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Meeting	Licensing/Gambling Hearing
Date	8 April 2019
Present	Councillors Hayes, Mercer and Pavlovic

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## 10. Chair

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

## 11. Introductions

## 12. 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.

## 13. The Determination of an Application by Anthony Dean (Public Protection Manager, City of York Council) for the Review of a Premises Licence [Section 52(2)] in respect of The Clockhouse, Kingsway West, York, YO24 3BA (CYC-09086)

Members considered an application by Anthony Dean (Public Protection Manager, City of York Council) for the Review of a Premises Licence [Section 52(2)] in respect of The Clockhouse, Kingsway West, York, YO24 3BA (CYC-09086)

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

### 1. 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 objective, including:

1. The application form, in particular the existing licence conditions and the steps taken by the applicant to promote the four licensing objectives.

2. The Licensing Manager's report and her comments made at the Hearing. She outlined the report noting reasons for the application for the review of the license and the information contained within the annexes to the report. She explained what the current licence authorised, detailing the current days and hours for licensable activities. She explained that anyone could apply for the review of a licence. She advised that consultation had been carried out correctly and that no further representations had been received. She ended by outlining the 5 options available to the Sub-Committee.

2. The representations of the Solicitor for the Applicant on behalf of the Applicant at the Hearing. She advised that the Environmental Health Officer at City of York Council was in attendance as a witness. The Solicitor for the Applicant made the following points:

- There had been 9 occasions on which one or more breaches of the licence conditions in the period 31 May 2015 to 18 January 2019.
- On 6 July 2016, the Premises Licence Holder pleaded guilty in York Magistrates' Court for 8 breaches of the Premises Licence for the Acomb Hotel (now called The Clockhouse). Of these, 3 included not closing windows and doors after 22.30, 2 included continuing to play music after 23.30, 2 included music being audible at the façade of a nearby premises and 1 for providing facilities for dancing in contravention of the licence.
- Further complaints continued to be received and further warning letters sent to the Premises Licence Holder on 7 February 2017, 7 June 2017 and 27 July 2017 reminding him of his obligations to comply with his Premises Licence and not to cause a nuisance.
- A further complaint was made on 26 May 2018, attended by the Council's Noise Patrol officers who observed 3 breaches of the premises licence. Subsequent to this visit noise abatement notices were served.
- On 27th October 2018, 2 further breaches of the Premises Licence were witnessed by officers whilst on the Noise Patrol. These were for not closing windows and doors after 22.30 and music being audible at a nearby façade.
- On 15 January 2019 the Premises Licence Holder pleaded guilty in York Magistrates' Court for 5 breaches of the Premises Licence for The Clockhouse.

In response to questions from Solicitor for the Applicant, the Environmental Health Officer confirmed that:

- He was employed by City of York Council as an Environmental Health Officer within Public Protection.
- The number warning letters that had been sent to the Premises Licence Holder.

[At this point, Solicitor for the Premises Licence Holder noted that three warning letters referred to by the Environmental Health Officer had not been disclosed prior to the hearing. The Chair confirmed that these three letters would be excluded from the applicant's representation and the Sub-Committee did not have any regard to those letters in its consideration of the application.]

- It was encouraging to see the proposed conditions put forward by the licence holder. He was pleased to see that there was a noise limiter proposed, however he noted that this could be problematic because of the need to have doors closed. He added that the proposed CCTV along with the alarm notification would be agreeable.
- With regard to proposed condition 2 with regard to the doors being closed and because there was amplified music, this could be a nuisance at any time of day. There would need to be control over the door if music was being played.
- If the proposed conditions were in place, the Premises Licence Holder would need to make sure that the conditions were complied with. In theory, public nuisance would be avoided if the proposed conditions are complied with. An additional condition would tighten this up and a procedure would need to be put in place to ensure that the conditions were complied with.

The Solicitor for the Applicant then closed by stating that the Premises Licence Holder was also the DPS. She noted that there had been a number of managers in post, and their roles were noted during the period of convictions. She referred to the Premises Licence Holder and the former Manager's interviews under caution with Public Protection Officers. She noted that in his interviews the Premises Licence Holder belittled the licence conditions and blamed the manager in post on those occasions. She made the distinction between the use of glass and plastic containers outside the premises.

