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Meeting	Licensing/Gambling Hearing
Date	12 February 2024
Present	Councillors Hook, Melly and Nicholls

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**19. Chair**

Resolved: That Councillor Melly be elected to act as Chair of the hearing

**20. Introductions**

Introductions were made.

**21. Declarations of Interest**

Members were invited to declare at this point in the meeting any disclosable pecuniary interest or other registerable interest they might have in respect of business on the agenda if they had not already done so in advance on the Register of Interests. No interests were declared.

**22. Exclusion of Press and Public**

Resolved: That the press and public be excluded from the meeting during the sub-committee's deliberations and decision making at the end of the hearing, on the grounds that the public interest in excluding the public outweighs the public interest in that part of the meeting taking place in public, under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.

**23. Minutes**

Resolved: That the minutes from the Licensing Hearing held on 23 November 2023 be signed and approved as an accurate record.

**24. The Determination of an Application by Mary Ann Atolagbe for a Premises Licence (Section 18(3) (a) in respect of Café Coco, 20 Hawthorn Terrace, New Earswick, York, YO32 4BL (CYC-077166)**

Members considered an application by Mary Ann Atolagbe for a Premises Licence (Section 18(3) (a) in respect of Café Coco, 20 Hawthorn Terrace, New Earswick, York.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objectives were relevant to the Hearing:

1. The Prevention of Crime and Disorder
2. The Prevention of Public Nuisance

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and the above licensing objectives, including:

1. The application form.
2. The papers before it including the written representation received from a local resident.
3. The Licensing Manager's report and her comments at the Hearing.

The Licensing Manager outlined the report and the annexes, noting the opening and operating hours of the café. She detailed the promotion of the licensing objectives as detailed in paragraphs 10-14 of the published report. She explained that the premises was not in the Cumulative Impact Area and that the Applicant had carried out the consultation process correctly. She noted that there were no representations from Responsible Authorities and that amendments and additional conditions had been agreed with the police, as set out in Annex 3. She drew attention to the representation made by one other person, at Annex 5. She then advised the sub-committee of the options open to them in determining the application.

4. The Applicant's representations at the Hearing. Mary Atolagbe (the Applicant) explained that there was nothing much more to add other than the information in her letter to the Sub-Committee, published as additional information with the agenda. She explained that the café would be a

café bistro, and that customers had asked about buying a glass of wine with their food. Mary Atolagbe explained that her intention was not for the café to be a bar and that its clientele would be families and elderly people. She noted that the café would be open until 9pm and would not be open every night and that there would be no music playing. Mary Atolagbe explained that there was CCTV inside and outside the premises and that the café being open late would discourage youths from congregating outside. She added that the alcohol licence was under discussion with the previous café owners.

Mary Atolagbe was then asked a number of questions to which she responded that:

- Regarding concerns about noise and parking there had been a parade of shops for a number of years and concerns needed to be taken up with the Joseph Rowntree Housing Trust. She added that the café did not create a lot of noise, was on a main road and may discourage children from congregating. She explained that she was trying to run a business and felt that the representor should address their concerns with the Joseph Rowntree Housing Trust.
- The question of having children's parties at the café was not relevant to the application.
- She would make sure that people who were served alcohol were over 18.
- The customer parking outside was for the shops and the representor may need to take this up with the Joseph Rowntree Housing Trust.

At this point in the hearing, the Licensing Manager advised that if the license was granted, the applicant needed to meet the four licensing objectives and not undermine the licensing objectives. Bridget Slezak, on behalf of the representor Joanna Bukkems then asked if the licensing objective of public nuisance included residents to which the Licensing Manager confirmed that it did, and included all of the public.

Mary Atolagbe then responded to further questions, explaining that:

- The café would serve bottled beer, wine and spirit options.

- The café would not open on evenings seven days a week and would probably be open Friday and Saturday evenings.
  - The café already had CCTV.
  - There were four very small tables outside the café, used by people walking dogs, and she believed that most people would eat inside the café.
  - The layout of the café was explained and she noted that customers were always with staff in the open plan area of the café.
5. The representations made by Bridget Slezak, on behalf of Joanna Bukkems. She explained that the representor lived above the café and there were blurred lines about when the café was open as the letter from the Joseph Rowntree Housing Trust stated that the café would be open until 11pm seven days a week. She explained that the representor was unable to leave her flat because of a chronic disability.

Bridget Slezak read out the letter from the representor as detailed at Annex 5 of the published report. She explained that it would be difficult to live in her flat because of the noise. She noted that the café was in the middle of New Earswick on a busy road. She added that a disabled parking space was occupied by a person without a disability badge. She noted that the representor did not believe that the café would be used by elderly residents. She noted that the applicant had said that the representor should complain to the Joseph Rowntree Housing Trust about the noise from the shops. She explained that the representors flat opened near the café tables and the clients from the café sat close to the gates and restricted her access. The representor was also worried about the times as the letter from the Joseph Rowntree Housing Trust said that the café would be open until 11pm. The representor also noted that the applicant said that music was at a low level which it wasn't and the representor was concerned about the café being open seven days a week. The representor was also concerned about noise as there wasn't noise from the previous café owners and the representor had made complaints about the noise to the council.

