
Meeting	Licensing/Gambling Hearing
Date	22 December 2022
Present	Councillors Cuthbertson, Melly and Norman

47. Chair

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

48. Introductions

The Chair introduced the Sub-Committee Members, the Legal Adviser, the Democratic Services officer, the Licensing Manager Lesley Cooke, the Applicant's Solicitor Rebecca Ingram, the police Representor PC Kim Hollis, and the Licensing Authority Representor Helen Sefton. Also present as witnesses and / or to answer questions were Mark Burville and David Oxtoby of The Alchemist Ltd., Max Reeves of the Helmsley Group (the landlords of the premises), and PS Jackie Booth of North Yorkshire Police.

49. 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.

50. 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.

51. Minutes

Resolved: That the minutes of the Licensing Hearing held on 17 November 2022 be approved as a correct record, to be signed by the Chair at a later date.

52. The Determination of a Section 18(3) Application by The Alchemist Bar & Restaurant Ltd for a Premises Licence in respect of The Alchemist, Nessgate, York YO1 9NF (CYC-071614)

Members considered an application by The Alchemist Bar & Restaurant Ltd. for a Premises Licence in respect of The Alchemist, Nessgate, York, YO1 9NF.

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

In coming to its 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. She noted that the premises, previously occupied by RBS and Thomas Cook, was located in the Red Zone of the Cumulative Impact Area (CIA), and confirmed that the consultation process had been carried out correctly. She drew attention to the representations received from North Yorkshire Police and the Licensing Authority, and the additional papers submitted by the Applicant as published in the Agenda Supplement.

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, the Licensing Manager confirmed that the Red Zone was an area within the CIA containing the highest concentration of licensed premises.

4. The representations made by Rebecca Ingram, solicitor, on behalf of the Applicant.

Having introduced the representatives of The Alchemist and The Helmsley Group who were present at the hearing, Ms Ingram drew attention to the brand and style of The Alchemist as set out in the additional papers. She stated that the issues to be decided were quite narrow, as the Applicant had been able to work with the Responsible Authorities. A meeting with PC Hollis and the Licensing Manager before the application had made it clear that a comprehensive operating schedule would be required, and this had been provided.

Ms Ingram submitted that, based on the evidence, the two most appropriate options in this case were to grant the application either on the basis of the revised schedule (Exhibit DO2 in the Agenda Supplement) or with the addition of the further condition sought by the Police and the Licensing Authority requiring the operation to be predominantly food led. The condition in issue was whether the premises should operate as predominantly food led. This was not a condition that the Applicant could agree to because The Alchemist was a cocktail bar/restaurant and the term 'food led' was vague and imprecise, which was contrary to the principles in paragraph 1.16 of the Section 182 guidance. If compliance with the condition was based on the operation's food take exceeding its drinks take, then the Applicant could not comply. If based on its 'food plus drinks' take exceeding its drinks alone take, then it could. The Applicant intended to invest £1.8m in the premises and could not do so without absolute certainty. Food was a very significant element of the operation, and clear conditions had been offered to ensure this.

Ms Ingram stated that, for the reasons set out in the additional papers, the Applicant's operations were not associated with crime, anti-social behaviour or nuisance. The comprehensive operating schedule specified the times when food must be available. Paragraph 9:15 of the council's policy (Annex 4 to the report) allowed premises in the CIA that were predominantly food led to be considered more favourably. She argued that premises with a significant food element should also be treated more favourably. This, combined with the conditions offered to guarantee that the premises would be predominantly seated, with waiter/waitress service and prohibitions on drinks promotions and stag/hen parties, was sufficient to rebut the presumption that applications not be granted in the red zone of the CIA. Granting this application would not open the floodgates to other applications for premises that were not food led. The Applicant had an excellent management and training record across its estate and none of its premises were associated with anti-social behaviour, including those trading in CIAs such as in Cardiff, Leeds and Westminster. There were no representations from other parties and considerable weight should be given to this, in view of paragraph 9.11 of the council's policy.

