

## **AGENDA SUPPLEMENT 1**

### **Licensing/Gambling Hearing**

**To:** Councillors Galvin, Hook and D Myers

**Date:** Monday, 9 August 2021

**Time:** 4.30 pm

**Venue:** Remote Meeting

The Agenda for the above meeting was published on **29 July 2021**. The attached additional documents are now available for the following agenda item:

- 6. The Determination of an Application by Mr R C Price for a Section 52(2) Review of a Premises Licence at 59 - 63 Walmgate, York, YO1 9TY (CYC-060429)** (Pages 1 - 32)

Additional documents submitted by the Applicant

This agenda supplement was published on **3 August 2021**

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**Licensing Hearing 9 August 2021**

**Additional documents submitted by Applicant**

1. Notes to Illustrations
2. Outside Area 1
3. Outside Area 2
4. Google Map
5. Premises Plan Outside Area 2014
6. Press Kitchen Licence 2018 - Original Licence.
7. Complaints Submitted Post Minor Variation Approval.
8. Points of Law
9. Tabanco Web Page

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## **NOTES TO ILLUSTRATIONS**

### Outside Area 1

Illustrates the position of the outside area in relation to surrounding and mainly residential properties.

Illustrates that the outside area is not in Walmgate or part of the commercial area but merely once the rear yard to a three storey residential property.

Illustrates the cycle store demolished and removed early 2021 to clear an area to accommodate the increased seating used first through Temporary Even Notice conditions and then as a variation to the Premises Licence.

### Google Map

Further illustrates the relationship of the outside area to the surrounding properties and St. Denys Court.

Illustrates the position of the recently demolished and removed cycle store.

### Premises Plan 2014

Illustrates the position of the cycle store (Planning Consent 15/01049/FUL) in place since approximately early 2015 and demolished and removed in early 2021.

Illustrates that the Premises Plan submitted February 2018 and supporting the original Premises Licence Application was incomplete - the cycle store is not shown.

### Outside Area 2

Illustrates the outside area being used by 18 customers (maximum permitted 20 by Premises Licence, 12 by Planning Permission (breached here)).

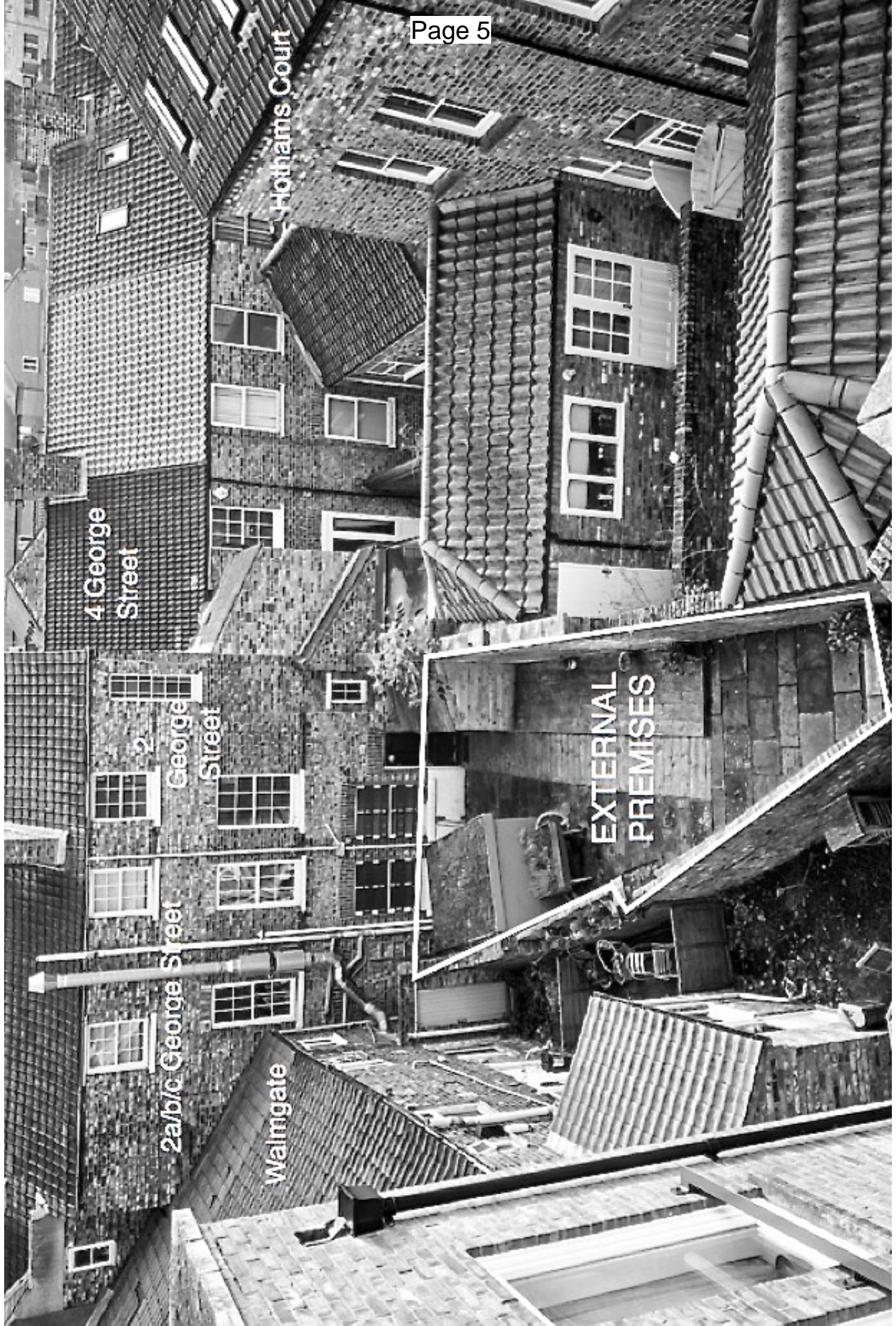
Illustrates the area previously accommodating the cycle store as now being used to seat customers.

