

Report of Application:

Olney Wine Bar and Brasserie, 9 High Street South, Olney, Bucks, MK46 4AA

Application Reference No: 140956

1. Summary of Application

1.1 This is a new premises licence application submitted by Olney Wine Bar and Brasserie Ltd. It will permit a number of licensable activities as detailed below:

- (a) Supply of alcohol (on and off the premises), Live Music, Recorded Music, Performance of Dance (Indoors)

Sunday to Thursday 10:00 to 00:30

Friday to Saturday 10:00 to 01:30

- (b) Late Night Refreshment (Indoors)

Sunday to Thursday 23:00 to 00:30

Friday to Saturday 23:00 to 01:30

- (c) Seasonal variations have been requested in respect of the end times for all licensable activities as follows:

(i) An additional one hour on the Sundays and Mondays of Bank Holiday weekends.

(ii) An additional hour on Christmas Eve, Boxing Day, St Patrick's Day and Valentine's Day, where these days fall other than on a Friday or a Saturday.

(iii) An additional half hour on the day British Summertime begins.

(iv) From the end of permitted hours on New Year's Eve until 05:00 on New Year's Day.

1.2 The application is detailed at **Annex A**. It contains a number of conditions to be included in the operating schedule.

2. Background Information

2.1 The premises is located to the south of Olney's High Street, situated amongst residential properties and is opposite The Swan Public House. A plan of the locality is included at **Annex B**.

- 2.2 The premises has had a premises licence from September 2005 when it was known as Olney Wine Bar. It was then subject to a transfer in 2007 to Grigg & Seidler. The current licensee, TJD Trade Ltd, took over in October 2009.
- 2.3 Although the new applicant is John Shayler of Olney Wine Bar and Brasserie Ltd, Jo Marks the director of TJD Trade Ltd has confirmed that their involvement will continue with the premises.
- 2.4 Essentially the premises is expanding, the neighbouring property is going to be merged with the existing premises for licensable activities. Legislatively a new premises licence application therefore needs to be submitted to incorporate this, because a variation application would not be suitable due to the expansion being considered as a substantial change.
- 2.5 Olney Wine Bar has been closed for approximately two years, the applicant may elaborate on this.
- 2.6 Current activities are for the sale of alcohol, regulated entertainment and late night refreshment. The existing licence (see **Annex C**) permits the following:
- (a) Supply of Alcohol
- Monday to Wednesday 10:00 to 00:30 (01:30 during December)
- Thursday to Saturday 10:00 to 01:30
- Sunday 12:00 to 23:30
- Good Friday and Christmas Day 12:00 to 23:30
- New Year's Eve from the start of permitted hours on that day of the week until start of permitted hours the following day.
- (b) Indoor Regulated Entertainment encompassing: Live Music; Recorded Music; Performances of Dance; Activity similar to Live Music/ Recorded Music or Performance of Dance
- Mondays to Wednesdays 20:00 to 00:00
- Thursdays to Saturdays 21:00 to 00:00
- Sundays 12:00 to 23:00
- (c) Late Night Refreshment
- Monday to Wednesday 23:00 to 00:30 (01:30 during December)
- Thursday to Saturday 23:00 to 01:30
- Sundays, Good Friday and Christmas Day 23:00 to 00:00
- New Year's Eve 23:00 to 05:00 New Year's Day
- 2.7 Complaints recorded against Olney Wine Bar are as follows:

- (a) October 2009 - concerns regarding smoking area beneath resident's window.
- (b) September 2011 - noise from music and anti-social behaviour, confirmed Police attendance, new issues connected to premises as it is now not serving food and being primarily a drinking establishment. Subsequently the licensee positioned the smoking area to the side alley.
- (c) October 2011 - noise from music and patrons. Patron urinating in resident's garden.
- (d) October 2011 - complainant can hear noise from music when doors are opened, but has more an issue with customers causing noise out of the front of the premises whilst arriving and leaving. When smoking outside the front violence occurs occasionally. Generally only a problem between midnight and 03:00. Mostly Fridays and Saturdays. Complainant advises that the doorman does his best but cannot control everyone. Danger of people standing on narrow pavement and then falling into road/ spilling onto road so that drivers honk horns to avoid them, which then sparks shouting etc. Taxis hanging around outside.

2.8 The Licensing Authority engaged with the licensee in relation to the complaints made and conducted subsequent monitoring visits on the evenings of: 11.11.11, 26.11.11, 03.12.11, 17.12.11, no issues were witnessed, the situation had therefore improved.

