

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held remotely, on Thursday 23 June 2022, at 2.00pm.

Present: Councillors C Gifford, Illingworth and Syson.

Also, Present: Sophie Vale (Committee Services Officer), Sarah Sellers (Council's Solicitor), Emma Dudgeon (Licensing Enforcement Officer), Amanda Allinson (Licensing Enforcement Officer), Peter Lawson (Senior Environmental Health Officer) and Stacey Walsham (Environmental Protection Technical Officer).

1. Apologies and Substitutes

There were no apologies for absence made.

2. Appointment of Chairman

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

3. Declarations of Interest

There were no declarations of interest made.

4. Application for a variation of a Premises Licence under the Licensing Act 2003 for The Shire Grill, Chesterton Drive, Sydenham, Royal Leamington Spa, CV31 1YJ

The Panel considered a report from Health and Community Protection which sought a valid variation of a premises licence to extend the licensable area for The Shire Grill, Chesterton Drive, Sydenham, Royal Leamington Spa, CV31 1YJ. Representations were received in relation to this application for the consideration of the Panel in the determination of the application.

The Chairman asked Members of the Panel to introduce themselves. The other parties then introduced themselves as:

- Mr Sahota, attending the hearing as the applicant;
- Mr Semper from The Licensing Guys, acting as agent on behalf of the applicant;
- Mr Lawson, attending the hearing as Senior Environmental Health Officer;
- Ms Walsham, attending the hearing as Environmental Protection Technical Officer;
- Mr Woodcock, speaking as a member of the public; and
- Mrs Woodcock, speaking as a member of the public;

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

The Licensing Officer outlined the report and asked the Panel to consider all the information contained within it in order to determine if the licence application should be granted, if so, whether the licence should be subject to any conditions.

Mr Shamsheer Sahota submitted an application to vary the premises licence to extend the licensable area to cover the beer gardens and patios surrounding the premises, including the use of a marquee, on the 9 May 2022. This was attached as Appendix 1 to the report.

The Shire Grill currently held a premises licence issued under The Licensing Act 2003 which permitted live and recorded music (inside only) until 00:00 hours Sunday to Thursday and until 01:00 on Friday and Saturday. A copy of the current premises licence for The Shire Grill was attached as Appendix 2 to the report.

The Licensing Department received objections from local residents. These were attached as Appendices 3 and 4 to the report.

A further three objections were received from residents, however, following discussions between the residents and the applicant these were subsequently withdrawn.

The Licensing Department also received an objection from Environmental Health. This was attached as Appendix 5 to the report.

No representations had been received from:

- Fire Authority
- The Licensing Authority
- Authority Responsible for Planning
- National Health Service/Public Health
- Enforcement Agency for Health and Safety

Two photographs showing the location of the proposed extension (currently with a marquee) in relation to the existing building of The Shire Grill, the play area and the car park were attached as Appendix 6 to the report. An aerial view showing the location of the premises in relation to surrounding homes was attached as Appendix 7 to the report. A plan of the premises submitted by the applicant was attached as Appendix 8 to the report.

In response to Environmental Health, the agent acting on behalf of the applicant created a noise plan. This was attached as Appendix 10 to the report.

Environmental Health submitted further correspondence regarding the application, this was attached as Appendix 11 to the report.

Members were asked to consider the information contained in the report and decide whether the application for a variation for a premises licence at The Shire Grill should be granted and, if so, whether the licence should be subject to any additional conditions.

