

# Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Tuesday 14 June 2016, at the Town Hall, Royal Leamington Spa at 10.00 am.

**Present:** Councillors Mrs Cain, Miss Grainger and Mrs Stevens.

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

## 1. **Appointment of Chairman**

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

## 2. **Declarations of Interest**

Councillor Mrs Cain declared an interest because she knew one of the observers.

## 3. **Application for a variation of a premises licence under the Licensing Act 2003 for Hickory's Smokehouse, Cromwell Lane, Coventry**

The Panel considered a report from Health and Community Protection which sought a decision on an application for a premises licence from Hickory's (ROS) Limited, Hickory's Smokehouse, Cromwell Lane, Coventry.

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

- Mr McDonnell, owner of Hickory's (ROS);
- Mr Cooper, Community Liaison – Hickory's;
- Mr Bartley, from Joliffe and Co Solicitors, acting for Hickory's;
- Ms Evans, from Joliffe and Co Solicitors (observing only);
- Mr Deeley, supporter, and also representing his wife;
- Mrs Kenney-Herbert, objector;
- Mr Bassett, objector, and also representing Mrs Bassett;
- Mrs Deeley – observer;
- Ms Lester – observer; and
- Councillor Taylor, Chairman, Burton Green Parish Council – observer.

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

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 variation of the premises licence for Hickory's Smokehouse, 216 Cromwell Lane, Coventry. The variation application had been submitted on 27 April 2016 and details proposed were outlined in paragraph 3.2 of the report.

Details of the variation to licensable activities were as per the tables below:

Current Licensable Hours:

	Sale of alcohol for consumption on and off the premises *	Live Music **	Recorded Music ***	Opening Hours
Monday to Saturday	11:30 to 00:00	20:00 to 00:00	11:30 to 00:00	11:30 to 00:30
Sunday	12:00 to 00:00	20:00 to 00:00	12:00 to 00:00	12:00 to 00:30
Christmas Eve	11:30 to 00:30	No seasonal variation	No seasonal variation	No seasonal variation

\*On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.

\*\*Note: Between the hours of 08:00 and 23:00, when amplified live music is taking place to an audience of less than 500 people and the premises is licensed for the sale of alcohol for consumption on the premises; or when amplified live music is taking place to any number people on any premises, all licensing conditions applicable to the control of live music on this licence are deemed not to be in operation.

Live music if (a) it is amplified and played to an audience of less than 200 premises licensed to sell alcohol (whilst alcohol is being sold), or a workplace; (b) it is unamplified to any number of people anywhere.

\*\*\*Note: Between the hours of 08:00 and 23:00, when recorded music is taking place to an audience of less than 500 people and the premises is licensed for the sale of alcohol for consumption on the premises, all licensing conditions applicable to the control of recorded music on this licence are deemed not to be in operation.

Variation Application:

	Sale of alcohol for consumption on and off the premises *	Late night refreshment	Opening Hours	Live and recorded music
Monday to Thursday	11:00 to 00:00	23:00 to 00:00	09:00 to 00:30	No change
Friday to Sunday	11:00 to 00:30	23:00 to 00:30	09:00 to 01:00	No change

\*On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.

The Licensing Officer advised that representations had been received from ten residents, and these were detailed in appendices 2 to 11 in the report. Six of these representations were objections, and four were in support of the application.

Under the Licensing Act 2003, there had been a premises licence issued by Warwick District Council, in place at Hickory's Smokehouse since 2005. The premises had previously operated under the name "The Peeping Tom". Since the licence was issued by Warwick District Council, there had been no complaints received by the Licensing Department.

The applicant had provided a plan of the premises distributed at the hearing, and a photo of the area was attached as appendix 12 to the report, along with a map of the area at appendix 13. Also provided by the applicant at the hearing was a bundle of papers, which included:

- A copy of the application
- Representations made to the Licensing Authority
- Sample menus for Hickory's Smokehouse
- The Applicant's Submissions

Mr Bartley drew attention to the bundle and stated that the key elements of the variation were:

- the change of permitted hours for the supply of alcohol;
- the change of the opening hours; and
- the inclusion of late night refreshment.

He drew attention to a condition requiring all doors and windows to be shut at 11.00pm, and that alcohol could only be consumed indoors after 11.00pm, with the outside area vacated by this time.

Mr Bartley stated that objectors had been concerned about the premises operating as a takeaway, but only doughnuts and coffee would be served after 11.00pm, so there would be no takeaway service after this time. He referred to paragraph 62 in the bundle which the applicant would be happy to accept as a condition of the licence:

"All food served at the premises is for the consumption on site albeit this condition shall not prevent the Premises Licence Holder from providing its customers with the service of taking any leftovers home with them."

In reference to objectors' concerns about noise from departing customers, Mr Bartley reminded Members that once people left the premises, the applicant was no longer responsible for their behaviour, but there would be "Quiet" notices on all exits.

