
Meeting	Licensing/Gambling Hearing
Date	29 November 2018
Present	Councillors Funnell, Pavlovic and Richardson

1. Chair

Resolved: That Councillor Pavlovic 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. Minutes

Resolved: That the minutes of Licensing Hearing held on 14 May 2018 be approved and then signed by the chair as a correct record.

5. The Determination of an Application by Try Market Halls York Limited for a Premises Licence (Section 18(3)(a) in respect of Stonebow House, The Stonebow, York, YO1 7NP (CYC-062590)

Members considered an application by Try Market Halls York Limited for a Premises Licence (Section 18(3)(a) in respect of Stonebow House, The Stonebow, York, YO1 7NP (CYC-062590).

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 crime and disorder.
2. Public safety
3. The prevention of public nuisance

4. 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 following late evidence, circulated prior to and at the hearing:
 - Updated proposed hours and conditions received from the Applicant's Solicitor
 - Revised updated proposed hours and conditions received from the Applicant's Solicitor
 - Page 2 of a representor letter which had omitted from the published agenda
 - Letter from the Managing Director of the Oakgate Group Ltd (dated 27 November 2018) in support of the application - received from the Applicant's Solicitor
 - Clarification from City of York Council in stating that there was an error in paragraph 8 of the report in stating that the premises was not located within the special policy area, as the outside area of the premises fell within the special policy area.
 - Preliminary matters at the beginning of the hearing in which the Sub Committee accepted the request of an extension to an hour speaking time from your Barrister Mr Gary Grant. It was also agreed by all the parties that a representative of Lady Hewley's Trust could speak at the Hearing. The Sub Committee also decided as a preliminary matter that as part of the premises falls within the special policy area (CIZ), the application as a whole should be treated as being in the CIZ and as such, the special policy applies to it. This is because otherwise, different tests would have to be applied to the premises although it is one application. Neither Mr Grant nor the Police's Solicitor had any legal authority for their argument that the CIZ special policy should be applied to just that part of the premises that is within the CIZ.
3. The Licensing Manager's report and her comments given at the Hearing. This included an update on the amended operating schedule. In response to Member questions, the Licensing Manager clarified the two existing premises licenses for Stonebow House were still in force, advising that because of

modifications to the building there would need to be licence variation applications to enable those licences to be implemented.

4. The representations made by Mr Grant, Barrister on behalf of the Applicant in writing and at the hearing. Mr Grant removed the outside area from the premises application so that the special policy presumption does not apply to the application. Mr Grant outlined the revisions to the conditions (including changes on the hours of operation as agreed with North Yorkshire Police and CYC Public Protection). He emphasized the nature of the premises would be a food led, operating as a food and dining hall and would not operate as a nightclub. He made reference to the Try Market Halls operating in London (Fulham and Victoria) that have been operating professionally as confirmed by the Police and he made reference to the noise report prepared by the Applicant's Acoustician.

In response to questions raised Mr Grant clarified the reasons for the operating times, closing times of the inside and outside areas (including the smoking area) and use of the basement. The Applicants detailed the measures that would be put in place to manage large groups and deter excessive drinking. Mr Grant explained access for deliveries to the venue and how it would be serviced (in line with planning approval), including the removal of waste. Further detail on the methodology for the acoustics report was requested and provided and it was noted that there would be a noise limiter in place.

In addition to the revised proposed conditions, Mr Grant offered the additional conditions:

- This licence will not come into effect until existing licenses are surrendered and are incapable of being resurrected.
- The premises licence holder shall not make any promotions to attract stag and hen parties.

5. The representations made by Sgt Jackie Booth (North Yorkshire Police) in writing and at the hearing. She expanded on Police condition 8, explaining that the outside furniture needed to be removed at 21:00 for reasons of the management and dispersal of a large number of people to prevent nuisance. A number of questions were raised to which Sgt Booth explained that the Police had looked at robust and enforceable conditions and had worked with the Fire Authority on the capacity for the venue.

Furthermore, the Police had put forward conditions to mitigate crime and disorder.

