



## NORWICH CITY COUNCIL NOTICE OF DETERMINATION

<b>Date of Hearing:</b>	20 March 2024
<b>Hearing Type:</b>	Application for the grant of a Premises Licence under the Licensing Act 2003
<b>Address of Premises:</b>	290 – 298 Aylsham Road, Norwich, NR3 2RJ
<b>Name of Applicant:</b>	FoodbyCPC Ltd
<b>Responsible Authorities:</b>	Norfolk Constabulary
<b>Other Persons (Objectors):</b>	Hilary Fauch; Steven Greensmith; Georgina Earland; Benita Ejiogu and Sally Ives
<b>Members of the Licensing Sub-Committee:</b>	Councillor Stutely (Chair) Councillor Ackroyd Councillor Maguire

**Other Attendees:** Gilbert Eyenga, proposed DPS and applicant's representative; Rosine Eyenga, applicant's representative; John Biggs, resident; Florence Clement-Harry, Solicitor and Legal Advisor; Maxine Fuller, Licensing Officer; Leonie Burwitz, Committee Officer.

### THE HEARING

The Sub-Committee was convened to consider an application for a premises licence made by FoodbyCPC Ltd and the representations made by Other Persons (the objectors). Councillor Stutely was appointed to chair the hearing. There were no declarations of interest. There were no papers in addition to those within the agenda, except for two photographs showing parts of the ceiling at the premises. These were distributed to those present at the hearing.

The Licensing Officer read out the report in detail and invited the Sub-Committee to determine the matter. The Applicant and Other Persons presented their case in turn, and this was followed by questions from members of the Sub-Committee and the other party. Following closing statements, the Sub-Committee went into a private session to deliberate. Once a decision was reached, the Chair read out the decision and the parties' rights of appeal.

Prior to the hearing, during discussions with Norfolk Constabulary, the Applicant had agreed to a set of conditions proposed by Norfolk Constabulary. These conditions were imposed by the Sub-Committee. The Applicant also agreed to amend the

application to off licence only and this was confirmed by the Applicant at the hearing. Therefore, the Sub-Committee proceeded to determine the application as amended.

## **REPRESENTATION FROM THE APPLICANT**

The Applicant applied for a premises licence to carry out the following licensable activity:

- the supply of alcohol for consumption off the premises from 8 a.m. to 10 p.m. Monday to Saturday and 9 a.m. to 5 p.m. on Sunday.

The Applicant was represented by Mr Gilbert Eyenga, the proprietor and proposed DPS and his wife, Mrs Rosine Eyenga. Mr Eyenga advised the Sub-Committee that the premises is currently a supermarket that sells food and that they have applied for a premises licence to enable them sell alcohol for consumption off the premises. He explained that there shall be no drinking on the premises except for some alcohol tasting on occasion; there shall be no entertainment except for background music; and there shall be no serving or eating of cooked meal as the premises is not intended to be a café. He advised that conditions had been agreed with the Police and that they have two other shops in Norwich and Great Yarmouth which have been operating without complaints from the residents. He stated that he was surprised by the objections to the application and that he wanted to make peace with the objectors.

The Sub-Committee's attention was drawn to the Operating Schedule which lists various measures to be taken by the Applicant to promote the licensing objectives. The Applicant offered some further conditions as set out below.

In summing up, Mr Eyenga advised that he could be contacted by the residents using the advertised telephone number and email address to resolve matters arising and that he will physically attend the shop every day.

## **REPRESENTATION FROM OTHER PERSONS (OBJECTORS)**

Representations were received from three residents of the flats above the shop and two landlords. The two landlords, Mr Steven Greensmith and Ms Hilary Faunch, attended the hearing and made presentation in addition to their written representation. The three residents, Ms Georgina England, Ms Benita Ejiogu and Ms Sally Ives did not attend the hearing, but their written representations were taken into account by the Sub-Committee. Another resident, Mr John Biggs, also attended the hearing as an observer.

The objections were mainly based on the public nuisance, prevention of crime and disorder and protection of children from harm licensing objectives. The issues complained of include: parking problems; antisocial behaviour; loud music; fighting; noise nuisance; littering; drunkenness; illuminated signage; lack of sound proofing and ventilation; vibration; opening times; adverse effect on rental, resale and mortgage application; customers congregating around the premises; disorderly behaviour; breach of restrictive covenant in the lease; waste disposal and health hazard from rodents and rats; and lots of children in the area travelling to and from school and using the library next door to the premises.

