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Meeting	Licensing/Gambling Hearing
Date	26 February 2018
Present	Councillors Mason, Wells and Pavlovic

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### 31. Chair

Cllr Mason was appointed as Chair for the meeting.

### 32. Introductions

The Chair introduced the panel members and officers, and explained the procedures for the Hearing.

### 33. Declarations of Interest

Members were asked to declare any personal interests not included on their Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda.

No additional interests were declared.

### 34. Minutes

It was confirmed by the legal officer that the minutes presented could be signed by the Sub-Committee Chair on behalf of the Members who were present at the hearings.

Resolved: To approve and sign the minutes of the following Licensing Hearings:

- 8 February 2018
- 9 November 2017
- 2 November 2017
- 4 September 2017
- 21 August 2017
- 17 July 2017
- 26 June 2017

**35. The Determination of an Application by Revolucion de Cuba Ltd for a Premises License (Section 18(3)(a)) in respect of New Street, York, YO1 8ND (CYC-060019)**

Members considered an application by Revolucion de Cuba Ltd for a Section 18(3)(a) premises license in respect of New Street, York, YO1 8ND.

In consultation with all parties present, it was agreed to defer the hearing for 90 minutes to enable parties to read additional evidence that had been presented by the Applicant in support of their application.

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. 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 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 Cumulative Impact Zone (CIZ) (as approved by Full Council on 27 March 2014). She reported that a sound report had been received as additional evidence from Mr Wallace of the Judges Court Hotel and that the applicant had provided additional information including revised opening hours and an operating schedule which explained how licensing requirements would be met. She confirmed that consultation had been carried out in accordance with the Licensing Act 2003 and that there were no planning issues related to the application.
3. The representations by the applicant, Mr Geoffrey Rush, in writing and at the Hearing and those of Mr Anthony Lyons, his representative. Mr Lyons advised that Mr Rush had experience of operating the Revolucion de Cuba brand in 11 cities across the UK and that several of these venues operated within Local Authority special policy areas. He explained that Mr Rush had responded to concerns raised by the police and local businesses by

reducing the operating hours so that it would only serve until 1am on Saturday and Sunday mornings, with last entry restricted to 12am, by including a dispersal policy, and by the inclusion of a sound lobby and a 2.6m barrier around the roof terrace. He reminded members that the planning committee that had awarded planning permission for the site had not identified any public protection concerns and that the proposed venue would be in an area where several licensed premises operated with later opening hours. The planning permission restricted use of the roof terrace to 11pm each night.

Mr Rush explained that the proposed venue would make a cultural offer different to anything else within York and that he anticipated the peak times to be early-evening rather than late-night, with a longer customer dwell time to other venues in the vicinity. He clarified that his position was to refuse entry to hen and stag parties who had not pre-booked and confirmed that he would be happy to condition the fixture of chairs and tables and remove “happy hour” offers if required. Mr Rush expressed disappointment that the police had been unwilling to meet with him to discuss their concerns in greater depth prior to the hearing. Finally, he explained that he expected the venue to have a positive impact on behaviour within the CIZ, in line with his experience of managing other venues.

4. The representations made by PC Sam Bolland and Emma Cruickshank of North Yorkshire Police in writing and at the Hearing. They stated their belief that the proposal was a smoke screen for a vertical drinking establishment and that its 600 person capacity would have a negative impact on the licensing objective of preventing crime and disorder being within the Cumulative Impact Zone which was already saturated. They reported that the street was a hot spot area for anti-social behaviour and that the combination of retail outlets and drinking establishments, particularly on Saturday afternoon, caused a great deal of concern to residents and made the area unattractive to families and shoppers. They explained that this was a problem unique to York and the experiences of Revolucion de Cuba venues in other cities could therefore not be used comparatively. They reported that the size and scale of the venue and its focus on drinking would make this an inappropriate venue in the proposed

location, regardless of how well it was managed or how well its customers behaved.

