
Meeting	Licensing/Gambling Hearing
Date	8 April 2021
Present	Councillors Galvin, Hook and Mason

50. Chair

Resolved: That Cllr Mason be elected to act as Chair of the meeting.

51. Procedure for the Hearing, and Introductions

The Chair outlined some amendments to the procedure for the hearing, as agreed with the parties. Both applications would be dealt with simultaneously and adjustments would be made accordingly to the time allowed for each party to present their case and for questions. The video 'walk-through' of the premises submitted by the Applicant had been viewed in advance by all parties but could not be played at the hearing for technical reasons. However, a link to the video would be published after the meeting.*

The Chair introduced the members of the Sub-Committee, the Applicant (Aaron Mellor of Tokyo Industries), the Applicant's Solicitor, the Police Representors, the Licensing Authority Representor, the Public Protection Representor, and the Senior Licensing Officer presenting the report. Also present were the Legal Adviser, the Senior Legal Officer shadowing the Legal Adviser, and the Democracy Officer.

***Note:** *The link to the video walk-through is below:*

<https://www.youtube.com/watch?v=fKJGkBaf-J0>

52. Declarations of Interest

Members were invited to declare at this point in the meeting any personal interests not included on the Register of Interests, and any prejudicial or disclosable pecuniary interests, which they might have in the business on the agenda. No interests were declared.

53. 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.

54. The Determination of an Application by Tokyo Industries (Yorkshire) Ltd for a premises licence in respect of Impossible (York), 3 St Helens Square, York, YO1 8QN. (CYC-067635) (Application A)

Members considered an application by Tokyo Industries (Yorkshire) Ltd. for a premises licence in respect of 3 St Helen's Square, York YO1 8QN.

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 Senior Licensing Officer's report and her comments at the Hearing.

The Senior Licensing Officer outlined the report and annexes in respect of each application, and the updated reports and annexes in the additional papers at pages 89-155 and 227-281 of the agenda, which included the

amended forms and plans submitted by the Applicant and additional representations from the Public Protection officer. She highlighted the location of both premises in the Red Zone of the cumulative impact assessment area (CIA) and confirmed that the consultation process had been carried out correctly in each case. She noted that the Applicant would surrender the existing licence granted to Carluccio's in respect of 3 St Helen's Square should the new application be granted, due to the substantial changes made to the plans and the hours of operation of the premises. In respect of 5 St Helen's Square, she drew attention to an error in her report, namely the omission of the days of the week from the summary of the application at paragraph 5. This had been corrected in the amended version published in the Agenda Supplement.

In response to a question from the Sub-Committee's Legal Adviser, the Applicant's solicitor stated that, following further discussions with the responsible authorities, the hours applied for had been altered. He confirmed that the case outline circulated to all parties prior to the hearing reflected the latest position.

In response to a question from the Chair, the Senior Licensing Officer confirmed that the existing Carluccio's licence was for a restaurant and delicatessen; it included alcohol and late night refreshments, but not entertainments.

4. The representations made by Paddy Whur, Solicitor, on behalf of the Applicant and the representations made directly by Aaron Mellor, as the Applicant.

Mr Whur recounted the information set out in the case outline* which he had prepared and circulated to the parties in advance in order to assist in the presentation of these two complex applications, which he characterised as:

- A. Impossible Tea Rooms, Chocolatier, Restaurant, Supper Club and Speakeasy at 3 St Helen's Square (formerly Carluccio's) and
- B. The Impossible Motel and Restaurant at 5 St Helen's Square (formerly the TSB).

Mr Whur highlighted the credentials of Tokyo Industries as an operator of licensed premises, noting that this would be the largest development they had been involved in to date, bringing 120 jobs to York. In relation to the Licensing Objectives, he drew attention to the noise management report at pages 125-133 of the agenda papers and noted the additional conditions suggested by the police*. He pointed out that the successful operation of a high end hotel under Licence B was dependent on guests not being subjected to noise nuisance from the operation of Licence A.

He then called on the Applicant to provide further details of the applications and the proposed operation of the premises.

**[Note: the case outline and the additional conditions suggested by the police have been published on the council's website in Agenda Supplement 2].*

The Applicant explained the layout of each premises with reference to the updated plans at pages 119-123 (Application A) and pages 255-258 (Application B) of the agenda papers, which were displayed on screen by the Senior Licensing Officer.

In respect of Application A, the Applicant stated that the intention was to 'recreate' the original use of the building, which had been a chocolate factory, restaurant and ballroom. He indicated the location on the plans of the various components of the operation, as set out in paragraphs 1.7 to 1.9 of the case outline. These included: a chocolatier and tea rooms to the front of the ground floor, which would operate as a bar later in the day; a ground floor restaurant with an open gallery kitchen to the rear and a central bar; a grand staircase with a glazed dome leading to a first floor dining room (ballroom) containing fixed furnishings and a small dance floor; a 'Hogwarts' style boardroom on the second floor that would operate as a private dining room available for booking; a roof terrace; and an 'apothecary and speakeasy' at the rear of the premises, accessed via a separate entrance from the alleyway that ran down the side of the building. He highlighted that the occupancy of the first floor restaurant was restricted by fire regulations to a maximum of 120, that much of the space would be occupied by fixed

seating, and that it was intended to operate as a jazz / supper club aimed at the over-30s age group. It would be connected by a small gantry to the second floor of the speakeasy. The boardroom was already included in the existing licence but had not been in use due to the lack of a fire escape. A new triplex fire escape would be installed leading down to the side alleyway. The roof terrace would be accessed via a new staircase from a flying gantry. It would be fully seated, with a maximum capacity of 60.

