



NORWICH
City Council

NORWICH CITY COUNCIL

NOTICE OF DETERMINATION

Date of Hearing: 6 December 2021 at 14:15 pm.

Application for the grant of a premises licence under the Licensing Act 2003

Address: Oliver's, 152A Unthank Road, Norwich, NR2 2RS

Applicant: White Orchard Limited

Members of the Licensing Sub-Committee: Councillor Stutely (Chair), Councillor Price and Councillor Maxwell.

Other persons attending committee: Mr Oliver Holdsworth (Director); Mr Oliver Sanham (Applicant's Representative); Maxine Fuller Public Protection (Licensing Advisor), Norwich City Council; Sarah Moss, solicitor, nplaw

DETERMINATION

1. There were no apologies for absence.
2. With regard to declarations of interest, the Chair informed those present that the Application related to a premises which fell within his ward. However, he did not know the Applicant, or the Interested Party, Mr Wicks, and had not spoken to any person within the ward about the Application.
3. Ms Fuller presented the report.
4. The Chair welcomed those present and informed those present of Mr Wick's non-attendance at the hearing (Members having been satisfied prior to the start of the hearing that Mr Wicks had been given sufficient notice of the hearing date by email and letter and had not indicated that he wished to attend. It had not been possible to contact Mr Wicks immediately prior to the hearing as no telephone number had been given. Consequently, Members had resolved to hold the hearing in the party's absence in accordance with S.20(2)(b) of The Licensing Act 2003 (Hearings) Regulations 2005).
5. The Chair invited Mr Sanham to present the application on behalf of the Applicant. He stated that the Application was for a small, casual, neighbourhood bar serving wine, beer and cocktails, which was not intended to be a late-night venue and would have the capacity for only 30 covers. The bar would be completely table service, there being no room for 'vertical drinking' and customers would be required to be seated to drink alcohol or eat

food (described as 'nibbles'). A condition was offered with regard to table service on the Applicant's behalf by Mr Sanham and wording agreed accordingly by Mr Sanham (Annex A attached). Having 14 years in the hospitality industry, the Applicant had a good deal of experience, particularly in dealing with customer intoxication issues and the importance of not serving intoxicated customers with more alcohol. Mr Sanham was confident that issues such as intoxication of customers could be adequately dealt with, particularly because customers would be dealt with personally through table service. Staff would be given thorough training and refresher training; it being made clear that breach of that training (eg serving an intoxicated customer with alcohol) would result in dismissal. In terms of the perception of a 'Prince of Wales Road venue', the Applicant's premises was intended to be as far from this as was possible.

6. Mr Sanham indicated that the Applicant was fully aware that the premises was located in a built-up area. However, he submitted that a small bar with only 30 covers was unlikely to add significantly to parking or traffic congestion issues and that deliveries to the premises would only be occasional. There were already taxi pick-up/drop-off points in the vicinity, which would likely be used by the premises' customers.
7. Addressing the Interested Party's submission that late night music, alcohol consumption both inside and on the street would have a seriously detrimental effect to quality of residents' lives, Mr Sanham stated that there was no intention to play live music at the premises, inside or out and no intention to play amplified music outside the premises. Recorded music would be played through small speakers inside the premises and the volume maintained at a suitable level through a noise limiter (a condition was offered in relation to the noise limiter on the Applicant's behalf by Mr Sanham and wording agreed accordingly by Mr Sanham (Annex A attached)). It was confirmed that soundproofing would be installed prior to the premises opening (with Mr Sanham offering a condition and agreeing wording to this effect (Annex A attached)). In response to a question by Councillor Price, Mr Sanham stated that there were no plans to introduce outside speakers, windows were not capable of being opened (jammed shut) and doors would only be opened with the normal access and egress of customers, owing to the Applicant's intention to make the bar as sustainable and energy efficient as possible. Management had already tried out in the sound system inside and with all windows and doors closed, music was not audible outside.
8. Responding to a question from the Chair as to the Applicant's intention to stick to the opening times outlined in his letter to Mr Wicks, Mr Sanham confirmed the Applicant's intention to do so, partly due to the Applicant's wish for staff to maintain a work/life balance and not work late nights. On behalf of the Applicant, Mr Sanham requested a reduction in the hours of opening, sale of alcohol (to reflect an offered drinking-up time of 30 minutes), late night refreshment and recorded music hours, as set out in Annex A. He further offered a condition and agreed wording that recorded music would cease at the same time that the sale of alcohol ceased.

