Town Planning & Development Consultants

TOWN & COUNTRY PLANNING ACT 1990

Proposal by DPGS Ltd (Domino's Pizza)

Proposed continued use of ground floor unit as Class A5 (Hot Food Takeaway) (granted consent under application ref: 085690) with variation of hours condition (Condition 5) to allow premises to operate 09.00 - 00.00 Sunday to Thursday and 09.00 - 3.00 Friday and Saturday

Site at: Domino's Pizza, Ground Floor, 126 York Street, Ardwick Manchester, M1 7XN

STATEMENT IN SUPPORT OF PLANNING APPLICATION

Prepared by
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1.0 INTRODUCTION

1.1 This Planning Support Statement has been prepared to accompany the planning application to seek to extend the hours of opening for an existing Domino's Pizza franchise at ground floor, 126 York Street, Ardwick, Manchester, M1 7XN. The current opening hours are restricted by condition 5 of planning permission 085690.

1.2 The current restricted opening hours are 0900 to 2300 hours daily. The proposed hours would allow the premises to be open until midnight Sundays to Thursdays and until 0300 the following day on Fridays and Saturdays. Planning permission was previously approved for the proposed extended trading hours on 15 September 2009 under planning reference 088194/JO/2008/CI. This granted a one year temporary 'trial period' planning permission which expired on 15 January 2010. The purpose of this current planning application is to re-establish planning permission for these same extended trading hours. This has not been sought earlier due to an oversight by the applicant. The proposed additional trading hours are already approved by the Premises Licence.

1.3 The Planning Support Statement is laid out as follows:

1.0 Introduction
2.0 Site Description & Area Context
3.0 Relevant Planning History
4.0 Relevant Planning Policy
5.0 Licensing Controls
6.0 Assessment of Planning Issues Raised
7.0 Summary & Conclusions
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2.0 SITE DESCRIPTION & AREA CONTEXT

2.1 The application relates to a ground floor unit within a five storey building. The unit itself operates as a Class A5 hot food takeaway unit and has done so since the summer of 2008. The basement unit has planning permission for Class A3 (restaurant and café) use. The upper floors comprise 17 one-bedroom self-contained residential units, used as post-graduate student accommodation.

2.2 The building itself lies within an area of the City Centre known as the Higher Education Precinct. The local area contains a variety of uses including bars, hot food takeaways, shops and some residential uses. This part of the City Centre is not primarily a residential area but very much a mixed-use area with bars, shops and café uses. There are also some student halls of residence next to the application site. Grosvenor Street, where the application site has its primary frontage, has a number of late night bars. These comprise the 'Footage & Firkin' which trades between 1000 to 0200 hours Mondays to Saturdays and between 1000 to 0100 hours on Sundays; 'Sand Bar' which trades between 1000 to 0100 hours on Mondays to Thursdays, between 1000 to 0200 hours on Thursdays to Saturdays, and between 1000 to midnight on Sundays; 'Trof' which trades between 0900 to 0200 hours Sundays to Thursdays and 0900 to 0300 hours on Fridays and Saturdays; and 'The Zoo/The Pub' which trades between 1000 to 0200 hours Sundays to Wednesdays and 1000 to 0300 hours on Thursdays to Saturdays.

3.0 RELEVANT PLANNING HISTORY

3.1 Planning permission was granted on 20 May 2008 for the change of use of this unit to Class A5 (Hot Food Takeaway) use and elevational changes (LPA ref: 085690/FU/2008/C2). Condition 5 of this planning permission read:

> *"The premises shall not be open outside the following hours, unless otherwise agreed in writing by the City Council as Local Planning Authority:*
>
> *09.00 – 23.00 Monday to Sunday.*
>
> *Reason – In interests of residential amenity in order to reduce noise and general disturbance in accordance with Policies H2.2 and DC26 of the Unitary Development Plan for the City of Manchester"*

3.2 Subsequent to this, planning permission was sought and granted to vary condition 5 of planning permission 085690/FU/2008/C2 to allow the premises to operate between 0900 and midnight Sundays to Thursdays and between 0900 and 0300 hours the following day on Fridays and Saturdays (LPA ref: 088194/JO/2008/C1). Condition 1 of this planning permission read:

