

**From:** [REDACTED] >

**Sent:** 06 January 2022 14:16

**To:** Premises Licensing <Premises.Licensing@manchester.gov.uk>

**Cc:** Patrick Ware <patrick.ware@manchester.gov.uk>; Licensing Subcommittees <licensing.subcommittees@manchester.gov.uk>; Sion Roberts <sion.roberts@manchester.gov.uk>; [REDACTED]

[REDACTED]; [REDACTED]; [REDACTED]

**Subject:** Fireaway, 266 Wilmslow Road, Fallowfield, Manchester M14 6JR

Good afternoon – I refer to the application for a new Premises Licence in respect of the above, which is due to be considered by the Licensing Sub-Committee on the 17<sup>th</sup> inst.

Please find attached the following:-

1. Proposed additional Conditions;
2. Background information relating to the 2 Applicant Directors;
3. Sample hours relating to other Fireaway franchises;
4. Local map;
5. Case Law;
6. A Powerpoint Presentation covering:
  - Acoustics readings taken at the front (Wilmslow Road) and rear (Boland Drive) of the premises, demonstrating that ambient noise levels were observed to be comparable at 21:30 and 23:30
  - Published noise levels of vehicles used for deliveries
  - Pictures of branded packaging used by Fireaway
  - Photographs of the interior of the premises restaurant
  - Updated opening timings from Google and JustEat

I would be grateful if you would confirm that these items will be added to the Agenda.

Yours sincerely,

[REDACTED] (Director)

Tel: [REDACTED] (Option 1)



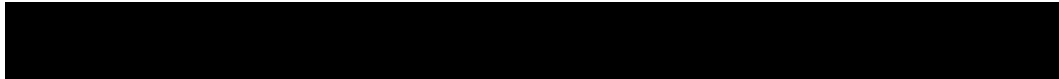
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## **Fireaway – Proposed Additional Conditions**

1. A direct telephone number for the Manager of the premises shall be publicly available at all times the premises are open. This telephone number is to be made available to all residents in the vicinity.
2. The Manager or a representative thereof shall attend quarterly meetings with Sherwood Tenants & Residents Association, Fallowfield Community Guardians and South East Fallowfield Residents Group, if invited to do so.
3. All takeaway packaging and wrappers shall clearly identify the premises, i.e. by way of company logo or name.
4. When deliveries are made by Deliveroo, automatic mobile telephone notifications will be sent out when the order leaves the restaurant, and again when it arrives at the customer's address.
5. After 23:00, Fireaway Delivery Staff will telephone all customers upon arrival at the stated address, with their deliveries. A comprehensive delivery training manual for Delivery Staff will be adhered to; this includes switching off car engines, telephoning the customer and meeting them at the door of their property with their order.



## Khurram Mohsin · 2nd



- [Redacted]
- [Redacted]

Manchester Area, United Kingdom · [Contact info](#)

500+ connections

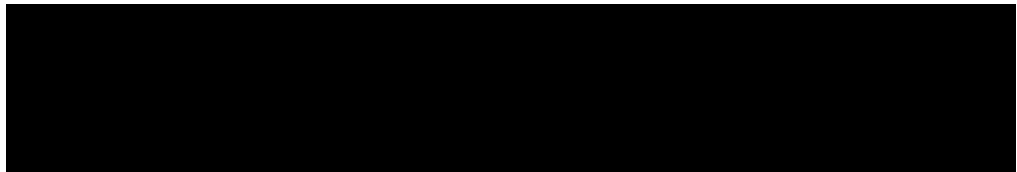
 5 mutual connections: , and 3 others

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## About



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## Activity

1,527 followers

+ Follow

### Khurram hasn't posted lately

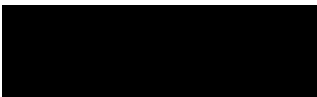
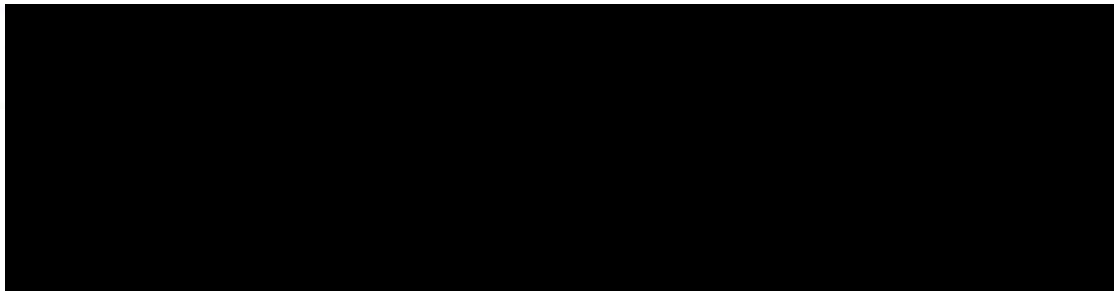
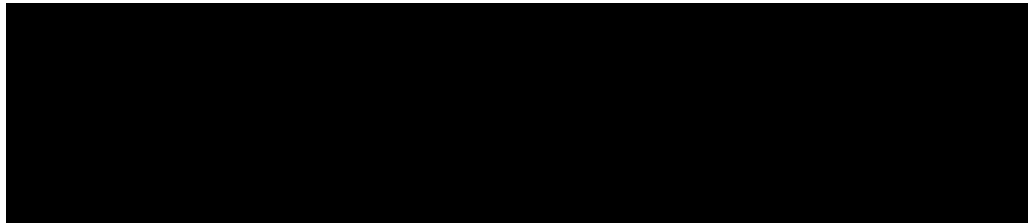
Khurram's recent posts and comments will be displayed here.

