

**Manchester City Council
Report for Resolution**

Report to: Licensing Subcommittee Hearing Panel – 17 August 2020

Subject: Dixy Chicken, 5a Wilbraham Road, Manchester, M14 6JS
Application ref: Premises Licence (new) 247136

Report of: Director of Planning, Building Control & Licensing

Summary

Application for the grant of a premises licence which has attracted objections.

Recommendations

That the Panel determine the application.

Wards Affected: Fallowfield

Manchester Strategy Outcomes	Summary of the contribution to the strategy
A thriving and sustainable City: supporting a diverse and distinctive economy that creates jobs and opportunities	Licensed premises provide a key role as an employer, in regeneration, and in attracting people to the city. The efficient processing of applications as well as effective decision making in respect of them, plays an essential role in enabling businesses to thrive and maximise contribution to the economy of the region and sub-region.
A highly skilled city: world class and home grown talent sustaining the city's economic success	An effective Licensing regime will enable growth in our City by supporting businesses who promote the Licensing Objectives.
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	The Licensing process provides for local residents and other interested parties to make representations in relation to licensing applications. Representations have to be directly related to the licensing objectives.
A liveable and low carbon city: a destination of choice to live, visit and work.	An effective licensing system supports and enables growth and employment in our City with neighbourhoods that provide amenities suitable to the surrounding communities.

A connected city: world class infrastructure and connectivity to drive growth	
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Full details are in the body of the report, along with any implications for:

Equal Opportunities Policy
Risk Management
Legal Considerations

Financial Consequences – Revenue - None

Financial Consequences – Capital - None

Contact Officers:

Name: Fraser Swift
Position: Principal Licensing Officer
Telephone: 0161 234 1176
E-mail: f.swift@manchester.gov.uk

Name: Helen Howden
Position: Technical Licensing Officer
Telephone: 0161 234 4294
E-mail: premises.licensing@manchester.gov.uk

Background documents (available for public inspection):

- Manchester City Council Statement of Licensing Policy 2016 - 2021
- Guidance issued under section 182 of the Licensing Act 2003, April 2017
- Licensing Act 2003 (Hearings) Regulations 2005
- Any further documentary submissions by any party to the hearing

1. Introduction

- 1.1 On 30/06/2020, an application for the grant of a Premises Licence under s17 of the Licensing Act 2003 was made in respect of Dixy Chicken, 5a Wilbraham Road, Manchester, M14 6JS in the Fallowfield ward of Manchester. A location map and photograph of the premises is attached at **Appendix 1**.
- 1.2 A 28-day public consultation exercise was undertaken in accordance with Licensing Act 2003 regulations; requiring the application to be advertised by the displaying of a blue notice at or on the premises, a notice published in a newspaper or similar circulating in the local area, and details of the application published on the Council's website.
- 1.3 Representations may be made for or against an application during the consultation period. To be 'relevant' and, therefore, able to be taken into account in determining the application, they must be about the likely effect of the grant of the premises licence on the promotion of the licensing objectives. Where representations are made by persons who are not a responsible authority, they must not be frivolous or vexatious.
- 1.4 Relevant representations have been received in respect of this application and so it must be determined by a Licensing Hearing Panel in accordance with the Council's Constitution.

2. The Application

- 2.1 A copy of the application is attached at **Appendix 2**.
- 2.2 The applicant is Mr Mohammed Zubair.
- 2.3 The description of the premises given by the applicant is:
Dixy Chicken Franchise
- 2.4 **The licensable activity applied for is:**
Provision of late night refreshment:
Mon to Sun 11pm to 4.30am
- 2.4.1 In accordance with the Live Music Act 2012 and Deregulation Act 2015, performances of Live Music and Recorded Music between the hours of 0800 and 2300 hours have been deregulated and so should not be regarded as licensable activities for the purposes of this application.
- 2.4.2 Any further details provided relating to any of the individual licensable activities are specified on the application form at **Appendix 2**.

2.5 **Activities unsuitable for children**

2.5.1 The applicant has not highlighted any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.

2.6 **Steps to promote the licensing objectives**

2.6.1 The applicant proposes to promote the licensing objectives by taking the steps identified in the operating schedule.

2.6.2 These steps must be translated into conditions by the licensing authority to be included in any granted premises licence, unless the conditions are modified by the Panel following consideration of relevant representations. These conditions are set out in the Schedule of Conditions at **Appendix 4**.

2.7 **Further documentation accompanying the application**

2.7.1 The applicant has not submitted further documentation with the application.

3. **Relevant Representations**

3.1 A total of 16 relevant representations were received in respect of the application (**Appendix 3**). The personal details of all members of the public have been redacted. Original copies of these representations will be available to the Panel at the hearing.