In response to questions from Solicitor for the Premises Licence Holder, the Environmental Health Officer confirmed:

- The amended conditions put forward by the applicant had not been shared with the licence holder.
- The name of the Premises Licence Holder.
- It was standard procedure to prosecute the limited company that owns the premises.
- In addition to the experience needed to run a licensed premises, he was not aware of the qualifications needed to do this. He suggested that 18 months good experience was needed and this would need, for example, to include training in the licence conditions.
- It was his view that the former Manager's training included training in some of the licence conditions.

During questions to Environmental Health Officer, the Solicitor for the Premises Licence Holder advised that the facilities for dancing had not been a licensable activity until 2012. The Senior Solicitor clarified that deregulation applied where there was a capacity of less than 200 persons.

In response to questions from the Sub-Committee, the Environmental Health Officer confirmed that:

- It was possible to set the noise limiting device with the doors open but this is not really an option as it would effectively mean there could not be live or recorded music.
- A door management regime could be included in the procedures whereupon the door which faced Kingsway West could be closed from 10pm to limit the noise. [The Solicitor for the Premises Licence Holder pointed out the location of this door using the premises plans.]
- Concerning the proposed conditions and revocation of the licence, his issue was whether the licence holder would do everything within his power to ensure that the conditions would be complied with.
- If the issues with compliance were addressed the conditions would be sufficient to prevent public.

3. The representations of the Solicitor for the Premises Licence Holder, on behalf of the Premises Licence Holder. He made a statement on behalf of the Premises Licence Holder. He explained that the Premises Licence

Holder accepted the seriousness of the situation and apologised unreservedly. The 9 breaches of licence since 2015 took place in the context of over 500 events. Many events have taken place with no issues. He added that on two occasions when the Premises Licence Holder was the DPS and had a manager in place, his involvement on the days of the incidents was limited. He added that the Premises Licence Holder had not had legal representation at the Magistrates Court or in the interviews until this hearing and he noted the legal advice he would have provided to the Premises Licence Holder.

The Solicitor for the Premises Licence Holder explained that:

- The Premises Licence Holder had stepped back into being at the premises since January 2019 and either he or his wife had been present every weekend since then.
- With reference to training, a training and information booklet for Clockhouse staff had been produced and would include any new licence conditions. The Solicitor for the Premises Licence Holder advised that no other statutory authorities had any problems with The Clockhouse and the complaints referred to had come from one resident. No resident has supported this review application.
- The Premises Licence Holder had lived in Acomb all his life, that The Clockhouse was popular with local residents and was open to darts and pools clubs.
- The outside area should have been cleared and a proposed condition regarding plastic glasses in the outside areas had been added.
- The Premises Licence Holder was looking at different solutions to the Kingsway West exit and in the bar there was a monitor showing CCTV feeds. He explained the location of the CCTV cameras and The Premises Licence Holder was considering the installation of a door closer on the Kingsway West doors. The Premises Licence Holder was meeting with a fire consultant the following week and would be looking at whether a push bar could be used on that door so that it could not be kept open.
- A noise limiter had been proposed by the Premises Licence Holder.

The Solicitor for the Premises Licence Holder drew attention to the events between the first and second prosecutions taking place in the pool room and he explained that the events now took place in a different bar. He explained how the DJ would play music via a PA system. He advised that if The Premises Licence Holder was not at the premises he could be sure that the music volume could not be overridden. Solicitor for the Premises Licence

Holder asked the Sub-Committee to take into account paragraphs 1.16, and 11.20 of the Section 182 guidance.

In response to questions from Solicitor for the Applicant, The Premises Licence Holder confirmed that:

- Staff had been asked to read the licence conditions, which were on the wall at the premises.
- He had reminded the former Manager about the licence conditions.
- His concern regarding a new licence [in the interview transcript on page 64 of the Agenda] referred to the need to apply for a new licence to include closing the doors. Costs were always an issue to the business.
- On the occasion referred to on page 65 of the Agenda, he went to the premises after drinking at a wedding and the former Manager was the manager in place.
- The proposed noise limiter and staff training had been put in place through discussions between The Premises Licence Holder and his solicitor.

