

Licensing/Gambling Hearing

To: Councillors Galvin, Melly and Norman

Date: Monday, 9 November 2020

Time: 10.00 am

Venue: Remote Meeting

AGENDA

1. Chair

To elect a Member to act as Chair of the meeting.

2. Introductions

3. Declarations of Interest

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

4. Exclusion of Press and Public

To consider excluding the Press and Public:

- a) During any discussion in relation to Annex 5(c) to the report at Agenda Item 6 (The Determination of a Section 18(3)(a) Application for a Premises Licence), on the grounds that it contains information relating to an individual which is classed as exempt under paragraph 1 of Schedule 12A to Section 100A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006) and

- b) 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.

5. Minutes

To approve the minutes of the Licensing Hearings held on 6 August 2020 and 17 August 2020.

- 6. The Determination of a Section 18(3)(a) Application for a Premises Licence by Mr Wenlin Chen in respect of Haizlonglao Hot Pot & BBQ, 12 George Hudson Street, York, YO1 6LP (CYC-067017)**

Democratic Services Officer:

Name: Fiona Young

Contact Details:

- Telephone – (01904) 552030
- Email - fiona.yong@york.gov.uk

For more information about any of the following, please contact the Democratic Services Officer responsible for servicing this meeting:

- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats.

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

Distribution:

Members of Licensing Act 2003 Sub-Committee

Licensing Officer

Legal Services

Applicant

Representors

Press, Library.

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LICENSING ACT 2003 SUB – COMMITTEES PROCEDURE FOR REMOTE LICENSING HEARINGS

Introduction

1. During the coronavirus pandemic emergency period it will be necessary for licensing hearings to be dealt with remotely. This procedure sets out how City of York Council will deal with such hearings. This procedure must be considered in conjunction with the Council's Delivery of Remote Meetings document which sets out how all meetings, including licensing hearings will be held in York.
2. The procedure adopted at a licensing hearing is at the discretion of the Sub-Committee but will normally follow the pattern outlined below.
3. The Council's hearings procedure is based on regulations made by the Secretary of State under the Licensing Act 2003. The procedure is intended as a general framework to ensure natural justice and a fair hearing. The Sub-Committee has a duty to view all evidence presented before them impartially. The Sub-Committee is not bound by the formal rules of evidence. Nevertheless, Members must carry out their duty placing what weight they feel is appropriate given the nature of the evidence and the manner in which it was obtained, and communicated.
4. The Council will provide a record of the hearing in a permanent and intelligible form and keep it for 6 years from the date of determination or disposal of any Appeal. The Hearing will be recorded and the recording placed on the Council's website.

Preparation for the Remote Licensing Hearing

5. The Sub-Committee will use the video-conferencing platform when the hearing is in public session. Clear instructions will be provided to participants on how to join the remote hearing. The Sub-Committee may exclude the public from all or part of a hearing if it considers it is in the public interest to do so. Should any part of the hearing need to be held in private session, a separate private online meeting will be convened by the Sub-Committee. This video-conferencing platform will also be used for decision making in private. All paperwork relevant to the hearing will be published online on the Council's

website, 5 working days before the remote hearing. The documents will be produced in PDF format and will be paginated to permit ease of reference during the remote hearing. Name and address details of those making representations will be made public. Telephone numbers, email addresses and signatures will be omitted.

6. 5 working days before the remote hearing is due to take place, the Council will contact the parties with a list of issues they would like any party to specifically address them on or clarify at the hearing.
7. If in light of the Council's list of issues any party wishes to produce any further documentary evidence they should submit this to the Council by email three working days before the hearing.
8. Any documentary evidence that is not submitted to the Council by email three working days before the hearing will not be admitted without the agreement of all parties. If it is essential to a party's case that the material be admitted, then the Sub-Committee will consider adjourning the remote hearing to allow all parties a fair opportunity to consider it.
9. Should any party wish to rely on any points of law, specific references in the s.182 Guidance, specific references in the Council's Policy or any other external resources, these should be set down in an electronic document and submitted to the Council by email three working days before the hearing.

The Remote Licensing Hearing

10. The Applicant is permitted to speak at the remote hearing (see below). Ward Councillors, responsible Authorities and Representatives are only permitted to speak if they have made written submissions during the consultation period. Any party to a hearing may be assisted or represented by any person, legally or otherwise.
11. All parties will be given a fair hearing and each party will have the same amount of time in which to address the Sub-Committee and question each other. Each party will have 15 minutes to address the Sub-Committee and call any witnesses and 5 minutes for questions.

12. However, where there are groups of individuals with a common interest, for example local residents making similar representations either for or against an application, consideration should be given to nominating a spokesperson. Otherwise the Sub-Committee may impose a time limit for such representations where there is pressure on the Sub-Committee to hear numerous applications in a short period of time or for any other valid reason.
13. If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written representation. In considering written evidence in the absence of a Representor, appropriate weight will be attached, given that the person cannot be questioned by Members.
14. **The Sub-Committee is required to disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations, or notice, and the promotion of the licensing objectives.** Duplication should be avoided. Comments must be confined to those points already made, although the parties may expand on their written submissions. The Sub-Committee will have read and familiarised themselves with all the written submissions and the issues prior to the hearing, and therefore do not require the points to be made at length.
15. A Representor **may not** introduce any new ground or objection not referred to in their written submission. Additional representations which do not amount to an amplification of the original representation will not be considered by the Sub-Committee.
16. Any person behaving in a disruptive manner will be asked to leave the hearing. However, if this occurs, that person will be entitled to submit in writing any information they would have been entitled to give orally.

ORDER OF PROCEEDINGS AT THE REMOTE HEARING

Chair's introduction and opening comments

17. The Chair will introduce the Sub-Committee Members and Officers and welcome the Applicant and Representors (or their representatives), and establish the identity of all who will be taking part.

18. The Chair will outline the procedure to be followed.

19. The Chair will proceed with the order of business on the agenda.

Licensing Manager

20. When the agenda item relating to the application is reached, the Chair will invite the Licensing Officer to present the application. The Chair will invite all present, one by one, to ask the Licensing Officer questions if they wish, to clarify any points raised in the report.

The Application

21. The Applicant (and/or their representative) will address the Sub-Committee and present information in support of the application and may call any witnesses to support the application, one witness at a time [*maximum 15 minutes*].

22. The Chair will invite the Representors to ask questions of the Applicant in the following order [maximum 5 minutes each party]:

- Police;
- Other Responsible Authorities;
- Ward Councillors;
- Public representation
- Members of the Sub-Committee;
- The Sub-Committee's legal adviser.

The Representations

23. The Chair will invite the Representors and/or their representative in the following order to address the Members of the Sub-Committee and call any witnesses in support of their representation [*maximum 15 minutes each party*]:

- Police
- Other Responsible Authorities
- Ward Councillors
- Public representation
- Members of the Sub-Committee

24. The Chair will invite the Applicant and each other party to ask questions of each Representor and/or their witnesses after each presentation [maximum 5 minutes per Representor]. The Chair will invite the Committee Members to ask questions of each Representor (or their representative) and/or their witnesses after each presentation.
25. Where there are groups of individuals with a common interest, for example local residents, presentation through an appointed spokesperson is preferred but not mandated.

Summaries

26. The Chair will invite the Representors (or their representative) in the following order to summarise their case *[maximum 5 minutes each party]*
 - Police
 - Other Responsible Authorities
 - Ward Councillors
 - Public representation
27. The Chair will invite the Applicant (or their representative) to summarise their case *[maximum 5 minutes]*.
28. The Chair will provide the Sub-Committee with a final opportunity to seek clarification from any of the parties on any points raised, or seek advice from the Licensing Officer on policy, or from the Legal Advisor on law and jurisdiction.

Determination

29. The Sub-Committee will withdraw to consider their decision with the Legal Adviser and the Democratic Services Officer in a separate private on line meeting. These officers will not comment on the merits of the application, but will be present to provide advice on legal and procedural points and to record the decision.
30. If the decision is made following the conclusion of the hearing, the Sub-Committee will return to the public online meeting to announce an outline of the decision to those present. This decision will then be communicated in full in writing, including reasons for the decision, to the Applicant and all Representors (whether in attendance or not)

usually within 5 working days of the hearing. There can be no further questions or statements.

31. If the Sub-Committee does not make a decision on the day of the hearing, the decision will be made within 5 working days beginning with the day or the last day on which the hearing was held. The Democratic Services Officer will inform the parties that they are no longer required and the decision will be communicated in writing to the Applicant and Representatives within 5 working days of the decision being made.

The notification will include information about the rights of appeal against the determination made.

City of York Council

Committee Minutes

Meeting	Licensing/Gambling Hearing
Date	6 August 2020
Present	Councillors Galvin, Mason and Norman

12. Chair

Resolved: That Cllr Mason be elected to act as Chair of the meeting.

13. Introductions

The Chair introduced those participating in the hearing: the Sub-Committee Members, the Applicant, the Applicant's two witnesses and the Representor. The Legal Adviser and Democracy Officer were also present.

14. Declarations of Interest

Members were invited to declare at this point in the meeting any personal interests not included in the Register of Interests, or any prejudicial or disclosable pecuniary interests, that they might have in the business on the agenda. No interests were declared.

15. Additional Item - Exclusion of Press and Public

The Chair accepted this as an additional item of business on the agenda and it was

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.

16. The Determination of a Section 18(3) (a) Application by Event Coordin8 Ltd for a Premises Licence in respect of The Salix Yurts, Willow House Caravan Park, Wigginton Road, Wigginton, York, YO32 2RH

Members considered an application by Event Coordin8 Ltd for a Premises Licence in respect of The Salix Yurts, Willow House Caravan Park, Wigginton Road, Wigginton, York, YO32 2RH.

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

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

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 objective, including:

1. The application form.
2. The papers before it.
3. The Licensing Manager's report and her comments given at the Hearing. The Licensing Manager outlined the report and the annexes, noting the details of the application submitted and the conditions agreed by the Applicant with the North Yorkshire Police and Environmental Protection should the licence be granted. She also noted that the premises were not located within the cumulative impact assessment area and that the site did not have the correct Planning Permission for the intended use. She drew attention to the representations that had been received from local residents, the parish council and ward councillors, as set out in Annex 6, and the Applicant's letter in response to these at Annex 7. She advised the Sub Committee of their options in determining the application.

The Licensing Manager further noted that live and recorded music performed to an audience of less than 500 people was no longer a licensable activity between the hours of 8:00 and 23:00 on licensed premises and so was

not subject to control between those hours. Finally, she drew attention to the additional papers supplied by the Applicant, which had been circulated to all parties and subsequently published online as an Agenda Supplement.

Questions were then put to the Licensing Manager in relation to the capacity sought for the venue and the position on Planning enforcement under Temporary Event Notices (TENs) issued for previous events at the premises, to which she responded that:

- Capacity had not been stipulated in the application;
- A number of events had taken place at the premises under TENs; it would be a matter for Planning to take any enforcement action required.

4. The representations made by Lee Cowell on behalf of the Applicant in writing and at the hearing, including the additional papers in the Agenda Supplement, and the representations made at the hearing by the Applicant's witness, James Gallagher.

Mr Cowell stated that he had run events successfully at the premises since April 2018 under TENs. However, in order to accommodate the number of events that had been postponed due to the coronavirus pandemic, he now had no alternative but to apply for a permanent licence. He was aware of concerns relating to licensed hours, noise, traffic and the location of the premises and in response had made concessions via the conditions agreed with the Police and Environmental Protection. He pointed out that these would require events to finish at 23:00 on Wednesdays and clarified that there was no intention to have regular late night entertainment on a Wednesday. Service of alcohol would cease at 23:30 on Fridays, Saturdays and Bank Holiday Sundays.

With regard to the objections made on the grounds of noise nuisance, Mr Cowell noted that he had enforced noise regulations from day one and, as the premises were located on a camping park, had always aimed to avoid inconvenience to the other guests on the site. He added that he had never received complaints about noise from residents of houses on the site and that the resident of Willow House supported the application. He stated that the yurts had been fitted with enhanced soundproofing, as

shown in the document marked 'Appendix D' in the Agenda Supplement, and each had 2 doors, which were kept closed after 9 pm. During events, there was always an Events Manager present, who carried out checks of the noise levels.

James Gallagher, an Events Manager and Co-ordinator at The Salix Yurts was called as a witness. He stated that he had worked there for 2 years and 2 months and had operated more than 100 licensed bars. He said that he had never had any problems with nuisance or noise. He was required to measure sound levels at the front gate and the entrance to the site and, in the event of excess noise, would ask the band or DJ to turn the sound down. He also met with each wedding couple 6 weeks before their event and discussed the sound monitoring arrangements with them. During the event, at 10 minutes to midnight he would draw the attention of the band or DJ to the time, then at midnight the lights would go up and the music would have to stop.

Mr Cowell then resumed and drew attention to the papers in the Agenda Supplement, including the minor amendments he sought to the conditions agreed with the police, as noted in the document marked Appendix B. He also highlighted the comments under the Press article at Appendix H and the letters in support of the application from Willow House Estates (Appendix G) and Laura Parkin (Appendix K). In relation to Appendix F, the licence held by the nearby Villa Farm, he stated that many of the concerns raised actually related to that venue, which was closer to residential areas and operated on more days than Salix Yurts, and hosted stag and hen parties rather than weddings. He went on to confirm that there were no plans to increase the number of yurts on the premises and that each event attracted 20-30 cars, for which there was adequate parking on site.

Mr Cowell then responded as follows to questions put to him by the Representor and the Sub-Committee, confirming that:

- No regulated entertainment would take place at the premises on Mondays, Tuesdays or Thursdays;
- Noise levels were measured on the Haxby side of the site;

- He would be happy agree a condition to provide advance information of events via leafleting, and a contact phone number in case of problems, to local residents;
 - Salix Yurts was mainly a venue for weddings; other events held there included christenings and children's parties;
 - He would like a capacity of 130 for events;
 - Events on the site were 'policed' by the Event Manager; door staff were not used and there had been no problems with this.
5. Representations made by Cllr Pearson, Ward Member for Haxby & Wigginton, on behalf of his fellow ward members and a number of local residents, in particular those living on the west side of Eastfield Avenue and Green Dike.

