

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Mr Russell Patterson

Respondent: Mr Dale Jeffrey Harris
(Licensee of Guildford Indoor Sports)

Premises: Guildford Indoor Sports
150 Queens Road
South Guildford

Commission: Mr Jim Freemantle (Chairperson)
Ms Helen Cogan
Mr Greg Joyce

Date of Hearing: 20 July 2010

Date of Determination: 25 August 2010

Matter: Application for review of decision of the Delegate of Director of Liquor Licensing under section 25 of the *Liquor Control Act 1988*

Determination:

1. The decision of the Delegate of the Director of Liquor Licensing dated 25 March 2010 is affirmed and
2. The conditions of licence no 6260088070 are varied as follows:
 - a) Trading Hours:
 - Monday to Friday- 5.00pm to 11.00pm
 - Saturday -12 midday to 11:00pm
 - Sunday 12 midday to 10.00pm;
 - b) a one way alarmed touch bar fire exit door be fitted to the doorways leading to the area between the Centre and the applicant's property.

Authorities cited in determination:

Hancock -v- Executive Director of Public Health [2008] WASC 224

McHenry (1987) 4SR (WA) 31-58

Introduction

1. Mr Dale Harris, licensee of Guildford Indoor Sports Centre holds a Special Facilities Licence which inter alia, provides for and restricts the sale of liquor to participants in sporting activities and spectators and persons assisting the participants in these sporting activities.
2. On 13 February 2008, the applicant lodged a complaint under section 117 of the Act which on 17 March 2008 was resolved after certain undertakings were given by Mr Harris as licensee of Guildford Indoor Sports Centre, designed to mitigate alleged problems of excessive noise and anti social behaviour.
3. On 21 July 2009 a complaint under section 117 was lodged by the applicant on behalf of himself and 5 others alleging regularly occurring anti social behaviour which was unduly annoying and disturbing to residents in the vicinity of the premises.
4. Various attempts were made to mediate after which the Director gave notice to the licensee on 25 January 2010 and 10 March 2010 of conditions he proposed to impose on the licence. No response was received by the Director to either notice.
5. On 25 March 2010, further conditions were imposed on the licence.
6. On 22 April 2010, the applicant lodged an application under section 25 for a review of the decision of the Director of Liquor Licensing dated 25 March 2010 made in respect of the section 117 complaint lodged on 21 July 2009.

Applicant's Submissions

7. The Director did not adequately take into consideration the listing of incidents relating to the level of disturbance and harm caused and the apparent failure of the licensee to implement harm minimisation practises as a result of which the final section 117 complaint was lodged; the issues included parking on verges, obstructing driveways, revving of engines, slamming car doors and loud voices often using less than normally acceptable language. A log of incidents had been kept and submitted to the Director.
8. There was a continuous breach of the conditions agreed to by the licensee and there were ongoing breaches of the licence conditions.

9. Anti social activities continued and the applicant felt his personal safety was threatened.
10. The Director did not adequately consider the number and nature of personal conversations between the Applicant and departmental inspectors concerning the issues surrounding the Guildford Indoor Sports Centre.

Respondent's Submissions

11. Every effort that could reasonably have been made to eliminate any problems arising from the use of, ingress to and egress from the Centre has been made.
12. The conditions of the licence are being complied with.
13. Efforts to discuss matters with the applicant have generally been rebuffed.
14. The applicant has never visited the Centre and therefore could not know what occurred within the licensed premises.
15. The centre itself has suffered from vandalism, graffiti and theft outside its operating hours.

The Hearing

16. A hearing was held on 20 July 2010.
17. The applicant largely relied on the written material he had submitted and which is covered in paras 7 – 10 above but added that the alarm at the Centre continually triggered in the early hours of the morning on many occasions.
18. The respondent conceded to the alarm problem and said that it had taken sometime to discover and remedy the fault. He further reiterated the material referred to in para 11 – 15 above.
19. In conducting a review under section 25, the Commission is not constrained to finding error on the part of the Director of Liquor Licensing but is to undertake a full review of the materials before the Director and make its own determination on the basis of those materials (refer Hancock –v- Executive Director of Public Health (2008) WASC 224).

20. It was agreed by both parties that efforts had been made to rectify problems arising in the outdoor area between the Centre and the applicant's fence. However there remained a problem of noise and activity in this area.

Reasons for Determination

21. There is little doubt that living next door to a Sports Centre where activities continue late into the night and the attendant issues of participants departing and the consequent noise occasioned by voices and vehicles (which tend to be magnified at night) provides difficulties for those residents.
22. By operation of section 117 of the Act, the Complainant must show on a balance of probabilities (section 117(4a)(b)) that the amenity, quiet or good order of the neighbourhood is unduly disturbed (section 117(1)(a)) or that any behaviour, noise or disorderly conduct is unduly offensive, annoying or inconvenient (section 117(1)(b)).
23. The Centre had been in existence prior to the applicant taking up residence next door and alcohol was on a BYO basis. A Special Facilities Licence was granted in respect of the premises after the Applicant took up residence.
24. There was no specific evidence that the granting of the Special Facilities Licence had led to the sort of behaviour about which the applicant complained in both the section 117 complaints he lodged.
25. The Commission accepts that inadequate provision of parking causes Centre patrons to park as they do, causing inconvenience and obstruction of neighbours properties.
26. The Commission accepts that the noise level at and around the time the majority of the participants leave the Centre due to voices and vehicles causes a disturbance but could not conclude it was undue. (*McHenry (1987) 4SR (WA) 31-58* is authority for the principle that quiet must be "unduly disturbed". This requires in its ordinary and natural meaning the interruption of a person's peace in the usual enjoyment of his property. The word must also be qualified by the nature of the neighbourhood; thus in a quiet neighbourhood disturbance might be undue which was not so in a more noisy neighbourhood. (If one resides in the vicinity of a hotel one must, however, expect some disturbance.)

27. The behaviour on leaving the Centre is consistent with the young male demographic which is the principal user of the Centre.
28. The Commission finds no clearly demonstrated nexus between the licence and the ability to serve alcoholic beverages and any inconvenience and disturbance caused in proximity to the Centre.
29. No evidence was provided that participants leaving the Centre were drunk or under the influence of alcohol.
30. In an attempt to reduce the impact of the operation of the Centre, and more particularly the issues arising in the surrounds of the Centre, the Commission orders that:
1. the hours of operation of the Special Facilities Licence be reduced so that the sale of alcoholic drinks ceases at 11pm Monday to Saturday with Sunday trading hours to remain unchanged;
 2. a one way alarmed touch bar fire exit door be fitted to the doorways leading to the area between the Centre and the applicant's property in order to reduce the activity and consequent noise in the area in question.
31. The Commission accepts that these orders will not cure the problem but is an attempt to alleviate the problems arising around the Centre.

A handwritten signature in black ink, appearing to read 'Jim Freemantle', with a horizontal line drawn underneath it.

JIM FREEMANTLE
CHAIRPERSON