The Chairman invited the applicant to introduce the application. The agent, Mr Semper, stated that this was simply an application to extend the areas in which the regulated entertainment authorised on the existing premises licence could take place to include the marquee, patios, and garden area. It did not seek to

change any of the authorisation in regards to alcohol or to change, by the way of extension or otherwise, the hours of the existing premises licence. There were also no proposed alterations or extensions that affected the current interior of the premises. The Shire Grill was the trading name of a successful business operating under a premises licence under the name of Bass Partners Ltd since March 2019. The premises itself had been licensed for many years, having previously been part of the Marston's chain. The premises was set in substantial grounds that consisted of a car park, gardens, patios, and a play area. A marquee had been erected on one of the patios immediately adjacent to the building on its south aspect- between the pub and the play area. This marquee was the focus of the application. The marquee was completely enclosed, standing approximately 25m from the site boundary and any neighbouring residential gardens. It was directly accessible from the main part of The Shire Grill and did not contain a bar. It had a capacity of 80 people and there was no formal layout; tables and chairs could be added depending on the type of function. The intention was to use this area for "prestigious" organised events such as conferences, weddings, and birthdays. These events would be ticketed or by invitation only and would be managed proactively and responsibly.

To provide some background context, Mr Semper explained that Mr Sahota and his three business partners decided to become restaurateurs after successful careers in London. Their business strived to be an exemplary licensed premises and has since received multiple awards and over 100 positive reviews on TripAdvisor. In addition, they also regularly collaborated with local charities and homeless shelters.

Mr Semper noted that the consultation period for this application ended on 6 June 2022, and by that date there were no representations received from any responsible authorities apart from Environmental Health. This meant that all other responsible authorities were satisfied with what was proposed by the applicant. Representations were received from five other persons within the relevant period. Three of those had subsequently been withdrawn, leaving two to be considered at this hearing. Those representations raised issues with a previous event and were "more akin to a review" and did not make any criticism of the operating schedule in any way. On 1 June 2022, the Senior Environmental Health Officer submitted his representation, and the additional conditions that were proposed were readily agreed by the applicant. The email received on 7 June 2022 (the day after the consultation period ended) stated that Environmental Health would not withdraw their application. The email dated 15 June 2022 from the Senior Environmental Health Officer used the word "objecting" for the first time. In Mr Semper's view, this amounted to a grounds of objection, but could not be accepted as such as it was made after the close of the statutory period for representations. He quoted the Secretary of State Section 182 guidance: "representations received within the time limit may be expanded upon but not added to". In his opinion, it would be severely prejudicial to the applicant to allow the Panel to consider the email from the Senior Environmental Health Officer dated 15 June 2022.

The applicant Mr Sahota added that he and his business partners of Bass Partners Ltd all grew up in Sydenham, and after successful careers in London felt that they should come back to their roots and open a restaurant. They opened the Grill in early 2019 and went into lockdown around a year later. Due to this, they had lost "immense" amounts of money and were now losing more because of the cost-of-living crisis. He stated that the marquee was an attempt to ensure their survival as a business.

In response to questions from the Panel, Mr Sahota and Mr Semper advised that:

- The email sent by Mr Lawson on 15 June 2022 was contradictory to his original statement and was sent to the applicant after the consultation period had ended. As such, Mr Semper requested that it be excluded from consideration.
- The beer garden and benches had always been in use, with the beer garden having been used for the past 30 years. They were not seeking to expand the usable space, but instead were hoping to bring the pre-existing beer garden within the premises licence.
- There were two entrances into the marquee. The main entrance would be accessed through the pub itself, but there was another entrance on the patio side which could be unzipped and opened.
- The point of this application was to ensure that the marquee could be used for regulated entertainment (including music) up until 23:00. In the absence of a Temporary Events Notice (TEN), the marquee could be used as a seating area.

In response to a question from Councillor Illingworth, the Licensing Enforcement Officer noted that the marquee was technically outside, but if the licence were extended to include that area, under the Deregulation Act 2015 it would no longer be relevant whether the licence said indoors or outdoors. At the moment, under the current licence, the live and recorded music did not require a licence until after 11.00pm. So, if the marquee was to be included within the licensed area, then up until 11.00pm it could be used for live or recorded music. After 11.00pm, the marquee could no longer be used for this purpose and any music would have to be moved inside. Mr Semper then confirmed this.

