

A meeting of the above Committee will be held in the Town Hall, Royal Leamington Spa on Monday 30 September 2019, at **4.30pm**.

Membership:

	Councillor T Heath (Chairman)
	Councillor N Murphy (Vice-Chairman)
Councillor H Calver	Councillor O Jacques
Councillor G Cullinan	Councillor M Luckhurst
Councillor A Dearing	Councillor M Mangat
Councillor A Evans	Councillor P Redford
Councillor C Gifford	Councillor S Sanghera
Councillor G Illingworth	Councillor S Syson
Councillor V Leigh-Hunt	

Emergency Procedure

At the commencement of the meeting, the emergency procedure for the Town Hall will be announced.

Agenda

1. Apologies & Substitutes

- (a) to receive apologies for absence from any Councillor who is unable to attend; and
- (b) to receive the name of any Councillor who is to act as a substitute, notice of which has been given to the Chief Executive, together with the name of the Councillor for whom they are acting.

2. Declarations of Interest

Members to declare the existence and nature of interests in items on the agenda in accordance with the adopted Code of Conduct.

Declarations should be entered on the form to be circulated with the attendance sheet and declared during this item. However, the existence and nature of any interest that subsequently becomes apparent during the course of the meeting must be disclosed immediately. If the interest is not registered, Members must notify the Monitoring Officer of the interest within 28 days.

Members are also reminded of the need to declare predetermination on any matter.

If Members are unsure about whether or not they have an interest, or about its nature, they are strongly advised to seek advice from officers prior to the meeting.

3. **Minutes**

To confirm the minutes of the meetings held on 19 August 2019 **(Page 1)**

4. **Minutes of Licensing & Regulatory Panels**

To confirm the minutes of the Licensing & Regulatory Panels, as set out below:

- (a) 29 August 2019 **(To follow)**
(b) 24 September 2019 **(To follow)**

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For enquiries about specific reports, please contact the officers named in the reports. You can e-mail the members of the Committee at LandRCommittee@warwickdc.gov.uk

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The agenda is available in large print on request, prior to the meeting, by telephoning (01926) 456114

Licensing and Regulatory Committee

Minutes of the meeting held on Monday 19 August 2019 at the Town Hall, Royal Leamington Spa at 5.00pm.

Present: Councillors: Heath (Chairman); Councillors Cullinan, A Dearing, C Gifford, Illingworth, Jacques, Leigh-Hunt, Luckhurst, Mangat, Redford, Sanghera and Syson.

8. Apologies and Substitutes

- (a) apologies for absence were received from Councillors Calver and Evans; and
- (b) there were no substitutes for the meeting.

9. Declarations of Interest

There were no declarations of interest made.

10. Appointment of Licensing & Regulatory Panels

The Committee considered the proposal for membership of Panel E. It was proposed, seconded and

Resolved that Councillor Cullinan be appointed as a Member of the Licensing & Regulatory Panel E in place of Councillor Heath for the municipal year 2019/20, and be a named substitute for any of the Licensing & Regulatory Panels.

(Members noted that Panels E and D were swapped at the last Committee meeting and that Councillor Cullinan was, in fact, appointed to Panel D.)

11. Minutes

The minutes of the Committee meetings held on 15 April, 20 May and 28 May 2019 were approved and signed by the Chairman as a true record, subject to an amendment to the minutes of 28 May 2019 meeting, to correct an error to the meeting end time.

(Councillor Jacques joined the meeting during the debate of this item.)

12. Minutes of Licensing & Regulatory Panels

The minutes of the Licensing & Regulatory Panels meetings held on 4 June, 25 July and 1 August 2019 were approved and signed by the Chairman as a true record.

(The meeting ended at 5.06pm)

CHAIRMAN
30 September 2019

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Thursday 29 August 2019, at the Town Hall, Royal Leamington Spa at 10.00am.

Present: Councillors Heath, C Gifford and Sanghera

Also Present: Mrs Gutteridge (Council's Solicitor), Mrs Dury (Principal Committee Services Officer) and Miss Daud (Licensing Enforcement Officer).

