



Licensing Hearing

To: Councillors Boyce, Gillies and Orrell

Date: Thursday, 24 October 2013

Time: 10.00 am

Venue: The Thornton Room - Ground Floor, West Offices (G039)

AGENDA

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. Minutes

To approve and sign the minutes of Licensing Hearing held on 19th August 2013.

5. **The Determination of an Application by City of York Council, Communities, Culture and the Public Realm to Vary a Premises Licence Section 35(3)(a) in respect of Rawcliffe Country Park, Shipton Road, York. (CYC-019663)**

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

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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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- Applicant
- Representors & the relevant Responsible Authorities

City of York Council

Committee Minutes

Meeting	Licensing Hearing
Date	19 August 2013
Present	Councillors Boyce, Funnell And Gillies

13. Chair

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

14. Introductions**15. Declarations Of Interest**

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

Councillor Gillies declared a personal interest in agenda item 4 as he had sat on the Planning Committee which decided the Planning permission for the premises. He also declared a personal interest as a director of Visit York.

16. Minutes**17. The Determination Of An Application By The Star Inn The City (York) Ltd For A Premises Licence Section 18(3)(A) In Respect Of Lendal Engine House, Museum Street, York. (Cyc-022222)**

Members considered an application by The Star Inn The City (York) for a Premises Licence in respect of Lendal Engine House, Museum Street, 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.
2. The Licensing Managers report and her comments made at the hearing. She advised that the application was for a premises licence at Museum Street, York, within the grounds of the Museum Gardens. A plan showing the location was tabled. The premise is not located within the special policy area. A number of conditions had been agreed with North Yorkshire Police and the Council's Environmental Protection Unit (EPU) prior to the hearing, although 3 EPU conditions had been disputed. Following issues raised prior to the hearing about the location of the site notices, she was satisfied that consultation had been carried out successfully, having visited the site herself to check the notices.
3. The applicants representations made at the hearing. He advised that the premise was in an attractive riverside location and the company had worked hard to secure the correct operator for the site. In response to the representations made by local residents he advised that the premises was to be operated as a fine dining restaurant and the hours and licensing activities applied for were to offer the same experience to early evening diners as to late diners. He confirmed that the premises was not going to be operated as a drinking establishment and would not be suitable for stag and hen parties. Live music would be the occasional pianist or lunchtime Jazz band.
4. The representations made at the hearing by local residents who raised concerns about the proximity of the premises to their properties and the potential for public nuisance caused by restaurant customers leaving the area late at night. They advised that they had been happy with the planning application closing hour of midnight but felt that the 2am premises licence was too late in a tranquil area. Concerns were also raised by representatives of the Waterways Associations about the impact on people who moor their boats along the riverside.

5. Representations made by the Ward Councillor who advised that residents were upset at the 2am alcohol licence when they purchased their properties believing the proposed establishment would close at midnight. He raised concerns about the access to the restaurant and concerns about noise nuisance in the museum gardens area which is generally peaceful at night.
6. Written representations made by local residents during the consultation period.

In coming to their decision, the Sub-Committee were presented with the following 4 options:

- Option 1 Grant the variation to the Licence in the terms applied for.
- Option 2 Grant the variation to the Licence with modified/additional conditions imposed by the Licensing Committee.
- Option 3 Grant the variation to the Licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
- Option 4 Reject the application.

Members chose Option 2 and agreed to grant the licence with modified/additional conditions as follows:

1. A CCTV system will be installed to cover the premises and recorded coverage will include all areas to where public have access to consume alcohol.
2. The CCTV system will be maintained, working and recording at all times when the premises are open.
3. The recordings shall be of good evidential quality to be produced in court or other such hearing.
4. Copies of the recordings will be kept available for any responsible authority for 28 days.

5. Copies of the recordings shall be made available to any responsible authority within 48 hours of request.
6. Copies of the recordings will display the correct time and date of the recording.
7. The only acceptable proof of age identification shall be a current Passport, photocard Driving Licence or identification carrying the PASS logo.
8. Open drinking vessels (to include bottles) of any type shall not be allowed to enter or leave the premises whilst under the customer's care.
9. Standard one pint capacity, two-third capacity, half pint capacity and 'highball' tumbler drinking glasses will be strengthened glass (tempered glassware) in a design whereby, in the event of breakage, the glass will fragment and no sharp edges are left.
10. The venue shall partake in the York Nightsafe Night-time Economy radio system.
11. Documented staff training will be given regarding the retail sale of alcohol; the conditions attached to the premises licence; and the opening times of the venue.
12. Such records (referred to in condition 11) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.
13. A Refusals Register and Incident Report Register will be kept. Such documents 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
14. Both documents (referred to in condition 13) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.

