



Subject: APPLICATION FOR A PREMISES LICENCE UNDER THE LICENSING ACT 2003

Premises: MRH Middleton, Oldham Road, Middleton, M24 2LD

Report to: Licensing Sub-Committee

Date: 20 May 2019

Cabinet Member: Councillor Sara Rowbotham
Cabinet Member for Health and Wellbeing

Report of: Mark Widdup
Director of Neighbourhoods

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1 Purpose of Report

- 1.1 The report provides information to the Licensing Sub-Committee to assist in determining the application for a Premises Licence, made under Section 17 of the Licensing Act 2003, for MRH Middleton, Oldham Road, Middleton to which representations have been received from Responsible Authorities/Other Interested Persons.

2 Recommendations

- 2.1 Members are to determine the application and either:
- (a) Grant the application as submitted; or
 - (b) Grant the application, with appropriate conditions; or
 - (c) Reject the application.

3 Reason for Recommendation

- 3.1 The Licensing Sub-Committee has delegated authority to determine applications for Premises Licences when representations have been made by Responsible Authorities or Interested Persons.

4 The Application

- 4.1 The application was made on 19 March 2019.

4.2 Premises Licence Holder

Name: Malthurst Retail Limited

4.3 The Designated Premises Supervisor

Name: Mr Saad Khan

5 The Scope of Application for Licence

5.1 The premises (a petrol forecourt store) is situated in Middleton and are intending to undertake the following licensable activities:

(I) Late Night Refreshment ON and OFF the premises
Monday to Sunday 23.00 hours to 05.00 hours

(J) Supply of Alcohol OFF the premises
Monday to Sunday 00.00 hours to 24.00 hours

(L) Opening Hours
Monday to Sunday 00.00 hours to 24.00 hours

5.2 Steps indicated to promote the Licensing Objectives

The steps the premises are intending to take to promote the licensing objectives are described in the application form as:

The Prevention of Crime and Disorder

1. A CCTV system will be installed, or the existing system maintained, such system to be fit for purpose.
2. The CCTV system shall be capable of producing immediate copies on site. Copies of recordings will either be recorded on good quality video tape or digitally on to CD/DVD or other equivalent medium.
3. Any recording will be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with Data Protection legislation, to the Police for inspection on request.
4. The precise positions of the camera may be agreed, subject to Data Protection legislation, with the Police from time to time.
5. The system will display, on any recording, the correct time and date of the recording.
6. The CCTV system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.

Public Safety

1. There will at all times be adequate levels of staff maintained at the premises. Such staff levels will be disclosed, on request, to the licensing authority and police.

The Prevention of Public Nuisance

1. Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises.

The Protection of Children from Harm

1. The premises licence holder will ensure that an age verification policy will apply to the premises whereby all cashiers will be trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 25 years (or older if the licence holder so elects) to produce, before being sold alcohol, identification being a passport or photocard driving licence bearing a holographic mark or other form of identification that complies with any mandatory condition that may apply to this licence.

2. Signage informing customers of the age verification policy adopted at the premises will be prominently displayed.

The Application for a Premises Licence is attached as Appendix 1 (page 8 of the report).
The premises location plan is attached as Appendix 2 of this report (page 28 of the report).

6 Relevant Representations

6.1 Legislation

Section 18 (3) Where relevant representations are made, the authority must:

- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
- (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

6.2 Responsible Authority Representations

A representation was received from Greater Manchester Police (GMP) which transpired to conditions being agreed on 27 March 2019 between the applicant and GMP.

In summary, the representation was to enable and agree additional conditions which would further strengthen and promote the licensing objectives. These conditions were suggested in part 3B of the representation form.

The representation, the agreement of further conditions and the clarification of conditions indicated on the application form are attached as Appendix 3 (page 29 of the report).

A representation was received from the Weights and Measures Authority on 11 April 2019.

In summary, the representation is in relation to the licensing objective the protection of children from harm. The Authority stated that there was insufficient information from the applicant/Premises Licence Holder within the application for licence to demonstrate how the protection of children from harm licensing objective will be promoted. A number of conditions were suggested in part 3B of the representation form.

