

REPORT TO	ON
Licensing Panel	28 August 2018



TITLE	REPORT OF
Application for a variation of the Premises Licence relating to the Lime Bar, 42 Liverpool Road, Penwortham	Head of Licensing

Is this report confidential?	No
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1. PURPOSE OF THE REPORT

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

2 CORPORATE PRIORITIES

The report relates to the following corporate priorities:

Excellence and Financial Sustainability	
Health and Wellbeing	x
Place	x

Projects relating to People in the Corporate Plan:

People	
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3. RECOMMENDATIONS

Members are requested to:

3.1 note the content of the report; and

3.2 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). Any decision made can only apply to the parts of the licence that are seeking to be varied.

4. BACKGROUND TO THE REPORT

4.1 The Premises licence was issued on the 13th March 2017. Since the grant of the Licence a huge amount of complaints have been received, virtually all of these complaints have been

received by one household. Since the 1st May 2018 to the 27th July 2018 over 70 e mails have been received just in connection with the Lime Bar. The volume of e mail traffic has increased in the last 3 weeks which possibly coincides with the submission of the variation application.

4.2 The Authority has endeavored to respond to as many of the complaints as possible but the sheer number of complaints being received and the protracted discussion between the complainants has meant numerous working days per week have been lost to providing detailed explanations which never provide satisfaction to the complainant.

4.3 In the same 3 month period 8 visits by the Licensing Authority have been made to the area. Some were merely observations outside the premises in order to gather an understanding of the issues the complainants describe whilst others were inside the premises to discuss issues with the Licence Holder. Throughout all the visits conducted in this 3 month period no adverse observations have been made relating to noise or disorder. The premises appears to be well managed and the response from the Licence Holder and staff has always been positive and cooperative.

4.4 Some of the complaints are relevant to the Licensing Objectives and touch on music from the premises being heard whilst others in recent weeks are of a much more irrelevant nature. They include ice being shoveled from a rear store room, the store room door being left ajar and parking contraventions by delivery drivers or other visitors.

4.5 The premises seeks to remove some of the conditions on the licence and it is fair to say that the application has come about following an extraordinary amount of complaints where technical breaches are often cited by the complainant as reasons why the Licence Holder should face formal action or even have their licence removed.

4.6 In accordance with the Section 182 Guidance the Authority has worked with the Licence Holder in an attempt to achieve a workable outcome, Both the Local Authority and the Licence Holder face strong criticism from the complainants regarding non-compliance with some of the conditions and failure on the part of the Authorities to prosecute the premises for the said alleged breaches. An application to streamline the conditions on the licence has been made but reasonable concessions have been offered to target the source of any potential noise nuisance connected with Licensable Activity.

5.REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

5.1 There has been one representation received by a responsible authorities in respect of the application. The representations have been received from the Council's Environmental Health Department who indicate that they require a noise limiter to be installed at the premises and make further comments on the extension to the opening times, the representations are attached as Appendix A.

5.2 The representation relate to concerns over noise nuisance which if connected with Licensable Activity could fall under the Licensing Objectives

6. REPRESENTATIONS FROM OTHER INTERESTED PARTIES

6.1 There have been 9 representations received from other parties. They have raised issues in respect of the Licensing Objectives relating to the Prevention of Crime and Disorder ,Harm to Children, the Prevention of Public Nuisance and Public Safety. Please see attached representations (Appendices B-E).

7. DECISION TO BE MADE BY THE LICENSING ACT PANEL

Determination of an application under Section 34 of the Licensing Act 2003

Where relevant representations are made, the Authority must hold a hearing to consider representations, unless the authority, the applicant and each person who has made representations agrees that a hearing is unnecessary.

The current Premises Licence permits the sale of alcohol at the following times;

Sunday to Friday 11.00am-10.45pm
Saturday 11.00am-11.45pm.

In addition to the sale of alcohol, late night refreshment can be sold during the following times;

Monday to Friday 11.00am -11.00pm
Saturday 11.00am- Midnight
Sunday Noon- 11.00pm
Non Standard Timings: Noon-11pm Bank holidays.

No other Licensable Activities have restrictive times next to them nor are they individually categorised on this particular licence but Deregulation Provisions would permit Live Music amplified or otherwise and the playing of recorded music subject to the statutory limitations up to 11pm at night.

