
Meeting	Licensing/Gambling Hearing
Date	23 May 2022
Present	Councillors Galvin, Hook and Melly

41. Chair

Resolved: That Cllr Melly be elected to chair the hearing.

42. Introductions

The Chair introduced the Sub-Committee Members, the Legal Adviser and the Democratic Services officer, and invited the other parties present - the Senior Licensing Officer, the Applicant (Arthur Ferraioli and Daniel Ferraioli of Clifton Hotel Ltd.), the Applicant's solicitor, Counsel for the Applicant, and the Representors – to introduce themselves.

43. Declarations of Interest

Members were invited to declare at this point in the meeting any disclosable pecuniary interest or other registerable interest they might have in respect of business on the agenda, if they had not already done so in advance on the Register of Interests. No interests were declared.

44. 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.

45. Minutes

Resolved: That the minutes of the Licensing Hearing held on 11 April 2022 be approved as a correct record, to be signed by the Chair at a later date.

46. The Determination of a Section 18(3) (a) Application by Clifton Bridge Hotel Ltd. for a Premises Licence at Clifton Bridge Hotel, 23 Water End, Clifton, York, YO30 6LL (CYC-069581)

Members considered an application by Clifton Bridge Hotel Ltd. for a premises licence in respect of Clifton Bridge Hotel, 23 Water End, Clifton, York YO30 6LL.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objectives were relevant to the 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 papers before it, and the written representations.
3. The Senior Licensing Officer's report, and her comments at the Hearing.

The Senior Licensing Officer outlined the report and the annexes, noting that the premises were not in the cumulative impact area (CIA) and confirming that the Applicant had carried out the consultation process correctly. She noted that the Applicant's previous application had been withdrawn in October 2021, that the current application was for the sale of alcohol only, and that there had been no representations from responsible authorities. She drew attention to the representations from local residents contained in Annex 4. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to questions from the Representors, the Senior Licensing Officer confirmed that:

- It would not be appropriate for Licensing to invite the Representors from the previous (withdrawn)

application to make representations in respect of this application.

- The former licence for the premises (*circulated to all parties before the hearing*) had been granted in 2005 and included conditions carried over from the 1964 Licensing Act.
- The proposed Designated Premises Supervisor (DPS), Daniel Ferraioli, held a personal licence.
- There was no smoking area marked on the plan.
- The proposed numbers of covers for the indoor and external areas were not shown on the plan.

In response to questions from the Panel, she further confirmed that:

- The Public Protection team had received no complaints about the premises since the former licence lapsed in 2018.
- The police had sent a 'no objections' response to the application; this was presumably because they were happy with the conditions in the operating schedule.
- Consumption of alcohol on the premises was not a licensable activity.
- Although the external area was included in the application, any proposal to place a permanent bar there would require a further application.
- No off-sales had been applied for.

In response to a question asked by a Representor regarding the previous (withdrawn) application, the Senior Licensing Officer later confirmed that the previous application had included 40 covers in the external area, late night refreshment, and alcohol sales on and off the premises. It had not included a requirement to serve alcohol only with a meal.

4. The representations made by Charles Holland, Counsel, on behalf of the Applicant.

Mr Holland stated that the application was for a long-established guest house that was in the process of becoming a small hotel. He stressed that the sub-committee must consider the application before it, and not make comparisons with any previous application. He noted that the Local Authority was satisfied that the legal consultation requirements had been complied with and

drew attention to the basis of the application as set out on page 20 of the agenda papers.

Mr Holland went on to say that the restaurant would seat up to 43 people indoors and up to 20 in the external area; the operation would be food-led, with alcohol to be served only with meals, and there would be no bar. The hotel was family-run; the Director, Arthur Ferraioli, was resident on the premises and had lived there for 17 years, so had a vested interest in ensuring that it was not the source of crime or disorder. Mr Ferraioli's son, Daniel, would be the DPS. The application sought only the supply of alcohol for consumption on the premises, as defined on the plan at page 45 of the papers, including the ground floor internal and external areas, from noon to 11 pm. This would provide more control of the operation, through regulation. The effect of conditions agreed with the police (page 42, under 'D') was that alcohol sales would cease at 10:30 pm and use of the external area would cease at 9 pm. There was also a ban on external speakers. The intention was to provide drinks for people having a meal on the premises, either hotel occupants or non-occupants, if they had booked a table. It was not intended to trade as a pub or nightclub, contrary to the impression given by the suggested conditions in some of the representations. For a venue of this size, the operating schedule (pages 39-43) was very extensive, with a comprehensive suite of conditions. These included the service of alcohol only with a meal (condition 3), and conditions suggested by the police in response to the previous application, some of which went beyond the requirements of the Licensing Act. In theory drinks could be served from a mobile bar on the terrace, but this would be a breach of condition 3.