6. The representations made by Michael Golightly, Technical Officer (City of York Council Public Protection) in writing and at the hearing. He explained how the concerns of Public Protection had been addressed through the proposed conditions, adding that there was a planning permission condition that there could be no audible noise 1 metre away from the premises. He reinforced the need to restrict the outside area to 21:00 (including the removal of outdoor furniture, restriction of smoking and closing of the bi-fold doors). Mr Golightly noted that a noise management plan would need to be submitted and he explained how noise would be controlled. In response to questions he clarified a number of proposed conditions.
7. The representations made by Councillor Denise Craghill (Guildhall Ward Member) in writing and at the hearing. She raised a number of concerns relating to large groups of drinkers being in close proximity to residential properties, particularly the vulnerable residents living at Lady Hewley's Cottages. She asked the Sub Committee to refuse the application noting further concerns regarding the basement capacity, alcohol off sales and delivery times which she suggested should be conditioned to 07:00 – 11:00 should a licence be granted. She also requested that there be an additional condition relating to access and egress from St Saviourgate.
8. A Representor on behalf of St Saviourgate Residents Association in writing and at the hearing. She listed their concerns in relation to the impact of alcohol fuelled behaviour, deliveries, taxis, noise, and the impact of the mess caused by people leaving the premises on local residents. Whilst the Representor opposed the application, she proposed a number of conditions should the licence be granted regarding opening hours, signage, the outside seating and smoking areas and deliveries, requesting that the licence should be limited to the ground floor only with a licence application for the basement to be made separately when the plans for it were better defined. She further requested that if granted, the licence should be for a 12 month period.
9. A Representor, on behalf of Guildhall Ward Planning Panel in writing and at the hearing. He explained the planning background to the premises. He referred to disruption because

of increased traffic and noted proposals regarding deliveries. He said that the operation of the Market Hall as a food led establishment should be measurable.

10. A Repesentor in writing and at the hearing. As a resident of Lady Hewley's Cottages, the Representor made objection due to noise and public nuisance; noting that the vulnerable residents of Lady Hewley's Cottages needed to reside in peace. She noted the existing problems with drug users and a rat infestation in the area, suggesting that this would be made worse by the Market Hall. She made a number of points in respect of deliveries loading and unloading, particularly in relation to the noise caused by these.

A witness for the Repesentor spoke as a representative of Mainstay. The concerns raised by residents he had spoken to were linked to the intrusion of noise, intrusion into gardens, delivery and traffic management and the prevention and control of vermin. He went on to explain how the noise levels impacted on the residents of Lady Hewley's Cottages.

11. A Representor in writing and at the hearing. SHE confirmed that her points had been made through the representative of Lady Hewley's Trust during the preliminary matters stage of the hearing. It was confirmed that he had left the hearing.
12. A Representor in writing and at the hearing. The Representor spoke as a York resident and business owner in support of the application. He noted that as a parent he took his children to premises serving alcohol noting that premises such as the Creepy Crawlies play park served alcohol. He noted that Try Market Halls offered a choice and he didn't believe that the off sales presented a problem. He noted that York had been voted the best place to live.
13. A Representor in writing and at the hearing. He spoke in support of the application and he noted that the Market Hall would offer a good addition to the early night time economy with a greater focus on food, which was currently limited in York. He added that the applicant had tried to mitigate the risk of the Market Hall and he looked forward to eating there.
14. The Executive Director, York Business Improvement District (BID) in writing and at the hearing. He clarified that he was not speaking because a levy would be paid to York BID. He

acknowledged the concerns of residents noting that York BID rangers and cleaner visited St Saviourgate and that there had been investment in CCTV in the area. He added that he hoped that the Market Hall concept would alleviate those problems. He noted the changing nature of city centres and that the concept would offer choice to families and the professional service sector, which was growing in York.

15. The 77 written representations in objection made during the consultation period.
16. The 22 written representations in support made during the consultation period.

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. 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.

In agreeing Option 2 the following conditions and modified/additional conditions were added to the licence:

1. Hours of operation to be restricted to the following:

Sale by retail of alcohol

Sunday to Thursday 10:30 hrs - 23:00hrs

Friday and Saturday 10:30 hrs – 00:00hrs

Provision of late-night refreshment

Friday and Saturday 23:00 hrs – 00:00 hrs

All other licensable activities:

Sunday – Thursday 07:00 hrs - 23:00 hrs

Friday and Saturday 07:00 hrs – 00:00 hrs

The premises to be open:

Sunday - Thursday 07:00 hrs - 23:30 hrs

Friday and Saturday 07:00 hrs - 00:30 hrs day following

2. The premises shall not operate as a night club
3. The premises shall primarily operate as a food dining hall/market, providing food and non-alcoholic drinks, not as a bar or vertical drinking establishment. Substantial food shall be available at all times the premises is open to the public.
4. A written Operating Management Statement (OMS) shall be submitted to and approved in writing by the licensing authority and the Police before the premises is opened. The premises shall thereafter operate in accordance with the approved OMS. The OMS may be subject to amendment as best practices develop and any amendments must be agreed in writing by the licensing authority and police in advance.
5. This licence excludes any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.
6. Staff will be trained in relation to the four licensing objectives.
7. Steps will be taken to ensure that fire exits are clearly indicated and kept clear of obstruction at all times.
8. Any firefighting equipment will be regularly serviced and maintained at all times.
9. Staff training will be carried out in order to prevent underage sales.
10. Digital colour CCTV will be installed to cover the premises and will include all areas to where the public have access to consume alcohol and where licensable activities are undertaken.
11. CCTV will be maintained, working and recording at all times when the premises are open.

