

**Manchester City Council  
Report for Resolution**

Report to: Licensing Subcommittee Hearing Panel – 14 June 2019

Subject: Kiki, 4 Canal Street, Manchester, M1 3HE - ref: LTN232742

Report of: Head of Planning, Building Control & Licensing

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**Summary**

Submission of a temporary event notice where an objection notice has been given.

**Recommendations**

That the Panel consider the objection notices and give a counter notice where it considers it appropriate.

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**Ward Affected:** Piccadilly

<b>Manchester Strategy Outcomes</b>	<b>Summary of the contribution to the strategy</b>
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	
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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:**

Name: Fraser Swift  
Position: Principal Licensing Officer  
Telephone: 0161 234 1176  
E-mail: [f.swift@manchester.gov.uk](mailto:f.swift@manchester.gov.uk)

Name: Helen Howden  
Position: Technical Licensing Officer  
Telephone: 0161 234 4294  
E-mail: [premises.licensing@manchester.gov.uk](mailto:premises.licensing@manchester.gov.uk)

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

## 1. **Introduction**

- 1.1 On 25 May 2019, a temporary event notice (TEN) was given under s100A of the Licensing Act 2003 in respect of Kiki, 4 Canal Street, Manchester, M1 3HE in the Piccadilly ward of Manchester. A location photo and map of the premises is attached at **Appendix 1**.
- 1.2 In accordance with Licensing Act 2003 regulations, Greater Manchester Police (GMP) and Licensing Out of Hours Compliance (LOOH) were notified of the TEN.
- 1.3 Where either GMP or LOOH is satisfied that allowing the premises to be used in accordance with the TEN would undermine a licensing objective, they must give an objection notice to the relevant licensing authority, the premises user, and to every other relevant person.
- 1.4 The objection notice must be given no later than three working days after the day on which the objector is given the TEN.
- 1.5 An objection notice has been received in respect of this TEN and so it must be determined by a Licensing Hearing Panel in accordance with the Council's Constitution.

## 2. **The Notice**

- 2.1 A copy of the TEN is attached at **Appendix 2**.
- 2.2 The premises user is Mr Adam Edwards.
- 2.3 The description of the event is: Small pop up bar opposite entrance doors.
  - 2.3.1 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 TEN.
  - 2.3.2 Any further details provided relating to any of the individual licensable activities are specified on the TEN at **Appendix 2**.
  - 2.3.3 The premises is subject to a premises licence issued under the Licensing Act 2003. A copy of the licence is included at **Appendix 4**.
- 2.4 **Activities unsuitable for children**
  - 2.4.1 The premises user 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.
- 2.5 **Further documentation accompanying the application**
  - 2.5.1 No further documents were submitted in support of the TEN at the time that it was submitted. Since the objections were made, correspondence has been

received on behalf of the premises user in support of the TEN going ahead. The correspondence is attached as **Appendix 5**.

**3. Objection Notice(s)**

3.1 Objection notices were received from GMP and from LOOH in respect of the TEN (**Appendix 3**). The personal details of all members of the public have been redacted. Original copies of these objections will be available to the Panel at the hearing.

3.2 Summary of the objections:

Party	Grounds of representation	Recommends
<b>GMP</b>	<p>GMP report that there is an “informal agreement to not have venues selling directly onto Canal Street – this has been an ongoing agreement for many years and is fully supported by the Pride organisers and all other venues.” The basis for the objection is:</p> <ul style="list-style-type: none"> <li>• Canal Street especially becomes extremely congested. Additional queueing for a bar will cause further congestion, likely to undermine the public safety objective.</li> <li>• Allowing the TEN is likely to cause a “ripple effect” with other venues applying to serve alcohol onto Canal Street. This could harm Public Safety and Crime &amp; Disorder objectives.</li> </ul>	Serve a counter notice
<b>Licensing and Out of Hours Compliance</b>	<p>The LOOH team believe that it is highly likely that the licensing objectives will not be upheld and object on the following grounds:</p> <ul style="list-style-type: none"> <li>• The TEN is likely to result in significant congestion of people outside the premises causing an obstruction to pedestrians.</li> <li>• There will be associated litter from people stopping, eating and drinking without anywhere to discard used receptacles.</li> <li>• The TEN states that there will be only 20 people present including staff, it is unclear how people will be moved on or managed to ensure that this limit is complied with.</li> </ul>	Serve a counter notice

	<ul style="list-style-type: none"> <li>• There is no reference as to how security will operate within this area, which has the potential to put greater pressure on the teams that facilitate smooth running of the Manchester Pride event.</li> <li>• A bar in the proposed location on the highway opposite Kiki will encourage street drinking and it will be difficult for the premises to monitor proxy sales and service to intoxicated persons</li> </ul>	
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#### **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.

4.5.4 Where the authority considers that to impose on the TEN one or more of the conditions from a premises licence or club premises certificate in force at the premises (insofar as such conditions are not inconsistent with the event) is appropriate for the promotion of the licencing objectives, the policy is to give notice to the premises user that includes a statement of the conditions imposed. Copies of this notice will be provided for GMP and LOOH.

4.5.5 Where, following any representations at the hearing, the licensing authority is not satisfied the event will ensure the promotion of the licensing objectives, the policy is to issue a counter-notice against the Temporary Event Notice.

#### **Conclusion**

4.6 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.

4.7 In considering the matter, the Panel should take into account any objections that have been received from GMP or LOOH, 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.

4.8 Having regard to the objection notice(s), the panel must give the premises user a counter notice if it considers it appropriate for the promotion of a licensing objective to do so.

- 4.9 If the panel decides not to give a counter notice the panel may impose one or more conditions on the TEN if –
- the authority considers it appropriate for the promotion of the licensing objectives to do so,
  - the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of the same premises, or any part of the same premises, as the temporary event notice, and
  - the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.
- 4.10 All licensing determinations should be considered on the individual merits of the notification.
- 4.11 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.
- 4.12 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.
- 4.13 **The Panel is asked to determine the temporary event notice.**