



NORWICH
City Council

NORWICH CITY COUNCIL
NOTICE OF DETERMINATION

Date of Hearing: 11 October 2022 at 10:15 am.

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

Address: 61 Newmarket Road, Norwich, NR2 2HW

Applicant: Eponymous Holdings Ltd/t/a Old Spirits Company

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

Other persons attending Committee: Mr Edgar Harden (Applicant and Director); Ms Noble (Applicant's Representative); Maxine Fuller Public Protection (Licensing Advisor) Norwich City Council, Leonie Burwitz (Committee Officer) Norwich City Council; Sarah Moss, solicitor, nplaw

DETERMINATION

1. There were no apologies for absence.
2. There were no declarations of interest.
3. Ms Fuller presented the report.
4. The Chair welcomed those present and noted that no interested parties (ie those having made representations) were in attendance, the residents of 63 Newmarket Road having indicated in a letter dated 2 October 2022 that they were unable to attend. The hearing proceeded in the interested parties' absence in accordance with S.20(2)(b) of The Licensing Act 2003 (Hearings) Regulations 2005).
5. The Chair invited the Applicant, Mr Harden, to present his application. Mr Harden stated that his business concerned the online sale of rare and vintage alcohol. Previously, his business had concerned the sale of alcohol to wholesalers, but he was now looking to sell alcohol to individuals, which was why he was now seeking a premises licence to enable him to do so. The operation and nature of his proposed business activity of selling alcohol to individuals online was not one which was likely to invite anti-social behaviour of any kind and the business would take place solely in the basement of his premises. No representations regarding his proposed activities had been

received from the police, public protection, or fire service and Mr Harden was committed to complying with the licensing objectives.

6. With regard to the representations received from interested parties, Mr Harden noted that the three main concerns raised were to do with public safety, public nuisance and the protection of children from harm. With regard to the licensing objective of public safety (fire risk), Mr Harden explained that he stored alcohol in sealed bottles in his basement, on metal shelving. The basement temperature was maintained at 16 degrees Celsius and there was a smoke alarm and fire extinguisher in place in the basement. There were no naked flames and he turned the electricity off in the basement at the close of business at 5pm. The only persons having access to the property were his own family, who lived upstairs. Accordingly, Mr Harden did not believe that there was a fire risk at the property and the fire department had not raised any objections to the application.
7. Addressing the licensing objective of public nuisance, Mr Harden stated that he received one delivery a day lasting around two minutes each. These deliveries took place by means of a professional courier/driver, using small vans, some of which were electric (ie silent). Once a month he received a larger delivery, lasting around 5 minutes, which was a consolidation of deliveries. In addition, he received a shipping delivery around three times a week. Deliveries only took place between 10am-5pm and there were no deliveries or collections at anti-social hours. The majority of deliveries were actually for the property (ie personal), rather than the premises as such. No objection had been made by the council's department for public protection in relation to the application.
8. In response to questioning by the Chair as to any measures by which public nuisance, including noise, was kept to a minimum, Mr Harden explained that deliveries were made to the front door of his property and to deliver elsewhere would mean that the duration of the delivery would be longer. Deliveries did not take place out of hours, unless there was a delay in delivery, which only happened very occasionally, with a van attending around 6pm in the evening. Usually, deliveries took place in the morning or early afternoon as the vans wanted to offload his delivery first so that they could go on to reload and deliver elsewhere.
9. With regard to the protection of children from harm, although Mr Harden's property was located close to Town Close School, he had not received any objections from the school in relation to his business activities. The premises were not open to the public and there was no signage on his property relating to the business or advertising it. All alcohol sales were made online, and Mr Harden suggested that the nature and high price of the alcohol sold (luxury bottles of alcohol such as malt whisky) would not, in any case, appeal to underage drinkers. In addition, the length of time that the alcohol took to be delivered meant that it could not be purchased as a 'quick fix'.
10. In response to further questioning by councillors, Mr Harden explained that before entering his sales website, the website user was required to verify that

they were of the legal drinking age for that country. In addition, alcohol orders were only made by means of a credit card, requiring the purchaser to be 18 years of age or older. He used the courier company DHL, which had a company policy for the delivery of alcohol, requiring ID to be shown by the recipient at the point of delivery. Mr Harden also offered a condition, the wording offered and agreed with the assistance of his legal representative and the Committee's legal advisor, that he would only use a delivery courier having in place a company policy by which delivery of alcohol would only be made to persons of the requisite age for that country (condition attached at Annex A).

