

LICENSING ACT 2003 (Hearings) Regulations 2005

Notice of decision: Premises Licence (new)

Following the Licensing Sub-committee hearing on 30/01/2023, I write to formally advise you of the sub-committee's decision regarding:

Go Local

210 Wilmslow Road

Manchester

M14 6LF

The committee has listened to the representations made by

| Body/ individual | In attendance |
|--|---------------|
| Applicant- Barrister Sarah Clover, Agent Gill Sherratt, Omar Kaleen and Sonia Mahmood. | X |
| GMP – Alan Isherwood | X |
| LOOH – Ben Moran and Stuart Alderson | X |
| Fallowfield Community Guardians and South East Fallowfield Residents' Group- represented by Sue Hare | X |
| Resident - Nick Roberts | X |
| University - Dr Jones | X |
| Written representations | |

and has taken them into consideration.

In reaching its decision the Committee also have considered the Council's Statement of Licensing Policy, the Licensing Act 2003, the Regulations made there under and the Guidance issued by the Secretary of State under Section 182 of that Act and the licensing objectives.

Case Law referred to by the parties:

Daniel Thwaites plc v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin)

The Queen on the Application of Hope, Glory Public House Limited v City of Westminster Magistrates Court v The Lord Mayor and the Citizens of the City of Westminster [2011] EWCA Civ 31

East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway [2016] EWHC 1265 (Admin)

R (on the application of Bristol City Council) v Bristol Magistrates Court and Somerfield Stores [2009] EWHC 625 (Admin)

Legal Issue raised regarding Manchester City Council's Statement of Licensing Policy:

It was accepted that the evidence base used for the cumulative impact policy for Fallowfield is "out of date" as raised by the Applicant, therefore the decision today will be made upon the evidence presented before the Committee and the policy won't be applied.

Committee's Decision:

To grant the application as applied for with the following conditions:

On first appointment, all staff employed at the premises will receive training on the Licensing Act 2003 including input on preventing underage sales, preventing sales of alcohol to people who are drunk and any other relevant matters. Training shall be regularly refreshed at no less than annual intervals.

The training must be recorded and be accessible on the premises and made available for inspection upon request of a Police Officer or an authorised officer of the licensing authority or (in the case of online training) within 48 hours.

A CCTV system will be in operation at the premises and recorded images shall be retained for a period of 31 days. CCTV images will be provided to the police and other responsible authorities as soon as practicable and in any case within 48 hours of a request for such images, subject of the provisions of the DPA 2018.

An incident register will be maintained at the premises and made available to the authorities upon request.

A register of refusals of alcohol will be maintained at the premises. The register will be made available for inspection by the Police and other responsible authority upon request.

The premises will adopt a 'Challenge 25' policy. This means that if a customer purchasing alcohol appears to be under the age of 25, they will be asked for proof of their age, to prove that they are 18 years or older. Posters will be on display advising customers of the 'Challenge 25' policy. The only forms of identification that will be accepted will bear their photograph, date of birth and a holographic mark and/or ultraviolet feature. Examples of appropriate identification include a passport, photocard driving licence, military ID, and Home Office approved proof of age ID card bearing the PASS hologram.

Notices will be displayed at the entrance/exit to the premises asking customers to leave the store quietly and respect local residents.

Staff shall take reasonable steps to ensure people do not congregate outside the premises in such numbers that can cause a disturbance to local residents. If congregation does arise staff shall take all reasonable steps to move them on from the area.

There will be no sales of beer, lager, or cider with an alcohol content above 6.5% ABV in metal or plastic containers. This restriction shall not apply in respect of specialist branded premium priced products, for example craft ales, local or micro-brewery specialist products, boxed gifts or national celebratory/commemorative beer, lager, or cider.

Staff shall reinforce that alcohol should not be consumed in the street at point of sale, where appropriate.

The licence holder will ensure, as far as is within their control, that the immediate area to the front of the store will be clear from litter.

Litter shall be removed from outside the premises at regular intervals and after the close of business.

Refuse to be stored in secure bins.

Refuse collection not between 2300-0700 so as not to cause a nuisance to residents.

All crimes to be reported to police.

The premises licence holder will ensure that a risk assessment is completed to determine if door supervisors are required to cover busier periods of the week.

