

# Licensing Act 2003 (Hearings) Regulations 2005

Reference: 214240

Name: Red Restaurant

Address: Portland House, 103a Portland Street, Manchester,

M1 6DF

Ward: Piccadilly

Hearing Date: 02/10/2018

**Application Type:** Premises Licence (new)

Name of Applicant: Wan Koon Chua

**Date of application:** 09/08/2018

### **Summary of application**

**Application Type:** Premises Licence (new)

Reference: 214240/AM2

Premises: Red Restaurant, Portland House, 103a Portland Street, Manchester, M1 6DF

Applicant: Wan Koon Chua

### General description of premises as given by the applicant:

Restaurant

### Proposed hours and licensable activities:

Provision of regulated entertainment (recorded music)

Indoors only

Non-standard timings not applied for

Mon to Sun 12:00 to 22:00

The supply of alcohol for consumption on the premises only:

Non-standard timings not applied for

Mon to Sun 12:00 to 22:00

Opening hours:

Mon to Sun 12:00 to 22:00

### Steps to promote licensing objectives as given by the applicant:

Nothing beyond existing health and safety/fire safety requirements

### Representations Received

Responsible Authority	Grounds For Representation
Greater Manchester Police	Crime and disorder
Licensing & Out of Hours     Compliance	Public nuisance
Trading Standards	Protection of children from harm

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#### **Considerations**

In determining the application, the Sub-Committee must give appropriate weight to:

- a) the steps that are appropriate to promote the licensing objective(s);
- b) the representations (including supporting information) presented by all the parties;

In determining the application, the Sub-Committee must also have regard to:

- c) the s182 Guidance to the Licensing Act 2003 by the Home Secretary;
- d) Manchester City Council's Statement of Licensing Policy
- e) The Licensing Act 2003 and the regulations made there under
- f) Licensing Objectives

Reasons should be given for any departure from c and d above.

#### **New premises licence**

The Sub-Committee must take such of the steps under section 17(4) of the Licensing Act 2003 (if any), that it considers appropriate for the promotion of the licensing objectives. The steps are:

- 1. To grant the licence subject to:
  - the conditions consistent with the operating schedule accompanying the application, modified to such extent as the authority considers appropriate for the promotion of the licensing objectives, and
  - b) any mandatory conditions that must be included in the licence
- 2. To exclude from the scope of the licence any of the licensable activities to which the application relates;
- 3. To refuse to specify the person proposed in the application as the designated premises supervisor;
- 4. To reject the application.

The conditions of the licence are modified if any of them is altered or omitted or any new condition is added. Modification of the condition of the premises licence includes restricting 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, the application should be granted in the terms applied for.

### **Summary of representations**

Please be advised that the below is a summary of representations received only. Copies of the representations are included at the back of this document for members and other interested parties to refer to as necessary.

#### PC Alan Isherwood on behalf of Greater Manchester Police (GMP)

GMP object to the premises licence application on the grounds of prevention of crime and disorder, prevention of public nuisance, public safety and the protection of children from harm.

The operating schedule which accompanies the application offers nothing in terms of conditions which show how the four licensing objectives will be upheld.

It gives the impression that the applicant has a limited understanding of the Licensing Objectives, which raises concerns about how the premises will be operated.

We therefore ask that this application is refused.

#### Gary Cook on behalf of the Licencing and Out of Hours (LOOH) team

the Licensing and Out of Hours team have concerns that the applicant has not provided any information in the operating schedule as to how they intend to uphold the Licensing Objectives. The only information provided under section M of the application states "Nothing beyond existing Health and Safety / Fire Safety requirements.

This lack of information demonstrates that the applicant may not have sufficient understanding of the requirements of operating a licenced premises, particularly in promoting the four licensing objectives under the Licensing Act 2003.

We therefore ask that this application is refused.

#### Ivor Parry on behalf of Trading Standards

The Trading Standards Service feels that the operating schedule in the application is not detailed enough with regards to how the premises is going to promote the licensing objective of the protection of children from harm. Suffice to say there is no detail at all.

We have concerns that the applicant may not have sufficient knowledge or understanding of what is required to operate a licensed premises in this case a restaurant.

We would therefore ask that the application be refused.



