

Meeting	Licensing/Gambling Hearing
Date	21 July 2022
Present	Councillors Galvin, Looker and Melly

13. Chair

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

14. Introductions

The Chair introduced the Sub-Committee Members, the Legal Adviser and the Democratic Services officer. The CYC Licensing Manager Lesley Cooke, the Applicant's solicitor Richard Taylor, Maria Farrugia from GTFO Bars Ltd (the Applicant) and the Representatives, Mr & Mrs Cooper, all introduced themselves.

15. 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.

16. 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.

17. Minutes

It was confirmed that the minutes of the Licensing Hearing held on 13 June 2022 had already been approved at the hearing on 11 July.

18. The Determination of a Section 35(3)(a) Application by GTFO Bars Ltd for Variation of a Premises Licence in respect of The White Horse Inn, The Green, Upper Poppleton, York, YO26 6DF (CYC-08978)

Members considered an application by GFTO Bars Ltd. for variation of a premises licence in respect of The White Horse Inn, The Green, Upper Poppleton, York YO26 6DF.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objective was relevant to this Hearing:

- 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 additional papers submitted by the Applicant (*now published as an Agenda Supplement*) and the written representations.
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 not in the cumulative impact area (CIA) and confirming that the Applicant had carried out the consultation process correctly. She drew attention to the amendment agreed with North Yorkshire Police to the suggested new condition, as set out in Annex 4, and to the representation from local residents contained in Annex 5. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to questions from the Representors, the Licensing Manager confirmed that the application did not include any change to the existing hours for the service of alcohol or closing times. The bar would have to close at 11:00 pm and be cleared and vacated by 11:30 pm.

4. The representations made by Richard Taylor, solicitor for the GTFO Bars Ltd. (the Applicant), on behalf of the Applicant.

Mr Taylor stated that the application was for a variation, amending the plan [of the licensed area] to include a new bar, or rather a multi-functional servery, that would close no later than 11:00 pm. He stressed it was important for the panel to concentrate on what the application was about, and to decide simply whether they were happy to allow drinks to be served from a new servery adjacent to the garden. Drinks could already be consumed outside until 11:30 pm. Nothing would change except that people would on occasion use the outside bar service. The operator, Maria Farrugia, had held a personal licence since the 2003 Licensing Act came into force and had operated several licensed premises in the region, including Winter Wonderland, YO1 and the Ryedale Maze, before taking over the White Horse at Easter. Her intention was to develop the premises and to make better use of the store in the garden - occasionally as a bar but also for other functions such as a bakery counter, a shop, and a pizza servery.

Referring to the additional documents circulated to the parties (*now published as an Agenda Supplement*), Mr Taylor explained that there would be no additional furniture to that shown in the photographs. The only change would be the removal of the large covered area in photograph 7; this was likely to be converted to parking for disabled customers. He said that the letter had been written to the Representors by Ms Farrugia, inviting them to discuss their concerns, and that though he did not seek to criticise the Representors, they had not responded.

Mr Taylor went on to say that there had been no representations from responsible authorities, and the additional condition agreed with the police meant the bar must be cleared and vacated by 11:30 pm. Referring to the local residents' representations at page 59 of the agenda papers, he said he understood their concerns and was pleased they had lived in their property for 11 years with no problems. Off sales and drinking had taken place in the garden of the premises up to 11:30 pm for all that

time. During the pandemic, the whole of the car park had been used as a beer garden. The new bar would be 2m wide, situated inside the doors shown in photographs 2 and 5. It was closer to the pub and further away from the Representors. There would be no extra seating and no changes to music (permitted until 10:30pm on the current licence), nor to 'drinking up time'. The smoking area and car park were not relevant to the application. It was a matter of whether the operators could sell alcohol over the bar on occasion and the effect of the application was net zero.

In response to questions from the Representors, Ms Farrugia and Mr Taylor confirmed that:

- The new layout of the beer garden did not allow room for any more chairs or tables, so it would not get busier.
- The operator would have no problem with putting up notices in the beer garden asking customers to respect the neighbours, as it was in everyone's interest not to disturb each other.
- The operator would work with the Representors to ensure no nuisance was caused to them by the pub, and had offered to liaise already.

