

Decision Notice

Licensing Panel Hearing 13 September 2011

Quince Tree, Stonor

The Licensing Panel met on 13 September 2011 to consider the application for a new premises licence for the Quince Tree, Stonor, Henley on Thames, RG9 6HE.

The decision of the Panel is set out below. This decision was deemed to be effective immediately from the date of the hearing. This does not affect the rights of the premises during the period of any appeal.

Contact the licensing team on 01491 823209 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 jennifer.thompson@southandvale.gov.uk if you have queries about the hearing or this notice. Both can be contacted in writing at Legal and Democratic Services, South Oxfordshire District Council, Benson Lane, Crowmarsh Gifford, Wallingford, OX10 8QS

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 local 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 only arise in connection with a failure of the premises relating to one or more of the four licensing objectives (prevention of crime and disorder, public safety, prevention of public nuisance, protection of children from harm). The authority will generally not expect to hold a review requested by representations from an interested party more frequently 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: 4 October 2011

Licensing Panel Hearing for a new premises licence



Listening Learning Leading

held on 13 September 2011 at 11.00 am at the council offices, Crowmarsh Gifford

Premises Licence:	The Quince Tree
Premises address:	Stonor, Henley on Thames, RG9 6HE
Licensing Panel Councillors:	Mrs Elizabeth Gillespie (Chairman) Mrs Eleanor Hards Mrs Margaret Turner
Legal advisor:	Ms Amanda Nauth
Licensing Officer:	Mr Nigel Haverson
Clerk:	Mrs Jennifer Thompson
Representing the applicant:	Mr H Thomas (licensing solicitor), Mr R Yerburgh (premises owner and DPS), Mr P Cowley (general manager), Mr K Wesley.
Interested Parties:	Mr D Reed, Mr M Messenger, Mrs Messenger, Mr P Mangold, Mr B Ward (local residents)

Mr T Dean, representing Environmental Protection, attended to answer questions.

Four local residents attended to observe the proceedings.

The Panel considered the report of the Licensing Officer which included copies of the premises licence application and seven relevant representations from 12 local residents.

The Panel heard evidence from the applicant and his representative and from five local residents.

The applicant's representative confirmed that the conditions in the operating schedule had been agreed with Environmental Protection before making the application and that the hours and activities were in line with the current planning consents. The controls on noise in the operating schedule would be sufficient if correctly operated to prevent any public nuisance caused by noise from regulated entertainment either inside or outside the premises. Regulated entertainment would only be provided at the rear of the building, in the café terrace area and terrace adjoining the function room.

Residents were very concerned about the potential for noise nuisance from live and recorded music played in the outside areas of the premises. This is a new premises and there is no direct evidence of noise from its activities. Residents pointed out that speech and music from a workman's radio in the café terrace area could be clearly heard in the gardens of the nearest two properties and that noise from building work could be heard during the working day. At the hearing, residents did not express concerns that the proposed sale of alcohol or regulated entertainment indoors would undermine the licensing objectives or that the conditions in the operating schedule would be insufficient to promote the licensing objectives.

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 considered what action would be reasonable and proportionate having regard to the Licensing Act 2003 and associated regulations and guidance, the licensing objectives, and the Council's licensing policy. The Panel had regard to the steps necessary to promote the licensing objectives and considered the evidence from all parties including the evidence of those unable to attend the hearing.

The Panel had specific regard to the Secretary of State's Amended guidance issued under section 182 of the Licensing Act 2003 paragraphs 1.32, 2.34 and 2.35 and the judicial review case *Thwaites PLC v Wirral Borough Magistrates Court 2008* and policies LH3 and OS17 of the council's licensing policy¹

The Panel agreed that the hours and the operating schedule adequately promoted three of the four licensing objectives.

In coming to their decision, the Panel took into account only evidence relevant to the licensing regime and factors relating to the promotion of the licensing objective of preventing public nuisance. The Panel also 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 his business and his licence, and to balance the different requirements of the business, residents, and customers.

The Panel took account of:

- the quiet residential area surrounding the site;
- the proximity of nearby properties;
- the nature of the business;
- the hours and activities set out in the application and the applicant's comments;
- the representations made by residents highlighting the potential of noise from regulated entertainment outdoors to undermine the licensing objective of preventing public nuisance;

¹ Policy LH 3: Licensing hours not limited

The authority will not reduce the hours permitted for licensable activities to less than those stated in an application, unless representations indicate that this is necessary and then only in the context of the individual merits of that application. In considering a limitation on trading hours, regard will be had to the nature of the locality around the premises.

Policy OS 17: Operating schedule – public nuisance noise

In considering applications, the responsible authority would encourage evidence that the likelihood of public nuisance has been considered and appropriate control measures implemented for the premises. The use of premises and particularly outside areas can potentially cause public nuisance particularly during quieter periods of the day when background noise has diminished. It is anticipated that the responsible authority may on occasions request that the operating schedule address measures for preventing public nuisance such noise control measures or restricting the use of certain areas of the premises e.g. garden area.

- the lack of representations from the responsible authorities and in particular that Environmental Protection had raised no concerns and had not suggested additional conditions or restrictions to permitted hours;
- whether the applicant could at all times adequately control noise from regulated entertainment through the conditions proposed in his operating schedule;
- the likelihood of disturbance to nearby properties from regulated entertainment held in the outside areas of the premises, given the conditions in the operating schedule which control noise, and whether this disturbance would undermine the licensing objective of preventing public nuisance.

