

## Licensing/Gambling Hearing

**To:** Councillors Galvin, Hook and D Myers

**Date:** Monday, 9 August 2021

**Time:** 4.30 pm

**Venue:** Remote Meeting

### AGENDA

#### 1. Chair

To elect a Member to act as Chair of the meeting.

#### 2. Introductions

#### 3. Declarations of Interest

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

#### 4. Exclusion of Press and Public

To consider excluding the Press and Public during the sub-committee's deliberations and decision-making at the end of the hearing, on the grounds that the public interest in excluding the public outweighs the public interest in that part of the meeting taking place in public, under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.

## 5. Minutes

To approve the minutes of the Licensing Hearing held on 17 June 2021.

## 6. The Determination of an Application by Mr R C Price for a Section 52(2) Review of a Premises Licence at 59 - 63 Walmgate, York, YO1 9TY (CYC-060429)

Democracy Officer:

Name: Fiona Young

Contact details:

- Telephone – (01904) 552030
- Email - [fiona.young@york.gov.uk](mailto:fiona.young@york.gov.uk)

For more information about any of the following, please contact the Democratic Services Officer responsible for servicing this meeting:

- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats.

Contact details are set out above.

**This information can be provided in your own language.**

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550



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## **LICENSING ACT 2003 SUB – COMMITTEES PROCEDURE FOR REMOTE LICENSING HEARINGS (*Review hearings*).**

### **Introduction**

1. During the coronavirus pandemic emergency period it will be necessary for licensing hearings to be dealt with remotely. This procedure sets out how City of York Council will deal with such hearings. This procedure must be considered in conjunction with the Council's Delivery of Remote Meetings document which sets out how all meetings, including licensing hearings, will be held in York.

2. The procedure adopted at a licensing Review hearing is at the discretion of the Sub-Committee but will normally follow the pattern outlined below.

3. The Council's hearings procedure is based on regulations made by the Secretary of State under the Licensing Act 2003. The procedure is intended as a general framework to ensure natural justice and a fair hearing. The Sub-Committee has a duty to view all evidence presented before them impartially. The Sub-Committee is not bound by the formal rules of evidence. Nevertheless, Members must carry out their duty placing what weight they feel is appropriate given the nature of the evidence and the manner in which it was obtained, and communicated.

4. The Council will provide a record of the hearing in a permanent and intelligible form and keep it for 6 years from the date of determination or disposal of any Appeal. The Hearing will be recorded and the recording placed on the Council's website.

### **Preparation for the Remote Licensing Hearing**

5. The Sub-Committee will use the video-conferencing platform when the hearing is in public session. Clear instructions will be provided to participants on how to join the remote hearing. The Sub-Committee may exclude the public from all or part of a hearing if it considers it is in the public interest to do so. Should any part of the hearing need to be held in private session, a separate private online meeting will be convened by the Sub-Committee. This video-conferencing platform will also be used for decision making in private. All paperwork relevant to the hearing will be published online on the Council's website, 5 working days before the remote hearing. The documents will be produced in PDF format and will be paginated to permit ease of reference during the remote hearing. Name and address details of those making representations will be made

public. Telephone numbers, email addresses and signatures will be omitted.

6. 5 working days before the remote hearing is due to take place, the Council will contact the parties with a list of issues they would like any party to specifically address them on or clarify at the hearing.

7. If in light of the Council's list of issues any party wishes to produce any further documentary evidence they should submit this to the Council by email three working days before the hearing.

8. Any documentary evidence that is not submitted to the Council by email three working days before the hearing will not be admitted without the agreement of all parties. If it is essential to a party's case that the material be admitted, then the Sub-Committee will consider adjourning the remote hearing to allow all parties a fair opportunity to consider it.

9. Should any party wish to rely on any points of law, specific references in the s.182 Guidance, specific references in the Council's Policy or any other external resources, these should be set down in an electronic document and submitted to the Council by email three working days before the hearing.

### **The Remote Licensing Hearing**

10. The Applicant for the Review and the Licence Holder(s) are permitted to speak at the remote hearing (see below). Ward Councillors, responsible Authorities and Representatives are only permitted to speak if they have made written submissions during the consultation period. Any party to a hearing may be assisted or represented by any person, legally or otherwise.

11. 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 and question each other. Each party will have 15 minutes to address the Sub-Committee and call any witnesses and 5 minutes for questions.

12. However, where there are groups of individuals with a common interest, for example local residents making similar representations either for or against an application, consideration should be given to nominating a spokesperson. Otherwise the Sub-Committee may impose a time limit for such representations where there is pressure on the Sub-Committee to hear numerous applications in a short period of time or for any other valid reason.

13. If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written representation. 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.

**14. 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 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 made at length.

15. The Applicant for the Review or any Representor **may not** introduce any new ground or objection not referred to in their written submission. Additional representations which do not amount to an amplification of the original representation will not be considered by the Sub-Committee.

16. Any person behaving in a disruptive manner will be asked to leave the hearing. However, if this occurs, that person will be entitled to submit in writing any information they would have been entitled to give orally.

#### *ORDER OF PROCEEDINGS AT THE REMOTE HEARING*

##### **Chair's introduction and opening comments**

17. The Chair will introduce the Sub-Committee Members and Officers and welcome the Applicant for the Review, the Licence Holder(s) and their representatives), and any Representors, and establish the identity of all who will be taking part.

18. The Chair will outline the procedure to be followed.

19. The Chair will proceed with the order of business on the agenda.

##### **Licensing Manager**

20. When the agenda item relating to the application is reached, the Chair will invite the Licensing Manager or Licensing Officer to present the application. The Chair will invite all present, one by one, to ask the

Licensing Manager / Officer questions if they wish, to clarify any points raised in the report.

### **The Application**

21. The Applicant for the Review (and/or their representative) will address the Sub-Committee and present information in support of the application and may call any witnesses to support the application, one witness at a time [*maximum 15 minutes*].

22. The Chair will invite the Licence Holder(s), Representors and Sub-Committee to ask questions of the Applicant for the Review in the following order [*maximum 5 minutes each party*]:

- Responsible Authorities
- Ward Councillors
- Interested parties
- Members of the Sub-Committee;
- The Sub-Committee's legal adviser.

### **The Representations**

23. The Chair will invite the Representors and/or their representative in the following order to address the Members of the Sub-Committee and call any witnesses in support of their representation [*maximum 15 minutes each party*]:

- Responsible Authorities
- Ward Councillors
- Interested parties

24. Where there are groups of individuals with a common interest, for example local residents, presentation through an appointed spokesperson is preferred but not mandated.

25. The Chair will invite the Applicant for the Review to ask questions of each Representor and/or their witnesses after each presentation [*maximum 5 minutes per Representor*]. The Chair will invite the Sub-Committee Members to ask questions of each Representor (or their representative) and/or their witnesses after each presentation.

26. 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*].

27. 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]*

- Applicant for the Review
- Responsible Authorities
- Ward Councillors
- Interested Parties

28. The Chair will invite the Sub-Committee Members to ask questions of the Licence Holder(s) or their representative.

### **Summaries**

29. The Chair will invite the Representors (or their representative) in the following order to summarise their case *[maximum 5 minutes each party]*

- Responsible Authorities
- Ward Councillors
- Interested Parties

30. The Chair will invite the Licence Holder(s) (or their representative) to summarise their case *[maximum 5 minutes]*.

31. The Chair will invite the Applicant for the Review (or their representative) to summarise their case *[maximum 5 minutes]*.

32. 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.

### **Determination**

33. The Sub-Committee will withdraw to consider their decision with the Legal Adviser and the Democratic Services Officer in a separate private on line meeting. 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.

34. If the decision is made following the conclusion of the hearing, the Sub-Committee will return to the public online meeting to announce an

outline of the decision to those present. This decision will then be communicated in full in writing, including reasons for the decision, to the Applicant for the Review, the Licence Holder(s) and all Representors (whether in attendance or not) usually within 5 working days of the hearing. There can be no further questions or statements.

35. If the Sub-Committee does not 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 Democratic Services 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 the Representors within 5 working days of the decision being made.

The notification will include information about the rights of appeal against the determination made.

City of York Council

Committee Minutes

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Meeting	Licensing/Gambling Hearing
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Date	17 June 2021
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Present	Councillors Galvin, Hook and Norman
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**1. Chair**

Resolved: That Cllr Norman be elected to act as Chair of the meeting.

**2. Introductions**

The Chair introduced those present at the hearing: the members of the Sub-Committee, the Applicant (Hannah McCarten), the Applicant's witnesses (Elliot Hardy and David Burgess), the Representors, the solicitor for some of the Representors (Frantz Gregory), the Licensing Manager presenting the report, the Legal Adviser, the Senior Legal Officer shadowing the Legal Adviser, and the Democracy Officer.

**3. Declarations of Interest**

Members were invited to declare at this point in the meeting any personal interests not included on the Register of Interests, and any prejudicial or disclosable pecuniary interests, which they might have in the business on the agenda. No interests were declared.

**4. Exclusion of Press and Public**

Resolved: That the press and public be excluded from the meeting during the sub-committee's deliberations and decision-making at the end of the hearing, on the grounds that the public interest in excluding the public outweighs the public interest in that part of the meeting taking place in public, under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.

**5. Minutes**

Resolved: That the minutes of the Licensing Hearings held on 29 April 2021 and 24 May 2021 be approved as a

correct record in each case, to be signed by the Chair at a later date.

**6. The Determination of an Application by Hardey Ltd. for a Section 18(3) (a) Premises Licence in respect of 7 Castlegate, York, YO1 9RN (CYC-068419)**

Members considered an application by Hardey Ltd. for a premises licence in respect of 7 Castlegate, York YO1 9RN.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objectives were relevant to this Hearing:

1. The Prevention of Crime and Disorder
2. Public Safety
3. The Prevention of Public Nuisance
4. The Protection of Children from Harm

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and the above licensing objectives, including:

1. The application form.
2. The papers before it, including the additional papers published in the three Agenda Supplements and the written representations.
3. The Licensing Manager's report, and her comments at the Hearing.

The Licensing Manager outlined the report and the annexes, noting that the premises were in the cumulative impact area (CIA) and confirming that the Applicant had carried out the consultation process correctly. She highlighted the conditions agreed by the Applicant with North Yorkshire Police and the Public Protection Team, as set out in Annexes 5 and 6 to the report, and noted that these included changes to the operating hours. She drew attention to the representations received from local residents as set out in Annex 8, and the additional information in Agenda Supplement 2. Finally, she advised the Sub Committee of the options open to them in determining the application.

In response to a question from the Sub Committee Legal Advisor, the Licensing Manager clarified that there were 5 options open to the Sub Committee, all of which were set out in her written report contained in the agenda.

In response to a question from Mr Gregory, the Licensing Manager confirmed that the premises were situated in the red zone of the CIA.

4. The representations made by Hannah McCartan on behalf of Hardey Ltd. (the Applicant).

The Applicant stated that she understood and respected the concerns of the Representors and would like to reassure them of her intentions in respect of the premises, which would operate as a café bar specialising in organic wines and serving small plates and cheeses. Its target market would be professional people looking to enjoy a drink and something to eat, for example after work. Under the revised hours agreed with the police it would operate from 11am to 11pm on Sundays to Thursdays and 11 am to midnight on Fridays and Saturdays. This was in line with existing bars in the area. She believed that the premises would enhance the street, in accordance with the aims of the Castlegate redevelopment.

The Applicant went on to state her commitment to upholding the Licensing Objectives and described the measures she would take to prevent public nuisance in particular. She and her business partner had over 20 years' experience in the trade and their employees would be fully trained in all areas, including regular training on how and when to refuse to serve alcohol. Challenge 25 would be introduced, and records of refusals kept. The need for door staff would be assessed, an Apex radio system would be used, and responsible drinking would be promoted. Only groups of 6 people or fewer would be admitted, due to the size of the property and so as not to add to congestion in the street. There would be signs indicating this policy and asking customers to respect the neighbours. The doors would be shut to reduce noise and there would be sound absorbing panels on the ceiling. The outside areas would close at 9pm and 10pm. Music would be low-level to allow conversation. Bins would be emptied at appropriate times and CCTV would be installed in accordance with the agreed conditions. There was no intention to block the passage to the rear courtyard; this would be kept clear at all times. It was in the interests of the business to clear away rubbish, and there would

be a cleaning schedule including daily sweeping. Off sales would be in recyclable containers and ashtrays would be provided. The business would create new jobs, work with local suppliers and artists and was intended to be used by local residents. It would continue to promote Castlegate as a 'signature' street to visit in York.

In response to questions from the Representatives and Mr Gregory, the Applicant confirmed that:

- There was no kitchen on the premises, but there was a food preparation area for serving small plates of seasonal food, and service of alcohol would be ancillary to food.
- The operating hours were 11am to 11pm Sunday-Thursday and 11am-midnight Friday-Saturday; the front external area would close at 10pm and the rear at 9pm; food and drink would be served ancillary to one another; there would be background music only.
- The noise regulation measures already described would continue to operate in summer, and fans could be installed in hot weather. The alleyway also acted as a sound break.
- The Applicant's employees would clean the area directly outside the premises – it was important to the business to keep the street clean.
- Although Hardy Ltd. had been set up only recently, the Applicant and her business partner both had previous experience of working in restaurants and pubs.

In response to questions from the Chair of the Sub-Committee, the Applicant confirmed that:

- The aim was for a 'happy medium' mix of table service at the front of the premises and a bar at the rear, creating a relaxed atmosphere.
- The conditions agreed with the police required alcohol to be ancillary to the sale of food.
- 'Tapas style' food would be served until 10pm.

5. The representations made by Mike Taylor, a local resident.

Mr Taylor stated that, in view of the amendments made to the application and the Applicant's responses to questions at the hearing, the representations he had made were no longer valid and he was happy for the application to be granted, on the basis that the service of alcohol would be ancillary to food.

