
Licensing Act 2003 Sub Committee

7th June 2007

Report of the Director of Neighbourhood Services

Section 35(3)(a) Application for the Variation of a premise licence for Gallery, 12 Clifford Street, York, YO1 1RD

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-008849.
3. Name of applicant: Luminar Gems Ltd.
4. Type of authorisation applied for: Variation of a premises licence.
5. Summary of application: The nature of the application is to vary the layout of the premises to create a smoking terrace.

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, in addition to existing conditions attached to the current licence, the licensing objectives would be met as follows:
9. The prevention of crime and disorder: The external area will be covered by the existing CCTV system installed at the premises.
10. Public safety: No additional steps proposed.
11. The prevention of public nuisance: No additional steps proposed.
12. The protection of children from harm: No additional steps proposed.

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 8.

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. A representation was made by City of York Council Environmental Protection Unit but was subsequently withdrawn when the applicant agreed to the following conditions being attached to the premise licence if granted;
 - 1) The smoking area is only used between 11:00 hours and 02:00 hours.
 - 2) The smoking area should only be marshalled during the hours when the premises are open to the public. The marshal shall control noise and any other anti social behaviour from the premises and its customers.
 - 3) There shall be no smoking on the premises other than in that area identified on approved drawings.
 - 4) No amplified or sound generating equipment shall be used in or on the smoking areas.

Summary of Representations made by Interested Parties

17. A representation has been received from the interested party listed at Annex 3 (confidential). A copy of the representation is attached at Annex 4.
18. The address of the interested party is indicated on the map attached as Annex 5 (confidential). A further map indicating the general area from which the representation is received is attached at Annex 6.
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. A planning application has been submitted for this proposal (ref: 07/00819/FUL) but is yet to be determined.

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 Priorities

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 priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

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.

Contact Details

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Report Approved

Date 18 May 2007

Specialist Implications Officer(s):

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Wards Affected: Guildhall

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 (Confidential)** - Details of Interested Party
- Annex 4** - Copy of representation from Interested Party
- Annex 5 (Confidential)** - Map of area indicating address of Interested Party
- Annex 6** - Map showing general area from which representation received
- Annex 7** - Mandatory Conditions
- Annex 8** - Copy of City Centre Special Policy Statement
- Annex 9** - Legislation and Policy Considerations