

## **MFG Fallowfield Rebuttal as of 17 April 2023**

### **Representations and rebuttal**

#### **Fraser Swift Licensing Authority**

##### FS statement

The location of this premises has been subject to a special licensing policy since 2012 aimed at preventing issues associated with licensable activities, including the off sales of alcohol, from worsening.

##### MFG response

The Special Policy has now lapsed.

The Committee considered this issue in the Go Local application 30/01/23:

“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hearing, the Committee must accept that the evidence base used for the cumulative impact policy for Fallowfield is “out of date.” “

##### FS statement

Whilst a number of 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. It is important that a licensee understands the local risks and challenges they will be faced with to ensure that they will have appropriate operational skills and resources to identify and address them effectively.

##### MFG response

MFG has carried out a risk assessment and does understand the local risks and challenges. This is a 24-hour store, but MFG has applied for restricted hours with robust conditions.

MFG is an extremely experienced operator.

MFG owns 859 licensed petrol stations.

Of these, 609 are licensed 24 hours a day including the following in Manchester; Ardwick, (not selling alcohol currently), Chorlton, Civic Centre, Levenshulme, Newton Heath, Oldham Road, Princess (not selling alcohol currently) & Rusholme.

785 are licensed for the sale of alcohol after 22:00 including Didsbury 6-12

Only 1 MFG stores has a terminal hour before 22:00 (Grafton (not selling alcohol currently) – some sensitivity next to a mosque).

MFG is aware of the sensitivities and the special characteristics of Fallowfield.

MFG has applied for an 08:00-start time. This is in line with other stores in the area. MFG is aware that an earlier start time may well be seen as attractive to those seeking a “first drink” of the day.

MFG has included conditions restricting the sale of high ABV beers and ciders and single cans. These are the drinks generally thought to attract the problem drinkers.

Spirits behind the counter eliminates the risk of theft for strong alcohol.

As part of its assessment, MFG attended the Go Local Hearing on 30/01/23. Here the applicant sought a licence to 04:00 but amended this to midnight. So still 2 hours later than that sought by MFG.

The Go Local premises is a few metres from another off licence – New Zealand Wines.

The application was opposed by the Police (who later withdrew), the University, Licensing Out of Hours and Resident Groups and residents.

Go Local decision:

The following is an extract from the decision of the Licensing Sub-Committee:

*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.*

*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.*

MFG has offered a robust set of conditions.

The police are not opposing the application. The police are the experts on the crime and disorder licensing objective.

MFG is a responsible and experienced operator. As stated above it operates a number of licensed premises in Manchester.

The MFG premises also previously had the benefit of a premises licence.

The terminal hour proposed is 22:00, so significantly shorter than the midnight terminal hour that the Committee considered would not add to the current issues experienced in the area.

The MFG premises are also a convenience store – the sale of alcohol is unlikely to exceed the 10-15% of shop sales indicated by Go Local.

MFG is happy to add the following conditions taken from the Go Local decision:

- Cashiers shall be trained to reinforce that alcohol should not be consumed in the street at point of sale, where appropriate.
- Cashiers shall be trained to 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 cashiers shall take all reasonable steps to move them on from the area.

FS statement

The application and its operating schedule provide no detail on how alcohol is to be sold and to what degree

MFG response

Our application and the operating schedule give a detailed and robust set of operating conditions.

FS Statement

The steps put forward and 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 ASB such as street drinking

MFG response

MFG has included conditions restricting the sale of high ABV beers and ciders and single cans. These are the drinks generally thought to attract the problem drinkers.

Spirits behind the counter eliminates the risk of theft for very strong alcohol.

The 08:00-start time is also intended to address the “first drink of the day” issue

The training MFG provides does cover sales to intoxicated persons.

FS statement

Therefore, I would dispute the submission that the steps would not add to any cumulative impact in the area, as key risks have not been identified and addressed

MFG response

We have stated that we believe that, due to the steps that we have set out in the operating schedule, the grant of the variation will not add to the cumulative impact referred to in the licensing policy.

FS Statement

Furthermore, the location of this premises which if granted means that it would be closest premises selling alcohol in proximity to many AHMOs and other sensitive uses

## MFG Response

No detail is provided here. The distance to nearby supermarkets and off licences is not prohibitive. We have commissioned an independent report which looks at the locations and calibre of off licences in the area and this report has been submitted.

## FS statement

Londis run alcohol promotions, examples of which are below, which I believe would appeal to the student community. It is noted that the graphic taken above from the Londis website promotes that this business is already providing "beers, wines and spirits" and as 'everyday essentials'. Therefore, it would likely become a source adding to cumulative negative impacts of alcohol on the local community and so granting this licence would only likely worsen the situation through contributing to the existing local issues.

## MFG response

MFG is not tied into Londis promotions or pricing. The screenshots of Londis promotions are not relevant.

