

LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Wednesday 11 July 2012, at the Town Hall, Royal Leamington Spa at 2.00 pm.

PANEL MEMBERS: Councillors Gill, Mrs Knight and Mrs Mellor.

ALSO PRESENT: David Davies (Licensing Services Manager), Peter Dixon (Committee Services Officer) and Max Howarth (Council's Solicitor).

1. APPOINTMENT OF CHAIR

RESOLVED that Councillor Mrs Knight be appointed as Chair for the hearing.

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

Mr Potts, Solicitor, attended to present the application on behalf of the applicant, Saint Bar. He was accompanied by Mr Burton, Designated Premises Supervisor (DPS) and Premises Licence Holder for the Saint Bar, and Mr Amas, the Saint Bar's Security Manager.

The responsible authorities introduced themselves: Ms Smith (Warwickshire National Health Service Primary Care Trust), Dr Caley (NHS Warwickshire and the Director of Public Health in Warwickshire) and Ms Simms (Warwickshire Police).

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. APPLICATION FOR A VARIATION OF THE PREMISES LICENCE ISSUED UNDER THE LICENSING ACT 2003 FOR SAINT BAR, WARWICK STREET, LEAMINGTON SPA

A report from Community Protection was submitted which sought a decision on an application by Saint Bar for a variation of the licence for the premises at Warwick Street, Leamington Spa.

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

The Licensing Services Manager 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.

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.

LICENSING PANEL HEARING MINUTES (Continued)

The report from Community Protection advised the Panel that an application had been submitted by Mr Burton on 16 May 2012 to vary the premises licence for the Saint Bar, to remove a wall within the premises and extend the area for licensable activities to take place. Officers were aware that the wall had been removed some time ago, but understood that it had been temporarily rebuilt until a decision on the variation application had been made.

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 Potts presented the application for a variation on the premises licence. He provided background to the history of the Saint Bar and advised that an appeal had been made to the Magistrates Court in respect of removal of the DPS, a decision upon which was expected to be made in September 2012. In the meantime, the application for a variation before the Panel related solely to removal of the wall. Mr Potts advised the Panel that removal of the wall allowed for the kitchen area to be relocated and for a DJ area to be installed within the premises. Relocation of the DJ and sound system substantially reduced noise affecting neighbours, which would also improve and simplify access to fire escapes. CCTV had been installed, had been inspected and was deemed to be a good system. Challenge 21 signs were displayed around the premises and other signs were due to be installed before the weekend. Mr Potts believed that the changes implemented made the premises better for customers and had no negative impact on the licensing objectives.

Mr Potts highlighted a number of additional conditions which had been proposed by the Primary Care Trust and which, despite not having been approved, the Saint Bar was adhering to anyway. He stated that the Saint Bar would be happy for the additional conditions to be added to the licence.

Mr Potts reported that Mr Burton accepted fully that an application for a variation should have been presented late in 2011, prior to the wall's removal, but that Mr Burton had been fully occupied getting another premises up and running.

With regard to concerns raised by the Primary Care Trust about the effect of the Saint Bar on the Cumulative Impact Zone, Mr Potts pointed out that the application before the Panel was not for an increase in licensing hours or the number of persons allowed on the premises and therefore the application made no difference to the Cumulative Impact Zone. The current licence allowed for up to 200 people to be in the premises at any time and that would not change. The number of people entering and exiting the premises were counted in and out using "clicking devices" and a record was kept detailing the number of people within the premises, which demonstrated that the terms of the licence were being adhered to. The only change would be an 8% increase in capacity for the licensable area. Mr Potts mentioned that an ex-Fire Officer had visited the premises, felt that the Saint Bar was perfectly safe and was in the process of producing a fire safety assessment for the premises.

LICENSING PANEL HEARING MINUTES (Continued)

Regarding representations made by Warwickshire Police, Mr Potts stated that the Saint Bar accepted that incidents had taken place but that not all of them had been adverse and that they were dealt with properly. He stated that there had been no further incidents since May 2012 and, while something had happened at that time, that was a matter for the review proceedings, rather than for this Panel. Any breaches of the licensing conditions would have an adverse effect on Mr Burton's separate appeal to the Magistrates Court and therefore he had a great incentive to ensure that breaches did not occur.

The Council's Solicitor clarified that, for the purpose of this hearing, the original conditions of the licence as detailed in paragraph 3.7 of the report still stood.

A member of the Panel asked the applicant why the application for a variation to the licence had not been presented previously. Mr Burton apologised, stating that he had been distracted, having taken on management of another property adjacent to the Saint Bar. The Council's Solicitor reminded the Panel that they should focus on the impact on the licensing objectives which a variation to the licence would have.

Responding to questions from the Panel, Mr Burton said that he had received assistance in reviewing the licence in order to simplify it. As a result, he had removed a condition allowing for late night refreshments for under age persons. He confirmed that a fire exit for the Saint Bar was shared with the adjacent premises. He said that, while people could leave the Saint Bar to go next door to buy food, door staff would not allow them to enter the Saint Bar with food. Mr Burton told the Panel that the maximum number of people allowed on the premises was never reached, never mind exceeded, and gave further details of how people were counted into and out of the premises. He stated that nobody was admitted to the premises whenever counting took place. He said that, while in theory people could enter the premises through the fire exit, the fire exit was in an area of the building where staff were always present and was never left open.

