

## Licensing Hearing

**To:** Councillors Boyce, Crisp and McIlveen  
**Date:** Thursday, 5 February 2015  
**Time:** 10.00 am  
**Venue:** The Auden Room - Ground Floor, West Offices (G047)

### AGENDA

#### 1. Chair

To elect a Member to act as Chair of the meeting.

#### 2. Introductions

#### 3. Declarations of Interest

At this point in the meeting, Members are 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 this agenda.

#### 4. **The Determination of an Application by Mr Andrew Elliott to Vary a Premises Licence Section 35(3)(a) in respect of Mansion Nightclub, 53-55 Micklegate, York, YO1 6LJ. (CYC-009397)**

Democracy Officer:

Name: Laura Bootland

Contact Details:

- Telephone – (01904) 552062
- Email - [laura.bootland@york.gov.uk](mailto:laura.bootland@york.gov.uk)

For more information about any of the following, please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats.

Contact details are set out above.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

**Distribution:**

Members of Licensing Act 2003 Sub-Committee

Licensing Officer

Legal Services

Applicant

Representors

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## LICENSING ACT 2003 SUB – COMMITTEES PROCEDURE FOR HEARINGS

### Introduction

The procedure outlined below will be followed at all Licensing Hearings.

As Licensing Hearings are quasi-judicial the Sub-Committee will, in effect, act like a Court and the rules of natural justice will apply. The Sub-Committee will be guided by legal principles in determining whether evidence is both relevant and fairly admitted. Committee Members have a duty to view all evidence presented before them impartially. Members of the Licensing Sub-Committee have all received relevant training and are used to making decisions of this type. No matter how strong local opinion may be, Committee Members can only make decisions based on relevant licensing issues as set out before the Sub-Committee in determining applications.

The hearing will be in public session. However, the Sub-Committee may exclude the public from a hearing if it considers it in the public interest to do so. However, the decision will be made in private.

The purpose of the hearing is

- To enable those with a right to appear to advance their point of view and to test the case of their opponents
- To assist the Sub-Committee to gather evidence and understand the relevant issues

**In view of the requirement to hold hearings within specified times, the Licensing Authority will generally be unable to enter into discussions to identify dates convenient to all parties concerned.** In exceptional circumstances, the Licensing Authority will consider applications to adjourn hearings to a later date.

### Representations at Licensing Hearings

The Applicant, Ward Councillors, and Representors who have made written submissions will be allowed to speak at the Sub-Committee. At

any hearing of an application, the Applicant and any Representors shall attend in person wherever possible. Any party to a hearing may be assisted or represented by any person, legally or otherwise.

All parties will be given a fair hearing and each party will have the same amount of time in which to address the Sub-Committee. A time limit has been set because of the pressures on the Sub-Committees to hear so many applications in a short period of time. **Each party will have 15 minutes to address the Sub-Committee, give any further information, and call any witnesses.** If any party considers this time to be insufficient then a request in writing may be made to the Democracy Officer for an extension of time at least 2 working days before the hearing. However, this will not be automatically granted and will be at the discretion of the Sub-Committee.

The Sub-Committee may take into account any documentary evidence or other information in support of the application, representations or notice, either before the hearing or, with the consent of all other parties, at the hearing.

If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written objection and hear and consider any evidence and argument in relation to it put forward by the Applicant. In considering written evidence in the absence of a Representor, appropriate weight will be attached, given that the person cannot be questioned by the Applicant and Members.

**The Sub-Committee is required to disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations, or notice, and the promotion of the licensing objectives.** Duplication should be avoided. Comments must be confined to those points already made, although the parties may extend or expand on their written submissions. The Sub-Committee will have read and familiarised themselves with all the written submissions and the issues prior to the hearing, and therefore do not require the points to be repeated or made at length. The Applicant and Representors cannot raise substantial new information at a hearing which has not been seen previously by the other parties.

A Representor **may not** introduce any new ground or objection not referred to in the written submission. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

Any person behaving in a disruptive manner will be asked to leave the hearing. If this does occur, that person may, before the end of the hearing, submit in writing any information which they would have been entitled to give orally.

### **Procedure prior to the Hearing**

The Members sitting on the Sub-Committee will meet prior to the hearing to note the matters that are to be presented. They will only be accompanied by the Democracy Officer and Legal Advisor (*if present*). Attention will only be drawn to the nature of the application and the premises or person to which it relates. The actual application will not be discussed.

At any hearing of an application, the Licensing Officer, the Applicant and any Representors or representatives will report to reception and be asked to wait in reception until the democracy officer calls them through to the committee room.

