

Meeting	Licensing/Gambling Hearing
Date	19 May 2016
Present	Councillors Douglas, Mercer and Richardson

36. Chair

Resolved: That Councillor Douglas be elected to Chair the meeting.

37. Introductions**38. Declarations of Interest**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests. No further interests were declared.

39. Minutes

Resolved: That the minutes of Licensing Hearings held on 14 September 2015, 24 September 2015, 12 November 2015 and 25 January 2016 be approved as correct records and signed by the Chair.

40. The Determination of an Application by The Botanist for a Premises Licence Section 18(3)(a) in respect of The Botanist, 15 Stonegate, York, YO1 8ZW (CYC-055340)

Members considered an application by the New World Trading Company (UK) Ltd for a Premises Licence Section 18(3)(a) in respect of 15-19 Stonegate, York.

In coming to their decision, Members took into consideration all of the evidence and submissions that were presented to them

and determined their relevance to the issues raised and the licensing objectives. The following was taken into account:

1. The application form and supporting documents submitted prior to the hearing.
2. The following late evidence, circulated prior to and at the hearing:
 - Design of the bar at The Botanist – City of York Council Planning Application validated on 11 May 2016 received from North Yorkshire Police
 - Statement from the Licensing Officer in response to the applicant's Appendix B 'Attendance Note' submitted on 17 May 2016.
 - Details of Pavement Cafe Licences on Stonegate and Little Stonegate, York and the York Traffic Management Order received from North Yorkshire Police
 - Statement from Mr Chris Hill, Managing Director of The New World Trading Company (NWTC) and accompanying appendices.
 - Brochure from New World Trading Company received from Applicant's Solicitor
3. The Licensing Manager's and applicant's confirmation of the withdrawal of the element of the application relating to a licensed outside area, and therefore agreement to removal of Conditions 14 to 21 of the Operating Schedule relating to the outside area, situated to the front of the venue, in Stonegate. The agreement of the Police that the evidence relating to pavement cafes was no longer relevant and could be disregarded.
4. The Licensing Manager's report and her comments made at the Hearing. She outlined the application and advised that the premises were located within the Cumulative Impact Zone (CIZ) and that consultation had been carried out correctly.
5. No representations had been received from the Environmental Protection Unit, Ward Councillors or local residents.
6. The Solicitors representations made at the hearing on behalf of the applicant. He advised that he was aware that

the premises fell within the CIZ. With this in mind he offered additional conditions relating to the numbers of customers in Zone A being limited to 87 of which no more than 70 would be standing. That no changes would be made to the furniture layout, without prior agreement and in Zones B & C that the service of alcohol to customers would be by waiter/waitress service, customers consuming alcohol would be seated and no vertical drinking would be permitted. He also put forward a further, style of operating condition for the duration of the licence relating to the Botanist brand and a condition that food would be available between midday and 11pm during opening hours. He confirmed that the venue would be 100% food led and that the majority of the premises would be laid out with dining tables and the bar area to the front with sofas, table and stools. That there had been no resident or Ward Councillor representations to the application and that you had demonstrated that the premises would not add a negative impact to the CIZ or the licensing objectives.

7. The representations made by Chris Hill, Managing Director of New World Trading Company during which he confirmed that the Company had 14 Botanist venues around the country. The first opening in 2012 all based on the Botanist model which had won awards and provided customers with a unique combination of food, drink and atmosphere. If granted consent you would invest £1.25million on the premises and create around 60 to 70 new jobs. With over 900 employees nationally the restaurants catered for a modern taste and appealed to discerning premium customers, attracting mature groups (over 25) and families. Live music would be provided by a pianist situated in the front bar area which it was felt would assist in encouraging a longer dwell time by customers. Confirmation that a further investment of £100k would be made in staff training for the venue and that dining in their restaurants accounted for over two third of total sales. The venue would not be a 'drink led establishment' and would improve the offer in the CIZ. Flexibility was required to be able to provide the customers with the same style of offer available in other Botanist premises and the condition proposed by the Police at page 75 of the agenda, would frustrate this.

