

Meeting	Licensing/Gambling Hearing
Date	23 January 2014
Present	Councillors Boyce, Gillies and McIlveen

61. Chair

Resolved: That Councillor Boyce be elected as Chair of the meeting.

62. Introductions

63. Declarations of Interest

At this point in the meeting, Members were asked to declare any personal, prejudicial or disclosable pecuniary interests that they might have had in the business on the agenda. None were received.

64. Minutes

Resolved: That the minutes of the Licensing Hearings held on 2 October 2013 and 24 October 2013 be approved and signed by the Chair as a correct record.

65. The Determination of an Application by Mr. Hayati Kucukkoylu for a Licence Variation Section 35(3)(a) in respect of Macumba, 3 Coffee Yard, York, YO1 8AR. (CYC-009165)

Members considered an application by Mr Hayati Kucukkoylu for a Licence Variation for Macumba, 3 Coffee Yard, York.

In coming to their decision, Members took into consideration all of the evidence and submissions that were presented to them and determined their relevance to the issues raised and the licensing objectives.

The following were taken into account:

1. The application form.
2. The Licensing Manager's report and her comments made at the Hearing. She advised that the application was to vary the existing licence to include the extension of the opening hours, and to amend certain conditions included in the current licence to allow the use of the outside courtyard after midnight and to vary the occupancy capacity.
3. The representations made at the hearing by the applicant. They advised that the premises was not located in the Cumulative Impact Zone (CIZ) or any special policy area. In reference to the capacity of the venue, they advised the panel that the limit for 100 people within the premises was set by North Yorkshire Fire and Rescue. In addition, they wanted to alter the number of covers to be 24 rather than 12 on the first floor and 12 on the second floor, this was in order to spread the tables and seats across the premises when events such as Salsa Dancing Classes took place to create a dance floor area. In relation to representations from North Yorkshire Police and Environmental Protection Unit (EPU) they questioned the Police's statistics as it was not clear whether the Anti Social Behaviour incidents were specifically alcohol related. In regards to comments from EPU about musical disturbance they confirmed that there had only been one incident during the summer heatwave. This was because the premises did not have Air Conditioning and this had now been rectified. They also confirmed that there would always be the possibility for some noise in the courtyard given that this was used as a cut through.
4. The representations made in writing and at the hearing by North Yorkshire Police. They advised the Committee that the area in which Macumba was located, Back Swinegate, was proposed to be located within the CIZ, due to it being a hotspot for crimes within the city centre. This area constituted for 8% of crime and Anti Social Behaviour incidents in the city centre and there was a peak in crimes between 11 pm and 2 am. They also commented that removal of tables inside the premises and increasing hours would change the nature of the premises to a primarily drinking/nightclub style establishment which

would attract a different type of clientele. They also felt there was a saturation of bars in that area and the increase of 25 people in an establishment where drinking was the primary focus would overstretch Police patrols.

5. The representations made in writing and at the hearing by the Council's Environmental Protection Unit. They explained that on Noise Patrols they had found that the nuisance levels had been below statutory levels but they still objected to the use of the courtyard after midnight as they felt it would be difficult to control noise once customers had consumed alcohol and no conditions could be imposed to prevent this. Provided that conditions were imposed, they did not object to the extension of time in the premises.
6. The representations made in writing and at the hearing by the Licensing Enforcement Officer. He explained that he had written to the applicant and had visited the premises along with the Police Licensing Officer with regard to alleged breaches of their licence and felt that the applicant had understood the conditions on the current licence.
7. The representations made in writing by York Archaeological Trust, who were concerned about the proposed extended hours of usage of the courtyard on noise and health and safety grounds.

In coming to their decision, the Sub-Committee were presented with the following 4 options:

- Option 1 Grant the Licence Variation in the terms applied for.
- Option 2 Grant the Licence Variation with modified/additional conditions imposed by the Licensing Committee.
- Option 3 Grant the Licence Variation to exclude any of the licensable activities to which the application related and modify/add conditions accordingly.
- Option 4 Reject the application.

