

City of York Council	Committee Minutes
Meeting	Licensing/Gambling Hearing
Date	25 January 2021
Present	Councillors Hook, Mason and Pearson (Substitute for Cllr Warters)
Apologies	Councillor Warters

28. Chair

Resolved: That Cllr Mason be elected to act as Chair of the meeting.

29. Introductions

The Chair introduced those participating in the hearing: Members of the sub-committee, the Applicant, the Applicant's Barrister, the Police Representor and her three witnesses, and the Senior Licensing Officer presenting the report. Also present were the Legal Adviser to the sub-committee, the Democracy Officer, and the Litigation Solicitor who was shadowing the Legal Adviser.

30. Declarations of Interest

Members were invited to declare at this point in the meeting any personal interests not included on the Register of Interests, and any prejudicial or disclosable pecuniary interests, which they might have in the business on the agenda. None were declared.

31. Exclusion of Press and Public

Resolved: That the press and public be excluded from the meeting during the sub-committee's deliberations and decision-making at the end of the hearing, on the grounds that the public interest in excluding the public outweighs the public interest in that part of the meeting taking place in public, under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.

32. Minutes

Resolved: That the minutes of the Licensing Hearing held on 9 November 2020 be approved as a correct record, to be signed by the Chair at a later date.

33. The Determination of a Section 18(3)(a) Application for a Premises Licence by Mr Man Wei Leung in respect of Haizhonglao Hot Pot & BBQ, 12 George Hudson Street, York, YO1 6LP (CYC-067498)

Members considered an application by Man Wei Leung for a premises licence in respect of Haizhonglao Hot Pot & BBQ, 12 George Hudson Street, York YO1 6LP.

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

- The Prevention of Crime and Disorder
- 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 papers before it.
3. The additional documents submitted by Counsel for the Applicant before the start of the hearing [*to be published online in a supplement to the agenda*].
4. The Licensing Manager's report and her comments at the Hearing. The Licensing Manager outlined the report and the annexes, highlighting the location of the premises within the Red Zone of the cumulative impact assessment area (CIA) approved by Council on 21 March 2020. She noted that the Applicant had complied with all statutory requirements in terms of consultation. She drew attention to the representations received from North Yorkshire Police, including the witness statements submitted as additional papers (pages 73-111 of the agenda papers). Finally, she advised the Sub Committee of the options open to them in determining the application.

Counsel for the Applicant noted that the options did not make reference to the power under Section 18(4)(c) of the Licensing Act to exclude the Applicant from being appointed as Designated Premises Supervisor (DPS).

In response to a question from the Chair to the Licensing Manager regarding the layout of the premises, the Applicant confirmed that it was intended to place dishes on 'conveyor belts' for customers to make their choice.

5. The representations made at the hearing by Duncan Craig (Counsel for the Applicant) on behalf of the Applicant.

Mr Craig stated that, although the application referred to a 'robot restaurant', all ordering would be via human interaction, including age verification checks; only food would be served by robots. He said that regulated entertainment is to be excluded from the scope of the application. He drew attention to the additional documents, which had been prepared in order to address Police concerns regarding the experience of the Applicant and deficiencies in the Operating Schedule submitted with the application. He conceded that the original application was not satisfactory and noted that it had not been produced by the Applicant himself. The additional documents included a CV demonstrating the Applicant's extensive experience in the restaurant trade, and 26 proposed conditions to replace the Operating Schedule in its entirety. These took account of the location of the premises and incorporated the conditions suggested by the Police including to ensure it can only operate as a restaurant (Conditions 8-12) as well as opening hours (Condition 12). Condition 13 addressed concerns around the involvement of Mr Zhong Le Chen by excluding him from the running of the premises. This condition could be expanded to exclude other persons of concern (Wenlin Chen and Yan Tong Feng), although no person with a lawful interest in the building could be denied entry. The documents also included the lease signed by the Applicant and a letter from the landlords confirming that no rent would be due until permission had been granted to operate the licensed premises.

