

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Wednesday 1 February 2017, at the Town Hall, Royal Leamington Spa at 10.00am.

Present: Councillors Mrs Falp, Quinney and Mrs Stevens

Also Present: Mr Howarth (Council's Solicitor), Miss Cox (Committee Services Officer), Mrs Dudgeon (Licensing Enforcement Officer) and Mr Blewett (Warwickshire County Council - observing).

1. Appointment of Chairman

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

2. Declarations of Interest

There were no declarations of interest.

3. Application for a premises licence under the Licensing Act 2003 for J B Pizza, 10 Clarendon Avenue, Royal Leamington Spa

The Panel considered a report from Health and Community Protection which sought a decision on an application for a premises licence from Mr Biryah for J B Pizza, 10 Clarendon Avenue, Royal Leamington Spa.

The Chairman, Members of the Panel and officers introduced themselves. The other parties present then introduced themselves as:

- Mr Jagjeet Biryah, applicant;
- Mr Jim Biryah, applicant's brother; and
- Mr Ashley, 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 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 premises licence application was for the sale of alcohol for collection or delivery from the take away premises, J B Pizza. The licensable activities requested were as follows:

	Opening Hours	Sale of alcohol for consumption off the premises
Everyday	11:00 to 23:00	11:00 to 23:00

An operating schedule had been submitted by the applicant and would form part of any licence issued. This was set out in section 3.2 of the report.

The Licensing Enforcement Officer advised that an objection had been received from a resident within the vicinity and this was attached as Appendix 1 to the report.

A representation had been received from Warwickshire Police. However, additional conditions had been agreed with the applicant and the representation was subsequently withdrawn. The agreed conditions were set out in section 3.4 of the report and would form part of any premise licence issued.

In addition, following discussions with Trading Standards, additional conditions had been agreed with the applicant. These would form part of any licence issued and were set out in section 3.5 of the report.

A plan of the premises provided by the applicant was attached as Appendix 2 to the report, a map of the area was attached as Appendix 3 and photographs of the area were attached as Appendix 4.

The Licensing Enforcement Officer reminded the Panel that the premise was located in the Cumulative Impact Zone and that the onus of proof was on the applicant to show that the application would not impact on the four licensing objectives.

The Council's Solicitor advised the Panel that Mr Ashley had not received notification of the hearing date, and had therefore not submitted written notification of his intention to speak. However, the applicant confirmed that he was happy for Mr Ashley to address the Panel. The Council's Solicitor also asked the applicant and Mr Ashley to confirm that they had seen the Council's Statement of Licensing Policy and were happy to proceed with the hearing.

Mr Jagjeet Biryah outlined the application and advised Members that the additional conditions agreed in consultation with Warwickshire Police and Trading Standards promoted the protection of the four licensing objectives. The core product offering would be premium stonebaked artisan pizza and salads made from high quality natural ingredients. Alcohol would form a supplementary part of the menu and consist of a limited selection of beer and wine. It would not be made available for self-service. His intention was to invest in the delivery side of the business, including the promotion of online ordering.

In reference to Mr Ashley's representation, the applicant stated that an increase in crime and disorder in the local area as a result of people visiting his store to purchase alcohol before moving onto clubs was unlikely to materialise; the store would close at 11pm, alcohol sales to walk-in customers would stop at 10pm and alcohol would only be sold with food. With respect to an increase in public nuisance, specifically litter and public urination, the premises previously operated as a fish and chip shop with only walk-in trade. As the focus would be shifting to the delivery of food to fixed premises, he would expect the issue of litter and public nuisance to reduce.

The Council's Solicitor advised the applicant that because the premise was within the Cumulative Impact Zone, he needed to demonstrate that the grant of the licence would not impact on the four licensing objectives. In response, the applicant referred the Panel to the conditions agreed with Trading Standards and

Warwickshire Police, including the implementation of CCTV and the Challenge 25 procedure, both in store and at the point of delivery. In addition, Mr Jim Biryah emphasised that the business was not focussed on alcohol; this was limited in volume and not on display in the shopfront. He referred the Panel to the store layout in Appendix 2 which indicated that the primary focus was on delivery, not walk-in trade.

In response to questions from Panel Members, Messrs Jagjeet and Jim Biryah responded as follows:

- Mr Jagjeet Biryah had a personal licence, experience of running two off-licences and an unblemished record with respect to selling alcohol.
- Basement Browns on Warwick Street was a competitor for the proposed business; it sold alcohol, available for self-service, with pizza throughout the day and offered a takeaway and delivery service, as well as the option to eat and drink in store.
- Based on the delivery model and investment in the online ordering website, and the speed of delivery using electric vehicles with a tracking device for drivers, the expectation was that the business would mostly be a delivery service.
- Because of the nature of the product, they would be targeting a more mature market than students; primarily families and those over the age of 25 who found it more convenient to use a delivery service. They would not be targeting late-night trade in the town centre.
- They acquired the premises in October 2016 and it was previously a fish and chip shop.
- They had both been customers of the social scene in Royal Leamington Spa, and in their experience, problems of public disorder and nuisance tended to occur south of the premises, centred around Warwick Street where the bars and clubs were located.
- The off-licences they previously owned had been sold, but they had not had many issues with customers because of the stringent way they operated and their challenge records.
- Plans for staff training were not finalised but they themselves would be undertaking any necessary re-training which would then be passed onto staff. Staff would also undertake online or classroom-based training with respect to conditions relating to selling alcohol and food safety regulations. The training plan would be stringent.

