

## Licensing Hearing

**To:** Councillors Gillies, Horton and Looker  
**Date:** Wednesday, 2 October 2013  
**Time:** 10.00 am  
**Venue:** The King John Room (GO59) - West Offices

### 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 15<sup>th</sup> August 2013.

**5. The Determination of an Application by Commercial Services, University of York for a Premises Licence Section 18(3)(a) in respect of Alcuin College Bistro. (CYC-022439)**

If you require any further information, please contact Laura Bootland on Tel 01904 552062 or Fax 01904 551035 or email [laura.bootland@york.gov.uk](mailto:laura.bootland@york.gov.uk)

**Distribution:**

Members of Licensing Act 2003 Sub-Committee

Licensing Officer

Legal Services

Applicant

Representors

Press, Libraries.



## **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

City of York Council

Committee Minutes

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Meeting	Licensing Hearing
Date	15 August 2013
Present	Councillors Boyce, Gillies and Richardson

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**9. CHAIR**

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

**10. INTRODUCTIONS****11. DECLARATIONS OF INTEREST**

At this point in the meeting, Members were invited to declare any personal, prejudicial or disclosable pecuniary interests they had. None were declared.

**12. THE DETERMINATION OF APPLICATIONS BY O'BRIEN LICENSING AND TRAINING SERVICES ON BEHALF OF HAYATI KUCUKKOYLU FOR TEMPORARY EVENTS SECTION 105 (2)(A) COUNTER NOTICE FOLLOWING POLICE AND ENVIRONMENTAL PROTECTION UNIT OBJECTIONS TO TEMPORARY EVENT NOTICES IN RESPECT OF EVENTS AT MACUMBA, 3 COFFEE YARD, YORK, YO1 8AR. (CYC-022413)**

Members considered an application by O'Brien Licensing and Training Services for 7 Temporary Events Notices following Police and City of York Councils Environmental Protection Unit objecting to the applications.

In coming to their decision, Members took into consideration all of the evidence and submissions that were presented to them and determined their relevance to the issues raised and the licensing objectives.

The following were taken into account:

1. The application forms for all 7 events. The dates of the events were as follows:
  - 17<sup>th</sup> to the early hours of 18<sup>th</sup> August
  - 23<sup>rd</sup> to the early hours of 24<sup>th</sup> August
  - 30<sup>th</sup> August to the early hours of 31<sup>st</sup> August
  - 6<sup>th</sup> September to the early hours of 7<sup>th</sup> September
  - 13<sup>th</sup> September to the early hours of 14<sup>th</sup> September
  - 20<sup>th</sup> September to the early hours of 21<sup>st</sup> September
  - 27<sup>th</sup> September to the early hours of 28<sup>th</sup> September
  
2. The Licensing Officers report and her comments made at the hearing. She advised that the applications were for Temporary Events at Macumba, 3 Coffee Yard, York. The nature of the TENs was to increase the licensed area of the premises to include the courtyard area and for the sale of alcohol and regulated entertainment between 1900 and 0300 the following morning for all proposed dates. The premise is not located within the special policy area.
  
3. The representations made in writing and at the hearing by North Yorkshire Police. They advised that given the nature of the TENS applications they would of expected a licence variation application instead. Although the premises was not in the Cumulative Impact Zone (CIZ), it was in area which had many licensed premises and had a problem with crime and disorder issues that peaked at 3am. The Police intended to request an extension of the CIZ in the near future to include the Swinegate area. The objection was down to strain on resources in the area late at night.
  
4. The representations made by the Councils Environmental Protection Unit (EPU) Officer who advised that the current licence only permits the use of a small part of the outside area and any extension would cause an increase in noise nuisance to local residents. He did not agree with the requested opening time of 03:00 as EPU had already received several complaints about the premises and it currently closes earlier at 01:30. He offered to assist the applicants in setting music levels in future.

5. The representations made by the applicants agent at the hearing. He offered two amendments to the applications; firstly he withdrew the outside area element of the applications and secondly, offered to close the premises at 02:30 instead of 03:00. He advised that the actual Macumba premises were not a hotspot for crime and disorder and disagreed with the Police evidence. He stated that his clients had purchased the lease, unaware that the premises licence only allowed them to open until 01:30 and they had applied for the temporary events notices to enable them to compete with neighbouring bars until a licence variation could be applied for. In regard to the comments made about noise nuisance he advised that his clients had worked hard in recent weeks to control the noise emanating from the premises and had spoken to local residents to inform them of the steps being taken to prevent noise nuisance.

