

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held at the Town Hall, Royal Leamington Spa, on Wednesday 10 August 2022, at 10.10am.

Present: Councillors Barton, C Gifford and Wright.

Also Present: Patricia Tuckwell (Civic & Committee Services Manager), Ross Chambers (Council's Solicitor), Amanda Allinson (Licensing Enforcement Officer), Peter Lawson (Senior Environmental Health Officer), Rachael Russell (Licensing Team Leader, observing only) and Stacey Walsham (Environmental Protection Technical Officer, observing only).

1. Apologies and Substitutes

There were no apologies for absence made.

2. Appointment of Chairman

Resolved that Councillor Wright 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 That Gin and Cocktail Place, 40 Clarendon Street, Royal Leamington Spa, CV32 4PG

The Panel considered a report from Health and Community Protection which sought a decision on whether the application for a premises licence at That Gin and Cocktail Place, 40 Clarendon Street, Leamington Spa, CV32 4PG should be granted and, if so, whether the licence should be subject to any additional conditions.

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

- Mr Duncan Craig, representing the applicant;
- Mr Steve Brazel, the applicant's business associate;
- Ms Kerry Cox, the barrister's associate, observing only;
- Mr Peter Lawson, attending the hearing as Senior Environmental Health Officer; and
- Mrs Doreen Ward, who lived next door to the property.

The Council's Solicitor announced the procedure for the meeting. At the Chairman's request, the Licensing Enforcement Officer introduced the report.

The Licensing Officer outlined the report and asked the Panel to consider all the information contained within it. When you Know You Know Limited applied for a premises licence at 40 Clarendon Street, Leamington Spa on 6 July 2022. The application was for a gin and cocktail bar.

The licensable hours applied for by When you Know You Know Limited and an operating schedule, which had been submitted by the applicant and would form part of any licence issued, was attached as Appendix 1 to the report.

The Licensing Department received three objections from local residents, attached as Appendices 2, 3 and 9 to the report. The Licensing Department also received a representation from Environmental Health attached as Appendix 4 to the report.

Representations were received from Trading Standards and Warwickshire Police. The applicant had agreed to the conditions suggested and the objections were subsequently withdrawn, as detailed in Appendices 5 and 6 to the report.

No representations had been received from the Fire Authority; The Licensing Authority; the Enforcement Agency for Health and Safety; the Authority Responsible for Planning; or the National Health Service/Public Health.

A plan showing the location of the premises was attached as Appendix 7, along with the plan submitted by the applicant showing the internal layout.

Before the meeting started, the applicant's representative circulated a list of opening hours for other licensed premises in Leamington Spa town centre and a proposed Dispersals Policy and Noise Management Plan.

The Chairman invited the applicant to introduce the application.

Mr Craig reminded Members that the Panel hearing was initially scheduled for 26 July 2022, but that meeting was adjourned at the request of Environmental Health. Unfortunately, the applicant, Mr Withers, was not able to attend the rescheduled meeting due to him being on holiday abroad.

Having been operating in the area for over ten years, this was the applicant's first appearance to a Licensing hearing. Being a close friend of Mr Withers, Mr Craig had visited the application site himself several times, and therefore was able to speak with confidence and knowledge of the site.

Mr Craig emphasised that the applicant was aware of Mrs Ward living next door, and he agreed to several conditions aimed to minimise impact on residents. However, whilst the premises were in a residential area, this was located in the town centre, which did mean having more facilities on one's doorstep.

Mr Craig described the premises as a gin and cocktail bar, with no live music or entertainment. The intention was to provide some platters of cold foods, late night refreshments and tea and coffee after 11pm. There was not going to be any extraction to the premises and in essence, the application was for selling of alcohol from midday to midnight, seven days a week. The applicant also managed similar premises in Warwick, licenced until midnight, and Stratford-on-Avon, licenced until 1am. Based on the experience of the other two premises, in terms of nuisance, this was not a high impact premises. The idea was to offer a very relaxed and friendly environment, for an older, more affluent client base, hence the higher price point.

Mr Craig confirmed the CCTV and training conditions recommended by Warwickshire Police would replace the equivalent conditions in the operating schedule.

Mr Craig explained to Members that due to the Senior Environmental Health Officer having been on annual leave, there was a lot of communication at the last minute. He thought the officer's concerns were reasonable and it was a balancing act for Members. The applicant had spoken to the next-door neighbours, had no intention to disturb them and wanted to work with the residents to minimise any potential impact on them. At the same time, those who lived in a city centre location had the benefit of amenities on their doorstep, which on occasion might mean a small level of disturbance, but did not intend to suggest that they should be unreasonably disturbed.

