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| Meeting | Licensing/Gambling Hearing |
| Date | 1 March 2021 |
| Present | Councillors Galvin, Hook and Melly |

45. Chair

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

46. Introductions

The Chair introduced the members of the Sub-Committee. Others participating in the hearing were Richard Craig from Jimmy's Group (the Applicant), the Applicant's Solicitor, the Applicant's witness, the Police Representor the Licensing Authority Representor, three public Representors, the Ward Councillor acting as a witness for a public Representor, and the Senior Licensing Officer presenting the report. Also present were the Legal Adviser and the Democracy Officer.

47. 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.

48. 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.

49. The Determination of a Section 18(3) Application by Jimmy's York Limited for a premises licence in respect of Jimmy's, 52 Low Petergate, York, YO1 7HZ (CYC-67685)

Members considered an application by Jimmy's York Limited for a premises licence in respect of Jimmy's, 52 Low Petergate, York YO1 7HZ.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objectives were relevant to the Hearing:

1. The Prevention of Crime and Disorder
2. 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 Senior Licensing Officer's report and her comments at the Hearing.

The Senior Licensing Officer outlined the report and the annexes, noting the location of the premises in the cumulative impact assessment area (CIA) but not in the Red Zone and confirming that the Applicant had carried out the consultation process correctly. She confirmed that this was an application for a new licence, with the existing licence to be surrendered on the grant of the new one. She drew attention to the further negotiations that had taken place between the Applicant and the Representors and the amendments made to the original application, as published in the Agenda Supplement. These included:

- removal of the request for live and recorded music;
- changes to the hours of opening, supply of alcohol and provision of late night refreshment (page 3 of the Supplement);
- the revised conditions at pages 4-6 of the Supplement;
- the Al Fresco Dining Policy at page 7 of the Supplement and

- the Dispersal Policy at page 9 of the Supplement.

The Senior Licensing Officer also highlighted the agreements submitted by Public Protection, at pages 13-15 of the Agenda Supplement, confirming that the Public Protection representations at pages 95-96 of the main agenda had been withdrawn.

4. The representations made by Felicity Tulloch, Solicitor, on behalf of the Applicant.

Ms Tulloch stated that this would be the fourth premises to be opened by the Applicant and that all were very different in style. The original premises in Manchester was a live music venue; the second premises in Manchester was a restaurant, and they had a 'hybrid' music venue / restaurant in Liverpool. The Manchester restaurant was subject to a special hours policy similar to the current application. The Applicant was an experienced operator used to working in city centres in close proximity to local residents. Jimmy's was a family company that was fortunately continuing to trade in the current circumstances and looking to expand. The existing Café Rouge licence had been transferred to the Applicant when the site was acquired.

Ms Tulloch explained that the Applicant was applying for a new licence because this was a 'cleaner' way of seeking the changes required - increasing the operating hours, replacing the operating schedule and changing the layout – than applying for changes to the existing licence, which was very dated. It included obsolete references, 24-hour opening, few modern conditions, and was unclear. She confirmed that the existing licence would be surrendered if the application for a new licence was successful. She noted that there was a residential property above the premises but most of the neighbouring properties were in retail use. She submitted that the revised application was not out of step with the way in which the previous occupant of the premises, Café Rouge, had operated there for many years, and apologised for any alarm caused by the inclusion of live and recorded music in the original application.

Ms Tulloch went on to state that she and the Applicant had had extensive dialogue with all parties and had hosted a Zoom meeting the previous Monday to which all residents objecting to the application had been invited. This had resulted in one resident withdrawing their objections, and the issues had been narrowed. The Responsible Authorities had all withdrawn their objections. Two main issues remained; the use of the rear courtyard and the weekend operating hours. All the residents wanted to bring the site back into use and the Applicant was grateful for the support they had shown. The additional papers, which had been circulated to all parties, included a comprehensive suite of conditions to ensure that the premises could trade only as a restaurant, with a small bar on each floor. The basement was not included in the application and was for ancillary use. Use of the external courtyard would be seasonal, weather dependent and covered by the al-fresco dining policy. It would be an extension of the restaurant, with seated customers only and no smoking. The Applicant had agreed to start closing the courtyard from 9pm, with complete closure at 10pm.