The Weights and Measures Authority and the applicant have agreed the conditions. The representation and confirmation of agreement of conditions is attached as Appendix 4 (page 37 of the report).

6.3 Interested Persons Representations

A representation was received on the 15 April 2019 from Mr Darren Potts.

In summary, his concerns relate to the licensing objectives, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. He is concerned that installing CCTV alone will not reduce the nuisance from noise that will be experienced in the area. He states that there already a number of youths who congregate in this particular area and another outlet selling alcohol may encourage proxy sales and anti-social behaviour.

The representation is attached as Appendix 5 (page 45 of the report).

7 The Council's Statement of Licensing Policy & National Guidance regarding licensing objectives

7.1 It is considered that the following policies may have a bearing on the application:

Extract(s) from Council's Licensing Policy:

(2.3) ...the Licensing Authority will exercise its licensing functions in order to promote the four Licensing Objectives which are:

- The prevention of crime and disorder;
- The prevention of public nuisance;
- Public safety; and
- The protection of children from harm.

(2.4) Each licensing objective is considered to be of equal importance within this Policy. They will be considered in relation to matters centred on the premises or within the control of the licensee and the effect if any, which the carrying on of that business has on the vicinity.

(12.2) Location and Impact of Activity - This part of the policy is concerned with whether a proposal is appropriate in a location with particular regard to the impact on any residential areas. In most of the Borough, which is predominantly residential, the policy will in appropriate cases limit the *normal* hours of opening for new licensed activities to a maximum time which is no later than midnight.

Later opening hours are considered to be acceptable, in principle, for premises in commercial areas with high levels of public transport accessibility. However, in all cases, the granting of a licence will depend on impact of an activity, particularly on local residents. It is necessary to consider, amongst other things, the level of impact that could arise from noise and vibration, litter, parking, people coming and going, transport, crowds and queuing; and whether any impact is particularly unacceptable late at night.

Policy

If relevant representations are received, the Authority will *normally* expect a closing time of no later than midnight for licensed premises in residential areas, *but* a later closing time may be permitted for premises located:

- in predominantly commercial areas,
- where there is a high level of accessibility to public transport services; and
- where there is an appropriate amount of car parking, readily accessible to the premises, and in places where vehicular movement will not cause demonstrable adverse impact to local residents; and
- the Operating Schedule submitted with the application indicates that the applicant is taking appropriate steps to comply with the licensing objective of preventing public nuisance.

Exceptions may be made to permit a later closing time/earlier opening time where it can be demonstrated that:

- the licensed activities would not be likely to cause adverse impact especially on local residents, and that, if there is a potential to cause adverse impact, appropriate measures will be put in place to prevent it; and
- there will not be any increase in the cumulative adverse impact from these or similar activities, on an adjacent residential area.

Reason

This part of the policy dealing with opening hours is based on a broad distinction between the approach to be taken in certain predominantly commercial areas, like parts of the town centres, and the rest of the Borough.

Any activity involving public entertainment or eating or drinking on the premises has the potential to impact adversely on the surrounding area due to noise, smells, or congestion on the footway. It may also be caused by the customers being noisy when leaving, leaving litter or taking up on-street car parking space in close proximity to residential premises. The

impact of noise generated by these activities, especially customers departing either on foot or in cars, is particularly intrusive at night when ambient noise levels are much lower.

(12.4) Consideration of the Impact of Licensed Activities - When considering whether any licensable activity should be permitted, on receipt of any relevant representations, the Authority will assess the likelihood of it causing unacceptable adverse impact, particularly on local residents, by considering the following factors amongst other relevant matters:

- the type of use, the number of customers likely to attend the premises and the type of customers at the time of the application;
- the proposed hours of operation;
- the level of public transport accessibility for customers either arriving or leaving premises and the likely means of public or private transport that will be used by the customers;
- the means of access to the premises, which should have customer entrances on the principal pedestrian routes;
- the cumulative impact of licensed premises in an area;
- the scope for mitigating any impact;
- how often the activity occurs.

and, in considering any application for a premises which is already licensed, the Authority will take into account any evidence:

- of past demonstrable adverse impact from the activity, especially on local residents;
- or
- that, if adverse impact has been caused, appropriate measures have been agreed and put into effect by the applicant to mitigate the adverse impact. If, however, such measures have not been put into effect or there has been insufficient time to assess them, this could impact on the determination of the application;

or

- of past history of the premises, where there have been no relevant complaints or problems.

