

Licensing/Gambling Hearing

To: Councillors Horton, Moore and Wiseman (Vice-Chair)
Date: Thursday, 4 September 2008
Time: 10.00 am
Venue: The Guildhall

AGENDA

1. Chair

To elect a Member to act as Chair of the meeting.

2. Introductions

3. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

4. Minutes

To approve and sign the minutes of Licensing Hearing(s) held on Thursday 17 July 2008 and Thursday 4 August 2008.

5. The Determination of an Application by Debretton Hospitality (4HP) Ltd for the Variation of a Premises Licence [Section 35 (3)(a)] in respect of Four High Petergate Hotel & Bistro, 2-4 High Petergate, York, YO1 7EH. (CYC-010833)

If you require any further information, please contact Laura Bootland on Tel 01904 552062 or Fax 01904 551035 or email laura.bootland@york.gov.uk

Distribution:

Members of Licensing Act 2003 Sub-Committee
Licensing Officer
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Applicant
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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.

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- Applicant
- Representors & the relevant Responsible Authorities

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City of York Council

Committee Minutes

MEETING	LICENSING HEARING
DATE	17 JULY 2008
PRESENT	COUNCILLORS HYMAN, MOORE AND WISEMAN (VICE-CHAIR)
APOLOGIES	COUNCILLORS

12. CHAIR

RESOLVED: That Councillor Hyman be elected as Chair of the meeting.

13. DECLARATIONS OF INTEREST

Members were invited to declare any personal or prejudicial interests in any of the business on the agenda. None were declared.

14. EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That the press and public be excluded prior to consideration of the personal data contained in annexes 5 & 7 to Agenda Item 5 as provided by the Data Protection Act 1998.

15. THE DETERMINATION OF AN APPLICATION BY MR T TUNSTALL & MR M TUNSTALL FOR A VARIATION TO A PREMISES LICENCE [SECTION 35(3)(A)] IN RESPECT OF STONEBOW SNOOKER CLUB (THE DUCHESS), STONEBOW HOUSE, THE STONEBOW, YORK, YO1 7NP (CYC-009129)

Members considered an application by Mr. T Tunstall and Mr. M Tunstall for the variation of a premises licence in respect of Stonebow Snooker Club (The Duchess), Stonebow House, The Stonebow, York.

In coming to their decision the Sub-Committee took into consideration all of the evidence and submissions that were presented and determined their relevance to the issues raised and the licensing objectives; the prevention of crime and disorder, the prevention of public nuisance and public safety.

1. The application form and the additional steps agreed to be taken by the Applicant to promote the four licensing objectives.
2. The Licensing Officer's report and his comments made at the hearing including the fact that the Applicant had agreed to

conditions requested by the Fire Service and Environmental Protection Unit and that these representations had been withdrawn.

3. The Applicants' representations at the hearing including the fact that the Applicant is an experienced operator of live music venues, and that an operating schedule had been set up to bring transparency.

4. A Local Resident's representation both in writing and at the hearing. The Local Resident was represented at the hearing by the Secretary of the St. Andrews Place Residents Association who raised concerns regarding the impact of an extra 400 people in the area in the early hours of the morning.

Members were presented with the following options:

- 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.

RESOLVED: That in line with **Option 2** the Licence be granted.

The Sub-Committee then imposed the following conditions:

1. That the occupancy figure for the premises should not exceed 400 persons, as stipulated by North Yorkshire Fire and Rescue Service.
2. Conditions as agreed with City of York Council's Environmental Protection Unit. These are that a Staff Policy be put in place to monitor sound levels omitting from the premises and that the rear doors of the premises shall be kept closed when music is playing.
3. That all times are to be read at face value and no allowance is made for the Greenwich Mean Time/British Summer Time clock adjustment.
4. Mandatory Conditions 19 and 21 of the Licensing Act 2003.

REASON: To address the representations made in respect of the prevention of crime and disorder, public safety and the prevention of public nuisance.

Councillor Keith Hyman, Chair
[The meeting started at 10.05 am and finished at 12.10 pm].

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MEETING	LICENSING HEARING
DATE	4 AUGUST 2008
PRESENT	COUNCILLORS FUNNELL, MERRETT AND MOORE

16. CHAIR

RESOLVED: That Councillor Moore be elected as Chair of the meeting.

17. DECLARATIONS OF INTEREST

Members were invited to declare any personal or prejudicial interests in any of the business on the agenda. Councillor Merrett declared a personal non prejudicial interest as he knew one of the representors, in a professional capacity. The representor was in attendance at the hearing and acknowledged as being a Council Employee.

18. EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That the press and public be excluded prior to consideration of the personal data contained in annexes 2 and 4 to agenda item 6 as provided by the Data Protection Act 1998.

19. MINUTES

RESOLVED: That the minutes of the two Licensing Hearings held on Thursday 26 June 2008 be signed be approved and signed by the Chair as a correct record.

20. THE DETERMINATION OF AN APPLICATION BY MR. MEMET KOYUPINAR FOR A PREMISES LICENCE [SECTION 18(3)(A)] IN RESPECT OF CASTLE TAKEAWAY, UNIT 4, ACOMB WOOD DRIVE SHOPPING CENTRE, ACOMB WOOD DRIVE, YORK, YO23 3XN. (CYC-014096)

Members considered an application by Mr. Memet Koyupinar for a Premises Licence in respect of Castle Takeaway, Acomb Wood Drive Shopping Centre, and York.

In coming to their decision the Sub-Committee took into consideration all of the evidence and submissions that were presented to them and determined their relevance to the issues raised and the licensing

objectives; the prevention of public nuisance, public safety, the prevention of crime and disorder and the protection of children from harm.

