

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel meeting held on Thursday 18 June 2015, at the Town Hall, Royal Leamington Spa at 10.00 am.

Present: Councillors Gifford, Mrs Redford and Weed.

Also Present: Peter Dixon (Committee Services Officer), Caroline Gutteridge (Council's Solicitor) and Emma Dudgeon (Licensing Enforcement Officer).

Councillor Gifford substituted for Councillor Mrs Falp and Councillor Weed substituted for Councillor Mann.

The start of the meeting was delayed due to the non-attendance of Councillor Mann. The meeting commenced at 10.30am once a substitute had been found.

1. **Appointment of Chairman**

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

2. **Declarations of Interest**

Councillor Gifford declared a personal interest because he was a director of BID Leamington.

3. **Application for a premises licence under the Licensing Act 2003 for Cosy Club, Regent Court, Leamington Spa**

The Panel considered a report from Community Protection which sought a decision on an application from Loungers Limited for a premises licence.

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

The other parties introduced themselves as Mr Woolcraft, a solicitor representing the applicant. He was accompanied by Mr Collins, the Managing Director of Loungers Limited and Mr Malik, the applicant's Property Manager.

Mr Weber attended to represent the views of Bernadette Smith, a local resident. Sergeant Calver attended to represent Warwickshire Police, an interested party, and Mr Jenkins represented Warwick District Council Environmental Health, the other interested party.

The Council's Solicitor explained the procedure that the hearing would follow.

The Licensing Enforcement Officer checked that everybody present had received the same additional documents, then 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 and, if so, whether the licence should be subject to any conditions.

The application was for a licence to permit the licensable activities as per the table below:

	Supply of alcohol for consumption on the premises	Late night refreshment	Opening Hours
Every day	10:00 to 23:15	23:00 to 23:30	08:00 to 23:30

An operating schedule was submitted by the applicant and would form part of any licence issued. The full operating schedule was detailed in the report.

Representations had been received from Warwickshire Police, Warwick District Council Environmental Health and a local resident.

The applicant had accepted twelve conditions put forward by Warwickshire Police, detailed in the report, and the first two conditions detailed in Appendix 1.

Members noted that there were currently no licensable activities taking place at the premises.

Mr Woolcraft presented his case, reiterating that the applicant had accepted a number of conditions, however, the applicant could not accept conditions requiring alcohol to be served at tables by serving staff at all times or that alcohol could only be served to those people partaking in meals or waiting to have a meal. This was because the business needed to be flexible in its service delivery to ensure it remained viable.

He explained that the applicant ran both the Lounge and Cosy Club brands. They had a list of accolades and awards, both locally and nationally, and these awards pertained to restaurants. They had been running since 2002 and there had been no bad reviews or significant issues, so they had a proven track record as good managers of restaurants. They had resident accommodation in Taunton immediately above a restaurant and received no complaints.

Cosy Club had a distinctive style and décor as shown in paperwork. The pictures shown were typical of style and layout. The aim was for theatrical and homely feel with informality which was why they wanted a degree of flexibility in the licence. Without that they could not go ahead.

Mr Woolcraft advised that Cosy Club was the more upmarket of the two brands and would be different to what was already at the location. While Turtle Bay and the other businesses operated similar business models, they did not have a dedicated dining area unlike the proposed premise and there would be no drinks promotions after 7pm. He stated that Turtle Bay aimed for a youthful market with a late night promotion too but Cosy Club would not do that.

The Panel were advised that, as a brand and organisation, they had faced similar concerns in Truro. But he explained that they did not generate those kinds of problems, to the extent that in Truro they had recently been granted an extension of hours. Turtle Bay's demographic was different to their own, which was much more mature. £750,000 of investment would be made.

The Environmental Health officer's first condition related to drinks promotion. As an alternative, the applicant suggested no drinks promotions after 7pm.

The other issue raised by Environmental Health was the timing of door closure. It had been suggested that all doors should remain closed after 9pm which the applicant would be happy with rather than 7.30 pm.

