

Meeting	Licensing/Gambling Hearing
Date	1 February 2021
Present	Councillors Mason, Melly and Norman

34. Chair

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

35. Introductions

The Chair introduced those participating in the hearing: Members of the Sub-Committee, the Applicant, the Barrister representing local residents and his witness, the resident representing himself, the Public Protection officer, and the Senior Licensing Officer presenting the report. Also present were the Legal Adviser to the Sub-Committee, the Democratic Services officer, and the Litigation Solicitor who was shadowing the Legal Adviser.

36. 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. None were declared.

37. 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.

38. The Determination of a Section 18(3) Application by Mr Simon Cowton for a premises licence in respect of St George Hotel, 6 St George Place, York, YO24 1DR (CYC-67482)

Members considered an application by Simon Cowton for a premises licence in respect of St George Hotel. 6 St George Place, York YO24 1DR.

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 Public Nuisance
- 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 additional plans submitted by Mr Bryce before the hearing.
4. 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 that consultation had been carried out correctly. She highlighted the additional conditions agreed with North Yorkshire Police in Annex 3 and the objections of Public Protection in Annex 4, confirming that the Police did not oppose the application. She acknowledged the additional information published in the Agenda supplement and the plans submitted by Mr Bryce. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to questions from Counsel for the residents, the Licensing Manager confirmed that the Applicant had a personal licence. She said she had no knowledge of the premises prior to the application and agreed that details of

operating hours for service of alcohol were not provided in the Applicant's plan at page 33 of the papers. In response to questions from Mr Bryce, she confirmed that it was not a requirement for licensed premises to have a bar, and that the application was for a licence to cover both the garden and the whole hotel.

5. The representations made at the hearing by yourself (henceforth referred to as the Applicant).

The Applicant stated that his intention was not to open a beer garden or bar available to the general public. His application was a direct response to the problems caused by Covid-19, in particular the need to provide safe spaces to meet and eat. The main objective was to enhance the service provided to guests of the hotel, and extend it to local residents and anyone else who wanted a safe dining experience. He also wanted to help his business survive and to protect jobs. He regretted that, due to shielding, he had been unable to hold meetings with local residents and respond to their concerns in person. However, he had been available on the phone and the only resident who had contacted him was in favour of the proposals.

The Applicant further stated that the glass pods he intended to install had a maximum capacity of six people. They were self-contained, weather-proof and made of high-quality materials. They would be available to pre-booked diners only, and alcohol would be served only with a meal. Bookings would not be accepted from stag and hen parties and never had been. Neither would bookings be taken from parties of more than six people. Only hotel guests and pre-booked diners would be admitted to the garden. Racegoers would not be excluded from booking to dine. Off sales were included in the application to enable diners to purchase a bottle of wine to take away with them.

The Applicant went on to state that there would be a maximum of 48 customers in the garden (up to 6 per pod). To minimise disruption further, he proposed an earlier closing time of 9:30 pm on Sundays to Thursdays (last orders at 9:00 pm) and 11:00pm on Fridays and Saturdays (last orders at 10:30pm). Referring to planning consent for the pods, he said he had been advised on 5 November 2020 that this was not required and had begun

construction of concrete platforms on that basis. Having later been informed that the platforms did require consent, he had since submitted a planning application.

With reference to the operating schedule, the Applicant said he did not anticipate any increase in alcohol-induced anti-social behaviour or crime, since alcohol would be sold only to customers eating on the premises. There would be two fully-trained members of staff on site at all times and he would be happy to meet regularly with ward members and residents to ensure that their experience [of the operation] was a positive one. He took fire safety very seriously and would comply with all requirements in respect of fire exit markings and appliances. The 'fire pit' would be purely decorative, consisting of a raised steel bowl 2m wide, containing a burner occupying less than half that diameter. In respect of safe service of alcohol, he would comply fully with all police requirements and had consulted a professional adviser with regard to CCTV. All staff were trained in the Licensing Act objectives and would apply an age verification policy and keep the required records. Alcohol would not be sold late at night and customers would be reminded, in correspondence and by notices at the premises, to respect the residential area. Out of hours security was provided by a night manager who lived less than 10 minutes from the premises and received alerts from the on-site CCTV cameras. The pods were lockable, and the garden would be fenced off and locked. There were 2m high walls on two sides of the garden.

