

LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Thursday 13 January 2011, at the Town Hall, Royal Leamington Spa at 2.00pm.

PANEL MEMBERS: Councillors Guest, Vincett and Wilkinson.

ALSO PRESENT: Max Howarth (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 Vincett 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 KOKOS, WARWICK STREET, LEAMINGTON SPA BY WARWICKSHIRE POLICE

A report from Community Protection was submitted which sought a decision on a review of the premises licence for KoKos, Warwick Street, Leamington Spa.

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

Mr Keith Duncan represented Warwickshire Police, the responsible authority which had requested the review of the licence. He was accompanied by Ms Penny Clarke and Inspector Bosworth, who attended for part of the meeting. Mr Paul Jacques represented Warwickshire County Council and confirmed that he would be making a representation on behalf of the County Council as a responsible authority. Mr Andrew Evans, barrister, attended to represent KoKos. He was accompanied by Mr G Atwal (Premises Licence Holder and Designated Premises Supervisor of KoKos), Mr Russell Davis and Mr Robert Mallie, who held a financial interest in KoKos, and Mr Gavin Meers and Mr Adam Cleslak (Military Security).

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.

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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 Keith Duncan, acting for Warwickshire Police as Responsible Authority under the Licensing Act 2003, presented the application for a review of KoKo's premises licence. The application was based on all four licensing objectives. Mr Duncan outlined the steps which the police were seeking in order to address problems which they believed to be associated with KoKos, and which were detailed in the report presented to the Panel. The Police were of the opinion that the conditions were required due to a number of incidents of crime and disorder in and around KoKos, which would continue to occur without intervention. The proposed conditions were considered to be the minimum requirements to address the problems and reduce crime. Mr Duncan briefly summarised some of the incidents which had occurred both inside and outside the premises, mentioned problems obtaining cooperation from KoKos staff and particular problems with door staff. He noted that since the application for a review, the security company contracted to provide door staff to KoKos had been replaced by another, Military Security. However, Military Security had yet to receive Approved Contractor Scheme (ACS) accreditation, one of the conditions which Warwickshire Police had requested. Mr Duncan also outlined an incident in which KoKos had not retained CCTV footage for 31 days, which was required as a condition of their premises licence, and also an incidence of repeated verbal abuse to a police officer. The number of allegations made against staff at KoKos was considered by Warwickshire Police to be excessive when compared to other venues of a similar size.

Mr Duncan noted the late submission of a statement by Mr Atwal on 11 January in which Mr Atwal responded to a number of police concerns. Warwickshire Police had not had sufficient time to consider or respond to the statement, or consult officers named in the statement. In response to a question from the Panel over whether it was right to proceed if the Police had not had time to comment, Mr Duncan confirmed that he was happy for the review to proceed.

Mr Jacques made a representation on behalf of Warwickshire County Council, based on the licensing objective of protecting children from harm. Mr Jacques pointed out that the presentation by Mr Duncan demonstrated consistent difficulty maintaining order at the premises, with problems occurring both inside and outside which the Designated Premises Supervisor (DPS), staff and door staff had all failed to address. Despite the Police and DPS having produced an action plan to improve standards, further breaches of the licence had occurred which raised questions about how order was maintained. In summary, the County Council did not think the premises were a safe place for children.

Members of the Panel were given the opportunity to ask questions of Mr Duncan and Mr Jacques. In response to concerns expressed by a member of the Panel that incidents referenced by the Police might not be related specifically to KoKos, Mr Duncan reported that he had been mindful of this when analyzing police reports. Violence and disorder at this premises was

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disproportionately high. The Police believed that a shortening of opening hours would reduce alcohol consumption, assist KoKos in reducing the incidence of crime and cause less people to be on the streets at any one time, making the area easier to police. The Police also had significant concerns over the possibility of patrons or other people being struck by vehicles outside the premises.