In respect of the effect on the Cumulative Impact Zone, the premises would only operate until 11pm. Experience and the applicant's market was that people came to the premises as a destination rather than a warm up before they moved on elsewhere.

The applicant would be unable to operate with a full restaurant condition, so had tried to find conditions that would reassure the Panel, including the requirement for alcohol only to be sold when providing substantial meals throughout the day, ensuring waiter and waitress service was available but not mandatory, and also a dedicated area for full table meals after 7.00pm as shown on the plan. In the area shaded green, alcohol sales were only shown as ancillary to meals served at tables. The areas shaded in blue were areas of flexibility but would have soft seating for no less than 40 people. Mr Woolcraft explained that Cody Club needed this area because it gave a degree of flexibility about how the premises would operate, but it was fundamentally a shop window which enticed people in. It also gave a degree of flexibility when the restaurant was full, when the kitchen was at full capacity and provided potential customers the opportunity to come in and have a drink while browsing the menu and deciding whether or not to eat. He also felt that some people would eat and then retire to the soft area.

He concluded that in his view the premises, with its distinctive patrons, would not further impact on the Cumulative Impact Zone.

In responding to questions, from the Panel and other parties present, he explained that:

- The patrons of the premises were not students but a more mature market due to its culture and pricing;
- During the day, snacks and hot drinks would be available;
- The premises operated an all-day format of brunch all day, rather than a lunch or breakfast menu, this was complimented with lighter dishes with a view to attracting small groups of people (informal meetings) to the premises;
- The addition of a requirement of waiter services would provide a formality which was not in keeping with the aim of the premises, the conditions would also make it harder to get the staffing levels right and still provide the correct level of customer service;
- The fire risk assessment for the premises, had not yet been completed but it was not considered that a great number of people would be stood at the bar;
- There would be no formal policy in place to control vertical drinking, but this would be naturally limited by the pricing of the premises and its layout.
- The grey shaded area on the plan was a circulation area to enable patrons and staff to move between areas, which would be ok because there were no chairs at the bar to encourage people to be in this area;
- The applicant had agreed to a condition to manage the grey shaded area and would be willing to help agree suitable wording for this;
- Patrons could be served at either the bar or by staff passing their table;
- No figures were held on the percentage of alcohol sales after 7.00pm;
- There would be limited drinks promotions during quieter periods in the day to try to increase trade, but they would be willing to have an appropriate condition so that there were no drinks promotions;

At the request of the Chairman, Sargent Calver outlined the objection on behalf of Warwickshire Police. He reminded the Panel that each application should be considered on its individual merits and that the nearby premises of Turtle Bay had a 70-30 split, while Cosy Club would be 60-40. The Police had objected due to the high level of crime and disorder in this area and the applicant had provided insufficient evidence that there would be no effect of this premises on the Cumulative Impact Zone. The main concern was regarding the effect of another bar and a lack of agreement on conditions relating to this. There were a large number of bars in this area already and Cosy Club was not solely a restaurant. For this reason Warwickshire Police considered that, if granted, this licence would impact on the Cumulative Impact Zone and the associated problems that already existed in this area.

Warwickshire Police welcomed that the applicant had accepted all the proposed conditions as outlined in their objection, except 1 and 2 but were concerned that the proposed alternatives were ambiguous and unenforceable.

In responding to questions, from the Panel and the applicant, Sargent Calver explained that:

- The Police did not feel the application was for a restaurant but a bar, which would have a greater impact on the Cumulative Impact Zone because the sale of alcohol was not as controlled within a bar setting;
- There had not been discussions to consider putting an operating time on the proposed condition 2; and
- The Police's concerns related primarily to later in the evening rather than during the day.

At the request of the Chairman, Mr Jenkins outlined the objection from Environmental Health. He explained that the applicant had been unwilling to accept the proposed restaurant conditions, unlike a number of similar premises in this area. These conditions were intended to reduce the operation of the premises as a bar and therefore minimise any further impact on the Cumulative Impact Zone.

