

# LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Tuesday 30 November 2010, at the Town Hall, Royal Leamington Spa at 2.00pm.

**PANEL MEMBERS:** Councillors Crowther, Mrs Gallagher and Shilton.

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

## 1. APPOINTMENT OF CHAIRMAN

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

## 2. DECLARATIONS OF INTEREST

There were no declarations of interest.

## 3. MINUTES

**RESOLVED** that minutes of the Licensing Panel hearings held between 24 March 2010 and 8 September 2010 were taken as read and signed by the Chairman as a correct record.

## 4. APPLICATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT 2003 FOR ART AND WINE LTD, 8 HIGH STREET, WARWICK

The Chair adjourned the meeting at 2.05pm as the applicant had yet to arrive. The meeting recommenced at 2.25pm, at which time the representatives of Art and Wine Limited apologised as there had been a misunderstanding over the start time.

A report from Community Protection was submitted which sought a decision on a premises licence application in respect of Art and Wine Limited, 8 High Street, Warwick.

The Chairman introduced the members of the Panel and the officers present and then asked all other parties to introduce themselves.

Mr Trevor Jones and Mrs Christine Jones attended as interested parties, local residents based in Church Street who objected to the application. They were accompanied by Mr Kevin O'Gorman, owner of 1 High Street, and Mr Roger Wyatt, owner of 10 High Street, who were also objectors. Mr Ian Weatherby-Blithe, Mr David Gomez and Mr James Morrison represented Art and Wine Limited, the applicant. Mr Peter Lawson represented Environmental Health, the responsible authority objecting to the application.

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

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 the report and determine if the application for a premises licence should be approved.

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.

The report from Community Protection which was submitted to the Panel presented an application to permit the following:

- ***Plays , Films, Live Music and the performance of dance (inside only)***

*10:00 to 22:00 seven days a week.*

- ***Recorded music (inside only)***

*10:00 to 00:00 seven days a week*

- ***The sale of alcohol (on and off the premises)***

*10:00 to 00:00 seven days a week*

*The sale of alcohol only extended from New Year's Eve until the end of permitted hours New Year's Day*

- ***The opening hours are shown as:***

*10:00 to 00:30 seven days a week*

For information only, the Panel was informed that Art and Wine Limited currently held a premises licence which permitted the following:

- ***Sale of Alcohol for Consumption on and off the Premises***

*Everyday from 08:00 to 23:00*

- ***Opening hours***

*Everyday from 08:00 to 00:00*

There was one condition attached to the existing premises licence which stated:

*Sales for the consumption of alcohol on the premises will be ancillary to the business of selling wine or the viewing of art.*

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

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

order to ensure compliance with the four licensing objectives. Each application would be judged on its individual merits.

A member of the Panel sought clarification on the condition. He was informed that the purpose of the premises was originally to sell art, with wine available and to offer opportunities for wine tasting. In response to a further question as to which areas of the premises would be covered by the new licence, if granted, Mr Gomez confirmed that the application was for the basement, the ground floor and courtyard and one room on the first floor.

In presenting his application, Mr Gomez advised the meeting that part of the current licence which addressed the sale of art and wine together created ambiguity and was difficult to police, and for those reasons that section of the licence had not been included in the new application. The courtyard area to the rear of Art and Wine was currently closed. The proprietors were in the process of designing a new type of retractable roof for the courtyard, which would remain closed to patrons until a suitable solution had been tried and tested. He confirmed that the applicant would be happy for a condition to be put on the licence to that effect, and to attend a further meeting of the Panel in the future to resubmit the licence once the condition had been met.

A Panel member asked why Art and Wine's owners wished to change their licence. The applicant responded that this was due to customer demand for the site to be used as a wine bar, art gallery and wine merchants. The current licence was restrictive. This was a new concept business which was continually being fine-tuned to accommodate the needs of customers. The original concept for the business was to sell art and have wine available, but the sale of art had dropped due to the recession and the business had adapted in order to survive. The applicant had on a number of occasions been approached to host events requiring the sale of alcohol, and hoped to introduce new types of art to the premises, including things like dance and poetry. The business was essentially functioning like a wine bar at present, but art remained its priority and primary focus.

