

**Manchester City Council
Report for Resolution**

Report to: Licensing Subcommittee Hearing Panel – 02 May 2023

Subject: Dixy Chicken, 5a Wilbraham Road, Manchester, M14 6JS –
App ref: Premises Licence (new) 285948

Report of: Director of Planning, Building Control & Licensing

Summary

Application for the grant of a premises licence made under the Licensing Act 2003, which has attracted objections.

Recommendations

That the Panel determine the application.

Wards Affected: Fallowfield

Manchester Strategy Outcomes	Summary of the contribution to the strategy
A thriving and sustainable City: supporting a diverse and distinctive economy that creates jobs and opportunities	Licensed premises provide a key role as an employer, in regeneration, and in attracting people to the city. The efficient processing of applications as well as effective decision making in respect of them, plays an essential role in enabling businesses to thrive and maximise contribution to the economy of the region and sub-region.
A highly skilled city: world class and home grown talent sustaining the city's economic success	An effective Licensing regime will enable growth in our City by supporting businesses who promote the Licensing Objectives.
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	The Licensing process provides for local residents and other interested parties to make representations in relation to licensing applications. Representations have to be directly related to the licensing objectives.

A liveable and low carbon city: a destination of choice to live, visit and work.	An effective licensing system supports and enables growth and employment in our City with neighbourhoods that provide amenities suitable to the surrounding communities.
A connected city: world class infrastructure and connectivity to drive growth	

Full details are in the body of the report, along with any implications for:

Equal Opportunities Policy
Risk Management
Legal Considerations

Financial Consequences – Revenue

None

Financial Consequences – Capital

None

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Background documents (available for public inspection):

- Manchester City Council Statement of Licensing Policy.
- Guidance issued under section 182 of the Licensing Act 2003.
- Licensing Act 2003 (Hearings) Regulations 2005.
- Any further documentary submissions by any party to the hearing.

1. **Introduction**

- 1.1 On 07/03/2023, an application for the grant of a Premises Licence under s17 of the Licensing Act 2003 was made in respect of Dixy Chicken, 5a Wilbraham Road, Manchester, M14 6JS in the Fallowfield ward of Manchester. A location map and photograph of the premises is attached at **Appendix 1**.
- 1.2 A 28-day public consultation exercise was undertaken in accordance with Licensing Act 2003 regulations; requiring the application to be advertised by the displaying of a blue notice at or on the premises, a notice published in a newspaper or similar circulating in the local area, and details of the application published on the Council's website.
- 1.3 Representations may be made for or against an application during the consultation period. To be 'relevant' and, therefore, able to be taken into account in determining the application, they must be about the likely effect of the grant of the premises licence on the promotion of the licensing objectives. Where representations are made by persons who are not a responsible authority, they must not be frivolous or vexatious.
- 1.4 Relevant representations have been received in respect of this application and so it must be determined by a Licensing Hearing Panel in accordance with the Council's Constitution.

2. **The Application**

- 2.1 A copy of the application is attached at **Appendix 2**.
- 2.2 The applicant is Mr Mohammed Zubair.
- 2.3 The description of the premises given by the applicant is:

The premises are an established food operator, operation over the ground floor with a small customer seating area internally and provision for takeaway by collection or delivery, as well a kitchen and back of house areas.

2.4 **The licensable activities applied for:**

Provision of late night refreshment

Sun to Thurs 11pm to 1.30am, Fri and Sat 11pm to 3am

The provision of late night refreshment will take place both indoors and outdoors.

Opening hours:

Sun to Thurs 11am to 2am, Fri and Sat 11am to 3am

- 2.4.1 In accordance with the Live Music Act 2012 and Deregulation Act 2015, performances of Live Music and Recorded Music between the hours of 0800 and 2300 hours have been deregulated and so should not be regarded as licensable activities for the purposes of this application.

2.4.2 Any further details provided relating to any of the individual licensable activities are specified on the application form at **Appendix 2**.

2.5 Activities unsuitable for children

2.5.1 The applicant has not highlighted any adult entertainment or services, activities, other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.

2.6 Steps to promote the licensing objectives

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

2.6.2 These steps must be translated into conditions by the licensing authority to be included in any granted premises licence, unless the conditions are modified by the Panel following consideration of relevant representations. These conditions are set out in the Schedule of Conditions at **Appendix 4**.

