

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Tuesday 24 September 2019, at the Town Hall, Royal Leamington Spa at 10.40am.

Present: Councillors C Gifford, Murphy and Syson

Also Present: Mr Howarth (Council's Solicitor), Mrs Dury (Principal Committee Services Officer), Miss Daud (Licensing Enforcement Officer), Mr Lawson (Senior Environmental Health Officer) and Ms Johnstone (Technical Officer, Safer Communities, observing only).

(The meeting started 40 minutes after the published agenda start time of 10.00am because of the late arrival of Councillor Murphy who had been held up in bad traffic conditions caused by the weather.)

1. **Apologies and Substitutes**

Councillor C Gifford substituted for Councillor Calver and Councillor Syson substituted for Councillor A Dearing.

The Principal Committee Services Officer explained that at the time the agenda for the Panel was published, Councillor Calver had given her apologies for the meeting. Between this time and the meeting itself, she had subsequently resigned as a Councillor for personal reasons.

2. **Appointment of Chairman**

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

3. **Declarations of Interest**

There were no declarations of interest made.

4. **Application for a premises licence issued under the Licensing Act 2003 for Casa Rica, 1 Brunswick Street, Leamington Spa, CV31 2DS**

The Panel considered a report from Health and Community Protection which sought a decision on an application for a premises licence for Casa Rica, 1 Brunswick Street, Leamington Spa, Warwickshire.

Prior to the start of the meeting, the applicant had circulated copies of the chain of emails he had between the Senior Environmental Health Officer and a noise consultant engaged by the applicant to agree noise insulation testing methods.

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

- Mr Mehdi Bijannejad, the applicant; and
- Mr Andrew Barker, a local resident.

The Council's Solicitor explained the procedure for the hearing.

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

Mr Bijannejad applied for a premises licence for 1 Brunswick Street, Leamington Spa, Warwickshire on 9 August 2019. The licensable hours and activity requested by the applicant were:

	Opening Hours	Late Night Refreshment (Indoors and outdoors)
Monday to Thursday	17:00 to 02:00	23:00 to 02:00
Friday to Sunday	13:00 to 03:00	23:00 to 03:00

The proposed operating schedule was attached as appendix 1 to the report.

The Licensing Department had received a representation from Warwick District Council Environmental Health which was attached as appendix 2.

Representations had been received from local residents. The representation attached as appendix 3, was a group representation but unredacted copies of appendix 3 was circulated at the meeting. Another representation had been received from a local resident which was attached as appendix 4.

A plan of the premises submitted by the applicant was attached as appendix 5, and a map and photograph of the area were attached as appendices 6 and 7.

Mr Bijannejad explained that he had applied for the late licence one month ago and then had received notification of the objections, and one of these had visited. He called the landlord and the landlord visited the tenant who lived above the premises. Whilst the landlord and tenant were upstairs, Mr Bijannejad made noise in the premises and neither the landlord nor the tenant could hear this noise. He went on to explain the location of the premises and the fact that there had been no noise complaints in the last ten years, or complaint in any respect.

Mr Bijannejad stated that local nearby residents liked the fact that the shop was open because they felt it made the area more secure because of the lights being on. He described an incident which had happened a year ago involving a man lying outside in the street who was choking on food. Mr Bijannejad had called for an ambulance and had gone to the man's assistance and helped him to breathe.

Mr Bijannejad advised the Panel that three takeaway establishments were within two minutes' walk of the premises. He pointed out that in the case of the representation from the resident living in Charlotte Street, anyone walking to his premises from Charlotte Street would have to pass these three takeaway establishments. Eagle Street, where another resident who had made representations lived was six to seven minutes away. He also pointed out that the Police had not made any objection to his application. He stated that a Police camera was next to his shop. 18 months previously a new ventilation system had

been installed at the shop which did not disturb the tenant above the premises and noise could not be heard from it outside.

Mr Bijannejad informed the Panel that his business was very small. He worked inside with two drivers; most of his food sales were deliveries, only a small amount involved people coming to the shop to buy food.

In response to questions from Panel Members, Mr Bijannejad explained that:

- He would be prepared to amend his application to closure on Sunday at 11pm.
- The premises went quiet around 10pm.
- Mondays to Thursdays and Sunday, he could close the shop at 11pm. Fridays and Saturdays, he could close at 11pm and only do food delivery service. The Council's solicitor sought clarification and Mr Bijannejad agreed that he would be prepared to have food service restricted to solely delivery service and was agreeable to the licence being amended so it was restricted to this.
- Currently, Fridays and Saturdays, two drivers were required for the delivery service, on Sundays, only one driver was required.
- Parking spaces for the drivers were close to the shop.

The Senior Environmental Health Officer informed the Panel that he had concerns even with the restriction of providing food solely by delivery because of how many vehicles might be required and the noise generated by people talking and parking. Mr Bijannejad responded that on quiet days, he went home at 11pm, on busier days he handled about five to ten deliveries between midnight and 3am.

Mr Barker informed the Panel that if food sales were restricted to delivery service only, the majority of the objections had been addressed. He did not know how this would affect residents in the immediate vicinity but he would encourage acceptance of the application in the new form because there would be less litter.

The Senior Environmental Health Officer explained to the Panel that Environmental Health objected to the application on the grounds of noise nuisance, especially during early morning when background noise had abated making noise coming from the shop more apparent. He had concerns that the noise of the kitchen and takeaway would cause people to loiter, but he recognised a delivery only service would negate this. He pointed out that there was a Planning condition which could be imposed which prevented people being on the premises after 11.30pm and Sundays. He had met with Mr Bijannejad who had sought to reassure him about the noise protection and sound insulation. However, the necessary noise testing had not yet taken place and he would be loath to withdraw his objection when no testing had taken place. There were complications surrounding getting appropriate tests run because Mr Bijannejad was a tenant and any evidence gathering would require the consent of the landlord. He therefore would not be withdrawing the objection pending the relevant evidence in place. He felt that restricting the licence to delivery service only was an improvement but wished for this to be restricted to deliveries to a defined point to restrict someone living in the same road ordering.

