

# ITEM 3

## Licensing Sub-Committee

4 April 2007

Report of: Licensing Officer  
Application: The Coachmakers Arms, 117 High Street, Newport  
Pagnell  
Application Reference No: 93742

### 1. APPLICATION

#### Summary of application

1. To increase hours for sale of alcohol and recorded music for an additional 2 hours (until 0100 in the morning) on Fridays and Saturdays
2. To increase hours for sale of alcohol and recorded music an additional half hour (until 0130) on Friday and Saturday of bank holiday weekends (an increase of two hours to existing).
3. An extra hour on Christmas Eve and Boxing Day (until 0200 where this falls on a Friday / Saturday and until 0100 on any other night for sale of alcohol and recorded music
4. To treat Good Friday and Xmas Day as any other day in respect of licensing hours for sale of alcohol and recorded music
5. Remove the condition that restricts use of outside areas after 11pm

#### Existing Activities

Supply of alcohol; Recorded Music; Late Night Refreshment; Live Music; Provision of entertainment facilities

#### Existing Hours

See attached licence (Annex A)

#### Proposed Hours

As stated above

## **2. BACKGROUND INFORMATION**

The premise is a long established public house. A copy of the application is provided in Annex B.

In November 2005 a variation application for extended hours was made but not granted in full following representations from local residents. A copy of the decision notice is placed at Annex C. That application sought entertainment and alcohol hours until midnight on weekends (0100 on bank holidays). Some extension of hours were granted (on bank holiday weekends) as was entertainment with conditions applied

In May 2006 the Licensing Authority was notified of breach of condition in respect of noise control. Letter at Annex D.

In June the current DPS (Mr Perry) took over at the premise

In September 2006 complaints were received regarding noise from outside functions and fireworks Annex E.

A plan of the licensed area is shown at Annex F.

A licensing visit on March 17<sup>th</sup> identified that no incident log was being maintained at the premise (breach of condition of licence)

Details of licence reviews:

None

## **3. PROMOTION OF LICENSING OBJECTIVES**

### General

None

### The Prevention of Crime and Disorder

None

### Public Safety

None

### The Prevention of Public Nuisance

None

### The Protection of Children from Harm

None

## **4. RESPONSIBLE AUTHORITIES**

Environmental Health made a representation regarding noise disturbance to local residents from entertainment, and use of the garden. Conditions have been proposed but not agreed. See Annex G.

Thames Valley Police have agreed a condition in respect of use of toughened glass drinking vessels. See Annex H.

## **5. INTERESTED PARTIES**

Two interested parties as residents as well as the Town Council have made representations against the application. See Annex I. In essence representations refer to public nuisance and crime and disorder as well as protection of children from harm re sleep deprivation. The problems include entertainment noise, disturbance from persons leaving and noise from the premise. A number cite existing problems connected with the pub that any extension would only exacerbate including sleep disturbance. General anti social behaviour of patrons is also cited including glass and bottles leaving the venue. The representations are similar to those raised to previous application in 2005

A plan showing proximity of the nearest residents is provided at Annex J.

## **6. POLICY CONSIDERATIONS**

**The following paragraphs of the Licensing Authorities Statement of Licensing Policy apply to this application:**

3.2 The following factors will also be given due weight: -

- Each application will be determined on its own merits having regard to guidance issued under Section 182 of the Licensing Act 2003, and local criteria. The former will take precedence;
- The rules of natural justice will be applied at all times.
- The right of any individual, or body to apply for a variety of permissions is not undermined.
- The statutory right of any interested party or responsible authority to make appropriate representations or to seek a review in respect of an application where appropriate is accepted.
- The direct impact of the activities taking place at the licensed premises on members of the public living, working, or engaged in normal activity at or in the vicinity of the premises. (Note “in the vicinity” will be decided upon by officers and members of the Licensing Authority as considered appropriate when considering an application, having regard to the characteristics of the neighbourhood) will be given due weight.

5.3.1 As a consequence of the Section 182 guidance, the Licensing Authority will not establish zones in particular areas where premises will be either required, or coerced into having fixed or predetermined closing times. Further, the Licensing Authority will not require a Licensee to make use of the licensed hours granted.

5.3.2 Any restriction on trading hours will be considered only where it is necessary to meet the licensing objectives

5.3.3 The Licensing Authority is likely to impose stricter conditions regarding

noise control for those premises that are situated close to residential areas if relevant representations are received. In these localities the Licensing Authority will expect the applicant to have scoped the potential for noise and/or vibration nuisance and factored in suitable control measures.

5.3.4 The Licensing Authority may set an earlier closing time where after representations having been made, it considers this appropriate having regard to the nature of the licensable activities, the amenity of the area, and the impact on the licensing objectives.

