

Report to:	Licensing Panel
Relevant Officer:	Sharon Davies, Head of Licensing Services
Date of Meeting :	10 November 2016

APPLICATION TO VARY A PREMISES LICENCE – Ma Kelly’s Foxhall Road

1.0 Purpose of the report:

1.1 To consider an application to vary a Premises Licence in respect of Ma Kelly’s Foxhall Road.

2.0 Recommendation(s):

2.1 The Panel is requested to consider the application and determine whether the granting of this licence would adversely impact on the licensing objectives.

3.0 Reasons for recommendation(s):

3.1 Representations have been received therefore there must be a hearing to determine the application.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council’s approved budget? Yes

3.3 Other alternative options to be considered:

None, once representations have received the application must be considered by the Licensing Panel.

4.0 Background Information

4.1 On 16 September 2016, the Licensing Service received an application from Paul Anthony Kelly to vary the premises licence PL1174, Ma Kelly’s, Foxhall Road

4.2 Currently the premises is licensed for the sale of alcohol 10.30 – 00.30 Monday-Thursday, 10.30 – 01.30 Friday-Saturday and 11.00 – 01.00 Sunday; the provision of regulated entertainment until 01.00 hours daily and late night refreshment until 23.30 Monday-Wednesday and 003.0 Thursday - Saturday with the premises closing to the public by 01.00 hours Monday – Thursday and 02.00 Friday – Sunday.

4.3 The application requests an extension of the hours for the sale of alcohol and provision of regulated entertainment until 03.00 on Friday and Saturday with the premises closing to the public at 03.30. A copy of the application is attached at Appendix 4a.

4.4 Representations have been received from Environmental Protection. A copy of the representation is attached at Appendix 4b.

4.5 **Local policy considerations**
None

4.6 **National policy considerations**

9.42 – The authority’s decision should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.43 – 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. Whilst 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 as well as the potential benefit in terms of 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 licensing objectives and nothing outside those parameters.

4.6 **Observations**

The following conditions are currently endorsed on the licence:

Annex 1 - Mandatory conditions

1 Alcohol shall not be sold or supplied except during permitted hours.
Permitted hours means:

- a) Monday to Thursday 1030 - 0030 the following morning
- b) Friday and Saturday 1030 - 0130 the following morning
- c) Sunday 1100 - 0100 the following morning

- d) On the Friday and Saturday of Easter, May, Spring and August Bank Holiday weekends, and 24th, 26th, 27th and 28th December permitted hours for sale of alcohol shall be 1030 - 0200 the following day. The premises shall close one hour after (0300).
- e) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or if there are no permitted hours on the following day, midnight on 31st December)

The above restrictions do not prohibit:

- a) During the first sixty minutes after the above hours the consumption of the alcohol on the premises;
- b) During the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- c) During the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking meals there if the alcohol was supplied for consumption as ancillary to the meals;
- d) Consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the licensed premises;
- e) The ordering of alcohol to be consumed off the premises, or the dispatch by the vendor of the alcohol so ordered;
- f) The sale of alcohol to a trader or club for the purposes of the trade or club;
- g) The taking of alcohol from the premises by a person residing there; or
- h) The supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied; or
- i) The supply of alcohol for consumption on the premises to person employed there for the purposes of business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

2 No supply of alcohol may be made under the premises licence -

- a) At a time when there is no designated premises supervisor in respect of the premises licence,

or

- b) At a time when the designated premises supervisor does not hold a personal licence, or his personal licence is suspended.

- 3 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 4 (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises -
- (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to -
- (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
- (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
- (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
- 5 The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

- 6 (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either a holographic mark, or an ultraviolet feature.

7 The responsible person must ensure that -

(a) where any of the following alcoholic drinks are sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures -

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

8 (1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

(2) In this condition:-

a. "permitted price" is the price found by applying the formula $P = D + (D \times V)$, where-

- i. P is the permitted price,
- ii. D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- iii. V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

b. "duty" is to be construed in accordance with the Alcoholic Liquor

Duties Act 1979;

- c. "relevant person" means, in relation to premises in respect of which there is in force a premises licence-
 - i. the holder of the premises licence,
 - ii. the designated premises supervisor (if any) in respect of such a licence, or
 - iii. the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- d. "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- e. "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

(3) Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny.

(4) Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

- 9 Any individual employed on the premises to carry out a security activity must be licensed by the Security Industry Authority.

