

SURREY HEATH LICENSING SUB COMMITTEE

IN THE MATTER OF

LAKESIDE COUNTRY CLUB

DECISION

Introduction

1. On 7th December 2012, we heard an application brought by the Premises Licence holders, Mr R Potter OBE and Mrs J Piper, to amend the premises licence for Lakeside Country Club. The licensing authority received the application on 19th October 2012. We were assisted by an independent legal advisor, Mr Elliot Gold of counsel.
2. The application was as follows:
 - i. To amend the capacity of the premises so as to allow 2,500 persons to be present on the premises at any one time;
 - ii. The removal of the age restriction which prevented persons under the age of eighteen being present;
 - iii. The removal of the condition requiring SIA personnel to carry out security activities;
 - iv. The removal of the condition requiring the use of safety glass / plastic glasses;
 - v. The removal of the embedded conditions relating to on and off sales;
 - vi. The removal of the mandatory conditions.
3. We received a written representation from Environmental Health and a single written representation jointly from two members of the public, Mr and Mrs Quarry from Frimley Green.

4. We were further assisted by the additional oral representations from the premises licence holders and the Environmental Health department. No other persons attended to make oral representations.

The relevant guidance

5. We received the application to amend on 19th October 2012. Our legal advisor advised us that the appropriate Statutory Guidance was that published in April 2012 for the following reasons.
6. There is Statutory Guidance dated October 2012. Paragraph 1.6 of the October 2012 Guidance states that it comes into force as soon as it is laid before Parliament, and that where a licence application was made prior to this date it should be processed in accordance with the previous guidance.
7. The Home Office website, on which the Statutory Guidance is placed, stated that the Guidance had been published on 31st October 2012. Our legal advisor informed us that he had checked the Parliamentary records, which stated that this Guidance had been laid before both Houses of Parliament on 31st October 2012, referring us to the following pages on the Parliament website:

For the House of Commons:

<http://www.publications.parliament.uk/pa/cm201213/cmvote/121031v01.htm>

For the House of Lords:

<http://www.publications.parliament.uk/pa/ld201213/minutes/121101/ldordpap.htm>

8. As we received the application to amend before 31 October 2012, on which date the October 2012 Guidance had been laid before Parliament, our legal advisor advised us that the previous April 2012 Guidance applied.

9. Although we have not referred in this decision to specific paragraphs of the Guidance, and in fact no-one other than our legal advisor referred us to it or its contents during the hearing, we have read and been advised of the sections relating to the licensing objectives and applications to amend premises licences.

Preliminary matters

10. At the start of the hearing, the premises licence holders produced two ring-binders, which they stated contained further information on which they wished to rely. They said that the files had been served on the authority that morning. Those files had not yet reached us and neither had they been received by the Environmental Health department.
11. Our legal advisor advised us to consider this material produced at the hearing and not before it, pursuant to the Licensing Act 2003 (Hearings) Regulations 2005 reg 18. In any event, the representative for Environmental Health stated that they were content for us to consider the material pursuant to reg 18. Although they raised other concerns pursuant to reg 19, our legal advisor stated that this did not prevent us from reading the material; in fact we would be required to read the documents but then to disregard any irrelevant information at the point of our decision making. Therefore, pursuant to reg 18 and with the consent of all the parties present, we read the material produced.
12. The panel retired for a short period for it and the Environmental Health representative to read the documents, which we and they did. We then resumed.

The capacity of the premises

The representations

13. The premises informed us that they wanted to hold events with up to 2,500 persons including members of staff. It informed us this figure was lower than the maximum standing capacity of 3,833 persons which the

building could hold and was lower than the maximum number of persons who safely could be on the premises and be evacuated in the event of a fire, which was 2,790. These figures were contained in a letter to the premises from the Fire Safety Officer Holly Davey, of the Surrey Fire and Rescue Service.

14. The Environmental Health department had raised a concern at the level of toilet facilities if there were to be an increase in the number of persons permitted to be on the premises, referring to the figures contained with the BS 6465-1:2006, Table 11.
15. The premises raised a dispute over what was the correct British Standards Level that applied. First, they stated that the British Standards document to which the Environmental Health department had referred had been superseded and was out of date. After some discussion, it was established that although the 2006 document had been superseded by one published in 2009, the relevant figures in respect of toilet facilities were the same in both of them. Once this was settled, the premises then submitted that the premises licence be amended to as to permit the provision of toilet facilities in the ratios as stated as stated in Table 10. Although the premises stated that any of the tables could be relevant, on being pressed they agreed that they were asking the panel to adopt the figures in table 10.
16. The figures in Table 10 were lower than those in Table 11, pursuant to which figures the premises currently must provide toilet facilities. That is to say that if we decided that the provision of toilet facilities should be in accordance with Table 10, the premises would be permitted to provide fewer toilets than if the provision had to be in accordance with Table 11.
17. The premises also asked us to read a number of risk assessment documents, recommendations from the fire authorities, a risk assessment and safe working procedure document and an events management plan, which we did.

