

Licensing/Gambling Hearing

To: Councillors Galvin, Melly and Wells

Date: Monday 31 October (postponed from Thursday 15 September 2022)

Time: 10.00 am

Venue: Remote via zoom

AGENDA

1. Chair

To elect a Member to act as Chair of the meeting.

2. Introductions

3. Declarations of Interest

At this point in the meeting, Members are asked to declare any disclosable pecuniary interest or other registerable interest they might have in respect of business on this agenda, if they have not already done so in advance on the Register of Interests.

4. Exclusion of Press and Public

To consider excluding the Press and Public during the sub-committee's deliberations and decision-making at the end of the hearing, on the grounds that the public interest in excluding the public outweighs the public interest in that part of the meeting taking place in public, under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.

5. The Determination of an Application by Mr Mehmet Simsek for the variation of a premises licence (Section 35(3) (a) in respect of 5 Whip ma Whop ma Gate, York, YO1 8BL (CYC 061097) (pages 7-79)

Democratic Services Officer:

Name: Angela Bielby

Contact Details:

- Telephone – (01904) 552599
- Email - a.bielby@york.gov.uk

For more information about any of the following, please contact the Democratic Services officer responsible for servicing this meeting:

- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats.

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

LICENSING ACT 2003 SUB – COMMITTEES PROCEDURE FOR REMOTE LICENSING HEARINGS

Introduction

1. During the coronavirus pandemic emergency period it will be necessary for licensing hearings to be dealt with remotely. This procedure sets out how City of York Council will deal with such hearings. This procedure must be considered in conjunction with the Council's Delivery of Remote Meetings document which sets out how all meetings, including licensing hearings will be held in York.
2. The procedure adopted at a licensing hearing is at the discretion of the Sub-Committee but will normally follow the pattern outlined below.
3. The Council's hearings procedure is based on regulations made by the Secretary of State under the Licensing Act 2003. The procedure is intended as a general framework to ensure natural justice and a fair hearing. The Sub-Committee has a duty to view all evidence presented before them impartially. The Sub-Committee is not bound by the formal rules of evidence. Nevertheless, Members must carry out their duty placing what weight they feel is appropriate given the nature of the evidence and the manner in which it was obtained, and communicated.
4. The Council will provide a record of the hearing in a permanent and intelligible form and keep it for 6 years from the date of determination or disposal of any Appeal. The Hearing will be recorded and the recording placed on the Council's website.

Preparation for the Remote Licensing Hearing

5. The Sub-Committee will use the video-conferencing platform when the hearing is in public session. Clear instructions will be provided to participants on how to join the remote hearing. The Sub-Committee may exclude the public from all or part of a hearing if it considers it is in the public interest to do so. Should any part of the hearing need to be held in private session, a separate private online meeting will be convened by the Sub-Committee. This video-conferencing platform will also be used for decision making in private. All paperwork relevant to the hearing will be published online on the Council's

website, 5 working days before the remote hearing. The documents will be produced in PDF format and will be paginated to permit ease of reference during the remote hearing. Name and address details of those making representations will be made public. Telephone numbers, email addresses and signatures will be omitted.

6. 5 working days before the remote hearing is due to take place, the Council will contact the parties with a list of issues they would like any party to specifically address them on or clarify at the hearing.
7. If in light of the Council's list of issues any party wishes to produce any further documentary evidence they should submit this to the Council by email three working days before the hearing.
8. Any documentary evidence that is not submitted to the Council by email three working days before the hearing will not be admitted without the agreement of all parties. If it is essential to a party's case that the material be admitted, then the Sub-Committee will consider adjourning the remote hearing to allow all parties a fair opportunity to consider it.
9. Should any party wish to rely on any points of law, specific references in the s.182 Guidance, specific references in the Council's Policy or any other external resources, these should be set down in an electronic document and submitted to the Council by email three working days before the hearing.

The Remote Licensing Hearing

10. The Applicant is permitted to speak at the remote hearing (see below). Ward Councillors, responsible Authorities and Representors are only permitted to speak if they have made written submissions during the consultation period. Any party to a hearing may be assisted or represented by any person, legally or otherwise.
11. All parties will be given a fair hearing and each party will have the same amount of time in which to address the Sub-Committee and question each other. Each party will have 15 minutes to address the Sub-Committee and call any witnesses and 5 minutes for questions.

12. However, where there are groups of individuals with a common interest, for example local residents making similar representations either for or against an application, consideration should be given to nominating a spokesperson. Otherwise the Sub-Committee may impose a time limit for such representations where there is pressure on the Sub-Committee to hear numerous applications in a short period of time or for any other valid reason.
13. If any Representors fail to attend the hearing, the Sub-Committee will normally proceed but will consider their written representation. In considering written evidence in the absence of a Representor, appropriate weight will be attached, given that the person cannot be questioned by Members.
14. **The Sub-Committee is required to disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations, or notice, and the promotion of the licensing objectives.** Duplication should be avoided. Comments must be confined to those points already made, although the parties may expand on their written submissions. The Sub-Committee will have read and familiarised themselves with all the written submissions and the issues prior to the hearing, and therefore do not require the points to be made at length.
15. A Representor **may not** introduce any new ground or objection not referred to in their written submission. Additional representations which do not amount to an amplification of the original representation will not be considered by the Sub-Committee.
16. Any person behaving in a disruptive manner will be asked to leave the hearing. However, if this occurs, that person will be entitled to submit in writing any information they would have been entitled to give orally.

ORDER OF PROCEEDINGS AT THE REMOTE HEARING

Chair's introduction and opening comments

17. The Chair will introduce the Sub-Committee Members and Officers and welcome the Applicant and Representors (or their

representatives), and establish the identity of all who will be taking part.

18. The Chair will outline the procedure to be followed.

19. The Chair will proceed with the order of business on the agenda.

Licensing Manager

20. When the agenda item relating to the application is reached, the Chair will invite the Licensing Officer to present the application. The Chair will invite all present, one by one, to ask the Licensing Officer questions if they wish, to clarify any points raised in the report.

The Application

21. The Applicant (and/or their representative) will address the Sub-Committee and present information in support of the application and may call any witnesses to support the application, one witness at a time [*maximum 15 minutes*].

22. The Chair will invite the Representors to ask questions of the Applicant in the following order [maximum 5 minutes each party]:

- Police;
- Other Responsible Authorities;
- Ward Councillors;
- Members of the Sub-Committee;
- The Sub-Committee's legal adviser.

The Representations

23. The Chair will invite the Representors and/or their representative in the following order to address the Members of the Sub-Committee and call any witnesses in support of their representation [*maximum 15 minutes each party*]:

- Police
- Other Responsible Authorities

- Ward Councillors
 - Public representation
24. The Chair will invite the Applicant to ask questions of each Representor and/or their witnesses after each presentation [maximum 5 minutes per Representor]. The Chair will invite the Committee Members to ask questions of each Representor (or their representative) and/or their witnesses after each presentation.
25. Where there are groups of individuals with a common interest, for example local residents, presentation through an appointed spokesperson is preferred but not mandated.

Summaries

26. The Chair will invite the Representors (or their representative) in the following order to summarise their case *[maximum 5 minutes each party]*
- Police
 - Other Responsible Authorities
 - Ward Councillors
 - Local residents
27. The Chair will invite the Applicant (or their representative) to summarise their case *[maximum 5 minutes]*.
28. The Chair will provide the Sub-Committee with a final opportunity to seek clarification from any of the parties on any points raised, or seek advice from the Licensing Officer on policy, or from the Legal Advisor on law and jurisdiction.

Determination

29. The Sub-Committee will withdraw to consider their decision with the Legal Adviser and the Democratic Services Officer in a separate private on line meeting. These officers will not comment on the merits of the application, but will be present to provide advice on legal and procedural points and to record the decision.