In response to a question from Mrs Woodcock, Mr Sahota stated that Lambourne Crescent was across the main road but was around the same distance (approx. 150m) from the Grill as Mrs Woodcock's property. Ms Walsham interjected, stating that there was a considerable number of houses as well as the main road between Lambourne Crescent and the Grill, and that Cobden Avenue was the same. Mr Lawson added to this, noting that the houses between Lambourne Crescent or Cobden Avenue and the Grill could provide shielding of noise. Therefore, the residents on those streets who had not experienced any problems according to Mr Semper may be experiencing reduced noise levels due to this shielding. Bankcroft did not have the same number of houses in between so would experience increased levels of noise nuisance.

Before the representation from Environmental Health, Mr Lawson asked whether his email correspondence dated 15 June 2022 should be taken into consideration after Mr Semper's earlier comments. He stated that he could still make his representation without using the 15 June 2022 email.

Mr Semper clarified that his earlier submission was that the 15 June 2022 was highly prejudicial but suggested that the Panel adjourn to decide whether to include it in the representation or not. Mr Sahota agreed, stating that he was happy for all other evidence to be included, just not this particular email.

At 3.12pm, the Chairman asked all parties other than the Panel, the Council's Legal Advisor, and the Committee Services Officer to leave the meeting, in order to enable the Panel to receive legal advice in respect of the communication from Environmental Health dated 15 June 2022 and reach a decision in private as to whether it should be given weight. The meeting then went into confidential session.

At 3.52pm, public session was resumed, and all parties re-joined the meeting. The Council's Legal Advisor announced that Members accepted that there was a technical issue with the late submission of the document dated 15 June 2022, and for the purposes of the hearing the Members would disregard the document, but they would still take into account the document submitted on 1 June 2022.

When given the opportunity by the Chairman to make a representation, Mr Lawson first acknowledged that he was only speaking to what was submitted by him on 1 June 2022, and that the 15 June 2022 email was to be disregarded.

In his statement, the Senior Environmental Health Officer noted that the marquee initially came to the attention of Environmental Health because of complaints received in April 2022 regarding noise from music and entertainment disturbing local residents. In May 2022, Environmental Health was consulted by the Licensing Department about a TEN that had been received regarding an intended event in the marquee on 30 May 2022. Environmental Health was concerned about the potential for noise escaping from the marquee and causing nuisance to local residents. Subsequently, on 9 May 2022, there was a meeting with the Licensing Guys and the applicants in the marquee to discuss the prevention of noise nuisance. For the purposes of the TEN, similar conditions to those listed in the representation from Environmental Health were agreed.

On 30 May, when this event was taking place, the Senior Environmental Health Officer and the Environmental Protection Technical Officer visited houses in Mathercroft and Bankcroft. He noted that the proprietors of The Shire Grill were aware that they were visiting nearby houses on that night as he had had discussions with Mr Semper about it beforehand. At 9.20pm, the Senior Environmental Health Officer and the Environmental Protection Technical Officer were in the street at the façade of the house around the junction of Mathercroft, Moncrieff and Bankcroft and could hear the noise of bass, drums, and amplified announcements. The noise was "quite apparent" in Mathercroft, which ran along the southern boundary of the premises.

Upon entering a house in Mathercroft, they found that the sound emanating from the marquee could be heard in the garden and that the noise (drumming, raised voices and cheering) was intruding into the first-floor rear bedroom. At around 10.00pm, the sound of amplified announcements could also be heard from inside the house with the window open and closed. After this, the Senior Environmental Health Officer formed the opinion that the noise would interfere with sleeping in that bedroom. Both Mr Lawson and Ms Walsham then went to meet with the proprietor at The Shire Grill car park gate and advised him of their observations.

Regarding the video of the sound meter reading, the Senior Environmental Health Officer stated that the applicant had not presented any evidence of the calibration of the noise meter, nor the competency of the operator. He explained that relying on noise meter readings as evidence of compliance with conditions was "fraught with difficulty" due to the technicalities of measuring noise, particularly music. In his view, this was why the advice given for the TEN and in

the terms of the variation of the licence looked at the practical issue of whether the noise was intrusive rather than looking at specific decibel limits. The noise comparison thermometer “missed the point” in terms of noise nuisance because what people perceived as intrusive was the difference in level or character of the noise and the normal background noise. So, as the Grill was situated in a relatively quiet area, the kind of noise from the marquee would stand out more.

