

**Aylesbury Vale District Council**

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE  
FOLLOWING A HEARING ON 24 APRIL 2012 AT THE COUNCIL'S GATEWAY  
OFFICES, GATEHOUSE ROAD, AYLESBURY**

**Application by Mohammed Naim for All Days Cuisine, 33 New Street, Aylesbury**

**Members of the Sub-Committee**

Cllr Mills (Chair)  
Cllr Mrs Brandis  
Cllr Lambert

**Declarations of interest**

None.

**The application**

The Applicant was not in attendance at 9:30am. He was contacted and confirmed he was on his way from High Wycombe. Therefore the sub-committee decided it was in the interests of justice to adjourn the hearing for 30 minutes to allow the Applicant to attend.

The hearing commenced at 10:15am.

The application is by Mohammed Naim for a new premises licence for All Days Cuisine at 33 New Street, Aylesbury. The amended application seeks permission for the following:

**Late Night Refreshment**

- Sunday – Wednesday 23:00 – 02:20
- Thursday – Saturday 23:00 – 03:20

**Hours open to the Public**

- Sunday – Wednesday 07:00– 02:30
- Thursday – Saturday 07:00 – 03:30

The Applicant, Mohammed Naim attended with Ammer Raheel who stated that he had an interest in the business.

There were two representations from Responsible Authorities; namely Planning and Environmental Health. Claire Harrison attended from the Planning Authority and Lindsey Hone from Environmental Health.

There were no representations from interested parties.

Lindsey Hone of Environmental Health presented her representation to the sub-committee. In her presentation she outlined that Environmental Health's concerns related to public nuisance affecting nearby residents.

The public nuisance could arise from people using the premises and from the ventilation (plant and equipment) which the premises would be using. After 23:00 the area has a low level background noise as the road noise reduces and that people are harder to manage therefore she has suggested some conditions that the sub-committee may like to consider. There has been one complaint from a nearby resident concerning noise and odour from a ventilation system and waste from a nearby restaurant, however nothing specific to this premise.

The premises currently have two extractor fans very close to each other situated on the wall in the 'L' shape of the premises on Alexander Road. They were about 15-20 metres from the nearest residential premises. No detail has been received regarding the type of system which has been installed; this had been requested as part of the planning process however planning permission was refused. Lindsey Hone outlined that Environmental Health would expect to receive noise surveys or at least figures, which would allow them to undertake a calculation to see if the noise would amount to a public nuisance. She has liaised with the Applicant and has asked for this information and has suggested a condition accordingly.

When questioned Lindsey Hone confirmed Alexander Road was a no-through road and she had not visited at night so could not comment on night road traffic noise.

Claire Harrison from the Planning Authority presented her representation to the sub-committee. Firstly she corrected an error in her representation, stating that it was with regard to a planning application received in 2011 not 2009.

Class A3 permits consumption on the premises of hot food etc. The planning application was for a mixed A3 and A5 usage to allow for takeaways.

The reasons for the rejection of the planning application were outlined in her written representation and she focused on reasons 2 and 3, namely the area is a residential area and the hours were excessive and would result in an unreasonable increase in traffic and thereby noise. She outlined that she had met with the Applicant as the Planning Authority believed it may be operating a take-away without planning permission. The current use is an A3 use which was granted in 1985 without restrictions on hours of operation.

Discussion then ensued around car parking facilities for the premises. Claire Harrison outlined that the highways department would have just taken account of the near vicinity not the wider area such as the Junction Retail Park or Sainsburys.

The legal advisor confirmed that the sub-committee must only have regard to information which is related to a licensing objective. Highways were not a responsible authority under the Licensing Act 2003 therefore their concerns were not strictly relevant.

When questioned about hours, Claire Harrison confirmed that the area is mainly residential and the neighbouring premise is open until 23:00. The fact that Alexander Road is a no-through road may result in increased vehicle movements therefore noise from the premises.

Peter Seal confirmed that the hours sought were in line with other takeaway premises on Cambridge Street and in Kingsbury Square.

Claire Harrison confirmed that when she visited the site the ventilation system had been erected in a different location, which is more acceptable in planning terms. The rejected planning permission can still be appealed or re-submitted. Currently the Council do not believe they are operating outside of their permitted use.

The sub-committee asked whether the new location of the ventilation was in a better location.

Lindsey Hone confirmed that until she has received calculations from the Applicant she is unable to comment. Once she has done the calculations she would recommend what limiters and or sound proofing would be required to make it acceptable.