Cllr Pearson stated that concerns had been raised in respect of the noise levels, particularly at night, coming from events previously held at the premises under TENs. He noted that Wigginton Parish Council had also made representations and that some local residents had asked for the application to be rejected. However, he also wanted to see local businesses thrive. He was therefore seeking amendments to the conditions; in particular a limit on the volume of noise, and action to ensure that it was not audible to local residents. He would also like to see the number of events curtailed so that it did not exceed the number allowed under the TENs, which was 15 per year. He went on express safety concerns regarding access from the site onto Wigginton Road and requested that the eastern boundary of the site be secured, to prevent access to Sandringham Close.

Cllr Pearson then responded to a question put to him by the Sub-Committee, stating that the evidence of noise nuisance that he had received since the premises started operating was anecdotal and contained in letters from residents and on Facebook.

The Representor and the Applicant were each then given the opportunity to sum up.

The Representor summed up by stating that, if the application were granted, it should be conditioned to restrict the hours of operation further (to 9pm on weekday nights) and to ensure that noise was kept at a level that did not disturb local residents.

The Applicant summed up by stating that he had been running events on the site for 2 years without any problems, had the support of local residents and was prepared to minimise noise and nuisance. He went on to say that continual improvements had been made to the premises since 2019 in order to limit sound coming from the site, most recently in the past few weeks. He would continue to monitor noise levels but would not wish to make further concessions to the hours or days of operation beyond those already agreed with the Police and Public Protection.

The Sub-Committee went on to discuss potential conditions to be attached to the licence should it be granted. They then went into private session to deliberate and to reach a decision.

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;
- Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee;
- Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify / add conditions accordingly; or
- Option 4: Reject the application.

The Sub-Committee rejected Options 1, 3 and 4, and

Resolved: That Option 2 be accepted and the application for a premises licence be granted, with modified/additional conditions imposed by the Sub-Committee, as follows:

Activity	Timings
Live music (indoors and outdoors)	23:00 - 00:00 Wednesday, Friday, Saturday and Bank Holiday Sundays
Recorded music (indoors only)	23:00 – 00:00 Wednesday, Friday, Saturday and Bank Holiday Sundays
Late night refreshment (indoors and outdoors)	23:00 – 01:00 Wednesday, Friday, Saturday, Sunday, Bank Holiday Sundays
Sale of alcohol (on sales only)	11:00 – 00:30 Wednesday, Friday, Saturday, Sunday, Bank Holiday Sundays
Opening times	08:00 – 01:00 Wednesday, Friday, Saturday, Sunday, Bank Holiday Sundays

1. The premises shall operate for pre-booked and bona fide private events and weddings only to which members of the public are not admitted (“Events”). Pre-booked is defined as booked in writing not less than 7 clear days in advance by the customer.
2. Events shall be restricted to the following days of the week:

Wednesday, Friday, Saturday, Sunday, Bank Holiday Sundays

3. The hours of regulated entertainment including live music and recorded music shall be restricted to the following hours and days:

Friday, Saturday, Bank Holiday Sundays -23:00 – 00:00 hours.

4. No regulated entertainment, including live and recorded music, shall be played through electronic speakers in the outside licensed area.
5. Within 2 months of the date of grant of the premises a detailed noise management plan shall be submitted in writing to the Local Authority for approval. Once approved, the noise management plan shall be implemented thereafter and adhered to.

6. The Sale of alcohol shall cease 30 minutes prior to the venue closing.
7. An event manager shall be allocated to each Event and consideration shall be given to the need for an event management plan (EMP).
8. Once in every month the licence holder shall inform residents of Sandringham Close, Haxby of proposed Events via leafleting and provide a direct telephone number for the manager of the premises in the event of complaint during an Event.
9. It is the responsibility of the Designated Premises Supervisor /Manager on duty for risk assessing not less than 7 days before the event the need for Door Supervisors at the premises for all events held.
10. Documented staff training will be given regarding staff's obligation under the Licensing Act in respect of the:-
 - Retail sale of alcohol
 - Age verification policy
 - Conditions attached to the Premises Licence
 - Permitted Licensable activities
 - The Licensing objectives and
 - The Opening Times of the venue.

Such training will be refreshed (and documented) every six months and the documented records shall be kept for a minimum of one year.

Such records shall be kept for a minimum of one year and will be made available immediately upon request from any Responsible Authority.

11. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals of alcohol sales to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises.
 - Such records shall be kept for at least one year. [For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry]: They will be made available immediately upon a reasonable request from any responsible authority.

12. A digital colour CCTV system will be installed to cover the premises.
 - It will be maintained, working and recording at all times when the premises are open.
 - The recordings should be of good evidential quality to be produced in Court or other such hearing.
 - Copies of the recordings will be kept available for any Responsible Authority for 28 days. (Subject to Data Protection requirements).
 - Copies of the recordings shall be made available to any Responsible Authority within 48 hrs upon request. (Subject to Data Protection requirements).
 - Copies of the recordings will display the correct time and date of the recording.
 - It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV system at the request of the police or responsible authority.(Subject to Data Protection requirements).

13. The licence holder will operate a Challenge 25 Age Verification Policy.
 - The only acceptable proof of age identification shall be a current Passport, photo card Driving Licence, Military ID card, or identification carrying the PASS logo.

All conditions offered in the operating schedule shall be included in the licence, unless contradictory to the above conditions. The licence is also subject to the mandatory conditions applicable to licensed premises.

- Reasons:
- (i) The Sub-Committee notes that this is a new grant premises licence application and the Applicant's evidence that they have been running events on the site for two years under TENs and have not received any complaints from residents.

 - (ii) They note that the Applicant has agreed to the conditions that the Police have requested be attached to a licence

- (iii) They also note that the Applicant and Environmental Protection have reached a position of compromise for the days and hours of operation and for regulated entertainment. Whilst the agreed conditions that Environmental Protection have requested be imposed are welcomed by the Sub-Committee, they note that some of the conditions relating to the control of regulated entertainment would fall outside the ambit of a premises licence if a licence is granted, due to deregulation of live and recorded music in certain circumstances. They also note that on a review of a premises licence, the licensing authority may add a condition relating to live and recorded music as if they were regulated entertainment.
- (iv) The Sub-Committee note the Applicant's evidence that the premises are well run, particularly with regard to the prevention of noise nuisance and it is felt that the Applicant has provided enough evidence to convince the Sub-Committee that the noise levels at the proposed events could, with the imposition of conditions, be sufficiently managed without undermining the licensing objectives.
- (v) The Sub-Committee note the concerns of the Representor in attendance and the written representations from residents with regard to public nuisance and have imposed modified/additional conditions including to control the type and days/timings of events. This is considered to be appropriate to ensure that the events proposed would be held without causing noise nuisance to nearby residents.
- (vi) The Sub-Committee believe the premises are sufficiently conditioned to ensure that the events proposed could be held without causing public nuisance to nearby residents and to promote the licensing objectives.

The Sub-Committee has made this decision taking into consideration the written and verbal representations, the Agenda pack, all the papers before them, the Licensing Objectives, the City of York Council's Statement of Licensing Policy and the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003.

Cllr A Mason, Chair

[The meeting started at 10.00 am and finished at 11.25 am].

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Meeting	Licensing/Gambling Hearing
Date	17 August 2020
Present	Councillors Galvin, Mason and Melly

17. Chair

Resolved: That Cllr Mason be elected to act as Chair of the meeting.

18. Introductions

The Chair introduced those participating in the hearing: the Sub-Committee Members, the Applicants (Paul Waddingham and Angela Waddingham) and the Senior Licensing Officer. The Legal Adviser and Democracy Officer were also present.

19. Declarations of Interest

Members were invited to declare at this point in the meeting any personal interests not included on the Register of Interests, or any prejudicial or disclosable pecuniary interests, that they might have in the business on the agenda. No interests were declared.

20. 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.

21. The Determination of a Section 35(3)(a) Application by Waddo's Pub & Grub Company Ltd for Variation of a Premises Licence in respect of The Walnut Tree, 73 Heworth Village, York YO31 1AN

Members considered an application by Waddo's Pub and Grub Company Ltd for a Variation of a Premises Licence in respect of The Walnut Tree, 73 Heworth Village, York, YO31 1AN.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objective was relevant to this Hearing:

The Prevention of Public Nuisance

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 objective, including:

1. The application form.
2. The papers before them.
3. The Senior Licensing Officer's report and her comments given at the Hearing. The Senior Licensing Officer outlined the report and the annexes, noting the details of the application submitted and the conditions agreed by the Applicant with the North Yorkshire Police (Annex 4) and Environmental Protection (Annex 5) should the variation be granted. She advised that the application had been amended since submission of the report, with the Applicant now seeking to vary the hours for the supply of alcohol to 08:30-00:30 on Saturdays only and sales from the outside bar to 12:00-21:00 daily. She noted that the premises were not located within the cumulative impact assessment area and that there were no relevant Planning issues. She drew attention to the three representations received in objection to the application, as set out in Annex 7, noting that two of the representations (nos. 1 and 2 in the papers) had since been withdrawn following mediation and should therefore be disregarded. Finally, she advised the Sub Committee of their options in determining the application.
4. The representations made by Paul Waddingham on behalf of the Applicant in writing and at the hearing.

Mr Waddingham explained that, since taking over the Walnut Tree in 2017, he had relied upon Temporary Event Notices (TENs) in order to increase his opening hours during major sporting events, including the World Cup. With the Rugby World Cup coming up and delays in re-opening due to the coronavirus pandemic, he had made the decision to apply for a permanent variation to the licence, on the terms set out in the report. On

reflection, he had decided to reduce the additional hours sought, since the aim was to cover sporting events on Saturdays, and provide more opportunity to serve customers outside during the Covid-19 restrictions. The beer garden always closed at 9pm and children were not allowed on the premises after that time. He added that he had been operating these hours successfully under a TEN since 4 July. To help moderate the noise levels, he would not allow customers to gather in the car parking area at the side of the premises.

In response to questions from the Sub-Committee, Mr Waddingham confirmed that:

- The address of the remaining Representor was 300-400 yards from the premises.
- The provision of off-sales was not an objective of the application.
- *[The Senior Licensing Officer clarified at this point that the government had exempted off-sales from licensing requirements until September 2021].*
- Customers were not permitted to take drinks into the car parking area, no seats were provided there, a Perspex screen was being fitted to the smoking shelter, and the number of people allowed in the area had been reduced.

In summing up, Mr Waddingham stated that he and his wife had run the Walnut Tree successfully for 3 years, so it was busier than it used to be. There had never been any issues with the police. He had taken the objections on board, responding to the valid points made, and would do his best to ensure that there were no problems with neighbouring residents. The aim was to make the outdoor area more accessible so as to continue observing social distancing measures into the winter months and enhance customers' experience. There were two duty managers, both licence holders. All staff were aware that anti-social behaviour would not be tolerated on the premises.

The Sub-Committee went on to discuss potential conditions to be attached to the licence should it be granted. They then went into private session to deliberate and to reach a decision.

The Sub-Committee had to determine whether the licence variation 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 35(4) of the Licensing Act 2003 as it considered appropriate for the promotion of the Licensing Objectives:

Option 1: Modify the conditions of the licence
or

Option 2: Reject the whole or part of the (and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added).

After deliberation, it was

Resolved: That Option 1 be accepted and the conditions of the licence be modified as follows:

1.

Activity	Timings
Supply of alcohol from the indoor bar (on sales only)	08:30 – 00:30 Saturday (Existing hours for the supply of alcohol from the indoor bar are otherwise unchanged)
Supply of alcohol from the outside bar (on sales only)	12:00 to 21:00 every day

2. A digital colour CCTV system will be installed to cover the premises and recorded coverage will include all areas (including outside areas) to where public have access to consume alcohol.

- a) It will be maintained, working and recording at all times when the premises are open.
- b) The recordings should be of good evidential quality to be produced in Court or other such hearing.
- c) Copies of the recordings will be kept available for any Responsible Authority for 28 days. Subject to Data Protection requirements.
- d) Copies of the recordings shall be made available to any Responsible Authority within 48 hrs upon request. Subject to Data Protection requirements.
- e) Copies of the recordings will display the correct time and date of the recording.
- f) It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV

system at the request of the police or responsible authority.
Subject to Data Protection requirements.

3. Documented staff training will be given regarding staff's obligation under the Licensing Act 2003 in respect of the:-

- a) Retail sale of alcohol
- b) Age verification policy
- c) Conditions attached to the Premises Licence
- d) Permitted Licensable activities
- e) The Licensing objectives and
- f) The Opening Times of the venue.

Such records shall be kept for a minimum of one year and will be made available immediately upon request from any Responsible Authority.

4. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals of alcohol sales to under-age or drunk people as well as incidents of any antisocial behaviour and ejections from the premises.

- a) Such records shall be kept for at least one year. (For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry).
- b) The records will be made available immediately upon a reasonable request from any responsible authority.

5. A noise management plan shall be submitted to the Local Authority for approval no later than 3 months from the granting of the variation of the premises licence. Once agreed the noise management plan shall be implemented and adhered to thereafter by any occupant.

Reasons: (i) The Sub-Committee notes that the Applicant has agreed specific conditions with the Police and Public Protection and that this has led to a lack of representation on their part. It is further noted that two of the three representations from local residents have been withdrawn.

(ii) It is noted that the Applicant has amended the application to reduce the hours sought for the sale of alcohol from an external bar and the internal bar and that at the hearing the Applicant further amended the application to on sales only.

(iii) The Sub-Committee notes that the application and matter for determination is not a review of the premises licence, but limited only to those licensable activities proposed by way of variation.

