

Meeting	Licensing Hearing
Date	15 May 2017
Present	Councillors Boyce, Hunter and Mercer

30. Chair

Resolved: That Councillor Boyce be elected to Chair the meeting.

31. Introductions**32. Declarations of Interest**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests. None were declared.

33. The Determination of an Application by Blue Fly (York) Ltd. to Vary Premises Licence Section 35(3)(a) in respect of Drawingboard, 10A New Street, York, YO1 8RA (CYC-009242)

Members considered an application by Blue Fly (York) Ltd for a Variation to Premises Licence Section 35 (3) (a) in respect of Drawingboard, 10A New Street, York, YO1 8RA.

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.

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, in particular the existing licence conditions.

2. The Licensing Officer's report and her comments made at the Hearing. She outlined the application and advised that the premises were inside the special policy area (as approved by Full Council on 27 March 2014) and that consultation had been carried out in accordance with the Licensing Act 2003.
3. The representations at the Hearing of the Applicant, and those of Mr Peter Black, his representative. The Applicant advised that he was aware this application fell within the special policy area and the implications of this. Mr Black advised that the pavement cafe had been in existence for six years at 3.1 metres from the front of the premises, (which was outside of the existing licensed area of 2.1 metres from the front of the premises) and in that time there had been no issues. He pointed out that highways had given consent ten years ago and that retrospective planning permission had been granted in the fortnight prior to the hearing. Therefore, in his view this application was merely to bring the premises licence into line with these and to rectify a historical mistake. Finally, the Applicant stated that he was content to withdraw the request for removal of conditions 14/15 from the licence.
4. The representations made by North Yorkshire Police in writing and at the Hearing. They stated that the extension of the pavement cafe from 2:1 metres to 3:1 metres would have an impact on public safety, given that there would be significant numbers of people in drink on the public highway. It would also cause issues for emergency vehicles trying to navigate the street. They requested that if the Sub - Committee was minded to grant the variation that it consider conditioning that the barrier be moved back to 2:1 metres at 17:00 each day when the area ceased to be a pedestrianised zone. They also highlighted that the small street was a 'hot-spot' for crime and disorder with significant levels of crime and anti-social behaviour recorded over a 12 month period. They stated that removal of conditions 14 and 15 could lead to the style of premises becoming a vertical drinking establishment, thus contributing further to anti-social behaviour in the area. Finally they reminded Members that the premises were located in the Special Policy of Cumulative Impact Area, therefore creating a rebuttable

presumption against the granting of new licences or material variations in that area. This meant that the onus was on the Applicant to evidence how any potential impact of the material variation to the licence would be addressed in order to meet the licensing objectives, in particular the prevention of crime and disorder and public safety.

5. The representations made by Councillor Ashley Mason who expressed concern that removal of conditions 14/15 would lead to an increase in vertical drinking and anti social behaviour. He also pointed out that other conditions on the existing licence, such as food being served at all times and no drinks promotions, appeared to him to be being broken.

In respect of the proposed licence, the Sub-Committee had to determine whether to take any of the steps mentioned under Section 35(4) that it considered necessary for the promotion of 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) of the Licensing Act 2003 as it considered necessary for the promotion of the Licensing Objectives:

Option 1: Grant the variation of the licence in the terms applied for.

Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.

Option 3: Grant the variation of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.

Option 4: Reject the application.

In coming to their decision of approving the above Option 3 the Sub-Committee imposed the following additional conditions:

A variation is granted to extend the licensable area but subject to restricted time for that extended area and repositioning of the barrier and removal of tables and chairs from that area to avoid conflict with use of the highway during later hours by people in

drink and taxis and emergency vehicles within the ClZ in line with the advice from the NYP.

- Extended Area (up to 3.1m) is granted from 09:00 – 17:00 each day.
- Barriers and all furniture to be moved back to 2.1m at 17:00 through to 09:00 each day.

The request for removal of conditions 14 and 15 was withdrawn by the Applicant during the hearing. From the evidence provided during the Hearing the Sub-Committee would in any event have been minded to refuse the request for removal of these conditions, as their removal would enable the style of operation to become a crowded vertical drinking establishment within an area to which the Special Policy (ClZ) applies, and evidenced by North Yorkshire Police as a busy area late at night with people in drink. No evidence was provided by the Applicant as to how the licensing objectives of public safety and prevention of crime and disorder would be met if the conditions were to be removed.

Reasons for the Decision:

The Sub-Committee was mindful of the fact that the premises were located in an area to which a Special Policy of Cumulative Impact (ClZ) applies, creating a rebuttable presumption against the granting of material variations to licences. The Sub-Committee considered that the applicant had failed to demonstrate that the material variation to the premises licence to extend the pavement cafe from 2.1 metres to 3.1 metres into the highway would not add to the alcohol related problems in the area and that there would be no negative cumulative impact on the licensing objectives.

The Applicant relied on the fact that the pavement cafe had operated in this position unlicensed for a number of years and in his submission this evidenced that it did not give rise to any problems in the area. He also relied on the Highway Authority and Planning Authority granting consent for the pavement cafe. However, the Sub-Committee was not persuaded by this evidence, having regard to the evidence of North Yorkshire Police that the area was a hot spot for crime and disorder and the increased area into the highway gives rise to public safety concerns due to the busy nature of the area at night frequented

by people in drink. It was also noted that the existing 2.1m licensed area was in line with the other pavement cafes on the street. Whilst planning permission for the extended area had been granted, the Highway Licence produced to the Hearing by the Applicant had expired and in any event the terms appeared to only grant Highway Authority consent for the pavement cafe until 4.30pm.

The Applicant did not provide any evidence in terms of assurance or measures to address the concerns raised by North Yorkshire Police about the increased public safety concerns with pedestrians in drink if the pavement cafe area was extended, and so failed to show how the licensing objective of public safety would be met.

It was particularly relevant that North Yorkshire Police were in objection, as the Licensing Authority place great weight on the advice from the police when considering applications, particularly within the CIZ (in accordance with the 2003 Act Statutory Guidance at para 9.12). The Sub-Committee also felt that the police had demonstrated that the area was a 'hot-spot' for crime and anti-social behaviour as evidenced by the figures recorded as having taken place between 18:00 and 06:00 over a 12 month period.

The Sub-Committee concluded that the application to extend the pavement cafe to 3.1 metres from the front of the building was acceptable with the above mandatory and additional conditions attached which addressed representations made both in writing and at the hearing, as it met all the licensing objectives. The Sub-Committee made this decision taking into consideration the representations, the Licensing Objectives, the City of York Council's Statement of Licensing Policy and the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003.

Councillor Boyce, Chair

[The meeting started at 10.10 am and finished at 12.20 pm].