

Licensing Hearing

To: Councillors Douglas, Mercer and Looker

Date: Monday, 26 June 2017

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 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 Hearings held on 27 February and 15 May 2017.

5. Determination of an Application by Punch Taverns Plc for Variation to Premises Licence Section 35 (3)(a) in respect of Fulford Arms, 121 Fulford Road, York, YO10 4EX (CYC-008985)

Democracy Officer:

Name: Laura Clark

Contact Details:

- Telephone – (01904) 554538
- Email - Laura.Clark@york.gov.uk

For more information about any of the following, please contact the Democracy Officer responsible for servicing this meeting:

- 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

Press

Library



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.

About City of York Council Meetings

Further information about what's being discussed at this meeting

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

Access Arrangements

We will make every effort to make the meeting accessible to you. The meeting will usually be held in a wheelchair accessible venue with an induction hearing loop. We can provide the agenda or reports in large print, electronically (computer disk or by email), in Braille or on audio tape. Some formats will take longer than others so please give as much notice as possible (at least 48 hours for Braille or audio tape).

If you have any further access requirements such as parking close by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

Every effort will also be made to make information available in another language, either by providing translated information or an interpreter providing sufficient advance notice is given. Telephone York (01904) 551550 for this service.

যদি যথেষ্ট আগে থেকে জানানো হয় তাহলে অন্য কোন অবাতে তথ্য জানানোর জন্য সব ধরণের চেষ্টা করা হবে, এর জন্য দরকার হলে তথ্য অনুবাদ করে দেয়া হবে অথবা একজন দোভাষী সরবরাহ করা হবে। টেলিফোন নম্বর (01904) 551 550।

Yeteri kadar önceden haber verilmesi koşuluyla, bilgilerin terümesini hazırlatmak ya da bir tercüman bulmak için mümkün olan herşey yapılacaktır. Tel: (01904) 551 550

我們竭力使提供的資訊備有不同語言版本，在有充足時間提前通知的情況下會安排筆譯或口譯服務。電話 (01904) 551 550。

اگر مناسب وقت سے اطلاع دی جاتی ہے تو ہم معلومات کا ترجمہ مہیا کرنے کی پوری کوشش کریں گے۔ ٹیلی فون (01904) 551 550

Informacja może być dostępna w tłumaczeniu, jeśli dostaniemy zapotrzebowanie z wystarczającym wyprzedzeniem. Tel: (01904) 551 550

Who Gets Agendas and Reports for our Meetings?

- Councillors get copies of all agendas and reports for the committees to which they are appointed by the Council;
- Relevant Council Officers get copies of relevant agendas and reports for the committees which they report to; and
- Public libraries, Council Receptions and the Press get copies of **all** public agendas/reports.
- Applicant
- Representors & the relevant Responsible Authorities

City of York Council

Committee Minutes

Meeting Licensing/Gambling Hearing
Date 27 February 2017
Present Councillors Gillies, Mason and Mercer

25. Chair

Resolved: That Councillor Gillies be elected to Chair the meeting.

26. Introductions

27. Declarations of Interest

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests.

Councillor Mason declared a personal, non-prejudicial interest in that he had previously used the services of the representor, Mr John Walker, in his capacity as a business solicitor.

28. Minutes

Resolved: That the minutes of the Licensing Hearing held on 12 December 2016 be approved as a correct record and then signed by the Chair.

29. The Determination of an Application by Mr Vincent Roberts for a Premises Licence Section 18(3) (a) in respect of 4 Patrick Pool, York, YO1 8BB (CYC-057510).

Members considered an application by Mr Vincent Roberts for a Premises Licence Section 18 (3) (a) in respect of 4 Patrick Pool, York, YO1 8BB.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objectives were relevant to this Hearing:

1. The prevention of crime and disorder.
2. Public safety.
3. The prevention of public nuisance.
4. The protection of children from harm.

