

Notice of Determination in respect of a variation application for a premises licence under the Licensing Act 2003 for Topsy Jar, 8 Redwell Street, Norwich NR2 4SN.

Licensing Sub-Committee date – 31st January 2022. This hearing was held remotely.

Members of committee present– Councillors Stutely (Chair of committee), Ackroyd and Button.

Applicant for the variation – L A Mixology Limited, company number 12275031

List of attendees:

	Name	Role
1	Cllr Caroline Ackroyd	Committee member
2	Cllr Sally Button	Committee member
3	Cllr Ian Stutely	Committee member
4	Ellice Fennell	For the applicant
5	Leonie Burwitz	Officer
6	Tiffany Bentley	Officer
7	David Lowens	Solicitor, legal advisor

Summary Notes of Hearing

There were no apologies received, nor were any declarations of interest made.

Ms Bentley addressed committee and presented the report, noting that there were no additional papers to be considered in addition to those in the agenda pack except for the amendment papers received from Mr L Bennett dated 25 January 2022 which had been circulated to all persons in advance of the committee hearing.

Ms Bentley noted that in summary the application sought to vary the existing premises licence to extend the hours for sale, to introduce off sales, to authorise the licensable activity of recorded music and to authorise late night refreshment. No representations had been received from any responsible authority, there was one representation from a resident. Ms Bentley summarised the options available to the committee when determining the variation application.

Regarding questions from Mr Bennett, there had been an application received to transfer the premises licence to LA Mixology on 26 October 2021 and on the 1st November the police confirmed that they had no objection to the transfer application. The contents of the premises licence remained the same. Mr Bennett had been told of the adoption of the new local licensing policy. Regarding any breach of hours, this would be a matter for enforcement officers and the police and was separate to the variation process. Concerns regarding the Designated Premises Supervisor (DPS) were not a bar to today's process going ahead. Several Temporary Event Notices (TENs) had been sought for off-sales and there was also emergency legislation in

force giving temporary authority for off sales which was in place until September 2022.

Ms Fennell addressed committee on behalf of the applicant. She mentioned regarding any breach of hours that TEN's had been obtained and had been used for Friday and Saturday in January, and also that the business had an existing premises licence permitting off sales issued by Broadland District Council.

The business dealt in the delivery of cocktails and had been approached by the new owner of the premises in Redwell Street. There was a delivery driver and collections by customers took place, some pre-ordered and some not. The business had been running at these premises since November 2021. An off licence was fundamental to the way this business was run. For customer convenience the business also wished to offer collections. The premises on sales were via table service. The Facebook post mentioned was in error regarding opening hours and she was happy to provide CCTV, the premises had been closing at 23:00. Most of the customers arrived at 22:00 or so and it was desired to add an extra hour to sales. The cocktails supplied via off sales still needed completion (adding of ice) and the containers came with tamper seals. If the premises felt a prospective purchaser was likely to drink the cocktails in the street they would not be supplied. Customers were questioned to confirm there would be consumption away from the premises.

Cllr Ackroyd asked about ensuring correct access to the premises pursuant to the condition on the premises licence, Ms Fennell noted that she was unaware of that condition and was not complying with conditions regarding access and egress, no. 34 and 35. She had not been familiar with the conditions on the premises licence at the time of the transfer but had read the premises licence conditions when preparing for this hearing. The Chair expressed concern that the applicant had been unaware of existing conditions on the premises licence and the legal advisor warned of the risk of prosecution for non-compliance with any licence condition.

The applicant confirmed an amendment to the proposed conditions in that references to Challenge 25 would replace any reference to Challenge 21.

Ms Fennell noted that the upstairs of the premises held approximately 45 persons and the cellar held approximately 18 to 20 persons. It was intended to keep to table service after the coronavirus restrictions ended as this method of operation was considered appropriate to this business. Ms Fennell had watched customers leave the premises on several recent Saturdays and she did not feel the premises were a significant cause of a lot of noise in Redwell Street. The business sent anyone wishing to smoke to St Andrews.

Cllr Button asked regarding Mr Hook and whether he was still involved in these premises. Ms Fennell thought that the DPS had been changed to Laura Whatling. She was advised that this needed an application. Ms Fennell believed she had not yet made such an application though it was planned. Ms Bentley confirmed that this could be dealt with promptly once an application was made.

Cllr Ackroyd asked how the premises could tell that persons did intend to drink at home and not on the street, Ms Fennell mentioned that a lot of questions were asked

of the intended purchasers and she felt the premises could make a good assessment. She confirmed that the premises had a refusals book.

