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Meeting	Licensing/Gambling Hearing
Date	8 August 2024
Present	Councillors Baxter, Knight, and Nicholls
Officers in attendance	Lesley Cooke – Licencing Manager Sandra Branigan – Senior Lawyer

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**13. Chair (10:15am)**

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

**14. Introductions (10:15am)**

Introductions were made.

**15. Declarations of Interest (10:16am)**

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.

**16. Exclusion of Press and Public (10:16am)**

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.

**17. Minutes (10:16am)**

Resolved: That the minutes from the Licensing Hearings held on 30 May 2024 and 4 June 2024 be signed and approved as an accurate record.

**18. The Determination of an Application by Café Frango (Haxby Road) Ltd for Determination of Application for Premises Licence [Section 18(3) (a)] in respect of Café Frango, The Pavilion at the Cocoa Works, Haxby Road, York, YO31 8TA. (CYC-078059) (10:16am)**

Members considered an application by Edward Hustler for a Premises Licence [Section 18(3)(a)] in respect of Café Frango, the Pavilion at the Cocoa Works, Haxby Road, York, YO31 8TA.

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

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

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

1. The application form.
2. The papers before it including the written representations received from local residents and the additional information submitted by the applicant.
3. The Licensing Manager's report and her comments at the Hearing.

The Licensing Manager outlined the report and the annexes, noting the opening and operating hours of the event. She explained that the plan of the premises was detailed in annex 1, and provided a larger printout of this to those in attendance at the hearing.

She explained that the premises was not in the Cumulative Impact Area and that the Applicant had carried out the consultation process correctly. She noted that there were no representations from Responsible Authorities and that amendments and additional conditions had been agreed with the police, as set out in Annex 3.

She drew attention to the representations made by one other person at Annex 5, and the additional information submitted by them within the agenda. She then advised the sub-committee of the options open to them in determining the application.

#### 4. The Applicant's representation at the hearing.

Edward Hustler (the Applicant) explained that he had also ran a restaurant in York from August 2023 which was food-led. He stated that he had created employment for around 16 people at this premises on both part time and full time contracts. This premises had a licence to sell alcohol up-to 01:00 hours, but this was not used, and the premises would usually be closed by around 22:30 – the hours of which were applied were in order to provide flexibility in the premises' capabilities and the Café did not expect to be open at 23:00.

He stated that he had agreed conditions with North Yorkshire Police.

He also mentioned that outdoor seating including around 12 seats would be available to customers until nighttime when they would be brought indoors. He also confirmed that the ancillary area on the plans would be available for primary use by residents. He then stated that as they operated without parking at their other premises, parking was not relative to their aims for this premises.

In response to questions from members, Edward confirmed that:

- As the building was new, it tended to be able to self-regulate its heating and so keeping the doors closed at night in the summer would not be an issue for overheating.
- This premises would be more informal compared to their restaurant in the city.
- They had no intention to become a late-night bar, and any event they held in the ancillary building would be held to benefit residents.
- In regard to paragraph 14(d) of the Licensing Manager's report, children would need to be in the care of an adult rather than their parent.

The Senior Lawyer sought clarification of the agreements made with North Yorkshire Police, as detailed in Annex 3, and the Applicant confirmed that:

- Condition 2 should have read “All sales of alcohol between 08:00 and 23:00 hours daily will be ancillary to food”.
- In relation to Condition 9, “The outdoor area as detailed on the premises plan” was already included within the premises’ boundaries on page 58 of the agenda.

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

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

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

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

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

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

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

### **Activities and Timings**

Supply of Alcohol – on and off the premises 08:00 to 23:00 every day.

Opening Times 08:00 to 23:00 every day.

### **Additional Conditions**

- 1) The premises shall operate predominantly as a café /food led premises and not as a vertical drinking establishment.
- 2) All sales of alcohol between 08:00 and 23:00 hours daily for consumption on the premises will be ancillary to food.
- 3) There shall be a minimum of 28 seats provided at all times for customer use inside the premises when the premises is trading.
- 4) 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.
  - 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.

