

## Licensing Hearing

**To:** Councillors Gillies, Mercer and Richardson  
**Date:** Thursday, 12 November 2015  
**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 Hearings held on 27<sup>th</sup> January 2015 and 3<sup>rd</sup> August 2015.

#### 5. The Determination of an Application by Brewdog Bars Ltd for a Premises Licence Section 18(3)(a) in respect of Brewdog, 130/134 Micklegate, York, YO1 6JX (CYC-054231)

Democracy Officer:

Name: Laura Bootland

Contact Details:

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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

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Meeting	Licensing Hearing
Date	27 January 2015
Present	Councillors Looker, Richardson and Wiseman

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**34. Chair**

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

**35. Introductions****36. 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.

**37. Minutes**

Resolved: That the minutes of the Licensing Hearings held on 13<sup>th</sup> June and 23<sup>rd</sup> June 2014 be approved and signed by the chair as a correct record.

**38. The Determination of an Application by Terrence Wheatley and Robert Wheatley to Vary a Premises Licence Section 35(3) in respect of Wheatlands Lodge Hotel, 75-85 Scarcroft Road, York. (CYC- 009636).**

Members considered an application by Terence and Robert Wheatley to vary a premises licence in respect of Wheatlands Lodge Hotel.

In coming to their decision, Members took into consideration all of the evidence presented to them and determined the relevance to the issues raised and the Licensing Objectives. The following were taken into account:

1. The application form.
2. The Licensing Officer's report and her comments made at the Hearing. She advised that the application was to vary the existing licence to extend the boundary of the premises licence to include the outside areas, namely the rear courtyard situated within the rear parking area, and the front garden and patio area looking into Scarcroft Road. The application was also seeking the removal of condition 9 in Embedded Restrictions from the licence in reference to not allowing Credit Sales. No representations had been received from responsible authorities. Consultation had been carried out correctly.
3. The representations made at the hearing by the applicants representative. He advised that the application had been made in order to ensure the whole of the premises, both inside and out, were licensed for guests to consume alcohol. The operation of the business would not be changing and there were no plans to sell alcohol to anybody other than guests. He clarified that there was no intention to apply for off sales, and that Part 4 to the application form at Question J should be amended to reflect this, as it stated "both" in error.
4. The representations made in writing and at the hearing by local residents who raised concerns about noise from the hotel caused by guests being outside late at night, particularly in the summer months. They felt that some conditions to the licence would help minimise problems and agreed that generally, the hotel was well run.

The Sub-Committee were presented with the following options:

- Option 1 Grant the licence variation in the terms applied for.
- Option 2 Grant the licence variation with modified/additional conditions.
- Option 3 Grant the licence variation to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
- Option 4 Reject the application.

In coming to their decision of approving Option 2 the Sub-Committee refused to licence the rear outside area of the property, but approved the extension of the licensable footprint to include the outside area to the front of the property and added the following conditions:

1. No licensable activities shall take place in the outside area after 23:00.
2. No music is permitted in the outside area.

**Informative**

The Sub-Committee reminded the applicant of the importance of making all staff aware of the impact of noise emanating from the hotel on local residents and the need to handle noise complaints appropriately.

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

Reason: The Sub-Committee resolved that the application for a variation be granted in respect of the outside area to the front of the hotel but not to the rear, based on the evidence given by the applicant's representative at the hearing. The application was satisfactory in respect of the front outside area with additional conditions to promote the licensing objectives.

Having regard to the submissions made on behalf of the applicant, the Sub-Committee were satisfied that the operation of the premises with the additional conditions would promote the licensing objectives.

The Sub-Committee therefore agreed to grant the application in respect of the front outside area and reminded the applicant of the necessity of upholding all of the licensing objectives.

Councillor Richardson, Chair

[The meeting started at 3.30 pm and finished at 5.00 pm].

Meeting	Licensing Hearing
Date	3 August 2015
Present	Councillors Douglas, Hayes and Mercer

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**9. Chair**

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

**10. Introductions****11. 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.

**12. Minutes**

Resolved: That the minutes of the licensing hearing held on 24<sup>th</sup> June 2015 be approved and signed by the Chair as a correct record.

**13. The Determination of an Application by BP Oil UK Ltd for a Premises Licence Section 18(3)(a) in respect of Jorvik SF Connect, 128 Lawrence Street, York, YO10 3EB (CYC-053433)**

Members considered an application by BP Oil UK Limited in respect of 128 Lawrence Street, York.

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 allow for the provision of late night refreshment from 23:00 hours to 05:00 hours and for the sale of alcohol off the premises 24 hours a day. There was a licence for the original store on this site for the same hour but following a change of operator a new licence was being sought. No responsible authorities had objected to the application. A number of representations had been made by local residents. Consultation had been carried out correctly.
3. The representations made on behalf of the applicant by their Solicitor. The application was for similar licensable activities and timings as permitted under the licence granted to the previous operator. He advised that the premises would be a BP petrol station and Marks and Spencer convenience store and the level of staffing, CCTV and company policies would be greatly improved in comparison to what was at the site previously.
4. The representations made by local residents in writing. They raised concerns about the granting of the licence potentially adding to problems in the area as they were already suffering from noise nuisance, littering and anti-social behaviour in the Lawrence Street area.

In coming to their decision, 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.
- Option 3 Grant the licence to exclude any of the licensable activities to which the application relates.
- Option 4 Reject the application.

