

## List No. 7

<b>Didsbury Ward</b>	<b>East</b>	<b>Application Number</b> 081148/JO/2006/S2	<b>Date of Appln</b> 25th Oct 2006	<b>Committee Date</b> 18 <sup>th</sup> January 2007
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**Proposal** Variation of condition no. 1 (attached to Application 040197) to allow premises to open between 12 noon and 2.00 a.m. on Sundays to Thursdays and between 12 noon and 4.00 a.m. on Fridays and Saturdays

**Location** 669 Wilmslow Road, Didsbury

**Applicant** Khalid Riaz 669 Wilmslow Road, Didsbury, Manchester, M20 6RA

**Agent**

### Description

The application site is a two-storey property located within a row of 6 retail units. The row of units comprises a mixture of offices, an estate agent, a shoe shop and hairdressers. The 'takeaway', also known as Didsbury Kebab House, is located within the northern part of Didsbury District Centre. It sits on the corner of Warburton Street which is close to the junction of Wilmslow Road, Barlow Moor Road and School Lane.

Didsbury District Centre offers a wide range of facilities including shops (convenience and comparison), financial and professional services, a police station, a district library, a church and parish centre and a petrol filling station. This property is not within a Conservation Area. The property is located in close proximity to the residential and commercial properties on Warburton Street.

Planning permission was granted on the 16<sup>th</sup> January 1992 for a change of use of the property from a delicatessen to a hot food takeaway. Until recently, the premises was a Chinese takeaway. The permitted opening hours for the 'takeaway' under this permission were: -

Sunday to Thursday 8:00am to 11:30 pm  
Fridays and Saturdays 8:00 am to midnight

This application is for the variation of this condition to change the opening hours to the following:

Sunday to Thursday 12:00 noon to 2:00am  
Friday and Saturday 12 noon to 4:00am

As part of the consideration of this application, it was suggested to the applicant that alternative hours of 11:30pm during the week and 1:30am during weekends would be acceptable. This would have been consistent with the hours approved for other licensed premises in Didsbury. However, the applicant failed to agree to these hours instead suggesting 3:00am. Against this background, the recommendation for this application has been based on the original proposed hours by the applicant.

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### Consultations

Local Residents / Businesses - 3 letters of objection have been received against this application. The comments can be summarised as follows:

1. The premises are already open until 4am on weekends and very often during the week;
2. Noise and disruption caused is totally unacceptable;
3. The rubbish created by the business is incredible. There are always discarded papers and containers in the street;
4. The premises is a focal point for drunken people.
5. Allowing the extended opening hours will increase the disruption, shouting, swearing and fighting;
6. The premises is located in a residential area on the corner of a Listed Street (Conservation Area);
7. Taxis are parking in Warburton Street late at night causing even more noise.

Head of Environmental Health- The following condition should be applied to any approval. The premises shall not open outside the following hours unless otherwise agreed in writing with the City Council as Local Planning Authority.

Monday to Sunday 16:30 to 00:30

Reason- to Safeguard the amenities of the occupiers of nearby residential properties.

These hours are consistent with those approved by the Licensing Unit for the previous operator of the premises as a Chinese Takeaway.

Licensing Unit-The application is due to be presented to the Licensing Committee on the 12/01/2006 and the outcome will be reported to committee.

Greater Manchester Police (Architectural Liaison Officer)- No Comment to make

Greater Manchester Police (Crime Reduction Unit)-Any comments will be reported to the Committee

Didsbury Civic Society- Object to the application for the following reasons:

1. The takeaway is situated on the corner of a residential street (Warburton Street) and opposite another residential road (Norgate). The increase noise caused by late customers is unacceptable in this area, this is especially so since the lateness of the proposed opening times is both week days and weekends and will attract more people to the area especially in vehicles.
2. There is no provision made for the removal or disposal of any extra litter that will occur;
3. People will have come from licensed premises and there will be a serious threat of an increase in crime and disorder.

Ward Members- Cllr Tony Parkinson Objects to the proposal. The premises are at the corner of Warburton Street and Wilmslow Road. Warburton Street is a very narrow cobbled street abutting on the other side of the Dog and Partridge Public House. There are several other licensed premises nearby. The residents of Warburton Street already suffer from noise and disturbance caused

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by patrons leaving the licensed premises late at night. There have also been complaints of taxis entering Warburton Street and sounding their horns to pick up late night drinkers.

Under the present hours of opening customers leave packaging and wrappers and customers affected by drink vomit in the street. If the opening hours are extended it will make life intolerable for the remaining residents.

City Solicitor- Any opening hours approved by the Licensing Sub-Committee are a material consideration. However, members should be aware that they are not automatically required to follow the Licensing Sub-Committee's hours and must make a decision based on whether the proposed hours will have a detrimental effect on residential amenity, crime and safety and other harm of a planning nature.

## Issues

### Unitary Development Plan (UDP) for the City of Manchester (Adopted 1995)

The application site is in the Didsbury area of the Adopted UDP and as such policy DB1 relates. In addition policies, policy H2.2 and E3.5 in part 1 of the UDP and Policies DC10.1, DC10.2 and DC26.1 are also applicable.

