

Meeting	Licensing/Gambling Hearing
Date	30 September 2024
Present	Councillors Baxter, Kilbane (substitute for Cllr Cuthbertson), and Ravilious
Apologies	Councillor Cuthbertson
Officers in attendance	Helen Sefton – Senior Licensing Officer Jodi Ingram – Legal Advisor

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**24. Chair (10:25am)**

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

**25. Introductions (10:25am)**

Introductions were made.

**26. Declarations of Interest (10:26am)**

Members were invited to declare at this point in the meeting any disclosable pecuniary interest or other registerable interest they might have in respect of business on the agenda if they had not already done so in advance on the Register of Interests. None were declared.

**27. Exclusion of Press and Public (10:26am)**

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.

**28. Minutes (10:26am)**

Resolved: That the approval of the minutes of the meeting held on 5 September 2024 be deferred to the next meeting.

**29. The Determination of Section 52(2) Application by Andrew Dickinson for Review of a Premises Licence in respect of Museum Gardens, Museum Street, York, YO1 7FR (CYC-009433) (10:26am)**

Members considered an application by Andrew Dickinson for a Review of Premises Licence for Museum Gardens, Museum Street, York.

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

- 1) The Prevention of Public Nuisance

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

- 1) The application and supporting documents.
- 2) The Senior Licensing Officer's report and her comments made at the Hearing. She outlined the report noting reasons for the application for the review of the licence and the information contained within the annexes to the report. She explained that the review had been brought to the sub-committee on the basis of the licensing objective of prevention of public nuisance, and that a noise complaint was received by City of York Council (CYC) after an event held by York Museums Trust in July 2024 where it was found that noise restrictions had been exceeded by 2 decibels (dB). It was noted that the licence held by York Museums Trust authorised the sale of alcohol and the provision of regulated entertainment. The Senior Licensing Officer highlighted that there was a representation received from Public Protection, CYC, as a responsible authority, in Annex 3. In response to questions from the Applicant, the Senior Licensing Officer reported that questions on details of noise complaints received since 2005 would be better posed to Public Protection.

- 3) The Applicant's representation at the hearing. Mr. Dickinson stated that York Museums Trust's event in July continued from the early hours of the evenings, and that residents such as himself were not notified of the holding of the event. He put it to the sub-committee that a restriction of 25db was not a reasonable level and was too high as it caused disruption and discomfort for a long period, he then noted that low-frequency sound waves, which could travel further than higher-frequency sound waves, were not accounted for in the data collected by noise measuring devices which only measured the immediate site, he stated that rigorous noise prevention measures should be in place in residential areas where there were children and elderly residents. Mr. Dickinson stated that Manchester City Council had pursued processes to implement lower level noise restrictions if events were to be held within residential areas, and urged that this be considered in York. He submitted that the event was only broadly compliant, and was therefore not wholly compliant with the conditions in place. He then stated that neuro-divergent people perceive noise differently, and that the noise regulations did not take this into account and should be more inclusive, and concluded that regarding the representation received by Councillor Mason seen in Annex 5 of the report, all members of the Sub-Committee should remain impartial.

In response to questions from the sub-committee, Mr. Dickinson stated that:

- He had attempted to complain to Environmental Protection, but they were not available during the timings of the events, and that he could not find contact details for the event organisers at the time.
- Low frequency sound waves were often not picked up by sound measuring devices, especially when further away from the source.
- He believed there was a Noise Council which could provide advice and supporting documents to Licensing Authorities.

- A limit of 65dB was too high of a threshold, and more mitigations should be put in place such as using directional speakers and using more sound limiting technologies.
  - He was not aware that the event would be taking place.
- 4) The representation made by a Responsible Authority. Michael Golightly, Public Protection Officer, CYC, commented on York Museums Trust's current licence and stated that they could hold live music events and that they had a noise management plan in place in relation to this. He confirmed that York Museums Trust was authorised to hold six of these events per year, and that a restriction of 65dB was applicable on three of these a year, and a restriction of 15 dB for the other three days. The Public Protection Officer then provided an explanation of how the background noise of the area's environment was used to determine permitted noise levels, and confirmed that although minor breaches of the licence conditions were found during the course of the event in July 2024 (noise exceeded conditions by 2dB), these were rectified by the third day of the event. He then mentioned that no complaints were received on both the first and third days of the event, and that it was calculated that a home and an open window would reduce the sound travelling through by 15dB, and so the sound experienced in residential properties nearby would be minimal. The Public Protection Officer concluded by confirming that the event was held in accordance with local and national guidance, and suggested to the sub-committee that the current licence conditions were enforceable and adequate.

