

## Licensing Hearing

**To:** Councillors Moore, Reid and Looker

**Date:** Thursday, 21 October 2010

**Time:** 10.00 am

**Venue:** The Guildhall

### AGENDA

#### 1. Chair

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

#### 2. Introductions

#### 3. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

#### 4. Minutes

To approve and sign the minutes of Licensing Hearing held on 23<sup>rd</sup> August 2010.

#### 5. The Determination of an Application by Lunchbox Theatrical Productions for a Premises Licence Section (18)(3)(a) in respect of York Designer Outlet Car Park, St. Nicholas Avenue, Fulford, York, YO19 4TA . (CYC-017400)

**If you require any further information, please contact Laura Bootland on Tel 01904 552062 or Fax 01904 551035 or email [laura.bootland@york.gov.uk](mailto:laura.bootland@york.gov.uk)**

**Distribution:**

Members of Licensing Act 2003 Sub-Committee

Licensing Officer

Legal Services

Applicant

Representors

Press, Libraries, Council Receptions



## **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.

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- Applicant
- Representors & the relevant Responsible Authorities

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City of York Council

Committee Minutes

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MEETING	LICENSING HEARING
DATE	23 AUGUST 2010
PRESENT	COUNCILLORS MERRETT, MOORE AND REID

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**84. CHAIR**

RESOLVED: That Councillor Merrett be elected as Chair of the meeting.

**85. INTRODUCTIONS****86. DECLARATIONS OF INTEREST**

At this point in the meeting Members were asked to declare any personal or prejudicial interests they might have had in the business on the agenda.

Councillor Merrett declared a personal non prejudicial interest as two representors were known to him.

Councillor Reid also declared a personal non prejudicial interest as two representors were known to her.

**87. MINUTES**

RESOLVED: That the minutes of the licensing hearing held on 10 May 2010 be approved and signed by the Chair as a correct record.

**88. THE DETERMINATION OF AN APPLICATION BY MR. KEMAL ALTIN FOR A PREMISES LICENCE SECTION 18(3)(A) IN RESPECT OF 38 HUBY COURT, WALMGATE, YORK. (CYC-017191)**

Members considered an application by Mr Kemal Altin for a premises licence, in respect of 38 Hubby Court, Walmgate, York.

In coming to their decision, the Sub Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to licensing objectives including;

1. The application form.

2. The Licensing Officer's report and his comments made at the Hearing, including the fact that the premises had been a convenience store for a number of years and was located in a residential area. As a result of the number of representations the applicant had withdrawn light night refreshment from the application.
3. Representations made by local community groups in writing and at the hearing. The Sub-Committee considered the written representations to be relevant to the issues raised and licensing objectives as concerns were raised regarding the potential for late night disturbance and public nuisance in the area, should the licence be granted for the period of time applied for.
4. Representations made by local residents in writing.
5. Representations made by the Ward Councillor in writing and at the hearing. He advised that he felt that the licence should not be granted as sufficient outlets existed in the area already to purchase alcohol. He raised concerns about the potential impact of another licensed premises in relation to residents of a hostel in the area, and urged the Sub-Committee to refuse the application.
6. Representations that had been made by North Yorkshire Police were withdrawn prior to the Hearing after the applicant agreed to a number of conditions be added to the licence.

Members were presented with the following options;

- |          |  |
|----------|--|
| Option 1 | Grant the licence in the terms applied for and including any applicable mandatory conditions as set out in ss19 of the Licensing Act 2003. |
| Option 2 | Grant the licence with modified/additional conditions.   |
| Option 3 | Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.      |
| Option 4 | Reject the application.  |

Members chose Option 3 and imposed the following conditions;

1. Late Night Refreshment was withdrawn by the applicant prior to the hearing, and as such is excluded from the licence.
2. The premises shall not operate beyond 23:00 hours.
3. Supply of alcohol shall take place between 10:00 am and 22:00 pm on each and every day.
4. CCTV will be installed to cover the premises and will include all areas(including outside areas) to where the public have access. It will be maintained, working and recording at all times when the

premises are open. The recordings should be of sufficient quality to be produced at Court or other such Hearing. Copies of the recordings will be kept available to any Responsible Authority for 14 days and will be made available to any Responsible Authority within 48 hours of a request.

5. The only acceptable proof of age identification shall be a current Passport, photocard Driving Licence or identification carrying the PASS logo(until other effective identification technology, e.g. thumb print or pupil recognition, is adopted by the Premises Licence Holder).
6. All Off-Sales shall be made in sealed containers.
7. Documented staff training will be given regarding the retail sale of alcohol and such records kept for at least one year.
8. 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 and will be kept for at least one year.
9. Staff will undertake a litter pick of the immediate area outside the premises upon the close of business.
10. Telephone contact details for the Designated Premises Supervisor shall be provided to residents in the vicinity of the premises i.e. those residents who made representations and the homes adjacent to them.
11. A notice shall be displayed to the public in the shop premises detailing telephone contact details for the Designated Premises Supervisor.
12. Noise levels from within the shop premises shall not emanate so as to cause a nuisance at nearby sound sensitive residential premises.