2.9 However, a further complaint was made in February 2012, alleging the previous problems now appeared to be returning, especially in relation to noise from people leaving and more so from smokers outside from 23:30. The complainant was advised of the out of hours call out service and a further monitoring visit was conducted on 22.12.12. No further issues or complaints were received since this date.

3. **Promotion of Licensing Objectives**

3.1 It is the responsibility of a premises licence holder to promote the licensing objectives and ensure any licensable activities are provided responsibly. The applicant has provided an operating schedule which will be formulated into conditions if the application is granted. The operating schedule is relatively detailed, some controls offered are covered by primary legislation and therefore shall not be implemented as conditions. If the application was granted, the following conditions would be attached (please note that the conditions were subsequently amended by Responsible Authorities, detailed further in the report):

- (a) Staff will be trained with regard to their responsibilities in the retail sale of alcohol and licence conditions and the measures necessary for compliance with those conditions.
- (b) CCTV shall be installed and maintained at the premises, and shall cover all areas where the public have access (with the exception of

toilets). This will include the external courtyard at the rear of the premises. Recorded images shall be retained for 28 days and shall be made available to the Police and authorised officers of the Licensing Authority upon lawful request.

- (c) The requirement for Door Supervisors shall be risk assessed by the Designated Premises Supervisor depending upon the type of entertainment being provided at the premises on any given day.
 - (d) The premises shall operate a zero tolerance policy in respect of illegal drugs use and the use of substances referred to as "Legal Highs".
 - (e) Off sales of alcohol for consumption beyond the premises boundary must be sold in sealed containers and must not be consumed within the premises boundary.
 - (f) An accident log shall be maintained and kept at the premises, and made available on request to Police and authorised officers of the Licensing Authority, which will record the following: All crimes which occur within the venue. All ejections of patrons. Any incidents of disorder. Seizures of drugs or offensive weapons. Any refusals of the sale of alcohol. The incident log shall be examined and signed on a regular basis by the Designated Premises Supervisor.
 - (g) All external doors and windows shall be kept closed at any time when regulated entertainment is taking place, except for the immediate access and egress of persons.
 - (h) Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
 - (i) No drinks or other refreshments shall be consumed outside the building after 23:00 hrs on any given day.
 - (j) The premises shall adopt 'Challenge 25' as its age verification policy and staff shall be trained in respect of this policy. A notice shall be displayed in a prominent position at the premises to advise customers that Challenge 25 is in operation at the premises
- 3.2 Original conditions offered in the operating schedule have been amended and agreed with Thames Valley Police (see **Annex D**) and Environmental Health (see **Annex E**).
- 3.3 The mandatory conditions will be attached as required by the Licensing Act 2003 (see **Annex F**).
4. **Responsible Authorities**
- 4.1 There are no outstanding representations from Responsible Authorities. The applicant has agreed with Thames Valley Police's request that conditions in the operating schedule are amended to be as follows (see **Annex D**):

(a) Staff Training

All persons involved in alcohol sales must receive full and adequate training on the law relating to underage sales. A written record of the training that each person has received shall be maintained. Regular refresher training is also to be given and recorded. The training records / log are to be kept on site and shall be provided to the Police, the Local Authority or Licensing Authority on request.

(b) CCTV

A CCTV system shall be installed, maintained and operated at the premises. The CCTV system will show images to an evidentiary standard and will cover all areas available internally to the public (excluding toilets), as well as the entrances and exits also the external courtyard area. The system will record at all times that the premises is open to the public. All recordings will be retained for a minimum of 28 days with date and time stamping. Recordings shall be made available upon request of the Police or Local Authority to view or remove upon lawful request. Relevant staff are to be trained and able to use the system.

(c) Door Supervisors

The Designated Premises Supervisor will risk assess the necessity for door supervisors at the premises and will amend such risk assessments if advised to do so by Thames Valley Police.

(d) Drugs

The premises shall operate a zero tolerance policy in respect of illegal drug use.

The condition in reference to legal highs has been agreed to be removed as they are now termed as psychoactive substances under the law, the use of which is now illegal.

(e) Challenge 25

An effective 'Challenge 25 Policy' shall be implemented and maintained in place at the premises. Any persons appearing to be under the age of 25 who attempts to purchase alcohol must be challenged in respect of their age and required to provide adequate proof that they are over the age of 18 before they are sold or supplied with alcohol. Only photographic based forms of identification shall be accepted as proof of age in respect of suspected underage sales. These must be accredited to the PASS scheme or subsequent equivalent but could also include passport, HM forces ID card, driving licence, national ID card.

