

# **NORWICH CITY COUNCIL**

## **NOTICE OF DETERMINATION**

**Date of Hearing:** 10<sup>th</sup> August 2020. Hearing held remotely under SI 2020 / 392

**Application for a premises licence - Licensing Act 2003**

**Applicant – Two Magpies Bakery Limited, company number 08142430**

**Premises – Two Magpies Bakery, Timberhill, Norwich**

Members of the Licensing Sub-Committee: Cllrs Stutely (Chair), Giles and Youssef.

Other persons attending committee: Tiffany Bentley, Public Protection (licensing) Team Leader; Rachel Bennett, Licensing Officer; Stephen Magnall, director, representing the applicant company; Nick Backhouse, resident; Sandra Robinson, resident; Oliver Kleyn, resident; David Lowens, solicitor; Alex Steadward, trainee solicitor.

There were no apologies, there were no declarations of interest and no additional papers to those in the agenda were produced.

### **SUMMARY NOTES OF HEARING**

The Chair welcomed those taking part in this remote committee and invited those persons present to introduce themselves.

Ms Bentley presented the report and noted that the site was outside the cumulative impact zone and that no attention should be given to the details about that zone, and further that the committee had the additional power of refusing to confirm the proposed Designated Premises Supervisor.

Mr Magnall addressed committee on behalf of the applicant, noting that the premises were not run nor were intended to be run as primarily a drinking establishment. The purpose behind the application was to enable alcohol to be enjoyed with food. There were limited alcohol sales at the company's other premises and a limited range of alcohol was available at the other premises. Mr Magnall described the location of the other businesses run by the company and their opening hours. The other businesses generally closed around 9pm.

Mr Backhouse addressed committee and noted the planning situation. This was mentioned to make it clear that residential amenity had been a factor in the planning application. He was concerned that street drinkers were often noted in this area and he felt that the application if granted would add to this problem. He suggested the applicant had shown little consideration to the neighbours and noted an issue with noise and odour involving the ventilation system.

Mr Magnall noted that a retrospective planning application was in progress, that the ventilation unit was present when the property was purchased and that it was a low decibel unit. He was seeking assistance from the environmental health team of the council regarding odour. He agreed that there was a problem with the behaviour of some members of the public in the area and noted that he had found needles in the area. These were existing problems. The area had many licensed premises serving alcohol. Should a drunk or drugged person want service at the Two Magpies Bakery they would be refused. He visited the site once a week but was willing to visit more often if that was necessary.

Ms Robinson addressed committee to support those matters mentioned by Mr Backhouse, being concerned about noise and disturbance. She mentioned that she had an outside terrace area that was close to the premises and she was concerned regarding odour nuisance also from fried food.

Mr Magnall mentioned that in the circumstances of the pandemic the premises had been open for three weeks and the volume of fried food was limited. The main fryers had been removed.

Mr Kleyn addressed committee, noting that there had been complaints about noise from the flats above the premises. There were concerns regarding odour with one resident not being able to open their windows. He clarified the noise concerns, mentioning that these related to music noise and persons talking loudly.

Mr Magnall noted that two of the immediate neighbours were bakers who did not have any complaint and regarding the music system this was background only. There had been a significant reduction in staff, there were four staff present on a Saturday but otherwise generally only three members of staff were on site and they did not make much noise. Mr Magnall was happy to have no music noise beyond 9pm. The premises had a maximum of 45 covers but most of the time the numbers present were likely to be 30 to 45. He confirmed the premises held a licence under s115E Highways Act 1980 for the outside frontage.

Ms Bentley mentioned the hours of this licence were 8am to 6pm (9am to 6pm on a Sunday).

Mr Magnall confirmed that there was space within the premises to store any external tables and chairs following removal of the bakery equipment.

Cllr Youssef asked whether the premises served alcohol without food and the applicant responded that at the present time they did not.

Mr Magnall confirmed his view that he was at the premises sufficiently to carry out the functions of a DPS and noted that he had a professional management team. It was confirmed after a query from the Chair that the premises had CCTV.

Mr Magnall at the invitation of the Chair responded regarding the promotion of the licensing objectives especially the prevention of crime and disorder, after a short pause whilst a further copy of the agenda was emailed to him and reviewed by him. He detailed that training of staff was undertaken by an external body. He noted that the company did not receive complaints regarding noise at its other premises and felt

that noise problems were unlikely to arise at Timberhill. The applicant company would not object to time controls. He had been Deputy MD of Greene King and had significant pub experience. The application premises would likely have limited alcohol sales.

