LICENSING PANEL HEARING

A record of a Licensing Panel hearing held on Thursday 13 December 2012, at the Town Hall, Royal Leamington Spa at 10.00 am.

PANEL MEMBERS: Councillors Illingworth, Mrs. Mellor and Wilkinson.

ALSO PRESENT: David Davies (Licensing Services Manager), Peter Dixon (Committee Services Officer) and Max Howarth (Council's Solicitor).

1. **APPOINTMENT OF CHAIR**

RESOLVED that Councillor Mrs. Mellor be appointed as Chair for the hearing.

The Chair introduced herself, other members of the Panel and officers, and asked the other parties to introduce themselves.

Mr. A Potts, Solicitor, was in attendance to present the application on behalf of the applicant, Mr. Kandola, who accompanied him. Mr. Nawaz, the Security Manager and Mr. Rollins, the Manager of Loose Box, were also present.

The responsible authorities introduced themselves: Ms. Simms represented Warwickshire Police and Mr. Nunn represented Environmental Health.

2. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

3. **APPLICATION FOR A VARIATION OF THE PREMISES LICENCE ISSUED UNDER THE LICENSING ACT 2003 FOR LOOSE BOX, 4 BEDFORD STREET, ROYAL LEAMINGTON SPA**

A report from Community Protection was submitted which sought a decision on an application by Loose Box for a variation of the licence for the premises at 4 Bedford Street, Royal Leamington Spa.

The Council's Solicitor explained the procedure that the hearing would follow.

The Licensing Services Manager outlined the report and asked the Panel to consider all the information contained within it, and the representations made to the meeting, and to determine if the application for a premises licence should be approved.

The report referred to those matters to which the Panel had to give consideration, the statutory guidance issued by the Secretary of State, the Council's Licensing Policy Statement and the Licensing objectives.

The report from Community Protection summarised the licensing history of the premises, which had previously been known as Mumbai Bluu.

In July 2005 Mr. Kandola, as a director of Momak Ltd., had applied to convert the existing Justice's licences for Mumbai Bluu to a premises licence under the Licensing Act 2003. Warwickshire Police were the only authority permitted to object to this conversion on the grounds of crime and disorder. No such objection was made. At the same time a variation application was submitted which attracted representations. A hearing was held on 5 September 2005 to decide the licence to be issued at the inception of the Licensing Act 2003 on 24 November 2005.

The Licensing Panel's decision was appealed to the Magistrates' Court and the premises licence was subsequently modified.

Mr. Kandola applied on 7 September 2009 to vary the premises licence to change the hours permitted for the sale of alcohol for consumption on the premises on Tuesday and Thursday to 10 am – 2 am. This application was refused at a Licensing Panel hearing on 21 December 2009. Mr. Kandola had now applied again to vary the licence. The applicant wished to extend the terminable hour for the sale of alcohol for consumption on the premises by one hour on Tuesdays and Thursdays, until 2 am, and to extend the closing time of the premises on Tuesdays and Thursdays until 2.30 am.

An operating schedule had been submitted with the variation application. Not all parts of the schedule translated to appropriate and enforceable conditions. The relevant points were as follows:

Prevention of crime and disorder

SIA registered door staff would be employed from 20:00 hours on Thursday, Friday and Saturdays until close.

The premises would remain a member of the Warwick District Council (WDC) approved Pubwatch scheme and adhere to all of its terms and conditions.

Protection of children from harm

Under 18's would not be allowed on the premises after 18:00 on any day.

The Licensing Services Manager highlighted the fact that the premises were located within the Cumulative Impact Area. He also pointed out that, under recent changes to the Licensing Act, the Panel was now required to decide whether it was "appropriate" to apply conditions. (Previously the Act had required a decision on whether it was "necessary" to apply conditions.)

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 compliance with the four licensing objectives. Each application would be judged on its individual merits.

Mr. Potts presented the application for a variation of the premises licence. He explained that Mr. Kandola had been in the licensing trade for many

years and had managed the premises now known as Loose Box for some time. The proposed variation before the Panel was a modest one. Mr. Kandola's reasoning for the variation was that he had regular and well established business from students on the nights in question and because he perceived a need for an additional half hour of drinking time on those nights. Bedford Street was busy, with several licensed establishments, but two licensed premises, the Windsor Club and Barcodes, had already left the area. There was no history of trouble relating to Loose Box and Mr. Kandola was confident that the variation would not affect the Cumulative Impact Area. Several temporary event notices had been successfully applied for in the past and the events had run smoothly, having no negative impact on the licensing objectives.

Mr. Potts pointed out that, while Environmental Health's objection related to its concerns for residents, there were no residents present at the meeting to echo such concerns. He also talked about a recent case that had gone before Leeds Magistrates and which effectively ruled that, in respect of applications within Cumulative Impact Areas, each application should be taken on individual merits, should not be weighed too rigidly and should be based on evidence.

