

# LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Friday 3 December 2010, at the Town Hall, Royal Leamington Spa at 10.00am.

**PANEL MEMBERS:** Councillors Coker, Mrs Knight and Pratt.

**ALSO PRESENT:** John Gregory (Council's Solicitor), David Davies (Licensing Services Manager) Jayne Bailey (Licensing Enforcement Officer) and Emma Millward (Committee Services Officer).

## 1. APPOINTMENT OF CHAIRMAN

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

## 2. DECLARATIONS OF INTEREST

Minute Number 3 – Application for a Review of the Premises Licence under the Licensing act 2003 to Art and Wine, 8 High Street, Warwick.

Councillor Coker declared a personal interest as he knew Mr Potts, the solicitor acting on behalf of the License holder and Mr O’Gorman, the solicitor acting on behalf of the applicant.

## 3. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE UNDER THE LICENSING ACT 2003 TO ART AND WINE, 8 HIGH STREET, WARWICK.

A report from Community Protection was submitted which sought a decision on a review of the premises licence for Art and Wine, 8 High Street, Warwick.

The Chairman introduced the members of the Panel and other officers present and then asked all parties to introduce themselves. Mr Trevor Jones and Mrs Christine Jones were an interested party and the applicant for the review of the premises licence. Mr O’Gorman was the solicitor acting on behalf of Mr and Mrs Jones. Mr Potts was acting on behalf of the Licence Holder, Mr Weatherby-Blythe, and he was accompanied by Mr Gomez who was a Director at Art and Wine. Peter Lawson from Warwick District Council’s Environmental Health Department also attended as a responsible authority who had a made representation.

The Council’s Solicitor read out the procedure that would be followed at the meeting.

The Licensing Services Manager outlined the report and asked the Panel to consider all the information contained within it when reaching a decision. 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 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.

Councillor Pratt asked the Licensing Services Manager if he had made visits to these premises in the past. He explained that he had made visits and that he had gathered information and statements from the premises.

Mr O'Gorman presented Mr and Mrs Jones' application for a review of the premises licence for Art and Wine which related to the Public Safety and the Prevention of Public Nuisance licensing objectives. He began by handing out a booklet which contained previous applications made by Art and Wine, minutes from previous Licensing Panels and photographs of the premises. The Council's Solicitor asked Mr Potts to agree to this new information being handed out and the panel was adjourned at 10.15am to allow him time to look through the new information. The panel reconvened at 10.20am with Mr Potts agreeing to this document being viewed by the panel.

Mr O'Gorman outlined the details shown in the document and explained where the photographs had been taken, including a picture which showed the proximity of Mr and Mrs Jones' property to the courtyard of Art and Wine. He went on to explain that they believed the premises no longer served alcohol ancillary to the sale of art and fine wine and that the premises were holding parties with people filling the courtyard to smoke and drink. He explained that this was causing nuisance to the neighboring properties due to the smoke drifting and the amount of noise being made. Mr O'Gorman asked Mr and Mrs Jones to tell the panel, in their own words, how the premises had been affecting them.

Mrs Jones explained that most weekends they were subjected to loud laughter, talking, shouting and smoke drifting in to their premises, which was the other side of the courtyard wall. This had meant that they had been unable to use their courtyard or open their windows, even through the summer months. She told the panel that she and neighbours living nearby had become extremely stressed because of the noise levels coming from the premises.

Mr Jones told the panel that he had previously spoken with Mr Gomez about the problems and was assured that they would try and sort these out but nothing had been done. He also explained that they did not just want the courtyard closed as he did not think these measures would stop the problems.

In response to questions from the panel, the applicants informed members that at first the premises had not caused much of a problem but since it had become more popular and changed the way it operated it had caused problems. They also confirmed that they did not think that the problems would go away if the courtyard was closed due to windows and doors being left open allowing noise to escape the premises and the volume of noise being made inside the premises.

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

The applicants also answered questions from Mr Potts, confirming that they would not withdraw their application if a condition to stop the use of the courtyard was put forward and that the only thing that would help would be the premises operating how it began.

