

Licensing Hearing

To: Councillors Moore, Pierce and Wiseman

Date: Thursday, 20 August 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 27 July 2009.

5. The Determination of an Application by To The Moon Ltd for a Premises Licence Section 18(3)(a) in respect of 69-71 Micklegate, York, YO1 6LJ. (CYC-015873)

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
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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	27 JULY 2009
PRESENT	COUNCILLORS SUE GALLOWAY, MOORE AND WISEMAN

1. CHAIR

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

2. DECLARATIONS OF INTEREST

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

3. MINUTES

RESOLVED: That the minutes of the Licensing Hearings held on 30 March 2009 and 9 April 2009.

The minutes of the 9 April were approved subject to an amendment under declarations of interest. The word 'survey' should be 'scrutiny'.

4. THE DETERMINATION OF AN APPLICATION BY EBOR FOODMARKETS LTD FOR THE VARIATION OF A PREMISES LICENCE SECTION 35(3)(A) IN RESPECT OF COSTCUTTER, 29 YORK STREET, DUNNINGTON, YORK, YO19 5QT. (CYC-009487)

Members considered an application by Ebor Foodmarkets Ltd for a variation to a premises licence in respect of Costcutter, York Street, Dunnington, York, YO19 5QT.

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

- 1) The application form in particular the operating schedule and the additional steps agreed to be taken by the applicant to promote the four licensing objectives.

- 2) The Licensing Officers report and his comments made at the hearing including the fact that the licensing objectives are upheld by the store concerned due to the existence of CCTV, fire regulations, discouragement of gatherings outside the premises and a proof of age scheme.
- 3) The representations made by the applicants legal representative including the fact that the store is well run and the extra half an hour in the morning was being applied for to enable the store to benefit from the morning passing trade.
- 4) The representations made in writing by local residents.

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 licence relates |

RESOLVED: That in line with Option 1 the Licence be granted.

REASON: To address the representations made in respect of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

Members advised the applicant that the required planning permission should be sought to match the Licensing hours.

Councillor Moore, Chair

[The meeting started at 10.00 am and finished at 10.30 am].



Licensing Act 2003 Sub Committee**20 August 2009**

Report of the Director of Neighbourhood Services

**Section 18(3)(a) Application for a premise licence for
69-71 Micklegate, York YO1 6LJ****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-015873
3. Name of applicant: To The Moon 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 supply of alcohol and the provision of regulated entertainment consisting of films, recorded music and the provision of entertainment facilities for dancing.

Background

6. A copy of the application is attached at Annex 1.
7. These premises were first granted a Justices (restaurant) Licence in November 1991 by the York Magistrates and this remained in place until the previous owners surrendered it in November 2008. This licence allowed for the sale of alcohol as an ancillary to a table meal from 10:00 hours to midnight on weekdays and from 12:00 hours to 23:30 hours on Sundays and Good Friday.

Promotion Of Licensing Objectives

8. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
9. General: 1) Regular staff training to cover all legislation requirements. 2) Voluntary closure policy to be 30 minutes after final supply of alcohol. 3) Alcohol will be ancillary to food.

10. The prevention of crime and disorder: 1) Installation of CCTV. 2) Utilise Drinkaware. 3) Join 'Pubwatch scheme'. 4) Liaise with Local Authority.
11. Public safety: 1) Liaise with appropriate bodies to ensure adequate health and safety/fire polices are in place.
12. The prevention of public nuisance: 1) Encourage patrons to leave quietly. 2) Noise levels to adhere to sound report required levels.
13. The protection of children from harm: 1) Staff training on underage drinking and identification. 2) Entertainment/programming to be used at appropriate times.

Special Policy Consideration

14. The premises fall within an area that has been identified as one where the concentration of a significant number of licensed premises has a considerable impact on the licensing objectives. As part of a series of measures to address the problems of a city centre increasingly blighted by alcohol misuse, this area has been made the subject of a special policy that addresses the impact of the concentration of licensed premises in this particular part of the city centre. The special policy was approved by the licensing committee on 1 April 2005 and considered by full council on 12 April 2005, a copy of the special policy statement is attached at Annex 5

Consultation

15. 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.
16. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

17. A representation was received from North Yorkshire Police on the grounds of crime and disorder which was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted:
 1. The premises shall operate primarily as a restaurant i.e. the provision of meals with patrons seated at tables.
 2. Alcohol will be served ancillary to a meal.
 3. 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 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 28 days.

4. The only acceptable proof of age identification shall be a current passport photocard driving licence or identification carrying the PASS logo.
 5. Drinking glasses of any type shall not be allowed to enter or leave the premises whilst under the customers' care
 6. 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.
 7. 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.
 8. 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.
 9. The premises shall only stay open until 03:00 hours on New Year's Eve (i.e. 03:00 hours New Year's Day)
 10. There shall be a maximum of 60 seated covers to ensure that the Licensing Objective "the Prevention of Crime and Disorder" is not undermined.
 11. The sale of alcohol shall cease 30 minutes prior to the closing of the venue.
 12. The emptying of bottle bins in the rear yard shall only take place after 08:00 hours and before 23:00 hours.
 13. The "provision for dancing" shall be withdrawn from the original application.
18. A representation was received from North Yorkshire Fire and Rescue Service on the grounds of public safety which was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted:
1. The maximum permitted occupancy of the ground floor should not exceed 100 persons with the front door opening outwards.

Summary of Representations made by Interested Parties

19. Representations have been received from the interested parties listed at Annex 2. These representations are attached at Annex 3.
20. The addresses of the interested parties are indicated on the map attached as Annex 4.

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. There are no planning issues in relation to this premise. A3 planning usage is in place.

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 licence in the terms applied for.
26. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
27. Option 3: Grant 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
Licensing Manager
Licensing & Regulation

Chief Officer Responsible for the report:

Andy Hudson
Assistant Director
Neighbourhood Services

Ext: 1593

Ext: 1814

Report Approved



Date 6 August 2009

Specialist Implications Officer(s)

Quentin Baker
Head of Legal & Democratic Legal Services

Ext: 1004

Wards Affected: Micklegate

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of application form
- Annex 2** - List of Interested Parties
- Annex 3** - Representations from Interested Parties
- Annex 4** - Map showing general area from which representations received
- Annex 5** - Copy of City Centre Special Policy Statement
- Annex 6** - Mandatory Conditions
- Annex 7** - Legislation and Policy Considerations