

# REPORT FOR DECISION

<b>Agenda Item</b>	
--------------------	--

<b>DECISION OF:</b>	<b>LICENSING HEARINGS PANEL</b>
<b>DATE:</b>	<b>29<sup>TH</sup> SEPTEMBER 2014</b>
<b>SUBJECT:</b>	<b>APPLICATION FOR A REVIEW OF THE PREMISES LICENCE UNDER THE LICENSING ACT 2003 IN RESPECT OF CUCKOO, 395-397 BURY NEW ROAD, PRESTWICH, MANCHESTER.</b>
<b>REPORT FROM:</b>	<b>ASSISTANT DIRECTOR (LOCALITIES)</b>
<b>CONTACT OFFICER:</b>	<b>MR M BRIDGE</b>
<b>TYPE OF DECISION:</b>	<b>COUNCIL</b>
<b>FREEDOM OF INFORMATION/STATUS:</b>	This paper is within the public domain
<b>SUMMARY:</b>	This report relates to an application pursuant to section 51 of the Licensing Act 2003, from a local resident, for a review of the premises licence in respect of Cuckoo, 395-397 Bury New Road, Prestwich, Manchester, in relation to which representations have also been received from other local residents.
<b>OPTIONS &amp; RECOMMENDED OPTION</b>	<ul style="list-style-type: none"> <li>To revoke the licence</li> <li>To suspend the licence for a period not exceeding three months</li> <li>To remove the Designated Premises Supervisor</li> <li>To exclude a licensable activity from the scope of the licence</li> <li>To modify the conditions of the licence</li> </ul>
<b>IMPLICATIONS:</b>	
<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework? <b>Yes</b> No
<b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b>	There are no specific issues from the report other than potential costs/risks associated with legal appeals.
<b>Statement by Executive Director of Resources:</b>	The cost of the licensing function is funded through the fees and charges levied by the Council. There may be additional costs if appeals are lodged with the Magistrates and

	Crown Courts.
<b>Health &amp; Safety implications:</b>	<p>Holders of Premises Licences are required to promote the 'licensing objectives' 3 of which are:</p> <ul style="list-style-type: none"> <li>• the Prevention of Public Nuisance</li> <li>• Public Safety</li> <li>• The Protection of Children from Harm</li> </ul>
<b>Equality/Diversity implications:</b>	<b>Yes</b> <b>No</b> (see paragraph below)
<b>Considered by Monitoring Officer:</b>	Yes      Under the legislation the Council is required to determine representations. The report is in accordance with the appropriate legislation.
<b>Wards Affected:</b>	St. Marys
<b>Scrutiny Interest:</b>	Internal Scrutiny Panel

**TRACKING/PROCESS**

**DIRECTOR:**

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

**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 Service.
- 1.3 On the 08<sup>th</sup> August 2014, the review application was received from Mr Matthew Taylor, 5 Church Lane, Prestwich, Manchester.
- 1.4 Since the 11<sup>th</sup> July 2013, the Premises Licence has been held by Mr David Allen, Stanmore House, 64-68 Blackburn Street, Radcliffe, Manchester, M26 2JS. Mr Allen is also the Designated Premises Supervisor (DPS).

**2.0 PROCEDURE**

- 2.1 The applicant has complied with all the necessary procedural requirements laid down by the Act.

- 2.2 As part of the statutory process, the Responsible Bodies and interested parties are entitled to make representations in relation to the review of a licence. The Licensing Authority has given Notice of the application by placing a Notice on the premises, at the Council Offices and on the Council web site. Where further representations are made by either the Responsible Authorities or from local residents / businesses and not withdrawn, Members are required to determine them.
- 2.3 Representations must be relevant to the licensing objectives defined within the Act. The objectives are:-
- a) the prevention of crime and disorder
  - b) public safety
  - c) prevention of public nuisance and
  - d) protection of children from harm

### 3.0 CURRENT LICENSABLE ACTIVITIES

3.1 The current licensable activities are as follows:

**a. The Supply of alcohol – For consumption on and off the premises:**

Monday to Wednesday	10.00am to 11.00pm
Thursday to & Saturday	10.00am to midnight
Sunday	10.00am to 10.00pm

**b. The provision of live music**

Monday to Wednesday	6.00pm to 10.00pm
Thursday to & Saturday	6.00pm to midnight
Sunday	6.00pm to 10.00pm

**c. The provision of recorded music**

Monday to Wednesday	08.00am to 11.00pm
Thursday to & Saturday	0800am to midnight
Sunday	08.00am to 10.00pm

**d. The exhibition of films**

Monday to Thursday	6.00pm to 10.00pm
Sunday	6.00pm to 10.00pm

**e. The provision late night refreshment**

Thursday to Saturday	11.00pm to midnight
----------------------	---------------------