The Sub-Committee expressed concern that the applicant did not attend the hearing. The Sub-Committee noted that prior to the hearing, the Licensing Manager was unable to contact the applicant on the telephone numbers provided on the application form. When the Designated Premises Supervisor is not available e.g. because he is on holiday, alternative arrangements should be made for a Personal Licence holder to be available for Licensing Officers and Local Residents to contact if required.

RESOLVED: That in line with Option 3, the licence be granted.

REASON: To address the representations made.

Councillor Merrett, Chair

[The meeting started at 10.00 am and finished at 11.15 am].



## Licensing Act 2003 Sub Committee

21 October 2010

Report of the Director of Communities and Neighbourhoods

### Section 18(3)(a) Application for a premise licence for Designer Outlet Car Park, York Designer Outlet, St. Nicholas Avenue, Fulford, York

#### 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-017400
3. Name of applicant: Lunchbox Theatrical Productions.
4. Type of authorisation applied for: Grant of Premise Licence.
5. Summary of application: The nature of the application is to allow: -

Licensable Activity	Indoors / outdoors / both	Days	Hours	Non standard timings
Live Music	Outdoors	Saturday Sunday  And on weekdays between Christmas and New Year	12:00 – 18:00 12:00 – 18:00  12:00 – 18:00	To include opening night on Friday 12 November to finish by 21:00
Recorded Music	Both	Mon - Sun	09:00 – 22:00	
Supply of Alcohol	Both	Mon – Sun	12:00 – 21:30	
Opening Hours		Mon – Sun	09:00 – 22:00	Not open on Christmas Day

#### Background

6. A copy of the application is attached at Annex 1.

### **Promotion Of Licensing Objectives**

7. The operating schedule submitted by the applicant detailing how the licensing objectives would be met is attached at Annex 2.
8. Additional correspondence received from the applicants giving supporting information is attached at Annex 3.

### **Special Policy Consideration**

9. This premise is not located within the special policy area.

### **Consultation**

10. 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.
11. All procedural aspects of this application have been complied with.

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

12. North Yorkshire Police have met with the applicant to discuss the application. The applicant has agreed to the following conditions being attached to the licence if granted: -
  - (i) All off-sales shall be made in sealed containers.
13. A representation was received from City of York Council Environmental Protection Unit on the grounds of the prevention of a public nuisance. This was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted: -
  - (i) Documented patrols be carried out by members of staff or volunteers at no less than hourly intervals whilst live or amplified music is being played. These checks shall be undertaken on the public footpath outside the nearest residential premises on Naburn Lane to check for noise coming from the premises. These documents should be available on request for inspection by authorised officers of City of York council.
  - (ii) Direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises on request.
  - (iii) A documented procedure for investigating noise complaints received by Ice factor shall be submitted to and approved by the City Council within 2 months, and once approved implemented.
  - (iv) No music or amplified sound shall be audible on the public footpath outside the nearest residential premises on Naburn Lane.



- (v) The playing of recorded music shall be restricted to the hours 09:00 – 21:30 on any day.
- (vi) The playing of live music shall be restricted to the hours of 12:00 – 18:00 on any day other than the opening day on 12 November where the hours shall be restricted to 12:00 – 21:00.

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

- 14. Representations have been received from 3 interested parties who are listed at Annex 4. These representations are shown in Annex 5.
- 15. A map showing the general area around the venue from which the representations are focused is attached at Annex 6.
- 16. 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**

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

### **Options**

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

### **Analysis**

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

## Corporate Priorities

28. 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.
29. 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

30.
  - **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

- 31 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.
32. 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

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

**Contact Details**

**Author:**

John Lacy  
Licensing Manger

Andy Hudson  
Assistant Director  
Neighbourhood Services

Tel No. 01904 551593

**Report  
Approved**



**Date** 8<sup>th</sup> Oct 2010

**Specialist Implications Officer(s)**

Head of Legal & Democratic Legal Services  
Ext: 1004

**Wards Affected:** Fulford

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

**Background Papers:**

- Annex 1** - Application form
- Annex 2** Operating Schedule accompanying the application form.
- Annex 3** Additional correspondence from the applicant
- Annex 4** List of Interested Parties
- Annex 5** - Representations from Interested Parties
- Annex 6** - Map showing general area from which representations received
- Annex 7** - Mandatory Conditions
- Annex 8** - Legislation and Policy Considerations

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