

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held at the Town Hall, Royal Leamington Spa, on Wednesday 27 September 2023, at 10.00am.

Present: Councillors Armstrong, Kohler and Sinnott.

Also Present: Lesley Dury (Principal Committee Services Officer); Alaa Cronin (Council's Solicitor); and Emma Morgan (Licensing Enforcement Officer).

1. **Substitutes**

Councillor Sinnott substituted for Councillor Dray.

2. **Appointment of Chairman**

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

3. **Declarations of Interest**

There were no declarations of interest made.

4. **New Mobile Street Trading Consent holder wishes to trade outside of the restrictions set out within Warwick District Council's Street Trading Policy**

The Panel considered a report from Safer Communities, Leisure and Environment for a new application for a Street Trading Consent to trade outside the hours and restrictions set out within the Warwick District Council's Street Trading Policy.

The Chairman asked the Panel and officers present to introduce themselves. The applicant, Mr Arlando Whyte and his spouse, Mrs Sue Whyte, introduced themselves.

The Council's Solicitor read out the procedure for the order in which evidence would be presented.

At the Chairman's request, the Licensing Enforcement Officer introduced the report.

Anyone who exposed goods for sale within the District needed a Street Trading Consent issued by the Council. A Street Trading Consent was issued for 12 months. The Council's Street Trading Consent Policy, attached as Appendix 2 to the report, stated that the Council would generally only permit street trading between 6.00am and 6.00pm. Any trading outside these hours would have to be approved by the Licensing and Regulatory Committee and would be assessed in terms of criteria laid out within the Policy on matters of public safety, public order, the avoidance of public nuisance and local area needs.

Mr Whyte applied for a Street Trading Consent on 10 August 2023 to sell Jamaican street food from a vehicle anywhere within Warwick District. A copy of

the application form along with supporting documents was attached as Appendix 1 to the report.

The Council's Street Trading Consent Policy included general conditions to be applied to Consents, these provided that:

- touring consent holders should not trade from the same location for more than 15 minutes (or until queuing customers had been served) at any one time; and
- there was to be no return to any location within two hours of previous trading.

Mr Whyte had requested to trade between the hours of 12 Noon and 8.00pm which was outside the guideline hours set out in the Policy. Mr Whyte had also requested that the condition in relation to being in the same location for more than 15 minutes was removed from any consent granted.

No objections to the new application had been received from Warwickshire Police, Environmental Health and Warwickshire County Council which were consultees.

In response to questions from Members, the Licensing Enforcement Officer confirmed that:

- this was a brand-new application and no complaints had been received; and
- the Council had a number of street traders who currently traded outside the hours stated in the Policy and some of these did trade to 8.00pm and the 15-minute period had been waived.

Mr Whyte was invited to give a statement. Mr Whyte explained that his business, Nally's Jamaican Street Food, started just after Covid when employment was hard to find. He used to cook in Jamaica and decided to bring his passion for cooking and Jamaican food to the UK. After searching for premises in Whitnash, he realised that there was not enough trade, so he searched other platforms on which to sell his food such as Just Eat. The fees for these platforms were extortionate and he struggled to keep the business viable.

Mr Whyte acquired a gazebo following requests to cater private parties, including wedding receptions. Problems were encountered in the colder months because Jamaican food necessitated several hours of cooking and it was difficult to keep the food warm. After struggling for several months, he decided that the only viable way to continue was to purchase a van. Subsequent to acquiring the van, more business had arrived from private parties; he had also been approached by Lighthorne Village Hall to provide food there. At this point the decision was made to apply to Warwick District Council for Street Trading Consent so that more people could be reached. He pointed to the positive reviews his business was getting.

Mr Whyte explained that the time required to prepare Jamaican food meant that a 15-minute limit was unsuitable. It took several hours of preparation so there was no business case for obtaining many ingredients and then be able to sell just for 15 minutes. This was not the type of business they ran. They therefore needed a licence outside of the Council's policy.

Mr Whyte explained the type of business they currently did. In the winter, Mr Whyte and his wife provided hot beverages and snacks like hot dogs to a youngsters' rugby football club in the morning. Mr Whyte explained that he needed the licence until 8.00pm because he had found that at 7.00pm people would be returning from work and rather than having to leave food for them to collect from other people, he wanted to be able to provide the food directly to his customers.

In terms of public safety, he was not looking to site his van on Parade or any pop-up on streets. He intended to take his food van to events and public houses which approached him to provide food at their premises. He wished to bring Jamaican food to more people, some of whom would never have tried it. This was his sole source of income. He only traded by invitation.

Mrs Whyte informed the Panel that they always cleared up the patch after they finished trading, including mess that had nothing to do with them. The van used gas bain-maries to heat the food up or would be hooked up to a power source from the premises, like village halls to which they had been invited. They did not generally use a generator, because she felt this would be likely to cause a noise nuisance. Music was not provided. Their intention was to gain more business from private events.

