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LGA SUB-COMMITTEE (DECISIONS 2009-2014)

DECISION

1. **VARIATION OF PREMISES LICENCE AT MANGO 1 SILVER STREET, AYLESBURY**
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Aylesbury Vale District Council

DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE FOLLOWING A HEARING ON 5 OCTOBER 2010 AT THE COUNCIL'S GATEWAY OFFICES, GATEHOUSE ROAD, AYLESBURY

Application by Admiral Taverns to vary the premises licence for Mango, 1 Silver Street, Aylesbury, Buckinghamshire

Members of the Sub-Committee

Cllr Janet Blake (Chairman)
Cllr Peter Cooper
Cllr Corrie Cashman

Declarations of interest

None.

The application

The Sub-Committee has given careful consideration to the application before it, namely, to vary the premises licence for Mango, 1 Silver Street, Aylesbury, Buckinghamshire.

In general terms, the application seeks permission to:

- to provide all licensable activities, with the exception of boxing or wrestling entertainment, 24 hours a day; and
- to remove all existing non-mandatory conditions and replace them with a complete set of new conditions.

The applicant was represented by Mr Kyle Michael, the designated premises supervisor who was supported by Mr Matt Valenzuela and Ms Elaine Westley.

The application received representations from the Police; Environmental Health and Buckinghamshire Fire Authority, acting in their capacity as responsible authorities and 4 representations from interested parties. Namely, Thomas Hickman's Charity; Aylesbury Town Council; Mr Jon Hughes and Mrs Robyn Hughes and Jardines Bowling Club.

The Police submitted a very detailed representation strongly objecting to the application referring to claims made and assurances provided by the applicant at the time of the previous extension and contrast it with the reality of the situation.

The Police referred to the fact that years of experience have shown that the premises are the hardest to police in the town centre because of the location and draw attention to the fact that there has been a high turnover of DPSs (designated premises supervisors) and area managers and that the premises is very near to a large town centre population of residents.

The Police, in particular, mention that the late hours that the premises currently enjoys attracts people to the premises who have already been drinking. The premises has the latest licensing

hours in the town centre and can stay open to the public until 03.30 hours on Fridays and Saturdays which is an hour longer than the majority of other licensed premises. According to the Police, CCTV evidence shows customers migrating to the premises in the early hours of the morning.

The Police representation also listed incidents of crime and disorder associated or connected with the premises since the current DPS has been in place.

The Police in their representation also detail what they consider to be the general problems associated with alcohol in Aylesbury town centre and draw attention to the Council's saturation policy.

The Police were represented by their Licensing Officer: Mr Trevor Hooper.

Thomas Hickman's Charity objected to the application because it would be likely to cause or increase disturbance within Aylesbury town centre during unsocial hours of the night with the risk of distress to elderly almspersons who live close to the premises.

Thomas Hickman's Charity were not represented at the hearing.

Environmental Health's representation expressed concern about disturbance arising from customers leaving the premises at the time when the town centre would otherwise be quiet. Environmental Health Officer Mr Paul Irwin attended the hearing in support of this representation.

The Fire Authority's representation simply stated that "A comprehensive fire risk assessment must be provided and form part of the conditions of the licence." Mr Andy O'Brien attended the hearing on behalf of the Fire Authority.

Aylesbury Town Council objected to the application because they believed it would greatly increase the risk of public nuisance and crime and disorder and were represented by Town Councillor Mr Steve Mitchell.

Mr and Mrs Hughes, live in a flat approximately 50 yards away from the premises. They objected 'because of the noise and disturbance emanating from the premises'. They complained about disturbance caused by people when leaving the premises and drunken people being noisy on Temple Street causing sleep disturbance as well as noise caused by cars and taxis between 0300 and 0400 hours.

They accept that not all the incidents of disturbance they complained about can be evidentially linked to the premises but claim that the situation has worsened since the previous extension of hours.

They complained about disturbances, fights, acts of vandalism within a short distance of the premises and say their right to peacefully enjoy their home is being disturbed. Mr Hughes attended the hearing in support of his own representation.

Jardines complained about metal railings which restrict access to their premises and about Mango's customers standing in front of their club's entrance which makes accessing their club more difficult and intimidating. Jardines also expressed concern about queues blocking or slowing down emergency access.

Mrs Eileen Adams, the Company Director and owner of Jardines, attended the hearing.

Prior to the hearing, the applicant had submitted a comprehensive response to the representations submitted arguing in favour of the application. The response sets out the applicant's management of the premises; the DPS's licensing experience; the reassurance that the premises has opened until much later on bank holidays and on Saturday nights using TENs (temporary event notices) without incident for the last 10 weeks and the premises' membership policy.

The applicant explains in the response that as the premises is regarded as a 'gay bar', its customers have suffered homophobic attacks and enforcing acceptable standards of behaviour has led to incidents which it should not be penalised for.

