

---

Meeting	Licensing/Gambling Hearing
Date	25 June 2018
Present	Councillors Hunter, K Taylor and Wells

---

1. **Chair**

Resolved: That Councillor Wells be appointed to Chair the meeting.

2. **Introductions**

3. **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 which they may have in respect of business on the agenda. None were declared.

4. **Minutes**

Resolved: That the minutes of Licensing Hearings held on 26 February 2018, 5 April 2018, 9 April 2018 and 26 April 2018 be approved and then signed by the chair as a correct record.

5. **The Determination of an Application by Mr Mehmet Simsek for a Premises Licence [Section 18(3) (a)] in respect of 5 Whip ma Whop ma Gate, York, YO1 8BL (CYC-061097)**

Members considered an application by Mr Mehmet Simsek for a Premises Licence [Section 18(3)(a)] in respect of 5 Whip ma Whop ma Gate, York, YO1 8BL.

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

1. 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 Manager's report and the comments of the Senior Licensing Officer given at the Hearing. The Senior Licensing Officer outlined the report noting the proposed activities and their timings made in the application and the information contained within the annexes to the report. She advised that the premises were located in the special policy Cumulative Impact Zone (CIZ). She reported that the consultation had been carried out correctly in accordance with the Licensing Act 2003.

The Senior Licensing Officer advised that North Yorkshire Police had made representations on the grounds that the premises was located within the (CIZ) and the prevention of crime and disorder and the prevention of public nuisance licensing objectives would be undermined if the premises licence were to be granted. She further advised that representation from City of York Council (CYC) Public Protection (Environmental Protection) had been withdrawn following the Applicant's agreement of the conditions put forward by them. The Senior Licensing Officer confirmed that additional information from both the Agent for the Applicant and North Yorkshire Police had been circulated to all parties in advance of the hearing.

3. Representation from the Applicant's Agent, Hilary Ramli and her colleague Roz Ramli (Ramli Fire Consultancy) on his behalf at the Hearing. Hilary Ramli explained that the premises currently operated as a barbers shop. She stated that the police representation had been based on a previous planning application. However, since the agenda papers had been published, the Applicant had been granted planning permission for the change of use to restaurant/bar with the formation of a roof top terrace. She explained that the Applicant had sought mediation with the police based on the new planning application. She advised that a noise management plan was agreed as part of the planning conditions and she noted the conditions agreed with City of York Council (CYC) Public Protection (Environmental Protection). She added that there would be signage placed in the premises asking customers to be quiet on leaving the premises.

4. Roz Ramli (Ramli Fire Consultancy) spoke in regards to the crime statistics referred to by North Yorkshire Police in their representation. He stated that the study area should have been 100m away from the premises. However, the crime statistics used by the police included busier areas such as Goodramgate and Swinegate. He asked why the crime statistics had not been broken down to show which crimes were alcohol related. He referred to the chart for anti social behaviour which showed crime over a 24 hour period noting that there had been two anti social behaviour incidents during the operating hours included in the planning approval. He suggested that there was a misrepresentation of crimes during the day as the national statistics used different times for the 'night time economy' whereas the statistics used by the police included crime between the times of 10:00 hours to 18:00 hours, and he questioned whether all of the crimes committed between those times could be attributed to alcohol consumption. He concluded that the police crime report did not give sufficient evidence on which to support their objection.

Hilary Ramli then referred to North Yorkshire Police proposed condition number 8, that: *'There will be a minimum of 45 seat covers for diners on the ground floor and a minimum of 30 seated covers for diners on the rooftop terrace at all times the venue is open to reduce the need for vertical drinking.'* She explained that the roof top terrace could not accommodate 30 covers. However, after consulting with the Applicant, the Applicant confirmed that the roof top terrace could accommodate 30 covers. During the hearing Hilary Ramli clarified that the only condition sought by North Yorkshire Police that was not acceptable to the Applicant related to the operating hours.

