

# LICENSING AND REGULATORY COMMITTEE

**Minutes and Decision of the Licensing and Regulatory Committee meeting of Broadland District Council, held on Wednesday 29 September 2021 10.00am.**

**Committee Members Present:** Councillors: D King (Chairman) K Kelly and S Prutton

**Officers in Attendance:** The Licensing Team Leader (SH) and the Democratic Service Officers (DM)

<b>Others in Attendance:</b>	Affsor Ali and Nishant Murria - Applicants Adrian Nicholas, Senior Community Protection Officer, Environmental Protection – objecting Rachel McCarthy, Deputy Clerk to Thorpe St Andrew Town Council - no objections Mr and Mrs Brown – objecting A local resident – objecting Sarah Moss, Solicitor NPLaw (the Committee's legal advisor)
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## 10 DECLARATIONS OF INTEREST

None made.

## 11 MINUTES

The minutes of the meeting held on 26 August 2021 were agreed as a correct record.

## 12 MATTERS ARISING

None raised.

## 13 LICENSING ACT 2003 – APPLICATION TO VARY A PREMISES LICENCE – MERCHANTS OF SPICE II, 127 YARMOUTH ROAD, THORPE ST ANDREW, NORWICH, NR7 0QY

The Chairman welcomed everyone to the meeting and confirmed who was in attendance. The applicants indicated they wished to share 3 photographs of the garden area of the premises with the Committee. After all present had consented, the photographs were viewed later in the meeting by all present.

## Licensing and Regulatory Committee

The matter before the Committee was the application to vary the premises licence for the Merchants of Spice II, 127 Yarmouth Road, Thorpe St Andrew as follows:

Licensable Activity:

***J. Supply of alcohol (for consumption both on and off the premises)***

*Monday to Sunday 12.00 to 22.00*

*Hours apply to new garden area only. Application is for off sales to also be added to the restaurant (indoors) part of the premises (in accordance with hours stated on current premises licence).*

The effect of the above statement is that, subject to the variation being granted, the premises would also be licensed for off sales of alcohol from the inside restaurant, Monday to Saturday 10.00 to 23.00 and Sunday from 12.00 to 22.30.

The outside area will open as follows:

*Monday 12.00 to 22.00*

*Tuesday to Sunday 12.00 to 23.00*

Representations had been received from Environmental Health (objecting) and other persons (objecting and supporting).

The Licensing Team Leader read out the officer's report. She drew attention to the anonymous representation included in the committee papers and confirmed that this had been received from a local resident who could reasonably claim to be affected by the application but who did not wish their name and address to be included in public papers. The resident was in attendance at the hearing. The Licensing Team Leader drew attention to paragraph 2.8 of the report and reference to the temporary provisions within the Business and Planning Act 2020 which permitted premises licensed for the sale of alcohol for consumption on the premises to also sell alcohol for consumption off the premises until 30 September 2021. This temporary provision had now been extended to 30 September 2022. In response to a question, the Licensing Team Leader confirmed that it was permissible for the applicant to submit a variation application to make provision for such arrangements beyond this temporary timeframe.

The Committee then heard from the applicants who explained that the COVID pandemic had hit their business hard with much lost revenue. They had decided to refurbish the land at the rear of their premises for use as an outdoor dining space and wanted to continue to do this despite a relaxation in COVID controls as some customers still preferred to eat outside. This was likely to be a seasonal use as the area was not covered and only had small heaters and was not likely to appeal to diners in the winter. The space was limited to 10 tables, approximately 50-60 people, and bookings were strictly controlled by the applicant. Outside diners tended to arrive at the earliest at 5-6 pm and would be gone by 10pm. They only offered one sitting per table outside, but two inside the premises. They also tended to attract a mature clientele rather than appealing to young people. They would not be hosting

## Licensing and Regulatory Committee

any weddings as they did not have the facilities to accommodate these and it was not their preference. They did not want to cause any issues for their neighbours. There would be noise from people chatting but it was not their intention to run a pub. There would always be 2 staff in attendance outside and both food and drink orders were taken and served at the table. There was very limited walking/standing around. A 2m perimeter space had been retained around the garden. The applicants had met with all neighbours to discuss their proposals and what measures they could take to help them. They stated they would be willing to close at 10pm. The legal advisor sought clarification on this point and the applicants confirmed they were happy to agree a condition to the licence to stop alcohol sales and close the garden at 10pm.

The applicants then answered questions. They confirmed it was their intention to continue to offer table service and wanted the outside bar to avoid staff having to go inside the premises to collect ordered drinks. The outside bar could be managed by a responsible person/personal licence holder. If a license was granted, the applicants confirmed they had no plans to increase the number of tables outside as they had limited kitchen facilities and were already at capacity. They did not provide a drinks only facility but did offer a drink and snack option. In response to a question about light pollution from the garden, the applicants reported that the outdoor garden area was only used for approximately 3 summer months when the evenings were light anyway and that the additional lighting was only turned on for a limited time to provide ambient light. With regard to music, the applicants confirmed that their proposal was to play low level background music at the table and there would be no live music. In response to a question raised by the applicant, the Licensing Team Leader confirmed that under their current licence food and soft drinks could be served in the outside area and customers could consume alcohol they had brought with them.

