



**Licensing & Regulatory Committee**  
**11 May 2016**

**Agenda Item No. 3**

<b>Title</b>	Application for a premises licence under the Licensing Act 2003 for Lobster, 11 Old Square, Warwick, CV34 4RA
<b>For further information about this report please contact</b>	Emma Dudgeon, Licensing Enforcement Officer, Health and Community Protection. Tel: 01926 456113 Emma.dudgeon@warwickdc.gov.uk
<b>Wards of the District directly affected</b>	None
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No
<b>Date and meeting when issue was last considered and relevant minute number</b>	N/A
<b>Background Papers</b>	None

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan? (If yes include reference number)</b>	No
<b>Equality and Sustainability Impact Assessment Undertaken</b>	No

**Officer/Councillor Approval**

<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive		
Head of Service	28.4.2016	Marianne Rolfe
CMT		
Section 151 Officer		
Monitoring Officer		
Finance		
Portfolio Holder(s)	26.4.2016	Moirra-Ann Grainger

**Consultation & Community Engagement**

N/A
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<b>Final Decision?</b>	Yes
<b>Suggested next steps - None</b>	

## 1. SUMMARY

- 1.1 Warwick District Council Licensing Authority has received a valid application for a premises licence from Mr Sik Wong Lee.
- 1.2 Representations have been received in relation to this application for the consideration of the panel in the determination of the application.

## 2. RECOMMENDATION

- 2.1 Members are asked to consider the information contained in this report and decide whether the application for a premises licence for Lobster, 11 Old Square, Warwick, should be approved and, if so, whether the licence should be subject to any conditions.

## 3. THE APPLICATION

- 3.1 Mr Lee applied for a premises licence on 21 March 2016. The application is for a seafood restaurant and cafe. The licensable activities requested are set out in the table below:

	Sale of alcohol for consumption on and off the premises*	Opening Hours*
Everyday	12:00 to 23:00	09:00 to 23:00

\* Christmas Eve/Day, New Year's Eve/Day and 14 February all the above extended until 001:00

- 3.2 An operating schedule which has been submitted by the applicant and will form part of any licence issued, has been supplied as follows:

### *General*

The premises consists of a small restaurant providing freshly cooked food, mainly Seafood, for local and visiting groups, couples and individuals. The maximum covers available are twenty providing meals accompanied by wine, spirits, beer and a variety of non-alcoholic beverages to be enjoyed on the premises. The ethos, size and design of the premises discourages anti-social behaviour particularly where caused by irresponsible drinking.

The management and staff are fully briefed with regard to the following Licensing objectives.

### *The prevention of crime and disorder*

The management and staff have procedures in place to identify, monitor and report 'high risk individual or groups of individuals' in order to prevent crime and disorder. Such individuals will be prevented from entering or removed from the premises and where appropriate the assistance of community policing will be requested to remove such persons from the premises or the immediate vicinity. A digital CCTV recorder will monitor the premises and in particular the entrance in order to protect staff, customers and members of the public from such individuals and recorded data will be made available to community policing when required.

#### *Public Safety*

Appropriate procedures, assessments and training have been given and will be updated to ensure the safety of staff and customers in respect of Health and Safety, First Aid and potential Fire Risk.

The maximum seating capacity of the premises, excluding staff, will be monitored and maintained at twenty.

#### *The prevention of public nuisance*

The sale of wine and other alcoholic beverages will be limited solely to diners on the premises. Any off sales will only be available to existing customers. Access to the premises by members of the public will be restricted from 21:00hrs except where diners have pre-booked. The proprietors and designated premises supervisor will ensure that any public nuisance is monitored, reported and resolved if necessary through community policing in cooperation with the Warwickshire Constabulary at all times.

#### *The protection of children from harm*

The Proprietors and staff do not propose to allow any activities which could pose a risk to children. A policy that no children under the age of twelve will be allowed on the premises after 20:00 hours and young persons between twelve and sixteen will not be allowed on the premises after 22:00 hours will be enforced. All persons under eighteen will be required to be accompanied by a responsible adult during licensing hours and supervised adequately. The Proprietor, designated premises supervisor and staff will fully adopt and operate the 'Challenge 21 Scheme'. Appropriate 'Challenge 21' scheme signs will be displayed prominently and any person appearing to be aged 21 or under will be asked for a passport, driving licence or accredited proof of age card bearing the PASS mark hologram in order to prove their age.