According to the applicant, the purpose of the application is to provide flexibility and allow customers to drift off naturally rather than evicting people en masse onto the streets.

The applicant reminds us that objections have to be evidenced based and points out to us the lack of any evidence and the need to consider the application on its own merits.

The applicant also challenges the incidents the Police attribute to the premises.

The decision

We have listened to all the representations and have read all the material.

We have had regard to the statutory guidance issued under section 182 of the Licensing Act 2003, and the Council's own licensing policy.

We have also taken into account our duty to have due regard to the likely effect of the exercise of our discretion on, and the need to do all we reasonably can to prevent, crime and disorder in our area.

We confirm that in making our decision we have sought to promote the licensing objectives.

We have taken into account that local residents have a right to respect for their private and family life and their home. They are entitled therefore not to be disturbed by unreasonable noise and nuisance. However, this is a qualified right and has to be balanced against the rights of others including the rights of businesses in the area to operate.

Under the Licensing Act, we cannot modify the conditions or reject the whole or part of the application merely because of unsubstantiated concerns or because we consider it desirable to do so. Any regulation we impose must actually be necessary in order to promote the licensing objectives and must be supported by real evidence that it was required in the circumstances of the case.

This application raises very significant issues concerning the implications of longer licensing hours in Aylesbury town centre.

Grappling with the strategic and premises-specific licensing issues arising from this application and assessing their likely impact was difficult.

Issue 1: Does the saturation policy apply?

The saturation policy deals with the cumulative impact on the licensing objectives of a concentration of licensed premises in Aylesbury town centre. It addresses the need to consider the bigger picture and the wider impact individual licensing decisions are likely to have on crime, disorder, nuisance and disturbance in sensitive locations.

According to the Council's Licensing Policy Statement, the policy "is based on the concentration of licensed premises selling alcohol for consumption on the premises which give rise to large numbers of people who have been drinking alcohol on the streets in Aylesbury Town."

The effect of the policy is to create a rebuttable presumption that applications for new licences or variations that are likely to add to the existing cumulative impact will normally be refused, unless the applicant can demonstrate that there will be no negative cumulative impact on the licensing objectives.

However, each case still has to be determined on its own individual merits.

In practice, deciding whether the saturation policy applies to this particular variation application and whether the application would add to the existing cumulative impact were very closely linked.

We considered these issues against the following factual and evidential background which the police presented to us in their representation and which we accepted.

There are approximately **21 pubs/clubs operating after 2300 hours** in the town centre.

The increase in the number of town centre premises selling alcohol and the increase in licensing hours has led to **an increase in crime, disorder and nuisance over the years**.

The town centre is a **hot spot** for incidents and policing.

Most town centre premises are open to the public until **0230 hours**.

It is the operational experience of the police that longer hours have not seen customers slowly dispersing but in effect has seen them drink right up to the last possible moment and then leave **en masse at a later hour**.

Later licensing hours have resulted in **later incidents of crime, disorder and nuisance**.

Most crime and disorder incidents happen in the town centre between 2200 and 0300 hours **and generally peak between midnight and 0200 hours**.

Most premises **do not open late during the week** and that is why **the majority of incidents take place over the weekend when the majority of premises open for longer**.

The police have already changed their **shift patterns** in response to the demands of policing the town centre for longer and later at night.

Even later hours at the weekends and during the week **would cost the police even more money to police the town centre** and would mean an even greater disproportionate amount of police resources being deployed in the town centre.

Late night town centre incidents can be **very labour intensive** with a single arrest monopolising the time of at least two officers for hours.

Licensed premises share Aylesbury town centre with a **large residential population**.

Although the number of incidents have declined since the high water mark in 2007 it is **still unacceptably high**.

The reduction has come at a price: bigger police wage bill and less policing elsewhere.

The reduction is proof that the saturation policy and the police strategy is **working and should be supported** to avoid a decline.

Against that background and having assessed very carefully the likely impact of the extension of hours, we are satisfied that this application by a town centre based public house which sells alcohol for consumption on the premises is a material variation which is likely to add to the existing cumulative impact.

In deciding whether a variation application is likely to add to the cumulative impact, regard should be had in our view not just to the likelihood of additional incidents but also the nature and timing of incidents and the wider impact this has on, for instance, policing.

It is overly simplistic and unduly restrictive to suggest that an application to extend hours well beyond the time that most or all other premises close is not capable of adding to the cumulative impact on the basis that it will not increase the number of incidents of crime, disorder and nuisance at the time when such incidents normally peak.

Cumulative impact can have a much broader application. Cumulative impact can arise from the large number of customers in the town centre late at night but an application which is likely to result in later incidents or disturbances is just as capable of adding to the cumulative impact of a concentration of licensed premises and is just as objectionable.