(iv) The Sub-Committee notes the Representor's concerns that an extension of licensable activities at the premises could lead to a potential increase in public nuisance. However, the Sub Committee does not consider that the proposed limited extension to the hours in which alcohol could be sold from the indoor bar and the supply of alcohol in the existing outside area would lead to any material increased risk of public nuisance, particularly with the addition of the conditions that have been agreed with the Applicant, which they support.

(v) Therefore, the Sub-Committee does not believe that the proposed licence variation would have any material impact on the licensing objectives. If there were to be such an impact, then the option of a Review would be available to residents.

The Sub-Committee has made this decision taking into consideration the written and verbal representations, the Agenda pack, all the papers before them, the Licensing Objectives, the City of York Council's Statement of Licensing Policy and the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003.

Cllr A Mason, Chair

[The meeting started at 10.00 am and finished at 10.42 am].



Licensing Act 2003 Sub Committee

9 November 2020

Report from the Assistant Director – Planning & Public Protection

Section 18(3) (a) Application for a premises licence for Haizhonglao Hot Pot & BBQ, 12 George Hudson Street, York, YO1 6LP

Summary

1. This report seeks Members' determination of an application for the grant of a premises licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-067017
3. Name of applicant: Wen Lin Chen
4. Type of authorisation applied for: Grant of Premises Licence
5. Summary of application:

The proposal is to allow for the provision of the following activities:

Proposed Activity	Timings
Recorded Music(Indoors)	11:00 – Midnight everyday
Sale of alcohol (on & off sales)	11:00 – Midnight everyday
Opening times	11:00 – Midnight everyday

Background

6. A copy of the application is attached at Annex 1. A copy of the plans of the premises are attached at Annex 2.
7. The premises is described in the application as a Chinese hot pot and BBQ restaurant.

Promotion of Licensing Objectives

8. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:

9. General

The legislation provides a clear focus on the promotion of four licensing objectives which must be addressed when licensing functions are undertaken. Each objective is of equal importance.

10. The Prevention of Crime and Disorder

An alarm or other security measure should be installed at the premises to protect it when closed. CCTV should be installed inside and outside the premises. The cameras should cover all internal and external area as possible.

11. Public Safety

A full risk assessment taking into account public safety should be carried out at the premises to identify potential hazards posed to staff or customers and setting out precautions to manage the hazards.

12. The Prevention of Public Nuisance

All staff should be trained on the content of the policy to ensure a commitment to good noise management. A record should be kept of the date and name of person trained and made available for inspection by the Licensing Authority.

13. The Protection of Children From Harm

The admittance of children can only be permitted if they are accompanied by an adult.

ID check – No sale policy, Challenge 21 scheme to anyone under 18 to purchase alcohol.

Special Policy Consideration

14. This premises is located within the cumulative impact assessment (CIA) area approved by full council on 21 March 2019. The assessment can be found at Annex 3. Section 9 of the Statement of Licensing Policy which deals with Cumulative Impact can be found at Annex 4.

Consultation

15. Consultation was carried out by the applicant in accordance with s13, and s17 (5) of the Act and Regulation 42, Parts 2 and 4 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the displaying of a notice on the premises and an advertisement in a local paper giving details of the application and serving a copy of the application on all responsible authorities. The applicant complied with all statutory requirements. In addition the relevant ward councillors and/or parish council were notified by way of register.
16. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

17. North Yorkshire Police have made a representation on the grounds that the licensing objectives, prevention of crime and disorder and prevention of public nuisance will be undermined by the granting of this application. Furthermore the applicant fails to demonstrate how this application would not add to the cumulative impact of licensed premises already experienced within the CIA especially the Red Zone.
18. The Police representation is attached at Annex 5 a, b and c. Please note Annex 5 c is restricted.
19. City of York Licensing Authority has made a representation on the grounds that the granting of this application would undermine the licensing objectives of both prevention of crime and disorder and prevention of public nuisance. Furthermore the applicant fails to demonstrate how this application would not add to the cumulative impact of licensed premises already experienced within the CIA especially the Red Zone.
20. The Licensing Authority representation is attached at Annex 6.

Summary of Representations made by Other Parties

21. There have been no other representations received from other persons.
22. A map showing the general area around the venue is attached at Annex 7.

Planning Issues

23. There are no outstanding planning issues.

Options

24. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision: -
25. Option 1: Grant the licence in the terms applied for.
26. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
27. Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
28. Option 4: Reject the application.

Analysis

29. The following could be the result of any decision made this Sub Committee:-
30. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
31. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
32. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
33. Option 4: This decision could be appealed at Magistrates Court by the applicant.

Council Plan

34. The Licensing Act 2003 has four objectives the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
35. By taking the statutory requirements of the Licensing Act into consideration, as well as the four licensing objectives when determining licensing applications the Council are supporting the new and existing licence trade, as well as local residents and

businesses. The functions support the Council's Plan of safe communities and culture for all, and a good quality of life for everyone.

Implications

36.

- **Financial** - N/A
 - **Human Resources (HR)** – N/A
 - **Equalities** – N/A
 - **Legal** – This decision could be appealed at Magistrates Court by the applicant or any of the representors.
 - **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
 - **Information Technology (IT)** – N/A
 - **Property** – N/A
- Other** – none

Risk Management

37. All Members of the Licensing Act 2003 Committee have received full training on the Act and the regulations governing hearings. They are aware that any decision made which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
38. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

Recommendations

39. Members determine the application.
Reason: To address the representations received as required by the Licensing Act 2003.

Contact Details

Author:

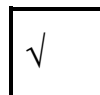
Lesley Cooke
Licensing Manager

Tel No. 01904 551515

Chief Officer Responsible for the report:

Mike Slater
Assistant Director for Planning and Public
Protection.

**Report
Approved**



27/10/2020

Specialist Implications Officer(s)

Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Micklegate Ward



For further information please contact the author of the report

Background Papers:

- Annex 1** - Application form
- Annex 2** - Plan of premises x 2
- Annex 3** - Cumulative Impact
- Annex 4** - Licensing Policy Annex
- Annex 5 a** - North Yorkshire Police Representation
- Annex 5 b** - North Yorkshire police Appendix 1
- Annex 5 c** - North Yorkshire Police Statement **RESTRICTED**
- Annex 6** - Licensing Authority Representation
- Annex 7** - Map of area
- Annex 8** - Mandatory Conditions
- Annex 9** - Legislation and Policy Considerations



CITY OF YORK COUNCIL
Licensing Services, Hazel Court EcoDepot, James Street,
York, YO10 3DS

Application for a premises licence to be granted under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/We WENLIN CHEN
(Insert name(s) of applicant)

apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003

Part 1 – Premises details

Postal address of premises or, if none, ordnance survey map reference or description			
HAIZHONGLAO HOT POT & BBQ 12 GEORGE HUDSON STREET			
Post town	YORK	Postcode	YO1 6LP
Telephone number at premises (if any)	01904 636304.		
Non-domestic rateable value of premises	£ 20,000	£28,250 VOA checked	LPrashad

Part 2 - Applicant details

Please state whether you are applying for a premises licence as **Please tick as appropriate**

- a) an individual or individuals * please complete section (A)
- b) a person other than an individual *
 - i as a limited company/limited liability partnership please complete section (B)
 - ii as a partnership (other than limited liability) please complete section (B)
 - iii as an unincorporated association or please complete section (B)

- iv other (for example a statutory corporation) please complete section (B)
- c) a recognised club please complete section (B)
- d) a charity please complete section (B)
- e) the proprietor of an educational establishment please complete section (B)
- f) a health service body please complete section (B)
- g) a person who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales please complete section (B)
- ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England please complete section (B)
- h) the chief officer of police of a police force in England and Wales please complete section (B)

* If you are applying as a person described in (a) or (b) please confirm (by ticking yes to one box below):

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities, or
- I am making the application pursuant to a
 - statutory function or
 - a function discharged by virtue of Her Majesty's prerogative

(A) INDIVIDUAL APPLICANTS (fill in as applicable)

Mr <input checked="" type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)
Surname CHEN		First names WENLIN		
Date of birth		am 18 years old or over <input checked="" type="checkbox"/> Please tick yes		
Nationality CHINESE				
Current residential address if different from premises address		165 BOROUGH BRIDGE ROAD		
Post town	YORK		Postcode	YO26 6AN
Daytime contact telephone number				
E-mail address (optional)				
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 9-digit 'share code' provided to the applicant by that service (please see				

note 15 for information)
PLEASE SEE PASSPORT & RESIDENCE PERMIT PHOTOCOPY

SECOND INDIVIDUAL APPLICANT (if applicable)

Mr <input type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other Title (for example, Rev)	
Surname			First names		
Date of birth		I am 18 years old or over		<input type="checkbox"/> Please tick yes	
Nationality					
Where applicable (if demonstrating a right to work via the Home Office online right to work checking service), the 9-digit 'share code' provided to the applicant by that service: (please see note 15 for information)					
Current residential address if different from premises address					
Post town				Postcode	
Daytime contact telephone number					
E-mail address (optional)					

(B) OTHER APPLICANTS

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name
Address
Registered number (where applicable)

Description of applicant (for example, partnership, company, unincorporated association etc.)
Telephone number (if any)
E-mail address (optional)

Part 3 Operating Schedule

When do you want the premises licence to start?

DD	MM	YYYY
01	10	2020

If you wish the licence to be valid only for a limited period, when do you want it to end?

DD	MM	YYYY

Please give a general description of the premises (please read guidance note 1)

CHINESE HOT POT & BBQ RESTAURANT.
 PROVIDE CHINESE FOOD, HOT POT & BBQ GRILL FOOD.

If 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend.

What licensable activities do you intend to carry on from the premises?

(please see sections 1 and 14 and Schedules 1 and 2 to the Licensing Act 2003)

Provision of regulated entertainment (please read guidance note 2)

Please tick all that apply

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)

- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g)
(if ticking yes, fill in box H)

Provision of late night refreshment (if ticking yes, fill in box I)

Supply of alcohol (if ticking yes, fill in box J)

In all cases complete boxes K, L and M

A

Plays Standard days and timings (please read guidance note 7)			Will the performance of a play take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
Day	Start	Finish		Both	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 4)		
Tue					
Wed			State any seasonal variations for performing plays (please read guidance note 5)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sat					
Sun					

B

Films Standard days and timings (please read guidance note 7)			Will the exhibition of films take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 4)		
Mon					
Tue			State any seasonal variations for the exhibition of films (please read guidance note 5)		
Wed					
Thur			Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list (please read guidance note 6)		
Fri					
Sat					
Sun					

C

Indoor sporting events Standard days and timings (please read guidance note 7)			Please give further details (please read guidance note 4)
Day	Start	Finish	
Mon			
Tue			State any seasonal variations for indoor sporting events (please read guidance note 5)
Wed			
Thur			Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list (please read guidance note 6)
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 7)			Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
Both	<input type="checkbox"/>				
Day	Start	Finish	Please give further details here (please read guidance note 4)		
Mon					
Tue			State any seasonal variations for boxing or wrestling entertainment (please read guidance note 5)		
Wed					
Thur			Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list (please read guidance note 6)		
Fri					
Sat					
Sun					

E

Live music Standard days and timings (please read guidance note 7)			Will the performance of live music take place <u>indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 4)	Both	<input type="checkbox"/>
Tue					
Wed			State any seasonal variations for the performance of live music (please read guidance note 5)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sat					
Sun					

F

Recorded music Standard days and timings (please read guidance note 7)			Will the playing of recorded music take place <u>indoors or outdoors or both – please tick</u> (please read guidance note 3)	Indoors	<input checked="" type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon	11:00	00:00	Please give further details here (please read guidance note 4) NORMAL CHINESE MUSIC FROM MUSIC PLAYER.	Both	<input type="checkbox"/>
Tue	11:00	00:00			
Wed	11:00	00:00	State any seasonal variations for the playing of recorded music (please read guidance note 5) /		
Thur	11:00	00:00			
Fri	11:00	00:00	Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list (please read guidance note 6) /		
Sat	11:00	00:00			
Sun	11:00	00:00			

G

Performances of dance Standard days and timings (please read guidance note 7)			Will the performance of dance take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 4)	Both	<input type="checkbox"/>
Tue					
Wed			State any seasonal variations for the performance of dance (please read guidance note 5)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list (please read guidance note 6)		
Sat					
Sun					

H

<p>Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 7)</p>			<p>Please give a description of the type of entertainment you will be providing</p>		
Day	Start	Finish	<p><u>Will this entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 3)</p>	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			<p><u>Please give further details here</u> (please read guidance note 4)</p>		
Wed					
Thur					
Fri			<p><u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u> (please read guidance note 5)</p>		
Sat			<p><u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u> (please read guidance note 6)</p>		
Sun					

I

Late night refreshment Standard days and timings (please read guidance note 7)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon			Please give further details here (please read guidance note 4)	Both	<input type="checkbox"/>
Tue					
Wed			State any seasonal variations for the provision of late night refreshment (please read guidance note 5)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list (please read guidance note 6)		
Sat					
Sun					

J

Supply of alcohol Standard days and timings (please read guidance note 7)			Will the supply of alcohol be for consumption – please tick (please read guidance note 8)	On the premises	<input checked="" type="checkbox"/>
				Off the premises	<input checked="" type="checkbox"/>
				Both	<input checked="" type="checkbox"/>
Day	Start	Finish			
Mon	11:00	00:00	State any seasonal variations for the supply of alcohol (please read guidance note 5)		
Tue	11:00	00:00			
Wed	11:00	00:00			
Thur	11:00	00:00	Non standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 6)		
Fri	11:00	00:00			
Sat	11:00	00:00			
Sun	11:00	00:00			

State the name and details of the individual whom you wish to specify on the licence as designated premises supervisor (Please see declaration about the entitlement to work in the checklist at the end of the form):

Name	WENLIN CHEN	
Date of birth		
Address	YORK	
Postcode		
Personal licence number (if known)	CYC-066817	
Issuing licensing authority (if known)	CITY OF YORK COUNCIL	

K

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 9).

