

Hearing Decision Notice
Licensing Panel Hearing 15 December 2010
La Barca, Henley on Thames

The Licensing Panel met on 15 December 2010 to consider the application for a new premises licence for La Barca, Thameside, Henley on Thames.

The decision of the Panel is set out in the Notes of the hearing (appended).
The Licensing Officer will send the formal documentation setting out the details of the licence to the applicant. This decision is effective now.

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 7 January (the date of despatch of this notice). 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: 7 January 2011

Notes



Listening Learning Leading

Licensing Panel Hearing for a new premises licence

HELD ON 15 DECEMBER 2010 AT 2.00PM

Place:	Council Offices, Crowmarsh Gifford
Premises Licence:	La Barca
Premises address:	Thameside, Henley on Thames, RG9 1AZ (premises formerly known as Hobbs of Henley)
Licensing Panel Councillors:	Mr Malcolm Leonard (Chairman) Mrs Pat Dawe Mr John Nowell-Smith
Legal advisor:	Miss Amanda Nauth
Licensing Officer:	Mr Nigel Haverson
Clerk:	Mrs Jennifer Thompson
Representing the applicant Delicioso Ltd:	Mr Robin Gates (solicitor), Dr Kate Shirley-Quirk (DPS and partner in Delicioso), Mr Jonathon Hobbs (premises owner), Mr Jose Bernal (partner in Delicioso)
Environmental Protection Officer:	Mrs Sally Coxell
Interested Parties:	Mrs S Lees (representing local residents), Miss A Pine, Mr A Collins, Mr P Davis and Mrs S Davis

The Panel considered the report of the Licensing Officer which included copies of the premises licence application and relevant representations from Planning, Environmental Protection, and eight local residents.

The Panel heard evidence from the applicants and their solicitor, Environmental Protection, and from two local residents. After hearing all the evidence presented, the Panel adjourned the hearing from 5.40pm on 15 December until 9.30am on 16

December, when they reconvened and made their decision in private session accompanied by the legal advisor and clerk.

The applicants explained the reasons for the application, how they intended to run the premises, and the nature and frequency of the regulated entertainment they proposed. They explained how the terrace would be managed and their reasons for wishing the external doors onto the terrace to be open. A number of changes and additional conditions were proposed: not adding the first condition proposed by environmental protection; restricting the total number of dates regulated entertainment is permitted to 24 per year; not permitting drinks to be taken outside; and changing the finish time for the supply of alcohol to be half an hour before the premises closed. Closing the outside doors other than when regulated entertainment was taking place, reinstating planning conditions removed on appeal, or closing the terrace earlier than 1800 was felt to be disproportionately restrictive.

The environmental protection officer explained the reasons for the recommended conditions.

The concerns expressed by residents were chiefly:

- noise from patrons on the external terrace and use of the terrace furniture by patrons after 1800;
- noise from the premises when the doors to the external terrace are opened
- noise late into the evening/night, and at other times when the area was generally quiet;
- disturbance extending until 0200 if non-standard hours were permitted for (for example) the Regatta;
- disturbance from regulated entertainment;
- disturbance from patrons entering or leaving the premises;
- the possibility of public nuisance from passers-by using the terrace furniture after it was closed to patrons;
- problems created by patrons parking nearby and stopping outside the premises.

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.

The Panel took account of the residential area surrounding the site, the proximity of the nearby residential properties, the nature of the business proposed, and the hours and activities set out in the application. The Panel considered the likelihood of disturbance from regulated entertainment and the sale of alcohol inside the premises and on the terrace area, and from the premises closing late in the evening or the early hours of the morning. The Panel also considered the likely impact of any disturbance on residents. The Panel considered the impact of restrictions on the licence and the operation of the premises on both the ability of the applicant to run the business and on the amenity of the nearby residents. The Panel also took account of the applicant's proposals for the business and the nature of the events which would normally take place, while also considering the potential for different uses once the licence had been granted.

In coming to the decision, the Panel sought to balance the rights of the residents to a peaceful enjoyment of their premises with the rights of the applicant to a peaceful enjoyment of their business and their licence, and to balance the different requirements of the business, residents, and customers.

