

LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Thursday 14 November 2013, at the Town Hall, Royal Leamington Spa at 10.00 am.

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

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

1. APPOINTMENT OF CHAIR

RESOLVED that Councillor Illingworth be appointed as Chairman for the hearing.

The Chairman advised everybody present that, due to an accident on the M40, the motorway had been closed with a number of drivers marooned on it, including the solicitor due to attend this meeting. With the agreement of all parties, the Chairman adjourned the meeting at 10.05 am until a solicitor was able to attend.

The meeting recommenced at 10.50 am with a solicitor in attendance.

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 ALTORIA, 45 WARWICK STREET, ROYAL LEAMINGTON SPA

A report from Health and Community Protection was submitted which sought a decision on an application from Warneford Bars Limited for the grant of a premises licence for Altoria, 45 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 Potts (Solicitor) attended to represent the applicant. He was accompanied by Mr Gill (Designated Premises Supervisor for Altoria) and four other representatives of Warneford Bars who attended to observe the proceedings. These representatives included Mr Mohammed (Head of Security) and Mr Beddows (Manager).

Sergeant Calver attended to represent Warwickshire Police, the interested party objecting to the application.

The Council's Regulatory Manager attended the meeting as an observer.

At this stage in the proceedings, the Chairman asked whether everybody present had received all the papers relating to the application. Mr Potts

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advised the Panel that he had colour copies of premises plans and that he had sent an email concerning an incident on 22 September to the Licensing Enforcement Officer, which had since been distributed to all parties.

However, his first sighting of an email from Councillor Weber, objecting to the application, had been shortly before the commencement of the meeting and he therefore requested that its contents be discounted. Following legal advice, parties agreed that the email should be disregarded, but it was pointed out that its contents added nothing to the report anyway.

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.

The application before the Panel was for a licence to be granted as follows:

Supply of Alcohol on Ground Floor, First Floor and Second Floor for consumption on the premises; Plays, Films, Live and Recorded Music, Performance of Dance (all indoors) and Indoor Sporting Events
Sunday and Monday from 08:00 to 01:00
Tuesday, Thursday, Friday and Saturday from 08:00 to 03:00
Wednesday from 08:00 to 02:00

(NB the current licence in respect of Tuesday was from 08:00 to 02:00)

Supply of Alcohol on Ground Floor, First Floor and Second Floor for consumption off the premises
Saturday and Sunday from 08:00 to 23:00

Supply of Alcohol on Third Floor
Monday to Sunday from 08:00 to 0:00

Anything similar to live & recorded music and dancing
Sunday and Monday from 08:00 to 01:00
Tuesday, Friday and Saturday from 08:00 to 03:00
Wednesday and Thursday from 08:00 to 01:00

(NB the current licence in respect of Tuesday was from 08:00 to 02:00)

Opening Hours
Sunday and Monday from 08:00 to 01:30
Tuesday, Thursday, Friday and Saturday from 08:00 to 03:30
Wednesday from 08:00 to 02:30

(NB the current licence in respect of Tuesday was from 08:00 to 02:30)

Last Entry Times

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Sunday and Monday 00:30

Tuesday, Thursday, Friday and Saturday 02:30

Wednesday 01:30

(NB the current licence in respect of Tuesday was from 08:00 to 01:30)

For Supply of alcohol, Plays, Films, Live music, Recorded music, Performance of dance and Anything similar to live music, recorded music and performance of dance – on Sundays preceding Bank Holiday Mondays, Christmas Eve and Boxing Day the terminal hours to be extended to 03:00. On New Year's Eve until the start of permitted hours on New Year's Day.

For late night refreshment - on Sundays preceding Bank Holiday Mondays, Christmas Eve and Boxing Day the terminal hours to be extended to 03:00.
On New Year's Eve terminal hour to be extended to 05:00 on New Year's Day.

Opening Hours - on Sundays preceding Bank Holiday Mondays, Christmas Eve and Boxing Day the terminal hours to be extended to 03:30. On New Year's Eve until the start of permitted hours on New Year's Day.

Following changes to Regulated Entertainment under the Live Music Act 2012 and The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 the below will apply to this application.

Plays – The performance of a play taking place between 08:00 and 23:00 to an audience of less than 500 people is not licensable. All licensing conditions applicable to the control of plays on the licence would be deemed not to be in operation.

