

TRAFFORD COUNCIL

Report to: Licensing Sub-Committee
Date: 26 November 2018
Report for: Decision
Report of: Head of Regulatory Services

Report Title

APPLICATION FOR THE REVIEW OF A PREMISES LICENCE UNDER S53A LICENSING ACT 2003 AT RYAN'S WINE BAR, 1 ORCHARD PLACE, SALE M33 7XP

Summary

This is a report to consider a Summary Review application submitted by Greater Manchester Police under the expedited powers afforded to them under section 53A of the Licensing Act 2003 in respect of Ryan's Wine Bar, 1 Orchard Place, Sale M33 7XP. The review application has been submitted because Greater Manchester Police consider that the licensing objective of Prevention of Crime and Disorder is being undermined following execution of a Drugs Search Warrant.

Recommendation(s)

Section 53C of the Licensing Act 2003 requires the Licensing Authority to consider the application for review and any representations. The Licensing Authority may take such steps as listed below that it considers appropriate to promote the four licensing objectives. The following options are open to the Licensing Sub-Committee;

- (i) To modify the conditions of the licence and/or;
- (ii) To exclude a licensable activity from the scope of the licence and/or;
- (iii) To remove the designated premises supervisors and/or;
- (iv) To suspend the licence for a period not exceeding 3 months or;
- (v) To revoke the licence.

Contact person for access to background papers and further information:

Name: Keiran Hinchliffe, Senior Licensing Officer.
Extension: 2593
Background Papers: None
Appendices: A) Application for review of the premises licence.
B) Police Certificate
C) Decision Letter for Interim Licence Suspension
D) Email regarding meeting on 20 Nov 2018
E) Representations received
F) Photograph of Public Notice
G) Premises Licence

1.0 APPLICATION

- 1.1 On 1st October 2007, the Violent Crime Reduction Act 2006 introduced a new provision into the Licensing Act 2003. Section 53A of the 2003 Act allows for a quick process for attaching interim conditions to a licence and to fast track licence reviews when the Police consider that the premises concerned are associated with serious crime or serious disorder (or both).

Section 53A allows:

- The Police to trigger a fast track process to review a premises licence where the Police consider that the premises are associated with serious crime and or serious disorder (or both); and
 - The Licensing Authority to respond by taking interim steps quickly, where appropriate, pending a full review.
- 1.2 On receipt of the application from Police under Section 53A, the Licensing Authority must meet within 48 hours to consider whether it is necessary to take interim steps pending determination of the review of the premises licence – the Licensing Authority must, in any event, undertake a review within 28 days of the receipt of the application.
- 1.3 On the 12th November 2018, the Licensing Authority received an application under Section 53A from Greater Manchester Police in respect of the premises known as Ryan's Wine Bar, 1 Orchard Place, Sale, Cheshire M33 7XP. A copy of the application is attached as Appendix A.
- 1.4 This application included a Police Certificate which was signed by a Senior Officer of Greater Manchester Police, Chief Superintendent Wayne Miller. In that Police Certificate, the Chief Superintended requested for the Licensing Authority to take the interim measure of suspension of the licence pending the full review hearing. A copy of the Police Certificate is attached as Appendix B.
- 1.5 On 14th November 2018, the Licensing Sub-Committee heard evidence from the Police and oral representation from the Licence Holder. The Licensing Sub-Committee decided to suspend the Premises Licence. A copy of the decision letter is attached as Appendix C.
- 1.6 An Application to Transfer the Premises Licence and an Application to Vary the Premises Licence to nominate a new Designated Premises Supervisor has been received by the Licensing Authority.
- 1.7 The Council's Senior Licensing Officer met with Mr Alan Street who has applied to transfer the Premises Licence into his name and PC Karen Packer, Licensing District Constable for Trafford on Tuesday 20th November 2018. A series of conditions were discussed as proposals for the Licensing Sub-Committee to consider in their determination. A response to this meeting has not been formally received from Mr Alan Street's Solicitor at time of writing this report. A copy of an email detailing the topics discussed at this meeting has been included as Appendix D.

2.0 STATEMENT OF LICENSING POLICY

2.1 In particular, the following extracts from the Council's statement of licensing policy are brought to the general attention of members:

- (1.8) Every application considered by the Council under this policy will be considered on its merits, and regard will be given to the Guidance issued under Section 182 of the Licensing Act 2003 and any supporting regulations..
- (1.9) Nothing in the policy will undermine the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act. Appropriate weight will be given to all relevant representations. This will not include those that are frivolous, vexatious or repetitious.
- (1.12) The licensing process can only seek to control those measures within the control of the licensee, and 'in the vicinity' of a premises. The conditions attached to various authorisations will, therefore, be consistent with operating schedules and will mainly focus on:
- Matters within the control of individual licensees and others who are granted any relevant authorisations;
 - The premises and places being used for licensable activities and their vicinity; and
 - The direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.
- (5.6) When considering applications for later closing times in respect of premises licences, where relevant representations have been made, the Council will take the following into consideration in accordance with Government Guidance:
- Whether the premises is located in a predominately commercial area
 - The nature of the proposed activities to be provided at the premises
 - Whether there are any arrangements to ensure adequate availability of taxis and private hire vehicles and appropriate places for picking up and setting down passengers
 - Whether there is an appropriate amount of car parking, readily accessible to the premises, and in places where the parking and use of vehicles will not cause demonstrable adverse impact to local residents
 - Whether operating schedule indicates that the applicant is taking appropriate steps to comply with the licensing objective of preventing public nuisance
 - Whether the licensed activity, particularly if located in areas of the highest levels of recorded crime, may result in a reduction or increase in crime and anti-social behaviour
 - Whether the licensed activities are likely to cause adverse impact especially on local residents, and whether, if there is a potential to cause adverse impact, appropriate measures will be put in place to prevent it

- Whether there will be any increase in the cumulative adverse impact from these or similar activities, on an adjacent residential area
- Any representations from a responsible authority or interested party that identify the premises as a focus for disorder and disturbance.

(5.8) As far as premises in residential areas are concerned, these may be subject to stricter controls with regard to opening hours to ensure that disturbance to local residents is minimised. The Council considers that it is self-evident that the risk of disturbance to local residents is greater when licensable activities continue late at night and into the early hours of the morning. For example the risk of residents' sleep being disturbed by patrons leaving licensed premises is obviously greater at 2 a.m. than at 11 p.m. It is, therefore, the policy of the Council to strike a fair balance between the benefits to a community of a licensed venue and the risk of disturbance to local residents. In predominantly residential areas, therefore, it may not be appropriate to allow closing times later than midnight. It may be acceptable to open later on a limited number of occasions, for example up to 15 times a year. This would allow licensees to extend opening beyond midnight for special occasions such as New Year. However, every application will be determined on its merits, and applicants wishing to operate beyond midnight will need to demonstrate to the satisfaction of the Council, in their operating schedule, that there will be no significant disturbance to members of the public living, working or otherwise engaged in normal activity around the premises concerned. This policy is aimed at the fulfilment of the licensing objective of "prevention of public nuisance".

(6.4) Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained with the intention of preventing crime and disorder. Such measures may include:

- The capability of the person who is in charge of the premises during trading hours or when Regulated Entertainment is provided to effectively and responsibly manage and supervise the premises, including associated open areas
- The steps taken or to be taken to ensure that appropriate instruction, training and supervision is given to those employed or engaged in the premises to prevent incidents of crime and disorder, and where appropriate any relevant qualifications.
- The measures taken or to be taken to raise staff awareness and discourage and prevent the use or supply of illegal drugs on the premises
- The features currently in place or planned for physical security at the premises, such as lighting outside the premises
- Policies adopted to meet appropriate best practice in accordance with existing guidance (e.g. Home Office: Selling Alcohol Responsibly, Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other recognised codes of practice, e.g. British Beer and Pub Association Partnerships Initiative.

- Any appropriate additional measures taken or to be taken for the prevention of violence or public disorder.
- (6.7) Where additional measures have been identified as likely to have an impact on the prevention of crime and disorder at any premises, the Council would expect applicants to detail such measures to be taken in their operating schedules. Such measures may include:
- Provision of effective CCTV with recording facilities both within and outside certain premises
 - Crime prevention design, including adequate lighting and supervision of car parks
 - Metal detection and search facilities
 - Procedures for risk assessing promotions and events such as 'happy hours' for the potential to cause crime and disorder, and plans for minimising such risks
 - Measures to prevent the use or supply of illegal drugs
 - Employment of Security Industry Authority licensed door supervisors and other appropriately trained staff
 - Participation in an appropriate Pubwatch Scheme or other similar scheme
 - Promotion of safe drinking
 - The control of glass and the provision of plastic containers or toughened glass
 - Use of radio net system (where available)
 - Provisions for dealing with prostitution or indecency
 - Provisions for discouraging drinking in public places in the vicinity of the premises
 - Policies on dress and music
 - Appropriate additional staff training.
- (6.8) All premises applying for licensing beyond 00:00hrs must demonstrate that its customers will be capable of leaving the area without causing a disruption to local residents or impact upon crime and disorder. For example, where appropriate and relevant an assessment of the availability of late night transport, and the likely flow of pedestrian traffic away from the premises, could be included in the operating schedule.
- (6.10) Where either prescribed and/or premises-related conditions have not been adhered to in the past, the Council will expect applicants to have considered and taken action to rectify those issues. Applications are likely to be refused where there are significant outstanding issues.
- (7.5) In considering applications, the Council will expect to see evidence that the applicant has identified matters that impact on the likelihood of public nuisance and that these matters have been addressed in the operating schedule. Such measures may include:
- Measures taken or proposed to be taken to prevent noise and vibration escaping from the premises or in the immediate vicinity of the premises and including any outside areas (including smoking areas) bearing in mind the location of premises and proximity to residential and other noise sensitive premises (e.g. hospitals,

hospices and places of worship); This would include music, ventilation equipment noise and human voices, whether or not amplified;