In response to questions from Mr Ashley regarding the two nightclubs within 50 yards of the premises, Messrs Jagjeet and Jim Biryah responded that:

- Most student socialising happened around Warwick Street and from previous experience they would not expect people to venture north of the clubs, from the pubs and bars, to visit the premises before returning to the clubs.
- Theirs was a completely different business proposition to a nightclub, pub or bar and was not a direct competitor; nor was it adding to current mix of these types of premises within the local area.

The Chairman then invited Mr Ashley to put forward his objection.

Mr Ashley stated that his objections were around the prevention of crime and disorder and the prevention of public nuisance. The first objection was based on the number of licensed premises in the area that fell within the Cumulative

Impact Zone, which he believed was already saturated with pubs, clubs and off licenses. He did not feel that an additional premise that served alcohol was necessary. Furthermore, the takeaway Mr Biryah had referred to as serving alcohol was actually a restaurant and was not comparable to the proposed business.

The conditions implemented following discussions with the Police all related to the internal workings of the premises and did not take into consideration what happened when customers left the premises. Residents incurred problems with litter, especially in the summer when customers took food into Christchurch Gardens. There were no rubbish bins or toilets nearby; toilets were all situated in licensed premises, but Mr Ashley had known people to use the driveway between his and his neighbour's property as a toilet and there was evidence of this virtually every other day. The sale of bottles and cans would further add to the rubbish problem and exacerbate the issue for residents. Mr Ashley stated that he regularly collected litter which accumulated daily and put it in his own dustbin.

Mr Ashley felt that if alcohol was on display to the public, it was another incentive to purchase it. It was reasonable for alcohol to be delivered with a pizza, but for takeaway customers it was an open invitation to add to the existing problem. In addition, in a letter to Mr Ashley, the applicant had stated that his business model was similar to that of other successful operators in the south east which targeted affluent locations focussing on premium artisan pizza delivery. This did not present a problem to neighbours because the food and drink sold did not stay in the area; his objection was only when it caused a nuisance to the public and residents.

Mr Ashley quoted a letter from a Police Sergeant in response to the initial application which stated that he was open to negotiation on the potential of alcohol being delivered to fixed dwelling addresses with the food, but not as an off licence at the actual premises. However, since conditions had been agreed, the comments seem to have been ignored. Whilst Mr Ashley objected to the licence being granted in full, he had no objection to the licence being granted for deliveries rather than takeaway business.

In response to Mr Ashley's representation, the applicant advised that alcohol would only be sold with food up until 10pm, and after that time no alcohol could be sold on the premises.

In response to a question from the applicant regarding the timing of incidents involving urination and public nuisance, Mr Ashley responded that it happened at all hours, including when he returned home from an evening out, and was not restricted to early hours of the morning.

Mr Jagjeet Biryah then advised that if someone exceedingly under the influence of alcohol came into the store before 10.00pm, the conditions of the licence would prevent them from selling alcohol to that person.

Mr Jim Biryah advised that the original representation made by the Police highlighted issues with Cumulative Impact, but the conditions subsequently agreed were accepted as sufficient to alleviate the problems around this and the four licensing objectives, and the Police had removed their objection. In terms of display of alcohol, it would not be visible in the shopfront and would be stored in fridges in the rear kitchen areas and basement.

In response to further questions from the Panel, Mr Jim Biryah advised that there was currently no marketing plan in place, so it was not possible to confirm whether signs promoting alcohol would be visible in the shopfront. However, the initial design for the shopfront had no reference to the sale of alcohol. It was not a requirement for alcohol not to be on display and there was no specific condition agreed with the Police regarding this.

The Licensing Enforcement Officer advised Members that the applicant could apply to vary the licence in order to alter the hours for the sale of alcohol and would only need to attend a further panel hearing if objections were received.

The applicant stated that he had nothing further to add in closing. In response to a question from Mr Ashley, the applicant advised that he would not amend the application to a delivery only service because it would prohibit business.

At 10.43am, the Chairman asked all parties other than the Panel, the Council's Solicitor, the Committee Services Officer and Mr Blewett to leave the room, in order to enable the Panel to deliberate in private and reach its decision.

At 11.18am, the parties were asked to return to clarify the details of the food the applicant was proposing to sell. The applicant explained that the core product was pizza made from hand-stretched dough and natural ingredients sourced locally. A section of the menu would be devoted to salads and the side orders available would consist of garlic breads and meat and cheese boards. The main cooking appliance within the premises would be a stone oven and there would be no deep fried fast food. Based on the current conditions of licence, customers would be able to order alcohol when purchasing any quantity of food from the menu, but there might be a maximum limit placed on the amount of alcohol that could be bought. With regard to delivery, there would be a minimum spend required on food. However, imposing a minimum spend on food for walk-in customers would be difficult to police operationally and it was not envisaged that there would be low-priced products on the menu. If somebody wished to purchase large amounts of alcohol, Tesco was around the corner, was far cheaper and had a far bigger selection of products. Alcohol served at the premises would likely be limited to eight to ten product lines.