Mr. Kandola reiterated points made by Mr. Potts, stating that the premises were well run, that a security firm was employed to manage the doors on Tuesdays and Thursdays, that he would continue to enforce the conditions attached to the licence and that he was happy to accept three additional conditions proposed by the Police.

In response to questions from the Panel, Mr. Potts and Mr. Kandola clarified that by extending the opening hours, Loose Box would be on an equal footing with neighbouring premises. They stated that there were two flats above an establishment called Rhubarb nearby, but that these flats were vacant. Also, when Loose Box had previously stayed open until 3 am, there had been no complaints.

Responding to questions from the responsible authorities, Mr. Kandola stated that students wished to remain on his premises for longer; that he was not aware of Police having recently met with students to discuss their antisocial behaviour; that he was not aware of reports in the Press about students causing disturbances upon leaving the premises in the early hours; and that there had been a complaint 18 months ago relating to a door being left open which had been resolved by the installation of more security doors.

Ms. Simms addressed the Panel on behalf of Warwickshire Police and asked the Panel to refuse the application because it was within the Cumulative Impact Area. Warwickshire Police believed that later opening would increase crime and disorder. The area had high footfall, with a lot of licensable premises and a number of residents nearby who needed to sleep, particularly within the working week. Extended hours would encourage customers to remain in the area for longer and increase late night incidents. Warwickshire Police believed that later opening would exacerbate existing problems. Ms. Simms pointed out that Loose Box had a noise limiter, but that it had not been set recently to the satisfaction of Environmental Health. For the reasons stated, Warwickshire Police

opposed the application. Notwithstanding that opposition, if the Panel was minded to endorse the variation, then three additional conditions were requested to be approved.

At this point, the Licensing Services Manager stated that he believed that a fault with the noise limiter had recently been corrected.

The Panel asked Ms. Simms to clarify the evidence for how the variation to the application would lead to an increase in crime and disorder. Ms. Simms replied that it was the potential for longer drinking. She added that it was already established that there was noise and antisocial behaviour linked to students. Ms. Simms responded to further questions from the Panel, confirming that due to cutbacks there were less police officers available to attend to incidents within the week. She said that it was difficult to relate crime and disorder specifically to one premises, but if a premises was extending its opening hours, then the potential for problems to increase was clearly there.

Responding to a question from the Council's Solicitor, Ms. Simms confirmed that she had statistics relating to students and the premises in question, but the burden of proof to present such information lay with the applicant. There had been an incident involving students shouting in the road very recently. The Solicitor pointed out that a responsible authority could only provide details of incidents prior to a hearing and that if further evidence was to be put forward now, then this could only be done if the applicant's approval was given first. Mr. Kandola denied any knowledge of an incident.

Through the Chair, Mr. Potts stated that there was no evidence of antisocial behaviour attributable to the premises. Ms. Simms responded by saying that no evidence had been put forward, but she asked that Mr. Kandola redact his statement that he was aware of no incidents, because the Police believed that he was aware.

At 10.40 am the meeting was adjourned in order for Ms. Simms to confer with the applicant and his representative over the evidence which Warwickshire Police wished to present and to ascertain whether the applicant was happy for the evidence to be presented to the Panel.

The meeting reconvened at 10.50 am, at which time Mr. Potts stated that he had been presented with CCTV evidence relating to an alledged incident which he knew nothing about. It was all in the public domain and so, given these circumstances, Mr. Potts would leave Mr. Kandola and Mr. Nawaz to deal with the matter, and he stated that he was happy for the Police to introduce the evidence and for his client to respond.

Ms. Simms clarified that, outside of the meeting, she had conversed with the applicant. She stated that it was up to the applicant to bring the information forward. Mr. Kandola advised the Panel that he had not known anything about the incident until it was presented to him but that he was content for Ms. Simms to present the evidence.

Ms. Simms advised the Panel that an incident had occurred on 14 November 2012 at 1.41 am. CCTV footage showed that a large crowd of drunken foreign students had gathered in the road, having come directly

from Loose Box. They stood in the middle of the street, singing loudly that they should not be moved and remained there for some time causing a disturbance until they were eventually moved on by the Police.

The Panel asked whether the Police were absolutely certain that the students had come directly from Loose Box. In response, Ms. Simms confirmed that this was so and that the doorman from Loose Box could also confirm this. Mr. Kandola stated that had he was not present at Loose Box on the night in question. Mr. Nawaz confirmed that he had been outside the premises, that the students had left Loose Box at about 1.15 am and that he had moved them up the road, where something had occurred and they had started to cause problems. He also pointed out that Loose Box had fulfilled its responsibility, which had been to get the customers to leave the premises and to move them on. The students had been heading towards Warwick Street when the incident had taken place. Mr. Kandola suggested that later opening would stop such incidents occuring.

