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LGA SUB-COMMITTEE (DECISIONS 2009-2014)

DECISION

1. **VARIATION OF THE PREMISES LICENCE AT 13 HIGH STREET BUCKINGHAM AND VARIATION OF THE PREMISES LICENCE AT THE FIVE ARROWS, 89 HIGH STREET, WADDESDON (Pages 1 - 10)**



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Aylesbury Vale District Council

DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE FOLLOWING A HEARING ON 17 MAY 2011 AT THE COUNCIL'S GATEWAY OFFICES, GATEHOUSE ROAD, AYLESBURY

Application by Mr Ashley Brown to vary the premises licence for 'Thirteen High Street', 13 High Street, Buckingham MK18 1NT

Members of the Sub-Committee

Cllr Judy Brandis (Chairman)
Cllr Michael Rand
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 'Thirteen High Street', at 13 High St., Buckingham. The application seeks permission to build an external servery/bar in the rear courtyard/back garden of the premises.

According to the applicant, the reduction in the size of the garden and improved management and supervision of the external area of the premises, will help to control the risk of noise nuisance rather than making the existing situation worse. The applicant also argued that moving people away from the main servery at the front door of the premises will reduce the risk of noise escaping out onto the street.

The applicant, Mr Ashley Brown, attended the hearing in support of his application.

The application received representations from Environmental Health, acting in its capacity as a responsible authority, and 9 representations from interested parties. Namely, Mr James Lowe; Mr Paul Walker; Mr Peter Thirlby; P Hunjan & J Wallis; Mrs Liz Zettl; Mrs Susan Byrne; Mr Graham Porter; Mr Pim Papendrecht and Mrs Julia Papendrecht and A Dunn.

Mr Neil Green submitted the representation on behalf of Environmental Health and mentioned the following:

- the premises is located within close proximity to residential, commercial and other licensed premises;
- in the last 2 years 1 complaint from a local resident about disturbance caused by amplified music emanating from the converted barn has been received;
- he does not object to the application but accepts that an outdoor bar may result in an intensification in the use of the external areas of the premises by customers; and
- should this cause a noise nuisance in the future, Environmental Health will consider using their review powers.

Mr Green also attended the hearing.

The interested parties expressed concerns about noise levels increasing because an outside bar would mean more people remaining outside at the back of the premises. They complained about problems that they currently experienced causing sleep disturbance late at night and in the early hours of the morning.

Concern was also expressed about a possible increase in crime and litter and a reduction in public safety and the safety of children.

As for the interested parties, Mr Lowe (who also represented Mrs Zettl); Mr Walker; Mr Thirlby; Mrs Susan Byrne (who also represented Mr Porter) and Mr and Mrs Papendrecht attended the hearing and took part in the discussion we led.

Although not all of the interested parties were in attendance we did not consider it to be in the public interest to adjourn the hearing and we nonetheless considered their written representations.

At the hearing, Mr Green confirmed that he had carried out an inspection of the premises in response to this application and that he did not object to it. He pointed out that there would be no increase in licensable activities or extension of times. He confirmed that the only complaint reported to Environmental Health was made in January 2011 and related to amplified music and was resolved informally.

Mr Papendrecht told us that he had not complained in the past but that is not to say that he had not experienced problems including break-out of music.

Mr Thirlby said he expected a certain amount of noise because of where he lived but said that it is really bad.

Mr Walker complained about sleepless nights and asked for a little bit of consideration. He told us that his house was a grade II listed building and he could not fit double-glazed windows.

Mr Lowe complained that the noise nuisance was getting worst. As far as he was concerned, more customers at the back of the premises would mean more noise.

Mrs Byrne complained about noise nuisance she had suffered as late as 2, 3 and 4am caused by customers milling about outside the premises or leaving the premises.

A number of the interested parties also complained that the premises regularly stayed open beyond 01.30 hours i.e. in breach of their licence.

Mr Brown disputed the claim that his premises regularly stayed open beyond the permitted hours. He also refuted the claim that he was not at the premises on Friday and Saturday nights and confirmed that he lived "on site" and that he did not own or manage another pub.

Mr Brown repeatedly and emphatically told us that the variation was not intended to and would not in reality result in an increase in footfall. He told us that on Friday and Saturday nights 85% of his customers remain outside at the rear of the premises because of the smoking ban and also because people enjoy being outside.

Mr Brown explained that an outside bar in the courtyard, which is already extensively used, would mean that entire area would be better supervised by more staff and that would decrease the likelihood of his customers causing a nuisance. He also said that if the application were granted, the grassed area would be rendered useless.

According to Mr Brown, the garden does not cause a problem; the current weakness is the front of the premises which is where noise leaks from. He told us that building a second bar would mean diluting the volume of customers and moving them away from the front bar. He said that because his premises was cocktail based it takes longer to serve his “premium clients” and that is why it was beneficial to move them away from the front of the premises.

