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Meeting	Licensing/Gambling Hearing
Date	25 August 2022
Present	Councillors D'Agorne, Melly and Orrell

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## **19. Chair**

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

## **20. Introductions**

The Chair introduced the Sub-Committee Members, the Legal Adviser and the Democratic Services officer. The Senior Licensing Officer, Maria Caulfield and Mark Caulfield from The Old Grey Mare Ltd (the Applicant), the Applicant's solicitor and the Representors all introduced themselves.

## **21. 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.

## **22. 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.

## **23. Minutes**

Resolved: That the minutes of the Licensing Hearings held on 11 July 2022 and 21 July 2022 be approved as a correct record in each case, to be signed by the Chair at a later date.

**24. The Determination of a Section 35(3)(a) Application by Old Grey Mare Ltd for Variation of a Premises Licence in respect of The Old Grey Mare, Clifton Green, York, YO30 6LH (CYC-9044)**

Members considered an application by Old Grey Mare Ltd. for variation of a premises licence in respect of The Old Grey Mare, Clifton Green, York YO30 6LH.

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 objective, including:

1. The application form.
2. The papers before it, including the additional papers published in the Agenda Supplement, and the written representations.
3. The Senior Licensing Officer's report, and her comments at the Hearing.

The Senior Licensing Officer outlined the report and the annexes, noting that the premises were not in the Special Policy Area and confirming that the Applicant had carried out the consultation process correctly. She drew attention to the additional conditions agreed with the Police, as set out in paragraph 9 of the report, and noted that there had been no representations from Responsible Authorities. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to questions from the Representors, the Senior Licensing Officer confirmed that:

- The existing plan at Annex 2 (*page 65*) had not been altered since its submission with the original application in 2005.
- Areas licensed for the sale/supply of alcohol were marked with an asterisk on that plan; because consumption of alcohol was not a licensable activity, alcohol supplied in those areas could be consumed elsewhere on the premises.
- The outside areas shown on the plan were not licensed for regulated entertainment.
- The note at Annex 3 explained the government deregulation in 2012 of entertainment in certain circumstances.
- Noise conditions could be added to the licence but it was difficult to condition entertainments between 8 am and 11 pm due to the deregulation.
- Live TV did not require a licence.

In response to questions from Panel Members, she confirmed that:

- The pergola shown on the new plan at Annex 1 (*page 51*), having 2 brick walls, 2 glass walls and a canvas roof, would be considered 'substantially enclosed' under the definitions used for smoking areas, and thus arguably an indoor area.
- Both the current licence and the application included off-sales.  
*[The Solicitor for the Applicant clarified at this point that off-sales were not required for the extended hours of 8:00 am–10:00 am, and that the application could be modified to reflect that.]*
- There was no requirement for the licensable area to be outlined in red on a plan; the existing plan showed the car park to be part of the premises, and alcohol sold indoors and consumed in the car park would not constitute 'off sales'.

4. The representations made by James Staton, Solicitor for The Old Grey Mare Ltd. (the Applicant).

Mr Staton stated that the Old Grey Mare had been a pub for over 200 years. He referred to the case summary and the bundle of photographs published in the Agenda Supplement, noting that the photographs numbered 2-8 showed the outdoor and indoor drinking areas as they

used to look. This retrospective application sought to re-order the interior and extend the licence to the pergola area adjacent to the former patio garden. He confirmed that the pergola had a retractable canvas roof, 2 brick walls and 2 glass walls. Next to it was the 'wine cave' - formerly 2 bedrooms in an old outhouse, which had been converted to a small bar – and the walled garden. Indoors, the old pool room and bar was now a delicatessen selling a limited range of wine and craft beers in sealed containers. There was no access to the main part of the premises when it was closed. Photo 9 in the bundle showed the refurbished bar area, with the same location for service of alcohol as in photo 4. Photo 11 showed the refurbished dining area, and photo 12 the pergola, leading on to the 'walled garden' with its artificial hedge.