Red Restaurant Portland House, 103a Portland Street, Manchester, M1 6DF

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**PREMISE NAME:** Red Restaurant

PREMISE ADDRESS: Portland House, 103a Portland Street, Manchester,

M1 6DF

WARD: Piccadilly

**HEARING DATE:** 02/10/2018

# Application for a premises licence to be granted under the Licensing Act 2003

#### PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I/₩e	W	AN KOON CHUA	<u>. R</u>	ED Kt	Str	IUKA					
(Insert name(s) of applicant) apply for a premises licence under section 17 of the Licensing Act 2003 for the premises described in Part 1 below (the premises) and I/we are making this application to you as the relevant licensing authority in accordance with section 12 of the Licensing Act 2003											
Part 1	Part 1 – Premises details										
a	70	Iress of premises or, if none, ordnance survey TLANP HOUSE A PORTLAND STRE	•		scription						
						(0.0					
Post	towr	MANCHESTER		Postcode	M	6DP					
Telep	hone	e number at premises (if any)									
Non-	dome	estic rateable value of premises £277	20	)							
Part 2	- Ap	plicant details									
Please	state	whether you are applying for a premises licer	ice as	Please tic	k as appro	priate					
a)	an i	ndividual or individuals *		please comp	lete sectio	n (A)					
b)	a pe	erson other than an individual *									
	i	as a limited company/limited liability partnership		please comp	lete sectio	on (B)					
	ii	as a partnership (other than limited liability)		please comp	lete sectio	n (B)					
	iii	as an unincorporated association or		please comp	lete sectio	on (B)					
	iv	other (for example a statutory corporation)		please comp	lete sectio	n (B)					
c)	a re	cognised club		please comp	lete sectio	n (B)					
d)	a cł	narity		please comp	lete sectio	on (B)					

e)	the proprietor of	an educational es	tablishment		please com	plete section (	B)	
f)	a health service b	ody			please com	plete section (	B)	
g)	a person who is re Care Standards A independent hosp	ct 2000 (c14) in			please com	plete section (	В)	
ga)	a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in an independent hospital in England							
h)	the chief officer o England and Wald		ce force in		please comp	olete section (	B)	
* If y box b	ou are applying as elow):	a person describe	d in (a) or (b	) please	confirm (by the	cking yes to o	one	
premi	carrying on or prop ses for licensable a	ctivities; or		hich in	volves the use	of the		
1 am i	making the applicat statutory function a function dischar	or		s prero	gative			
(A) IN	DIVIDUAL APPL	ICANTS (fill in	as applicable	e)				
Mr	Mrs	Miss [	Ms [		ner Title (for imple, Rev)			
Surna	ame Kook	7	First	names	+ WAR	7		
Date over	of birth	. I ar	n 18 years ol	d or	Plea	se tick yes		
NASS - C 100 NOV.	nality MAL	AYSII	+.					
addres	nt residential as if different from ses address							
Post to	own				Postcode			
Daytii	ne contact telepho	one number						
E-mai (optio	l address nal)			· · ·				
SECON	ID INDIVIDUAL	APPLICANT (i	f applicable)					
				T	100010000000000000000000000000000000000			
Mr	Mrs	Miss	Ms		er Title (for mple, Rev)			

Whe	on do you want the premises licence to start? $ASAP$	D MM YYYY  9 0 7 2 0 1 3
	ou wish the licence to be valid only for a limited period, n do you want it to end?	D MM YYYY
Plea	se give a general description of the premises (please read guidance	note 1)
	ESTAURANT	1010 1)
	000 or more people are expected to attend the premises at any ime, please state the number expected to attend.	N/A
What	licensable activities do you intend to carry on from the premises?	
(pleas	e see sections 1 and 14 and Schedules 1 and 2 to the Licensing Ac	t 2003)
Pro	rision of regulated entertainment (please read guidance note 2)	Please tick all that apply
a)	plays (if ticking yes, fill in box A)	
b)	films (if ticking yes, fill in box B)	
c)	indoor sporting events (if ticking yes, fill in box C)	
d)	boxing or wrestling entertainment (if ticking yes, fill in box D)	
e)	live music (if ticking yes, fill in box E)	
f)	recorded music (if ticking yes, fill in box F)	
g)	performances of dance (if ticking yes, fill in box G)	
5)	performances of dance (if deking yes, fin in sox e)	·