In conclusion, Mr Holland submitted that there was no attempt to 'hoodwink' the sub-committee, that the restaurant capacity as set out was very modest and that the Applicant had accepted all the conditions suggested by the police in response to the previous, more extensive, application. There were no objections from the police, who under the s.182 guidance were the main source of advice on public disorder, nor from Environmental Health (in relation to the risk of patrons falling into the river), and he did not consider that any further conditions were necessary.

In response to questions from the Representors, Mr Holland stated that:

- The Applicant's business plan was a matter of commercial confidentiality unless it impacted on the Licensing objectives.
- A food-led restaurant serving alcohol was a conventional aspiration for a hotel that had previously been licensed.
- The definition of a 'meal' had deliberately not been given in the operating schedule to avoid becoming bogged down in arguments like those that had arisen during the pandemic.
- Traffic, parking and road safety were matters for planning, not licensing.

[The Legal Adviser confirmed that these matters were not relevant to the application as the restaurant could operate without a licence].

- He did not accept that this was a 'sensitive' area, and the DPS had a lot of experience of working at the hotel.

Daniel Ferraioli confirmed that he did not have experience of operating a licensed premises.

- The Applicant's policy was not to allow smoking anywhere on the premises, including the external area.

Arthur Ferraioli confirmed that there was an area in the car park where people could smoke, with a bin for disposing of cigarettes, but it was not within the red line on the plan.

- There was no intention to play music on the premises, except for background music.
- The condition suggested by one of the Representors (condition 6, p.76) was unworkable in a hotel with numerous external doors; there was no evidence of any noise breakout in the past and no representations from Environmental Health.
- The Applicant had no intention of putting on live music and the licence would be liable to review if he did.
- *In response to a question about how stag and hen parties would be excluded, Arthur Ferraioli stated that there would be security on the gate preventing large groups from entering, that it was a family*

oriented venture, and that a pre-booking system would be in place.

- The outside area by the front door was within the red line on the plan, but the Applicant did not want customers dining there - the intended dining area was marked on the plan.

Arthur Ferraioli confirmed that the front area was a garden.

- Although there was nothing to prevent people congregating around the front door, on a commonsense basis this was unlikely to be a frequent occurrence.
- In terms of consultation with local residents, the Applicant had complied with the legal requirements.

In response to questions from the Sub-Committee, Mr Holland stated that:

- The Applicant was unaware of the incidents of disorder mentioned by the Representors; vulnerable people placed in the hotel for short-term accommodation sometimes arrived by police car, and this may have given the wrong impression.
Arthur Ferraioli confirmed that there had been no problems or incidents needing police attendance in 17 years; sometimes the police might attend in the course of their routine enquiries, but he could not prevent that.
- *In response to a question about seating in the 'smoking area' in the car park, Arthur Ferraioli confirmed that this was a free-standing garden trellis with 2 seats and could be removed if the neighbour so requested.*
- He was not sure why the ground floor bedrooms had been included in the application plan; there was no intention to supply alcohol in the bedrooms.
The Applicant's solicitor, Meghan Waldron, confirmed that the bedrooms could be excluded from the application.
- Whether it was appropriate to add further conditions (no vertical drinking outside, table service only outside, a cap on the number of covers) was a matter for the sub-committee.
- He had no instructions to accept any further conditions and did not feel any more were necessary to promote the Licensing objectives.

5. The representations made by Cllr Myers, Ward Member for Clifton, on behalf of Representors, including his fellow Ward Member, Cllr Wells.

Cllr Myers stated that he and Cllr Wells had received a large number of objections to the application from local residents and the wider community, based on the prevention of crime and public nuisance. From their work with residents, they were aware that noise and disturbance were already a problem in the area, including in recent years, and were concerned that this would worsen with the granting of the licence. There had been incidents, including fights, resulting in police involvement, and it was regrettable that the police were not present at the hearing. There was limited parking in the area, which was a Respark zone, and public safety along the riverside was also a serious concern. There was an anomaly in the application in relation to meals – how long could a meal last, and what was the definition of ‘meal’? The Applicant had offered no conditions in relation to this aspect, just an expression of goodwill.

Cllr Myers went on to say that, overall, residents felt that the application was inappropriate for the area. He understood that the hotel had advertised for stag and hen parties to make bookings. The council had focused on addressing the issue of stag and hen parties in the city centre but had not applied the same rigour to areas outside the centre. Residents were not taking an anti-business approach, but there was a lack of specific detail on issues including meals and smoking, and the Applicant had failed to engage with the community and allay their fears. Residents felt there were risks that crime in this quiet residential area would increase. For those reasons, the sub-committee should reject the application.