### Tabanco Web Page

First page of Tabanco web site - illustrates that it is plausible to conclude that the premises is being promoted/operated as a bar. Licence Condition Annex 2.2 specifically prevents this.

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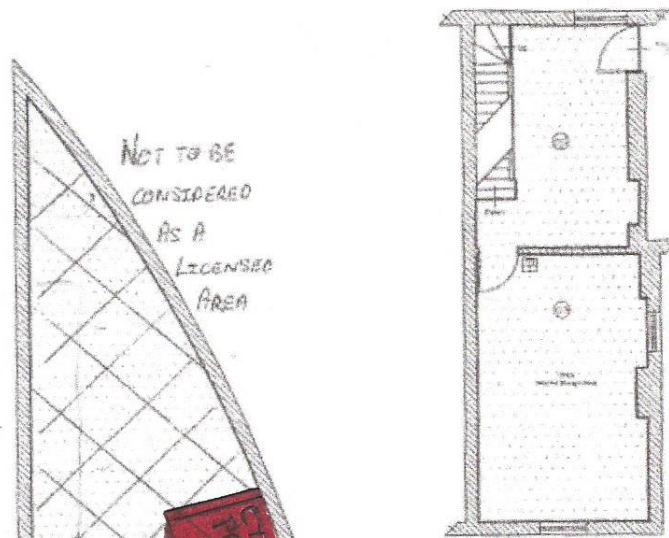
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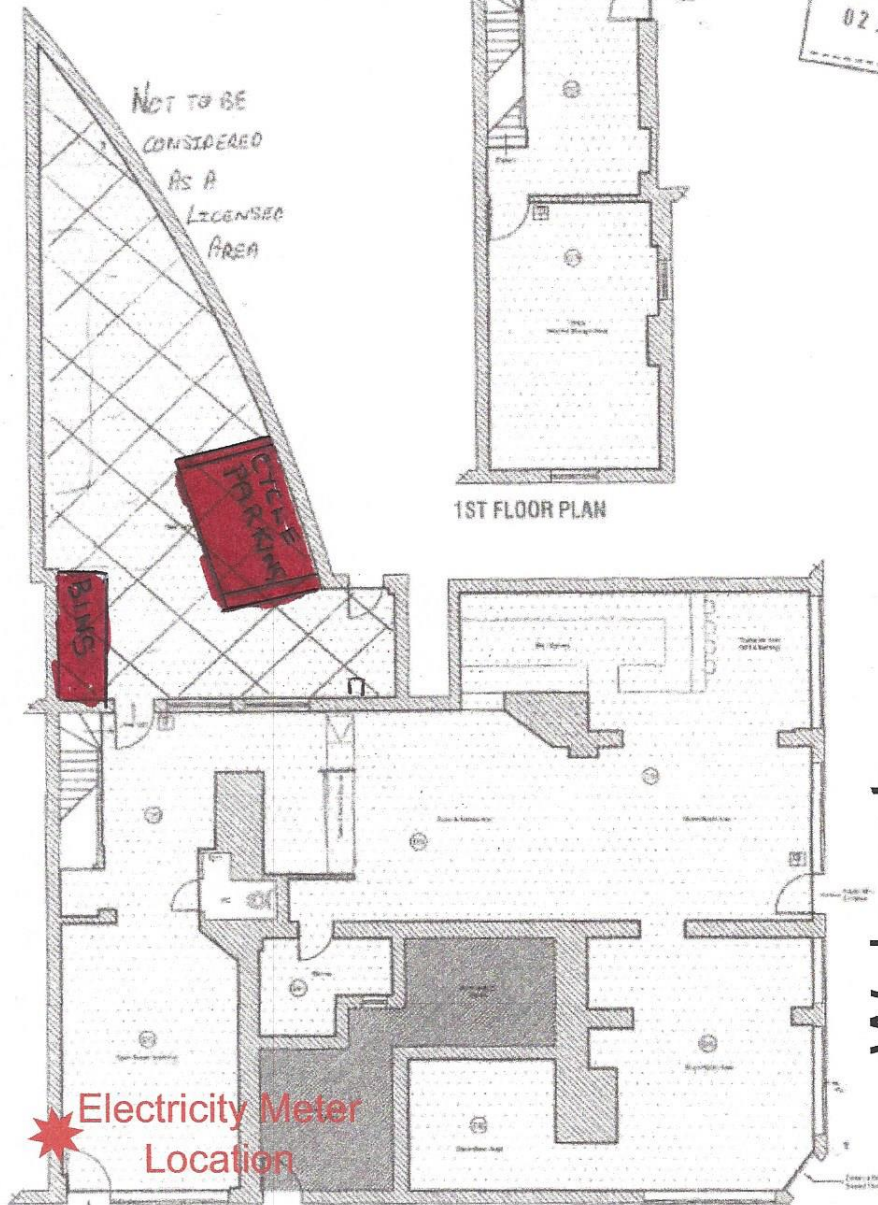
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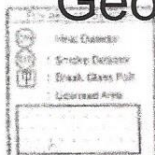
1ST FLOOR PLAN



