

Planning

Growth & Development

Delegated officer report for planning application

Application no. 131763/FO/2021

Date registered valid: 8 October 2021

Proposal: Installation of enclosed canopy at rear of premises to form an enclosed seating area for customers and retention of first floor rear external air conditioning unit.

Address: 113 Lapwing Lane, Manchester, M20 6UR

Ward(s): Didsbury West Ward

Applicant: Grant Ashdown Neighbourhood Pizza 113 Lapwing Lane, Manchester, M20 6UR

Agent (if any): Kath Ludlam Ludlam Associates The Bank, 99 Palatine Road, M20 3JQ

Case officer: Linda Marciniak
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Recommendation: Refuse

Date of recommendation: 16 February 2022



Application details

Type of application: Full Application Consent
Development type: Minor Retail
Date of site visit: 1 November 2021
Standard consultations: Printed: 26 October 2021 Expired: 16 November 2021
Neighbour notifications Printed: 26 October 2021 Expired: 16 November 2021
Site notice Posted: 1 November 2021 Expired: 22 November 2021
Press advert Published: 26 October 2021 Expired: 16 November 2021
Departure from Development Plan: No
Environmental Statement: Not required
Listed building: Not applicable
Conservation area: Ballbrook Conservation Area 1992
Tree Preservation Order: Not applicable

Description of site/building

The application site is a ground floor mid-terrace commercial unit trading as a pizza restaurant with 2-storeys of a residential flat above. It is within a parade of 9 no. mainly similar food and drink uses on the north side of Lapwing Lane in the Ballbrook Conservation Area. The unit has internal seating and additional external seating under a restored Victorian canopy which extends the length of the parade. It is close to one end of an open cobbled alleyway that runs along the sides and rear of the parade.

The south-facing frontage faces the Metrolink Didsbury West tram station situated in a cutting across Lapwing Lane, beyond which is the Northern Lawn tennis club.

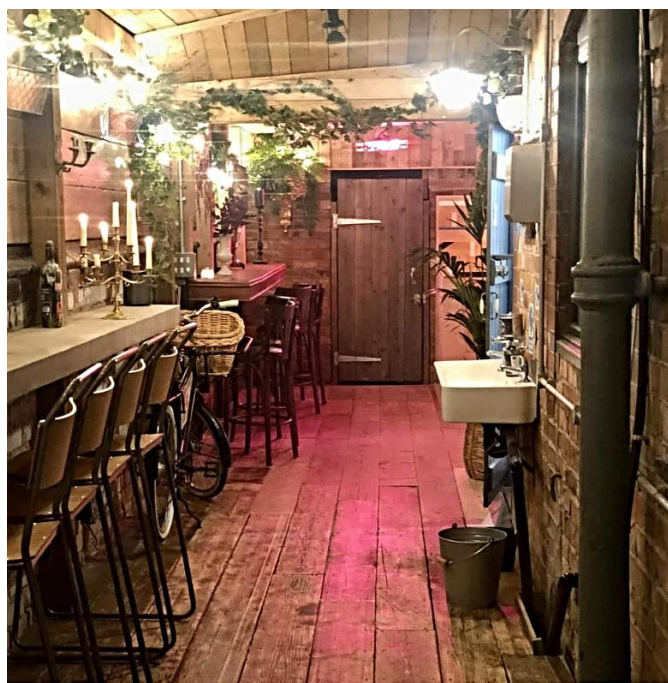
At the rear of the site is a yard area that has a walled boundary with single access gate. The yard has been covered over with a painted timber canopy roof on timber upstands. There are



4no. polycarbonate rooflights on the canopy and the height of the side and rear boundaries has been raised with painted timber boards leaving an open section to the roof. There is a flue rising to above eaves level, and an air conditioning unit situated on the wall below a first-floor rear bedroom window.



