

**LICENSING PANEL
21 FEBRUARY 2018
2.10 - 3.19 PM**



Present:

Councillors Allen (Chairman), Brossard and Mrs McKenzie

In Attendance:

Simon Bull, Legal Advisor

Hannah Stevenson, Clerk

Charlie Fletcher, Licensing Officer, Bracknell Forest Council

Mrs Hatice Anil Bunker, Applicant

Janet Cabell, Objector

16. Declarations of Interest

There were no declarations of interest.

17. The Procedure for Hearings at Licensing Panels

The procedure for hearings at Licensing Panel was noted.

18. Application for new premises Licence - A&A Plus, Bull Lane, Bracknell

Following the hearing of the application for a New Premises Licence in respect of the above premises by the Licensing Panel on 21 February 2018, I write to formally advise you of the Panel's decision.

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

- the Licensing Officer who outlined the issues;
- the Applicant,
- the Interested Parties, including the interested parties who submitted written representations but did not attend. The panel also filtered out the irrelevant parts of the written representations as indicated they should by the presenting Licensing Officer and those were disregarded.

The Panel considered the reference to the appropriate Licensing Objectives, the Council's own Licensing Policy and the Secretary of State's guidance. 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, or any of the other Responsible Authorities. The Panel bore in mind the promotion of the four licensing objectives, the relevant objectives in this case being the potential for noise and smell nuisance in a residential area. These come under the specific heading of prevention of public nuisance. The Panel also considered crime and disorder but concluded that there was no link between the street trading activities of

the applicant and crime and disorder. There may well be crime and disorder in the area but it was not directly attributable to the street trading by Mrs Bunker.

The Panel decided that granting the licence would have an adverse impact on the promotion of the licensing objectives, in particular the public nuisance associated with the smell from cooking and noise nuisance associated with the current street trading activities. As there was unacceptable noise levels already existing the Panel saw no way that by allowing trading under premises licence and late night refreshment, it would be anything other than extending the noise later into the night. The Licensing Panel agreed that they would not grant the New Premises Licence or allow the late night refreshment activity in Bull Lane.

Reasons

The Panel heard the account of residents and objectors, and were convinced that there was an existing noise nuisance caused by the premises through both the generator and noise of cars and people using the premises. The Panel found that people pulling up, waiting and pulling away again after they had collected their order was already a cause of noise nuisance in a residential area. Even though a new generator had been purchased on the 16 February 2018, the Panel felt that not enough time had been given for the residents to identify whether this made a difference to the noise or not. In any event the panel concluded that the cause of noise was from a number of sources: cars, people talking and the noise from the generator. The panel heard representations about the purchase of a Honda generator. However, that was only purchased after the applicant had made their application for a premises licence and late night refreshment and after objections to the application had been received. The Applicant should have recognised the noise it generated and showed insensitivity to the noise given that she has been trading in a residential area since October 2017.

The way the evidence of noise was presented was not convincing. The applicant had provided the panel with You Tube videos of the noise. However, those are taken in the open air or from a parked vehicle. Such a method does not recognise that in the evening the ambient background noise level reduces and for people in their homes and particularly children who go to bed well before 11pm external noise is heightened and becomes more acute and disruptive than to people out in the community, where the recordings were taken.

It was also the view of the Panel that there should be no presumption that people should tolerate noise of any level up until 11pm. Early risers, school children and people who have to get up for work are entitled to quiet enjoyment of their homes at all times. The Panel saw written evidence that people could not get to sleep until the trading ceased. It was the opinion of the panel that the current place of trading poses a real conflict between the business activities of the applicant and the rights of the residents in a residential area to have quiet enjoyment of their homes. Had this been a contested street trading application it is possible that it would not have been granted by this Panel. This was not a reflection on the Applicant, who the Panel believe will do all she can to reduce disturbance to residents. However it was very difficult to set up a street trading concern in a residential area which trades in the evening and up until an hour before midnight without disturbing the quiet enjoyment of the local residents homes.

The Panel also believed that there was a strong smell of food cooking coming from premise, as the premises was in a residential area this was deterring residents nearby from having their windows or doors open. The Panel agreed that the noise nuisance and food smell would be exacerbated by extending the opening hours of the

premises due to its residential location. The Panel did question the granting of the licence, leaving it to residents to possibly call a review.

However, the Panel felt there was already existing clear evidence that the trader who had been trading under a street trading consent since October 2017 was already causing noise nuisance and public nuisance due to the smell of cooking. By granting a Licensing Act Premises Licence to provide late night refreshments would only exacerbate an already existing public nuisance and the only reasonable decision was to refuse the licence.

The Panel considered the issue of litter nearby but were not convinced that this was entirely as a result of the Premises. Issues regarding Anti Social Behaviour were raised in the written and oral submissions by the interested parties, but the Panel felt that this was also not directly linked to the premises. Also no representations had been received by the Police with regards to this or any of the four licensing objectives.

In summary the Panel were convinced that an already existing noise and smell nuisance problem would be exacerbated by the extension of opening hours at A&A Plus, Bull Lane. Full reasons have been set out above.

The Panel's decision is binding upon the applicant and the Licensing Authority. There is no onward appeal against the decision of the panel. The only route of challenge is a judicial review on public law grounds.

CHAIRMAN

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