



AGENDA ITEM: 8

**LICENSING & GAMBLING
COMMITTEE:
30 JULY 2013**

Report of: Assistant Director Community Services

Relevant Managing Director: Managing Director (People and Places)

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SUBJECT: LICENSING ACT 2003 - EARLY MORNING RESTRICTION ORDER

Wards affected: Borough wide

1.0 PURPOSE OF REPORT

- 1.1 To provide Members with preliminary evidence in respect of a proposed Early Morning Restriction Order for the Ormskirk area, including the views of partner agencies and available alternative options.

2.0 RECOMMENDATIONS

- 2.1 That the Licensing and Gambling Committee does not proceed with the proposal of an Early Morning Restriction Order for the Ormskirk area as there is insufficient suitable preliminary evidence at this time.

3.0 BACKGROUND

- 3.1 Members will recall that a formal request to consider an Early Morning Restriction Order (EMRO) for the Ormskirk area was received from Councillor Owens on 18 November 2012. This request was presented to the Licensing and Gambling Committee (the Committee) on 5 February 2013 in the report attached at Appendix B - the contents of which must be taken into account when reading this report.
- 3.2 The Committee resolved to consider Councillor Owens' request and instructed the Assistant Director Community Services to gather preliminary evidence, including the views of partner agencies and available alternative options, for presentation to the Committee, so an informed decision could be made whether to propose an EMRO for the Ormskirk area.

3.3 The Committee also confirmed those organisations, businesses and representative groups within Ormskirk that should be contacted to obtain their views. These included:

Responsible Authorities as stated under the Licensing Act 2003;

- All businesses, including licensed businesses;
- Private hire operators;
- Ward Councillors;
- Hospital-Accident and Emergency Department;
- Transport Authorities;
- Director of Student Services Edge Hill University;
- Director of Student Union Edge Hill University;
- Transport Police;
- Residents Associations.

4.0 CURRENT POSITION

4.1 The letter, attached as Appendix C to this report, was sent to approximately 350 relevant organisations, businesses and representative groups on 13 March 2013. The letter requested that responses be submitted by 7 June 2013.

4.2 A total of 28 responses have been received. 6 responses are in support of an EMRO and 19 are against. 3 'neutral' responses have also been received, which do not state a specific preference for or against the proposal of an EMRO. A copy of each response is provided in the respective Appendix as detailed in tables 1, 2 and 3 below.

Table 1: outline of the 19 responses against the proposal of an EMRO for the Ormskirk area

No.	Date rec'd	From	Summary	App.
1	04/04/13	Belpasso Oil and Wine Company	Economy will suffer.	D
2	09/04/13	Ormskirk Karate Sandra Brookfield	Council should be supporting businesses not restricting them.	E
3	24/04/13	Fat Olive, Ormskirk Jennifer Hardman-Varley	Small businesses will not be able to survive.	F
4	24/05/13	CCTV	No evidence to support an EMRO.	G
5	24/05/13	Environmental Protection	No evidence to support an EMRO.	H
6	24/05/13	Community Safety Partnership	Insufficient evidence to support an EMRO.	I
7	29/05/13	John Gaunt Solicitors on behalf of Marston's for Disraeli's, Ormskirk	Economic impacts and social impacts.	J
8	31/05/13	Disraeli's, Ormskirk Sue Jones	Effect on all businesses not just the licensed	K

