



Licensing Hearing

To: Councillors Boyce, Crisp and Horton

Date: Monday, 23 June 2014

Time: 10.00 am

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

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 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. Minutes

To approve and sign the minutes of Licensing Hearing held on 15th May 2014.

5. The Determination of an Application by Mr. Barbaros Ayata to Vary a Premises Licence Section 35(3)(a) in respect of Jorvik Cafe, Units 4 & 5, Stonebow House, Stonebow, York, YO1 7NP. (CYC-013040)

Democracy Officer:

Name: Laura Bootland

Contact Details:

- Telephone – (01904) 552062
- Email - laura.bootland@york.gov.uk

For more information about any of the following, please contact the Democratic Services 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.

City of York Council

Committee Minutes

Meeting Licensing Hearing

Date 15 May 2014

Present Councillors Boyce, Richardson and Watt

90. Chair

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

91. Introductions**92. 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 in the agenda. None were declared.

93. Minutes

Resolved: That the minutes of the Licensing held on 14th April 2014 be approved and signed by the Chair as a correct record.

94. The Determination of an Application by 22/44 The Shambles Ltd to Vary a Premises Licence Section 35(3)(a) in respect of Shambles Tavern, 44 Shambles, York, YO1 7LX. (CYC- 022106)

Members considered an application to vary a premises licence in respect of Shambles Tavern, 44 Shambles, York.

In coming to their decision, Members took into consideration all of the evidence and the 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, in particular the operating schedule and the additional steps agreed to be taken by the applicant to promote the licensing objectives.

2. The Licensing Managers report and her comments made at the hearing. She advised that the application was for a licence variation to remove conditions 1 and 2 from annex 2 of the premises licence. Condition 1 being "The retail sale of alcohol shall be ancillary to the provision of food". Condition 2 was "Customers shall remain seated whilst consuming alcohol". In addition, the application requested the replacement of condition 7 at annex 2 which stated "Children must be accompanied by an adult at all times in the cafe area" to be replaced with the following, "Children at the premises must be accompanied by an adult at all times"
3. The comments made by the applicants solicitor at the hearing. He advised that the applicant did not want to increase capacity at the premises or introduce vertical drinking. The application was to cater for customers who may only wish to purchase a drink. Following the police visit in March 2014, rigorous staff training was now in place. In relation to the conditions suggested by the police, the applicant was in agreement with them all but the door staff condition which would be detrimental to the family friendly business model of the venue. The applicant was willing to consider other conditions if requested by the police.
4. The representations made in writing and at the hearing by North Yorkshire Police. They advised the Committee that following an intelligence led visit to the venue on 7th March 2014, it was found that alcohol was being served without the need for patrons to purchase a meal and that crisps were being consumed instead. During that visit, concerns were also raised about the lack of staff knowledge about the licence conditions and upon inspection, no training records were held on the premises. There had been a noticeable change in style of operation of the premises in the past year from a gift shop, to a cafe bar and now the suggestion was the premises was moving towards being alcohol led. In relation to the door staff condition being requested by the police, it was not considered unreasonable when other similar premises in the area had door staff employed from 9pm.

In coming to their decision the Sub-Committee considered the following options:

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

In coming to their decision, the Sub-Committee chose option 4 and rejected the application.

REASON FOR THE DECISION:

The Sub-Committee resolved that the application for a variation be refused based on the evidence given by North Yorkshire Police at the hearing and the concerns of the Police regarding vertical drinking and drink led premises.

The Sub-Committee were mindful of the fact that the premises were located in an area to which a Special Policy of Cumulative Impact applies, although the rebuttable presumption against the granting of the variation did not apply as the variation would not increase capacity or extend the premises. However, they considered the application on its own merits and took into account of the concerns of the Police relating to the possible impact which the removal of the licence conditions would have on the prevention of crime and disorder in the area.

Having regard to the submissions made on behalf of the applicant, and the representations made by the Police, the Sub-Committee were not satisfied that the operation of the premises without conditions 1 and 2 on the licence would promote the licensing objective of the prevention of crime and disorder.

Councillor Boyce, Chair

[The meeting started at 10.00 am and finished at 11.40 am].



Licensing Act 2003 Sub Committee**23 June 2014**

Report of the Director of Communities and Neighbourhoods

Section 35(3) (a) Application for the variation of a premise licence for Jorvik Cafe, Unit 4 & 5 Stonebow House, Stonebow, York, YO1 7NP.

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-013040
3. Name of applicants: Mr Barbaros Ayata
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is as follows:
 - i) To extend the opening hours.
 - ii) To provide regulated entertainment consisting of live and recorded music and performance of dance.