In respect of Application B, as set out in paragraph 1:10 of the case outline, the Applicant indicated the location of the hotel rooms in the basement (the former bank vault), on the first floor (the former bank offices) and on the second floor. He described the restaurant on the ground floor, which would serve as the hotel's dining facility, as an 'Instagram' dining experience. It would have a bar running the full length of the room, from which cocktails and coffees would be served. There would be a 24-hour entrance with a bell boy, a staircase to the hotel reception on the first floor, and a lift servicing all floors.

In response to questions from Members of the Sub-Committee on the plans, the Applicant stated that:

- The change from service of teas to service of alcohol in the front ground floor area would be gradual as the day moved on.
- The 'bell boy' entrance (shown at the corner of St Helen's Square on the plan at page 257) would be manned until 9 or 10pm, after which it would be locked and accessible only to hotel guests using a card.

Mr Whur then resumed his representations. He referred to the relevant sections of City of York Council's Statement of Licensing Policy and General Approach to Licensing set out in paragraph 2 of the case outline, which he said encouraged applications like these, since they fitted the council's visions and aspirations for, in particular, a variety and mix of high quality licensed premises. He contended that neither application would lead to an increase in the impact of licensed premises in the Red Zone; on the contrary they ticked all the right boxes to show they would not, given the capability of the Applicant and the nature of the operations, which were not the usual style of business

operating in the city centre. He went on to highlight the reduced operating hours offered for Application A, as set out in paragraph 3 of the case outline, and the 33 conditions set out in paragraph 4, which included some of the further conditions sought by the police. Conditions 1-3 would, he said, 'future proof' the licence against the premises becoming a vertical drinking establishment, which would in any case be detrimental to the atmosphere required to charge a premium for food and drink. Condition 5 (hours of closure of the roof terrace and outdoor areas) showed that the Applicant had taken on board the concerns of the Public Protection officer, as did the noise consultant's report. As stated earlier, noise nuisance would be detrimental to the success of Application B. Condition 10 varied from the suggested police condition in order to avoid having surplus door supervisors at quieter times. However, the Applicant would work to ensure appropriate door supervision at all times.

In respect of Application B, Mr Whur stated that this would be a high quality operation similar to The Bells in Leeds. The conditions of Application A had been replicated in Application B to ensure consistency in promoting the Licensing Objectives. He concluded by stating that he hoped the quality of the proposals to bring these two iconic buildings back to life would enable Members to use their discretion to grant the applications in the Red Zone.

In response to questions from the Representors, the Applicant confirmed that:

- Entertainment would be of a theatrical nature; adult entertainment such as burlesque would only take place at night, with 9pm generally being the 'watershed'.
- The current Carluccio's licence did not cover the rooms to the rear, nor the roof terraces.
- Noise barriers would run the length of the roof terrace; there would be a glass balustrade on the upper terrace for the views, and because it was further from the residential area.
- The roof terraces and other external areas would close at 10 pm except on New Year's Eve.
- A digital sound processor would monitor the ambient noise in each room and turn the sound down

automatically once it exceeded the noise level set for that room.

- In the Speakeasy, there would be some flexibility around recorded music, but as it was located in the old bank vaults sound emanation was not a concern.
- Access from no. 3 St Helen's Square to the hotel bar would be restricted, and controlled at the staffed entrance; hotel customers could gain access to the ground floor bar at no. 3.
- The 1st floor hotel bar was intended to service the hotel rooms and only background music would be played here.
- Live music would be played on the stage in the first floor ballroom and possibly at a low level in the Speakeasy.

The Applicant and Mr Whur then responded to questions from Members of the Sub-Committee, stating that:

- The conditions set out in the case outline incorporated the police's suggested conditions where these were not detrimental to the operation; with some amendments, such as altering 'covers' to 'seats'.
- Security for the alleyway into which the fire exit staircase fed would be provided at the door to no.3, next to the alleyway entrance.
- Customer numbers would be governed by fire regulations (and, currently, by Covid-19 regulations); a pre-booking system would operate and admissions would be restricted during peak periods.
- Most customers would be seated, with some standing upstairs; a minimum of 90 seats would be provided on each floor (Condition 3 in the case outline).
- Adult entertainment would take place only occasionally; this would be on the first floor, second floor, or in the Speakeasy.
- There would be no 'cut-off' time for non-residents in the hotel bar.
- Condition 1 in the case outline (*The premises shall operate predominantly as a restaurant and hotel*) would prevent the licence from applying to the individual hotel bedrooms.

- The number of bedrooms had not been included in the proposed conditions as it was currently undecided and subject to Listed Building Consent; however, Mr Whur would be happy to draft a condition to cover this.

