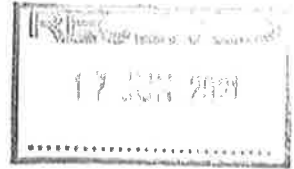




CITY OF YORK COUNCIL
Licensing Services, Hazel Court EcoDepot, James Street, York, YO10 3DS



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

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

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

Number of premises licence or club premises certificate (if known) 6209010

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
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Post Town	York	Postcode	YO1 9PU
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Daytime contact telephone number	
----------------------------------	--

Email address (optional)	
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(B) DETAILS OF OTHER APPLICANT - N/A

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

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

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

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 note 5). If signing in ~~the~~ **RF** ~~the~~ **RF** capacity.

Signature

Date 15 June 2021

Capacity Interested party living in the vicinity to the premises

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

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 or 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). 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

