

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held remotely, on Tuesday 12 July 2022, at 10am.

Present: Councillors Illingworth, Syson and Wright

Also Present: Emma Dudgeon (Licensing Enforcement Officer), Lesley Dury (Principal Committee Services Officer), Sue Mullins (Council's Legal Advisor), Paulette Samuels (Environmental Protection Team Leader), Stacey Walsham (Legal Advisor, observing only)

1. **Apologies and Substitutes**

Councillor Illingworth substituted for Councillor Mangat, Councillor Syson substituted for Councillor Luckhurst and Councillor Wright substituted for Councillor Jacques.

2. **Appointment of Chairman**

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

3. **Declarations of Interest**

There were no declarations of interest.

4. **Application for a premises licence under the Licensing Act 2003 for Atic, Unit 1, Moss Street, Royal Leamington Spa**

The Panel considered a report from Health & Community Protection which sought a decision on an application for a premises licence for Atic, Unit 1, Moss Street, Royal Leamington Spa, CV31 2DA.

The Chairman asked the Members of the Panel and the officers present to introduce themselves. The Environmental Protection Team Leader informed everyone that she was attending in place of her colleague, Peter Lawson, who was unable to attend but had been the case officer for these premises. The other parties then introduced themselves as:

- Mr Ryan Mold, the applicant; and
- Mr Frank Fender, a licensing consultant representing ROCKTHEATIC Limited.

The Legal Advisor 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 Atic, Royal Leamington Spa, should be granted and, if so, whether the licence should be subject to any additional conditions.

Warwick District Council Licensing Authority had received a valid application for a premises licence for Atic, Unit 1, Moss Street, Royal Leamington Spa, CV31 2DA

from ROCKTHEATIC Limited on 1 June 2022. The application was for a comedy club.

The licensable hours and activity applied for by the ROCKTHEATIC Limited and an operating schedule, which had been submitted by the applicant were shown below (and set out in Appendix 1 to the report) and these would form part of any licence issued.

“Operating schedule:

Sale of Alcohol for Consumption On and Off the Premises

Sunday to Wednesday from 17:00 to 23:30

Thursday to Saturday from 17:00 to 01:00

Plays (Indoors only)

Sunday to Wednesday from 17:00 to 23:30

Thursday to Saturday from 17:00 to 01:00

Between the hours of 08:00 and 23:00, when plays are taking place to an audience of less than 500 people all licensing conditions applicable to the control of plays on this licence are deemed not to be in operation.

Films (Indoors only)

Sunday to Wednesday from 17:00 to 23:30

Thursday to Saturday from 17:00 to 01:00

Performance of dance (Indoors only)

Sunday to Wednesday from 17:00 to 23:30

Thursday to Saturday from 17:00 to 01:00

Between the hours of 08:00 and 23:00, when performance of dance is taking place to an audience of less than 500 people all licensing conditions applicable to the performance of dance on this licence are deemed not to be in operation.

Late night refreshment (Indoors only)

Sunday to Wednesday from 23:00 to 23:30

Thursday to Saturday from 23:00 to 01:00

The applicant has also requested the following for all licensable activities:

From the end of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day. An additional hour on Bank Holiday Friday, Saturday and Sundays, Christmas Eve and Boxing Day.

On the morning on which British Summertime begins, where the terminal hour is later than 01:00hrs, the terminal hour shall be extended by an hour.

Normal Opening Hours

Sunday to Wednesday from 17:00 to 24:00

Thursday to Saturday from 17:00 to 01:30

Prevention of Crime & Disorder

1. A CCTV system with recording equipment shall be maintained at the premises and operated with cameras. All recordings used in conjunction with CCTV shall:

- Be of evidential quality in all lighting conditions
- Indicate the correct time and date

- Be retained for a period of 31 consecutive days
2. A member of staff trained to use the system shall be on duty at all times, as the recorded images must be made available for inspection and downloading within 24 hours following a request by the police and officers of Responsible Authorities.
 3. All images downloaded from the CCTV system must be provided in a format that can be viewed on readily available equipment without the need for specialist software.
 4. Door Supervisors shall be employed at the premises on occasions as deemed necessary by the Designated Premises Supervisor and/or Premises Management following a risk assessment.

