

Aylesbury Vale District Council

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

**Application by Thames Valley Police to review the Premises Licence held by W H
Brakspear & Sons Ltd for The Emperor's Lounge, 31 Buckingham Street,
Aylesbury, Buckinghamshire.**

Members of the Sub-Committee

Cllr Peter Cooper (Chairman)
Cllr Judy Brandis
Cllr Janet Blake

Declarations of interest

None.

The application

The Sub-Committee has given careful consideration to the application before it from Thames Valley Police, namely, to review the premises licence for the Emperor's Lounge, 31 Buckingham Street, Aylesbury, Buckinghamshire.

In general terms, the application seeks to review the licence due to allegations of underage drinking, drug taking, violence and drunk and disorderly behaviour and after a substantial number of incidents where the police have had to attend the Premises.

The application received a representation from Mr J A Michael, a Director for Buckingham Developments (Aylesbury) Limited who also attended the hearing.

At the hearing the Applicant, Thames Valley Police, was represented by Mr Trevor Hooper. The Premises was represented by its Business Development Manager, Mr John Beazley.

The Police objection was detailed in the application dated 13 December 2010 and an updating letter dated 11 January 2011. During the hearing Mr Hooper confirmed that the Police had been in negotiation with Mr Beazley on behalf of the Premises Licence Holder and had agreed the conditions as outlined in the letter from Mr John Beazley dated 26 January 2011. He confirmed that the police were happy with these conditions and upon questioning, noted the differences from the ones requested by the Police in their application set out in the papers. The differences being that door supervisors increasing from two to three, though only be required on Friday and Saturday evenings after 9pm and the same restriction for glasses etc to be in the designated smoking area.

When questioned about the risk assessment, Trevor Hooper stated he envisaged it would cover bank holidays, occasions when the Premises intended to trade for longer hours, private functions and would possibly take account of numbers. He had not discussed it further with the Premises Licence holder.

Trevor Hooper confirmed that the majority of incidents which had occurred in the smoking area happened after 9:00pm when the Premises became busier therefore the police are happy with the conditions to apply only after 9:00pm on Friday and Saturday evenings being the main nights when problems occur. They were mindful of not wanting to require too many onerous conditions.

Mr Michael, submitted an additional letter dated 1 February 2011 which was agreed by all parties, said he had nothing to add to his representation.

Upon questioning from Mr Beazley he confirmed he had no interest in running or taking over the Emperor's Lounge and just had concern in the way it had been managed.

Mr Beazley gave the sub-committee some background regarding the premises. He said that he had joined Brakspear Pub Company in 2008 upon which they had re-possessed the Emperor's Lounge as it was failing. They closed it for a short time before it opened with another operator for a short time before closing again. The property then opened again with Spyros Koumantarakis in place as DPS. He had a new business strategy which led to the extension in opening hours. The Premises is located in an area where there is not a huge footfall during the day.

Mr Beazley acknowledged that Spyros Koumantarakis did not have a good relationship with the Licensing Authority and Thames Valley Police. He confirmed that Brakspear are fully supportive of the conditions agreed with the Police including the removal of Spyros Koumantarakis as DPS. He acknowledged the impact this would have on Spyros Koumantarakis' livelihood.

Mr Beazley emphasised that it was important for the business to retain the current hours in order to be successful. He confirmed that Brakspear would be supportive and continue to work with the Police and Licensing Authority.

Mr Beazley confirmed that the new Designated Premises Supervisor is to be Cleveland Bailey. He will run the business full time and will be a tenant of the Premises. Cleveland Bailey does not currently hold a personal licence and therefore in the interim Mr Beazley will be the Designated Premises Supervisor and he will provide written authority to Cleveland to run the Premises.

Trevor Hooper, when asked by the sub-committee, confirmed he had known Cleveland Bailey for many years and was happy that he will be the new DPS.

After questioning by the sub-committee Mr Beazley offered to close the premises for a period of one to two weeks which would allow for the Premises to be refurbished. There were no building works anticipated but redecoration etc.

