

Hearing Decision Notice

Licensing Panel Hearing 18 April 2011

Diamonds and Pearls, Greys Road Car Park, Henley on Thames

The Licensing Panel met on 18 April 2011 to consider the application to review the premises licence no. 7641 held by Diamonds and Pearls (Latinos/SpeakEasy), Greys Road Car Park, Henley on Thames, RG9 2AA.

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.

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 28 April 2011. The magistrates' court may make any order as to costs as it thinks fit. The magistrates' court can be contacted on 01865 448020.

Jennifer Thompson
Democratic Services Officer

Date issued and posted: 28 April 2011

Notes



Listening Learning Leading

Licensing Panel Hearing for a review of a premises licence held on 18 April 2011 at 10.00 am

Place:	Council Chamber, Council Offices, Crowmarsh Gifford
Premises Licence:	7641 Latinos/SpeakEasy trading as Diamonds and Pearls
Premises address:	Greys Road Car Park, Henley on Thames, RG9 2AA
Licensing Panel Councillors:	Mr Malcolm Leonard (Chairman) Mrs Ann Midwinter Mrs Margaret Turner
Legal advisor:	Miss Amanda Nauth
Licensing Officer:	Mr Nigel Haverson
Clerk:	Mrs Jennifer Thompson
Applicant for the review	Thames Valley Police, represented by Ms Laura Morris (Licensing Officer), and Sergeant George Pink.
Representing the premises:	Mr Juan Lopez (barrister representing the premises), Mr Antonio Lopes (premises licence holder), Mr Carmelo de Borg (Designated Premises Supervisor), Mr Ian Whiting (ST Security), Mr Andy Maglaras (ST security)
Interested Parties:	Mr B Wood, representing Henley Town Council, and in his capacity as a resident who had made written representations in respect of the review.
Licensing Authority member:	Ms L Hillier, district ward councillor for Henley North.

Evidence provided to the Panel:

- the report of the licensing officer which included a copy of the current premises licence;
- the application for the review by Thames Valley Police including the supporting documentation supplied with this (including a confidential document with restricted circulation updating Annex 5 of their review application);
- a relevant representation from Henley Town Council;
- four relevant representations from 19 interested parties;
- a pack of supporting information prepared on behalf of the applicant, delivered to the clerk on Friday 15 April and transferred to the Panel and Thames Valley Police that day;
- late submissions from the premises admitted after consultation with all parties: the full drugs policy adopted by the premises in March 2011, a stricter drugs procedure adopted in April 2011, and an email thanking door staff for their help dated; and
- late submissions from Thames Valley Police admitted after consultation with all parties: a chart showing the police classification of drugs swab results and additional information on drugs results from 2 April 2011 and 5 April 2011.

The Panel heard extensive evidence in turn from:

- the authority's licensing officer;
- Thames Valley Police;
- the district ward councillor, Ms Hillier, who was permitted to speak with the agreement of all parties to present information about residents' concerns;
- Mr Wood in his authorised capacity as the town councillor speaking for Henley Town Council, and speaking in his private capacity; and
- the premises licence holder's barrister, Mr Lopez, and representatives for the premises.

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.

In particular, the Panel noted:

- i. the extensive evidence provided by Thames Valley Police in support of their review application including the results of drugs swabs and their incident log showing all reported incidents since March 2009;

- ii. that the incident log included information from a variety of sources and that incidents could not necessarily be verified or corroborated, and that information supplied by the premises after successfully resolving the problem also appears;
- iii. that 106 incidents had been reported, some serious and some minor, and it was unreasonable to assume that all or most of these were misreported or unsubstantiated;
- iv. the results of the drugs swabs in June and July 2010 and in February and March 2011;
- v. the drug policies put in place would be sufficient to curb drugs use if implemented rigorously but had been introduced only as a result of the review application and the drugs warrant search in March 2011. Mr Lopez gave the impression that the premises management expected drugs tests to show periodic red or amber results in both private and public areas, the Panel did not have confidence that the premises management took the prevention of drug use sufficiently seriously to ensure the policies would be implemented effectively;
- vi. the written and verbal information and explanations given by the police and the premises' representatives for a number of the incidents listed, for some of the serious incidents, and for the high drug readings, and the lack of explanation permitted to be given by the police licensing officer or from the premises for several incidents;
- vii. that Sergeant Pink and Mr Borg both reported a good working relationship between the police and the premises and that there were no major concerns over the capabilities of the DPS or the security firm;
- viii. the DPS and security staff had worked at the premises since it opened and were experienced. However, they had not been complying with the licence conditions relating to admitting under-21s (no 39 on the licence dated 30 March 2011 and 'A' in the operating schedule attached as conditions to the licence dated 10 June 2009) as they had been unaware of the existence of these conditions until the licence was amended in November 2010;
- ix. that after the review application had been lodged, the premises' managers had put in place new policies and procedures, were complying with age restrictions on entry, and had changed the entertainment provided in the upstairs venue. Four senior staff had undergone refresher training to BIIAB Level 2 for personal licence holders. Fraud prevention measures and a new incident log were introduced. Some staff had been dismissed. All these measures had been implemented in a short period of time;
- x. the management of the premises did not demonstrate that prior to the review application it took the promotion of the licensing objectives, the concerns of the

police, the number of incidents, the prevention of drug use, or the conditions on the premises licence sufficiently seriously to prevent a similar pattern of incidents continuing in the future;

