

## Licensing Hearing

**To:** Councillors Gillies, Looker and Merrett

**Date:** Thursday, 1 March 2012

**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 **15 December 2011 and 19 January 2012**

**5. The Determination of an Application by Ali Gumusler for a Premises Licence Section 18(3)(a) in respect of 4 Gerard Avenue, Burnholme, York. (CYC-019853)**

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](mailto: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

City of York Council

Committee Minutes

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MEETING	LICENSING HEARING
DATE	15 DECEMBER 2011
PRESENT	COUNCILLORS BOYCE, GILLIES AND RICHARDSON

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**21. CHAIR**

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

**22. INTRODUCTIONS****23. 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 on the agenda. None were declared.

**24. MINUTES**

RESOLVED: That the minutes of the Licensing Hearing held on 4<sup>th</sup> July 2011 be approved and signed by the Chair as a correct record.

**25. THE DETERMINATION OF AN APPLICATION BY SCOTTISH AND NEWCASTLE PUB COMPANY (MANAGEMENT) LTD FOR A PREMISES LICENCE SECTION 18(3)(A) IN RESPECT OF MONTEY'S, 129 MICKLEGATE, YORK. (CYC- 019198)**

Members considered an application by Scottish and Newcastle Pub Company (Management) Ltd for a premises licence in respect of Montey's, 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 crime and disorder and public nuisance. The following were taken into account:

1. The application form
2. The Licensing Officers report and her comments made at the hearing. She advised that the application was for a new grant although the premises had been operating under a previous licence which had recently lapsed.
3. The representations made by the Solicitor for the applicant. He advised that the previous licence had lapsed due to the previous holding company being dissolved and that a new licence was being sought as a result. The applicant had already agreed to a number of conditions with North Yorkshire Police and the Environmental Protection Unit (EPU) although some remained outstanding.
4. The representations made by the Solicitor for North Yorkshire Police who strongly requested that a condition relating to provision of door staff be added to the licence due to the location of the premises in the Cumulative Impact Zone.
5. The representations made by the Council's EPU department who advised that a number of complaints had been received regarding noise originating from the premises, most recently in May and June 2011. Four conditions had been suggested, three of which had been accepted by the applicant but a condition relating to the closure of the rear garden after 23:00 was still in dispute.
6. The representations made in writing and at the hearing by local residents. They raised concerns regarding noise from the premises which often carried on until the early hours and originated from the garden and from inside the bar due to doors being propped open.

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 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).
2. Standard one pint capacity, half pint capacity and “high ball tumbler” drinking glasses will be strengthened glass (tempered glassware) in design whereby in the event of breakage the glass will fragment and no sharp edges are left.
3. Drinking glasses of any type should not be allowed to enter or leave the premises whilst under the customers care.
4. All off sales shall be made in sealed containers save for those sales specifically for consumption in any outside drinking areas attached to the premises.
5. Documented staff training will be given regarding the retail sale of alcohol; the conditions attached to the premises licence and the opening times of the venue.
6. Such training in condition 5 will be refreshed and documented every 6 months and the documented records shall be kept for at least 3 years.
7. Such training records should be kept for at least 3 years and they will be made available upon a reasonable request for any responsible authority.
8. The Management of the venue will comply with any written, reasonable and justified requests made by North Yorkshire police regarding the provision of door supervisors should the need arise.
9. A refusals register and Incident Report Register will be kept. Such documents will record incidents of staff

refusals to underage or drunk people, as well as incidents of any anti-social behaviour and ejections from the premises.

10. Both the above documents (Condition 9) will be available upon a reasonable request from any Responsible Authority and will be kept for at least a year.
11. 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.
12. CCTV will be installed to cover the premises and will include all areas (including outside areas) by 1st June 2012, to where the public have access to consume alcohol.
13. CCTV will be maintained, working and recording at all times when the premises are open.
14. The recording should be of sufficient quality to be produced in court or such hearing.
15. Copies of recordings will be kept available for any responsible authority for 21 days and be made available to any responsible authority within 48 hours of a request,
16. Copies of the recordings will display the correct time and dates of the recording.
17. An adequate number of door supervisors (at least 1) will be provided from 21:00 until the close of business on the following evenings: 1. Friday and Saturday evenings. 2. Evenings before a bank holiday. 3. On any night advertised as a student night in connection with any local student establishment. 4. On recognised York Race Days.
18. The venue will partake in the York Nighttime Economy Radio Scheme. The radio should be turned on and carried by the Duty Manager (or Door Supervisor when deployed) at all times that the venue is open for business after 1900 hours (the Duty Manager may opt to turn on the radio earlier if required).
19. In order that the Licensing Objective the prevention of crime and disorder is not undermined the capacity will be a maximum of 160.

20. No music or amplified sound emanating from within the premises shall be audible at the rear boundary of the beer garden to the rear of the premises.
21. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises on request.
22. A fence and lockable gate shall be erected in the rear garden as indicated on the plan with the agreement of City of York Council's Licensing Manager. The gate shall be locked at 23:00 on each and everyday.
23. Self closing double doors shall be installed to be agreed with the Licensing Manager to ensure mitigation of noise emanating from the premises.

All mandatory conditions shall apply.

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

REASON: To address the representations made.

Councillor Boyce, Chair

[The meeting started at 10.00 am and finished at 12.10 pm].