GROUND FLOOR PLAN

George Street  
Exit

Ground Floor & External Licensed Area: 224.5m  
1st Floor Licensed Area: 36.8m  
Total Licensed Alcohol Area: 178.8m



**NOTES**  
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<b>UK SURVEYORS LTD</b> <small>Company &amp; Architects, Architects &amp; Planners</small>		
St. George's Road, St. George's, Walsingham, Norfolk, NR21 3JL Tel: 01263 851 7000 Fax: 01263 851 7001 Email: info@uksurveyors.co.uk		
Project Title: 55-53 Walmgate - 2 George Street York YO1 1QD		
Drawing Title: Premises Licensing Plan		
Drawing Notes		
Drawing No: 002789 Rev-A	Drawn By: SC	Scale: 1:100 @ A3
Date: 13/05/2013	Checked: CS	Sheet: 1 of 1

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**LICENSING ACT 2003****PREMISES LICENCE****SCHEDULE 12****Part A****Part 1 Premises details**

Premises licence number CYC - 060429
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Postal address of premises:

**59-63 Walmgate**Post town: **York**Post code: **YO1 9TY**

Telephone number: None

**Expiry date:** This licence has no expiry date.**Licensable activities authorised by the licence**

Recorded Music  
Late Night Refreshment  
Supply of Alcohol

**The times the licence authorises the carrying out of licensable activities:****RECORDED MUSIC**

Indoors

Monday

08:00 - 23:30

Tuesday

08:00 - 23:30

Wednesday

08:00 - 23:30

Thursday

08:00 - 23:30

Friday

08:00 - 23:30

Saturday

08:00 - 23:30

Sunday

08:00 - 23:30



**LATE NIGHT REFRESHMENT**

Indoors

Monday 23:00 - 23:30	Tuesday 23:00 - 23:30	Wednesday 23:00 - 23:30	Thursday 23:00 - 23:30
Friday 23:00 - 23:30	Saturday 23:00 - 23:30	Sunday 23:00 - 23:30	

