

# REPORT FOR DECISION

<b>Agenda Item</b>	
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<b>DECISION OF:</b>	<b>LICENSING HEARINGS PANEL</b>
<b>DATE:</b>	<b>12<sup>TH</sup> AUGUST 2015</b>
<b>SUBJECT:</b>	<b>AN APPLICATION FROM LOCAL RESIDENTS FOR A REVIEW OF THE PREMISES LICENCE UNDER THE LICENSING ACT 2003 IN RESPECT OF MONTECRISTO, 271 BURY NEW ROAD, WHITEFIELD, MANCHESTER, M45 8QP.</b>
<b>REPORT FROM:</b>	<b>ASSISTANT DIRECTOR (PLANNING, ENVIRONMENTAL AND REGULATORY SERVICES)</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 local residents in respect of Montecristo, 271 Bury New Road, Whitefield, Manchester.
<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>Equality/Diversity implications:</b>	Yes <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>	Pilkington
<b>Scrutiny Interest:</b>	Overview and 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 Office.
- 1.3 The Premises Licence in respect of Montecristo, 271 Bury New Road, Whitefield, Manchester, is held by Bar Whitefield Ltd, 9 Redmere Drive, Bury, BL9 9GB. Mr David Miller of the same address, is the Designated Premises Supervisor (DPS). On 02/06/15, Enterprise Inns PLC, 3 Monkpath Hall Road, Solihull, West Midlands, the leasehold owner of the property registered an interest in the premises with this Licensing Authority.

### 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 & off the premises:

Monday – Thursday	08.00 – 01.00am
Friday – Saturday	08.00 – 02.00am
Sunday	09.00 – midnight
Boxing Day, Christmas Eve & other public holidays	08.00 – 02.00am
New Years Eve	From 08.00 31 Dec to 08.00 1 Jan

b. The Provision of Regulated Entertainment comprising: Exhibition of films, Indoor sporting events, Playing of recorded music, the Provision of facilities for dancing:

Monday – Thursday	08.00 – 01.30am
Friday – Saturday	08.00 – 02.30am
Sunday	09.00 – 00.30am
Boxing Day, Christmas Eve & other public holidays	08.00 – 02.00am
New Years Eve	From 08.00 31 Dec to 08.00 1 Jan

c. Performance of a play, Performance of dance, Provision of facilities for making music, Entertainment of a similar nature to E,F & G:

Monday – Thursday	10.00 – 01.30am
Friday – Saturday	10.00 – 02.30am
Sunday	10.00 – 00.30am
Boxing Day, Christmas Eve & other public holidays	08.00 – 02.00am
New Years Eve	From 08.00 31 Dec to 08.00 1 Jan

d. Performance of live music:

Monday – Sunday	Noon - Midnight
Boxing Day, Christmas Eve & other public holidays	08.00 – 02.00am
New Years Eve	From 08.00 31 Dec to 08.00 1 Jan

e. Late night refreshment:

Monday – Thursday	23.00 – 02.00am
Friday – Saturday	23.00 – 03.00am
Sunday	23.00 – 01.00am
Boxing Day, Christmas Eve & other public holidays	23.00 – 02.00am
New Years Eve	From 08.00 31 Dec to 08.00 1 Jan

f. The opening hours of the premises:

Monday – Thursday	08.00 – 02.00am
Friday – Saturday	08.00 – 03.00am
Sunday	09.00 – 01.10am
Boxing Day, Christmas Eve & other public holidays	08.00 – 02.00am
New Years Eve	From 08.00 31 Dec to 08.00 1 Jan

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

4.1 A copy of the 'Non mandatory' conditions attached to the current Premises Licence is attached at appendix A.

#### **5.0 REVIEW APPLICATION**

5.1 The review application is from a local resident who resides in a 3 storey block of residential flats called Silver Court which is adjacent to Montecristo. The nature of the complaints are as follows:

- Noise from music and customers emanating from the premises.
- Customers arguing and shouting at the top of their voices and occasional fighting on the street after leaving the premises on a Saturday and Sunday morning up to 03.30am.
- Customers leaving the premises in possession of pint glasses of beer.
- General anti social behaviour.
- At weekends, drunken people have been seen entering the premises around 1am in the morning after alighting from the last Metrolink tram.
- Posts on the internet suggest that illicit drugs are available at the premises.
- At least 6 such incidents of the above complaints have been reported to Greater Manchester Police.