In response to questions from the Applicant, the Public Protection Officer confirmed that:

- Tests concerning low frequency noise were concluded on the site of the event, but not on nearby areas.

In response to questions from the sub-committee, the Public Protection Officer confirmed that:

- Background noise for the environment was 45dB.
- Noise consultants were on site during the event in July 2024 and worked to resolve issues that arose.
- Controlling the level of noise outside was more complex than inside due to extra external sounds that could not be accounted for.
- The conditions applied to York Museums Trust's licence were similar to those imposed on York Racecourse and similar venues in York.
- Noise limiting devices would not work well outdoors, but sound barriers could be beneficial. Directional speakers and re-positioning of the stage could also ease noise disruption.
- The distance for mail distribution, as seen on page 26 of the Agenda Supplement - Additional Information provided by Premises Licence Holder, could be improved following experience.

5) The representation of Ms. Hazlewood on behalf of the Premises Licence Holder at the hearing. Ms. Hazlewood stated that the event of July 2024 was an inaugural event for York Museums Trust, and that Future Sounds and Electric Star Live, who worked on the event with them, had previous experience of working on historic sites. She noted that people in nearby areas were given ample time to comment on the event beforehand, and that time had been spent investigating background noise levels of the area of which the lowest recorded level was 44dB and the highest 61dB. She noted that there was no disorder during the events, there had been no representation from North Yorkshire Police, and that the event had been well operated. She then introduced Gareth Hance, Electric Star Live.

Mr. Hance stated that where issues had occurred, actions were taken quickly to resolve them, and that community engagement was positive throughout the event. He continued to demonstrate how the noise management plan considered the local context and background levels. He confirmed that any excessive noises during sound

checks were resolved before the start of the event, and only minimal breaches were experienced during the event, of which external, uncontrollable factors could have been an issue.

Ms. Hazlewood continued to indicate that they hadn't received any criticism from Public Protection or any other Responsible Authority, and that there had been little evidence demonstrated showing that noise levels had exceeded background levels (within allowances of 15dB). Ms. Hazlewood stated that the Applicant's residence was outside of the noise modelling used by York Museums Trust to gauge the spread of noise, but that background checks for the area had been checked and it was found that 45dB was the background noise level for the area, and that the event would have been within these limits, within a 15dB allowance. She then demonstrated legal definitions of 'public nuisance' and submitted that a class of persons must have been disrupted for the event to have been a public nuisance. Ms. Hazlewood concluded by stating that the stage that was used for the event was pre-built and installed, and that noise issues could be mitigated by building the stage on-site and positioning the stage at an alternate angle.

In response to questions from the Applicant, Ms. Hazlewood and Mr. Hance confirmed that:

- A scientific assessment was undertaken to determine how far noise would travel from the event, and that in future the leafletting area could be redesigned to incorporate more residents.

In response to questions from the sub-committee, Ms. Hazlewood, and Mr. Hance confirmed that:

- Contact details for the duration of the event were available online on the York Museums Trust website, on the email sent out to residents, and calls were received to York Museum Trust's control room which was co-occupied with North Yorkshire Police during the event.
- When hearing perception is accounted for, 65dBA was perceived as double 45dBA.

- Sound barriers would have some benefit to the premises in areas on ground level, but would be less effective above ground level.
- Westminster road and nearby areas were not covered within the sound plan as it was thought that noise would have dropped to a low enough level at this distance from the event's premises.
- Public Nuisance was defined in law and did not refer to consideration of protected characteristics.
- The wind could affect sound levels by around 10dB in extreme conditions.

The Applicant was then given the opportunity to sum-up. Mr. Dickinson stated that Westminster Road was far away from the city centre, and as such could not be compared to its' noise levels, and commented on the lack of recognition from the premises holder of lower frequency sound waves which could travel further, stating that the scope of sound monitoring was not far enough. He stated that Manchester City Council's policies demonstrated considerations for where an event was held within residential areas and that this had been overlooked in York. Mr. Dickinson concluded by stating that Autism and neurodivergence should be considered in the Licensing Authority's guidance.

