

FILE NO: A16/0007518

COMPLAINANT: [REDACTED]

LICENSED PREMISES: Gaslight Inn Hotel – LIQH400102143

LICENSEE: Stuart Browne

ISSUES: Whether the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed.

LEGISLATION: *Liquor Act 2007*

SECTION 81 DECISION

Under Section 81(d) of the *Liquor Act 2007* (the Act) I, Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW (L&GNSW), a delegate of the Secretary, Department of Justice, in relation to the disturbance complaint made against the Gaslight Inn Hotel, Darlinghurst, have decided to **issue a warning** to the licensee in the following terms:

'Under Section 81(d) of the Liquor Act 2007 (the Act) I, Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW (L&GNSW), a delegate of the Secretary, Department of Justice warn Stuart Browne, licensee of the Gaslight Inn, Darlinghurst that he must ensure that no future undue disturbance is caused by amplified entertainment or patron behaviour at the Gaslight Inn, Darlinghurst.'

REASONS FOR DECISION

Legislation

1. Section 79 of the Act permits a person to complain to the Secretary that the quiet and good order of the neighbourhood of the licensed premises is being unduly disturbed because of the manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).
2. For the purpose of section 79 of the Act, a complaint may be made by a resident in the neighbourhood of the subject licensed premises who is authorised by at least 2 other residents.
3. Section 80 of the Act enables the Secretary to deal with a complaint by way of written submissions from the licensee and any other person the Secretary considers appropriate. After dealing with the complaint, section 81 of the Act provides that the Secretary may decide to impose, vary or revoke licence conditions, issue a warning, or take no action.
4. In exercising functions under the Act, the Secretary must have regard to the objects set out in section 3 of the Act and must have regard to the matters set out in section 3(2) which are:
 - a) The need to minimise harm associated with the misuse and abuse of liquor;
 - b) The need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor; and,
 - c) The need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

The Complaint

5. On 31 May 2016 [REDACTED] lodged a disturbance complaint under section 79 of the Act concerning the hotel. He lodged the complaint as a resident authorised by four other residents. All the complainants reside in the same apartment building situated almost exactly opposite the hotel. They allege that since February 2016 the hotel has conducted live amplified entertainment which has been extremely loud on Thursday, Friday, Saturday and Sunday nights. They further allege that the music is so loud that in

the apartments occupied by the complainants, normal home pursuits such as having a normal conversation or watching TV are disturbed, even when windows and doors are closed. The complaint further asserts that patrons are going out for a cigarette and urinating in the laneway beside the hotel and singing songs at full voice after the live entertainment has concluded.

6. The authorised complainant also alleges that in March 2016 he attended the venue in an attempt to discuss the disturbance with the licensee. He met with a male who he believed may have been the licensee but left after a short time without achieving any resolution of the matter.
7. The disturbance was reported to Police and Council. Council took no action, however Police intervened on a number of occasions. They have listened to noise levels in some affected apartments and have instructed the hotel to close windows and doors and turn the music down. The complainants have provided a copy of an email from Police which describes listening to the music from one affected apartment and describing it as 'unacceptable'
8. The complainants seek that the hotel take action to mitigate the disturbance by:
 - Keeping windows and doors closed when live entertainment is provided
 - Keeping windows and doors closed when amplified recorded music via a Juke Box or other means is provided
 - Employing enough staff to ensure the above is adhered to
 - Moving the band away from the front doors
 - Pointing speakers away from windows and doors
 - Installing a sound limiter
 - Employing security staff
 - Constructing an air lock
 - Soundproofing windows.
9. Between 31 May 2016 and 27 June 2016, various submissions were lodged by the parties. A list of the material that is before the delegate of the Secretary is set out in Annexure 1.

Considerations and findings

10. *Statutory considerations of section 81(3) of the Act:*

The Act requires that in certain cases the Secretary have regard to three statutory considerations being the order of occupancy between the licensed premises and the complainant; any changes in the hotel and the premises occupied by the complainant, including structural changes to the premises; and, any changes in the activities conducted on the licensed premises over a period of time.

