

Meeting	Licensing Hearing
Date	27 July 2015
Present	Councillors Douglas, Gillies and Hunter

5. Chair

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

6. Introductions

7. Declarations of Interest

At this point of the meeting, Members were asked to declare any personal, prejudicial or pecuniary interests they may have in the business on the agenda. None were declared.

8. The Determination of an Application by Tapped York Ltd for a Premises Licence Section 18(3)(a) in respect of Pavement Vaults, Piccadilly, York, YO1 9NU. (CYC-053292)

Members considered an application by Tapped York Ltd for a premises licence in respect of Pavement Vaults, Piccadilly, 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 and documents submitted prior to the hearing.
2. The Licensing Managers report and her comments made at the hearing. She advised that a representor had queried the accuracy of one of the legal notices placed in the local newspaper. The applicant confirmed that there had been

errors on the notice but these had been rectified and the notice re-submitted correctly. He had proof of this on an email and agreed to show the Licensing Manager this before the end of the hearing. The application was for a premises licence at Pavement Vaults (the former White Swan Hotel site) Piccadilly, York. The premises were located within the Cumulative Impact Zone. North Yorkshire Police had made representations as had a local business owner. Consultations had been carried out correctly. It was later confirmed by the Licensing Manager that she had seen evidence to show that the newspaper notice query detailed above had been resubmitted correctly.

3. The applicants solicitors comments made at the hearing. He advised that following negotiations with North Yorkshire Police, both parties were now close to reaching an agreement on licence conditions, should the application be granted. The police had indicated that a condition requiring 60% of sales to be food would be acceptable to them but the applicant considered that there would be difficulties in trying to meet this condition. It was suggested that a condition to state that the business would be 'predominantly food led' would be more reasonable. He explained that this is because the premises attracted a high rental and in order to be viable a mixed use as a restaurant and bar was needed for the venture. The style of operation being proposed would not be a high density vertical drinking establishment, although the applicant would like to have the option of including a drinking area in the ground floor bar for up to 50 persons. He also described in detail the kind of beers and food that would be on offer and confirmed it would be a premium bar and restaurant concept, offering craft beers and an extensive menu. It was stated that it was the intention to attract discerning customers, not large groups of stags and hens, and that in his opinion, whilst it was within the Cumulative Impact Zone (CIZ), there was a big difference in character between Micklegate and Coppergate. The intention was to employ a sommelier and drinks would include sophisticated cocktails, but not cheap priced drinks offers. The premises would be available for dining all day, from breakfast, through lunch to evening dining. The bar area would be located on the ground floor with the

restaurant downstairs. The Brewdog court case in Leeds was referred to where a District Judge had accused the Council of being too rigid with CIZ policy and had considered that the style of operation would not add to problems in the CIZ. It was suggested that the same would be true of this application. The applicant had carefully considered the CIZ area and asked that the Committee looked to the reasons for the CIZ to consider whether they had heard evidence to show that the proposal would not undermine the licensing objectives. The CIZ Policy does not dictate that new licences cannot be granted. It was confirmed that the applicant would have no objection to capping capacity of the whole licensed premises to 150 people even if the fire risk assessment enabled a higher capacity, as the style of operation would not want a crowded atmosphere. At present the Fire Safety Audit had not been carried out.

4. The representations made by North Yorkshire Police in writing and at the hearing. The Police's representative advised that he was not against the grant of a food led operation but did not want to see a bar on the site enabling vertical drinking. The addition of late night refreshment to the licence between 11pm and midnight had been suggested by the police to allow for a more relaxed atmosphere and to enable the provision of food the whole time the premises are open. The location of the premises on a busy 5 road intersection was a concern, as it was already in an area which experiences a lot of activity, with the footfall shown in the statement of the Police. That the Council CCTV cameras do not currently cover the site was also a concern. Concern was also raised about the potential impact on the residents of the 18 flats above the premises from noise, although it was accepted that no representations had been received from any of them. The Police confirmed that they were not saying that the applicant was not a good operator, but they were concerned about the impact when people leave the premises. Neither were the Police saying don't grant the licence, but if minded to do so, that it should be conditioned appropriately.
5. The representations made in writing and at the hearing by a local business owner. He raised concerns about the

potential for the premises to change its style to become drink-led after gaining a licence and questioned the robustness of conditions which require a premises to be food led. He queried how the operator would monitor numbers drinking at the bar area and raised concerns about the busy location of the premises on a street corner. He was also concerned about arrangements for smokers.

In coming to their decision, Members were presented with the following options:

- Option 1 Grant the licence in the terms applied for.
- Option 2 Grant the licence with modified/additional conditions.
- Option 3 Grant the licence to exclude any of the licensable activities to which the application relates.
- Option 4 Reject the application.