**f. The opening hours of the premises:**

Monday to Wednesday	08.00am to 11.30pm
Thursday to Saturday	08.00am to 12.30am
Sunday	08.00am to 10.30pm

## **4.0 CONDITIONS ATTACHED TO THE LICENCE**

4.1 There are a number of mandatory and other conditions attached to the current premises licence which include the following:

### **To Prevent Public nuisance**

- a. Prominent, clear and legible notices must be displayed at all exits requesting that customers respect the needs of local residents and to leave the premises and area quietly.
- b. Music and associated other noise sources (e.g. DJs and amplified voices) shall not be generally audible inside noise sensitive property at any time. The DPS or a member of staff is to carry out noise level checks of the surrounding outside area whenever entertainment is being provided taking action to reduce noise levels where there is a potential for nuisance to be caused.
- c. All external doors and windows are to be kept closed when live entertainment or recorded music is in progress.
- d. The smoking area at the rear will not be open to the public after 10.30pm so as not to disturb local residents
- e. On occasions when the premises are used / hired to hold an 18<sup>th</sup> birthday party, at least one SIA registered security staff is to be employed at the premises for the duration of the function. In addition, on such occasions, the sale of alcohol and the provision of regulated entertainment is to cease no later than 23.00hrs.
- f. Management and staff are to use their best endeavours to prevent persons loitering outside the premises and to ensure that persons refused entry or ejected are asked to leave the vicinity of the premises if it is safe to do so.

## **5.0 REVIEW APPLICATION**

5.1 A copy of the review application from Matthew Taylor is attached at appendix A. His complaints concern the rear outside area of Cuckoo being used to cook food on a solid fuel oven the smoke and smell from which is causing considerable nuisance to his family and his neighbours inside their homes. He also complains about customers entering and intoxicated customers leaving Cuckoo via the rear gate which leads onto the gated private car park which he states is for the sole use of the residents of Nos: 5,7,9 and 11 Church Lane. Some of these customers have allegedly urinated against the residents parked cars. The use of the back gate to Cuckoo is causing a security issue for Mr Taylor and his family. He also complains about his family being disturbed by 'continuous loud dance music pounding through the walls of his home' on the evening of the 26/27 July 2014. He believes this was the result of the windows to the premises being left open and the rear door which leads out onto the outside area which is used by smokers, being opened and slammed shut by customers shouting and swearing. He states that on the evening of Wednesday the 30/07/14, an 'open mic night' took place at the venue resulting in his family being subjected to noise nuisance from amplified instruments and voice. He also complains that the shared drive is

often littered with cigarette ends, discarded chewing gum and broken glass. Mr Taylor concludes by stating that "the premises is not practical for the provision of loud late activities in a built up residential area. Sleep disturbance is causing stress".

Mr Taylor has also sent to the Licensing Authority video's showing the cooking of food and the smoke emanating from the oven which he has requested to be shown to the Members of the Panel. Copies of the video's have been sent to the premises licence holder.

## **6.0 SUPPORTING INFORMATION**

6.1 Supporting information has been received from the Bury Council Environmental Services in their capacity as a Responsible Authority which relates to smoke emanating from the premises and loud music at the premises. A copy is appended to the report.

## **7.0 OTHER REPRESENTATIONS**

7.1 Representations have been received from a further three residents of Church Lane, Prestwich, which are similar in content to those received from Mr Taylor. Copies are appended to the report.

## **8.0 PREVIOUS COMPLAINTS**

8.1 Previous complaints relating to noise nuisance emanating from the rear outside area when being used by customers smoking in this area have been brought to the attention of the licence holder by the Licensing Service and advice has been given in this regard. The most recent complaint was in connection with the evening of the 26/27<sup>th</sup> July 14, when the premises was being used until 02.00hrs under the authority of a Temporary Even Notice (TEN). The licence holder has been reminded that when operating under the authority of the Premises Licence, all doors and windows must be kept closed whenever live entertainment or recorded music is taking place.

## **9.0 NUISANCE FROM OUTSIDE COOKING**

9.1 In relation to the complaints about smoke and smells emanating from the outside pizza oven causing a nuisance to local residents, this has been brought to the attention of the Council's Planning Department as a possible breach of planning regulations. Following liaison with the business, a planning application in relation to the outside oven was submitted to the Council on the 14<sup>th</sup> August 2014 (Ref:57886), which has yet to be determined.

## **10.0 OBSERVATIONS**

10.1 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.

---

### **List of Background Papers:-**

Review Application form  
Representations received  
Email from Mary Hadfield re: Planning application

***For further information on the details of this report, please contact:***

Mr M Bridge  
Licensing Office  
Town Hall  
BURY

Telephone No: 0161 253 5209