

# Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Monday 25 February 2019, at the Town Hall, Royal Leamington Spa at 2.00pm.

**Present:** Councillors Gifford, Illingworth and Mrs Redford

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

## 1. **Apologies and Substitutes**

Councillor Gifford substituted for Councillor Ashford.

## 2. **Appointment of Chairman**

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

## 3. **Declarations of Interest**

There were no declarations of interest made.

## 4. **Application for a premises licence issued under the Licensing Act 2003 for Nashaa, 55 Warwick Road, Kenilworth**

The Panel considered a report from Health and Community Protection which sought a decision on an application for a premises licence for Nashaa, 55 Warwick Road, Kenilworth.

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

- Mr Nural Hoque, the applicant;
- Mr Vijay Begraj, the manager of the applicant's company;
- Mr Anil Bhawsar, the Licensing Agent;
- Mr Bala Rajasegaran, an objector; and
- Mr John French, solicitor, representing the objector.

The Council's Solicitor 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 application for a premises licence should be approved and, if so, whether the licence should be subject to any conditions.

Mr Hoque applied for a premises licence for Nashaa, 55 Warwick Road, Kenilworth on 8 January 2019. It was proposed that the premises would operate as a restaurant and bar. The licensable activities requested by the applicant were:

	Opening Hours	Sale of alcohol for consumption on the premises	Late Night Refreshment (Indoors)
Monday to Sunday	12:00 to 01:00	12:00 to 01:00	23:00 to 01:00

After submitting the premises application, the applicant had agreed conditions with Warwickshire Police and Trading Standards. An operating schedule, which had been submitted by the applicant and would form part of any licence issued, had been supplied and detailed in paragraph 3.2 of the report.

The Licensing Department had received a valid representation from the owner of the premises adjacent to Nashaa, 55 Warwick Road, Kenilworth which was attached as Appendix 1 to the report along with supporting documents.

A premises licence issued under the Licensing Act 2003 was in place at 55 Warwick Road, Kenilworth between August 2007 and November 2013 when the licence was surrendered. The premises were previously known as Seetar Tandoori.

A map and photograph of the premises was attached as Appendix 2 to the report. A plan of the premises provided by the applicant was attached as Appendix 3 to the report.

Mr Bhawsar explained that the applicant had 30 years' experience and had been a DPS for over five years. He was held in good standing within the Coventry business area where he operated a similar establishment. 55 Warwick Road had previously been a licensed establishment and Mr Hoque had previously worked there. Mr Bhawsar disputed the accuracy of some of the statements made on the representation by the objector:

- A3 licensing consent was still in place for the restaurant and he had confirmed this with an officer in the Council's Planning Department – a Mr J Gentry.
- There was a planning application for a fire escape at the back of the building.
- He had paperwork available to substantiate his case.

For the last five years, Mr Hoque had an unblemished reputation at his other restaurant. In response to a question from the Chairman, Mr Hoque confirmed that the premises the subject of the application had been left empty for the last four years.

The Council's Solicitor explained that once the hearing had started, the Panel could only accept new evidence with the consent of all parties. She also confirmed that the statement about the A3 licence was not relevant to the decision the Panel had to make.

Mr Bhawsar explained that in agreement with the Police, additional wording had been incorporated to the operating schedule to tighten controls in respect of the Licensing Objectives, for example, CCTV evidence would be held for 28 days and would be made available to the Police. The cameras installed would be the latest available and there would be full training records kept. Mr Hoque knew that staff required regular training and "Challenge 25" would be in operation. A refusals book would be kept, and indeed, this was already used at his other premises.

The Chairman noted that there were a lot of conditions imposed as shown at paragraph 3.2 in the report, and a lot of these could be edited to stop repetition. The Licensing Enforcement Officer agreed that this could be done if necessary.

Mr Bhawsar, in response to a question from Councillor Mrs Redford, explained that the premises could hold a maximum of 60 people; the ground floor area was 5 metres by 14 metres.

