

# Licensing & Regulatory Panel

Minutes of the meeting held on Thursday 21 August 2014, at the Town Hall, Royal Leamington Spa at 10.00 am.

**Present:** Councillors Mrs Goode, Mrs Knight and MacKay.

**Also Present:** Peter Dixon (Committee Services Officer), Emma Dudgeon (Licensing Enforcement Officer) and Caroline Gutteridge (Council's Solicitor).

## 1. **Appointment of Chair**

**Resolved** that Councillor Mrs Knight be appointed as Chair for the hearing.

## 2. **Declarations of Interest**

There were no declarations of interest.

## 3. **Application for the variation of a premises licence under the Licensing Act 2003 for The Loose Box, 4 Bedford Street, Royal Leamington Spa**

The Panel considered a report from Community Protection which sought a decision on an application from The Loose Box, 4 Bedford Street, Royal Leamington Spa for a variation to its premises licence.

The Chair, members of the Panel and officers introduced themselves. The other parties then introduced themselves as Mr Kandola (Premises Licence Holder for The Loose Box), Mrs Crowley (Mr Kandola's business partner), Mr Potts (Solicitor, representing the applicant), Sergeant Calver (Warwickshire Police) and Mr Gifford (Royal Leamington Spa Town Council). An apology was given on behalf of the Designated Premises Supervisor, Mr Crowley, who was unable to attend the meeting, having broken his knee.

It was noted that while Royal Leamington Spa Town Council had made a written representation to the Panel as appended to the report, the Town Council had failed to register Mr Gifford to speak. Mr Gifford confirmed that he was attending at the request of the Town Council and, if permitted to speak, would do no more than amplify the Town Council's written representation.

After conferring with Mr Kandola, Mr Potts stated that the applicant was happy for Mr Gifford to address the Town Council's concerns to the Panel.

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

The Licensing Enforcement 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 to the premises licence should be approved.

The application before the Panel was for the licence to be varied as follows:

- Performance of dance and anything similar to live & recorded music and dancing (indoors) – 10:00 to 02:00 on Tuesdays (currently 10:00 to 01:00)
- Recorded music, performance of dance and anything similar to live & recorded music and dancing, late night refreshment (all indoors) and supply of alcohol for consumption on the premises – 10:00 to 02:00 on Wednesdays (currently a mix of 10:00 to 00:00 and 10:00 to 01:00)
- Recorded music, performance of dance and anything similar to live & recorded music and dancing, late night refreshment (all indoors) and supply of alcohol for consumption on the premises – 10:00 to 03:00 on Thursdays (currently a mix of 10:00 to 00:00, to 01:00 and to 02:00)
- Opening hours of the premises – 10:00 to 2:30 on Wednesdays (currently 10:00 to 01:30) and 10:00 to 03:30 on Thursdays (currently 10:00 to 02:30)

The applicant confirmed that the application was for the premises to open from 10.00 am and not 8.00 am as stated on the original application.

Representations had been received from Warwickshire Police and Royal Leamington Spa Town Council. The report explained that the premises were located within a Cumulative Impact Zone (CIZ), so the onus was on the applicant to prove that the application would not impact significantly on any of the Licensing Objectives, rather than for anyone making representations to prove that it would.

The report stated that The Loose Box had recently applied for two Temporary Event Notices (TENS) to open the premises late and had received no complaints.

Mr Potts presented the application, stating that The Loose Box was a public house which had been operated under various names by Mr Kandola since 2004. Mr Kandola had been in the trade for 32 years.

On the nights when the proposed variation would occur, door staff would be employed and either Mr Kandola or Mrs Crowley would be present. The variation would allow the premises to stay open later in line with other premises in the area and to cater for the student market. Substantial refurbishment of the premises was planned for January 2015.

Mr Potts pointed out that Parliament allowed for 24 hour licencing of premises, although this was not the case locally.

Responding to the representation made in the report by Warwickshire Police, Mr Potts noted that despite a number of logs presented as evidence, there was very little criticism of the premises or door staff. The representation also stated that the logs were "only submitted as a guide" and it was unclear whether they referred to incidents inside or outside of the premises. Therefore it was not clear whether they could be specifically attributed to The Loose Box and Mr Potts questioned whether the data, "as a guide", was good enough.

With regard to 35 incidents referenced in the report, Mr Potts suggested that as 12 of them took place outside, they were not necessarily connected with The Loose Box, 5 were instances of theft which was a widespread problem, and there were 8 incidents where people dispersed and no further action was taken. Of the many incidences of Police presence, this had often been as a direct result of the premises contacting the Police in the first place. An incident on 20 June was a

result of door staff being overzealous, and a complaint made about door staff was never followed up.

