

Licensing Hearing

To: Councillors Hyman, B Watson and Wiseman
Date: Monday, 24 January 2011
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 27 September 2010.

5. The Determination of an Application by Riza Aygun for a Premises Licence Section 18(3)(a) in respect of 19 Micklegate, York, YO1 6JH. (CYC-017746)

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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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	27 SEPTEMBER 2010
PRESENT	COUNCILLORS HYMAN, REID AND B WATSON

1. CHAIR

RESOLVED: That Councillor Reid be elected as Chair.

2. INTRODUCTIONS**3. DECLARATIONS OF INTEREST**

At this point in the meeting Members were invited to declare any personal or prejudicial interests they might have in the business on the agenda.

None were declared.

4. MINUTES

RESOLVED: That the minutes of the meeting of the Licensing Review Panel held on 18 January 2010 be approved and signed as a correct record by the Chair.

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)

Members considered an application by Mr Grainger and Mr Hawley for the review of a variation to a club premises licence in respect of Haxby Working Men's Club (WMC).

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.
2. The Licensing Officer's report and his comments made at the Hearing. He advised that there had been a licensed premises on the site for many years and the current licence was granted under grandfather rights in 2005. The application was being made to

extend the supply of alcohol by one hour on Friday, Saturday and Sunday nights.

3. The applicant's representations at the hearing including the fact the applicant wanted to be able to serve alcohol longer on weekends. The applicant advised that the club did not have live acts on Sunday evenings and that the only time the club had been open later recently was under Temporary Events Notices. The applicant told the Panel that the club wanted to be a good neighbour and offered to extend the wall beside the outside area to help block some of the noise.
4. The 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 the area, especially after 11pm at night.
5. The representations made by Councillor Paul Firth at the hearing on behalf of a local resident. He advised that the area was residential and the club had boundaries with residential properties. He advised that residents accepted that the club had been there a long time but residents expected to be able to sleep after 11 pm.

Having regard to the evidence and representations received, the Sub Committee considered the steps which were available for them to take under Section 72 (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 variation of the certificate in the terms applied for and including any applicable mandatory conditions as set out in ss73, 74 and 75 of the Licensing Act 2003.
- Option 2: Grant the variation of the certificate with modified/additional conditions imposed by the Licensing Committee including any applicable mandatory conditions as set out ss73, 74 and 75 of the Licensing Act 2003.
- Option 3: Grant the variation of the certificate to exclude any of the qualifying club activities to which the application relates and modify/add conditions accordingly to include any applicable mandatory conditions as set out ss73, 74 and 75 of the Licensing Act 2003.
- Option 4: Reject the application.

Members chose to grant the variation of the certificate with modified/additional conditions imposed by the licensing committee (Option 2). Members imposed the following conditions:

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. 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.
3. 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).
4. 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 a year and they will be made available upon a reasonable request from any Responsible Authority.
5. 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.
6. 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.
7. 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.
8. Noise and vibration from the premises shall not emanate, so as to cause a nuisance at nearby sound sensitive properties.
9. 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.
10. 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.
11. Bottle bins are only to be filled and emptied between the hours of 09:00 and 21:00, Monday to Saturday.

12. The outside seating/smoking area shall be cleared, cleaned and vacated by 23:00 on each and every day.

13. Representors shall be provided with a contact number for the Member of Committee on duty.

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

REASON: To address the representations made.

Cllr Reid , Chair

[The meeting started at 10.00 am and finished at 11.20 am].



Licensing Act 2003 Sub Committee

24 January 2011

Report of the Director of Communities and Neighbourhoods

Section 18(3)(a) Application for a premise licence for 19 Micklegate, York, YO1 6JH**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-017746
3. Name of applicant: Riza Aygun.
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The nature of the application is to allow for the provision of late night refreshment between the hours of 23:00 and 05:00 every day.

Background

6. A copy of the application is attached at Annex 1.
7. This venue previously had a premises licence that was surrendered in October 2010. It was also for the provision of late night refreshment, operating between the hours of 23:00 and 04:00 every day. A copy of this licence, CYC-010909, 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. The prevention of crime and disorder:
 - (a) CCTV system will be fully displayed.
10. Public safety:
 - (a) 'Caution Wet Floor' signs will be in place.
 - (b) Exits will clearly be shown.

11. The prevention of public nuisance:
 - (a) Noise to be kept to a minimum.
12. The protection of children from harm:
 - (a) No children to be allowed after 23:00 hours.

Special Policy Consideration

13. 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 initially approved by the licensing committee on 1 April 2005 and subsequently revised in 2010. A copy of the special policy statement is attached at Annex 6

Consultation

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

Summary of Representations made by Responsible Authorities

16. A representation has been received from North Yorkshire Police on the grounds of crime and disorder. A copy of this representation is attached at Annex 3

Summary of Representations made by Interested Parties

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

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

Options

21. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision: -
22. Option 1: Grant the licence in the terms applied for.
23. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
24. Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
25. Option 4: Reject the application.
26. Members are reminded that they may only use their discretion to add, remove or amend conditions or activities in relation to matters that are raised by representors and are relevant to the promotion of the licensing objectives.

Analysis

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

Corporate Priorities

32. 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.
33. 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

34.
 - **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

35. 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.
36. 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

37. 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 10 January 2011

Specialist Implications Officer(s)

Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Micklegate

All

For further information please contact the author of the report

Background Papers:

- Annex 1** - Application form
- Annex 2** - Copy of previous premises licence
- Annex 3** - Representation from North Yorkshire Police
- Annex 4** - Representation from Interested Party
- Annex 5** - Map showing general area from which representations received
- Annex 6** - City Centre Special Policy Statement
- Annex 7** - Mandatory Conditions
- Annex 8** - Legislation and Policy Considerations

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