Public Safety

An incident/refusals book shall be kept at the premises, in which details of crime and/or disorder relating to the premises shall be recorded. The Incident book shall contain the following details;

- Time, date and location of incident/refusals.
- Nature of the Incident/refusal.
- Names, addresses and contact details of persons involved.
- Result of the incident/refusals.
- Action taken to prevent further such incidents.
- Each entry signed by the DPS or other responsible person employed at the premises and so authorised by the DPS; and
- Retained for a period of no less than 12 months and made available to the Police for inspection upon request.

Prevention of Public Nuisance

1. Customer notices to be displayed at all exits asking patrons to please leave the premises quietly and to respect the needs of the local residents.
2. Patrons shall not be allowed to enter or leave the premises whilst in the possession of any alcoholic drink in unsealed containers.
3. On Friday and Saturdays last entry will be 1 hour before the end of Licensable activities.

Protection of Children

1. A Challenge 25 scheme shall operate at the premises. Any person who appears to be under 25 years of age shall not be served alcohol unless they produce an acceptable form of identification (passport, photo driving licence, PASS accredited card or HM Forces identity card.)
2. Challenge 25 notices will be displayed in positions within the premises.
3. Training records for each member of staff shall be kept and these records to include the following areas:
 - Preventing underage sales of alcohol
 - Preventing proxy sales of alcohol to underage persons
 - Preventing sale of alcohol to a person who is drunk
4. These records to be made available for inspection and copying by the police and other officers of responsible authorities immediately on request and all such records to be retained at the premises for at least 12 months."

The Licensing Department had received an objection from Environmental Health, and this was attached as Appendix 2 to the report. The applicant amended their application to remove live and recorded music and amend their operating hours following the objection from 10:00 hours to 17:00 hours.

The Licensing Department also received a representation from Warwickshire County Council Trading Standards and Warwickshire Police, however, following agreement of conditions, they subsequently withdrew their representations. A copy of all conditions agreed were attached as Appendix 3 to the report.

No representations had been received from:

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

A plan showing the location of the premises was attached as Appendix 4 to the report along with the plan submitted by the applicant showing the internal layout. Photographs of the premises were attached as Appendix 5.

The Chairman invited the applicant to introduce the application. Mr Fender explained that the application was for a new premises licence. Mr Mold was the director of ROCKTHEATIC Limited, and he was also the proposed designated premises supervisor.

Mr Mold explained his background; he was a very experienced licensee, having run licensed premises since 2008. He had run four such premises, one of which was a nightclub which stayed open until 4am. He was currently the owner of a bar called Atic in Banbury which opened until 3am in the morning. The current application was for a comedy club, and the opening hours were less than premises he had previously managed. He believed he had spotted a gap in entertainment venues in Leamington Spa for this sort of comedy club entertainment. Whilst there were clubs that did have comedians occasionally, there were no pure comedy clubs open three or four times a week in Leamington. Weekends would be a combination of touring shows from comedians around the UK to mixed bills like a normal comedy club. During the week, local comedians and newer comedians would feature.

Mr Mold did not wish to annoy local people and wished to work with people as he had done in the past. He had never had any issues of note in the past.

Mr Fender explained that 1 Moss Street was actually the address for a railway arch which was situated between two railway lines. He referred the Panel to page 13 of the report which showed two photographs. The planned entrance to the comedy club would be situated where Bobbins Embroidery was currently sited. He then explained the layout, shown on page 12 of the report. Customers would enter and exit from the club via the main doorway marked 'main entrance' which was leading off Moss Street. Main entertainment in the club would be in the main room, with the stage for performers located at one end and the bar serving area at the other end. The stage was facing away from the Moss Street side of the premises meaning that any audio speakers would be aimed towards the bar serving area. The door leading from the main room, led into Neilston Street, and would not be used as an entrance for the club; it would serve predominantly as a fire exit and would also be used to access the outside proposed smoking area.

At pre-application stage, advice had been sought from the Police and from Environmental Health. Whilst the Police had responded, no advice had been

forthcoming from Environmental Health which meant the application was submitted without this.

Originally, longer opening hours were the intention but were reduced subsequent to receiving a representation from Environmental Health in the belief that the amended times would make the application acceptable. Mr Fender stressed that no other authority or person had made representation in respect of the application. During the consultation period, discussions had taken place with the Police and Trading Standards and further conditions had been agreed as a result. These conditions were set out on page 9, Appendix 3 to the report.