5. The representations made in writing and at the Hearing by the City of York Council Licensing Unit who supported the representations made by North Yorkshire Police and asked that, should the committee be minded to grant the licence, that any conditions be made clear and enforceable. It was reported that the team received around five emails a year from members of the public regarding anti-social behaviour within the CIZ.
6. The representations made in writing and at the Hearing by the City of York Council Public Protection Unit who stated that they were satisfied that the proposed noise and light pollution mitigation measures would be satisfactory.
7. The representations made in writing and at the Hearing by Mr John Wallace and his witness Mr Lee Robinson, of Judges Court Hotel, York. They reported that they had concerns regarding noise nuisance from the roof terrace and by customers outside the venue. They stated that hotel guests were regularly disturbed by noise from licensed venues on New Street and that the listed building status of their property meant that they were unable to install double glazing or other sound proofing. They acknowledged the work proposed by the applicant to alleviate their concerns but felt that the dispersal policy and roof terrace structure were not sufficient to reassure them that customers would not disturb hotel guests and damage their business.

In respect of the proposed licence, the Sub-Committee were mindful of the premises' location within a Cumulative Impact Zone (CIZ). They 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) 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.

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

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

Option 4: Reject the application.

The Sub-Committee was not persuaded by the evidence before them that there were sufficient grounds to rebut the presumption against grant that applies in the Cumulative Impact Zone, and concluded on the evidence that granting the licence would undermine the licensing objective of preventing crime and disorder. It was therefore resolved to approve **Option 4**, to reject the application, for the following reasons

- i. The proposal is within the Cumulative Impact Zone (CIZ). The fact that it is within the CIZ is not in itself sufficient grounds on which to refuse an application. It is possible for an applicant to demonstrate that the style of operation, (including seating, target market, branding, food offer, prices, dwell time and management), create a positive impact and promote licensing objectives by raising standards in areas in need of regeneration, benefiting the City's economy. The onus is firmly on the Applicant to demonstrate how the proposal will promote the licensing objectives.
- ii. The applicant sought to demonstrate the above by reference to 11 other Revolucion de Cuba branded premises that operate in other cities. However, no sufficiently detailed evidence was provided to convince the Sub-Committee that the impact of those premises promoted the licensing objectives, or whether they were comparable in size and location. The Police evidence, (to which the Sub-Committee attach great weight in accordance with the statutory guidance (para 9.12)) was that the other locations were not comparable as the issues in York were unique at the location of the proposed venue.
- iii. The applicant sought to show that the target market would be clientele that would not be likely to behave irresponsibly and add to problems of anti social behaviour. The Sub Committee was not persuaded that the target market of 21-40 yr olds, pre booked hen and stag parties for salsa dancing classes, the sample menus and the fact that happy hours were prevalent in other venues demonstrated that the style of operation was such that it would attract only discerning well behaved custom.

- iv. The proposed venue is of a very large scale with a capacity of 740 people for fire safety purposes. The Applicants offered to condition a limit to 600. The Police provided evidence to show that the capacity of the venue far exceeded the capacity of other licensed premises in the vicinity. The sub committee was not convinced that the proposed conditions regarding provision of door supervisors, dispersal policy, refusal of hen/stag parties, fixed layout of seating and CCTV would be sufficient to prevent undermining the licensing objective of prevention of crime and disorder in this location.
- v. The Police evidence stated that the area was already a highly stressed area for anti social behaviour. In their opinion the impact of such a large venue in this location would undermine the licensing objective of preventing crime and disorder, and the Sub Committee shared this view.
- vi. The Sub Committee shared the view of the Police that the application was for a high volume, large scale vertical drinking establishment, and there was nothing unique about the proposal that convinced the Sub-Committee otherwise.
- vii. The Sub Committee was satisfied by the evidence from public protection that the licensing objective of public nuisance would not be undermined by the proposal, notwithstanding the representations made by Mr John Wallace and Mr Lee Robinson regarding their views on the impact on Judges' Court Hotel.

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.

Cllr A. Mason, Chair

[The meeting started at 10.00 am and finished at 3.15 pm].