

Aylesbury Vale District Council

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE
FOLLOWING A HEARING ON 20 SEPTEMBER 2011 AT THE COUNCIL'S
GATEWAY OFFICES, GATEHOUSE ROAD, AYLESBURY**

**Application by Mr Bhagi Shah for a premises licence for 'Khan Baba', 179 Cambridge
Street, Aylesbury HP20 1BQ**

Members of the Sub-Committee

Cllr Judy Brandis (Chairman)
Cllr Janet Blake
Cllr Sue Renshell

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 Khan Baba at 179 Cambridge Street, Aylesbury. The premises is used to operate a restaurant and takeaway business and the application seeks permission to provide late night refreshment, in other words, continue that business after 23.00 as follows:

Mon – Sat: 23.00 to 03.00
Sun: 23.00 to 00.00

The applicant also sought permission for the premises to remain open to the public for a further 25 minutes after the terminal hour on Sundays to Fridays and a further 35 minutes on Saturdays.

In his application form, the applicant, Mr Baghi Shah, described the premises “as a former restaurant/takeaway of many years” and emphasised the fact that no alcohol would be served and that customers would be encouraged to consume food on the premises.

Mr Shah attended the hearing in support of his application and was represented by Mr Niknam Hussain.

The application received representations from the Police and Environmental Health, acting in their capacity as responsible authorities, and from an interested party, namely, Mr Nathan Poole who lives near the premises on Cambridge Street.

The Police representation asked for the terminal hour for late night refreshment to be reduced to 02.25 with the premises closed to the public at 02.30. The Police expressed concern about the risk of an existing noise nuisance problem - caused by other takeaway premises on Cambridge Street – being extended to an earlier hour as more customers leaving pubs and clubs in the town centre would be attracted to the area. Mr Trevor Hooper, Licensing Officer, attended the hearing in support of the representation by the Police.

Mr Neil Green, Environmental Health Officer, submitted the representation on behalf of Environmental Health and also attended the hearing. His representation confirmed that he did not object to the application. He noted that the premises had indoor seating and toilet facilities for customers which would encourage customers to eat in and could even reduce the numbers of people gathering outside in this part of Cambridge Street. Mr Green also noted that the hours applied for were shorter than the operating hours of other food premises in the vicinity. Mr Green referred to just one recent noise complaint concerning Cambridge Street which was general and not premises specific.

Mr Poole's representation complained about public disorder, the inevitable disturbance the granting of the application would cause, and requested that the Council consider a policy of preventing any further late night licences in the Cambridge Street area "to avoid creating a late night centre of attraction outside peoples homes'.

Mr Poole had kindly informed the Council in advance of the hearing that he would be unable to attend the hearing and submitted a supplementary representation instead. Mr Poole stated that Khan Baba was an entirely different business from its predecessor and would attract a different customer base. He said he was concerned about another premises attracting more inebriated people to the area in the middle of the night and adding to an existing problem.

Mr Poole stated that "the only thing I could agree to is that if a temporary license was issued for a trial period...". As Mr Shah had applied for a permanent licence, the Licensing Act does not allow us to grant a licence for a temporary period. We can only grant the application, either with or without additional conditional, or refuse it.

Although we proceeded with the hearing in Mr Poole's absence, we had regard to his written representations.

During the course of the discussion we led, Mr Hussain submitted that Khan Baba was not that different from its predecessor and explained that Mr Shah found that he needed to open until later for his business to be viable.

Mr Hussain stated that Mr Shah had previous experience of running food premises and would run his premises responsibly not least of all because he and his family lived close to the premises themselves.

Mr Hussain rejected Mr Poole's complaints and submitted that there was no evidence of the application creating a new problem or adding to an existing one.

Nevertheless, in response to our efforts to explore the possibility of reducing the potential impact of the application, Mr Hussain reduced the scope of the application for standard timings as follows:

Mon – Thurs: 23.00 to 02.00 (close at 02.30)

Fri – Sat: 23.00 to 02.30 (close at 03.00)

Sun: 23.00 to 00.00 (close at 00.25)

Mr Hooper confirmed that he did not object to these timings and had no further issue with the application.

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 Mr Poole has a right to respect for his private and family life and his home. He is 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 the impact of the amended application on the licensing objectives does not necessitate a rejection of the application. On the facts of this particular case, we noted that the scope of the amended application was very limited and, other than Mr Poole's representation, there were no other remaining objections. The fact that the Police and Environmental Health raised no concerns about the amended application weighed heavily with us. We were therefore not satisfied that Mr Poole's concerns about what might happen in the future justified refusing the application.

There is, however, one further issue that we need to address. At the hearing, Mr Hussain mentioned that Mr Shah's application also sought permission to provide late night refreshment until 03.30, and stay open to the public until 04.00, on Bank holiday weekends and Christmas and Boxing day and on Eid. These non-standard timings were not however specified in Mr Shah's application but Mr Hussain asserted that that was the intention which is why in the 'State any seasonal variations' box of the application form for premises licences, which is prescribed by statutory regulations, the following was inserted: 'Bank holiday weekends; annual holidays of Christmas and Boxing day'. Mr Hussain acknowledged that a later terminal hour had not been specified but he argued that it was obvious that it would be later than the standard timings.

It was pointed out to Mr Hussain that the Licensing Act required the applicant to specify the standard and non-standard timings sought and did not allow the Council to licence activities for a time later than that specifically applied for and nor could the Council fill in gaps in an application form.

Mr Hussain insisted that Mr Shah should be permitted to trade for longer on the specified occasions.

It is important therefore that we explain why this is not something we can do.

Section 17 of the Licensing Act deals with applications for premises licences and states in particular that each application must be accompanied by an ‘operating schedule’ which must be in the prescribed form and include, amongst other things, ‘the times during which it is proposed that the relevant licensable activities are to take place’ and ‘any other times during which it is proposed that the premises are to be open to the public’.

According to regulation 10 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, an application for a premises licence must be in the form and must contain the information set out in Schedule 2.

The form completed by Mr Shah is identical to the form set out in Schedule 2. The form requires the applicant to state any seasonal variations for the provision of late night refreshment and is supported by the following guidance note: “For example (but not exclusively), where the activity will occur on additional days during the summer months”.

The box below reads as follows: “Non standard timings. Where you intend to use the premises for the provision of late night [refreshment] at different times, to those listed in the column on the left, please list”. The guidance note relating to this part of the form states as follows: “For example (but not exclusively), where you wish the activity to go on longer on a particular day ie Christmas Eve”.

In Mr Shah’s case, the “Non-standard timings’ box for both late night refreshment and the hours the premises are open to the public was left blank.

It is thus clear that if Mr Shah intended to trade for longer on Bank holidays etc. he did not fully or properly complete his application form. This is not intended as a criticism because we understand that the form is not very user friendly and trying to complete it is a technical exercise. The outcome, however, is the same: we cannot grant Mr Shah permission for something which he did not apply for and which others did not have the opportunity to comment upon.

As Mr Shah voluntarily reduced his standard timings, on Bank holiday weekends (Fridays, Saturdays and Mondays) and Christmas and Boxing day and on Eid (with the exception of Sundays) he can trade until the hours he originally applied for, namely:

Late night refreshment: Mon – Sat: 23.00 to 03.00

Open to the public: Mon – Fri: 23.00 to 03.25; Sat: 23.00 to 03.35

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 Shah and Mr Poole 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.