

## **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 STA Sports (Liscombe Ltd for a new premises licence for Energie Fitness Club, Liscombe Park, Soulbury, Leighton Buzzard, LU7 0SL**

#### **Members of the Sub-Committee**

Cllr Judy Brandis (Chairman)

Cllr Janet Blake

Cllr Freda Roberts

The meeting was opened at 10:05, but the Applicant was not in attendance. The Licensing Manager had attempted to contact the Applicant via his mobile phone number and via his office, though with no success. The sub-committee decided it would not be in the public interest to hear the application without the Applicant in attendance as there were a number of issues which he would need questioning on.

There were two interested parties in attendance, Ian Woodlaw representing Mr Viegas and Mrs Tobin. Mrs Tobin confirmed she could attend an adjourned hearing at 2pm the same day, though Mr Woodlaw was unable to. He agreed that Mrs Tobin could represent him and it was confirmed that all the written representations would be considered.

The sub-committee adjourned the meeting until 2pm on 12 July 2011.

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#### **Members of the Sub-Committee**

Cllr Judy Brandis (Chairman)

Cllr Janet Blake

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#### **The application**

The Sub-Committee has given careful consideration to the application before it, namely, to grant a new premises licence for Energie Fitness Club, Liscombe Park, Soulbury.

In general terms, the application seeks permission for the provision of regulated entertainment (i.e. the performance of live music; the playing of recorded music and the provision of facilities for dancing); for the supply of alcohol and the provision of late night refreshment. The Premises comprises an internal café bar with adjacent terrace area and Liscombe Field which is adjacent to the club.

The application received representations from Environmental Health and 7 representations from residents living in the vicinity of the premises.

The applicants, STASports (Liscombe) Ltd were represented by Nick Sheehan.

Ms Lindsay Hone represented Environmental Health.

Mrs Tobin attended as an interested parties and spoke. No 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.

Ms Hone from Environmental Health outlined that there had been no previous history of complaints regarding the Premises, though there had been complaints regarding neighbouring commercial units therefore she was aware there was some noise sensitive premises. Therefore she was concerned with the potential noise break out. She stated that she had been in contact with the Applicants who had accepted her proposed conditions concerning noise monitoring and signage.

Mrs Tobin presented to the Sub-Committee her objection to the application which mainly surrounded the issue of noise nuisance. Her property, 6 Rock Lane Farm was very close to the premises and the terrace was only 20 paces from her bedroom window. Her cottage is of single brick construction with single glazing, therefore sound penetrates it very easily. After business hours the site is very still and silent. She acknowledged that they have had no problems with the functions held by the Premises so far. Her concerns were mainly around bass beat music and the use of the terrace. She was surprised that there was no discussion with the residents before the application was submitted. She handed up, with the agreement of the Applicant, some aerial photographs which show the proximity of her house to the Premises.

On the grounds of public safety she said the application only considered inside of the gym area, it did not consider that there is no public lighting in and around the site and that entry is by a single lane only. She had no confidence in the effectiveness of the signs as suggested by Environmental Health. Further, the condition regarding noise monitoring – what is defined as “excessive”, what is excessive to one person may not be to another. Her view was that the application was flawed in that there was not enough detail, no discussion and no real steps to prevent crime and disorder and public nuisance occurring.

She stated that her, and other residents, did not wish to see the gym close and recognised that it needs to become financially viable, but there had been no discussion to allow for a compromised application to be agreed upon.

The sub-committee confirmed the location of the terrace on the aerial maps with Mrs Tobin and Mr Sheehan agreed.

Mr Sheehan presented his application and stated that first and foremost they did not want to upset the residents. He is not wishing to turn the premises into a pub, but to diversify his business. The average age of his members is 46 and 75% are classed as prosperous therefore he does not anticipate there being much anti-social behaviour. He is simply trying to re-establish the old premises licences that the premises had. He said he was happy to discuss any possible amendments. He does not envisage ever having an 18<sup>th</sup> or 21<sup>st</sup> birthday party. The terrace will not have any live or amplified music on it.