## FS Statement

Reference to Section 176 Licensing Act 2003 and Section 182 Guidance

## MFG response

The representation sets out Section 176 incorrectly.

Section 176 actually states as follows:

*No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises.*

*In this section "excluded premises" means—*

*(a) premises situated on land acquired or appropriated by a special road authority, and for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class I (with or without other classes); or*

*(b) premises used primarily as a garage or which form part of premises which are primarily so used.*

So, this presupposes that a licence exists. The licence does not take effect if the premises are primarily a garage. It does not set out some sort of test to secure a licence or a licence variation. The requirements for an applicant are set out in section 34 of the Act and the Licensing Authority is required to determine an application under section 35. It is not to introduce some form of new obstacle. MFG is aware that as with every other licensed petrol station, the licence has no effect if the primary use is that of a garage.

The Section 182 Guidance is poorly drafted and does not supersede the provisions of the Act.

It is open to the Licensing Authority to prosecute any premises where it considers that they are trading unlawfully. There are several thousand petrol stations now selling alcohol and many in the Manchester area. It would be wrong to apply a different test to the MFG Fallowfield premises.

A decision here based on primary use would be ultra vires. The application must be determined in accordance with the 2003 Act.

**Stuart Alderson - Neighbourhood Compliance Officer**

SA engaged positively with Robert Botkai from MFG's solicitors. There was an email exchange and telephone conversation.

It appears that subsequently SA has spoken to his line manager and submitted a representation totally out of context with the engagement with RB.

Emails as follows:

*Hello Robert*

*The tweak to the condition is fine. I am waiting on a meeting with my manager to discuss the application before making a decision on whether I make a representation or not.*

*Thanks*

*Stuart Alderson*

*Hi Stuart*

*Apologies for the delay.*

*Our client agrees to the following condition:*

- *Where necessary customers shall be reminded to have regard to the needs of local residents, to leave the premises quietly and swiftly once they have completed their purchase.*

*I have changed the word "order" to "purchase" so it fits better with a store of this type.*

*I will inform the licensing officer of the additional condition and should be grateful if you will confirm that there will be no representation from Licensing and Out of Hours.*

*Kind regards*

*Robert*

#### SA statement

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". In May 2022 I received a noise complaint from a nearby resident regarding this premises using its tannoy system. We are concerned that the attraction of alcohol being available at this premises will lead to further complaints for the aforementioned issues.

#### MFG response

We do not agree that footfall is likely to increase.

This is a very small add on to the existing services. It is entirely within hours operated elsewhere. People will not travel any sort of distance on foot or by car simply because we have a small range of alcohol available 0800 to 2200 at prices probably higher than elsewhere in the area. The representations and our evidence is that there are other opportunities to buy alcohol locally, for longer hours and at cheaper prices and with greater range.

We do not have groups congregating. There is no evidence of groups congregating at other MFG stores notwithstanding similar fears expressed by residents eg Didsbury.

Why would groups migrate to the store to pre-load? They have a large supermarket a few mins' walk away with a larger range, longer hours and cheaper price. There are other off licences again with larger range, longer hours and cheaper prices in the locality.

As an operational petrol station, we must have a tannoy system. Whilst we are considerate of noise impact on local residents, use of this system is an essential part of forecourt retailing.

A single noise complaint in May 2022 relating to the use of the tannoy cannot possibly be relevant to this application

There is no evidence to support the assertion that the alcohol licence is likely to lead to further complaints about the tannoy.

#### SA statement

We are concerned there will be a rise in litter from discarded drinks containers, and an increase of on street drinking. We are also concerned by the prospect of intoxicated people being in the dangerous environment of a service station and the potential risks this could pose.

#### MFG response

We have addressed street drinking elsewhere. There is absolutely no evidence that the grant of the licence on restricted terms will increase street drinking in the area.

We do not agree that the alcohol licence would result in an increase in drinking in the area or litter from discarded drinks containers.

We do not agree that there is any more danger to people at this store than any other petrol station.

#### SA statement

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.

MFG response

It would be highly unusual to acknowledge a PSPO in an application. SA made no reference to this in discussion or emails. The police have made no representation. MFG will be pleased to display signage informing customers that a PSPO is in force. We are happy to work with officers and display appropriate signage relating to the PSPO.

SA statement

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.

MFG response

MFG is fully aware that for alcohol to be sold lawfully a DPS must be named on the licence. This is a separate application to the variation. Again, SA made no reference to his concern about the DPS in consultation.

SA statement

The World Health Organisation (WHO) study 'Preventing violence by reducing the availability and harmful use of alcohol' states. *A range of studies have explored associations between densities of alcohol outlets and violence. Despite methodological limitations, findings are generally consistent, associating higher outlets densities with higher levels of violence.*

The WHO study shows that an increase in just 1 licensed alcohol premises lead to an increase in assaults in that area.

MFG response

This extract is hugely misleading and must be read in context.

