

Licensing Act 2003 Sub Committee

9 April 2018

Report from the Assistant Director – Planning & Public Protection

Section 18(3) (a) Application for a premises licence for 59-63 Walmgate, York, YO1 9TY

Summary

1. This report seeks Members determination of an application for the grant of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-060429
3. Name of applicant: Ambiente Tapas Limited
4. Type of authorisation applied for: Grant of Premises Licence
5. Summary of application: The proposal is to allow for the provision of the following licensable activities:

Proposed Activity	Timings
Recorded Music (indoors)	Monday to Sunday 08:00 – 23:30
Late Night Refreshment (indoors)	Monday to Sunday 23:00 – 23:30
Sale of alcohol (on & off sales)	Monday to Sunday 10:00 – 23:30
Opening times	Monday to Sunday 08:00 – 23:30
Non Standard Timings for all licensable activities including opening times	New Year's Eve until 01:00 on New Year's Day. The outside courtyard area to be open 08:00 – 20:00 each day

Background

6. A copy of the application is attached at Annex 1. A copy of the plan of the premises is attached at Annex 2.

Promotion of Licensing Objectives

7. The operating schedule showing how the applicant will address the four licensing objectives is attached at Annex 3.

Special Policy Consideration

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

Consultation

9. 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.
10. All procedural aspects of this application have been complied with.

Summary of Representations made by Responsible Authorities

11. North Yorkshire Police made a representation to the application but withdrew it when the applicant agreed to the following conditions being attached to the premises licence if granted:
 - 1) The premises shall operate as a restaurant / cafe not as a bar or vertical drinking establishment providing food and non-alcoholic drinks.
 - 2) Alcoholic drinks purchased on the premises may only be taken off the premises in sealed containers, except into the designated outdoor area (Courtyard) as detailed in the premise plan.
 - 3) Customers shall only be served by way of waiter / waitress service.

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

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

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

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

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

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

- operation of the CCTV system (including the downloading of evidence);
- retail sale of alcohol;
- age verification policy;
- conditions attached to the 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.]

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

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

10) The CCTV system will cover all areas of the premises occupied by the public, as outlined on the Premises Plan

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

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

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

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

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

Outside area:

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

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

12. The agreement is attached at Annex 4.

13. City of York Council Public Protection (Environmental Protection) made a representation on the grounds that the prevention of public nuisance licensing objective would be undermined if the premises licence were to be granted in the terms applied for. Public Protection withdrew the representation after mediation with the applicant who agreed to the following conditions being attached to the licence if granted:

- 1) Bottles should not be disposed of into bins at night and will only be disposed of between 10:00 and 21:00.
 - 2) Clear notices shall be prominently displayed requesting customers to leave the premises and the area in a quiet and orderly manner.
 - 3) Whilst recorded music is being played doors and windows shall remain closed other than for ingress and egress.
14. The Public Protection representation and agreement is attached at Annex 5.

Summary of Representations made by Other Parties

15. Representations have been received from 9 residents on the grounds the licensing objective, the prevention of public nuisance, would be undermined particularly in relation to the proposed use of the outside area. A list of representors is attached at Annex 6. Copies of the representations are attached at Annex 7.
16. A map showing the general area around the venue is attached at Annex 8.

Planning Issues

17. There are no planning issues.

Options

18. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision: -
19. Option 1: Grant the licence in the terms applied for.
20. Option 2: Grant the licence with modified/additional conditions imposed by the licensing committee.
21. Option 3: Grant the licence to exclude any of the licensable activities to which the application relates and modify / add conditions accordingly.
22. Option 4: Reject the application.

Analysis

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

Council Plan

28. The Licensing Act 2003 has 4 objectives the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
29. The promotion of the licensing objectives will support the Council's Plan for a prosperous city for all and a council that listens to residents.

Implications

30.
 - **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

31. 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.
32. 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

33. Members determine the application.

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

Contact Details

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Chief Officer Responsible for the report:

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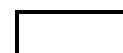
**Report
Approved**



Date 09/03/2018

Specialist Implications Officer(s)
Head of Legal & Democratic Services
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Wards Affected: Guildhall



For further information please contact the author of the report

Background Papers:

- Annex 1** - Application form
- Annex 2** - Plan of premises
- Annex 3** - Operating Schedule
- Annex 4** - North Yorkshire Police representation
- Annex 5** - Public Protection representation & mediated conditions
- Annex 6** - List of Other Representors
- Annex 7** - Copy of representations
- Annex 8** - Map of area
- Annex 9** - Mandatory Conditions
- Annex 10** - Legislation and Policy Considerations