

Licensing Hearing

To: Councillors Boyce, Horton and Taylor

Date: Monday, 8 April 2013

Time: 10.00 am

Venue: Snow Room, Ground Floor, West Offices, York.

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 20th August 2012.

5. The Determination of an Application by Ms. Joanna S Gray, Otilie Wood, John Morgan, Will Yemuyang and Alistair and Sue McClean for a Review of a Premises Licence Section 52(2) in respect of McDonalds, 14-16 Blake Street, York, YO1 8QG (CYC-010238)

If you require any further information, please contact Laura Bootland on Tel 01904 552062 or email laura.bootland@york.gov.uk

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LICENSING ACT 2003 SUB – COMMITTEES PROCEDURE FOR REVIEW HEARINGS

Introduction

The procedure outlined below will be followed at all Licensing Review 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 for the Review, Ward Councillors, the Licence Holder(s) and Representors who have made written submissions will be allowed to speak at the Sub-Committee. At any hearing of an application for a Review, the Applicant for the Review, the Licence Holder(s) 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 for the Review and the Licence Holder(s). 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 for the Review, the Licence Holder(s) 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 for the Review, the Licence Holder(s) and Representors cannot raise substantial new information at a hearing which has not been seen previously by the other parties.

The Applicant for the Review or any Representor **may not** introduce any new ground or objection not referred to in the written submission. Amplification of the original representation may be made but any additional or new 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. 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 for a Review, the Licensing Officer, the Applicant for the Review, the Licence Holder(s) 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 and the Licensing Officer*], welcomes the Applicant for the Review, the Licence Holder(s) 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 for the Review, the Licence Holder(s) and Representors (or representatives) to ask the Licensing Officer questions to clarify any points raised in the report.
8. The Chair will invite the Applicant for the Review (or their representative) to present their case and call any witnesses to support their case *[maximum 15 minutes]*.
9. The Chair will invite the Licence Holder(s) and 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) Responsible Authorities
 - (ii) Ward Councillors
 - (iii) Interested Parties in support of the Review
 - (iv) Interested Parties opposing the Review
 - (v) Licence Holder(s)
10. The Chair will invite the Committee Members to ask questions of the Applicant for the Review (or their representative) and/or witnesses.
11. The Chair will invite the Representors in support of the review (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) Responsible Authorities
 - (ii) Ward Councillors
 - (iii) Interested Parties
12. The Chair will invite the Applicant for the Review and the Licence Holder(s) and representors opposing the review to ask questions of each Representor in support of the review(or their

representative) and/or their witnesses after each presentation *[maximum 5 minutes per Representor]*.

13. The Chair will invite the Committee Members to ask questions of each Representor in support of the review (or their representative) and/or their witnesses after each presentation.
14. The Chair will invite the Licence Holder(s) (or their representative) to present their case and call any witnesses to support their case *[maximum 15 minutes]*.
15. The Chair will invite the Applicant for the Review and Representors (or their representative) in the following order to ask questions of the Licence Holder(s) (or their representative) and/or witnesses *[maximum 5 minutes each party]*
 - (i) Applicant for the Review
 - (ii) Responsible Authorities
 - (iii) Ward Councillors
 - (iv) Interested Parties in support of the Review
 - (v) Interested Parties opposing the Review
16. The Chair will invite the Representors opposing the review (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) Responsible Authorities
 - (ii) Ward Councillors
 - (iii) Interested Parties
17. The Chair will invite the Applicant for the Review and the Licence Holder(s) and representors in support of the review to ask questions of each Representor opposing the review (or their representative) and/or their witnesses after each presentation *[maximum 5 minutes per Representor]*.
18. The Chair will invite the Committee Members to ask questions of each Representor opposing the review (or their representative) and/or their witnesses after each presentation.
19. The Chair will invite the Licence Holder(s) (or their representative) to summarise their case *[maximum 5 minutes]*.

20. The Chair will invite the Representors (or their representative) in the following order to summarise their case [*maximum 5 minutes each party*]
 - (i) Responsible Authorities
 - (ii) Ward Councillors
 - (iii) Interested Parties opposing the Review
 - (iv) Interested Parties in support of the Review
21. The Chair will invite the Applicant for the Review (or their representative) to summarise their case [*maximum 5 minutes*].
22. 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 on law and jurisdiction.
23. When all the evidence has been heard, the Chair will declare the hearing closed and ask the Licensing Officer, the Applicant for the Review, the Licence Holder(s) 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

24. 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.
25. If possible, and always in the case of a Review of a premises licence following a Closure Order, 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 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.
26. 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 for the Review, the Licence Holder(s) and Representatives within 3 working days of the hearing. There can be no further questions or statements.