The Applicant then presented his case to the sub-committee. He firstly apologised for being late to the hearing. He outlined that he also runs a transport company and that this is a new venture. He thought that planning permission had been approved when he started the venture. He envisaged the premises being a mix A3-A5 usage with a focus on families coming down for some good food and shopping.

Ammer Raheel confirmed he had an interest in the business. He confirmed he has met with both Miss Hone and Miss Harrison and is starting to sort out the issues relating to the ventilation system. They are also negotiating with some landowners opposite the premises to acquire the use of a parking space to tackle parking issues. He outlined that the premises is on a main road of Aylesbury and he believes they can handle the noise nuisance and therefore requested the sub-committee to grant the application. He stated they would fit a silencer on the flue, they are hoping to acquire the parking space and inside the premises there is now seating for 16 people so people would be inside rather than outside of the premises making noise. They want to provide a service to the public with late night refreshment. They want to assist the police in getting people out of the town centre quickly and they envisage linking the purchase of food to getting a private hire vehicle at a discounted rate to get them away from the premises as quickly as possible. He confirmed that they were looking to employ someone to litter pick in the near area to the premises.

During questions being put by the sub-committee to the Applicant, they were asked whether they would consider reducing their hours of operating given the concerns expressed at the hearing thus far.

Mr Naim confirmed they wanted to work with the Council and what would the sub-committee be suggesting.

Miss Hone confirmed at this point that she felt hours were irrelevant if there was no noise management in place. She felt the extraction fan could be managed through silencers instead of hours and traffic noise from taxis was perhaps relevant and perhaps a condition could be worded to deal with this.

The legal advisor suggested the hearing be adjourned for 10 minutes to allow for the Applicant to talk with Environmental Health to discuss noise management ideas and for Peter Seal to confirm the hours they were requesting a licence for.

The committee reconvened after 20 minutes and Mr Seal, on behalf of the Applicant, confirmed the Application was seeking the following hours:

Late Night refreshment from 23:00 each night until:

Monday	01:30
Tuesday	01:30
Wednesday	01:30
Thursday	03:30
Friday	03:30
Saturday	03:30
Sunday	12:00

He confirmed they proposed to close the door of the premises 10 minutes before the closure hour on every night to allow the final customers to be served. The premises would open from 7:00am each day.

He confirmed that they agreed to the conditions suggested by Lindsey Hone and would place self-closers on all external doors.

He confirmed they did not want to commit to a minimum number of staff at this stage as it was a new business and this would evolve as the business did.

The sub-committee asked whether they would agree to using a prominent “open” and “closed” sign displaying the businesses opening hours on it. The Applicant agreed to this.

Miss Harrison and Miss Hone confirmed they had nothing further to add.

Mr Naim confirmed he had no closing comments other than they wanted to work with the Council and contribute to Aylesbury. Mr Raheel apologised for their lateness again and would be willing to work with licensing, planning and environmental health to make this work.

### **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. The sub-committee noted that

the application is for a new premises licence application and there were no representations from interested parties.

We have heard that the Planning Authority 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. However, the sub-committee were concerned about the Premises' ability to serve all customers on the premises in ten minutes after closing to the public on a Thursday – Saturday, therefore there has been an amendment to the application for late night refreshment.

Therefore the hours granted for the licensable activities are as follows:

#### Late Night Refreshment

- Sunday 23:00 – 23:50
- Monday – Wednesday 23:00 – 01:20
- Thursday – Saturday 23:00 – 03:15

#### Hours open to the Public

- Sunday 07:00 – 00:00
- Monday – Wednesday 07:00 – 01:30
- Thursday – Saturday 07:00 – 03:30

An additional hour on bank holiday weekend (Friday, Saturday and Sunday), Christmas Eve and New Year's Eve.

#### **Conditions:**

1. The premises shall not sell or supply hot food or drink past 23:00 until a scheme which specifies the provisions to be made for the control of noise and odour from the extraction and ventilation system has been submitted to and approved in writing by the Environmental Health Department. Details regarding the make, model and noise level output from the fan as well as details regarding any silencer fitted to the extraction system shall be provided as part of this scheme.
2. All windows and doors at the premises which open to the external environment shall remain closed after 23:00 except for access and egress. The windows and doors will be fitted with automatic closers.
3. A closed and open sign shall be displayed and used on the entrance to the Premises which will prominently display the opening and closing hours of the Premises
4. Prominent notices shall be displayed at 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.

The sub-committee were concerned about parking issues in the surrounding area and note that the Applicants are negotiating the use of a car parking space opposite the Premises. The sub-committee would strongly encourage this to continue.

**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.

1 May 2012