> *"The permission hereby granted is for a limited period only, expiring on 15 January 2010; and after that period the hours of operation shall revert to those granted under application ref no: 085690.*
>
> *Reason – To allow the Local Planning Authority to consider the acceptability of the continuance of the hours of operation having regard to residential amenity in accordance with Policy H2.2 and C26.6 of the Unitary Development Plan for the City of Manchester."*

3.3 The applicant subsequent received a letter dated 26 October 2011 from the LPA's Development Compliance Manager. In this letter, the LPA advised the applicant that the temporary planning permission 088194/JO/2008/C1 had lapsed and that:

"If you wish to maintain the extended hours of operation, you should re-apply to vary the original hours of operation by submitting a planning application. It is reasonably expected that any forthcoming application should be received within 28 days of this letter."

4.0 RELEVANT PLANNING POLICY

4.1 At national level, the most directly relevant planning policy is Planning Policy Statement 4: Planning for Sustainable Economic Growth (PPS4).

4.2 PPS4 addresses economic development and includes within this remit main town centre uses (paragraph 4). Paragraph 7 specifically lists the main uses to which the town centre policies of PPS4 apply. These include restaurants and drive-through restaurant facilities.

4.3 The Government's objectives for PPS4 include the promotion of the vitality and viability of town and other centres as important places for communities (paragraph 10). Part of this stated aim is to provide enhanced consumer choice in the provision of local services which allows genuine choice to meet the needs of the entire community (also paragraph 10). Policy EC4 of PPS4 therefore specifically addresses the planning for consumer choice and promoting competitive town centres. LPAs are specifically encouraged to proactively promote competitive town centre environments and provide for enhanced consumer choice (paragraph EC4.1).

4.4 LPAs are also required by PPS4 to manage the evening and night-time economy in centres, taking account of and complementing the local authority's Statement of Licensing Policy and the promotion of the licensing objectives under the Licensing Act 2003 (paragraph EC4.2). LPAs should therefore:

> "*Encourage a diverse range of complementary evening and night-time uses which appeal to a wide range of age and social groups, making provision, where appropriate, for leisure, cultural and tourism activity…*"
> (paragraph EC4.2a)

4.5 PPS4 therefore requires LPAs to determine planning applications for economic development in a positive and constructive way (Policy EC10). All such planning applications should be assessed against various considerations, including the accessibility of the site, its inclusive design and the impact on the economic and physical regeneration of the area (paragraph EC10.2).

4.6 PPS4, together with all of the current PPSs and PPGs, will ultimately be replaced by the 'National Planning Policy Framework (NPPF), once the Localism Bill becomes statute. The Draft NPPF published in July 2011 is therefore a material planning consideration. The Draft NPPF has at its heart the promotion of sustainable development whereby the planning system is used to build a strong, responsive and competitive economy with accessible local services that reflect the community's needs (paragraph 10). A positive planning system is essential because, without growth, a sustainable future cannot be achieved. Planning must operate to encourage growth and not act as an impediment (paragraph 13). The Draft NPPF adds that:

> *"Local planning authorities should plan positively for new development, and approve all individual proposals wherever possible."* (paragraph 14).

4.7 Draft NPPF adds that the core planning principles include proactively supporting the development that the country needs. Decision-takers at every level should assume that the answer to development proposals is *"yes"*, except where this would compromise the key sustainable development principles set out in this framework (paragraph 19). Specifically in terms of development management, the primary objective of LPAs should be to foster delivery of sustainable development, not hinder or prevent development (paragraph 53). To enable each local authority to proactively fulfil their planning role, and to actively promote sustainable development, local planning authorities need to approach development management decisions positively – looking for solutions rather than problems so that applications can be approved wherever it is practical to do so; and attach weight to the benefits of economic growth (paragraph 54). LPAs need to recognise the presumption in favour of sustainable development and the positive approach to planning in the NPPF (paragraph 55).

