AGENDA SUPPLEMENT

Licensing/Gambling Hearing

To: Councillors Cuthbertson, Galvin and Melly

Date: Thursday, 8 December 2022

Time: 10.00 am

Venue: Remote Meeting

The Agenda for the above meeting was published on **30 November 2022.** The attached additional document is now available for the following agenda item:

5. The Determination of a Section 18(3) Application by Mr Kheng Chooi Koay for a Premises Licence in respect of 10 -12 George Hudson Street, York, YO1 6LP (CYC-070840) (Pages 1 - 14)

Additional document submitted by North Yorkshire Police - Decision Letter from Review Hearing in respect of Sky Blue, 16 Barbican Road.

This agenda supplement was published on **6 December 2022.**

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Agenda Item 5

Licensing Hearing 8 December 2022

10-12 George Hudson Street

Additional document submitted by North Yorkshire Police

- Decision Letter from Review Hearing in respect of Sky Blue, 16 Barbican Road

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Customer and Corporate Services Directorate

Democratic Services
2nd Floor
West Offices
Station Rise
York YO1 6GA

PS Jacqueline Booth
Force Licensing Manager
North Yorkshire Police
Fulford Police Station
Fulford Road
York YO10 4BY

2 December 2022

Dear PS Booth,

Re: Licensing Sub-Committee Hearing – Application for a Review of a Premises Licence at Sky Blue, 16 Barbican Road, York YO10 5AA (CYC- 168154)

I am writing to inform you of the decision of the Licensing Sub-Committee which met on 17 November 2022 to consider your application for a review of the above premises licence, made pursuant to section 51 of the Licensing Act 2003.

In considering your 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. Public safety
3. The prevention of public nuisance
4. The protection of children from harm

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 history of the premises as set out in the police application and supporting documents at Annex 1 and the incidents described therein, and confirming that the consultation process had been carried out correctly. She also confirmed that no further representations had been received. Finally, she advised the Sub Committee of the options open to them in determining the application, including two further options not set out in the report, namely:

- Option 6 - to determine that no further steps are required
- Option 7 - to issue an informal warning.

4. The representations made by Kayley Scaife, solicitor, on behalf of yourself and North Yorkshire Police (the Applicant), in writing and at the hearing.

Ms Scaife stated that the application related to all four licensing objectives and followed significant police intervention, with the premises demonstrating on each occasion that it was unable to operate responsibly. She outlined the history of the premises, which had previously operated as 'The Regency'. Its licence had been revoked after a review hearing on 8 June 2020. Evidence at the hearing had referred to immigration offences and multiple breaches of the licence conditions. Two Section 19 closure notices had been issued and accepted by Man Wei Leung, also known as 'Kevin'. One of the notices had been issued in December 2020 when the licence had been revoked and an appeal was pending. At the review hearing the sub-committee had noted a history of repeated failings and said they had no faith in the ability of the licence holder to uphold the licensing objectives. The appeal had been dismissed on 10 December 2020.

Ms Scaife went on to say that on 10 March 2021 an application had been received from Mr Koay for a new premises licence. This was supposed to be a fresh start. Police concerns had been raised and addressed, assurances made, and the police had agreed stringent conditions. The application form had promised a 'wholly new management team' to address the previous issues. At the hearing on 29 April 2021, the applicant's legal adviser had stated that any breach of the licence conditions was potentially a criminal offence, that the applicant was under no illusions that it was incumbent upon him to comply, and that it was right to exclude

previous management from the premises. However, the police's current understanding was that Mr Leung, known as 'Kevin', remained involved in the premises and was described as the 'manager', delivering training. Also misleading was Mr Koay's comment at the hearing that there had been no issues at Mr Happy, another premises he was involved in, when in fact he had been prosecuted by the Fire Service in 2018 for 3 breaches of fire regulations, for which he was convicted and fined. The licence was granted without this being known, and since then there had been no reported incidents until 22 January 2022. That was a report of a 'spiking' the evening before. A 16-year-old girl had attended with friends for karaoke and drinks. She described being served at the bar 3 times and experiencing odd behaviour and attention from a 'bouncer'. She had become very unwell on the car ride home, and the next morning a home test had tested positive for benzodiazepines. The police officer attending had experienced significant difficulty in obtaining CCTV footage from the premises, with mixed messages from staff about its availability. On 16 February, the hard drive had been seized, but no footage of the incident was available. Any footage had been recorded over and some cameras were not working.

Ms Scaife then called PS Booth as a witness, regarding activity that had taken place since February 2022.

