

Aylesbury Vale District Council

DECISION OF THE LICENSING ACT SUB-COMMITTEE FOLLOWING A HEARING ON 12 JULY 2011 HELD AT THE COUNCIL'S GATEWAY OFFICES, GATEHOUSE ROAD, AYLESBURY

Application by ROC UK Limited for a new premises licence for the 'ESSO Snack & Shop Borough Service Station, Wendover Road, Aylesbury HP21 9LB..

Members of the Sub-Committee

Cllr Janet Blake (Chairman)

Cllr Judy Brandis

Cllr Freda Roberts

Declarations of interest

None.

The application

The sub-committee has given careful consideration to the application before it, namely, to grant a premises licence for ESSO Snack & Shop, Borough Service Station, Wendover Road, Aylesbury HP21 9LB.

In general terms the application, as amended, seeks permission for the supply of alcohol between 07:00-22:00 seven days per week and late night refreshment 23:00-05:00 seven days a week.

The application received representations from Thames Valley Police and 17 representations from residents living in the vicinity of the premises.

The applicants were represented by Leo Charalambides (Counsel); Corrigan Lockett of Locket & Co, (Retail, Licensing and Training Consultants), Mrs Andrews, the Site Manager and their Flexi Manager also attended the hearing.

Thames Valley Police did not attend.

The interested parties Mr A Porter, Mr R Porter, Mr K Saw, Mrs H Wood and Mrs A Henderson spoke on behalf of the interested parties. A number of other interested parties attended and 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.

Additional paperwork was circulated prior to the hearing which included a copy of the letter sent from the Applicants to the Interested Parties and a short pack of documents entitled "Premises Licence Application".

The Interested Parties also brought two photographs which had been taken the previous weekend showing congestion around the service station. The applicant did not object to these been introduced though did invite the Chairman not to allow them to be submitted as they were irrelevant. The Chairman said she was minded to agree with Mr Charalambides, though allowed them to be circulated, and said that the Committee would attach the appropriate weight to them.

The interested parties who spoke stated that their main concerns relating to road safety issues as they believed there would be increased traffic if the licence was granted. They also explained that they experience issues of litter, noise, people urinating on gardens and other areas due to a lack of toilets in the service station and they asserted that all of these problems would only get worse if the licence was granted. They also feared for the safety of children from the increased traffic, underage sales and people gathering in the area. Generally they asserted that there was no need for the premises.

The Applicant's representative, Mr Charalambides, in his presentation, confirmed that the Applicant had substantially amended their application after input from Thames Valley Police. He confirmed the hours sought for the sale of alcohol were 07:00 – 22:00 hours seven days a week and the use of a night hatch between 22:00 and 07:00 seven days per week. He stated that late night refreshment was sought to enable the sale of hot coffee and tea, possibly soup and other foods which can be heated up in a microwave. They would not be serving burgers and alike.

Mr Charalambides confirmed that the Applicant's agent had written to all interested parties detailing the revised application on 1st July 2011.

The garage has been established a long time with a convenience store. Mr Charalambides said that the Applicant was very surprised at the assertion regarding the sale of age restricted goods to underage children as the company has very detailed due diligence procedures, including keeping detailed logs when ID is requested. They have a

rigorous training regime which stems from head quarters. The company has chosen to adopt the challenge 25 policy.

Mr Charalambides, for the benefit of the interested parties, confirmed that the framework of the Licensing Act 2003 is very prescriptive and the sub-committee can only take into account those matters relating to the four licensing objectives. Matters relating to road safety are not relevant for the grant of a licence. He drew the sub-committee's attention to paragraph 2.19 and 2.32-2.40 of the Secretary of States Statutory Guidance. He also referred to the case of *Thwaites*. He referred to paragraph 13.23 of the Statutory Guidance which states that commercial need/demand is not a relevant consideration.

In respect of the allegation of litter, Mr Charalambides states that as the garage does not currently sell alcohol the current litter could not come from the Applicant's Premises. They objected to the assertion that blue gloves and tissues had come from the garage and that they do not currently do clean up as Mrs Andrew's does pick up litter, including weeding the verge next to the garage. He did offer a condition that they would be willing to agree to a condition to do 3 or 4 litter collections a day in the vicinity of the premises. He would be agreeable to prescriptive times for this being set.

He confirmed that there are not toilets available in the service station for customer's use and that if anyone asked the staff would direct them to other toilets. The reason behind this was for staff safety. The robberies which had been experienced were a local problem and someone has been apprehended. The Applicant was a victim of the robberies and therefore should not be penalised. He confirmed that children services had not made an objection to the application. The issue of public nuisance is a very narrow concept in licensing terms and does not include traffic issues. Litter is relevant and they have offered a condition to deal with these problem. The hours of operation for the sale of alcohol are very small.

