

Marygate  
York  
YO30 7BH

City of York Council Licensing Services  
Hazel Court  
EcoDepot  
James Street  
York  
YO10 3DS

20<sup>th</sup> August 2018

Dear Sir/Madam

**Your ref: Notice of Application for the variation of a Premises Licence,  
Address of Premises – The Bay Horse, 68 Marygate, York YO30 7BH**

I have been onto the website as directed on the Notice of Application for the variation of a Premises Licence 'posted' on the wall of the business, and had great difficulty in finding any information concerning this application.

I have also recently telephoned on 01904 552 512, only to find the 'mailbox' full.

The only mention of the Bay Horse Inn, 68 Marygate, YO30 7BH on the website refers to

- Licence Number 009027
- LA Ref 12541/41010

And not this application.

At present the licence allows licensable activities:

- Monday – Saturday 11:00 – 23:00 and
- Sunday 12:00 – 22:30

This Notice of Application for the variation of a Premises Licence, has the proposed variations of:

1. Late night refreshments (tea and coffee) until 23:30
2. Supply of Alcohol until 23:30
3. Premises open to the public 11:00 – 00:00
4. And the removal of conditions 1, 8, and 12

Comments I have to make initially are, with reference to above:

1. 2. and 3. - Is this every night of the week, including Sunday? As this is not clear in the application.
4. As I cannot access information concerning the conditions I can only refer to those in the initial licence – **CYC - 009027**
  - Annex 1 – Mandatory conditions

- 1. In accordance with section 19 of the Licensing Act 2003, where a premises licence authorises the supply of alcohol, the licence must include the following conditions.
- 8. The responsible person shall ensure that -
  - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures -
    - (i) beer or cider: pint;
    - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
    - (iii) still wine in a glass: 125 ml; and
  - (b) customers are made aware of the availability of these measures.
- 12. not listed!
- Annex 2 – Conditions consistent with the operation schedule
  - 1. Risk assessments are undertaken.
    - Prevention of Crime & Disorder
  - Public Safety
    - 8. The maximum occupancy should not exceed 60 persons in the first floor function room. The maximum occupancy of the ground floor should not exceed 100 persons.
    - 12. Where appropriate, prominent, clear and legible notices shall be displayed at all exits requesting the public respect the needs of local residents and to leave the premises and area quietly.

I would have considered all of the above conditions in both annexes 1 and 2 to be valid in some aspect, especially those in annex 2.

I would also make the following comments referring to:

**City of York Council - Statement of Licensing Policy 2014 - Licensing Act 2003**

*This policy took effect on the 27th March 2014 and runs until the 26 March 2019*

Within this document I would refer to:

**1.1 Licensing Vision**

- *'improving the quality of life for local residents through a reduction in alcohol related crime and disorder, **disturbance** and anti-social behaviour;'*

Would a business that is open to the public until 00:00 (midnight) every night not cause some concern, especially with its location next to residential properties.

**3.2 General Approach to Licensing**

- *The Licensing Act is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual*

*business holding the licence or certificate. However, the Act is a key aspect of such control and the exercise of licensing functions is part of a wider approach to the management of anti-social behaviour and the night time economy with particular regard to the city centre.*

However in this case it is on the limited of what the City of York considers to be its boundary of the City Centre and as such the council should careful consider the effect on the local residential community of the proposed late night extension.

City of York Council in making its decisions, will no doubt accept the difficulty a licence holder has in preventing anti-social behaviour by individuals once they are beyond the direct control of that licence holder. However, it should also take into account that the licensing objective of preventing public nuisance will not be achieved if patrons from licensed premises regularly engage in activities to the detriment of nearby residents .

Premise licence and certificate holders should take reasonable steps to prevent the occurrence of crime and disorder and public nuisance immediately outside their premises, for example; the business has only outside space at the front, will this be used as a smoking area, and will this continue until 00:00 (midnight) every night?

Furthermore the Licensing Authority should also take into account its responsibility under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder.