In conclusion, the Senior Environmental Health Officer stressed that they wanted to make sure that if the licence were varied, a situation would not be inadvertently created where there could be uncontrolled entertainment going on in the marquee that would subsequently give rise to nuisance.

In response to questions from Members, the Senior Environmental Health Officer advised that:

- intrusive noise related to what the noise was like at the boundary of the premises. For example, if a conversation could be had between two people without them having to shout, then a noise was not intrusive; and
- the key to a successful noise mitigation plan was risk assessments. But first it had to be clear what events would happen in the marquee, for example no “rock concerts”.

Mr Sahota noted the Senior Environmental Health Officer’s definition of intrusive noise as people having to “shout” over the noise. Mr Sahota remarked that he accepted Mr Lawson’s professional opinion but wanted to make it clear that he did have conversations with previously objecting residents on Mathercroft and none of them raised issues about the event on 30 May 2022.

The Senior Environmental Health Officer clarified that ‘having to raise voices’ would be better than ‘having to shout’ in defining intrusive noise.

The Environmental Protection Technical Officer provided the legal definition of intrusive:

“To cause a disruption or annoyance through being unwelcome or uninvited.”

When given the opportunity by the Chairman to make a representation, Mr Woodcock stated that in all his time living near The Shire Grill, he had never had issue with noise. He admitted that he had in fact previously been a customer who had been to see bands at the location. However, on 13 April 2022- after the marquee was erected - an event took place which was so loud “the windows were shaking”. This prevented Mr Woodcock from sleeping properly, something which he needs for his job as a HGV driver. He stated that this “intrusion” was the reason behind his objection to this application. He acknowledged that this event ended at 23:00, but that when he went to the Grill to notify Mr Sahota of the noise nuisance caused, Mr Sahota told him to leave as “you lot complain about everything”. However, Mr Woodcock accepted that Mr Sahota had apologised, and no noise nuisance had happened since.

When making her representation, Mrs Woodcock stated that she stood by her husband’s submission.

The Council’s Solicitor asked if Mr Sahota was in agreement with the conditions set out by Environmental Health on 1 June 2022 (Appendix 5 to the report). Mr Semper confirmed that Mr Sahota was indeed willing to accept these conditions.

In his final summary, Mr Semper explained that the applicant's intention was the same as Mr Lawson's – to avoid inadvertently creating nuisance to neighbours. They had accepted all conditions put forward by the Senior Environmental Health Officer and were keen to revisit the noise risk assessment regularly in order to prevent nuisance. He also clarified that the applicant had no intention of hosting "rock concerts or discos", it would be pre-booked events and that any entertainment would be ended at 11.00pm.

At 4.39pm, the Chairman asked all parties other than the Panel, the Council's Legal Advisor, 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** for a variation of a premises licence under the Licensing Act 2003 at The Shire Grill, Chesterton Drive, Sydenham, Royal Leamington Spa to extend the licensable area to include the areas marked on the plan at Appendix 8 of the officers' report (consisting of patios, beer garden area and a marquee adjacent to the main pub building).

In addition, the Panel determined that the following conditions should be applied to the premises licence in order to prevent public nuisance as set out in the Environmental Health comments at Appendix 5 of the Report:

1. the sound of music and amplified voices shall not be intrusive at the boundary of the premises;
2. the Premises Licence Holder or DPS must immediately comply with any request to adjust sound levels made by an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or the Police;
3. there shall be a Noise Management Plan in place, which must include:
 - A noise risk assessment
 - Procedures and control measures for noise
 - Bookings policy
 - Briefings of users/entertainers on noise precautions
 - Monitoring of noise during events
 - Noise complaints procedures; and
4. no regulated entertainment shall take place in the Marquee, patios or beer garden after 11pm.

