

# LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Monday 19 August 2013, at the Town Hall, Royal Leamington Spa at 10.00 am.

**PANEL MEMBERS:** Councillors Mrs Goode, Illingworth and Pratt

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

## 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 MARALANI PIZZA, 12A CLARENDON AVENUE, ROYAL LEAMINGTON SPA

A report from Health and Community Protection was submitted which sought a decision on an application for a premises licence from Mr Saied Maralani for Maralani Pizza, 12A Clarendon Avenue, Royal Leamington Spa.

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

Mr Maralani, the applicant was in attendance, accompanied by his partner, Ms Holland (observing). Sergeant Calver was in attendance on behalf of the Police, along with his colleague Sergeant Kettle (observing). Michael Jenkins attended on behalf of Environmental Health. Councillors Ms Dean and Weber attended as Ward Councillors and Mr Saltaire as a local resident.

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.

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 report from Community Protection advised that the applicant had applied for permission to authorise the following:

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

Late Night Refreshment

Tuesday to Saturday from 23:00 until 04:00

Sunday and Monday from 23:00 until 02:00

Opening Hours

Tuesday to Saturday from 14:00 until 04:00

Sunday and Monday from 14:00 until 02:00

Including New Year's Eve, New Year's Day and Christmas Eve and Bank Holidays.

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

### *Prevention of crime and disorder*

The applicant will co-operate with the local Police to ensure that they are made aware of particular problems which affect the area and which may potentially affect the shop.

### *Prevention of public nuisance*

Doors and windows will be kept closed at night to prevent transmission of noise. Customers visiting will be asked to leave the premises quietly and with due consideration for the area. No music played at the premises. Delivery drivers are required to enter and leave their vehicles quietly. The applicant will not hesitate to ban customers who are causing a lot of noise and disturbance. Equipment is insulated etc.

### *Public safety*

The premises comply with all requisite Health and Safety Legislation. The applicant will carry out regular Health and Safety Risk Assessments. In the unlikely event that greater numbers of people congregate in the premises than is conducive to public safety the applicant will not hesitate to ask customers to leave the store and will also encourage home delivery service.

### *Protection of children*

Shop is not licensed for the sale of alcohol. It is unlikely that a child unaccompanied by an adult would visit the shop. Due consideration and care will be given a child enters the shop.

Mr Maralani addressed the Panel and explained that since making his application, he would now be willing to reduce the opening hours to 3.00 am on Tuesdays, Thursdays, Fridays and Saturdays and to midnight on Mondays, Wednesdays and Sundays. He informed the Panel that he had not appreciated that he had required a licence. The Licensing Enforcement Officer confirmed that a licence was not required up to 11.00 pm.

In response to a question from the Panel, the applicant confirmed that the majority of his customers came at night, but he was currently having to shut. He advised that he was not getting enough customers. The Council's Solicitor confirmed with Mr Maralani whether he was aware that the premises fell within the Cumulative Impact Zone and asked him if he needed the implications of this explaining to him. Mr Maralani confirmed that he understood this, and he was asked to demonstrate that his application would not impact on the Cumulative Impact Zone to support his

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

application. Mr Maralani replied that the shop was small, that it was next to a nightclub and that people would be able to enter his shop so it would not affect the Cumulative Impact Zone. He also said that he would ban trouble makers from his premises. The Chairman confirmed that none of the representatives from the responsible authorities nor interested parties had any questions for the applicant.

The officer from Environmental Health handed out maps demonstrating where the Cumulative Impact Zone fell and the premises in question. He explained the colour coding on the map, with the pink or faded red colour representing residential areas in the vicinity of the application premises, which was shaded in yellow. He was concerned about the potential for public nuisance because of the request for late opening hours in a residential area. He pointed out that a flat was above the premises, which was used for residential purposes. Customers would be attracted to the area which was in the Cumulative Impact Zone, and these customers could potentially be under the influence of alcohol so would be speaking in raised voices. He was already aware that the premises were causing a nuisance to the flat above. The nightclub was already open late and the premises would attract customers from the club.

He stated that if the licence was granted, it would set a precedent and other premises might also apply for late opening hours which would add to the saturation in a Cumulative Impact Zone and the potential for public nuisance.

The Panel asked for details of what the premises had previously been. Sergeant Calver confirmed that previously it had been a Chinese takeaway. The Licensing Enforcement Officer was unable to confirm whether this had held a late night licence. Sergeant Calver confirmed that having just checked on the internet, there was nothing to suggest that a late night licence had been held. Mr Maralani handed a photograph of the premises to Panel members so that they could see the size. The Chairman confirmed that there were no further questions to the Environmental Health Officer from either the responsible authorities or the applicant.

Sergeant Calver read through pertinent aspects of the representation from the Police. He stated that the Police objected to the application in its entirety because increasing the hours would impact on Police resources and would increase public nuisance. He stated that late night opening for refreshments in Leamington Spa had reached saturation point and that there was very little in the operating schedule that showed that it would reduce the impact on crime and disorder. He pointed out that the greatest period for violence was between 11.00 pm and 07.00 am and explained the various diagrams to the Panel that had been given in the Police representation.

The Panel asked if the offer to reduce the opening hours to 3.00 am would make the application acceptable, and Sergeant Calver confirmed that it would not. The applicant declined the opportunity to ask any questions.

