

Aylesbury Vale District Council

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE
FOLLOWING A HEARING ON 05 JANUARY 2012 AT THE COUNCIL'S GATEWAY
OFFICES, GATEHOUSE ROAD, AYLESBURY**

**Application by Mrs Anne E Cooney, Mr George A De Maison and Mr Jonathan P
O'Keeffe to vary the premises licence for The Kings Head, Station Road, Ivinghoe,
Buckinghamshire, LU7 9EB**

Members of the Sub-Committee

Cllr Tim Mills (Chair)
Cllr Jackie Phipps
Cllr Andy Huxley

Declarations of interest

None.

The application

This is an application by Mrs Anne E Cooney, Mr George A De Maison and Mr Jonathan P O'Keeffe to vary the premises licence for The Kings Head, Station Road, Ivinghoe, Buckinghamshire, LU7 9EB. The application seeks permission to sell alcohol indoors and outdoors for extended hours Monday – Saturday with no change on Sunday (i.e. 10:00 - 23:30 Monday to Thursday, and 10:00 - 00:00 Friday and Saturday).

The application seeks the addition of live music, recorded music, performance of dance and the provision of facilities for dancing for indoors for the following hours:

- Monday – Thursday 19:30 – 23:00
- Friday - Saturday 19:30 – 00:00
- Sunday none.

Following consultation with Environmental Health, the application seeks the addition of live music, recorded music, performance of dance, provisions of facilities for dancing for five times per year outdoors as follows:

- Monday – Thursday 19:30 – 23:00
- Friday - Saturday 19:30 – 00:00
- Sunday none.

It also seeks the addition of late night refreshment indoors and outdoors (outdoors limited to 5 times per year) as follows:

- Monday – Thursday 23:00 – 23:30
- Friday - Saturday 23:00- 00:00

The opening hours sought are:

- Monday – Thursday 10:00 – 23:30
- Friday – Saturday 10:00 – 00:00
- Sunday 12:00 – 22:30

At the hearing, the applicant was represented by Mr Jonathan Patrick O’Keeffe; one of the three licence holders and partners who own the business.

Richard Swan, Environmental Health Officer submitted a representation on behalf of Environmental Health, as a responsible authority. Mr Swan attended the hearing.

The application also received eight representations from interested parties who live surrounding the premises; on Station Road, Church Road, Ladysmith Road and Vicarage Lane. The interested parties who attended and spoke at the hearing were Patrick Busby, Patricia Nightingale, Amanda Masters and Christabel Boersma. Although not all interested parties were in attendance the Sub-Committee were satisfied that it was fair to proceed with the hearing in their absence.

Mr O’Keeffe was asked to clarify his application at the outset due to some confusion over what had been completed on the form and what he had subsequently agreed with Mr Swan. He stated that the application was as set out above in the introduction.

Cllr Mills asked whether the Applicants had considered any drinking up time, such as 30 minutes. Mr O’Keeffe stated the applicants did not fully understand the application form and had not considered drinking up.

Mr Swan addressed the Sub-Committee on his representation. His main concern was in relation to the use of the external space and the potential for noise nuisance from it. Mr Swan stated that any external event, given the locality of the premises, will cause a disturbance to the residents, it was a question of what was reasonable in terms of what residents can be expected to put up with and how are those events controlled. He was interested in seeing the timings controlled, number of events and limits on the number of people attending. He was also insistent that a condition be put on to require complaints to be logged that the premises received and that they maintain contracts with musicians as set out in the papers. He would much prefer to see the events held under the licence rather than through the use of a Temporary Event Notice (TEN) due to the lack of control under TENs.

Following this there was some discussion around the process of TENs which Mr Seal clarified for all parties as well as various questions concerning the length of a premises licence and the ability to transfer the licence.