Responsible Authorities:

- Licensing Authority
- Greater Manchester Police;
- MCC Licensing and Out of Hours Compliance Team;

Other Persons:

- Ward Councillor;
- Fallowfield Community Guardians
- Sherwood TRA
- South East Fallowfield Residents Group
- Residents (x9)

3.2 Summary of the representations:

Party	Grounds of representation	Recommends
Licensing Authority	<ul style="list-style-type: none">• The impact of the venue as proposed carries a risk of undermining the licensing objectives, and grant of this application would likely exacerbate the problems in the area.	Refuse

	<ul style="list-style-type: none"> • It is not considered that any conditions could be imposed on the licence to enable the premises to operate to the hours applied for without adding to the cumulative impact already being experienced. 	
GMP	<ul style="list-style-type: none"> • The proposed hours will lead to increased noise disturbance. • The Wilmslow Road corridor already suffers from begging, street drinking and other anti-social behaviour and to allow the premises to remain open until 0430 hours is likely to exacerbate these problems and undermine the hard work of the local Neighbourhood Policing Team. • The applicant has not demonstrated how, by remaining open until such a late hour, they will not add to the cumulative impact within the area. 	Refuse
Licensing and Out of Hours Compliance	<p>The requested terminal hour of 4.30am Monday-Sunday will lead to an additional noise nuisance that would not normally be experienced by the immediate vicinity local residents at this time. Nuisance is likely to result from:</p> <ul style="list-style-type: none"> • customers arriving on foot, talking loudly and laughing • cars/taxis pulling up waiting for customers to collect food, car doors slamming 	Refuse
Councillor Jade Doswell	<ul style="list-style-type: none"> • There are existing issues in the area such as excessive litter, late night noise and antisocial behaviour. • The measures proposed by the applicant are insufficient to ensure that there will be no increase in public nuisance from late night noise, and litter 	Refuse
Fallowfield Community Guardians	<ul style="list-style-type: none"> • Residents in the area already experience a “massive amount” of public nuisance resulting from littering, antisocial behaviour and noise including noise from car doors slamming and engines revving. • Deliveries during the night already bring a lot of noise and traffic to residential streets and sometimes result in residents being woken by delivery to the wrong address. • Litter from Dixy Chicken is regularly seen on streets and pavements in the area. • There are no exceptional circumstances in this application that would allow for a deviation from the policy. Another late night 	Refuse

	take away in Fallowfield will undoubtedly add to the cumulative impact and will undermine the licensing objectives. No amount of conditions imposed will suffice to prevent adding to the impact.	
Sherwood TRA	<p>Residents currently experience problems such as</p> <ul style="list-style-type: none"> • litter from nearby takeaways. • disturbed sleep - particularly noticeable during University term times • constant disturbance from late night delivery drivers arriving at the wrong address • delivery drivers and customers stopping at the front of the premises and parking on the narrow pavement, adding to the congestion at this already busy junction • Nayaab car park is also used which again disturbs nearby residents <p>Sherwood residents do not consider deliveries after 11pm to be appropriate times and can see no merit in permitting these premises to trade until 4.30am</p>	Refuse
South East Fallowfield Residents Group	<p>Licensed premises in this area have caused - and continue to cause - significant problems in relation to the licensing objectives. Examples given are:</p> <ul style="list-style-type: none"> • Littering - in spite of extra street cleaning services being provided, and the litter picking efforts of local residents, streets which are "litter strewn" is the norm. The littering is described as "extreme", with much of it coming from the local takeaway businesses including Dixy Chicken • Noise - Students often go out in mixed groups and so are much noisier than lone customers or couples. Local residents, including students, are regularly disturbed by noise throughout the night and this has a very negative impact on mental and physical health. <p>The representation explains that residents in the area work hard to improve their environment, and to build a sense of balanced community and having a "Cumulative Impact Policy in our area is one of the effective ways we can achieve this." It is considered that "There are no licensing conditions which can be implemented to</p>	Refuse

	prevent further problems”.	
Residents (x9)	<ul style="list-style-type: none"> • Littering, noise, antisocial behaviour, are problems cited in all of the nine resident objections. • Two residents specifically refer to issues caused by deliveries, although a further three residents refer to traffic related problems such as noise and parking problems. • All nine of the resident objections consider that granting this application will add to existing problems. <p>Examples of general concerns raised are that</p> <ul style="list-style-type: none"> • “Extending the licence will mean we suffer from far more nuisance, far more often, for far longer.” • “Later opening from food venues encourages more people to stay in the area or come into the area having been drinking, with associated disruptive behaviour.” • One resident comments that “The extended operational hours would mean that the premises would be open later than nearly all other premises in the area” <p>Specific issues raised by individual residents are that:</p> <ul style="list-style-type: none"> • Licensed food outlets act as a magnet for those who buy the product and eat it outside our houses before dumping the waste outside in the street or in our gardens • Longer hours will lead to an increase in noise issues and increased litter which could lead to issues of vermin and pest control, traffic noise, pollution and parking issues. • Later hours will add to “the already insufferable cacophony of noise (delivery cars coming in going, early hour inebriated patrons {mainly students} screeching and hollering etc)” • The application itself is inconsistent in the measures it proposes • Later opening is likely to attract “dubious characters and gangs late into the night and early morning seeking to prey on drunk and vulnerable victims making their way home” <p>And could result “in even more rowdy,</p>	<p>5 x Refuse</p> <p>4 x not stated</p>

	inebriated, antisocial, groups roaming the streets throughout the night and early hours”	
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3.3 No conditions have been proposed by objectors and no agreements have been reached.

