

# LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Wednesday 11 December 2013, at the Town Hall, Royal Leamington Spa at 10.00 am.

**PANEL MEMBERS:** Councillors Gill, Illingworth and Mrs Knight.

**ALSO PRESENT:** Emma Dudgeon (Licensing Enforcement Officer), John Gregory (Council's Solicitor) and Graham Leach (Democratic Services Manager).

## 1. APPOINTMENT OF CHAIR

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

## 2. DECLARATIONS OF INTEREST

Councillor Gill declared that he was a member of Royal Leamington Spa Town Council which had objected to the application.

## 3. APPLICATION FOR THE GRANT OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 FOR MARALANI PIZZA, 12a CLARENDON AVENUE, ROYAL LEAMINGTON SPA

A report from Health and Community Protection was submitted which sought a decision on an application from Mr Maralani for the grant of a premises licence for Maralani Pizza, 12a Clarendon Avenue, Royal Leamington Spa.

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

Mr Khali attended to represent the applicant Mr Maralani. Also attending were; Sergeant Allison Wiggin, representing Warwickshire Police; Mr Jenkins, representing Environmental Health; Councillor Gifford, representing Royal Leamington Spa Town Council; and Councillor Dean acting as the Ward Councillor.

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 a licence to be granted as follows:

	Late Night Refreshment	Opening hours
Monday, Wednesday & Sunday	23:00 to 00:00	11:00 to 00:00
Tuesday, Thursday, Friday and Saturday	23:00 to 03:00	11:00 to 03:00

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 and 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 Khali outlined the application and the reasons why it had been made. He explained that Mr Maralani had purchased the premises with a view to closing at 23:00 because he was a family man and he did not want to work late nights. He had now found, after operating the business, that there was little demand for the business before 23:00. Mr Maralani had invested a significant amount into the business and would be unable to continue operating without the licence because there was insufficient demand.

Clarendon Avenue was a key route for people heading north away from the town centre and the grant of the licence to the premises would not increase the number of people in the area already because of other premises that were already open at these times including the petrol station opposite that was open 24 hours a day.

Mr Khali accepted that there was anti social behaviour in the area already but this application would not change this because the cause was the drinking establishments and not the takeaway premises.

The applicant believed he had met the requirements of licensing objectives and would be agreeable to any further measures to enhance this. It was the applicant's opinion that the grant of the licence would help enhance the night time economy.

Mr Khali responded to questions from the Panel explaining that:

- the application would not impact on the Cumulative Impact Zone because the premises would not bring more people into the area;
- the additional hours would guarantee to make the business profitable;
- the delivery drivers of the takeaway would be well managed to ensure minimal disturbance both at the premises and at the delivery addresses; and
- it was not the responsibility of the premises to manage their customers once they have left the premises but they would work with

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

customers to ensure minimal disturbance when they were in the vicinity of and inside the premises.

In response to a question from Mr Jenkins he explained that the proposed Door Staff would be SIA registered.

In response to a question from Councillor Ms Dean, Mr Khali explained that any person visiting the premises would be there for a maximum of five or ten minutes. It was anticipated that most customers would be passing trade although some would come from the petrol station.

In response to a question from Councillor Gifford, Mr Khali explained that while the premises were closer to residential properties, the granting of a licence would not be adding to a problem that was already there.

Sergeant Wiggin outlined the representation from Warwickshire Police, explaining that they objected to the licence outright because of the extensive issues as part of the night time economy that already existed within the locality.

It was the opinion of the Police that despite the best efforts of the applicant, people would congregate or wait outside and this would create a flash point. The road was a main through-route for Royal Leamington Spa and this was a busy area particularly at 3am when most premises were closing.

It was the opinion of the Police that the approval of the application would lead to problems migrating to Clarendon Avenue because it would; bring more people into the area later in the night; encourage people to stay in the area longer; and would cause congestion on the footway providing a potential cause of flash points. The Police felt that the applicant had not addressed these potential issues.

In response to questions from the Panel, the Police explained that:

- the submission was based upon town centre policing experience and an understanding that the introduction of these premises would encourage people to stay in the locality and not disperse;
- the application should not be granted and there were no conditions that could mitigate its impact that would enable it to be granted;
- if the application was granted it would cause further problems for the town centre; and
- if the Panel were minded to grant the application, the Police would expect SIA door staff on Tuesday, Thursday, Friday and Saturday from 23:00 onwards and CCTV as set set out in the operating schedule.

The applicant acknowledged that they would be content with the conditions requested by the Police.

Mr Jenkins outlined the representation from Environmental Health. He explained that it was their opinion that there were no appropriate conditions that could mitigate the public nuisance impact created by the premises.

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

Mr Jenkins highlighted that there were residential premises much closer than 50 metres from the premises. The customers of the premises would have raised voices fuelled by alcohol consumption and temporary volume threshold shift after leaving premises playing loud music.

