
Meeting	Licensing/Gambling Hearing
Date	12 June 2023
Present	Councillors Cuthbertson, Hook and Melly

1. **Chair**

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

2. **Introductions**

The Chair introduced the Sub-Committee Members, the Licensing Manager, the Legal Adviser and the Solicitor shadowing her, and the Democratic Services officer and the Democracy Officer shadowing her. The Applicant's solicitor introduced himself and those accompanying him – Nicholas Bradley (Director of New Holgate Ltd.), Daisy Drydal-Mortimer (Designated Premises Supervisor) and Gessica Giacolome (Front-of-house Manager). Counsel for the Representors introduced himself, noting that he was instructed by Pippa Allen and a number of other Representors. Tom Mitchell, Representor, introduced himself.

3. **Declarations of Interest**

Members were invited to declare at this point in the meeting any disclosable pecuniary interest or other registerable interest they might have in respect of business on the agenda, if they had not already done so in advance on the Register of Interests.

No interests were declared, but for the sake of transparency Cllr Cuthbertson indicated that he had visited both of the schools referred to in the case papers in connection with Council activities.

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 Hearing held on 22 December 2022 be approved as a correct record, to be signed by the Chair at a later date, subject to the reference to 'licensing committee' in 'Option 2' at the end of paragraph 6 of Minute 52 being corrected to 'sub-committee'.

6. **The Determination of a Section 18(3) (a) Application by New Holgate Limited for a Premises Licence in respect of Holgate Bridge Hotel, 106 - 108 Holgate Road, York, YO24 4BB (CYC-072631)**

Members considered an application by New Holgate Limited for a premises licence in respect of Holgate Bridge Hotel, 106-108 Holgate Road, York YO24 4BB.

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 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 in the Cumulative Impact Area and confirming that the Applicant had carried out the consultation process correctly.

She further noted that an additional condition had been agreed with Public Protection (Annex 3) and that there were no representations from Responsible Authorities. She drew attention to the representations at Annex 5, and the additional information from the Applicant and Representors published in the Agenda Supplement. Finally, she advised the sub-committee of the options open to them in determining the application.

In response to questions from the sub-committee, the Licensing Manager confirmed that:

- Public notices in respect of the application had been correctly formatted and placed
- The Licensing Act did not automatically allow 24-hour service of alcohol to hotel guests
- A further application would be needed if the Applicant wished to extend the licensed area to other premises.

4. The representations made by James Staton, Solicitor, on behalf of the Applicant.

Mr Staton noted that the question raised about extending the premises was academic, as the Applicant had no plans to purchase other properties.

He stated that the Applicant was looking to establish a new boutique hotel on the site of an existing unlicensed hotel. The plan was to upgrade the premises and offer a high-quality experience to hotel residents and diners. The building, which was Grade II listed, was being refurbished. The hotel would have 12 bedrooms, a small bar (12 covers), a modest-sized restaurant and an outdoor dining area. Service of alcohol would be available to hotel residents throughout the day, but early in the day it would be served to non-residents only with a meal, for example a wedding breakfast. The prime objective was not the sale of alcohol but an upmarket offering for visitors to York. Non-residents could dine in the restaurant but would have to pre-book due to its size. Use of the external area would be constrained by the weather. The Applicant was planning to sell sustainable local wines, craft beer, whisky, gins and water, and not to replicate the offering of the Volunteer Arms.

Mr Staton contended that the licences held by the Volunteer Arms and other premises in the area – the Premier convenience store, St Paul’s Lodge, and Kilima Hotel - as described in paragraphs 6.2-6.8 of the case summary in the Agenda Supplement, showed that granting the application would not be a major change or ‘open the floodgates’ in the area as suggested in the representations. Describing the premises, he said that the external area was immediately behind the building and included a car park with 12 spaces. There was student accommodation to the east, and the east boundary was a brick wall. To the south, Watson Street was shielded by the annex of Holmwood House Hotel. The west boundary adjoined the home of the former owners of the premises, and the Applicant had agreed to increase the height of the fence on this boundary. There would be planters in the external area to deaden the noise and the area would be cleared by 10pm. The low-level background music to be played there would be monitored by the Applicant. The Applicant was content to ensure that the car park was used by residents only after 8pm and it would be closed by 10pm. Non-residents would be directed to the front door entrance.