27. 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 for the Review, the Licence Holder(s) and Representatives within 3 working days of the decision being made.
28. 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

MEETING	LICENSING HEARING
DATE	20 AUGUST 2012
PRESENT	COUNCILLORS BOYCE, GILLIES AND GUNNELL

18. CHAIR

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

19. INTRODUCTIONS**20. 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.

Councillor Gillies declared a personal interest as he had sat on the planning committee that considered a related planning application.

Councillor Gunnell declared a personal interest as she had sat on the planning committee that considered a related planning application.

21. MINUTES

RESOLVED: That the minutes of the Licensing Hearings held on 28 May 2012 and 7th June 2012 be approved and signed by the Chair as a correct record.

22. THE DETERMINATION OF AN APPLICATION BY BORA AKGUL TO VARY A PREMISES LICENCE SECTION 35(3)(A) IN RESPECT OF BORA BORA, 5 SWINEGATE COURT EAST. YORK, YO1 8AJ (CYC-?017001

Members considered an application by Bora Akgul to vary a premises licence in respect of Bora Bora, 5 Swinegate Court East, York.

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

The following were taken into account:

1. The licence application form.
2. The Licensing Officers report and her comments made at the hearing. She advised that the application was to vary the hours of operation for and to add new licensable activities to the licence. The application also requested the removal of a number of conditions. The premises are located outside of the Special Policy Area. A condition relating to capacity had been agreed with North Yorkshire Police prior to the hearing.
3. The applicants representations made at the hearing. He advised that he had operated the premises since April 2011 and had managed it to the best of his ability. There is no intention for the business to become a vertical drinking establishment. In response to concerns about noise by the representors, he advised that he had withdrawn the request for outdoor music.
4. The representations made by the Council's Environmental Protection Unit who advised that they would prefer no background music outdoors and that the door to the bar area could be kept open between 11am and 8pm providing music indoors was background level. It was suggested that an inaudibility condition should be included should the application be approved.

5. The representations made at the hearing by a local residents who raised concerns about increasing noise levels in the area. They also raised concerns about anti social behaviour and the general impact of the high number of licensed premises in the area.
6. Written representations made by local residents during the consultation period.

Members were presented with the following options:

- Option 1 Grant the licence in the terms applied for.
- Option 2 Grant the licence with modified/additional conditions 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 Refuse the application.

Members chose Option 2 and added the following conditions and informative:

1. There shall be a maximum capacity of 80 customers for the whole licensed area.
2. Noise and vibration from the premises shall be inaudible at nearby resident's properties.

The Sub Committee also decided that while Conditions 9 and 10 could be removed from the licence, condition 26 should remain.


Informative – The Sub-Committee asked that the Environmental Protection Unit monitor the area.

All relevant mandatory conditions shall continue to apply.

Councillor Boyce, Chair

[The meeting started at 11.00 am and finished at 1.20 pm].

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Meeting of Licensing Act 2003 Sub-Committee	8 April 2013
Report from the Assistant Director – Housing & Community Safety	

Section 52(2) Review of Premises Licence CYC/010238 for McDonalds Restaurant, 14-16 Blake Street, York, YO1 8QG

Summary

1. This report seeks Members determination of an application for a review of a premises licence which has been made under the Licensing Act 2003 in respect of McDonalds Restaurant, 14-16 Blake Street, York, YO1 8QG, premises licence number CYC/010238.
2. Name of applicants: 1. Joanna Sara Gray, 2. Otilie Wood, 3. Sue McClean, 4. Alister McClean, 5. John Morgan, 6. Will Yemuyang – All resident at Stonegate Court, 11 Blake Street, York.
3. Summary of Review: The application to review the premises licence relates to the following licensing objectives;
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance.
4. A copy of the application for review is attached at Annex 1 and is summarised as follows:
5. The application includes a catalogue of incidents of anti-social, abusive and intimidating behaviour, noise, disorder, criminal damage and littering which regularly occur between the hours of 23:00 to 05:00 in and around McDonalds Restaurant area and are believed linked to the operation of the restaurant. These incidents are believed to be generated by McDonalds' customers and gangs who congregate in the

area attracted to the restaurant and by vehicles and taxis dropping off and picking up customers throughout the night and into the early hours. Many of the people involved appear to be fuelled by alcohol. The applicants state that the number of incidents was noticeably reduced during the months the restaurant was closed for refurbishment.