Indoor Sporting Events – Indoor sporting events taking place between 08:00 and 23:00 to an audience of less than 1000 people are not licensable. All licensing conditions applicable to the control of indoor sporting events on the licence would be deemed not to be in operation.

Live music – Live amplified music between the hours of 08:00 to 23:00 to an audience of less than 200 people is not licensable. All licensing conditions applicable to the control of live music on the licence would be deemed not to be in operation.

Performance of dance – The performance of dance taking place between 08:00 and 23:00 to an audience of less than 500 people is not licensable. All licensing conditions applicable to the control of performance of dance on the licence would be deemed not to be in operation.

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)

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

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 Warneford Bars, which was a new application as opposed to a variation, so that all elements of it could be looked at afresh. He stated that, essentially, the applicant was seeking to open the premises for one additional hour on Tuesday nights.

Mr Potts talked about the history of the premises and how, since it had reopened in October 2012, the owners and operators had adhered strictly to the conditions and managed to shake off the problem clientele of the past. He talked about refurbishment of the ground floor and the installation of a new music system, in full consultation with Environmental Health officers, and pointed out that they had not made a representation against this application. A large amount of money had been spent on transforming the premises into something very different from the other premises in the area and Mr Potts believed that the only premises which had seen a similar level of investment was the Assembly.

Mr Potts recognised that Altoria was located within the Cumulative Impact Zone but pointed out that, while a number of complaints had been received about disturbances, none of them related to Altoria itself. In the case of a serious assault on 5 September and another incident on 22 September, Altoria's doorstaff had made positive interventions by assisting the Police who had subsequently taken statements and made arrests.

Four incidents had occurred at Altoria since 8 September and Mr Potts suggested that, in each case, the premises staff had acted correctly. On the first occasion, doorstaff had contacted the Police upon finding a customer to be in possession of drugs. The second incident was an assault on one of the doorstaff, which was picked up on Altoria's CCTV system – not on the public one. A third was a minor incident of disorder at the door, but no offence was committed. The final incident involved somebody being punched outside of the premises and a subsequent arrest.

Mr Potts concluded that Altoria was managed positively and involved close cooperation with the Police.

Mr Potts stated that by applying to open for an additional hour, Altoria aimed to cater for students who currently only had one venue they could go to at that time in the morning, that venue being Smack. Altoria hoped to offer an attractive alternative to Smack. The additional hour would be used as a maximum between September and June, with four weeks taken out of that because students would be on holiday. The applicant was well aware that the premises would be under close scrutiny and Mr Potts assured the Panel that four members of senior management would be on duty at the premises each Tuesday.

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Mr Potts advised the Panel that Altoria had applied for temporary event notices on 6 occasions since September, for 1 additional hour in each case, to see how that extra hour would work in practice. The arrangement seemed to have worked well, hence the application for longer opening hours. Mr Potts did not believe that there was any evidence that the additional hour would have a negative effect on the Cumulative Impact Zone and suggested that this was pure speculation.

Mr Gill formally confirmed what Mr Potts had said and reiterated Altoria's desire to offer something different to the only other premises open at that time of night. He stated that few students ventured off-campus on Wednesdays because they were catered for on site. However, they were out and about on Tuesdays and Altoria wanted to entice them by offering a venue which would be open for longer and where they could therefore stay all night, rather than having to move on to somewhere else once Altoria closed, which was presently the case.

Mr Potts and Mr Gill responded to questions from the Panel, stating that the application had been to open for one additional hour because they did not think the licence would be awarded if the application had been for two hours. They confirmed that the top floor of the premises was a smoking terrace which kept people off the street and seemed to work well. There was security up there, no music and there had never been an issue of noise. Both the Police and the Council's licensing officers seemed to be happy with this arrangement.

Responding to questions from the Police, Mr Potts and Mr Gill explained that although Altoria had opened late when temporary licences had been in place, they had not been able to capitalise on this because they had been unable to advertise in advance that Altoria was open. Smack, on the other hand, had been able to advertise several months in advance, because that premises was open late anyway. Mr Gill confirmed that, on the nights when Altoria had been open late, it had accommodated up to 300 customers, but could potentially handle 400. The average age of customers on a Tuesday was between 18 and 23. With regard to seating, Mr Gill stated that approximately 50% of customers on the ground floor would be seated and the remainder standing, 30% seated on the first floor, 60% on the second floor and 70% on the top floor.