Reason

The prime purpose of this part of the policy is to achieve the licensing objective of preventing public nuisance. In furtherance of this aim the policy lists particular matters that the Authority will take into account in considering whether a licensed activity is likely to cause an adverse impact, particularly to local residents:

- The precise nature of the activity, especially for entertainment, will be a factor in considering the impact, principally in terms of the age and orderliness of the customers.
- Levels of noise from licensed premises, which may be acceptable at certain times of day, may not be acceptable later in the evening or at night when ambient noise levels are much lower.
- The Authority's preference is to see licensed activities located in places where customers are not reliant on private car use, and can walk or use public transport. The Borough varies considerably. In town centres, a high use of public transport could be expected by the customers of licensed premises but, even there, car use is likely to increase when activities go on very late. Consequently, there could be unacceptable parking and traffic in nearby residential areas.
- The main impact of customers arriving, queuing and leaving should be confined to principal pedestrian routes as far as possible. It would not be appropriate, for instance, to have licensed activities which cause large numbers of people to exit into a residential area as opposed to a situation where pedestrian movement takes place directly to and from nearby public transport services.
- Car parking by customers of licensed premises can be a serious problem. This affects local residents in terms of noise and their ability to find a parking space, particularly after the hours when any controlled parking zones are in operation. It can also affect the movement of essential traffic on primary routes and delay bus and emergency services. When considering the possible

impact on residents, the Authority will look at the area within which the impact could be experienced, in particular the likely distance at which most customers arriving by car would seek to park. The potential parking area for major entertainments can be substantial.

With any adverse impact it may be possible to take steps to mitigate or prevent the impact and if such measures are reliable an activity may be licensed. In accordance with Government advice, the decisions taken by the Authority will obviously be focused on matters within the control of individual licensees, and others granted relevant permissions, and the steps they can take to achieve the licensing objectives. Accordingly, these matters will centre on the premises and places being used for licensable activities and the likely impact of those activities on members of public living, working or engaged in normal activity in the area concerned.

In taking its decisions the Authority accepts the difficulty a licence holder has in preventing anti-social behaviour by individuals, once they are beyond the direct control of that licence holder. However, it will also take into account that the licensing objective of preventing public nuisance will not be achieved if patrons from licensed premises regularly engage in anti-social activities to the detriment of nearby residents or businesses. Furthermore it will also take into account its responsibility under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in the Borough.

The aim of the policy is, therefore, to achieve a balanced approach to these difficult issues.

Extract(s) from the National Guidance regarding licensing objectives

(1.17) Each application on its own merits - Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case".

(2.1) Crime and Disorder - Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

(10.8) Imposed Conditions - The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.

(10.10) Proportionality - The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

Extract from the National Guidance regarding Planning and Building Control

(14.65) There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

Rochdale Borough Council's Planning Service have informed the Licensing Authority that planning permission for the use of the premises are subject to the following planning hours:

Monday to Saturday: 07.00 hours to 23.00 hours; and
Sunday: 08.00 hours to 22.00 hours.

8 Observations

- 8.1 The Committee is obliged to determine this application with a view to promoting the licensing objectives which are:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance;
 - the protection of children from harm.
- 8.2 In making its decision, the Committee is also obliged to have regard to National Guidance and the Council's own Licensing Policy.
- 8.3 Of course, the Committee must also have regard to the representations made and the evidence it hears.
- 8.4 The Committee must take such of the following steps as it considers appropriate for the promotion of the licensing objectives:
- (i) Grant the application as submitted.
 - (ii) Grant the application, with appropriate conditions.
 - (iii) Reject the application.
- 8.5 The Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be appropriate in order to promote the licensing objectives.
- 8.6 Nonetheless, this is a matter for the Committee to determine in light of the above matters, and any others it considers material.

<p>For further information about this report or access to any background papers, please contact Jahangir Alom, Licensing Operational Manager, in Neighbourhoods Service (Public Protection), Number One Riverside, Smith Street, Rochdale. OL16 1XU Telephone: 01706 924114.</p>

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