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.
8. The following schedule shows the licensable activities and timings currently authorised and the proposed activities and timings:

Licensable Activity	Current timings	Proposed timings	Proposed non standard timings
Live Music (Indoors)	Not authorised	Mon – Sat 07:00 – 02:30 Sun 09:30 – 02:30	An additional finishing hour on UK Bank Holiday Sundays, Bank Holidays, Christmas Eve and New Year's Eve and start of British Summer Time
Recorded Music (Indoors)	As above	As above	As above
Performance of Dance (Indoors)	As above	As above	As above
Anything of similar description to above (Indoors)	As above	As above	As above
Late Night Refreshment (Indoors & Outdoors)	As above	Mon – Sun 23:00 – 02:30	As above
Supply of Alcohol	Mon - Sun 11:00 - 00:00 (On sales only)	Mon – Sat 07:00 – 02:30 Sun 09:30 – 02:30 (Both on & off sales)	As above
Opening Hours	Mon - Sun 07:00 - 00:00	Mon – Sat 07:00 – 02:30 Sun 09:30 – 02:30	As above

Promotion of Licensing Objectives

9. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:

10. General

The availability of food will cease at 23:00 hours.

11. Prevention of Crime and Disorder

a) CCTV is to be installed. The system will cover all areas including the outside dining area. This information will be stored on a hard drive system and will be available for police and other agencies.

b) Staff and management will monitor excessive alcohol consumption. Staff will all be trained to refuse service to any person who appears intoxicated by drink or drugs, and they will be asked to leave the premises.

c) The premises operate a strict proof of age scheme. The only forms of identification that will be accepted by our trained staff will be either photo driving licence, passport or (PASS) proof of age card.

d) The premises will take part in the radio linked scheme which advises of any potential problems which may affect the operation of the business.

e) Door staff will be employed. The door staff will be SIA registered, and internal training with each member will be carried out to ensure they are fully aware of their responsibilities and licensing objectives. Any queuing from customers will be monitored and controlled by the door staff. Dispersal of customers from the premises will be carried out by door staff, and waiting staff, who will start gradually informing customers from the final hour of operation. Signage indicating operating hours and drinking up times will be visible so people are clearly informed.

f) The outdoor area will be for seated customers only.

g) There is a total zero tolerance to drugs. Regular checks will be made in the toilet areas by staff. Anyone found to be in possession or distributing drugs will be reported to the police.

h) Strengthened glassware is currently used.

12. Public Safety

- a) A fire risk assessment has been carried out on the premises. The assessment covers: means of escape, fire detection, emergency lighting, fire fighting equipment, fire instruction and notices and occupancy.

13. Prevention of Public Nuisance

- a) In order to prevent public nuisance, management and staff will ensure that notices asking customers to leave quietly are positioned in a prominent place. Doorstaff will also inform customers to leave quietly and direct them away from the premises. Customers who regularly leave in a noisy fashion will be banned from the premises. The premises are situated close to a main bus stop and taxi rank. Customers will be encouraged and directed to these locations for transport in order to ensure people leave as soon as possible.
- b) It is proposed that no live music will be played outside and no live music will take place after 02:30 hours inside the premises. Recorded music will be played inside, at a level so that it does not disturb any residents. No licensable activities will take place outside after 02:30 hours.
- c) No recorded music to be played outside.
- d) A container used to discard smoking material is provided.
- e) Customers will be requested to be seated whilst consuming food or alcohol in the outside area.

14. Protection of Children from Harm

The premises welcome families with children up to 21:00 hours Monday to Sunday.

Special Policy Consideration

15. These premises are not located within the special policy area.

Consultation

16. 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.

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

Summary of Representations made by Responsible Authorities

18. Both North Yorkshire Police and the council's Environmental Protection Unit have been in consultation with the applicant and proposed some amendments and additions to the applicants' proposed conditions which have been agreed and will be added to the licence if granted. Copies of these proposals are attached at Annex 3 and Annex 4.

Summary of Representations made by other persons

19. Two relevant representations have been received from local residents and these are attached at Annex 5.
20. A map showing the general area around the venue is attached at Annex 6.
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. A planning application has been received for change of use and is currently under consideration.

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.
28. 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

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

Council Plan

34. 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.
35. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

Implications

36.
 - **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

37. 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.
38. 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

39. 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 09/06/14

Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services Ext: 1004

Wards Affected: Guildhall West

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of existing premises licence
- Annex 2** - Copy of application
- Annex 3** - Copy of police proposed conditions
- Annex 4** - Copy of EPU proposed conditions
- Annex 5** - Copy of representations
- Annex 6** - Map of area
- Annex 7** - Mandatory Conditions
- Annex 8** - Legislation and Policy Considerations