

LICENSING SUB-COMMITTEE

A record of proceedings of the Licensing Sub-Committee held at Bodicote House, Bodicote, Banbury on 14 September 2006 at 10.00 am.

Membership of the Sub-Committee (all Members present) – Councillors Gibbard (Chairman), O’Sullivan and Wyse.

Officers:	M Dudfield (Solicitor)	}	Advising the Sub-
	J D Best (Senior Democratic Services Officer)	}	Committee
	Mrs T Poke (Central Services Manager)	}	Representing the Licensing Authority

1. DECLARATIONS OF INTEREST

There were no declarations of interest.

2. LICENSING HEARING PROCEDURE

The hearing was undertaken in accordance with the agreed Licensing Hearing Procedure.

3. APPEAL HEARING – QUE PASA, 64-65 HIGH STREET, BANBURY

Present at the hearing:	R Lowther	}	Environmental Services
	Ms J Wileman	}	Department, Cherwell District Council – Responsible Authority
	O Wright	-	Thames Valley Police – Responsible Authority
	G Ladenburg	-	Counsel for the Applicant
	I Robinson	-	Designated Premises Supervisor, Que Pasa, 64-65 High Street, Banbury

The Central Services Manager stated that an application had been received on 25 July 2006 from Eldridge Pope and Co Ltd for the variation of the Premises Licence issued under the Licensing Act 2003.

The report set out:-

- (1) details submitted by the applicant which set out support for the promotion of the four licensing objectives, ie: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm;
- (2) the representations received from the Head of Environmental Services and Thames Valley Police as responsible authorities setting out that there were no objections to the variation application subject to the imposition of conditions to implement additional measures to control issues relating to public nuisance arising from noise and crime and disorder;

(3) the representations received from a Ms E Oliver as an interested party.

The existing Premises Licence had come into force on 24 November 2005 and allowed:-

- Sale (by retail) of alcohol Monday to Saturday other than Christmas Day, New Years Eve or Good Friday 10:00 to 23:00, Good Friday and Sunday other than Christmas Day or New Years Eve 12:00 to 22:30, Christmas Day 12:00 to 15:00 and 19:00 to 22:30, New Years Eve except on a Sunday 10:00 to 00:00 New Years Eve on a Sunday 12:00 to 22:30, New Years Eve from the end of permitted hours on New Years Eve to the start of permitted hours on the following day. (For consumption **on & off** the premises)
- If the sale of alcohol is ancillary to the use of the premises for music and dancing and substantial refreshment
 1. The permitted hours shall commence:-
 - On days, other than Sundays, Christmas Day, and Good Friday, at 10:00
 - On Sundays, Christmas Day and Good Friday at 12:00(NB For New Years Eve permitted hours commence at 10:00 unless New Years Eve falls on a Sunday when they shall commence at 12:00).
 2. Subject to the following paragraphs, the permitted hours on Mondays, Tuesdays and Wednesdays shall extend until 01:00 the following morning and on Thursdays, Fridays and Saturdays shall extend until 02:00 the following morning except that—
 - (a) the permitted hours shall end at 00:00 on any day on which music and dancing is not provided after 00:00; and
 - (b) on any day that music and dancing end between 00:00 and 02:00 in the morning, the permitted hours shall end when the music and dancing end
 3. In relation to the morning on which summer time begins, paragraph (2) of this condition shall have effect with the substitution of references to 03:00 in the morning for references to 02:00 in the morning
 4. Except as provided in (5) below the permitted hours on Sundays shall extend until 00:30 in the following morning except that –
 - (a) the permitted hours shall end at 00:00 on any Sunday on which music and dancing is not provided after 00:00
 - (b) where music and dancing end between 00:00 on any Sunday and 00:30, the permitted hours on that Sunday shall end when the music and dancing end,
 5. On Sundays immediately before bank holidays other than Easter Sunday, the permitted hours shall extend until 2am the following morning except that-
 - (a) the permitted hours shall end at midnight on any Sunday on which the music or dancing is not provided after midnight;
 - (b) where music and dancing end between midnight on any Sunday and 2 am, the permitted hours on that Sunday shall end when the music and dancing end
 6. On New Year's Eve the permitted hours shall extend through from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, to midnight on 31st December).
 7. The sale of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment

- Provision of Live Music, Recorded Music, Performance of Dance, Anything of a similar description to Live Music, Recorded Music or Performance of Dance, Provision of Entertainment facilities for Making Music, Dancing and Entertainment of a similar description to Making Music and Dancing Monday to Wednesday 11:00 to 01:00, Thursday to Saturday 11:00 to 02:00 and Sunday 11:00 to 00:30. (Indoors)
- Provision of Late Night Refreshment until the expiration of 30 minutes after permitted hours for sale (by retail) of alcohol.

The proposed variation was:-

- Sale (by retail) of alcohol everyday 10:00 to 04:00 (For consumption both **on and off** the premises)
- Provision of Live Music, Recorded Music, Performance of Dance, Anything of a similar description to Live Music, Recorded Music or Performance of Dance, Provision of Entertainment facilities for Making Music, Dancing and Entertainment of a similar description to Making Music and Dancing everyday 10:00 to 04:00 (Indoors and outdoors)
- Non-standard timings apply to sale (by retail) of alcohol from the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day. (For consumption both **on and off** the premises)
- Provision of Late Night Refreshment everyday 23:00 to 04:30.
- Non-standard timings apply to Provision of Live Music, Recorded Music, Performance of Dance, Anything of a similar description to Live Music, Recorded Music or Performance of Dance, Provision of Entertainment facilities for Making Music, Dancing and Entertainment of a similar description to Making Music and Dancing and Provision of Late Night Refreshment as follows from the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day (Both Indoors and Outdoors).