			trade, must be an alternative to an EMRO.	
9	01/06/13	Amy Livesey Student and part time worker at Styles Bar, Ormskirk	Loss of job, huge effect on economy, students would not want to come in to Ormskirk if pubs close early.	L
10	05/06/13	Kate Charlton Part time worker at Styles Bar, Ormskirk	Loss of job, affect all businesses, distract people coming to Ormskirk, devastating effects on the local economy.	M
11	06/06/13	A and B Cabs, Ormskirk	Effects on business and other local businesses, could not keep drivers if pubs close early.	N
12	06/06/13	GE Real Estate Clients: Wheatsheaf Walk and 33-39 Moor Street	Clients will potentially lose tenants, lead to further voids in the town and see a spiral of decline from which Ormskirk will not recover.	O
13	06/06/13	Queens Head, Ormskirk Elaine Wright	Disastrous for business and other bars and businesses.	P
14	07/06/13	Styles Bar, Ormskirk Alun Comer	Huge impact on business and other local businesses.	Q
15	07/06/13	Styles Bar, Ormskirk Philip Watson	Catastrophic to Ormskirk night time economy, knock on effect to night time economy.	R
16	07/06/13	JD Wetherspoon Solicitors Nigel Connor	Other measures should be looked at before an EMRO is formally considered.	S
17	07/06/13	IKO Ventures Ian Gordon in respect of the Green Room, Ormskirk	Damage the local economy, threaten local businesses and deprive people of local venues.	T
18	11/06/13	Liquid Bar, Ormskirk Pedro Andrade	Town will severely suffer if an EMRO is imposed with people moving out of the town to drink and returning later.	U
19	12/06/13	Love Ormskirk Katie Givens (Managing Director)	EMRO could reduce the attraction of the town, detrimental to town, reduce employment opportunities.	V

4.3 The arguments contained in the responses against the proposal of an EMRO are summarised below:

- The loss of business will have immediate consequences for businesses;
- Closure of premises will drive business elsewhere;
- Change to the infrastructure of the town, with consequent loss of business and employment;
- Level of vibrancy in the town would cease to exist; this would impact upon the viability of the centre as a whole;
- Taxi firms, take-away food outlets and retailers will be impacted upon, not just the licensed trade;
- People will migrate to Liverpool and Southport, not just for late night entertainment but for all socialising and retail needs;
- If people migrate to other towns and cities they may return at a later hour than is currently the case;
- Popularity of the University would suffer if the town is to be regarded as somewhere that didn't have anything to offer students. A fall in the popularity of the University would have further adverse effects on the town as business and employment prospects fall;
- Town may experience a serious and potentially much more difficult situation in controlling street drinking and house parties;
- Governments own advice on EMRO's is that other avenues should be explored before their introduction;
- Noise problems could be resolved by other means.

Table 2: outline the 6 responses supporting the proposal of an EMRO for the Ormskirk area.

No.	Date rec'd	From	Summary	App.
1	31/03/13	New Way Tenants and Residents Association	Noise nuisance and anti-social behaviour.	W
2	28/05/13	Merseyrail	Support introduction of an EMRO due to the significant increase in alcohol related incidents and offences over the past few years.	X
3	30/05/13	Jane Thomson Ormskirk resident	Noise Nuisance.	Y
4	05/06/13	Councillor Adrian Owens	By introducing an EMRO, anti-social behaviour will be curtailed.	Z
5	07/06/13	Mr and Mrs M Jones Ormskirk residents	Welcome formal proposal for an EMRO due to noise and anti-social behaviour problems in Ormskirk.	1A
6	07/06/13	Ormskirk Community Partnership	Anti-social behaviour.	1B

4.4 The arguments contained in the responses in support of the proposal of an EMRO are summarised below:

- Night time economy would continue to flourish as licensed premises will still be able to open later at weekends;
- Anti-social behaviour needs to be curtailed;
- Residents need to get more sleep;
- Better community relations to develop;
- A reduction in economic damage;
- Reduction in noise nuisance.

Table 3: outline of the 3 'neutral' responses, which did not state a preference for or against the proposal of an EMRO for the Ormskirk area.

