

Licensing Panel Hearing
held at 10.00 am on Thursday 13 June 2013 in
Committee Room 4, South Oxfordshire District
Council Offices



Listening Learning Leading

Date of issue of decision notice: 18 July 2013

Premises details and attendance

Premises Licence:	4027
Premises address:	Magoos, 22 Hart Street, Henley on Thames, RG9 2AU
Licensing Panel Councillors:	Mrs Pat Dawe (Chairman) Mrs Lynn Lloyd Mrs Pearl Slatter
Legal advisor:	Miss Sarah Commins
Licensing Officer:	Mr Bhavdip Nakum
Clerk:	Mrs Jennifer Thompson
Representing the applicant:	Mr Laurence Gordon Wilson (premises licence holder) Mr Philip Somarakis (legal representative)
Environmental Protection:	Mr Simon Hill (to answer questions)
Interested Parties:	Mr Louth (accompanied by Mrs Louth) Mr and Mrs Augur Mr Hemsley Mr and Mrs Wood

Reason for Hearing

To determine the application for a variation to a premises licence made under section 34 of the Licensing Act 2003 ("the Act")

Hearing

Written evidence

The Panel considered the following:

- The report of the licensing officer, which included copies of the premises licence variation application; the current licence; a representation from environmental protection, and seven relevant representations from ten local residents.
- Photographs and maps submitted by two of the local residents prior to and at the hearing; a further response from environmental protection withdrawing their objection

after negotiation; and a response from Thames Valley Police stating that they did not wish to make a representation.

Oral Evidence

The Panel heard from the licensing officer, the applicant and his representatives, the environmental protection officer, and from the six interested parties present at the hearing.

The applicant and his representative stated at the start of the hearing that they wished to withdraw the part of the application relating to the provision of live and recorded music and dancing (regulated entertainment) and that they had agreed to withdraw the application for extended hours on the Sunday preceding bank holiday Mondays.

Mr Hill confirmed that environmental protection's representation had been withdrawn as the agreed reduction in the non-standard operating hours addressed their concerns. He would answer questions but would not be making representations.

Mr Wilson and Mr Somarakis explained that the application was to allow the premises to provide sale and consumption of alcohol and late night refreshment on Thursday, Friday, and Saturday nights until 0200 the following morning; until 0230 the following morning on the Friday and Saturday preceding a bank holiday; and until 0300 every morning of Henley Regatta week and on New Year's Day. There was now no extension requested to the permitted hours for regulated entertainment. In consequence, they requested that condition 7 of Annex 3 be deleted, but conditions 8 and 9 could be retained.

The applicant explained that the additional hours had been requested by patrons and it was his view that the extension, if granted, would provide patrons with more time to socialise but also to calm down and stagger their departure. Mr Wilson explained his commitment to the premises and his investment in the new rear extension which, at large cost had incorporated noise attenuation measures which had been certified as acoustically effective by the council's environmental protection team. However, Mr Wilson said that as the nearest residents had stated they still experienced noise nuisance, he had decided to withdraw the request to extend the permitted hours for regulated entertainment to allow time to address the residents' concerns.. He was intending to meet the resident of the adjoining property to see what could be done to reduce noise nuisance and discuss installing CCTV to monitor the area next to her property. He explained that the premises operated as a late night bar not as a nightclub. He had recently employed a new chef to provide better quality late night refreshment to encourage patrons to unwind with food after drinking and before leaving the premises. He already employed a doorman to monitor smoking and departing patrons at the front of the premises and the police had not been called to any incidents at the premises. In common with other premises, smokers had to stand outside the front of the building, and the doorman who was a longstanding employee sought to manage the patrons from behaving in a noisy or anti-social manner when outside the premises. He informed the Panel that he was very aware of the need to keep a tight control on what was happening at the premises which he had operated for ten years. He was an active member of Pubwatch and had been its local secretary until family commitments took over his time.

