

Representation to the Licence Review for 59-63 Walmgate York YO1 9TY

My wife and I own and occupy 59-63 St Denys Court, St Denys Road, York YO1 9PU. The rear yard of Tabanco is approximately 10m from the wall of our flat.

Prior to the changes to the use of the rear yard introduced by the licence holder and the owner of the previous business this was a quiet, residential location; the terraced buildings of Walmgate and George Street together with St Denys Court, the Parisi Hotel, Stamford House and United House all form an effective barrier to noise, separating the large area at the rear of these buildings from the hubbub of the surrounding streets. All of the residential properties forming this perimeter previously enjoyed a very quiet situation at their rear. There was no other commercial activity in this area.

In 2014 planning consent was sought (14/01960/FUL) by the previous business owner for the rear yard of 59-63 Walmgate York YO1 9TY to be used for café seating associated with the retail business within those premises, at that time a bicycle shop and repair facility. Permission was sought to serve hot and cold drinks to 8 people and was granted for a trial period. The business owner also applied for a premises licence to serve alcohol, but the rear yard was specifically excluded from the application and was not considered as part of the premises. At that time (14/01960/FUL) in their delegated report the Environmental Protection Unit were *'satisfied that the likelihood of noise from customers using the rear yard can be adequately controlled by a restriction on the hours of use. However, this is based on no more than 8 people using the yard. If more tables and chairs were to be installed, then it is possible that noise from customers could affect the amenity of nearby residents, particularly if the yard was to be used during the evening'*.

In 2016 the previous business owner applied for planning permission to confirm to use the rear yard for café seating and to increase the number of customers to 12. In considering (and approving) this application The Council are on record (Committee Report 16/00012/FUL) agreeing *'with residents that if alcohol were permitted to be served in the yard, or if it were open into the evening, where background noise levels are known to be lower, there would be an undue effect on residential amenity. The times of operation can be controlled via a planning condition. Alcohol is currently not served in the outside area; prevented by the premises licence. This matter would need to continue to be managed through licensing legislation'*.

In 2018 the current business owner applied for a premises licence proposing to serve alcohol in this outside area. I made a representation, and I attended the hearing. At that hearing I heard the applicant propose a number of conditions to prevent a public nuisance, conditions which were accepted by the committee, and which were incorporated into the licence. These included a confirmation of the limit of 12 on the number of customers using the outside area, restrictions on the times of its use and a condition that noise from the premises should not be audible at the facade of any neighbouring noise sensitive premises. I accept that this latter condition is hard for the licensee to monitor, but the first two are not, and it has been clear from the outset that the licensee has done no more than pay lip service to observing the conditions that were imposed, conditions specifically intended to prevent public nuisance.

The level and nature of noise from customers using this yard is intrusive and unacceptable. It must be recognised (as it was at the outset by council officers and the planning committee) that groups of people drinking alcohol in such an intrinsically quiet location are an unacceptable intrusion and cause a public nuisance. Emptying of bottles and other rubbish into bins late at night, serving alcohol outside the permitted hours, playing music loudly with the doors open, regularly exceeding the number of permitted users, these are all issues which are all capable of being controlled by the licensee, but it has consistently failed to do so. Similarly, they constitute a public nuisance.

A benevolent observer could take the view that these types of incident result from insufficient managerial oversight. However, one recent issue characterises far more clearly the complete lack of regard which the licence holder has for the interests and amenity of nearby residents and its disregard for the public nuisance which its activities cause.

In November 2020 the business installed a commercial hot smoker (in a designated Clean Air zone) in the rear yard. Noisy preparations for the use of the equipment began at 6:15am and its use continued throughout the day, generating smoke, fumes and food smells. The impact that this operation would have on neighbours was completely foreseeable, but the fact that the equipment was nonetheless installed and put into operation characterises much more succinctly the attitude the licensee has towards both regulations and the interests of nearby residents. Both the Environmental Health Office and the Licensing Enforcement Office became involved to deal with the smoke and noise issues, both of which constitute a public nuisance.

My wife and I choose not to complain at every breach of the licence conditions that we hear or see, but this does not mean that we are not affected by them. Loss of amenity and the existence of nuisance does not reduce with the passage of time. We have always supported the use of the corner premises as a café or a wine bar, but we feel that our amenity was severely affected by allowing the use of the yard for the service of alcohol and continues to be so.

The recent licence variation is the last straw. All of the issues raised at the original hearing, including those of CYC officers, and the conditions offered by the licence holder intended to prevent a public nuisance to nearby residents, have been swept away by this subsequent application, in a process which has been misused. It is no surprise to me that I was unaware of the variation application. I have no doubt that the licensee can provide a photo of the variation application notice displayed in the window of its premises, but I can assure the committee that if it had been there for the requisite period of 10 working days then I would have known of the application and I would have made a representation at that time.

