

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Wednesday 7 September 2016, at the Town Hall, Royal Leamington Spa at 2.00 pm.

Present: Councillors Gill, Mrs Stevens and Weed.

Also Present: Mrs Gutteridge (Council's Solicitor), Mrs Dury (Committee Services Officer) and Mrs Dudgeon (Licensing Officer).

1. **Appointment of Chairman**

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

2. **Declarations of Interest**

All Members of the Panel declared an interest because they knew one of the objectors.

3. **Application for a premises licence under the Licensing Act 2003 for 27 Augusta Place, Royal Leamington Spa**

The Panel considered a report from Health and Community Protection which sought a decision on an application for a premises licence for Punch Taverns PLC at 27 Augusta Place, Royal Leamington Spa.

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

- Mr Warne – TLT Solicitors representing Punch Taverns PLC
- Ms Hanson – representing Punch Taverns PLC
- Mr Alexander – observing
- Mrs Gifford – observing
- Mr Gifford – local resident and representing Dr Cave, also a local resident
- Mr O'Reilly – Chair of Governors, St Peter's School, speaking on behalf of the Governing Body

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

The Licensing Officer outlined the report and asked the Panel to consider all the information contained within it and the representations made at the meeting, 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.

The application was for a premises licence for a restaurant with a small reception bar at 27 Augusta Place, Royal Leamington Spa. The application had been submitted on 18 July 2016 and the details proposed were outlined in paragraph 3.2 of the report.

Details of the licensable activities requested were as per the table below:

	Opening Hours	Sale of alcohol for consumption on and off the premises	Late Night Refreshment (Indoors)
Monday to Saturday	10:00 to 01:00	10:00 to 00:30	23:00 to 01:00
Sunday	10:00 to 00:30	10:00 to 00:00	23:00 to 00:30

The Licensing Officer advised that six representations had been received objecting to the grant of the premises licence, and these were attached as appendices 1 to 6 of the report. No representations had been received from responsible authorities.

In November 2005, a premises licence was issued under the Licensing Act 2003 for 27 Augusta Place, Royal Leamington Spa. This licence remained in place until April 2011 when the licence lapsed due to bankruptcy. In January 2012, a premises licence was refused for the premises to operate as a bar by the Licensing Committee. Therefore, since April 2011, there had not been a premises licence at the premises.

A plan of the premises provided by the applicant was attached as appendix 7 to the report, a map of the area was attached as appendix 8 and photographs of the area were attached as appendix 9 to the report.

The applicant had provided a letter dated 24 August 2016, distributed prior to the start of the hearing, which advised that there was a typing error on one condition on the application and proposed additional conditions.

Mr Warne addressed Members and stated that it was unusual to have an application for a licence when the operator was not in place, but it did happen. Punch Taverns wanted the licence in place so that they would be able to steer the chosen operator.

The Operating Schedule had been amended as per the details of the letter dated 24 August 2016. These changes had been borne out of conversations held with responsible authorities and interested parties. The conditions would ensure that the premises could only act as a restaurant, and the small ancillary bar can only be used by people who were waiting to be seated at a table to eat.

Mr Warne gave a short history of the premises. Punch had acquired the premises as part of a "job lot" of three restaurants including the premises above. Punch leased these to operators. 27 Augusta Place had been on the market for two years, but there was not any interest because a licence was not in place. A restaurant operator had shown interest, subject to a licence. Punch had considered letting the premises as a retail unit but there had been no interest.

Punch Taverns had commissioned an exterior refit of the whole block. There had been no complaints of the other restaurants it had taken over as part of the "job lot" in 2011. They had consulted with Environmental Protection and others to shape the revised conditions, and the hours requested on the licence mirrored those operated by La Pergola.

The Conditions meant that the premises could not be turned back into a bar. Good operating practices would be in place like CCTV and a "No open vessels" condition would mean people could not take their drinks outside; this in turn would mean that pavements would not be blocked. If there were issues, these could be raised directly with the Operator.

Punch Taverns had a lot of experience; in respect of there being no tenant present, any licence would be attached to the building and not the person. Mr Warne reminded Members that if there were any concerns that could not be addressed, then there was always the power to review the licence.

Mr Warne then spoke about the person living above the premises. The noise experienced would be far less from a restaurant. In all likelihood, the restaurant would operate for fewer hours than applied for on the licence. The hours applied for were to provide the ability to run special events, and the hours had been applied following advice received from Police. The surrounding area was not a known trouble spot, so Mr Warne was fairly confident there would not be problems caused by people using the restaurant.

