



Licensing Hearing

To: Councillors Boyce, Richardson and Watt

Date: Thursday, 15 May 2014

Time: 10.00 am

Venue: The King Richard III Room (GO49) - West Offices

A G E N D A

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 the Licensing Hearing held on 14th April 2014.

5. The Determination of an Application by 22/44 The Shambles Ltd to Vary a Premises Licence Section 35(3)(a) in respect of Shambles Tavern, 44 Shambles, York, YO1 7LX. (CYC-022106)

Democracy Officer:

Name: Laura Bootland

Contact Details:

- Telephone – (01904) 552062
- Email - laura.bootland@york.gov.uk

For more information about any of the following, please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats.

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

Distribution:

Members of Licensing Act 2003 Sub-Committee

Licensing Officer

Legal Services

Applicant

Representors

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LICENSING ACT 2003 SUB – COMMITTEES PROCEDURE FOR HEARINGS

Introduction

The procedure outlined below will be followed at all Licensing Hearings.

As Licensing Hearings are quasi-judicial the Sub-Committee will, in effect, act like a Court and the rules of natural justice will apply. The Sub-Committee will be guided by legal principles in determining whether evidence is both relevant and fairly admitted. Committee Members have a duty to view all evidence presented before them impartially. Members of the Licensing Sub-Committee have all received relevant training and are used to making decisions of this type. No matter how strong local opinion may be, Committee Members can only make decisions based on relevant licensing issues as set out before the Sub-Committee in determining applications.

The hearing will be in public session. However, the Sub-Committee may exclude the public from a hearing if it considers it in the public interest to do so. However, the decision will be made in private.

The purpose of the hearing is

- To enable those with a right to appear to advance their point of view and to test the case of their opponents
- To assist the Sub-Committee to gather evidence and understand the relevant issues

In view of the requirement to hold hearings within specified times, the Licensing Authority will generally be unable to enter into discussions to identify dates convenient to all parties concerned. In exceptional circumstances, the Licensing Authority will consider applications to adjourn hearings to a later date.

Representations at Licensing Hearings

The Applicant, Ward Councillors, and Representors who have made written submissions will be allowed to speak at the Sub-Committee. At

any hearing of an application, the Applicant and any Representors shall attend in person wherever possible. Any party to a hearing may be assisted or represented by any person, legally or otherwise.

All parties will be given a fair hearing and each party will have the same amount of time in which to address the Sub-Committee. A time limit has been set because of the pressures on the Sub-Committees to hear so many applications in a short period of time. **Each party will have 15 minutes to address the Sub-Committee, give any further information, and call any witnesses.** If any party considers this time to be insufficient then a request in writing may be made to the Democracy Officer for an extension of time at least 2 working days before the hearing. However, this will not be automatically granted and will be at the discretion of the Sub-Committee.

The Sub-Committee may take into account any documentary evidence or other information in support of the application, representations or notice, either before the hearing or, with the consent of all other parties, at the hearing.

If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written objection and hear and consider any evidence and argument in relation to it put forward by the Applicant. In considering written evidence in the absence of a Representor, appropriate weight will be attached, given that the person cannot be questioned by the Applicant and Members.

The Sub-Committee is required to disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations, or notice, and the promotion of the licensing objectives. Duplication should be avoided. Comments must be confined to those points already made, although the parties may extend or expand on their written submissions. The Sub-Committee will have read and familiarised themselves with all the written submissions and the issues prior to the hearing, and therefore do not require the points to be repeated or made at length. The Applicant and Representors cannot raise substantial new information at a hearing which has not been seen previously by the other parties.

A Representor **may not** introduce any new ground or objection not referred to in the written submission. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

Any person behaving in a disruptive manner will be asked to leave the hearing. If this does occur, that person may, before the end of the hearing, submit in writing any information which they would have been entitled to give orally.

Procedure prior to the Hearing

The Members sitting on the Sub-Committee will meet prior to the hearing to note the matters that are to be presented. They will only be accompanied by the Democracy Officer and Legal Advisor (*if present*). Attention will only be drawn to the nature of the application and the premises or person to which it relates. The actual application will not be discussed.

