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| Meeting | Licensing/Gambling Hearing |
| Date | 11 October 2018 |
| Present | Councillors Boyce, Pavlovic and K Taylor |

11. Chair

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

12. Introductions

13. 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.

14. Minutes

Resolved: That the minutes of Licensing Hearing held on 6 September 2018 be approved and then signed by the chair as a correct record.

15. The Determination of an Application by Helen Heraty to Vary Premises Licence [Section 35(3)(a)] in respect of Grays Court, Chapter House Street, York, YO1 7JH (CYC-018630)

Members considered an application by Ms Helen Heraty to Vary a Premises Licence [Section 35(3)(a)] in respect of Grays Court, Chapter House Street, York, YO1 7JH.

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

1. 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 Licensing Manager's report and the comments of the Senior Licensing Officer given at the Hearing. The Senior Licensing Officer outlined the report noting the nature of the application which was to extend the existing licensed hours for all licensable activities for one additional hour to closing times Sunday to Thursday (which would bring the hours in line with existing hours for Friday and Saturday) and for an amendment of Condition 1 to include the L-shaped driveway within the licensed area. She outlined the information contained within the annexes to the report. She advised that the premises were not located in the special policy area. She reported that the consultation had been carried out correctly in accordance with the Licensing Act 2003.

The Senior Licensing Officer noted the representations that had been made and she reported that there were no planning issues in relation to your application. She added that on 3 September 2018 a list of complaints received by CYC Licensing Section and Environmental Protection relating to Grays Court was circulated to Members and parties to the hearing and she noted that most of the complaints had been unsubstantiated. She ended by outlining the 4 options available to the Sub-Committee.

3. The representations made by Mrs Johnson, solicitor on behalf of the Applicant at the hearing.
4. The representations made by the Legal Adviser & Chapter Clerk, York Minster in writing and at the hearing.

5. The representations made by two Representors in writing and by one of those Representors in person at the hearing and by Mr Grunert, Solicitor on their behalf at the hearing.
6. The representations made by two further Representors in writing and by one of those Representors in person at the hearing.

Highlighting Annex 4 in light of the impact of the 2012 deregulation, Members asked the lawyers for their views on this. Mrs Johnson stated that they were two different issues and that you could play music on the driveway as it had been covered by deregulation.

At this point, the CYC Legal Services Manager clarified that the Public Protection (Environmental Protection) objection was only withdrawn if the following condition was attached to the licence if granted:

- 1) *The area referred to for the purpose of this licence is as shown edged red on the plan attached to the licence. The L-shaped driveway section shall be for alcohol only. The licensed are shall exclude the Bar Walls and the step access to the Bar Walls.*

Mrs Johnson stated that the Applicant would give an undertaking that there would only be alcohol and no playing of live or recorded music on the L shaped drive. Mr Grunert stated that this was unenforceable and there would have been no complaints if there had been no issues. He added that his clients would have no comfort from that undertaking and he noted that the perpendicular area went past his clients' bedroom. Mrs Johnson responded that the undertaking would have the desired effect.

The representors present then summed up.

7. Written representations made during the consultation period.

The representations made CYC Council Public Protection (Environmental Protection) were withdrawn prior to the Hearing, subject to the imposition of the agreement to have alcohol only in the L-shaped driveway.

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(4) 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.

Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.

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

Option 4: Reject the application.

In coming to their decision to choose Option 4 above to reject the application, the Sub-Committee refused the application on the grounds of public nuisance.

The Sub-Committee was satisfied that the evidence of the Representors was sufficiently compelling to show that on a balance of probabilities the inclusion of the L-shaped drive and the extension of an hour during the week would undermine the licensing objective of preventing public nuisance.

In reaching this conclusion the Sub-Committee had regard to the number of complaints made (albeit not all substantiated by EPU); the evidence of one of the Representors present at the meeting as to the proximity of the L-shaped driveway to his property; the noise that would be generated by the number of functions taking place both during the week and at weekends (which had not been referred to by the Applicant until questioned); the quiet and sensitive historic location of the specific area of York close to the Minster; and the implications of the Live Music Act 2012 in respect of the potential use of the L-Shaped driveway for unregulated entertainment.

The Sub Committee considered that the condition suggested by EPU would not be enforceable, as music could not be prevented if the L-shaped driveway were to be included within the licensed

area. The proposal by the Applicant to offer an undertaking that music would not be played in the L-shaped drive area and that it would only be used for alcohol was not of sufficient comfort to them having regard to the turbulent history between the applicant and her neighbours, as it would not be legally enforceable. It was therefore insufficient to overcome the concerns regarding the undermining of the licensing objectives of preventing public nuisance.

The Sub-Committee made this decision taking into consideration the representation, 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.

Cllr B Boyce, Chair

[The meeting started at 10.00 am and finished at 12.55 pm].