The Chairman referred to the photograph shown on page 30 of the report, which showed another establishment next door also called Nashaa and asked what the connection was of both premises. Mr Hoque explained that "Nashaa" was a famous name. Despite the fact that the other Nashaa was next door, there was no connection between the two establishments. Mr Hoque did not run the other Nashaa. Mr Bhawsar explained that the photograph had been taken about five to six months ago and now the other Nashaa was no longer there. The Chairman then confirmed his understanding that the applicant was telling him that there was no connection between the two premises next door to each other, both named Nashaa.

Mr French, the objector's solicitor then spoke and stated that he had heard the Council's Solicitor advice that planning matters were not relevant but he contended that it surely was relevant if A3 use was not in place and the premises had been empty since 2012. The Council's Solicitor again reiterated that the Panel were there to look at whether the four Licensing Objectives were covered.

Mr French then challenged the application in respect of Crime and Disorder and asked the Panel to refer to the email in the report from a Mr Wilby (Appendix 1 in the report). He also stated that Mr Hoque had no right of access or rights to remove commercial waste, except the limited rights detailed in the copied Deeds (also part of the report).

57 Warwick Road was owned by Mr Rajasegaran, and he held the rights of access, as shown in the Deed at page 14 of the report. Mr French contended that according to his client, people at 55 Warwick Road were using his land illegally for deliveries and parking, and that when challenged, Mr Hussain, who they believed to be the brother of Mr Hoque, had acted aggressively and they had therefore reported him to the Police. He was concerned that the owners of 55 Warwick Road might resort to criminal activity based on the aggressive behaviour.

Access to the premises was via Hargar Court and vehicles were parked at the rear because of the lack of access at the front, so he felt that the scope for confrontation was high. The restaurant would be busy if full and a lot of people would need to access it. Additionally, the takeaway service would present issues because it was unclear where the vehicles would be parked. Mr French asked the Panel to consider these issues.

Mr French then listed concerns in respect of public safety:

- 55 Warwick Road only had standard domestic refuse bins and there was no room at the rear for storing large commercial bins.
- The premises opened out onto a busy road, Kenilworth Road, which was very busy and unsafe for using for deliveries and commercial waste.

- If there were no rights of access at the rear to number 55 and not safe to at the front, then it was impractical to use number 55 for a restaurant.
- If the rear was used for commercial waste, then this would be detrimental to the owner of number 57, and would affect his ability to park his car.

Mr French offered to show the Panel pictures of commercial waste bins to prove his point about the difficulty these would cause at the rear, but the Panel was content that they already knew what a commercial waste bin looked like and a phot of one was shown on page 26 of the report.

Mr French then explained the issues in respect of the fire escape which extended over number 57's land and had been built after 2014. Mr French stated that the fire escape was trespassing onto land owned by his client and was the subject of a civil action. His client had every right to have the fire escape removed from his land, so number 55 would not have a fire escape. How would people on the first floor of number 55 escape in the event of an emergency? This was a matter of public safety.

In respect of public nuisance, Mr French cited deliveries to the restaurant and takeaway meals with the issues surrounding parking. He felt that residents in Hargar Court would be inconvenienced. If a significant number of people used the rear of the premises, then public disturbance could ensue. Those who had occupied number 55 in the past, had also used number 57 and had wrecked the place, and this had been reported to the police. He contended that the people who would use number 55 were not fit and proper people. Mr French also informed the Panel that a significant number of bills remained outstanding to the District Council and the County Council. The Council's Solicitor reminded the Panel that "Fit and Proper Person" was not a test that necessarily applied; the test was could the licence be granted in light of the Licensing Objectives.

Councillor Illingworth then corrected Mr French and informed him that the road at the front of number 55 was Warwick Road, not Kenilworth Road. He agreed that it was unsuited for parking and that he was aware of the problem at Hargar Court. Mr French confirmed that the reference to access rights was stated on page 21 of the report in second paragraph and that the restriction referred to in the title was clearly significant for number 55.