8. The representations made by North Yorkshire Police in writing and at the hearing. The Police's representative referred to the addition of the Swinegate area to the CIZ in 2014 as an area under stress. They pointed out that there were over 40 licensed premises in the vicinity, close to a hotspot where there had been an increase in violent and public order incidents. Whilst the Botanist was not a bad operator consideration had to be given to the addition of further licensed premise in the area and its affect on the CIZ, crime, disorder and anti-social behaviour. It was noted that none of the proposed conditions stated that food must be sold at the venue and concern was raised at Condition 13 which referred to the hire of the venue for private events which it was felt could result in further vertical drinking. Their representative reiterated that the premises needed to operate as a restaurant rather than a circuit bar. They reported their contact with the Leeds Licensing Officer regarding the Trinity Centre Botanist and to confirmation that the premises traded as a bar rather than a restaurant. However, in view of this and in order to allow the applicant a level of flexibility, if Condition 13 in the Operating Schedule was amended to read 'The premises shall operate as a restaurant, Zones A, B and C (Premises Plan) shall not be used exclusively or primarily for the retail sale of alcohol at any time' and Conditions 14 to 21, relating to the outside area, were removed they would withdraw their formal representations.
9. The representations made in writing and at the hearing by Karen Waugh, owner of Kennedy's Bar at 1 Little Stonegate, adjacent to the site. She confirmed that whilst not making a trade objection motivated by fear of competition she had concerns that saturation point had been reached and that further licensed premises in the area would tip the balance. She referred to the capacity of the premises which would attract additional drinkers to the area causing public safety issues and changing the street from a shopping and historic tourist area to a drinking strip. She considered that other Botanist premises were bar led, similar to Kennedy's rather than a restaurant. In view of the location and if the Botanist was not viable if the sale of alcohol was required to be ancillary to food, she requested refusal of the application.

Members were presented with the following options:

Option 1: Grant the licence in the terms applied for and including any applicable mandatory conditions of the Licensing Act 2003 as amended. This option was **rejected**.

Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee including any applicable mandatory conditions of the Licensing Act 2003 as amended. This option was **approved**.

Option 3: Grant the licence to which the application relates and modify/add conditions accordingly to include any applicable mandatory conditions of the Licensing Act 2003 as amended. This option was **rejected**.

Option 4: Reject the application. This option was **rejected**.

In coming to their decision the Sub-Committee chose Option 2 and granted the application with the following conditions and modified/additional conditions:

1. A colour CCTV system shall be maintained and operated at the premises. The CCTV coverage will include the external smoking area. The CCTV shall be operational at all times licensable activities are taking place at the premises.
2. Recorded CCTV images will be maintained and stored for a period of twenty eight days and shall be produced to the Police or Licensing Authority upon request. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
3. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard DVD player.
4. Any person left in charge of the premises must be trained in the use of any such CCTV equipment and be able to produce CCTV images to an officer from a responsible authority upon request.

5. Plans indicating the position of CCTV cameras to be submitted and agreed with the Police prior to the premises opening.
6. Two door supervisors shall be provided at each door from 9pm to the close of business every Friday and Saturday evening and the evening before a Bank Holiday and on Bank Holidays. On days when race meetings are held at York Racecourse (save for the family meeting held in September and the first meeting in May) two door supervisors shall be provided on each door from 4pm to the close of business.
7. Where door supervisors are on duty they shall sign in and out of the premises incident book, providing full details of their name and SIA number.
8. Open containers of alcohol shall not be removed from the premises.
9. A documented staff training programme shall be provided to all members of staff at the premises in respect of the:-
 - retail sale of alcohol;
 - age verification policy;
 - conditions attached to the Premises Licence'
 - permitted licensable activities;
 - the licensing objectives; and
 - opening times for the venue.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 log book and runs from the date of that particular entry.
10. A premises incident book/ refusals register shall be kept. Such registers will record any incidents of staff refusals to under age or drunk people as well as incidents of any alcohol anti-social behaviour and ejections from the premises. Such registers shall be kept for a minimum of one year. For the avoidance of doubt, the one year period relates to each respective entry in a Register and runs from the date of that particular entry in the Register.

11. The premises shall possess and use the Apex Radio scheme. The radio shall be turned on and used by staff at the premises at all times the premises is open for licensable activities.
12. There shall be a minimum of 100 chairs/seats for customer use inside the premises at all times the venue is open to reduce the need for vertical drinking.
13. There shall be a maximum of 200 customers within the premises at any one time.
14. There shall be no decrease or material departure to the furniture layout as depicted on the plans (Zones A, B and C), unless such change has the prior approval of the Licensing Authority. The piano shall not be sited near the entrance, and shall be re-sited with the approval of the Licensing Authority.
15. There shall be no more than 72 customers within Zone A at any one time of which no more than 39 customers will be standing.
16. In Zones B and C:
 - a. The service of alcohol to customers shall be by waiter and waitress only:
 - b. Customers consuming alcohol must be seated;
 - c. No vertical drinking will be permitted.
17. Food shall be available between midday and 11pm during normal opening hours.
18. Noise from amplified music or voices shall not be such as to cause a noise nuisance to the occupants of nearby premises.
19. External doors and windows shall be kept shut after 23:00 except for entry to and egress from the premises and in cases of emergency.
20. External doors and windows should be kept closed during any regulated entertainment.