Mr Craig advised Members that additional conditions were agreed the day before the meeting with Environmental Health, as below:

- *No noise emanating from within the premises will be audible in any noise sensitive premises in the vicinity.*
- *There will be no smokers outside the front of the premises after 23:00.*
- *There will be an internal lobby at the front entrance to prevent noise escaping from the premises.*
- *The frontage to the premises will be constructed to prevent any noise escaping from the premises.*
- *No refuse will be collected from the premises between 22:00 and 08:00.*
- *There will be no admission or readmission to the premises after 23.00.*
- *No open vessels to be taken from inside the premises to the external area to the front of the building any time.*

With regards to the first bullet point above, Mr Craig felt that in this instance, it was a very achievable condition. In relation to the second bullet point, conversations with Environmental Health had gone even further just before the meeting, and it was agreed between the applicant and Environmental Health that all external areas would be cleared by 23:00. This was in appreciation that after 23:00, people's lives were more susceptible to noise intrusion.

In relation to the third bullet point, the applicant had agreed to introduce a lobby as an additional layer of protection from any noise breaking out, and indeed the frontage as a whole was constructed to prevent noise from escaping.

The condition about refuse collection had been omitted from the initial list in error. Mr Craig clarified that the external area at the rear was part of the premises, so that people could go outside at the back with a drink, but not at the front, in line with the last condition above.

Mr Craig emphasised to Members that the applicant had agreed far-reaching conditions because it did really need a midnight licence, and 23:00 would not be sufficient. Clients would start leaving around 22:00 and go elsewhere, and Mr Craig felt the business might not be viable in that instance.

With regards to Miss Hayton's objection, Mr Craig had distributed a list with other local venues and their closing times in advance of the meeting. He felt that the application was consistent with those hours and, in some instances, were significantly less. He then proceeded to address some of the specific issues raised in the other objections: the application site was not in the cumulative impact area; no open vessels would be taken outside of the premises at the front, therefore there should not be the issue of broken glass and litter. He felt that the concerns about disorderly behaviour and noise were resolved by the far-reaching conditions agreed by the applicant, as well as by the nature of the business model itself.

Mr Craig felt that the applicant had listened to the issues raised, agreed even more conditions, sent across the Dispersal document as well as the noise management. His client had taken on board the comments from Environmental Health and residents, was committed to having a good relationship with the neighbours, and asked that the application should be granted.

The Chairman invited Mr Brazel, the applicant's business associate dealing with the operations, to make his representation. Mr Brazel advised Members that the conditions had been thought through with the residents' interests in mind. There was going to be seated rather than bar service, where staff members would approach the table and take orders via a tablet device, which in itself would help manage the noise. The other two sites had been operational for over three years and there had been no complaints or issues with the responsible authorities. The site in Leamington Spa would be identical to the other two sites, as suggested by the name. He had been a licensee for over 15 years, had the relevant experience and aimed to provide a high quality venue with drinks and refreshments to be enjoyed by customers.

Mr Brazel emphasised that should the licence be granted, there was always the opportunity for many different authorities to get involved in the process if complaints were made or the venue was not run in a suitable manner. In terms of pricing, the standard price for a drink was around £9, and the reason for that was to attract someone who wanted a good quality drink, rather than wanting to consume a lot of alcohol and become intoxicated.

When prompted by the Chairman, Mrs Ward advised that she had struggled to hear. In answer to questions from Mrs Ward, the applicants advised that:

- The music was going to be at the same level as at the hairdressers or in a lift. It was only going to be background music, so that two people sat at a table could easily have a conversation and hear each other without needing to raise their voice. The applicant was happy to discuss potential additional measures to minimise noise.
- There was not going to be any cooked food provided. As with any business, there would be some waste, but not an overwhelming amount. This would be managed in a responsible way, and it would not be collected between 10pm and 8am.

There were no questions from Environmental Health to the applicants.