1. The Application form and any additional steps agreed to be taken by the Applicant to promote the four licensing objectives.
2. The Licensing Officer's report and his comments made at the hearing including the fact that some residents representations may not be relevant to the application as they may not be considered to live within the vicinity of the premises and that the Police Authority had withdrawn their representation as the Applicant had agreed to install CCTV and to carry out a litter pick upon close of business each day.
3. The Applicant's representations at the hearing including the fact that no alcohol will be sold at the premises and the main reason for requiring later opening hours is for business reasons. The Applicant pointed out that the majority of late night sales are delivery based but would call the Police should any visiting patrons engage in anti-social behaviour.
4. Written representations made during the consultation period and verbal representations made at the hearing by Ward Councillors and Local Residents.

Members were presented with the following options:

- | | |
|-----------------|---|
| Option 1 | Grant the licence in the terms applied for. |
| Option 2 | Grant the licence with modified/additional conditions imposed by the licensing committee. |
| Option 3 | Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly. |
| Option 4 | Reject the application |

RESOLVED: That in line with **Option 2** the licence be granted.

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

1. Licensable Opening Hours shall be Sunday-Thursday 23:00 – 00:00 and Friday and Saturday 23:00 – 01:00.
2. That the following conditions requested by North Yorkshire Police shall be adhered to:
 - (i) CCTV will be installed to cover the premises. It will be maintained and working at all times that the premises are open. Copies of recordings will be kept available for any relevant authority for 7 days.

(ii) Upon closing the premises at the conclusion of business, staff will undertake a general litter pick of the immediate vicinity of the premises.

3. A notice shall be prominently displayed reminding patrons to dispose of litter responsibly and to leave the premises quietly.

There are no mandatory conditions.

REASON: To address the representations made in respect of the prevention of public nuisance, public safety, the prevention of crime and disorder and the protection of children from harm.

Councillor Richard Moore, Chair
[The meeting started at 10.10 am and finished at 11.13 am].

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Licensing Act 2003 Sub Committee**4 September 2008**

Report of the Director of Neighbourhood Services

Section 35(3)(a) Application for the Variation of a premise licence for Four High Petergate Hotel & Bistro, 2-4 High Petergate, York, YO1 7EH**Summary**

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-010833.
3. Name of applicant: Debretton Hospitality (4HP) Ltd.
4. Type of authorisation applied for: Variation of existing premises licence.
5. Summary of application: The nature of the application is to permit the provision of regulated entertainment consisting of plays, films, live and recorded music and dancing, the provision of late night refreshment and to amend the plans of the premises to include a ground floor garden area.

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 table showing the existing and proposed licensable activities is attached at Annex 3.

Promotion Of Licensing Objectives

9. The operating schedule submitted by the applicant offered no additional steps to address the licensing objectives other than those already attached to the existing premises licence.

Special Policy Consideration

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

Consultation

11. 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.
12. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

13. City of York Council Environmental Protection Unit: Make representation on the grounds of the prevention of public nuisance licensing objective. The representation relates specifically to the intended use of the outside area. A copy of the representation is attached at Annex 4 and summarised below:
14. A representation received from North Yorkshire Police was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence:
 1. CCTV will be installed to cover the premises. It will be maintained and working at all times that the premises are open. Copies of the recordings will be kept available for any relevant authority for 28 days.
 2. The only acceptable proof of age identification shall be a current passport, photocard driving licence or identification carrying the PASS logo.
 3. One pint capacity, half pint capacity and 'highball' tumbler drinking glasses will be strengthened glass (tempered glassware) in a design whereby, in the event of breakage, the glass will fragment and no sharp edges are left. Drinking glasses of any type shall not be allowed to enter or leave the premises whilst under the customers care.
 4. All OFF SALES shall be made in sealed containers.
 5. Documented staff training will be given regarding the retail of alcohol and such records will be kept accordingly.
 6. The management of the venue will comply with any reasonable and justified request regarding the provision of Door Supervisors should the need arise.
 7. A refusals register and incident report register will be kept. Such documents will record incidents of staff refusals to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises. Both documents will be made available upon a reasonable request from any relevant authority.
 8. Prominent clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly.

9. The premise shall partake in the York Pubwatch Pager scheme.
15. A representation received from North Yorkshire Fire & Rescue Service was subsequently withdrawn when the applicant agreed to the following condition being attached to the licence:
The occupancy figure for the ground floor and garden area should not exceed 100 persons.

Summary of Representations made by Interested Parties

16. A representation was received from an interested party on the grounds of prevention of public nuisance. A copy of this representation is attached at Annex 5.
17. The location of the residential property owned by the interested party in relation to the premises subject to this application is shown on the map attached at Annex 6.
18. 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.
19. 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

20. To date the applicant has not submitted the required listed building and planning application for the works / change of use to the building. There is an outstanding application for the summerhouse at the rear of the garden and this is unlikely to be determined in the near future.

Options

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

25. Option 4: Reject the application.

Analysis

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

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 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

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.
Reason: To address the representations received as required by the Licensing Act 2003.

Contact Details

Author:

John Lacy
Licensing Manager
Licensing & Regulation

Ext: 1593

Chief Officer Responsible for the report:

Richard Haswell
Head of Licensing
Neighbourhood Services

Ext: 1515

Report Approved



Date 12 August 2008

Specialist Implications Officer(s):

Quentin Baker
Head of Legal & Democratic Legal Services

Ext: 1004

Wards Affected: Guildhall East

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** - Table of existing and proposed licensable activities.
- Annex 4** - Copy of representation from Environmental Protection Unit
- Annex 5** - Copy of representation from Interested Party
- Annex 6** - Map of area indicating location of residential property owned by interested party in relation to premises subject of application
- Annex 7** - Mandatory Conditions
- Annex 8** - Legislation and Policy Considerations



LICENSING ACT 2003

PREMISES LICENCE

Schedule 12

Part A

Part 1 Premises details

Premises licence number CYC - 010833

Postal address of premises:

Four High Petergate Hotel and Bistro
2-4 High Petergate

Post town: **York**

Post code: **YO1 7EH**

Telephone number: 01904 658516

Expiry date: This licence has no expiry date.