2.7 Further documentation accompanying the application

2.7.1 The applicant has submitted the following documents in support of their application, which are included with the application form at **Appendix 2**:

- Customer & Premises Nuisance Management Strategy
- Driver Code of Conduct
- In addition, several paragraphs of information are included within Part M of the application which describe the applicant's trading model and experience; give background to the application; address the former cumulative impact policy for the area; and address the ways in which granting this application will promote the licensing objectives generally.

The above documents and information were included on the consultation emails that were sent by the Premises Licensing Team to parties that receive these emails.

3. Relevant Representations

3.1 A total of 18 relevant representations were received in respect of the application (**Appendix 3**), including 6 representations in support. The personal details of all members of the public have been redacted. Original copies of these representations will be available to the Panel at the hearing.

A summary of the parties that made representation is on the next page.

Responsible Authorities:

- Licensing Authority
- MCC Licensing and Out of Hours Compliance Team (LOOH)

Other Persons:

- Residents against the application (including 4 x bodies that represent local residents) x 10
- Residents in support of the application x 6

3.2 Summary of the representations:

Party	Grounds of representation	Recommends
Licensing Authority	<p>Existing takeaway venues in the area have led to issues with street litter and cleansing, likely to be made worse by grant of this licence.</p> <p>Existing issues of public nuisance are also likely to be exacerbated.</p> <p>Food wrappers are likely to be discarded beyond the immediate vicinity of the premises, so the proposed steps in the operating schedule are not likely to be effective.</p> <p>The proposed operating schedule and operating policies lack specificity for the site.</p> <p>The application does not make clear how delivery services will operate.</p>	Refuse
LOOH	<p>Dixy Chicken is close to residential premises.</p> <p>The proposed operating schedule “will undoubtedly lead to an additional noise nuisance from customers arriving on foot, talking loudly, laughing, waiting for food, delivery drivers, cars/taxis pulling up waiting for customer to collect food, car doors slamming etc.”</p> <p>The hours applied for are exactly those highlighted as problem times by residents. Existing issues are likely to be made worse if this application is granted.</p> <p>The premises ventilation system is a source of potential noise nuisance</p> <p style="text-align: right;">Continued....</p> <p>Litter, especially discarded takeaway food packing, is a “huge issue” in the area, with the proposed steps likely to be ineffective beyond the immediate vicinity of the premises.</p> <p>The representation concludes: “The application and proposed operating schedule do not address the issues, challenges and risks, especially late at night, specific to this area and this raise concerns over their effectiveness in</p>	Refuse

	this situation.”	
Residents against the application	<p>RES1: Long-term resident. The hours applied for “will only serve to increase noise and anti-social behaviour, which we are already blighted by”. The majority of littering in the area is “takeaway litter which is discarded carelessly on the street, along with alcohol bottles and cans”. The resident concludes “It’s very depressing living in a community which we are trying to care for ... Please consider the quality of life for local residents”</p> <p>RES2: The hours applied for will increase “noise, littering and nuisance to Fallowfield on top of the long list of anti-social behaviours we’re already facing day and night”. Rising crime in the area is a concern as “More late night establishments in the area will attract youngsters/half-drunken people to hang around in the streets. The later they’re out there the more they’re apt to getting get rowdy or starting a fight.”</p> <p>RES3 – Issues in the area “gave rise to the Cumulative Impact Policy that has had some success in limiting on-going problems with late night trouble, transient noise, and endless litter, which is dropped especially during the night in the locality and far afield (including my road). Extended opening hours would increase the social nuisance that already exists”</p> <p style="text-align: right;">Continued....</p> <p>RES4 - If granted, the premises would be open later than nearly all other premises in the area, adding to existing noise disturbance “already being suffered on a regular basis by the local residents”. Issues in the area are “begging, street drinking and other alcohol related anti-social behaviour”. Granting this licence “will undoubtedly exacerbate these problems”. Most customers are likely to be drunken students, an “easy pic for a robber” leading to the vicinity of</p>	Refuse, or representation implies refuse