L

Hours premises are open to the public Standard days and timings (please read guidance note 7)			State any seasonal variations (please read guidance note 5)
Day	Start	Finish	<p>Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 6)</p>
Mon	11:00	00:00	
Tue	11:00	00:00	
Wed	11:00	00:00	
Thur	11:00	00:00	
Fri	11:00	00:00	
Sat	11:00	00:00	
Sun	11:00	00:00	

M

Describe the steps you intend to take to promote the four licensing objectives:

a) General - all four licensing objectives (b, c, d and e) (please read guidance note 10)

THE LEGISLATION PROVIDES A CLEAR FOCUS ON THE PROMOTION OF FOUR LICENSING OBJECTIVES WHICH MUST BE ADDRESSED WHEN LICENSING FUNCTIONS ARE UNDERTAKEN. EACH OBJECTIVE IS OF EQUAL IMPORTANCE.

b) The prevention of crime and disorder

AN ALARM OR OTHER SECURITY MEASURE SHOULD BE INSTALLED AT THE PREMISES TO PROTECT IT WHEN CLOSED. CCTV SHOULD BE INSTALLED INSIDE & OUTSIDE THE PREMISES. THE CAMERAS SHOULD COVER ALL INTERNAL & EXTERNAL AREA AS POSSIBLE.

c) Public safety

A FULL RISK ASSESSMENT TAKING INTO ACCOUNT PUBLIC SAFETY SHOULD BE CARRIED OUT AT THE PREMISES TO IDENTIFY POTENTIAL HAZARDS POSED TO STAFF OR CUSTOMERS & SETTING OUT PRECAUTIONS TO MANAGE THE HAZARDS.

d) The prevention of public nuisance

ALL STAFF SHOULD BE TRAINED ON THE CONTENT OF THE POLICY TO ENSURE A COMMITMENT TO GOOD NOISE MANAGEMENT. A RECORD SHOULD BE KEPT OF THE DATE & NAME OF PERSON TRAINED & MADE AVAILABLE FOR INSPECTION BY THE LICENSING AUTHORITY.

e) The protection of children from harm

THE ADMITTANCE OF CHILDREN CAN ONLY BE PERMITTED IF THEY ARE ACCOMPANIED BY ADULT.
ID CHECK - NO SALE POLICY - CHALLENGE 21 SCHEME TO ANYONE UNDER 18 TO PURCHASE ALCOHOL.

Checklist:

Please tick to indicate agreement

- I have made or enclosed payment of the fee.
- I have enclosed the plan of the premises.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
- I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable.
- I understand that I must now advertise my application.
- I understand that if I do not comply with the above requirements my application will be rejected.
- [Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships] I have included documents demonstrating my entitlement to work in the United Kingdom or my share code issued by the Home Office online right to work checking service (please read note 15).

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.

Part 4 – Signatures (please read guidance note 11)

Signature of applicant or applicant’s solicitor or other duly authorised agent (see guidance note 12). **If signing on behalf of the applicant, please state in what capacity.**

Declaration	<ul style="list-style-type: none"> • [Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 15). • The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licensable activity) and I have seen a copy of his or her
--------------------	--

	proof of entitlement to work, or have conducted an online right to work check using the Home Office online right to work checking service which confirmed their right to work (please see note 15)
Signature	
Date	11/09/2020
Capacity	Director

For joint applications, signature of 2nd applicant or 2nd applicant's solicitor or other authorised agent (please read guidance note 13). If signing on behalf of the applicant, please state in what capacity.

Signature	
Date	
Capacity	

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 14)			
Post town		Postcode	
Telephone number (if any)			
If you would prefer us to correspond with you by e-mail, your e-mail address (optional)			

Consent of individual to being specified as premises supervisor

I WENLIN CHEN
[full name of prospective premises supervisor]

of

[home address of prospective premises supervisor]

hereby confirm that I give my consent to be specified as the designated premises supervisor in relation to the application for

PREMISES LICENCE
[type of application]

by

WENLIN CHEN
[name of applicant]

relating to a premises licence *[number of existing licence, if any]*

for

HAIZHONGLAO
12 GEORGE HUDSON STREET
YORK
YO1 6LP
[name and address of premises to which the application relates]

and any premises licence to be granted or varied in respect of this application made by

WENLIN CHEN

[name of applicant]

concerning the supply of alcohol at

HAIZHOUGLAO
12 GEORGE HUDSON STREET
YORK
YO1 6LP

[name and address of premises to which application relates]

I also confirm that I am entitled to work in the United Kingdom and am applying for, intend to apply for or currently hold a personal licence, details of which I set out below.

Personal licence number

CYC-066817

[insert personal licence number, if any]

Personal licence issuing authority CITY OF YORK COUNCIL, HAZEL COURT ECO DEPOT,
JAMES STREET, YORK, YO10 3DS TEL 01904 551550

[insert name and address and telephone number of personal licence issuing authority, if any]

Signed

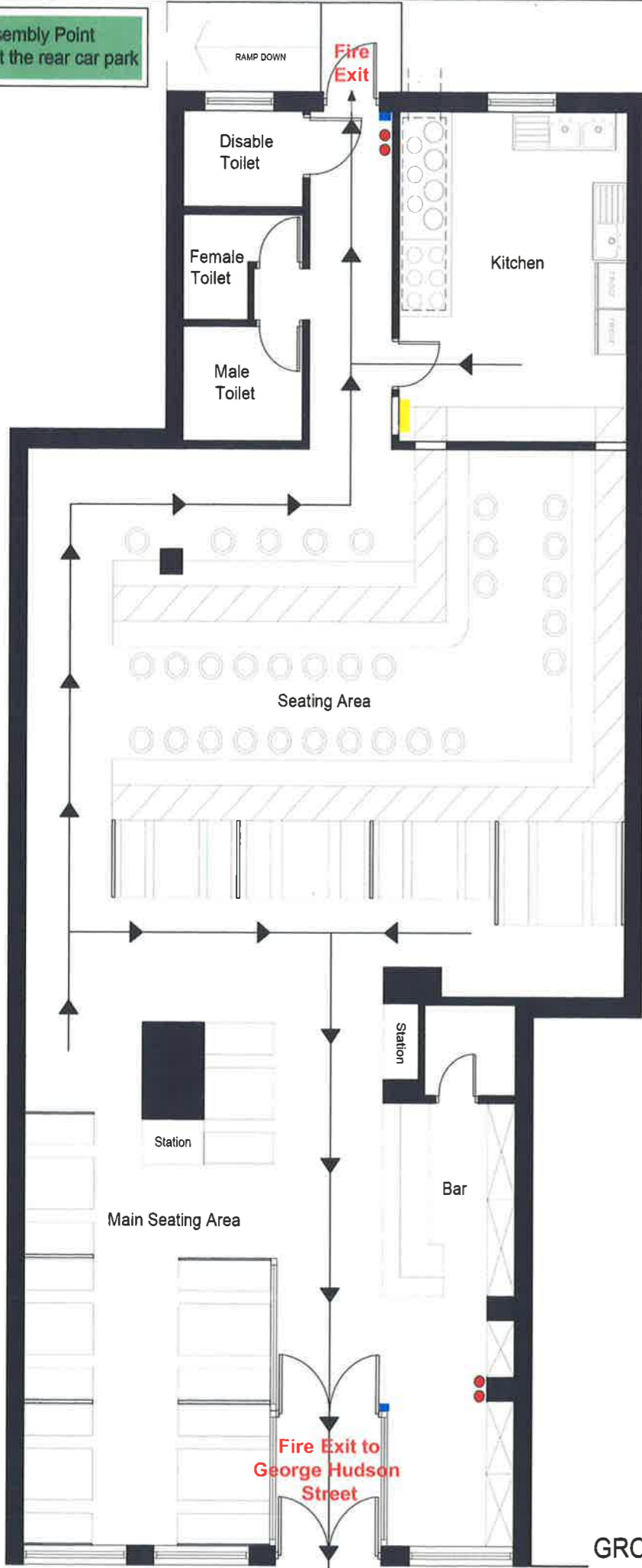
Name (please print)

WENLIN CHEN.

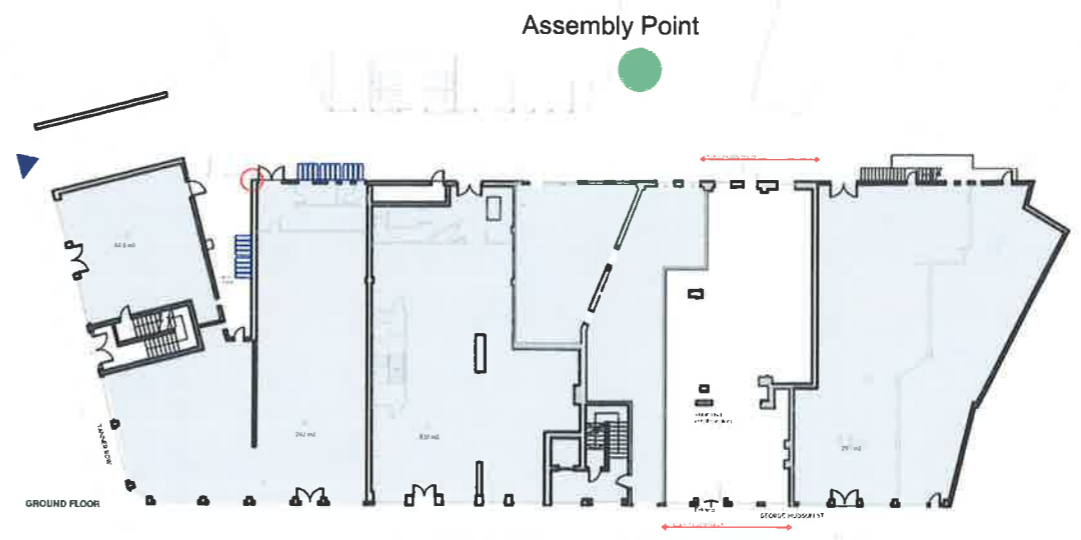
Date

11/09/20.

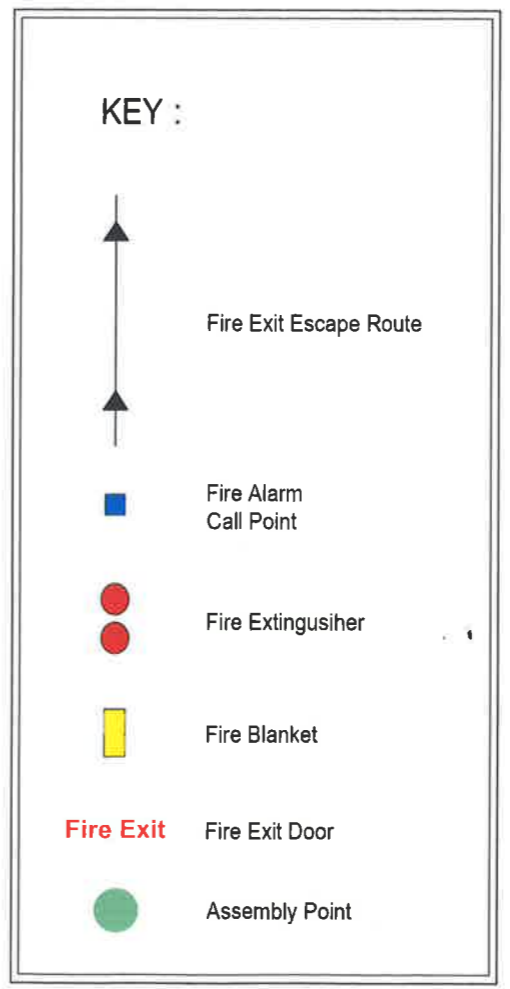
Assembly Point located at the rear car park



GROUND FLOOR PLAN Scale @ 1:100



Scale @ 1: 500



Notes:

All work is to be carried out to the latest current British standards Codes of Practice and recognised working practices.

All work and materials should comply with Health and Safety legislation.

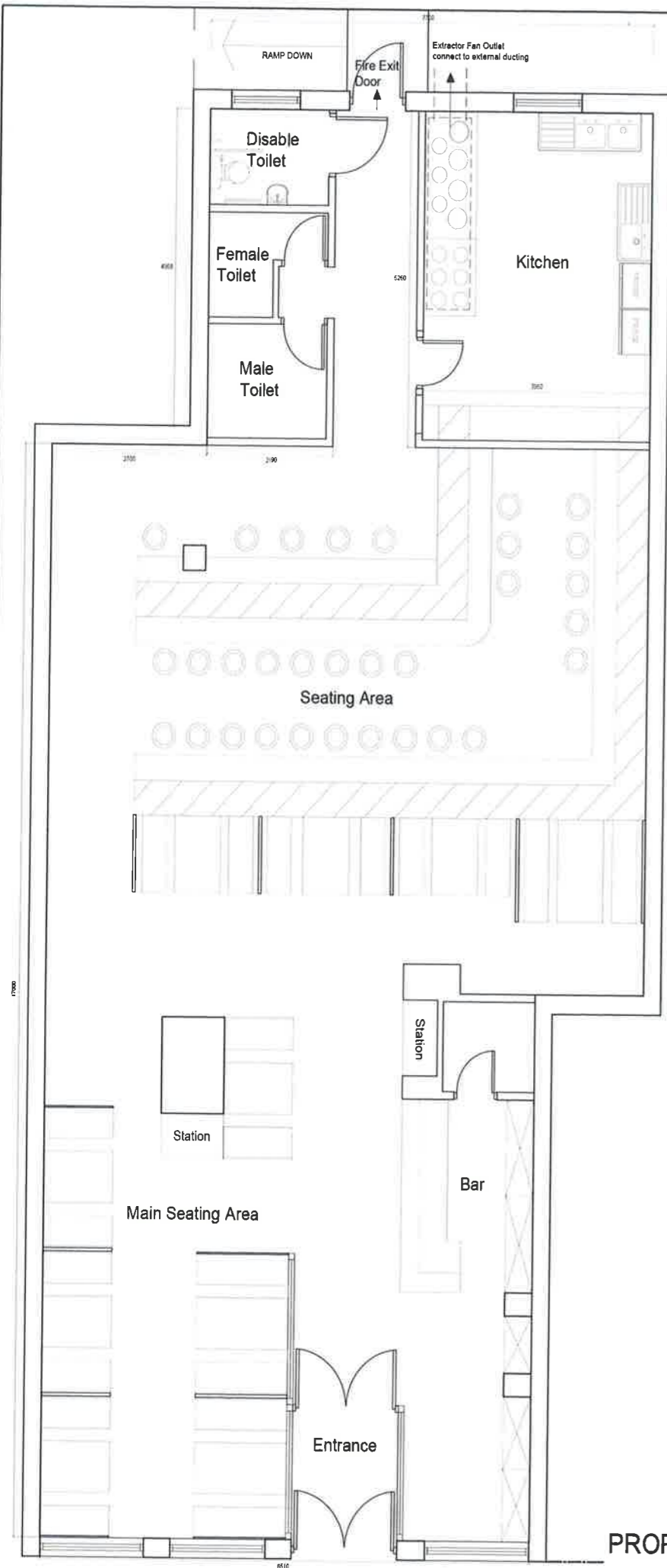
All dimensions are in millimetres unless where explicitly shown otherwise.