The Applicant said he did not think that the development would cause significant extra traffic. There were 7 parking spaces on site for hotel guests; other customers would be directed to parking on Knavesmire Road. Neither did he anticipate any noise nuisance. He had carried out tests using decibel meters, which indicated that noise levels from the pods would be no higher than background levels. There were no facilities for playing music and the premises would not be open late at night. There would be no deliveries before 9am; refuse was collected once per month. There would be no service of takeaway food to create litter. The dining area was at the rear of the premises, and there would be no street drinking.

Unaccompanied children were not allowed on the premises and the garden was not visible from the street.

In response to questions from the Public Protection officer, the Applicant said he had carried out the sound tests himself using an Iphone app, by playing music quite loudly in one pod and measuring the sound level from a distance of 2m. He agreed that this did not amount to scientific data or a professional assessment.

In response to questions from Counsel for the residents, the Applicant stated that:

- He also intended to serve alcohol in the dining room inside the hotel, which currently seated a maximum of 16 people, and would agree not to exceed this capacity should the application be granted.
- He did not intend to apply the 9:30 pm time limit to hotel guests dining indoors and had not anticipated other customers dining indoors with guests.
- The pizza oven would be a mobile unit and would be subject to the same operating hours as the pods.
- He and his staff would use their judgement in deciding the ratio of food to alcoholic drink to be accepted in a customer's order.
- There would be a minimum of 2 members of staff on duty and serving customers during operating hours; orders would be taken via an app. There would also be a 'restaurant manager' not involved in serving or cooking food.
- The application was not time-limited, and he intended to continue the operation post-Covid.
- The exact location of the smoking area had not been decided, but it would be in the car parking area at the back of the hotel; this area abutted the boundary fence of 4 St George's Place. It would be covered by CCTV but not subject to controlled hours, as the garden area would be closed to non-guests outside operating hours.
- He followed the risk assessment guidance, but as a non-lawyer was not familiar with the reference to Section 182.

In response to questions from Mr Bryce, the Applicant stated that the plan at page 33 of the papers was of the footprint of the hotel. He said there was no reason why he

had not submitted a clearer plan of the basement. The room to the left of the dining room on the plan was a guest bedroom. There was no bar in the hotel, and only one dining room.

In response to questions from members of the Sub-Committee, the Applicant confirmed that he would be content to remove the additional hours applied for on Christmas Eve and New Year's Eve, substituting a finish time of 9pm on Christmas Eve, and accept a condition to limit service of alcohol to table service only. He said that the menu for food service was 'evolving', but he was expecting to serve proper 3-course meals of a Mediterranean type, including pasta, salads, antipasti and desserts, not just pizza.

In response to a question from the Legal Adviser, the Applicant agreed that it would be possible for customers to play music inside the pods on their own devices.

[At this point there was discussion between the Legal Adviser and Counsel as to whether music on licensed premises before 11pm could be conditioned from the outset or only on review of the licence.]

Finally, the Licensing Manager asked the Applicant to clarify what was shown on the plan at page 33 of the papers. The Applicant confirmed that it was intended to show every floor, including the basement. The area marked 'dining room' was meant to be the on ground floor. He said the plan was a mistake, a terrible plan, and that it was not his intention to licence the basement. The Licensing Manager confirmed that, since the application did not cover the basement and other plans of the ground floor had been submitted, she had no further concerns.

6. The representations made at the hearing by Michael Golightly, City of York Council Public Protection.

Mr Golightly stated that the application was for the premises to operate from 11:00 am to 11:00 pm, 7 days per week, in a quiet residential area. Each of the 8 pods could contain up to 8 people (or 6 as the Applicant now stated), and the external area could accommodate more. Although further conditions had been offered by the

Applicant, these had either not been formally agreed or were not sufficiently robust. As the application stood, there could be a bar outside. There was also some confusion around who would use the pods. Customers could include racegoers, in which case stringent conditions would be needed. The sound tests had not been carried out by a qualified technician and no details were available in respect of reverberation, background noise levels, the cumulative impact of noise from all the pods in use simultaneously, or sound insulation. The conditions agreed were insufficient to control noise from licensable activities. Public Protection therefore recommended that the application be refused on the grounds of public nuisance unless the issue of conditions could be resolved.

