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| Classification | Item No. |
| Open | |

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| Meeting: | Licensing Hearings Sub-Committee |
| Meeting date: | 15 November 2022 |
| Title of report: | Application for a Premises Licence to be granted under the Licensing Act 2003 in respect of Express Mini Market, 46 Bolton Street, Bury, BL9 0LL |
| Report by: | Executive Director (Operations) |
| Decision Type: | Council |
| Ward(s) to which report relates | East |

Executive Summary:

This report relates to an application for a Premises Licence to be granted under the Licensing Act 2003 in respect of Express Mini Market, 46 Bolton Street, Bury, BL9 0LL.

Recommendation

Options & recommended option

- To grant the application in the terms requested
- To grant the application subject to conditions
- To amend or modify existing or proposed conditions
- To refuse the application

Key considerations

This is a Council Function that is delegated to the Licensing and Safety Panel by the Council's Constitution.

Community impact / Contribution to the Bury 2030 Strategy

Not applicable

Equality Impact and considerations:

A GM-wide Equality Impact Assessment has been undertaken and a copy is available on request.

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

The public sector equality duty requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.

The Licensing Service have considered the Equality Act 2010 and due to each application being dealt with on its own merits there is no positive or negative on any of the protected characteristics

Assessment of Risk:

The following risks apply to the decision:

| Risk / opportunity | Mitigation |
|--------------------|------------|
| Not applicable | |

Consultation:

Not applicable

Legal Implications:

Under the legislation the Council is required to determine representations. The report is in accordance with the appropriate legislation.

Financial Implications:

There are no specific issues from the report other than potential costs/risks associated with legal appeals

Report Author and Contact Details:

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Please include a glossary of terms, abbreviations and acronyms used in this report.

| Term | Meaning |
|------|--------------------------------|
| DPS | Designated Premises Supervisor |

Background papers:

Application form
Representation received
Plan

1.0 BACKGROUND

- 1.1 The Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations are the relevant legislation.
- 1.2 The Panel will make a decision on the day of the hearing and the parties will be notified subsequently of the decision and the reasons for it by letter from the Licensing Office.

2.0 INTRODUCTION

- 2.1 The applicant for the licence and the proposed Designated Premises Supervisor (DPS), in respect of the above premises, is Mr Faraydn Qasmpwr, 156 Deane Road, Bolton, BL3 5DL, However at the time of writing this report the applicant does not hold a personal licence under the Licensing Act 2003 but an application has been made to Bolton Council.
- 2.2 The applicant has complied with all the necessary procedural requirements laid down by the Act.
- 2.3 As part of the statutory process the Responsible Authorities and interested parties are entitled to make representations in relation to the grant of a licence. Where representations are made and not withdrawn Members are required to determine them.

2.4 Representations must be relevant to the licensing objectives defined within the Act. The objectives are:-

- the prevention of crime and disorder
- public safety
- prevention of public nuisance and
- protection of children from harm

3.0 THE APPLICATION

3.1 The application is for the grant of a Premises Licence under Part 3 of the Licensing Act 2003:

The operating schedule shows the following:

a. Supply of alcohol – For consumption Off the Premises.

| | |
|--------------------|----------------|
| Sunday to Thursday | 06:00 to 23.00 |
| Friday to Saturday | 06.00 to 00.00 |

b. Hours open to the Public

| | |
|--------------------|----------------|
| Sunday to Thursday | 06:00 to 23.00 |
| Friday to Saturday | 06.00 to 00.00 |

The conditions contained in the operating schedule submitted by the applicant are contained at Appendix 1.

4.0 REPRESENTATIONS FROM A RESPONSIBLE AUTHORITY

4.1 Greater Manchester Police have submitted a representation in their capacity as a Responsible Authority. The representation is contained at Appendix 1.

5.0 OBSERVATIONS

5.1 After hearing the representations made and the evidence presented, Members are obliged to determine the application with a view to promoting the licensing objectives and having regard to the Authority's Licensing Policy and National Guidance.

6.0 THE SECRETARY OF STATES GUIDANCE TO THE LICENSING ACT 2003

6.1 The Secretary of State's Guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. 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.

6.2 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.

- 6.3 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.

7.0 CONCLUSION

- 7.1 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.

- 7.2 In reaching the decision, regard must be had to relevant provisions of the national guidance and the Council’s licensing policy statement.

- 7.3 The Sub-Committee must consider what steps are appropriate for the promotion of the licensing objectives.

- 7.4 In making its decision with regard to this variation hearing, the steps the Sub-Committee can take are:

- To grant the application in the terms requested
- To grant the application subject to conditions
- To amend or modify existing or proposed conditions
- To refuse the application

- 7.5 All licensing determinations should be considered on the individual merits of the application.

- 7.6 The Sub-Committee’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.

- 7.7 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.

