

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Tuesday 22 August 2017, at the Town Hall, Royal Leamington Spa at 2.00pm.

Present: Councillors Mrs Cain, Mrs Hill and Quinney.

Also Present: Mr Howarth (Council's Solicitor), Mrs Dury (Committee Services Officer) and Mrs Dudgeon (Licensing Officer).

1. **Substitutes**

Councillor Mrs Hill substituted for Councillor Gifford.

2. **Appointment of Chairman**

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

3. **Declarations of Interest**

Minute Number 4 – Application for a premises licence under the Licensing Act 2003 Hart & Co, 27 Augusta Place, Royal Leamington Spa

Just before the Panel's decision was read out, an earlier oversight was rectified; all Councillors on the Panel declared an interest because one of the interested parties, Mr Gifford, was also a District Councillor.

4. **Application for a premises licence under the Licensing Act 2003 Hart & Co, 27 Augusta Place, Royal Leamington Spa**

The Panel considered a report from Health and Community Protection which sought a decision on an application for a premise licence from Miss Louise Hart for Hart & Co, 27 Augusta Place, Royal Leamington Spa.

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

- Miss Louise Hart – the applicant;
- Mrs Hart – supporter and applicant's mother;
- Dr Hugo Petzsch – local resident;
- Dr Andrew Cave – local resident;
- Mr Bill Gifford – local resident;
- Mrs Caroline Gifford – local resident;
- Miss Joanna Hart – supporter;
- Mr Matt Whiteley – property letting agent; and
- Mrs Nicole Alexander – local resident.

The Council's Solicitor explained the procedure for the hearing.

The Licensing 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.

The application was for a premise licence for 27 Augusta Place, Royal Leamington Spa. The licence was for a restaurant and bar selling alcohol and providing regulated entertainment. The application was submitted on 4 July 2017. An operating schedule had also been submitted by the applicant and would form part of any licence issued, and details of this were listed in point 3.2 in the report.

An addendum was circulated at the Panel hearing and this contained a sample menu, a copy of a letter the applicant had written to nearby residents to allay their fears that past unfortunate incidents under previous licensees would not be repeated, and a copy of the planned layout.

The Licensing Department had received five representations in relation to the application objecting to the application and these formed appendices 2 to 6 in the report.

Representations were received from Warwick District Council Environmental Health and Warwickshire Police, but following discussions between these and the applicant, conditions had been agreed and the representations had been withdrawn. These conditions would form part of any premises licence issued and were detailed in section 3.4 of the report. No other representations had been received from notifiable authorities.

A premise licence issued under the Licensing Act 2003 had been in place from 2005 and the premises until 2011 was known as either Kasa, Barcode, Afterlife and then G's Bar. The premise licence lapsed in 2011 due to bankruptcy. An application for a new licence was submitted in 2011, but this was refused in January 2012. Punch Taverns applied for a premises licence in July 2016, and this licence was still in place. However, this did not affect the applicant's ability to apply for a new premises licence.

A plan of the premises had been provided by the applicant and this was attached as appendix 7 to the report; a map of the area was attached as appendix 8 to the report; and photographs of the area were attached as appendix 9.

The licensable activities requested were as follows:

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	Sale of Alcohol for the Consumption off the Premises	Live Music (Indoors)*	Recorded Music (Indoors)*	Opening Hours
Friday	09:00 to 23:00	18:00 to 22:00	09:00 to 22:30	09:00 to 23:00
Saturday	08:00 to 23:00	18:00 to 22:00	08:00 to 23:00	08:00 to 23:00
Sunday	12:00 to 22:00	12:00 to 21:00	08:00 to 22:30	08:00 to 23:00
Monday to Thursday	09:00 to 22:00	N/A	09:00 to 22:30	09:00 to 22:00

* Between the hours of 08:00 and 23:00, when amplified live music is taking place to an audience of less than 500 people and the premises is licensed for the sale of alcohol for consumption on the premises; or when unamplified live music is taking place to any number people in any premises, all licensing conditions applicable to the control of live music on this licence are deemed not to be in operation.