Referring to representations made about the car park, Mr Staton said there would be no more parking spaces than when the premises operated as Holgate Bridge Hotel with 16 bedrooms. In respect of the nearby schools, there would be no increase in traffic, hotel guests would not be checking in or out during school dropping-off times, and children would not be exposed to drunken behaviour. The focus of the operation would be on the supply of food and drink to hotel residents and pre-booked diners. There would be a limited range of wines and beers, no draught supplies, and off-sales for residents / diners / guests only, such as a bottle of wine to take home or out for a picnic. It would be a quality offering to a limited clientele and there would not be large groups of people drinking in the garden.

In conclusion, Mr Staton stated that the issues of crime and disorder suggested by the Representors were illusory. The Applicant was investing a significant amount in the business and wanted it to be a success. He referred to

the operating schedule included in the application, which detailed the steps to be taken with regard to the licensing objectives, and noted that the application for late night refreshment had been amended to 23:00-00:00 hours.

In response to questions from Mr Mitchell (Representor), Mr Staton confirmed that:

- The earliest check-in time for guests would be 4pm.
- If check-in was being advertised as 3pm on booking.com, the Applicant would be happy to correct this.

In response to questions from the sub-committee, he confirmed that:

- Arrangements for off-sales in other premises in the area were set out in the schedule at pages 13-14 of the supplementary papers.
- The number of covers in each of the licensed areas was 16 in the restaurant, 12 in the bar/whisky room and 32 in the outside area.
- The Applicant would accept a condition of table service only.
- The outside area could in theory be adapted for use in adverse weather conditions but there were no plans to do so.
- The closure time of 10pm for the outside area (page 59 of the papers) had been agreed on the advice of Public Protection.
- Smokers would have to leave their drink to go outside and smoke after 10pm.
- Windows in the dining room and bar would be closed at 10pm.
- Late night refreshment would cease at 23:00 but service of alcohol would continue until 24:00 (page 41).

5. The representations made by Leo Charalambides, Barrister, on behalf of several Representors, including nos. 2, 10, 13, 15, 23 and 24 on the confidential list before the sub-committee.

Mr Charalambides stated that the test to be applied under Section 18 of the Licensing Act was the likely effect of the application on the promotion of the licensing objectives; however, this was not mentioned in the Applicant's case summary. He highlighted the key aims and purposes set

out in paragraph 1.5 of the Licensing Act statutory guidance, in particular the duty to encourage greater community involvement and give local residents the opportunity to have their say regarding licensing decisions that may affect them. He said the issue was what was suitable for this particular location, and therefore it was wrong to focus on the conditions attached to other premises in the area. He stated that the Applicant had failed to engage with the licensing objectives and could not comply with the requirement in the statutory guidance to undertake a risk assessment because the application kept shifting – at page 38 of the papers the application referred to a maximum of 22 guests, but the capacity of the bedrooms as provided online indicated a maximum of 52. There were further discrepancies in the papers – for example, on the plan the capacity of the dining room was given as 12, but in the description at page 38 it was 18. Taking the highest and the lowest figures, the overall maximum capacity was between 117 and 124.

With regard to the external area, he said that noise carried across back gardens in the locality and that the Applicant had advertised a race day offering. On days when the community wanted to enjoy their gardens, the external area could be packed with people, and bad language would be audible to children –the guidance on protection of children from harm included protection from expletives. With heaters, blankets and awnings, maximum advantage could be taken of the outside area all year round, and the impact of the resulting intensification in the number of people using the outside space in the heart of a residential area would be huge.

