

Extn: 1515
Ask for: Richard Haswell
Our ref: RHH/LJC/260608/2
Your ref: CAB/25828.9
e-mail: dick.haswell@york.gov.uk

26 June 2008

Berwin Leighton Paisner LLP
Adelaide House
London Bridge
London
EC4R 9HA

Dear Sirs

Licensing Act 2003
Application for Variation to Premise Licence
Stonebow Snooker Club, 7 Stonebow House, York

I refer to your letter of representation in respect to this application which was dated 11 June 2008 and received by this office on 16 June.

By virtue of the councils delegation under this Act it falls to me to consider the relevance of any representations received.

In accordance with the councils Licensing Policy I have consulted with the Assistant Director for Neighbourhoods and Community Safety to consider your representation.

Section 18(6)(a) of the Licensing Act 2003 states that 'relevant representations' means representations which are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives.

In respect of your representation I would wish to comment as follows:

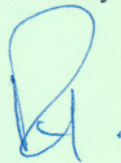
1. Fire safety is a matter that is dealt with under the Regularly Reform (Fire Safety) Order 2005 and should not be duplicated by the licensing regime. The Fire Authority has not made any representations and has been made aware of your concerns. I am also advised that the closure of your client's premises does not mean the shared access is unavailable.
2. Management of queues - The operating schedule and appended documents do refer in more detail that you state to queue management and do include an exit (dispersal) policy. Your

representation, although pointing out omissions to the information provided in the operating schedule and asking questions does not make any reference to any likely effect on the promotion of the licensing objectives.

3. Membership - You ask a question but do not state any effect on the promotion of the licensing objectives.
4. Protection of children from harm - You ask a question but do not state any effect on the promotion of the licensing objectives. The Act provides protection to children through age restrictions. Any breach of statute is provided for by appropriate sanctions.

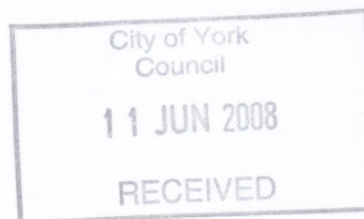
I wish to inform you therefore that in consideration of the above your representation are not considered 'relevant' as defined by section 18(6)(a) of the Licensing Act 2003 and will not be considered.

Yours faithfully

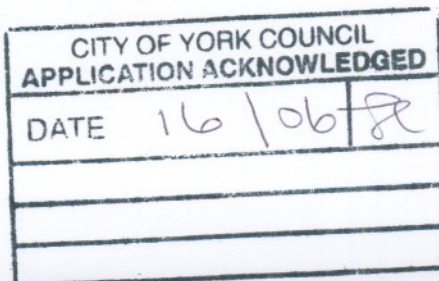


Richard Haswell
Head of Licensing & Safety

our ref CAB/25828.9
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ddi 020 7427 1326
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Lesley Cooke
The Licensing Team
York City Council
9 St Leonards Place
York
YO1 7ET



11 June 2008

Dear Sirs

Stonebow Snooker Club, York

We are instructed by "Fibbers" of Stonebow House, The Stonebow, York to make representations in respect of the most recent application for variation of Premises Licence which has been made in respect of these premises.

Our clients are concerned in respect of the following matters.

1. The public safety licensing objective. The application's premises share a fire escape with our client's premises. No specific indication is given in the application as to how the evacuation of the premises will be managed if our client's premises were to be closed and the shared exit were to be unavailable.
2. In relation to the public safety objective no detail is given as to how queues outside the premises will be managed. No details are given as to the dispersal of patrons and what efforts will be made to ensure there is no clash with patrons exiting our client's premises. The applicant makes a mere assertion in his operating schedule that "customers leaving our premises will not interfere with them in any way". How is this assertion supported and justified? How will the applicant know that patrons of our premises are not leaving at the same time as patrons of his premises?
3. The applicant seeks to have all embedded restrictions on the current Licence removed. He gives no indication as to whether membership of his premises will be required and how membership will be regulated.
4. In relation to the protection of children from harm, it is indicated on the application form that "all under 18s must vacate the premises when live music finishes". How will the applicant ensure that all under 18s have vacated the premises at that time, leaving only over 18s? Will they be made to occupy a separate part of the premises so that they can easily be identified? If they are mingling with over 18s during the performance of live music, how will the applicant's door staff be able to separate under 18s from over 18s to ensure compliance with this proposal?

Yours faithfully

BERWIN LEIGHTON PAISNER LLP

gml\6799764.2

Extn: 1515
Ask for: Richard Haswell
Our ref: RHH/LJC/250608/barfly
e-mail: dick.haswell@york.gov.uk

25 June 2008

Ms K McShannon
Barfly Holdings
MAMA Group Plc
59-65 Worship Street
London

Dear Ms McShannon

Licensing Act 2003
Application for Variation to Premise Licence
Stonebow Snooker Club, 7 Stonebow House, York

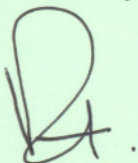
I refer to your letter of representation dated 17 June 2008, relating to this application.