12. CCTV recordings shall be of an evidential quality in all lighting conditions and will be of sufficient quality to be produced in court or other such hearing.
13. Copies of the recordings will be kept available for any responsible authority for 28 days.
14. Copies of the recordings will display the correct time and date of the recording.
15. A member of staff trained to use the CCTV system shall be on duty at all times so as to ensure the recorded images are made available for inspection and downloading immediately upon request to any responsible authority.
16. All images downloaded from the CCTV system must be provided in a format that can be viewed on readily available equipment without the need for specialist software.
17. Documented staff training will be given regarding the retail sale of alcohol; the conditions attached to the premises licence; and the opening times of the venue.
18. Such records (referred to in condition 17) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.
19. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from premises.
20. Both documents referred to in condition 19 shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.
21. The venue will participate in any city wide night time security initiatives.
22. A documented noise management plan shall be submitted to and approved in writing by the City of York Council before the premises is opened. Once approved it shall be implemented. The noise management plan will also include a procedure for investigating noise complaints.

23. Bottle bins are only to be emptied in line with Stonebow House refuse policy.
24. A Challenge 25 proof of age scheme shall be operated where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
25. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
26. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
27. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, including power washing if necessary, and litter and sweepings collected and stored in accordance with the approved refuse storage.
28. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
29. Where alcohol is being sold or supplied on the respective floor there will be a minimum number of covers provided as follows:
 - 350 table covers provided on the ground floor and or
 - 200 table covers provided on the basement floorto negate the need for vertical drinking. (The exception will be for the Basement level any change to minimum table covers must be agreed in writing with North Yorkshire Police and the Licensing Authority, 28 days before any changes).
30. Only non-glass vessels or toughened glasses shall be used In the outside designated area.
31. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the

premises, save for the external seating area identified on plan [ref 18079, dated 20.09.18]

32. The footprint of the outside area shall be clearly defined by semi-permanent removal barriers.
33. Tables, chairs and barriers/other outside furniture shall only be placed outside the premises, as defined on the plans, between 09:00 and 21:00 hours daily.
34. Door Supervisors shall be employed as follows: -

Sun -Thurs there shall be a minimum of two SIA licensed door supervisors for up to 300 capacity on duty at the premises while it is open for licensable activities from 2000hrs. Thereafter there shall be 1 SIA door supervisor per 100 additional people or part thereof.

On Fridays and Saturdays there shall be a minimum number of five SIA door supervisors from 2000hrs until 30 minutes past closing time. When employed, door staff will wear high visibility arm bands.

or such other number on such days and at such times as may be agreed in writing with the Police.

35. Clear notices shall be prominently displayed at all exits to the premises requesting customers to respect local residents and leave the premises and area in a quiet and orderly manner.
36. All doors and windows shall be closed when regulated entertainment is provided (except for immediate ingress and egress).
37. Whilst live or recorded music is being played all music shall be played or reproduced through loudspeakers and a tamper-proof noise limitation device. The device, the levels set and the installation shall be approved in writing by EPU before the premises is opened.. Thereafter the, approved levels, equipment, installation and position and type of loudspeakers shall be maintained in accordance with the planning approval (ref: 16/02856/FUL); at no time shall they be modified without the written approval of the local planning authority.

38. Save for any smoking barriers, all tables, chairs, barriers and other outside furniture shall be removed from outside the premises by 21:00hrs and shall not be replaced before 09:00hrs on the following day.
39. After 21:00hrs the bi-fold door shall be closed and only 2 of the smaller door sections to the West facade shall be used for ingress and egress.
40. After 21:00hrs the outside area shall only be used by customers wishing to smoke. The smoking area within the outside area shall be clearly defined with a barrier, the location of which shall be agreed with the licensing authority before use commences and adhered to thereafter.
41. No drinks to be taken into the outside area after 21:00hrs
42. The outside area (when in use) shall be monitored by staff or door staff (when employed).
43. No regulated entertainment shall take place in the outdoor area of the premises.
44. A noise management plan shall be submitted to and approved by the local authority before the premises is opened and the approved noise management plan shall be implemented thereafter. The plan shall include details of how people will be managed dispersing from the premises, a noise complaints procedure and details of noise monitoring, including locations where monitoring will take place and any noise mitigation that will be proposed.
45. When used door supervisors shall be instructed to maintain orderly queues outside the premises so that it does not block the highway or cause excessive noise disturbances.
46. When used door supervisors shall use their best endeavours to ensure that customers leaving the premises do so quickly and quietly without loitering outside.
47. No licensable activities (or regulated entertainment) shall take place at the premises until the premises has been assessed as satisfactory by the Local Authority at which time this condition shall be removed from the licence by the licensing authority.

