

Licensing Hearing

To: Councillors Jeffries, King and Semlyen

Date: Monday, 5 September 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. Minutes

To approve and sign the minutes of the Licensing Hearing held on 4 July 2011.

5. The Determination of an Application by Mr. Kevin Mohan to Review of the Premises Licence Section 52(2) in respect of Grays Court, Chapter House Street, York, YO1 7JH. (CYC-016907)

If you require any further information, please contact Jill Pickering on Tel 01904 552061 or Fax 01904 551035 or email jill.pickering@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.

This page is intentionally left blank

About City of York Council Meetings

Further information about what's being discussed at this meeting

All the reports which Members will be considering are available for viewing online on the Council's website. Alternatively, copies of individual reports or the full agenda are available from Democratic Services. Contact the Democracy Officer whose name and contact details are given on the agenda for the meeting. **Please note a small charge may be made for full copies of the agenda requested to cover administration costs.**

Access Arrangements

We will make every effort to make the meeting accessible to you. The meeting will usually be held in a wheelchair accessible venue with an induction hearing loop. We can provide the agenda or reports in large print, electronically (computer disk or by email), in Braille or on audio tape. Some formats will take longer than others so please give as much notice as possible (at least 48 hours for Braille or audio tape).

If you have any further access requirements such as parking close by or a sign language interpreter then please let us know. Contact the Democracy Officer whose name and contact details are given on the order of business for the meeting.

Every effort will also be made to make information available in another language, either by providing translated information or an interpreter providing sufficient advance notice is given. Telephone York (01904) 551550 for this service.

যদি যথেষ্ট আগে থেকে জানানো হয় তাহলে অন্য কোন ভাষাতে তথ্য জানানোর জন্য সব ধরনের চেষ্টা করা হবে, এর জন্য দরকার হলে তথ্য অনুবাদ করে দেয়া হবে অথবা একজন দোভাষী সরবরাহ করা হবে। টেলিফোন নম্বর (01904) 551 550।

Yeteri kadar önceden haber verilmesi koşuluyla, bilgilerin terümesini hazırlatmak ya da bir tercüman bulmak için mümkün olan herşey yapılacaktır. Tel: (01904) 551 550

我們竭力使提供的資訊備有不同語言版本，在有充足時間提前通知的情況下會安排筆譯或口譯服務。電話 (01904) 551 550。

اگر مناسب وقت سے اطلاع دی جاتی ہے تو ہم معلومات کا ترجمہ میا کرنے کی پوری کوشش کریں گے۔ ٹیلی فون (01904) 551 550

Informacja może być dostępna w tłumaczeniu, jeśli dostaniemy zapotrzebowanie z wystarczającym wyprzedzeniem. Tel: (01904) 551 550

Who Gets Agenda and Reports for our Meetings?

- Councillors get copies of all agenda and reports for the committees to which they are appointed by the Council;
- Relevant Council Officers get copies of relevant agenda and reports for the committees which they report to; and
- Public libraries, Council Receptions and the Press get copies of **all** public agenda/reports.
- Applicant
- Representors & the relevant Responsible Authorities

This page is intentionally left blank

City of York Council

Committee Minutes

MEETING	LICENSING HEARING
DATE	4 JULY 2011
PRESENT	COUNCILLORS BOYCE, LOOKER AND SEMLYEN
APOLOGIES	COUNCILLORS

1. CHAIR

RESOLVED: That Councillor Boyce be elected as Chair of the Hearing.

2. INTRODUCTIONS**3. DECLARATIONS OF INTEREST**

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

4. THE DETERMINATION OF AN APPLICATION BY LUNCHBOX THEATRICAL PRODUCTIONS FOR A PREMISES LICENCE SECTION 18(3)(A) IN RESPECT OF ICE FACTOR, DESIGNER OUTLET COACHES AND CAR PARK, ST NICHOLAS AVENUE, YORK. (CYC-018431)

Members considered an application by Lunchbox Theatrical Productions for a premises licence in respect of the Designer Outlet Car Park, 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 objective public nuisance. The following were taken into account:

1. The application form.
2. The Licensing Officer's report and her comments made at the Hearing. She advised that the application was for a new grant as the previous licence had been for a limited duration and had expired in January 2011.

3. Representations made by the applicant at the hearing including that the Ice Factor had proved successful at the Designer Outlet location and that Lunchbox Theatrical productions had worked hard to ensure it had operated satisfactorily alongside its new neighbours. It was advised that staff had worked hard to ensure noise was within the agreed limits and that they would continue to do so.
4. The representations made by a local residents in writing and at the hearing. The representations were considered relevant as they raised concerns relating to noise nuisance.
5. The representations made by Fulford Parish Council in writing.

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 application relates and modify/add conditions accordingly.
- Option 4 Reject the application.

Members chose Option 2 and added the following conditions to the licence:

1. The Licence shall be operated only between 15 November to 15 January annually.
2. No music or amplified sound shall be audible on the public footpath outside the nearest residential premises on Naburn Lane Fulford.
3. Documented patrols shall be carried out by members of staff or volunteers once during the morning (between 9am and 1pm) once during the afternoon (between 1pm and 5pm) and twice during the evening (between 5pm and

10pm) whilst live or amplified music is being played. These checks shall be undertaken on the public footpath outside the nearest residential premises on Naburn Lane, Fulford to check from noise coming from the venue. These documents shall be available on request for inspection by authorised officers of City of York Council.

