

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held remotely, on Tuesday 29 November 2022, at 10am.

Present: Councillors Boad, Roberts and Syson

Also Present: Emma Dudgeon (Licensing Enforcement Officer), Lesley Dury (Principal Committee Services Officer) and Sue Mullins (Council's Legal Advisor)

1. **Apologies and Substitutes**

Councillor Syson substituted for Councillor Leigh-Hunt.

2. **Appointment of Chairman**

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

3. **Declarations of Interest**

There were no declarations of interest.

4. **Objection to a Temporary Event Notice received under the Licensing Act 2003 for the Builders Arms, 38 Lansdowne Street, Royal Leamington Spa**

The Panel considered a report from Health & Community Protection which sought a decision on a Temporary Event Notice (TEN) for the Builders Arms, 38 Lansdowne Street, Royal Leamington Spa CV32 4SP. A representation had been received from Environmental Health in relation to this notice for the consideration of the Panel in the determination of the notice.

The Chairman introduced the Members of the Panel and the officers present. The Chairman noted that the applicant, Mr Cavan Fulton was not present at the meeting but had agreed that the TEN could be heard in his absence.

Warwick District Council's Environmental Protection Team Leader, Paulette Samuels introduced herself.

The Legal Advisor explained the procedure for the hearing.

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 TEN for the Builders Arms should be granted.

Mr Fulton applied for a Temporary Event Notice for the Builders Arms, 38 Lansdowne Street, Royal Leamington Spa on 29 September 2022. The Temporary Event Notice submitted by the applicant was attached as Appendix 1 to the report.

The notice was to extend the hours already allowed in the premises licence for the sale of alcohol (on the premises only) and the provision of regulated entertainment from 18:00 hours on Saturday 17 December 2022 to 02:00 hours

on Sunday 18 December 2022. The applicant had indicated that the proposed event was a private party.

The current premises licence allowed the sale of alcohol from 09:00 hours until 01:00 hours on Friday and Saturday and from 09:00 hours until 00:00 from Sunday to Thursday. The TEN was therefore seeking to extend the time during which alcohol could be sold on Sunday 18 December from 00:00 hours to 02:00 hours.

In terms of regulated entertainment, the current premises licence allowed regulated entertainment between 12:00 hours and 00:00 hours from Fridays to Sundays. The TEN was therefore seeking to extend the time during which regulated entertainment could be provided on Sunday 18 December from 00:00 hours to 02:00 hours.

The Builders Arms currently held a premises licence issued under The Licensing Act 2003. When a premises licence was in place under The Licensing Act 2003 a panel was able to add conditions from that licence to a Temporary Event Notice as part of the decision. A copy of the current premises licence for The Builders Arms including all current conditions had been attached as Appendix 2 to the report.

Warwickshire Police and WDC Environmental Health had powers to object to a Temporary Event Notice where they were satisfied that allowing the premises to be used in accordance with this notice would undermine a licensing objective.

In accordance with section 105 of the Licensing Act 2003, the licensing authority had to hold a hearing to consider the objection unless the relevant person (i.e., the Police or Environmental Health whichever had objected) the premises user and Licensing Authority agreed that a hearing was unnecessary. The hearing must be concluded and notice of the decision given to the premises user and the Police, no later than 24 hours before the temporary event was due to commence.

The Licensing Department had received an objection from Environmental Health. Full details of the objection were attached as Appendix 3 to the report. It had not been agreed that a hearing would be unnecessary and therefore a Panel had to be held to make the decision.

In the evidence submitted by Environmental Health, it was stated that a TEN hearing took place and was refused on 31 October 2021. This was not the case; the TEN was refused because it was submitted outside of the required timeframe set out in the Licensing Act 2003. The TEN submitted in October 2021 was submitted by a different applicant.

A map showing the location of the premises and photos of the premises were attached as Appendix 4 to the report.

Mr Fulton had sent an email confirming that he was unable to attend the hearing but had submitted comments to be read out on his behalf.

The Chairman asked the Licensing Enforcement Officer to read out Mr Fulton's comments which were received the previous day. In the comments, Mr Fulton had explained that he had been unable to attend the hearing because of staffing issues caused by sickness. He only took over the pub on 21 June 2022 and was not involved whatsoever in events that transpired before then. He did not wish

for previous problems caused by TENS in the past to continue. The Licensing Enforcement Officer confirmed that having checked records, Mr Fulton became the Licence Holder and DPS officially on 4 April 2022.

