

Minutes of the meeting of the Licensing
and Appeals Hearings Panel held at 9.30
am on Monday, 8th March, 2021 at a
Virtual Meeting via Teams

Present

Councillor R Kirk (in the Chair)

Councillor P Bardon

Councillor D Watkins

Also in Attendance

Councillor M S Robson

LAHP.9 **Application for the Grant of a Premises Licence - The Old Cinema, 38
Long Street, Thirsk**

Thirsk Ward

The subject of the decision:

The Director of Law and Governance submitted a report seeking consideration of an application for the grant of a new premises licence in respect of The Old Cinema, 38 Long Street, Thirsk. The application sought to authorise the sale of alcohol from 11am until 11pm every day and the exhibition of films from 9am until 11pm every day.

Alternative options considered:

The Panel considered all of the options in paragraph 7.2 of the officer's report.

The Panel did not consider it necessary to reject the application. The Panel therefore considered whether to grant the application as applied for or to grant the licence subject to additional conditions. The Panel was satisfied that it was appropriate to impose additional conditions in order to adequately promote the licensing objectives.

The Panel therefore concluded that the alternative options were not appropriate in this instance.

The reason for the decision:

The Panel considered the representations of the parties both written and oral, the Licensing Act 2003 as amended, the Council's Statement of Licensing Policy and the guidance issued under Section 182 of the Licensing Act 2003.

The Panel gave appropriate weight to the representations submitted by North Yorkshire Police expressing concerns relating to crime and disorder on the basis that the proposed premises was part of a car showroom and alcohol sales were unlawful from excluded premises such as service areas and garages.

The Panel noted that section 176 of the Licensing Act 2003 prohibits the sale of alcohol from service areas, garages and premises used for the sale of motor vehicles. The Panel was satisfied that the provisions of section 176 were originally directed at removing the temptation to drink and drive and that this would engage the crime and disorder licensing objective.

The Panel noted that any sale of alcohol from excluded premises would be unlawful and therefore concerns in this regard would further engage the crime prevention objective.

The applicant informed the Panel that the premises were currently operating as a car showroom and that the application was intended to provide an opportunity for visitors to enjoy their time on the premises through association with the business. The Panel was informed that the café/bar/cinema element of the premises would not be used as an "open house bar" but instead would be primarily used by "friends of the business".

The applicant informed the Panel that the sale of alcohol would take place in the area marked "coffee bar" on the premises plans and the exhibition of films would take place in the area marked "cinema". The applicant indicated that the coffee bar/cinema would be separated from the car showroom areas of the premises by a cinema screen and a velvet curtain.

Officers of North Yorkshire Police raised concerns relating to the current layout of the premises. The Panel was informed that, on inspection in January and February 2021, the police could identify no clear separation between the car showroom and the proposed cinema/coffee bar and that the boundary of the proposed licensed premises was unclear. The applicant indicated that the premises were closed at the time of the police visit and, as no licence had been granted, the layout of the premises had not been altered yet. The Panel was satisfied that the applicant was under no obligation to invest in such measures at the application stage because he may incur unnecessary expense if, for example, the licence was refused. However, the Panel was satisfied that, in order to lawfully carry out any licensable activities, the applicant would be required to comply with any licence conditions and operate in accordance with the premises plans.

The Panel was informed by officers of North Yorkshire Police that they had attempted to reach an agreement with the applicant during the consultation period in order to adequately separate the sale of alcohol from the sale of motor vehicles. The Panel noted that the police had proposed a maximum of 12 events per year in order to ensure that, when the sale of alcohol was taking place, the premises were not operating as a car showroom. However, the applicant indicated that he wanted to open the bar whenever he deemed it appropriate and therefore the proposed restriction was not acceptable.

The Panel noted that the applicant had informed the police that “normal business” would take place between 10am and 5pm and the bar would be open between 5pm and 11pm. The Panel also noted that the police would be amenable to such arrangements provided no motor vehicles were on the premises when licensable activities were taking place. The police informed the Panel that the applicant was only willing to implement these arrangements as “good practice” but he would not volunteer licence conditions to this effect. The police informed the Panel that enforceable conditions would be required in this respect to prevent crime associated with the provisions of section 176.

The Panel noted that the Planning Authority had provided information during the consultation period to confirm that planning permission would not be required for the bar as the use of the premises would be regarded as ancillary to the primary use as a car showroom. The Panel was satisfied that, if the bar was ancillary to the showroom, it could not reasonably be regarded as separate premises.