When the applicant received the representation from Environmental Health, the applicant felt that the concerns could be addressed and reduced the hours applied for as a direct result. A meeting arranged with Environmental Health did not take place because of illness and other reasons. The Panel Hearing was the first opportunity to address other concerns from Environmental Health.

Mr Fender noted that the representation from Environmental Health made it clear that the officer had visited the premises without notifying the applicant.

The representation from Environmental Health stated that the front door to the premises was close to the windows of the student accommodation at Moss House and therefore would cause disturbance to the Moss House residents from noise of the people smoking outside and from people entering and exiting the club late at night. Mr Fender informed the Panel that the application had been properly publicised and there had been no representations from any residents at Moss House.

Mr Fender then described how any disturbance would be mitigated:

- Licensable activity would only take place in the main room.
- The main room could only be accessed by going through three sets of doors, meaning that the potential for noise breakout was considerably reduced.
- Using internal lobby doors was a proven method of containing noise.
- The only entertainment that would take place was performers talking; comedy acts.
- There would be no music entertainment.
- The applicant was prepared to propose the additional measure of keeping doors closed whenever regulated entertainment was in progress, with the exception of allowing people to enter and exit the premises.
- The structure of the premises would help noise dampening because they were in a railway arch which necessitated a thick brick structure to support trains.
- Atic was not unique in people coming and going close to residential properties and the noise tended to be more of an issue when people left premises.
- Staff would reinforce the need to be quiet and notices would ask people to leave quietly.
- Tickets to enter the premises would also reinforce the message for respecting local residents.

Mr Fender referred to the representation made by Environmental Health and the statement about the access to the rear of the premises approached via an industrial estate along Neilston Street and up a narrow canyon between two elevated railway lines. The concern was the problem this would be to businesses

operating in the canyon. Mr Fender reiterated that, in fact, the entrance to the club would be through the entrance in Moss Street. Environmental Health had claimed that the rear of the premises was unsuitable as a smoking area, but the applicant refuted this and maintained that it was suitable because clientele would not be walking around whilst smoking; they would smoke a cigarette and then re-enter the club. The time applied for to start licensable activity had been moved to 5pm which meant that people smoking would not impact the businesses which probably would not be trading by this time. The applicant would also agree to keep the area clean and tidy at all times during licensable activity hours and to clean any litter at closure.

Environmental Health had also stated that the location of the premises was unsuitable; the applicant disagreed, and this was not a valid reason to refuse the licence because suitability of location was not relevant to the licensing objectives.

The applicant had addressed all the licensing objectives in his application including the representations from Environmental Health.

The Chairman invited the Panel to ask questions and in response the applicant and his representative explained that:

- They were not sure of the thickness of the brick in the archway. This area would lead into the lobby area of the club.
- It was only intended for licensable activities to take place in the main room where the stage and bar were located. They were happy for the lobby area to be removed from the licensed area applied for so that no alcohol sales could take place in the lobby.
- Alcohol would be stored in the bar area behind the bar, kept under lock and key.
- The door behind the bar was where the meter cupboard was located and there was no storage space there.
- Industrial units were at the back of the building where the bar was located.
- The inclusion of Performance of Dance on the Operating Schedule was an error, and this could be removed. There would be no live music or performance of dance.
- Security at the premises would include SIA trained staff, CCTV, and locks.
- Door supervisors would be employed on occasions that the DPS or management deemed necessary following a risk assessment. These door staff would be SIA registered. Incident logs would be maintained, and copies of the risk assessments would be kept on file with the licensing documents.

The Chairman invited the Environmental Health Team Leader to make the Department's representation, but she was only able to reference the report that her colleague had submitted (Appendix 2 to the report) and she read it out.

In response to questions from the Panel, the Environmental Health Team Leader explained that:

- The noise nuisance to businesses located in the "canyon" referred to in Appendix 2 may well have been addressed by the subsequent reduction in hours but the main concern was the congregation of smokers outside the club because they would not be silent, they would be drinking, and the "canyon" effect would cause a noise nuisance. The reduction in the times

- were at most a side issue, the noise would still be an issue by virtue of the location and the proximity to residential accommodation.
- She could not answer on the timeline in respect of the representation made by Environmental Health and if the reduction of hours had been accounted for. She suggested that the applicant would be in a better position to comment.
 - Her colleague was unable to examine the structure when he made his site visit. The applicant had to be sure of the sound insulation provided in the archway.
 - She did not conduct a site visit so could not answer the question about lighting in the area designated for smoking. (The applicant confirmed that there was lighting because the area was covered by CCTV which required lighting.)

