

Meeting	Licensing/Gambling Hearing
Date	11 April 2019
Present	Councillors Lisle, Reid and Wells

14. Chair

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

15. Introductions

16. 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.

17. **The Determination of an Application by QM Hotel (UK) Limited for a Premises Licence [Section 18(3)(a)] in respect of Moxy Hotel, York Stonebow, Black Horse Lane, York, YO1 7NE (CYC - 063711)**

Members considered an application by QM Hotel (UK) Limited for a Premises Licence [Section 18(3)(a)] in respect of Moxy Hotel, York Stonebow, Black Horse Lane, York, YO1 7NE (CYC – 063711).

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

1. The prevention of crime and disorder
2. 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:

- Updated proposed hours and conditions received from the Applicant's Solicitor

3. The Licensing Manager's report and her comments given at the Hearing. She outlined the report noting hours of provision and non standard timings. She noted the information contained within the annexes to the report and advised that the premises were not in the cumulative impact area. She explained that consultation had been carried out correctly.

Sub-Committee Members were advised that representation had been received from North Yorkshire Police on the grounds that the prevention of crime and disorder and prevention of public nuisance licensing objectives would be undermined if the licence was granted under the terms applied for. The Licensing Manager reported that since the report had been published both the Applicant and North Yorkshire Police had been in contact and mediated an agreed set of conditions. City of York Council Public Protection (Environmental Protection) had also 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. There had been 17 representations received from 'other persons' mainly on the grounds that three licensing objectives would be undermined if the application was granted. She added that there were no planning issues in relation to the application. She ended by outlining the 4 options available to the Sub-Committee.

In response to questions from the Sub-Committee, the Licensing Manager clarified that the proposed activities of showing films indoors referred to the showing of films in guest rooms and that late night refreshments (indoors) referred to the serving of drinks to members of the public not resident at the hotel.

4. The representations made by the Applicant's Solicitor on at the hearing. Mr Grunert explained that conditions had been agreed with North Yorkshire Police and were in discussion with EPU. He explained that the terminal hour was 01:00 and that the 24 hours for showing films was for pay per view films. He clarified that the applicant had withdrawn the request to include the area shown shaded yellow on the plan included in the application. He noted the conditions agreed with the police and explained that the external area would be restricted to smokers after 11pm, that there would be no consumption of alcohol and a capped capacity of 15 people in the external area after 11pm. Mr Grunert circulated the conditions agreed with EPU noting that there were some conditions yet to be agreed.

Mr Grunert explained that Moxy was a new brand as part of the Marriott hotel chain with the York hotel being the first Moxy hotel in England outside London. He added that the hotel would create 15 permanent jobs as well as 15

housekeeping jobs via an external provider. He noted that the application was for the food and beverage areas of the hotel, and that the applicant had reached the position of the hours of operation being 01:00hrs.

Mr Grunert then outlined the hotel Manager's experience of working in hotels. He noted that the provisional operating schedule for the hotel included a Dispersal Policy and Noise Monitoring Policy. Mr Grunert explained the layout and location of the hotel noting that the food and drink area in the hotel was the furthest point from the residential area. He added that the smoking area was adjacent to the Black Swan's smoking area, which was open until 01:00hrs.

Mr Grunert noted that the premises had a double set of doors onto the lane, along with a main entrance and he added that the unresolved issue with EPU was noise breakout. He noted that at present there was not an acoustic lobby in the hotel. He explained how noise would emit from the building. He proposed a noise monitoring plan, adding that EPU may suggest a noise limiter. He advised that three noise monitoring spots had been identified.

Mr Grunert stated that his client had a proven track record and experience in running hotels that had operating without issue. He outlined the projected layout advising that there was a maximum capacity of 100 people in the food and beverage area with a maximum of 70 expected on a busy day.

