



Licensing Hearing

To: Councillors Boyce, Cuthbertson and Richardson
Date: Monday, 4 November 2013
Time: 10.00 am
Venue: The Thornton Room - Ground Floor, West Offices (G039)

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 28th August 2013 and 4th September 2013.

5. The Determination of an Application by Mr Erdal Ozturkce for a Premises Licence Section 18(3)(a) in respect of Late Night Mobile Trader, Whip-ma-Whop-ma-Gate, York. (CYC-022587)

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:

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Licensing Officer
Legal Services
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Representors
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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

Meeting

Licensing Hearing

Date

28 August 2013

Present

Councillors Boyce, Cuthbertson and Taylor

18. Chair

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

19. Introductions**20. Declarations of Interest**

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

21. The Determination of an Application by Mr Raymond Stannard to Vary a Premises Licence Section 35(3)(a) in respect of Lord Collingwood, The Green, Upper Poppleton, York, YO26 6DP. (CYC-008977)

Members considered an application by Mr. Raymond Stannard to vary a premises licence in respect of the Lord Collingwood, Hodgson Lane, Upper Poppleton, York.

In coming to their decision, Members 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 application form.
2. The Licensing Manager's report and her comments made at the Hearing. She advised that the application was to

vary an existing premises licence at The Lord Collingwood to extend the licensed area to incorporate a section of village green at the front of the premises. The premise is not located within the special policy area. Two conditions had been agreed with North Yorkshire Police prior to the hearing. Consultation had been carried out successfully.

3. The applicants' Solicitors representations made at the hearing. He advised that the premises is a well run public house that offered food until 9pm and the extension of the licensed area was to enable tables to be placed outside on the village green immediately in front of the building for customers to enjoy meals outside. In response to the representations made he advised that his client was happy to amend the application to three tables. He stated that he is a responsible operator who would not tolerate badly behaved customers and would monitor the extended area closely to ensure no nuisance is being caused.
4. The representations made at the hearing by local residents who raised concerns about the proximity of the proposed seating area to their property and the potential for public nuisance caused by customers being outside at night time. They advised that they already experienced some noise nuisance and had some concerns about children running between the new area and the rear of the property.
5. Written representations made by local residents during the consultation period.

The Sub-Committee were presented with the following options:

- Option 1 Grant the variation to the Licence in the terms applied for.
- Option 2 Grant the variation to the Licence with modified/additional conditions imposed by the Licensing Committee.
- Option 3 Grant the variation to 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 agreed to grant the licence with modified/additional conditions as follows:

1. There shall be no more than three tables providing a maximum of 18 seated covers available at any time.
2. The outside grassed area directly to the front of the premises shall be clearly demarked by way of removable barrier when in use. For the purpose of clarity the demarcation shall be on three sides (the boundaries being the left and right side of the outside area and the area directly affronting/closest to the road).
3. The front outside area to be cleared and vacated of customers by 22:00 hours everyday.
4. Upon closing the premises, staff will undertake a general litter pick up and tidy of the front outside area of the premises.

Informative – The applicant is reminded that all necessary consents must be sought to erect barriers and place tables and chairs on the front outside area.

All relevant mandatory conditions shall apply.

Resolved: That the application be approved in line with Option 2 as detailed above.

Reason: The Sub-Committee concluded that the application was acceptable with the above additional/modified conditions as it addressed representations made both in writing and at the hearing, and it met all the licensing objectives.

Councillor Boyce, Chair
[The meeting started at 10.00 am and finished at 12.15 pm].

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Meeting	Licensing Hearing
Date	4 September 2013
Present	Councillors Boyce, Looker and Watt

22. Chair

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

23. Introductions**24. Declarations of Interest**

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

25. The Determination of an Application by The Restaurant Group (UK) Ltd for a Premises Licence [Section 18(3)(a)] in respect of Frankie & Benny's Restaurant, Unit 2, Vangarde Retail Park, Monks Cross, York (CYC-022253)

A Licensing hearing was called to consider an application by The Restaurant Group (UK) Ltd in respect of Frankie and Bennys, Unit 2, Vangarde Retail Park, Monks Cross, York.

Prior to the Hearing mediation took place between the applicant and North Yorkshire Police. It was reported that the following conditions had been agreed:

1. A CCTV system will be installed to cover the premises and recorded coverage will include all areas to where public have access to consume alcohol.
2. The CCTV system will be maintained, working and recording at all times when the premises are open.