[See all activity](#)

## Experience



[See more](#)



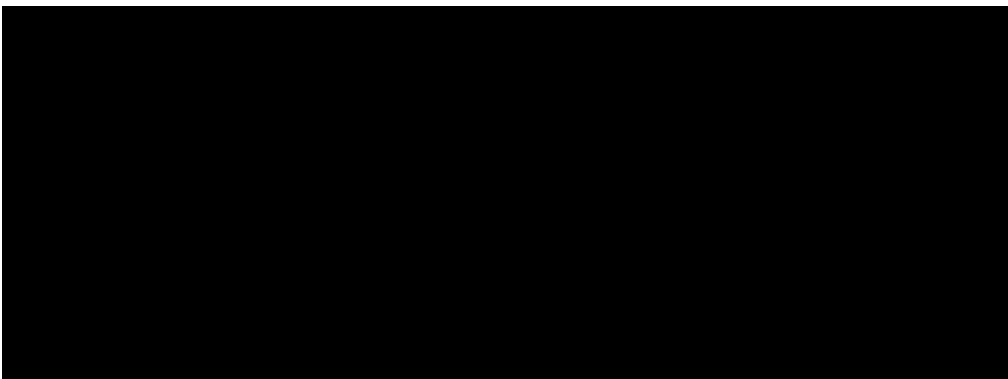


...see more



See all 23 experiences

## Education



## Licenses & certifications



## Taha Zamir Hussain · 1st



Contact info

500+ connections



100 mutual connections  
others



and 98

Message

More

## Highlights

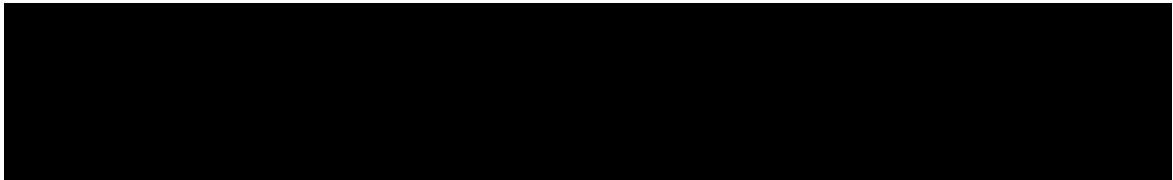


Message



Message

## About



## Featured

Posted · 2yr

**Financing  
Start Up  
Enterprise**  
Getting Started: Business  
Structure by Financing Start...  
anchor.fm

19 · 4 comments

Image · 3yr

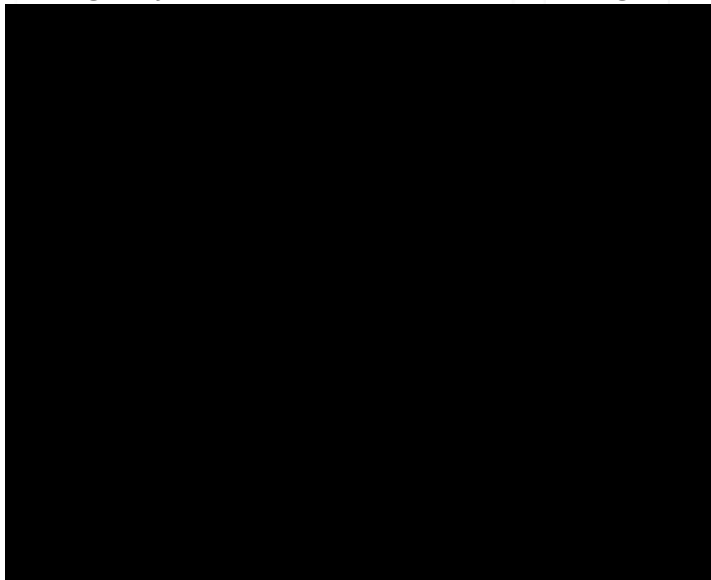



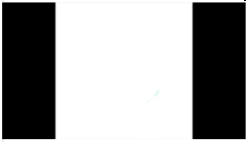
Image ·

## Activity

3,541 followers

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Reshared From [redacted] · 1mo · 



 2

Commented · 2mo · 

Well done, Mr President.

