

Comments from Public Protection Officer

A review of the premises licence for 59 – 61 Walmgate has been formally requested. In response to this I have reviewed Public Protection records in relation to complaints received about 59 – 61 Walmgate, York and have the following comments:

Since 16 July 2018 Public Protection have received approximately 14 complaints about the premises, 11 of which were from the same complainant. These complaints included complaints about the following issues:

- 4 Generic noise complaints about customer noise at the premises including the external area.
- A complaint about noise from inside the premises when windows were left open.
- 4 complaints about rubbish bins being filled.
- Three separate complaints by different complainants about a smoke nuisance from an external barbeque unit.
- 2 complaints about customers voices in the outside area

In relation to these complaints 4 warning letters sent to the premises about noise. The premises owner engaged with our officers and was offered advice on managing noise levels.

One warning letter about smoke from external barbeque unit was sent and after engagement with our Environmental Health Officer, the owners sourced authorised smokeless fuels which has resolved the issue.

It is worth noting that the complaints in 2021 about the courtyard area coincided with government guidance issued at that time requiring the hospitality industry to only use outside areas if opening due to the Covid 19 pandemic and therefore these complaints were received during an exceptional time. The noise was not at an unreasonable time, being during the afternoon and was not due to rowdy behaviour and just people talking with an occasional raised voice. The current premises licence owner has been running this premises since 2018 and the premises had a café area since 2014 therefore is not an introduction of a new noisy activity into a previously quiet area. It would therefore be unreasonable to require there to be no noise at all from the premises, especially as it is in the City Centre.

The evidence of the these complaints about the use of the courtyard area has been viewed by one of Public Protection's Environmental Health Officer's and he did not deem that the noise levels were sufficient to be a statutory nuisance and the complainant has expressed in emails that they agree with these conclusions. It must, however, be noted that noise from customers voices being audible at the complainant's property does signify that condition 25 is being breached and as the noise is unwanted to the complainant, that this results in a loss of amenity to them when trying to enjoy their outside area and is covered under the definition of public nuisance.

The difficulty is that Condition 25 of the premises license requires “Noise or vibration from the premises will be maintained at a level that will not be audible at the facade of any neighbouring noise sensitive premises.” If the staff of the venue cannot physically get to the façade of the nearest noise sensitive premises this condition is not achievable and therefore not enforceable.

Taking all of these points into consideration, the fact that the premises has existed as a licensed premises since 2014 and that the current designated premises supervisor has engaged with Public Protection at each complaint and taken positive action to remedy any issues, that the latest complaints about the external area have been made during the Covid 19 pandemic when the business was advised to use the external area and that no statutory nuisance has ever been witnessed in relation to any complaint, Public Protection are **not** making any representations at this review hearing but would, if helpful, offer the following recommendations:

Recommendations

As there is the possibility of a loss of amenity to one of the complainant’s and that condition 25 is not achievable for the premises staff or enforceable by the Local Authority, if members of the review committee were minded to make any amendments to the premises license you may wish to remove condition 25 and replace it with the following condition.

“A documented noise management plan shall be submitted to and approved in writing by the Public Protection Department of York City Council within two months of the premises licence review decision date. Once approved it shall be implemented. The noise management plan will also include a procedure for investigating noise complaints.”

This would not result in no noise at all but would help the premises owners to better manage noise levels in the courtyard area.

Regards

Michael Golightly
Technical Officer