No.	Date rec'd	From	Summary	App.
1	25/03/13	Edge Hill University, Ormskirk Christine Coleman	Decision on licensing hours is a matter for the Local Authority.	1C
2	16/05/13	Barn Lodge Veterinary Hospital, Ormskirk Austin Kirwan	Outline of local issues and potential debate.	1D
3	12/06/13	Lancashire Constabulary Chief Inspector Edward Newton	Guidance states that an EMRO is a "weapon of last resort" and other options should be considered before its implementation.	1E

5.0 ISSUES

5.1 Members will be familiar with the four statutory licensing objectives under the Licensing Act 2003 (the 2003 Act), which are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

5.2 The legislative and procedural requirements for an EMRO are stated in the report attached at Appendix B. For Members' benefit, the relevant section of the Secretary of State's Guidance issued under Section 182 Licensing Act 2003 (the Guidance) is also provided at Appendix 1F to this report. Members should consider the Guidance carefully, as not to proceed in accordance with the content would leave the Council open to legal challenge.

5.3 The Guidance clearly states that an EMRO should only be contemplated when there is sufficient evidence. Accordingly, the Committee must be satisfied that it has sufficient evidence to demonstrate that the proposal of an EMRO for the

Ormskirk area is appropriate for the promotion of the licensing objectives. The Guidance also states that the Committee should consider evidence from partners, including responsible authorities and the Community Safety Partnership, alongside its own evidence. Whilst the information contained in this report is only preliminary, it provides the Committee with sufficient indication so an informed decision can be made at this stage.

5.4 The Guidance provides a non-exhaustive list of matters that should be considered as part of the evidential argument for an EMRO:

- Local crime and disorder statistics, including statistics on specific types of crime and crime hotspots;
- Statistics on local anti-social behaviour offences;
- Health-related statistics such as alcohol-related emergency attendances and hospital admissions;
- Environmental health complaints, particularly in relation to litter and noise;
- Complaints recorded by the Council, which may include complaints raised by local residents or residents' associations;
- Residents' questionnaires;
- Evidence from local Councillors;
- Trends in licence applications, particularly trends in applications by types of premises and terminal hours;
- Changes in terminal hours of premises;
- Premises' capacities at different times of night and the expected concentrations of drinkers who will be expected to be leaving premises at different times; and
- Evidence obtained through local consultation.

5.5 Given that only preliminary information has been sought, it is not possible to address all of the above points at this time. Furthermore, not all of the preliminary evidence received would stand up to the level of scrutiny required as part of the hearing process in its current form, as it does not provide a suitable amount of prescriptive detail. Nevertheless, evidence of a significant number of low level nuisance / crime incidents based around certain areas of Ormskirk has been submitted, but this is not substantiated by any responsible authority or other source outside those representing the views of local residents.

5.6 It is important to note that no information to substantiate the introduction of an EMRO has been received from any responsible authorities - particularly those involved in the control of crime, disorder and/or nuisance or directly affected by it (i.e. the Police [including the Community Safety Partnership and CCTV], the Council's Environmental Protection service and Health Authority). Without any suitable evidence submitted by these organisations, it is not possible to demonstrate that an EMRO is a reasonable and proportionate course of action in accordance with the Guidance. It should also be noted that at those local authorities that have taken a formal approach to introducing an EMRO, the process has been supported by one or more responsible authorities – this includes Blackpool, Norwich, Plymouth, Chesterfield and Hartlepool. No such approach has been made by any responsible authority in West Lancashire.

5.7 According to Home Office sources, only the above mentioned local authorities are currently formally considering an EMRO. However, only Hartlepool Borough Council has followed the statutory process to conclusion at this time, whereby following the formal proposal of an EMRO, a hearing was held on 7 May 2013. After consideration of the evidence, Hartlepool's Licensing Committee determined that it would not be appropriate to introduce an EMRO at the current time even though evidence was submitted by responsible authorities. The Committee resolved to revisit the issue in 2014 to establish whether specific improvements had been made. The minutes of this hearing are attached at Appendix 1G to this report.