Questions were asked by both interested parties and the sub-committee where it was established what the Applicant's meant in terms of "vicinity" for the litter picking. This was described as the forecourt, plus public verge and half way between the premises and Broad Leys. It is depicted by a red line on the attached plan.

Mr Charalambides confirmed that individual cans would not be sold, just packs of drink. They would stock the full range of beers, wine and spirits. The layout of the operation was shown on the plan at B19. He confirmed that they, at present, had no plans to expand. If they did wish to expand in future they would require planning permission.

The due diligence checks are checked by an external agent and they have an external test purchaser as well as trading standards. There is also a till prompt for challenge 25.

They have no designated parking spaces, but this is not a consideration for this hearing. They did not have financial figures available, though again it is not a relevant consideration.

Their training DVD does cover the issue of proxy purchasing. Mrs Andrew's confirmed at this time that she is very approachable, and would hope that if anyone has a problem with the garage then please raise it with her directly and they can try to resolve the issue.

Mr Charalambides confirmed that the challenge 25 log was site specific and is checked by the manager and area manager regularly to ensure all staff are challenging customers and following the procedures. It is also used to identify whether any particular staff are being targeted.

The premises do not encourage people to eat or drink on the premises but to take the food and drink away with them.

They do not have a notice stating that there are no toilet facilities on site, but would be willing to put one up. Further, Mrs Andrew's will ensure staff do not direct customer's to the Public House.

Their security procedures are very rigorous and they have signs up in several prominent places stating that staff do not have access to the till. When the money gets to a certain level, the staff are required to do till drops which puts the money into a big secure unit which can only be collected by their money collectors; it cannot be accessed by staff.

In closing, the interested parties confirmed that they felt the licence was not needed and would only create nuisance issues in relation to noise, litter and road traffic. They felt the offer of litter collections did not cover a sufficient area. They asserted that all customer's could just be sent to Adam's, their sister garage, which does have a licence for the supply of alcohol, late night refreshment and toilet facilities.

Mr Charalambides, when closing, confirmed that the sub-committee should consider the likely affect of the grant of the licence on the licensing objectives only. They have offered a litter collection for 3 to 4 times a day between 07:00 and 22:00. They have substantially reduced the hours and have a detailed operating schedule at B14 which they would be happy to be included as conditions. He urged the sub-committee to grant the application.

The decision

We have listened to all the representations from a selection of the interested parties and the Applicant. We have also read all of the written representations and other material supplied.

We acknowledge that those residents who live in the vicinity of the service station believe they could be adversely affected by this application if granted and have therefore objected on a number of grounds and have expressed concerns.

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

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.

We have considered carefully the concerns expressed by, and on behalf of, the local residents. During the discussion, they majored on the following arguments: road safety, litter. They also mentioned concern regarding the sale of age-restricted items to underage children, noise and the lack of the availability of toilets on site.

We remind all parties that the Sub-Committee is limited to what we can take in account when making a decision. We must only have regard to the Licensing Objectives and concerns such as road safety are not a relevant consideration for today's hearing.

Thames Valley Police had made a representation and confirmed that after a reduction in the hours sought for the supply of alcohol and the use of a night hatch to serve customers between 22:00 and 07:00 that they were satisfied with the licence application. We note that the service station will still operate 24 hours a day, seven days a week. Further, that late night refreshment is still sought for between 23:00 and 05:00, seven days a week.

The fact that the Applicant accepted the conditions proposed by the Police and that the Police were satisfied with the revised application weighed heavily with us because the expert authorities with special responsibilities for crime and disorder have effectively

satisfied themselves that the application does not raise any unacceptable issues. Further, there were no representations from the other Responsible Authorities.

We are satisfied that in all the circumstances, the impact of the grant of a premises licence on the licensing objectives does not necessitate a rejection of the application. The application is granted for the supply of alcohol for off sales between 07:00-22:00 seven days per week and the following conditions, as agreed by the Applicant are put on the licence:

1. Doors to the premise to be shut and locked at 22.00 hours each night until 07.00 hours the following morning with all sales taking place through a night hatch. For the avoidance of doubt, management, staff members and if required those making deliveries to the site shall be permitted access.
2. Litter to be collected within the vicinity of the Premises as shown on the attached plan four times per day between 07:00 and 22:00, seven days a week. A record of each litter pick will be kept on site available for inspection by the local authority.
3. A notice is to be prominently displayed stating that the premises do not have toilets facilitate on site.

The Sub-Committee were pleased to hear from Mrs Andrew's that she wants to get on with neighbours and would welcome anyone to approach her if they have problems which they believe emanate from the garage. The sub-committee would strongly encourage this.

Right of Appeal

The interested parties have a right of appeal to Aylesbury Magistrates' Court against this decision. The applicant can appeal on the grounds that different or additional conditions should have been imposed.

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.

13 July 2011