

REPORT TO	ON
Licensing Panel	9 February 2021



TITLE	REPORT OF
Full Variation Application - Indigo	Shared Services Lead - Legal & Deputy Monitoring Officer

Is this report confidential?	No
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PURPOSE OF THE REPORT

1. To provide an overview of the application and inform Members of the relevant parts of statute and guidance relating to this application.

RECOMMENDATIONS

2. Members are requested to:
3. Note the content of the report; and
4. Determine whether to grant or reject the application. If members grant the application, they are asked to consider whether any additional conditions or restrictions should apply (taking into account any representations that have been made).
5. Conduct the hearing in accordance with the hearing procedure.

REASONS FOR RECOMMENDATIONS

6. In relation to a full variation application that receives public objections, Section 35 (3) Licensing Act 2003 states;

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 as it considers appropriate for the promotion of the licensing objectives.

OTHER OPTIONS CONSIDERED AND REJECTED

7. There are no other options to consider, when a relevant objection has been received a hearing must be held to determine the application by a panel of the licensing and public safety committee.

CORPORATE OUTCOMES

8. The report relates to the following corporate priorities:

An exemplary council	X	Thriving communities	X
A fair local economy that works for everyone		Good homes, green spaces, healthy places	X

BACKGROUND TO THE REPORT

9. An application was submitted by Mr Daniel Hindle, for Indigo, 1a Fleetwood Street, Leyland, PR25 3NL on the 21st December 2020 for a full variation of the Premises Licence pursuant to Section 34 of the Licensing Act 2003.
10. The premises currently consist of a first-floor premises which is situated on the junction of Chapel Brow and Fleetwood Street.
11. In January 2019 a hearing was convened to determine the new application for the premises following public objections. The premises licence was granted with additional conditions, notably to this application the requirement for door staff at the premises on Friday and Saturday evening when the licence has been granted until 00:00.
12. Following a two-year period of being open to members of the public Mr Hindle has applied for the following within the variation application;
- a. Change of planned licensable area - To extend the currently licenced first floor premises licensable area into the premises directly under on the ground floor, incorporating the premises below formally licenced as the Curious café, by a door linking the two premises together, creating a two-level premises.
 - b. Change the main public access to the premises from Fleetwood street to Chapel Brow, subject to conditioned use of the Fleetwood street entrance.
 - c. An extension to current opening time and extension to sale of alcohol from
Sunday – Thursday from 23:00 to 00:00 hours
Friday and Saturday from 00:00 to 01:00 hours
 - d. Mr Hindle originally had asked for the same times for the sale of alcohol, but following discussions with the police and Licensing Authority he has changed the times to the following to allow for safe dispersal of customers from the premises,

Sunday – Thursday from 23:45
Friday and Saturday from 00:45
 - e. To change the requirement for the need for door staff to be by risk assessment only.

13. Section 35 Licensing Act 2003 states that the licensing authority must be satisfied that the applicant has complied with any requirement imposed by virtue of subsection (5) of that section.
14. It is a requirement for these type of applications, for a blue notice to be displayed in the window of the premises. Licensing officers have visited the premises and seen that the notice has been displayed on the premises.
15. The application has also been advertised within a local newspaper and the application summary has been displayed on the council's own website.

REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

16. Responsible Authorities are deemed to be experts in relation to identifying if a variation to the premises licence would undermine one of the 4 Licensing Objectives which include Public Nuisance, Prevention of Crime & Disorder, Protection of Children from harm and Public Safety.
17. All Responsible Authorities were consulted by the Licensing Authority. No representations have been made by any Responsible Authority.
18. Conditions have been agreed between the applicants, the police and the environmental health department.
19. All other conditions with regards to Under age sales, challenge 25 Polices and sale of alcohol to intoxicated people, will all remain on the licence. These conditions can be found within background document 1 of the report titled Current licence.
20. The police have also requested a complex door staff risk assessment to mitigate any crime and disorder issues that may occur as a result of removing the door staff as a condition of the licence. This has been agreed with the police, the risk assessment can be found within appendix 1 of the report.
21. Concern were raised by environmental health regarding the use of entrance currently situated on Fleetwood street.
22. Mr Hindle only plans to use the entrance on Fleetwood Street during the week, and only if the ground floor of the premises is closed and for any private functions to keep privacy between his private customers and normal customers using the ground floor facilities.
23. Following dialogue between the applicant, Licensing and environmental Health officers the following conditions were agreed:
 1. *The entrance door onto Fleetwood Street may only be used for access and egress into the premises in the following circumstances:*
 - a) *for private functions hiring the entirety of the upper floor. When in use the door onto Fleetwood Street must only be used for access and egress and must not be used after 19.30 (even if a function is in progress) except for emergency use only.*

b) for public customers access and egress to the upstairs area Monday to Thursday until 10.30.pm, providing that the downstairs bar is closed throughout the whole period. Should the downstairs area be open the side door cannot be used unless for purposes set out in clause 1.(a) above.