9. In response to a question by Councillor Maxwell with regard to the likelihood of there being a large congregation of customers at the front of the premises waiting to get inside, Mr Sanham explained that the small number of covers was very unlikely to result in this. There was a small waiting area between the front door and bar and a small bench area outside to accommodate any other persons. However, it was likely that persons entering the premises would be seated very quickly by front of house staff and it was estimated that waiting times would be no longer than 30 – 60 seconds. There was also no intention to accommodate groups larger than six persons, owing to the small size of the premises. There would be no limit to how long customers could stay but Mr Sanham suggested the average time would be around 1-1.5 hours.
10. In response to further questions about the outside area, Mr Sanham confirmed that there was no intention to serve food or drink in the outside area and that it would be used for waiting purposes or persons wishing to smoke. On behalf of the Applicant, Mr Sanham offered a condition and agreed wording (attached at Annex A) closing the front outside area to customers from 10pm except for access and egress to the premises. Smokers could use the side area for smoking after 10pm, which was away from the main area and residents. For the avoidance of doubt, the Applicant also requested that the licensable area on the plan attached to the Application be reduced to exclude the outside front area, indicating the boundaries of the reduced area on the legal advisor's plan. The legal advisor advised that reducing the licensable area in this way would mean that no alcoholic beverages could be consumed in the front outside area as the Applicant had applied for 'on-sales' only with regard to the sale of alcohol; Mr Sanham confirmed his understanding of this on behalf of the Applicant.
11. Responding to further questions by Councillors, Mr Stanham explained on behalf of the Applicant the content, method and frequency of training to be given to staff. He also confirmed that noise from customers would be controlled by staff both dispersing customers gradually and requesting that customers leave the premises quietly. Mr Sanham, on behalf of the Applicant, further offered a condition and agreed wording with regard to erecting signage to control noise levels from customers leaving the premises (attached at Annex A). Further matters pertaining to training, provision of SIA door staff (confirmed not required by the Applicant's representative), litter and glass disposal, occupant capacity, layout of premises, liaison with public transport providers and the protection of children from harm as outlined in the operating schedule were addressed by Members and amendments to the operating schedule and/or conditions were offered by Mr Sanham on behalf of the Applicant and wording agreed (as detailed and attached at Annex A).
12. In closing and specifically addressing the Interested Party's objection to the Application, Mr Sanham stated that the Applicant fully understood the concerns that a resident may have in relation to consumption of alcohol at a nearby licensed premises. However, the premises in this Application did not present any more of a risk than any other licensed premises and the Applicant firmly believed that they had done everything within their control to address

resident concerns and minimise any risk or effect on them that the premises may have.

13. Members retired to consider their decision.

DECISION OF THE LICENSING SUB-COMMITTEE

The Sub-Committee unanimously approved the application for the grant of the premises licence with the adoption of the conditions contained in the police email to the licensing department dated 9 November 2021 (as amended in Annex A attached) and the conditions and amendments to the Applicant's operating schedule offered by the Applicant during the course of the hearing (attached at Annex A)

REASONS FOR THE COMMITTEE'S DECISION

In coming to its decision, the Committee had regard to the Statutory Guidance published under S182 of the Licensing Act 2003.

Having heard fully from the Applicant's representative as to the proposed management and operation of the venue, Members were of the opinion that sensible controls had been put in place to uphold the licensing objectives. In addition, further controls and amendments to the operating schedule had been offered by the Applicant during the course of the hearing, demonstrating the Applicant's awareness of potential issues of concern with regard to local residents and a willingness to accommodate these and uphold the licensing objectives.

While having considered the contents of the written representation of interested party, Mr Wicks, who had not attended the hearing, Members were of the opinion that insufficient evidence had been put forward in the representation to suggest that the licensing objectives would be undermined if the premises licence were to be granted. The observations in the representation appeared to be based on speculation, rather than having an evidential foundation and Members noted that they should not refuse a premises licence for speculative reasons. Further, as the interested party had not attended the hearing, it had not been possible to obtain any further information from him relating to his representation. Members also noted that whether there was a commercial 'need' in the area for a licensed establishment of this kind was not a relevant consideration for the licensing sub-committee.

Weight was given to the fact that the local authority department responsible for environmental health functions, including noise, had not made any representation and that the Committee must therefore proceed on the basis that there were no concerns from this department regarding the proposals in terms of public nuisance. It was also noted that the police's representation had been withdrawn following the Applicant's agreement to adopt the conditions set out in the police email to the licensing department dated 9 November 2021.

Members were satisfied, therefore, that the licensing objectives had been upheld and there were consequently no grounds to refuse the application or impose any further conditions.

It was noted that the review system is available.

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

The Applicant and any person who has submitted a relevant representation may appeal this decision at the Magistrates Court within 21 days of the date on which they are notified in writing of this decision in accordance with the following appeal provisions under Schedule 5 of the Licensing Act 2003: –

- (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,

they may appeal against the decision.

