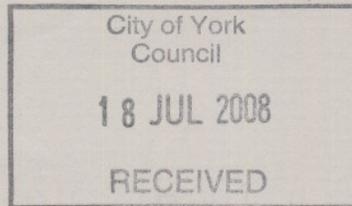


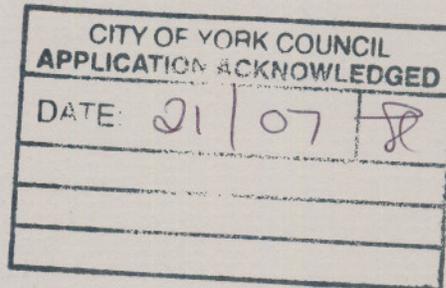
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Our Ref: PGW/10233.308
Your Ref:
Direct email: PeterWarren@grayssolicitors.co.uk
Date: 15 July 2008

Licensing Services
City of York Council
9 St Leonard's Place
York
YO1 7ET



Dear Sirs

Objection to Application for Variation of Premises Licence Ref:CYC010833
Applicant: Debretton Hospitality (4HP) Limited
Premises: 4 High Petergate, York ("the Premises")

We act on behalf of the Dean & Chapter of York Minster who own 9 Precentor's Court, York ("the Property"). This Property is a residential property lying to the rear of the Premises.

My client wishes to object to the current application to vary Premises Licence CYC010833 on the basis that the grant of this variation to allow, inter alia, a beer garden would have serious adverse effects upon the residential amenity of the occupiers of 9 Precentor's Court. This objection therefore relates to the prevention of public nuisance which is one of the four objectives of the Licensing Act and a valid ground for objection to an application under the Act. As such, we contend that the licensing application should be refused.

1. Background to the Application

1.1 The rear garden at the Premises has already been developed as an outside drinking area without the grant of planning permission. The garden has been landscaped, a "summerhouse" erected and external lighting installed without the benefit of planning or listed building consent. My client has strenuously objected to the grant of listed and planning consent and has made representations to City of York Council. At the present time, therefore, the Premises do not have the necessary consent to allow the use of the garden as an outside drinking area.

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Partners: Christopher Goodway Lyn Rickatson John Knowles Brian Mitchell Ben Williams Consultant: Tony Lawton
Solicitors: Peter Warren Catherine Goodway Gillian Blick Emma Grandison Legal Executive: Janet King

1.2 The planning and listed building applications for the outside area and summerhouse have met with strong resistance from City of York Council and other conservation agencies. Accordingly, it is by no means certain that consent for the development will be forthcoming and we contend that it is inappropriate to grant a licence in respect of this area in the absence of planning and listed building consent.

1.3 The City of York Council Statement of Licensing Policy 2008 provides that "it is strongly recommended that lawful planning use be obtained initially" before an application for variation of a premises licence. We refer to this requirement further below.

2. Detrimental effect upon the residential amenity of 9 Precentor's Court

2.1 The rear facing rooms of 9 Precentor's Court directly overlook the rear garden of the Premises. Indeed, the master bedroom and a number of other rooms within the house are effectively a few feet from the garden area. Equally, the garden to the Property which provides essential private amenity space for residential occupiers, lies immediately adjacent to the garden of the premises.

2.2 Any customers in the beer garden would, therefore, be able to look into the bedroom and other rooms of the Property which would constitute an entirely unacceptable intrusion on the privacy of the occupants of the Property. Furthermore, the enjoyment of the essential amenity space provided by the garden would be severely affected by noise from the beer garden and indeed from the public house area as a result of the rear doors of the Premises being kept open to allow access to and from the beer garden.

2.3 Equally significant would be the detrimental effect on residential amenity occasioned by exterior lighting and any music or entertainment in the garden. We note that the application is for all forms of entertainment (including live music and recorded music and dancing) "inside the building and in the garden area".

2.4 Accordingly, we submit that there would be serious and sustained detrimental effect upon the residential amenity of 9 Precentor's Court by overlooking, noise and light pollution occasioned by the application.

3. Detrimental impact upon the character of the area

The setting and relative tranquillity of this area in the heart of York is an essential part of the character of the area and this would, it is contended, be severely diminished should the Application be granted. Many visitors to York walk along the walls immediately adjacent to the garden area and we submit this will be harmed by the extension of licensing activities in this sensitive location.

4. Other security and nuisance issues

4.1 The close proximity of an outside drinking area in the city centre and a neighbouring dwelling means that there is a considerable risk of overlooking, possible anti-social behaviour and security issues.

4.2 If the garden area were to be opened for regular public use as a beer garden we contend that issues of trespass and other anti-social behaviour would be a possible consequence, further harming the residential amenity of 9 Precentor's Court.