6. The applicants also state that despite meetings held between McDonalds' management, residents and responsible authorities and the efforts of police, council officers, McDonalds' staff and doorstaff to address and alleviate the situation, the problems persist.
7. A copy of the current premises licence is attached at Annex 2. The premises licence currently authorises the following:

Licensable Activity	Current Days & Hours
Provision of late night refreshment	23:00 hours to 05:00 hours Monday to Sunday

8. The premises licence issued on conversion under the Licensing Act 2003 was granted on 1 September 2005. This licence authorised the provision of late night refreshment from 23:00 hours until 03:00 hours daily. A variation of the premises licence to extend the hours for provision of late night refreshment until 05:00 hours daily was granted on 3 April 2009 at a hearing of the licensing sub-committee.

Consultation

9. Consultation was carried out by the Applicants and the 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 concerns the notification of a review and the advertisement of a 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 in the vicinity of the premises and on the exterior noticeboard at the Guildhall. In addition relevant Ward Councillors were informed by way of register.

10. As a result of the consultation 44 representations were received, one of which contained a 40 signature petition. A schedule of names and addresses of representors is attached at Annex 3. Copies of the representations received are attached at Annex 4.
11. A map showing the location of McDonalds Restaurant in relation to representors' addresses is attached at Annex 5.
12. Further representations have been received from the following responsible Authorities -
13. North Yorkshire Police has made representation to the application on the grounds of all four licensing objectives;
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm.The representation includes a schedule of incidents reported to the police and crime statistics associated with McDonalds and the Blake Street area. A copy of the representation is attached at Annex 6.
14. City of York Council Licensing Authority has made representation to the application. Between July and October 2012 several complaints were received relating to anti-social behaviour and litter. A copy of the representation is attached at Annex 7.

Other Relevant Information

15. The applicants had previously submitted an application to review the premises licence on 24 December 2012 which was subsequently withdrawn on 7 February 2013.
16. Special Policy Consideration
This premise falls within an area that has been identified as one where the concentration of a significant number of licensed premises has a considerable impact on the licensing objectives. As part of a series of measures to address the problems of a city centre increasingly blighted by alcohol misuse, this area has been made the subject of a

special policy that addresses the impact of the concentration of licensed premises in this particular part of the city centre. The Special Policy was approved by full council on 7th January 2011. A copy of the special Policy Statement is attached at Annex 8.

17. There are no planning implications in relation to this application.

Options

18. By virtue of S52(4) of the Act, the Committee have the following options available to them in making their decision:
19. Option 1: To modify the conditions of the licence (ie to alter, omit or add any new condition).
20. Option 2: To exclude a licensable activity from the scope of the licence.
21. Option 3: To remove the Designated Premises Supervisor.
22. Option 4: To suspend the licence for a period not exceeding three months.
23. Option 5: To revoke the licence.
24. Members are also reminded of the option to issue a 'yellow card', ie a warning as to future conduct which may accompany options 1 to 4.

Analysis

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

28. Option 3: This decision could be appealed at Magistrates Court by the premises licence holder, the review applicant or any of the representors.
29. Option 4: This decision could be appealed by the premises licence holder.
30. Option 5: This decision could be appealed by the premises licence holder.
31. 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 this review and are relevant to the promotion of the licensing objectives.

Council Priorities

32. 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.
33. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

Implications

34.
 - **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

35. 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 which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
36. 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

37. Members determine the application.

Reason: To address the application for review received as required by the Licensing Act 2003.

Contact Details

Author:	Chief Officer Responsible for the report:		
Lesley Cooke Licensing Manager Ext 1515	Steve Waddington Assistant Director Housing & Community Safety Ext 4016		
	Report Approved	√	Date 27/03/13

Wards Affected: Guildhall West

Annexes

- Annex 1** - Copy of application for review of premises licence
- Annex 2** - Copy of premises licence
- Annex 3** - Schedule of representors
- Annex 4** - Copy of representations received
- Annex 5** - Map showing location of McDonalds in relation to residents making representation.
- Annex 6** - Copy of North Yorkshire Police representation
- Annex 7** - Copy of CYC Licensing Authority representation
- Annex 8** - Copy of CYC Cumulative Impact Policy
- Annex 9** - Legislation and Policy Considerations

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