

Meeting	Licensing/Gambling Hearing
Date	9 April 2018
Present	Councillors Hunter, Reid and Wells

1. Chair

Resolved: That Councillor Reid be appointed to Chair the meeting.

2. Introductions

3. Declarations of Interest

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

4. The Determination of an Application by Ambiente Tapas Limited for Premises Licence (Section 18(3)(a) in respect of 59-63 Walmgate, York YO1 9TY (CYC-060429)

Members considered an application by Ambiente Tapas Limited for a Premises Licence (Section 18(3) (a) in respect of 59-63 Walmgate, York YO1 9TY.

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

1. The prevention of public nuisance.

In coming to their decision, members took into consideration all of the evidence and submissions that were presented to them and determined their relevance to the issues raised and the licensing objectives. The following were taken into account:

1. The application form.

2. The Licensing Officer's report and her comments made at the Hearing. She outlined the application and advised that the premises were not located in the special policy Cumulative Impact Zone (CIZ). She reported that the consultation had been carried out in accordance with the Licensing Act 2003 and that conditions had been mediated with North Yorkshire Police and City of York Council Public Protection (Environmental Protection). She stated that there had been representations from nine other interested parties and she outlined the four options available to the committee.
3. The representations made in writing and at the hearing by Zoe Plummer, Co-owner of Ambiente Tapas. She advised that their intention was to operate as a food-led wine bar and that the application had been modified as mediated with North Yorkshire Police and City of York Council Public Protection (Environmental Protection). She stated that the premises included a seating area, and would not be a vertical drinking establishment. She further advised that having an outside licensed area would protect residents, as without a license in that area the establishment could allow customers to bring their own alcohol into the outside area. She added that in her 10 years of operating premises licences, they had never had a problem with public nuisance or licensing and the establishment would be a food led business where it was intended that customers would eat and drink simultaneously. Having considered the representations made, she offered to limit the supply of alcohol in the outside area to 10:00am to 6:00pm daily and 10:00am to 4:30pm on Sundays and Bank Holidays (in accordance with the timings for the outside cafe planning permission).
4. The representations made by Mr Price in writing and at the hearing on his own behalf and on behalf of other residents. He reported that he, and other residents, objected to the licence for the outside area because of the detrimental effect that it would have on residents' amenity. He referred to planning issues relating to the outside area, the conditions attached to the planning approval for the outside area, and the findings of the independent noise assessment carried out on behalf of residents in 2016 for the planning application. The assessment, carried out by Dragonfly Acoustics, found that if the outside yard was

used as a cafe, the noise created would be detrimental to residents. Mr Price stated that Ambiente had not presented a noise report or evidence of how noise would be controlled and that if the license for the outside area was granted, the establishment would present a public nuisance.

5. Written representations made during the consultation period.

It was reported that the representations made by North Yorkshire Police and City of York Council Public Protection (Environmental Protection) were withdrawn prior to the Hearing.

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) of the Licensing Act 2003 as it considered necessary for the promotion of the Licensing Objectives. Members were presented with the following options:

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 related to modify / add conditions accordingly. This option was **rejected**.

Option 4: Reject the application. This option was **rejected**.

The Sub-Committee decided to approve Option 2, to grant the licence with the conditions mediated with North Yorkshire Police and Council Public Protection (Environmental Protection) as set out in paragraphs 11 and 13 of the Licensing Officer's report. They made the following amendment to the Council Public Protection (Environmental Protection) condition no.1):

1. Bottles should not be disposed of into the outside waste bins at night and will only be disposed of between 10:00 and 21:00.

The Sub-Committee also imposed the following additional conditions:

1. In the outside area alcohol is only to be supplied ancillary to the provision of food to persons seated at tables and by waiter or waitress service only.
2. Alcohol is only to be supplied in the outside area from 10:00 until 18:00 Monday to Saturdays and 10:00 until 16:30 on Sundays and Bank Holidays.
3. The outside area shall be cleared of customers and closed by 19:00 Monday to Saturdays and 17:30 on Sundays and Bank Holidays.

All conditions offered by the Applicant in the application, including the operating schedule at Annex 3 of the Licensing Officer's report, for granting the premises licence under the Licensing Act 2003 were included in the licence, unless contradictory to the above conditions.

Reasons for the Decision:

The Sub-Committee considered very carefully the application and all the representations. In particular, full consideration was given to the 9 written objections received from local residents that the grant of a license in relation to the outside area would cause public nuisance and increase noise and disturbance. The Sub-Committee considered those concerns very carefully but was reassured by the evidence given by the Applicant, including the additional conditions offered at the hearing, the conditions agreed with the Police and Environmental Protection, the Operating Schedule, the level of licensing experience generally and willingness to engage with residents that the premises could operate without causing public nuisance by the imposition of suitable conditions. The Sub-Committee felt that in addition to imposing the conditions agreed by the Police and Environmental Protection it was also appropriate and reasonable to impose conditions to reduce the hours for supply of alcohol and the opening hours in relation to the outside area of the premises in order to enable the licensing objective of prevention of public nuisance to be met.

The Sub-Committee concluded that the application was acceptable with the relevant mandatory and additional conditions which addressed representations made both in writing and at the hearing, as it met all the licensing objectives. The Sub-Committee made this decision taking into consideration the representations, the Licensing Objectives, the City of York Council's Statement of Licensing Policy and the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003. Accordingly, in all of the circumstances of the case it was felt that the decision of the Sub-Committee was reasonable and proportionate.

As an informative, the Sub-Committee also stressed that there was a review process which could be initiated by residents as well as responsible authorities if problems linked to the operation of the premises licence arose.

Cllr A Reid, Chair

[The meeting started at 10.00 am and finished at 11.38 am].