

# LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Thursday 9 January 2014, at the Town Hall, Royal Leamington Spa at 10.00 am.

**PANEL MEMBERS:** Councillors Goode, Pratt and Wilkinson.

**ALSO PRESENT:** Emma Dudgeon (Licensing Enforcement Officer), John Gregory (Council's Solicitor) and Graham Leach (Democratic Services Manager).

## 1. APPOINTMENT OF CHAIR

**RESOLVED** that Councillor Goode be appointed as Chair for the hearing.

## 2. DECLARATIONS OF INTEREST

Councillor Wilkinson declared that he was a member of the Warwick District Council Planning Committee that had considered the change of use application for this site, however he did not think he was pre-determined in any way because this application had to be considered on its merits.

## 3. APPLICATION FOR THE GRANT OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 FOR UNIT 11, 17-19 LIVERY STREET, REGENTS COURT, ROYAL LEAMINGTON SPA

A report from Health and Community Protection was submitted which sought a decision on an application from Turtle Bay Restaurants Limited for the grant of a premises licence for Unit 11, 17-19 Livery Street, Regents Court, Royal Leamington Spa.

The Chair introduced himself, other members of the Panel and officers, and asked the other parties to introduce themselves.

Present were; Steve Entwistle from Turtle Bay Restaurants, Michael Parrot Solicitor for the applicant, Jeremy Phillips Counsel for the applicant, Jerry Weber Ward Councillor and Nicholas Hargrave objector.

The Council's Solicitor explained the procedure that the hearing would follow. He outlined that conditions 1 -3, set out in Paragraph 3.5 of the report were no longer applicable because the application for the outside area had been withdrawn.

The Licensing Enforcement 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 premises licence should be approved.

The application before the Panel was for a licence to be granted for the supply of alcohol (on and off the premises) and late night refreshment between 10:00 and 23:30 every day. The proposed opening hours of the premises was 10:00 to 23:30 hours every day.

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

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.

An operating schedule had been submitted with the application, which would form part of any premises licence issued.

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.

The applicant explained that Turtle Bay was a restaurant concept that looked to provide an interesting way to dine. It was a Caribbean brand that was developing nationally. They highlighted the licensing submission pack, that was circulated at the meeting, outlining the objectives of the premises along with its style and key features.

The design of the premises was aimed at providing flexibility for its customers and its owner, where 90% of the business would be customers purchasing food but some would simply have table service drinks.

The hours were reasonable with standard conditions offered. Normally 70% of tables were booked in advance. There was a mixture of drinks available and these were of a Caribbean theme.

The applicant responded to questions from the Panel explaining that:

- the other Turtle Bay premises had outside areas;
- people would be allowed outside to smoke and a canopy would be provided in line with the planning permission but no drinks would be allowed outside the premises and no licensing activities would take place;
- the Turtle Bay restaurants in Milton Keynes and Bristol had people living directly above them;
- noise would be limited because there was no application for recorded music
- conditions had been agreed with Environmental Health for sound insulation along with those applied to the planning consent;
- any person with concerns about the operation of the premises should speak with the duty manager or speak with Mr Entwistle who would ensure his contacts were available for neighbours;
- the applicant stressed that the residents were of equal importance to them as their customers and recognised the need to work with them for the benefit of all;
- there was a commitment to abide by the planning restriction and therefore it would close by 23:30 as set out in the planning approval;
- two of the other premises were within Cumulative Impact Zones in other cities and they did not have problems at these because they did not attract a client looking for a drinking culture;
- there was no way to stop the public walking along Livery Street after 23:00 but the applicant would work to minimise the impact on the

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

- residents from its customers and for this reason the acoustic canopy within the planning conditions would be installed before it opened; and
- there would be signage on the premises reminding people to leave quietly and be quiet when they were outside.

In response to questions from Councillor Weber the applicant explained that:

- normally the premises would see a drop off in families from 9pm, after this time more adults would be present;
- there would be a choice of three beers and 24 cocktails available to customers, as well as soft drinks;
- the planning application allocated 75% of the premises for seated dining, the remaining area did allow for informal drinking as well as those areas not contained within the licensable area;
- there would be over 60 different dishes available with 90% of customers eating, the aim was to provide different choices reflecting modern dining styles
- after 10pm there would be fewer people eating due to the early closing hours but at this stage it would be difficult to give numbers because other premises in the chain stayed open later;
- door supervisors would be provided on a risk assessed basis for example in Leicester they had now been stopped because they were not required due to nature of the business.

