

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held remotely, on Tuesday 18 August 2020, at 10.00am.

Present: Councillors Heath, Leigh-Hunt and Murphy

Also Present: Mr Edwards (Committee Services Officer), Mrs Tuckwell (Civic & Committee Services Manager, observing only), Mrs Amphlett (Council's Solicitor), Ms Russell (Licensing Enforcement Officer) and Mr Lawson (Senior Environmental Health Officer)

1. **Apologies and Substitutes**

There were no apologies or substitutes.

2. **Appointment of Chairman**

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

3. **Declarations of Interest**

There were no declarations of interest.

4. **Application for Temporary Event Notices for Fizzy Moon, 35 Regent Street, Royal Leamington Spa**

The Panel considered a report from Health and Community Protection which sought a decision on an application for six Temporary Event Notice (TEN) applications from Mr Moe Kandola, Fizzy Moon, 35 Regent Street, Leamington Spa, CV32 5EE.

Representations had been received in relation to these Temporary Event Notice applications for the consideration of the Panel in the determination of the applications.

An addendum circulated prior to the meeting informed Members that ongoing discussions had taken place between the applicant, Warwickshire Police, and Environmental Health, and the applicant had agreed to accept the amended opening hours set out by Warwickshire Police, set out at appendix 3 to the report.

The applicant had also agreed to amend the hours of live music to 23:00 (as requested by Environmental Health) and recorded music to cease at the same time as the sale of alcohol.

The addendum also advised that Environmental Health had agreed to withdraw their representation if the following were amended:

Opening Hours of the premises:
Monday to Sunday 12:00 to 00:30.

Additional condition:
No entry / re-entry after midnight.

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

- Mr Gregory, Solicitor representing the applicant;
- Mr Kandola, the applicant;
- Mr Lawson, Senior Environmental Health Officer (Warwick District Council);
- Sgt Calver, Warwickshire Police.

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.

When considering the application, the Panel needed to give appropriate weight to: the representations received; statutory guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003; the Council's Licensing Policy Statement (attached as appendix 3 to the report); and the Licensing Objectives. These were:

- i. The Prevention of Crime and Disorder;
- ii. Public Safety;
- iii. The Prevention of Public Nuisance; and
- iv. The Protection of Children from Harm.

However, the Panel could only consider those licensing objectives which had been referred to in the representations received.

The Council's Licensing Policy Statement provided that the authority would take an objective view on all applications and would seek to attach appropriate and proportionate conditions to licences where necessary, in order to ensure the promotion of the four licensing objectives. Each application would be judged on its own merits.

Details of the procedure adopted by the Licensing Committee for Panel Hearings were supplied to the applicant.

Mr Kandola applied for six Temporary Event Notices for Fizzy Moon, 35 Regent Street, Leamington Spa, CV32 5EE, Warwickshire on 3 August 2020.

The temporary event notices were submitted to enable the use of the outside terraced area for Fizzy Moon for an additional hour between 23:00 to 24:00 on the dates below:

- Friday 21 August 2020;

- Friday 28 and Saturday 29 August 2020;
- Friday 4 and Saturday 5 September 2020;
- Friday 11 and Saturday 12 September 2020;
- Friday 18 and Saturday 19 September 2020; and
- Friday 25 and Saturday 26 September 2020.

The premises currently had a premises licence (WDCPREM00201) that enabled them to use the outside area until 23:00. A copy of the current premises licence and conditions was attached as appendix 1 to the report.

The Licensing Department had received an objection from Environmental Health. This objection was attached as appendix 2 to the report.

In accordance with section 105 of the Licensing Act 2003, the Licensing Authority needed to hold a hearing to consider the objection notice unless Environmental Health, the premises user and Licensing Authority agreed that a hearing was unnecessary. The hearing needed to 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 Panel could only consider those licensing objectives detailed in the objection received from Environmental Health.

Following the publication of the agenda, three further appendices were circulated with the following additional information:

- Additional Appendix 4 – further correspondence between Mr Kandola and the Environment Health Officer, addressing some of the concerns of noise nuisance, open vessels and the conditions of the current licence, which were raised by Environmental Health;
- Additional Appendix 5 – letters from neighbours stating no objections to the application; and
- Additional Appendix 6 – a completed Covid-19 risk assessment for the premises.

