

Licensing Hearing

To: Councillors Merrett, Looker and B Watson
Date: Monday, 17 January 2011
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. The Determination of an Application by SMG Theatres Ltd for a Premises Licence Section 18(3)(a) in respect of The Barbican Centre, Paragon Street, York. (CYC-017762)

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
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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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Agenda Item

Licensing Act 2003 Sub Committee

17 January 2011

Report of the Director of Communities and Neighbourhoods

Section 18(3)(a) Application for a premise licence for The Barbican Centre, Paragon Street, York YO10 4NT

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-017762
3. Name of applicant: SMG Theatres Ltd.
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
All categories of Regulated Entertainment	Indoors	Monday - Sunday	24 hours
Late Night Refreshment	Indoors	Monday – Sunday	23:00 – 05:00
Sale of Alcohol	On the premises	Monday – Sunday	11:00 – 04:00
Opening Times		Monday – Sunday	24 hours

Background

6. A copy of the application is attached at Annex 1.
7. This venue previously had a premises licence which lapsed in June 2009 when the licence holder at that time was declared insolvent.

8. A summary of that licence is as follows

Licensable Activity	Indoors / outdoors / both	Days	Hours
All categories of Regulated Entertainment	Indoors	Monday - Sunday	10:00 – 02:00
Late Night Refreshment	Indoors	Monday – Sunday	23:00 – 02:15
Sale of Alcohol	On and off the premises	Monday – Sunday	10:00 – 02:00
Opening Times		Monday – Sunday	10:00 – 02:30

Promotion Of Licensing Objectives

9. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:

10. General

- (a) Each event type will be individually risk assessed and reviewed at the Multi-Agency Planning Meeting held every 3 months (see Licensing Notes).
- (b) Appropriate number of SIA Door Supervisors, Events Stewards, Medical and cleaning staff will be on duty for the duration of each event.
- (c) Every sale of alcohol will be made or authorised by a Personal Licence Holder in accordance with our Policy Document (see Licensing Notes)
- (d) All staff will be suitably trained for their duties and briefed prior to the start of each event on any unusual factors affecting their functional area (see Licensing Notes).

11. The prevention of crime and disorder:

- (a) The venue will be fitted with internal and perimeter CCTV and appropriate intruder prevention and detection systems.
- (b) Appropriate numbers of Door Supervisors and Event Stewards will be on duty as identified for the event profile.
- (c) The Fire Safety Officer, Duty Manager, Senior Steward, Steward Supervisors, Technical Teams and Medical Manager will be in constant contact via hand-held radio with both the Duty Manager's Office and Event Control Radio Operator. (see Licensing Notes).

12. Public safety:
- (a) SMG will develop a robust system of bespoke operational procedures, policies and risk assessments which will be reviewed with the City of York Council Health and Safety Service.
 - (b) An extensive system of written pre, during and post event checks will be in operation for all events in addition to fully recorded systems for planned/reactive maintenance and staff training. (see Licensing Notes).
13. The prevention of public nuisance:
- (a) See points 17 to 28 of the Licensing Notes.
14. The protection of children from harm:
- (a) Performances which include child performers will be risk assessed individually and controls implemented to safeguard children from harm.
 - (b) The venue will be suitable to accommodate children and adequate supervision will be provided.
15. A copy of "The York Barbican Licensing Notes" referred to in the above paragraphs is attached at Annex 2

Special Policy Consideration

16. This premise is not located within the Cumulative Impact Zone.

Consultation

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

Summary of Representations made by Responsible Authorities

19. A representation was received from City of York Council Environmental Protection Unit on the grounds of public nuisance. This was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted.
- (i) All windows and doors to the premises shall be kept closed during regulated entertainment except for access/egress.
 - (ii) The rear roller shutter door to the loading bay shall be kept closed at all times during regulated entertainment.

- (iii) Loading and unloading of vehicles via the rear access bay shall not be undertaken during regulated entertainment.
- (iv) No music or amplified sound shall be audible at the boundary of the nearest noise sensitive receiver.
- (v) Documented patrols shall be carried out by members of staff at no less than hourly intervals during regulated entertainment. These checks shall be undertaken outside the building to the front, rear and both sides to check for noise from inside the premises and noise from customers outside the venue to ensure compliance with condition (iv).
- (vi) 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.
- (vii) A direct contact number for the venue shall be made available to residents living in the vicinity of the premises on request.
- (viii) No drinks shall be taken to the external licensed area outside of the hours of 09:00 to 23:00.

Summary of Representations made by Interested Parties

- 20. A representation was received from an interested party on the grounds of public nuisance. A copy of this representation is attached at Annex 3.
- 21. A map showing the general area around the venue from which the representation is focused is attached at Annex 4.
- 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 or conditions relevant to this application.

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.

29. Members are reminded that they may only use their discretion to add, remove or amend conditions or activities in relation to matters that are raised by representors and are relevant to the promotion of the licensing objectives.

Analysis

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

Corporate Priorities

35. 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.
36. 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

- 37.
- **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

38. 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.
39. 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

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

Contact Details

Author:

John Lacy
Licensing Manager

Tel No. 01904 551593

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director– Housing & Public
Protection.

Report Approved

Y

Date 5 January 2011

Specialist Implications Officer(s)

Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Fishergate

All

For further information please contact the author of the report

Background Papers:

- Annex 1** - Application form
- Annex 2** - Licensing Notes accompanying applicant's Operating Schedule
- Annex 3** - Representations from Interested Party
- Annex 4** - Map showing general area from which representations received
- Annex 5** - Mandatory Conditions
- Annex 6** - Legislation and Policy Considerations