30. If the decision is made following the conclusion of the hearing, the Sub-Committee will return to the public online meeting to announce an outline of the decision to those present. This decision will then be communicated in full in writing, including reasons for the decision, to the Applicant and all Representors (whether in attendance or not) usually within 5 working days of the hearing. There can be no further questions or statements.

31. If the Sub-Committee does not make a decision on the day of the hearing, the decision will be made within 5 working days beginning with the day or the last day on which the hearing was held. The Democratic Services Officer will inform the parties that they are no longer required and the decision will be communicated in writing to the Applicant and Representors within 5 working days of the decision being made.

The notification will include information about the rights of appeal against the determination made.



Licensing Act 2003 Sub Committee

15 September 2022

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.

Contact Details

Author:
Lesley Cooke
Licensing Manager

Chief Officer Responsible for the report:
James Gilchrist
Director Environment, Transport & Planning

Tel No. 01904
551515

Report Approved



Date
26.08.2022

Specialist Implications Officer(s)
Head of Legal & Democratic Services
Ext: 1004

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

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26 JUL 2022

Application to vary a premises licence under the Licensing Act 2003**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Mr Mehmet Simsek
(Insert name(s) of applicant)

being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in Part 1 below

Premises licence number CYC - 061097
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Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description 5 Whip-Ma-Whop-Ma-Gate			
Post town	York	Postcode	YO1 8BL

Telephone number at premises (if any)	01904 651868
Non-domestic rateable value of premises	£32,250.00

Part 2 – Applicant details

Daytime contact telephone number	
E-mail address (optional)	
Current postal address if different from premises address	
Post town	
Postcode	

Part 3 - Variation

Please tick as appropriate

Do you want the proposed variation to have effect as soon as possible?

Yes

No

If not, from what date do you want the variation to take effect?

DD	MM	YYYY

Do you want the proposed variation to have effect in relation to the introduction of the late night levy? (Please see guidance note 1) Yes No

Please describe briefly the nature of the proposed variation (Please see guidance note 2)

- 1) The replacement of 21.00 hours with 23.00 hours in Conditions 2, 3 and 8 of Annex 3 of the Premises Licence.
- 2) The extension of the hours for Recorded Music (inside) from 09.00 - 23.30 to 09.00 - 01.00 every day.

If your proposed variation would mean that 5,000 or more people are expected to attend the premises at any one time, please state the number expected to attend:

Part 4 Operating Schedule

Please complete those parts of the Operating Schedule below which would be subject to change if this application to vary is successful.

Provision of regulated entertainment (Please see guidance note 3) **Please tick all that apply**

- a) plays (if ticking yes, fill in box A)
- b) films (if ticking yes, fill in box B)
- c) indoor sporting events (if ticking yes, fill in box C)
- d) boxing or wrestling entertainment (if ticking yes, fill in box D)
- e) live music (if ticking yes, fill in box E)
- f) recorded music (if ticking yes, fill in box F)
- g) performances of dance (if ticking yes, fill in box G)
- h) anything of a similar description to that falling within (e), (f) or (g) (if ticking yes, fill in box H)

Provision of late night refreshment (if ticking yes, fill in box I)

Supply of alcohol (if ticking yes, fill in box J)

In all cases complete boxes K, L and M

A

Plays Standard days and timings (please read guidance note 8)			Will the performance of a play take place <u>indoors or outdoors or both – please tick</u> (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			<u>Please give further details here</u> (please read guidance note 5)		
Tue					
Wed			<u>State any seasonal variations for performing plays</u> (please read guidance note 6)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of plays at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sat					
Sun					

B

Films Standard days and timings (please read guidance note 8)			Will the exhibition of films take place indoors or outdoors or both – please tick (please read guidance note 4)	Indoors	<input type="checkbox"/>			
				Outdoors	<input type="checkbox"/>			
				Both	<input type="checkbox"/>			
Day	Start	Finish	Please give further details here (please read guidance note 5).					
Mon								
Tue								
Wed						State any seasonal variations for the exhibition of films (please read guidance note 6)		
Thur								
Fri						Non standard timings. Where you intend to use the premises for the exhibition of films at different times to those listed in the column on the left, please list (please read guidance note 7)		
Sat								
Sun								

C

Indoor sporting events Standard days and timings (please read guidance note 8)			Please give further details (please read guidance note 5)
Day	Start	Finish	
Mon			State any seasonal variations for indoor sporting events (please read guidance note 6)
Tue			
Wed			
Thur			Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list (please read guidance note 7)
Fri			
Sat			
Sun			

D

Boxing or wrestling entertainments Standard days and timings (please read guidance note 8)			Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	Please give further details here (please read guidance note 5)		
Mon					
			State any seasonal variations for boxing or wrestling entertainment (please read guidance note 6)		
Tue					
			Non standard timings. Where you intend to use the premises for boxing or wrestling entertainment at different times to those listed in the column on the left, please list (please read guidance note 7)		
Wed					
Thur					
Fri					
Sat					
Sun					

E

Live music Standard days and timings (please read guidance note 8)			Will the performance of live music take place <u>indoors or outdoors or both</u> – please tick (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish	<u>Please give further details here</u> (please read guidance note 5)		
Mon					
Tue					
Wed			<u>State any seasonal variations for the performance of live music</u> (please read guidance note 6)		
Thur					
Fri			<u>Non standard timings. Where you intend to use the premises for the performance of live music at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sat					
Sun					

F

Recorded music Standard days and timings (please read guidance note 8)			Will the playing of recorded music take place indoors or outdoors or both – please tick (please read guidance note 4)	Indoors	<input checked="" type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon	09.00	01.00	<u>Please give further details here</u> (please read guidance note 5)		
Tue	09.00	01.00			
Wed	09.00	01.00	<u>State any seasonal variations for the playing of recorded music</u> (please read guidance note 6)		
Thur	09.00	01.00			
Fri	09.00	01.00	<u>Non standard timings. Where you intend to use the premises for the playing of recorded music at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sat	09.00	01.00			
Sun	09.00	01.00			

G

Performances of dance Standard days and timings (please read guidance note 8)			Will the performance of dance take place indoors or outdoors or both – please tick (please read guidance note 4)	Indoors	<input type="checkbox"/>
				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Day	Start	Finish			
Mon			Please give further details here (please read guidance note 5)		
Tue					
Wed			State any seasonal variations for the performance of dance (please read guidance note 6)		
Thur					
Fri			Non standard timings. Where you intend to use the premises for the performance of dance at different times to those listed in the column on the left, please list (please read guidance note 7)		
Sat					
Sun					

H

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 8)			Please give a description of the type of entertainment you will be providing		
Day	Start	Finish	<u>Will this entertainment take place indoors or outdoors or both – please tick</u> (please read guidance note 4)	Indoors	<input type="checkbox"/>
Mon				Outdoors	<input type="checkbox"/>
				Both	<input type="checkbox"/>
Tue			<u>Please give further details here</u> (please read guidance note 5)		
Wed					
Thur			<u>State any seasonal variations for entertainment of a similar description to that falling within (e), (f) or (g)</u> (please read guidance note 6)		
Fri					
Sat			<u>Non standard timings. Where you intend to use the premises for the entertainment of a similar description to that falling within (e), (f) or (g) at different times to those listed in the column on the left, please list</u> (please read guidance note 7)		
Sun					

I

Late night refreshment Standard days and timings (please read guidance note 8)			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 4)	
			Indoors	<input type="checkbox"/>
			Outdoors	<input type="checkbox"/>
			Both	<input type="checkbox"/>
Day	Start	Finish		
Mon			Please give further details here (please read guidance note 5)	
Tue				
Wed			State any seasonal variations for the provision of late night refreshment (please read guidance note 6)	
Thur				
Fri			Non standard timings. Where you intend to use the premises for the provision of late night refreshment at different times, to those listed in the column on the left, please list (please read guidance note 7)	
Sat				
Sun				

J

Supply of alcohol Standard days and timings (please read guidance note 8)			Will the supply of alcohol be for consumption – please tick (please read guidance note 9)	On the premises	<input type="checkbox"/>
				Off the premises	<input type="checkbox"/>
				Both	<input checked="" type="checkbox"/>
Day	Start	Finish	State any seasonal variations for the supply of alcohol (please read guidance note 6)		
Mon	09:00	01:00			
Tue	09:00	01:00			
Wed	09:00	01:00			
Thur	09:00	01:00	Non-standard timings. Where you intend to use the premises for the supply of alcohol at different times to those listed in the column on the left, please list (please read guidance note 7)		
Fri	09:00	01:00			
Sat	09:00	01:00			
Sun	09:00	01:00			

K

Please highlight 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 (please read guidance note 10).

