

Meeting	Licensing/Gambling Hearing
Date	24 May 2021
Present	Councillors Mason, Pearson and Wann

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**62. Chair**

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

**63. Introductions**

The Chair introduced those present at the hearing: the members of the Sub-Committee, the Applicant (Josh McNaboe, Area Manager), the Applicant's solicitor, the Representors, the Senior Licensing Officer presenting the report, the Legal Adviser, the Senior Legal Officer shadowing the Legal Adviser, and the Democracy officer.

**64. 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.

**65. 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.

**66. Minutes**

Resolved: That the minutes of the Licensing Hearing held on 8 April 2021 be approved as a correct record, to be signed by the Chair at a later date.

**67. The Determination of a Section 18(3)(a) Application by Co-operative Group Food Ltd for a premises licence in respect of Co-op Hallmark House, Ground Floor, Chocolate Works, Campleshon Road, York, YO23 1PX (CYC-068304)**

Members considered an application by Co-operative Group Food Limited for a premises licence in respect of C-op Hallmark House, Ground Floor, Chocolate Works, Campleshon Road, York YO23 1PX.

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, including the additional papers published in the Agenda Supplement and the written representations.
3. The Licensing Manager's report, and the comments of the Senior Licensing Officer at the Hearing.

The Senior Licensing Officer 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 highlighted the conditions agreed by the Applicant with North Yorkshire Police and noted that the Police had subsequently withdrawn their objections. She drew attention to the 26 representations received from local

residents, as set out in Annex 4. Finally, she advised the Sub Committee of the options open to them in determining the application

In response to questions from Members of the Sub-Committee, the Senior Licensing Officer confirmed that:

- The Licensing team were not aware of any restriction or scheme preventing shops in the area from selling alcohol before 7pm on race days. *(Mr Cole commented at this point that there had been such a restriction in place in the late 1990s; the Senior Licensing Officer said that this may have been a voluntary scheme).*
- Conditions requiring door staff on race days would not normally be applied to licences for off-sales only.
- Off-sales licences varied, but the timings for the sale of alcohol would usually match the shop's opening hours.

4. The representations made by Richard Arnot, Solicitor, on behalf of the Co-operative Food Group Limited (the Applicant).

Mr Arnot stated that the Co-operative was the largest retailer in the country, with 2,500 stores and 8.2 million members. The unit at the Chocolate Works already had retail planning permission and, if all went well, would open next January. It would be a convenience store, and the ability to sell alcohol was part of that role. Off-sales would be ancillary, making up 15% of total sales. The Co-op had been around for 150 years and knew what was expected of it in relation to alcohol sales. Policies and procedures were in place, and each region had a risk manager to ensure these were applied. Unlike other national stores, the Co-op was very risk averse. When a new colleague started work, they would undergo an induction process and take an exam, ensuring that they understood the licensing requirements. The company operated a 'buddy' system (an idea taken from diving), and a 'lockdown' procedure to ensure a new staff member could not sell alcohol until they had gone through the induction and exam process. All staff underwent refresher training twice a year and would go back into 'lockdown' if they did not satisfy the requirements. CCTV was in place in all stores, and the till process included a reminder of the

requirements before each alcohol purchase. There was one way in and one way out of the premises, as indicated on the plan. In terms of the local community, the Co-op had 15 stores in York and each had a community pioneer. The company took its responsibilities very seriously; being a Members' organisation, it was important not to get things wrong.