[Mr Cooper explained at this point that he and his wife had been away on holiday when the letter arrived and then had Covid, so had not been able to respond.]

In response to questions from the Panel Members, Ms Farrugia and Mr Taylor stated that:

- The house marked as no. 15 on the map at page 43 was about 40-50 yards from the proposed new serving area.
[Mr Cooper estimated the distance as no more than 30 yards].
- There was no designated smoking area and no change to the smoking arrangements was proposed.
- Under the Licensing Act, as clarified by the s.182 guidance in paragraphs 8.35-8.37, it was permitted to purchase alcohol within the licensed area and 'appropriate' it to drink it outside the licensed area.

- If the application was granted, the 'red line' on the plan would be extended to cover the new bar, but not the seating area.
5. The representations made by Mr and Mrs Cooper, local residents.

Mr Cooper stated that if the application was granted the outside area would probably get busier, and there would also be disturbance from the car park, with cars parking and doors slamming. The car park was very close to their house. He said their concerns about drinking up time, music, and closing time had been alleviated by the Applicant's comments at the hearing. However they did not want it getting any noisier.

Mrs Cooper added that their main concern was the noise - and children, if they were about. There had not been any problems before, but they had been alerted by the noise occurring during the pandemic. Everyone in their cul-de-sac was elderly and they themselves had moved to a bungalow from the other end of the village and had never had problems with the noise before.

Finally, Mr Cooper said that he didn't want anyone to go out of business; he just wanted them to keep the noise down.

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

Mr and Mrs Cooper confirmed that they had no further comments to make.

Mr Taylor summed up for the Applicant, re-iterating that it was important for the Panel to concentrate on the effect of the proposal before them, which was an application for a variation to allow alcohol sales from a multi-purpose bar. He pointed to the evidence in favour of the application, namely:

- no representations from responsible authorities, who were the experts on noise nuisance and anti-social behaviour;
- no representations from other neighbours;

- an experienced operator with an unblemished record who had tried to engage and had said she would continue to act in a neighbourly fashion, inviting the Representors to have a chat about any concerns;
- no previous problems experienced by the Representors, who had lived there a long time.

He stated that no evidence had been heard against the application, just concerns, and although he sympathised with these they did not constitute evidence. He invited the Panel to grant the application, perhaps with an extra condition requiring the Applicant to display notices asking customers to respect the neighbours. If any problems occurred they could be discussed and he was confident the matter would not come back for review.

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: Modify the conditions of the licence. This option was **approved**.

Option 2: Reject the whole or part of the application. This option was **rejected**.

Resolved: That Option 1 be approved and the conditions of the licence be modified, as set out below:

- a) To extend the licensable area to include a new external bar servery as per the plan submitted with the application.
- b) A new condition is added to the licence to require the new external bar servery to close no later than 2300 each day.

The existing conditions on the licence shall apply in all respects.

The varied licence is subject to any relevant mandatory conditions.

- Reasons:
- (i) The Sub-Committee noted the scope of the variation as applied for and that as the premises already had a licence to sell alcohol, it was only the impact of the external bar as an addition to the premises licence which could be considered.
 - (ii) The Sub Committee carefully considered the concerns raised by the residents who had made representations at the hearing and in writing relating to public nuisance, with regard to concerns about noise disturbance, with particular regard to late noise issues due to the proximity of the outside area of the premises to their home.
 - (iii) The Sub-Committee also considered the representations made by the Applicant to address concerns raised. It was also noted that Public Protection did not object and that the police had agreed with the applicant an additional condition to be added to the proposed variation to the licence.
 - (iv) Whilst the Sub-Committee acknowledged the concerns expressed by the residents, it was satisfied with the responsible attitude of the Applicant and felt that the additional condition offered by the Applicant was appropriate and proportionate to deal with the relevant concerns raised by the proposed variation. The Sub-Committee did not find any evidence to justify a refusal of the variation 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.
 - (v) It was noted that the Licensing Act 2003 has a key protection for communities that allows at any stage, following the grant or variation 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.

Cllr R Melly, Chair

[The meeting started at 10.15 am and finished at 11.05 am].