This means that the onus is on the applicant to demonstrate that the variation will not add to the cumulative impact.

As far as the extension of hours is concerned, we are satisfied that in all the circumstances, the applicant was not able to demonstrate that the variation will not add to the cumulative impact. In other words, we decided that our duty to promote the licensing objectives does necessitate a rejection of this part of the application.

We arrived at that conclusion having particular regard to the following:

Licensing experience since the Licensing Act came into force strongly suggests that longer licensing hours in the town centre will result in more and later incidents of crime and disorder and nuisance. This will cause even further disruption to the town centre residents.

According to Mr Hughes, between 4.00am and 6.00am the town centre is “very peaceful” and “like a graveyard”. Granting this application would shatter the peace and quiet that residents currently enjoy.

Similarly, Mr Irwin expressed concern in his expert opinion about customers leaving the premises causing a disturbance “in the quietest hours of the night”.

Local licensing experience also demonstrates that a significant extension of hours granted to one premises in the town centre is likely to result in other similar applications and ultimately customers drinking for even longer followed by a mass exit of customers at a common but even later hour.

These are the clear conclusions we can draw from real life operational experience of licensing premises in Aylesbury town centre.

The need to consider each application on its own merits, as we have in this case, does not preclude us from considering the cumulative and wider impact on the licensing objectives of granting this application. This is clearly a material and weighty consideration given our duty to promote the licensing objectives and there was nothing exceptional about this application justifying a departure from this important policy.

The Police expressed particular concern about customers migrating to the premises in the early hours of the morning. This is something which Mr Michael accepted and argued that it showed that there was a demand for a safe place for people to continue to drink at that time. But the Police highlighted the problems this can cause when people who have already been drinking all night or who have drunk too much attempt to gain entry to the premises or once they are inside the premises. The significance of these incidents is that even if they are properly handled by the premises and even if the management could not have done anything to prevent them, they arise from the use of the premises for licensable activities at that time.

Nor were we persuaded, for the same reasons, that the use of TENs on 12 Saturdays so far this year prove that extended hours would not add to the cumulative impact. The temporary, ad hoc nature of these extensions, over a relatively short period of time, which may or may not have been common knowledge, do not represent in our view a reliable account of the likely impact of extending the hours in the longer term.

For these reasons, we were satisfied that it was necessary to refuse the application in order to promote the licensing objectives. We considered extending the hours for a shorter time and/or on some but not all days. We also considered Mr Michael’s offer of extending the hours only for as long as he remained the DPS or, if permissible, for a trial period of time but they would not overcome the fundamental objections to extending the hours we have explained already nor would the use of conditions or expecting responsible authorities and interested parties to rely on their right to ask the council to review the licence any time in the future.

As for the need for our decision to be evidence based, both Mr Hooper and Mr Michael referred us to the same case.

In the **Daniel Thwaites Plc case**, the High Court decided that a decision of a Magistrates’ Court to impose restrictions on the hours of operation of a licensed premises was unlawful as it had not been established that it was necessary to do so to promote the licensing objectives.

In that case, the Court noted that “what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems.”

The High Court criticised the Magistrates’ Court for failing to take proper account of the changed approach to licensing introduced by the Licensing Act and for imposing regulation without looking for real evidence that it was required in the circumstances of the case.

However, in that particular case the applicant had agreed to restrict the hours to those that were acceptable to the Police. The Police accordingly withdrew their representations and did not take part in the hearing conducted by the licensing authority.

Significantly, the Court specifically held that the fact that the police did not oppose the hours sought should have weighed very heavily with the Magistrates.

The other key point to note is that no representations were made by Environmental Health.

It is plain therefore that the facts of this particular application are very different from that case. As far as this application is concerned, we do attach considerable weight to the representations made by the Police and Environmental Health, both of whom objected to the application and asked us to refuse it. Our decision is also based on local licensing experience and concern for the future which rests on extrapolation from actual incidents of crime, disorder and nuisance.

Issue 2: conditions

As for the conditions, appended to this decision is a table which sets out the existing and proposed wording of the conditions which were in issue.

No entry restriction

To prevent the problems associated with customers migrating to the premises from other licensed premises, for the reasons already given, we were satisfied that it was necessary to continue to apply this restriction.

CCTV

During the course of the discussion we led, the parties agreed amongst themselves to relax the existing CCTV condition so that it only needs to be operated from 2100 hours until 1 hour after the premises is closed to the public.

The existing condition will be amended as follows:

After 21.00 hours and until 1 hour after the premises is closed to the public, the premises shall operate a digital CCTV system throughout the premises and outside which monitors all alleyways and corridors surrounding the premises subject to the necessary listed building consents.

