

Manchester City Council

Report for Resolution

Report To: **Licensing Subcommittee Hearing Panel – 20/05/2019**

Subject: Victoria Inn, 196 Burnage Lane, Manchester, M19 1FL –
App ref: Premises Licence variation228341

Report of: Head of Planning, Building Control & Licensing

Summary

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

Recommendations

That the Committee determine the application.

Wards Affected:

Burnage

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 25/03/2019, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of Victoria Inn, 196 Burnage Lane, Manchester, M19 1FL in the Burnage ward of Manchester. A location map and photo 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 Punch Taverns 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 is to change the hours on the premises licence as outlined below. The application also requests amendments to conditions, details of which are given below.

Amendment to hours and licensable activities:

Provision of regulated entertainment (live music)

Current hours: Mon to Sat 11am to 11pm, Sun noon until 11pm

Proposed hours: Mon to Thurs 11am to 11.30pm, Fri and Sat 11am to midnight, Sun noon until 11.30pm

Provision of regulated entertainment (recorded music)

Current hours: Mon to Thurs 11am to 11pm, Fri and Sat 11am to midnight, Sun noon until 11pm

Proposed hours: Mon to Thurs 11am to 11.30pm, Fri and Sat unchanged (11am to midnight), Sun noon until 11.30pm

Provision of late night refreshment:

Current hours: Mon to Sat 11pm to 11.30pm, Sun not permitted

Proposed hours: Mon to Thurs 11pm to midnight, Fri and Sat 11am to 1am,
Sun 11pm until midnight

Supply of alcohol for consumption both on and off the premises:

Current hours: Mon to Thurs 11am to 11pm, Fri and Sat 11am to midnight,
Sun noon until 10.30pm

Proposed hours: Mon to Thurs 11am to midnight, Fri and Sat 11am to 1am,
Sun noon until midnight

In addition the application requests removal of the restriction on Christmas Day which only permits sale of alcohol from noon to 3pm, and 7pm to 10.30pm

Opening hours:

Current hours: Mon to Thurs 11am to 11.30pm, Fri and Sat 11am to half past midnight, Sun noon until 11.30pm

Proposed hours: Mon to Thurs 11am to half past midnight, Fri and Sat 11am to 1.30am, Sun noon until half past midnight

Amendment to conditions:

The application requests to:

Replace condition 6 Annex 2 with the following:

"Children are allowed on the premises when accompanied by a responsible adult until 9:00pm, unless they are finishing a table meal or attending a pre-booked private function when they will be allowed on the premises until the meal or function has finished". For information the existing condition 6 (to be removed) is "Persons under the age of 18 shall not be allowed on the premises, at any time that the premises are open to the public."

Remove condition 1 of annex 2:

For information, the condition requested to be removed is as follows –

The above time restrictions in relation to the hours for the sale of alcohol do not prohibit:

During the first twenty minutes after the above hours the consumption of the alcohol on the premises;

During the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
During the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption ancillary to the meals;

Consumption of the alcohol on the premises by, or the taking or sale or supply of alcohol to any person residing in the licensed premises;

The ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;

The sale of alcohol to a trader or club for the purposes of the trade or club;

The sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;

The taking of alcohol from the premises by a person residing there; or
The supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied; or the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

- 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 No additional steps, other than the amendments outlined at para 3.2 above, have been proposed by the applicant to promote the licensing objectives.

4. Relevant Representations

- 4.1 A total of 2 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:

- MCC Licensing and Out of Hours Compliance Team;

Other Persons:

- Residents (x1).

4.2 Summary of the representations:

Party	Grounds of representation	Recommends
Licensing and Out of Hours Compliance	<p>The representation comments on the proximity to residential premises, and gives information about complaints received from residents.</p> <p>Details are given of: observations carried out over a 6 month period in 2018; two action plans which have been drawn up for the premises; meetings and visits which have taken place; and breaches of the licence.</p> <p>The representation states: “The LOOHT have tried on many occasions to work with the premises licence holder and the DPS but they have failed to cooperate. Both action plans of 24th October 2018 and 2nd April 2019 now remain incomplete. “</p> <p>The representation concludes “there is little confidence that the Premises Licence Holder/DPS will effectively manage the dispersal of customers at later closing times. Patrons may congregate outside the premises later at night, talking loudly/ shouting and causing transient noise in a heavily residential area. As a consequence this would increase the risk of causing public nuisance to nearby residents.”</p>	Refuse
Residents (x1)	<p>This objector describes nuisance experienced from the premises as follows:</p> <p>“On a regular basis the level of noise coming from this establishment is unreasonable for a residential area. The noise is caused by loud music (both live and recorded), a heavy bass line and voices over microphones. The noise is worst at weekends, however has also affected us late into the night mid-week and on Sundays.”</p> <p>In addition: “We have had littering to the front yard of our property following customers leaving the premises, verbal and physical domestic disturbances between customers of the premises directly outside our home and drunk customers knocking on our door and requesting access to our property.”</p> <p>Damage to local property has also been</p>	Not stated

	witnessed. The objector comments that increasing the hours at the premises is likely to increase these problems	
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- 4.3 No conditions have been proposed by the objectors.
- 4.4 No agreements have been reached with the objectors.

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
- 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
- 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.

- MS2 Effective general management of the premises
- MS3 Responsible promotion and sale of alcohol
- MS8 Prevent noise nuisance from the premises
- 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.**