Between the hours of 08:00 and 23:00, when recorded music is taking place to an audience of less than 500 people and the premises is licensed for the sale of alcohol for consumption on the premises, all licensing conditions applicable to the control of recorded music on this licence are deemed not to be in operation.

For all of the above, seasonal variations are as follows:

Christmas Eve, Good Friday, May Bank Holiday and August Bank Holiday until 00:00am

Easter Monday until 22:00pm

Boxing Day until 23:00

New Year's Eve / New Year's Day until 01:00am."

The applicant, Miss Hart, gave a little of her background to the Panel, including her age and ambitions. She informed Members that she had written to all residents in the vicinity in June and had been disappointed not to receive any replies. She felt that the objections made against her application were based on previous businesses and she was at pains to point out that the application was for a restaurant and bar, not a bar/restaurant. She felt that the drinking culture had changed and the previous businesses had all been bars where food was not served. She felt that the video evidence that would be presented later in the hearing was not relevant to her application. She did not feel that the opening hours would cause concern and she felt that the premises were ideally located near established restaurants. She felt that the closing hours of 22:00, Monday to Thursday were considerate to families living close by. She was agreeing a five year lease with Punch Taverns and when this expired, she would either have to re-apply or she might not choose to do so as it might be preferable to expand her opportunities elsewhere.

She wanted to make the establishment "homely" and to this end, clientele would have to ring a doorbell to be admitted inside. A member of staff would greet all arrivals and show them to a seating area where there would be sofas and armchairs creating a relaxed ambience, further enhanced by table lights and books. She had no intention of the venue being used for late night drinking. She argued that her application would have a neutral effect on the Cumulative Impact Zone because the premises were already licensed through Punch Taverns; she was applying for a new licence because she wanted to change certain aspects.

There would be live music but this would be a solo artist and he/she would finish by 22:00 at the latest so no disturbance would be caused by this. Recorded music would be played softly in the sitting area. Doors and windows would be kept closed from 21:30 to stop leakage of sound outside, and they would always be closed when entertainment was provided.

Under no circumstances would people be allowed to take their drinks outside and the door host would oversee all arrivals and departures. Additionally, in summer, supervisors would monitor outside.

The last entry time was 22:00, and at this time, the style of the music would change to signal a winding down towards closure. A free taxi booking service would be in place and clientele would wait inside until their taxi arrived. This would limit opportunity for people to cause disturbance outside whilst waiting for their taxi to arrive.

The pricing structure at the establishment would reflect the type of clientele they were trying to attract to discourage heavy drinking; craft beers would be on offer. Odours from food preparation would be minimised through an extraction system.

The applicant proposed to use the same suppliers as other nearby businesses when possible to minimise the amount of delivery vehicles. Refuse collectors would also be contracted to collect three times a week.

Sergeant Calver was happy with the agreed conditions in respect of prevention of crime and disorder. Door supervisors would be trained to a high standard, with a minimum of six hours training and guests would not be standing inside unless they were at the bar ordering drinks. She did not intend to "pack out" the building with clients and she intended to become an active member of "Pub Watch". External lighting would enhance signage and deter criminal activity.

In respect of Public Safety, staff would be trained to a high standard before they could work and Miss Hart would insist that these standards were maintained. There would be regular fire drills and required logs kept. Staff would have an understanding of alcohol awareness and guests would be expected to present ID on request. There would always be a minimum of one first aider on each shift, and one manager on duty at all times. Managers would be required to undertake periodic risk assessments and only specialist alcohol would be provided at a price range to discourage binge drinking.

Child Safety would be addressed by adopting the "Challenge 25" initiative and staff would understand how to deal with people who refused to provide ID, and a log book of any refusals would be kept. Anyone aged under 18 would not be allowed into the bar after 21:00.

Miss Hart explained that she would be wholly focused on the business because she was not looking for other premises, and her lease was only for five years. She wanted to create a unique place where memories were created; and an environment that people would want to enjoy.

