

Aylesbury Vale District Council

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE
FOLLOWING A HEARING ON 1 NOVEMBER 2011 AT THE COUNCIL'S
GATEWAY OFFICES, GATEHOUSE ROAD, AYLESBURY**

**Application by Fuller, Smith & Turner Plc to vary the premises licence for The Whale, 14
Market Hill, Buckingham**

Members of the Sub-Committee

Cllr Cooper (Chairman)
Cllr Cashman
Cllr Mrs Renshell

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 The Whale, 14 Market Hill, Buckingham.

In general terms, the application as amended seeks permission to:

- Vary the hours the premises are open to the Public:
 - o Sunday – Thursday 08:00 – 00:30
 - o Friday – Saturday 08:00 – 01:30
- Vary the hours to serve alcohol to: (for consumption on and off the premises)
 - o Sunday – Thursday 08:00 – 00:00
 - o Friday – Saturday 08:00 – 01:00
- Vary the hours of live music (indoors only)
 - o Sunday - Thursday 11:00 – 23:00
 - o Friday – Saturday 11:00 – 01:00
- The timings of Live music, Late night refreshment, supply of alcohol and hours open to be the public to have one additional hour on Good Friday, Christmas Eve, Christmas Day, Boxing Day and December 27th.

There was some discussion between the legal representatives for AVDC and the Applicant and it was confirmed that there was no application in respect of recorded music.

The Applicant, Fuller Smith and Turner Plc were represented by Stephen Lindsley-Frost, the Area Manager and Mr and Mrs Thirkettle, the tenants.

The application received a representation from Environmental Health, acting in their capacity as a responsible authority and two representations from residents acting in their capacity as interested parties; Mrs Irving of Forge Cottage and Mr B Lowe representing his partner, Mr J Lowe of 33 High Street.

Environmental Health's representation, made by Neil Green, concerned with possible noise breakout from live music.

Environmental Health was represented by Mrs Jacqui Bromilow as Mr Green was unable to attend. Mrs Bromilow confirmed that their view was that the size of the venue meant that a sound limiter would not be an effective measure. Further both the front and rear entrances to the venue had a lobby area and therefore if the doors were kept closed this would help limit noise break out. Mrs Bromilow also confirmed that on the Council's database which goes back to 2000 there are no records or complaints which relate to noise nuisance.

Environmental Health had raised their concerns with the applicants before the hearing and they agreed the following conditions and thereby the application was amended accordingly:

1. Standard timing for live music for Sunday to Thursday to be from 11:00 – 23:00 hours
2. The rear garden area shall close and be cleared of customers at 22:30 hours daily
3. Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly.
4. Save for entry and exit purposes, when regulated entertainment is provided, all windows, external doors and the internal lobby door shall remain closed.

Mr B Lowe represented his partner Mr J Lowe and read out a statement which Mr J Lowe had written. In summary he welcomed the refurbishment and change of the public house but he opposed the serving of alcohol from 8:00am daily due to school children passing by and the type of people it would attract. He questioned whether it would be more appropriate to seek occasional licences to cover the few times that the applicants' seem to be suggesting that they would be serving alcohol at such an early hour. He stated that he would wish to seek the licensing hours to be in line with the Kings Head Public House. His opinion was that the White Heart and 13 High Street were not comparable venues to The Whale due to their size and location.

There was some discussion surrounding the distance that Mr Lowe lived from The Whale. The Sub-Committee noted that a plan had been supplied which they would refer to for this purpose.

Mrs Irving gave her representation next. She stated that she did not want to place unreasonable restrictions on the public house which she felt they had done a great job in improving inside. She would have liked to have discussed the application, face to face on an informal basis before today, but had not had the opportunity to do so because she only became aware of the application the night before representations were due to be submitted. She has no concerns regarding the extension of hours on a Friday and Saturday night but she does have concerns in respect of Sunday to Thursday evening. She has to get up very early and leaves the house at 6:30am for work during the week. Her two bedroom windows face the rear of the public house. She also has children which she feels will be affected and could be kept awake by noise from the Premises. She is very grateful to see the condition regarding the closing of the rear garden at 22:30 daily as agreed with Environmental Health and that there will not be any speakers playing music outside. The other venues with similar hours to that which this application relates to are not adjoined to residential premises. In respect of serving alcohol from 8:00am she questioned the need for this and raised the possibility of temporary licences being applied for if appropriate. She noted she was anxious to avoid arguments with the applicants. More generally, she spoke about noise from people smoking in the smoking shelter. She mentioned this noise being from both patrons and other people using the smoking shelter, though noted that the applicants only had control over their patrons.

Mr Thirkettle questioned how she thought he could control the use of the smoking shelter by non-patrons as he has no gates.

Mrs Irving stated that she was only concerned with the patrons.

Mr Thirkettle asked whether she would object to the installation of gates on the alleyway.

Mrs Irving stated that the issue of gates had been raised by previous tenants but it was quite a complex issue as a number of people had a right of way over the alleyway, however she was not against the idea in principle and would happily explore this further.

Mrs Irving had brought in a number of photographs showing the rear of the Premises which the Applicant agreed to be handed to the Sub-Committee.

