

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 Talbot Road

1.0 Purpose of the report:

- 1.1 To consider an application to vary a Premises Licence in respect of Ma Kelly's Talbot 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 PL0881, Ma Kelly's, Talbot Road.

- 4.2 Currently the premises is licensed for the sale of alcohol and the provision of regulated entertainment until 01.00 hours Monday-Wednesday, 02.00 Thursday and Sunday and 03.00 Friday-Saturday; late night refreshment until 02.00 Monday-Wednesday, 03.00 Thursday/Sunday and 04.00 Friday-Saturday with the premises closing to the public one hour after the permitted time for the sale of alcohol ceases.
- 4.3 The application requests an extension of the hours for the sale of alcohol and provision of regulated entertainment until 04.00 on Friday and Saturday with the premises closing to the public at 04.30. A copy of the application is attached at Appendix 5a.
- 4.4 Representations have been received from Lancashire Constabulary. A copy of the representation is attached at Appendix 5b

4.5 **Local policy considerations**

This premises is situated in the town centre saturation area.

- 4.7.5 The policy will apply to applications including the sale or supply of alcohol on the premises and the provision of late night refreshment for:

- New premises licences
- New club premises certificates
- Provisional statements
- Variations to existing licences (where the modifications are directly relevant to the issue of cumulative impact, for example, extension of trading hours or capacity).

- 4.7.6 The effect of the policy is to create a rebuttable presumption that applications listed above will be refused. To rebut this presumption an applicant would be expected to show through the operating schedule and where appropriate, with supporting evidence, that the operation of the premises will not add to the cumulative impact already being experienced. The licensing authority expects that applications covered by this policy will be discussed with the responsible authorities in advance of submission. Applications should include detailed proposals dealing with the seating provision for customers (what percentage of proposed trading area will be seated), the provision of food, the type and style of entertainment to be offered. Premises which intend to primarily offer vertical drinking are unlikely to be able to rebut the presumption of refusal.

- 4.7.7 This policy does not act as an absolute prohibition on the granting of new licences however the policy will only be overridden in genuinely exceptional

cases where the applicant can demonstrate that the granting of the application will not undermine the policy and the reasons for it.

- 4.7.8 An application is not likely to be classed as exceptional merely on the ground that the premises have been or will be operated within the terms of its licence or that they are/will be well managed. This is to be expected of any application.

4.6 **National policy considerations**

9.12 – The police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that do so would not be proportionate for the promotion of the licensing objectives.

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.

3.35 – After receiving relevant representations in relation to a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case... if the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.

4.7 **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) On Monday to Wednesday 10.00 to 01.00 hours the following day
- b) On Thursday 10.00 to 02.00 hours the following day
- c) On Friday to Saturday 10.00 to 03.00 hours the following day
- d) On Sunday 10.00 to 02.00 hours the following day
- e) On the Friday to Monday of Easter, May, Spring and August Bank Holidays, the Thursday before Easter and on Christmas Eve, an additional hour will be permitted
- f) 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 sixty 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.

The sale of alcohol must be ancillary to the use of the premises for music

and dancing and substantial refreshment.

- 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 premise 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 Exhibition of films:

Where the film classification body is specified in the licence, unless the following applies, admission of children must be restricted in accordance with any recommendations made by that body.

Where -

- a) The film classification body is not specified in the licence,
- or*
- b) The relevant licensing authority has notified the holder of the licence that this condition is applied to the film in question,

Admission of children must be restricted in accordance with any recommendation made by that licensing authority.

- 10 Any individual employed on the premises to carry out a security activity must be licensed by the Security Industry Authority.
- 11 The terms, conditions and restrictions detailed in the Blackpool Borough Council Entertainments Licences (Standard Conditions) Regulations 1985 must be adhered to at all times.
- 12 The premises shall not be used for public entertainment on Sunday except between the hours defined by the schedule and then only for (a) musical entertainment as defined by the Sunday Entertainments Act 1932, and (b) dancing in respect of which an admission charge is not made.
- 13 Music must not be excessive in volume and must be under the control of the holder of the licence or his duly appointed representative. The requirements of the Licensing Authority's Environmental Health Division in relation to levels of noise produced inside or outside the premises as a result of, incidental to, or arising from the public entertainment, shall be complied with.
- 14 The maximum number of persons to be accommodated in the premises or in any particular part of the premises at any one time shall be as follows:

Ground Floor Bar	600
Basement	500

Annex 2 - Conditions consistent with the Operating Schedule

- 1 The non-standard hours for the provision of Regulated Entertainment, Late Night Refreshment and the Premises Opening Hours are as follows:

On the Friday to Monday of Easter, May, Spring and August Bank Holidays, the Thursday before Easter and on Christmas Eve, an additional hour will be permitted.