At any hearing of an application, the Licensing Officer, the Applicant and any Representors or representatives will report to reception and be asked to wait in reception until the democracy officer calls them through to the committee room.

Procedure at the Hearing

1. Members of the Sub-Committee will appoint a chair.
2. The Chair introduces the Committee Members and officers [*Democracy Officer, Legal Advisor to the committee (if present) and the Licensing Officer*], welcomes the Applicant and Representors (or their representatives), and establishes the identity of all who will be taking part.
3. The Chair will explain to the parties the procedure that will be followed at the hearing.
4. The Chair will proceed with the order of business on the agenda.
5. When the agenda item relating to the application is reached, the Chair will invite the Licensing Officer to present the application.
6. The Licensing Officer outlines the application, confirms the application details, introduces the report and gives an update on any recent changes.

7. The Chair will invite Committee Members, the Applicant and Representors (or representatives) to ask the Licensing Officer questions to clarify any points raised in the report.
8. The Chair will ask the Applicant (or their representative) to present their case.
9. The Applicant (or their representative) will present their case and may call any witnesses to support their case *[maximum 15 minutes]*.
10. The Chair will invite the Representors (or their representative) in the following order to ask questions of the Applicant (or their representative) and/or witnesses *[maximum 5 minutes each party]*
 - (i) Police
 - (ii) Other Responsible Authorities
 - (iii) Ward Councillors
 - (iv) Interested Parties
11. The Chair will invite the Committee Members to ask questions of the Applicant (or their representative) and/or witnesses.
12. The Chair will invite the Representors (or their representative) in the following order to state the nature of their interest in the matter, present their case and call any witnesses to support their case *[maximum 15 minutes each party]*
 - (i) Police
 - (ii) Other Responsible Authorities
 - (iii) Ward Councillors
 - (iv) Interested Parties
13. The Chair will invite the Applicant to ask questions of each Representor (or their representative) and/or their witnesses after each presentation *[maximum 5 minutes per Representor]*.
14. The Chair will invite the Committee Members to ask questions of each Representor (or their representative) and/or their witnesses after each presentation.

15. The Chair will invite the Representors (or their representative) in the following order to summarise their case *[maximum 5 minutes each party]*
 - (i) Police
 - (ii) Other Responsible Authorities
 - (iii) Ward Councillors
 - (iv) Interested Parties
16. The Chair will invite the Applicant (or their representative) to summarise their case *[maximum 5 minutes]*.
17. The Chair will provide the Sub-Committee with a final opportunity to seek clarification from any of the parties on any points raised, or seek advice from the Licensing Officer on policy, or from the Legal Advisor *(if present)* on law and jurisdiction.
18. When all the evidence has been heard, the Chair will declare the hearing closed and ask the Licensing Officer, the Applicant and Representors (or their representatives) plus any witnesses present to leave the committee room and wait in reception while the Sub-Committee considers the evidence.

Procedure after the Hearing

19. If the Sub-Committee wish to seek further clarification on the evidence given, the Democracy Officer will invite all parties back into the committee room.
20. If possible, and for all hearings under:-
 - section 35 or 39 which is in respect of an application made at the same time as an application for conversion of an existing licence under paragraph 2 of Schedule 8 (determination of application under section 34 or 37)
 - section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under section 85)
 - section 105(2)(a) (counter notice following police objection to temporary event notice)
 - section 167(5)(a) (review of premises licence following closure order)

- paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence)
- paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate)
- paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence)

the Sub-Committee will make a decision on conclusion of the hearing and only the Democracy Officer and the Legal Advisor to the Sub-Committee (*if present*) will remain in the room with the Committee Members. These officers will not comment on the merits of the application, but will be present to provide advice on legal and procedural points and to record the decision.