11. *The order of occupancy between the licensed premises and the complainant*

The hotel's liquor licence indicates that the hotel has operated at its current site since 29 June 1959. The present licensee commenced operation at the hotel on 15 September 1987. The hotel predates the authorised complainant who has lived at his apartment for approximately nine years. This fact is not in dispute and I consider that the order of occupancy consideration is in favour of the hotel.

12. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises*

Since the complaint was lodged the licensee has implemented a number of noise mitigation measures, including repositioning speakers and live performers, keeping windows and doors shut and use of security to monitor patron behaviour as they come and go from the hotel. There is no evidence before me that there have been any changes to the complainants' residences.

13. *Any changes in the activities conducted on the licensed premises over a period of time*

The complainants allege that prior to February 2016 there had been no complaints to speak of about the hotel. The hotel was noisy from time to time, particularly from patrons around Easter, but as it was not every weekend, it did not warrant complaints from residents of affected apartments. However from February 2016 it appears that the hotel has commenced live amplified entertainment which is so loud it is causing disturbance to the complainants. They are not aware of the hotel providing this sort of entertainment prior to February 2016.

14. *Submissions:*

On 20 June 2016 a submission was received from the licensee. The licensee responded to the complaint in the following terms:

- He has never been of the opinion that sound emanating from the hotel has been or is offensive to residents and notes that the area surrounding the hotel is a busy and bustling part of Darlinghurst. Nevertheless when a noise abatement order was issued by Police he took action by turning down the volume and repositioning speakers and performer so they do not face Crown St. He has also where possible the doors are closed for performances and only open for short periods.
 - He has never seen his patrons urinate in the side lane, noting that there is a toilet in his venue some 15-20 metres away. Despite this he will endeavour to monitor those hotel patrons who use the lane to smoke.
 - The licensee notes that there are at least six venues including bars and restaurants within the vicinity of the hotel. Due to the large numbers of people entering or leaving the Oxford St precinct, it is unfair to attribute noise from this source as being solely from the hotel or its patrons. However the licensee and his staff are willing to monitor noise levels of patrons leaving the hotel to assist in reducing street noise in the vicinity of the hotel. A notice at each exit will also be put up requesting that patrons refrain from making noise as they exit and a register of disturbance complaints will be kept.
 - The licensee will also keep the door and windows at the front of the hotel closed during live performances, but not when amplified music is conducted at acceptable levels from the jukebox. The hotel has used a juke box for 25 years and has never had a complaint.
 - The implementation of electronic monitoring equipment is unnecessary and the hotel employs security on a needs basis and will continue to do so.
 - The hotel has implemented a number of measures to reduce the noise emanating from the hotel and considers that an acoustic report prepared by an acoustic engineer is not necessary. The cost would also place severe stress on the business which is suffering due to the lock-out laws.
15. On 23 June 2016 a submission was received from Sydney City Council. It noted that there was no DA for the ground floor, however due to representations from Police in 2007 about overcrowding, the Council had set patron capacity at 140 for the ground floor. A developmental consent was issued in 2002 for a change of use of the first floor from a lounge and dining area to a function room. Notably, no live entertainment was to

be provided on the first floor. The Council has only received one noise complaint relating to the hotel, dating back to 2009. This complaint was resolved without any formal action being taken.

16. On 24 June 2016 a submission was received from NSW Police. The submission comprised of a short description of four incidents along with supporting documentation. The incidents covered the period 26 March 2016 to 11 May 2016. The incidents are summarised as follows:

- 11 May 2016 – 12.00 pm
Police contacted the licensee by phone re the provision of CCTV footage relating to an alleged stealing of a wallet on 8 May 2016. The licensee was not co-operative.
- 6 May 2016 – 11.49 pm
Police attended the hotel and issued a noise abatement direction after receiving a complaint from a nearby residence. Police attended the residence and could clearly hear a band and singer performing and could still hear this when a screen and glass door was closed. An officer then attended the front of the hotel who confirmed by phone to an officer in the residence that it was the same noise heard in the residence.
- 28 April 2016 – 9.32 pm
Police attended the hotel after receiving several complaints of noise and required the licensee to turn down the volume.
- 26 March 2016 – 00.42 am
Police attended the hotel after receiving a noise complaint. They spoke to the licensee who was defensive. Police advised the licensee to keep the front doors closed. This done and noise levels reduced slightly.

