

**North East Derbyshire District Council**

**Licensing Sub-Committee**

**5 July 2021**

**To hear representations made under the Licensing Act 2003**

**Report of the Service Manager (Environmental Health)**

Classification: This report is public under Paragraph of Part 1 of Schedule 12A to the Local Government Act 1972

Report By: Sian Harpham

Contact Officer: Sian Harpham

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**PURPOSE / SUMMARY**

To consider representations made against an Application for a Premises Licence for **Cocina Familiar, 2 Edinburgh Court, Wingerworth, Chesterfield, S42 6SH.**

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**RECOMMENDATIONS**

The Licensing Sub-Committee may;

1. Grant the Premises Licence application as applied for;
2. Grant the Premises Licence application, modified to such an extent as the Authority considers appropriate for the promotion of the licensing objectives and any mandatory conditions; or
3. Refuse the Premises Licence application.

Approved by the Portfolio Holder - [Click here to enter text.](#)

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**IMPLICATIONS**

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**Finance and Risk:**      Yes       No

**Details:**

An appeal against this decision would incur costs in preparing a defence case and to attend Court. Costs may be recovered at the discretion of the Magistrates in the event that the application is dismissed. Costs could be awarded against the Authority in the event that the appeal is successful.

On Behalf of the Section 151 Officer

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**Legal (including Data Protection):**                      **Yes**                       **No**

**Details:**

Any parties have the right to make an appeal to the Magistrates' Court if they are not satisfied with the outcome/conduct of the hearing.

On Behalf of the Solicitor to the Council

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**Staffing:**      **Yes**                       **No**

**Details:**

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On behalf of the Head of Paid Service

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## DECISION INFORMATION

Decision Information	
<b>Is the decision a Key Decision?</b> A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:  <b>BDC:</b> Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input checked="" type="checkbox"/> <b>NEDDC:</b> Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	Yes/No
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	Yes/No
<b>District Wards Significantly Affected</b>	None
<b>Consultation:</b> Leader / Deputy Leader <input type="checkbox"/> Cabinet / Executive <input type="checkbox"/> SAMT <input type="checkbox"/> Relevant Service Manager <input type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/>	Yes  Details: Ward Members

**Links to Council Ambition (BDC)/Council Plan (NED) priorities or Policy Framework including Climate Change, Equalities, and Economics and Health implications.**

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## REPORT DETAILS

### 1 **Background** *(reasons for bringing the report)*

- 1.1 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when regulated activities are undertaken at a premises.

The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

- 1.2 The legislation and statutory guidance are clear that each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions.
- 1.3 A premises may only undertake licensable activities where it holds both planning permission and a premises licence to enable it to do so. Planning and Licensing are separate systems of regulatory control, planning deals with land use, licensing with detailed operation of premises where licensable activities take place. Similar considerations are likely to arise in both and there is overlap between the two but each regime involves consideration of different albeit related matters and each operate independently. The guidance provides that licensing committees are not bound decisions made by a planning committee and vice versa.
- 1.4 On 25<sup>th</sup> May 2021, an application for a Premises Licence for **Cocina Familiar, 2 Edinburgh Court, Wingerworth, Chesterfield, S42 6SH** was received by North East Derbyshire District Council from **Mrs Jennifer Alison Sim, 21 Longedge Lane, Wingerworth, Chesterfield, S42 6PB**.

- 1.5 The application seeks a premises licence operating to the conditions set out in the table below. A copy of the application is attached as **Appendix 1**.

<b>Licensable Activity</b>	<b>Proposed Times</b>
Regulated Entertainment – Recorded Music	Monday to Friday: 11:00 to 22:00 Saturday and Sunday: 10:00 to 22:00
Supply of Alcohol (On Sales only)	Monday to Thursday: 12:00 to 23:00 Friday: 11:00 to 23:00 Saturday and Sunday: 10:00 to 23:00
Opening Times	Monday to Saturday: 10:00 to 23:00 Sunday: 10:00 to 21:00

- 1.6 A copy of the proposed plan is attached at **Appendix 2**.