SA's statement fails to include the paragraphs which follow the extract:

*A range of studies have explored associations between densities of alcohol outlets and violence. Despite methodological limitations, findings are generally consistent, associating higher outlets densities with higher levels of violence*

*For example:*

- In Norway, increased density of alcohol outlets (number of public drinking premises per 10,000 inhabitants) between 1960 and 1995 was found to be associated with higher numbers of violent crimes investigated by police. An increase of one alcohol outlet corresponded to an increase of 0.9 assaults investigated each year (39).*

- In Melbourne, Australia, spatial analysis found an association between concentration but with greater increases seen at higher censing authorities could identify a maximum density of licensed premises above which sharp increases in assaults would be likely to occur.*

It is misleading to submit to the Licensing Committee that that the WHO concludes that an increase in just 1 licensed premises leads to an increase in assaults in that area.

It is misleading to apply this single paragraph to an application for an off licence in Fallowfield.

SA statement

SA refers to data which is now out of date. Also, police data – the police have not made a representation.

It would be extremely difficult to link hospital admissions to this application.

SA statement

The premises currently operates a delivery service, and we are concerned this will be extended to include alcohol should the variation be granted.

MFG response

Again, SA made no reference to this during the consultation. Any delivery would be before 10pm.

### **Kattie Kincaid South East Fallowfield Residents' Group**

KK statement

This garage is a well-known flashpoint for crime and antisocial behaviour in Fallowfield and police and council records can be checked to verify this

MFG response

We do not recognise this description of our store. The police are not making a representation which supports our own experience.

KK statement

If these premises are given a new alcohol licence we think the **most likely** customers will fall into the following categories;

(1) Students/airbnb guests who want to nip out to top up their supplies - perhaps during parties, weekly sports gatherings, summer barbecues, end of exams celebrations etc - i.e. when caution starts 'going to the wind'. The garage (like most garages) does not stock a wide variety of competitively priced goods so this will not form part of a general shop but more of an 'add on' or impulse buy when people are already a bit drunk.

MFG response

KK makes unsubstantiated observations on the customer categories and their reasons for purchasing alcohol. By way of evidence, she references an incident "a few months ago" "at about 1.30am". Our application is limited to 22:00.

There are other off licences in close proximity selling alcohol. There is no evidence to support the statements made here.

KK statement

We understand the shop has recently changed hands and we hope that the new management will read our objections and withdraw their application because they will see that we really do not wish to harm their business and hope it does well .... but without an alcohol licence. To grant a licence would inevitably harm our neighbourhood and this is our main concern.

MFG response



The shop has not recently changed hands. We have appointed a new Contract Manager in February. We would like to thank KK for the feedback and are grateful for the good wishes. We operate 871 petrol convenience stores and 1 non-fuel convenience store. Alcohol is an important part of our convenience offer and we aim to provide as comprehensive an offering as space in each site allows. Objecting to a high quality, well managed and regulated store will not address KK's concerns. It simply closes the door on new entrants with high standards.

KK is not powerless. The Licensing Act allows for licences to be reviewed where there is evidence that they are not promoting the licensing objectives.

**Gavin Evans Neighbourhood Manager Withington Old Moat and Fallowfield**

We have not seen any evidence of adults congregating at rear of the service station. Indeed, there is no access to the rear.

There has been a single graffiti incident at the petrol station.

We are not aware of any reports of drug dealing at the petrol station.

**Sue Hare Fallowfield, Ladybarn and Withington Community Guardians**

Issues as problematic as they have been for years and so principles of the CIP should be applied. Please see response above regarding the CIP.

We do not accept that isolated incidents can in any way be connected to our premises. Indeed, the police have not sought to make this connection.

Other issues of crime include theft of giant Costa Coffee cup – this was reported in October 2015.

World Health Organisation – this feeds into Government strategy – the findings of this report must be read in full and cannot be applied to a single licence application.

We have addressed the issue of litter in planters.

We do not agree that a further licence will add to issues. It is our experience that good operators with high standards are unlikely to create the store of issues referred to. Licensing should be about quality not quantity.

**Steve Allen Withington Civic Society Planning Group Facilitator**

SA wishes to open the debate on whether alcohol should be sold at petrol stations.

**MFG response**

Petrol stations are permitted to sell alcohol in the UK subject to the provisions of the Licensing Act.

Alcohol is also permitted to be sold in petrol stations in many other European countries.

There is no evidence that the sale of alcohol will result in enhanced risk of fires.

**Councillor Chris Wills**

Councillor Wills states that the grant of the licence would not be beneficial to the wider community.

MFG response

This is not the test to be applied – nonetheless we believe that by offering our customers a choice, we are benefiting the community.

**Resident representations**

**MFG response**

We believe that the concerns raised have been covered elsewhere in this statement.

It is noted that one of the residents is opposing the grant of premises called Dixy.