6. The representations made by Bih Toie Wong, on behalf of herself and other residents of 11 Castlegate.

Miss Wong stated that the application seemed to have morphed into something different from the original, but on behalf of her household she still had concerns about noise. It was inevitable that people would open doors and windows on a hot day, and this would have an impact on residents of nos. 9 and 11 and of the Coppergate Centre, which overlooked the back of the premises. However well-intentioned the Applicant, it was a legal fact that once customers had left the premises they were no longer the responsibility of the proprietors. 11 Castlegate fronted Friargate and there had been problems in the past with people urinating and being sick; residents did not want a repeat of that. The Applicant couldn't do anything to address the situation after customers had left. Castlegate was not a large street – it was only 12 feet wide. Residents wanted to live in harmony with commercial tenants, but there were already establishments like this on along the street. She did not think the premises would enhance Castlegate, which was a historic street that encompassed Fairfax House and the Castle Museum.

In response to a question from the Chair of the Sub-Committee, Miss Wong confirmed that her central point related to the cumulative impact of the premises within the CIA red zone. She pointed out that there were already three licensed premises (bars) along the street – the Blue Boar, Pairings wine bar and another that sold gin, plus three restaurants, including Rustique, which meant that the area was already saturated.

7. The representations made by Frantz Gregory, Solicitor, on behalf of members of the Dykes family and Mr Sheldon.

Mr Gregory drew attention to his client's objections at pages 65-77 of the agenda papers and stated that he was not convinced that drinking would be ancillary to food at the premises. Castlegate was largely residential, with at least 70 residents in the vicinity of the premises. The premises were very small and reliant on service in the rear yard and front pavement areas. Due to conditions on the previous Listed Building planning consent, no air conditioning was permitted in the back yard, so the premises could only be aired by opening doors and windows. This raised the issue of noise pollution, which he doubted could be mitigated sufficiently to satisfy the licensing objectives.

Mr Gregory went on to state that there was already a problem with street drinking in Castlegate, it was saturated, and the premises were located in the red zone, this being a lived experience for the residents. The proposals were not sufficiently clear or detailed in terms of meeting the licensing objectives. If those objectives could not be met, the application must be refused. Although conditions had been agreed with the police, including removing the external areas from being part of the licensed area, the Applicant seemed adamant that customers would still be served in those areas, as indicated in paragraph 19 of the report. There was a complex mix of ownership and easement rights, so the rear yard should be excluded or clearly conditioned. He was concerned that the North Yorkshire Police and Public Protection Unit may have relied upon the misleading representations in the plans submitted by the Applicant referred to at pages 66-69 of the papers when mediating with the Applicant; this needed further clarification.

Mr Gregory submitted that the public safety objective could not be met without representations from the North Yorkshire Fire Service. There was a complicated network of fire exits and easements at the premises and one door supervisor could not manage the volume of drinkers. Nos. 9a, 9b and 11a all had easement rights over the alleyway and rear yard for deliveries. Access could not be restricted and this was a concern if the yard was to be used to serve customers and for smoking, as it was not large enough. There was also evidence of public nuisance in that the decision of the licensing application for the Blue Boar had restricted the use of its rear yard to the storage of bins. Any use of the yard would create noise and cause nuisance to surrounding properties, all of which had single glazed windows. His client's elderly mother would experience nuisance, and an infringement of her right to a private and family life in contravention of the Human Rights Act. His client and other Representors had also experienced rising crime and social disorder along Castlegate on Friday and Saturday evenings, as stated in the representations at pages 69 and 70-71. Congregation in the rear yard would lead to a serious risk of crime, as private items stored in the area would be at risk of theft or damage.

In response to questions from the Chair of the Sub-Committee, Mr Gregory confirmed that he wanted the use of the rear yard to be excluded altogether rather than conditioned. He did not

accept that there could be table covers in the yard even without a licence. The issue was that it was a service yard and fire escape.

The Representors and the Applicant's solicitor were each then given the opportunity to sum up.

Mr Taylor confirmed that he had nothing further to add.

Miss Wong summed up, stating that she had little to add to the submissions already made. She was not convinced that the Applicant could control the noise nuisance. Castlegate was already saturated with establishments and the application was not bringing anything to enhance the area. She was concerned that there would be an increase in problems with litter and noise nuisance should the application be granted. The Applicant's intentions were clear but they could not control the behaviour of their customers once they had left the premises.

Mr Gregory summed up, stating that the council should refuse all applications in the red zone. He said the application had been insufficiently prepared and lacked clarity with regard to door supervision, noise nuisance, infringement on private life, links to the community, discouraging irresponsible drinking and behaviour, and fire regulations. There were no representations from the fire service. No conditions had been offered in respect of picking up glasses / litter, music levels, smoking, provision of contact details to residents, or vertical drinking. The rear yard should not be used at all except for deliveries. Other uses would cause problems for residential properties, with noise, smoking, and people opening doors. There were so many other licensed premises in the street that the area was saturated. Therefore the licensing objectives could not be met.

The Applicant summed up, stating that the company's intention was to attract a clientele that would not indulge in bad behaviour. CCTV was installed already both inside the building and at the rear. The company had strong connections with the police; they respected their neighbours and took their concerns seriously. If complaints arose, they would look at adjusting their procedures. The rear yard was not part of the application. The fire service had not yet carried out a risk assessment because the premises were currently empty, but this would be done. The alley and access will be kept clear. There would be a cleaning

schedule for the front and rear of the premises and the company would carry out their own risk assessment of those areas.

Members of the Sub-Committee sought clarification on the former use of No. 7 Castlegate. The Applicant stated that it had previously been a vape shop. Mr Gregory stated that, prior to that, it had been an art shop.

The Sub-Committee Legal Advisor sought clarification from the Licensing Manager regarding the conditions agreed with the Police and Public Protection, the interaction between the planning and licensing regimes, and the comments made by Mr Gregory in respect of the Fire Service and the Blue Boar licensing decision.

The Licensing Manager confirmed that:

- The police condition in respect of 'opening hours' on page 47 was not enforceable and should be amended to refer to 'hours of licensable activities'.
- Condition 2 on page 49 should require the noise management plan to be submitted to Public Protection rather than to City of York Council. There was no requirement to obtain planning permission prior to submitting a licensing application; in this case, the Conservation Officer was already involved and the relevant Listed Building application had been submitted.
- The Fire Authority could not use the Licensing Act, as it was governed by its own legislation.
- Any changes imposed as part of the Listed Building consent that conflicted with the licensing conditions would require an application for a minor variation to the licence by the Applicant.
- She had no updates in respect of the Blue Boar; however confirmed that there had been changes to the operation of some licensed premises due to the Coronavirus pandemic, and the extension of pavement café areas.

Mr Gregory wished to raise an issue regarding the premises licence for the Blue Boar premises. He confirmed when asked by the Sub-Committee Legal Advisor that this was information included in the written representations in the agenda pack.

In respect of the proposed licence, the Sub-Committee had to determine whether the licence application demonstrated that the

premises would not undermine the licensing objectives. Having regard to the above evidence and representations received, the Sub-Committee considered the steps which were available to them to take under Section 18(3) (a) of the Licensing Act 2003 as they considered necessary for the promotion of the Licensing Objectives:

Option 1: Grant the licence in the terms applied for. This option was **rejected**.

Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee. This option was **approved**.

Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly. This option was **rejected**.

Option 4: Refuse to specify a person on the licence as premises supervisor. This option was **rejected**.

Option 5: Reject the application. This option was **rejected**.

Resolved: That Option 2 be approved and the application be granted, with the following modified/additional conditions added to the licence:

- a) Licensable activities to be 11:00-23:00hrs weekdays and Sundays, and 11:00-01:00hrs Fridays and Saturdays.
- b) A documented noise management plan shall be submitted to and approved by the Public Protection Team of the City of York Council within two months of the licence being granted, once approved it shall be implemented. The noise management plan will also include a procedure for investigating noise complaints.

The Operating Schedule and the conditions agreed with North Yorkshire Police and the Public Protection Team contained in the published Agenda shall be included in the licence, unless contradictory to the above conditions.

Reasons: (i) The Sub-Committee must promote the licensing objectives and must have regard to the Guidance issued under section 182 of the Licensing

Act 2003 and the Council's own Statement of Licensing Policy.

(ii) The Sub-Committee noted that the premises were located within the red zone of the Council's cumulative impact assessment area (CIA), and that the Applicant had reached an agreement with both the North Yorkshire Police and the Public Protection Team, with the agreed conditions contained in Annex 5 and 6 the Agenda respectively.

(iii) The Sub-Committee considered very carefully the representations of the Applicant, both those contained within the agenda and those made in person at the hearing, and gave great weight to the business operation as described, size of the premises, the experience of the Applicant and her business partner, their proposed use of the outside areas, her assurance that they would continue their engagement with their neighbours, their consultation with responsible authorities, and agreed conditions set out in Annex 5 and 6.

(iv) The Sub-Committee noted the withdrawal of representations by Mr Taylor at the hearing.

(v) The Sub-Committee considered very carefully the representations of Ms Wong, both those contained within the agenda and those made in person at the hearing, that the application was within the CIA red zone, her opinion that it was already a saturated area, there could be an increase in noise and other anti-social behaviours, the potential impact of warm weather on the opening and closing of windows and doors, what the business operation described would add to the street, her lived experience and her proximity to the premises.

(vi) The Sub-Committee considered very carefully the representations of Mr Gregory on behalf of his clients, both those contained within the agenda and those made in person at the hearing, in particular his clients concerns regarding the proposed use of the premises, their use of the outdoor areas, potential for noise pollution, current saturation of premises, increases in anti-social behaviour and crime, the lived experience of his clients, his clients' proximity

to the premises, and that the application should be refused as it was within the CIA red zone.

(vii) The Sub-Committee noted the written representations by those persons who did not attend the hearing or instruct another to speak on their behalf, (Agendas Annex 7 and 8).

(viii) The Sub-Committee was satisfied, from the information contained in the Agenda and the three Agenda Supplements and the representations of the Applicant at the hearing, that the Applicant had demonstrated that the cumulative impact would not be added to. The Sub-Committee was further satisfied that with the two modified conditions set out above that the premises would operate without undermining the licensing objectives.

(ix) The Sub-Committee therefore agreed to grant the licence with the modified, additional and mandatory conditions referred to above, which were appropriate and proportionate in the circumstances to promote the licensing objectives.

Cllr G Norman, Chair

[The meeting started at 10.00 am and finished at 11.42 am].

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<b>Meeting of Licensing Act 2003 Sub-Committee</b>	<b>August 2021</b>
Report from the Director – Environment, Transport & Planning	

### **Section 52(2) Review of Premises Licence CYC/060429, 59 – 63 Walmgate, York, YO1 9TY**

#### **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 59 – 63 Walmgate, York, YO1 9TY, premises licence number CYC/060429.
2. Name of applicant: Mr R C Price, 20 St Denys Court, St Denys Road, York, YO1 9PU
3. Summary of Review: The application to review the premises licence relates to the following licensing objectives;
  - The prevention of public nuisance.
  - The prevention of crime and disorder.
4. A copy of the application for review is attached at **Annex 1** and is accompanied by supplementary information provided by the applicant.
5. A copy of the current premises licence and plans is attached at **Annex 2**. The premises licence currently authorises the following:

<b>Licensable Activity</b>	<b>Current Days &amp; Hours</b>
Recorded Music	08:00 to 23:30 everyday
Late night refreshment	23:00 to 23:30 everyday

Supply of alcohol	10:00 to 23:30 everyday
Opening hours	08:00 to 23:30 everyday

8. The premises licence was granted on 09/04/2018.
9. A map showing the location of the premises is attached at **Annex 3**.

### **Consultation**

10. 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 premises licence holder. Notice of the application was displayed in the vicinity of the premises, on the exterior noticeboard at the West Offices and on the Councils website. In addition relevant Ward Councillors were informed by way of register.
11. There were two responses from the responsible authorities:
  - a) North Yorkshire Police confirmed they had have reviewed the application for review of premises licence submitted and conducted checks regarding the premises and could confirm that North Yorkshire Police would not be submitting a representation in respect of this application.
  - b) The Council's Public Protection Team confirmed they had been involved in a number of complaints regarding the premises, they stated they were not making a representation to this review but have made a suggestion that may assist the Committee if they choose Option 1 at paragraph 14 below in choosing to add or amend any conditions on the licence. Their comments included at **Annex 4**.
12. Three further representations were received from other persons. One person wrote in support of the review, two people wrote to oppose the review (and therefore support the premises). The list of

representors is at **Annex 5** and a copy of their representations appears at **Annex 6**.

13. The Licensing Authority has received a number of complaints regarding the premises which has resulted in engagement with the premises licence holder regarding potential breaches of licence conditions. Two of the complaints resulted in written warnings being issued to the premises licence holder. A summary of complaints can be seen at **Annex 7**.

## **Options**

14. By virtue of S52(4) of the Act, the Sub-Committee may in making their decision take such of the following steps as it considers appropriate for the promotion of the licensing objectives:
15. Option 1: To modify the conditions of the licence (ie to alter, omit or add any new condition).
16. Option 2: To exclude a licensable activity from the scope of the licence.
17. Option 3: To remove the Designated Premises Supervisor.
18. Option 4: To suspend the licence for a period not exceeding three months.
19. Option 5: To revoke the licence.

Where the Sub-Committee takes a step mentioned in Option 1 or Option 2, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify. Otherwise the modification of conditions or the exclusion of a licensable activity will be permanent.

In deciding which, if any, of these steps to take, the Sub-Committee should direct its mind to the cause or causes of the concerns which the application and representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

The Sub-Committee may decide that no action is appropriate if it finds that the Review does not require it to take any steps that are appropriate to promote the licensing objectives.