Mr Evans asked a question in relation to police storm reports. Mr Duncan responded by confirming that the reports gave limited information, a problem compounded by police officers not being able to properly investigate incidents as they occurred due to staff being unwilling to make statements immediately after their shifts ended. Mr Evans asked whether any attempt had been made by the police to give KoKos details of 25 people who had been identified by the police as nuisances. Such people would be banned from the premises if the licence holders knew who they were. Mr Evans' other questions related to door staff, KoKos being identified as a landmark in police reports, the current status of Pubwatch, which Mr Atwal had been involved in but which seemed to have fallen by the wayside, and a lack of responses by Warwickshire Police to repeated attempts by Mr Meers to arrange a meeting.

Mr Evans gave a representation to the panel on behalf of KoKos, suggesting that evidence underpinning the police representation was weak and did not justify a reduction in hours. As it was primarily a late opening bar, the late hours were essential to KoKos viability as a business. Earlier closure would discourage visitors. He also pointed out that since most problems appeared to occur between midnight and 2am, it would seem that bringing forward the closing time to 2am would have no effect. He went on to say that this seemed to suggest a problem in the area generally, but not specifically with KoKos, which closed at 3am. He suggested that the owners of the premises were doing all that they could to reasonably combat problems, had made efforts to improve lines of communication with the police over the past year and implemented a number of improvements in recent weeks. Mr Evans felt that the review was unusual because it did not relate to a particular incident or a significant increase in incidents, but largely to police analysis alone. He accepted that reports made to the police frequently referred to KoKos, but as the police had acknowledged, KoKos was seen as a landmark and was often referred to in reports to the police, regardless of its actual involvement in an incident. He suggested that there had clearly been friction between door staff and customers, and that when people reported that they had been refused entry, this indicated that door staff had been effective. Mr Evans suggested allegations against door staff did not necessarily reflect a crime, particularly where people making allegations were aggrieved, drunk, or both. He suggested exercising caution in relation to theft reports, as while theft undoubtedly occurred, KoKos also collected a significant amount of lost property, no doubt left behind by people who were drunk. Records of lost property found on the premises were brought to the meeting in case the Panel wished to view them. Mr Evans went on to question incidents listed by the police, 25 of which he claimed KoKos had no knowledge of. He asserted that 59 incidents suggested staff acted correctly, 26 did not relate to KoKos and that in over 60 cases, it was not possible to determine whether incidents related to KoKos or not. He suggested that, given the size of the premises and the number of patrons frequenting it, the number of incidents

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relating to KoKos was actually very low. Mr Evans advised the panel that Mr Atwal was usually to be found on the premises during opening hours and was happy to involve the police following any incident. With regard to drugs, Mr Evans agreed with the police that drug use was widespread in the nighttime economy, but did not think there was evidence of a particular problem at this premises. With regard to protecting children from harm, there had only been 1 incidence of underage drinking which had been dealt with as soon as it came to light.

Mr Evans attempted to address other points raised by the Police, pointing out that a problem with the CCTV on site had been addressed, that there were plans to install interior doors and that problems with door staff had been solved by the appointment of a new contractor, Military Security, in November 2010. He conceded that there was a need for better record keeping at the premises, which was being addressed. In order to reassure the Panel, Mr Evans gave a brief history of Military Security and the way it operated. Mr Meers also gave details of changes put in place since Military Security's appointment, and the steps he had taken to date towards obtaining ACS accreditation. Mr Meers was confident that the police would be reassured by the measures he had put in place if they agreed to meet him at the premises.

The Panel were concerned that communication seemed to have broken down between KoKos, door staff and the police, despite a plan of action having been put in place, and that KoKos efforts to address problems had in the past been more reactive than proactive. Reassurances were sought that this had now changed, that relations would improve, and that the appointment of Military Security was having a positive effect. Questions were asked in relation to how the premises were managed, staffing levels, ACS accreditation and what effect moving the entrance to the premises would have. The Panel also asked questions about responsibility for the premises, the program of improvement, and coverage of the entrance and area immediately outside the premises by external CCTV cameras. The Licensing Services Manager pointed out that the CCTV control room was nearby and that members of the Panel could see for themselves what coverage was available via external cameras, if they so wished.

