

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

At a meeting of the Licensing (2003 Act) Sub-Committee held on
Wednesday, 20 September 2006 at 10.00 a.m.

PRESENT: Councillor A Riley – Chairman

Councillors: Mrs A Elsby Mrs DSK Spink MBE

Officers: Catriona Dunnett Assistant Solicitor
Myles Bebbington Licensing Officer
Maggie Jennings Democratic Services Officer

1. INTRODUCTION

The Chairman and remaining members of the Panel introduced themselves, as did the officers present. Richard Wormold, Barrister was present representing the Applicant and was accompanied by Barry Todd and Fran Gillgallon, tenants of the Duke of Wellington.

Also in attendance at the meeting were five members of the public who had made representations to the application; four indicated their wish to speak at the hearing. There were also two members of the press present.

The Assistant Solicitor for the Council informed the Chairman that the representation from Councillor RMA Manning included in the agenda papers should be disregarded. It was an invalid representation and should have not been accepted as it was not clear whether it was a personal representation or one made on behalf of the public. One of representees present disagreed with the action taken as he had been informed during a discussion with a member of the licensing department, that the letter had been re-written and submitted to comply with the appropriate criteria. The Chairman, confirmed that that the Sub-Committee would follow the legal advice given in respect of that representation.

2. DECLARATIONS OF INTEREST

None.

3. APPLICATION TO VARY THE EXISTING LICENCE FOR THE DUKE OF WELLINGTON PUBLIC HOUSE, 55 CHURCH STREET, WILLINGHAM

The Licensing Officer gave a resume of the application to vary the existing licence for the Duke of Wellington PH at Willingham as contained in the papers before the Panel and reported that letters of objection had been received as contained in Appendix D of the papers. A representation received from the Council's Environmental Health Officer had subsequently been withdrawn following negotiations with the applicant and the agreement to conditions as stated at para 9 of the Assistant Licensing Officer's report. Additional conditions suggested by Environmental Health had also been agreed with the applicant (para 10 refers). A further set of proposed conditions were submitted by the applicant on 18 September 2006 and circulated at the meeting.

It was indicated by the Licensing Officer that the Panel had three options:

- Approve the application as submitted
- Reject in its entirety

- Approve with conditions in accordance with the four licensing objectives

Mr Wormold addressed the Panel and made the following remarks:

- Greene King were very happy that the present tenants had taken on the premises as there had been problems with the previous incumbent
- The present tenants had embarked upon a total refurbishment of the premises; additional refurbishment would include a smoking room, patio area and new kitchen, all to be completed at no cost to the brewery
- Between 10 and 12 known troublemakers had been banned from the premises
- Average age of persons frequenting the pub was 35-40
- There had been no trouble since the present tenants had taken over the premises in May 2006
- Photographs of the refurbished premises were shown to the Panel (no objections having been raised to the presentation of this new evidence)
- The tenants saw the premises as a community pub and would like to open at 08:30 to serve breakfast, together with the flexibility to stay open without having to make repeat applications. A straw poll which they stated they had taken from some of the villagers showed agreement to these proposals
- The representations received were from a small minority
- Other nearby public houses, namely the Black Bull and Three Tuns both have later hours than those proposed for the Duke of Wellington (The Panel were reminded by the Licensing Officer that the application should be considered on its own merit, however the times of the other pubs should be stated if required)
- The tenants kept a complaints book and logged any concerns or complaints
- The landlady had banned someone from the pub who was behaving inappropriately on the village green
- In order to address objections raised to the application, a list of solutions had been offered as submitted on the 18 September
- Following negotiations with the Environmental Health Officer, further conditions had been agreed
- It was agreed that problems had occurred within the pub premises in the past, but this had now changed with the arrival of the new tenants

The Panel raised the following questions:

- (a) Had there being a succession of tenants?
- (b) Were the opening hours for breakfast outside the remit of the Panel?
- (c) Representations had been received regarding illegal/inconsiderate parking
- (d) Referring to the plan on page 35 of the application, what was the barn used for?
- (e) How was adequate ventilation achieved if windows/doors were closed?
- (f) What was the response to observations made by representees that drinking was carried out in front of the premises?
- (g) The current licence provides for live music on Fridays and Sundays only, was there much potential for further use?
- (h) There was a danger that, if closing times were in line with the other public houses in the vicinity, the clientele would move from one to the other
- (i) Was other food to be served other than breakfast at 08:30?