The contractor should check and certify all dimensions as work proceeds and notify the architect of any discrepancies.

Do not scale off the drawings, if in doubt ask.

Title: 12 George Hudson Street York YO1 6LP	
Fire Plan	
Project No: 0001	Drawn: AM
Client: HaiZhonGlaio	Paper: A3
Date: 08-09-2020	Scale: 1:100
Amendments:	

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PROPOSED GROUND FLOOR PLAN Scale @ 1:100



PROPOSED FRONT ELEVATION Scale @ 1:100

Notes:

All work is to be carried out to the latest current British standards Codes of Practice and recognised working practices.

All work and materials should comply with Health and Safety legislation.

All dimensions are in millimetres unless where explicitly shown otherwise.

The contractor should check and certify all dimensions as work proceeds and notify the architect of any discrepancies.

Do not scale off the drawings, if in doubt ask.

Title: 12 George Hudson Street
York
YO1 6LP

Proposed Plan & Front Elevation

Project No: 0001 Drawn: AM

Client: Hai Zhong Lao Paper: A3

Date: 08-09-2020 Scale: 1:100

Amendments:

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Cumulative Impact

1. Cumulative impact has been included within the Section 182 guidance issued by the Home Office since the commencement of the Act. Cumulative impact assessments were introduced at Section 5A of the Act by the Police and Crime Act 2017, with effect from 6 April 2018. This provides provision for licensing authorities to publish a document, cumulative impact assessment, stating that the licensing authority considers that a number of relevant authorisations in respect of premises in one or more parts of its area, described in the assessment, is such that it is likely that it would be inconsistent with the authority's duty under the Act to grant any further relevant authorisations in respect of premises in that part or those parts.
2. Relevant authorisations means:
 - premises licence
 - club premises certificate
3. Cumulative impact is the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.
4. The Council has included a Cumulative Impact Policy within its Statement of Licensing Policy since 2005, in relation to an area within York city centre. Due to the changes within the city centre, mainly the locations where licensed premises are predominately operating, this area has increased over the years.

Cumulative Impact Assessment

5. As required by the Act the Council has reviewed the cumulative impact area following the receipt of evidence provided by North Yorkshire Police and the Councils Public Protection Service (noise). The Council has published its first cumulative impact assessment (assessment) in relation to an area that has been identified in York city centre. The assessment is available on the Council website or from the Licensing Section. The assessment will be reviewed at least every three years as required by the Act. A map showing the area can be found in the assessment.
6. As required by the Act the Council has formally consulted on the assessment.
7. By publishing the assessment the Council is setting down a strong statement of intent about its approach to considering applications for grant and variation of premises licences or club premises certificates in the area described. The Council must have regard to the assessment when determining or revising this Statement of Licensing Policy. The assessment does not change the fundamental way that a licensing decision is made, each application will be considered on its own merits. It is open for the Council to grant an application where it is considered appropriate and where the applicant can demonstrate in the operating schedule that they would not be adding to the cumulative impact. Applications in the area covered by the assessment should therefore give consideration to potential cumulative impact issues when setting out the steps that will be taken to promote the licensing objectives. Where relevant representations are received and the Council determines to grant an application reasons for granting the application will be given to the applicant, the Chief Officer of

Police and all parties who made a relevant representation, with the reasons for departing from the Policy.

8. Where no relevant representations are received an application within the cumulative impact area will be granted in terms consistent with the operating schedule.
9. Applications for new premises licences or variations for premises situated within the cumulative impact area that are likely to add to the cumulative impact already experienced will normally be refused if relevant representations are received. The applicant must demonstrate through the operating schedule, the steps that they intend to take so that the Council and responsible authorities can be satisfied that granting a new or varied licence will not add to the cumulative impact already being experienced.
10. The onus is on the applicant to demonstrate to the responsible authorities the suitability of how their proposal will not add to the cumulative impact. To assist this process the Council recommends early consultation with responsible authorities; this can be done directly with those authorities or through the Council's Licensing Section.
11. The Statement of Licensing Policy and Cumulative Impact Assessment were approved by the City of York on the 21 March 2019.

Cumulative Impact Area

12. The published assessment relates to an area within York city centre. This area has been identified because evidence shows that the cumulative impact of the number and concentration of licensed premises in this area continue to adversely affect residents, visitors and other businesses and therefore adversely affecting the promotion of the licensing objectives:
 - prevention of crime and disorder
 - prevention of public nuisance
13. North Yorkshire Police and Public Protection have provided information that the nature of this area is such that the problems and cumulative impact directly relates to the style of businesses operating in the area and their clientele, due to the concentration of:
 - drink led premises – pubs, bars, nightclubs and restaurants/cafes;
 - entertainment premises – pubs, bars and nightclubs providing entertainment, especially late at night into the early hours of the morning;
 - late night refreshment premises – takeaways; and
 - off licence premises – supermarkets and convenience stores.
14. A red zone has also been identified in this area due to the high concentration of licensed premises, the impact of which have lead to a high level of occurrences in relation to crime and disorder related issues. Therefore, the Council should refuse all applications within the red zone where relevant representations are received, unless the applicant can show how their application would not lead to an increase in the impact of licensed premises in this zone. A map showing the red zone can be found in the assessment.

9. Cumulative Impact

- 9.1 Cumulative impact has been included within the Section 182 guidance issued by the Home Office since the commencement of the Act. Cumulative impact assessments were introduced at Section 5A of the Act by the Police and Crime Act 2017, with effect from 6 April 2018. This provides provision for licensing authorities to publish a document, cumulative impact assessment, stating that the licensing authority considers that a number of relevant authorisations in respect of premises in one or more parts of its area, described in the assessment, is such that it is likely that it would be inconsistent with the authority's duty under the Act to grant any further relevant authorisations in respect of premises in that part or those parts.
- 9.2 Relevant authorisations means:
- premises licence
 - club premises certificate
- 9.3 Cumulative impact is the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.
- 9.4 The Council has included a Cumulative Impact Policy within its Statement of Licensing Policy since 2005, in relation to an area within York city centre. Due to the changes within the city centre, mainly the locations where licensed premises are predominately operating, this area has increased over the years.

Cumulative Impact Assessment

- 9.5 As required by the Act the Council has reviewed the cumulative impact area following the receipt of evidence provided by North Yorkshire Police and the Councils Public Protection Service (noise). The Council has published its first cumulative impact assessment (assessment) in relation to an area that has been identified in York city centre. The assessment is available on the Council website or from the Licensing Section. The assessment will be reviewed at least every three years as required by the Act. A map showing the area can be found in the assessment.
- 9.6 As required by the Act the Council has formally consulted on the assessment.
- 9.7 By publishing the assessment the Council is setting down a strong statement of intent about its approach to considering applications for grant and variation of premises licences or club premises certificates in the area described. The Council must have regard to the assessment when determining or revising this Statement of Licensing Policy. The assessment does not change the fundamental way that a licensing decision is made, each application will be considered on its own merits. It is open for the Council to grant an application where it is considered appropriate and where the applicant can demonstrate in the operating schedule that they would not be adding to the cumulative impact. Applications in the area covered by the assessment should therefore give consideration to potential cumulative impact issues when setting out the steps that will be taken to promote the licensing objectives. Where relevant representations are received and the Council

determines to grant an application reasons for granting the application will be given to the applicant, the Chief Officer of Police and all parties who made a relevant representation, with the reasons for departing from the Policy.

- 9.8 Where no relevant representations are received an application within the cumulative impact area will be granted in terms consistent with the operating schedule.
- 9.9 Applications for new premises licences or variations for premises situated within the cumulative impact area that are likely to add to the cumulative impact already experienced will normally be refused if relevant representations are received. The applicant must demonstrate through the operating schedule, the steps that they intend to take so that the Council and responsible authorities can be satisfied that granting a new or varied licence will not add to the cumulative impact already being experienced.
- 9.10 The onus is on the applicant to demonstrate to the responsible authorities the suitability of how their proposal will not add to the cumulative impact. To assist this process the Council recommends early consultation with responsible authorities; this can be done directly with those authorities or through the Council's Licensing Section.

Cumulative Impact Area

- 9.11 The published assessment relates to an area within York city centre. This area has been identified because evidence shows that the cumulative impact of the number and concentration of licensed premises in this area continue to adversely affect residents, visitors and other businesses and therefore adversely affecting the promotion of the licensing objectives:
- prevention of crime and disorder
 - prevention of public nuisance
- 9.12 North Yorkshire Police and Public Protection have provided information that the nature of this area is such that the problems and cumulative impact directly relates to the style of businesses operating in the area and their clientele, due to the concentration of:
- drink led premises – pubs, bars, nightclubs and restaurants/cafes;
 - entertainment premises – pubs, bars and nightclubs providing entertainment, especially late at night into the early hours of the morning;
 - late night refreshment premises – takeaways; and
 - off licence premises – supermarkets and convenience stores.
- 9.13 A red zone has also been identified in this area due to the high concentration of licensed premises, the impact of which have lead to a high level of occurrences in relation to crime and disorder related issues. Therefore, the Council should refuse all applications within the red zone where relevant representations are received, unless the applicant can show how their application would not lead to an increase in the impact of licensed premises in this zone. A map showing the red zone can be found in the assessment.



NOTICE OF RELEVANT REPRESENTATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT 2003

North Yorkshire Police hereby give notice of objection to the Premises Licence as listed below:

Postal Address of premises or club premises: Haizhongloa Hot Pot & BBQ 12 George Hudson Street	
Post town: York	Post code (if known): YO1 6LP

Notice of Objection relates to the following licensing objective: *(Please tick one or more boxes)*

1. The prevention of crime and disorder	<input checked="" type="checkbox"/>
2. Public safety	<input type="checkbox"/>
3. Prevention of Public Nuisance	<input checked="" type="checkbox"/>
4. The protection of children from harm	<input type="checkbox"/>

GROUNDINGS FOR RELEVANT REPRESENTATION

Please provide as much information as possible to support this relevant representation:
(e.g. please list any additional information, e.g. dates of problems which are included in the grounds for review)

This application relates to a new premises licence for a Chinese Hot Pot and BBQ restaurant in York's Cumulative impact area for licensable activities as follows:-
Mon- Sun Recorded Music 1100-0000hrs
Mon- Sun sale of alcohol for on and off sales 1100-0000hrs

The premises sits within York's CIA (Cumulative impact assessment area) 'Red zone', an area which The City of York Council has identified as being under the most stress from crime and disorder and public nuisance in their statement of licensing policy. The current policy came in to effect on 21st March 2019 and runs until 2024 and which states:-

"9.13 North Yorkshire Police and Public Protection have provided information that the nature of this area is such that the problems and cumulative impact directly relates to the style of businesses operating in the area and their clientele, due to the concentration of:

- drink led premises – pubs, bars, nightclubs and restaurants/cafes;
- entertainment premises – pubs, bars and nightclubs providing entertainment, especially late at night into the early hours of the morning;
- late night refreshment premises – takeaways; and
- off licence premises – supermarkets and convenience stores.

9.14 A red zone has also been identified in this area due to the high concentration of licensed premises, the impact of which have led to a high level of occurrences in relation to crime and disorder related issues. Therefore, the Council

should refuse all applications within the red zone where relevant representations are received, unless the applicant can show how their application would not lead to an increase in the impact of licensed premises in this zone.”

Furthermore the CIA policy states:

“An applicant wishing to obtain a new licence or vary a licence for premises, within the cumulative impact area, must demonstrate through the operating schedule, the steps that they intend to take so that the Council and responsible authorities can be satisfied that granting a new or varied licence will not add to the cumulative impact already being experienced.”

The applicant fails to make a single reference within its application to the fact that the premises is located within York’s Cumulative Impact Area Red Zone, an understanding of the problems that exist, and the measures they will take to mitigate the impact. They also fail to explain why their application is such that the licensing authority should depart from its special policy in light of the individual circumstances of this case.

The applicant has stated that the Premise is a restaurant and has applied for opening hours with the sale of alcohol from 1100-0000 seven days a week. There is no mention in the operating schedule for consideration of a drinking up time in relation to “on-sales” which is referred to in the current statement of Licensing Policy as follows:-

8.13 “Even though the traditional drinking up time was not carried over into the Act the Council recommends that applicants of premises licensed for the on-sale of alcohol should consider a drinking up / cooling down period during which music volume may be reduced, customers may consume their drinks and make arrangements for transportation from the premises. The Council considers that a 30 minute drinking up time will assist in the gradual dispersal of customers and consequently reduce impact on the area.”

Whilst the application states that the Premises will operate as a Restaurant, it is concerning that “Late Night” refreshment has not been applied for, which means that after 2300hrs food cannot be served. This leaves a one hour window from 2300-0000 when the premises would solely be operating as a bar for the supply of alcohol, in an area which is already saturated with Licensed Premises.

The applicant has failed to offer any substantial conditions, which would seek to address concerns that they are promoting the licensing objectives of Prevention of Crime and Disorder or Prevention of Public Nuisance, in an area that already experiences high levels of disorder.

