

Licensing Hearing

To: Councillors Ayre, Runciman and Wiseman
Date: Thursday, 16 December 2010
Time: 1.30 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. Minutes

To approve and sign the minutes of Licensing Hearing held on 6th September 2010.

5. The Determination of an Application by J.Z Plummer for a Premises Licence Section 18(3)(a) in respect of Ambiente, 14 Goodramgate, York, YO1 7LQ. (CYC-017699)

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

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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/GAMBLING HEARING
DATE	6 SEPTEMBER 2010
PRESENT	COUNCILLORS MERRETT, MOORE AND WISEMAN
IN ATTENDANCE	COUNCILLOR B WATSON

27. CHAIR

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

28. INTRODUCTIONS**29. 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.

Councillor Merrett declared a personal non prejudicial interest in the application, as he had frequented the café owned by a representor.

Councillor Wiseman also declared a personal non prejudicial interest in the application, as her children had attended the same school as two of the representors' children.

Councillors Moore and B Watson declared personal non prejudicial interests in the application as the representors were known to them.

30. THE DETERMINATION OF AN APPLICATION BY MRS. JANICE ROBINSON FOR A PREMISES LICENCE SECTION 18(3)(A) IN RESPECT OF 1331, 13 GRAPE LANE, YORK, YO1 7HU. (CYC-017239)

Members considered an application by Mrs Janice Robinson for a Premises Licence in respect of 1331, 13 Grape Lane, York.

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and licensing objectives- The Prevention of Public Nuisance and The Prevention of Crime and Disorder. The following were taken into account:

1. The application form.

2. The Licensing Officer's report and his comments made at the Hearing. He advised that the premises already had a licence and the new licence application had been made due to the significant changes to the licensed area and extension of hours for licensable activities. Consultation had been carried out correctly and the applicant had agreed to a number of conditions with North Yorkshire Police and City of York Council's Environmental Protection Unit.
3. Representations made by the applicant at the hearing including the fact that they had been trading from the premises for a number of years, and due to the popularity of weddings had now applied for a licence to enable them to expand the business. The applicant advised that they wanted to be a responsible neighbour and had not been made aware of some of the issues raised by the representors at the hearing.
4. Representations made by local residents 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 potential for further public nuisance and crime and disorder in the area if the new licence were to be granted in the terms applied for.
5. The representations made by Councillor Brian Watson at the hearing on behalf of a local resident. He advised that the area was residential and occupants of nearby houses should not have been subjected to excessive noise later into the night.

Having regard to the above evidence and representations received, the Sub-Committee considered the steps which were available for them to take under Section 35 (4) of the Licensing Act 2003 as it considered necessary for the promotion of the Licensing Objectives.

Members were presented with the following options:

- Option 1: Grant the licence in the terms applied for and including any applicable mandatory conditions as set out in ss19, 20 and 21 of the Licensing Act 2003.
- Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee including any applicable mandatory conditions as set out in ss19, 20 and 21 of the Licensing Act 2003.
- Option 3: Grant the licence to which the application relates and modify/add conditions accordingly to include any applicable mandatory conditions as set out in ss19, 20 and 21 of the Licensing Act 2003.
- Option 4: Reject the application.

Members chose to modify the conditions of the licence (Option 2).

Members with the agreement of the applicant, amended the hours applied for all activities to end by 01:30.

The following conditions were added to the licence:

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 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.
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 of 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 containers of any type shall not be allowed to enter or leave the premises whilst under the customer's care.
5. All off sales shall be made in sealed containers and made only to patrons of the premises.
6. Documented staff training will be given regarding the retail sale of alcohol and such records kept for at least one year.
7. An adequate number of Door Supervisors will be provided from 21:00 hours until the close of business on the following evenings:- i) Thursday, Friday and Saturday evenings, ii) the evening before a bank holiday, iii) York race days (except for the Sunday family meeting in September).
8. 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.
9. A Refusals Register and Incident Report Register will be kept. Such documents will record 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.

10. Staff shall encourage patrons to leave the premises and area quietly and to respect the needs of local residents. This will be reinforced by prominent and clear notices displayed at all exists requesting this of patrons and staff.
11. The venue shall partake in the York Pubwatch pager system.
12. The external courtyard area shall be cleared and cleaned and not used after 23:00 hours save for patrons using the area to smoke (where legally allowed). Patrons shall not consume alcohol in the external courtyard after 23:00 hours.
13. On the second floor of the premises alcohol shall only be served ancillary to a meal or at a pre-booked function.
14. The only exception to the above condition shall be the cinema which shall be used as follows: - i) patrons shall remain seated whilst consuming alcohol, ii) alcohol shall only be served by way of table service, iii) there shall be no more than 30 patrons allowed in the cinema area.
15. In the first floor ceremony room alcohol shall only be served as ancillary to a meal or at a pre-booked function.
16. For avoidance of doubt, a pre-booked function is one where there is at least 48 hours between the event being booked and commencement of the event.
17. All windows and doors shall be kept closed, except for access and egress whilst licensable activities are taking place.
18. Noise and vibration shall not emanate from the premises so as to cause a nuisance to nearby premises.
19. No sound reproduction or amplification equipment (mechanical or electrical) shall be installed or used in or adjacent to, any part of the building at anytime for the purpose of external use.
20. All extractor fans and air conditioning units shall be maintained, repaired and/or replaced as necessary.
21. The premises shall be vacated by all persons including staff, within one hour of closure.
22. Urgent telephone details for the Duty Manager shall be prominently displayed in the premises and provided to residents who made representations.

Mandatory conditions 19, 21 and 22 shall apply.

RESOLVED: That, in line with Option 2, the conditions of the licence be modified.

