

## Licensing Hearing

**To:** Councillors Ayre, Hyman and Wiseman (Vice-Chair)  
**Date:** Monday, 30 March 2009  
**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 19 January 2009 and 29 January 2009.

#### 5. The Determination of an Application by Burger King Ltd for a Premises Licence Section 18(3)(a) in respect of Burger King, Clifton Moor Retail Park, York. (CYC-014707)

**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	19 JANUARY 2009
PRESENT	COUNCILLORS ALEXANDER (CHAIR), AYRE AND WISEMAN (VICE-CHAIR)

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**49. CHAIR**

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

**50. DECLARATIONS OF INTEREST**

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

**51. MINUTES**

RESOLVED: That the minutes of the Licensing Hearing(s) held on 1 December 2008 and 15 December 2008 be approved as a correct record by the Chair.

**52. THE DETERMINATION OF AN APPLICATION BY MR. MALCOLM GOODWIN & MRS EILEEN GOODWIN TO VARY A PREMISES LICENCE SECTION 35 (3) (A) IN RESPECT OF PLONKERS WINE BAR, 5 CUMBERLAND STREET, YORK, YO1 9SW. (CYC-009024)**

Members considered an application by Mr. & Mrs Goodwin for the variation of a premises licence in respect of Plonkers Wine Bar, 5 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 objective; 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 licensing objectives.
2. The Licensing Officers report and his comments made at the hearing. He stated that a number of conditions were already attached to the Licence including stringent conditions relating to noise control. He advised that the police had withdrawn a

representation following successful mediation with the applicant, when the applicant agreed to twelve conditions being attached to the licence.

3. The applicants representation at the hearing, including the fact that the changes applied for are to allow the premises to be able to provide a full service to its customers without the need for temporary events notices, especially in relation to entertainment. Also to bring the opening times and supply of alcohol in line with the pavement café opening times.
4. The representations made by Mr. Crawshaw both in writing and at the hearing. The Sub-Committee considered the representation to be relevant as concerns were raised regarding anti-social behaviour.
5. Written representations made during the consultation period.

Members were presented with the following options:

- Option 1** Grant the variation of the licence in the terms applied for
- Option 2** Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
- Option 3** Grant the variation of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
- Option 4** Reject the application.

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

The Sub-Committee then imposed 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 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 5 days.
2. Standard one pint capacity and highball tumbler drinking glasses will be strengthened glass (tempered glassware) in a design whereby, in the event of breakage, the glass will fragment and no sharp edges are left.
3. The only acceptable proof of age identification shall be a current passport, photo-card driving licence or identification carrying the PASS logo.
4. Drinking glasses of any type shall not be allowed to enter or leave 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 (minimum one) shall be provided at the venue from 21:00 hrs until the venue has closed for business on Friday, Saturday, the evening preceding a bank holiday and on a day when a York race meeting is 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 underage 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.
11. The premises shall partake in the York Pubwatch Pager scheme
12. A capacity figure of 130 persons shall be imposed so as not to undermine the licensing objective "Prevention of Crime and Disorder".
13. Late night refreshment shall be served indoors only between the hours of 23:00 and 02:00.

Apart from the conditions which the applicant requested to be removed from the licence which are (i) the "Councils rules for the management of places of public entertainment, and (ii) conditions relating to limited opening times on Sundays, Good Friday and Christmas Day, all existing Licence Conditions are to be retained unless contradictory to any of the above conditions.

REASON: To address the representations made in respect of the prevention of public nuisance.

Councillor Alexander, Chair

[The meeting started at 10.00 am and finished at 10.35 am].

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MEETING	LICENSING HEARING
DATE	29 JANUARY 2009
PRESENT	COUNCILLORS ALEXANDER (CHAIR), FUNNELL AND REID
APOLOGIES	COUNCILLORS

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**53. CHAIR**

RESOLVED: That Councillor Alexander be elected as Chair.

**54. DECLARATIONS OF INTEREST**

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

**55. THE DETERMINATION OF AN APPLICATION BY MR. A CAGLAR FOR A PREMISES LICENCE SECTION 18(3)(A) IN RESPECT OF 8 HORIZON COURT, AUDAX CLOSE, CLIFTON MOOR, YORK, YO30 4US. CYC-01440.**

Members considered an application by Mr. Caglar for a premises licence in respect of 8 Horizon Court, Audax Close, York, YO30 4US.

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 public nuisance and the prevention of crime and disorder.

- 1) The application form, and the additional steps agreed to be taken by the applicant to promote the for licensing objectives.
- 2) The Licensing Officers report and his comments made at the Hearing. He clarified that the application is for the preparation, cooking and delivery of food between 23:00 and Midnight and that the application is not for an onsite service. A representation had been made by North Yorkshire Police but this had been mediated in light of the applicant agreeing to 2 additional conditions.
- 3) The applicants representation at the hearing including the fact that he has run the business successfully for 5 years from another premises and only wishes to leave that premises due to problems with the landlord. He stated

that the business attracts few onsite customers after 8pm and that the business is 98% delivery based.