### **Analysis**

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

The decision of the Sub-Committee will not have effect until the end of the period given for appealing against the decision, or if the decision is appealed against, until the appeal is disposed of.

26. Members are reminded that they may only use their discretion to take remedial action in relation to matters that are raised by this review and are relevant to the promotion of the licensing objectives.

### **Council Priorities**

27. 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.

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

### **Implications**

29.

- **Financial** - N/A
- **Human Resources (HR)** – N/A
- **Equalities** – N/A
- **Legal** – The decision made by this Sub Committee is subject to appeal rights to the Magistrates Court.
- **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**

30. 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.
31. 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**

32. Members determine the application.

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

**Contact Details**

<b>Author:</b>	<b>Chief Officer Responsible for the report:</b>		
Lesley Cooke Licensing Manager Ext 1515	James Gilchrist Director Environment, Transport & Planning		
	<b>Report Approved</b>	√	<b>Date</b> 17/07/21

<b>Wards Affected: Guildhall</b>
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**Annexes**

**Annex 1** - Copy of application for review of premises licence, plus supplementary information

**Annex 2** - Copy of premises licence

**Annex 3** - Map showing location of premises

**Annex 4** – Public Protection Officer’s Comments

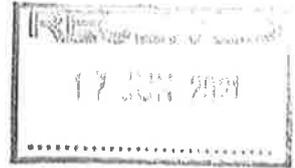
**Annex 5** – List of other persons – **CONFIDENTIAL**

**Annex 6** – Other Person’s representations

**Annex 7** – Summary of complaints received by the Licensing Authority

**Annex 8** - Legislation and Policy Considerations

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**CITY OF YORK COUNCIL**  
Licensing Services, Hazel Court EcoDepot, James Street, York, YO10 3DS

**Application for a review of a premises licence or club premises certificate under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

I, **Raymond Christopher Price** apply for the review of a premises licence under section 51/apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

**Part 1 – Premises or club premises details**

<b>Postal address of premises or club premises, or If none, ordinance survey map reference or description</b> <b>59-63 Walmgate</b>	
<b>Post town - York</b>	<b>Post code - YO1 9TY</b>

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Ambiente Tapas Limited Green Lane Trading Estate Clifton Moor York YO10 5PY
--

<b>Number of premises licence or club premises certificate (if known) 6209010</b>
---

**Part 2 – Applicant details**

I am:

Please tick ✓ yes

An interested party ✓

i) A person living in the vicinity of the premises. ✓

**(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)**

Mr <input checked="" type="checkbox"/>	Mrs <input type="checkbox"/>	Miss <input type="checkbox"/>	Ms <input type="checkbox"/>	Other title (for example, Rev) <input type="checkbox"/>
Surname			First names	
Price			Raymond Christopher	

Please tick ✓ Yes

I am 18 years old or over

Current postal address  
if different from  
premises address

20 St Denys Court  
St Denys Road

Post Town

York

Postcode

YO1 9PU

Daytime contact telephone number

Email address (optional)

**(B) DETAILS OF OTHER APPLICANT - N/A**

Name
Address
Telephone number (if any)
E-mail (optional)

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT - N/A**

<b>Name</b>
<b>Address</b>
<b>Telephone number (if any)</b>
<b>E-mail (optional)</b>

**This application to review relates to the following licensing objectives(s)**

Please tick one or more boxes ✓

- 1. the prevention of crime and disorder
- 2. public safety
- 3. the prevention of public nuisance
- 4. the protection of children from harm

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

**Please state the ground(s) for review (please read guidance note 1)**

There is a fundamental failure of both City of York Council and the Premises Licence Holder to promote licensing Objective 1 - Crime & Disorder and Objective 3 - Prevention of Public Nuisance.

The variations issued to the licence 02/06/2021 will impact on crime & disorder, public nuisance and the undue effect on residential amenity.

The Application for a Minor Variation to the Premises Licence explicitly states that the proposed variations 'are all in relation to the outside area'. As such the outside area represents the premises.

As well as the Premises Licence, the layout, use and activities in the outside area are also controlled by Planning Permissions 15/01049/FUL & 16/00012/FUL. No other planning permission exists for the operation of the business at the premises.

Crime & Disorder - Annex 2 Condition 2 of the existing licence requires that 'The premises shall operate as a restaurant/cafe not as a bar or vertical drinking establishment providing food and non-alcoholic drinks'. This is consistent with the Licensing Objectives.

Outside Area - Annex 2 Condition 19 restricts the use of the outside area to 12 patrons at any one time. This condition is there to 'prevent a public nuisance. It is consistent with the Licensing Objectives.

Conditions attached after the Licensing Hearing, proposed by the applicant, placed both time constraints on the use of the outside area and that 'in the outside area alcohol is only to be supplied ancillary to the provision of food to persons seated at tables and by waiter or waitress service only'. These conditions were attached to prevent a public nuisance. They are consistent with the Licensing Objectives.

The variation to the above condition will increase the likelihood of a public nuisance. (A public nuisance is not narrowly defined and can include low level nuisance affecting one or a few person(s) living locally - City of York Council - Statement of Licensing Policy 2019-2024)

The condition 'that alcohol can only be supplied ancillary to the provision of food in the outside area' is removed by the variation. This makes the outside area a bar. Annex 2 Condition 2 prohibits this. It also varies substantially the premises (outside area) to which the licence relates. Such a variation this is not permitted through the minor variation process.

In April 2021, and in order to accommodate additional seating/increased patrons using the outside yard, a building was demolished and removed. (Cycle Parking - Planning Permission 15/01049/FUL). This represents a variation to the approved layout of the outside area and requires a plan to be submitted with the application.

The application for the variation to the premises licence are 'all in relation to the outside area'.

The applicant states in that application that 'no revised plan has been enclosed as the proposed variations do not impact on the extent or layout of the premises'.

This statement is false - the layout of the outside yard no longer complies with the approved planning permission. A plan should have been submitted/requested.

The variation to the layout of the outside area, to accommodate additional patrons, 'could increase the capacity for drinking on the premises'. Such an application is likely to be refused (See Application Form). Such changes should be referred to the full licence variation process as it 'could potentially have an adverse impact on the promotion of the licensing objectives' (Revised

Guidance issued under Section 182 - 8.62 Licensing Act 2003). There appears to be no justification as to why an exception has been made in this case.

The licensing conditions, controlling both patron numbers and the hours of use of the outside area, replicate planning permissions already in place controlling the use of the outside yard. These planning controls are 'in the interests of residential amenity'. I consider it only right and sensible that the Premises Licence should mimic the already existing Planning Conditions.

Planning Permission for the use of the outside area was approved in 2016. This was prior to the establishment of the existing business. At the time the outside area was unlicensed and, in granting the planning permission, the Council are on record agreeing 'with residents that if alcohol were permitted to be served in the yard, or if it were open into the evening, where background noise levels are known to be lower, there would be an undue effect on residential amenity. The times of operation can be controlled via a planning condition (subsequently applied). Alcohol is currently not served in the outside area; prevented by the premises licence. This matter would need to continue to be managed through licensing legislation'. (Committee Report 07/04/2016 - 16/00012/FUL)

What is implicit in this statement is that, had the yard (outside area) been part of the licensed premises and alcohol was being served, planning permission would have been refused. Explicit in this statement is that, to prevent an undue effect on residential amenity from the use of the rear yard by patrons, the outside area should not become part of a licensed premises.

Despite this, a Premises Licence was granted in 2018 and it has since been demonstrated that this matter (the undue impact of the business on residential amenity/public nuisance) is not being successfully managed through licensing legislation.

On 02/06/2021 a number of variations were granted via a process to be used specifically for minor variations. They extend the hours of use of the outside area by patrons, they increase the number of patrons able to use the outside area at any one time and they remove the requirement for alcohol to only be supplied as ancillary to the provision of food, thereby creating a bar in the outside area which is prohibited by the licence. I consider that these variations, both individually and collectively, represent a *significant variation* to the existing premises licence and do not fall within the scope of a minor variation. There is a failure of the Council to follow due process.

The variations granted dilute significantly the purpose of the Premises Licence and both City of York Council and the Premises Licence Holder to promote the Licensing Objectives. Existing planning permissions do not support the variations granted. Overall there is a failure of City of York Council to abide by its Statement of Licensing Policy 2019-2024.

**Please provide as much information as possible to support the application (please read guidance note 2)**

The existing Premises Licence was granted by City of York Council on 09/04/2018 who have since been found to have granted the said licence while failing to follow their own procedures. As a result, planning recommendations concerning the control of residential amenity were not considered. (Ombudsman's Report November 2020)

The premises licence restriction on the number of customers using the outside area, the times in which the outside area can be used by customers and that alcohol would only be served as ancillary to the supply of food, were a concession made by the applicant at the Licensing Committee hearing 09/04/2018 in order to reduce the impact of their business on residential amenity - specifically to control a public nuisance. Nothing has since changed to reduce or remove that impact. The variation places no additional controls to prevent a public nuisance. The variation granted can only exacerbate the public nuisance and the undue effect on residential amenity.

Condition 25 of the Premises Licence requires that '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' - and was submitted as a control measure by the applicant to prevent a public nuisance. This has subsequently been found to be unachievable and, as such, the business permanently operates in breach of this condition and control measure. City of York Council have failed to enforce this condition. The variation will only increase the audible noise at the facades of any neighbouring properties and the associated public nuisance this noise will cause.

There is a history of complaints relating to the operation of the licensed premises, particularly with regards to noise, which includes a final warning issued by City of York Council 11/12/2019.

The business no longer operates in the way described by the applicant at the Licensing Hearing. It has since enlarged its seating capacity increasing the opportunities for the consumption of alcohol on the premises. This variation to the licence further increases that capacity and opportunities of the consumption of alcohol. Such an increase should be subject to the full licence variation process.

The business operates from the premises in breach of planning permission/controls and has done so since 2018 - a planning application for a Change of Use is required to address this breach. The business owners, despite requests from the Council, have shown no intention of applying for planning permission.

The business regularly uses Temporary Event Notices to vary its existing licensing conditions thereby extending the hours which the outside area is used and increasing the number of patrons above 12. In doing so it has knowingly breached existing planning controls.

It is highly questionable whether or not both City of York Council and the Premises License Holder are abiding by the City of York Council's Statement of Licence Policy 2019-2024 - Section 8 Planning.

Until such a time as the review requested by this application is concluded the premises area will be operated in breach of Annex 2 Condition 2.

Have you made an application for review relating to this premises before?

Please tick ✓ yes  
**No**

If yes please state the date of that application - N/A

Day		Month		Year			

**If you have made representations before relating to this premises please state what they were and when you made them**

There is a history of complaints to the licensing authority relating to noise generated by the premises and breaches of licence condition. These complaints are documented with City of York Council. They include but are not limited to:-

16/07/2018 Noise - recorded with Environmental Health - warning letter sent.  
22/07/2018 Noise - raised with business owner.  
12/08/2018 Noise - raised with Environmental Health.  
17/08/2018 Light Pollution - raised with business owner.  
19/04/2019 Failure to comply with bank holiday closure times. raised with business owner.  
24/07/2019 Noise - raised with Licensing Officer York  
05/12/2019 Noise - Raised with business owner.  
11/12/2019 Noise - warning letter issued by Licensing York.  
16/11/2020 Noise & Fumes - warning letter sent by Environmental Health.  
19/04/2021 Noise - raised with Licensing Officer.  
04/06/2021 Noise - raised with Environmental Health.  
13/06/2021 Noise - raised with Licensing Officer.

The above does not include separate complaints to City of York - Planning.

Please tick ✓ Yes

- I have sent copies of this form ~~and enclosures~~ to the responsible authorities and the premises licence holder ~~or club holding the club premises certificate~~, as appropriate ✓
- I understand that if I do not comply with the above requirements my application will be rejected ✓

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION.**

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant's solicitor or other duly authorised agent.** (See guidance note5). If signing in ~~the~~ capacity.

Signature .....

Date ..... 15 June 2021

Capacity Interested party living in the vicinity to the premises

<b>Contact Name (where not previously given) and address for correspondence associated with this application</b> (please read guidance note 6)	
Mr R. C. Price 20 St Denys Court St Denys Road	
<b>Post town - York</b>	<b>Post code - YO1 9PU</b>
<b>Telephone number (if any)</b>	
<b>If you would prefer us to correspond with you by e-mail your e-mail address (optional)</b>	

This authority is under a duty to protect the public funds it administers and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.



**APPLICATION FOR A REVIEW OF PREMISES LICENCE 6209010  
59-63 WALMGATE YORK YO1 9TY  
AMBIENTE TAPAS LIMITED**

**SUPPLEMENTARY INFORMATION**

I provide the following supplementary information to further support of my request for a review of this Premises Licence.

Throughout this submission the term 'business owner' is used to define the Premises Licence Holder and to who complaints from me have been addressed.

**Documented Complaints**

**16 July 2018 - Noise - Recorded With Environmental Health - Warning Letter Sent.**

In an effort to maintain a good relationship with Ambiente/The Press Kitchen I raised a number of issues directly with the business owner relating to:-

1. Annex 2 Condition 25 - noise could be heard from the business premises beyond the facade of my building and inside my premises.
2. Annex 2 Condition 27 - recorded music was being played with doors and windows open and could be heard inside my premises.
3. Annex 3 Condition 1 - Bottles were being disposed of outside the agreed hours (10:00-2100) causing a noise nuisance both after midnight and before 08:00.

I recorded the various issues and requested them to be addressed as I considered them to be causing a public nuisance (see chart below). I considered the activities to be unacceptable/breaches of the Premises Licence. I suggested to the business owner that, if my complaints were not addresses I would be seeking a review of the premises licence.