In response to questions from the Sub-Committee's Legal Adviser and further questions from Members, the Applicant and Mr Whur confirmed that:

- The fire risk assessment at no.3 had been carried out with Covid in mind so was subject to review, but the current capacity on the ground floor and the first floor was 140; capacity on the second floor and roof terrace was currently zero but anticipated to be 60 in future.
- The new risk assessment would take into account the new fire escape, which was subject to Listed Building Consent.
- Adult entertainment was requested for Licence A, and should have been included in the schedule at paragraph 3 of the case outline; however, it was not requested for Licence B.
- Adult entertainment in the former Carluccio's premises would be on the first and second floors only, and children would be excluded while it was on.
- The Applicant had previously operated premises in York offering adult entertainment and would comply with council policy and the Local Government Miscellaneous Provisions Act in marketing and operating it.
- Adult entertainment at these premises would consist only of theatrical / burlesque performances, and corporate events deemed to be 'adult'.
- Although two separate applications had been made, the operation of both premises was intended to be a fully integrated experience; however, each could potentially operate alone.
- All outside areas would close by 10 pm each night, except on New Year's Eve.
- This would be a very high-end operation, with no stag or hen parties or cheap drinks, providing something that did not currently exist in York.

- The move to a more drink-led approach in the evening, and the operating times of the restaurants, would be flexible and based on demand; people were tending to eat later now.
5. The representations made at the hearing by PS Jackie Booth and PC Kim Hollis of North Yorkshire Police.

PS Booth referred to the discussions between the Applicant and the Responsible Authorities that had resulted in the amended applications set out in the case outline. She noted that the Applicant sought to extend the hours, capacity and activities of the existing licence granted to Carluccio's, and that granting both applications would result in a total of 9 bars over 4 floors, including 2 rooftop terraces, with live and recorded music and adult entertainment. She highlighted the location of the premises in the CIA Red Zone, in an area with a mix of residential properties; this was particularly relevant to the proposed opening hours, as the council's CIA policy showed that calls to the police were at their highest between midnight and 4 am at weekends. Given the existing demands on the police, they would not support a closing time of 3 am or later. PS Booth went on to state that the additional conditions offered by the Applicant were welcome and went some way towards mitigating the impact of the applications; however Condition 10 in the case outline, relating to door supervision, was insufficient for an operation of this size. She requested that the condition suggested by the police in respect of door supervisors (Condition 9 in the police conditions) be imposed should the applications be granted. She also asked that Condition 23 in the case outline be replaced by a condition to comply with local crime reduction initiatives, as there were issues with the current Pubwatch scheme.

PC Hollis stated she had met the Applicant at the premises along with colleagues to discuss the applications. Further discussions had been held on receipt of the amended applications, and following a meeting on 24 March she had drawn up the list of suggested conditions and circulated it to all parties. Some of these conditions had been included in the case outline circulated by the Applicant's solicitor on 1 April. However, the case outline differed from the police conditions in that

it proposed closure of the roof terraces by 10pm instead of 9pm, substituted 'seats' for 'covers', removed the requirement for alcohol to be ancillary to food, and proposed 90 customers on the 2nd floor instead of 50.* PS Hollis also noted that dance had not been removed from Application B in the case outline and that this had not been discussed.

**Note: during questions, the Applicant confirmed that there was an error in the case outline and the proposal was for 50 customers on the 2nd floor.*

PS Booth then resumed, stating that, in summary, the conditions set out in the case outline had largely addressed the police requirements; however, their concerns in respect of opening times and the need for SIA door supervisors remained (as per Condition 9 in the police's suggested conditions).

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

- In respect of numbers, the police were seeking to mitigate the risk associated with vertical drinking and therefore to establish a minimum number of fixed seats that could not be removed to accommodate more drinkers.
- The police would like to amend 'seats' to 'covers' in respect of the ground floor but were content with the term 'seats' in respect of the upper floors.
- PS Booth was aware of the Applicant as an operator of licensable premises in the York and North Yorkshire areas and around the country and from a crime and disorder point of view had not received reports of any problems with these.

6. The representations made at the hearing by Lesley Cooke, the Licensing Manager.

Ms Cooke stated that her concerns were similar to those of the police, and she too welcomed the amended operating schedule and the reduced hours and licensable activities. She still had concerns about the operating hours and considered that the close proximity of the premises to residential premises should be taken into account, especially in relation to the proposed 3am finish

time and the external areas. Although no. 3 was already licensed, the application was for a much larger licensed area. No. 5 was a new application and, although there were no issues with the hotel, the ground floor restaurant would be yet another licensed premises in the Red Zone. No conditions had been offered to prevent the licensed areas from becoming bars with no dining at all. She reiterated the need to protect the CIA and local residents and supported the police representations.

In response to a question from the Chair, Ms Cooke stated that most of the licensed premises in the area closed at midnight during the week and 1am at weekends. Carluccio's closed at midnight on 7 days per week.

