

Licensing Hearing

To: Councillors Hyman, Reid and B Watson
Date: Monday, 27 September 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 Licence Review Hearing held on 18 January 2010.

5. The Determination of an Application by Haxby & District W.M.C to Vary a Premises Licence Section 35(3)(a) in respect of Haxby W.M.C, 64 North Lane, Haxby, YO32 3JP.. (CYC-009770)

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

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Members of Licensing Act 2003 Sub-Committee
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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	18 JANUARY 2010
PRESENT	COUNCILLORS MOORE, B WATSON AND WISEMAN

37. CHAIR

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

38. DECLARATIONS OF INTEREST

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

39. THE DETERMINATION OF AN APPLICATION BY HELEN HOWLETT, SENIOR ENVIRONMENTAL PROTECTION OFFICER, CITY OF YORK COUNCIL FOR THE REVIEW OF A PREMISES LICENCE SECTION 52(2) IN RESPECT OF ZIGGY'S, 53-55 MICKLEGATE, YORK, YO1 6LJ. (CYC-009397)

Members considered an application by Helen Howlett, Senior Environmental Protection Officer, City of York Council for the review of a Premises Licence in respect of Ziggy's, 53-55 Micklegate, 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 objective – Prevention of Public Nuisance. The following were taken into account:

1. The application form, in particular the existing licence conditions and the steps 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 review relates to noise complaints dating back three years and a subsequent noise abatement order being breached. The premises owner had worked with the Environmental Protection Unit and progress had already been made towards resolving the problem.
3. The applicant's representations at the hearing, in particular the fact that Environmental Protection Unit has a duty to take action and the review is a result of a noise abatement order

being breached. A number of conditions had been suggested and the applicant had been compliant throughout the process and the Environmental Protection Unit were satisfied that the proposed conditions would be sufficient to address the noise problem at the premises.

4. The representations of the holder of the premises licence, including the fact that he accepted that there had been incidents during which the rear fire door had been left open, and consequently noise levels had been audible outside. He advised that he had now put safeguards in place to ensure the door stayed closed. He advised that he had also taken steps to sound proof the premises further by installing appropriate sound systems. He advised that he was happy to accept the proposed conditions to his licence.
5. The representations made by a representor in writing and at the hearing. The sub-committee considered this representation to be relevant to the issues raised and the licensing objectives listed above, as the representor lived in close proximity to the premises and raised concerns regarding noise coming from the establishment.
6. The representations made by North Yorkshire Police in writing.

Having regard to the application and any relevant representations, the sub-committee had to determine whether to take any of the steps mentioned under Section 52(4) that it considered necessary for the promotion of the Licensing Objective the Prevention of Public Nuisance.

Members were presented with the following options:

- Option 1. Modify conditions of licence (ie alter, omit or add any condition including a requirement to display a notice explaining the outcome of the review).
- Option 2. Exclude a licensable activity from the scope of the licence.
- Option 3. Remove the designated premises supervisor.
- Option 4. Suspend the licence for a period not exceeding three months.
- Option 5. Revoke the licence.

Members also had the option of issuing a “yellow card” which would be a warning as to future conduct and may accompany the options above. Members also had the option of taking no action if they did not consider it necessary to do so for the promotion of Licensing Objectives.

Members chose to modify the conditions of the licence (Option 1) and this was to include the requirement to display a notice explaining the outcome of the review.

The following conditions, as suggested by the Environmental Protection Unit, were added to the licence:

1. All music in the basement area shall be via the dBX DriveRack PA noise limiter or similar noise limiter to be agreed with City of York Council's Environmental Protection Unit prior to use.
2. Prominent, clear and legible signs shall be displayed in the DJ area to inform DJs that all music is to be played through the noise limiter provided.
3. An alarm system shall be installed and be operational during hours of opening to the public which alerts staff when the rear fire door has been opened.
4. Prominent, clear and legible notices shall be displayed on all fire exits stating that fire exits are for emergency use only.
5. Documented patrols shall be carried out by members of staff at no less than hourly intervals during the hours of opening to the public. These checks shall be undertaken outside the building to the front and rear to check for noise from inside the premises and noise from customers outside the venue to ensure compliance with Condition 9.
6. Staff training shall be given and documented regarding all matters relating to the licence and its conditions. Records of training shall be kept for three years.
7. All windows and doors opening onto the rear car park area of the premises shall be kept closed during regulated entertainment.
8. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises on request.
9. No music or amplified sound shall be audible at the boundary of the car park to the rear of the premises.
10. During hours the premises is open to the public, fire doors shall be fitted with non-locking restrictions which prevent their opening except in an emergency.
 - Existing licence Condition 9 will be deleted as it is superseded by the above conditions.
 - Members requested that the requirement to display a notice in a prominent position inside the premises, detailing the outcome of the review shall apply. The notice shall be agreed with the licensing authority and thereafter shall be displayed for a minimum of six months.

- Given the willingness and co-operation of the establishment to seek a satisfactory solution the sub-committee did not deem it appropriate to issue a yellow card at this time.

