

**Manchester City Council  
Report for Resolution**

**Report to:** Licensing Subcommittee Hearing Panel – 24 April 2023

**Subject:** MRH Fallowfield, Fallowfield Service Station, 377-385 Wilmslow Road, Manchester, M14 6AH - App ref: Premises Licence variation 285721

**Report of:** Director of Planning, Building Control & Licensing

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**Summary**

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

**Recommendations**

That the Committee determine the application.

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**Wards Affected:** Withington

| <b>Manchester Strategy Outcomes</b>   | <b>Summary of the contribution to the strategy</b>  |
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| 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 Policy and implementation 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.  |

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| 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

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**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.
- Guidance issued under section 182 of the Licensing Act 2003.
- Any further documentary submissions by any party to the hearing

## 1. **Introduction**

- 1.1 On 20/02/2023, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of MRH Fallowfield, Fallowfield Service Station, 377-385 Wilmslow Road, Manchester, M14 6AH in the Withington ward of Manchester. A location map 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. **Current Licence**

- 2.1 The premises licence holder is Motor Fuel Limited and a copy of the current licence is attached at **Appendix 2**.

## 3. **The Application**

- 3.1 A copy of the application is attached at **Appendix 3**.

- 3.2 The variation is to:

To allow the sale of alcohol between the hours of 0800 and 2200 daily for consumption off the premises

To remove the conditions listed under Annex 2

To include in Annex 2 the conditions listed in the operating schedule attached to this application

- 3.2.1 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.
- 3.2.2 Any further details provided relating to any of the individual licensable activities are specified on the application form at **Appendix 3**.

### 3.3 **Activities unsuitable for children**

3.3.1 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.

### 3.4 **Steps to promote the licensing objectives**

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

3.4.2 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 5**.

## 4. **Relevant Representations**

4.1 A total of 12 relevant representations were received in respect of the application (**Appendix 4**). The personal details of all members of the public have been redacted. Original copies of these representation will be available to the Committee at the hearing.

#### Responsible Authorities:

- MCC Licensing and Out of Hours Compliance Team;
- Licensing Authority

#### Other Persons:

- Gavin Evans (Neighbourhoods Team);
- Withington Ward Councillors;
- South East Fallowfield Residents Group;
- Fallowfield Community Guardians;
- Withington Civic Society;
  
- Residents x5.

4.2 Summary of the representations:

| <b>Party</b>               | <b>Grounds of representation</b>   | <b>Recommends</b> |
|----------------------------|--|-------------------|
| <b>Licensing Authority</b> | Local residents complain of alcohol-related antisocial noise and other behaviour and significant council resources are dedicated to managing local issues. Residents, councillors and partner agencies are working hard work together to create a safe and harmonious community and there are concerns about the impact of | Refuse            |

licensed premises, and particularly the impact of alcohol, locally.

Whilst several steps to promote the objectives have been proposed in the application, it is not clear what assessment of risks the applicant has undertaken in identifying what are the appropriate steps to promote the licensing objectives in this location. The application and its operating schedule provide no detail on how alcohol is to be sold or to what degree. The steps put forward and the training do not take into account the need to prevent sales to persons who are already intoxicated, and do not address any potential impact on local antisocial behaviour, such as street drinking.

In addition, Paragraph 5.22 of the s182 Guidance to the Licensing Act 2003 states:

*5.22 Section 176 of the 2003 Act prohibits the sale or supply of alcohol at motorway service areas (MSAs) and from premises which are used primarily as a garage or are part of premises used primarily as a garage. Premises are used primarily as a garage if they are used for one or more of the following:*

- the retailing of petrol;*
- the retailing of derv (diesel);*
- the sale of motor vehicles; and*
- the maintenance of motor vehicles.*

It would appear that this premises, with the applicant Motor Fuel Ltd, is used primarily as a garage.