#### **6.0 REPRESENTATIONS FROM TRADING STANDARDS**

6.1 Bury Council's Trading Standards Service, in their capacity as a Responsible Authority will shortly give their reasons for making a representation in relation to this review application in which they request that the Panel consider removing the designated premises supervisor and the imposition of a condition. The representation considerations are attached at appendix B.

#### **7.0 REPRESENTATIONS FROM GREATER MANCHESTER POLICE**

7.1 Greater Manchester Police, in their capacity as a Responsible Authority will shortly give their reasons for making a representation in relation to this review application in which they request that the Panel give consideration to taking

steps against the premises licence and make changes to the licence conditions and permitted hours. The requested conditions are attached at appendix C

## **8.0 OTHER REPRESENTATIONS**

- 8.1 A number of other residents of Silver Court have signed a petition supporting their neighbours review application.
- 8.2 Enterprise Inns PLC, who are the freehold owners of the property and who have entered into a 10 year lease/tenancy with Bar Whitefield Limited, have made a representation in which they state that they are mindful of the Panel's powers of review and would respectfully submit that the Licensing objectives can be achieved and indeed promoted in ways other than the suspension or revocation of the Premises Licence, such as by adding further conditions relating to the prevention of public nuisance, creation of a drugs policy and incident book, by amending the licensed hours, or by changing the DPS.

## **9.0 PREVIOUS COMPLAINTS**

- 9.1 A chronology of previous noise nuisance and disorder complaints relating to the premises is attached at appendix D. A copy of this has already been supplied to the Premises Licence holder.

## **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.

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

Copy of Review Application  
Copy of representations received

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

Mr M Bridge  
Licensing Office  
3 Knowsley Place  
Duke Street  
Bury

0161-253-5209

**Conditions consistent with the Operating Schedule**

- 1 Prominent, clear and legible notices should be displayed at all exits requesting that customers respect the need of local residents and to leave the premises and area quietly and at an appropriate time before closing, announcements should be made reminding customers of the above.
- 2 When amplified music or entertainment takes place all external windows and doors should be closed save for entrance and exit purposes.
- 3 Music and noise should not be audible inside noise sensitive property at any time and noise levels should be regularly checked to prevent any nuisance to residents in the vicinity. Any complaint should be monitored and investigated and action taken where necessary.
- 4 Proof of identity/age should be required and satisfied before allowing a person(s) who appear may be under 18 years of age to purchase/consume alcohol.
- 5 All emergency lighting, fire exits, escape routes, fire safety equipment including fire alarms, electrical and gas installations should be regularly checked to ensure that they are properly maintained and in good working order.
- 6 CCTV system to be maintained and tapes to be safely retained for a minimum period of 28 days for viewing purposes by the authorities, including the police.

**Trading Standards Representation**

1. A condition attached to the licence that there is no refilling of small premium bottles from larger different branded bottles and that receipts and invoices are kept for all spirits purchased for use in the bar.

### Conditions requested by Greater Manchester Police

1. The premise is to operate an effective CCTV system which is to be maintained in good working order at all times the premises is open for business. The recording medium (e.g. discs / tapes / hard drive etc) and associated images are to be retained and securely stored for a minimum period of 28 days and are to be made available to the police / Authorised Officers of the Licensing Authority upon request. The premises licence holder or designated premises supervisor is to ensure trusted members of staff (or other person(s) ) who are trained and familiar with the operation of the equipment so that, at the expense of the premises licence holder, they are able to check that the equipment is operating properly and that they are able to provide copies of recorded data upon request and within no more than 12 hours from the time of the request. The premises licence holder or the Designated Premises Supervisor must notify the licensing office or the Police in the event of CCTV breakdown or malfunction as soon as is reasonably practicable and in any event within 24hrs.

