
Meeting	Licensing/Gambling Hearing
Date	22 February 2021
Present	Councillors D'Agorne, Galvin and Mason

39. Chair

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

40. Introductions

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

41. 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, which they might have in the business on the agenda. No interests were declared.

42. Minutes

Resolved: That the minutes of the Licensing Hearings held on 25 January 2021 and 1 February 2021 be approved as a correct record in each case, to be signed by the Chair at a later date.

43. Exclusion of the 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.

44. The Determination of a Section 18(3) Application by Mr Wing Lun Man for a premises licence in respect of Regency Restaurant and Supermarket, 2 -4 George Hudson Street, York, YO1 6LP (CYC-067691)

Members considered an application by Wing Lun Man for a premises licence in respect of Regency Restaurant and Supermarket, 2-4 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 the 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.
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 in the cumulative impact assessment area (CIA) and confirming that the Applicant had carried out the consultation process correctly. She drew attention to the representations received from North Yorkshire Police, including the additional papers published in the Agenda Supplement. Finally, she advised the Sub Committee of the options open to them in determining the application, confirming that there was a right of appeal in respect of Option 5 (reject the application); this had been omitted in error from the report.

4. The representations made by the Applicant.

The Applicant outlined his previous experience in the restaurant trade, stating that he had worked for more than a year as a head waiter at Maxi's, a restaurant in Leeds that had been trading for over 30 years. Since 2019 he had worked at several restaurants and was currently working at a fish shop in Leeds. He had also carried out personal licence training in 2019. He therefore disagreed with the assertion by the police that he was not a suitable person to be the designated premises supervisor (DPS) at the Regency. He went on to say that, after a visit from the licensing authority had identified that the CCTV and HR practices at the premises were not up to standard, an HR consultancy service (Peninsula) had been engaged to identify the risks and advise on how to comply with the law and provide the best training programme. This process had begun on 5 February 2021.

The Applicant then responded to questions from the Sub-Committee Members and the Police representative, stating that:

- Off-sales would be operated from the supermarket, he would manage the restaurant, front of house and improvements, while Tina (Yan Tong Feng) would manage the supermarket, the admin and paperwork;
- Hiring of staff will go through him first, then paperwork passed to Tina for record keeping
- He did not have a personal licence when he worked at Maxi's and he had not carried out the role of DPS before;
- He had been present at a meeting between Tina and Peninsula Consultancy when a contract was decided on, but had not signed the contract himself;
- As DPS for the premises, the paperwork would come to him first and he would then pass it on to Tina to record.

5. The representations made by PS Jackie Booth on behalf of North Yorkshire Police, in writing and at the hearing.

PS Booth drew attention to the additional papers published in the Agenda Supplement, comprising witness statements, exhibits and further information for the hearing, and to the grounds of the police objections set out in Annex 7 to the Licensing Manager's report.

PS Booth highlighted that the previous licence for the premises had been revoked and that an application to transfer the licence, made by Tina Feng, had been refused at a hearing on 8 June 2020. She pointed to the 'serious failings' identified in the decision letter from the 8 June hearing and the panel's view at that hearing that Tina Feng would not be a responsible licensee (page 27 of the additional papers). She said this was an important consideration in the current application, as the police believed Tina Feng had employed Mr Man, as a person with no criminal record, to be a 'front' to enable her to obtain a licence. Ms Feng had been part of the problems at the premises and had been issued with a further Section 19 notice in October 2020. She had failed to appoint an experienced DPS or adhere to previous conditions; there was no evidence of an HR system being implemented, copies of documents for staff employed at the premises, or checks on the Home Office website to ensure they had a right to work in this country.

PS Booth said the police had highlighted their concerns about illegal working and the lack of any conditions to mitigate this in the current application. She had contacted the Applicant but he did not wish to discuss these matters. He had not signed a contract with Peninsula nor offered any conditions to mitigate previous failings, and this raised questions as to why – did he not have authority, as an employee of Ms Feng? The Applicant had stated that he had been approached by Tina Feng due to his experience of working in the business. On the Operating Schedule he stated that he had worked in licensed premises for over 10 years; today he admitted this was not in the role of DPS. The fish shop where he currently worked was not licensed. The only evidence that he had worked at licensed premises had come from his statements to the hearing today. He had stated that he would be working alongside Tina Feng; she had signed the contract with Peninsula and would be the person truly responsible for the premises. The Applicant had said he would be responsible for front of house and Tina Feng for the administration. There were exceptional circumstances against the Applicant also being the DPS as he would be working alongside, and be employed by Ms Feng. The Applicant was not considered suitable to hold the

premises licence, as there was no evidence to show how he would mitigate these concerns. The police were of the view that Tina Feng was the person likely to have direct control and be running the business under this licence, which would undermine the licensing objective of crime and disorder which involves the avoidance of harm in the future, and therefore requested that the application be refused, given Ms Feng's previous serious failings.

