

Report of the Director of Neighbourhood Services

**Section 35(3)(a) Application for the Variation of a premise licence for Lucia Wine Bar, 13 Swinegate Court, York, YO1 8AJ**

**Summary**

1. This report seeks Members determination of an application for the variation of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-009246
3. Name of applicants: Mr Ozgur Akgul
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is to increase the licensable activities to include live music, the performance of dance, the provision for making music and provision of facilities for dancing, and to extend the hours of operation for all regulated entertainments, late night refreshments and the sale of alcohol. The proposed hours for live and recorded music and the sale of alcohol are Monday to Thursday 10:00 hours to midnight and Friday to Sunday 10:00 hours to 01:30 hours; late night refreshment on Monday to Thursday until 00:30 hours and Friday to Sunday until 01:30 hours; dancing and the provision for dancing etc. on Monday to Thursday from 22:00 hours to midnight and Friday to Sunday from 22:00 hours to 01:30 hours. Proposed opening times are Monday to Thursday 10:00 hours to 00:30 hours and Friday to Sunday 10:00 hours to 02:00 hours. The applicant also wishes to increase the outside licensed area, increase the occupancy and remove all embedded conditions which appear on the current licence.

**Background**

6. A copy of the existing premise licence is attached at Annex 1.
7. A copy of the application to vary the licence is attached at Annex 2.
8. Plans showing the proposed additional licensed area and the venue's location in Swinegate Court are attached 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: 1) Staff training shall be undertaken. 2) Substantial food shall be provided until 22:00 hours. 3) There shall be no change of style of operation. 4) There shall be no amusement with prizes machines etc.
11. The prevention of crime and disorder: 1) CCTV with recording facilities. 2) Pager shall be provided. 3) Door supervisors shall be provided on weekends.
12. Public Safety. 1) Toughened glassware will be used.
13. Public Nuisance. 1) Signs shall be provided around the premises.
14. The protection of children from harm. 1) A "Challenge 21" policy shall be in place. 2) Acceptable "Proof of Age" will only be passports, photo driving licence and PASS logo ID cards.

### **Special Policy Consideration**

15. This premise is not located within the Special Policy area.

### **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.

### **Summary of Representations made by Responsible Authorities**

17. A representation was received from North Yorkshire Police on the grounds of crime and disorder and prevention of public nuisance. This was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted:
  1. CCTV will be installed to cover the premises and will include all areas (including outside areas) to where the public have access. It will be maintained, working and recording at all times when the premises are open. The recordings shall be of sufficient quality to be produced in court or other such hearing. Copies of the recordings will be kept available for any Responsible Authority for 28 days.
  2. The only acceptable proof of age identification shall be a current passport, photocard driving licence or identification carrying the PASS logo.

3. Standard one-pint capacity, half pint capacity and “highball” tumbler drinking glasses will be strengthened glass (tempered glassware) in a design whereby in the event of breakage, the glass will fragment and no sharp edges are left.
4. Drinking glasses of any type shall not be allowed to enter or leave the premises whilst under the customers care.
5. Documented staff training will be given regarding the retail of alcohol and such records kept accordingly.
6. When the venue is due to operate beyond 24:00 hours an adequate number of Door Supervisors shall be provided at the venue from 23:00 hours until the venue has closed for business on Friday and Saturday evenings; the evening preceding a bank holiday and on any day when York race meetings are held (except the first May meeting and the Sunday meeting in September).
7. The management of the venue will comply with any written, reasonable and justified request made by North Yorkshire Police regarding the provision of Door Supervisors should the need arise.
8. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals to under age or drunken people as well as incidents of any anti-social behaviour and ejections from the premises. Both documents will be made available upon a reasonable request from any Responsible Authority.
9. Prominent clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly.
10. The premises shall partake in the York Pubwatch Pager scheme.
11. Substantial food shall be available until 22:00 hours.
12. A capacity of 80 persons shall be imposed so as not to undermine the Licensing Objective “Prevention of Crime and Disorder
13. There shall be no more than 42 patrons allowed inside the venue and no more than 30 persons allowed in the outside drinking area of the venue.
14. The outside of the premises (not covered by the raised flooring area i.e. the courtyard area) shall be bordered at all times when open by robust semi-permanent barriers showing a clear demarcation of the premises footprint (as highlighted on the plan submitted).
18. A representation was received by the City of York Council Environmental Protection Unit on the grounds of public nuisance but this was subsequently withdrawn when the applicant agreed to the following conditions being attached to the licence if granted:
  1. No live music to be played outside.
  2. Recorded music played outside shall be restricted to background level.

### **Summary of Representations made by Interested Parties**

19. A representation was received from an interested party on the grounds of public nuisance. A copy of this representation is attached at Annex 4
20. A map showing the general area around the venue from which the representation is focused is attached at Annex 5
21. An “interested party” is defined at s13(3) of the Act as being a person living in the vicinity of the premises, a body representing persons who live in that vicinity, a person involved in a business in that vicinity, or a body representing persons involved in such businesses.
22. Members are reminded that representations are only “relevant” if they relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

### **Planning Issues**

23. There are no planning issues or conditions relevant to this application.

### **Options**

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

### **Analysis**

29. The following could be the result of any decision made this Sub Committee:-
30. Option 1: This decision could be appealed at Magistrates Court by any of the representors.
31. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
32. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.

33. Option 4: This decision could be appealed at Magistrates Court by the applicant.

### **Corporate Strategy**

34. 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.
35. The promotion of the licensing objectives will support the Council's strategy to make York a safer city with low crime rates and high opinions of the city's safety record.

### **Implications**

- 36.
- **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**

37. 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.
38. 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

39. Members determine the application.  
Reason: To address the representations received as required by the Licensing Act 2003.

## Contact Details

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Report Approved



Date 14 January 2010

## Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services

Ext: 1004

**Wards Affected: Guildhall West**

**For further information please contact the author of the report**

## Background Papers:

- Annex 1** - Copy of existing premises licence
- Annex 2** - Copy of application form
- Annex 3** - Plans showing proposed additional licensed area
- Annex 4** - Copy of representation from Interested Party
- Annex 5** - Map showing general area from which representations received.
- Annex 6** - Mandatory Conditions
- Annex 7** - Legislation and Policy Considerations