

Licensing Panel

Report of Head of Legal and Democratic Services

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Licensing Panel

DATE: 23 November 2011

Application to vary a Premises Licence under the Licensing Act 2003 – Premises Licence Number: 7641 Diamonds and Pearls (Latinos/Speak Easy), Greys Road Car Park, Market Place, Henley-on-Thames RG9 2AA

Recommendation(s)

That the Panel consider the application to vary the licence, the objections from Thames Valley Police and Environmental Protection to the application and decide whether to grant the requested variation in full, refuse the variation or make amendments to it. If the Panel cannot be satisfied that granting the variation will promote the licensing objectives they are recommended to refuse the variation application.

Purpose of Report

1. To present the facts and relevant representations received in respect of an application to vary a premises licence for Diamonds and Pearls (Latinos/Speak Easy), Greys Road Car Park, Market Place, Henley-on-Thames, RG9 2AA under Section 34 of the Licensing Act 2003 to the Licensing Acts Sub-Committee in order that it can determine the application.

Strategic Objectives

2. The relevant objectives are those of “helping people to feel safe and secure” and “managing our business effectively”. The relevant corporate priorities are those of “provide value for money services that meet the needs of our residents and service users” and “maintain low levels of fear of crime and anti-social behaviour”.

Background

- 3.1 The Licensing Act 2003 (‘the Act’) has established a single integrated scheme for licensing premises which are used for the supply of alcohol, regulated entertainment, late night refreshment or permission to carry on some or all of these activities. In the Act these activities are referred to collectively as the ‘licensable activities’.

Any assessment of licensable activities must consider and promote the following four statutory objectives:

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

- 3.2 Where no representations are received in respect of an application for the grant or variation of a premises licence, then the licence would be granted by the Head of Legal and Democratic Services Officer under delegated powers. When valid representations are received regarding the grant or variation of a premises licence, the application will be referred to the Licensing Panel for consideration.
- 3.3 A copy of the current **Premises Licence 7641** is attached at **Appendix 1** for information. This licence was first granted on 16 January 2009 to the current premises licence holder. A variation of the licence was granted on 10 June 2009 and is the licence that is currently in force. The Designated Premises Supervisor (DPS) is Mr Carmelo Borg and he has been the DPS since 22 January 2009.
- 3.4 An application was received from Thames Valley Police on 3 March 2011 under Section 51 of the Licensing Act 2003 for a review of the Premises Licence.

The grounds for the review were:-

Thames Valley Police are calling for review of this licence due to the premise breaching conditions and not upholding the crime and disorder objective of the 2003 Licensing Act.

The number and nature of incidents that have occurred at the premise have greatly increased over the last year. There is great concern that these incidents are increasingly involving persons who are affiliated with or working for the premise.

Upon a licensing check at the premise there were several licensing conditions that are attached to the premise licence that are not being adhered to.

- 3.5 At a hearing on 18 April 2011 the licensing authority (represented by a Licensing Panel) heard the review application and having heard all the evidence concluded, that having considered all the options available to them under the Licensing Act decided that they had no alternative but to revoke the licence. A copy of that decision letter is attached for information at **Appendix 2**.
- 3.6 On 16 May 2011 the licensing authority were notified that the premises licence holder had appealed to Oxford Magistrates Court against the decision to revoke the licence. **Appendix 3**. As an appeal has been lodged the revocation decision does not come into effect until the appeal has been determined.
- 3.7 On 13 June 2011 the licensing authority received a temporary event notification in respect of the premises from Mr Carmelo Borg, Designated Premises Supervisor at the premises to use the premises for the sale by retail of alcohol, the provision of regulated entertainment and the provision of late night refreshment at the following times:-

Wednesday 30 June 2011 - 21.00 to 00.00
Thursday 01 July 2011 – 00.00 to 04.45 and 21.00 to 00.00
Friday 02 July 2011 – 00.00 to 00.45 and 21.00 to 00.00
Saturday 03 July 2011 – 00.00 to 04.45

- 3.8 Thames Valley Police received their copy of the Temporary Event Notification on 16 June 2011 and the licensing authority received their notice of objection on 17 June 2011. The licensing authority (represented by a licensing panel) held a hearing to hear the objection on 24 June 2011 and concluded that, having heard all the evidence, allowing the premises to have extended opening hours until 04.45am during the Regatta from 30 June to 3 July 2011 in accordance with the notice to use the premises for the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment would undermine the prevention of crime and disorder licensing objective as set out in Section 105 (2) (b) Licensing Act 2003. A Counter Notice was therefore served on the applicant.
- 3.9 On 14 October 2011 an application was received from Mr Antonio Lopes and Mr Carmelo Borg to vary the premises licence **Number 7641** in respect of Latinos/Speak Easy, Greys Road Car Park, Market Place, Henley-on-Thames, RG9 2AA (**Appendix 4**). The application seeks to vary the existing licence as follows:-
- Removal of adult entertainment indoors – conditions 27 – 34 on the licence.
 - Removal of Condition 38 (2) – DJ to ask customers to leave quietly
 - Removal of Condition 39 (2) – Age restriction, over 25's policy.
 - Removal of Strip Club but keeping nightclub licence with dancing

- 3.10 The current premises licence allows;

- Live Music Indoors from 10.00 to 03.15 Monday to Sunday

- Recorded Music Indoors from 10:00 to 03.15 Monday to Sunday
- Dance Performance Indoors from 10.00 to 03.15 Monday to Sunday
- Music Facilities Indoors from 10.00 to 03.15 Monday to Sunday
- Dancing Facilities Indoors from 10:00 to 03.15 Monday to Sunday
- Late Night Refreshment Indoors from 23:00 to 03.15 Monday to Sunday
- Supply of Alcohol on Sales from 10:00 to 03.15 on Monday to Sunday.
- The premises are open to the public from 10.00 to 03.45 on Monday to Sunday.

