

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel meeting held on Tuesday 3 May 2016, at the Town Hall, Royal Leamington Spa at 2.00 pm.

Present: Councillors Mrs Cain, Gill and Illingworth.

Also Present: John Gregory (Council's Solicitor), Lesley Dury (Committee Services Officer) and Emma Dudgeon (Licensing Enforcement Officer).

1. **Substitutes**

Councillor Mrs Cain substituted for Councillor Miss Grainger, and Councillor Gill substituted for Councillor Quinney.

2. **Appointment of Chairman**

Resolved that Councillor Illingworth be appointed as Chairman for the hearing.

3. **Declarations of Interest**

There were no declarations of interest.

4. **Application for the Variation of a Premise Licence under the Licensing Act 2003 for 12 West Street, Warwick**

The Panel considered a report from Health and Community Protection which sought a decision on an application from Mr Douglas for 12 West Street, Warwick for a variation of a premises licence.

The Chair, members of the Panel and officers introduced themselves. The other parties then introduced themselves as the applicant Mr Douglas, and local residents, Mr Jones, Mrs Jones and Mr Chambers who were objecting to the variation.

The Council's Solicitor explained the procedure that the hearing would follow.

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

The current premises licence for 12 West Street, also known as The Old Post Office, was:

	Sale of Alcohol for Consumption on and off the Premises	Opening Hours of the Premises
Sunday to Thursday	10.00 to 23.00	10.00 to 23.30
Friday and Saturday	10.00 to 00.00	10.00 to 23.30

	Live Music (indoors only (limited to two performers))
Monday to Sunday	18.00 to 22.00

The application submitted by Mr Thomas for a variation was to:

- remove the condition “No open vessels to be taken off the premises”; and
- extend the licensable area to include the rear garden.

Additions to the operating schedule had been submitted by the applicant and would form part of any licence issued. The additions to the operating schedule were detailed in the report along with the current ones in operation, which were detailed in Appendix 1 to the report.

The Licensing Officer advised that representations had been received from two local residents, copies of which were appended to the report. In addition, the Panel was advised that a representation form confirming no objection had been received from Environmental Health, and a copy of this was also appended to the report. No other representations had been received.

The Licensing Officer stated that since the licence had been issued on 2 January 2014, only one complaint in relation to customers using the front of the premises had been received. She also informed Panel Members that on 25 April 2016, Mr Douglas had submitted a petition in support of the application. A decision was required on whether it was permissible for this petition to be entered as evidence.

Following advice from the Council’s Solicitor, both Mr Chambers and Mr and Mrs Jones confirmed that they were happy for the petition of 136 names and addresses to be entered as evidence on behalf of the Applicant. Mr Chambers also requested that photographic evidence he had of the premises was also entered as evidence, and Mr Douglas confirmed that he was happy with this.

Mr Douglas explained that he wanted to use the rear garden as a small beer / smoking garden. Walls eight feet high surrounded the garden and he had no intention that the raised area in the rear would be used by patrons; it was his intention to fence this off and put in plants. It was not possible to see directly into nearby premises. He was adamant that he did everything necessary to prevent nuisance and the incident which had given rise to the complaint had not been caused by his patrons, but as a result of a beer festival at the local race course, borne out by the fact that the glasses left by these people had a Warwick Beer Festival logo on them.

Mr Douglas was clear that his intention was “use not abuse”. The garden would be clear by 9.30 pm on week nights and by 5pm on Sundays. The fencing and planting would prevent people standing on the raised area, and the rear garden would not be used in winter; only summer.

The Licensing Officer referred Members to Appendix 4 in the report which clearly stated that the Applicant had stated that the proposed outdoor area would be vacated by 9.30 pm each night.

In response to questions from the Panel, Mr Douglas explained that:

- three to four tables would be in the outdoor area, accommodating 20 people maximum;
- the two seats currently at the front of the premises would be removed, so that people could only stand out the front;
- it was his belief that smokers, who currently stood outside the front, would use the rear garden;
- following the complaint about open vessels taken off the premises, he had put up notices to remind people not to do this;
- it was his intention to remove the tables outside the front, which would ensure the path was not blocked;
- the rear entrance would not be used; people would have to walk through the bar allowing him to monitor what was going on. The rear entrance would only be used in the event of an emergency;
- his main business was selling ale. Bottled drinks such as wine could be purchased, but he did not sell spirits currently. This had been a commercial decision on his part;
- control of the customers and their drinking was stated in the Management Plan. He stopped selling alcohol at 9.00 pm, he did not sell spirits which meant his premises were not exposed to the issues that arose with purchasing numerous shots just as the bar was about to close. The beers he sold were less than 5% proof, so he did not sell strong ale. The type of customers he had were self-controlled.

It was noted by the Panel that the one complaint had not been raised by Environmental Health, and had there been problems with drinking outside the front of the premises, then Environmental Health would have raised this.

In response to a question from the Chairman, the Applicant confirmed that the plan submitted in the report was correct and that there was a Barber's shop at number 14 with flats above. The gravel area in the plan would not be used.

Mr and Mrs Jones and Mr Chambers did not have any questions for Mr Douglas.