The canopy structure and air-conditioning unit were erected without the benefit of planning consent, the applicant noting in March 2021 that the outdoor space was crucial to the business in response to the Covid-19 government restrictions. Images on the business website indicate two phases of development that have enlarged the yard area to incorporate the area to the right of the back gate for additional seating which caters for an additional 20no.covers:



Our Neighbourhood Bar

The back Yard now open for reservations
call 0161 434 9900

Instagram Photos · 31 Oct 2020 ·



Across the rear alleyway are the walled boundaries and garden gates of houses fronting onto Ballbrook Avenue. A number of commercial and domestic bins are stored in the alleyway, mostly on the shorter section to the east of the site.

Description of area

Aside from the parade with a majority of independent bars and restaurants and the tennis club, there is a smaller parade to the west with a Pizza Express restaurant, and a public house to the south-west across Palatine Road. The character of the surrounding area comprises mainly of Edwardian red brick semi-detached houses within a mature treed landscape setting.

Description of development

Installation of enclosed canopy at rear of premises to form an enclosed seating area for customers and retention of first floor rear external air conditioning unit. On validating the application, the agent was asked to include the air conditioning unit in the proposal description and to show it on revised drawings. The re-worded description which was re-notified to residents is therefore as noted above.

The application is a resubmission of application 128264/FO/2020 (Installation of canopy at rear of premises to form an external seating area for customers) which was refused under delegated powers on the 19.04.2020. The reasons for refusal of that application were the impacts on residential amenity due to noise arising from patrons using the rear yard, and the visual impact of the canopy structure which failed to preserve or enhance the Ballbrook Conservation Area. This application did not show the air-conditioning unit and was not noted on the case officer's photos.

The present application was submitted as a response to a Planning Compliance case being opened on the 13.08.2020 (Ref: ENF/14933/20 - Unauthorised felling of tree in conservation area and erection of rear extensions) in response to complaints received from 3no. residents.

The Council has concerns that the canopy structure and use of all of the rear yard is at odds with the character of the parade and that there are inadequate means of managing waste. Concern has also been raised with regards to the location and performance of the air-conditioning unit outside a residents' bedroom window.

The application was subject to two rounds of notifications, the second resulting in 15 residents' objections, 1 Conservation Area group objection and 1 Councillor objection. 1 resident has written in support of the application. Details are set out below.

Consultations & Notification Responses

1st Notification

Objection 1

Myself and the other residents who live in my property would like to object against the planning application for a variety of reasons. We live in flat 113A Lapwing Lane, directly above the property in question.

I have commented on the planning application itself via the Council's website but wanted to email you directly with evidence and documentation for why we would like to object to the planning application so thank you for being patient if there are any repeats of information.

Previous planning decisions:

I have attached a copy of the response to the original planning permission that was subsequently ignored by the owner, as the reasons why it was denied is very much why we are objecting to it this time round (mainly detriments to residential property and the visual amenity of the area).

I have also attached the document with the previous objection notes which were submitted prior to ourselves moving in. We would all like to agree with these statements and stress the impacts of these in particular: extra noise pollution, constructed without planning permission, construction is poor quality, it was submitted as a temporary solution to the Covid 19 pandemic but has become a permanent unneighbourly development, shoddy appearance and the Council should issue an enforcement notice to remove this structure.

Loss of privacy/safety:

The extension has allowed for the roof of the property to be accessed by various individuals. I have attached photographic and video evidence of this with the owner being on the roof and visible through our kitchen and one resident's bedroom.



The fan, which the owner also placed on our property without permission is directly under the bedroom window of one of the residents and the only way to access this is via the extension roof. I have attached a picture of the fans placement and how close it is to our bathroom window to highlight the lack of privacy we have in these areas when individuals check on the fan. We also have major issues with this fan in regards to noise, which another resident has been in touch with your colleague about already, as the fan seems to also require planning permission due to

its size and close proximity to our property, which has not been previously completed.