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and the above licensing objectives, including:

1. The application form, in particular the existing licence conditions and the additional steps agreed to be taken by the applicant to promote the four licensing objectives.
2. The Licensing Officer's report and her comments made at the Hearing. She outlined the application and advised that the premises were inside the special policy area (as approved by Full Council on 27 March 2014) and that consultation had been carried out in accordance with the Licensing Act 2003.
3. The applicants' representations at the Hearing, and those of his business partner. They advised that they were aware this application fell within the special policy area and the implications of this. With this in mind they had consulted with North Yorkshire Police and the Licensing Officer to agree the following additional conditions:
 - I. A colour digital CCTV system shall be installed within the premises and be operational and recording at all times when licensable activities take place and at any other times where members of the public are present on the premises.
 - II. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
 - III. The CCTV system must be capable of producing quality images of good evidential value. The CCTV system will have sufficient storage retention capacity for a minimum of 28 days consecutive footage.

- IV. North Yorkshire Police or a Responsible Authority (as defined in the Licensing Act 2003) may at any time request a recording. This should be complied with within 48 hours of the request being made.
- V. It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV system at the request of the police or responsible authority.
- VI. The premises shall operate the Challenge 21 policy for the sale of alcohol.
- VII. The only acceptable proof of identification shall be a current passport, photo card driving licence or identification carrying the PASS logo (until other effective identification technology e.g. Thumb print or pupil recognition, is adopted by the Premises Licence Holder).
- VIII. A documented staff training programme shall be provided to all members of staff at the premises in respect of the :-
 - operation of the CCTV system (including the downloading of evidence);
 - retail sale of alcohol
 - age verification policy;
 - conditions attached to the Premises Licence;
 - permitted licensable activities;
 - the licensing objectives; and
 - opening times for the venue.
- IX. An incident log will be kept at the premises and made available on request to an authorised officer or the police which will record the following:
 - all crimes reported to the venue
 - any complaints received regarding crime and disorder
 - any incidents of disorder
 - any faults in the CCTV system
 - any refusal of sale of alcohol
 - any visit by a relevant authority of emergency service

Such records to be kept for a minimum of one year
[For the avoidance of doubt, the one year period

relates to each respective entry in the log book and runs from the date of that particular entry].

- X. There shall be a minimum of 25 chairs /seats available for customer use inside the premises at all times the venue is open to negate the need for vertical drinking.
 - XI. Food, (for clarity includes panini, wraps and sandwiches), shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises up to 2 hours before the end of permitted hours for the sale of alcohol.
4. The representations made by Mr John Walker in writing and at the Hearing.

In respect of the proposed licence, the Sub-Committee had to determine whether to take any of the steps mentioned under Section 35(4) that it considered necessary for the promotion of the licensing objectives. Having regard to the above evidence and representations received, the Sub-Committee considered the steps which were available to them to take under Section 18(3) of the Licensing Act 2003 as it considered necessary for the promotion of the Licensing Objectives:

Option 1: Grant the licence in the terms applied for and including any applicable mandatory conditions of the Licensing Act 2003. This option was **rejected**.

Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee including any applicable mandatory conditions as set out in ss19, 20 and 21 of the Licensing Act 2003. This option was **approved**.

Option 3: Grant the licence to which the application relates and modify/add conditions accordingly to include any applicable mandatory conditions of the Licensing Act 2003 as amended. This option was **rejected**.

Option 4: Reject the application. This option was **rejected** as the Sub-Committee saw no reason to reject the application based on the Licensing Objectives and City of York Council Licensing Policy.

In coming to their decision of approving the above **Option 2** the Sub-Committee imposed the following additional conditions:

- I. A colour digital CCTV system shall be installed within the premises and be operational and recording at all times when licensable activities take place and at any other times where members of the public are present on the premises.
- II. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
- III. The CCTV system must be capable of producing quality images of good evidential value. The CCTV system will have sufficient storage retention capacity for a minimum of 28 days consecutive footage.
- IV. Through the Licensing Authority, North Yorkshire Police or a Responsible Authority (as defined in the Licensing Act 2003) may at any time request a recording. This should be complied with within 48 hours of the request being made.
- V. It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV system at the request of the police or responsible authority.
- VI. The premises shall operate the Challenge 21 policy for the sale of alcohol.
- VII. The only acceptable proof of identification shall be a current passport, photo card driving licence or identification carrying the PASS logo (until other effective identification technology e.g. Thumb print or pupil recognition, is adopted by the Premises Licence Holder).
- VIII. A documented staff training programme shall be provided to all members of staff at the premises in respect of the :-
 - operation of the CCTV system (including the downloading of evidence);
 - retail sale of alcohol
 - age verification policy;
 - conditions attached to the Premises Licence;
 - permitted licensable activities;
 - the licensing objectives; and
 - opening times for the venue.

