

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held remotely, on Tuesday 26 January 2021, at 2.00pm.

Present: Councillors Evans, Grey and Illingworth.

Also Present: Mr Edwards (Committee Services Officer), Mrs Tuckwell (Civic & Committee Services Manager – observing only), Mrs Gutteridge (Council’s Solicitor), and Mrs Dudgeon (Licensing Enforcement Officer).

1. **Appointment of Chairman**

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

2. **Declarations of Interest**

There were no declarations of interest made.

3. **Application for a Premises Licence under the Licensing Act 2003**

The Panel considered a report from Health and Community Protection which asked Members to decide whether the premises licence application for Robins Cellar, 2 Victoria Street, Royal Leamington Spa should be granted and, if so, whether the licence should be subject to any additional conditions. Representations had been received in relation to this application for the consideration of the panel in the determination of the application.

Details of the procedure adopted by the Licensing and Regulatory Committee for Panel Hearings were supplied to the applicant and those making representations.

Mr Sandeep Panaich and Mr Kamaljit Dhesi applied for a new premises licence at Robins Cellar, 2 Victoria Terrace, Leamington Spa on 3 December 2020.

The licensable hours and activity applied by the applicants were:

Opening Hours of the premises:

Monday to Sunday from 12:00 to 04:00

Supply of Alcohol for Consumption on the Premises:

Monday to Sunday from 12:00 to 03:00

Live Music (Indoors Only):

Sunday to Wednesday from 12:00 to 23:00.

Thursday from 12:00 to 00:00.

Friday and Saturday from 12:00 to 01:00.

Recorded Music (Indoors Only):

Sunday to Wednesday from 12:00 until 23:00.

Thursday from 12:00 until 01:00.

Friday and Saturday from 12:00 until 03:00.

An operating schedule, which had been submitted by the applicants and would form part of any licence issued was attached as appendix 1 to the report.

The applicants had agreed conditions with Warwickshire County Council Safeguarding and Trading Standards, which were attached as appendix 2 to the report. Its objections were subsequently withdrawn.

The Licensing Department received objections from the following responsible authorities:

- Warwickshire Police; and
- Environmental Health

Their objections were attached as appendices 3 and 4 to the report.

The applicants had agreed to the conditions put forward by Warwickshire Police but did not wish to amend the hours the premises were open.

No representations have been received from:

- Fire Authority;
- the Licensing Authority;
- Enforcement Agency for Health and Safety;
- Authority Responsible for Planning;
- Authority Responsible for the Protection of Children; and
- National Health Service/Public Health.

A plan of the premises was attached as appendix 5 to the report. A map of the area was attached as appendix 6 to the report, alongside current photos of the premises, and a copy of the Statement of Licensing Policy was attached as appendix 7 to the report.

Following the publication of the agenda, two further appendices were circulated which provided an address list for the apartments above Robbins Well/Robins Cellar, provided by Environmental Health and which the Senior Environmental Health Officer intended to refer to in his

representation, to highlight the impact of the application on the residents in the flat above the premises.

An addendum circulated prior to the meeting informed Members that ongoing discussions had taken place between the applicant, Warwickshire Police and Environmental Health, and the applicant had agreed to accept the amended opening hours set out by Warwickshire Police. These opening hours were set out in appendix 3 to the report.

The applicant had also agreed to amend the hours of live music to cease at 23:00 as requested by Environmental Health and recorded music to cease at the same time as the sale of alcohol.

Environmental Health had agreed to withdraw its representation if the following were amended:

- Opening Hours of the premises - Monday to Sunday 12:00 to 00:30; and
- No entry / re-entry after midnight.

The Chairman asked Members of the Panel to introduce themselves. The other parties then introduced themselves as:

- Mr Gregory, the applicant's Solicitor;
- Mr Panaich, the applicant;
- Mr Lawson, Senior Environmental Health Officer (Warwick District Council); and
- Sgt Calver, Warwickshire Police.

The Council's Solicitor announced the procedure for the meeting. At the Chairman's request, the Licensing Enforcement Officer introduced the report. She also advised Members that since the publication of the report, the applicant had accepted the amended hours that were put forward by Warwickshire Police, therefore Sgt Calver from Warwickshire Police attended the meeting to withdraw their representation.

Sgt Calver informed Members that Warwickshire Police had withdrawn their representation.

The Chair confirmed with the applicant and the applicant's Solicitor that they were both aware that Warwickshire Police had withdrawn their representation.