A Summary of the evidence

Applicant

The Committee was advised by the Applicant's representative this was an application for an alcohol licence for a convenience store under the banner "Go Local", which is a national trading "outfit". The Committee was told that the likely alcohol sales for this store would be in the region of 10/15% of their turnover.

The Committee was informed that the premises was previously a Kebab shop which held a premises licence for late night refreshment. The representative for the Applicant referred to a "one in one out" principle.

As a convenience store the Committee was told the alcohol for sale won't be cheap and they don't intend to do offers or promotions.

The representative for the Applicant referred to Manchester City Council's Statement of Licensing Policy, in particular the Cumulative Impact policy for the Fallowfield area. It was submitted that the policy is clearly out of date and there is no evidence provided currently as to what is going on in the area.

If the policy was applied the types of concerns/problems raised such as litter from take away wrappers, single cans been deposited, vandalism and students pre-loading on alcohol, none of these problems will be contributed to by the Applicant operating as a convenience store selling alcohol until 12.00 midnight. The representative for the Applicant told the Committee it was not for the Applicant to 'cure' the existing problems and further they were not required to "make things better".

The Committee was told that when the application was originally submitted in September 2022 the terminal hour applied for was until 4am as the shop was allowed to trade under the planning permission until this time. The application was revised with the terminal hour of 12.00 midnight.

The Committee was reminded that waste collections and parking were planning concerns rather than licensing matters.

The representative for the Applicant summarised GMP's representation. GMP raise the issues of litter, noise and other anti-social behaviour, and to allow

another outlet would exacerbate these problems. GMP sought to rely on the CI policy.

The Applicant's representative informed the Committee that the shop was already open and therefore people were already coming and going from the premises so there would be no additional noise created by the sale of alcohol. Currently, they are operating until 3am however the premises will close at 12.00 midnight if this premises licence is granted.

Regarding the issue of litter, the premises is not a takeaway so there isn't any issue with take away wrappers causing litter and the premises do not sell single cans of alcohol. Further there was no evidence submitted regarding anti-social behaviour in the area from GMP. It appears they have submitted a "global representation".

Regarding students pre-loading; this type of premises will not be attractive to students as the alcohol will not be cheap, and students are therefore likely to obtain their alcohol from the larger supermarket outlets to pre-load back at their halls.

The representative for the Applicant advised the Committee she was "disappointed" with Licensing and Out of Hours' (LOOH) representation. Which included a complaint against the premises regarding loud noise. The Committee was advised that LOOH had attended the premises and found no issue with noise, and that the premises only played low level music at the store. It was submitted there was no noise nuisance from this store.

The Applicant's representative raised the case of R (on the application of Bristol City Council) v Bristol Magistrates Court and Somerfield Stores [2009] EWHC 625 (Admin) to remind the Committee that they should not impose conditions dealt with by other legislation. It was submitted that LOOH had raised issues which should be dealt with by other legislation in their representation.

The Applicant's representative asked the Committee to consider the suggested condition put forward in the operating schedule and the additional condition at page 6 and 7 of the supplementary agenda which would uphold the licensing objectives.

It was submitted that this premises will not contribute to any of the issues that are occurring in this area and the local issues that do occur are not linked to this store.

The representative for the Applicant took issue with the University's representation in regard to having a reduced number of outlets. The Applicant's representative reminded the Committee that 'demand' is not a consideration in Licensing matters.

Further the Applicant's representative was critical of the University's representation as it hadn't referred to what steps have been taken to resolve matters and she submitted they should be adopting a holistic response.

The representative for the Applicant told the Committee whilst allegations had been made regarding the sale of drugs and nitrous canisters, this is categorically denied by the premises and further the responsible authorities who enforce such matters have not raised this as an issue nor have they investigated such matters.

Regarding the residents' representations, their main issue is the student behaviour in the early hours of the morning and the effect this has on them.

Further regarding anti-social behaviour in the area, the Applicant's representative told the Committee if the premises became aware of an issue, or they are aware of an event such as 'park life' they would carry out a risk assessment to determine whether SIA door staff are required. (This is a suggested condition.)

The residents raise in their representation the murder which occurred in October 2022. The Applicant's representative stated that whilst this is a shocking incident it was submitted that this had nothing to do with this premises and in fact the premises supplied CCTV to the police to assist them with their investigation into the murder.

