

# Licensing & Regulatory Panel

Minutes of the Licensing & Regulatory Panel held on Wednesday 6 June 2018, at the Town Hall, Royal Leamington Spa at 10.00am.

**Present:** Councillors H Grainger, Mrs Hill and Murphy.

**Also Present:** Mr Howarth (Council's Solicitor), Mrs Dury (Principal Committee Services Officer) and Ms Russell (Licensing Enforcement Officer).

Mrs Rose (Licensing Team Leader) and Ms Munir and Ms Wells (Warwickshire County Council Solicitors) were present, but observing only.

## 1. **Substitutes**

Councillor Mrs Hill substituted for Councillor Quinney. The Committee Services Officer explained that a change in Panel membership had occurred at a Licensing & Regulatory Committee meeting that had been held after the agenda for the current Panel hearing had been published. Councillor Quinney had been appointed to this Panel but had given apologies for this hearing, so Councillor Mrs Hill had been appointed to substitute for him.

## 2. **Appointment of Chairman**

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

## 3. **Declarations of Interest**

There were no declarations of interest.

(A problem with the microphones meant that the meeting was adjourned at 10.04 am for six minutes, whilst the issue was rectified.)

## 4. **Application for a variation of a premises licence issued under the Licensing Act 2003 for Royal News, 42 Bedford Street, Royal Leamington Spa**

The Panel considered a report from Health and Community Protection which sought a decision on an application for a variation of a premises licence for Royal News, 42 Bedford Street, Royal Leamington Spa.

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

- Mr Uniss Ali Mohamed – the applicant, Royal News;
- Mr Heath Thomas – the applicant's solicitor; and
- Sergeant Alison Wiggins – Warwickshire Police Safe Neighbourhood Team.

There were no interested parties present.

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 variation application for a premises licence should be granted and, if so, whether the licence should be subject to any conditions.

Mr Mohamed had applied for a variation of the premises licence for Royal News on 25 April 2018. The premises operated as a newsagent and off licence. The application was for the extension of the hours the premises could sell alcohol for consumption off the premises to fall in line with the current opening hours. A copy of the current premises licence was attached as appendix 1 to the report and details of the variation were set out as below:

	Current hours: Sale of Alcohol for consumption off the premises	Hours applied for under variation: Sale of Alcohol for consumption off the premises
Monday to Sunday	06:00 to 22:00	06:00 to 00:00

An operating schedule had been supplied by the applicant and would form part of any licence issued and was detailed in the report at paragraph 3.2.

The Licensing Department had received a representation from Warwickshire Police which was attached as appendix 2 to the report. No other representations had been received.

The premise was located within the Council's Cumulative Impact Zone and a map of the area was attached as appendix 3 with photographs of the area attached at appendix 4 to the report.

The Chairman asked the applicant or his solicitor to introduce the application. Mr Thomas informed the Panel that he had acted on behalf of the applicant since 2015 when he had first applied for a licence. The applicant lived above the premises and had appeared before a Panel several times when he needed to vary a licence. The previous owner had only wanted to operate until 7pm but the applicant had wanted to extend these hours and so a trial period had been agreed in 2016 in liaison with the Police for opening until 10pm on the basis that, if successful, the applicant would apply to vary the licence. Now the applicant wished to operate until midnight and had again liaised with the Police but this time the Police had informed him that they would object to this extension. The application had therefore come before the Panel for a decision.

Mr Thomas informed the Panel that in the course of reviewing the evidence supplied by the Police, he had spoken to his client and it had been agreed to moderate the application so that the terminal hour would be 23:00 hours. His client was very aware of issues of anti-social behaviour in the town centre which occurred from midnight onwards. He had therefore taken on-board the comments raised by the Police and felt that a variation to extend up to 23:00 would not cause problems. Mr Thomas then informed the Panel that they formally wished to amend the variation of the licence to 23:00 hours.

Mr Thomas drew the Panel's attention to the report which listed the licensing conditions which were comprehensive. He pointed out that in the time the applicant had run the shop, there had not been any evidence that he sold to

people already intoxicated or to underage people. He also stated that there was no evidence from the Police that his application would contravene the licensing objectives and pointed out that the licence holder was only responsible for trouble caused from customers to his shop in the immediate vicinity of it. There was no evidence to show any breach of the Licensing Objectives, nor evidence to suggest a negative impact on the Cumulative Impact Zone. He also felt that there would not be any issue with the reduction to 23:00 hours.

