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| Meeting | Licensing/Gambling Hearing |
| Date | 25 June 2020 |
| Present | Councillors Cuthbertson, Hook and Norman |

7. Chair

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

8. Introductions

The Chair introduced the Sub-Committee, the Legal Advisor and the Democracy Officer, and invited others present to introduce themselves: the Licensing Manager, the Public Protection Officer, the License Enforcement Officer, and the North Yorkshire Police Licensing Officer PC Hollis and Licensing Manager Sgt Booth; for the the Applicant, the Applicant's representative Hilary Ramli, her partner Rozlan Ramli, the business owner Yalcin Kizilkaya, his business partner Sarah Kavanagh and Cllr Michael Pavlovic (witness); for the Representors Cllr Fiona Fitzpatrick (Ward Councillor), Patrick Robson (Solicitor on behalf of a local resident), Catherine Berry, Clive Robinson, Pamela Davies and Lois Pickering.

9. 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.

10. Exclusion of Press and Public

The Chair accepted this as an additional item of business on the agenda and it was

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.

11. The Determination of an Application by Secret Square Limited for a Premises Licence [Section 18(3)(a)] in respect of Secret Square Limited, Unit 4, Stonegate Walk, Hornby Passage, York, YO1 8AT (CYC - 066152)

Members considered an application by Secret Square Limited for a Premises Licence [Section 18(3)(a)] in respect of Secret Square Limited, Unit 4, Stonegate Walk, Hornby Passage, York, YO1 8AT.

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
- 3) Public Safety

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 given at the Hearing. The Licensing Manager outlined the report noting the amendments to the report that had been circulated to all parties prior to the hearing. She explained the representations that had been received and noted that in relation to the change of use of the building, planning permission was needed for this. She advised the Sub Committee of their options in determining the application.

The Senior Solicitor then outlined the changes to the published report.

Following the Licensing Manager's report a number of questions were raised to which the following clarifications were given:

- The supply of alcohol would be until 23:00 hours.
- Last orders for food would be 22:00 hours.
- The licensed hours would one hour extra on Christmas Eve, New Year's Eve and Bank Holiday Sundays.
- There were 16 apartments in Stonegate Court.

4. The representations made by Mrs Ramli (Agent) on behalf of the Applicant in writing and by Mr and Mrs Ramli at the hearing. Mrs Ramli explained that the application was completely different to the application previously determined by the Sub-Committee. Mrs Ramli's witness Ms Kavanagh (Business Partner to Mr Kizilkaya, Business Owner) explained that it was a new idea with a focus on food bring the Kurdish culture to York using high calibre chefs to help Mr Kizilkaya develop the menu. Ms Ramli advised that the gate to the access to the premises would not be locked and that the applicant has been given responsibility for locking and unlocking the gate under the lease. She added that the application was for the supply of alcohol only and that the applicant had not applied for licensable activities after 11.00pm. The premises would open as a café/restaurant if the licence was not granted but would prefer to operate under the control of a premises licence.

Mrs Ramli stated that the premises had been granted planning permission for A1 and A3 use. She referred to the pictures at page 33 of the Agenda pack to demonstrate the layout of the premises as a small restaurant. Concerning the Police representation she drew attention to the premises at 13 and 13a High Ousegate (Ate O'Clock restaurant) noting that it was in the red zone of the Cumulative Impact Area (CIA) and that the licensed courtyard backs onto a residential area. She questioned inconsistency in the way the responsible authorities dealt had objected to the application. She added the premises would not be a vertical drinking establishment or bar; that alcohol would be by way of table service only and that there would be a full menu, not a mezze style menu.

Concerning the Public Protection objection on the grounds of noise nuisance, Mrs Ramli noted that Stonegate Court flats 9, 11, 15 and 17 were commercial holiday lets of which 15 and 17 had balconies that overlooked the premises. The premises would not increase noise nuisance as holiday guests can sit and drink and smoke on their balconies at all hours. A premises licence would restrict the use of the courtyard, whereas unlicensed premises would use the whole of the courtyard to increase the revenue stream. Mrs Ramli ended by referring to CYC statement of licensing policy section on diversity.