In response to questions from the Sub-Committee, Cllr Myers stated that:

- He accepted it was possible that an appeal to the magistrates’ court would succeed should the application be refused, but he believed there was a robust case in defence of the residents’ approach.

- He could not confirm whether parking restrictions in the vicinity were lifted at 6pm; there were various bays with different operating hours.
6. The representations made by Sandra Branigan, in a personal capacity, on behalf of one of the Representors.

Ms Branigan stated that, regarding the licence conditions, the test was what was appropriate to prevent public nuisance. The Applicant's intentions as set out in the operating schedule could be converted into precise, enforceable conditions. The prevention of vertical drinking was a standard condition and any questions regarding enforceability could be put to the Licensing officer. She confirmed that her representations related to public nuisance, the application being for an indoor and outdoor food and drink operation in a quiet residential street with no other licensed premises. She was not surprised that there were no objections from Public Protection, as their focus was on statutory noise nuisance. She was concerned that the Applicant had made no attempt to engage with residents, although they must be aware of the strong objections from those who would be close neighbours of the operation. The Applicant had demonstrated no real intention to be a good neighbour. She was very concerned that no risk assessment had been undertaken in relation to the smoking area, which was not part of the 'red line' area on the plan and therefore could not be subject to control. A number of people could be congregating, talking and smoking in the area, and in a quiet road even 2 people would sound like 20.

Ms Branigan went on to say that the relevant consideration for the sub-committee was the promotion of the Licensing objectives, including the prevention of public nuisance, and not commercial interests. There would inevitably be noise associated with the proposed use – loud voices, people coming and going, pick-ups and drop-offs, stag and hen parties, people loitering, doors slamming etc. There was a real likelihood that this would reduce the amenity and affect the environment of residents in this location. There would therefore be a material and negative effect upon residents. The operating schedule at page 39 of the papers was rather

vague, with nothing to prevent vertical drinking or noise and nothing to monitor the situation outside. Litter collection should be daily; the expression 'food-led' was very vague, and there was nothing to prevent having a bar outside. The external decked area was very large – it could easily accommodate the 40 covers requested in the previous application, and there was nothing to restrict numbers to 20. The schedule was not robust, and it would be appropriate to convert it into robust and precise conditions.

In response to questions from the Sub-Committee, Ms Branigan stated that:

- She did not consider that any conditions could be imposed that would prevent nuisance in this location; there would inevitably be noise, nuisance and reduction in residential amenity, and this was an inappropriate location for licensed premises.
- The license would result in additional noise and footfall because people would be attracted due to the service of alcohol, the premises advertised for stag/hen parties and took pre-bookings for meals, and when people drank they talked more loudly and congregated in groups.
- It was usual for external areas to be closed to customers after 9pm, rather than as indicated in the operating schedule (*under heading 'D'*).

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

Cllr Myers summed up, re-iterating the points made in his representations and stating that the evidence had become stronger as the hearing went on, and that he hoped this was clear to the sub-committee.

Ms Branigan summed up, stating that the sub-committee had heard that the DPS had no experience of running licensed premises, let alone in a sensitive area. There had been no attempt to engage with residents before submitting the application, which raised concerns about the Applicant's general approach and whether they would be a considerate neighbour. There had been no risk assessment regarding the smoking area and the character of the location had not been considered. The proposal to

operate until 11pm on 7 days per week would create unacceptable noise problems and reduce the amenity of those living in close proximity, which was a public nuisance under the Housing Act. Residents in the area had an expectation of quiet enjoyment – this was not a city centre location or an area like Bishopthorpe Road, and there were no other commercial properties in the vicinity. Promoting the interests of the local community was a relevant consideration and she did not consider it possible to impose conditions that would prevent noise nuisance in this location.

Mr Holland summed up for the Applicant, stating that this was a long established hotel which had been trading under the Applicant for nearly 20 years and had a long history of being licensed. Those objecting were treating the application as if it were a completely novel suggestion, when the intention was to restore what had previously existed for many years. There were no objections from the police, and the Applicant was the only person with any personal experience who had spoken at the hearing. No dates or descriptions had been provided of any adverse events, therefore the sub-committee should infer that there was no evidence of crime, disorder or public nuisance. There were no objections from Environmental Health. River safety was a very serious issue but not a matter to be dealt with by excluding the Applicant. The objections at the hearing had been made through a catastrophic lens and residents' fears had been 'hyped up'. It was unreasonable to suggest that a 14-bedroomed hotel seeking to offer what it used to in the past would be the cause of nuisance in the style of a nightclub and be a risk to public safety. The legal test was what would be reasonably appropriate in the area. The matter could be brought back to the sub-committee under review. With regard to conditions, whatever the Applicant offered would not be enough. The recent pandemic had shown the unreality of trying to define what a 'meal' was. The Applicant had accepted the police suggestions and the conditions offered had gone far enough.

