

Manchester City Council

Report for Resolution

Report to: Licensing Sub-Committee Hearing Panel – 11 July 2019

Subject: Obsessions, First Floor, 2b Whitworth Street West, M1 5WZ –
(App ref: Premises Licence variation 226989)

Report of: Head of Planning, Building Control and Licensing

Summary

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

Recommendation

That the Committee determine the application.

Wards Affected:

Deansgate

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

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 18/02/2019, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of Obsessions, First Floor, 2b Whitworth Street West, Manchester, M1 5WZ in the Deansgate 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 Primehill Properties 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 requests to
- a) Extend the hours for licensable activities each Friday and Saturday;
 - b) Extend the hours for licensable activities on Sundays preceding a Bank Holiday Monday and the morning following any UEFA Champions League Football Match played at either the Etihad Stadium (Manchester City) or Old Trafford (Manchester United) until 06:00; and
 - c) Make amendments to conditions

Further details are as follows:

a) Proposed amendments to hours on Fridays and Saturdays

Provision of regulated entertainment (live music, recorded music, performances of dance and anything of a similar description to live music, recorded music or performances of dance):

Current hours: Mon to Sun 12noon to 4am

Proposed hours: Mon to Thurs 12noon to 4am, Fri & Sat noon to 6am

Supply of alcohol for consumption on the premises only:

Current hours: Mon to Sun 12noon to 4am

Proposed hours: Mon to Thurs 12noon to 4am, Fri & Sat noon to 6am

Opening hours:

Current hours: Mon to Sun 12noon to 4.30am

Proposed hours: Mon to Sun 12noon to 4.30am, Fri & Sat noon to 6.30am

b) Proposed amendments to hours at other times

Sundays preceding a Bank Holiday Monday and the morning following any UEFA Champions League Football Match played at either the Etihad Stadium (Manchester City) or Old Trafford (Manchester United) until 06:00.

From the start of permitted hours on New Year's Eve to the end of permitted hours on New Year's Day.

An additional hour on the day British Summer Time commences.

c) Proposed amendments to conditions/ steps to promote licensing objectives as given by the applicant

The application proposes to add and amend conditions as follows:

Conditions to be added:

There will be no entry or re-entry allowed at the premises after 03:30 apart from smokers returning from the designated smoking area.

A minimum of 1 member of door staff to remain on site for 30 minutes following close on those days when the premises are trading until 06:00.

Condition to be amended:

Annex 3, condition 8: The application request to amend the wording within this condition from "The time of any breaks taken whilst on duty" to "The time of any meal breaks taken whilst on duty".

(For information the full condition is: "A written record shall be kept on the premises by the Designated Premises Supervisor of every person employed on the premises as a door supervisor in a register kept for that purpose. That record shall contain the following details: (a) the door supervisor's name, date of birth and home address; (b) his/her Security Industry Authority licence number; (c) the time and date he/she starts and finishes duty; (d) the time of any breaks taken whilst on duty; (e) each entry shall be signed by the door supervisor.")

- 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 premises also holds a sex establishment licence.
- 3.4 **Steps to promote the licensing objectives**
- 3.4.1 The applicant proposes to promote the licensing objectives by adding and amending conditions as outlined para 3.2 (c) above. No additional steps have been identified in the operating schedule of the application.
- 3.4.2 The conditions referred to above are to be included in any granted premises licence, unless the conditions are modified by the Panel following consideration of relevant representations. The conditions are set out in the Schedule of Conditions at **Appendix 5**.

4. Relevant Representations

- 4.1 A total of two relevant representations were received in respect of the application (**Appendix 4**).

Responsible Authorities:

- Greater Manchester Police;
- MCC Licensing and Out of Hours Compliance Team;

- 4.2 Summary of the representations:

Party	Grounds of representation	Recommends
GMP	<p>There are pre-existing problems requiring police assistance in the area, and “in the early hours a significant number of the calls made to the police relate to the premises in this area and the locality in general”</p> <p>The hours requested are later than other premises in the area which GMP consider “will probably lead to issues on the door, with new customers coming from the other venues on the Locks and</p>	Refuse

	<p>trying to gain entry. This will then see an increase in calls to service that GMP are already overstretched to deal with”</p>	
<p>Licensing and Out of Hours Compliance</p>	<ul style="list-style-type: none"> • The premises is in an area with a mix of licensed premises and other commercial premises, with residential accommodation nearby. The latest time nearby bars are open to is 4am. Deansgate rail station is approx. 20m away. The objection raises the following concerns: • Intoxicated customers will be leaving the premises at times when a significant number of commuters will be making their way into the city centre for work during the daytime economy. • Potential for public nuisance from noise and/or drunken behaviour from customers leaving, and from people smoking outside. • The premises will become a ‘go to’ premises for football fans, potentially in large numbers, wanting to stay out after other bars have closed. • The potential that customers leaving will go directly onto public transport, including to the airport, having consumed alcohol until 6am. • The ability of the Council to clean and maintain the street scene ahead of the arrival of the day time economy. • The probability that patrons arriving at the premises will have already been drinking for an extended period of time. • Potential for large numbers of 	<p>Refuse</p>

	<p>people attempting to gain entry and subsequently loitering outside the premises if refused entry.</p>	
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4.3 No conditions have been proposed by either of the objectors, and no agreements have been reached.

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.

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| MS1 | Implement effective security measures at the premises |
| 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 |

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.

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.**