

Meeting	Licensing/Gambling Hearing
Date	6 February 2020
Present	Councillors Barker, Orrell and Wells

26. Chair

Resolved: That Cllr Orrell be appointed to Chair the meeting.

27. Introductions

28. 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.

29. The Determination of an Application by Secret Square Limited for a Premises Licence [Section 18(3)(a)] in respect of Secret Square Limited, Unit 4, Stonegate Walk, Hornby Passage, York, YO1 8AT (CYC - 065668)

Members considered an application by Secret Square Limited for a Premises Licence [Section 18(3)(a)] in respect of Secret Square Limited, Unit 4, Stonegate Walk, Hornby Passage, York, YO1 8AT (CYC - 065668).

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

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:
 - Additional information from North Yorkshire Police detailing email correspondence between them and the applicant.
3. The Licensing Manager's report and her comments given at the Hearing. The Licensing Manager outlined the report noting the opening and operating hours and schedule, and she noted the information contained within the annexes to the report. She advised that the premises was in the red area of the cumulative impact assessment area (CIA) as detailed in the council policy. She advised that North Yorkshire Police had made a representation on the grounds that the licensing objectives, prevention of crime and disorder and prevention of public nuisance would be undermined by the granting of the application. She advised that City of York Council Public Protection (Environmental Protection) had made a representation on the grounds that the prevention of public nuisance licensing objective would be undermined if the premises licence was to be granted in the terms applied for, and that the City of York Licensing Authority had made a representation on the grounds that the granting of the application would undermine the licensing objectives of both prevention of crime and disorder and prevention of public nuisance. There had also been 15 relevant representations received from other persons on the grounds of the prevention of public nuisance, prevention of crime and disorder and public safety licensing objectives would be undermined if the licence was granted.

The Licensing Manager noted the additional information submitted by the applicant's solicitor and from two representors, which had been circulated to all parties. She then outlined the options available to Members in determining the application.

4. The representations made by Mr Rodger, Counsel on behalf of the Applicant at the hearing. He acknowledged that the application was in the CIA and explained that the applicants would like to run a café to promote and share Turkish and Kurdish cultures that would be quiet, low key, familial, neighbourly and at night time. He noted that the Sub Committee should be concerned about noise and the gap between the cessation of food at 10pm and drink at 11.30pm noting the worry that the premises may become a bar. He wanted to allay those concerns and offered the following conditions:
 - Food and drink to end at the same time
 - Table service
 - No dancing and live music
 - Music not being audible in the external parts of the premises

- The closure of the courtyard at 11pm on Fridays, Saturdays and Sundays prior to Bank Holidays and 9pm on the remaining days.
- To limit the capacity to 10 people in the courtyard

He also offered the potential condition of alcohol being served ancillary to food. He added that it was a small premises and that the hours of operation fell within the hours of premises in the CIA and that the inclusion of the premises would not extend the zone and was a different operation.

The applicants then explained that in York there was a population of 3-4000 Turkish and Kurdish people and the aim was to bring a very different to the city centre and to York. He believed that it would be a nice place to relax and he added that the cultures were very respectable and they wanted to share those cultures.

Mr Rodger then added that what was apparent from residential neighbours was the concerns about the passage [Hornby Passage] and he noted that the premises was currently empty, attracting anti-social behaviour (ASB) and that by being occupied the premises would bring an improvement to security.

In response to questions from Mr Golightly, Mr Rodger explained that the applicants would be willing to add double glazed bi-folding doors and a condition that music would not be audible outside the premises. Mr Golightly noted that music was a concern, to which Mr Rodger responded that the applicants were not perusing a venue to play live music.

In response to questions from Mr Robson, Solicitor on behalf of a number of other persons (being residents of Stonegate Court), Mr Rodger explained that the applicants were willing to flexible on the capacity and covers for the premises and that there was no intention to have a temporary bar in the courtyard, where there would be waiter service. He added that with regard to recorded music there would be no DJ and that this referred to background music.