11. In considering the representations submitted by interested parties, the Chair noted for the record that only matters related to the licensing objectives were relevant for the licensing Committee to consider. Matters connected with planning, such as change of use or the alleged devaluation of property were outside the scope of matters capable of being considered by the Committee.

12. 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 condition 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 Agenda papers, including representations submitted by interested parties (including a letter dated 2 October submitted by the residents of 63 Newmarket Road), evidence heard during the hearing and Statutory Guidance published under S182 of the Licensing Act 2003.

Having heard fully from the Applicant as to the proposed management and operation of his online alcohol sales business, Members were of the opinion that the operation of the business in itself did not appear to undermine the licensing objectives.

The contents of the written representations of interested parties (three objecting to the application and one in support) were considered fully by Members. However, Members were of the opinion that many of the concerns raised in the representations were matters for consideration by a planning committee, rather than a licensing committee, who were only able to consider matters falling within the scope of the licensing objectives. Members noted accordingly that the suitability of using of a domestic dwelling for business purposes and the effect of the business on surrounding house prices or saleability were not relevant considerations for the licensing sub-committee. Further, as the interested parties had not attended the hearing, it had not been possible to obtain any further information from them relating to their representations. Members noted that 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.

With regard to the licensing objective of public nuisance, Members accepted the Applicant's evidence that deliveries and collections of stock to the applicant's

premises were undertaken by a van during daylight working hours and Members did not deem the number of deliveries, or the duration of stay at the premises to be excessive. In addition, the Applicant and his family were entitled as residents to receive deliveries unconnected to the business and on the evidence provided by interested parties, it could not be concluded that all deliveries to the premises were business-related. No representation had been received from interested parties with regard to any noise emanating from the property itself because of the business. Accordingly, the licensing objective of the prevention of public nuisance was not deemed to be undermined by the Applicant's proposals.

In consideration of the licensing objective of the protection of children from harm, the Committee accepted the applicant's evidence that there was nothing about the property to indicate that a business involving the sale of alcohol was taking place, to advertise the sale of alcohol or make it attractive to children. In addition, no one (including children) had access to the premises and stock. Members noted the Applicant's evidence that the price and nature of the alcohol being sold made it unattractive to underage consumers and that visitors to the website had to verify their age and use a credit card in order to place an order for alcohol. Further, the Applicant's offer of a condition that the Applicant would only use a delivery courier who had in place a policy by which deliveries of alcohol would only be made to a person of the requisite drinking age for that territory, the age of the person to be challenged if necessary, further satisfied Members that the licensing objective of the protection of children was being upheld.

With regard to perceived fire risk, this was considered by Members to be a speculative concern, also bearing in mind that on application of section 2.7 of the S182 Statutory Guidance, the licensing objective of 'public safety' only concerned the safety of persons using the premises. As the only persons using or having access to the premises were the Applicant himself and his family and adequate fire safety measures were already in place, Members did not consider the licensing objective of public safety to be undermined by the Applicant's proposals.

Weight was also given to the fact that no representations had been received from any of the Responsible Authorities, including those having responsibility for the areas of public protection, fire, and crime and disorder and that the Committee must therefore proceed on the basis that there were no concerns from these departments regarding the Applicant's proposals.

Members were satisfied, therefore, that the licensing objectives had been upheld and there were consequently no grounds to refuse the application or impose any 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: 31 October 2022

A handwritten signature in black ink, consisting of a stylized, cursive script.

Signed: (Chair, Licensing Sub-Committee)

ANNEX A

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

The Applicant will only use a delivery courier who has in place a policy by which the age of the person receiving the alcohol delivery is of the legal drinking age for that territory, to be challenged if necessary.