Licensable activities authorised by the licence:

Supply of Alcohol

The times the licence authorises the carrying out of licensable activities:

SUPPLY OF ALCOHOL

Monday
12:00 - 00:00

Tuesday
12:00 - 00:00

Wednesday
12:00 - 00:00

Thursday
12:00 - 00:00

Friday
12:00 - 00:00

Saturday
12:00 - 00:00

Sunday
12:00 - 23:00

Non Standard Timings:

Residents may consume alcohol at anytime.

The Opening Hours of the Premises

Monday 12:00 - 00:30	Tuesday 12:00 - 00:30	Wednesday 12:00 - 00:30	Thursday 12:00 - 00:30
Friday 12:00 - 00:30	Saturday 12:00 - 00:30	Sunday 12:00 - 23:30	

Where the licence authorises supplies of alcohol whether these are on and/or off supplies:

On the premises

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Name: Holdercraft Ltd
Address: Stonegrave House
Stonegrave
York
YO62 4LJ
Telephone number: None
Email address: None

Registered number of holder, for example company number, charity number (where applicable):

Limited Company 04782555

Annex 1 – Mandatory conditions

MANDATORY CONDITIONS WHERE LICENCE AUTHORISES SUPPLY OF ALCOHOL

(1) In accordance with section 19 of the Licensing Act 2003, where a premises licence authorises the supply of alcohol, the licence must include the following conditions.

(2) The first condition is that no supply of alcohol may be made under the premises licence -

- (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
- (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

(3) The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Annex 2 – Conditions consistent with the operating schedule

None

Annex 3 – Conditions attached after a hearing by the licensing authority

None

For and on behalf of
The Director of Neighbourhood Services

Date: 17/10/2005
16/08/2007 (DPS Variation)

Licensing & Regulatory Services
9 St Leonard's Place
York
Y01 7ET

Phone: 01904 552512
Fax: 01904 551590
Email: licensing.unit@york.gov.uk
Website: www.york.gov.uk/licensing

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17 JUN 2008

ANNEX 2

Application to vary a premises licence under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/We DEBRETTON HOSPITALITY (4HP) LTD

(Insert name(s) of applicant)

being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below

Premises licence number

CYC - 010833

Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description

FOUR HIGH PETERGATE HOTEL AND BISTRO
2-4 HIGH PETERGATE

Post town	YORK	Post code	YO1 7EH
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Telephone number at premises (if any)	01904 658516
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Non-domestic rateable value of premises	£24,500
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Part 2 – Applicant details

Daytime contact telephone number	0113 225 5431		
E-mail address (optional)			
Current postal address if different from premises address	AS ABOVE		
Post Town		Postcode	

Part 3 - Variation

Please tick yes

Do you want the proposed variation to have effect as soon as possible?

If not do you want the variation to take effect from

Day	Month	Year

Please describe briefly the nature of the proposed variation (Please see guidance note 1)

VARIATION TO PERMIT ADDITIONAL FORMS OF LICENSABLE ACTIVITY, TO MODIFY HOURS OF LICENSABLE ACTIVITIES AND TO AMEND THE PLANS OF THE PREMISES TO INCLUDE A GROUND FLOOR GARDEN AREA

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend

Part 4 Operating Schedule

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

Provision of regulated entertainment**Please tick yes**

- | | |
|--|-------------------------------------|
| a) plays (if ticking yes, fill in box A) | <input checked="" type="checkbox"/> |
| b) films (if ticking yes, fill in box B) | <input checked="" type="checkbox"/> |
| c) indoor sporting events (if ticking yes, fill in box C) | <input type="checkbox"/> |
| d) boxing or wrestling entertainment (if ticking yes, fill in box D) | <input type="checkbox"/> |
| e) live music (if ticking yes, fill in box E) | <input checked="" type="checkbox"/> |
| f) recorded music (if ticking yes, fill in box F) | <input checked="" type="checkbox"/> |
| g) performances of dance (if ticking yes, fill in box G) | <input checked="" type="checkbox"/> |
| h) anything of a similar description to that falling within (e), (f) or (g)
(if ticking yes, fill in box H) | <input checked="" type="checkbox"/> |

Provision of entertainment facilities:

- | | |
|--|-------------------------------------|
| i) making music (if ticking yes, fill in box I) | <input checked="" type="checkbox"/> |
| j) dancing (if ticking yes, fill in box J) | <input checked="" type="checkbox"/> |
| k) entertainment of a similar description to that falling within (i) or (j)
(if ticking yes, fill in box K) | <input checked="" type="checkbox"/> |

Provision of late night refreshment (if ticking yes, fill in box L)**Sale by retail of alcohol (if ticking yes, fill in box M)****In all cases complete boxes N, O and P**

A

Plays Standard days and timings (please read guidance note 6)			Will the performance of a play take place <u>indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon	1000	0000	Please give further details here (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA	Both	<input checked="" type="checkbox"/>
Tue	1000	0000			
Wed	1000	0000	State any seasonal variations for performing plays (please read guidance note 4)		
Thur	1000	0000			
Fri	1000	0000	Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list (please read guidance note 5)		
Sat	1000	0000			
Sun	1000	0000			

B

Films Standard days and timings (please read guidance note 6)			Will the exhibition of films take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon	1000	0000	Please give further details here (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA	Both	<input checked="" type="checkbox"/>
Tue	1000	0000			
Wed	1000	0000	State any seasonal variations for the exhibition of films (please read guidance note 4)		
Thur	1000	0000			
Fri	1000	0000	Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list (please read guidance note 5)		
Sat	1000	0000			
Sun	1000	0000			

C

Indoor sporting events Standard days and timings (please read guidance note 6)			<u>Please give further details</u> (please read guidance note 3)
Day	Start	Finish	
Mon			
Tue			<u>State any seasonal variations for indoor sporting events</u> (please read guidance note 4)
Wed			
Thur			<u>Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list</u> (please read guidance note 5)
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 6)			Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick (please read guidance note 2)	
			Indoors	<input type="checkbox"/>
			Outdoors	<input type="checkbox"/>
			Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 3)	
Mon				
Tue				
Wed			State any seasonal variations for boxing or wrestling entertainment (please read guidance note 4)	
Thur				
Fri				
Sat			Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list (please read guidance note 5)	
Sun				

