

# LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Tuesday 22 October 2013, at the Town Hall, Royal Leamington Spa at 10.00 am.

**PANEL MEMBERS:** Councillors Illingworth, Mrs. Knight and Wreford-Bush.

**ALSO PRESENT:** Peter Dixon (Committee Services Officer), Emma Dudgeon (Licensing Enforcement Officer) and Caroline Gutteridge (Council's Solicitor).

## 1. APPOINTMENT OF CHAIR

**RESOLVED** that Councillor Illingworth be appointed as Chair for the hearing.

## 2. DECLARATIONS OF INTEREST

There were no declarations of interest.

## 3. APPLICATION FOR THE GRANT OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 FOR SAINT BAR, 40 WARWICK STREET, ROYAL LEAMINGTON SPA

A report from Health and Community Protection was submitted which sought a decision on an application from Mr Coppor Burton for the grant of a premises licence for Saint Bar, 40 Warwick Street, Royal Leamington Spa.

The Chair introduced himself, other members of the Panel and officers, and asked the other parties to introduce themselves.

Mr Besant (Solicitor) attended to represent the applicant, Mr Coppor Burton, who was also due to attend the meeting but had yet to arrive. As well as being the applicant, Mr Coppor Burton was the Designated Premises Supervisor (DPS) for Saint Bar.

Sergeant Calver attended to represent Warwickshire Police, an interested party objecting to the application. He was accompanied by Sergeant Wiggins and PC Mann, both of whom attended the meeting as observers. Mr Jenkins attended to represent Environmental Health, who had objected to the application, and he was accompanied by Mr Shirley, Environmental Health Officer, who also attended the meeting as an observer. Mr Gifford, local resident, attended the meeting as an interested party objecting to the application, but clarified that he was also a member of Warwick District Council.

The Council's Solicitor explained the procedure that the hearing would follow.

The Licensing Enforcement Officer outlined the report and asked the Panel to consider all the information contained within it, and the representations made to the meeting, and to determine if the application for a premises licence should be approved.

## **LICENSING PANEL HEARING MINUTES (Continued)**

The application before the Panel was for:

*Supply of Alcohol for consumption on and off the premises*  
Monday to Sunday from 10:00 to 06:00

*Live Music; Recorded Music; Performance of Dance; Anything similar to live and recorded music and dancing (all indoors only)*  
Monday to Sunday from 10:00 to 06:00

*Late night refreshment*  
Monday to Sunday from 10:00 to 05:00

*Opening hours of the premises*  
Monday to Sunday from 10:00 to 06:30

Saint Bar already had a licence which permitted the following:

*Sale of Alcohol for consumption on the premises*  
Monday to Wednesday from 10:00 to 01:00  
Thursday to Saturday from 10:00 to 02:00  
Sunday from 10:00 to 00:00

*Sale of Alcohol for consumption off the premises*  
Monday to Sunday from 10:00 to 23:00

*Live Music; Recorded Music; Performance of Dance; Other Activities of a similar description to that of live music, recorded music or performance of dance (all indoors only)*  
Monday to Wednesday from 10:00 to 01:00  
Thursday to Saturday from 10:00 to 02:00  
Sunday from 10:00 to 00:00

*Late night refreshment*  
Monday to Wednesday from 23:00 to 01:00  
Thursday to Saturday from 23:00 to 02:00  
Sunday from 23:00 to 00:00

*Opening hours of the premises*  
Monday to Wednesday from 10:00 to 01:00  
Thursday to Saturday from 10:00 to 02:00  
Sunday from 10:00 to 00:00

The report referred to those matters to which the Panel had to give consideration, the statutory guidance issued by the Secretary of State, the Council's Licensing Policy Statement and the Licensing objectives.

An operating schedule had been submitted with the application, which would form part of any premises licence issued:

### *General*

Staff training is carried out and recorded in relation to recognising and dealing with intoxicated, underage and rowdy customers.

## **LICENSING PANEL HEARING MINUTES (Continued)**

A personal licence holder must be on the premises at all times after 18:00 hours on all occasions when the premises are open.

The premises licence holder must supply to the Licensing Officer at Leamington Spa's Police Station a full month's list of events taking place at the licensed premises by the first day of each month. If bookings are made for parties or events at short notice such details must also be supplied in writing prior to the event and in any event as soon as reasonably practicable.

The licence holder must attend a meeting with an appointed representative from Warwickshire Police and the Licensing authority at interval of no less than two months.