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| <p><b>Licensing and Out of Hours Compliance</b></p> | <p>We are concerned this variation will undermine the public nuisance licensing objective by leading to an increase in antisocial behaviour in the area. It is likely to increase footfall in this area and lead to a rise in noise nuisance to local residents from groups congregating and migrating to and from the premises purchasing alcohol to “preload”.</p> <p>The application does not identify or show understanding of any of the local factors or specific risks associated with this location or negate the risk posed to the local area by the applicant’s proposed licensable activities. They do not acknowledge the PSPO in force in this area or detail how they will support it.</p> <p>These concerns are further compounded by the applicant’s failure to identify who exactly the DPS will be. We have concerns that if an area manager is appointed then they will not be in day to day control of the premises, unable to ensure the measures needed to uphold the licensing objectives are in place and unable to immediately identify or manage any issues.</p> <p>While the CIP is currently under review, the issues that brought it in to existence for this area, in our experience, still exist and should be considered.</p> | <p>Refuse (but condition put forward in the event that the variation is granted)</p> |
| <p><b>Neighbourhoods Team</b></p>                   | <p>Selling alcohol in this particular location would likely increase issues and complaints to do with noise, litter, drugs and antisocial behaviour.</p>  | <p>Refuse</p>  |
| <p><b>Withington Ward Councillors</b></p>           | <p>Granting this licence variation to enable the sale of alcohol, would</p>   | <p>Refuse</p>  |

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|   | fail on the grounds of prevention of crime and disorder, public safety, and the prevention of public nuisance. The sale of alcohol would not be beneficial to the wider community.   |        |
| <b>South East Fallowfield Residents Group</b> | The premises is a well-known flashpoint for crime and antisocial behaviour in Fallowfield. The grant of this variation could lead to local residents, many of whom are transient, consuming more alcohol which could in turn exacerbate existing antisocial behaviour issues, including excessive noise, public urination/defecation, aggressive begging, littering.   | Refuse |
| <b>Fallowfield Community Guardians</b>        | <p>The high levels of anti-social behaviour in this area led to the implementation of a Special Cumulative Impact Policy for Fallowfield, which was adopted in January 2013. Although the CIP has lapsed due to Covid and a new policy is in a consultation process, we consider the issues to be as problematic as they have been for years and that the principles of the CIP should be observed where new off licences are to be considered.</p> <p>There has been a recent rise in anti-social behaviour and crime related to drug delivery and use and alcohol consumption. This has increased significantly since many homeless people have been placed in temporary accommodation at the three nearby hotels. The addition of alcohol at such a local point to these hotels would aggravate these issues.</p> <p>Granting the variation would also worsen issues to do with littering</p> | Refuse |

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|                                 | (including broken glass), noise and nuisance from those purchasing alcohol and drinking it on the streets.  |        |
| <b>Withington Civic Society</b> | The sale of alcohol in a petrol station is alarming. It is likely to give rise to groups congregating just outside having purchased alcohol in order to pre load on the way to other venues. The likelihood of violent alcohol related crime in the area will increase.   | Refuse |
| <b>Residents (x5)</b>           | <p>The garage is near temporary accommodation for homeless people. Granting this alcohol licence is not supportive of their needs within our community.</p> <p>Any increased access to the sale of alcohol in our community would be very unhelpful because we are already blighted by alcohol related antisocial behaviour and crime.</p> <p>The area already has an excessive number of off licences.</p> | Refuse |

4.3 Any conditions proposed by objectors are set out in the Schedule of Conditions at **Appendix 5**.

## 5. **Key Policies and Considerations**

### 5.1 **Legal Considerations**

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

### 5.2 **New Information**

5.2.1 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.

### 5.3 **Hearsay Evidence**



5.3.1 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.

#### 5.4 **The Secretary of State's Guidance to the Licensing Act 2003**

5.4.1 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.

5.4.2 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.

5.4.3 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.

#### 5.5 **Manchester Statement of Licensing Policy**

5.5.1 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.

5.5.2 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.

5.5.3 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.

5.5.4 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
- 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
- MS3 Responsible promotion and sale of alcohol
- MS5 Prevent on-street consumption of alcohol
- 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
- 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

## **6. Conclusion**

- 6.1 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.
- 6.2 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.
- 6.3 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 the conditions consistent with the operating schedule accompanying the application, which the Panel may modify to such extent as they consider appropriate;
  - b) To reject the whole or part of the application
- 6.4 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.
- 6.5 However, conditions should not be imposed on a licence which are unrelated to the variation sought.
- 6.6 All licensing determinations should be considered on the individual merits of the application.
- 6.7 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.

6.8 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.

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