

## **Licensing Hearing**

**To:** Councillors Alexander, Crisp and McIlveen  
**Date:** Thursday, 21 August 2014  
**Time:** 10.00 am  
**Venue:** The John Carr Room - 3rd Floor, West Offices (T021)

### **A G E N D A**

#### **1. Chair**

To elect a Member to act as Chair of the meeting.

#### **2. Introductions**

#### **3. Declarations of Interest**

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

#### **4. Minutes**

To approve and sign the minutes of Licensing Hearing held on 19<sup>th</sup> May 2014.

#### **5. The Determination of an Application by Mrs A D Kose for a Premises Licence Section 18(3)(a) in respect of Ali G's Pizza House, 11A Tower Street, York, YO1 9SA. (CYC- 023674)**

Democracy Officer:

Name: Laura Bootland

Contact Details:

- Telephone – (01904) 552062
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For more information about any of the following, please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats.

Contact details are set out above.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

**Distribution:**

Members of Licensing Act 2003 Sub-Committee

Licensing Officer

Legal Services

Applicant

Representors

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## **LICENSING ACT 2003 SUB – COMMITTEES PROCEDURE FOR HEARINGS**

### **Introduction**

The procedure outlined below will be followed at all Licensing Hearings.

As Licensing Hearings are quasi-judicial the Sub-Committee will, in effect, act like a Court and the rules of natural justice will apply. The Sub-Committee will be guided by legal principles in determining whether evidence is both relevant and fairly admitted. Committee Members have a duty to view all evidence presented before them impartially. Members of the Licensing Sub-Committee have all received relevant training and are used to making decisions of this type. No matter how strong local opinion may be, Committee Members can only make decisions based on relevant licensing issues as set out before the Sub-Committee in determining applications.

The hearing will be in public session. However, the Sub-Committee may exclude the public from a hearing if it considers it in the public interest to do so. However, the decision will be made in private.

The purpose of the hearing is

- To enable those with a right to appear to advance their point of view and to test the case of their opponents
- To assist the Sub-Committee to gather evidence and understand the relevant issues

**In view of the requirement to hold hearings within specified times, the Licensing Authority will generally be unable to enter into discussions to identify dates convenient to all parties concerned.** In exceptional circumstances, the Licensing Authority will consider applications to adjourn hearings to a later date.

### **Representations at Licensing Hearings**

The Applicant, Ward Councillors, and Representors who have made written submissions will be allowed to speak at the Sub-Committee. At

any hearing of an application, the Applicant and any Representors shall attend in person wherever possible. Any party to a hearing may be assisted or represented by any person, legally or otherwise.

All parties will be given a fair hearing and each party will have the same amount of time in which to address the Sub-Committee. A time limit has been set because of the pressures on the Sub-Committees to hear so many applications in a short period of time. **Each party will have 15 minutes to address the Sub-Committee, give any further information, and call any witnesses.** If any party considers this time to be insufficient then a request in writing may be made to the Democracy Officer for an extension of time at least 2 working days before the hearing. However, this will not be automatically granted and will be at the discretion of the Sub-Committee.

The Sub-Committee may take into account any documentary evidence or other information in support of the application, representations or notice, either before the hearing or, with the consent of all other parties, at the hearing.

If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written objection and hear and consider any evidence and argument in relation to it put forward by the Applicant. In considering written evidence in the absence of a Representor, appropriate weight will be attached, given that the person cannot be questioned by the Applicant and Members.

**The Sub-Committee is required to disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations, or notice, and the promotion of the licensing objectives.** Duplication should be avoided. Comments must be confined to those points already made, although the parties may extend or expand on their written submissions. The Sub-Committee will have read and familiarised themselves with all the written submissions and the issues prior to the hearing, and therefore do not require the points to be repeated or made at length. The Applicant and Representors cannot raise substantial new information at a hearing which has not been seen previously by the other parties.

A Representor **may not** introduce any new ground or objection not referred to in the written submission. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

Any person behaving in a disruptive manner will be asked to leave the hearing. If this does occur, that person may, before the end of the hearing, submit in writing any information which they would have been entitled to give orally.