In response to questions from the Panel Members, Miss Hart explained that:

- There would be approximately 60 covers.
- The sample menu she had provided had been prepared by her. She had not yet hired a chef but when she did, the chef would prepare the menu. She was proposing that the menu would consist mainly of "sharing" platters, and this would account for around 80% of the menu. The remaining 20% would be more expensive "too good to share" choices.
- The maximum number of people that could be accommodated was 300, but she expected numbers to generally be around 100 because packing people in was not her intention. Everyone would be provided with a seat.
- She did not think any structural work had been carried out on the building since its closure in 2011, but she would expect everything to be in working order before she took the tenancy.

- Doors would be kept shut and a host would welcome all arrivals and take their coats. She saw no reason for noise to be an issue. Guests would have to ring a doorbell to gain entry.
- CCTV would be on-site and the door host would be trained to deal with any troublemakers arriving Monday to Thursday. At weekend, four supervisors would be on the door. She did not expect the establishment to attract groups of youths because of the pricing structure.
- People would not be allowed to take their drinks outside and smokers could use an area on-street outside, next to the window up until 21:30. Smokers would be prevented from going outside to smoke after this time because the host would not allow re-entry after 21:30.
- She believed that noise abatement measures were in place by the glass roof area at the back, and she thought the kitchen would be located there, so no guests would gather there.
- The music was not the right sort to encourage dancing. She would apply for a TEN if dancing was required at an event.
- She did not think the venue would suit wedding parties and similar. It was a restaurant and bar and would not be rented out for other events.
- She wanted the bar facility because it was important to extend the business to non-diners and give guests a freedom of choice. The venue would provide a quiet environment for guests to relax, enjoy live music and have a few drinks. She estimated that being able to provide drinks only without the requirement that they had to be provided with food would increase sales by 40%. She could achieve profit by creating the right ambience so increasing business.
- A noise limiter would be in operation for the music; the music would be ambient, chart music and easy listening. The music would not be heavy drum/bass.

The Chairman invited the interested parties to pose their questions to Miss Hart.

Mrs Gifford sought confirmation that Miss Hart understood that the definition of background music meant that people did not have to raise their voices to be heard above the music. Miss Hart explained that she had been to a bar where there was no music playing and had felt that there was no ambience. She had then seen a solo artist playing and had loved the atmosphere and the atmosphere this created; and there had been no need to shout to be heard. In response to another question from Mrs Gifford, Miss Hart explained that the lease would only last five years, and after that it would require renegotiation. She also felt it necessary to prevent children entering after 21:00 to avoid them being exposed to alcohol.

In response to further questions from interested parties, Miss Hart responded that:

- She accepted that there was no outside area for seating, but she was not interested in creating an outside area because it would create the problems experienced before.
- She did realise that she was applying for a licence in the Cumulative Impact Zone and bar saturation zone. She just needed to prove that her premises would not cause problems.
- She had not yet prepared a noise policy, and not all policies had been set as yet. She proposed background music with a 30 minute winding down time. There would be chart music, and that could not always be predicted, hence the reason for the 30 minute winding down time.

- There would not be any drink promotion events.

Dr Cave confirmed that if the music was only soft, and drinks were table service only, he would withdraw his objection. Miss Hart felt that service to table only would be too constraining as people would want to go to the bar.

The Chairman then asked the interested parties to make their statements.

Dr Cave informed the Panel that he was concerned about the live music and why it needed to be wound down 30 minutes before closure. He saw no reason for the need to have a bar at the premises. It was up to the applicant to prove there would be no nuisance caused in the Cumulative Impact Zone. If Miss Hart left, the licence would remain and then the 2010 noise abatement notice would lapse, which risked any new operator being a nuisance.

Miss Hart pointed out that the previous tenants had run the premises just as a bar and late night drinking venue. She also confirmed that as per her tenancy agreement, she was prevented from sub-letting.