- 3.3 The applicant has submitted additional documentation in relation to their application. This is attached as appendix 1.
- 3.4 Representations have been received from three local residents and from a business near to the premises, these are attached as appendices 2 and 3.
- 3.5 Representations were received from Environmental Health and Warwickshire Police, however conditions were agreed with the applicant and the representations were subsequently withdrawn. These conditions were agreed and therefore will be added to any premises licence issued:
  - 1. Alcohol only to be supplied to those persons partaking / partaken of a table meal or those waiting to be seated.
  - 2. All staff to ensure quiet departure of patrons.
  - 3. Alcohol to be tabled served by waiter/waitress service at all times.
  - 4. CCTV to be installed and the premises licence holder must ensure that :-
    - a. CCTV cameras are located within the premises to cover entrance & bar area
    - b. The system records clear images permitting the identification of individuals.
    - c. The CCTV system is able to capture a minimum of 12 frames per second and all recorded footage must be securely retained for a minimum of 28 days.

- d. The CCTV system operates at all times while the premises are open for licensable activities. All equipment must have a constant and accurate time and date generation.
- e. The CCTV system is fitted with security functions to prevent recordings being tampered with, i.e. password protected.
- f. Downloads will be provided to the Police upon reasonable request in line with the DPA.
- g. Signed off by Warwickshire Police Architectural Liaison officer
- 5. All Staff training records to be maintained and made available for inspection on reasonable request from responsible authority.
- 6. Staff to be trained in drunk and drugs awareness.
- 7. No entry after 22.00 hours.
- 8. The DPS to make on going professional risk assessments as to whether to employ door supervisors at any time.
- 9. No open vessels to leave the premises at any time.
- 10. Challenge 25 Scheme to be adopted and enforced
- 11. Refusals book / registered to be maintained and made available for inspection on reasonable request from responsible authority.
- 12. All staff to be trained in age verification policies and procedures.
- 13. No persons under the age of 18 years will be allowed on the premises after 21.00 hours unless accompanied by a responsible adult of 18 years or above and with the express permission and knowledge of the DPS or someone acting under their authority.

3.6 No representations have been received from:

- Fire Authority
- Enforcement Agency for Health and Safety.
- The Licensing Authority
- Authority Responsible for Planning
- National Health Service/Public Health
- Body responsible for the protection of children from harm
- Warwickshire County Council (Weights and Measures)

3.7 There are currently no licensable activities taking place at the premises and therefore there is no evidence in relation to licensing which can be detailed in the report.

3.8 A map of the premises provided by the applicant is attached as appendix 4 and a plan of the area is attached as appendix 5.

#### 4. **POLICY FRAMEWORK**

4.1 When considering the application the panel must give appropriate weight to:-

- a) The representations received.
- b) Statutory guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.
- c) The Council's Licensing Policy Statement (attached as appendix 6)
- d) The Licensing Objectives, which are:-
  - i) The Prevention of Crime and Disorder.

- ii) Public Safety.
- iii) The Prevention of Public Nuisance.
- iv) The Protection of Children from Harm.

However, it should only consider those licensing objectives which have been referred to in the representations received.

- 4.2 The Council's Licensing Policy Statement provides that the authority will take an objective view on all applications and will seek to attach appropriate and proportionate conditions to licences where necessary in order to ensure the promotion of the four licensing objectives. Each application will be judged on its own merits.
- 4.3 Details of the procedure adopted by the Licensing Committee for Panel Hearings have been supplied to the applicant and those making representations. The procedure will be explained more fully by one of the Council's Legal Team at the commencement of the hearing.

## **5. BUDGETARY FRAMEWORK**

- 5.1 There would be costs associated with any appeal against the decision as set out in 6.1 below.

