

Licensing and Regulatory Committee

Minutes of the meeting held on Tuesday 21 October 2014, at the Town Hall, Royal Leamington Spa at 10.00am.

PRESENT: Councillor Illingworth (Chairman); Councillors Barrott, Mrs Bromley, Doody, Mrs Falp, Mrs Gallagher, Gill, Mrs Goode, Mrs Grainger, Mrs Higgins, Pratt, Weber and Wreford-Bush.

23. **Substitutes**

Councillor Barrott substituted for Councillor Mrs Knight, Councillor Mrs Bromley for Councillor Mackay, Councillor Mrs Falp for Councillor Mrs Mellor and Councillor Weber for Councillor Wilkinson.

24. **Declarations of Interest**

Minute Number 25 – Application for a review of the premises licence for the Falcon, Birmingham Road, Haseley, Warwick

Councillor Mrs Gallagher declared an interest because she would be addressing the Committee as a witness for the applicants and would not vote on the application.

Minute Number 26 – Community Governance Review

All Councillors present declared a blanket declaration because the review affected all Wards of the District.

25. **Application for a review of the premises licence for the Falcon, Birmingham Road, Haseley, Warwick**

The Committee considered a report from Community Protection which outlined an application from Mr and Mrs Waterhouse, requesting a review of the premises licence for the Falcon, Birmingham Road, Haseley.

The Chairman introduced himself, the Council's Legal Advisor, the Committee Services Officer and the Licensing Officer.

Present were the applicants Mr and Mrs Waterhouse, Mr Shield, solicitor representing Marston's Plc, Mr Morris, a representative from Marston's Plc, and Mr Tracey, the Designated Premises Supervisor and licence holder.

Additional papers were circulated at the meeting including a restaurant and bar menu from the Falcon and the skeleton argument from Marston's Plc.

The Legal Advisor addressed the meeting and explained that the timescale for appealing was 21 days and not 28 days as detailed in the report. The Chairman advised that a decision would be delivered verbally at the meeting and a written decision would be finalised and sent out in due course.

The Licensing Officer outlined the report and explained that a premise licence had been issued to English Country Inns Plc for the Falcon, Haseley, Warwick in November 2005. Since the first issue of the licence, the premises licence holder had changed six times and the current premises licence holder was Mr Tracey.

The details of the existing premise licence were outlined in the report and explained that there were no conditions or operating schedule put forward to be included on the licence at the time of applying in 2005 and this had remained unchanged.

In September, the Licensing Team received an application for a review of the licence from Mr Waterhouse, a resident living in the vicinity of the premises. The application had been made under the licensing objectives of the Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance and Protection of Children from Harm and a copy of the application form was attached as appendix 1 to the report, along with documents submitted by Mr Waterhouse to support the application.

Mrs Waterhouse addressed the Committee and explained that she and her husband lived behind the Falcon Inn with their young son. She explained that they had experienced a very stressful summer due to the outside space of the pub not being managed properly. When they moved in, the pub had been a quiet country premise but had since evolved into a self-advertised party venue. The family had found the evenings especially difficult because the high noise levels had prevented them from opening their windows, especially during the very warm weather.

Mrs Waterhouse gave examples of events throughout the summer, some of which had had Temporary Event Notices and some had not. The family had been disturbed by every event held and the noise levels had been worsened by the volume of people allowed on the outside terrace. She stated that sound proofing should have been included as part of the planning application for the terrace but this had been withdrawn by Marstons Plc, who she felt had no intention to try to protect residents.

On one occasion, a marquee had been erected next to the perimeter fence adjoining their property and had been filled with 'hundreds' of people. Mr & Mrs Waterhouse had received no dialogue or apology in relation to the ongoing issues and had repeatedly involved the Environmental Health officers.

Mrs Waterhouse requested that the terrace be unlicensed for alcohol consumption, that a capacity limit be placed on the terrace and for the terrace and gardens to be cleared by 2100 hours with no outside cooking allowed.

In response to questions from the Committee, the Waterhouses advised that they had lived in the property since November 2010. Members noted that there was no evidence from Environmental Health officers that a statutory noise nuisance had been effected but were disappointed that the officers had not submitted any report, considering the extent of their involvement in this case.