5.8 The Guidance makes it clear that an EMRO is a powerful tool and the Committee should consider other measures that may address the problems that have been identified as the basis for introducing an EMRO. The evidential burden will rest with the Council to prove that it has exhausted all other options and so the Committee will need to be convinced that the options detailed below have been implemented and subsequently failed, thus leaving a demonstrable need to consider an EMRO:

- Review the licence of any particular troublesome premises;
 - The Council makes use of this provision. However, only 3 licences were called in for review in 2012/13 and none of these were in the Ormskirk area, which does not suggest a level of concern that would substantiate the use of an EMRO.
- Encouraging business lead initiatives - i.e. "best practice guide";
 - The Best Bar None initiative was introduced within Ormskirk town centre approximately 3 years ago, but there was only limited engagement from the licensed trade. However, it is known that licensing solicitors are advising affected licensees to act swiftly and collectively against any indication of an intention to introduce an EMRO. Licensed premises and their representatives are therefore encouraged to express a strong willingness to challenge any decision to introduce an EMRO. Strength in numbers is perceived to give licensed premises the best chance to succeed, as this will also allow licensed premises to put forward a strong case for the Council to consider such trade friendly alternatives to tackle perceived problems with the late night economy. For example, Best Bar None, Purple Flag scheme, taxi marshalls, street pastors, street ambassadors etc. Accordingly, it is likely that the licensed trade within Ormskirk may now be more receptive to such initiatives given the potential implications of an EMRO – which is indicated in some of the responses received. Evidence that all of these initiatives have been used without success must be available before an EMRO is proposed.
- Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the Council;
 - No such formal arrangements exist with regard to licensing issues. Again, these options must be sufficiently explored before an EMRO is proposed.
- Provision of CCTV;

- 3 additional CCTV cameras are being installed on St Helens Road to improve coverage on the 'red route' between Ormskirk town centre and Edge Hill University. It is anticipated that these additional cameras will be installed by the end of September 2013. The impact of these cameras must be assessed before an EMRO is proposed.
- Designation of places where alcohol may not be consumed publicly and the confiscation of alcohol in such areas (e.g. Designated Public Places Orders - DPPOs);
 - No suitable evidence was available to support the use of a DPPO when the issue was last examined in 2009. However, given the current available evidence of a number of low level nuisance / crime incidents in the Ormskirk area, such measures should be re-examined before an EMRO is considered. It should be noted that the cooperation and input of the Police is vital given that they are the primary enforcing authority.
- New anti-social behaviour legislation;
 - The Anti-social behaviour Bill is due to be enacted in 2014 and it contains provisions for a Public Space Protection Order (PSPO). It is anticipated that Section 53 will allow Local Authorities to designate a PSPO if reasonably satisfied that two conditions are met:
 1. (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
(b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.
 2. The effect, or likely effect, of the activities
 - (a) is, or is likely to be, of a persistent or continuing nature,
 - (b) is, or is likely to be, such as to make the activities unreasonable, and
 - (c) justifies the restrictions imposed by the notice.
 - Persons who breach any restriction imposed can be fined or given a fixed penalty notice. Whilst publicity and signage may restrict offences, the use of a PSPO would still rely on police resources and in this respect this order would draw some similarity with a DPPO described above.
- Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices, prosecution of drunks causing offence, prosecution for sale of alcohol to a drunk individual under Section 141 of the 2003 Act, and powers to close down instantly for up to 24 hours (extendable to 48 hours) any licensed premises in respect of which a TEN has effect on grounds of disorder, the likelihood of disorder, or noise emanating from the premises causing a nuisance;
 - The Police have not submitted any evidence that would support the use of an EMRO. Therefore, Members need to be convinced that there is a sufficient need to use these powers and that this option has been fully explored and deemed to be incapable of addressing the alcohol-related problems in the Ormskirk area before an EMRO can be considered.

- Late Night Levy;
 - This allows the Council to charge an additional licence fee for specific premises within a designated area to assist with policing the night time economy. The additional licence fee is shared with the Police, but is not ring-fenced for use within the relevant local authority. The evidential base for the levy is similar to that required for an EMRO, but the Committee will need to be convinced that this option has been adequately examined before proposing an EMRO.
- Introduction of a Cumulative Impact Policy.
 - No Cumulative Impact Policy is operated within West Lancashire. The evidential base for such a policy is similar to that required for an EMRO, but the Committee will need to be convinced that this option has been adequately examined before proposing an EMRO.