The Chairman invited the applicant, Mr Kandola, to present the application. Mr Kandola advised Members that his application was intended to minimise any instances of conflict or law and order issues, and would in no way financially benefit the business.

Mr Kandola had held a licence for 17 years, which had a condition to close the terrace area of the premises by 11pm. Due to Covid-19 restrictions, only 30% of the internal capacity of the premises could be used, which had resulted in customers using the terrace more frequently. As this had to be closed at 11pm, the customers who were outside had to leave at this time, whilst those who were inside could stay until the closing time of midnight.

Mr Kandola explained that the premises were licensed until 2am at weekends, but given the Covid-19 restrictions and lack of demand, he had decided to call last orders at 11pm, with a closing time of midnight. As the bar remained open until 11pm, many of the customers who were outside

who may have ordered shortly before 11pm, were asked to leave and were not permitted to take their drinks with them. Many of these customers would normally have been allowed to move indoors at 11pm, but due to the Covid-19 restrictions, there was often not enough space for them. As a result, there had been a couple of occasions of conflict when staff attempted to remove customers from the terrace area at 11pm.

Mr Kandola had previously made an application for a Temporary Event Notice for the use of an additional hour between 23:00 and 00:00 on Friday 31 July and Saturday 1 August, to allow the terrace to remain open and allow adequate drinking up time for customers, and there had been no objections to this application. This application served as a test, during which no drinks were served to customers outside after 11pm, with all doors and windows being shut at this time. Mr Kandola was pleased that there were no incidents of conflict as customers had adequate drinking up time, and there had been no complaints about noise. Mr Kandola understood the concerns about noise raised by Environmental Health, and he explained that immediate neighbours were contacted following the previous application, and there had been no complaints. As a result of its success, the application was made for six other temporary events notices.

In answer to questions from Members, Mr Kandola advised that:

- The premises had a one-way system for all customers to follow, and in line with Government guidelines, customers were asked to give their contact details, which were kept for 21 days.
- Covid-19 restrictions meant that the indoors area was non-standing only, and there was limited seating capacity. As a result, there was extra seating outside for customers. At 11pm, many customers could not come inside as there was not enough capacity, and they were subsequently asked to leave.
- Customers used an app to place their order, and did not need to come to the bar as their drink was brought to them. Using the app meant that staff could see the time each order was placed, and staff would refuse any sales to outdoor customers after 11pm. This ensured that no drinks were taken outside by staff after 11pm, and gave staff control of who was served and at what time.
- He had tried to make the venue family-friendly, and tried to consult neighbours as much as possible. Neighbours understood that it provided a temporary solution to an issue faced as a result of the Covid-19 pandemic, and only while the weather remained warm enough for people to want to stay outside.
- It was not pertinent to give more adequate drinking up time by changing the last orders to 10:30pm for customers outdoors, as this would mean outdoor customers would be treated differently to customers indoors. As customers from outside were allowed to go inside to use the toilet facilities until 11pm, calling last orders at 10:30pm meant that this was potentially open to misuse.
- There had been an incident where a staff member had a drink thrown over them while trying to remove a customer from the outside area, and the application was designed to reduce the likelihood of this

happening again and make the customers feel more relaxed and finish their drink more leisurely.

The Senior Environmental Health Officer in his representation advised that:

- Local residents might be trying to sleep with their windows open on a warm summer day after 11pm, and would be disturbed by sound coming from the terrace.
- Mr Kandola had said that no music would be played inside the building after 11pm. However, noise would come from the customers using the terrace, and could escape from inside the premises through the doors.
- He had not seen the correspondence with the neighbours that was circulated in additional appendix 5, and did not know how far this consultation went.
- Noise coming from gatherings often become more apparent and intrusive the later it got in the evening, as background noise reduced. The change in character of Leamington Town Centre, as a result of lockdown, had meant that there was less activity, background noise levels had decreased, and as a result, noise at night would carry further.
- As the application was for a series of events, over consecutive weekends, this could lead to regular disturbance of neighbours.
- The existing licence contained a condition that the terrace area needed to close at 23:00, but he was concerned that the stated purpose of the Temporary Events Notices was to avoid this condition. He felt that the application was contrary to the licensing objectives regarding public nuisance. One of the unintended consequences of allowing the terrace to open until midnight would be undermining the existing premises licence condition to close all doors and windows after 23:00, because the doors to the terrace would be opening and closing after this time to allow customers to use the toilet, or when staff members went outside. Such examples would lead to noise escaping the building through the doors.
- The condition to remove vessels from external areas by 11pm was designed to prevent crime and disorder, and to encourage customers with unfinished drinks to move inside rather than take drinks with them or put staff in a position where they were trying to take drinks off customers.

