

## Licensing Hearing

**To:** Councillors Horton, Merrett and Wiseman  
**Date:** Monday, 25 January 2010  
**Time:** 2.00 pm  
**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. The Determination of an Application by Ozgur Akgul to Vary a Premises Licence[Section 35(3)(a) in respect of Lucia Wine Bar, 13 Swinegate Court, York, YO1 8AJ. CYC-009246

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](mailto: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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**Licensing Act 2003 Sub Committee****25 January 2010**

Report of the Director of Neighbourhood Services

**Section 35(3)(a) Application for the Variation of a premise licence for Lucia Wine Bar, 13 Swinegate Court, York, YO1 8AJ****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-009246
3. Name of applicants: Mr Ozgur Akgul
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is to increase the licensable activities to include live music, the performance of dance, the provision for making music and provision of facilities for dancing, and to extend the hours of operation for all regulated entertainments, late night refreshments and the sale of alcohol. The proposed hours for live and recorded music and the sale of alcohol are Monday to Thursday 10:00 hours to midnight and Friday to Sunday 10:00 hours to 01:30 hours; late night refreshment on Monday to Thursday until 00:30 hours and Friday to Sunday until 01:30 hours; dancing and the provision for dancing etc. on Monday to Thursday from 22:00 hours to midnight and Friday to Sunday from 22:00 hours to 01:30 hours. Proposed opening times are Monday to Thursday 10:00 hours to 00:30 hours and Friday to Sunday 10:00 hours to 02:00 hours. The applicant also wishes to increase the outside licensed area, increase the occupancy and remove all embedded conditions which appear on the current licence.

**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. Plans showing the proposed additional licensed area and the venue's location in Swinegate Court are attached at Annex 3.

### **Promotion Of Licensing Objectives**

9. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
10. General: 1) Staff training shall be undertaken. 2) Substantial food shall be provided until 22:00 hours. 3) There shall be no change of style of operation. 4) There shall be no amusement with prizes machines etc.
11. The prevention of crime and disorder: 1) CCTV with recording facilities. 2) Pager shall be provided. 3) Door supervisors shall be provided on weekends.
12. Public Safety. 1) Toughened glassware will be used.
13. Public Nuisance. 1) Signs shall be provided around the premises.
14. The protection of children from harm. 1) A "Challenge 21" policy shall be in place. 2) Acceptable "Proof of Age" will only be passports, photo driving licence and PASS logo ID cards.

### **Special Policy Consideration**

15. This premise is not located within the Special Policy area.

### **Consultation**

16. 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.

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

17. A representation was received from North Yorkshire Police on the grounds of crime and disorder and prevention of public nuisance. This was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted:
  1. CCTV will be installed to cover the premises and will include all areas (including outside 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 any Responsible 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. Standard 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.
4. Drinking glasses of any type shall not be allowed to enter or leave the premises whilst under the customers care.
5. Documented staff training will be given regarding the retail of alcohol and such records kept accordingly.
6. When the venue is due to operate beyond 24:00 hours an adequate number of Door Supervisors shall be provided at the venue from 23:00 hours until the venue has closed for business on Friday and Saturday evenings; the evening preceding a bank holiday and on any day when York race meetings are held (except the first May meeting and the Sunday meeting in September).
7. The management of the venue will comply with any written, reasonable and justified request made by North Yorkshire Police regarding the provision of Door Supervisors should the need arise.
8. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals to under age or drunken 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 Responsible Authority.
9. 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.
10. The premises shall partake in the York Pubwatch Pager scheme.
11. Substantial food shall be available until 22:00 hours.
12. A capacity of 80 persons shall be imposed so as not to undermine the Licensing Objective “Prevention of Crime and Disorder
13. There shall be no more than 42 patrons allowed inside the venue and no more than 30 persons allowed in the outside drinking area of the venue.
14. The outside of the premises (not covered by the raised flooring area i.e. the courtyard area) shall be bordered at all times when open by robust semi-permanent barriers showing a clear demarcation of the premises footprint (as highlighted on the plan submitted).
18. A representation was received by the City of York Council Environmental Protection Unit on the grounds of public nuisance but this was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted:
  1. No live music to be played outside.
  2. Recorded music played outside shall be restricted to background level.

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

19. A representation was received from an interested party on the grounds of public nuisance. A copy of this representation is attached at Annex 4
20. A map showing the general area around the venue from which the representation is focused is attached at Annex 5
21. 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.
22. 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**

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

### **Options**

24. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision:-
25. Option 1: Grant the variation of the licence in the terms applied for.
26. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
27. 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.
28. Option 4: Reject the application.

### **Analysis**

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

33. Option 4: This decision could be appealed at Magistrates Court by the applicant.

### **Corporate Strategy**

34. 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.
35. 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**

- 36.
- **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**

37. 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.
38. 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

39. 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 14 January 2010

## 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 existing premises licence
- Annex 2** - Copy of application form
- Annex 3** - Plans showing proposed additional licensed area
- Annex 4** - Copy of representation from Interested Party
- Annex 5** - Map showing general area from which representations received.
- Annex 6** - Mandatory Conditions
- Annex 7** - Legislation and Policy Considerations