
Meeting	Licensing/Gambling Hearing
Date	17 June 2021
Present	Councillors Galvin, Hook and Norman

1. Chair

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

2. Introductions

The Chair introduced those present at the hearing: the members of the Sub-Committee, the Applicant (Hannah McCarten), the Applicant's witnesses (Elliot Hardy and David Burgess), the Representors, the solicitor for some of the Representors (Frantz Gregory), the Licensing Manager presenting the report, the Legal Adviser, the Senior Legal Officer shadowing the Legal Adviser, and the Democracy Officer.

3. 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. No interests were declared.

4. 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.

5. Minutes

Resolved: That the minutes of the Licensing Hearings held on 29 April 2021 and 24 May 2021 be approved as a

correct record in each case, to be signed by the Chair at a later date.

6. The Determination of an Application by Hardey Ltd. for a Section 18(3) (a) Premises Licence in respect of 7 Castlegate, York, YO1 9RN (CYC-068419)

Members considered an application by Hardey Ltd. for a premises licence in respect of 7 Castlegate, York YO1 9RN.

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. Public Safety
3. The Prevention of Public Nuisance
4. The 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 papers before it, including the additional papers published in the three Agenda Supplements and the written representations.
3. The Licensing Manager's report, and her comments at the Hearing.

The Licensing Manager outlined the report and the annexes, noting that the premises were in the cumulative impact area (CIA) and confirming that the Applicant had carried out the consultation process correctly. She highlighted the conditions agreed by the Applicant with North Yorkshire Police and the Public Protection Team, as set out in Annexes 5 and 6 to the report, and noted that these included changes to the operating hours. She drew attention to the representations received from local residents as set out in Annex 8, and the additional information in Agenda Supplement 2. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to a question from the Sub Committee Legal Advisor, the Licensing Manager clarified that there were 5 options open to the Sub Committee, all of which were set out in her written report contained in the agenda.

In response to a question from Mr Gregory, the Licensing Manager confirmed that the premises were situated in the red zone of the CIA.

4. The representations made by Hannah McCartan on behalf of Hardey Ltd. (the Applicant).

The Applicant stated that she understood and respected the concerns of the Representors and would like to reassure them of her intentions in respect of the premises, which would operate as a café bar specialising in organic wines and serving small plates and cheeses. Its target market would be professional people looking to enjoy a drink and something to eat, for example after work. Under the revised hours agreed with the police it would operate from 11am to 11pm on Sundays to Thursdays and 11 am to midnight on Fridays and Saturdays. This was in line with existing bars in the area. She believed that the premises would enhance the street, in accordance with the aims of the Castlegate redevelopment.

The Applicant went on to state her commitment to upholding the Licensing Objectives and described the measures she would take to prevent public nuisance in particular. She and her business partner had over 20 years' experience in the trade and their employees would be fully trained in all areas, including regular training on how and when to refuse to serve alcohol. Challenge 25 would be introduced, and records of refusals kept. The need for door staff would be assessed, an Apex radio system would be used, and responsible drinking would be promoted. Only groups of 6 people or fewer would be admitted, due to the size of the property and so as not to add to congestion in the street. There would be signs indicating this policy and asking customers to respect the neighbours. The doors would be shut to reduce noise and there would be sound absorbing panels on the ceiling. The outside areas would close at 9pm and 10pm. Music would be low-level to allow conversation. Bins would be emptied at appropriate times and CCTV would be installed in accordance with the agreed conditions. There was no intention to block the passage to the rear courtyard; this would be kept clear at all times. It was in the interests of the business to clear away rubbish, and there would

be a cleaning schedule including daily sweeping. Off sales would be in recyclable containers and ashtrays would be provided. The business would create new jobs, work with local suppliers and artists and was intended to be used by local residents. It would continue to promote Castlegate as a 'signature' street to visit in York.

In response to questions from the Representatives and Mr Gregory, the Applicant confirmed that:

- There was no kitchen on the premises, but there was a food preparation area for serving small plates of seasonal food, and service of alcohol would be ancillary to food.
- The operating hours were 11am to 11pm Sunday-Thursday and 11am-midnight Friday-Saturday; the front external area would close at 10pm and the rear at 9pm; food and drink would be served ancillary to one another; there would be background music only.
- The noise regulation measures already described would continue to operate in summer, and fans could be installed in hot weather. The alleyway also acted as a sound break.
- The Applicant's employees would clean the area directly outside the premises – it was important to the business to keep the street clean.
- Although Hardy Ltd. had been set up only recently, the Applicant and her business partner both had previous experience of working in restaurants and pubs.

In response to questions from the Chair of the Sub-Committee, the Applicant confirmed that:

- The aim was for a 'happy medium' mix of table service at the front of the premises and a bar at the rear, creating a relaxed atmosphere.
- The conditions agreed with the police required alcohol to be ancillary to the sale of food.
- 'Tapas style' food would be served until 10pm.

