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Meeting	Licensing/Gambling Hearing
Date	27 October 2022
Present	Councillors Cuthbertson, Looker and Mason

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**31. Chair**

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

**32. Introductions**

The Chair introduced the Sub-Committee Members, the Legal Adviser, the Democratic Services officer and the Licensing Manager. The Applicant's Barrister introduced himself and Ben Williams, from Ebor Holdings Ltd, and the Representors introduced themselves.

**33. 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.

**34. 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.

**35. The Determination of a Section 18 (3) (a) Application by Ebor Holdings Ltd. for a Premises Licence in respect of The Liquor Store, Lower Ground Floor, The Chocolate Works, Bishopthorpe Road, York, YO23 1DE (CYC-071326)**

Members considered an application by Ebor Holdings Ltd. for a Premises Licence in respect of The Liquor Store, Lower Ground

Floor, The Chocolate Works, Bishopthorpe Road, York, YO23 1DE.

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, noting that the premises were not located in the cumulative impact area and confirming that the Applicant had carried out the consultation process correctly. She corrected two errors in the table at paragraph 5 of the report; the section on the supply of alcohol should read '*on and off the premises*' and the section on opening hours should also make reference to New Year's Eve. She drew attention to the additional conditions agreed with North Yorkshire Police at Annex 3, the representations at Annex 4, and the additional information from Representors published in the Agenda Supplement. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to questions from the Applicant's Barrister, the Representors and the Legal Adviser to the Sub-Committee, seeking clarification on the hours for off-sales, the Licensing Manager confirmed that:

- The initial application was for both on and off sales between the hours of 09:00 and 23:00 (09:00 and 01:00 on Fridays and Saturdays).

- After negotiation with Responsible Authorities, the Applicant had agreed to a modification restricting the supply of alcohol to off-sales only between 09 00 and 11:00 each day.
4. The representations made by Leo Charalambides, Barrister, on behalf of the Applicant.

Mr Charalambides stated that the premises had, as a matter of planning, always been envisaged as a hotel or bar. Paragraphs 14.64 and 14.65 of the Section 182 Licensing Act guidance sought to maintain proper integration between planning and licensing schemes, so it would be inconsistent to refuse the application. The Applicant was very local and recognised the location of the premises; hence the description of the operation, on page 18 of the agenda papers, as *'a café / deli / wine bar / restaurant...mainly for local residents'*. As stated in section M of the application, on page 27, the premises were not in town and not on an established 'route'. The application was rooted in being part of the local community, geared towards the neighbours of the premises, and the Applicant would not want to do anything to put off expected patrons. The application was in line with paragraph 1.4 of the council's licensing policy, which sought to improve the quality of life for local residents by bringing greater choice and encouraging more family-friendly premises, as this one would be. It was also in keeping with paragraph 6.4 of the policy, which encouraged the development of local businesses.

Referring to paragraph 9.12 of the Section 182 Licensing Act guidance, Mr Charalambides pointed out that there were no objections from responsible authorities, and that the Applicant had engaged with them and agreed to the additional conditions at page 39 of the papers. He also had emails that evidenced discussions between the Applicant and all the neighbours. In relation to the hours for off-sales, he confirmed that the intention was to enable sales to take place from 9:00 am to 11:00 pm, enabling customers to buy wine to take home, as would be expected in premises operating as a delicatessen / café. He stated that the operator, Ben Williams, was local and had previously run the Rose and Crown in Sutton on the Forest, which he had turned into a food-led, award-

winning business; he had also worked in-house as a brewery adviser, and at premises in Walthamstow with a similar concept to the current application. After meeting his fiancée and moving back to York, he was looking to run a food-led, community-based business that would operate to 'standard' hours to suit a family lifestyle.

Mr Charalambides stated that the Representors' objections must amount to something substantial in order to show that the operation would have adverse effects, rather than just fears that this would happen. He pointed out that the application had supporters as well as detractors and that the decision must be made in the wider public interest. He drew attention to the representations in support of the application made on behalf of residents of the care home, at pages 71 and 73 of the papers, and noted the need to comply with the public sector equality duty and avoid age discrimination. He said that the tenor of the representations [in objection] was that they were being made by well-meaning residents who were not expert in the licensing field. Representations must be relevant to the licensing objectives and not personal to the objector.

