

Licensing Hearing

To: Councillors Merrett, Looker and Wiseman
Date: Thursday, 29 April 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 Hearings held on 4 January 2010 and 25 January 2010.

5. The Determination of an Application by Mr. A Caglar for a Premises Licence Section 18(3)a in respect of Pizza Time, 193 Burton Stone Lane, York, YO30 6DG. (CYC- 016859)

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

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Members of Licensing Act 2003 Sub-Committee
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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.

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- Applicant
- Representors & the relevant Responsible Authorities

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City of York Council

Committee Minutes

MEETING	LICENSING/GAMBLING HEARING
DATE	4 JANUARY 2010
PRESENT	COUNCILLORS HORTON, MOORE AND WISEMAN

21. CHAIR

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

22. DECLARATIONS OF INTEREST

Members were invited to declare any personal or prejudicial interests they may have in the business on the agenda. None were declared.

23. MINUTES

RESOLVED: That the minutes of the licensing hearing held on 5 October 2009 be confirmed as a correct record and signed by the Chair.

24. THE DETERMINATION OF AN APPLICATION FOR A PREMISES LICENCE SECTION 18 (3) (A) IN RESPECT OF UNIT 4, 62-68 LOW PETERGATE, YORK, YO1 7HZ. (CYC-016617)

Members considered an application for a premises licence in respect of Unit 4, 62-68 Low Petergate, York. Unit 4, 62-68 Low Petergate was identified as the ground floor premises between 66a Low Petergate and the alleyway access to Talbot Court.

In coming to their decision the sub-committee took into consideration all of the evidence and submissions that were presented and determined their relevance to the issues raised and the licensing objectives; the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. The following were considered:

1.The application form, in particular the existing licence conditions and the additional steps agreed to be taken by the applicant to promote the licensing objectives.

2.The Licensing Officer's report and his comments made at the hearing, including details of the mediation that had taken place between the applicant and residents, and the applicant and the Police. It was noted that the applicant had withdrawn the application for on sales. The Sub-

Committee's attention was also drawn to the fact that two of the representors resided above the premises and not as previously indicated. The Licensing Officer stated that he was satisfied that the applicant had complied with all statutory requirements in respect of the displaying of a notice on the premises. There were no representations from the Fire Service or the Environmental Protection Unit. The representations that had been made by North Yorkshire Police had been withdrawn when the applicant had agreed to conditions being attached to the licence if granted.

3. Representation from the applicant's licensing agent at the hearing including details of the nature of the business and the way in which the franchise operated, the mediation that had taken place with the Police and with local residents and the fact that it was not now intended to offer taster evenings at the premises and therefore the application was no longer for on sales. The requested finish time on Sundays was now 1800 hours. During December and January a later finishing time of 2200 hours on Thursday, Fridays and Saturdays was requested in the interests of customers. The training programme provided by the franchise was excellent and both the applicant and the shop supervisor held personal licences.

4. The representations made in writing and at the meeting by two local residents. These included corrections to the map that had previously been circulated and it being noted that the premises above the shop were residential. Concerns expressed regarding the hours of trading and the inconvenience to residents, including possible noise and people congregating in the area, were noted.

5. Written representations made during the consultation period.

Members were presented with the following options:

Option 1: Grant the licence in the terms applied for.

Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.

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.

In coming to their decision of approving the above Option 2 the Sub-Committee decided to impose the mandatory condition section 19 of the Licensing Act 2003.

The Sub-Committee then imposed the following additional conditions:

1. Hours premises are open to the public:

Monday to Saturday: 0800 to 2100 hrs
Sunday: 1000 to 1800 hrs

2. Supply of alcohol is for off-premises only and following timings apply:

Monday to Saturday: 0800 to 2100 hrs

Sunday: 1000 to 1800 hrs

3. For every Thursday, Friday and Saturday during December and January the supply of alcohol shall cease at 2200 hrs when the premises will close immediately.

4. Off sales shall be made in sealed containers.

5. There shall be no sale of beers, lagers, cider or alcopops.

6. CCTV will be installed to cover the premises and will include all areas to where the public have access. 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 police officers for 31 days.

7. Proof of age identification shall be a current passport, photocard driving licence, identification carrying the PASS logo, any lawful document evidencing identity.

8. A Refusals Register will be kept to record incidents of staff refusals to under-age or drunken people. The document will be made available upon reasonable request from any Responsible Authority.

9. The landline telephone number of the premises shall be forwarded to residents of Talbot Court to enable them to make contact if any problems arose.

- Representors were made aware that the licence could be reviewed if there was reason to do so.

RESOLVED: That, in line with Option 2 the licence be granted.

REASON: To address the representations made.

Councillor Horton, Chair

[The meeting started at 10.00 am and finished at 11.20 am].

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MEETING	LICENSING HEARING
DATE	25 JANUARY 2010
PRESENT	COUNCILLORS MERRETT, REID AND RUNCIMAN
APOLOGIES	COUNCILLORS

25. CHAIR

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

26. INTRODUCTIONS**27. DECLARATIONS OF INTEREST**

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

28. THE DETERMINATION OF AN APPLICATION BY MR. S AND MR. D BINNS TO VARY A PREMISES LICENCE SECTION 35 (3)(A) IN RESPECT OF THE LOWTHER, 8 CUMBERLAND STREET, YORK, YO1 9SW. CYC-009036

Members considered an application by Mr. S Binns and Mr. D Binns for the Variation of a Premises Licence in respect of The Lowther, 8 Cumberland Street, York.