3. The recordings shall be of good evidential quality to be produced in court or other such hearing.
4. Copies of the recordings will be kept available for any responsible authority for 28 days.
5. Copies of the recordings shall be made available to any responsible authority within 48 hours of request.
6. Copies of the recordings will display the correct time and date of the recording.
7. The only acceptable proof of age identification shall be a current Passport, photocard Driving Licence or identification carrying the PASS logo.
8. Open drinking vessels (to include bottles) of any type shall not be allowed to enter or leave the premises whilst under the customer's care.
9. All OFF sales shall be in sealed containers (save for consumption in any outside drinking area attached to the premises).
10. This condition will apply during all York City FC football matches, all York RL rugby matches and all large scale events (large scale being any publically advertised event where the attendance can reasonably be expected to be over 1000 people) held at the Community Stadium, Monks Cross, three hours prior to the scheduled kick off/start time of the event and for a period of two hours after the scheduled finish time of the event :
 - i) Alcohol will only be sold as ancillary to a meal at table seated areas within the internal restaurant area of the premises;
 - ii) There will be no vertical drinking in the external seating areas;
 - iii) External seating shall be limited at the front of the premises to 58 seats and 18 tables, and at the rear of the premises (facing the retail unit) seating shall be limited to 24 seats and 6 tables; and
 - iv) There shall be no more than 20 persons at the bar area, whether seated on bar stools or standing.

The Sub-Committee were presented with the following options:

- Option 1 Grant the variation to the Licence in the terms applied for.
- Option 2 Grant the variation to the Licence with modified/additional conditions imposed by the Licensing Committee.
- Option 3 Grant the variation to the Licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
- Option 4 Reject the application.

Resolved: That following successful mediation, the licence application be approved in line with Option 2 and the agreed conditions be added to the licence.

Reason: The Sub-Committee concluded that the application was acceptable with the above additional conditions as it addressed representations made both in writing and at the hearing, and it met all the licensing objectives.

Councillor Boyce, Chair
[The meeting started at 10.30 am and finished at 10.45 am].

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Licensing Act 2003 Sub Committee**4th November 2013**

Report from the Assistant Director – Housing & Community Safety

Section 18(3)(a) Application for a premise licence for a hot food take-away van, Whip Ma Whop Ma Gate, York.**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-022587
3. Name of applicant: Mr Erdal Ozturkce.
4. Type of authorisation applied for: Grant of Premise Licence.
5. Summary of application: The nature of the application is for the provision of late night refreshment, Monday to Thursday 23:00hrs to 03:30hrs and Friday to Sunday between 23:00hrs and 04:30hrs.

Background

6. A copy of the application is attached at Annex 1. A previous licence for this site was granted in November 2005 but lapsed in February 2013 when the former licensee was declared bankrupt. This is attached at Annex 2.

Promotion of Licensing Objectives

7. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
8. Prevention of crime and disorder
 - a) Any disorder to be reported to the police.
9. Public safety
 - a) Fire fighting equipment will be on the unit.

10. The Prevention of public nuisance

- a) There will be no audible music on the unit.

11. The protection of children from harm

- a) Any unaccompanied children will be reported to the police.

Special Policy Consideration

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

Consultation

13. 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 were notified by way of register.
14. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

15. North Yorkshire Police have met with the applicant who has agreed to a series of 13 proposed conditions being added to the licence if granted and as such there is no representation from the police. These conditions are listed at Annex 3.

Summary of Representations made by Parties other than Responsible Authorities

16. Relevant representations have been received from 2 people who live in the area. These representations are shown at Annex 4.
17. A map showing the general area around the venue is attached at Annex 5.

Planning Issues

18. There are no planning issues.

Options

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

Analysis

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

Council Plan

29. 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.

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

Implications

31.

- **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

32. 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.
33. 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

34. 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 & Community Safety.

**Report
Approved**



Date 21/ 10/13

Specialist Implications Officer(s)

Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Guildhall East



For further information please contact the author of the report

Background Papers:

- Annex 1** - Copy of application form
- Annex 2** - Lapsed licence.
- Annex 3** - Police agreed conditions
- Annex 4** – Copy of Representations.
- Annex 5** - Map showing location of venue
- Annex 6** - Legislation and Policy Considerations

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