I received no response from the business owner.

I referred my complaint to Mr Gray Environmental Health Officer who, at the time, I considered the person most likely to deal with my complaint. In doing so I made the point that 'the list only refers to incidents of noise heard from within my property. I have not included any details of noise, usually from customers using the outside yard (which is also part of the licensed premises), or from the internal premises, that can be heard from my balcony (i.e. at the facade) but not my inside my home'.

In his response to my complaints Mr Gray said "I will log this as a noise complaint onto our system and a warning letter will be sent in relation to the noise and alleged licence breaches." It is recorded by Mr Gray that the warning letter was sent on 16 July 2018

Date	Time	Duration/ Mins	Activity	Condition Breached
May 2018				
Thur 24	22:45	10	Disposing of boxes & rubbish in rear yard	A2/25
Sat 26	08:55	5	Disposing of bottles in rear yard	A2/25 A3/1
Sun 27	00:18	5	Disposing of bottles in rear yard	
Sun 27	22:50	10	Clearing of rubbish, moving of bins from rear yard into shop	A2/25
Mon 28	08:10	45	Sweeping out of rear yard, rearranging tables & chairs	A2/25
Mon 28	14:00	30	Loud group of 5 in rear yard	A2/25
Mon 28	16:00	30	Loud group of 5 & 2 groups of 2 in rear yard	A2/25
June 2018				
Fri 1	12:40	30	Loud group of 4 in rear yard	A2/25
Sun 3	07:36	5	Disposing of bottles in rear yard	A2/25 A3/1
Sun 3			email sent to Zoe Plumber	
July 2018				
Fri 6	21:45	45	Internal noise from premises	A2/25
Sun 8	23:00	5	Disposing of bottles, clearing of bins etc in rear yard	A2/25 A3/1
Mon 9	14:00	90	Loud group of 9 in rear yard	A2/25
Tue 10	13:00	30	Loud group of 3 in rear yard	A2/25
Fri 13	22:00	30	Internal noise from premises, including music	A2/25 A2/27
Fri 13	23:00	5	Disposing of rubbish etc in rear yard	A2/25 A3/1
Sat 14			email sent to Zoe Plumber	
Sat 14	20:00	90	Internal noise from premises including music	A2/25 A2/27

### 22 July 2018 - Noise - Raised with Business Owner

I complained directly to the business owner that internal noise generated from the premises, including shouting and loud laughter could clearly be heard *inside* my property until late into the evening on both Friday 6 July 2018 and Friday 13 July 2018. I added that I believed I was being tolerant of the noise generated by the use of the outside yard during the day but that hearing noise clearly generated by customer and staff during the late

evening and from inside The Press Kitchen was not acceptable. I reminded the business owner of their assurances to the Licensing Committee and of the conditions of their premises licence in relation to noise from their operations. I proposed that the solution may simply be to close the windows of the premises.

I received a response from the business owner that 'windows would be closed earlier in future' but, due to unusually high temperatures the internal temperatures have risen above what we anticipated' and that 'you will have to forgive us during this period'.

I was assured that the 'music has however always been turned down to reflect licensing obligation'. The business owner did not refute my claim regarding noise but, I felt, suggested that I should just have to put up with it.

I considered this response to be unsatisfactory and maintained a record of it.

### **12 August 2018 - Noise - Raised with Environmental Health**

I made the following extensive complaint to Mr Gray - Environmental Health Manager regarding noise in relation to Condition 25 of the Premises Licence:-

I spent most of last Saturday afternoon (11 August) on my balcony which overlooks The Press Kitchen. For much of the time I was disturbed by noise generated by their business activities and customers *coming from inside the premises*. This included loud talking, laughter, the clanging of plates, rattle of knives and forks, stomping about of serving staff and even the filling of ice buckets. All of this, and more, could be clearly heard because the windows and door at the rear of the premises were secured wide open throughout the afternoon.

From this I conclude that a) The Press Kitchen continue to demonstrate a complete disregard towards their neighbours and b) that they have no intention of complying with the Premises Licence Annex 2 Clause 25 that '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'. Noise was clearly audible and I have a number of recordings to demonstrate this.

When this and other conditions were applied by the Licensing Committee, it was done so after full consultation with all the representatives and due consideration to Ambiente's Premises Licence Application and objections received. In Section M of that application and under the heading 'Detail the steps you intend to take to promote the four licensing objectives' Ambiente submitted in the section The Prevention of Public Nuisance that 'Noise and vibration from the premises will be maintained at a level that will not be audible at the facade of any neighbouring noise sensitive premises'.

In my objections to the granting of a Premises Licence I wrote "Clearly the surrounding residential premises are 'neighbouring noise sensitive premises' and Ambiente have not provided any evidence in their application to demonstrate how noise and vibration will be prevented from creating a public nuisance". I also raised this point (amongst others) at the Licensing Committee hearing and challenged Ambiente's representative to articulate how

this obligation would actually be implemented. The response was at best ambivalent but Ambiente maintained that it would achieve this condition were the licence to be granted.

The licence was granted and it is now abundantly clear the condition is not being adhered to; noise from the premises can be clearly heard at the facade of neighbouring noise sensitive properties.

Given this, I now look to you to use your powers so as to ensure that the full conditions of the Licence are complied with by The Press Kitchen/Ambiente Tapas Ltd. The conditions were imposed after detailed consideration by the Licensing Committee and they were clearly considered reasonable by them. The conditions are also clearly enforceable and I am rather surprised that you have suggested you have the delegated authority to reassess their reasonableness and enforceability or that it is within your discretion to choose not to enforce them. (Your email 6 August) The Press Kitchen are not applying the conditions that were proposed by Ambiente Tapas Ltd and set by the committee; please now take the necessary action to ensure that these conditions are fully applied.'

I received the following response from Mr Gray:-

Thanks for your email below.

I have had a discussion with the Council's Licensing Enforcement Officer, Helen Sefton.

My role is to investigate and take action where noise amounting to a statutory nuisance is taking place. From your comments and information provided, it would indicate that the noise being encountered is at annoyance level as opposed to a statutory nuisance, thereby meaning that it is unlikely that I would be able to take any further action.

This then leaves us with the actual licensing conditions and whether they are being complied with. Both Helen and I believe that the enforcement of the following condition: 25. 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. would be problematic. Firstly the condition refers to at the facade. It could be asked, does the licensee have the ability to be able to actually get access to and assess the noise at the facades?

In terms of the reasonableness of such a condition, it could be said that any kind of noise made in the courtyard, no matter how reasonable or how low, would be likely to make sufficient noise to travel to a nearby facade. Neither the licensing enforcement officer or I feel that we could take enforcement action against the type of noises that you refer to taking place during the day (laughter, the clanging of plates, rattle of knives and forks, stomping about of serving staff and even the filling of ice buckets).

I realise you may not be happy with this conclusion, but if you wish to take this further, you may wish to consider contacting the Licensing Manager, Lesley Cooke for further clarification.

In response to Mr Gray I made the following comments:-

'Thank you for your response to which I make the following comments.

In your response you refer to noise from the courtyard. For clarity, in my email (and in previous emails) I referred to noise generated by the activities of the business and its customers from inside the building, not the courtyard.

In Paragraph 2 you maintain that the noise does not represent a statutory nuisance. The standard by which such noise is assessed is subjective, not objective. Therefore I would argue that, as the noise is clearly audible *inside* my property, it can be considered to be 'unreasonable and substantially interfere with the use or enjoyment of a home'. In this case my home. In the case of licensing law we are considering an issue of Public Nuisance not statutory nuisance and I believe that a Public Nuisance is being created for me and other occupants by the activities of The Press Kitchen in the way that I have described to you. In their decision the Licensing Committee clearly set out conditions intended to avoid this.

In Paragraph 3 you state that:-

'This then leaves us with the actual licensing conditions and whether they are being complied with. Both Helen and I believe that the enforcement of the following condition: 25. *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* would be problematic'.

By this you are implying that condition 25 is not being complied with and a Public Nuisance is being created, (why else would you consider enforcement?) but that you consider the actual enforcement of the condition would be problematic.

This is not so. In order that noise generated *inside* The Press Kitchen by their business activities and customers will *not* be heard at the facade of (or within) my property it is simply a matter of them keeping their doors and windows closed. While this may be problematic for The Press Kitchen it would allow them/Ambiente Tapas Ltd to comply with the terms of their Premises Licence. I fail to understand why enforcing this should be 'problematic' for either you or the licence enforcement officer.

Again In Paragraph 3 you then suggest that the licensee may not have the ability to actually get access to assess the noise at the facade (of my property). Given the close proximity of my property to The Press Kitchen it would not be difficult for the licensee to assess the level of noise emitted from their premises. Indeed, in your previous email (6 August) you said:-

'I have advised that management monitor the noise at the far end of the yard such that music is not audible at that far end'.

While in this case we are not addressing music but other noise you clearly think that the rear yard is a suitable point to assess whether or not noise might be audible at the facade of my property.

You then state (Paragraph 4) that:-

'In terms of the reasonableness of such a condition, it could be said that any kind of noise made in the courtyard, no matter how reasonable or how low, would be likely to make sufficient noise to travel to a nearby façade'.

Given your role as Environmental Health Officer I consider this to be a reasonable assessment made by a 'competent person'. Therefore it could be considered irrelevant whether or not the licensee has access to make an assessment of the noise at the facade. You have already made an assessment and concluded that any kind of noise from the courtyard could be heard at the facade.

I believe this assessment equally applies to noise generated from within the building and particularly when the windows and doors are open. Along with this, previous professional noise assessments carried out in relation to both planning and Premises Licence applications for the property at 59-63 Walmgate have identified that noise from the premises would cause a loss of amenity to residents. Such assessments remain on the records of City of York Council and can be provided again if you require.

Given this, I believe that we are all agreeing then that noise from the premises, both from the inside and the courtyard, will and can be heard at the facade of neighbouring noise sensitive properties. This raises the simple question, what can be done about such noise given the conditions contained within the Premises Licence?

Your stated view is that:-

'Neither the licensing enforcement officer or I feel that we could take enforcement action against the type of noises that you refer to taking place during the day (laughter, the clanging of plates, rattle of knives and forks, stomping about of serving staff and even the filling of ice buckets).'

I am unsure what relevance the time of day has as the conditions of the licence are not, in this case, time specific and time has no bearing on when a Public Nuisance can or cannot be created.

Given this I conclude that either:-

1) You or the licensing enforcement officer are not prepared to take any enforcement action regarding my complaint in relation to Annex 2 Clause 25 because it would be 'problematic',

or

2) Both you and the licensing enforcement officer believe that the licence granted to Ambiente Tapas Ltd by the Licensing Committee, which benefitted from the advice of the Council's Legal Officer, is unenforceable insofar as Annexe 2 Clause 25 is concerned.

As I am sure you will appreciate, there is a fundamental difference between a licence that City of York Council chooses not to enforce and a licence granted by City of York Council

that is unenforceable. It is important to me to know which of these two stances is your stated position in order that I can consider what further action to take.

Received the following response from Mr Gray:-

Thanks for your email, which I will respond to as follows;

- You mention that because noise from the Press Kitchen is audible within your property it is a public nuisance. Just because something is audible in the home, it does not automatically follow that it prevents reasonable use of the property, so I cannot agree with your conclusion that because something is audible it is a public nuisance.
- When the premises is busiest it is also likely to produce most noise, so to that end I would recommend that you contact the Council's Noise Patrol on a Friday or Saturday night after 9pm to enable officers to make an assessment of the noise level.
- I am certainly not implying that by breaching condition 25 that this means it would be creating a public nuisance. Case law has shown that it must be possible for any licence condition to actually be checked by the operator. They are able to assess the noise close to but not actually at the façade.
- There is no requirement for the operator to keep doors and windows closed other than that stated in condition 27 which only relates to when music is playing after 23.00. This winter the premises intends to install air conditioning which will negate the need to open windows before that time anyway.
- You state that time of day has no relevance on whether a public nuisance is caused. On the contrary, a noise after 23.00 that could result in sleep disturbance is significantly more likely to amount to a public nuisance than if the same noise is created before that time.

I have attached for you a very interesting article that relates to noise, inaudibility and licence conditions for licensed premises. It goes into some detail about the complexities of trying to require inaudibility conditions and the problems of any subsequent enforcement.

In summary I would recommend that you contact the Noise Patrol on a weekend if you continue to be disturbed by noise after 21.00.

I was left with the view that City of York Council were using the 'statutory nuisance' definition as an excuse for not enforcing Annex 2 Condition 25 and that, besides this, enforcing Annex 2 Condition 25 would be too difficult for the Council so it was best avoided; using the Noise Patrol was offered up as a distraction.

That there is a considerable difference between a 'statutory nuisance' and a 'public nuisance' in relation to the Licensing Act 2003 appears to have not been considered in the context of my complaint. I was also left with the view that I really wasn't going to get much further with this complaint. However, I must add that I found Mr Gray to be helpful and co-operative in my dealings with him albeit that I did not agree in this instance with his response.

**17 August 2018 - Light Pollution - Raised with Business Owner**

I had mention to the business owner in June 2018 that light pollution from their premises was a problem and that my black out curtains were struggling to contain this. I pointed out that this was a problem to us every night including the early hours of the morning. I again complained to the business owner 17 August 2018 that this was still a problem.

I received the following response:-

I have now investigated this and it has come to light that the duty manager failed to turn the lights out last night and for this we apologise.

I am assured that this is a one off occurrence and x has also assured me that better use will be made of the blind in the first floor stock room.

The lights should be turned off daily as the staff leave the premises and action will be taken against any Duty Manager that fails to do this in the future. However please be aware that the premises are cleaned outside opening hours by a contractor. It is normal therefore for the ground floor light and stair light to be on for up to 2 hours any time between 11pm and 7am on a daily basis.