**SUPPLY OF ALCOHOL**

Monday 10:00 - 23:30	Tuesday 10:00 - 23:30	Wednesday 10:00 - 23:30	Thursday 10:00 - 23:30
Friday 10:00 - 23:30	Saturday 10:00 - 23:30	Sunday 10:00 - 23:30	

Non Standard Timings for Recorded Music:

New Year's Eve until 00:00

Non Standard Timings for Late Night Refreshment and Alcohol:

**The Opening Hours of the Premises**

Monday 08:00 - 23:30	Tuesday 08:00 - 23:30	Wednesday 08:00 - 23:30	Thursday 08:00 - 23:30
Friday 08:00 - 23:30	Saturday 08:00 - 23:30	Sunday 08:00 - 23:30	

Non Standard Timings:

New Year'e Eve until 01:00

**Where the licence authorises supplies of alcohol whether these are on and/or off supplies:**

On and Off the premises

## Part 2

**Name, (registered) address, telephone number and email (where relevant) of holder of premises licence**

Name: Ambiente Tapas Limited

Address: Green Lane Trading Estate  
Clifton Moor  
York  
YO10 5PY

Telephone number: None

Email address: zoe@ambiente-tapas.co.uk

**Registered number of holder, for example company number, charity number (where applicable)**

6209010

**Name of designated premises supervisor where the premises licence authorises for the supply of alcohol**

Ms Jennifer Zoe Plummer

## Annex 1 – Mandatory Conditions

### MANDATORY CONDITIONS IN RELATION TO THE SUPPLY OF ALCOHOL

1. In accordance with section 19 of the Licensing Act 2003, where a premises licence authorises the supply of alcohol, the licence must include the following conditions.
2. The first condition is that no supply of alcohol may be made under the premises licence -
  - a) at a time where there is no designated premises supervisor in respect of the premises licence, or
  - b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
3. The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
4. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises –

- a) games or other activities which require or encourage, or are designed to require or encourage individuals to –
  - i. drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
  - ii. drink as much alcohol as possible (whether within a time limit or otherwise);
- b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
- c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
- d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
- e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either –

- a) a holographic mark, or
- b) an ultraviolet feature.

7. The responsible person must ensure that –

- a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures –
  - i. beer or cider: ½ pint;
  - ii. gin, rum, vodka or whisky: 25ml or 35ml; and
  - iii. still wine in a glass: 125ml;
- b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

- c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

#### MANDATORY CONDITION - ALCOHOL PRICING

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1 –
  - a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
  - b) “permitted price” is the price found by applying the formula –  $P = D + (D \times V)$  where –
    - i. P is the permitted price,
    - ii. D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
    - iii. V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
  - c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence –
    - i. the holder of the premises licence,
    - ii. the designated premises supervisor (if any) in respect of such a licence, or
    - iii. the personal licence holder who makes or authorises a supply of alcohol under such a licence;
  - d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
  - e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.  
(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

## **Annex 2 – Conditions consistent with the operating schedule Licensing Objectives**

### **General**

1. This licence excludes any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.

### **Prevention of Crime & Disorder**

2. The premises shall operate as a restaurant / cafe not as a bar or vertical drinking establishment providing food and non-alcoholic drinks.

3. Alcoholic drinks purchased on the premises may only be taken off the premises in sealed containers, except into the designated outdoor area (Courtyard) as detailed in the premise plan.

4. Customers shall only be served by way of waiter / waitress service.

5. There shall be a minimum of 50 table covers available at all times.

6. A full food menu shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises up to 1.5 hours before the end of permitted hours for the sale of alcohol.

7. An incident log / refusal register will be kept at the premises and made available on request to an authorised officer or the police which will record the following:

- all crimes reported to the venue
- any complaints received regarding crime and disorder
- any incidents of disorder
- any faults in the CCTV system
- any refusal of sale of alcohol
- any visit by a relevant authority of emergency service

With such records being kept for a minimum of one year [For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry.]

8. A documented staff training programme shall be provided to all members of staff at the premises in respect of the:-

- operation of the CCTV system (including the downloading of evidence);
- retail sale of alcohol;
- age verification policy;
- conditions attached to the Premise Licence;
- permitted licensable activities;
- the licensing objectives; and
- opening times for the venue.

With such records being kept for a minimum of one year. [For the avoidance of doubt, the one year period relates to each respective entry in the log book and runs from the date of that particular entry.]

