

## Licensing Hearing

**To:** Councillors Alexander, Reid and Wiseman

**Date:** Monday, 28 June 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 22 April 2010.

#### 5. The Determination of an Application by Mr. Saleem Akhtar for a Variation of a Premises Licence Section 35(3)(a) in respect of Silvano's, 2 Cumberland Street, York, YO1 9SW. (CYC-009284)

**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.

This page is intentionally left blank

## About City of York Council Meetings

### Further information about what's being discussed at this meeting

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

### Access Arrangements

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

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

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

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

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

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

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

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

### Who Gets Agenda and Reports for our Meetings?

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

This page is intentionally left blank

City of York Council

Committee Minutes

---

MEETING	LICENSING HEARING
DATE	22 APRIL 2010
PRESENT	COUNCILLORS MOORE, LOOKER AND WISEMAN
APOLOGIES	COUNCILLORS

---

**33. CHAIR**

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

**34. DECLARATIONS OF INTEREST**

At this point in the meeting Members are invited to declare any personal or prejudicial interests they may have in the business on the Agenda. None were declared.

**35. MINUTES**

That the minutes of the Licensing Hearings held on 16 November 2009 and 17 December 2009 be signed by the Chair as a correct record.

**36. THE DETERMINATION OF AN APPLICATION BY MITCHELLS & BUTLERS LEISURE RETAIL FOR THE VARIATION OF A PREMISES LICENCE SECTION 35(3)(A) IN RESPECT OF FLARES, 6 TANNER ROW, YORK, YO1 6JB. (CYC- 009030)**

Members considered an application by Mitchells and Butlers Leisure Retail Ltd, for the variation of a premises licence in respect of Flares, Tanner Row, 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 following were taken into account:

1. The application form, in particular the existing licence conditions and the additional steps agreed to be taken by the applicant to promote the 4 licensing objectives.
2. The Licensing Officers report and his comments made at the hearing. He advised that along with the extension of the terminal hour to 03:00 on Fridays and Saturdays, the applications included the removal of conditions 4, 7, 8 and 16 in Annex 2 of the existing licence. It was proposed that these conditions would be replaced

with similar worded conditions as agreed with the Police. The application was also for the removal of conditions a, b, c and d, under the heading 'Regulated Entertainment', which had been left on the current licence from the old licence. The Officer advised that the consultation had been carried out correctly.

3. The applicants representation, in particular that the application was in order to bring the opening hours of Flares in line with other establishments in the area. The applicant advised that the extra hour on Fridays and Saturdays would encourage customers to stay longer and would assist in keeping disturbance to minimum in the area.
4. The representations made in writing by a local resident who raised concerns regarding 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 application relates and modify/add conditions accordingly.
- Option 4 Reject the application.

Members chose Option 1 and granted the variation in the terms applied for as they felt the existing licence conditions were sufficient to address the issues raised in relation to public nuisance.

The new mandatory conditions introduced by the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 would be added to the licence.

RESOLVED: That in line with Option 1, the licence be granted.

REASON: To address the representations made.

Councillor Moore, Chair  
[The meeting started at 10.15 am and finished at 11.20 am].



---

**Licensing Act 2003 Sub Committee****28 June 2010**

Report of the Director of Neighbourhood Services

**Section 35(3)(a) Application for the Variation of a premise licence for 2 Cumberland street, YorkYO1 9SW****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-009284
3. Name of applicants: Mr Saleem Akhtar.
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is to extend the hours for the sale of alcohol, the provision of regulated entertainment and late night refreshment until 04:00 hours every day and to extend opening times until 04:30 hours.

**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.

**Promotion Of Licensing Objectives**

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

**Special Policy Consideration**

9. The premises fall within an area that has been identified as one where the concentration of a significant number of licensed premises has a considerable impact on the licensing objectives. As part of a series of measures to address the problems of a city centre increasingly blighted by alcohol misuse, this area has been made the subject of a special policy that addresses the impact of the concentration of licensed premises in this particular part of the city centre. The special policy was approved by the licensing committee on 1 April 2005 and

considered by full council on 12 April 2005, a copy of the special policy statement is attached at Annex 6.

### **Consultation**

10. 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.
11. All procedural aspects of this application have been complied with.

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

12. A representation was received from North Yorkshire Police on the grounds of all 4 licensing objectives. 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 to where the public have access. It will be maintained, working and recording at all times when the premises are open. The recordings should 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 (until other effective identification technology e.g. thumb print or pupil recognition, is adopted by the Premises Licence Holder).
  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 sale of alcohol and such records kept for at least one year.
  6. When the venue is due to operate beyond 01:00 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 and will be kept for at least one year.

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 sale of alcohol shall cease 30 minutes before the venue is due to close to allow a period of drinking up time.
11. The venue shall not open or operate (other than by way of Temporary Event Notice) earlier or later than the times listed in part 1 of the premises Licence (i.e. the opening hours of the premises).
12. All off-sales shall be in sealed containers.

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

13. Representations have been received from 2 Interested Parties listed in Annex 3. Their representations are attached at Annex 4.
14. A map showing the general area around the venue from which the representation is focused is attached at Annex 5.
15. 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.
16. 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**

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

### **Options**

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

## Analysis

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

## Corporate Strategy

28. 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.
29. 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

30.
  - **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

31. 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.
32. 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

33. Members determine the application.  
Reason: To address the representations received as required by the Licensing Act 2003.

## Contact Details

**Author:**  
John Lacy  
Licensing Manager

Ext: 1593

**Chief Officer Responsible for the report:**  
Andy Hudson  
Assistant Director  
Neighbourhood Services

Ext: 1814

**Report Approved**



**Date** Xx June

## 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** - List of Interested Parties
- Annex 4** - Representations from Interested Parties
- Annex 5** - Map showing general area from which representations received.
- Annex 6** - Copy of City Centre Special Policy Statement .
- Annex 7** - Mandatory Conditions.
- Annex 8** - Legislation and Policy Considerations.

This page is intentionally left blank