The Licensing Enforcement Officer explained what the Fire Service did to check safety and confirmed that as part of their assessment, they might stipulate maximum occupancy. If the Fire Service felt the premises did not meet standards, they had powers to halt operation until these issues were addressed. The Fire Service had not made representation expressing any concerns in relation to Atic. If the Council received any notification from the Fire Service, the applicant would also receive a copy.

The Chairman asked if anyone wished to say anything further and then asked the applicant to give a short closing speech.

Mr Fender reiterated that there had not been any representation from the residents in Moss Street. Whilst there might be concerns about noise from the smoking area, the area was below a railway line where trains ran several times a day; the noise from these would outweigh any noise from two or three people smoking. Mr Mold had vast experience in operating premises with entertainment until the early hours of the morning and there had been no issues with these. The entertainment proposed at Atic was a lighter type of entertainment, where there would be comedy acts and therefore would attract a different clientele. The risk of contravening the licensing objectives was minimal, especially in light of conditions and the times agreed.

At 10.53am, the Chairman asked all parties other than the Panel, the Council's Legal Advisor, and the Principal Committee Services Officer to leave the meeting, in order to enable the Panel to deliberate in private and reach its decision.

Resolved that the premises licence be **granted** subject to the conditions set out in Appendix 3 to the report and some additional conditions. Performance of dance (Indoors only) was removed from the Operating Schedule detailed in Appendix 1 to the report.

At a public hearing on 12th July 2022 Warwick District Council's Licensing Panel considered an application made under the Licensing Act 2003 by ROCKTHEATIC Limited ("the Applicant") in respect of premises at Unit 1, Moss Street, Royal Leamington Spa, CV31 2DA. The application was for the use of the premises for the licensable activities as set out in paragraphs 3.4, 3.5 and Appendix 1 of the Licensing Officer's report ("the Report").

Objection was received from Warwick District Council Environmental Health, attached as Appendix 2 of the Report. Following the objection, the Applicant amended their application to remove live and recorded music and amend their operating hours following the objection from 10:00hours to 17:00hours.

Representations from Warwickshire County Council Trading Standards and Warwickshire Police were withdrawn following the Applicant's agreement to conditions as detailed at Appendix 4 of the Report.

No representations were received from the Fire Authority, The Licensing Authority, the Enforcement Agency for Health and Safety, the Authority Responsible for Planning, the National Health Service/Public Health or local residents.

The Applicant, Mr Mold, attended the hearing together with his representative, Mr Fender. Mr Mold would be the Designated Premises Supervisor.

Mr Fender explained that customers would enter and exit the premises via the doorway marked 'main entrance' on the plan at Appendix 4 of the Report and would have to go through two further doors to reach the main room. He also explained that the stage in the main room is facing away from the Moss Street side of the premises and that any speakers will be aimed towards the back of the room, in the direction of the bar. Mr Fender explained that there is another doorway in the premises that leads onto Nielston St, which was predominantly a fire exit, and would lead to the proposed smoking area.

Mr Fender drew the Panel's attention to Appendix 1 of the Report, which provided full details of the licensing activities requested. Mr Fender pointed out that longer times had initially been applied for, but that these had been amended following the objections from Environmental Health in the belief that amended times would be more acceptable. The measures proposed as part of the application were set out on pages 5 and 6 of the Report and Mr Fender suggested that these could be conditions attached to the licence. Mr Fender pointed out that, during the consultation period, Warwickshire Police and Warwickshire County Council Trading Standards agreed further conditions with the Applicant, some of which reflected the conditions proposed as part of original application. As regards the Environmental Health objection, the Applicant believed measures could be put in place to address the concerns raised and had reduced the hours requested to address those concerns. Further discussions with Environmental Health had not been possible due to sickness and absence.

In response to the concerns of Environmental Health, Mr Fender clarified that the licensable activities will only be

carried out in the main room, which is accessed via three doors, thus reducing the potential for noise breakout. Mr Fender added that, as the music entertainment element has also been removed from the application, the only entertainment will be from performers who are talking, further reducing the risk of nuisance from noise breakout. To further assist, the Applicant was prepared to keep the doors closed whilst entertainment was in progress.