4.2 The applicant has agreed with Environmental Health's request, that the condition in the operating schedule relating to the terminal time for drinks and refreshment consumed outside to be reduced to 21:00 and has also agreed to

the following additional conditions to be added to the operating schedule (see **Annex E**):

- (a) A dispersal of patrons/customer policy will be produced and implemented to ensure noise is kept to a minimum.
- (b) Large gathering of customers will be prevented to occur outside the front of the building to prevent spillage onto the main road.

5. Interested Parties

- 5.1 The Licensing Authority received representations from Olney Town Council and 4 residents. Each representation is listed at **Annex G**.
- 5.2 The Town Council has made a representation and references the unsuitability of the location and timings for licensable activities, being within a residential area leading to residents being disturbed by music and noise from customers arriving from other premises that close sooner. That the non-standard seasonal timings for New Year's Day are excessive and that St Patrick's Day and Valentine's Day are not sufficiently exceptional to warrant additional hours.
- 5.3 Resident's concerns reiterate Olney Town Council's and include reference to the potential for antisocial behaviour from customers. Furthermore, that the hours for music should be reduced and that the last entry to be at 22:00.
- 5.4 The applicant has responded in writing to some of the objectors, stating that there will be an emphasis on food at these premises. The music entertainment is sought as part of the application, so that customers who have been dining can enjoy music and dance (see **Annex H**).
- 5.5 The legislation will permit any person to make representation as long as it is relevant and relates to the four licensing objectives. Representations can be made against new premises, even where it may be difficult or indeed impossible to evidence any problems. However in this instance, Olney Wine Bar has been in operation previously.

6. Policy Considerations

Relevant sections of the Guidance issued under Section 182 of the Licensing Act 2003

2.20

Conditions relating to noise nuisance would normally concern steps appropriate to control the levels of noise emanating from premises such as ensuring that doors and windows are kept closed after a particular time. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises.

2.21

As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately

protect those living in the area of the premises. Section 182 Guidance states that licensing authorities should only place additional conditions on a licence where they feel that other legislation may not adequately cover concerns raised in relevant representations.

2.22

Where applications have given rise to representations, any 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.

2.3

Conditions should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally.

Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

9.4

A representation is “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. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

Licensing Authorities Statement of Licensing Policy

2. Licensing Objectives

2.1 The council will carry out its statutory duties under the Licensing Act 2003 as the licensing authority and have due regard to the licensing objectives.

2.2 *It is important to note that all objectives have equal importance in the implementation of this policy.*

The Licensing Objectives are:

- *The prevention of crime and disorder.*
- *Public safety.*
- *The prevention of public nuisance.*
- *The protection of children from harm.*

7.2 Crime and Disorder

7.2.1 *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.*

7.2.2 *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, variations and notices.*

7.2.3 *In localities where there is concern that the licensing objectives are not being met by licensees in operating their premises, targeted and proportionate pro-active intelligence gathering may be undertaken by the licensing authority or other relevant agency who will then share that information, as considered appropriate, with a view to taking formal action.*

7.2.4 *The licensing authority firmly believes that the licensing framework must be balanced by the high standards of house management by licensees and their staff. If this does not occur and there are no reasonable mitigating factors then the licensing authority will take firm enforcement action, in line with the councils' enforcement policy, to ensure that the licensing objectives are met.*

10. Applications for New Premises

10.1 *New premises licences will be granted except where;*

- *Valid representations are received opposed to the application and the grant of the licence will undermine the licensing objectives.*

10.2 *When considering contested applications the licensing sub-committee must have regard to the licensing objectives this could include reference to the following information:*

- *The occupancy figure for the proposed 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.*
- *Compliance history of the applicant.*

16. Prevention of Crime and Disorder

16.1 The Council acting as the licensing authority has a duty to act singularly or with its partners to reduce crime and disorder throughout Milton Keynes, consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998.

16.2 Thames Valley Police has provided data to the licensing authority that the licensing authority may consider the following, as examples of the issues that may be referred to as key components in the relationship between the crime and disorder licensing objective and any relevant representations received in respect of an individual premises:

- *The employee's knowledge of crime prevention measures appropriate to the premises.*
- *The internal design and capacity of those premises used primarily or exclusively for the sale and consumption of alcohol and which have little or no seating for patrons (high volume vertical drinking establishments).*
- *The security arrangements in place.*
- *The competency of the premises management team and the level of co-operation from the licensee.*
- *The willingness to have flexible trading hours so as to avoid patrons competing for limited public transport late at night.*
- *The willingness to limit the sales of alcohol in glass bottles for immediate consumption outside the premises.*
- *The use of responsible alcoholic drink pricing and promotions.*
- *End of evening music 'wind-down' policies.*
- *The measures employed to prevent the consumption or supply of illegal drugs, including any search procedures, amnesty boxes and door entry policies.*

- *The procedures in place to conduct age verification checks.*
- *The arrangements in place to relay 'early warning' information on to the police and other venues using a text pager or radio communications system.*
- *The willingness to voluntarily use polycarbonate or toughened/ shatterproof glass drinking containers in those premises considered to be a higher risk due to any of the following factors in the premises risk assessment :- the operating hours, mode of operation, customer profile and type of entertainment.*
- *The location of the premises.*
- *Compliance history.*

17.1 General and related issues

17.1.1 Licence conditions will not be imposed for any other purpose than meeting the licensing objectives. The licensing authority will not impose blanket standard conditions.