Mrs Waterhouse also explained that they had tried communicating with Mr Tracey, the Designated Premises Supervisor, but dialogue had broken down because they felt they were not being listened to.

Mr Waterhouse addressed Members regarding the acoustic report referred to by Marstons Plc in their representation. He advised that the test had been undertaken in unrealistic circumstances and no mitigation measures had been carried out. He did not feel that the Committee should give too much weight to this and referred to it as a red herring.

Councillor Mrs Gallagher addressed the Committee in support of Mr & Mrs Waterhouse's application. She advised that she had witnessed the distress caused from the previous evening, in early summer 2014 when an event had taken place at the pub, without a temporary event notice being issued. She explained that this had caused huge distress, during a hot summer which had rendered the family's outside space unusable.

Mr Shield, the solicitor acting on behalf of Marston's Plc asked Councillor Mrs Gallagher if she had witnessed the noise nuisance herself, which she confirmed she had. Councillor Mrs Gallagher also confirmed that she had not sought advice from the Environmental Health Officers because the applicants had already done this on a number of occasions. Following persistent questioning, Mr Shield was reminded by the Legal Officer that cross examination was not permitted at the hearing.

Mr Shield then addressed Members and explained that Marstons Plc were a large, regional brewery with two sections to it. One section had its own pubs in which they employed managers and the other was a lease / tenanted division. Mr Shield gave a brief history of the Falcon premise and explained that it was a country inn, with a pre-2005 old licence which had not changed since the original was granted. The premise had some rooms for let and an outside shelter had been constructed in 2009, on an existing, external hard-core area. The pub was a food led premise that held functions on an occasional basis. Mr Tracey had been a very successful tenant in the 14-15 months he had been there and had always complied with the terms of the lease. Mr Shield informed the Committee that Mr Tracey had now decided to leave the business of his own accord.

Mr Shield referred to the colour copies of the premises layout and explained how each area was managed. He reminded Members that there had been no representations from the Police or any other responsible authorities and highlighted that the Environmental Health team had made no representation.

Members asked if responsible authorities were specifically asked for comments. Officers advised that they were not directly asked to contribute an opinion but they were notified if a review of a licence was applied for.

Mr Morris, a representative of Marstons Plc, addressed Members and assured them that this was not an issue of uncontrolled management nor was there a pressure on premises to hit targets. He explained that tenants were usually signed up to a five year tenancy but in exceptional circumstances, Marstons Plc would agree that a tenant could move on. Mr Morris explained that the leaseholder had a right to run the business as he

chose to and the business had been turned around without breaching licensing laws and was as a result of good service and good produce.

Mr Tracey addressed the Committee and stated that he was very disappointed to be in this situation. He advised that 14 to 15 months ago he had taken over the lease with the best of intentions and the dialogue between himself and the applicants had been good. He reminded Members that a successful business had to be busy and he was proud of the success he had achieved in quadrupling turnover. He made reference to the level of pressure he had felt with the continuous probing from the Environmental Health team. Although Mr Tracey accepted that there had been some issues with amplified music, he reiterated that the pub only had a limited licence for operation which was often restrictive.

In response to questions from the Committee, Mr Tracey stated that he had been informed by Marstons Plc that there was an historic issue with the neighbours. In addition, he was encouraged by Marston's Plc to trade for a period of time with the existing licence, rather than apply for a more permanent change in licensing hours.

In summary, Mr Shield explained that there were two different sides to the issue and although they were the responsible authority, Environmental Health had not made any representation because there was insufficient evidence.

Mrs Waterhouse summed up her application and reminded Members that Marston Plc's version of events was very different to their experiences. She assured the Committee that Environmental Health had taken their concerns seriously and they had been pro-active in monitoring their calls. She asked that Members did not dismiss their points because they were the only residents affected because this, in fact, made them more vulnerable. She felt that they had a right to enjoy their home, without disturbance and hoped that an enduring solution could be found.

At 12.10 pm the Chairman asked all parties, other than the Legal Advisor and the Committee Services Officer to leave the room whilst the Committee made its deliberations.