The legal advisor noted that there was an error on the application in that late night refreshment could not be sought before 23:00 and the applicant amended the variation application to note the start time for late night refreshment as 23:00.

Regarding the application for recorded music, Ms Fennell mentioned that music in the bar was low level, effectively background music. The legal advisor noted that music played at background level was not licensable but also that there were no conditions proposed in the variation as to the control of recorded music. The applicant amended the variation application by deleting the request for recorded music to be included in the premises licence.

The applicant wanted the other times mentioned in the variation application to remain as requested.

The legal advisor mentioned that committee would need to give appropriate weight to concerns as to crime and disorder and should give weight to the lack of any representation from the Norfolk Constabulary and from the environmental protection section of Norwich City Council.

The Chair noted with concern that the applicant had not given sufficient attention to ensuring that they were aware of all existing premises licence conditions.

Decision of committee

The variation as amended was approved. No further condition was added to the premises licence. This was the unanimous decision of committee.

Reasons for the committee's decision

The committee had noted the type of premises and the way this business is intended to operate when considering the variation and the promotion of the licensing objectives. The premises' provision of cocktails was dissimilar to and of less concern than a standard off licence providing cans and bottles from the point of view of the public nuisance licensing objective.

When considering the promotion of the licensing objectives regarding the prevention of public nuisance and crime and disorder the fact that the most relevant responsible authorities had not been concerned enough to make any representation was given significant weight. The committee noted that the police are their prime source of guidance regarding concerns as to the crime and disorder licensing objective, pursuant to the s182 revised statutory guidance.

Committee noted the intended controls and the steps taken to promote the licensing objectives at the premises. The premises did not have a particularly large capacity. The proposal for recorded music to be licensed had been withdrawn.

The committee noted the nature of the area in that there were other licensed premises nearby and also took account of the revised statutory guidance in paragraph 2.21 that the behaviour of members of the public once beyond the premises and the immediate surrounding area was a matter of personal responsibility. The area the premises was in was not subject to a cumulative impact policy and concerns regarding operating at unlawful hours / trading beyond permitted hours had been addressed.

The individual merits of this premises were considered when coming to a view about the acceptability of proposed licensable hours.

The committee had reviewed the representation from Mr Bennett, both as originally written and as varied. Whilst Mr Bennett and Mr Hook had come to an arrangement in September 2020 this does not prevent a variation application being made and considered under the statutory tests and with reference to both statutory and local guidance. Mr Bennett notes that the variation sought is not appropriate for the premises and will undermine the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder.

Regarding hours, the hours sought were not felt to be unreasonable in a city centre location where other licensed premises are nearby. Whilst the behaviour of the public when leaving these particular premises cannot be known the committee notes and follows the statutory guidance as to personal responsibility and does not feel that this is a sufficient reason to refuse the variation application. The committee also notes the premises location adjoining a main highway. Committee does not feel there is sufficient evidence for the view that the variation sought would so exacerbate problems of public nuisance and crime and disorder arising at the premises sufficient to justify refusal of the variation.

There are a number of licensed premises in the locality with permitted off sales and this business is not likely to significantly increase the risk of public drinking in the street. It is accepted that the premises licence holder cannot control and cannot be expected to control persons once they have left the premises, again reference is made to the statutory guidance and the matter of individual responsibility.

Whilst the limited soundproofing of residential dwellings is mentioned by Mr Bennett the premises have discarded the proposal to have recorded music as a licensable activity. There is felt to be insufficient evidence to support a view that noise nuisance will arise from the premises which is sufficient to justify refusal of the variation.

Committee notes that Mr Bennett has stated that the noise and behaviour experienced was not always at a level that would constitute a public nuisance, but that he viewed it as disproportionate and unreasonable at times. However there is the lack of an objection from the environmental protection team, there is the evidence from Ms Fennell after viewing persons leaving the premises and there is the matter of personal responsibility for breaches which are not within the control of the premises licence holder, further to the statutory guidance. The committee notes paragraph 9.38 of the s182 guidance, in that the application should be determined

with a view to promoting the licensing objectives in the overall interests of the local community and has noted the matters to be taken into account mentioned in that paragraph. There is a balancing exercise to carry out between the interests of the business and the interests of those who live and work in the area and this has been carried out. Committee has also followed paragraph 9.43 and has sought to ensure that its determination is evidence-based, appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. .

The existence of the review procedure is noted.

Rights of appeal

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

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

- (a) that any variation made ought not to have been made, or
 - (b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of section 35 of that Act,
- they may appeal against the decision.

Any appeal should be raised with a magistrates' court within 21 days of receipt of the written decision appealed against.



Signed.....Chair, Licensing Sub-Committee.

Dated 10 March 2022