

Hearing Decision Notice

Licensing Panel Hearing 8 October 2009

White Lotus Sports Bar, Henley on Thames

The Licensing Panel met on 8 October 2009 to consider the application to review the premises licence held by the White Lotus Sports Bar, 16-18 Hart Street, Henley on Thames.

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.

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 justices' chief executive of the magistrates' court for your area within a period of 21 days from 13 October 2009. The magistrates' court may make any order as to costs as it thinks fit. The magistrates' court is situated at Speedwell Street, Oxford OX1 1RZ and can be contacted on 0870 2412808.

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: 13 October 2009

Notes



Listening Learning Leading

Licensing Panel Hearing for a review of a premises licence held on 8 October 2009 at 10.00 am

Place: Committee Room 4, Council Offices, Crowmarsh Gifford

Premises Licence: 7054 - White Lotus Sports Bar

Premises address: 16-18 Hart Street, Henley on Thames, RG2 9AA

Licensing Panel Councillors: Mrs Elizabeth Gillespie (Chairman)
Mr Colin Daukes
Mrs Margaret Turner

Legal advisor: Miss Amanda Nauth

Licensing Officers: Mr Alastair Dearling

Clerk: Mrs Jennifer Thompson

Applicant for the review Thames Valley Police, represented by
Ms L Morris (Licensing Officer),
Inspector S Havill, and Sergeant G Pink.

Representing the premises: Mr D King (premises licence holder),
Mrs P de Santos (Designated Premises
Supervisor), Ms J Hogan, Mr M Newell
(security consultant) and Mr W Donn
(licensing consultant)

Responsible Authority: Environmental Protection, South
Oxfordshire District Council (represented by
Mr P Holland and Mrs S Coxell)

Interested Parties: Five local residents who had made written
representations in respect of the review.

The Panel considered:

- the report of the Licensing Officer which included a copy of the existing premises licence,
- the application for the review by Thames Valley Police,
- supporting documentation from Thames Valley Police (as a confidential document with restricted circulation),
- copies of letters and diary sheets from Environmental Protection,
- the paperwork relating to the previous review on 9 January and 10 February 2009,
- relevant representations from seven interested parties,
- a document prepared by Security Surveillance Investigations Consultancy Services for the premises licence holder in response to the review application,
- three late submissions admitted after consultation with all parties: an email from an interested party in support of his earlier letter, a letter of support from Dorata hairdressers, and a letter of support from a resident of Sonning Common.

The Panel heard extensive evidence in turn from:

- Thames Valley Police
- Environmental Protection
- Local residents
- The premises licence holder's licensing consultant and his representatives.

After hearing all the evidence presented, 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, and the evidence in the report and presented by all parties at the hearing. The Panel considered all written evidence presented to them and all evidence presented at the hearing.

In particular, they took account of:

- the extensive documented failures of the premises licence holder to abide by the conditions on his licence and of failure to promote the four licensing objectives;
- the extensive evidence provided by Thames Valley Police in support of their review application;
- Inspector Havill's observation that since its opening the police had spent disproportionately more time dealing with this premises than on other late night licensed venues in Henley which have to comply with broadly similar crime and disorder conditions;
- the evidence of endemic poor management and poor control over the activities in the premises;

- evidence that this led to the premises operating in a way that resulted in on-going non-compliance with the conditions on the licence;
- evidence that the premises licence holder appeared to permit, or appeared to promote, or failed to prevent patrons participating in activities not permitted on the licence;
- the formal warning issued by the licensing panel at the conclusion of the licensing hearing on 10 February 2009;
- the documentary evidence of further warnings issued by Environmental Protection over non-compliance with the noise-prevention conditions;
- documentary and verbal evidence given by the licensing consultant in support of the premises licence holder;
- the evidence presented by all parties in support of their cases, the credibility of the local residents as reliable witnesses, the credibility of the evidence presented by Thames Valley Police and Environmental Protection, and the evidence presented by the licensing consultant and the premises licence holder.