In coming to their decision the Sub Committee chose Option 2 and granted the application with modified/additional conditions as follows:

1. The premises shall operate as a predominantly food led establishment. Substantial food and non-intoxicating beverages including drinking water shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises up to 1 hour before the end of permitted hours for the sale of alcohol. For the avoidance of doubt, a full menu shall be available up to 2 hours before the end of permitted hours for the sale of alcohol on any given day.
2. Late night refreshment shall take place between 11pm and 12 midnight.

3. CCTV

- a. A colour digital CCTV system shall be installed within the premises and be operational and recording at all times when licensable activities take place.
- b. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
- c. CCTV cameras shall be installed to provide adequate cover of all public areas in the premises and entrances/exits & outside designated smoking areas (excluding toilets).
- d. The CCTV system recordings must be kept for a minimum of 28 days.
- e. North Yorkshire Police or a Responsible Authority (as defined in the Licensing Act 2003) may at any time request a recording. This should be complied with within 24 hours of the request being made.
- f. It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV system at the request of the police or responsible authority.
- g. All CCTV recordings will have sufficient clarity / quality / definition to allow facial recognition.

DOOR SUPERVISORS

1. An adequate number of Door Supervisors (at least one) shall be provided at the venue from 21:00hrs to the close of business on the following occasions:
 - (i) Every Friday & Saturday evening
 - (ii) 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 in May)
5. Where door supervisors are on duty they shall sign in and out of the premises log book, providing full details of their name and SIA number.
6. Door Supervisors shall wear their SIA badge on their outer clothing at all times when on duty.

GENERAL

7. A documented staff training programme shall be provided to all members of staff at the premises in respect of the:-

- (i) retail sale of alcohol;
- (ii) age verification policy;
- (iii) conditions attached to the premises licence;
- (iv) permitted licensable activities;
- (v) the licensing objectives;
- (vi) 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 entry in the log book and runs from the date of the particular entry).

8. The venue shall operate a Challenge 21 age verification policy and display posters confirming such in prominent locations throughout the venue.

9. The premises shall possess and use the local night time economy radio system (where this system is in operation). The radio shall be turned on and used by staff at the premises at all times the venue is open for licensable activities.

10. A Refusal Register / Incident Report record shall be maintained for the premises. Such registers, electronic or otherwise stored, will record incidents of staff refusals of underage or drunk people as well as incidents of any anti-social behaviour and ejections from the premises. Such registers shall be kept for a minimum of one year. (For the avoidance of doubt the one year period relates to each entry in the log book and runs from the date of the particular entry).

11. Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.

12. Alcoholic drinks purchased on the premises may only be taken off the premises in sealed containers.

13. The basement will be laid out with seating and tables to accommodate a minimum of 45 diners at any one time.
14. A written policy for the management of customers smoking will be drawn up and implemented. This policy will be revisited in light of changes to customer behaviour and as required to ensure that smokers do not block the pavement outside the premises to pedestrians.
15. No more than 50 persons at any one time to be drinking in the bar area located to the front of the ground floor.
16. No more than 170 persons to be within the whole of the licensed area at any one time.

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

Reason: To address the issues raised.

Reasons for the Decision:

The Sub-Committee carefully considered the application and the representations submitted in writing and orally at the hearing by those making representations and the Applicant. In reaching their decision, the Sub-Committee took into consideration the provisions of the Licensing Act 2003, in particular the statutory Licensing Objectives, together with 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.

The Sub-Committee had regard to the concerns of North Yorkshire Police that the premises are within the Cumulative Impact Zone and in a busy location. Members attached weight to these representations and were mindful of the Special Policy that there is a presumption against the grant of such a licence unless the applicant can rebut the presumption that the granting of such a licence would unacceptably add to the cumulative impact and thereby undermine the licensing objectives. The Sub-Committee were satisfied that the evidence put forward at the Hearing by the applicant was sufficient to rebut the presumption against granting a licence because the premises

will be of a food led nature, with limited scope for vertical drinking of up to 50 people in a specific area with a high quality of supervision. The imposition of Condition 1, is to ensure that the assurances given by the operators that the emphasis will be on dining as opposed to vertical drinking will be adhered to. The Sub-Committee had regard to the operator's previous history and the evidence they put forward. The Sub-Committee considered that it had received sufficient assurances and evidence from the applicant in order to have a high level of confidence that the premises would be operated responsibly and that it could with the imposition of suitable conditions operate without unacceptably adding to the cumulative impact or undermining the licensing objectives of prevention of crime and disorder. Whilst the Police and the other Representor had mentioned the impact of noise on the residents of the flats, no representations had been received from the Environmental Protection Authority or the occupiers of the flats, and it was considered that there was no evidence that the proposal would fail to promote the licensing objective relating to the prevention of public nuisance. They concluded that all four licensing objectives would be met in granting the application with the above mandatory and additional conditions.

The Sub-Committee therefore agreed to grant the licence with the additional conditions referred to above which were appropriate and proportionate to promote the licensing objectives. They reminded the applicant of the necessity of complying with all of the conditions.

Councillor Gllies, Chair

[The meeting started at 10.00 am and finished at 12.30 pm].