

Licensing Hearing

To: Councillors Douglas, Crisp and Richardson
Date: Monday, 12 December 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. 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 28 November 2016.

5. The Determination of an Application by Ainsty Ales Ltd for a Premises Licence Section 18(3) (a) in respect of Ainsty Ales Brewery, Manor Farm, Intake Lane, Acaster Malbis, YO23 2PL (CYC-056879)

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)

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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

28 November 2016

Present

Councillors Boyce, Mason and Richardson

15. Chair

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

16. Introductions**17. 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.

18. Minutes

Resolved: That the minutes of the Licensing Hearing held on 7 November 2016 be approved as a correct record and then signed by the Chair.

19. 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)

Members considered an application by DPSK Ltd for a Premises License Section 18 (3) (a) in respect of Unit 8, Matmer House, Hull Road, York.

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 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 Officer's report and her comments made at the Hearing. She outlined the application and advised that the premises were outside the special policy area, consultation had been carried out in accordance with the Licensing Act 2003 and there had been no representations received from responsible authorities. She also pointed to the additional information provided by the applicant since the report was written which addressed some of the concerns raised by Representors. In answer to questions during the Hearing, the Licensing Officer confirmed that there was no alcohol licence applied for – only late night refreshment of hot food and non-alcoholic drinks. She also confirmed that there were a number of takeaway food outlets in the Matmer House Units, and that the latest licensed hours related to Unit 3 known as Pizza House, which was licensed for late night refreshment between 11pm and 4am every day, and this included alcohol sales.
3. The Applicant's representations at the hearing. They clarified that their intention was to close to the public at 23:00 and operate a delivery service only after this time. They advised that they wished to run this service from 23:00 till 05:00, but if the Sub-Committee were minded to grant this licence they would accept a reduction in hours in line with other businesses operating in the area. In response to representations they informed the Sub-Committee that a bin was already in place at the front of the store and this would be emptied regularly. Drivers would park at the front of the store and leave via the front door, in order to mitigate the noise for residents at the rear of the building. In response to questions during the Hearing they confirmed that they anticipated that trade would be from students, but could not confirm that all deliveries would be to the campus away from the immediate area of the premises. They anticipated that trade would be much quieter outside term time of the University.
4. The representations made by Councillor Neil Barnes, on behalf of Hull Road Ward Councillors, in writing and at the hearing. He clarified that Ward Councillors were not

objecting to the business, but rather the operating hours, as it was felt deliveries in the early hours of the morning would contribute to anti-social behaviour issues in the local area that Ward Councillors were currently working to address. He also asked for consideration to be given to earlier closing times during the working week, Sunday to Thursday as opposed to late opening every night.

5. Written representations made during the consultation period.

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 and including any applicable mandatory conditions as set out in ss19, 20 and 21 of the Licensing Act 2003. This option was **rejected** because the Sub-Committee decided that the existing conditions were insufficient and extra conditions were required to address the issue of public nuisance.

Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee including any applicable mandatory conditions as set out in ss19, 20 and 21 of the Licensing Act 2003. This was the **approved** option in order to meet the Licensing Objectives and City of York Council Licensing Policy.

Option 3: Grant the licence to which the application relates and modify/add conditions accordingly to include any applicable mandatory conditions of the Licensing Act 2003 as amended. This option was **rejected**.

Option 4: Reject the application. This option was **rejected** as the Sub-Committee saw no reason to reject the application, based on the Licensing Objectives and City of York Council Licensing Policy.

In coming to their decision of approving the above **Option 2** the Sub-Committee then imposed the following additional conditions:

1. The premises shall not be open to the public between 23:00 and 04:00 and therefore no food orders can be made in person by the public at the premises during this time.
2. Any trade between 23:00 and 04:00 shall be restricted to a delivery only service.
3. The delivery only service shall be managed so as to ensure that between 23:00 and 04:00 such deliveries are only made to residential addresses.
4. Between the hours of 23:00 and 04:00 vehicles used for the delivery service shall only be parked at the front of the premises whilst awaiting orders, and delivery drivers are to enter and leave the premises only by the front door of the premises during this time.
5. A Notice must be clearly displayed in the window of the premises informing customers that trading is by delivery only between 23:00 and 04:00 and the premises are closed to the public during those hours therefore no food orders can be made in person by the public at the premises during this time.
6. A bin must be placed outside the premises and be emptied regularly.