The following responses were made:

- (a) The present tenants had signed an agreement for up to 5 years; (but could terminate the agreement if desired) in the event of a subsequent change in tenancy and problems occurring as a result, the review process could be activated

- (The Assistant Solicitor informed the Panel that, for the avoidance of doubt, a review could be requested by interested parties and responsible authorities and, as contained in recently updated guidance, Parish Councils were interested parties)
- (b) Opening hours to the public were under the Panel's remit; the applicant was asking for an 08:30 opening
 - (c) Cars parked outside were not necessarily related to the pub; the landlady had requested patrons to use the car park
 - (d) Storage
 - (e) At the present time by opening the back door, however it was the intention to install fans
 - (f) Some patrons did go outside to either smoke or use phones and by leaving the doors open this encouraged people to do that; this practice had been discouraged during the previous 3 to 4 weeks
 - (g) Not been used at all, however would like the opportunity to be able to do so instead of applying for temporary licences. Would also like to have a drink with locals 'after hours' (Mr Wormald interjected to inform the Panel that there had been no lock-ins since the present tenants had take over the premises)
 - (h) Customers tended to be in three categories and frequent the various premises accordingly, it was intended that the Duke of Wellington would close at 23:00
 - (i) Other hot food and alcohol would be available from 12:00

Representee A addressed the Panel; the following remarks were made:

- One of the public houses referred to was outside the village and closed at 02:00
- The solutions offered by the applicant were noted and welcomed
- The landlord had been requested on one occasion at 01:00 to turn out the coach lantern; Mr Todd confirmed this. The appendix in A's letter of objection relating to the coach light had not been included in the agenda papers. (In response the council's solicitor informed the Panel that it related to a planning consent and was not therefore a matter for the licensing panel and had therefore been removed. A condition relating to the light could however be imposed if the panel felt it was relevant. Mr Todd informed the panel that he had agreed to remove the offending coach lantern)
- They were concerned with outside drinkers; one had sat on A's windowsill and nothing had been said to the offender by the landlord. In response, the Licensing Officer quoted from the Licensing Act relating to prevention of public nuisance and informed the Panel that they could condition immediately outside the premises and an appropriate distance
- Cars belong to patrons of the pub were parked outside A's premises and not in the car park which A felt was both a public nuisance and anti-social behaviour
- There were additional neighbours who objected to the proposals other than those listed on the agenda papers
- They did not object to lock-ins but not when the doors are left open and lights on and not an everyday occurrence. (In response the landlord informed the Panel that when he had friends visiting the premises after hours they moved into the back and dimmed the lights at the front; he resented it being said that they had 'lock-ins'. The Chairman said he could see where A had gained his observations on this matter. A apologised to the landlord)
- A urged the Panel to re-read his letter; he also referred to Cllr Ray Manning's letter as quoted in the press

At this point the licensing solicitor informed the panel that no police representation had been received regarding this application and there had been no reference to crime and disorder. Should matters deteriorate, there was the option of applying for a review. The

Panel were not dealing with past events and the applicant had acknowledged there had been troubles in the past.

Representee A continued

- Trouble at the premises 2 years ago resulted in the magistrates' court describing it as a 'den of iniquity'. In response to a question from the Panel on whether anyone had been banned, A replied that he did not know
- If A had known about this application, incidents would have been logged as they happened; there had been minor incidents. The applicant said he was not denying that there had been trouble two years ago

The Panel raised the following questions with representee A:

- (a) Had there been any problems since May 2006?
- (b) How long had he lived at his property?
- (c) Where in the submitted photographs was the coach light?
- (d) Was there any street lighting outside A's property?