Finally, it was submitted that the premises would add value to the community and the Committee was referred to their Statement of Licensing Policy regarding this point.

During questioning -

It was accepted that they will be serving students and not just other members of the public in the store.

Further the Committee was advised during questioning that if a risk assessment was to be carried out this would be done with the assistance of 'Licensing Matters' as Licensing Matters provide their training and licensing advice.

GMP - Alan Isherwood

Due to the evidence regarding the Cumulative Impact policy being out of date, GMP didn't wish to make any representations at the hearing and took no further part.

LOOH

The officer reminded the Committee of the location of this premises and how this location is already saturated with off licences and takeaways. The Committee was advised that the location suffers from ASB, violent crime, litter and noise which led to the CI policy being introduced and these problems still exist today. As a result of the issues in this area the council must provide additional resources to this area.

The officer told the Committee that by increasing availability of alcohol the issues in the area will just get worse. The officer referred the Committee to the noise complaints received in the area and he stated, "they are usually alcohol related".

The officer advised the Committee of the murder which took place in October 2022 to highlight the level of violence in the area.

The officer said by granting this licence will only have a negative impact on the area and the licensing objectives will be undermined.

During questioning the officer confirmed the investigation was still open in relation to the noise complaint from the premises and it hadn't been concluded as a further issue had been raised regarding students congregating outside the premises. The Applicant took issue during questioning with the length of time this investigation had been ongoing for as did a member of the Committee. The officer confirmed when questioned that the murder and the other issues of violence in the area had nothing to do with this premises.

Dr Brendon Jones - University

Dr Jones advised the Committee that The University did take an holistic approach to how they work with students. The Committee was advised The University works very hard asking students to behave. They provide an educational programme to students which reminds students they are now citizens of Manchester, and they work with them regarding their behaviour. Further The University works closely with Manchester student homes for students catered for off site.

Student safety is paramount to The University, so they work closely with GMP. Dr Jones told the Committee that an extra licence "will not be helpful."

Dr Jones talked about the issues with students pre-loading before going out at the evening and there had been an issue with students drinking alcohol at the Owen's Park bus stop. The University had worked closely with Transport for Greater Manchester to stop students boarding buses with alcohol.

Finally, the Committee was told if they granted this application this would be allowing students greater access to alcohol and this would be potentially damaging.

During questioning from a committee member Dr Jones confirmed they don't visit licence premises directly to discuss issues, this is dealt with by the partnership agreement they have with GMP and LOOH's and they share information with them.

From questioning by a local resident Dr Jones confirmed that the litter found particularly at the weekends largely came from the night-time economy.

Further he confirmed during questioning that "bad students" are dealt with by disciplinary proceedings.

Nick Roberts

Mr Roberts advised the Committee he was a long-term resident of Fallowfield since 1985. He reminded the Committee that Fallowfield has one of the largest population of students in Europe and was made up of 7 main streets. At the centre of this location is a "giant noise fest" until 6.00am caused by drugged/drunks students.

Mr Roberts also talked about the anti-social behaviour in the area which has led to assaults and a murder in October 2022.

Mr Roberts describes the area as a "24/7 party club atmosphere". He told the Committee about issues of vandalism in the area and advised the Committee of the latest incident of vandalism against his property and referred them to the still of the CCTV footage in his representation.

Mr Roberts told the Committee there is a real issue with "garbage" in the area which has led to a rat infestation, which he has tried to address by instructing pest control. However, rats have returned.

Mr Roberts advised the Committee that pre-loading and post loading are causing major problems in the area, and this has resulted in him suffering sleep deprivation.

He advised the Committee that “we don’t need another off licence”.

Mr Roberts stated “I am at the end of my tether”

During questioning by another resident, he confirmed that the issue with the students is not just a night-time issue. He confirmed students load up with boxes of beer and it isn’t always from the large supermarket chains as cost is immaterial to the students.

Sue Hare

Sue Hare confirmed she was speaking on behalf of The Fallowfield and Withington Community Guardians and The South-East Fallowfield Residents Group.