Upon being questioned by local residents and Panel members, the applicant confirmed that he understood that there were concerns about noise from regulated entertainment and also about noise and disturbance late into the night on Hart Street caused by patrons from various establishments. He stated that the bar provided a place for Henley residents to socialise and the extended hours would provide an opportunity for quieter

socialising and allow patrons to disperse more gradually and quietly. In answer to a question posed by a local resident the applicant stated that he did not think that serving only coffee in the last hour would be popular, nor would keeping the current closing time and reducing the hours of regulated entertainment be acceptable. He confirmed that removing condition 7 of Annex 3 was necessary if the hours were changed to avoid contradiction, and that the timings in conditions 8 and 9 should be consistent with the operating hours. This was confirmed by the licensing officer.

Upon being questioned by local residents and Panel members, the environmental protection officer confirmed that apart from Mr Wood's complaint there was no record of complaints of significant problems from the premises. Mr and Mrs Wood's complaints had been investigated (including the placing of noise monitoring equipment in their house). As a result of the complaints the noise limiters at the premises had been reset to a lower level. In the professional opinion of environmental health officers the noise intrusion was now at a level which was not considered to constitute a statutory nuisance. The environmental health officer confirmed that the process of investigation and sound assessment was that recognised within the profession and expected by environmental health legislation.

The interested parties made their statements, all requesting that the operating hours be retained at their current levels or reduced and explaining the impact of late night disturbances on their amenity.

Mr Louth, Mr Augur and Mr Hemsley stated that Hart Street had a high density of residential properties (as shown on a plan submitted in evidence) and that residents balanced the convenience of living in a central town centre location with the disadvantages of the locality. However, they considered that they should have a right to be able to sleep uninterrupted by rowdy crowds and music. Disturbances included shouting and arguments (which could be very stressful); the congregation and revving of taxis and slamming of car doors as people left and groups talking on the street. There was low-level but unpleasant nuisance caused by people vomiting and urinating in the doorways. While residents tolerated the disturbances of regatta week, they wanted to live in a civilised town the rest of the year. Mr Louth stated that Henley was considered to have a major problem with disturbances compared to other towns and the street could be very rowdy at night. He expressed surprise that the police had not made representations on the application and the Panel Chairman confirmed that she had checked with Thames Valley Police that they had no problem with the application.

Mr Louth acknowledged that compared to other premises Magoos appeared to be generally well run and that Mr Wilson did attempt to control events immediately in front of the premises with collections of cigarette butts and a doorman however as the police were under resourced in the town late at night and no-one was responsible for the problems caused away from the premises he felt that the nuisance on the street could only be contained by restricting the operating hours of premises. There had to be a balance struck between the night-time economy and residents' amenity.

Mr and Mrs Wood stated that music could still be heard outside and inside their property. They stated that the noise limiter did not cut out the intrusive short bursts of loud bass or drums which still escaped from the new extension. Mr and Mrs Wood stated that Mr Wilson's previous use of temporary event notices had resulted in increased hours of disturbance. A verbal agreement to finish the music at 23.00 had improved the situation considerably, and they would like this to be formalised. It was also a concern to them that there was nothing to prevent staff playing loud music while clearing up. Noise nuisance severely affected family life, and the extension in hours would further exacerbate the

problems. Mrs Wood considered that because of the intermittent nature of the nuisance and the limited availability of the out of hours officers, it was difficult for residents to provide a comprehensive record of disturbance to the environmental protection team. Mr Hill explained to the Panel that although the out of hours provision was limited this was not the sole method of assessment. They believed that the required notices requesting patrons to leave quietly had only recently appeared on the premises' windows and looked to be temporary as they were not contained within permanent notice boards affixed to the premises.

The applicant and a number of the interested parties took the opportunity to sum up.

Decision

To grant the variation to premises licence 4027 for the hours and areas applied for subject to the additional conditions as set out below:

Opening hours of the premises:

Sunday to Wednesday 1000 to 0130 the following day
Thursday, Friday and Saturday 1000 to 0230 the following day

Sale of alcohol (on and off)

Sunday to Wednesday 1000 to 0100 the following day
Thursday, Friday and Saturday 1000 to 0200 the following day

Late night refreshment (indoors only)

Sunday to Wednesday 2300 to 0100 the following day
Thursday, Friday and Saturday 2300 to 0200 the following day

Live music, recorded music, provision of facilities for dancing – no change to the times of the existing licence.