Ms Simms presented the objections of Warwickshire Police to the application, which were on the grounds of the prevention of crime and disorder, and public safety. Removal of the wall resulted in increased capacity. The wall had been removed contrary to the licence and the Police believed that it should remain. The Police were concerned that capacity numbers should not be breached, which would lead to a breach of fire and safety rules and an unsafe environment. Ms Simms argued that while Mr Burton had been concentrating on another premises in Stratford, the number of incidents in Leamington had dropped, but that they had increased again since his return and therefore the Police had no confidence that the prevention of crime and disorder and public safety would be maintained at the premises. A closure warning notice had been issued in 2011 and was almost followed by a second in 2012. The CCTV had failed to work on one occasion which meant that allegations against staff could be neither substantiated or denied. The Police were of the opinion that the Saint Bar had blatantly ignored responsible authorities until threatened with closure.

LICENSING PANEL HEARING MINUTES (Continued)

The Panel asked Ms Simms whether there was any evidence that, in the opinion of Warwickshire Police, the Saint Bar had been managed more appropriately since May 2012. Ms Simms responded that there had been 3 incidents since that time but that, due to time factors, these incidents had not been submitted to the Panel. Ms Simms gave no further information.

Dr Caley made a representation on behalf of the Primary Care Trust and Director of Public Health in Warwickshire. He stressed the importance of cooperative and responsible licensed premises in managing alcohol-related incidents. There were more incidents in Leamington Spa town centre than anywhere else in Warwickshire. These included alcohol-related injuries and excess, and alcohol and drug-related violence against persons. There was a particular problem in and around Warwick Street. For these reasons, the NHS felt that it was vital that all licensees should be cooperative and responsible. Dr Caley did not believe that all the incidents which took place in the town centre related to the Saint Bar. He did, however, believe that the Police had provided compelling evidence to show that the premises was neither cooperative or responsible.

The Panel asked Dr Caley whether he believed that removal of the wall would have a detrimental effect on the town centre. Dr Caley could not say, but felt that the Panel needed to be convinced that all licensees were cooperative and responsible, regardless of the the application presented to the Panel.

Mr Potts made a closing speech on behalf of the applicant, reminding the Panel that Mr Burton had apologised unreservedly for not submitting the application for a variation to the licence at the appropriate time. He stated that licensing conditions were being adhered to, including further proposed conditions which Saint Bar were happy to be formally attached to the licence. He pointed out that, while a closure warning notice had been issued, the Saint Bar had not been closed. There was a foolproof system for counting the number of people in the premises, and a permanent record of the numbers of people in the premises. If the maximum number of 200 people was breached, this would cause difficulties for Mr Burton's appeal, which Mr Burton would not allow to happen. Mr Potts stated that Mr Burton had learned his lesson and asked the Panel to approve the variation.

The Chair asked all parties other than the Panel, the Council's Solicitor and Committee Services Officer to leave the room at 3.05pm, to enable the Panel to deliberate and reach its decision.

Having considered the application before them and having heard the representations made, the Panel felt that the variation to the licence should be granted, subject to one condition being made more robust and the addition of conditions proposed by the responsible authorities.

RESOLVED to grant the variation to the premises licence as follows:

Having considered the representations made by the applicant, the Police and the Primary Care Trust, it is the view of this Panel that the variation of the licence

LICENSING PANEL HEARING MINUTES (Continued)

will not impact upon the licensing objectives. In coming to this conclusion, the Panel note that there is currently a condition on the licence which restricts the maximum safe occupancy of the premises to 200 people. In view of this, it is the Panel's view that the extension of the licensed area will not result in an increase of the number of people in the premises at any given time as this would be in breach of the aforementioned condition. The Panel also note that if the number of people on the premises exceeds 200 people, then the premises licence holder can be prosecuted for acting in breach of the condition and/or the responsible authorities can call for a review of the premises licence. In addition to this, and having taken legal advice, the Panel have concerns about the robustness of the current condition providing for safe occupancy. It is the Panel's view that the current condition 13 should be amended to state that "door staff must use a clicker in and clicker out to ensure that the maximum number of people in the premises does not exceed 200 at any time".

With regard to the conditions requested by the Primary Care Trust, the Panel note that a number of the conditions are already mandatory conditions or would not be appropriate or proportionate to promote the four licensing objectives. However, the Panel note that the applicant has agreed that a number of conditions be placed upon the premises licence and, having considered the conditions, it is the Panel's view that it would be appropriate to impose the following four conditions:

- Responsible server training to prevent over-service, particularly in relation to intoxicated customers
- Public awareness campaigns on responsible drinking, providing information on units/recommended limits etc.
- Training of bar staff and security staff on how to monitor and prevent problematic behavior including intoxication, dealing with under age persons and with rowdy customers
- Offering smaller spirit measures as a default rather than automatic doubles.

All parties were invited back in to the room so they could be informed of the decision, which was read out by the Council's solicitor. They were reminded that all parties had the right to appeal the Panel's decision to the Magistrates Court within 21 days of formal notice of the decision.

(The meeting finished at 4.10 pm)

LICENSING PANEL HEARING MINUTES (Continued)

A record of a reconvened Licensing Panel hearing held on Wednesday 25 July 2012, at the Town Hall, Royal Leamington Spa at 11.00 am.

PANEL MEMBERS: Councillors Gill, Mrs Knight and Mrs Mellor.

ALSO PRESENT: Peter Dixon (Committee Services Officer) and Max Howarth (Council's Solicitor).

4. APPLICATION FOR A VARIATION OF THE PREMISES LICENCE ISSUED UNDER THE LICENSING ACT 2003 FOR SAINT BAR, WARWICK STREET, LEAMINGTON SPA

Following advice given to the Panel over the appropriateness of the conditions which had been proposed and agreed at the meeting on 11 July, the Panel reconvened on 25 July 2012 in order to review those conditions.

The Panel resolved to amend their previous resolution, removing the four conditions and instead imposed the following two conditions:

- Staff training must be carried out and recorded in relation to recognising and dealing with intoxicated, under age and rowdy customers
- Spirits must not be offered as doubles by default

(The meeting finished at 11.20 pm)