
Meeting	Licensing/Gambling Hearing
Date	17 October 2022
Present	Councillors Cuthbertson, Galvin and Mason

25. Chair

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

26. Introductions

The Chair introduced the Sub-Committee Members, the Legal Adviser, the Legal Assistant shadowing the Legal Adviser, and the Democratic Services officer. The Licensing Manager and the Police Representor introduced themselves; the Applicant's solicitor introduced himself and Jamie Hawksworth, from T'Bridge Café Ltd.

27. 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.

28. 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.

29. Minutes

Resolved: That the minutes of the Licensing Hearing held on 25 August 2022 be approved as a correct record, to be signed by the Chair at a later date.

30. The Determination of a Section 18(3) (a) Application by T'Bridge Cafe Ltd. for a premises licence in respect of Fawkes & The Tiger, 32 Stonegate, York, YO1 8AS

Members considered an application by T'Bridge Café Ltd. for a premises licence in respect of Fawkes & The Tiger, 32 Stonegate, York YO1 8AS.

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
3. 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, noting that the premises were located in the cumulative impact assessment area (CIA) but not in the red or amber zone, and confirming that the Applicant had carried out the consultation process correctly. She highlighted an error in paragraph 5 of the report, stating that this should refer to the supply of alcohol 'on *and off* the premises'. She drew attention to the representations received from North Yorkshire Police, including the additional papers published in the Agenda Supplement, and to the further additional information circulated by the police and the Applicant [*since published in Agenda Supplement 2*]. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to a question from the Chair of the Sub-Committee, the Licensing Manager confirmed that there was a legal requirement for venues to operate an age challenge policy, but not specifically the Challenge 25 policy. This was acknowledged by the police representative, PC Hollis.

4. The representations made by Piers Warne, solicitor, representing the Applicant.

Mr Warne referred to his submission document, which had been circulated to all parties [*since published in Agenda Supplement 2*]. He noted the Licensing Manager's confirmation that the premises were not located in the Red or Amber zones of the CIA. He confirmed that the application was for the supply of alcohol and late night refreshments for the hours stated, subject to the 27 conditions offered in the operating schedule. The Applicant had worked with the police to try to reach agreement on the conditions, and had offered a variation to Condition 2 (page 43 of the agenda papers), requiring substantial food to be available from 12 noon to 9.00 pm instead of '*up to 3 hours before the end of permitted hours*', as it was felt this would work better to maximise the efficiency of the kitchen.

Mr Warne went on to state that the Applicant already operated four premises in York, including two with a substantial food offer, and therefore expected a huge rise in costs, due to the rising price of energy, food etc. As set out in the submission document, restaurant closures to May 2022 were up 64% on the previous year. This dramatic rise was a result of the effects of Covid and then the ceasing of grants and support post-Covid. The Applicant was an exemplary operator, who was prepared to invest £700k in the business, offering 15 full time and 6 part time jobs. There were no issues of crime or disorder at any of his other operations in York, which included Pivni, the Market Tap, the Pavement Vaults and York Tap, and a Challenge 21 policy operated successfully at all of them. There was no need for Challenge 25 at the new premises, although it was PC Hollis' preference. The conditions offered by the Applicant included minimum seating for 210 people; the maximum capacity of the premises was 250, which indicated that it would be a

mainly seated venue. It was a 'grown-up' offer, like the Market Cat, with quite expensive craft beer and substantial food.

Regarding the conditions requested by the police, Mr Warne stated that the Applicant and Police had been close to agreement, but the Applicant felt that the police proposals went too far and didn't take into account the operation of the kitchen or the implications of the premises being outside the red and amber zones of the CIA. A graded approach should be taken. In the Brewdog case quoted in the submission document, the judge found no reason to suspect that increased footfall would undermine the licensing objectives. The Applicant was offering a 'hybrid' between a restaurant, which had no flexibility as to food service times, and a pub, which had maximum flexibility. The benefit of this approach was that customers were more likely to turn up to eat, then leave to go home rather than go on to drink elsewhere, leading to an overall reduction in the cumulative impact.

In conclusion, Mr Warne asked the panel to consider whether to accept the variation offered by the Applicant to Condition 2.

