
Licensing Act 2003 Sub Committee

2 February 2009

Report of the Director of Neighbourhood Services

Section 35(3)(a) Application for the Variation of a premise licence for Hot Chilli Pepper, 5 Acomb Road, York, YO24 4EN

Summary

1. This report seeks Members determination of an application for the variation of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-010845.
3. Name of applicant: Mr Cem Sinan Altin.
4. Type of authorisation applied for: Variation of existing premises licence.
5. Summary of application: The nature of the application is to increase the provision of late night refreshment from Sunday to Thursday until midnight and on Friday and Saturday until 02:00 hours.
6. The existing hours for the provision of late night refreshment are Monday to Sunday until 23:30 hours.

Background

7. A copy of the existing premise licence is attached at Annex 1.
8. A copy of the application to vary the licence is attached at Annex 2.

Promotion Of Licensing Objectives

9. The operating schedule submitted by the applicant shows that, in addition to existing conditions attached to the current licence, the licensing objectives would be met as follows:
10. General: 1) Close collaboration with the local authority, police and fire service. 2) Inform and train staff more regularly about safety and public nuisance. 3) More attention to clearing around the premises
11. The prevention of crime and disorder: 1) To work closely with the police, fire service and council to prevent crime and disorder.

12. Public Safety. 1) To work closely with the police and to keep them informed about any problems related to public safety.
13. The prevention of public nuisance 1) No music after 23:00 hours. 2) No queuing outside the premises.
14. The protection of children from harm. 1) There shall be no service to children without parents' permission.

Special Policy Consideration

15. This premise is not located within the special policy area.

Consultation

16. 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.
17. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

18. The City of York Environmental Protection Unit makes representations on the grounds of the prevention of public nuisance licensing objective. The representation relates to increased trade after midnight having the potential to cause a noise nuisance to nearby residents. A copy of the representation is attached at Annex 3.
19. A representation received from North Yorkshire Police was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence:
 1. CCTV shall be installed to cover the premises. It will be maintained, working and recording at all times when the premises are open and shall cover all areas where the public have access including the outside area. The recordings should be of sufficient quality to be produced at court or other such hearing. Copies of the recordings will be kept available for any responsible authority for 3 days.
 2. Upon closing the premises at the conclusion of business staff will undertake a general litter pick-up and tidy of the general area of the premises.

Summary of Representations made by Interested Parties

20. Representations have been received from 2 interested parties listed at Annex 4. Their representations are attached at Annex 5.
21. The location of the residential properties owned by the interested parties in relation to the premises subject to this application is shown on the map attached at Annex 6.
22. An “interested party” is defined at s13(3) of the Act as being a person living in the vicinity of the premises, a body representing persons who live in that vicinity, a person involved in a business in that vicinity, or a body representing persons involved in such businesses.
23. Members are reminded that representations are only “relevant” if they relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

Planning Issues

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

Options

25. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision:-
26. Option 1: Grant the variation of the licence in the terms applied for.
27. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
28. Option 3: Grant the variation of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
29. Option 4: Reject the application.

Analysis

30. The following could be the result of any decision made this Sub Committee:-
31. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
32. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.

33. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
34. Option 4: This decision could be appealed at Magistrates Court by the applicant.

Corporate Priorities

35. 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.
36. The promotion of the licensing objectives will support the Council's priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

Implications

37.

- **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

38. 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.

39. 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

40. Members determine the application.
Reason: To address the representations received as required by the Licensing Act 2003.

Contact Details

Author:

John Lacy
Licensing Manager
Licensing & Regulation

Ext: 1593

Chief Officer Responsible for the report:

Andy Hudson
Assistant Director
Neighbourhood Services

Ext: 1814

Report Approved

3

Date

21 January 2009

Specialist Implications Officer(s):

Quentin Baker
Head of Legal & Democratic Legal Services

Ext: 1004

Wards Affected: Holgate

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of existing premises licence.
- Annex 2** - Copy of application form.
- Annex 3** - Copy of representation from City of York Council Environmental Protection Unit.
- Annex 4** - List of interested parties.
- Annex 5** - Representations from interested parties.
- Annex 6** - Map showing general area from which representations received.
- Annex 7** - Mandatory Conditions.
- Annex 8** - Legislation and Policy Considerations.