### **Procedure at the Hearing**

1. Members of the Sub-Committee will appoint a chair.
2. The Chair introduces the Committee Members and officers [*Democracy Officer, Legal Advisor to the committee (if present) and the Licensing Officer*], welcomes the Applicant and Representors (or their representatives), and establishes the identity of all who will be taking part.
3. The Chair will explain to the parties the procedure that will be followed at the hearing.
4. The Chair will proceed with the order of business on the agenda.
5. When the agenda item relating to the application is reached, the Chair will invite the Licensing Officer to present the application.
6. The Licensing Officer outlines the application, confirms the application details, introduces the report and gives an update on any recent changes.

7. The Chair will invite Committee Members, the Applicant and Representors (or representatives) to ask the Licensing Officer questions to clarify any points raised in the report.
8. The Chair will ask the Applicant (or their representative) to present their case.
9. The Applicant (or their representative) will present their case and may call any witnesses to support their case *[maximum 15 minutes]*.
10. The Chair will invite the Representors (or their representative) in the following order to ask questions of the Applicant (or their representative) and/or witnesses *[maximum 5 minutes each party]*
  - (i) Police
  - (ii) Other Responsible Authorities
  - (iii) Ward Councillors
  - (iv) Interested Parties
11. The Chair will invite the Committee Members to ask questions of the Applicant (or their representative) and/or witnesses.
12. The Chair will invite the Representors (or their representative) in the following order to state the nature of their interest in the matter, present their case and call any witnesses to support their case *[maximum 15 minutes each party]*
  - (i) Police
  - (ii) Other Responsible Authorities
  - (iii) Ward Councillors
  - (iv) Interested Parties
13. The Chair will invite the Applicant to ask questions of each Representor (or their representative) and/or their witnesses after each presentation *[maximum 5 minutes per Representor]*.
14. The Chair will invite the Committee Members to ask questions of each Representor (or their representative) and/or their witnesses after each presentation.

15. The Chair will invite the Representors (or their representative) in the following order to summarise their case *[maximum 5 minutes each party]*
  - (i) Police
  - (ii) Other Responsible Authorities
  - (iii) Ward Councillors
  - (iv) Interested Parties
16. The Chair will invite the Applicant (or their representative) to summarise their case *[maximum 5 minutes]*.
17. The Chair will provide the Sub-Committee with a final opportunity to seek clarification from any of the parties on any points raised, or seek advice from the Licensing Officer on policy, or from the Legal Advisor *(if present)* on law and jurisdiction.
18. When all the evidence has been heard, the Chair will declare the hearing closed and ask the Licensing Officer, the Applicant and Representors (or their representatives) plus any witnesses present to leave the committee room and wait in reception while the Sub-Committee considers the evidence.

### **Procedure after the Hearing**

19. If the Sub-Committee wish to seek further clarification on the evidence given, the Democracy Officer will invite all parties back into the committee room.
20. If possible, and for all hearings under:-
  - section 35 or 39 which is in respect of an application made at the same time as an application for conversion of an existing licence under paragraph 2 of Schedule 8 (determination of application under section 34 or 37)
  - section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under section 85)
  - section 105(2)(a) (counter notice following police objection to temporary event notice)
  - section 167(5)(a) (review of premises licence following closure order)

- paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence)
- paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate)
- paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence)

the Sub-Committee will make a decision on conclusion of the hearing and only the Democracy Officer and the Legal Advisor to the Sub-Committee (*if present*) will remain in the room with the Committee Members. These officers will not comment on the merits of the application, but will be present to provide advice on legal and procedural points and to record the decision.

21. If the decision has been made, all the parties will be invited back into the committee room by the Democracy Officer. The Chair will announce the decision including reasons together with, if appropriate, details of any conditions to be attached to the grant of the licence. This decision will then be communicated in writing to the Applicant and Representors within 3 working days of the hearing. There can be no further questions or statements.
22. For all other hearings not listed above, if the Sub-Committee is unable to make a decision on the day of the hearing, the decision will be made within 5 working days beginning with the day or the last day on which the hearing was held. The Democracy Officer will inform the parties that they are no longer required and the decision will be communicated in writing to the Applicant and Representors within 3 working days of the decision being made.
23. The notification will include information about the rights of appeal against the determination made.





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**Licensing Act 2003 Sub Committee****5 February 2015**

Report of the Director of Communities and Neighbourhoods

**Section 35(3) (a) Application for the variation of a premise licence for Mansion Nightclub, 53-55 Micklegate, York, YO1 6LJ**

1. This report seeks Members determination of an application for the variation of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-009397
3. Name of applicant: Andrew Elliott
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is as follows:
  - 1) To change the layout to the premises.
  - 2) To remove the embedded conditions relating to credit sales and the attachment of PEL (Public Entertainment Licence) conditions.
  - 3) To extend the hours for the sale of alcohol to between 10:00 and 04:30.
  - 4) To extend the opening hours and hours for permitted regulated entertainment to between 10:00 and 05:00.
  - 5) To extend the hours for late night refreshment to 23:00 and 05:00.
  - 6) To permit extensions to these hours on race days.
  - 7) To add existing conditions to the premises licence;

**Background**

6. A copy of the existing premise licence is attached at Annex 1. A copy of the plans showing the existing layout of the premises is attached at Annex 2.
7. A copy of the application to vary the licence is attached at Annex 3. A copy of the plan showing the proposed change to layout of the premises is attached at Annex 4.