I note the concerns expressed in your letter. I can confirm with regard to planning issues the councils planning department will take appropriate action separate from the licensing process.

Section 18(6)(a) of the Licensing Act 2003 makes it clear that for representations to be relevant they must be about the likely effect of the grant of the premises licence on the promotion of the licensing objectives.

Under the delegation scheme set out in our policy I have consulted with the Assistant Director for Neighbourhoods and Community Safety, and have concluded that your representation cannot be considered relevant as it fails to address the effect of the grant of the licence on the promotion of the licensing objectives as outlined above, and concentrates in the main on planning issues.

Yours sincerely

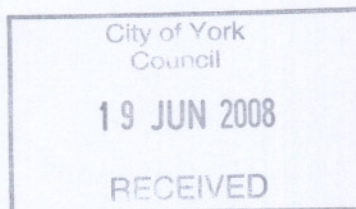


Richard Haswell
Head of Licensing & Safety



Holdings

Lesley Cooke
Senior Licensing Officer
Licensing Services
City of York Council
9 St Leonard's Place
York
YO1 7ET



By email and first class post

17 June 2008

Dear Ms Cooke,

Application for variation to Premises Licence - Stonebow Snooker Club, 7 Stonebow House

Further to my letter of 27 May 2008, I have been requested by Fibbers (York) Limited, the owner of Fibbers, the café bar and live music venue located at Stonebow, York ("Fibbers") to make representations in respect of the re-submitted application for variation to the Premises Licence (the "Licence Application") of Stonebow Snooker Club, 7 Stonebow House, York (the "Snooker Club").

These representations are made in addition to any representations which may be made by Messrs Berwin Leighton Paisner LLP on Fibbers' behalf in respect of the Licence Application. They are made from a planning law perspective as it appears to Fibbers that those persons who have submitted the Licence Application (the "Applicants") are seeking to obviate the requirements of applicable planning legislation by attempting to vary the terms of the Premises Licence without making any concomitant application for planning permission in accordance with the relevant planning legislation.

Fibbers are concerned in respect of the following matters:-

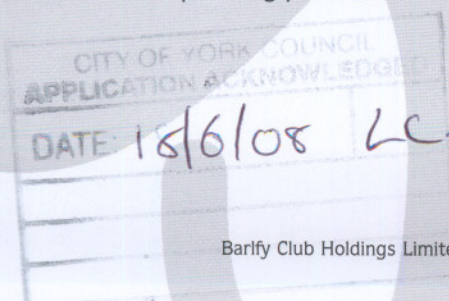
1. Material change of use

The current permitted use of the Snooker Club pursuant to the Town and Country Planning (Use Classes) Order 1987 (as amended) (the "1987 Order") is non-residential use as a snooker hall within class D2 of the 1987 Order. It is noted that pursuant to the Licence Application, the Applicants have applied for a licence to provide "a core business of live music and dancing and late night refreshment for the general public" to serve alcohol until 2.30 a.m., to serve food until 3 a.m. and to close at 3.30 a.m., seven days a week. It is clear from s2(1) of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 that use as a nightclub is a *sui generis* use which does not fall within any of the use classes in the Schedule of the 1987 Order.

Therefore, it is contended that this change of use would constitute a "development" for the purposes of s55(1) Town and Country Planning Act 1990 (as amended) (the "Act") as it amounts to a "material change in the use of" the Snooker Club.

We have discussed this matter with the planning department of York Council and they are not aware of any planning permission applications for change of permitted use, or otherwise, having been submitted by the Applicants in respect of the Snooker Club. Therefore, it would appear that in direct contravention of the Act the Applicants have failed to seek planning permission to use the premises as a live music and dancing and late

part of
MAMA
Group Plc



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Barfly Club Holdings Limited Registered in England Number 5827632. VAT Registration Number GB 728 6408 14

night refreshment venue and are seeking to circumvent the requirements of the application planning legislation by applying to vary the premises licence.

This failure to submit a planning application together with the Application would also appear to be in direct contravention of section 3.1 of York Council's "Statement of Licensing Policy 2008 (the "Council Policy") which states *"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"*. It does not appear from the Application that any such special circumstances have been delineated. hearing.

The Application would also appear to ignore the guidance set out in Appendix C paragraph 1 of the Council Policy which states that *"The granting by the Licensing Committee of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission..."*

We would respectfully request that the Licensing Committee adheres to section 13.2 of the Council Policy and ensures that it consults with its planning department colleagues to ensure that the Applicants adhere to the planning legislation and the Council Policy.

