

Report to:	Licensing Sub-Committee	Date of Meeting:	
Subject:	Licensing Act, 2003 – Premises Licence - Variation Orrell Hill Wood, Orrell Hill Lane, Hightown, L38 5DA		
Report of:	Assistant Director of Place (Highways and Public Protection)	Wards Affected:	Ravenmeols
Portfolio:			
Is this a Key Decision:	N	Included in Forward Plan:	N
Exempt / Confidential Report:	The Report is not exempt, however parts of the two Annexes have been redacted by virtue of Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972. The Public Interest Test has been applied and favours the information being treated as exempt.		

Summary:

To give consideration to an application for the variation of a Premises Licence.

Recommendation(s):

The Sub-Committee's instructions are requested.

Reasons for the Recommendation(s):

Under the Scheme of Delegation Officers cannot determine applications which have received relevant representations.

Alternative Options Considered and Rejected: (including any Risk Implications)

N/A

What will it cost and how will it be financed?

(A) Revenue Costs

There are no financial costs associated with the proposals in this report

(B) Capital Costs

There are no financial costs associated with the proposals in this report

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):

There are no financial implications arising directly from this Report except in the event of any Appeal made against the Sub-Committee's eventual decision, the costs of which would depend upon the length of the Appeal process.

Legal Implications:

The Chief Legal and Democratic Officer will provide legal advice to the Licensing Sub Committee on the issues set out in this report.

Equality Implications:

There are no equality implications.

Contribution to the Council's Core Purpose:

The Sub-Committee is acting in an administrative capacity under the Licensing Act 2003.

What consultations have taken place on the proposals and when?

(A) Internal Consultations

Consultation has taken place as per the provisions of the Licensing Act 2003.

(B) External Consultations

Consultation has taken place as per the provisions of the Licensing Act 2003.

Implementation Date for the Decision

Immediately following the Committee meeting.

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Appendices:

Annex 1 – Copy of existing Premise Licence.

Annex 2 – Objections received.

Annex 3 - Map

Background Papers:

There are no background papers available for inspection.

1. Application details

Application: Variation of a Premises Licence

Premises: Orrell Hill Wood,
Orrell Hill Lane,
Hightown

Applicants: Mr Wallace James Greenwood

Representative: Mr Edward Grant

Designated Premises Supervisor: Mr Wallace James Greenwood

Licensable activities applied for:

- The sale of alcohol by retail (on and off the premises);

Days of Operation	Current Hours	Variation applied for
Monday to Thursday	N/A	08.00 to 23.00
Friday to Saturday	12.00 to 22.30	08.00 to 23.00
Sunday	12.00 to 22.00	08.00 to 23.00

The provision of regulated entertainment - plays;
The provision of regulated entertainment - films;
The provision of regulated entertainment - live music;
The provision of regulated entertainment - recorded music;
The provision of regulated entertainment - performance of dance;
The provision of regulated entertainment - entertainment of a similar description to that falling within the category of live music, recorded music, or performance of dance;

Days of Operation	Current Hours	Variation applied for
Monday to Thursday	N/A	08.00 to 23.00
Friday to Saturday	11.00 to 22.30	08.00 to 23.00
Sunday	11.00 to 22.00	08.00 to 23.00

Hours premises to be open to public:

Days of Operation	Current Hours	Variation applied for
Monday to Thursday	N/A	08.00 to 23.00
Friday to Saturday	11.00 to 23.00	08.00 to 23.00
Sunday	11.00 to 22.30	08.00 to 23.00

- 1.1 The applicants wish to remove the requirement of 'Any condition limiting use of the premises after 22.00 until 23.00 following agreed notification'.

2. Background information/Current Licence details

- 2.1 The premises were granted a Premise Licence on 01st April 2019 and a copy of this Licence is attached in Annex 1 to this Report.

3. Details of proposed Operating Schedule

3.1 GENERAL

Security cover and wayfinding staff external to site will extend operations until at least 30 minutes after closing Noise monitoring will likewise be extended. A noise management plan shall be submitted to the Licensing Authority at least 28 days prior to the event and shall be adhered to during the course of the event. The Music Noise Level (MNL) of music and/or vocals shall not exceed the background noise level by more than 15dB(A) over a 15minute period at any time when measured at 1metre from the boundary of any residential property. A maximum noise level of 65dB LAeq 15 minute at 63Hertz and 125 Hertz octave bands from, music and/or vocals, shall not be exceeded at any time when measured at 1 metre from the boundary of any residential property.