None.

L

Hours premises are open to the public Standard days and timings (please read guidance note 8)			State any seasonal variations (please read guidance note 6)
Day	Start	Finish	
Mon	09:00	01:00	
Tue	09:00	01:00	
Wed	09:00	01:00	
Thur	09:00	01:00	
Fri	09:00	01:00	
Sat	09:00	01:00	Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the column on the left, please list (please read guidance note 7)
Sun	09:00	01:00	

Please identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking.

None.

Please tick as appropriate

- I have enclosed the premises licence
- I have enclosed the relevant part of the premises licence

If you have not ticked one of these boxes, please fill in reasons for not including the licence or part of it below.

Reasons why I have not enclosed the premises licence or relevant part of premises licence.

M Describe any additional steps you intend to take to promote the four licensing objectives as a result of the proposed variation:

a) General – all four licensing objectives (b, c, d and e) (please read guidance note 11)

The application involves (1) an extension of hours for the first floor roof terrace so that it closes at 23.00 rather than 21.00 and (2) an extension of hours for Recorded Music (inside only) from 23.30 to 01.00. This will not require a fundamental change in how the applicant is dealing with the four licensing objectives but it will require even greater vigilance and hands on management. The applicant will ensure that there are 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 very tight ship. This will continue. He often closes the business at times of possible disorder (e.g. 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 the serving of alcohol, which were varied last year.

b) 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 Licencing Policy (2022-2027) and the Cumulative Impact Assessment (2022-2025) and the advice/guidance contained within them.

c) Public safety

See above.

d) The prevention of public nuisance

See above.

e) The protection of children from harm

See above.

Checklist:

Please tick to indicate agreement

- I have made or enclosed payment of the fee; or
- I have not made or enclosed payment of the fee because this application has been made in relation to the introduction of the late night levy.
- I have sent copies of this application and the plan to responsible authorities and others where applicable.
- I understand that I must now advertise my application.
- I have enclosed the premises licence or relevant part of it or explanation.
- I understand that if I do not comply with the above requirements my application will be rejected.

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 5 – Signatures (please read guidance note 12)

Signature of applicant (the current premises licence holder) or applicant’s solicitor or other duly authorised agent (please read guidance note 13). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	25/07/2022
Capacity	Solicitor

Where the premises licence is jointly held, signature of 2nd applicant (the current premises licence holder) or 2nd applicant’s solicitor or other authorised agent (please read guidance note 14). **If signing on behalf of the applicant, please state in what capacity.**

Signature	
Date	
Capacity	

Contact name (where not previously given) and address for correspondence associated with this application (please read guidance note 15)			
John Walker Guest Walker 12a Shambles			
Post town	York	Post code	YO1 7LZ
Telephone number (if any)			
If you would prefer us to correspond with you by e-mail, your e-mail address (optional)			

Notes for Guidance

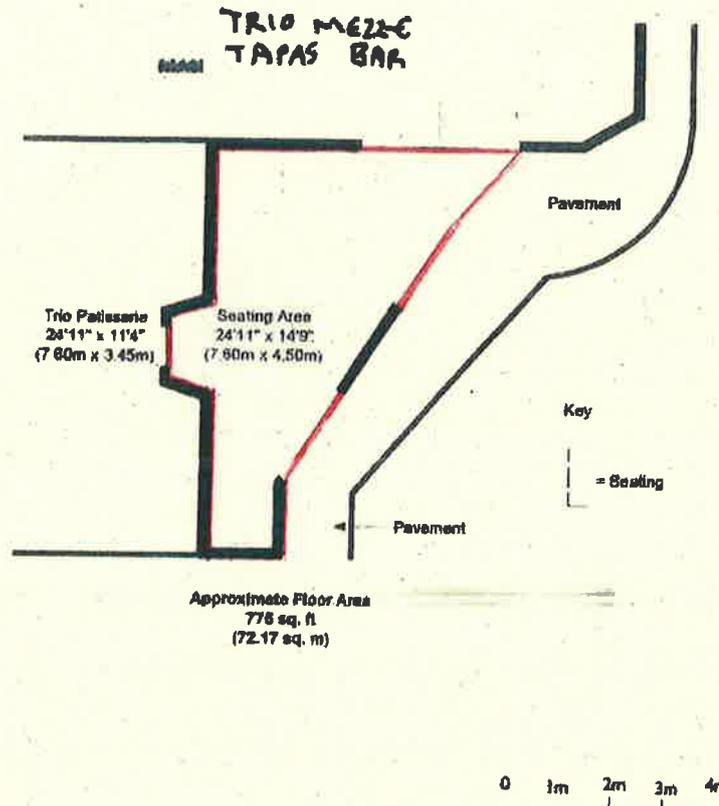
This application cannot be used to vary the licence so as to extend the period for which the licence has effect or to vary substantially the premises to which it relates. If you wish to make that type of change to the premises licence, you should make a new premises licence application under section 17 of the Licensing Act 2003.

1. You do not have to pay a fee if the only purpose of the variation for which you are applying is to avoid becoming liable for the late night levy
2. Describe the premises. For example, the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place of consumption of these off-supplies of alcohol, you must include a description of where the place will be and its proximity to the premises.
3. In terms of specific regulated entertainments please note that:
 - Plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
 - Films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.
 - Indoor sporting events: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
 - Boxing or Wrestling Entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000. Combined fighting sports – defined as a contest, exhibition or display which combines boxing or wrestling with one or more martial arts – are licensable as a boxing or wrestling entertainment rather than an indoor sporting event.

- Live music: no licence permission is required for:
 - a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
 - a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that is not licensed to sell alcohol on those premises, provided that the audience does not exceed 500.
 - a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - a performance of amplified live music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school or (iii) the health care provider for the hospital.
- Recorded Music: no licence permission is required for:
 - any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - any playing of recorded music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - any playing of recorded music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school proprietor or (iii) the health care provider for the hospital.
- Dance: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500. However, a performance which amounts to adult entertainment remains licensable.
- Cross activity exemptions: no licence is required between 08.00 and 23.00 on any day, with no limit on audience size for:
 - any entertainment taking place on the premises of the local authority where the entertainment is provided by or on behalf of the local authority;
 - any entertainment taking place on the hospital premises of the health care provider where the entertainment is provided by or on behalf of the health care provider;
 - any entertainment taking place on the premises of the school where the entertainment is provided by or on behalf of the school proprietor; and
 - any entertainment (excluding films and a boxing or wrestling entertainment) taking place at a travelling circus, provided that (a) it takes place within a moveable structure that accommodates the audience, and (b) that the travelling circus has not been located on the same site for more than 28 consecutive days.

