

Manchester City Council

Report for Resolution

Report to: Licensing Subcommittee Hearing Panel – 12 August 2019

Subject: Premises Licence Variation - The Shiredale, 102 Fernclough Road, Manchester, M9 5UR (application ref: 233586)

Report of: Director 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: Harpurhey

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	An effective licensing system supports and enables growth and employment in our City

and work.	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 20/06/2019, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of The Shiredale, 102 Fernclough Road, Manchester, M9 5UR in the Harpurhey 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 Miss Debra Jayne Thompson 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 as follows:

Description of proposed variation as given by the applicant:

- I. To extend the opening hours of the premises
- II. To extend the retail sale of alcohol / late night refreshment and regulated entertainment times
- III. To remove Condition 9, Annex 3 in order allow children on the premises until the later time of 10pm (this would be at our discretion – not every customer's child would be allowed on the premises, just on private bookings and also for the children of regular customers. Children would still not be allowed on the premises unaccompanied by an adult and would be supervised by staff at all times.)
- IV. To remove Condition 25, Annex 3 (relating to risk assessments) as we will not take bookings that will jeopardise the safety of our staff or other members of the public

- V. To amend Condition 26, Annex 3 so that all references to the random search policy are removed.

Proposed hours and licensable activities:

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

Current hours: Mon to Sun 10am to midnight

Proposed hours: no changes proposed to hours

Provision of regulated entertainment (recorded music):

Current hours: Mon to Sun 10am to midnight

Proposed hours: Sun to Thurs 10am to midnight, Fri and Sat 10am to 2am

Proposed seasonal variation: New Year's Day: 10am to 2am, Boxing Day 10am to 2am

Provision of regulated entertainment (live music):

Current hours: Mon to Sun 10am to 11.30pm

Proposed hours: Sun to Thurs 10am to midnight, Fri and Sat 10am to 2am

Proposed seasonal variation: New Year's Eve 10am to 2am, Boxing Day 10am to 2am

Provision of late night refreshment:

Current hours: Mon to Sun 11pm to midnight

Proposed hours: Sun to Thurs 11pm to 1am, Fri and Sat 11pm to 2am

Proposed seasonal variation: New Year's Eve: 11pm to 3am, Christmas Day 11pm to 2am, Boxing Day 11pm to 2am

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

Current hours: Mon to Sun 10am to 11.30pm

Proposed hours: Sun to Thurs 9am to 1am, Fri to Sat 9am to 2am

Proposed seasonal variation: Christmas Day 9am to 2am, Boxing Day 9am to 2am

Opening hours:

Current hours: Mon to Sun 10am to midnight

Proposed hours: Sun to Thurs 9am to 2am, Fri to Sat 9am to 3am

Proposed seasonal variation: Christmas Eve 9am to 3am, Christmas Day 9am to 3am

- 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 The applicant proposes to promote the licensing objectives by taking the steps identified in the operating schedule.

3.4.2 These steps must be translated into conditions by the licensing authority to be included in any granted premises licence, unless the conditions are modified by the Panel following consideration of relevant representations. These conditions are set out in the Schedule of Conditions at **Appendix 5**.

4. **Relevant Representations**

4.1 A total of 3 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:

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

4.2 Summary of the representations:

Party	Grounds of representation	Recommends
GMP	The prevention of public nuisance – the proposed hours are considered excessive given the residential nature of the area and if granted would likely cause an unacceptable level of disturbance resulting from people leaving the premises and also using the smoking area	Refuse
Licensing and Out of Hours Compliance	The prevention of public nuisance – the proposed hours are considered excessive given	Part refuse, part grant

	<p>the residential nature of the area and if granted would likely cause an unacceptable level of disturbance (this includes the request to open an hour earlier in the morning). Also, the area around the premises already has high levels of antisocial behaviour and later opening hours could exacerbate this.</p> <p>The protection of children from harm – varying Condition 9, Annex 3 so as to allow children onto the premises beyond 2000 would undermine this licensing objective due to the presence of intoxicated adults and also possible drug use in the toilets.</p> <p>However, LOOH would support the removal of Condition 25, Annex 3 relating to the requirement to send risk assessments to GMP although would expect risk assessments to continue.</p> <p>LOOH would also support the amendment of Condition 25, Annex 3 as requested.</p>	
Greater Manchester Fire and Rescue	Public safety – the description of how fire safety has been assessed was inadequate	Grant with a condition

4.3 Any conditions proposed by objectors are set out in the Schedule of Conditions at **Appendix 5**.

4.4 Agreements on conditions have been reached with Greater Manchester Fire and Rescue.

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 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
- The proximity of the premises to local residents and other local businesses, particularly in relation to the potential for nuisance

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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| MS2 | Effective general management of the premises |
| MS4 | Prevent the use of illegal drugs, new psychoactive substances (NPS) and the spiking of drinks at the premises |
| MS8 | Prevent noise nuisance from the premises |
| MS11 | Ensure the wellbeing of children on the premises |

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.