

Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Thursday 8 March 2018, at the Town Hall, Royal Leamington Spa at 10.00am.

Present: Councillors Gifford, H. Grainger and Mrs Hill

Also Present: Mrs Gutteridge (Council's Solicitor), Miss O'Neill (Council Solicitor – observing), Mrs Barnes (Senior Committee Services Officer) and Mrs Dudgeon (Licensing Enforcement Officer).

1. **Appointment of Chairman**

Resolved that Councillor H. Grainger be appointed as Chairman for the hearing.

2. **Declarations of Interest**

Councillors Gifford and Mrs Hill declared an interest because one of the interested parties, Mr Dixon, was known to them.

At 10.10am the Chairman adjourned the meeting to allow further time for one of the interested parties to arrive.

The meeting reconvened at 10.22am when Police Sergeant Kitson arrived representing Warwickshire Police.

3. **Application for the variation of a premises licence issued under the Licensing Act 2003 for Shell, 178 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 Shell, 178 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 Mitchener, solicitor representing Motor Fuel Ltd
- Mr Lawson, WDC Environmental Health Officer
- Councillor Dixon, Kenilworth Town Councillor representing Mr and Mrs Taylor
- Mr Clemett, a local resident
- Police Sergeant Kitson, representing Warwickshire Police
- Ms O'Neill, Legal Services, shadowing Council's solicitor

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.

Motor Fuel Limited applied for the variation of the premises licence for Shell, 178 Warwick Road, Kenilworth on 29 January 2018. The premise was a Petrol Station

with convenience store. The variation was to extend the hours for alcohol sales, opening hours and the addition of late night refreshment. The plans submitted with the application were attached at appendix 1 to the report and the hours applied for originally, were as detailed below:

	Opening Hours	Sale of Alcohol for Consumption Off the premises	Late Night Refreshment (Restricted to hot drinks only)
Monday to Sunday	00:00 to 24:00	00:00 to 24:00	23:00 to 05:00

A number of additional documents were circulated to all parties at the meeting including colour images of the site from neighbouring properties, a letter from Warwickshire Police detailing incidents relating to the site in question and clarification that one of the interested parties had withdrawn their objection.

Mrs Dudgeon advised that 30 objections had been received from residents, however, since the amended hours had been submitted, one objection had been withdrawn. In addition, she reminded Members that although it had been referred to a number of times throughout the documents, the Planning permission relating to the application site could not be taken into account by the Panel.

Prior to the hearing, the applicant had reduced the hours for alcohol sales as stated in the original application. The revised hours were as follows:

	Opening Hours	Sale of Alcohol for Consumption Off the premises	Late Night Refreshment (Restricted to hot drinks only)
Monday to Sunday	00:00 to 24:00	06:00 to 23:00	23:00 to 05:00

The premise had been licenced with Warwick District Council since August 2014 and its existing opening hours and Sale of Alcohol for Consumption off the premises, seven days a week, were 07:00 to 22:30.

An operating schedule was included at section 3.3 of the report and the representation from Warwickshire Police, Environmental Health and 29 residents were attached as appendices to the report.

Mr Mitchener from Motor Fuel Limited, introduced the application and advised that Motor Fuel Limited had taken over the licence on 18 December 2017. He described the premise as a 'benign site' and advised that in the 12 weeks they had held the licence they had had five drive offs without paying, compared to national figure of 3.8 drive offs per month.

Mr Mitchener explained that they were applying for an extension to the alcohol hours and late night refreshment licence which would be used to serve hot coffee and not hot food. He advised that they currently opened at 07.00 and were licenced until 22.30 so in effect, the application was only for an additional 1.5 hours per day. Mr Mitchener advised that one of the difficulties neighbouring residents experienced was of the noise of taxis driving onto the forecourt to drop

off passengers, however, because the petrol station was not open when this happened, they had no evidence to address it with.

Mr Mitchener then proceeded to address a number of the objections including the noise from the tannoy and the service provided through the night hatch which often caused late night noise. He felt that the majority of the objections had been due to the request for 24 hour opening which the applicant was no longer applying for. In response to the objection from the Police, the applicant did not feel this stood up to scrutiny because no timelines had been provided.

The applicant had advised that all staff would be trained to sell alcohol and would have to sit a test, there would be an audit report produced every six months, and a refusal book and incident log would be kept.