The Public Protection Officer was then given the opportunity to sum-up and noted that the event in July 2024 was well planned and monitored and that breaches were resolved, and professionals were on-hand. He noted that not complaints had been received on the third night of the event, and the licence's conditions were achievable and appropriate.

In response to questions from the sub-committee, the Public Protection Officer stated that other events held by the Premises Licence Holder would be affected by amendments to this licence, and that communications could be improved for future events.

On behalf of the Premises Licence Holder, Ms. Hazlewood was given the opportunity to sum-up and stated that York Museums Trust had learnt from the event and that events had been held in the past without any issues. There was no evidence of antisocial behaviour or crime, and that no public nuisance had been caused by the event. She concluded by stating that breaches of licence conditions were minimal and that the event was well-run.

Having regard to the application and the 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 above evidence and submissions received, the Sub-Committee deliberated the different options available to them and agreed to reject the following options:

Option 1: To modify the conditions of the licence (ie 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.

Option 5: To revoke the licence.

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

Option 6: Take no action.

The Sub-Committee resolved to take no action in regard to the Premises Licence in accordance with Option 6.



## Reasons

1. The Sub-Committee considered the representations and the evidence presented at the hearing. The Sub-Committee had regard to the Guidance issued under section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy, more particularly those paragraphs relating to public nuisance and premises licence reviews.
2. The Sub-Committee considered the Applicants representation that the noise measures are insufficient, they are arbitrary values and they do not adequately take into account low level frequencies and the distance the noise travels. They noted that the applicant stated this had a detrimental impact on his household and more particularly it had a detrimental impact on neuro-divergent people.
3. The Sub-Committee considered the evidence provided by the Public Protection Officer relating to the monitoring of the sound levels during the 3 day event. The Sub-Committee noted that there were very minor breaches of the sound levels on the first and second day of the event and no breaches on the third day of the event. The Public Protection Officer confirmed that the very minor breaches were not audible to the human ear and were rectified promptly by the sound engineers. The Public Protection Officer confirmed that the breaches were of such a minor nature that no action would be taken in respect of the breaches. The Public Protection Officer confirmed that other than the very minor breaches the sound levels at the event complied with the conditions of the Premises Licence. He also noted that the conditions on sound levels are below the national guidance levels. The Public Protection Officer affirmed that the current conditions on the premises licence are robust, achievable and adequate to promote the licensing objectives. The Sub-Committee noted that the Public Protection Officer advised that the event was well planned, organised and well monitored. The Sub-Committee had regard to paragraph 9.12 of the S182 guidance which states that responsible authorities

- are the expert in their field and therefore attached great weight to the submissions of the Public Protection Officer.
4. The Sub-Committee considered the Licence Holders representations and the evidence they presented in relation to the sound management. They noted that this was an inaugural event and were satisfied that the sound levels were very well monitored and managed throughout the event and in accordance with the sound management plan. The Sub-Committee noted that the low frequency sound was monitored and was below an actionable level. The Sub-Committee were reassured by the Licence Holders community engagement, their willingness to take learnings from the event and their willingness to consider making further improvements.
  5. The Sub-Committee sympathised with the applicant and the impact that the low-level frequency had on his household. They found that whilst there was noise generated by the event, taking into account the evidence on the sound levels at the event provided by the Licence Holder and the Public Protection Officer and in consideration of the s182 Guidance and the Statement of Licensing Policy, the sound levels did not amount to a public nuisance and that the public nuisance licensing objective had not been undermined. The Sub-Committee considered that the current conditions on the Premises Licence are appropriate and proportionate to promote the licensing objectives and therefore resolved to take no action.
  6. The Sub-Committee encouraged the Licence Holder to consider if any improvements could be made to the event by considering stage direction and communications.
  7. The Sub-Committee also noted that they will recommend that the Licensing and Regulatory Committee consider policy relating to neurodiversity.

Cllr Ravilious, Chair

[The meeting started at 10.25 am and finished at 12.17 pm].