At present there were no premises in this this area and this aided the flow of people leaving the area. The introduction of the premises would encourage people to congregate, delaying their journey home and increasing public nuisance for local residents.

It was the opinion of Environmental Health that the business plan was to attract customers from Smack and these people would normally be speaking louder due to temporary threshold shift because of the noise within Smack then the quiet outside.

There was no evidence provided by the applicant that this would not impact on the Licensing Objectives and therefore because the premise was within the Cumulative Impact Zone the application should be refused.

Following clarification it was accepted that the flat above the premises was owned by the applicant and was not in use as a residential premises.

Councillor Ms Dean explained that it was her opinion that if the application was granted the premises would attract people into the area or keep people in the area for longer. It would also be impossible for members of staff to oversee the behaviour of customers when they left the area.

The Police and the Council had introduced schemes within Royal Leamington Spa to reduce the impact of the late night economy on the local community and help people to get home safely. The application would not help with these schemes or the licensing objectives. The road was the border between the town centre and the residential areas and there was no justification for the application to be granted.

In response to a question from the applicant Councillor Ms Dean explained that not all neighbours accepted the application despite the assurance from the applicant that they did.

Councillor Gifford outlined the representation from Royal Leamington Spa Town Council. He explained that the application showed a lack of respect for the surrounding area.

He highlighted to the Panel that it was not for the residents and responsible authorities to prove why the application should be refused but, because it was in the Cumulative Impact Zone, for the applicant to prove significant assurances as why the application should be granted.

It was well recognised that there were lots of people in the area who would be drunk and the Council recognised the need to get people home as quickly and safely as possible.

The argument from the applicant was based upon the commercial need of the applicant and not on the licensing objectives, nor had it considered the impact on the local community.

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

Therefore Councillor Gifford urged the Panel to focus its decision on the licensing objectives and the potential impact on these and not on the financial viability of the premises.

There were no questions from the Panel.

Councillor Gifford responded to a question from the applicant that it was not possible for the applicant to take responsibility for the actions of his customers outside the premises. Therefore while there were problems in the area now, the approval of the application would only increase the number of people in the area and the problems that occur.

The Solicitor for the Council explained that there had been a previous application and an appeal was currently waiting to be determined by Magistrates. However this should not be of consideration for the Panel because it was perfectly possible for two premises licences to be held for the same premises.

The applicant summed up their application explaining that the current problem would not be made worse by the premises being open or not. The problem was the culture of the area and individual businesses needed to be challenged for selling the alcohol to people. They questioned how many arrests were made each night compared to the thousands of people in the town centre. The premises would not attract more people into the town centre and the approval of the application could help reduce the issues by the spreading demand over more businesses.

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.

The Panel considered the application, the written representations received and the oral submissions made by all parties at the hearing. It considered the relevant legislation, statutory guidance and the Council's own Licensing Policy.

The premises were situated in the Council's Cumulative Impact Zone. In accordance with the Council's Licensing Policy, the applicant was therefore expected to demonstrate that the grant of the licence would not adversely affect the four licensing objectives. However, the Council recognised that the Cumulative Impact Policy was not absolute and that the application must be treated on its merits.

The Panel had heard evidence from the representatives of the Police and Environmental Health that there was likely to be a significant increase in crime and disorder and nuisance from noise and litter should this licence be granted. Both authorities had said that the extended opening hours would hinder the dispersal of people from the area in the early hours and provide a place for people to congregate, thereby creating a potential "flashpoint" for anti-social behaviour. The Police had emphasised the existing problems in the vicinity of the premises, and in particular the various safety issues caused by traffic and the congregation of crowds of people on Clarendon Avenue and Tavistock Street.

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

In their submission, the applicant had submitted that his premises would not add to a problem that already existed in the area, and would simply attract custom from other premises that were already open. The applicant had also suggested that he would be willing to provide a doorman to help prevent crime and disorder within the premises, and to prevent the admission of customers who were drunk.

However, the Panel were of the view that the submissions of the Police and Environmental Health showed that there was likely to be a significant adverse impact on the Licensing objectives should the licence be granted, particularly those relating to the prevention of public nuisance and crime and disorder.

They considered that the applicant's submission that the premises would not add to an existing problem was not supported by evidence, and did not demonstrate that the grant of the licence would not significantly adversely affect the Licensing Objectives. Whilst a condition requiring door staff may help to prevent problems inside the premises, it would do nothing to prevent people congregating outside the premises, and increasing crime and disorder and nuisance.

Therefore it was:

**RESOLVED** that the application should be refused.

It should be noted that the panel sympathised with the economic circumstances of the applicant, and his reasons for applying for the licence, but these are not relevant to the four Licensing Objectives.

All parties were invited back in to the room at 11.46am and were informed of the Panel's decision.

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 11.50am)