Glynn Jones, Immigration Officer, was called as a witness to clarify information in his statement at page 45 of the additional papers. He confirmed that:

- when he visited the premises on 6 September 2019 Ms Feng had been present and had indicated that she was the boss;
- when he visited on 6 April 2017 Ms Feng had granted consent for him to enter the premises;
- there was no evidence that Ms Feng was present when he visited on 8 September 2018, but the notice had been served on her, she was recorded as the manager of the business, and the two people present had referred to the manager as 'Tina'.

In response to a question from the Applicant as to whether an application could ever succeed by Ms Feng due to previous history, PS Booth stated that no evidence had been put forward to indicate that any measures had been taken to address the previous failings, and DPS was a new role to him. She said she could not comment on future applications, but the Applicant had been given every opportunity to provide evidence of where he had worked previously, including references, and had not done so.

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

PS Booth summed up, stating that nothing had been put forward by the Applicant to mitigate the concerns highlighted by the police. The Prevention of Crime and Disorder objective for licensing applications included illegal working, and illegal workers had been found on the premises on three previous visits. Ms Feng was still the person in control of the premises and therefore concerns about illegal working remained.

The Applicant summed up, stating that he had already taken steps to address the previous problems since taking over the management role and had made improvements. He had been employed by Tina Feng to point the business in the right direction. He was looking to the future, not the past, and asked the Sub-Committee to grant the application.

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: Refuse to specify a person in the licence as a premises supervisor. This option was rejected.

Option 5: Reject the application. This option was approved.

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

Reasons: (i) 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.

(ii) The premises are located within an area where a Cumulative Impact Policy applies. It is within the red zone of this area. 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 representations, unless the applicant can demonstrate why the operation of the premises involved will not add to the impact of premises with this zone. The policy is not absolute and the Sub-Committee is required to consider the circumstances of each application on its merits.

(iii) The Sub-Committee noted in particular the concern of the Police that granting the application would add to the cumulative effect in the CIA, specifically the crime and disorder licensing objective. They further noted the Police concern that the Applicant was not a suitable DPS due to the exceptional reasons of his link to and employment by Ms Feng, and her link to the incidents which led to the review and revocation of the premises licence in June 2020, and the closure notice served on her by the Police on 21 October 2020, that Ms Feng was to be the employer of Mr Man, with Mr Man in the role of DPS, that Ms Feng had engaged and signed the contract with Peninsua, that the Applicant had no experience in the role of DPS, he had not provided any evidence of nor references from his past employment, and had not engaged with the Police nor offered any additional measures or conditions to address the previous failings.

(iv) The Sub-Committee considered the submissions made by the Applicant, including the operating schedule and additional

information submitted by him. The Sub-Committee noted that the Applicant accepted he did not have any experience of the role of DPS, had not provided any evidence of nor references from his past employment, accepted that Ms Feng was to continue in both a management and administrative role within the business, and did not offer any additional measures or conditions to mitigate the concerns highlighted by the Police.

(v) The Sub-Committee considered that the evidence of the Police carried great weight in accordance with paragraph 9.12 of the statutory Guidance.

(vi) The Sub-Committee had to be confident that the Applicant would comply with any licensing conditions imposed and was concerned that without good standards of management the licensing objectives would not be upheld. The Sub-Committee concluded that it was not so satisfied, due to the following factors:-

- a) the Applicant would be likely to undermine the crime and disorder objective given the history of these premises and Ms Feng's role;
- b) the Applicant had no experience as a DPS;
- c) the Applicant had not provided any evidence of nor references from his past employment;
- d) the Applicant had not offered sufficient measures or conditions to mitigate the previous failings highlighted by the Police;
- e) the Applicant was not a suitable person to be the DPS for the exceptional reasons of the continued role of Ms Feng in both the day-to-day management of the business and as the employer of the Applicant and proposed DPS, Mr Man, due to Ms Feng's record of involvement at the premises, both prior to and subsequent to the review and

revocation of the premises licence on 8 June 2020.

(vii) 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.

(viii) Even if the Committee had reached a view that the Cumulative Impact Policy did not bite, it would still have refused this application on its merits. This was for the reasons set out in point (vi) above.

Cllr A Mason, Chair

[The meeting started at 10.04 am and finished at 11.10 am].