- xi. the recommendation from the police that it would be inappropriate to add more conditions, given that the premises had a history of a lack of diligence in complying with the licence conditions; a change of management would not be effective; and given that the culture of the premises as a whole creates crime and disorder which is not being adequately prevented, revocation of the licence was requested;
- xii. Mr Lopez's assertion that the existing licence and conditions are sufficient, when complied with, to ensure that the licensing objectives were promoted;
- xiii. Mr Lopez's proposal to deal with the on-going level of incidents by adding further conditions and by way of a formal warning (regarding the breach of licence conditions in admitting under 21's and the breach of conditions and law by admitting under 18's to the premises) so that the penalty can be escalated at the next review;
- xiv. Mr Lopez's proposed additional conditions requiring a female door supervisor; toilet attendants; actively reporting incidents to the police and annotating the incident log; and incorporating the premises' drugs policies.

The Panel considered that some of the evidence presented by all parties was not sufficiently robust and that some was irrelevant under the Licensing Act 2003, 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 evidence supplied by Thames Valley Police and by the licence holder shows an on-going failure to manage the premises in such a way as to promote the licensing objective of reducing crime and disorder. The evidence, particularly regarding drug swab readings, was considered impartial and credible.

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 did not consider that these indicated a significant change in management style.

During their deliberations, the Panel took the evidence presented by Thames Valley Police with the utmost seriousness. The Panel were very concerned about the levels of crime and disorder shown by the number of incidents relating to the premises recorded by the police. The Panel were very concerned that non-compliance with some conditions on the licence had arisen because the DPS was unaware of their existence.

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

1. Taking no action would not be appropriate given all the circumstances;
2. A formal warning would not be sufficient to ensure that the premises complied with the licence conditions and the directions of Thames Valley police in the future;
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 or restricting hours of operation not of itself reduce crime and disorder and may be so restrictive as to prevent the business operating viably.
5. Removing the DPS and/or the security firm would not alleviate problems caused by the culture and nature of the business and its overall management.
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 objective of preventing crime and disorder was promoted.

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

The Panel considered that given the evidence presented in writing and at the hearing they have no alternative but to revoke the licence.

The reasons for this decision are:

- a. **There is strong evidence to show that a large number of incidents of crime and disorder are associated with the premises, and the licence holder has not shown that the premises are managed adequately. The police have demonstrated that the premises is a source of crime and disorder, given the high number of reported incidents.**
- b. **The Panel took into account the number of incidents including some very serious incidents for which the premises licence holder had not given a satisfactory explanation.**
- c. **There has been a pattern of incidents which has remained consistent since the premises opened which gave the Panel great concern**
- d. **The Panel took into account the results of all the drug tests carried out at the premises and Thames valley Police's concern about these.**

- e. **The Panel noted that on the eve of the hearing (after a meeting with Thames Valley Police on 18 February and the subsequent review application) the drugs policy was brought into force and training updated as evidenced by the policy and certificates supplied. The Panel noted one instance on the incident log, 16/6/10, where the information supplied by the premises states they had a drugs policy in place but the only policy supplied was dated March 2011 and no supporting evidence has been supplied for this statement.**
- f. **The Panel noted that the over 25s/over 21s on discretion policy was not enforced for the best part of two years and there was admission that under-18s were on the premises. The Panel noted that there was confusion over the conditions on the licence.**
- g. **Given the history of the premises, the Panel did not consider that adding additional conditions could overcome the problems at the premises. Nor did the Panel think that restricting the hours or activities would of themselves stop crime and disorder.**
- h. **The Panel did not take into account concerns raised about planning, protection of children from harm, public nuisance and public safety as these were not relevant to this case. The Panel also did not take into account the specific entertainment offered except as part of the consideration of the nature of the premises.**
- i. **The Panel was of the view that the incidents and breaches of conditions 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 without recurring allegations (substantiated or otherwise) in relation to crime and disorder.**
- j. **The Panel considered that the evidence overall showed there is a lack of oversight and managerial control in the approach to running a late-night licensed premises. The Panel was of the view that poor control of the premises will continue and will give rise to continuous further breaches of the premises licence and further undermine the licensing objective of preventing crime and disorder.**

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.