

**Manchester City Council
Report for Resolution**

Report to: Licensing Sub-Committee Hearing Panel – 02 March 2021

Subject: Kate & Luc Cafe/Restaurant, 213 Burnage Lane, Manchester, M19 1FN
(Review of premises licence following a closure order, App ref - 255869)

Report of: Head of Planning, Building Control & Licensing

Summary

Review of the premises licence following a closure order under s167 of the Licensing Act 2003

Recommendations

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

Wards Affected: Burnage

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 10 February 2021 a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 was made by Manchester Magistrates Court in relation to Kate & Luc Cafe/Restaurant, 213 Burnage Lane, Manchester, M19 1FN in the Burnage ward of Manchester.
- 1.2 The Court gave notice of the closure order to the licensing authority, under s167(1)(b) of the Licensing Act 2003, on 18/02/2021. In accordance with s167(2) the licensing authority must review the premises licence.
- 1.3 A location map and photograph of the premises is attached at **Appendix 1**.
- 1.4 The closure order and the associated notice are attached at **Appendix 2**.
- 1.5 A 7-day public consultation exercise has been undertaken in accordance with Licensing Act 2003 regulations, requiring notice of the review to be advertised by the displaying of a blue notice at or on the premises and details of the review to be published on the Council's website.

2. **Current Premises Licence**

- 2.1 A copy of the current licence is attached at **Appendix 3**.
- 2.2 The premises licence holder is Kate and Luc Café Ltd who has held the licence since 18 September 2014.
- 2.3 The designated premises supervisor is Lucjan Domanski who has held this position since 18 September 2014.
- 2.4 The licensable activities permitted by the licence are:

Licensable activities authorised by the licence

1. The sale by retail of alcohol*

* All references in this licence to "sale of alcohol" are to sale by retail.

The times the licence authorises the carrying out of licensable activities

Sale by retail of alcohol

Standard timings

<u>Day</u>	<u>Mon</u>	<u>Tue</u>	<u>Wed</u>	<u>Thu</u>	<u>Fri</u>	<u>Sat</u>	<u>Sun</u>
<u>Start</u>	<u>1700</u>	<u>1700</u>	<u>1700</u>	<u>1700</u>	<u>1700</u>	<u>1700</u>	<u>1700</u>
<u>Finish</u>	<u>2200</u>	<u>2200</u>	<u>2200</u>	<u>2200</u>	<u>2200</u>	<u>2200</u>	<u>2200</u>

The sale of alcohol is licensed for consumption on the premises only.

Seasonal variations and Non standard Timings:

None

Hours premises are open to the public

Standard timings							
<u>Day</u>	<u>Mon</u>	<u>Tue</u>	<u>Wed</u>	<u>Thu</u>	<u>Fri</u>	<u>Sat</u>	<u>Sun</u>
<u>Start</u>	<u>0800</u>	<u>0800</u>	<u>0800</u>	<u>0800</u>	<u>0800</u>	<u>0800</u>	<u>0800</u>
<u>Finish</u>	<u>2300</u>	<u>2300</u>	<u>2300</u>	<u>2300</u>	<u>2300</u>	<u>2300</u>	<u>2300</u>
<u>Seasonal variations and Non standard Timings:</u>							
None							

3. **Relevant Representations**

- 3.1 Representations may be made for or against a review application during the consultation period. To be 'relevant' and, therefore, able to be taken into account in determining the application, they must relate to one or more of the licensing objectives. Representations may be made by the holder of the premises licence, a responsible authority or any other person. Where representations are made by persons who are not a responsible authority, they must not be frivolous or vexatious.
- 3.2 A total of 1 relevant representation has been received in respect of this review (**Appendix 5**). The personal details of all members of the public have been redacted. Original copies of the representations will be available to the Panel at the hearing. Representations were received from the following persons / bodies:

Responsible Authorities:

- Greater Manchester Police
- Licensing Out of Hours Compliance

Summary of the representation(s):

Party	Grounds of representation
Greater Manchester Police	GMP is firmly of the opinion that these premises are undermining the Licensing Objectives of the Prevention of Crime and Disorder, the Prevention of Public Nuisance and Public Safety. GMP has been receiving reports from members of the public regarding the premises allowing customers to eat and drink inside the premises since the middle of January this year. The DPS has also not been at all cooperative with officers and has behaved in a defiant manner with regard to lockdown rules.
Licensing Out of Hours Compliance	LOOH believe the premises licence holders have shown an inability to uphold the licencing objectives. LOOH conclude both Mr Lucjan Domanski and Mrs Katarzyna Korzewnikow-Domanska have complete disregard for the Licensing Act 2003, LOOHT, ASBAT, GMP and the Licensing Authority, and the safety of its customers and any of the wider community that may have come into contact with the premises over the last few months during the Pandemic.

	<p>The licence holders have chosen to operate in a way that would further increase the spread of COVID 19. They have refused any advice, verbal or written from Council officers. They have sought to profit by operating as normal whilst numerous other café/restaurants have followed instructions to remain closed and/or operate within the Government Guidelines and Regulations.</p>
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4. **Additional information**

4.1 No additional information has been received from any party to the review.

5. **Key Policies and Considerations**

5.1 **Legal Considerations**

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

5.2 **New Information**

5.2.1 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.

5.3 **Hearsay Evidence**

5.3.1 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.

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

5.4.1 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.

5.4.2 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.

- 5.4.3 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.

5.5 **Manchester Statement of Licensing Policy**

- 5.5.1 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.

- 5.5.2 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.

- 5.5.3 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.

- 5.5.4 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 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
- MS3 Responsible promotion and sale of alcohol
- MS4 Prevent the use of illegal drugs, new psychoactive substances (NPS) and the spiking of drinks at the premises
- MS5 Prevent on-street consumption of alcohol
- MS6 Provide a Duty of Care for intoxicated or vulnerable customers and medical emergencies
- MS7 Maintain a safe capacity
- MS8 Prevent noise nuisance from the premises
- MS9 Effectively manage exterior spaces (eg beer gardens, smoking areas, table and chair areas on the highway)
- MS10 Operate effective cleansing arrangements, including ensuring the premises and surrounding area are kept clean and free of litter, and adequate arrangements for the secure and responsible storage of refuse
- MS11 Ensure the wellbeing of children on the premises
- MS12 Prevent underage sales of alcohol, including proxy sales

6. Conclusion

- 6.1 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.
- 6.2 In considering the matter, the Panel should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the licence holder. In reaching the decision, regard must also be had to relevant provisions of the national guidance and the Council's licensing policy statement.
- 6.3 The authority must take such of the steps below as it considers appropriate for the promotion of the licensing objectives. The steps are –
 - a) to modify the conditions of the licence;
 - b) to exclude a licensable activity from the scope of the licence;
 - c) to remove the designated premises supervisor;
 - d) to suspend the licence for a period not exceeding three months;

e) to revoke the licence.

- 6.4 The conditions of the licence are modified if any of them is altered or omitted or any new condition is added.
- 6.5 All licensing determinations should be considered on the individual merits of the case.
- 6.6 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.
- 6.7 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.
- 6.8 **The Panel is asked to take such steps, as set out in 6.3 above, as it considers appropriate for the promotion of the licensing objectives.**