

Manchester City Council

Report for Resolution

Report to: Licensing Sub-committee Hearing Panel – 3 August 2021

Subject: Joel's Grill, 317 Wilmslow Road, Manchester, M14 6NW - App ref: Premises Licence variation 257310

Report of: Director of Planning, Building Control & Licensing

Summary

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

Recommendations

That the Committee determine the application.

Ward Affected: Fallowfield

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

1. Introduction

- 1.1 On 19/04/2021, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of Joel's Grill, 317 Wilmslow Road, Manchester, M14 6NW in the Fallowfield 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 Joel's Grill Ltd 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:

The application is to permit the sale of alcohol (both on and off the premises) every day from 11am until 11pm and to also update the premises licence plan as per the enclosed.

*Supply of alcohol for consumption both on and off the premises:
Current hours: (the premises is not currently licensed to sell alcohol)
Proposed hours: Mon to Sun 11am to 11pm*

- 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**.

4. **Relevant Representations**

4.1 A total of 8 relevant representations were received in respect of the application (**Appendix 5**). 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;

Other Persons:

- South East Fallowfield Residents Group;
- Fallowfield and Withington Community Guardians;
- Sherwood Tenants and Residents Association;
- Withington Civic Society
- Residents (x2).

4.2 Summary of the representations:

Party	Grounds of representation	Recommends
GMP	Representation submitted against the application on the grounds that all Four Licensing objectives would be likely to be undermined if the application were to be granted. GMP have made express reference in their representation to the fact that the premises is located within the Fallowfield-Wilmslow	Refuse

	<p>Road Special Policy Area and that, taking into account the numerous issues related to the sale and consumption of alcohol already affecting the locality (on-street drinking, alcohol related antisocial behaviour/public nuisance and begging activities, which all have a combined negative impact and effect upon local residents and visitors to the area), granting the application would only serve to unacceptably add further to the existing adverse situation affecting the area. The large, locally resident student population is also a factor in GMP determining that the application should be refused as it is regarded that</p> <p>Therefore, taking the reasons expressed via their representation, GMP are requesting that the application be refused.</p>	
<p>Licensing and Out of Hours Compliance</p>	<p>Representation served against the application on the grounds of the Licensing Objective relating to public nuisance likely to be being undermined if the application were to be granted.</p> <p>LOOH Compliance are concerned that, despite engaging in discussions with the applicant, it has not been adequately explained to them (by the applicant) that the proposal to provide off-sales of alcohol from the premises post 11.30pm (clarified as being via delivery only) would not serve to add further to the negative cumulative impact issues already affecting the local area (no additional information or conditions were/have been put forward to LOOH Compliance by the applicant in regard to this matter).</p> <p>As the applicant has not been able to satisfactorily demonstrate or explain to LOOH Compliance how the application would not contribute further to the negative cumulative impact issues currently affecting the locality they are requesting that the application be refused.</p>	<p>Refuse</p>
<p>South East Fallowfield Residents</p>	<p>SEFRG has submitted a representation against the application on the grounds of the Licensing Objectives relating to the</p>	

<p>Group</p>	<p>prevention of public nuisance, the prevention of crime and disorder and the upholding of public safety being negatively impacted upon should the application be granted.</p> <p>As with GMP and LOOH Compliance, SEFRG see no exceptional reasons being demonstrated via the application as to why the Cumulative Impact Policy should be departed from. SEFRG are satisfied that there are enough licensed premises already operating in the locality, that provide adequate levels of service and entertainment to local residents/visitors to the area, and that the addition of another licensed premises would only serve to further exacerbate and increase the levels of antisocial incidents/issues already affecting the local area.</p> <p>SEFRG are, therefore, requesting that the application be refused.</p>	
<p>Fallowfield and Withington Community Guardians</p>	<p>FWCG are objecting to the application on the grounds of the Licensing Objectives relating to public nuisance and crime and disorder likely to be being undermined should the application be granted.</p> <p>FWCG have expressed similar reasons as GMP, LOOH Compliance and SEFRG as to why the current Cumulative Impact Policy should not be departed from in regard to the application (as no exceptional reasons are being put forward by the applicant as to why the policy should be disregarded in reference to his application).</p> <p>Furthermore, the representation submitted by FWCG clearly illustrates the levels of antisocial behaviour and public nuisance issues that local residents are regularly subjected to (and have already experienced over a long period of time) and do not wish for the existing situation to be added to any further by the granting of the application. Therefore, FWCG are requesting that the application be refused.</p>	<p>Refuse</p>
<p>Withington Civic</p>	<p>Withington Civic Society have submitted a representation against the application on</p>	<p>Refuse</p>