In conclusion, Mr Charalambides stated that if the application were granted, it should be with conditions to:

- require the premises to operate only as a hotel providing overnight accommodation for guests;
- allow access to the hotel facilities for hotel residents and their bona fide guests only;
- limit the number of people staying overnight to 24 (2 per room);
- not allow access to non-residents before 8 am or after 11pm (except for staff);
- restrict the number of people on the premises to 36 (excluding staff);

- not allow smoking in the external area after 17:00 hours and restrict the number of smokers to 4 at any one time;
- allow the supply of alcohol between 08:00 and 23:00 only;
- restrict late night refreshment to hotel guests / room service only;
- not allow any licensable activities or alcohol consumption in the courtyard of the basement.

He stressed that residents were completely against the use of the external area and suggested that the type of alcohol supplied could also be restricted, to no more than 6-8 premium spirits and no draught beer. He added that the area around Holgate Road was quiet and residential and that the intensification and ever-shifting nature of the proposals made them unsuited to the area. His suggested conditions would allow the Applicant to operate a small, boutique luxury hotel as requested, prevent it from turning into the type of operation that had been advertised and avoid the adverse impacts of granting the application as submitted.

In response to a question from the sub-committee, Mr Charalambides clarified that the representations in respect of the nearby social housing for vulnerable adults related to the potential adverse effects of people going on and off the premises with drinks interacting with those vulnerable adults.

6. The representations made by Tom Mitchell, a resident of Holgate.

Mr Mitchell stated that he lived about a mile away from St Paul's Square and was the Chair of Governors of St Paul's Primary School. His children attended the school and he had been walking to and from the area since 2019. The school had 129 children on its roll, many from families that lived in the surrounding area.

In relation to the application, he said that the main issue was the protection of children from harm. The rear of the premises was directly opposite the entrance/exit of the school, which was on a small lane leading onto Watson Terrace. The road and pavement were narrow and there

was a lot of traffic at drop off and pick up times. There were already issues with delivery vehicles on Watson Terrace, with instances of them reversing and parking outside the school. The application was for much longer drinking and food service hours than previous operations. There would be a need for supplies to be delivered to the premises, resulting in an increased traffic risk that would put children in harm's way. Some children walked to and from school unaccompanied. There would also be issues with noise from the external area, which was 20-50 metres from the school playground. The playing fields were even closer. The sound would carry and the type of noise, as demonstrated by Mr Charalambides, was a concern. Children also walked past the front of the premises in order to cross the road. The existing licences held by other premises were not used to their full extent and were not causing problems with noise etc. These premises did not operate in the way that the Applicant proposed to do. An OFSTED inspection had noted that the school 'sits in the heart of its community'. However the Applicant had not engaged with the community at all, which said something about his intentions.

In response to questions from the Applicant's solicitor, Mr Mitchell said that:

- School pick-up times were staggered, beginning at 3:10pm, with after-school clubs finishing at 4:15 pm and wraparound care at 6pm.
- He would be surprised if the playground was as far as 100m from the premises and if the sound did not carry.

In response to a question from the sub-committee, he confirmed that as far as he was aware there were no other licensable activities taking place in the rear gardens of premises to the front or rear of the school.

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

Mr Charalambides summed up, stating that he had set out clear conditions to challenge Mr Staton's assertion that the hotel's clientele would be limited and the numbers well-controlled, and to meet what the Applicant said they wanted. However, there had not been one question or

engagement from the Applicant. He represented at least 7 families, and he was concerned that the Applicant had not taken into account the location of the premises and the requirement for community engagement as stated in the guidance. The residents were appalled that their olive branch had been dismissed and ignored, and the panel should be too. The key was the location of the premises – the Applicant wanted to use sunny evenings to promote business in the hotel's commercial interests with no regard for local residents.

Mr Charalambides urged the panel, if they did not dismiss the application out of hand, to apply the conditions he had suggested to give the operator the small limited clientele they had asked for. He added that it was a criminal offence under S.158 of the Licensing Act to make false statements to the sub-committee or in the application.

