

LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Wednesday 19 March 2014, at the Town Hall, Royal Leamington Spa at 2.00 pm.

PANEL MEMBERS: Councillors Illingworth, Pratt and Wilkinson.

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

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 THE ASSEMBLY AND ZEPHYR LOUNGE**

A report from Health and Community Protection was submitted which sought a decision on an application from The Assembly and Zephyr Lounge, Spencer Street, Royal Leamington Spa.

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

Present were; the General Manager of the premises, Mr Lynch; the Designated Premises Supervisor, Ms Canning; employee, Mr Dalley; Mr Besant, legal representative for the Applicant; Sergeant Calver, Warwickshire Police; and two members of the Public, Mr Davies and Mr Tubbs. Mr Tubbs wished to observe only.

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

The Chairman checked that all those present had received copies of the agenda and report. Additionally, the Police provided paperwork with a proposal for licensing hours they would find acceptable; photos of the inside of the premises were provided by the General Manager of the premises; Mr Besant provided paperwork which contained a list of events at The Assembly, an email from Mr Davies to Mr Lynch dated 12 August 2013, articles in the local press and case notes of other applications at different premises. All parties present agreed to the additional paperwork being circulated at the hearing.

The Licensing Enforcement Officer outlined the report and asked the Panel to consider all the information contained within it, and the representations

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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 per the details on the table below:

| | Supply of alcohol for consumption on the premises | Supply of alcohol for consumption off the premises | Plays*, Films, Indoor Sporting Event*, Boxing or Wrestling, Live Music*, Recorded Music Performance of Dance*, Anything of a similar description to that falling within Live Music, Recorded Music and Performance of Dance (All indoors) |
|-----------|---|--|---|
| Monday | 10:00 to 02:00 | 10:00 to 23:00 | 10:00 to 02:00 |
| Tuesday | 10:00 to 02:00 | 10:00 to 23:00 | 10:00 to 02:00 |
| Wednesday | 10:00 to 02:00 | 10:00 to 23:00 | 10:00 to 02:00 |
| Thursday | 10:00 to 03:00 | 10:00 to 23:00 | 10:00 to 03:00 |
| Friday | 10:00 to 03:00 | 10:00 to 23:00 | 10:00 to 03:00 |
| Saturday | 10:00 to 03:00 | 10:00 to 23:00 | 10:00 to 03:00 |
| Sunday | 10:00 to 00:00 | 10:00 to 23:00 | 10:00 to 00:00 |

*On New Year's Eve until the start of permitted hours on New Year's Day.

| | Late night refreshment (Indoors) | Opening Hours of the premises |
|-----------|----------------------------------|-------------------------------|
| Monday | 23:00 to 02:00 | 10:00 to 02:30 |
| Tuesday | 23:00 to 02:00 | 10:00 to 02:30 |
| Wednesday | 23:00 to 02:00 | 10:00 to 02:30 |
| Thursday | 23:00 to 03:00 | 10:00 to 03:30 |
| Friday | 23:00 to 03:00 | 10:00 to 03:30 |
| Saturday | 23:00 to 03:00 | 10:00 to 03:30 |
| Sunday | 23:00 to 00:00 | 10:00 to 00:30 |

Last Entry Times:

The Assembly
 Sunday 00:00
 Monday to Saturday

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01:30

Zephyr Lounge
Sunday 00:00
Monday to Saturday
00:30

For Recorded Music, Live Music and Opening Hours the following seasonal variation:

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 would apply to this application.

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

Indoor sporting events – Between the hours of 08:00 and 23:00, when Indoor sporting events were taking place to an audience of less than 1000 people, all licensing conditions applicable to the control of Indoor sporting events on this licence were deemed not to be in operation.

Plays – Between the hours of 08:00 and 23:00, when plays were taking place to an audience of less than 500 people, all licensing conditions applicable to the control of plays on this licence were deemed not to be in operation.

The application stated that it was not, at present, intending to use the premises for adult entertainment but the Applicant could not rule out such use in the future. If adult entertainment was introduced, it would be on an infrequent basis, i.e. provided on not more than 11 occasions within a 12 month period, no such occasion beginning within a period of one month beginning with the end of the previous occasions and no such occasion lasting longer than 24 hours.

