

Licensing Hearing

To: Councillors Horton, Merrett and Wiseman
Date: Friday, 15 October 2010
Time: 2.30 pm
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 19 August 2010.

5. The Determination of an Application by Sainsbury's Supermarket Ltd for a Premises Licence Section 18(3)(a) in respect of 1A Haxby Shopping Centre, The Village, Haxby, York YO32 2LU. (CYC-017365)

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	19 AUGUST 2010
PRESENT	COUNCILLORS MERRETT, MOORE AND WISEMAN
APOLOGIES	COUNCILLORS

79. CHAIR

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

80. INTRODUCTIONS

Introductions were carried out.

81. DECLARATIONS OF INTEREST

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

82. MINUTES

RESOLVED: That the minutes of the Licensing Hearing held on 29 April 2010 be approved and signed as a correct record.

83. THE DETERMINATION OF AN APPLICATION BY H. HERATY & J. EDWARDS FOR A PREMISES LICENCE SECTION 18(3)(A) IN RESPECT OF GRAYS COURT, CHAPTER HOUSE STREET, YORK. (CYC-016907).

Members considered an application by Ms H Heraty and Mr J Edwards for the determination of a Premises Licence in respect of Grays Court, Chapter House Street, York, YO1 7JH.

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and the above licensing objectives: the prevention of crime and disorder; public safety and the prevention of public nuisance. The following were taken into account.

1. The application form.

2. The Licensing Officer's report and his comments made at the Hearing. He advised that the application was for a premises licence for a Grade 1 listed building and that the venue already had a weddings licence and had been using Temporary Events Notices. He was satisfied that the blue public notices had been displayed satisfactorily and said that the applicant had agreed a number of conditions with North Yorkshire Police and the Council's Environmental Protection Unit.
3. Representations made by the applicant at the Hearing, including the fact that the venue would be marketed to a mature clientele and that the applicants are proud of the historical nature of the venue and would provide for events in keeping with the location. The applicant advised that properties nearby operate similar activities and felt that some of the objections had been exaggerated as the Council's Environmental Protection Unit had not found any of the complaints warranted enforcement action.
4. The representations made by a local resident in writing and by his Barrister at the hearing. The Sub-Committee considered the written representation to be relevant to the issues raised and the licensing objectives listed above as concerns were raised in particular, regarding noise nuisance.
5. The representations made by local residents in writing. The Sub-Committee considered the written representations to be relevant to the licensing objectives listed above.

The representations made by North Yorkshire Police and City of York Council's Environmental Protection Unit had been withdrawn prior to the Hearing after the applicant agreed to a number of licence conditions.

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(3) of the Licensing Act 2003 as it considered necessary for the promotion of the Licensing Objectives of the prevention of crime and disorder; public safety and the prevention of public nuisance.

The Committee considered the following four 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.

The Sub-Committee approved Option 3 then imposed the following amended/additional conditions:

1. The area to be licensed shall be as shown edged red on the attached plan. (The licensed area excludes the courtyard, the L-shaped driveway including the Coach House, the Bar Walls, the access to the Bar Walls and Bar Walls Embankment).
2. Hours the premises are open to the public shall be as follows:
Sunday to Thursday 08:00-22:00
Friday and Saturday 08:00-23:00
With the exception of the external licensed areas.
3. All external area's shall be vacated, cleared and cleaned by 19:00 Sunday to Thursday and 21:00 on Fridays and Saturdays.
4. Supply of alcohol to cease 1 hour prior to closing on each and everyday
5. Live music (E) shall take place from 10:00 to 1 hour prior to closing of the relevant area on each and every day. It shall take place externally only from Good Friday to 31st October.
6. Recorded Music (F) shall take place indoors only until the terminal hour.
7. Anything of a similar description to live and recorded music (H) , shall take place indoors only from 10:00 to 1 hour prior to closing on each and every day.
8. Provision of facilities for dancing (J) shall take place indoors only from 10:00 to 1 hour prior to closing on each and every day.
9. Late Night Refreshment (L) was withdrawn by the applicant and is excluded from the licence.
10. The only acceptable proof of age identification shall be a current Passport, photocard Driving Licence or identification carrying the PASS logo (until other effective identification technology, e.g. thumb print or pupil recognition, is adopted by the Premises Licence Holder).
11. Standard one pint capacity, half pint capacity and "highball" tumbler drinking glasses will be strengthened glass (tempered glassware) in a design whereby, in the event of breakage, the glass will fragment and no sharp edges are left.
12. Drinking glasses of any type shall not be allowed to enter or leave the licensed area whilst under the customers care.
13. Documented staff training will be given regarding the retail sale of alcohol and such records kept for at least one year.

