

WEST OXFORDSHIRE DISTRICT COUNCIL

Record of a meeting of the **LICENSING PANEL**
Held in the Council Chamber, Council Offices, Woodgreen, Witney, Oxon
at 10.00am on Friday 28 February 2014

PRESENT

Councillors: Mr S J Good (Chairman); Mr R A Langridge and Ms E P R Leffman

1. APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS

Councillor Ms E P R Leffman attended for Mr E H James

2. APPLICATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT 2003 –
LOVE WINE MERCHANTS LTD, OXFORD ROAD, WOODSTOCK

The Chairman of the Panel welcomed those present to the meeting. Mr Good then set out the procedure by which the hearing would operate.

In response to a question from the Chairman, Mr Richard Leonard, the applicant confirmed that the application had been properly advertised and registered his intention to address the Panel.

Mr Sharone Parnes then registered his intention to address the Panel. He explained that, whilst he was a Member of the Woodstock Town Council, he was speaking in a purely personal capacity.

The Chairman explained the order of business for the meeting. He advised that the Panel Members were familiar with the written representations submitted and requested those addressing the Panel to highlight any specific points they wished to raise.

Mr Good explained that new evidence could only be considered with the consent of all parties present and asked if any such evidence was to be introduced. There was no new evidence presented to the Panel.

The Council's Legal Adviser Indicated that the question had been raised as to whether the objection received was a valid and relevant objection in the terms of the Licensing Act given that it had been received at midnight on the 28th and final day of the objection period.

He explained that if no valid objection was received within the relevant period, the Licensing Authority had no discretion other than to grant a licence. The applicant contended that, for the objection to be valid, it had to have been received by 23:59 and 59 seconds after which it would be out of time. In the absence of any legislation or precedent on this point, the Legal Advisor referred Members to the dictionary definition of a day being a 24 hour period from Midnight to Midnight.

He further advised that the objector had telephoned the licensing office to establish the deadline for the submission of objections and had been advised that it was midnight on 10th February. In light of which, he suggested that it would be irrational for the Council to reject the submission as being out of time.

Mr Leonard noted that the email was timed and dated as having been received at 00:00 on 11 February 2014 and made reference to email correspondence that had passed between him and the Council's Officers to the effect that case law suggested that the Licensing Authority could give consideration to objections received out of time.

The Council's Legal Advisor indicated that the Licensing Authority was not seeking to rely upon this premise and accepted Mr Leonard's position that, if no valid objections were received, the grant of a licence must follow as a matter of course.

Mr Parnes expressed surprise that his email had been shown as having been received at 00:00 as he had sent it at 23:59 with a copy to his own address. Receipt of his copy had been timed at 11:59 and he offered to provide evidence to this effect to Members.

The Council's Legal advisor reminded Members that the requirement under the Licensing Act was the receipt of representations by the Licensing Authority.

Mr Parnes made reference to the postal rule that electronic communication was to be considered as delivered at the time it had been sent and went on to suggest that the application as submitted was defective in that it was unsigned. In response, the Council's Licensing Officer confirmed that a signed copy of the application had been submitted by the applicant by hand and was available on file.

The Panel then retired to consider whether to accept the objection as valid.

Having considered the issues raised, the Panel concluded that there had been a substantial endeavour to comply with the requirements for making submissions and that the objection was valid and relevant. In consequence, it had decided to proceed with the hearing.

Mr Parnes sought leave to submit a plan to the Panel to illustrate his objection. Members considered this to amount to new evidence and as such it was decided not to accede to the request.

The Council's Legal Advisor then outlined that each case had to be considered on its merits and any conditions needed to be appropriate to the four licensing objectives, evidence based and proportionate.

The Council's Licensing Officer presented her report outlining the application. She confirmed that the application had been properly advertised and advised that the applicant had obtained a Personal Licence.

Mr Leonard then addressed the panel in support of the application. In light of the earlier debate, he suggested that it could prove useful in future if the Council was to require a cut off time for objections be specified in public notices.

Mr Leonard emphasised that it was his intention that his business would operate primarily as an off-licence. He then went on to address the issues raised by the objector. A summary of the points he raised is attached at Appendix A.

In response to questions from Mr Langridge, Mr Leonard advised that a deposit would be charged for the pre-payment cards enabling these to be retained and any remaining credit used on subsequent occasions. In relation to his projected client base, Mr Leonard indicated that both organised events and casual 'walk-in' customers would be catered for. However, given the physical constraints of the premises and the location of the tasting areas, he estimated that only 10 or so customers would be accommodated at any one time.

Mr Leonard also indicated that the ability to restrict and refuse sales was the same as that of any licence holder. Whilst the nature of the proposed operation made the necessity unlikely, the sale of alcohol to anyone considered to be inebriated could be controlled through refusal to allow the purchase of additional credits. The Council's Legal Advisor reminded Members that the consumption of alcohol was not a licensable activity. The sale of alcohol was the regulated activity and the law made provision to preclude irresponsible promotions and address any instances of inappropriate sales.

In terms of supervision, the tasting areas were within the confines of the shop and in line of sight from the till. The intention behind offering tasting facilities was to support the primary objective of the business by promoting retail sales.

Given that the main thrust of the operation was directed towards retail off-sales, the Chairman enquired why Mr Leonard had sought a licence to allow for the sale of alcohol for consumption both on and off the premises. In response, Mr Leonard advised that he had established through his discussions with the Council's Planning Officers that all aspects of his intended operation fell within an A1 retail use. The Council's Legal Advisor indicated that the application required clarification as to where alcohol was to be consumed as different considerations had to be taken into account in each case. Whilst it was something of a grey area, in this instance, whilst consumption on the premises was a limited element of the operation, Mr Leonard had been correct in specifying both on and off sales.