On an annual basis the premises licence holder or the DPS is to ensure that the CCTV system has been checked & maintained to any recognised specification and is shown to be in working order at all times.

2. A written record shall be kept every time images are recorded by CCTV and shall include details of the recording medium used, the time and date recording commenced and finished. This record shall identify the person responsible for the recording and shall be signed by him/her. Where the recording is on a removable medium (i.e. videotape, compact disc, flash card etc.), a secure storage system to store those recording mediums shall be provided.
3. A Personal Licence holder must be on the premises on Friday & Saturday between 9.00pm and close of business.
4. Staff training shall take place on the Licensing Act and Licensing objectives when employment commences & every six months, a written record of this training to be maintained and made available to the Police and any authorised officer of the Council for inspection on request.
5. 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.
6. 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.
7. All external doors and windows are to be kept closed when live entertainment or recorded music is in progress.
8. The **\*beer garden / \*outside area** is not to be used for licensable activities or for the consumption of alcohol after **[23.00]** hours daily.



9. Management, staff and SIA door security personnel 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.
10. The premises to operate the following customer dispersal policy, the purpose of which is to ensure, so far as it is possible, that minimum disturbance or nuisance is caused to the neighbourhood and to ensure that the operation of the premises makes the minimum impact in relation to potential nuisance and anti-social behaviour.

This will be achieved by exercising pro-active measures towards and at the end of the evening. By ensuring that this Dispersal Policy document is brought to the attention of Management and Staff we will seek to encourage the efficient, controlled, safe and gradual dispersal of our patrons during our closing period:

- a. Music - consideration will be given to the volume levels, type of music played coupled with the usage of lighting levels designed to encourage the gradual dispersal of patrons during the last part of the evening. The gradual dispersal of customers shall commence well before the premises closes with members of staff and door staff instructed to encourage customers to leave in an orderly manner.
  - b. Door personnel and management staff, will be employed outside the premises and will assist with the orderly and gradual dispersal of patrons.
  - c. Staff Members (including door personnel) will advise patrons to leave the premises quickly and quietly.
  - d. Notices will be displayed requesting our customers to leave quietly and in an orderly manner and their attention will be drawn to these notices by members of staff (including door personnel).
  - e. We will ensure the removal of all bottles and drinking receptacles from any patron before exiting the premises.
  - f. We will actively discourage our customers from assembling outside the premises at the end of the evening.
  - g. Consideration will also be given to staff departures. Staff will be instructed to leave the premises quietly and to request that any waiting taxis do not leave their engines running or sound their horns whilst waiting.
11. The premises will operate a "Challenge 21" proof of age policy and signage to this effect is to be prominently displayed within the premises. Persons who appear to be under the age of 21 must produce for thorough scrutiny by staff, proof of identity/age before being sold / supplied alcohol. Only a passport or photo-card driving licence or a proof of age card bearing the official 'PASS' accreditation hologram should to be accepted as proof of age.
  12. The premises is to maintain a refusals book to record the details of incidents / descriptions of individuals whenever a member of staff has refused to sell alcohol to a person suspected of being under the age of 18yrs. The book must be made available to the police / authorised officers of the Licensing Authority on request.

**Chronology of complaints relating to Montecristo from 31/08/13 to date**

Ser:	Date of incident:	Details:	Action taken:
1.	16/06/15	Complaint from a resident of Silver Court that on the evening of 16/6/15, both she and her husband were disturbed in their home by loud recorded music emanating from Montecristo. The nuisance continued up to 01.30am. She stated that windows at the front of the premises were open at the time.	Brought to the attention of Mr Miller the following day who claimed that he had been in the premises on the date in question with approx 8 customers and that the premises closed at 00.30hrs. The report of this incident coincides with the review application being received.
2.	16/05/15	Complaint from a further resident of Silver Court regarding customers congregating at the front of the premises after closing time until approximately 3am. The complainant was subjected to threatening banter by the customers. The matter was reported to the police who did not attend the scene	When confronted by a Licensing Enforcement Officer, Mr Miller claimed that the customers in question were from the nearby Pizza Takeaway and not from Montecristo. The complainant was advised of the review of the premises licence process.
3.	29/03/15	Complaint regarding noise from customers congregating outside the premises in the early hours up to 0425hrs. A fight took place resulting in an ambulance attending the scene.	Police confirmed attending the scene.  Mr. Miller rang Licensing in connection with the incident, however, the complaint had already been received. He stated that the incident involved an injured and violent man who he claimed had not been a customer in his premises. He said that his staff assisted the man and had called an ambulance. The reason for the late opening was due to the clock going forward for UK summer time.
4.	15/03/15	Complaint from a resident of Silver Court that he was disturbed inside his home by customers leaving Montecristo	Mr Miller was confronted on the incident by a Licensing Enforcement Officer and reminded of