The application sought to incorporate the one licence currently held for the Zephyr and the two held for the Assembly into one licence.

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.

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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 explained that:

- three licenses held between two premises caused confusion, hence the application to bring them all under one application;
- under the current licence 00566, alcohol could only be sold on the premises until 00:30 on a Monday to Wednesday, but the Applicant wished to extend this to 02:00. Where the current licence provided for the sale of alcohol up to 01:00 or 02:00 Thursdays to Saturdays, the Applicant wished this to be extended to 03:00;
- the proposal from the Police was not entirely acceptable because it effectively mirrored the existing licensing hours;
- in respect of issues caused by re-entering the premises, this occurred when there were problems with the cash machine and people needed to leave to get cash, or when people went outside to smoke;
- there would be no issues with the Police proposals for last entry if people already inside could leave and re-enter.

Mr Besant then explained the floor plans shown in the report and informed Members that Police were requesting that re-entry to the premises was through entrances marked DG4, DG6 and DG7.

Mr Besant informed the Panel that there was no intention to increase the capacity of the premises. Currently there was a condition on the licence that people could not move between the premises. The premises provided variety live entertainment; some of these events were sell-outs and others not. It was hoped that when an event was not a sell-out, it could be moved to the smaller premises and the larger one closed for the evening, or vice versa when an event was very well supported.

He referred to the Police Proposal under "General Conditions", clause 3. This was acceptable provided the word "regulated" was removed from the condition. The bar was only open when entertainment was provided. In respect of clause 4, this was acceptable in principle. But currently, if there was illness or holidays it would prove difficult, so he requested a six month period of grace to get more staff trained. Clause 5 onwards was acceptable and, in accepting these, the premises would have one of the most strictly governed licences in the District.

Mr Besant informed the Panel that once the entertainment finished, 95% of the clientele left. Mr Besant then referred the Panel to the list of entertainment that had been provided by the premises, and pointed out that it provided a raft of entertainment that no one else in Leamington Spa did. He referred them to page 5 of the handout showing various newspaper articles, and pointed them to the events to raise money for charitable causes. The premises secured bookings of significant artists and encouraged customers to attend from within and outside the District, so promoting tourism for the District. Other businesses benefitted such as

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hotels and it promoted South Town. He explained that if the licence hours were extended, it allowed dispersal of people between the venues.

Mr Besant then referred to the Police objection in respect of crime and disorder, detailed in Appendix 3 of the report and also the complaint about the premises in the officer's report, paragraph 3.5. The complaint was in reference to the Assembly; none had been received about The Zephyr. Mr Besant explained that this had arisen as a result of a mistake on a temporary event notice, which they had admitted voluntarily. Mr Besant stated that the Licensing Authority had dealt with it as an innocent mistake.

He then drew attention to paragraphs 3.6 and 3.7 of the officer's report and the fact that the maximum opening hours would be until 03:00; he reminded Councillors that it was significant that there were no complaints other than the one that had been accepted as an innocent mistake. In respect of concerns from the Police about public disorder, he stated that there had been no complaints from anyone in the area; he then commented that Mr Davies was not a resident in the area. Environmental Health Department had not raised any concerns.

Mr Besant referred to the evidence provided by Mr Davies. There was no increase in the number of customers at the premises and the officer's report showed that there were no crime and disorder issues in connection with the premises. He referred to the papers he had provided in which there was an email from Mr Davies to Mr Lynch, offering his services for licensing advice or assistance. The email also referred to the premises as "such a good venue for Leamington Spa". He then questioned Mr Davies's motives in making an objection to the application, and whether he was acting as a private individual or in his professional capacity.

He asked that the Panel grant the application subject to the conditions stipulated by the Police, except for the amendments he had requested.