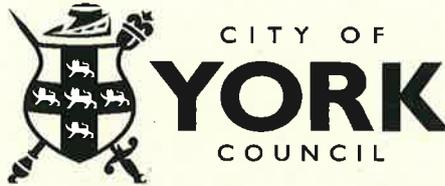
4. Where taking place in a building or other structure please tick as appropriate (indoors may include a tent):
5. For example state type of activity to be authorised, if not already stated, and give relevant further details, for example (but not exclusively) whether or not music will be amplified or unamplified.
6. For example (but not exclusively), where the activity will occur on additional days during the summer months.
7. For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.
8. Please give timings in 24 hour clock (e.g. 16.00) and only give details for the days of the week when you intend the premises to be used for the activity.
9. If you wish people to be able to consume alcohol on the premises, please tick 'on the premises'. If you wish people to be able to purchase alcohol to consume away from the premises, please tick 'off the premises'. If you wish people to be able to do both, please tick 'both'.
10. Please give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups or the presence of gaming machines.
11. Please list here steps you will take to promote all four licensing objectives together.
12. The application form must be signed.
13. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
14. Where there is more than one applicant, each of the applicants or their respective agents must sign the application form.
15. This is the address which we shall use to correspond with you about this application.

3 Whip-Ma-Whop-Ma-Gate, York YO1 8BL



Scale 1:100

Whilst every attempt has been made to ensure the accuracy of the floor plan contained here, measurements of doors, windows, rooms and any other items are approximate and no responsibility is taken for any error, omission, or mis-statement. This plan is for illustrative purposes only and should be used as such by any prospective purchaser or tenant. The services, systems and appliances shown have not been tested and no guarantee as to their operability or efficiency can be given.
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**LICENSING ACT 2003****PREMISES LICENCE****Schedule 12****Part A****Part 1 Premises details**

Premises licence number CYC - 061097

Postal address of premises:

5 Whip-Ma-Whop-Ma-GatePost town: **York**Post code: **YO1 8BL**

Telephone number: None

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

Recorded Music
Performances of Dance
Late Night Refreshment
Supply of Alcohol

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

Indoors

Monday
09:00 - 23:30

Tuesday
09:00 - 23:30

Wednesday
09:00 - 23:30

Thursday
09:00 - 23:30

Friday
09:00 - 23:30

Saturday
09:00 - 23:30

Sunday
09:00 - 23:30

PERFORMANCES OF DANCE

Indoors

Monday 09:00 - 23:30	Tuesday 09:00 - 23:30	Wednesday 09:00 - 23:30	Thursday 09:00 - 23:30
Friday 09:00 - 23:30	Saturday 09:00 - 23:30	Sunday 09:00 - 23:30	

LATE NIGHT REFRESHMENT

Indoors and Outdoors

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 09:00 - 01:00	Tuesday 09:00 - 01:00	Wednesday 09:00 - 01:00	Thursday 09:00 - 01:00
Friday 09:00 - 01:00	Saturday 09:00 - 01:00	Sunday 09:00 - 01:00	

The Opening Hours of the Premises

Monday 09:00 - 01:00	Tuesday 09:00 - 01:00	Wednesday 09:00 - 01:00	Thursday 09:00 - 01:00
Friday 09:00 - 01:00	Saturday 09:00 - 01:00	Sunday 09:00 - 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: Mr Mehmet Simsek
Address: 5 Whip-Ma-Whop-Ma-Gate
York
YO1 8BL
Telephone number: None
Email address: None

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

Not applicable

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol:

Name: Mr Mehmet Simsek
Address: [REDACTED]
[REDACTED]
Telephone number: None

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol:

City of York Council
CYC055238

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.

MANDATORY CONDITION: DOOR SUPERVISION

1. In accordance with section 21 of the Licensing Act 2003 (as amended by section 25 Violent Crime Reduction Act 2006), where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must -
 - a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
 - b) be entitled to carry out that activity by virtue of section 4 of that Act.
2. But nothing in subsection (1) requires such a condition to be imposed -
 - a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or
 - b) in respect of premises in relation to -

- i. any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence, or
 - ii. any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).
3. For the purposes of this section -
- a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and which is licensable conduct for the purposes of that Act (see section 3(2) of that Act), and
 - b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

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.

Protection of Children from Harm

2. A 'Challenge 21' scheme will be adopted on the premises and only a passport or photographic driving licence will be accepted as ID.

Annex 3 – Conditions attached after a hearing by the licensing authority on 25/06/2018

1. Whilst regulated entertainment is taking place, all doors and windows shall remain closed, except for the purposes of ingress and egress.
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 on the roof terrace after 21:00 hours each day.
4. Signs shall be displayed near the exits reminding customers to respect the needs of those living nearby and to leave the premises as quietly as possible.
5. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises.
6. Any complaints received from local premises to be acted upon immediately to reduce the noise levels. Any noise complaints to be logged in a log book and actions taken also logged.
7. The log book shall be made available to the local authority on request.
8. Closure of the premises to the public shall be no later than 01:00, with no access to the roof top terrace after 21:00. Licensable activities are permitted as set out in the current licence as varied above.

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

10. On days when race meetings are held at York Racecourse (save for the family meeting held in September) a minimum of 2 door supervisors shall be provided at the premises from 17:00 hours to close of business. At all times the need for SIA registered door staff shall be determined in accordance with a risk assessment to be carried out by the Designated Premises Supervisor and / or the Premises Licence Holder. When employed door staff will wear high visibility arm bands.

11. A colour digital CCTV system shall be installed within the premises and 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.

12. The CCTV recordings shall be of good evidential quality to be produced in court or other such hearing.

13. Copies of CCTV recordings will be kept available for any responsible authority for 28 days.

14. Copies of CCTV recordings will display the correct time and date of the recording.

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

- retail sale of alcohol;
- age verification policy;
- conditions attached to the premises 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].

16. An incident log 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 refusal of sale of alcohol.

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].

17. All off sales shall be in sealed containers and no drinks in open vessels to be taken off the premises.

18. There will be a minimum of 45 seat covers for diners on the ground floor and a minimum of 30 seated covers for diners on the rooftop terrace at all times the venue is open to reduce the need for vertical drinking.

**Conditions attached after a hearing by the licensing authority on
16/09/2021**

(ii)Vary the currently licensed area to include the outside ground floor pavement area edged red on the plan submitted with the application SUBJECT TO the restrictions set out in the additional and varied conditions below.

1. A Noise Management Plan (NMP) shall be submitted in writing to the Licensing Authority by 28 October 2021 for the written approval of the Licensing Authority. The NMP, once approved, must be complied with at all times as a condition of the licence.

2.The only licensable activity permitted on the outside ground floor pavement area edged red on the plan submitted with the application referred to in (ii) above is the supply of alcohol from 09:00 to 23:00 each day. All chairs and tables shall be removed from this outside area by 23:00 each day;

3.There shall be a minimum of 20 seat covers for diners on the outside ground floor pavement area edged red on the plan submitted with the application referred to in (ii) above at all times this area is open to reduce the need for vertical drinking;

4.Condition 8 of the current licence shall be varied as follows:
Closure of the premises to the public shall be no later than 01:00, with no access to the roof top terrace after 21:00. Licensable activities are permitted as set out in the current licence as varied above.

Annex 4 – Approved Plan

Plan Number 2016181.04 Rev A5 (ground and first floor)
 plus additional pavement area at Ground Level signed, dated Sept
 2021

For and on behalf of
The Corporate Director of Place

Date: 26/06/2018
16/09/2021 (Variation)

Licensing Services
Hazel Court EcoDepot
James Street
York
YO10 3DS

Phone: 01904 552422
Fax: 01904 551590
Email: licensing@york.gov.uk
Website: www.york.gov.uk/licensing



PREMISES LICENCE SUMMARY

Part B

Part 1 Premises details

Premises licence number
CYC - 061097

Postal address of premises:

5 Whip-Ma-Whop-Ma-Gate

Post town: **York**

Post code: **YO1 8BL**

Telephone number: None

Where the licence is time limited the date:

This licence has no expiry date.

