

Licensing Act 2003 Sub Committee

25 June 2018

Report from the Assistant Director – Planning & Public Protection

Section 18(3) (a) Application for 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 grant of a premise 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: Grant of Premises Licence
5. Summary of application: The proposal is to allow for the provision of the following:

Proposed Activity	Timings
Recorded Music (Indoors)	Monday to Sunday 09:00 – 01:30
Performances of Dance (Indoors)	Monday to Sunday 09:00 – 01:30
Late Night Refreshment (Indoors & Outdoors)	Monday to Sunday 23:00 – 01:30
Supply of Alcohol (On and Off the premises)	Monday to Sunday 09:00 – 01:00
Opening Hours	Monday to Sunday 09:00 – 01:30
Non Standard Timings for all licensable activities and Opening Hours	An additional one hour on the end of permitted hours New Year's Eve, Bank Holidays and the evening British Summertime commences.

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 applicant has proposed the following conditions in order to address the four licensing objectives as follows:

General

- 1) The premises will be a ground and first floor restaurant and bar serving food and beverages.
- 2) The roof terrace will be for background music only.

Prevention of Crime and Disorder

- 3) Colour CCTV system will be installed and all recordings kept for 28 days.
- 4) A challenge 21 policy will be adopted and only passport and driving licence accepted as ID.

Public Safety

- 5) Full fire safety risk assessment will be carried out once building works are completed. All works will be in accordance with Building Control and the Regulatory Reform Order (Fire Safety) Order 2005.

Prevention of Public Nuisance

- 6) Taxi rank is located across the road for any customers requiring such transport.
- 7) Signs asking customers to leave quietly will be positioned by entrance / exit.

Protection of Children from Harm

- 8) Children are welcome to dine with family and friends as it will be a family friendly restaurant.

Special Policy Consideration

8. This premise is located within the special policy area approved by full council on 27 March 2014. A copy of the policy is attached at Annex 3

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. A representation has been received from North Yorkshire Police on the grounds that the premises is located within the cumulative impact zone (CIZ) and the prevention of crime and disorder and the prevention of public nuisance licensing objectives would be undermined if the premises licence were to be granted.
12. The police feel the applicant has not provided any information as to why this application should be considered to be an exception to the CIZ policy as they have not demonstrated specifically how the licensing objectives would be promoted if a premises licence were to be granted. The application makes no reference to the premises being within the CIZ, nor does it outline any specific conditions which will seek to promote the licensing objectives and mitigate any potential impact within the CIZ.
13. The police ask that, if members are minded to grant the premises licence, it is conditioned as follows:
 - 1) Licensable activities and closure of the premises to the public shall be no later than 23:30 hours, with no access to the roof top terrace after 19:00 hours.

[The premises are offering cafe style cuisine which is not consistent with a restaurant style premises within the CIZ, therefore, North Yorkshire Police would not support the premises opening until 01:30 hours].

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

3) 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 the close of business. At all other 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.

4) 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.

- The recordings shall be of good evidential quality to be produced in court or other such hearing.
- Copies of recordings will be kept available for any responsible authority for 28 days.
- Copies of the recordings will display the correct time and date of the recording.

5) 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].

6) 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].

- 7) All off sales shall be in sealed containers and no drinks in open vessels to be taken off the premises.
- 8) 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.

14. A copy of the police representation is attached Annex 4.

15. A representation was received from City of York Council Public Protection Unit (Environmental Health) on the grounds that the prevention of public nuisance licensing objective would be undermined by the granting of the licence. However the representation has subsequently been withdrawn after the applicant agreed to the following conditions being attached to the premises licence if granted:

- 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.

16. A copy of the agreement is attached at Annex 5.

Summary of Representations made by Other Parties

17. No representations were received from other parties.
18. A map showing the general area around the venue is attached at Annex 6.

Planning Issues

19. At the time of writing this report, a planning application for change of use is yet to be determined

Options

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

Analysis

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

Council Plan

30. 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.
31. 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

32.

- **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

33. 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.
34. 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

35. 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:

Mike Slater
Assistant Director for Planning and Public Protection.

**Report
Approved**



Date 07/06/2018

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
- Annex 2** - Plan of premises
- Annex 3** - Copy of Special Licensing Policy
- Annex 4** - North Yorkshire Police representation
- Annex 5** - Public Protection representation
- Annex 6** - Map of area
- Annex 7** - Mandatory Conditions
- Annex 8** - Legislation and Policy Considerations