- IX. An incident log will be kept at the premises and made available on request to an authorised officer or the police which will record the following:
- all crimes reported to the venue
 - any complaints received regarding crime and disorder
 - any incidents of disorder
 - any faults in the CCTV system
 - any refusal of sale of alcohol
 - any visit by a relevant authority of emergency service

Such records to be kept for a minimum of one year [For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry].

- X. There shall be a minimum of 25 chairs /seats available for customer use inside the premises at all times the venue is open to negate the need for vertical drinking.
- XI. Food, (for clarity includes panini, wraps and sandwiches), shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises up to 2 hours before the end of permitted hours for the sale of alcohol.

All conditions offered by the Applicant in the application, including the operating schedule, for granting the premises licence under the Licensing Act 2003, shall be included in the licence, unless contradictory to the above conditions.

Reasons for the Decision:

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, creating a rebuttable presumption against the granting of new licences to sell alcohol in that area. The Sub-Committee considered that the applicant had demonstrated that, with the imposition of suitable conditions, the premises would not add to the alcohol related problems in the area and that there would be no negative cumulative impact on the licensing objectives. It was noted as particularly relevant that North

Yorkshire Police were not in objection, as the Licensing Authority place a great weight on the advice from the police when considering applications, particularly within the CIZ (in accordance with the 2003 Act Statutory Guidance at para 9.12). There were no representations from any local residents or from other Responsible Authorities, notably Public Protection. The Sub-Committee also commented on the small size of the venue, the careful handling of noise issues during the planning process, the style of venue proposed which was not intended to promote vertical drinking, but seated drinking with food available and the fact the premises would stop serving alcohol at 23:00 and that off sales had not been applied for. It was also noted that the plan accompanying the application showed 40 seats, whilst North Yorkshire Police had requested a minimum of 25 seats to be available within their proposed condition. The Sub Committee did not consider it to be necessary to specifically condition 40 seats be available as the limited space in the venue would restrict vertical drinking in any event and the applicants made it clear that the style of venue intended would not be promoting vertical drinking. However, it was noted that the Applicant would need the approval of the Licensing Authority if changes were proposed in the future to the approved layout that presently shows 40 seats on the submitted application plan.

The Sub Committee considered the representations made by Mr Walker regarding door staff, but North Yorkshire Police had not considered a condition requiring door staff to be required, and the Sub-Committee agreed that it was not necessary as whilst the premises were within the CIZ, they were not within a recognised drinking circuit and the premises were very small.

Councillor Gillies, Chair

[The meeting started at 10.00 am and finished at 11.25 am].

This page is intentionally left blank

Meeting	Licensing Hearing
Date	15 May 2017
Present	Councillors Boyce, Hunter and Mercer

30. Chair

Resolved: That Councillor Boyce be elected to Chair the meeting.

31. Introductions**32. Declarations of Interest**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests. None were declared.

33. The Determination of an Application by Blue Fly (York) Ltd. to Vary Premises Licence Section 35(3)(a) in respect of Drawingboard, 10A New Street, York, YO1 8RA (CYC-009242)

Members considered an application by Blue Fly (York) Ltd for a Variation to Premises Licence Section 35 (3) (a) in respect of Drawingboard, 10A New Street, York, YO1 8RA.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objectives were relevant to this Hearing:

1. The prevention of crime and disorder.
2. Public safety.

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and the above licensing objectives, including:

1. The application form, in particular the existing licence conditions.

2. The Licensing Officer's report and her comments made at the Hearing. She outlined the application and advised that the premises were inside the special policy area (as approved by Full Council on 27 March 2014) and that consultation had been carried out in accordance with the Licensing Act 2003.
3. The representations at the Hearing of the Applicant, and those of Mr Peter Black, his representative. The Applicant advised that he was aware this application fell within the special policy area and the implications of this. Mr Black advised that the pavement cafe had been in existence for six years at 3.1 metres from the front of the premises, (which was outside of the existing licensed area of 2.1 metres from the front of the premises) and in that time there had been no issues. He pointed out that highways had given consent ten years ago and that retrospective planning permission had been granted in the fortnight prior to the hearing. Therefore, in his view this application was merely to bring the premises licence into line with these and to rectify a historical mistake. Finally, the Applicant stated that he was content to withdraw the request for removal of conditions 14/15 from the licence.
4. The representations made by North Yorkshire Police in writing and at the Hearing. They stated that the extension of the pavement cafe from 2:1 metres to 3:1 metres would have an impact on public safety, given that there would be significant numbers of people in drink on the public highway. It would also cause issues for emergency vehicles trying to navigate the street. They requested that if the Sub - Committee was minded to grant the variation that it consider conditioning that the barrier be moved back to 2:1 metres at 17:00 each day when the area ceased to be a pedestrianised zone. They also highlighted that the small street was a 'hot-spot' for crime and disorder with significant levels of crime and anti-social behaviour recorded over a 12 month period. They stated that removal of conditions 14 and 15 could lead to the style of premises becoming a vertical drinking establishment, thus contributing further to anti-social behaviour in the area. Finally they reminded Members that the premises were located in the Special Policy of Cumulative Impact Area, therefore creating a rebuttable

presumption against the granting of new licences or material variations in that area. This meant that the onus was on the Applicant to evidence how any potential impact of the material variation to the licence would be addressed in order to meet the licensing objectives, in particular the prevention of crime and disorder and public safety.

5. The representations made by Councillor Ashley Mason who expressed concern that removal of conditions 14/15 would lead to an increase in vertical drinking and anti social behaviour. He also pointed out that other conditions on the existing licence, such as food being served at all times and no drinks promotions, appeared to him to be being broken.

In respect of the proposed licence, the Sub-Committee had to determine whether to take any of the steps mentioned under Section 35(4) that it considered necessary for the promotion of the licensing objectives. Having regard to the above evidence and representations received, the Sub-Committee considered the steps which were available to them to take under Section 18(3) of the Licensing Act 2003 as it considered necessary for the promotion of the Licensing Objectives:

Option 1: Grant the variation of the licence in the terms applied for.

Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.

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.

Option 4: Reject the application.

In coming to their decision of approving the above Option 3 the Sub-Committee imposed the following additional conditions:

A variation is granted to extend the licensable area but subject to restricted time for that extended area and repositioning of the barrier and removal of tables and chairs from that area to avoid conflict with use of the highway during later hours by people in

drink and taxis and emergency vehicles within the ClZ in line with the advice from the NYP.

- Extended Area (up to 3.1m) is granted from 09:00 – 17:00 each day.
- Barriers and all furniture to be moved back to 2.1m at 17:00 through to 09:00 each day.

The request for removal of conditions 14 and 15 was withdrawn by the Applicant during the hearing. From the evidence provided during the Hearing the Sub-Committee would in any event have been minded to refuse the request for removal of these conditions, as their removal would enable the style of operation to become a crowded vertical drinking establishment within an area to which the Special Policy (ClZ) applies, and evidenced by North Yorkshire Police as a busy area late at night with people in drink. No evidence was provided by the Applicant as to how the licensing objectives of public safety and prevention of crime and disorder would be met if the conditions were to be removed.

Reasons for the Decision:

The Sub-Committee was mindful of the fact that the premises were located in an area to which a Special Policy of Cumulative Impact (ClZ) applies, creating a rebuttable presumption against the granting of material variations to licences. The Sub-Committee considered that the applicant had failed to demonstrate that the material variation to the premises licence to extend the pavement cafe from 2.1 metres to 3.1 metres into the highway would not add to the alcohol related problems in the area and that there would be no negative cumulative impact on the licensing objectives.

The Applicant relied on the fact that the pavement cafe had operated in this position unlicensed for a number of years and in his submission this evidenced that it did not give rise to any problems in the area. He also relied on the Highway Authority and Planning Authority granting consent for the pavement cafe. However, the Sub-Committee was not persuaded by this evidence, having regard to the evidence of North Yorkshire Police that the area was a hot spot for crime and disorder and the increased area into the highway gives rise to public safety concerns due to the busy nature of the area at night frequented

by people in drink. It was also noted that the existing 2.1m licensed area was in line with the other pavement cafes on the street. Whilst planning permission for the extended area had been granted, the Highway Licence produced to the Hearing by the Applicant had expired and in any event the terms appeared to only grant Highway Authority consent for the pavement cafe until 4.30pm.