Councillor Gifford pointed out that no objection had been made in respect of alcohol and drunk behaviour; the objection was about difficulties with deliveries and waste collection. Those issues could equally apply in respect of a butcher's shop, so why were these issues different for a licensed premise. Mr French acknowledged this as a fair point and answered that Indian restaurants were not generally known for issues relating to alcohol consumption on site, but they could be if they sold alcohol for consumption off-site. However, the access rights were relevant because of the potential problems that would arise from them and that not all disorderly conduct was caused by alcohol.

Councillor Mrs Redford then questioned the objections in respect of a takeaway service because she could not see reference to it. She remarked that the Fire Service had not raised any objections and asked Mr French how much of the fire escape was crossing on number 57's land. Mr French replied that eight or nine steps trespassed, a little over half of the fire escape. The Fire Service had not examined the fire escape when it was extended and also did not know that it extended onto land belonging to number 57. The Licensing Enforcement Officer confirmed that the Fire Service had not raised any objections to the application.

In response to a question from the Chairman, Mr Bhawsar responded that money owed to the Council was nothing to do with his client. Mr Hoque confirmed that he was the applicant and that he had no relationship with Mr Hussain, the person Mr French had stated had acted aggressively towards his client.

Mr Bhawsar pointed out that local residents had not objected to the application. He felt that parking in the surrounds of Warwick Road was sufficient, and cited the car park at Sainsbury's as an example. Mr Bhawsar also pointed out that planning was not an issue the Panel should take into consideration and that proof of what was eligible and what was not could be found on the Planning Portal. All relevant planning permissions had been granted in respect of the fire escape and dustbins. In respect of the dustbin, the three-foot wide egress would be used to store it; the Fire Authority had not objected to this. The application was as a restaurant and not as a food delivery service. Mr Hoque informed the Panel that they were able to deal with the waste collection issues and had a plan.

The parties were then asked to sum up their cases.

Mr French felt there was no need to repeat issues he had raised but the main issues were the commercial waste and the fire escape. Commercial waste bins were large items and the majority of the types of commercial bins available were wider than three feet. The objector had the right to park at the rear and this was not going to be possible. The fire escape trespassed onto his client's land so how would people escape from number 55.

Mr Bhawsar reminded the Panel that Mr Hoque had 30 years' experience, five years as a DPS and he had been a licensee for over 25 years. He was well-established in Coventry. He intended to run the business responsibly. There were various options of commercial waste bins and these could be removed from a tight spot; a contract for waste collection was already in place with Fortress. Additional conditions had been agreed with the Police and Trading Standards.

In response to a point raised by the Chairman, Mr Hoque responded that any takeaway business would have to operate from the front of the business because the kitchen was at the rear.

The objector then asked to speak but the Chairman refused permission because he had had his chance when asked to summarise. Mr French then asked if he could show the Panel the types of bins available for commercial waste; the Licensing Agent agreed to this request and informed the Panel that the two-foot by two-foot model shown was the type they were using.

At 3.25pm, the Chairman asked all parties other than the Panel, the Council's Solicitor and the Committee Services Officer to leave the room, in order to enable the Panel to deliberate in private and reach its decision.

**Resolved** that the licence application is granted with two additional conditions:

This application made under the Licensing Act 2003 by Mr Nural Hoque is for the use of the premises at 55 Warwick Rd, Kenilworth for licensable activities namely the sale by retail of alcohol for consumption on the premises and the provision of late night refreshment.

There have been no objections from any of the responsible authorities including the fire service, environmental health or the police. There have been no representations from any local residents.