Responding to a question concerning where clients would drink and smoke if the courtyard remained closed, Mr Gomez pointed out that the courtyard was already closed and that clients had been happy to remain within the building, occasionally going out onto the street to smoke. Art and Wine were looking to install ash trays outside and had a schedule for cleaning up outside on a regular basis. Mr Weatherby-Blithe added that without the courtyard, they did not expect so many visitors. Mr Gomez confirmed that the courtyard was still accessible to staff and would be to any future resident of the flat above the premises. Staff needed access for maintenance purposes, to look after the plants and because the courtyard was being used for storage. However, the owners were happy to forbid anybody from smoking in that area. Objectors sought further reassurance that the courtyard would not be used for smoking, but expressed some dismay over suggestions that people should be sent into Church Street to smoke. Mr Gomez confirmed that once a roof was on the courtyard it would be a no-smoking area, and that while he could impose restrictions on where staff could or could not smoke, he could do no such thing in respect of clients. Responding to a further question, Mr Gomez stated that Art and

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

Wine operated within the realms of their licence, but pointed out that he had already conceded the licence was ambiguous and that steps had been taken to address this through the new licence application. While the new licence requested permission to show films and play music, there were no concrete plans in this regard, although the applicant wished to have the option to do such things. Conditions could be added to the licence to control noise and nuisance if residents were particularly concerned.

Mr Wyatt asked whether the A1 retail use which was currently designated to the premises was appropriate. Mr Gomez felt this was a planning issue and pointed out that an application had been submitted to the planning authority requesting that the designation be changed to A1, A3 and A4 use.

A member of the Panel was concerned that, were Art and Wine to fail as a business, the premises would be left with a licence to sell alcohol which could result in a noisy and inappropriate business in a predominantly residential area. Mr Gomez pointed out that the applicant could surrender the licence in such a scenario. He responded to a further question which was to clarify details of two instances where Art and Wine failed to adhere to a Noise Abatement Order. Both instances related to noise emanating from the courtyard and an issue of vibration and noise coming from doors too. As a result the doors had been re-hung, noise dampeners had been installed and waste collection times had been changed so as not to disturb residents. A large number of plants had been brought in to the courtyard in an attempt to soak up the noise, which had not worked and resulted in the second breach of the Noise Abatement Order. Managers had reduced the hours for which the courtyard remained open and finally decided to close it to members of the public altogether.

A question regarding insurance was put to the applicant by one of the objectors, but the Council's solicitor pointed out that this issue was outside the remit of the Panel. Nevertheless Mr Gomez assured the meeting that the business was fully insured and that members of the public were welcome to visit the premises to see the insurance certificates for themselves.

Mr Lawson made a representation to the Panel on behalf of Environmental Health, the responsible authority objecting to the application, their primary concern being the potential for public nuisance due to noise, both in terms of live or recorded music coming from within the premises, and issues of noise from the courtyard. Mr Lawson clarified that the breaches of the Noise Abatement Order related to both music and voices coming from the courtyard. Environmental Health had witnessed noise from 6 High Street and residences to the rear of Art and Wine. The responsible authority felt that noise from the courtyard could not be effectively managed by the proprietors, hence the closure of the courtyard. Pre-application discussion between the applicant and Environmental Health had taken place, but the latter were skeptical that anything other than a solid roof on the courtyard would solve the problem. The responsible authority had concerns over imposing a condition preventing the courtyard's use by patrons until a suitable retractable roof had been installed, as suggested by the applicant, which could then be followed by a later application for a variation to the licence after roof works had been approved. Environmental Health believed

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

that a solid roof was the only option and that their proposed condition would also address the issue of noise coming from within the building.

Following his representation, Mr Lawson responded to questions from the Panel, applicant and interested parties. He confirmed that if construction was carried out with the intention of limiting noise, a physical test requiring noise from within courtyard would be necessary in order to test whether the roof was effective. Environmental Health had the power to serve an abatement notice outside of the licensing regime. The two notices served had only related to noise from the courtyard, which was an actual nuisance, as opposed to concerns the authority had expressed relating to noise from within the building, which was a potential nuisance. Objectors were concerned that noise could come from within during the summer months when windows were open. Mr Gomez said that the proprietors were considering air conditioning for future use, but were concerned that mechanical ventilation could present its own set of noise-related problems.