In response to questions from the Applicant, Mr Golightly explained that admitting racegoers to the premises would increase the risk of anti-social behaviour and noise, which meant that door staff would normally be required on race days. Taking pre-bookings and serving alcohol only with meals would help, but more precise details on the handling of bookings would be required in order to mitigate the risk.

In response to questions from Counsel for the residents, Mr Golightly said he could not think of any premises operating in a similar way in a residential area in York and confirmed that there were no other licensed premises close to the application site. He agreed that to site a smoking area beneath a child's bedroom window would be poor management, though in public protection terms this was about the noise rather than the smoke. He confirmed that disturbed sleep was relevant to public protection, but light was less of an issue because it could be controlled, e.g. by putting up curtains. He agreed that kitchen smells could be a statutory nuisance and that exposure to bad language was relevant to the protection of children from harm. He could not comment on the frequency of rubbish collection, but agreed that businesses should plan for the collection of commercial waste. He agreed that the impact of Air B&B premises in a residential area could be significant if they were not well managed, and said there had been an increase in complaints about such premises in York.

In response to questions from Mr Bryce, Mr Golightly stated that noise inside adjacent buildings was not a concern from a licensing point of view where there was no regulated entertainment or music. In preparing his representations he had only examined the external area.

In response to questions from members of the Sub-Committee, Mr Golightly stated that it might be possible to mitigate the public protection risks if the application were significantly altered. However, there was still a risk it could introduce noise into an area where noise did not currently exist. He said he had not had time to discuss conditions with the Applicant over the Christmas period. However, he had doubts as to whether the premises were suitable for this type of operation. The location of the pizza oven was a further concern, since even an external location could be a risk. He agreed that the Applicant should have submitted a planning application for a change of use before applying for a premises licence. He confirmed that no noise complaints had been received about the premises as it currently operated. However, once the whole premises was licensed, there could potentially be a bar in any of the rooms. He agreed that it would not be possible to agree conditions to mitigate the risks at this hearing.

7. The representations made at the hearing by Leo Charalambides, Counsel for a number of residents of St George's Place and Moorgarth Avenue.

Mr Charalambides stated that it was important to focus on what the application was for - an outdoor food and drink-led development in a hitherto darkened garden within a cul-de-sac, in an entirely residential area. With up to 48 customers in the pods and some outside them, plus staff and hotel guests, there could be a significant number of people in the area at any one time. The Public Protection officer had been unable to give an example of a similar operation in York. The Sub-Committee was being asked to authorise the use of a garden as a restaurant or bar; however, this was a planning issue. On that basis alone, the Applicant should be required to obtain planning permission before seeking a licence.

Mr Charalambides submitted that the application was not a response to Covid as stated by the Applicant, but about a long-term investment in an unauthorised restaurant / bar. The application was 'ill thought out and irresponsible' in the context of the Licensing Act guidance and the Council's statement of licensing policy. The residents had taken the time and trouble to make representations, hold meetings and instruct Counsel, and they should be listened to. Paragraph 9.38 of the guidance made it clear that the 'overall interests of the local community' were a relevant consideration, while commercial interests were not. The Applicant had failed to comply with his basic responsibilities, including the requirement to submit 'clear and legible' plans.

Mr Charalambides said he was chilled by the Applicant's response to the Sub-Committee that the menu was 'evolving', concerned that he had started building before engaging with the planning process, and shocked that the police had agreed conditions. He had asked the police to attend the hearing but they were not available. He stated that the Applicant had failed to undertake the local enquiries and risk assessments required by the Licensing Act guidance, including risks associated with the smoking area, cooking, race days, and people loitering outside the premises. The Applicant's responses to questions indicated that he had not thought this through and was unfamiliar with the guidance.

Mr Charalambides drew attention to:

- The statements of the residents, and in particular their references to break-ins at the premises;
- The issue of preserving privacy and data protection in the glass pods and how this would be addressed;
- The protection of children from harm - which harm, under paragraph 222 of the guidance, could include bad language and limiting children's enjoyment of their own gardens;
- The lack of parking facilities and information on where and how parties of diners would be organised, and potential public nuisance resulting from this.

He urged the Sub-Committee, even just on these few examples, to reject the application.

