

Aylesbury Vale District Council

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE
FOLLOWING A HEARING ON 17 JANUARY 2012 AT THE COUNCIL'S GATEWAY
OFFICES, GATEHOUSE ROAD, AYLESBURY**

Application by Louis Kitchen Ltd

Members of the Sub-Committee

Cllr Mrs Blake (Chair)
Cllr Hawkett
Cllr Mrs Renshell

Declarations of interest

None.

The application

This is an application is by Louis Kitchen Limited for a new premises licence for 53/54 Nelson Street, Buckingham MK18 1BT. The amended application seeks permission for the following:

Supply of alcohol (on sales only to accompany food)
Monday – Sunday 08:00 – 23:00

Recorded Music (indoors only)
Monday – Sunday 08:00 – 23:00

Opening Hours
Monday – Sunday 09:00 – 23:00

The Applicant was represented by Louis Myhill who will be running the restaurant. The restaurant is to be a family run business therefore Louis Myhill's parents, Steven Myhill and Sarah Myhill accompanied Louis Myhill.

There were two representations from Responsible Authorities; namely the Thames Valley Police and Environmental Health. Trevor Hooper attended from Thames Valley Police. Neil Green attended from Environmental Health.

There were a number of representations from interested parties and six attended. Andrew Wighton, Nicholas Robinson, Jenny Bates, Andrew White and David Hartin on behalf of his son, Paul Hartin indicated that they wished to speak at the sub-committee hearing. A number of apologies from interested parties were received though the sub-committee felt it was fair and reasonable to continue in their absence.

A number of documents were received prior to the hearing, from both the Applicant and Interested Parties who had put in apologies. These were circulated to the sub-committee for consideration.

Trevor Hooper from the Police outlined in his representation that he had contacted the Applicant and had visited the premises with Neil Green, Environmental Health Officer. After speaking with the Applicant it was agreed that the live music element of the original application would be withdrawn and alcohol would only be served with food. Further, there were going to be no take-aways from the premises and off sales were not being applied for. He concluded that if the conditions he had requested in his written representation (A23) were put onto the licence then he had no objections to it being granted.

When answering questions from various parties at the hearing, Mr Hooper confirmed that there are 1 or 2 premises which attract disorder in the town and this tends to be from vertical drinking premises and to be associated with 18 to 25 years olds. The main problems are between 00:30 and 2:00am. There had been two noise complaints in the nearby area in November or December 2011 but upon investigation these stemmed from student parties.

Mr Green of Environmental Health outlined that Nelson Street is predominantly residential. There have been 5 noise complaints recently about late night noise from student parties and the use of the road as a route to and from the town centre. The immediate neighbours are both residential. He understood that the premises were to be an upmarket restaurant where the music was incidental rather than the reason to attend the premises. He felt that the live music was not appropriate due to it being a terraced property and he had concerns about music in the outside areas. As a result of this the Applicant had agreed, prior to the hearing, to withdraw the part of the application relating to live music and outdoor recorded music. As a result of this, Mr Green had no further objections.

Mr Green confirmed when questioned that even if the live music was for a person playing a guitar or other 'light' live music that it would not be appropriate for the premises due to the difficulty in controlling the level of noise. Mr Neil Green explained that he was looking at the issue of extraction of smells from the premises and the system to be installed under the planning framework.

The legal advisor advised all parties that planning considerations were not relevant at today's hearing; the sub-committee must only take into account matters which are relevant under the four headings of the licensing objectives.

The five interested parties then presented their representations to the sub-committee. Their objections were based on the objective of public nuisance, particularly in relation to noise nuisance from people coming and going from the premises, the possible use of the garden, people to the front of the premises and the lack of car parking provision. There was particular concern from Ms Bates about the use of the outside space by people to eat and the noise and disturbance that this would cause to her. They all felt that the opening of the restaurant would only add to the problems of anti-social behaviour already experienced in the town centre.

Questions were put to the interested parties. They confirmed that the electrical store was mainly for contractors and had very little footfall and the premises had been empty for some 5 to 6 months. Mr Robinson stated that if there must be a business there then he felt it should finish licensable activities at 22:00 and everyone must be off the premises at 22:15.

Ms Bates asked Neil Green whether he thought the music would be audible to the rear of the premises. He stated that there is to be no recorded music played outside. He explained it would be difficult to word a condition as he had in his representation as you couldn't control any "burst of noise" that might happen when somebody arrived or left the premises. He expects

there may be some noise from time to time but none which is unreasonable and he is happy with the application and that it should not cause a nuisance to neighbours.