Mr Duncan was next to ask questions of Mr Evans and the licence holders, focusing first on police confidence in Military Security and then on the various statements made by Mr Evans in respect of incidents at KoKos, some of which Mr Duncan disputed. Mr Atwal confirmed that he had discussed incidents with a civilian at the police station counter, but Mr Duncan suggested that this was not the best way to gauge the views of the police. Mr Duncan asked questions about the impact of moving the entrance to KoKos and the reluctance of staff to be interviewed about incidents immediately following their shifts. Mr Meers stated that he would encourage door staff to do this and was happy to pay them overtime if they had to stay late to give statements.

Mr Jacques asked questions about how and when Mr Meers would involve the police in incidents at the premises, the number of incidents satisfactorily resolved without police intervention and how effective Mr Meers felt that changes instigated by Military Security had been. He also asked questions about incidents which had taken place earlier in the

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evening when children were permitted to be on the premises, most of which appeared to be random events.

Ms Clarke took the opportunity to ask questions of the licence holders and was given a brief description of radio communications used on the premises by staff, managers and door staff.

Mr Duncan summed up the application for review which he had presented on behalf of Warwickshire Police, stating his belief that the licence holders had effectively agreed to several of the suggested conditions during the course of the discussion. He understood that Mr Meers was working towards ACS accreditation, which the Police were keen for Mr Meers to see through. The Police remained committed to seeing the entrance to KoKos moved and a reduction in the hours of operation.

Mr Jacques summed up the application on behalf of Warwickshire County Council, stating that he did not believe the venue was a safe place for children to visit and that he would like to see a condition allowing no children inside.

Mr Evans summed up on behalf of KoKos, saying that reviews could be constructive and expressing his hope that responses given during the meeting to points made by the Police and Mr Jacques demonstrated KoKos positive intentions to make improvements at the premises. He pointed out that Mr Atwal had voluntarily offered to make a number of changes, but reiterated that the licence holders did not believe that moving the entrance or reducing licensing hours would be constructive.

At 4.30 pm the Chairman asked the applicants, the Licensing Officers and responsible authorities to leave the room to enable the Panel to deliberate and reach its decision. Prior to deliberation, the Panel visited the CCTV control room to see the views of KoKos and the surrounding area afforded by CCTV cameras.

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 a number of conditions should be imposed as detailed in the resolution below.

At 6.10 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 magistrate's court.

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

The Licensing Panel has listened to representations from Warwickshire Police, Warwickshire County Council and the Premises Licence Holder. Having considered the representations and the evidence before them, it is the Panel's view that it would not be necessary or

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proportionate to reduce the hours when the premises is open, the time of last entry to the premises or the times during which alcoholic drinks can be served or music played. Further, the Panel considered, on the evidence before them, that it would not be necessary or proportionate to require relocation of the entrance and exit door to the Warwick Street side of the building.

The Panel consider that it is necessary and proportionate to impose the following conditions:

- SIA door staff to be employed to supervise the function room at all times whenever the function room is open
- A personal licence holder to be present on the premises at all times between 22:00 hours and the close of business
- Premises to keep a register of all SIA door staff working hours together with their individual door staff SIA badge numbers
- All door staff to be briefed by management at the start of any shift and the DPS to use best endeavours to make the door staff available to police officers after door staff have finished their shifts, should statements be required
- To remove existing foliage/plantation from the entrance on Tavistock Street and to ensure, in consultation with Warwick District Council, that the entrance is kept free from any obstruction to the view of the entrance from the CCTV operated by the District Council on Tavistock Street
- Provision of offset doors, located within the premises at the entrance/exit, to reduce the instance of noise nuisance. Doors to be installed to the satisfaction of Environmental Health

The Panel would expect, with the imposition of these conditions and cooperation between Warwickshire Police and the Premises Licence Holder, that improvements will be made. However, the Panel notes that if further incidents do occur which impact on the licensing objectives, that Warwickshire Police have the right to apply for a further review of the premises licence.

All parties in attendance are reminded that they have the right to appeal this decision to the Magistrates Court within 21 days of formal notice of this decision.

(The meeting finished at 6.15pm)