### **Procedure prior to the Hearing**

The Members sitting on the Sub-Committee will meet prior to the hearing to note the matters that are to be presented. They will only be accompanied by the Democracy Officer and Legal Advisor (*if present*). Attention will only be drawn to the nature of the application and the premises or person to which it relates. The actual application will not be discussed.

At any hearing of an application, the Licensing Officer, the Applicant and any Representors or representatives will report to reception and be asked to wait in reception until the democracy officer calls them through to the committee room.

### **Procedure at the Hearing**

1. Members of the Sub-Committee will appoint a chair.
2. The Chair introduces the Committee Members and officers [*Democracy Officer, Legal Advisor to the committee (if present) and the Licensing Officer*], welcomes the Applicant and Representors (or their representatives), and establishes the identity of all who will be taking part.
3. The Chair will explain to the parties the procedure that will be followed at the hearing.
4. The Chair will proceed with the order of business on the agenda.
5. When the agenda item relating to the application is reached, the Chair will invite the Licensing Officer to present the application.
6. The Licensing Officer outlines the application, confirms the application details, introduces the report and gives an update on any recent changes.

7. The Chair will invite Committee Members, the Applicant and Representors (or representatives) to ask the Licensing Officer questions to clarify any points raised in the report.
8. The Chair will ask the Applicant (or their representative) to present their case.
9. The Applicant (or their representative) will present their case and may call any witnesses to support their case [*maximum 15 minutes*].
10. The Chair will invite the Representors (or their representative) in the following order to ask questions of the Applicant (or their representative) and/or witnesses [*maximum 5 minutes each party*]
  - (i) Police
  - (ii) Other Responsible Authorities
  - (iii) Ward Councillors
  - (iv) Interested Parties
11. The Chair will invite the Committee Members to ask questions of the Applicant (or their representative) and/or witnesses.
12. The Chair will invite the Representors (or their representative) in the following order to state the nature of their interest in the matter, present their case and call any witnesses to support their case [*maximum 15 minutes each party*]
  - (i) Police
  - (ii) Other Responsible Authorities
  - (iii) Ward Councillors
  - (iv) Interested Parties
13. The Chair will invite the Applicant to ask questions of each Representor (or their representative) and/or their witnesses after each presentation [*maximum 5 minutes per Representor*].
14. The Chair will invite the Committee Members to ask questions of each Representor (or their representative) and/or their witnesses after each presentation.

15. The Chair will invite the Representors (or their representative) in the following order to summarise their case *[maximum 5 minutes each party]*
  - (i) Police
  - (ii) Other Responsible Authorities
  - (iii) Ward Councillors
  - (iv) Interested Parties
16. The Chair will invite the Applicant (or their representative) to summarise their case *[maximum 5 minutes]*.
17. The Chair will provide the Sub-Committee with a final opportunity to seek clarification from any of the parties on any points raised, or seek advice from the Licensing Officer on policy, or from the Legal Advisor *(if present)* on law and jurisdiction.
18. When all the evidence has been heard, the Chair will declare the hearing closed and ask the Licensing Officer, the Applicant and Representors (or their representatives) plus any witnesses present to leave the committee room and wait in reception while the Sub-Committee considers the evidence.

### **Procedure after the Hearing**

19. If the Sub-Committee wish to seek further clarification on the evidence given, the Democracy Officer will invite all parties back into the committee room.
20. If possible, and for all hearings under:-
  - section 35 or 39 which is in respect of an application made at the same time as an application for conversion of an existing licence under paragraph 2 of Schedule 8 (determination of application under section 34 or 37)
  - section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under section 85)
  - section 105(2)(a) (counter notice following police objection to temporary event notice)
  - section 167(5)(a) (review of premises licence following closure order)

- paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence)
- paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate)
- paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence)

the Sub-Committee will make a decision on conclusion of the hearing and only the Democracy Officer and the Legal Advisor to the Sub-Committee (*if present*) will remain in the room with the Committee Members. These officers will not comment on the merits of the application, but will be present to provide advice on legal and procedural points and to record the decision.