Mr Brown also told us that his premises is well run which the licensing authority and the police could vouch for.

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.

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 the facts and the relevant representations made.

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.

We are satisfied that in all the circumstances the impact of the variation of the premises licence on the licensing objectives does not necessitate a rejection of the application.

We were impressed by Mr Green’s evidence. His comments were to the point and effective. In summary, he felt that an intensification of the use of the garden area could be properly managed and that the improved supervision which Mr Brown promised could even result in less noise. Mr Green’s representations weighed heavily with us and meant that a refusal of the application could not be justified.

We can understand why the interested parties objected to this application and expressed concerns about the problems they were currently experiencing getting worst. We also appreciate their strength of feeling. Unfortunately for them, many of their complaints did not relate to this particular variation application and were not relevant. This was not an application

for the grant of a licence or even for a review of the licence. Our remit was limited to the issues arising from the installation of a second outside bar without a request for an extension of hours or the addition of new licensable activities. The application was therefore fairly limited in scope.

Complaints about music and problems caused by people generally late at night in the High Street area do not fall to be considered in the context of this particular application.

If the interested parties experience problems in the future, we would strongly advise them to record it and report it to the relevant authorities especially if they have good reason to believe that the disturbance also constitutes a breach of the conditions of licence.

The concerns the interested parties expressed about the future were purely speculative and could not be substantiated.

We are also of the view that if properly managed and supervised, the outside area could even promote the licensing objectives for the reasons stated by Mr Brown. We would, however, take this opportunity to remind Mr Brown that if he obtains planning permission to build a new bar and implements this permission, he must deliver on the assurances he has given us and we would encourage him to fence off the grassed area as he said he would. We acknowledge that the premises has been well run to date but there is certainly no room for complacency and no doubt he will be all too aware of the right that the interested parties and Environmental Health have to apply for a review of his licence.

Conditions

Having regard to the representations made, we are satisfied that no further conditions are necessary in order to promote the licensing objectives.

The effective date of this decision

This decision takes effect immediately. However, the premises cannot be used in accordance with this decision until 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.

It is also worth noting in this particular case that the permission we have granted does not constitute planning permission.

Right of Appeal

All the interested parties have a right of appeal to Aylesbury Magistrates' Court against this decision.

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.

Aylesbury Vale District Council

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE
FOLLOWING A HEARING ON 17 MAY 2011 AT THE COUNCIL'S GATEWAY
OFFICES, GATEHOUSE ROAD, AYLESBURY**

**Application by Rothschild Waddesdon Ltd to vary the premises licence for The Five
Arrows, 89 High Street, Waddesdon, Buckinghamshire HP18 0JE**

Members of the Sub-Committee

Cllr Judy Brandis (Chairman)
Cllr Michael Rand
Cllr Corrie Cashman

Declarations of interest

None.

The application

This is an application by Rothschild Waddesdon Ltd to vary the premises licence for The Five Arrows, 89 High Street, Waddesdon, Buckinghamshire. The application seeks permission to sell alcohol later at night (i.e. until 01.00 hours Mondays to Saturdays and midnight on Sundays for consumption on and off the premises) and to provide regulated entertainment (live and recorded music and the provision of facilities for dancing – indoors only; until midnight on Mondays to Saturdays and 23.00 hours on Sundays) and late night refreshment (indoors only; until midnight on Mondays to Saturdays).

In its operating schedule the applicant listed closing times of midnight on Mondays to Saturdays and 23.00 hours on Sundays. This clearly was an error. We therefore proceeded on the basis that the application was for the premises to stay open until the same times as the sale of alcohol.

At the hearing, the applicant was legally represented by Mr Philip Somarakis and he was accompanied by Mr Alexander McEwen, the General Manager, and Mr Mike Rothwell on behalf of the premises' management company.

One of the responsible authorities, namely, Environmental Health, submitted a detailed and extremely helpful representation in response to the application.

The representation submitted by Environmental Health expressed concerns about the potential for public nuisance as there are residential properties in close proximity to the premises. Environmental Health suggested that the applicant produce a noise management plan, which forms part of their operating schedule, explaining how noise emitted from events and functions will be managed so as to reduce the potential for nuisance. The representation then went on to specify the practical measures which should be included.

Environmental Health also asked the applicant and the sub-committee to consider attaching further conditions to the operating schedule.

Miss Lindsey Hone, who submitted the representation on behalf of Environmental Health, attended the hearing in support of her representation.

The application also received three representations from interested parties who lived directly opposite the premises. They complained about loud music, sleep disturbance, the disturbance caused by the premises' customers when leaving the premises, the nuisance caused by parking issues. They also claimed that the premises ignored their complaints and operated without a licence.

The interested parties were Mr Ian Bullivant and Mrs Sandra Bullivant; Dr Mardon and Mr Jeremy Reade and Mrs Jane Reade.

