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Meeting	Licensing/Gambling Hearing
Date	9 August 2021
Present	Councillors Galvin, Hook and D Myers

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## 7. Chair

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

## 8. Introductions

The Chair introduced those present at the hearing; the members of the Sub-Committee, the Applicant, the Licence Holder (Zoe Sinclair of Ambiente Tapas Limited), the Licensing Manager presenting the report, the Legal Adviser, the Senior Legal Officer shadowing the Legal Adviser, and the Democratic Services officer.

## 9. 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, that they might have in the business on the agenda. None were declared.

## 10. 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.

## 11. Minutes

Resolved: That the minutes of the Licensing Hearing held on 17 June 2021 be approved as a correct record, to be signed by the Chair at a later date.

**12. The Determination of an Application by Mr R C Price for a Section 52(2) Review of a Premises Licence at 59 - 63 Walmgate, York, YO1 9TY (CYC-060429)**

Members considered an application by Mr R C Price for a review of the premises licence at 59-63 Walmgate, York YO1 9TY.

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

- The prevention of public nuisance.
- The prevention of crime and disorder.

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 Licensing Manager's report and her comments at the Hearing.

The Licensing Manager outlined the report and the annexes, highlighting the additional papers submitted by the Applicant as published in Agenda Supplement 1 and confirming that the consultation process had been carried out correctly. She stated that no representations had been made by North Yorkshire Police, and drew attention to the representations made by the Environmental Protection Unit (EPU), noting that these neither supported nor opposed the application but instead made suggestions regarding noise management. She also drew attention to the additional papers submitted by the Licence Holder, as published in Agenda Supplement 2. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to questions from the Applicant, the Licensing Manager confirmed that:

- Planning were consulted on all licensing applications and had the opportunity to make representations,

but had not done so in this case. *[The Applicant responded that he was concerned at the lack of such representations, as he believed the premises were operating in breach of Planning conditions.]*

- All complaints received about a premises were logged by Licensing officers, who might then consult with another responsible authority or contact the licence holder.
- Officers would normally liaise with the EPU on complaints about noise.
- Condition 6 of the licence, requiring a minimum of 10 seats in the courtyard area, had been requested by the police during consultation on the minor variation.

4. The representations made by the Applicant in writing and at the hearing.

The Applicant stated that the evidence he had submitted showed that the council and the Licence Holder had failed to promote Licensing Objectives 1 and 3 and that the courtyard area of the premises was not suitable to be licensed. He therefore proposed that this area be removed from the licence, in order to restore his position and remove a public nuisance. He said he had never suggested that a statutory nuisance, as defined in the council's Licensing Policy, was being caused, but the council had chosen to hide behind that definition and had ignored his complaints.

The Applicant confirmed that he was only concerned with the use of the rear courtyard area of the premises; he was not contesting the internal area at the premises. Referring to Agenda Supplement 1, he said that pages 5 and 9 illustrated that this was not part of Walmgate's commercial zone; that the cycle store shown on the plan at page 11 had recently been demolished to accommodate additional seating; and that page 7 showed the courtyard being used by 18 customers and resembling an overcrowded beer garden. He said that he had always sought a balance between his own needs and those of the business operation and, unlike Ambiente, had followed the correct procedures. However, the balance had now shifted in favour of the business. Concerns had been expressed as far back as 2014 about the suitability of the area for use as a café and in 2016 (during the Planning process) it was

stated it should not be licensed; the council had failed to address these concerns.

He noted that the original licence conditions restricting the number of customers in the courtyard to 12, with service of alcohol to be ancillary to food, and noise not to be audible at the façade of neighbouring premises, had been agreed by Ambiente and it was their responsibility to decide how to achieve them. His own complaints, and the submissions made by the EPU, showed that it was not possible to operate in the yard without creating a public nuisance. Both the EPU and Ambiente had admitted that a public nuisance had occurred, as indicated at page 73 of the agenda papers and page 23 of Agenda Supplement 2. The effect of the recent approval of minor variations to the licence had been to increase customer numbers by 60%, extend the opening hours, and enable up to 20 customers to drink alcohol outside without food. This did not promote the licensing objectives. He re-iterated that the variations should be removed and the external area excluded from the licence.

In response to a question from the Sub-Committee Members, the Applicant stated that he did not object to the noise plan suggested by the EPU but that he did not support the removal of Condition 25 (now 26), which he considered to be clear and enforceable:

5. The representations made by Zoe Sinclair on behalf of the Licence Holder, Ambiente Tapas Limited, in writing and at the hearing.

Ms Sinclair stated that Ambiente was a food-led business which had operated for the past 14 years without complaint, and that the receipt of 14 complaints from one person spoke more about the complainant than it did about the operator. She said that the complaints resulting in warnings being issued in 2018 had occurred before the installation of air conditioning, and were due to the windows and doors of the premises being left open. Air conditioning had been installed in July 2018. None of the complaints about noise in the courtyard area had been upheld. The Applicant was one of more than 15 neighbours close to the courtyard. In her view the noise

from this area did not amount to a public nuisance; at worst, it was a tolerable annoyance.