3.2 THE PREVENTION OF CRIME & DISORDER

Security cover and wayfinding staff external to site will extend operations from 30 minutes before opening until at least 30 minutes after closing.

3.2 PUBLIC SAFETY

No items indicated

3.4 THE PREVENTION OF PUBLIC NUISANCE

NMP shall extend to 23:00.

3.5 PROTECTION OF CHILDREN FROM HARM

No items indicated

4. Objections/Representations received

- 4.1 Under the Prevention of Crime & Disorder, Public Safety and Public Nuisance objectives 25 local resident plus a petition make representations.

- 4.2 A copy of their representations are attached in Annex 2 to this Report.

5. Additional licensing information

5.1 Paragraph 1.17 of the Guidance issued under S.182 of the Act (“the Guidance”) states that each application *“must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.”*

5.2 With regard to conditions, Paragraph 1.16 says that these are *“are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:*

- *must be appropriate for the promotion of the licensing objectives;*
- *must be precise and enforceable;*
- *must be unambiguous and clear in what they intend to achieve;*
- *should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;*
- *must be tailored to the individual type, location and characteristics of the premises and events concerned;*
- *should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;*
- *should not replicate offences set out in the 2003 Act or other legislation;*
- *should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);*
- *cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and*
- *should be written in a prescriptive format.”*

5.3 However paragraph 10.10, with respect to proportionality, underlines that the Act *“requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that evidence of a right to work check, either physical or digital (e.g. copy*

of any document checked or a clear copy of the online right to work check) is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.”

5.4 In respect of Hearings, Paragraph 9.37 states that as “As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.” Paragraph 9.38 continues: “in determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- *the steps that are appropriate to promote the licensing objectives;*
- *the representations (including supporting information) presented by all the parties;*
- *this Guidance;*
- *its own statement of licensing policy.”*

5.5 Paragraph 9.39 states that the “licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Any conditions added to the licence must be those imposed at the hearing or those agreed when a hearing has not been necessary.” Paragraph 9.40 states that alternatively “the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information”.

5.6 In addition to the above, Paragraph 9.42 states that “Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as

the case may be” and further within Paragraph 9.43 that the “authority’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.”

5.7 Paragraph 9.44 indicates that determination “*of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business....The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.*”

5.8 SEFTON’S STATEMENT OF LICENSING POLICY

PREVENTION OF CRIME & DISORDER

Paragraph 3.5 states that when making licence applications, in providing evidence within the Operating Schedule that suitable and sufficient measures will be in place to address the Crime and Disorder objective, applicants should consider the following matters in particular:

- The capability of the person in charge to ensure effective and responsible management of the premises;
- The training given to staff in crime prevention measures;
- Procedures for risk assessing promotions and events, such as ‘happy hours’ in relation to crime and disorder, and the plans to minimise such risks;
- Adoption of best practice in relation to safer clubbing etc;
- Physical security features installed in the premises (i.e. location and standard of CCTV equipment, toughened drinking glasses etc);
- Measures to prevent the supply of illegal drugs, including search and entry policies;
- Employment of SIA licensed door supervisors;
- Participation in an appropriate crime prevention scheme (e.g. ‘pubwatch’);
- Measures to be taken for the prevention of violence and disorder;
- The presence, or access to, sufficient transport facilities to ensure that customers can leave the premises safely and swiftly;
- Weapon detection and search facilities;
- Illegal sale of alcohol to those who are already drunk;
- Participation in any existing radio network scheme

PUBLIC SAFETY

Paragraph 3.7 advises applicants when making licence applications, in providing evidence within the Operating Schedule that suitable and sufficient measures will be in place to address the Public Safety objective, to consider the following matters in particular:

- The safe occupancy capacity of the premises, in particular having regard to floor area and means of escape;
- The age, design and layout of the premises, including the means of escape;
- The nature of the licensable activities provided, in particular the sale of alcohol;
- Hours of operation;
- Customer profile (age, disability etc);
- The necessary Health and Safety and Fire risk assessments for the premises, and other measures to reduce risk to public safety;
- The number of people employed or engaged to secure the safety of all persons attending the premises or event;
- Where appropriate, noise exposure controls, for both staff and public, which have been detailed in accordance with the appropriate legislation;
- Arrangements to ensure that litter, generated by activities at the premises, does not present a fire hazard;
- Implementation of appropriate crowd management measures