The decision of the Panel was: to grant the premises licence with conditions and amendments to the hours of operation.

The Panel agreed to the additional conditions numbered 2 to 7 on the representation from Environmental Protection and circulated to all parties with the papers for the hearing. The Panel agreed additional conditions, which the applicant had outlined as being acceptable at the hearing, and agreed one further condition. The Panel noted that the applicant will adhere to the conditions set out in their operating schedule.

These conditions all further the objective of the prevention of public nuisance by preventing noise from regulated entertainment or from patrons drinking causing undue nuisance and disturbance to residents later into the evening or early on a Sunday morning under policies LH3 and LH5, given the residential nature of the immediate locality. They do not place undue restrictions on the operation of the business while protecting the amenity of the nearby residents as far as is practicable.

The Panel agreed that the standard opening hours and standard hours of permitted activity shall be:

Indoors

Opening hours:	Monday to Sunday	0900 to 2400
Late night refreshment:	Monday to Sunday	2300 to 2400
Hours for the sale of alcohol:	Monday to Saturday Sunday	0900 to 2330 1100 to 2330
Regulated entertainment - recorded music only	Monday to Saturday Sunday	0900 to 2400 1100 to 2400

Reasons: Finishing the sale of alcohol at 2330 on the majority of evenings the restaurant is open until the end of its permitted hours reduces public nuisance by providing a winding-down period to allow patrons to finish their drinks and leave gradually causing less disturbance to residents. Restricting the start of licensable activities (sale of alcohol and regulated entertainment) on a Sunday to 1100 reduces public nuisance by providing a defined quieter period on a traditionally quiet family-oriented morning.

Outdoors

The terrace area may only be used between the following hours:

Opening hours:	Monday to Sunday	0900 to 1800
Hours for the sale of alcohol:	Monday to Saturday	0900 to 1800

Sunday

1100 to 1800

Non-standard timings:

Note: the current planning consents do not permit the premises to remain open beyond midnight on any day of the year. Should the premises wish to remain open beyond this time the applicants would need to obtain planning permission.

On Christmas Eve, New Year's Eve, Henley Regatta week and Henley Festival weeks:

The premises may be open:

- New Years Eve 0900 until 0200 hours the following day
- Christmas Eve 0900 until 0200 hours the following day
- Wednesday to Sunday of Henley Regatta week 0900 until 0200 hours the following day
- Wednesday to Sunday of Henley Festival week 0900 until 0200 hours the following day

Late night refreshment:

- New Years Eve 2300 until 0200 hours the following day
- Christmas Eve 2300 until 0200 hours the following day
- Wednesday to Sunday of Henley Regatta week 2300 until 0200 hours the following day
- Wednesday to Sunday of Henley Festival week 2300 until 0200 hours the following day

Hours for the sale of alcohol:

- New Years Eve 0900 until 0130 hours the following day (unless New Year's Eve falls on a Sunday in which case the sale of alcohol may not start until 1100)
- Christmas Eve 0900 until 0130 hours the following day (unless Christmas Eve falls on a Sunday in which case the sale of alcohol may not start until 1100)
- Wednesday to Saturday of Henley Regatta week 0900 until 0130 hours the following day
- Sunday of Henley Regatta week 1100 until 0130 the following day
- Wednesday to Saturday of Henley Festival week 0900 until 0130 hours the following day
- Sunday of Henley Festival week 1100 until 0130 the following day

Regulated entertainment – recorded music

- New Years Eve 0900 until 0200 hours the following day (unless New Year's Eve falls on a Sunday in which case the recorded music may not start until 1100)
- Christmas Eve 0900 until 0200 hours the following day (unless Christmas Eve falls on a Sunday in which case recorded music may not start until 1100)
- Wednesday to Saturday of Henley Regatta week 0900 until 0200 hours the following day
- Sunday of Henley Regatta week 1100 until 0200 the following day
- Wednesday to Saturday of Henley Festival week 0900 until 0200 hours the following day
- Sunday of Henley Festival week 1100 until 0200 the following day

Reason: Condition 10 restricts the number of events when regulated entertainment takes place to 24 in a calendar year. It is normal practice to permit premises in Henley to be open late on these days/evenings. It is reasonable to permit the premises to open and provide licensable activities until 0200 on these dates. However, to preserve the amenity of residents, it was not considered reasonable to permit the premises to be open past 0200 on New Year's Eve given the nature of the premises, its location, and the character of the immediate surrounding area.