   203 · 54 comments

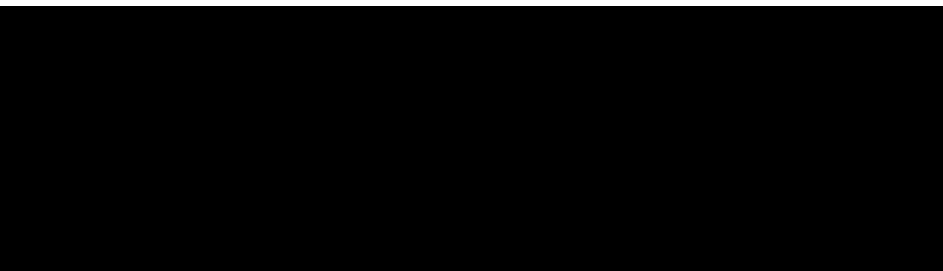
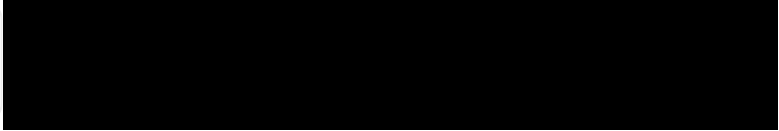
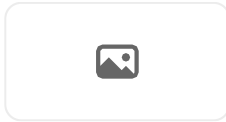
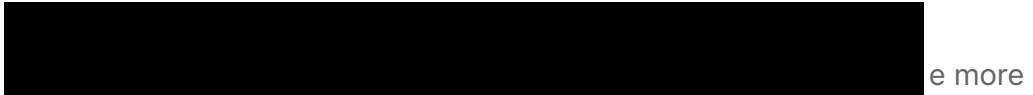
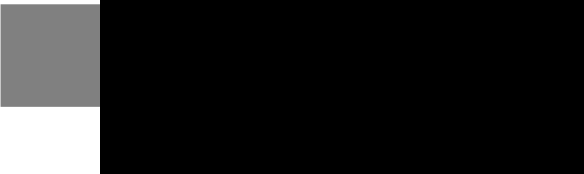
Commented · 2mo · 

Addressing the real issues.

  24 · 3 comments

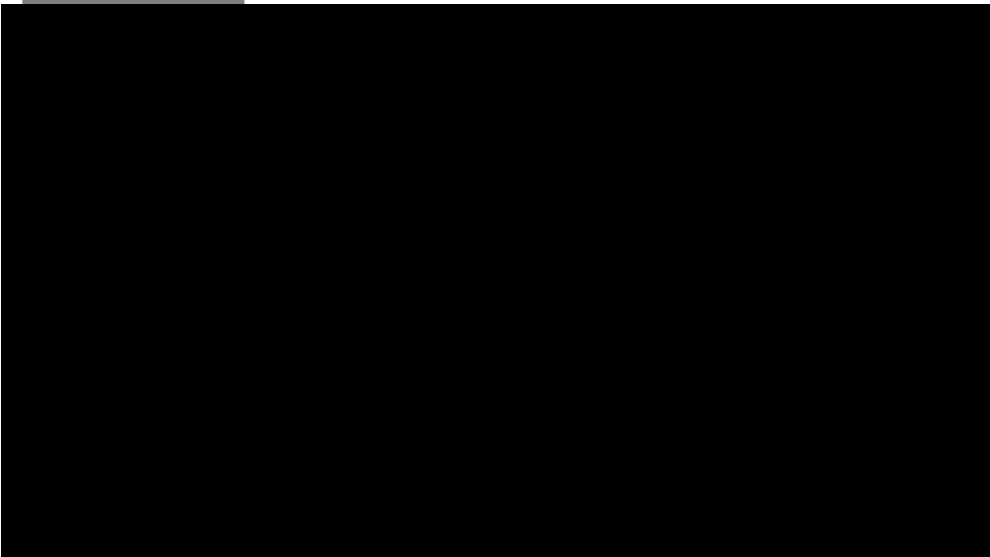
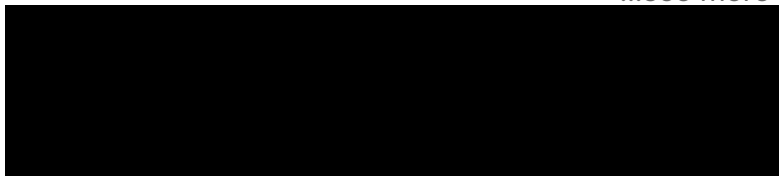
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## Experience

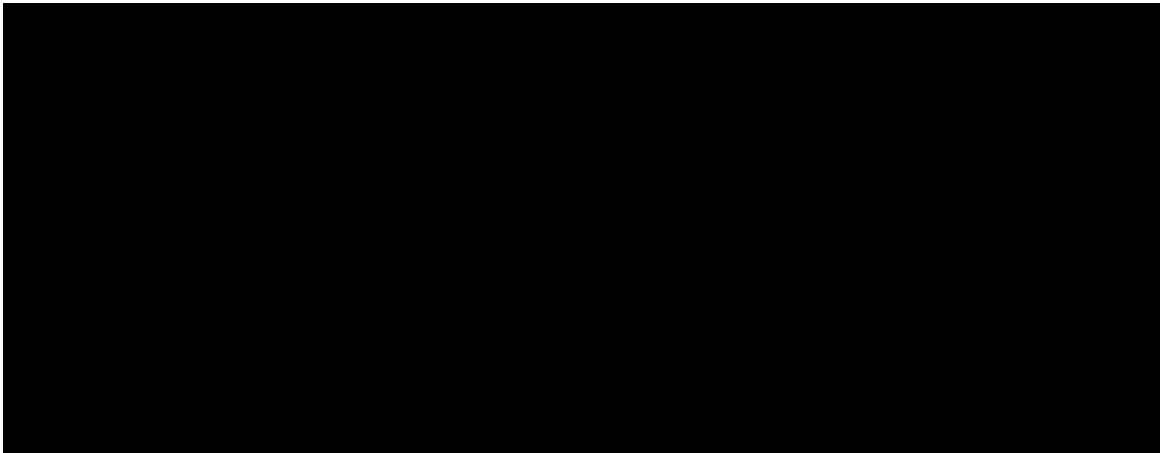
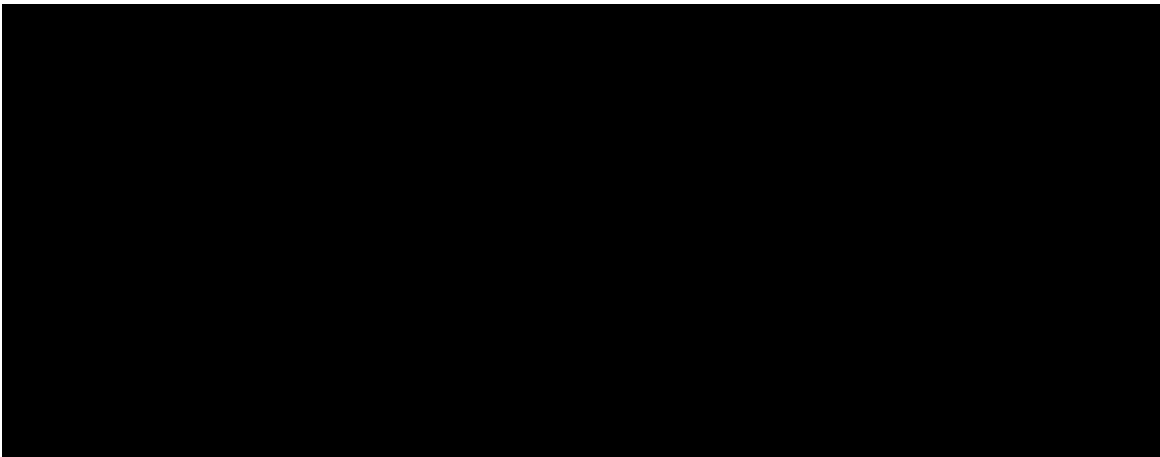