In response A replied:

- (a) Low level nuisance to local people, which had worsened because of the increase in the use of the pub
- (b) Approximately one year
- (c) At the front left hand side of the premises; the coach light being separate from the remainder of the lights
- (d) Don't know, but would be orange and not bright white

Representee B addressed the Panel; and made the following points:

- Reference was made to the reproduced photograph (page 46 in the agenda) and the proximity of windows overlooking the Duke of Wellington
- B was pleased with what the landlords had done so far and nothing personal was intended
- B had suffered increased nuisance from the side door of the premises being open
- When curtains were open in B's property they could see straight into the bar area. B was aware the landlord would close all doors but the smoking area became busy
- Main disturbance was people making mobile phone calls; they talk loudly and swear which was not very nice when they had visitors. If the premises were allowed to remain open later, would have people making phone calls later
- Reference was made to bottles being emptied into the bottle bin; B liked to go to bed at 22:15 and had been woken up; could it be later? The applicant agreed that no bottles and refuse would be emptied between 22:00 and 08:00
- B's main concern was the proposed 01:30 closing on Thursdays

Representee C addressed the Panel; the following remarks were made:

- C had lived in the village for four years and agreed that the tenants had done a lot of work; C hoped it would become a family run pub. C related an incidence when getting ready to go to the pub, people unknown to C were in the driveway to C's property and when entering the pub later, those same people were there. C had not been asked her opinion on the application (the tenant responded that he had not sent out a questionnaire to every resident – he had simply referred to a 'straw poll')

- What would replace the coach light? (The tenant responded 'nothing')
- Yellow lines were in operation between 18:00 and 24:00, if allowed the hours proposed in the application, people would park on the road. C related an incidence of being blocked in, however that had not happened since the new tenants came in
- Would like more information on how the steps to promote the four licensing objectives as stated on page 28 of the application form would be implemented (the applicant responded that there were an additional 3 members of the staff trained in cellar management and how to behave and talk to customers. There was a check list of duties that they had to do each day)

The licensing solicitor reminded C that all questions should be addressed through the Panel and informed the Panel that there was specific guidance on public nuisance, which was highlighted in a letter from the secretary of State to all licensing authorities in September 2005 and in particular that there was no presumption in the Licensing Act for longer hours over objections from local people.

Representee C continued:

- C couldn't see many mothers being able to use the facilities at 08:30 (The Chairman responded that although entitled to an opinion, it was up to the applicant whether he feels he can make a go of it)
- What about drug taking (the tenant informed the Panel that he was aware of what had happened in the past and had spoken to the local police and the Community Beat Officer who said that nothing much could be done except being aware of groups of people visiting the toilets and car park. He would however remain vigilant as both he and his partner were anti-drug)

The Licensing Officer informed the Panel that Greene King hold the licence and there was nothing in the current legislation to say that the licensee had to be on the premises at all times, however if offences occurred, eg drugs or late drinking and were subsequently proved, it was the premises supervisor who would lose his/her licence, receive a fine and/or imprisonment.

Representee C continued:

- Was the 5-year tenancy binding on the tenant? Mr Todd responded that he could go tomorrow if he wanted.
- C did not agree with the premises opening at 08:30 in the morning as it would affect C's children (the council's solicitor said there was nothing in the objection that would fall into the category of concern re children witnessing drinking)

At this point (12:32) the tenant, Mr Barry Todd left the room; he returned at 12:36.

Representee D addressed the Panel and made the following remarks:

- The public houses were similarly located
- No other pubs have houses located in such close proximity
- They had nothing against the tenants; D had moved into the area knowing about the pub
- One set of previous tenants had run the pub as it should in a village
- D suffered from public nuisance and was affecting D's life, health and happiness and if allowed to continue would suffer further impact

At this point (12:38), the tenant, Fran Gillgallan left the room; she returned at 12:40.