In response to questions from the Panel, Mr Besant confirmed the parts of the Police proposals that were acceptable and those that were not. Mr Besant confirmed that the hours required were as per the application; he pointed out a mistake in the officer's report. The opening hours in the officer's report, Appendix 1, should all have stipulated 30 minutes more than had been recorded. He pointed out that a lot of events were held in "normal time" but there was pressure for promoters to extend hours. They were in competition with other venues in other towns and if they could not stay open at the later times, it would affect the ability to attract the "names". 90% of business would finish by 23:00 and it was impractical to have to apply for a TEN. If entertainment ended at midnight then the bar closed. Mr Besant pointed out the typing error in the Police proposal in the opening hours for Friday through to Sunday. It should have stated opening from 10:00 every day. Sergeant Calver confirmed this.

Mr Davies was then invited to ask Mr Besant questions to which Mr Besant confirmed that this was a new application, customers were not "well-heeled" and there were two stages.

The Chairman then invited Sergeant Calver to speak. Sergeant Calver referred to the cumulative impact zone and the effect on this because of

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the request for an increase in hours. It was up to the Applicant to prove that this would not affect crime and disorder. The Police proposal document was not an agreement; simply a point of reference for the Panel if they were minded to grant the application. The proposal had been sent to Mr Besant in advance but they were unable to come to an agreement with the Applicant about the hours.

The Panel then discussed the effect of crime and disorder in the cumulative impact zone and the Council's solicitor read out the relevant paragraphs from the Licensing Policy. She advised Members that it was a balancing exercise but the Policy was not absolute.

Members then questioned Sergeant Calver on the number of incidents involving the premises. Sergeant Calver confirmed that the numbers of call-outs were low. Since the beginning of 2013 and the following 15 months there had been approximately 21 incidents of which 12 had required positive action where door staff had detained someone and the Police had been called. There were four incidents involving assault. In comparison to other venues, the premises recorded lower incidents, but the premises might be comparable with one or two other venues. Sergeant Calver also confirmed that he agreed with paragraphs 3.5 and 3.6 of the officer's report. He confirmed that the Police had not objected to any of the applications for temporary event notices.

Mr Davies then informed the Panel of his qualifications and his profession and confirmed that he was at the hearing in a personal capacity. He then gave a history of the licence applications and variations at the premises and asserted that this application was a "backdoor" way to change the purpose of the venue. He then referred to the cumulative impact zone and that it was the responsibility of the Applicant to prove that their application would not increase crime and disorder. He felt that all references to the lack of problems at the premises had no relevance to the cumulative impact zone issue; he felt that it would add to problems due to the sale of cheap alcohol and he referred to adverts in respect of cheap drinks. He maintained that there was evidence of crime and disorder, and this was especially evident when people left the premises. He stated that granting the licence would not promote any of the four objectives of the Council's Licensing Policy; the Licensing Authority would be sending out a message that providing premises are well run, the cumulative impact zone could not be used as a reason to refuse an application.

The Panel then asked Mr Davies if he was saying that the hours could not be extended, to which Mr Davies replied that it was not his place to say that. Mr Besant then asked Mr Davies if he had taken any work as a licensing consultant in Leamington Spa and Mr Davies replied that this information was not relevant. Mr Besant then insisted that it was relevant information if Mr Davies was working for a competitor and the Council's Solicitor agreed that this was a fair point. Mr Davies then replied that he had undertaken work for the Police and for some licensed premises. The Chairman then called a halt to the line of questioning because Mr Davies had informed them that he was there as a private individual.

The Chairman then informed Mr Davies that although legally this was a new application, it was effectively a change because three licenses were being

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surrendered to which Mr Davies replied that if the Zephyr and Assembly closed, there would not be an automatic right for another club to open.