21. If the decision has been made, all the parties will be invited back into the committee room by the Democracy Officer. The Chair will announce the decision including reasons together with, if appropriate, details of any conditions to be attached to the grant of the licence. This decision will then be communicated in writing to the Applicant and Representors within 3 working days of the hearing. There can be no further questions or statements.
22. For all other hearings not listed above, if the Sub-Committee is unable to make a decision on the day of the hearing, the decision will be made within 5 working days beginning with the day or the last day on which the hearing was held. The Democracy Officer will inform the parties that they are no longer required and the decision will be communicated in writing to the Applicant and Representors within 3 working days of the decision being made.
23. The notification will include information about the rights of appeal against the determination made.



City of York Council

Committee Minutes

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Meeting Licensing Hearing

Date 19 May 2014

Present Councillors Boyce, Cuthbertson and McIlveen

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**95. Chair**

Resolved: That Councillor Boyce be elected as Chair of the meeting.

**96. Introductions****97. Declarations of Interest**

At this point in the meeting, Members were asked to declare any personal, prejudicial or pecuniary interests they may have in the business on the agenda. None were declared.

**98. The Determination of an Application for the Review of a Premises Licence by PC 952 Mick Wilkinson Section 52(2) in respect of Indian Ocean Tandoori Restaurant, 37 The Green, Acomb, York, YO26 5LL. (CYC-009204)**

Members considered an application for the review of 3 premises licences by PC Mick Wilkinson in respect of Indian Ocean Tandoori, 37 The Green, Acomb, York, The Kings Ransom, 12A King Street York and The Jaipur Spice, 103 Haxby Road, York.

In coming to their decision, the sub-committee took into consideration all of the evidence and submissions that were presented to them and determined their relevance to the licensing objectives. The following were taken into account:

1. The review application form.
2. The Licensing Officer's report and her comments made at the hearing. She advised that PC Mick Wilkinson, North Yorkshire Police was the review applicant for all 3

premises. Consultation had been carried out correctly. She also advised that there was a typing error at page 41, paragraph 15 of the Report regarding Kings Ranson, which should read “ The premises fall within the cumulative impact area”.

3. The representations by the Review Applicant's Solicitor and his witnesses at the hearing. The representation by the Review Applicant's Solicitor and his witnesses at the hearing. It was accepted by the Applicant that a criminal prosecution was not being pursued by the Secretary of State in relation to the 3 investigations, and no criminal proceedings had been brought against Mr Zaman in relation to the employment of illegal workers pursuant to S.21 of the Immigration, Asylum and Nationality Act 2006 in the past. Any such breaches had been dealt with under civil proceedings by way of a financial penalty (s15 of the 2006 Act). Notwithstanding this, the Sub-Committee was asked to consider S.182 Guidance at paragraph 11.27, which advises “...*that certain criminal activity ... should be treated particularly seriously ... These are the use of the licensed premises ... for knowingly employing a person who is unlawfully in the UK who cannot lawfully be employed as a result of a condition on that person's leave to enter;*” Paragraph 11.28 states that “ *the police .. will use the review procedures effectively to deter such activities and crime ... where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence, even in the first instance, should be seriously considered.*” It was submitted that the licensing authority could make a finding on the facts that Mr Zaman had knowingly employed people and that criminal activity is taking place on the premises, based on the evidence put forward at the hearing, and that this is affecting the licensing objective of prevention of crime and disorder. It was submitted that as Licence Holder for all premises and as Designated Premises Supervisor of two of the premises, Mr. Zaman should be aware of what is required of him, in terms of checking that employees are legally entitled to work. A representative of the Border Agency spoke to confirm details of the visits to the premises which

took place in February 2014 and provided details of the services available for employers to carry out checks on potential employees, including a helpline, website, and an option to become a licensed “Trusted Employer” with the Home Office. She stated that in other similar situations locally, employers had responded by taking this advice to ensure thorough checks in the future. The police commander for York was also in attendance and spoke in support of the review applications. He submitted that the wider impact of this type of criminal activity should be noted, in terms of the impact on business, employment opportunities for locals, the lack of protection for the illegal workers, lack of access to the NHS, and food safety training, which impacts on the community. It was submitted that despite no criminal proceedings, the sub-committee could find that criminal activity was taking place; evidence suggests that Mr Zaman turned a blind eye. He could have made a call for advice about paperwork. The Sub-Committee was invited to revoke all 3 premises licences on this basis. In respect of the written legal submissions made by Mr Zaman’s solicitor, it was submitted with reference to his paragraph 22, that it was not the case that the decision to proceed by way of civil penalty led to a finding that no criminal activity was taking place. The decision to dispose of the matter by way of civil penalty was a policy decision.