Mrs Ramli was then asked and responded to questions:

- Regarding why she had not contacted the responsible authorities in the consultation period to discuss the application, Ms Ramli said she would expect Police to contact her with any concerns, to which PC Hollis responded that they had emailed Ms Ramli prior to submission of the application.
- The last orders for food were 9.00pm in the courtyard and 10.00pm inside, and while customers were having their meal inside they could still order drinks. The courtyard would be closed from 9pm. Customers could come into the premises during the last hour for alcohol only but this was unlikely given there is table service only. .
- She stated that the applicant had planning permission to trade as A1 and A3 premises.
- Mr Ramli noted that the applicant may need to use the outside area more irrespective of the COVID-19 situation if a licence is not granted.
- With regard to the previous director of Secret Square Limited who has recently been convicted for drug dealing offences, Mr Ramli confirmed he was a director from 5 December 2019 to 5 March 2020 and has been removed from the lease. Ms Kavanagh (Business Partner to Mr Kizilkaya, Business Owner) confirmed that the application was completely separate to the previous application.
- She confirmed there would be a challenge 25 (age) policy in place.
- Mrs Ramli confirmed that the conditions offered were on page 37 of the agenda pack (operating schedule). In addition, the challenge 25 policy was being offered.

5. The representations made by PC Hollis, on behalf of North Yorkshire Police in writing and at the hearing. She explained that the premises is located in CIA red zone, an area under stress for crime disorder and public nuisance and that the application should be refused. She stated that the applicant failed to address measures needed to ensure that the premises would not impact on the CIA in terms of the licensing objectives and that the operating schedule is not tailored to deal with CIA issues and would not be able to manage the impact. She noted that she had met with the applicant on 20 November 2019 at which the business model was explained as a bar. On 16 December 2019 the application received described the venue as a café bar and the operating schedule did not state that alcohol was ancillary to a meal. PC Hollis added that even though food is offered, the premises was not food led and there was a limited food offering as the proposed business model was a café/bar, not a substantial food restaurant. The premises would be able to operate as a drinking establishment for up to 1.5 hours each day with no food offer. The premises would add to the cumulative impact in terms of crime and disorder and anti-social behaviour in the CIA. In the course of questions of PC Hollis, Mrs Hamil stated that the applicant would agree to a substantial CCTV condition and PC Hollis confirmed that the imposition of additional conditions would not make the application acceptable to the Police.
6. The representations made by Mr Golightly, on behalf of the Council's Public Protection unit, in writing and at the hearing who objected on the grounds of public nuisance in this location. He expressed serious concern regarding the noise impact, especially from the courtyard surrounded by residential homes. He noted that the application would add to the noise problems in the area and that as there was no noise report or noise management plan he could not judge how noise would be regulated. He advised that the use of the bi-folding doors meant that noise would go into the outdoor area and the conditions offered did not address this. He added that there was no detail on the smoking area, and on how noise from customers outside would be controlled within the residential area. He advised that he had visited the site and considered that conditions could not adequately control the noise in the outside area

given the close proximity to residents. It is the wrong location for the premises and the noise would give rise to public nuisance.

7. The representations made by Mr Woodhead, on behalf of City of York Licensing Authority in writing. In response to questions, he noted that the premises would be able to operate as a non-vertical drinking establishment for the final 1.5 hours every day of the week.
8. The representations made by Cllr Fitzpatrick, Ward Councillor, in writing and at the hearing, and also representing two other local residents who had made representations. She noted that whilst she welcomed Kurdish cuisine and culture into the city, this was the wrong location. She had concerns that the glass in the surrounding properties could not withstand the noise from revellers and that smoking in the courtyard could cause a fire in a space not wide enough for people going to and from the establishment. She supported the Police and Public Protection in their objection to the application.
9. The representations made by Mr Robson, Solicitor on behalf of a local resident in writing and at the hearing. He stated that the application was in a small residential and noise sensitive area. He advised that both surrounding streets, Stonegate and Blake Street, were in the red zone of the CIA with a high level of crime and disorder and that the red zone creates the highest threshold for an application. He noted that the Police evidence was that the application would be a bar from the police meeting with the applicant on November 2019. He read out paragraph 8.43 of the statutory guidance.