Mr. Nunn attended the meeting on behalf of Environmental Health and talked about early morning incidents in the past which had involved extremely loud noise coming from Loose Box prior to 3 am. Environmental Health had met and discussed these issues with the applicant. Mr. Nunn stated that Environmental Health's representation did not relate directly to those incidents, but he pointed out that when local residents complained about noise they were not usually aware of who was causing the noise, only that there was a disturbance coming from somewhere. Environmental Health's concern was that the premises lay within a Cumulative Impact Area and that any increase in operating hours would contribute to cumulative problems for residents, particularly in terms of noise during the early hours. Mr. Nunn recognised that an establishment could not control its customers once they had left the premises, but suggested that the Panel could influence the time at which those people would leave.

Responding to the Panel's questions, Mr. Nunn said that it was impossible to tell whether later opening hours would lead to an increase in the number of customers, but that it would allow patrons to leave later on, creating the potential for early morning disturbance. Environmental Health officers regularly visited the town centre and regularly received complaints. Mr. Nunn was not aware of any complaints relating to the incident on 14 November.

The Panel asked whether there was any evidence that other premises remained open later than Loose Box. There was none, and the Panel had noted that the application had to be judged on its own merits anyway.

Responding to a question from Mr. Potts, Mr. Nunn confirmed that noise problems could be attributed to the wider area but not specifically to Loose Box.

Mr. Potts summed up the application, confirming that he was happy to accept the additional three conditions proposed by Warwickshire Police, which streamlined conditions already in place. He stated that there was evidence that students wished to remain on the premises until later than they were currently allowed to, that Mr. Kandola and Mr. Nawaz had both demonstrated that they had acted appropriately in relation to the incident

which had occured, and that there was no evidence of Loose Box making a negative contribution to the licensing objectives. Mr. Potts talked again about the District Judge's decision relating to Leeds City Centre and about the need for Councils not to raise an iron curtain to variations within a Cumulative Impact Area. He asked the Panel to deal with the application on its merits, noting that Loose Box had a good track record and an experienced licensee.

At this stage in the proceedings, the Licensing Services Manager identified an anomoly on the existing licence, pointing out that it referred to the need for door staff after 1 am, but that it did not dictate Tuesdays and Thursdays.

The Chair asked all parties other than the Panel, the Council's Solicitor and Committee Services Officer to leave the room at 11.15 am, to enable the Panel to deliberate and reach its decision.

RESOLVED to grant the variation to the premises licence as follows:

The Panel has considered the representations made by the applicant, Warwickshire Police and Environmental Health. The Panel has also considered the report from Licensing Services and has had regard to the guidance issued by the Secretary of State and the Council's Statement of Licensing Policy.

The Panel notes that the premises are located within the Cumulative Impact Area and therefore that the Council's special policy regarding cumulative impact applies. Paragraph 7.9 of the special policy provides that the onus of proof is on the applicant to show that the application will not impact upon the four licensing objectives. The relevant licensing objectives in this case are Crime and Disorder, and Public Nuisance.

The Panel heard from the applicant that he wishes to extend the terminable hour for the sale of alcohol for consumption on the premises by 1 hour on Tuesdays and Thursdays until 2 am, and the extension of the closing time of the premises on Tuesdays and Thursdays until 2.30 am. The Panel also heard that, with the exception of the Section 19 closure notice which was served on the premises on 27 October 2012 and the incident which occurred on 14 November 2012, there have been no recorded incidents of crime and disorder or public nuisance arising from the premises.

The Panel also heard from the applicant that they had applied for 10 temporary event notices in the past 12 months for events taking place on Tuesdays and Thursdays and that they had received no complaints in relation to these events, nor were they aware of

any incidents of crime and disorder or public nuisance.

Having heard the representations made by the applicant, the Panel is satisfied that the applicant has demonstrated that the application will not impact upon the licensing objectives of crime and disorder and public nuisance.

The Panel also heard representations from Warwickshire Police and Environmental Health; however, the Panel felt that neither responsible authority had provided sufficient evidence to show that the grant of the application would significantly impact upon the licensing objectives. The Panel is therefore minded to grant the application, subject to the conditions agreed with the Police which are contained within the Police's representation and an additional condition providing that SIA registered door staff will be employed from 20:00 hours on Tuesdays and Thursdays until close.

All parties were invited back in to the room so they could be informed of the decision, which was read out by the Council's Solicitor. They were reminded that all parties had the right to appeal the Panel's decision to the Magistrates Court within 21 days of formal notice of the decision.

(The meeting finished at 12.05 pm)