In response to a question from Mr Hargrave the applicant explained that they had two premises which were changed from an existing licensed premises and two which were new premises.

Councillor Weber addressed the Panel outlining his objection to the application. His particular concerns were for the impact on residents in Livery Street due to the premises becoming more bar orientated later in the evening; and while he welcomed that the outside area had been withdrawn from the application, assurance should be provided from the applicant over the management of this area.

Councillor Weber explained currently Livery Street was A1 planning use but premises were beginning to change to A3 use and that the majority of activity in the street was during the day. There was a covenant for tenants regarding noise after 23:00 and the premises should respect this as their neighbours. However it should be noted that this did not apply to businesses and there had been problems with Nandos opening after this time.

Royal Leamington Spa had a population of 50,000 and the population of the locations where the other Turtle Bay Restaurants were situated was far greater and they were located within busy town or city centers where residents would be used to noise and disturbance. This application was a new business and brought a change in the type of business in the area.

Councillor Weber observed that the Panel had been informed that drinks were served by waitresses only and then informed that some were available directly from the bar. The bar was a key feature of the restaurant, and the GL Hearn report for the planning application identified that 75% of

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

the premises was for dining, the Panel then needed to ask what the other 25% was to be used for.

Councillor Weber provided an opinion that between 25 and 20% of the premises would be purely for drinking which was not the description provided by the applicant. The licensing pack from the applicant said that food was served up to 60 minutes before the premises closed and the Panel should ask what would be served after this time, it was his opinion this would be used as time to maximise income from the bar.

Councillor Weber explained that he had visited the Turtle Bay premises in Leicester. The premises was good and after 9pm it became more drinks orientated with loud music provided, that he could not describe as background. It was more a party and drinking premises.

Councillor Weber responded to questions from the Panel explaining that:

- he had seen the plan of the premises and that it provided space for vertical drinking;
- the GL Hearn report had been commissioned by the applicant;
- the issues with Nandos were about the seating area outside; and
- if the music was background it would not be problem for residents.

The Licensing Enforcement Officer informed the Panel that no licensing issues with Nandos had been reported to them for investigation.

The applicant explained that they would have no objections if the application for off sales was not granted.

Councillor Weber responded to questions from the Panel explaining that:

- the door supervisors at Leicester were good;
- he did not think the music was that associated with the Caribbean; and
- the music at the Leicester premises was excessively loud and not background music.

Mr Hargrave outlined his objection to the application. He explained that the development was about seven years old and was a narrow pedestrianised area lined by tall buildings, 95% of which were residential.

Residents had been surprised by the level of noise from Nandos and how a few people would escalate the noise significantly to the area in the evening. The clean-up noise from Nandos had also been a significant disturbance.

Residents were worried that although low level noise was likely this was likely to be amplified because of the numbers of people making the noise.

Therefore he requested that if the Panel were minded to grant the application there should be; no drinking outside the premises; not allowing non diners to drink on the premises; restrict late night drinks promotions; and restrict the level of noise to background music.

Mr Hargrave responded to questions from the applicant, explaining that:

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

- although he was a member of the Regent Court Residents' Association he did not have authority to represent the views of the Association, therefore the views submitted to Panel were purely his own;
- if the premises kept its doors and windows closed it would help reduce noise nuisance;
- he was content with the arrangements for the acoustic canopy at the front of the premises; and
- he accepted that it was difficult to define a premises and its operation into a neatly defined box.

The Chairman adjourned the meeting for five minutes from 12 noon prior to the applicant summing up their application.

The applicant summed up their application explaining that the premises were predominantly food orientated with little or minimal vertical drinking. They highlighted that there were restrictions within the planning approval on stopping at 23:30, along with conditions on noise, a management plan and the requirement for an acoustic canopy.

The applicant highlighted that their premises in Milton Keynes, Leicester and Bristol all has residential properties either very close by or above them. They also highlighted that while Councillor Weber had cited the loud music during his visit to their premises in Leicester this was the only premises in the chain which had a licence for recorded music and that this was only in place because they had transferred a licence over from a previous owner.

