

## Licensing Act 2003 Sub Committee

23<sup>rd</sup> January 2014

Report of the Director of Communities and Neighbourhoods

### **Section 35(3)(a) Application for the variation of a premise licence for Macumba, 3 Coffee Yard, York YO1 8AR.**

1. This report seeks Members determination of an application for the variation of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-009165
3. Name of applicants: Mr Hayati Kucukkoylu.
4. Type of authorisation applied for: Variation of premises licence.
  - a) Summary of application: The nature of the application is as follows:
    - i) to extend the hours of operation for the following licensable activities:-

| <u>Licensable Activities</u>             | <u>Proposed Timings</u>    | <u>Current Timings</u>     |
|--|----------------------------|----------------------------|
| Live music                               | Mon – Sun<br>10:00 – 02:30 | Mon – Sun<br>07:30 – 01:30 |
| Recorded music                           | As above                   | As above                   |
| Performance of dance                     | As above                   | As above                   |
| Anything similar to the above activities | As above                   | As above                   |
| Late night refreshment                   | Mon – Sun<br>23:00 – 02:30 | Mon – Sun<br>23:00 – 01:30 |
| Sale of Alcohol                          | Mon – Sun<br>10:00 – 02:30 | Mon - Sun<br>07:30 – 01:30 |
| Opening times                            | Mon - Sun<br>10:00 – 03:00 | Mon – Sun<br>07:30 – 02:00 |

|  |  |  |
|--|--|--|
| Non Standard timings to be added to all of these activities. | An additional one hour for UK bank holidays and the Sunday preceding a bank holiday, and for Christmas Eve and New Year's Eve and when the clocks go forward for BST | From the opening time on New Year's Eve to the closing time on New Year's Day and an additional hour when the clocks go forward to BST |
|--|--|--|

ii) to alter certain conditions listed in Annex 2 of the current licence:-

condition 8: proposed is, "Seating and tables shall be laid out for 24 covers" - currently it reads "...12 covers on ground floor and 12 covers on first floor

condition 11: proposed is, "The outside area shall not be used after 02: 30hrs for any licensable activity or the consumption of alcohol" - currently it reads "outside area not to be used for licensable activities or consumption of alcohol after 24:00hrs"

N.B. the proposals to alter occupancy figures on the licence with regards to public safety are no longer relevant as this is dealt with under separate legislation.

## **Background**

5. A copy of the existing premise licence is attached at Annex 1.
6. A copy of the application to vary the licence is attached at Annex 2.

## **Promotion of Licensing Objectives**

7. The applicant has included a number of measures to promote the licensing objectives. Some of these are already incorporated in the current licence whilst the additional measures are as follows:

8. The prevention of crime and disorder

- a) Internal training of door staff will be carried out to ensure they are fully aware of their responsibilities and Macumba's licensing objectives.
- b) Any queuing from customers will be monitored and controlled by the door staff.
- c) Dispersal of customers from the premises will be carried out by door staff and waiting staff, who will start gradually informing customers from the final hour of operation.
- d) Signage indicating operating hours and drinking up times will be visible so people are clearly informed.
- e) Macumba operates a zero tolerance to drugs. Regular checks will be made in the toilet area by staff. Anyone found to be in possession or distributing drugs will be reported to the police.

9. The prevention of public nuisance

- a) Door staff will inform customers to leave quietly and direct them away from the premises.
- b) Customers who regularly leave in a noisy fashion will be banned from the premises.
- c) Recorded music will be played at a level so that it does not disturb any residents.

**Special Policy Consideration**

10. This premise is not located within the special policy area.

**Consultation**

11. 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.
12. All procedural aspects of this application have been complied with.

### **Summary of Representations made by Responsible Authorities**

13. North Yorkshire Police made representation to the application on the grounds that it is believed that the licensing objective, the prevention of crime and disorder, would be undermined on the granting of this application. A copy of the representation is attached at Annex 3.
14. The Council's Environmental Protection Unit has made representation to the proposed variation to condition 11 of the current licence regarding the use of the outside area. After discussions with the applicants with regard to the other proposals both parties have agreed to a number of conditions being included in the licence if granted. A copy of the representation and agreed conditions is attached at Annex 4
15. The Council's Licensing Authority has made representation to the application on the grounds that it is believed that the licensing objectives, the prevention of crime and disorder and the prevention of public nuisance would be undermined on the granting of the application. A copy of the representation is attached at Annex 5

### **Summary of Representations made by other persons**

16. One relevant representation has been received and this is attached at Annex 6.
17. A map showing the general area around the venue from which the representations are focused is attached at Annex 7.
18. Members are reminded that representations are only "relevant" if they relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

### **Planning Issues**

19. The Council's Planning and Development Unit are currently in discussions with the applicant's agents regarding the current and proposed activities at the venue. These include planning permissions for a change of use to regularise the existing use and a new application for the pavement cafe to incorporate layout, operating times and furniture.

## **Options**

20. By virtue of s18 (4) of the Act, the Committee have the following options available to them in making their decision:-
21. Option 1: Grant the variation of the licence in the terms applied for.
22. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
23. Option 3: Grant the variation of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
24. Option 4: Reject the application.
25. Members are reminded that they may only use their discretion to add, remove or amend conditions or activities in relation to matters that are raised by representors and are relevant to the promotion of the licensing objectives.

## **Analysis**

26. The following could be the result of any decision made this Sub Committee:-
27. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
28. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
29. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
30. Option 4: This decision could be appealed at Magistrates Court by the applicant.

## **Council Plan**

31. 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.

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

## **Implications**

33.

- **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**

34. 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.
35. 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**

36. Members determine the application.

Reason: To address the representations received as required by the Licensing Act 2003.

## **Contact Details**

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### **Chief Officer Responsible for the report:**

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**Report  
Approved**



**Date** 08/01/2014

### **Specialist Implications Officer(s):**

Head of Legal & Democratic Legal Services Ext: 1004

**Wards Affected:** Guildhall West

**For further information please contact the author of the report**

### **Background Papers:**

**Annex 1** - Copy of existing premises licence

**Annex 2** - Copy of application form

**Annex 3** - Police Representation

**Annex 4** - Environmental Protection Unit representation

**Annex 5** - Licensing Authority representation

**Annex 6** - Other representation

**Annex 7** - Map of area

**Annex 8** - Mandatory Conditions

**Annex 9** - Legislation and Policy Considerations