In conclusion, he highlighted the Applicant's experience and engagement with the local community, and asked the sub-committee to grant the application as it stood and to deal with the matter of the off-sales hours as they saw fit.

In response to questions from the Representors:

- Mr Williams confirmed, in relation to his correspondence with Public Health, that he had agreed that the hours for off-sales would be 9:00 am to 11:00 pm, and the hours for on-sales would be 11:00 am to 11:00 pm.
- Mr Charalambides and Mr Williams both confirmed that their understanding was that the planning consent required the *outdoor* area to be closed by 9pm.
- Mr Charalambides stated that the operation was clearly 'food-led', which was a term denoting that it was not a vertical drinking establishment; in support of this he referred to the size of the kitchen as shown on the plan, the description of the premises

given on the application form, and the conditions agreed with the police.

- In terms of the police withdrawing their objections, Mr Charalambides referred to the case of Daniel Thwaites and confirmed that the police did not base their decisions simply on whether or not there was a history of anti-social behaviour at the site but were able to take a wider view by assessing the operating schedule and meeting with the Applicant.

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

- Mr Charalambides said that he saw the premises operating flexibly, similar to Carluccios, with customers coming in for breakfast and lunch and for evening meals, when there would be a greater focus on pizzas, as well as buying charcuterie etc. to take away.
- Mr Williams confirmed that part of the premises would be earmarked as space for a delicatessen, with an upmarket shopping environment on the restaurant side and moveable furniture to make the space flexible.
- Mr Williams confirmed that substantial food would be on offer continually, but there would be a natural end to food orders as kitchens had to be closed down and therefore food trade could not continue to the very end.
- Mr Charalambides confirmed that hot food service would end before 11 pm.

*[The Legal Adviser reminded Members at this point that the applicant had agreed the police conditions at page 39 of the papers, which included a requirement for substantial food to be available at all times the premises were trading, and the police had withdrawn their objections on that basis.]*

- Mr Charalambides clarified that the hours of operation applied for were:

Off-sales:

9:00 am – 11 pm Sunday to Thursday;

9:00 am – 12 midnight Friday & Saturday.

On-sales:

11:00 am – 11 pm Sunday to Thursday;

11:00 am – 12 midnight Friday & Saturday.

5. The representations made by Rosie Pressland, a local resident.

Ms Pressland stated that the Liquor Store was a lovely old building in the middle of a residential area. There were 400 households to the rear and 40 to the right, approximately 10m away, with a care home adjacent. The Clock Tower, with 22 apartments, was 10m to the left. 22m to the front was The Residence, with 166 apartments. So this was very much a residential area, with a mixed demographic. Noise was amplified by the nature of the tall buildings. Noise was not unusual, as work had been ongoing at the Chocolate Works Centre for 5 years, but the lack of sleep caused by the internal refurbishment of the premises had been the worst thing. Residents had had to ask Planning and Public Protection to enforce the permitted hours of work. This showed the effect of noise from the premises.

Ms Pressland went on to say that she applauded the idea of bringing the Liquor Store back to life – the first application had been for a coffee shop and people were delighted; then they were told it was for a restaurant closing at 9pm, which was good news. But this application had evolved into a wine bar with small plates, and that was not good news. On Bishopthorpe Road there were restaurants and a wine bar that closed between 9 and 9:30 pm. This application asked for a much later closing time, in a residential area. After drinking up and clearing up, the actual closure would be even later. People were unlikely to leave quietly – alcohol fuelled rowdiness and could lead to anti-social behaviour. She herself had already suffered sleep deprivation and she had friends who were very worried about the possibility of their young children being deprived of sleep, which could affect their learning. Residents could have people right outside their bedroom windows making a noise and disrupting their sleep patterns every day, for 7 days a week. She asked the Sub-Committee to consider a closing time of 9pm, so as not to disbenefit residents in terms of their health.

In response to questions from Members of the Sub-Committee, Ms Pressland clarified that her home was

located on the 4<sup>th</sup> floor of The Residence, which was directly in front of the premises, with Orange House to the right of the premises as you faced it. The Clock Tower was to the left of the premises, and the care home was adjacent to Orange House - between Orange House and Bishopthorpe Road. The Chocolate Works estate was immediately behind the premises.