The Licensing Enforcement Officer advised that a minimum spend condition would be unenforceable if the menu changed in the future and a substantial meal cost less than the minimum spend amount.

In response to a question from the Legal Officer regarding the hours of operation for licences in the immediate vicinity, the Licensing Enforcement Officer advised that the Shell Garage had a 24 hour licence for alcohol sales for off the premises and Tesco had a licence from 6.00am until midnight Monday to Sunday.

The parties were asked to leave the room again at 11.28 am.

Resolved that the application for a premises licence be **granted** in accordance with the report, the applicant's operating schedule and subject to the conditions agreed with the Police and Trading Standards.

The Panel has considered the report from the Licensing Enforcement Officer and the representations made by the

applicant and by the objector, Mr Ashley, during this hearing.

The Panel notes that the application is for the sale of alcohol for collection or delivery from takeaway premises at 10 Clarendon Avenue. The hours applied for are 11.00am to 11.00pm for delivery and 11.00am to 10.00pm for the sale of alcohol to walk-in customers.

The Panel heard from the applicant that their business model was for a takeaway business which would involve the sale of upmarket artisan pizzas, salad and side orders to a more mature customer and to families. The Panel notes that the applicant has agreed a condition with the Police that alcohol will only be sold with food, not as a separate product. The Panel heard from the applicant that the focus of the business would be on delivery and that they anticipated that a large percentage of the business would be delivery as opposed to sales to walk-in customers.

The Panel also heard from the applicant that alcohol would not be visibly on display at the front of the premises and would be stored to the rear of the premises. The Panel heard from the applicant that the offer of food and alcohol would not be heavily discounted, which demonstrated that their business was not aimed at the student population.

The Panel notes that there has not been any objection from Environmental Health and that whilst the Police initially objected, this was withdrawn as the applicant agreed the conditions proposed by the Police.

The Panel heard from Mr Ashley who had objected to the application. Mr Ashley advised the Panel that he had no objection to deliveries only. However, he was concerned regarding the problems which would be caused by walk-in customers. Mr Ashley referred to problems of litter within the vicinity of the premises and also problems caused by intoxicated individuals, such as individuals urinating in public.

The Panel notes that the premises are located within the Cumulative Impact Zone and, therefore, the onus of proof is on the applicant to demonstrate that the application will not impact on the four Licensing Objectives. The Panel also notes that each application is to be considered on its own merits, and that it must have proper regard to the contrasting styles and individual characteristics of the premises concerned and the differing impact that it will have on the local community.

Having listened to the representations made by the applicant, the Panel believes that the character and nature of the business will differ from the usual type of fast food

takeaway in that the focus is on artisan food and the demographic of customer is likely to be people over 25, mature persons and families. The Panel does not believe that the business is aimed at students or the traditional type of food served in fast food outlets, and as such differs in nature from the traditional type of takeaway business.

The Panel has considered the points made by Mr Ashley regarding anti-social behavior, such as littering and public urination, and also that customers frequenting bars would attend the premises to purchase alcohol on their way to one of the town's bars or nightclubs. The Panel has not been provided with any evidence, other than anecdotal evidence, regarding littering or public urination.

The Panel also notes that there are two other licensed premises within the immediate vicinity of the premises which are the subject of this application, which have licenses to sell alcohol for consumption off the premises. The first, the Shell Garage, has a licence to sell alcohol off the premises 24 hours a day, seven days a week, and the other, Tesco, has a licence to sell alcohol up to 12 midnight seven days a week. The Panel, therefore, does not believe that patrons of bars will attempt to purchase alcohol from the premises as they can purchase alcohol from the Shell Garage or Tesco much more cheaply and without the requirement to purchase food.

Having heard from the applicant regarding the character of the business and the applicant's business model, and having considered the conditions they agreed with the Police and Trading Standards, the Panel is satisfied that the premises are sufficiently different in character, and that there are sufficient safeguards in respect of the conditions imposed, to ensure that the grant of a licence will not impact on the Licensing Objectives.

The Panel notes the concerns of Mr Ashley. The Panel would like to take this opportunity to point out to Mr Ashley that if there are problems caused by the operation of the licence which impact on the Licensing Objectives, the Council as the Licensing Authority does have the power to review the licence, which could result in additional conditions being imposed on the licence, or the licence being revoked. The Panel hopes that this provides some comfort to Mr Ashley.

At 12.13pm, 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 12.18pm)

Following the conclusion of the meeting, the Panel was informed that it had been provided with incorrect information regarding the licence held by the Shell Garage, Royal Leamington Spa and the premises did not hold a 24 hour alcohol

licence. Following consultation with the Panel members, Legal Officer and all interested parties, the decision was confirmed to grant the licence in accordance with the report, the applicant's operating schedule and subject to the conditions agreed with the Police and Trading Standards.