Dr Petzsch confirmed that he had no issues with the current licence conditions held by Punch Taverns, it was the changes that Miss Hart required that caused concern. In response to a question from Miss Hart, he confirmed that noise was the biggest issue for him.

Mr Gifford stated he had no reason to question Miss Hart's intentions, but the premises were in the Cumulative Impact Zone, so she had to prove there would not be any nuisance caused. He had no objections to the premises being run solely as a restaurant as per the current licence, which could be transferred to Miss Hart. Service of drinks to table was not a trivial point as proven by the two local restaurants. He was concerned that the establishment required doormen and children not to be given access after 21:00. To him, this sounded like a bar and bars had been a disaster in this location. There was a risk that people would revert to vertical drinking and loud music might be played, which would force people outside to hold a conversation. Drinking outside the premises had not been allowed before, but doormen had not been able to prevent it happening. The premise was not a suitable location for a bar. If the licence was refused, Miss Hart could still operate the premises as a restaurant, and he would not object to that. The prevention of public nuisance objective had not been met.

In response to Mr Gifford, Miss Hart expressed concern that even after hearing her speak, he still thought she intended to run the premises as a bar or bar/restaurant. He confirmed that the problems they had faced before had occurred some years ago.

The Chairman then asked for the video evidence to be played and Mrs Gifford introduced each clip, which were also detailed in Appendix 5 to the report. Mrs Gifford explained that the filmed incidents had nothing to do with Miss Hart and were filmed over a period from 2005 to 2011. There were eight clips which demonstrated that they had endured serious noise. The evidence had been sent to Licensing, the Police and Environmental Health. Video evidence had only been obtained when the disturbance was either seriously bad or something dangerous had occurred.

In response to points/questions made by Miss Hart, Mrs Gifford responded that:

- None of the incidents had occurred within the hours of opening that Miss Hart had applied for.
- The ratio of residences to businesses in the area had increased now that the Willoughby had been converted to an HMO; there was also a new development of four flats. The area was increasingly becoming a residential area.
- She was not opposed to new businesses coming to the location; she liked the diversity and convenience this provided. She also accepted that this could bring some problems with mixed age groups living in or coming to the area.

Mrs Alexander was invited to make a statement and she pointed out that Miss Hart's family were helping to finance the business and would account for 90% of the staff.

The Chairman then invited the applicant and interested parties to give their summations.

Miss Hart reiterated that she was not applying for a bar licence, but a restaurant/bar. The DVD evidence that had been presented bore no resemblance to the type of establishment she would be running and she would be providing a menu of predominantly sharing platters.

Mr Gifford reiterated that the application could mean that the premises could be operated as a bar; the conditions recommended could mean it could be a bar. The current licence meant that the premise could only be operated as a restaurant.

The Chairman then asked Miss Hart to explain how the premise would be configured and she replied that this would be a "journey". She intended that a hostess would greet customers. The lobby would have armchairs and lamps and people would not be allowed to stand. They would be allowed to have a drink but there would not be any room for tables in the lobby. There might be curtains. She explained where the bar would be situated and this started a debate on exactly where the glass roof was, with some saying the bar area would be under the glass roof. Miss Hart repeated that the kitchen area would be under the glass roof.

At 4.32 pm, the Chair 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. He informed people leaving the room, that if they did not wish to wait for the decision, they would receive notification by email.

Resolved that the application for a premises licence be **granted**, subject to conditions, for the following reasons:

The Panel has listened to representations made by the applicant, Dr Cave, Dr Petzsch and Mr & Mrs Gifford. The Panel has also watched the video evidence presented by Mrs Gifford. The Panel notes that the Police and Environmental Health have withdrawn their objections as

they have agreed conditions with the applicant. These are set out at page 5 of the officer's report.

The Panel notes that it is the applicant's intention that the premises will be operated as a restaurant/bar where the patrons will be seated on sofas as opposed to standing. Further, that the applicant proposes that the premises will offer craft beers, fine wines and cocktails and that the menu will contain a number of dishes which will essentially be serving platters which can be shared by patrons. The Panel understands that it is the applicant's vision that this will be a family orientated establishment with a relaxed ambience.

