

Licensing & Regulatory Panel

Minutes of the additional Licensing & Regulatory Panel held at Saltisford One, Warwick, on Wednesday 7 February 2024, at 10.00am.

Present: Councillors Barton, Gorman and Matecki.

Also Present: Alaa Cronin (Council's Solicitor), Emma Morgan (Licensing Enforcement Officer), Sam Woods (Senior Environmental Health Officer), Stacey Walsham (Environmental Protection Technical Officer), Patricia Tuckwell (Civic and Committee Services Manager) and Mia Matthews (Committee Services Officer).

1. Appointment of Chairman

Resolved that Councillor Gorman be appointed as Chairman for the hearing.

2. Substitutes

There were no substitutions.

3. Declarations of Interest

There were no declarations of interest made.

4. Application for a new Premises Licence under the Licensing Act 2003 for Sombrero, 40 Bedford Street, Royal Leamington Spa

The Panel considered a report from Safer Communities, Leisure and Environment for a new premises licence application at Sombrero, 40 Bedford Street, Leamington Spa, CV32 5DY. Representations had been received in relation to the application for the consideration of the Panel in the determination of the application.

Mr Mohammed applied for a new premises licence for Sombrero, 40 Bedford Street, Leamington Spa, CV32 5DY on 22 December 2024. The premises had been described by the applicant as a hot food takeaway.

The application was for the sale of hot food and drink after 11.00pm. A copy of the relevant part of the application form was attached as Appendix 1 to the report.

The Licensing Department had received two objections, one from Warwickshire Police and one from Environmental Health, and these were attached as Appendices 2 and 3 to the report. The Responsible Authorities were invited to attend the Licensing and Regulatory Panel.

No representations had been received from:

- Trading Standards
- Fire Authority
- The Licensing Authority
- Enforcement Agency for Health and Safety

- Authority Responsible for Planning
- National Health Service/Public Health

A plan showing the location of the premises was attached as Appendix 4 to the report along with the current plan of the internal layout. Photographs of the premises were attached as Appendix 5 to the report.

Addendum 1 to the report was circulated prior to the meeting advised of proposed amended opening hours from Warwickshire Police. A further Addendum 2 was circulated, containing amended conditions from environmental health to the applicant and withdrawal of objections from Warwickshire Police following the agreed amendments in Addendum 1. A final Addendum 3 was circulated as the applicant agreed to the conditions set by Environmental Health.

A document summarising the agreed operating hours and amended conditions was circulated at the meeting. Members were also provided with a printed email from the applicant's noise assessor providing responses to questions raised by Environmental Health.

The Chair asked Members of the Panel and officers to introduce themselves. Mr Khuramy introduced himself as the current manager of Sombrero, and stated he would be representing the applicant at this Panel. It was proposed by the Chair and seconded by Councillor Barton that Mr Khuramy be permitted to represent the applicant at the Panel, even though he had not registered to speak prior to this.

The Council's Solicitor announced the procedure for the meeting. At the Chair's request, the Licensing Enforcement Officer introduced the report.

In response to questions from Members, the Licensing Enforcement Officer explained that the premises was not currently licensed, and a licence was not required to provide hot food and refreshments until 11.00pm.

In his opening statement, Mr Khuramy advised that he had been the manager of Sombrero for two and a half years, and they now had applied for the licence because the business was struggling.

In response to questions from the Panel the applicant explained that:

- the delay in agreeing conditions was due to a misunderstanding of what was being asked;
- a doorman would be present on Friday and Saturday nights. Sunday to Thursday the door would be closed at 02.00am, and the restaurant would be open for online orders only;
- the current opening hours were 12pm-11pm; and
- if required due to noise levels, the restaurant would close completely at 02.00am Sunday to Thursday.

The Chair invited the Environmental Health Officer to make their representations, they stated that:

- the premises was located within centre of Royal Leamington Spa and was less than 500 metres from late night establishments;
- there were at least four other establishments that were licensed to provide hot food and refreshments past 11.00pm situated on the same street;

- there were residential properties surrounding the establishment, a map of which was attached in Appendix 3 to the report;
- additional conditions had been agreed with the applicant for the door to the premises to be closed from 02.00am Sunday to Thursday and only online orders would be taken from this time; and
- following the submission of the noise and odour report, further concerns were raised with the applicant. The noise consultant had responded to these concerns and the email had been printed for the Panel.