Non standard timings:

During the week of Henley Regatta:

opening hours - until 0330;
late night refreshment - until 0300
alcohol sales until 0300;
regulated entertainment - unchanged; and

Fridays and Saturdays on weekends preceding public holiday Mondays

opening hours - until 0300;
late night refreshment - until 0230
alcohol sales - until 0230;
regulated entertainment - unchanged; and

New Year

sale of alcohol and late night refreshment from the start of permitted hours on New Year's Eve to the 0300 on New Year's Day; with opening hours extended to 0330 on New Year's Day.

All conditions remain apart from condition 7 of Annex 3 which is deleted.

Mandatory conditions shall be attached as required by the licensing authority

The Chairman stated that the Panel appreciated the efforts made by the premises to address the concerns of the residents, and noted that the request for the extension of hours for music had been withdrawn to alleviate problems this may cause. The Panel expected that before any further application is made to extend the hours of regulated entertainment, Mr Wilson will fully address these concerns and will seek to reduce the noise nuisance caused to neighbours from the premises as far as possible. The Chairman reminded Mr Wilson that all conditions must be complied with at all times.

Reasons for the Decision

The Panel considered the representations of all parties including those unable to attend the hearing, the relevant provisions of the Act, the Secretary of State's guidance issued under section 182 of the Act and the council's licensing policy. The Panel considered what action would be reasonable and proportionate having regard to the Act and associated regulations and guidance, the promotion of the licensing objectives, and the Council's licensing policy.

The Panel only took into account evidence relevant to the licensing regime and to the promotion of the licensing objectives.

The Panel took account of:

- the mixed use area surrounding the site;
- the nature of the business;
- the hours and activities set out in the application and amended by the applicant before and at the hearing, the operating schedule, and the applicant's comments;
- the concerns raised in the representations made by residents; and
- the information from environmental protection.

The Panel acknowledged the concerns of local residents regarding public nuisance created by noise late at night from patrons leaving premises in the town centre, and the detrimental effects some of the resulting anti social behaviour might have on their well-being. However the Panel also noted that while it was acknowledged that there are a number of residences in the vicinity of the premises this is a mixed use area comprised of a number of licensed premises which may equally be responsible for some of the disturbances in Hart Street. The Panel took into account the fact that neither environmental protection nor Thames Valley Police had any objection to the variation as now proposed. In considering this particular licensed premises the Panel noted that Mr Wilson had shown a responsible attitude to running the premises over a number of years and had worked consistently with the council's licensing and environmental protection teams to address any issues that had arisen and there was no reason to suppose that this would not continue.

The Panel considered the potential for additional nuisance arising from noise in the premises and from patrons leaving if the requested extension of hours was granted. The

Panel considered that provided the applicant complied fully with the conditions set out on the licence, the later hours of operation would not give rise to public nuisance. It was also possible that the level of disturbance may reduce as people dispersed more quietly over a longer period.

The Panel noted that if the activities of the premises were to cause a public nuisance in the future environmental protection could take action under the Environmental Protection Act 1990; or the licensing officer or responsible authorities or residents could take steps up to and including requesting a review of the licence under the Licensing Act 2003. Consequently the Panel considered that granting the variation to the licence as now sought was consistent with the promotion of all four of the licensing objectives,

Appeal and review rights

Appeal 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. If you wish to appeal you must give notice in time, in the proper form, and with the proper fee to the Clerk to the Justices, The Court House, Oxford Magistrates' Court, Speedwell Street, Oxford OX1 1RZ. The magistrates' court may make any order as to costs as it thinks fit. The magistrates' court can be contacted on 01865 448020. Section 181(1) Schedule 5(9) of the Licensing Act 2003 sets out the process for appeals.

Right of review.

Responsible authorities, local residents, and ward councillors may request a review of the premises licence if the premises are running licensed activities in such a way as to fail to uphold one of the 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 of 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.

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.

Contacts

If you have queries about the licence or about enforcement, contact the licensing team (tel 01491 823209, email licensing@southoxon.gov.uk).

If you have queries about the hearing or this notice, contact the Democratic Services Officer Jennifer Thompson (tel 01491 823619, email democratic.services@southandvale.gov.uk).

The meeting closed at 2.15 pm

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.