NORWICH CITY COUNCIL

NOTICE OF DETERMINATION

APPLICATION FOR THE VARIATION OF A PREMISES LICENCE

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

Address of premises: Olivers, 152A Unthank Road, Norwich, NR2 2RS

Date of Committee: 16 October 2023

Applicant – The Fat Cat Brewery Tap Limited

Committee members: Councillor Stutely (chair), Councillor Calvert and Councillor Driver

Other persons present: Mark White, Director of the applicant company, Tim Cary, solicitor, Leathes Prior, representing the applicant company, Danny Turpin, Leathes Prior, assisting Mr Cary (observing), Pier Paolo D'Amico – local resident and objector, David Lowens, solicitor, nplaw, legal advisor to committee, Elizabeth Baker -apprentice solicitor, nplaw (observing), Maxine Fuller, licensing officer, Norwich City Council, Leonie Burwitz, committee officer, Norwich City Council, Mick Bonnington – political assistant, Green Party (observing)

Summary notes of hearing

1. There were no apologies for absence and no declarations of interest. Cllr Stutely mentioned that he had been contacted by the applicant company (hereafter "the applicant") to discuss process in his role as a ward councillor, but no discussion of merits had occurred, and he was not pre-determined in respect of any of the issues that would be considered at committee.

2. Ms Fuller presented the report and mentioned the papers received by all persons in addition to those contained in the agenda in advance of committee. The applicant has provided a fire risk assessment, fire risk conclusions, noise impact assessment and noise management plan. The licensing team had provided a copy of the current licence and had distributed a valid representation from Mr D'Amico which whilst received in the relevant period had not been included in the printed agenda.

3. Mr Cary addressed committee on behalf of the applicant. The premises had been licensed by the council in 2021. This variation application was to permit

off sales and to improve some conditions, which hindered the business. The proposed increase in occupancy to 60 persons was not a fire safety concern, and the requirement for three staff members was problematic.

4. The Chair mentioned that this condition had been offered rather than being imposed.

5. Mr Cary noted that the business had traded to February but then closed, and the applicant believed that the two conditions 14 and 25 mentioned above made the business uneconomic. The previous operator had not obtained planning permission and this was being sought by the applicant.

6. The Chair noted that the controls under the planning and licensing regimes were separate and invited the applicant to avoid planning discussions.

7. Mr Cary noted that the Public Protection team (Env Health) had not objected, which was relevant to the consideration of the prevention of public nuisance licensing objective and should be given weight. The applicant had employed an acoustic engineer to investigate noise issues and noted that the recommendations made in the Adrian James Acoustics report would be implemented. The noise emanating from the premises would in most cases be superseded by ambient noise. Condition 22 requires a noise limiter.

8. Mr Cary noted there were no objections from adjoining premises, Mr D'Amico living across the road. The Fire Service had no issues with the premises. The off-licence request was in case customers wished to take beer home.

9. Mr D'Amico addressed committee. He noted that the acoustic report did not cover the likely ambient noise following the close of the evening rush hour. Things were quiet after 8-9pm. In the summer months especially, he was concerned about the likely noise. Those living in adjoining premises were tenants and thus less likely to be bothered to object. He wished a staff of three kept, as otherwise he was concerned that misbehaviour would escalate. Here was a potential for sixty persons on the pavement causing disturbance.

10. In response to a question from a councillor, the applicant noted that the intention was to have one member of staff at opening and for staff to increase throughout the day. It was unlikely that only one staff member would be on duty in the evening.

11. The applicant (Mr White) explained how the external area would be managed, noting the seating and fence. The intention was to turn off the coolant unit between 23:00 and 07:00. Numbers would be controlled and overcrowding avoided by ejecting persons if necessary.

12. Discussion took place regarding numbers inside and outside and the seating available. In response to a question from the Chair the applicant expected 15-20 persons maximum outside. The applicant confirmed there would be a contact number for persons concerned about nuisance to call.

13. Mr D'Amico remained concerned about noise nuisance and confirmed he did not want this business at this location and wanted numbers restricted.

14. Mr Cary noted that the public protection team had not sought a numbers limit.

(There was a break in committee whilst the applicant contacted their noise consultant).

15. Mr Cary noted that the acoustic report was based on ten persons, but that the view of the noise expert was that not all would speak at once. In hot weather the premises needed to open windows to allow ventilation. In hot weather persons look for beer gardens and if the windows needed to be kept closed the premises would not be commercially viable. Air conditioning would add to noise and costs and would not be good for the neighbours. The applicant did not expect noise from the premises to affect neighbours substantially, and if it did there was the review process.

16. Mr D'Amico noted that numbers remained an issue, but he understood that the cooler was not part of the licensing process and was a matter for planning consideration. Fundamentally he did not want the pub at these premises.

17. The Chair noted that matters were still to be decided, but this was a variation application and not a grant application.

18. The applicant noted that there were reasons why the building had not been a commercial success, they had looked at costs, rates etc and it was not felt economically viable if the numbers stayed the same as currently limited.

19. There were no questions from the applicant to Mr D'Amico.

20. Mr Cary summed up on behalf of the applicant, noting this was a simple application based on an existing licence supported by professional evidence. There was no risk to any of the licensing objectives and if the public had concerns the matter could come back to committee.

21. The applicant clarified the offered conditions:

    1. The outdoor area will not be used after 23:00

    2. The outdoor area will be roped off at the ramp at 23:00 hours to prevent use by the public.

3. Customers in the outdoor area will be advised of the forthcoming closure at 23:00 at least 20 minutes prior to that time.

4. Signage will be provided regarding the times of use of the outdoor area, that no glasses can be taken off the premises and requiring patrons to be considerate to neighbours when leaving the premises.

5. There will be a “traffic light system” visible behind the bar to members of the public showing the level of noise in the interior of the premises.

6. A 1.8 metre high close-boarded timber fence is to be introduced on the inside of the existing wall between 152 and 152A Unthank Road, or such other fence as is approved under the planning legislation.

7. Paragraphs 7.1 and 7.2 shown on page 3 of 4 of the noise management plan dated 25.09.23 are introduced as conditions.

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Decision of committee

The application was granted as sought, noting the addition of the conditions mentioned above. There were no imposed conditions.

Reasons for the committee’s decision

1. The committee notes and gives weight to the fact that no relevant representation was received from the Norfolk Constabulary or the Public Protection team, as would be expected if either authority had concerns regarding the prevention of crime and disorder or prevention of public nuisance licensing objectives.

2. The applicant has a good track record of managing public houses without issues of concern arising. The presentation before committee indicated a competent and efficient management.

3. Regarding the risk of noise nuisance, the committee notes the conclusions of the specialist acoustic report prepared by Adrian James Acoustics Limited regarding the expected limited effect of noise from the premises upon neighbours subject to the controls mentioned and noting the expected background ambient noise level. The committee notes the mitigation from physical works, the limited space available outside the premises and the fact that the outdoor area will not be open for public use after 23:00 and will be roped off. The committee does not feel there is evidence before it sufficient to justify as appropriate the refusal of all or part of the variation or the imposition of further noise conditions beyond those already existing in the premises licence and as added by the applicant.

4. Some local residents are concerned regarding possible noise nuisance and disturbance but the committee believes that the expected professional management together with the controls current and introduced under the premises licence should be sufficient to deal with the risk of excessive noise.

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 that section,
they may appeal against the decision.

Any appeal should be notified in writing to a magistrates' court within 21 days of receipt of notification of the decision appealed against.

Signed: …….. Dated:1 November 2023

Chair.