In response to questions from the Panel, the Environmental Health Officer explained that:

- the team was concerned the extractor system that would be fitted could cause a noise nuisance, and there was not enough data to confirm if this would not be the case;
- further evidence would be produced following a noise report, but this had not yet happened;
- the current extractor fan had been in situ since 2020 when a refurbishment took place; and
- the noise from the extractor fan was not an issue during the day, but after 11.00pm it could be more noticeable.

In response to further questions from the Panel, the applicant explained that:

- The restaurant gave out free food to the homeless but would not be providing free food to the public as a calming measure.
- The premises did not play music so they would not need to lower the volume for the final hour. This was mistakenly filled out on the application form.
- If necessary, they would ask delivery drivers and customers to be quiet and respectful to their neighbours.
- They had already erected signage asking for drivers to be quiet.
- Drivers would park at the front of the establishment, there was no rear access.

The Panel had then asked the Environmental Health officer if she felt noise would still occur regardless of the signage. In response, the Environmental Health officer confirmed there might be noise from cars idling and doors opening. The Council's Solicitor then confirmed the conditions only applied to situations which were in the applicant's control. The notices that had been erected would encourage drivers to be respectful, but the applicant could not control what occurred on the road.

The Licensing Enforcement Officer confirmed other similar premises had been granted a late-night refreshment license, such as Domino's which was situated on the same area as the applicant.

The applicant's representative advised that he would be willing to close the premises at 2am for deliveries as well, not just for dining in customers, Sunday to Thursday.

The Environmental Health officer confirmed the noise engineer would attend the premises in the early hours to assess the background noise levels. They would not necessarily turn the extractor fan on, they could assess the noise using the manufacturer's decibels. Warwick District Council staff would not undertake the noise assessment, and this would be done by a qualified consultant. If noise

complaints were received, the Council could enforce the statutory noise powers or review the licence if necessary.

The Chair invited Environmental Health to add anything further in light of the evidence that has been presented. Environmental Health stated they would suggest the Panel should refuse the application at this time, as a satisfactory noise report had not been provided. The team had concerns regarding noise nuisance, such as idling cars and doors shutting into the early hours. Once a satisfactory noise report from a qualified consultant was submitted, Environmental Health would withdraw any objections and the applicant could reapply.

Mr Khuramy confirmed he had nothing further to add.

At 11.00am the Chairman asked all parties other than the Panel, the Council's Legal Advisor, the Civic and Committee Services Manager and the Committee Services Officer to leave the meeting, in order to enable the Panel to deliberate in private and reach its decision. The decision would be communicated in writing via email to the applicant and interested parties later on the same day, followed by a written notice with a full decision within seven days.

Resolved that the application be granted.

The Licensing Panel has taken note of all of the written representations made in respect of the application for a new Premises Licence at Sombrero, 40 Bedford Street, Leamington Spa, CV32 5DY and has listened to all those who have spoken at the Hearing.

In reaching its decision, the Panel took into account Warwick District Council's Statement of Licensing Policy and the statutory guidance issued under section 182 of the Licensing Act 2003.

The Panel noted that the Warwickshire Police had agreed conditions to the license with the Applicant and had withdrawn their objection to the application on this basis.

The Panel noted that Environmental Health continued to object to the application on grounds relevant to the prevention of public nuisance. The Environmental Health Team had put forward proposed conditions to the Applicant on the 30 January 2024. At the hearing the Applicant's representative, Mr Hares Khuramy, who manages the premises, confirmed that the Applicant agreed to the proposed conditions.

The Panel also noted that the Applicant had instructed an expert to prepare a noise and odour report (dated 5 February 2024) which was submitted to the Environmental Health Team for consideration. In addressing the Panel, the Environmental Health Officer confirmed that following their consideration of the report, they wrote to the Applicant's instructed expert on 6 February 2024, raising a number of queries and requesting further information about the odour extract system at the premises. The Panel noted that

without this additional information, Environmental Health's concerns regarding the potential for public nuisance remained and so they continue to object to the application, however, they were hopeful that agreement could be reached on additional conditions on receipt of the additional information.

