

Hearing Decision Notice

Licensing Panel Hearing 23 June 2011

Magoos, 22 Hart Street, Henley on Thames

The Licensing Panel met on 23 June 2011 to consider the application to vary the premises licence no. 4027 held by Magoos, 22 Hart Street, Henley on Thames, RG9 2AU.

The decision of the Panel is set out in the notes of the hearing (appended).

This decision is deemed to be effective immediately from the date on this notice. This does not affect the rights of the premises during the period of any appeal.

Contact Nigel Haverson, Licensing Team Leader on 01491 823426 or at licensing@southoxon.gov.uk if you have queries about the licence or about enforcement.

Contact Jennifer Thompson, Democratic Services Officer, on 01491 823619 or at Legal and Democratic Services, South Oxfordshire District Council, Benson lane, Crowmarsh Gifford, Wallingford, OX10 8QS or at Jennifer.thompson@southandvale.gov.uk if you have queries about the hearing or this notice.

Appeal rights

All parties have the right of appeal. Section 181(1) Schedule 5(9) of the Licensing Act 2003 states that if you wish to appeal you must give notice of the appeal to the clerk to the Justices, The Court House, Oxford Magistrates' Court, Speedwell Street, Oxford OX1 1RZ within a period of 21 days from the date of this notice. The magistrates' court may make any order as to costs as it thinks fit. The magistrates' court can be contacted on 01865 448020.

Right of review.

Section 10.1 of the Council's Statement of Licensing Policy states that, under the 2003 Licensing Act, it is possible for the authority to review a premises licence at any time if it receives representations from one or more of the responsible authorities or interested parties. The authority may not initiate its own review without receiving representations. Reviews may only arise in connection with a failure of the premises relating to the four licensing objectives (prevention of crime and disorder, public safety, prevention of public nuisance, protection of children from harm). The local authority will generally not expect to hold a review into a licence on representations from an interested party more than annually unless there has been a significant change in the use of the premises or there are exceptional circumstances.

Jennifer Thompson
Democratic Services Officer

Date issued and posted: 15 July 2011

Licensing Panel Hearing for a variation of a premises licence

23 June 2011 at 10.00 am

Place:	Council Chamber, Council Offices, Crowmarsh Gifford
Premises Licence:	4027 Magoos
Premises address:	22 Hart Street, Henley on Thames, RG9 2AU
Licensing Panel Councillors:	Mr Malcolm Leonard (Chairman) Mrs Anna Badcock Mr Christopher Quinton
Legal advisor:	Miss Amanda Nauth
Clerk:	Mrs Jennifer Thompson
Licensing Officer:	Mr Nigel Haverson
Environmental Protection:	Mr Simon Hill
Representing the premises:	Mr Philip Somarakis (solicitor) and Mr Laurence Gordon (premises owner and premises licence holder)
Interested Parties:	Six local residents who had made written representations about the application

Evidence provided to the Panel:

The Panel considered:

- the report of the licensing officer including a copy of the current premises licence and a copy of the application to vary the licence;
- representations from South Oxfordshire District Council Environmental Protection including proposed conditions;
- eight relevant representations from 12 interested parties;
- photographs provided by Mr Scott and Environmental Protection circulated with the agreement of all parties

The Panel heard extensive evidence in turn from:

- the authority's licensing officer;
- the premises licence holder and his solicitor
- the Environmental Protection officer
- six local residents, one of whom read a written statement from a seventh resident.

The applicant clarified the hours requested for the Sunday preceding a bank holiday and that takeaway food would not be provided.

Decision:

After hearing all the evidence presented and the answers to questions to and from all parties, the Panel made their decision in private session accompanied by their legal advisor and clerk.

The Panel considered what action would be reasonable and proportionate having due regard to the Licensing Act 2003 and associated regulations and guidance, the licensing objectives, the Council's licensing policy. The Panel considered all written evidence presented to them and all evidence presented at the hearing.

