

Licensing Hearing

To: Councillors Boyce, Mason and Richardson
Date: Monday, 28 November 2016
Time: 10.00 am
Venue: The Craven Room - Ground Floor, West Offices (G048)

AGENDA

1. Chair

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

2. Minutes

To approve and sign the minutes of the Licensing Hearing held on 7 November 2016.

3. Introductions

4. 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.

5. The Determination of an Application by DPSK Ltd for a Premises Licence Section 18(3) (a) in respect of Unit 8 Matmer House, Hull Road, York, YO10 3JW (CYC-056908)

Democracy Officer:

Name: Laura Clark

Contact Details:

- Telephone – (01904) 554538
- Email - Laura.Clark@york.gov.uk

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

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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)

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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 Representatives 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

Meeting Licensing Hearing

Date 7 November 2016

Present Councillors Hayes, Mercer and Richardson

10. Chair

Resolved: That Councillor Richardson be elected to Chair the meeting.

11. Introductions**12. Declarations of Interest**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests. No further interests were declared.

13. Minutes

Resolved: That the minutes of the Licensing Hearings held on 09 June and 16 June 2016 be approved as a correct record and then signed by the Chair.

14. The Determination of an Application by Make it York for a Premises Licence Section 18(3) (a) in respect of Parliament Street and St Sampson's Square, York (Christmas Market site) (CYC-056707)

Members considered an application by Make it York for a Premises License Section 18 (3) (a) in respect of Parliament Street and St Sampson's Square, York (Christmas Market Site).

The Sub-Committee noted that the applicant had agreed to the following additional conditions:

1. The Christmas Market may only operate on consecutive days between the 1 November and 6 January.

2. To qualify as the Christmas Market (as per the above condition), the market must have a Christmas theme.
3. Any point of sale for the retail sale of alcohol outside the tented structure of the Tipi shall only be permitted for the sale of mulled wine, mulled cider, liquor coffee and hot chocolate.

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and the above licensing objectives, including:

1. The application form, in particular the existing licence conditions and the additional steps agreed to be taken by the applicant to promote the four licensing objectives.
2. The Licensing Manager's report and the Licensing Officers comments made at the Hearing. The Sub-Committee received an outline of the application and had been advised that the premises were located within the special policy area. They confirmed there were no planning issues and that consultation had been carried out correctly.
3. The applicant's representations made at the hearing, which included clarification that having a second licence and additional Designated Premises Supervisor (DPS) would allow them greater control over the food and drink venue. A third party would be employed to manage the running of the tipi, including staff training. They advised that they had consulted with North Yorkshire Police and the Licensing Officer in order to agree the additional conditions set out in the report.
4. Written representations by Councillor Lars Kramm, who raised issues around alcohol consumption in the Cumulative Impact Zone (CIZ) and suggested that, if granted, the license be reviewed annually.

In respect of the proposed licence, the Sub-Committee had to determine whether to take any of the steps mentioned under Section 18(4) that it considered necessary for the promotion of the licensing objectives. Having regard to the above evidence and representations received, the Sub-Committee considered the steps which were available to them to take under Section

18(4) of the Licensing Act 2003 as it considered necessary for the promotion of the licensing objectives:

Option 1: Grant the licence in the terms applied for. This option was **rejected**.

Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee. This option was **approved**.

Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly. This option was **rejected**.

Option 4: Reject the application. This option was **rejected**.

In coming to their decision the Sub-Committee chose Option 2 and granted the application with the following conditions and modified/additional conditions:

1. The Christmas Market may only operate on consecutive days between the 1 November and 6 January.
2. To qualify as the Christmas Market (as per the above condition), the market must have a Christmas theme.
3. Any point of sale for the retail sale of alcohol outside the tented structure of the Tipi shall only be permitted for the sale of mulled wine, mulled cider, liquor coffee and hot chocolate.

Reason for the Decision:

The Sub-Committee noted that, after the additional conditions were agreed, North Yorkshire Police had no objections to the application. There had only been one representation and the application was reasonable and an attempt to more tightly control management of the venue. The Sub-Committee were mindful of the fact that the premises were located in an area to which a Special Policy of Cumulative Impact applied, creating a rebuttable presumption against the granting of new licences to sell alcohol in that area. The Sub-Committee considered that the applicant had demonstrated that, with the imposition of suitable conditions, the premises would not add to the alcohol related problems in the area and that there would be no negative cumulative impact on the licensing objectives.

Councillor Richardson, Chair
[The meeting started at 10.10 am and finished at 10.35 am].



Licensing Act 2003 Sub Committee**28 November 2016**

Report from the Assistant Director – Planning & Public Protection

**Section 18(3) (a) Application for a premises licence for Unit 8
Matmer House, Hull Road, York, YO10 3JW.****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-056908
3. Name of applicant: DPSK Ltd.
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The nature of the application is to allow for the provision of late night refreshment between the hours of 23:00 and 05:00 every day.

Background

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

Promotion of Licensing Objectives

7. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
8. The prevention of crime and disorder
 - a) The licence holder will actively co-operate with the local police to ensure that they are made aware of particular problems which affect the area and which may potentially affect the store.

- b) The licence holder will not countenance the use or supply of illegal drugs and staff will inform the police immediately of any such suspected activity on or in the vicinity of the store.
- c) Employment policies are designed to ensure we recruit professional and reputable staff.
- d) The premise does not use or supply glassware.

9. Public Safety

- a) The premises comply with all requisite health and safety legislation.
- b) Regular health and safety risk assessments are carried out and are required under the terms of the terms of the Franchise Agreement.
- c) In the most unlikely event that a greater number of people congregate in the premises than is conducive to public safety, the management will not hesitate to ask people to leave the store and will always encourage them to take advantage of our home delivery service, which is the primary way in which we serve our customers.

10. The prevention of public nuisance

- a) Doors and windows will be kept closed at night to prevent transmission of noise.
- b) Visitors will be asked to leave the premises quietly and with due consideration for our neighbours.
- c) Delivery drivers are instructed to enter and leave their vehicles quietly and considerately, not to leave engines running, to park considerately, and at all times to have in mind the neighbours (particularly residential occupiers).
- d) The management would have no hesitation in banning people who visit the store and regularly leave the premises in a noisy fashion.
- e) Equipment is properly sound insulated and operated strictly in accordance with manufacturers' requirements, guide lines and tolerances.
- f) The air extraction system complies with Building Regulations requirements and is designed to ensure that there is no escape of cooking smells to neighbouring premises.

11. The protection of children from harm:

- a) The store is not licensed for the sale of alcohol.

Special Policy Consideration

12. This premise is not located within the council's special policy area.

Consultation

13. 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.
14. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

15. There were no representations from any of the Responsible Authorities.

Summary of Representations made by Parties other than Responsible Authorities

16. Two relevant representation has been received from other parties. These are shown at Annex 2.
17. A map showing the general area around the venue is attached at Annex 3.

Planning Issues

18. There are no planning issues regarding this application.

Options

19. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision: -
20. Option 1: Grant the licence in the terms applied for.
21. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.

22. Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
23. Option 4: Reject the application.

Analysis

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

Council Plan

29. 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.
30. 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

31.
 - **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

32. 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.
33. 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

34. 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:

Mike Slater
Assistant Director for Planning and Public Protection.

**Report
Approved**



Date 11/11/2016

Specialist Implications Officer(s)

Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Hull Road



For further information please contact the author of the report

Background Papers:

- Annex 1** - Application form
- Annex 2** - Representations
- Annex 3** - Map of area
- Annex 4** - Legislation and Policy Considerations