Ms Tulloch explained that the Applicant differed from the Representors in respect of opening hours. The Representors wanted uniformity of hours throughout the week, while the Applicant wished to trade for an hour later at weekends. It was submitted that this was not excessive; it was no later than the existing licence and conditions would still apply, including closure of the courtyard at 10pm on any day of the week. Other restaurants in the area had later weekend closing hours (Côte) and / or live or recorded music (Via Vecchia). Tables were normally allocated to diners for a period of 2 hours, with last orders for food at 10pm and a 30 minute dispersal period. The application included late night refreshments to enable a quick meal to be served to customers arriving later in the evening. The revised operating schedule also allowed for the service of alcohol without a meal to a limited number of customers. This was to give them flexibility to accommodate a mixed group, for example, a party of 4 of whom only 3 wanted a meal. Most customers would be seated, with a few allowed to stand at the bar, usually while waiting for their table or after their meal.

Ms Tulloch drew attention to the fact that the premises, although in the CIA, was not in the Red Zone, stating that the application related not to an additional licensed venue but to an existing one and a new licence would be an preferable due to the Licensing Authority's engagement and the conditions.

Finally, she stated that there was always a balance to be struck but that channels of communication had been opened with the Representors, and the Applicant wanted to be a good neighbour.

In response to questions from Members of the Sub-Committee, Ms Tulloch confirmed that:

- The Dispersal Policy would be in place at all times;
- The reference to 'all bottles' in paragraph 4 of the Dispersal Policy should be amended to 'all open bottles' to be consistent with the Conditions.

5. The confirmation given at the hearing by PC Kim Hollis that North Yorkshire Police had withdrawn their objections following the additional conditions and changes made to the application.
6. The confirmation given at the hearing by Lesley Cooke, Licensing Manager, that the Licensing Authority had withdrawn their objections following the additional conditions and changes made to the application.
7. The representations made by Christine Potter, a local resident. Ms Potter acknowledged and welcomed the changes made to the application, in particular with regard to live and recorded music and no smoking, but said she still had concerns and would like all activity on the premises to be finished by 11pm. Due to her location in relation to the premises, there were also issues in respect of the effects on noise levels and security of the fire doors and the shared entrance and exit to the rear courtyard. She hoped that through further discussions she could be assured of a resolution to these concerns.
8. The representations made by Rebecca Hill. Ms Hill said that she ran Galtres Lodge Hotel with her partner. While she appreciated the Applicant's attempts to negotiate, she had concerns that the operation would negatively affect

her own business. She suggested that, had lockdown not been in effect, there may also have been representations from York Minster. She stated that she and her partner had developed the business after taking over two years ago and that having a bar as a neighbour could have a serious impact, especially if there were bouncers. Some of the hotel rooms shared a wall with the premises and any extra noise would affect the guests, meaning that charges for those rooms would have to be reduced. They had made the decision to close one bedroom previously due to the noise, which created a loss of income. The noise from the extractor fans on the premises was already excessive, as evidenced by a recording made on 15 February. Café Rouge had agreed not to use the fans on full power and to turn them off by 10pm; if they were not turned off until 11:30pm this would cause problems. The new operation would have 138 covers across 2 floors and a courtyard, which was more than twice that of Café Rouge, hence the likely use of the extractor fan at a higher level and for a longer period.

Ms Hill stated that her main fear was the intent of the Applicant. The phrase 'Rock and Roll bar' used in their publicity led to doubts as to the nature of the operation, and the licence had no expiry date. She asked for further conditions to ensure that the boundaries would not be pushed and that the premises would not become like the Applicant's venues in Manchester and Liverpool. Otherwise, she said, its impact would be devastating. The latest booking should be at 9pm, with all guests to depart before 'last orders' time, as in the restaurant at Galtres Lodge. In a bar, guests stayed on until the last minute. Her concerns about intent, she said, were based on the fact that there was an existing licence in place; that the other properties in the Jimmy's group were bars; and the promotion of cocktails, beers, and a rock and roll barbeque, all of which had more the feel of a bar than a restaurant. Likewise the information given to the press, even when this had been amended, and the information on social media. Jimmy's already had 20,000 followers on Instagram and their clientele might not respect the new restaurant style. At the Zoom meeting, the Applicant had confirmed that there would be recorded music using the existing system at the premises. She would like to work

with the Applicant in the same collaborative way she had worked with Café Rouge.