When questioned by Councillor Brandis regarding admissions made by Spyros Koumantarakis at the last sub-committee in 2010 relating to operating outside of

permitted hours, Mr Beazley explained that they did not realise the Premises did not have a licence for a certain licensable activity. The Premises therefore operated under a number of Temporary Event Notices and one weekend without a TEN and beyond their licence before obtaining the extended hours. He was clear to say that Spyros Koumantarakis had done this contrary to his advice and Brakspear did not condone this behaviour and the Premises operated within the law to the best of his knowledge. He apologised on behalf of Spyros Koumantarakis. He confirmed that he worked with the Police and would welcome them to visit the Premises should there be allegations of underage drinking, drug taking or trading outside of their permitted hours. He asserted that they had done everything reasonably practicable to prevent problems arising though seem not to have been successful.

Trevor Hooper, when questioned, confirmed that underage drinking is a problem at the Premises and not really at any other premises within the town centre. He confirmed that there are drugs in most premises and the police do visits to undertake tests to show licensees the location of the problems. Trevor Hooper confirmed that there had been no prosecutions in relation to this Premises.

Mr Beazley when questioned about having door staff for other evenings apart from Friday and Saturday stated that the new operator, Cleveland, wants to change the style of the Premises and attract an older customer base of 25 years old plus rather than the 18 to 35 years customers that are currently attracted.

When specifically questioned about door staff on a student night he offered to give an undertaking that the Premises would have door staff if the premises were to do a 'student night'.

When questioned about the risk assessment he said that this would be done in conjunction with Popplestone Allen and he had not done one before so was unable to provide further information. He said that to have 3 door staff 7 days a week is not viable and the problems are only on a Friday and Saturday night.

He stated that he was happy for the risk assessment to be drawn up in consultation with Thames Valley Police and the Licensing Authority.

Trevor Hooper confirmed he would be happy to be involved and is aware that other premises, such as JD Wetherspoons, have a risk assessment to cover other evenings.

The sub-committee suggested to Mr Beazley that the timescales for when the new DPS would be in place should be within 3 months and the risk assessment to be completed within 1 month. Mr Beazley agreed to 3 months for the DPS but asked for 3 months for the risk assessment to be completed as it involved communication with third parties.

Mr Beazley was questioned about how the interim period would work before Cleveland Bailey was the DPS. Mr Beazley said he would be the DPS and would visit the Premises two to three times per week.

When asked whether he would be prepared to close for 28 days, Mr Beazley said very strongly that he felt this was excessive and was prepared to offer 2 weeks, being two weekends with a view to re-open on Monday 14 February 2011. He stated that the main

trade nights are Friday and Saturday and the rest of the week does trade but not a lot at all.

In summing up Trevor Hooper confirmed the reason the review was brought was due to the bad management of the Premises by Spyros Koumantarakis. Now that he has been removed and conditions agreed the police are happy.

Mr Michael confirmed he was comforted by the fact that Spyros Koumantarakis has left, but he is slightly concerned regarding the new proposals being a 'front' as Spyros Koumantarakis was a tenant therefore had a lease. He stated he was comforted by the new clientele and how it seemed it was going to be run more as a pub / late night bar.

Mr Beazley was asked to sum up and include details about the style of operation and the training bar staff are to receive.

Mr Beazley stated that the risk assessment is new ground to him and to the company and is not something that is usually required of them given the nature of their Premises. They have worked closely with Thames Valley Police and the Licensing Authority and will do so to create the risk assessment. They have agreed new conditions to tighten up the operation and have acquiesced to the removal of Spyros Koumantarakis as DPS. They have put forward a respected operator who will be DPS within 3 months and it is very important that they maintain the current hours. Cleveland Bailey wishes to extend the hours into the day time.

The tenancy held by Spyros Koumantarakis has a clause which allows for it to be terminated if there are concerns about management by Brakspear. This is effectively what he has done. Spyros Koumantarakis is aware of today. Cleveland Bailey will be the operator and the tenancy will be in his name.