Ms Hare confirmed The Fallowfield and Withington Community Guardians has met every month for the last 15 years and now has 30 members. The other group, The South-East Fallowfield Residents Group, has 100 members. She states that permanent residents are in short supply as so many have left the area due to the problems. She explained to the Committee she has helped to get the CI policy in place, and she had attended many previous committees. Ms Hare confirms that the issues raised in the policy still exist today and alcohol is the “big problem”. She advised the committee that the biggest cause of public nuisance is alcohol.

Ms Hare advised the Committee that herself and other residents used to do a “walk about” on the streets of Fallowfield in the early hours, to see what was occurring. However, this is no longer possible as they are too frightened.

Ms Hare reminds the Committee about the level of violence in the area and the murder that took place in October 2022.

Ms Hare told the Committee that students affect the residents a lot, and many of them attend parties and go to off licences en route to get alcohol. The Committee heard that house parties happen every day of the week which impacts on residents.

Ms Hare informed the Committee that due to issues with street drinking a PSPO is now in place to deal with street drinking in this area.

Ms Hare told the Committee that when walking the streets of Fallowfield you will come across vomit, broken glass and litter.

Further Ms Hare advised the Committee that even if it was a member of her family who was applying for a licence in this area, she would be objecting to it.

Ms Hare stated, "They do not want another off licence". She went on to state "Residents couldn't cope anymore"

When questioned by The University Ms Hare confirmed that people drink at the bus stop and dump the bottles before getting on the bus.

Case law referred to by LOOH

LOOH

LOOH firstly relied on the case of Daniel Thwaites plc v Wirral Borough Magistrates' Court 2008 EWHC 838 (Admin).

The case recognises that Responsible Authorities are experts in their fields, and that weight should be attached to their representations.

Secondly, they asked the Committee to be accountable to local residents and quoted the case of *The Queen on the Application of Hope, Glory Public House Limited v City of Westminster Magistrates Court v The Lord Mayor and the Citizens of the City of Westminster* [2011] EWCA Civ 31

Paragraph 42- addresses this point:

“Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.”

Finally, they referred to the case of *East Lindsey District Council v Abu Hanif (Trading as Zara’s Restaurant and Takeaway.)* EWHC 1265 (Admin),

LOOH submitted that the significance of the case is that it confirms the principle that Responsible Authorities need not wait for the licensing objectives to actually be undermined before objecting to a licence being granted. The key is prevention.

Para 18 – addresses this point

“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder.”

“This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on Page 6the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.”

Response by the Applicant’s representative during closing to the above case law.

The representative for the Applicant told the Committee there were no issues before the Committee that were raised in the case of East Lindsey District Council v Abu Hanif (Trading as Zara’s Restaurant and Takeaway) EWHC 1265 (Admin).

She submitted that the fact as to whether a crime had to be committed or not had “naff” all to do with this licence application.

Regarding the case of The Queen on the Application of Hope, Glory Public House Limited v City of Westminster Magistrates Court v The Lord Mayor and the Citizens of the City of Westminster [2011] EWCA Civ 31 the Applicant’s representative quoted paragraph 42

Paragraph 42:

“Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.”

Finally, the representative addressed the committee on the Daniel Thwaites plc v Wirral Borough Magistrates' Court 2008 EWHC 838 (Admin)

She told the Committee they cannot take into account speculative evidence and their decision should be based on 'real evidence'.

She went further to state:

Para 42

"...That the Act anticipates that a "light touch bureaucracy" (a phrase used in para 5.99 of the Guidance) will be applied to the grant and variation of premises licences."

Reasons:

The Committee is very familiar with the location of this premises and is aware the premises is situated close to the centre of one of the largest populations of students in Europe.

As addressed at the beginning of this hearing, the Committee must accept that the evidence base used for the cumulative impact policy for Fallowfield is "out of date."

Whilst the Committee cannot make their decision based upon policy, they can take into account evidence of pre-existing problems in the area as set out in 7.12 of their Statement of Licensing Policy.

7.12 "Where its discretion is engaged, the authority will give particular consideration to the general character of the surrounding area, including crime and antisocial behaviour (ASB) levels, litter problems, issues regarding underage or proxy sales,

and noise complaints. Where there are demonstrable problems linked to the operation of licensed premises in the area and the evidence demonstrates problems with licensed premises in the area, the licensing authority will, in exercising its discretion, take this into consideration when deciding what (if any) steps are appropriate and proportionate in the individual case.”