The use of internal lights is not governed by our licence but we will of course try and take reasonable measures to be neighbourly. You have made it quite clear in the past that it is not your job to monitor our activities but I would like to use this as a point in case that if you do bring things to our attention they can be dealt with quickly and simply.

I was dissatisfied with this response, it clearly was not a one-off occurrence, and I felt it unnecessary to suggest that internal lights were not governed by the premises licence. I felt that the business owner set out to be uncooperative. I maintained a record of this.

**19 April 2019 - Bank Holiday Conditions - Raised with Business Owner**

I raised with the business owner that on Friday 19 April - a Bank Holiday that:-

- 1) Alcohol was being supplied to customers not taking food - breach of Annex 3 Condition 2
- 2) Alcohol was still served after 16:30 - breach of Annex Condition 3
- 3) the outside area was still occupied long after 17:30 by which time it should have been cleared - breach of Annex Condition 4

And that there was a failure to comply with the Conditions of the premises licence.

I received an apology from the business owner: staff had failed to recognise the day as a Bank Holiday. Given that the day Good Friday I found this remarkable. On the question of alcohol being served without food the response was:-

'we have had a very occasional problem with customers being told about the courtyard rules, ordering drinks and then deciding not to order food for one reason or another. Notwithstanding the terms of the Premises Licence this is not good business for ourselves but has been addressed with a complimentary bowl of olives rather than confrontation. Moving forward all staff have been instructed that they must take a food order with the initial order for any alcoholic drink, thus avoiding any breach of the PL or putting themselves into a confrontational position later down the line'.

I was left with the impression that it was easier to provide olives than comply with the premises licence condition. I was dissatisfied with the response and maintained a record of it.

### **3 May 2019 - Noise - Raised with Business Owner**

I made the following complaint to the business owner about noise late at night:-

Last night at 22:40, when my wife and I had already retired for the night, we were disturbed by the activities of your business. Rubbish was being disposed of into wheelie bins along with the clattering and banging of bin lids and shed doors. Bottles were also being disposed of into bins with the associated noise. There were two further trips to the bins and associated disturbances to us, the last one being at 23:25. The noise from all these activities could be clearly heard inside my property.

You may be unaware but the above is not unusual. Every night of every week since your business opened your staff have disposed of rubbish into bins between 22:00 and 23:30. The times vary, probably depending on how much rubbish has been generated during the day, and has on some occasions been after midnight. On most occasions the rubbish is disposed of quickly and in a single trip. However multiple trips to the bins during the hours I mention are not unusual. In fairness to you I acknowledge that it is highly unusual for bottles to be disposed of outside the hours permitted by your premises licence but rubbish is disposed of late at night every day.

I have previously said that I attempt to be tolerant of your use of the outside yard and general business activities. However after last night my patient is wearing thin, there appears to be no recognition by your staff that your rear yard is surrounded by residential properties. Clearing up at night clearly takes preference over your impact on my quality of life.

It is unfortunate then that once again I feel the need to refer you to your commitments and restrictions under both your Premises Licence and the existing planning consent for the premises. In particular that noise from your premises (which does include the rear yard) will be maintained at a level that will not be audible at the facade of any neighbouring noise sensitive premises, (Premises Licence), that bottles should not be disposed of into the outside waste bins at night and will only be disposed of between 10:00 and 21:00 (Premises Licence) and that there shall be no putting out of waste (e.g. bottles, cans etc) outside the permitted hours of operation (07:00 and 23:00) (Planning Consent).

Equally, it has not gone without notice by myself and others, including City of York Council, that the deli aspects of your business (if it actually exists) does not qualify as an A1 activity and that you are operating solely as an A3 restaurant. Because of this City of York Council consider you to be in breach of the currently A1/A3 Planning Consent for the premises and to continue to operate as such is entirely at your own risk.

I would appreciate it then if you would take whatever action you feel appropriate to comply with the restrictions and ensure that my quality of life is not regularly disturbed by the operation of your business. In the event that you are unable to do this you will leave me and other residents with little option than to seek a review and/or enforcement action regarding the Premises Licence and Planning Permission for your business.

I did not receive a response from the business owner.

**24 July 2019 - Noise - Raised with Licensing Officer**

On 17 July 2019 I raised the following complaint with Lesley Cooke,, Licensing Manager concerning noise:-

You will be aware that I have made a number of complaints regarding noise from the premises at 59-63 Walmgate and occupied by the business The Press Kitchen.

The purpose of this email is to advise you that this issue continues.

Last night (18/07/19) at 20:45 and for over the following hour the noise of business activities, music from the juke box and customers could clearly be heard *beyond* the facade of my property. The windows on all three floors of the premises were open and the door to the street of Walmgate was wedged open.

I am of the view that this constitutes a breach of the Premises Licence on at least two counts:

- 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 property.
- Whilst recorded music is being played doors and windows shall remain closed other than for ingress and egress.

Please consider this as a formal complaint and take action as appropriate.

As an aside, I am aware that air-conditioning is currently being installed at the premises. The Council's planning enforcement team is aware of this and that the business has not applied for planning permission to install air-conditioning (the premises is within a conservation area) or applied for written permission to install such plant and equipment in accordance with current planning approval for the premises. As such, until permission is granted the equipment cannot be used. The business also continue to operate as an 80 covers licensed restaurant for which it does not have planning permission. Given the blatant disregard shown by the owners of the business for the Council's planning and licensing processes and local residents I am fast forming the view that they are not fit to hold a premises license.

On 24 July 2019 I received the following response:-

Firstly I apologies for the delay in responding I have just returned from annual leave. Please make sure you either [licensing@york.gov.uk](mailto:licensing@york.gov.uk) or [public.protection@york.gov.uk](mailto:public.protection@york.gov.uk) as these email address are monitored during working days.

In my absence a written warning has been issued to the premises licence holder and designated premises supervisor of the above premises in relation to the alleged breach of licence conditions.

You should be aware that following the introduction of the Legislative Reform (Entertainment Licensing) Order 2014 and the Deregulation Act 2015 a number of activities are not licensable between the hours of 08:00 – 23:00 to an audience of less than 500. These activities include live and recorded music. Therefore any conditions relating to live or recorded music are only enforceable at the times that these activities are licensable.

I noted that the business owner has again received written warning.

#### **5 December 2019 - Noise - Raised with Business Owner**

I raised with the business owner a complaint regarding the disposal of rubbish and noise from the rear yard at 01:00 causing a disturbance. I considered this to be unacceptable and antisocial behaviour. I also reminded the business owner that these activities all too frequently caused a disturbance late at night and that 'your Premises Licence and existing planning controls both have conditions designed to regulate noise and protect residential amenity and not just serve your own self interests with impunity. Given this, will you now please address permanently these long and on-going issues of unacceptable antisocial resulting from your business activities'. I also raised a formal complaint with the licensing officer.

I received the following response:-

For clarification our Premises Licence states the following and makes no reference to access to the courtyard or disposal of general waste:

'Bottles should not be disposed of into the outside waste bins at night and will only be disposed of between 10:00 and 21:00'

I hope that you agree that we have adhered to this. We have also, until recently, applied a similar time frame to general waste and restricted entry to the court yard to the hours of 10:00 and 22:00 wherever possible. With the onset of the festive season this has proved impossible but I accept that the isolated incident in the early hours of 5th is unacceptable and steps have been taken to prevent it from happening again. However for the record all our staff had clocked out and left the premises by 00:00 so we are all puzzled by the reference to noise around 01:00.

Please rest assured that we will continue to comply with the Premises Licence in regard to disposal of bottles and we will endeavour to try and restrict disposal to before 22:00 as a standard but during busy periods this may extend to, but not exceed, 23:00.

I apologise again for the inconvenience caused in the early hours of 5th and hope that you have no further cause for complaint.

I felt the business owner was discrediting my complaint and ignored my reference to planning controls. The disposal of rubbish etc. late at night continued.

I also referred this complaint to Nigel Woodhouse, Licensing Officer. As a result a final warning was issued to the business owner:-

I am the Licence Enforcement Officer at the council and will be dealing with your complaint regarding The Press Kitchen.

I note that you have made previous complaints regarding noise emanating from the premises for which they have received advice and a warning letter issued.

As a resident you can bring the licence to review which would mean that a hearing would be held in front of council licensing committee members whereby a decision would be made to possibly put more stringent conditions on the licence or they could revoke the licence. I have attached information regarding a review to this mail.

With regards to this complaint I will speak with the Premise Licence Holder and reiterate to them the present licence conditions.

Please do not hesitate to contact the Licensing office should you have any further issues with these premises.

On 11 December 2019 I received a further response from the licensing officer that a 'final warning' had been sent and advising me of how to bring about a review. I found this response particularly helpful but decided, at this point, not to request a review.

At this point it should be noted that for much of 2020 the business was closed due to Covid 19 restrictions.

### **16 November 2020 - Noise & Fumes - Raised with Environmental Health**

A commercial wood burning food smoking appliance was installed in the outside area. The smoking of food was a 12 hour operation. Preparation of its use started just around 06:15 in the morning and this preparation generated noise that caused sleep disturbance. The lighting of the smoker, and then its use throughout the day, caused acrid smoke fumes to be emitted which filtered through into neighbouring properties. There was also an issue with the noise generated by the activity of attending to the needs of the appliance and cooking of food. It was apparent to me that no consideration had been given by the business owner to the impact of the appliance's use to nearby neighbours. Following complaints to the Council, particularly Mr Gray, Environmental Health Officer who was very helpful, a warning letter was sent and time restrictions were put on the use of the appliance along with the type of fuel used. This controlled the smoke nuisance. I also referred my complaint to the Licensing Office due to the noise being generated. They attended the site to investigate my complaint regarding noise. The response concluded that 'from the information provided there are no apparent breaches of the licence taking place'.

I was satisfied that my principle concern regarding smoke had been addressed. I noted that the site visit by the Licensing Office took place on a day when the smoker was not in use. The smoker appliance has since been removed.

**19 April 2021 - Noise - Raised with Licensing Officer**

I made a lengthy complaint to the Licensing Enforcement Office concerning what I considered to be a number of breaches of the Premises Licence:-

I wish to draw to your attention to the Premises Licence held by Ambiente Tapas Limited for 59-63 Walmgate, YO1 9TY and currently operating as Tabanco by Ambiente.

Tabanco by Ambiente opened on Monday 12 April 2021. It supersedes The Press Kitchen previously operated by Ambiente Tapas Limited at this site. Tabanco is marketed as 'being inspired by Spain's tabanco bars. It's the perfect place to pop in for a solo visit and grab a cold beer or sherry with a nibble or tapa, or visit with family and friends to dwell for longer to sample some tapas alongside a bottle of wine'. (see [www.ambiente-tapas.co.uk](http://www.ambiente-tapas.co.uk)). I consider this is a significant shift away from the traditional full restaurant menu previously offered by The Press Kitchen.

Specifically Condition 19 requires that 'There shall be no more than 12 patrons in the outside area (Courtyard) at any one time to prevent public nuisance' while Condition 25 requires that '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'.

The attached pictures, taken on Saturday 17 April 2021, shows that specifically at 13:30 there were 17 patrons and at 17:30 there were 21 patrons in the outside area. Throughout the day the number of patrons in the outside area regularly exceeded 12. I consider this to be a breach of Condition 19.

Noise from the patrons/premises was clearly audible throughout the day at the facade on my neighbouring property, 20 St Denys Court. At numerous times noise from the patrons/premises could also clearly be heard within my property causing me to close my doors and windows. I consider this to be a clear breach of Condition 25 and a public nuisance detrimental to my residential amenity. (Public nuisance is not narrowly defined in the Licensing Act 2003 and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Revised Guidance issued under section 182 - 2.16 Licensing Act 2003)

I attach below a recording of the noise made and heard within my property\*.

I now draw your attention to the seating arrangements in the outside area.

Prior to opening Tabanco a storage shed was demolished in the outside area and the space created used to accommodate additional seating and now apparently for at least 21 patrons. Clearly there is then the intention to cater regularly for a number of patrons more than the 12 already permitted. I view this as a considered action by the Licence Holder to wilfully ignore Condition 19 of their Premises Licence. I also suggest that planning for an increased number of patrons, and the demolition of the storage shed, represents a change in the layout of the outside yard. This change has the effect of 'increasing the capacity for

drinking on the premises' and specifically in the outside area. Therefore such changes should have been referred to the full licence variation process as it 'could potentially have an adverse impact on the promotion of the licensing objectives' (Revised Guidance issued under Section 182 - 8.62 Licensing Act 2003). However, and despite this, the Planning Conditions attached to the use of the outside area (16/00012/FUL - April 2016) restricts the use of that area to 12 customers. This would prevent any variation to the Premises Licence to increase the number of customers that could use that area and any such application to be rejected.

It can be seen then that, as well as ignoring Conditions 19 and 25 of the Premises Licence, the Licence Holder is knowingly ignoring planning conditions and hence I have copied this email to Andy Blain, Planning Enforcement Officer.

Annex 3-3 of the Premises Licence requires that 'Alcohol is only to be supplied in the outside area from 10:00 until 18:00 Monday to Saturdays' (and 10:00 until 16:30 on Sundays and Bank Holidays). On Saturday 17 April alcohol was still being supplied to customers outside until 18:40. Evidence of this, and all the above, should be available to you via the required premises CCTV.

Annex 3-2 of the Premises Licence requires that 'In the outside area alcohol is only to be supplied ancillary to the provision of food to persons seated at tables and by waiter or waitress service only'. When The Press Kitchen was a more traditional restaurant the supply of alcohol was ancillary to the provision of food. However, Tabanco appears now to be very much a tapas bar with a predominant emphasis on drink, the 'nibbles or tapa' being served as ancillary to the provision of alcohol. It does not seem to me that Tabanco is operating within the spirit of this licensing condition.