- 4) Representations made by Clifton Without Parish Council and Councillor Moore on behalf of Clifton Business Association. Concerns were raised regarding the impact of such a business on an otherwise quiet 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 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.

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

The Sub-Committee then imposed 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 and shall cover all areas where the public have access including the outside entrance area. 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 5 days.
- 2) 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.
- 3) All sales made between 23:00 and Midnight shall be delivery only.
- 4) A notice shall be displayed reminding customers that between the hours of 23:00 and Midnight all sales shall be delivery only and onsite sales shall cease.

REASON: To address the representations made in respect of the prevention of public nuisance and the prevention of crime and disorder.

Councillor Alexander, Chair

[The meeting started at 10.25 am and finished at 11.00 am].

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**Agenda Item****Licensing Act 2003 Sub Committee****30 March 2009**

Report of the Director of Neighbourhood Services

**Section 18(3)(a) Application for a premise licence for Burger King, Clifton Moor Retail Park, Stirling Road, Clifton Moor, York YO30 4XZ****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-014707
3. Name of applicant: BurgerKing Ltd.
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 from Sunday to Thursday until midnight and on Friday and Saturday until 03:00 hours on the following morning.

**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. General: 1) The customer area is easily supervised by staff and has CCTV cameras.
9. The prevention of crime and disorder: 1) CCTV recording - 11 cameras record customer areas, drive thru windows and lane, rear fire exit, kitchen, stock area and manager's office. Images are in colour and clear enough to be used in evidence. 2) Panic buttons are installed at front counter and in the manager's office. 3) Emergency and neighbouring tenants numbers listed in manager's office with telephone. 4) Dining area to be locked at 23:00 hours and then drive-thru only until closing time.

10. Public safety: 1) All fire and safety equipment checked regularly by managers and as required by professional bodies. 2) Regular mopping of floors in sections, in addition to cleans following spillages, with approved chemical balance and using wet floor caution signs. 3) Staff are disability awareness trained. 4) Disabled facilities include wide entrance doors parking space and toilet. 5) Health and Safety and fire safety training is given to all staff on induction and every six months thereafter.
11. The prevention of public nuisance: 1) Deliveries are restricted to between 07:00 and 16:00 daily. 2) Litter patrols in area surrounding restaurant regularly until dark. 3) Groundsman on site between 06:00 hrs to 10:00 hrs Monday to Friday. 4) Restaurant rubbish is collected twice weekly
12. The protection of children from harm: 1) The premises does not serve alcohol nor permit customers of any age to consume or have open alcohol containers on the premises. 2) Toilet facilities are checked regularly for cleanliness and appropriate use.

### **Special Policy Consideration**

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

### **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. There were no representations received from Responsible Authorities.

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

17. A representation was received from an interested party on the grounds of public nuisance. A copy of this representation is attached at Annex 2.
18. A map showing the general area around the venue from which the representation is focused is attached at Annex 3.
19. An "interested party" is defined at s13(3) of the Act as being a person living in the vicinity of the premises, a body representing persons who live in that

vicinity, a person involved in a business in that vicinity, or a body representing persons involved in such businesses.

20. Members are reminded that representations are only “relevant” if they relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

### **Planning Issues**

21. There are no planning restrictions / conditions relevant to this premise.

### **Options**

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

### **Analysis**

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

### **Corporate Priorities**

32. The Licensing Act 2003 has 4 objectives the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.

33. The promotion of the licensing objectives will support the Council's priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

### **Implications**

34.

- **Financial** - N/A
- **Human Resources (HR)** – N/A
- **Equalities** – N/A
- **Legal** – This decision could be appealed at Magistrates Court by the applicant or any of the representors.
- **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
- **Information Technology (IT)** – N/A
- **Property** – N/A
- **Other** – none

### **Risk Management**

35. All Members of the Licensing Act 2003 Committee have received full training on the Act and the regulations governing hearings. They are aware that any decision made which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
36. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

### **Recommendations**

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

### **Contact Details**

**Author:**

**Chief Officer Responsible for the report:**

John Lacy  
Licensing Manager  
Licensing & Regulation

Andy Hudson  
Assistant Director  
Neighbourhood Services

Ext: 1593

Ext: 1814

Report Approved

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Date 12 March 2009

**Specialist Implications Officer(s)**

Quentin Baker  
Head of Legal & Democratic Legal Services

Ext: 1004

**Wards Affected: Rawcliffe/Skelton and Clifton Without**

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

**Background Papers:**

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

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