Mr Robson noted that there had been verbal assurances from the applicants that the premises would be a cafe restaurant. However, a better way of judging the application would be look at the timings and the conditions, and the application was not backed up by robust conditions with regard to the premises not being a bar. He noted that regardless, the establishment was in the red area with a high threshold and the onus of responsibility was on the applicants to demonstrate how the presumption against grant of the licence is rebutted. He questioned whether the applicant had put forward that

the premises would not be built as a bar when the indicative illustrations showed a wall of alcohol, there had been no drinks menus provided, there were 28 covers (of which only 18 are inside) and no commitment to more than this. He noted that the applicant had offered table service and queried how this would work for people seated at the bar. Also, table service could be by way of seats at high tables and the loose seating was not legally binding. He noted that alcohol had not been offered ancillary to a table meal, although operators that are genuinely food led would normally put forward such conditions, and after 10pm the premises could operate for 90 minutes with no food offer.

Mr Robson stated that there was no noise assessment, and there was no robust dispersal policy. The door staff arrangements were inadequate in the red zone. He noted that when the premises closed, customers may migrate to other premises in the red zone and that in the outside area there was a maximum of 10 covers but no maximum 10 persons drinking and smoking outside. He added that the nearby Cocoa House only had until 6.00pm for their outside area. He stated that application lacked in details and legally binding commitments.

10. The representations made by Ms Berry in writing and at the hearing. She said that in terms of public nuisance, Ate O'Clock and Popeshead are not comparisons to this proposal. The apartments in Stonegate Court are much closer to the outside space and the acoustics there are very different. Ate O'Clock was approved by consent as residents did not raise issues in that case, whereas for this application they have strongly objected in relation to three out of four of the licensing objectives.
11. The representations made by Mr Robinson in writing and at the hearing. He explained that he had lived in York for 60 years, 15 of them at Stonegate Court. He explained that his sitting room and balcony overlooked Hornby Passage. He explained the layout of the courtyard garden and noted his concerns about the glass in the Jack Wills building. He also noted that there was a number of fire escapes through the passage. He explained that music would reverberate through the walls and he expressed

concern about the noise from the outside yard, smoking outside and early morning deliveries.

Mr Robinson noted that the CIA and the red zone were a means of protecting visitors, local residents and businesses. He stated that his privacy and security would be affected by the grant of the licence, and that public nuisance would be a threat to these. He concluded that the establishment would be unsuitable for licence because of its location and close proximity to neighbours.

12. The representations made by Ms Davies in writing and at the hearing. As a permanent resident of Stonegate Court, with her windows at right angles to the premises, she was concerned that about nuisance from noise from customers and early morning deliveries. She explained that when she stayed in a different apartment in Stonegate Court she had to call noise control from the council. She noted her concern for the safety of herself and other residents on a number of safety grounds. She feared that if there were no restrictions to people congregating in the courtyard she would feel less safe in her home.
13. The representations made by Ms Wallace, Director of the Stonegate Living Company in writing and represented by Ms Pickering (her mother-in-law) at the hearing. Ms Pickering explained the access arrangements to Stonegate Living Company shop. She explained that the shop opened in August 2019 and that her daughter-in-law worked there alone. She explained that the locked gate in Hornby Passage was the only means of access to the shop and when the gate was last open this led to criminal activity and homeless people going there which left her daughter-in-law feeling vulnerable. Ms Pickering noted that more homeless people had moved in leaving used needles and bodily fluids to which the police had attended the courtyard every night to move people along. A barrier would need to be erected to prevent access to the horseshoe. Ms Pickering explained that the constant criminal activity had been helped by putting plates in the gate but this would end when the passage was used for access. She added that the Rohan shop gave up their premises nearby partly due to the criminal activity in the area. She suggested that customers would try and exit the bar via the gateway next to the shop which would make it

a perfect place for alcohol related crime. This would mean that public safety was detrimentally affected by the outside seating due to the number of fire escapes.