5. The representations made by Sgt Jackie Booth (Alcohol Licensing Unit, North Yorkshire Police). She stated that there had been an increase in crime in the CIZ area that the premises were located in the CIZ. She outlined CYC's own policy on CIZs and advised that each application made in a CIZ should be considered on its own merits. She stated that the application had failed to address how the Applicant would put in measures to seek to promote the licensing objectives and mitigate any potential impact within the CIZ. She explained the disorder at the taxi rank close to the premises and highlighted that there was no

dispersal area for customers. She noted that the application made no reference to alcohol being sold ancillary to food. She advised that on a meeting involving the Police and the Applicant on 17 May 2018, the Applicant stated that he would be serving tapas style food. This suggested that the premises would in reality be a bar offering snacks within the CIZ.

Sgt Booth concluded by stating that crime was above average in the Ward, and should Members be minded to grant the application, this would contribute to anti social behaviour and alcohol related crime. She advised Members that under the Section 17 of the Crime and Disorder Act the Council should do all it could to prevent crime and disorder.

Sgt Booth was asked by Members why North Yorkshire Police had asked for reduced opening hours and she explained that this was because the crime statistics showed higher than average crime in the area and the police believed that opening another establishment would contribute to disorder in the area.

Members asked what the Police view would be, should the Applicant agree to the reduced opening hours. Sgt Booth stated that the Police would withdraw their representation if all the conditions proposed by the Police were agreed.

The Applicant was then asked if he would amend his application to include the reduced hours as requested by the Police to which he responded that he would not, but that he agreed to all the other conditions requested by the Police.

In summing up, Sgt Booth noted that the application was for a premises licence in the CIZ and if another new drinking establishment was created, this would contribute to crime and disorder in the area. She reminded the Sub-Committee of the CYC licensing objectives of the prevention of crime and disorder and the prevention of public nuisance licensing objectives, which would be undermined if the premises licence were to be granted.

Hilary Ramli, Agent for the Applicant, concluded by stating that planning permission had been granted with an operating schedule. She didn't believe that the statistics used by the

Police were a true reflection of the area and were not based solely on alcohol consumption.

In response to a question from the Sub-Committee, Sgt Booth gave an overview of the areas that North Yorkshire Police would use on their statistics for the night time economy.

Following consideration of representations, the Sub-Committee requested clarification on a number of points from the Applicant and North Yorkshire Police in order to inform their decision.

Members asked Sgt Booth whether the Police opposed the grant of a licence as the premises were in the CIZ or whether the Police would consider the application to be acceptable with the proposed conditions. Sgt Booth explained that, taking on board the guidance published in April 2018, the application should be considered on its own merits. She noted that because of the lack of information in the operating schedule concerning how the Applicant would address the prevention of crime and disorder and the prevention of public nuisance, the licence would need to include robust and enforceable conditions, including alcohol being ancillary to food and a reduction in operating hours to 23:30 hours. She added that should these not be put in place, the premises would add to the cumulative impact of anti social behaviour at the nearby taxi rank later on a night.

In response to this, Hilary Ramil commented that the Applicant would not agree to alcohol being served ancillary to food.

Sgt Booth explained that the application was for a restaurant, not a bar, which was an application for a vertical drinking establishment. Hilary Ramli clarified that was an application for a food establishment and bar. She went on to suggest that more customers would want taxis earlier in the evening to which Sgt Booth responded that having spoken to the Area Inspector, there were more customers waiting for taxis later at night.

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) 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 to choose Option 2 above to Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.

The Sub-Committee then imposed the following additional conditions:

1. Whilst regulated entertainment is taking place, all doors and windows shall remain closed, except for the purposes of ingress and egress.
2. The doors to the roof terrace shall be closed and remain closed after 9pm each day.
3. Customers will not be allowed on the roof terrace after 9pm each day.
4. Signs shall be displayed near the exits reminding customers to respect the needs of those living nearby and to leave the premises as quietly as possible.
5. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises.
6. Any complaints received from local premises to be acted upon immediately to reduce the noise levels. Any noise complaints to be logged in a log book and actions taken also logged.