9. A colour digital CCTV system shall be installed within the premises and be operational and recording at all times when licensable activities take place and at any other times where members of the public are present on the premises.

10. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.

11. The CCTV system will cover all areas of the premises occupied by the public, as outlined on the premises plan

12. The CCTV system must be capable of providing quality images of good evidential value. The CCTV system will have sufficient storage retention capacity for a minimum of 28 days consecutive footage.

13. North Yorkshire Police or a Responsible Authority (as defined in the Licensing Act 2003) may at any time request a recording. This should be complied with within 48 hours of the request being made.

14. It is the responsibility of the management to ensure that there are sufficient members of staff available during the hours of operation to be able to download evidence from the CCTV system at the request of the police or responsible authority.

15. The premises shall operate the Challenge 25 policy for the sale of alcohol.

16. The only acceptable proof of age identification shall be a current passport, photo card driving licence or identification carrying the PASS logo (until other effective identification technology eg thumb print or pupil recognition, is adopted by the Premises Licence Holder).

17. Customers carrying open or sealed bottles or glasses will not be admitted to the premises at any time.

18. A personal licence holder will be at the premises at all times when alcohol is being sold.

Outside area:

19. There shall be no more than 12 patrons in the outside area (Courtyard) at any one time to prevent public nuisance.

20. There shall be no smoking in the outside area (Courtyard).

Public Safety

21. Step and stair edges will be appropriately highlighted so as to be conspicuous.

22. Curtains, hangings and temporary decorations will be located so as not to obstruct exits, fire safety signs or fire fighting equipment.

23. Notices detailing the actions to be taken in the event of fire or other emergency will be prominently displayed and maintained in good condition.

24. An evacuation policy will be put in place. All staff members will be trained in fire and emergency evacuation procedures.

#### Public Nuisance

25. Noise or vibration from the premises will be maintained at a level that will not be audible at the facade of any neighbouring noise sensitive premises.

26. Clear notices shall be prominently displayed requesting customers to leave the premises and the area in a quiet and orderly manner.

27. Whilst recorded music is being played doors and windows shall remain closed other than for ingress and egress.

28. Staff will undertake a litter pick to a distance of 5 metres around the premises daily.

#### Protection of Children from Harm

29. Children under the age of 18 will not be permitted onto the premises unaccompanied by an adult.

### **Annex 3 – Conditions attached after a hearing by the licensing authority**

1. Bottles should not be disposed of into the outside waste bins at night and will only be disposed of between 10:00 and 21:00.

2. In the outside area alcohol is only to be supplied ancillary to the provision of food to persons seated at tables and by waiter or waitress service only.

3. Alcohol is only to be supplied in the outside area from 10:00 until 18:00 Monday to Saturdays and 10:00 until 16:30 on Sundays and Bank Holidays.

4. The outside area shall be cleared of customers and closed by 19:00 Monday to Saturdays and 17:30 on Sundays and Bank Holidays.

For and on behalf of  
The Director of Economy & Place

Date: 09/04/2018

Licensing Services  
Hazel Court EcoDepot  
James Street  
York  
YO10 3DS

Phone: 01904 551521  
Fax: 01904 551590  
Email: [licensing.unit@york.gov.uk](mailto:licensing.unit@york.gov.uk)  
Website: [www.york.gov.uk/licensing](http://www.york.gov.uk/licensing)



## COMPLAINTS POST APPROVAL OF MINOR VARIATIONS

### Complaint 13 June 2021

I am the owner/occupier of 20 St Denys Court, St Denys Road, YO1 9PU.

My premises, in particular my balcony, overlooks the outside area of the premise 59-63 Walmgate. The outside area is used by patrons of the licensed establishment Tabanco of which Ambiente Tapas Limited is the Premises Licence Holder.

Condition 25 of their Premises Licence requires that:

'Noise or vibration from the premises will be maintained at a level that will not be audible at the facade of any neighbouring noise sensitive premises.'

The purpose of this condition is to prevent a public nuisance, one of the 4 Licence Objectives.

I consider my premises to be a 'neighbouring noise sensitive premises' and, as such, noise from licensed premises must not be audible at the facade of my premises.