8. The following schedule lists the existing and proposed licensable activities and hours;

LICENSABLE ACTIVITIES	CURRENT HOURS	PROPOSED HOURS
Films	Monday to Sunday 10:00 – 03:00	Monday to Sunday 10:00 – 05:00
Live Music	As above	As above
Recorded Music	As above	As above
Performances of dance	As above	As above
Activities like music/dance	As above	As above
Late Night Refreshment	Monday to Sunday 23:00 – 03:00	Monday to Sunday 23:00 – 05:00
Supply of Alcohol	Monday to Sunday 10:00 – 02:30  Non standard timings - From the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day	Monday to Sunday 10:00 – 04:30  Non standard timings - From the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day
Opening Hours	Monday to Sunday 10:00 – 03:00  Non standard timings - From the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day	Monday to Sunday 10:00 – 05:00  Non standard timings - From the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day
		An additional hour on the end of all timings on racedays and on the morning the clocks go forward

### **Promotion of Licensing Objectives**

9. The applicant proposes the following conditions to be added to those already stipulated on their existing licence:
- i) There will be no entry / re-entry to the premises (save for persons who have gone to the designated smoking area) after 04:00.
  - ii) A CCTV system will be installed and maintained at the premises. Images will be retained for a minimum period of 28 days and be made available to officers of the responsible authorities on request.
  - iii) The outside smoking area will be monitored by a designated member of staff whose duty it is to ensure that no disturbance is caused by those using the smoking area.
  - iv) The premises will operate a written queuing and dispersal policy to ensure customers leave quietly. That policy will be operated and a copy made available to officers of the responsible authorities on request.

### **Special Policy Consideration**

10. This premise falls within an area that has been identified as one where the concentration of a significant number of licensed premises has a considerable impact on the licensing objectives. As part of a series of measures to address the problems of a city centre increasingly blighted by alcohol misuse, this area has been made the subject of a special policy that addresses the impact of the concentration of licensed premises in this particular part of the city centre. The Special Policy was initially approved for this area by full council on 7<sup>th</sup> January 2011 and an extension to the policy area was approved by full council on 27 March 2014. A copy of the special Policy Statement is attached at Annex 5. A map showing the location of the venue is attached at Annex 6.

### **Consultation**

11. Consultation was carried out by the applicant in accordance with s13, and s17 (5) of the Act and Regulation 42, Parts 2 and 4 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the displaying of a notice on the premises and an advertisement in a local paper giving details of the application and serving a copy of the application on all responsible authorities. The applicant complied with all statutory requirements.

12. All procedural aspects of this application have been complied with.

### **Summary of Representations made by Responsible Authorities**

13. A representation was received from North Yorkshire Police on the grounds that the following licensing objectives would be undermined if the application was to be granted; the prevention of crime and disorder; public safety; prevention of public nuisance. The following is a summary of their representation:

- 1) The grant of the variation is likely to add to the existing cumulative impact within York's Cumulative Impact Zone (CIZ) area.
- 2) A significant number of premises already provide licensable activities within the vicinity of these premises (on licensed / late night refreshment houses).
- 3) The increased hours of trading will have a significant bearing on the likelihood for crime and disorder.
- 4) Potential negative impact on the current multi-agency work being conducted under the Safer night-time economy strategy.
- 5) The removal of all "compliance with PEL conditions" will have a detrimental impact on the crime and disorder licensing objective.
- 6) Perceived public safety issue as first floor fire exit indicated on plan into neighbouring premises is out of the control of 53-55 Micklegate.
- 7) Potential crime and disorder issue as designated smoking area mentioned in volunteered conditions is not defined as a specific location on submitted plans.

14. North Yorkshire Police did not propose any additional conditions that could be attached to the licence to address these issues, as they oppose the extension to existing licensable hours. A copy of the representation is attached at Annex 7.

15. A representation was received from the Licensing Authority in its role as a responsible authority on the grounds that the prevention of crime and disorder and prevention of public nuisance licensing objectives would be undermined. This representation was subsequently withdrawn when the applicant agreed to the following two conditions being attached to the premises licence:

- i. The maximum occupancy of the premises will be 500 persons.
- ii. All off sales of alcohol shall be made in sealed containers.