Sergeant Calver made a representation to the Panel on behalf of Warwickshire Police. He reminded the Panel that Altoria was located within the Cumulative Impact Zone and suggested that, based on levels of crime and disorder and incidents which had already taken place within that area, extended opening hours would only make the situation worse. He stressed the importance of reducing crime levels and pointed out that not only did Tuesday nights have a high footfall, but that most of that was from students, many of whom would start drinking before they descended on the town centre and who would certainly be drunk before the night was over. Many venues would like to extend their opening hours to accommodate them. However, it made no difference how well a venue was run or how good its management and security were, if that venue was within the Cumulative Impact Zone it could not be underestimated how an extra hour would impact on that.

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Sergeant Calver talked about the dangers of vertical drinking and pointed out that, averaged out, roughly half of Altoria's clientelle would be standing. He also talked about the number of requests received for temporary extensions to licences and the fact that the Police rarely objected to them because of the time it would take to do so.

Responding to questions from the Panel, Sergeant Calver reasoned that there were more students than venues available to cater for them and that if a venue was open later, students would stay in town longer rather than going home, increasing the risk of crime and disorder.

In response to a question from Mr Gill, Sergeant Calver confirmed that Altoria's doorstaff did offer assistance to the Police and would be around to do so for an additional hour if the application were granted. However, he also pointed out that they were not essential as the Police had sufficient resources due to the support given to them by street marshalls.

Mr Potts summed up the application, highlighting that the temporary licence extensions recently granted to Altoria demonstrated that the premises could operate for longer hours without problems on a Tuesday night. He also pointed out that the applications for temporary extensions were submitted responsibly, not at the last minute in order to catch the Police out.

Mr Potts argued that students deserved extra choice on Tuesday nights. He reminded the Panel that Altoria's management team would augment the doorstaff who were already demonstrably proactive in assisting the Police. He referenced a court case in Leeds where a judge decided that Cumulative Impact Zones were not written in stone. Notwithstanding the fact that Altoria was located in such a Zone, the application had to be judged on its own merits and the premises were particularly well run.

The Chair asked all parties other than the Panel, the Council's Solicitor and the Committee Services Officer to leave the room at 11.57 am, to enable the Panel to deliberate and reach its decision.

All parties were invited back in to the room at 12.34 pm, at which time the Panel's decision was read out as detailed below.

RESOLVED to grant the application for a premises licence, subject to conditions, as follows:

The Panel has considered all the written representations received and listened to the oral submissions made by those present at the hearing. It has also considered all the relevant legislation and statutory guidance. The Panel has disregarded the representation received by Councillor Weber, because it was received late and produced at the hearing without the consent of the Applicant.

The Panel is very conscious of the fact that the premises are situated in the Cumulative Impact Zone,

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and that the onus is therefore on the Applicant to show that the grant of the application will not adversely impact on the four licensing objectives. The Panel has taken the concerns of Police in relation to the Cumulative Impact Zone extremely seriously, and accepts that there have been several instances of crime and disorder in the vicinity of the premises.

However, the Panel considers that the premises are very well managed, and this was accepted by the Police. Further, not all the incidents mentioned can be directly attributed to the premises, and the Door Staff have a record of behaving properly and dealing with incidents effectively. The Panel attaches weight to the fact that the premises have extended their hours on Tuesdays under 6 Temporary Event Notices, and there have been no reported problems arising from this. It is also noted that the Police have not objected to these applications, although it is accepted that reasons have been given for this. The Panel is also reassured by the fact that the management will be present at the premises during the period of the proposed extended hours.

For these reasons, the Panel considers that the Applicant has demonstrated that the grant of this licence would be unlikely to adversely affect the four Licensing Objectives. However, the Applicant has submitted that the extended licence would be used to offer a whole night's entertainment to students, and the Panel does have concerns that crime and disorder may be exacerbated by people seeking entry to the premises near to closing time.

The Panel has therefore decided to grant the licence, subject to the conditions in the operating schedule and with a condition attached to the effect that there shall be no entry to the premises after 1.30am on Tuesdays. This reflects the position on the current licence, and is considered appropriate in order to prevent potential crime and disorder being caused by people leaving other premises and seeking entry to these premises after this time.

The licence is therefore granted subject to this condition.

All parties are 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 12.37 pm)