We are pleased to note that in response to the representations received, the applicant opened a very constructive dialogue with the interested parties in an attempt to resolve the issues raised. Having taken on board Miss Hone's suggestions, the applicant amended its operating schedule to incorporate the practical safeguards and mitigating measures she had suggested. As a result, Ms Hone informed us that she was satisfied that the applicant had reasonably met all her concerns at this stage. We were also given to understand that the applicant arranged a meeting with all the interested parties and general satisfaction with the amended application was achieved.

Mr and Mrs Reade attended for the hearing but took no part in it having confirmed that the additional conditions volunteered by the applicant fully addressed their concerns. On that basis they withdrew their representation.

Mr and Mrs Bullivant did not attend the hearing but we were shown copies of email correspondence between them and the applicant evidencing the commitment on the applicant's part to consult them about forthcoming functions and a willingness to make necessary adjustments to avoid the kind of problems they had suffered in the past. The correspondence indicated that Mr and Mrs Bullivant had already started to see a marked improvement in the situation and confirmed that a recent function had not caused any disturbance.

Dr Mardon did not attend the hearing and had not contacted Licensing Services to indicate whether he intended to attend.

Given the circumstances we did not consider it to be in the public interest to adjourn the hearing but we had regard to the written representations the parties had originally made and the subsequent developments.

As two of the three interested parties had not formally withdrawn their representations or otherwise informed the Council that the applicant had satisfactorily resolved their concerns, we had to proceed with the hearing and make a formal decision.

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.

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 the facts and the relevant representations made.

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.

We are satisfied that in all the circumstances the impact of the variation of the premises licence on the licensing objectives does not necessitate a rejection of the amended application.

The applicant and the interested parties deserve credit in our view for using the impetus provided by this application to try to resolve the problems experienced in the recent past and for making sensible concessions.

We agree with Miss Hone that the additional conditions which the applicant volunteered (see Appendix 1) which are attached to this decision, satisfactorily address the issues arising from this variation application. The conditions will apply when regulated entertainment is provided. We would, however, reiterate what Miss Hone said at the hearing: given the sensitive location of the premises, the risk of noise nuisance and disturbance will have to be continuously and actively managed by the applicant to avoid enforcement action whether using Environmental Health's statutory nuisance powers or their power to seek a review of the premises licence itself.

For our part, we would encourage the applicant and interested parties to maintain their constructive dialogue and we would also take this opportunity to record our disappointment that the premises did operate without a licence before seeking, in the form of this application, to regularise the situation.

Conditions

Having regard to the representations made, we are satisfied that no further conditions are necessary in order to promote the licensing objectives.

The effective date of this decision

This decision takes effect immediately. However, the premises cannot be used in accordance with this decision until 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

Mr and Mrs Bullivant and Dr Mardon have a right of appeal to Aylesbury Magistrates' Court against this decision.

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.

Appendix 1

Conditions volunteered by the applicant when regulated entertainment is taking place

1. All music performers are required to sign and adhere to the Five Arrows Cartshed terms and conditions for musicians and DJs – attached to the Premises Licence as Appendix []. They will be briefed personally regarding the need for sensitivity to local residents and other hotel guests. Music performance will be stopped in the event that performers do not comply with the contract and the terms and conditions of the Five Arrows Premises Licence.
2. An appointed senior management team member will be on duty throughout the time that music is played on the premises, to be responsible for managing noise breakout and will react positively and in a timely manner to any complaints received. Any complaints will be logged and the complainants will be contacted after the event by the General Manager and a record will be kept for twelve months and be available for inspection by the District Environmental Health Officer.
3. The appointed senior management team member will conduct regular noise checks around the perimeter of the hotel at least every hour to ensure that the music is at the agreed level, if it is not then action will be immediately taken to reduce the noise.
4. All music will cease at 11.45 p.m.
5. Between 11pm and finishing at 11.45pm, the volume of the disco, I-pod or acoustic music must be turned down to a level agreed with the appointed senior manager for the Five Arrows.
6. All live music (as opposed to DJ performance) will cease at 11pm.
7. Any provision for the facilities of dancing that is carried on with the provision of amplified live and recorded music shall take place within the structure of the Cartshed building only.
8. Any speakers and amplifiers used for the provision of regulated entertainment in the Cartshed and marquees shall be positioned within the building structure of the Cartshed itself and directed away from residential premises that may be affected by noise.
9. Speakers and amplifiers used for the provision of regulated entertainment shall not be used in the Courtyard or garden areas after 21:00 hours.
10. The front hotel gates will remain closed during music performances, save for the opening and closing to allow the ingress and exit of customers and staff.

11. Any taxi company ordered by the hotel on behalf of guests when requested will be instructed to drop off and collect guests from the rear car park and NOT at the front of the hotel. Any taxi ordered personally by guests themselves, seen waiting at the front, will be directed to the rear car park to wait.
12. Signage will be placed in a prominent position on the front gates of the hotel and at the rear of the hotel asking guests to be mindful of local residents when leaving the premises.