### *Prevention of Crime and Disorder*

Three door staff must be employed every Thursday, Friday and Saturday from 21:00 hours until the premises have closed and all customers have left, at least one of the door staff must be on duty at the front entrance to the premises and be equipped with a retail radio and earpiece.

A professional risk assessment must be carried out to decide whether door staff are required on other nights of the week and when special events take place.

An ID scanning system must be installed and must be used at all times that licensing activities are carried out at the premises and door staff are employed. A report or printout containing a statistical analysis of information gathered by the ID scanning system must be sent to Warwickshire Police every week.

CCTV to be installed to current British Standards BS7958. The cameras shall cover all public areas and have no blind spots and include head and facial recognition.

The cameras image must be digitally recorded at 25 frames per second but, as a minimum, 12 frames per second and the recording kept for a minimum of 31 days. At least one member of staff must be on duty at all times when the premise is open who is able to operate the CCTV system and download images upon request by any authorised officer.

The premises must be a member of the Warwickshire Police approved PubWatch Scheme and must conform to its policies and procedures.

The premises must be a member of the Warwick District approved radio scheme, ensure the equipment is in working order, switched on when the premises is open and earpieces worn where appropriate. All staff must be trained in their use.

### *Public safety*

The door staff shall use a clicker in and clicker out to ensure that the maximum number of people in the premises does not exceed 200.

The premises licence holder must ensure the individuals who are drunk and/or disorderly shall not be permitted access to the premises. The licence holder must ensure that all SIA badges are displayed on armbands worn by the door supervisors and must be valid and up to date. The licence holder must ensure that all door

## **LICENSING PANEL HEARING MINUTES (Continued)**

supervisors sign on duty as they start work and off duty when they leave and that they record all incidents which are of a serious nature and reports such incidents to the police immediately.

No open vessels shall be removed from the premises as any time.

The premises must be a member of the Warwickshire Police approved PubWatch Scheme and must confirm to its policies and procedures.

Spirits must not be offered as doubles by default.

### *The prevention of public nuisance*

All windows and doors shall be kept closed from 23:00 except to allow entry and egress from the premises.

The basement garden area shall be vacated by 23:00 hours.

Live and recorded music shall not be intrusive at the nearest elevation of any neighbouring residential properties, nor within the properties themselves.

### *The protection of children from harm*

No persons under the age of 18 shall be permitted on the premises after 21:00 hours.

The Council's Licensing Policy Statement provided that the Authority would take an objective view on all applications and would seek to attach appropriate and proportionate conditions to licences, where necessary, in order to ensure compliance with the four licensing objectives. Each application would be judged on its individual merits.

Mr Besant presented the application for Saint Bar, drawing attention to the conditions which applied to the current Saint Bar licence, which he felt were quite extensive. This notwithstanding, he stated that additional conditions proposed by Environmental Health in an appendix to the report were all acceptable. Drawing attention to the requirements of the proposed operating schedule, Mr Besant said that in order to aid the prevention of crime and disorder, Saint Bar would be willing to employ door staff seven days a week. There was already an ongoing dialogue with the Police in respect of information gathered by the ID scanning system, CCTV had been installed to the required standard and the premises was a member of both the PubWatch and radio schemes.

Mr Coppor Burton joined the meeting at this point in the proceedings.

Mr Besant responded to objections which had been put forward by interested parties. The Police objection listed 29 incidents that had occurred over the past 12 months. Discounting 17 incidents relating to the theft of property which Mr Besant suggested could happen anywhere and at any time, and a further 10 incidents where he believed door staff had acted correctly, this left only 2 incidents.

Saint Bar was located within a Cumulative Impact Zone and Environmental Health had raised concerns over how the licence would affect this. Mr Besant pointed out that current conditions already protected neighbours from noise and that a sound limiter was in place on site, which had been set by Environmental Health. The second point raised by Environmental Health, concerning big groups creating noise outside of the premises, was

## **LICENSING PANEL HEARING MINUTES (Continued)**

essentially the reason for this application. A situation regularly arose at the premises whereby at closing time patrons would either hang around outside or move on to local takeaways or other premises. The applicant believed that, by allowing the premises to open much later, people would disperse more gradually and big noisy groups were much less likely to congregate.

Mr Besant had prepared a schedule which showed Saint Bar's closing time in relation to other local premises and which demonstrated that a number of premises closed within half an hour of each other, particularly on busy nights. Allowing Saint Bar to open later would, he argued, address issues of concern and discourage mass congregation.