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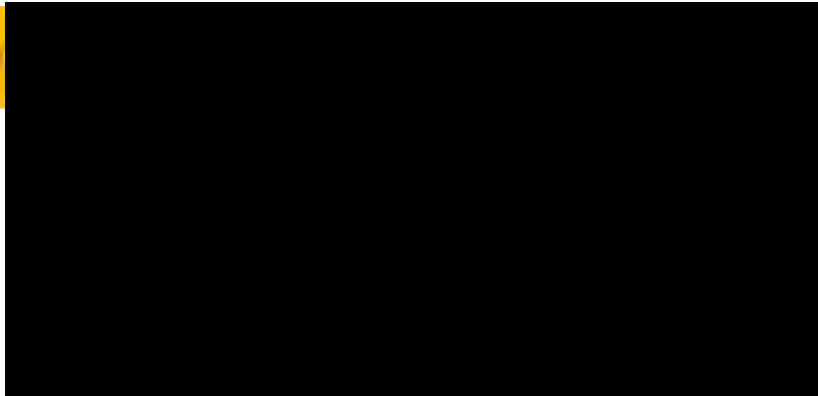


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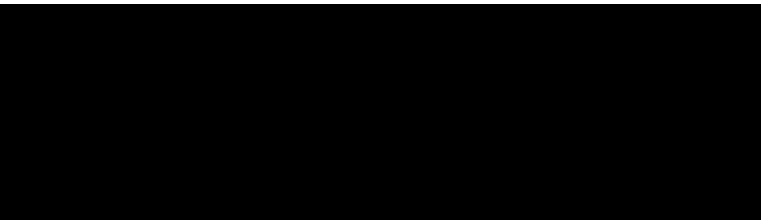


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## Education



Business Administration,

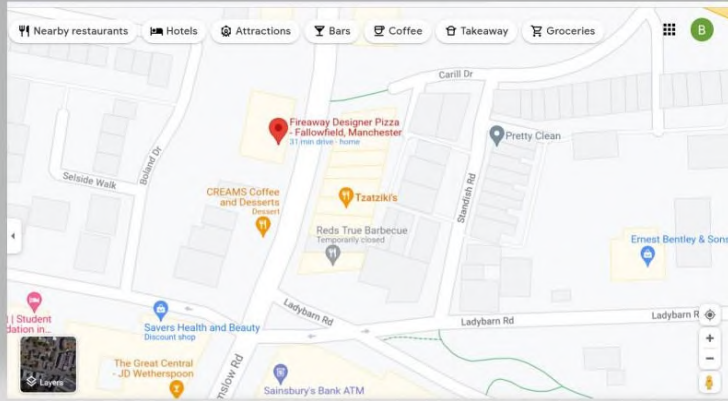


[See all 5 education](#)

## Volunteering

### Table of other Fireaway Premises Information

<b>Address</b>	<b>Closing Times</b>
Fireaway, 16 Garrick Walk, Milton Keynes MK9 3PT	Monday to Sunday until 03:00
Fireaway, 128 Fore Street, Exeter EX4 3JQ	Monday to Sunday until 02:00
Fireaway, 47 High Street, Watford WD17 1LJ	Weekdays until 02:00 Weekends until 04:00
Fireaway, 2 The Mall, Ealing, London W5 2PJ	Monday to Sunday until 03:00
Fireaway, 4 Pennine Precinct, Newhey Road, Rochdale OL16 4JD	Monday to Sunday until 02:30
Fireaway, 27 Bolton Road, Bury BL8 2AB	Monday to Sunday until 02:30



Official Transcripts (1980-1989)

## **Miah v Secretary of State for the Environment and Another**

**QUEEN'S BENCH DIVISION (CROWN OFFICE LIST)**

**WOOLF J**

The Times 4 November 1985, [1986] JPL 756, CO/506/85, (Transcript:Marten Walsh Cherer)

**29 OCTOBER 1985**

**29 October 1985**

T Comyn for the Appellant; R Griffiths for the First Respondent; the Second Respondent did not appear and was not represented

William Heath & Co; the Treasury Solicitor

**WOOLF J**

This is an appeal under section 246 of the Town and Country Planning Act 1971. On the face of it, it raised a very short and very simple point, but, as sometimes happens on closer examination, with the considerable assistance that I have had from counsel in this case, the point is not as straightforward as it first appears.