The Panel considered what action would be reasonable and proportionate having regard to the Licensing Act 2003 and associated regulations and guidance, the licensing objectives, the Council's licensing policy, and the evidence in the report and presented at the hearing. The Panel are bound by the Licensing Act 2003 and associated guidance and regulations and may not make decisions which are contrary to these, which are outside the scope of the licensing objectives, or which are not based on reasonable objective evidence.

In particular, the Panel noted:

1. Residents currently experienced noise from the premises from patrons using the toilets and garden; from patrons leaving the premises and standing outside to smoke; and through the party walls into adjoining flats;
2. The design of the extension sought to alleviate noise problems through soundproofing and air conditioning; providing internal toilets; moving the regulated entertainment away from the older part of the building; and altering the access route to the garden;
3. Once the garden had closed, smokers had to use the area by the toilets or the front of the premises to smoke. After the alterations were complete, smokers would go out the front of the building and be supervised by door staff;
4. The premises had no authority over patrons once they had left the premises and Hart Street residents experienced noise nuisance from patrons leaving the various premises on the street;
5. While there were a number of residential properties on Hart Street, it could not be considered a residential street given the mixed use and number of businesses on the street;
6. The conditions suggested by Environmental Protection; that the variation should not take effect until the building work was completed; and
7. That the licensing objective of preventing public nuisance was relevant here but there was no evidence to suggest that the Panel needed to consider the impact of this application on the other three licensing objectives.

The Panel carefully considered all the options available to them. They considered that three elements were particularly relevant to the objective of prevention of public nuisance,

considering the impact of the application on residents, and the likely benefits and disadvantages to them of both the new building and the changes in permitted hours:

1. noise from the premises as a result of its activities which the premises could control - which could be adequately controlled by the proposed extension and by the current management;
2. noise from the premises which the premises could not entirely control- principally noise from patrons using the toilets and access and outside the front of the building - some of which would be alleviated by the new extension but some of which would continue to impact upon residents; and
3. noise from patrons dispersing at or before the premises closed - which would potentially cause more public nuisance to residents if the proposed additional numbers exited the premises later than at present.

The Panel sought to balance the promotion of the licensing objective to prevent public nuisance and the requirement to impose conditions and hours of operation which permit the licence holder to operate without undue restriction. The Panel considered that granting the variation without amendment and without additional conditions would not promote the licensing objective, but refusing it entirely would be disproportionate. The application could be granted with amended hours for permitted activities and conditions which would support the licensing objective but not be unduly restrictive.

The variation was therefore granted with amendments.

Licence:

The decision of the Panel, as stated by the Chairman at the close of the hearing and subsequently circulated by email to all parties, was to **vary** the premises licence and impose additional conditions as follows:

Area where licensable activities may take place:

As shown on the plan submitted with the application dated 27 April 2011, incorporating the existing and extended areas of the premises where licensable activities may take place.

Opening hours of the premises:

Monday to Saturday 0930 to 0130 the following day
Sunday 1200 to 0130 the following day

Sale of alcohol (on and off)

Monday to Sunday 1100 to 0100 the following day

Live music

Monday to Sunday 2100 to 0000

Recorded music

Thursday, Friday, Saturday 2100 to 0100 the following day

Provision of facilities for dancing

Monday to Sunday 2200 to 0100 the following day

Late night refreshment

Monday to Sunday 2300 to 0100 the following day

Non standard timings:

During Henley Regatta:

opening hours extended until 0200;
late night refreshment until 0200
regulated entertainment until 0200; and
alcohol sales extended until 0130;

New Year

from the start of permitted hours on New Year's Eve to the end of permitted hours on New Year's day.

