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**Licensing Act 2003 Sub Committee**

**17 July 2006**

Report of the Director of Neighbourhood Services

**Section 31(3)(a) Determination of Application for a Provisional Statement for**

**Summary**

1. This report seeks Members determination of an application for the grant of a provisional statement which has been made under the Licensing Act 2003.

Application reference number: CYC-011565

2. Name of applicant: Hotel du Vin York
3. Type of authorisation applied for: Provisional Statement
4. Summary of application: The intention is for the premises to operate as a hotel, bar and brasserie with alcohol sales for consumption on and off the premises. Licensable activities applied for include supply of alcohol, provision of regulated entertainment consisting of live and recorded music, performance of dance, the provision of entertainment facilities for making music and dancing, and the provision of late night refreshment. All licensable activities to take place between 09:00 hours and 00:00 hours daily; and from end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day. Private functions to cease at 01:00 hours. The supply of alcohol will be 24 hours for residents.
5. A copy of the application is attached at Annex 1.

**Background**

6. A provisional statement can be applied for where premises are being or are about to be constructed for the purpose of being used for one or more licensable activity, or are being or are about to be extended or otherwise altered for that purpose (whether or not they are already being used for that purpose). "Provisional statement" means a statement issued under s31(2) or (3)(c) of the Licensing Act 2003 (the Act). An application under this section must also be accompanied by a schedule of works which will include a statement made by or on behalf of the applicant including particulars of the premises to which the application relates and of the licensable activities for

which the premises are to be used; plans of the work being or about to be done at the premises; and such other information as may be prescribed.

7. A provisional statement does not 'convert' into a premises licence on completion of the construction or development and a subsequent application for the grant of a premises licence will be required.

### **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: 1) CCTV. 2) Door staff.
  10. The prevention of public nuisance: 1) Sound proofing.

### **Special Policy Consideration**

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

### **Consultation**

12. 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.

### **Summary of Representations made by Responsible Authorities**

13. No representations were received from responsible authorities relating to this application.

### **Summary of Representations made by Interested Parties**

14. Representations have been received from the interested parties listed at Annex 2 (confidential). Their representations are attached at Annex 3.
15. The addresses of the interested parties are indicated on the map attached as Annex 4 (confidential). A further map indicating the general area from which representations were received is attached at Annex 5. One representor is from the South Esplanade area and one is from the Tower Street area. 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.

16. 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.

## **Options**

17. By virtue of s31(3)(b) the Committee must determine whether, on the basis of representations and the provisional statement application, it would consider it necessary to take any steps under section 18(3)(b) (which refers to s18(4)) if, on the work being satisfactorily completed, it had to decide whether to grant a premises licence in the form described in the provisional statement application.
18. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision:-
19. Option 1: Grant the provisional statement in the terms applied for.
20. Option 2: Grant the provisional statement with modified/additional conditions imposed by the licensing committee.
21. Option 3: Grant the provisional statement to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
22. Option 4: Reject the application.

## **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 any of the representors.
25. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
26. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
27. Option 4: This decision could be appealed at Magistrates Court by the applicant.

## **Corporate Objectives**

28. 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.

29. These directly contribute to the Council's Safer City priority and corporate aim 4.
30. In addition the licensing objectives of public safety and prevention of public nuisance contribute towards corporate objective 1.4 – protection of residents from pollution, public health and safety hazards.

## **Implications**

31.
  - **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**

32. In compliance with the Councils risk management strategy any decision made which is unreasonable or unlawful could be open to legal challenge resulting in loss of image reputation and potential financial penalty.
33. Measured in terms of impact and likelihood, the risk score has been assessed at less than 16. This means that at this point the risks need only to be monitored as they do not provide a real threat to the objectives of this report.

## **Recommendations**

34. Members determine the application.

## Contact Details

**Author:**

**Author**

John Lacy  
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Licensing & Regulation

**Chief Officer Responsible for the report:**

**Chief Officer Responsible for the Report:**

Andy Hudson  
Assistant Director  
Neighbourhood Services

**Report Approved**

**Date** 7 July 2006

### Specialist Implications Officer(s)

Suzan Hemingway  
Head of Legal & Democratic Services  
Civic Democratic & Legal Services  
551004

**Wards Affected:** Micklegate

**All**

**For further information please contact the author of the report**

### Background Papers:

Licensing Act 2003  
Secretary of State's Guidance issued under section 183 of the Licensing Act 2003  
Explanatory Notes to the Licensing Act 2003  
Regulations to the Licensing Act 2003  
City of York Council Statement of Licensing Policy made under the Licensing Act 2003

### Annexes:

**Annex 1** - Application form  
**Annex 2a (Confidential)** - List of Interested Parties  
**Annex 2b** - List of Interested Parties  
**Annex 3** - Representations from Interested Parties  
**Annex 4 (Confidential)** - Map of area indicating addresses of Interested Parties  
**Annex 5** - Map showing general area from which representations received  
**Annex 6** - Mandatory Conditions  
**Annex 7** - Legislation and Policy Considerations