Noise:

We have an ongoing noise dispute and investigation with the below property, which has only been exacerbated by the extension. I have attached correspondence we have had with the licensing and out of hours department. This highlights our ongoing complaints, a letter being sent to the owner in question, a report from 2 members of the council who visited our property in regards to the noise and how further enforcement is now going to be taken.

The case reference number for these complaints is SRU 704452.

Times:

The times stated the extension will be used on the application is 16:00 - 21:00 pm. Based on the noise complaint and licensing correspondence I have attached and witness from ourselves we can confirm that this is incorrect.

I have attached the times stated when you google the property in question and several social media posts that state the owner is serving alcohol, playing music and running the business way beyond the times stated on the application and we suspect his license, which is extremely disruptive for our property.

Design, appearance and materials:

The overall appearance of the extension is shoddy and unsightly. I have attached an image of our view from our kitchen window which shows the state of the roof and materials/rubbish left on top of it.



Furthermore, from this picture and the video previously highlighting our lack of privacy, you can see the lack of drainage for water when it has been raining and has only been manually attempted to be removed by the owner on one occasion when they decided to reapply for planning permission.

Waste:

I have attached pictures of the alleyway at the side of the businesses and flats, where the large commercial bins that the businesses use now have to be placed as they cannot be manoeuvred from the back of the commercial properties and back again once they are emptied. This means that the residents that have to go down that alleyway to access their bins have to pass these bins which you can see from the pictures are overflowing and unsanitary.

Odours:

The extension itself is not fully enclosed as stated, which means that as well as noise there is also a

strong smell of fire and smoke that emits from the property. This affects our property as we are unable to have our windows open when the smell is present, which is nearly everyday. This can be seen in the pictures attached.

Ultimately, we believe the owner has no respect or consideration for his neighbours or the surrounding area. He erected this structure without planning permission and frequently plays loud and disruptive music as per the noise complaint case reference attached. We originally tried to have a collaborative relationship with him but were met with aggression and intimidation over the phone and in person, so have since been advised by the council not to have direct contact with him anymore and send all complaints and issues through them.

I hope this is sufficient evidence to support our opposition to the planning permission and that this structure can be removed to reduce the negative impact this property has on the surrounding residents and businesses. If you have any queries or would like to discuss anything further, please don't hesitate to get in contact with myself or any of the other objecting residents who I have cc'd into this email to yourself.

Environmental Health

I do have one concern regarding the change of use, and that is in relation to the bins. The applicant has said that all the businesses on Lapwing Lane store their bins in the alley to the rear, but do the residential premises above store their bins in the alley too? My concern is that by changing the use of the of the yard into an enclosed dining area that all the bins will have to be stored in the alley and not within the curtilage of the premises, and this may set a precedent for the other properties to do so (if they are not already).

From a noise perspective, now the hours of use have been reduced and the area will be enclosed, the noise should be manageable and if the work is carried out in accordance with the plans, then it should not be detrimental to the amenity.

1. NOISE

a) The premises shall be acoustically insulated and treated to limit the break out of noise in accordance with a noise study of the premises and a scheme of acoustic treatment that has been submitted to and approved in writing by the City Council as local planning authority. The scheme shall be implemented in full before the use commences or as otherwise agreed in writing by the City Council as local planning authority.

b) Prior to occupation of the development a verification report will be required to validate that the work undertaken throughout the development conforms to the recommendations and requirements in the approved acoustic consultant's report. The report shall also undertake post completion testing to confirm that acceptable criteria have been met. Any instances of non-conformity with the recommendations in the report shall be detailed along with any measures required to ensure compliance with the agreed noise criteria.

Reason - To safeguard the amenities of the occupiers of the building and occupiers of nearby properties.

*I accept the proposals set out in the Clement Acoustics report reference 16472-NIA-01-_RevA dated 12 July 2021, so the work should be done in accordance with this report and the submitted plans.