The Panel was satisfied that the application sought to authorise the sale of alcohol between 11am and 11pm every day on premises which form part of an excluded premises as defined by section 176 of the Licensing Act 2003.

The Panel also noted that the applicant expected the bar to be primarily used by “friends of the business” and therefore the proposed use of the premises would be likely to contravene the provisions of section 176 unless appropriate conditions were imposed to address this matter.

The Panel concluded that it would be necessary to clearly divide the premises in order to ensure that any areas identified for the sale of alcohol did not form part of the premises used for the sale of motor vehicles. The Panel acknowledged that this may have implications on the existing planning permission and that, prior to making any alterations in this regard, the applicant would need to make enquiries with the relevant authorities outside the licensing process.

The Panel considered the licence conditions proposed by North Yorkshire Police as a means of promoting the licensing objectives. The Panel noted that the applicant’s operating schedule made reference to installing a suitable CCTV system, keeping an incident log, closing doors and windows where necessary and adopting a proof of age policy. The Panel was satisfied that appropriate and enforceable conditions should be imposed in this regard and that additional conditions (as proposed by the police) should be imposed to clearly identify the external areas of the premises.

The applicant informed the Panel that motor vehicles may be displayed on the licensed premises but they would not necessarily be for sale. The Panel was satisfied that vehicles for sale should not be permitted on the premises at any time that alcohol was available, but it was not satisfied that all motor vehicles should be prohibited. The Panel did not find it necessary, for example, to

prevent the applicant from displaying a motor vehicle as part of the customer experience provided it was not available for purchase.

The Panel was satisfied that, provided the premises were adequately distinct from the adjacent car showroom, it would not be necessary to restrict the number of occasions per year that licensable activities may be carried out. Furthermore, the Panel did not find it necessary to reduce the proposed hours for licensable activities.

In conclusion, the Panel was not satisfied on the balance of probability that the grant of the licence would have an adverse effect on the licensing objectives, provided appropriate conditions were imposed. The Panel was satisfied that the applicant had demonstrated a commitment to promoting the licensing objectives.

The Panel noted that the licence would be subject to all relevant mandatory conditions and may be subject to review in the event of any issues resulting from licensable activities being carried out on the premises.

The decision:

That the premises licence be granted as applied for, subject to the following conditions:

- Any part of the premises used for the sale and/or consumption of alcohol shall be separated from the adjacent car showroom by a permanently constructed partition wall.
- No customer shall be permitted to have direct access between the licensed premises and the adjacent car showroom.
- No motor vehicles available for sale shall be permitted on the licensed premises at any time during which the sale of alcohol is taking place.
- A colour digital CCTV system will be operational at the premises at all times when licensable activities are being carried out and at any other times where members of the public are present on the premises.
- The CCTV system shall contain the correct time and date stamp information.
- The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence.
- The CCTV system must be capable of providing quality images of good evidential value. The CCTV system will have sufficient storage retention capacity for a minimum of 28 days continuous footage.

- The CCTV footage will be controlled and kept in a secure environment to prevent tampering or unauthorised viewing.
- The CCTV system will be adequately maintained and be capable of transporting recorded material onto a removable media.
- The CCTV system replay software must allow an authorised officer or an officer of North Yorkshire Police to search the picture footage effectively and see all the information contained in the picture footage for the purposes of detecting, investigating and preventing crime. It must be possible to replay exported files immediately e.g. no indexing of files or verification checks.
- No device shall be permitted that could in any way adversely affect or impede the quality of the images recorded by the CCTV system, e.g. smoke or dry ice machines.
- 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.
- 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];

- A Refusal Register and an Incident Report Register shall be maintained on the premises. Such registers will record incidents of staff refusals to under age 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 respective entry in a Register and runs from the date of that particular entry in the Register].
- The premises shall operate a challenge 25 policy.
- The external area of the premises will be defined by a café-style barrier which shall consist of moveable posts, rigid cross beams (top and bottom) securely linked together with either a fabric or rigid infill.

- The external seating area shall not be used for the consumption of alcohol between the hours of 10pm and 11am.

All tables and chairs shall be removed (or stacked and secured) from the external areas of the premises by 10pm each day.

The meeting closed at 10.30 am

Chairman of the Panel