18. The objections of the Environmental Health were as follows. First, they were concerned with overcrowding in relation to sanitation facilities. In particular, that there would be insufficient toilet facilities. They stated that at present the premises had to comply with BS 6465-1:2006. In particular, they stated that the premises should be required to maintain a ratio of toilets as stated in Table 11 of the document.
19. Second, they were concerned with the number of bars and that there would be overcrowding. It was also suggested that, indirectly, this would lead to a greater level of noise and nuisance from the premises due to the increased number of people arriving at and leaving from it.
20. We read the written representation from the members of the public, Mr and Mrs Tom Quarry. They objected to any increase in the premises' capacity on the basis that this would increase the number of cars arriving at and leaving from the premises, the number of drunken persons leaving the premises and would increase the number of fireworks displays. They said that the area can already be quite rowdy in the evenings with people leaving the hotel.
21. We heard no submissions from the police as to any concerns relating to crime and/or disorder and no submissions from any organisations representing the interests of the protection of children.

Our decision

22. There is no suggestion from the police that there have been problems with crime or disorder at this premises. Although the environmental health department did make reference to the potential for crime and disorder, we have been provided with no material that they have supplied alcohol otherwise than in accordance with their licence, that there has been disorder at the premises or that there has been any form of crime.

23. There has also been no material from the Environmental Health department showing that the premises presently cause public nuisance to any significant level. We do note the written representation of Mr and Mrs Quarry but feel that although they state that the premises are situated in a quiet residential area, we have received no representations from any other members of the public and the written representation itself provides very limited detail. We were not persuaded that the receipt of one representation in such limited terms, and in the absence of any further information from Environmental Health, could lead us to find that the premises were causing public nuisance as opposed to private nuisance. Although we see how an increase in capacity could result in more people arriving at and leaving from the premises, we are not clear as to why or how this could result in an increased number of firework displays.
24. We note that there is no suggestion that the premises falls within a tolerance zone.
25. Taking into consideration all that we have heard, our decision is to grant the application to permit an increased capacity of up to 2,500 persons including staff. We are of the view that there is insufficient information before us to find that it would so adversely affect the licensable objectives of crime and disorder, public nuisance and/or public safety for us to refuse it. To the extent that there may be some risk of adverse consequences relating to the licensing objectives, we feel that we can balance this by imposing some further, limited conditions.
26. Having granted this part of the application, we then turn to consider what should be the appropriate level of toilet facilities that the premises must provide.
27. We read the descriptions of Tables 10 and 11. The descriptions of the premises to which Table 10 applied referred, in the main, to pubs or bars where there may be separate functions rooms or dining areas. Table 11

referred to premises primarily providing entertainment such as night clubs or music.

28. In our view, the nature of the instant premises is closer to that of a venue providing entertainment and/or a nightclub than a pub or bar providing entertainment as a secondary function. Therefore, we decide that the figures in Table 11 are what should be the appropriate level of toilet facilities that the premises should provide, rather than Table 10. The premises licence already requires that the toilet facilities be provided in accordance with the figures stated in Table 11 and so our decision is to make no change to the premises licence in this respect.

The removal of the age restriction

Representations

29. The premises stated that they held charitable functions in addition to weddings and other forms of family entertainment at which young persons could properly be present at all times. They therefore wished to remove the restrictions on the attendance of children under the age of eighteen.
30. The Environmental Health department raised concerns as to the presence of children at events where there was entertainment of an adult nature. For example, there could be a charity event involving cabaret acts where there might be nudity or other risqué displays.

Our decision

31. The objection here from Environmental Health appeared to us not to be against the principle of the attendance of children rather than an invitation to formulate appropriate conditions to protect them by specifying which events they should not be permitted to enter. If we are wrong on that, then we consider that we can properly lift the restriction whilst protecting children by specifying those events to which they should not be permitted entry.

32. Our decision is to remove the restrictions on the attendance of children but that the conditions state that children not be permitted entry to any events at which there is entertainment which could be considered of an adult nature and to restrict them from entering the bar areas. Rather than settle on the precise wording of those conditions ourselves, we ask our licensing officers to formulate the appropriate wording for them.

