
Licensing Act 2003 Sub Committee

12 February 2007

Report of the Director of Neighbourhood Services

Section 52(2) review of premise licence for The Bay Horse, Main Street, Fulford, York, YO10 4PN

Summary

1. This report seeks Members determination of an application for a review of a premise licence, which has been made under the Licensing Act 2003 in respect of The Bay Horse, Main Street, Fulford, York.
2. Name of applicant: Mr & Mrs C Stanton.
3. Summary of review: This application to review relates to the following licensing objective: The prevention of public nuisance.
4. A copy of the review application is attached at Annex 1 and is summarised as follows: This application for review is based on complaints of noise emanating from the premises. It is accompanied by a diary of noise nuisance incidents recorded by the applicants over a five month period between August and December 2006.
5. A copy of the premises licence is attached at Annex 2.

Background

6. The applicant, in the capacity of 'interested party', has requested a review of the premises licence. 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.
7. A map showing the address of the applicant in relation to the premises is attached at Annex 3.
8. A response from the premises licence holder to the application has been compiled by Guest Walker Solicitors. A copy of this response is attached at Annex 4. This response is supported by seven residents living within the vicinity of the premises their addresses are indicated on the maps attached at

Annex 5 (confidential) and Annex 6. Five of these residents are from Glen Close who have endorsed their names on a petition. The other two residents are from Pasture Farm Close and Main Street, Fulford.

9. Members are reminded that a representation is only “relevant” if it relates to the likely effect on the promotion of at least one of the licensing objectives. This is in accordance with S52(7) and (8) of the Act.

Other Relevant Information

10. The existing premises licence was the result of a simultaneous conversion and variation of an existing licence. The variation of the licence was determined and granted at a hearing of the licensing sub-committee held on 23 September 2005
11. There are no planning implications in relation to this application.
12. A report has been submitted by CYC Environmental Protection Unit detailing their involvement with the premises and the applicant between July and November 2006. This is not a representation but an outline of the premises history in relation to noise complaints. This report is attached at Annex 7.
13. Copies of two letters sent to the licence holder dated 28 July and 14 November 2006 from the Licensing Section are attached at Annex 8. These letters are in relation to noise complaints.

Consultation

14. Consultation was carried out by the Applicant and Licensing Authority in accordance with S51(3) of the Act and Regulation 42, Part 4, paragraphs 29 and 38 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the notification of a review and the advertisement of review by licensing authority. Copies of the application were served on all responsible authorities and the premise licence holder. Notice of the application was displayed on the premises and on the exterior noticeboard at the Guildhall. In addition relevant Ward Councillors and Parish Councillors were informed by way of register.
15. As a result of the consultation no further representation was received other than the response received from the premise licence holder.
16. All procedural aspects of this review application have been complied with.

Options

17. By virtue of S52(4) of the Act, the Committee have the following options available to them in making their decision should they decide not to dismiss this application for review:-

18. Option 1: To modify the conditions of the licence (ie to alter, omit or add any new condition).
19. Option 2: To exclude a licensable activity from the scope of the licence.
20. Option 3: To remove the designated premises supervisor.
21. Option 4: To suspend the licence for a period not exceeding three months.
22. Option 5: To revoke the licence.

Analysis

23. The following could be the result of any decision made this Sub Committee:-
24. Option 1: This decision could be appealed at Magistrates Court by the premises licence holder or the review applicant.
25. Option 2: This decision could be appealed at Magistrates Court by the premises licence holder or the review applicant.
26. Option 3: This decision could be appealed at Magistrates Court by the premises licence holder or the review applicant.
27. Option 4: This decision could be appealed by the premises licence holder.
28. Option 5: This decision could be appealed by the premises licence holder.
29. Additionally the committee may decide to dismiss the application, in which case the applicant would have a right of appeal to the magistrates Court.
30. In accordance with the Guidance 5.108, the committee may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. However, the committee may decide to issue a written warning to the licence holder and / or to recommend improvement within a particular period of time.

Corporate Priorities

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 priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

Implications

33.

- **Financial** - N/A
- **Human Resources (HR)** – N/A
- **Equalities** – N/A
- **Legal** – This decision could be appealed at Magistrates Court by the review applicant, the premises licence holder or any other 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.

Contact Details

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Report Approved ✓ **Date** 26 January 2007

Specialist Implications Officer(s)

Suzan Hemingway
Head of Legal & Democratic Services
Civic Democratic & Legal Services

Wards Affected: Fulford

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of review application
- Annex 2** - Copy of existing premises licence
- Annex 3** - Map of area indicating address of applicant in relation to reviewed premises
- Annex 4** - Premise licence holder response to application
- Annex 5 (Confidential)** - Map indicating addresses of residents supporting licence holder response.
- Annex 6** - Map of area showing general area of addresses of residents supporting licence holder response
- Annex 7** - Copy of report from CYC Environmental Protection Unit
- Annex 8** - Letters dated 28 July and 14 November 2006 to the licence holder from CYC Licensing Section, relating to noise complaints
- Annex 9** - Legislation and Policy Considerations