4.8 The Draft NPPF also specifically addresses business and economic development and promotes the vitality and viability of town centres to meet the needs of consumers for high quality and accessible retail services (paragraph 72). In considering applications for planning permission, Local Planning Authorities should apply the presumption in favour of sustainable development and seek to find solutions to overcoming any substantial planning objections where practical and consistent with the NPPF (paragraph 74). Planning policies should also be positive and promote competitive town centre environments; recognising the role of centres as the heat of their communities and support the viability and vitality of town centres. It is also important that retail and leisure needs are met in full (paragraph 76).

4.9 Draft NPPF also addresses sustainable communities for which the Government's stated objective is to create strong, vibrant and healthy communities by creating a good quality built environment with accessible local services that reflect community needs, ensuring access to recreational facilities amongst others (paragraph 124). To deliver community facilities and local services planning policies and decisions should ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community (paragraph 126).

4.10 Whilst work on the Manchester Local Development Framework continues, the saved policies of the Unitary Development Plan for Manchester provide the local planning policy context. Policy H2.2 seeks to protect residential areas from development that would result in any unacceptable impact. Policy DC10 supports the provision of food and drink uses within the City Centre providing that they would not have any detrimental impact on the amenity of neighbouring residents. Policy DC26.6 requires the development control process to reduce the impact of noise on people living and working in the City and resist developments likely to result in unacceptably high levels of noise in residential areas. Policy RC20 (Area 29) supports small scale commercial units such as shops and restaurants which serve the daily needs of the student population.

5.0 LICENSING CONTROLS

5.1 Since 2000, Central Government has advocated a more relaxed licensing regime in order to encourage flexibility to licensed operators, more freedom of choice and a means of addressing and reducing the impact of binge drinking. The Government White Paper 'Time for Reform: proposals for the modernization of our licensing laws' (April 2000) sets out formal proposals for modernizing and integrating the alcohol, public entertainment and associated late night leisure licensing systems in England and Wales in order to encourage a strategy for 24-hour living in Town Centres.

5.2 The White Paper was followed by The Licensing Bill, introduced in Parliament in November 2002. On 10 July 2003, the Bill received Royal Assent, becoming the Licensing Act 2003. This was followed by Guidance from the Secretary of State for the Department of Culture, Media & Sport (DCMS) under Section 182 of the 2003 Act. The Guidance amplifies the meaning of the Act and is a statutory document to which licensing authorities must have regard when considering both their licensing policies and individual applications for new licences. There are four fundamental licensing objectives underpinning everything within the Act:

i) The prevention of crime and disorder;
ii) Public safety;
iii) The prevention of public nuisance; and
iv) The protection of children from harm.

5.3 The Secretary of State for DCMS also produced an explanatory letter to accompany the Guidance. The letter explains that the 2003 Act "*provides a genuine opportunity for the local development of our rich culture of live music, dancing and the arts. These, and other forms of entertainment, provide a diversity of activities for local people and visitors, help invigorate the leisure and night time economy and provide pursuits for young people that are not based around drinking*".

5.4 In accordance with the Licensing Act 2003, Local authorities have a statutory duty to publish a licensing policy dealing with how they will promote the licensing objectives in their area. In producing this they must consult widely with other statutory authorities, the Police, the Fire Authority and the local community.

5.5 Manchester City Council (as Licensing Authority for the City) has published and adopted a statutory Licensing Policy. The Council's policy confirms the four licensing objectives as the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

5.6 It is important to note that the application site requires a premises licence to operate, which controls the hours of use at the site.

5.7 A Premises Licence (PL) is required to allow the proposed additional hours of use. In determining the PL application, the Council will fully take into account the potential impact of any additional noise and disturbance, as well as the other licensing objectives. The Police and EHO will need to be satisfied that the PL can be approved. As rehearsed in Section 6.0 subsequently, a Premises Licence has already been granted for these hours.

5.8 If the PL is approved, even if planning permission is granted for the additional opening, the Council has full control over the activities taking place at the site. Powers under the Licensing Act 2003 enable a PL to be revoked, suspended or amended at any time; therefore the Council has the power to cease the extended use, at any time.