7. The Log book shall be made available to the Local Authority on request.
8. Licensable activities and closure of the premises to the public shall be no later than 23:30 hours, with no access to the roof top terrace after 19:00 hours.
9. Customers shall only be served by way of waiter / waitress service.
10. On days when race meetings are held at York Racecourse (save for the family meeting held in September) a minimum of 2 door supervisors shall be provided at the premises from 17:00 hours to the close of business. At all other times the need for SIA registered door staff shall be determined in accordance with a risk assessment to be carried out by the Designated Premises Supervisor and / or the Premises Licence Holder. When employed, door staff will wear high visibility arm bands.
11. A colour digital CCTV system shall be installed within the premises and be operational and recording at all times when licensable activities take place and at any other times where members of the public are present on the premises.
  - The recordings shall be of good evidential quality to be produced in court or other such hearing.
  - Copies of recordings will be kept available for any responsible authority for 28 days.
  - Copies of the recordings will display the correct time and date of the recording.
12. A documented staff training programme shall be provided to all members of staff at the premises in respect of the:-
  - retail sale of alcohol;
  - age verification policy;
  - conditions attached to the premises licence;
  - permitted licensable activities;
  - the licensing objectives; and
  - opening times for the venue.With such records being kept for a minimum of one year. [For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry].

13. An incident log will be kept at the premises and made available on request to an authorised officer or the police which will record the following:
- all crimes reported to the venue;
  - any complaints received regarding crime and disorder;
  - any incidents of disorder;
  - any refusal of sale of alcohol.

With such records being kept for a minimum of one year. [For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry].

14. All off sales shall be in sealed containers and no drinks in open vessels to be taken off the premises.
15. There will be a minimum of 45 seat covers for diners on the ground floor and a minimum of 30 seated covers for diners on the rooftop terrace at all times the venue is open to reduce the need for vertical drinking.

All conditions offered by the Applicant in the application, including the operating schedule, for granting the premises licence under the Licensing Act 2003, shall be included in the licence, unless contradictory to the above conditions.

The reasons for the decision were that:

- i) The premises was within the Cumulative Impact Zone (CIZ). The fact that it was within the CIZ was not in itself sufficient grounds on which to refuse an application. However, the onus was firmly on the Applicant to demonstrate how the proposal would promote the licensing objectives.
- ii) The Applicant did not provide sufficiently detailed evidence to convince the Sub-Committee that the impact of the premises in the terms applied for promoted the licensing objectives. The Applicant failed to mention in the application the significance of being in the CIZ and the application did not adequately address how the application would not add to cumulative impact. However, the application was considered on its merits.
- iii) The Sub-Committee attached great weight to the Police evidence and concerns raised regarding crime and disorder and



public nuisance and cumulative impact that would likely arise from granting the licence in the terms applied for.

iv) Having considered the individual circumstances of the case, the Sub-Committee was not persuaded by the evidence before it that there were sufficient grounds to rebut the presumption against grant that applies in the CIZ. It considered that the application in the terms applied for would undermine the licensing objectives of preventing crime and disorder and public nuisance and add to cumulative impact. In addition, the area was particularly sensitive due to the close proximity of the premises to a taxi rank.

v) However, the Sub-Committee was satisfied that the inclusion on the licence of additional conditions from City of York Council Public Protection Unit (Environmental Health) and North Yorkshire Police as set out in the Licensing Manager's report (including the provision of seating and a terminal hour of 23:30) were necessary and sufficient to promote the licensing objectives and would not add to the cumulative impact within the CIZ.

The Chair reminded the Applicant that the licence could be reviewed if the licensing conditions were not adhered to or if problems relating to licensable activities at the premises arose.

The Sub-Committee concluded that the application was acceptable with the above mandatory and additional conditions 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.

Cllr Wells, Chair

[The meeting started at 10.00 am and finished at 11.20 am].

This page is intentionally left blank