Given this, I do not consider the above to represent the actions of a responsible Premises Licence Holder who takes seriously the duties imposed upon them through both Licensing and Planning Conditions or their wider social responsibilities. And while I do understand that businesses have had a difficult period during the last year as a result of Covid 19 restrictions, I am not aware of any changes that would legitimise the above circumstances. I would therefore appreciate your comments and particularly with regards to any breaches of the Premises Licence conditions.

\* not attached to this document.

Following my complaint to the Licensing Officer it transpires that, unknown to me, a Temporary Events Notice was in place and this legitimised some of the activities and invalidated, in part, my complaint.

Since this complaint Temporary Events Notices have been used on a number of occasions by the business owner, often on consecutive days, to modify their premises licence conditions. They are perfectly entitled to use TEN's in this way. However, the issues arising from the increased number of patrons in the outside area at any one time, and the noise they generated which could be heard beyond the facade of my premises, are indicative of what can now be expected as a result of the variations issues to the existing premises licence. (See 13 June 2021). Indeed, my complaint illustrates well the direction in which I

see the business heading with its use of the outside area and that the later variation application confirmed.

It should be noted that the application for a minor variation to the Premises Licence was submitted on 14 May 2021. It was approved 02 June 2021. It is surprising to me that the variations were granted at a time when the Council's licensing department would have been aware of my most recent complaint and that no reference appears to have been made to my previous complaints.

#### **4 June 2021 - Noise - Raised with Environment Health Officer**

I raised with the Mr Gray, Environmental Health Officer that the daily practice of disposing of rubbish into bins in the outside yard was taking place at various times and on a regular basis after 23:00. This practice continued to cause sleep disturbance. A complaint was logged and a warning letter in relation to noise was sent to the business owner.

#### **13 June 2021 - Noise - Raised with Licensing Officer**

I raised with the Licensing Officer a complaint that Annex 2 Condition 25 was being breached by the business owner and that a public nuisance existed:-

'I am the owner/occupier of 20 St Denys Court, St Denys Road, YO1 9PU.

My premises, in particular my balcony, overlooks the outside area of the premise 59-63 Walmgate. The outside area is used by patrons of the licensed establishment Tabanco of which Ambiente Tapas Limited is the Premises Licence Holder.

Condition 25 of their Premises Licence requires that:

'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.'

The purpose of this condition is to prevent a public nuisance, one of the 4 Licence Objectives.

I consider my premises to be a 'neighbouring noise sensitive premises' and, as such, noise from licensed premises must not be audible at the facade of my premises.

I attach 2 video files\* taken at different times during the afternoon of Saturday 12 June 2021. These clearly demonstrate that noise from the licensed premises could be heard at the facade of my premises. Noise levels such as these could be heard throughout the afternoon and early evening. I consider this a breach of the Condition 25 and a failure of the premises licence holder to promote the licensing objectives. I also that consider that the noise amounts to a public nuisance as defined by Section 7.11 City of York Council - Statement of Licensing Policy 2019-2024. As such, I wish to register a formal complaint.

Irrespective of Condition 25, I consider the level of noise to be both frequent and sufficient enough to demonstrate a public nuisance exists; the examples I have provided are indicative of the regular noise levels I am subjected to on a daily basis.

Please advise me what action the Council will now take, particularly with regards to Section 13 - Enforcement - City of York Council - Statement of Licensing Policy 2019-2024.

It should also be noted that throughout much of the afternoon there were in excess of 12 patrons in the outside area, a breach of planning controls (16/00012/FUL). It is for the Council to consider whether that, under such circumstances, the provision of alcohol at the premises is unlawful. (Section 8.5 - Planning - City of York Council - Statement of Licensing Policy 2019-2024)

\*not attached to this document.

As of 16 June 2021 this complaint is still active.

### Summary

I believe the above demonstrates that the operation of this business has given rise to a considerable number of complaints concerning the operation of the Premises Licence. In particular I am of the view that I have demonstrated the many occasions when Annex 2 Condition 25 (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) has been breached. This condition was submitted by the applicant as a control measure to prevent a public nuisance (Licence Objective 3). After scrutiny by the Licensing Committee Hearing (9 April 2018) it was enshrined in the then granted Premises Licence. As such, it is an enforceable condition, irrespective of whether or not such enforcement may be problematic to the Council.

I am of the view that I have demonstrated a fundamental failure by business owner to promote the licensing objectives and comply with licensing conditions, not only Annex 2 Condition 25. Having raised complaints against the business, and despite numerous warning letters, the business continues to fail to take sustainable action to prevent reoccurrence of their same failings. *These failings continue have an on-going detrimental effect on my residential amenity and the wellbeing of my household.* There is also the never-ending, frustrating and time consuming cycle of attempting to have such failings addressed; success has been minimal and short lived. It is difficult for me to feel anything other than that both the business owner and Council are attempting to wear me down to a point where I just give in.

I am also of the view that the Council continues to prevaricate on enforcing Annex 2 Condition 25. City of York Council's Statement of Licence Policy 2019-2024 Section 13.1 states that 'Effective enforcement is needed to meet the licensing objectives and to support local residents and businesses'. In hindsight it may be considered that my complaints have been shared between too many Council departments, as well as the business owner, and that I should have directed all my complaints through the Licensing

Officer. I willingly accept any such observation. However, it does not detract from my view that there has been a noticeable lack of any enforcement to support me, a local resident, while the business owner appear to me to not take seriously the duties imposed upon them through Licensing (and Planning) conditions or their wider social responsibilities. As a result I am of the view that the premises licence needs to be reviewed.

### **Outcome**

Having requested a review of the premises licence I now state what I consider to be a suitable outcome from such a review.

*Put simply, I want my residential amenity and wellbeing restored to the position I enjoyed prior to the granting of this premises licence in relation to the use of the outside area. Such a position is suitable documented in Planning Permission 16/00012/FUL.*

In support of this position I add the following comments.

In my original objections (27 February 2018) to the application for this premises licence I submitted the following:-

### **Internal Premises**

The Internal Premises are defined as the inside of the building and are totally enclosed by it.

I have no objections and support the granting of a Premise Licence solely relating to the use of the Internal Premises by Ambiente as described in their application but only with the following conditions:-

1. Bottles should not be disposed of into bins at night and will only be disposed of between 10:00 and 21:00. This condition is for the purpose of preventing a public nuisance by restricting noise, protecting my residential amenity and promoting The Licensing Objectives (Licensing Act 2003). This restriction replicates the licensing restriction placed on the previous occupying business Bicy y Mas and for the same reason. The proposed restriction by Ambiente shown in Section M - The Prevention of Public Nuisance - of their application for a restriction to dispose between 23:00 and 07:00 is unacceptable as this not sufficient to prevent a public nuisance to the surrounding residential properties.

These times were adopted and this became Annex 3 - Condition 1 of the current Premises Licence. It has been proved to have been successful in controlling a public nuisance.

Section M - The Prevention of Public Nuisance - of the application states that 'The premises will have a waste collection service six days of the week'. Assuming this involves removing any waste bins/receptacles etc stored in External Premises then this also should not be undertaken between 21:00 and 10:00 in order to prevent a public nuisance caused by noise to the surrounding residential properties.

This was not adopted and it has since been demonstrated that the disposal of waste/rubbish into bins stored in the outside area creates a noise (public) nuisance to surrounding residential properties. Despite numerous warnings from the Council, and ignored by the licence holder, the practice of disposing of waste/rubbish into bins stored in the outside area continues. I consider this to constitute a public nuisance.

It should be made a condition of the existing premises licence that removing any waste into bins/receptacles etc stored in External Premises/outside area should not be undertaken between 21:00 and 10:00 in order to prevent a public nuisance caused by noise to the surrounding residential properties.

### **External Premises (Outside Area)**

Ambiente have stated that they wish the External Premises (not separately defined by Ambiente as such) to be included within their Premises Licence, to use the External Premises as part of their normal business activities, that this will contain 12 covers (seating places), that they intend to serve alcoholic drinks, other drinks and food in the External Premises, and that they intend to use the External Premises for these activities between 10:00 & 20:00 each and every day, including weekends and bank holidays. I can see little of any substance in their application to suggest how Ambiente would proactively prevent the creation of a public nuisance (primarily noise and its effect on nearby dwellings and residents) as a result of this use of the External Premises.

Given this, the granting of a Premises Licence to Ambiente permitting the use of the External Premises in the way that Ambiente describe and intend would create a detrimental effect to my current residential amenity, create a public nuisance, primarily due to noise within a predominately residential area, and not be consistent with promoting the Licensing Objective - Prevention of Public Nuisance (Licensing Act 2003). As such, I object to a Premises Licence being granted/approved for the External Premises of 59-63 Walmgate.

Despite this objection (and the views of the Planning Committee) the outside area was licensed. As a consequence I consider a public nuisance has been created in the way I suggested.

I also suggested in my objections that:-

In Section M - 'Detail the steps you intend to take to promote the four licensing objectives' Ambiente state under the section The Prevention of Public Nuisance that 'Noise and vibration from the premises will be maintained at a level that will not be audible at the facade of any neighbouring noise sensitive premises'. Clearly the surrounding residential premises are 'neighbouring noise sensitive premises' and Ambiente have not provided any evidence in their application to demonstrate how noise and vibration will be prevented from creating a public nuisance. This statement is therefore incompatible with Ambiente's intentions for the External Premises as it would be impossible for noise generated by the use of the External Premises with 12 covers, and as Ambiente describe in their application, not to be audible at the facade of such properties.

I have since demonstrated on numerous occasions that it is indeed impossible for the business to operate from the outside yard and not generate noise that is audible at the facade of neighbouring noise sensitive premises. It has also been demonstrated that the control measures of Annex 3 Condition 2,3 & 4, imposed after the licensing hearing, do not control/prevent such audible noise.

*On this basis the outside area should be exempt from the Premises Licence.*

In conclusion, a successful outcome from this this review would be that the Council adopted in full the observations of the Planning Committee (16/00012/FUL) - Committee Report. That is:-

'Officers agree with residents that if alcohol were permitted to be served in the yard, or if it were to open into the evening, when background noise levels are known to be lower, there would be an undue effect on residential amenity. The times of operation can be controlled via a planning condition (since applied). Alcohol is currently not permitted in the outside area; prevented by the premises licence. This matter would need to continue to be managed through the licensing legislation'.

In doing so the outside area would no longer be part of the Premises Licence but the business would be permitted to continue to operate in accordance within the existing planning conditions for the outside area:-

- 1) The number of covers in the external area shall not exceed the amount (12).
- 2) The use of the rear yard as an outside seating area for customers shall only occur during the following times -
  - Monday to Saturdays 08.30 to 19.00 hours
  - Sundays and Bank Holidays 09.30 to 17.30 hours
  - Reason: In the interests of residential amenity.
- 3) There shall be no amplified or recorded music or installation of other electrical equipment (such as televisions) in the courtyard area.
  - Reason: In the interests of residential amenity.

I have not included any further reference to separate complaints relating to the planning issues surrounding the use of these premises. Other than to say that the business owner does not have the required planning permission to operate the business from the premises my complains are documented in the report of the Local Government and Social Care Ombudsman - November 2020.

This concludes my Supplementary Information.

Ray Price  
20 St Denys Court  
York  
YO1 9PU

16 June 2021

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## LICENSING ACT 2003

### PREMISES LICENCE

#### Schedule 12

#### Part A

#### Part 1 Premises details

Premises licence number  
CYC - 060429

Postal address of premises:

**59-63 Walmgate**

Post town: **York**

Post code: **YO1 9TY**

Telephone number: None

**Expiry date:** This licence has no expiry date.

#### Licensable activities authorised by the licence:

Recorded Music  
Late Night Refreshment  
Supply of Alcohol

#### The times the licence authorises the carrying out of licensable activities:

##### RECORDED MUSIC

Indoors

Monday

08:00 - 23:30

Tuesday

08:00 - 23:30

Wednesday

08:00 - 23:30

Thursday

08:00 - 23:30

Friday

08:00 - 23:30

Saturday

08:00 - 23:30

Sunday

08:00 - 23:30

LATE NIGHT REFRESHMENT  
Indoors

Monday 23:00 - 23:30	Tuesday 23:00 - 23:30	Wednesday 23:00 - 23:30	Thursday 23:00 - 23:30
Friday 23:00 - 23:30	Saturday 23:00 - 23:30	Sunday 23:00 - 23:30	

SUPPLY OF ALCOHOL

Monday 10:00 - 23:30	Tuesday 10:00 - 23:30	Wednesday 10:00 - 23:30	Thursday 10:00 - 23:30
Friday 10:00 - 23:30	Saturday 10:00 - 23:30	Sunday 10:00 - 23:30	

Non Standard Timings for Recorded Music:

New Year's Eve until 00:00

Non Standard Timings for Late Night Refreshment and Alcohol:

**The Opening Hours of the Premises**

Monday 08:00 - 23:30	Tuesday 08:00 - 23:30	Wednesday 08:00 - 23:30	Thursday 08:00 - 23:30
Friday 08:00 - 23:30	Saturday 08:00 - 23:30	Sunday 08:00 - 23:30	

Non Standard Timings:

New Year's Eve until 01:00

**Where the licence authorises supplies of alcohol whether these are on and/or off supplies:**

On and Off the premises

**Part 2**

**Name, (registered) address, telephone number and email (where relevant) of holder of premise licence:**

Name: Ambiente Tapas Limited  
Address: Green Lane Trading Estate  
Clifton Moor  
York  
YO10 5PY  
Telephone number: None  
Email address:

**Registered number of holder, for example company number, charity number (where applicable):**

6209010

**Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol:**

Name: Ms Jennifer Zoe Plummer  
Address:  
Telephone number: None

**Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol:**

Ryedale District Council  
20080005

**Annex 1 – Mandatory conditions**

MANDATORY CONDITIONS IN RELATION TO THE SUPPLY OF ALCOHOL

1. In accordance with section 19 of the Licensing Act 2003, where a premises licence authorises the supply of alcohol, the licence must include the following conditions.
2. The first condition is that no supply of alcohol may be made under the premises licence -
  - a) at a time where there is no designated premises supervisor in respect of the premises licence, or

- b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

3. The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

4. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises –

- a) games or other activities which require or encourage, or are designed to require or encourage individuals to –

- i. drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

- ii. drink as much alcohol as possible (whether within a time limit or otherwise);

- b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

- c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

- d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

- e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either –

- a) a holographic mark, or

- b) an ultraviolet feature.