5.9 Both the Licensing Act 2003 and the Council's own Licensing Policy are material considerations in the determination of planning applications. There is no reason to consider that these controls cannot be effective at the application site.

5.10 In the case of this property, the Premises Licence has already been granted by Manchester City Council for the hours now sought through this planning application. A copy of this Premises Licence 110052 is attached as Appendix 1 to this statement.

6.0 ASSESSMENT OF THE PLANNING ISSUES RAISED

6.1 The Domino's Pizza unit is sustainably located within a central urban location within a mixed use area that includes a range of shopping, services and commercial activities. The unit is well located to serve its local resident population as well as visitors to the area.

6.2 The extended trading times of the Domino's Pizza unit will allow it to offer wider customer choice and better meet the needs of the whole community of the local area. Later opening will allow potential customers that cannot conveniently use this takeaway facility at present to do so at a time that is more convenient and appropriate to them; for example shift workers. The later opening will also broaden the customer choice for takeaway food available as part of the city centre economy within this part of Manchester. It would also complement other later night leisure and entertainment uses by offering a choice for takeaway food throughout the proposed extended opening hours.

6.3 There is now more demand for customer choice throughout the daytime and evening and customers who may currently wish to consume takeaway food after the permitted opening hours are being denied this choice. People now tend to live more flexible lifestyles and widening consumer choice to reflect this complies with both national and local planning policy and should be generally acceptable to the Council, provided that the environmental implications of this are acceptable.

6.4 The principle of the extended hours and consequential improved customer choice and broadened leisure time options is therefore supported by PPS4, the Draft NPPF and the local policies rehearsed in Section 4.0 above, especially Policies DC10 and RC20 of the UDP. In addition, it is important to note the valuable contribution that uses make to the local economy and the character of the area; adding diversity and vitality as well as enhanced consumer choice.

6.5 The LPA has already granted planning permission previously for the proposed extended trading hours under reference 088194/JO/2008/C1. This granted a year-long temporary 'trial' period for the proposed extended trading hours. Through oversight by the applicant, this temporary planning permission was never sought to be renewed. In effect, the application unit has operated a trial period for these extended hours lasting for nearly three years without any complaint. The advice of Circular 11/95 is to use temporary planning permission to act as a trial period where the LPA considers that there is insufficient evidence to enable the authority to be sure of its effect (paragraph 111). This grants the development proposal a trial run. A trial period should be set that is sufficiently long for it to be clear by the end of the first permission whether permanent permission or a refusal is the right answer (paragraph 112). Following a successful trial period, there is a presumption in favour of the grant of a permanent planning permission. It is therefore considered that a permanent planning permission should now follow in this case.

6.6 It is important to note that the application site will also require a Premises Licence to trade the proposed later hours. In this case, the Licensing Authority is also Manchester City Council and the proposed extended hours already have the benefit of approval from the Licensing Authority. The Licensing Authority is required to assess and agree these opening hours and will consider whether there will be harm to the general amenities of the local area, taking into account the requirements of the site's Operating Schedule, and any conditions of the Premises Licence. This they have done and they have concluded that the proposed additional trading hours are acceptable at this location.

6.7 The Licensing Authority also has a whole raft of potential actions to seek recourse and resolution of any issues raised, regardless of the planning situation. If a Premises Licence is approved, even if planning permission is also granted for the additional trading hours, the Council retains full control over the activities taking place at the site. Powers under the Licensing Act 2003 enable a Premises Licence to be revoked, suspended or amended at any time. Therefore the Council, as Licensing Authority, has the power to cease the extended trading hours (indeed use of the premises in general) at any time if nuisance were to occur. Both the Licensing Act and the Council's own Licensing Policy are

therefore material considerations in the determination of planning applications. There is no reason to consider that these controls cannot be effective at the application site.

