

Meeting	Licensing/Gambling Hearing
Date	31 October 2022
Present	Councillors Galvin, Melly and Wells

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**36. Chair**

Resolved: That Cllr Melly be elected to chair the hearing.

**37. Introductions**

The Chair introduced those present at the hearing: the Sub-Committee Members, the Licensing Manager, the Legal Adviser, the Democracy Officer, the Applicant and his solicitor, and the Representatives from North Yorkshire Police, Public Protection and the Licensing Authority.

**38. 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.

**39. 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.

**40. The Determination of an Application by Mr Mehmet Simsek for the variation of a premises licence (Section 35(3) (a) in respect of 5 Whip ma Whop ma Gate, York, YO1 8BL (CYC 061097)**

Members considered an application by Mr 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:

- The Prevention of Crime and Disorder
- 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. She explained that the original licence was granted in June 2018 with a variation in 2021. She advised that the premises was located in the Cumulative Impact Area (CIA) but was not in the red or amber zones. She noted that the full cumulative impact assessment (Annex 4) had been published as a supplement to the agenda. She detailed the representations from the police (Annex 6), public protection (Annex 7) and CYC licensing authority (Annex 8). She then outlined the options available to Members in their determination of the application.

In response from a question from the Chair, all present confirmed that they were in receipt of the two published supplements:

- Supplement 1 – draft noise management plan

- Supplement 2 – Amended Annex 4 cumulative impact
4. The representations made by John Walker, on behalf of the Applicant.

John Walker detailed the extension to timings to the outside area and for the playing of recorded music inside. He explained the Applicant's background to the matter, noting that he was a conscientious operator. He explained that the premises was not in the red or amber zones and added that the application was lodged in line with the Statement of Licensing Policy and that it would not add to the cumulative impact. Referring paragraph 5.15 of the policy he explained that there was no vertical drinking, and there would be table service, a set number of table covers, no drinks promotions unless in line with food promotions, that alcohol would be ancillary to food, and that last orders would be at 10pm. In addition, the premises had a modern and extensive CCTV system, noise monitoring, radio contact, signage, logbooks, and had put forward a noise management plan. He added that his client was happy to amend the noise mb to 60dba, that an internal door had been installed, that extra staff training had been arranged and that there would be zero tolerance regarding noise. He advised that the applicant would be happy for there always to be one member of staff on the first floor roof terrace and that there had been no objections to the application from members of the public.

John Walker stated that the Applicant was happy to put up a barrier for one adjoining property and would put up an awning. He noted that there were much noisier licenced properties in the area that were open much later, for example The Terrace. He explained that Mr Simsek was a small independent operator, and the business was a credit to York. He explained that there had been one complaint that was as the result of an error. He added that the application was in line with section 9.15 of the policy.

In response to questions from Members of the Sub-Committee, he confirmed that:

- The nearest habitable property was the flat at the back of the building on the Shambles, and he was not aware of others apart from those in St Saviourgate and Stonebow.

- Regarding zero tolerance to noise, the applicant noted that this was from opening to closing. He noted that he had been in the building 17-18 years and had asked neighbours if they had problems with the way in which the premises was run (this included the flat). The Applicant noted that he would not let any noise or stupid acts to ruin the business for his children's or employees' futures as it was his livelihood. He noted the use of radios at the premises.
  - The proposed screening area to the flat on the first floor outside area would require planning permission and had been referred to a planning agent. The applicant confirmed that there would be no other screening.
  - The Applicant would be happy to condition a member of staff on the first floor outside area in the noise management plan.
  - There was not necessarily some drinking without food. Customers were mainly over 30 and wanted somewhere to sit and relax.
  - The music played would be quiet music.
5. The representations made by PC Kim Hollis, on behalf of North Yorkshire Police. She stated that it was an application to vary a premises in the CIA and she noted the timings applied for the roof terrace and extension of hours for recorded music indoors. In regard to the Statement of Licensing Policy, she referred to paragraphs 9.9, 9.10 and 9.15 of the policy. She noted that some of the conditions referred to in paragraph 9.15 of the policy relating to predominantly food led premises were lacking in the existing licence and current application.

PC Hollis advised that the police had submitted a representation for the 2021 variation along with the other responsible authorities. She noted that the current application was for recorded music until 1.00am and it was yet to be seen what the impact of later opening hours was, and she noted concerns regarding public nuisance as a result of the roof terrace. She added that there was no obligation for people to dine, and that without any condition regarding providing food there would be an increase in public nuisance and disorder. She requested that the application be considered in line with policy and not granted.