21. If the decision has been made, all the parties will be invited back into the committee room by the Democracy Officer. The Chair will announce the decision including reasons together with, if appropriate, details of any conditions to be attached to the grant of the licence. This decision will then be communicated in writing to the Applicant and Representors within 3 working days of the hearing. There can be no further questions or statements.
22. For all other hearings not listed above, if the Sub-Committee is unable to make a decision on the day of the hearing, the decision will be made within 5 working days beginning with the day or the last day on which the hearing was held. The Democracy Officer will inform the parties that they are no longer required and the decision will be communicated in writing to the Applicant and Representors within 3 working days of the decision being made.
23. The notification will include information about the rights of appeal against the determination made.

City of York Council

Committee Minutes

Meeting	Licensing Hearing
Date	14 April 2014
Present	Councillors Boyce, Horton and Watt

75. Chair

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

76. Introductions**77. Minutes**

Resolved: That the minutes of the Licensing Hearings held on 9th and 23rd January 2014 be approved and signed by the Chair as a correct record.

78. Declarations of Interest

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

79. The Determination of an Application by Under the Influence (Yorkshire) Ltd, Bewlie, Burnby York for (Premises Licence) [Section 18(3)(a)] in respect of 54-56 Fossgate, York (CYC-023101)

Members considered an application by Under the Influence (Yorkshire) Ltd for a premises licence.

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 for a premises licence at 54-56 Fossgate, York. Plans showing the location and floor layouts were tabled. The premise is located within the special policy area as of 27th March 2014 but the licence application had been made before this date with the consultation period ending on 12th March. A number of conditions had been agreed with North Yorkshire Police and the Council's Environmental Protection Unit prior to the hearing. Consultation had been carried out successfully.
3. The applicant's Solicitor's representations made at the hearing including that the premise would be replacing the old Army and Navy Stores and that a planning application for change of use had now been granted. Due to the relatively small size of the building and the use of tables on the ground floor and the first floor, the capacity was likely to be half of the 170 quoted in the application and 90% of the floor area would be seated. The concept would be that of a coffee shop and bistro with alcohol being a part of the overall sales, rather than the main focus. A comprehensive operating schedule was in place for the premises and in response to concerns raised by local residents it was advised that trained staff would monitor the conduct of patrons smoking outside the building and there would be door staff on duty at peak times. The premises would have no effect, cumulative or otherwise, on the promotion of the licensing objectives.
4. The representations made in writing and at the hearing by two local residents who raised concerns about the potential for public nuisance and disturbances caused by t customers from the premises being in the area late at night, particularly customers smoking outside the premises. They raised concerns about the number of licensed premises opening up in the area and the potential for the addition of this licence to add to the existing problems of public nuisance and crime and disorder.

The Sub-Committee 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 agreed to grant the licence with the following conditions as amended and agreed with North Yorkshire Police and conditions agreed with the Council's Environmental Protection Unit:

Condition 8 – reworded as follows:

- (a) A CCTV system will be installed to cover the premises and recorded coverage will include all areas where the public will have access to consume alcohol.
- (b) The CCTV system will be maintained, working and recording at all times when the premises are open.
- (c) The recordings shall be of good evidential quality to be produced in court or other such hearing.
- (d) Copies of the recordings will be kept available for the police or authorised officer for 31 days.
- (e) Copies of the recordings shall be made available to the police or authorised officer within 48 hours of request.
- (f) Copies of the recordings will display the correct time and date of the recording.

Condition 11 – reworded as follows:

An adequate number of Door Supervisors (at least one) shall be provided at the venue from 21:00hrs on the following occasions:

- i) Every Friday and Saturday evening

- ii) The evening before a Bank Holiday
- iii) The evening of race meetings held at York Racecourse (save for the family meeting held September and the first meeting in May).

Condition 12 – the following wording to be inserted:

The incident log shall be kept for at least one year and will be made available immediately upon a reasonable request from any responsible authority.

Condition 13 reworded as follows:

The venue shall partake in the York Nightsafe Night-time Economy radio system.