7. The representations made at the hearing by Michael Golightly, the Public Protection officer.

Mr Golightly stated that despite negotiations with the Applicant and the amendments made to the applications his representations still stood (as set out on pages 71-74 of the agenda papers). He stated that the onus was on the Applicant to demonstrate that the applications would not increase the impact of licensed premises in the Red Zone. He noted that 3 St Helen's Square was a listed building in a prominent location, that the three existing bars on the Square all closed at midnight or 1am, and that the area included the Mansion House and the flats on Lendal. The applications would introduce later closing hours and a further 7 bars to the area, plus two rooftop terraces closing at 10pm. The premises would, he said, be a magnet for stag and hen parties, racegoers and late night drinkers. If all the bars were open at the same time this was likely to have a cumulative impact upon noise in the area. There was nothing in the proposed conditions to prevent this. It was also likely that there would be large numbers of people entering and leaving the premises up to 3am on a weekend. The noise from the alleyway, which was not currently in use, would also affect the flats on Lendal.

Referring to his additional representations at page 147 of the agenda papers and the photographs at pages 149-155, Mr Golightly stated that the noise from the rooftop bars would lead to a significant change for residents who

were currently shielded from ground level noise and might also affect hotels in the area. He pointed out that the rooftop terraces were only 14m away from residential dwellings. He noted that there was no dispersal policy nor any plan to deal with smoking areas, and no noise impact assessment had been submitted. In relation to the noise management report, he stated that it did not consider the cumulative impact of the voices of 120 people on the roof terraces, including shouting, and did not suggest conditions to prevent noise. There was not enough information to assess the effectiveness of the barrier around the lower terrace, and no noise barrier was proposed for the upper terrace. The mixture of noise from both terraces had not been assessed. The assumption that residents would have to close their windows to keep out the noise was not acceptable. The report was based on a steady noise source, whereas a fluctuating source might be more applicable here. The WHO levels referred to in the report were not representative of noise at roof level. The reference to PPG24 was irrelevant, as this guidance had been withdrawn in 2012. The proposed noise limit of 85db for the Speakeasy and roof terraces was very high, and noise checks would need to take place at roof level where the residents were. Noise limiting devices were welcome in principle but may be dependent on planning permission, which had not yet been granted. For the external areas, he supported a closing time of 10pm but would like a condition to restrict the 'creep' of those areas, as on the existing Carluccio's licence. The protection of children remained a concern. He would like more stringent conditions to provide a 'buffer time' between children leaving and the start of adult entertainment and to ensure children in the hotel at no. 5 were supervised when adult entertainment was taking place at no.3.

With regard to Application B (the hotel), Mr Golightly said his concerns related to the bar being open to non-residents until 3am, the movement of people between the two premises, and the potential for the two to merge into one large drinking establishment. Again, this was a listed building and planning consent was yet to be granted; this raised uncertainties around the effectiveness of some of the conditions – for example noise nuisance would

increase if Listed Building Consent did not allow the windows to be double glazed.

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

- The Legal Adviser confirmed that the Planning and Licensing regimes were entirely separate and based on different considerations, although the Licensing policy recommended that planning permission should be obtained first.
- Mr Whur confirmed that he would work with Public Protection to 'finesse' the noise management conditions (Conditions 28-32 in the case outline) once planning permission had been determined, to ensure compliance with the licensing objectives.
- The Applicant said that he was confident that the applications would not adversely affect neighbouring residents, and indicated that the flats on Blake Street were holiday lets.
- Mr Golightly confirmed that no representations had been received from residents; however, since the notices went up over the Christmas period, people may not have been aware of them. Some residents had expressed concerns that they had missed the deadline to make representations, and objections had been made to the Planning applications.
- Mr Golightly stated that the operation of the premises under the Carluccio's licence had not caused problems in relation to noise, as there had been background music only and the premises had closed at 1am.

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

PS Booth summed up on behalf of North Yorkshire Police. She welcomed the significant changes made to the original applications but re-iterated the police concerns about the proposed operating hours, which represented a significant change from the licence granted to Carluccio's. The additional three hours of operation on a Saturday were of particular concern, as this was a period when the calls to the police about incidents within the CIA were at a peak. Condition 9 in the suggested conditions was a key aspect of mitigating police concerns in relation to crime

and disorder and public nuisance. Having SIA staff in place for 30 minutes after closing time would address concerns about dispersal. PS Booth asked the Sub-Committee to consider imposing the conditions requested by the police in respect of door staff and operating times should the applications be granted.

The Licensing Manager summed up. She welcomed the amended operating schedule but expressed concerns regarding the hours of operation, which she considered should be more in line with those of other premises in the area. She further stated that priority should be given to residents; that, contrary to what the Applicant had said, the flats on Blake Street were not just holiday lets, and that consideration should be given to the location of the premises in the CIA.

The Public Protection officer summed up. He again highlighted the location of the premises in the CIA and stated that he could not see how 9 new bars would not bring extra pressure to the area by bringing in more people late at night and adding to public nuisance. He expressed concern that there was no dispersal policy and agreed with the police and Licensing Manager that the operating hours were too late. He stated that the rooftop terraces were too close to business and residential properties and would introduce 120 extra people to an area currently shielded from street level noise, resulting in a significant impact on residents. He said it was difficult to comment on appropriate conditions to address noise breakout from the premises, as not enough information was available. He was happy with the external areas and ground floor of no.3, subject to conditions. With regard to the protection of children, he was concerned by the lack of a 'buffer' before the start of adult entertainment and by the link between the two premises and how to stop people going back and forth between the two. This needed to be looked at to ensure a clear separation. Finally, he confirmed that his objections to the applications remained, although he appreciated that the Applicant had been working with Public Protection to mitigate these.