<p>Society</p>	<p>the grounds of the Licensing Objectives relating to the prevention of public nuisance, the prevention of crime and disorder and the upholding of public safety.</p> <p>Furthermore, as with all previously recorded objections to the application, Withington Civic Society see no merits or exceptional reasons being displayed or demonstrated via the application that should convince the Licensing Authority to depart from its current Cumulative Impact Policy for the Fallowfield/Wilmslow Road Cumulative Impact Zone and that the application should, therefore, be refused.</p>	
<p>Sherwood Tenants and Residents Association</p>	<p>Sherwood TRA are objecting to the application on the grounds of the public nuisance, crime and disorder and public safety Licensing Objectives.</p> <p>The representation submitted by Sherwood TRA outlines specific reasons as to why the application should not be granted (i.e. alcohol fuelled noise nuisance and antisocial behaviour incidents impacting directly on residents living within the immediate vicinity of the Wilmslow Road corridor, adequate existing numbers of licensed retail/hospitality premises that are already providing sufficient means/opportunities to purchase alcohol for on/off sales consumption etc).</p> <p>Sherwood TRA also does not see any exceptionality in the application that means that the current Cumulative Impact Policy attached to the Fallowfield/Wilmslow Road Cumulative Impact Zone should be disregarded or set aside. Consequently so, Sherwood TRA are requesting that the application be refused.</p>	<p>Refuse</p>
<p>Residents (x2)</p>	<p>A local private resident and the manager of an elderly persons Sheltered Housing Scheme have both submitted representations against the application. In both instances, the representations have been submitted in regard to the undermining of the Licensing Objectives relating to public nuisance, crime and disorder and public safety (should the</p>	<p>Refuse</p>

	<p>application be granted).</p> <p>The manager of the elderly persons residence has described how intoxicated/inebriated persons loiter in the vicinity of the residential premises (creating noise and antisocial behaviour incidents/issues) and how, on occasion, such persons walk on to the grounds of the premises and even attempt to enter the (secure) premises, which causes distress and fear to the residents. It has been explained that such incidents usually occur in the evening, when there are no scheme staff present on the premises.</p> <p>The private resident has outlined how the ongoing alcohol-fuelled antisocial behaviour from persons patronising existing licensed premises impacts directly upon his premises (i.e. litter being casually thrown into his premises garden, inebriated persons attempting to trespass on to his premises to use the premises as a urinal, passing groups of drunken individuals creating noise disturbance, etc.).</p> <p>Both the private resident and the sheltered scheme manager have expressed concern at the application and neither see any reason for the current Cumulative Impact Policy to be disregarded and not adhered to in regard to the application. Consequently so, both persons are requesting that the application be refused.</p>	
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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 5: Special Policy Area

The premises is located within the following special policy area:

Fallowfield and Wilmslow Road

The effect of the Special Policy is that the Council will refuse applications for a new Premises Licence or Club Premises Certificate, or variation of an

existing licence or certificate, whenever it receives relevant representation, unless an applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact already being experienced. In relation to variations, this includes any variation that seeks to add a licensable activity, increase the capacity/size of a licensed premises, or extend the hours for licensable activities, but will usually exclude minor variations.

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:

- Identified risk factors specific to the licensed premises
- 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
- Proximity to sensitive uses

- Ability to clean and maintain the street scene

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
- MS2 Effective general management of the premises
- MS3 Responsible promotion and sale of alcohol
- 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
- 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:
- 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.**