

SPEAKERS PANEL (LIQUOR LICENSING)

16 April 2021

Commenced: 9.30am

Terminated: 11.25am

Present: Councillors Sweeton (Chair), Bowden and Cartey

In Attendance:

Mike Robinson	Regulatory Services Manager, TMBC
David Joy	Legal Representative, TMBC
Deborah Evitt	Applicant and Premises Licence Holder
Tim Evitt	Partner of Premises Licence Holder
Gerard Wilson	Solicitor (on behalf of Applicant)
Councillor David Mills	Submitted representations

23. DECLARATIONS OF INTEREST

There were no declarations of interest.

24. MINUTES

The Minutes of the previous meetings held on 6 April 2021 were agreed as a correct record.

25. APPLICATION FOR A FULL VARIATION OF PREMISES LICENCE – JOLLY CARTER, 231 MANCHESTER ROAD, DROYLSDEN, M43 6HE (PL0383)

Mr Robinson presented the report to the Panel and identified the steps available to the Panel in determining the application.

Mr Robinson reminded the Panel that the hearing was not a review of the planning decision. A licensing application decision should be made having regard to the promotion of the licensing objectives.

Mr Robinson informed the Panel of the brief background to the application as set out in the report and summarised the representations received from:

- Local/Ward Councillors

The Jolly Carter, 231, Manchester Road, Droylsden, M43 6HE was a licensed premises. A site plan, including an up to date photograph of the premises, was attached at **Appendix 1** of the report.

A copy of the current licence for the Jolly Carter, 231 Manchester Road, Droylsden was attached at **Appendix 2** of the report.

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 sought 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 rear beer garden. There was a condition attached to the current licence that restricted the use of the beer garden beyond 9pm. The application and site plan was attached to the report at **Appendix 3**.

On 29 July 2020 the Planning Office received an application from the premises licence holder to change the use of the side 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 was attached at **Appendix 4** to the report.

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 were Monday to Sunday 10:00am to 22:30pm. This application was granted on 1 February 2021, the decision letter was attached at **Appendix 5** to the report.

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.

Within the last three years, the Council had received one noise complaint in 2019 regarding the Jolly Carter, Manchester Road, Droylsden. A diary sheet was sent to the Complainant but not returned therefore the complaint was not investigated any further.

Mr Robinson referred the Panel to the Council's Statement of Licensing Policy and the Statutory Guidance.

Mr Wilson, for the applicant, then addressed the Panel and made the following submissions in support of the application:

- Reference was made to an Acoustic Impact Report dated 25 November 2020. The report identified that any noise created would be within acceptable levels. The report recommendations included the provision of a Perspex roof and an acoustic fence. These had been installed at significant cost.
- The Applicant noted the representations from local Councillors. There were no other objections – nothing from the Police, Licensing Authority, Environmental Health nor from any local residents. The Representations did not present any evidence as such.
- The Representations should be measured against the actual evidence – the noise assessment, the absence of complaints, the existing conditions, the acoustic measures and the limited time (i.e. 10.30pm).
- The licence holder and Mr Evitt were known locally – they were part of the community and very experienced and passionate pub owners. The clientele was well behaved and the premises had door security.
- Judge them by their past not by fears about the future. They could be trusted to run the premises effectively.
- The Government was currently encouraging publicans to operate external areas in light of the pandemic.
- Other local pubs were permitted to use external areas even though there were nearby residential premises. There should be consistency in the Council's approach.

Cllr David Mills attended the hearing and presented the representation submitted by himself and other Elected Members for Droylsden East Ward, Councillor Susan Quinn and Councillor Laura Boyle. The representation was attached to the Report at **Appendix 7** the details of which were as follows:

- Local Ward Councillors believed granting the premises licence variation application would undermine the Licensing Objectives, in particular the Prevention of Nuisance, Prevention of Crime and Disorder and Protection of Public Safety.

- The proposed terminal hour (10:30pm) for use of the beer gardens at the premises was unacceptable and would cause a nuisance to the local community.
- The premises was located opposite Chesworth Court, which was a sheltered housing scheme for elderly residents. If the application was granted, there was a potential for a large number of customers to congregate in the new beer garden, which was adjacent to the pub and directly opposite Chesworth Court. Local Ward Councillors felt that this would cause a disturbance to these residents, particularly under current coronavirus restrictions where all customers were required to use outside areas at all times that the premises was open.
- Further, there were many other properties which would be adversely affected by the proposed variation to the premises licence, namely residents of; Martins Way, Kershaw Street and Carpenters Walk.
- Currently, there was a condition on the premises licence which restricted use of the beer garden after 9pm. Local Councillors felt that this condition was reasonable and compliance with this condition should be maintained.

Cllr Mills informed the Panel that he had had complaints from local residents when out canvassing.

Cllr Mills did not object to the use of the external space but that it should be restricted to 9.00pm.

The Panel further noted the representation submitted by Cllrs. G Cooney, A Holland and B Holland, (Elected Members for Droylsden West). The representation was attached to the report at **Appendix 6**.