Mr Arnot went on to state that the Applicant intended to trade from 7:00 am to 10:00 pm and was happy to amend the operating hours on the application accordingly. He noted that the Section 182 guidance, as reproduced in paragraph 8.12 of the council's policy, stated that shops should normally be allowed to sell alcohol during the period they were trading. He referred to the conditions agreed with the police as set out in the agenda papers and noted that there were now no objections to the application from responsible authorities. He said the onus was on the objectors to convince the Sub-Committee that there was evidence to show the Applicant would not support the four Licensing Objectives, and pointed out that there was a robust review and prosecution process in place in respect of licences. Referring to the Representors' objections, he said that both the police and the Licensing Authority had confirmed that no scheme existed to prevent the sale of alcohol before 7pm in the area on race days. He had checked the licences issued for other premises, and there was no such condition on those either. It would therefore be unfair to impose a 7pm 'curfew' in this case. Commenting on the representations numbered 1, 2, 4, 9 and 23 in the agenda papers, he stated that there was no reason why the shop would attract 'undesirable elements' or gatherings of people, that 'need' was not a relevant consideration in respect of opening hours, and that people did not visit Co-op stores to get drunk; it was also illegal to sell alcohol to people who were already drunk. He also noted that several Representors had said they did not object in principle to the sale of alcohol at the premises.

Finally, Mr Arnott called on Josh McNaboe, the Co-operative's Area Manager for York, to comment in respect of race days.

Mr McNaboe stated that, as a community retailer, the Co-op wanted to work with the community and come to a solution in the event of any problems. He had the authority to make local decisions and had support available to manage the situation on race days. He would look into the use of security guards should the need arise and would work with the local community, the police and the Racecourse and follow the required procedures. The Co-op's work in the community also involved supporting other local retailers.

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

Mr McNaboe confirmed that:

- Staff training was provided mainly online, with two sessions per year; there was also in-store training and a buddy system. A member of the management team was always in attendance.
- In relation to recent test purchases, there had been an issue with underage sales at one store in York; appropriate action had been taken via training and re-issuing the policy.
- Every store had a designated premises supervisor and there were weekly checks on all test purchases.
- The safety and security of shop staff was very important; if security staff were needed on particular days they would be supplied by an external company, Mitre.

Mr Arnot confirmed that:

- The Applicant was used to operating close to places that attracted large crowds, for example Wembley Stadium, and routinely carried out risk assessments.
- He considered it unfair to impose a security condition that did not apply to other licence holders in the area; the Applicant could be left to carry out its own risk assessment and act in accordance with that.

5. The representations made by Gary Cole, a local resident and member of the Chocolate Works Residents' Association.

Mr Cole stated that the Chocolate Works was a unique development comprising a mixture of owners and renters, some of whom also attended the races. He had lived locally for many years and was aware of the bad reputation of the Racecourse in York, which was due to the time that racegoers spent in the drinks tents and the unsavoury atmosphere resulting from people drinking too much. He did not object to the sale of alcohol by the Co-op, but if this could be restricted on race days it would give local residents some comfort. Although conditions had been agreed by the police in respect of CCTV, and incident log and a panic button, these measures would be too late once an offence had been committed. The seating area in the development already attracted problems from racegoers and drinkers. Any support for the residents by way of a condition or an agreement would be helpful. The problems related mainly to race days, but other events did take place at the racecourse. He concluded by stating that he looked forward to seeing what the community pioneer could do; he was looking to the Co-op to help residents enjoy the new shop as a facility for the local area.

In response to questions from Members of the Sub-Committee, Mr Cole confirmed that:

- He was concerned that the premises would be a target for drunken racegoers looking to purchase more drinks on their return from the racecourse.
- He did not seek a restriction on the sale of alcohol to after 7pm every day, just on race days.
- He thought that security guards would be needed at the premises on race days.
- The Residents' Association were also looking into having security at the development entrance on race days; there was currently no security provision at the development.

6. The representations made by Ben Sheriff, a local resident.

Mr Sheriff stated that his main concern related to people seeking to buy alcohol after attending the races, particularly as the premises were on one of the main routes from the racecourse to town, and would be the nearest shop to the racecourse. He was also concerned for residents along the route, believing that the sale of

alcohol would exacerbate problems with littering and nuisance. He calculated that, if alcohol made up 15% of total sales, this could amount to alcohol sales of £400 on each race day, potentially causing a great deal of nuisance. Active measures and security guards could help, but the question was how the Co-op would challenge and refuse the sale of alcohol to customers who were drunk. In conclusion, he welcomed the prospect of the shop, but had concerns about its hours of opening and alcohol sales.

