

NOTTINGHAM CITY COUNCIL

LICENSING PANEL A

RECORD OF PROCEEDINGS

1.	Date of hearing - 5 December 2016
2.	Panel - Councillor Linda Woodings (Chair) - Councillor Neghat Khan - Councillor Dave Liversidge
3.	Legal advisor - Ann Barrett
4.	Note taker - Catherine Ziane-Pryor
5.	Applicant and application premises DPSK Limited Dominos Unit 2 9 Midland Way Nottingham NG7 3NY
6.	Nature of application - New premises license <u>Summary of proposals</u> <ul style="list-style-type: none"> • <u>Late Night Refreshment:</u> Monday to Sunday from 23.00 hrs to 05.00 hrs the following morning. If applicable, an additional hour to the standard and non-standard times on the day when British summertime commences. From the standard start timings on 31 December to the standard start timing on 1 January. • Opening hours on Monday to Sunday from 00.00 hrs to 24.00 hrs.
7.	Parties present (1) <u>For the Applicant</u> - Walaiti Rathore, of Fraser Brown Solicitors and Mr Jamshed Rana (Area Manager) , representative of the Applicant company (2) <u>Responsible Authority</u> - Environmental Health and Safer Places, Nottingham City Council were represented by Joe McElhinney and were available for questioning by the Panel. Persons present refused permission to speak and reason why None
8.	Parties not present and reason why

	None
9.	<p>Applications and Decisions on ancillary issues eg requests for adjournments, determinations whether to proceed in absence, directions etc</p> <p>It was confirmed that there has unfortunately been an error in transposing one of the conditions which had been agreed with the police and which appeared in the Committee report. It was confirmed that condition 7 should read:-</p> <p>“Security Industry Authority licensed door supervisors shall be employed at the premises on occasions as deemed necessary by the Premises Licence Holder and/or premises management following a risk assessment and on occasions when requested by, and following consultation with the Police”</p>
10.	<p>Supplementary material taken into consideration other than that which was contained within the agenda</p> <p>8 page submission produced by Joe McElhinney.</p>
11.	<p>Facts/Issues in dispute</p> <p>Whether the application promotes the Prevention of Public Nuisance objective.</p>
12.	<p>Decision</p> <p>The Panel listened to all the evidence put before it and also took into account the contents of the application and all representations and submissions made in relation to it. The Panel found that the takeaway premises were located on the ground floor of a block of purpose built student apartments with vehicle access and parking to the front of the property. The premises were in a mixed use area with a number of blocks of student apartments in the location. This particular unit was in a block of other retail units which included a Subway takeaway, Greggs Bakers, Wok and Go Noodles and a Lidl supermarket. There were 4 levels of student apartments directly above the retail units. One other premise in the general locality (the White Horse) remained open until 3 am.</p> <p>The had applicant submitted that:-</p> <ul style="list-style-type: none"> • there was no legal or evidential basis for the licence to be refused and that the representation was based on speculation and planning considerations both of which were irrelevant. • Although this was a new application the premises had been operating until 11pm for a number of years. • The applicant company was one of, if not the largest Domino’s franchisee running almost 200 operations. Mr Rana was one of the Area Managers with responsibility for Nottingham and this store in particular. • Many of the applicant’s stores had late licences with 26 having licences until 5am. • No action had ever been taken against the applicant company which demonstrated that they had a proven track record in managing late licences. • The Applicant company was responsible for running all Dominos in Nottingham including an establishment in West Bridgford which has a 5am licence with residential accommodation above. • The Company has a management plan and staff are under strict instructions to operate quietly or face disciplinary action. Area managers do inspections and the company has excellent relationships with licensing authorities all over the UK. • The police are proactive but other responsible Authorities only tend to get involved where there are complaints. The Police had not objected to the application and a

set of conditions had been agreed.

- Case Law and the Statutory Guidance confirm that planning policies are separate from licensing and that planning and licensing decisions can legitimately differ. Planning is concerned with amenity which has a lower evidential threshold than the licensing objective of public nuisance.
- It was appreciated that the Environmental Health Officers concerns were based on prevention but some evidence was needed – is there any real evidence as opposed to speculation that this applicant will carry out activities which will undermine the licensing objectives.
- The representation was based purely on planning considerations and speculation that there will be a public nuisance
- None of the students have made representations about the application – a petition has been prepared signed by residents who are in favour of the application.
- The Police have taken the proper approach looking at other premises there is no issue
- The applicant did not dispute that public nuisance can be low level and affect only a few people but there is no evidence here and some residents in the vicinity support the scheme

When questioned about staff training it had been confirmed that the full staff training programme was not before Mr Rathore, that the applicant had indicated how they would deal with issues and that there came a point at which the applicant had to be taken at face value. Staff were given training and knew they needed to follow the rules. If there were complaints the contact details of the area manager were available in store but he had never received any complaints relating to the 6 stores he was responsible for or had need to discipline anyone. The store operated with approximately 52 staff (30 delivery drivers and 22 in store) which would increase if the premises were to open later. This store would provide a delivery service to most of the Nottingham area.