In response to questions from Members of the Sub-Committee, PC Hollis confirmed that:

- Incidental music was not licensed. She explained the police concerns regarding why they were asking for recorded music, which would suggest that the music would be louder than music at a background level. If recorded music was refused, this would remove one objection to the application.
- Cumulative impact was about the overall impact of adding more capacity and by adding more people, noise, and drinking into an area that was already fit to burst.

6. The representations made by Michael Golightly on behalf of Public Protection at City of York Council. He reminded Members that in the CIA, the application adversely affected the licensing objectives of crime and disorder and public nuisance. He explained that the roof terrace would introduce more raised voices and music while drinking later into the evening. He stated that the onus should be on the premises not to create a disturbance and this would set a precedent to open later in the CIA and would contradict the earlier decisions of the Sub-Committee in previous applications. He added that the concern of Public Protection was that there was a risk of public nuisance and that the noise could not be mitigated. He explained that the premises had opened during the pandemic when it was quieter and Public Protection were now receiving complaints from residents. He explained that there was one noise complaint about this premises, that loud music was a regular issue for that complainant, and that the management had refused to turn down the music which was not a good way for the applicant to deal with the complaint and handling of the site. He added that no noise management plan was submitted until after the complaint and the variation application was submitted. He noted that the noise management plan as recently submitted was not fit for purpose. He added that the noise management plan submitted had not been agreed and it was still in breach of the licensing conditions.

Michael Golightly explained the technical details of the noise levels inside and outside the premises. He noted that if the Sub-Committee was minded to grant recorded music, there could be noise break outs until 1am in the

CIA seven days a week. He added that the premises had background music and that the recorded music element of the application should be refused. He explained the different decibel levels and whilst it may be possible to control music levels through a noise management plan, he questioned how long this would take given the length of time taken to submit the noise management plan. He requested that the Sub-Committee refuse regulated entertainment, or, if granted, include a condition prohibiting regulated entertainment until the noise management plan was in place and agreed works had been carried out to ensure no sound escape.

In response to questions from John Walker, Michael Golightly explained that:

- There had been no other complaints other than the one person and that complaint did not relate to the use of the first floor terrace (although it wasn't clear whether it was about external speakers).
- Some items requested had not been included in the noise management plan. This was a work in progress and that needed an extra condition.
- He would accept a condition regarding no recorded music until the noise management plan had been signed off. He added that if the application was granted the premises could operate as a nightclub, and, therefore, a condition was needed to prohibit this.
- Regarding the barrier between the premises and flat upstairs, he had concerns as it was in a historic area, and he could not comment on planning matters which were beyond his control.

He was then asked a number of questions from the Sub-Committee, to which he responded that:

- There had been one complaint from the complainant, who had said that the noise was happening regularly.
- If the recorded music element of the application was not granted, his concern regarding extending the hours for the roof terrace was that it would set a precedent for other licensed premises, and he noted general concern for the impact of noise after 9pm, putting further pressure on the CIA.
- His concerns were regarding general noise breakout and greatest concern was noise escape from the downstairs doors.

- Any noise over 83db would be a concern.
  - He explained where the complainant lived and added that the application was adding to the accumulation of existing noise
  - The Licensing Manager was asked and confirmed that there was a taxi rank on Spurriergate.
7. The representations made by Helen Sefton on behalf of the Licensing Authority. She explained that the Licensing Authority fully supported the comments of the other two representors. She added that policy stated that applications in the CIA should be refused. She noted that the applicant had not shown how the application would not add to the cumulative impact of the area. She explained that history of premises applications for the premises. She further noted that there had been a breach of the Licensing Act as there was no noise management plan submitted. She was asked and confirmed that when the late night refreshment van was located in the layby next to the premises and she did not know when it closed.

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

PC Hollis summed up, stating that it was important to note that there was a number of licensed premises, which was why there was a cumulative impact, and the application added to it. She added that York was saturated with licensed premises in that area, which added to public nuisance. She added that police were there as experts to give advice on the likely effect of the variation. She added that the police were trying to prevent an increase in cumulative impact.