Regarding the plans, Mr Staton confirmed that the position had been helpfully clarified by the Senior Licensing Officer in response to the Representors' questions. It was not intended for the car park to be a drinking area, and he was surprised to see it marked as such on the existing plan. The area for the supply and consumption of alcohol was shown bordered in red on the plan (*at page 51*) and the walled garden was not an extension of this licensed area. He said the application proposed to reduce the area in which people could drink alcohol, by excluding the car park and including only the locations marked on the plan. Wholesale drinking outside was not the intention, as explained in the case summary. The walled garden was surrounded by a wall and a 'mock hedge', which it was hoped would reduce noise emissions. The wine cave was intended more for private parties and its use would probably be limited to Fridays and Saturdays. Regarding the extended hours, he confirmed that, although the box for off-sales had been ticked on the application form, there was no intention to provide off-sales between 8 am and 10 am, and a condition had been agreed with the police that service of alcohol between these times must be ancillary to food.

Turning to the representations made in respect of noise and the playing of music outdoors, Mr Staton referred to Annex 3 to the report, noting the deregulation of live and recorded music played between 8 am and 11 pm to an

audience of less than 500 people. He acknowledged that there had been an incident when a band played louder than anticipated; it was not intended to repeat this. However, the issue of music was not within the Panel's remit. He said the Applicant was confident that the roof and walls of the pergola would help to deaden sound, and the licence included a condition to vacate, clear and clean all external drinking areas by 23:15 hours. No representations had been received from Responsible Authorities.

In conclusion, Mr Staton said that all necessary Planning and Listed Building consents had been obtained but that the Applicant had not realised that a Licensing application was also required. A considerable sum had been spent on refurbishing the premises to a higher standard than before; the delicatessen was an enhancement to the community, and a significant number of jobs had been created.

In response to a question from the Panel, Mr Staton confirmed that the Applicant did not seek to extend the existing hours for off-sales.

5. The representations made by Mike Charlton, a local resident.

Mr Charlton expressed surprise that the car park was classed as a drinking area and that the pergola was considered an indoor area. He said he was glad to see the pub re-open, that the workmen had done a good job on updating the premises, and that it seemed a good opportunity to create a more sustainable business. However, the premises had operated as a quiet local pub for many years with minimal friction, and since it re-opened this had not been the case. Because this was a retrospective application there had been a chance to see how the changes worked. He added that there had not been clear and open communication with residents about the application. A single notice had been posted on an internal door, and residents had not been contacted until the Licensing authority became involved.

Mr Charlton went on to say that several noise events had occurred since the re-opening, including a 'riotous and un-

managed' christening party, and a band. These events had taken place 4 metres from his property, and although he was not at home at the time other local residents had been disturbed, indicating the impact of the changes on the lives of people in the locality. Two further incidents had taken place when he had been at home. On 3 August there had been a lot of noise from the premises and 'cavorting' in the pergola. He had been in bed by 11:40 pm with the windows closed. Having telephoned and received no response, he had gone round to find the pub locked, and people on the patio drinking and making a noise, with no attempt being made to moderate this. The bar manager had told him the pub was shut and either did not know of the disturbance being caused or did not care. On 20 August there had been noise until 12:40 am, apparently from a televised boxing match being shown in the pergola for which the pub had a special licence. This had prevented him from sleeping and caused disturbance, which it would not have done had it been shown indoors with the windows shut. Of greater concern was the ongoing noise from people 'carousing' 4m from his property. There was shouting and screeching, and he could not sit out in his garden. The hedge around the walled garden did nothing to absorb the noise. It was very difficult living next door to the premises with the noise at its current level - he felt uncomfortable in his home, had to complain repeatedly, and the pub management seemed unable or unwilling to contain the noise. The walled garden had brought drinkers much closer to his property and was occupied by 3 long benches, accommodating up to 30 people. It had been used as a band stage and for a hot tub and paddling pool.