He offered the opinion that the applicant had not provided adequate evidence that it would not have an impact on Regent Court. The design of Regent Court caused a canyon effect for noise emanating from premises and with no noise from traffic this noise would be more noticeable. There had been a significant number of complaints last year from residents in this area regarding licensed premises. There was an intention to attract families to this area and any premises operating as a bar would negate this.

For these reasons, he asked that, if the Panel were minded to grant the licence, they affix the conditions as recommended by Warwickshire Police.

The Chairman asked Mr Weber to make his representation to the Panel on behalf of Ms Smith who lived above the premises. He explained that the primary concern was the use of the premises as a bar compared to a restaurant. While there were restrictions in place for outside use for drinking, smoking outside was a problem later in the evening which was hard to control. He explained that ideally the Panel would impose conditions not permitting people outside after 9.00pm and ensuring doors and windows remained closed after this time.

He also highlighted that the emerging Local Plan identified Regent Court as a potential for A3 use (Family Restaurants) and not A4 use. Any move towards A4 use would potentially undermine the emerging Local Plan.

Mr Woolcroft, at the request of the Chairman, summed up explaining that all the other premises within the Cosy Club brand operated as A3 and not A4 use and he recognised the concerns related to patrons drinking and causing problems. However, he drew a comparison with Turtle Bay in that they did not have such obligations placed on them, yet the style of operation was the same. Indeed Turtle Bay also offered drinks promotions to customers later in the evening, whereas Cosy Club had agreed to have no drinks promotions at all. He also highlighted that the enforceable conditions that had been agreed would, in his opinion, mitigate against any potential impact from the premises.

At 11.58 am the Chairman 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.

In reaching their decision the Members of the Licensing Panel considered all of the evidence provided by the Applicant, the Responsible Authorities and the Interested parties that was provided both in advance and during the hearing.

The Panel also had regard to the statutory guidance under s182 of the Licensing Act 2003 and the Warwick District Council statement of Licensing Policy.

The Panel had to consider the application in the light of the licensing objectives. The two objectives that were particularly engaged were the prevention of crime and disorder and the prevention of public nuisance.

The Panel made the following findings in this case:

1. The premises were situated in the Leamington Spa Cumulative Impact Zone and it was for the Applicant to demonstrate that the grant of the licence would not impact on the licensing objectives.
2. The premises were situated on Livery Street within Regent Court. The evidence provided by the Environmental Health Officer was accepted and the Panel noted that the area was noise sensitive due to its design, the level of background noise and proximity of single aspect residential dwellings.
3. Premises that operated as a bar rather than solely as a restaurant were likely to cause significantly more noise from customers and were more likely to draw in larger groups of people with more people smoking outside or leaving in an intoxicated state.
4. The Applicant was an experienced and successful restaurant operator with 65 other licensed venues and had not experienced issues at any other sites and that these include premises in close proximity to residential accommodation.
5. The Police, Environmental Health and the Interested Party (a local resident) had not objected to the premises operating as a restaurant providing suitable conditions were put in place to prevent crime and disorder and public nuisance.
6. The conditions proposed that had been not agreed by the Applicant were;
 - Alcohol to be table served by waiter or waitress service at all times
 - Alcohol only to be supplied to those persons partaking of a table meal or those waiting to be seated.

The Applicant explained during the hearing that the premises operated as a restaurant but they required the flexibility to have more relaxed seating in parts of the premises, for alcohol to be served separately to a meal and for patrons to order drinks at the bar.

7. During the hearing the Police, Environmental Health and the Interested Party conceded that they would be content for the disputed conditions to be amended to apply from 19:00 hours on the grounds that problems with nuisance, crime and disorder mainly occurred in the evening.
8. During the hearing, the Applicant agreed not to hold any alcoholic drinks promotions at the premises at any time.
9. The operation and issues caused by other premises in the vicinity were discussed at the hearing, however, the Panel was mindful of the fact that this application must be considered on its individual merits.