The background to the case is that the appellant, Mr Kadar Miah, operates a restaurant at 110 High Street, Northwood, Middlesex. The premises are operated subject to a planning permission which is dated 31st March 1978, which granted permission for the change of use of those premises from a shop to a restaurant and made that permission subject to a condition which was in these terms: "The restaurant shall not be open to the public after 12 midnight or before 9.00 am Monday to Saturday inclusive or on Sundays". The reason for the imposition of the condition was stated to be to protect the amenities enjoyed by the occupants of adjoining residences. Quite clearly, Mr Miah, on any view of the facts, did not comply with that condition and because of that the Enforcement Notice was issued on 23rd March 1984 by the Local Planning Authority, which is the Hillingdon London Borough Council, which was anxious to restrict inconvenience caused to persons living in the vicinity of the restaurant and the Enforcement Notice set out that the breach of planning control was that the restaurant was opened to the public after 12 midnight and before 9 am and was also open to the public on Sundays.

An appeal was entered against that Enforcement Notice and the appeal was on two grounds, first of all, on the ground that planning permission ought to be granted to permit what was not permitted by the permission already given -- that is under section 88(2)(a) of the Act of 1971 -- and in addition on ground (b) of the same subsection; that being that the steps required by the Notice to be taken exceeded what was necessary to remedy any breach of planning control. With regard to that, the requirements of the Notice were that the appellant should ensure the restaurant was closed between the hours of 12 midnight and 9 am on Monday to Saturday of each week and it was closed to the public at all times on Sunday of each week.

The appeal was heard by an Inspector and he heard a considerable amount of evidence. That evidence included evidence from the Local Authority and persons who lived in the locality. The Inspector visited the site and, having done so and having heard the evidence, set out his conclusions in his report in terms which dismissed Mr Miah's appeal.

In setting out his conclusions, he started off by stating that in his opinion the principal issue to decide is whether the opening of the restaurant outside the hours permitted by the condition attached to the existing permission is unacceptably detrimental to the residential amenities of the neighbourhood by reason of noise and general disturbance. Having stated that as the principal issue, he went on eventually to say that he took

the view that the normal interpretation of the condition as a whole is that the public should not be on the premises during the stated hours when opening is prohibited. "On that basis, customers would have to leave no later than midnight. In my opinion that is not an unreasonable restriction to impose on this restaurant which is so closely associated with dwellings". He added that in his opinion the opening of the restaurant outside the hours permitted by the condition attached to the existing permission is unacceptably detrimental to the residential amenities of the neighbourhood by reason of noise and general disturbance. He came to the conclusion that the appeal on the grounds contained in subsection 2(a) and (g) failed.

In relation to that decision, there is a right of appeal provided by section 246 of the Town and Country Planning Act. Subsection 1 of which reads: "Where the Secretary of State gives a decision in proceedings on an appeal . . . against an enforcement notice . . . the appellant or the local planning authority or any other person having interest in the land to which the Notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law . . ." Although that right of appeal refers to a decision of the Secretary of State there is no dispute that it also applies to a decision such as we have here by an Inspector on behalf of the Secretary of State.

The section then goes on to indicate the powers of this court on such an appeal. The basic power which is contained in the rules made pursuant to that section is to remit the matter to the Secretary of State with the opinion or direction of the court for rehearing and determination by the Secretary of State. It is apparent on reading the Inspector's decision in this case that his conclusions were based entirely on the fact that he took the view that protection of the sort provided by this condition was needed for the protection of the public. The ground of appeal which is made to this court depends on the statement by the Inspector that the public by virtue of the condition should not be on the premises during the stated hours when opening is prohibited. Mr Comyn on behalf of Mr Miah submits that this amounts to a misinterpretation of the condition and the effect of the condition is not that indicated by the Inspector. The correct effect is one which prevents the restaurant allowing the public to have access to the premises after the periods laid down in the condition but does not prevent customers who are already on the premises remaining on the premises after the permitted hours for the purpose, for example, of finishing a meal which they had already started.

Having regard to the reasoning of the Inspector, the point immediately arises that the issue as to the proper interpretation of the condition would not have affected and could not have affected the decision which the Inspector in fact came to. If he had adopted the interpretation of the condition which Mr Comyn submits is the correct one, he would have been even more firmly of the view that the condition imposed was not unreasonable since on that interpretation the condition is less restrictive than the interpretation in fact adopted by the Inspector. This being so, there is no basis for suggesting that this appeal should properly result in a conclusion which requires the decision to be remitted for redetermination. If the Inspector was in error on his interpretation, that did not in any way affect the outcome of his decision.

Mr Griffiths on behalf of the Secretary of State submits, that being the situation, that this whole appeal is misconceived and should be dismissed at the outset without the court expressing any view about the proper interpretation of the condition, that being a matter which could be resolved, if it was necessary to do so, in the event of enforcement proceedings being taken in the Magistrates' Court as a result of the non-compliance of the Enforcement Notice.