While it was accepted that the premises was located in a hotspot area, Mr Potts pointed out that there were a number of premises located in Tavistock Street and Regents Street. Also, with regard to references to high volume vertical drinking, this could not apply to The Loose Box, which could only cater for 300 customers, with a lot of fixed seating and tables and therefore only a small area for vertical drinking.

Mr Potts pointed out that while Sergeant Calver had dismissed the findings of the BrewDog case in Leeds, a District Judge in that case had stated that a special policy should never be absolute.

Mr Potts drew attention to the two successful TENS which had taken place without incident or complaint, and added that Street Marshalls had no complaint with the premises either.

Mr Potts stated that in practice the later opening would take place about 26 weeks per annum, as the intention was to cater to the student market. The Loose Box maintained a rigorous system of logging customers in and out of the premises and the log was reviewed hourly. The applicant was happy to abide by additional conditions as proposed in the report, but Mr Potts suggested strengthening the condition relating to CCTB by adding "at all times there shall be a person on duty who can download the CCTV footage when requested by any of the regulatory authorities". The Loose Box would adopt the Challenge 21 or Challenge 25 initiatives – whichever was considered to be most appropriate in this instance.

Mr Potts concluded his presentation by stating that there was no evidence that opening The Loose Box for 3 additional hours would affect the Cumulative Impact Zone.

Mr Kandola and Mr Potts responded to questions from the Panel, stating that:

- The Loose Box staff had been instructed not to serve people who were drunk but instead encourage them to leave;
- Alcohol was currently only served until midnight, but the application sought a later licence because students would often not come into town until 10.30pm or later;
- With regard to the TENS which had taken place, the first had been on a bank holiday and the second a private function;
- A record was kept of incidents and refusals, but while incidents were recorded in a book, refusals were noted in a file
- Mr Potts suggested the record of refusals would be better regulated in a book; and
- Council Licensing Officers had last visited the premises in June.

Sergeant Calver requested clarification on whether the conditions proposed by The Loose Box were additional to those already in place or were intended to supersede them. Mr Potts responded that the present condition relating to door staff should remain and not be replaced by the variation application, but that the CCTV condition needed further teeth, and the Challenge 21 or 25 condition was additional. Mr Kandola explained that 2 door staff were currently employed two days a week and that risk assessments were carried out to determine whether

they were needed more than that. Sergeant Calver asked whether the applicant realised that, if the variation was approved, door staff would be required 5 days per week and from 9pm whenever the premises was open after 1am. Mr Kandola replied that he understood.

Responding to a question as to whether he thought that the extra hours would change his expectations with regard to the level of incidents which occurred, Mr Potts stated that he did not necessarily accept the percentages in the Police Incident Data which had been presented to the Panel. Mr Kandola added that Bedford Street was a thoroughfare and that most incidents occurred at weekends, so with the additional hours being midweek, there would be little or no impact.

The applicant was asked whether, by seeking to remain open later, The Loose Box would be trying to compete with premises in Bedford Street or a wider area. Mr Kandola referenced Altoria which was across the road and Smack in Tavistock Street. Duke had a midnight licence and had the same owners as Smack.

Sergeant Calver made a representation on behalf of Warwickshire Police, stating that they objected to the application in its entirety. It would increase the risk of disorder and The Loose Box was in a Cumulative Impact Zone. Referencing home office guidance, Section 182 of the Licensing Act 2003, Sergeant Calver pointed out that the number of premises within the CIZ was at saturation point, that the application was targeted at the student market, that the number of students in the town was increasing year on year and the Police were having to increase their presence as a result.

Sergeant Calver could not clarify whether the figures in the report were 100% accurate because all the data received might not have been entered on to the system. However, the incidents were all attributed as fact to Loose Box. He acknowledged that behaviour differed between midweek and weekends, but students had caused antisocial behaviour to increase, to the extent that Warwick University had paid for marshals to be employed during the week in order to help manage the problem. Students were known to preload extensively, meaning that they would drink a lot before coming out. Warwickshire Police wanted to protect people from harm. Sergeant Calver had no concerns with The Loose Box or its staff, but it was located in the CIZ and so the objection stood. Picking up a point raised earlier, that he had dismissed the findings of the BrewDog case in Leeds, Sergeant Calver pointed out that the case in question had related to real ale and what the District Judge had described as "well-heeled alcohol geeks", which students clearly were not. He reminded the Panel that there had been a steady increase in opening hours at The Loose Box and that the TENS had taken place on a completely different night to those being applied for.