## **2. Details of Proposal or Information**

- 2.1 All the Responsible Authorities were notified of this application in accordance with the legislation.
- 2.2 The following Responsible Authorities have not submitted a representation regarding this application;
- Derbyshire Fire and Rescue Service
  - Planning
  - Derbyshire County Council Trading Standards
  - Derbyshire County Council Safeguarding
  - Home Office - Alcohol Licensing Team
- 2.3 However, the Police & Trading Standards have held informal discussions with the applicant without submitting a formal representation themselves to the Licensing Team. As a result of these discussions the applicant has requested the addition of further conditions to be added to the application. These conditions attached as **Appendix 3 and 4**.
- 2.4 The consultation deadline for this application was the 22<sup>nd</sup> June 2021. By this time, the Licensing Team had received 4 valid representations from individual members of the public, which all relate at least one of the licensing objectives.

Fiona Cutts-Bland has referenced all 4 licensing objectives in the representation she has submitted. This representation is attached as **Appendix 5**.

Cassandra Osborn and Ann Parker have reference the prevention of public nuisance in the representations they have submitted. These representations are attached as **Appendix 6 and 7**.

B Thompson has referenced the protection of children from harm in the representation they have submitted. This representation is attached as **Appendix 8**.

The relevant part of the statutory guidance explaining the licensing objectives is attached as **appendix 9**.

- 2.5 These parties have a legal right to make representation.
- 2.6 On the 18<sup>th</sup> June 2021, the Licensing Team received an email from a member of the public supporting the application. This email is attached as **Appendix 10**.
- 2.7 The applicant, Mrs Jennifer Alison Sim has provided some further documentation to support her application. She has received 60 emails/letters from the local community all supporting the application, these can be viewed should the Members wish to see them.
- 2.8 The applicant, Mrs Jennifer Alison Sim, has provided emails from Wingerworth Wonder Years, the nursery nearby the premises and the resident who lives above the restaurant. Both these parties support the application. These emails are attached as **Appendix 11 and 12**.
- 2.8.1 The applicant, Mrs Jennifer Alison Sim, has also provided a letter from a Pinewood Estate Agents who confirm there will be no affect to property values in the immediate area. This letter is attached as **Appendix 13**.
- 2.9 The premises have had 9 Temporary Event Notices covering 26 days since November 2020. The Licensing Team and Environmental Health have received no complaints about the operation of the premises.
- 2.10 In September 2018 the Council adopted a revised Licensing Act 2003 Policy. A number of paragraphs within the policy are relevant in this case. These paragraphs are set out below:

*2.2 In carrying out its licensing functions, the Licensing Authority must also have regard to the licensing objectives, its Policy Statement and any statutory guidance under the Act and is bound by The Human Rights Act 1998. The Council must also fulfil its obligations under section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in North East Derbyshire.*

*2.4 Guidance on the Licensing Objectives is available on the Government's website at: <https://www.gov.uk/guidance/alcohol-licensing>*

*2.5 Licensing law is not the primary mechanism for the general control of antisocial behaviour by individuals once they are beyond the direct control of the individual club, or business holding the licence, certificate*

*or permission concerned. Licensing is about the management of licensed premises and activities within the terms of the Act and conditions attached to various authorisations will be focused on matters which are within the control of the individual licence holder and others.*

4.2 *The granting of a licence, certificate or provisional statement will not override any requirement of the planning system or vice-versa. The licensing system will provide for the detailed control of operational matters, which are unlikely to be addressed through planning processes. However there will be overlapping issues of interest e.g. disturbance, which will remain material considerations for planning purposes as well as being relevant in terms of the licensing objectives. Applicants should also ensure that they have due regard to any planning restrictions on the use of premises when applying for licence/certification to avoid any possible enforcement action. Equally any planning approval for a premises does not imply that approval will be giving under the Licensing regime.*

Further information can be found in the Council's Licensing Act 2003 Policy.

**3 Reasons for Recommendation**

Not applicable

**4 Alternative Options and Reasons for Rejection**

Not applicable

## DOCUMENT INFORMATION

Appendix No	Title
1	Application for a premises licence
2	Plan of premises
3	Additional conditions added by the Police
4	Additional conditions added by Trading Standards
5	Representation 1
6	Representation 2
7	Representation 3
8	Representation 4
9	Licensing objectives guidance
10	Email supporting application
11	Email from Wingerworth Wonder Years Nursery
12	Email from resident
13	Letter from Pinewood Estate Agents
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
<a href="#">Click here to enter text.</a>	