Representee D continued:

- D had made complaints to the tenant the previous week, so surprised to hear that nothing had been recorded in the complaints book
- The fabric of the building does not lend itself to music
- Drinking after hours had gone on with lights on and doors open
- D had had people sitting on her window sill and making phone calls
- Felt that the operating schedule was inadequate (the council's solicitor advised that the schedule had been offered up as conditions on the licence – they are the difference between the old and new regulations)
- The summary of the Licensing Officer's report stated that the police had made no representations yet a window to D's property was broken and D had witnesses that it was caused by people who came from the pub. D's neighbour also had a window broken (through the Chair, the council's solicitor asked when this instance was. In response D stated 17 September 2005; a log of events had been kept) The council's solicitor added that the log was not presented as evidence to the hearing and the remark was subsequently withdrawn by D
- D considered there was a public nuisance and it would increase if the pub hours were extended. D did not feel the application was appropriate as public nuisance and crime and disorder would increase

The Panel addressed questions to representee D as follows:

- (a) Any objections to the 8:30 start?
- (b) How long has D lived in the village?

In response D replied:

- (a) Yes, as the deliveries would impact. The pub should trade with its current licence, together with the solutions offered by the applicant on 18 September 2006
- (b) Five and a half years

The Panel then addressed questions to the tenant as follows:

- (a) What was the current situation relating to deliveries?
- (b) Representees had expressed concern about noise at the rear of the premises, were there any suggestions on ways to alleviate the matter?

The response was as follows:

- (a) The brewery delivered between 08:30 and 09:00 and other deliveries came mid morning. If more food was provided at the premises, there would be more deliveries
- (b) Would be willing to close windows and doors at 21:00

There being no other representations to be heard, the Licensing Officer made some closing remarks that in respect of the operating schedule, it was for the Panel to decide the conditions. The applicant had agreed a schedule of solutions to some of the objections raised by the representees. Most of the complaints received related to public nuisance and he quoted from s.9 of the Licensing Act. There was some overlap in legislation, however the conditions should be reasonable and appropriate.

The Panel left the room to make its deliberations at 13:05 and announced the decision at 17:45.

Hours Sought		Decision (e.g. approve, modify or exclude)	Reason
Live Music – Indoors only		Approved	
Monday			
Tuesday			
Wednesday			
Thursday			
Friday	20:00 – 23:00		
Saturday	20:00 – 23:00		
Sunday	20:00 – 23:00		

Seasonal Variations for Live music Sought	Decision (e.g. approve, modify or exclude)	Reason
Good Friday, Christmas Day, Boxing Day, New Years Eve, New Years Day, Bank Holiday Mondays 20:00 – 23:30	Approved	

Hours Sought		Decision (e.g. approve, modify or exclude)	Reason
Supply of Alcohol On and Off the premises		Approve Sunday to Wednesday. Modify Thursday 11:00 – 23:30 Modify Friday and Saturday 11:00 – 00:30	Please see below
Monday	11:00 – 23:00		
Tuesday	11:00 – 23:00		
Wednesday	11:00 – 23:00		
Thursday	11:00 – 01:00		
Friday	11:00 – 01:00		
Saturday	11:00 – 01:00		
Sunday	11:00 – 23:30		

Seasonal Variations for supply of alcohol Sought	Decision (e.g. approve, modify or exclude)	Reason
Xmas Eve, Xmas Day, Boxing Day, New Years Day, Spring & August Bank Holidays, Good Friday, Easter Saturday, Sunday & Monday, Thursday prior to Good Friday, Sundays before Bank Holiday Mondays 11:00 – 01:00 New Years Eve from the beginning of normal licensed hours to the beginning of normal licensed hours New Years Day.	Modify timing 11:00 – 00:30. New Year's Eve agreed as requested	Please see below

Hours Sought	Decision (e.g. approve, modify or exclude)	Reason
Hours premises are open to the public		

Monday	08:30 – 23:00	Approve Sunday to Wednesday. Modify Thursday 08:30 – 00:00 Modify Friday and Saturday 08:30 – 01:00	Please see below
Tuesday	08:30 – 23:00		
Wednesday	08:30 – 23:00		
Thursday	08:30 – 01:30		
Friday	08:30 – 01:30		
Saturday	08:30 – 01:30		
Sunday	08:30 – 00:00		
Seasonal Variations for Hours premises are open to the public Sought		Decision (e.g. approve, modify or exclude)	Reason
Xmas Eve, Xmas Day, Boxing Day, New Years Day, Spring & August Bank Holidays, Good Friday, Easter Saturday, Sunday & Monday, Thursday prior to Good Friday, Sundays before Bank Holiday Mondays 08:30 – 01:30 New Years Eve from the beginning of normal licensed hours to the beginning of normal licensed hours New Years Day.		Modify timing to 08:30 – 01:00	Please see below

