

**Manchester City Council
Report for Resolution**

Report to: Licensing Subcommittee Hearing Panel – 1 August 2023

Subject: Fallowfield Convenience Store, 240-242 Wilmslow Road,
Manchester, M14 6LD - App ref: Premises Licence variation 287879

Report of: Director of Planning, Building Control & Licensing

Summary

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

Recommendations

That the Committee 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 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.

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

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 02/05/2023, an application for the variation of an existing Premises Licence under s34 of the Licensing Act 2003 was made in respect of Fallowfield Convenience Store, 240-242 Wilmslow Road, Manchester, M14 6LD in the Fallowfield 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 Mr Ehsan Ali 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:

Vary the hours for the sale of alcohol and opening hours and the addition of late night refreshment.

The premises is an existing convenience store that has been operated by the applicant without problems or complaints.

All types of convenience products are sold including fresh & frozen food, toiletries, household, newspapers etc. Other services are also offered to customers such as the ability to pay bills & collect/send packages.

In terms of addressing the licensing objectives, the existing licence has several robust conditions and those have been supplemented by additional measures volunteered within this application to ensure the continuing support of the licensing objectives.

Proposed hours and licensable activities:

Provision of late night refreshment (indoors):

Current hours: Not currently permitted

Proposed hours: Mon to Sun 11pm to 2am

Supply of alcohol for consumption off the premises only:

Current hours: Mon to Sun 8am to 12 midnight

Proposed hours: Mon to Sun 8am to 2am

Opening hours:

Current hours: Mon to Sun 8am to 12 midnight

Proposed hours: Mon to Sun 8am to 2am

Steps to promote licensing objectives as given by the applicant

Removal of condition 7 (Annex 2)

Removal of condition 12 (Annex 2) – replaced by improved version.

Removal of condition 1 (Annex 3)

Removal of condition 2 (Annex 3) – replaced by improved version.

On first appointment, all staff employed at the premises shall 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.

All crimes to be reported to police.

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

There shall 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.

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

The premises shall 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.

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.

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 4**.

4. **Relevant Representations**

4.1 A total of 12 relevant representations were received in respect of the application (**Appendix 5**). 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:

- Greater Manchester Police;
- MCC Licensing and Out of Hours Compliance Team;
- Neighbourhoods Team
- Licensing Authority

Other Persons:

- Withington Civic Society
- Fallowfield Community Gardens;
- Residents (6).

4.2 Summary of the representations: AMEND AS NECESSARY

Party	Grounds of representation	Recommends
GMP	Concerns that current problems of littering, noise disturbance and other anti-social behaviour will be exacerbated if alcohol hours are increased. Fallowfield suffers late night, noisy, alcohol-fuelled house parties, which cause a high level of disturbance to local residents and later alcohol hours at the premises will provide an additional source of alcohol.	Refuse
Licensing and Out of Hours Compliance	Concerns that granting this variation is likely to contribute further to the considerable pre-existing public nuisance issues in this residential/student area and that granting of the variation would be inconsistent with the Council's policy. The removal of the condition that all staff are Personal Licence Holders, the lack of detail proposed for the door staff risk assessment and the issue of litter are also concerns.	Refuse
Neighbourhoods	There have been complaints of ASB, litter and transient noise in the area along with community tensions and a recent serious incident on Wilmslow Road and it is felt that selling alcohol until early hours will increase issues and complaints.	Refuse
Licensing Authority	Concerns that the grant of the application is likely to undermine the promotion of the licensing objection as it: <ul style="list-style-type: none"> • Proposes to weaken the existing controls in place for staff training whilst increasing the level of risk of alcohol-related issues • Increases the sale of alcohol at a period that customers are increasingly likely to be 	Refuse

	<p>intoxicated and potentially vulnerable.</p> <ul style="list-style-type: none"> • Increases the availability of alcohol and will exacerbate existing issues with anti-social behaviour in the locality. • Provides no detail around the proposed variation, such as what late night refreshment will be provided and how this will be served. • Fails to address relevant risks associated with the proposed variation, such as litter and the risk of increased conflict • Fails to address relevant standards as set out in Section 8 of the Council's policy • Increases the risk and likelihood of cheaper alcohol consumed in unsupervised environments • The premises have previously been evidenced as selling higher strength alcohol products including those associated with problematic • The grant of the variation would be inconsistent with the Council's policy • The proposed step in relation to the provision of a risk assessment provides no assurance that appropriate door supervision would be provided. • The proposed steps offer little tangible protections to promote the licensing objectives. 	
<p>Withington Civic Society</p>	<p>Concerns regarding the potential increase in noise nuisance, litter, crime and anti-social behaviour and the lateness of the proposed terminal hour.</p>	<p>Refuse</p>

Fallowfield Community Gardens	Concerns regarding existing noise, nuisance, littering, criminal damage and anti-social behaviour and the potential increase with the proposed later availability of alcohol.	Refuse
Residents (x6)	Concerns that late availability of alcohol will increase public drunkenness, anti-social behaviour, litter, noise and nuisance affecting local residents and the cumulative impact of the requested late opening of these premises on top of other local premises which are already selling alcohol. Residents also refer to a murder which occurred in October 2022.	Refuse

4.3 Any conditions proposed by objectors are set out in the Schedule of Conditions at **Appendix 4**.

4.4 No agreements on conditions have been reached with persons making representations.

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:

- Identified risk factors specific to the licensed premises
- Evidence of pre-existing problems in the area
- Proximity of takeaways and off-licences to nightlife entertainment areas
- 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.

MS1 Implement effective security measures at the premises

MS2	Effective general management of the premises
MS5	Prevent on-street consumption of alcohol
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

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.**