In response to questions from Members of the Sub-Committee:

- Mr Hawksworth confirmed that he was familiar with the demographic of his customers after 15 years trading in York; that their age range was 23+, with no students or stag / hen parties; that no drinks promotions were offered and prices were not cheap – the aim was quality rather than volume; and that he did not want to serve diners after 9pm who may have been drinking, so his chefs and kitchen staff would be idle from 9pm if required to stay on after that time.
- Mr Hawksworth agreed that 9pm could be last orders for food rather than closing time for the kitchen, depending on demand.
- Mr Warne stated that conditions restricting the use of parts of the premises to certain times would be difficult to enforce.

At this point, the Legal Adviser to the sub-committee queried the indication in the submission document that

paragraph 9.15 of the special policy related only to the red and amber zones of the CIA. In response, Mr Warne stated that, even if he had misunderstood the wording, the points made in his submission still stood.

5. The representations made by PC Kim Hollis, on behalf of North Yorkshire Police, in writing and at the hearing.

PC Hollis referred to the additional information in the Agenda Supplements showing her communication with the Applicant's solicitor, and to the police representations at Annex 5 to the Licensing Manager's report. She highlighted the paragraphs in the council's statement of licensing policy that related to the CIA, noting that this area had been identified because evidence showed that the cumulative impact of licensed premises in this area adversely affected the promotion of the licensing objectives (paragraph 9.11) and that applications in the CIA may be considered more favourably if they were predominantly food-led (paragraph 9.15). The Police had reviewed this application to add another licensed premises to the CIA, and now looked to agree minor and carefully considered changes to the conditions.

PC Hollis went on to say that the conditions offered by the Applicant were welcome, but the changes proposed by the police were proportionate and relevant and would ensure that the premises operated as a food-led establishment. She pointed out that, should the application be granted, the conditions attached to it would endure beyond any shift in economic circumstances. The policy had been applied due to the density of venues in the area and was particularly relevant in this case, where a former retail premises was being converted. The police had not asked for a condition that alcohol be served only ancillary to a meal, but just for 2 minor amendments to ensure that the premises did not add to the cumulative impact. These amendments would still allow 2.5 hours for the service of drinks to customers.

With regard to the age challenge policy, PC Hollis explained that the police considered Challenge 25 to be more robust, and she believed it would offer stronger protection because the premises sat within the CIA. If the customer base was older, it should not be a problem. It

was considered best practice and was always welcomed by responsible operators. Regarding the Applicant's proposed amendment to Condition 2, she noted that this would actually reduce the time when food was available.

In conclusion, PC Hollis stated that, under paragraphs 9.5 and 9.10 of the policy, applications in the CIA were normally refused and the onus was on the Applicant to demonstrate how their proposal would not add to the cumulative impact. She referred the panel to her written submissions and the fact that the only change offered by the Applicant would reduce the time when food was available. She further stated that she did not look to object outright to the application nor to ask for unreasonable conditions.

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

- the classification of the red and amber zones of the CIA related to the number of incidents in these zones, and it was not known how the application, if granted would add to these;
- it was not the role of the police to take into account the financial consequences of any conditions added to the licence;
- although Challenge 21 had previously been considered acceptable, the police now looked to be more robust due to the younger demographic in the city centre, and in her opinion Challenge 25 was a more appropriate policy in this case as it left less room for error;
- although the policy stated that alcohol should only be served ancillary to food in the CIA, she was aware of the challenges to operators and considered that her suggested minor changes would ensure that the operation was predominantly food-led, thus offering a good compromise.

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

PC Hollis summed up, re-iterating that she was not looking to object outright to the application nor to impose overly onerous conditions. She asked the sub-committee to appreciate that, without the suggested police

conditions, the operation would not be robust enough within the CIA policy area. Anyone could enter licensed premises, and failure to impose adequate conditions would make things difficult.

Mr Warne summed up, stating that the government could have made either Challenge 21 or Challenge 25 mandatory but had not done so; therefore it was up to the operator to decide. Challenge 21 worked across the board at the Applicant's premises, as there were no issues with young customers in these premises. The Applicant had 15 years' experience and an impeccable track record. It was about how best to operate in difficult circumstances, and the panel had a wider focus than the police. Times were changing rapidly, which was why the council had changed its policy – under the previous policy the premises would have been in the red zone.