## **6. RISKS**

- 6.1 Any decision made by the Panel may be appealed against at a Magistrates Court within 21 days of the decision. There would be costs associated with responding to an appeal and the Council could be ordered to pay the Appellants costs if it is deemed to have behaved unreasonably.



## Applicants Statement In Respect of Objections to Application for Premises Licence at Lobster Restaurant 11 Old Square, Warwick CV34 4RA

I refer to the above and confirm that I will be attending the Licensing Panel Hearing on 11<sup>th</sup> May 2016 in support of my application with a friend [REDACTED] to represent me and speak on my behalf.

The Joint letter of objection dated 14<sup>th</sup> April 2016 signed by [REDACTED] on behalf of [REDACTED] and [REDACTED] as residents of the [REDACTED] Old Square, Warwick CV34 [REDACTED]

The objectors have clearly stated in their objection letter that my premises are "*frequently open till 10pm-11pm in the evening and at weekends*" I can categorically state that this is not the case. I have kept detailed records of any evening trade at these premises and since the beginning of November 2015 until today's date we have only opened in the evening on 18 occasions catering for private bookings. That constitutes less than one evening per week over a six month period. In fact over the last four weeks there have been no evening bookings whatsoever therefore I am not sure where this alleged nuisance is coming from.

I will supply a list of dates at the Licensing Panel if required as well as the number of people who attended these private bookings on each occasion. Furthermore, on those occasions that the premises have been used very few of the diners have been smokers and it is extremely rare that I have witnessed our clients smoking in the street. The private bookings have wholly consisted of one group of people numbering between six and ten persons hiring the premises in the evening between 7-10pm for family/friend celebrations.

I would point out that Old Square has very few residential occupiers and that our immediate neighbours at [REDACTED] Old Square have absolutely no issues with the use of the premises. The assertion that frequent use of these premises in the evening has caused increased noise and public disturbance is simply not the case. I can only presume that if disturbance has been caused it is due to the fact that Old Square is a main Vehicular and Pedestrian route into and from the centre of Warwick. In addition both objectors' addresses have sleeping accommodation at the second floor of the [REDACTED] at a window height above the pavement of approximately 24 feet. It may be difficult therefore to identify the source of the nuisance complained of but can assure you that this has not emanated from my premises.

In respect of possible future disturbance as a result of the grant of a Premise Licence, as clearly shown in the application there are no outside areas attached to the premises and therefore all licensable activities will occur within the building. This very much would reduce the possibility of any public nuisance occurring and in addition as the designated premises supervisor I will not accept clients causing any public or noise nuisance in line with the Licensing objectives inside or in the vicinity of the premises.

Furthermore, I would suggest that Old Square is part of the Town Centre and is predominantly a commercial area on a relatively busy thoroughfare with 3 other Licensed premises within 50 feet of the Old Post Office and since 1996 has been zoned in the local

plan as a cafe quarter (subject to adoption of new local plan) and therefore the objectors could have been aware of this prior to moving onto Old Square.

It is not my intention to cause any residential neighbours any disturbance and will endeavour to facilitate the quiet enjoyment of their dwellings and protect their amenity if a Premises Licence is granted and I am fully prepared to discuss the use with them to that end.

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In respect of the written objection dated 16<sup>th</sup> April 2016 from [REDACTED] of [REDACTED] Old Square, Warwick I would comment as follows. [REDACTED] is a [REDACTED] of [REDACTED] and Proprietor of Seven Square a Licensed Restaurant and Bar operating from 7 Old Square Warwick which is within 10 metres of my premises.

It is my view that this is predominantly an objection of a competitive nature and is also based on a misunderstanding of what constitutes the Sale of Alcohol for Consumption Off the Premises. I have made it clear in the application that 'Off Sales' will only be available to existing customers i.e. diners and have already accepted the standard condition that no unsealed containers of alcohol can leave the premises. The proposed licensed area is wholly within the building and therefore the service and consumption of alcohol can only take place indoors.

Therefore, I do not understand [REDACTED] contention that a public nuisance can be caused or there is a risk to public safety by the granting of the licence on the basis of 'Off Sales' as it is my understanding that an Off Sale is by definition the sale of a sealed container of alcohol to be consumed away from Licensed Premises. The purpose of the application for the Off Sales element is to provide the facility for diners to purchase wine to take with them and enjoy at a later date for example at home.