In her presentation to the Sub-Committee, Ms Faunch stated that she is the landlord to one of the flats above which is currently occupied by a tenant and that her principal complaint is noise nuisance. She explained that the premises was previously occupied by a bank which generated very little or no noise but that the acoustic tiles which served as sound proofing at the premises had been removed and there is

concern that there is very little sound insulation between the premises on the ground floor and the residential flats above. In his presentation to the Sub-Committee, Mr Greensmith pointed out the inconsistencies in the Applicant's case as it relates to whether the premises would be a café or not. He explained that the problem of parking may lead to nuisance and disorder and cause altercation between customers and the residents who are guaranteed dedicated parking spaces in the lease. He drew the Sub-Committee's attention to the restrictive covenant in the lease which prohibits the sale or supply of alcohol. Further, Ms Faunch raised the issue of crime and disorder in the nearby Tesco store where there had been several incidents of break-ins resulting to the Police attending the premises on several occasions. She expressed concern that another licensed premises in the area will add to such incidents.

In summing up, Ms Faunch concluded that she was still concerned about the issue of noise nuisance; and Mr Greensmith submitted that he had no confidence in the application and that he had had nothing from the Applicant to convince him that the premises would be operated competently.

## **DECISION OF THE SUB-COMMITTEE**

The application was granted with some conditions:

- offered by the Applicant,
- agreed between the Applicant and Norfolk Constabulary, and
- imposed by the Sub-Committee.

## **REASON FOR THE SUB-COMMITTEE'S DECISION**

The Sub-Committee carefully considered the application and objections. In coming to its decision, the Sub-Committee considered the need to promote the 4 licensing objectives under the Licensing Act 2003, the Home Office Guidance, and the Norwich City Council's Statement of Licensing Policy.

The Sub-Committee noted the conditions agreed between the Applicant and Norfolk Constabulary and the conditions offered by the Applicant. The Sub-Committee further noted that the premises currently operates as a supermarket that is mainly selling food items which does not require a premises licence. The Sub-Committee accepted the Applicant's submission that the sale of alcohol will only form a small part of the operation at the premises. The Sub-Committee considered whether the issues raised by the objectors would be made considerably worse by the additional alcohol sales at the premises and concluded that it would not. The Sub-Committee also concluded that certain matters raised by the objectors were irrelevant considerations for the purpose of determining applications under the Licensing Act, including the effect on the value of the property and mortgage application, and the covenant in the lease forbidding the supply of alcohol in the property which has redress that can be pursued under property law. The Sub-Committee was of the view that the conditions imposed would be sufficient to redress the concerns raised by the objectors and ensure that the sale of alcohol at the premises would not undermine the licensing objectives.

The Sub-Committee considers this decision to be an appropriate and proportionate response to promote the licensing objectives.

## CONDITIONS IMPOSED

The following conditions were proposed by the Applicant:

- Staff training records in relation to the sale of alcohol will be kept at the premises and made available to the Police or the Licensing Authority on request.
- Staff will be trained to ensure that they leave the premises quietly. This includes turning off music, closing doors quietly, turning off lights and leaving without making noise.
- There shall be a minimum number of 20 CCTV cameras inside and around the premises.
- Noise and vibration including music and human voices shall be prevented from escaping from the premises by keeping doors and windows shut.
- A notice will be on display around the premises informing customers that they are not permitted to consume alcohol on the streets of Norwich City Centre.
- If the CCTV equipment fails, the Police and the Licensing Authority will be informed immediately by telephone and immediate steps will be taken to put the equipment back into working order.
- The Applicant will establish, implement and follow good safeguarding policies and procedures including safe recruitment. All members of staff will be trained to ensure that they are aware of and follow the organisation's safeguarding policies and procedures.
- There will be signage to inform customers that they are in a residential area and should proceed quietly. The specific wording shall be agreed with the Licensing Authority prior to the commencement of licensable activities.
- A litter picking service shall be provided to pick litters around the premises, the staircase and the car park.

The following conditions were agreed between the Applicant and Norfolk Constabulary:

- Alcohol shall not be sold for consumption on the premises.
- CCTV shall be in operation recording the main public areas of the premises. CCTV footage for a minimum of 28 days shall be made available to the Police or the Licensing Authority immediately on request.
- Challenge 25 Policy shall be operational at the premises.
- A refusal / incident record shall be kept at the premises to record all incidents relating to disorderly behaviour and/or refusals of age restricted products. This record shall be made available to the Police or the Licensing Authority immediately on request.

The following condition was imposed by the Sub-Committee:

- The Council's Environmental Health Officer shall visit and assess the premises for noise nuisance with a view to making recommendation as necessary and such recommendation should be implemented to the satisfaction of the Environmental Health Officer prior to the commencement of licensable activities.

## **RIGHT OF A PARTY TO APPEAL AGAINST THE DECISION OF THE LICENSING SUB-COMMITTEE**

The Applicant and any person who made a relevant representation, or submitted an objection notice, who is aggrieved by the decision, or the imposition of any term, condition or restriction, have a right of appeal. Any appeal should be made to the Magistrates' Court within 21 days of the date on which they are notified of the decision in writing.

Signed:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

(Chair, Licensing Sub-Committee)

**Dated:** 12 April 2024