

LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Wednesday 3 November 2010, at the Town Hall, Royal Leamington Spa at 10.30am.

PANEL MEMBERS: Councillors Mrs Gallagher, Guest and Wilkinson.

ALSO PRESENT: Max Howarth (Council's Solicitor), David Davies (Licensing Services Manager) and Peter Dixon (Committee Services Officer).

1. APPOINTMENT OF CHAIRMAN

RESOLVED that Councillor Guest be appointed as Chairman for the hearing.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. APPLICATION FOR A REVIEW OF THE PREMISES LICENCE UNDER THE LICENSING ACT 2003 TO THE WILLOUGHBY, AUGUSTA PLACE, LEAMINGTON, BY AN INTERESTED PARTY

A report from Community Protection was submitted which sought a decision on a review of the premises licence for The Willoughby, Augusta Place, Leamington.

The Chairman introduced the members of the Panel and other officers present and then asked all parties to introduce themselves. Dr Andrew Cave was an interested party, being a resident of Portland Street and the applicant for the review of the premises licence. Ian Besant, solicitor, represented the premises licence holder. He was accompanied by Andrew Liddington, Managing Director of the company which owned the Willoughby, Victoria Peach, the designated premises supervisor, and the Willoughby's operations manager.

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.

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.

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Dr Cave presented his application for a review of the premises licence which related to the Prevention of Public Nuisance licensing objective. He sought the following conditions to be attached to the Willoughby's licence:

- (1) Prominent, clear and legible notices shall be displayed at all exits requesting the patrons respect the needs of local residents and to leave the premises and area quietly
- (2) Noise or vibration shall not emanate from the premises so as to cause a nuisance to nearby properties
- (3) The outside drinking areas should be cleared of customers by 22.30pm.

Dr Cave was particularly concerned with low level noise which appeared to emanate constantly from a cellar refrigeration ventilation system. He stated that he was very happy with the current management of the Willoughby, but had concerns that noise related problems could resurface if a new manager was appointed in the future. The condition relating to the outside drinking area was requested due to some nuisance having been caused from the balcony. Dr Cave referenced the Council's responsibilities in terms of their duty to prevent noise nuisance, and he summarized comments attached as appendices to the report made by a former Environmental Health Officer and residents who lived close to the Willoughby. He pointed out that while Environmental Health did not feel that the droning noise constituted a statutory nuisance, one resident had complained about how it affected her ability to sleep.

In response to a question from a member of the panel, Dr Cave confirmed that his key concern was not noise from the balcony but from the ventilation system.

Mr Besant made a representation on behalf of the premises licence holder, advising the Panel that the licensee would be happy to accommodate the signs as proposed by Dr Cave, but opposed clearing customers from the balcony area by 22:30. The current condition, which required clearance by 23:00, adhered to the licensing authority's standard policy. The designated premises supervisor had only once failed to clear the balcony and that was due to exceptional circumstances: as a result of a member of staff collapsing from an injury sustained prior to his shift, the designated premises supervisor had to take urgent action and summon an ambulance, resulting in failure to clear the balcony on time. The premises licence holder did not feel that this one incident justified a variation to the licensing authority's standard policy.

Mr Besant gave details of the refrigeration ventilation units. The cooling system was switched off at 22:00 each day until 9:00 the following morning. Beer chillers, which ran on a 12 volt fan, were not activated at night as there was no demand for them. Responding to a resident's comment in the report concerning constant noise, Mr Besant respectfully suggested that the noise did not come from the Willoughby as the premises had nothing running for 24 hours. Another resident stated in his correspondence that the noise now appeared to be less frequent. Environmental Health had talked only about a potential for noise, but had not identified a statutory nuisance. The premises licence holder felt that the second of Dr Cave's conditions would be inappropriately onerous to

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implement, and was not in line with the licensing authority's duty to impose conditions which were appropriate.

Mr Besant suggested that, as Dr Cave had expressed satisfaction with Miss Peach's management of the Willoughby, it might be appropriate for him to apply for a review of a licence if any subsequent designated premises supervisor failed to do such a good job, but concerns about the future did not justify a review at this stage

Following Mr Besant's representation, the Panel asked a number of questions which Mr Besant and the various representatives of the Willoughby responded to. Panel members noted that the cooling system switched off automatically at 22:00, that the cellar cooler was installed between 10 and 12 years ago and the beer chillers approximately 5 years ago. Brewers visited to check the systems, which were also monitored by the management who called out maintenance engineers if they detected excessive noise.

Dr Cave summed up his application, reiterating that there was a nuisance which needed to be prevented. He mentioned that he had telephoned the management of the Willoughby to advise them that he would be applying for a review and that, following that phone call, there was no noise whatsoever that night. He was convinced that the noise did come from the Willoughby, and quoted from the Premises Licence that all persons resident within the neighbourhood should not be affected by noise which amounted to a nuisance and that no sound arising from within the premises should be audible within any neighbouring noise sensitive building.

At 11.20 am the Chairman asked the applicant, the licensing enforcement officer 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 review of the licence should not be endorsed for the reasons given in the resolution below.

At 11.40 am 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:

Having considered representations made by the applicant and by the premises licence holder, the Panel are not satisfied that there is sufficient evidence of public nuisance at the Willoughby.

With regard to the complaint relating to the outside drinking area, the Panel notes that there was only one

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reported incident which took place in April 2010. The Panel notes that there have been no further reported incidents. The Panel are also satisfied with the explanation provided by the premises licence holder in relation to the incident which took place in April 2010. Therefore, it is the Panel's view that it is not necessary to impose a condition requiring the outside drinking areas to be cleared by 22:30.

With regard to the complaint regarding the air conditioning, ventilation and refrigeration equipment at the licensed premises, the Panel are not satisfied that there is sufficient evidence to prove that the noise reported by the applicant originates from the Willoughby. Therefore it is the Panel's view that it is not necessary to impose a further condition on the licence.

The Panel resolves to take no further action.

(The meeting finished at 11.45 am)