Mr Fender also referred to the structure of the building in containing noise breakout. As the premises is located in a brick-built rail arch, Mr Fender suggested that this would provide excellent sound insulation. In respect of the acknowledged issue of noise when customers are leaving premises, Mr Fender said that the Applicant would make sure that staff enforce the request to leave the premises without causing a nuisance to local residents. This message would also be included on customer tickets.

In respect of the proposed smoking area, Mr Fender refuted the Environmental Health objection that the area outside the rear exit of the premises is not suitable to be used as smoking area. Mr Fender said that customers will not be walking along the road but will be stood in area to smoke and will then return inside premises. By adjusting times requested in the licence, the expectation was also that the businesses adjacent to the proposed smoking area would not be trading at the time customers wanted to smoke there. Mr Fender also said that the smoking area would be cleaned of litter at the end of trading.

In response to questions from the Panel about the sale of alcohol in the lobby area and the licensable activities taking place in the premises, the Applicant offered to remove the lobby area from the area covered by the licensable activities and confirmed that dance could be removed as a licensable activity, as the premises would be operating purely as a comedy club. The Panel also had questions about security of the bar area and the use of door staff. The Applicant confirmed that alcohol would be kept under lock and key behind the bar area and Mr Fender said that door supervisors would be employed on occasions when they were deemed necessary, based on individual risk assessments for each event, taking into account the type of event and anticipated numbers of people attending. Any such door supervisors would be SIA registered. As regards lighting to the rear of the premises, Mr Fender pointed out that this would be necessary to ensure that the CCTV met the required standard and would be provided.

Paulette Samuels, representing Environmental Health, explained that there were several potential sources of nuisance, due to the proximity of the front door of the premises to the Moss House student accommodation and the 'canyon' effect in Moss Street. There was concern that

residents were likely to be affected by noise from smokers around the front door (as the premises has no outside area of its own), noise from opening of the door, noise of persons going to and from the premises at night and the noise of people walking to and from the premises at the back. To the rear of the premises, there is no pavement, and the area is used as a workspace by the occupiers of other units. Environmental Health therefore considered that there was likely to be conflict between adjacent businesses and customer access through the rear door of the premises. Environmental Health also had concerns about sound insulation within the premises themselves, and the potential for noise transmission if this were inadequate. Environmental Health were of the view that there were no conditions that could address these issues.

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 that the Applicant had reduced the requested hours, removed the performance of dance from the licensable activities, would be ensuring that the smoking area was lit for the purposes of CCTV and was willing to enforce the request to customers to leave the premises in such a way as not to cause a nuisance to local residents. The Panel also noted that there was no response from Environmental Health on these points, either before or during the hearing.

The Panel therefore determined to grant the application for a premises licence at Atic, Unit 1, Moss Street, Royal Leamington Spa, CV31 2DA as set out below:

Sale of Alcohol for Consumption On and Off the Premises

Sunday to Wednesday from 17:00 to 23:30

Thursday to Saturday from 17:00 to 01:00

Plays (Indoors only)

Sunday to Wednesday from 17:00 to 23:30

Thursday to Saturday from 17:00 to 01:00

Between the hours of 08:00 and 23:00, when plays are taking place to an audience of less than 500 people all licensing conditions applicable to the control of plays on this licence are deemed not to be in operation.

Films (Indoors only)

Sunday to Wednesday from 17:00 to 23:30

Thursday to Saturday from 17:00 to 01:00

**Late night refreshment (Indoors only)
Sunday to Wednesday from 23:00 to 23:30
Thursday to Saturday from 23:00 to 01:00**

As part of the decision to grant the application, the Panel determined that the following conditions should be applied to the premises licence to prevent public nuisance, ensure public safety and protect children from harm:

- 1. The conditions set out in the operating schedule at Appendix 1 of the Report, amended as indicated.**
- 2. The conditions set out at Appendix 3 of the Report.**
- 3. Notices shall be erected at each entrance/exit requesting customers to leave the premises quietly and to respect the needs of the local residents and action will be taken by staff to enforce this request, where necessary.**
- 4. Any litter arising from the use of the outside of the premises for smoking by customers of the premises shall be removed and safely disposed of at the end of each day.**

(The meeting ended at 11.43am)

CHAIRMAN
17 October 2022