

**Manchester City Council
Report for Resolution**

Report to: Licensing Sub-Committee Hearing Panel – 28 June 2021

Subject: West Coast Wines, 2 St Oswald's Road, Manchester, M19 3DR
(Review of Premises Licence, App ref - 257890)

Report of: Head of Planning, Building Control & Licensing

Summary

Review of the premises licence under s51 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 | |

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

Introduction

- 1.1 On 30 April 2021 an application was made by Louise Carter on behalf of Trading Standards under s51 of the Licensing Act 2003 for a Review of the Premises Licence for West Coast Wines, 2 St Oswald's Road, Manchester, M19 3DR in the Levenshulme ward of Manchester.
- 1.2 A location map and photograph of the premises is attached at **Appendix 1**.
- 1.3 A 28 day public consultation exercise has been 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 The licensing authority must hold a hearing to consider an application to review a premises licence and any relevant representations.

The Application

- 2.1 A copy of the application is attached at **Appendix 2**.
- 2.2 The applicant is Louise Carter on behalf Trading Standards.
- 2.3 The application for a review was submitted on the grounds that the licence holder has failed to uphold the licensing objectives the prevention of crime and disorder and public safety.
- 2.4 Further details of the grounds for the review are as follows:
A review application was submitted as Trading Standards have concerns that the premises are undermining the licensing objectives as they state that Illicit tobacco is being held for sale at the premises, the premises are not safe and that the premises have been operating whilst the Designated Premises Supervisor is not in control of day-to-day running of the business.

Following complaints being received, Trading standards officers visited the premises on 14/01/2020 and found illicit tobacco was being supplied from the premises. During the visit an inspection was carried out at the premises utilising a tobacco search dog. The dog detected a bag behind the counter, and found it to contain illicit tobacco Further illicit tobacco was found at the rear of the premises in a concealed container behind the counter and inside of a sweet tub. More illicit tobacco was found behind a sliding door at the bottom of the till.

The shop assistant at the time of the visit advised that the owner was a person who is not listed on the licence either as the premises licence holder or Designated premises supervisor.

Trading standards have made numerous attempts to contact the licence holder, Mr Amar Saleem, to no avail.

A further visit was made to the premises on 18th March 2020. The result of the visit found further illicit tobacco being held at the premises. The tobacco failed to comply with the Tobacco and Related Product Regulations 2016 and the Standardised Packaging of Tobacco Products Regulations 2015, by failing to be in the correct packaging and display the correct warnings.

It was also clear during the visit that the Premises Licence Holder/ Designated Premises Supervisor was no longer in control of the business, and the premises was operating without authorisation.

Safety concerns were also highlighted with electrical bare wires protruding from the walls. Subsequently the premises was referred to Greater Manchester Fire and Rescue Service who attended and advised that some of the bare wires protruding from the wall were in fact live wires. Further concerns were also highlighted which has resulted in a full compliance visit being conducted by the fire service in the future.

Trading standards are concerned that the business owner, Premises Licence holder and Designated Premises supervisor have no control over the business and there is an absence of any duty of care and disregard for promoting any of the licensing objectives.

Current Premises Licence

- 3.1 A copy of the current licence is attached at **Appendix 3**.
- 3.2 The premises licence holder is Mr Amar Saleem who has held the licence since 27/05/2014
- 3.3 The designated premises supervisor is Mr Amar Saleem who has held this position since 27/05/2014
- 3.4 The licensable activities permitted by the licence are:

| Sale by retail of alcohol | | | | | | | |
|--|------|------|------|------|------|------|------|
| Standard timings | | | | | | | |
| Day | Mon | Tue | Wed | Thu | Fri | Sat | Sun |
| Start | 0800 | 0800 | 0800 | 0800 | 0800 | 0800 | 0800 |
| Finish | 2300 | 2300 | 2300 | 2300 | 2300 | 2300 | 2300 |
| The sale of alcohol is licensed for consumption off the premises only. | | | | | | | |
| Seasonal variations and Non-standard Timings: | | | | | | | |
| None | | | | | | | |

| Hours premises are open to the public | | | | | | | |
|--|------|------|------|------|------|------|------|
| Standard timings | | | | | | | |
| Day | Mon | Tue | Wed | Thu | Fri | Sat | Sun |
| Start | 0700 | 0700 | 0700 | 0700 | 0700 | 0700 | 0700 |
| Finish | 2300 | 2300 | 2300 | 2300 | 2300 | 2300 | 2300 |
| Seasonal variations and Non-standard Timings: | | | | | | | |

None

Relevant Representations

- 4.1 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.
- 4.2 A total of 1 relevant representations have been received in respect of this application (**Appendix 4**)
- 4.3 Representations were received from the following Responsible Authority:
- MCC Licensing and Out of Hours Compliance Team;

Summary of the representation:

| Party | Grounds of representation | Recommends |
|---|--|--------------------------|
| Licensing and Out of Hours Compliance (LOOH) | LOOH have made a representation in support of the review application. LOOH have made visits to the premises and have found that the sale of alcohol has been authorised by a person who is not the designated premises supervisor. LOOH have also noted numerous breaches of the premises licence conditions. LOOH believe that due to the absence of the premises licence holder there has been a failure to promote the licensing objectives which has led to the breaches of the licence conditions. | No recommendation stated |

Additional information

- 5.1 Additional information has been received from the licence holder, attached at **Appendix 5**.

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.
- 6.5.4 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.

- MS2 Effective general management of the premises
- MS7 Maintain a safe capacity
- MS11 Ensure the wellbeing of children on the premises
- MS12 Prevent underage sales of alcohol, including proxy sales

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 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.
- 7.3 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.
- 7.4 The conditions of the licence are modified if any of them is altered or omitted or any new condition is added.
- 7.5 All licensing determinations should be considered on the individual merits of the application.
- 7.6 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.
- 7.7 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.
- 7.8 **The Panel is asked to take such steps, as set out in 7.3 above, as it considers appropriate for the promotion of the licensing objectives.**