14. 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.
15. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals to under-age or drunken 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 and will be kept for at least one year.
16. 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.
17. 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).
18. At the conclusion of business there shall be a check of the area of the bar Walls adjacent to the premises to ensure that no glass vessels are left unattended and clear any premise related debris as necessary.
19. A standard operating capacity figure of 100 maximum shall be imposed to ensure that the Licensing Objective the prevention of crime and disorder is not undermined.
20. Alcohol will be served only ancillary to a meal when the restaurant/café is open for business or at pre-booked events.
21. Noise or vibration from the premises (including external areas), shall not emanate, so as to cause a nuisance at nearby sound and vibration sensitive properties.
22. When regulated entertainment in the form of Recorded and/or Live music is provided at the premises, doors and windows shall remain closed other than for ingress or egress.
23. A dispersal policy shall be agreed in writing by the applicant with the Licensing Officers and shall thereafter be implemented and adhered to.

Mandatory Conditions 19 and 21 shall apply.

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

RESOLVED: That in line with option 3, the licence be granted with the above mandatory, amended and additional conditions.

REASON: To address the representations made.

Councillor D Merrett, Chair

[The meeting started at 10.15 am and finished at 2.20 pm].

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Licensing Act 2003 Sub Committee

15 October 2010

Report of the Director of Communities and Neighbourhoods

Section 18(3)(a) Application for a premise licence for Sainsbury's Supermarket, 1A Haxby Shopping Centre, The Village, Haxby, York, YO32 2LU

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-017365
3. Name of applicant: Sainsbury's Supermarket Limited
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The nature of the application is to allow:

Licensable Activity	Indoors / outdoors / both	Days	Hours	Non standard timings
Late Night Refreshment	Both	Monday – Sunday	23:00 – 00:00	None
Supply of Alcohol	Off the premises	Monday – Sunday	06:00 – 00:00	None
Open to the Public		Monday – Sunday	24 hours	The applicant may elect not to open the store, or part(s) of the store, 24 hours every day but requires the flexibility to do so subject to statutory or operational restrictions.

Background

6. A copy of the application is attached at Annex 1.
7. There is currently a premises licence in force for the premise, licence number CYC-009488. A copy of this licence is attached at Annex 2. This licence authorises the following licensable activities:

Licensable Activity	Indoors / outdoors / both	Days & Hours	Non Standard Timings:
Supply of Alcohol	Off the premises	Monday – Saturday 07:00 – 23:00 Sunday 10:00 – 22:30	1 st January, 24 th December, 26 th December and 31 st December all commencing at 06:00 hours.
Open to the Public		Monday – Sunday 24 hours	

Promotion Of Licensing Objectives

8. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
9. The prevention of crime and disorder:
 - (a) A CCTV system will be installed, or the existing system maintained, such system to be fit for the purpose.
 - (b) The system will incorporate a camera covering each of the entrance doors and the alcohol display areas and will be capable of providing an image which is regarded as identification standard. The precise positions of the cameras may be agreed, subject to compliance with Data Protection legislation, with the police from time to time.
 - (c) The system will incorporate a recording facility and any recording shall be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with Data Protection legislation, to the police from inspection on request.
 - (d) The system will display on any recording the correct time and date of the recording.
 - (e) A system will be in place to maintain the quality of the recorded image.
10. Public safety:
 - (a) The applicant will at all times maintain adequate levels of staff. Such staff levels will be disclosed, on request, to the licensing authority and police.
11. The prevention of public nuisance:
 - (a) Signage will be displayed at the exit of the premises requesting customers leaving the premises late at night to do so quietly and with consideration so as not to disturb nearby residents.
12. The protection of children from harm:
 - (a) The licence holder shall ensure that all cashiers are trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 21 years (or older if the licence holder so elects) for evidence of age. This evidence shall be photographic, such as passport or photographic driving licence until other

effective identification technology (for example, thumb print or pupil recognition) is introduced. All cashiers will be instructed, through training, that a sale shall not be made unless this evidence is produced.

Special Policy Consideration

13. This premise is not located within the 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. Representations have been received from 37 interested parties listed at Annex 3. Their representations are attached at Annex 4.
18. A map showing the general area around the venue from which the representations are focused is attached at Annex 5.
19. 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

20. There are no planning issues or conditions relevant to this application.

Options

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

25. Option 4: Reject the application.

Analysis

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

Corporate Priorities

31. 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.
32. 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

- 33.
- **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

34. 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.
35. 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

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

Contact Details

Author:

John Lacy
Licensing Manager

Chief Officer Responsible for the report:

Andy Hudson
Assistant Director Neighbourhood Services

Tel No. 01904 551593

Report Approved

Y

Date 17/09/2010

Specialist Implications Officer(s)

Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Haxby & Wigginton

All /

For further information please contact the author of the report

Background Papers:

- Annex 1** - Application form
- Annex 2** - Premise licence currently in force
- Annex 3** - List of Interested Parties
- Annex 4** - 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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