During the adjournment Councillor Weber had circulated, with the agreement of all parties, a list of recommendations to the Panel for them to consider. The applicant responded to these explaining that:

- that a site visit to the Leicester Premises would not be valuable to the Panel because each application should be determined on its merits and the Leicester premises had a different type of licence;
- the premises did not have an emphasis on late night drinking and could not if it was closing by 23:30;
- the introduction of a decibel level on the music offered was not appropriate because there was sufficient statutory powers available and because only background music would be played;
- the imposition of a condition requiring customers to only be served a drink if they were taking a meal was both unreasonable and unenforceable;
- they agreed with Councillor Weber that no drinking in the street and no activity should be permitted within the curtilage of the premises and this was why they had removed this aspect from their application;
- it was not unreasonable for the a condition to be included that restricted the advertisement of drinks promotions immediately outside the premises;
- the condition within the general section of the operating schedule should not include the words "outside area";
- operating schedule general condition number 10 should be removed because there would be no outside seating area or activity and was therefore no longer relevant; and
- In response to the objection from Mr Hargrave the applicant was understanding of the problems experienced with Nandos but this was a separate premises to Turtle Bay, Turtle Bay would not have an

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

outside seating area and their doors and windows would remain closed except for entry and exit.

The Chair asked all parties other than the Panel, the Council's Solicitor and the Committee Services Officer to leave the room at 12.20, to enable the Panel to deliberate and reach its decision.

The Panel listened to the representations made by the applicant in respect of the application and the representations from Councillor Weber and Mr Hargrave, in his own personal capacity, in objection to the application. The Panel had also noted the objection from Warwickshire Police had been withdrawn subject to including a condition relating to membership of the retail radio scheme. The Panel noted that there had been no objection from Environmental Health.

This application was for a premises licence located within the Cumulative Impact Zone, therefore the starting point was that the burden of proving that the licence would not impact upon the four licensing objectives fell upon the applicant.

It was the view of this Panel, having listened to the representations made by the applicant and having considered the proposed conditions, conditions agreed with the Police and objectors together with the conditions included within the Planning Permission for the change of use to restaurant, that the applicant had satisfied this burden of proof.

The objectors raised a number of issues in relation to the use of the outside area, noise from the premises and the potential for the premises to be a vertical drinking establishment later in the evening.

With regard to the issues concerning the outside area the Panel noted that since submission of the application the applicant had removed the outside seating area from the area for licensable activities.

With regard to noise from the premises the Panel noted that no objection had been made from Environmental Health. The Panel also noted that there were conditions relating to noise and the operation and management of the premises within Planning permission W13/1339. Specifically conditions 6, 9 and 10 in relation to noise arising from plant and equipment, the submission of a management plan, and implementation of an acoustically absorbent canopy. The Panel also noted that a condition has been agreed that the entrance door to the premises shall remain closed after 23:00 save for entry and egress. The Panel were satisfied that these measures would alleviate any concerns regarding noise arising from the premises.

The Panel also noted that there are various statutory powers available to the local authority in the event that issues concerning noise arose. Such as the power to serve an abatement notice and the power to request a review of the premises licence.

With regard to the potential for the premises to become a vertical drinking establishment the Panel could only consider the application on its own merits. The application before the Panel was for a premises licence for a restaurant with ancillary bar. The Panel noted that the planning use for the

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

premises was for the use as a restaurant under class A3. In the event that the bar use was to intensify to a degree that it became the predominant use or a mixed use in planning terms without planning permission there were powers available to the local planning authority to take enforcement action to cease such use .

There was no evidence before the Panel that the premises would become a vertical drinking establishment later in the evening and it was the Panel's view that the views put forward by the objectors were speculative.

**RESOLVED** to grant the application for the hours requested subject to the following conditions:

- (1) Membership of locally approved retail radio scheme and conform to its policy and procedures;
- (2) The entrance door to be closed after 23:00 except for access and egress;
- (3) That not to display advertisements outside the premises advertising drinking promotions; and
- (4) All conditions as set out within the report paragraph 3.2 subject to condition 2 removing the reference to the outside area and condition 10 not being included on the licence.

All parties were invited back in to the room at 1.11 pm, at which time the Panel's decision was read out as detailed below.

All parties are reminded of their right to appeal the Panel's decision to the Magistrates Court within 21 days of formal notice of the decision.

(The meeting finished at 1.17 pm)