Within the operating schedule, there is reference to CCTV stating it “should be installed inside and outside the Premises”. Not that, it will be installed, that staff will be trained to access the CCTV, how long storage will be retained for and copies provided to responsible authorities upon request.

The operating schedule is substandard and fails to offer conditions tailored to that of a restaurant including, alcohol ancillary to food, number of table covers, refusals book, documented staff training, or notices requesting patrons to leave the premises quietly.

The Section 182 guidance provides applicants with clear guidance with regards to completing their operating schedule namely:-

8.43 - “Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application: any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy”.

The inadequate operating schedule demonstrates that the applicant has failed to take into account York’s Statement of

Licensing Policy or the government guidance and nothing that has been put forward by the applicant demonstrates why their application should be considered as an exception to the policy.

Upon receiving this application North Yorkshire Police have conducted due diligence checks in relation to the applicant who is also the proposed Designated Premises Supervisor.

Alongside the concerns raised above North Yorkshire Police do not support this application for a premises licence under Section 18(9) of the Licensing Act, as the applicant and proposed Designated Premises Supervisor Mr Wenlin CHEN, it is believed would undermine the Crime Prevention Objective.

The Section 182 guidance para 4.39 states

"The Police may object to the designation of a new DPS where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. The police can object where, for example, a DPS is first specified in relation to particular premises and the specification of that DPS in relation to the particular premises gives rise to exceptional concerns."

I would refer members of the Licensing Committee to my witness statement submitted in support of this representation regarding the concerns North Yorkshire Police have in respect of Mr CHEN.

North Yorkshire Police have to be satisfied that an individual, who performs the role of a DPS, and who will ultimately have day-to-day management of the Premises and be the point of contact for responsible authorities, is able to effectively promote the Licensing Objectives.

My statement highlights there are exceptional circumstances to consider in respect of Mr CHEN and his ability to perform the role of a Designated Premises Supervisor

The Section 182 guidance Para 9.12 states;-

"Each responsible authority will be an expert in their respective field.....The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective".

North Yorkshire Police cannot support this application in the Cumulative Impact Area, and for the exceptional reasons highlighted in my witness statement regarding Mr CHEN as the proposed Designated Premises Supervisor and respectfully ask members to refuse the application.

Signature: J Booth

Date: 13/10/20

Contact name: PS 133 Jackie Booth

Address for correspondence: **Alcohol Licensing Department Fulford Road Police Station**

Post town: **York**

Post code: **YO10 4BY**

Tel. number (if any): **01609 643273**

Email address if preferred option of contact: **NYPLicensing@northyorkshire.pnn.police.uk**

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Anthony Dean
Public Protection Manager
City of York Council
Eco Depot
Hazel Court

Customer and Corporate Services
Directorate

Democratic Services
2nd Floor
West Offices
Station Rise
York YO1 6GA

22 June 2020

Dear Mr Dean

**Re: Licensing Sub-Committee Hearing – Review of Premises
Licence for Regency, 2 – 4 George Hudson Street, York, YO1 6LP
(CYC/053937)**

I am writing to inform you of the decision of the Licensing Sub-Committee which heard your application for a review of the Premises licence on 8 June 2020.

In considering your application and the representations made, the Sub-Committee concluded that the following licensing objective(s) were relevant to this Hearing:

1. The prevention of crime and disorder
2. Public Safety

With the agreement of all the parties, the Sub-Committee decided that it would be expedient to hear the three applications together (Reviews of Premises Licences for The Regency, 16 Barbican Road, York, YO10 5AA (CYC/009221) and Regency, 2 – 4 George Hudson Street, York, YO1 6LP (CYC/053937) and Application for transfer of premises licence for The Regency, 2-4 George Hudson Street, York, YO1 6LP (CYC/053937) as they would cover some of the same ground. 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:

3. The papers before it.

4. The Head of Public Protection's reports and his comments made at the Hearing. He outlined the reports in respect of the three applications being considered at the Hearing.

In response to questions from Mr Grant (Counsel for the Applicant), the Head of Public Protection clarified that the transfer application related to the premises licence for the George Hudson Street premises. Mr Grant pointed out that on page 346 of the reports pack the legal test for the transfer application in option 4 should state "appropriate" instead of "necessary". The Head of Public Protection thanked Mr Grant for the correction. There were no questions from Mr Shaikh (Solicitor for the Premises Licence Holder and Licence Transfer Applicant), Sgt Booth (North Yorkshire Police) or Members.

5. The representations of Mr Grant, who presented the case for the Applicant for the two reviews. He stated that the two reviews related to two different Regency Premises, one at 16 Barbican Road which was a restaurant, takeaway and karaoke bar, with a Licence to open to 4am each day. The second Premises was also called Regency, at 2-4 George Hudson Street and was a Chinese restaurant and supermarket and was open midweek until midnight until 3am on Saturday and Sunday. These reviews engaged two licensing objectives; the prevention of crime and disorder and public safety. The licensing objective of the protection of children against harm may also be an aspect. He stated that the operators of the restaurants were incorrigible employers of illegal workers, all Chinese nationals. With reference to illegal workers, in April 2017 and on 2 September 2019 for the Barbican Road Premises there had been a total of 4 visits - on one occasion no illegal workers found, but on the three other occasions a total of 10 illegal workers were found on the Premises. Regarding the George Hudson Street premises, over the same period, a total of 3 visits, illegal workers were found on all 3 visits, making a total of 6 illegal workers. He stated that over 2.5 years, there were 7 visits to the two restaurants and on 6 occasions illegal workers found, totalling 16 illegal workers. He stated that this total excludes the 2014 inspection where further illegal workers were found in fairness to Mr Chen as this visit pre-dated the current licence holder.

Mr Grant stated that the employment of illegal workers was taken seriously in the context of licence reviews. He explained that the licensed sector had been found to employ the majority of illegal immigrants in the UK and this usually involved the exploitation of vulnerable people working on unlawfully low rates. In this case, the

workers were paid no more than £2-£3 per hour, way under national minimum wage. As vulnerable people who are in the country illegally they could not go to the authorities to complain on their treatment. He stated that another impact of illegal workers was that it undercut other law abiding restaurateurs in York who had to pay the legal, national wage and could not compete with Mr Chen. It also acts as a positive incentive for more illegal immigrants to come to country often using dangerous methods. He stated that there had been additional repeated failures sometimes amounting to criminal failures by the operators of Regency, including persistent breaches of licence conditions and repeated fire safety failures on more than one occasion which was of particular concern as a number of people were sleeping in make shift bedrooms in the premises. Mr Grant stated that there had also been a failure to protect children from being sold knives, and failures to properly have a system at work which ensured that hygiene and food standards were observed. He stated that this undermined the public safety licensing objective.

Mr Grant also said that the Sub-Committee's decision could have a proper deterrent impact on other irresponsible licensees tempted to flout the law. He stated that the Applicant for the licence transfer, Ms Feng provided no acceptable remedy to the reviews as Ms Feng had been part of the problem, so was unlikely to be part of solution. This was the reason that the Applicant for the reviews had something to say about the transfer, as they were linked because the operator was saying that the premises licence for one of the premises should not be revoked as there was someone it could be transferred to. Mr Grant outlined a number of multi-agency visits to the premises as follows:

16 April 2016

Barbican Road – intelligence that there were fire safety issues which led to a visit by Kevin Caulfield (NYFRS) (statement at page 139). Fire safety advice was given to the operators and was not taken up on subsequent visits.

7 April 2017

George Hudson Street – visit by Glyn Jones (Immigration Service) during which one Chinese national was arrested for illegal working and had entered UK without permission. (Statement at page 97).

21 May 2017

Barbican Road – one Chinese national arrested for illegal working. No permission to work.

8 September 2017

Intelligence led multi agency visit by North Yorkshire Police, Licensing Officers, Immigration Officers, HMRC visit to both restaurants. At Barbican Road there were 6 illegal workers on site, and there was sleeping accommodation with bunk beds on the second floor. Mr Chen wasn't there, arrived later, and had difficulties with English. No-one could operate the CCTV, there was a lack of staff training, and there were no notices asking customers to be respectful to residents. There was also no waste management plan. Advice was given to Licence Holder to put matters right.

On the same date the same officers went to the premises in George Hudson Street where one illegal worker was found working in breach of workers permission to enter UK. On this visit to George Hudson Street, Tina Feng who was now the applicant for transfer was present. She described herself as the manager and said she been there for 2 years which would have covered the time when the illegal worker was found on 7 April 2017, and she managed the premises when on at least two occasions illegal workers were found in the George Hudson Street premises. Ms Feng was unable to use the CCTV and show documentation to show staff training. There were also fire safety issues which had a real impact on public safety as means of escape were locked or shut.

11 September 2017

A fire safety officer visit to the Barbican Road premises after a complaint that 20 people were living in the premises in cramped conditions. Advice was given.

14 September 2017

An inspection of the George Hudson Street premises found there was no fire detection system in the basement, a door was held open in the basement, and there was no record of staff training. A notice of the deficiencies was served. Mr Grant noted that Ms Feng was the manager at that time.

18 July 2017 – At the George Hudson Street Premises Ms Feng as manager sold a knife to a child. Ms Feng signed a caution admitting the offence on behalf of the company.

16 March 2018

An inspection of the Barbican Road premises was the only occasion no illegal workers found.

14 August 2018

A visit to the Barbican Road premises by Public Protection led to Mr Chen being convicted and fined for three food safety breaches of food safety regulations (Summonses at page 99).

6 September 2019

Both premises were visited. At the Barbican Road premises, there were three illegal workers, rooms were turned into sleeping accommodation on the second floor, decoration work was taking place and fire exits were blocked. There was a defect with the fire alarm and a fire safety prohibition notice to stop people sleeping on the premises was later served. None of the breaches of licence conditions from previous visits had been remedied – there was no staff training, staff management plans, no registers, no incident registers and no working CCTV. Officers were concerned as they smelt cigarette smoke in toilets and karaoke rooms and the small karaoke rooms were being used for sleeping in and this was confirmed by an Eastern European male who appeared to collect a passport.

6 September 2019

George Hudson Street premises– four illegal workers were found. Miss Feng was present while four workers were working with her. There were further breaches with CCTV, no staff training and no incidents and refusals register. There were no notices asking people to leave quietly. Ms Feng was described by officers as being “very uncooperative with Officers”. In the basement there were suitcases with female clothing stored suggesting that the premises was used to house workers.

9 September 2019

Barbican Road premises– safety audit found that padlocks were fitted to sleeping accommodation and fire exits were blocked. A Prohibition notice was served.

24 October 2019

Barbican Road premises – a visit by licensing officers found that licence breaches were the same as identified during the visit 6 weeks earlier. North Yorkshire Police served a closure notice as a warning. A visit to the premises in George Hudson Street the same day found that the same conditions were being breached and another closure notice was served. There were several males residing on the top floor.

A week later faced with closure of Premises, on 31 October 2019 the Barbican Road conditions breached had been rectified and the George Hudson Street breaches had been rectified save for CCTV still showing the wrong date and time.

4 November 2019

An application was made by Ms Feng as manager to change the DPS for the premises at George Hudson Street to Mr Feng, who gave his address as 2-4 George Hudson Street. He had no legal right to work in UK.

Mr Grant also referred to the evidence of Inspector Freer but would not give any details. He submitted that for all of those reasons the revocation was the only course as there were overwhelming failures in this case by the current licence holder and by Miss Feng, the proposed Licence holder of the George Hudson Street premises. He stated that the law had been summarised at page 298 of Agenda papers. In summarising he noted that chapter 11 guidance (page 324) indicated that that some forms of criminality associated with premises are treated particularly seriously, one was illegal workers, and licensing officers should use review procedures effectively to deter such crime and where the Licensing Authority feels that the crime prevention objective has been undermined, it is expected that revocation of licence in first instance should be considered. He noted the deterrent effect or revocation approved by two High Court decisions in the papers bundle and said that an important public interest is raised if licensees can make money through operating illegally and then transfer the license to someone else, as it undermines the whole licensing system.

6. The representations of Mr Shaikh, the Solicitor for the Premises Licence Holder and Ms Feng then provided a response to the two Reviews and he presented the Application for Transfer of the Premises Licence at the George Hudson Street premises.

Mr Shaikh noted that some of the matters referred to in the representations made by Mr Grant were old matters. He explained that the background history was that there had been breaches of the premises licences which have been brought to Mr Chen's and Ms Feng's attention but from November 2019, as stated by Mr Grant, the notices were complied with and there were no further issues.

Mr Shaikh stated that the documents he provided shortly before the hearing established regarding the proposed revocation of the licences and illegal workers was that no action was taken against Mr Chen or Ms Feng on those matters.

Mr Shaikh submitted that revocation of the licences was not necessary or proportionate. Mr Shaikh accepted that there have been past misdemeanours. Addressing the concern raised by Mr Grant regarding the selling of knives Ms Feng had accepted a caution on behalf of the company and she did not herself sell the knife. He added that the matters raised by the multi-agency visits were not minor matters but when running a restaurant his clients could not be there 24 hours a day, 7 days a week and running a restaurant means delegation of responsibility. He said that they had undertaken all due diligence checks as best they could for illegal workers and did not knowingly employ any illegal workers. There had been no prosecution for immigration offences at either restaurant. Mr Shaikh stated that sleeping upstairs or on the premises had never been permitted, but given the nature of business, some employees took a 15 minute nap due to length of hours.

Mr Shaikh stated there had been no further breaches. It was a family run business and all parties are interconnected. He appreciated that Ms Feng had undertaken the training required for a personal licence and understood the responsibilities she had to comply with. The prosecution for food hygiene standards was against Mrs Chen and the company operators, not Mr Chen.

As to Mr Grant's suggestion that one of individuals employed was not entitled to work, Mr Shaikh stated that the individual was employed, had a restricted a visa, 5 year permit to work. This had expired and a further application was made to extend the visa.