E

Live music Standard days and timings (please read guidance note 6)			Will the performance of live music take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input checked="" type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA		
Mon	1000	0000			
Tue	1000	0000	State any seasonal variations for the performance of live music (please read guidance note 4)		
Wed	1000	0000			
Thur	1000	0000	Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list (please read guidance note 5)		
Fri	1000	0000			
Sat	1000	0000			
Sun	1000	0000			

F

Recorded music Standard days and timings (please read guidance note 6)			Will the playing of recorded music take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input checked="" type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA		
Mon	1000	0000			
			State any seasonal variations for the playing of recorded music (please read guidance note 4)		
Tue	1000	0000			
			Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list (please read guidance note 5)		
Wed	1000	0000			
Thur	1000	0000			
Fri	1000	0000			
Sat	1000	0000			
Sun	1000	0000			

G

Performances of dance Standard days and timings (please read guidance note 6)			Will the performance of dance take place indoors or outdoors or both – please tick (please read guidance note 2)	Indoors	<input type="checkbox"/>
Day	Start	Finish		Outdoors	<input type="checkbox"/>
Mon	1000	0000	Please give further details here (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA	Both	<input checked="" type="checkbox"/>
Tue	1000	0000			
Wed	1000	0000	State any seasonal variations for the performance of dance (please read guidance note 4)		
Thur	1000	0000			
Fri	1000	0000	Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list (please read guidance note 5)		
Sat	1000	0000			
Sun	1000	0000			

H

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 6)			<u>Please give a description of the type of entertainment you will be providing</u> ANYTHING OF A SIMILAR DESCRIPTION		
Day	Start	Finish	<u>Will this entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
Mon	1000	0000		Outdoors	<input type="checkbox"/>
				Both	<input checked="" type="checkbox"/>
Tue	1000	0000	<u>Please give further details here</u> (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA		
Wed	1000	0000			
Thur	1000	0000	<u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u> (please read guidance note 4)		
Fri	1000	0000			
Sat	1000	0000	<u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sun	1000	0000			

I

Provision of facilities for making music Standard days and timings (please read guidance note 6)			<u>Please give a description of the facilities for making music you will be providing</u> FACILITIES AS REQUIRED	
			<u>Will the facilities for making music be indoors or outdoors or both – please tick</u> (please read guidance note 2)	
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA	
Mon	1000	0000		
Tue	1000	0000		
Wed	1000	0000		
Thur	1000	0000		
Fri	1000	0000		
Sat	1000	0000		
Sun	1000	0000		
			<u>State any seasonal variations for the provision of facilities for making music</u> (please read guidance note 4)	
			<u>Non standard timings. Where you intend to use the premises for provision of facilities for making music at different times to those listed in the column on the left, please list</u> (please read guidance note 5)	

J

Provision of facilities for dancing Standard days and timings (please read guidance note 6)			Will the facilities for dancing be indoors or outdoors or both – please tick (see guidance note 2)	Indoors <input type="checkbox"/>
				Outdoors <input type="checkbox"/>
				Both <input checked="" type="checkbox"/>
Day	Start	Finish	Please give a description of the facilities for dancing you will be providing AS REQUIRED	
Mon	1000	0000	Please give further details here (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA	
Tue	1000	0000		
Wed	1000	0000	State any seasonal variations for providing dancing facilities (please read guidance note 4)	
Thur	1000	0000		
Fri	1000	0000	Non standard timings. Where you intend to use the premises for the provision of facilities for dancing at different times to those listed in the column on the left, please list (please read guidance note 5)	
Sat	1000	0000		
Sun	1000	0000		

K

Provision of facilities for entertainment of a similar description to that falling within i or j Standard days and timings (please read guidance note 6)			<u>Please give a description of the type of entertainment facility you will be providing</u> ANYTHING OF A SIMILAR DESCRIPTION		
Day	Start	Finish	<u>Will the entertainment facility be indoors or outdoors or both – please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
Mon	1000	0000		Outdoors	<input type="checkbox"/>
				Both	<input checked="" type="checkbox"/>
Tue	1000	0000	<u>Please give further details here</u> (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA		
Wed	1000	0000			
Thur	1000	0000	<u>State any seasonal variations for the provision of facilities for entertainment of a similar description to that falling within i or j</u> (please read guidance note 4)		
Fri	1000	0000			
Sat	1000	0000	<u>Non standard timings. Where you intend to use the premises for the provision of facilities for entertainment of a similar description to that falling within i or j at different times to those listed in the column on the left, please list</u> (please read guidance note 5)		
Sun	1000	0000			

L

Late night refreshment Standard days and timings (please read guidance note 6)			Will the provision of late night refreshment take place indoors or outdoors or both – <u>please tick</u> (please read guidance note 2)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input checked="" type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 3) INSIDE THE BUILDING AND IN THE GARDEN AREA		
Mon	2300	0000			
Tue	2300	0000	State any seasonal variations for the provision of late night refreshment (please read guidance note 4)		
Wed	2300	0000			
Thur	2300	0000	Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list (please read guidance note 5)		
Fri	2300	0000			
Sat	2300	0000			
Sun	2300	0000			

M

Supply of alcohol Standard days and timings (please read guidance note 6)			Will the supply of alcohol be for consumption (Please tick box) (please read guidance note 7)	On the premises	<input type="checkbox"/>
				Off the premises	<input type="checkbox"/>
				Both	<input checked="" type="checkbox"/>
Day	Start	Finish	State any seasonal variations for the supply of alcohol (please read guidance note 4) INSIDE THE BUILDING AND IN THE GARDEN AREA		
Mon	1000	0000			
Tue	1000	0000			
Wed	1000	0000			
Thur	1000	0000			
Fri	1000	0000			
Sat	1000	0000			
Sun	1000	0000			
			Non-standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 5)		