The Panel asked Mr Besant and Mr Coppor Burton whether Saint Bar closing later would make a real difference if the other premises in the area continued to close at a similar time to one another. Mr Besant responded that each premises had a different capacity, but that he believed the reduction in noise could potentially be 25%.

Responding to the Panel's concerns that some residents were so close to the premises that it would be difficult to protect them from noise, Mr Besant pointed out that the conditions of the licence put the onus on the DPS to ensure that noise did not cause a nuisance to neighbours. Mr Coppor Burton added that, in addition to noise limiters, the building had been insulated. He stated that he wanted the premises to remain open and that therefore it was in his own interest to ensure that neighbours were happy. He went on to explain that, in the case of one regular complainant, it had turned out that the noise he had been complaining about was not coming from Saint Bar.

Responding to questions put by Sergeant Calver, Mr Coppor Burton stated that the CCTV system worked and that the software was currently being upgraded to an iPad-based system. He confirmed that roughly 30% of the venue catered for seated customers, with the remainder standing.

Mr Gifford asked whether one of the incidents which had occurred at the premises had been very serious, as it had been described by the Police as an affray. Mr Besant pointed out that he had not described the incident as minor.

Sergeant Calver made a representation to the Panel on behalf of Warwickshire Police. He reiterated that Saint Bar was located within a Cumulative Impact Zone and suggested that, based on levels of crime and disorder and incidents which already took place within that area, extended opening hours would only make the situation worse.

In Sergeant Calver's opinion, on one occasion Saint Bar door staff had not acted appropriately but had discharged an offender on to the street when they should have hung on to him until the Police arrived. He also pointed out that, if door staff were turning people away until 6.30am, this would see an increase in incidents taking place throughout the night, rather than a reduction, because aggravated drunk people tended not to respond well to being turned away, regardless of what time that was. Furthermore, customers would gravitate towards the Saint Bar if it was the only premises open at this time. No matter how well the premises was run, Saint Bar was

## **LICENSING PANEL HEARING MINUTES (Continued)**

in a hotspot for crime and disorder and the proposals before the Panel would only see an increase in crime and disorder. The venue was already subject to extensive and onerous conditions and there were no further conditions which could be applied to reduce risk, therefore Warwickshire Police recommended full refusal of the application as the only sensible course of action.

Sergeant Calver also talked about the dangers of vertical drinking, where standing customers without somewhere to rest their drinks tended to get drunk a lot faster and were also often in a crowded space, resulting in greater tension and more antisocial problems.

Mr Besant asked Sergeant Calver whether the issue of people moving on from one establishment to another already applied to customers leaving Saint Bar to go elsewhere? Sergeant Calver agreed, then pointed out that a number of establishments were required not to allow people to enter their premises up to one hour before closure. Even if the Panel considered applying such a condition to the Saint Bar, the Police would still object to the application. Responding to a question from the Panel, Sergeant Calver replied that he was not happy with the Saint Bar's current opening hours, but happier with them than the application to extend them further.

Mr Jenkins made a representation to the Panel, stating that Environmental Health would accept premises closing earlier in order to address the issue of congregation and disturbance, but not later, which kept people on the streets for longer. Environmental Health did not believe the licensee had demonstrated how longer opening hours would not impact on the licensing objectives. There were also concerns that other premises might also then want to open for longer hours. Officers did not feel that it was a reasonable proposal for a premises to be open and potentially creating disturbance until the time some people would be getting up for work.

Saint Bar was located in a Cumulative Impact Zone where congregation of smokers was often a problem. Mr Jenkins used the night of 17 October 2013 as an example; the pavement had been seen to be heaving with customers, many of them congregating beneath residents' windows. He said that, despite the best intentions of door staff, once people were out in the street they could not be controlled and Environmental Health were obliged to prevent congregation and nuisance where possible, in order to protect local residents.

Environmental Health accepted that Saint Bar had a noise limiter, but pointed out that this was not a definitive solution and that there was still always a risk that somebody would adjust the level, or that noise levels would fluctuate, as certain types of music were difficult to manage effectively. Waiting until residents asked for noise to be turned down was not a reasonable solution because it meant that the disturbance would have already occurred, and sometimes residents did not have the confidence to address a situation in that matter.

In response to questions from the Panel, Mr Jenkins said that Environmental Health would attend to address noise levels at any time, if necessary. He was not able to confirm how many complaints had been received about Saint Bar over the past 12 months, as he did not have that

## **LICENSING PANEL HEARING MINUTES (Continued)**

information with him. Mr Jenkins agreed that once people left a premises, that premises had no control over them, but he reiterated his belief that keeping a premises open later would only exacerbate the problem of noise in the street.