She further stated that her staff lived in fear of the Applicant's complaints and that he would lean over the balcony filming; this was affecting the customers as well as staff. The photographs in Agenda Supplement 2 showed people sitting down in an orderly manner. The business had had a 'hellish' 18 months and had had to reduce its indoor capacity by 20 covers. She considered Ambiente had been a good neighbour and that the application was a case of extreme 'Nimbyism'.

In response to questions from the Applicant, Ms Sinclair stated that:

- The additional papers in Agenda Supplement 2 referred to the Applicant as a 'serial complainer' because he was the only person who had complained about operations at any Ambiente premises in 14 years.
- The Facebook comments at page 37 of Supplement 2 had been included with reference to submissions made by a person living above the premises and were already in the public domain.

In response to questions from the Sub-Committee Members, Ms Sinclair confirmed that:

- She had asked for Condition 26 (previously 25) to be included in the original licence but the condition was badly worded, and she now supported the suggestion that it be removed.
- No music was played in the courtyard.

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

The Licence Holder summed up, stating that there was no case to answer in respect of the claim of public nuisance, and supporting the EPU's suggestion to remove Condition 26 from the licence and substitute a condition requiring a noise management plan.

The Applicant summed up, stating that the Public Protection officer had confirmed that a public nuisance had occurred and that Ambiente did not understand that the definition of public

nuisance could apply to an individual. He said he had met with Ambiente at an early stage and told them that he was very concerned about the use of the back yard as licensed premises, but they had chosen to press on against the concerns of himself and other neighbours. He said that the opportunity to correct Condition 25 (now 26) should have been taken at the original hearing, as the Chair had been fully aware of the issues with this condition. Removing it now would leave no protection against noise from the outside space. The issue was that a public nuisance was being created and this needed to be addressed. The variations had made matters worse, increasing the number of customers outside by 150%. The fact that the location did not lend itself to being licensed was supported by the EPU. The last three years had been a trial period, but the experiment had failed.

Members of the Sub-Committee then sought a point of clarification from the Licence Holder regarding the opening times of the external courtyard. It was confirmed that the operating hours were 11:00 am to 7:30 pm daily, with the area to be cleared by 8:00 pm.

By virtue of Section 52(4) of the Licensing Act 2003, the Sub-Committee had to determine whether or not to take any of the following steps, as they considered appropriate for the promotion of the licensing objectives:

Option 1: To modify the conditions of the licence (i.e. to alter, omit or add any new condition). This option was **approved**.

Option 2: To exclude a licensable activity from the scope of the licence. This option was **rejected**.

Option 3: To remove the Designated Premises Supervisor. This option was **rejected**.

Option 4: To suspend the licence for a period not exceeding three months. This option was **rejected**.

Option 5: To revoke the licence. This option was **rejected**.

Resolved: That Option 1 be approved and that the conditions of the licence be modified, with Condition 26 to be omitted from the licence the following condition to be added:

“A documented noise management plan shall be submitted to and approved in writing by the Public Protection Department of City of York Council within

two months of the premises licence review decision date. Once approved it shall be implemented. The noise management plan will also include a procedure for investigating noise complaints.”

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 licence, the subject of this review application, was contained in Agenda Annex 2, and that any/all references in the written and oral representations to condition 25 of the premises licence were taken by them to be a reference to condition 26 of the premises licence.

(iii) The Sub-Committee noted that the consultation had been properly completed. They further noted that no representations had been submitted by either the Local Planning Authority or North Yorkshire Police.

(iv) The Sub-Committee carefully considered the representations of the Applicant, both those contained within the papers and those made in person at the hearing, and gave great weight to the following:

- The declaration by the Applicant that his review was only concerned with the use of the rear courtyard area of the premises,
- The evidence from the Applicant regards the complaints made; and
- The Applicant’s concern that his noise complaints were not being resolved.

(v) The Sub-Committee carefully considered the representations of the Licence Holder, both those contained within the papers and those made in person at the hearing, and gave great weight to the following:

- The evidence from the Licence Holder regarding the complaints received;

- No music was played in the rear courtyard area;
- The effect of the Covid 19 pandemic and resulting Regulations on the business operation;
- They had proposed the wording of Condition 26 in the original licence, and accepted that it was badly worded; and
- The Licence Holder welcomed the Licence condition variation proposed by the Public Protection Officer in his written representation.

(vi) The Sub-Committee carefully considered the written representations of the Public Protection Officer contained within the papers (Agenda Annex 4), and gave great weight to the following:

- His summary of complaints linked to these premises;
- The effect of the Covid 19 pandemic on the Licence Holder's business in particular their use of the rear courtyard area of the premises; and
- The proposed Licence condition variation.

(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, (Agenda Annex 6).

(viii) The Sub-Committee were satisfied from the information contained in the Agenda, the two Agenda Supplements, and the representations made by the Parties at the hearing, that the appropriate step to be taken for the promotion of the licensing objectives, in accordance with Section 52 of the Licensing Act 2003, particularly with regard to the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder, was to modify the conditions of the licence as set out above.

Cllr A Hook, Chair

[The meeting started at 4.49 pm and finished at 6.24 pm].