

Meeting	Licensing/Gambling Hearing
Date	29 April 2021
Present	Councillors Norman (Chair) Mason (Substitute), and Pearson (Substitute)

1. Chair

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

2. Introductions

3. 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.

4. 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.

5. Minutes

Resolved: That the minutes of the Licensing Hearings held on 22 February 2021 and 1 March 2021 be approved

as a correct record in each case, to be signed by the Chair at a later date.

6. The Determination of a Section 18(3)(a) Application by Mr Kheng Chooi Koay for a premises licence in respect of 16 Barbican Road, York, YO10 5AA (CYC-068154)

Members considered application by Mr Kheng Chooi Koay for a premises licence in respect of 16 Barbican Road, York, YO10 5AA (CYC-068154).

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 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 including the following additional information:
 - Agreed conditions with Public Protection
 - Dispersal Policy
3. The Licensing Manager's report and her comments at the Hearing.

The Licensing Manager outlined the report and annexes in respect of the application. She advised that the premises was not located within the cumulative impact assessment area (CIA) and confirmed that the consultation process had been carried out correctly. She explained that Public Protection had withdrawn their representation as conditions had been agreed and that during the consultation period, the police had withdrawn their representation following mediated conditions. There had been 13 representations from other interested parties.

In response to questions from Members, the Licensing Manager explained that:

- The premises was not in the CIA.
- The closest licensed premises were on Lowther Street and Laurence Street.
- The premises licence applied for was for 16 Barbican Road.
- There were complaints on the evening referred to in representor 13 correspondence.

4. The representations made by Duncan Craig, Counsel, on behalf of the Applicant (henceforward referred to as the Applicant) and the representations made directly by the Applicant. Mr Craig explained that the premises had some documented history and the licence had been subject to revocation in June 2020 and that public nuisance had formed part of that decision. He noted that the Applicant had other premises in the city and there had been no issues associated with those. He noted that it was important that local people felt safe and were involved. He highlighted that North Yorkshire Police and Public Protection were responsible authorities and following consultation had withdrawn representation and would have applied stringent checks to the application. He advised that any less hours would make the business unviable and he had taken mitigation measures agreed by the responsible authorities. He outlined the agreed conditions and added that a noise management plan would be agreed with Public Protection. He added that in relation to Public Protection concern about windows, all windows would remain closed.

Mr Craig explained that two days prior to the hearing, there had been a zoom conference with the Applicant regarding a Dispersal Policy, which had been circulated to all parties. He advised that Public Protection had welcomed the Dispersal Policy and the addition of the noise management plan in the conditions. He noted that the Applicant would abide by the conditions and there were mitigations to allay concerns. He noted the Applicant was vested in the local community and city and the application was well considered with the additional conditions and offer of a Dispersal Policy. He added that the Applicant was sincere in his intention to people who lived near to the premises.

In answer to questions from representors, Mr Craig explained that the Applicant was the licensee for Mr Happy and Hon King Hotspot in York, adding that there would be an entertainment element to the premises applied for.

In response to questions from Members, Mr Craig and the Applicant noted that:

- Coaches would drop off customers then drive away. He invited Members to condition this.
 - There could be a condition for picking up glass and litter at the end of the night.
 - The noise management plan condition covered the music levels.
 - It was possible to provide the premises contact details in a leaflet to residents every six months.
 - The operating hours and hours for the sale of alcohol were what the Applicant felt was necessary and the responsible authorities were content with them.
 - Food would stop being served at 11.30pm.
 - The premises would operate broadly the same as the previous premises, with the same layout and format.
 - Regarding the selling of knives, this was an error and it was confirmed that the premises would not sell knives.
 - The smoking area was the outside area labelled as the dining hall.
 - There would be no staff living at the premises.
 - The coach drop off would be near the Staycity aparthotel.
 - The Applicant had no knowledge about the allegation of a party at the premises at Christmas.
5. The representations of Paul Goodwin in writing and at the hearing on behalf of himself and others. He explained that before the pandemic, coaches were stopping outside the car park and making a noise, and his car had been damaged by a coach parking there. He noted that the area was already quite noisy at 3-4am with university students, and with people parking in the car park below and having conversations. He noted his concern about the noise level

in the smoking area and added that there was already antisocial behaviour in the area, which would bring more sleeplessness.

In response to a question from one of David Sylvester, one of the representors, Mr Craig noted that the licence holder would need to comply with conditions concerning coaches parking in designated areas.

In response to questions from Members, Mr Goodwin explained that:

- Regarding the additional conditions being added to address his concerns, he remained concerned about noise from the smoking area. He added that nothing in the local area was open after midnight, and even hours an hour less would create noise in the neighbourhood.
- If the windows were shut there should not be an excessive amount of noise. The noise was from people coming and going.
- Although he would expect more noise on a Friday, Saturday and Sunday, there was still noise during the week.
- Concerning whether there had been a marked change in noise levels since the previous premises licence had been revoked, it was hard to tell whether this was as a result of the pandemic. He had more concern about the new scenario.
- There was already a problem with noise prior to COVID.

6. The representations of David Sylvester in writing and at the hearing on behalf of himself and a number of students at the Bible College. He explained that noise was amped up by next door and urinating, smoking and talking would escalate until 3.30am in the morning which meant they did not think much of the community. He noted that there had been a problem with parking in front of the flats. He added that it was a viable business when it had not been open until 3.30am. He added that expecting people to abide by Dispersal Policy rules at 3.30am was optimistic.