The licence is granted with a number of conditions:

Mandatory conditions shall be attached as required by the licensing authority

Conditions requested by Environmental Protection:

1. No regulated entertainment shall take place until an acoustic survey has been carried out by an independent person who is qualified to be at least an associate member of the Institute of Acoustics. This survey shall be used to design a scheme to prevent noise emanating from the premises and affecting neighbouring properties. This scheme must be submitted for approval by the local authority (Environmental Protection team). Once approved the scheme must then be carried out in accordance with the approved details to the satisfaction of the local authority.
(Note: the occupier of 24A Hart Street requested that the acoustic survey include his property)
2. A sound limiting device shall be fitted to the amplification system and shall be located in a separate lockable cabinet which is remote from the volume control, set at a level to be agreed with the local authority. The operational panel of the noise limiter shall then be secured to the satisfaction of the council. No alteration or modification to any existing sound system should be effected without the prior agreement of the council.
3. No additional sound generating equipment shall be used on the premises without being routed through the sound limiting device.
4. The rear beer garden shall not be used after 2300 until 0800 the following day.
5. After 2000 the external noise levels shall be checked a minimum of three times throughout the performance of regulated entertainment at the rear of the premises to ensure that noise breakout is not clearly audible. These checks shall be logged with the time and date they were carried out and signed by the person responsible for managing the event.

Conditions consistent with the operating schedule (conditions on the licence dated 24 November 2005 but amended at this hearing, and new conditions, are shown in italics.)

6. Registered door supervisors will be provided from 2200 until close

~~Deleted: Personal licence holder to be on premises at all times when the licence is being used~~

7. Staff training carried out on licensing issues
8. CCTV installed
9. Drugs policies notices displayed
10. Adequate lighting provided
11. Emergency lighting provided
12. Additional escape routes provided
13. First aid provided
14. Noise patrols of local area
15. Music kept to reasonable level/outside background music only to cease at 2200
16. Litter clearance carried out
17. Considerate loading/unloading arrangements
18. Noxious odours from cooking controlled
19. External areas not used for live music
20. Doors /windows closed while licence is being used
21. Visible notices asking customers to leave quietly
22. Provision of children's areas
23. Proof of age cards
24. Prevention of access to gaming machines
25. Limit on hours during which children can be on premises
26. All children must be accompanied by an adult

Conditions attached after a previous hearing by the licensing authority (conditions on the licence dated 24 November 2005 but amended at this hearing, and new conditions, are shown in italics)

27. The Premises Licence is granted for the area shown on the plans submitted to the Licensing Officer with the application of 24 April 2011.

28. Late night refreshment shall not be served beyond 01:00 Monday to Sunday *except when non-standard hours apply.*

29. Live music shall be permitted between the hours of 2100 and 0000 on no more than three days in any one week (Monday to Sunday)

30. Dancing shall be permitted in the back bar between the hours of 22:00 and 01:00 on no more than twelve occasions in the year. The Licensing Authority to be notified in writing at least two weeks before such an event occurs.

31. Prominent, clear notices shall be displayed at all exits / in the beer garden requesting that customers respect the needs of local residents and leave the premises and the area quietly.

~~Deleted: The garden must not be used by customers after midnight or before 08:00 on any day.~~ (replaced by condition 4 above)

32. Noise emanating from the premises as a result of regulated entertainment shall not be clearly audible at the boundary of any adjacent residential property.

33. No live music to be held outside.

34. There shall be no admittance to the premises beyond one hour before closing.
35. Noise patrols shall be carried out every 15 minutes.
36. No external speakers shall be placed in the garden or anywhere external to the buildings curtilage.
37. No children are to be permitted on the premises after 19:00.

The Panel noted that to promote the licensing objectives the licence holder offered to implement a written closure and clearance policy for the garden area and that an appropriate interlink between the fire door and the sound limiter would be installed and maintained in order to reduce or cut off noise from regulated entertainment if the fire door was opened.

This licence shall not take effect until after Condition 1 of the conditions agreed with Environmental Protection has been met (effectively not until the building work is complete)

Signed as a true summary of the proceedings by the Chairman

Signed

Date