The removal of SIA door supervisors

33. The premises asked that they be granted a discretion as to when they used SIA door supervisors. The premises stated that, at present, it was required to use SIA door supervisors at all events at great expense whether they be charitable events, family celebrations or more commercial bookings, such as darts sports tournaments or ticketed events involving music, dancing and alcohol.
34. The concerns of the Environmental Health department were that the premises had not adequately described the type of staff that it would use as customer attendants in place of SIA supervisors and that this lack of clarity compelled them to oppose this request. They stated that within the risk assessment documents, there was no information as to what training such customer attendants would receive or the types of events in which SIA staff would be used.
35. We took advice on this point from our legal advisor, who advised us as follows. Licensing Act 2003 section 21 requires that where we decide that it is appropriate to impose a condition on the licence that there be one or more individuals to carry out a security activity, we must include a condition on the licence that each such individual be granted a licence under the Private Security Act 2001. The meaning of "security activity" is defined in the Private Security Act at paragraph 2(1)(a) of Schedule 2. This refers to guarding premises against unauthorised access or occupation, against outbreaks of disorder or against damage.

36. Where we require the premises to have one or more persons present to guard the premises against unauthorised access or occupation or against outbreaks of disorder or against damage, we must require that such a person be a person with a licence under the Private Security Act 2001 – that is to say an SIA registered person. If, however, we require no such person to perform such an activity, that does not prevent the premises from having people to perform such functions. However, the persons that the premises may employ to perform these functions can be persons who are not SIA registered. A person must be SIA registered only where we require such a person to be present – not when the premises itself seeks to have such functions performed in the absence of any condition requiring this.

37. We agree that the premises will hold certain events at which the likelihood of there being disorder such as to require SIA registered personnel is low. These might include certain charity events and/or Duke of Edinburgh award events. We therefore follow the table headed 'Lakeside Events Schedule' in section K of the bundle of documents provided by the premises and state that SIA door supervisors will continue to be required at the following events;

- Boxing, Wrestling and any contact sport,
- Darts, Snooker or any other non-contact sport,
- School Proms,
- Cabaret Shows,
- Adult Entertainment,
- Public Music Events.

It is our decision that we will not require the premises to have persons providing security activities at the following events;

- Commercial Exhibitions and Trade Shows or Promotions
- Conferences and Seminars for Businesses, Religious or Community use
- Dancing Competitions
- Fashion Shows and Clothing Exhibitions or Sales
- Nationally recognised Family Occasions

Birthdays, Christenings, Engagements, Weddings and Wakes
Military Tattoos.

38. For the avoidance of doubt, where there is some overlap between the events, say a charity boxing match, we will require SIA registered supervisors to be present wherever one of the events in the second list contains content which would fall within the first list. In other words, we will require SIA registered door supervisors to be present where the content of the event falls within the first list, regardless of whether the event itself falls within the description of the second list.
39. Again, we will leave it to our licensing officers to formulate the appropriate wording for these conditions.

The removal of safety glass / plastic glasses

Representations

40. The premises have stated that at events such as weddings, family events or charitable events, they would like to be able to provide drinks such as wine in proper wine glasses rather than plastic equivalents.
41. The Environmental Health department raised concerns that any increased capacity of the premises would result in a larger number of persons drinking alcohol, leading to a greater risk of crime and disorder. It is pointed out that there may be birthday parties or weddings, large or small, where small arguments could lead unexpectedly to disorder.
42. The written representation from Mr and Mrs Quarry opposes the removal of restrictions relating to glass bottles but other than to state this, provides no further detail.

Our decision

43. We might have been more concerned at removing this condition were the police to have made representations relating to crime and disorder. As it is, the police have made no representations about this. Although

the Environmental Health department has raised some concerns, they are raised in a general way. We have seen no material suggesting that there has been a problem with crime and disorder at the premises and/or that removing this condition is likely to result in an increase in crime and disorder. There is no information before us that suggests that the current management are incapable of managing the premises and that they cannot be trusted to use their own discretion in relation to when real glassware as opposed to plastic glasses or other reinforced glassware should be used.

44. We therefore grant the application to remove the conditions that the premises must use plastic or toughened glasses. If there is any increase in crime and disorder then we can reconsider this at a review.

The removal of embedded conditions regarding 'on' and 'off' sales

Representations

45. The premises suggested that patrons of events would sometimes want to take home unfinished bottles of wine but that this was prevented by the present conditions.

