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| Meeting | Licensing/Gambling Hearing |
| Date | 9 November 2020 |
| Present | Councillors Galvin, Melly and Norman |

22. Chair

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

23. Introductions

The Chair introduced those participating in the hearing: the Sub-Committee Members, the Applicant, the Applicant's interpreter, the Police Representor and her two witnesses, the Licensing Authority Representor, and the Senior Licensing Officer presenting the report. Also present were the Legal Adviser, the Democracy Officer and the Litigation Solicitor who was shadowing the Legal Adviser.

24. Declarations of Interest

Members were invited to declare at this point in the hearing any personal interests not included on the Register of Interests, and any prejudicial or disclosable pecuniary interests, which they might have in the business on the agenda. No interests were declared.

25. Exclusion of Press and Public

Resolved: That the Press and Public be excluded from the hearing:

- a) During any discussion relating to Annex 5 (c) to the report at Agenda Item 6 (The Determination of a Section 18(3)(a) Application for a Premises Licence), on the grounds that it contains information relating to an individual, which is classed as exempt under Schedule 12A to Section 100A of the Local Government Act 1972 (as revised by The Local Government (Access to Information) (Variation) Order 2006, and

- b) 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) Regulation 2005.

26. Minutes

Resolved: That the minutes of the Licensing Hearings held on 6 August 2020 and 17 August 2020 be approved as a correct record, to be signed by the Chair at a later date.

27. The Determination of a Section 18(3)(a) Application for a Premises Licence by Mr Wenlin Chen in respect of Haizhonglao Hot Pot & BBQ, 12 George Hudson Street, York, YO1 6LP (CYC-067017)

Members considered an application by Wenlin Chen for a premises licence in respect of Haizhonglao Hot Pot & BBQ, 12 George Hudson Street, York YO1 6LP.

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

- The Prevention of Crime and Disorder
- 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.
3. The Licensing Manager's report and her comments at the Hearing. The Licensing Manager outlined the report and the annexes, highlighting the location of the premises within the Red Zone of the cumulative impact assessment area (CIA) approved by Council on 21 March 2020. She

noted that the Applicant had complied with all statutory requirements in terms of consultation and that there were no outstanding Planning issues. She drew attention to the representations received from North Yorkshire Police, including the additional information published in the Agenda Supplement, and from the Licensing Authority. Finally, she advised the Sub Committee of the options open to them in determining the application.

4. The representations made at the hearing by the Applicant, through his interpreter, Alan Man. He stated that, following the downturn in the catering industry that had resulted from the Covid-19 pandemic, he had conceived the idea of a contactless restaurant system. As a young entrepreneur, he wanted to open the country's first automated restaurant in York. He had put a lot of time and investment into this idea and saw no reason why he could not run it properly, nor why his application should not be approved.

In response to questions put to him by the Police Representor and members of the Sub-Committee, the Applicant stated that:

- He had completed the application form himself, but with assistance because he had problems with English;
 - He had gained experience of operating food-led establishments by working at the Regency restaurant on Barbican Road, York;
 - He intended to serve alcohol at the premises only with food, and would be happy to amend his application accordingly in order for this to be enforceable.
5. The representations made by PS Jackie Booth on behalf of North Yorkshire Police, in writing and at the hearing. PS Booth explained that the police objected to the application on the grounds that the premises were located within the city's CIA Red Zone, and that this, together with concerns about the Applicant's potential appointment as both the licence holder and the Designated Premises Supervisor (DPS), meant that granting the application would undermine the Crime Prevention Objective. She stated that the Applicant had not addressed these matters in his application, nor made any attempt to liaise with the

responsible authorities or offer mitigation measures. The operating schedule provided in the application was sub-standard, being unclear as to the installation and details of CCTV cameras, and giving no precise, enforceable conditions for the operation of the restaurant. Although the application was for opening hours with the sale of alcohol from 11:00-00:00, no application had been made for late night refreshment. This all suggested that the Applicant was either unfamiliar with the licensing requirements or not prepared to offer precise conditions.