Members of the Sub-Committee sought and received clarification from the parties on a number of points, as follows:

- Mr Holland confirmed that the Applicant would be happy for the ground floor bedrooms to be excluded from the licence, but he did not wish to submit a revised plan.
- Mr Holland confirmed that there was nothing in law to prevent the hotel to continue operating a restaurant without a licence, taking bookings from members of the public as well as from hotel guests.
- The Senior Licensing Officer confirmed that Public Protection were aware that the hotel was used to accommodate vulnerable people and had made no representations.
- Ms Waldron confirmed that Arthur Ferraioli would monitor the external area in conjunction with his manager and staff, and there would be clear signage; Mr Ferraioli clarified that the area would be locked off after 9 pm.
- The Representors clarified that residents' concerns did not relate to any specific day of the week, but to the constant noise of the operation and its effects on resident amenity.
- Mr Holland confirmed that the operation would be food-led and alcohol would be served with a meal; he did not consider 'hair splitting' in terms of defining a meal to be appropriate at this stage.
- Ms Waldron clarified that the hotel currently served breakfast, lunch and dinner.

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 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 sub-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 that the licence be granted with modified and additional conditions, as set out below:

Activity	Timings
Supply of alcohol – on the premises	Monday to Sunday 12:00 – 23:00
Opening hours	Monday to Sunday 12:00 – 23:00

The modified conditions are as follows (*amendments in italics*):

1. The PLH/DPS will prominently display notices which inform customers that open bottles or glasses may not be taken off the premises, *or into the car park*.
2. Appropriate background checks on all potential staff will be carried out before offering them employment. The Licensee will report any child related concerns to the police *they have* about potential staff, existing staff and customers.

The additional conditions are as follows:

1. The sale of alcohol shall only be by waiter/waitress service to seated customers.
2. No more than 43 covers to be provided inside the premises for customers dining, and no more than 20 covers to be provided outside the premises for customers dining.

No conditions have been removed from the operating schedule submitted by the Applicant.

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 notes that the premises is not located within the Council's cumulative impact assessment area (CIA), and that there were no objections to the application from either North Yorkshire Police, or the Council's Public Protection Team.

(iii) The Sub-Committee has considered very carefully the representations of the Applicant, both those contained within the papers and those made in person on his behalf by Mr Holland at the hearing, and gives great weight to the business operation as described, the period of time the Applicant has been resident at the premises, the period of time the applicant has been operating a guest house in that location, the size of the premises, the limiting of the application to on sales, the consultation which has taken place with the North Yorkshire Police regards the conditions set out in the operating schedule, the hours of operation both indoors and outdoors, the lack of external speakers, their intention to serve alcohol only to patrons dining at the premises, their proposed use of the outside areas, and the use of the guest house as short-term accommodation for some vulnerable persons resulted in occasional police attendance to assist these guests and / or as part of routine police enquiries.

(iv) The Sub-Committee has considered very carefully the representations of Cllr Myers on behalf of his Ward Members, both those contained within the papers and those made in person at the hearing, in particular that they were concerned there would be an increase in noise and disturbance in the area, there were concerns around public safety issues and the river and the lack of engagement with the neighbouring properties.

(v) The Sub-Committee has considered very carefully the representations of Ms Branigan on behalf of Representor 10 in the papers, both those contained within the papers and those made in person at the hearing, in particular that the operating schedule needed to be more precise, with additional restrictive conditions such as a restriction on the number of diners in the indoor and outdoor areas, the lack of engagement with the local residents, lack of risk assessment regards the smoking area, the increased noise such as voices, car doors and traffic to / from the premises, its greater impact in a quiet area, and the effect on the local residents.

(vi) The Sub-Committee has noted the written representations by those persons who did not attend the hearing or instruct another to speak on their behalf, (Agenda Annex 4.

(vii) The Sub-Committee notes that there is insufficient evidence either contained within the papers or from the representations made in person at the hearing that there have been incidents of violence and / or disorder resulting in police involvement either at / in the vicinity of the premises.

(viii) The Sub-Committee are satisfied from the information contained in the papers and the representations at the hearing that, with the two modified conditions and two additional conditions set out above, the premises will operate without undermining the licensing objectives.

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

Cllr R Melly, Chair

[The meeting started at 10.05 am and finished at 1.12 pm].