Mr Bartley informed Members that the applicant wished to vary the hours on the licence so that customers could be served brunch; for this reason an opening time of 9.00am was requested, and serving alcohol could start at 11.00am. The application also sought to increase terminal hours. The premises had operated since 2005 up to midnight with no problems. The intention was to provide an upscale expensive meal environment in what had become a 24 hour society. There was no evidence that an additional 30 minutes would cause any problems or make any difference. A nearby public house "The Saracen's Head" had a later licence.

The layout proposed for the premises would have one way in and out which would mean that people would have to pass the host. No "gangs" would be allowed in, only quiet people.

In response to questions from the Panel, Mr Bartley responded:

- Customers did not only go outside to smoke. There would be a full outdoor operation with lots of staff and table service. People who sat outside would be told that they must go inside by 11.00pm, even if they had not finished their meal. There would be a gradual move to seat

people inside so that they could finish their meals. The previous operator had only had seven staff, but under Hickory's, 44 staff would be employed.

- The other four Hickory's establishments worked perfectly well and were very service minded.
- The host would be at the one entrance/exit point and if a group of people arrived that were not wanted, they would not be allowed in.
- There would be 98 covers inside and 90 outside when the weather permitted. There would be some heating provided outside, plus blankets and hot water bottles.
- Customer demand would determine the time of last orders and what was provided. If someone placed a food order at 11.00pm, they would not be allowed to place an order for a three-course meal; instead, they could order a burger.
- There would be smaller snack choices at the bar and staff would be trained to push sales of these. It was always better to serve food with drink.
- At other Hickory's establishments, the kitchens tended to start winding down by 11.00pm.
- In comparison to TGI Friday's, which were more town based and bar led, Hickory's was kitchen focused. Cocktails were offered but the premises did not have a "bar" environment. Families would be the main focus "early doors". Mr Bartlett referred Members to the food choices on the sample menus in the bundle.
- Depending on the person, customers would be served just drinks late at night. The general customer profile was someone arriving on foot or by car, pre-booking a table.
- The premises had trialed a "soft" opening and most customers were dining and drinking. Over 220 people attended over the course of three evenings. They had been mostly local residents so had most likely walked to the establishment. Going forward, it would be a mixture of local customers and those from further afield. Hickory's was popular with families and over 90% of customers booked a table which allowed control of timings. On the application, a condition would be that bookings would be spread every 15 minutes.
- The peak period for customers coming and going was between 7pm and 9.30pm. After that people did not arrive or leave in such large numbers so the issue of noise and cars would not be such a nuisance.

Mr Bassett, representing a local resident, Mrs Bassett, informed Members that:

- The pub was surrounded on three sides by properties in a semi-rural setting.
- Public transport stopped at 6.20pm, which meant that private vehicles were the only way for customers who lived outside Burton Green to get to the pub. Local residents were already being disturbed.
- Despite the offer to post notices for consideration to residents, disturbance would be inevitable, and the additional hours on the application would only serve to increase this.
- He had telephoned other Hickory's establishments and had established that a takeaway service was offered by them. He would welcome the inclusion of a condition that takeaway would not be sold.
- There was nothing to prevent issues arising from the sale of alcohol by customers who started by drinking elsewhere and then went to Hickory's to continue to drink. The Bell Inn in Station Avenue, Tile Hill sold cheap

alcohol up until midnight, as did The Green Man and The Bear and Ragged Staff in Kenilworth. He requested the licensing hours should be the same as the other establishments to stop people transferring from one pub to another.

- The additional hours would cause loss of privacy issues and material harm to the living conditions for residents. He could not understand the need to sell alcohol beyond midnight, and referred to Hickory's in the Wirral where a 10.30pm closing was advertised.
- The objectors to the variation in the licence were all nearby residents, as opposed to the supporters who were not. The supporters would not be disturbed. He requested that the closing time should be set at midnight all days of the week. If the Panel was minded to grant the application, then he requested a condition should be placed on it so that last entry time was 11.00pm to discourage people transferring from another licensed premise.

In response to questions from the Panel, Mr Bassett replied that:

- There had not been any need for serious complaint about disturbance by late closure of the Peeping Tom because the business had been struggling for a long while and so had closed at 11.00pm. However, even at 11.00pm, young people had congregated and made some noise and the manager had put up notices to ask the clientele to be quiet; this had not had any effect.
- The pub had been there when he had moved into the road. He did not have an issue living close to a pub, but he did have a problem with late opening hours because the car park was adjacent to his house and fence.
- The effect of disturbance during the working week was completely different to disturbance at the weekend. People drank far more at the weekend. The pub had a small car park (about 65 spaces). He was more concerned about disturbance at the weekends because he did not think people would stay until midnight during the working week. Getting up for work on a Monday after being disturbed on a Sunday night would be difficult.

In response to a question from Mr Bartley, Mr Bassett responded that he did think the clientele at Hickory's would be different to those that used the Peeping Tom, but that the Peeping Tom had not been that busy. Hickory's would have a younger customer; when he had visited branches of Hickory's at Chester and Wirral, customers were mainly in their 30's. There had been a lot of families and the places were much busier. Mr Bartley pointed out that there were no boy racers. He also asked Mr Bassett whether he would find it acceptable should last entry be before end of service to discourage people coming from other pubs after they closed. Mr Bassett agreed that this would be much better but he would still prefer that a time for last tables was set at 10.00pm or 10.30pm and 11.00pm for last entry to stop transference.