N

Please highlight any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children (please read guidance note 8)

O

Hours premises are open to the public Standard days and timings (please read guidance note 6)			State any seasonal variations (please read guidance note 4)
Day	Start	Finish	
Mon	1000	0000	
Tue	1000	0000	
Wed	1000	0000	
Thur	1000	0000	
Fri	1000	0000	
Sat	1000	0000	
Sun	1000	0000	

Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 5)

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking

Please tick yes

- I have enclosed the premises licence
- I have enclosed the relevant part of the premises licence

If you have not ticked one of these boxes please fill in reasons for not including the licence, or part of it, below

Reasons why I have failed to enclose the premises licence or relevant part of premises licence

COPY ENCLOSED

P Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General – all four licensing objectives (b,c,d,e) (please read guidance note 9)

AS PER EXISTING PREMISES LICENCE

b) The prevention of crime and disorder

AS PER EXISTING PREMISES LICENCE

c) Public safety

AS PER EXISTING PREMISES LICENCE

d) The prevention of public nuisance

AS PER EXISTING PREMISES LICENCE

e) The protection of children from harm

AS PER EXISTING PREMISES LICENCE

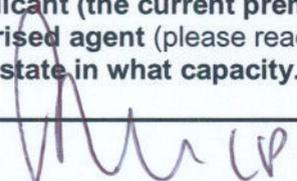
Please tick yes

- I have made or enclosed payment of the fee
- I have sent copies of this application and the plan to responsible authorities and others where applicable
- I understand that I must now advertise my application
- I have enclosed the premises licence or relevant part of it or explanation
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 5 – Signatures (please read guidance note 10)

Signature of applicant (the current premises licence holder) or applicant’s solicitor or other duly authorised agent (please read guidance note 11). **If signing on behalf of the applicant please state in what capacity.**

Signature	
Date	16 JUNE 2008
Capacity	SOLICITORS FOR APPLICANT

Where the premises licence is jointly held signature of 2nd applicant (the current premises licence holder) or 2nd applicant’s solicitor or other authorised agent (please read guidance note 12). **If signing on behalf of the applicant please state in what capacity.**

Signature	
Date	
Capacity	

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 13)

FAO KEITH SHAW (SOLICITOR)
PINSENT MASONS
1 PARK ROW

Post town	LEEDS	Post code	LS1 5AB
Telephone number (if any)	0113 225 5431		
If you would prefer us to correspond with you by e-mail your e-mail address (optional) keith.shaw@pinsentmasons.com			

Four High Petergate Hotel & Bistro**Existing trading period and licensable activities**

LICENSABLE ACTIVITY	DAYS	TIMES
Supply of alcohol:	Monday to Saturday Sunday	12:00-00:00 12:00-23:00
Regulated Entertainment:		
a) Plays		
b) Films		
c) Indoor Sporting Events		
d) Boxing or Wrestling		
e) Live music		
f) Recorded music		
g) Performance of dance		
h) Anything of similar description to (e), (f) or (g)		
Provision of entertainment facilities:		
i) Making music		
j) Dancing		
k) Entertainment of similar description to (i) or (j)		
Provision of late night refreshment:		
Hours premises open to public:	Premises close 30 minutes after last permitted sale of alcohol	

Proposed trading period and licensable activities

LICENSABLE ACTIVITY	DAYS	TIMES
Supply of alcohol:	Monday to Sunday	10:00 – 00:00
Regulated Entertainment:		
a) Plays	As alcohol hours	
b) Films	As alcohol hours	
c) Indoor Sporting Events		
d) Boxing or Wrestling		
e) Live music	As alcohol hours	
f) Recorded music	As alcohol hours	
g) Performance of dance	As alcohol hours	
h) Anything of similar description to (e), (f) or (g)	As alcohol hours	
Provision of entertainment facilities:		
i) Making music	As alcohol hours	
j) Dancing	As alcohol hours	
k) Entertainment of similar description to (i) or (j)	As alcohol hours	
Provision of late night refreshment:	Monday to Sunday	23:00 – 12:00
Hours premises open to public:	Monday to Sunday	10:00 – 00:00

Davies, Fiona

From: Davies, Fiona
Sent: 11 July 2008 10:46
To: Cooke, Lesley
Cc: Cockerill, Janice; Welsh, Mike; Gray, Ian
Subject: variation of premises license for Four High Petergate Hotel & Bistro

Dear Lesley,

The environmental protection unit would like to make representations about this application.

I am specifically making representations in relation to the request to use the outdoor garden area for licensable activities until midnight seven days a week. Although the applicant is aware of complaints from local residents about noise from patrons using the garden area late at night which disturbs sleep, he has not offered any additional steps that he intends to take to promote the "prevention of public nuisance" licensing objective.

If the garden area is permitted to be used for licensable activities it is likely that the environmental protection unit will be asked to further investigate noise nuisance by local residents whose bedrooms are within a few meters of this garden area. The garden is a large area and would hold many patrons who would be talking and laughing. In addition the application requests both recorded and live music and dance be permitted in the garden area. This would be totally unacceptable in terms of noise nuisance impacting on the nearby residents on a daily basis. A noise nuisance investigation was carried out shortly after the premises first opened, and a warning given recommending the garden area was not used at night. If this application to vary the license is successful and the garden is to be allowed to be used every night I am confident a noise abatement notice would have to be served and the environmental protection unit would be asking for a review of the license.

