

LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Tuesday 20 November 2012, at the Town Hall, Royal Leamington Spa at 10.00am.

PANEL MEMBERS: Councillors Heath, Mrs Mellor and Pratt.

ALSO PRESENT: David Davies (Licensing Services Manager), Peter Dixon (Civic & Committee Services Officer) and John Gregory (Council's Solicitor).

1. APPOINTMENT OF CHAIR

RESOLVED that Councillor Mrs Mellor be appointed as Chair for the hearing.

The Chair introduced herself, other members of the Panel and Officers, and asked the other parties to introduce themselves. Present were Sergeant P Calver (Warwickshire Police), Ms C Simms (Warwickshire Police, observing), Mr M Mercer (solicitor, representing the applicant) and Mr I Ahmed (applicant).

The Panel was informed that Mr P Lawson (Environmental Health) had been due to attend the meeting but had been involved in a car accident en route. However, Mr Lawson arrived during the course of the meeting, whilst the applicant's representative was responding to questions from the Panel, and was therefore able to participate.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. APPLICATION FOR THE GRANT OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 FOR SPICY BITES, CLEMENS STREET, ROYAL LEAMINGTON SPA

A report from Community Protection was submitted which sought a decision on an application by Spicy Bites.

The Council's Solicitor ran through the procedure which the hearing would follow.

The Licensing Services Manager outlined the report and asked the Panel to consider all the information contained within it, and the representations made to the meeting, and to determine if the application for a premises licence should be approved. The report referred to those matters to which the Panel had to give consideration, the statutory guidance issued by the Secretary of State, the Council's Licensing Policy Statement and the Licensing objectives.

The report from Community Protection, which was submitted to the Panel, presented an application to permit the following:

LICENSING PANEL HEARING MINUTES (Continued)

Late Night Refreshment

Sunday to Wednesday 23:00 to 02:00

Thursday to Saturday 23:00 to 03:30

Opening Hours

Sunday to Wednesday 17:00 to 02:00

Thursday to Saturday 17:00 to 03:30

An operating schedule, which would form part of any licence issued, was also submitted to the Panel. The operating schedule explained steps the applicant proposed to take to promote the four licensing objectives; Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance and Protection of Children.

The Council's Licensing Policy Statement provided that the Authority would take an objective view on all applications and would seek to attach appropriate and proportionate conditions to licences, where necessary, in order to ensure compliance with the four licensing objectives. Each application would be judged on its individual merits.

The Licensing Services Manager reported that he had recently carried out a PACE Interview and that, under caution, Mr Ahmed had confirmed that the premises had been open after the current permitted licensed hours on a number of occasions. As a result, the Licensing Services Manager was in the process of putting together a case for prosecution.

The applicant's representative Mr Mercer outlined the application, made by Mr Ahmed on 17 September 2012, to extend the opening hours of Spicy Bites. Mr Mercer presented photos of the premises in order to give the meeting a better understanding of its location. He explained that a CCTV system had been installed under the guidance of the Warwickshire Constabulary, that CCTV recordings were kept for 31 days and were available on request. Mr Ahmed planned to implement a queuing system for customers, coupled with an efficient and quick service to prevent large numbers of people gathering. He would politely refuse potentially troublesome customers. All cooking equipment was kept securely behind a tall counter, out of reach of patrons. Staff would be trained to a minimum health and safety standard. In order to prevent public nuisance, hourly inspections would be carried out and the premises would be kept free of litter, both inside and outside. No entry was permitted 15 minutes prior to closing time and a self-closing door would be installed to minimise potential noise. No radio or music was presently played within the premises and this would continue to be the case. Any gatherings outside would be quietly dispersed. Children under the age of 16 had to be accompanied by adults and those who were not would be reported to the authorities.

Mr Mercer advised the Panel that Mr Ahmed was willing to accept the proposed condition that he install retail radio, that all members of staff be trained to use it and records kept. Mr Ahmed already maintained records of training which had been undertaken.

LICENSING PANEL HEARING MINUTES (Continued)

Mr Mercer reiterated that Mr Ahmed had admitted to previous offences and had apologised. Mr Ahmed had been let down by some members of staff, against whom disciplinary action had been taken. Opening hours had since complied with the current premises licence and Mr Mercer stated that if a new licence were granted, the premises would be managed in a complaint manner, more proactively and effectively.

The Licensing Services Manager pointed out that during his PACE interview, Mr Ahmed had not placed blame on other members of staff and had stated that he had kept the premises open later than permitted because business had been bad.

Responding to the Panel's questions, Mr Ahmed stated that he lived in Coventry and had taken over the Spicy Bites premises in 2010. At that time he had known nothing of running a takeaway business. Whenever he was unable to work or on holiday, he arranged for a longstanding member of staff to take charge. Mr Ahmed currently employed 4 members of staff. He had not implemented a queuing system to date or installed a self-closing door because they had not been necessary. However, Mr Ahmed intended to do both in order to comply with the requirements of the new licence. Mr Ahmed had not installed retail radio because he believed that other outlets in the area made no use of it, but he was willing to do so in order to comply with conditions.

Responding to questions from the responsible authorities, Mr Mercer explained that Spicy Bites used distinctive packaging and therefore Mr Ahmed would be able to identify and deal with litter originating from his outlet. However, Mr Mercer conceded that Mr Ahmed could only do this within a limited area and that it would not be practical for him to collect litter except in the immediate vicinity of the premises. With regard to ensuring that nobody entered the premises within 15 minutes of its closing time, Mr Ahmed's intention was to carry out a supervisory role at the entrance. If he were not available, a minimum of 2 members of staff would be instructed to act in this capacity and to do so politely and respectfully. If staff were otherwise engaged taking orders and supplying food, Mr Ahmed would have to take a view on whether an additional member of staff was required.