The representors and applicant were then given the opportunity to sum up. In summing up, the representors maintained their objections to the application.

Finally, the applicant summed up by stating that the conditions offered (including door supervisors, CCTV, table waitress service, seated customers, last orders for food at 10pm, challenge 25, alcohol ancillary to food) were suitable for a restaurant.

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 licensing committee. This option was rejected.
- 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: Reject the application. This option was approved.

Reasons for the decision

The Sub-Committee carefully reviewed all the information presented from all parties in light of the licensing objectives and decided to approve Option 4, to reject the application, for the following reasons:

1. 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).

2. The Sub-Committee noted 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 did 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. A number of local representations had been received in objection. There were also representations from North Yorkshire Police, Public Protection and the Licensing Authority.
3. The Sub-Committee considered that the onus lay upon the Applicant (to the civil standard) to evidence to the Sub-Committee that the operation of the premises, if licensed, would not add to the cumulative effect of having more licensed premises in the CIZ, with regard to the licensing objectives.
4. The Sub-Committee noted the written representations and oral representations made by local residents and the The Stonegate Living Company relating to public nuisance, public safety and anti-social behaviour and noted their concerns regarding the likely impact of the premises in terms of crime and anti-social behaviour, increased noise nuisance and public safety if the application were to be granted.
5. The Sub-Committee heard evidence from the Public Protection Officer that the impact on residents of Stonegate Court of noise nuisance and disturbance arising from the premises would be significant and could not be adequately managed in this location. As a Responsible Authority providing the main source of advice on public nuisance

matters, this representation that the licensing objective of public nuisance would be undermined by the proposal was given significant weight.

6. The Sub-Committee was satisfied that in view of the close proximity of the premises to residents, the grant of a licence in this location would be likely to undermine the prevention of public nuisance objective in terms on increased noise and disturbance to residents of Stonegate Court.
7. The Sub-Committee noted the Police objection and the Licensing Authority objection that the licensing objectives of prevention of crime and disorder and prevention of public nuisance would be undermined by the grant of the licence.
8. The Sub-Committee noted in particular the concern of the Police that the premises would be able to operate as a drink-led establishment for at least part of every day of the week in an area which is already saturated with licensed premises and that the that granting the application would add to the cumulative effect of having more licensed premises in the CIA. The Sub-Committee considered that the Police concern carried great weight in accordance with paragraph 9.12 of the statutory guidance.
9. The Sub Committee noted the Applicant's representation that the impact of the premises licence on the licensing objectives would not be significant and that the application has been altered since the previous application to a cafe/restaurant format with alcohol by way of table service only. The Sub-Committee accepted the Applicant's evidence that it had parted company with its former business partner, and that he would not be involved with the business. However, whilst the Sub-Committee heard from the Applicant's representatives that the potential for noise nuisance and disturbance to residents would be worse if the premises operated as an unlicensed cafe/restaurant without an operating schedule, the Sub-Committee considered that the Applicant and its representatives had 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 were concerned that the Applicant did not appear to sufficiently address what is a very high bar to cross in terms of premises licence applications for premises in the CIA. The Sub-Committee felt in particular that the Applicant was unable to demonstrate how they would manage the likely noise and public nuisance impact from the premises.

10. There was no suggestion that crime and disorder would happen at the premises as a result of its management, nevertheless, the Sub-Committee was 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 was not satisfied that the operating schedule/conditions presented at the Sub-Committee meeting met that very high bar.

11. The Sub Committee was not satisfied from the evidence before it that the Applicant had rebutted the presumption against granting a licence for a new premises situated in the CIA and concluded on the evidence that granting the licence would undermine the licensing objective of preventing crime and disorder and in particular, public nuisance.

Cllr G Norman, Chair

[The meeting started at 10.00 am and finished at 2.20 pm].