In response to questions from Panel Members, Mr Mitchener advised that:

- The hatch would be used at the discretion of the staff member – it helped to cut down on incidents of robbery which the Police liked but Environmental Health did not because of people congregating outside.
- Currently, staff were obliged to close the door at 21.30 and were not allowed to let anyone else in.
- With regard to the Late Night Refreshment licence, it would solely be for hot drink sales.
- The applicant preferred to avoid coin operated machines because they wanted customers to approach the till and be tempted by impulse purchases.

As a point of clarification, the Legal Officer reminded Mr Mitchener that the applicant was entitled to sell hot drinks before 23:00 – the late night refreshment licence would allow these to be sold after 23:00.

In response to questions from the Environmental Health Officer, Mr Mitchener advised that:

- There would not be facilities provided inside the premise for customers to consume hot drinks but generally individuals bought them to drink walking home or in their cars.
- Customers would be encouraged not to drink hot drinks on the forecourt.
- With regard to taxis using the forecourt to drop off passengers, it was difficult to manage this when the station was closed. If the premise was open longer, the incidents of crime could drop off.

In response to questions from interested parties, Mr Mitchener advised that:

- There had not been any incidents of drive-offs without paying whilst the Horsefair was in town.
- Across 420 sites, the proportion of alcohol sold between 06.00 and 07.00 was low but the applicant would like the option to do so.
- He could not confirm how many times the premise had operated before 07.00.
- He did not believe that the premise had been trading before 07.00 in the past few weeks.

The Chairman invited the officer representing Environmental Health, Mr Lawson, to outline his objection.

Mr Lawson advised that he had only seen the amendment to the hours being applied for the Sale of Alcohol that morning. However, the premise was located in the town centre and was surrounded by residential dwellings. The extension of the opening hours to 24 hours would result in noise from people and vehicles and would cause sleep disturbance. Mr Lawson felt that the petrol forecourt operating over 24 hours would result in noise from compressors and vehicles. The premise currently operated between 07.00 and 22.30; to extend this to 24 hours would not protect local residents.

In response to a question from the Panel, Mr Lawson confirmed that the 24 hour opening permission caused more concern than the hot drink sales, although there was a presumption that activities normally moved inside after 23.00.

Mr Dickson, Kenilworth Town Councillor representing Mr Steve Taylor, addressed the Panel and outlined the objection. He disagreed with Mr Mitchener's description of the site as being 'benign', instead seeing it as being located on a busy road which breached air quality levels. In addition, there were a lot of residential properties nearby that would lose their quiet environment. Mr Dickson highlighted the previous mention of the nearby Jet Garage located on the gyratory in Kenilworth which had far fewer houses in the vicinity than the Shell Garage. He also made reference to the nearby alleyway which led to Farmer Ward Road which had a history of problems associated with it. Mr Dickson referred to higher levels of criminal activity when the Horsefair was in town, although he recognised that the garage was under different ownership now. His main concern was that there would be potential disturbance to neighbours.

In response to a question from Mr Mitchener, Mr Dickson confirmed that Mr Taylor was objecting to the alcohol licence.

Mr Clemett, a local resident, addressed the Panel and stated that he felt there would be a significant increase in public nuisance if the garage was open at unsociable hours. He stated that the garage already attracted customers from the public house, The Green Man, at closing time and the bright lights from the garage disturbed him and his family whose property had six windows facing the site. He felt that the garage consistently breached its current licence and this affected his family's sleep and health. In addition, he felt there would be an increase in crime and disorder because the sales of hot drinks and the location of the cash machine encouraged youngsters to congregate. As a result of these breaches, Mr Clemett did not feel he could trust the owners to adhere to licence conditions. With regard to public safety, Mr Clemett highlighted the location of the propane tanks which were 3 to 4 metres from his bedroom window. His family had experienced drunken vandalism, damage to their property and regularly witnessed congregations of people smoking near to the propane tanks. He did not feel that there was a need for another 24 hour premise in the area and there needed to be a balance for the residents living nearby.

In response to a question from Mr Mitchener, Mr Clemett confirmed that he was objecting to the alcohol licence, the opening hours and the late night refreshment licence.