When given the opportunity by the Chairman to make his representation, Mr Gregory, advised that:

- Mr Panaich had agreed the hours set out in the addendum and the conditions set out by Warwickshire Police, and this represented a significant reduction in the hours initially applied for, demonstrating Mr Panaich's willingness to address the concerns of responsible authorities;

- the whole building already benefitted from a premises licence, which was slightly unusual, and the reduced hours agreed with Warwickshire Police were in accordance with that existing licence;
- the existing licence was unaffected by the outcome of this application, with the basement bar effectively able to open if not for restrictions in place because of Covid-19. That being the case, it was a surprise that all representation was not withdrawn, but the representation from Environmental Health remained;
- Mr Panaich had made the application as he thought the extension of hours made "matters neater", should the business wish to open or let it separately from the rest of the building;
- although the operating schedule stated that recorded music would stop at 11pm, Mr Panaich asked that this was changed to stop at the same time as the sale of alcohol ended each of day of the week, which reflected the usual position in relation to these types of licenses, and also accorded with the Police representation;
- the building comprised of three floors, with planning permission for apartments on the top floor, which were not yet occupied. The whole building was in the control of the applicant and it was the basement and ground floor for which the licence was sought;
- the applicants were experienced operators of licensed premises, and had run pubs for over 10 years;
- the representation by Warwickshire Police was withdrawn, there had been no representations from members of the public, and the only representation was from Environmental Health which related to the prevention of public nuisance;
- Environmental Health was asking that the premises shut considerably earlier than the existing licence, which was surprising as the baseline, against which the effects of the licence application needed to be assessed, was that the whole building could operate with the hours agreed with Warwickshire Police. It was therefore difficult to see how this application could cause additional public nuisance over and above what was already permitted;
- the commercial reality was that the applicants were unlikely to operate the cellar bar under a licence that made them close earlier than the licence they already had;
- in response to email correspondence between Mr Gregory and the Senior Environmental Health officer, the applicants did not wish to open until 4:00am, which would negate the concern Environmental Health had relating to the lack of background noise at that time of night, which might amplify noise nuisance. Rather, the premises would open until 2:30am on Friday and Saturday, which would be a far from silent part of the night;
- the existing use of the colonnade for smoking had to stop at 11pm under the existing licence, so there was no designated smoking area after 11pm. The grant of this application would not worsen the position in this respect;
- smoking in the colonnade would possibly have a far greater impact on residents than smoking in the street, and there had been no representations from local residents or other evidence to support the view of Environmental Health that this would pose a difficulty. In fact, the new application proposed an additional exit from the

- building, with no corresponding increase in the overall capacity, a logical consequence of which would be a dilution of people smoking/queueing and splitting themselves between two areas, rather than being concentrated into one place. The effect of people leaving the premises needed to be assessed in the context of the premises being in a primarily non-residential town centre location;
- if the town centre was to enjoy any kind of night-time activity, some degree of late-night activity had to be encouraged/accepted, particularly as hospitality sought to recover from the Covid-19 pandemic;
 - the residential units above the premises were entirely controlled by the owner, so commercially it would be odd to create units above that they could not then occupy due to noise from the bar. Although the ownership of the building could change, the planning permission was granted against the background of the existing licence for the whole building, in line with the hours sought in this application;
 - when Planning permission was granted, it was the view of Environmental Health, and the Council, that the residential units could co-exist with the rest of the building being licensed;
 - the position of Environmental Health now was at odds with this, in that it required the basement bar to close earlier than the existing pub, albeit the basement would have clearly less effect on the residential units above;
 - whilst Planning and Licensing were separate statutory regimes, there was a general need for consistency in public law decision making, and this approach seemed to lack that consistency;
 - in terms of provisions in place, no open vessels were to be taken outside, no re-entry after 1am, as agreed with Warwickshire Police, no off-licence sales after 11pm, and there would be door supervision every Friday and Saturday after 9pm until the premises were empty;
 - there was also a condition that would be attached relating to a dispersal policy which would be in place, to be approved by the Council and reviewed every 12 months. This was highly relevant to the concerns of Environmental Health about noise being caused by those leaving the premises;
 - there would be clear and legible signs reminding patrons to leave the premises quietly, and a zero-tolerance policy on anti-social behaviour; and
 - due to the agreement with Warwickshire Police, unusually, as the application was for part of the premises which was already licensed for the same hours as this application sought, it was difficult to understand how the licensing objectives could be undermined by the grant of a separate licence for the basement, which was on the same terms as a licence which already existed.