At a public hearing on 23 June 2022 Warwick District Council's Licensing Panel considered an application made under the Licensing Act 2003 by Mr Shamsheer Sahota ("the Applicant") in respect of premises at The Shire Grill,

Chesterton Drive, Leamington Spa. The application was for a variation of the licensable area of the premises to extend it to cover outdoor areas consisting of patios, beer garden area and a marquee adjacent to the main pub building as per the red line shown on the plan at Appendix 8 of the Licensing Officer's Report ("the Report"). No change was sought to the existing hours of operation or licensable activities.

An objection was received from Warwick District Council Environmental Health Team in their capacity as a Responsible Authority.

Two objections were received from local residents Mr Paul Woodcock and Mrs Victoria Woodcock. A further three objections received from local residents were withdrawn following discussion between the objectors and the applicant.

Mr Nick Semper attended the hearing as the representative for the Applicant.

At the hearing verbal representations were also made by the following persons:-

- Mr Shamsheer Sahota - the Applicant
- Mr Peter Lawson - Senior Environmental Health Officer for Warwick District Council
- Mr Paul Woodcock – local resident
- Mrs Victoria Woodcock – local resident

Mr Semper explained that the premises was a well-established restaurant business which had been under the current management since March 2019. The effect of the application would extend the area for regulated entertainment. The Applicant intended to use the marquee to host organised events. The marquee was located adjacent to the pub which had generous grounds. No change was sought to the hours of operation or interior.

The Applicant was willing to agree to conditions in the terms suggested by environmental health were the application to be granted. The proposed conditions included having a noise management plan in place and that no regulated entertainment take place in the marquee or beer garden after 11.00 pm.

Mr Sahota also addressed the Panel in support of the application and outlined his intended approach to using the marquee for events and his intention to operate within the confines of the noise management plan. Mr Sahota responded to questions from Members regarding use of the marquee and the beer garden.

The Panel adjourned briefly to consider some points put on behalf of the Applicant regarding whether the

environmental health email of 15 June presented new material that should not have been put before the committee given the wording of the representation of 1 June. For the purposes of the hearing the Panel decided to disregard the email of 15 June but found that the representation of 1 June did set out an objection to the application by environmental health.

Mr Lawson addressed the committee on the reasons why environmental health were objecting and outlined some of the observations that had been made whilst an event was taking place under a TEN on 30 May. Concerns included disturbance to nearby residents as observed at nearby locations and the potential difficulties with controlling the sound levels in the marquee. It was felt that controls were needed for music before 11 pm. Mr Lawson addressed the Panel regarding the proposed conditions if the application was granted and the importance of noise risk assessment by the Applicant in terms of use of the marquee. The issue of whether noise was intrusive would be a practical one and Mr Lawson cautioned against relying on noise meter readings alone.

Mr Paul Woodcock and Mrs Victoria Woodcock, local residents, addressed the Panel regarding an incident on 13 April when they had experienced unacceptable levels of noise at their property from the Premises. Whilst this had never happened previously, on the night in question the noise had been very loud and this was the reason they had objected.

Mr Semper re-stated the Applicant's intention not to hold events that would cause noise issues and his willingness to address noise risk assessments and re-visit the noise management plan.

In making their decision the Panel considered all of the information provided in advance of, and at, the hearing and the statutory guidance and the Council's Statement of Licensing Policy.

The Panel considered the potential impact on the licensing objectives and in particular public nuisance. The Panel noted the Applicant's assurances given as to how events would be operated and his commitment that the location would not be used for loud events that would be unsuitable for the marquee. The Panel regarded this as an important measure and noted that it would be publicised to hirers and referenced on booking material. On balance the Panel reached the view that it would be acceptable for the variation application to proceed subject to the conditions which had been proposed by Environmental Health and which the Applicant had agreed to comply with. The Panel expected the Applicant to actively manage the Noise Management Plan and to be proactive in responding to any

neighbour concerns or issues around activities at the Premises.

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.

Cllr Illingworth (Chair)
Cllr Gifford
Cllr Syson

(The meeting ended at 5.10pm)

CHAIRMAN
17 October 2022