The Sub-Committee raised a number of questions to which Mr Rodger responded that:

- The number of tables left no room for customers to stand around
- There would be no seated area for customers waiting to be seated

The Sub-Committee raised a number of questions to which the applicants responded that:

- A different location for the venue had not been sought because the rent was good and it was in an easily accessible location in the city centre
 - Customers would be signposted to the premises through social media and contacts made through their existing business and knowledge of the area
5. The representations made by PC Hollis, on behalf of North Yorkshire Police in writing and at the hearing. She explained that the CIA was under stress in the red zone and that the application should be refused. She stated that the applicant failed to address measures to be implemented to address the licensing objectives. She noted that she had met with the applicant on 20 November 2019 at which the business model was explained as a bar. On 16 December 2019 the application received described the venue as a café bar and the operating schedule did not state that alcohol was ancillary to food. PC Hollis added that even though there was food offered, the premises was not food led and there was a limited food offering. In addition, the proposed business model was not that of a café bar and the cumulative impact was a rise in crime and disorder and ASB.

Mr Rodger noted the offer of a condition of food and alcohol terminating at the same time and he assured that the premises would not be a vertical drinking establishment.

6. The representations made by Cllr Fitzpatrick, Ward Councillor, on behalf of a number of other persons in writing and at the hearing. She explained that there needed to be a balance between residential life and the city centre. She noted that as a city centre councillor she supported different cultures. She had concerns that the glass in the surrounding properties could not withstand revellers and that smoking in the courtyard could cause a fire in a space not wide enough for people going to and from the establishment. She supported the police in their objection to the application.

The applicants asserted that the residents did not use the gate at the back entrance to the courtyard to which Cllr Fitzpatrick responded that the residents had keys to the gate and did use the back entrance.

7. The representations made by Mr Golightly, on behalf of City of York Council Public Protection (Environmental Protection) City of York Licensing Authority in writing and at the hearing. He explained their objection on the grounds of public nuisance in the red zone of the CIA. He noted that the premises was unlikely to be food led if open beyond 11pm and referring to the photos of the premises, he added that the

set up was not consistent to that of a restaurant. He expressed major concern regarding the noise, especially from the courtyard surrounded by residential homes. He noted that the application was adding to the problems in the area and that as there was no noise report he could not judge how noise would be regulated. He advised that the use of the bi-folding doors meant that noise would go into the outdoor area and the conditions offered did not address this. He added that there was no detail on the smoking area, and on how noise from customers outside would be controlled within the residential area. He advised that he had visited the site and felt that the noise would add to public nuisance.

8. The representations made by Mr Woodhead, on behalf of) City of York Licensing Authority in writing and at the hearing. He noted that the premises were in the red area and he read out the council statement of licensing authority. He explained that the applicants had stated that the outside area would be accessible by bi-folding doors which would open straight into the courtyard area. He noted that the premises was a café bar with limited area and would add to public nuisance and that the business model showed alluded to a vertical drinking establishment.
9. The representations made by Mr Robson, Solicitor on behalf of a number of other persons in writing and at the hearing. He stated that the application was in a small residential area with residential premises overlooking the establishment and was an inappropriate nature and location for the premises. He advised that both surrounding streets were in the red zone with a high level of crime. He noted that the police evidence was that the application would be a bar from the police meeting with the applicant on November 2019. He read out paragraph 8.43 of the statutory guidance.

Mr Robson noted that there had been verbal assurances from the applicants. However, the premises was in the red zone. He explained that a better way of judging the application would be look at the timings, and the application was not backed up by robust conditions with regard to the premises not being a bar. He noted that regardless, the establishment was in the red area and the onus of responsibility was on the applicants to put forward how they would address this. He questioned whether the applicant had put forward that the premises would not be built as a bar when the photo of it showed a wall of alcohol, there had been no drinks menus provided, there were 25 covers and no commitment to more than this. He noted that the applicant had offered table service and asked how this would work for people seated at the bar, He noted that alcohol had been offered

ancillary to food, and that the loose seating was non binding and he was not sure that the establishment would be food led.