Turning to the conditions, he stated that from the police point of view, their proposed changes were minor, but there was no point in staff hanging around when people were not going to eat, and this would increase the costs of the kitchen. A minimum 'last orders' of 9pm for food would work better. If the panel were not prepared to grant that, it was requested that this condition revert to 3 hours before closing time.

Finally, Mr Warne submitted that the city wanted thriving businesses, not empty premises. These premises had been empty for 2.5 years. The Applicant was an exceptional operator, the premises were outside the red and amber zones, and granting the application would bring the building back into use as a modern, food-led business, offering 21 jobs. Kitchen costs were high and every hour counted – evidence could be seen from how other premises operated within the CIA.

The Sub-Committee sought clarification from the parties on their proposed hours for the availability of food, and on the reality of food service in terms of the operating model, to which.

- PC Hollis responded that the police wanted food to be available until 10 pm.
- Mr Warne responded that the Applicant had asked for a period of 3 hours at the end of the operating

period when food would not be available, and had then offered set times for the service of food, with minimum last orders at 9pm.

- Mr Hawksworth responded that he wanted the ability to do business when it was available, as this changed all the time, and the kitchen team were already in by 10 am to prepare for food service from 12 noon – on most days, he probably wouldn't open the doors until 11 am.
- PC Hollis pointed out that, if the licence was granted from 8 am, the Applicant would be able to serve alcohol from 8 am.
- Mr Warne said that weight should be given to the Applicant's track record and knowledge of his clientele.

The Legal Adviser to the sub-committee sought clarification on the exact wording of the proposed alternative conditions sought by the parties, to which:

- PC Hollis referred to page 65 of the agenda papers;
- Mr Warne referred to his email dated 10 October 2022 [*at page 5 of the now-published Agenda Supplement 2*].

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 **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 with modified/additional conditions imposed by the sub-committee, as set out below:

Activity	Timings
Supply of alcohol on and off the premises	08:00 to 00:00 every day
Late night refreshment - indoors	23:00 to 00:00 every day
Opening hours	08:00 to 00:30 every day
Non-standard timings	New Year's Eve until the start of trade the following day

The additional/modified conditions are as follows:

1. As a minimum, in all parts of the premises where alcohol is sold or supplied for consumption on the premises substantial food and non-intoxicating beverages including water shall be available to order between midday and 9pm. For the avoidance of doubt, a substantial food menu shall be available to order between these hours each day.
2. The licence holder will operate a Challenge 25 Age Verification Policy at the premises.

All conditions offered in the operating schedule shall be included in the licence, unless contradictory to the above conditions. The licence is also subject to the mandatory conditions applicable to licensed premises.

- 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 Sub-Committee was satisfied that the Cumulative Impact Area policy applied and that the application for a new premises licence was likely to add to the existing cumulative impact within the Cumulative Impact area unless the Applicant could rebut the presumption of non-grant and show that its application would not add to the cumulative impact already experienced.
 3. It 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 premises, if licensed, would not add to the cumulative impact already being experienced in the CIA, with regard to the licensing objectives.
 4. The Sub-Committee noted the Police representation that they do not object to the application if the two conditions proposed by the Police are attached to the licence, the Police being content that the premises could with the imposition of the two conditions proposed by the Police operate without adding to the cumulative impact.
 5. The Sub-Committee accepted the assurances put forward at the hearing by the Applicant that the venue would attract customers aged 23 plus, that it would be a mainly seated venue selling expensive craft beer and that substantial food orders would be taken until at least 9pm. It also noted the Applicant's other examples of its premises that have operated in the City without concern.
 6. The Sub-Committee considered that, on balance, it had received sufficient assurances from the Applicant in order to have a high level of

confidence that the premises would be operated responsibly. Whilst the imposition of the additional conditions set out above did not fully resolve the Police objections, it was unlikely that with these additional conditions any significant additional cumulative impact would be caused. Therefore the proposal was sufficient to rebut the presumption of refusal as set out in the CIA policy.

7. The Sub-Committee therefore agreed to grant the licence with the additional conditions referred to above which were appropriate and proportionate in the circumstances to promote the licensing objectives.

Cllr A Mason, Chair

[The meeting started at 2.35 pm and finished at 4.12 pm].