In respect of the Cumulative Impact Zone (CIZ), Mr Warne contended that the Police would be the source of information if the premises would be a likely problem in the CIZ. From figures he had obtained, there were no issues surrounding public nuisance or crime and disorder. This restaurant would not add to the cumulative impact.

In response to questions from the Panel, Mr Warne responded:

- The premises would operate as a restaurant only and not as a public house serving food. The conditions applied to the licence would make this explicit.
- Whilst off-sales were permitted, a condition on the licence meant that there could be no open vessels, which meant there could be no drinking outside.
- The application did not include regulated entertainment and structural works would prevent noise outbreak. Punch Taverns would ensure that the operator understood that loud noise was unacceptable.

In response to a question from Mr Gifford, who had concerns about how Punch Taverns would deal with any breaches of conditions by the operator, Mr Warne responded that Punch allowed businesses to manage how they ran themselves and Punch Taverns' managers dealt with the operators. Punch Taverns were notified about complaints and they worked hard with publicans to resolve these. The lease agreement used by Punch was very firm because it had the power to take away the property. There had only been two incidents where they had to inform residents that this would happen in the last six years.

In response to a question from Mr O'Reilly, Mr Warne replied that the information about the potential tenant was commercially sensitive but he assured Mr O'Reilly that Punch Taverns selected very carefully and applicants had to have a good business plan.

Mr O'Reilly addressed the Panel. He stated that if the restaurant was similar to La Pergola, then he had no issues with it. But if the premises were going to be used as a public house, he had concerns about the 105 children who would walk

past people outside the pub. 13 staff, who sometimes left the school late, would be forced to walk past the premises to get to the car park.

Mr Gifford then addressed the Panel and reminded Members that he was also speaking on behalf of Dr Cave. He reminded the Panel of the appalling record of the premises and that it was the last premises to lose its licence under the old Act. Since the premises had closed, life had improved for nearby residents. He noted that the new application with Punch Taverns was for 30 minutes later than La Pergola. La Pergola did not use its late night licence, but other premises like Shalimar had done and there were problems there. He requested a 12 midnight end time. La Pergola had a 12.30 am close time but it normally closed at 11.00pm. He felt that it would alter the type of restaurant if closing time was 1.00am. Dr Cave had concerns about the CIZ and it was up to the applicant to prove why this application would not be a problem in the CIZ. Nothing had been said to show why the additional hour would not be a problem in the CIZ. This would be attractive to the night-time economy, but not the evening economy.

Mr Gifford understood why Punch Taverns wanted the licence and he understood the premises would operate as a restaurant. He felt that a midnight closing time would ensure this happened; given the previous bad history at the premises, the extra hour could be an issue. Up to 80 people might gather outside, and whilst the Management Plan had been drawn up to stop people congregating outside was well-intentioned, it was unrealistic.

In respect of the promise that entertainment would be rare, the undertaking to keep doors closed made Mr Gifford think that noise escaping would be an issue. It was critical that doors be kept closed at all time and Mr Gifford requested that a condition be imposed on the licence to ensure this.

Mr Gifford congratulated Punch Taverns on the additional conditions, but the lack of movement on the 1.00am closure and only the statement by Mr Warne that this would not be used often, was a matter of concern. The operator had not been chosen yet. Mr Gifford requested that the licence ensured closing time was 12 midnight. The case had not been proven for a 1.00am closure.

Mr Warne declined the opportunity to ask any questions to the interested parties. He reassured Mr O'Reilly over a concern that the premises would sell takeaway food by stating that the licence was for food to be supplied inside the premises. In response from a request from Mr Gifford about the closure time, Mr Warne offered a concession that Punch Taverns were prepared to accept licensable activity up to 12 midnight with closure at 12.30am.

In summation, Mr Warne read out paragraph 13.3.6 from the Cumulative Impact Guidance which stated that a small restaurant would not impact. Restaurants very rarely caused problems. The two restaurants already in operation were not causing a problem. The historical problems happened when the premises operated as a bar where music was played, and the evidence pointed to the fact that the licence was deservedly revoked. The problems caused had nothing to do with the CIZ, and everything to do with poor management.

The plans would bring life back into the building, and the only way to lease it was to obtain a licence first; without which, the building would stay empty. Punch Taverns would give the operator clear guidance on expected standards and the Police had given advice about hours of business. If matters did deteriorate,

there were significant legal powers in place to stop the offending activity. Punch was happy to offer the change in hours if this would provide reassurance.