Mr Chen gave evidence to the Sub Committee through his interpreter; He had not been convicted or interviewed for immigration offences. He said he had undertaken a programme of training to ensure compliance with the requirements of the licence. Both restaurants were a family business and he had been involved in them for 3 years. Illegal workers did not sleep at the premises. He had never employed illegal workers to his knowledge. To ensure workers were not illegal he checked passports and their work visas and also checked with the Home Office. As to how Mr Chen would convince the panel that he would ensure above and beyond that no illegal workers will be on his premises, Mr Chen confirmed that he would operate according to the requirements of

the licence and will take all steps to ensure that all were legal. As to Mr Grant's assertion that it was too little too late and he tended to do things when it was the final straw, Mr Chen confirmed that in future he will do his best to comply and do everything he can to make improvements. Mr Chen stated that he was not aware that a knife had been sold to a child and that in future he would ensure that ID was produced to prove that the purchaser was over age of 25. He said that for the last 24 months the food hygiene rating at both premises was 3 stars but they were doing their best.

Ms Feng (Applicant for the License Transfer for the premises in George Hudson Street) gave evidence through her interpreter. In relation to the caution, Ms Feng explained that an 18 year old staff member on their probation period was working in the shop and unknown to her sold a knife to a child. Ms Feng admitted responsibility and has since trained staff to check the age was over 24 years old. There had not been any other issues since the section 19 closure notice had been complied with. She confirmed that she had not been interviewed regarding immigration offences against illegal workers and had not knowingly been in control of illegal workers or allowed them to stay on the premises. She checked their passports, work permits and if in doubt would check with the Home Office. Additional checks in place involve keeping a copy of the ID. She confirmed she understood the importance of having working CCTV on the premises. Apart from the caution, she had no convictions recorded against her for any other matters. She confirmed she understood that she was part of the family business if the transfer of the licence was revoked, many of her staff would lose their jobs and she would to lose her income. She is a single parent with two children to support. This was her livelihood and she could not lose it.

She explained that to ensure that the licensing objectives were not undermined, they are going to replace all CCTV systems to ones which are easy to operate. They would put posters up in the restaurants to remind customers to leave quietly and warnings for age and alcohol consumption and purchase. They would comply with the fire regulations and update all the fire systems.

As to it being too little too late, Ms Feng said that was not correct and that when they received suggestions they always took action to make improvements. This was done bit by bit.

In response to question from Mr Grant as to why when Mr Chen has given evidence that he carried out checks on all workers over a number

of years he still managed to employ 16 illegal workers on 6 occasions, Mr Chen replied that normally workers arrived on Saturdays and Sundays, he would try and contact them then, but then he found it hard to get through and a lot of workers were newcomers, he confirmed that he was aware that he had a legal obligation to keep a copy of the documents and that he did have copies but there were not as many as 16 illegal workers.

Mr Grant asked Miss Feng whether she could you explain why on 25 October 2019 the DPS proposed was also an illegal worker and the name was Zen Cheng Feng which had same home address as Miss Feng. Ms Feng replied that he was her younger brother and this was a family business. She confirmed that she was not related to Mr Chen the licence holder and they were just friends.

In response to questions from Sgt Booth, Mr Chen explained that Zen Cheng Feng told him that he was in the process of applying for an extension of his visa and he believed he was legal which was why he applied for the DPS transfer to him. He said he did carry out Home Office checks and his visa was pending. As to whether the Home Office confirmed he had a right to work in the UK, Mr Chen replied that he saw his previous visa and a letter confirming that he had applied for a visa.

As to why repeatedly he had failed to engage with the Licensing Authority and Police following request for him to contact them on 24 October 2019 and 31 October 2019 and two letters from Licensing Authority on 13 November 2019 and 28 November 2019 regarding the issues raised, Mr Chen replied that he asked his manager to do this.

Members of the Sub-Committee then asked questions as to whether there would there be written evidence of checks being made with the Home Office. Mr Shaikh responded that it was his understanding that it was a direct dial line which was used. Mr Shaikh said he had emailed the Home Office for confirmation regarding Zheng Feng Chen, it was not in the submitted evidence but he did receive an email. He noted that replies from Home Office were usually on the telephone. He confirmed that the principal position was not to revoke the licences but the imposition of additional conditions would be the lesser of two evils.

Mr Shaikh also noted that all employees were entitled to 15 minute break every hour and because staff were working long hours in kitchens, took naps for 15 minutes. A shelter was to be put outside and naps were to take place outside due to fire risks.

7. Representation from Sgt Booth, North Yorkshire Police. She outlined the North Yorkshire Police representations in relation to the two premises licence review applications and to the application to transfer the premises licence.

She stated that North Yorkshire Police believed that the crime and disorder objective was seriously undermined, as mentioned by Mr Grant. The Guidance states some criminal activity should be treated particularly seriously, including using premises to employ a person who cannot work in UK. She stated that the statements from Helen Sefton and Nigel Wood head and PC Bolland and PC Hollis was a joint partnership approach to deal with the issues at the premises. In 2017 a number of persons were removed from Barbican Road and George Hudson Street premises who had no right to work, and there was also failure to comply with safety and fire safety issues there was a persistent failure by Mr Chen to address concerns regarding staff. Following the visit on 8 September there was no responsibility taken by Mr Chen. She noted that as a minimum they expected Mr Chen to engage with the Licensing Authority and North Yorkshire Police to work on a stepped approach to ensure the safeguarding of staff and customers attending the premises. She stated that there was no suggestion by the premises licence holder or anyone at the premises of any HR management system to store records for staff, and no copies of documents retained for staff to make available to agencies on request. Although Mr Chen said he had conducted checks on Home office website to ensure all staff were legally employed, there had been no evidence submitted as to how he conducted those immigration checks or if they even have been conducted. She added that there were no new staff details to suggest they had undertaken training to meet any of four licensing objectives. She stated that the failing to take action after first visit resulted in further information being received and further operation on 6 September 2019 when again Immigration staff removed officers, as detailed in Glyn Jones' statement.

Sgt Booth stated that on 4 November 2019 North Yorkshire Police received an application for a new DPS at George Hudson Street and carried out checks and found the person had no right to work in UK. Mr Chen signed the application as premises licence holder but failed to take responsibility and carry out due diligence checks. Mr Chen did not engage with the Licensing Authority or North Yorkshire Police to discuss concerns following their visit to the premises. At the time of the transfer request Mr Chen was the DPS for George Hudson Street and it was

expected that the DPS is the person with day to day responsibility and should be available and should contact North Yorkshire Police or the Licensing Authority if requested. No formal communications have taken place with North Yorkshire Police or the Licensing Authority and Mr Chen failed to respond to visits, phone calls or letters.

Regarding the premises transfer licence application, North Yorkshire Police have objected on grounds that granting the application would prejudice and undermine the crime and disorder licensing objective. The transfer was merely a smokescreen to say that Mr Chen was not involved in the business running. However, Members have heard that it was a family run business. Ms Feng had also been at the Premises when illegal persons found and removed and she was closely associated as she had same address as DPS who had no right to work in UK and has been involved when there has been a breach of licence conditions. Sgt Booth noted that PC Hollis attended the premises on 24 October 2019 asked about premises licence holder and Ms Feng said she said not heard of him, and didn't know who he was. Sgt Booth asked whether this was the evidence of a credible person. She reminded Members of Inspector Freer's statement.

She said that Mr Chen had failed to address issues, failed to train staff, not communicated, and failed to implement robust measures to deter criminal activity in the Premises. CCTV not working was also a concern to North Yorkshire Police as CCTV can provide a good deterrent for criminal activity. Sgt Booth submitted that North Yorkshire Police consider that the only choice for the Sub Committee was to revoke both licences and refuse application to transfer to deter further crimes.

In response to questions, Sgt Booth confirmed that during the first visit in 2017 when Mr Chen attended the premises a further staff member had to interpret for him as he was unable to understand what was asked to do of him. That person (who was not Zhong Chen Feng) identified themselves as the manager of the premises.

As to whether there was any evidence to identify who were illegal workers and who were customers, Mr Glyn Jones (Immigration) confirmed that Immigration officers were well trained and versed in who was working and wouldn't ordinarily question customers. Mr Jones stated that some of those who had been removed from the premises were removed from the UK, and others granted bail.

All parties then summarised in the following order: Police, Applicant for Reviews, premises Licence Holder/applicant for transfer.

Sgt Booth stated that North Yorkshire Police were concerned that if revocation was not the outcome, the premises would continue to undermine the licensing objective of crime and disorder. There were grave concerns that the premises licence holder had not attempted to engage, respond or work with the Licensing Authority or North Yorkshire Police to ensure compliance with the licences for George Hudson Street and Barbican Road. She strongly asked the Sub-Committee to consider Inspector Freer's evidence and ask for the revocation of the licences and for and the transfer to be refused.

Mr Grant stated that in terms of number of failed illegal worker inspections and workers, of seven inspections there had been six failures and a total of 16 illegal workers. He stated that the response on behalf of Mr Chen and Ms Feng appeared to be that they did check out illegal workers, but they can't produce evidence to demonstrate that, including no photocopies of passport or visas, which they had a legal obligation to retain. He said the Sub-Committee were being misled by the operators, who didn't check, didn't look at passports or visas as they didn't care if workers were legal or illegal and knew that if they were illegal they could pay them next to nothing, so there was financial gain for them. The other option was that they did carry out checks but for reasons which can't be explained 16 workers were illegal and weren't customers. Glyn Jones confirmed in his statement was clear that they were workers, not customers. Mr Grant stated that if the Sub Committee needed further evidence to decide the factual issues as to whether Mr Chen deliberately employed those workers, they should look at the recent DPS application in October 2019 by Mr Chen, which was Miss Feng's younger brother who had no right to work in the UK. Mr Grant added that Mr Chen's evidence was that he would allow people to work at weekends before carrying out right to work checks. This spoke volumes about their approach. Referring to paragraph 18 of the Abu Hanif case on page 303 of the Agenda pack, Mr Grant said that the question was not whether there had been criminal convictions as prevention of crime and disorder can be retrospective and that the reviews applicant says that prevention and deterrence calls for full revocation of the licences. Lately there were no issues but this was late in the day and the licence should be revoked due to concerns with crime and disorder.

Mr Grant stated that the information on pages 96, 141 and 143 of the Agenda pack all confirmed that the workers were illegal.

Mr Shaikh stated that Mr Chen and Ms Feng had done things wrong and there was a history of rectification notices which had been sorted and all was now in order apart from the CCTV. He added that there had been speculative criminal activities and he had not seen evidence that all 16 persons removed were illegal workers. He added that Mr Chen had not been interviewed by the immigration authorities and there had been no issues since November 2019. He added that Ms Feng was not responsible for the supply of the knife.

Decision

Having regard to this review application and any relevant representations, the Sub-Committee had to determine whether to take any of the steps mentioned under Section 52(4) that it considered necessary for the promotion of the licensing objectives. Taking into consideration the papers, evidence and submissions received and answers to questions, the Sub-Committee deliberated the 5 different options available to them and agreed to reject the following options:

Option 1: To modify the conditions of the licence (i.e. to alter, omit or add any new condition).

Option 2: To exclude a licensable activity from the scope of the licence.

Option 3: To remove the Designated Premises Supervisor.

Option 4: To suspend the licence for a period not exceeding three months.

The Sub-Committee's decision was to agree to the following option:

Option 5: To revoke the licence.

The Sub-Committee noted that this application was discussed alongside the review for the other Regency premises and the application to transfer the premises licence for Regency in George Hudson Street as the applications covered some of the same ground

Reasoning for decision

In reaching its decision, the Sub-Committee gave due consideration to:

- The promotion of the licensing objectives as set out in the Licensing Act 2003, in particular the prevention of crime and disorder and public safety.
- The Council's Statement of Licensing Policy.
- The Home Office Guidance issued under section 182 of the Licensing Act 2003.
- The Licensing Sub-Committee agenda pack for the application, the additional statement of Inspector Freer dated 29 May and the additional documents submitted by Mr Shaikh on 5 June 2020 and circulated before the start of the hearing.
- The oral representations made during the hearing.

In making its decision, the Sub-Committee:

- Considered the following parts of the section 182 Guidance:

Section 182 Guidance

"2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when

considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.”

- Took account of the evidenced cases of repeated immigration offences at the premises, specifically the recorded incidents of 8

September 2017 and 6 September 2019 during which a number of immigration offenders were encountered. The Sub-Committee further noted that during submissions the premises licence holder disputed that the persons identified as working illegally at the premises on those dates were in fact employees. However, the Sub-Committee was of the view that on the basis of the evidence submitted by the Home Office, which are an intelligence-led organisation, and on the balance of probabilities it was more likely than it was not that they were so employed by the premises licence holder. The Sub-Committee was satisfied that the management was ineffective in any checking of the documentation of staff they were employing at the premises to ensure that they had a legal right to work in the UK and noted that the premises licence holder had not actually produced any documents to evidence that any such checks had in fact been carried out..

- Found the employment of illegal workers at the premises as wholly unacceptable and that it clearly undermines the licensing objective of prevention of crime and disorder.
- Were satisfied on the evidence that there had been sustained and significant breaches of licensing conditions and fire safety issues and that this undermined the prevention of crime and disorder and public safety licensing objectives.
- Noted that Mr Chen had been premises licence holder during the whole time that these immigration issues and fire safety and licence breaches had occurred.
- Took into consideration the fact that there have been no further incidents at the premises reported since November 2019 and that that the premises licence holder had not been convicted or questioned by the Home Office with regard to immigration offences at the premises. They also noted that the revocation of the premises licence would be likely to harm the business and its employees.
- Noted that in light of the High Court decision in the case of *East Lindsey DC v Abu Hanif (t/a Zara's restaurant and Takeaway)*, the crime prevention objective did not require a crime to have been reported, prosecuted or established in court. The crime prevention objective is not retrospective; it is concerned with the avoidance of harm in the future.