17.1.2 The licensing authority will attach conditions to licences or certificates only to ensure that they will:

- *refer to licensable activities as stated in the operating schedule,*
- *refer to one or more of the licensing objectives, and*
- *deal with any relevant representations received from a responsible authority or interested party that are considered by officers or the licensing subcommittee to be appropriate.*

17.1.3 Conditions will assume that persons with disabilities are present on the licensed premises and guide or assistance dogs should be permitted access with their partner.

17.1.4 Conditions will not be drafted which could have a direct or indirect discriminatory impact on particular ethnic groups contrary to the council's equality policy.

17.1.5 The licensing authority will normally stipulate the relevant mandatory conditions under the Licensing Act 2003 on all licences or certificates.

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

17.1.7 Licensing authority is aware of the need to avoid measures that might deter regulated entertainment by imposing indirect costs of a disproportionate or substantial nature through the imposition of unreasonable licence conditions.

17.1.18 *With the exception of the film classification for film exhibitions, the licensing authority will not use their powers to attach conditions that may be regarded as an act of censorship in respect of the content of regulated entertainment particularly theatrical performances, unless there are overriding reasons connected to the licensing objectives.*

17.1.9 *The licensing authority will normally attach a condition to the granted licence or certificate to confirm that the licensed plan forms part of the authorisation/operating schedule*

17.1.10 *Example conditions can be found in the Secretary of State's guidance (pool of conditions) although the licensing authority reserves the right to impose other conditions were appropriate to do so.*

The Prevention of Public Nuisance

17.5.1 *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.*

17.5.2 *Where considerations apply to late night refreshment premises, they shall only be taken to apply to their operation between the hours of 11 p.m. and 5 a.m. when a premises licence would be required.*

17.5.3 *In considering licence applications, the licensing authority will consider any information from the responsible authorities concerning legislative compliance relevant to this licensing objective.*

17.5.4 *The licensing authority will also consider representations made by relevant persons 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:*

- *Excessive noise and vibration escaping from the premises, including music, noise from mechanical ventilation equipment and human voices.*
- *Disturbance by customers, staff, delivery vehicles or contractors arriving at or leaving the premises. This will be of greater importance between 11p.m. and 7a.m.*
- *Queuing either by pedestrian or vehicular traffic on land under the applicant's control.*
- *Arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local residents.*
- *Use of gardens and other open-air areas within the curtilage of the premises.*
- *Siting of external lighting.*

- *Increase in refuse storage or additional littering in the vicinity of the premises.*
- *Previous history of nuisance complaints.*
- *Potential for odour nuisance.*
- *Confidence in the management to deliver the control measures proposed.*

7. Officers' Observations

- 7.1 This premises licence application has received a number of representations. There is clearly a local concern that a premises opening for these applied for hours, providing alcohol and regulated entertainment is something that local residents feel strongly about.
- 7.2 Officers are satisfied as far as possible that it is the intention of the premises management to operate primarily as a restaurant/ bar. The provision of facilities to dance is no longer a licensable activity. The premises could operate as a nightclub of sorts if the application is granted as applied. There is no specific licensable activity in the Act that licenses a nightclub.
- 7.3 Members will be keen to determine the precise intentions of the applicant in respect of the business model and if necessary and appropriate, relevant conditions could be attached. However, it could be hard to condition the premises to operate following a particular business model.
- 7.4 Controls on the premises to restrict public nuisance from regulated entertainment are possible to achieve. Controls on customers leaving the premises can be more difficult as the applicant's responsibility for a customer ends soon after leaving the premises. It will be useful to determine how the applicant intends to ensure that their customers do not disturb residents in the locality and how the previous issues of Olney Wine Bar shall not be repeated with Olney Wine Bar and Brasserie.

8. Associated Papers

None.

Contact Officer: For further information on this application please contact Kieran Evans on 01908 252801 or e-mail: kieran.evans@milton-keynes.gov.uk or 01908 252800 or e-mail: licensing@milton-keynes.gov.uk