In response to a query from the Council's Solicitor, the Licensing Enforcement Officer clarified that the email correspondence between Mr Gregory and Mr Lawson, which Mr Gregory referred to in his opening submission, had not been circulated as part of the bundle of papers for the meeting, due to the volume of correspondence between the two parties; rather that comments had been summarised in the addendum. The

Council's Solicitor felt that the information contained within these emails was relevant information for the Panel to consider. Mr Lawson clarified that the email correspondence was negotiations back and forth and were part of a chain of documents of negotiations resulting in some common ground, which he would explain further as part of his submission. Mr Gregory concurred, and explained that unless there was any substantive dispute between himself and Mr Lawson, Mr Lawson would explain the common ground and where they differed during his representation, in which case the email did not need to be seen. The Chair then confirmed with the Council's Solicitor and Mr Gregory that they were content to proceed.

In answer to questions from Members, Mr Gregory and Mr Panaich explained that:

- the current licence was in existence and was held by the same licence holder as this application;
- the opening hours applied for were the same as the existing licence; and
- the normal position for a premise was that recorded music stopped when alcohol sales stopped each night, and this was the applicant's intention.

The Licensing Enforcement Officer advised Members that there had been an agreement outside the conditions that the colonnade would not be used for smoking; whilst the applicant had agreed to this, as there was no condition there was nothing to stop it being used, apart from the licence that currently existed.

In further answers to questions from Members, Mr Gregory and Mr Panaich advised that:

- the colonnade was privately owned by Mr Panaich;
- there was a condition on the existing licence that the colonnade must be cleared by 11pm, and a natural consequence of this would be that smoking would not take place there after 11pm. In this application, the colonnade did not form part of the licensed premises so was not relevant and did not need to be conditioned as it was covered by the existing licence;
- the cellar did not have windows; and
- currently none of the residential units were occupied.

In response to questions from the Senior Environmental Health Officer, Mr Gregory and Mr Panaich advised that:

- there was only one entrance to the cellar bar, with three fire exits that were not normally available for non-emergency use.
- there was no exit onto the colonnade for smoking from the basement bar, so the colonnade would not be used for patrons of the basement bar; and
- there was a condition in the application relating to no re-entry, but it was not for the applicants to control what happens outside on the

pavement. This would have to be judged against the fallback position which was that there was an existing licence under which people could come out of the pub to smoke after 11pm but could not use the colonnade.

When given the opportunity by the Chairman to make his representation, the Senior Environmental Health Officer advised that:

- there was an existing licence in respect of Robbins Well, which comprised of the ground floor and cellar of the premises;
- when the licence was granted for Robbins Well it also included the colonnade;
- the photo at appendix 6 to the report, showed the colonnade was currently boxed in by builders who were converting the apartments above, some of which were addressed off Victoria Colonnade, and some addressed off Victoria Terrace, close to the entrance door to the cellar;
- Environmental Health accepted that the noise from recorded music was unlikely to be heard as far as the first floor flat and would therefore not cause a problem, but noise from live music was slightly different, and not as easy to control. However, there had been an agreement that live music would cease at 11pm;
- Environmental Health had asked questions of the applicants relating to noise from late night refreshments, but there was no plan to offer hot food at night and so there would be no problem with ventilation from kitchen/cooking systems;
- the remaining issue that Environmental Health raised was noise and disturbance to the flats above when people came outside at night, particularly where groups stood outside to smoke. They were concerned the colonnade could become a default smoking area;
- the applicant had explained the colonnade was not part of the current application, so they did not necessarily have control of the colonnade, save for the fact that it was owned by them;
- Environmental Health was looking for a package of measures to avoid patrons coming outside to smoke during early hours, where noise could carry at such a quiet time of night, and avoid the residents of the flat above having to push past or force past people who came out of the cellar bar to smoke;
- Environmental Health suggested a controlled smoking area on Victoria Colonnade with barriers and supervision of smokers by the door staff; and
- the applicant did not wish to use the colonnade for that purpose which is why Environmental Health arrived at the position that if there could not be a controlled smoking area, perhaps the premises ought to close earlier rather than have an uncontrolled smoking area under the colonnade which might cause noise nuisance to people.

The applicant's Solicitor, Mr Gregory, offered a point of clarification in response in relation to a controlled or uncontrolled smoking area on the colonnade; the colonnade was effectively irrelevant for the purposes of this application. Any difficulties of people pushing past other people on the

colonnade would not relate to this licence because people from the basement bar would not be using the colonnade to smoke. This would have been the position at the point of the planning application for the residential units, when Environmental Health agreed that the application should be approved because of insulation.

