

Licensing Hearing

To: Councillors Ayre, Moore and Wiseman (Vice-Chair)
Date: Friday, 3 April 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 Hearing held on 2 February 2009.

5. The Determination of an Application by McDonald's Restaurants Ltd for a Variation of a Premises Licence Section 35(3)(a) in respect of McDonald's Restaurant, 14-16 Blake Street, York. (CYC-01023)

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

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

MEETING	LICENSING/GAMBLING HEARING
DATE	2 FEBRUARY 2009
PRESENT	COUNCILLORS HORTON, MOORE AND RUNCIMAN

56. CHAIR

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

57. DECLARATIONS OF INTEREST

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

58. THE DETERMINATION OF AN APPLICATION BY MR. C S ALTUN TO VARY A PREMISES LICENCE SECTION 35(3)(A) IN RESPECT OF HOT CHILLI PEPPER, 5 ACOMB ROAD, YORK, YO24 4EN (CYC - 010845)

Members considered an application by Mr. C S Altun to vary a Premises Licence Section 35(3)(a) in respect of Hot Chilli Pepper, 5 Acomb Road, York, YO24 4EN.

Introductions were carried out. The applicant confirmed that although English was not his first language he did not require additional support. The Chair stated that if, during the course of the meeting, difficulties arose in understanding what was said the Committee should be made aware of this.

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, public safety, the prevention of public nuisance and the protection of children from harm.

- 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 meeting.
- 3) The representation made at the hearing on behalf of Hot Chilli Pepper's, including the view that extending opening hours would enable the applicant to increase trade as otherwise the business may have to close.

- 4) Representations made in writing by the City of York Environmental Protection Unit on the grounds of the prevention of public nuisance licensing objective. The EPU Officer stated that there was the potential of noise from customers and vehicles disturbing nearby residents.
- 5) Written representations from residents of two properties in the vicinity of the premises made during the consultation period and the representation made at the hearing by one of the residents. The representation included concerns about noise, litter and vehicles parking inappropriately.

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 variation be granted with the following additional conditions:

- (i) The closing time for the premises shall be:
Sunday to Thursday – 00:00 (midnight)
Friday and Saturday – 01:00
- (ii) Conditions 2 and 3 of the existing licence shall be applicable to this variation:
 - The premise shall be closed and vacated of customers, in accordance with the opening hours, on each and every day (Condition 2).
 - Late night refreshment shall cease 10 minutes before end of opening hours, on each and every day (Condition 3).
- (iii) The Conditions as required by North Yorkshire Police shall apply as follows:
 1. CCTV shall 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 area. The recordings should be of sufficient quality to be produced at court or other such hearing. Copies of the

recordings will be kept available for any responsible authority for three 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.

All conditions offered by the applicant in the application, including the operating schedule for variation of the premises licence under the Licensing Act 2003, shall be included in the licence unless contradictory to the above conditions.

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

Councillor Moore, Chair

[The meeting started at 10.05 am and finished at 10.55 am].

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Agenda Item

Licensing Act 2003 Sub Committee

3 April 2009

Report of the Director of Neighbourhood Services

Section 35(3)(a) Application for the Variation of a premise licence for McDonald's restaurant, 14-16 Blake Street, York YO1 2QN**Summary**

1. This report seeks Members determination of an application for the variation of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-10238.
3. Name of applicant: McDonald's Restaurant Ltd.
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is to extend existing hours for provision of late night refreshment, Monday to Sunday until 05:00 hours and to remove the linked condition No.3 at Annex 1 relating to the current opening times. Also to remove condition No 1 at Annex 1 relating to legislation now repealed i.e. Late Night Refreshment Houses Act 1969
6. The existing hours for the provision of late night refreshment are Monday to Sunday until 03:00 hours.

Background

7. A copy of the existing premise licence is attached at Annex 1.
8. A copy of the application to vary the licence is attached at Annex 2.

Promotion Of Licensing Objectives

9. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
10. General: The licence holder shall work in partnership with all responsible authorities to ensure the promotion of the four licensing objectives.
11. The prevention of crime and disorder: 1.) All shift running managers shall have safety and security training. 2) A CCTV system shall be in operation on the

premises while open to the public. CCTV images will be held for a period of 28 days and access to the CCTV system will be provided to police officers and council officers on request.

12. Public Safety. 1) Safety systems shall be in place to protect the safety of customers and staff at all times. These systems are regularly reviewed and updated where appropriate.. 2) The licence holder shall work with the local Environmental health Office and the local Fire service to ensure compliance as far as reasonably practicable with relevant Health and safety and fire safety legislation. 3) The restaurant is subject to inspections from its own safety and security teams to ensure systems are being maintained.
13. Public Nuisance. 1) Litter patrols shall collect McDonald's packaging and other litter within a certain radius of the restaurant and will act on reasonable recommendations from the Environmental Health Officer to extend this patrol to a nearby area. 2) Self closing doors are fitted to limit noise. 3) Staff shall encourage customers to be considerate to neighbours and limit noise both when ordering food and on leaving the local area.
14. The protection of children from harm. 1) Staff shall ensure that children are protected from harm at all times when visiting the restaurant.

Special Policy Consideration

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

Consultation

16. 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.
17. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

18. No representations were received from responsible authorities.

Summary of Representations made by Interested Parties

19. Representations have been received from 8 interested parties listed at Annex 3. Their representations are attached at Annex 4.

20. The location of the residential properties owned by the interested parties in relation to the premises subject to this application is shown on the map attached at Annex 5.
21. 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.
22. 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

23. At the time of putting this report together planning were unable to provide their comments. They will be reported at the hearing by the Licensing Officer.

Options

24. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision:-
25. Option 1: Grant the variation of the licence in the terms applied for.
26. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
27. 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.
28. Option 4: Reject the application.

Analysis

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

Corporate Priorities

34. 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.
35. 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

36.
 - **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

37. 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.
38. 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

39. Members determine the application.

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

Contact Details

Author:

John Lacy
Acting Licence Manager
Licensing & Regulation

Chief Officer Responsible for the report:

Andy Hudson
Assistant Director
Neighbourhood Services

Ext: 1593

Ext: 1814

Report Approved



Date 23 March 2009

Specialist Implications Officer(s):

Quentin Baker
Head of Legal & Democratic Legal Services

Ext: 1004

Wards Affected: Guidhall West

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of existing premises licence
- Annex 2** - Copy of application form
- Annex 3** - List of Interested Parties
- Annex 4** - Copy of representations from Interested Parties
- Annex 5** - Map showing general area from which representations received.
- Annex 6** - Mandatory Conditions
- Annex 7** - Legislation and Policy Considerations

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