Dated 22 December 2021

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

Signed: (Chair, Licensing Sub-Committee)

ANNEX A

Changes to the Application for grant of a premises licence, as offered by the Applicant:

1. The licensable area to be reduced to exclude the front outside area on the far left of the plan, as indicated on the plan by the Applicant's representative at the hearing and marked on the plan by the legal advisor
2. Hours that premises are open to the public (Standard Days and Timings) to be amended as follows: Monday - Thursday 12:00 – 24:00; Friday & Saturday 12:00 – 01:00; Sunday 12:00 – 23:30
3. Supply of alcohol, Late night refreshment and Recorded music (Standard Days and Timings) to be amended as follows: Monday – Thursday 12:00 – 23:30; Friday and Saturday 12:00 – 00:00; Sunday 12:00 – 23:00

Conditions offered by the Applicant:

1. The licensee will ensure that all customers are seated while consuming alcohol and food and no customer will be permitted to drink alcohol while standing.
2. The licensee will ensure that the playing of recorded music will cease at the same time as the sale of alcohol at the premises.
3. No glass will be emptied into outside waste receptacles between the hours of 9pm – 9am.
4. Except for access and egress to and from the premises, the front outside area of the premises will be closed to customers from 10pm.
5. Clear and legible notices will be displayed inside the premises above the main entrance door and outside the premises on an external pillar requesting customers to respect the needs of local residents and leave the area quietly.

Amendments to the Operating Schedule offered by the Applicant:

1. The following amendments to be made to the first paragraph of the operating schedule (steps to promote all four licensing objectives together):
 - i. **Replace** 'Records will be kept of training and refresher training' **with** '*Records will be kept of training and refresher training given to staff, such records to be made available to an officer of a Responsible Authority on request*'
2. The following amendments to be made to the second paragraph of the operating schedule (The prevention of crime and disorder):
 - i. **Remove** 'Employment of Security Industry Authority licensed door staff, to ensure the safety of patrons from any violent behaviour'

- ii. **Replace** 'Provision of effective CCTV' **with** '*CCTV to be in operation and cover the main public areas of the premises and immediate outside. CCTV to record for a minimum of 28 days and be available to Police or Licensing Authority on request*'
3. The following amendments to be made to the third paragraph of the operating schedule (Public safety):
- i. **Replace** 'The premises will have a occupant capacity to ensure suitable means of escape if necessary' **with** '*The premises will have a customer occupant capacity of 30 to ensure suitable means of escape if necessary*'
 - ii. **Replace** 'The layout of the premises will be as open as possible to prevent congestion and thus injury' **with** '*The licensee will ensure that the layout of the premises will be such that patrons will have unobstructed access to all escape routes and external exits*'
 - iii. **Replace** 'Provision of effective CCTV' **with** '*Provision of CCTV as detailed in (b) – the prevention of crime and disorder)S.4 above*'
4. The following amendments to be made to the fourth paragraph of the operating schedule (The prevention of public nuisance)
- i. **Replace** 'CCTV/registered door supervisors' **with** '*Provision of CCTV as detailed in (b) – the prevention of crime and disorder)S.4 above*'
 - ii. **Remove** 'Liaison with public transport providers'
 - iii. **Replace** 'Installation of soundproofing, air conditioning, sound limitation devices' **with** '*Soundproofing will be installed by the licensee prior to the premises being opened for business. A noise-limiting device must be installed and must operate at all times that regulated entertainment takes place at the premises. The device must be of a type, in a location and set at a level approved in writing by the appropriate officer of the Council*'
 - iv. **Replace** 'Collection and disposal of litter' **with** '*At the beginning of each daily business shift and throughout the shift, the premises staff will collect any litter in the vicinity and dispose of this appropriately in the premises' waste receptacles*'
5. The following amendments to be made to the fifth paragraph of the operating schedule (The protection of children from harm)
- i. **Replace** 'Sufficient number of staff to secure the protection of children from harm' **with** '*A minimum of three staff members will be present at the premises during opening hours to secure the protection of children from harm*'

- ii. **Replace** 'Limitations on the hours when children may in the premises' **with** '*All Under 18s will be off the premises by 10pm (with the exception of private events* '
- iii. **Remove** S.4 'Limitations on the hours when children may in the premises' (unintended repetition)

Conditions proposed by Norfolk Constabulary and accepted by the Applicant:

- 1. 'CCTV to record for a minimum of 28 days and be available to Police or Licensing Authority on reasonable request' (*as inserted in the operating schedule at (b)S.4, (c) S.5 and (d)S.1*)
- 2. '**Remove** 'With the exception of the use of the outside area' (*agreed with Applicant to remove this to avoid confusion as Applicant reduced the licensable area during the hearing to exclude the front outside area*). **Remaining text:** 'Patrons will be prevented from taking open vessels of alcohol off the premises'
- 3. 'The management will allow for a drinking up period for alcohol 30 minutes before the premises closes' (*drinking-up time of 30 minutes offered by the Applicant during the hearing*)
- 4. All Under 18s will be off the premises by 10pm (with the exception of private events) (*as inserted in the operating schedule at (e)S.3*)