Mr Whur summed up on behalf of the Applicant. He referred Members to the points made in the case outline and then commented on the representations made at the

hearing. In respect of the points made by the police, he asked the Sub-Committee to give careful consideration to granting the hours applied for in order to make the operation commercially viable. He was certain that the Applicant, who had been trading in a similar way elsewhere with no negative responses, could ensure that the 3am closure on Saturdays would not have an adverse impact on the Red Zone. In relation to door staff, Condition 10 in the case outline was identical to that on the licences granted to Harkers, Kennedys and Revolution. It had been included to ensure that there were not more door staff than required at quiet times. With reference to the Licensing Manager's representations, Mr Whur said that the Applicant wanted to do something different and that the premises would not be 'just another bar', The 'seven new bars' were small areas that together would create a quality atmosphere in a fabulous multi-use new development.

With regard to the Public Protection officer's representations, Mr Whur did not agree with the officer's approach. Planning did not have priority over Licensing as had been suggested, and it was common practice to determine a Licensing application before a Planning application. Conditions 29-33 in the case outline addressed the noise issues raised and the Applicant would liaise with Public Protection to ensure that music would not create noise 'breakout'. Condition 30 – submission of a noise management plan within 2 months - was crucial; this plan would include a smoking plan and dispersal policy. The comments in relation to racegoers and stag and hen parties should be disregarded in view of the Applicant's investment in providing something completely different. The conditions on Carluccio's licence sought by the officer were for the external area and would be included in the separate application for the pavement licence. Finally, Mr Whur submitted that this was an opportunity to support a game-changing development unique to York which would bring 120 jobs to the city at a time when leisure and retail were suffering. It was, he said, the best application he had seen and should be supported.

The Sub-Committee's Legal Adviser then sought comments from Mr Whur as to whether he considered

music played before 23:00 hours could be controlled by conditions, given that it had been deregulated. Mr Whur stated his view that the deregulation did not remove the duty to promote the licensing objectives and comply with conditions at all times when licensable activities were taking place at the premises.

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: Reject the application. This option was **rejected**.

Resolved: That Option 2 be approved and the licence be granted with the following conditions and modified/additional conditions added to the licence:

1. The premises shall operate predominantly as a restaurant/tea rooms providing food and non-alcoholic drinks and it shall not operate as a bar or nightclub or vertical drinking establishment.
2. Until midnight substantial food and non-intoxicating beverages shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises during the periods when alcohol is sold.
3. Where alcohol is being sold or supplied on the respective floor there will be a minimum number of seating provided as follows:

Seating for 90 customers provided on the ground floor

Seating for 90 customers provided the first floor

Seating for 50 customers provided on second floor with a further 50 seats provided on the outside roof terrace on the second floor.

48 seats provided on the rooftop terrace. All patrons to be seated when using this area.

4. The sale of alcohol in all parts of the premises shall only be by waiter/waitress service to seated customers, and there shall be no sales of alcohol over the bars directly to the customer.
5. The ground floor outside area shall be closed by 2200hrs daily. The roof terraces shall close and be cleared of patrons by 2100hrs daily (with the exception of New Year's Eve).
6. The licence holder will operate a Challenge 25 Age Verification Policy at the premises.
7. The only acceptable proof of age identification shall be a current Passport, photo card Driving Licence, Military ID card, or identification carrying the PASS logo (until other effective identification technology e.g thumb print or pupil recognition, is adopted by the Premises Licence Holder).
8. No adult entertainment shall take place before 2130hrs.
9. No person under the age of 18 will be permitted on the premises when any adult entertainment is taking place and in the 30 minute periods before and after such entertainment takes place.
10. Any adult entertainment must be restricted to the first and second floor areas only and must not take place on roof terraces or any outside area. When such events take place there shall be screens to prevent such entertainment being viewed by other members of the public and the DPS or Premises Licence holder shall ensure that a risk assessment is conducted. Customers must be seated during the performance and there is to be no physical contact between customers and performers.

11. Advertising for adult entertainment shall not be displayed on the premises at a time when persons aged under 18 are on the premises.

12. A digital colour CCTV system will be installed to cover the premises and recorded coverage will include all areas (including outside areas) to which the public have access.

It will be maintained, working and recording at all times when the premises are open. The recordings should be of good evidential quality to be produced in Court or other such hearing. Copies of the recordings will be kept available for any Responsible Authority for 28 days.

Copies of the recordings shall be made available to any Responsible Authority within 48 hrs upon request.

Copies of the recordings will display the correct time and date of the recording.

It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV system at the request of the police or responsible authority.

13. Door Supervisors shall be employed as follows: -

(a) On Fridays, Saturdays and Sundays leading into a bank holiday Monday there shall be a minimum number of 3 SIA door supervisors from 2000hrs until 30 minutes past closing time.