Outdoors

Non-standard timings are not permitted.

Conditions:

The conditions set out in the original operating schedule are:

1. We will be taking account of health and safety and fire safety requirements.
2. We will be using CCTV equipment as an aid to the prevention of crime and disorder
3. We will be making use of the Challenge 21 scheme to protect children from harm

The conditions attached by agreement between the applicant and Environmental Protection to prevent public nuisance by restricting noise nuisance from the premises when regulated entertainment takes place are:

4. When regulated entertainment is taking place at the premises all external doors and windows must be kept closed other than for access and egress, including those facing the river.
5. Entertainment is to be held internally only and no music or speakers shall be provided to the external areas of the premises.
6. Noise emanating from the premises as a result of regulated entertainment shall not be clearly audible at the boundary of any residential property.
7. During each occasion when regulated entertainment takes place the premises licence holder shall ensure that hourly assessments are undertaken of noise emanating from the premises as a result of regulated entertainment. The assessment shall be made at the boundary of the nearest residential premises on Meadow Road, Station Road and Boathouse Reach. If the assessment indicates that a potential problem exists arising from excessive noise levels then immediate action must be taken to reduce the noise level and a further check conducted to ensure that levels have been sufficiently reduced. A written record shall be kept of each noise assessment and of any remedial action taken. Records of such checks shall be made available to the Licensing Authority for inspection at any reasonable time.
8. During operating hours, the licensee or a nominated representative shall be available to receive and respond to nuisance-related complaints. A contact number shall be readily available to residents upon request. Contact details of the licensee or the nominated representative shall be provided to the Licensing Authority and updated as necessary.

9. Prominent, clear notices shall be displayed at all exits requesting that customers respect the needs of local residents and leave the premises and area promptly and quietly.

The conditions attached after discussion at the hearing and with the outline agreement by the applicant to prevent public nuisance by restricting the number of times regulated entertainment can take place and reduce noise from people temporarily outside the premises after the terrace closes are:

10. Regulated entertainment shall be permitted on no more than 24 occasions during a calendar year including those permitted under non-standard timings (New Years Eve, Christmas Eve, Regatta and Festival weeks).

Note: any temporary event notices the licence holder may apply for are not included in this number.

11. Persons leaving the premises after 1800 for any purpose shall not be permitted to take any alcoholic drink outside.

Conditions attached by the Panel to prevent public nuisance caused by noise from patrons consuming alcohol in the premises are:

12. The doors fronting onto the terrace shall be closed at 2100 other than for access and egress (this applies to all evenings except when regulated entertainment takes place: then condition 4 applies).

Reason: the Panel considered this to be a reasonable compromise between the wishes of the residents and the applicants and was proportionate as it allowed the licence holder to make use of the amenity of the premises but to reduce the effect on the residents later in the evening when the background noise reduces but the noise of patrons enjoying the amenities of the premises may increase to a noticeable degree.

Appeal and review rights

Each party has the right of appeal to the magistrates' court within 21 days of the date of the formal notice of this decision if they are unhappy with this decision.

Responsible authorities, local residents, and ward councillors may request a review of the premises licence if the premises is running licensed activities in such a way as to fail to uphold one of the licensing objectives. In addition, other legislation exists to protect the amenity of residents if the premises should be run in such a way as to cause a statutory noise nuisance.

Each party has the right to the peaceful enjoyment of their possessions – in the case of the residents, to their homes and in the case of the applicants to their premises and their licence.

Signed as a true summary of the proceedings by the Chairman¹

Date

¹ 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.
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