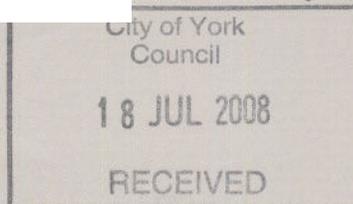
Regards,


Fiona Davies
Environmental Protection Officer,
Environmental Protection Unit,
9 St Leonard's Place,
York YO1 7ET
Tel (01904) 551535



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Our Ref: PGW/10233.308
 Your Ref:
 Direct email: PeterWarren@grayssolicitors.co.uk
 Date: 15 July 2008

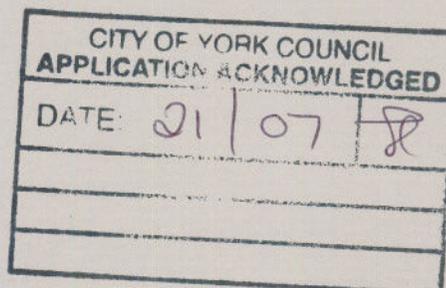


GRAYS
 SOLICITORS

Duncombe Place York YO1 7DY
 Telephone: (01904) 634771
 Fax: (01904) 610711
 DX: 61505 YORK

Email: enquiries@grayssolicitors.co.uk
 Web site: www.grayssolicitors.co.uk

Licensing Services
 City of York Council
 9 St Leonard's Place
 York
 YO1 7ET



Dear Sirs

Objection to Application for Variation of Premises Licence Ref:CYC010833
Applicant: Debretton Hospitality (4HP) Limited
Premises: 4 High Petergate, York ("the Premises")

We act on behalf of the Dean & Chapter of York Minster who own 9 Precentor's Court, York ("the Property"). This Property is a residential property lying to the rear of the Premises.

My client wishes to object to the current application to vary Premises Licence CYC010833 on the basis that the grant of this variation to allow, inter alia, a beer garden would have serious adverse effects upon the residential amenity of the occupiers of 9 Precentor's Court. This objection therefore relates to the prevention of public nuisance which is one of the four objectives of the Licensing Act and a valid ground for objection to an application under the Act. As such, we contend that the licensing application should be refused.

1. Background to the Application

1.1 The rear garden at the Premises has already been developed as an outside drinking area without the grant of planning permission. The garden has been landscaped, a "summerhouse" erected and external lighting installed without the benefit of planning or listed building consent. My client has strenuously objected to the grant of listed and planning consent and has made representations to City of York Council. At the present time, therefore, the Premises do not have the necessary consent to allow the use of the garden as an outside drinking area.

10233\308\1080PGW .LET

Partners: Christopher Goodway Lyn Rickatson John Knowles Brian Mitchell Ben Williams Consultant: Tony Lawton
 Solicitors: Peter Warren Catherine Goodway Gillian Blick Emma Grandison Legal Executive: Janet King

1.2 The planning and listed building applications for the outside area and summerhouse have met with strong resistance from City of York Council and other conservation agencies. Accordingly, it is by no means certain that consent for the development will be forthcoming and we contend that it is inappropriate to grant a licence in respect of this area in the absence of planning and listed building consent.

1.3 The City of York Council Statement of Licensing Policy 2008 provides that "it is strongly recommended that lawful planning use be obtained initially" before an application for variation of a premises licence. We refer to this requirement further bellow.

2. Detrimental effect upon the residential amenity of 9 Precentor's Court

2.1 The rear facing rooms of 9 Precentor's Court directly overlook the rear garden of the Premises. Indeed, the master bedroom and a number of other rooms within the house are effectively a few feet from the garden area. Equally, the garden to the Property which provides essential private amenity space for residential occupiers, lies immediately adjacent to the garden of the premises.

2.2 Any customers in the beer garden would, therefore, be able to look into the bedroom and other rooms of the Property which would constitute an entirely unacceptable intrusion on the privacy of the occupants of the Property. Furthermore, the enjoyment of the essential amenity space provided by the garden would be severely affected by noise from the beer garden and indeed from the public house area as a result of the rear doors of the Premises being kept open to allow access to and from the beer garden.

2.3 Equally significant would be the detrimental effect on residential amenity occasioned by exterior lighting and any music or entertainment in the garden. We note that the application is for all forms of entertainment (including live music and recorded music and dancing) "inside the building and in the garden area".

2.4 Accordingly, we submit that there would be serious and sustained detrimental effect upon the residential amenity of 9 Precentor's Court by overlooking, noise and light pollution occasioned by the application.

3. Detrimental impact upon the character of the area

The setting and relative tranquillity of this area in the heart of York is an essential part of the character of the area and this would, it is contended, be severely diminished should the Application be granted. Many visitors to York walk along the walls immediately adjacent to the garden area and we submit this will be harmed by the extension of licensing activities in this sensitive location.

4. Other security and nuisance issues

4.1 The close proximity of an outside drinking area in the city centre and a neighbouring dwelling means that there is a considerable risk of overlooking, possible anti-social behaviour and security issues.

4.2 If the garden area were to be opened for regular public use as a beer garden we contend that issues of trespass and other anti-social behaviour would be a possible consequence, further harming the residential amenity of 9 Precentor's Court.

5. City of York Council Statement of Licensing Policy 2008

5.1 In the Policy at paragraph 3.1 (Planning) it is stated that "If an Applicant wishes the Licensing Authority to determine an Application for an activity for which lawful planning use cannot be demonstrated it will be for the Applicant to demonstrate special circumstances justifying a departure from the Policy". The reason for this Policy is given as being to ensure all licensed premises have lawful planning permission and that no conflicts arise between the Council acting as planning and licensing authorities.

5.2 As noted above, the garden area at the Premises does not have planning or listed building consent for use as an outside drinking area and the summer-house does not have planning or listed building consent. In the Application, the Applicant has not provided any special circumstances justifying the grant of the variation of the Premises' licence in the absence of lawful planning permission. Accordingly, the Application is in breach of the City of York Council Licensing Policy and should be refused.

5.3 In the Policy at paragraph 5.3 (Prevention of Public Nuisance) it is stated that "Responsible Applicants will wish to ensure their operations do not disturb their neighbours or give rise to representations being made against a Licence Application". Under "Hours of Operation" it is stated that "The Licensing Authority would expect licence holders to consider hours of operation when compiling their operating schedules". It is clear that the Applicant has made no attempt whatsoever to consider the appropriate hours of operation for the beer garden and the impact this will have on the occupiers of 9 Precentor's Court as the Application is for hours of operation until midnight seven days a week.