I attach 2 video files taken at different times during the afternoon of Saturday 12 June 2021. These clearly demonstrate that noise from the licensed premises could be heard at the facade of my premises. Noise levels such as these could be heard throughout the afternoon and early evening. I consider this a breach of the Condition 25 and a failure of the premises licence holder to promote the licensing objectives. I also that consider that the noise amounts to a public nuisance as defined by Section 7.11 City of York Council - Statement of Licensing Policy 2019-2024. As such, I wish to register a formal complaint.

Irrespective of Condition 25, I consider the level of noise to be both frequent and sufficient enough to demonstrate a public nuisance exists; the examples I have provided are indicative of the regular noise levels I am subjected to on a daily basis.

Please advise me what action the Council will now take, particularly with regards to Section 13 - Enforcement - City of York Council - Statement of Licensing Policy 2019-2024.

It should also be noted that throughout much of the afternoon there were in excess of 12 patrons in the outside area, a breach of planning controls (16/00012/FUL). It is for the Council to consider whether that, under such circumstances, the provision of alcohol at the premises is unlawful. (Section 8.5 - Planning - City of York Council - Statement of Licensing Policy 2019-2024)

Kind regards,

Ray Price  
20 St Denys Court  
St Denys Road  
York  
YO1 9PU

Response 22 June 2021

SRU22053

Good afternoon Mr Price

With regard to your recent complaint, which I can confirm has been logged.

As you are now aware the premises are now subject to a licensing review, with a hearing now scheduled to heard by the Licensing Committee.

That being the case the Licensing Dept. shall now await the outcome of that review.

Before considering any further action which may or may not be required

Regards

Kerrie Shields  
Licence Enforcement Officer,  
City of York Council  
email: [kerrie.Shields@york.gov.uk](mailto:kerrie.Shields@york.gov.uk)

**Complaint 26 June 2021**

I am the owner/occupier of 20 St Denys Court, St Denys Road, YO1 9PU.

My premises, in particular my balcony, overlooks the outside area of the premise 59-63 Walmgate. The outside area is used by patrons of the licensed establishment Tabanco of which Ambiente Tapas Limited is the Premises Licence Holder.

Condition 25 of their Premises Licence requires that:

'Noise or vibration from the premises will be maintained at a level that will not be audible at the facade of any neighbouring noise sensitive premises.'

The purpose of this condition is to prevent a public nuisance, one of the 4 Licence Objectives.

I consider my premises to be a 'neighbouring noise sensitive premises' and, as such, noise from licensed premises must not be audible at the facade of my premises.

I attach 2 video files taken at 16:12 and 17:55 during the afternoon of Saturday 26 June 2021. These clearly demonstrate that noise from the licensed premises could be heard at the facade of my premises. Noise levels such as these could be heard throughout the afternoon and early evening. I consider this a breach of the Condition 25 and a failure of the premises licence holder to promote the licensing objectives. I also that consider that the noise amounts to a public nuisance as defined by Section 7.11 City of York Council - Statement of Licensing Policy 2019-2024. There appeared to be no attempts by staff to manage the noise generated by customers. As such, I wish to register a formal complaint.

Irrespective of Condition 25, I consider the level of noise to be both frequent and sufficient enough to demonstrate a public nuisance exists; the examples I have provided are indicative of the regular noise levels I am subjected to.

Please advise me what action the Council will now take, particularly with regards to Section 13 - Enforcement - City of York Council - Statement of Licensing Policy 2019-2024.

Kind regards,

Ray Price  
20 St Denys Court  
St Denys Road  
York  
YO1 9PU

Response 12 July 2021

Good morning Mr Price

Thank you for your email

With regard to Licensable Activities, as advised previously on similar matters, there are no apparent breaches of the licence taking place.

With regard to the usage of the rear yard , again I find that this is being conducted in terms with the licence conditions.

These matters have also been reviewed by the senior Licensing Officer whom I understand you have also communicated with previously, and, I believe, she is of similar opinion to mine.

In relation to the potential noise nuisance The EHO, Mr Gray was forwarded a copy of your complaint, I understand you are in regular communication with him.

Regards

Kerrie Shields  
Licence Enforcement Officer,  
City of York Council  
email: Kerrie.Shields@york.gov.uk

## **Reference to Points of Law - Revised Guidance issued under section 182 of the Licensing Act 2003**

Section 182 of the Licensing Act 2003 provides that the Secretary of State must issue Guidance to Licensing Authorities on how to discharge their functions. (RG 1.6)

All licensing applications received by the Licensing Authority should be processed in accordance with the revised guidance. (RG 1.6)

Section 4 of the 2003 Act provides that, in carrying out its function, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent. (RG 1.9)

City of York Council - the Licensing Authority - in processing the Minor Variation submitted by Ambiente Tapas Ltd have ignored the Guidance issued by the Secretary of State and which is binding on that Licensing Authority.