PS Booth then outlined the reasons why the Applicant was not considered suitable to be the licence holder and DPS. She referred to the exempt information contained in Annex 5c and the Agenda Supplement as relevant to this matter. She stated that the Applicant was listed as the sole director of a licensed premises at 16 Barbican Road, from which the licence had been revoked for reasons of crime prevention. Statements within the exempt information indicated a link between the Applicant and persons who had undermined the prevention of crime licensing objective. The Applicant had also failed to explain why the council should depart from its Statement of Licensing Policy to grant the application in this case.

PC Kim Hollis was called as a witness. She stated that she had attended the Regency restaurant, at 16 Barbican Road, on a number of occasions and each time had struggled to obtain details of who was in charge of the premises. She also said that, despite an unprecedented number of business closures during the pandemic, there had not been a corresponding decrease in crime or public nuisance in the city. In fact, new challenges had arisen in terms of anti-social behaviour associated with off-sales of alcohol as well as sales on licensed premises.

PS Booth then resumed, noting that the application did not mention the plans for a contactless restaurant referred to by the Applicant at the hearing. She re-iterated that the Applicant had made no attempt to engage with the responsible authorities, that he had been confirmed as sole director of the 16 Barbican Road premises, and that there was nothing in the application to address the ongoing concerns with regard to the CIA.

PS Booth then responded to questions put to her by the Applicant and members of the Sub-Committee, stating that:

- The Barbican Road premises licence had been revoked following a hearing on 8 June 2020.
- An appeal against the revocation had been lodged at the Magistrates' Court and was currently pending.
- The Applicant was still listed at Companies House as a Director of the premises.
- She had tried to engage with the Applicant by calling him on the telephone number provided, but he had not answered and neither had he attempted to seek advice.
- The onus was on the person applying for the licence to contact the responsible authorities.
- An application for a restaurant premises licence within the CIA would be expected to include robust and enforceable conditions in relation to: no service of alcohol except with food, permission to serve late night refreshment, staff training, a refusals log, and signage asking customers to leave quietly.
- The Applicant could run a restaurant at the premises without a licence, relying on the existing planning permission, provided he did not serve alcohol; however granting a licence would provide more opportunities for financial gain and a consequent increase in the risk of harm, due to the need for more staff and other issues relating to the operation of the business.

6. The representations made by Nigel Woodhead, the Licensing Enforcement Officer for City of York Council, in writing and at the hearing.

Mr Woodhead explained that the premises lay within York's CIA Red Zone, an area identified in the council's Statement of Licensing Policy as being under the most stress from crime and disorder and public nuisance, as set out in paragraphs 9:13 and 9:14 of the policy. The policy stated that all licence applications in this zone, if relevant representations were received, should be refused unless the applicant could show how their application would not lead to an increase in the impact of licensed premises in the zone. Applicants were also required to demonstrate,

through their operating schedule, the measures they would take to satisfy the council and responsible authorities that granting the licence would not add to the cumulative impact. The application in this case had failed to refer to the Red Zone and to identify any measures to be taken. There was no mention of a drinking-up time; no offer of any substantial conditions; the reference to CCTV indicated that it 'should' be installed and not that it would; the operating schedule was sub-standard and not tailored to the operation of a restaurant. This demonstrated that the Applicant had not taken into account the council's statement of licensing policy or government guidance.

Mr Woodhead then responded to questions put to him by the Applicant, Police Representor and members of the Sub-Committee, stating that:

- He had not personally attempted to contact the Applicant on the phone number provided, but a Licensing officer would have done.
- The DPS (in this case, the Applicant) should be the point of contact at the premises for all authorities and be contactable at all times.
- Many more stringent conditions and checks would be needed before the licence could be granted; he was also aware that the police would require a number of conditions in relation to CCTV.

During the above questions the Applicant, through his interpreter, stated that CCTV had been installed inside and outside the premises; that footage of an incident in September had been requested by, and provided to, the police; that an experienced manager had been employed and would be training staff; that currently there were 30-40 covers at the restaurant; that notices would be displayed asking customers to leave quietly at 10:30 and reminding them of the drinking-up time; and that this would be his own business independent of his family.

The Representors and the Applicant were each then given the opportunity to sum up.

PS Booth summed up, stating that the application should be refused because nothing had been put forward at the hearing to say why an exception should be made to the Statement of Licensing Policy in order to grant this

application within the CIA Red Zone. She also noted the concerns raised by the lack of contact with the Applicant and asked Members to consider the exempt information provided by the police.