Michael Golightly summed up, stating that the premises was in the CIA, and would add extra pressure by adding noise to the CIA. He expressed concern regarding the impact of this on a residential neighbourhood. He noted that regarding noise internally, the Sub-Committee could refuse recorded music, or if granted, could condition that music was prohibited until there was a noise management plan and the necessary works had been carried out. Helen Sefton summed up, stating that the premises were in the CIA and should be refused unless the applicant could prove how it could not add impact to it.

Mehmet Simsek (Applicant) and John Walker summed up. Mehmet Simsek explained that on the occasions where the music was over 90db was a mistake made by himself. Regarding the complaint made, this had been addressed. There were 24 cameras in the premises, and he cared about his property and tried to do all possible to run the property as peacefully as possible. John Walker advised that the applicant could sell alcohol on the outside ground floor and the application was for a small outside terrace holding 30 people. This was a tiny application in a well run premises and would not impact on the CIA. He noted that he could work with Michael Golightly on the noise management plan. He concluded that it was a reasonable application with no impact on the CIA.

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 35 (3) (a)** 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 **rejected**.
- Option 2: Reject the whole or part of the application, and for this purpose, the conditions of the licence are modified if any of them is altered or omitted or any new condition is added. **This option was approved with the whole of the application being rejected.**

Resolved: That Option 2 be approved and the whole of the application 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 Sub-Committee noted that the premises are located within an area where a Cumulative Impact Area Policy applies. The Statement of Licensing Policy sets out that this special policy will create a rebuttable presumption that applications for variations that are likely to add to the existing cumulative impact will normally be refused following receipt of representations, unless the applicant can demonstrate through the operating schedule that the grant of the variation will not add to the cumulative impact already being experienced.

(iii) The Sub-Committee noted that that the premises being in the CIA did not act as an absolute prohibition on granting 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 the operation of the varied licence would not add to the cumulative impact already being experienced in the CIA, with regard to the licensing objectives. There were representations from North Yorkshire Police, Public Protection and the Licensing Authority.

(iv) The Sub-Committee considered that the onus lay upon the Applicant to evidence to the Sub-Committee that the operation of the premises as varied would not add to the cumulative effect of licensed premises in the CIZ, with regard to the licensing objectives.

(v) The Sub-Committee noted the Police representation that the area was already a highly stressed area for anti-social behaviour and crime and disorder. The Sub-Committee noted in particular the concern of the Police that there is no obligation for customers to dine, that the premises is in an area which is already saturated with licensed premises, that extending the terminal hour for the use of the roof terrace would add to the cumulative effect of licensed premises in the CIA. It noted the Police's concern that the applicant had not demonstrated how the extension of the terminal hour for the use of the roof terrace and recorded music would not add to the cumulative impact of public nuisance and

crime and disorder already experienced in the CIA. The Sub-Committee considered that the Police concern carried great weight in accordance with paragraph 9.12 of the statutory guidance.

(vi) The Sub-Committee noted the evidence from the Public Protection Officer that the impact on residents of noise nuisance and disturbance arising from the use of the roof terrace as proposed by the variation would be significant and could not be adequately managed in this location. It also noted the concerns of Public Protection about the potential for unacceptable noise escape in respect of the recorded music element of the application, that a complaint has been received about loud amplified music from the premises and that a noise management plan has not yet been agreed with the Council, as required by existing condition on the licence. As a Responsible Authority providing the main source of advice on noise nuisance matters, this representation that the licensing objective of public nuisance would be likely to be undermined by the proposal was given significant weight.

(vii) The Sub-Committee noted that the Licensing Authority fully supported the comments of the other representors.

(viii) The Sub Committee noted the Applicant's representation that the variations of the premises licence would have no impact on the licensing objectives and the CIA. However, the Sub Committee agreed with the Responsible Authorities that they had not heard sufficient evidence to demonstrate that granting the variation application would not add to the cumulative effect of licensed premises in the CIA, with regard to the licensing objectives of public nuisance and crime and disorder.

(ix) They also noted that the Applicant has not kept to the terms of the licence with regard to provision of a noise management plan, which is of particular concern bearing in mind the premises are

in the CIA, an area with high levels of public nuisance and anti-social behaviour.

(x) The Sub-Committee concluded that the applicant had failed to rebut the presumption that the application, if granted, would add to the cumulative impact in the area.

CLlr R Melly, Chair

[The meeting started at 10.17 am and finished at 1.00 pm].