

Meeting	Licensing/Gambling Hearing
Date	22 June 2023
Present	Councillors Cuthbertson, Nicholls and Rose

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## **7. Chair**

Resolved: That Cllr Cuthbertson be elected as Chair of the hearing.

## **8. Introductions**

The Chair introduced the Sub-Committee Members, the Legal Adviser and the Solicitor shadowing her, the Democratic Services officer and the Democracy Officer shadowing her, the Senior Licensing Officer and the Applicant, Mrs Edwards.

## **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**

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 a Section 18(3)(a) Application by Dark Horse Espresso Bar Ltd for a Premises Licence in respect of The Dark Horse Espresso Bar, 147A Bishopthorpe Road, York, YO23 1NZ. (CYC-072806)**

Members considered an application by Dark Horse Espresso Bar Ltd. for a premises licence in respect of The Dark Horse Espresso Bar, 147A Bishopthorpe Road, York YO23 1NZ.

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 two written representations received from local residents.
3. The Licensing Manager's report and the comments of the Senior Licensing Officer at the Hearing.

The Senior Licensing Officer outlined the report and the annexes, confirming that the premises were not in the Cumulative Impact Area and that the Applicant had carried out the consultation process correctly. She noted that there were no representations from Responsible Authorities and that amendments and additional conditions had been agreed with the police, as set out in Annex 3. She also drew attention to the representations made by other parties at Annex 5. Finally, she advised the sub-committee of the options open to them in determining the application.

In response to questions from the sub-committee, the Licensing Manager confirmed that:

- there had been no response to consultation from the Planning department;

- the police had not suggested any additional conditions in relation to race days.

4. The representations made by the Applicant.

The Applicant stated that the business was owned and run by herself and her husband Mark. It currently operated from a horsebox in Shambles Market (in the red zone of the CIA) where it had been located since 2017. It had been licensed since 2020. She was the licence holder for the premises and had a proven track record for the responsible service of alcohol.

The Applicant explained that the new premises would be primarily a café serving quality coffee and food. The business was very family oriented and had created a warm, relaxed atmosphere. They were recognised for their coffee and had many regular customers. The aim was to provide a welcoming space for local residents, operating as a neighbourhood café where people could enjoy a coffee or a glass of wine with friends. Their customers were families, walkers, retirees and mothers with their children, rather than groups of drinkers. There would not be a pub atmosphere. The planning application (mentioned on page 46) was for a deck to be built on the outside area to level the ground so that people could sit there. There may be some chatter from the outside area but it wouldn't be too loud, and use of the area would be weather-dependent. She envisaged people sitting there with a glass of wine before moving on to have dinner elsewhere. She had agreed the police conditions requiring the outside area to be closed off by 9pm on Fridays and Saturdays. On other days it would be closed by 6pm. The windows and doors of the premises would be closed after these times. The idea was just to make the most of the summer weather when it was warm.

The Applicant went on to say that she appreciated that the premises were in a residential area but pointed out that there were many other businesses nearby, including a number of shops and restaurants as well as pubs and other licensed premises. These included The Winning Post, the Working Men's Club, the Liquor Store at The Chocolate Works and, on Bishopthorpe Road, 2 Many Wines and Angel on the Green. In response to the

representations at Annex 5, she highlighted the conditions agreed with the police regarding closure of the outside area and stated that the intention was not to open late on every Friday and Saturday. On race days, the premises might even close before the last race finished. It would not be a place that racegoers would want to go; they were likely to pass it by on their way to The Winning Post. During an interview by The Press she had mentioned live music; by this she did not mean a band or anything loud but an acoustic singer in the afternoons to provide background music and atmosphere.

In conclusion, the Applicant stated that she had had positive feedback on the application from local residents and from regulars at the horsebox operation in Shambles Market. She wanted the new operation to be an exciting addition to the neighbourhood for people to enjoy with their friends and families.