At 1.05pm all parties were invited back in and the Chairman asked the Legal officer to read out the decision as follows:

The Committee, having heard the representations made and having considered the information in the report and the additional papers

Resolved that the premises licence should not be revoked or suspended. They did however, feel that conditions should be added to the licence in order to prevent public nuisance, as follows:

- i) all outside areas, including the canopy dining area, to be cleared of all customers by 23:00 hours save for egress; and

- ii) the playing of music will not be permitted in the outside areas, including the canopy dining area, at any time.

A note was also added to Environmental Health and Licensing as follows:

The Committee understands that applications for Temporary Event Notices have been made in the past and that objections have not been made by the Police or Environmental Health. Whilst the Committee accepts that the control of Temporary Event Notices is outside the remit of this review application they do find that the operation of these licences may have caused noise issues and disturbance in the past and may do so in the future. The Committee would ask Environmental Health to note its findings and the conditions that have now been added to the premises licence.

All parties were advised that a full decision would be published in due course and that individuals had 21 days to appeal this decision.

The full decision is appended to these minutes.

Councillor Mrs Bromley arrived during this item but did not join the meeting until the start of minute number 26 – Community Governance Review.

26. **Community Governance Review**

The Committee considered a report from the Chief Executive which brought forward the final proposals following the Community Governance Review of the District for agreement and progression, in liaison with the Local Government Boundary Commission for England (LGBCE) and also a draft submission in response to LGBCE review of Warwickshire County Council Divisions.

At its meeting of 18 September 2014 the Committee agreed a set of proposals, as a result of its Community Governance Review, for the Chief Executive to discuss informally with the LGBCE.

At the meeting between the Chief Executive and the LGBCE, their representative explained that two processes needed to be considered. Firstly, if, as part of a Community Governance Review (CGR), Warwick District Council wished to alter the electoral arrangements for a parish whose existing electoral arrangements were put in place within the previous five years by an order made either by the Secretary of State, the Electoral Commission, or the LGBCE, the consent of the LGBCE was required. This included proposals to change the names of parish wards.

Secondly, with regard to any proposed changes to the Warwick District Council Ward boundaries that were protected through the order due to come into force in 2015, the Council would need to undertake the following process. The District Council would need to seek consent for any

associated Warwick District Council and Parish boundary changes. Once this was approved, the Council would need to seek approval from the LGBCE for a late alteration order to be made to ensure the District boundary was amended. This would need to be completed by early January 2015.

The report advised that at the meeting between the Chief Executive and the LGBCE there was general but informal agreement on the proposed changes. However, there was concern relating to the area of Bishop's Tachbrook.

The Council had previously committed to the principal that local authority boundaries should be coterminous to provide clarity for electors. Consequently, in respect of the proposals for the County Council Divisions, the report suggested that the LGBCE should be asked to amend boundaries that were agreed as part of this Community Governance Review, especially in the case of the University Ward of Stoneleigh Parish.

Further reasons for recommendations 2.3 and 2.4 of the report were provided in paragraph 3.12. In addition, officers felt it was important to delegate the wording of the final response to the Chief Executive to enable it to be amplified to include details of how the number of electors would change for each Division following the proposals suggested by Warwick District Council to both its boundaries and the County Council Divisions.

At the start of the meeting, the Chief Executive addressed Members and advised that the LGBCE had informed the Council that it would not consider any proposal to change the number of District Councillors or the overall proposals outlined in Appendix 2 to the report. Therefore, recommendation 2.2 had been removed by officers.

Following discussions, the Committee agreed that the wording of the Council's representation to the LGBCE on the WCC Boundary Review should be circulated to Members, once it had been finalised with the Chairman of the Licensing & Regulatory Committee.

Councillors Brookes and Heath had made requests to address the Committee with regard to proposals 16 and 17 outlined in Appendix 1 to the report, which related to Myton and Heathcote Ward.

Councillor Heath spoke first and requested that the boundary should be as detailed in the original Map 5 dated January 2014, and not as per the proposed Map 12 contained in this report. He felt that residents would be more likely to use the facilities and amenities in Whitnash and requested that the boundary run along Harbury Lane and not the hedgerow.

Councillor Brookes addressed the meeting and requested that Members leave the boundaries as they were, leaving the proposed new development in Bishop's Tachbrook. He reminded members that Grove Farm development would provide a primary school with Section 106 monies and residents would be able to find all the necessary amenities in Bishop's Tachbrook. He urged Members not to change anything but to help make a new community and retain the residents of Heathcote caravan park in Bishop's Tachbrook.