Our decision

46. We heard no substantial objection to this. We note that the premises are not located on the high street and are not so easily accessible; they are unlikely to be able to act as an off-licence for off sales. Accordingly, we accept the reasoning put forward by the premises for the removal of these embedded conditions and it is our decision that they be removed from the premises licence.

The noise levels

Representations

47. The premises have asked for conditions that relate to maximum noise levels of 100 decibels. They said that they would provide their staff with earplugs whilst working but would not provide them to visitors of events. They said that such persons who wanted to leave would be given a

refund of their ticket if they were attending on a paid ticket, or could otherwise leave of their own accord.

48. The Environmental Health department has raised concerns that this is a loud level of amplification and that no assessment has been provided in respect of staff in attendance at music events.

Our decision

49. The safety of staff is regulated by the Control of Noise at Work Regulations 2005, which contents we need not replicate. Where people attend a music event, they can be expected to know the type of event that they are attending. Even if this is not entirely clear, they can choose to leave any event which they consider to be too loud. We note that the HSE website on noise states the following, "The [2005] Regulations do not apply to: members of the public exposed to noise from their non-work activities, or making an informed choice to go to noisy places" (<http://www.hse.gov.uk/noise/employers.htm>).
50. Further, although we have heard contrasting representations from Environmental Health and the premises as to the appropriate volume and levels of amplification in the premises, we have not had explained to us what these mean, what is the effect of these levels of amplification, what they relate to or, really, any other information which allows us to consider this in any detail.
51. We have heard no representations that suggest the premises have had any problem in the past with public nuisance arising from the levels of noise or audio amplification, save the limited written representation from Mr and Mrs Quarry which related more to persons leaving the premises and fireworks displays than the amplification of music.

52. We therefore consider that the appropriate decision for us is to make no conditions relating any decibel limit. If there are future problems relating to public safety or nuisance then we can address those on a premises review.

Removal of the mandatory conditions

53. The premises licence holders suggested that it was unnecessary for the statutory mandatory conditions to be written into the licence. Instead, they submitted that the licence itself should state that all licensable activities be performed pursuant to and in accordance with Licensing Act 2003. They further suggested that the existing conditions and/or the new conditions that they proposed removed the need for the mandatory conditions.
54. We took advice on this point from our legal advisor, who advised us as follows.
55. Licensing Act 2003 section 19(1) states that where a premises licence authorises the supply of alcohol, the licence “must include” the conditions stated within that section. Section 19(4) requires that this includes all conditions specified in an order under section 19A.
56. Section 19A gives a power to the Secretary of State to specify up to nine conditions, by order, if they consider it appropriate for the promotion of the licensing objectives. Those conditions are now well known and we need not repeat them here.
57. The word “include” in section 19(1) indicates that Parliament requires the mandatory conditions to be included within the premises licence – that is, they must be written into it. This is made a mandatory requirement by the use of the word “must” within the section – “must include”. We therefore have no discretion as to whether or not the mandatory conditions are to be included in the licence – we are required by law to ensure that the premises licence does include them.

58. This is supported by section 19A(4)(a) which states that the conditions that the Secretary of State imposes are to be treated as "included" in existing premises licences and, by section 19A(4)(b), they must override any conditions already included in such licences insofar as they are identical to the existing conditions or inconsistent with them. In other words, they must take precedence over any other non-mandatory conditions already present in the premises licence.
59. The premises licence holders in this instance are unable to avoid the mandatory conditions being written into their premises licence by pointing to existing conditions or possible additional conditions that regulate similar or the same matters as the mandatory conditions. The mandatory conditions must override any existing conditions in the premises licence and it would not be appropriate for us to impose discretionary conditions which duplicated the content of the mandatory ones.
60. Having received this legal advice, our decision is to reject the application to remove the mandatory conditions from the premises licence.

The discretionary conditions

61. We have read the letter dated 26th September 2012 from the Environmental Health department, which reaches agreement with the premises on the removal of certain conditions.
62. Taking this into account, we agree the embedded conditions in the premises licence that relate to the sale of supply of alcohol on and off the premises be removed in their entirety.
63. We agree that the following conditions relating to the provision of regulated entertainment be removed from the premises licence insofar as they duplicate existing statutes, are unenforceable or unclear and/or are no longer appropriate.

64. Conditions 1, 3, and 6 to be deleted.
65. Condition 9 be amended to read:
66. There shall be CCTV on and in operation during the hours that the premises are open for licensable activities.
67. The CCTV shall record all areas to which the public have access with the exception of the toilets. One camera shall be directed at the entrance and record the faces of all persons entering it.
68. The CCTV recordings to be kept on the premises, unedited and for a period of no less than 30 days.
69. At any time when a licensable activity is being carried on, there be on the premises a person able both to operate the CCTV system fully and to download the footage on request.
70. There be displayed clearly in the entrance to the premises and in other prominent positions a notice stating that CCTV is on and in operation.
71. Conditions 12 and 16 to be deleted.
72. Condition 15 be amended to read 'SIA...' rather than door staff.

