

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel meeting held on Thursday 17 September 2015, at the Town Hall, Royal Leamington Spa at 10.00 am.

Present: Councillors Cain, Mrs Cain and Gifford.

Also Present: Max Howarth (Council's Solicitor), Graham Leach (Democratic Services Manager & Deputy Monitoring Officer) and Emma Dudgeon (Licensing Officer).

1. **Appointment of Chairman**

Resolved that Councillor Mrs Cain be appointed as Chairman for the hearing.

2. **Declarations of Interest**

There were no Declarations of Interest.

3. **Public and Press**

Resolved that under Section 100A of the Local Government Act 1972 that the public and press be excluded from the meeting for the following item by reason of the likely disclosure of exempt information within paragraph 7 of Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006.

4. **Application for a variation of a premises licence under the Licensing Act 2003 for Moo Bar, 24 Russell Street, Royal Leamington Spa**

The Panel considered a report from Community Protection which sought a decision on an application from Mr Steven Smith for a variation to the premises licence of Moo Bar, 24 Russell Street, Royal Leamington Spa.

The Chair introduced the members of the Panel and the officers present. The other parties then introduced themselves as;

Mr Smith, the applicant; Mr Besant, applicant's representative; Sergeant Paul Calver, Warwickshire Police; and Mr Cutts, Licensing Authority were all present.

The Council's Solicitor explained the procedure that the hearing would follow.

The Licensing 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 variation of the premises licence should be approved and, if so, whether the licence should be subject to any conditions.

At this point Mr Besant, raised an objection to Councillor Gifford sitting on the Panel; this was because as an individual, Mr Gifford had objected to the licence application of another premises owned by Mr Smith. The Democratic Services Manager & Monitoring Officer explained that he had discussed the matter with

both Mr Besant and Councillor Gifford. The bar for consideration of predetermination had been set at a very high level and following relevant discussions it was clear that Councillor Gifford had made an objection in a personal capacity, some time ago, about a premises not being discussed today. Councillor Gifford had provided assurance that he was approaching the matter today with an open mind and would listen to all the facts before determining the application. This assurance was accepted by the applicant.

Mr Smith had applied for a variation of the premises licence on 28 July 2015. The application requested an extension of the hours the premises were able to sell alcohol for consumption on the premises, provide live and recorded music (indoors) and the opening hours of the premises. The application was for an additional hour on Friday and Saturday and on a Sunday preceding a Bank Holiday Monday so the terminal, if approved, hour would be 3.00am and the closing hour would be 3.30am.

An operating schedule was included within the current premises licence, this was set out in the report, but it was not proposed to change any aspect of this as part of the application.

Representations had been received from Warwickshire Police and the Licensing Authority as responsible authorities.

Mr Besant outlined his client's application, highlighting the characteristics of the premises that was for a wide age range of young professionals and that no residents had objected to the application. He also highlighted that there was no objection to the application for extending the hours on a Sunday preceding a Bank Holiday.

Mr Besant responded to the incidents contained within the representation from Warwickshire Police. He highlighted to the Panel that it was most likely that people would use Moo Bar as an identifiable building to establish location of an incident and that because of this it should be taken that all the incidents reported were related to the premises.

The report from Warwickshire Police detailed eight incidents in 11 and a half months, which equated to less than two incidents a month for a venue that had a capacity of over 1000 people. He talked to each of the incidents, explaining that they were either minor incidents or ones where the staff were acting in a manner that the Police would support to help prevent crime.

Mr Besant cross referenced the incidents with those from the Street Marshalls' log on incidents within the locality of Moo Bar. He expressed the view that from these it was possible to see that when the premises closed, it emptied quickly and patrons moved out of the area soon after.

Mr Besant commented on the submission from the Licensing Authority which in his opinion just demonstrated that the premises was well managed with a good knowledge of the Licensing Act.

Mr Besant explained that it was not possible to demonstrate if a variation to the licence would lead to an increased impact on the Cumulative Impact Zone, but it was clear from the evidence submitted that the application on Sundays preceding Bank Holidays would be acceptable and was a quieter night in town.

Mr Besant concluded that the premises was very well managed, as outlined by both responsible authorities which had objected and that if it was outside the Cumulative Impact Zone, he did not feel that there would have been any objections from responsible authorities.

