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| Meeting | Licensing/Gambling Hearing |
| Date | 4 July 2019 |
| Present | Councillors Galvin, Mason and Norman |

18. Chair

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

19. Introductions**20. 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.

21. The Determination of an Application by Marston's PLC to Vary Premises Licence [Section 35(3)(a)] in respect of Corner Pin, 17 Tanner Row, York, YO1 6JB (CYC-008996)

Members considered an application by Marston's PLC to Vary Premises Licence [Section 35(3)(a)] in respect of Corner Pin, 17 Tanner Row, York, YO1 6JB (CYC-008996).

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

1. 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 following late evidence, circulated prior to and at the hearing:

- Updated proposed conditions received from the applicant's solicitor
3. The Senior Licensing Officer's report and her comments given at the Hearing. She outlined the report noting the proposed variation to the extension of licensable hours and activities for Fridays and Saturdays only and the information contained within the annexes to the report. She advised that the premises were in the red zone area of the cumulative impact assessment area. She explained that consultation had been carried out correctly.

The Senior Licensing Officer advised that North Yorkshire Police had made a representation on the grounds that the licensing objectives of the prevention of crime and disorder and prevention of public nuisance would be undermined by the granting of the application. The representation had been withdrawn as the Police and applicants had agreed to an additional condition. There was one representation received from 'other persons' mainly on the grounds that the 'prevention of public nuisance' licensing objective will be undermined if the variation is granted. The Senior Licensing Officer noted the additional information submitted by the applicant's solicitor and from the representor. She then outlined the options available to Members in determining the application.

The Senior Licensing Officer was asked and explained that the patio is not included in the licensable area and is used for the consumption of alcohol.

4. The representations made by Mr Patrick Robson, Solicitor on your behalf at the hearing. The premises Manager and Area Manager of the premises also attended the hearing but did not make any representations. Mr Robson explained the reason for the extended hours on Fridays and Saturdays and during British summertime was for late night events and to allow flexibility to stay open later. He highlighted that the premises was not going to be open later than other premises in the vicinity and that there had been no objections from the Police or environmental health officer. He noted the condition that had been mediated with North Yorkshire Police.

With reference to the objection from the representor based on noise nuisance, Mr Robson referred to licensing guidance and in response to the representor's complaints about noise; he had submitted a Freedom of Information (Fol) request to City of York Council which stated that there had been no noise complaints to City of York Council. He added that there had not been any complaints regarding

the noise to the premises. Regarding noise he noted that doors had been left open during the day and the noise on a quiz night took place on a Wednesday, which had not been included in the licence variation. With regard to the outside festoon lighting, he noted that there had been a fault which had been rectified. He added that the outdoor CCTV was not directed at the representor's window and that the outside speakers were deregulated and were no longer in use.

Mr Robson commented on the personal relationship between the representor and premises manager noting that the representor had been banished from the premises since February and had entered the premises three times since. Mr Robson advised Members of the current licence conditions and he outlined the conditions the applicant was willing to put forward. He ended by stating that the applicant did not seek to trade every Friday and Saturday.

In response to questions, Mr Robson confirmed that:

- There had been two temporary event notices over the last year and under the further licence conditions offered, the licensable activities on Fridays and Saturdays would not be provided beyond 01:00 hours the following mornings more than 50 times per calendar year. The proposed condition related to a total of 50 Fridays and Saturdays.
- It was unlikely that the premises would trade later every Friday and Saturday.
- If incidents were report an incident register would be kept.
- The premises did not have any noise complaints.
- The Temporary Event Notices in the past had run to 02:00 hours with some being at 02:30 hours and 03:00 hours.
- The external lighting included festoon lighting and spotlights. The spotlights were turned off at 23:00 hours.

5. A Representor in writing and at the hearing. The Representor stated that the issue was the noise and lighting coming from the conservatory at the premises. He explained that his property was a Tudor house and because of this there were limitations with the building, for example with sound insulation which meant that from his home he could hear people talking in the outside area of the premises. He noted that if the door to the conservatory was open from 11:00 hours he could noise and this would become an issue if loud bass music was being played 01:00 hours. He added that the doors were open during club nights and he could hear the music from his house and that during the temporary event notices there was loud music from bass music.

The Representor stated that he didn't want loud music coming through his walls past 23:00 hours on a night and that the outside speakers faced his wall. He explained that he had made complaints about noise to the manager and that the speakers were on during the day. He explained that there was an issue with lights being on all night which illuminated his house and two bedroom windows. He expanded on how noise and lighting were an issue and in noting that there was after hours drinking and card games he referred to the photographs he submitted as additional information. He noted that up to 50 nights of extended hours could make his weekends hell and as the spotlights, outside speakers and doors being left open were an issue. He noted that doors and windows at the premises needed to be closed after 23:00 hours and that the current conditions needed to be adhered to.