The staff will be trained on BII Responsible Alcohol Retailing Course run in Oxford. This was proposed by the Police and all staff will attend when a course is available.

He said that Brakspear has acted in a responsible manner though acknowledged they could have acted a bit more swiftly. He urged the sub-committee to not alter the hours and to only modify the conditions in line with that agreed with the Police.

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 revoke the licence or modify the conditions 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.

As often is the case with Review applications, there are competing rights at stake and we have sought to strike a fair and proportionate balance in coming to the decision that we have.

The Sub-committee can take such of the steps mentioned below as it considers necessary for the promotion of the licensing objectives

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

We are satisfied that in all the circumstances, the impact of the review of the premises licence on the licensing objectives necessitates suspending the premises licence for a short period and modifying current conditions of the licence and the addition of new conditions as outlined below:

The Premises will close for a period 17 days from today and is permitted to re-open on Friday 18 February 2011. This date for re-opening reflects the sub-committee's wish for the premises to re-open with door staff being present and it was noted that Mr Beazley said that Friday and Saturday nights are the main trade with other days being 'dead' days.

Amending Condition 6 at Appendix 4 to the current licence to include:

- No children under the age of 18 years old to be permitted on the Premises between 21:00 and the close of the Premises.
- Smokers, and other patrons, must be confined to use the designated smoking area situated at the rear of the Premises. There is to be no smoking at the front of the Premises and no drinks are to be taken outside in front of the Premises.
- No bottles, glasses or drink containers, whether open or sealed to be allowed in the designated smoking area to the rear of the Premises after 21:00 on a Friday and Saturday evening.

Amending Appendix 4, condition 8 (c) (page A20)

- There shall be a minimum of 3 registered door supervisors on duty after 21:00 to the close of the premises on a Friday and Saturday. Two of the door supervisors are to be situated at the main door to the Premises and the third is to monitor the lower room and designated smoking area to the rear of the Premises.

- An accurate and up-to-date log book shall be maintained in a format agreed with the Licensing Authority, providing details of door supervisors employed in respect of the premises, which shall comprise two distinct parts:
 - (i) a part recording the name, address, telephone number and registration number of each door supervisor employed in respect of the premises (whether employed directly or through an agency) and the name, address and telephone number of the agency providing the supervisor where the supervisor is not employed directly
 - (ii) A part recording the name and registration number of each door supervisor, dates and times of commencement and finishing of work, signature of the door supervisor in respect of both, and details of any incident in which the door supervisor is involved, including the calling of the police and any police action taken.
- A written risk assessment to be carried out and submitted to the Licensing Authority and Thames Valley Police by Tuesday 1 March 2011 for comment. The risk assessment to be finalised by Thursday 21 April 2011 and copies to be given to the Police and Licensing Authority. The risk assessment to assess the risk for bank holidays, any function or business activity being held Sunday – Thursday and include consideration of the need to employ registered door staff for the event in question and the banning of bottles, glasses and drink containers from being taken outside.
- The risk assessment is to be reviewed bi-annually for the first two years and then annually thereafter as a minimum.
- A colour CCTV system with a hard disk shall be installed inside and outside of the premises, maintained and operated correctly to the satisfaction of Thames Valley Police. The recordings from the system shall be retained for a period of 90 days and shall be made available on request to the Police, Licensing Authority and Trading Standards. These authorities shall also be allowed to take DVD copies of the recordings.
- Current bar staff to attend the Responsible Alcohol Retailing Courses within a time frame to be agreed with the Licensing Authority.
- All bar staff to attend Responsible Alcohol Retailing Course.
- The proposed new Designated Premises Supervisor, Cleveland Bailey, to be in place not later than 3 months from today.

The effective date of this decision

Strictly speaking this decision takes effect on the expiration of the appeal period (see below). However, Mr Beazley offered for the closure of the Premises to take effect immediately and the Licensing Authority agree. The licence will be issued by Licensing Services as soon as possible.

Right of Appeal

All the 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.

01 February 2011