

Manchester City Council
Report for Resolution

Report to: Licensing Sub-Committee Hearing Panel – 11 October 2021

Subject: AO Arena, Hunts Bank Approach, Manchester, M3 1AR - App ref: Premises Licence variation 261981

Report of: Director of Planning, Building Control & Licensing

Summary

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

Recommendations

That the Sub-Committee determine the application.

Wards Affected: Cheetham

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

1. **Introduction**

- 1.1 On 02 August 2021, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of AO Arena, Hunts Bank Approach, Manchester, M3 1AR in the Cheetham 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 SMG (UK) 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 remove the current operating schedule of conditions (both Annexes 2 and 3 of the licence) and replace with the conditions proposed within this application. All operating times and licensable activities authorised by the existing Premises Licence to remain unaltered.
 - 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 4**.

4. Relevant Representations

- 4.1 A total of 3 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;
- Licensing Authority

- 4.2 Summary of the representations:

Party	Grounds of representation	Recommends
GMP	<p>GMP have concerns that the way in which some of the conditions put forward are worded is too open to interpretation and lacks specific detail.</p> <p>GMP would have expected to have had sight of an overarching OMP which would form the framework for how all events are managed and then examples of event specific plans and procedures so that they could see whether they stood up to scrutiny and were fit for purpose.</p> <p>The condition relating to the new Protect Duty legislation mentions training but it doesn't state if this includes every person working at the venue or only specific persons and it doesn't say how often this training will be refreshed.</p>	Refuse

Licensing and Out of Hours Compliance	<p>LOOH have concerns that the conditions put forward by the applicant do not go far enough towards ensuring that the Licensing Objectives would be upheld.</p> <p>The LOOH team would like to see a base line Operational Management Plan in order to be able to fully understand the level of detail that should be expected in an updated OMP and to assess whether the new OMP is better able to promote the licensing objectives.</p> <p>LOOH would like more detail on how the smoking area is to be managed.</p> <p>LOOH would like the premises to consider a way of enabling access to Council officers on production of relevant ID without long delays in gaining entry as such delays have meant certain jobs are difficult to investigate (e.g. complaints about people smoking in the toilets).</p> <p>The conditions put forward relating to CCTV are not robust enough.</p> <p>In terms of Stewards and SIA staff at the venue, LOOH would like to see a proposal that would allow for clear identification of these separate roles.</p> <p>The LOOH would like to see a greater 'buy in' from the premises around tackling the issue of illegal street traders outside.</p> <p>The application makes several references to the training of staff yet there is no detail on when the initial training will be conducted.</p>	Refuse the application in its current form
Licensing	This revision of the Arena's licence conditions gives us an	Refuse the application in its

Authority	<p>opportunity to establish an exemplar model for the licensing of large-scale public built arenas given there is no established guidance on how such venues should be operated.</p> <p>The Licensing Authority would like clarification on whether the operational management plan would be overarching, generic documents (rather than event-specific), how the plans would be available to the Licensing Authority and Safety Advisory Group (SAG), and the scope of influence of the Licensing Authority and SAG on the content of the plans. The LA believes that more information is needed on the purpose, scope, role and process of how the OMP would operate in practise so as to ensure the promotion of the licensing objectives.</p> <p>The LA would also like further clarification on steps relating to CCTV, counter terrorism, first aid, cleansing and safeguarding.</p>	current form
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4.3 Any conditions proposed by objectors are set out in the Schedule of Conditions at **Appendix 4**.

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:

- Identified risk factors specific to the licensed premises
- 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
- 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.

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| 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 (e.g. 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

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.**