

<b>Report To:</b>	<b>SPEAKERS PANEL (LIQUOR LICENSING)</b>
<b>Date:</b>	16 April 2021
<b>Reporting Officer:</b>	Emma Varnam – Assistant Director Operations & Neighbourhoods
<b>Subject:</b>	<b>APPLICATION FOR A FULL VARIATION OF PREMISES LICENCE – JOLLY CARTER, 231 MANCHESTER ROAD, DROYLSDEN, M43 6HE (PL0383)</b>
<b>Report Summary:</b>	Members are requested to determine the application
<b>Recommendations:</b>	<p>Having regard to the application and the relevant representations, Members are invited to take such steps (if any) as it considers appropriate for the promotion of the licensing objectives. The steps available are:</p> <ul style="list-style-type: none"> <li>a) To modify the conditions of the licence</li> <li>b) To reject the whole or part of the application</li> </ul>
<b>Corporate Plan:</b>	Living Well – Improve satisfaction with local community
<b>Policy Implications:</b>	Members are provided with policy guidelines to assist in the decision making process.
<b>Financial Implications: (Authorised by the statutory Section 151 Officer &amp; Chief Finance Officer)</b>	There are limited financial implications for the Council, as detailed in the report, however, any legal challenge to a policy decision may potentially incur costs.
<b>Legal Implications: (Authorised by the Borough Solicitor)</b>	If the Panel rejects the application that decision can be challenged by the Applicant. If the Panel grants the licence the Applicant can appeal against any of the conditions imposed on the licence. Any person who made relevant representations can appeal against the decision to grant the licence or against any of the conditions imposed on the licence or on the grounds that the Panel should have refused to specify a person in the licence as the premises supervisor. Any challenge would be by way of an appeal to the Magistrate's Court which may dismiss the appeal, substitute for the decision appealed against any other decision which could have been made by the licensing authority, or remit the case to the licensing authority to dispose of it in accordance with the direction of the court and may make such order as to costs as it thinks fit. If an appeal were successful the Magistrates would be unlikely to order costs against the Local Authority if the authority had acted honestly, reasonably, properly and on grounds that reasonably appeared to be sound, in exercise of its public duty.
<b>Risk Management:</b>	Failure to give full consideration to the determination of licensing issues has the potential to impact on public safety.
<b>Access to Information:</b>	The author of the report is Mike Robinson, Regulatory Services Manager (Licensing)

**Background Information:** The background papers relating to this report can be inspected by contacting Mike Robinson



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## 1. INTRODUCTION

- 1.1 Under section 34 of the Licensing Act 2003 a premises licence holder may apply to the Licensing Authority for a variation of a premises licence.
- 1.2 Where relevant representations have been made in response to the application, the Licensing Authority must hold a hearing to consider them, unless the Applicant, each person who has made representations and the Licensing Authority agree that a hearing is unnecessary. After having regard to the representations, the Panel may take such steps, if any, as it considers appropriate for the promotion of the licensing objectives which are:
- a) To modify the conditions of the licence
  - b) To reject the whole or part of the application
- 1.3 The conditions consistent with the operating schedule may be modified to alter or omit any of them or to add any new condition, including restricting the times at which licensable activities authorised by the licence can take place. However, conditions should not be imposed on a licence which are unrelated to the variation sought

## 2. REPORT

- 2.1 The Jolly Carter, 231, Manchester Road, Droylsden, M43 6HE is a licensed premises. A site plan, including an up to date photograph of the premises, is attached at **Appendix 1**.
- 2.2 A copy of the current licence for the Jolly Carter, 231 Manchester Road, Droylsden is attached at **Appendix 2**.
- 2.3 On 12 March 2021, the Licensing Office received an application from Ms Deborah Anne Evitt (Premises Licence Holder) for a full variation of the premises licence at the Jolly Carter, 231 Manchester Road, Droylsden, M43 6HE. The Applicant seeks authorisation to include the side grassed area within their licensable area and to be used as a beer garden until 10:30pm along with the extension of hours from 9:00pm to 10:30pm for the current beer garden. There is a condition attached to the current licence that restricts the use of the beer garden beyond 9pm This application and site plan is attached at **Appendix 3**.
- 2.4 On 29 July 2020 the Planning Office received an application from the premises licence holder to change the use of the garden area to public use with the proposed use as a drinking establishment and hours of opening of Monday to Sunday 10:00am to 02:00am. This application was refused on 22 September 2020 due to the close proximity of the land to residential properties and the possibility of excessive noise and potential anti-social behaviour. The decision letter is attached at **Appendix 4**.
- 2.5 On 28 November 2020 the Planning Office received an application to change the use of the grassed area to public house use with shelter. The proposed times for the hours of opening are Monday to Sunday 10:00am to 22:30pm. This application was granted on 1 February 2021, the decision letter is attached at **Appendix 5**.
- 2.6 Following the change of use applications submitted to the Planning Office, there were no discussions between the Planning Office and Licensing Department in relation these applications.
- 2.7 Within the last three years, we received one noise complaint in 2019 regarding the Jolly Carter, Manchester Road, Droylsden. The diary sheet was not returned therefore this matter was not investigated any further

### **3 REPRESENTATIONS & EVIDENCE SUBMITTED**

#### **3.1 Councillors**

A representation has been received from the Elected Members for Droysden West Ward; Councillor Gerald Cooney, Councillor Barrie Holland and Councillor Ann Holland. This representation is attached at **Appendix 6**.

A representation has been received from the Elected Members for Droysden East Ward; Councillor Susan Quinn, Councillor Laura Boyle and Councillor David Mills. This representation is attached at **Appendix 7**.

### **4 HOME OFFICE GUIDANCE**

4.1 In determining this application, the Panel must have regard to the statutory guidance issued pursuant to s182 of the Licensing Act 2003. The statutory guidance includes the following:

4.2 The updated statutory guidance issued by the Home Secretary in accordance with section 182 of the Act refers to the consideration of applications for the grant or variation of premises licences in Chapter 9. Members may wish to consider the following extracts from the statutory guidance when determining this application:

4.3 Paragraph 9.42 "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."

4.4 Paragraph 9.43 "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."

4.5 Paragraph 9.44 "Determination of whether an action or step is appropriate for the promotion of the 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. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. 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."

4.6 Paragraph 9.45 "Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs."

4.7 Paragraph 10.8 "The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result

of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations."

- 4.8 Paragraph 10.9 "It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives."
- 4.9 Paragraph 10.13 "The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application."
- 4.10 Paragraph 10.14 "Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested."

## **5 STATEMENT OF LICENSING POLICY**

- 5.1 In determining this application the Panel must also have regard to the Council's Statement of Licensing Policy which includes the following:

### **Planning etc.**

- 5.2 1.17 Planning permission, building control approval and licensing regimes are properly separated to avoid duplication and inefficiency. Planning and licensing regimes involve consideration of different (albeit related) matters. The council's Speaker's panel (Liquor Licensing) is not bound by decisions made by the Speaker's panel (Planning), and vice versa.
- 5.3 1.18 There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant or licence holder must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. The council's planning function is, however, a responsible authority under the Licensing Act and by working in partnership with officers from the Licensing Department, the council will aim to ensure that the planning and licensing regimes avoid any possible conflict between the two regulatory regimes.

## **6 CONCLUSION AND OPTIONS FOR THE PANEL**

- 6.1 Panel are requested to consider the evidence and decide what (if any) steps to take as it considers appropriate for the promotion of the licensing objectives. The options available to the Panel are;
- a) To modify the conditions of the licence
  - b) To reject the whole or part of the application