- 2 Where appropriate soft drinks and non-alcoholic refreshment will be available during the period between the cessation of the supply of alcohol and the closure of the premises.
- 3 The premises will respect the Spirit Group's Approach to Responsible Drinking.
- 4 When door staff are used they will be Security Industry Authority (SIA) approved and operate in accordance with the security industry guidelines.
- 5 A zero tolerance towards illegal drugs will be enforced at all times.
- 6 If a disc jockey is used on any night then he / she will ask customers to leave quietly.
- 7 All instances of crime and disorder will be reported to the police and will be kept in an incident log book.
- 8 The existing CCTV system will continue to operate and be kept in good working order.
- 9 Free drinking water will be available at all times.
- 10 Additional patrols will take place by members of staff, internally and externally, to limit any noise pollution when entertainment is being offered within the premises.
- 11 Notices will be displayed asking our customers to respect our neighbours when leaving the premises.
- 12 When children are allowed upon the premises, any entertainment offered within the premises will be suitable for young persons. Children will be required to be supervised by the accompanying adult at all times.
- 13 A no smoking area will be provided.
- 14 A recognised proof of age policy will be enforced.
- 15 The premises shall be operated in participation with the 'Pubwatch' and 'Radiolink' schemes.
- 16 All staff to have received suitable training in relation to the proof of age scheme to be applied upon the premises. Records to evidence this will be made available to an authorised officer upon request.

- 17 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.
- 18 Appropriate measures will be taken to ensure staff prevent the removal of bottles or glasses from the curtilage and grounds of the licensed premises.
- 19 All door staff employed at the entrance / exit of the licensed premises will wear a reflective jacket/tabard of a design approved by the Lancashire Constabulary.
- 20 The Local Authority CCTV control room will be notified
 - a) On any occasion when the premises CCTV or radio system is operative.
 - b) When the CCTV or radio system has been brought back into use
- 21 The Police Licensing Unit shall be notified on any occasion when the CCTV or radio system 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.
- 22 The Radiolink equipment will be 'live' and will be monitored by the Head Doorman or another responsible person while the licensed premises are open for business.
- 23 Only toughened glass vessels are used to dispense beverages to customers.
- 24 At least one personal licence holder will be available on the licensed premises while the supply or sale of alcohol is being undertaken (who's identity will be known to all other staff engaged in the supply or sale of alcohol) except in the case of emergency.
- 25 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.
- 26 Adequate first aid provision is available at all times to include having at least one trained first-aider on the premises at all times the premises are being operated.
- 27 Risk assessments carried out by or on behalf of the Licence holder which relate to a licensing objective will be available for inspection by an officer or a

Responsible Authority.

- 28 Clearly visible notices, in a form prescribed by the Council, shall be displayed advising those attending that 1. It is a condition of entry that customers agree to be searched and 2. Police will be informed if anyone is found in possession of controlled substances or weapons.
- 29 Security arrangements are sufficient to discourage the sale and consumption of drugs and shall ensure such arrangements include regular checks of toilet areas.
- 30 Records of incidents involving the use and/or detection of drugs shall be maintained and those records shall be available for inspection.
- 31 Confiscated and found drugs shall be stored, disposed, transferred in accordance with procedures agreed with the Lancashire Constabulary.
- 32 A drugs prevention strategy for the venue shall be developed and applied. The strategy shall include arrangements for the location of posters and the distribution of other information relating to drugs risks, the dangers associated with drugs and the legal provisions relating to drug use.
- 33 The volume of amplified sound used in connection with entertainment shall at all times be under the control of the licensee or management and the controlling mechanism shall be operated from a part of the premises inaccessible to the public.
- 34 Frequent collection of glasses and bottles will be undertaken to ensure that empty containers do not accumulate in or around the licensed premises.
- 35 All external windows and doors should be closed during hours of Regulated Entertainment, except in the case of an emergency.
- 36 Noise from ant Regulated Entertainment or Mechanical Ventilation will be inaudible within the nearest sensitive properties or, at the discretion of the Local Authority, shall not exceed some other pre-agreed limit, which does not cause unreasonable disturbance to the residents of these properties or their guests.
- 37 Vibration produced as a result of any Regulated Entertainment shall not be perceptible in any adjoining or nearby sensitive properties.

4.8 Does the information submitted include any exempt information? No

4.9 List of Appendices:

Appendix 5a: Application
Appendix 5b: Lancashire Constabulary 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