

**Manchester City Council
Report for Resolution**

Report to: Licensing Subcommittee Hearing Panel – 10 June 2024

Subject: The Chorlton Green, 137 Beech Road, Manchester, M21 9EQ –
App ref: Variation of Premises DPS 300696

Report of: Director of Planning, Building Control & Licensing

Summary

Application for the grant of an application to vary a licence to specify an individual as premises supervisor, which has attracted objections.

Recommendations

That the Panel determine the application.

Wards Affected: Chorlton

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.
- 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 07/05/2024, an application to vary a premises licence to specify an individual as designated premises supervisor (DPS) under s37 of the Licensing Act 2003 was made in respect of The Chorlton Green, 137 Beech Road, Manchester, M21 9EQ in the Chorlton ward of Manchester. A location map and photograph of the premises is attached at **Appendix 1**.
- 1.2 Notice of the application was given to Greater Manchester Police in accordance with the Licensing Act 2003. The police may object to the designation of a new DPS where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective.
- 1.3 An objection must be given within the period of 14 days beginning with the day on which the police are notified of the application.
- 1.4 A representation from GMP has 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. The Application

- 2.1 A copy of the application is attached at **Appendix 2**.
- 2.2 The applicant is the licence holder, Thomas Davin.
- 2.3 The proposed designated premises supervisor is Garry Duncker.

3. GMP Representation

- 3.1 The representation from GMP is attached at **Appendix 3**. The personal details of all members of the public have been redacted. An unredacted copy of the representation will be available to the Panel at the hearing.
- 3.2 Summary of the representation:

Party	Grounds of representation	Recommends
GMP	<p>Mr Duncker lives in Scotland which is a large distance to travel to the premises. GMP are concerned that Mr Duncker will not be at the premises as often as would be required to ensure that the staff are upholding the licensing objectives.</p> <p>GMP have attempted to contact Mr Duncker by telephone and by email, but these attempts have been unsuccessful and as such our concerns have not been alleviated.</p> <p>GMP therefore ask that this DPS variation is refused.</p>	Refuse

4. Key Policies and Considerations

4.1 Legal Considerations

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

4.2 New Information

4.2.1 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.

4.3 Hearsay Evidence

4.3.1 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.

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

4.4.1 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.

4.4.2 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.

4.4.3 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.

4.5 Manchester Statement of Licensing Policy

4.5.1 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.

4.5.2 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.

- 4.5.3** 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.
- 4.6 A licensing authority must carry out its functions under the 2003 Act (“licensing functions”) with a view to promoting the licensing objective of the prevention of crime and disorder.
- 4.7 In considering the matter, the Panel should take into account the representation that has been received from Greater Manchester Police. In reaching the decision, regard must also be had to relevant provisions of the national guidance and the Council’s licensing policy statement.
- 4.8 Having regard to the representation, the Panel must –
- grant the application; or,
 - reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.
- 4.9 All licensing determinations should be considered on the individual merits of the application.
- 4.10 The Panel’s determination should be evidence-based, justified as being appropriate for the promotion of the crime prevention licensing objective and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.
- 4.11 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeal. Failure to give adequate reasons could itself give rise to grounds for an appeal.
- 4.12 The Panel is asked to determine the application**