Sergeant Calver presented the objections of Warwickshire Police to the application, stating that the Police objected to the application in its entirety. The premises was located within a diverse community which already suffered from disturbance and which had recently seen an increase in the same alongside greater numbers of students moving into the area. The community was already saturated with premises which remained open late at night, attracting noise and antisocial behaviour. Sergeant Calver quoted statistics demonstrating that the area accounted for a significant percentage of the total number of violent and drunken incidents in South Leamington. He stated that the Police were concerned that the premises were poorly managed, particularly when considering the number of recent breaches of the current premises licence. He suggested that the only reason for the application being presented to the Panel was because the premises had been caught out.

LICENSING PANEL HEARING MINUTES (Continued)

Mr Mercer responded by suggesting that extending the opening hours of Spicy Bites would contribute to a reduction in the number of antisocial incidents by allowing a more gradual dispersement of customers from the area over time. Sergeant Calver took a different view, believing that people would remain in the area if the outlet remained open longer and that they would use it as a meeting point rather than dispersing. He suggested that such a problem would be compounded by the fact that, under the terms of the proposed new licence, the premises would still be open around the time that other premises closed.

Mr Lawson presented the objections of Environmental Health on the grounds that later opening of Spicy Bites would contribute to an incremental increase in people remaining within the area and in late night disturbance. While the outlet was situated outside the boundary of the Cumulative Impact Zone, it was in the vicinity of a number of residential properties where there was already a considerable concentration of late night premises. Environmental Health felt that the existing opening hours should remain in force and that no later opening hours be approved.

The Licensing Services Manager reiterated that the application before the Panel was for late night refreshment within the premises only. He added that it had only just come to his attention that, in addition to the hours stated in the report, Spicy Bites had also applied for the following extensions to opening hours:

Late Night Refreshment

Bank Holiday Mondays	Until 03:30
Christmas and New Years Eve	Until 03:30

Mr Mercer conferred with the applicant and confirmed that this was correct. He stated that there were currently 7 seats within the outlet, which were put to one side at weekends in order to better facilitate queuing. There were never more than 10-15 people queuing within the premises at any one time. Spicy Bites was the only Halal fast food outlet in the area and there was a regular group of customers who used the outlet and who were keen for an increased service. The Licensing Services Manager pointed out that the Police had seen 13 people sat within Spicy Bites on one occasion in September. Mr Mercer confirmed that disciplinary action had been carried out in respect of that incident, that such an occurrence would not be repeated and that there was now very strict compliance with conditions, which would continue in future.

Sergeant Calver clarified that the Police remained opposed to the application.

The Chair expressed surprise that there was no indication on Spicy Bites' frontage that it was a Halal establishment. Mr Mercer said that Mr Ahmed had not yet had an opportunity to put a sign up but pointed out that the Halal symbol appeared on the Spicy Bites leaflet. He stated that the premises was cleaned inside and out every day and was some distance from the town's nightclubs, so the clientele were largely regular Halal customers who liked Mr Ahmed's food.

LICENSING PANEL HEARING MINUTES (Continued)

Summing up the application, Mr Mercer stated that extended opening hours were required because Spicy Bites was Mr Ahmed's only business and he needed to ensure that he was putting something back into the local community. Mr Ahmed would adhere strictly to all conditions, and carry out regular monitoring and maintenance which it was hoped would bring people off the street and into his premises.

The Chair thanked those present for their representations and asked all parties to leave the room (excluding the Panel's Solicitor and Committee Officer) while the Panel determined the application.

Having considered the application, representations from the applicant, and the responsible authorities (Warwickshire Police & Environmental Health) the Panel was of the opinion that the application should be refused for the following reasons;

The Panel heard evidence from the Police that there were serious existing problems with crime and disorder in the vicinity of the premises and that this problem was worsening. The Panel heard that, statistically, Spicy Bites was situated in one of the worst areas in Leamington in terms of violent crime. Further, the Police and the Licensing Authority stated that the premises had been found to be operating outside its current permitted hours on a number of occasions, an allegation that the applicant conceded. The Police also gave evidence to the effect that the new closing time would coincide with the closing times of a number of licensed premises in the vicinity, resulting in an increased number of people on the street and in the premises at that time.

The Panel was consequently of the view that it could not have any confidence that the premises would be operated in accordance with the conditions and permitted hours on its licence. Given the existing level of crime and disorder in the area, the Panel took the view that to permit the premises to open later would be likely to result in an increase in crime and disorder at the premises, and in the immediate vicinity.

The Panel was also mindful of the fact that the Environmental Health Department had suggested that there would be a problem with noise if the licence were to be granted. The Panel was of the view that this was potentially the case, but attached limited weight to this consideration due to the fact that it had heard no evidence of complaints about noise in the area generally, or about the premises in particular during the period in which it had been operating.

Therefore it was proposed, duly seconded and

RESOLVED that the application be refused for the reasons stated.

All parties were invited back in to the room so they could be informed of the decision, which was read out by the Council's solicitor, and reminded of their right to appeal the decision to the magistrates court within 21 days of the decision notice.

(The meeting finished at 11.40 am)