In response to questions from Members, Mr Sylvester explained that:

- Regarding whether he felt that mitigation measures would address his concerns, that anything could be put on paper but in reality people would be living with a lot more noise in a residential area.
 - Urination was from customers because they had been coming out of the restaurant waiting for taxis, talking and sitting around.
 - There was noise from people outside the restaurant.
 - In regard to a contact at the premises, he had been in and spoken to the manager and having to do this 20 times was a frustration.
 - Residents of the Bible College lived in the flats.
7. The representations of Louise Pattison in writing and at the hearing. She explained that the last licence was granted to drink and eat so people were not just going there to get drunk. She also explained that the path around the smoking area was tight and she had to go on the road with her dog, which was a blind bend and she expressed concern that there may be a fatality. In response to questions from Members, she explained that:
- Regarding the additional conditions being added, there could a condition to make sure that that there was no car or coach parking in residents car parks.
 - The pavement outside the premises was 4ft wide. Mr Sylvester added that he thought it was 6-7ft.
 - The smoking area could be at the back of the premises

At that point in the meeting a map of the premises area was brought on screen and the Chair suggested a number of possible areas for the location of the smoking area. The Applicant confirmed the smoking area could be at the back of the premises and Mr Craig made an undertaking that smoking could be part of the noise management plan.

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

Mr Craig explained that the premises would not operate as a vertical drinking establishment and noted that the conditions were enforceable. He noted that the previous licence was revoked due to poor management and the Applicant was a responsible operator. Asked by the Chair whether a condition could be added stating that the

premises could not be used for residential purposes Mr Craig suggested that a condition could be added to state that no one lives on site. The Sub-Committee Legal Advisor clarified that this was not possible as the conditions had to address licensable activities. This was confirmed by the Licensing Manager. It was suggested that a condition could be added stating that the karaoke rooms must remain as karaoke rooms and were not habitable.

The Chair asked Mr Craig whether an earlier closing time during the week would be acceptable. Mr Walker, the Solicitor for the Applicant stated that it was a 7 day a week premises. Members asked if there were door staff previously. Louise Pattison explained that there was a condition but there hadn't been any door staff. Mr Craig advised that the Applicant had signed a contract for door staff that week and it was noted that this was included in the Dispersal Policy. In response to a question from the Chair he noted that Applicant had accepted the need for a proper smoking area and didn't want to upset the neighbours.

In response to a question from the Chair, the Licensing Manager confirmed that the proposed conditions were enforceable as they addressed licensable activities. She added that the licensed premises on Laurence Street were open until 01.00 or 02.00am.

In relation to the Dispersal Policy, Mr Craig was asked and noted that it had been submitted in isolation and he had spoken to Public Protection 45 minutes before the hearing. He added that Public Protection had welcomed the noise management plan and that it had not been seen by the police. The Democracy Officer was asked and confirmed that there had been no feedback regarding the Dispersal Policy. She also confirmed that the Public Protection Officer had confirmed that he had seen the Dispersal Policy.

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. Coaches attending the premises must not park, idle, pick-up, or drop-off on either Barbican Road or Wellington Street at any time.
2. Coach noise is to be assessed via the noise management plan.
3. A leaflet containing the premises duty manager(s) contact details and the City of York Council's noise patrol contact details must be provided to all properties on Barbican Road, Wellington Street, Lawrence Court and Barbican Mews prior to the premises operating, and each October thereafter.
4. The smoking area for the premises is to be assessed and agreed by the Council's Public Protection team.
5. The Operating Schedule, the conditions agreed with North Yorkshire Police and the conditions agreed with Public Protection, contained in the published Agenda, Agenda Supplement 1 and Agenda Supplement 2, 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 not located within the Council's cumulative impact assessment area, that the Applicant had reached an agreement with both North Yorkshire Police and Public Protection prior to the hearing, both of whom had withdrawn their representations.
- iii. The Sub-Committee considered very carefully the representations of the Applicant, and the witness evidence. The Sub-Committee gave great weight to the fact that the Applicant was not linked to the previous licensee at the premises, had held premises licences in the city for a number of years without any issues, and agreements had been reached with the Police and Public Protection prior to the hearing. The Sub-Committee were reassured by the Applicant that they would continue their engagement and dialogue and with their neighbours and Public Protection. The Sub-Committee noted the Applicant's following assurances, that the premises windows would remain closed, the agreed dispersal policy, that no one would be resident on the premises, that the premises would operate in a similar manner to the previous business, an area had been proposed away from the premises for coach drop off and pick up, a recent contract had been signed regards the provision of door staff at the premises, and the noise management plan would be agreed with Public Protection. The Sub-Committee noted the Applicant's undertaking that the smoking area would form part of the noise management plan, and their agreements to amend the dispersal policy regards litter "to be picked up", coach noise to be included in the noise management plan, and would provide a leaflet to the local neighbours with contact details.
- iv. The Sub-Committee considered very carefully the representations of Mr Goodwin, Mr Sylvester, and Ms Pattison, the witness evidence, and the proximity of each to the premises. The Sub-Committee had careful regard to

their individual and shared concerns, in particular noise from open windows at the premises, coaches stopping at or near to the premises, noise and anti-social behaviour from customers leaving the premises, the previous lack of door staff, how the premises could be contacted by neighbouring homes / businesses, and the location of the smoking area for their customers.

- v. The Sub-Committee noted the written representations from those persons who did not attend the hearing or instruct another to speak on their behalf, (Agenda Annex 7 and 8).
- vi. 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 and / or linked to the licensable activity in the premises. The Sub-Committee were satisfied that the information contained in the Agenda, the two Agenda Supplements, and with the additional conditions set out above that the premises would operate without undermining the licensing objectives.
- vii. 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 G Norman, Chair

[The meeting started at 5.30 pm and finished at 7.53 pm].