

## Licensing Act 2003 Sub Committee

20<sup>th</sup> August 2012

Report of the Director of Communities and Neighbourhoods

### **Section 35(3)(a) Application for the variation of a premise licence for 5 Swinegate Court East, York YO1 8AJ.**

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-017001
3. Name of applicants: Bora Akgul.
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is as follows
  - (a) To vary the hours of operation for the following licensable activities and add new licensable activities as follows:

Activity	Proposed timings	Proposed location	Current timings	Current Location
Live music	Mon – Sun 11:00 – 24:00	Indoors	Sun – Fri 12:00 – 22:00 Sat 12:00 – 23:00 and until midnight on Christmas Eve and New Year's Eve	Indoors
Recorded music	Mon – Sun 11:00 – 03:00 and an extra hour later on	Indoors and outdoors until	Mon – Sun 11:00 – 03:00	Indoors

	bank holiday Sundays and Christmas Eve and New Year's Eve	01:00		
Performance of dance	Mon – Sun 11:00 – 03:00 and an extra hour later on bank holiday Sundays and Christmas Eve and New Year's Eve	Indoors	Mon – Sun 12:00 – 24:00 and an extra hour later in June July and August	Indoors
Anything similar to the above	Mon – Sun 11:00 – 03:00 and an extra hour later on bank holiday Sundays and Christmas Eve and New Year's Eve	Indoors	New addition	
Provision for making music	Mon – Sun 11:00 – 03:00 and an extra hour later on bank holiday Sundays and Christmas Eve and New Year's Eve	Indoors	New addition	
Provision for facilities for dancing	Mon – Sun 11:00 – 03:00 and an extra hour later on bank holiday Sundays and Christmas Eve and New Year's Eve	Indoors	Mon – Thurs 12:00 – 24:00 Fri - Sat 12:00 – 01:30 Sun 12:00 – 01:00 and an extra hour later in June July and	Indoors

			August	
Provision for similar entertainments	Mon – Sun 11:00 – 03:00 and an extra hour later on bank holiday Sundays and Christmas Eve and New Year's Eve	Indoors	New addition	
Late night refreshment	Mon – Sun 23:00 – 03:00 and an extra hour later on bank holiday Sundays and Christmas Eve and New Year's Eve	Both	Mon – Sun 23:00 – 03:00 and an extra hour later in June July and August on Fri, Sat and Sun	Both
Sale of alcohol	Mon – Sun 23:00 – 02:30 and an extra hour later on bank holiday Sundays and Christmas Eve and New Year's Eve	Both	Mon – Sun 11:00 – 02:30 and an hour later in June July and August on Fri, Sat and Sun	Both

- (b) To remove condition 9 of the licence relating to capacity figures which is covered under the Regulatory Reform (Fire Safety) Order 2005.
- (c) To remove condition 10 of the licence “Customers shall remain seated whilst consuming alcohol within the courtyard area.”
- (d) To amend condition 26 of the licence so to allow the front door to remain open between 11:00 and 20:00 providing music is played at background level.

## **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.

## **Promotion of Licensing Objectives**

8. The operating schedule submitted by the applicant as part of the application includes all the conditions attached to the current licence with the addition of a zero tolerance policy towards drugs and regular drug checks throughout the venue.

## **Special Policy Consideration**

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

## **Consultation**

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

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

12. City of York Council Environmental Protection Unit make representation on the grounds of the prevention of public nuisance licensing objective. A copy of this representation is attached at Annex 3.
13. North Yorkshire Police have met with the applicant to discuss the application. The applicant has agreed to the following condition being included in the licence if granted.
  - (i) To ensure the licensing objective the prevention of crime and disorder is not undermined, there shall be a maximum capacity of 80 customers for the whole licensed area.

### **Summary of Representations made by other people**

14. Relevant representations have been received from 4 local residents listed on Annex 3. Their representations are shown in Annex 4.
15. A map showing the general area around the venue from which the representation is focused is attached at Annex 5.
16. 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**

17. There are no planning issues relevant to this application.

### **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 variation of the licence in the terms applied for.
20. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
21. 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.
22. Option 4: Reject the application.
23. Members are reminded that they may only use their discretion to add, remove or amend conditions or activities in relation to matters that are raised by representors and are relevant to the promotion of the licensing objectives.

### **Analysis**

24. The following could be the result of any decision made this Sub Committee:-
25. Option 1: This decision could be appealed at Magistrates Court by any of the representors.

26. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
27. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
28. Option 4: This decision could be appealed at Magistrates Court by the applicant.

### **Council Plan**

29. 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.
30. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

### **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.

### **Recommendation:**

34. That 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:**

Steve Waddington  
Assistant Director– Housing & Public Protection.

**Report  
Approved**



**Date** 07/08/12

### **Specialist Implications Officer(s):**

Head of Legal & Democratic Legal Services

Ext: 1004

**Wards Affected: Guildhall East**

**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** - Representation from Environmental Protection Unit
- Annex 4** - List of representors
- Annex 5** - Representations from local residents
- Annex 6** - Map showing general area from which representation received.
- Annex 7** - Mandatory Conditions
- Annex 8** - Legislation and Policy Considerations.