Mr Rajasegaran, the owner of the adjoining property at 57 Warwick Rd, has made the following representations objecting to the grant of the premises licence:

1. The applicant, Mr Hoque, is believed to be the brother of Mr Anwar Hussain, the owner of the restaurant also called "Nashaa" that operated at 57 Warwick Rd prior to November 2018. It is alleged that the person operating this business caused criminal damage to the property, left utility bills and business rates unpaid and that Mr Hussain was aggressive and threatening towards Mr Rajasegaran. Reports about aggressive behaviour by Mr Hussain and criminal damage have been made to the police. The objector believes that Mr Hoque is a "nominee" applicant who will have very little involvement in the running of the business.
2. The premises at 55 Warwick Rd lacks vehicular access to the rear and this will cause issues with deliveries and commercial waste collection. The only right of access is by foot across land belonging to Mr Rajasegaran. Issues with rear access have already caused confrontation between the respective owners and could cause nuisance to the residents of Hargar Court.
3. The fire escape that leads from the first floor of 55 Warwick Rd is partially situated on land belonging to Mr Rajasegaran and he intends to take civil action for trespass and force its removal.

The objector stated that the licensing objectives of prevention of crime and disorder, public safety and prevention of public nuisance were engaged.

The applicant, Mr Hoque told the Licensing Panel that he had no connection with the business formerly operated from 57 Warwick Rd and that he was not the brother of Mr Hussain. Furthermore, he advised that he was an experienced licensee who currently operated similar premises in Coventry, and had been a DPS for over 5 years. His representative advised that he had agreed to incorporate conditions suggested by Warwickshire Police and Warwickshire Trading Standards into the licence, the premises would not sell alcohol for consumption off the premises, the public would not use the rear entrance and that waste would be disposed of in accordance with the planning consent and a contract with a commercial waste operator was already in place.

In making their decision the Panel considered all of the information provided in advance of and at the hearing, and took into account the statutory guidance and the Council's Statement of Licensing Policy. The Panel were of the view that some of the matters raised by the objector such as legal rights of access and waste collection were either

issues to be dealt by litigation between the parties or would fall within the remit of other responsible authorities such as the Planning Authority or the Fire Authority. It was noted that the majority of the representations made on behalf of the objector did not specifically focus on any impact that the sale of alcohol or the provision of late night refreshment may have but seemed to focus on the more general use of the premises as a business.

The Panel noted that the applicant denied any involvement with the business formally operating at 57 Warwick Rd and the conditions agreed with the police determined that the grant of the licence would not impact on the prevention of crime and disorder objective.

The Panel considered the potential impact on public nuisance and noted the lack of any objection from Environmental Health or objections from local residents. They did believe that it would be appropriate to add a condition to the licence to prevent the rear access of the property being used by the public or delivery drivers as this could cause nuisance to local residents.

The Panel noted that whilst the objector had threatened civil proceedings to secure the removal of some or all of the fire escape from the rear of the first floor of the premises these proceedings had not yet been instituted and they could not speculate what the outcome would be. It was noted that on the 18 January 2019 the Fire Service had confirmed that they had no objection to the application and the Panel are aware that fire safety is not usually something that the Licensing Authority would become involved with as it is governed by a separate statutory regime. However, given the objector's intentions the Panel were concerned that a sudden removal of the fire escape could result in a public safety issue as it was noted that the applicant intended to use the first floor of the property as part of the dining area. As such it was deemed appropriate to add a condition to the licence requiring the applicant to take immediate action should the current fire escape arrangements change.

The Panel therefore grant the licence in accordance with the application subject to the additional conditions as set out below:

1. Any public access or egress to the premises must be via the entrance fronting onto Warwick Rd. In addition, any persons leaving or returning to the premises in the course of delivering take away food shall only use the entrance fronting onto Warwick Rd. This is in order to ensure that public nuisance is not caused to the residents of Hargar Court.
2. Should the existing fire escape to the rear of the property be removed or changed the applicant shall immediately carry out a review of the premises fire risk

assessment and take advice from the local fire and rescue authority.

At 3.57pm, all parties were invited back into the room and the Chairman invited the Council's Solicitor to read out the Panel's decision.

(The meeting ended at 3.58pm

CHAIRMAN  
15 April 2019