It is a reasonable presumption that the Licensing Authority was expected to follow this Guidance, unless there is a valid reason not to do so. No such valid reasons has been submitted for the Licensing Authority's departures from the Guidance or why the Guidance has been ignored by the Licensing Authority. Therefore the lawfulness and merits of the granting the minor variations are open to question to the extent that the minor variations granted should be rescinded.

### **The Minor Variations Process**

To be clear Revised Guidelines 8.61 only permits minor variations which 'will generally fall into four categories: minor changes to the structure or layout of the premises; small adjustments to licensing hours; the removal of out of date, irrelevant or unenforceable conditions or additional volunteered conditions.'

#### Conditions

The following 4 Conditions are included in the original licence granted in April 2018. They are Conditions which act as controls to prevent a Public Nuisance:-

Annex 2 Condition 19 (Number of Patrons) has been relaxed, the numbers increased from 12 to 20. This is outside the scope of the Minor Variation Process. (RG 8.61)

Annex 3 Condition 2 (Drink only with Food) has been removed. This is outside the scope of the Minor Variation Process. (RG 8.61)

Annex 3 Condition 3 (Sunday drinking hours) has been relaxed. The hours have been extended. This is outside the scope of the minor variations process. (RG 8.61. RG 8.66)

Annex 3 Condition 4 (Times of Outside Area use). These times have been relaxed. This is outside the scope of the Minor Variation Process. (RG 8.61)

All four of the above Conditions fall outside the four categories of permitted variations detailed in the Guidance. There was no valid reason for varying any of these conditions within the minor variation process. To vary the four conditions indicates that the Guidance has been ignored.

Furthermore, it is not permissible to relax or remove Conditions that ‘*could* impact adversely on any of the four licensing objective’. through the Minor Variations Process (RG 8.61)

There can be no doubt that to relax or remove Conditions in place to Prevent a Public Nuisance *could* impact adversely on any of the four licensing objectives.

As such, their removal is outside the scope of the Minor Variations Process for Amending or Removing Existing Conditions. (RG 8.72 RG 8.73)

This invalidates the application for Minor Variation application. The application should have been refused and returned.

These minor variations should not have been approved. The Guidance has been ignored.

The original Conditions: Annex 2 Condition 19, Annex 3 Condition 2, Annex 3 Condition 3 and Annex 3 Condition 4 must be restored.

### Permitted Hours

Within the existing licence the time at which alcohol can be supplied to customer in the outside area is controlled by separate and different times to the internal premises. Effectively the outside area has its own specific and individual Permitted Hours.

Through the Minor Variation process, on Sundays, the amount of time that alcohol can be supplied has increased (from 6½ hours to 8.) (10:00 - 16:30 = 6½ 11:30 - 19:30 = 8).

‘Variations to the following are excluded from the minor variation process and must be treated as full variations in all cases:

- Increasing the amount of time on any day during which alcohol may be sold or supplied for consumption on or off the premises.’

In this case the ‘time on any day’ is Sunday. The increase is 23% and, as such, cannot be considered ‘a small adjustment to licensing hours’ (RG 8.66. RG.8.61)

Approving the extended Sunday hours is outside the scope of the Minor Variation Process. The Guidance has been ignored.

The original Annex 3 Condition 3 must be restored.

### Layout of Outside Area

The seating layout of the outside area has been changed and enlarged to accommodate 66% more customers - a cycle store (requiring planning permission) was removed for this purpose earlier this year (2021) and prior to reopening following lockdown 3. As a result there is an *increase in the capacity for drinking on the premises* and therefore this should have been referred to the full variation process. This variation is outside the scope of the Minor Variations Process. The Guidance has been ignored. (RG 8.62) (CYC Planning Reference 15/01049FUL)

The original Annex 2 Condition 19 must be restored.

Given this I maintain that the applied for and approved Minor Variations are ***all*** outside the scope of the Minor Variation Process. The Licensing Authority, in accepting the proposals and then approving the minor variations application has ignored the Guidance issued by the Secretary of State.

### Imposed Condition

A new Condition 6 has been added to the Premises Licence through the Minor Variation Process.

