

**Manchester City Council
Report for Resolution**

Report to: Licensing Sub-Committee Hearing Panel – 22 January 2024

Subject: Sky Lounge, 241 Barlow Moor Road, Manchester, M21 7QL
(Review of Premises Licence, App ref - 296081)

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: Chorlton Park

| 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. |

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| 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):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy, please contact one of the contact officers above.

- Manchester City Council Statement of Licensing Policy.
- Guidance issued under section 182 of the Licensing Act 2003.

- Licensing Act 2003 (Hearings) Regulations 2005
- Any further documentary submissions by any party to the hearing

1. Introduction

- 1.1 On 29/11/2023 an application was made by the Licensing Out of Hours and Enforcement Team under s51 of the Licensing Act 2003 for a Review of the Premises Licence for Sky Lounge, 241 Barlow Moor Road, Manchester, M21 7QL in the Chorlton Park ward of Manchester. A location map and photograph of the premises is attached at **Appendix 1**.
- 1.2 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.
- 1.3 The licensing authority must hold a hearing to consider an application to review a premises licence and any relevant representations.

2. The Application

- 2.1 A copy of the application is attached at **Appendix 2**.
 - 2.2 The applicant is the Licensing Out of Hours and Enforcement Team, on behalf of Environmental Health.
 - 2.3 The application for a review was submitted on the grounds that the licence holder has failed to uphold all four licensing objectives: ie the prevention of crime and disorder, public safety, the prevention of public nuisance, the protection of children from harm.
3. Further details of the grounds for the review are as follows:
- Persistent refusal from the licence holder to comply with the hours & multiple conditions of the licence
 - Refusal by the licence holder to provide CCTV in line with conditions & in connection with allegations of unauthorised licensable activities
 - Complaints received by members of the public relating to nuisance & licensing offences
 - Offences being committed under the Health Act 2006 relating to smoke free legislation

4. Current Premises Licence

- 4.1 A copy of the current licence is attached at **Appendix 3**.
- 4.2 The premises licence holder is Salar Henareh who has held the licence since 18/09/2023.
- 4.3 The designated premises supervisor named on the licence is Majid Mirzaeian. Para 6.3 gives information about the recent history regarding the DPS.
- 4.4 The licensable activities (were there a designated premises supervisor in place) and opening time permitted by the licence are:

| | |
|----------------------------|---------------------------|
| Sale by retail of alcohol* | Mon to Sun 11am to 9.30pm |
| Recorded music** | Mon to Sun 11am to 9.30pm |
| Opening times | Mon to Sun 11am to 9.30pm |

* The sale of alcohol is licensed for consumption on the premises only.
 ** Licensed to take place indoors only.

5. Relevant Representations

5.1 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.

5.2 A total of two relevant representations have been received in respect of this application (**Appendix 4**). The personal details of all members of the public have been redacted. Original copies of the representations will be available to the Panel at the hearing. Representations were received from the following persons / bodies:

Responsible Authority:

- Greater Manchester Police

Other Persons:

- Chorlton Park Ward Councillors

Summary of the representations:

| Party | Grounds of representation | Recommends |
|---------------------------|---|---|
| Greater Manchester Police | <p>GMP comment that at the time of submitting this representation the premises licence has been in in force for only 3 months.</p> <p>The representation gives details of an incident report filed in November. This was later expanded on and reports a number of complaints about the premises, details of which are included in the representation.</p> <p>A specific concern highlighted by GMP relates to non-compliance with CCTV requirements.</p> <p style="text-align: right;">Continued....</p> <p>On 12 December 2023 GMP emailed the premises licence holder to request CCTV footage from the premises. Subsequent email correspondence took place between the licence holder and GMP (copy attached to the</p> | <p>GMP “ask the committee to take appropriate measures to ensure that the licensing objectives do not continue to be undermined.”</p> |

| | | |
|---------------------------------------|--|------------|
| | <p>the GMP representation). At the time of submitting their representation GMP had not received an email to inform them that the requested CCTV has been downloaded and is available for collection.</p> <p>GMP conclude that they “do not believe that the operators are abiding by the conditions of their premises licence” and that they are undermining the 4 licensing objectives. GMP state their full support for the application to review the premises licence.</p> | |
| Chorlton Park Ward Councillors | <p>Councillors report that “Within the first week of opening, it was necessary to involve the LOOH team” due to issues raised by neighbours and observed by Councillors. Since the premises opened, Councillors “have received a stream of queries and complaints” about “a whole series of activities being undertaken at the premises in breach of licensing undertakings”.</p> <p>Examples of complaints received by Councillors are included in the representation, which are “hopefully enough to illustrate to the Committee that local residents have been caused significant and persistent disamenity by this business” by issues such as:</p> <ul style="list-style-type: none"> • Parking – “a clear lack of respect for the regulations and access rights in place on the street.” • Shisha – “there were lots of tables outside doing shisha and I thought it was explicitly stated shisha wouldn't be sold” • Loud music • Trading outside licensed hours • Bins on the pavement area • Store area - described as “overflowing”. <p>One resident summarised: “it makes you wonder how many other agreements will be broken”. The Councillors conclude by saying that the premises “has been a really extremely disruptive presence.”</p> | Not stated |

6. **Additional information**

6.1 Additional information has been received from the Licensing and Out of Hours team in support of their representation, attached as **Appendix 5**.

- 6.2 Blue notices: An appendix regarding blue notices has been added by the Premises Licensing team, attached as **Appendix 6**. This documents the history of blue notices at the premises. Notices were found to have been removed and had to be replaced on more than one occasion.
- 6.3 Application to vary the Designated Premises Supervisor (DPS):
- An application to vary the DPS from Majid Mirzaeian to Salar Henareh was received 2 December 2023 but was rejected as it was incomplete. The application was accepted 12 December 2023. The application requested to have immediate effect.
 - GMP objected to the application.
 - A hearing took place on 8 January 2024. The decision was to refuse the application. The person named as DPS therefore reverts to Majid Mirzaeian.
- 6.4 Layout plan attached to the licence
- The premises licensing team had email correspondence between 6 and 30 November with both the LOOH team and the premises licence holder regarding varying the plan attached to the licence.
 - An application to vary both the plan and the times on the licence was received by the Premises Licensing team on 12 December 2023. It was incomplete and was rejected on 13 December 2023. The application was resubmitted on 14 December and was rejected again on 15 December. The application has not been resubmitted at the time of publication of these papers.

7. **Key Policies and Considerations**

7.1 **Legal Considerations**

- 7.1.1 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005.

7.2 **New Information**

- 7.2.1 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.

7.3 **Hearsay Evidence**

- 7.3.1 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.

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

- 7.4.1 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.

7.4.2 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.

7.4.3 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.

7.5 **Manchester Statement of Licensing Policy**

7.5.1 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.

7.5.2 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.

7.5.3 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.

7.5.4 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.

- MS1 Implement effective security measures at the premises
- MS2 Effective general management of the premises
- MS3 Responsible promotion and sale of alcohol
- MS8 Prevent noise nuisance from the premises
- MS9 Effectively manage exterior spaces (eg 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

8. Conclusion

- 8.1 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.
- 8.2 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.
- 8.3 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.

- 8.4 The conditions of the licence are modified if any of them is altered or omitted or any new condition is added.
- 8.5 All licensing determinations should be considered on the individual merits of the application.
- 8.6 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.
- 8.7 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.
- 8.8 **The Panel is asked to take such steps, as set out in 8.3 above, as it considers appropriate for the promotion of the licensing objectives.**