All parties were provided with the opportunity to ask questions in relation to the representations made.

All parties were invited to provide a brief statement in summary.

Members of the Panel then retired to carefully consider the written submissions, representations and questions and answers during the hearing in addition to all the information provided. The Panel were accompanied by the Legal Representative and the Principal Democratic Services Officer who provided legal and procedural advice only and took no part in the decision making process.

In determining this matter, the Panel had due regard to:-

- all oral and written evidence and submissions
- the Council's Statement of Licensing Policy
- the relevant sections of the Licensing Act 2003 and Regulations made thereunder
- the Guidance issued by the Secretary of State under section 182 of that Act

The Panel determined the application pursuant to s35(4) of the Act having regard to the relevant representations and the requirement to take such steps as it considers appropriate to promote the licensing objectives.

The key points were as follows:

- The application related to 2 external areas at the premises – an existing rear beer garden which was currently in use until 9.00pm and a new area at the side of the premises – currently unlicensed.
- Local Ward Councillors had concerns regarding the potential for an increase in noise nuisance from the requested increased use of external areas (particularly after 9.00pm) and the impact on nearby residents including those in sheltered accommodation.
- Planning permission had been granted for the extended outdoor seating area, or beer garden which included the following conditions:

- The extended outdoor seating area, or beer garden were not to be used outside the hours of 10:00 to 22.30 on any day.
- No public address system, television set, amplified music, or musical instrument shall be relayed to, or played in the extended outdoor seating area, or beer garden hereby permitted.
- Noise mitigation measures were to be implemented (prior to use) including acoustic fencing and a Perspex roof.
- A planting scheme was to be introduced.
- The Premises Licence currently included conditions in the following terms:
 - Doors & Windows - To prevent noise nuisance, all windows and doors at the premise must be kept closed at any time when regulated entertainment, live music (amplified or unamplified), recorded music or any other type of entertainment (amplified or unamplified) was being performed at the premise, except to allow people to enter or exit.
 - Noise generated by regulated entertainment should be inaudible at the nearest noise sensitive location.
- There was one record of a noise complaint relating to the premises in the last three years. This complaint was not pursued further by the Complainant.
- The rear beer garden had been in use for a number of years (although, as stated, limited to 9.00pm).
- The new area was not really any nearer to residential premises than the existing beer garden. No local residents had directly objected.

The Panel considered all available options.

The Panel considered whether the licence variation application could be granted (with or without the imposition of appropriate conditions and/or limits on proposed licensable activities).

On balance, having carefully considered all of the available information, the Panel concluded that the licence could be varied in accordance with the application and such a grant would not undermine the promotion of the licensing objectives.

In granting the application the Panel particularly noted that mitigation measures that were to be in place and the prohibition on amplified music etc.

The Panel also noted the available enforcement options in the event that there was noise nuisance from the premises and/or the planning or licence conditions. Options included a review of the premises licence.

The grant of the variation to the licence would be subject to amendments/additions to the licence conditions.

STEPS TAKEN PURSUANT TO S18(4) LICENSING ACT 2003

The steps that the Panel considered appropriate to promote the licensing objectives were to grant the application to vary the premises licence/conditions. The effect of this would be:

- (1) to extend the hours of use of the existing rear beer garden from 10.00am - 9.00pm to 10.00am to 10.30pm; and
- (2) to include the new external area within the licensed area with permitted hours of use from 10.00am to 10.30pm.

The existing licence conditions will be amended to include the above and:

- A variation of the current cctv condition to extend it to the external beer garden/outdoor seating areas.
- A condition relating to amplified music etc. This would be in similar terms to the current planning condition and imposed on the licence for consistency and clarity.

The details of the amendments/additions to the conditions are set out in Appendix 1 to these Minutes.

The Panel thanked those attending the hearing for their contribution and assisting the Panel in reaching its decision.

RESOLVED

That the variation to the licence be granted subject to amendments/additions to the licence conditions as set out in Appendix 1 to these Minutes.

CHAIR

APPENDIX 1

Premises: JOLLY CARTER, 231 MANCHESTER ROAD, DROYLSDEN M43 6HE

Amendments to the current premises licence conditions:

Annex 2 – Conditions consistent with the Operating Schedule

CONDITIONS AS PER WRITTEN AGREEMENT WITH RESPONSIBLE AUTHORITY – LICENSING AGREED 1 July 2005

At the end of paragraph number 3 “The beer garden must not be used by customers after the hours of 9.00pm” insert the words, “(deleted 16 April 2021)”

Annex 3 – Conditions attached after a hearing by the Licensing Authority

- (1) The beer gardens/outside seating areas at the premises must not be used outside of the hours 10.00am to 10.30pm any day
- (2) The CCTV system installed and maintained at the premises pursuant to the existing licence conditions shall be extended to include the beer gardens/outside seating areas at the premises. For the avoidance of doubt, all existing CCTV requirements will apply to the external CCTV.
- (3) No public address system, television set, amplified music, or musical instrument shall be relayed to, or played in the beer gardens/outdoor seating areas.