The interested parties made representations to the Panel, starting with Mr Wyatt who referenced his written representation made at appendix 4 to the report. He also talked about points made by Lynne Dunne, another objector who had been unable to attend the meeting, but who had experienced problems with smokers standing on her doorstep and looking through her windows. Mr Wyatt's property was let to a tenant who had complained to both himself and Art and Wine about the same problem. Mr Wyatt believed that if his tenant moved out he would struggle to find a replacement tenant.

Mrs Jones expressed similar concerns. Her property had been for sale for some time and while a number of people had initially shown interest in the property, she believed they had been put off when they discovered its proximity to Art and Wine. Mrs Jones mentioned that a relative had frequented Art and Wine and, while the relative had enjoyed food and drink, there had been no mention of art, other than it being displayed on the walls of the premises. Mrs Jones pointed out that there was a pedestrian crossing outside the front of the premises and suggested that clientele who smoked on the narrow pavement there were causing confusion for drivers who could not tell whether or not the smokers were waiting to cross the road.

Mr O'Gorman pointed out that the premises had become, in the words of the applicant, a wine bar. Members of the public were using the premises, drinking a lot, talking loudly inside and outside of the premises and creating a public nuisance in a largely residential area. Mr O'Gorman felt that the problems all directly resulted from the premises operating as a wine bar, which it was not meant to be. This was not within the terms of the current licence, which was sale of alcohol ancillary to the sale of art. Mr O'Gorman also talked about the noise problems experienced by Lynne Dunne, which did not relate just to the courtyard but also to a party wall and which were so significant that Ms Dunne could not remain in her property at weekends. Mr O'Gorman was not convinced by future assurances when faced with these issues of public nuisance and stress. He felt that this was precisely the sort of issue which the licencing act had been set up to address.

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

Mr Jones related details of a time when Mr Weatherby-Blithe had visited his property and witnessed the noise for himself. Mr and Mrs Jones did not feel able to entertain guests and relatives, and did not trust promises made by the applicant relating to effective management of noise nuisance.

Mr Gomez summed up the application, assuring the Panel that if the application were to be granted, Art and Wine would abide by the terms of the licence. Following closure of the courtyard, 2 redundancies had been necessary and the applicant had concerns that further redundancies would be necessary if the new licence was not granted. The business had an excellent reputation as far as the police were concerned. The applicant wanted to create a unique experience for customers, who were attracted to the town from a wide area primarily so they could visit Art and Wine. The applicant conceded that mistakes had been made, but was committed to not repeating those mistakes.

At 3.55 pm the Chairman asked the applicant, officers and interested parties to leave the room to enable the Panel to deliberate and reach its decision.

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

Having heard representations from the applicant and interested parties, the panel were of the opinion that the proposed application should not be endorsed for the reasons given in the resolution below.

At 4.30 pm all parties were invited back in to the room so they could be informed of the Panel's decision. They were reminded that they had 21 days from receiving written confirmation of the Panel's decision to appeal the decision to the magistrates court.

**RESOLVED** that the Licensing Panel's decision be as follows:

The Panel considered the written representations of all parties, along with the oral representations made at the hearing.

The Panel was of the view that the nature of the premises, and its proximity to a number of residential properties had caused, and were likely to continue to cause, serious noise nuisance to neighbouring residents.

The Panel considered whether its concerns could be overcome by a condition that the external courtyard was not to be used by customers, as suggested by the applicant.

However, the Panel considered that it had heard convincing evidence from local residents that nuisance would continue to be caused by noise escaping from doors and windows, and by people congregating at the front of the property to smoke. The addition of recorded

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music to the licence, as applied for, would be likely to increase the existing problem in this respect.

The Panel has therefore decided that this application should be refused.

All parties were reminded that they had 21 days from the date of publication of this decision to appeal to the Magistrates Court.

(The meeting finished at 4.35 pm)