



## NOTICE OF DETERMINATION

Date of Hearing:	26 February 2016
Licence Type:	Application for a premises licence
Name of Applicant:	Mr Remigijus Kajutis
Name of Premises/Postal Address of Premises:	355 Alysham Road, Norwich, NR3 2RX
Licensing Sub-Committee: ("the Committee")	Councillors Button (Chair), Accroyd and Brociek-Coulton
Responsible authorities:	There were no representations made by or attendance by responsible authorities.
Other persons present:	Mr C N Page, objector and Ms Berezovskajo (translator for the applicant), Mr T Shearman, Licensing Manager and Mr D Lowens, solicitor, nplaw (Clerk).

## DETERMINATION:

The Committee noted that the Norfolk Constabulary proposed conditions were part of the intended operating schedule as follows:-

1. Staff will be trained in relation to the sale of alcohol and a record of this training will be kept at the premises and available to Police or licensing authority on request.
2. CCTV will record for a minimum of 28 days and be available to Police on reasonable request.
3. Roller shutters will be fitted at the front of the premises to secure the premises when it is closed.
4. There shall be no self-service of spirits on the premises, save for spirit mixtures of less than 5.5% alcoholic volume.
5. An intruder alarm will be in operation.
6. Sales of alcohol will only take place by night hatch when the premises opens after midnight.

During the hearing the Committee received a note from the applicant dated 25 February 2016 commenting upon the representations and also received a copy of the Premises Licence for the Boundary Public House close to the application premises. Mr Shearman presented the report and noted that the application was for the sale of alcohol for the period 12 noon to 0300 hours the next day on all days with opening hours to match the hours for retail sale of alcohol.

Mr Shearman has said that the applicant and the Police had agreed that the conditions set out in Appendix B were to be added to the operating schedule and attached to the report was the local and national guidance together with representations made by local businesses and residents.

Mr Shearman mentioned that as requested by the Clerk in advance of committee he had checked the Council's records in respect of the opening hours of licensed premises in the area. Mr Shearman mentioned there were 15 licensed premises in the area searched being along Aylsham Road and Mile Cross Lane. These were a mix of off-licences, late night refreshment houses and the Boundary Public House. Mainly these premises operated until 0030 hours but in respect of premises at 4 Aylsham Crescent and 121B Mile Cross Lane these opened to 1am or 1am at the weekend for the provision of late night refreshment only. The only premises opening beyond this time was noted to be the service station on Mile Cross Lane with 24 hour opening.

There were no questions to the Licensing Manager from the applicant or objector.

Via his translator Mr Kajutis then presented his application noting that early morning opening hours were very good for the business and assisted local members of the public if they wished to purchase extra alcohol, for example for a birthday or Christmas celebration. Specialist alcohol would not be sold. The applicant confirmed that the hatch required as part of the operating schedule for service of alcohol after midnight was not yet installed. The applicant confirmed that it would only be himself running the business and in response to a question from the Licensing Manager and the Clerk the applicant spoke directly to the committee regarding how he would deal (in English) with the question of the Challenge 25 scheme.

Mr Page then addressed committee noting that he lived locally, that there were plenty of retail businesses in the area catering for out of hours drinking, and that he had a lot of concern regarding these premises and the proposed use. A number of current problems were noted regarding customers believed to be from the Boundary Public House and Mr Page mentioned he was currently woken up by antisocial behaviour including those taking drugs. The applicant noted that their premises were not yet open and therefore they could not be held responsible for the current amount of antisocial behaviour. In answer to a question from Mr Page as to why he wished to open to 3am the applicant mentioned that there were approximately three or four night shops already in Norwich, if persons did not buy from him they would simply go elsewhere and that he would prohibit the drinking outside his building and prohibit persons opening the alcohol within his shop.

Mr Page was informed of the statutory guidance that need was not a relevant consideration for the committee.

Mr Page mentioned that he already became very anxious regarding the antisocial behaviour, the drinking and the shouting and the throwing of bottles for example that took place at the moment and was concerned that these problems would increase. Mr Kajutis noted that there were problems with alcohol consumption everywhere in the world. In answer to a question from a councillor as to what he would do in respect of antisocial behaviour taking place outside the premises (noting that he had said he would be the only member of staff) Mr Kajutis said that he would call the Police. There were no questions from Mr Kajutis to Mr Page and he did not address committee further.

The Committee took time considering these matters in private.

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

The decision of the Licensing Sub-Committee was to grant the application with limited hours and to impose a condition relating to placing a notice informing customers that drinking was not allowed in the nearby area and to take care not to disturb neighbours when leaving the premises.

The sale by retail of alcohol for consumption off the premises only is permitted between 12 noon and 2400 hours on Sunday, Monday, Tuesday, Wednesday and Thursday. On Friday and on Saturday the sale by retail of alcohol for consumption off the premises only is only permitted between 12 noon and 0100 hours the following day. The opening hours of the premises are to match the hours for the retail sale of alcohol.

## **REASONS FOR THE LICENSING SUB-COMMITTEE'S DECISION**

The Licensing Sub-Committee took account of the statutory guidance including that save in the immediate area of the premises the behaviour of persons was a matter for personal responsibility, the local guidance and the evidence heard and contained in the committee report. The Committee noted that the Police had no objection to the premises application following the introduction of the additional conditions as set out in their correspondence. However the Committee was concerned that opening to 3am would be opening considerably later than any other local premises save for the petrol service station some distance away, that this included hours when residents were generally trying to sleep and that the area clearly contained a number of problems arising from alcohol consumption as noted by Mr Page.

There was considered to be a significant risk of public nuisance arising from customers in the early hours in the morning and this noise disturbance was likely from car engines, car doors, conversations and the consumption of alcohol in the early hours of the morning when persons would be trying to sleep.

It was noted that as the applicant was working on his own and as the Norfolk Constabulary had suggested for his own safety that a night-hatch be used after midnight it was not realistic to expect or require him to leave the premises to try to control noise nuisance and disturbance taking place in the area even if it was something that he was willing to do.

The suggestion that antisocial behaviour and noise nuisance would be remedied by a call to the Norfolk Constabulary was felt to be unrealistic noting the very limited Police resources that would be available in the early hours of the morning. It was reasonable though to ask the applicant to place a sign on the premises requiring persons not to drink in the local area and to be quiet when leaving the premises.

It was likely that unreasonable disturbance would be caused to residents due to the noise and disturbance of alcohol sales to 3am noting very low ambient background noise levels would be expected in the early hours of the morning. Committee therefore determined to reduce the hours sought.

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

Rights of appeal are as set out in Schedule 5 of the Licensing Act 2003. Any person who has made a relevant representation together with the applicant may appeal this decision to a Magistrates' Court within 21 days of receipt of written notification.

Dated this 3<sup>rd</sup> March 2016