7. The responsible person must ensure that –

- a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures –

- i. beer or cider: ½ pint;

- ii. gin, rum, vodka or whisky: 25ml or 35ml; and

- iii. still wine in a glass: 125ml;

- b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

- c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

#### MANDATORY CONDITION - ALCOHOL PRICING

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1 –
  - a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
  - b) "permitted price" is the price found by applying the formula –  $P = D + (D \times V)$  where –
    - i. P is the permitted price,
    - ii. D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
    - iii. V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
  - c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence –
    - i. the holder of the premises licence,
    - ii. the designated premises supervisor (if any) in respect of such a licence, or
    - iii. the personal licence holder who makes or authorises a supply of alcohol under such a licence;
  - d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
  - e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.  
(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

## **Annex 2 – Conditions consistent with the operating schedule**

### **Licensing Objectives**

#### General

1. This licence excludes any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.

#### Prevention of Crime & Disorder

2. The premises shall operate as a restaurant / cafe not as a bar or vertical drinking establishment providing food and non-alcoholic drinks.

3. Alcoholic drinks purchased on the premises may only be taken off the premises in sealed containers, except into the designated outdoor area (Courtyard) as detailed in the premises plan.

4. Customers shall only be served by way of waiter / waitress service.

5. There shall be a minimum of 50 table covers available at all times.

6. There shall be a minimum of 10 seats provided in the outside area at all times when in use in order to prevent the need for vertical drinking.

7. A full food menu shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises up to 1.5 hours before the end of permitted hours for the sale of alcohol. This shall include the outside courtyard area when in use.

8. An incident log / refusal register will be kept at the premises and made available on request to an authorised officer or the police which will record the following:

- ~~all crimes reported to the venue~~
- any complaints received regarding crime and disorder
- any incidents of disorder
- any faults in the CCTV system
- any refusal of sale of alcohol
- any visit by a relevant authority of emergency service

With such records being kept for a minimum of one year [For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry.]

~~9. A documented staff training programme shall be provided to all members of staff at the premises in respect of the:-~~

- operation of the CCTV system (including the downloading of evidence);
- retail sale of alcohol;
- age verification policy;
- conditions attached to the Premises Licence;
- permitted licensable activities;
- the licensing objectives; and
- opening times for the venue.

With such records being kept for a minimum of one year. [For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry.]

10. A colour digital CCTV system shall be installed within the premises and be operational and recording at all times when licensable activities take place and at any other times where members of the public are present on the premises.

11. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.

12. The CCTV system will cover all areas of the premises occupied by the public, as outlined on the premises plan

13. The CCTV system must be capable of providing quality images of good evidential value. The CCTV system will have sufficient storage retention capacity for a minimum of 28 days consecutive footage.

14. North Yorkshire Police or a Responsible Authority (as defined in the Licensing Act 2003) may at any time request a recording. This should be complied with within 48 hours of the request being made.

15. It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV system at the request of the police or responsible authority.

16. The premises shall operate the Challenge 25 policy for the sale of alcohol.

17. The only acceptable proof of age identification shall be a current passport, photo card driving licence or identification carrying the PASS logo (until other effective identification technology eg thumb print or pupil recognition, is adopted by the Premises Licence Holder).

18. Customers carrying open or sealed bottles or glasses will not be admitted to the premises at any time.

19. A personal licence holder will be at the premises at all times when alcohol is being sold.

Outside area:

20. There shall be no more than 20 patrons in the outside area (Courtyard) at any one time to prevent public nuisance.

21. There shall be no smoking in the outside area (Courtyard).

Public Safety

22. Step and stair edges will be appropriately highlighted so as to be conspicuous.

23. Curtains, hangings and temporary decorations will be located so as not to obstruct exits, fire safety signs or fire fighting equipment.

24. Notices detailing the actions to be taken in the event of fire or other emergency will be prominently displayed and maintained in good condition.

25. An evacuation policy will be put in place. All staff members will be trained in fire and emergency evacuation procedures.

Public Nuisance

26. 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.

27. Clear notices shall be prominently displayed requesting customers to leave the premises and the area in a quiet and orderly manner.

28. Whilst recorded music is being played doors and windows shall remain closed other than for ingress and egress.

29. Staff will undertake a litter pick to a distance of 5 metres around the premises daily.

Protection of Children from Harm

30. Children under the age of 18 will not be permitted onto the premises unaccompanied by an adult.

**Annex 3 – Conditions attached after a hearing by the licensing authority**

1. Bottles should not be disposed of into the outside waste bins at night and will only be disposed of between 10:00 and 21:00.
2. Alcohol is only to be supplied in the outside area from 11:00 until 19:30 daily (amended by minor variation)
3. The outside area shall be cleared of customers and closed by 20:00 daily (amended by minor variation)

**Annex 4 – Approved Plan**

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Plan Number                      Endorsed and dated 07 FEB 2018

For and on behalf of  
The Corporate Director of Place

Licensing Services  
Hazel Court EcoDepot  
James Street  
York  
YO10 3DS

Date: 09/04/2018  
02/06/2021 (Minor variation)

Phone: 01904 552422  
Fax: 01904 551590  
Email: [licensing@york.gov.uk](mailto:licensing@york.gov.uk)  
Website: [www.york.gov.uk/licensing](http://www.york.gov.uk/licensing)



**PREMISES LICENCE SUMMARY**

**Part B**

**Part 1 Premises details**

Premises licence number  
CYC - 060429

Postal address of premises:  
**59-63 Walmgate**

Post town: <b>York</b>	Post code: <b>YO1 9TY</b>
Telephone number: None	

**Where the licence is time limited the date:**

This licence has no expiry date.

**Licensable activities authorised by the licence:**

Recorded Music  
Late Night Refreshment  
Supply of Alcohol

**The times the licence authorises the carrying out of licensable activities:**

**RECORDED MUSIC**

Indoors

Monday 08:00 - 23:30	Tuesday 08:00 - 23:30	Wednesday 08:00 - 23:30	Thursday 08:00 - 23:30
Friday 08:00 - 23:30	Saturday 08:00 - 23:30	Sunday 08:00 - 23:30	

LATE NIGHT REFRESHMENT  
Indoors

Monday 23:00 - 23:30	Tuesday 23:00 - 23:30	Wednesday 23:00 - 23:30	Thursday 23:00 - 23:30
Friday 23:00 - 23:30	Saturday 23:00 - 23:30	Sunday 23:00 - 23:30	

SUPPLY OF ALCOHOL

Monday 10:00 - 23:30	Tuesday 10:00 - 23:30	Wednesday 10:00 - 23:30	Thursday 10:00 - 23:30
Friday 10:00 - 23:30	Saturday 10:00 - 23:30	Sunday 10:00 - 23:30	

Non Standard Timings for Recorded Music:

New Year's Eve until 00:00

Non Standard Timings for Late Night Refreshment and Alcohol:

**The Opening Hours of the Premises**

Monday 08:00 - 23:30	Tuesday 08:00 - 23:30	Wednesday 08:00 - 23:30	Thursday 08:00 - 23:30
Friday 08:00 - 23:30	Saturday 08:00 - 23:30	Sunday 08:00 - 23:30	

Non Standard Timings:

New Year's Eve until 01:00

**Where the licence authorises supplies of alcohol whether these are on and/or off supplies:**

On and Off the premises

**Name and (registered) address of holder of premise licence:**

Name: Ambiente Tapas Limited  
Address: Green Lane Trading Estate  
Clifton Moor  
York  
YO10 5PY

**Registered number of holder, for example company number, charity number (where applicable):**

6209010

**Name of designated premises supervisor where the premise licence authorises the supply of alcohol:**

Ms Jennifer Zoe Plummer

**State whether access to the premises by children is restricted or prohibited**

Children under the age of 18 will not be permitted onto the premises unaccompanied by an adult.

For and on behalf of  
The Corporate Director of Place

Licensing Services  
Hazel Court EcoDepot  
James Street  
York  
YO10 3DS

Date: 09/04/2018  
02/06/2021 (Minor variation)

Phone: 01904 552422  
Fax: 01904 551590  
Email: [licensing@york.gov.uk](mailto:licensing@york.gov.uk)  
Website: [www.york.gov.uk/licensing](http://www.york.gov.uk/licensing)

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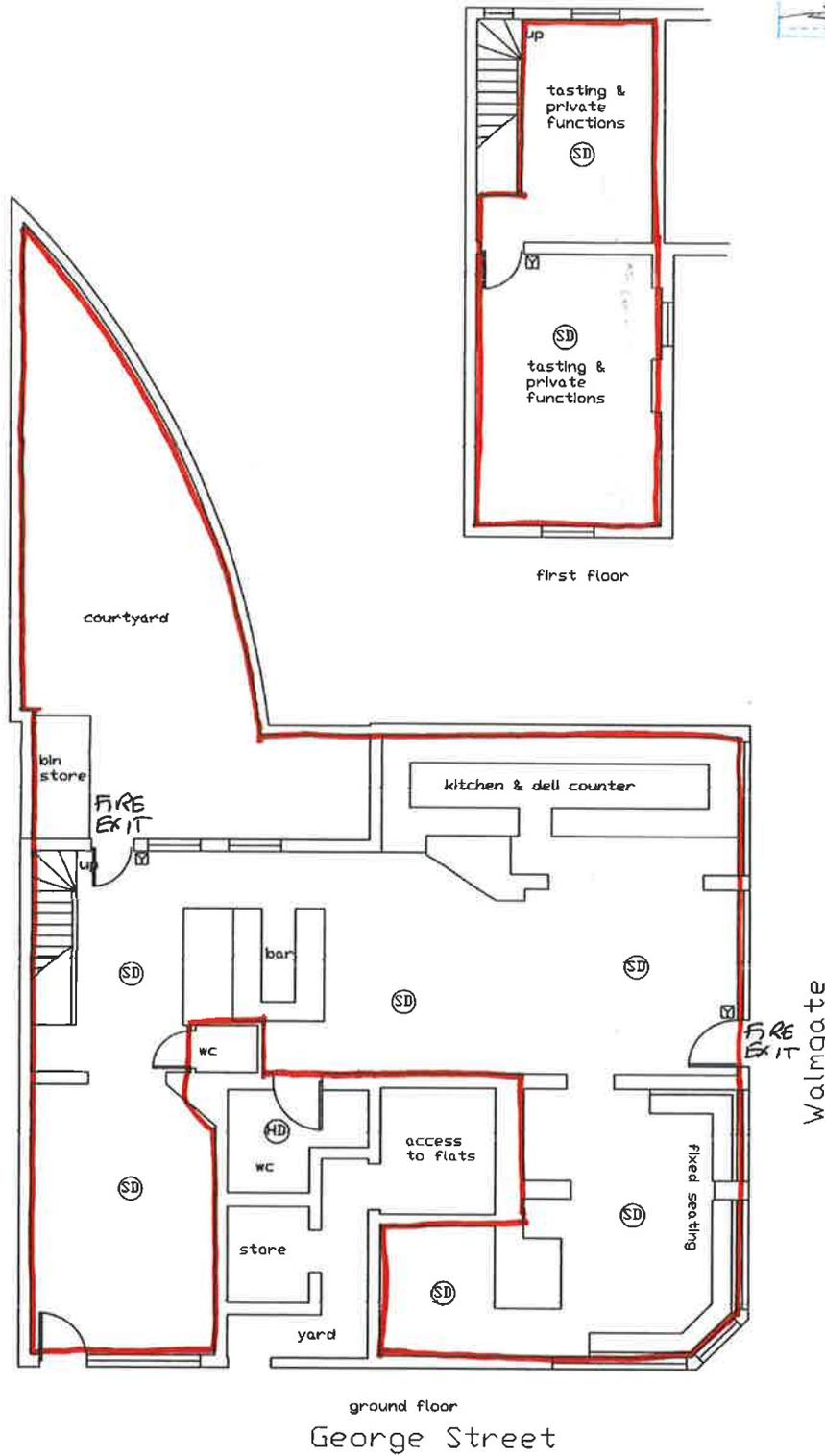
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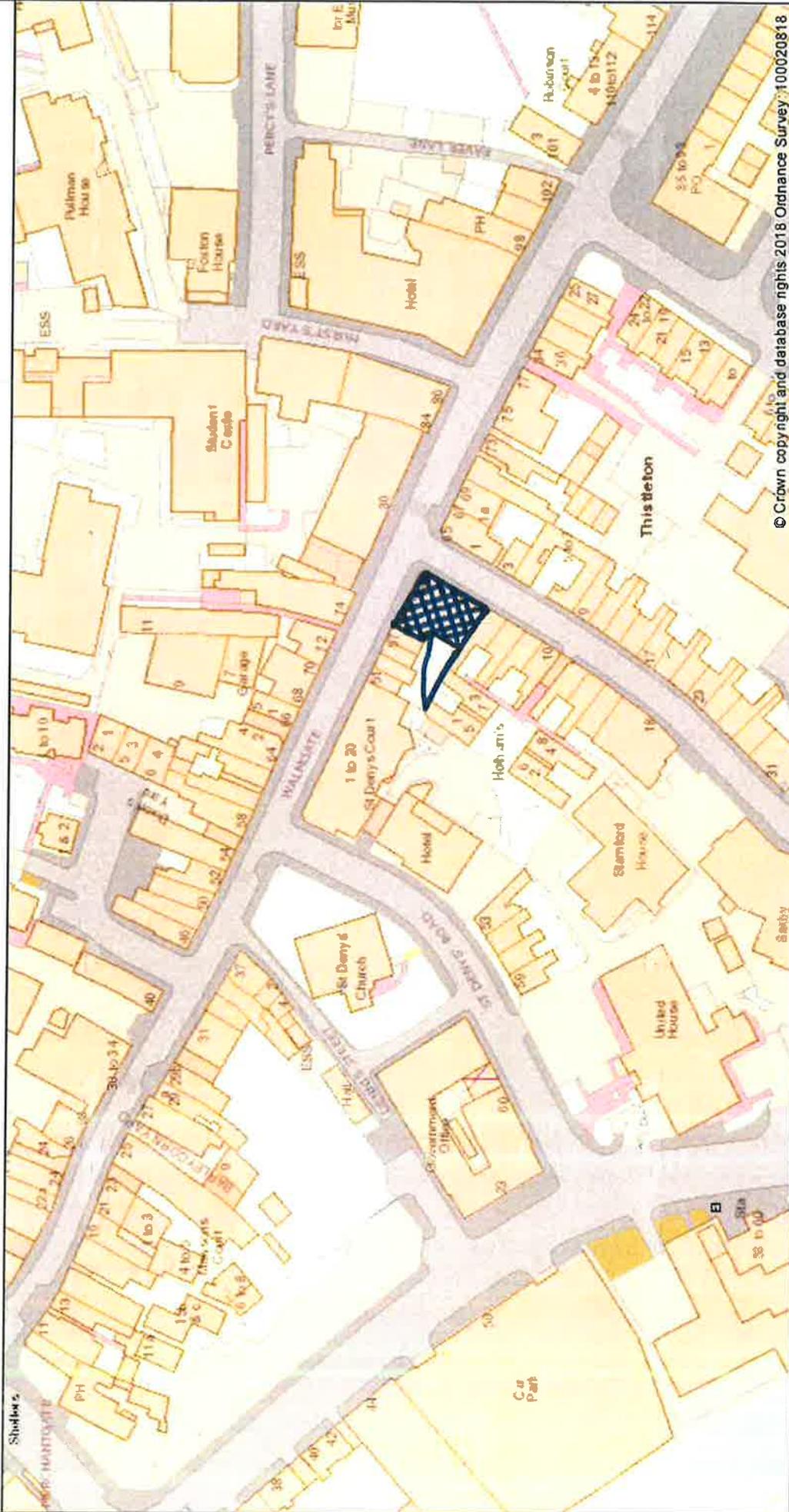
**Key**