Therefore it was

Resolved that the application be granted with the following conditions:

Operating Schedule Conditions

1. The conditions as set out in the operating schedule submitted by the Applicant, with the exception of the condition that requires the external seating area to be cleared of customers by 21:00 hours. This condition will be deleted and replaced by condition 17 below;

Conditions requested by Warwickshire Police and agreed by the Applicant:

2. CCTV to be installed to the current British Standard BS7958. This consists of
 - Cameras shall cover all public areas
 - Head and facial recognition coverage
 - Recordable and retained for a minimum of 31 days
 - Images will record in real time, ideally 25 frames per second but a minimum of 12 frames per second.
 - CCTV images to be made available to Police or the Local Authority upon reasonable request.
 - Signed off by Warwickshire Police Architectural Liaison Officer;
3. All staff training records to be maintained and made available for inspection on reasonable request from a Responsible Authority;
4. Staff to be trained in drink and drugs awareness;
5. DPS to make on-going professional risk assessments as to whether to employ door supervisors at any time;
6. Premises to join the locally approved retail radio scheme and conform to its policies and procedures;

7. No open vessels to be taken outside the curtilage of the premises at any time;
8. Any outside areas to be demarked by physical barriers or similar with clear signs displayed to instruct patrons that vessels must not be taken outside the said area;
9. Challenge 25 scheme to be adopted and enforced;
10. Refusals book/register to be maintained and made available for inspection on a reasonable request from Responsible Authority;
11. All staff to be trained in age verification policies and procedures;
12. No persons under the age of 18 years will be allowed in the premises after 21:00 hours unless accompanied by a responsible adult of 18 years and above and with the express permission and knowledge of the DPS or someone acting under their authority;

Additional Conditions imposed by the Licensing Panel

13. After 19:00 hours alcohol will only be served by waiter or waitress service;
14. After 19:00 hours alcohol will only be supplied ancillary to a table meal or to those waiting to be seated;
15. Alcohol will only be supplied for consumption in the green and blue areas as shown on the Applicants plan (see attached). These areas will be clearly defined and identifiable. No alcohol is to be consumed in the grey area;
16. There shall be no alcoholic drinks promotions at any time;
17. The use of outside areas and all outside activity must cease and be cleared of patrons by 19:30 hours;
18. Doors and windows are to kept closed after 19:30 except for access and egress;
19. No speakers for amplification of music to be placed outside of the premises;
20. External dining furniture shall remain outside overnight;
21. No regulated entertainment shall take place at the premises;

In imposing these conditions the Panel have carefully considered all of the issues raised by the parties. They are particularly concerned by the location of the premises and the potential for it to cause nuisance to local residents. The Panel believe that if the premises were to operate partly as a bar into the evening then it would be likely that public nuisance and crime and disorder would increase.

The Applicant has not satisfied the Panel that the grant of the licence in accordance with the application would not impact on the licensing objectives. The possibility of customers attending the premises simply to drink is a significant concern in this noise sensitive location and therefore the Panel have decided to follow the representations made by the Police and Environmental Health and impose conditions that limit the supply of alcohol to restaurant customers and require table service.

The Panel have also considered the proposed layout of the premises and have given particular consideration to the condition suggested by the Applicant which would restrict the supply of alcohol in the area shaded green where it was ancillary to a table meal and to provide seating in the blue area. The Panel do not feel that this would be sufficient as there would still be a large area of the premises outside of the green area that could operate as a bar. The Panel also noted that the grey "circulation area" shown on the plan was large and had the potential to be used for vertical drinking. It was noted that the Applicant stated during the hearing that it was not intended that this area would be used by customers who were drinking and the Panel therefore decided it was appropriate and in accordance with the licensing objectives to restrict the consumption of alcohol to the green and blue areas shown on the Plan.

At 12.55 pm all parties were invited back into the room, at which time the Council's Solicitor read out the Panel's decision.

All parties were advised that they had the right to appeal the decision to the Magistrates Court within 21 days of the formal decision being published.

(The meeting ended at 12.58 pm)