

**Manchester City Council
Report for Resolution**

Report to: Licensing Sub-Committee Hearing Panel – 28 December 2018

Subject: Summary Review of Factory, 118-120 Princess Street, Manchester, M1 7EN – (App Ref: 224069)

Report of: Head of Planning, Building Control & Licensing

Summary

Review of the premises licence under s53C of the Licensing Act 2003

Recommendations

That the Panel consider what steps are appropriate for the promotion of the licensing objectives taking into account any change in circumstances since any interim steps were imposed, consider any relevant representations, and review the interim steps already taken.

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

1. Introduction

- 1.1 On 3 December 2018, an application was made by Greater Manchester Police under s53A of the Licensing Act 2003 for a Summary Review of the Premises Licence for the Factory nightclub (also known as FAC251) on the corner of Princess Street and Charles Street in the Deansgate ward of Manchester. A location map of the premises is attached at **Appendix 1**.
- 1.2 Summary reviews can be undertaken when the police consider that the premises concerned are associated with serious crime or serious disorder (or both). The summary review process allows interim conditions to be quickly attached to a licence and a fast track licence review.
- 1.3 Within 48 hours of receiving a summary review application, under s53B of the Licensing Act 2003 the licensing authority must consider whether it is necessary to take interim steps pending the review of the licence for the promotion of the licensing objectives.
- 1.4 The premises licence holder may make representations against the interim steps taken by the licensing authority. On receipt of such representations, the licensing authority must (if the representations are not withdrawn) hold a hearing within 48 hours of their receipt.
- 1.5 The premises licence holder and Greater Manchester Police have been given notice of the hearing.

2. The Review Application

- 2.1 A copy of the application is attached at **Appendix 2**.
- 2.2 The application for a summary review was submitted on the grounds that the premises are associated with serious disorder following a violent incident in the early hours of Sunday 2 December 2018, involving multiple door supervisors from the venue and 2 customers who had been ejected from the club shortly before the incident.

3. Interim Steps currently in place

- 3.1 On 5 December 2018, a Licensing Sub-Committee Hearing Panel held a hearing to consider taking such interim steps and the decision of the Panel was to suspend the licence (**Appendix 3**).

4. Representations by the premises licence holder against the interim steps in place

- 4.1 On 18 December 2018, the premises licence holder represented by Woods Whur Solicitors made representations against the interim steps (**Appendix 4**).

5. Current Premises Licence

- 5.1 A copy of the current licence is attached at **Appendix 5**.

6. 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 There is no right of appeal to a magistrates' court against the licensing authority's decision at this stage.

6.3 Following this hearing to consider representations, the holder of the licence may only make further representations if there has been a material change in circumstances.

6.4 New Information

6.4.1 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.

6.5 Hearsay Evidence

6.5.1 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.

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

6.6.1 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.

6.6.2 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.

6.6.3 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.

6.7 **Manchester Statement of Licensing Policy**

- 6.7.1 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.
- 6.7.2 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.
- 6.7.3 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.

7. **Conclusion**

- 7.1 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.
- 7.2 At this hearing to consider representations against interim steps the Panel must:
- consider whether the interim steps are appropriate for the promotion of the licensing objectives; and
 - determine whether to withdraw or modify the steps taken.
- 7.3 The interim steps that the licensing authority must consider taking are:
- the modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail from the scope of the licence;
 - the removal of the designated premises supervisor from the licence; and
 - the suspension of the licence.
- 7.4 Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.
- 7.5 When considering the case the Panel must take into account:

- the senior police officer's certificate that accompanied the review application;
- the chief police officer's representations (if any); and
- any representations made by the premises licence holder.

7.6 All licensing determinations should be considered on the individual merits of the application.

7.7 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.

7.8 **The Panel is asked to:**

- a. consider whether the interim steps are appropriate for the promotion of the licensing objectives; and
- b. determine whether to withdraw or modify the steps taken.