Mr Besant responded to questions from the Panel and responsible authorities, explaining that:

- The premises was just inside the Cumulative Impact Zone;
- There were a number of premises in close proximity to Moo Bar
- Through the Licensing Officer it was confirmed that last entry to Altoria was at 2.30am on Thursday, Friday and Saturday.

Mr Cutts, representing the Licensing Authority, explained that there was a good working relationship with the premises and its owner but violent crimes either resulting in injury, or not resulting in injury, were both on the increase within Warwick District and the Council had a responsibility to help reduce this.

He detailed that Royal Leamington Spa Town Centre was a priority area for tackling crime and for this reason a lot of resources had been put into the town. Street Marshalls had been introduced working on 180 nights per year. Any addition in hours created a further burden on resources and he reminded them as new Councillors that there was a burden of proof on the applicant that there would not be an increase in Crime and Disorder as a result of the application being granted.

Mr Cutts responded to questions from the Panel explaining that in his opinion, the premises stayed open later, patrons did leave more gradually but there was a more specific issue relating to the layout of Leamington. This was because the north of the River was laid out in a grid format, creating a funnelling effect which caused problems on busier nights and special events. He agreed there was a number of premises in the locality but from recollection only one of these closed after 3.00am.

Sergeant Calver, representing Warwickshire Police, explained that there was a high level of crime and disorder in this locality which was why the premises was included within the Cumulative Impact Zone. He accepted that the premises was not a bad premises or badly managed but it was still within the Cumulative Impact Zone.

He explained that the incidents report log presented to the Committee was that requested by the applicant and only showed the incidents that occurred around the terminal hour for the premises and therefore if the licence was extended these incidents would be more likely to happen later in night.

In response to questions from the Panel and the applicant Sergeant Calver explained that:

- they were not specific crime statistics, that he had with him for this location and only knew the broad the statistics for the Town Centre;
- in his opinion the increase in operating hours would move incidents later and increase the potential for incidents because patrons had more time to consume alcohol;
- the licensee was proactive and took on board relevant suggestions;
- the information provided to the Panel was that requested by the applicant and at the terminal and later hours;

- without working through case by case it was difficult to say exactly which of the 11 incidents were the responsibility of the premises, but they did provide an illustration of what was happening in this area including Anti-Social Behaviour in the later hours; and
- the incidents reports did include some incidents, such as when they removed people from the premises, which would be seen as a positive for the premises.

The Solicitor for the Council circulated a colour version of the Cumulative Impact Zone map as set out in the Council's Statement of Licensing Policy. It provided an illustration of premises within the Cumulative Impact Zone and their terminal hour. It was noted that some premises had, following publication of this plan, either closed or had their hours extended.

At the request of the Chairman, Mr Besant summed up the application, emphasising the Council's policy that each application should be considered on its individual merits and that there were good reasons from departing from Policy along with appropriate conditions to manage the premises.

Guidance also stated that an application should not be approved within the cumulative impact if it was to increase capacity because this would increase impact on the Cumulative Impact Zone.

Mr Besant provided a view to the Panel that it was perhaps better to provide longer opening hours at a premises so that patrons did not leave it rather than move to another venue disturbing residents and then cause further disturbance when they went home from the second venue.

Mr Besant brought to attention of the Panel the results of a further Freedom of Information request response from Warwickshire Police. This showed that none of eight recent incidents took place at the venue but the premises had been used as a location to attach an incident to.

Mr Besant referred to the case of Brew Dog in Yorkshire and drew comparisons in this application, illustrating that Moo Bar was not a "get it down your neck" establishment and its patrons were mainly young professionals.

The Chairman permitted Sergeant Calver to respond to this point because it had not been raised in the initial submissions. Sergeant Calver and expressed the view that in his opinion Moo Bar was not the same as the example in the Brew Dog case.

At 11.30 am the Chairman asked all parties other than the Panel, the Council's Solicitor and the Democratic Services Officer, to leave the room, in order to enable the Panel to deliberate in private and reach its decision.

Having considered the application, representations from the Licensing Authority and Warwickshire Police (as responsible authorities), the submissions made by the applicant and the responsible authorities at the meeting the Panel were in agreement that the application should be granted in part.