Cllr Fitzpatrick, Member for Guildhall Ward, was called as a witness. She said that she was fully supportive of music venues, and as a city centre resident herself did not expect peace and quiet in that area. She had regularly visited Galtres Lodge, which was a quiet hotel with a restaurant. She stated that she did not oppose the application but that the Applicant should consider the neighbours and the nature of the nearby businesses, and that it was in a heritage area. She would welcome additional conditions to clarify the position in respect of dispersal and the noise from the fans. She had also spoken to other neighbours who were concerned about a potential change in the ambience of the street. The Applicant needed to be fully conversant with the situation and compliant with neighbours' requirements. She suggested that a different venue may have been more suitable for this application, but considered it could be made to work, as long as there was consideration for the neighbours.

In response to questions from Members of the Sub-Committee, Ms Hill confirmed that:

- she had not had any conversations with the Applicant to establish how they would ensure that no noise was transmitted through the structure of the premises;
- she had wanted to ask the Public Protection officer why the condition on the original operating schedule relating to the transmission of noise (page 44 of the Agenda papers) had been removed as 'unachievable' but he was not present at the hearing; and
- she did not consider the requirement to submit a noise management plan (condition 23 on the new schedule, at page 5 of the Agenda Supplement) to be a suitable replacement for this condition.

9. The representations made by Steven Bruce, on behalf of 25 owners and residents of Talbot Court. Mr Bruce stated that the Applicant had engaged in constructive dialogue with residents over the past two weeks and agreement had been reached on some important points. However,

the opening hours on Fridays and Saturdays were too late when there was no condition requiring the service of alcohol to be ancillary to food. There was nothing to prevent groups of drinkers from being on the premises when the service of food stopped at 10pm. He had been told that nobody would be allowed to enter the premises after 10pm and that this would be policed by door staff. He was concerned that, if there was no link between the service of alcohol and the service of food, the premises would be a go-to place for late night drinking.

Mr Bruce noted that the advertisements in the window promoted a 'rock and roll barbeque' and that there had been contradictions and mixed messages in the publicity; for example, York Mix had quoted that 'it will be a pub'. He considered that what the Applicant wanted to achieve would be at the expense of the prevention of crime and disorder and would compromise public safety. Residential properties are only metres away from the premises. If the service of food ceased at 10pm, the premises did not need to stay open until midnight. He said that he wanted to ensure that the venue would operate only as a restaurant. If alcohol were served only with food he would withdraw his objection. Initial correspondence from the Applicant's Solicitor had sought to provide reassurance that they were committed to being a good neighbour. If they were to accept a condition to serve alcohol only with food, or withdraw the request to be open until midnight, he would have that reassurance.

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

Mr Bruce summed up, confirming that his chief remaining objection related to the prevention of crime and disorder, as stated. He was concerned that a venue permitting late night drinking would attract late night drinkers to the street from elsewhere.

Ms Tulloch summed up on behalf of the Applicant. She drew attention to the appreciation voiced by Representors for the efforts made by the Applicant to engage with them and confirmed that these conversations would continue should the application be granted. She asked Members to disregard the suggestion that further representations may have been made

had it not been for the lockdown. She stated that the application was consistent with the licence held by Ms Hill for Galtres Lodge. She confirmed that there was no intention to change or upgrade the existing speaker system on the premises and that any music played would be background music only; there was no room for live music, as could be seen from the plan. The Applicant would be happy to re-instate the noise condition that had been removed at the request of the Public Protection officer. The publicity for the venue had not been intended to cause alarm and the Press had apologised to Mr Craig for jumping to conclusions based on the nature of Jimmy's other operations. She submitted that, although there would be some flexibility, the venue could not become a place for late night drinking as this would be in direct breach of the conditions. The concept of service of alcohol ancillary to a meal was an old-fashioned one, preceding the 2003 Licensing Act. The Applicant intended to operate the venue responsibly and in communication with neighbouring residents. She asked Members to grant the application as amended, in line with the operating schedule accepted by the Police.