The Panel considered that the hours proposed were acceptable and the operating schedule, if rigorously adhered to, provided adequate safeguards to prevent public nuisance caused by noise from regulated entertainment indoors. However, the Panel considered that the provision of regulated entertainment outdoors (live and recorded music and dancing) should cease at 2100.

The Panel had concerns that regulated entertainment outdoors later at night on a regular or frequent basis could give rise to noise nuisance and recognised the likelihood that noise generated from outside music/entertainment would cause an unacceptable level of nuisance in a quiet residential area.

Despite the lack of representations on this by Environmental Protection, the Panel were not of the view that the conditions proposed are entirely sufficient to control noise from regulated entertainment outdoors later in the evening when background noise levels are lower. Imposing further conditions to control noise would be overly onerous if these were to have the desired effect, and may in effect prevent the premises from providing such entertainment.

Given the nature of the entertainment proposed and the nature of the locality, it was considered reasonable to restrict the times of regulated entertainment outside. Later in the evening, there is less background noise, noise is more intrusive, and people are preparing to sleep.

The Panel decided that ending regulated entertainment outside at 2100 would be reasonable. This would allow the premises to provide entertainment outside till dusk, but would protect the amenity or residents by providing a reasonable cut-off time to allow residents peace and quiet later in the evening. This ensured that any public nuisance from music outside late in the evening was prevented.

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

Opening hours and alcohol sales

Hours premises are open to the public and hours for supply of alcohol (on and off the premises):

Monday to Saturday	0830 to 2300
Sunday	1000 to 2200

Hours specific areas are open and may supply alcohol as follows:

Retail area – ‘off’ sales only	
Monday to Saturday	0830 to 1900
Sunday and bank holidays	1000 to 1800

Café, restaurant and conference areas:
Monday to Saturday 0830 to 2300
Sunday and bank holidays 1000 to 2200

Public house area:
Monday to Saturday 1000 to 2300
Sunday and bank holidays 1000 to 2200

Regulated activities indoors

Plays, films, recorded music (indoors)
Monday to Saturday 0830 to 2300
Sunday 1000 to 2200

Live music, performances of dance, provision of facilities for making music, provision of facilities for dancing (indoors)
Monday to Saturday 1100 to 2300
Sunday 1100 to 2200

Regulated activities outdoors

Recorded music (outdoors)
Monday to Saturday 0830 to 2100
Sunday 1000 to 2100

Live music, performances of dance, provision of facilities for making music, provision of facilities for dancing (outdoors)
Monday to Saturday 1100 to 2100
Sunday 1100 to 2100

The operating schedule is attached to the licence as additional conditions:

1. CCTV shall be installed in the premises upon the reasonable recommendation of Thames Valley Police and subject to approval by the local planning authority. CCTV will operate at all times the premises are open to the public. Images will be retained for a period of 31 days and made available to Thames Valley Police upon reasonable request.
2. There shall be waiters/waitress service throughout the café, restaurant and terrace areas of the premises affording control and supervision.
3. A fire risk assessment will be conducted and implemented in the premises.
4. The premises will satisfy current building regulation requirements.
5. No amplified music/live music shall be played in the restaurant garden terrace.
6. Notices to be erected in the external terrace areas and at exits requesting customers to respect the needs of local residents.
7. Noise from regulated entertainment shall not be clearly audible² at the boundary of the nearest residential property.
8. The external noise levels shall be checked by a member of staff minimum of at least once per hour throughout the performance of regulated entertainment. The checks shall be carried out at the boundaries of the nearest residential properties to the north, south, east and west of the premises. Whenever noise is clearly

² 'not clearly audible' is not equivalent to 'inaudible'.

audible adjustments shall be made to reduce the regulated entertainment to acceptable levels and the noise level checked again. The checks shall be logged with the time and date they were carried out and at the end of each event signed by the person responsible for managing the event.

9. An age verification policy will be implemented in the premises in accordance with the mandatory conditions to be imposed on the premises licence. Relevant staff engaged in the sale and supply of alcohol will be trained accordingly. Any person appearing under the age of 18 years will be requested to provide identification. Only photographic identification will be accepted as valid proof of age, for example passport photo driving licence and PASS accredited proof of age cards
10. A refusals book will be maintained in the premises in which shall be recorded all requests for proof of age and refusals of sale of alcohol.
11. Children are to be permitted access to the premises in accordance with the provisions of the Licensing Act 2003.

The Panel recommended that premises staff must be diligent in adhering to the conditions designed to reduce noise nuisance to promote the licensing objective of preventing public nuisance particularly in quieter periods of the day.

Reasons for reducing the permitted hours for regulated entertainment outdoors.

To ensure the promotion of the licensing objective of preventing public nuisance.

The use of premises and particularly outside areas can potentially cause public nuisance particularly during quieter periods of the day when background noise has diminished. Given that regulated entertainment outside can give rise to noise and the nature of the locality, it was considered reasonable to impose a finishing time of 2100 to protect the amenity of the residents and avoid the need to impose unreasonably onerous conditions on the premises licence.

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.

Signed as a true summary of the proceedings by the Chairman³

Date

³ 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.