In response to questions from Representors, Mr Grunert and the hotel Manager confirmed that:

- There would be no deliveries after 15:00hrs each day and the hotel wanted to work with local residents
- There would be an arrangement with a taxi firm to collect passengers from Stonebow.
- CCTV could not be used to intrude on residents due to GDPR
- Customers would not be able to leave the hotel with glasses; the cleanliness of the external area was important to the hotel. Hot food could not be taken away from the hotel
- Customers could go into the hotel to order and eat food
- Up to 28 people could be seated in the external area although it was anticipated that there would be no more than 20. The supervision of the smoking area was explained. The business plan was not based on the premises being a vertical drinking establishment

- Recorded music would be played indoors and there would be no recorded music outdoors
- The applicant had tried to address concerns from residents regarding the outside area and it was originally intended to be for cafe type use
- On race days there would be two door supervisors. EPU had requested that there also be door supervisors on Fridays and Saturdays
- Moxy hotels did not believe that there was a necessity for door supervisors on Fridays and Saturdays, but did have them and would like to take an appropriate view as to their use.
- The applicant was happy to change the condition for off sales of alcohol
- With regard to providing management contact information to local residents, the hotel was open 24 hours a day. The hotel management structure was explained. Should residents request a contact number the applicant was happy to include this as a condition
- Concerning there being no acoustic lobby, there was no prescription of this. An acoustic lobby was usually a closed set of doors between the first set of doors and the outside area
- The maximum capacity in the main area would be set by the fire risk assessment, however it was anticipated that this would be no more than 100 at maximum and believed to be 70 people
- In relation to the door supervisors, the applicant was asking for manager discretion to make a proportionate judgement regarding how many door supervisors were needed. EPU had requested two door supervisors on Fridays, Saturdays and race days (except for the Sunday meeting in September and the first May meeting).

5. The representations made by Sgt Jackie Booth (North Yorkshire Police) in writing and at the hearing. Sgt Booth explained that since the application, the police had entered into negotiations with the applicant, demonstrating that the applicant wanted to engage and address the concerns of local residents by pulling back the start time to 01:00hrs, and a Dispersal Policy (with the door supervisors being under discussion). Sgt Booth had contacted colleagues in the Met Police regarding the two Moxy Hotels in London and was informed that the hotels were well run and had caused no issues. Sgt Booth stated that the Moxy Hotel business model was in line with, and promoted, the four licensing

objectives and the applicant had taken on board suggestions from the police and EPU.

Sgt Booth was asked and explained that on further enquiry with the Met police and with the conditions offered by the applicant, it was felt that these would mitigate the risks regarding nuisance and behaviour, which the applicant had taken time to address.

6. The representations made by Michael Golightly, Technical Officer (City of York Council Public Protection) in writing and at the hearing. Mr Golightly stated that he had liaised with the applicant on a lot of the conditions and he outlined the conditions that had been agreed between the two. He noted EPU's concern regarding music and live venues creating noise with over 1000 residential units being built behind the premises. He noted EPU's preferred conditions in relation to music which included a noise limiting device to address their concern regarding noise escape out of the single door to the rear of the building. He advised that Public Protection request that there be two door staff on Fridays, Saturdays and race days. Public Protection also wished to see some clarity on the hours including the control of residents and non residents at the hotel.

In response to concerns expressed by EPU, Mr Grunert offered the condition that all cash purchases would cease at 01:00hrs and be charged to rooms after 01:00hrs. Concerning door staff, Mr Grunert explained that he was surprised that The Grand (hotel) did not have a door supervisor condition to which Mr Golightly clarified that the condition had been requested because of residents living nearby which would make it prudent to have that condition.

Mr Golightly was asked and confirmed that there had been complaints about live music from the Black Swan and he clarified that these were not in relation to drunken behaviour. He was not able to confirm if the Black Swan had an acoustic lobby to the beer garden.

7. A Representor in writing and at the hearing. The Representor represented a number of local residents. He explained their concerns regarding noise nuisance and cleaning up outside the hotel. (He further explained the arrangement with City of York Council which made residents responsible for cleaning up the road). He added that the reduction from 03:00hrs to 01:00hrs was a step in the right direction, but residents would prefer 23:00hrs.

8. The 17 written representations in objection made during the consultation period.

Representors were then given the opportunity to sum up. Sgt Booth stated that the applicant had agreed the police conditions that had been put forward. Mr Golightly reiterated his concerns regarding the break out of noise from the building. Mr Grunert referred the Sub-Committee to paragraphs 1.17, 9.12, 2.21 and 10.10 of the S182 guidance. In addressing concerns about acoustics he explained that measures were in place adding that the applicant would be happy to accept a visit from EPU when the premises was operational. He advised that Sgt Booth was happy with the Dispersal Policy and there was flexibility within this to work with the operator moving forward. Regarding the door supervisors' condition he asked the Sub-Committee to be proportionate, adding that the venue was not a vertical drinking establishment, was outside the CIZ and was a hotel.