In response to questions from the Panel, the applicants explained that:

- They had a five-star food health rating for both the van and the shop.
- When they applied for the licence, they had looked online and the earliest time they could apply to trade from had been 12 noon. But they would like to trade earlier because of the business with the football rugby club which was not their main core business and was on an occasional basis. They would appreciate the licence covering this if the hours could be extended further. They pointed out that people generally would not want Jamaican food before Noon. They asked the Panel if it would extend the start time to 10.00am to cover for hot beverages and snacks like a bacon sandwich.
- They did not hold any other licenses with other Authorities.
- They tended not to trade next to other food premises with fixed locations. This was not a direction they wished to take with their business because it could cause problems with a conflict of interest.

The Licensing Enforcement Officer confirmed that she had found five instances where the Council had issued similar licenses. She confirmed with the applicants that they would be willing for a condition to be imposed that they only traded on private land.

The Chairman confirmed that the applicants had nothing they wished to add.

At 10.35am, the Chairman asked all parties other than the Panel, the Council's Legal Advisor, and the Principal Committee Services Officer to leave the meeting, in order to enable the Panel to deliberate in private and reach its decision. The decision would be communicated in writing via email to the applicant later on the same day, followed by a written notice with a full decision within seven days.

Resolved that Street Trading Consent be granted with the amended operating hours of 10.00am to 8.00pm subject to:

- (1) an additional condition to trade only on private land with the permission from the landowner; and
- (2) a restriction that the Touring Consent holder shall not trade from the same location more than three consecutive days at any one time, with no return to any location within seven days of previous trading.

The Decision:

"The Licensing Panel received a report from Warwick District Council's Licensing Department, in respect of an application from Mr Arlando Whyte for a Street Trading Consent to trade across the District and outside the hours and restrictions set out within Council's Street Trading Policy.

In reaching this decision the Panel considered the written report, the Licensing Officer's presentation of the report and the oral representations made at the meeting by the Applicant and his partner Mrs Whyte. The Panel have also considered the Council's "Street Trading Consent Policy" dated 2016 and the provisions of Schedule 4 Local Government (Miscellaneous Provisions Act) 1982.

The Panel noted the Applicant's representations that they intend to operate as a food vendor across the Council's district at locations such as village halls, Rugby clubs, wedding venues and charity events. Further, that they intend to primarily sell Jamaican food, which often takes several hours to prepare, as such a requirement that they do not trade from the same location for more than 15 minutes (or until queuing customers have been served) at any one time is not suitable for their business.

The Panel also took note of the Applicant's representations that they envisage primarily trading after 12:00 hours, however, that they required flexibility to trade before this time so that they can occasionally cater at events such as morning football practice. Accordingly, with the consent of the Chair, the Applicant amended the times stated on their written application and instead requested that the Panel consider granting a Street Trading Consent that permitted them to trade between 10:00 and 20:00 hours. Moreover, the Panel noted that in response to a question from the Licensing Officer, the Applicant indicated that they would be happy to agree to a condition requiring them to trade only on private land with consent of the landowner.

Though the operating hours requested by the Applicant are outside of the guidance hours as set out in the Council's Street Trading Policy, the Panel considered these reasonable given the nature of the locations that the Applicant intended to trade from. Similarly, the Panel considered that it would be unreasonable to impose the standard condition prohibiting the Applicant from trading from the same location for more than 15 minutes (or until

queuing customers have been served) at any one time and not to return to any location within 2 hours of previous trading. However, as the Application is for a Touring Consent rather than a static pitch, the Panel considered that some restriction is necessary.

Further, the Panel considered that a condition requiring the Applicant to only trade on private land with permission from the landowner would ensure the Applicant would trade only from locations where their presence was desired.

The Panel noted that no objections were received by the Licensing Department from any of those consulted about the application, moreover, that the Council has granted Touring Street Trading Consents to hot food vendors in the past.

Accordingly, the Panel considered that, at the time of their decision, there were no relevant grounds on which to refuse the application.

In the circumstances, the Panel resolved to grant the Street Trading Consent as applied for with the amended operating hours requested at the hearing (10:00 to 20:00 hours) subject to the following additional condition:

- To only trade on private land with permission from the landowner.

Additionally, paragraph 5 of the General Conditions to Street Trading Consents (as set out at Appendix 1 of the Council's Policy) is to apply to this Consent as amended below:

- The Touring Consent holder shall not trade from the same location for more than 3 consecutive days at any one time. There is to be no return to any location within 7 days of previous trading."

A copy of this Record of Decision will be served on all relevant parties.

Under Schedule 4 Local Government (Miscellaneous Provisions) Act 1982 there is no statutory right of appeal against this decision. An aggrieved applicant may apply to the High Court for a judicial review to challenge any errors in the administrative process. Alternatively, applicants have recourse to the Council's complaints procedure.

(The meeting ended at 10.50am)

CHAIRMAN
11 March 2024