A copy of the existing licence is attached as Appendix J

7.1 What does the applicant seek?

The applicant seeks an extension of 15 minutes relating to Late Night Refreshment and a further extension of 15 minutes on the premises opening time with alcohol sales to remain the same.

An extension of 1 hour for the sale of alcohol on Fridays taking it from 22.45hrs to 23.45hrs

An extension of 15 minutes to the closing time which would provide a window of 30 minutes for the Premises Licence Holder to clear all customers out of the venue, known in the trade as the "drinking up time".

An amendment to the opening time at the start of the day from 11.00hrs to 09.30hrs, no proposed change has been applied for to bring alcohol sales earlier forward to this time so no licensable activity will commence until 11.00.

A restrictive condition that curtails use of the outside area to the front (Liverpool Road elevation) is set out at Condition 9 of Annex 2, a terminal hour has been set at 10pm for this area save for Sundays where it is set at 9pm.

The request is to allow drinks to be consumed in the outside area till 10pm every night of the week.

Other conditions that they seek the removal of include doors and windows being closed and the removal of the requirement to have a vestibule lobby, restrictions around delivery times and days and also timings around the bin store.

In replacement of these conditions they offer;

1. Customers will not be permitted to take drinks into any external areas after 22.00 each day.
2. Customers will not be permitted to use the garden area to the West of the premises at any time.
3. Windows and doors will be kept closed (save for the purpose of access and egress) after 19.00 each day

4. There shall be no deliveries or waste collection between 19.00 and 08.00.

A copy of the application is attached as Appendix K

7.2 There are numerous areas of the Section 182 guidance that need to be considered;

7.2 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

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."

7.3 Finally the impact of the Deregulation Provisions needs to be carefully considered. These provisions render conditions that seek to control noise from entertainment as unenforceable till after 11pm.

*16.36 Any existing licence conditions (or conditions added on a determination of an application for a premises licence or club premises certificate which relate to live music or recorded music remain in place, but are **suspended** between the hours of 08.00 and 23.00 on the same day where the following conditions are met:*

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;*
- if the music is amplified, it takes place before an audience of no more than 500 people; and*
- the music takes place between 08.00 and 23.00 on the same day.*

16.37 Whether a licence condition relates to live or recorded music will be a matter of fact in each case. In some instances, it will be obvious that a condition relates to music and will be suspended, for example “during performances of live music all doors and windows must remain closed”. In other instances, it might not be so obvious: for example, a condition stating “during performances of regulated entertainment all doors and windows must remain closed” would be suspended insofar as it relates to music between 08.00 and 23.00 on the same day to an audience of up to 500, but the condition would continue to apply if there was regulated entertainment after 23.00.

16.38 More general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) will continue to have effect.

7.4 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, and if granted whether any additional conditions or restrictions should apply having regard to the promotion of the licensing objectives.

7.5 The panel must have regard to:

1. Its own policy; and
2. Secretary of State Guidance (section 182 of the Licensing Act 2003).

8. FINANCIAL IMPLICATIONS

8.1 There are no direct financial implications arising from this report.

9. LEGAL IMPLICATIONS

9.1 The Licensing Authority are under a statutory duty to facilitate the hearing. When determining this hearing the Council must comply with the rules of natural justice.

Any party at the hearing has a right to appeal the decision to the Magistrates Court.

10. COMMENTS OF THE STATUTORY FINANCE OFFICER

10.1

9. COMMENTS OF THE MONITORING OFFICER

Please refer to the comments at 9.1.

11. OTHER IMPLICATIONS:

▶ HR & Organisational Development	None
▶ ICT / Technology	None
▶ Property & Asset Management	None

<p>▶ Risk</p> <p>▶ Equality & Diversity</p>	<p>Please refer to the legal risks identified above.</p> <p>None</p>
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12. APPENDICES

- Appendix A- Environmental Health Representations
- Appendix B – Representations from Mr and Mrs O Donnell
- Appendix C - Representations from Gareth Edwards
- Appendix D - Representations from Janette Hall
- Appendix E- Representations from Stephen Crookes.
- Appendix F- Representations from J& H Doupe
- Appendix G- Representations from Val Edwards
- Appendix H- Representations from Michael Langfield
- Appendix I – Representations from Mr & Mrs Gildert
- Appendix J- Existing Premises Licence
- Appendix K- Variation Application.

Report Author:	Telephone:	Date:
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