Steven Myhill presented the case for the Applicant. He stated that they appreciated the neighbours' apprehension and wanted to work with them. He felt that a lot of the objections are based on assumptions and are not evidence based. The restaurant is going to be offering a quality dining experience and the alcohol and music licence is essential to make it a viable business. Louis is at the heart of the restaurant and will be the chef. The site already has planning permission for a restaurant from 08:00 to 23:00 so today's hearing is really only about the selling alcohol and playing recorded music elements. He outlined that, in his opinion, Nelson Street is a mixed use street as there are a number of other premises on it, including a convenience store, dentist, take away etc. Louis is moving into 54A so will be a neighbour.

The interested parties asked a number of questions of the Applicant. The Applicant outlined that Building Control regulations mean that they cannot use the decked area for customers, and they had no intention of doing so. The decked area was about a storey and a half higher than the back of the restaurant. They had no formal plans for that area yet, but thought Louis Myhill may use it as his own domestic garden and perhaps grow some produce in that area. They had no formal outdoor smoking area for customers but had thought that the small yard area immediately at the rear of the premises may be suitable. They would be having a strict rule that there would be no drinks taken outside of the premises.

The sub-committee then asked a number of questions.

It is intended that the restaurant is to be opened at 9:00am, lunch to be served between 12:00-15:00, it will be closed 15:00-18:00 and then open between 18:00 to 23:00 with food service finishing at 22:00. It will be croissants, coffee etc during the day. They expect to do 40 to 45 covers in terms of 'bums on seats'. The music will be quiet background music.

They are happy to put up signs asking people to be quiet when they leave the premises.

They were asked about the disparity between the opening hours and the hour licensable activities were to start and whether they intended to serve alcohol in the morning.

The confirmed that they wanted to be able to sell alcohol between 10:00– 23:00 7 days a week to allow people to have wine or champagne with breakfast etc.

When questioned about food orders stopping at 22:00 but they didn't close until 23:00 how was this going to work in respect of alcohol only being served with food.

Louis Myhill explained that an order may be taken just before 22:00 but that the customer may not receive their food until 22:30.

It was asked how they intended to ensure customers had left by 23:00 when they could order drinks right up until 22:59.

After some discussion, Mr Steve Myhill stated that they would be happy to agree to finish selling alcohol at a reasonable period of time prior to closing, perhaps 20 minutes if this was felt reasonable by the sub-committee.

The Applicant confirmed that children under 16 would have to be accompanied by an adult after 18:00. They agreed they would be happy to provide information to customers on the availability of parking the nearby area.

The bar area has only 4 stools and is mainly for people who are waiting for a table or who are having a light meal such as welsh rarebit or other English style tapas dishes.

The parties all summed up.

Mr Hooper had nothing further to add apart from to say that there is a power of review if the licence was not working.

Neil Green confirmed he had nothing further to add.

Mr Robinson spoke on behalf of the interested parties. He stated that they were pleased to have heard what the Applicant had said but he has huge warning signs regarding the closing hours. He appreciates there are lots of unknowns but he sees no positives or reasons why they should try it.

The Applicant summarised to say that they intended to work with the interested parties and wanted to fit into the community. They want to be able to address any specific issues with them, such as where people will smoke.

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 have heard that the Police and Environmental Health are satisfied with the amended application and agreed conditions.

We are therefore satisfied that in all the circumstances the impact of the new 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:

Recorded Music (Indoors only)

Monday – Sunday 09:00 – 23:00

Supply of Alcohol – (on sales only to accompany the service of food)

Monday – Sunday 10:00 – 22:40

Opening Hours

Monday – Sunday 09:00- 23:00

Conditions:

1. Notices shall be displayed close to all entrance / exit doors of the premises reminding patrons of the residential area and to respect the needs of local residents and advising the patrons to leave the premises and the surrounding area quietly.
2. The playing of recorded music shall take place indoors only and no external speakers are permitted.
3. If a customer appears to be under 25 there shall be no sale of alcohol unless the customer proves he or she is over the legal age limit for the purchase of alcohol. The compliance with this condition shall be in accordance with the “Challenge 25” initiative or equivalent standard.
4. A refusals register shall be created and maintained with records all sales of alcohol refused on the Premises because of the legal age limit for the purchase of alcohol. The register shall be made available on request to the Police, the Licensing Authority and Trading Standards.
5. Children under 16 years old to be accompanied by an adult between 18:00 and 23:00 Monday to Sunday.

The Sub-Committee also welcome the offer of the Applicant to provide information for customers around parking in the surrounding areas.

The Sub-Committee note that the Applicant has stated that they are not permitted by Building Control and in any event do not intend to use, the outside decked area for customers. Further, there will be no open drinks taken outside of the premises at any time.

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.

17 January 2012