In response to a question from the applicant's solicitor, Mr Gregory, the Senior Environmental Health officer explained that:

- the bar and the residential units could co-exist, and he was not making the argument that the bar should not have a licence, rather that it could exist better if there were a package of conditions;
- there was discussion during the planning application for the residential units about sound insulation between the ground and first floor, with a view to making sure noise of music/entertainment did not find its way up through the building. However, Environmental Health's representation was looking at the noise from smokers, particularly during the summer when people could open their windows to ventilate and then become aware of people below; and
- Environmental Health were trying to suggest a reasonable time for the outside areas to be vacated and come up with something agreeable to the Panel.

In answer to a question from the Chairman, Mr Gregory advised that:

- the request by Warwickshire Police that there should be no re-entry after 1am was accepted by the applicant;
- in relation to Environmental Health's suggestion that there should be no re-entry after 12am, that there had to be a balance struck between the business functioning viably, without unnecessary restrictions imposed and the needs of local residents;
- the premises were in a town centre location and if any night time economy was wanted there, there would need to be some tolerance of activity late in the evening; and
- 2:30am was not considered late for a town centre bar, and the idea of no re-entry after 12am was too early.

Mr Panaich stated that he had already reduced the closing time from 4am to 2:30am, in line with the suggestions of Warwickshire Police. The flat upstairs was owned and rented out by the applicants, so it would not be in their interests to allow noise from the premises to disturb their own residents.

In his closing statement, the Senior Environmental Health Officer advised that:

- Environmental Health was not opposing the licence per se, but its concern did rest on controlling people smoking outside; and
- he recognised there was and would continue to be a licensed premises, but his concern was how it was managed and how it would prevent a nuisance to the people in the flats above.

In his closing statement, Mr Gregory advised that:

- he recognised Mr Lawson had generously conceded he was not against the licence, rather he had concerns about the residual issues about people smoking on the pavement and entering the premises late at night;
- there was a balance to be struck, and he felt the applicants had gone far enough to strike that balance fairly;
- Members did not have evidence before them on which to base granting a licence that was any more restrictive than the one that already existed for the building, particularly when the basement area was further away from the proposed residential units, which did obtain planning permission against the background of the existing licence;
- as there was already an existing licence, the fall-back position would not be that there would be no licence for the premises;
- the premises had a proven track record, and had been open for several years;
- no evidence of concern or complaints about its operation had been brought to the meeting, nor had there been any representations from members of the public or nearby businesses;
- Warwickshire Police was content with the grant of the licence;
- sometimes in these matters, it was felt a compromise of additional/appropriate conditions to satisfy all parties was necessary, however the application had already been significantly reduced in scope and numerous conditions imposed;
- in the current climate it was important that business in general, particularly the hospitality sector, was not subject to arbitrary or overly bureaucratic restrictions, and the viability of these premises should not be jeopardised by restrictions that were imposed on speculation rather than evidence;
- if there were concerns about the premises, there was the protection/comfort for Environmental Health or public residents to apply for a review of the licence in the future if they felt it caused nuisance;
- the premises were a town centre business that could play a key part of the economic recovery of Royal Leamington Spa, and if the town wished to have a night-time economy, then some late-night activity should be accepted and actively encouraged; and
- the application struck a good balance between the interests of the police and the people working and living in the vicinity.

At 3:16pm, the Chairman reminded those present of the procedure: the remote meeting would be ended by the Committee Services Officer; a separate meeting would be arranged with the Members of the Panel, the Council's Solicitor and the Committee Services Officer; the decision would be communicated in writing via email to the applicant and interested parties later on the same day, followed by a written notice with a full decision within seven days.

Resolved that the application be granted.

At a public hearing on 26 January 2021 Warwick District Council's Licensing Panel considered an application made under the Licensing Act 2003 by Mr Sandeep Panaich and Mr Kamaljit Dhesi ("the Applicants") in respect of premises at Robins Cellar, 2 Victoria Terrace, Leamington Spa. The application was for the use of the premises for the licensable activities as set out in paragraph 3.5 of the Licensing Officer's report ("the Report").

An objection from Warwickshire County Council Safeguarding and Trading Standards was withdrawn following the Applicant's agreement to conditions as detailed at Appendix 2 of the Report.

PS Paul Calver attended the hearing on behalf of Warwickshire Police who had submitted an objection to the application. PS Calver advised the Licensing Panel that the Applicant had agreed to the amended opening hours, hours when licensable activities would take place and conditions as set out in Appendix 3 of the Report and the police objection was therefore withdrawn.