Ms Ingram went on to say that the operating schedule complied with all recommendations in the policy as to how the licensing objectives should be upheld. There was a significant level of common ground and all the concerns of the Responsible Authorities had been dealt with except for the requirement to be 'food led' and concerns about the pavement and queuing outside the premises. Regarding the latter, the entrance to the premises was on the Nessgate frontage, where the pavement was wide and there were road markings; the entrance was also recessed, allowing for a short queue. The Alchemist tended not to have long queues forming. Smokers could also be accommodated and the situation would be carefully monitored by staff, including door security staff when present. Condition C7 on the revised schedule listed the relevant policies to be agreed with the responsible authorities, whose input would continue. Dispersal would be organic and gradual, as the premises would not be at full capacity at closing time, and therefore would not contribute to the cumulative impact. Alistair

Turnham, who had helped develop the Purple Flag standard, had described The Alchemist as the type of venue that cities should be looking to attract and this, it was submitted, included York. Did York want to say that no new premises could open in the city centre unless it was a restaurant? Ms Ingram concluded by saying that things were even more difficult now than they had been during the pandemic, and the fact that a well-run business wanted to invest in the city at this time was a relevant factor, as the merits of the application included the economic context. The Applicant wanted to invest in empty units in the city centre with a good business model but could not do so if a 'food led' condition was imposed, so imposing that condition would be tantamount to a refusal. All the circumstances of the application meant that granting it would uphold the licensing objectives and not contribute to the cumulative impact.

In response to questions from PC Hollis:

- Ms Ingram confirmed that there were no promotions on the Applicant's website offering alcohol at reduced prices.
- Mr Oxtoby stated that prices were all available on the website and were quite varied; food prices were in the mid to high range.
- Mr Oxtoby explained the arrangements regarding stag and hen groups: they were not encouraged, any bookings by such groups were not knowingly accepted, and if they did attend any paraphernalia would be removed from them at the point of entry and they would be monitored closely while on the premises. In York, the size of the venue would restrict the size of groups allowed, with the largest table being for 8 people.
- Ms Ingram confirmed that in the area hatched green on the plan (page 61 of the agenda papers) everyone must be seated, with waiter/waitress service only. In all other areas, seating and table service would be available but not enforced.

In response to questions from the Sub-Committee:

- Mr Oxtoby explained that there was capacity to take bookings of more than 8 people spread across several tables but the Alchemist tended not to do that at busy times, and in the York environment the

turnover of smaller tables should negate the need to accommodate larger parties. The area hatched green could potentially be booked for an event such as a corporate Christmas party, but that would be a rarity.

- Mr Burville stated that the kitchen capacity was 50 square metres, staffed by a team of 8 to 10, serving about 15 covers every 15 minutes during busy times. On a Saturday evening in York about 100-150 covers would be expected. All Alchemist kitchens were of the same size and could easily service the whole venue if required.
- Ms Ingram confirmed the position of the main entrance doors as the double doors on the east side, as shown on the plan.
- Mr Burville added that the door on the corner was the landlord's entrance; the other was for disabled access.
- Ms Ingram confirmed the proposal that there would be a minimum of 2 door staff at the main entrance on Friday, Saturday, the Sunday before a Bank Holiday from 9pm until close and on any race day from 7pm until close.
- Ms Ingram stated that the key factors of the Alchemist style of operation that would ensure it would not contribute to negative community impact were the predominant seating and the significant food element; should the licence be transferred, the new operator would have to apply to remove those specific conditions.
- Ms Ingram agreed that the conditions could be more tightly worded, along the lines of *'the premises shall operate as a cocktail bar which always has a significant food element and is always predominantly seated.'*