- *The Licensing Authority has a duty to do all that it reasonably can to prevent crime and disorder under Section 17 of the Crime and Disorder Act 1998.*

It is also noted that there is no mention of methods to mitigate any impact on the local residential communities of the possibility of anti-social behaviour (noise etc.,) once clients have left the premises.

### **3.2.7 Impact of Alcohol on York**

Anti-social behaviour related to alcohol across the city centre and the suburbs of York continues to be in the news, this would appear not to be necessarily associated with any demographic group but crosses many social boundaries. Residents have identified through surveys that 'low crime levels and acceptable social behaviour' are the most important factors in making somewhere good place to live. (This links to: **4.2 Crime & Disorder**)

### **6.3 Prevention of Public Nuisance**

It is vital that the applicant and their business would wish to ensure their operations do not disturb their neighbours, again no mention of mitigation methods. and this late night extension with this residential area could cause issues, it is noted that within the document there are numerous measures listed, but it must be appreciated that individuals and groups especially do not necessarily follow guidance.

- *Erecting prominent notices at the exits to premises asking customers to leave quietly and not slam car doors;*

- *At appropriate times making announcements to the same effect. Instructing door staff to ask customers leaving the premises to leave the area quietly;*
- *Banning from the premises people who regularly leave in a noisy fashion;*
  - Perhaps given the knowledge one has of the business, this may be an occasional destination, and repeat regular business may not necessarily be the case.
- *Directing customers away from noise sensitive areas where appropriate;*
  - Given that the business is surrounded by a residential community, some of which are mature in age, this may be difficult.
  - And **where will the smokers be located** at during the period 23:00 – 00:00, outside on Marygate?
- *Steps taken to reduce the impact of any parking on local residents where appropriate.*
  - It is noted that the this area has a requirement for resident parking permits, with very limited on street parking, will this be monitored by parking wardens in the evenings

### **Appendix C - map delineating the York City Centre Area**

The business would appear very much on the boundary of The York City Centre area, in what is in the majority a residential area, with housing next door and opposite the business. Careful consideration should be made concerning all the aspects as listed above.

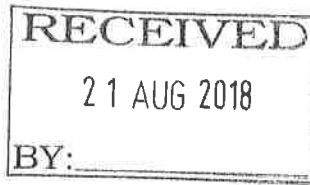
### **The Human Rights Act 1998**

The City of York Council has a duty under the European Convention on Human Rights to protect both the rights of a resident to privacy and family life (Article 8) and the rights of a licensee to operate their business without undue interference (Article 1 of the First Protocol). These policies are intended to reflect the balance to be struck between these interests where they conflict.

I would comment that the present conditions certainly allow the business to operate, however the proposed increase in time to 23:30pm (late night refreshment) would unduly effect the rights of the residents in the immediate surrounding area, especially considering the premises would be open until 00:00 (midnight)

Given my above comments I would hope that the licencing authority would reject this application for variation.

Yours faithfully



Marygate  
York  
YO30 7BH

Attention - Lesley Cooke - Licensing Manager  
City of York Council Licensing Services  
Hazel Court  
EcoDepot  
James Street  
York  
YO10 3DS

21<sup>st</sup> August 2018

Dear Lesley Cooke

**Your ref: Notice of Application for the variation of a Premises Licence,  
Address of Premises – The Bay Horse, 68 Marygate, York YO30 7BH**

Further to your email (20<sup>th</sup> August 2018 at 17:08), there is still some clarification required concerning condition 12, hopefully I have covered these in this representation.