Cllr Crawshaw, Ward Member for Micklegate, was called as a witness. He confirmed that St George Place was a quiet residential street in his ward, with a small supported-living area at the top of the street and larger houses towards the bottom. There had been no complaints about noise in the area until last year, when he started to receive reports that racegoers congregating at Knavesmire Gates were causing problems. This was about 100m from the entrance to St George Place. One of the biggest problems he had to deal with as a ward councillor was the noise from small groups of 3-5 people sitting drinking on the wall at Little Knavesmire, which sounded more like 20-40 people and carried as far as Albermarle Road. There were also issues with Air B&B premises on The Mount. People would tolerate occasional noise from their neighbours but noise from commercial premises on a regular basis would often become a problem. He and his fellow ward member Cllr Kilbane had been contacted by a significant number of residents and he was disappointed that the Applicant had not contacted ward members. In his own experience with music venues, complaints usually related to the smoking and external areas. He considered that this was the wrong idea for the area and would be disastrous for St George Place and Moorgarth.

The following residents represented by Mr Charalambides were then called to comment individually:

- Mark and Helen (Representor 18) said that noise, disturbance and pollution from the premises would affect their enjoyment of their garden, their children's health and ability to sleep and also their privacy, as it was possible to see into the family's bedrooms and dining room from the pods.
- Derek (Representor 15) said that noise would be a significant issue for him and his family, as they lived close to the premises and all, including their young son, slept at the rear of the house. Their use of their own garden would also be affected.
- Rebecca (Representor 14) said that having over 40 people in the garden of the premises would have a huge impact in terms of noise; this would affect her children who were doing university work at home and was inappropriate for the area.

- Sean (Representor 11) pointed out that the premises were in a conservation area and said that the noise was bound to carry, as there was a clear line of site down a line of domestic back gardens to the pods, and the operation would disrupt the residential character of the area.

In response to questions from the Applicant as to how he could allay residents' concerns, Mr Charalambides advised that he should start the process again from the beginning by completing the application properly, providing an operating schedule that addressed the licensing objectives and then engaging with the responsible authorities and the residents. The additional documents he had submitted were an attempt to engage retrospectively, contained inconsistencies, were unclear, and did not begin to address the concerns raised.

In response to questions from members of the Sub-Committee, Mr Charalambides acknowledged that the police had agreed the operating schedule and the Applicant had offered earlier closing times, but said it was local residents who were the experts on crime in their area. Already there had been an increase in crime and disorder, with break-ins at the premises, and drug users and anti-social behaviour in the wooded area nearby. Although there were no specific problems associated with the current bed and breakfast operation, the application was likely to exacerbate certain types of disorder in the area, including those associated with the racecourse. He called on Cllr Crawshaw to expand upon this.

Cllr Crawshaw explained that on race days up to 40,000 people attended the racecourse, resulting in a significant number of anti-social behaviour incidents. Ward members held meetings with residents at the start and end of every season and their complaints greatly exceeded the incidents officially recorded by the police. There had already been an increase in problems at the Knavesmire gates and this application would provide a further focus for anti-social behaviour, drawing it further up St George Place. Noise travelled further than most people realised.

In response to further questions from the Sub-Committee:

- Mr Charalambides stated that the hearing was for members to make decisions in the interests of the local community.
 - Cllr Crawshaw said he had not objected to the application because he had misunderstood that part of the Licensing process; it was a mistake on his part.
8. The representations made at the hearing by Anthony Bryce, a local resident.

Mr Bryce supported the submissions made by Counsel for the Applicant. He added that he found it hard to believe that the basement would not be used for any purpose and stated that there was the potential to modify the premises over time and for the basement to be used by drinkers. This would increase capacity, attract more people to the premises and exacerbate the problems it would cause.

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

The Public Protection officer summed up. He said that the application had been submitted over Christmas and he had not had much time to consider it. However, nothing he had heard today had allayed his concerns about noise nuisance; in fact it had caused additional concerns. This was a highly residential area, and the premises were overlooked by gardens and dwellings. No professional sound tests had been carried out on the pods. It was not clear that any achievable conditions could be attached in order to prevent noise. He therefore advised that the application be refused on the grounds of public protection and protection of children from harm.

Counsel for the residents summed up. He said it was clear that the Applicant had not considered the nature of the location and the character of the area. The application was changing and evolving to suit the questions being asked. The Public Protection officer had said that he had extra concerns, and Paragraph 9.12 of the guidance stated that particular regard should be taken of evidence from an expert. Members were looking at a proposal to develop a bed & breakfast operation in an entirely residential area into what was effectively a stand-alone

glass restaurant and bar in a residential garden. This was simply not suitable for the area, and he urged them to reject the application.