In response to questions from the sub-committee, the Applicant confirmed that:

- It was intended to have a food offering in the evenings, but to allow customers the option to have a glass of wine or beer without food, for example as a pre-dinner drink.
- Alcohol ancillary to food in the mornings was an option for an occasional celebration - for example a glass of fizz with a birthday brunch or a Baileys with a coffee or hot chocolate - in line with the current operation in the horsebox.
- In the evenings, an Australian / European café culture scene was envisaged, with people meeting their friends for a coffee as an alternative to going to a pub.
- Early closure on race days would eliminate having to deal with any related issues; she would not object to restrictions on race days being included on the licence.
- Off-sales would be of artisan wines, and beers from Ainsty Ales to take home to enjoy later; this would not attract people who wanted to drink on the street, and there was an off-licence opposite the premises.
- Regarding trade between 9 and 11pm, they were going to test this out and adjust the opening hours

accordingly if there was not much business during this time.

The Applicant declined the opportunity to sum up.

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 sub-committee. This option was **approved**.

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 **rejected**.

Resolved: That Option 2 be approved and the licence be granted for the following activities and timings with modified / additional conditions imposed by the sub-committee, as set out below:

<b>Activity</b>	<b>Timings</b>
Supply of alcohol - on and off the premises	08:00 – 18:00 Mon to Thurs 08:00 – 23:00 Fri & Sat 08:00 – 21:00 Sun

Opening hours	07:30 – 18:00 Mon to Thurs 07:30 – 23:00 Fri & Sat 07:30 – 21:00 Sun
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The conditions contained in the Operating Schedule and the additional conditions numbered 1 to 12 inclusive set out in Annex 3 of the Agenda shall be added to the licence.

The following condition shall also be added to the licence:

All sales of alcohol between 08:00 and 11:00 hours daily shall be ancillary to food.

The licence is also subject to the mandatory conditions applicable to licensed premises

- 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 Sub-Committee noted that the premises are not located within an area where a cumulative impact policy applies.
  - (iii) The Sub-Committee noted that this was a new licence application and was very conscious of the premises' location in a residential area in close proximity to local residences. The Sub-Committee carefully considered the concerns raised by the local residents who had made representations in writing relating to public nuisance with regard to concerns about noise disturbance from the premises, in particular associated with use of the outside space, that could impact on their quality of life. Concern was also raised as to the impact of the premises on crime and disorder, particularly on race days.
  - (iv) The Sub-Committee noted that the Police, who are the Licensing Authority's main source of advice on matters relating to the promotion of the crime and

disorder licensing objective, had agreed with the applicant a number of additional conditions to be added to the grant of a licence. The Sub-Committee considered the fact that the Police did not object to the application (subject to the imposition of agreed conditions) carried great weight.

(v) It noted that there were no representations from any other Responsible Authority.

(vi) Whilst the Sub-Committee acknowledged the concerns expressed by residents, it also considered the nature of the proposed activities, noting that the establishment was intended to primarily operate as a café/wine bar, rather than as a vertical drinking establishment. The Sub-Committee was reassured by the evidence given by the Applicant, her level of experience generally and that she had agreed with the Police to address concerns about in particular the possible impact of noise disturbance from the outside area and to a number of other conditions including that the supply of alcohol prior to 11am shall be ancillary to food.

(vii) The Sub-Committee was satisfied overall with the proposed arrangements and responsible attitude of the Applicant and felt that the additional conditions she had agreed with the Police were appropriate and proportionate to deal with the concerns raised by local residents. The Sub-Committee did not find any evidence to justify a refusal of the application and it was felt that further conditions would not be necessary in order to promote the licensing objectives on the basis of the evidence before the Sub-Committee.

(viii) It was also noted that the Licensing Act 2003 has a key protection for communities that allows at any stage, following the grant of a premises licence, a Responsible Authority or 'other persons', such as a local resident, to ask the Licensing Authority to review the licence if they consider that one or more of the licensing objectives are being undermined, therefore allaying the concerns of the local residents.

(ix) Accordingly, in all of the circumstances of the case it was felt that the decision of the Sub-Committee was justified as being appropriate and proportionate for the promotion of the licensing objectives.

Cllr I Cuthbertson, Chair

[The meeting started at 10.05 am and finished at 11.02 am].