21. The premises licence holder shall ensure that people entering or leaving the premises do so in an orderly manner.
22. The exterior of the building shall be cleared of litter at regular intervals.
23. The emptying of bins into skips and refuse collections will not take place between 23:00hrs and 07:00hrs.
24. A first aid box will be available at the premises at all times.
25. Regular safety checks will be carried out by staff.
26. Management shall liaise with the fire authority as necessary to ensure compliance with all necessary fire regulations.
27. A "Challenge 21" Policy shall be implemented in full and appropriate identification sought from any person who appears to be under the age of 21. The only acceptable forms of ID are photographic driving licences, passports, HM forces cards, or a form of identification with the "PASS" hologram.
28. Staff Training will include the Challenge 21 Policy and its operation. In particular, staff shall be trained to take such action as is necessary to prevent the sale of alcohol to persons over the age of 18 where those customers are engaged in the distribution of alcohol to persons under the age of 18. The training must be given to a new member of staff before they commence employment and all staff must receive refresher training every 6 months.
29. Notices advising what forms of ID are acceptable must be displayed.
30. Notices must be displayed in prominent positions indicating that the Challenge 21 policy is in force.
31. No person under the age of 18 shall be permitted to remain on the premises after 23:00hrs, unless accompanied by an adult.

32. For the duration of the licence, the premises will only operate as and in the style of a “Botanist” (as described in the New World Trading Company Brochure produced at the Licensing Hearing with the evidence of Chris Hill) (unless any alternative arrangement is first approved by the Licensing Authority in consultation with North Yorkshire Police.)

Reasons for the Decision:

The Sub-Committee carefully considered the application and the representations submitted in writing and orally at the hearing by those making representations and the Applicant. In reaching their decision, the Sub-Committee took into consideration the provisions of the Licensing Act 2003, in particular the statutory Licensing Objectives, together with 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.

Representations were made by Mrs Waugh, owner and DPS of Kennedys, 1 Little Stonegate. Kennedys had been granted a licence under the 1968 Licensing Act many years ago, prior to the introduction of the Cumulative Impact Zone at Stonegate. Mrs Waugh gave evidence that Kennedys operated in a way that did not negatively contribute to issues of crime and disorder or public nuisance, but rather had a positive impact on the area as a well run establishment. Mrs Waugh was concerned that the increase in footfall to a new bar premises within an area already saturated could give rise to problems of public nuisance, crime and disorder. Mrs Waugh emphasised that she did not see Botanist as a commercial threat, but as a motivator. She was concerned that York was losing its historic interest and becoming a drinking destination.

When considering the evidence of Mrs Waugh, Members had regard to the Licensing Vision in the York Licensing Policy, and the fact that well run premises operated by a quality brand, could have a positive impact on the area, as evidenced by Kennedys. This aligns with the objectives of offering ..”high quality and well managed entertainment venues within a safe, orderly and attractive environment”. Members agreed with Mrs Waugh’s evidence to the extent that the premises would be within a drinking “circuit”, footfall to the area would increase, and the applicants were proposing an area in Zone A that if

unrestricted, could accommodate a high level of vertical drinking which could encourage “circuit” drinking and give rise to issues of alcohol related crime and disorder and public nuisance.

North Yorkshire Police and the Licensing Authority made representations as they were not satisfied that the conditions proposed by the Applicant in the operating schedule were sufficient to control the level of vertical drinking, and shared the concerns of Mrs Waugh, that operation as an unrestricted drink-led premises could lead to problems of crime and disorder, and public nuisance, based upon the statistical evidence presented to support the CIZ policy. Both the Police and Licensing Authority stated that they would withdraw their objection if the Licensing Authority imposed the condition proposed by the Police at Page 75 of the agenda , being content that the premises could be a restaurant without undermining the licensing objectives, and acknowledging that flexibility required by the applicant, meant that a condition requiring alcohol to be ancillary to food would not be reasonable . The Members also noted that the Police also gave oral evidence at the hearing that they would be satisfied with a limit of 39 vertical drinkers within Zone A, others being seated. 33 seats are shown on the plan in Zone A.

When considering the Police and Licensing Authority evidence, Members had regard to the Licensing Vision in the York Licensing Policy, and the objectives of improving quality of life for local residents through a reduction in alcohol related crime and disorder, disturbance and anti-social behaviour, and encouraging responsible retailing and consumption of alcohol and preventing related health issues.

The Members attached significant weight to the Police representations in accordance with the Licensing Act Guidance Para 2.1. Members shared the concerns of the Police to the extent that Zone A within the premises could encourage a high volume of vertical drinking, being on the ground floor and so highly visible from the street. Also of concern to the Members was the situation of the premises within a “circuit” of drink-led establishments in the Cumulative Impact Zone. Members accepted the evidence of the Police to the extent that a wholly unrestricted drink-led premises capable of holding 200 people (shown on the fire certificate) could give rise to alcohol related crime and disorder and public nuisance by encouraging vertical drinking on a “circuit”.