The Chairman asked the Environmental Protection Team Leader to make their representation. She explained that a different member of the Environmental Health Team, the Environmental Protection Technical Officer had led on this case but because of personal reasons, had been unable to be physically present at the hearing. She stated that she had an open line by telephone with Stacey Walsham, the Environmental Protection Technical Officer if she needed guidance.

The Environmental Protection Team Leader explained that on receipt of the TEN, officers in Environmental Protection searched for evidence of previous complaints in the last six to 12 months. The officer then explained that despite the previous refusal of the TEN in 2021, the applicant at that time had proceeded to hold the event and there were witnesses to very loud noise resulting from the event at 01:45 hours. Whilst the applicant for the current TEN was a different person, it was still for an event at the same premises and the current applicant had not tried to engage with the Environmental Protection officers subsequent to the objection being lodged in response to the application. There had been some other complaints made about the premises, but the complainants had not pushed through their complaints necessitating investigation of statutory noise nuisance.

The Environmental Protection Team Leader stated that visits had taken place. In March at 22:00 hours a visit was made but nothing was observed. The premises were being monitored just the same as other premises would be.

Environmental Protection officers were concerned that the applicant would not comply with the conditions laid down because of past experience with the event in October 2021 and because the applicant had failed to engage with officers subsequent to the objection being made. The additional two hours requested on the TEN would lead to further nuisance to local residents.

In response to a point raised by Councillor Syson, the Licensing Enforcement Officer confirmed that the applicant was seeking to extend regulated entertainment by two hours, but the current premises licence allowed for sale of alcohol until 01:00 hours, so the requested extension on this was for one hour.

In response to questions from the Panel, the Environmental Protection Team Leader explained that:

- She had not made a visit to the premises but knew of it.
- There was no longer an out of hours noise service operated by the Council. She did not believe that a visit had been scheduled for officers to visit the Builders Arms on the night of the event being applied for. Sometimes when there was a Licensing Enforcement visit taking place, Environmental Protection officers would work with Licensing Enforcement. She did not have the timetable for December for enforcement visits.
- Hypothetically, should the TEN be granted and noise was an issue, the process was that action would require a complaint being submitted by a member of the public for the noise issue to become evident. It was unlikely that any patrol by Council officers would bring the issue to light.
- When a complaint was received, the complainant would be expected to engage with Environmental Health officers and to keep diary sheets and keeping in touch possibly through the Council's "noise app". The two

complaints received about the premises that had not been followed through were because the complainants had not engaged further with the Council. It was unknown why the complainants had not followed up their complaints.

- She did not know what provision the premises had for smokers. The Licensing Enforcement Officer explained that she believed that the alley at the side of the shops was used by smokers.
- It was not known how ventilation was achieved since windows and doors were not allowed to be left open.

The Licensing Enforcement Officer explained that the Panel could only impose conditions on the TEN that were already imposed under the current premises licence. Therefore, it would not be possible to stipulate door staff had to be present. The Environmental Protection Team Leader confirmed that drinkers and smokers outside were required to move indoors at 23:00 hours.

When a TEN was submitted, it would be automatically sent to the Police and to Environmental Health. The Licensing Enforcement Officer confirmed that the Police had not made a representation to this application.

The Panel noted that the area surrounding the Builders Arms had a lot of residents.

At 10.31am, the Chairman asked all parties other than the Panel, the Council's Legal Advisor, and the Principal Committee Services Officer to leave the meeting, in order to enable the Panel to deliberate in private and reach its decision. The decision would be sent to the applicant by email.

Resolved that a counter notice for the event be issued to prevent the event taking place.

It was resolved to issue a counter notice under Section 105(2) of the Licensing Act because Members of the Panel considered it appropriate for the promotion of the Licensing Objective of the Prevention of Public Nuisance for the following reasons: Allowing the premises to extend its hours had the potential to result in nuisance to local residents due to the sound of amplified music and voices escaping from the premises, as well as when persons were leaving the premises following the event.

(The meeting ended at 11.00am)

CHAIRMAN
20 February 2023