Mr Bryce summed up. He stated that this was an ill thought-out and opportunistic plan to exploit the premises for financial gain. He said that the Applicant was not interested in its effect on the neighbourhood because he lived away from the area. Residents would suffer visual and aural detriment and loss of parking space. If granted, the application would set a dangerous precedent. The Applicant had no experience of running licensed premises, had shown a lack of involvement, had avoided submitting accurate plans with clear details, and could not be relied on to comply with conditions.

The Applicant summed up. He thanked everyone for their involvement and said he had listened carefully to the objections and taken them on board, especially the comments about noise and disruption to amenity. He stated that this was not a profit-motivated endeavour but an attempt to diversify and provide something unique to encourage people to visit and ensure the success of the guest house business. He wanted to take on new employees as well as retain current staff. He appreciated that the objections were based on a 'worst case scenario' and would be happy to curtail his opening hours, including not opening in the evenings on Sundays to Tuesdays if that would help. He would also be happy to limit the number of customers in the garden to 24. He did not think that the restaurant would draw racegoers up to St George Place, as he was not offering a bar and there was no seating in the garden area (except the pods). His purpose was to provide safe, comfortable, warm private dining areas and he would not seek to attract the type of customer who would detract from that atmosphere. He accepted that the original application had not been detailed, but said he had subsequently submitted very detailed operating principles.

The following points of clarification were provided:

- On the issue of imposing conditions on music that was not a licensable activity, as discussed earlier, the Legal Adviser and Counsel for the residents

confirmed that they had not changed their positions; however, the latter agreed that this was a grey area.

- Members agreed that they could consider conditions relating to the number of customers permitted in the garden area, the areas to be licensed, the operating hours, and table service of alcohol with a substantial meal.
- The Applicant confirmed that he would agree to any conditions that would make his objective for customers to enjoy a meal in safety and comfort work. If alcohol could only be served indoors, this may be a problem.

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 **rejected**.

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 **approved**.

Resolved: That the application for a premises licence for St George Hotel, 6 St George Place, York YO24 1DR be rejected.

Reasons:

(i) The Sub-Committee noted that no representation had been received from the Police, having agreed additional conditions with the Applicant prior to the hearing. The Sub-Committee further noted the submissions from Mr Charalambides, that he had invited the Police to attend the hearing, but they had been unable to do so due to other diary commitments.

(ii) The Sub-Committee considered the evidence of the Applicant, in particular the additional information he provided about his proposed business, and operating hours, and noted that he accepted that his application had not been adequate that there were no complaints linked to the current business, and he had submitted further information in support of his application. However the Sub-Committee were concerned that it remained unclear how / where the Applicant intended elements of his new business to be conducted / operate on the premises, the plans submitted by the Applicant were not sufficiently clear, the business model was not sufficiently developed, the requirements / impact of planning consent on his intended business model was not known, the Applicant had prepared insufficient risk assessments, there was no certainty about how the glass pods would be used, e.g. would the occupants be enclosed at all times or would windows / doors remain open, and no professional noise assessment had taken place. All of which reflected to the Sub-Committee that the application was ill-prepared, and lacking in detail, such that they did not have confidence that the Licensing Objectives would be upheld.

(iii) The Sub-Committee considered the evidence of the Public Protection officer carried great weight, in particular the lack of professional sound tests, insufficient risk assessments and preparation conducted by the Applicant, such that he was not satisfied

that any achievable conditions could be attached to the licence to satisfy his concerns. The Sub-Committee noted that in his summary to them, Mr Golightly stated he had greater concerns about the application after hearing the evidence during the hearing.

(iv) The Sub-Committee considered that the evidence of both Mr Charalambides on behalf of a number of local residents, and Mr Bryce himself a local resident. They noted that the Premises is located in an entirely residential area of the city, specifically in a cul-de-sac, within a conservation area. That there is no similar licensed premises in the city. They also noted the evidence that complaints were not always made to the Police by local residents, and noise complaints had been received in other areas close to the Applicant's premises linked to groups gathering outdoors in smaller numbers to those expected by the Applicant in the premises garden area. The Sub-Committee noted that the Applicant had not conducted any meaningful engagement with the local residents or ward councillors prior to submitting his application.

Cllr A Mason, Chair

[The meeting started at 10:10 am and finished at 2:50 pm].