Surname	First names		
Date of birth over	I am 18 years old or	☐ Pl	ease tick yes
Nationality			
Current postal address if different from premises address			
Post town		Postcode	
Daytime contact telepho	ne number		
E-mail address (optional)			
	er. In the case of a partnership or ve the name and address of each p		
Registered number (where	e applicable)		
Description of applicant (f	For example, partnership, company, u	nincorporato	ed association etc.)
Telephone number (if any)	)		
E-mail address (optional)			

Part 3 Operating Schedule

Provision of late night refreshment (if ticking yes, fill in box I)	
Supply of alcohol (if ticking yes, fill in box J)	
In all cases complete hoves K. I. and M.	

# A

Plays Standard days and timings (please read guidance note 7)			Will the performance of a play take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	
guidance note 7)		)		Outdoors	
Day	Start	Finish		Both	
Mon			Please give further details here (please read guid	dance note 4)	
Tue					
Wed			State any seasonal variations for performing plant guidance note 5)	lays (please rea	ıd
Thur					
Fri			Non standard timings. Where you intend to us for the performance of plays at different times the column on the left, please list (please read gu	to those listed	<u>in</u>
Sat					
Sun					

## B

Films Standard days and timings (please read			Will the exhibition of films take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	
	ce note 7			Outdoors	
Day	Start	Finish		Both	
Mon			Please give further details here (please read gui	dance note 4)	
Tue					
Wed			State any seasonal variations for the exhibition read guidance note 5)	<b>of films</b> (plea	se
Thur					
Fri			Non standard timings. Where you intend to us for the exhibition of films at different times to column on the left, please list (please read guida	those listed in	
Sat					
Sun					

# C

Indoor sporting events Standard days and timings (please read guidance note 7)			Please give further details (please read guidance note 4)
Day	Start	Finish	
Mon			
Tue			State any seasonal variations for indoor sporting events (please read guidance note 5)
Wed			
Thur			Non standard timings. Where you intend to use the premises for indoor sporting events at different times to those listed in the column on the left, please list (please read guidance note 6)
Fri			
Sat			
Sun			

## D

Boxing or wrestling entertainments Standard days and		J	Will the boxing or wrestling entertainment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	
	(please rece note 7)			Outdoors	
Day	Start	Finish		Both	
Mon			Please give further details here (please read guid	dance note 4)	
Tue					
Wed			State any seasonal variations for boxing or wreentertainment (please read guidance note 5)	estling	2
Thur					
Fri			Non standard timings. Where you intend to us for boxing or wrestling entertainment at differ listed in the column on the left, please list (plea	ent times to th	<u>10se</u>
Sat			note 6)		
Sun					

Live music Standard days and timings (please read guidance note 7)		read	Will the performance of live music take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors		
Day	Start	Finish		Both		
Mon	Start	A MIISH	Please give further details here (please read guid		Ш	
Tue						
Wed			State any seasonal variations for the performance of live music (please read guidance note 5)			
Thur						
Fri			Non standard timings. Where you intend to us for the performance of live music at different t listed in the column on the left, please list (please	imes to those	-	
Sat			note 6)	8		
Sun						

## F

Recorded music Standard days and timings (please read			Will the playing of recorded music take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	B
guidance note 7)		00.000000	(prease read guidance note 3)	Outdoors	
Day	Start	Finish		Both	
Mon	12:00	22:00	Please give further details here (please read guid	dance note 4)	
Tue	12.00	27.00	• •		
Wed	17:00		(pictise read guidance note 3)	recorded mu	<u>sic</u>
Thur	12:00	$\mathcal{M}^{\infty}$	N/A		
Fri	12:00	22:0c	listed in the column on the left, please list (plea	imes to those	
Sat	12:00	ZZ:.co	note 6)		
Sun	12:00	2700			