Nigel Woodhead summed up, stating that he was in agreement with the police in this matter. The Applicant should have been aware that the premises were in the Red Zone and should have submitted information to show how this would be dealt with. Nothing said at the hearing had given him confidence that the premises would be properly run by the Applicant.

The Applicant summed up via his interpreter, stating that he believed he could manage the premises properly alongside a new manager who would be appointed. He had been through the required training and hoped to be given the chance to learn and gain more experience by starting up this business independently. As a foreigner it was difficult for him to start a business in this country, so he felt under pressure and was perhaps finding it difficult to express himself. He said that he would be happy to provide any further information required and to have conditions placed on the licence. All information was recorded and could be shown to the authorities.

The following points of clarification were provided:

- The Licensing Manager confirmed that the premises were currently vacant;
- The Applicant confirmed that he would be happy to accept any reasonable changes to conditions, new conditions, or changes to hours of operation.

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.

Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.

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

Option 4: Reject the application.

The Sub-Committee rejected Options 1, 2 and 3, and

Resolved: That the application for a premises licence be rejected.

Reasons: (i) The Council's special policy relating to cumulative impact creates a rebuttable presumption that applications for the grant or variation of premises licences which are likely to add to the existing cumulative impact will normally be refused following the receipt of representations, unless the applicant can demonstrate in the operating schedule that the application will not add to the cumulative impact. The premises is within the red area of the Cumulative Impact Area (CIA).

(ii) The Sub-Committee notes that the cumulative impact of the number, type and the density of licensed premises in the CIA may lead to problems of public nuisance and crime and disorder and that the premises being in the CIA does not act as an absolute prohibition on granting or varying new licences within that area. Each application must be considered on its own merit and it is possible for an applicant to rebut the above presumption if they can demonstrate that their application for a premises licence would not add to the cumulative impact already being experienced in the CIA. Representations have been received from North Yorkshire Police and the Licensing Authority that the licensing objectives of prevention of crime and disorder

and prevention of public nuisance would be undermined by the grant of the licence.

(iii) The Sub-Committee considers that the onus lies upon the Applicant (to the civil standard) to evidence that the operation of the premises, if licensed, would not add to the cumulative effect of having more licensed premises in the CIA, with regard to the licensing objectives.

(iv) The Sub-Committee notes in particular the concern of the Police that granting the application would add to the cumulative effect of having more licensed premises in the CIA. The Sub-Committee considers that the Police concern carries great weight in accordance with paragraph 9.12 of the statutory guidance.

(v) The Sub-Committee notes that the Licensing Authority supports the Police objection.

(vi) The Sub Committee notes the Applicant has made no attempt in the operating schedule to address the CIA policy. Although the Applicant offered additional control measures at the hearing, the Sub-Committee are concerned that the Applicant has not sufficiently addressed what is a very high bar to cross in terms of premises licence applications for premises in the CIA. They consider that the Applicant has missed the point in the Council's licensing policy that where a premises licence is sought for premises within a CIA, there is a presumption that the application will be refused if an applicant does not demonstrate that granting the application would not add to the cumulative effect of having more licensed premises in the CIA. The Sub-Committee is concerned that any grant of the application in the red zone requires a particularly robust operating schedule, which should demonstrate particular measures at the premises to

address the likely impact of the availability of alcohol in an area that already experiences a high volume of antisocial and criminal behaviour and public nuisance, these issues being factors behind the creating of the CIA in the first place. The Sub-Committee has heard nothing to satisfy it that the application has met that very high bar and that an exception to the policy applies in this particular case.

(vii) The Sub-Committee is not satisfied from the evidence before it that the Applicant has rebutted the presumption against granting a licence for a new premises situated in the CIA, and concludes on the evidence that granting the licence would undermine the licensing objective of preventing crime and disorder and public nuisance.

(viii) Whilst the Sub-Committee notes the other matters raised in objection by the Police, including the Police evidence marked as 'exempt', it does not consider it necessary to make a determination regarding those matters given its above conclusions.

The Sub-Committee has made this decision taking into consideration the written and verbal representations, the Agenda pack and Supplementary Agenda, 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 G Norman, Chair

[The meeting started at 10.00 am and finished at 12.40 pm].