I fully accept the force of Mr Griffiths' submission and I recognise that it is undesirable for this court to allow the procedure under section 246 to be used as a vehicle for testing the validity of reasoning of inspectors or the Secretary of State on appeals conducted by them of this nature, when the points which are in issue do not affect their decision. The wording of subsection (1) of 246 provides an appeal against the decision and it is not an appeal against the decision if it cannot affect the decision. So in the ordinary way I would be inclined to accede to Mr Griffiths' submission and I would defer from adding to my reasons for dismissing the appeal anything over and above that which I have already stated in this judgment. However, quite clearly, there is now an issue as to what is the correct interpretation of this condition as a matter of law. It is obviously important for Mr Miah to know what is the proper manner in which he should conduct his business.

If there had been an application to the Court for a declaration it could be -- I put the matter no higher than that -- that the court would consider it appropriate to grant a declaration, this is not being a case where there is any pending criminal proceedings which it could be suggested are being interfered with by the court taking that course. It is very desirable that the court should not unnecessarily put the parties to expense merely because the correct procedure had not been adopted. From the practical point of view, there is no embarrassment at all to Mr Griffiths by the court proceeding to consider the merits of the argument which was advanced by Mr Comyn. Indeed, he was very quickly able to persuade me that the answer to the question was not as easy as I had hitherto thought and in these circumstances it does seem to me right that I should go on to indicate my view of what is the proper interpretation of this condition.

There were cited certain 19th Century licensing decisions on similar phrases in licensing statutes and other

references were made to situations where the court has considered similar phrases to those contained in this condition, however, I find those authorities of really no assistance at all. I was, however, also referred to a decision of the Court of Appeal as to the general approach to conditions in planning permissions. That is the case of *Crisp from the Fens, Ltd v Rutland County Council* [1950] 114 JP 105, and that authority did provide useful guidance.

In the judgment of Lord Justice Singleton, he indicated at page 57 that it was proper to look at the reason given for a condition and he also went on to say that he considered the argument that had been submitted that all the matters in the Order should be construed against the local planning authority, in other words, that the *contra proferentes* rule should apply was wrong. He added, "The local planning authority are given the duty of determining applications under this Act. When the Court is construing a permission which the authority have given, it must have regard to the document and to the subject matter of the case. I do not see why it should be construed against those who grant it in particular, for there is another class of persons altogether to be considered, namely, the general public."

Lord Justice Denning, as he then was, in the same case, at page 59, added: "I think it is very important that a condition of this kind should be expressed in plain language so that any layman can understand it without having to look up the statutory instrument and interpret the terms of an Order. This condition was ambiguous, but I cannot see that the company have in any way been misled." He added later: "It has to be remembered that the Planning Acts are intended to protect amenities. Owners of property cannot in these days use their property to their own private advantage without regard to the amenities of the neighbourhood. When the Planning Authority gave this permission, they clearly intended to protect the amenities. The reasons said so. It would be unfortunate if the amenities of a small country town like Oakham came to be taken away owing to a slip in omitting the word 'other' in the wording of a condition when the parties knew perfectly well that the amenities were intended to be preserved."

With the guidance provided by that authority, I would therefore return to the proper interpretation of this condition. Mr Griffiths points out that the great advantage to approaching the matter in the way that the Inspector approached it was that the position was clear beyond peradventure: members of the public should not be on the premises during the stated hours when opening is prohibited. In those circumstances, the condition is clearly capable of ready enforcement and furthermore there is no question of the obvious intent of the planning authority being overridden by persons who are already on the premises being allowed to remain on those premises for a substantial time.

Mr Comyn, on the other hand, contends that, if that was what the authority was seeking to do, they could easily have used words which had that effect and the words which were used only mean that the restaurant is prohibited from giving access to the premises after the hours stated in the condition.

My conclusion as to the proper interpretation is one which is easier to state by explaining how the condition is intended to work than being expressed in terms different from those actually used in the condition.

I do not think it is helpful – as Mr Comyn would submit it would be – to interpret this condition by examining whether doors are closed or secured in some other way. That is an unrealistic approach to a restaurant. Equally, I do not think it is right to regard this condition as having the effect of preventing any member of the public being on the premises one minute after midnight. What is intended by this condition is that the premises should be closed at midnight. That is to say that the restaurant should cease to be open to the public for the serving of meals after that time. However, if, when midnight strikes, there are persons in the restaurant who are already fully engaged in eating a meal, that does not mean that they forthwith – rather like Cinderella – have to leave the restaurant irrespective of the state of the table at that moment. The restaurant is not open to the public within the meaning of the condition if those persons have a reasonable time in which to finish their meal. I am not reading into the condition any implied term, I am merely giving effect to the words "open to the public". In the same way as after a store is closed some members of the public will take a little while to leave the premises and the premises are not open to the public, so a restaurant is not open to the public if it allows those persons a short time in which to finish their meal upon which they are engaged when midnight strikes.

I do, however, emphasize that the effect of what I have decided does not permit what was happening in these premises to occur, where there were still members of the public present, making a noise, between 2 am and 3 am. That is something wholly different. The general effect of the condition is to require the premises to close at 12 o'clock on weekdays and not to be open at all on Sundays.

Although I take a different interpretation from that of the Inspector and take the view that if the interpretation the Inspector adopted was to be the correct one the condition would have to be in much more restrictive terms than it was, for the reasons I gave at the outset of this judgment the appeal is dismissed.