16. A further representation was received from CYC Environmental Protection Unit (EPU), on the grounds that the licensing objective, prevention of public nuisance, would be undermined if the variation application was granted. However this representation was withdrawn when the applicant agreed to the following conditions being attached to the premises licence if granted:
- i. Bottle bins will be emptied between 09:00 and 23:00.
  - ii. Notices will be displayed at the Micklegate exit asking customers to leave the premises quietly.
  - iii. During the operation of amplified equipment and regulated entertainment all doors, including fire doors, shall be kept shut when not in use. With the exception to the front door which may remain open during opening hours, providing that the noise emanating does not cause a nuisance to any noise sensitive premises.
  - iv. All windows and doors opening onto the rear car park area of the premises shall be kept closed during regulated entertainment. Except for any door used for access which forms a lobby consisting of a minimum of 2 doors, one at each end of the lobby. These lobby doors shall be kept closed except for ingress and egress and fitted with a self closing device.
  - v. Notices will be displayed in the car park asking customers to have regard for neighbours by leaving the area quietly.
  - vi. All music shall be played via a noise limiting device to be agreed with City of York Council's Environmental Protection Unit prior to use.
  - vii. Prominent, clear and legible signs shall be displayed in the DJ area to inform DJs that all music is to be played through the noise limiter provided.
  - viii. An alarm system shall be installed and be operational during hours of opening to the public which alerts staff when the rear fire door has been opened.
  - ix. Prominent, clear and legible notices shall be displayed on all fire exits stating that fire exits are for emergency use only.
  - x. Documented patrols shall be carried out by members of staff at no less than hourly intervals during the hours of opening to the public. The documentation for the patrols shall be made in the course of the patrol or on the completion of each patrol. These checks shall be undertaken outside the building to the front and rear to check for noise from inside the premises and noise from Customer's outside the venue to ensure compliance with condition 13. The patrol documents shall be kept for a minimum of 3 months and made available to the Licensing Authority or any responsible authority on reasonable request.

- xi. Staff training shall be given and documented regarding all matters relating to the licence and its conditions. Records of training shall be kept for 3 years.
- xii. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises on request.
- xiii. No music or amplified sound shall be audible at the boundary of the car park to the rear of the premises.
- xiv. During hours the premises is open to the public, fire doors shall be fitted with non-locking restrictions which prevent their opening except in an emergency.

### **Summary of Representations made by other persons**

- 17. Six relevant representations have been received from persons listed at Annex 8 including a representation from the Micklegate Ward Councillors. A copy of these representations is shown at Annex 9.
- 18. Members are reminded that representations are only “relevant” if they relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

### **Planning Issues**

- 19. There are no planning issues regarding this application.

### **Options**

- 20. By virtue of s18 (4) of the Act, the Committee have the following options available to them in making their decision:-
- 21. Option 1: Grant the variation of the licence in the terms applied for.
- 22. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
- 23. Option 3: Grant the variation of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
- 24. Option 4: Reject the application.
- 25. Members are reminded that they may only use their discretion to add, remove or amend conditions or activities in relation to matters that are raised by representors and are relevant to the promotion of the licensing objectives.

## Analysis

26. The following could be the result of any decision made this Sub Committee:-
27. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
28. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
29. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
30. Option 4: This decision could be appealed at Magistrates Court by the applicant.

## Council Plan

31. The Licensing Act 2003 has 4 objectives the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
32. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

## Implications

33.
  - **Financial** - N/A
  - **Human Resources (HR)** – N/A
  - **Equalities** – N/A
  - **Legal** – This decision could be appealed at Magistrates Court by the applicant or any of the representors.
  - **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's

responsibility to co-operate in the reduction of crime and disorder in the city.

- **Information Technology (IT)** – N/A
- **Property** – N/A
- **Other** – none

### **Risk Management**

34. All Members of the Licensing Act 2003 Committee have received full training on the Act and the regulations governing hearings. They are aware that any decision made which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
35. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

### **Recommendations**

36. Members determine the application.

Reason: To address the representations received as required by the Licensing Act 2003.



## Contact Details

**Author:**

Lesley Cooke  
Licensing Manager

Tel no: 01904 551515

**Chief Officer Responsible for the report:**

Steve Waddington  
Assistant Director– Housing & Public Protection.

**Report  
Approved**



**Date** 14/01/15

## Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services Ext: 1004

**Wards Affected:** Micklegate

**For further information please contact the author of the report**

## Background Papers:

- Annex 1** - Copy of existing premises licence
- Annex 2** - Copy of plans showing existing premises layout
- Annex 3** - Copy of application form
- Annex 4** - Copy of plans showing proposed premises layout
- Annex 5** - Copy of CYC Special Policy Statement
- Annex 6** - Map of area showing location of premises
- Annex 7** - Copy of police representation
- Annex 8** - List of representors
- Annex 9** - Copies of representations
- Annex 10** - Mandatory Conditions
- Annex 11** - Legislation and Policy Considerations

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