The Sub-Committee has considered your application very carefully and has had due regard to the Licensing Act 2003, the accompanying Guidance and Regulations and the SCDC Licensing Policy. We have heard the evidence of the legal representative of Greene King Retailing Limited who appeared with Fran Gillgallan and Barry Todd who are the current tenants at the Duke of Wellington. We also heard from four representees and we considered their submissions in respect of the application and had regard to the four written submissions of the other representees. The representations related to public nuisance and crime and disorder. We did not have regard to the representation from Councillor RA Manning, which was invalid.

We have set out our decision in the above table and the reasons for which are given below.

We acknowledge the very positive steps taken by the new tenants who have been in place since May 2006, which include their own investment in the refurbishment of the premises, which we note is ongoing and their commitment to the pub and the desire to have good relations with their neighbours. Particular notice was also taken of the evidence that the current tenants have barred a number of known troublemakers.

We have not approved the extension of hours on Thursday evenings because of the potential for noise nuisance being caused to the occupiers of the adjacent properties during the working week. We have decided to grant a limited extension to the hours for supply of alcohol and the opening hours on a Friday and Saturday. However we have decided to impose several conditions listed below which address the potential for public nuisance.

We recognise that the pub has had a troubled history, however no police representation has been received as part of the application process. The representations from local residents about Crime and Disorder relate to historical events or speculation about what may happen in the future. Should any problems arise in the future there are provisions in

the legislation enabling interested parties and responsible authorities to apply for a review of the licence on a ground relating to one or more of the licensing objectives.

It should be noted, that under the Guidance, conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder cannot be justified. Beyond the vicinity of the premises any individual engaging in anti-social behaviour is accountable in his own right. Any problems that local residents should experience with regard to anti-social behaviour, noise nuisance and public nuisance should be referred to the appropriate authorities.

Problems with on-street parking mentioned by some of the representees are matters for the Highways Authority and cannot be addressed through this application process.

We have decided to attach the following conditions to promote the prevention of public nuisance; some of these conditions were proposed or agreed by the applicant at the hearing, we have modified some of them to strengthen their impact:

1. No outside drinking shall take place between 22:30 and 08:30 hours, except when a licensed outdoor entertainment event is taking place.
2. Lighting illuminating the garden and patio areas shall be turned off from 22:30, except when a licensed outdoor entertainment event is taking place.
3. Bottles and other refuse shall not be placed in outside receptacles between 22:00 and 08:00
4. A clear, prominent and legible notice shall be placed adjacent to all exits requesting patrons to respect the needs of local residents and to leave the premises and the area quietly
5. All external doors and windows in the premises shall be kept shut except for ingress and egress during licensed indoor entertainment events
6. All external doors and windows in the premises shall be kept shut except for ingress and egress from 21:00 each evening.
7. Lighting, except for a safety light, will be turned off at the front of the premises at 23:00 Sunday to Thursday and 23:30 Friday and Saturday
8. All external doors at the premises shall be fitted with automatic closing mechanisms to prevent them slamming.
9. Notices shall be put in prominent places on the premises requesting patrons to park in the car park
10. The coach light at the front of the building shall be removed by 31 October 2006
11. A complaints procedure shall be developed and a complaints book shall be kept to record concerns of local residents and actions taken by the staff of the premises to address those concerns. This book shall be made available to officers from the Council when requested

The applicant and objectors have a right of appeal to the Cambridge Magistrates' Court within 21 days of receiving notification of this decision.

Signed: Councillor A Riley.....

Councillor Mrs A Elsby.....

Councillor Mrs DSK Spink, MBE

Dated: 20 September 2006