Licensable activities authorised by the licence:

Recorded Music
Performances of Dance
Late Night Refreshment
Supply of Alcohol

The times the licence authorises the carrying out of licensable activities:

RECORDED MUSIC

Indoors

Monday
09:00 - 23:30

Tuesday
09:00 - 23:30

Wednesday
09:00 - 23:30

Thursday
09:00 - 23:30

Friday
09:00 - 23:30

Saturday
09:00 - 23:30

Sunday
09:00 - 23:30

PERFORMANCES OF DANCE

Indoors

Monday 09:00 - 23:30	Tuesday 09:00 - 23:30	Wednesday 09:00 - 23:30	Thursday 09:00 - 23:30
Friday 09:00 - 23:30	Saturday 09:00 - 23:30	Sunday 09:00 - 23:30	

LATE NIGHT REFRESHMENT

Indoors and Outdoors

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 09:00 - 01:00	Tuesday 09:00 - 01:00	Wednesday 09:00 - 01:00	Thursday 09:00 - 01:00
Friday 09:00 - 01:00	Saturday 09:00 - 01:00	Sunday 09:00 - 01:00	

The Opening Hours of the Premises

Monday 09:00 - 01:00	Tuesday 09:00 - 01:00	Wednesday 09:00 - 01:00	Thursday 09:00 - 01:00
Friday 09:00 - 01:00	Saturday 09:00 - 01:00	Sunday 09:00 - 01:00	

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

On and off the premises

Name and (registered) address of holder of premises licence:

Name: Mr Mehmet Simsek
Address: 5 Whip-Ma-Whop-Ma-Gate
York
YO1 8BL

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

Not applicable

Name of designated premises supervisor where the premises licence authorises the supply of alcohol:

Mr Mehmet Simsek

State whether access to the premises by children is restricted or prohibited

No restrictions

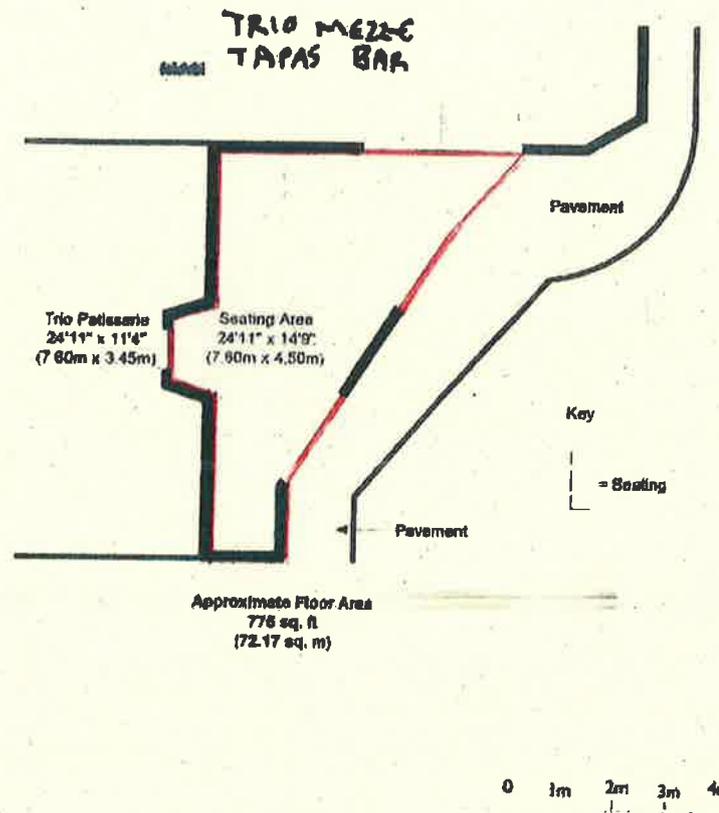
For and on behalf of
The Corporate Director of Place

Licensing Services
Hazel Court EcoDepot
James Street
York
YO10 3DS

Date: 26/06/2018
16/09/2021 (Variation)

Phone: 01904 552422
Fax: 01904 551590
Email: licensing@york.gov.uk
Website: www.york.gov.uk/licensing

3 Whip-Ma-Whop-Ma-Gate, York YO1 8BL



Scale 1:100

Whilst every attempt has been made to ensure the accuracy of the floor plan contained here, measurements of doors, windows, rooms and any other items are approximate and no responsibility is taken for any error, omission, or mis-statement. This plan is for illustrative purposes only and should be used as such by any prospective purchaser or tenant. The services, systems and appliances shown have not been tested and no guarantee as to their operability or efficiency can be given.
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Home Office – Guidance Issued Under Section 182 of the Licensing Act 2003

Section 16 Regulated Entertainment

Overview of circumstances in which entertainment activities are not licensable

16.5 There are a number of exemptions that mean that a licence (or other authorisation¹⁸) under the 2003 Act is not required. This Guidance cannot give examples of every eventuality or possible entertainment activity that is not licensable. However, the following activities are examples of entertainment which are not licensable:

- activities which involve participation as acts of worship in a religious context;
- activities in places of public religious worship;
- education – teaching students to perform music or to dance;
- the demonstration of a product – for example, a guitar – in a music shop;
- the rehearsal of a play or performance of music for a private audience where no charge is made with a view to making a profit;
- Morris dancing (or similar)
- Incidental music – the performance of live music or the playing of recorded music if it is incidental to some other activity;
- Incidental film – an exhibition of moving pictures if it is incidental to some other activity;
- A spontaneous performance of music, singing or dancing;
- Garden fetes – or similar if not being promoted or held for purposes of private gain;
- Films for advertisement, information, education or in museums or art galleries;
- Television or radio broadcasts – as long as the programme is live and simultaneous;
- Vehicles in motion – at a time when the vehicle is not permanently or temporarily parked;
- Games played in pubs, youth clubs etc. (e.g. pool, darts and table tennis);
- Stand-up comedy; and
- Provision of entertainment facilities (e.g. dance floors).

16.6 As a result of deregulatory changes that have amended the 2003 Act, no licence is required for the following activities:

- Plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
- Dance: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
- Films: no licence is required for ‘not-for-profit’ film exhibition held in community premises between 08.00 and 23.00 on any day provided that the

audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.

- Indoor sporting events: no licence is required for an event between 08.00 and 23.00 on any day, provided that those present do not exceed 1000.
- Boxing or wrestling entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
- Live music: no licence permission is required for:
 - a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
 - a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace²⁶ that does not have a licence, provided that the audience does not exceed 500.
 - a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - a performance of amplified live music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school or (iii) the health care provider for the hospital.
- Recorded Music: no licence permission is required for:
 - any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - any playing of recorded music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - any playing of recorded music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school proprietor or (iii) the health care provider for the hospital.
- Cross activity exemptions: no licence is required between 08.00 and 23.00 on any day, with no limit on audience size for:
 - any entertainment taking place on the premises of the local authority where the entertainment is provided by or on behalf of the local authority;

- any entertainment taking place on the hospital premises of the health care provider where the entertainment is provided by or on behalf of the health care provider;
- any entertainment taking place on the premises of the school where the entertainment is provided by or on behalf of the school proprietor; and
- any entertainment (excluding films and a boxing or wrestling entertainment) taking place at a travelling circus, provided that (a) it takes place within a moveable structure that accommodates the audience, and (b) that the travelling circus has not been located on the same site for more than 28 consecutive days.

16.7 The deregulatory changes mean that, for example, an indoor sporting event that takes place between 07.00 and 23.30 on a particular day is licensable in respect of activities taking place between 07.00-08.00 and 23.00-23.30. Similarly, where the audience for a performance of dance fluctuates, those activities are licensable if, and for so long as, the number of people in the audience exceeds 500. If organisers are uncertain as to audience sizes or if audience migration is likely, it might be easier and more flexible to secure an appropriate authorisation. Examples of where a Temporary Event Notice (TEN) could still be required include if the activity is the playing of recorded music or the exhibition of a film that requires an authorisation; or if the entertainment is not authorised by an existing licence or certificate and its conditions.