Mr Busby outlined his concerns and they were mainly to do with the proximity of his property to the premises and the ability of the premises to stop any nuisance. He stated that most of the surrounding buildings are listed so there is little sound proofing. The size of restaurant and car park is not big enough for 150 people. Mr Busby and his family are regularly disturbed by people leaving the premises and walking directly past his house, stating that he can hear every word they say. Mr Busby said that he appreciated the difficult economic times though he feels it is out of character for the area and unnecessary. He has approached the premises before regarding problems and feels them not to be accommodating. He has never been notified of events before they are held. The marquee is within 15 metres of his back door and asks the sub-committee to consider what is reasonable for the residents. In relation to Mr Swan’s condition

regarding acceptable noise levels, he asked to whom they should be acceptable. He handed up some photographs showing his property which Mr O’Keeffe agreed to be circulated.

Patricia Nightingale, who lives in Victoria Cottage, Church Road then addressed the panel. She was predominantly focused on the external events which she felt would be a huge concern for her due to lack of sleep. She explained that she works shift patterns 365 days a year which requires her sometimes to rise at 4:30am. Her property is listed and does not have double glazing. She handed up some photographs showing her proximity to the premises which were agreed by Mr O’Keeffe. She referred to a function last year which was inside the building which disturbed her. She believed it was a disco as she could see disco lights in the dining room. She expressed that if the application is approved she will be forced to move.

Amanda Masters, resident at 19 Vicarage Lane, stated that most of her concerns had been covered by Mr Busby and Mrs Nightingale. The marquee would be erected 40foot from her rear windows and her house is designed in such a way that the living room and bedrooms are at the back of the house overlooking the premises. She has had no notice of previous events at the premises. In the last four years there has been 2 occasions which she knows of where a marquee has been erected. She has two children aged 9 and 12 and she does not want them to go to bed as late as 00:00. The proposal from Mr Swan, that the speakers point away from any residential premises is not possible as the area is surrounded by houses. Historically the relationship is poor with the current owners of the premises, they have had no notice of events and she has little confidence in the willingness to self-regulate. When they have had events previously she has not raised specific issues as they have only had two and is aware they are running a business. The disturbance is general noise, noise from people leaving, including staff who leave later and talk loudly. The existing parking arrangements are poor. She asked possibly for the restriction on days of the week and she wasn’t sure whether New Year events were to be indoors or outdoors.

Mr O’Keeffe confirmed New Year events would be indoors only.

Mrs C Boersma presented to the Sub-Committee and said that most of her concerns had been covered already. She shares a wall with the King’s Head. She explained that Ivinghoe is a very quiet peaceful village. She stated it was reasonable for the Ivinghoe residents to be able to enjoy their own amenity without disruption. She has had no prior notification of events which means you cannot plan to do other things. She does not believe it is reasonable to allow external events due to the location. She stated that the impact from the noise and car parking could not be mitigated as with 150 people in attendance there would be at least 75 cars. Even with five external events the disruption would be intolerable. She would consider not being home for the weekends if they were notified in advance of events. She strongly believes it is not reasonable to hold events at the premises, nor is it a suitable venue. She doesn’t believe leaving the Applicants to self-regulate as suggested by Mr Swan is meaningful as they have been unwilling to co-operate in the past.

Following the interested parties presenting their cases, there were a number of questions poised to both Mr Swan and the interested parties.

Mr Swan confirmed that he had omitted the word “nearest” from paragraph (f) on page A28 of his representation. A marquee cannot be effectively insulated therefore this was not a possibility. In terms of monitoring, he envisaged the Applicants agreeing levels with musicians and then the Applicants monitoring that level and ensuring that it is complied with. Any issues would then be logged which would enable him to see records if he were to receive any

complaints of nuisance. He feels that the situation is not ideal, but the mitigation makes it reasonable. He states that there has been 3 separate complaints over the last year, one of which was the wedding in the marquee which resulted in today's application. The other two complaints related to noise from people leaving and a person being sick on a doorstep. He has felt the applicants to be not unhelpful, and if what he was asking was clear, then they were helpful. Mr Swan felt they had quite a complex business. He felt that a noise limiter in the external area was not practical in this case as it would have to be set at such a low level that someone talking loudly or clinking glasses would set it off.