Mr Robson stated that verbal assertions had been made and noted that music had not been withdrawn from the application, that there was no noise assessment, and there was no dispersal policy. He questioned why there wasn't two door staff, why the premises was closing in the third worst noise hour and proceeding hours. He noted that when the premises were closing that customers may migrate to other premises in the red zone and that in the outside area there was a maximum of 10 covers but the applicants still wanted to use the outside area from 9.00-11.00pm. He added that the nearby cocoa house only had until 6.00pm for their outside area. He stated that application lacked in details and commitments.

10. A Representor in writing and at the hearing. He explained that he had lived in York for 60 years, 15 of them at Stonegate Court. He explained that his sitting room and balcony overlooked Hornby Passage. He explained the layout of the courtyard garden and noted his concerns about the glass in the Jack Wills building. He also noted that there was a number of fire escapes through the passage. He explained that dancing and music would reverberate through the walls and he expressed concern about the noise from the outside yard, smoking outside and early morning deliveries.

The Representor noted that the council had created the CIA and the application was in the red zone and that the CIA was a means of protecting visitors, local residents and businesses. He stated that his privacy and security would be affected by the granting of the licence, and that public nuisance would be a threat to these. He concluded that the establishment because of its location and close proximity to neighbours was unsuitable.

11. A Representor in writing and in person at the hearing. She noted that as a permanent resident of Stonegate Court she was concerned that about nuisance from noise from customers and early morning deliveries. She explained that when she stayed in a different apartment in Stonegate Court she had to call noise control from the council, who were very supportive. She explained that Blake Street was problematic and the proposed bar in Hornby Passage would add to this. She noted her concern for the safety of herself and other residents on a number of safety grounds. She feared that if there was no restrictions to people congregating in the courtyard she would feel less safe in her home. She added that many residents at Stonegate Court chose to live in the city centre to become involved in city centre

life. Following a request from Mr Rodger, The Representor demonstrated the location on her apartment on the location map to the Sub-Committee.

12. The representations made by the Director of the Stonegate Living Company in writing and represented by a family member at the hearing. The family member on behalf of the Representor explained the access arrangements to Stonegate Living Company shop. She explained that the shop opened in August 2019 and that her daughter-in-law worked there alone. She explained that the locked gate in Hornby Passage was the only means of access to the shop and when the gate was last open this led to criminal activity and homeless people going there which left her daughter-in-law feeling vulnerable. The family member on behalf of the Representor noted that more homeless people had moved in leaving used needles and bodily fluids to which the police had attended the courtyard every night to move people along. She noted that her daughter-in-law had called YorkBid about the problems.

The family member on behalf of the Representor explained that the constant criminal activity had been helped by putting plates in the gate but this would end when the passage was used for access. She added that the Rohan shop gave up their premises nearby partly due to the criminal activity in the area. She suggested that customers would try and exit the bar via the gateway next to the shop which would make it a perfect place for alcohol related crime. This would mean that public safety was detrimentally affected by the outside seating due to the number of fire escapes.

In answer to questions from Mr Rodger, The family member on behalf of the Representor explained that:

- The business had been at her premises since August 2019. When she first moved there, there were no plates on the gates to the alleyways and there were problems with homeless people.
- She did not know how long the unit for which the premises licence was being applied for had been empty.
- By licensing the gateway which was currently secure, this would open and unlock the gate and the alleyway.
- It was not necessary for the unit to be occupied as access would be opened up. She added that shop use would enable the use of the premises.

In response to questions from Sub-Committee members, the family member on behalf of the Representor explained that there were sometimes homeless people in the area before the gate was locked.

The representors and applicant were then given the opportunity to sum up.

PC Hollis emphasized that the application was for a further licence in the CIA and she believed that the application in its current form was for a vertical drinking establishment and not for a café bar. She stated that the police had engaged with the applicants to show how the licensing objectives would be met and this was not demonstrated by the applicants. She urged refusal of the application.

Mr Golightly stated that the application was in the CIA and he did not feel that the conditions offered addressed the noise nuisance. He advised the Sub-Committee to refuse the application. Mr Woodhead in his summing up reiterated what the police had said.