# $\mathbf{G}$

Performances of dance Standard days and			Will the performance of dance take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	
timings (please read guidance note 7)		read	(produce route gardanies note s)	Outdoors	
Day	Start	Finish		Both	
Mon			Please give further details here (please read guid	dance note 4)	
Tue					
Wed			State any seasonal variations for the performation (please read guidance note 5)	nce of dance	
Thur					
Fri			Non standard timings. Where you intend to us for the performance of dance at different times the column on the left, please list (please read gu	s to those listed	d in
Sat					
Sun					

## H

Anything of a similar description to that falling within (e), (f) or (g) Standard days and timings (please read guidance note 7)		hat e), (f) or and read	Please give a description of the type of entertainm providing	nent you will be	e
Day	Start	Finish	Will this entertainment take place indoors or outdoors or both – please tick (please read	Indoors	
Mon			guidance note 3)	Outdoors	
				Both	
Tue			Please give further details here (please read gui	dance note 4)	
Wed					
Thur			State any seasonal variations for entertainment description to that falling within (e), (f) or (g) guidance note 5)	t of a similar (please read	
Fri					
Sat			Non standard timings. Where you intend to use for the entertainment of a similar description within (e), (f) or (g) at different times to those column on the left, please list (please read guidal please	to that falling listed in the	<u>:S</u>
Sun					
	2				

### I

Late night refreshment Standard days and			Will the provision of late night refreshment take place indoors or outdoors or both – please tick (please read guidance note 3)	Indoors	
timings (please read guidance note 7)		ead	,	Outdoors	
Day	Start	Finish		Both	
Mon			Please give further details here (please read guid	dance note 4)	
Tue					
Wed			State any seasonal variations for the provision refreshment (please read guidance note 5)	of late night	
Thur					
Fri			Non standard timings. Where you intend to us for the provision of late night refreshment at dithose listed in the column on the left, please list	ifferent times,	
Sat			guidance note 6)		
Sun					

J

Supply of alcohol Standard days and timings (please read			Will the supply of alcohol be for consumption – please tick (please read guidance note 8)	On the premises	
_	guidance note 7)			Off the premises	
Day	Start	Finish		Both	
Mon	12:00	22.00	read guidance note 5)	alcohol (please	e
Tue	12:00	ZZ`, œ	NO		
Wed	15.00	22:00			
Thur	12,00	22.00	Non standard timings. Where you intend to us for the supply of alcohol at different times to the column on the left, please list (please read guidants).	ose listed in t	
Fri	15:00	27:00	20		
Sat	12:00	)Σ'.∞			
Sun	(2:∞	22°.00			

State the name and details of the individual whom you wish to specify on the licence as designated premises supervisor (Please see declaration about the entitlement to work in the checklist at the end of the form):

Name WAN KOON CHUA	
Date of birth	
Address	
Postcode	
Personal licence number (if known) 101769	
Issuing licensing authority (if known) NOTTING-HAM CITY COUN	CI

K			
matte	ers ancilla	ary to the	lult entertainment or services, activities, other entertainment or e use of the premises that may give rise to concern in respect of aidance note 9).
L			
open t Standa timing	s premises to the pub ard days as gs (please a nce note 7)	blic ind read	State any seasonal variations (please read guidance note 5)
Day	Start	Finish	
Mon	12:00	27:00	
Tue	12.00	55:00	
	1		
Wed	12:00	27.∞	
51			Non standard timings. Where you intend the premises to be open to the public at different times from those listed in the
	12:00		open to the public at different times from those listed in the column on the left, please list (please read guidance note 6)
Thur		ZI*. 00	open to the public at different times from those listed in the

Sat

Sun

12:00 22:00

12:00 22:00

Declaration	<ul> <li>[Applicable to individual applicants only, including those in a partnership which is not a limited liability partnership] I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 15).</li> <li>The DPS named in this application form is entitled to work in the UK (and is not subject to conditions preventing him or her from doing work relating to a licesable activity) and I have seen a copy of his or her proof of entitlement to work, if appropriate (please see note 15)</li> </ul>		
Signature	<b>M</b> .		
Date	SUPERVISOF-WAN KOON CHUA		
Capacity	SUPERVISOR-WAN KOON CHUA		
For joint applica authorised agent state in what cap	tions, signature of 2 <sup>nd</sup> applicant or 2 <sup>nd</sup> applicant's solicitor or other (please read guidance note 13). If signing on behalf of the applicant, please acity.		
Signature			
Date			
Capacity			
	Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 14)		

#### **Notes for Guidance**

Telephone number (if any)

Post town

Describe the premises, for example the type of premises, its general situation and layout
and any other information which could be relevant to the licensing objectives. Where
your application includes off-supplies of alcohol and you intend to provide a place for
consumption of these off-supplies, you must include a description of where the place will
be and its proximity to the premises.