In conclusion, Mr Charlton said he wanted to see the walled garden closed off, no sports broadcasts or music outdoors, the pergola not deemed to be indoors, and for the licensee / management to think ahead. He said that extending the morning drinking hours could result in going from prosecco with breakfast to beer with the World Cup, and that the Applicant seemed to be trying to create a city centre pub in a residential area. He urged the Panel to support local residents at a difficult time.

In response to a question from the Applicant's Solicitor, Mr Charlton said he did not accept that the Applicant's

proposal reduced the extent of the drinking area shown in the 2005 plan, because the pergola did not contain the noise as the main building did, yet it was classed as an indoor area.

In response to questions from the Panel, he said that:

- Restricting the service of alcohol between 8 am and 10 am to indoor areas would not help unless 'indoors' meant only the main building, as serving alcohol in the pergola would be as bad as serving it outdoors.
- A condition to vacate, clear and clean the pergola by 23:15 hours would not address the issue of serving alcohol there between the hours of 8 am and 10 am.

6. The representations made by Bronwen Tuffen, a local resident.

Mrs Tuffen said she had lived next door to the pub for 23 years and had never had any cause to complain or raised objections about it. She said her main objection now related to the outside area. The operators were dictating what she listened to in her own home, and that should be taken into account in the decision. Bringing the music indoors made a difference, because the main building was well-insulated when the windows and doors were closed. It was the pergola and wine cave that were the problem. The pergola had glass walls only partway up, and its doors leading to the walled area were left open. If the doors were shut and the glass extended to the top, that might help. The noise funnelled up through her garden and all the way down Compton Street. The pergola area was a massive noise problem; for example, on 2 and 5 August she could hear the bass over the television in her front room. When the pub was busy, she couldn't go to bed until closing time. When the wine cave was hired out for a christening party along with the pergola, the noise had been so loud that her husband could not have his own music on in the loft of their house. When she went to the pub to complain she had been told that the noise was *'not under our control – we have hired it out'*. The wine cave was not as well soundproofed as the main building; in fact the noise in the pub when she went in was less than in her home. The noise was making life incredibly stressful. The council's guide to pubs in relation to this issue stated that

the noise at the boundary should be 'negligible'. The pergola was already causing big problems and the wine cave would cause a bigger problem – for example, when there was a disco in the wine cave it had 'boomed' throughout her house. No attempt had been made to consider the neighbours. There had been no contact with neighbours, and the only phone number for the pub was a mobile number that was never answered. When she went in the owners had been away; they had emailed 4 days later.

In conclusion, Mrs Tuffen said that she wanted the pub to succeed, but also wanted the Applicant to think about their new outdoor areas. Imposing noise restrictions on these, if that were possible, might help. It would also help if the outdoor areas were cleared by 11:15 pm, though this was not ideal. She just wanted to spend time in her own home without being dictated to by the pub, and the licensing of the outdoor areas was key to this. Referring to a point made in the representations, she also noted that people walking past the pergola could see inside it due to the glass walls.

In response to questions from the Applicant's Solicitor, Mrs Tuffen stated that:

- Previously, outdoor drinking had only taken place in the patio area. The addition of the walled garden and pergola had brought the drinking area 10m closer to neighbours and increased the number of people drinking outside.
- The application had 'brought in' (reduced) the drinking area in a legal sense, but not in terms of the lived experience.

In response to questions from the Panel, she stated that:

- The extension of the operating hours to 8-10 am would not be an issue if restricted to the main building.
- In terms of the impact of the extended hours, people drinking at that time in the morning were in party mood, and alcohol always increased the level of noise.
- Adding a condition requiring the pergola to be closed by 11:15pm would be better than nothing, as at least she would now know when the noise would stop.



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

Mr Charlton summed up, saying that the biggest issue for him was the classing of the pergola as an indoor rather than an outdoor space, and that it would cause many problems if the activities taking place in there could not be controlled.

Mrs Tuffen summed up, saying she had nothing further to add but just wanted the Panel to take into account the noise likely to be generated from the wine cave and the pergola.

