

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel meeting held on Wednesday 11 May 2016, at the Town Hall, Royal Leamington Spa at 10.00am.

Present: Councillors Miss Grainger, Quinney and Mrs Stevens

Also Present: Mr Gregory (Council's Solicitor), Miss Carnall (Senior Committee Services Officer), and Mrs Dudgeon (Licensing Enforcement Officer).

1. **Substitutes**

None.

2. **Appointment of Chairman**

Resolved that Councillor Miss Grainger be appointed as Chairman for the hearing.

The Chair, Members of the Panel and officers introduced themselves.

The Chairman then invited the applicant and interested parties to introduce themselves. They were Mr Sik Wong Lee, the applicant, Mr Jones, the applicant's representative and Ms Adkin, representing Mr Hoyek, a neighbouring business owner.

3. **Declarations of Interest**

There were no declarations of interest.

4. **Application for a premise licence under the Licensing Act 2003 for Lobster, Old Square, Warwick**

The Panel considered a report from Health and Community Protection which asked Members to consider an application from Mr Sik Wong Lee for a premise licence for Lobster, 11 Old Square, Warwick.

The Licensing Enforcement Officer outlined the report and asked the Panel to consider all the information contained within it.

Representations had been received in relation to the application and Members were asked to consider if the licence should be approved, and if so, should the licence be subject to any conditions.

The applicant submitted the application in March 2016 for the following licensable activities:

	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 01.00.

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

The representations had been received from Environmental Health and the Police; however, conditions had been agreed with the applicant and both representations had been subsequently withdrawn. The conditions agreed were as follows:

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.

The representations from three local residents and a nearby business were attached as appendices 2 and 3 to the report. In addition, coloured pictures of the premise location had been distributed prior to the start of the meeting.

The Chairman invited the applicant's representative, Mr Jones to make comments on the application. He advised that Lobster was a seafood restaurant and café with 16 to 20 covers. The applicant had been encouraged by customers to apply for a licence because they would rather dine without having to bring

their own alcohol. Mr Jones advised that the restaurant had held approximately 20 private evening bookings recently and had not encountered any complaints as a result of those bookings.

In response to questions from Panel Members, Mr Jones advised that:

- there was a current condition relating to the planning permission on the premises which restricted the opening hours to 19.00 and the applicant would be negotiating with the Planning Department to amend this if the licence application was successful;
- the recent evening bookings had been for groups or family gatherings and no sales of alcohol had occurred;
- the restaurant was not aware of any complaints made either to themselves or to Environmental Health regarding noise disturbance from people exiting or smoking outside the premises;
- the applicant was surprised when they read the objections because none of the nearby residents had approached them with concerns, despite coming into the café; and
- there was a nearby residential building but no objection had been received from the new tenant at number 13.

The Chair then asked the interested parties to outline their representation. Ms Adkin introduced herself and explained that she was addressing the Panel on behalf of the nearby business owner, Mr Hoyek. Ms Adkin advised that she was also a nearby resident and had submitted an objection on 19th April only to be told she had missed the deadline for representations to be received. Ms Adkin asked if her objection could be taken into account at the hearing.

The Legal Officer advised the Panel that they were able to take the late representation into account, if the applicant was happy for them to do so as he had not had sight of the objection. It was therefore agreed that the applicant would be shown the representation and given sufficient time to consider its content.

The Licensing Officer confirmed that Ms Adkin had submitted her objection on 19th April and was emailed a response explaining that it could not be considered because the deadline for representations to be received was 18th April.

The Chairman therefore adjourned the meeting at 10.19am to allow the applicant to read Ms Adkin's representation and decide if he was happy for the Panel to take it into consideration.

The Panel reconvened at 10.31am and Mr Jones advised that Ms Adkin's objection covered the same points already raised by the other interested parties. In addition, the applicant did not think the objection should be considered because the deadline had been missed and Ms Adkin had been fully aware of the application.

The Chair therefore agreed that the late representation would not be taken into account but all parties were in agreement that it was no longer the case that the neighbour had not objected.

Ms Adkin outlined Mr Hoyek's representation which she stated had been made in good faith as an experienced restaurateur and not because he feared for the change in footfall at his own premise. However, Mr Hoyek had concerns that his business would be 'caught in the crossfire' from a public nuisance point of view

and was worried that he would start to encounter visits from the Environmental Health Department.

Ms Adkin advised that Mr Hoyek considered the licence application as a back door route to alter the planning restrictions already in place on the premise. In addition, he felt that the off licence sales were unnecessary because there were no outside areas that could be used or accessed. Mr Hoyek was worried that the off licence sales would be used as a drop in to buy alcohol and the licence was an indirect expansion into the vacant corner premises.

In response to a question from the Panel, Mr Hoyek confirmed where his business was in relation to the applicant's premise, advised what the opening hours were and stated that he would be happy to withdraw his objection if the off licence part of the application was removed.

In response to the objections made, Mr Jones explained that the off licence permission would only be used if a diner wanted to buy a bottle of wine to take home and confirmed that there were no outside areas covered by the licence which could be used by customers.

In summation, Mr Jones reminded Panel Members that the residents who had objected had not attended the hearing and as previously stated, the applicant was happy to work with residents on any concerns they had. He advised that the applicant would control any noise nuisance and was aware of the need to act as a responsible licensee. He assured the Panel that waste would be removed once a day and deposited in a suitable place. Mr Jones did not accept that the objection from Mr Hoyek was not about competition and did not feel that the comments made about the off licence sales were relevant.

The Legal Officer clarified that the applicant would be happy to amend one of the conditions to ensure that off licence sales were restricted to diners only. Mr Gregory then asked Mr Hoyek if this amendment would alleviate his concerns regarding off licence sales. Ms Adkin advised that he still had concerns because the planning permission only allowed the premise to be open until 7.00pm.

At 10.53am 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.

Resolved that

The Panel has considered the application before it, the officer's report, the Council's Licensing Policy and the submissions made on behalf of the Applicant and other parties at today's hearing.

The Panel appreciate that the local residents have expressed concerns about the potential for nuisance to be caused by the grant of this licence. However, they have given weight to the fact that the Council's Environmental Health Department has not objected to the application, subject to the imposition of appropriate conditions. Further, the Panel do not consider that they have been presented with any evidence, either at this hearing or in the written

representations, that has convinced them that that public nuisance would in fact be caused.

The Panel therefore consider that the grant of this licence would not adversely affect any of the four Licensing Objectives and have decided that the application should be approved.

The Panel do consider that it is appropriate to impose the conditions set out at Paragraph 3.5 of the Officer's report, subject to Condition (1) being amended to make it clear that the sale of alcohol for consumption off the premises is also to be restricted to those who have eaten a meal in the restaurant.

Condition (1) is therefore amended to read "*Alcohol is only to be supplied to those persons partaking in, or who have partaken in, a table meal in the restaurant or those waiting to be seated. For the avoidance of doubt, this restriction applies to alcohol sold for consumption either on or off the premises*".

At 11.18am, the applicant, his representative, the interested parties and the Licensing Enforcement Officer were asked to re-enter the room. The Chairman invited the Council's Solicitor to read out the Panel's decision.

The Council's Solicitor advised that any party had the right to appeal the decision within 21 days to the magistrates court.

(The meeting ended at 11.19 am)