The Sub Committee were presented with the following options:

- Option 1: Modify the terms of the TENs.
- Option 2: Issue counter notices refusing authorisation of the TENs.
- Option 3: Choose not to issue counter notices.

Members chose Option 2 and chose to issue 7 counter notices refusing authorisation of the TENs.

Reason for the decision:

The Licensing Authority decided that allowing the premises to be used in accordance with the Temporary Event Notices would undermine the prevention of public nuisance objective.

The Licensing Authority also took into account the evidence from the Police which suggested that allowing the premises to be used in accordance with the Temporary Event Notice, would undermine the crime prevention objective.

Resolved: That the 7 TENs be refused.

Reason: To address the issues raised by the responsible authorities.

Councillor Boyce, Chair

[The meeting started at 12.00 pm and finished at 2.25 pm].



## Licensing Act 2003 Sub Committee

2<sup>nd</sup> October 2013

Report from the Assistant Director – Housing & Community Safety

### **Section 18(3)(a) Application for a premise licence for Alcuin College-Alcuin Bistro, University of York, Heslington, York, YO10 5DD.**

#### **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-022439
3. Name of applicant: Commercial Services.
4. Type of authorisation applied for: Grant of Premise Licence.
5. Summary of application: The nature of the application is to allow for:

Activity	Proposed Timings	Proposed Location
Plays	Mon – Sat 10:00 – 03:00 Sun 12:00 – 24:00	Indoors and outdoors
Films	Mon – Sat 10:00 – 03:00 Sun 12:00 – 24:00	Indoors and outdoors
Live music	Mon – Sat 10:00 – 03:00 Sun 12:00 – 24:00	Indoors and outdoors
Recorded music	Mon – Sat 10:00 – 03:00 Sun 12:00 – 24:00	Indoors and outdoors

Performance of dance	Mon – Sat 10:00 – 03:00 Sun 12:00 – 24:00	Indoors and outdoors
Anything similar to music and dance	Mon – Sat 10:00 – 03:00 Sun 12:00 – 24:00	Indoors and outdoors
Late night refreshment	Mon – Sat 23:00 – 03:00 Sun 23:00 – 24:00	Indoors and outdoors
Supply of alcohol	Mon – Sat 10:00 – 03:00 Sun 12:00 – 24:00	Indoors and outdoors
Opening times	24 hours a day	

## Background

6. A copy of the application is attached at Annex 1.

## Promotion of Licensing Objectives

7. The operating schedule submitted by the applicant shows that the licensing objectives would be met by complying with university policy documents. These policies are shown in Annex 2 and the Licensed Premises Drug Policy at Annex 3.
8. General
- a) Social Responsibilities Policy.
9. Prevention of crime and disorder
- a) Anti Social Behaviour Policy.
- b) Licensed Premises Drugs Policy October 2004.
10. Public safety
- a) Alcohol Harm Reduction Policy.



11. The Prevention of public nuisance

- a) Local Environment Policy (including Noise Pollution Management).

12. The protection of children from harm

- a) Protection of Children from Harm Policy.

**Special Policy Consideration**

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

**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 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. North Yorkshire Police have met with the applicants who agreed to a series of conditions being added to the licence if granted and as such there is no representation from the police. These conditions are listed at Annex 4.

**Summary of Representations made by Parties other than Responsible Authorities**

17. Relevant representations have been received from 9 people who live in the area. Their details are shown at Annex 5 and their representations at Annex 6.
18. A map showing the general area around the venue is attached at Annex 7.

### **Planning Issues**

19. There are no planning issues.

### **Options**

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

### **Analysis**

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

### **Council Plan**

30. 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.
31. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

## Implications

32.

- **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

33. 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.
34. 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

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

**Contact Details**

**Author:**

Lesley Cooke  
Licensing Manager

Tel No. 01904 551515

**Chief Officer Responsible for the report:**

Steve Waddington  
Assistant Director  
Housing & Community Safety.

**Report  
Approved**



**Date** Xx/ 09/13

**Specialist Implications Officer(s)**

Head of Legal & Democratic Services  
Ext: 1004

**Wards Affected: Heslington**



**For further information please contact the author of the report**

**Background Papers:**

- Annex 1** - Copy of application form
- Annex 2** - University operating schedule policies
- Annex 3** - University Drugs Policy
- Annex 4** - Police agreed conditions
- Annex 5** - List of representors
- Annex 6** - Copies of representations
- Annex 7** - Map showing location of venue
- Annex 8** - Mandatory Conditions
- Annex 9** - Legislation and Policy Considerations