

# LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Tuesday 22 April 2014, at the Town Hall, Royal Leamington Spa at 2.00 pm.

**PANEL MEMBERS:** Councillors Guest, Illingworth and Wilkinson.

**ALSO PRESENT:** Emma Dudgeon (Licensing Enforcement Officer), Max Howarth (Council's Solicitor) and Lesley Dury (Committee Services Officer).

## 1. APPOINTMENT OF CHAIR

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

## 2. DECLARATIONS OF INTEREST

There were no declarations of interest.

## 3. APPLICATION FOR THE GRANT OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 FOR CASTLE KEBABS

A report from Health and Community Protection was submitted which sought a decision on an application from Castle Kebabs, 46b Saltisford, Warwick.

The Environmental Health Officer circulated a handout to all those present at the meeting. This contained a street plan, showing where the premises were located, internal floor plans of the premises on ground and first floor level and various complaint reports from 2013.

The Chair introduced himself, other members of the Panel and officers, and asked the other parties to introduce themselves. He ensured that all present had received a copy of the papers handed out by the Environmental Health Officer at the meeting and a copy of the agenda and report.

Present were; the applicant Mr Guner; his business partner Mr Çiftçi; the area supervisor Mr Yilmaz and interested party, Mr Shirley, Environmental Health Officer.

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

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. She informed Members that Condition 3 "Groups congregating outside to be dispersed" requested by the Police had now been withdrawn.

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

The application before the Panel was for a licence to be granted for the supply of late night refreshments off the premises Fridays and Saturdays between the hours of 11.00pm and 02.00 am and opening hours on Friday and Saturdays between 12.00 Noon and 02.00 am and on Sundays to Thursdays between 12.00 Noon and 11.00 pm.

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.

Mr Yilmaz explained that:

- in respect of objections received referring to noise from the premises caused by doors slamming, the entrance door was always kept open. The only other door in the premises was to the toilet which did not make a noise. He felt that the noise referred to must have emanated from other premises close by;
- the premises were adjacent to a busy road which was used as a short-cut. "Boy racers" often accelerated when exiting the nearby roundabout;
- over 60% of sales were through walk-in customers and delivery;
- the refuse bin was quite large and impractical to move; there was nowhere else to position it. The bin was close to the shop and there was little to be gained by moving it. It was never emptied at night. Food preparation took place during daytime hours and this was when the bin was used;
- at night, two people were working and one delivery man. None of these staff members shouted;
- at night, the majority of customers were delivery only;
- at 01.00 am cleaning would start and the extractor fan would be switched off at 01.30 am; and
- at the hours that concerned Environmental Health there were very few walk-in customers, but those that did were local people;

Mr Yilmaz, Mr Çiftçi and Mr Guner responded to questions from the Panel explaining that:

- the refuse bin was located to the left side of the front of the building and he referred Members to the first photograph showing the front of the premises in the information provided by Environmental Services at the meeting;
- the request for opening to 02.00 am was for Fridays and Saturdays only, which were the days when most people tended to be out in the locality. Only a few people walked along the street at these times and these would be local to the area. Whilst the premises were open for

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

- delivery orders, it was felt that it would also be preferable to be open for any walk-in trade;
- the business operated on-line ordering and it was felt that there was sufficient demand; and
  - in respect of longer opening hours leading to more people using the premises late at night and causing disturbance, Mr Çiftçi explained that they had a petition from people who lived above the premises and this showed that they were not against the application. The only objector they had was a taxi driver, who they felt had objected because of lack of on-street parking.