- Smoke detector
- Heat detector
- Break glass call point
- Licensed area

Premises Licensing Plan  
 59-63 Walmgate  
 York  
 YO1 9TY  
 Scale 1:100 at A3  
 Feb 18



59-63 Walmgate



Date:

Author:

Scale: 1:1,250



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### 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**

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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**Representation to the Licence Review for 59-63 Walmgate York YO1 9TY**

My wife and I own and occupy 1 St Denys Court, St Denys Road, York YO1 9PU. The rear yard of Tabanco is approximately from the wall of our flat.

Prior to the changes to the use of the rear yard introduced by the licence holder and the owner of the previous business this was a quiet, residential location; the terraced buildings of Walmgate and George Street together with St Denys Court, the Parisi Hotel, Stamford House and United House all form an effective barrier to noise, separating the large area at the rear of these buildings from the hubbub of the surrounding streets. All of the residential properties forming this perimeter previously enjoyed a very quiet situation at their rear. There was no other commercial activity in this area.

In 2014 planning consent was sought (14/01960/FUL) by the previous business owner for the rear yard of 59-63 Walmgate York YO1 9TY to be used for café seating associated with the retail business within those premises, at that time a bicycle shop and repair facility. Permission was sought to serve hot and cold drinks to 8 people and was granted for a trial period. The business owner also applied for a premises licence to serve alcohol, but the rear yard was specifically excluded from the application and was not considered as part of the premises. At that time (14/01960/FUL) in their delegated report the Environmental Protection Unit were *'satisfied that the likelihood of noise from customers using the rear yard can be adequately controlled by a restriction on the hours of use. However, this is based on no more than 8 people using the yard. If more tables and chairs were to be installed, then it is possible that noise from customers could affect the amenity of nearby residents, particularly if the yard was to be used during the evening'*.

In 2016 the previous business owner applied for planning permission to confirm to use the rear yard for café seating and to increase the number of customers to 12. In considering (and approving) this application The Council are on record (Committee Report 16/00012/FUL) agreeing *'with residents that if alcohol were permitted to be served in the yard, or if it were open into the evening, where background noise levels are known to be lower, there would be an undue effect on residential amenity. The times of operation can be controlled via a planning condition. Alcohol is currently not served in the outside area; prevented by the premises licence. This matter would need to continue to be managed through licensing legislation'*.

In 2018 the current business owner applied for a premises licence proposing to serve alcohol in this outside area. I made a representation, and I attended the hearing. At that hearing I heard the applicant propose a number of conditions to prevent a public nuisance, conditions which were accepted by the committee, and which were incorporated into the licence. These included a confirmation of the limit of 12 on the number of customers using the outside area, restrictions on the times of its use and a condition that noise from the premises should not be audible at the facade of any neighbouring noise sensitive premises. I accept that this latter condition is hard for the licensee to monitor, but the first two are not, and it has been clear from the outset that the licensee has done no more than pay lip service to observing the conditions that were imposed, conditions specifically intended to prevent public nuisance.

The level and nature of noise from customers using this yard is intrusive and unacceptable. It must be recognised (as it was at the outset by council officers and the planning committee) that groups of people drinking alcohol in such an intrinsically quiet location are an unacceptable intrusion and cause a public nuisance. Emptying of bottles and other rubbish into bins late at night, serving alcohol outside the permitted hours, playing music loudly with the doors open, regularly exceeding the number of permitted users, these are all issues which are all capable of being controlled by the licensee, but it has consistently failed to do so. Similarly, they constitute a public nuisance.

A benevolent observer could take the view that these types of incident result from insufficient managerial oversight. However, one recent issue characterises far more clearly the complete lack of regard which the licence holder has for the interests and amenity of nearby residents and its disregard for the public nuisance which its activities cause.

In November 2020 the business installed a commercial hot smoker (in a designated Clean Air zone) in the rear yard. Noisy preparations for the use of the equipment began at 6:15am and its use continued throughout the day, generating smoke, fumes and food smells. The impact that this operation would have on neighbours was completely foreseeable, but the fact that the equipment was nonetheless installed and put into operation characterises much more succinctly the attitude the licensee has towards both regulations and the interests of nearby residents. Both the Environmental Health Office and the Licensing Enforcement Office became involved to deal with the smoke and noise issues, both of which constitute a public nuisance.

My wife and I choose not to complain at every breach of the licence conditions that we hear or see, but this does not mean that we are not affected by them. Loss of amenity and the existence of nuisance does not reduce with the passage of time. We have always supported the use of the corner premises as a café or a wine bar, but we feel that our amenity was severely affected by allowing the use of the yard for the service of alcohol and continues to be so.

The recent licence variation is the last straw. All of the issues raised at the original hearing, including those of CYC officers, and the conditions offered by the licence holder intended to prevent a public nuisance to nearby residents, have been swept away by this subsequent application, in a process which has been misused. It is no surprise to me that I was unaware of the variation application. I have no doubt that the licensee can provide a photo of the variation application notice displayed in the window of its premises, but I can assure the committee that if it had been there for the requisite period of 10 working days then I would have known of the application and I would have made a representation at that time.

That 'minor' licence variation has increased the hours of use, increased the number of customers to 20 and it now allows 20 people to drink alcohol in the yard without the requirement to serve food.

Effectively we now overlook a beer garden.

The Home Office guidance on such applications specifically states that *'your application is likely to be refused if the proposed variation could increase capacity for drinking on the premises...'*, guidance which, in allowing the minor variation procedure to be used, appears to have been ignored by the CYC Licensing Team.

To finalise, I can do no better than to repeat the words of the council's own officers:

*'...the likelihood of noise from customers using the rear yard can be adequately controlled by a restriction on the hours of use. However, this is based on no more than 8 people using the yard. If more tables and chairs were to be installed, then it is possible that noise from customers could affect the amenity of nearby residents, particularly if the yard was to be used during the evening'.*

*'...if alcohol were permitted to be served in the yard, or if it were open into the evening, where background noise levels are known to be lower, there would be an undue effect on residential amenity. ...This matter would need to continue to be managed through licensing legislation'.*

St Denys Court  
St Denys Road  
York YO1 9PU

5<sup>th</sup> July 2021

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**From:**  
**Sent:** 14 July 2021 09:30  
**To:** licensing@york.gov.uk  
**Subject:** Ref: 060429 Email in Support Of Tabanco by Ambiente, 59-63 Walmgate

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Application for Review of Premises Licence Ref: 060429 Dated 17/6/21

Email in Support Of Tabanco by Ambiente, 59-63 Walmgate

To whom this may concern

My name is . and I am writing this email in support of Tabanco by Ambiente, 59-63 Walmgate. I have also sent a copy by post.

I live with my young family (8-year-old, 5-year-old, and 4-year-old) at George Street, which Tabanco by Ambiente. We have lived here for 9 years and enjoy being part of a vibrant community, being surrounded by independent shops, cafes, restaurants & bars.

We were delighted when Tabanco by Ambiente opened in 2018 as it is a real asset to Walmgate. It is a lovely restaurant, and the staff are always very considerate. It is also handy to have such a place on our doorstep, not least because we are able to recommend it to friends when they visit York.

We are never disturbed by noise coming from the restaurant even though we share a party wall with the business and our rear courtyard runs parallel to that of Tabanco by Ambiente. On no occasion have we found this situation to be either a nuisance or annoyance.

With so many businesses closing down in the centre of the city, we should be encouraging and supporting those businesses that are still running, to continue to thrive. Tabanco by Ambiente is a valuable neighbourhood facility which has definitely made a positive contribution to improving the profile of this end of Walmgate.

Yours faithfully



**From:** Charles Cook [mailto:charles.cook@york.gov.uk]  
**Sent:** 15 July 2021 23:58  
**To:** licensing@york.gov.uk  
**Subject:** Tabanco by Ambiente - Review of Premises Licence 060429

This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

City of York  
Licensing Services  
Hazel Court  
James Street  
York  
YO10 3DS

I made a business booking for Tabanco for 15th July. However, I was sorry to feel the need to cancel my booking when I was made aware that with seven people, we would need to sit outside in the courtyard due to Covid Regulations.

The reason that I cancelled is that when we last ate at Tabanco, on 12th April 2021, we sat outside - because of Covid regulations. Unfortunately we were made to feel uncomfortable by a gentleman in one of the overlooking apartments standing on his balcony and observing us continually as we enjoyed our dinner. This felt intimidating and we will now not eat in the Courtyard again - which is a real shame as it is a perfect spot for a quiet lunch or early evening meal.

I mentioned this experience when I called Zoe Sinclair to cancel my booking and she made me aware of this particular neighbour's application for a review of the premises licence at Tabanco. Consequently I offered to write to record the incident and provide a character reference for the business at the same time. My family & I have enjoyed Ambiente's restaurants in York for over 8 years now and can vouch for the business & their responsible approach to licencing matters and the consideration they afford their neighbours - indeed when we ate at Tabanco in April the servers emphasises that due to their neighbours, we should not make too much noise.

We live on Ogleforth close to their Goodramgate restaurant so we feel we are well placed to make this assessment. They are hugely aware of their neighbours, and ensure that music is not loud, that they (courteously) close at a reasonable time, and I have never encountered clientele who cause a noise nuisance when leaving their premises.

The mix of diverse, high quality independent businesses in York is one of the reasons our family chose to continue living in the City Centre. This is something that the City of Council should be encouraging. We would wholly recommend that you support Ambiente and Tabanco - from my experience, the gentleman finds himself overlooking a very orderly, courteous restaurant, and has nothing to complain about - and clearly enjoys making the customers in the courtyard at Tabanco feel uncomfortable.

I would be delighted to speak directly about this incident or about my excellent experiences at Ambiente.

With best wishes,

Ogleforth  
York  
YO1 7JG

## Annex 7

## Summary of licensing complaints

Complaint Ref	Date	Issue	Action taken
207923	19/07/2019	Breach of condition (noise from music through open windows)	Written warning
208000	19/07/2019	Breach of condition (duplicate complaint to 207923)	Written warning as above
210612	05/12/2019	Breach of condition (disposal of rubbish)	Written warning
221919	07/06/21	Use of outside area outside permitted hours	NFA no breach identified
222053	07/06/21	Noise from people in outside area	Referred to Public protection

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## Legislation and Policy Considerations

### Review of Premises Licence

1. The following provisions of the Licensing Act 2003 apply to this application: S4 general duties of licensing authorities; s51 Application for review of premises licence; s52 Determination of application for review; s53 Supplementary provision about review.
2. The following provisions of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 apply to this application: Regulation 42, Part 2 (Premises licences) and Part 4 (General) relating to applications, notices and representations and advertising of reviews.
3. The following provisions of the Secretary of State's guidance apply to this application: Chapter 10 Conditions attached to premises licences and club premises certificates and Chapter 11 Reviews.
4. The following paragraphs of the licensing authority's statement of licensing policy apply to this application: 8.0 Licensing Hours; 11.0 Review of licences.
5. 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.
6. The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

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