In response to a question from the Chair Mr Magnall confirmed that the applicant company was happy to have a noise limiter introduced to prevent any noise nuisance arising. In respect of concerns regarding the protection of children from harm this was a matter again involving noise and controls had been suggested. Mr Magnall noted the large number of businesses in the area of the premises which sold alcohol and at later hours, he confirmed that the applicant company was happy to work with residents.

Ms Bentley confirmed that she was not aware of any live complaints relating to the application premises, though Mr Backhouse mentioned two premises where complaints had been made.

The applicant company varied the proposed operating schedule to include a condition that the incident book and the refusals book would be produced on request to both the police and the licensing team of NCC.

Ms Robinson told committee that she was still concerned regarding possible nuisance, as was Mr Kleyne regarding possible noise coming from the premises. He looked to have the proposed hours changed significantly. Mr Backhouse remained concerned about possible noise also. Mr Magnall mentioned that he was happy to meet residents on site, that the intention of the business was to serve limited alcohol with food and he was happy to have trading hours reduced if that was decided to be appropriate.

Following a discussion regarding the applicant company's ability to amend the application at this point the applicant company confirmed that the application was varied to reduce the terminal hour for the supply of alcohol to 21:00 hours on Friday and Saturday and 17:00 hours on all other days, with the proposed opening hours to be reduced to 21:30 Fri/Sat and 17:30 on all other days and for the hours for recorded music to match the opening hours. The solicitor and Public Protection (licensing) Team Leader confirmed that a licence was not required for background music and explained the nature of background music as being of such a level that customers had no need to raise their voice.

The applicant company via Mr Magnall amended its proposed operating schedule to state that a noise limiter would be introduced to control the level of recorded music.

## **DECISION OF COMMITTEE:**

The application, as amended, was approved with the following additional conditions being imposed or varied:

1. CCTV recordings will be retained for a minimum of 28 days and will be provided to the police or the licensing authority on request.
2. Recorded music will be controlled via a noise limiting device which will be set at a level decided upon by the environmental health team of the council and not changed without their written consent.
3. Alcohol is only to be supplied with food orders
4. There will be a refusals book operated which records the refusal to serve any person and the reason for this, which will be provided to the police or the licensing authority upon request.
5. There will be an incident book which will record any incident of concern at the premises involving a member of the public, which will be provided to the police or the licensing authority upon request.

## **REASONS FOR THE COMMITTEE DECISION:**

1. The amended application significantly reduces the evening hours of proposed activities, thus reducing the risk of noise nuisance from customers when background noise levels are low.
2. Control of noise via a noise limiter will ensure that no noise nuisance arises from this source.
3. There is antisocial activity in the area but committee saw no evidence that this was the fault of the applicant company, nor that the proposed application was likely to add to this. The behaviour of persons who were beyond the control of the licensee was a matter of personal responsibility.
4. The business is well run with competent management. Age controls via Challenge 25, the provision of CCTV, a refusals book, an incident book and staff training will all be provided.
5. The business is not designed primarily for the consumption of alcohol. To assist with any possible concerns regarding the public nuisance licensing objective committee has imposed an additional condition requiring alcohol to be only supplied with food orders.
6. The committee has considered the local and national guidance together with all other relevant matters including the evidence provided in the agenda and during the hearing. This decision is felt to be a satisfactory and proportionate balance between the legitimate interests of local residents and the Two Magpies Bakery business.

## **RIGHTS OF APPEAL:**

Rights of appeal are set out in schedule 5 of the Licensing Act 2003.

Where a licensing authority grants a premises licence the holder of the licence may appeal against any decision to impose conditions on the licence.

Where a person who made relevant representations in relation to the application desires to contend—

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of section 18 of the Licensing Act 2003,

they may appeal against the decision.

Any person wishing to appeal any decision by the licensing authority should do so within the period of 21 days from the receipt of written notification of the decision appealed against. Any appeal should be raised directly with the Magistrates Court.

Dated 11<sup>th</sup> August 2020

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'Z' shape followed by a horizontal line and a small flourish.

Signed: ..... (Chair, Licensing Sub-Committee)