

**Report Title: S183
Licensing Act 2003 –
Premise Licence
Variation Hearing**

Date of meeting:	8 October 2024		
Report to:	Licensing Sub-Committee		
Report of:	Assistant Director Of Place (Highways and Public Protection)		
Portfolio:	Corporate Services		
Wards affected:	Birkdale		
Is this a key decision:	No	Included in Forward Plan:	No
Exempt/confidential report:	Yes The Report is not exempt, however parts of the Annex 1 & Annex 2 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.

1. The Rationale and Evidence for the Recommendations

Application details

Application: Variation of a Premises Licence

Premises: No 4,
4 Liverpool Road,
Birkdale
PR8 4AR

Applicants: MM Wine Ltd

Representative: Licensing Matters

Designated Premises Supervisor: Mr Stuart McCarron

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 Sunday	07.30 to 24.00	07.30 to 01.30

- 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 Sunday	None	23.00 to 01.30

- The provision of late night refreshment

Days of Operation	Current Hours	Variation applied for
Monday to Sunday	23.00 to 24.00	23.00.to 02.00

Hours premises to be open to public:

Days of Operation	Current Hours	Variation applied for
Monday to Sunday	07.30 to 24.00	07.30 to 02.00

1.1 In addition to the matters outlined above, the applicants also wish to vary the Licence by adding the following condition:

- After 23.00 any music (including bass and vocals) provided inside the building should not be audible at the boundary of any residential dwelling.

2. Background information/Current Licence details

2.1 The premises were granted a Premise Licence on 13th July 2020 and a copy of this Licence is attached in Annex 1 to this Report.

3. Details of proposed Operating Schedule

3.1 GENERAL

l) No items indicated

3.2 THE PREVENTION OF CRIME & DISORDER

i) No items indicated

3.3 PUBLIC SAFETY

- i) No items indicated

3.4 THE PREVENTION OF PUBLIC NUISANCE

- i) No items indicated

3.5 PROTECTION OF CHILDREN FROM HARM

- i) No items indicated

3.6 ADDITIONAL CONDITIONS AGREED FOLLOWING REPRESENTATIONS

The applicants have also agreed to the below Conditions being inserted on the Licence. This being in response to representations received from Merseyside Police and subsequent negotiations; as a result of this agreement representations have been formally withdrawn.

Prevention Of Crime & Disorder Conditions

- i) A risk assessment shall determine the requirement for door supervisors. If door supervisors are on duty, they shall wear distinctive clothing or insignia to clearly identify them as door supervisors. A register of all door supervisors will be kept at the premises with recorded details of dates and times on and off duty, full names and full 16-digit SIA numbers signed on and off by the DPS or deputy. Any incident involving door supervisors will be recorded in the door supervisor register. The record shall include details of their employer (if not the premises) and be signed by that individual.
- ii) No open vessels, glasses, bottles or alcohol containers will be allowed to be taken beyond the delineated licensed area as indicated on the deposited plan.
- iii) Any sales of alcohol knowingly made for consumption off the premises will be made in a sealed container and consumed away from the premises.

4. Objections/Representations received

4.1 One representation has been received from an Interested Party.

4.2 Other person, business or body

Under the Public Nuisance objective one local resident makes representation.

A copy of the representation is 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 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 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.”*

6. Financial Implications

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.

7. 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.

8. Risk Implications

N/A

9. Staffing HR Implications

N/A

10. Conclusion

N/A

Alternative Options Considered and Rejected

Equality Implications: There are no equality implications. (Please note that Council have agreed care experience should be treated like a protected characteristic.)
Impact on Children and Young People: N/A
Climate Emergency Implications: N/A

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

All relevant Responsible Authorities have been consulted within the required representation period relevant to this application.

Implementation Date for the Decision :

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Appendices:

There are Two appendices to this report

The following appendices are attached to this report:

Annex 1.

Annex 2.

Background Papers:

There are no background papers available for inspection.