Members chose Option 2 and agreed to grant the licence variation with the following additional conditions from North Yorkshire Police and Environmental Protection Unit:

North Yorkshire Police

Removal of Annex 2 Condition 2 to be replaced with the following conditions-

- 2a) A digital colour CCTV system will be installed to cover the premises and recorded coverage will include all areas to where public have access to consume alcohol.
- 2b) The CCTV system will be maintained, working and recording at all times when the premises are open.
- 2c) The recordings shall be of good evidential quality to be produced in a court or other such hearing.
- 2d) Copies of the recordings will be kept available for any responsible authority for 28 days.
- 2e) Copies of the recordings shall be made available to any responsible authority within 48 hours of request.
- 2f) Copies of the recording will display the correct time and date of the recording.

Removal of Annex 2 Condition 5 to be replaced by the following condition-

- 5. So as to uphold the licensing objective the prevention of crime and disorder, there shall be a maximum capacity figure of 100 people (which will include staff) at any one time on the licensed premises (for the avoidance of doubt this figure includes the occupancy of the outside area).

Removal of Annex 2 Condition 13 to be replaced with the following re-worded condition-

- 13a) Two door Supervisors shall be provided at the venue from 2100hrs on the following occasions;
 - i) Every Friday and Saturday evening
 - ii) In the evening before a Bank Holiday
 - iii) The evening of race meetings held at York Racecourse (save for the family meeting held in September and the first meeting held in May).

13b) Two door supervisors shall be provided at the venue from 2300hrs on any other night, not listed in the condition, upon which the venue intends to open beyond 0100hrs.

The use of the outside area would be covered with the following condition-

18) The footprint of the outside area shall be bordered by a semi-permanent removable, barrier (or similar) at all times the area is used for licensable activities.

The condition volunteered in the operating schedule in relation to the radio link be worded as follows-

19) The venue shall participate in the York Nightsafe Night Time Economy radio scheme.

Environmental Protection Unit

Conditions relating to the variation of hours for live and recorded music:

1. During regulated entertainment, all windows shall be kept closed and all doors shall be kept closed except for ingress and egress.
2. After 11pm, when regulated entertainment takes place, the windows on the first floor shall be provided with close fitting acoustic insulation designed to prevent noise breakout through the first floor windows.
3. All regulated entertainment shall be played through the premises sound system which has connection points on each floor of the premises. This sound system shall be under the control of the premises manager at all times when it is in use.
4. Documented checks shall be carried out by members of staff at no less than hourly intervals during the performance of live or recorded music. These checks shall assess the noise for the regulated entertainment and shall be carried out in the courtyard area outside no 1 Coffee Yard. Actions taken following these assessments shall be documented.

These documents shall be retained for six months and shall be made available for inspection on request by an authorised officer of City of York Council.

5. Staff involved in ensuring compliance with the licence conditions shall be trained in all matters relating to the licence and its conditions. This training shall be documented and records of training shall be kept available for inspection for 3 years.
6. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises on request.

All relevant mandatory conditions shall apply, together with the condition requiring seating for 12 covers on the ground floor and 12 on the first floor.

Reason for the decision:

The premises are not within the current Cumulative Impact Zone and there is therefore no rebuttable presumption that the application will normally be refused.

The Sub-Committee resolved that the application for variation be approved in relation to the extended hours inside the premises subject to the conditions requested by the Environmental Protection Unit at page 79, and the Police at page 77, together with mandatory conditions, as it was considered that the extension within the building would not undermine the licensing objectives.

The Sub-Committee also resolved that the variation to Condition 8 regarding seating arrangements would not be granted, and will remain in force, as the variation was considered to undermine the licensing objective of preventing crime and disorder, as it materially changes the nature of the establishment enabling it to be primarily used for drinking, based on the evidence available.

The Sub-Committee also resolved that the variation of Condition 11 regarding the use of the outside area would not be granted, as it was considered that an extension to 02:30 would undermine the licensing objective of preventing public nuisance by virtue of noise in the courtyard area based on the evidence available.

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.

Resolved: That the licence be granted in line with Option 2.

Reason: To address the issues raised.

Councillor Boyce, Chair

[The meeting started at 10.10 am and finished at 12.00 pm].