I am not sure of the relevance of [REDACTED] objection in respect of the difference in the operating hours 9.00-23.00hrs of the business and the proposed Licensing hours 12.00-23.00hrs. The proposal is to supply alcohol for sale after 12.00hrs in order to meet the licensing objectives as it is my view that the provision of alcohol before that time in a restaurant is unnecessary and is not in accord with the Licensing objectives. We wish to retain the unlicensed element prior to 12.00hrs as a small cafe and continue during the licensed hours as a restaurant.

In respect of [REDACTED] comments in respect of the neighbouring property [REDACTED] Old Square, which separates our premises from [REDACTED] Bar/Restaurant at 7 Old Square, has in my view no relevance again to this application. The future use of the neighbouring premises [REDACTED] Old Square for whatever purpose and by whoever has absolutely no bearing on the application for a Premises Licence under consideration.

In respect of [REDACTED] objection I feel that as stated before it is of a competitive nature, inaccurate in its understanding of licensing and not relevant to Licensing objectives.

SI Kwong Lee. 21st April 2016



# Licensing Act 2003 Representation Form



## Section 1 - Application Details

### I object to the following Application:

Applicant's name (if known): **Si Kwong Lee**

Premises name and address:

**Lobster  
11 Old Square  
Warwick  
CV34 4RA**

Application for a

Premises Licence..... ☒ x

Club Premises Certificate..... ☐

Application to vary an existing Premises

Licence..... ☐

Club Premises Certificate..... ☐

Application Number

WDCPREM00851

## Section 2 - Objector details

### Individual Objectors Details:

*If you are objecting as a representative go to the next section*

Applicant Title

Surname

First name(s)

Address (incl postcode):

**Please note that a full copy of your objection (including your name and address) is required to be sent to the applicant and will be a public document at any hearing of this matter.**

If you do not wish your objection to be made public please complete the box below and give reasons. If you are not prepared to allow your objection to be made public then it may be ruled as unusable or as being less important than a public objection.

☐ Please tick here if you do not wish your objection to be made public and complete the box below

This is because

If you represent residents or businesses please complete the boxes below

Organisation name if applicable

[REDACTED]

Please state nature of representation:

Joint representation from the residents at [REDACTED]

[REDACTED]

[REDACTED]

Old Square,  
Warwick, CV34 [REDACTED]

[REDACTED]

[REDACTED]

Old Square,  
Warwick, CV34 [REDACTED]

[REDACTED]

[REDACTED]

Old Square  
Warwick, CV34 [REDACTED]

## Section - Objection Details

**My objection is relevant to the following licensing objective:**

*You can tick more than one box*

☐ Prevention of crime and disorder.

☒ Prevention of public nuisance.

☐ Protection of children from harm.

☐ Public safety

☒

I object to the application being granted at all

☐

I object to the application being granted in it's current form (If you choose this option remember to tell us in the next section what changes you would like to see)

Our objection is based on the following:

There are a number of residential properties on Old Square who's living and bedrooms face directly onto Old Square; for example two residential properties in the Old Post Office directly opposite Lobster and a town house (13 Old Square) adjoining Lobster.

The premises has changed recently from being a small café (open Mon-Fri approx. 9am-5pm) now to a café/restaurant which is frequently open until 10pm-11pm in the evening and at weekends (although it's 'official' trading hours are 9am-4pm and closed at weekends, which is not the case!).

Since then, there has been a significant increase in noise due to:

- a) Customers entering and leaving the premises within these hours, particularly in the evening; and
- b) Customers smoking outside the premises within these hours, particularly in the evening.

Increased activity to, from and within the premises has created increased noise which is disruptive to the residential homes that are directly opposite or adjoining. This type of noise is unsettling in the evening when residents are trying to relax or sleep.

We believe that the granting of the premises license will further increase activity and public nuisance, particularly due to the extended opening hours late into the evening. This will have a further detrimental impact on local residents, including ourselves, in the evening who will be unable to sleep, or may be woken, by customers using the premises and smoking/talking outside for prolonged periods.

