

Licensing Hearing

To: Councillors Gillies, Orrell and Taylor

Date: Monday, 4 September 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. The Determination of an Application by Make it York for a Premises Licence Section 18 (3) (a) in respect of Shambles Market, York, YO1 8RY (CYC-058836)

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**

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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 Representatives 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.

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- Applicant
- Representors & the relevant Responsible Authorities



Licensing Act 2003 Sub Committee

4 September 2017

Report from the Assistant Director – Planning & Public Protection

Section 18(3) (a) Application for a Premises Licence for Shambles Market, York, YO1 8RY

Summary

1. This report seeks Members determination of an application for the grant of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-058836
3. Name of applicant: Make it York
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The proposal is to allow for the provision of the following activities:

Proposed Activity	Timings
Plays (outdoors)	Mon to Sat 09:00 – 22:00 Sun 12:00 – 22:00
Films (outdoors)	As above
Live Music (outdoors)	As above
Recorded Music (outdoors)	As above
Performance of dance (outdoors)	As above
Sale of alcohol (on & off sales)	Mon to Sun 09:00 – 22:00
Opening times	24 hrs

Background

6. A copy of the application is attached at Annex 1. A copy of the plan of the premises is attached at Annex 2.

Promotion of Licensing Objectives

7. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
8. General
 - a) Alcohol will be ancillary to a meal on race days held at York Racecourse.
 - b) The premises shall primarily operate as a food court and not as a bar or vertical drinking establishment. The premises will provide food and non-alcoholic drinks as part of its offer.
 - c) Substantial food will be available at the premises throughout opening hours.
9. The prevention of crime and disorder
 - d) A minimum of 2 SIA Door Staff shall be provided at the premises from 12:00 hrs to close of business on days when race meetings are held at York Racecourse (except on the first meeting in May, the family meeting held in September and the October finale meeting).
 - e) The Premises Licence Holder (PLH) or Designated Premises Supervisor (DPS) shall be responsible for risk assessing the need for additional SIA door staff at the premises during the time(s) above and at any other times the premises is open to the public.
 - f) Steward(s) will be responsible for the external (outside) area when the premises are open to the public, at times when SIA door staff are not employed.
 - g) 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.

- h) The CCTV equipment shall have constant time / date generation which must be checked on a daily basis for accuracy.
- i) CCTV cameras shall be installed to provide adequate cover of all public areas in the premises (excluding toilets).
- j) The CCTV system must be capable of providing quality images of good evidential value. Recordings must be kept for a minimum of 28 days consecutive footage.
- k) 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 24 hours of the request being made.
- l) 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.
- m) A documented staff training programme shall be provided to all members of staff at the premises in respect of the:-
 - retail sale of alcohol;
 - age verification policy;
 - conditions attached to the Premises Licence:
 - permitted licensable activities;
 - the licensing objectives; and
 - opening times of the venue.With such records being 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].
- n) 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 or emergency service;
 - SIA on site, including badge number and times on site.

With such records being 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].

- o) Alcoholic drinks purchased on the premises may only be taken off the premises in sealed containers.
- p) There shall be 100 (minimum) chairs/ seats for customer use at all times the premise is open to negate the need for vertical drinking.
- q) At least one Personal Licence Holder shall be on duty at the premises at all times when the retail sale of alcohol takes place.
- r) All drinks shall be served in non-glass vessels only. For glass bottles, the drink is to be decanted into non-glass vessels.
- s) The out boundary of the licensable area shall be clearly defined by a removal semi-permanent in-fill barrier at all times when in use.
- t) Store not radio systems shall be in place through City Centre Manager's Office.

10. The prevention of public nuisance

- a) For any event, event organisers / Make it York shall submit a completed copy of the Event Information Questionnaire extracted from the Council's code of Practice and Guidance Notes on Control of Noise for Concerts and Outdoor Events, together with a detailed plan showing exact layout of the site and proposed sound monitoring locations, at least 28 days before the event. A copy shall be sent to Public Protection and also the Licensing Unit. The notification shall include a sample of the leaflet to be sent to comply with the conditions below and which addresses will receive the leaflet.
- b) Prior to an event, noise sensitive premises in close proximity shall be leafleted about the event. Information shall include details of the performance times and any sound checks taking place and contact telephone number of the Named Event Organiser and a Make it York representative. In the event of a complaint regarding sound levels, the Named Event Organiser will make an

assessment of no less than 5 minutes in close proximity to the complainant's address. If the sound level is within category C or D of the sound monitoring log guidance, the specified action shall be taken and the requirements of the Named Event Manager to mitigate will be carried out immediately. The Named Event Organiser will contact the complainant and check that they are satisfied with the steps taken. If the complaint cannot be resolved on site the City of York Council Complaints Procedure, as outlined at www.york.gov.uk, will be instigated.

- c) The Events Organiser shall appoint a member of their event team as 'Sound Monitor'. The Sound Monitor will undertake a documented sound check prior to or at the start of the event to ensure that the sound levels are within category A or B as defined in the 'Sound Monitoring Log for Events on CYC Land'. During the event, the Sound Monitor shall carry out documented patrols at least once per hour or for each separate act taking place whichever is the more frequent. The monitoring at each location shall be for a representative period whilst the act is taking place (as least 5 minutes) and the observations shall be recorded on the 'Sound Monitoring Log Sheets for Events on CYC Land'. Actions taken shall be in accordance with those stated on the monitoring log sheet.

11. The protection of children from harm

- a) The premises shall operate a Challenge 25 policy for the sale of alcohol.
- b) The only acceptable proof of age identification shall be a current passport, photo card driving licence, HM forces cards 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).

Special Policy Consideration

12. The premise is located within the special policy area approved by full council on 27th March 2014. A copy of the policy is attached at Annex 3.

Consultation

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

Summary of Representations made by Responsible Authorities

15. There were no representations from responsible authorities.

Summary of Representations made by Other Parties

16. Three relevant representations has been received from other parties and are attached at Annex 4.
17. A map showing the general area around the venue is attached at Annex 5.

Planning Issues

18. There are no planning issues regarding this application.

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 licence in the terms applied for.
21. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
22. Option 3: Grant 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.

Analysis

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

Council Plan

29. 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.
30. The promotion of the licensing objectives will support the Council's Plan for a prosperous city for all and a council that listens to residents.

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. 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.
33. 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

34. 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:

Mike Slater
Assistant Director for Planning and Public Protection.

**Report
Approved**

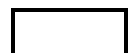


Date 15/08/2017

Specialist Implications Officer(s)

Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Guildhall



For further information please contact the author of the report

Background Papers:

Annex 1 - Application form

Annex 2 - Plan of premises

Annex 3 - Special policy

Annex 4 - Representation

Annex 5 - Map of area

Annex 6 - Mandatory Conditions

Annex 7 - Legislation and Policy Considerations

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