

# Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Tuesday 12 September 2017, at the Town Hall, Royal Leamington Spa at 10.00am.

**Present:** Councillors Mrs Cain, Gifford and Mrs Hill.

**Also Present:** Mrs Gutteridge (Council's Solicitor), Mr Hafiz (trainee solicitor, observing only), Mrs Dury (Committee Services Officer) and Mrs Russell (Licensing Enforcement Officer).

## 1. **Appointment of Chairman**

**Resolved** that Councillor Gifford be appointed as Chairman for the hearing.

## 2. **Declarations of Interest**

There were no declarations of interest.

## 3. **Application for a variation of the premises licence issued under the Licensing Act 2003 for Cape of Good Hope, 66 Lower Cape, Warwick**

The Panel considered a report from Health and Community Protection which sought a decision on an application for the variation of a premises licence from Mr Steve Jury and Mrs Emma Jury for Cape of Good Hope, 66 Lower Cape, Warwick.

The Chairman introduced the members of the Panel and the officers present. The other parties then introduced themselves as:

- Mr and Mrs Jury, the applicants;
- Mrs Southorn, local resident, objector; and
- Mr Southorn, local resident, speaking in objection on behalf of Mr Henstone, a local householder.

The Council's Solicitor explained the procedure for the hearing. She also explained that her colleague, Mr Hasan, was a trainee solicitor and was at the hearing to observe only and he would remain in the room when deliberations were in progress.

The Licensing Officer outlined the report and asked the Panel to consider all the information contained within it and the representations made at the meeting, in order to determine if the application for a premises licence should be approved and, if so, whether the licence should be subject to any conditions.

Mr and Mrs Jury applied for a variation of the premises licence for Cape of Good Hope on 1 August 2017. The variation application was to extend the current licensable area to include the lock side. A plan showing the current licensable area was attached as appendix 1, and a plan showing the proposed licensable area was attached as appendix 2, to the report.

An operating schedule, which had been submitted by the applicant and was detailed at 3.2 in the report, would form part of any licence issued.

The Licensing Department had received two representations in relation to the application. Objections had been received from residents within the vicinity, and copies of these were attached as appendices 3 and 4 to the report.

There were a number of conditions which already formed part of the current premises licence and these would remain on the licence and were detailed at section 3.4 in the report.

A deregulation came into force in April 2015 which amended the Licensing Act 2003 and the need for a premises licence which was authorised and open for the sale of alcohol to require a licence for live or recorded music in certain circumstances. The application was to extend the area to sell alcohol only and therefore any live or recorded music falling under the deregulation which may take place in this new licensable area could not be considered. The deregulations which would apply to the premises were detailed at paragraph 3.5 on the report.

A map of the area was attached as appendix 5 to the report and photographs of the area were attached as appendix 6.

The applicants informed the Panel that the reason for the application was so that they would have the authority to ensure that the requirements of the four Licensing Objectives were complied with. Authority was required to prevent people contravening these objectives.

Mr Jury stated that they had taken comments on board from neighbours about noise and the incident referred to in the objections related to one incident which was a lapse. Since then, he had ensured that there was no amplification of music outside the premises.

He had applied to lease the additional land and had cleaned the area up. He had provided tables and spent £2,000 on the area. The area of land was not a public thoroughfare, it was private land. The Land Registry staff had suggested that he should gate the area, but he had felt that this would be anti-social.

In response to questions from the Panel, the applicants responded that:

- People were not behaving anti-socially in the street, but there was an issue because people did think they could do what they liked on the land in question, and had done so before. When he had asked them to stop, people had responded that the land was not subject to a licence.
- Six tables, with seating for four per table had been provided in the area. There were signs stating that the area was not licensed.
- There was no public right of way on the land subject to the variation application, but on the other side of the canal, there was a towpath. People mistakenly believed that the pub side was a public right of way.
- They had not sent letters to local residents explaining the situation because nothing was finalised; they would do this and include all the recent new-build houses.
- They wanted to make the premises family friendly; not a "rough old boozier".
- They had no intention of improving the lighting by the lock because they did not wish to encourage people to remain there at night. No alcohol would be allowed outside past 9.30pm.

- Infra-red cameras were set up to record outside and any anti-social behaviour would be reported to the Police. They had previously reported two car break-in incidents.
- Whilst they could not prevent people on their way home sitting outside, they would try to encourage good behaviour.
- They would be happy for the licence to stipulate that no alcohol was to be served outside after 9.30pm because it would stop children dining outside late in the evening. As soon as children had finished eating after 9.30pm, they would have to leave. The seating area would be closed.
- The outside speaker had been disconnected.
- Residents were used to an annual event on a boat when music was played for a charitable cause, and the same event was planned for June 2018.
- They had no intention of playing music outside, but if the situation arose, then they would apply for a one-off special licence.
- The outside area was to talk, drink and eat up to 9.30pm. Waitress service to table would be provided outside.
- Mr Jury had been at the pub since October 1997.

