

**Manchester City Council
Report for Resolution**

Report to: Licensing Sub-Committee Hearing Panel – 31 January 2020

Subject: Indigo, 457-459 Wilmslow Road, Manchester, M20 4AN - (App ref: LPU243595)

Report of: Head of Planning, Building Control & Licensing

Summary

Interim Steps hearing for Summary Review of the premises licence under s53C of the Licensing Act 2003

Recommendations

The Sub-Committee must take such of the steps under section 53(B) of the Licensing Act 2003 (if any), that it considers appropriate for the promotion of the licensing objectives. The steps are:

1. To modify the conditions of the licence;
2. To exclude any of the licensable activities from the licence;
3. To remove the designated premises supervisor;
4. To suspend the licence

The conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Modification of the conditions of the premises licence can include altering or modifying existing conditions or adding any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place. Where the Sub-Committee consider that none of the above steps are appropriate for the promotion of the licensing objectives, no action should be taken in respect of the licence.

Wards Affected: Withington

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	

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 30 January 2020, an application was made by Greater Manchester Police under s53A of the Licensing Act 2003 for a Summary Review of the Premises Licence for Indigo, 457-459 Wilmslow Road, Manchester, M20 4AN in the Withington ward of Manchester. A location map and photograph of the premises is attached at **Appendix 1**.
- 1.2 Summary reviews can be undertaken when the police consider that the premises concerned are associated with serious crime or serious disorder (or both). The summary review process allows interim conditions to be quickly attached to a licence and for the review of the licence to be fast tracked.
- 1.3 A 10 working-day public consultation exercise is undertaken in accordance with Licensing Act 2003 regulations, requiring the application to be advertised by the displaying of a blue notice at or on the premises and details of the application to be published on the Council's website.
- 1.4 Under section 53C of the Licensing Act 2003, the licensing authority must hold a full review of the premises licence and determine the review within 28 days after the day of receipt of the application.
- 1.5 Following the review under section 53C, the licensing authority must then review the interim steps in place and determine whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn.

2. The Application

- 2.1 A copy of the application is attached at **Appendix 2**.
- 2.2 An application for the summary review of premises licence number 129896 under section 53A of the Licensing Act 2003 was submitted by Greater Manchester Police on 30 January 2020. The grounds of the application for review are that in the opinion of a senior police officer the premises are associated with serious crime or serious disorder or both.
- 2.3 **Interim Steps pending the review**
 - 2.3.1 Within 48 hours of receiving a summary review application, under s53B of the Licensing Act 2003 the licensing authority must consider whether it is necessary to take interim steps pending the review of the licence for the promotion of the licensing objectives.
 - 2.3.2 The premises licence holder may make representations against the interim steps taken by the licensing authority. Also under s53B, the licensing authority must within 48 hours of the time of its receipt of the representations, hold a hearing to consider those representations.
 - 2.3.3 On the date of the review hearing, the licensing authority is required to review any interim steps that are in place and consider whether it is appropriate for

the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn.

3. Current Premises Licence

- 3.1 A copy of the current licence is attached at **Appendix 3**.
- 3.2 The premises licence holder is Mr Christopher Hindle and has held the licence since 15 May 2018
- 3.3 The designated premises supervisor is Mr Christopher Hindle who has held this position since 25 October 2019.
- 3.4 The licensable activities permitted by the licence are:
- Sale of Alcohol Monday to Sunday 11am to 2am
 - Live and Recorded Music Monday to Sunday 11am to 2am
 - Late night refreshment Monday to Sunday 11pm to 12.30am
 - Opening Hours Monday to Sunday 11am to 2.30am

4. Key Policies and Considerations

4.1 Legal Considerations

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

4.2 New Information

- 4.2.1 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.

4.3 Hearsay Evidence

- 4.3.1 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.

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

- 4.4.1 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.

- 4.4.2 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.
- 4.4.3 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.

4.5 **Manchester Statement of Licensing Policy**

- 4.5.1 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.
- 4.5.2 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.
- 4.5.3 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.
- 4.5.4 Relevant to this application, the Panel are recommended to have regard to the following sections of the Policy:

Section 6: What we aim to encourage

This section identifies certain types of venues and initiatives the licensing authority aims to encourage in order to promote an inclusive evening and night-time economy not simply focused on the consumption of alcohol. We aim to encourage:

- Premises that will extend the diversity of entertainment and attract a wider range of participants
- Live music, especially original material, which will provide a range of live performances and styles of music, provided that such entertainment does not undermine the licensing objectives
- National cultural institutions, global sports events and cultural festivals
- Non-drink-led premises, including restaurants, cafes, theatres and cinemas

- Communication and integration with local residents and businesses through licensees consulting with those in the local area prior to an application
- Participation in Pubwatches, off licence forums and other crime-reduction partnerships
- Engagement with the NITENET radio scheme and DISC secure information sharing platform by city centre venues through the Cityco Manchester Business Crime Reduction Partnership
- Designing out crime in the layout of the premises

Section 7: Local factors

This section sets out key issues that applicants are expected to take into account relevant to the individual characteristics of the premises and address any local factors relevant to their premises.

Having regard to this application, the Panel are recommended to have regard to the following Factors:

- Identified risk factors specific to the licensed premises
- Evidence of pre-existing problems in the area
- Consistency with relevant Council strategies

Section 8: Manchester's standards to promote the licensing objectives

This section identifies the standards that the licensing authority expects of licensed premises in Manchester. It is recognised that not all standards will be appropriate to apply in every situation to every premises. The degree to which standards would be appropriate is expected to be proportionate to the risk posed against the promotion of the licensing objectives having regard to the individual circumstances of the premises. The standards are not exhaustive and the licensing authority will have regard to any relevant issues raised in any representation that may fall outside them.

- MS1 Implement effective security measures at the premises
- MS2 Effective general management of the premises
- MS4 Prevent the use of illegal drugs, new psychoactive substances (NPS) and the spiking of drinks at the premises
- MS7 Maintain a safe capacity

5. Conclusion

5.1 A licensing authority must carry out its functions under this Act ("licensing functions") with a view to promoting the licensing objectives:

- the prevention of crime and disorder
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

- 5.2 In reaching the decision, regard must be had to relevant provisions of the national guidance and the Council's licensing policy statement.
- 5.3 The Panel must consider what steps are appropriate for the promotion of the licensing objectives.
- 5.4 In making its decision with regard to this interim steps hearing, the steps the Panel can take are:
- a) To modify the conditions of the licence;
 - b) To exclude any of the licensable activities from the licence;
 - c) To remove the designated premises supervisor;
 - d) To suspend the licence
- 5.5 The conditions of the licence, with the exception of mandatory conditions in Appendix 1 of the licence, may be modified to alter or omit any of them or to add any new condition, including restricting the times at which licensable activities authorised by the licence can take place.
- 5.6 All licensing determinations should be considered on the individual merits of the application.
- 5.7 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.
- 5.8 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.
- 5.9 **The Panel is asked to determine what steps, as set out in 5.4 above, are appropriate for the promotion of the licensing objectives.**