

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held remotely, on Tuesday 25 August 2020, at 10.00am.

Present: Councillors C Gifford, Heath and Leigh-Hunt.

Also Present: Mrs Dury (Principal Committee Services Officer), Mrs Dudgeon (Licensing Enforcement Officer), and Mrs Amphlett (Council's Solicitor).

1. **Apologies and Substitutes**

There were no apologies for absence made.

2. **Appointment of Chairman**

Resolved that Councillor Leigh-Hunt be appointed as Chairman for the hearing.

3. **Declarations of Interest**

There were no declarations of interest made.

4. **Application for a Premises Licence under the Licensing Act 2003 for Deli on the Hill, 36 Castle Hill, Kenilworth**

The Panel considered a report from Health and Community Protection which sought a decision on an application for a new premises licence for Deli on the Hill, 36 Castle Hill, Kenilworth.

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

- Mr D and Mrs L Taylor, the applicants;
- Mr G Marsh, Chairman, Little Virginia Management Limited;
- Mr S Bowen, a local resident; and
- Mr S Toor, who lived next door to the Deli and whose property had a shared party wall.

The Council's Solicitor explained the procedure for the hearing and informed those present that the Panel would endeavour to make a final determination that day, which would be circulated to the applicant via email. A summary of the decision would be published on the Council's website and written copies of the decision would subsequently be posted to all those who had made representations in relation to the application. She further explained that at the end of the hearing, the Panel would consider its decision, during which time all parties would be asked to leave the meeting and a new meeting would be created for Members, herself and the Committee Services Officer. Her role was only to provide legal

advice, and not to make any recommendations as to the determination to be given.

The Licensing Enforcement 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 additional conditions.

Mr Taylor applied for a new premises licence for Deli on the Hill, 36 Castle Hill, Kenilworth on 14 July 2020.

The licensable hours and activity requested by the applicant were:

	Sale of Alcohol for consumption on and off the premises	Live music Indoors*	Recorded Music Indoors**
Monday	12:00 to 17:00		09:00 to 16:00
Tuesday	12:00 to 17:00		09:00 to 16:00
Wednesday	12:00 to 17:00		09:00 to 16:00
Thursday	12:00 to 17:00		09:00 to 16:00
Friday	12:00 to 23:00	17:00 to 21:00	09:00 to 16:00 and 17:00 to 22:00
Saturday	12:00 to 23:00	17:00 to 21:00	09:00 to 16:00 and 17:00 to 22:00
Sunday	12:00 to 18:00		09:00 to 16:00 and 17:00 to 21:00

*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 of people on 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.

The proposed operating schedule was attached as appendix 1 to the report.

Warwickshire Police and Warwickshire County Council Trading Standards had agreed conditions with the applicant and had subsequently withdrawn their representations. The conditions agreed would form part of any licence issued and were detailed at section 3.6 in the report.

The Licensing Department had received seven objections and a representation in support of the application from interested parties. These were attached as appendices 2 to 9 in the report.

The Licensing Enforcement Officer reminded those present that Planning and Licensing were separate regimes and that planning issues should not be considered. The Planning Authority had the power to make a representation if it had concerns but no such representation had been made.

A plan of the premises was attached as appendix 10, and a map and photographs of the area were attached as appendices 11 and 12.

Mr Taylor explained that they wished to be able to sell alcohol, including when they had "pop-up" events such as tapas nights. In respect of music, it would be nice to have live music playing, such as an acoustic guitar. There was no intention to amplify this loudly so there would be no noise pollution.

In respect of the objections submitted by Mr Marsh, smoking would only be allowed at a small bistro table outside with an accompanying sign that only a maximum of two people could sit at the table to smoke. He had spoken to Fortress about waste disposal and recycling and it was planned to store excess waste in a storage area at the back of the shop which Fortress would remove. He guaranteed that there would be no live bands, DJs or amplified music playing; the music would be quiet background.