The Committee has also considered Section 8 -MS 2 MS5 MS8 AND MS10 of their policy when considering this application.

From the evidence presented by LOOH’s and residents there are clearly issues with noise, litter and anti-social behaviour caused by students in Fallowfield which appear to be alcohol related. However, when making their decision the Committee noted that GMP had not provided any evidence of anti -social behaviour or crime and disorder concerning the area where the premises is situated. The Committee noted that GMP decided at the hearing not to make any oral representations.

As per paragraph 2.1 of the section 182 guidance states:

2.1 “Licensing authorities should look to the police as the main source of advice on crime and disorder.”

As stated by the Applicant’s representative it is not for this applicant “to make things better”. They must uphold the licensing objectives.

For any new premises licence application not in a CI area there is a presumption to grant a premises licence application unless the licensing objectives will not be upheld.

The Applicant has supplied a package of conditions which has been considered by the Committee and they are satisfied any ‘real concerns’ regarding the operation of this premises can be addressed by the imposition of these conditions.

The Committee take into to account this premises is run by a responsible operator who has experience of the retail trade and “Go Local” are a well-recognised national brand.

The Committee has considered firstly, the fact the premises previously had a premises licence.

Secondly, the Applicant can currently open subject to planning permission until 3am providing groceries to members of the public.

Thirdly, the terminal hour of 12.00 midnight with the proposed conditions will not add to the current issues experienced in this area. (The Applicant’s representative confirmed they will be closing the premises at 12.00 midnight if the licence is to be granted).

Finally, the Committee has taken into account the type of premises, which is a convenience store rather than an off licence. From the evidence provided by the Applicant, alcohol is ancillary to other goods sold in the shop with an estimate at 10% to 15% of their sales and the committee conclude that this premises will not impact on the current issues in the area.

Regarding the case law and the submission made by the parties to the Committee they have considered the cases and have applied the principles when making their decision:

R (on the application of Bristol City Council) v Bristol Magistrates Court and Somerfield Stores [2009] EWHC 625 (Admin) –

The Committee will not impose conditions dealt with by other legislation

The Queen on the Application of Hope, Glory Public House Limited v City of Westminster Magistrates Court v The Lord Mayor and the Citizens of the City of Westminster [2011] EWCA Civ 31 The Committee considered paragraph 42 and applied the principles to this application.

Paragraph 42- "Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact."

East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway [2016] EWHC 1265 (Admin)-Whilst it is accepted the facts of the case are entirely different to the set of facts before the Committee today (as stated by the Applicant's representative,) LOOH sought to rely on the case to remind the Committee that Responsible Authorities need not wait for the licensing objectives to actually be undermined before objecting to a licence being granted. The licensing objectives are the prevention of crime and disorder and the prevention of public nuisance. The purpose of the Licensing Act 2003 is to prevent problems from happening.

Finally, in regarding to the case of Daniel Thwaites plc v Wirral Borough Magistrates' Court 2008 EWHC 838 (Admin) the case recognises that Responsible Authorities are experts in their fields, and that weight should be attached to their representations. The Committee further apply the principle from the case that they cannot take into account speculation and their decision should be based on 'real evidence'. Paragraph 53 states:

"...Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case."

The holder of the premises licence may appeal any decision to:

- Refuse the application
- Impose conditions on the licence

- Exclude a licensable activity
- Refuse to nominate someone as a Designated Premises Supervisor
- Modify conditions attached to a licence (where the application is a variation)

Any person having made relevant representation against the application may appeal the decision if they believe that:

- The licence should not have been granted
- A licensable activity should have been excluded
- Different or additional conditions should have been attached by the Licensing Authority
- A Designated Premises Supervisor should not have been nominated
- The conditions attached to the licence should not have been modified or should have been modified in a different way (where the application is a variation)

Any appeal must be made to Manchester City Magistrates' Court, Crown Square, Manchester, M60 1PR (tel 0161 830 4200) and must be commenced within the period of 21 days beginning with the day on which you were notified by the licensing authority of the decision, as provided for in Section 181 of the Licensing Act 2003.

Please note, the licensing decision is separate from any planning decision; *the licensing decision does not confer planning consent*. Please ensure you have the proper planning consent before commencing trading.

Should you require any further information, please reply to this email.

Yours faithfully
Helen Howden
Premises Licensing Team

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