Mr Mitchell summed up, stating that he had now measured the distance from the premises to the school playground on Google Maps as 60 metres. He noted that 'harm' [to children] included both language and behaviour and that there were large numbers of families using facilities in the area all day and every day. The application had the potential to be at odds with that use. One of the ward councillors, Cllr Taylor, had also objected to the application. He urged that it be rejected or that significant restrictions be placed upon the licence to limit any potential harm.

Mr Staton summed up, stating that the dramatic representations from Mr Charalambides of large numbers of drinkers 'cheek by jowl' with back gardens was exactly not what the Applicant was seeking to achieve. The aim was for a high-quality boutique hotel. The maximum occupation, if all the sofa beds (which were mainly for children) were in use would be 42. The outside area would be cleared by 10 pm, and the Applicant would be happy to close the back gate by 10 pm. He had no wish to put children at risk of harm. The operating schedule set out how the Applicant intended to address the licensing objectives. The application was for a hotel offering with restaurant facilities and some outside dining. The intention of the Applicant was far from the gross picture presented by Mr Charalambides. He asked the panel to

grant the application as set out and clarified in the case summary.

[At this point, Mr Charalambides stated that the maximum number of 42 guests had not been included in the application; the application was therefore misleading and should be rejected as imprecise. Mr Staton replied that the number was taken from the plan attached to the application.]

The Sub-Committee sought and received the following points of clarification from Mr Staton:

- The number of covers was 12 in the whisky room/bar, 18 in the restaurant and 36 in the external area.
- The maximum number of guests if all beds and sofa beds were occupied was 42, although full occupancy on any given day was unlikely.
- 7 of the rooms had sofa beds, but he was not sure that their use could be restricted to children.
- The only smoking area was the one to the rear of the premises; smoking could in theory take place there at any time.

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 sub-committee. This option was **approved**.

Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly. This option was **rejected**.

Option 4: Refuse to specify a person in the licence as a premises supervisor. This option was **rejected**.

Option 5: Reject the application. This option was **rejected**.

Resolved: That Option 2 be approved and the licence be granted for the following activities and timings with modified/additional conditions imposed by the sub-committee as set out below:

Activity	Timings
Late night refreshment – indoors	23:00 to midnight each day for hotel residents and their bona fide guests
Supply of alcohol - on and off the premises	24 hours each day for hotel residents and their bona fide guests
	08:00 to midnight for members of the public
Opening hours	08:00 to midnight each day

The Operating Schedule conditions contained in paragraphs 12 to 15 (inclusive) of the Agenda shall be added to the licence SUBJECT TO the following modifications:

(a) Condition 14b is deleted and is replaced with the following condition:

All external doors and windows in the ground floor dining area and basement bar/Whisky Room at the rear of the hotel building shall be closed (save for immediate access or egress) from 21:00 onwards during operating hours.

(b) Condition 14f is deleted and is replaced with the following condition:

No bottles shall be placed in outside areas between 21:00 hours and 08:00 hours on the following day.

- (c) Conditions 12l and 14g are deleted and are replaced with the following condition:

Open containers of alcohol shall not be removed from the premises

- (d) Condition 14h is deleted and is replaced with the following conditions:

The supply of alcohol shall be by waiter/waitress service only. Save for hotel bedrooms, alcohol must not be sold, supplied, or consumed on the premises otherwise than to seated persons and there shall be no vertical drinking of alcohol on the premises.

In the ground floor outside areas to the rear of the premises alcohol must not be sold, supplied, or consumed other than to seated persons who are taking substantial table meals served and consumed at the table and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

The use of the ground floor outside areas to the rear of the premises shall cease at 21:00 every day. Notwithstanding this condition at any one time up to 4 people shall be permitted to smoke in these outside areas after 21:00.

The following conditions shall also be added to the licence:

After 20:00 every day the car park shall be used by hotel residents only. After 22:00 every day, the car park gates shall be closed and shall not be used by hotel residents or members of the public except in the event of an emergency.