The Environmental Health Officer declined the opportunity to ask questions of the applicant. He was then asked by the Chairman to make representation from Environmental Health. He asked Members to refer to the location plan and pointed out that No 46a was a House in Multiple Occupation (HMO) and next door to the premises in question. The application premises were surrounded by businesses and residential properties. He referred to the floor layout plans and stated that a bedroom window was next to the entrance to Castle Kebabs and this would mean disturbance. He referred to the second photo in the pack he had provided to everyone at the start of the meeting. It showed that the extractor fans overlooked bedrooms causing unacceptable levels of noise disturbance to the occupants so that they would not be able to sleep or open their windows. He stated that there was regular noise emanating from the premises between the hours of 11.00 pm and 01.00 am, such as shouting and moving items onto the street. Sleep was only possible after the premises had closed. The officer had personally visited the site on 12 February at midnight. He had observed four to five people in the premises even though the premises were not open. On 8 March at 10.30 pm the noise from the extractor fan was checked and it was audible above the traffic. Environmental Health requested that the application for additional hours was refused. If granted, it would prevent the dispersal of people from other premises. There were no measures stated in the application to prevent nuisance and the additional hours was likely to attract more customers.

Mr Çiftçi informed Members that they never stayed at the premises after 11.00 pm and referred Members to the petition and he was directed by the Council's solicitor to speak about the evidence that the Environmental Health Officer had just provided. The Chairman enquired if he wished to ask the officer questions, but he did not. The Environmental Health Officer clarified that he had tried to convey that the business was not trading at the time he had visited, but that there were four to five people still inside with the light on at midnight.

The Chairman asked the applicant if he wished to make a closing statement, to which Mr Çiftçi explained that:

- the reason for requesting opening hours to 02.00 am on Fridays and Saturdays was to increase business as they were currently struggling;
- when the premises had been purchased, they had been closed. They had then refurbished the premises, but the business was not bringing in as much custom as they had anticipated; and
- it was hoped that additional hours would increase trade.

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

The Council's solicitor asked whether they wanted to say anything in response to the comments made by the Environmental Health Officer and the conditions and licensing objectives. What steps did they propose to take in respect of preventing noise and public nuisance.

Mr Çiftçi responded that:

- they would undertake not to open the bin at night and could keep the bin inside the premises at night;
- the front door would remain open all through business hours; the back door, which was the door to the toilet, was kept closed; and
- the toilet was an extension to the building and not directly under the flats, and was the only door inside the premises.

Mr Çiftçi asked Members if they would consider trialing the extension of hours for a couple of months to monitor noise levels. The Chairman checked that the applicant would be willing to accept all conditions stipulated, with the exception of condition 3 which had been withdrawn, and the applicant indicated that he would be willing.

The Council's solicitor then asked the Environmental Health Officer if the complaint received was from a single complainant over several incidents, to which the Environmental Health Officer replied that the investigation into the complaint had never been completed because the complainant had moved away.

The Chair asked all parties other than the Panel, the Council's Solicitor and the Committee Services Officer to leave the room at 2.45 pm, to enable the Panel to deliberate and reach its decision:

"Having listened to the representations made by the applicant and by Environmental Health, it is the Panel's view that if granted the licence will not impact upon the Licensing Objectives. The Panel therefore grant the licence in accordance with the report, the operating schedule submitted by the applicant and subject to the amended conditions agreed with the Police.

The Panel, however, would like to remind the parties that if there are any incidents at the premises of crime and disorder, or public nuisance, that the Police and Environmental Health have the power to apply for a review of the licence which could result in the licence being revoked.

The applicant is reminded that he has 21 days to appeal this decision to the magistrates court."

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

- (1) no music to be played in the premises whilst open;
- (2) no child under 16 years to be allowed into the shop after 11.00 pm, except in the company of an adult;

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

- (3) CCTV must be installed to the current British Standard, record at all times when licensable activities take place, and must include:

Cameras must cover entrance and service till.  
Head and facial recognition.

Capable of recording and storing 31 days continuously.

Someone must be on duty when licensable activities take place who is capable of downloading images upon request by an authorised officer.

The image quality must be of a minimum of 12 frames per second.

The system must be signed off by Warwickshire Police Architectural Liaison Officer.

At 3.00 pm all parties were invited back into the room and the decision was read out by the Council's solicitor as stated above. The Chairman confirmed that the applicant understood the decision.

(The meeting finished at 3.01 pm)