REASON: To address the representations made.

Cllr Merrett, Chair

[The meeting started at 11.00 am and finished at 2.50 pm].

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Licensing Act 2003 Sub Committee

16 December 2010

Report of the Director of Communities and Neighbourhoods

Section 18(3)(a) Application for a premise licence for 14 Goodramgate, York, YO1 7LQ

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-017699
3. Name of applicant: Ambiente Tapas Ltd.
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The nature of the application is to allow:

Licensable Activity	Indoors / outdoors / both	Days	Hours
Live Music	Indoors	Monday – Sunday	10:00 – 00:00
Recorded Music	Indoors	Monday – Sunday	10:00 – 00:00
Late Night Refreshment	Indoors	Monday – Sunday	23:00 – 00:00
Sale of Alcohol	On the premises	Monday – Saturday Sunday	10:00 – 23:30 12:00 – 23:30
Opening Times		Monday – Sunday	10:00 – 00:00

Background

6. A copy of the application is attached at Annex 1.
7. This venue previously had a premises licence which lapsed in November 2008 when the licence holder at that time was declared bankrupt.

8. During the period between June 2006 and July 2008 the Council needed to contact a previous licence holder on 6 occasions because of complaints about noise from the premises. This included a Noise Abatement Notice being served on the owner in May 2007.
9. A summary of that licence is as follows

Licensable Activity	Indoors / outdoors / both	Days	Hours
Live Music	Indoors	Monday - Sunday	10:00 – 23:30
Recorded Music	Indoors	Monday - Sunday	10:00 – 23:30
Activities like music/dance	Indoors	Monday - Sunday	10:00 – 23:30
Facility for making music	Indoors	Monday - Sunday	10:00 – 23:30
Late Night Refreshment	Indoors	Sunday – Thursday Friday - Saturday	23:00 – 00:30 23:00 – 01:30
Sale of Alcohol	On & Off	Sunday – Thursday Friday - Saturday	10:00 – 00:00 10:00 – 01:00
Opening Times		Sunday – Thursday Friday - Saturday	08:00 – 00:30 08:00 – 01:30

Promotion Of Licensing Objectives

10. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
11. General
- (a) Staff training.
12. The prevention of crime and disorder:
- (a) CCTV within the premises.
- (b) There will be no irresponsible sale promotion or discounting of prices for alcohol.
- (c) No customer will be permitted to take glasses or bottles from the premises.
- (d) An incident book relating to the occurrences of crime and disorder will be kept.
13. Public safety:

- (a) Emergency lighting systems are in place throughout the premises
- (b) Fire alarms are fitted throughout all public areas.
- (c) Free drinking water will be available to customers.
- (d) A first aid trained member of staff will be available at all times.

14. The prevention of public nuisance:

- (a) Amplified music played within the premises will not be audible from outside of the building.
- (b) Staff and customers will be notified to leave the premises quietly to respect the need of the local residents.

15. The protection of children from harm:

- (a) Children will only be admitted when accompanied by an adult.
- (b) No alcohol will be sold to any person who is under 18 or appears to be under 21 and is not carrying a challenge 21 card.

Special Policy Consideration

16. This premise is not located within the area.

Consultation

17. Consultation was carried out by the applicant in accordance with s13, and s17(5) of the Act and Regulation 42, Parts 2 and 4 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the displaying of a notice on the premises and an advertisement in a local paper giving details of the application and serving a copy of the application on all responsible authorities. The applicant complied with all statutory requirements. In addition the relevant ward councillors and/or parish council were notified by way of register.
18. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

19. 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 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 7 days and

will be made available to any Responsible Authority within 48 hours of a request.

- (ii) Copies of the recordings will display the correct time and date of the recording.
 - (iii) 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).
 - (iv) Drinking glasses of any type shall not be allowed to enter or leave the premises whilst under the customers care.
 - (v) Documented staff training will be given regarding the retail sale of alcohol and the conditions attached to the Premises Licence. Such records shall be kept for at least one year and they will be made available upon a reasonable request from any Responsible Authority.
 - (vi) There will be a minimum of 30 seated covers laid out at all times the venue is open.
20. A representation was received from City of York Council Environmental Protection Unit on the grounds of public nuisance. This was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted.
- (i) All windows and doors shall be kept closed whilst regulated entertainment is taking place, except for ingress and egress.
 - (ii) Customers shall not be permitted to take their drinks outside of the premises after 21:00 hours.

Summary of Representations made by Interested Parties

- 21. A representation was received from an interested party on the grounds of public nuisance. A copy of this representation is attached at Annex 2
- 22. A map showing the general area around the venue from which the representation is focused is attached at Annex 3.
- 23. 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

Planning Issues

- 24. In 2008 planning permission was granted for change of use from a bar (class A4) to restaurant with hot food take away (uses classA3/A5). A 21:00 hour closing time condition was imposed. This related to the Codfather Fish and Chip shop. A further planning application would be required for a restaurant only operation and later opening hours.

Options

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

Analysis

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

Corporate Priorities

35. 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.
36. The promotion of the licensing objectives will support the Council's priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

Implications

37.
 - **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

38. 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.
39. 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

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

Contact Details

Author:

John Lacy
Licensing Manager

Tel No. 01904 551593

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director– Housing & Public
Protection.

Report Approved Date 09 December 2010

Specialist Implications Officer(s)

Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Guildhall East

All

For further information please contact the author of the report

Background Papers:

- Annex 1** - Application form
- Annex 2** - Representations from Interested Party
- Annex 3** - Map showing general area from which representations received
- Annex 4** - Mandatory Conditions
- Annex 5** - Legislation and Policy Considerations

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