

**Manchester City Council
Report for Resolution**

Report to: Licensing Sub-Committee Hearing Panel – 04 January 2022

Subject: Biggy's, 479 Wilmslow Road, Manchester, M20 4AN - App ref: Premises Licence (new) 265935

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 10/11/2021, an application for the grant of a Premises Licence under s17 of the Licensing Act 2003 was made in respect of Biggy's, 479 Wilmslow Road, Manchester, M20 4AN 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 Biggy Eats Ltd.
- 2.3 The description of the premises given by the applicant is fast food takeaway and delivery service.
- 2.4 **The licensable activities applied for:**

Provision of late night refreshment:

Sun to Thu 11pm to 2am, Fri to Sat 11pm to 4am

Christmas Eve, Christmas Day, New Year's Eve New Year's Day 11pm to 4am

Opening hours:

Sun to Thu 11am to 2am, Fri to Sat 11am to 4am

Christmas Eve, Christmas Day, New Year's Eve New Year's Day 11am to 4am

Subsequent to the application, the applicant has proposed the following amendments:

We shall limit our footfall trading hours to 11pm, however, we intend to offer a strictly delivery only service after 11pm.

Shutters at the front of the building will be closed promptly at 11pm daily.

We will offer our delivery only service till 2am including the weekend, rather than 4am stated on the application.

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 submitted the following documents in support of their application, which are included with the application form at **Appendix 5**:

- Premises Plan

3. **Relevant Representations**

3.1 A total of nine 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;
- Licensing Authority

Other Persons:

- Withington Ward Councillors;
- Withington Civic Society;

- Fallowfield & Withington Community Guardians;
- South East Fallowfield Residents' Group (SEFRG);
- Residents (x1) opposed to the application;
- Residents (x1) in favour of the application.

3.2 Summary of the representations:

Party	Grounds of representation	Recommends
GMP	Concerns regarding the very brief, generic conditions offered in the operating schedule giving the impression that the applicant has a limited understanding of the Licensing Objectives, which raises concerns about how the premises will be operated and the likely effect that all four of the Licensing Objectives will be undermined.	Refuse
Licensing and Out of Hours Compliance	Concerns regarding the location of the premises within the Withington Stress Area without showing exceptional reasons why the application should be granted; the very brief, generic conditions offered in the operating schedule giving the impression that the applicant has a limited understanding of the Licensing Objectives, raising concerns about how the premises will be operated; that persons congregating outside will be managed and loitering customers will be moved on, with no offer of security staff, suggesting employees serving food will be responsible for management of the external area, which could be a safety issue.	Refuse
Licensing Authority	Concerns that the Licensing Objectives will be undermined if the licence is granted: and the location of the premises within the Withington Stress Area. The Council's Statement of Licensing Policy contains a special policy for Withington which creates a strong presumption against granting further such licences. Whilst not a cumulative impact-based policy, it seeks to guard against the development of further problems relating from the operation of late-night takeaways in Withington. The steps proposed by the applicant to promote the licensing objectives in their application lack any detail and do not provide any reassurance that the licensing objectives would be promoted	Refuse

	should this licence be granted. It is not clear what assessment the applicant has conducted of local risks and consequently sought to address relevant Local Factors and Standards of the Council's Licensing Policy.	
Withington Ward Councillors	Concerns regarding a further late night takeaway premises in the Withington Stress Area; evidence of pre-existing problems in the area; the proximity of the premises to nightlife entertainment areas leading to alcohol related crime and disorder; a lack of detail and assurances in the conditions offered by the applicant; previous incidents of the premises offering late night refreshments whilst unlicensed giving doubt as to whether the Licensing Objectives will be supported.	Refuse
Withington Civic Society	Concerns regarding a further late night takeaway premises in the Withington Stress Area without good reason given why licence should be granted; current and worsening problems with litter; increasing problems of anti-social behaviour in the immediate area including on street drinking, late night /all night parties which will be exacerbated by another late night premises.	Refuse
Fallowfield & Withington Community Guardians	Concerns regarding an additional takeaway in the Withington Stress Area adding to the already terrible litter situation in the area; the lateness of the proposed terminal hour; and the insufficient measures proposed to support the Public Nuisance Licensing Objective. The representation endorses all points made by Withington Civic Society.	Refuse
SEFRG	Concerns regarding public nuisance additional to that already experienced in the form of litter and noise from drunken revellers frequenting the premises in the early hours; the addition of a further takeaway in the Withington Stress Area.	Refuse
Residents (x1) opposed	Concerns regarding the lateness of the terminal hour; the high number of takeaways in the area; and the potential for more litter being	Refuse

	generated on top of that currently experienced.	
Residents (x1) in favour	States has frequented the premises with children without issues; premises have a reputation of a calm and collected business with no incidents in last 2 years of trading; having no alcohol sales is an asset in preventing crime and disorder.	Grant: Proposed changes agreed.

- 3.3 Any conditions proposed by objectors are set out in the Schedule of Conditions at **Appendix 4**.
- 3.4 Agreements on conditions have been reached with resident (Reference REF4) who is in favour of the grant of the application and has agreed the suggested amendments in paragraph 2.4.
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.
- 4.3 **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:

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.

	Closing time	Approach
Non-alcohol led venues (excluding hot food takeaways)	Beyond midnight	<p>Discouraged, unless strict compliance with set criteria can be shown.</p> <p>Positive proposals for the promotion of the licensing objectives from departing customers must also be demonstrated in the operating schedule.</p>
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>

	Closing time	Approach
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:

- 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.

- MS1 Implement effective security measures at the premises
- 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

Conclusion

- 4.6 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.
- 4.7 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.
- 4.8 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.

4.9 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.

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

4.11 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.

4.12 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.

4.13 **The Panel is asked to determine the application.**