RESOLVED: That, in line with Option 1, the conditions of the licence be modified.

REASON: To address the representations made.

Councillor Moore Chair

[The meeting started at 10.00 am and finished at 11.10 am].



Agenda Item

Licensing Act 2003 Sub Committee

27 September 2010

Report of the Director of Communities and Neighbourhoods

Section 35(3)(a) Application for the variation of a club premises certificate for Haxby & District W.M.C. 64 North Lane, Haxby, York, YO32 3JP

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-009770
3. Name of applicants: Haxby & District W.M.C.
4. Type of authorisation applied for: Variation of club premises certificate.
5. Summary of application: The nature of the application is to remove the embedded restrictions of the Licensing Act 1964 and extend the hours for licensable activities as follows

Licensable Activity	Proposed Times	Proposed Non Standard Timings	Current Times
Live Music	Mon – Sat 10:00 – 23:00 Sun 12:00 – 22:30	Start of permitted hours on New Year's Eve to end of permitted hours on New Year's Day	No restrictions. Grandfather rights from 1964 Act
Recorded Music	Mon – Fri 10:00 – 23:00 Sat 10:00 – 00:00 Sun 12:00 – 22:30	As above	As above
Performance of dance	Mon – Fri 10:00 – 23:00 Sat 10:00 – 00:00 Sun 12:00 – 22:30	As above	As above

Anything of a similar description	Mon – Sat 10:00 – 23:00 Sun 12:00 – 22:30	As above	As above
Provision of facilities for making music	Mon – Fri 10:00 – 23:00 Sat 10:00 – 00:00 Sun 12:00 – 22:30	As above	As above
Provision of facilities for dancing	As above	As above	As above
Provision of facilities for entertainment of a similar description	Mon – Sat 10:00 – 23:00 Sun 12:00 – 22:30	As above	As above
Supply of alcohol	Mon – Thurs 10:00 – 23:00 Fri – Sun 10:00 - 00:00	As above	As per 1964 Act Mon – Sat 10:00 – 23:00 Sun & Good Friday 12:00 – 22:30 Christmas Day between 12:00 – 15:00 and then 17:00 – 22:30
Opening times	Mon - Thurs 10:00 – 23:30 Fri – Sun 0:00 – 00:30	As above	No restrictions

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 shows that the licensing objectives would be met as follows:
9. General:
 - (a) Committee member is always on duty when the club is open in the evening.
 - (b) Members only admission
 - (c) Off sales will be in sealed containers.

10. The prevention of crime and disorder:
 - (a) CCTV is installed.
 - (b) Door supervisors will be provided should the need arise.
11. Public safety:
 - (a) Health and safety policies are in place.
12. The prevention of public nuisance:
 - (a) When entertainment takes place, doors and windows will be closed.
13. The protection of children from harm:
 - (a) Staff are trained in the requirements of the Licensing Act.

Special Policy Consideration

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

Consultation

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

Summary of Representations made by Responsible Authorities

17. North Yorkshire Police have met with the applicant to discuss the application. The applicant has agreed to the following conditions being attached to the licence if granted: -
 - (i) 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 should be of sufficient quality to be produced at Court or other such Hearing. Copies of the recordings will be kept available for any Responsible Authority for 28 days and will be made available to any Responsible Authority within 48 hours of a request.
 - (ii) A member of the Committee will always be on duty when the Club is open on an evening. For the purpose of clarity an evening is defined as after 21:00 hours.
 - (iii) All off-sales shall be made in sealed containers (save for those sales specifically for consumption in any outside drinking areas attached to the premises).

- (iv) Documented staff training will be given regarding the retail sale of alcohol and the conditions attached to the Club Premises Certificate. Such records shall be kept for at least one year and they will be made available upon a reasonable request from any Responsible Authority.
 - (v) The management of the venue will comply with any written, reasonable and justified request made by the North Yorkshire Police regarding the provision of door Supervisors should the need arise.
 - (vi) 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.
 - (vii) 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.
18. A representation was received from City of York Council Environmental Protection Unit on the grounds of the prevention of a public nuisance. This was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted: -
- (i) Noise and vibration from the premises shall not emanate, so as to cause a nuisance at nearby sound sensitive properties.
 - (ii) When regulated entertainment in the form of recorded and/or live music is provided at the premises, doors and windows shall remain closed other than for ingress or egress.
 - (iii) Notices shall be placed on exit doors and staff to remind customers that there are residential premises in the area and to be quiet when leaving the property.
 - (iv) Bottle bins are only to be emptied between the hours of 09:00 and 21:00, Monday to Sunday.

Summary of Representations made by Interested Parties

- 19. Representations have been received from 5 Interested Parties listed in Annex 3. Their representations are 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

Ext: 1593

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

Ext: 1814

Report Approved **Date** 15 september 2010

Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services

Ext: 1004

Wards Affected: Haxby & Wigginton

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of existing club premises certificate.
- 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** - Mandatory Conditions.
- Annex 7** - Legislation and Policy Considerations.

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