5. The representations made by Mike Taylor, a local resident.

Mr Taylor stated that, in view of the amendments made to the application and the Applicant's responses to questions at the hearing, the representations he had made were no longer valid and he was happy for the application to be granted, on the basis that the service of alcohol would be ancillary to food.

6. The representations made by Bih Toie Wong, on behalf of herself and other residents of 11 Castlegate.

Miss Wong stated that the application seemed to have morphed into something different from the original, but on behalf of her household she still had concerns about noise. It was inevitable that people would open doors and windows on a hot day, and this would have an impact on residents of nos. 9 and 11 and of the Coppergate Centre, which overlooked the back of the premises. However well-intentioned the Applicant, it was a legal fact that once customers had left the premises they were no longer the responsibility of the proprietors. 11 Castlegate fronted Friargate and there had been problems in the past with people urinating and being sick; residents did not want a repeat of that. The Applicant couldn't do anything to address the situation after customers had left. Castlegate was not a large street – it was only 12 feet wide. Residents wanted to live in harmony with commercial tenants, but there were already establishments like this on along the street. She did not think the premises would enhance Castlegate, which was a historic street that encompassed Fairfax House and the Castle Museum.

In response to a question from the Chair of the Sub-Committee, Miss Wong confirmed that her central point related to the cumulative impact of the premises within the CIA red zone. She pointed out that there were already three licensed premises (bars) along the street – the Blue Boar, Pairings wine bar and another that sold gin, plus three restaurants, including Rustique, which meant that the area was already saturated.

7. The representations made by Frantz Gregory, Solicitor, on behalf of members of the Dykes family and Mr Sheldon.

Mr Gregory drew attention to his client's objections at pages 65-77 of the agenda papers and stated that he was not convinced that drinking would be ancillary to food at the premises. Castlegate was largely residential, with at least 70 residents in the vicinity of the premises. The premises were very small and reliant on service in the rear yard and front pavement areas. Due to conditions on the previous Listed Building planning consent, no air conditioning was permitted in the back yard, so the premises could only be aired by opening doors and windows. This raised the issue of noise pollution, which he doubted could be mitigated sufficiently to satisfy the licensing objectives.

Mr Gregory went on to state that there was already a problem with street drinking in Castlegate, it was saturated, and the premises were located in the red zone, this being a lived experience for the residents. The proposals were not sufficiently clear or detailed in terms of meeting the licensing objectives. If those objectives could not be met, the application must be refused. Although conditions had been agreed with the police, including removing the external areas from being part of the licensed area, the Applicant seemed adamant that customers would still be served in those areas, as indicated in paragraph 19 of the report. There was a complex mix of ownership and easement rights, so the rear yard should be excluded or clearly conditioned. He was concerned that the North Yorkshire Police and Public Protection Unit may have relied upon the misleading representations in the plans submitted by the Applicant referred to at pages 66-69 of the papers when mediating with the Applicant; this needed further clarification.

Mr Gregory submitted that the public safety objective could not be met without representations from the North Yorkshire Fire Service. There was a complicated network of fire exits and easements at the premises and one door supervisor could not manage the volume of drinkers. Nos. 9a, 9b and 11a all had easement rights over the alleyway and rear yard for deliveries. Access could not be restricted and this was a concern if the yard was to be used to serve customers and for smoking, as it was not large enough. There was also evidence of public nuisance in that the decision of the licensing application for the Blue Boar had restricted the use of its rear yard to the storage of bins. Any use of the yard would create noise and cause nuisance to surrounding properties, all of which had single glazed windows. His client's elderly mother would experience nuisance, and an infringement of her right to a private and family life in contravention of the Human Rights Act. His client and other Representors had also experienced rising crime and social disorder along Castlegate on Friday and Saturday evenings, as stated in the representations at pages 69 and 70-71. Congregation in the rear yard would lead to a serious risk of crime, as private items stored in the area would be at risk of theft or damage.

In response to questions from the Chair of the Sub-Committee, Mr Gregory confirmed that he wanted the use of the rear yard to be excluded altogether rather than conditioned. He did not

accept that there could be table covers in the yard even without a licence. The issue was that it was a service yard and fire escape.

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

Mr Taylor confirmed that he had nothing further to add.

Miss Wong summed up, stating that she had little to add to the submissions already made. She was not convinced that the Applicant could control the noise nuisance. Castlegate was already saturated with establishments and the application was not bringing anything to enhance the area. She was concerned that there would be an increase in problems with litter and noise nuisance should the application be granted. The Applicant's intentions were clear but they could not control the behaviour of their customers once they had left the premises.

Mr Gregory summed up, stating that the council should refuse all applications in the red zone. He said the application had been insufficiently prepared and lacked clarity with regard to door supervision, noise nuisance, infringement on private life, links to the community, discouraging irresponsible drinking and behaviour, and fire regulations. There were no representations from the fire service. No conditions had been offered in respect of picking up glasses / litter, music levels, smoking, provision of contact details to residents, or vertical drinking. The rear yard should not be used at all except for deliveries. Other uses would cause problems for residential properties, with noise, smoking, and people opening doors. There were so many other licensed premises in the street that the area was saturated. Therefore the licensing objectives could not be met.

