

**Manchester City Council
Report for Resolution**

Report to: Licensing Sub-Committee Hearing Panel – 08 February 2021

Subject: International Mini Market, 455-457 Wilmslow Road, Manchester, M20 9AN - App ref: Premises Licence (new) 254479

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: Withington

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

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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 17 December 2020, an application for the grant of a Premises Licence under s17 of the Licensing Act 2003 was made in respect of International Mini Market, 455-457 Wilmslow Road, Manchester, M20 9AN in the Withington 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 Middle East Grocery Ltd.
- 2.3 The description of the premises given by the applicant is: This is a pre-existing Convenience Store. We would like to obtain an Off-Licence in order to add to our offering and have proposed a comprehensive raft of Conditions to ensure that we promote and support the Licensing Objectives in their entirety.
- 2.4 The proposed designated premises supervisor is Sirwan Rasoul Kader

2.5 **The licensable activities applied for:**

The supply of alcohol for consumption off the premises only:

Mon to Sun 10am to 11pm

Opening hours:

Mon to Sun 7am to 12 midnight

- 2.5.1 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.
- 2.5.2 Any further details provided relating to any of the individual licensable activities are specified on the application form at **Appendix 2**.

2.6 **Activities unsuitable for children**

2.6.1 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.

2.7 **Steps to promote the licensing objectives**

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

2.7.2 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**.

3. **Relevant Representations**

3.1 A total of 7 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:

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

Other Persons:

- Withington Ward Councillor;
- Withington Civic Society Planning Group;
- Fallowfield & Withington Community Guardians
- South East Fallowfield Residents Group
- Resident x1

3.2 Summary of the representations:

Party	Grounds of representation	Recommends
GMP	The grounds for the objection are the Prevention of Crime and Disorder and the Prevention of Public Nuisance. The area where the premises are situated is now subject to a Stress Policy partly due to the problems in the area with alcohol related incidents. Greater Manchester Police see no valid reason for the committee to depart from their own Stress Policy in this instance and would therefore ask that the application is refused.	Refuse

Licensing and Out of Hours Compliance	The Team have assessed the likely impact of the grant of this application taking into account a number of factors, including the nature of the area in which the premises is located and any potential risk the granting of this licence could lead to issues of public nuisance. LOOHT have also given consideration to Manchester City Council's Statement of Licensing Policy and do not consider the applicant to have made an exceptional case to justify departing from the policy.	Refuse
Withington Ward Councillors	There is concern regarding prevention of public nuisance, and prevention of crime and disorder. There is currently a major drive to improve Withington Village and commitment is needed from the Premises owners that they will play their part in this, and not allow the premises to become a cause of litter and antisocial behaviour, thereby hampering the good work being done.	N/a
Withington Civic Society Planning Group	The key matter for consideration is Manchester City Council's Statement of Licensing Policy 2016-2021 published on 4 January 2016, in particular, the special policy area (Withington Stress Area) which the Premises falls squarely within. There must be a strong presumption against such a licence in accordance with this Policy, A genuinely exceptional case would need to be shown. There is no good reason why such a licence should be granted, and to do so would be contrary to the Council's stated policy	Refuse
Fallowfield & Withington Community Guardians	<p>There is a presumption for refusal of any new off licence provision in the Withington Stress Policy. Adding another off license to Withington high street is very likely to increase the cumulative stress of noise and nuisance in the Withington area. This application is not seen as an exceptional case despite the long list of proposed conditions.</p> <p>Alcohol is the fuel for much anti-social behaviour and it is felt that opening another off license will undermine the licensing objectives for public safety, public nuisance and increase</p>	Refuse

	crime and disorder.	
South East Fallowfield Residents Group	<p>The grounds for the objection are the application undermines all of the licensing objectives and is not a 'genuinely exceptional case' that would justify departing from the stress policy. There are concerns that an additional off licence will not help the problem of rough sleepers and beggars in the area, many of whom suffer from alcohol addiction, and whose presence is intimidating for children and the elderly.</p> <p>There are a large number of students who live in Withington and local residents are often disturbed by groups of drunk students who use local off-licenses to pre-load. Adding another off licence will increase these disturbances and the problem of littering. No benefits are seen to be gained from granting the licence.</p>	Refuse
Resident	<p>In recent times there has been a huge increase in the number of street beggars and drinkers, many being housed in local "hotels". Many residents have witnessed and experienced problems including drug dealing, drunken and aggressive behaviour from some of these people.</p> <p>Another potentially low-cost convenience store is likely to aggravate the position. The huge number of students residing in and visiting the neighbourhood is a significant contribution to night-time noise and disturbance both in Withington Village and local densely populated residential streets. It cannot be seen how an exceptional case can be made for this application as would be required by the Withington Stress Policy and it should be rejected.</p>	Refuse