In response to questions from the Panel, Mr Craig and Mr Brazel advised that:

- there would be no smoking after 11pm, and security might need to be contracted to manage that if needed;
- the bar would be facing the door so that it could be more easily visible;
- the busiest times would be 7pm-9pm; by 11pm, it would get less busy and staff members would become more available to stand by the door;
- with regards to spiking, only 2-3% of cases took place when smoking, but the safest way for customers was to finish their drink and then go outside to have a cigarette;
- a lobby would be constructed, and it was the licence holder's responsibility to comply with all the conditions of their licence. As a result, conditions had to be part of the business model;
- background music was considered incidental music and as a result, it did not require a licence;
- subject to fire safety regulations and a risk assessment, the area at the back would either be closed off or managed appropriately and cleared by 11pm;
- it was not anticipated that there would ever more than 60 people at the premises at any given time;
- there was no reason not to have CCTV in the area at the rear of the property;
- any air conditioning unit would not be audible to neighbouring properties;
- the intention was for customers to consume alcohol in the area marked red on the map, which was over two floors. The bar might be moved, so a minor variation application might be required at a later date to reconfigure the space. There would not be a servery anywhere other than the ground floor;
- the boundary wall was the entirety of the right side boundary. Specific details on what works would be done to the party wall could not be given at this stage, but it might be a layer of sound proofing. However, any works required were subject to making the project feasible; and
- whilst at the other two venues the service was table only, this was not agreed as a condition to allow the business more flexibility.

In answer to a question from the Panel, the Senior Environmental Health officer advised Members that a certain number of decibels was not used to measure nuisance, rather, nuisance was a matter of fact.

The Chairman invited Mrs Ward to make her representation.

Mrs Ward was thankful for the opportunity to address the Panel. She described the situation at the premises, where parking was a big issue for residents, and any additional vehicles would create even more problems. Another concern for her was around noise generated by customers entering and leaving the premises, which was an issue especially later in the evenings. Customers would gather outside to smoke and create litter. In addition, this would bring a lack of privacy and impact on her peaceful enjoyment of her property when curtains and windows would be open.

Mrs Ward also raised the issue of food waste. The passage was very narrow and it was already being used by another business, which made the vehicle access

already very difficult. Should the application be granted, this issue would be exacerbated. She also queried if planning permission had been sought.

When the Chairman offered the opportunity, no questions were asked of Mrs Ward.

The Chairman invited Mr Lawson, the Senior Environmental Health Officer, to make his representation.

Mr Lawson advised Members that the planning and licensing applications were two different, independent matters, and that the applicant did not need planning consent before applying for a licence.

Environmental Health had made a representation on the issue of noise nuisance from the party walls, shop window, opening of the door, smoking outside and leaving and entering late at night. The application was for the sale of alcohol until midnight, but the suggestion from the Senior Environmental Health Officer had been that 11pm would be a more suitable closing time. Since then, further conditions had been suggested by the applicant on 9 August, seeking to address these issues. Further to that submission, there were some other negotiations held just before the meeting, with more conditions having been agreed as above.

The Senior Environmental Health officer felt that what was now being offered substantially addressed the concerns. If the applicant was willing to accept those conditions and Members were minded to grant the application subject to all the conditions discussed, the Senior Environmental Health officer would withdraw the objection to operate until midnight. Some concerns would still remain, but they would be addressed through the planning process.

Members were informed that the two amendments were: at the first bullet point to add that "and all clearing of the rear area by 11pm"; and at the last condition, to clarify that the rear outside area was part of the premises.

In answer to a question from Councillor Gifford, Mr Craig confirmed that no changes were proposed to the opening hours, hence why the far-reaching conditions had been agreed.

At 11.41am, the Chairman asked all parties other than the Panel, the Council's Legal Advisor, and the Civic & Committee Services Manager 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 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 10 August 2022 Warwick District Council's Licensing Panel considered an application made under the Licensing Act 2003 made by Mr Earl Withers of When You Know You Know Limited ("the Applicant") in respect of premises at That Gin and Cocktail Place, 40 Clarendon Street, Leamington Spa. The application seeks a licence for the provision of late night refreshment between 23:00 and 00:00, 7 days per week. The application also

seeks the sale or supply of alcohol between 12:00 and 00:00, 7 days per week (licensable activities extended by 1 hour on Bank Holidays and from the end of the permitted hours New Year's Eve to the start of the permitted hours New Year's Day).

An objection was received from Warwick District Council's Environmental Health Team in their capacity as a Responsible Authority.

Three objections were received from local residents Mrs Fiona Hayton, Mrs Doreen Ward and a person who wished to remain anonymous.

Trading Standards and Warwickshire Police withdrew their objections after the Applicant agreed to include their requested conditions in the operating schedule.

On 9 August 2022, following discussions with the environmental health officer, the Applicant proposed further conditions intended to deal with concerns about noise from the premises. The Applicant also submitted a list of opening hours for other licensed premises in Leamington Spa town centre and a proposed Dispersals Policy and Noise Management Plan.