PS Booth stated that the police licensing team had had significant engagement with Sky Blue, including visits to the premises and direct communications with Mr Koay. On each occasion, concerns had been identified that the licence conditions had been breached and the licensing objectives undermined. This had resulted in a criminal investigation for Section 136 offences of unauthorised licensable activities. She highlighted key aspects of the detailed information contained in the agenda pack for the panel to consider in determining whether the premises could be trusted to operate within the law going forward, as summarised below:

- 22 January 2022 – report received of spiking incident at the premises *(victim's statement, page 117 of the published agenda pack).*
- 15 February 2022 – investigating officer unable to progress the investigation as cannot obtain CCTV footage; Mr Koay, as DPS is contacted and gives assurance that it will be provided.

- 16 February 2022 – CCTV footage not provided; officer instructed by PS Booth to seize the CCTV system.
- 18 February 2022 – officers attend premises to conduct a S. 179 inspection *(statement page 135)*; Mr Leung present and claims to be cleaning and helping out; several breaches found and S.19 closure notice issued *(page 141).*
- 25 February 2022 – officers re-attend to check compliance; Mr Leung present; S.19 notice not cancelled as further details of staff records needed for the investigation.
- 15 June 2022 – PS Booth contacts Mr Koay to highlight concerns re the criminal investigation *(email page 145)*.
- 16 June 2022 – PS Booth contacts Mr Koay to arrange a meeting to address the concerns highlighted.
- 21 June 2022 – PS Booth and PC Hollis attend for a scheduled meeting with Mr Koay. Mr Leung and Mr Walker (legal adviser) also present. 6 breaches found; a further S.19 notice is issued. Mr Koay appears disconnected from the running of the premises and refers all questions to Mr Leung *(statement of PC Hollis page 155).*
- 30 June 2022 – police submit a review application to the Licensing Authority, copied to Mr Koay.
- 5 July 2022 – PS Booth and PC Bolland attend for a scheduled meeting to follow up the S.19 notice. Mr Koay, Mr Leung & Mr Walker present. Further breaches identified from the CCTV footage of 2 July *(statement of PS Booth page 191).*
- 20 July 2022 – Mr Koay is interviewed at Fulford Police Station for S.136 offences and fully admits breaches relating to both S.19 notices.
- 28 July 2022 - PS Booth and PC Bolland attend the premises to check compliance with CCTV retention as a new system has been installed. Mr Leung present. System compliant.
- 4 August 2022 – PS Booth issues a simple police caution to Mr Koay re the S.136 offences.
- 8 August 2022 – PS Booth and PC Bolland attend premises to check the outstanding S.19 notice. Mr Koay, Mr Leung & Mr Walker present. CCTV is checked from 6 August, identifying further breaches and S.136 offences.
- 9 August 2022 – PS Booth emails Mr Koay highlighting the further breaches *(page 185).*

- 17 August 2022 – officers attend premises to check compliance. Mr Koay, Mr Leung & Mr Walker present. Further enquiries required before S.19 notice satisfied.
- 8 November 2022 – unscheduled visit to the premises by PS Booth and PC Bolland. Mr Leung present. CCTV system is showing incorrect time; rectified immediately by Mr Leung. Mr Koay then attends; full HR records are shown and the S.19 notice issued in June is finally complied with *(pages 7-9 of the agenda supplement)*.

PS Booth stated that, based on the above information, the police did not trust that the operator would abide by the licence and the law without someone looking over their shoulder, despite previous assurances that they would adhere to the licence conditions. Police licensing had no confidence in Mr Koay as the Licence Holder or the DPS to operate the premises in a responsible manner so as to uphold and promote the licensing objectives. It was therefore requested that the licence be revoked.

In response to questions from the Licence Holder's Barrister:

- Ms Scaife confirmed that there had been a lack of compliance on each occasion that the police had attended the premises, although it was accepted that the breach on 8 November had been rectified and that the Section 19 notice issued in June had finally been cancelled.
- PS Booth confirmed that the statement of the victim of the 22 January incident had been taken by the investigating officer, PC Souster, at the victim's home address, in the presence of an appropriate adult; the victim's age appeared on the back of the statement but had been redacted as restricted information.
- PS Booth said she did not know whether a photo had been taken of the victim; she believed that the incident log referred to a urine sample being taken, but agreed that there was no police evidence to support the fact that the victim had been drugged.

5. The representations made by Duncan Craig, Barrister, on behalf of the Licence Holder, Kheng Chooi Koay, in writing and at the hearing.

Mr Craig conceded that there had been issues at the premises and said he would not be inviting the panel to take none of the steps available to them. However, the incident that had given rise to the review application had occurred about 10 months ago and the panel were allowed to take account of the position as it currently stood. Since January there had been an improving picture of compliance at the premises. PC Bolland's statement *(page 199)* indicated a generally high level of compliance at the premises during the visit on 17 August. When PS Booth visited the premises on 8 November and the S.19 notice was cancelled, the clock had been out by 3 minutes but that was not uncommon. This could only be described as a hugely improved picture, which he invited the panel to take into account.