NOISE -Enclosed canopy area

Shall only allow use of the enclosed canopy area within the application site between the hours of 12.00 - 21.00hrs and shall not allow for the use of amplified sound or any music in this area at any time.

Reason - To safeguard the amenities of the occupiers of nearby properties.

Information for Developers guidance documents can be downloaded using the following link:
http://www.manchester.gov.uk/info/500207/planning_and_regeneration/1962/additional_planning_guidance/3

Revised scheme (including air conditioning unit) - Comments

2nd Notification

Objection 1

Noise:

The fan is attached to the first floor of our property and was placed on there without consultation or permission from the residents. It is located directly on the side of one of the residents bedrooms. When the fan is switched on the noise is excessively loud, vibrating the entire walls and can even be heard a floor up as well from another bedroom. As you can understand this has impacted our ability to sleep and enjoy the comfort of our own bedrooms when the fan is switched on.

There has also been occasions where the fan has been left on all night, meaning one of the residents in our property has had to sleep in the living room to try and avoid the noise and get some sleep before they have had to go to work. A couple of us living in the property have also had to invest in expensive noise cancelling headphones just to try and block out the noise.

Loss of privacy:

As stated above, the fan is located directly on the side of one of the residents bedrooms right below their window. Alongside this, the fan is right next to our bathroom window. We have had multiple individuals, including the owner, coming to check on the fan without letting us know.

This has meant they have sight into our bedrooms and bathrooms which as you can understand makes us feel very uncomfortable and violated as it's a complete lack of privacy within our own home.

We hope this comment further highlights how disruptive the external air conditioning unit is and how it needs to be removed from our property so it no longer negatively impacts our home lives.

Objection 2

Permitting this building will set a precedent for neighbouring eateries to do the same. Also, it will only be a matter of time before they seek an extension of their hours. The same would apply to live music.

All in all, a large and unpleasant disruption to the lives of the people living in the properties behind these businesses. When people moved into those houses there were no businesses being conducted effectively in the yards behind the row of shops and it would be grossly unfair and a major intrusion if permission was granted for this building.

Objection 3

I am not happy with the acoustic report;

- It begins by referring to an assessment of "an outdoor dining area", rather than the enclosed space that is the subject of the application
- I am concerned about the skylight windows, when open emitting noise from inside
- It goes on to state that "Calculations were undertaken for the nearest identified receiver, identified as a first floor window. I feel that where I live 27 Ballbrook Avenue, my back wall is nearer to the building than the first floor window, an assessment should be done from my back wall and house.
- The anticipated noise has been modelled as a plane source (paragraph 6.1) but no consideration is given to the fact that the rear door to the premises is routinely left open, or used by delivery drivers.

Supporting information document Specification/Standard Inverter states:

- Note 1 says: - Due to our policy of innovation some specifications may be changed without notification - surely we need the correct information here. Does this sentence not imply they will just do what they want?
- Note 4 says: - Sound pressure level ISO 3745 standard but this is for measuring sound pressure levels on a measurement surface enveloping a noise source (machinery or equipment). I would be interested in the noise associated with gatherings of people in pubs and restaurants.
- Note 6 says: - This product contains Fluorinated greenhouse gases. - I would just like to state that Fluorinated greenhouse gases (F-gases) are a family of gases containing fluorine. They are powerful greenhouse gases that trap heat in the atmosphere and contribute to global warming.

Waste Management Waste Performa: This document has not been completed and has omissions, the following questions have not been answered:

- Ensure all bins in the store are accessible
- Ensure recycling facilities are as easy to access as general refuse
- Detailed plans of waste stores
- Location plans showing stores
- Location plans showing the proposed collection point and the route the collection vehicle will take

The report also assumes what it seeks to prove, in that it does not discount the "background noise" from plant which was installed as part of the unauthorised works the subject of the (amended) application. To re-cap, the application relates to works which were carried out without planning permission. As part of those works, the occupier installed a black extractor fan (or similar) above the dining area, on an external wall. No permission was sought or granted. The fan produces noise. Accordingly, when the authors of the report purported to measure the existing, background noise (paragraph 3.1), what they were actually measuring included the noise of the unauthorised fan (and the nearby A/C unit which is also lacking any planning permission), thereby increasing the apparent background noise level, and artificially reducing the apparent impact of noise emanating from within the premises

No consideration has been given to the effect of the playing of music within the venue, although the condition proposed in the supporting statement only refers to "live music".

