

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 recorded music from 23:00 to 01:00
- b) To amend conditions 2, 3 and 8 of Annex 3 on the licence which restricts:
 - the use of the doors to the roof terrace after 21:00 hours;
 - the use of the roof terrace area to 21:00 hours;

The applicant seeks to increase these hours to 23:00 each day.

Licensable Activity	Existing hours	Proposed hours
Recorded Music – indoors	0900 to 2330 everyday	0900 to 0100 everyday
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 01000 everyday	No change
Opening hours	0900 to 01000 everyday	No change

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. Further conditions at Annex 3 of the premises licence were attached to the licence by the Sub-Committee at a hearing held on 16 Sept 2021.
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:

(1) an extension to hours, an extension to the first floor roof terrace area so that it closes at 2300 rather than 2100; and
(2) an extension to hours for recorded music (inside only) from 2330 to 0100. This will 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 will ensure that there a satisfactory number of properly trained staff to service the roof terrace at all times so that he is not spread too thinly across the business as a whole and has already ensured that the CCTV coverage is fully comprehensive in terms of area and hours of coverage.

The contents of the statement of Licensing Policy (2022 – 2027) and the Cumulative Impact Assessment (2022 – 2025) are noted. Access to the roof terrace is only possible through the property itself and the applicant has a track record of running a tight ship. This will

continue. He often closes the business at times of possible disorder (eg race days or major sporting event days) and this approach will continue. Further, the applicant has been in discussions with neighbours who have expressed doubts about the extension of the hours for the roof terrace and they are now content with what he is proposing.

The Noise Management Plan will be followed very closely at all times to ensure that there are no antisocial consequences from the extension of hours (inside only) for recorded music and the applicant will personally ensure that no neighbouring properties are affected in any way. This extension is just to bring the hours for recorded music into line with the opening hours and the hours for serving alcohol, which were varied last year.

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 his staff and the customers, many of whom are regulars.

The applicant notes the contents of the Statement of Licensing policy (2022 – 2027) and the Cumulative Impact Assessment (2022 – 2025) and the advice/guidance contained within.

12. Public Safety

See above

13. The Prevention of Public Nuisance

See above.

14. The Protection of Children from Harm

See above.

Special Policy Consideration

15. This premises is located within the cumulative impact assessment area which was approved by full council on 24 March 2022. It is not however located within the 'red or amber zones'. 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**.

21. A map showing the general area around the venue is attached at **Annex 9**.
22. The mandatory conditions that will be attached to this licence if granted can be found at **Annex 10**. The Legislation and Policy considerations can be found at **Annex 11**.
23. By virtue of s35(4) of the Act, the Committee have the following options available to them in making their decision: -
24. Option 1: Modify the conditions of the licence
25. 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

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.

Council Plan

29. 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.
30. 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

31.

- **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

32. 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.
33. 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

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

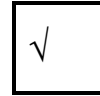
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Report Approved



Date
26.08.2022

Specialist Implications Officer(s)
Head of Legal & Democratic Services
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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** - Map of area
- Annex 10** - Mandatory Conditions
- Annex 11** - Legislation & Policy