The Applicant gave evidence that the specific high quality brand concept of the Botanist was not viable if the licence did not permit a bar element permitting drink only to be consumed within Zone A, and therefore could not agree to the condition proposed by the Police and Licensing Authority to overcome the Authorities' concerns. The Applicant considered that the customer profile, evidenced in the NWTC Customer data, of more affluent over 30 year olds were unlikely to cause issues of anti-social behaviour, and the Botanist brand concept was such that customers would be seated for long periods of time listening to music, rather than visiting to consume lots of cheap drinks.

Members accepted the evidence of Chris Hill that there had been no issues relating to public nuisance or crime and disorder in any of the other Botanist venues, and noted that none of the other Representors had evidence that contradicted this. Members also accepted that the Botanist brand attracted a more mature customer, having regard to the evidence relating to customer profiles, and that it was a well managed quality venue, as evidenced by the awards gained at other Botanist venues.

When considering the applicant's evidence, Members had regard to the Vision Statement in the York Licensing Policy, and the objectives of the Council to give businesses freedom and flexibility to meet their customer's expectations, and improving quality of life by bringing greater choice to residents, consumers, tourists and businesses about where to spend leisure time.

In considering the application, Members also took into account that there were no representations from any other responsible authorities or local residents. (The representor being a business owner), and that the premises had planning permission for A3/A4 use (acknowledging that the separate statutory planning process did not specifically address the licensing objectives which is a matter for the Licensing Authority).

The Members considered whether conditions could be imposed to overcome their concerns about the potential for the unrestricted volume of vertical drinking that could take place in Zone A to give rise to undermining the licensing objectives of preventing crime and disorder and public nuisance. Members considered that the volume of vertical drinking capable of taking

place in Zone A could be restricted by condition, so that the number of patrons in Zone A be restricted to 72, and as there are 33 seats shown in the plans, no more than 39 must be standing. In Zones B and C drinkers must be seated, so there shall be no vertical drinking, and there must be waitress service. Members considered this to significantly reduces the potential for a high capacity of vertical drinkers congregating in Zone A, and would have the effect of reducing the propensity for “circuit” type drinking, encouraging a longer “dwell time” with the majority of customers being seated, whilst still providing the applicant with the flexibility required to operate the Botanist style of offering to match their other venues across the country. In addition, Members required the furniture layout to be fixed, and did not agree to the furniture layout being rearranged to accommodate private functions – again, to discourage vertical drinking. Conditions that there must be a minimum of 100 seats in the venue, and overall capacity limited to 200 customers at any one time were also imposed to restrict vertical drinking.

Members also considered the quality and operating style of the Botanist, and the demographic of customer it attracts, important factors, and considered that a condition could be imposed (as suggested by the Applicant), to restrict the operating style to that outlined in the Applicant’s evidence, unless otherwise agreed by the Licensing Authority in consultation with the Police.

Members considered that the condition proposed by the Police and Licensing Authority would not be workable having regard to the Applicant’s operating style, and were also concerned that the reference to not selling alcohol “exclusively or primarily” within Zone A lacked clarity.

Members had regard to these representations and were mindful of the Special Policy and that there is a presumption against the grant of such a licence unless the applicant can rebut the presumption that the granting of such a licence would add to the cumulative impact and thereby undermine the licensing objectives.

The Sub-Committee were satisfied that the evidence put forward at the Hearing by the applicant was sufficient to rebut the presumption against granting a licence having regard to the premium bar concept ; the expensive pricing strategy for drinks; the likelihood that the venue would attract discerning customers

who would appreciate drinks with food, not large groups such as “stag and hen parties” looking for cheap drink promotions; the character of the style of venue in the historic building and the provision of live music at a piano; the number of other examples of Botanist premises across the country that operated since 2012 without concern, at least 4 of which are located within a CIZ, including Glasgow, Newcastle, and Leeds; the provision of 2 door staff at each entrance to the premises and the imposition of the additional conditions including restricting the number of vertical drinkers in Zone A to 39, the requirement for waitress service to tables in the other Zones, and a condition restricting the style of operation, as well as the other matters set out in the operating schedule.

The Sub-Committee considered that it had received sufficient assurances and evidence from the applicant in order to have a high level of confidence that the premises would be operated responsibly and that it could, with the imposition of these conditions, operate within the Cumulative Impact Zone without undermining the licensing objectives of prevention of crime and disorder and public nuisance. They concluded that all four licensing objectives would be met in granting the application with the above mandatory and additional conditions.

The Sub-Committee therefore agreed to grant the licence with the additional conditions referred to above which were appropriate and proportionate to promote the licensing objectives.

Cllr H Douglas, Chair

[The meeting started at 10.00 am and finished at 12.20 pm].