16.8 Of course, anyone involved in the organisation or provision of entertainment activities – whether or not any such activity is licensable under the 2003 Act – must comply with any applicable duties that may be imposed by other legislation relevant to the event (e.g. in areas such as crime and disorder, fire, health and safety, noise, nuisance and planning). Any such person should take steps to be aware of relevant best practice, and may find responsible authorities a useful source of expert support and advice.

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Cumulative Impact

1. Cumulative impact has been included within the Section 182 guidance issued by the Home Office since the commencement of the Act. Cumulative impact assessments were introduced at Section 5A of the Act by the Police and Crime Act 2017, with effect from 6 April 2018. This provides provision for licensing authorities to publish a document, cumulative impact assessment, stating that the licensing authority considers that a number of relevant authorisations in respect of premises in one or more parts of its area, described in the assessment, is such that it is likely that it would be inconsistent with the authority's duty under the Act to grant any further relevant authorisations in respect of premises in that part or those parts.
2. Relevant authorisations means:
 - premises licence
 - club premises certificate
3. Cumulative impact is the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.
4. The Council has included a Cumulative Impact Policy within its Statement of Licensing Policy since 2005, in relation to an area within York city centre. Due to the changes within the city centre, mainly the locations where licensed premises are predominately operating, this area has increased over the years.

Cumulative Impact Assessment

5. As required by the Act the Council has reviewed the cumulative impact area following the receipt of evidence provided by North Yorkshire Police and the Councils Public Protection Service (noise). The Council has published its first cumulative impact assessment (assessment) in relation to an area that has been identified in York city centre. The assessment is available on the Council website or from the Licensing Section. The assessment will be reviewed at least every three years as required by the Act. A map showing the area can be found in the assessment.
6. As required by the Act the Council has formally consulted on the assessment.
7. By publishing the assessment the Council is setting down a strong statement of intent about its approach to considering applications for grant and variation of premises licences or club premises certificates in the area described. The Council must have regard to the assessment when determining or revising this Statement of Licensing Policy. The assessment does not change the fundamental way that a licensing decision is made, each application will be considered on its own merits. It is open for the Council to grant an application where it is considered appropriate and where the applicant can demonstrate in the operating schedule that they would not be adding to the cumulative impact. Applications in the area covered by the assessment should therefore give consideration to potential cumulative impact issues when setting out the steps that will be taken to promote the licensing objectives. Where relevant representations are received and the Council determines to grant an application reasons for granting the application will be given to the applicant, the Chief Officer of

Police and all parties who made a relevant representation, with the reasons for departing from the Policy.

8. Where no relevant representations are received an application within the cumulative impact area will be granted in terms consistent with the operating schedule.
9. Applications for new premises licences or variations for premises situated within the cumulative impact area that are likely to add to the cumulative impact already experienced will normally be refused if relevant representations are received. The applicant must demonstrate through the operating schedule, the steps that they intend to take so that the Council and responsible authorities can be satisfied that granting a new or varied licence will not add to the cumulative impact already being experienced.
10. The onus is on the applicant to demonstrate to the responsible authorities the suitability of how their proposal will not add to the cumulative impact. To assist this process the Council recommends early consultation with responsible authorities; this can be done directly with those authorities or through the Council's Licensing Section.
11. The Statement of Licensing Policy and Cumulative Impact Assessment were approved by the City of York on the 21 March 2019.

Cumulative Impact Area

12. The published assessment relates to an area within York city centre. This area has been identified because evidence shows that the cumulative impact of the number and concentration of licensed premises in this area continue to adversely affect residents, visitors and other businesses and therefore adversely affecting the promotion of the licensing objectives:
 - prevention of crime and disorder
 - prevention of public nuisance
13. North Yorkshire Police and Public Protection have provided information that the nature of this area is such that the problems and cumulative impact directly relates to the style of businesses operating in the area and their clientele, due to the concentration of:
 - drink led premises – pubs, bars, nightclubs and restaurants/cafes;
 - entertainment premises – pubs, bars and nightclubs providing entertainment, especially late at night into the early hours of the morning;
 - late night refreshment premises – takeaways; and
 - off licence premises – supermarkets and convenience stores.
14. A red zone has also been identified in this area due to the high concentration of licensed premises, the impact of which have lead to a high level of occurrences in relation to crime and disorder related issues. Therefore, the Council should refuse all applications within the red zone where relevant representations are received, unless the applicant can show how their application would not lead to an increase in the impact of licensed premises in this zone. A map showing the red zone can be found in the assessment.

9. Cumulative Impact

- 9.1 Cumulative impact has been included within the Section 182 guidance issued by the Home Office since the commencement of the Act. Cumulative impact assessments were introduced at Section 5A of the Act by the Police and Crime Act 2017, with effect from 6 April 2018. This provides provision for licensing authorities to publish a document, cumulative impact assessment, stating that the licensing authority considers that a number of relevant authorisations in respect of premises in one or more parts of its area, described in the assessment, is such that it is likely that it would be inconsistent with the authority's duty under the Act to grant any further relevant authorisations in respect of premises in that part or those parts.
- 9.2 Relevant authorisations means:
- premises licence
 - club premises certificate
- 9.3 Cumulative impact is the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.
- 9.4 The Council has included a Cumulative Impact Policy within its Statement of Licensing Policy since 2005, in relation to an area within York city centre. Due to the changes within the city centre, mainly the locations where licensed premises are predominately operating, this area has increased over the years.

Cumulative Impact Assessment

- 9.5 As required by the Act the Council has reviewed the cumulative impact area following the receipt of evidence provided by North Yorkshire Police and the Councils Public Protection Service (noise). The Council has published its first cumulative impact assessment (assessment) in relation to an area that has been identified in York city centre. The assessment is available on the Council website or from the Licensing Section. The assessment will be reviewed at least every three years as required by the Act. A map showing the area can be found in the assessment.
- 9.6 As required by the Act the Council has formally consulted on the assessment.
- 9.7 By publishing the assessment the Council is setting down a strong statement of intent about its approach to considering applications for grant and variation of premises licences or club premises certificates in the area described. The Council must have regard to the assessment when determining or revising this Statement of Licensing Policy. The assessment does not change the fundamental way that a licensing decision is made, each application will be considered on its own merits. It is open for the Council to grant an application where it is considered appropriate and where the applicant can demonstrate in the operating schedule that they would not be adding to the cumulative impact. Applications in the area covered by the assessment should therefore give consideration to potential cumulative impact issues when setting out the steps that will be taken to promote the licensing objectives. Where relevant representations are received and the Council

determines to grant an application reasons for granting the application will be given to the applicant, the Chief Officer of Police and all parties who made a relevant representation, with the reasons for departing from the Policy.

- 9.8 Where no relevant representations are received an application within the cumulative impact area will be granted in terms consistent with the operating schedule.
- 9.9 Applications for new premises licences or variations for premises situated within the cumulative impact area that are likely to add to the cumulative impact already experienced will normally be refused if relevant representations are received. The applicant must demonstrate through the operating schedule, the steps that they intend to take so that the Council and responsible authorities can be satisfied that granting a new or varied licence will not add to the cumulative impact already being experienced.
- 9.10 The onus is on the applicant to demonstrate to the responsible authorities the suitability of how their proposal will not add to the cumulative impact. To assist this process the Council recommends early consultation with responsible authorities; this can be done directly with those authorities or through the Council's Licensing Section.