Door supervisors

The Police objected to the changes proposed to this condition and in all the circumstances of this case we felt that in order to promote the licensing objectives of preventing crime and disorder and preventing public nuisance, it was necessary to refuse the variation of this condition.

Floodlighting

There was no objection to the variation of this condition and it was therefore granted.

Windows and doors

Given the close proximity of residential premises we felt it was necessary to ensure all windows and doors remained close whenever music was played and not just after 23.00 hours in order to prevent a public nuisance. We therefore refused the variation of this condition.

Children

Mr Hooper expressed concern about permitting an individual under 18 on the premises between 23.00 and 00.00 hours but the Licensing Act does not prevent this and we did not think that there was any justification for refusing the variation of this condition.

Fire safety

None of the parties objected to the variation of this condition. Mr O'Brien, however, told us that he wanted us to impose a capacity limit of 150. In the context of determining a variation application, we could not introduce this restriction but Mr O'Brien said that he could take any necessary enforcement action under fire safety legislation.

The mandatory conditions and the conditions volunteered by the applicant (i.e. the details of the amended operating schedule) have not been reproduced in this decision notice but will be set out in the licence document itself.

The effective date of this decision

This decision will take effect when the licence (or a certified copy) is kept at the premises and a summary of that licence (or a certified copy) is displayed at the premises. These documents will be issued by Licensing Services as soon as possible.

Right of Appeal

The applicant has a right of appeal to Aylesbury Magistrates' Court against this decision. The applicant can appeal against the refusal of part of the application.

If you wish to appeal you must notify Aylesbury Magistrates' Court within a period of **21 days** starting with the day on which the Council notified you of this decision.

22 October 2010

Aylesbury Vale District Council

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE
FOLLOWING A HEARING ON 5 OCTOBER 2010 AT THE COUNCIL'S GATEWAY
OFFICES, GATEHOUSE ROAD, AYLESBURY**

**Application by Admiral Taverns to vary the premises licence for Mango, 1 Silver Street,
Aylesbury, Buckinghamshire**

Appendix: Conditions

Proposed amendment	Existing
<p>No entry restriction No person, other than staff of other venues, shall be allowed to enter or re-enter the premises after 03.00 or before 06.00, save for the purpose of compliance with smoking regulations</p>	<p>No entry restriction No persons shall be allowed to enter or re-enter the premises after 01.45 hours save for the purpose of compliance with smoking regulations</p>
<p>CCTV Remove it</p>	<p>CCTV The installation and 24 hour running of digital CCTV throughout the premises and outside ...CCTV [shall be]used to monitor all alleyways and corridors surrounding the premises subject to the necessary listed building consents</p>
<p>Door supervisors The placing of a registered door supervisor outside of the premises wearing an illuminous marked jacket where premises are open to the public between the hours of 0200 and 0600</p>	<p>Door supervisors The use of a registered door supervisor after 21.00 on a Friday and a Saturday to terminal hour and the placing of a member of staff outside of the premises wearing an illuminous marked jacket to help with customer dispersal where premises close after 02.00hrs for 20 minutes before and after terminal hour The placing of a registered door supervisor outside of the premises wearing an illuminous marked jacket where the premises close after 0200 hours for 20 minutes before and after the terminal hour</p>
<p>Floodlighting Floodlighting to be provided to light alleyways surrounding the premises</p>	<p>Floodlighting Floodlighting shall be used to light all alleyways and corridors surrounding the premises subject to the necessary listed building consents</p>

<p>Windows and doors All windows and external doors shall remain closed between 23.00 and 06.00 when live or recorded music takes place save for the opening of doors to allow the ingress and exit of customers</p>	<p>Windows and doors All windows and external doors shall remain closed whenever live or recorded music takes place save for the opening of doors to allow the ingress and exit of customers</p>
<p>Children Children under 16 to be accompanied by an adult and no person under 18 permitted on the premises between 00.00 and 07.00</p> <p>No persons under 18 on the premises during forms of adult entertainment</p>	<p>Children Children under 16 to be accompanied by an adult</p> <p>Persons under the age of 18 will not be permitted on the premises during times where adult entertainment is provided, and in any event no person under 18 shall be permitted on the premises after 23.00 hours and before 07.00 hours on any day</p>
<p>General/fire safety Risk management assessments to be regularly carried out</p> <p>Capacity of venue to be assessed regularly and fire evacuation training provided to all staff and attached to the risk assessment and hi-visibility clothing provided for staff for immediate use in the event of fire alarm sounding</p> <p>Keep up to date with best practice in relation to health and safety, fire safety and all other policies</p>	<p>General/fire safety Promotion of public safety by effective management, provision of sufficient first aid boxes and accident reporting procedures as at present</p> <p>The Fire Based Risk Assessment is to record the action to be taken by staff in the event of an accident, also the emergency lighting system to be extended to cover the upstairs fire exit</p>