4. The representations made on behalf of the Premises Licence Holder, Mr Zaman, by his Solicitor. A written legal submission had been provided to the Sub Committee prior to the hearing. It was submitted that the police review was ill-founded in that there was no evidence that criminal activity of the nature described in paragraph 11.27 of the S182 guidance was taking place. It was submitted that as the civil penalty under S15 of the 2006 Act has no criminal ramifications whatsoever, was issued against Mr Zaman without even investigating, and the fact that he was not even interviewed, meant that there was no evidence on which the Sub-Committee could draw an inference that his client had knowingly employed illegal workers. In any event, the S15 penalty notice in 2013 was withdrawn, as it had been issued against a Mr Choudhary by the Home Office in error, and was never re-issued against Mr Zaman. The Jaipur Spice S15 penalty notice in 2013 was

cancelled by Court Order, as the Home Office were satisfied that Mr Zaman had made sufficient checks ( the visa had been tampered with to show a different end date. The Home Office do not expect employers to be experts in respect of forged documentation). Three further penalty notices were issued in February 2014, and Mr Zaman has instructed his solicitor that these be appealed, on the basis that he has made the relevant checks. His solicitor envisages that these will be withdrawn by the Home Office shortly. The Sub Committee was invited to take no action.

In coming to their decision, the Sub-Committee considered the following options:

- Option 1    Modify the conditions of the licence (i.e. to alter, omit or add any new condition).
- Option 2    Exclude a licensable activity from the scope of the licence.
- Option 3    Remove the designated premises supervisor.
- Option 4    Suspend the licence for a period not exceeding 3 months
- Option 5    Revoke the licence.

Members decided to remove designated premises supervisor for all 3 premises in order to uphold the licensing objective of the prevention of crime and disorder under the Licensing Act 2003 (Option 3).

The removal of the designated premises supervisors comes into effect when the time period for making appeals against the decisions has expired or when any appeals have been disposed of.

#### Reason for the Decisions

The Sub-Committee considered that there was insufficient evidence to show Mr. Zaman knowingly employed people not entitled to work in the United Kingdom and as such, Section 182 guidance, paragraph 11.27 relating to serious criminal activity

was not engaged. Consequently, revocation was not considered to be warranted in these cases, having regard to the evidence available.

However, having regard to the S182 guidance as a whole, and the licensing objective of the prevention of crime and disorder, the Sub-Committee had concerns that from the evidence of the Border Agency, in particular, a number of individuals found at the restaurants are now awaiting deportation, and people not entitled to work in the United Kingdom were present at all three premises on more than one occasion, so that it appears that this was an established practice.

It is a concern of the Licensing Authority that there was evidence that the Designated Premises Supervisors were not being as thorough as they could be in ensuring adequate due diligence checks were being made regarding the entitlement of employees to work in the United Kingdom. Advice and assistance is available from the Home Office, and this has not been sought by Mr Zaman. Whilst there was no evidence before the Sub-Committee of the serious criminal activity stated at paragraph 11.27 of the s.182 guidance, there was sufficient evidence of an established practice that people not entitled to work in the UK were working at the restaurants. Failure to take more diligent steps to manage employment of workers to ensure they were entitled to work in the UK was held to be a failure to promote the Licensing Objective of prevention of crime and disorder. The decision was therefore taken to remove all 3 designated premises supervisors.

A 'Yellow card Warning' was also issued to be displayed in all 3 premises 12 months and this will become a condition of the licence.

The Sub-Committee highly recommended that Mr Zaman applies to become a trusted employer of the Border Agency and makes full use of the advice and assistance they can give him. He was also reminded that licences are always open to further reviews if any applications are made from any responsible authorities.

Resolved: That the Sub-Committee determined the application for a review of the 3 premises licences and chose option 3.

Reason: To address the issues raised by the review applicant.