5.9 Furthermore, the Committee will need to be satisfied that the following have been addressed as the result of a proposed EMRO:

- Any potential stigma that may be attached to Ormskirk town centre;
- Any potential migration of the public to other licensing / Police districts;
- 'At-home' drinking away from the supervised environment of licensed premises;
- Potential closure of licensed businesses and associated job losses;
- Indirect impact on local taxis, tradesmen, food and drink suppliers etc.

5.10 The above issues have been raised in those responses which highlight a perceived risk that an EMRO could reduce the attraction of Ormskirk and would have the potential to drive away trade to neighbouring towns and cities that do not have restricted hours for alcohol sales. Other responses state that an EMRO would affect local trade and reduce employment opportunities, the impact of which could spread beyond the night time economy and have a detrimental effect on the general local economy in Ormskirk. Members should also note that an EMRO only prevents the sale of alcohol beyond a certain time and it does not apply to other licensable activities. Premises could continue to offer other licensable activities such as regulated entertainment and late night refreshment until the closing time on the respective licence.

5.11 However, there are also potential benefits to an EMRO, which in addition to the issues raised in the responses, include:

- Customers may choose to come to the town centre earlier rather than drinking at home (pre-loading);
- People may return home earlier reducing noise nuisance as people either walk home or go home by taxi;
- Police and other emergency service resources may be freed up.

5.12 Not to proceed in accordance with the Guidance would leave the Council open to legal challenge and could raise public expectations that the evidential base and/or the opinions received may not be able to support. The Guidance is explicit in stating that EMROs are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance, and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises. The adequacy

and transparency of the evidence is vital. The parameters of an EMRO need to be made based on robust data that will stand up to detailed 'forensic' cross examination during any hearing. Whilst there is preliminary evidence of problems within the Ormskirk area, it is not considered these instances alone are sufficient so as to fulfil the evidential burden required to introduce an EMRO at this time – particularly given the lack of support from any responsible authority.

- 5.13 If Members consider that existing preliminary information is insufficient or not readily available, but the Committee believes there are alcohol-related problems that could be addressed by an EMRO, the Guidance further states that the Committee can consider conducting or commissioning a specific study to assess the position. This may involve conducting observations of the night time economy to assess the extent of incidents relating to the promotion of the licensing objectives. In order to identify the areas in which problems are occurring, information about specific incidents can be mapped, and where possible, a time analysis undertaken to identify the key times and locations at which there are specific issues. It should be noted that no budget or staff resource exists for such a study. Therefore, if Members wish to choose this option, a further report will be required to outline the process and costs.
- 5.14 In the light of the information contained in this report, if the Committee resolves to propose an EMRO, a further report will be submitted to determine the process and the parameters of the proposed EMRO (i.e. location, days, times, duration etc.) as well as any budgetary implications – which are likely to be significant.
- 5.15 If the Committee resolves not to propose an EMRO, Members may wish to set a review date to reassess the situation. A period of 2 years would be recommended to allow suitable evidence to be sought.

6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 6.1 The 2003 Act has the potential to impact upon the Community Strategy. The contents of this report have the following links with the Community Strategy: Community Safety (issues A and E); Economy and Employment (issue D).

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 7.1 No budget has been allocated for the costs associated with the implementation and/or enforcement of an EMRO or any specific studies to assess the night time economy in Ormskirk. These costs are likely to be significant and will be the subject of future reports, if the Committee resolves to take further action.
- 7.2 The implications of legal challenge should also be carefully considered, as these could incur significant officer and legal costs.

