

Licensing Hearing

To: Councillors Boyce, McIlveen and Taylor
Date: Friday, 13 June 2014
Time: 10.00 am
Venue: The Thornton Room - Ground Floor, West Offices (G039)

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 Hearing held on 12th May 2014.

5. The Determination of an Application by Mr. Yutao Lu for a Premises Licence Section 18(3)(a) in respect of Londis, 39a York Road, Acomb, York, YO24 4LW. (CYC-023309)

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 میا 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	12 May 2014
Present	Councillors Boyce, Gillies and McIlveen

85. Chair

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

86. Introductions**87. Declarations of Interest**

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

88. Minutes

Resolved: That the minutes of the Licensing Hearing held on 3rd April be approved and signed by the Chair as a correct record.

89. The Determination of an Application by Mr. Arumugam Kalamohan for a Premises Licence Section 18(3)(a) in respect of Local News, 76 Goodramgate, York, YO1 7LF. (CYC-023162)

Members considered an application by Mr Arumugam Kalamohan for a premises licence in respect of 76 Goodramgate, York.

In coming to their decision, Members took into consideration all of the evidence and the 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, in particular the operating schedule and the additional steps agreed to be taken by the applicant to promote the licensing objectives.
2. The Licensing Managers report and her comments made at the hearing. She advised that the application was for a premises licence for 76 Goodramgate, York. The premises had been operating as a newsagent/convenience store for 12 years. At the time the application was made the premises was not located within the special policy zone, but following an extension to the zone and the Council's new licensing policy being adopted in March, the premises was now within the special policy area. Consultation had been carried out successfully.
3. The comments made by the applicants representative at the hearing. He advised that the operating schedule included with the application had been replaced with a more comprehensive version which had been submitted at the beginning of the hearing. In relation to alcohol sales it was envisaged that they would make up only a small percentage sales but alcohol was required to enable the business to remain competitive. The applicant was willing to accept any additional conditions as necessary to promote the licensing objectives.
4. The representations made in writing and at the hearing by North Yorkshire Police. They raised concerns about the number of licensed premises in the area, in particular the number of off-licences and the potential for the addition of this licence to add to the existing problems of crime and disorder. The police did not consider that the new operating schedule submitted by the applicant was sufficient to show that the introduction of a further off-licence would not have a negative cumulative impact within the Special Policy Area and address the issues of crime and disorder in the area.

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 1 and rejected the application.

REASON FOR THE DECISION:

The Sub-Committee concluded that the application was unacceptable as it did not address the representations made both in writing and at the hearing, and did not meet 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 were mindful of the fact that the premises were located in an area to which a Special Policy of Cumulative Impact applies, creating a rebuttable presumption against the granting of new licences to sell alcohol in that area. They also took account of the concerns of the Police relating to the possible impact which a licence would have on the prevention of crime and disorder in the area.

Having regard to the submissions made on behalf of the applicant, and the representations made by the Police regarding the revised operating schedule submitted at the hearing the Sub-Committee were not satisfied that the operation of the premises involved would not add to the cumulative impact already experienced within the Special Policy Area, and therefore the application failed to promote the licensing objective of the prevention of crime and disorder.

The Sub-Committee therefore agreed to reject the application and reminded the applicant of the necessity of upholding all of the licensing objectives.

Resolved: That in line with Option 1 the application be rejected.

Reason: To address the representations made by North Yorkshire Police.

Councillor Boyce, Chair
[The meeting started at 10.00 am and finished at 11.20 am].



Licensing Act 2003 Sub Committee**13th June 2014**

Report from the Assistant Director – Housing & Community Safety

Section 18(3) (a) Application for a premise licence for Londis, 39a York Road, Acomb, York, YO24 4LW**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-023309
3. Name of applicant: Mr Yutao Lu
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The application is to allow for the sale of alcohol, off the premises, every day between 06:00hrs and 23:00hrs.

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 as follows:
8. General

All staff will be fully trained in their responsibilities with regard to the sale of alcohol and will be retrained every six months with recorded training records kept for inspection.

9. The prevention of crime and disorder

- a) A CCTV system is in operation to provide security and identify any culprit who is intent in causing trouble in the store.
- b) All images are stored for a period of 31 days after which they can be erased or saved at the request of the police.
- c) All current security measures will remain in operation.
- d) All staff will be fully trained in the operation of the CCTV system to ensure that it is operational all the hours of trade.
- e) Images will be made available to the police or authorised licensing officer from the council on request.

10. Public safety

- a) Staff will be trained to be alert to any potential danger to customers and react accordingly. If they are unable to quickly diffuse the situation without risk to customer or staff then they are instructed to call the police.
- b) All relevant fire procedures are in place for a store of this size.

11. The prevention of public nuisance

- a) Youths will be encouraged to move from the entrance to the store to prevent the potential of causing nuisance to customers either in requesting the purchase of alcohol on their behalf or general intimidating behaviour.
- b) The entrance to the store is also visible from the till point area and so can be monitored by the staff.
- c) CCTV will also pick up any disturbance in this area.

12. The protection of children from harm:

- a) Only photographic ID is accepted (passport, driving licence, proof of age card with PASS hologram).
- b) Anyone under the age of 25 will be asked to produce ID. If the customer is unable to produce identification then no sale is made.

- c) Members of staff under 18 must call a senior member to take over the sale and complete the transaction.
- d) All refused sales will be recorded in a refusals book which will be made available for inspection by the police or council licensing officers on request.

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 and/or parish council were notified by way of register.
- 15. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

- 16. North Yorkshire Police have met with the applicant who has agreed to a number of conditions which add to the applicant's proposals and which will be included in the licence if granted. These conditions are shown at Annex 2

Summary of Representations made by Parties other than Responsible Authorities

- 17. One relevant representation has been received and this is attached at Annex 3.
- 18. A map showing the general area around the venue from which the representations are focused is attached at Annex 4.

Planning Issues

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

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 28/05/2014

Specialist Implications Officer(s)

Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Guildhall East



For further information please contact the author of the report

Background Papers:

Annex 1 - Copy of application form.

Annex 2 – Police conditions

Annex 3 - Copy of representation.

Annex 4 - Map showing location of venue.

Annex 5 - Mandatory Conditions.

Annex 6 - Legislation and Policy Considerations.