In response to questions The Representor confirmed that:

- He was not happy that the outdoor spotlights did not face his home as they still illuminated his bedroom. He would be happy if the spotlights faced away from his house and were off by 11:00 hours.
- Only music being played from the conservatory was audible from his property.
- It would be useful to have a route of contact to make complaints.

The Senior Licensing Officer was asked and clarified that:

- Under the current licence the outdoor area needed to be cleaned and vacated by 23:00 hours every day. Mr Robson was then asked and confirmed that the applicant would be happy for all external lighting to be turned off at 11:00 hours and he requested that such a condition referred to the beer garden.
- Music was deregulated, resulting in existing conditions relating to this being unenforceable.

The Senior Solicitor was asked and advised that the outdoor lighting could be conditioned in relation to the proposed variation as offered as a condition by the applicant.

The applicant and representor were then given the opportunity to sum up. The Representor noted that the issues went back to the 2005 condition with the problems with lighting, bass music and doors being open. He concluded that to put back the times to 03:00 hours was unacceptable and the conditions needed to be controlled.

Mr Robson then summed up noting that the proposed condition regarding lighting may help. He was happy to propose limiting the number of times that licensable activities will be provided under the extended hours to a total of 40 times per calendar year. He noted the current conditions concerning the conservatory and entertainment. He added that there was a proven track record of the applicant was good, there had been no complaints, including during the Temporary Event Notices. He asked the Sub-Committee to grant the licence with the additional conditions as discussed and referred to the case of *Daniel Thwaites plc v Wirral Borough Magistrates' Court* [2008] that he had included as additional information. He was asked and explained how the two door staff would be managed on Friday and Saturday nights under the variation.

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 35(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 licensing 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: Reject the application. This option was rejected.

In agreeing Option 2 the following conditions and modified/additional conditions were added to the licence:

1. On Fridays and Saturdays two SIA registered door staff will be deployed from 22:00 hours until the premises closes to the public but only when the premises is open to provide licensable activities after 01:00 hours. At all other times, door staff will be deployed on a risk assessed basis. When on duty, SIA door supervisors will wear high visibility armbands and sign in and out of the premises providing their full name and SIA number.

2. When regulated entertainment comprising live or recorded music is provided then external doors and windows will be kept closed except for the purposes of immediate access/egress. All external floodlights/spotlights shall be directed away from the neighbouring residential property.
3. All external lighting in the beer garden shall be turned off at 23:30 hours each and every day.
4. There shall be no regulated entertainment in the conservatory area shown edged [green] on the attached plan on Fridays and Saturdays after 00:30 hours.
5. Telephone contact details for the management of the premises shall be made available to the neighbouring residents to contact in the case of noise-nuisance or anti-social behaviour by persons or activities associated with the premises. The telephone number will be a direct number to the management who are in control during opening hours.

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 Sub-Committee were not minded to grant the British Summer Time variation because this would adversely affect the neighbouring residential property.

The Sub-Committee concluded that the application was acceptable with the above mandatory and additional conditions attached which addressed representation 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 especially in relation to cumulative impact, the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003 and the High Court's decision in *Daniel Thwaites Plc v Wirral Magistrates' Court* (relating to the standard of evidence at licensing hearings).

The Sub-Committee notes that the premises is located in the cumulative Impact Zone and that the Police had withdrawn their representation on the basis that a condition relating to door staff had been agreed with the applicant. The Sub-Committee also noted that none of the other Responsible Authorities had objected.

The Sub-Committee considered very carefully the representation of Mr Clark, who lived in a property adjacent to the premises. The Sub-Committee had careful regard to the concerns of the neighbouring resident

about the noise and light nuisance created by the current licensable activities and the close proximity of the application site to his residential property. The Sub-Committee noted that the proposed extended timings relate to licensable activities on Fridays and Saturdays only.

The Sub-Committee concluded that if the variation application were to be granted in the terms originally applied for there would be the likelihood of the resident being subjected to public nuisance in terms of noise nuisance from licensable activity in the conservatory and from outside lighting in the beer garden. The Sub-Committee therefore considered that the additional hours for licensable activities should not apply to the conservatory area of the premises and that, together with the imposition of other additional conditions including with regard to outside lighting and the exclusion of an additional hour on the commencement of British Summer Time, the variation to the premises could operate without undermining the licensing objectives. It also considered that this would not lead to an increase in the cumulative impact of premises in this area. Therefore the steps it had taken were appropriate for the promotion of the licensing objectives.

The Sub-Committee therefore agreed to grant the licence with the additional and mandatory conditions referred to above which were appropriate and proportionate in the circumstances to promote the licensing objectives.

Cllr Mason, Chair

[The meeting started at 10.00 am and finished at 11.30 am].

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