73. We will add the following conditions:

a. The toilet facilities be provided in accordance with the numbers contained in Table 11 of the BS 6465-1:2006 + A1:2009.

Sanitary appliance	For male customers	For female customers
WC	2 for up to 150 males; plus 1 for every additional 250 males or part thereof 2 for up to 50 males if urinals are not provided	2 for up to 30 females; plus 1 for every additional 30 females up to 120, plus 1 for every additional 60 females or part thereof
Urinal	1 per 60 males or part thereof up to 120 males; plus 1 for every additional 100 males or part thereof	Not applicable
Washbasin	1 per WC, plus 1 per 5 urinals or part thereof	1 per WC
Cleaners' sink	As recommended	As recommended

b. For the purposes of clarity, in order for the venue to achieve the maximum capacity of 2,500 persons, and on the assumption of a 50/50 ratio of male and female persons on site, the provision of toilet facilities required are as follows;

c. For male customers: 8 WCs, 19 urinals and 12 washbasins.

d. For female customers: 39 WCs, and 21 washbasins.

e. Each WC shall be permanently fitted in accordance with British Standard 6465-1:2006 +A1:2009, paragraph 3.24

74. For the same reasons, we agree that the following conditions relating to Annex 2 be removed:

Conditions 1 and 4.

75. For the same reasons, we agree that the following conditions relating to Annex 3 be removed:

Conditions 2 and 3.

The reference to '24 months' in condition 7.2 shall be amended to read '12 months'

76. We amend condition number 4 under Capacity to state that no more than 2,500 persons be permitted to be on the premises at any one time. We remove condition number 5.
77. We agree to remove condition 11 relating to plastic glasses and amend condition 12 to state that where plastic glasses are used, they should be made of toughened glass or plastic and be designed to have no sharp edges when broken.
78. We amend condition 14 under Layout and Plans to make reference to casual jackets or suit jackets. We agree that this should cover such clothing as cardigans.
79. We have replaced condition 16 under Toilets and Hand Wash Facilities with the relevant condition on such facilities, referred to above.
80. We have also considered the five pages of proposed additional, discretionary conditions, which amount to forty-three in number. In our view, less is more. We therefore impose the following additional conditions:

The Prevention of Crime and Disorder

81. Any person who shows signs of intoxication will be refused entry to the licensed premises.
82. The Management shall adopt a 'Challenge 25' age policy. Bar staff shall be instructed not to serve anyone who fails to prove that they have reached 18 years of age.

Public Safety

83. In the event of an emergency the automatic announcement recording shall give instructions for the safe evacuation of the premises to where the emergency assembly point is located.
84. During contact sporting events, a qualified medical practitioner shall be in attendance throughout the programme in accordance with the events schedule.
85. Signs requesting orderly conduct when leaving the licensed premises shall be placed above the main exit doors and boundary wall.

The Prevention of Public Nuisance

86. The Management shall control the escape of noise from the licensed premises by ensuring that all doors and windows shall be kept closed during events, except in an emergency.
87. The Management shall not permit recorded music to be placed outside the licensed premises after 2300 hours.

The Protection of Children from Harm

88. Only children, in their capacity as spectators, when supervised by an adult, will be allowed entry to the licensed premises, in accordance with the Events Schedule.
89. Persons under the age of 18 years shall not be allowed access to the licensed premises for a show which may contain nudity, striptease, bad language or material of an adult nature.
90. Children shall not be allowed within the bar areas marked on the plan of the licensed premises.
91. Children shall not be allowed access to the 'Smoking Area'

Conclusion

92. In conclusion, our decision is:

- i. To increase the maximum capacity of the premises to 2,500 including staff;
- ii. To require the provision of toilet facilities in accordance with the BS BS 6465-1:2006 + A1:2009, Table 11;
- iii. To remove the age restrictions of persons permitted to enter the premises;
- iv. To amend the conditions relating to SIA personnel as we have stated above;
- v. To remove the condition requiring the use of safety glass / plastic glasses;
- vi. To remove the embedded conditions relating to on and off sales;
- vii. To dismiss the application to remove the mandatory conditions from the premises licence;
- viii. To amend the conditions as we have stated above.

93. This is the end of our decision.

Dated 21 December 2012