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:

Proposed Activity	Timings
Films (indoors)	Monday to Sunday 24 hours
Indoor Sport	Monday to Sunday 10:00 to 01:00
Live Music (indoors)	Monday to Sunday 10:00 to 01:00
Recorded Music (indoors)	Monday to Sunday 10:00 to 01:00

Performance of Dance	Monday to Sunday 10:00 to 01:00
Late Night Refreshment (indoors)	Monday to Sunday 23:00 to 01:00
Sale of alcohol (on & off sales)	On sales Monday to Sunday 10:00 to 01:00
Opening times	Monday to Sunday 24 hours
Non-Standard Timings for all licensable activities	New years eve 10:00 to terminal hour on new years day Residents and their bona fide guests will be entitled to be served alcohol 24 hours a day, 7 days a week

2. The CCTV system shall be maintained in working condition and provide comprehensive coverage of the public areas of the premise 24 hours every day, subject to any reasonable periods of maintenance or repair. Recordings shall be retained for 31 days and be made available to the Police or officers of the Council upon a request compliant with Data Protection legislation, and shall be of evidential quality in any light condition.

3. The equipment must have a suitable export method i.e. CD/DVD/USB facility so that the Police and officers of the Council can make an evidential copy of the data they require. This data should be in a native file format to ensure that no image quality is lost when making the copy. If this format is non-standard (i.e. manufacturers proprietary), then the licence holder shall within 14 days of being requested supply the replay software to ensure that the video on the CD can be replayed by the Police and officers of the Council on a standard computer.

4. A suitable number of staff working at the premises shall be trained in the use of the equipment and a log will be kept to verify this. At all times when the premises is open to non-residents a trained member of staff shall be present at the premises who is capable of providing playback of CCTV recordings, when requested to do so by the a Police or Local Authority Officer in compliance with Data Protection legislation.

5. Cameras on the entrances must capture full frame shots of the heads and shoulders of ALL people entering the premises from which identification may be made, in any lighting condition.
6. There shall be signs displayed in the customer area to advise that CCTV is in Operation.
7. Should the CCTV become non-functional this will be reported 2 working days to the Licensing Authority and any fault repaired as soon as practicable.
8. CCTV cameras shall provide comprehensive coverage of the premises used by premises patrons (excluding bedrooms) including any external area to monitor number and prevent crime and disorder.
9. Where appropriate prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly.
10. The external licence area shall not be used between the hours of 23:00hrs – 07:00hrs (with the exception of any designated smoking area).
11. The designated smoking area shall be specified by the Premises Licence holder as an area outlined blue on the “landscape general arrangement plan” attached to the premises licence. When in use as a designated smoking area, a maximum of 15 persons will be allowed in this area at any one time.
12. The premises shall agree with North Yorkshire Police a suitable dispersal policy for the premises. The agreed policy shall be implemented by the premises.
13. Clear notices shall be prominently displayed requesting customers to respect local residents and leave the premises and area in a quiet and orderly manner.
14. All doors and windows shall be closed when regulated entertainment is provided (except for ingress and egress).
15. When in use door staff shall use their best endeavours to ensure that customers leaving the premises do so quickly and without loitering outside.
16. Bottles should not be disposed of into bins at night and will only be disposed of between 07:00hrs and 23:00hrs.

17. A noise management plan shall be submitted before the premises opened and implemented thereafter.
18. After 23:00hrs the outside area shall only be used by customer wishing to smoke. This area shall be clearly defined.
19. No drinks to be taken into the outside area after 23:00hrs.
20. No recorded music to take place in the outdoor area of the premises after 23:00hrs.
21. Noise shall be inaudible inside the nearest noise sensitive premises after 23:00hrs.
22. A clear notice shall be prominently displayed with the contact information for the Duty Manager.
23. Door Supervisors shall be employed as follows:
Sunday – Saturday the use of door staff will be risk assess by the licence holder or premises supervisor and adequate number of door staff employed and at least two SIA registered Door Supervisors shall be provided from 21:00 hours until the close of business on the following evenings:
 - York race days (except for the Sunday meeting in September and the first May 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 CIA and that the special policy rebuttable presumption to refuse the application is not therefore triggered.

The Sub-Committee considered very carefully the representations of EPU and residents, some of whom live particularly close to the premises. They also

noted that the applicant, Police and Public Protection had proposed a number of conditions to address these issues.

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 felt that this decision was proportionate on the basis of Home Office and local guidance and they concluded that 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 Lisle, Chair

[The meeting started at 10.00 am and finished at 12.35 pm].