5. The representations made by PC Kim Hollis on behalf of North Yorkshire Police, in writing and at the hearing.

PC Hollis referred to her statement at page 73 of the agenda papers, stating that the application was for a cocktail bar with a food offering in the CIA Red Zone. This was the area identified by the council in its Statement of Licensing Policy as being under the most stress from crime and disorder and public nuisance. Section 9.13 of

the current policy, which had come into effect in March 2022, stated that applications in the CIA Red Zone should be refused where relevant representations had been received unless the Applicant could show how their proposal would not add to the cumulative impact of licensed premises in the area. She also invited the panel to consider paragraphs 9.11 and 9.12 of the policy when considering the application. She noted that the premises had not previously operated as a licensed venue and was situated on Nessgate, a busy road in the centre of York.

PC Hollis went on to say that the Applicant had pre-consulted with responsible authorities and had offered an operating schedule with a number of conditions, which were welcomed by the police, as were the further changes proposed in the additional papers. However, these did not state that the premises would be food led, and the times applied for were consistent with a late-night venue. There was no offer for alcohol to be ancillary to food. Paragraph 9.15 of the policy said that applications may be considered more favourably if the premises were 'predominantly food led', with suggested conditions. The operating schedule, although thorough, did not cover all the points required and the police still proposed that the conditions be amended to say that the premises should be predominantly food led. There were still concerns about the hours of activities, especially during weekdays, given the location of the venue on a very busy road with 2 pedestrian crossings and traffic lights. Management of the outside area, which already experienced congestion, would be key and the operators would need to implement a robust policy to ensure that queues and smokers were not a public safety issue. The police had not yet seen details of the dispersal policy, so this remained a concern.

In conclusion, PC Hollis stated that the police still believed that granting the licence would be likely to undermine the licensing objectives and may add to the cumulative impact. It was only in the green hatched area that waiter / waitress service and no vertical drinking was proposed. With no condition for the service of alcohol to be ancillary to a meal or for the operation to be predominantly food led, the schedule still left room for the premises to have a wet led style of operation, certainly at weekends and busy times.

In response to a question from Ms Ingram, PC Hollis confirmed that she would be happy to engage with the Applicant to finalise the details of their dispersal and queuing policies should the application be granted.

In response to questions from the Sub-Committee, PC Hollis stated that:

- She couldn't quantify the effects of the premises on the CIA as it wasn't yet licensed, but there was a much higher level of drink-fuelled anti-social behaviour in that area than in others, and other venues had to very robustly manage people going into the road when standing outside. Even during the day, the pavement and crossing were very busy.
- Key times for anti-social behaviour and incidents were in the late evenings / early mornings and on Saturdays.
- It was difficult to say whether there was a queuing or dispersal policy that would satisfy the police; the police would never write or dictate such a policy, as the operator knew their premises and customers best and their management would need to take charge in assessing the policy dynamically. The police would offer advice rather than agree or disagree with the policy, insisting that it was robust and had provisions to adapt to the situation. If the premises were predominantly food led there would be fewer dispersal and queuing problems and the police would have fewer concerns about the policy. If unhappy with the policy, they would let the operator know that it was not acceptable. She confirmed that the condition in the schedule regarding agreement of the policy was workable.

6. The representations made by Helen Sefton, Senior Licensing Officer, on behalf of the Licensing Authority, in writing and at the hearing.

Ms Sefton stated that many of her points had already been covered by PC Hollis. She again highlighted that the premises sat within one of the red zones of the CIA, which had been identified through information provided by the police and the council's own public protection team. Evidence had shown that the concentration of licensed

premises in these areas adversely affected residents, visitors and other businesses, and the promotion of the licensing objectives. She re-iterated the council's policy in relation to applications in the red zones.

Ms Sefton expressed full support for the representations of the police and welcomed the conditions proposed by the Applicant and the amendments made the previous week. However, she still shared the police concerns about the location of the premises and the risk posed by what was sure to be a popular new bar and restaurant to a busy and narrow junction and that it should be predominantly food led. She asked that the Sub-Committee consider the aspects raised regarding the activities outside the premises if they decided to grant the application.