(b) On all other days an adequate number of door supervisors shall be provided at the premises on the following occasions:-

(i) From 2300hrs until 30 minutes past closing time on any day when the premises closes after 0100hrs.

(ii) At all times the premises licence holder will risk assess the need for SIA door supervisors in conjunction with North Yorkshire Police and ensure sufficient door supervisors are on duty to promote the crime and disorder licensing objectives.

The management of the venue will comply with any written, reasonable and justified request made by North Yorkshire Police regarding the provision of Door Supervisors should the need arise at other times.

All door supervisors will wear high visibility arm bands.

14. Documented staff training will be given regarding staff's obligation under the Licensing Act 2003 in respect of the:-

- Retail sale of alcohol
- Age verification policy
- Conditions attached to the Premises Licence
- Permitted Licensable activities
- Licensing objectives and
- Opening Times of the venue.

Such records shall be kept for a minimum of one year and will be made available immediately upon request from any Responsible Authority.

15. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals of alcohol sales to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises.

Such records shall be kept for at least one year. (For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry). They will be made available immediately upon request from any Responsible Authority.

16. The sale of alcohol shall cease 30 minutes before close of business on any given day to allow for 'drinking up' time.

17. All off sales shall be in sealed containers (with the exception of the pavement café licence area).

18. No drinks or drinking glasses shall be taken out of the licensed premises or (licensed area) onto the pavement or highway with the exception of any pavement café licence area.

19. The ground floor outside area will be regularly cleared and kept tidy.

20. There shall be a personal licence holder on duty per floor at the premises at all times when they are open for licensable activities. In addition, the premises licence holder or DPS shall also be present on the premises during the whole time that adult entertainment is taking place.
21. Clear and legible notices shall be displayed at all exits requesting patrons to respect the needs of local residents and to leave the premises and area quietly.
22. No licensable activities shall take place at the premises until a documented smoking policy has been submitted to and agreed in writing with the Council. The policy shall thereafter be implemented as approved.
23. A zero tolerance towards illegal drugs will be enforced at all times.
24. All instances of crime and disorder will be reported to the Police and will be kept in an incident log book.
25. The premises will comply take part in and comply with any crime reduction initiatives, when requested to do so by a responsible authority.
26. The Premises Licence Holder will comply with any instructions issued by the Police regarding closure on race days and/or other sporting events.
27. The Premises Licence Holder shall ensure so far as possible that when an exclusion order is made, the person subject to the order is denied access to the premises.
28. No noise shall emanate from the premises that gives rise to a nuisance.
29. A tamper-proof noise-limiting device shall be fitted to the sound system within the premises and all music played at the premises must pass through this sound limiter at a level first agreed by the Council's Public Protection section. The device shall not be altered or modified without prior agreement with the Council's Public Protection section. The device must be of a type and in a location approved in writing by the Council's Public Protection section.

30. Speakers shall not be located /operated on any roof terrace or external area.
31. No regulated entertainment shall take place on any roof terrace or outside the premises building.
32. Notices shall be prominently displayed on the roof terraces requesting patrons to respect the needs of local residents and use the area quietly.
33. No licensable activities shall take place at the premises until a written Noise Management Plan has been submitted to and approved in writing by City of York Council. The Noise Management Plan will include a procedure for investigating noise complaints received from the premises and a map identifying the sound check locations following any such complaint. The Premises Licence Holder shall ensure compliance with all aspects of the approved Noise Management Plan.
34. No licensable activities shall take place at the premises until a documented dispersal policy has been submitted to and approved in writing by City of York Council. The Premises Licence Holder shall ensure compliance with all aspects of the approved dispersal policy.
35. No licensable activities shall take place at the premises until premises licence CYC 55807 (or such other number subsequently issued for the premises) has been surrendered and is incapable of resurrection.

- 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 premises are located within an area where a Cumulative Impact Policy applies. They are within the red zone of this area. The Statement of Licensing Policy sets out that this special policy will create a rebuttable presumption that applications for new premises licences that are likely to add to the existing cumulative impact will normally be refused following receipt of representations, unless the

applicant can demonstrate why the operation of the premises involved will not add to the impact of premises with this zone.

(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 their application for a premises licence would not add to the cumulative impact already being experienced in the CIA. Representations had been received from North Yorkshire Police, Public Protection and the Licensing Authority.

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

(v) The Sub-Committee accepted and gave weight to concerns by the Police, Public Protection and the Licensing Authority as to the potential for alcohol related noise disturbance and crime and disorder that could arise from a large capacity venue in this location if a premises licence is granted. They also noted that the Applicant and the Police had each proposed a number of conditions to address these issues.

(vi) The Sub-Committee noted the Police representations that they do not object to the application if the conditions proposed by the Police are attached to the licence, the Police being content that the premises could with the imposition the conditions proposed by the Police operate without adding to the cumulative impact. They gave weight to the Police representation in accordance with paragraph 9.12 of the statutory guidance.