Sergeant Kitson, representing Warwickshire Police, addressed the Panel and advised that they were still objecting to the extension in the alcohol sales but were less concerned with a 6.00am start compared to the 7.00am start. He informed the Panel that there had been a rise in anti-social behaviour in this area

of Kenilworth in the past six months. If the application had been submitted 12-18 months ago the objection would have been based on an increase in noise only, however, in the past six months a small team had had to devote all its time to tackling anti-social behaviour in Kenilworth.

Sergeant Kitson reminded Members that the garage was located on a main road through Kenilworth and issues encountered would include slamming car doors, driving onto the forecourt and attending the serving hatch. Due to the nearby location of the bus stops from Coventry and Leamington, the presence of a lit forecourt would be a magnet from groups to migrate to. Whilst he had not seen taxis dropping off at the Shell Garage, similar garages were focal points for groups to gather and provided a platform for showing off. He did feel that the additional 90 minutes in the evening had the potential to cause problems.

In response to questions from the Panel, Sergeant Kitson advised that:

- The lighting at the forecourt was an attraction and caused a lot of the issues that occurred.
- The opening hours would result in people congregating who would look to base themselves there and buy alcohol.

In response to a question from Mr Mitchener, Sergeant Kitson explained that the additional time caused the police a problem because there was a shift changeover at 10.00pm which resulted in only a small number of officers being available. He therefore maintained the objection due to resources and was concerned that the extension of opening hours would provide disruptive, disrespectful groups of youths with an additional window of time.

Mr Clemett asked Sergeant Kitson a number of questions relating to response time from the Police and how often there would not be anyone to assist. Sergeant Kitson advised that this was an increasingly difficult question to answer but each call would be graded as to severity of threat to life or property. Immediate response would normally be within ten minutes. In addition, he advised Mr Clemett to make a note of incidents and make recordings if necessary.

The Chairman then invited Mr Mitchener to add any further information to his submission. Mr Mitchener described the application as two pronged with the Late Night Refreshment aspect being the 'benign' part. The applicant regarded this as a low level problem site as far as the company was concerned and the additional hours for the sale of alcohol, resulted in an additional half an hour at night. He did not feel that any evidence had been provided which specifically related to the 10.30pm to 11.00pm times and most of the representations referred to the 24 hour alcohol licence. Mr Mitchener referred to the suggestion that the night window should be removed but again there was no evidence that this was a problem, nor that the additional hours would cause a problem.

At 12.07pm, the Chairman asked all parties other than the Panel, the Council's Solicitor and the Senior Committee Services Officer to leave the room, in order to enable the Panel to deliberate in private and reach its decision.

Resolved that

In reaching its decision the Panel considered all of the evidence including that contained within the written

representations and the evidence given orally at the hearing. It was noted that the objection at appendix 26 of the Licensing Officer's report had been withdrawn.

The Panel also had regard to the statutory guidance and the Warwick District Council Statement of Licensing Policy.

The Applicant has applied for the variation of the current premises licence in the following terms:-

- i. The plan attached at appendix 1 of the Licensing Officer's Report to be substituted.
- ii. Opening hours to be Monday to Sunday 00:00 to 24:00.
- iii. Sale of Alcohol for Consumption off the premises between 06:00 to 23:00 hours.
- iv. Late Night Refreshment between 23:00 to 05:00 hours.
- v. Removal of the following condition;
"Between the hours of 21:00 to 22:30 each day the site will operate a closed door policy with all sales taking place through the night hatch".

The Panel had to consider the application in the light of the licensing objectives. The two objectives that are particularly engaged are the Prevention of Crime and Disorder and the Prevention of Public Nuisance.

During the hearing the Panel heard representations from Mr Chris Mitchener on behalf of the Applicant, Mr Peter Lawson on behalf of Environmental Health, Cllr Richard Dickson on behalf of Mr and Mrs Taylor, Mr Owen Clemett and PS Chris Kitson on behalf of Warwickshire Police.