1. **Apologies and Substitutes**

Councillor Sanghera substituted for Councillor Leigh-Hunt.

2. **Appointment of Chairman**

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

3. **Declarations of Interest**

There were no declarations of interest made.

4. **Application for a full variation of a premises licence issued under the Licensing Act 2003 for 203A Warwick Road, Kenilworth, Warwickshire, CV8 1FB**

The Panel considered a report from Health and Community Protection which sought a decision on an application for a full premises licence variation for 203A Warwick Road, Kenilworth, Warwickshire, CV8 1FB.

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

- Ms Trish Bojczuk, a Central Operations Manager for SGN Limited, representing the applicant; and
- Mr Robert Botkai, solicitor from Winckworth Sherwood LLP, representing the applicant.

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.

TG Convenience Stores Limited applied for a full variation of the premises licence for Warwick Road Service Station, 203A Warwick Road, Kenilworth, Warwickshire CV8 1FB. It was proposed to extend the hours for alcohol sales, to remove the restrictions to the sale of alcohol on Christmas Day and Good Friday, add the provision of late night refreshment and to remove embedded restrictions on the current licence. The initial licensable hours requested by the applicant were:

	Opening Hours	Sale of alcohol for consumption off the premises	Late Night Refreshment (Indoors and outdoors)
Monday to Sunday (including Christmas Day and Good Friday)	00:00 to 24:00	00:00 to 24:00	23:00 to 05:00

However, the applicant then amended the application to:

	Opening Hours	Sale of alcohol for consumption off the premises	Late Night Refreshment (Indoors and outdoors)
Monday to Sunday (including Christmas Day and Good Friday)	00:00 to 24:00	06:00 to 23:00	23:00 to 05:00 to allow the sale of hot drinks only

The current premises licence summary, which showed the current licensable hours was attached as appendix 1 to the report and a copy of the proposed operating schedule was attached as appendix 2.

A representation had been received from Warwickshire Police which was attached as appendix 3 to the report, but this had subsequently been withdrawn upon receipt of the amended application details.

The Licensing Department initially received 24 representations from residents. However, following the amended application, this reduced to 15 and these were detailed in appendices 4 to 18 in the report. By the date of the hearing on 29 August 2019, these had further reduced to 10, and copies of the outstanding representations were circulated at the Panel meeting as appendices A to J.

A plan of the premises was attached as appendix 19 to the report, with a map and photographs of the area attached as appendices 20 to 21. Colour copies of appendices 20 and 21 were circulated at the meeting on 29 August 2019.

Mr Botkai explained that in 2005 all off licenses had adopted similar licenses and in the Petrol Station's case, this licence had been "grandfathered" and not altered since. Now most petrol stations and off licenses were seeking to modernise their licenses.

Mr Botkai informed the Panel that SGN Limited had acquired the store recently and wished to modernise all their shops and have them all run on the same hours during the day. During late hours, they wished to be able to sell hot drinks only at this location. He pointed out that prior to 2005, it was possible to sell hot drinks late at night without the need for a licence, but after a change in legislation in 2005, a licence was required and petrol stations were caught within the new legislation. The applicants had removed the late hot food element sales from their application when local residents had objected, and now the application stipulated hot drinks only.

Mr Botkai drew Members' attention to the fact that almost all representations made by residents referred to late night alcohol sales. The application in its

amended form allowed them sell alcohol during hours when the store was open because it was easier to manage the whole of the store, rather than shut off part of the store. Nothing had been reported by the Police in this area for issues with on-street drunken behaviour.

A modernised operating schedule had been included. The Police had initially objected to the 24-hour alcohol licence, but following the submission of the amended application, they had withdrawn their objection. Mr Botkai felt that the amendments to the application addressed the concerns residents had raised and felt that the fact that no resident had turned up to the Panel to make a representation indicated that the objections had been addressed.

