
Licensing Act 2003 Sub Committee**16 September 2021**

Report from the Director – Environment, Transport & Planning

Section 35(3) (a) Application for variation of a premises licence for 5 Whip ma Whop ma Gate, York, YO1 8BL**Summary**

1. This report seeks Members determination of an application for the variation of a premises licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC 061097
3. Name of applicant: Mr Mehmet Simsek
4. Type of authorisation applied for: Variation of Premises Licence
5. Summary of application:

The premises currently trades as a café/restaurant over two floors. The variation seeks the following:

- a) The extension of hours for the supply of alcohol from 23:00 to 01:00
- b) The extension of the licensed area covered by the premises licence to include the area edged in red on the plan (for clarity this is the front pavement area outside 3 Whip ma Whop ma Gate)
- c) To delete conditions 2, 3 and 8 of Annex 3 on the licence which restricts:
 - the use of the roof terrace area to 21:00 hours;
 - the use of the doors to the roof terrace; and
 - the opening hours of the premises to 23:30 every day.

Licensable Activity	Existing hours	Proposed hours
Recorded Music – indoors	0900 to 2330 everyday	No change

Performance of Dance - indoors	0900 to 2330 everyday	No change
Late night refreshment – indoors & outdoors	2300 to 2330 everyday	No change
Supply of Alcohol – on & off the premises	0900 to 2330 everyday	0900 to 0100 everyday
Opening hours	0900 to 2330 everyday	0900 to 0100 everyday

Background

6. A copy of the application can be found at **Annex 1**, including a plan(s) of the premises.
7. A copy of the current licence and plan is attached at **Annex 2**. The licence was granted on 25 June 2018 at a hearing of the Licensing Sub-Committee. The conditions at annex 3 of the premises licence were attached to the licence by the Sub-Committee.
8. An overview of the circumstances in which entertainment activities are not licensable can be found at **Annex 3**.

Promotion of Licensing Objectives

9. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:

10. General

The application involves three principle elements, namely an extension to hours, an extension to the licensed area and the bringing into line of the first floor terrace area with the rest of the premises and these do not require a fundamental change to how the applicant is dealing with the four licensing objectives but they will require greater vigilance and hands on management. The applicant is therefore increasing the number of properly trained staff to make sure that he is not spread too thinly and is ensuring the CCTV coverage is fully comprehensive in terms of area and hours of coverage.

11. The Prevention of Crime and Disorder

The existing practices will be continued with regard to waiter/waitress service only, effective training programmes, proper use of the incident log and compliance with the minimum number of seat covers

requirement. This is NOT a bar where people stand up and serve themselves. The applicant does NOT want to alter the nature of the business and how it is run. It is a successful family run business that thrives upon the personal relationships formed between the applicant and the customers, many of whom are regulars.

12. Public Safety

See above

13. The Prevention of Public Nuisance

See above.

14. The Protection of Children from Harm

The outside area on the ground floor will be properly cordoned off from the public highway and children will be treated with sensitivity and care. The age ID requirements will continue to be strictly complied with.

Special Policy Consideration

15. This premises is located within the cumulative impact assessment area which was approved by full council on 21 March 2019. It is not however located within the 'red zone'. The assessment can be found at **Annex 4**. Section 9 of the Statement of Licensing Policy which deals with Cumulative Impact can be found at **Annex 5**.

Consultation

16. Consultation was carried out by the applicant in accordance with s13, and s17 (5) of the Act and Regulation 42, Parts 2 and 4 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the displaying of a notice on the premises and an advertisement in a local paper giving details of the application and serving a copy of the application on all responsible authorities. The applicant complied with all statutory requirements. In addition the relevant ward councillors and/or parish council were notified by way of register.
17. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

18. North Yorkshire Police have made a representation on the grounds that the licensing objectives, prevention of crime and disorder and prevention of public nuisance will be undermined by the granting of this application. Furthermore the applicant fails to demonstrate how this application would not add to the cumulative impact of licensed premises already experienced within the CIA. Their representation can be found at **Annex 6**.
19. City of York Council Public Protection (Environmental Protection) have made representation on the objective of the prevention of public nuisance. Furthermore the applicant fails to demonstrate how this application would not add to the cumulative impact of licensed premises already experienced within the CIA. Their representation can be found at **Annex 7**.
20. City of York Licensing Authority has made a representation on the grounds that the granting of this application would undermine the licensing objectives of both prevention of crime and disorder and prevention of public nuisance. Furthermore the applicant fails to demonstrate how this application would not add to the cumulative impact of licensed premises already experienced within the CIA. Their representation is attached at **Annex 8**.

Summary of Representations made by Other Parties

21. There have been 3 relevant representations received from other persons. One of those representations is from the Ward Councillor. The list of representors is attached at **Annex 9**.
22. The representations are predominantly based on the grounds of the prevention of public nuisance. They state that this objectives will be undermined if the application is granted.
23. A copy of all the representations are attached at **Annex 10**.
24. A map showing the general area around the venue is attached at **Annex 11**.
25. The mandatory conditions that will be attached to this licence if granted can be found at **Annex 12**. The Legislation and Policy considerations can be found at **Annex 13**.
26. By virtue of s35(4) of the Act, the Committee have the following options available to them in making their decision: -
27. Option 1: Modify the conditions of the licence

28. Option 2: Reject the whole or part of the application.
and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Analysis

29. The following could be the result of any decision made this Sub Committee:-
30. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
31. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.

Council Plan

32. The Licensing Act 2003 has four objectives the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
33. By taking the statutory requirements of the Licensing Act into consideration, as well as the four licensing objectives when determining licensing applications the Council are supporting the new and existing licence trade, as well as local residents and businesses. The functions support the Council's Plan of safe communities and culture for all, and a good quality of life for everyone.

Implications

- 34.
- **Financial** - N/A
 - **Human Resources (HR)** – N/A
 - **Equalities** – N/A
 - **Legal** – This decision could be appealed at Magistrates Court by the applicant or any of the representors.
 - **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.

- **Information Technology (IT)** – N/A
- **Property** – N/A
- **Other** – none

Risk Management

35. All Members of the Licensing Act 2003 Committee have received full training on the Act and the regulations governing hearings. They are aware that any decision made which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.
36. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

Recommendations

37. Members determine the application.
Reason: To address the representations received as required by the Licensing Act 2003.

Contact Details

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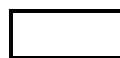
**Report
Approved**



Date
31/08/2021

Specialist Implications Officer(s)
Head of Legal & Democratic Services
Ext: 1004

Wards Affected: Guildhall



For further information please contact the author of the report

Background Papers:

- Annex 1** - Application form and plan
- Annex 2** - Copy of current licence
- Annex 3** - Overview of circumstances in which entertainment activities are not licensable
- Annex 4** - Cumulative impact
- Annex 5** - Special policy annex
- Annex 6** - North Yorkshire Police Representation
- Annex 7** - Public Protection Representation
- Annex 8** - Licensing Authority Representation
- Annex 9** - List of other persons - **CONFIDENTIAL**
- Annex 10** - Other persons representations
- Annex 11** - Map of area
- Annex 12** - Mandatory Conditions
- Annex 13** - Legislation & Policy