That 'minor' licence variation has increased the hours of use, increased the number of customers to 20 and it now allows 20 people to drink alcohol in the yard without the requirement to serve food.

Effectively we now overlook a beer garden.

The Home Office guidance on such applications specifically states that *'your application is likely to be refused if the proposed variation could increase capacity for drinking on the premises...'*, guidance which, in allowing the minor variation procedure to be used, appears to have been ignored by the CYC Licensing Team.

To finalise, I can do no better than to repeat the words of the council's own officers:

'...the likelihood of noise from customers using the rear yard can be adequately controlled by a restriction on the hours of use. However, this is based on no more than 8 people using the yard. If more tables and chairs were to be installed, then it is possible that noise from customers could affect the amenity of nearby residents, particularly if the yard was to be used during the evening'.

'...if alcohol were permitted to be served in the yard, or if it were open into the evening, where background noise levels are known to be lower, there would be an undue effect on residential amenity. ...This matter would need to continue to be managed through licensing legislation'.

St Denys Court
St Denys Road
York YO1 9PU

5th July 2021

From:
Sent: 14 July 2021 09:30
To: licensing@york.gov.uk
Subject: Ref: 060429 Email in Support Of Tabanco by Ambiente, 59-63 Walmgate

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Application for Review of Premises Licence Ref: 060429 Dated 17/6/21
Email in Support Of Tabanco by Ambiente, 59-63 Walmgate

To whom this may concern

My name is . and I am writing this email in support of Tabanco by Ambiente, 59-63 Walmgate. I have also sent a copy by post.

I live with my young family (8-year-old, 5-year-old, and 4-year-old) at George Street, which Tabanco by Ambiente. We have lived here for 9 years and enjoy being part of a vibrant community, being surrounded by independent shops, cafes, restaurants & bars.

We were delighted when Tabanco by Ambiente opened in 2018 as it is a real asset to Walmgate. It is a lovely restaurant, and the staff are always very considerate. It is also handy to have such a place on our doorstep, not least because we are able to recommend it to friends when they visit York.

We are never disturbed by noise coming from the restaurant even though we share a party wall with the business and our rear courtyard runs parallel to that of Tabanco by Ambiente. On no occasion have we found this situation to be either a nuisance or annoyance.

With so many businesses closing down in the centre of the city, we should be encouraging and supporting those businesses that are still running, to continue to thrive. Tabanco by Ambiente is a valuable neighbourhood facility which has definitely made a positive contribution to improving the profile of this end of Walmgate.

Yours faithfully



From: Charles Cook
Sent: 15 July 2021 23:58
To: licensing@york.gov.uk
Subject: Tabanco by Ambiente - Review of Premises Licence 060429

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City of York
Licensing Services
Hazel Court
James Street
York
YO10 3DS

I made a business booking for Tabanco for 15th July. However, I was sorry to feel the need to cancel my booking when I was made aware that with seven people, we would need to sit outside in the courtyard due to Covid Regulations.

The reason that I cancelled is that when we last ate at Tabanco, on 12th April 2021, we sat outside - because of Covid regulations. Unfortunately we were made to feel uncomfortable by a gentleman in one of the overlooking apartments standing on his balcony and observing us continually as we enjoyed our dinner. This felt intimidating and we will now not eat in the Courtyard again - which is a real shame as it is a perfect spot for a quiet lunch or early evening meal.

I mentioned this experience when I called Zoe Sinclair to cancel my booking and she made me aware of this particular neighbour's application for a review of the premises licence at Tabanco. Consequently I offered to write to record the incident and provide a character reference for the business at the same time. My family & I have enjoyed Ambiente's restaurants in York for over 8 years now and can vouch for the business & their responsible approach to licencing matters and the consideration they afford their neighbours - indeed when we ate at Tabanco in April the servers emphasises that due to their neighbours, we should not make too much noise.

We live on Ogleforth close to their Goodramgate restaurant so we feel we are well placed to make this assessment. They are hugely aware of their neighbours, and ensure that music is not loud, that they (courteously) close at a reasonable time, and I have never encountered clientele who cause a noise nuisance when leaving their premises.

The mix of diverse, high quality independent businesses in York is one of the reasons our family chose to continue living in the City Centre. This is something that the City of Council should be encouraging. We would wholly recommend that you support Ambiente and Tabanco - from my experience, the gentleman finds himself overlooking a very orderly, courteous restaurant, and has nothing to complain about - and clearly enjoys making the customers in the courtyard at Tabanco feel uncomfortable.

I would be delighted to speak directly about this incident or about my excellent experiences at Ambiente.

With best wishes,

Ogleforth
York
YO1 7JG