



Licensing Act 2003 Sub Committee

11 January 2010

Report of the Director of Neighbourhood Services

Section 35(3)(a) Application for the Variation of a premise licence for The Lowther, 8 Cumberland Street, York, YO1 9SW

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-009036
3. Name of applicants: Mr S. Binns & Mr D. Binns
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is to extend the existing hours, for the ground floor only, on Fridays and Saturdays and specific dates (i.e. bank holiday Sundays, Thursday prior to Good Friday, Christmas Eve and Boxing Day, St Patrick's Day, St George's Day and Halloween) for recorded music, dancing, late night refreshment and the supply of alcohol. These times to start at 09:00 hours and finish at 04:00 hours with closing at 04:30 hours. The applicant also wishes to remove from the licence all the embedded restrictions, the conditions for regulated entertainment consisting of music and dancing and condition 13 in Annex 3.

Background

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

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) Licensable activities will cease on the first floor of the premises at 02:30 hours Monday – Sunday with the exception of New Year's Eve.

9. The prevention of crime and disorder: 1) Last entry of the premises will be 03:00 hours. 2) When the premises operate after 02:30 hours, doorstaff shall remain on duty until all customers have dispersed.
10. Public Safety. Nil
11. Public Nuisance. 1) When the premises operate after 02:30 hours, recorded music will be provided by jukebox only, with the volume controlled by staff. 2) When the premises operate after 02:30 hours, smokers from the premises will be monitored by doorstaff on Cumberland Street.
12. The protection of children from harm. Nil.

Special Policy Consideration

- 13 The premises fall within an area that has been identified as one where the concentration of a significant number of licensed premises has a considerable impact on the licensing objectives. As part of a series of measures to address the problems of a city centre increasingly blighted by alcohol misuse, this area has been made the subject of a special policy that addresses the impact of the concentration of licensed premises in this particular part of the city centre. The special policy was approved by the licensing committee on 1 April 2005 and considered by full council on 12 April 2005, a copy of the special policy statement is attached at Annex 6

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.

Summary of Representations made by Responsible Authorities

15. A representation was received from North Yorkshire Police on the grounds of crime and disorder and prevention of public nuisance. This was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted:
 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.
 2. The only acceptable proof of age identification shall be a current passport or photocard driving licence.
 3. Standard 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.

4. Drinking glasses of any type shall not be allowed to enter or leave the premises whilst under the customers care.
5. All off-sales shall be made in sealed containers.
6. Documented staff training will be given regarding the retail of alcohol and such records kept accordingly.
7. An adequate number of door supervisors shall be provided at the venue from 21:00 hours until the venue has closed for business on Thursday, Friday, Saturday and Sunday evenings, the evenings preceding a bank holiday and on any day when York race meetings are held.
8. 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.
9. 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.
10. Prominent clear 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.
11. The premises shall partake in the York Pubwatch Pager scheme
12. A capacity of 300 persons (ground floor 200 & first floor 100) shall be imposed so as not to undermine the Licensing Objective "Prevention of Crime and Disorder)
16. A representation was received by the City of York Council Environmental Protection Unit on the grounds of public nuisance but this was subsequently withdrawn when the applicant agreed to the following condition being attached to the licence if granted:
 1. Noise or vibration from the premises shall not emanate so as to cause nuisance at nearby sound sensitive properties.

Summary of Representations made by Interested Parties

17. Representations have been received from 3 interested parties shown on Annex 3. Their representations are attached at Annex 4.
18. 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 5.
19. 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.

20. 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

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

Options

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

Analysis

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

Corporate Strategy

32. 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.

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

Implications

34.

- **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

35. 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.
36. 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

37. 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

Date 23 December 2009

Specialist Implications Officer(s):

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 existing premises licence
- Annex 2** - Copy of application form
- Annex 3** - List of Interested Parties
- Annex 4** - Copy of representations from Interested Parties
- Annex 5** - Map showing general area from which representations received.
- Annex 6** - Copy of City Centre Special Policy Statement
- Annex 7** - Mandatory Conditions
- Annex 8** - Legislation and Policy Considerations