Mr Thirkettle presented the application on behalf of the Applicant. In summary, he stated that they had taken over the pub in July 2011 and are due to move onto site within the next couple of weeks. The Premises is mainly a 'drinkers' pub but they are going to be introducing food and they are going to establish the garden and try to make it a more family friendly pub. They have no history of anti-social behaviour. They have two entrances, one to the front and one to the rear. They have had issues recently with youths coming and taking the cigarette butts from the smoking shelter and vandalising the toilets. However this has been resolved by placing a bucket of water for the cigarette butts and making the rear exit non-accessible from outside. They are currently making it so that the rear exit is for emergencies only and people will be only be able to enter and exit via the front entrance.

Mr Thirkettle did run a pub 30 years ago in Aylesbury but this is his first recent experience with his wife and three children. He acknowledged that the pub has run late night functions in the past without a licence which they have no intention of doing hence the reason for today's application. They have had three discos to date using Temporary Event Notices (TEN). They have had no complaints and only received good reports.

They wish to open at 8:00am to be able to provide food for people including local market traders, old age pensioners, night shift workers and estate agents who arrive at work early in order to get parking. It would also allow people to have a drink if they wanted and provide for the Premises to open for any sporting events which may be on.

The main age category of their customers is about 35 to 40 years old and although they have tried to attract a younger crowd this has been unsuccessful. Most of the people who frequent their pub are responsible people. The smoking shelter is exactly that, used solely to smoke, it is approximately 6ft square and has planning permission.

Mr Thirkettle has been in contact with the Licencing Team at the Council concerning the possibility of moving of the kebab van outside the front of his premises and stopping taxis from picking up people unlawfully outside of his premises in an effort to reduce noise and any potential for nuisance in the locality of his Premises.

Mrs Thirkettle added that they had slept over the premises with their children and have all slept through. They are not there to judge people who wish to have a drink at 8:00am. The flats that adjoin the pub are mostly occupied by students not families. The New Inn Public House, the only other pub with a licence to open at 8:00am which is currently closed, is interviewing and is due to re-open shortly with the same licensing hours as before.

Mr Thirkettle confirmed that they wished to have the hours on their licence so they did not need to apply for a TEN each time so as to avoid the administrative burden associated with this and to allow for last minute events to be held.

Mr Thirkettle confirmed that the garden is shown on the plan submitted with the previous application. It is the rectangle area which adjoins the car park. Currently it is hardly used and they are going to do some work to improve it and will promoting its use.

In terms of live music they are intending to have 'middle of the road' music in the form of live bands, recorded music and a disco. They are not intending to have RnB or heavy metal kind of music. Such events that they envisage are birthday parties for 50 years olds and a like, perhaps once or twice a month. The discos are run through the juke box, not a separate PA system.

The Applicant said that they would explore the option of gates with Mrs Irving further as this may assist in stopping non-patrons using the smoking shelter.

The Applicant was asked whether the closure of the garden at 22:30 included the smoking shelter and they confirmed that it did not.

The Sub-Committee questioned whether the Applicant would be agreeable to a condition restricting drinks being taken out to the smoking shelter after 22:30. The Applicants said they could not agree to this as felt it would be too hard to enforce

The decision

We have listened to all the representations made by the Interested Parties, Environmental Health and the Applicant 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 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 real evidence that it was required in the circumstances of the case.

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 variation application is granted with the additional conditions as agreed by the applicants before the hearing. The application as granted is as follows:

Hours Open to the Public:

Sunday – Thursday 08:00 – 00:30

Friday – Saturday 08:00 – 01:30

Hours serving alcohol (on and off the premises)

Sunday – Thursday 08:00 – 00:00

Friday – Saturday 08:00 – 01:00

Late Night Refreshment

Sunday – Thursday 23:00 – 00:00
Friday – Saturday 23:00 – 01:00

Live Music (indoors only)

Sunday - Thursday 11:00 – 23:00
Friday – Saturday 11:00 – 01:00

Condition 5 at Annex 2 of the current Premises Licence to be amended in its entirety to read:

“All licensable activities to be permitted in the hours stated with the following exception: one additional hour on the following dates on Good Friday, Christmas Eve, Christmas Day, Boxing Day and 27th December and an additional hour to the standard and non-standard times on the day when British Summertime commences.”

There is no change to recorded music as permitted by condition 6 at Annex 2.

Additional conditions agreed by the Applicant:

1. The rear garden area shall close and be cleared of customers at 22:30 daily.
2. Prominent notices will be displayed at all exits requesting the public to respect the needs of local residents and leave the Premises and area quietly.
3. Other than for entry and exit, when there is regulated entertainment all windows, external doors and the internal lobby doors shall remain closed.

The Sub-Committee noted that the Applicant made a suggestion regarding the installation of gates on the alleyway entrance adjoining the Premises. Mrs Irving agreed that she would be happy to explore the possibility of this. The Sub-Committee would encourage both parties to explore this further.

The Sub-Committee welcomed the Applicants' and Mrs Irving's desire to explore the possibility of working with Environmental Health and Licensing to find a means to legally secure the smoking shelter when the Premises are closed.

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 interested parties have a right of appeal to Aylesbury Magistrates' Court against this decision. They can appeal against the grant of the application or 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.

02 November 2011