



FILE NO: A17/0011084
LICENSEE: Timothy Graeme Parmenter
LICENSED PREMISES: Greystanes Hotel, Greystanes – LIQH400104707
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 of the *Liquor Act 2007* (the Act) I, Sean Goodchild, Director Compliance Operations, Liquor & Gaming NSW a delegate of the Secretary, Department of Industry, in relation to the complaint made in respect to the Greystanes Hotel (the hotel) have decided to take **no further action** in regards to the complaint.

REASONS FOR DECISION

Legislative framework

1. Section 79 of the Act provides that a prescribed person may 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 person who has standing to make a complaint includes a person who is a resident in the neighbourhood of the licensed premises and is authorised in writing by two or more 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:
 - the need to minimise harm associated with the misuse and abuse of liquor;
 - the need to encourage responsible attitudes and practices towards the promotion, sale, supply, services and consumption of liquor; and,
 - 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 22 November 2017, [REDACTED] of [REDACTED] lodged a complaint alleging that her interests have been adversely affected by undue disturbance from the operation of the hotel.
6. On 19 December 2017, additional medical evidence was received from the complainant to substantiate claims that her health has been severely impacted as a result of sleep disturbance. This complaint was accepted by L&GNSW on 10 January 2018.
7. The complainant alleges that disturbance occurs predominately on Friday and Saturday nights from live music and karaoke. The complainant referenced two specific instances of disturbance occurring on the nights of 28 October 2017 from 7:00pm to 11:15pm; and 18 November 2017 until 11:00pm.
8. L&GNSW later received correspondence from the complainant which cited disturbance from the hotel on 23 February 2018 and 24 February 2018.
9. The complainant seeks the hotel be restricted to playing music indoors with all windows and doors closed whilst entertainment is in operation. She further requests that amplified music be reduced to ensure noise is not audible within her residence.
10. Between 17 January 2018 and 27 April 2018, various submissions were lodged by all parties. A list of the material before the delegate is set out in Annexure 1.

Statutory considerations of section 81(3) of the Act:

11. The Act requires that the Secretary have regard to the following statutory considerations.

12. *The order of occupancy between the licensed premises and the complainant* – the hotel has operated under its current licence at its present site since 14 March 1960. The present licensee commenced at the hotel on 23 April 2013. The hotel predates the complainant's occupation of her residence. These facts are not in dispute and I consider the order of occupancy to be in favour of the hotel.
13. *Any changes in the licensed premises and the premises occupied by the complainant, including structural changes to the premises* – there is no evidence before me that there have been any changes to the complainant's residence. Structural changes were made to the hotel with the installation of a family courtyard and children's outdoor play area.
14. *Any changes in the activities conducted on the licensed premises over a period of time* – the complainant alleges that there have been significant operational changes to the licensed premises with regular live music and karaoke. The business owner submits the hotel has shifted its operations to focus on being family-friendly as evidenced by the installation of the children's play area. On the available material before me, the hotel remains focused on an offering of food and beverage accompanied by entertainment on busier trading nights. Since the complaint, karaoke performances at the hotel cease 30 minutes earlier at 10:30pm.

Other Considerations

Undue disturbance

15. I am not satisfied on the material before me that there is sufficient evidence to support a finding that the hotel has caused undue disturbance to the neighbourhood. In making this finding, I have balanced the submissions made by the business owner, the complainant, NSW Police, and Council.
16. The hotel is a late trading venue in the local centre of Greystanes on Merrylands Road, next door to a number of retail and business stores within the Greystanes Shopping Centre.
17. The complainant's residence is 153 metres from the rear of the hotel, one street back from the hotel carpark. The hotel conducts entertainment in the beer garden which is on the side of the hotel directly adjacent to this carpark. The immediate residential neighbours located approximately 25 metres from the Beer Garden (between Cumberland Road and Terry Street) are not party to the complaint.

18. I have considered the complainant's allegations of excessive noise from live music and karaoke predominately on Friday and Saturday nights. The complainant provided four specific examples of disturbance including dates and approximate times.
19. Both Council and Police have acted to mitigate the risk of undue disturbance associated with noise emission from the venue, and its effect on the amenity of the area.
20. Council received two noise complaints from the complainant dated 15 October 2017 and 28 October 2017 respectively. Council attended the area on three separate nights during live music and did not assess the noise as being offensive.
21. A Council survey established that whilst music was being performed on Friday and Saturday nights, residents in close proximity to the complainant's residence did not consider themselves impacted as it concluded at 11:00pm. One resident indicated that the level of disturbance increased on karaoke nights.
22. NSW Police indicate that on 19 November 2017 at 12:46am, the hotel complied with a noise abatement direction to reduce amplified noise in response to a noise complaint received 18 November 2017 at 8:23pm.
23. Police advise they have attended the hotel covertly on five separate occasions between September 2017 and March 2018. On these nights, Police indicate that disturbance was not perceived to be excessive by officers located both within the licensed premises and outside, patrolling the surrounding streets.
24. On 24 March 2018 at 7:15pm, Police covertly assessed noise levels from karaoke at the hotel prior to receiving a noise complaint from the complainant at 9:46pm alleging disturbance. Police conducted further investigations before determining that no further action was necessary as the noise generated was considered to be neither loud nor offensive.
25. Police indicate they have not received any noise or disturbance complaints from any other residents who reside in the vicinity of the hotel.
26. In response to the disturbance complaint, the business owner engaged Rodney Stevens Acoustics to conduct an acoustic test of the hotel's compliance with the LA10 noise standard on two consecutive nights from 2 February 2018 to 3 February 2018. The test was carried out whilst live music and karaoke was played in the beer garden of the hotel. The report concluded that the hotel operates in compliance with the LA10 criteria.