The Applicant summed up, stating that the company's intention was to attract a clientele that would not indulge in bad behaviour. CCTV was installed already both inside the building and at the rear. The company had strong connections with the police; they respected their neighbours and took their concerns seriously. If complaints arose, they would look at adjusting their procedures. The rear yard was not part of the application. The fire service had not yet carried out a risk assessment because the premises were currently empty, but this would be done. The alley and access will be kept clear. There would be a cleaning

schedule for the front and rear of the premises and the company would carry out their own risk assessment of those areas.

Members of the Sub-Committee sought clarification on the former use of No. 7 Castlegate. The Applicant stated that it had previously been a vape shop. Mr Gregory stated that, prior to that, it had been an art shop.

The Sub-Committee Legal Advisor sought clarification from the Licensing Manager regarding the conditions agreed with the Police and Public Protection, the interaction between the planning and licensing regimes, and the comments made by Mr Gregory in respect of the Fire Service and the Blue Boar licensing decision.

The Licensing Manager confirmed that:

- The police condition in respect of 'opening hours' on page 47 was not enforceable and should be amended to refer to 'hours of licensable activities'.
- Condition 2 on page 49 should require the noise management plan to be submitted to Public Protection rather than to City of York Council. There was no requirement to obtain planning permission prior to submitting a licensing application; in this case, the Conservation Officer was already involved and the relevant Listed Building application had been submitted.
- The Fire Authority could not use the Licensing Act, as it was governed by its own legislation.
- Any changes imposed as part of the Listed Building consent that conflicted with the licensing conditions would require an application for a minor variation to the licence by the Applicant.
- She had no updates in respect of the Blue Boar; however confirmed that there had been changes to the operation of some licensed premises due to the Coronavirus pandemic, and the extension of pavement café areas.

Mr Gregory wished to raise an issue regarding the premises licence for the Blue Boar premises. He confirmed when asked by the Sub-Committee Legal Advisor that this was information included in the written representations in the agenda pack.

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 they 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: Refuse to specify a person on the licence as premises supervisor. This option was **rejected**.

Option 5: Reject the application. This option was **rejected**.

Resolved: That Option 2 be approved and the application be granted, with the following modified/additional conditions added to the licence:

- a) Licensable activities to be 11:00-23:00hrs weekdays and Sundays, and 11:00-01:00hrs Fridays and Saturdays.
- b) A documented noise management plan shall be submitted to and approved by the Public Protection Team of the City of York Council within two months of the licence being granted, once approved it shall be implemented. The noise management plan will also include a procedure for investigating noise complaints.

The Operating Schedule and the conditions agreed with North Yorkshire Police and the Public Protection Team contained in the published Agenda shall be included in the licence, unless contradictory to the above conditions.

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 Sub-Committee noted that the premises were located within the red zone of the Council's cumulative impact assessment area (CIA), and that the Applicant had reached an agreement with both the North Yorkshire Police and the Public Protection Team, with the agreed conditions contained in Annex 5 and 6 the Agenda respectively.

(iii) The Sub-Committee considered very carefully the representations of the Applicant, both those contained within the agenda and those made in person at the hearing, and gave great weight to the business operation as described, size of the premises, the experience of the Applicant and her business partner, their proposed use of the outside areas, her assurance that they would continue their engagement with their neighbours, their consultation with responsible authorities, and agreed conditions set out in Annex 5 and 6.

(iv) The Sub-Committee noted the withdrawal of representations by Mr Taylor at the hearing.

(v) The Sub-Committee considered very carefully the representations of Ms Wong, both those contained within the agenda and those made in person at the hearing, that the application was within the CIA red zone, her opinion that it was already a saturated area, there could be an increase in noise and other anti-social behaviours, the potential impact of warm weather on the opening and closing of windows and doors, what the business operation described would add to the street, her lived experience and her proximity to the premises.

(vi) The Sub-Committee considered very carefully the representations of Mr Gregory on behalf of his clients, both those contained within the agenda and those made in person at the hearing, in particular his clients concerns regarding the proposed use of the premises, their use of the outdoor areas, potential for noise pollution, current saturation of premises, increases in anti-social behaviour and crime, the lived experience of his clients, his clients' proximity

to the premises, and that the application should be refused as it was within the CIA red zone.

(vii) The Sub-Committee noted the written representations by those persons who did not attend the hearing or instruct another to speak on their behalf, (Agendas Annex 7 and 8).

(viii) The Sub-Committee was satisfied, from the information contained in the Agenda and the three Agenda Supplements and the representations of the Applicant at the hearing, that the Applicant had demonstrated that the cumulative impact would not be added to. The Sub-Committee was further satisfied that with the two modified conditions set out above that the premises would operate without undermining the licensing objectives.

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

Cllr G Norman, Chair

[The meeting started at 10.00 am and finished at 11.42 am].