
Licensing Act 2003 Sub Committee

14 May 2007

Report of the Director of Neighbourhood Services

Section 35(3)(a) Application for the Variation of a premise licence for Toffs, 3-5 Toft Green, York, YO1 1JT

Summary

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-009396.
3. Name of applicant: Luminar Gems Ltd.
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is to vary the existing layout of the premises to include an outside smoking terrace as part of the existing licensed area, and to amend Condition 1 of Annex 3 of the existing licence to read "There shall be no admissions to the premises after 01:30 hours, except for patrons using the smoking terrace."

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 existing conditions attached to the current licence, the licensing objectives would be met as follows:
9. The prevention of crime and disorder: The external area will be covered by the existing CCTV system installed at the premises.
10. Public safety: No additional steps required.
11. The prevention of public nuisance: No additional steps required.

12. The protection of children from harm: No additional steps required.

Special Policy Consideration

13. The premises 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 the licensing committee on 1 April 2005 and considered by full council on 12 April 2005, a copy of the special policy statement is attached at Annex 8.

Consultation

14. 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. In addition the relevant ward councillors and/or parish council were notified by way of register.
15. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

16. A representation has been received from the following responsible authority relating to this application. This is attached at Annex 3 and summarised below:
17. City of York Council Environmental Protection Unit: Make representation on the grounds of the prevention of the public nuisance licensing objective, stating that the proposed area should be reduced in size in order for the seating and covered area to be screened by the adjacent wall. This would provide a barrier between the patrons and the windows of nearby sensitive properties and would remove the direct line of sight to the windows.

Summary of Representations made by Interested Parties

18. A representation has been received from an interested party, a copy of the representation is attached at Annex 4.
19. The address of the interested party is indicated on the map attached as Annex 5.
20. An "interested party" is defined at s13(3) of the Act as being a person living in the vicinity of the premises, a body representing persons who live in that vicinity, a person involved in a business in that vicinity, or a body representing persons involved in such businesses.

21. 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

22. Planning permission is required for this proposal. At the time of submitting this report planning permission had not been sought.

Options

23. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision:-
24. Option 1: Grant the variation of the licence in the terms applied for.
25. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
26. 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.
27. Option 4: Reject the application.

Analysis

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

Corporate Priorities

33. 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.
34. The promotion of the licensing objectives will support the Council’s priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

Implications

35.

- **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

36. 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.
37. 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

38. Members determine the application.

Contact Details

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Report Approved



Date 26 April 2007

Specialist Implications Officer(s):

Suzan Hemingway
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** - Copy of representation from Responsible Authority
- Annex 4** - Copy of representation from Interested Party
- Annex 5** - Map of area showing address of Interested Party
- Annex 6** - Mandatory Conditions
- Annex 7** - Copy of City Centre Special Policy Statement
- Annex 8** - Legislation and Policy Considerations