6. The representations made by Norma Rees, a local resident.

Ms Rees supported the comments of Ms Pressland, who she said had expressed the concerns of many of those who had submitted representations. Her own personal concerns were about noise disturbance, anti-social behaviour and parking issues. She was very concerned that the Chocolate Works and The Residence would become established routes to the Liquor Store. Since the opening up of Clock Tower Way, there had been much more traffic going up there to the Co-op and the Racecourse, as well as people generally walking through the development. This was mostly during the day and therefore acceptable, but she would contest the Applicant's statement that the premises were not on an established route, and she questioned on what basis he had made that assumption, as it would become an issue with people leaving the premises late in the evening.

Ms Rees also queried the assumption that the premises would be for local use and said she had not been consulted about its use as a local function venue. Having studied the floor plan and read the papers, she was unclear on the number of table covers to be offered. Although the minimum was 50, on the plan she had counted 60 indoors and 28 outside. This suggested a large venue and, especially with the hours stated for food service, a lot of people exiting via Clock Tower Way and picking up their cars from The Residence. Any provision for an external smoking area would add further to the noise nuisance. Regarding parking, her concern was that the visitors' spaces would be abused by people driving to the premises. No designated parking spaces for the premises were marked on the plan; the papers quoted as many as 10 spaces and as few as 3, which seemed inadequate. What signage would there be to explain the

parking arrangements and to advise that the residential spaces were not for customers' use? Even customers walking to the premises would have an impact on local residents, due to the volume of people.

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

- Mr Sirrell confirmed that the parking spaces for The Residence were at the front of the building; the Applicant had 3 of the 10 spaces allocated to the Liquor Store.
- Ms Rees confirmed that there were designated visitor spaces for the Clock Tower and Orange House.

*[The Legal Adviser reminded Members at this point that potential abuse of visitor parking arrangements, though referred to in the representations, were not within the remit of the Licensing Authority and therefore not relevant to the hearing.]*

7. The representations made by Iain Sirrell, a local resident.

Mr Sirrell stated that his three main concerns were about disturbance to residents of the Chocolate Works, potential anti-social behaviour, and the process of the application. He confirmed that most of the residents supported the original proposed use of the building as a coffee shop / delicatessen operating up to 8pm, on which they had been consulted. He pointed out that, apart from the care home, there was little support for the application in the representations; only 4 people supported it without amendment, and 4 of the supporters did not live at the Chocolate Works. 82 people objected, on the basis of disturbance to the community. Due to the design of the buildings, noise reverberated, and discussions on balconies could be heard from 50m away. As an example, the noise from an opening evening held at the dentist's on the level above his, which finished at 9pm, had been noticeable; he was aware of the party outside while watching TV.

Mr Sirrell went on to say that the responsible authorities could only base their reports on the history of anti-social behaviour at the site, and there was no such history. Placing a bar in the middle of the site risked initiating anti-



social behaviour, and would certainly create a nuisance. Although he realised this was intended to be an upmarket establishment, people affected by alcohol were normally loud. He said he had 30 years' experience of dealing with anti-social behaviour. He echoed the points made by many residents, supporting the idea of a licensed coffee shop that closed at a certain time and the concept of 'walking before trying to run'. Finally, he suggested that the planning application, approved only 6 months ago, should be re-visited to ensure proper integration with the licensing application, in accordance with Section 182 of the Act.

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

Ms Pressland summed up, reiterating that the premises were in a residential community comprising many hundreds of people. She would welcome a good, healthy use of the premises as originally proposed, with an 8pm or 9pm closing time. But if it went on until 11pm or 12 midnight, residents would be at risk of a life sentence of disrupted sleep, with health implications for them all, due to a commercial enterprise, and their needs must be taken into consideration.

Ms Rees summed up, stating that this was not about the alcohol licence per se, but about limiting the licence to make it appropriate and acceptable to the community. She was not sure how much local residents would use the premises, and there was no evidence to support the statement that it would be for local use. The Liquor Store was quite a large entertainment facility and she was not reassured that there would be no issues. Having heard the Applicant's description of the operation, she was dismayed that it would not serve as a traditional delicatessen. Her impression was that it would be more wine-led than food-led, which added to her concerns.