- Put weight on the fact that despite several attempts by the Police and the Licensing Authority to work with the premises licence holder, there had been no engagement with those responsible authorities by the premises licence holder.
- Attached no weight to the food hygiene convictions in 2018 in respect of the Barbican Road premises, no weight to the caution of Ms Feng in 2017 for the sale of a knife to a child at the Regency Street premises and no weight to the ongoing wider criminal investigation (beyond the employment of illegal workers) referred to in the two restricted statements of Inspector Freer.
- Considered all the options open to them and noted that whilst the Sub-Committee had to consider what appropriate steps to take on review, such steps taken must also be proportionate. It recognised that a request for revocation of a licence was a major and severe step that had to be treated seriously, and that they had to consider whether there were alternative measures such as imposing conditions or adopting another sanction using its powers available to it under section 52 (4) of the Licensing Act 2003.
- They noted that the premises licence holder had a history of failure to comply with licensing conditions. They felt that given the history of repeated failings at the premises (significant breaches of conditions, fire safety issues and the presence of illegal workers) the premises suffers from either a lack of regard or poor management control had no faith in the premises license holder being able to sustainably uphold the licensing objectives in the future, particularly prevention of crime and disorder and public safety.
- Due to the gravity of the situation and taking into particular account the promotion of the crime prevention objective, including acting as a deterrent, believed that other sanctions including the imposition of further or amended conditions or a suspension of the licence would be ineffective in the promotion of the licensing objectives of prevention of crime and disorder and public safety. Accordingly it was determined that the premises licence should be revoked.

The decision will not take effect until the end of the period for appealing against the decision. In the event of an appeal, the existing licence will continue until the appeal is determined.

Right of Appeal

There is a right of appeal for the Premises Licence holder to the Magistrates Court against this decision. Any appeal to the Magistrates Court (preferably in writing), must be made within 21 days of receipt of this letter and sent to the following address:

Chief Executive
York and Selby Magistrates Court
The Law Courts
Clifford Street
York
YO1 9RE

Thank you for attending the hearing.

Yours sincerely

Angela Bielby
Democracy Officer
(01904) 552599

cc. Representors
cc. Licensing Officer

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Cooke, Lesley

From: Woodhead, Nigel
Sent: 14 October 2020 14:46
To: Cooke, Lesley
Cc: Sefton, Helen
Subject: Premise Licence application, Haizhonglao Hot Pot and BBQ

I am the Licence Enforcement officer for the City of York Council and I am authorised to make representations on behalf of the Licensing Authority.

This application relates to a new premises licence for a Chinese Hot Pot and BBQ at 12 George Hudson Street, restaurant in York's Cumulative impact area for licensable activities as follows:-

Mon- Sun Recorded Music 1100-0000hrs

Mon- Sun sale of alcohol for on and off sales 1100-0000hrs

The premises sits within York's CIA (Cumulative impact assessment area) 'Red zone', an area which The City of York Council has identified as being under the most stress from crime and disorder and public nuisance in their statement of licensing policy. The current policy came in to effect on 21st March 2019 and runs until 2024 and which states:-

"9.13 North Yorkshire Police and Public Protection have provided information that the nature of this area is such that the problems and cumulative impact directly relates to the style of businesses operating in the area and their clientele, due to the concentration of:

- drink led premises – pubs, bars, nightclubs and restaurants/cafes;
- entertainment

premises – pubs, bars and nightclubs providing entertainment, especially late at night into the early hours of the morning;

- late night refreshment premises – takeaways; and
- off licence premises – supermarkets and convenience stores.

9.14 A red zone has also been identified in this area due to the high concentration of licensed premises, the impact of which have led to a high level of occurrences in relation to crime and disorder related issues. Therefore, the Council should refuse all applications within the red zone where relevant representations are received, unless the applicant can show how their application would not lead to an increase in the impact of licensed premises in this zone."

Furthermore the CIA policy states:

"An applicant wishing to obtain a new licence or vary a licence for premises, within the cumulative impact area, must demonstrate through the operating schedule, the steps that they intend to take so that the Council and responsible authorities can be

satisfied that granting a new or varied licence will not add to the cumulative impact already being experienced.”

The applicant fails to make a single reference within its application to the fact that the premises is located within York’s Cumulative Impact Area Red Zone, an understanding of the problems that exist, and the measures they will take to mitigate the impact. They also fail to explain why their application is such that the licensing authority should depart from its special policy in light of the individual circumstances of this case.

The applicant has stated that the Premise is a restaurant and has applied for opening hours with the sale of alcohol from 1100-0000 seven days a week. There is no mention in the operating schedule for consideration of a drinking up time in relation to “on-sales” which is referred to in the current statement of Licensing Policy as follows:-

8.13 “Even though the traditional drinking up time was not carried over into the Act the Council recommends that applicants of premises licensed for the on-sale of alcohol should consider a drinking up / cooling down period during which music volume may be reduced, customers may consume their drinks and make arrangements for transportation from the premises. The Council considers that a 30 minute drinking up time will assist in the gradual dispersal of customers and consequently reduce impact on the area.”

The applicant has failed to offer any substantial conditions, which would seek to address concerns that they are promoting the licensing objectives of Prevention of Crime and Disorder or Prevention of Public Nuisance, in an area that already experiences high levels of disorder.

Within the operating schedule, there is reference to CCTV stating it “should be installed inside and outside the Premises”. Not that, it will be installed, that staff will be trained to access the CCTV, how long storage will be retained for and copies provided to responsible authorities upon request.

The operating schedule is substandard and fails to offer conditions tailored to that of a restaurant including, alcohol ancillary to food, number of table covers, refusals book, documented staff training, or notices requesting patrons to leave the premises quietly.

The inadequate operating schedule demonstrates that the applicant has failed to take into account York’s Statement of Licensing Policy or the government guidance and nothing that has been put forward by the applicant demonstrates why their application should be considered as an exception to the policy.

The Licensing Authority cannot support this application in the Cumulative Impact Area, and respectfully ask members to refuse the application.

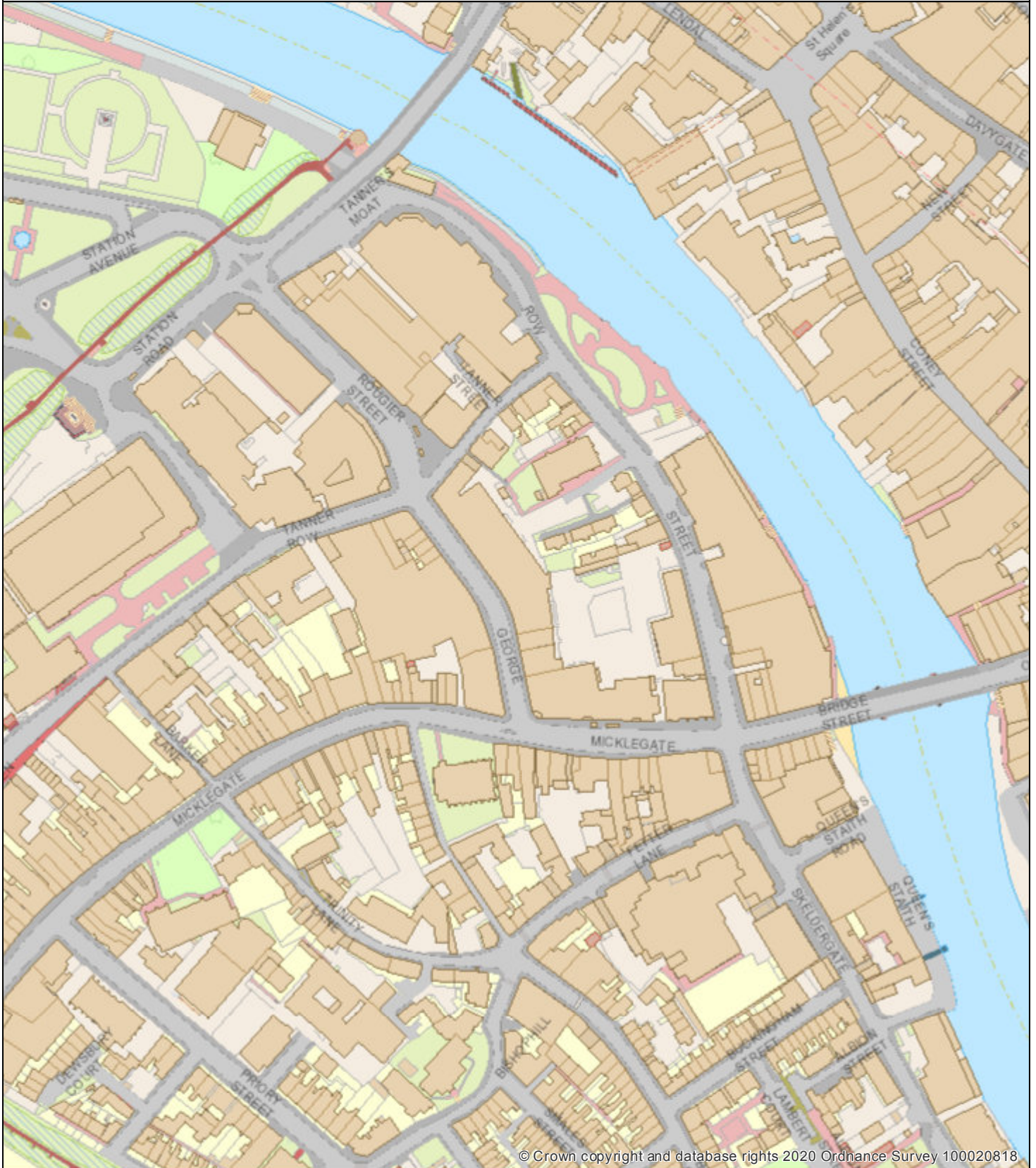
Nigel Woodhead
Licence Enforcement Officer,
City of York Council
t:01904 552520 / 07904 203585
email: nigel.woodhead@york.gov.uk

Please be aware of the new contact details for the Licensing Section (including Taxis):
Telephone: 01904 552422
Email: licensing@york.gov.uk

City of York Council |
Hazel Court EcoDepot, James Street | York YO10 3DS
www.york.gov.uk | [facebook.com/cityofyork](https://www.facebook.com/cityofyork) | [@CityofYork](https://twitter.com/CityofYork)

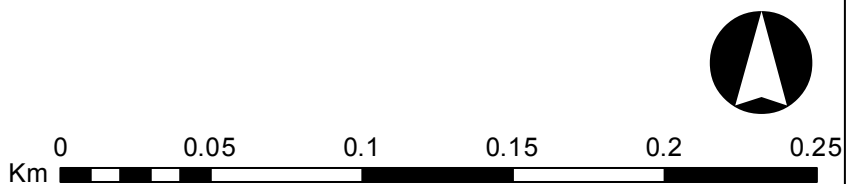
Please be advised that following the latest Government advice regarding the outbreak of Coronavirus (COVID-19), the Licensing Section will be working from home where possible. Emails and calls will still be responded to but it may take a little longer than usual. We apologise in advance for any inconvenience this may cause. It would help us greatly if you could communicate by email wherever possible.

12 George Hudson St



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Author: City of York Council
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**MANDATORY & PROHIBITED CONDITIONS – PREMISES LICENCE
LICENSING ACT 2003**

MANDATORY CONDITIONS WHERE LICENCE AUTHORISES SUPPLY OF ALCOHOL

1. In accordance with section 19 of the Licensing Act 2003, where a premises licence authorises the supply of alcohol, the licence must include the following conditions.
2. The first condition is that no supply of alcohol may be made under the premises licence -
 - (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
3. The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
4. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises –
 - (a) games or other activities which require or encourage, or are designed to require or encourage individuals to –
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either –
- (a) a holographic mark, or
 - (b) an ultraviolet feature.

7. The responsible person must ensure that –
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures –
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25ml or 35ml; and
 - (iii) still wine in a glass: 125ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

MANDATORY CONDITION: ALCOHOL PRICING

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1 –
- (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979(6);
 - (b) “permitted price” is the price found by applying the formula –
$$P = D + (D \times V)$$
where –
 - (i) P is the permitted price,
 - (ii) D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence –
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994(7).
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

MANDATORY CONDITION: DOOR SUPERVISION

1. In accordance with section 21 of the Licensing Act 2003 (as amended by section 25 Violent Crime Reduction Act 2006), where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must -
 - (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
 - (b) be entitled to carry out that activity by virtue of section 4 of that Act.
2. But nothing in subsection (1) requires such a condition to be imposed -
 - (a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or
 - (b) in respect of premises in relation to -
 - (i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence, or
 - (ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).
3. For the purposes of this section -
 - (a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and which is licensable conduct for the purposes of that Act (see section 3(2) of that Act), and
 - (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

MANDATORY CONDITION: EXHIBITION OF FILMS

1. In accordance with section 20 of the Licensing Act 2003, where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.
2. Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.
3. Where -
 - (a) the film classification body is not specified in the licence, or
 - (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question, admission of children must be restricted in accordance with any recommendation made by that licensing authority.
4. In this section - 'children' means persons aged under 18; and 'film classification body' means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

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Legislation and Policy Considerations

1. The following provisions of The Licensing Act 2003 apply to this application: S4 general duties of licensing authorities; s17 application for premises licence; s18 determination of application for premises licence; s23 grant or rejection of application; ss19, 20 and 21 mandatory conditions; The Licensing Act (Mandatory Licensing Conditions) Order 2010; and The Licensing Act 2003 (Mandatory Conditions) Order 2014.
2. The following provisions of The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 apply to this application: Regulation 42, Part 2 (Premises licences) and Part 4 (General) relating to applications, notices and representations and advertisement of applications
3. The following provisions of the Secretary of State's guidance apply to this application: Section 2 The Licensing Objectives; Section 9 Determining applications; Section 10 Conditions attached to premises licences and club certificates; and Section 14 Statements of licensing policy.
4. The following paragraphs of the licensing authority's statement of licensing policy apply to this application: 5.0 Applications for Premises Licences, Club Premises Certificates and Variations; 6.0 Guidelines for Applicants; 7.0 Saturation and Cumulative Impact and 8.0 Licensing Hours.
5. The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
6. The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

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