Mr Craig went on to state that he had visited the premises on Monday and would describe the level of compliance as very high; he had been impressed by the quality of record keeping. In relation to the visit on 17 August, he pointed to the records included in the agenda papers: the training records *(pages 203-205),* the door supervisor register *(page 206)*, and the individual training records *(pages 207-210)*, stating that he had examined the latter and that many of them had been completed by early June. He also highlighted the age verification poster *(page 211)*, the incident book *(pages 212-213)* (which he pointed out was being filled in regularly), and the checklists for the individual rooms *(pages 214-220).* Turning to the additional papers in agenda supplement 2, he highlighted the further incident book entry *(page 11),* room checks *(pages 13-15),* door supervisor sign in *(page 17),* more recent training records *(pages 19-21)*, and the start and termination staff record system *(pages 23-25),* describing the records as impressive and comprehensive. He then referred to the supporting documents circulated before the hearing on behalf of the Licence Holder *[now published as agenda supplement 3].* These included photographs of the CCTV monitor *(page 2)*, the hard drives - which money had been spent on upgrading - *(pages 3-4)*, and a number of posters relating to the prevention of public nuisance (asking customers to leave quietly etc.) *(pages 7-14).* Mr Craig pointed out that there had been no representations from neighbours or Environmental Health. He further highlighted photographs of: a book containing an individual room record *(pages 17-18),* radios *(page 19),* a screenshot of a passport indicating compliance with the requirement for each member of staff to have identifying documents *(page 20)*, the noise

management plan *(pages 21-22)*, and contact details circulated to neighbouring properties *(page 23).*

Mr Craig further stated that the licence was significantly conditioned, that the Licence Holder had taken positive steps to address what had been an unsatisfactory position, and that the police would have progressed to closure after their visit on 8 November if they could have done. He invited the panel to consider 11.2.0 in the S.182 guidance. He said that Mr Leung did not have any standing at the premises in terms of the Licensing Act nor any involvement in carrying out licensing activities, but obtaining staff for licensed premises was 'a nightmare' and nobody had tried to hide the fact he was involved. Regarding the caution, Mr Koay had readily accepted that he was at fault; had the breaches been significant, the CPS would have prosecuted. With reference to the spiking incident, he said he did not know what the victim looked like or the veracity or circumstances of the test taken, and he found it strange that her statement *(page 123)* said her friends had tasted her drinks in the first venue she attended that night. He said the panel could not attach overwhelming weight to the statement as it had not been subject to further investigation. He conceded that there had been shortcomings at the premises regarding the CCTV footage. Referring to PS Booth's statement *(at page 195)* he said the Licence Holder had not intended to mislead officers regarding his involvement in the fire regulations breaches at Mr Happy.

In conclusion, Mr Craig invited the panel to suspend rather than revoke the licence. This would act as a deterrent and send a message that improvements would be taken into account, as would be more proportionate given the clear improvements that had taken place as indicated at the visit on 8 November.

In response to questions from Ms Scaife on behalf of the Applicant:

- Mr Craig agreed that the police occurrence enquiry report (OEL) of the spiking incident did show that a urine sample had been taken *(page 131).*
- Mr Craig stated that Mr Koay would continue to comply with conditions if he kept his licence, as otherwise he would lose his business.
- Mr Koay stated that he would do his very best and follow the police conditions, and confirmed that he understood better

than before what he needed to do and what the consequences would be if he did not.
- Mr Craig stated that Mr Koay had another business where there were some issues but would be at the premises 4 days per week and understood that the responsibility was on him and not on Mr Leung.
- Mr Koay said he would keep up all he needed to do.

In response to questions from the Sub-Committee Members, Mr Craig:
- Stated that in his view the premises had been compliant, or thereabouts, since 17 August;
- Conceded that the level of compliance had not been good enough and had taken a long time, which was why he was inviting the panel to consider suspending the licence but to fall short of extinguishing the business.

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

Mr Craig summed up for the Licence Holder, stating that the panel was required to make a proportionate, reasonable and appropriate decision and take steps for the promotion of the licensing objectives. Given the improvements made, which were conceded by the police, it would be unjust to penalise the Licence Holder by taking the licence away. He had visited the premises himself and felt that the levels of compliance were of a very high standard. If the panel gave the Licence Holder this opportunity, the police would be watching and if he did not comply he would have only himself to blame. He asked the panel to give the Licence Holder a chance and impose a suspension for as long as they saw fit, which would serve as a deterrent for this and other premises going forward.