6.8 The granting of a Premises Licence for the proposed additional trading hours and the controls that would be exercised over the operation of this site by the Licensing Authority do not mean that the planning system should ignore or overlook residential amenity issues. They will still need to be examined in the planning system. However, that examination has to take account, as a very material consideration, the fact that all of these matters have already been examined by Manchester City Council and a Premises Licence subsequently approved. The Premises Licence is an on-going regulatory tool. At any time the licence can be made the subject of an application for review, as a result of which the conditions can be changed or the licence revoked. It follows that licensing is a far more flexible and responsive regulatory tool than the planning regime and any sustained or serious objection can be tackled by way of a review of the licence.

6.9 The site is also located in a busy City Centre mixed use area where existing pedestrian and vehicular traffic levels are high. The character of this part of Manchester includes the usual elements of the mixed use City Centre economy, including other late night licensed premises described in paragraph 2.2 above. The premises are also located on the main road network on the High Street where ambient noise levels throughout the proposed additional trading hours will be higher than that experienced in any solely residential setting.

6.10 Staff would continue to manage the premises to ensure that resulting noise and disturbance caused for local residents would be kept to an acceptable level whereby no detriment to local amenity resulted. Indeed, the 'trial period' has already demonstrated this on the ground and in reality. At all times, and regardless of any controls of the LPA, the Licensing Authority has many methods of recourse if the operation of this unit failed to preserve residential amenity, including ultimately revoking the Premises Licence. In addition, any statutory noise nuisance caused would also be subject to recourse through the Environmental Health legislation.

6.11 The unit would be managed in accordance with the controls imposed by the Licensing Authority, which has significant enforcement powers in order to ensure compliance with these controls. Noise and disturbance from staff and from delivery vehicles will therefore be controlled to ensure that local amenities are not detrimentally affected. There would therefore be no conflict with Policies DC10 and DC26.6 of the Manchester UDP.

7.0 SUMMARY & CONCLUSIONS

7.1 The Domino's Pizza unit is sustainably located in a busy mixed use City Centre location. It is well located to meet the takeaway demand of the local catchment population.

7.2 The proposed extended opening hours would allow this takeaway facility to widen customer choice and better meet the needs of the whole local community. The proposals are therefore in compliance with both national and local planning policy.

7.3 The proposed extended hours have previously been granted temporary planning permission by the LPA under reference 088194/JO/2008/C1. In effect, the application premises has operated a trial period for the extended hours for nearly three years. During this time the applicant is unaware of any complaints received. The advice in Circular 11/95 is therefore that a permanent permission should now follow.

7.4 The proposed extended opening hours also has the benefit of approval from the Licensing Authority, which has already fully assessed its implications on the amenities of the local area and concluded that the proposed additional hours would not result in any detriment to the local area. The recourse and control measures that continue to be exercised by the Licensing Authority are also far more flexible, responsive and potentially onerous than the powers of the LPA.

7.5 The site is located within a busy, mixed-use City Centre, where both existing pedestrian and vehicular traffic is high and where there are other late night licensed premises already operating. The local area also includes a mix of commercial uses, which trade as part of the usual City Centre economy. Consequently, this leads to increased activity and background/ambient noise levels within the local area to the application site.

7.6 The controls of both the Licensing Authority and the Environmental Health Unit would always remain in place in addition to the controls of the planning system. In addition, the operational control already imposed by the Licensing Authority will ensure that the staff working in this unit are well managed and would not cause nuisance or disturbance to the local area. The Licensing Authority also has significant enforcement powers to ensure that the controls it has imposed are complied with and that if any nuisance was caused to local residents, the Premises Licence could be reviewed, amended or revoked.

LIST OF APPENDICES

1. Premises Licence 110052

MANCHESTER
CITY COUNCIL

LICENSING ACT 2003
PREMISES LICENCE

Premises licence number	**110052**
Granted	**07/10/2008** (Change of PLH details 25/11/2010)

Part 1 - Premises details

Name and address of premises		
Dominos Pizza 126 York Street		
Post town	**Post code**	**Telephone number**
Manchester	M1 7XN	0161 273 5666

Licensable activities authorised by the licence

1. **The provision of late night refreshment.**

The times the licence authorises the carrying out of licensable activities

Provision of late night refreshment

Standard timings

Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Start	2300	2300	2300	2300	2300	2300	2300
Finish	0500	0500	0500	0500	0500	0500	0500

Licensed to take place indoors only.

