

Meeting	Licensing/Gambling Hearing
Date	19 July 2023
Present	Councillors Kent, Melly and Ravilious

12. Chair

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

13. Introductions

The Chair introduced the Sub-Committee Members, the Legal Adviser and the Solicitor shadowing her, the Democratic Services officer, the Senior Licensing Officer and the Applicants, Ms Winlow and Mr Darbyshire

14. Declarations of Interest

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

15. 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.

16. Minutes

Resolved: That the minutes of the Licensing Hearings held on 12 June 2023 and 22 June 2023 be approved, and signed by the Chair at a future date.

**17. The Determination of a Section 18(3)(a) Application by Sara Winlow and Robert Darbyshire for a Premises Licence
Section 18(3)(a) Application in respect of 75 Balmoral Terrace, York, YO23 1HR (CYC-073025)**

Members considered an application by Sara Winlow and Robert Darbyshire for a premises licence in respect of 75 Balmoral Terrace, York YO23 1HR.

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 Crime and Disorder
2. The Prevention of Public Nuisance

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

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

The Senior Licensing Officer outlined the report and the annexes, confirming that the premises were not in the Cumulative Impact Area and that the Applicants had carried out the consultation process correctly. She noted that there were no representations from Responsible Authorities and that amendments and additional conditions had been agreed with North Yorkshire Police, as set out in Annex 3. She also drew attention to the representation, at Annex 5. Finally, she advised the sub-committee of the options open to them in determining the application.

In response to questions from the Sub-Committee, the Senior Licensing Officer confirmed that:

- sale of alcohol off the premises meant the sale of alcohol for consumption off the premises;
- the external yard was not included in the licence application;
- the conditions agreed with the police included a condition that any off sales must be in sealed containers.

4. The representations made by the Applicants.

Ms Winlow expressed her thanks to everyone who had shown their support for the application, including the local community, in the context of recent difficulties in her personal life and in the business environment which had delayed the opening of the café. She stated that the consultation process had been carried out fully and completely. The Applicants had engaged with the local community and spoken to residents and businesses to reassure them of their intentions. The premises would operate primarily as a florist in the daytime and had been noted by the police licensing officer as being a very low risk. Local residents were excited about this unique addition to the area.

Ms Winlow went on to say that, although the application was for the supply of alcohol between 12:00 and 22:00 hrs, there was no intention to be open until late every day. The purpose of the application was to vary and extend their offering, and they expected actual sales to be very low. The aim was to allow people to meet for a coffee and / or food and to offer a comfortable and safe space with a duty of care to customers and neighbours. The premises would also provide a resting opportunity, helping to make York more 'walkable', and would promote the many other small businesses in the area. The sale of alcohol would support the floristry and workshop side of the business and would be based on a sustainable model, with locally sourced drinks from Brew York, York Gin and others. It was now normal for cafés to offer alcoholic drinks in the continental manner, in modest quantities that supported moderate drinking. The café could only seat 8 and there would be no outdoor seating, so people were unlikely to gather outside. They had assured neighbours that daytime noise would be kept to a minimum, and had

agreed with the police a condition to keep all doors and windows shut after 9pm daily.

With regard to the representation, Ms Winlow stated that this had been made by someone who had chosen to purchase a property next to a social club. The application would not affect the Representor's children. The Applicants did not want a scary environment for their own young child. The proposed opening hours were intended to provide for future endeavours in the form of small private functions, similar to the provision at Hallow Mallow. The operation was not a bar, and in their letter to the Representor the Applicants had objected to it being called as such. The application for off sales was to support the sale of gifts and flowers and sales would be controlled and monitored for safety. The Applicants had gone to great lengths to ensure that the premises were covered by CCTV, and they would operate a Challenge 25 policy. They had the full support of neighbours with young children. The Representor's main concern was the idea that the license would be sold on with the business, but the police had said that [a new owner] would need to apply for any change. The Applicants had addressed all the Representor's concerns and just wanted the chance of a feasible future for the business.

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

- the total number of covers in the café was 8;
- the bar area was for people to place orders, which would then be brought to the tables;
- there would also be a large table for floristry activities;
- there would be background music only, as the idea was for people to socialise and make connections;
- the yard area would be used for storage, recycling and composting only.

The Applicants were given the opportunity to sum up. Ms Winlow said she had nothing further to add. Mr Darbyshire stated that he had worked for a long time in bars and restaurants and had a history of providing a duty of care, safe operating and nice environments.

A point of clarification was sought by the Legal Adviser to the Sub-Committee regarding the consequences of any sale of the business. The Senior Licensing Officer confirmed that:

- unless the licence was surrendered it would be transferred with the same conditions to the purchaser, with no need to make a new application;
- a separate application would be required to appoint the new Designated Premises Supervisor (DPS), who would hold a personal licence; this would involve consultation with the police on the suitability of the proposed DPS.

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

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

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

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

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

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

Resolved: That Option 2 be approved and the licence be granted for the following activities and timings with

modified / additional conditions imposed by the Sub-Committee as set out below:

Activity	Timings
Supply of alcohol - on and off the premises	12 noon until 22:30 every day
Opening hours	08:30 until 22:30

The conditions agreed between the Applicants and North Yorkshire Police numbered 1 to 9 inclusive set out in Annex 3 of the Agenda shall be added to the licence.

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

- Reasons:
- (i) The Sub-Committee must promote the licensing objectives and must have regard to the Guidance issued under section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy.
 - (ii) The Sub-Committee noted that the premises are not located within an area where a cumulative impact policy applies.
 - (iii) The Sub-Committee noted that this was a new licence application and was very conscious of the premises' location in a residential area in close proximity to local residences. The Sub-Committee carefully considered the concerns raised by the local resident who had made a representations in writing relating to the impact the premises would have on the licensing objectives, in particular concerns about noise disturbance from the premises and the impact of the premises on children and on race days.
 - (iv) Sub-Committee noted that the Police, who are the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, had agreed with the applicant a number of additional conditions to be

added to the grant of a licence. The Sub-Committee considered the fact that the Police did not object to the application (subject to the imposition of agreed conditions) carried great weight.

(v) It noted that there were no representations from any other Responsible Authority.

(vi) Whilst the Sub-Committee acknowledged the concerns expressed by the local resident, it also considered the nature of the proposed activities, noting that the establishment was intended to primarily operate as a flower shop with a small scale café offering and not as a vertical drinking establishment. The Sub-Committee was reassured by the evidence given by the Applicants, their responsible attitude towards the promotion of the licensing objectives and that they had agreed with the Police to the addition of a number of conditions to be added to the grant of a licence.

(vii) From the submissions made by the Applicants, the Sub-Committee had a high level of confidence that the premises would be operated responsibly. It did not find any evidence to justify a refusal of the application and given the nature of the proposed operation it was felt that further conditions would not be necessary in order to promote the licensing objectives.

(viii) Accordingly, in all of the circumstances of the case it was felt that the decision of the Sub-Committee to grant the licence subject to the additional conditions agreed with the Police was justified as being appropriate and proportionate for the promotion of the licensing objectives.

Cllr R Melly, Chair

[The meeting started at 10.03 am and finished at 10.40 am].

This page is intentionally left blank