(vii) The Sub-Committee noted concerns from Public Protection in particular that the operation of a premises licence would be likely to cause significant noise nuisance and disturbance to nearby residents and Public Protection's concerns as to whether this

impact could be adequately mitigated by the imposition of conditions in advance of planning and listed building consent.

(viii) The Sub-Committee also noted the Licensing Authority's objection to the application.

(ix) The Sub-Committee noted that the Applicant had amended the application to scale back the licensable activities, area and timings proposed. It accepted the evidence put forward at the hearing by the Applicant as to the proposed pricing strategy for drinks; the likelihood that the venue would attract discerning customers and families rather than customers looking for cheap drink promotions; the character of the style of venue and the other examples of the Applicant's premises that the Police confirmed have operated without concern.

(x) The Sub-Committee noted the concerns of the Responsible Authorities but felt that on balance, it had received sufficient assurances and evidence from the Applicant in order to have a high level of confidence that the premises would be operated responsibly and that, with the imposition of suitable amended and additional conditions (including conditions to ensure that it could not operate as a bar or nightclub), it was unlikely that noise disturbance to local nearby residents or any significant additional cumulative impact would be caused.

(xi) Therefore it concluded that that the presumption against granting a licence for a new premises situated in the CIA was rebutted in this particular case and was satisfied that all four licensing objectives would be met in granting the application with the mandatory and the above conditions.

(xii) 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.

55. **The Determination of an Application by Tokyo Industries (Yorkshire) Ltd for a premises licence in respect of Impossible (York), 5 St Helens Square, York, YO1 8QN). (CYC-067636) (Application B)**

Members considered an application by Tokyo Industries (Yorkshire) Ltd. for a premises licence in respect of 5 St Helen's Square, York YO1 8QN.

Full details of the matters considered, and the representations made at the meeting in respect of both applications are set out in Minute 54 above.

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 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: Reject the application. This option was **rejected**

Resolved: That Option 2 be approved and the licence be granted with the following conditions and modified/additional conditions added to the licence:

1. The premises shall operate predominantly as a hotel with ancillary restaurant and bar facilities. It shall not operate as a bar or nightclub or vertical drinking establishment and all licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a hotel.
2. A minimum number of 40 seats shall be provided for customers on the ground floor.

3. The outside area shall be closed by 2200hrs daily
4. The licence holder will operate a Challenge 25 Age Verification Policy at the premises.
5. The only acceptable proof of age identification shall be a current Passport, photo card Driving Licence, Military ID card, or identification carrying the PASS logo (until other effective identification technology e.g. thumb print or pupil recognition, is adopted by the Premises Licence Holder).
6. No adult entertainment shall take place at the premises.
7. The sale of alcohol in all parts of the premises shall only be by waiter/waitress service to seated customers, and there shall be no sales of alcohol over the bars directly to the customer.
8. The outside area shall be closed by 2200hrs daily.
9. The licence holder will operate a Challenge 25 Age Verification Policy at the premises.
10. The only acceptable proof of age identification shall be a current Passport, photo card Driving Licence, Military ID card, or identification carrying the PASS logo (until other effective identification technology e.g. thumb print or pupil recognition, is adopted by the Premises Licence Holder).
11. A digital colour CCTV system will be installed to cover the premises and recorded coverage will include all areas (including outside areas) to which the public have access.

It will be maintained, working and recording at all times when the premises are open. The recordings should be of good evidential quality to be produced in Court or other such hearing. Copies of the recordings will be kept available for any Responsible Authority for 28 days.

Copies of the recordings shall be made available to any Responsible Authority within 48 hrs upon request.

Copies of the recordings will display the correct time and date of the recording.

It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV system at the request of the police or responsible authority.

12 Door Supervisors shall be employed as follows: -

- (a) On Fridays, Saturdays and Sundays leading into a bank holiday Monday there shall be a minimum number of 3 SIA door supervisors from 2000hrs until 30 minutes past closing time.
- (b) On days when race meetings are held at York Racecourse (save for the family meeting held in September and the first meeting in May) a min of 1 SIA registered door staff shall be provided at the premises from 19:00 hours to the close of business.

The management of the premises will comply with any written, reasonable and justified request made by North Yorkshire Police regarding the provision of Door Supervisors should the need arise at other times.

When employed, door staff will wear high visibility arm bands.

13. Documented staff training will be given regarding staff's obligation under the Licensing Act 2003 in respect of the:-

- Retail sale of alcohol
- -Age verification policy
- Conditions attached to the Premises Licence
- Permitted Licensable activities
- Licensing objectives and
- Opening Times of the venue.

Such records shall be kept for a minimum of one year and will be made available immediately upon request from any Responsible Authority.

14.A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals of alcohol sales to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises.

Such records shall be kept for at least one year. (For the avoidance of doubt, the one year period relates

to each respective entry in the log book and runs from the date of that particular entry). They will be made available immediately upon request from any Responsible Authority.