5.3.7 All residents living in the vicinity of any licensed premises have equal rights to make observations concerning applications for premises licences and hours of trading, and to receive appropriate consideration to their representations as an interested party. However, the Licensing Authority will disregard irrelevant, frivolous and vexatious representations.

### **7.3 Crime and Disorder**

7.3.1 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of carrying out of their functions on crime, disorder and anti-social behaviour; doing all they reasonably can to prevent these matters occurring.

7.3.2 The Licensing Authority will have particular regard to the likely impact on these matters when considering the location, operation and management of all proposed licence or certificate applications, renewals and variations.

13.2 The locality within which licensed premises are, or may be located is a major consideration in determining whether a licence should be granted and what conditions should be attached to it. Primary consideration will be given to the direct impact of the licensed activity on those living, working or enjoying the local environment.

13.3 Licensing law is not a mechanism for the general control of any anti-social behaviour being displayed by patrons once they have left the curtilage of the licensed premises, other more specific legislation should be used.

13.10.2 In considering contested applications the Licensing sub committee will have particular regard to: -

- The occupancy figure for the proposed premises
- The proximity of the premises to others in the area licensed for similar activities, and the occupancy figures for those other premises
- Whether the proposed premises will act as a replacement for others in the area that no longer have a licence
- The proposed methods of management outlined in the applicants operating schedule
- The proposed hours of operation
- The proposed licensable activities
- The impact on the emergency services
- The views of Police, including crime and disorder statistics along with the

seriousness and nature of previous incidents occurring at similar premises in the locality.

14.7 The Licensing Authority recognises that balancing the interests of owners, employees, customers and neighbours of pubs, clubs and off-licences will not always be straightforward, but it will always have regard to the licensing objectives.

19.1.1 "Conditions will accurately reflect the individual style, location and characteristics of the particular premises, and be clear, unambiguous, and proportionate".

19.1.2 Licensing Authority is aware of the need to avoid measures that might deter live music, dancing or theatre by imposing indirect costs of a disproportionate or substantial nature through the imposition of unreasonable licence conditions.

19.1.4 In respect of toughened glass, safe plastic drinking containers and plastic bottles instead of standard annealed drinking containers and glass bottles; the licensing authority may consider attaching conditions to a premise licence if a representation is received from a responsible authority such as the police

19.5.1 The Licensing Authority wishes to protect the amenity of residents, and businesses in the vicinity of licensed premises and for these purposes in the vicinity is taken to mean the immediate area around licensed premises without any stated distance criteria. Matters of concern will be dealt with on an individual basis

19.5.3 In considering licence applications, the Licensing Authority will consider representations made by interested parties or responsible authorities on the adequacy of measures proposed to deal with the potential for nuisance and/or anti-social behaviour having regard to all the circumstances of the application. These could include the steps taken or proposed to be taken by the applicant regarding the following issues:-

- (a) excessive noise and vibration escaping from the premises, including music; noise from mechanical ventilation equipment and human voices.
- (b) disturbance by customers, staff, delivery vehicles, or contractors arriving at or leaving the premises. This will be of greater importance between 11p.m. and 7am.
- (c) queuing either by pedestrian or vehicular traffic on land under their control.
- (d) arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local resident's at large events e.g. National Bowl.
- (e) use of gardens and other open-air areas within the curtilage of the premises.

- (f) siting of external lighting,
- (g) increase in refuse storage or additional littering in the vicinity of the premises.
- (h) previous history of nuisance complaints.

20.5.4 When determining applications the Licensing Authority will have regard to any Guidance issued by the Department for Culture, Media and Sport (DCMS).

23.5 The Licensing sub committee will determine each case on its individual merits whilst taking into consideration the terms of this Policy document. Where the Licensing sub committee determines that it is appropriate to attach conditions to a licence or certificate it will ensure that those conditions are focused on the direct impact of the activities taking place at the premises concerned on members of the public living, working or engaged in normal activity in the area or in the premise concerned. Such conditions will be proportionate to the activity to be controlled and will only be imposed in the interests of the licensing objectives.

The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

**The following paragraphs of the Licensing Act 2003 apply to this application**

Not applicable due to nature of application

**The following paragraphs of the Secretary of States Guidance apply to this application**

5.50 In respect of some premises, it is entirely possible that no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that it is proposed to take to promote each of the licensing objectives and in particular, the protection of children from harm.

5.68 Where a representation concerning the licensing objectives is lodged by a responsible authority about a proposed operating schedule it is relevant and the licensing authority's discretion will be engaged. It will also be engaged if an interested party makes relevant representations to the licensing authority, i.e. those which are not frivolous or vexatious and which relate to the licensing objectives (see paragraphs 5.70 – 5.77 below). A hearing will be required for the licensing authority to consider the representations, at which the parties should be invited to comment upon the representations made and if necessary, to provide clarification of their own representations. The need for a hearing can

only be dispensed with by the agreement of the licensing authority, the applicant and all of the parties who made relevant representations. The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website. As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective, which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation, which gave rise to the hearing. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may amplify their existing representation. In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy; and
- the steps that are necessary to promote the licensing objectives.