The report does not comply with the requirements of the relevant British Standard in that it does not even attempt to measure the impact on any receivers other than at a nearby window. It does not address, for example, the proximity of residential homes and gardens, and the impact that a noisy pub / restaurant would have on the residents. It assumes that any noise would be partially shielded by a window, which is not the case. At the proposed opening times, the adjoining gardens would be expected to be in use. Young children should not be subjected to the noise made by groups of people consuming alcohol a few metres away. The adjacent homes also include bedrooms as the closest point to the extension, some of which are used by young children.

It is also regrettable that the applicant has misrepresented the conclusion of the acoustic report in the supporting statement. The statement that "the Report concludes that there will be no adverse noise impact on the nearest residential properties, and the proposed structural amendments will provide further acoustic mitigation" is false and misleading. The report actually concludes that "if these [maximum allowable emissions] are adhered to, it is indicated that the dining area would have a low impact". Even that conclusion is based upon a number of assumptions, which are revealed by the terms of the report itself to be unsound. There is no finding that "further acoustic mitigation" is provided by the structural amendments, which are not addressed in the report.

The proposal that the dining area will only be used until 9pm. Does this mean last orders at 9pm or all people have to leave by 9pm? It is incapable of being policed, and unlikely to be observed. The premises adjoining the lane routinely ignore restrictions on operating hours and, for example, the emptying of glass bins at unsocial hours. Also, I am worried that this structure could set a precedence for other food business on the Lapwing Lane Arcade.

Accordingly, the amended application wholly fails to address the reasons for which the original application was dismissed: "the proposed canopy would facilitate the more intensive use of the existing outside area of the existing premises to the detriment of the amenity of the occupiers of nearby residential properties. The proposed development would therefore be contrary to the provisions of Core Strategy policies SP1, DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26."

Objection 4

Please put my tally down to stop this extension and to actually have the unauthorized building removed. As this was built without prior approval it should be removed without delay!

The alleyway is already an eyesore and a health hazard and should be addressed immediately.

Objection 5

We run a beauty salon "Evie's Retreat" next door to Neighbourhood Pizza, by its very nature our business - opened from 9am to 8.30pm - prides itself in offering calm and relaxation during treatment. This aspect of it is essential to our success and our reputation, currently some of our clients object to the noise emanating from the area of the extension, as conversations can be heard through our shared wall.

Although we support Mr Ashdown in his plans for growth and expansion, we cannot fail to express concern about yet more noise being generated from the area of the proposed extension. The acoustic report submitted was carried out during lockdown therefore does not adequately reflect the level of noise we will experience on a normal working day through our shared wall, nor does it address the extra noise which will be generated at the rear. I have spoken to Mr Ashdown regarding this matter and informed him of my concerns and objection to the extension adjoining our business without adequate soundproofing.

Objection 6

I and my young family live directly behind the proposed outdoor dining area. My property is approximately 2m away from the back door of the proposed outdoor dining area on the opposite side of the alley way.

As a family we enjoy spending a lot of time in our garden, eating, playing and reading there, and the importance of our outdoor space to our health and well being has been particularly highlighted throughout the pandemic.

The garden is also a sanctuary for all kinds of insects and birds and this year we took part in the RSPC bird watch to support bird conservation and recorded all the different kinds of birds that we spotted enjoying the peace and quiet of our garden.

We also like to keep the patio doors to our kitchen / living area open in the warmer months to keep the house cool.