The Chairman then asked Peter Lawson to outline his representation, which he did explaining that Environmental Health Officers had witnessed the noise nuisance caused by Art and Wine, with an abatement notice being served. He told the panel that they received regular complaints regarding the courtyard, especially from residents who overlooked it. He explained that noise in the courtyard could not be effectively managed and that this part of the premises should not be used as a drinking or smoking area.

He then answered questions from the panel explaining that the premises would need suitable ventilation if the courtyard was not used and windows were kept closed. He also confirmed that he had not only received complaints from people overlooking the courtyard but also from residential properties which adjoined the premises with regard to noise and odours.

Mr Lawson also answered questions from Mr Potts, confirming that if the courtyard was not used and measures were taken inside the premises, such as a noise limiter, the problems that had been reported should be alleviated.

The Chairman then asked Mr Potts to present the licence holders application, which he did, informing the panel that the courtyard area would no longer be used by anyone, including staff and that they would be willing to have this as a condition added to the licence. He explained that this would deal with many of the concerns raised, including those made by the Environmental Health Officer. He went on to say that they would be willing to make changes inside the premises to make it as sound tight as possible including the noise limiter. He asked that the panel did not revoke the licence and that they allowed them the chance to try and improve things for the people living near the premises.

Mr Gomez, a director for Art and Wine told the panel that the courtyard had not been used for a number of weeks and that it would not be used in future. He also explained that they would only have background music in the premises and that the level had been approved by a Warwick District Council Environmental Health Officer.

Mr Gomez answered questions from the panel confirming that the premises had changed the way it operated since it had become more popular and that they were considering installing air-conditioning into the premises so they did not have to open the windows or doors of the premises. He also explained that a number of changes had already been made following complaints, such as new hanging doors to prevent slamming.

Mr O'Gorman then summed up Mr and Mrs Jones' application, reiterating that there was a nuisance that needed to be prevented and that no conditions would be accepted by the applicant that would meet the reasonable requirements for the neighbours to live in peace and quiet. He explained that as the premises seemed to be operating as a wine bar, it

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

had created too many problems and the neighbours wanted it closed or for the licensee to operate the premises as applied for in 2007.

The Licensing Services Manager explained to the panel that there was a condition on the licence which meant the premises were only able to sell alcohol ancillary to the sale of fine wine and art, which was not easy for the Licensing Authority to enforce and asked that this be taken into consideration.

At 12.08 pm the Chairman asked the applicants, the licence holder, the Licensing Enforcement Officer and interested parties to leave the room to enable the Panel to deliberate and reach its decision.

At 13.05 pm all parties were invited back in to the room so they could be informed of the Panel's decision.

In taking their decision the Panel paid due consideration to the relevant legislation and guidance, application and the representations made about it.

The panel carefully considered the representations of the applicants, the Licensee and Warwick District Councils Environmental Health Officer and were satisfied that there had been significant noise nuisance to local residents, caused largely by patrons drinking and smoking in the courtyard.

Whilst the representations of the interested parties and Environmental Health were focussed on the external courtyard, the panel considered that there was a potential for noise to escape from the internal areas and cause a nuisance.

However, it was satisfied that this potential could be addressed by conditions and appropriate enforcement action. Therefore the panel had decided to add five conditions to the licence.

**RESOLVED** that the following conditions be added to the premises licence:

- (1) the external courtyard shall not be used or occupied at any time by customers;
- (2) the external courtyard shall not be used by members of staff for the purposes of smoking or recreation at any time;
- (3) all doors and windows shall be kept closed at all times save for the purposes of access and egress to the premises;
- (4) noise shall not be audible so as to cause a nuisance at the facade of the nearest noise sensitive premises; and
- (5) a noise limiter shall be operational at all times and set to a level agreed by Warwick District Council's Environmental Health Department.

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

All parties were reminded that they had 21 days of the Panel's decision to appeal the decision to the magistrate's court.

(The meeting finished at 13.10pm)