		in the early hours of 15/03/15. Several of these customers were involved in a fight which continued for some considerable time. He phoned the police to report the incident.	the conditions attached to the premises licence in relation to noise nuisance etc and that further complaints could trigger a review of the premises licence.
5.	27/02/15		Licensing Enforcement Officers visited the premises at 22.00hrs with a view to liaising with Mr Miller re the complaint at Ser 6. Officers were told by a member of staff that Mr Miller was not on site but in Radcliffe. We were provided with his mobile phone number but despite several attempts to call him, he did not answer his phone. Officers noted that the bass beat from recorded music could be heard outside the premises particularly whenever the front door was opened.
6.	22/02/15	Complaint from a resident of Silver Court that she was disturbed my music emanating from the premises up to 02.45hrs on the morning of Sat 22/02/15. When contacted to clarify the time that the music had ended she stated that she was not certain but believed that it had continued to between 02.30hrs and 02.45hrs.	
7.	17/08/14	Complaint from a resident of Silver Court that he was disturbed in his home by noisy customers in Montecristo beer garden until late in the evening.	When confronted on the matter by a Licensing Enforcement Officer, Mr Miller agreed to close the beer garden no later than 23.00hrs and would place notices on the doors leading out into the beer garden requesting his customers to respect his neighbours right to peace and quiet.
8.	02/06/14	Complaint from a resident of Silver Court that the premises was open until 01.20hrs on	When a Licensing Enforcement Officer subsequently confronted

		Mon 02/06/14 and that she was disturbed by loud music and customers.	Mr Miller on the issue he claimed that they had problems getting a number of male customers to leave the premises the previous evening and that he had to phone the police for assistance in order to get them to leave the area. He confirmed that the men were causing a nuisance once outside the building. Mr Miller was advised on the requirement to have a full copy of the Summary of the Premises Licence on display (only part was on display). He was reminded of the timings in relation to the playing of recorded music and the times when the premises must be closed to the public/cleared of customers.
9.	18/09/13	Complaint received from a resident of Silver Court that every Fri and Sat night, he and other residents of the building are disturbed by loud music and noisy customers. He explained that the previous Saturday, a doorman at the premises blew a loud whistle outside the pub at 01.30hrs then shouted at customers to get inside otherwise they would not be allowed back in.	In light of previous complaints from local residents about Montecristo and Mr Miller having been confronted on the issues to no effect, the complainant was advised of his ability to submit an application for a review of the Premises Licence and was supplied with the requisite application form/guide to completion.
10.	31/08/13	Complaints received from practically all the residents of Silver Court comprising two letters and 13 other signatories on a prepared document. All complained of excessively loud music on Saturday nights, right through until 2am and of very noisy customers, particularly sitting/standing outside the front of the building. Their spokesperson said that all residents of Silver Court have suffered in silence, complaining to each other for many months before finally deciding to do	Mr Miller was confronted on the matter by a Licensing Enforcement Officer who outlined the complaints in full. He was made aware of the numbers involved and the period of time covered. He was shown a copy of the conditions attached to his Premises Licence and reminded that he must ensure compliance with a requirement that doors/windows must be kept closed to stop noise

		something about it.	emanating from the premises and disturbing nearby residents in their homes. The relevant legislation was explained to him at considerable length and Bury Council's policy and practices when dealing with such complaints. He was told to monitor the premises whenever music/entertainment was taking place and to deal with identified problems immediately.
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