5.68A Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving interested parties time to address the revised application before the hearing commences. The Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed. Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application.

The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website.

5.68B There is no requirement in the Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees to reach more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree.

5.68C As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation which gave rise to the hearing. They may not add further representations to those disclosed to the applicant prior to the hearing, but they

may amplify their existing representation. In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- . • the representations (including supporting information) presented by all the parties;
- . • this Guidance;
- . • its own statement of licensing policy; and
- . • the steps that are necessary to promote the licensing objectives.

5.73 A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. A representation that fails to do this is not “relevant” for the purposes of the 2003 Act. It is not intended, for example, that the consideration of the application should be a re-run of the planning application which would have considered a wider range of matters. Premises licences authorise the activities within the scope of the 2003 Act that it is proposed should take place on the premises. For example, a representation from a local businessman which argued that his business would be commercially damaged by the new business for which an application is being made under Part 3 of the 2003 Act would not be relevant. On the other hand, a representation to the effect that nuisance caused by the new business would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance are inadequate would amount to relevant representations and must be considered provided the other conditions necessary to be a relevant representation were fulfilled. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises.

5.77 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application for the grant or variation of a premises licence.

5.99 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licences by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of

individual premises.

6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.

6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of parliament to alter any provisions

6.8 In relation to the prevention of public nuisance, in each individual case that arises following representations, the licensing authority should consider the potential for nuisance associated with the style, characteristics and activities of the business to be carried on at the premises in order to examine the potential steps which could be taken to reduce the risk of nuisance occurring. This will particularly apply in areas of residential accommodation. The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times.

7.23 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. As has been said above, conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and his staff or agents, but can directly impact on the behaviour of those under the licensee's direction when on his premises or in the immediate vicinity of the premises as they seek entry or leave.

7.27 Some conditions primarily focused on the prevention of crime and disorder will also promote other licensing objectives. For example, a condition requiring that all glasses used on the premises for the sale of alcoholic drinks should be made of plastic or toughened glass or not allowing bottles to pass across a bar may be necessary to prevent violence where such activity is likely to occur, by denying assailants suitable weapons, but may also benefit public safety by minimising the injury done to victims when such assaults take place (for example, facial injuries resulting from broken glass). A condition must also

be capable of being met, for example, while beer glasses may be available in toughened glass, wine glasses may not. Conditions of this kind therefore need careful consideration to ensure that they are not only necessary but both practical and achievable. Similarly, although most commonly made a condition of a licence on public safety grounds, consideration can also be given to conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary, consideration should also be given to whether door supervisors would be needed to ensure that the numbers are appropriately controlled.

7.38 Annex G provides examples of conditions, which relate to public nuisance, and could be used where necessary in the particular circumstances of any individual premises. These should be treated as a pool of conditions from which appropriate and necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be treated as standard conditions.

7.39 The 2003 Act requires licensing authorities following receipt of relevant representations and, through the making of representations, responsible authorities to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licenses and club premises certificates to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

7.40 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.<sup>6</sup>

7.41 Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises, from simple mechanisms like ensuring that doors and windows are kept closed after a particular time in the evening to more sophisticated mechanisms like sound level inhibitors on amplification equipment or sound proofing. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of premises and the type of activities expected to

take place there.

7.42 As with all conditions, it will be clear that conditions relating to noise nuisance may in certain circumstances not be necessary where the provisions of the Environmental Protection Act 1990 and of the Noise Act 1996 adequately protect those living in the vicinity of the premises in question. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.

7.43 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.

7.45 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from a responsible authority or interested party that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.

## **7. OFFICERS OBSERVATIONS**

1. The operating schedule proposes no additional measures other than those conditions already on the licence
2. No occupancy limit has been set for the premise so Section 177 of the Licensing Act 2003 does not apply

3. The extension of entertainment only refers to recorded music.
4. The existing noise condition does NOT apply to recorded music (only Live music / karaoke)
5. The applicant has proposed a condition that licensable activities do not take place outdoors after 11pm. There is already a restriction on the licence that precludes any licensable activities outdoors at any time.

**Further details requested of the applicant:**

1. Any additional steps proposed as a result of the representations received
2. The nature of 'recorded music' at the venue for the additional hours sought

**Further requested of those making representations (against the application):**

Town Council:

1. Number of residents who have contacted you
2. Further details on the disturbance after 11pm mentioned in the representation

Residents:

1. How frequently you are disturbed by the matters listed in your representation

**8. ASSOCIATED PAPERS**

None

Contact Officer

For further information on this application please contact Ed Fisher on telephone 01908 252409 or e-mail: eddie.fisher@milton-keynes.gov.uk