In response to questions from Members, Mr Botkai explained that:

- In respect of CCTV cameras, the wording "The precise positions of the camera may be agreed, subject to compliance with Data Protection legislation, with the Police from time to time" within the Operating Schedule at appendix 2 to the report could not be altered so that the "may" became "must" because the Police would have to be called out to the premises every time the cameras were moved. The wording used was in thousands of licenses. The Police had the right to request a review of the licence if they asked for a camera to be moved and this was not actioned. An absolute requirement using the word "must" would mean that the store would immediately have to stop alcohol sales until Police approval had been received.
- Petrol stations welcomed visits from the Police. There would be about 16 cameras on site and the management should have the discretion to move the position of these as they saw fit.
- The phrase "adequate levels of staff maintained at the premises" within the Operating Schedule might appear vague, but this wording appeared in thousands of licenses. If the store failed to maintain adequate levels of staff on site and there was an incident, the Police could request a review of the licence. The shop would be closed at night, which was the case for the vast majority of petrol stations. They were then manned by a single member of staff and customers were served through a kiosk.

The Council's Solicitor confirmed that altering the CCTV condition from "may" to "must" was too burdensome and that in the case of staffing, the licence could be reviewed if there was an incident.

Mr Botkai confirmed that a condition could be imposed that during late hours, only hot drinks could be sold. He pointed out the application only increased alcohol sales by 30 minutes on a Sunday and two other specified days in the year and that the Police had not objected to the amended application. A Refusals Log would be kept on-site and staff would receive training. Ms Bojczuk explained the training the staff received and the policy in respect of lone working.

Mr Botkai informed Members that a hot drink vending machine was already on site but at night customers could not enter the store. A licence was not required for sales from vending machines. The petrol station would open at 6am and close about 8.30pm, but they did have discretion to close later, with most petrol stations closing between 10pm and 11pm.

In summarising the argument to grant the application, Mr Botkai hoped that the Panel would consider the changes made to the application and the fact that the Police had subsequently withdrawn their objection.

At 10.42am, 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.

Resolved that the premises licence variation application is granted with one additional condition:

In making its decision the Panel considered all of the information provided in advance of, and at, the hearing and considered the statutory guidance and the Council's Statement of Licensing Policy.

The Panel noted that initially the application was for a 24-hour licence to sell alcohol (for consumption off the premises) but this had subsequently been amended and the application was now for a licence to sell alcohol between the hours of 06:00 and 23:00 hours. The Applicant has also applied for a licence to serve Late Night Refreshment and confirmed that this was so that they could serve hot drinks between the hours of 23:00 and 05:00. Following the amendment of the application the objection from the police was withdrawn. Ten objections from members of the public had not been withdrawn although none had registered to speak or were in attendance at the hearing.

Having considered the written objections, the Panel found that the licensing objectives that were primarily engaged were the prevention of crime and disorder and the prevention of public nuisance. Some of the objections also referred to underage drinking. The objections had all been submitted before the Applicant had amended their application and so many were focused on the proposed 24-hour alcohol licence.

During the hearing the Applicant confirmed that the only late night refreshment to be sold would be hot drinks and that they were happy that the licence should be conditioned to this effect. The Panel considered that this was necessary to ensure that the premises were not used for hot food sales which could cause groups of people to congregate late at night and increase the risk of anti-social behaviour and litter in an area with a high proportion of residential dwellings.

The Panel considered the potential impact of the application on public nuisance, crime and disorder and the protection of children. It concluded that the increased hours would not impact on the licensing objectives and the conditions offered by the Applicant at Appendix 2 were a welcome addition to the licence and should help to ensure that the

premises does not contribute to crime and disorder or public nuisance in the local area. The Panel therefore decided to grant the licence in accordance with the application with the conditions as set out at Appendix 2 of the Licensing Officers Report and a further condition as follows:

- The service of the late night refreshment shall be restricted to the sale of hot drinks only.

At 10.56am, 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 10.57am)

CHAIRMAN
30 September 2019

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