There shall be a maximum of:

- 12 covers in the basement bar/Whisky Room
- 18 covers in the restaurant

- 36 covers in the ground floor outside areas to the rear of the premises

All conditions offered in the operating schedule shall be included in the licence, unless contradictory to the above timings and conditions.

The licence is also subject to the mandatory conditions applicable to licensed premises.

- Reasons:
- (i) The Sub-Committee must promote the licensing objectives and must have regard to the Guidance issued under section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy.
 - (ii) The Sub-Committee noted that the premises are not located within an area where a cumulative impact policy applies.
 - (iii) The Sub-Committee noted that this was a new licence application and was very conscious of the premises' location in close proximity to local residences, social housing for vulnerable adults, a nursery school and a primary school.
 - (iv) The Sub-Committee carefully considered the local residents' objections that the proposals will effectively result in an intensification of the use of the premises (which it noted was previously operated as an unlicensed hotel by the previous owners) and would make it unsuitable for the location particularly due to the potential for noise and other adverse effects on the surrounding area particularly from the use of the outside area of the premises.
 - (v) They also noted that Public Protection had agreed a proposed condition with the Applicant to cease the use of the outside area from 10pm daily to address potential public nuisance issues and that there had been no objection to the application from the other Responsible Authorities.

(vi) The Sub-committee noted the evidence put forward at the hearing on behalf of the Applicant as to the character of the style of the proposed operation and its operating schedule and was satisfied that the management of the premises would make every effort to promote the four licensing objectives.

(vii) Whilst the Sub-Committee acknowledged the concerns expressed by residents, it did not find any evidence to justify a refusal of the application in order to promote the licensing objectives nor on the basis of alleged discrepancies in the application. The Sub-Committee felt on the basis of the evidence before it that the imposition of suitable additional conditions on the premises licence would be adequate to promote the licensing objectives in this location.

(viii) In relation to the concerns raised by residents about the potential for noise disturbance and public nuisance generated from the use of the outside area, the Sub-Committee was satisfied on the basis of the evidence before it that, subject to the imposition of suitable conditions, the prevention of public nuisance objective would not be undermined. It attached great weight to the lack of representation from Public Protection, which had agreed that the use of the outside area should cease at 10pm. The Sub-Committee considered it was appropriate to impose restrictions on the use of the external area after 9pm daily (including by smokers), the disposal of bottles and the use of the gate and the private car park to the rear of the premises. It was also considered necessary to ensure a food led operation outdoors with seated consumption only and a limited number of covers (in accordance with the application). In view of the nature of the proposed activities, it considered these measures were adequate and proportionate to deal with the concerns raised by residents, as the concerns were mainly speculative.

(ix) The Sub-Committee was persuaded that there was no reason to believe that the supply of alcohol

within the internal areas of the hotel would undermine any of the licensing objectives, subject to the additional conditions it imposed to manage the supply of alcohol, to prevent vertical drinking, to limit the number of covers (in accordance with the application) and to restrict the opening of the hotel's rear windows and doors.

(x) The Sub-Committee acknowledged the concerns expressed by residents that the proposal would be harmful to children but it considered that these concerns were speculative. The Sub-Committee also considered the fact that the Police did not object to the application carried great weight and reassured the Sub-Committee that, given the nature of the proposed operation, the prevention of crime licensing objective would be unlikely to be undermined.

(xi) Accordingly, in all of the circumstances of the case the Sub-Committee was satisfied that with the additional conditions it imposed on the licence it would be sufficiently robust to allay the fears of local residents and that it could operate without undermining the licensing objectives. It considered that the conditions were justified as being appropriate and proportionate for the promotion of the licensing objectives.

(xii) It was also noted that the Licensing Act 2003 has a key protection for communities that allows at any stage, following the grant of a premises licence, a Responsible Authority or 'other persons', such as a local resident, to ask the Licensing Authority to review the licence if they consider that one or more of the licensing objectives are being undermined.

Cllr R Melly, Chair

[The meeting started at 10.15 am and finished at 1.45 pm].

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