2. The door onto Fleetwood Street shall be kept closed at all times during opening hours except for emergency use or for access and egress during the permitted hours in Para. 1.

2. Patrons and staff of the premises shall not be allowed to congregate outside the doorway onto Fleetwood Street at any time.

4. There shall be no public access through the back door or yard except in an emergency.

REPRESENTATIONS FROM OTHER INTERESTED PARTIES

24. 6 written representations from members of the public were received by the licensing authority opposing the variation to the premises licence.

25. A representation is not relevant if it does not directly relate to one or more of the 4 licensing objectives. Representations that are categorised as vexatious or frivolous would not be taken into account.

26. All of the representation raised were deemed relevant by officers of the Licensing Authority. Those representations stated that if the variation application was granted, the premises would be undermining the Prevention of Public Nuisance and the Prevention of Crime and Disorder objectives, in the opinion of the members of public making those representations.

27. Where relevant representation are received the licensing authority must hold a hearing to consider them, unless each person who has made such representations agrees that a hearing is unnecessary. Copies of the relevant representation can be found attached to this report as appendix 3 to 8.

PROPOSALS

28. The Licensing Panel are asked to determine the application under section 35 of the Licensing Act 2003.

29. Section 35 of the Licensing Act 2003 sets out the steps that can be taken, which are;

30. Grant the variation to the licence as set out in the application,

31. Modify the conditions of the licence,

32. Reject the whole or part of the application;

33. A licensing authority must carry out its functions under the Act (licensing functions) with a view to promoting the licensing objectives. In carrying out its functions, a licensing authority must also have regard to;

a) Its own statement policy published under section 5, and

b) Any guidance issued by the Secretary of State under section 182.

34. Relevant policy considerations which can be found within the Statement of Policy are as follows;

12.2 In considering all licence applications, the Licensing authority will consider the adequacy of measures proposed to deal with the potential for nuisance and disorder having regard to all of the circumstances of the application, and in particular consider the following:-

- a. the type of activity, the number and type of customers likely to attend;*
- b. the levels of noise likely to be generated from the premises;*
- e. the levels of public transport accessibility for customers and the likely means of public or private transport that will be used;*
- f. means of access to the premises for customers;*
- g. whether appropriate car parking is readily accessible to premises and whether the use/parking of vehicles would cause a demonstrable adverse impact on the amenity of residents;*
- j. the steps the applicant has taken or proposes to prevent disturbance by patrons arriving at or leaving the premises;*
- l. the arrangements the applicant has made or proposes to make for security lighting at the premises, and the steps the applicant has taken or proposes to take to ensure that lighting will not cause a nuisance to residents;*
- m. whether routes to and from the premises pass residential premises;*
- n. whether the premises would result in increased refuse storage or disposal problems or additional litter in the vicinity of the premises.*

35. Relevant paragraphs of the Section 182 guidance are found below;

“9.3 where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant (see paragraphs 9.4 below), the licensing authority’s discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

9.4 A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives.....There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.”

36. Panel members are requested to consider the evidence and to determine whether or not the application should be granted with or without modifications or rejected.

EQUALITY AND DIVERSITY

37. None

AIR QUALITY IMPLICATIONS

38. None

COMMENTS OF THE STATUTORY FINANCE OFFICER

39. There are no financial implications.

COMMENTS OF THE MONITORING OFFICER

The legal implications can be found within the body of the report. A further point to note is that any person who feels aggrieved by the decision of the panel has a right to appeal to the Magistrates Court within 21 days.

BACKGROUND DOCUMENTS (or There are no background papers to this report)

Background Document 1 - Current Licence
Background Document 2 - Application Form
Background Document 3 - Plan

APPENDICES

*Appendix 1 – Risk Assessment
Appendix 2 – Environmental Health Conditions
Appendix 3 - 1st Resident Objection
Appendix 4 - 2nd Resident Objection
Appendix 5 – 3rd Resident Objection
Appendix 6 - 4th Resident Objection
Appendix 7 - 5th Resident Objection*

Appendix 8 - 6th Resident Objection

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