Condition 19 to have the following wording inserted:

...so as to ensure the licensing objective *the prevention of crime and disorder* is not undermined.

Conditions 29, 31 and 32 to be removed.

An additional condition to cover staff training:

Documented staff training will be given regarding the retail sale of alcohol; the conditions attached to the premises licence; and the opening times of the venue. Such records (referred to in condition x) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.

Conditions requested by the Councils Environmental Protection Unit:

1. All doors and windows shall be closed after 23:00 each night (except for ingress and egress)
2. Clear signage shall be displayed requesting that customers respect neighbouring residents and leave the premises quietly.
3. The use of external areas for the purpose of smoking shall be restricted to the facade fronting onto Fossgate.
4. The removal of any waste to the exterior bins shall be restricted to 08:00hrs to 23:00hrs each day.
5. Music within the premises shall be played at a background level only.

6. Noise and vibration emanating from the premises shall not be audible at the nearest noise sensitive premises.

REASON FOR THE DECISION:

The Sub-Committee concluded that the application was acceptable with the above amended and additional 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.

The Sub-Committee noted the local residents' concerns that there has been a recent increase in anti-social behavior in Fossgate. They noted their concerns about noise problems in Fossgate, particularly from smokers congregating outside other licensed premises and coming and going late at night. They also noted that there had been no objection to the application from the Responsible Authorities and that the Police and EPU had agreed a number of proposed conditions with the applicant to address potential crime and disorder and public nuisance issues. The Sub-Committee considered that it had received sufficient assurances from the applicant in order to be satisfied that the premises would be operated responsibly to avoid noise nuisance to local residents, particularly late at night. It also took into account that there would be no live music and that recorded music would be background only. It also noted that the premises would operate as a coffee house/brasserie/bar with 90% of the floor area would be devoted to seating rather than use as a vertical drinking establishment.

Resolved: That in line with Option 2, members approved the application.

Reason: To address issues raised.

Councillor Boyce, Chair

[The meeting started at 10.00 am and finished at 11.45 am].



Licensing Act 2003 Sub Committee**15th MAY 2014**

Report of the Director of Communities and Neighbourhoods

Section 35(3) (a) Application for the variation of a premise licence for 44, Shambles, York YO1 7LX.

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-022106
3. Name of applicants: 22/44 The Shambles Ltd.
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is as follows:
 - i) To remove conditions 1 and 2 from Annex 2 of the premises licence. Condition 1 reads “The retail sale of alcohol shall be ancillary to the provision of food”. Condition 2 reads “Customers shall remain seated whilst consuming alcohol”.
 - ii) To replace condition 7 at Annex 2 which states “Children must be accompanied by an adult at all times in the cafe area” with the following, “Children at the premises must be accompanied by an adult at all times”

Background

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

Promotion of Licensing Objectives

8. The applicant does not propose any additional measures to those already stipulated on their existing licence.

Special Policy Consideration

9. This premise is located within the extended special policy area approved by full council on 27 March 2014. A copy of the policy is attached at Annex 3.

Consultation

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

Summary of Representations made by Responsible Authorities

12. North Yorkshire Police made representation to the application on the grounds that it is believed that the licensing objective, the prevention of crime and disorder, would be undermined on the granting of this application. A copy of the representation is attached at Annex 4.

Summary of Representations made by other persons

13. There were no other representations.
14. A map showing the general area around the venue is attached at Annex 5.
15. 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

16. There are no planning issues regarding this application.

Options

17. By virtue of s18 (4) of the Act, the Committee have the following options available to them in making their decision:-

18. Option 1: Grant the variation of the licence in the terms applied for.
19. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
20. 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.
21. Option 4: Reject the application.
22. 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

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

Council Plan

28. 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.
29. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

Implications

30.

- **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

31. 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.
32. 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

33. 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 01/05/2014

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

Extra Information submitted by Applicant

Annex 3 - Special Policy

Annex 4 - Copy of police representation

Annex 5 - Map of area

Annex 6 - Mandatory Conditions

Annex 7 - Legislation and Policy Considerations

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