	<p>the premises being a “magnet” for robbers and drug dealers”. This long term local resident concludes: “you’re only going to add to problems of street noise, nuisance and litter (I’m fed up with picking junk food wrappers, boxes and used tissues out of my front garden) and adding to the already insufferable cacophony of noise (delivery cars coming and going, early hour inebriated patrons {mainly students} screeching and hollering etc)”.</p> <p>RES5 - The degree of antisocial behaviour recorded in the area is significantly disproportionate. Residents “repeatedly” complain of “noise, littering, vandalism and antisocial behaviour from persons going out to and returning from licensed premises, including complaints of preloading and drunkenness.” – all likely to increase by granting this application. Other issues raised are: Noise from delivery vehicles, “hammering on doors; on street eating and drinking. A late night takeaway will lead to “congregation of large numbers of drinkers with all the attendant noise and littering.”</p> <p>RES6 - The area is “swamped with late night takeaways and licensed premises” leading to night noise “from (the mainly student) patrons who walk past our homes late at night and wake us up”. Health and wellbeing of families suffer as a result, with children being woken at night. Reviews of the premises indicate that staff and delivery drivers do not behave in a responsible manner. Parking issues are likely to be made worse - streets are already congested, with cars parked dangerously.</p> <p>Continued....</p> <p>RES6 (continued) - Takeaways “rejuvenate people after a night out at a bar. They then become even louder on their walk home and often deposit their litter in our hedges and gardens”. The proportion of hot food takeaways in Fallowfield District Centre way exceeds the suggested 10% by MCC. Other issues of concern are high levels of litter, and high levels of crime, disorder and safety during the early hours.</p>	
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	<p>RES7 - The area is overly saturated with licensed premises and the council and police are under resourced to deal with issues cause. Lives of residents are “seriously impacted as a result”. Additional cleansing initiatives from the Council are “still not enough to deal with the tide of rubbish in the area” much of which is from takeaways. Residents have set up their own initiatives to attempt to deal with the amount, which includes vomit and glass. Late night noise wakes residents “several times a night” which is “very damaging to our collective health and wellbeing”. Residents are “strongly opposed” to late night home deliveries – loud door knocking, vehicle noise and mistaken address calls further add to sleep disturbance, which impacts on education for young people. Delivery drivers pulling in and out poses a road safety hazard. Residents feel increasingly vulnerable in the area - recent incidents are cited. All of these issues are likely to be exacerbated by grant of this licence.</p> <p>RES9 - The premises is very close to residents and “many users of this takeaway pass by our homes when walking back to their shared accommodation eating their food as they go. When the food has been eaten the wrappers are discarded on the pavements or thrown into gardens, so the bins provided on the premises are useless for this type of customer.” Families/children suffer from disturbed sleep, particularly noticeable during term times, with noise coming from the district centre and licensed premises in particular. Groups of students “wake us up due to their shouting, loud screams and sounds of general</p> <p style="text-align: right;">Continued....</p> <p>RES9 (continued) - merriment”. Signage is not likely to have any impact. late night deliveries. Late night deliveries are a concern, drivers calling calling at the wrong address is “alarming and frightening” Delivery drivers and customers parking add to congestion at this busy junction.</p> <p>RES14 - “wholeheartedly” supports the points made by RES6. Late night trading in the area “has a negative impact on my family life and</p>	
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	<p>neighbourhood. There are two main reasons: environmental degradation and danger because of littering and broken glass - and sleep loss." Vomit on the street and transient late night noise are other concerns. Granting the application will "increase the unwelcome reputation Fallowfield has gained as a destination for drinking and takeaway purchases during the small hours".</p> <p>RES 16 - "The area already experiences a high degree of anti-social behaviour including: incidents of drunkenness and loud noise both late at night and in the early hours of the morning. Which would be exacerbated by yet another outlet being permitted to sell alcohol."</p>	
Residents in support of the application	<p>RES8 - Grant of this licence "could potentially help to disperse noisy and drunk people instead of them being centralised at the few takeaways which operate late into the night. Staffing at late night premises leads to employment opportunities which is "beneficial for our community". Litter control measures are necessary in the area but the application makes proposals which satisfy this resident: "If they do and can implement this then I am happy with this application going forward."</p> <p>RES 10 – This resident orders from this premises and is "excited that I might have more access to their food past 11pm, and has not "personally experienced any noise disturbance or littering specifically associated with dixy chicken".</p> <p style="text-align: right;">Continued....</p> <p>RES11 - feels "that this takeaway is very serious about their measures to keep the community clean and litter free" and has policies in place to deal with litter issues and noisy / anti-social behaviour – "I feel they are serious in their intention to keep our community safe". States: "I also don't think it is fair to blame takeaways for noise and antisocial behaviour eg "youngsters" getting drunk and creating disturbance late at night, groups racing</p>	Grant, or no issue with the application