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MEETING	LICENSING HEARING
DATE	19 JANUARY 2012
PRESENT	COUNCILLORS BOYCE, GILLIES AND WISEMAN

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**35. CHAIR**

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

**36. INTRODUCTIONS****37. DECLARATIONS OF INTEREST**

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

**38. THE DETERMINATION OF AN APPLICATION BY CITY OF YORK COUNCIL, COMMUNITIES AND CULTURE FOR A PREMISES LICENCE SECTION 18(3)(A) IN RESPECT OF RAWCLIFFE COUNTRY PARK, SHIPTON ROAD, YORK, YO30 5XZ. (CYC- 019663)**

Members considered an application by City of York Council, Communities and Culture for a Premises Licence in respect of Rawcliffe Country Park, Shipton Road, York.

In coming to their decision, the sub-committee took into consideration all of the evidence that was presented to them and determined their relevance to the issues raised and the licensing objectives.

The following were taken into account:

1. The licence application form.

2. The Licensing Officers report and her comments made at the hearing. She advised that the application was for a premises licence and that prior to the application being submitted, the Councils Environmental Protection Unit had been consulted and had agreed wording to be included on the operating schedule to assist in the control of noise. It was confirmed that there had been no representations from any of the responsible authorities and that the consultation process had been carried out correctly.
3. The representation made by David Meigh, Head of Parks and Open Spaces on behalf of the Council. He advised that the Council had applied for licence variations for existing park licences and had taken the opportunity to apply for a licence for Rawcliffe Country Park. The Department for Communities and Culture would like to licence the Park to enable community events for residents in the area. It was confirmed that the Park has good security and there had been few incidents of vandalism in recent years. He accepted that noise could be an issue but due the work undertaken alongside the Environmental Protection Unit, noise nuisance would be minimal. Event Organisers would be expected to adhere to the operating schedule and would not be invited to work for the Council again if they fail to control events appropriately.
4. The representations made by Rawcliffe Parish Council in writing and at the hearing. Due to a high level of anti-social behaviour and noise complaints in the Ward, they felt that licensing the park could increase problems in the area.
5. Representations made by local resident in writing and at the hearing. They raised concerns about noise nuisance in the area should the licence be granted.

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 related and modify/add conditions accordingly.

Option 4 Reject the application.

Members chose Option 2 and added the following condition to the licence.

1.All amplified music or amplified sound shall cease by 22:00 everyday.

All mandatory conditions shall apply.

**Informative**

The Sub-Committee requested that the applicant puts in place arrangements with Events Organisers that reflect the concerns of the representors raised at the hearing.

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

REASON: To address the representations made.

Councillor Boyce, Chair

[The meeting started at 10.10 am and finished at 12.20 pm].

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**Licensing Act 2003 Sub Committee****1 March 2012**

Report of the Director of Communities and Neighbourhoods

**Section 18(3)(a) Application for a premise licence for 4 Gerard Avenue, Burnholme, York YO31 0QW****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-019853
3. Name of applicant: Ali Gumusler.
4. Type of authorisation applied for: Grant of Premise Licence
5. Summary of application: The nature of the application is to allow for the sale of alcohol off the premises between the hours of 06:00 and 23:00 every day.

**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
  - (a) The premises will be fitted with 24 hr CCTV.
9. The prevention of crime and disorder:
  - (a) Alcohol will not be sold to persons who have been drinking.

(b) Persons causing problems will be reported to the police.

10. Public safety:

(a) Health and Safety and Fire Safety Regulations will be in place.

11. The prevention of public nuisance:

(a) Nuisance notices will be displayed at the entrance.

12. The protection of children from harm

(a) Where appropriate, staff will undertake ID checks on customers before alcohol and tobacco products are sold.

**Special Policy Consideration**

13 This premise is not located within the special policy area.

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. North Yorkshire Police have met with the applicant to discuss the application. The applicant has agreed to the following conditions being attached to the licence if granted:-

- i. CCTV will be installed to cover the premises and will include all areas to where the public have access.
- ii. It will be maintained, working and recording at all times when the premises are open.
- iii. The recordings should be of sufficient quality to be produced in Court or other such Hearing.

- iv. Copies of the recordings will be kept available for any Responsible Authority for 28 days and will be made available to any Responsible Authority within 48 hours of request.
- v. Copies of the recordings will display the correct time and date of the recording.
- vi. All off-sales shall be made in sealed containers.
- vii. Documented staff training will be given regarding the retail sale of alcohol, the conditions attached to the premises licence and operating times of the venue.
- viii. Such records (re condition vii) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any Responsible Authority.
- ix. 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.
- x. Both documents (referred to in condition ix) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any Responsible Authority.
- xi. 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.

### **Summary of Representations made by Interested Parties**

- 17. Relevant representations have been received from 7 Interested Parties listed at Annex 2. Their representations are attached at Annex 3.
- 18. A map showing the general area around the venue from which the representations are focused is attached at Annex 4.
- 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.

### **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.

### **Council Plan**

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 priorities to protect vulnerable people, build strong communities, and protect the environment.

### **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:**

Lesley Cooke  
Licensing Manager

Tel No. 01904 551515

**Chief Officer Responsible for the report:**

Steve Waddington  
Assistant Director– Housing & Public Protection.

**Report  
Approved**



**Date** 08/02/12



**Specialist Implications Officer(s)**

Head of Legal & Democratic Services  
Ext: 1004

**Wards Affected: Heworth**



**For further information please contact the author of the report**

**Background Papers:**

- Annex 1** - Application form
- Annex 2** - List of representors
- Annex 3** - Copy of representations
- Annex 4** - Map of area from which representations received
- Annex 5** - Mandatory Conditions
- Annex 6** - Legislation and Policy Considerations