Mr Staton summed up, saying that in terms of the extended hours the Applicant only wanted to serve alcohol, with food, indoors and in the pergola, with no off-sales. There was already provision in the licence that the outdoor areas be closed and cleared by 23:15 hours. The Applicant had listened to the representations and was prepared to agree that the pergola and wine cave likewise be closed and cleared by 23:15. The Applicant did not want to make enemies in the locality. Most of the representations were irrelevant to the application, and the issues relating to music were not within the Panel's remit and should not be taken into account. He asked the Panel to grant the variation subject to the amendments to the conditions as mentioned – that is, restricting the sale of alcohol between 8 and 10 am to the main building and the pergola, and requiring the pergola and wine cave to be closed and cleared by 11:15 pm.

The following points of clarification were made by Mr Staton at the request of the Senior Licensing Officer and the Panel:

- The delicatessen opened at 8 am, but no alcohol was sold there until 10 am. It was not proposed to alter this.
- No additional conditions were proposed in relation to the service of alcohol in the pergola between 8 and 10 am; just that this be ancillary to food. However, it was planned to fit the pergola with soundproofed double glazing next year.

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:

1. The internal and external alterations to the plan which forms part of the premises licence to include a glass atrium to rear, pergola to the side, replacement of garage doors with windows and doors, remove internal wall, replace internal doors and new external French doors, as shown on the plan submitted with the application, are approved.
2. The existing pool room/public bar is changed into a shop/deli.
3. The supply of alcohol on the premises is extended to the hours of 08:00 to midnight every day.
4. Notwithstanding condition 3 above alcohol shall be served only ancillary to food between the hours 08:00 and 10:00 every day.
5. Condition 5 in Annex 3 to the current licence shall be amended as follows:

The areas shown on the plan submitted with the application marked 'Walled Garden', 'Pergola with fabric roof', 'Wine Cave' and 'Patio Garden' shall be closed and cleared of customers from 23:15 until 10:00 hours Monday to Sunday.

The external drinking area marked 'Car Park' shown on the plan submitted with the application shall be vacated, cleared and cleaned by 23:15 hours Monday to Sunday.

6. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity of the premises.
7. The conditions offered in the updated operating schedule are added to the licence.
8. Conditions 1 to 3 in Annex 2 to the current licence are removed.

For the avoidance of doubt, condition 5 in Annex 3 to the existing licence is varied as set out in conditions 5 and 6 as above. Save as varied above, 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 variations as applied for and that as the premises already had a licence to sell alcohol, it was only the impact of the variations to the existing 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 particular regard to noise disturbance issues due to the proximity of the outside and pergola areas of the premises to their homes.
  - (iii) The Sub-Committee also considered the representations made by the Applicant about concerns raised. It was also noted that the Police had agreed with the applicant modifications to the operating schedule prior to submission of this application and that Public Protection did not object to the proposed variations to the licence.

(iv) The Sub-Committee noted that because this application was retrospective and the internal and external alterations to the premises have been in place and used by patrons, there is evidence from residents of the actual impact of the changes that have been made on the prevention of public nuisance licensing objective. The Sub-Committee found that there was evidence that the alterations that have been made to the outside and pergola drinking areas have led to disturbance and noise nuisance to local residents, particularly late at night, which was disrupting the use of their homes and adversely impacting their quality of life.

(v) In relation to the alterations to the outside and pergola drinking areas, it was therefore felt that on the basis of the evidence before the Sub-Committee that amended conditions would be necessary in order to promote the licensing objectives. The additional and modified conditions imposed by the Sub-committee to restrict the use of the outside and pergola drinking areas as altered would reduce the noise emanating from the premises and would promote the licensing objectives regarding the prevention of public nuisance.

(vi) Whilst many of the concerns raised by residents about the operation of the premises licence were outside the scope of this variation application, 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.

Cllr R Melly, Chair

[The meeting started at 10.05 am and finished at 12.15 pm].