The applicants confirmed that the timing of the provision of late night refreshment was 23:00 to 04:30 every day (the variation detail set out in the report circulated with the Sub-Committee's agenda showed the latter timing as 04:00).

Mr Ladenburg Counsel for the applicants opened by referring to the consultations held with the police in respect of two of the recommended conditions which provided (i) that no drinks should be served in bottles and (ii) that a minimum of five door supervisors should be present at all times between 21:00 and closing time on those days when the premises were open after midnight. Mr Ladenburg advised the Sub-Committee that the outcome of the consultations was that the police were prepared both to withdraw the condition relating to the sale of drinks from bottles and modify the condition relating to door supervisors on the basis of a formula where there would be one door supervisor for every 100 people in the premises or part thereof. The flexibility of this working arrangement meant that when, for example, the 201st customer wished to enter the premises entry would not be allowed until the third door supervisor was present. The Head of Environmental Services had been similarly consulted and was happy with the proposed modified condition.

Mr Ladenburg commented on Ms Oliver's representation (which he had hoped, following consultation with Ms Oliver, would be withdrawn). Mr Ladenburg indicated that the objection related to the aggregation of generic problems in the town centre which could not be directly related to his client's premises; there was no evidence of any problems associated with the operation of Que Pasa in terms of disturbance and, in any event, the applicants had no control over their customers when they left the premises. Mr Ladenburg concluded by stating that Que Pasa was an extremely well

run establishment and that the variation application, which had resulted in a great deal of publicity in the local press, had only resulted in the submission of one objection.

Mr Lowther, on behalf of the Head of Environmental Services, indicated that there were no objections to the variation application subject to the imposition of a condition which had been agreed with the applicants where admission or readmission would be prohibited to the premises one hour before the cessation of the sale of alcohol.

Mr Wright, on behalf of Thames Valley Police, indicated that there were no objections to the variation application subject to the following conditions:-

- (1) the introduction of a formula requiring one door supervisor for every 100 people or part thereof in the premises at all times between 21:00 and closing time on all days when the premises were open after midnight;
- (2) no person shall be admitted to the premises less than one hour before cessation of the last licensable activity;
- (3) the Licence Holder shall implement a written responsible drinking policy to be agreed in writing with Thames Valley Police;
- (4) all members of staff at the premises shall seek “credible photographic proof of age evidence” from any person who appears to be under the age of 21 years and who is seeking access to the premises or is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age card carrying a “PASS” logo;
- (5) prominent clear notices shall be displayed at the point of entry to the premises and in a suitable location at any points of sale, advising customers that they may be asked to produce evidence of their age;
- (6) all occasions when persons have been refused service shall be recorded in writing and kept at the premises for six months.

The Sub-Committee considered and had regard to the letter of objection submitted by Ms Oliver who had advised the Licensing Authority that she was unable to be present at the hearing.

The Sub-Committee then retired to consider the variation application in accordance with Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005. On the return of the Sub-Committee the decision was announced.

Mr Ladenburg, having regard to the announced decision, requested the Sub-Committee to reconsider the condition which required that two door supervisors should be present at all times when the premises were open. Mr Ladenburg submitted that there were no relevant representations which dictated the need for such a condition and that it was likely to have a significant impact on the viability of the business as there were often relatively few customers in the premises during daytime opening hours. Mr Ladenburg also respectfully reminded the Sub-Committee that where conditions were imposed they had to be necessary, proportionate and have regard to the evidence presented at the hearing.

Mr Lowther and Mr Wright were invited to comment and agreed that it was a reasonable requirement to have two door supervisors but in their view this would only be necessary from 21:00 every night.

The Sub-Committee then retired to reconsider its decision. On the return of the Committee the decision was announced and it was

RESOLVED that the variation to the existing licence be granted subject to the following conditions:-

- (1) no admission/readmission in the last hour of the sale of alcohol;
- (2) door staff – one per 100 patrons or part thereof subject to a minimum of two door supervisors at any one time from 21:00 on every night until at least 30 minutes after the last licensable activity has ended when any licensable activity ends after 00.00;
- (3) the Licence Holder shall implement a written responsible drinking policy to be agreed in writing with Thames Valley Police;
- (4) all members of staff at the premises shall seek “credible photographic proof of age evidence” from any person who appears to be under the age of 21 years and who is seeking access to the premises or is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age card carrying a “PASS” logo;
- (5) prominent clear notices shall be displayed at the point of entry to the premises and in a suitable location at any points of sale, advising customers that they may be asked to produce evidence of their age;
- (6) all occasions when persons have been refused service shall be recorded in writing and kept at the premises for six months.

REASONS – there appears to be a general consensus that these premises are well run and currently cause no concern to the responsible authorities. The Sub-Committee feels the extension of hours will not alter that situation with the additional conditions that have been agreed. Insofar as the number of door staff is concerned the Sub-Committee accept the principle of the formula but feels that it is essential that there is a minimum of two door supervisors at all times after 21:00.

4. **END OF MEETING**

The proceedings ended at 11.30 pm.