Policy DB1 provides general guidance towards new development proposals in Didsbury. In particular, when deciding development proposals the Council will seek to ensure that the Didsbury area remains an attractive location in which to live and work and encourage commercial opportunities only where they will not cause harm to residential amenity.

Policy H2.2 states that the Council will not allow development that will have an unacceptable impact on residential areas. Matters which the Council will consider when determining such applications are the scale and appearance of the development and its impact in terms of noise, vibration, traffic generation, road safety and air pollution.

Policy E3.5 states that the Council will promote measures which will lead to a safer environment for all people living in and using the City.

Policy DC10.1 (Food & Drink Uses) states that in determining planning application for development involving the sale of hot food to be consumed off the premises the Council will have regard to, particularly in this instance:

- The general location of the proposed development;
- The effect on the amenity of neighbouring residents;
- The storage and collection of refuse and litter.

Policy DC10.2 states further that the Council will normally accept the principle of development of this kind in the City Centre, industrial and commercial area and, at ground level, in local shopping parades of more than 8 shops or offices.

Policy DC10.4 states that where the Council considers food and drink premises to be acceptable in principle, conditions may be imposed in order to protect the amenity of nearby residents. Such conditions include limitations in terms of the

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hours of opening and the need to deal adequately with the storage of refuse and collection of litter.

Policy DC26.1 (Development & Noise) states that the Council intends to use the Development Control process to reduce the impact of noise on people living and working in, or visiting, the City. In giving effect to this intention, the Council will consider the effect of new development proposals which are likely to be generators of noise.

Policy DC26.3 states that development likely to result in unacceptably high levels of noise will not be permitted in residential, near schools, hospitals, nursing homes and similar institutions and near open land used frequently for recreational purposes.

Other Relevant Policies and Guidance-In considering development proposals, reference is not only made to the UDP, but also other policies and supplementary planning guidance. In this case, the Regional Spatial Strategy for the North West (Formerly RPG13).

RSS for the North West (RPG13) provides planning guidance for the North West region and is part of the development plan long with the Manchester UDP.

Policy DP2 (Enhancing the Quality of Life) seeks to ensure that developments provide a high quality of life for this and future generations.

Principle of the proposal-Although the principle of the 'takeaway' use has been established for many years, the impact of the proposed extended opening hours upon the existing levels of residential amenity enjoyed by local residents must be considered and any crime and safety implications.

Residential amenity- The 'takeaway' is situated on the corner of Warburton Street which is a narrow cobbled street where a number of residential properties are located. Although the entrance to the premises fronts onto the busy Wilmslow Road and there are no external seating to the rear or side of the property, it is considered that there will be significant noise and disturbance associated with extending the opening hours until 2:00 am during weekdays and 4:00 am at weekends. There will be increased levels of activity from patrons congregating in and around the premises which will have an unacceptable impact upon the amenity of the occupiers of the residential properties on Warburton Street.

In addition, instances of anti-social behaviour would extend into the evening and there would be increased litter creation which is not acceptable in the residential area.

Crime and Disorder- It is considered that allowing these premises to open until the proposed times would impact upon anti-social behaviour and safety in the local area. Whilst it is recognised that many of the existing licensed premises in the area are open until 1:30am, having the takeaway until 2:00am during the week and 4:00am during the weekend, will act as a focal point for patrons leaving the licensed premises. This will result in increase levels of activity late at night and, as a result, will not disperse people from the local area. As such, this will increase instances of anti-social behaviour in the local area and thus on public safety.

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Current breach of hours- There have been complaints that the premises has been operating until 4:00am which is a clear breach of the hours approved under 040197. The applicant has been reminded of the current opening hour, however, recent observations have established that the premises are exceeding their current hours on a Saturday night albeit not until 4:00am.

As detailed in this report, the opening of the premises until 2:00am during the week and 4:00am at weekends is considered inappropriate.

The applicants were asked to consider alternative hours of 1:30am at weekends. This would bring the premises in line with other licensed units along Wilmslow Road as it is considered that the cumulative effect of extending the opening hours until 1:30am would not have an unduly detrimental impact upon the current levels of residential amenity enjoyed in the vicinity of the area. However, the applicant failed to agree to these hours instead suggesting 3:00am which is also considered inappropriate.

Conclusion- The site is located in a busy part of Didsbury District Centre. However, there are residential properties and businesses close to the takeaway that are affected by its operations. Permitting the extended opening hours of the takeaway past the opening hours of many of the licensed premises in the area will, in the view of the Head of Planning, have a detrimental impact on level of residential amenity currently enjoyed by the residents of Warburton Street through noise, disturbance, anti-social behaviour and excessive litter.

**Human Rights Act 1998 considerations** - This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have the right to a fair hearing and to this end the Committee must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Unitary Development Plan, the Head of Planning has concluded that some rights conferred by these Articles on the applicant(s)/objectors/residents and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. He believes that any restriction on these rights posed by of the application is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

**Recommendation** **REFUSE and ENFORCE** authorise the City Solicitors to take such action as necessary including enforcement action under Section 172 of the Town and Country Planning Act to secure the cessation of the late opening hours of the premises beyond the permitted hours.