- 5) Documented staff training will be given regarding staff's obligation under the Licensing Act in respect of the: -
- Operation of the CCTV system (including the downloading of evidence – specific staff only);
  - 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 records shall be kept for a minimum of one year and will be made available immediately upon request from any Responsible Authority.

- 6) An incident log will be kept at the premises and made available on request to an authorised officer or the police which will record the following:
- All crimes reported to the venue;
  - Any complaints received regarding crime and disorder;
  - Any incidents of disorder;
  - Any faults in the CCTV system;
  - Any refusal of sale of alcohol;
  - Any visit by a relevant authority of emergency service;

With such records being kept for a minimum of one year. (For the avoidance of doubt, the one year period relates to each respective entry in the logbook and runs from the date of that particular entry);

- 7) On Sales of alcohol shall cease 30 minutes before close of business on any given day to allow for 'drinking up' time.

- 8) The licence holder will operate a Challenge 25 Age Verification Policy at the premises.
- 9) 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.
- 10) No open drinks containers shall be taken out of the licensed premises or (licensed area) onto the pavement or highway, with the exception of the external licensed area of the premises.
- 11) All off sales of alcohol shall be in sealed containers.
- 12) No external area at the premises shall be used after 21:00 hours.
- 13) All tables and chairs in the outside licensed area shall be stacked immediately after 21:00hrs and stored away securely at the premises when closed.
- 14) All Doors and windows shall be kept shut after 21:00 hours daily and during the playing of amplified music and other entertainment, except for immediate entry to and egress from the premises.
- 15) Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly.
- 16) The licence holder shall ensure that children are in the sight and the care of an accompanying adult.

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

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

## **Reasons for the decision**

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

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.

The Sub-Committee noted that the premises were not located within an area where a cumulative impact policy applies.

The Sub-Committee noted that this was a new licence application and was very conscious of the premises' location in proximity to local residences.

The Sub-Committee carefully considered the concerns raised by the local resident who had made representations in writing relating to the potential for public nuisance in the surrounding area with particular regard to concerns about noise disturbance emanating from the premises and off sales.

The Sub-Committee noted that the Police, who were 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.

It also noted that there were no representations from any other Responsible Authority.

Whilst the Sub-Committee acknowledged the concerns expressed by the nearby resident, it also considered the nature of the proposed operation, noting that the premises was intended to primarily operate as a food-led establishment with a minimum number of covers. It noted that the Applicant had agreed that all sales of alcohol for consumption on the premises would be ancillary to food. It also noted that the Applicant had



also agreed to a proposed condition to cease the use of the outside area from 9pm and to the closure of doors and windows to address potential public nuisance issues. The Sub-Committee was satisfied that there was no reason to believe that the proposed off sales would undermine any of the licensing objectives in this location. The Sub-Committee noted that the parking issues raised by the local resident are not relevant to its decision.

Overall, the Sub-Committee considered that it had received sufficient assurances from the Applicant in order to be satisfied that the premises would be operated responsibly to avoid noise nuisance and disturbance to local residents. It did not find any evidence to justify a refusal of the application in order to promote the licensing objectives. The Sub-committee felt that, based on the evidence before it, the additional conditions the Applicant had agreed with the Police, subject to the minor amendments made by the Sub-Committee, would be adequate to prevent public nuisance and crime and disorder in this location.

Accordingly, in all of the circumstances of the case the Sub-Committee was satisfied that with the additional conditions it imposed on the licence, the licence would be sufficiently robust to allay the fears of local resident and that it could operate without undermining the licensing objectives. It considered that the conditions were justified as being appropriate and proportionate for the promotion of the licensing objectives.

It was also noted that the Licensing Act 2003 has a key protection for communities that allows at any stage, following the grant of a premises licence, a Responsible Authority or 'other persons', such as a local resident, to ask the Licensing Authority to review the licence if they consider that one or more of the licensing objectives are being undermined

Cllr Knight, Chair

[The meeting started at 10.15am and finished at 11.17am].