PUBLIC NUISANCE

In relation to the prevention of public nuisance objective, paragraph 3.9 advises applicants to consider the following matters when making an application:

- The type of activity, its frequency and the number and nature of customers likely to attend;
- Measures taken, or proposed, to prevent noise and/or vibration escaping from the premises given its location and proximity to residential and other noise sensitive premises. This would include music, plant noise and human voice, whether amplified or not;
- Measures taken to prevent the transmission of sound and/or vibration to adjoining properties;
- Measures taken, or proposed, for management and supervision of the premises and open areas to minimise unreasonable disturbance by customers and staff arriving or leaving the premises, including the delivery of goods and services;
- The proposed hours of operation for all, or parts, of the premises;
- Measures taken to prevent cooking odours and other smells escaping from the premises;
- Means of access to and egress from the premises, including customer entrances and exits on principal pedestrian routes;
- Whether routes to and from the premises pass residential premises;
- Whether the premises would result in increased refuse storage, disposal problems or additional litter in the vicinity of the premises, including measures taken to ensure the collection and disposal of litter and waste outside the premises;

- Measures to be taken to reduce drunkenness on the premises, e.g. the “Drink Less Enjoy More” scheme;
- If appropriate, a ‘wind down’ period between the end of the licensable activities and closure of the premises;

Should the applicant, or a responsible authority, identify possible sound leakage from the premises paragraph 3.10 indicates that the Authority would expect this to be addressed in practical ways, such as:

- Keeping doors and windows closed and providing adequate mechanical ventilation, or if necessary, air conditioning;
- Reducing sound levels and installing a sound limiting device to prevent sound exceeding the appropriate level;
- Installing soundproofing measures to contain sound and vibration

In premises where customers leave late at night, or early in the morning paragraph 3.11 states that the Authority would expect the applicant to have included, in the Operating Schedule, such practical steps as:

- Erecting prominent notices at the exits to the premises asking customers to leave quietly and not to slam car doors;
- At appropriate time making loud speaker announcements to the same effect;
- Instructing door staff to ask customers leaving the premises to do so quietly;
- Reducing the volume of music towards the end of the evening and where appropriate playing quieter, more soothing music as the evening winds down;
- Improving availability of licensed taxis or private hire vehicles to take customers from the premises;
- Refusing entry to people known to regularly leave in a noisy manner;
- The supervision of any queues so as to keep noise and disturbance to a minimum

5.9 GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003

PREVENTION OF CRIME & DISORDER

Paragraph 2.1 states that the *“Licensing authorities should look to the police as the main source of advice on crime and disorder.”*

Paragraph 2.2 states that in the exercise of their functions *“licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.”*

Paragraph 2.3 states that *“Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises... For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.”*

Paragraph 2.4, with regard to radio links and ring-round phones systems, states that these *“should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.”*

Paragraph 2.5 states that *“Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.”*

Paragraph 2.6 underlines that the *“prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that evidence of a right to work check, either physical or digital (e.g. a copy of any document checked as part of a right to work check or a clear copy of the online right to work check) are retained at the licensed premises.”*

PUBLIC SAFETY

Paragraph 2.7 states that under the Act *“Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result*

from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene."

Paragraph 2.8 underlines that a "number of matters should be considered in relation to public safety. These may include:

- *Fire safety;*
- *Ensuring appropriate access for emergency services such as ambulances;*
- *Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts...;*
- *Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;*
- *Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);*
- *Ensuring appropriate and frequent waste disposal, particularly of glass bottles;*
- *Ensuring appropriate limits on the maximum capacity of the premises...; and*
- *Considering the use of CCTV in and around the premises."*

Paragraph 2.11 underlines that "Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules."

With regard to safe capacities Paragraph 2.12 states that they "should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that

effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.”

PUBLIC NUISANCE

Paragraph 2.15 states that the Act “enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.”

Public nuisance is given a statutory meaning in many pieces of legislation. Paragraph 2.16 states that it is “however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.”

Paragraph 2.17 states that Conditions “relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable...Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.”

Paragraph 2.18 continues that as with all conditions “those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.”

Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods,

Paragraph 2.19 stating for example *“the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.”*

Paragraph 2.20 states that measures to control light pollution should also require careful thought: *“Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.”*

Finally Paragraph 2.21 underlines that beyond *“the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.”*