In response to questions from Mr and Mrs Southorn, the applicants responded that:

- They agreed with Mrs Southorn that people using the Lockside area had a public right of way on the towpath, and people had crossed to the pub from the towpath. These people were not just locals, but cyclists and boaters.
- People living in the flats should use Lock Lane, Mrs Southorn should not treat the Lockside as a public right of way, nor should people from the factory. However, the applicants had no intention of blocking the access; they simply wanted to make it obvious that the area was subject to a licence. Mrs Southorn could use the area as a crossing point "try stopping her" (stated in a jovial tone).

Mr and Mrs Southorn lived in a property across the canal and opposite the pub and the area known as Lockside.

Mrs Southorn confirmed that she enjoyed a good relationship with the applicants. She had purchased her house in 2002, and whilst she had appreciated that there would be noise, the noise had increased in the last three years. General noise from conversation was not an issue, but she had not expected music to be played outside. She was reassured that Mr Jury had stated that music would not be played outside, but was concerned that another licensee might do this under the rules of deregulation. She had been concerned when the applicants had been informed that live music was not permitted in an unlicensed area and then had immediately applied for a licence.

She was pleased that there were signs outside asking patrons to be considerate to neighbours and that drinks could not be taken outside past 10.30pm. She was happy for the area to be closed down by 10.30pm but if smokers were allowed to go there, then their noise would still be audible.

Mrs Southorn explained that water amplified voices and none of the regulations would prevent this. Her house now had double glazing and she had rearranged the positioning of beds to reduce noise nuisance. The noise was not continuous. The pub was great for watching rugby matches and for the community. More people had moved into the area and this meant that larger numbers of people

were congregating outside. When the applicants were away, she had not found the staff to be very helpful when she complained about the music.

In response to questions from the Panel, Mrs Southorn replied that:

- She did not mind the annual "Folk on the Water" event.
- This year she had remarked on two occasions when live amplified music had been played outside, and water amplified this further.
- Music was played inside once a month, but this finished by 11pm and usually happened on a Saturday night. The live music outside had occurred on a Sunday.
- Her house sat below the level of the canal and whilst the music was not every night and not all the time, when it was played, it was intrusive.
- She was not aware of many problems the extra control a licence on the additional area would afford the applicants. Most people came for a quiet drink. It did use to be a rough area and most of the noise occurred in the summer months in front of the pub, not in the Lockside area.

Mr Jury clarified that they were applying for a licence to cover the front of the pub and the Lockside. This was not being done with the intention of generating additional business; simply so they can apply the Licensing Objectives. He wanted to keep everyone happy.

The applicants did not wish to question Mrs Southorn. The Council had never been forced to act over any issue. Mr Jury was concerned that Mrs Southorn had not spoken to them about the issues she found problematic, and had instead gone to the Council. Mrs Southorn replied that she had tried to speak to them three summers ago about the music but had been met with a refusal. Mr Jury responded that he knew nothing about this because he had been away at the time and had only found out about it at the last minute. Mrs Southorn confirmed that she was extremely happy to speak to Mr Jury.

Mrs Southorn then sought clarification on the times drinks could be consumed outside and Mr Jury confirmed that the area outside the pub would be used until 10.30pm and the Lockside area would be 9.30pm. A shelter would be constructed outside for smokers this year. No drink or food would be served past the times he had indicated outside, but he could not stop smokers.

Mr Southorn then spoke on behalf of Mr Henstone. Mr Henstone was pleased that the pub was thriving but since the applicants had purchased number 60, people were now closer to his house. Mr Henstone lived at a property that was part of a set of buildings all joined to the pub. Mr Henstone had raised certain issues:

- Could number 60 be licensed despite not being a licensed premise?
- Was it intended to resume live music?
- What would the applicant achieve?

Mr Henstone did not currently live at the house he owned but at some point he might.

The Chairman acknowledged that some of Mr Henstone's questions had already been answered previously but he asked Mr Jury to give more details on some aspects.

Mr Jury confirmed that he had purchased number 60, but this would have no impact on Mr Henstone because he intended to rent out number 60 to pub staff. Whether or not the licence was granted would have no effect on Mr Henstone because Mr Henstone was not currently living at the property and his tenants were in his pub until closing. The issue of music outside had been addressed. He would clear the Lockside area by 9.30pm, a time when most people naturally left an outside area at a pub.

Mrs Southorn expressed concern that now Mr Jury owned number 60, tables and chairs might move further along and this could create a future problem for Mr Henstone.

Mr Jury confirmed that there would be tables outside number 60. He pointed out that Mr Henstone had purchased his property and this was part of the pub. Mr Henstone's concerns were what might happen. Mr Jury intended to put two, two-seater tables outside number 60 and people could be served with food and drink there up to 10.30pm.