On behalf of the responsible authority, Mr McElhinney had submitted that:-

- The original planning permission for the premises was for:-
09:00 – 23:00 Monday – Saturday and
10:00 to 23:00 Sundays and Bank Holidays
- A series of planning applications to vary these hours had been refused on amenity grounds due to activity and associated noise and disturbance which would be caused to the detriment of the occupiers of the nearby residential premises. One of these refusals had been upheld by the Planning Inspectorate on appeal.
- The last planning application in 2016 had resulted in permission being granted for the premises to operate between 09:00 and Midnight Monday – Sunday including bank holidays.
- His concerns were not about how Domino's operate rather it was what happened outside the premises and in the immediate vicinity of the premises which it was felt the applicant would have difficulty controlling.
- Reference had been made to the planning history and regime not as a basis of objection but as an indication of the history of the matter.
- There is a significant overlap eg by noise, general disturbance between the planning and the licensing regimes especially as customers are drawn to premises as they open later.
- It is not possible to come up with appropriate conditions to control clientele outside the premises.
- The noise sources arising from such uses such as slamming car doors, raised voices and congregation of people are variable, unpredictable, intermittent and of a type likely to produce a "startle" response likely to disturb or prevent sleep and

which it is not possible for the operator to control.

- There is a difference between this type of intermittent noise and traffic noise.
- Notwithstanding the conditions agreed by the police the responsible authority have considered the impact of persons using the premises on the flats above. Public nuisance can include low level nuisance that will be created by the premises operating the hours applied for. The authority had considered the nature of the application premises and its locality and whilst there may be a demand those signing the petition may not appreciate the affect that the premises may have on their living conditions
- The issue was how the premises will impact on residents and the inability of the operator to control it.
- None of the other premises in this block have a late night refreshment licence
- Conditions should be imposed on any licence granted limiting the hours for the provision of late night refreshment to 23:00 – Midnight on any day and the hours that the premises are open to the public to 09:00 – Midnight on any day

Whilst noting what had been said about the applicant company's operation and in particular the West Bridgford Store the Panel were familiar with the location of that premises and did not feel it to be comparable to the application premises. In particular the West Bridgford store was in a block of late opening restaurants and shops and the residential accommodation above was on a much lower level than the 4 storey block of apartments above the application unit. The Panel was obliged to carry out its functions to ensure the promotion of the licensing objectives and in this case the prevention of public nuisance. It had been accepted that public nuisance could be low level and only affect a few people and here there were 4 storeys of residential accommodation in the block above the unit and other accommodation nearby. Whilst the accommodation was occupied by students they are also entitled to sleep especially at exam times. The guidance was clear that the authority should focus on the effect of the proposed licensable activities at the specific premises on persons living in the area and may, in appropriate circumstances include a reduction in living amenity. The licensing objective itself related to the prevention of public nuisance. The Panel accepted that the type of noise associated with and likely to arise from the proposed operation would be of the type described by Mr McElhinney and that this would have an impact on those in the accommodation above the premises. On that basis the Panel found that there was a real likelihood that the Prevention of Public Nuisance objective would be undermined and that the application as submitted failed to promote that objective. It was noted that the police had agreed a set of conditions with the applicant which included the provision of door supervisors in limited and agreed circumstances however, such staff would only intervene with customers creating a disturbance once it had already occurred. The Panel was concerned about the level of distinctive noise incidents that would arise from the proposed use and affect the numerous students living in the accommodation block directly above the application premises. However, bearing in mind Mr McElhinneys representation and suggested operating hours the Panel was prepared to grant a licence albeit for different hours and subject to different conditions to those applied for.

The application was granted as follows:

The application was granted for the provision of Late Night Refreshment both on and off the premises during the hours of 23:00 – Midnight (Monday – Sunday) and with the hours that the premises are open to the public restricted to 09:00 – Midnight (Monday – Sunday)

The licence shall be subject to conditions 1,2,3,4 and 6 as indicated in the report and

agreed with the Police. Given the restriction of hours the Panel felt it disproportionate to require the provision of door supervisors as required by the other conditions previously agreed with the police and did not impose them.

The Panel was not persuaded by Mr Ranas responses in relation to how the public know who to contact in relation to complaints, how easy it would be to obtain the appropriate phone number and that he had never received any complaints about the six premises under his control and also felt it appropriate to impose a further condition in the following terms

“ A notice shall be placed in an obvious position within the shop window (facing outwards) stating the contact number of a person to whom calls should be made in case of complaint”

Signed: Councillor Woodings (Chair)

Dated: 5 December 2016