If you would prefer us to correspond with you by e-mail, your e-mail address (optional)

Postcode

2. In terms of specific regulated entertainments please note that:

M Describe the steps you intend to take to promote the four licensing objectives:			
a) General – all four licensing objectives (b, c, d and e) (please read guidance note 10)			
NOTHING BEYOND EXISTING HEALTH			
NOTHING BEYOND EXISTING HEALTH AND SAFETY /FIRE SAFETY REQUIREMENTS			
b) The prevention of crime and disorder			
c) Public safety			
c) I usite sarcty			
d) The prevention of public nuisance			

e) The protection of children from harm

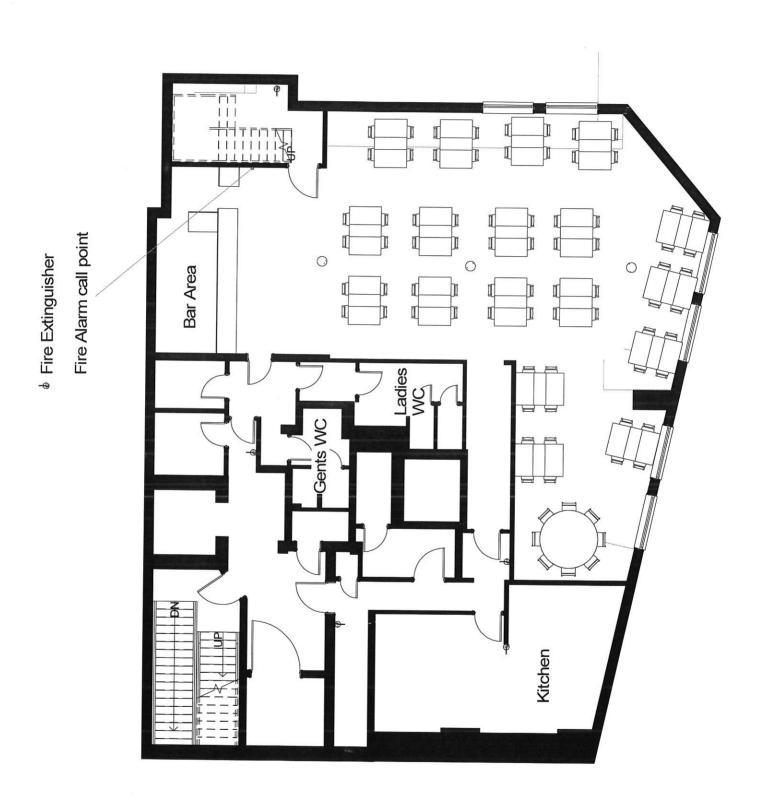
Chec	klist: Please tick to indicate agreer	nent
•	I have made or enclosed payment of the fee.	
•	I have enclosed the plan of the premises.	
•	I have sent copies of this application and the plan to responsible authorities and others where applicable.	
•	I have enclosed the consent form completed by the individual I wish to be designated premises supervisor, if applicable.	
•	I understand that I must now advertise my application.	
•	I understand that if I do not comply with the above requirements my application will be rejected.	
•	[Applicable to all individual applicants, including those in a partnership which is not a limited liability partnership, but not companies or limited liability partnerships] I have included documents demonstrating my entitlement to work in the United Kingdom (please read note 15).	

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.

Part 4 – Signatures (please read guidance note 11)

Signature of applicant or applicant's solicitor or other duly authorised agent (see guidance note 12). If signing on behalf of the applicant, please state in what capacity.