Mrs Taylor added that the premises would have CCTV and signs asking patrons to keep noise levels down to respect the neighbours. The live music would be simply one guitarist and it would be kept quiet to avoid the sound spreading to neighbouring properties. They would operate Challenge 25 and people would only be served inside and would not be allowed to go outside with alcohol.

The applicant stressed that whilst parking was busy, patrons would be encouraged to park at the Queen & Castle public house, and the cost of the parking would be refunded to them as a deduction from their bill. A manager would always be on-site for pop-up events and exit from the premises would be staggered. A maximum of 30 people would be allowed into the shop. They had held a "burger" event at the premises previously and the 30 years old and 65 to 70 years old had been their target audience. They were aiming events at responsible people. They also wished to work with local residents and would try to be as accommodating as possible to their neighbours. They had been open for about two years and hoped that they had not been any trouble. There might have been an increase in traffic but had proactively addressed any issues with local residents.

In response to questions from Members, the applicant explained that:

- They opened at 9am and would close between 3pm and 4pm in autumn/winter months and between 5pm and 5.30pm in July and August. Their main custom base was dog walkers and locals. During

the Covid-19 pandemic, they could only accommodate 15 people and this probably allowed more than two metres spacing. Bookings were made via their website and they operated track and trace.

- Subsequent to renovations, they could only sit a maximum of 30 people for a meal.
- They planned to stagger exit times. Pop-up events were bookings only and near closing time, they would remind people about booking a taxi. They had an arrangement with a local taxi firm to pre-book taxis.
- They would not be serving food or alcohol outside but they may provide a few bistro tables and chairs where coffee would be served.

In response to questions from interested parties, the applicant explained that:

- No more than 30 people would be sat at tables and there would be no amplified or recorded music.
- Permission did not have to be sought from the Queen and Castle to park in their car park. He offered to have a condition imposed on the licence that amplified music was not allowed.
- Customers would only be received if they had pre-booked and paid a deposit, which would help ensure that once inside, they would stay and eat in the evenings. During the day, people did pop in and out for take-away food but the premises could only sit a maximum of 30 people.
- At the event held last Saturday, 20 people had pre-booked and paid a deposit.

The Licensing Enforcement Officer notified Members that if a premises had licence to sell alcohol, then because of deregulation, they could play live and recorded music without the need for a premises licence. This meant that for this application, Members should not consider the music, because this was automatically granted because the sale of alcohol was permissible up to 11.00pm. This also meant that a condition could not be placed on the licence in connection to live or recorded music.

Mr Marsh found the Licensing Enforcement Officer's clarification on deregulation helpful and noted that once an alcohol licence was granted then there would be no control on music. He pointed out that there were already three licensed premises in the vicinity, so questioned whether another one was required. He claimed that noise was already an issue at the three licensed premises and the Deli on the Hill would increase this problem. It was a small venue and patrons would spill out onto the street. He asked Members to note that the street had a narrow pavement making it impossible to socially distance. He felt that staggered exits would just extend the time of the disruption. Adjacent properties were not sound-proofed and could not be sound-proofed because they were Listed Buildings. He pointed out that residents held parking permits which they had to pay for and it was a frequent occurrence that residents could not find a parking spot. Taxis made it hard for cars to pass because the street was narrow, and this narrowness would be compounded by chairs and signs. He noted that it was not only the Deli causing these issues.

Mr Toor complained about the noise and the terrace that had been constructed meant that sound transmitted. He did not think that it met modern building regulations. He could often hear individual voices coming from neighbouring properties. People would talk above the music. The event held at the Deli on 22 August 2020 proved his case about noise transmission. This had been a private event held at the Deli, but even when he turned his TV in his lounge on, Mr Toor could not drown out the noise coming from the venue; it was the same in his bedroom. He was concerned that there was not any dedicated waste storage; bins were over-flowing. He understood that the waste contract would be renewed but the waste issue was particularly bad at weekends. He now wished to object to the application in its entirety subsequent to the event last Saturday, because he realised that even with a limited licence, it would be impossible for him to enjoy a quiet evening.