Mr Craig went on to state that the Applicant's involvement in the Regency restaurant had been as a restaurant manager; he had not been involved in the recruitment of staff. Although the Applicant had been present at the Regency when the police visited, he was not the DPS or licence holder for that premises. Should this application be granted, he would not want any interference from anyone else. He had never been in trouble with the police and had held a personal licence since November 2005 with no issues. Although the address on his personal licence was incorrect, this was quite common and not considered a prosecutable offence. Mr Craig stated that the Applicant had made efforts to engage with the authorities, having met the police on site and engaged Counsel for the hearing. He could

operate the premises as a restaurant without a licence, so granting the application would bring him within the regulatory framework more effectively than refusing it. Members were therefore requested to grant the application and allow the Applicant this opportunity to make something of his life.

In response to questions put by Members of the Sub-Committee:

- The Applicant confirmed that he would agree to the removal of off-sales from the application;
- Counsel for the Applicant confirmed that, by indicating that the Applicant would never have a chance like this again, he was referring to the Applicant's age, the fact that he had not run his own business before, and that the premises were already fitted out so would not require a capital outlay;
- The Applicant described his role at the Regency as being like a 'head waiter' responsible for training of floor staff and the quality of front of house service, with no involvement in recruitment or administration.

6. The representations made by PS Jackie Booth on behalf of North Yorkshire Police, in writing and at the hearing. PS Booth referred to her statement at page 55 of the hearing papers and the statements of the witnesses submitted as additional information [*redacted versions of the three exempt statements to be published in a supplement to the agenda*]. She confirmed that the police objected to the application on the grounds that to grant it would undermine the licensing objectives of prevention of crime and disorder and prevention of public nuisance. This was due to the location of the premises with the CIA Red Zone and the police's view that the Applicant was not suitable to be the licence holder and DPS. She noted that this was the second application to be submitted for these premises, the first one having been refused.

PS Booth went on to state that she and PC Hollis had contacted the Applicant at the Regency restaurant after receiving the current application. At that time, he had told them that he wasn't aware of the previous application and that he had completed the form for the current application himself. Today, however, it had been stated that Wen Lin Chen had completed the form. Referring to the additional papers, PS Booth confirmed that the conditions now proposed were acceptable, with the exception of Condition 13. This was because there were concerns around the involvement of a number of people in addition to Zhong Le Chen. She re-iterated that the police did not consider the Applicant a suitable person to be the premises licence holder and DPS, due to the exceptional circumstances set out in the

witness statements. In particular, he had been present on occasions when police and licensing officers visited the Regency and found breaches of the licence and Immigration officers removed persons with no right to work in the UK. He had told officers that he was responsible for operating the premises at that time, and Section 19 notices had been issued to him personally. As a personal licence holder, he would have been aware of the implications of this. Given all the circumstances, the police were of the opinion that the Applicant was a 'cloak' for the involvement of other persons in the new application.

Helen Sefton, Licensing Officer at City of York Council, was called as a witness. She stated that on the two occasions she had visited the Regency (in 2017 and 2019) she had discussed staff training with the Applicant and he had confirmed he was the person responsible for that. He had also admitted that the address on his personal licence was incorrect and should be altered, and she had advised him to inform the responsible authorities.

In response to questions from Counsel for the Applicant:

- Helen Sefton agreed that it was not uncommon for licence holders to fail to inform the authorities of a change of address.
- PS Booth confirmed that the Applicant had not been prosecuted in connection with investigations at the Regency and had no criminal convictions. He had stated at the time of the visits that he was operating the premises; however, there was no suggestion he had been the DPS of the Regency. Action had been taken against other parties, the result of which was a review of the licence of the Regency. There had been no criminal proceedings.
- PS Booth confirmed that she had had interactions with the Chen family and that she knew them as persons involved in operating licensed premises. She stated that, in her experience, they had failed to take responsibility for these activities.

In response to questions from members of the Sub-Committee, PS Booth stated that, from additional information provided, she believed the Applicant to be a front man for the Chen family, put forward by them to be the licence holder and DPS because he had no convictions. She remained concerned that, in view of past events, his involvement with them would continue as they are investors and stakeholders in the premises.