In addition the following non - standard timings for licensable activities are authorised by the licence

- Live Music Indoors on New Year's Eve/New Year's Day to 05.30
- Recorded Music Indoors on New Year's Eve/New Year's Day to 05.30
- Dance Performance Indoors on New Year's Eve/New Year's Day to 05.30
- Music Facilities Indoors on New Year's Eve/New Year's Day to 05.30
- Dancing Facilities Indoors from on New Year's Eve/New Year's Day to 05.30
- Late Night Refreshment on New Year's Eve/New Year's Day to 05.30
- Supply of Alcohol on Sales on New Year's Eve/New Year's Day to 05.30
- Opening Hours on New Year's Eve/New Year's Day to 05.30.

(See **Appendix 1** for the current premises licence.)

3.11 The council is satisfied that the application was advertised in accordance with Licensing Act 2003

3.12 A map of Henley town centre showing the premises location is displayed as **Appendix 5.**

3.13 Planning, Health and Safety and Trading Standards in their capacity as Responsible Authorities have raised no objections.

3.14 Thames Valley Police in their capacity as a Responsible Authority have objected to the variation application on the grounds that following a review hearing, called by Thames Valley Police because they had concerns about the way the premises were being run, breaches of their licence conditions and regularly high drug results, the licence was revoked. The Police do not believe the current application will address these issues and therefore alleviate their concerns. In addition the applicant is seeking to remove the condition whereby the premises will run an over 25's policy with over 21's allowed at the manager's discretion. This condition was not previously adhered to by the premises and was one of the conditions that the premises were breaching. (**Appendix 6**)

3.15 Environmental Protection in their capacity as a Responsible Authority have raised objections to the application in relation to the impact of noise on the surrounding area and have recommended a number of conditions be attached to the licence if granted as per the application. (**Appendix 7**)

3.16 Members of the Panel are aware that they are sitting as the licensing authority and as such cannot change any decision already made by the licensing

authority. The licensing authority have already decided to revoke the premises licence in respect of this premises and the premises licence holder has appealed this decision to the Magistrates Court and as such now only the magistrates can review that decision.

- 3.17 The Panel is also advised that adult entertainment is not a licensable activity within the Licensing Act 2003 and therefore it cannot be removed from the licence. What the licence currently says is that if adult entertainment is provided then conditions 27 – 34 will have effect. If no adult entertainment is being provided then conditions 27 – 34 do not apply. (As an analogy some licences say that if regulated entertainment is taking place after a set time then SIA door staff have to be provided, if regulated entertainment does not take place beyond the set time then that condition does not apply but is still a relevant and proportionate condition to attach to the licence). The Panel should therefore consider if it is appropriate to remove conditions that are on the licence as a control mechanism if an activity is to take place.
- 3.18 The Panel will be aware that their duty is to ensure that by granting the variation that the licensing objectives will be promoted. This is a positive statement and the Panel has to be satisfied that the licensing objectives will be promoted. If the impact of the variation is neutral i.e. granting the variation will neither be positive or negative they should refuse the variation.

4. Options

- 4.1 In determining applications the authority must give weight to:
- a. The Secretary of State's Guidance Issued under Section 182 of the Licensing Act 2003
 - b. The Council's Statement of Licensing Policy
 - c. The steps necessary to promote the Licensing Objectives
- 4.2 In view of the above, the Panel is requested to consider the application for variation of the premises licence and decide whether:
- a. to grant the variation as applied for
 - b. to refuse the variation
 - c. to grant the variation with amendments
 - d. to grant a full or amended variation and attach additional conditions to the licence

5. Legal Implications

- 5.1 The Human Rights Act 1998 requires public bodies to ensure everything they do is compatible with Convention Rights and makes it unlawful for a public authority to act incompatibly with those Rights. When determining applications the Panel will be aware of Human Rights considerations, specifically Part 2, Article 1, peaceful enjoyment of possessions (a licence is deemed to be a possession) and Article 6 (right to a fair trial) for the applicant and Article 8 (right to respect for private and family life) for those making representations.
- 5.2 The hearing of all applications is subject to the principles of natural justice.
- 5.3 Section 17 of the Crime and Disorder Act 1998 states, 'without prejudice to any other obligation imposed on it, it shall be the duty of each authority to exercise its various functions with due regard to the likely effect of those functions and the need to do all that it reasonably can to prevent crime and disorder in its area.'
- 5.4 Under Schedule 5 part 1 of the Licensing Act 2003 any person aggrieved by the decision in respect of the application may appeal to a Magistrates' Court within 21 days of the date of the decision.

6. Risks

- 6.1 None identified

7. Other Implications

- 7.1 None

8. Conclusion

- 8.1 This report provides information submitted by the applicant and the two responsible authorities. The Panel should determine this application on its merits with a view to promoting the relevant Licensing Objectives which are 'the prevention of crime and disorder', 'public safety', 'the prevention of public nuisance' and 'the protection of children from harm' and have regard to the relevant provisions of the Act, Statutory Guidance and the council's Licensing Policy. The Panel are reminded that it cannot overturn the decision to revoke the licence that the Licensing Authority has already taken and which is the subject of a current appeal to the Magistrate's Court.
- 8.2 The Panel must have had regard to all the relevant objections made and the evidence it hears either grant the variation, refuse the variation, grant the variation with amendments or grant a full or amended variation and attach conditions to it.
- 8.3 If having heard all the evidence the Panel conclude that by granting the variation the licensing objectives will not be promoted they are recommended to refuse the variation.

Background Papers

- Legislation referred to in the report.