

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Monday 4 July 2016, at the Town Hall, Royal Leamington Spa at 10.00 am.

Present: Councillors Ashford, Gill and Redford.

Also Present: Mr Howarth (Council's Solicitor), Mrs Dury (Committee Services Officer), Mrs Dudgeon (Licensing Officer), and Miss Cox (Committee Services Officer (observing only)).

1. **Appointment of Chairman**

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

2. **Declarations of Interest**

There were no declarations of interest.

3. **Application for a premises licence under the Licensing Act 2003 for Bar Angeli, 5 Livery Street, Royal Leamington Spa**

The Panel considered a report from Health and Community Protection which sought a decision on an application for a premises licence from Ms Ahmadi for Bar Angeli, 5 Livery Street, Royal Leamington Spa.

The Chair introduced the members of the Panel and the officers present. The other parties then introduced themselves as:

- Ms Ahmadi, the applicant;
- Mr Nankali, the applicant's agent; and
- Dr Cave, objector.

The Council's Solicitor explained the procedure for the hearing.

Dr Cave drew attention to the officer's report, and requested that the word "significantly" was deleted from paragraph 3.9 because this word was not used in the Council's Statement of Licensing Policy under paragraph 10.8. The Council's Solicitor thanked Dr Cave for his comment and said that this would be taken into account when making a decision on the application.

The Licensing Officer outlined the report and asked the Panel to consider all the information contained within it and the representations made at the meeting, 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 conditions.

The application was for a restaurant /café selling alcoholic beverages with food served by waiters/waitresses. Discussions had taken place between Environmental Health and the applicant to reduce the hours for late night refreshment and hours of opening. The application subsequent to those discussions was as per the table below:

	Sale of Alcohol for Consumption on and off the premises	Opening Hours	Late Night Refreshment
Everyday	10:30 to 23:30	08:30 to 23:30	23:00 to 23:30

The Licensing Officer advised that representations had been received from Warwickshire Police and Environmental Health. However, conditions had been agreed with the applicant and these representations had subsequently been withdrawn. These conditions would be added to any premises licence issued, and were detailed at paragraph 3.4 of the report.

A representation had been received from a resident which was detailed on page 3/6 of the report. The objection was based on the addition of another bar within the town's saturation zone, and a failure to promote the four licensing objectives, in particular, the prevention of crime and disorder, public safety and the prevention of public nuisance.

The report advised that there had been no representations from any of the other public bodies or authorities, as listed in paragraph 3.6 of the report. As there were no licensable activities currently taking place at the premises, there was no evidence in relation to licensing which could be considered at the hearing.

The premises were located in the Council's Cumulative Impact Zone and the onus was on the applicant to prove that the application would not impact significantly on the Licensing Objectives.

Mr Nankali informed the Panel that they had satisfied all of the criteria. The applicant had come to the conclusion that her sales had been decreasing because she was not selling alcohol in line with the competition, and therefore she had applied for a licence. Agreement had been reached with both the Police and Environmental Health over the conditions that would apply.

Ms Ahmadi informed the Panel that when Bar Angeli had opened, the businesses around it had all been retail outlets. Subsequently, the amount of retail outlets had decreased and the area had become a food mecca, and the businesses in competition provided alcohol to their customers. Ms Ahmadi told the Panel that she had "nice" customers and did not envisage that they would be drinking all day.

The Council's Solicitor referred back to the point Dr Cave had made earlier; the word "significantly" appeared in paragraph 10.9 of the Council's Statement of Licensing Policy, and therefore the last sentence of paragraph 10.8 should state that "The onus of proof will be on the applicant to show that the application will not impact significantly on the four licensing objectives".

Mr Nankali stated that the premises would not impact significantly on the four licensing objectives. Drinks would be served alongside food. There had been a licence previously at Bar Angeli, but Ms Ahmadi had not pursued it because at that time, it had not been necessary. Bar Angeli was a small premises and the number of customers would not increase significantly if a licence was awarded. Ms Ahmadi's aim was to win back the customers that had been lost, and her intention was that customers would be served a small glass of wine with their meal.

Ms Ahmadi interjected that the food served at Bar Angeli did not attract the type of clientele who drank all day or consumed excess alcohol. Large numbers of students were not an issue because of the pricing of food.

In response to questions from Panel Members, Ms Ahmadi and Mr Nankali responded that:

- Food sales would stop at 10pm, which would mean that the last drink would be served at 10pm also.
- Alcohol would not be sold without food.
- Despite last entry being at 11pm, as stated in the agreed conditions, and the sale of alcohol for consumption on and off the premises between 10.30am and 11.30pm, alcohol would not be served at 11.30pm because that was closing time.
- Customers could purchase drinks providing they were eating a meal. Once the meal was finished, they could not.
- Customers would be allowed to enter the premises at 10pm and that would be the last entry time for food. The person could then drink alcohol whilst eating a meal.
- The premises currently closed on Christmas Day.
- CCTV operated in the premises.

The Licensing Officer clarified that condition 2 that had been agreed meant that customers could only drink if eating a meal, to which Ms Ahmadi reiterated that last orders for food was at 10pm. The Council's Solicitor then confirmed to Members that the agreed conditions meant that anyone who wanted to buy alcohol must be sat at a table eating food. He also informed the Panel that monitoring this was a matter for the Licensing Team and if there were complaints, then the matter would be an enforcement issue.

In response to questions from Dr Cave, Ms Ahmadi confirmed that:

- She was aware that she had applied for a premises licence and not a personal licence, and it would be sold on if she left the premises.
- She was aware of the Council's policy in respect of the cumulative impact zone.