- Measures taken or proposed for management and supervision of the premises and associated open areas to minimise unreasonable disturbance by customers and staff arriving or departing from the premises and delivery of goods and services.
- Control of opening hours for all or part (e.g. garden areas) of the premises
- Measures taken to control light to ensure that it does not stray outside the boundary of the premises such as to give rise to problems to residents in the vicinity
- Steps taken to lessen the impact of parking in the local vicinity
- Measures taken to prevent someone who has consumed excess alcohol from entering the premises and to manage individuals on the premises who have consumed excess alcohol
- Management arrangements for collection and disposal of litter and refuse, and the control of pests
- Arrangements for ensuring that adequate and suitably maintained sanitary provision and washing facilities are provided for the number of people expected to attend any premises or events
- A 'wind down time' after the last service of alcohol, during which time the venue may offer for sale non-alcohol beverages
- A 'last admission time' policy
- Management arrangements for any proposed use of bonfires, fireworks and other pyrotechnics.

(11.7) Standardised conditions will be avoided, although 'pools of conditions' will be used from which necessary and proportionate conditions may be drawn in particular circumstances.

(11.8) Conditions attached to licenses and certificates will be tailored as appropriate to reflect the individual style and characteristics of the premises and events concerned.

(11.9) Conditions will not be imposed which are beyond the responsibility or control of the licence holder.

(14.1) "Cumulative impact" means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, the potential impact on crime and disorder or public nuisance on a Town Centre of a large concentration of licensed premises in that part of the local authority licensing area. In certain circumstances the number, type and density of premises selling alcohol for consumption on the premises may be such that there are serious problems of nuisance and disorder arising or beginning to arise outside or some distance from licensed premises. It is possible that the impact on surrounding areas of the behavior of the customers of all premises taken together is greater in these circumstances than the usual impact from customers of individual premises.

(14.4) When such a special saturation policy is adopted, each application will still be considered properly and on their own individual merit, and licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives will be granted. Following receipt of representations in respect of a new application for or a variation of a licence or certificate, the Council will consider whether it would be justified in departing from the special policy in the light of the individual circumstances of the case. The impact can be expected to be different for premises with different styles and characteristics. It will be for the Council to show that the grant of the application would undermine the promotion of one of the licensing objectives and if it would, that necessary conditions would be ineffective in preventing the problems involved.

(14.5) In considering such applications the Committee will have particular regard to:

- The occupancy figure for the proposed premises.
- The proximity of the premises to others in the Area licensed for similar activities and the occupancy figures for those other premises.
- Whether the proposed premises will act as a replacement for others in the Area that no longer have a licence.
- The proposed methods of management outlined in the applicant's operational plan.
- The proposed hours of operation.
- Transport provision for the Area.

3.0 CONSULTATION

3.1 The appropriate ward Councillors and neighbouring wards, local residents and responsible authorities have been consulted. The responsible authorities are; Licensing, Greater Manchester Police, Greater Manchester Fire & Rescue, Environmental Health & Pollution Control, Health and Safety Team, Home Office Immigration Enforcement, Planning Department, Safeguarding Children Team, Trading Standards and Public Health.

3.2 Of those consultees identified in paragraph 6.2, there have been two valid representations from other persons. These representations are concerned with prevention of crime and disorder

The representations in full have been attached as Appendix E.

3.3 The Licensing Authority is required to put up a Public Notice at the Premises on pale blue paper detailing the application for review. A photograph has been attached as Appendix F.

3.4 A copy of the report and all representations received have been sent to the Licence Holder, the proposed new Licence Holder and Greater Manchester Police.

- 3.5 Those that have made representations have been informed of the time and date of the Licensing Sub-Committee meeting and have been informed of their right to attend.
- 3.6 Representations must be relevant to one or more of the four licensing objectives and must relate to concerns related to the subject premises specifically and not to the area as a whole, unless clear evidence (on the balance of probabilities) can be provided to show that concerns raised relate directly to the inability of the premises to promote the licensing objectives.
- 3.7 All representations represent the views of the person making the representation and may not necessarily be factual. None of the representations or any summarisation of them represent the views of officers or the Council and must be considered on their individual merits and on the balance of probabilities as required by law.
- 3.8 Some of the representations have been submitted anonymously. Although this would generally not be accepted for licensing hearings, due to the circumstances of the grounds for review, these have been included in the report.

4.0 LEGAL CONSIDERATIONS

- 4.1 Conditions may only be attached to a Premises Licence where they are deemed appropriate for the promotion of the licensing objectives. They must be proportionate and not duplicate any existing provisions contained in other legislation. The justification behind a suspension, revocation or the attachment of conditions must be given to the Licence Holder, Police and any other person that made representation.
- 4.2 There is a right of appeal to the Magistrates Court by any party aggrieved by any decision of the Licensing Sub-Committee.