

Licensing Hearing

To: Councillors Horton, Moore and Wiseman
Date: Monday, 4 January 2010
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 held on 15 October 2009.

5. The Determination of an Application for a Premises Licence Section 18 (3) (a) in respect of Unit 4, 62-68 Low Petergate, York, YO1 7HZ. (CYC-016617)

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
Legal Services
Applicant
Representors
Press, Libraries, Council Receptions



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	5 OCTOBER 2009
PRESENT	COUNCILLORS MERRETT, MOORE AND PIERCE

5. CHAIR

RESOLVED: That Councillor Merrett be elected as Chair of the Meeting.

6. DECLARATIONS OF INTEREST

Members were invited to declare any personal or prejudicial interests they may have in any of the business on the agenda.

Councillor Merrett declared a personal non prejudicial interest as Treasurer of York Chinese Cultural Association.

7. THE DETERMINATION OF AN APPLICATION BY MR. JOSEPH MOORE FOR A PREMISES LICENCE SECTION 18(3)(A) IN RESPECT OF 35/37 WALMGATE, YORK, YO1 9TX. (CYC-016268)

Members considered an application for a premises licence in respect of 35/37 Walmgate, 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 and the prevention of public nuisance. The following were considered:

1. The application form, in particular the existing licence conditions and the additional steps agreed to be taken by the applicant to promote the four licensing objectives.
2. The Licensing Officers report and his comments made at the hearing including the fact that 35 Walmgate is currently a takeaway situated on a main road out of York in which has a reputation as an eatery area. The premises are located in alcohol exclusion zone. The representations made by the responsible authorities had been withdrawn following mediation.
3. The applicants representations including the fact that the premises are owned by the applicant who is a local businessman who is keen to bring the building back into use. Members were advised that the

applicant has traded from the premises at number 35 for 2 and a half years without any problems and would like to extend his business to number 37 by opening a Bistro.

4. Representations made by a local resident in writing and at the hearing. The Sub-Committee considered the representations to be relevant to the licensing objectives as concerns were raised regarding the possible increase in noise and disturbance in the area.
5. Written representations made during the consultation period.

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.
- Option 3 Grant the licence to exclude any of the licensable activities to which the licence relates and modify/add conditions accordingly.
- Option 4 Reject the application.

The Sub-Committee chose **Option 2** and imposed the following conditions:

1. Hours of opening are granted as applied for, but all planning restrictions must be adhered to.
2. No lap dancing, pole dancing or activities of a similar nature shall take place.
3. The supply of alcohol shall be restricted to the restaurant area only and shall be served with food. There shall be no off-licence sales.
4. The outside area within the immediate vicinity of the premises shall be cleared of all litter at the end of each trading period.
5. When the venue is used as a Bistro style operation, and has tables laid out indicative of dining, then the maximum occupancy shall be 40 persons.
6. When the venue is clear of tables then the maximum occupancy shall be 60 persons.
7. Noise originating from the premises shall be inaudible at the nearest noise sensitive premises.
8. Mandatory conditions 19,20 and 21 shall apply.

Sections H and K of the application were withdrawn by the applicant.

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

REASON: To address the representation made.

Councillor Merrett, Chair
[The meeting started at 10.30 am and finished at 12.30 pm].

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Licensing Act 2003 Sub Committee**4 January 2010**

Report of the Director of Neighbourhood Services

Section 18(3)(a) Application for a premise licence for Unit 4, 62-68 Low Petergate, York YO1 7HZ**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-016617
3. Name of applicant:
4. Type of authorisation applied for: Grant of Premises Licence
5. Summary of application: The nature of the application is to allow for the supply of alcohol both on and off the premises.

Background

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

Promotion Of Licensing Objectives

7. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
8. General: 1) There shall be no sale of canned lagers or beers.
9. The prevention of crime and disorder: 1) A CCTV system as agreed with the police to be in place and recordings of licensable activities to be retained for a period of 31 days and to be made available to police on demand. 2) The system must be maintained in working order.
10. Public safety: Nil
11. The prevention of public nuisance: 1) All products containing alcohol must be sold in sealed containers excepting alcohol products for the purpose of

sampling on the premises. 2) All alcohol must be decanted by a member of staff.

12. The protection of children from harm: 1) Notices to be displayed within the premises indicating age restrictions to the purchase of alcohol. 2) Proof of age will be sought before purchase where the person appears to be under the age of 21. 3) If suspicion exists on a person's age and being relative to the alcohol to be purchased where photographic evidence was not produced or if produced was not satisfactory, then no sale shall be made. 4) All training must be based on a robust system and carried out by the holder of a personal licence or person otherwise trained to do so.

Special Policy Consideration

- 13 This premise is not located within the Special Policy area.

Consultation

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

Summary of Representations made by Responsible Authorities

16. A representation was received from North Yorkshire Police but this was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted:
1. On sales shall only take place on pre-booked occasions for the purpose of product tasting evenings.
 2. On sales as per condition 1 shall cease at 22:45 hours to allow a period of 15 minutes drinking up time.
 3. When the premises operate until 23:00 hours patrons will be reminded of the need to leave the area quietly.
 4. Off sales shall be made in sealed containers.
 5. There shall be no sale of canned lagers or beers.
 6. CCTV will be installed to cover the premises and will include all areas to where the public have access. It will be maintained, working and recording at all times when the premises are open. The recordings shall be of sufficient quality to be produced in Court or other such hearing. Copies of the recordings will be kept available for police officers for 31 days.

7. Proof of age identification shall be a current passport, photocard driving licence, identification carrying the PASS logo, any other lawful document evidencing identity.
8. A Refusals Register will be kept to record incidents of staff refusals to under-age or drunken people. The document will be made available upon reasonable request from any Responsible Authority.

Summary of Representations made by Interested Parties

17. Representations have been received from the interested parties listed at Annex 2. These representations are attached at Annex 3.
18. The addresses of the interested parties are indicated on the map attached as Annex 4.
19. Since the application was submitted the applicant has written to local residents, a copy of the letter is attached at Annex 5. We are also aware that the applicant has sent further correspondence to the representors trying to mediate their concerns, this has been in relation to licensing hours. At the time of preparing this report we have not received copies of this correspondence.
20. 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.
21. 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

22. There are no planning issues or conditions relevant to this application.

Options

23. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision:-
24. Option 1: Grant the licence in the terms applied for.
25. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
26. Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
27. Option 4: Reject the application.

Analysis

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

Corporate Strategy

33. 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.
34. The promotion of the licensing objectives will support the Council's strategy to make York a safer city with low crime rates and high opinions of the city's safety record.

Implications

35.
 - **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

36. 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.
37. 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

38. 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

Chief Officer Responsible for the report:

Andy Hudson
Assistant Director
Neighbourhood Services

Ext: 1593

Ext: 1814

Report Approved



Date 16 December 2009

Specialist Implications Officer(s)

Head of Legal & Democratic Legal Services

Ext: 1004

Wards Affected: Guildhall West

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of application form
- Annex 2** - List of Interested Parties – Available on request.
- Annex 3** - Representations from Interested Parties – Available on request.
- Annex 4** - Map showing general area from which representations received
- Annex 5** - Letter to representors from applicant
- Annex 6** - Mandatory Conditions
- Annex 7** - Legislation and Policy Considerations

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