The Committee then heard from Adrian Nichols, Senior Community Protection Officer who explained why he had concerns about the application. There had been no complaints received about the premises until the use of the garden area had commenced. Concerns had then been raised about noise from customers talking in the garden which was impacting on the neighbours' enjoyment of their garden. He felt the 11pm closing time was too late. He stated it was difficult to control customers enjoying their meal and talking in the garden but because of the proximity of the domestic garden, the collective noise of 40-50 people talking was a nuisance.

The Senior Community Protection Officer then answered questions. He stated that it was difficult to suggest mitigating measures which could control this sort of outdoor noise.

The Committee then heard from Rachel McCarthy – Deputy Clerk to Thorpe St Andrew Town Council who stated that the Town Council broadly supported the application and was not aware of any issues at the premises. The Town Council recognised the valuable role of the facility to the wider community.

## Licensing and Regulatory Committee

They accepted there were some issues with pests/smell which could be dealt with and welcomed the reduction in the proposed hours from 11pm to 10pm.

Mrs Brown raised a concern relating to her understanding of the criteria by which the Town Council had assessed the application having attended the Town Council meeting at which the matter had been discussed. This appeared to have been wider ranging than the criteria she had been advised to have regard to. The Chairman explained that the Committee was bound to only have regard to the relevant licensing criteria despite what matters may have been considered by the Town Council.

The Committee then heard from Mr and Mrs Brown. They explained that their main concern was noise and that they were only 3ft from the boundary and 3m away from the tables in the garden. There was no separation and no way of mitigating the noise. They had double glazing and insulation and could still hear the noise indoors with windows and doors closed. They had no issues with the management of the premises but that the reality was not the peaceful dining experience portrayed. Some nights were quieter than others but there was no warning of what was coming and it was difficult to plan ahead.

Mr and Mrs Brown were asked to give some details regarding the frequency and duration of the noise experienced and they stated that it was very variable. Thursday, Friday and Saturday were the busiest and noisiest times but sometimes mid-week could be bad depending on bookings. The premises were closed on a Monday which was the only day they could guarantee no noise. The noise tended to occur from 6pm through to 10pm when the applicants very reliably closed at 10pm. They were unable to get away from the noise and get peace and could not enjoy their garden or have friends visit. They had heard bad language and had occasionally seen people standing in groups. The noise tended to increase after dark. Their enjoyment of their house was also impacted as certain rooms could not be used because of the noise. It had affected their health and wellbeing this summer and they could not continue to tolerate the noise. They recognised that the premises were a valuable asset to the community and had good relations with the applicants but the issue of concern was the noise.

The Panel then heard from a nearby resident who stated that the applicants had spoken to them about the proposals and what they could do to help mitigate the impact. Additional visual screening had been installed to avoid overlooking. The resident raised concerns about the safety of two trees on the land and felt these needed to be dealt with. The resident felt there was an issue with noise but that it was not at a level that could be regarded as excessive. With regard to lighting, it was not considered that this was an unacceptable disturbance and the lights were always turned off at 10pm. There was concern about a potential license to 11pm and this could be an issue, particularly as there was sometimes disturbance from cars parked on the adjoining street at busy times, but a finish time of 10pm was acceptable.

## **Licensing and Regulatory Committee**

In response to a question, members were given an approximate distance from the resident's property to the garden and noted this was further away than the closest neighbour.

All present were then invited to make their closing statements.

The Licensing Team Leader invited members to consider the application and the options for determining the application and drew attention to the provisions for a review of the licence should it be granted and issues were experienced.

All parties present, with the exception of the Democratic Services Officer and the Legal Advisor then left the meeting. They were subsequently readmitted to the meeting and the Chairman announced the Committee's decision.

### **DECISION OF THE LICENSING AND REGULATORY COMMITTEE**

The Committee approved the application for the variation of the premises licence to extend the licensable area to the outside rear area as defined by the plan at page 38 of the application (to allow for an outside bar) and to extend the licence for sale by retail of alcohol for off-sales as well as on-sales, subject to the condition offered by the applicant to cease the supply of off-sales alcohol for consumption in the outside area at 22.00 hours and to close this area to customers at 22.00 hours.

### **REASONS FOR THE COMMITTEE'S DECISION**

The Committee noted that the matter under consideration was principally whether the variation to the licence as requested by the applicant (extension of the licensed area to the outside area and supply of off-sales alcohol to enable alcohol to be consumed in this area) would undermine the Licensing Objectives, especially those of public nuisance and crime and disorder. This was not a review hearing to consider and review concerns about licensed activities at the premises in general. It would not, therefore, be appropriate for Members to consider matters unrelated to the impact that the variation of the licence, as sought by the applicant, may have on the licensing objectives.