The Premises Licence Holder then responded to questions from Sub-Committee members as follows:

- Customers left the building from different doors. It was a large building and they had stopped doing functions in the room opposite Kingsway West.
- He was satisfied that the measures put in place would address the issues. The rooms used for music and functions had moved to another room in February 2019 and this had addressed the problems with noise. Solicitor for the Premises Licence Holder referred to the noise monitoring log in the training booklet stating that The Premises Licence Holder had agreed for the noise limiter to be fitted which made sure the music volume could not be turned up when he was not at the premises.
- With reference to the May 2018 incident, the doors had been wedged open with a beer mat by a customer. The Solicitor for the Premises Licence Holder noted that possible air conditioning could be looked at. Referring to potential conditions, he noted that he and The Premises Licence Holder could look doors being closed whilst music is played.

- Twelve staff were employed at the premises plus Premises Licence Holder and his wife. He was also refurbishing the upstairs of the building and looking at lets upstairs.
- A large amount had been paid in fines and the he could not continue to pay these large amounts. Solicitor for the Premises Licence Holder stated that the former Manager was no longer employed by the Premises Licence Holder and he had taken control of managing the premises.

[Using the premises plans the CYC Senior Solicitor clarified with the Premises Licence Holder the location where music is now played within the building].

- If live music is excluded from the licence this would dramatically affect the business which was largely dependent on footfall from the local community. A noise limiter could be installed within the next 21 days.
- The internal PA system would work by the DJ having an audio jack. This could be discussed with The Environmental Health Officer along with the noise limiter. The Premises Licence Holder expressed that he would be willing to work with The Environmental Health Officer to look at solutions.

The Environmental Health Officer was asked if the DJ could be moved to which he answered that it would depend on what speakers were being used at what time. The Solicitor for the Applicant asked Sub-Committee Members to note that there would not need to be a requirement for current condition 6 as this would be addressed through the public PA system.

The Solicitor for the Premises Licence Holder concluded by stating that his client took the matter seriously and was committed to working with the Environmental Health Officer regarding the noise limiter. The Solicitor for the Premises Licence Holder reminded the Sub-Committee about proportionality. He advised that The Premises Licence Holder was aware of the conditions and his manager had let him down. The Premises Licence Holder had accepted ultimate responsibility for the mistakes and that training, management and the proposed conditions would be a proportionate and appropriate way forward.

The Solicitor for the Applicant concluded by outlining the chronology of events for The Premises Licence Holder' abatement notices and convictions. She asked the Sub-committee to consider why these incidents had taken place and cited the events of 26 May 2018 when the Premises Licence Holder was present but not on duty and engaged. She stated that The Premises Licence Holder had shown by his behaviour that a revocation of the licence was the most appropriate action.

The CYC Senior Solicitor then asked whether, without in any way prejudicing the Sub-Committee's decision, Public Protection had any specific comments regarding the wording of the amended conditions proposed by the licence holder. The Environmental Health Officer had no comments on the wording of the applicant's draft condition 7 as long as the noise limiter was set right and fitted in with condition 8. The Solicitor for the Applicant drew Sub-Committee Members' attention to existing conditions 12 and 15.

Having regard to the application and any relevant representations, the Sub-Committee had to determine whether to take any of the steps mentioned under Section 52(4) that it considered necessary for the promotion of the licensing objectives. Taking into consideration the above evidence and submissions received, the Sub-Committee deliberated the 5 different options available to them and agreed to reject the following options:

- Option 3    Remove the designated premises supervisor [Section 52(4)(c)]. The Sub-Committee decided to reject this option
- Option 4    Suspend the licence for a period not exceeding 3 months [Section 52(4)(d)]. The Sub-Committee decided to reject this option.
- Option 5    Revoke the licence [Section 52(4)(e)]. The Sub-Committee decided to reject this option.

The Sub-Committee's decision was to accept the following options:

- Option 1    Modify the conditions of the licence.
- Option 2    Exclude a licensable activity from the scope of the licence.

Having heard the application for a review of the premises licence at The Clockhouse, the Sub-Committee was satisfied that that the premises had demonstrated its inability to satisfactorily promote the prevention of public nuisance licensing objective on the basis that it had breached a number of conditions on the premises licence as detailed in the review application.

