

**Manchester City Council
Report for Resolution**

Report to: Licensing Sub-Committee Hearing Panel – 23 December 2019

Subject: Baytree Restaurant, 1140 Rochdale Road, Manchester, M9 6FQ -
(App ref: 239855 - Transfer of Premises Licence)

Report of: Director of Planning, Building Control and Licensing

Summary

Transfer of the premises licence under s42 of the Licensing Act 2003

Recommendations

That the Panel, having regard to the application and any relevant representations, take what steps are appropriate for the promotion of the licensing objectives.

Wards Affected: Deansgate

Manchester Strategy Outcomes	Summary of the contribution to the strategy
A thriving and sustainable City: supporting a diverse and distinctive economy that creates jobs and opportunities	Licensed premises provide a key role as an employer, in regeneration, and in attracting people to the city. The efficient processing of applications as well as effective decision making in respect of them, plays an essential role in enabling businesses to thrive and maximise contribution to the economy of the region and sub-region.
A highly skilled city: world class and home grown talent sustaining the city's economic success	An effective Licensing regime will enable growth in our City by supporting businesses who promote the Licensing Objectives.
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	The Licensing process provides for local residents and other interested parties to make representations in relation to licensing applications. Representations have to be directly related to the licensing objectives.
A liveable and low carbon city: a destination of choice to live, visit and work.	An effective licensing system supports and enables growth and employment in our City with neighbourhoods that provide amenities suitable to the surrounding communities.

A connected city: world class infrastructure and connectivity to drive growth	
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Full details are in the body of the report, along with any implications for:

Equal Opportunities Policy
Risk Management
Legal Considerations

Financial Consequences – Revenue - None

Financial Consequences – Capital – None

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Background documents (available for public inspection):

- Manchester City Council Statement of Licensing Policy 2016 - 2021
- Guidance issued under section 182 of the Licensing Act 2003, April 2018
- Licensing Act 2003 (Hearings) Regulations 2005
- Any further documentary submissions by any party to the hearing

1. Introduction

- 1.1 On 12 November 2019, an application for the transfer of a Premises Licence under s42 of the Licensing Act 2003 was made in respect of the Baytree Restaurant, 1140 Rochdale Road, Manchester, M9 6FQ in the Charlestown ward of Manchester. A location map and photograph of the premises is attached at **Appendix 1**.
- 1.2 Notice of the application has been given to Greater Manchester Police in accordance with the Licensing Act.
- 1.3 Where a chief officer of police is satisfied that granting the application would undermine the crime prevention objective, he must give the licensing authority a notice under s42(6) of the Licensing Act, within the period of 14 days beginning with the day on which he is notified of the application, stating the reasons why he is so satisfied.
- 1.4 Where such a notice is given the authority must hold a hearing to consider it.
- 1.5 Such a notice was received from Greater Manchester Police on 25/11/2019.

2. The Application

- 2.1 A copy of the application is attached at **Appendix 2**.
- 2.2 The applicant is Mr Hafizur Rahman.

3. Current Premises Licence

- 3.1 A copy of the current licence is attached at **Appendix 3**.
- 3.2 The current premises licence holder is Habibur Rahman. Mr Rahman has held the licence since 02/05/2017.
- 3.3 The licensable activities permitted by the licence are:

Supply of alcohol for consumption on the premises only:

- Sunday to Thursday 5pm to 10pm
- Friday and Saturday 5pm to 11pm

Provision of late night refreshment:

- Friday and Saturday only 11pm to 12 midnight

4. Notice under s42(6)

- 4.1 A copy of the notice received from Greater Manchester Police is attached at **Appendix 4**.

- 4.2 A summary of the notice is as follows –
- 4.2.1 The applicant Hafizur Rahman has applied to become the premises licence following the conviction and subsequent 4½ year prison sentence handed to his brother, Habibur Rahman, who is the current licence holder.
 - 4.2.2 The grounds for the objection are the undermining of the prevention of Crime and Disorder objective.
 - 4.2.3 Hafizur Rahman is currently subject to court hearings after being charged with a serious offence and GMP have serious concerns as to his suitability to be the holder of a Premises Licence.
 - 4.2.4 GMP are extremely concerned that along with the previous Premises Licence holder, two other brothers of Hafizur Rahman are also currently serving prison sentences and believe that the family connection is also a reason that the licensing objective is likely to be undermined.
- 4.3 GMP asks that this application is refused.

5. Additional information

- 5.1 An application was made by Greater Manchester Police on 05/11/2019 to review the existing licence. The review application will be considered under a separate hearing.

6. Key Policies and Considerations

6.1 Legal Considerations

- 6.1.1 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005.

6.2 New Information

- 6.2.1 In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority may take into account documentary or other information produced by a party in support of their application, representations or notice either before the hearing or, with the consent of all parties, at the hearing.

6.3 Hearsay Evidence

- 6.3.1 The Panel may accept hearsay evidence and it will be a matter for the Panel to attach what weight to it that they consider appropriate. Hearsay evidence is evidence of something that a witness neither saw nor heard, but has heard or read about.

6.4 The Secretary of State's Guidance to the Licensing Act 2003

- 6.4.1 The Secretary of State's Guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.
- 6.4.2 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.
- 6.4.3 Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

6.5 **Manchester Statement of Licensing Policy**

- 6.5.1 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' its statement of licensing policy.
- 6.5.2 The Licensing Policy sets out the vision the licensing authority has for the regulation of licensed premises throughout Manchester and outlines the standards expected in order to ensure the promotion of the licensing objectives in the city. The Panel may depart from the policies should it consider doing so would benefit the promotion of the licensing objectives. Reasons are to be given for any such departure from the Policy.
- 6.5.3 There are a number of references in the Policy to the licensing authority's expectations of applicants. The licensing authority will not apply the Policy rigidly, but will always have regard to the merits of the case with a view to promoting the licensing objectives.

7. **Conclusion**

- 7.1 A licensing authority must carry out its functions under this Act ("licensing functions") with a view to promoting the licensing objectives:
- a) the prevention of crime and disorder
 - b) public safety;
 - c) the prevention of public nuisance; and
 - d) the protection of children from harm.
- 7.2 In considering the matter, the Panel should take into account the notice served by the police under s42(6). Regard must also be had to relevant

provisions of the national guidance and the Council's licensing policy statement.

- 7.3 All licensing determinations should be considered on the individual merits of the application.
- 7.4 The Panel's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.
- 7.5 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.
- 7.6 **The Panel is asked to determine the application.**