*Appeal dismissed*

Response to representations

Premises Licence 266802/PW5:  
Fireaway, 266 Wilmslow Road, M14 6JR





# Acoustics Analysis

- Noise level was observed to be consistent at the front (wilmslow road) before and after 11pm. This is mainly due to the routine traffic. So the area does not get any quieter after 11pm and remained at similar levels when compared with the readings taken at 21:30



### Noise measurement report

Date: 05/01/2022, 21:24

Operator: KM

Place: Wilmslow Road Front

#### Measurement results

Measurement time (hh:mm:ss)	00:02:11
L <sub>Aeq</sub>	67.2 dB
Max. level	76.8 dB
L <sub>Cpeak</sub>	92.8 dB
TWA	dB
Dose	%
Projected dose	%

#### Notes

Wilmslow Road (front) before 11pm



### Noise measurement report

Date: 05/01/2022, 23:26

Operator: KM

Place: Wilmslow road

#### Measurement results

Measurement time (hh:mm:ss)	00:02:14
L <sub>Aeq</sub>	68.6 dB
Max. level	88.2 dB
L <sub>Cpeak</sub>	99.4 dB
TWA	37.7 dB
Dose	0.0 %
Projected dose	0.4 %

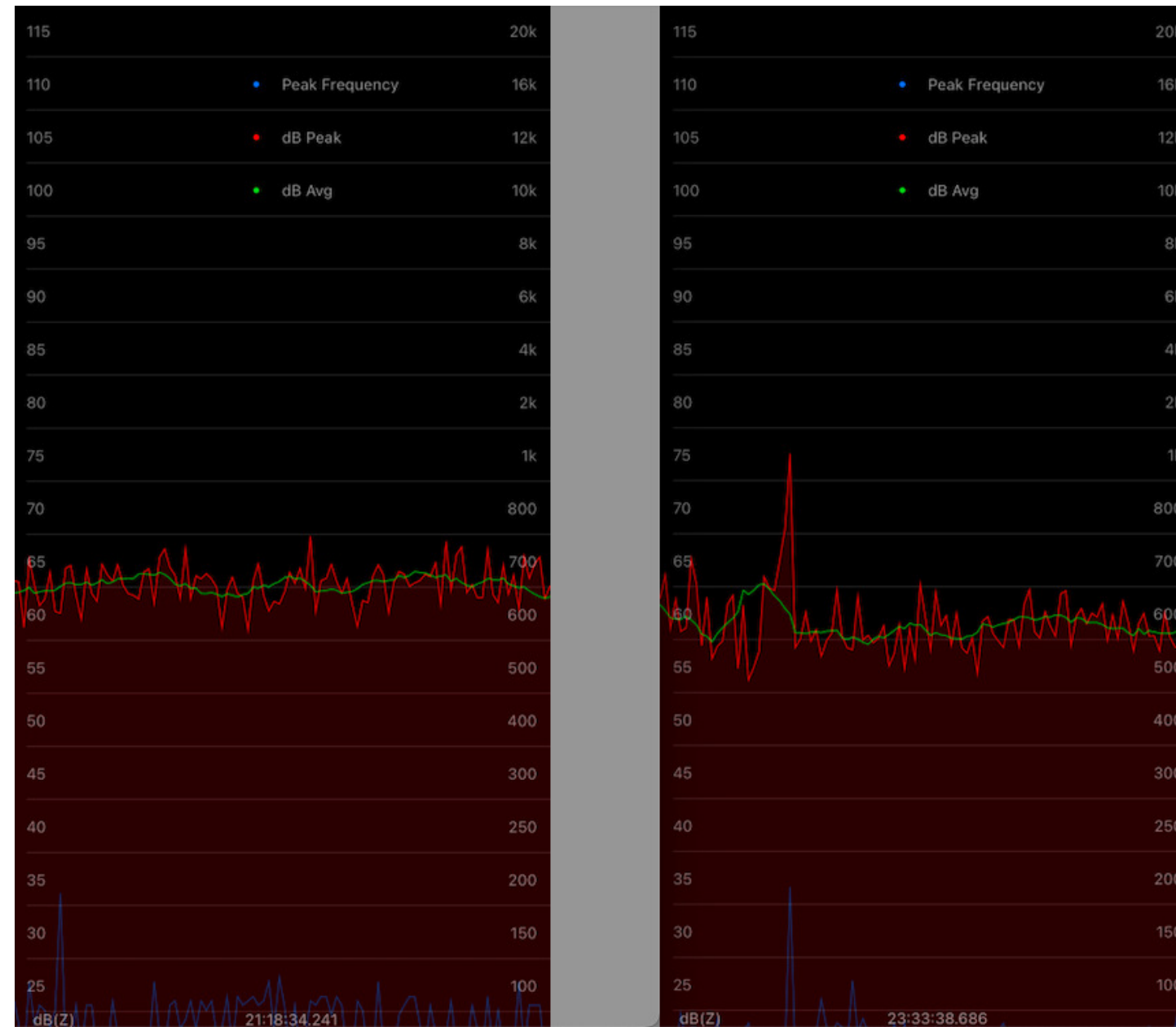
#### Notes

Wilmslow Road (front) after 11pm

- Noise readings taken at Boland Drive before and after 11pm remained comparable (60 – 65 Decibels).
- This is same sounds level as observed in a business office/ normal conversation.