In arriving at this view, the Sub-Committee considered the evidence submitted by the application for the review of the premises licence and the representations made on behalf of and by the applicant at the hearing and balanced these against the representation made at the hearing on behalf of and by the Premises Licence Holder (who is also the designated premises supervisor). The Sub-Committee considered that the noise nuisance was



primarily caused by the poor management by the licensee and breaches of the licensing conditions in relation to the playing of live or recorded music.

To deal with noise escape from the premises, the Sub -Committee considered it proportionate to impose appropriate conditions relating to the playing of live and recorded music. In order to give effect to those conditions the Sub-Committee exercised its powers under section 177A(2) of the Licensing Act 2003 (the Act), to make a statement on this review pursuant to section 177A(3) of the Act disapplying the live and recorded music exemption given to premises and adding conditions relating to music to the licence in accordance with section 177(4) of the Act.

The Sub-Committee considered that in order to satisfactorily address the prevention of public nuisance licensing objective it is appropriate and proportionate to replace the existing conditions on the licence with the conditions set out below. In particular, so as to ensure that all music whether amplified recorded music or live music is played at a volume that would not cause a nuisance to neighbouring residents the Sub-Committee considered a noise limiter is appropriate to control volume levels. Given the history of mismanagement, it considered it appropriate and proportionate to impose a condition to the effect that the provision of live and recorded music at the premises should be withdrawn from the licence for three months or such earlier time as an approved noise limiter has been installed.

The Sub-Committee having considered the other available options considered that the licence holder should be given a further and final opportunity to demonstrate that he could successfully promote the licensing objectives.

### Conditions

1. Notices will be displayed at the exits and smoking areas asking customers to leave the premises quietly and to keep noise down when stood outside.
2. During the operation of amplified music and/or regulated entertainment, after 22:00hrs all doors, including fire doors, shall be kept shut other than when being used for immediate ingress or egress.
3. CCTV coverage shall be maintained of the exit door to Kingsway West. A monitor shall be located in the bar allowing serving staff to see live images of the doorway. An alarm system shall be installed and be operational during hours of opening to the public which alerts staff when the external side door facing Kingsway West has been left open.

4. Documented patrols shall be carried out by members of staff at no less than hourly intervals between 22:00 and closing time. These checks shall be undertaken outside the building to the front and side to check for noise from inside the premises and noise from customers outside the venue to ensure there is no public nuisance. The documentation of patrols shall be made in the course of the patrol or on completion of each patrol. The patrol documents shall be kept for a minimum of 3 months and made available to the Licensing Authority or any responsible authority on reasonable request.
5. Staff training shall be given and documented regarding all matters relating to the licence and its conditions. Such training will be refreshed and documented every 6 months and records of training shall be kept for 3 years and they will be made available upon a reasonable request by any responsible authority.
6. All entertainment in the form of amplified live or recorded music shall only be permitted to take place at the premises when the amplification is via the premises' public address system and via a noise limiter approved by City of York Council Public Protection team and in accordance with Condition 7.
7. The premises' noise limiter referred to in Condition 6 above shall be set in conjunction and agreed with a representative of York City Council's Public Protection team. The upper limits shall not be varied without the prior written consent of City of York Council's Public Protection team.
8. There shall be no entertainment in the form of amplified live or recorded music for a period of 3 calendar months from the date of this licence or until such earlier time as an approved noise limiter has been put in place and set in accordance with Conditions 6 and 7.
9. The playing of amplified live or recorded music shall only take place in zone C as indicated on the attached plan and shall not take place in any other part of the premises.
10. Bottle bins will only be emptied between 7:00hrs and 23:00hrs.
11. The emptying of bins into skips and refuse collections will not take place between 23:00hrs and 07:00hrs.
12. A direct contact number for the duty manager and/or DPS shall be made available to residents living in the vicinity of the premises on request.

13. The consumption of alcohol in external areas shall not be permitted after 22:00hrs daily.

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 decision did not take effect until the end of the period for appealing against the decision. In the event of an appeal, the existing licence will continue until the appeal is determined.

Cllr Pavlovic, Chair

[The meeting started at 10.00 am and finished at 1.30 pm].