

## Licensing/Gambling Hearing

**To:** Councillors Boyce, Funnell and Orrell

**Date:** Thursday, 9 January 2014

**Time:** 10.00 am

**Venue:** The Drake Room - 1st Floor West Offices (F029)

### AGENDA

#### 1. Chair

To elect a Member to act as Chair of the meeting.

#### 2. Introductions

#### 3. Declarations of Interest

At this point in the meeting, Members are asked to declare:

- Any personal interests not included on the Register of Interests
- Any prejudicial interests or
- Any disclosable pecuniary interests

which they may have in respect of business on this agenda.

#### 4. Minutes

To approve and sign the minutes of Licensing Hearings held on 10<sup>th</sup> and 19<sup>th</sup> September 2013.

#### 5. The Determination of an Application by Andrew Thwaite to Vary a Premises Licence Section 35(3)(a) in respect of York Chocolate Story, Kings Square, York, YO1 7LD. (CYC-020175)

**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, Council Receptions



## 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	10 September 2013
Present	Councillors Boyce, Horton and Looker

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**26. Chair**

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

**27. Exclusion of Press and Public**

Resolved: That it be agreed to exclude the press and public from the meeting during consideration of agenda item 5 on the grounds that it contains information relating to an individual. This information is classed as exempt under Paragraphs 1 and 2 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

**28. Introductions****29. Declarations of Interest**

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

**30. The Determination of an Application for a Personal Licence Section 117. (CYC-022444)**

Consideration was given to an application for a personal licence to which North Yorkshire Police had objected to.

Members considered the evidence presented to them from the Licensing Manager, the Applicant and North Yorkshire Police.

Members had two options:

Option 1: Reject the application.

Option 2: Grant the application.

Following careful consideration it was:

Resolved: That the licence be granted.

Reason: The Sub-Committee considered carefully the application for the personal licence and noted the Police evidence. They took into account the applicants change in circumstances and agreed to grant the licence.

Councillor Boyce , Chair

[The meeting started at 10.00 am and finished at 10.45 am].

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Meeting	Licensing Hearing
Date	19 September 2013
Present	Councillors Boyce, Gillies and McIlveen

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**31. Chair**

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

**32. Introductions****33. Declarations of Interest**

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

**34. Minutes**

Resolved: That the minutes of the licensing hearings held on 9<sup>th</sup> May 2013 and 3<sup>rd</sup> June 2013 be approved and signed by the Chair as a correct record.

**35. The Determination of an Application by P. Smith, Commercial Services Operations Manager, University of York for a Premises Licence Section 18(3)(a) in respect of Heslington East Campus, Heslington, York, YO10 5GE. (CYC-022409)**

Members considered an application by the University of York (Commercial Services) for a premises licence in respect of Heslington East Campus.

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 form.
2. The Licensing Managers report and her comments made at the hearing. She advised that the application was to licence an area of land at the University campus. The premises was not located within the special policy area. A number of conditions had been agreed with North Yorkshire Police prior to the hearing. Consultation had been carried out successfully.
3. The applicants representations. Members were advised that in previous years the University had run a succession of events using Temporary Events Notices and the application was in order to have a licence in place with conditions that would benefit the University and the interests of local residents. The Commercial Services Manager had worked with a noise control company in order to minimise any noise issues. In relation to concerns raised about Anti Social Behaviour it was advised that SIA qualified staff would be on duty at events and buses were used to transport students back to their accommodation.
4. The representations made by the Councils Environmental Protection Officer (EPU) who advised that representations had been made on the ground of public nuisance. Due to a lack of time prior to the hearing, negotiations had not been completed with the applicant on the suggested noise management plan to be implemented at events and the EPU Officer would continue to work with the University on this. An amendment to the suggested condition 3 and two extra conditions were accepted by the applicant during the course of the hearing.
5. The representations made at the hearing by local residents who raised concerns about the proximity of the proposed licensed area to their properties and the potential for public nuisance caused by loud music and by students being in the area late at night. They advised that they had already experienced some noise nuisance from past events and although they did not wish to stop the University from holding events for the students, they wanted the University to operate responsibly.

6. Written representations made by local residents during the consultation period.

In coming to their decision, the Sub-Committee were presented with the following 4 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 agreed to grant the licence with modified/additional conditions as follows:

1. An Event Management Plan shall be submitted to the Police, Environmental Protection Unit and the local Safety Advisory Group at least 8 full weeks prior to the event.
2. The Event Management Plan shall include the following:
  - Details of the event to include:-
    - Venue design
    - Structures
    - Audience profile
    - Capacity
    - Duration
    - Toilets
    - Music levels
  - The event safety policy statement detailing the organisational chart and levels of safety responsibility.
  - The event risk assessment.
  - The site safety plan to include:-
    - Details of the safety co-ordinator
    - The site safety rules
    - Structural safety calculations and drawings
  - The crowd management plan to include:-
    - The numbers and types of stewards and SIA Door Staff