*Decibel Level Comparison Chart*

Environmental Noise	dBA
Jet engine at 100'	140
<b>Pain Begins</b>	125
Pneumatic chipper at ear	120
Chain saw at 3'	110
Power mower	107
Subway train at 200'	95
Walkman on 5/10	94
<i>Level at which sustained exposure may result in hearing loss</i>	80-90
City Traffic	85
Telephone dial tone	80
Chamber music, in a small auditorium	75-85
Vacuum cleaner	75
Normal conversation	60-70
Business Office	60-65
Household refrigerator	55
Suburban area at night	40
Whisper	25
Quiet natural area with no wind	20
Threshold of hearing	0



- The 2 cars used for delivery are classed as “super quiet” as one is a hybrid and second is an all electric. The published decibel readings for these cars are below 50dB at low speeds which is even below than the ambient noise level observed at Boland Drive.

# Auto-decibel-dl

## Home - Toyota - Yaris

2018 Yaris 1.5 Hybrid	dB
idle	42.1
55 mph	54.1
65 mph	60.3
70 mph	67.3
75 mph	69.7
85 mph	71.8
50 km/h	60.4
80 km/h	67.8
100 km/h	68.6
120 km/h	70.0
140 km/h	71.8

Pictures

# Fireaway Packaging

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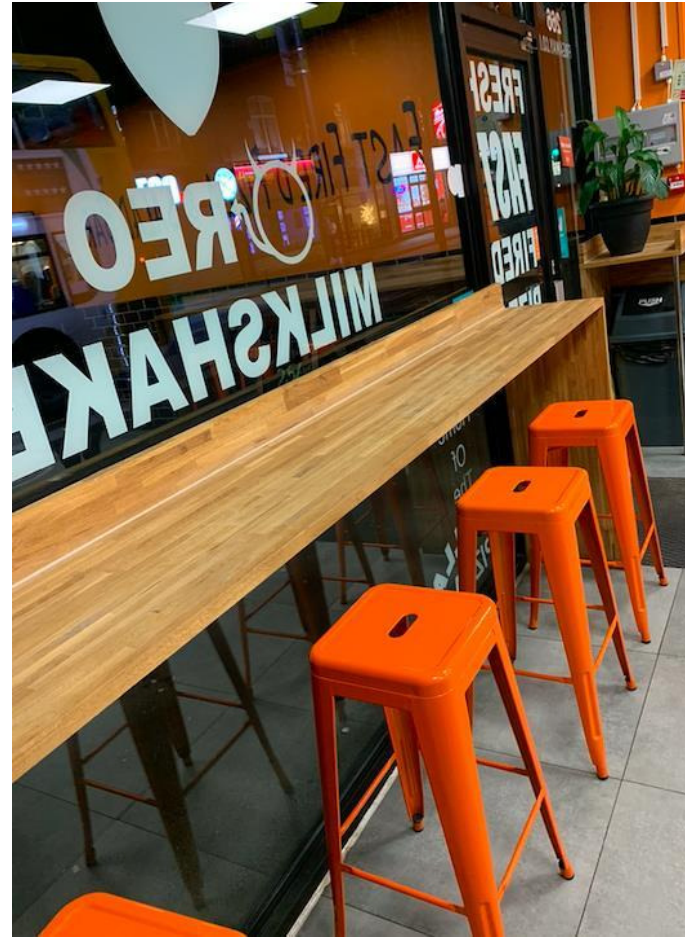
- All Fireaway packaging is branded.



Restaurant  
pictures



# Restaurant pictures





Restaurant  
pictures



Updated  
opening  
hours  
(Google)



## Fireaway Designer Pizza - Fallowfield, Manchester



Website

Directions

Save

4.9 ★★★★★ 36 Google reviews

Pizza restaurant

**Service options:** Dine-in · Curbside pickup · No-contact delivery

**Address:** 266 Wilmslow Rd, Fallowfield, Manchester M14 6JR

### Hours:

**Thursday** 4–11pm

Friday 4–11pm

Saturday 3–11pm

Sunday 3–11pm

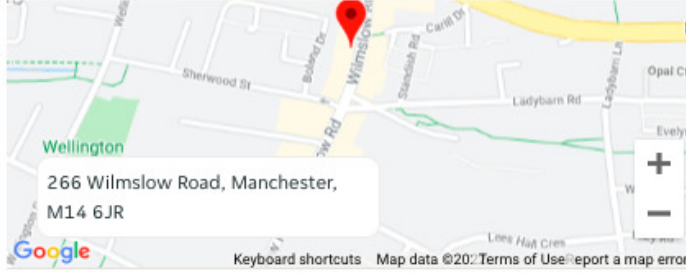
Monday 4–11pm

Tuesday 4–11pm

Wednesday 4–11pm

Updated  
opening  
hours  
(JustEat)

- Meal Deals
- Build Your Own
- Signature Specials
- Calzone
- Kids Pizza
- Sides & Salads
- Desserts
- Milkshakes
- Drinks



**A little bit about us**

Do you fancy pizza? (some of us would choose it every day if we could). For a tasty base and some great toppings, go to Fireaway Designer Pizza -Fallowfield Manchester and your wish is their pizza command. No washing up and delivery right to your door - what's not to love? After you have eaten, we'd love to get your feedback on our food and service at [www.just-eat.co.uk](http://www.just-eat.co.uk)

**Opening times**

	Delivery	Collection
Monday		16:00 – 23:00
Tuesday		16:00 – 23:00
Wednesday		16:00 – 23:00
<b>Thursday</b>		<b>16:00 – 23:00</b>
Friday		16:00 – 23:00
Saturday		15:00 – 23:00
Sunday		15:00 – 23:00