



Licensing Hearing

To: Councillors Gillies, Hyman and Wiseman
Date: Tuesday, 24 January 2012
Time: 10.00 am
Venue: The Guildhall

A G E N D A

1. Chair

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

2. Introductions

3. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

4. The Determination of an Application by City of York Council, Communities and Culture Section 35(3)(a) to Vary a Premises Licence in respect of Eye of York and Tower Gardens. (CYC- 010978)

If you require any further information, please contact Laura Bootland on Tel 01904 552062 or Fax 01904 551035 or email laura.bootland@york.gov.uk

Distribution:

Members of Licensing Act 2003 Sub-Committee

Licensing Officer

Legal Services

Applicant

Representors

Press, Libraries, Council Receptions



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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- Applicant
- Representors & the relevant Responsible Authorities



Licensing Act 2003 Sub Committee**24 January 2012**

Report of the Director of Communities and Neighbourhoods

Section 35(3)(a) Application for the variation of a premise licence for Eye of York and Tower Gardens, York.

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-010978
3. Name of applicants: City of York Council, Communities and Culture.
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is as follows
 - (a) to extend the licensed area to include the Tower Gardens riverbank and the paved area and mooring on the opposite bank (adjacent to Bonding Warehouse).
 - (b) to add 2 additional licensable activities to those already authorised namely (i) the provision of entertainment facilities for making music and (ii) the provision of entertainment facilities for dancing
 - (c) to amend condition 1 in Annex 2 of the licence by adding the words 'military' so the condition now reads " Any event on this land will be either civic or military or family based and will reflect as such.
 - (d) to replace condition 2 in Annex 2 of the licence with the following:-
 - (i) The number of events for the Tower Gardens are to be limited to no more than 10, with a maximum of 30 days activity per calendar year
 - (e) to replace condition 3 in Annex 2 of the licence with the following:-

- (i) Full risk assessment shall be presented 30 days prior to the event by the Event Organiser as specified in the Event Hire Agreement to the Licence Holder.
- (ii) Public Liability Certification and Safety Certification will be presented 30 days before the event by the Event Organiser as named in the Event Hire Agreement to the Licence Holder

(f) to replace conditions 4-5 in Annex 2 of the licence with the following

- (i) The York Safety Advisory Group will be presented with the full risk assessment, Public Liability Certification and Safety Certification where the expected attendance is above 499 people and /or significant demountable structures or road closures are proposed no later than 28 days before the event.

(g) to replace condition 6-17 in Annex 2 of the licence with the following:-

- (i) Event organisers as named in the Event Hire Document shall submit a completed copy of the form "Notification for Provision of live Amplified Music for Event booked on City of York Council Controlled Land", together with a detailed plan showing exact layout of the site and proposed sound monitoring locations, at least 28 days before the event. A copy shall be sent to the Environmental Protection Unit and also the Licensing Unit. The notification shall include a sample of the leaflet to be sent to comply with the condition below and which addresses will receive the leaflet.
- (ii) Prior to an event, noise sensitive premises in close proximity shall be leafleted about the event. Information shall include details of the performance times and any sound checks taking place and a contact telephone number of the Named Event Organiser and a CYC representative. In the event of a complaint regarding sound levels, the Named Event Organiser will make an assessment of no less than 5 minutes in close proximity to the complainants address. If the sound level is within category C or D of the sound monitoring log guidance, the specified action shall be taken and the requirements of the

Named Event Manager to mitigate be carried out immediately. The Named Event Organiser will contact the complainant and check that they are satisfied with the steps taken. If the complaint cannot be resolved on site the City of York Council Complaints Procedure, as outlined at www.york.gov.uk will be instigated.

(iii) The Events Organiser shall appoint a member of their event team as "Sound Monitor". The Sound Monitor will undertake a documented sound check prior to or at the start of the event to ensure that the sound levels are within category A or B as defined in "Sound Monitoring Log for Events on CYC land". During the event, the Sound Monitor shall carry out documented patrols at least once per hour or for each separate act taking place whichever is the more frequent. The monitoring at each location shall be for a representative period whilst the act is taking place (at least 5 minutes) and the observations shall be recorded on the "Sound Monitoring Log Sheet for Events on CYC land". Actions taken shall be in accordance with those stated on the monitoring lo sheet.

(iv) There shall be a litter pick of the area upon the conclusion of the event (or daily conclusion should the event be held over a number of days) with particular emphasis on any glass items that have been brought onto the site by customers.

(h) to replace condition 18 in Annex 2 of the licence with the following:-

(i) All necessary steps shall be taken to ensure that all supervisory staff in sole charge of children and young people are CRB checked by the named Event Organiser.

Background

6. A copy of the existing premise licence is attached at Annex 1.
7. A copy of the application to vary the licence is attached at Annex 2.

Promotion of Licensing Objectives

8. The operating schedule submitted by the applicant shows that, in addition to the proposed changes as listed above, the licensing objectives would be met as follows:
9. General
 - (a) For all events in which alcohol is to be sold a 28 day notification shall be given to the police. The police will have the right to veto such sales upon submission of written, reasonable and justified grounds served within 14 days of the event. The date of notification and the date of commencement of the event shall not form part of the 14 or 28 day notification period
 - (b) Alcohol sales shall be in open non glass vessels and containers only, which will include the decanting of alcohol where necessary.
10. The prevention of crime and disorder
 - (a) For all events where alcohol is to be sold, front line Door Supervisors shall be deployed at all entrance points leading to where alcohol is available for sale and consumption.
 - (b) The management of the venue will comply with any written reasonable and justified request made by North Yorkshire Police regarding the number of Door Supervisors depending on the style of the event.
 - (c) A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals to under-age or drunken people as well as incidents of any anti-social behaviour and ejections from the premises. Both documents will be made available upon a reasonable request from any Responsible Authority and will be kept for at least 3 calendar months from the end of the event.
11. The protection of children from harm
 - (a) The only acceptable proof of age identification shall be a current passport, photocard driving licence or identification carrying the PASS logo (until other effective identification technology e.g. thumb print or pupil recognition, is adopted by the premises licence holder)
 - (b) Signage advertising the above condition shall be displayed at all points where alcohol is offered for sale.

Special Policy Consideration

12. The premises (i.e. Tower Gardens) fall 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 approved by full council on 7 January 2011. A copy of the special policy statement is attached at Annex 5.

Consultation

13. 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.
14. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

15. North Yorkshire Police have met with the applicant to discuss the application. The applicant has agreed to the following condition being included in the licence if granted.
 - (i) Alcohol will not be allowed to be transferred between the individual licensed areas as covered by the premises licence.

Summary of Representations made by Interested Parties

16. Representations have been received from 2 Interested Parties. Their representations are shown in Annex 3.
17. A map showing the general area around the venue from which the representations are focused is attached at Annex 4.

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 relevant to 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:

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Licensing Manager

Tel no: 01904 551515

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director– Housing & Public Protection.

**Report
Approved**



Date 09/01/12

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 application form.
- Annex 3** - Representations from Interested Parties
- Annex 4** - Map showing general area from which representations received.
- Annex 5** - City Centre Special Policy Statement
- Annex 6** - Mandatory Conditions
- Annex 6** - Legislation and Policy Considerations.

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