The decision of the Panel, as stated by the Chairman at the close of the hearing, was to revoke the premises licence for the White Lotus Sports Bar with immediate effect.

The reasons for the decision are:

The Panel took the evidence presented by Thames Valley Police and Environmental Protection in this review with the utmost seriousness. The Panel were very concerned about the failure to prevent crime and disorder shown by the number of incidents at the premises recorded by the police. The Panel were very concerned about the continued non-compliance with the conditions relating to the prevention of public nuisance by preventing noise disturbance to nearby residents.

The Panel were aware that all options were open to them and carefully considered these options. The Panel considered the evidence that for a period after the last review the licence holder had co-operated with the responsible authorities, had complied with the requirements to control noise, and had attempted to run the premises in such a way as to promote the four licensing objectives. The Panel also considered in detail the breaches and alleged breaches of the licence conditions and the impact of these on the local area.

The Panel considered that some of the evidence presented by all parties was not sufficiently robust, and did not take this evidence into account in making their decision. The rest of the evidence provided by all parties was taken into account in making the decision.

The Panel in coming to their decision agreed that overall the evidence showed continued non-compliance with the conditions and permitted activities on the licence

and that none of the four licensing objectives were promoted (the prevention of crime and disorder, prevention of public nuisance, promotion of public safety, and the prevention of children from harm). The Panel considered that overall the evidence led them to conclude that the premises was poorly managed and poorly controlled. The Panel was of the view that poor management of the premises will continue.

The Panel carefully considered all the options available to them. They considered that:

1. Taking no action was not an option open to them.
2. A formal warning had been issued and had not been heeded in the longer term.
3. Adding new conditions would not improve the operation of the premises as the licence holder was not complying with the current conditions.
4. Excluding licensable activities would not be appropriate as management of the premises was insufficient to control the activities taking place at present. Reducing the closing time to 11pm may alleviate the nuisance, disorder and noise after 11pm, but would not improve the operation of the premises or its compliance with the licensing objectives.
5. Removing the DPS would not alleviate problems caused by endemic poor management and control by the premises licence holder and his business partner, who had overall managerial responsibility.
6. Suspension of the licence for a period would not alleviate the problems.
7. Revoking the licence was the only means open to the Panel to ensure that the licensing objectives were promoted.

The Panel determined that revocation of the licence was the only course available for three main reasons:

A. Poor management and poor overall control of the activities of the premises

1. The licence holder appeared to have disregarded the conditions on his licence despite a previous review and formal warning. Credible evidence of repeated, numerous, and serious breaches of conditions was supplied in the written evidence from both of the responsible authorities and verbally by the interested parties.
2. The licence holder had not taken steps to fully comply with the licence conditions until the first review in January 2009. Since then, despite the formal warning, the licence holder had still failed to fully comply with the licence conditions. Whether intentionally or unintentionally, failure to comply with conditions on an on-going basis despite the help offered by Environmental Protection and contracted specialist advisers showed on-going poor managerial control of the premises or failure to understand the requirements of his licence.
3. There had been considerable investment in sound-proofing measures. However these had been rendered ineffective by the licence holder failing to control access

to the sound-limiter by giving unrestricted access to a sound engineer, and failing to check on the levels after the sound engineer had finished. The licence holder had a report setting out the levels agreed with Environmental Health including photographs showing the dial positions to which he could refer. The licence holder could not confirm the dates on which work was undertaken. At some point since the work was undertaken, the noise emanating from the premises had again given rise to regular complaints and visits from the Environmental Protection team. The licence holder had not taken steps to reduce the noise or check the controls between notification of the complaint on 22 June 2009 and the Licensing Officer's visit on 6 August 2009.