15. The sale of alcohol (other than to residents of the hotel and their bona fide guests) shall cease 30 minutes before close of business on any given day to allow for 'drinking up' time.
16. All off sales shall be in sealed containers (with the exception of the pavement café licence area).
17. No drinks or drinking glasses shall be taken out of the licensed premises or (licensed area) onto the pavement or highway with the exception of any pavement café licence area.
18. The outside area will be regularly cleared and kept tidy.
19. Clear and legible notices shall be displayed at all exits requesting patrons to respect the needs of local residents and to leave the premises and area quietly.
20. No licensable activities shall take place at the premises until a documented smoking policy has been submitted to and agreed in writing with the Council. The policy shall thereafter be implemented as approved.
21. A zero tolerance towards illegal drugs will be enforced at all times.
22. All instances of crime and disorder will be reported to the police and will be kept in an incident log book.
23. The Premises will comply take part in and comply with any crime reduction initiatives, when requested to do so by a responsible authority.
24. The Premises Licence Holder will comply with any instructions issued by the Police regarding closure on race days and/or other sporting events.
25. The Premises Licence Holder shall ensure so far as possible that when an exclusion order is made, the person subject to the order is denied access to the premise.

- 26.No noise shall emanate from the premises that gives rise to a nuisance.
- 27.A tamper-proof noise-limiting device shall be fitted to the sound system within the premises and all music played at the premises must pass through this noise limiting device at a level first agreed by the Council's Public Protection section. The device shall not be altered or modified without prior agreement with the Council's Public Protection section. The device must be of a type and in a location approved in writing by the Council's Public Protection section.
- 28.Speakers shall not be located /operated on any external area.
- 29.No regulated entertainment shall take in any outside area.
- 30.No licensable activities shall take place at the premises until a written Noise Management Plan has been submitted to and approved in writing by the by City of York Council. The Noise Management Plan will include a procedure for investigating noise complaints received from the premises and a map identifying the sound check locations following any such complaint. The Premises Licence Holder shall ensure compliance with all aspects of the approved Noise Management Plan.
- 31.No licensable activities shall take place at the premises until a documented dispersal policy has been submitted to and approved in writing by City of York Council. The Premises Licence Holder shall ensure compliance with all aspects of the approved dispersal policy.
- 32.The only licensable activity that is authorised to take place in the hotel bedrooms is the sale of alcohol by retail through a mini bar or room service. No other licensable activity will take place in the hotel bedrooms.
- 33.With the exception of hotel residents and their bona fide guests, no alcohol shall be supplied or consumed on the ground floor of the premises between 2400rs and 0800hrs.

34. The supply of alcohol on the basement, first and second floors of the premises shall be to hotel residents and their bona fide guests only.

- 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 premises are located within an area where a Cumulative Impact Policy applies. It is within the red zone of this area. The Statement of Licensing Policy sets out that this special policy will create a rebuttable presumption that applications for new premises licences that are likely to add to the existing cumulative impact will normally be refused following receipt of representations, unless the applicant can demonstrate why the operation of the premises involved will not add to the impact of premises with this zone.
 - (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 their application for a premises licence would not add to the cumulative impact already being experienced in the CIA. Representations had been received from North Yorkshire Police, Public Protection and the Licensing Authority.
 - (iv) The Sub-Committee considered that the onus lay upon the Applicant (to the civil standard) to evidence to the Sub-Committee that the operation of the premises, if licensed, would not add to the cumulative effect of having more licensed premises in the CIZ, with regard to the licensing objectives.
 - (v) The Sub-Committee accepted and gave weight to concerns by the Police, Public Protection and the Licensing Authority as to the potential for alcohol related noise disturbance and crime and disorder that could arise from a large capacity venue in this location if a premises licence is granted. They

also noted that the Applicant and the Police had each proposed a number of conditions to address these issues.

(vi) The Sub-Committee noted the Police representations that they do not object to the application if the conditions proposed by the Police are attached to the licence, the Police being content that the premises could with the imposition the conditions proposed by the Police operate without adding to the cumulative impact. They gave weight to the Police representation in accordance with paragraph 9.12 of the statutory guidance.

(vii) The Sub-Committee noted concerns from Public Protection in particular that the operation of a premises licence would be likely to cause significant noise nuisance and disturbance to nearby residents and Public Protection's concerns as to whether this impact could be adequately mitigated by the imposition of conditions in advance of planning and listed building consent.

(viii) The Sub-Committee also noted the Licensing Authority's objection to the application.

(ix) The Sub-Committee noted that the Applicant had amended the application to scale back the licensable activities, area and timings proposed. It noted the proposed style of venue as an upmarket boutique hotel, with restaurant facilities in keeping with the design and price point of the hotel rooms, and the other examples of the Applicant's premises that the Police confirmed had operated without concern.

(x) The Sub-Committee noted the concerns of the Responsible Authorities but felt that on balance, it had received sufficient assurances and evidence from the Applicant in order to have a high level of confidence that the premises would be operated responsibly and that, with the imposition of suitable amended and additional conditions (including conditions to ensure that it could not operate as a bar or nightclub), it was unlikely that noise disturbance to local nearby residents or any significant additional cumulative impact would be caused.

(xi) Therefore it concluded that that the presumption against granting a licence for a new premises situated in the CIA was rebutted in this particular case and was satisfied that all four licensing objectives would be met in granting the application with the mandatory and the above conditions.

(xii) 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 10.00 am and finished at 4.30 pm].