When invited to speak by the Chairman, Mr Chambers informed the Panel that:

- the variation in licence would give rise to public nuisance;
- he had lived in West Street for 30 years and his house was two doors away from number 12;
- the area was mainly residential, although there were some shops;
- people used their gardens, it was a quiet area with families;
- the beer garden would mean strangers would be using it and sound would travel. This had happened with people using the front of the premises, and even secondary glazing did not stop the noise;
- the Beer Festival was not the only incident that had blocked the pavement; a wedding party had done this too. A local councillor he had spoken to had informed him that blocking the pavement was a criminal offence which he could report, but he had chosen not to do so and had just taken a photo;
- the Licensing Officer had contacted the Applicant about the incident and as a result, the Applicant had put up notices. There had been no complaints since this;
- the beer garden would totally undermine the quality of life for those in a private house; there were windows overlooking and strangers would peer in;

- Mr Douglas would face difficulties controlling his customers whilst he was busy serving at the bar;
- the type of customers would change if there was a beer garden; and
- the Applicant had a "casual approach" because he had allowed drinking outside the front of the premises until there had been a complaint.

Mr Chambers referred to the photographs he had submitted, to show where his property was and its relation to the Old Post Office.

The Chairman reminded everyone present that drinking outside the front of the premises was not an issue for consideration in this application because there was no evidence of a complaint from Environmental Health.

In response to questions from the Panel, Mr Chambers stated that:

- he was on good terms with the Applicant and had no issues if the status quo remained;
- he spent a lot of time using his own garden; there was a wall but because the garden sloped, this wall got lower at the top end; and
- the nearest pubs were the Tudor Inn and the Vine Inn at the bottom of West Street.

The Applicant did not wish to question Mr Chambers.

When invited to speak by the Chairman, Mr and Mrs Jones informed the Panel that:

- they owned the freehold over the furniture shop; the long building in the plan was number 10;
- the first floor was used as bedrooms and a living area;
- they had not lived there long but when they had purchased their property it had a very quiet garden area;
- the clientele at The Old Post Office were docile, but people raised their voices when they drank;
- they were objecting to the variation now to protect themselves;
- they accepted that the walls were high, but there were a few gaps;
- they feared the unknown;
- the licensing hours were not the issue;
- they spent a lot of time in the garden in the day; and
- they had no way to tell how noisy it would get, and the noise could affect them on every day except Mondays;

Mr Jones referred to the plans to show the layout of their property in relation to the Old Post Office. The Panel acknowledged that the particular layout was not what was normally expected.

In response to questions from the Panel, Mr Jones stated that:

- they had lived in the house for four months; and
- they had known there was a pub next door but there had been no suggestion of a beer garden and there had been the condition for no open vessels outside.

The Applicant did not wish to question Mr Jones.

When invited to sum up, Mr Douglas stated that he understood the anxiety but his ethos was "use not abuse". In respect of the raised area out the back, a condition could be imposed to fence this off with only access allowed during an emergency. There would be no furniture outside the front of the premises. He wanted the open vessel restriction removed for the smokers. The Beer Festival only lasted two days and he would police this period to ensure the issues surrounding the complaint did not re-occur.

In response to further questions from the Panel, Mr Douglas stated that:

- the pub only held about 40 people; and
- the open vessel restriction removal would allow people to drink outside the front, but generally the only people who wished to do this were smokers.

At 3.02 pm the Chair asked all parties other than the Panel, the Council's 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 to refuse the application. The Panel has considered the application before it, the officer's report, the Council's Licensing Policy and the submissions made on behalf of the Applicant and other parties at today's hearing. The Panel has placed weight on the comments of the Council's Environmental Health Officer, in terms of the usual clientele and low capacity of the premises, and note that Environmental Health has consequently not objected to the application. The Panel has also given weight to the fact that the premises appear to be well run, and have not generated significant complaints in the past.

However, on the basis of the representations made and evidence produced at today's hearing the Panel disagrees with the Environmental Health officer that this is an established drinking establishment in a town centre location. Rather, on the evidence available to it, the Panel consider that this is a relatively new licensed premises located in a predominantly residential area.

The Panel also disagrees with the Environmental Health assessment that the garden would only hold a small number of people. On the contrary, the Panel has heard evidence from the applicant today that the garden would hold up to 20 people, which the Panel considers to be a relatively large number in the context of this establishment and the character of the area.

Further, having heard evidence of the physical relationship between the gardens of numbers 10 and 16 West Street and the garden of the licensed premises, the Panel are particularly concerned about the likelihood of this number of people causing noise nuisance to the occupiers of nearby residential properties, and in particular to the occupiers of numbers 10 and 16, when they are using the outside areas of their dwellings.

In light of this, the Panel considers that the Licensing Objective of the prevention of public nuisance would be adversely affected by the grant of this application. Accordingly, the application is refused.

At 3.47 pm all parties were invited back into the room, at which time the Council's solicitor read out the Panel's decision.

All parties were advised that they had the right to appeal the decision within 21 days of the formal decision being published.

(The meeting ended at 3.50 pm)