The Chairman then invited the interested parties to address the Panel. Councillor Ms Dean addressed the Panel as a Ward councillor. She had concerns because the area was already considered a hotspot and residents

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

had confirmed issues with noise, litter and disturbance because of people leaving late and she felt that this application would add to the problem of people gathering and would stretch Police resources. She felt that the applicant had not directly addressed the issue of why his application would not exacerbate the problems in the Cumulative Impact Zone. His assertion that he would ban trouble makers from the premises would simply displace the trouble somewhere else and would still require Police intervention. Nothing she had heard would help manage the problem and the application would make problems worse by providing another gathering point.

In response to a question from a Panel Member, Councillor Dean confirmed that she believed that the nearby Fish and Chip shop made a good business even though it closed at 10.00 pm. She felt this was the case because it had been open for a number of years. She also confirmed that her main concern was that this application, if granted, would provide another gathering place past 11.00 pm in the Cumulative Impact Zone. Mr Maralani declined the opportunity to ask any questions.

Councillor Weber addressed the Panel as a Ward councillor. He stated that the Fish and Chip shop had a different clientele and it did most of its business at dinner time. He stated that he would like Clarendon Avenue to act as the boundary for night life. It was served currently by three public houses and the chip shop. He felt that nothing else was required past 11.00 pm and noted that the Council's Community Safety Officer was keen for people to disperse quickly at night. The Chairman confirmed that there were no questions to address to Councillor Weber.

Mr Saltaire, a local resident, stated that he was speaking on behalf of three local residents who all objected to the application. He pointed out that the application would impact on residents in Hall Road which was used as a route to leave the Town. Noise was already an issue with people walking down the street, who also would vomit and urinate in the street too. He felt that if people ate pizza when under the influence of alcohol, they would sit down close to the premises, and talk loudly. He accepted that some noise had to be expected if you lived close to the town centre. He pointed out that the applicant had stated that the premises were small, and this would mean that people would sit outside to eat. He pointed out his property on the map that had been provided at the meeting.

Mr Maralani informed the Panel that when people left the nightclub, they tended to order "chips and cheese" rather than pizza because they did not wish to wait the time it took to prepare fresh pizza; to which the Chairman pointed out that the application was for a late night licence, not for which type of food was served. One of the Panel members then referred to the Police comment that if the application was granted, they might ask for a SIA doorman to be provided at the premises. There was concerns that the business was too small to hold the number of staff required and might not have enough turnover to pay for them. The Chairman stated that the applicant could not be expected to answer a question about how many bags of chips he would have to sell to pay for this, but that everyone understood the intention of the question.

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

Councillor Ms Dean confirmed that she felt opening hours until 11.00 pm were sufficient given the nature of the street in question. Mr Saltaire also confirmed that when he had originally objected he had suggested that the licence only ran to 10.00 pm, but now that a licence was not required up to 11.00 pm, he still objected.

Sergeant Calver asked the Panel to consider how the applicant knew what he would sell late at night because currently he did not have a licence to open late. The Council's Solicitor stated that the applicant could only surmise that he would be selling chips and cheese at this point in time because he could not know.

Mr Maralani was given the opportunity to sum up his application. He informed the Panel that if the licence was not granted, then he would be forced to close the premises immediately "today". He would agree to not sell pizza so that customers would not be kept waiting.

The Chair asked all parties other than the Panel, the Council's Solicitor and the Committee Services Officer to leave the room at 10.50 am to enable the Panel to deliberate and reach its decision.

All parties were invited back into the room and advised of the Panel's decision as follows:

The Panel had heard representations from the applicant in support of his application and representations from the Police, Environmental Health, the two Ward Councillors and a resident opposing the grant of the Application.

The Panel had heard from the applicant that he was willing to reduce the opening hours for the premises so that the premises closed at 3.00 am on Tuesday, Thursday, Friday and Saturday at 12.00 am on Monday, Sunday and Wednesday.

The Panel had heard from the applicant that he required a licence because the majority of his business would occur between the hours of 11.00 pm and 4.00 am.

The Panel had also heard from Environmental Health that the premises were located within the Cumulative Impact Zone. Whilst the area was a mixed-use area, there were a number of residential properties within the vicinity of the premises. Environmental Health had provided a plan showing the residential properties within the vicinity of the premises in support of this objection.

The Panel had heard from the Police that the grant of a licence would be likely to impact upon the licensing objective of crime and disorder in that it was likely to cause an increase of crime and disorder within the Cumulative Impact Zone which would be likely to further stretch Police resources.

The Panel had also heard from the Ward Councillors Ms Dean and Weber who echoed the concerns of Environmental Health and the Police in relation to the Licensing objectives of crime and disorder and public nuisance.

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

Finally the Panel had heard from an interested party who was a resident of Hall Road. The Panel heard about the impact of existing licensed premises and of the likely additional impact if the licence was granted upon the residential properties in Hall Road and upon the interested party's own property.

The Panel noted that the proposed licensed premises were within the Cumulative Impact Zone and therefore the Council's special policy regarding the cumulative impact would apply. There was therefore, a burden of proof upon the applicant to show that the application would not impact upon the four licensing objectives and in particular the licensing objectives of crime and disorder and the prevention of public nuisance.

Having heard from the applicant, the Panel was not satisfied that the applicant had demonstrated that this was the case.

The Panel had taken into account the applicant's offer to reduce the licensed hours. It was on this basis that the Panel decided to refuse this application.

Therefore, the Panel

**RESOLVED** to REFUSE the premises licence.

All parties were 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 11.45 am)