5.4 The Policy in 5.3 goes on to state that the Applicant should consider "the areas of the building where entertainment is provided, particularly outside areas" and "the management of the general use of outside areas such as beer gardens and smoking areas". Once again, the Applicant has not provided any information whatsoever in the Application to suggest how the activities to take place in the outside area will be controlled. Indeed, the Application is for entertainment of all kinds including live music and recorded music in the outside areas until midnight seven days a week. Once again, the Applicant appears to have given

no thought whatsoever to the effect on the occupiers of 9 Precentor's Court and there is no supporting information in the Application to explain how the Licensee will mitigate the disturbance from the garden area of the Premises.

5.5 For the reasons above, the Application does not conform to City of York Council Licensing Policy. The Applicant does not have lawful planning use for the garden area as a licensed area and the Applicant has provided no information whatsoever relating to the prevention of public nuisance. The Application is therefore in contravention of the Council's Licensing Policy and should be refused.

6. Opening times of the proposed beer garden

6.1 We recognise that the Applicant has applied for use of the garden as a beer garden from 10 am until midnight seven days a week. The Application suggests that the garden will be available for the consumption of alcohol and public entertainment throughout this time. Notwithstanding our objection to the use of this garden area as a licensed area at any time of the day or night we contend that the Application for these hours and these activities, without any restriction in the interests of neighbouring residents, is entirely inappropriate and insensitive to the amenity of neighbours.

6.2 The Applicant provides no evidence as part of the Application on how activities in the garden would be supervised or regulated or how the effects upon neighbouring amenity could be mitigated. The Application is deficient and does not seek to address any of the key objectives of the Act. For this reason alone we submit that the Application should be refused.

7. Summary

7.1 The Application proposal would have a severe detrimental impact upon the neighbouring amenity of the occupiers of 9 Precentor's Court.

7.2 Issues of overlooking, noise, light pollution and other anti social behaviour would be entirely unacceptable.

7.3 For the reasons above, the Application proposal is not in accordance with City of York Council Licensing Policy and should therefore be refused. Specifically, the Application does not contain any of the supporting information required in Policy 5.3 of the Licensing Policy relating to the prevention of public nuisance.

7.4 Further, granting permission for this Application would be in conflict with the duty of City of York Council to protect the character of the Central Historic Core Conservation Area as the character of this important location next to the City Walls would be greatly harmed.

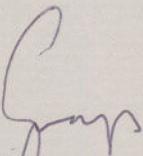
7.5 The Application itself is deficient as it does not address the licensing objectives

of the Act or seek to illustrate how potential issues of public nuisance, crime and disorder could be mitigated.

- 7.6 The Premises do not currently benefit from planning or listed building consent and, accordingly, the Application is in breach of the Policy in 3.1 of the Licensing Policy. The Applicant has provided no special circumstances justifying the grant of the Premises' Licence in advance of lawful planning consent being obtained and, accordingly, the Application should be refused.
- 7.7 For all of the reasons outlined above, we strongly urge the Licensing Committee to refuse this Application.

We would also strongly urge that in order to appreciate the particular sensitivities in this case, members should consider conducting a site visit in order to appreciate the concerns which have been expressed. If members wish to undertake such a site visit, this should be arranged through Grays Solicitors.

Yours faithfully

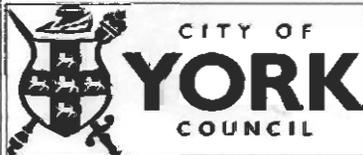
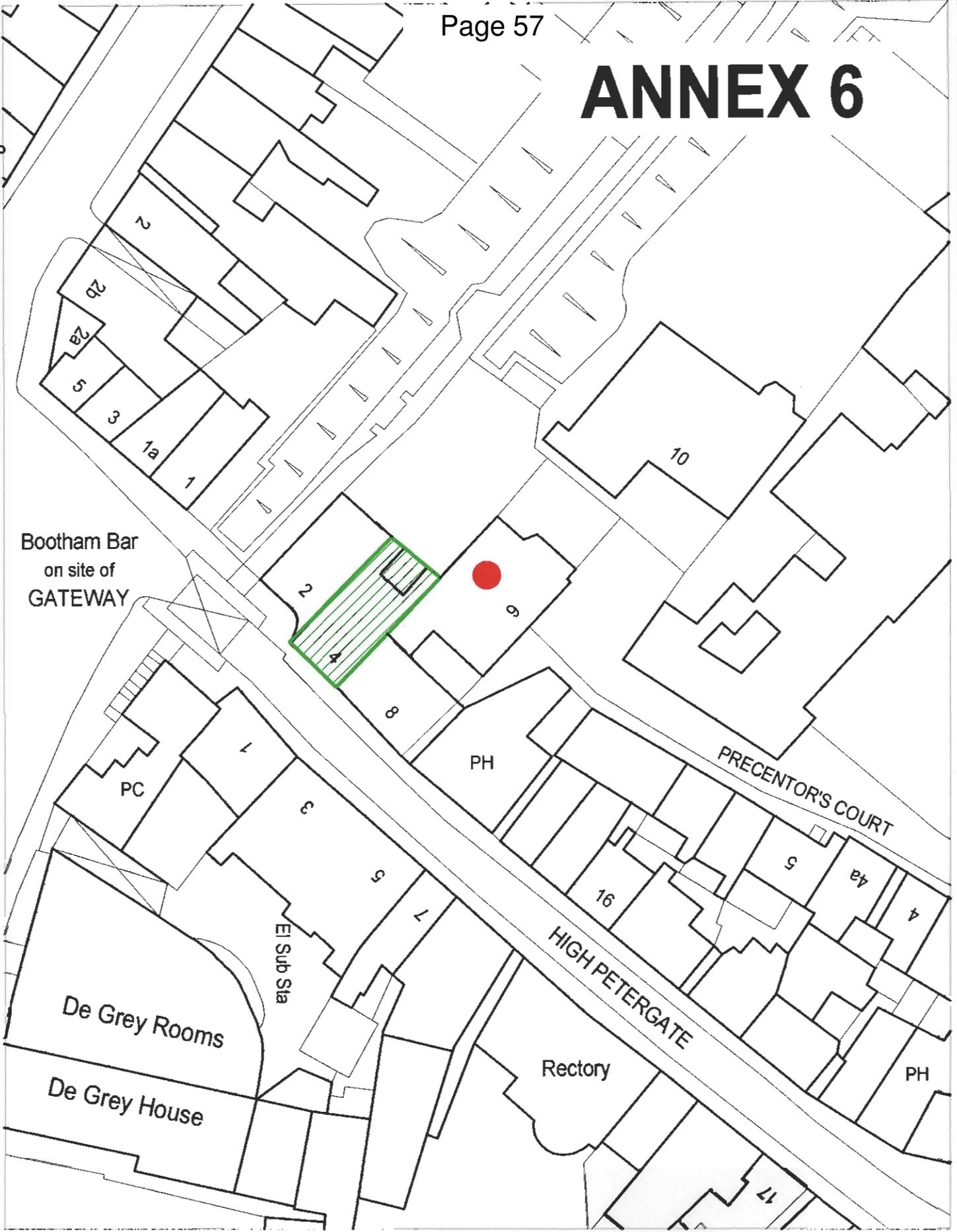