Mr Sirrell summed up, stating that there were only 4 letters of support for the application in the papers; beyond that, support was limited to an early evening closure. There was no history of anti-social behaviour or nuisance on the site – why invite it and risk the peace of the community? Alcohol knew no social bounds; people would be loud and

taxis would arrive. Everyone supported the idea of a coffee shop / delicatessen, and that should be explored first. The Applicant was likeable and experienced, but if the application were granted as it stood and the licence subsequently withdrawn, he would risk losing quite a lot of money.

Mr Charalambides summed up, stating that the representations heard from residents unfamiliar with the Licensing regime must be filtered through the lens of relevance. Traffic was not relevant. The Representatives' focus on what they saw and understood was not helpful. They had failed to engage with the agreed police conditions 1 and 2 requiring the premises to trade predominantly as a restaurant / café / deli, with a minimum of 50 table covers. The hearing was not about popularity and the number of representations for and against the application, but about examining whether the operating schedule supported the licensing objectives. All the responsible authorities had agreed that the hours applied for were proportionate. Proper integration with the planning process encouraged joined-up thinking.

In conclusion, he said the job of the Sub-Committee was to consider the wider public interest, not a vocal minority, and he commended the application to them.

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:

<b>Activity</b>	<b>Timings</b>
Supply of alcohol on the premises	11:00 to 22:00 Sunday to Thursday 11:00 to 23:00 Friday & Saturday New Year's Eve until 01:00
Supply of alcohol off the premises	09:00 to 22:30 Sunday to Thursday 09:00 to 23:30 Friday & Saturday New Year's Eve until 01:00
Opening hours	09:00 to 22:30 Sun to Thurs 09:00 to 23:30 Friday & Saturday New Year's Eve until 01:00

The additional/modified conditions are as follows:

- The 20 (twenty) conditions agreed between the Applicant and North Yorkshire Police as set out in Annex 3 of the Agenda papers shall be added to the licence.

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: (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 considered very carefully the application and all the representations.

(iii) The Sub-Committee considered that the prevention of public nuisance and the prevention of crime and disorder licensing objectives were engaged by this application. The Sub-Committee disregarded objections that had been submitted that were not relevant to the licensing objectives, such as arguments that there was no need for a licensed premises for the hours requested or potential parking issues. These matters were not premises licence application considerations.

(iv) The Sub-Committee noted that the Police, who are the Licensing Authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, did not consider that the licensing objective of the prevention of crime and disorder would be undermined if a number of agreed conditions are attached to a premises licence. The Sub-Committee considered the fact that the Police did not object to the application carried great weight and it was satisfied that, with the imposition of suitable conditions, the prevention of crime and disorder objective would not be undermined.

(v) With regard to the prevention of public nuisance, the Sub-Committee had regard to the advice in the Statutory Guidance that public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning. The Guidance advises that it may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.

(vi) The Sub-Committee noted that this was a new licence application and was very conscious of the premises' location in a quiet residential area in close proximity to local residences.

(vii) The Sub-Committee was reassured by the evidence given by the Applicant including details of

negotiation with the responsible authorities, (including conditions agreed with the Police), the level of experience generally and a willingness to engage with residents.

(viii) However, due to the close proximity to residences in this quiet location, the Sub-Committee considered that, when applying its common sense and judgment to the representations received and taking into account the nature of the premises, it was likely (and not mere speculation) that public nuisance would be caused to nearby residents by noise and disturbance from patrons when dispersing within the immediate area surrounding the premises late at night. It considered that this noise disturbance would materially reduce the living amenity and environment late at night of residents living in this immediate area. The Sub-Committee was satisfied that these impacts should be alleviated by reducing the terminal hours for the supply of alcohol and for closing time. (The Sub-Committee noted that the Applicant could not be held responsible for noise disturbance after customers had left the immediate area surrounding the premises).

(ix) The Sub-Committee considered on the basis of the evidence before it that, with the imposition of suitable conditions and reduction in the late night timings, the premises could operate without undermining the licensing objectives.

(x) Accordingly, in all of the circumstances of the case it was felt that the decision of the Sub-Committee was justified as being appropriate and proportionate for the promotion of the licensing objectives.

Cllr J Looker, Chair

[The meeting started at 10.02 am and finished at 11.50 am].

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