

**Manchester City Council  
Report for Resolution**

**Report to:** Licensing Sub-Committee Hearing Panel – 4 May 2021

**Subject:** El Diablo Tequila and Taco Bar, Arch 11 & 12, Deansgate Locks, Whitworth Street West, Manchester, M1 5LH - App ref: Premises Licence variation 256179

**Report of:** Director of Planning, Building Control & Licensing

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**Summary**

Application for the variation of a premises licence which has attracted objections.

**Recommendations**

That the Committee determine the application.

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**Wards Affected:** Deansgate

| <b>Manchester Strategy Outcomes</b>   | <b>Summary of the contribution to the strategy</b>  |
|---|---|
| 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 Policy and implementation 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

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**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 2017
- Any further documentary submissions by any party to the hearing

## 1. **Introduction**

- 1.1 On 5 March 2021, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of El Diablo Tequila and Taco Bar, Arch 11 & 12, Deansgate Locks, Whitworth Street West, Manchester, M1 5LH in the Deansgate ward of Manchester. A location map of the premises is attached at **Appendix 1**.
- 1.2 A 28-day public consultation exercise was 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, a notice published in a newspaper or similar circulating in the local area, and details of the application published on the Council's website.
- 1.3 Representations may be made for or against an application during the consultation period. To be 'relevant' and, therefore, able to be taken into account in determining the application, they must be about the likely effect of the grant of the premises licence on the promotion of the licensing objectives. Where representations are made by persons who are not a responsible authority, they must not be frivolous or vexatious.
- 1.4 Relevant representations have been received in respect of this application and so it must be determined by a Licensing Hearing Panel in accordance with the Council's Constitution.

## 2. **Current Licence**

- 2.1 The premises licence holder is Mr John Rennie and a copy of the current licence is attached at **Appendix 2**.

## 3. **The Application**

- 3.1 A copy of the application is attached at **Appendix 3**.

- 3.2 The variation is to:-

To remove Condition 27 of Annex 2 to allow customers to consume alcohol in the external area until the premises closes.

To amend Condition 5 of Annex 3 so that the external bar can be used until 3am.

There are no changes to any other part of the licence.

To remove Condition 27 Annex 2:-

The use of the external seating and drinking area shall cease at 0100.

To amend Condition 5 Annex 3 from:-

The sale of alcohol from the outdoor portable bar will cease sales at 0:45 hours, the bar will be covered and rendered unusable at that time and the bar must be taken indoors when the premises closes.

To read:-

The sale of alcohol from the outdoor portable bar will cease sales at 3am, the bar will be covered and rendered unusable at that time and the bar must be taken indoors when the premises closes.

Hours and licensable activities:

Provision of regulated entertainment (plays, films, indoor sporting events live music, recorded music, performances of dance and anything of a similar description to live music, recorded music or performances of dance):

Current hours: Mon to Sun 11am to 4am

Provision of late night refreshment:

Current hours: Mon to Sun 11pm to 4.30am

Supply of alcohol for consumption both on and off the premises:

Current hours: Mon to Sun 11am to 4am

Opening hours:

Current hours: Mon to Sun 11am to 4.30am

Steps to promote licensing objectives as given by the applicant

None beyond existing conditions on the licence”.

3.2.1 In accordance with the Live Music Act 2012 and Deregulation Act 2015, performances of Live Music and Recorded Music between the hours of 0800 and 2300 hours have been deregulated and so should not be regarded as licensable activities for the purposes of this application.

3.2.2 Any further details provided relating to any of the individual licensable activities are specified on the application form at **Appendix 3**.

### 3.3 **Activities unsuitable for children**

3.3.1 The applicant has not highlighted any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.

### 3.4 **Steps to promote the licensing objectives**

3.4.1 The applicant proposes to promote the licensing objectives by taking the steps identified in the operating schedule.