At 3.15pm, the Chair 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.

Resolved that the application for a premises licence be **granted**, subject to conditions for the following reasons:

In reaching their decision the Members of the Licensing Panel have considered all of the evidence provided by the Applicant and the Interested Parties.

The Panel has also had regard to the statutory guidance under s182 of the Licensing Act 2003 and the Warwick District Council statement of Licensing Policy.

The Panel has to consider the application in the light of the licensing objectives. The two objectives that are particularly engaged are the prevention of crime and disorder and the prevention of public nuisance.

The Panel made the following findings in this case:

- (i) The premises are situated in the Leamington Spa Cumulative Impact Zone and it is for the Applicant to demonstrate that the grant of the licence will not impact on the licensing objectives.
- (ii) Warwickshire Police and Environmental Health have not objected to the application.
- (iii) The Panel has noted the history of the premises and the serious problems relating to crime and disorder and public nuisance that have, in the past, had an unacceptable impact upon local residents. The Panel fully understands residents' concerns about the grant of a further licence.
- (iv) The Panel note that the premises would operate as a restaurant and not as a bar.
- (v) Punch Taverns are the applicant and own the property. They do not yet have a tenant and are not yet able to give indication of who would operate the premises. The property has been empty for over 2 years and the only interest in the property has been as a licensed venue. Punch Taverns would not directly operate the premises but would lease the premises to the operator and the terms of the lease would require compliance with conditions of the licence. The Applicants has a system of partner development managers who work directly with leasehold operators.
- (vi) During the hearing the Applicant confirmed that they had no objection to the opening hours shown on the licence being restricted so that the premises would close at 00:30 hours and licensable activities would

cease at 00:00 hours should the Panel believe that this would be appropriate.

The Panel has decided to grant the application with the following conditions:

- (1) the opening hours of the premises shall be from 10:00 to 00:30 Monday to Sunday. The sale of alcohol for consumption on and off the premises shall take place between 10:00 to 00:00 hours Monday to Sunday. The provision of late night refreshment (Indoors) shall take place between 23:00 hours to 00:00 hours;
- (2) the premises shall operate as a restaurant, with a small reception/bar indicated on the plan where customers may drink alcohol whilst waiting for a table in the main restaurant;
- (3) sales of alcohol shall be waiter/waitress service only;
- (4) all sales of alcohol, with the exception of customers waiting to be seated in the main restaurant area, shall only be to persons seated and partaking in a substantial table meal;
- (5) no open vessels to leave the premises at any time;
- (6) CCTV shall be installed and operated at the premises. Notices to this effect shall be displayed as required to comply with data protection legislation. CCTV shall be capable of being stored and should be stored for a minimum of 31 days. The areas covered by CCTV to include the entrance/exit and at least one camera shall cover each public area (with the exception of the toilets and corridor staircase to the toilets) Images shall be capable of being downloaded onto a portable device such as a DVD or memory stick and shall be provided to Warwickshire Police on request;
- (7) at least one member of staff shall have received first aid training;
- (8) a challenge 21 policy shall be operated at the premises and all staff responsible for the sale of alcohol shall be trained in relation to the policy and in relation to the law relating to the sale of alcohol;
- (9) no persons under the age of 18 shall be admitted onto the premises after 21:00 hours unless accompanied by an adult;
- (10) notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly;

- (11) all doors and windows shall be kept closed after 23:00 hours except for the immediate access and egress of persons;
- (12) a management plan will be drawn up and implemented to ensure that customers do not block the pavement outside the front of the premises either when going outside to smoke or leaving the premises; and
- (13) a complaints log ("the log") will be maintained at the premises to record any complaints received from residents in relation to the operation of the premises. The log will record the date and time of the complaint, the name (if known) of the person complaining, the nature of the complaint and any action taken to deal with the complaint.

The Panel considers that the conditions imposed are justified and proportionate in the particular individual circumstances of this application. The Panel have decided to restrict the opening and licensable hours in view of the concerns expressed by the Interested Parties about late night noise and disturbance. The Panel is satisfied that the Applicant has demonstrated that the grant of a licence with conditions would not be likely to impact on the licensing objectives.

At 3.38pm all parties and the Licensing Officer re-entered the room. The Chairman invited the Council's Solicitor to read out a summation of the Panel's decision, which would be confirmed in full in writing.

(The meeting ended at 3.43pm)