
Meeting	Licensing/Gambling Hearing
Date	16 September 2021
Present	Councillors Galvin, Orrell and Wann

13. Chair

Resolved: That Cllr Orrell be elected to act as Chair of the meeting.

14. Introductions

The Chair introduced those present at the hearing; the members of the Sub-Committee, the Applicant, the Applicant's solicitor, the Licensing Manager presenting the report, the Legal Adviser, and the Democracy Officer.

15. Declarations of Interest

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

16. 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.

17. Minutes

Resolved: That the minutes of the Licensing Hearing held on 9 August 2021 be approved as a correct record, to be signed by the Chair at a later date.

18. The Determination of a Section 35(3) (a) Application by Mehmet Simsek for Variation of a Premises Licence at 5 Whip ma Whop ma Gate, York, YO1 8BL (CYC-061097)

Members considered an application by Mehmet Simsek for the variation of a premises licence in respect of 5 Whip ma Whop ma Gate, York YO1 8BL.

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

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 amendments to the application submitted by Mr Walker, Solicitor on behalf of the Applicant on 15 September and circulated to all parties:

With reference to page 24 of the agenda bundle:

- a) The application for an extension of hours for the supply of alcohol from 23.30 to 01.00 was now proceeding only in relation to the inside of the building on the ground floor.
- b) The application for the extension of the licenced area covered by the premises licence to include the area edged red on the plan [ground floor – outside] was being proceeded with but only on the basis that alcohol could be served in this ground floor outside area up to 23.00 .

A noise management plan was being offered and chairs / tables would be removed after 23.00 .
c) The roof top terrace application was being withdrawn.

Following the submission of the amended application above, representations from North Yorkshire Police, City of York Council Public Protection (Environmental Protection, City of York Licensing Authority and by one of the other parties were withdrawn.

3. The Licensing Manager's report, and her comments at the Hearing.

The Licensing Manager outlined the report and the annexes, noting that the premises were in the cumulative impact assessment area but not in the 'red zone.' She confirmed that the Applicant had carried out the consultation process correctly. She noted that the Applicant had amended and withdrawn a number of conditions (as detailed above) and as such, North Yorkshire Police City of York Council Public Protection (Environmental Protection), City of York Licensing Authority and by one of the other parties had withdrawn their representations set out in the annexes to the report.

4. The representations made by Mr Walker, Solicitor on the Applicant's behalf. Mr Walker detailed the application. He explained that the Applicant had planning permission for the outside area and it was not the subject of the hearing. He noted that the premises had been subject to a hearing in 2018 following which the premises was subject to a number of conditions. He noted that the Responsible Authorities had withdrawn their representations. He added that the premises would provide a place for people during the period between pubs closing and clubs opening.

In response to questions from a Member, Mr Walker explained that the premises provided a sanctuary for people leaving pubs. The Senior Solicitor asked and he responded that concerning condition 18 on the current licence, there would be 20 covers on the ground floor outside area. A Member then asked if the number of covers outside could be conditioned and the Applicant confirmed that he would be happy with a condition requiring a minimum of 20 covers.

5. The representations made in writing by Cllr Craghill, Ward Councillor.
6. The representations made by an interested party in writing.

In respect of the proposed licence, the Sub-Committee had to determine whether the 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 necessary for the promotion of the Licensing Objectives:

Option 1: Modify the conditions of the licence. This option was approved.

Option 2: Reject the whole or part of the application. This option was rejected.

Resolved: That Option 1 be approved, and the application be approved with the following modified and additional conditions:

- (i) The hours of current licensable activities to be increased as follows:

Activity	Timings
Supply of alcohol - inside the premises building on the ground floor and off the premises	09:00 to 01:00 every day
Opening hours (inside the premises building on the ground floor)	09:00 to 01:00 every day

- (ii) The currently licensed area be varied to include the outside ground floor pavement area edged red on the plan submitted with the application SUBJECT TO the restrictions set

out in the additional and varied conditions below.

- (iii) The following additional and varied conditions to be imposed:
 - (a) A Noise Management Plan (NMP) shall be submitted in writing to the Licensing Authority by 28 October 2021 for the written approval of the Licensing Authority. The NMP, once approved, must be complied with at all times as a condition of the licence.
 - (b) The only licensable activity permitted on the outside ground floor pavement area edged red on the plan submitted with the application referred to in (ii) above is the supply of alcohol from 09:00 to 23:00 each day. All chairs and tables shall be removed from this outside area by 23:00 each day;
 - (c) There shall be a minimum of 20 seat covers for diners on the outside ground floor pavement area edged red on the plan submitted with the application referred to in (ii) above at all times this area is open to reduce the need for vertical drinking;
 - (d) Condition 8 of the current licence shall be varied as follows:
Closure of the premises to the public shall be no later than 01:00, with no access to the roof top terrace after 21:00.
Licensable activities are permitted as set out in the current licence as varied above.

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 1, to grant the licence with

modified/additional conditions imposed by the Sub-Committee, for the following reasons:

1. 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.
2. The premises are located within an area where a Cumulative Impact Policy applies. The Statement of Licensing Policy sets out that this special policy will create a rebuttable presumption that applications for new premises licences that are likely to add to the existing cumulative impact will normally be refused following receipt of relevant representations, unless the Applicant can demonstrate how the operation of the premises involved will not add to the cumulative impact already being experienced.
3. It was noted that that the premises being in the CIA does not act as an absolute prohibition on granting variations for premises 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 the varied licence would not add to the cumulative impact already being experienced in the CIA. Representations had been received from a Ward Councillor and another interested party in relation to the prevention of public nuisance objective.
4. The Sub-Committee considered that the onus lay upon the Applicant (to the civil standard) to provide evidence to the Sub-Committee that the operation of the premises license as varied, would not add to the cumulative effect of having more licensed premises in the CIZ, with regard to the licensing objectives.
5. The Sub-Committee noted that the Applicant had amended the application to scale back the licensable activities, area and timings proposed. The Sub-Committee noted that in light of the amended application the Police, Public Protection, the Licensing Authority and one of the interested parties had withdrawn their representations. They give weight to the absence of a Police representation in accordance with paragraph 9.12 of the statutory guidance.

6. The Sub-Committee noted the concerns of the Ward Councillor and the other interested party who had made representations with regard to the prevention of public nuisance objective but felt that with the imposition of suitable modified and additional conditions, it was unlikely that noise disturbance to local nearby residents or any significant additional cumulative impact would be caused by the amended variation application.
7. Therefore the Sub-Committee concluded that the presumption against granting a variation of a premises licence in the CIA has been rebutted in this particular case and was satisfied that the licensing objectives would be met in granting the application as amended, with the above conditions.
8. The Sub-Committee therefore agreed to grant the licence with the modified and additional conditions referred to above, which were appropriate and proportionate in the circumstances to promote the licensing objectives.

Cllr K Orrell, Chair

[The meeting started at 5.00 pm and finished at 5.21 pm].