Reasons for the Decision

The Sub-Committee took into consideration that there had been no objection from public protection, or any other responsible authorities. The Sub-Committee were aware from local knowledge that the area in which the premises were situated was in the vicinity of a number of existing late night takeaways and a garage with shop open 24/7. They were also aware of anti-social behaviour being an existing issue in the area. However, the Sub-Committee did not consider that granting the licence until 4am (to be in line with the existing closing time at

Unit 3), would give rise to a significant impact on anti social behaviour PROVIDED THAT the licence was conditioned so that the premises were closed to the public from 11pm and only deliveries were to take place from the premises between 11pm and 4am. This would decrease the likelihood of people congregating outside the premises late at night causing disturbance. In addition, in order to protect the residential amenity of the residents to the rear of the parade of shops, the Sub-Committee considered it reasonable to condition the licence so that delivery drivers would park at the front of the shop and only use the front entrance.

Councillor Boyce, Chair

[The meeting started at 10.10 am and finished at 11.00 am].

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Licensing Act 2003 Sub Committee

12 December 2016

Report of the Assistant Director – Planning & Public Protection

Section 18 (3) (a) Application for a premises licence for Ainsty Ales Brewery, Manor Farm, Intake Lane, Acaster Malbis, YO23 2PL

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-056879
3. Name of applicant: Ainsty Ales Brewery.
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The proposal is to allow for the provision of the following activities:

Proposed Activity	Timings
Plays	Mon – Fri 16:00 – 21:00 Sat 11:00 – 21:00
Films	Mon – Sat 16:00 – 21:00
Live Music	Mon – Thurs 16:00 – 21:00 Fri 15:00 – 21:00 Sat 10:00 – 21:00
Recorded Music	Mon – Thurs 08:00 – 21:00 Fri – Sat 08:00 – 21:00

Sale of alcohol (on sales)	Mon – Sat 09:00 – 18:00
Sale of alcohol (off sales)	Mon – Sat 09:00 – 22:00
Opening times	Mon – Sat 09:00 – 22:00

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
- a) A Challenge 25 policy will be in place with signs displayed.
 - b) All staff will be instructed in the Licensing Act 2003 and its objectives.
9. The prevention of crime and disorder
- a) Any persons behaving in a drunken manner will be asked to leave.
 - b) There will be signs reminding people not to drink and drive.
10. Public Safety
- a) There are 2 fire escapes, both well signed and smoke detectors are placed in the Tap Room area.
 - b) Fire notices will be displayed.
 - c) No smoking signs will be displayed.
11. The prevention of public nuisance
- a) Operating hours will cease at 22:00.

- b) There will be no music outside.
- c) Posters will be displayed asking customers to respect our neighbours and signs will be posted outside asking customers to keep noise to a minimum.

12. The protection of children from harm:

- a) As per paragraph 8.

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. The North Yorkshire Police have mediated with the applicants who have agreed to a number of conditions being attached to the licence if granted. These are shown at Annex 2.

Summary of Representations made by Parties other than Responsible Authorities

17. Three relevant representations have been received from local residents. These are shown at Annex 3.
18. A map showing the general area around the venue is attached at Annex 4.

Planning Issues

19. There are no planning issues regarding 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 Plan for a prosperous city for all and a council that listens to residents.

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:

Mike Slater
Assistant Director for Planning and Public Protection.

**Report
Approved**



Date 22/11/2016

Specialist Implications Officer(s)

Assistant Director of Legal & Governance
Ext: 1004

Wards Affected: Bishopthorpe



For further information please contact the author of the report

Background Papers:

Annex 1 - Application Form

Annex 2 - Police Conditions

Annex 3 - Representations

Annex 4 - Map of Area

Annex 5 - Mandatory Conditions

Annex 6 - Legislation and Policy Considerations