17. On 28 June 2016 a submission in response to the licensee submission was received from the authorised complainant, [REDACTED]. The salient points of the submission are summarised as follows:

- The complainants acknowledge that the area is busy and noisy with pedestrian and other noise. All the complainants bar one have lived in the affected apartment for seven to ten years and no-one to their knowledge has complained about the hotel.

The only issue has been the noise from the hotel for the period March to May after it commenced regular live music.

- The measure the hotel has recently taken to reduce noise have made a great difference to the volume of music heard in the complainants' residences. The complainants agree that electronic monitoring and acoustic consultants appear unnecessary at this point.
- The complainants accept that public urination is not solely the hotel's problem and acknowledge the licensee's offer to monitor patrons more closely to ensure this does not happen again. It never seems to happen when the hotel employs two security personnel on the footpath. The complainants are happier with the current state of affairs. Music is almost indiscernible in the apartments when windows and doors are closed, except when distracted staff do not keep windows and doors closed.
- The complainants are willing to trial whether the current level of music noise is acceptable and put the improvement down to security being employed and all doors and windows being closed. They urge that four conditions be placed on the licence as follows:
 - Keep a register of disturbance complaints
 - Deploy at least one security guard on all nights live entertainment is provided and two on Fridays and Saturdays up till one hour after the entertainment finishes
 - Keep all windows onto Crown and Little Oxford St shut during live entertainment
 - Keep all doors onto Crown and Little Oxford St shut as much as possible during live entertainment, with monitoring of security.

18. On 2 August 2016 the licensee advised that he did not wish to provide a final submission.

Summary and conclusion

19. I have considered the submissions from the complainant, licensee, NSW Police and the Sydney City Council. I have also had regard to the particular context in which the hotel operates (including the statutory considerations mentioned above) and fact that the Hotel is a late trading hotel in a busy entertainment precinct.

20. Notwithstanding that the order of occupancy is in favour of the Hotel, I am satisfied the material before me is sufficient to support a finding that the hotel, at times, has caused undue disturbance to the neighbourhood. I have balanced the submissions on behalf of the hotel, the submissions made on behalf of the complainant, the material provided by the Police Local Area Command and the Sydney City Council.
21. The hotel is located in a busy location in the CBD Entertainment Precinct near the corner of Crown and Oxford Streets with a number of licensed premises in close proximity. A level of disturbance from the normal operation of these premises is to be expected, including noise from live entertainment, patrons and pedestrian traffic generated by the hotel and other nearby venues. I do not regard this type of disturbance as undue in a general sense, taking into account the nature of the local environment.
22. However in this case it is clear that in February 2016 the licensee changed his business model and introduced live amplified entertainment on the ground floor of the hotel on a regular basis. Significantly this was during summer and I am satisfied that initially the doors and windows of the hotel, which are almost directly opposite the apartment block containing the complainants residences remained open most of the time when live amplified entertainment was provided. I am satisfied that this was the primary cause of exacerbating the level of noise disturbance from amplified live entertainment and patrons and driving it to a level where it became undue and remained so for some three months.
23. I have been particularly persuaded by the evidence supplied by independent evidence of NSW Police. This evidence substantiates the allegations that noise from live amplified entertainment has caused undue disturbance to the point that on one occasion Police considered it necessary to issue a noise abatement order. This was after Police had attended an affected residence and clearly heard noise from live amplified entertainment at the hotel through closed screen and glass doors. On at least two other occasions Police have attended the hotel due to noise complaints and required the hotel to either turn down the volume or close doors.
24. The licensee has advised in his submission of 20 June 2016 that he has taken a number of steps to mitigate the disturbance caused by amplified live entertainment and patrons at the hotel. These include:
 - o Reducing the volume and repositioning speakers and performer
 - o Keeping windows and doors closed

