

Annex 7

Public Protection Representation

Public Protection are making representation against the variation application for 5 Whip- Ma-Whop-Ma-Gate on grounds of public nuisance.

The proposed variation: The proposal is the replacement of an end time of 21:00 hours with 23:00 hours in conditions 2,3 and 8 from annex 3 of the current licence and to increase the hours of recorded music indoors from 23:30 hours to 01:00 hours. Conditions 2,3 and 8 pertain to the roof top terrace to the rear of the premises and are worded as follows:

2. The doors to the roof terrace shall be closed and remain closed after 21:00 hours each day.
3. Customers will not be allowed onto the roof terrace after 21:00 hours each day.
8. Closure of the premises to the public shall be no later than 01:00, with no access to the roof terrace after 21:00. Licensable activities are permitted as set out in the current licence as varied above.

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 directly onto residential dwellings approximately 8 metres away. There is no shielding to these premises which have single paneled windows which will reduce the amount of sound they can attenuate. 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 which have already been affected by noise from the venue.

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

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. The applicants have stated that the neighbours have been approached and are supportive of the application for the roof terrace, however, this would be based on there being a satisfactory number of trained staff for the roof terrace, the applicants running a very tight ship in terms of management of the premises and greater vigilance being required due to this variation. It is also stated that the noise management plan will have to be very closely followed at all times.

Public Protection, however, are still concerned about both the use and management of the external areas and feel that it may result in both statutory nuisance and also public nuisance from customers voices if the hours are extended. The roof top terrace has no screening from the residential dwellings that overlook it at the back of the premises. These residential dwellings only have single glazing, 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. 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. The applicant has not stated how many people will staff this area or explained how they will control noise or how they will be trained and have not to date demonstrated that they are adequately managing the premises.

Public Protection have received a noise complaint about loud amplified music from the premises on 12 May 2022 due to a door being left open. A warning letter was subsequently sent to the Designated Premises Supervisor about this matter.

The noise management plan was required to be submitted by 28 October 2021 in condition 1 of the conditions attached after a licensing hearing and this was not submitted for review until 29 June 2022, 2 months after it had been requested by Public Protection officers dealing with the noise complaint and 3 days after this variation application was submitted.

At the time of making this representation the original draft of the noise management plan is not detailed enough or sufficient to be signed off and therefore the condition is not being complied with. They are therefore unable to demonstrate that they have been already following it correctly as it has not yet been agreed.

There is a concern that the increased hours will result in customers leaving the premises into the early hours of the morning each day of the week with voices raised louder than currently and this may affect residents within the vicinity of the premises all of which will put further pressure on this area of the CIA from public nuisance.

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 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 21:00hours and requiring the access door from the building to the roof terrace to be kept closed after this time. A complaint has been received earlier this year about loud amplified music and the applicants have not demonstrated that they are managing the venue in accordance with their current conditions, they are at the time of this representation, still in breach of condition 1 which relates to a noise management plan that they did not submit until after applying for this variation. The noise management plan has not yet been agreed with the Council and is, in my opinion, inadequate in its current form.

Public Protection therefore do not support this application because this will change the nature of the premises and put further pressure on the CIA due to noise and I would advise that the application is refused on grounds of public nuisance.

Regards

Michael Golightly

Technical Officer