In response to questions from Members of the Sub-Committee, Mr Sheriff confirmed that:

- He did not think that changing the opening time from 6:00 am to 7:00 am would make much difference; at most supermarkets, the sale of alcohol began at 10:00 am.
- He felt security staff were needed to help shop staff manage drunken behaviour at busy times when there were a lot of people loitering around the area.

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

The Representors both confirmed that they had nothing to add to the comments they had already made.

Mr Arnot summed up on behalf of the Applicant. He stated that the Representors' concerns all seemed to relate to race days, which the Applicant already managed well. The police were not asking for further conditions. The Applicant always carried out risk assessments and would take any action needed as a result of these, including on a race day. He commended the application to the Sub-Committee, stating that his views were the result of much experience. For example, a similar application in Peterborough had attracted many objections but all the local residents now shopped there. He felt sure that residents in this case would also soon come to rely on the Co-op and have a good relationship with the store. The Applicant would do all it could to help, applying the law properly and not selling alcohol to drunks – in 12 years, he had never had to give advice to the Co-op in that respect.

Members of the Sub-Committee sought clarification from the Applicant's solicitor as to why he did not want to accept a

condition requiring door staff on race days. Mr Arnot replied that it would be difficult to apply and could result in having to employ door staff on days when none were required. Instead, staff should be trusted to apply the company's own risk assessment process and take any necessary action resulting from that.

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: Refuse to specify a person on the licence as premises supervisor. This option was **rejected**.
  - Option 5: Reject the application. This option was **rejected**.
- Resolved: That Option 2 be approved and the application be granted, with the following modified/additional conditions added to the licence:

(a) In relation to race days the premises licence holder will risk assess the need for SIA personnel in conjunction with North Yorkshire Police and ensure sufficient such personnel are on duty to promote the crime and disorder licensing objective.

(b) The premises will take part in and comply with any crime reduction initiatives in relation to race



days, when requested to do so by a responsible authority.

The Operating Schedule and the conditions agreed with North Yorkshire Police contained in the published Agenda 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) In relation to the proposed sale of alcohol, the Sub-Committee noted the Secretary of State Guidance and the Council's Licensing Policy, which advised that supermarkets should normally be allowed to sell alcohol during their trading hours (which the Applicant had amended to 7am – 10pm).
  - (iii) The Sub-Committee noted the Applicant's evidence that the premises would be a convenience store with ancillary alcohol sales which would equate to only about 15% of the store's turnover. They also noted that nationally, the Co-op is a well-run company with a comprehensive training programme for staff and that it has systems and policies in place to control the sale of alcohol.
  - (iv) The Sub-Committee noted that this store is not within the Special Policy Area and that the Police had withdrawn their objection, upon agreement of conditions. They noted that no representations were made by any of the other Responsible Authorities.
  - (v) They noted the objections raised by a number of residents and that the representations mainly referred to the licensing objectives of crime and disorder and public nuisance. Particular concerns were raised as to the impact of the premises on local residents on race days with regard to these licensing objectives.

(vi) The Sub-Committee were of the view that whilst the operating schedule and proposed additional conditions were sufficiently robust to promote the licensing objectives on non-race days, there was a real threat that the premises would encourage additional problems of crime and disorder and anti-social behaviour in the area on race days, given that the premises would be the closest off-sale shop to the racecourse. It considered that the likelihood of such issues occurring on race days was sufficient to warrant the imposition of additional conditions for race days requiring the premises to risk assess the need for SIA personnel in conjunction with the Police and to participate in any crime reduction initiatives that might be implemented.

(vii) The Sub-Committee therefore agreed to grant the licence with the additional and mandatory conditions referred to above which were appropriate and proportionate in the circumstances to promote the licensing objectives.

Cllr A Mason, Chair

[The meeting started at 5.30 pm and finished at 7.10 pm].