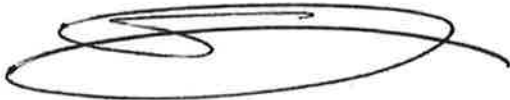
- Employment of security outside the hotel to manager patron behaviour as the enter and leave the hotel and monitor the closing of windows doors
 - A notice at each exit will also be put up requesting that patrons refrain from making noise as they exit and
 - A register of disturbance complaints will be kept.
25. The complainants have advised in their submission of 28 June 2016 that the above measures have been largely successful. Music is almost indiscernible in the apartments when windows and doors are closed, except when distracted staff do not keep windows and doors closed. They are willing to trial whether the current level of music noise is acceptable and put the improvement down primarily to security being employed and all doors and windows being closed. They also ask that most of the measures voluntarily put in place by the licensee to mitigate undue disturbance be imposed as four conditions on the licence.
26. I am satisfied that the licensee has caused undue disturbance from the operation of the hotel in the past to the complainants. However I am also satisfied that he has voluntarily taken steps to mitigate the disturbance. These mitigation measures appear to have been successful in restricting the disturbance from amplified entertainment and patrons at the hotel to a level where it is not undue for the purposes of section 79 of the Act, after the nature of the local environment is taken into account. There is also no evidence before me of any further complaints of undue disturbance since the complainants' submission was lodged on 28 June 2016.
27. I have noted the complainants' request that conditions be imposed on the licence of the hotel. I am not persuaded that this level of regulatory intervention is warranted in this case. I am however satisfied that issuing a warning to the licensee is an appropriate regulatory intervention and provides more regulatory certainty than taking no further action as it provides an escalation path should there be a recurrence of undue disturbance occurring.
28. Accordingly I have decided to issue the following warning to the licensee under section 81(d) of the Act:

'Under Section 81(d) of the Liquor Act 2007 (the Act) I, Sean Goodchild, Director Compliance Operations, Liquor and Gaming NSW (L&GNSW), a delegate of the Secretary, Department of Justice warn Stuart Browne, licensee of the Gaslight Inn,

Darlinghurst that he must ensure that no future undue disturbance is caused by amplified entertainment or patron behaviour at the Gaslight Inn, Darlinghurst.'

29. The licensee should be aware that if I receive further reports of undue disturbance from the hotel, I may revisit this decision and consider whether conditions should be imposed on the licence.

Date of decision: 12 September 2016.



Sean Goodchild
Director Compliance Operations
Delegate of the Secretary, Department of Justice

Application for review:

Should you be aggrieved by this decision, you may seek a review by the Independent Liquor & Gaming Authority by lodging an application. This must be lodged within 28 days of the date of this decision, that is, by no later than 10 October 2016. A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at:

https://www.liquorandgaming.justice.nsw.gov.au/Documents/lga/publications-and-guidelines/Authority_Guideline_2.pdf

In accordance with section 36C of the *Gaming and Liquor Administration Act 2007* this decision will be published on the Liquor & Gaming NSW website at www.liquorandgaming.justice.nsw.gov.au.

Annexure 1

The material before the delegate of the Secretary in making this decision comprises:

1. Section 79 Noise Disturbance Complaint lodged 31 May 2016
2. Submission from licensee received 20 June 2016
3. Submission from Sydney City Council received 23 June 2016
4. Submission from NSW Police received 24 June 2016
5. Submission from authorised complainant received 28 June 2016
6. Liquor & Gaming NSW email to licensee dated 18 July 2016
7. File note of telephone conversation with licensee dated 2 August 2016