At the hearing verbal representations were made by the following persons:-

- Mr Steven Brazel - the Applicant's business partner
- Mr Duncan Craig, of counsel, the Applicant's representative
- Mr Peter Lawson - Environmental Health Officer for Warwick District Council
- Mrs Doreen Ward - local resident who lives next door to the premises

The licensing officer, Amanda Allinson, introduced the report to the Panel.

Applicant's representations

Mr Craig said that he has visited the site so speaks with some confidence and knowledge. He accepts that the premises, whilst being in the town centre, has residential properties around it including next door. He says the Applicant has agreed far reaching conditions to address public nuisance, in particular.

Mr Craig said no regulated entertainment is proposed. There would only be background music. Late night refreshment would probably just be hot tea and coffee. Foodwise, they are only intending to do cold plates. He said they have an older, affluent client base. The price point is high. It is a relaxed and friendly environment with waiter service.

Mr Craig confirmed the CCTV and training conditions recommended by Warwickshire Police will replace the equivalent conditions in the operating schedule.

Mr Craig accepted that the environmental health officer's concerns are not disproportionate. It is a residential area and there needs to be a balancing exercise between the benefits of vibrant town centres from well-run premises against the effects on local residents. There should be no unreasonable intrusion. The Applicant is not seeking to upset anyone or disturb people's lives. He has spoken to the neighbours and understands he needs to work with the local community. The Applicant is committed to carrying out works to the premises to ensure there is no disturbance to neighbouring properties. People who live in town centres should expect more intrusion, but not to unreasonable levels.

Mr Craig said far reaching conditions were proposed yesterday. No noise will be audible in any residential properties. Mr Craig said this was an achievable condition. Some work may be required to the party wall to achieve this. All external areas will be cleared from 23:00. There will be an internal lobby at the front which provides a layer of protection from any noise breakout. The frontage will be constructed to prevent noise breakout.

Mr Craig said that closing at 11PM does not work as a business model and would be unviable. This is why they have proposed stringent, enforceable conditions.

Mr Brazel addressed the Panel. He said his background is in premises security. He said it will be restaurant style service. People will be seated, and they don't tend to serve people at the bar, which helps to prevent unreasonable behaviour. The numbers in the premises will be limited by the tables. They have two other sites in Warwick and Stratford upon Avon that have been operational for 3 years with no complaints. Nobody wants to go through a licensing review. He said the entry level price for a typical alcoholic drink is around £9, which discourages a clientele attracted by cheap drinks.

Mrs Ward asked how turning the music down will work? Mr Craig said that music will not be audible in Mrs Ward's property. It will be background music only i.e., people won't need to raise their voices to be heard. The Applicant will also consider works to the party wall.

Mrs Ward asked how the Applicant will dispose of food waste. Mr Craig said there won't be cooked food, just cold plates. Environmental health will have oversight of waste disposal. There won't be many bottles of beer. Waste will be managed in a responsible way.

Cllr Barton asked how smoking out the front will be managed and what will be done about drink spiking while people leave their drinks to smoke outside. In relation to the first point, Mr Craig said the Applicant could put security on the door, but he doesn't think that is necessary. Last entry being at 11PM is a way of dealing with the problem. It will have to be managed by staff. In relation to the second point, Mr Brazel said people will be encouraged to leave their drinks with a friend and they could be encouraged to smoke after finishing their drink or they could put their drinks on a shelf in the lobby area. In relation to smokers, Mr Brazel said he estimates only 2 to 3% of their clientele are smokers. Mr Craig said it is a licence holder's responsibility to comply with the conditions on the licence and the Applicant will have to ensure there are enough staff to achieve compliance.

Cllr Barton asked about background music and Mr Craig explained that background music is not regulated entertainment and it is a matter of fact and degree as to what constitutes background or incidental music. Mr Lawson confirmed that what constitutes a nuisance is a matter of fact and it is not simply down to decibel levels.

Cllr Barton asked about the use of the rear outside area. Mr Craig said that this area will be vacated at 11PM and closed subject to fire safety requirements. Mr Craig does not anticipate there will ever be more than 60 people in the premises because that is the default position for premises with one fire escape. The rear area will either be closed off or managed depending on the fire risk assessment.

Cllr Barton asked whether the rear area would be covered by CCTV and Mr Craig said yes it would be.

Cllr Barton asked about air conditioning and mentioned that external condensers are noisy. Mr Craig said that no noise emanating from the premises will be audible inside properties.