2. Increased capacity

As you will be aware, the Snooker Club currently trades on a member-only basis with a non-fixed capacity based on the number of snooker tables in operation. Fibbers estimate that the number of customers within the Snooker Club at any one time would be a maximum of approximately 20 to 30 people depending on the number of snooker tables in operation.

Pursuant to the Licence Application the Applicants are seeking to change the use of the Snooker Club to a nightclub, which is being advertised with a capacity of at least 500 people, thereby increasing the current trading capacity by over 1000%.

As your planning colleagues will confirm there is a substantial residential development currently being undertaken immediately adjacent to the Snooker Club by CBM Construction Group. It is highly probable that the incoming residents of this development will be directly affected by the noise emanating from a 500-capacity venue on their doorstep and by the nuisance caused by the number of patrons at such a sizeable venue.

Since planning permission has not been sought for the proposed change of use of the Snooker Club the developers of this residential building have not had an opportunity to raise any objections to the same. However, we have no doubt that they would raise such an objection to the opening of a 500-capacity nightclub on the doorstep of their residential investment.

It would appear that the Applicants have failed to take into account the criteria stipulated in section 4 of the Council Policy which states that *"The Licensing Authority will normally expect the operating schedule to have regard to the nature of the area where the premises are situated... and the needs of the local community in addressing the four licensing objectives."*

However, there does not appear to have been any regard on the part of the Applicants to the needs of the local community and, in particular, the fact that a substantial residential development is being constructed on the doorstep of the Snooker Club. There appears to have been no regard for section 4.2 of the Council Policy and our concerns in this respect are as follows:-

- a) The local community is already well-served with local bars and restaurants, including Fibbers. The opening of a further late-night venue in the area will lead to additional noise levels and is likely to lead to additional nuisance problems for local residents and businesses;

- b) It is stated in the Health and Safety Policy Document appended to the Application that Fibbers is located one hundred yards away from the Snooker Club. This is incorrect. In fact, the two venues share an artist access passageway and it is possible that the proposed operation of the Snooker Club would prevent Fibbers from trading. In the event that both venues were featuring live music artists on the same night it would be almost impossible to load in/out the equipment of the artists at both venues using only one accessway;
- c) There appears to have been no assessment whatsoever of the environmental impact of 500 people vacating the locality at between 2 and 3.30 p.m every day of the week. Firstly, there is only one taxi rank in the area, which does not have the capacity to service the numbers of customers of Fibbers and other local venues together with 500 additional customers of the Snooker Club. Fibbers, located in extremely close proximity to the Snooker Club, trades until 2 a.m. and despite the best efforts of the Fibbers staff and security the prospect of a clash between customers at the two venues cannot be underestimated, nor can the prospect of damage to local property as a result of the efflux of such numbers of persons in the early hours of the morning. If the Snooker Club is permitted to continue to sell alcohol until 2.30 a.m. there is also the extreme likelihood that its customers will be intoxicated when departing the premises which will only serve to exacerbate any problems.

It is our contention that the past operation of the Snooker Club is irrelevant in determining the public nuisance which is likely to be caused if the Application is granted as the proposed use of the premises differs entirely from the current use.

3. Fire exit development

The plans submitted with the Licence Application indicate that the Applicants intend to create a new fire exit at the Snooker Club.

This would also appear to constitute a "development" for the purposes of the Act and yet no application has been made for planning permission in this regard in contravention of the Act. The Snooker Club currently shares a fire escape with Fibbers and it is unclear from the Licence Application as to the effect that the new proposed fire exit would have on the Fibbers' fire exit.

4. Conclusion

For the reasons set out above, the directors of Fibbers (York) Limited are extremely concerned that the development of a new nightclub in the locality has the potential to be inordinately detrimental to their business and that of other local traders. The development of a new nightclub in Stonebow will have a fundamental impact on the nature of the area from a planning perspective and it gravely concerns Fibbers that neither local residents nor local businesses have been consulted in respect of this potentially pernicious development.

I understand that the City of York Council Licensing Department often consult with Mr Gareth Arnold of the City of York Council Planning Department in order to obtain a planning perspective prior to making decisions in respect of licence applications. Given the nature of this application and the fact that the Applicants appear to be attempting to circumvent the relevant planning legislation and the Council Policy it would be greatly appreciated if the Licensing Committee would consult with Mr Arnold as a matter of urgency in order to obtain input from the planning department in connection with this Application.

A copy of this letter has been sent to Mr Arnold and I would implore you to take into account the views and representations set out in this letter together with those of Mr Arnold in reaching any decision relating to the Licence Application.

Yours sincerely

A handwritten signature in purple ink, appearing to be 'K. McShannon', with a long horizontal flourish extending to the right.

Kirsty McShannon
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