“There shall be a minimum of 10 seats provided in the outside area at all times when in use in order to prevent the need for vertical drinking.”

No such condition was proposed by the Premises Holder in their Minor Variation Proposal. Given this, I must be assumed that this new Condition 6 has been imposed by the Licensing Authority.

Licensing Authorities cannot impose their own conditions through the minor variation process. (RG 8.69).

This invalidates the new Condition 6 and it must be removed: The Licensing Authority has ignored the Guidance issued by the Secretary of State.

### Prevention of Crime & Disorder

Annex 2 Condition 2 requires that ‘The premises shall act as a restaurant / cafe not as a bar or vertical drinking establishment providing food and non-alcoholic drinks’.

The original Premises Licence Annex 3 Condition 2 requires that ‘In the outside area alcohol is only to be supplied ancillary to the provision of food to persons seated at tables and by waiter or waitress service only.’ The Condition was volunteered by the Premises Licence applicant as a control measure to prevent a public nuisance and at the original Licensing Hearing.

This Condition has been removed from the licence as amended by the minor variation process/ approval and at the behest of the Premises Licence Holder

As a result, the principle of alcohol only being served to customers as ancillary to food has been reversed, food can, but not necessarily, be served as ancillary to alcohol. Alcohol can be supplied without the need purchase/partake in food. As such this renders the outside area - regulated by the



Premises Licence with its own Permitted Hours, Conditions and Planning Consent - a bar. The premises is not permitted to operate as a bar.

As such, the Premises Licence holder has applied for a minor variation that, if granted, would require them to operate the outside area knowingly in breach of Annex 2 Condition 2. In granting that variation the Licensing Authority has condoned this breach. (See also 'Conditions' above)

The minor variation application should have been refused and returned.

### **Other Specific Reference**

#### Retrospective Planning Approval 14/1960/FUL

##### Paragraph 3.1

'The Environmental Protection Unit have concerns about this application...Specifically, the noise .... from customers using the rear courtyard dining area, talking, laughing, shouting etc and noise from collection of refuse and delivery noise in the early mornings.'

##### Paragraph 4.13

'The applicants propose that there will be no more than 8 covers in the external area. It would only operate until 18:00 and there would be no alcohol served. The area does not have a premises license for serving alcohol. ....The Environmental Protection Unit are satisfied that the likelihood of noise from customers using the rear yard can be adequately controlled by a restriction on the hours of use. However, this is based on no more than 8 people using the yard. If more tables and chairs were to be installed, then it is possible that noise from customers could affect the amenity of nearby residents, particularly if the yard was to be in use during the evenings. These matters could be controlled through appropriate conditions.'

##### Condition 5

'The use of the rear yard as an outside seating area for customers is not permitted outside the following times:

Monday to Saturdays 0830 to 1800 hours Sundays and Bank Holidays 0930 to 1630 hours, and there shall be no more than 8 customers within this area at any one time.

Reason: In the interests of residential amenity, in accordance with Local Plan policy GP1(i).'

It should be noted that the outside area was not licensed.

#### Planning Committee Report 16/00012/FUL

##### Paragraph 4.12

'Officers agree with residents that if alcohol were permitted to be served in the yard, or if it were to open into the evening, when background noise levels are known to be lower, there would be an undue effect on residential amenity. The times of operation can be controlled via a planning

condition. Alcohol is currently not permitted in the outside area; prevented by the premises licence. This matter would need to continue to be managed through the licensing legislation.'

### Condition 3

'The use of the rear yard as an outside seating area for customers shall only occur during the following times -

Monday to Saturdays 08.30 to 19.00 hours Sundays and Bank Holidays 09.30 to 17.30 hours

Reason: In the interests of residential amenity.'

It should be noted that the outside area was not licensed.

## **City of York Council - Statement of Licensing Policy 2019-2024**

### Definition of Public Nuisance - 7.11

'Public nuisance is not narrowly defined and can include low level nuisance affecting one or a few person(s) living locally, as well as a major disturbance affecting the whole community. Issues will mainly concern noise nuisance, light pollution and litter.'

### Planning 8.7

'While there is no obligation for an applicant to have planning permission before applying for a premises licence, provisional statement or for a substantial variation, it is recommended that lawful planning use is obtained initially. The planning authority is a responsible authority under the Act whom applicants are required to give notice of applications.'

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# SPANISH TAPAS & SHERRY BAR

TAPAS Y BEBIDAS



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