On behalf of the representor Budget Slezak was asked and explained that the representor's concern about noise inside and outside was because there would be up to 18 people in a small area and if the café was full, noise could be excessive and the noise from people coming and going from the café up until 11pm.

Closing points were then made in which Mary Atolagbe explained that before she took over the café it was a rundown area and since it had opened she had received very positive feedback. She explained that your objective was to make it busy and welcoming. She added that the parking was for all of the shops and that people walked to the café. Mary Atolagbe noted that she was not you were not running the café any differently to any other business and added that music would be quiet. She suggested that regarding the representors health conditions, she may need to address her concerns with the Joseph Rowntree Housing Trust. She explained that concerning access to the representor's flat, people did not congregate near the access to the flat as it was at the side, not front of the café.

In response to further questions Mary Atolagbe confirmed that:

- The café would have quiet ambient music.
- There would never be more than 18 covers inside the meeting and 8 covers outside the meeting.
- Regarding parties, she had held a party for her daughter.
- If the license was granted you would be willing to accept a maximum number of covers.

In respect of the proposed licence, the Sub-Committee had to determine whether the licence application demonstrated that the premises would not undermine the licensing objectives. Having regard to the above evidence and representations received, the Sub-Committee considered the steps which were available to them to take under Section 18(3) (a) of the Licensing Act 2003 as it considered necessary for the promotion of the Licensing Objectives:

Option 1: Grant the licence in the terms applied for. This option was rejected.

Option 2: Grant the licence with modified/additional conditions imposed by the sub-committee. This option was approved.

Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly. This option was rejected.

Option 4: Refuse to specify a person in the licence as a premises supervisor. This option was rejected.

Option 5: Reject the application. This option was rejected.

In approving Option 2, the Sub-Committee granted the licence for the following activities and timings as applied for together with modified/additional conditions imposed by the Sub-Committee (Option 2) as set out below:

- 1) That there be a maximum of 18 covers inside the premises and a maximum of 8 covers to the front of the premises.
- 2) The conditions agreed between the Applicant and North Yorkshire Police set out in Annex 3 of the agenda shall be added to the licence, save for
  - Condition 8 which shall be deleted.
  - Condition 7 which shall be modified to delete the word 'open'.

The conditions contained in the Operating Schedule shall be added to the licence unless contradictory to the above conditions.

The licence is also subject to the mandatory conditions applicable to licensed premises.

### **Reasons for the decision**

The Sub-Committee carefully reviewed all the information presented from all parties in light of the licensing objectives and decided to approve Option 2, to grant the licence with modified/additional conditions imposed by the sub-committee, for the following reasons:

1. The Sub-Committee must promote the licensing objectives and must have regard to the Guidance issued under section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy.
2. The Sub-Committee noted that the premises are not located within an area where a cumulative impact policy applies.

3. The Sub-Committee had regard to the location of the premises and noted its position at the end of a row of shops and business which are located underneath residential flat/apartments. The row of shops is set back from a busy road in a predominantly residential area.
4. The Sub-Committee has regard to the applicant's application and representations and noted that the premises is a café that is encouraging a family friendly, relaxed atmosphere, its customers being mainly the elderly, dog walkers and families. It was noted that alcohol will only be served with food and the premises is to operate predominately as a café and not a vertical drinking establishment.
5. The Sub-Committee considered the representor's representations regarding the noise emanating from the premises. The Sub-Committee noted the representations regarding the playing of music and noted that due to the deregulation of music it is not a matter that the Sub-Committee can consider on the grant of a new premises licence however if the premises license is reviewed then it will be open to the Sub-Committee to consider the playing of music. In relation to the concerns about noise disturbance generated from the use of the premises and the outside area the Sub-Committee were satisfied that the subject to the imposition of conditions, for a maximum cover of 18 inside the premises and a maximum cover of 8 to the front of the premises, the licensing objectives would not be undermined.
6. The Sub-Committee considered the fact that the Police did not object to the application carried great weight and reassured the Sub-Committee that the prevention of crime licensing objective would be unlikely to be undermined. The Sub-Committee noted that conditions had been agreed between the police and the applicant. The Sub-Committee made modifications to the conditions agreed at condition 7 and 8 as the conditions relate to off sales of alcohol and it was noted that the application does not relate to off sales of alcohol therefore the conditions were not considered appropriate.
7. It noted that there were no representations from any other Responsible Authority.

8. The Sub-Committee felt on the basis of the evidence before it that the imposition of suitable additional conditions on the premises licence would be adequate to promote the licensing objectives. Accordingly, it was felt that the decision of the Sub-Committee was justified as being appropriate and proportionate for the promotion of the licensing objectives.

Cllr Melly, Chair

[The meeting started at 10.00 am and finished at 11.10 am].