



Regulatory Subcommittee

10:00 to 12:45

10 June 2019

Present: Councillors Stutely (chair), Ackroyd, Brociek-Coulton

1. Declarations of Interest

There were no declarations of interest.

2. Highways act 1980: application for licence to place tables and chairs on the highway - Gardeners Arms, 2-8 Timberhill, Norwich, NR1 3LB.

(Consideration of this item had been adjourned at the meeting of the subcommittee meeting held on 13 May 2019. This subcommittee meeting is the reconvened subcommittee meeting to consider the outstanding issues from the previous meeting.)

(Copies of the applicant's revised Tables and Chairs Operating Schedule were circulated at the meeting.)

The chair welcomed the applicant and the members of the public to the reconvened subcommittee meeting. He said that members would like to undertake a site visit to further their understanding of the applications and issues raised in objection. The applicant and members of the public were welcome to attend the site visit. He reminded all parties that this was a continuance of the previous hearing and that it was an opportunity to consider the outstanding issues set out in the new information before the subcommittee.

(The meeting was adjourned to enable members to undertake a site visit to the proposed seating area, accompanied by Mr Philip Cutter (the applicant) and members of the public, the Norfolk Constabulary's licensing officer and council officers and legal advisor in attendance.)

(The meeting reconvened at 10:45.)

The chair said that the subcommittee would be taking into consideration the information presented to it at the meeting on 13 May 2019 when making its decision. It was therefore not necessary to repeat the grounds covered at the last meeting and was an opportunity to consider the new information that had been submitted for this

hearing. The subcommittee would listen to comments from all parties on the new information.

The applicant referred to the operating schedule and answered questions from the chair and members of the subcommittee. He explained that the seating area was for 30 diners who would be clearly seated at the tables. In reply to a question from the chair, the applicant explained that he considered that pigeons would not be a problem. He considered that the "Stop Bird Pro" would deter birds from the area despite the chair's concern that reviews of the product was that it was ineffective. People tended to feed the birds at present. The number of birds was not excessive. During questions from members, the applicant confirmed that the tables would seat 3 people and that larger groups of 9 or 10 would likely be directed into the public house rather than be seated in this area. He explained that he did not envisage using plastic rather than glass for drinks as he wanted to create a good dining experience. He explained how diners would place orders for food and drinks through an online food ordering system, using an Ipad or phone, and that staff would not need to leave the area to put orders through to the kitchens. He confirmed that his staff were experienced and used to carrying 3 to 4 plates at a time and that the slope from the public house and navigating between members of the public would not be a problem. In reply to a members' question, the applicant referred to the operating schedule and said that the seating area was surrounded by an open area where people could sit at the benches and smoke. It was therefore unreasonable not to allow diners to smoke and the area at the front of the seating area would be reserved for smokers and it would be monitored. The current licence for tables and chairs outside the public house did not have any restrictions on smoking. The public house itself was a non-smoking area. He explained that the seating area would be kept clean with jet washing, bleach and regular sweeping and removal of rubbish. The area was currently unkempt.

In reply to the subcommittee's legal advisor in relation to the operating schedule, the applicant confirmed that:

- The proposed area of seating was exclusively for diners;
- Last orders for food was 19:00;
- Staff to replace tables and chairs from the seating area to behind the premises by 21:00;
- Customers would be directed to the single point of access (by the lectern);
- Diners would be seated by staff;
- No alcohol to be consumed outside the seating area, with the exception of diners who have completed their meals and were returning to the public house, where they could be escorted by a member of staff;
- There would be two dedicated members of staff on duty in the seating area;
- The area would never be left without a member of staff during operating hours.

The applicant then answered questions from members in relation to the practical staffing of the site. He did not consider that rowdiness would occur in a seating area where most reasonable people who had finished dining would accept that they could not continue to drink and not eat in this area. He reiterated that the only access would be near the lectern.

The licensing officer, Norfolk Constabulary, referred to her response as set out in Appendix C and referred to the conditions set out in the letter. She commented that the applicant had reassured her that on Norwich City Football Club home match days the seating area would not be used and asked that this could be a condition of the licence. In reply to the chair, the licensing officer said that the seating area should not be available in the 2 hours before and after home matches. She also asked that the seating area would not be in operation on the day Lord Mayor's parade.

Responding to the request, the applicant said that in all likelihood the inside of the public house would be too busy to manage the outside dining area and games were played in the winter season. The premises had been very busy inside during the World Cup and it would have been unfeasible to operate the outside dining area. In reply to further questions, the applicant asked that he could use discretion to close the seating area for 2 hours before and after sporting events and when England were playing. The environmental protection, licensing and markets manager said that the applicant should be able to use his discretion after conducting risk assessments in advance of significant cultural and sporting events, which could be available to Norfolk Constabulary and the licensing authority.

(The legal advisor to the subcommittee refused Mr Foskett's request to take into consideration the magistrates' decision in 2009 on St Andrew's Plain because it related to a premises licence, under the Licensing Act 2003 and not a tables and chairs licence under the Highways Act, 1980 and had different requirements and considerations.)