Councillor Mrs Redford then sought clarification on how the applicant would ensure that children were not allowed by the serving area, and was informed that it was policy not to allow children around the kitchen area and that trained staff were always present. Parents with pushchairs would be shown to seats near the window area where there was sufficient space for pushchairs. Other businesses faced similar issues regarding children. The Council's Solicitor advised the Panel Members that they must show reasonableness in what could be expected, and staff were not responsible for looking after children. The applicant stated that troublesome families would be asked to leave.

Dr Cave was then invited to make his representation. He lived in the centre of Leamington Spa and had a keen interest in licensing matters. He contended that Leamington Spa had had social issues until recently but overall there had been an improvement. Nuisance bars had been closed and others had gone upmarket to improve the type of customers they attracted. He had been to Bar Angeli on Saturday and found that it had a lively and authentic Italian atmosphere. It was very popular and a credit to the town, but it was situated in the Cumulative Impact Zone and this was a new application. There was no recognition of this in

the application and no explanation as to how the premises would not have a significant negative impact on the four Licensing Objectives. In respect of Public Nuisance, smokers gathered outside between 9pm and 11.30pm. Their smoke and chatter could be a possible nuisance to the residents living in the flats above and the applicant had not proven otherwise.

Dr Cave accepted that the additional conditions had been approved by the Police, but this did not prove that there would not be a negative impact. The applicant had failed to prove that there would be no risk, no public nuisance and no public disorder. Under these circumstances, Dr Cave maintained that the Panel should not grant the licence application.

In response to Dr Cave's comments, Ms Ahmadi accepted that she could not prove anything with 100 percent certainty; no business in the area could. It surely depended on the type of business, and Bar Angeli was a nice environment with nice customers that would not attract the type of problems mentioned. Mr Nankali added that smokers would be outside with or without alcohol. The intention of the application was to keep the number of customers they had.

Ms Ahmadi informed the Panel that the types of customers at Bar Angeli were people very much like Dr Cave. She had never experienced an unwanted customer. In response to a question from Councillor Ashford, Ms Ahmadi confirmed that street pastors did patrol the area. Currently, the premises served meals until between 10pm and 10.30pm and last orders were at 10pm. There had never been any problems at the premises and smokers sat outside.

When asked to make any closing remarks, the applicant and her agent said that the premises were a restaurant café, not a bar, and it would never be just a bar. They had applied for a licence to keep their customers from deserting them and taking their business to premises that did sell alcohol. Service was refused to any unwanted customers. Bar Angeli needed to be able to compete equally with other businesses in the courtyard area.

In his closing remarks, Dr Cave stated that an application for a premises licence meant that alcohol could be sold in the saturation zone. The onus of proof was on the owner to prove that this would not affect the four Licensing Objectives; public nuisance being the main issue, but also public disorder. The Police had removed their objection but this in itself was not proof that there was not an issue. Smokers outside the premises after 9pm would make more noise if they had been drinking alcohol.

At 10:57 am, the Chair asked all parties other than the Panel, the Council's Solicitor and the two Committee Services Officers to leave the room, in order to enable the Panel to deliberate in private and reach its decision.

Resolved that the application for a premises licence be **granted**, subject to:

- (1) the licensable activities detailed in the table in section 3.2 of the report; and
- (2) conditions 1 to 14 listed in section 3.5 of the report.

The Panel has heard the representations from the applicant and Dr Cave in support of the application.

The Panel notes that there were originally objections from the Police and Environmental Health; however, that these have been withdrawn as the applicant has agreed conditions with both responsible authorities.

The Panel also notes that the premises are located within the cumulative impact zone and therefore the Council's special policy in relation to cumulative impact applies. The test under the policy is that the applicant must demonstrate that the grant of licence will not significantly impact upon the Licensing Objectives. The Panel notes that the burden of proof lies with the applicant.

The Panel heard from the applicant that it was their intention to serve alcohol with meals and that the last meal would be ordered at 10pm. The applicant advised that it was their intention to attract back previous customers and to provide for existing customers who wished to be served alcohol with their meal. The Panel heard that currently the applicant serves food until 10pm and that to-date they have not received any complaints regarding noise or public disorder.

The Panel heard from Dr Cave about the potential for public nuisance caused by noise from patrons smoking outside the premises. The Panel notes, however, that Environmental Health has withdrawn their objection on the basis that the applicant has agreed to have conditions imposed upon the licence. The Panel are aware of the decision in the case of Thwaites which states that there must be more than a fear that the Licence will impact upon one of the Licensing Objectives and that there must be a real possibility of such an impact.

Taking into account the particular nature of these premises and the type of customer the applicant intends to attract, and taking into account that both Responsible Authorities have withdrawn their objections, and that there have been no previous complaints in relation to people smoking outside the premises, albeit it that the premises does not currently have a licence, it is the Panel's view that on a balance of probabilities, the grant of the licence will not impact significantly on the Licensing Objectives.

The Panel notes the concerns of Dr Cave; however, the Panel notes that if there is any future impact on the Licensing Objectives, then the Licensing Authority or one of the Responsible Authorities can call for a review of the licence. This will involve the licence coming back before a Licensing Panel who will consider whether the licence should be varied or revoked.

The Panel resolved to grant the licence in accordance with the Operating Schedule and the conditions agreed with the Police and Environmental Health.

At 11.42 am Mr Nankali and the Licensing Officer re-entered the room. The Chairman invited the Council's Solicitor to read out the Panel's decision.

(The meeting ended at 11:45am)