

North Yorkshire Council

Statutory Licensing Sub-Committee

19 June 2024

Application for grant of a Premises Licence for Curlew Gelato Lounge, 32 Belle Vue Street, Filey, YO14 9HY

Report of the Corporate Director – Environment

1.0 PURPOSE OF REPORT

- 1.1 To seek the determination by the Statutory Licensing Sub-Committee of an application for the grant of a premise licence (Licensing Act 2003 'The Act')

2.0 APPLICATIONS

- 2.1 An application for the grant of a premise licence has been received from Gelato Lounge (Filey) Ltd, the application and accompanying plan is attached at **Appendix A**.
- 2.2 The application seeks to convert the ground floor of the premises into an ice cream parlour and café bar with an outdoor seating area. The licensable activities are as follows:
- Sale of alcohol 11:00 to 22:30 Monday to Sunday
 - Opening Hours 10:00 to 23:00 Monday to Sunday

3.0 PROMOTION OF LICENSING OBJECTIVES

- 3.1 Section 4 of 'the Act' places a duty on the Licensing Authority to carry out its functions under the Act with a view to promoting the licensing objectives which are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 3.2 The following conditions have been offered as part of the application:

- 1) The premises will operate primarily as a restaurant and not a bar or vertical drinking establishment

The prevention of crime and disorder

- 2) 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.
- i) The CCTV system shall contain the correct time and date stamp information.
 - ii) The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence.

- iii) The CCTV system must be capable of providing quality images of good evidential value.
- iv) The CCTV system will have sufficient storage retention capacity for a minimum of 28 days continuous footage.
- v) The CCTV footage will be controlled and kept in a secure environment to prevent tampering or unauthorised viewing.
- vi) The data controller who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of an authorised officer or an officer of North Yorkshire Police, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.
- vii) 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.
- viii) 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.
- ix) If there is an outdoor area that is to be used for the sale or consumption of drinks then these areas will be covered by CCTV, which will be available to be seen on a monitor by staff members at all times.

Public safety

- 3) A documented staff training programme shall be provided to all members of staff at the premises in respect of the:-
 - operation of the CCTV system (including the downloading of evidence)
 - retail sale of alcohol;
 - age verification policy;
 - conditions attached to the Premises Licence;
 - permitted licensable activities;
 - any training specified by North Yorkshire Police Licensing in respect of safeguarding and vulnerability.
 - the licensing objectives
 - 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];

- 4) The premises shall operate a challenge 25 policy
- 5) Off sales will be in sealed containers
- 6) There will be a minimum number of 20 covers available at all times licensable activities are taking place.

The prevention of public nuisance

- 7) 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.

- 8) The DPS shall risk assess the requirement for SIA registered door staff / additional staff for events held at the premises. This will be documented and provided to any responsible authority when required.

The protection of children from harm

- 9) A Refusal Register and an Incident Report Register shall be maintained at 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].
- 10) There shall be no adult entertainment on the premises

4.0 REPRESENTATIONS

4.1 A relevant representation has been received from a member of the public and is attached at **Appendix B**, the representation is in line with the following licensing objectives:

- The prevention of crime and disorder
- The prevention of public nuisance

4.2 The representation is summarised as follows:

- The premises is situated on a quiet back street with many surrounding gardens and balconies.
- That the back street is not very well lit.
- That it's not the place for alcohol and late nights to be accepted.
- That the sale of alcohol may lead to rowdiness.
- That customers in the proposed outside seating area may cause a disturbance.
- They have a bedroom which overlooks the proposed outside seating area and don't want drunk people hanging around in that area.

4.3 Members should note that some of the grounds for the representations may not directly relate to the licensing objectives but have been included in the interests of openness and transparency.

5.0 ALTERNATIVE OPTIONS CONSIDERED

5.1 All of the Sub-Committee's options are outlined at 12.0 of the report. No alternative options are available.

6.0 FINANCIAL IMPLICATIONS

6.1 The costs involved in administering the Licensing Act 2003 are set in statutory legislation.

7.0 LEGAL IMPLICATIONS

7.1 As a relevant representation has been received, the Sub-Committee must hold a hearing to consider the representation and, having regard to the representation, determine the application.

7.2 The Sub-Committee must have regard to the promotion of the four licensing objectives in exercising its functions under the Licensing Act 2003.

7.3 The Sub-Committee must also have regard to the statutory guidance under section 182 of the Act and the council's own statement of licensing policy exercising its functions under the Act.

7.4 The applicant and all parties to the hearing may appeal against the decision of the Licensing Sub-Committee. Appeals must be made to a Magistrates' Court within 21 days of receiving notification of the decision.

8.0 CLIMATE CHANGE IMPLICATIONS

8.1 No Climate change implications have been identified.

9.0 POLICY IMPLICATIONS

9.1 The following sections of the Scarborough Locality Statement of Licensing Policy are relevant in considering the licensing objectives:

"3.8 The Council has a duty under Article 8 of the European Convention on Human Rights to protect the rights of its residents to privacy and family life. The Council also acknowledges the rights of businesses in its area to operate, but this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises".

"3.9 It is acknowledged that the Council has a duty to exercise its functions with a due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent, crime and disorder in its area. In addition we will seek to support strategies where they are allied to the licensing objectives".

"3.10 The licensing authority is unable to refuse or impose conditions on valid applications where no relevant representations have been made. Where conditions are imposed, they shall be appropriate and proportionate and shall be tailored to the size, style, characteristics and activities that take place at the premises concerned".

"3.11 In addition conditions imposed shall be precise and enforceable, clear in what they intend to achieve, shall not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation, shall not replicate offences set out in the 2003 Act or other legislation, shall be justifiable and capable of being met and shall not seek to manage the behaviour of customers once they are beyond the direct management of the licence/certificate holder and their staff".

9.2 The Sub-Committee should also consider the following sections of the S182 Licensing Act 2003 Guidance:

- Principles – 1.15 to 1.17
- Crime and disorder – 2.1 to 2.7
- Public nuisance - 2.21 to 2.27
- Beer gardens or other outdoor spaces – 8.35 to 8.37
- Conditions - 10.1 to 10.10

10.0 EQUALITIES IMPLICATIONS

10.1 No equalities implications have been identified for this matter.

11.0 REASONS FOR RECOMMENDATIONS

- 11.1 In accordance with section 18 of the Licensing Act 2003, the licensing authority must hold a hearing to consider the application and any relevant representations.
- 11.2 The Sub-Committee must, having had regard to the application and any relevant representations, take such steps (if any) as it considers appropriate for the promotion of the licensing objectives.

12.0 RECOMMENDATION(S)

The Licensing Committee has the following options:

- i. To grant the licence as applied for (subject to any conditions consistent with the applicant's operating schedule)
- ii. To grant the licence subject to any additional conditions that Members consider appropriate for the promotion of the licensing objectives; or
- iii. To reject the whole or part of the application.

In making its decision, the Sub-Committee must act with a view to promoting the licensing objectives. The Sub-Committee must also have regard to its Statement of Licensing Policy and the Statutory Guidance issued under Section 182 of the Act.

APPENDICES:

Appendix A – Application
Appendix B – Representation

BACKGROUND DOCUMENTS:

Scarborough Locality Statement of Licensing Policy
Section 182 Guidance (Home Office), Licensing Act 2003

Karl Battersby
Corporate Director – Environment
County Hall
Northallerton

28 May 2024

Report Author – Lisa Templeton – Licensing Enforcement Officer
Presenter of Report – Lisa Templeton – Licensing Enforcement Officer

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.