

**LICENSING PANEL
11 OCTOBER 2018
2.00 - 3.50 PM**



Present:

Councillors Allen (Chairman), Mrs McKenzie and Tullett

Also Present:

Charlie Fletcher, Licensing Officer

Simon Bull, Legal Advisor

Lizzie Rich, Clerk

Councillor Tina McKenzie-Boyle, Ward Councillor

45. Declarations of Interest

There were no Declarations of Interest.

46. The Procedure for Hearings at Licensing Panels

The procedure for hearings at Licensing Panels was noted and understood by all parties.

47. Review of Street Trading Consent for A&A Plus, Bull Lane, Bracknell

The Panel carefully considered all the information presented, both written and oral, from:

- the Licensing Officer who outlined the issues;
- the Consent Holder;
- the Interested Parties, including those who submitted written representations but did not attend.

The panel also listened to sound recordings taken from the one of the interested party's garden.

The Panel considered the reference to the Council's own Street Trading Consent Policy and the Local Government (Miscellaneous Provisions) Act 1982. At the conclusion of the proceedings, all participants present confirmed that they had been given the opportunity to say all they wished to say.

The Panel noted that there had been no representations made by the Police, Fire Authority or Licensing Authority.

After the hearing and deliberations, the Panel decided to revoke the street trading consent for A&A Plus at Bull Lane, Bracknell.

Reasons

The Panel heard from residents who had raised objections to the operation of the trader in its current location on Bull Lane. Residents raised objections to the noise emanating from the unit arising from both loud customers and operation within the unit, and to the noise associated with shutting down the unit late at night. Residents

also raised objections to the smell of cooking coming from the unit. It was claimed that both the noise and smell coming from the trader's unit were disturbing the residents nearby. Objectors had kept a Nuisance Record log of issues arising over the period May to August 2018, which detailed activity such as 'banging of fridge/cupboard doors', 'rowdy conversation' and noise from vehicles. The Panel were convinced by the comprehensive nature of the objectors' log, and noted that they presented as credible witnesses and gave cogent evidence.

The objectors had supplied a number of videos recording the type of noise heard from their property, and these were played to the Panel and commented on by the Consent holder. The sound recordings included noises of customers shouting, swearing and noise from children. It was not suggested by those present at the meeting that the sound recordings depicted noise from the generator. The Panel considered that the customer noise emanating from the unit would be particularly disruptive when the ambient background noise level dropped in the evenings. It was agreed that on the balance of probabilities, there was an unacceptable level of additional noise generated in the area from the presence of the street trader.

Although objectors conceded that there was also noise associated with cars and parking arrangements in the area, the Panel formed the clear view that the location of the street trader in a residential area amounted in its own right to an unacceptable level of noise, and would cause disturbance to the quiet enjoyment of home owners in Shepherds Lane. It was felt that the presence of the trader was a cause of unacceptable anti-social noise issues late at night in Bull Lane. The consent holder's arguments that noise was coming from the nearby alleyway, car park and people passing on their way to and from the town centre did not persuade the panel that the majority of noise was not associated with the operation of the trading activities. The panel noted the answer of the Licensing Officer to a direct question that Bull Lane was not an ideal trading place, being located in a residential area. The Licensing Officer had communicated this point to the Consent holder when they originally applied for the consent. The noise nuisance has, in the opinion of the panel, exceeded the level that a resident has to tolerate in the quiet of their home, and therefore the consent must be revoked.

The Panel also agreed that on the balance of probabilities, the smell emanating from the street trader was a nuisance to complainants and had had an impact on their lives. Although it was noted that the smell travelled based on the wind direction, the Panel understood that the proximity of the trader to residents would likely result in a smell which, when constant, could be unpleasant. The Panel noted that this had had an impact on residents, such as being unable to sit outside on warm evenings, and having to bring their washing inside before trading begun at 17:00.

Objectors also raised concerns that the unit had, on a number of occasions, left the allocated parking bay after the 15 minute window allowed on their consent. However, there was no suggestion from objectors that the unit had continued trading past 23:00 as permitted on the street trading consent. The Panel did not allow any comments about this to influence their decision.

The Panel took note of the consent holder's case, which included a number of disparities between the opening and closing logs for the unit and the Nuisance Record completed by objecting residents. While the Panel agreed that there were a few entries on the Nuisance Record which could not be attributed to the trader as they had not occurred within the trader's operating hours, the Panel formed the view on the balance of probabilities based on the evidence presented that the majority of entries on the Nuisance Record form were resultant from the proximity of the trader to the residents' house. The consent holder suggested that the area had aircraft noise

from the Heathrow flight path, but the Panel did not believe this to be a relevant consideration.

The Panel took note of a number of emails supporting the trader in its current location, however the matters raised in the emails such as the quality of food and philanthropy of the business owners were not considered relevant to the matter of street trading consent. It was agreed by all parties that the quality of food distributed by the trader was not in question, and it was purely the location which had been objected to.

It was commented that it was the Council's policy to ask residents to record any concerns regarding street traders' operation and to raise these through the Licensing function, as had been done in this case. The Panel believed that this served as satisfactory quality assurance to ensure that street traders were acting reasonably, and did not believe that it was the officers' duty to maintain levels of assurance by carrying out additional investigations.

The Panel were assured that there had been no breach of the Equalities Act in either the treatment of the consent holder or the decision making process of this case.

The Panel were reminded by the Legal Advisor that this case was considered on its merits, and was not to be considered in comparison with any other business or existing street trader. The consent holder drew an analogy with a street trader in Crowthorne, however the circumstances of that case were not relevant to the decision the Panel had to make, which was based on the particular individual circumstances that prevail in Bull Lane.

It was submitted by the trader that the objectors were small in number and that there may have been some discussion between neighbours about the trader. The Panel concluded that whilst the objectors were small in number, the impact upon them was at an unacceptable level. The Panel concluded that the objectors were entitled to discuss the matter with neighbours, and were entitled to garner support. The trader had done similarly by use of social media, as is their right.

The oral evidence and credibility

The panel took particular note of the fact that the objectors were prepared to concede that there were some noises associated with parking and vehicles, whereas the Consent holder sought to deny that any of the noise in Bull Lane was associated with her trading arrangements. The overwhelming evidence from the objectors and the sound recordings played to the Panel to replicate different stages of the evening clearly demonstrated noise generated by the activities of the trader.

Why the Panel did not allow the business to continue with new conditions

The Panel did consider whether they could impose conditions to reduce the noise and odours to an acceptable level and allow the trading to continue. However, the open fronted nature of this vehicle made it difficult to impose new conditions on it to prevent noise or odour from reaching nearby residents. When the Panel asked, the trader did not think there was any filter that could be fitted to remove the odour, and denied that the van caused detectable odours. The open fronted nature of the unit and the presence of customers waiting in the open air to be served did not allow for any enforceable conditions to be used to reduce or eradicate the noise or odour. For conditions to be effective, they have to be reasonable and workable. The Panel could not see any available conditions to impose that would have achieved the desired effect, and which would have satisfied all parties.

It was noted that although the Local Authority was not able to locate an alternative site for the unit to trade from on the trader's behalf, the business owner was able to apply for new street trading consent at an alternative site should they find one.

In summary, the Panel were convinced that the street trading at A&A Plus had resulted in an unacceptable level of noise and smell nuisance problem which had affected and disrupted the lives of nearby residents. It was clear that the only remedy was to revoke the consent, as no additional conditions would lead to the return of the quiet and peaceful enjoyment of the objectors' home.

The Panel's decision is binding upon all parties, and the consent was revoked from the date of the hearing.

CHAIRMAN