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

PC Hollis summed up, stating that the concerns of the police remained and asking the Sub-Committee to consider whether the Applicant had truly satisfied the criteria in the council's Statement of Licensing Policy. She noted that, if there were any concerns about the enforceability of the 'food led' requirement, the conditions to demonstrate that a premises was food led were set out in the policy.

Ms Sefton summed up, stating that the Licensing Authority supported the representations of the police, which were in line with the council's policy, and shared the same views and concerns.

Ms Ingram summed up for the Applicant, stating that the only point of contention was whether or not the premises would be 'food led'. Paragraph 9.15 of the council's policy defined the requirements for this, and the application was not far off the policy— substantial food would be available up to one hour before the end of hours for alcohol service; there would be no vertical drinking in part of the premises; a set number of table covers would be provided, with table service only in part of the premises; and there would be no drinks promotions. As the policy stated, the Sub-Committee should consider the merits of each application

individually. Here, the merits included the substantial food offer plus the predominantly seated nature, which meant it would not be associated with anti-social behaviour because of the type of premises it was and the demographic it attracted. This was ensured by the comprehensive operating schedule, the track record and credentials of the Applicant in delivering this style of operation, including in CIAs, and their experience in robustly managing external areas, for example in similar premises in Nottingham and Westminster. Further merits included the lack of representations from local residents and businesses, the significant compliance with the policy, the amount of common ground with responsible authorities, and the wider context. She submitted that granting the application would achieve the aim of the policy to encourage a variety and mix of high-quality licensed premises.

The Sub-Committee sought clarification on the current status of the CIA. PC Hollis confirmed that there had been some changes during the pandemic and the policy had been recently updated.

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 in the licence as a premises supervisor. This option was **rejected**.

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

Resolved: That Option 2 be approved and the licence be granted for the following activities with modified / additional conditions, as set out below:

Activity	Timings
Recorded music - indoors	09:00 to 00:00 Sunday to Thursday 09:00 to 01:00 Friday & Saturday
Late night refreshment – indoors	23:00 to 00:30 Sunday to Thursday 23:00 to 01:30 Friday & Saturday
Supply of alcohol - on and off the premises	09:00 to 00:00 Sunday to Thursday 09:00 to 01:00 Friday & Saturday
Opening hours	09:00 to 00:30 Sunday to Thursday 09:00 to 01:30 Friday & Saturday
Non-standard timings	From the start time on New Year's Eve to the terminal hour for New Year's Day.

The Operating Schedule conditions numbered A 1 to 26, B 1 to 12, C 1 to 12 and D 1 to 5 contained in pages 11 to 15 of the Agenda Supplement published on 19 December 2022 shall be added to the licence SUBJECT TO the following modifications:

(a) Condition A1 is deleted.

(b) Condition A3 is deleted and is replaced with the following condition:

“There shall be no vertical drinking of alcohol on the premises. The supply of alcohol shall be by table service only. Alcohol must not be sold, supplied, or consumed on the premises otherwise than to seated persons who are

taking substantial table meals served and consumed at the table and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

Notwithstanding this condition at any one time up to 8 customers are permitted to be served alcohol for consumption whilst seated at the bar if they are waiting for their table to become available.”

(c) Condition A4 is deleted and is replaced with the following condition:

“There shall be a minimum of 52 covers in the area marked green on the plan and a minimum of 60 covers provided for customer use throughout the rest of the premises at all times the premises is open and operating for business”

(d) Condition A5 is deleted and is replaced with the following condition:

“The loose furniture layout as shown on the plan attached to the premises licence shall not be materially departed from without prior approval from the Licensing Authority.”

(e) Condition A6 is deleted.

(f) Condition A7 is deleted.

(g) Condition A23 is deleted and is replaced with the following condition:

“There shall be no promotional sale of alcohol unless it is part of a food promotion.”