Mr Thomas suggested that the Police representation should be scrutinised and that the Panel should take a balanced view. Page 9 of the documents provided by the Police talked about car parking issues but this was not a matter for the Panel to consider because it was a highways issue, so the Panel should not take this into consideration. The Police had not provided any CCTV, statistical or any other evidence of any sort against his client. Evidence provided with street marshal confiscation of alcohol was not specific as to location. Mr Thomas would have expected more information. He pointed out that the street marshal initiative had been established to deal with anti-social behaviour at taxi ranks, and it was not designed for the purposes of monitoring anti-social behaviour at shops selling alcohol. The University had requested the street marshal scheme and it had been agreed that the starting time for street marshals would be 23:00 hours which indicated that hours prior to 23:00 should not cause issues at the premises. The evidence provided by the Police in respect of seizure of alcohol was from midnight onwards and this evidence had been collected by people who only started work at 23:00.

His client had a refusal policy and was strict on refusing to sell alcohol to clients who were clearly intoxicated. Alcohol sold was put in carrier bags so that it could be drunk at home. Mr Mohammed had offered to label all bottles to show that they had been sold at Royal News. If there was real concern about litter, then any littering of products sold at Royal News would then be traceable back to the shop.

Mr Thomas had examined the Council's Licensing Policy and found that it was based on crime figures ten years old. Mr Thomas had therefore found more recent crime figures for Warwickshire on the Web and these showed a reduction by one-third for crimes attributable to alcohol; these being borne out by a corresponding drop in violent crime by 32%.

Mr Thomas contended that a grant of a variation of licence to 23:00 hours would not give rise to an increase in anti-social behaviour. There was no evidence provided that showed there would be a breach and the evidence submitted from street marshals was for incidents after 23:00. The amended hours would therefore be unlikely to affect the Cumulative Impact Zone. It was pointed out that Royal Leamington Spa Town Council had made representations at the previous variation of hours submitted in 2016; this time the Council had not submitted a representation. He assured the Panel that if it granted the extension to 23:00, there would be no further application for later hours than that.

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

- The evidence showed that problems occurred from midnight onwards. People had been refused alcohol sales. His client lived above the premises so that was one reason why he refused to sell alcohol to those intoxicated. A Refusals book was maintained.

- Only two staff worked in the shop at all times. It would be too crowded to have more staff working at any time.

Sergeant Wiggins confirmed that the Police still objected to the application to vary the licence even with the amendment to 23:00. She informed the Panel that there were no concerns on how the premises operated; the objection was purely on the grounds of the extension of hours. Currently the premises operated until 22:00, but the application was for an extension up to midnight. Sergeant Wiggins drew the Panel's attention to her experience dealing with the night-time economy and the premises were located at the heart of this. Pedestrian footfall after 22:00 was heavy and there would be issues with cars parking which would be a public safety issue.

Sergeant Wiggins reiterated that the Council had introduced the power to seize alcohol and the information from the street marshals was on the days when most alcohol was seized. If more alcohol was sold, then crime and disorder would increase. There was also the risk of people "pre-loading" before entering licensed premises. This was the third application from Royal News and if the extension to midnight was granted there would be a rise in anti-social behaviour, litter and the availability to use bottles as weapons. Sergeant Wiggins therefore requested that the Panel should refuse the application.

In response to questions from the Panel, Sergeant Wiggins responded that:

- The Police were objecting to an extension of hours from 22:00 hours. (The Chairman had pointed out that the applicant had revised the application from midnight to 23:00.)
- There were other premises operating until 23:00, but these closed at 22:00. It was not the responsibility of the Police to provide evidence that the extension would cause problems, just to provide evidence that the extension would add to the problems in the saturation zone.
- She could not comment on whether the previous extension in hours in 2015 and 2016 had resulted in problems at the individual premises because the evidence provided did not include this information.

Mr Thomas confirmed that he had no questions for the Police.

The Chairman asked Mr Thomas to sum up his case for his client. Mr Thomas stated that the concerns from the Police had been taken on board and had resulted in the moderated application. The Police had not provided any evidence of incidents at the premises or that a rise in hours would result in an increase in anti-social behaviour there. The marshal scheme started at 23:00 and this fact was not disputed by the Police, nor had the reason the scheme had been originally introduced been disputed. Nothing had been stated to support that a rise by one hour would have a negative impact. The issue raised by the Police about parking was not within the Panel's remit, and there was no evidence of any crimes connected to the premises.