It is not acceptable for residents to be kept awake until 11pm-12am every evening. All of the local residents on Old Square purchased or moved into the properties when 11 Old Square was a small café that did not have evening opening hours. We ourselves would not have chosen to live directly opposite a restaurant due to the noise that these premises generate in the evening. The premises is therefore a significant change of use to that which it was previously and we object on the grounds of public disturbance, primarily the impact on neighbouring properties. As residents have been *in situ* long before the premises was altered, we hope that the Council seriously considers the views and impact on neighbouring residents.

If however, the Council choses to grant the license, can the license at least include conditions about designated smoking areas for customers? Directly outside of the premises should not be used due to the level of noise that is generated by customers who are standing directly beneath living and bedroom windows. This is already an issue.

Many thanks for your consideration of this objection.

Signed..........Date.....14<sup>th</sup> April 2016.....

### NOTES

- Please complete all information or your objection may not be considered.
- Try to be as specific as possible and give examples e.g. on 1 February I could hear loud music from the premises between 10pm and 1 am I am concerned that if the premises open until 2 am this will cause a nuisance to me and other residents of the street
- Groups may include a Residents Association, Parish or Town Council, District Council Ward Councillor (list residents who have approached you to represent them), trade association
- If you do make a representation you will be invited to attend a meeting of the Licensing Authority's Panel and any subsequent appeal proceeding. If you do not attend, the Panel will consider any representations that you have made and apply any weight to it they deem appropriate
- This form must be returned within 28 days from the day after the application was made. The exact date may be found on the council's website.
- The objection may only relate to one or more of the four licensing objectives.

Please return this form when completed to:

Warwick District Council  
Licensing Team,  
Health and Community Protection,  
Riverside House,  
Milverton Hill,  
Royal Leamington Spa.  
CV32 5HZ

[licensing@warwickdc.gov.uk](mailto:licensing@warwickdc.gov.uk)

Tel: 01926 456113  
Fax: 01926 456121

**This may form be posted or emailed to the Local Authority**

**Emma Dudgeon**

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**From:** [REDACTED]  
**Sent:** 16 April 2016 20:50  
**To:** Licensing  
**Subject:** Re: WDCPREM00851 - Premises Licence - Representations

Dear Sirs,

I write in connection with the above-mentioned premises licence regarding the sale of alcohol for consumption on or off the premises.

I am the proprietor of a neighbouring business, 7 Square, and have some serious concerns about the scope of the applicant to sell alcohol off premises for the following reasons:

- The applicant has insufficient outdoor space (back and front) to provide off premises alcohol. Specifically, the applicant has no rear garden and significantly limited space at the front as the premises faces onto a narrow public footpath;
- Currently, the applicant operates a café and the normal opening hours are from 9:00 to 4:00. However, the operating schedule for the proposed licence stipulates that the hours for the sale of alcohol on or off premises will be from 12:00 to 23:00, which do not coincide with the normal opening hours of the café. In addition the normal opening hours of the café are stipulated as 9:00 to 23:00 which is clearly incorrect as can be seen from the applicant's website;
- Noticeably, one of the conditions of the licence is that the alcohol will only be supplied to persons partaking in a table meal but as mentioned the applicant currently operates a café between the hours of 9:00 and 4:00 only; and
- It is understood that the applicant is seeking to purchase the premises next door in order to run a florist. Whilst this may be the case, my concern is that the outside space will be used to provide the off premises alcohol for the café due to the applicant's current lack of outdoor space.

I consider that the proposed off licence will impact on public safety and create a public nuisance, as there is simply insufficient space to operate an off premises licence for the sale of alcohol, and will result in customers intruding onto public highway and footpath.

I would be grateful if these representations could be considered by the Licensing Team.

Should you require any further information please do not hesitate to contact me.

With kind regards,

[REDACTED]  
Tel: 01926 [REDACTED]  
Address: 7 Square  
7 Old Square  
Warwick  
CV34 [REDACTED]  
Email: [REDACTED]