Ms Scaife summed up for the Applicant, stating that there had been repeated failures to comply with the terms of the licence and all promises made had proved empty and false. The Licence Holder was more than aware of his obligations and had failed to meet them, despite significant police resources. All four licensing objectives had been undermined. The police approach had been a stepped one, with visits, guidance and two S. 19 notices issued as well as pursuing a criminal offence. The second notice had taken five months to rectify, which was unacceptable, and there were still

outstanding issues. The police had absolutely no confidence that the Licence Holder would comply with his obligations. Two days after he had accepted a caution, further breaches had been identified. There was no confidence that the premises would be operated lawfully without continuing police involvement. Drawing attention to Paragraph 11.10 of the S.182 guidance, Ms Scaife asked how many opportunities should the Licence Holder be afforded and asked the panel to consider the effect on other licence holders and urged the panel to revoke the licence.

By virtue of Section 52(4) of the Licensing Act 2003, the Sub-Committee had to determine whether or not to take any of the following steps, as they considered appropriate for the promotion of the licensing objectives:

Option 1: To modify the conditions of the licence (i.e. to alter, omit or add any new condition). This option was **rejected.**

Option 2: To exclude a licensable activity from the scope of the licence. This option was **rejected.**

Option 3: To remove the Designated Premises Supervisor. This option was **rejected.**

Option 4: To suspend the licence for a period not exceeding three months. This option was **rejected.**

Option 5: To revoke the licence. This option was **approved.**

The Sub-Committee noted that it may also decide:

Option 6: To determine that no further steps are required. This option was **rejected.**

Option 7: To issue an informal warning. This option was **rejected.**

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 5, to revoke the licence, for the following reasons:

1. The Sub-Committee reminded itself that it must take its decision on this review application with a view to promoting the licensing objectives. In taking that decision, it must also 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 Sub-Committee considered that all four licensing objectives were engaged by this review application.

3. The Sub-Committee noted that a previous licence for the premises was reviewed and revoked by the Sub-Committee on 8 June 2020 on application by North Yorkshire Police. The Sub-Committee noted the history of the undermining of licensing objectives by the previous premises licence holder before the current premises holder was granted a new premises licence on 29 April 2021 under the new business name of Sky Blue. The Sub-Committee also took account of the evidenced persistent and significant failures by the current premises licence holder to comply with conditions of the premises licence and considered that this has undermined the licensing objectives, in particular the prevention of crime objective. The Sub-Committee noted in particular that failings of the CCTV system had impeded a Police investigation into the alleged drink spiking incident. They noted that notwithstanding the significant resources employed by the Police to engage with the premises, breaches and failings continued to occur over a lengthy period. They also noted that the previous premises licence holder is closely linked to the running of the current operation.

4. The Sub-Committee took account of the improved compliance with the premises licence conditions in recent months but noted that this was only after a lengthy supervision of the premises by the Police. The Sub-Committee was concerned that the licence holder has shown disregard and failure to comply with conditions over a lengthy period and a lack of proper and effective management of the premises. The Sub-Committee felt that the premises licence holder did not reassure them that he understood the severity of the situation or that he has the ability to appropriately control and manage the licensed activities on the premises.

5. The Sub Committee considered all the options available as set out above. Given the history of repeated failings by the current premises licence holder, the Sub Committee has no confidence in

the premises licence holder running a licensed premises. The Sub Committee shared the concerns of the Police that the premises licence holder is not able in the future to consistently apply and comply with the conditions of the premises licence and exercise sustainably the levels of control necessary to ensure that the licensing objectives are being upheld.

6. The Sub-Committee was mindful that revocation of the premises licence is a major and severe step that would be likely to harm the business and its employees. However, it was not satisfied that the licensing objectives would not be undermined if the licence were to remain in place and were of the view that revocation of the licence was the only way to ensure that the licensing objectives would not be undermined, in particular the prevention of crime objective. This was considered to be appropriate and proportionate in the promotion of the licensing objectives on the information before them. Having considered what other steps short of revocation could be taken to ensure promotion of the licensing objectives, the Sub-Committee resolved on the information before it that there were none.

This determination does not have effect until either the end of the period given for appealing against the decision, or if the decision is appealed against until the appeal is disposed of - Section 52(11) of the Licensing Act 2003.

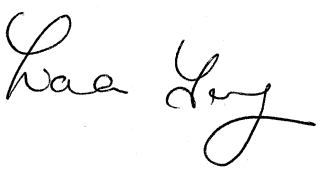
Right of Appeal

There is a right of appeal for the Applicant, the Licence Holder and the Representors to the Magistrates Court against this decision. Any appeal to the Magistrates Court (preferably in writing), must be made within 21 days of receipt of this letter and sent to the following address:

Chief Executive
York and Selby Magistrates Court
The Law Courts
Clifford Street
York, YO1 9RE
Email - ny-yorkmcenq@justice.gov.uk

Thank you for attending the hearing.

Yours Sincerely,



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CC: The Licence Holder