The starting point for the Panel was that the premises fell within the Cumulative Impact Zone (CIZ), therefore the provisions of the Council's special policy regarding cumulative impact applied. Paragraph 10.7 of the Licensing Policy provided that each application would be considered on its individual merits and

that proper regard would be given to the individual characteristics of the premises concerned and the differing impact the premises would have on the local community. Paragraph 10.8 provided that the Licensing Authority would expect the applicant to demonstrate that the grant of the application would be unlikely to add significantly to the cumulative impact in light of the licensing objectives.

The relevant licensing objectives were Crime and Disorder and Public Nuisance.

Having considered the representations made by the Police and Licensing Authority (as a responsible authority) the Panel were not satisfied that either responsible authority had provided sufficient evidence to show that the grant of the licence would impact on the licensing objective of public nuisance.

With regard to the Licensing objective of crime and disorder the burden of proof was on the applicant to demonstrate that the extension of the licensing hours by one hour on Fridays and Saturdays and Sundays preceding a Bank Holiday would be unlikely to significantly impact on crime and disorder.

The Panel noted that the Police had not objected to the extension of the terminal hours on Sundays proceeding any Bank Holiday.

The Panel also noted that the incidents provided by the Police in support of its objection related to a Friday and a Saturday. The Panel therefore considered the application in two parts. The Panel had firstly considered if the applicant had demonstrated that the extension on Friday and Saturday would be unlikely to add significantly to the CIZ in light of the licensing objectives.

In support of his case the applicant had made the following arguments.

Firstly the applicant had stated that the premises were well managed and that any incidents that arose were dealt with appropriately by the applicant's staff. The applicant stated this was supported by the incidents relied upon by the Police. The applicant also pointed out this was accepted by both the Police and the Licensing Authority.

The Panel did not dispute this and accepted that the premises was a well-managed establishment.

The applicant had referred to the Police incident reports and stated that a number of the incidents had taken place outside the premises and that there was no evidence that the incidents were related to the same. The Panel noted that the applicant had not provided sufficient evidence to support this. The Panel noted that the majority of incidents had taken place within close proximity to the premises and there was no evidence to suggest that the incidents were unrelated to the patrons of the premises.

The applicant had stated that currently the patrons of the premises would leave the premises and move on to other premises in the locality which had a later terminal hour and that the variation of the licence applied for would prevent this. The Panel believed that is purely anecdotal and on that basis were not satisfied that the applicant had provided sufficient evidence to demonstrate that this was the case.

The applicant had stated that the character of the premises and its patrons differed from other licensed premises in the area. The applicant stated that the age range of patrons was 25 – 40 and were predominantly professional people. The applicant referred to the case of Brew Dog which involved an applicant for a microbrewery in a CIZ in Yorkshire. In that case the Court held that the character of the premises differed from other premises in that this was a microbrewery serving real ales and high end drinks to mature customers.

The Court referred to customers as well-heeled and not get it down your neck drinkers. Having considered the character of the premises the Panel did not consider that this was an establishment of the type which was the subject of the Brew Dog case, or that the character of the premises sufficiently differed from other premises in the CIZ. The Panel were not satisfied that the applicant had provided sufficient evidence that this was the case.

The Panel therefore were not satisfied that the applicant had demonstrated that the extension of one hour on a Friday and Saturday would not be likely to add to the cumulative impact in light of the licensing objectives.

With regard to the extension of one hour on a Sunday preceding a Bank Holiday the Panel noted that the Police had made no objection in respect of this aspect of the application. The Panel were also mindful that the incidents relied upon by the Police took place on a Friday and Saturday and noted that Sundays were typically less busy in Leamington Town Centre. The Panel were therefore satisfied that the extension of one hour on a Sunday preceding a Bank Holiday would not add significantly to the Cumulative Impact Zone.

The Panel therefore

Resolved to grant in part and that the licence be varied to enable an extension of one hour on any Sunday preceding a Bank Holiday, as set out in the report and that the variation of one hour on Friday and Saturdays be refused.

All parties were invited back into the room at 1.26pm, informed of the decision and their right to apply to Magistrates Court for an appeal within 21 days of formal notification of this decision.

(The meeting ended at 1.30pm)