

Licensing Hearing

To: Councillors Hyman, Moore and Runciman
Date: Monday, 4 October 2010
Time: 10.00 am
Venue: The Guildhall

AGENDA

1. Chair

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

2. Introductions

3. Declarations of Interest

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

4. Minutes

To approve and sign the minutes of Licensing Hearings held on 14 May 2010 and 17 May 2010.

5. The Determination of an Application by Mrs. Asma Chaudhry for a Premises Licence Section 18 (3)(a) in respect of 98 Micklegate, York, YO1 1JX. (CYC-017036)

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 HEARING
DATE	14 MAY 2010
PRESENT	COUNCILLORS MOORE, PIERCE AND LOOKER

63. CHAIR

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

64. DECLARATIONS OF INTEREST

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

65. THE DETERMINATION OF AN APPLICATION BY TO THE MOON FOR A VARIATION OF A PREMISES LICENCE SECTION 35(3)(A) IN RESPECT OF LOS LOCOS, 69 MICKLEGATE, YORK, YO1 6LJ. (CYC-015873)

Members considered an application by To The Moon Ltd for the variation of a premises licence for Los Locos, Micklegate, York.

In coming to their decision the sub-committee took into consideration all of the evidence and submissions that were presented to them and determined their relevance to the issues raised and the licensing objectives. The following were taken into account:

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.
2. The Licensing Manager's report and his comments made at the hearing. He advised that the application was seeking the variation of the licence to extend the opening hours and for the provision of dance. He advised that mediation had been taking place between the applicant and the Environmental Protection Unit (EPU) in regard to a Noise Management Plan and as a result EPU had withdrawn their representation. North Yorkshire Police had also mediated after the applicant agreed to the addition of a number of conditions being added on the licence. Consultation had been carried out correctly and Members were reminded that the premises were within the Cumulative Impact Zone.

3. The applicant's representation at the hearing. He advised that there were four business partners involved in the restaurant, all of whom had extensive experience in the industry. They had no interest in operating a bar and specialised in restaurant style operations. The reason for the application was mainly due to a change in customers' habits, as people were wishing to eat later. The bar area would enable patrons to have pre-dinner drinks and it was not intended to change it into a vertical drinking establishment.
4. The representations made by local residents in writing and at the hearing. They raised concerns regarding noise from the premises as the Perspex roof offered little sound proofing. They advised that the area was residential with neighbours adjacent to the premises. They felt an extension to 01:00 was unreasonable in such a residential area.
5. The representations made by Councillor Merrett as Ward Councillor on behalf of a resident. He advised that the resident was concerned about noise issues. He reiterated the point that the area was densely populated and that this was a special case in that the premises had neighbours attached to it at one side. He urged the sub-committee to refuse the application.
6. Written representations made during the consultation period.

In respect of the proposed variation, the sub-committee had to determine whether to take any of the steps mentioned under Section 35(4) that it considered necessary for the promotion of the licensing objectives. Having regard to the above evidence and representations received, the sub-committee considered the steps which were available to them to take under Section 18(4) of the Licensing Act 2003 as it considered necessary for the promotion of the Licensing Objectives.

Members were presented with the following options:

- Option 1. Grant the variations of the licence in the terms applied for and including any applicable mandatory conditions as set out in sections 19, 20 and 21 of the Licensing Act 2003.
- Option 2. Grant the variations of the licence with modified/additional conditions imposed by the licensing committee including any applicable mandatory conditions as set out in ss19, 20 and 21 of the Licensing Act 2003.
- Option 3. Grant the variations of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly to include any

applicable mandatory conditions as set out in ss19, 20 and 21 of the Licensing Act 2003.

Option 4. Reject the application.

In coming to their decision of approving the above Option 2 the sub-committee then imposed the following additional and modified conditions. Bank holiday extensions were withdrawn by the applicant during the hearing.

1. Hours open to the public shall be 09:00 to 01:00 on each and everyday. New Year being de-regulated is not applicable.
2. Extended hours on Christmas Eve shall not apply.
3. The supply of alcohol shall cease 30 minutes prior to closure on each and every day.
4. Provision of facilities for dancing shall be allowed on Monday to Wednesday only between 10:00 and 21:00.
5. Recorded music shall cease 30 minutes prior to closure on each and every day.
6. Late night refreshment shall be allowed between 23:00 and closure on each and every day.
7. Prior to any changes in licensing hours, or the addition of licensable activities, the identified noise management plan shall be implemented as submitted at the hearing. This management plan should directly refer to best practice and guidance provided by relevant professional institutions and standards created nationally, internationally and by the industry.
8. Staff training shall be given and documented regarding all matters relating to the licence and its conditions. Records of training shall be kept for 3 years and made available to the Local Authority on request.
9. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises on request.
10. A log of any complaints from residents, police or local authority regarding noise shall be kept for a period of 3 years and shall include details of what action was taken to remedy the problem. This log shall be made available to the Local Authority on request.
11. All music shall be controlled by the management of the premises.
12. Alcohol shall be served by way of waiter/waitress service to all patrons at all times.

13. Alcohol will only be served to patrons seated at tables as ancillary to a meal except for a maximum of 24 customers to be seated at tables within the blue area (as identified on the plan submitted with the application).
14. A full food menu (indicative of normal food provision) shall be available at all times the venue remains open.
15. Adequate door supervisors shall be provided at the premises from 21:00 hours until the venue closes for business on the following occasions:
 - (i) Friday and Saturday evenings
 - (ii) The evenings before any bank holiday
 - (iii) York Race days.
 - (iv) Any evening that the venue intends to remain open beyond 01:00 (i.e. non standard times)
16. 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).