- Present Licence Number CYC - 009027
- LA Ref 12541/41010

At present the licence allows licensable activities:

- Monday – Saturday 11:00 – 23:00 and Sunday 12:00 – 22:30

This Notice of Application for the variation of a Premises Licence, has the proposed variations of:

1. Late night refreshments (tea and coffee) until 23:30
2. Supply of Alcohol until 23:30
3. Premises open to the public 11:00 – 00:00
4. And the removal of conditions 1, 8, and 12

Comments I have to make initially are, with reference to above:

1. 2. and 3. – You have confirmed that this is proposed to be seven days a week. I would refer you to my comments as stated on the following pages, I would expect the business to operate without undue interference under the present licence in the 12 hours available to them, and to allow the residents the remaining 12 hours.
4. You appear to be referring to the conditions as listed in Annex 2 of the initial licence – **CYC – 009027**, and that the business would like removed the following conditions:
  - **Annex 2 – Conditions consistent with the operation schedule Concerning Health and Safety**
    - *'1. Risk assessments are undertaken.'*
      - I would aspect that risk assessments and the management of risk would be expect in any workplace, especially one where there is food preparation and service to the general public. This is a legal requirement for every employer to

make risk assessments within their place of work, this is covered by the Health and Safety Executive (HSE) - **Regulation 3 of the Management of Health and Safety at Work Regulations 1999.**

- Therefore I would not expect this condition to be removed from the licence, and I would also expect the HSE would also not look favourably if it was.

#### **Concerning Public Safety**

- '8. *The maximum occupancy should not exceed 60 persons in the first floor function room. The maximum occupancy of the ground floor should not exceed 100 persons.*'
  - I would expect that every building has a maximum occupancy level and this should be adhered to, again on health and safety grounds. North Yorkshire Fire and Rescue Service will have occupancy calculations that follow the published guide for **Fire Safety Risk Assessment in Small and Medium Places of Assembly under the Regulatory Reform (Fire Safety) Order 2005.** Floor space factors can be taken from **Building Regulations ADB**, and calculate for main function areas, as the Business is a restaurant I believe is 1.0 m<sup>2</sup> per person.
  - I am sure that as a restaurant the M<sup>2</sup> will increase from the present Licence which was for a public house, (Bay Horse Inn) which included standing areas and bars without seating (0.3m<sup>2</sup> person). I would hope that this condition is referred to North Yorkshire Fire and Rescue Service for further clarification.
  - Also does the premises have suitable toilet facilities for larger numbers of customers?
- You state that condition 12 is '*Children under the age of 16 shall not be permitted to enter the premises after 21:00 hours*'. Within Annex 2 this is condition 16, and condition 12 is: '*Where appropriate, prominent, clear and legible notices shall be displayed at all exits requesting the public respect the needs of local residents and to leave the premises and area quietly.*'
  - If I take what you believe to be condition 12 – which is covered within **6.4 Protection of Children from Harm**, (see page 4).
  - And then take condition 12 to be concerned with the displaying of notices, I would refer you to my comments in sections **6.3 Prevention of Public Nuisance**, (see page 3) and **8. Dispersal** (see page 4).

I would also make the following comments referring to:

#### **City of York Council - Statement of Licensing Policy 2014 - Licensing Act 2003**

*This policy took effect on the 27th March 2014 and runs until the 26 March 2019*

Within this policy document I would refer to:

#### **1.1 - Licensing Vision**

- '*improving the quality of life for local residents through a reduction in alcohol related crime and disorder, **disturbance** and anti-social behaviour;*'

Would a business that is open to the public until 00:00 (midnight) every night not cause some concern, especially with its location next to residential properties.

Within the document I could not find a statement referring to the Government's National Alcohol Strategy 2012 which should have a bearing especially as there is a responsibility of the Licensing Authority not to encourage further drinking, which could include extending licensable activities.

### **3.2. - General Approach to Licensing**

- *The Licensing Act is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual business holding the licence or certificate. However, the Act is a key aspect of such control and the exercise of licensing functions is part of a wider approach to the management of anti-social behaviour and the night time economy with particular regard to the city centre.*

However, in this case it is on the limited of what the City of York Council considers to be its boundary of the City Centre and as such the council should careful consider the effect on the local residential community of the proposed late-night extension.

City of York Council in making its decisions, will no doubt accept the difficulty a licence holder has in preventing anti-social behaviour by individuals once they are beyond the direct control of that licence holder. However, it should also take into account that the licensing objective of preventing public nuisance will not be achieved if patrons from licensed premises regularly engage in activities to the detriment of nearby residents.