Annex 2 - Conditions consistent with the Operating Schedule

- 1 Noise generated by way of regulated entertainment shall be under the direct control of the licensee and such control shall not be accessible to a member of the public and artistes.
- 2 During the provision of regulated entertainment all windows in the premises shall remain closed, the door entrance on the south elevation shall remain closed except for access and egress except in an emergency, and the middle doors to the west elevation shall remain closed except for access and egress by patrons.
- 3 Access and egress by patrons shall be by the door on the west elevation only after midnight each evening.
- 4 Noise generated shall be inaudible, or at a level set by the local authority, so

as not to give rise to nuisance in adjacent or nearby residential and holiday accommodation.

- 5 The premises are operated in accordance with the principles outlined by the 'Nightsafe' Scheme, as are relevant to those premises, and indicated in the associated leaflet.
- 6 An adequate number of licensed door supervisors will be on duty as appropriate to any risk assessment and in accordance with the guidance under the 'Nightsafe' Scheme.
- 7 Appropriate measures will be taken to ensure staff prevent the removal of bottles or glasses from the curtilage and grounds of the licensed premises.
- 8 The existing closed circuit television system will be maintained appropriate to its purpose and to the satisfaction of the enforcement authorities.
- 9 Where Radiolink equipment is in use it will be 'live' and will be monitored by the Head Doorman or another responsible person while the licensed premises are open for business (if applicable).
- 10 Where possible only toughened glass vessels are used to dispense beverages to customers.
- 11 At least one personal licence holder will be contactable while the supply or sale of alcohol is being undertaken (whose identity will be known to all other staff engaged in the supply or sale of alcohol) except in the case of emergency.
- 12 Another member of staff shall be nominated to act for the Designated Premises Supervisor, in their absence, whose identity is known by all other staff when such absence occurs.
- 13 Risk assessments carried out by or on behalf of the licence holder which relate to a licensing objective will be available for inspection by a police officer or a responsible authority.
- 14 Frequent collection of glasses and bottles will be undertaken to ensure that empty containers do not accumulate in or around the licensed premises.
- 15 There will be no irresponsible drinks promotions which may encourage binge drinking.
- 16 Staff will be fully trained in relation to sales of alcohol to persons under the

age of 18. No persons under the age of 18 are allowed on the premises at any time.

- 17 A drugs policy is to be in force and operational at the premises.
- 18 The maximum number of persons to be permitted to the premises at any one time shall be 200.
- 19 There will be annual testing and inspection of the gas installation, electrical installation, emergency lighting and fire alarm system at the premises by qualified engineers.
- 20 Signs will be posted at exits reminding customers of the need to leave the premises quietly and with respect for local residents.
- 21 A free phone taxi service is to be available for use by customers.
- 22 Empty bottles shall not be disposed of outside the premises between the hours of 22.00 - 08.00.

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

- 1 An individual shall be nominated who has the power to deal with complaints concerning noise as they arise. The details of this person should be made available to Mr and Mrs Devine of 9 Bairstow Street.
- 2 The smoking area shall be closed and the rear exit must only be used as a fire exit.
- 3 Outside lights must be switched off no later than 30minutes before the premises is to close.
- 4 Curtains in the windows must be drawn no later than 22:00hours.
- 5 The CCTV system installed at the premises shall comply with the following:
 - i. The CCTV system shall be installed, maintained and operated to the reasonable satisfaction of Lancashire Constabulary. All public areas of the premises are to be covered by the system. The system will incorporate a camera covering each of the entrance doors and will be capable of providing an image which is regarded as identification standard.
 - ii. The system will display on any recording the correct time and date of the recording.
 - iii. The system will make recordings during all hours the premises are open to

the public.

- iv. Digital recording shall be held for a minimum of 28 days, after the recording is made and will be made available to the Police or any authorised persons acting for a Responsible Authority for inspection upon request.
- v. The system will, as a minimum, shall record images of the head and shoulders of all persons entering the premises.

6 A staff member who is conversant with the operation of the CCTV system will be on the premises at all times the premises are open to the public. This staff member will be able to show recent data or footage with the absolute minimum of delay when requested to a Police Officer or to a Local Authority Enforcement Officer.

7 The Licence Holder or Designated Premises Supervisor shall notify the Police Licensing Unit on any occasion when the CCTV is to be inoperative for a period in excess of one working day and shall provide a certificate from a competent person stating the reason for the system being inoperative and the measures which have been taken to satisfy the licence conditions.

4.7 Does the information submitted include any exempt information? No

4.8 **List of Appendices:**

Appendix 4a: Application

Appendix 4b: Environmental Protection representation

5.0 **Legal considerations:**

5.1 Please see local and national policy in the background information.

6.0 **Human Resources considerations:**

6.1 None

7.0 **Equalities considerations:**

7.1 None

8.0 Financial considerations:

8.1 None