

## Manchester City Council

### Report for Resolution

**Report To:** Licensing Subcommittee Hearing Panel – 23/10/2023

**Subject:** The Beer Studio, Bar and Kitchen, 256 Wilmslow Road, M14 6LB  
- Application reference: Premises Licence Variation 292737

**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:

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 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.
- Guidance issued under section 182 of the Licensing Act 2003.
- Any further documentary submissions by any party to the hearing

## **1. Introduction**

- 1.1 On 24/08/2023, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of The Beer Studio, Bar and Kitchen, 256 Wilmslow Road, Manchester, M14 6LB 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 Hydes Brewery Limited 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 asks to:

To remove all the conditions in Annex 2 and the condition in Annex 3, and to replace with more appropriate conditions where necessary.

To remove the permitted occupancy (converted from PEL): 200 persons.

The proposed new conditions are included at **Appendix 5** – Schedule of Conditions. The application does not ask to change the licensable activities or the times permitted by this 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 5**.

## 4. **Relevant Representations**

4.1 A total of **5** relevant representations were received in respect of the application (**Appendix 4**). 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:

- WITHDRAWN REPRESENTATION from MCC Licensing and Out of Hours Compliance Team (withdrawn 18/10/23)

#### Other Persons:

- Resident group x 1
- Individual resident x 4

<b>Party</b>	<b>Grounds of representation</b>	<b>Recom- mends</b>
<b>Licensing and Out of Hours Compliance</b>	<p>The representation made by LOOH proposed a number of conditions.</p> <p>The representation states that the conditions within it had been agreed with the applicant, however this was not the case. The applicant proposed amendments to the conditions which were later agreed to by LOOH.</p> <p>Discussions regarding the conditions is included in Appendix 4 – Representations. The finalised, agreed conditions are included in full in Appendix 5 - Schedule of Conditions. The agreed conditions are to be added to the licence in addition to those in the operating schedule.</p>	Grant with conditions

<p><b>RES1</b></p>	<p>This representation raises concerns “especially in relation to public nuisance and public safety”.</p> <p>RES1 considers that the conditions requested to be removed are appropriate and necessary, and that the “suggested replacement conditions are vague and general”.</p> <p>The representation gives details of events at the premises, one described as “an end of term earth shattering rave”. Flyers for similar events are presented, and the comment made that “The night and day economy from such premises causes huge distress to residents in our group and many other residents who suffer and don't know how to make their concerns heard because they are not in a residents group”.</p> <p>The representation concludes that “the need to have very strict conditions on all licensed premises in this area is paramount to protect residents in this suburb from noise and anti social behaviour”. The committee is urged to refuse removal of conditions.</p> <p>The applicant’s request to remove the capacity limit is also questioned – residents would wish to see a reduction in capacity.</p>	<p>Refuse</p>
<p><b>RES2</b></p>	<p>This resident strongly objects to the request to remove conditions, commenting that “my home area is being overrun by businesses that only cater to the transient student community. Lifting the condition will surely increase the noise issues to neighbours and the church nearby. Potentially later opening hours will in increase the litter and rubbish that already blights our neighbourhood”.</p>	<p>Refuse</p>
<p><b>RES3</b></p>	<p>This resident objects to the removal of conditions, which “help keep the public safe and deter an unacceptable noise level and anti-social behaviour”. The resident cites existing issues in the area arising from licensed premises, and refers to a flyer received by residents, commenting that this “appears to be connected to the above premises, is encouraging noisy parties by hiring out amplifiers. This shows no respect to local residents by the owners”</p>	<p>Refuse</p>

<b>RES4</b>	This resident objects to the removal of conditions and considers that “the licensing objectives of public safety and public nuisance would be undermined if these conditions are removed”. The resident urges the panel to “consider the needs of ordinary people in this residential area and refuse this application. We have the right to live in a place where we can work and sleep well - if not this undermines our wellbeing, our physical and mental health”.	Refuse
<b>RES5</b>	This resident supports the representation made by Fallowfield and Withington Community Guardians and considers the current conditions necessary, stating “They will ensure the safety of its young drinkers and prevent the undermining of the Licensing Objectives”. To back this up, the resident includes a number of emails that he/she sent to the Out of Hours Compliance team, reporting incidents in the area that gave rise to concerns about nuisance and public safety – with descriptions such as “unpleasant uneasy atmosphere” and “Noisy group disturbances by such groups - sometimes intimidating”. The resident has also made contact with this licensed premises.	Refuse

- 4.2 The conditions agreed with LOOH are set out in the Schedule of Conditions at **Appendix 5**. No conditions have been proposed by any other objector.
- 4.3 An agreement on conditions has been reached with LOOH. The conditions that have been agreed are not those originally proposed, but as amended by the applicant. LOOH agreed to the applicant’s amendments on 18/11/2023.
- 4.4 The conditions contained within the LOOH representation were mistakenly circulated by email to all objectors on 12/10/2023, asking whether these conditions satisfied their concerns. All representations except for RES2 were subsequently withdrawn.
- 4.5 When it came to light that the original LOOH conditions had not been agreed, a second email was sent to objectors notifying them of this error and that all representations still stand.
- 4.6 The finalised agreed conditions with LOOH were circulated to objectors on 18/10/2023.
- 4.7 The emails referred to in paras 4.4, 4.5 and 4.6 are included at **Appendix 6**. Any further correspondence will be provided to the Panel

## **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
- 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.

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| MS2  | Effective general management of the premises   |
| 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 |

## **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.**