The Applicant did not provide any evidence in terms of assurance or measures to address the concerns raised by North Yorkshire Police about the increased public safety concerns with pedestrians in drink if the pavement cafe area was extended, and so failed to show how the licensing objective of public safety would be met.

It was particularly relevant that North Yorkshire Police were in objection, as the Licensing Authority place great weight on the advice from the police when considering applications, particularly within the CIZ (in accordance with the 2003 Act Statutory Guidance at para 9.12). The Sub-Committee also felt that the police had demonstrated that the area was a 'hot-spot' for crime and anti-social behaviour as evidenced by the figures recorded as having taken place between 18:00 and 06:00 over a 12 month period.

The Sub-Committee concluded that the application to extend the pavement cafe to 3.1 metres from the front of the building was acceptable with the above mandatory and additional conditions attached which addressed representations made both in writing and at the hearing, as 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.

Councillor Boyce, Chair

[The meeting started at 10.10 am and finished at 12.20 pm].

This page is intentionally left blank



Licensing Act 2003 Sub Committee

26 June 2017

Report of the Corporate Director of Economy and Place

Section 35 (3) (a) Application for the variation of a premise licence for Fulford Arms, 121 Fulford Road, York, YO10 4EX

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-008985
3. Name of applicant: Punch Taverns Plc
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is as follows:
 - a) To change the layout of the premises.
 - b) Change to existing licensed hours as follows:

Licensable Activities	Existing Hours	Proposed Hours
Live Music Recorded Music Performance of Dance Activities like dance/music	Sunday - Thursday 10:00 – 23:30 Friday & Saturday 10:00 – 00:30	Monday – Sunday 10:00 – 02:00
Sale of Alcohol	Sunday – Thursday 08:00 – 00:00	Monday - Sunday 08:00 – 02:00
Late Night Refreshment	Not currently permitted	Monday – Sunday 23:00 – 02:00
Opening Hours	Sunday – Thursday 08:00 – 00:30 Friday & Saturday 08:00 – 01:30	Monday – Sunday 08:00 – 02:30
All non-standard timings to remain unaltered		

c) Remove the following conditions from Annex 2 of the premises licence:

- All conditions under Public Safety as these are covered under fire safety legislation.
- Condition 7 under Public Nuisance which reads “Recorded music is provided via juke box, the volume is controlled by staff”.

All other conditions to remain unchanged.

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. A copy of the plan showing the existing layout of the premises is attached at Annex 3.
9. A copy of the plan showing the proposed changes to layout is attached at Annex 4.

Promotion of Licensing Objectives

10. The applicant offered no additional conditions to those already existing on the current premises licence.

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

Summary of Representations made by Responsible Authorities

14. There were no representations received from responsible authorities.

Summary of Representations made by other persons

15. There were five relevant representations received from other persons on the grounds the prevention of public nuisance licensing objective would be undermined by the granting of this variation. Copies of the representations are attached at Annex 5.
16. A map showing the general area around the venue is attached at Annex 6.
17. 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

18. There are no planning issues.

Options

19. By virtue of s18 (4) of the Act, the Committee have the following options available to them in making their decision:-
20. Option 1: Grant the variation of the licence in the terms applied for.
21. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
22. 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.
23. Option 4: Reject the application.
24. 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

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

Council Plan

30. 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.
31. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

Implications

32.

- **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

33. 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.
34. 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

35. 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:

Michael Slater
Assistant Director Planning & Public Protection.

**Report
Approved**



Date 31 May 2017

Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services
Ext: 1004

Wards Affected: Fishergate

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 plans showing existing layout of premises
- Annex 4 - Copy of plans showing proposed layout of premises
- Annex 5 - Copy of other representation
- Annex 6 - Map of area
- Annex 7 - Mandatory Conditions
- Annex 8 - Legislation and Policy Considerations