	<p>cars, people using/littering nitrous oxide canisters - “people who are determined to act selfishly will do so with or without late night establishments operating”.</p> <p>RES12 - has no objection and has “not had any issues with takeaway litter or noise disturbance and I feel that objecting on these grounds is unfair to the business”. States: “I would also like to you to note that antisocial behaviour in the area is as a result of people in the neighbourhood excessively using nitrous oxide cannisters and to penalise takeaways for this is again unfair.”</p> <p>RES13 - comments “I have never had any issues with litter problems and have never seen their packaging in our streets. In relation to noise disturbance – feels confident that measures can be taken, has spoken to the premises and has been told that these measures will be implanted.” States: “I feel that supporting these businesses progress is directly and indirectly supporting the growth of our community”.</p> <p>RES15 - This representation supports the application generally and considers that it will create “employment opportunities for local students who live close by”</p>	
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- 3.3 Any conditions proposed by objectors are set out in the Schedule of Conditions at **Appendix 4**.
- 3.4 No conditions have been proposed by any of the objectors and no agreement have been reached.
4. **Key Policies and Considerations**
- 4.1 **Legal Considerations**
- 4.1.1 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005.
- 4.2 **New Information**
- 4.2.1 In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority may take into account documentary or other information produced by a party in support of their application, representations or notice either before the hearing or, with the consent of all parties, at the hearing.

4.3 Hearsay Evidence

- 4.3.1 The Panel may accept hearsay evidence and it will be a matter for the Panel to attach what weight to it that they consider appropriate. Hearsay evidence is evidence of something that a witness neither saw nor heard, but has heard or read about.

4.4 The Secretary of State's Guidance to the Licensing Act 2003

- 4.4.1 The Secretary of State's Guidance to the Licensing Act 2003 is provided for all parties involved in licensing. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.
- 4.4.2 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.
- 4.4.3 Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

4.5 Manchester Statement of Licensing Policy

- 4.5.1 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' its statement of licensing policy.
- 4.5.2 The Licensing Policy sets out the vision the licensing authority has for the regulation of licensed premises throughout Manchester and outlines the standards expected in order to ensure the promotion of the licensing objectives in the city. The Panel may depart from the policies should it consider doing so would benefit the promotion of the licensing objectives. Reasons are to be given for any such departure from the Policy.
- 4.5.3 Section 4 of the Policy (Operation of the Policy) sets out how the Licensing Policy is intended to be used in practice for licence applications and licensed premises.
- 4.5.4 Relevant to this application and the grounds of the representations made, the Panel are recommended to have regard to the following sections of the Policy:

Section 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

MS8 Prevent noise nuisance from the premises

MS10 Operate effective cleansing arrangements, including ensuring the premises and surrounding area are kept clean and free of litter, and adequate arrangements for the secure and responsible storage of refuse

Conclusion

- 4.6 A licensing authority must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives:
- the prevention of crime and disorder
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 4.7 In considering the matter, the Panel should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. In reaching the decision, regard must also be had to relevant provisions of the national guidance and the Council’s licensing policy statement.
- 4.8 Having regard to the representations, the Panel must take such of the steps set out below that it considers appropriate for the promotion of the licensing objectives:
- a) To grant the licence subject to:
 - i. the conditions consistent with the operating schedule accompanying the application, which the Panel may modify to such extent as they consider appropriate, and
 - ii. any mandatory conditions that must be included in the licence;
 - b) To exclude from the scope of the licence any of the licensable activities to which the application relates;
 - c) To refuse to specify the person proposed in the application as the designated premises supervisor;
 - d) To reject the application.
- 4.9 The conditions consistent with the operating schedule may be modified to alter or omit any of them or to add any new condition, including restricting the times at which licensable activities authorised by the licence can take place.
- 4.10 All licensing determinations should be considered on the individual merits of the application.
- 4.11 The Panel’s determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.
- 4.12 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.
- 4.13 **The Panel is asked to determine the application**