In summation, Mr Jury reiterated that his application to vary the licence was so that he could enforce the four Licensing Objectives. There would not be music played outside. He had the lease to the land now and a licence would present the opportunity to apply the licensing objectives with more authority.

The Council's Solicitor then informed the Interested Parties what advice she would be giving to the Panel when it came to deliberate the decision. Guidance would be given in reference to the Licensing Act and "Beer Gardens". Whether or not the area became licensed, it would make no difference to whether live music could be played. People were protected from nuisance under Environmental Health Acts.

At 10.59am, the Chair asked all parties other than the Panel, the Council's Solicitor, the trainee solicitor and the Committee Services Officer to leave the room, in order to enable the Panel to deliberate in private and reach its decision.

**Resolved** that the application for a variation of a premises licence be **granted**, subject to conditions, and the area known as Lockside must be closed by 9.30pm.

At 11.19am the Licensing Enforcement Officer was invited back into the room (the applicants and the Southorns had left) and the Chairman invited the Council's Solicitor to read out a shortened decision. A full decision would be sent to all parties within two days.

(Appendix One to these minutes details the full decision.)

(The meeting ended at 11.20am)

**Licensing Panel Decision  
Cape of Good Hope  
12 September 2017**

1. In reaching their decision the Members of the Licensing Panel has considered the Licensing Officer's report, together with the representations made both before and during the hearing by the Applicants and the Interested Parties.
2. The Panel has also had regard to the statutory guidance under s182 of the Licensing Act 2003 and the Warwick District Council statement of Licensing Policy.
3. The Panel has to consider the application in the light of the licensing objectives. The objective most particularly engaged in this case is the prevention of public nuisance.
4. The Panel made the following findings:
  - i. The premises are an established public house that has been owned by the Applicants since 1997.
  - ii. The premises already have outside seating used by customers alongside the canal and in the area known as Lockside. None of the outside areas are currently licensed.
  - iii. The application seeks to increase the licensable area to include both outside areas as outlined at Appendix 2 of the report.
  - iv. The Applicants have recently leased the area known as Lockside from the Canal and River Trust.
  - v. There have been no objections by the Police or Environmental Health to the application.
  - vi. The Interested Parties Mr and Mrs Southorn live in close proximity to the premises. Mr and Mrs Southorn submitted representations and attended the hearing. They are concerned that the increased size of the licensable area will result in additional noise and disturbance. They make the point that sound carries across the canal and state that they have experienced noise nuisance in the past particularly when there were performances of live amplified music outside of the pub and when music has been played through outside speakers.
  - vii. Mr Southorn spoke on behalf of Mr Tom Henstone who is the owner of a cottage that adjoins the premises. It is understood that this is tenanted. Mr Henstone is concerned by the extension of the frontage along the canal and the closeness of the outside seating area to the window of his property. The Applicants have recently purchased the cottage in between Mr Henstone's property and the premises and rent this to staff.
  - viii. The Applicant Mr Jury stated that the reason for this application was to further the licensing objectives. His view was that they would be better able to control the outside areas if they were covered by the premises licence. Mr Jury stated that it was not their intention to use the outside

areas for performances of live amplified music although there may be occasional one off events. Mr Jury advised that all outside speakers had now been disconnected.

- ix. The Applicant stated that he intends to prevent customers from using the Lockside area at 9.30pm and the outside area alongside the canal at 10.30pm. The Applicant explained that he does not want Lockside to be used after 9.30pm due to its situation next to the canal and he wants to discourage children after this time. Mr Jury stated that he would remove the tables to prevent use after 9.30pm if necessary. A barrier will be installed between the benches and the canal.
  - x. Signs are displayed at the premises asking customers to be considerate of neighbours when leaving.
5. The Panel has decided to grant the application with the conditions that already apply to the licence together with one additional condition which is as follows:
- The area known as Lockside and identified in red on the attached plan must be vacated by 21:30 hours.**
6. The Panel has carefully considered the need to prevent public nuisance and fully appreciate the concerns expressed by the Interested Parties. The Panel note the lack of any objection by Environmental Health and has noted that customers already use both outside areas. The Panel does not believe that a refusal to grant the variation would reduce noise levels. They do believe that it is proportionate and justifiable, in the light of the Interested Parties concerns and the evidence provided by the Applicants, to restrict the use of the Lockside area after 21:30 hours in order to prevent public nuisance and to promote public safety.
7. The Panel would ask that all parties note that the provisions of the Environmental Protection Act 1990 apply to licensed premises, businesses and residents alike and it contains powers that allow action to be taken against those who are responsible for causing statutory nuisance. The Panel hope that the Applicants and the Interested Parties can continue to communicate with each other and that the premises thrive in harmony with local residents.

The Applicant or any person who has made representations has a right of appeal to the Magistrates Court within 21 days of formal notification of the decision.

Cllr Gifford  
Cllr Mrs Cain  
Cllr Mrs Hill