In response to a question from Mr Good regarding fire exits, it was noted that the relevant responsible authority had raised no objection to the application.

Mr Parnes then addressed the Panel in objection to the application.

He expressed concern over arrangements for the supervision of the tasting areas and suggested that the applicant's description of the location of the premises in relation to the 'shared surface' area referred to in his objection was misleading, the application site forming part of a single building.

The Chairman sought clarification as to which of the individual licensing objectives each of the specific points raised in his objection related in each case. In response, Mr Parnes indicated that his concerns related to all four of the licensing objectives.

Mr Parnes went on to express some concern that the premises would not operate as an independent unit but as part of the existing furniture shop, contending that this would allow children access to the building.

The Council's Legal Advisor reminded Members that the licensing regime welcomed children into licensed premises provided that appropriate measures were put in place

to ensure their protection from harm. There was no suggestion that the proposed operation would put children at risk.

Mr Parnes expressed further concern in terms of crime and disorder, access and public safety. He questioned the adequacy of parking provision in the immediate vicinity and suggested that the grant of a licence could encourage other licensed retail premises to reduce their prices. The Legal Advisor reminded Members that competition was not a relevant matter in determining a licence application.

In conclusion, Mr Parnes suggested that the Council should impose conditions restricting access as he believed the proposed method of operation could be open to abuse.

The applicant, Mr Leonard, then took the opportunity to sum up. He indicated that, whilst he appreciated the concerns that had been raised by the objector, he had given much thought to the licensing objectives and his application specifically detailed how these would be met. In particular, he confirmed that children would not be allowed into the tasting areas.

Mr Leonard recognised that his was something of a unique operation but suggested that it would give customers the opportunity to enjoy a better product. He believed that this method of operation would become increasingly common in the near future as large retail outlets such as Selfridges had adopted such arrangements. The nature of his business would differentiate it from its local competition and help him to meet his business objectives as a retail off-sales outlet. There was no intention to operate the business as a wine bar or café.

The Panel then retired to consider the application.

Having considered the report and the submissions made at the meeting in relation to the licensing objectives and the Council's Statement of Licensing Policy and Guidance, it was:-

RESOLVED: That a premises licence be granted for the activities, days and hours sought in the application and as set out in the operating schedule.

The hearing closed at 11.20am

Response to objections

Paragraph 1

1a) 20 Oxford Street is the 4th premise away from the from a newly brick-paved 'shared surface' road - Not as close as the Crown, The Punch Bowl, Hope House Hotel, or the CO-OP all of which are effectively at the Junction. Thus irrelevant to the 4 Licensing Objectives.

1b) It is conjecture whether the road surface is a danger either to motorist or pedestrian - I expect OCC Highways would have taken appropriate risk assessment based on their design specification before allowing it to be finished in this way? Thus irrelevant to the 4 Licensing Objectives.

Paragraph 2

2a) There is on street parking provision to the front of the proposed premises of 20 Oxford Street, Woodstock - There is even a advisory Blue Parking restriction sign outside the shop frontage.

Paragraph 2

2b) The private rear court yard to the premises is via a secured keypad gate off Union Street. We do not anticipate deliveries but some collections by car from the rear courtyard may be made. Because of the gated security these will be accompanied. We have not suggested deliveries will be made to the rear as there is a front to back side passage and parking to the front. But largely irrelevant to the licensing objectives.

2c) The Premises - currently The Real Wood Furniture Company - is AI Retail - a furniture shop. I expect most shops in Woodstock take deliveries by vans or lorries during operational hours. However, we don't expect large lorries as our suppliers tend to use 'Transit' type vans.

Paragraph 3

3a) "The applicant contends heavy merchandise is a deterrent to burglary..." I don't understand what this means. I have discussed with the landlord to which we will take further advice from insurers as to what further deterrents we may employ against burglary.

3b) Parking has no case to answer.

Paragraph 4

4a) Each tasting measure dispensed from the machine is just 25ml. A 750ml bottle of wine thus contains 30 measures - a prepayment card will be loaded with 20 credits and these credits will be pro-rata against the value of individual wine - example one

wine from Argentina (RRP Value £8.99 per bottle) may be one credit per 25ml measure and one wine from Burgandy (RRP Value £68.99 per bottle) may be 5 or 6 credits for one 25ml measure. Our experience is that some people may spit out the wine and some may drink it. The alcohol consumption and its effects will vary from person to person but we doubt a customer will use the tasting opportunity to consume cheap wine for the purposes of becoming intoxicated. Our raison d'être is to operate a retail wine business.

4b) Our aim is to educate that quality is always a preference to quantity. - The operation and control of the tasting machines is described in our application. We took the opportunity to submit a draft application to the Licencing team to assess if there were obvious ambiguities that we needed to address and make appropriate adjustments.

Paragraph 5

5a) To the contrary, Love Wine (Merchants) Ltd won't be selling low cost product our average price point across 200 lines will be approx. £25.00 per bottle, the price range will be from £8.99 to £150.00 per bottle and occasionally we may have very rare wines to sell which may exceed £1000.00 per bottle. Therefore it is unlikely to lead to the CO-OP or Hampers Deli and Cafe having to reduce their prices to compete.