27. There is limited direct evidence to support a finding that the hotel has caused undue disturbance. In this regard, I have been persuaded by the observations and investigations undertaken by Council and Police.
28. A level of disturbance from the normal operation of a hotel is to be expected, including noise from live entertainment, patrons, and pedestrian traffic generated by the premises. I do not regard this as a type of disturbance as undue taking into account the environs of the local neighbourhood in conjunction with the nature and operation of the hotel.

Action taken to mitigate disturbance

29. In considering whether to impose conditions on the liquor licence, I have balanced the submissions of all parties, having specific regard to any action taken by the business owner in response to the complaint and the effectiveness of any measures that have been implemented to address disturbance.
30. The business owner acknowledged disturbance concerns raised and implemented the following measures to mitigate disturbance, including:
- engaging with Council, Police, and the complainant;
 - updating the sound system to restrict the type of soundwaves amplified;
 - introducing fold back speakers to redirect noise towards the performer;
 - reducing the volume of amplifiers;
 - lowering a blind around the performance area;
 - management regularly patrolling the car park to assess noise levels; and
 - introducing a noise complaint register.
31. The complainant conceded that since the complaint, the level of disturbance has been reduced and there have been evenings where the level of noise has been acceptable. However, she asserts that the frequency with which disturbance still occurs is distressing.
32. On 2 March 2018, the complainant lodged an application for noise abatement in court. The matter is currently listed for mention in the Parramatta Local Court on 15 August 2018.
33. The business owner advised that since the notice of listing, the hotel has offered to install double glazed windows in the complainant's bedroom to mitigate sleep

disturbance. He submits that the complainant declined this offer on the grounds that her air conditioning is too noisy and she prefers to sleep with her windows open in summer.

34. The business owner has voluntarily proposed the installation of a noise limiter to control all amplified entertainment at the licensed premises. All amplifiers would be under the control of the noise limiter which would be calibrated by an acoustic consultant to ensure compliance with the LA10 noise criteria.

Findings and conclusion

35. I have considered the submissions of the complainant, business owner, Police and Council. I have also had regard to the particular context in which the hotel operates. I have taken the statutory considerations into account and acknowledge the order of occupancy in favour of the hotel and that it is reasonable to expect some form of noise will be generated from its ongoing operations.
36. I acknowledge the business owner has implemented a range of measures to mitigate disturbance, including the introduction of fold back speakers to redirect amplified noise back towards the performer and other operational measures.
37. While I note the complainant's concerns in relation to the hotel providing live music and karaoke in the beer garden, the fact remains that the hotel has been found to operate in compliance with the LA10 noise criteria regardless of its proximity to residential properties. This determination is supported by the numerous investigations conducted by both Council and Police in assessing noise from the hotel as not being undue.
38. In the absence of a finding there has been undue disturbance from the available material, the appropriate response in this context of a disturbance complaint is to take no further action.
39. I am satisfied that the voluntary measures implemented by the business owner sufficiently address the issues raised in the complaint.
40. Finally, I note the licensee has an ongoing obligation to manage and minimise levels of disturbance cause by the hotel. I strongly encourage the licensee to proactively manage the issue to ensure that the hotel continues to contribute to, and not detract from, the amenity of the neighbourhood.

Decision Date:

15 / 8 / 8



Sean Goodchild

Director Compliance Operations

Liquor & Gaming NSW

Delegate of the Secretary of the Department of Industry

Application for review:

Should you be aggrieved by this decision, you may seek a review by the Independent Liquor & Gaming Authority by an application which must be lodged within 28 days of the date of this decision, that is, by no later than 12/9/18 . A \$500 application fee applies. Further information can be obtained from Authority Guideline 2 published at www.liquorandgaming.nsw.gov.au

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.liquorandgamingnsw.nsw.gov.au



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

1. Section 79 Noise Disturbance Complaint lodged by [REDACTED] on 22 November 2017.
2. Submission from the complainant re medical evidence received 19 December 2017.
3. Submission from [REDACTED] Environmental Health Officer, Cumberland Council received 17 January 2018.
4. Submission from the business owner received 20 February 2018.
5. Submission from the complainant re engagement with Council and hotel dated 18 February 2018.
6. Response to the business owner's submission from the complainant dated 22 February 2018.
7. Submission to Council from the complainant re noise abatement order dated 25 February 2018.
8. Submission from [REDACTED] Commander of Cumberland Police Area Command received 4 April 2018.
9. Final submission from the business owner dated 27 April 2018.