Mr Busby confirmed that he himself had not be disturbed by noise emanating from inside the premises, just from people leaving and taxis sat outside with their engine running. He thinks that a disco inside would disturb him due to the bass which would cause vibrations through the buildings. Most of the noise is from the road rather than the car park. Quite often staff park along the road and he hears every single word from people leaving. At the moment it is liveable but he does not think it will be if the licence is granted.

Mrs Nightingale agreed that she has only been disturbed once by inside noise which she had referred to and she assumes it was a disco due to the lights. It stopped at midnight.

Mrs Masters is not disturbed by events inside or parking.

Mrs Boersma is disturbed by the car park and staff leaving. The car park abuts the residents' gardens and they have had cigarettes flicked over the walls, noise from revving of engines, the bleep from people opening the cars and people saying protracted goodbyes. They have had the very occasional car alarm go off.

Mr O'Keeffe presented the case on behalf of the Applicants. He explained that the Applicants have owned the premises since 2001, it is not a large organisation. They employ 15 full time and casual staff. They contribute to the economy paying VAT and rates. They want to run their business to the highest standard which is why they are applying for this licence. They envisage a maximum of 150 guests with five maximum external events per year. They are asking for some understanding from residents and due to concerns of car parking they spent a large amount of money on car park works last year. They try to help with the local community and have contributed to raffles etc. They need to push the business for it to survive and they are about good food, great service and good wine.

There were a number of questions put to Mr O'Keeffe by the interested parties and the sub-committee.

Mr O'Keeffe agreed that they have not communicated with the residents when previous events have been held and said they intend to, either verbally or in writing in future. He explained that the restaurant is sometimes run at a loss and they find it hard to fill the restaurant earlier on in the week, therefore they would like to have a piano, maybe a jazz band of similar to attract customers. He envisages the events will be during the summer, with June, July and August being the busiest. He might consider agreeing to a maximum of two events per month but not one. It will not be a heated marquee. When questioned about the likely days it would be held, Mr O'Keeffe stated it would be unlikely to be on a Sunday and most likely on a Friday and a Saturday. When asked if he would restrict the external events to be on a Friday and Saturday he agreed to this. The residents suggested that a limit of two events per year would be suitable which Mr O'Keeffe did not agree to, stating that five was a small number.

There were questions concerning the 150 people and possible fire load. It was explained that the fire authority had been consulted and had not submitted a representation. If they had concerns they would address it separately with the premises.

Mr O’Keeffe confirmed the smoking area was outside of the backdoor, in the courtyard area of the car park.

Mr Swan confirmed with Mr O’Keeffe that the marquee is for a Friday and Saturday only and is for a maximum of 150 people.

Mr O’Keeffe confirmed that the music internally is background music. Upon the suggestion that people could eat outside for the wedding and use the restaurant for the disco Mr O’Keeffe explained that the restaurant was usually fully booked on a Friday and Saturday so this would not be possible.

Mr O’Keeffe confirmed that people occasionally have pre-dinner drinks or after dinner drinks outside. They have tables and chairs outside but no external lighting so this limits its use. He confirmed that the marquee will be erected for each event. He confirmed that there is no music outside, apart from for the marquee as explained and the occasional harpist.

Cllr Mills asked Mr O’Keeffe about drinking up time.

Mr O’Keeffe stated he wanted 30 minutes with last orders at 24:00

It was explained to him that this would mean an extension of opening hours to those advertised which he could not do.

Mr O’Keeffe paused and perused the papers, then stated he would like last orders at 23:30 on Friday and Saturday with closing at 00:00. Monday to Thursday last orders 23:00 closing at 23.30 Sunday last orders 22:00 and close at 22:30

Mr O’Keeffe agreed that the entertainment would finish when alcohol stopped being served and the late night refreshment would as well.