3.4.2 These steps must be translated into conditions by the licensing authority to be included in any granted premises licence, unless the conditions are modified by the Panel following consideration of relevant representations. These conditions are set out in the Schedule of Conditions at **Appendix 6**.

**3.5 Further documentation accompanying the application**

3.5.1 The applicant has submitted the following documents in support of their application, which are included with the application form at **Appendix 4**:

- Smoking Policy
- Dispersal Policy

**4. Relevant Representations**

4.1 A total of 3 relevant representations were received in respect of the application (**Appendix 5**) plus 2 letters of support to Councillor representation. The personal details of all members of the public have been redacted. Original copies of these representation will be available to the Committee at the hearing.

Responsible Authorities:

- Greater Manchester Police;
- MCC Licensing and Out of Hours Compliance Team;
- Deansgate Ward Councillors;

4.2 Summary of the representations:

| <b>Party</b>   | <b>Grounds of representation</b>  | <b>Recommends</b> |
|--|---|-------------------|
| <b>GMP</b>   | Public nuisance, noise issues due to opening of large residential building during lockdown period.  | Refuse            |
| <b>Licensing and Out of Hours Compliance</b>                                       | Prevention of crime and disorder, Public Safety, The Prevention of public Nuisance and the Protection of Children from harm. LOOH believes that the hours applied for in the outside seating area are excessive and will cause issues with noise and disturbance to local residents. The removal of current conditions would impact on these residents. | Refuse            |
| <b>Deansgate Ward Councillor, plus 2 letters of support from other councillors</b> | Public nuisance, the councillor objects to the removal of the conditions on the grounds of noise issues to local residents.   | None              |

## 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 for all parties involved in licensing. 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 Section 4 of the Policy (Operation of the Policy) sets out how the Licensing Policy is intended to be used in practice for licence applications and licensed premises.

5.5.4 Relevant to this application and the grounds of the representations made, 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 when preparing their operating schedule and address any local factors relevant to their premises.

Having regard to the grounds of the representations made, the Panel are recommended to have regard to the following Factors:

- Evidence of pre-existing problems in the area
- Proximity of takeaways and off-licences to nightlife entertainment areas
- Consistency with relevant Council strategies
- The proximity of the premises to local residents and other local businesses, particularly in relation to the potential for nuisance
- The availability of transport to and from 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, and applicants are not obliged to include all standards in their operating schedule. 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
- 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 (e.g. beer gardens, smoking areas, table and chair areas on the highway)
- MS12 Prevent underage sales of alcohol, including proxy sales

### **Section 9: Alcohol delivery services**

This section sets out specific provisions for alcohol delivery services to be considered in conjunction with relevant standards from Section 8 of the Policy

### **Section 10: Adult entertainment (including striptease, nudity and other entertainment of a sexual nature)**

This section sets out specific considerations in respect of applications to provide adult entertainment, including entertainment of a sexual nature e.g. nudity, striptease and lap dancing.

### **Section 11: The use of tables and chairs on the public highway**

This section provides that the operation of any areas on the public highway licensed for tables and chairs should be considered with regard to all relevant Standards set out in Section 8 of the Policy.

### **Section 12: Premises Licences for large-scale public events**

This section sets out particular expectations regarding large scale public events, given the specific associated risks.

## **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:
  - the prevention of crime and disorder
  - public safety;
  - the prevention of public nuisance; and
  - 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 applicant or premises user as the case may be. 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 Panel must take such of the steps set out below that it considers appropriate for the promotion of the licensing objectives:
  - a) To grant the licence subject to the conditions consistent with the operating schedule accompanying the application, which the Panel may modify to such extent as they consider appropriate;
  - b) To reject the whole or part of the application
- 6.4 The conditions consistent with the operating schedule 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.
- 6.5 However, conditions should not be imposed on a licence which are unrelated to the variation sought.
- 6.6 All licensing determinations should be considered on the individual merits of the application.
- 6.7 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.
- 6.8 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.
- 6.9 **The Panel is asked to determine the application.**