Cllr Gifford asked how they envisage using the premises and how many rooms will have a bar or be where alcohol is consumed. Mr Craig said that the licensable areas are the areas marked red on the plan, which is over two floors. The bar may be moved, so a minor variation application may be required to reconfigure the space. There won't be a servery anywhere other than the ground floor.

Cllr Barton asked for confirmation on where the party wall is, which was confirmed by Mr Craig as the entirety of the right side boundary. Cllr Barton asked what works to the party wall are envisaged. Mr Craig said he can't give specifics at this stage. It may be a layer of sound proofing.

Such works may make the proposal unfeasible. Whatever is required is subject to it being feasible.

Cllr Gifford asked whether the table service is subject to a condition and noted that such a condition is often applied to premises in Leamington Spa. Mr Brazel said they choose to do table service only in their Warwick premises as a responsible operator, but it is not a condition because sometimes people come to the bar e.g., to get water.

Local resident's representations

Mrs Ward addressed the Panel. Her property adjoins the premises. She said that parking spaces were at a premium in the area. She is also concerned about noise pollution from people entering and leaving late in the evening and people gathering outside to smoke. This will result in a loss of privacy, particularly in summer when windows are open. She queries whether planning permission has been sought.

Environmental Health representations

Mr Lawson, environmental health officer, addressed the Panel. He confirmed that it is not necessary to obtain planning permission first. Some matters need to be dealt with through the planning process rather than the licensing process.

He said he saw the potential for noise nuisance through the party wall, noise breakout through the shop window, outside smokers and customers leaving the premises late at night. Originally, he recommended the premises close at 11PM, every night of the week. The Applicant has now offered up conditions which substantially addresses his concerns after 11PM. If those conditions are imposed, he would remove his objection to midnight closure.

Cllr Gifford asked if the additional conditions proposed this morning could be clarified. These were confirmed as: all external areas to be cleared by 11PM and no open vessels are to leave the premises.

Decision

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

The Panel note that the premises share a party wall with a residential property and, notwithstanding the additional conditions proposed the day before and on the day of the hearing, remain very concerned about the potential for noise nuisance to the occupiers of the neighbouring property late at night. This could arise from noise breakout

through the party wall or from people noise outside. After 23:00 is a sensitive period when residents of adjacent properties may be attempting to go to sleep or are sleeping. The Panel's expectation is that the Applicant will carry out sound insulation works to the party wall.

The Panel noted that some licensed premises in the town centre remain open until midnight or later, but the Panel are not aware that these premises share a party wall with residential properties.

The Panel consider that a reasonable and proportionate outcome which promotes the licensing objectives is to restrict the hours for the sale of alcohol to 23:00 Sunday to Wednesday and to allow a termination hour of midnight for the sale of alcohol, as applied for, on Thursdays to Saturdays, when it is more reasonable to expect some level of disturbance at that hour in a town centre location.

The Panel therefore determined to grant the premises licence subject to the following conditions which are considered appropriate for the promotion of the licensing objectives:

- **Such conditions as are consistent with the operating schedule accompanying the application (as amended by the conditions agreed between the Applicant and Trading Standards and Warwickshire Police).**
- **The condition that the sale and supply of alcohol shall end at 23:00 Sunday to Wednesday and 00:00 Thursday to Saturday.**
- **The hours the premises are open to the public shall end at 23:30 Sunday to Wednesday and 00:30 Thursday to Saturday.**
- **Late night refreshment is excluded from the scope of the licence Sunday to Wednesday (except Bank Holidays and New Year's Eve/New Year's Day) and ends at 00:00 Thursday to Saturday.**
- **For the avoidance of doubt on Bank Holidays, licensable activities will be extended by 1 hour and from the end of the permitted hours on New Year's Eve to the start of the permitted hours on New Year's Day.**
- **No noise emanating from within the premises will be audible in any noise sensitive premises in the vicinity.**
- **There will be no smokers outside the front of the premises after 23:00**
- **There will be an internal lobby at the front entrance to prevent noise escaping from the premises**

- **The frontage to the premises will be constructed to prevent any noise escaping from the premises**
- **No refuse will be collected from the premises between 22:00 and 08:00**
- **There will be no admission or readmission to the premises after 23.00**
- **No open vessels to leave the premises at any time.**
- **All external areas will be cleared by 23:00.**
- **A condition requiring table service only.**

The Applicant or any person who has made representations may appeal against the decision of the Panel to the Magistrate's Court within 21 days of issue of formal notification of the decision.

(The meeting ended at 11.41am)

CHAIRMAN
17 October 2022