Mr Thomas drew the Panel's attention to the "Thwaites" case where it was concluded that the decision had to be evidence based. What was before the Panel was perceived concern and not borne out under closer scrutiny. The Panel also had the power to use discretion in respect of the Cumulative Impact Zone.

Sergeant Wiggins informed the Panel that it was the duty of the Police to protect citizens from harm and not for the Police to prove harm. The Panel would have to decide.

The Council's Solicitor asked if the two County Council solicitors observing could remain in the room whilst the Panel was deliberating its decision; Mr Thomas was amenable.

At 11.03am, the Chairman asked all parties other than the Panel, the Council's Solicitor, Ms Munir and Ms Wells 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 variation to the licence be **granted** subject to the amendment to the terminal hour of 23:00 hours.

The Panel has considered the report from Licensing and has heard the representations from the applicant and the Police. The Panel has also given due consideration to the statutory guidance published under Section 182 of the Licensing Act 2003 and the Council's statement of Licensing Policy.

The Panel note that the premises is situated within the Cumulative Impact Zone and therefore the onus is on the applicant to demonstrate that the grant of a licence will not impact on any of the four licensing objectives.

The Panel notes that the applicant has amended their application to change the terminal hour to 11pm.

The Panel heard from the applicant's representative that there is currently a licence until 10pm and that there are already a number of conditions attached to that licence which provide such matters as CCTV and staff training. The Panel also heard that there is no evidence of incidents of sales of alcohol to intoxicated individual or minors, nor is there any evidence that the sale of alcohol from these premises has resulted in problems of people drinking on the street.

The Panel heard from the applicant's representative that the Police have not provided any CCTV evidence or statistics or crime reports and that the only evidence provided by the Police to support their representation is a chart showing seizures made by Street Marshals over a 12 month period from January 2017 to January 2018.

The Panel heard from the Panel's representative that the Street Marshals did not go on duty until 11pm and this suggested that there were no problems in relation to open bottles being carried onto the street prior to this time. The Panel notes that this has not been challenged by the police.

The Panel heard from the applicant's representative that the applicant operates a refusals book policy. Further that the applicant lives above his premises and therefore has a good knowledge regarding his customers.

The applicant's representative has informed the Panel that the applicant would agree to the imposition of a condition requiring him to label his bottles so that in the event there was a problem with littering or incidents where such bottles have been used as weapon, the bottles can be traced back to the premises.

The Panel heard from the Police that they had no concerns how the premises had been operated and that their concerns related to the problems which would be caused if the application was granted. The Panel heard from the Police that the premises are located in the heart of the night time economy and that the footfall in this area was heavy. The Police informed the Panel that their concerns related to the potential impact on public safety caused by customers to the premises parking on double yellow lines and the concern that bottles from the premises could be used as weapons and could become trip hazards if left on the street.

The starting point for this Panel in coming to its decision is the case of Thwaites, which is authority for the view that any decision by this Panel must be evidence based and must not be based purely on perceived concerns. The Panel notes that the Police have not provided any evidence of any incidents of crime and disorder which can be traced back to the licensed premises nor have the Police provided any statistics or crime reports. The only evidence provided by the Police relates to seizures by Street Marshals which have taken place after 11pm.

The Panel has not seen any evidence from the Police that customers of the premises will park on double yellow lines and that this will result in a public safety issue. In any event, such matters are outside the control of the premises licence holder and therefore should be considered a highways issue, not a licensing issue.

Having considered all of the evidence before the Panel today, the Panel is satisfied that there is no evidence that the grant of the licence will impact upon any of the licensing objectives.

The Panel has considered whether it is appropriate to impose conditions upon the licence relating to the minimum number of staff that should be on duty when the premises is open and also the labelling of bottles. The Panel does not however feel that the imposition of such conditions is appropriate. It is however open to the applicant to label

their bottles and that this could be considered to be good practice.

The Panel therefore grants the licence in accordance with the report subject to the amendment to the terminal hour of 11pm.

At 12.19pm, all parties were invited back into the room (Sergeant Wiggins had left) and the Chairman invited the Council's Solicitor to read out the Panel's decision. The Council's Solicitor informed all parties that they had a right to appeal against the decision to the Magistrates Court within 21 days from receipt of the Notice of Decision.

(The meeting ended at 12.24pm)

CHAIR  
26 November 2018