- 7.8 The Sub-Committee is asked to determine what steps, as set out in 7.4 above, are appropriate for the promotion of the licensing objectives.

Appendix 1

Bury Metropolitan Borough Council

The Licensing Act 2003

Responsible Authority Representation Form

Section 1 - Application Details

We object to the following Application:

Express Mini Market

46 Bolton Street

Bury

BL9 0LL

Type of application.

Application for a Premises License

Application Number (if known):

Section 2 – Responsible Authority's Details

Responsible Authority's Details:

Please tick appropriate box:

| | |
|-------------------------------------|------------------------------|
| <input checked="" type="checkbox"/> | Police |
| <input type="checkbox"/> | Fire Authority |
| <input type="checkbox"/> | Planning Authority |
| <input type="checkbox"/> | Health and Safety |
| <input type="checkbox"/> | Environmental Health Service |
| <input type="checkbox"/> | Child Protection |

| | | |
|---------------------|--|--|
| | Weights and Measures | |
| | Licensing Authority | |
| | Immigration | |
| | Public Health Department | |
| Full name: | Peter Eccleston PC 15913 | |
| Job Title: | Bury District Licensing Officer | |
| Tele number: | 0161 856 2256 / 07774219071 | |
| Email: | peter.eccleston@gmp.police.uk | |
| Address: | | |
| Bury Police Station | | |
| Dunster Road | | |
| Bury | | |
| BL9 0RD | | |

| | |
|--|---|
| Section 3 – Representations | |
| | We object to the application being granted at all |
| X | We object to the application being granted in its current form* |
| <p>*If you choose this option remember to tell us in section 3B what changes you would like to see.</p> | |
| <p>You need to complete the boxes below as fully as possible. If you do not then the Licensing Sub-Committee may not understand why you have made a representation (objection).</p> <p>Please attach supporting documents/further pages as necessary. Please number all extra pages and add the applicant's name and your name to each page.</p> | |
| Section 3A – The Objectives | |
| To prevent crime and disorder | <p>Please state your reasons:</p> <p>The premises are situated on Bolton Street which is within close proximity to a number of licensed premises and in the vicinity of an area within Bury Town Centre which is known for its frequent flashpoint for alcohol related violence and disorder, whereby individuals have received a varying scale of injuries.</p> |

| | |
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| | <p>By granting the application in its current form it is likely to undermine the Licensing Objective of the Prevention of Crime and Disorder and is likely to put further pressure on already stretched Police and Emergency Service resources.</p> <p>The premises are located within the boundaries of a PUBLIC SPACES PROTECTION ORDER (PSPO) and the introduction of an "Off Sales" provision during the operating hours of the night-time economy is likely to lead to an increase of PSPO breaches.</p> <p>As the premises are situated just a short distance away from residential properties it is likely that many customers will be travelling on foot from or between other licensed premises.</p> <p>Whilst operating within the hours of the night-time economy it is likely that customers to these premises will already be suffering the effects of alcohol and therefore the granting of a licence for "Off Sales" during the hours of the night-time economy is likely to lead to offences under sec 141 of The Licensing Act (SALE OF ALCOHOL TO A PERSON WHO IS DRUNK).</p> <p>There is a likelihood that alcohol obtained from these premises during the operating hours of the night-time economy will lead to a breach of the PSPO as customers will drink their purchases on the streets and potentially contribute to night-time disorder increasing the risk of violence. There is also a heightened risk that empty containers such as glass bottles will be used as weapons or discarded around the town centre giving someone else the opportunity to use them as a weapon.</p> <p>In summary, Greater Manchester Police are of the opinion that the granting of this application in its present form is likely to undermine the licensing objective of the Prevention of Crime and Disorder.</p> |
| Public safety | Please state your reasons: |
| To prevent public nuisance | Please state your reasons: |
| The protection of children from harm | Please state your reasons: |

Section 3B – Suggestions/Further information

- Reduction in licensable hours for supply of alcohol. Suggested hours:
Mon – Thursday = 08:00 – 23:00
Friday & Saturday = 08:00 – 20:00
Sunday = 08:00 – 23:00
Sundays of Bank Holidays = 08:00 – 20:00

In addition to those already proposed on the Premises license application:

- Marking of alcohol beverage containers prior to being placed on display so that they can be easily identified as being purchased from the store.
- Notices to be placed inside and in a prominent place at the front of the store advising customers / members of the public not to loiter outside the premises.
- Person under the age of 16 years will only be permitted entry after 8pm if accompanied by an adult.
- Premises license holder to ensure the area immediately outside the premises is kept clean and tidy.
- No alcoholic beverages to be displayed in the window of the premises or in close proximity to the front entrance.
- Refrigerated alcoholic beverages to be located next to premises serving counter.

Signed P. Eccleston PC 15913

dated 18/10/2022

N.B if you do make a representation you will be expected to attend the Licensing Sub-Committee hearing and any subsequent appeal proceedings.