Mandatory Conditions 19 and 21 shall apply.

RESOLVED: That, in line with Option 2, the variations of the licence be granted with modified/additional conditions set out above.

REASON: In order to meet the Licensing Objectives and City of York Council Licensing Policy and to address the representations made.

Councillor Moore, Chair

[The meeting started at 10.15 am and finished at 12.10 pm].

MEETING	LICENSING HEARING
DATE	17 MAY 2010
PRESENT	COUNCILLORS HYMAN, REID AND RUNCIMAN

66. CHAIR

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

67. INTRODUCTIONS**68. DECLARATIONS OF INTEREST**

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

69. THE DETERMINATION OF AN APPLICATION BY MR. TAHSIN KAYA FOR THE VARIATION OF A PREMISES LICENCE SECTION 35(3)(A) IN RESPECT OF EFE'S KEBAB KITCHEN, ST. SAMPSON'S SQUARE, YORK. (CYC-010849)

Members considered an application by Mr Tahsin Kaya for the variation of a premises licence, in respect of Efe's Kebab Kitchen, St Sampson's Square, York.

In coming to their decision the Sub Committee took into consideration all of the evidence and submissions that were presented to them and determined their relevance to the issues raised and the licensing objectives. The following were taken into account:

1. The application form, in particular the existing licence conditions and additional steps that would be taken by the applicant to promote the four licensing objectives.
2. The Licensing Officer's report and his comments made at the Hearing including;
 - That the application was to extend the licence to 05:00 every day.
 - The premises had been under the current ownership since 2002.

- That it was situated in an area covered by City of York Council CCTV.
 - That the applicant had agreed to a police condition to install CCTV premises.
 - That full public consultation had been carried out correctly,
3. Representations made by the applicant at the hearing, which included; their wish to extend their operating hours mainly on Friday and Saturday nights to catch late night trade in the area, their advice to customers and passers by to make sure that they were quiet in the immediate vicinity of the premises, and that they did not know that a premises licence did not include permission to play music.
 4. Representations made by a local resident in writing and at the hearing that; the local resident had been to the premises on numerous occasions to ask the for the music being played to be turned down, and that disorder had been seen at the premises.
 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 deleted the existing licence conditions 4 and 8 and replaced them with the agreed police conditions. They then imposed the following modified/additional conditions:

1. The extension applied for shall be granted on Friday and Saturday nights only and condition 9 of the existing licence shall not be removed.
2. CCTV will be installed within 28 days, to cover the premises and will include the area to where the public congregate to purchase food. 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 7 days.
3. Upon closing the premises at the conclusion of business, staff will undertake a general litter pick and tidy of the general area of the premises.

4. On a Friday and Saturday evening, a minimum of two members of staff shall be employed at all times the venue is open for business.

Informative- The Licensing Manager will inform the applicant on any training available on dealing with difficult customers.

Note to applicant- That Planning consent is separately required before the premises can utilise the agreed hours and the licence can be called in for review at any time.

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

REASON: To address the representations made.

Councillor Reid, Chair

[The meeting started at 10.00 am and finished at 10.55 am].

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Licensing Act 2003 Sub Committee

1 July 2010

Report of the Director of Communities and Neighbourhood

Section 18(3)(a) Application for a premise licence for 98 Micklegate, York, YO1 1JX**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-017036
3. Name of applicant: Mrs Asma Chaudhry
4. Type of authorisation applied for: Grant of Premise Licence.
5. Summary of application: The nature of the application is to allow the provision of recorded music Monday to Sunday 11:00 – 04:00 hours and late night refreshment Sunday and Monday 23:00 – 04:00 hours and Tuesday to Saturday 23:00 to 05:00 hours. Opening times Sunday and Monday 11:00 – 04:00 hours and Tuesday to Saturday 11:00 – 05:00 hours.

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) CCTV will be provided. 2) Fire alarm and fire safety equipment will be provided. 3) Door supervision on Friday and Saturday evenings.

Special Policy Consideration

9. 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 4.

Consultation

10. Consultation was carried out by the applicant in accordance with s13, and s17(5) of the Act and Regulation 42, Parts 2 and 4 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the displaying of a notice on the premises and an advertisement in a local paper giving details of the application and serving a copy of the application on all responsible authorities. The applicant complied with all statutory requirements. In addition the relevant ward councillors and/or parish council were notified by way of register.
11. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

12. Representations have been received from the City of York Council Environmental Protection Unit on the grounds of public nuisance, and North Yorkshire Police on the grounds of crime and disorder. They are attached at Annex 2. A location plan of the premise is attached at Annex 3.

Summary of Representations made by Interested Parties

13. No representations were received from interested parties.
14. 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

15. The lawful planning useage of this premise is currently Class A3 “Restaurants and Cafes”, defined as “places where the primary purpose is the sale and consumption of food and light refreshment on the premises”. The current planning permission hours of operation approved are confined to 09:00 to 01:00 hours each day of the week, and all activity associated with the restaurant use on the premise shall cease by 01:00 hours each day.

Options

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

Analysis

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

Corporate Priorities

26. 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.
27. 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

28.
 - **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

29. 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.
30. 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

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

Contact Details

Author:

John Lacy
Licensing Manger

Tel No. 01904 551593

Chief Officer Responsible for the report:

Andy Hudson
Assistand Director
Neighbourhood Services

**Report
Approved**



Date

21/06/10

Specialist Implications Officer(s)

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** - Application form
- Annex 2** - Representations from Responsible Authorities
- Annex 3** - Location plan
- Annex 4** - City Centre Special Policy Statement
- Annex 5** - Mandatory Conditions
- Annex 6** - Legislation and Policy Considerations