The Legal Advisor clarified that this would mean that the application for late night refreshment on Monday – Thursday and Sunday would not be required as it is only applicable after 23:00. Mr O’Keeffe confirmed he understood and this is what he wanted.

In view of the resident’s concerns about the manner in which past complaints have been handled Mr O’Keeffe agreed to be the point of contact for unresolved complaints, to provide residents with a contact telephone number and to enter details of additional action taken in the log book.

The legal advisor asked Mr O’Keeffe if he was aware that by agreeing a limit of 5 external events that this meant he could not have a harpist or other such entertainment outside for dinner guests as was suggested they occasionally did.

He agreed that he understood this.

In closing, Mr Swan requested conditions on the number of external events, days of the week they could be held, the timing of activities and maximum number of people in attendance. He

also requested a condition in respect of speakers, signage and logging complaints as outlined in his written representation.

The interested parties then each summed up their position. Generally they felt that even with the restrictions and conditions it was not appropriate. Mrs Boersma asked that if the application was granted, that conditions be put on requiring 4 weeks notification be given to all boundary residents, that they terminate all activities at 23:00, that noise levels are monitored and reported to Mr Swan after each event and are publicly available and that they are allowed no more than two external events each year.

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 local residents have a right to respect for their private and family life and their home. They are 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 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. Therefore the hours granted for the licensable activities are as follows:

Hours can sell alcohol (indoors and outdoors)

- Monday – Thursday 10:00 – 23:00
- Friday – Saturday 10:00 – 23:30
- Sunday – 12.00 -22:00

Live music, recorded music, performance of dance and the provision of facilities for dancing for indoors for the following hours:

- Monday – Thursday 19:30 – 22:30
- Friday - Saturday 19:30 – 23:30

Live music, recorded music, performance of dance, provisions of facilities for dancing limited to five times per calendar year outdoors

- Friday - Saturday 19:30 - 23:30

Late night refreshment indoors and outdoors (outdoors limited to 5 times per calendar year)

- Friday - Saturday 23:00- 23:30

Opening hours

- Monday – Thursday 10:00 – 23:30
- Friday – Saturday 10:00 – 00:00
- Sunday 12:00 – 22:30

We accept some of the proposals made by Mr Swan and have set these out in conditions below. Some have been amended, for example to ensure that all people visiting the premises, whether it be just for an external event or otherwise see a sign asking them to respect neighbours. We also agree with local residents that notification should be given prior to any external events. In addition to those who are required to be given notice as set out in the conditions below; we would request the Applicants to consider complying with any reasonable requests received from nearby residents who wish to be given the same notification of external events.

The sub-committee welcomed the residents being given the telephone number as a point of contact and the offer by Mr O’Keeffe to be the contact point for any unresolved complaints.

The sub-committee also welcomed the terms and conditions that the Applicants propose to impose on all visiting musicians.

Conditions

- Four weeks prior to external events written notification is to be given to the following addresses:
 - Victoria Cottage, 1 Church Road
 - The Old Vicarage, Church Road,
 - Old Beams, Station Road
 - The Shambles, 1 Ladysmith Road
 - Church Cottage, 5 Church Road
 - Woodstock, Vicarage Lane
 - Pencyce House, Station Road
 - 19 Vicarage Lane
- A maximum of 5 external events in any one calendar year.
- The maximum number of people to attend an external event is to be 150 people.
- Signage must be displayed in prominent positions at the front entrance and rear of the restaurant as well as one in the car park and toilets asking guests to be mindful of local residents and be quiet when leaving the premises.
- Any speakers and amplifiers used for the provisions of regulated entertainment in a marquee shall be positioned within the marquee itself and directed away from the nearest residential premises.
- A log of any communication received by the premises regarding concerns of noise nuisance or other issues shall be kept. The log must detail the complaint received, date, time, who by and their contact details and any action taken. This list to be kept for 12 months and to be made available to the Licensing Authority or Environmental Health upon request.

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

The interested 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.

11 January 2012