Grays

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ANNEX 6

Bootham Bar
on site of
GATEWAY



FOUR HIGH PETERGATE HOTEL & BISTRO, 4 HIGH PETERGATE

SCALE 1:500
Originating Group

DRAWN BY PSL
Project

DATE 12/8/2008
Drawing No.

FHPH81



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**MANDATORY & PROHIBITED CONDITIONS – PREMISES LICENCE
LICENSING ACT 2003**

MANDATORY CONDITIONS WHERE LICENCE AUTHORISES SUPPLY OF ALCOHOL

- (1) In accordance with section 19 of the Licensing Act 2003, where a premises licence authorises the supply of alcohol, the licence must include the following conditions.
- (2) The first condition is that no supply of alcohol may be made under the premises licence –
 - (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- (3) The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

MANDATORY CONDITION: EXHIBITION OF FILMS

- (1) In accordance with section 20 of the Licensing Act 2003, where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.
- (2) Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.
- (3) Where –
 - (a) the film classification body is not specified in the licence, or
 - (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,
 admission of children must be restricted in accordance with any recommendation made by that licensing authority.
- (4) In this section –
 - “children” means persons aged under 18; and
 - “film classification body” means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

MANDATORY CONDITION: DOOR SUPERVISION

- (1) In accordance with section 21 of the Licensing Act 2003 (as amended by section 25 Violent Crime Reduction Act 2006), where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must –
 - (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
 - (b) be entitled to carry out that activity by virtue of section 4 of that Act.
- (2) But nothing in subsection (1) requires such a condition to be imposed –
 - (a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or
 - (b) in respect of premises in relation to –
 - (i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence, or
 - (ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).

- (3) For the purposes of this section –
- (a) “security activity” means an activity to which paragraph 2(1)(a) of that Schedule applies, and which is licensable conduct for the purposes of that Act (see section 3(2) of that Act), and
 - (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

PROHIBITION CONDITIONS: PLAYS

- (1) In relation to a premises licence which authorises the performance of plays, no conditions may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence.
- (2) But subsection (1) does not prevent a licensing authority imposing, in accordance with section 18(2)(a) or (3)(b), 35(3)(b) or 52(3), any condition which it considers necessary on the grounds of public safety.

Legislation and Policy Considerations

1. The following provisions of the Licensing Act 2003 apply to this application: S4 general duties of licensing authorities; s34 application to vary premises licence; s35 determination of application under section 34; s36 supplementary provision about determinations under section 35; and ss19, 20 and 21 mandatory conditions.
2. The following provisions of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 apply to this application: Regulation 42, Part 2 (Premises licences) and Part 4 (General) relating to applications, notices and representations and advertisement of applications
3. The following provisions of the Secretary of State's guidance apply to this application: Chapter 2 the Licensing Objectives and Paragraphs 5.47 Steps to promote the licensing objectives; and 8.33 Variations.
4. The following paragraphs of the licensing authority's statement of licensing policy apply to this application: 3.2 Crime and Disorder; 4.1 Consultation on New Premises Applications, Club Premises Certificates, Variations and Provisional Statements; 4.2 General Principles for Determination of Applications; 5.0 Guidelines for Applicants; 7.0 Licensing Hours and Appendix D Pool Conditions.
5. 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.
6. The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

NOTE FOR MEMBERS

Extracts from Revised Guidance issued under section 182 of the Licensing Act 2003 (in force 28 June 2007). The following amendments to paragraphs in the Guidance may have relevance at a hearing to determine an application for the grant, variation or review of a premises licence or club premises certificate.

Related Legislation and Strategies

1.26 Licensing law is not the primary mechanism for the general control of individuals once they are away from a licensed premises and therefore beyond the direct control of individual licensees or certificate holders. However, licensees and certificate holders should take reasonable steps to prevent the occurrence of crime and disorder and a public nuisance immediately outside their premises, for example on the pavement, in a beer garden, or (once the smoking ban comes into force) in a smoking shelter, where and to the extent that these matters are within their control.

1.27 In addition, when considering a new premises licence or following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate, such as preventing customers from taking open containers outside the premises or installing CCTV. However, any conditions imposed must not be aspirational and must be within the control of the licensee. For example, a condition may require a premises to adopt a particular dispersal policy, but a licensee cannot force customers to abide by it.

Hours of Trading

10.19 In some town and city centre areas where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport, which may in turn lead to conflict, disorder and anti-social behaviour. In some circumstances, flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises.

10.20 However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.

10.21 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there.