In coming to their decision the sub-committee took into consideration all of the evidence and submissions that were presented and determined their relevance to the issues raised and the licensing objectives; the prevention of crime and disorder, the prevention of public nuisance.

1. The application form, in particular the existing licence conditions and the additional steps agreed to be taken by the applicant to promote the four licensing objectives. Section G (the performance of dance) and Section J (provision of facilities for dancing) were withdrawn from the application by the applicant at the beginning of the hearing.
2. The Licensing Officer's report and his comments made at the hearing, including the fact the premises is situated on the centre of York in an area with a lot of other establishments located nearby. Mr. Binns had met with the Police and agreed 16 further conditions to be added to the licence. Subsequently the Police had withdrawn their representation. The applicant had also mediated with the Council's Environmental Protection Unit.

3. The applicants representation at the hearing. He advised that he had applied for longer opening hours at the request of customers as they are wishing to arrive later and stay later, but there would be no intention to operate as a Club. He advised that he accepted the additional conditions as agreed with the Police and would accept further reasonable conditions.
4. The representations made by local residents, both in writing and at the hearing. A local resident attended the hearing and expressed his concern regarding the increasing duration of night time noise in the area.
5. Written representations made during the consultation period.

Members were presented with the following options:

- Option 1 Grant the licence in the terms applied for.
- 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 2 and added the following conditions:

- 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 a breakage the glass will fragment and no sharp edges are left.
- 4) Drinking glasses of any type shall not be allowed to leave or enter 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 drunk 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. Door Supervisors will assist in ensuring customers leave quietly.
 - 11) The premises shall participate 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".
 - 13) Noise originating from within the premises shall be inaudible at the nearest noise sensitive premises.
 - 14) Vibration from the premises shall not emanate so as to cause nuisance at nearest sensitive premises.
 - 15) The Manager will carry out nightly checks for the escape of noise or smells.
 - 16) The Manager shall supply an emergency contact number to all residents within the vicinity of the premises.
 - 17) All windows and doors shall be closed after 00.30am with the nearest windows to residents kept locked after 21:00.
 - 18) The speakers to the Jukebox in Zone1, shall be turned off at 23:00.
 - 19) There shall be no entry to the top floor after 1am and no admission to the premises shall be allowed after 2.30am.
- Mandatory condition 21 shall apply.

RESOLVED: That in line with Option 2 the licence be granted.

REASON: To address the representations made.

Councillor Merrett, Chair

[The meeting started at 10.00 am and finished at 11.40 am].

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Licensing Act 2003 Sub Committee**29 April 2009**

Report of the Director of Neighbourhood Services

**Section 18(3)(a) Application for a premise licence for Pizza Time,
193 Burton Stone Lane, York, YO30 6DG****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-016859
3. Name of applicant: Mr Ahmet Caglar.
4. Type of authorisation applied for: Grant of Premises Licence
5. Summary of application: The nature of the application is to allow for the provision of late night refreshment between 23:00 hours and 00:30 hours, seven days a week.

Background

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

Promotion Of Licensing Objectives

7. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
8. The prevention of crime and disorder: 1) CCTV in operation.
9. Public safety: as above.
10. The prevention of public nuisance: as above.
11. The protection of children from harm: 1) No children allowed on the premises without family accompaniment.

Special Policy Consideration

12. This premise is not located within the Special Policy area.

Consultation

13. 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.
14. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

15. City of York Council Environmental Protection Unit: Make representations on the grounds of prevention of public nuisance. A copy of the representation is attached at Annex 2
16. City of York Council Development Control: Make representations on the grounds of prevention of public nuisance. A copy of the representation is attached at Annex 2.
17. A representation was received from North Yorkshire Police on the grounds of crime and disorder and public nuisance which 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 and will include all 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 in Court or other such Hearing. Copies of the recordings will be kept available for any Responsible Authority for 14 days.
 2. 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.
 3. The venue shall not open or operate (other than by way of Temporary Event Notice) earlier or later than the times listed in Part 1 of the premises licence (i.e. the opening hours of the premises)
 4. Upon closing the premises at the conclusion of business, staff will undertake a general litter pick up and tidy of the general area of the premises.
 5. Unaccompanied children (i.e. persons under the age of 18 years) shall not be allowed on the premises unless accompanied by a person over the age of 18 years.

Summary of Representations made by Interested Parties

18. A representation was received from an interested party on the grounds of public nuisance. A copy of this representation is attached at Annex 3.
19. A map showing the general area around the venue from which the representation is focused is attached at Annex 4.
20. 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.
21. 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

22. Planning permission for change of use from a shop to a hot food takeaway was granted in September 2008 subject to a condition restricting the opening hours from 16:00 hours to 23:00 hours. Paragraph 16 above refers to a representation from Development Control.

Options

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

Analysis

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

31. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
32. Option 4: This decision could be appealed at Magistrates Court by the applicant.

Corporate Strategy

33. 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.
34. 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

35.
 - **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

36. 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.
37. 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

38. 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

Chief Officer Responsible for the report:

Andy Hudson
Assistant Director
Neighbourhood Services

Ext: 1593

Ext: 1814

Report Approved



Date 15 April 2010

Specialist Implications Officer(s)

Head of Legal & Democratic Legal Services

Ext: 1004

Wards Affected: Clifton

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of application form
- Annex 2** - Copy of representations from Responsible Authorities
- Annex 3** - Copy of representation from Interested Party
- Annex 4** - Map showing general area from which representation received.
- Annex 5** - Mandatory Conditions
- Annex 6** - Legislation and Policy Considerations.

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