## Conditions and/or Reasons

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1) The proposed extended opening hours, would have a detrimental impact on the amenity of nearby residential properties on Warburton Street and businesses on Wilmslow Road, by virtue of the associated high levels of activity and noise generated by patrons during late evenings and the early hours of the morning. There will also be increased instances of rubbish and anti-social behaviour as a result of the proposal. As such, the proposal will be contrary to policies DB1, H2.2, E3.5, DC10.1, DC26.1 and DC26.3 of the Unitary Development Plan for the City of Manchester (Adopted 1995).

### **Local Government (Access to Information) Act 1985**

The documents referred to in the course of this report are either contained in the file(s) relating to application ref: 081148/JO/2006/S2 held by Planning or are City Council planning policies, the Unitary Development Plan for the City of Manchester, national planning guidance documents, or relevant decisions on other applications or appeals, copies of which are all held by the Planning Division.

### **The following residents, businesses and other third parties in the area were consulted on the application:**

L' Epi 'D' Or 671 Wilmslow Road Didsbury Manchester M20 6RA  
O'neil's 655-657 Wilmslow Road Didsbury Manchester M20 6RA  
Jem & I 1c School Lane Didsbury Manchester M20 6RD  
677a Wilmslow Road Didsbury Manchester M20 6RA  
Philip James Partnership 679-681 Wilmslow Road Didsbury Manchester M20 6RA  
Mcdonnell Haydock Residential Lettings 698 Wilmslow Road Didsbury Manchester M20 2DN  
9 Warburton Street Didsbury Manchester M20 6WA  
11 Warburton Street Didsbury Manchester M20 6WA  
17 Warburton Street Didsbury Manchester M20 6WA  
15 Warburton Street Didsbury Manchester M20 6WA  
Ladbroke Racing Ltd 11a Barlow Moor Road Didsbury Manchester M20 6TN  
11 Barlow Moor Road Didsbury Manchester M20 6TN  
5a Barlow Moor Road Didsbury Manchester M20 6TN  
675a Wilmslow Road Didsbury Manchester M20 6RA  
Dental Surgery 1b School Lane Didsbury Manchester M20 6RD  
M J Leeming Opticians 1a School Lane Didsbury Manchester M20 6RD  
10 Warburton Street Didsbury Manchester M20 6WA  
8 Warburton Street Didsbury Manchester M20 6WA  
6 Warburton Street Didsbury Manchester M20 6WA  
4 Warburton Street Didsbury Manchester M20 6WA  
2 Warburton Street Didsbury Manchester M20 6WA  
7 Warburton Street Didsbury Manchester M20 6WA  
5 Warburton Street Didsbury Manchester M20 6WA  
3 Warburton Street Didsbury Manchester M20 6WA  
1 Warburton Street Didsbury Manchester M20 6WA  
Dog & Partridge 665-667 Wilmslow Road Didsbury Manchester M20 6RA  
661a Wilmslow Road Didsbury Manchester M20 6RA  
9 Barlow Moor Road Didsbury Manchester M20 6TN  
7 Barlow Moor Road Didsbury Manchester M20 6TN  
Axons 5 Barlow Moor Road Didsbury Manchester M20 6TN  
Nelson Inn 3 Barlow Moor Road Didsbury Manchester M20 6TN

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Micklehurst Butchers 1 Barlow Moor Road Didsbury Manchester M20 6TN  
663a Wilmslow Road Didsbury Manchester M20 6RA  
Graham Peart & Co Stroll House 681a Wilmslow Road Didsbury Manchester  
M20 6RA  
House 677 Wilmslow Road Didsbury Manchester M20 6RA  
Help The Aged 675 Wilmslow Road Didsbury Manchester M20 6RA  
Andrew Graham Shoes 673 Wilmslow Road Didsbury Manchester M20 6RA  
Fortress Cantonese Take Away 669 Wilmslow Road Didsbury Manchester M20  
6RA  
Ashley Brown 663 Wilmslow Road Didsbury Manchester M20 6RA  
The Third Eye 661 Wilmslow Road Didsbury Manchester M20 6RA  
Didsbury Conservative Club 659 Wilmslow Road Didsbury Manchester M20  
6RA  
Evans Fishmonger 702 Wilmslow Road Didsbury Manchester M20 2DW  
Squires 700 Wilmslow Road Didsbury Manchester M20 2DN  
Wren Properties 696 Wilmslow Road Didsbury Manchester M20 2DN  
Saints & Scholars 694 Wilmslow Road Didsbury Manchester M20 2DN

### **Representations were received from the following third parties:**

A And I Bayliss 7 Warburton Street Didsbury Manchester

R Mulholland 5 Warburton Street Didsbury Manchester

Ashley Brown Ashley Brown 663 Wilmslow Road Didsbury

Cllr Tony Parkinson

<b>Relevant Contact Officer:</b>	: Jennifer Atkinson
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