- Method of working
  - Chain of command
  - The emergency plan to include actions to be taken by designated people in the event of a major incident or contingency.
  - The first aid plan detailing procedures for administering first aid on site.
3. An Incident Log shall be kept documenting all incidents/issues dealt with on the day of the event.
  4. A two way radio system between the Event Organiser, Stewards and Door Staff shall be in operation at all times the event is in operation.
  5. There shall be a pre-nominated Event Management team who shall be contactable on a staffed mobile phone number at all times the event is in operation.
  6. A representative of the premises licence holder shall attend a Safety Advisory Group meeting which will be held after the Event Management Plan has been submitted.
  7. The event shall be completely fenced off with only one entrance/exit point (save for statutory emergency exits).
  8. Non glass vessels shall be utilised for all drinks; this will include the decanting of all bottled beverages.
- For all other events the following shall apply:-
9. There shall be a personal licence holder on site throughout the duration of the event.
  10. SIA Door Staff shall be deployed throughout the event.
  11. Details of the event shall be submitted in writing to North Yorkshire Police at least 28 days in advance of the event. For the purpose of clarity, the 28 days shall not include the date of notification or the date of the event.
  12. Details of the event to include:-
    - Venue design
    - Structures
    - Audience profile
    - Capacity



- Duration
- Music levels
- SIA Door Staff being deployed (as per condition 10 above)
- First aid provision
- Staff training
- Personal licence holder deployed (as per condition 9 above)

13. All live music and recorded events with a capacity of more than 500 people shall finish by midnight.
14. The number of outdoor events providing live or recorded music shall not exceed 12 in any calendar year, of which, only one event shall have capacity of more than 500 people. Each event shall be no longer than 24 hours.
15. The City of York Council's Environmental Protection Unit shall be consulted about the layout of each event, to agree the orientation of any stage or sound system.
16. The music noise level when assessed at a noise sensitive premises during any sound checks and during events shall not exceed 65 dB (A) over a 15 minute period.
17. Staff training shall be given and documented regarding all matters relating to the licence and its conditions. Records of training shall be kept available for 3 years.
18. An event specific noise management plan shall be prepared and submitted by the premises licence holder, not less than 28 days before an event for less than 500 people and at least 8 weeks before an event for over 500 people and agreed with the licensing authority. Once agreed with the licensing authority the noise management plan shall be implemented during the specified event.
19. For the event planned for 5th October 2013, an event specific noise management plan shall be submitted by the premises licence holder and agreed with the licensing authority prior to the event. Once agreed with the licensing authority the noise management plan shall be implemented during the event.

All relevant mandatory conditions shall apply.

Reason for the decision:

The Sub-Committee concluded that the application was acceptable with the above additional/modified conditions as it addressed representations made both in writing and at the hearing, and it met all the licensing objectives. The Sub-Committee made this decision taking into consideration the representations, the Licensing Objectives, the City of York Council's Statement of Licensing Policy and the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003.

Resolved: That the application be granted in line with Option 2.

Reason: To address the issues raised.

Councillor Boyce, Chair  
[The meeting started at 10.00 am and finished at 12.15 pm].



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**Licensing Act 2003 Sub Committee****9 January 2014**

Report of the Director of Communities and Neighbourhoods

**Section 35(3)(a) Application for the variation of a premise licence for York's Chocolate Story, Kings Square, York YO1 7LD**

1. This report seeks Members determination of an application for the variation of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-020175
3. Name of applicants: Andrew Thwaite.
4. Type of authorisation applied for: Variation of premises licence.
  - a) Summary of application: The nature of the application is to permit the sale of alcohol off the premises. (Currently only on-sales are allowed.)

**Background**

5. A copy of the existing premise licence is attached at Annex 1.
6. A copy of the application to vary the licence is attached at Annex 2.

**Promotion of Licensing Objectives**

7. The applicant does not propose any additional measures to promote the licensing objectives other than those stipulated on their existing licence.

**Special Policy Consideration**

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

### **Consultation**

9. 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.
10. All procedural aspects of this application have been complied with.

### **Summary of Representations made by Responsible Authorities**

11. North Yorkshire Police have met with the applicant and agreed to the following condition being included in the licence if granted:

“All off sales shall be in sealed containers save for the provision of mulled wine or a hot drink with no more than a double measure of alcohol added. Such drinks must only be provided in non-glass vessels.”

### **Summary of Representations made by other persons**

12. One relevant representation has been received and this is attached at Annex 3.
13. A map showing the general area around the venue is attached at Annex 4.
14. 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**

15. There are no planning issues for this application

### **Options**

16. By virtue of s18 (4) of the Act, the Committee have the following options available to them in making their decision:-
17. Option 1: Grant the variation of the licence in the terms applied for.

18. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
19. Option 3: Grant the variation of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
20. Option 4: Reject the application.
21. 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**

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

### **Council Plan**

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 priorities to protect vulnerable people, build strong communities, and protect the environment.

## 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 made 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:**

Lesley Cooke  
Licensing Manager

Tel No: 01904 551515

**Chief Officer Responsible for the report:**

Steve Waddington  
Assistant Director– Housing & Public Protection.

**Report  
Approved**



**Date** 17/12/2013

## Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services Ext: 1004

## Wards Affected: Guildhall East

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

## Background Papers:

- Annex 1** - Copy of existing premises licence
- Annex 2** - Copy of application form
- Annex 3** - Copy of representation
- Annex 4** - Map of area
- Annex 5** - Mandatory Conditions
- Annex 6** - Legislation and Policy Considerations

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