Mr Bowen reinforced the fact that the Deli was a mid-terraced property with shared walls and it had a clear negative effect on neighbouring properties: the noise from the Deli, coupled with the public nuisance caused by the smokers, cars, taxis, music, and people leaving late. He now amended his objection on the licence to sell alcohol because it allowed music to be played. There were already licensed venues in the vicinity and this application would add to the anti-social behaviour despite assertions made about the target age group of clientele because alcohol lowered inhibitions.

The Council's Solicitor advised Members that they could not refuse the licence on the grounds that music could be played as a result of the licence to sell alcohol. If the licence were to be granted and noise proved to a problem as a result of the music, then a review on the licence could be sought.

Mr Taylor voiced frustration that music and the sale of alcohol could not be separated because he would not be playing amplified music. Music would only be played between 6.30pm and 8.30pm; not 11pm.

Mr Toor repeated the issues he had suffered on the previous Saturday when only 20 people had attended. His daughters had to go to bed an hour later as a result of the disturbance and he had had to sleep in a different room. He emphasised the lack of sound insulation.

Mr Taylor emphasised that he had no wish to upset his neighbours and apologised. He stated that if his application was successful, then noise would be kept to a minimum.

The Licensing Enforcement Officer pointed out that if residents made a complaint about the noise, then Environmental Health had the power to review the complaint and the licence could be reviewed. She also pointed out that background music was not licensable.

Mr Taylor was asked for a final statement. He assured Members that he wanted to get along with neighbours and did not want to be a nuisance.

He respected the area. He had received a lot of positive feedback from local people and he would not be playing amplified music at all.

At 10.49am, the Chairman ended the remote meeting with the public present and a separate meeting was immediately started with the Members of the Panel, the Council's Solicitor, and the Committee Services Officer present, to enable the Panel to deliberate and determine the application.

Resolved that the licence be granted subject to conditions and changes to the times permitted for the sale of alcohol.

The Panel listened carefully to all of the representations made at the hearing today and determined to grant the licence subject to conditions. The conditions include those agreed with the Police and Trading Standards, as set out in the Licensing Officer's report. These conditions are agreed in pursuance of the prevention of crime and disorder, the promotion of public safety and the protection of children from harm. Further the Panel considered it appropriate, to impose conditions on the times for the sale of alcohol as follows:

1. sale of alcohol to be permitted Monday to Thursday between 12:00 and 17:00;
2. sale of alcohol to be permitted Friday and Saturday between 12:00 and 20:00; and
3. sale of alcohol to be permitted on a Sunday between 12:00 and 18:00.

In considering your application, the Panel were concerned by the noise generated by patrons whilst in the premises, which they noted is small and located between two residential neighbours. They were also concerned by the potential for noise generated by patrons when leaving the premises. The Panel heard evidence that a pop-up event last weekend, with approximately 20 customers in attendance had generated noise, resulting from customers talking, which affected neighbouring residents.

The Panel concluded that were alcohol sales to be permitted beyond 20:00 on Friday and Saturday nights, it would in their view, have a disproportionate and unreasonable impact on local residents. The Panel noted that when intoxicated patrons tend to be increasingly noisy and considered that limiting the sale of alcohol to 20:00 would limit the risk of noise escalating during the evening.

During the hearing you mentioned that you intend to have a table outside for use by smokers. The Panel consider it prudent for you to seek advice from the licensing authority on whether any licence is required to enable you to have such furniture on the pavement. Furthermore, you set out in your submissions the steps you are taking to ensure social distancing on the premises at the current time and the Panel trust that you will continue to observe any guidance issued by the Government on responding to the Covid-19 situation.

If you disagree with the Licensing Panel's decision, you can appeal to your local magistrates' court. You must do this within 21 days of being notified of the Licensing Panel's decision.

(The meeting ended at 11.55am)

CHAIRMAN
16 November 2020