Cllr Fitzpatrick stated that residents valued living in the city centre and she noted that it was worth exploring what the applicants would bring to the city centre. She added that York had a vibrant city centre but that the application was in the wrong location.

Mr Robson advised that the whole application was deficient and the applicants had not addressed this or offered conditions. He noted that if Members were minded to grant the application, that conditions could be negotiated. He added that granting the application would require the council to deviate from its policy. He asked the Sub-Committee to place weight on the representations from responsible authorities. He stated that the applications had not addressed the premises being in the red zone of the CIA.

The Representor had nothing to add in his summing up and The Representor asked how the licensing objectives would be addressed. The family member on behalf of the Representor stated that location was key and allowing access would increase the risk of crime and disorder and public nuisance.

Mr Rodger, on behalf of the Applicant, stated that the applicants wished to share and promote Turkish and Kurdish cultures that would be quiet, low key, familial, neighbourly and at night time. He offered the following conditions:

- 48 covers inside the premises
- A maximum and minimum of 10 covers in the courtyard
- Table/waiter service
- To preclude the use of the courtyard for licensable activities and 9pm on weekdays and 11pm on Fridays, Saturdays and Sundays prior to Bank Holidays

- Music not being audible outside the premises
- Alcohol only to be supplied ancillary to food
- No live music

With regard to the CIA, he stated that the application was a modest proposal with a capacity of 60 people, was a café restaurant with 48 covers inside and 10 covers external. He stated that there was no better location for the establishment which would bring the unit back into use.

There were a further number of questions as follows:

- Members asked PC Hollis if the police position would remain the same with the conditions offered. PC Hollis responded that the police would question how the conditions would be managed.
- Mr Woodhead was asked the same question and he agreed with the police noting that even if there were additional door staff, whether they would actively engage in stopping customers being disorderly.

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 rejected.

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 approved.

The Sub-Committee was not persuaded by the evidence before them that there were sufficient grounds to rebut the presumption against grant that applies in the red area of the Cumulative Impact Area, and concluded on the evidence that granting the licence would undermine the licensing objective of preventing crime and disorder.

The Sub-Committee decided to approve Option 4, to reject the application for the following reasons:

- The proposal is within the red area of the Cumulative Impact Area (CIA). The fact that it is within the CIA is not in itself sufficient grounds on which to refuse an application. It is possible for an applicant to demonstrate that the style of operation, (including seating, target market, branding, food offer, prices, dwell time and management), create a positive impact and promote licensing objectives by raising standards in areas in need of regeneration, benefiting the City's economy. The onus is firmly on the Applicant to demonstrate how the proposal will promote the licensing objectives.
- The applicant sought to demonstrate the above by reference to additional conditions offered. However, no sufficiently detailed evidence was provided to convince the Sub-Committee that the impact of those promoted the licensing objectives. The Police evidence, (to which the Sub-Committee attach great weight in accordance with the statutory guidance (para 9.12)) was that the license objectives had not been met by the application.
- The applicant sought to show that the target market would be clientele that would not be likely to behave irresponsibly and add to problems of anti-social behaviour. The Sub-Committee was not persuaded that the target market of the Turkish and Kurdish communities, the sample menus and photos of the establishment demonstrated that the style of operation was such that it would attract only discerning well behaved custom.
- The Sub-Committee was not convinced that the proposed conditions would be sufficient to prevent undermining the licensing objectives of the Prevention of Crime and Disorder, Public Safety, and Public Nuisance in this location.
- The Sub-Committee shared the view of the Police that the application was for a vertical drinking establishment, and there was nothing unique about the proposal that convinced the Sub-Committee otherwise.
- The Sub-Committee was satisfied by the evidence from public protection that the licensing objective of public nuisance would be undermined by the proposal, notwithstanding the representations made by local residents regarding their views on the noise impact on their homes.

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.

Cllr Orrell, Chair

[The meeting started at 10.00 am and finished at 12.15 pm].