Seasonal variations and Non standard Timings: None

Hours premises are open to the public

Standard timings

Day	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Start	0700	0700	0700	0700	0700	0700	0700
Finish	0700	0700	0700	0700	0700	0700	0700

Seasonal variations and Non standard Timings: None

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

DPGS Limited T//A Dominos Pizza
DPGS Limited T/A Dominos Pizza, Suite B, The Stable Buildings, Wick Road, Englefield Green, TW20 0HJ.

Registered number of holder, for example company number, charity number (where applicable)

39378195

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Not applicable

Issued by:
Licensing Unit Premises Team, Neighbourhood Services, PO Box 271, Manchester City Council, Manchester M18 8YU

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Not applicable

Annex 1 – Mandatory conditions

Door Supervisors

Only individuals licensed by the Security Industry Authority shall be used at the premises to undertake security activities, which include guarding against: -

a) Unauthorized access or occupation (e.g. through door supervision),
b) Outbreaks of disorder, or
c) Damage

Annex 2 – Conditions consistent with the operating schedule

1. The licence holder shall liaise with Greater Manchester Police within a reasonable period of time after issue of this licence with regards to reducing crime and disorder and ensuring public safety within the premises and act on any recommendation promptly.
2. Any person found to be dealing drugs on or near to the premises shall be detained and the police informed immediately. Drugs seized will be handed over to the police.
3. Regular health and safety risk assessments shall be carried out in respect of all activities that take place at the premises.
4. In the event that a greater number of people congregate in the premises than is conducive to public safety, the licence holder shall ask people to leave the premises and shall encourage them to take advantage of the home delivery service provided.
5. All windows and doors shall be kept closed when at night except for access and egress to and from the premises and/or in the event of an emergency.
6. Customers shall be asked to respect the needs of local residents and to leave the premises and the area quietly.
7. Music shall not be played in the premises.
8. Delivery drivers shall be instructed to enter and leave their vehicles quietly and considerately, not to leave engines running, to park considerately, and at all times to have in mind the neighbours and in particular residential occupiers.
9. The licence holder shall ban any customer who visits the premises and regularly leaves the premises in a noisy manner.
10. All equipment shall be properly sound insulated and operated strictly in accordance with manufacturers' requirements, guidelines and tolerances so as to not unreasonably disturb local residents.
11. An air extraction system shall be maintained and operated in all areas of the premises.

Annex 3 – Conditions attached after a hearing by the licensing authority

1. A suitable CCTV system shall be installed at the premises, which shall be approved by the Greater Manchester Police Crime Reduction Officer, and all images recorded by CCTV system shall be retained in unedited format for a minimum of 28 days and made available to any responsible authority on request. The Recording equipment and tapes shall be kept in a secure environment under the control of the premises licence holder or other responsible named individual. The CCTV cameras shall also monitor the outside area of the premises. There shall be a member of management trained in the retrieval of CCTV footage, with the ability of downloading the relevant footage onto a disc or video, on request from the police or relevant authority.
2. Signage shall be displayed clearly in the shop to inform customers that CCTV is in operation.
3. Staff shall not serve customers who are intoxicated.
4. Any drinks sold at the premises shall be served in none glass containers.
5. The management shall ensure that customers do not congregate outside the premises.
6. The management shall ensure that all litter is removed regularly from outside the premises and at the close of business each day.
7. The premises doors shall be closed to the public at 0200 on Sunday and 0300 Monday – Saturday. After these hours and until 0700, customers shall be permitted to use the delivery service only.
8. Should customers/youths congregate outside the premises or in the immediate vicinity during the night time hours or early in the morning a member of staff shall request that they leave the area quickly and quietly.

Annex 4 – Plans

See attached.

Issued by:
Licensing Unit Premises Team, Neighbourhood Services, PO Box 271, Manchester City Council, Manchester M18 8YU