4. Key Policies and Considerations

4.1 Legal Considerations

4.1.1 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005.

4.2 New Information

4.2.1 In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority may take into account documentary or other information produced by a party in support of their application, representations or notice either before the hearing or, with the consent of all parties, at the hearing.

4.3 Hearsay Evidence

4.3.1 The Panel may accept hearsay evidence and it will be a matter for the Panel to attach what weight to it that they consider appropriate. Hearsay evidence is evidence of something that a witness neither saw nor heard, but has heard or read about.

4.4 The Secretary of State’s Guidance to the Licensing Act 2003

4.4.1 The Secretary of State’s Guidance to the Licensing Act 2003 is provided for all parties involved in licensing. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

4.4.2 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. The Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.

4.4.3 Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

4.5 Manchester Statement of Licensing Policy

4.5.1 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must ‘have regard to’ its statement of licensing policy.

- 4.5.2 The Licensing Policy sets out the vision the licensing authority has for the regulation of licensed premises throughout Manchester and outlines the standards expected in order to ensure the promotion of the licensing objectives in the city. The Panel may depart from the policies should it consider doing so would benefit the promotion of the licensing objectives. Reasons are to be given for any such departure from the Policy.
- 4.5.3 Section 4 of the Policy (Operation of the Policy) sets out how the Licensing Policy is intended to be used in practice for licence applications and licensed premises.
- 4.5.4 Relevant to this application and the grounds of the representations made, the Panel are recommended to have regard to the following sections of the Policy:

Section 5: Special Policy Area

The premises is located within the following special policy area:

Fallowfield and Wilmslow Road

The effect of the Special Policy is that the Council will refuse applications for a new Premises Licence or Club Premises Certificate, or variation of an existing licence or certificate, whenever it receives relevant representation, unless an applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact already being experienced. In relation to variations, this includes any variation that seeks to add a licensable activity, increase the capacity/size of a licensed premises, or extend the hours for licensable activities, but will usually exclude minor variations.

Section 6: What we aim to encourage

This section identifies certain types of venues and initiatives the licensing authority aims to encourage in order to promote an inclusive evening and night-time economy not simply focused on the consumption of alcohol. We aim to encourage:

- Premises that will extend the diversity of entertainment and attract a wider range of participants
- Live music, especially original material, which will provide a range of live performances and styles of music, provided that such entertainment does not undermine the licensing objectives
- National cultural institutions, global sports events and cultural festivals
- Non-drink-led premises, including restaurants, cafes, theatres and cinemas

- Communication and integration with local residents and businesses through licensees consulting with those in the local area prior to an application
- Participation in Pubwatches, off licence forums and other crime-reduction partnerships
- Engagement with the NITENET radio scheme and DISC secure information sharing platform by city centre venues through the Cityco Manchester Business Crime Reduction Partnership
- Designing out crime in the layout of the premises

Section 7: Local factors

This section sets out key issues that applicants are expected to take into account relevant to the individual characteristics of the premises when preparing their operating schedule and address any local factors relevant to their premises.

Having regard to the grounds of the representations made, the Panel are recommended to have regard to the following Factors:

- Evidence of pre-existing problems in the area
- Proximity of takeaways and off-licences to nightlife entertainment areas
- Consistency with relevant Council strategies
- The proximity of the premises to local residents and other local businesses, particularly in relation to the potential for nuisance
- Ability to clean and maintain the street scene

Section 8: Manchester's standards to promote the licensing objectives

This section identifies the standards that the licensing authority expects of licensed premises in Manchester. It is recognised that not all standards will be appropriate to apply in every situation to every premises, and applicants are not obliged to include all standards in their operating schedule. The degree to which standards would be appropriate is expected to be proportionate to the risk posed against the promotion of the licensing objectives having regard to the individual circumstances of the premises. The standards are not exhaustive and the licensing authority will have regard to any relevant issues raised in any representation that may fall outside them.

MS2 Effective general management of the premises

MS8 Prevent noise nuisance from the premises

MS10 Operate effective cleansing arrangements, including ensuring the premises and surrounding area are kept clean and free of litter, and adequate arrangements for the secure and responsible storage of refuse

5. Conclusion

5.1 A licensing authority must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives:

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

5.2 In considering the matter, the Panel 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. In reaching the decision, regard must also be had to relevant provisions of the national guidance and the Council’s licensing policy statement.

5.3 Having regard to the representations, the Panel must take such of the steps set out below that it considers appropriate for the promotion of the licensing objectives:

- a) To grant the licence subject to:
 - i. the conditions consistent with the operating schedule accompanying the application, which the Panel may modify to such extent as they consider appropriate, and
 - ii. any mandatory conditions that must be included in the licence;
- b) To exclude from the scope of the licence any of the licensable activities to which the application relates;
- c) To refuse to specify the person proposed in the application as the designated premises supervisor;
- d) To reject the application.

5.4 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.

5.5 All licensing determinations should be considered on the individual merits of the application.

- 5.6 The Panel'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. Findings on any issues of fact should be on the balance of probability.
- 5.7 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.
- 5.8 **The Panel is asked to determine the application**