Deliveries

48. All deliveries (including bar deliveries) and collections will take place between 07:00hrs and 18:00hrs.

Refuse

49. All glass must be crushed internally (to reduce noise from bottle disposal).
50. There will be no movement of trolleys or external waste bins or other noise generated by waste disposal on Hungate after 20:00hrs; after that time waste will be held internally until 07:00hrs next morning.
51. No waste of any kind whatsoever will be stored outside of the building on Hungate, St Saviourgate or elsewhere except inside the external refuse stores already provided.

Cleansing

52. Cigarette bins will be provided in the area fronting Whip-ma-Whop-ma-gate and at the Whip-ma-Whop-ma-gate and Stonebow entrances.

Smoking and pavement drinking

53. Regular supervision of the external areas to the building (Whip-ma-Whop-ma• Gate, St Saviourgate, Stonebow and Hungate) will take place throughout the day and evening. Any customers including smokers gathering on Hungate or St Saviourgate will be actively encouraged to move elsewhere.

Noise

54. The retractable glass wall fronting Whip-ma-whop-ma-gate will be closed from 21:00hrs.

Additional conditions

55. This licence will not come into effect until the existing premises licenses are surrendered and are incapable of being resurrected.
56. The premises licence holder shall not make any promotions to attract stag and hen parties.

57. Local residents shall be invited to quarterly meetings with the licence holder to resolve any problems associated with the carrying on of licensable activities at the premises. The minutes of the meetings and any actions to be taken shall be lodged with the licensing authority by the premises licence holder within 7 days of the meeting.

All conditions offered by the Applicant in the application, including the operating schedule, for granting the premises licence under the Licensing Act 2003, shall be included in the licence, unless contradictory to the above conditions.

The Sub-Committee concluded that the application was acceptable with the above mandatory and additional conditions attached, 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.

The Sub-Committee noted that the premises as amended by the applicant at the hearing are not located within the CIZ and that the special policy rebuttable presumption to refuse the application is not therefore triggered.

However, the Sub-Committee had regard to the fact that the premises are located next to the CIZ and are accessed from the CIZ, an area identified as suffering from high levels of crime and disorder and anti-social behaviour.

The Sub-Committee considered very carefully the representations of the Ward Councillor and residents, some of whom live particularly close to the premises. The residential objections included general concerns in relation to crime and disorder, nuisance and traffic issues currently experienced in the area as well as specifically related to the night club that previously operated at the site. The Sub-Committee accepted and gave weight to residents' concerns as to the potential for alcohol related noise disturbance and crime and disorder that could arise from a large capacity venue in this location if a premises licence is granted. They also noted that the applicant, Police and Public Protection had proposed a number of conditions to address these issues.

In determining the matter the Sub-Committee had regard to the Planning Permission granted subject to conditions for the proposed uses but did not consider itself bound by it.

It also had regard to the Vision Statement in the York Statement of Licensing Policy and the objectives of the Council to give businesses freedom and flexibility to meet their customer's expectations, and improving quality of life by bringing greater choice to residents, consumers, tourists and businesses about where to spend leisure time. Members had to balance this with the fact that the premises is located close to residential properties.

The Sub-Committee attached weight to the Police representations that they do not object to the application if the conditions proposed by the Police are attached to the licence, being content that the premises could with the imposition of conditions to restrict capacity and vertical drinking operate as a food led establishment without undermining the licensing objectives of prevention of crime and disorder and public nuisance. The Sub-Committee shared the concerns of the Police with regard to the potential for public nuisance if the outside furniture is left outside the premises.

The Sub-Committee also attached weight to Public Protection evidence that noise nuisance to residents could be adequately controlled through their proposed conditions as to the need to restrict the outside area to 21:00 (including the removal of outdoor furniture, restriction of smoking and closing of the bi-fold doors).

The Sub-Committee accepted the evidence put forward at the hearing by the applicant as to the pricing strategy for drinks; the likelihood that the venue would be likely to attract discerning customers and families rather than large groups such as "stag and hen parties" looking for cheap drink promotions; the character of the style of venue; the other examples of Market Hall premises in London that the Police have confirmed have operated without concern; the provision of door staff and the imposition of the additional conditions including restricting the number of vertical drinkers and conditions restricting the style of operation to a food led establishment; prevention of noise escape from music, as well as the other proposed conditions and matters set out in the operating schedule.

The Sub-Committee considered that on balance, it had received sufficient assurances and evidence from the applicant in order to have a high level of confidence that the premises would be operated responsibly and that it could, with the imposition of conditions, operate

without undermining the licensing objectives of prevention of crime and disorder and public nuisance. They concluded on balance that all four licensing objectives would be met in granting the application with the mandatory and the above additional conditions.

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

Cllr Pavlovic, Chair

[The meeting started at 10.00 am and finished at 7.45 pm].