Cumulative Impact Area

- 9.11 The published assessment relates to an area within York city centre. This area has been identified because evidence shows that the cumulative impact of the number and concentration of licensed premises in this area continue to adversely affect residents, visitors and other businesses and therefore adversely affecting the promotion of the licensing objectives:
- prevention of crime and disorder
 - prevention of public nuisance
- 9.12 North Yorkshire Police and Public Protection have provided information that the nature of this area is such that the problems and cumulative impact directly relates to the style of businesses operating in the area and their clientele, due to the concentration of:
- drink led premises – pubs, bars, nightclubs and restaurants/cafes;
 - entertainment premises – pubs, bars and nightclubs providing entertainment, especially late at night into the early hours of the morning;
 - late night refreshment premises – takeaways; and
 - off licence premises – supermarkets and convenience stores.
- 9.13 A red zone has also been identified in this area due to the high concentration of licensed premises, the impact of which have lead to a high level of occurrences in relation to crime and disorder related issues. Therefore, the Council should refuse all applications within the red zone where relevant representations are received, unless the applicant can show how their application would not lead to an increase in the impact of licensed premises in this zone. A map showing the red zone can be found in the assessment.



NOTICE OF RELEVANT REPRESENTATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT 2003

North Yorkshire Police hereby give notice of objection to the Premises Licence as listed below:

Postal Address of premises or club premises: 5 WHIP MA WHOP MA GATE	
Post town: YORK	Post code (if known): YO1 8BL

Notice of Objection relates to the following licensing objective: *(Please tick one or more boxes)*

1. The prevention of crime and disorder	<input checked="" type="checkbox"/>
2. Public safety	<input type="checkbox"/>
3. Prevention of Public Nuisance	<input checked="" type="checkbox"/>
4. The protection of children from harm	<input type="checkbox"/>

GROUNDINGS FOR RELEVANT REPRESENTATION

Please provide as much information as possible to support this relevant representation:

(e.g. please list any additional information, e.g. dates of problems which are included in the grounds for review)

This is an application to vary to a premises licence for a restaurant with indoor and outdoor seating including a roof terrace in York's Cumulative impact area.

The applicant requests that the following be granted:

- To extend the hours the roof terrace can operate daily by replacement of Annex 3 conditions 2,3 and 8 from 2100hrs to 2300hrs daily.
- The extension of hours for recorded music from 2330hrs 7 days a week to 0100hrs.

The premises sits within York's CIA (Cumulative impact assessment area) an area which The City of York Council has identified as being under the most stress from crime and disorder and public nuisance in their statement of licensing policy. The current policy came into effect in March 2022 and it states:

9.11 The published assessment relates to an area within York city centre. This area has been identified because evidence shows that the cumulative impact of the number and concentration of licensed premises in this area continue to adversely affect residents, visitors and other businesses and therefore adversely affecting the promotion of the licensing objectives:

- prevention of crime and disorder
- prevention of public nuisance

9.12 North Yorkshire Police and Public Protection have provided information that the nature of this area is such that the problems and cumulative impact directly relates to the style of businesses operating in the area and their clientele, due

to the concentration of:

- pubs, bars, nightclubs, restaurants, cafes, hotels (with bars open to the general public), late night refreshment premises (takeaways) and off-licensed premises (including supermarkets and convenience stores);
- especially in the night-time economy; and
- especially at weekends (day and night-time economy).

The policy also states:

9.9 Applications for new premises licences or variations for premises situated within the cumulative impact area that are likely to add to the cumulative impact already experienced will normally be refused if relevant representations are received. The applicant must demonstrate through the operating schedule, the steps that they intend to take so that the Council and responsible authorities can be satisfied that granting a new or varied licence will not add to the cumulative impact already being experienced.

9.10 The onus is on the applicant to demonstrate to the responsible authorities the suitability of how their proposal will not add to the cumulative impact. To assist this process the Council recommends early consultation with responsible authorities; this can be done directly with those authorities or through the Council's Licensing Section.

The premises in question applied for the licence in 2018 and due to representations received, including one from North Yorkshire Police, a hearing was held to determine the outcome in June 2018.

As a result of this hearing and concerns raised regarding the impact of the roof terrace area and the premises to the licensing objectives, the committee saw fit to place a number of conditions on the licence preventing the roof terrace from being open after 2100hrs and restricted the opening hours applied for to stop licensable activities at 2330hrs.

In July 2021 a variation was applied for by the applicant requesting the hours for sale of alcohol be increased to 0100hrs, an extension to licensable area and an extension to the roof terrace to be in line with the hours applied for sale of alcohol. Responsible authorities including North Yorkshire Police visited the premises and made representations in objection to these changes and the applicant agreed before hearing to withdraw changes to the roof terrace due to concerns raised.

It was also raised by the licensing authority when I visited the premises with them in 2021 that the ground floor did not seem to match the current plans and this was pointed out to the applicants. The plans now submitted with this application seem still to be the old layout.

North Yorkshire Police still have concerns about the licensing objectives being undermined by these changes applied for, namely 'the prevention of crime and disorder' and 'public nuisance' and the impact that might be felt in this area, which has residential properties nearby.

The premises now have the sale of alcohol until 0100hrs inside the premises and it is believed that an extension further to the roof terrace is likely to cause a public nuisance and further add to the strain already felt in this area. It is also believed that the extension of regulated entertainment until 0100hrs is not in line with a food led venue and as the premises is already operating into the early hours of the morning for food and alcohol with background music its not believed that applicant has provided enough information about what is intended in applying for this change and how this will not further impact this sensitive area.

I do not believe that the applicant has demonstrated in the operating schedule how the granting of this variation will not impact this area.

Members it is therefore the position of North Yorkshire Police that we would not support this application within York's Cumulative impact area and would ask you to consider rejecting these changes applied for.

Signature:

Date: 22/08/22

Contact name: Kim HOLLIS (PC1671)

Address for correspondence: **Alcohol Licensing Department Fulford Road Police Station**

Post town: **York**

Post code: **YO10 4BY**

Tel. number (if any): **01609 643273**

Email address if preferred option of contact: **NYPLicensing@northyorkshire.pnn.police.uk**

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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

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Annex 8

Licensing Authority Representation

Application for variation of premises licence, 5 Whip ma Whop ma Gate, York

I write to make representation on behalf of the Licensing Authority in relation to the variation of a premises licence for the above premises.

This application relates to a variation of a premises licence for a restaurant at 5 Whip ma Whop ma Gate. 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 23:30 to 01:00 each day.
- c, To amend conditions 2, 3 and 8 of annex 3 on the licence which restricts the use of the roof terrace area to 21:00, and replace this with 23:00.

The licensed areas are located over two floors, from the plans the kitchen, toilets and external roof terrace are on the first floor, the bar, seating areas, disabled toilet, and external pavement café area are on the ground floor. After previously making a site visit in company of the Police Licensing Officer I do not believe the current plan attached to the licence at Annex 4 accurately reflects the layout of the ground floor internal area. As the internal plan is not subject to this variation application this matter may need to be regularised by way of another variation application.

This premises is located in York City Centre in close proximity to a number of licensed premises (bars, restaurants, cafes, shops and takeaways), residential premises, a taxi rank and churches. The premises is also located within York's Cumulative Impact Assessment (CIA) area, this area has been identified by the Council within the Statement of Licensing Policy (the Policy) as being under the most stress from crime and disorder and public nuisance related issues due to the high concentration of licensed premises.

The Policy came into effect in March 2022, it states:

9.11 The published assessment relates to an area within York city centre. This area has been identified because evidence shows that the cumulative impact of the number and concentration of licensed premises in this area continue to adversely affect residents, visitors and other businesses and therefore adversely affecting the promotion of the licensing objectives:

- prevention of crime and disorder
- prevention of public nuisance

9.12 North Yorkshire Police and Public Protection have provided information that the nature of this area is such that the problems and cumulative impact directly relates to

the style of businesses operating in the area and their clientele, due to the concentration of:

- pubs, bars, nightclubs, restaurants, cafes, hotels (with bars open to the general public), late night refreshment premises (takeaways) and off-licensed premises (including supermarkets and convenience stores);
- especially in the night-time economy; and
- especially at weekends (day and night-time economy).

The Policy also states:

9.9 Applications for new premises licences or variations for premises situated within the cumulative impact area that are likely to add to the cumulative impact already experienced will normally be refused if relevant representations are received. The applicant must demonstrate through the operating schedule, the steps that they intend to take so that the Council and responsible authorities can be satisfied that granting a new or varied licence will not add to the cumulative impact already being experienced.

