

**Aylesbury Vale District Council**

**DECISION OF THE LICENSING AND GAMBLING ACTS SUB-COMMITTEE  
FOLLOWING A HEARING ON 10 SEPTEMBER 2013 AT THE COUNCIL'S  
GATEWAY OFFICES, GATEHOUSE ROAD, AYLESBURY**

**Application by Orchid Pubs & Restaurants Limited to vary the premises licence for the  
Cock Inn, 24-26 High Street, Wing, Buckinghamshire LU7 0NR**

**Members of the Sub-Committee**

Cllr Judy Brandis (Chairman)  
Cllr Peter Cooper  
Cllr Andrew Douglas-Bate

**Declarations of interest**

None.

**The application**

The Sub-Committee has given careful consideration to the application before it, namely, to vary the premises licence for the Cock Inn, 24-26 High Street, Wing, Buckinghamshire.

The application seeks permission to play recorded music (indoors only) on Fridays and Saturdays from 10.00 hours until midnight and to extend the terminal hour for the sale of alcohol (for consumption on and off the premises) on Fridays and Saturdays by one hour until midnight and to bring forward the opening time for the sale of alcohol on Sundays by one hour to 11.00.

The application also sought to vary the conditions attached to the licence to allow standard timings on Christmas day and Good Friday. As for New Year's Eve, as well as seeking standard timings, the application also sought permission to play recorded music and sell alcohol until the start of the permitted hours the following day.

The applicant was represented by Faye Given, Licensing and Legal Manager and Matthew Baddeley, Area Manager, both for The Orchid Group and Garry Rayner, the DPS for the premises.

None of the responsible authorities made a representation in response to the application but a representation had been received from Robert Anstee, a local resident.

Mr Anstee objected to the application on the grounds of the excessive noise and disturbance caused by the outbreak of music from the premises; the use and availability of the pub garden and customers when leaving the premises.

Mr Anstee attended the hearing and during the course of the discussion we led made the following representations.

He had a human right not to be disturbed and to a peaceful night's sleep; his main concern was the proximity of the pub garden to residential premises and that his garden was only 15 metres from the car park; that youngsters congregate in the garden causing a nuisance and that an extension of one hour even on a Friday and Saturday night was unacceptable.

It soon became apparent that at least in part, Mr Anstee's objection rested on general noise and disturbance caused by individuals in the vicinity of the premises as well as those loitering in the open pub garden. In other words, not all the disturbance complained of related to the premises use of the pub garden or its customers as the area is used as a walk through even when the premises is closed.

Our discussion ascertained that because of a public right of way, it was not possible to fully enclose the pub garden as Mr Anstee suggested.

When asked Mr Anstee informed us that he had been disturbed on just one occasion from noise outbreak from the premises since Mr Rayner became the DPS and that the source of that disturbance was music from an outside speaker. Mr Rayner told us that the speakers had now been disconnected.

In support of the application, we heard that The Orchid Group acquired the premises in 2010; that to the best of their knowledge they had not received any complaints since then; they are a responsible retailer and focussed on the sale of food as well as alcohol and that they had significantly scaled back their initial application which had dramatically decreased the number of representations to just one. We were also told that they appreciate that the premises sits in a small community and that they have tried to run it as a community pub and that some residents had asked for extended hours which is why the application was made.

We were also given assurances that the premises wanted the flexibility of being able to play recorded music but that would not mean that there would be a disco, for example, every week.

In direct response to the concerns raised by Mr Anstee, the following conditions were volunteered on behalf of The Orchid Group:

1. When regulated entertainment is provided, all windows and door (including the internal porch door) shall remain closed, save for the opening and closing of doors to allow the ingress and exit of customers.
2. The playing of recorded music shall take place indoors only and no external speakers are permitted.
3. Prominent, clear and legible notices shall be displayed at all exits reminding customers of the residential area and to respect the needs of local residents and advising them to leave the premises and the surrounding area quietly.
4. After 23.00 hours, the grassed area which forms part of the premises, excluding the smoking shelter, shall not be used.

### **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 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 appropriate 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 Anstee 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 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 grant of the premises licence on the licensing objectives does not justify a rejection of the application for the following reasons.

The application is limited in scope, the premises appears to be well run, reasonable steps have been taken to reduce the potential for disturbance in the future, additional conditions have been volunteered by the applicant during the course of this hearing, there is little evidence of actual and serious disturbance suffered in the recent past and despite the close proximity of a number of residential premises, the application only received a single objection.

Given the layout of the premises and the wider area and in particular, access to the car park which cannot be closed and the positioning of the public right of way, we found that, in any event, not all of Mr Anstee's complaints related to the carrying on of licensable activities at the premises. More specifically, in the context of deciding this variation application, we can only have regard to the use of the pub garden by the premises and not any unauthorised use by others.

Although we have granted the application in full, we would point out to the premises licence holder that on Fridays and Saturdays the premises' closing time, namely, midnight, is the same time as the terminal hour for alcohol and recorded music. We suggest therefore that a so-called 'drinking up' time for alcohol and a winding-down time for music be factored into use of the additional hour.

Finally, we note that the premises will be run in accordance with the premises licence holder's responsible retailing policies and standards which are kept under review and updated from time to time. We appreciate the need for flexibility when it comes to operational policies and standards. That said, operating schedules should specify, wherever possible, the steps an applicant intends to take to promote the licensing objectives so that the commitments can be converted into enforceable conditions. To refer to policies in support of an application but "for information only and not as suggested conditions or to form part of any other Operating Schedule" is not helpful and a practice we would discourage.

## **Conditions**

Having regard to the representations made, and the volunteered conditions, 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 Anstee has 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.

2 October 2013