The Panel therefore determined to grant the premises licence subject to:

- A. Such conditions as are consistent with the operating schedule accompanying the application; as amended by the conditions currently agreed between the Applicant and Warwickshire Police and Environmental Health, namely:
1. The Applicant shall ensure that CCTV is installed and maintained to the satisfaction of the Police and Licensing Officers and shall ensure: -
 - a) All equipment shall have constant time/date generation.
 - b) This shall include a system to ensure automatic update in relation to the beginning and end of British Summer Time etc.
 - c) If the system is not capable of achieving this requirement the Licence holder or a nominated person must ensure that a manual facility is available to carry out this update as an alternative.
 - d) Recordings must be kept for a minimum of 31 days.
 - e) Recordings of incidents at the premises must be made secure for inspection by the Police and or Licensing Officers.
 - f) Copies of recordings will be made available to officers of the responsible authorities on reasonable request.
 - g) Unauthorised persons should not be allowed access to the system or view personal data as it could contravene the Data Protection Act or jeopardise any criminal investigation.
 - h) Arrangements for its repair must be made without delay.
 4. The Premises Licence holder shall implement and maintain an up-to-date register of incidents occurring on the premises. This register shall be made available to the Police or Authorised Officers on request.
 3. Door supervisors are to be employed on Friday's and Saturday's from 11pm to 5am (or closing time). All door staff to be SIA registered and badged. The requirement for the deployment of door staff may be varied in writing with the agreement of Warwickshire Police. Should a variation be agreed and there is subsequently an increase in disorder, then Warwickshire Police may reinstate the original requirements of requiring door supervisors on

Thursday, Friday and Saturday by notifying the license holder in writing.

4. The applicant or manager of the premises shall join the WRCI retail scheme for the Leamington Spa area and participate in the local retail watch meetings and actively use the "retail" radio provided as part of this scheme.

5. Prominent, clear, and legible notices must be displayed at all exits requesting that customers respect the needs of residents and to leave the premises and area quietly.

6. Prominent, clear, and legible notices must be displayed at all entrances requesting that all delivery drivers, do not leave their cars in idle when collecting deliveries.

7. The premises licence holder (or his/her nominees) shall ensure that any patrons queuing and/or smoking outside the premises do so in an orderly manner and are supervised by staff to ensure that there is no public nuisance or obstruction of the public highway.

8. No collections of waste or recycling materials (including bottles) from the premises shall take place between 21:00 and 08:30 on the following day.

9. Where the premises provide food to the public for consumption off the premises, there shall be provided at or near the exits, one waste bins to enable the disposal of waste food, food containers, wrappings etc.

10. Where the premises provide food for consumption off the premises, the public area immediately surrounding the premises shall be cleared of waste food, food containers, wrapping etc. at the end of trading on each day. Such refuse shall be placed in a container designed for the storage and disposal of refuse and waste foods.

11. No deliveries to the premises shall take place between 22:00 and 08:30 on the following day.

12. The counter service open to the public will only be available until 02:00 Sunday through to Thursday. Thereafter no public access will be permitted to the premises and the premises will only be used for the provision of late-night refreshment via the delivery service.

13. The counter service open to the public will only be available until 05:00 Friday and Saturday only if door staff are on duty. Thereafter no public access will be permitted to the premises and the premises will only be used for the provision of late-night refreshment via the delivery service if door staff are not available.

14. Any deliveries from the premises will only be made to a customer's place of residence or place of business.

AND

- B. Any additional conditions as considered appropriate for the promotion of the licensing objectives by Licensing Officers in consultation with the Panel, following receipt and consideration of the additional information requested by the Environmental Health from the Applicant's instructed expert.

The Applicant or any person who has made representations may appeal against the decision of the Panel to the Magistrate's Court within 21 days of issue of formal notification of the decision.

(The meeting ended at 11:32am)

CHAIRMAN
11 March 2024