4. The Panel considered that the licence holder had been negligent in not checking that the sound limiter controls were re-set correctly.
5. The licence holder was unable to confirm what sound-proofing works had been carried out apart from covering doors and windows, or when these had been carried out.
6. The licence holder confirmed that the CCTV system had been installed but on one instance a camera had been faulty and footage required by Thames Valley Police from that camera had been unavailable. The cameras hold 30 days of recordings in memory then automatically restart their recording. The cameras had not been checked to ensure they were recording correctly and the camera over the back door had failed to reset. The conditions relating to CCTV coverage require recordings to be kept but checks to ensure the system was fully operational were not made.
7. The licence holder had given responsibility for promoting his business to a firm which had promoted non-permitted activities at the premises. The licence holder had neither checked nor exerted adequate control over the content of its website. The licence holder had been negligent in permitting for a period of three months dancing to be advertised as taking place, whether or not dancing had in fact been allowed at the premises.
8. The licence holder's representative appeared unaware of conditions on the licence:
 - He offered to set up a contact number for residents to call, but this is already condition 28 on the existing licence;
 - He said that all staff had been recently trained to BIIAB¹ standard but had not provided details of specific parts of the programme to Thames Valley Police in writing as required by condition 6 on the existing licence;
 - He reported that the speaker in the VIP lounge had been removed at the request of the Licensing Officer when this is a condition on the licence.

¹ British Institute of Innkeepers Awarding Body
X:\Committee Documents\2009-2010 Cycle (2) Aug-Oct\Licensing Panels 28Sep & 8Oct\LicensingPanel_081009_White Lotus Sports Bar revocation.doc

9. The Panel was of the view that these matters detailed above show that the premises licence holder does not manage and control the activities of the premises or his staff or his appointed contractors sufficiently closely to give the Panel confidence that the premises can operate in compliance with the terms of its licence under the present management. The Panel considered that the evidence overall showed there is a lack of oversight and managerial control verging on negligence in their approach to running a late-night licensed premises. The Panel was of the view that poor management of the premises will continue and will give rise to continuous further breaches of the premises licence and further undermine all four licensing objectives.

B. Breaches of licence conditions and permitted activities

The Panel were aware that breaches could occur inadvertently but that nonetheless breaches of the licence and allowing non-permitted activities were still serious matters.

B1. Activities not permitted by the licence:

The licence does not permit dancing or similar activities but:

- There was promotion of dancing on the White Lotus website. Either intentionally or unintentionally, the venue's promoter had not been instructed to ensure that only permitted activities were advertised. Dancing had been advertised by the promoter.
- Environmental Protection officers reported that a Youtube video of dancing at the White Lotus showed that on at least one occasion recently dancing had been permitted to occur and to continue (whether spontaneous or planned).

B2. The Panel's findings on breaches of conditions (numbered as on the licence):

1. The Panel felt that the confusion over the status and whereabouts of the previous DPS at the meeting on 6 August 2009 showed very poor managerial control. The licence holder could not provide contact details or a return date for the DPS. A breach could not be proved or disproved by either party.
4. Although on one recorded instance only one door supervisor was present at midnight, it was not clear when the premises was shutting that night. If the premises conducted any licensable activity after 0000 that night this would have been a clear breach, but was not proven in this instance.
5. A handbook, however detailed, is not a training programme, and no timetabled training programme was supplied to the Licensing Officer at his visit on 6 August 2009. This condition was breached.