Mr Foskett then referred to the operating schedule and asked questions about staffing and how the applicant would manage staff during bad weather conditions when the seating area was not in operation. The applicant confirmed that he would be able to manage the staffing and that it was a service led industry, driven by supply and demand. The applicant answered further questions from members on this issue. In reply to Mr Foskett, the applicant said that people booking a table outside would be aware that it might not be available if the weather was bad. He also said that it was usual to have a contact number for bookings. In response to Mr Foskett, the applicant said that there had never been an issue with drinks being unattended and that it would be unusual for everyone at a table to leave to go to the toilets at the same time. The applicant said that it was unlikely that drinks would be stolen from tables as the area would be staffed and monitored. It would also be mainly open during daylight hours. He said that there had been no complaints about the existing seating area outside the public house for four years and that, as a consequence of the new seating area it was not considered that the area outside Mr Foskett's opticians would concentrate drinkers and result in antisocial behaviour.

Marilyn Thompson, an employee at the opticians, asked whether people seeking a fine dining experience would like the pigeons congregating in the area. She considered that people eating food and feeding the pigeons would make the situation worse. The applicant referred to his initial response that the bird scarer would scare the birds away and that he did not consider the birds to be a massive problem, but if it were a separate application would be made for parasols or covering for the seating area. In reply to the chair, the legal advisor for the subcommittee pointed out that if concerned about health and safety of food eaten outside and would ensure that food hygiene standards were maintained. The environment protection, licensing and

markets manager concurred with this advice confirmed that the environmental protection team were familiar with this premises and would bring to the applicant's attention any concerns about food hygiene.

In reply to a question on traffic noise, the applicant said that the site was in a busy city centre and would give members of the public an opportunity to sit outside. People already sat on the benches to eat sandwiches and as city centre location there were other noises from construction and traffic in the area.

Marilyn Thompson commented on an article in the local press about the erosion of public spaces. The chair confirmed that the loss of a public space would be taken into consideration alongside the other matters raised.

(Members of the subcommittee resolved to exclude the public from the meeting during their deliberation and consideration of the matters raised at this and at the subcommittee meeting on 13 May 2019 in relation to this application and to seek advice from the subcommittee's legal advisor. The applicant, his advisor, the licensing officer (Norfolk Constabulary), the environment protection, licensing and markets manager and members of the public left the meeting at this point.)

RESOLVED, unanimously, to approve the grant of a licence to place tables and chairs on the highway under the Highways Act 1980, S115E, in accordance with the application submitted in respect of an area on Timberhill, Norwich, NR1 3LB (as set out on the plan (appended to the report) having considered all matters raised by the applicant, statutory consultees and members of the public, and following a site visit to the location of the tables and chairs, subject to the standard conditions for tables and chairs licence amended and added to incorporate the requests from the police and to bring it into line with the applicant's operating schedule, as follows:

- (1) The licensed area will be exclusively for the use of patrons ordering food with no access to casual drinkers;
- (2) Amending condition 9 to ensure that last orders for food must be placed by 19:00 and the licensee must ensure that all tables, chairs and other items are removed from the area by 21:00;
- (3) Diners will be seated by staff allocated to the area and all service will be provided by the staff from the table, including payments, with appropriate signage to inform patrons of this;
- (4) There will be two dedicated members of staff looking after these tables and at least one member of staff present in the area at all times during operating hours, the other member of staff may leave the area on a temporary basis for any reason;
- (5) Substantial table meals will be served at all times when the licence is in use;
- (6) The area will be used for table service only and there will be signage on display informing patrons of this;
- (7) Customers are not to use this area unless seated;
- (8) The tables and chairs will not be in use on the day of the Lord Mayor's Procession and during any Norwich City Football Club home match for two hours prior and two hours after the game; and for all other significant cultural and sporting events, the licensee must conduct a risk assessment on whether to use the tables and chairs seating area which should be available to the police and the licensing authority upon request;

- (9) The access point to the seated area shall be sufficiently wide for wheelchairs and buggies;
- (10) Customers wishing to leave the area will not be allowed to take their alcohol with them save for patrons having finished their meals and wishing to relocate to the public house with their drinks may do so if escorted by a member of staff to the premises.
- (11) Amend the standard condition 15, to include the lectern.

Reasons for approval:

- 1. The applicant has satisfied the subcommittee with the submission of the schedule of operation that the area will be managed professionally.
- 2. The committee took into consideration concerns about the erosion of the public open space. The benches surrounding the site would still be available for public use. The site was poorly maintained at present. The grant of the licence would improve this amenity space.
- 2. No issues had been raised about any by the loss of needed highway by the statutory consultees in terms of access;
- 3. The site is in a busy city centre where people currently sit outside. The use of this area for dining will not make a significant increase to noise levels. Also there is other noise from traffic and construction in the area which is acceptable.

(The applicant, the licensing officer (Norfolk Constabulary), the environment protection, licensing and markets manager and members of the public were readmitted to the meeting. The legal advisor to the subcommittee advised the applicant of the subcommittee's decision. The appellant thanked the subcommittee and said that he would be seeking to implement the seating area in March 2020.)

CHAIR