The Chairman asked Mr Besant if he wished to make a closing statement, to which Mr Besant explained that:

- this was technically a new application;
- referring to the Licensing Policy, paragraph 7.4 where it referred to "premises of a certain type", this was not just another night club; it was a unique venue in the District, possibly even in Warwickshire given the list of events;
- paragraph 7.5 of the Licensing Policy was not absolute. Paragraphs 3.5 to 3.7 of the officer's report gave the figures and Sergeant Calver had also done this. These showed that there was one incident every two months of which 12 required positive action, so there was no effect to note;
- paragraph 7.7 of the Licensing Policy stated that each application would be considered on its individual merits, which would mean that this application would not open the floodgates to other applications;
- the application was unlikely to add significantly to the cumulative impact in light of the licensing objectives;
- in respect of crime and disorder and public nuisance, the conditions laid out by the Police were onerous and the Applicant was prepared to adopt most of them and had given reasons for the ones that were unacceptable;
- when the events finished, the sale of alcohol would finish;
- the case notes, especially in respect of the Brewdog Bars Limited that he had handed out were to show that there were few cases that were identical. The clientele at the venue he represented were different to other venues in the vicinity and this was why he had used the Brewdog example; and
- he reiterated that the individual circumstances of this application and the figures produced did not support a claim that the application would affect the cumulative impact zone.

The Chair asked all parties other than the Panel, the Council's Solicitor and the Committee Services Officer to leave the room at 3.30 pm, to enable the Panel to deliberate and reach its decision:

"The Panel has decided to grant the application for a premises licence for the Assembly and Zephyr Lounge. The grant of the licence is subject to the mandatory conditions and the additional conditions proposed by Warwickshire Police as set out in the document titled "Warwickshire Police Proposal" referred to at the hearing. One minor amendment has been made to condition 3 which will read;

3. The sale of alcohol after 2300 hours shall only be made if it is ancillary to the provision of regulated entertainment and/or provision of late night refreshment.

When considering the application the Panel had taken into account;

- The report prepared by the Licensing Authority
- The representation made by Warwickshire Police

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- The representation made by Mr David Davies
- The WDC Licensing Policy
- The statutory guidance issued under s182 of the Licensing Act 2003.
- The oral representations made by all parties at the hearing.

The Panel firstly noted that the premises were situated in the Cumulative Impact Zone (CIZ) and that the relevant sections of both the statutory guidance and the Warwick District Council Licensing Policy applied. This meant that there was a rebuttable presumption that applications that were likely to add to the cumulative impact would normally be refused and that the onus of proof was on the applicant to show that the application would not impact upon the four licensing objectives. In this case, the licensing objectives of crime and disorder and, to a lesser extent, public nuisance were the most relevant. The Panel attached considerable weight to the policy and the guidance.

The Panel found that:

- The grant of the license would result in an increase in licensable hours in the CIZ zone
- The grant of the licence would allow the Zephyr Lounge to operate at later hours than currently permitted and permit patrons to pass between both venues
- The Assembly was generally a well-run premises that was an asset to the District
- There were no police concerns about the current levels of crime and disorder at the premises and there was no evidence of public nuisance
- The overall capacity of the premises would remain the same

Having carefully considered the representations and the relevant policies, the Panel concluded that the applicant had satisfied them that the application would not impact on the four licensing objectives and add to the existing cumulative impact. In reaching this decision, the Panel had taken into account the characteristics of this particular premises, the low level of incidents of crime and disorder, and the lack of issues or complaints resulting from the operation of Temporary Event Notices that had extended the hours until 3am on a number occasions.

The Panel also considered the applicant's representations in relation to the conditions proposed by the police, in particular the proposed amendments to conditions 1 and 4. The Panel decided that it was not appropriate to make amendments. The Panel considered that condition 1 should include the word re-entry and that a personal license holder should be on the premises in accordance with condition 4 in the interests of promoting the licensing objectives."

RESOLVED to grant the application for the hours requested subject to mandatory conditions and the additional conditions proposed by Warwickshire Police as set out in the document titled "Warwickshire Police Proposal" referred to at the hearing except condition 3 which will read:

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“3. The sale of alcohol after 2300 hours shall only be made if it is ancillary to the provision of regulated entertainment and/or the provision of late night refreshment”.

At 4.25 pm all parties that had chosen to wait for the decision (Mr Besant, Mr Lynch, Sergeant Calver and the Licensing Enforcement Officer) were invited back into the room and the outline decision was read out by the Council’s solicitor as stated above. The full decision and reasons would be sent out within five days.

(The meeting finished at 4.26 pm)