Members chose Option 2 and granted the application with the following conditions:

1. A CCTV system will be installed and be fit for purpose.
2. The CCTV system shall be capable of producing immediate copies of recordings on site. Copies of recordings will either be recorded on good quality video tape or digitally on to CD/DVD or other equivalent medium.
3. Any recording shall be retained and stored in a suitable and secure manner for a minimum of 28 days and shall be made available, subject to compliance with Data Protection legislation, to the police for inspection on request.
4. The CCTV system will incorporate a camera covering the entrance door and the alcohol display areas and will be capable of providing an image which is regarded as identification standard. The precise positions of the cameras may be agreed, subject to compliance with Data protection legislation, with the police from time to time.
5. The system will display, on any recording, the correct time and date of the recording.
6. A system will be in place to maintain the quality of the recorded image and a complete audit trail maintained.
7. The CCTV system will be maintained so as to be fully operational throughout the hours that the premises are open for any licensable activity.
8. The premises licence holder will at all times maintain adequate levels of staff. Such staff levels will be disclosed, on request, to the licensing authority and police.
9. Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises.
10. The premises licence holder will ensure that an age verification policy will apply to the premises whereby all cashiers will be trained to ask any customer attempting to purchase alcohol who appears to be under the age of 25 years (or older if the licence holder so elects) to produce, before being sold alcohol, identification being a passport or photocard driving licence bearing a holographic mark or other form of identification that complies with any mandatory condition that may apply to this licence.

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

Reason: To address the issues raised in the representations.

REASONS FOR THE DECISION:

The Sub-Committee carefully considered the application, the representations made orally by the Applicant at the hearing and the written representations. In reaching their decision, the Sub-Committee took into consideration the provisions of the Licensing Act 2003, in particular the statutory Licensing Objectives, together with 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 had regard to the concerns of the residents but considered that it had received sufficient assurances and evidence from the applicant in order to have a high level of confidence that the premises would be operated responsibly and that it could with the imposition of suitable conditions operate without undermining the licensing objectives of prevention of public nuisance and crime and disorder. Whilst the Representors had mentioned the impact of noise, litter and anti social behavior in the area, no representations had been received from any of the Responsible Authorities and it was considered that there was no evidence that the proposal would be likely to fail to promote the licensing objectives. They considered that the new M&S food store, without a night pay window, would be a large improvement on the previous situation. They concluded that all four licensing objectives would be met in granting the application with mandatory and the above additional conditions.

The Sub-Committee therefore agreed to grant the licence with the additional conditions referred to above which were appropriate and proportionate to promote the licensing objectives. They reminded the applicant of the necessity of complying with all of the conditions.

Councillor Douglas, Chair

[The meeting started at 10.00 am and finished at 10.40 am].



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**Licensing Act 2003 Sub Committee****12 November 2015**

Report from the Assistant Director – Housing &amp; Community Safety

**Section 18(3)(a) Application for Brewdog, 130/134 Micklegate, York, YO1 6JX****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-054231
3. Name of applicant: Brewdog Bars Ltd.
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The nature of the application is to allow for:
  - a) The provision of late night refreshment between 23:00hrs and 00:30hrs Sunday to Thursday and between 23:00hr and 01:30hrs Friday and Saturday.
  - b) The sale of alcohol between 10:00hrs and midnight Sunday to Thursday and between 10:00hrs and 01:00hrs Friday and Saturday.
  - c) Opening times from 10:00hrs to 00:30hrs Sunday to Thursday and from 10:00hrs to 01:30hrs Friday and Saturday.
  - d) Non standard timings relating to the above are for an additional hour on those days preceding a Bank holiday and from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

## **Background**

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

## **Promotion of Licensing Objectives**

7. The operating schedule, including a dispersal policy and smoking policy, submitted by the applicant showing how the licensing objectives would be met is attached at Annex 2.

## **Special Policy Consideration**

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

## **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. In addition the relevant ward councillors and/or parish council were notified by way of register.
10. All procedural aspects of this application have been complied with.

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

11. Both the North Yorkshire Police and the council's Licensing Authority have made representations to the application on the grounds that as the venue is located within the city's cumulative impact zone, it is believed that the licensing objectives, the prevention of crime and disorder and public nuisance would be undermined on the granting of this application. Copies of these representations are attached at Annex 4 and 5 respectively.
12. The Council's Environmental Protection Unit has mediated with the applicants who have agreed to a number of conditions being

attached to the licence if granted. These conditions are listed at Annex 6.

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

13. Relevant representations have been received from 8 local residents listed at Annex 7 and their representations are shown at Annex 8.
14. A map showing the general area around the venue is attached at Annex 9.

### **Planning Issues**

15. There are no planning issues regarding 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 licence in the terms applied for.
18. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
19. Option 3: Grant 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.

### **Analysis**

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

25. Option 4: This decision could be appealed at Magistrates Court by the applicant.

### **Council Plan**

26. 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.
27. The promotion of the licensing objectives will support the Council's Plan for a prosperous city for all and a council that listens to residents.

### **Implications**

28.

- **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**

29. 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.

30. 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**

31. 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** 26/10/2015

**Specialist Implications Officer(s)**

Head of Legal & Democratic Services  
Ext: 1004

**Wards Affected: Micklegate**

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

**Background Papers:**

- Annex 1** - Application form
- Annex 2** - Operating schedule
- Annex 3** - Special Policy
- Annex 4** - Police representation
- Annex 5** - Licensing Authority representation.
- Annex 6** - Environmental Protection Unit agreed conditions
- Annex 7** - List of representors
- Annex 8** - Copies of representations

**Annex 9** - Map of area

**Annex 10** - Mandatory Conditions

**Annex 11** - Legislation and Policy Considerations