

Licensing Hearing

To: Councillors Boyce, Richardson and Wiseman
Date: Thursday, 22 December 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 14 July 2011.

5. The Determination of an Application by Helen Howlett, Senior Environmental Protection Officer for a Review of a Premises Licence Section 52(2) in respect of The Jubilee, Balfour Street, York, YO26 4YU. (CYC- 009091)

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

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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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City of York Council

Committee Minutes

MEETING	LICENSING HEARING
DATE	14 JULY 2011
PRESENT	COUNCILLORS BOYCE, RICHARDSON AND WISEMAN

5. CHAIR

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

6. DECLARATIONS OF INTEREST

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

7. THE DETERMINATION OF AN APPLICATION BY SLOPINGTASTIC LIMITED FOR A PREMISES LICENCE SECTION 18(3)(A) IN RESPECT OF THE LAMB & LION INN, 2-4 HIGH PETERGATE, YORK, YO1 7EH. (CYC-018449)

Members considered an application by Slopingtastic Ltd for a premises licence in respect of The Lamb and Lion, Petergate, 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 public nuisance. The following were taken into account:

1. The application form.
2. The Licensing Officer's report and her comments made at the Hearing. She advised that the application was for a new grant although the premises had been operating under a previous licence. The police had agreed some conditions with the applicant and there had been no objections from Planning or Environmental Protection.

3. The applicants Solicitors representations at the hearing including that the applicant had taken over the premises in December 2010 and since then, no complaints had been received regarding noise. It was advised that the applicant is fully aware of his responsibility to his neighbours whilst trying to balance the economic needs of the business and the needs of his customers.
4. The representations made by the Solicitor for the Dean and Chapter of York Minster in respect of 9 Precentors Court. She advised that the main concern of her clients is the proximity of the Lamb and Lion beer garden to the rear wall of 9 Precentors Court and the fact that the first floor of the property is level with the beer garden.
5. The representations made in writing by local residents.

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 imposed by the licensing committee.
- 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 2 and added the following conditions to the licence:

- (i) CCTV will be installed to cover the premises and will include all areas (including outside areas) to where the public have access to consume alcohol. 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 and will be made available to any Responsible Authority within 48 hours of 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) 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).
- (v) 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.
- (vi) The planting and/or potting of shrubs and or the erection of a trellis and climbing plants to provide screening along the boundary wall between the premises and the rear garden of 9 Precentors Court, between the points marked A and B, indicated on the attached Plan 1, the said shrubs/climbing plants and trellis2 to be not less than 5ft in height.


Mandatory condition 19 shall apply.

RESOLVED: That in line with Option 2, the licence be granted.

REASON: To address the representations made.

Councillor Boyce, Chair
[The meeting started at 10.00 am and finished at 11.15 am].

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Meeting of Licensing Act 2003 Sub-Committee	22 December 2011
Report from the Assistant Director – Communities & Neighbourhoods	

Section 52(2) Review of Premise Licence for The Jubilee, Balfour Street, York, YO26 4YU

Summary

1. This report seeks Members determination of an application for a review of a premise licence which has been made under the Licensing Act 2003 in respect of The Jubilee, Balfour Street, York, YO26 4YU
2. Name of applicant: Helen Howlett, Senior Environmental Protection Officer, City of York Council Environmental Protection Unit.
3. Summary of Review: The application to review relates to the following licensing objective;
 - The prevention of public nuisance.
4. A copy of the review is attached at Annex 1 and is summarised as follows: The Environmental Protection Unit (EPU) have received complaints about the premises since 2007 relating to noise nuisance emanating from either inside the premises, the first floor function room or the outside area. Statutory noise nuisance has been witnessed by EPU officers on four separate occasions and a potential nuisance on one further occasion. These occurrences were reported to the respective premises managers; however there have been seven different managers during the four year period. This has resulted in the same issues being encountered and similar letters being sent to new managers. Abatement notices have been served on two occasions, however both notices were breached.

5. Investigations by EPU suggest that the first floor function room of the premises is not suitable for certain types of regulated entertainment. EPU tried to address this by way of warning letters and abatement notices but has failed to secure compliance because of the frequent change of staff in control of the premises
6. To address the issue of the unsuitability of the premises for the provision of live music after 11:00pm and the inappropriate use of the first floor room for discos and live music, EPU would ask that the following conditions be attached to the premises licence:
- 1) To remove regulated entertainment from the first floor of the premises.
 - 2) To restrict the hours that live music is permitted in the remainder of the premises to 23:00 hours on each day of the week; and
 - 3) To place a condition on the licence requiring a submission of a noise policy within 1 month of the date of the review coming into affect and the subsequent implementation of the agreed noise policy, both to the satisfaction of City of York Council.
7. A copy of the premises licence is attached at Annex 2. The premise licence authorises the following licensable activities:

Licensable Activity	Current Days & Hours
Films	Sunday - Wednesday 08:00 - 00:30 Thursday - Saturday 08:00 - 01:30
Indoor Sporting Events	Sunday - Wednesday 08:00 - 00:30 Thursday - Saturday 08:00 - 01:30
Live Music & Recorded Music	Sunday - Wednesday 10:00 - 23:30 Thursday - Saturday 10:00 - 00.00
Activities like Music/Dance	Sunday - Wednesday 08:00 - 00:30 Thursday - Saturday 08:00 - 01.30
Facility for Making Music & Dance	Sunday - Wednesday 08:00 - 00:30 Thursday - Saturday 08:00 - 01.30
Late Night Refreshment	Sunday - Wednesday 23:00 - 00:30 Thursday - Saturday 23:00 - 01.30
Supply of alcohol	Sunday - Wednesday 10:00 - 00:00 Thursday - Saturday 10:00 - 01.00