15. 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 area quietly.
16. There shall be a minimum of 80 seated covers laid out at all times in the internal area of the venue.
17. There shall be a minimum of 40 seated covers laid out at all times in the external (outdoor) area of the venue when the outdoor area is being used.
18. An adequate number of Door Supervisors (at least one) shall be provided at the venue from 2200hrs on the following occasions:-
 - i) every Friday and 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 held in May).
19. All OFF sales shall be made in sealed containers.

The following shall apply to pre-booked private functions:-

20. Conditions 16, 17 & 18 shall not apply when the venue is being used for a pre-booked private function. For the purpose of clarity, a private function is one that has been booked in advance (see condition 21 below) and to which members of the general public are not allowed access unless partaking in the private function; such as a wedding, celebratory event or similar
21. A pre-booked function shall be classed as booked at least seven days in advance and the seven days shall not include the date the booking was made or the date of the event.
22. A documented noise management plan shall be submitted to and approved by the City of York Council within two months of the licence being granted, once approved it shall be implemented. The noise management plan will also include a procedure for

investigating noise complaints received by Lendal Engine House and the Starr Inn the City (York) Ltd.

23. A documented customer dispersal policy shall be submitted to and approved by the City of York Council within two months of the licence being granted, once approved it will be implemented.
24. No live or recorded music shall be played inside the premises after midnight. No live or recorded music shall be played in any part of the external area after 11pm.
25. The windows in the bar (as shown on drawing no. Y-245-06- 201) and the private dining room (as shown on drawing no. Y-245 06-202) shall remain closed at all times.
26. All doors (except for ingress or egress) and other windows not mentioned in the condition above, shall remain closed during the operation of regulated entertainment.
27. The garden terrace dining area shall be vacated and cleared by midnight on each night of the week.
28. Signs shall be displayed near the exits reminding members and guests to respect the needs of those living nearby and to leave the premises as quietly as possible.

All relevant mandatory conditions shall apply.

Reason for the decision:

The Sub-Committee concluded that the application was acceptable with the above additional/modified conditions as it addressed representations made both in writing and at the hearing, and it met all the licensing objectives. The Sub-Committee made this decision taking into consideration the representations, the Licensing Objectives, 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.

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

Reason: To address the issues raised.

Councillor Boyce, Chair

[The meeting started at 10.00 am and finished at 12.15 pm].

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Licensing Act 2003 Sub Committee**24 October 2013**

Report of the Director of Communities and Neighbourhoods

Section 35(3)(a) Application for the variation of a premise licence for Rawcliffe Bar Country Park, Shipton Road, York, YO30 5XZ.

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-019663
3. Name of applicants: Communities, Culture and Public Realm, City of York Council.
4. Type of authorisation applied for: Variation of premises licence.
 - a) Summary of application: The nature of the application is to extend the licensable area of the premises to include the adjacent Park and Ride car park and overflow car park.

Background

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

Promotion of Licensing Objectives

7. The applicant does not propose any additional measures to promote the licensing objectives other than those stipulated on their existing licence.

Special Policy Consideration

8. This premise is not located within the special policy area.

Consultation

9. 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.
10. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

11. 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.

“The extended tarmac car park area shall only be used when the grassed area is not in use.”

Summary of Representations made by other persons

12. Relevant representations were received from 2 local residents. Their representations are shown in Annex 3
13. A map showing the general area around the venue from which the representations are focused is attached at Annex 4.
14. 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

15. There are no planning issues regarding this application.

Options

16. By virtue of s18 (4) of the Act, the Committee have the following options available to them in making their decision:-
17. Option 1: Grant the variation of the licence in the terms applied for.

18. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
19. 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.
20. Option 4: Reject the application.
21. 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

22. The following could be the result of any decision made this Sub Committee:-
23. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
24. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
25. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
26. Option 4: This decision could be appealed at Magistrates Court by the applicant.

Council Plan

27. 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.
28. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

Implications

29.

- **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

30. 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.
31. 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

32. 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 02/10/2013

Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services Ext: 1004

Wards Affected: Rawcliffe & Skelton
Clifton Without

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** - Copies of representations
- Annex 4** - Map of area
- Annex 5** - Mandatory Conditions
- Annex 6** - Legislation and Policy Considerations

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