

**JUSTICES REASONS**

**Rock and Chill -v- London Borough of Harrow**

This is an appeal in respect of a review hearing before the Harrow Licensing Authority on 13<sup>th</sup> May 2008. The premises concerned are known by the style 'Crazy Horse'.

The review was brought by the Metropolitan Police following a number of violent incidents at the premises. A number of residents in support of the review made representations to the panel. There were written representations in support of the premises from other residents and customers of the premises.

The licensing authority reduced the hours the premises was permitted to sell alcohol and provide live music to 11.00.p.m. Sunday to Thursday and on Fridays and Saturday to 11.30.p.m. A number of conditions were imposed on the premises licence. The appellant proposed a number of the conditions adopted.

The court will have regard to the decision of the Licensing Authority but is not bound by its decision. We have also considered the licensing policy of the licensing authority.

The court is aware of its duty to promote the licensing objectives. It is apparent the relevant licensing objectives in this case are:

- a. The prevention of crime and disorder
- b. The prevention of public nuisance
- c. Public Safety

There is no statutory definition of nuisance.

The powers of the court are either to dismiss the appeal or substitute for the decision appealed against any other decision which could have been made by the licensing authority.

It is not appropriate to remit the case to the licensing authority with directions.

We have read all the evidence submitted by the appellant and the licensing authority.

If we now turn to the evidence we have heard. There were three serious incidents of disorder on 12 January, 23 February, and 1 March 2008. The court also received evidence cocaine residue was found on every surface in the gent's toilet and on a number of surfaces in the ladies toilet. We read the statements of a number of police officers and three officers gave evidence before the court. The evidence of the police is not dispute.

Dr. Prupti Malde, Alan Garner, and Mr Salman Al-Haider, Resident Association members of Pynnales Close, gave evidence of the noise and disturbance from the incidents that occurred out side the premises. It particular Mr Al-Haider gave evidence of music noise emanating from the premises. Other than the incidents in the

earlier part of the year they gave evidence that no other serious disturbance had taken place.

We found all three witnesses helpful. In effect their evidence went to the issue of noise nuisance. Mr Garner and Mr Al-Haider gave evidence of noise disturbance on a date in August and October. Police were called on both occasions but no action was required.

Police Sergeant Davis, the Licensing Officer for Harrow Borough gave evidence to the court. He confirmed the police were not averse to applying for revocation of a premises licence or a reduction in hours if necessary. The police were not asking for either, it was a matter entirely for the licensing authority and the court.

Prior to the three incidents complained of the premises had not come to the attention of the police. He was unable to assist the court in relation to the issue of nuisance. He confirmed Mr Owide had sought advice from him on a number of occasions and understood Mr Owide had acted on his advice in full.

Sergeant Davis confirmed there had been no reported incidents since March. He was of the view that these types of incidents can occur in licensed premises from time to time where there has been a change of management, poor security or an individual incident which can escalate.

The court then heard the evidence of the appellant.

Mr David Press, Chandelle Lambe, residents of Pynnacles Close gave evidence in support of the premises. They gave no evidence of noise nuisance. We found their evidence equally helpful.

Mr Simon Baker a customer of the premises gave evidence the premises in his opinion well run.

Dunhall Newhall, an acoustic's consultant submitted a report that showed noise levels were generally high in the locality. Observations and measurements were taken on one visit both inside and outside the premises. The measurements were taken after the appellants had re-sealed the windows and fitted an acoustic screen to prevent noise break out. All noise levels appeared to be within an acceptable level. Even on full volume the music could not be heard outside the premises. Noise levels in the area were dominated by road traffic.

We cannot find noise created by Crazy Horse is a nuisance.

Michael Watson, a licensing consultant, gave evidence to the court. He was instructed by Mr Owide in 18 March 2008 following the third incident. His evidence was to the effect there was a total lack of operating procedures. He proposed an operation manual which incorporates thirteen areas of policy and formal staff training. Mr Owide adopted his proposals in full, including all signage, and security measures.

Mr Daniel Owide, designated premises supervisor gave evidence of his extensive experience in the licensed trade. He purchased the premises in 2002. He spent

£450,000 in re-furbishing the premises. He has an over 21 years of age policy. He states his clientele from Stanmore have changed in recent years. He also owned nearby premises until 2006. At that point he had more control over who entered the Crazy Horse. He did not dispute the seriousness of the three incidents in the earlier part of the year. He accepted he had taken his eye off the ball. He cannot explain how the incidents occurred. He confirmed there had been no incidents since.

It is obvious that during the earlier part of the year Mr Owide did not fulfil his responsibility as a licensee, and we believe this situation has brought home the need for him to be vigilant, particularly with regard to staff performance both inside and outside the premises. We acknowledge the extensive steps he has taken to minimise the risk of future serious disorder, in particular staff training, change of security and maintaining the use of his newly introduced operational manual.

Mr Owide has taken steps to address the problem of noise escape from the premises. He has made a start in installing an acoustic screen and sealing the windows. A noise limiter is on the music equipment behind a tamper proof device.

The court is minded to grant the appeal subject to conditions:

In respect the licensable activities the court has decided to re-instate the hours in full.

1. The sale by retail of alcohol shall cease at 12.30.a.m. Sunday to Thursday, and cease at 1.30.a.m. Fridays and Saturdays.
2. Provision of live entertainment shall cease at 12.30.a.m. Sunday to Thursday, and cease 1.30.a.m. Fridays to Saturdays.

Conditions:

1. There shall be no entry or re-entry to the premises after 11.30.p.m. Sunday to Thursday and midnight Friday and Saturday. *Other than by agreement*
2. Condition 15 amended to add a 'tamper proof box'
3. The car park to be patrolled three times an hour from 10.00.p.m. on Friday, Saturday and Sunday and Burn's Night etc as per Condition 2. The car park to be patrolled at 10 minutes intervals during the last hour the premises are open to the public. The time of such patrol to be noted on a log, available for inspection by the local authority.
4. The smoking policy will be in force after 22.30 as per Annex A (p175)
5. Condition 9 in respect of drugs shall be replaced as follows: There shall be random searches of customers and staff in respect of illegal drugs and weapons on entry to the premises. Such searches to be filmed on CCTV and noted on an incident log. The CCTV footage and log to be retained for inspection by licensing authority and police for a minimum 31 days. All substances and weapons seized to be placed in sealed bags (proved by police) signed, and retained for police in a secure area. There be random inspections of the toilets.

We expect Mr Owide to have learnt from this experience and that some of the detailed issues we have been asked to consider we are not dwelling on as we are sure they will be dealt with by his common sense approach.