

Representation by Public Protection, 5 Whip ma Whop ma Gate

Public Protection are making representation against the above premises variation application on grounds of public nuisance.

The proposed variation: The proposal is to increase the sale of alcohol from 23:30 hours finish to 01:00hours finish, extend the licensable area to include the front until 01:00hrs and increase the hours of use for the roof terrace from 21:00 hours – 01:00hours and to remove the requirement for the access door to the roof top terrace to be closed after 21:00hrs.

The premises: The premises sits within the CIA in an area where there are already a number of licensed premises. The premises has a bar inside and a roof top terrace that faces residential dwellings approximately 8 metres away. There are also residents in the Stonebow building who have balconies to the front of the premises and residents down St Saviourgate, the latter of whom have been subjected to a lot of substantiated noise nuisance from customers in drink at various premises in the area.

The CIA is: the cumulative impact Area and is an area designated by City of York Council in its statement of licensing policy where evidence shows that the cumulative impact of the number and concentration of licensed premises continue to adversely affect residents, visitors and other businesses and therefore adversely affecting the promotion of the licensing objectives of prevention of crime and disorder and prevention of public nuisance. Within this area, when applying for licenses the onus is on the premises license holder to demonstrate that the licensing objectives will be met and that their proposed activities will not result in an escalation of crime, disorder and public nuisance in this area.

Concerns

Public Protection are concerned that late use of the external areas to the front at ground floor level and also the roof top terrace in terms of public nuisance.

Noise from customers in drink can include raised voices and shouts that can be very loud, travel long distances and are difficult to control and impossible to stop altogether. To the front of the premises there are many residents down St Saviourgate who have had to contend with noise nuisance from customers at other licensed premises in the area in the past and also new residential flats in the Stonebow complex that have balconies overlooking the front of this premises. No proposed conditions have been offered by the applicant to demonstrate that they can prevent noise in this area from causing a public nuisance and Public Protection would advise that we would not support this part of the variation unless this area is restricted to the following hours: 23:00 hours. I would also advise that a suitably worded condition be attached requiring that a noise management plan is submitted to control noise to the front of the premises. This could include a dispersal policy for when the premises finishes.

The roof top terrace is overlooked directly by residential dwellings some which may include bedrooms and there is no way that noise from this area can be controlled to an adequate level later in the evening or and especially into night time periods and the early hours of the morning.

The premises applied for the licence in 2018 and as a result of concerns about noise from the roof top terrace area the committee placed conditions restricting its use to 21:00 hours and requiring the access door from the building to the roof terrace to be kept closed after this time. Public Protection do not support the removal of these conditions and timings because this will change the nature of the back of the premises after 21:00 hours bringing unwanted noise from people in drink with raised voices just in front of residents who's properties are at present partly shielded from street noise by the premises building itself and because no condition would prevent noise from the terrace from causing a public nuisance to nearby residents.

The door accessing the roof terrace should remain closed as to open this would allow music and raised voices from inside the building to blast out whilst it was open and would effectively bring the inside of the club to the outside and subject the residents to this until 1am. This would very likely result in not only a public nuisance but also a statutory nuisance as defined in the Environmental Protection Act 1990.

Conclusion:

This application is within the Cumulative Impact Area where the Council should refuse all applications unless the applicants can show how their application would not lead to an increase in the impact of licensed premises in that area. The applicants have not demonstrated how they will control noise from the roof terrace or the front seating area.

I would advise that unless the hours of the front external area are reduced to 23:00 hours and suitably worded condition attached requiring a noise management plan to be submitted and followed, are attached this element of the variation should be refused due to public nuisance.

The roof top terrace is opposite residential dwellings that are to some extent shielded from street level noise by the building and the use of this into the early hours of the morning would likely affect the sleep and quiet enjoyment of residents and would increase pressure on from public nuisance due to noise from both customers and music. The 9 o'clock restriction on the roof top terrace was agreed to in hearing by the councillors in the original hearing and I cannot see how extending the hours for this area or allowing the door to be opened would do anything other than result in noise complaints, public nuisance and potentially even a statutory nuisance. I would therefore strongly advise that the proposed variations to the hours of use for the roof top terrace and the proposed change to condition 2 of Annex 3 are refused on grounds of the prevention of public nuisance.

Regards

Michael Golightly
Technical Officer