The Panel made the following findings:

1. The Premises are situated on a main thoroughfare and there are number of licensed establishments within the vicinity. A number of residential properties border the Premises and there are residential areas close to it.
2. The Jet Petrol Station situated on the St John's gyratory roundabout has no restriction on opening times and is licensed to sell alcohol from 08:00 until 23:00 Monday to Saturday and 22:30 on Sundays. The Panel note that the Jet Garage is not as easily accessible by foot as the Premises, it is situated further away from the Town Centre and it does not have residential properties bordering it.
3. The Applicant has owned the Premises for some 12 weeks and describes it as a benign site. The Applicant has pointed out the number of "drive offs" during their period of ownership has been lower than the national monthly average. Having heard from PS Kitson, Mr Peter Lawson EHO and Mr Clemett, the Panel do not accept that this is a benign site. PS Kitson, who is the Safer Neighbourhood Team Sergeant for Kenilworth and Warwick, advised the Panel that anti-social behaviour and alcohol related crime caused by the congregation of large groups of youths from

surrounding areas was an increasing problem in Kenilworth and that a lit petrol station forecourt in this area of the town with a shop selling alcohol would be magnet for large groups. Environmental Health described the potential for public nuisance in the form of noise and light nuisance that could be experienced by those residents whose homes adjoin the site if the premises operated at night. Mr Clemett whose house is situated directly next to the premises described problems that he had experienced with noise and anti-social behaviour. Mr Clemett also referred to anti-social behaviour and noise coming from the premises when it had formerly operated as a 24 hour garage and pointed out that this was at a time when it did not sell alcohol.

4. The Panel considered the extension of the hours for the sale of alcohol which amount to an extension of one hour in the morning and an extra 30 minutes at night. It was noted that Environmental Health objected to the extension and felt that the current hours struck the right balance between the needs of the business and the needs of the community. Sgt Kitson stated that he would not oppose the 06:00 to 07:00 extension but that he did feel that the additional 30 minute extension to 23:00 could have an impact and explained that the police may have more difficulty policing the Premises at this time. Mr Mitchener on behalf of the Applicant referred to the other licensed premises in the surrounding area, in particular the Green Man public house across the road and the Jet Garage which both serve alcohol until 23:00. The Panel fully appreciate the role of Environmental Health and the Police and understand that they are the main source of advice in relation to crime and disorder and public nuisance. The Panel attach considerable weight to their evidence and in particular felt that PS Kitson's evidence was fair and persuasive but, on balance, they did not believe that the extension of the hours for the sale of alcohol as requested would impact on the licensing objectives to the extent that refusal of this aspect of the application was justified.
5. Having considered all of the evidence the Panel is concerned by the potential for late night crime and disorder and public nuisance resulting from the licensable activities at the premises. As PS Kitson advised a floodlit, open premises would be considerably more likely than a closed premises to attract groups of people to congregate and to remain there or in the immediate vicinity once alcohol has been purchased. If this occurs after 23:00 then it will cause nuisance to local residents and increase the likelihood of crime and disorder. It is for this reason that the Panel believe that it would appropriate for the prevention of crime and disorder and the prevention of public nuisance to impose a condition on the premises licence that restricts the opening hours from 06:00 to 23:00.
6. The Panel considered the application to vary the licence to allow late night refreshment to be served between 23:00 and 05:00 hours. It is understood that the Applicant only

intends to serve hot drinks and would be happy for this to a condition of the licence. The Applicant also advised that waste bins would be present on the forecourt and signs could be erected asking customers to leave quietly. The Panel take the view that the service of hot drinks would be more likely to result in customers staying on the premises to consume them. They consider that this would increase the likelihood of public nuisance and therefore have decided to refuse this variation to the licence.

7. The Applicant has asked for the condition requiring all sales to be via the night hatch between 21:00 and 22:30 to be removed. No objection was made by the Police or Environmental Health and it is understood that the cashier would have the ability to lock the door remotely at their discretion. The Panel agreed that this condition should be removed from the licence.

In conclusion the Panel has determined that the licence shall be varied as follows;

The licence shall authorise the sale of alcohol for consumption off the premises Monday to Sunday between 06:00 and 23:00.

The opening hours of the premises: Monday to Sunday 06:00 to 23:00

The Plan of the premises shall be the Plan submitted with the variation application.

The following condition shall be removed from the licence:

Between the hours of 21:00 to 22:30 each day the site will operate a closed door policy with all sales taking place through the night hatch

The following condition shall be added to the licence:

The opening hours of the premises shall be between 06:00 and 23:00 hours.

At 1.01pm, 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 1.10pm)