4. Staff and volunteer training shall be given and documented regarding all matters relating to the licence and its conditions. Records of training shall be kept and made available on request for inspection by authorised officers of City of York Council.
5. A direct contact number for the duty manager shall be made available on request to residents living in the vicinity of the premises.
6. A documented procedure for investigating noise complaints received by The Ice Factor shall be submitted to and approved by the City of York Council within two months of the licence being granted and once approved it shall be implemented.
7. Off sales shall be in sealed containers.

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

REASON: To address the representations made.

Councillor Boyce, Chair

[The meeting started at 2.30 pm and finished at 4.25 pm].

This page is intentionally left blank



Licensing Act 2003 Sub Committee**5 September 2011**

Report of the Director of Communities & Neighbourhoods

Section 52(2) review of premise licence for Gray's Court, Chapter House Street, York YO1 7JH**Summary**

1. This report seeks Members determination of an application for a review of a premise licence, which has been made under the Licensing Act 2003 in respect of Grays Court, Chapter House Street, York.
2. Name of applicant: Kevin Mohan.
3. Summary of review: This application to review relates to the following licensing objectives;
 - Public Safety
 - The prevention of Public Nuisance
4. A copy of the review is attached at Annex 1 and is summarised as follows: The applicant, whose residential property abuts Grays Court, alleges that Grays Court is not being run in accordance with the premises licence conditions.
5. A copy of the premises licence is attached at Annex 2.

Background

6. The applicant, in the capacity of 'interested party', has requested a review of the premises licence. 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.
7. A map showing the address of the applicant in relation to the premises is attached at Annex 3.
8. Members are reminded that a representation is only "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. This is in accordance with S52(7) and (8) of the Act.

9. The existing premises licence was granted on 19 August 2010 after the application was determined at hearing by a licensing sub-committee.

Consultation

10. Consultation was carried out by the Applicant and Licensing Authority in accordance with S51(3) of the Act and Regulation 42, Part 4, paragraphs 29 and 38 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the notification of a review and the advertisement of review by licensing authority. Copies of the application were served on all responsible authorities and the premise licence holder. Notice of the application was displayed on the premises and on the exterior noticeboard at the Guildhall. In addition relevant Ward Councillors and Parish Councillors were informed by way of register.
11. As a result of the consultation 2 representations were received from interested parties, their details are attached at Annex 4 and copies of the representations are attached at Annex 5.
12. A plan showing the addresses of the representors in relation to Grays Court is attached at Annex 6.
13. There were no representations received from responsible authorities, however reports have been received from the Environmental Protection Unit and the Planning Section, copies of the reports are attached at Annex 7 and Annex 8 respectively.
14. Seven letters supporting the premise licence holders and their operation of Grays Court were received; copies of these are attached at Annex 9.
15. Since the granting of the premises licence two warning letters relating to noise issues have been sent to the premise licence holders from the Licensing Section as a result of complaints received. The letters were dated 20 September 2010 and 27 May 2011 respectively. Copies of these letters are attached at Annex 10.

Options

16. By virtue of S52(4) of the Act, the Committee have the following options available to them in making their decision:-
17. Option 1: To modify the conditions of the licence (ie to alter, omit or add any new condition).
18. Option 2: To exclude a licensable activity from the scope of the licence.
19. Option 3: To remove the designated premises supervisor.
20. Option 4: To suspend the licence for a period not exceeding three months.
21. Option 5: To revoke the licence.

Analysis

22. The following could be the result of any decision made this Sub Committee:-
23. Option 1: This decision could be appealed at Magistrates Court by the premises licence holder, the review applicant or any of the representors.
24. Option 2: This decision could be appealed at Magistrates Court by the premises licence holder, the review applicant or any of the representors.
25. Option 3: This decision could be appealed at Magistrates Court by the premises licence holder, the review applicant or any of the representors.
26. Option 4: This decision could be appealed by the premises licence holder.
27. Option 5: This decision could be appealed by the premises licence holder.

Corporate Priorities

28. 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.
29. 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

30.
 - **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

31. 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.
32. 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

33. Members determine the application.

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

Contact Details

Author:

Lesley Cooke
Licensing Manager
Licensing Section
Ext 1515

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director
Housing & Public Protection

Ext: 4016

Report Approved



Date 23 August 2011

Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services
Ext: 1004

Wards Affected: Guildhall East

All ☐

For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of review application
- Annex 2** - Copy of existing premises licence
- Annex 3** - Map of area indicating address of applicant in relation to Grays Court
- Annex 4** - List of Interested Parties making representation
- Annex 5** - Copies of representations from Interested Parties
- Annex 6** - Plan showing addresses of representors in relation to Grays Court
- Annex 7** - Report from Environmental Protection Unit
- Annex 8** - Report from Planning Section
- Annex 9** - Copies of letters of support for premise licence holders
- Annex 10** - Copies of warning letters sent to premise licence holders
- Annex 11** - Legislation and Policy Considerations

This page is intentionally left blank