8.0 RISK ASSESSMENT

- 8.1 Outside of the hearing process required to propose and formalise an EMRO, Judicial Review is the only method by which an EMRO could be successfully challenged. There is no appeal process, as the Authority has the power to revoke an EMRO under Section 172D(1) of the 2003 Act. Nevertheless, the cost implications of a Judicial Review should be carefully considered, but Members should note that there are currently no legal cases to take guidance from on this matter.
- 8.2 By way of indication as to potential legal challenge, it is known that some licensing solicitors indicate that whilst Judicial Reviews can be costly, this is not necessarily the case if licensed premises act collectively and all contribute towards the legal costs of employing a specialist legal team. This is advocated as being commercially more beneficial than having to cope with the effects of an EMRO and the perceived damage it could do to licensed premises and the night time economy. It is known that the licensed trade within Ormskirk has been approached by prominent national legal firms in this regard and therefore there is a real risk of Judicial Review.
- 8.3 Furthermore, some licensing solicitors also appear to advocate the potential to challenge the legality of the power of an EMRO itself under European human rights legislation, as well as challenging a local authority on procedural grounds. This is because an unsuccessful challenge may also be perceived to be beneficial if the commercial gains from delaying the effects of an EMRO outweigh the cost of the challenge. It also presents a risk that the Council may be involved in case determined by the European Court of Human Rights. However, again there are currently no legal cases to take guidance from on this matter.
- 8.4 The Council would not be the first local authority to consider an EMRO since the introduction of this power, but only a low number of authorities are currently at a formal stage and these are at varying stages of development. The one local authority that has formally proposed an EMRO, has decided not to proceed at this time, even though evidence was submitted by responsible authorities. The national picture appears to be one of caution, waiting to ascertain the full implications of this new legislative power. Nevertheless, Members should carefully consider the available evidence to ensure the balance between the promotion of the licensing objectives and the burdens of the licensed trade, before any action toward an EMRO is taken.

Background Documents

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

Home Office Amended Guidance issued under Section 182 of the Licensing Act 2003:
June 2103

Equality Impact Assessment

There is a significant direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

- A Equality Impact Assessment.
- B Licensing and Gambling Committee Report: 5 February 2013.
- C Letter sent to relevant organisations, businesses and representative groups on 13 March 2013

Consultation responses:

- D Belpasso Oil and Wine Company
- E Ormskirk Karate, Sandra Brookfield
- F Fat Olive, Ormskirk - Jennifer Hardman-Varley
- G CCTV
- H Environmental Protection
- I Community Safety Partnership
- J John Gaunt Solicitors on behalf of Marston's for Disraeli's, Ormskirk
- K Disraeli's, Ormskirk - Sue Jones
- L Amy Livesey, Student and part time worker at Styles Bar, Ormskirk
- M Kate Charlton, Part time worker at Styles Bar, Ormskirk
- N A and B Cabs, Ormskirk
- O GE Real Estate Clients: Wheatsheaf Walk and 33-39 Moor Street
- P Queens Head, Ormskirk - Elaine Wright
- Q Styles Bar, Ormskirk - Alun Comer
- R Styles Bar, Ormskirk - Philip Watson
- S JD Wetherspoon Solicitors - Nigel Connor
- T IKO Ventures - Ian Gordon in respect of the Green Room, Ormskirk
- U Liquid Bar, Ormskirk - Pedro Andrade
- V Love Ormskirk - Katie Givens (Managing Director)
- W New Way Tenants and Residents Association
- X Merseyrail
- Y Jane Thomson, Ormskirk resident
- Z Councillor Adrian Owens
- 1A Mr and Mrs M Jones, Ormskirk residents
- 1B Ormskirk Community Partnership
- 1C Edge Hill University, Ormskirk - Christine Coleman
- 1D Barn Lodge Veterinary Hospital, Ormskirk - Austin Kirwan
- 1E Lancashire Constabulary - Chief Inspector Edward Newton

- 1F Extract from of Secretary of State's Guidance issued under Section 182 Licensing Act 2003 relating to EMROs
- 1G Hartlepool BC Licensing Committee: minutes of meeting 7 May 2013