6. The Panel were informed that training was delivered on 23 September but no documentary evidence was provided. No policy on drinks spiking was supplied to Thames Valley Police for approval. This condition was admitted to have been breached by the licensing consultant who delivered the training.
10. The Panel were unsure that this had not been breached, as there was no training programme, training was not proven to have been given, and Challenge-25 identification requirements only very recently introduced after the review was requested.
11. No evidence was shown to the Panel to confirm that the daily register was completed and detailed the incidents reported by Thames Valley Police in their evidence. A book was produced at the hearing but the Panel were not given the opportunity to examine this in detail. Evidence from the responsible authorities supported the view that a daily register was not kept. This condition was not conclusively shown to be met although the licence holder had the opportunity to prove this to the Panel.
12. No evidence was shown to the Panel to confirm that the daily register was completed in compliance with this condition. This condition was not conclusively shown to be met.
- 19.-21. The licence holder confirmed that the CCTV system had been installed but on one instance a camera had been faulty and footage required by Thames Valley Police from that camera had been unavailable. The recording for that day had been blank. These conditions had been breached.
23. There was clear evidence supplied by Environmental Protection and residents of numerous verified breaches of this licence condition. Breaches of this condition had resulted in the review in January and February 2009 and the licence holder had worked with Environmental Protection officers to resolve the problems. However, breaches had been verified from May 2009 and continued after a letter advising of these had been sent to the licence holder on 22 June 2009.
24. This had been complied with but had been rendered ineffective because of non-compliance with condition 25. The Panel were not informed of the full range of measures taken by the licence holder to reduce noise emanating from the premises.
25. This was breached. Access to the sound limiter had been given to a sound engineer by the premises licence holder. The levels had been altered without the licence holder's knowledge although he had the means to check the dial settings. The licence holder had not checked the levels after complaints were received.
26. No records were presented by the licence holder to show compliance with this condition. There was no evidence of pro-active control over external noise

leakage once the sound system had been altered by the removal of the speakers in the VIP lounge. The only recorded check, by Environmental Protection officers at the site on 2 August 2009, did not sufficiently reduce noise from the premises as this was still clearly audible within a nearby residential premises. The Panel consider this condition has been breached.

28. It appears this was not met as the licensing consultant offered to provide this in the future.
37. A breach of this condition was confirmed by the proven complaints about noise emanating from this premises, and the verified changes to the sound limiter settings.
39. This condition is confirmed as being met at least in part as one resident was aware of the content of the dispersal policy.

No evidence of compliance or non-compliance with the remaining conditions was supplied or requested.

C. Failure to promote the licensing objectives

Prevention of crime and disorder

The evidence supplied by Thames Valley Police, discounting evidence which is alleged or unsubstantiated, shows an on-going failure to manage the premises in such a way as to promote this objective. The evidence was considered impartial and credible.

Public safety

Evidence supplied by residents about litter and detritus from the premises, disturbances, and drunk and incapable people leaving the premises shows an on-going failure to manage the premises in such a way as to promote this objective.

Prevention of public nuisance

Evidence supplied by residents about disturbances, petty vandalism, and drunk and incapable people leaving the premises shows an on-going failure to manage the premises in such a way as to promote this objective.

Evidence supplied by Thames Valley Police about disturbances caused by patrons in or leaving the premises shows an on-going failure to manage the premises in such a way as to promote this objective.

Evidence supplied by Environmental Protection about continued noise nuisance to nearby properties, despite their assistance in implementing noise control measures and several written warnings, shows an on-going failure to manage the premises in such a way as to promote this objective.

Protection of children from harm

Evidence supplied by Thames Valley Police about under-age drinking and sales to under-18s in the premises shows failure to manage the premises in such a way as to promote this objective. The measures put in place as a result of the review (Challenge 25) and dismissal of an employee on failure of a test purchase show willingness to comply with this objective.

Evidence supplied by residents and Environmental Protection about noise nuisance caused by the premises disturbing the sleep of young children shows an on-going failure to manage the premises in such a way as to promote this objective in the wider community.

Evidence discounted as not verifiable or robust:

- Evidence of dancing taking place on a regular and pre-planned basis at the premises.
- Evidence supplied by Thames Valley Police which is based on allegations or is unsubstantiated.
- Evidence supplied by the licence holder which is unsubstantiated.
- Recent changes in procedures as a result of the review were noted, but the Panel noted that these have only been introduced as a result of this review and thus are not considered indicative of a significant change in management style.

Signed as a true summary of the proceedings by the Chairman²

Date

² Unlike committee minutes, notes of Panel hearings are signed by the Chairman on behalf of the Panel but are not approved by the whole Panel.