Asked whether he thought the variation would make a difference, Sergeant Calver explained that bearing in mind the specific target group, it would increase the number of venues that would have to be policed and the number of students drinking within the town. The times at which students dispersed would vary. The variation would therefore add to the cumulative impact.

Responding to further questions, Sergeant Calver explained that Challenge 21 allowed for anybody who appeared to be under the age of 21 to be challenged to prove that they were over 18. He clarified that it was statistically proven that vertical drinking resulted in larger amounts of violence and disorder.

Mr Gifford presented Royal Leamington Spa Town Council's concern over The Loose Box wanting to open very late midweek, which could lead to antisocial behaviour and noise. There were already a couple of nightclubs nearby which stayed open late. Mr Gifford reminded the Panel that it was not up to the objectors to prove that the application would have an impact, but rather it was up to applicant to prove that it would not. He did not feel that this had been demonstrated, and added that the town needed a sensible night time economy. The Town Council felt that diverse closing times would be better than several premises closing at the same time. Late opening midweek could cause problems for residents trying to sleep, and the town was trying to attract more residents, not less. The Town Council already had concerns about basic antisocial behaviour.

Mr Potts summed up the application by stating that there had been no objections from Environmental Health or local residents, and none were in attendance at the meeting, despite the application having been advertised. He questioned whether the Town Council did not object to those nights when the premises would not be open until 3 am, as it had explicitly made a reference in its objection to 3 am. Mr Potts reminded the Panel that The Loose Box was well managed and that this would continue to be the case if it remained open longer. Concerns about the impact were pure speculation and he therefore urged the Panel to grant the application along with the improved conditions as proposed.

At 11.28 am 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 to vary the Premises Licence for The Loose Box at 4 Bedford Street, Royal Leamington Spa be refused for the reasons listed below.

The Panel has decided to refuse the application to vary the Premises Licence for the Loose Box at 4 Bedford Street, Royal Leamington Spa.

The Application was to increase the hours of licensable activities from midnight until 2.00 a.m. on Wednesdays and from 2.00 a.m. to 3.00 a.m. on Thursdays. This would be an overall increase of three hours when licensable activities would be authorised at the premises. The Applicant confirmed during the hearing that the application was for opening from 10.00 a.m. and not 8.00 a.m. as stated on the original application.

The Panel has listened carefully to the information provided by the Applicant and his legal representative. It notes that the Applicant's intention is to open later on Wednesdays and Thursdays of each week to attract the student market. The Panel has noted that the premises are not particularly large with a maximum capacity of 300 and that there is seating in the premises. The Panel also accepts that the Premises are run by an experienced license holder, there is no objection from Environmental Health and the Licensing Authority have not received complaints in the last 12 months about the venue. It is also noted that the

Licensing Officers report refers to the fact that the Street Marshalls spend little time assisting the premises.

The Panel has noted that the venue specific data provided by the police does indicate that there are incidents of crime and disorder and anti-social behaviour at the premises. The Panel accepts that a number of these incidents take place outside and may not therefore be connected to the premises. The Panel does however note the timing of the various incidents, which seem, for the most part, to have taken place in the early hours of the morning. The Panel also notes that the premises are in or close to the violent crime and the anti-social behaviour hotspots as identified at Appendix A of the report.

The Panel has also considered the representations made on behalf of Royal Leamington Spa Town Council who objected to the increased hours until 3 am due to concerns about increased noise and anti-social behaviour.

The Panel considered the Warwick District Council Licensing Policy and the Statutory Guidance. It is acknowledged that the Cumulative Impact Policy is not absolute and the individual merits of each application must be considered. Warwick District Council's Licensing Policy states that it may grant an application within the Cumulative Impact Zone where it would be unlikely to add significantly to the cumulative impact in the light of the licensing objectives. The Policy also states that the onus of proof is on the Applicant to show that the application will not impact on the licensing objectives. The Panel has concluded that the Applicant has not demonstrated that the increase in hours would be unlikely to add to the cumulative impact. The Panel is of the view that even a small increase in hours would be likely to add to the cumulative impact and have a negative effect on the prevention of crime and disorder and the prevention of public nuisance in Royal Leamington Spa Town Centre.

The Panel has considered the new and amended conditions offered by the Applicant and, in particular, has considered whether other conditions could be added to the licence that would allow the application to be granted. The Panel does not feel that to add or amend conditions would be sufficient to prevent the additional hours from adding to the cumulative impact.

At 11.50 am all parties were invited back into the room, at which time the Council's solicitor read out the Panel's decision. She clarified that she had drawn the Panel's attention to guidance and policy, and that she agreed with Mr Potts' assertion that the Cumulative Impact Policy was not absolute.

(The meeting ended at 11.55 am)