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## Licensing Act 2003 Sub Committee

05 October 2009

Report of the Director of Neighbourhood Services

### **Section 18(3)(a) Application for a premise licence for 35/37 Walmgate, York, YO1 9TX**

#### **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-016268
3. Name of applicant: Mr Joseph Moore.
4. Type of authorisation applied for: Grant of Premises Licence
5. Summary of application: The nature of the application is to allow for the supply of alcohol, late night refreshment, and the provision of regulated entertainment consisting of films, live and recorded music, performance of dance, and anything of a similar description, and for the provision of making music and dancing and entertainment of a similar description.

#### **Background**

6. A copy of the application is attached at Annex 1.
7. A premises licence for late night refreshment is currently in force for 35 Walmgate.

#### **Promotion Of Licensing Objectives**

8. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
9. General: 1) prominent and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly. 2) Documented staff training will be given regarding the retail of alcohol and such records kept accordingly. 3) A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals to under-age or drunken people as well as incidents

of any anti-social behaviour and ejections from the premises. Both documents will be made available upon a reasonable request from any Responsible Authority. 4) A full food menu shall be available with food orders being accepted at all times the venue is open for business.

10. The prevention of crime and disorder: 1) CCTV will be installed to cover the premises. It will be maintained, working and recording at all times when the premises are open. The recordings shall be of sufficient quality to be produced in Court or other such Hearing. Copies of the recordings will be kept available for any Responsible Authority for 14 days.
11. Public safety: 1) The management of the venue will comply with any written, reasonable and justified request made by North Yorkshire Police regarding the provision of Door Supervisors should the need arise. 2) One pint capacity, half pint capacity and highball tumbler drinking glasses will be strengthened glass (tempered glassware) in a design whereby, in the event of breakage the glass will fragment and no sharp edges are left.
12. The prevention of public nuisance: 1) Alcoholic and other drinks provided for consumption on the premises may not be removed from the premises in open containers except for consumption in any area provided for that purpose. 2) Alcoholic and other drinks provided for consumption off the premises may not be removed from the premises in open containers.
13. The protection of children from harm: 1) The premises shall operate a challenge 21 policy and only photographic I.D recognised as suitable by the local authority will be accepted. That I.D. being a current passport, a photographic driving licence or identification carrying the PASS logo.

### **Special Policy Consideration**

14. This premise is not located within the Special Policy area.

### **Consultation**

15. 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.
16. All procedural aspects of this application have been complied with.

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

17. A representation was received from North Yorkshire Police on the grounds of crime and disorder and public nuisance which was subsequently withdrawn

when the applicant agreed to the following conditions being attached to the licence if granted:

1. When the venue is being used as a bistro style operation, and has tables laid out indicative of dining, then the maximum occupancy shall be 40 persons.
  2. When the venue is clear of tables then the maximum occupancy shall be 60 persons.
18. A representation was received from the City of York Council Environmental Protection Unit on the grounds of public nuisance which was subsequently withdrawn when the applicant agreed to the following condition being attached to the licence if granted.
1. Noise originating from within the premises shall be inaudible at the nearest noise sensitive premises.

### **Summary of Representations made by Interested Parties**

19. A representation was received from an interested party on the grounds of crime and disorder and public nuisance. A copy of this representation is attached at Annex 2.
20. A map showing the general area around the venue from which the representation is focused is attached at Annex 3.
21. 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.
22. 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**

23. A planning application for a restaurant at No 37 Walmgate (using the kitchen and facilities at No 35) is currently being considered.

### **Options**

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

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

## **Analysis**

29. The following could be the result of any decision made this Sub Committee:-
30. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
31. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
32. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
33. Option 4: This decision could be appealed at Magistrates Court by the applicant.

## **Corporate Priorities**

34. 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.
35. The promotion of the licensing objectives will support the Council's priority to make York a safer city with low crime rates and high opinions of the city's safety record.

## **Implications**

36.
  - **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**

37. 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.
38. 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**

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

### **Contact Details**

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**Report Approved**



**Date** 24 September 2009

### **Specialist Implications Officer(s)**

Quentin Baker  
Head of Legal & Democratic Legal Services

Ext: 1004

**Wards Affected:** Guildhall East

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

### **Background Papers:**

**Annex 1** - Copy of application form

- Annex 2** - Representation from Interested Party
- Annex 3** - Map showing general area from which representation received.
- Annex 4** - Mandatory Conditions
- Annex 5** - Legislation and Policy Considerations.