The Applicant had also agreed to limit the playing of live music to 23:00 hours and the playing of recorded music to the same time as the sale of alcohol.

Mr Peter Lawson, Senior Environmental Health Officer attended the Panel on behalf of Environmental Health and confirmed that whilst discussions between the Applicant and Environmental Health had taken place the objection from Environmental Health remained as they were of the view that opening hours should be restricted to 12:00 - 00:30 hours from Monday to Sunday and a condition imposed restricting entry/no re-entry after midnight.

The Panel heard from Mr John Gregory of Wright Hassall Solicitors on behalf of the Applicants and Mr Panaich also attended the hearing. Mr Gregory explained that Robins Cellar already benefited from a premises licence on the same terms as those detailed at Appendix 3 of the report but this covered a larger area of the building and not just Robins Cellar. Mr Gregory further explained that the (as yet unoccupied) residential properties above the premises had been granted planning permission, with appropriate conditions relating to noise insulation, in the context of licensed premises

already being in existence on the lower floors. It was established that the existing premises licence did not permit customers on the outdoor colonnade after 23:00 hours but that the colonnade was not accessible via Robins Cellar and therefore it had no relevance to this application.

Mr Lawson addressed the hearing and explained that Environmental Health accepted that there was already a premises licence in existence and that the licensed premises and the residential premises would need to co-exist. Mr Lawson confirmed that his concerns related to the potential for disturbance to be caused to residents in the flats above by customers coming and going and smoking outside of the premises noting that the entrances to some of the residences were close to the bar entrance with windows directly above. Mr Lawson explained that it was for this reason that Environmental Health were of the view that a terminal hour of 00:30 would be appropriate together with a condition prohibiting entry or re-entry after midnight.

In making their decision the Panel considered all of the information provided in advance of, and at, the hearing and the statutory guidance and the Council's Statement of Licensing Policy.

The Panel considered that the potential impact on the licensing objectives and in particular public nuisance. The Panel noted there had been no objections from members of the public and the only remaining objection from the Responsible Authorities was from Environmental Health. The Panel did note that the both residential accommodation and the licensed premises was currently under the control of the Applicants but made their decision on the basis that this may not always be the case. The Panel determined that, in view of the existing licence, it would not be appropriate to restrict the opening hours to 12:00 - 00:30; the Applicants would simply be able to operate under the existing licence and there was no evidence put before them to suggest that the existing licence had caused issues or complaints relating to public nuisance. The Panel were aware that the residential properties post-dated the issue of the existing premises licence but it was noted that planning permission had been granted in the full knowledge that licensed premises were already in situ.

The Panel carefully considered whether to impose a no entry/re-entry condition after midnight as requested by Environmental Health. The Panel are aware that it is difficult to achieve the right balance between the operation of licensed premises and the need to protect nuisance to residents, particularly in a town centre location and fully acknowledged Mr Lawson's expertise in this area. The Panel did however take into account the fact that the later no entry/re-entry time agreed by the Police of 01:00 would only be relevant on Thursday, Friday and Saturday nights when the premises would be able to open to 01:30/02:30 hours, door supervisors would be present on Friday and Saturdays from 21:00 until close and that the entrance was on a busy town centre thoroughfare where a level of background noise would be expected. On balance the Panel felt that preventing entry or re-entry after midnight with a terminal hour of 02:30 was not proportionate or required to prevent public nuisance.

The Panel therefore determined to grant the application for a premises licence at Robins Cellar for the hours as set out below and subject to conditions in accordance with the operating schedule at Appendix 1 of the Report, the conditions agreed by Warwickshire County Council Safeguarding and Trading Standards at Appendix 2 of the Report and the conditions agreed by Warwickshire Police at Appendix 3 of the Report:-

Opening Hours of the premises:

Sunday to Wednesday from 12:00 to 00:30.

Thursday from 12:00 to 01:30.

Friday and Saturday from 11:00 to 02:30.

Supply of Alcohol for Consumption on the Premises:

Sunday to Wednesday from 12:00 to 00:00.

Thursday from 12:00 to 01:00.

Friday and Saturday from 11:00 to 02:00

Live Music (Indoors Only):

Monday to Sunday from 12:00 until 23:00.

Recorded Music (Indoors Only)

Sunday to Wednesday from 12:00 to 00:00.

Thursday from 12:00 to 01:00.

Friday and Saturday from 11:00 to 02:00.

(The meeting ended at 10.38am)

CHAIRMAN
13 April 2021