(h) Condition D5 is deleted.

The licence is also subject to the mandatory conditions applicable to licensed premises.

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 Council’s special policy relating to cumulative impact creates a rebuttable presumption

that applications for the grant or variation of premises licences which are likely to add to the existing cumulative impact will normally be refused following the receipt of representations, unless the applicant can demonstrate in the operating schedule that the application will not add to the cumulative impact. The premises is within the red zone of the Cumulative Impact Area (CIA), which has the highest level of occurrences in relation to crime and disorder issues due to the concentration of the style of premises operating in the area, including drink led premises.

(iii) The Sub-Committee noted that the saturation of licensed premises in the CIA can attract high numbers of customers into the CIA who contribute to the overall cumulative impact in the surrounding area, beyond the control of an individual licence holder. The premises being in the CIA does not act as an absolute prohibition on granting new licences within that area. Each application must be considered on its own merit and it is possible for an applicant to rebut the above presumption if they can demonstrate that their application for a premises licence would not add to the cumulative impact already being experienced in the CIA. The Council's policy states that within the CIA predominantly food led premises including with alcohol supplied ancillary to a meal, may be considered more favourably. Representations had been received from North Yorkshire Police and the Licensing Authority that the licensing objectives of prevention of crime and disorder and prevention of public nuisance would be undermined by the grant of the licence if the premises is not going to be predominantly food led.

(iv) The Sub-Committee considered that the onus lay upon the Applicant (to the civil standard) to evidence that the operation of the premises, if licensed, would not add to the cumulative effect of having more licensed premises in an area which is already saturated with licensed premises, with regard to the licensing objectives.

(v) The Sub-Committee noted in particular the concern of the Police that granting the application for a premises that is not going to be predominantly food led in this location would add to cumulative effect of having more licensed premises in the CIA. The Sub-Committee considered that the Police concern carried great weight in accordance with paragraph 9.12 of the statutory guidance. The Sub-Committee noted that the Licensing Authority supported the Police objection.

(vi) The Sub-Committee was concerned that any grant of an application in the red zone requires a particularly robust operating schedule, which should demonstrate particular measures at the premises to address the likely impact of the availability of alcohol in an area that already experiences a high volume of anti-social and criminal behaviour and public nuisance, these issues being factors behind the creation of the CIA in the first place.

(vii) The sub-committee considered the condition offered by the applicant to mitigate by ensuring the premises would be run in line with the style of operation of The Alchemist. It thought this condition was unenforceable, unreasonable, and difficult to understand what it meant in practice, and could not prevent the premises being run under an entirely different set of standards, particularly as the applicant's solicitor explained that the style of the Alchemist is a cocktail bar with seating and a food offer. Therefore the sub-committee felt this condition could not mitigate the application cumulatively impacting public safety and crime and disorder. The sub-committee decided that, as the condition around operating under the style of The Alchemist was unenforceable, unreasonable, and difficult to understand, it should be removed from the license granted.

(viii) The Applicant sought to demonstrate that an operation in the style of the Alchemist brand should enable an exception to the policy to be applied. However, the Sub-committee shared the view of the Responsible Authorities that most of the premises

could operate as a wet style of operation (albeit a food offer would be available during most of the trading hours) with no restriction on vertical drinking and it considered there was nothing unique about the operating schedule that warranted a departure from the Council's CIA policy. Having considered all of the evidence, the Sub-Committee was satisfied that if the premises is not required to be predominantly food led, this would be likely to add to the existing problems in the area and would fall short of what would be required to rebut the presumption of refusal created by the CIA. Therefore the Sub-Committee decided to grant a premises licence subject to a predominantly food -led condition (and to make consequential amendments to other volunteered conditions), which it considered to be appropriate and proportionate for a premises located in an area which was already saturated with licensed premises.

Cllr G Norman, Chair

[The meeting started at 10.00 am and finished at 1.03 pm].