Opening Hours	Sunday - Wednesday 08:00 - 00:30 Thursday - Saturday 08:00 - 01.30
Non Standard Timings	Bank Holiday Weekends (Friday – Monday), Christmas Eve & Boxing Day: For Films & Indoor Sporting Events ; 08:00 - 01:00 For Live & Recorded Music; 10:00 - 00:00 For Activities like Music/Dance & Facilities for making Music & Dancing; 08:00 - 01:30 For Late Night Refreshment; 23:00 - 01:30 For Supply of Alcohol; 10:00 - 01:00 Opening Hours; 08:00 - 01:30 For all licensable activities & opening hours; From the end of permitted hours New Year's Eve to the start of permitted hours New Year's Day.

Background

8. The following is a timetable of events concerning the existing premises licence:

03/10/05	Premises licence granted. Licence holder: Mr A & Mrs A E Brownbridge DPS: Arnold Brownbridge
12/07/06	Premises licence transferred & DPS varied. New licence holder: PBC Leisure Ltd New DPS: Michelle McGowan
17/10/06	DPS varied. New DPS: Mrs S P Callaghan
29/10/08	Licence transferred. New licence holder: Enterprise Inns Ltd
11/09/09	DPS varied. New DPS: Peter Douthwaite

01/12/09	DPS varied. New DPS: Laura Larkin
29/07/10	Meeting took place between Enterprise Inns Area Manager, CYC Licensing & EPU, & Police Licensing to discuss noise issues from premises.
31/07/10	Enforcement visit carried out at premises by CYC Licensing & Police Licensing. Warning letter relating to the visit sent to DPS from CYC Licensing 03/08/10, copy attached at Annex 3
14/10/10	Complaints received from residents concerning operation of the premises and noise issues. Warning letter sent to DPS from CYC Licensing 20/10/10, copy attached at Annex 3.
03/11/10	Transfer of licence & DPS varied. New licence holder: Jubilee (2010) Ltd New DPS: Peter Pendlebury
17/08/11	DPS varied. New DPS: Christopher Scully

9. A map showing the location of The Jubilee is attached at Annex 4.

Consultation

10. Consultation was carried out by the Applicant and the Licensing Authority in accordance with S51(3) of the Act and Regulation 42, Part 4, Paragraphs 29 and 38 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concerns the notification of a review and the advertisement of review by licensing authority. Copies of the application were served on all responsible authorities and the premise licence holder. Notice of the application was displayed on the premises and on the exterior noticeboard at the Guildhall. In addition relevant Ward Councillors and Parish Councillors were informed by way of register.
11. No further representations were received from interested parties or responsible authorities as a result of the consultation. However, North Yorkshire Police make the following observations concerning incidents at the venue

involving the police over the last three months (copy of email received from Police Licensing Officer at Annex 5):

- 1) 2117 hours 18/09/11 report from member of staff of two males refusing to leave and causing damage. Males left prior to police arrival. No complaints of criminal damage reported.
- 2) 0109 hours 08/10/11 report from member of staff of disturbance inside the venue. Female involved left prior to police attendance. No complaint of assault. Two persons ejected.

12. Members are reminded that a representation is only 'relevant' if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. This is in accordance with S52(7) and (8) of the Act.

Other Relevant Information

13. There are no planning implications in relation to this application.

Options

14. By virtue of S52(4) of the Act, the Committee have the following options available to them in making their decision:
15. Option 1: To modify the conditions of the licence (ie to alter, omit or add any new condition).
16. Option 2: To exclude a licensable activity from the scope of the licence.
17. Option 3: To remove the Designated Premises Supervisor.
18. Option 4: To suspend the licence for a period not exceeding three months.
19. Option 5: To revoke the licence.
20. Members are also reminded of the option to issue a 'yellow card', ie a warning as to future conduct which may accompany options 1 to 4.

Analysis

21. The following could be the result of any decision made by this Sub-Committee:
22. Option 1: This decision could be appealed at Magistrates Court by the premises licence holder, the review applicant or any of the representors.
23. Option 2: This decision could be appealed at Magistrates Court by the premises licence holder, the review applicant or any of the representors.
24. Option 3: This decision could be appealed at Magistrates Court by the premises licence holder, the review applicant or any of the representors.
25. Option 4: This decision could be appealed by the premises licence holder.
26. Option 5: This decision could be appealed by the premises licence holder.

Council Priorities

27. 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.
28. The promotion of the licensing objectives will support the Council's priority to protect vulnerable people and create jobs and grow the economy.

Implications

29.
 - **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

30. 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 which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
31. 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

32. Members determine the application.

Reason: To address the representations received as required by the Licensing Act 2003.

Contact Details

Author:	Chief Officer Responsible for the report:		
Lesley Cooke Licensing Manager Ext 1515	Steve Waddington Assistant Director Housing & Public Protection Ext 4016		
	Report Approved	√	Date 02/12/11

Wards Affected: Holgate

Annexes

- Annex 1** - Copy of the application of review
- Annex 2** - Copy of premises licence
- Annex 3** - Copy of warning letters sent from CYC Licensing
- Annex 3** - Map showing location of The Jubilee
- Annex 5** - Copy of observation received from North Yorkshire Police Licensing Officer
- Annex 6** - Legislation and Policy Considerations