The Council's Legal Officer clarified that the Panel was not bound by the existing licence. The application for the Temporary Events Notices was in line with the regulations, even though it affected a condition in the existing licence.

In his closing statement, Mr Kandola re-emphasised that neighbours were regularly consulted and they understood that the application was a temporary solution. He explained that he was following all Government guidelines and recommendations for the premises, but given the issues as a result of the Covid-19 pandemic, compromise was needed to solve the problem of giving customers outside adequate drinking up time. The proposed extension until midnight was just to give customers more time

to finish their drinks and leave the premises peacefully, and was unlikely to result in any complaints from neighbours. However, Mr Kandola explained that he was willing to revert back to closing the outdoor area at 11pm if any complaints were received.

At 10.43am, the Chairman reminded those present of the procedure: the remote meeting would be ended by the Committee Services Officer; a separate meeting would be arranged with the Members of the Panel, the Legal Advisor, the Committee Services Officer and the Civic & Committee Services Manager; the decision would be communicated in writing via email to the applicant later on the same day, followed by a written notice with a full decision within seven days.

Resolved that the application be granted.

The Panel listened carefully to the submissions made during the hearing, and were minded to grant the application for Temporary Events Notices, for the use of the terrace until 24:00 hours (rather than 23:00), subject to conditions, for the following dates:

- Friday 21 August 2020;
- Friday 28 August and Saturday 29 August 2020;
- Friday 11 September and Saturday 12 September 2020;
- Friday 18 September and Saturday 19 September 2020; and
- Friday 25 September and Saturday 26 September 2020.

In pursuance of the licensing objectives, the Panel granted the Temporary Event Notices subject to those conditions in Mr Kandola's existing licence for the premise which were not incompatible with the applications. For the avoidance of doubt, the conditions from the existing licence which would not apply to the Temporary Event Notices were as follows:

1. The external areas must be cleared by 23:00 and not used after this time; and
2. All open vessels must be removed from external areas within the building by 23:00.

In reaching this decision, the Panel noted that in the current Covid-19 climate, there was additional strain on the space within the premises, as social distancing needed to be adhered to. As such, it was not possible for those using the terrace to move

inside the premises to finish their drinks once the terrace closed at 11pm.

The Panel understood that this had resulted previously in an altercation in which a customer threw a drink at a member of staff. The Panel was of the view that allowing the terrace to remain open for the additional hour on the dates sought may alleviate the risk of further altercations arising, as customers on the terrace would have time to consume their drinks before leaving.

The Panel noted that drinks were served until 23:00 hours, and as such this additional hour would allow patrons to consume the drinks purchased before this time. Whilst the weather was fine, it would be beneficial if those customers who were outside could finish their drinks in the same way as customers inside, and all guests could leave the premises together at 24:00 hours.

It was noted that the previous Temporary Event Notice that Mr Kandola operated under, on the weekend of the 31 July and 1 August, received no complaints. Whilst the Panel was of the view that this alone would not amount to sufficient evidence of there being no noise nuisance caused by the additional hours of the terrace being used, when combined with other factors in this case, including Mr Kandola consulting immediate neighbours, the position of the premises, and that there was a terrace area, the Panel considered on balance that the licensing objectives could be maintained whilst granting the Temporary Event Notices for the selected dates.

Mr Kandola was required to keep the Temporary Event Notices in a safe place when the event was held, and display a copy of the notice on the premises where it could be easily seen.

(The meeting ended at 10.43am)

CHAIRMAN
14 October 2020