Premise licence and certificate holders should take reasonable steps to prevent the occurrence of crime and disorder and public nuisance immediately outside their premises, for example; the business has only outside space at the front, will this be used as a smoking area, and will this continue until 00:00 (midnight) every night? Or even longer as customers leave the premises.

Furthermore, the Licensing Authority should also take into account its responsibility under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder.

- *The Licensing Authority has a duty to do all that it reasonably can to prevent crime and disorder under **Section 17 of the Crime and Disorder Act 1998**.*

It is also noted that there is no mention of methods to mitigate any impact on the local residential communities of the possibility of anti-social behaviour (noise etc.) once customers have left the premises.

#### **3.2.7. - Impact of Alcohol on York**

Anti-social behaviour related to alcohol across the city centre and the suburbs of York continues to be in the news, this would appear not to be necessarily associated with any demographic group but crosses many social boundaries. Residents have identified through surveys that 'low crime levels and acceptable social behaviour' are the most important factors in making somewhere good place to live. (This links to: **4.2 Crime & Disorder** within the policy)

### 6.3. - Prevention of Public Nuisance

It is vital that the applicant and their business would wish to ensure their operations do not disturb their neighbours, again no mention of mitigation methods. and this late-night extension with this residential area could cause issues, it is noted that within the document there are numerous measures listed, but it must be appreciated that individuals and groups especially do not necessarily follow guidance.

- *Erecting prominent notices at the exits to premises asking customers to leave quietly and not slam car doors;*
- *At appropriate times making announcements to the same effect. Instructing door staff to ask customers leaving the premises to leave the area quietly;*
- *Banning from the premises people who regularly leave in a noisy fashion;*
- *Directing customers away from noise sensitive areas where appropriate;*
  - Given that the business is surrounded by a residential community, some of which are mature in age, this may be difficult.
  - And **where will the smokers be located** at during the period 23:00 – 00:00, outside the premises on Marygate?
- *Steps taken to reduce the impact of any parking on local residents where appropriate.*
  - It is noted that this area has a requirement for resident parking permits, with very limited on street parking, will this be monitored by parking wardens in the evenings?

### 6.4. - Protection of Children from Harm

The policy document expects that conditions should be listed in some way to protect children from harm and would be stated and adequately controlled by the operating schedule. I would expect these to be

- *Limitations on the hours when children may be present;*
- *Arrangements to ensure age limits for admission or the sale of alcohol are controlled;*
- *Age limitations below 18;*
- *Limitations or exclusions when certain activities are taking place;*
- *Requirements for accompanying adults or stewarding.*

### 8. - Dispersal

The time at which licensed activities take place has a significant impact on the potential for public nuisance and disturbance to occur and is also a factor in the prevention of crime and disorder. A licensed activity may be acceptable at certain times and not others. Generally the later the activity takes place the greater the potential for problems to occur. What effective method of dispersal of customers will be used to mitigate disturbance, will customers be using taxis, who will be arriving late (00:00+), perhaps with engines running, utilising Marygate Landing to turn round etc.,



### **Appendix C - map delineating the York City Centre Area**

The business would appear very much on the boundary of The York City Centre area, in what is in the majority a residential area, with housing next door and opposite the business. Careful consideration should be made concerning all the aspects as listed on this and previous pages.

### **The Human Rights Act 1998**

The City of York Council has a duty under the **European Convention on Human Rights** to protect both the rights of a resident to privacy and family life (Article 8) and the rights of a licensee to operate their business without undue interference (Article 1 of the First Protocol). These policies are intended to reflect the balance to be struck between these interests where they conflict.

I would comment that the present conditions certainly allow the business to operate, however the proposed increase in time to 23:30pm (late night refreshment) would unduly affect the rights of the residents in the immediate surrounding area, especially considering the premises would be open until 00:00 (midnight)

Given my comments I would hope that the licencing authority would reject this application for variation.

Yours sincerely