5. City of York Council Statement of Licensing Policy 2008

5.1 In the Policy at paragraph 3.1 (Planning) it is stated that "If an Applicant wishes the Licensing Authority to determine an Application for an activity for which lawful planning use cannot be demonstrated it will be for the Applicant to demonstrate special circumstances justifying a departure from the Policy". The reason for this Policy is given as being to ensure all licensed premises have lawful planning permission and that no conflicts arise between the Council acting as planning and licensing authorities.

5.2 As noted above, the garden area at the Premises does not have planning or listed building consent for use as an outside drinking area and the summer-house does not have planning or listed building consent. In the Application, the Applicant has not provided any special circumstances justifying the grant of the variation of the Premises' licence in the absence of lawful planning permission. Accordingly, the Application is in breach of the City of York Council Licensing Policy and should be refused.

5.3 In the Policy at paragraph 5.3 (Prevention of Public Nuisance) it is stated that "Responsible Applicants will wish to ensure their operations do not disturb their neighbours or give rise to representations being made against a Licence Application". Under "Hours of Operation" it is stated that "The Licensing Authority would expect licence holders to consider hours of operation when compiling their operating schedules". It is clear that the Applicant has made no attempt whatsoever to consider the appropriate hours of operation for the beer garden and the impact this will have on the occupiers of 9 Precentor's Court as the Application is for hours of operation until midnight seven days a week.

5.4 The Policy in 5.3 goes on to state that the Applicant should consider "the areas of the building where entertainment is provided, particularly outside areas" and "the management of the general use of outside areas such as beer gardens and smoking areas". Once again, the Applicant has not provided any information whatsoever in the Application to suggest how the activities to take place in the outside area will be controlled. Indeed, the Application is for entertainment of all kinds including live music and recorded music in the outside areas until midnight seven days a week. Once again, the Applicant appears to have given

no thought whatsoever to the effect on the occupiers of 9 Precentor's Court and there is no supporting information in the Application to explain how the Licensee will mitigate the disturbance from the garden area of the Premises.

5.5 For the reasons above, the Application does not conform to City of York Council Licensing Policy. The Applicant does not have lawful planning use for the garden area as a licensed area and the Applicant has provided no information whatsoever relating to the prevention of public nuisance. The Application is therefore in contravention of the Council's Licensing Policy and should be refused.

6. Opening times of the proposed beer garden

6.1 We recognise that the Applicant has applied for use of the garden as a beer garden from 10 am until midnight seven days a week. The Application suggests that the garden will be available for the consumption of alcohol and public entertainment throughout this time. Notwithstanding our objection to the use of this garden area as a licensed area at any time of the day or night we contend that the Application for these hours and these activities, without any restriction in the interests of neighbouring residents, is entirely inappropriate and insensitive to the amenity of neighbours.

6.2 The Applicant provides no evidence as part of the Application on how activities in the garden would be supervised or regulated or how the effects upon neighbouring amenity could be mitigated. The Application is deficient and does not seek to address any of the key objectives of the Act. For this reason alone we submit that the Application should be refused.

7. Summary

7.1 The Application proposal would have a severe detrimental impact upon the neighbouring amenity of the occupiers of 9 Precentor's Court.

7.2 Issues of overlooking, noise, light pollution and other anti social behaviour would be entirely unacceptable.

7.3 For the reasons above, the Application proposal is not in accordance with City of York Council Licensing Policy and should therefore be refused. Specifically, the Application does not contain any of the supporting information required in Policy 5.3 of the Licensing Policy relating to the prevention of public nuisance.

7.4 Further, granting permission for this Application would be in conflict with the duty of City of York Council to protect the character of the Central Historic Core Conservation Area as the character of this important location next to the City Walls would be greatly harmed.

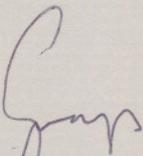
7.5 The Application itself is deficient as it does not address the licensing objectives

of the Act or seek to illustrate how potential issues of public nuisance, crime and disorder could be mitigated.

- 7.6 The Premises do not currently benefit from planning or listed building consent and, accordingly, the Application is in breach of the Policy in 3.1 of the Licensing Policy. The Applicant has provided no special circumstances justifying the grant of the Premises' Licence in advance of lawful planning consent being obtained and, accordingly, the Application should be refused.
- 7.7 For all of the reasons outlined above, we strongly urge the Licensing Committee to refuse this Application.

We would also strongly urge that in order to appreciate the particular sensitivities in this case, members should consider conducting a site visit in order to appreciate the concerns which have been expressed. If members wish to undertake such a site visit, this should be arranged through Grays Solicitors.

Yours faithfully



Grays