9.10 The onus is on the applicant to demonstrate to the responsible authorities the suitability of how their proposal will not add to the cumulative impact. To assist this process the Council recommends early consultation with responsible authorities; this can be done directly with those authorities or through the Council's Licensing Section.

The Policy and CIA can be found at: <https://www.york.gov.uk/LicensingPolicy>

Within the proposed operating schedule the applicant has not offered any extra conditions but has stated the premises will not be run as a 'bar' and that table service of food and drinks will continue. Existing conditions regarding a noise management plan, staff training, incident recording and a minimum number of seat covers will remain in place.

As detailed above this premises is located in an area identified by the Council as being under stress due to crime and disorder and public nuisance, already having a high level of licensed premises. I do not believe that the applicant has demonstrated through the hours applied for and the operating schedule how the granting of this variation will not impact this area.

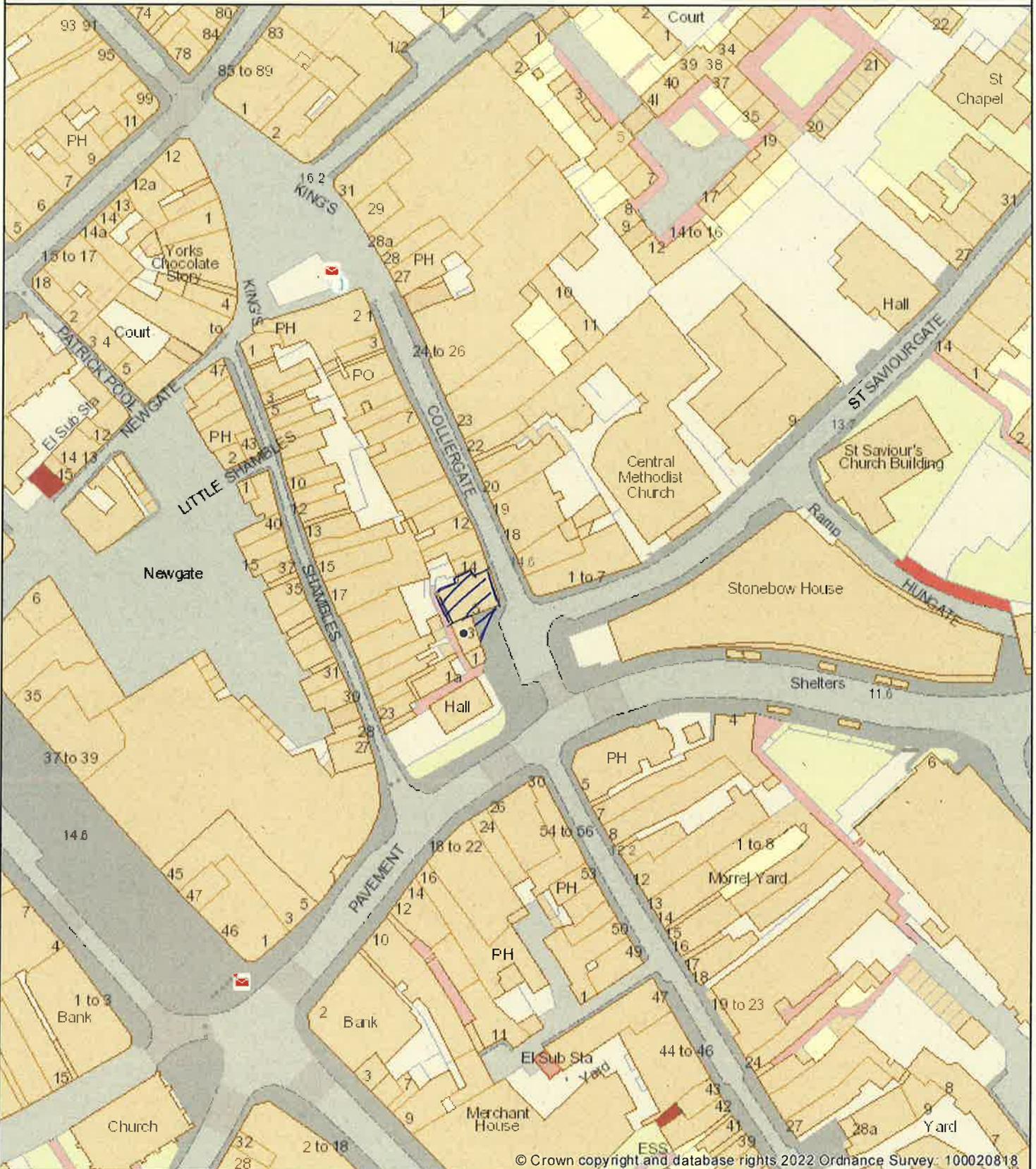
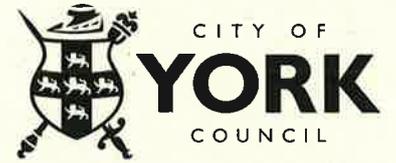
The Licensing Authority do not believe the applicant has fully considered the Policy and CIA, and therefore has not demonstrated through the application and proposed operating schedule how the granting of this variation to the premises licence will not add to the cumulative impact already being experienced.

The Licensing Authority cannot support this application as it is within the CIA.

Helen Sefton | [Senior Licensing Officer](#)

t: 01904 551526 | e: licensing@york.gov.uk

Annex 9 Map



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Date: 24 Aug 2022

Author: City of York Council

Scale: 1:1,250



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**MANDATORY & PROHIBITED CONDITIONS – PREMISES LICENCE
LICENSING ACT 2003**

MANDATORY CONDITIONS WHERE LICENCE AUTHORISES 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(6);
 - (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(7).
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.

MANDATORY CONDITION: DOOR SUPERVISION

1. In accordance with section 21 of the Licensing Act 2003 (as amended by section 25 Violent Crime Reduction Act 2006), where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must -
 - (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
 - (b) be entitled to carry out that activity by virtue of section 4 of that Act.
2. But nothing in subsection (1) requires such a condition to be imposed -
 - (a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or
 - (b) in respect of premises in relation to -
 - (i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence, or
 - (ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).
3. For the purposes of this section -
 - (a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and which is licensable conduct for the purposes of that Act (see section 3(2) of that Act), and
 - (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

MANDATORY CONDITION: EXHIBITION OF FILMS

1. In accordance with section 20 of the Licensing Act 2003, where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.
2. Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.
3. Where -
 - (a) the film classification body is not specified in the licence, or
 - (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question, admission of children must be restricted in accordance with any recommendation made by that licensing authority.
4. In this section - 'children' means persons aged under 18; and 'film classification body' means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

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Legislation and Policy Considerations

1. The following provisions of The Licensing Act 2003 apply to this application: S4 general duties of licensing authorities; s17 application for premises licence; s18 determination of application for premises licence; s23 grant or rejection of application; ss19, 20 and 21 mandatory conditions; The Licensing Act (Mandatory Licensing Conditions) Order 2010; and The Licensing Act 2003 (Mandatory Conditions) Order 2014.
2. The following provisions of The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 apply to this application: Regulation 42, Part 2 (Premises licences) and Part 4 (General) relating to applications, notices and representations and advertisement of applications
3. The following provisions of the Secretary of State's guidance apply to this application: Section 2 The Licensing Objectives; Section 9 Determining applications; Section 10 Conditions attached to premises licences and club certificates; and Section 14 Statements of licensing policy.
4. The following paragraphs of the licensing authority's statement of licensing policy apply to this application: 5.0 Applications for Premises Licences, Club Premises Certificates and Variations; 6.0 Guidelines for Applicants; 7.0 Saturation and Cumulative Impact and 8.0 Licensing Hours.
5. 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.
6. The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

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