The Representors and the Applicant were each then given the opportunity to sum up.

PS Booth summed up, re-iterating the concerns of the police in respect of the Applicant's suitability to be the licence holder and DPS given his previous statements, which were inconsistent with what he was now saying, and his involvement at the Regency. The question was whether he would have any control, or be able to ensure that the conditions offered were adhered to. His record demonstrated that he had not done so in the past, although he was fully aware of what was required. She stated that it was for the sub-committee to consider whether the Applicant was a fit person to hold the licence and suggested that the application be refused even if there were an alternative DPS.

Mr Craig summed up on behalf of the Applicant. He confirmed that the application form had been completed by Alan Man, an interpreter [*he later corrected this to Wen Lin Chen*]; however, the Applicant had read it through and made amendments. He stated that the Applicant had taken steps to address the police concerns by the proposed conditions, had taken out a lease on the premises and not tried to hide the involvement of the previous applicants. A condition had been proposed to deal with this issue. The premises were low-risk. The Applicant was a man of good character, aged 57, and had worked in restaurants for a long time. Mr Craig invited the Sub-Committee to grant the application, stating that there was nothing to support the suggestion that the Applicant was connected with the Chen family in the way the police had implied and it was not right to punish him because of where he had worked previously as he was not the DPS or licence holder.

The following point of clarification was provided:

- PS Booth confirmed that the proposed condition no.13 remained unacceptable to the police as a method of excluding other parties from involvement in the running of the premises, because the landlords would still have right of entry.

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 noted that a fifth option was to refuse to specify a person in the licence as a premises supervisor (section 18(4)(c)).

Resolved: That the application for a premises licence be rejected.

Reasons:

- (i) The Sub-Committee must promote the licensing objectives and must have regard to the Guidance issued under section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy.
- (ii) The premises are located within an area where a Cumulative Impact Policy applies. It is within the red zone of this area. The Statement of Licensing Policy sets out that this special policy will create a rebuttable presumption that applications for new premises licences that are likely to add to the existing cumulative impact will normally be refused following receipt of representations, unless the applicant can demonstrate why the operation of the premises involved will not add to the impact of premises with this zone. The policy is not absolute and the Sub-Committee is required to consider the circumstances of each application on its merits.
- (iii) The Sub-Committee notes in particular the concern of the Police that granting the application would add to the cumulative effect of having more licensed premises in the CIA.
- (iv) The Sub-Committee has considered the submissions made by Counsel for the Applicant, the style of the premises and the package of conditions submitted shortly before the hearing. It is noted that the Applicant recognised that the original operating schedule proposed was inadequate and that a large number of robust conditions have now been circulated by the Applicant and considered by the Police to be satisfactory, save for condition 13. However, the Police do not have confidence that the premises would be run and operated in accordance with the conditions and that the Applicant would be a responsible licence holder (or DPS) and consider that the licensing objectives would not be upheld.

- (v) The Sub-Committee considers that the evidence of the Police carries great weight in accordance with paragraph 9.12 of the statutory Guidance.
- (vi) The Sub-Committee has to be confident that the applicant would comply with any licensing conditions imposed and is concerned that without good standards of management the licensing objectives would not be upheld. The Sub-committee concludes that it is not satisfied that there would be good standards of management and that licensing objectives would be upheld in light of the Applicant's track record of involvement at the Regency when there were serious failings at those premises. They also share the Police concerns that as premises licence holder, the Applicant would be linked to investors who would be likely to undermine the crime and disorder objective given their history with the Regency.
- (vii) The Sub-Committee is not satisfied from the evidence before it that the Applicant has rebutted the presumption against granting a licence for a new premises situated in the CIA and concludes on the evidence that granting the licence would undermine the licensing objective of preventing crime and disorder and public nuisance.
- (viii) Even if the Committee had reached a view that the Cumulative Impact Policy did not bite, it would still have refused this application on its merits. This is for the reasons set out in (vi) above.

Cllr A Mason, Chair

[The meeting started at 10.00 am and finished at 1.20 pm].