### **GREATER MANCHESTER POLICE - REPRESENTATION**

About You		
Name	PC Alan Isherwood	
Address including postcode	1 <sup>st</sup> Floor	
	Manchester Town Hall Extension	
	Lloyd Street	
	Manchester	
Contact Email Address	alan.isherwood@gmp.police.uk	
Contact Telephone Number	0161 856 6017	

About the Premises		
Application Reference No.	LPA 214240	
Name of the Premises	Red Restaurant	
Address of the premises	Portland House, 103a Portland Street, Manchester M1 6DF	
including postcode		

### **Your Representation**

Please outline your representation below and continue overleaf. This should describe the likely effect of the grant of the licence on the licensing objectives on and in the vicinity of the premises in question.

Please accept this as formal notification of the Greater Manchester Police objection to the premises licence in relation to the above premises on the grounds of Prevention of Crime and Disorder and the Prevention of Public Nuisance, Public Safety and the Protection of Children from Harm.

The operating schedule which accompanies the application offers nothing in terms of conditions which show how the 4 Licensing Objectives will be upheld.

It gives the impression that the applicant has a limited understanding of the Licensing Objectives, which raises concerns about how the premises will be operated.

We therefore ask that this application is refused.



Licensing & Out of Hours Comp	pliance Team - Representation
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Name	Gary Cook
Job Title	Neighbourhood Compliance Officer
Department	Licensing and Out of Hours Compliance Team
Address	Level 1, Town Hall Extension, Manchester, M60 2LA
Email Address	g.cook@manchester.gov.uk
Telephone Number	0161 234 1220

Premise Details	
Application Ref No	214240
Name of Premises	Red Restaurant
Address	Portland House, 103a Portland Street, Manchester
	M1 6DF

#### Representation

Outline your representation regarding the above application below. This representation should describe the likely effect of the grant of the licence/certificate on the licensing objectives and on the vicinity of the premises.

The Licensing and Out of Hours (LOOH) team have assessed the likely impact of the grant of this application taking into account a number of factors, including the nature of the area in which the premises is located and any potential risk the granting of this licence could lead to issues of public nuisance.

As a result of this assessment the Licensing and Out of Hours team have concerns that the applicant has not provided any information in the operating schedule as to how they intend to uphold the Licensing Objectives. The only information provided under section M of the application states "Nothing beyond existing Health and Safety / Fire Safety requirements.

This lack of information demonstrates that the applicant may not have sufficient understanding of the requirements of operating a licenced premises, particularly in promoting the four licensing objectives under the Licensing Act 2003.

Recommendation:

Refuse application

PLEASE NOTE: ALL REPRESENTATIONS AND SUPPORTING EVIDENCE MUST BE SUBMITTED TO MANCHESTER CITY COUNCIL WITHIN 28 DAYS, STARTING THE DAY AFTER THE PREMISES IN QUESTION MAKES AN APPLICATION (TO FIND OUT THE CLOSING DATE CALL THE LICENSING UNIT ON 0161 234 4512)

PLEASE NOTE: LICENSING OFFICERS, LICENSING COMMITTEE MEMBERS AND THE **ABOUT YOU** APPLICANT CAN VIEW THE INFORMATION PROVIDED ON THIS FORM Your first name (required) Your last name (required) Ivor **Parry** Your address including postcode (required) **Trading Standards Service** 1 Hammerstone Road Manchester M18 8EQ **Contact email address** Contact phone no i.parry@manchester.gov.uk 0161 234 1540 Your signature (I hereby declare the information I have provided on and with this form is correct to the best of my knowledge and belief)

#### ABOUT THE PREMISES

#### Application Ref No. (if known):

LPA 214240

#### Name of the Premises about which you would like to make a representation:

Red Restaurant

Address of the Premises (including postcode if known):

Portland House 103a Portland Street Manchester M1 6DF

### YOUR REPRESENTATION

Please outline your representation below and continue overleaf. This should the likely effect of the grant of the licence / certificate on the licensing objectives on and in the vicinity of the premises in question. (Please continue on a separate sheet of paper if necessary)

The Trading Standards Service feels that the operating schedule in the application is not detailed enough with regards to how the premises is going to promote the licensing objective of the protection of children from harm. Suffice to say there is no detail at all.

We have concerns that the applicant may not have sufficient knowledge or understanding of what is required to operate a licensed premises in this case a restaurant.

We would therefore ask that the application be refused.