3.3 Any conditions proposed by objectors are set out in the Schedule of Conditions at **Appendix 4**.

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.

4.2.2 Alcohol Licensing: cumulative impact assessments By John Woodhouse (submitted by applicant) **Appendix 5**.

4.2.3 Crime changes in Manchester 2020 (submitted by applicant) **Appendix 6**.

4.2.4 Update from Cllr Chris Wills at **Appendix 7**.

4.2.5 Email in response to Objections (Submitted by applicant) at **Appendix 8**.

4.2.6 Updated version of Plan at **Appendix 9**

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

Withington Stress Area

The effect of the Special Policy is to set out a range of specific approaches according to the nature of the premises to be licensed. With respect to this application, the Policy proposes the following approach:

	Closing time	Approach
Non-alcohol led venues (excluding hot food takeaways)	Up to Midnight	Strongly encouraged provided that they do not harm the licensing objectives.
Non-alcohol led venues (excluding hot food takeaways)	Beyond midnight	Discouraged, unless strict compliance with set criteria can be shown. Positive proposals for the promotion of the licensing objectives from departing customers must also be demonstrated in the operating schedule.

	Closing time	Approach
Alcohol-led venues (on-licence)	Up to 11.30pm	<p>Judged according to set criteria.</p> <p>Positive proposals for the promotion of the licensing objectives, including from departing customers, must also be demonstrated in the operating schedule.</p> <p>A stricter approach is likely to be taken where customers are not seated at tables and/or where a substantial food offer is not available at all times the premises are open</p>
Alcohol-led venues (on-licence)	Beyond 11.30pm	<p>Strong presumption against.</p> <p>A genuinely exceptional case would need to be shown. The reasons for the exception should be shown in the operating schedule and must demonstrate that there will be no harm to the licensing objectives, including from departing customers.</p>
Hot food Takeaway premises	All	<p>Strong presumption against.</p> <p>A genuinely exceptional case would need to be shown. The reasons for the exception should be shown in the operating schedule and must demonstrate that there will be no harm to the licensing objectives, including from departing customers.</p>
Alcohol led venues (off licence)	All	<p>Strong presumption against.</p> <p>A genuinely exceptional case would need to be shown. The reasons for the exception should be shown in the operating schedule and must demonstrate that there will be no harm to the licensing objectives.</p>

The policy also sets out particular measures it expects operators to pay special attention to in order to ensure their operation will not add to the problems within this area. Operators are not required to do so, but where the authority's discretion is engaged, any applications that fail to address all appropriate measures may be refused or have conditions applied to comply with the policy measures.

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:

- Identified risk factors specific to the licensed premises
- 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
- Proximity to sensitive uses
- 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.

- MS1 Implement effective security measures at the premises
- MS2 Effective general management of the premises
- MS3 Responsible promotion and sale of alcohol
- MS5 Prevent on-street consumption of alcohol
- 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
- MS11 Ensure the wellbeing of children on the premises
- MS12 Prevent underage sales of alcohol, including proxy sales

Section 9: Alcohol delivery services

This section sets out specific provisions for alcohol delivery services to be considered in conjunction with relevant standards from Section 8 of the Policy

Section 10: Adult entertainment (including striptease, nudity and other entertainment of a sexual nature)

This section sets out specific considerations in respect of applications to provide adult entertainment, including entertainment of a sexual nature e.g. nudity, striptease and lap dancing.

Section 11: The use of tables and chairs on the public highway

This section provides that the operation of any areas on the public highway licensed for tables and chairs should be considered with regard to all relevant Standards set out in Section 8 of the Policy.

Section 12: Premises Licences for large-scale public events

This section sets out particular expectations regarding large scale public events, given the specific associated risks.

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.**