The Panel heard from the applicant regarding the measures she proposes to put in place regarding the control of access and egress to the property during the hours of opening. The Panel notes that the applicant proposes to use a lobby which will be manned by a host/hostess and that patrons will ring a doorbell to gain access to the premises. The idea being that the host/hostess will supervise such access and egress. Further, that on Fridays, Saturdays and special occasions, door supervisors will also be employed.

The Panel heard from Dr Cave, Dr Petzsch and Mr & Mrs Gifford regarding their concerns that in the event that a licence is granted without conditions limiting the sale of alcohol to table service and/or accompaniment with a meal, such a licence would result in the premises becoming a bar as opposed to a restaurant and that this would result in patrons leaving the premises intoxicated and generating noise on the highway outside which would cause a disturbance to residents.

The Panel watched a number of videos of previous incidents between 2005 and 2011 which showed a number of occasions when the patrons of the premises have stood outside the premises and on the highway and also on the adjoining car park creating noise and disturbance to local residents.

Whilst the Panel notes that the videos show historical incidents which took place when the premises were being operated under previous management, the videos do, in the Panel's view, show the type of noise and disturbance which can be caused by a bar in this location.

Whilst the Panel notes that the Police and Environmental Health have withdrawn their objections subject to conditions being imposed, which include all external doors and windows being closed after 9.30pm, the display of signs asking patrons to leave quietly and requiring the premises holder to ensure that patrons using the outside area will do so in an orderly manner and will be supervised by staff to ensure there is no public nuisance or obstruction

of the public highway, the Panel has real concerns whether such conditions will be sufficient to prevent disturbance of nearby residents by patrons leaving the premises or otherwise using the outside area.

The Panel is concerned that a licence which does not contain conditions that limit the sale of alcohol to table-service only will result in the premises becoming a bar as opposed to a restaurant/bar. This, in the Panel's view will result in a greater number of patrons attending the premises and, in turn, a greater number of patrons leaving the premises during the evening and at closing time. This, in the Panel's view, is likely to result in patrons causing a disturbance to local residents.

Whilst the Panel notes that Augusta Place is a mixed use area, the Panel heard evidence from the interested parties that there has been an increase in the number of residential properties in Augusta Place since the premises were last in operation.

The Panel is also mindful that the premises are located within the CIZ and that the onus of proof is on the applicant to demonstrate on the balance of probabilities that the grant of the licence will not impact on the licensing objectives.

Having listened to the applicant and the measures she proposes to implement to prevent disturbance to residents by patrons leaving the premises, the Panel are not satisfied that the applicant has demonstrated that the grant of the licence will not impact on the licensing objective of public nuisance. It is the Panel's view that only the imposition of a condition restricting the sale of alcohol to table-service will ensure that the grant of the licence will not impact on the licensing objectives. It is, therefore, the Panel's view that the imposition of such a condition is appropriate.

The Panel resolves to grant the licence subject to the operating schedule, the conditions agreed with the Police and Environmental Health and subject to a further condition that the sale of alcohol will be restricted to table service.

At 6.10pm all parties who had remained were invited back into the room (the applicant, Mrs Hart, Miss J Hart, Mr and Mrs Gifford and the Licensing Officer) and the Chairman invited the Council's Solicitor to read out the Panel's decision.

All parties were advised that they had the right to appeal within 21 days of the formal decision being published. He clarified to the applicant that drinks could be served without a meal providing they were served to table. He also advised Mr Gifford that the advice he had given the Panel Members whilst they were deliberating the decision, related to the amount of weight that could be attached to the video evidence and that the responsible authorities had withdrawn their objections and if the Panel came to a different view, this would need to be

evidence based and the Panel would need to give the reasons why the conditions imposed were necessary.

(The meeting ended at 6.16pm)