With regard to the licensing objective of crime and disorder, on the evidence given at today's hearing and in the representations, the Committee could find no basis for concluding that granting the variation of the licence as sought would undermine this licensing objective.

With regard to the licensing objective of the prevention of public nuisance, the Committee came to the following conclusions:

It was noted by the Committee that as the music proposed to be played by the applicants on the tables through small speakers would be background music only, this did not require a licence as it fell within one of the regulated entertainment exemptions under schedule 1 of the Licensing Act 2003.

## Licensing and Regulatory Committee

The Committee noted that there were no restrictions on the applicant's premises licence prohibiting the use of the outside area, including the consumption of food and drink including alcohol. The Committee therefore noted that under the current premises licence, the applicant was already entitled to serve food and soft drinks to customers in the outside area. Consequently, the matter for consideration by the Committee was whether the supply of alcohol for consumption by customers in the outside area would undermine the licensing objectives, should the variation to the licence be granted as sought.

On the evidence given by the applicant, the Committee was satisfied that the premises were well managed and noted the efforts made by the applicant to consult with neighbouring residents prior to beginning any work and accommodate any concerns. There was no reason to suggest that the applicant would not continue to be mindful of and work with neighbouring residents to mitigate any concerns.

The Committee noted the way the premises were currently run, accepting that the restaurant was promoted as a family-orientated food establishment to appeal to older clientele, rather than young groups. It was not promoted as a public house, alcohol was not currently served without food and that was likely to remain the situation. The Committee also considered that the applicant intended to use the outside area mainly during the summer months, with only the occasional visit outside these times and there were no plans to increase numbers of customers (given that the kitchen was already at capacity) and also no intention to host weddings. Taking these into account, the Committee considered that the applicant had already put in place sensible measures to reduce any impact the supply of alcohol may have on the licensing objectives.

Further, it was noted that customers in the outside area were monitored by two trained members of staff at all times and that this would, in the Committee's opinion, provide a reasonable way of monitoring and controlling noise levels. It was also believed by the Committee that the applicant's offer to limit the supply of alcohol to no later than 22.00 hours and closing the garden to customers at the same time was a sensible and proportionate attempt to limit the impact of noise on neighbouring residents, taking into account the nature of the area.

Taking into account the evidence submitted by the neighbours living in the property closest to the premises and the Senior Community Protection Officer (through written representations and oral evidence at the hearing), the Committee had sympathy for and accepted that there did appear to be a level of annoyance experienced by the neighbours living in the property closest to the premises, principally in relation to noise. However, the Committee was of the view that there was insufficient evidence to suggest that the supply and consumption of alcohol in itself would significantly undermine the licensing objective of public nuisance to the degree that it justified refusing the variation of the licence as sought. The applicant was entitled to serve food and soft

## **Licensing and Regulatory Committee**

drinks to customers in the outside area under his existing licence and insufficient evidence had been provided to suggest that supplying alcohol would affect noise levels over and above the level that might be expected if alcohol was not supplied by the premises. Accordingly, on that basis, there was insufficient evidence to justify refusing the variation of the licence as sought.

Further, it was noted that the premises were reliably closed at 22.00 hours and the Committee was of the view that this was a proportionate closing hour to balance the interests of the residents with that of the community.

It was noted by Committee that three of the representations received were in support of the application although it was accepted that they did not live in such close proximity to the premises as the neighbours living in the adjoining property. Weight was given to the fact that the objector also attending today's hearing, while living further away the property than the adjoining neighbours, had not believed the noise from the outside area to be excessive and had no concerns as to light issues. The objector's main concern had related to the outside area remaining open until 23.00 hours, due to the likelihood of additional noise related to a longer drinking period. In relation to this, the Committee took account of the condition offered by the applicant, which, subject to the variation being granted and this condition being added to the licence, would mean that this situation would not arise. Further, Committee noted that Thorpe St Andrew Town Council had also broadly been in support of the application, subject to the garden being closed to customers at 22.00 hours.

In view of this, the Committee felt that it was important to balance the views of the neighbours living in the property closest to the premises, with the interests of the wider community as expressed in representations and evidence given today, the majority of whom supported the application and considered the premises to be an asset to the community.

Finally, the Committee noted the availability of the review process, whereby any person believing that a premises is not upholding the licensing objectives may make a representation to the Council and request that the premises' licence be reviewed.

### **RIGHTS OF APPEAL**

Rights of appeal set out in Schedule 5 of the Licensing Act 2003. Any person wishing to appeal this decision by the licensing authority to either grant or not grant the application or any conditions imposed or which should have been imposed should do so within the period of 21 days from the receipt of written notification of the decision appealed against. Any appeal must be sent directly to the Magistrates' Court.

This written decision would be provided within 5 working days of the meeting and circulated to all those making representations.

## Licensing and Regulatory Committee

(The meeting concluded at 1.03pm)

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Chairman