In response to a question from Councillor Gifford, the Senior Environmental Health Officer responded that insulating the flat above the premises was under the control of the person occupying the flat.

The Council's solicitor asked the Senior Environmental Health Officer to define who exactly was being affected in respect of the objection made on grounds of prevention of public nuisance. The Senior Environmental Health Officer responded that the people affected would be the tenant above the premises and people next door who shared a party wall. The plant noise, especially between 2am and 3am would have a greater effect and he needed to ascertain how far the noise spread. He took on board the comment from the Council's solicitor that if noise only affected the person in the flat above, it might not form public nuisance.

Mr Bijannejad did not have any questions for the Senior Environmental Health Officer.

Mr Barker informed the Panel that almost all of the objections could be withdrawn with the amended application. There was no hostility between him and Mr Bijannejad. He suggested litter bins would be welcome on the terrace by the canal because currently people did come to the shop for food and assembled on the terrace. He did not know the times when people gathered there but there was a litter issue. The Council's solicitor explained that licensable activity only took place after 11pm, so given the amendments agreed to the application, it would not be applicable to impose a condition in respect of the litter. Mr Barker could report the issue to the Council.

Mr Bijannejad explained that there had been a refuse bin on a nearby lamppost but this had been removed. The people who caused the litter were not even people who used his shop but he still cleared the mess away. The terrace was part of the premises.

The Senior Environmental Health Officer was asked to demonstrate to Members using the plans in the report which people were affected by the plant noise, which the Senior Environmental Health Officer demonstrated. The Senior Environmental Health Officer reiterated that tests had not been done. People who were right above the kitchen would be affected by the noise and an assessment would show if they were affected more. The Council's solicitor referred to case law in respect of public nuisance and the number of people affected by noise. It was questionable whether this was public nuisance or simply a case of nuisance to one person.

The Chairman asked Mr Bijannejad to summarise his application. Mr Bijannejad informed the Panel that he had installed a very good ventilation system. Only the flat above was close and there were adequate parking facilities close by.

The Senior Environmental Health Officer welcomed the amended application because this would deal with the issue of people outside the premises. There was ongoing dialogue with sound consultants but no results to-date so he was not in a position to suggest improvements. He had heard from the applicant about how the tenant in the flat above was affected but that needed to be verified with objective witnessing. He might be convinced in the future that there was not noise nuisance but at this point in time he was not.

Mr Barker did not have anything further to add.

At 11.40am, the Chairman asked all parties other than the Panel, the Council's Solicitor and the Committee Services Officer to leave the room, in order to enable the Panel to deliberate in private and reach its decision.

The Panel required absolute confirmation on what Mr Bijannejad had agreed in respect of amending the application and so Mr Bijannejad, The Senior Environmental Health Officer, The Technical Officer and the Licensing Enforcement Officer were asked to re-enter. Mr Barker had already left the building.

Mr Bijannejad confirmed that a licence was only required Fridays and Saturdays 11pm to 3am for food delivery service only.

At 12.26pm, the Chairman asked all parties other than the Panel, the Council's Solicitor and the Committee Services Officer to leave the room again, in order to enable the Panel to deliberate in private and reach its decision.

Resolved that a licence in accordance with the Applicant's amended application of late night refreshment Friday 11pm to 3am and Saturday 11pm to 3am, in accordance with the Applicant's operating schedule and with a condition which prohibits the admittance of any patrons to the premises after 11pm and restricts late night refreshment (ie sale after 11pm) to sales by order and delivery to a specified address is granted:

The Panel have considered the report from Health & Community Protection and listened to the representations made by the Applicant, Environmental Health and Mr Barker.

The Panel note that the Applicant has amended his application to Friday 11pm to 3am and Saturday 11pm to 3 am and no late night refreshment to take place Sunday to Thursday and that he has offered to accept a condition restricting all late night refreshment to delivery sales and that no counter sales will take place.

This in the Panel's view restricts the issue of whether the application will impact upon the prevention of public nuisance to the plant and extraction machinery that will be operated at the premises and the potential impact upon surrounding residential properties.

The Panel heard from the Senior Environmental Health Officer that his main concern was the impact of the noise from plant and extraction system and other noise from the premises upon the resident occupying the flat above. The Panel understands that The Senior Environmental Health Officer has not expressed the view that noise from plant and extraction system would affect other surrounding residential properties.

As the noise from the premises would in this Panel's view only affect the individual occupying the residential property above the premises, and not a class or group of the public, it is this Panel's view that there would be no impact upon the licensing objective prevention of public nuisance.

The Panel note that Environmental Health do have powers under the Environmental Protection Act to serve an abatement notice on the Applicant where they consider the premises are causing a statutory nuisance which affects the residential property above. The Panel also note that there is currently a Planning condition which restricts the hours the premises can operate and that this would need to be varied before the Applicant can carry out late night refreshment.

The Panel therefore resolve to grant a licence in accordance with the Applicant's amended application of late night refreshment Friday 11pm to 3am and Saturday 11pm to 3am, in accordance with the Applicant's operating schedule and with a condition which prohibits the admittance of any patrons to the premises after 11pm and restricts late night refreshment (ie sale after 11pm) to sales by order and delivery to a specified address.

At 12.34pm, all parties were invited back into the room and the Chairman invited the Council's Solicitor to read out the Panel's decision.

(The meeting ended at 12.37pm)

CHAIRMAN
30 September 2019