Members of the Sub-Committee sought and received points of clarification as follows from the parties indicated:

- Ms Tulloch confirmed that the reason for making a new application was to obtain a better and more restrictive licence with clear, standardised conditions, setting out exactly how the premises would trade, primarily as a restaurant. It was an attempt to modernise the existing licence, which was very broad and a hangover from previous legislation.
- Ms Tulloch confirmed that the basement was not included in the licensable area; it was on the plan to show its ancillary use;
- Mr Craig stated that the basement had been included on the plan to demonstrate that it was to be used as a kitchen area and not for live music and that he would be happy for it to be excluded from the licensable area.
- Ms Tulloch stated that the Applicant would not be willing to accept a condition to serve alcohol only with food; it had been considered but would not be practicable from a commercial point of view.
- Mr Craig clarified, in respect of noise, that the restaurant would be operating in exactly the same way as Café Rouge, with music at the same level, and it would not be a music venue.

- Ms Potter stated that Café Rouge did not utilise their licence to the extent that they could have; they operated the first floor as a function room to accommodate events such as office parties and any overspill from the restaurant and did not close as late as the licence allowed.
- Ms Hill agreed with the above comments of Ms Potter.
- Mr Craig stated that when Jimmy's took over the property the first floor was set up with chairs and tables as if in use.

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.

The Sub-Committee concluded that the application was acceptable with the mandatory, modified and additional conditions attached which addressed the representations made both in writing and at the hearing, as it met all of the Licensing Objectives.

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

- a) The basement is removed from the licensable area; an amended plan to be provided by the Applicant.

- b) Paragraph 4 of the dispersal policy is modified as follows: “We will ensure the removal of all open bottles and drinking receptacles from any patron before exiting the premises.”
- c) The following condition is added:
“No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to nuisance.”
- d) The revised Operating Schedule, al fresco dining policy and dispersal policy offered by the Applicant, and the agreements made with Public Protection, each contained in the Agenda Supplement published on 24 February 2021, shall be included in the licence, unless contradictory to the above conditions.

- 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 noted that the premises is located within the Council’s the cumulative impact assessment area (CIA), (not in the Red Zone), that the Applicant had amended their application, had reached an agreement with the Public Protection Officer, and the Police, Licensing Authority and Public Protection had withdrawn their representations on the basis of the additional information contained in the Agenda Supplement published on 24 February 2021.
 - (iii) The Sub-Committee considered very carefully the representations of the Applicant and the witness evidence. The Sub-Committee noted that during the hearing, Ms Tulloch, on behalf of the Applicant, confirmed that the basement was not included in the licensable area, agreed that paragraph 4 of the dispersal policy in the Agenda Supplement be

amended to state 'all open bottles and drinking receptacles', and would accept the addition of Condition 2 at Section C on Page 44 of the Agenda. The Sub-Committee noted that the Applicant had considered the addition of a condition regards service of alcohol being only ancillary to a meal, and that it was determined to be impracticable for the business. The Sub-Committee noted that the Applicant had obtained a transfer of the existing licence, which would be surrendered on being granted this new licence. The Sub-Committee were reassured by the engagement and dialogue which had taken place by the Applicant with the Representors, and the Applicant's assurance that they would continue their engagement and dialogue and with their neighbours.

(iv) The Sub-Committee considered very carefully the representations of Ms Potter, Ms Hill, Mr Bruce, Mr Bennett, Mr MacDonald and Ms Douglas, the witness evidence, and the proximity of each to the premises. The Sub-Committee had careful regard to their individual and shared concerns.

(v) The Sub-Committee concluded that if the application were to be granted in the terms applied for there would be the likelihood of the residents being subjected to public nuisance in terms of noise nuisance from licensable activity in the premises. The Sub-Committee considered that the additional information contained in the Agenda Supplement which had been agreed by the Police, Licensing Authority and Public Protection was sufficient to ensure that the Applicant would only trade as a restaurant. The Sub-Committee were satisfied that with the additional information contained in the Agenda Supplement, the modified and additional conditions set out above the premises would operate without undermining the licensing objectives. It also considered that a licence in the terms granted would not lead to an increase in the cumulative impact of premises in this area.

The Sub-Committee therefore agreed to grant the licence with the modified, additional and mandatory

conditions referred to above which were appropriate and proportionate in the circumstances to promote the licensing objectives.

Cllr J Galvin, Chair

[The meeting started at 11.04 am and finished at 1.14 pm].

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