**99. The Determination of an Application for the Review of a Premises Licence by PC 952 Mick Wilkinson Section 52(2) in respect of The Kings Ransom Restaurant (also known as Jaipur Spice), 12A King Street, York, YO1 9SP (CYC-009200)**

Due to all 3 review applications being by the same review applicant and the premises being operated by the same individual, and the issues being the same across all 3 premises, the decision was taken to consider all 3 applications combined. Please see minute item 98.

**100. The Determination of an Application for the Review of a Premises Licence by PC 952 Mick Wilkinson Section 52(2) in respect of The Jaipur Spice, 103 Haxby Road, York, YO31 8JP (CYC-009208)**

Due to all 3 review applications being by the same review applicant and the premises being operated by the same individual, and the issues being the same across all 3 premises, the decision was taken to consider all 3 applications combined. Please see minute item 98.

Councillor Boyce, Chair

[The meeting started at 10.00 am and finished at 12.30 pm].



## Licensing Act 2003 Sub Committee

21 August 2014

Report from the Assistant Director – Housing & Community Safety

### **Section 18(3) (a) Application for a premise licence for Ali G's Pizza House, 11a Tower Street, York YO1 9SA.**

#### **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-023674
3. Name of applicant: Mrs A.D. Kose.
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The proposal is to allow for the provision of the following activities:

Proposed Activity	Timings
Late Night Refreshment	Mon – Sat 23:00 – 03:30 Sun 23:00 – 24:00
Sale of alcohol- off sales only	Mon – Sat 16:00 – 03:30 Sun 16:00 – 24:00
Opening times	Mon – Sat 16:00 – 03:30 Sun 16:00 – 24:00

## **Background**

6. A copy of the application is attached at Annex 1.
7. A premises licence, CYC 010581 is already in force for this business but only covers for the provision of late night refreshment. It is proposed that this will be surrendered should a new licence be granted. A copy of this 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. Prevention of Crime and Disorder
  - a) Sales of alcohol will be over the counter and via a delivery service but only with food orders. There will be no sales of alcohol alone. All delivery drivers will be 18 years of age or older.
  - b) Sales will be over the counter and via a delivery service but only with food orders and not the sale of alcohol alone. All delivery drivers will be 18 years of age or older.
10. Public Safety
  - a) Experienced staff, supervisor and CCTV system.
11. Prevention of Public Nuisance
  - a) The CCTV system will be enhanced and supported with a working record kept for 7 days and a refusals book kept on the premises for inspection by officers.
12. Protection of Children From Harm
  - a) ID signage will be prominently displayed and staff will be trained only to serve or deliver alcohol following the presentation of a passport, photo ID, or driving licence.
  - b) If in any doubt delivery drivers will only leave food and not alcohol.
  - c) There will be no deliveries of alcohol only.
  - d) All delivery drivers will be over the age of 18.



### **Special Policy Consideration**

13. This premise is located within the special policy area approved by full council on 27 March 2014. A copy of the policy is attached at Annex 3.

### **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. North Yorkshire Police have mediated with the applicant who has agreed to a number of conditions being added to the licence if granted. These conditions are show at Annex 4

### **Summary of Representations made by Parties other than Responsible Authorities**

17. One relevant representation has been received and a copy of this is attached at Annex 5.
18. A map showing the general area around the venue is attached at Annex 6.

### **Planning Issues**

19. The council's development Management team have been in contact with the applicant regarding the required planning permissions and will deal with any issues within their remit.

### **Options**

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

### **Analysis**

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

### **Council Plan**

30. 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.
31. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

## **Implications**

32.

- **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**

33. 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.
34. 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**

35. Members determine the application.

Reason: To address the representations received as required by the Licensing Act 2003.

**Contact Details**

**Author:**

Lesley Cooke  
Licensing Manager

Tel No. 01904 551515

**Chief Officer Responsible for the report:**

Steve Waddington  
Assistant Director  
Housing & Community Safety.

**Report  
Approved**



**Date** 06/08/2014

**Specialist Implications Officer(s)**

Head of Legal & Democratic 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** - Operating Schedule.
- Annex 3** - Special Policy.
- Annex 4** - Copy of proposed Police conditions.
- Annex 5** - Copy of representation.
- Annex 6** - Map showing location of venue.
- Annex 7** - Mandatory Conditions.
- Annex 8** - Legislation and Policy Considerations.