Mr Bassett applauded Hickory's efforts to engage with the residents; he did not have any issues in respect of the management, simply the 12.30am extension of opening hours at weekends.

Mrs Kenney-Herbert was invited to speak by the Chairman. She informed the Panel that she had visited the premises the previous day and had thought that it had been beautifully decorated. She had lived in Burton Green since 1963. In the 1970's, there had been issues with bikers and she had been told that she should expect a certain amount of trouble living close to a pub. But she did not

expect disturbance on a Sunday night. She pointed out that a nearby pub, The Saracen's Head was not surrounded by houses.

In response to questions from the Panel, Mrs Kenney-Herbert replied that she had complained to the previous manager about glasses being thrown into her garden and he had banned the culprits from the pub. She also confirmed that she would be happy with the same opening hours at weekends as for weekdays. She did not see the point of the additional half an hour opening for shift workers when most shifts finished at 8.00pm.

The Council's Solicitor advised Councillors who questioned whether residents had been put off complaining about the pub because of the negative impact this could have should they ever wish to sell their house, that this point had no relevance to the licence application and there was no evidence to suggest that this was a reason why complaints had not been made. Mr Bartley informed Panel members that the comments they had heard about problems late opening might cause with people transferring from another pub were not relevant to the licensing objectives that they should consider when dealing with an application; to which the Council's Solicitor responded that he would provide advice to Panel Members on what was relevant for consideration.

Mr Deeley, a local resident, was invited to speak by the Chairman. He informed the Panel that he had lived in Burton Green for 30 years and had attended the opening event. He felt that it was a "classy" establishment and would have a positive impact. The management had engaged with the residents and had adapted plans in response to feedback that the community had provided. It would provide local employment and was an important enterprise for the village. Mrs Kenney-Herbert advised the Panel that she echoed Mr Deeley's sentiments and her only objection was the additional half an hour on closing time.

The Chairman invited the applicant to make a short closing speech. Mr Bartley reminded the Panel that:

- Mr Bassett had acknowledged that the clientele using Hickory's would be different to those that had used the Peeping Tom.
- Mrs Kenney-Herbert was only concerned about the additional 30 minutes.
- That the Panel could only impose conditions on the licence on the objections they had heard.
- His client was willing to offer last entry one hour before the terminal alcohol hour.

At 11.22 am, the Chair 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 application for a premises licence be **granted**, subject to:

- (1) the agreed conditions restricting the sale of takeaway food; and
- (2) preventing last entry to the premises no later than one hour before the terminal hour for the sale of alcohol.

The Panel has considered the application before it, the officer's report, the Council's Licensing Policy and the submissions made on behalf of the Applicant and Objectors at today's hearing.

Turning first to the removal of the condition restricting sales of alcohol to those paid for beforehand or simultaneously, the so called "tabs" condition, the Panel notes that it has received no representations in this respect and it does not consider that the condition serves to promote the licensing objectives. The Panel has consequently decided that the condition should be removed.

Similarly, as regards the change to the layout of the premises, the Panel does not consider that it has heard any evidence that suggests that this change would adversely affect the Licensing Objectives and has decided that the variation should be granted in this respect.

Turning finally to the variation in the licensable hours and provision of late night refreshment. On the basis of the evidence the Panel has heard today, along with the written representations, the Panel considers the main issue in this regard to be whether or not the grant of the application would adversely affect the Licensing Objective of the Prevention of Public Nuisance, in particular noise nuisance.

Whilst the Panel has heard some anecdotal evidence of noise nuisance caused by those coming and going from the premises in its previous incarnation as the Peeping Tom, it does not consider that it has heard evidence sufficient to demonstrate that there is likely to be an increase in public nuisance if this application is granted. Whilst the Panel appreciates the concerns of local residents, it considers that many of the representations are speculative and general in nature, and that the addition of an extra half hour at the weekends is acceptable. In this respect, the Panel has given weight to the fact the Council's Environmental Health Department has not objected to the application, and that the Council has received no complaints about the premises in the past.

However, given the location of the premises in a predominantly quiet residential area, and some reported incidents of noise nuisance caused by the previous premises, it considers that it is appropriate that the conditions volunteered by the Applicant should be imposed in order to reduce the likelihood of noise nuisance being caused by those arriving at or leaving the premises late at night.

The application is therefore granted, subject to the agreed conditions restricting the sale of takeaway food, and

preventing last entry to the premises later than one hour before the terminal hour for the sale of alcohol.

At 12.00pm all parties and the Licensing Officer re-entered the room. The Chairman invited the Council's Solicitor to read out the Panel's decision.

All parties were advised that they had the right to appeal within 21 days of the formal decision being published.

The Council's Solicitor confirmed that "Leave Quietly" notices had not been set as a condition because it had not been agreed beforehand.

(The meeting ended at 12.05pm)