Mr Gifford presented his objection to the application, pointing out that it was the applicant's responsibility to demonstrate that the proposed licence would not significantly impact on the Cumulative Impact Zone or cause a problem for local residents and stated that he did not feel that this had been done. He had lived in the town centre for many years, had experience of people congregating and was sure that it would continue to be a problem, perhaps even more so. Some local residents lived in social housing, it was not easy for them to move elsewhere and the proposed new licence would open up the potential for them to be disturbed all night. It was often groups of no more than 3 or 4 people who disturbed residents and the proposed licence would result in such groups passing by at almost any time. Mr Gifford pointed out that it was not always possible for a resident to simply pick up a phone to complain, and that just because residents had not complained did not prove that they were not suffering.

Mr Besant summed up, stating that the applicant would be happy to be subject to a condition encouraging patrons to be quiet. He referred again to Police evidence and said that in the case of the incidents which took place on 5 July 2013 and 4 September 2013 no evidence had been put forward and there was no evidence at all relating specifically to noise disturbance. The applicant was trying to facilitate more gradual dispersal of patrons in line with guidance and was therefore right to request longer opening hours. He referred to Principle 3 and paragraph 4.1.5 in the Statement of Licensing Policy which he felt supported the application before the Panel. He also reminded the Panel that a call for a review of a licence could be made at any time if interested parties or residents had any concerns.

Mr Besant reminded the Panel that Saint Bar was not a new premises and was already open until the early hours several nights each week. He suggested there was no evidence that the new licence would have a cumulative impact, but that if the Panel had concerns, it could choose to grant a proposal of its own. He also reminded the Panel of its obligation to judge each application on its own merits.

Mr Coppor Burton added that he had been the DPS of Saint Bar for approximately six years. As a result he was aware that the current closing time caused problems. Having applied for several temporary event licences, he had seen that when the premises was open later, people tended to leave at their own pace and he personally believed that this would improve the dispersal of customers.

The Chair asked all parties other than the Panel, the Council's Solicitor and the Committee Services Officer to leave the room at 11.20 am, to enable the Panel to deliberate and reach its decision.

All parties were invited back in to the room at 12 noon, at which time the Solicitor outlined the legal advice which she had given to the Panel prior to it reaching a decision.

## **LICENSING PANEL HEARING MINUTES (Continued)**

The Panel was referred to all paragraphs of Home Office guidance which had been referred to by the Police and the applicant. It was suggested that paragraph 10.22, concerning vertical drinking, might not apply to this premises. The Panel had then been reminded to test each case on its own merits, and that it had to decide whether the application was likely to affect the cumulative impact on Public Nuisance and Crime and Disorder and, if so, how significant that effect would be.

**RESOLVED** to refuse the application for the grant of a premises licence as follows:

The Panel has listened to all of the evidence, given at the hearing and contained within the report. The decision is to refuse the application.

Having heard the evidence the Panel feels that the grant of the application would be likely to add to the cumulative impact on the licensing objectives and in this case the relevant licensing objectives are crime and disorder and public nuisance. The Panel has further considered how significant this impact would be and reached the conclusion that the impact is likely to be significant in terms of the cumulative impact on these particular objectives.

The Panel has taken into account the policy and guidance and in particular the sections which relate to licensed premises having longer opening hours and given consideration to whether this would improve the prevention of public nuisance and crime and disorder in the area but feel that it would not and furthermore the increased hours would mean that residents would be likely to be subjected to nuisance throughout the night.

The Panel has considered whether it could grant a licence with reduced hours than those applied for or reduced hours on certain days. The Panel feels that any increase in the licensable hours will affect cumulative impact.

The Panel has also considered whether it could amend or add to the licence conditions to prevent cumulative impact of increased hours. The Panel has listened to the conditions proposed by the applicant, namely

1. Signage
2. Door staff to be on duty on all days
3. Restrict re-entry after certain times
4. Maximum amount of people permitted to smoke outside



**LICENSING PANEL HEARING MINUTES (Continued)**

but do not believe that these conditions would be sufficient to prevent the increased hours adding to the cumulative impact.

All parties were reminded of their right to appeal the Panel's decision to the Magistrates Court within 21 days of formal notice of the decision.

(The meeting finished at 12.05 pm)