
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].