It was proposed and duly seconded that the southern boundary of the Whitnash West Town Ward should run in a southerly direction down Tachbrook Road before progressing along Harbury Lane. This would incorporate the future residents of the Woodside Farm development into Whitnash Town and not Bishop's Tachbrook.

The Chairman of the Committee proposed that proposals 1 to 4 of appendix 1 be approved and this was agreed.

With regard to proposal 5 which dealt with the realignment of the Leamington Manor Town Ward, resulting in the New Cubbington area moving from Cubbington Parish Council North ward into Leamington Manor Ward, there was further discussion from Members.

Members noted that Cubbington Parish Council did not support the proposal because it believed it would impact on its financial viability. An addendum was circulated which outlined the precept received by each Parish and/or Town Council in Warwick District, the number of electors for each and the mean average spend per elector for each Parish or Town.

The addendum also included further comments from Cubbington Parish Council and the advice sent from officers in return as well as their estimated costs for 2014/2015. Officers had proposed that the request could be put forward to the Executive requesting that a grant be offered to Cubbington Parish Council to help ease the burden on the significant financial impact that the boundary changes could result in.

Councillor Doody stated that he was not in favour of awarding a grant to the Parish Council because it should be able to stand on its own two feet. Members felt that if it was recognised that the Parish Council would face real financial hardship, then the boundary changes should not be made.

Other Members felt that the issue of finances had been discussed many times and parish councils needed to look at other ways of raising funds if their budgets had been cut. Councillor Mrs Goode therefore proposed that the Leamington Manor Ward should be realigned with the LGBCE Manor District Ward, as per Map reference 3. This was seconded but having been put to the vote was defeated three votes to six.

Proposal 6 of appendix 1 was discussed, with an amendment to the boundary being proposed. Councillors felt that there was strong public feeling that the boundary should run along the bridle path and that Whitnash Town Council East Ward should remain in Whitnash.

This was proposed, seconded and resulted in a tied vote of six votes all. The Chairman used his casting vote and the proposal lost. It was proposed, duly seconded and resolved that the proposal in the agenda should not go forward for consideration.

The remaining proposals in appendix 1, numbered 7 to 15, were agreed consecutively.

The Committee therefore

Resolved that

- (1) recommendations 1 to 4 and 7 to 15 as set out at Appendix 1 and in the relevant maps are confirmed and approval is given to the Chief Executive to progress the necessary consents with the LGBCE;
- (2) proposals 5 and 6 of appendix 1 are not supported and the parish boundary should remain unamended;
- (3) a further proposal to amend the boundary between Bishop's Tachbrook and Whitnash, both at District and Parish level so that Whitnash includes Woodside Farm and Harbury Lane Sports ground to reduce the impact of the predicted housing growth in Whitnash;
- (4) a further proposal to amend the Boundary between Warwick and Bishops Tachbrook so that the area south of Harbury Lane currently in Warwick, at both District and Parish level be moved in to Bishops Tachbrook;
- (5) the Committee confirms its principle view that the Local Government Boundaries should be coterminous and therefore it objects to the proposals for Warwickshire County Council Divisions and suggests and recommends that:
 - (i) the LGBCE picks up the minor variation to ward and parish boundaries brought through as a result of the Community Governance Review by Warwick District Council; the University Parish Ward of Stoneleigh should be part of Kenilworth Abbey Division;
 - (ii) the LGBCE notes that the latest predicted growth for Bishop's Tachbrook parish between 2014 and 2019 is 1740 electors;
 - (iii) the Commission reconsiders its proposal at Town Council level in the towns of Kenilworth, Warwick and Royal Leamington Spa to ensure coterminosity of the Town Council wards with the District Council wards; and
 - (iv) the LGBCE reconsider the proposal of losing a County Councillor seat from each District/Borough area, as this is a change not made in proportion to the number of electors in each District/Borough.

- (6) authority is delegated to the Chief Executive, in consultation with the Chairman of the Committee, to finalise the wording of the Council's representation to the LGBCE on the WCC Boundary Review.

(The meeting finished at 3.03 pm)