The club currently operates Monday to Friday 6:00am to 10:00pm and Saturday and Sunday 8am to 7pm; 90% of what they anticipate running will be within those hours. He does not believe they will really use the bar Monday – Thursday except for possible local sports groups. They had recently held a presentation evening for a local netball group; the terrace was closed at 9:00pm and the bar at 10:30pm, it will not be a late night premises. He stated that the terrace, practically can only be really used for 3 months a year due to temperature and it being dark.

The main motivation for the licence is to enable champagne spa packages to be offered and for members to have a glass of wine with food.

He does not want floodlights and his staff are familiar with challenge 21/ 18, bar watch schemes. He is building up a relationship with a local taxi company.

All of his members are over 18 apart from the hiring of the swimming pool twice a week to water babies.

The increase in traffic flow he believes will be negligible. Currently there are anything between 400 and 500 traffic movements a day due to other businesses on the site.

He has 1100 members and not currently profitable, he is just trying to diversify to make the business profitable.

It soon became apparent to the Sub-Committee that it would be useful for the Applicant and Interested Party to have an informal discussion regarding the application to see if they could resolve some issues, therefore the sub-committee adjourned.

Upon the hearing reconvening, Peter Seal, on behalf of Mr Sheehan offered the following as a revised application:

- Liscombe Field to removed totally from the application
- The hours for live music, recorded music and dance to be in line with the supply of alcohol; therefore:
  - Monday 11:00 – 22:00
  - Tuesday 11:00 – 22:00
  - Wednesday 11:00 – 22:00
  - Thursday 11:00 – 23:00
  - Friday 11:00 – 23:00
  - Saturday 11:00 – 23:00
  - Sunday 11:00 – 21:00
- There to be no amplification music on the terrace at any time.

- There is to be no drinks taken onto the terrace after 9pm except for one night per calendar month when drinks can be taken onto the terrace until the terminal hour
- The doors to the terrace to be closed after 9pm during regulated entertainment.
- The application for late night refreshment is withdrawn.
- The applicant will direct people who use the terrace to smoke or for other reason after 9pm to use the part which overlooks the field rather than Mrs Tobin's property.

Environmental Health confirmed that they no longer sought the condition for the patrols of the boundary of the premises following the revised application.

### **The decision**

We have listened to all the representations from Environmental Health, and Mrs Tobin, the interested party 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 Premises feel that they could be adversely affected by the grant of the licence 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 Mrs Tobin majored on the issue of noise nuisance, particularly from the terrace.

Following the short adjournment, the sub-committee were pleased to have been presented with a revised application which Mrs Tobin agreed to. The sub-committee note that Mrs Tobin still had some concern regarding the gathering of smokers on the terraced area.

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 amended application is granted as per the below hours confirmed with the Applicant and following conditions:

- Sale of Alcohol and live entertainment, recorded music and dance:
  - Monday 11:00 – 22:00
  - Tuesday 11:00 – 22:00
  - Wednesday 11:00 – 22:00
  - Thursday 11:00 – 23:00
  - Friday 11:00 – 23:00
  - Saturday 11:00 – 23:00
  - Sunday 11:00 – 21:00
  
- There is to be no amplification music on the terrace at any time.
- There are to be no drinks taken onto the terrace after 21:00 except for one night per calendar month when drinks can be taken onto the terrace until the terminal hour. A record of the night to be recorded and available for inspection by the local authority.
- The doors to the terrace to be closed at 21:00 during regulated entertainment.
- Prominent, clear and legible notices to be displayed at all access and egress points to the terrace requesting the public to respect the needs of local residents and to keep noise levels to a minimum and leave the premises and the area quietly.

The sub-committee strongly encourage the applicant to direct users of the terrace after 21:00 to the area of the terrace overlooking the field, rather than 6 Rock Lane Farm, as he offered to do so.

### **Right of Appeal**

The interested parties have a right of appeal to Aylesbury Magistrates' Court against this decision. The applicant can appeal against the refusal of part of the application and the other parties can appeal against the grant of the licence 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.

13 July 2011

## **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 Lockett & 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 1<sup>st</sup> 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



# Borough Service Station Wendover Road Aylesbury



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