

**Manchester City Council  
Report for Resolution**

**Report to:** Licensing Subcommittee Hearing Panel – 10 June 2019

**Subject:** Wilderness Bar and Kitchen, 30-32 Thomas Street, Manchester, M4 1ER - App ref: Premises Licence variation 230968

**Report of:** Head of Planning, Building Control and 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:**

Piccadilly

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	
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**Full details are in the body of the report, along with any implications for:**

Equal Opportunities Policy  
Risk Management  
Legal Considerations

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### **Financial Consequences – Revenue**

None

### **Financial Consequences – Capital**

None

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### **Contact Officers:**

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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 24/04/2019, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of Wilderness Bar and Kitchen, 30-32 Thomas Street, Manchester, M4 1ER in the Piccadilly 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 Wilderness Trading 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 vary the layout of the licensed area in accordance with the plan submitted with the application.
- To add non-standard timings for film and live music in line with the other licensable activities
- To remove 'further details' in respect of live music.
- To vary the hours for the sale of alcohol so that they mirror the hours for regulated entertainment
- To vary the opening times to allow for dispersal

**Proposed hours and licensable activities:**

**Addition of Non-standard timings (NST) for the activities: Exhibition of Films and Live music (indoors only)**

Proposed NST:

From 10:00 on New Year's eve to the terminal hour on New Year's Day.  
On the day British Summer Time commences, one additional hour following the terminal hour.

**Removal of the further details section of live music**

Removal of the following sentence: Acoustic acts consisting of no more than 2 performers only.

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

Current hours:

Mon to Wed 11am to Midnight  
Thu 11am to 1am  
Fri and Sat 11am to 1.30am  
Sun 11am to midnight

Current NST: From 10:00 on New Year's eve to the terminal hour on New Year's Day. On the day British Summer Time commences, one additional hour following the terminal hour

Proposed Hours

Mon to Wed 9am to 12.30am  
Thurs 9am to 1.30am  
Fri and Sat 9am to 2am  
Sun 9am to 12.30am

Proposed NST: From 09:00 on New Year's eve to the terminal hour on New Year's Day. On the day British Summer Time commences, one additional hour following the terminal hour.

**Opening hours:**

Current hours:

Mon to Wed 11am to 12.30am  
Thurs 11am to 1.30am  
Fri and Sat 11am to 2am  
Sun 11am to 12.30am

Current NST: From 10:00 on New Year's eve to the terminal hour on New Year's Day. On the day British Summer Time commences, one additional hour following the terminal hour

### Proposed hours:

Mon to Wed 9am to 1am  
Thurs 9am to 2am  
Fri and Sat 9am to 2.30am  
Sun 9am to 1am

Proposed NST: From 09:00 on New Year's eve to the terminal hour on New Year's Day. On the day British Summer Time commences, one additional hour following the terminal hour.

### **Steps to promote licensing objectives as given by the applicant**

As per the existing 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.

## **4. Relevant Representations**

- 4.1 A total of one relevant representations were received in respect of the application (**Appendix 5**). 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 (LOOH)

### 4.2 Summary of the representations:

Party	Grounds of representation	Recommends
<b>Licensing and Out of Hours Compliance (LOOH)</b>	LOOH have objected to the application on the grounds that the removal of the existing limitation on the licence <i>Acoustic acts consisting of no more than 2 performers only</i> is likely to lead to issues of public	Grant with the existing condition: Acoustic acts consisting of no more than 2 performers only

	<p>nuisance.</p> <p>LOOH also state that due to the area being heavily residential, the removal of the condition will lead to potential noise disturbance for residents in the area and other commercial premises during the operating hours</p> <p>LOOH request that this condition remains on the licence</p>	
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## **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:

- 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

### ***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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| MS1 | Implement effective security measures at the premises   |
| MS2 | Effective general management of the premises  |
| MS3 | Responsible promotion and sale of alcohol   |
| MS4 | Prevent the use of illegal drugs, new psychoactive substances (NPS) and the spiking of drinks at the premises |
| MS5 | Prevent on-street consumption of alcohol  |
| MS6 | Provide a Duty of Care for intoxicated or vulnerable customers and medical emergencies                        |
| 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
- MS11 Ensure the wellbeing of children on the premises
- MS12 Prevent underage sales of alcohol, including proxy sales

### ***Section 9: Alcohol delivery services***

This section sets out specific provisions for alcohol delivery services to be considered in conjunction with relevant standards from Section 8 of the Policy

### ***Section 10: Adult entertainment (including striptease, nudity and other entertainment of a sexual nature)***

This section sets out specific considerations in respect of applications to provide adult entertainment, including entertainment of a sexual nature e.g. nudity, striptease and lap dancing.

### ***Section 11: The use of tables and chairs on the public highway***

This section provides that the operation of any areas on the public highway licensed for tables and chairs should be considered with regard to all relevant Standards set out in Section 8 of the Policy.

### ***Section 12: Premises Licences for large-scale public events***

This section sets out particular expectations regarding large scale public events, given the specific associated risks.

## **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.