When we purchased our property we were reassured by the fact that it was located within a formal planning 'conservation area' and that the character of the neighbourhood would be protected from changes that would adversely impact it.

That character is one of a quiet residential street comprising of old fashioned / historic properties. The Victorian promenade along the front of lapwing lane offers ample outdoor dining for the restaurants along the strip and the residential properties to the rear enjoy peace and quiet.

<https://ehs.yale.edu/sites/default/files/files/decibel-level-chart.pdf>

Attached is a link to a decibel chart from Yale University showing typical decibel levels from various noise sources and settings. Please note the following extracts from the chart: -

A typical conversation averages 60 - 70 decibels
chamber music from a small auditorium averages 75 - 85 decibels

The levels of noise from a restaurant are of particular concern to occupational health experts because they typically can reach 85 decibels and employees spending prolonged time within such an environment can suffer hearing damage.

Restaurants are regulated by the Control of Noise at Work Regulations 2005 which state that the level at which employers must provide hearing protection and hearing protection zones (for employees) is 85 dB(A) (daily or weekly average exposure) and the level at which employers

must assess the risk to workers' health and provide them with information and training is 80 dB(A).

I appreciate the outdoor seating area will be for 12 guests and this could be considered a relatively small number of people compared to larger restaurants. However, the space within which these 12 customers will be seated is very small and partially enclosed this is also an important factor.

It is common knowledge that voices often need to be raised in restaurants so that people can hear each other over the noise of other diners and background music. When one person raises their voice, everyone else has to also raise their voice and so on it goes until people are struggling to hear over each other and shouting.

If 60 - 70 decibels is the average loudness of a conversation, how can the noise report reasonably suggest within table 6.2 that the maximum noise emissions of a 'larger dining area' would amount to 62 decibels?

Where is the proposed noise from the music taken into consideration? It is not mentioned at all.

Restaurants are noisy places that need to be regulated by law to protect the hearing of their employees and the noise impact assessment downplays this significantly.

Add alcohol into the mix and you invariably get people being much louder than normal, disagreeing, swearing, singing etc.

Article 8 of the Human Rights Act 1988 gives myself, my children (who go to bed to sleep in bedrooms at the rear of my property at 7pm) and all the neighbours with residential properties close to the proposed development a right to enjoy our existing homes peacefully.

The links to poor mental health, stress and associated adverse health outcomes caused by noise pollution are well established.

I am not thrilled at the prospect of smokers all smoking at the bottom of my garden either and smelling this disgusting smell whilst trying to enjoy my garden. My children do not suffer from asthma but nevertheless the negative health impacts of inhaling second hand smoke are well established and this needs to be considered.

My view is that the noise impact assessment is totally flawed and fails to properly assess the impact of the likely noise on myself and my family.

The thought of not being able to enjoy the back garden peacefully and being subjected to noise and second hand smoke there from 12pm to 9 pm every day is causing real distress to myself and my neighbours.

Why as human beings should we have to put up with such an adverse impact on the enjoyment of our properties and our lives just because a pizza restaurant wants to make extra money? They were well aware of the size of the restaurant and number of covers when they took out the lease.

Granting this application would set a worrying precedent for the noisy commercial space on lapwing lane to encroach into the peaceful residential space behind it even further.

If you require any further information in connection with this objection please do not hesitate to contact me. I sincerely hope that the concerns above are given the serious consideration they

deserve and the human rights of the individuals objecting to this application are given priority and are not breached.

Objection 7

I love locally but would not really be impacted by this development as a few streets away. However the people whose houses back onto the alley that this development backs on to are not happy I gather. This is due to this being an outdoor structure (ie not fully enclosed) with the inevitable noise and light pollution. None of the eateries along the parade have (open) dining in the back section while many have seating at the front under the canopy on the wide street. Why not stick to this? The world has survived without this so far and it will obviously be detrimental, even if it were to stay within the application guidelines rather than breach them, gradually erode them. Further what if all the eateries along there have dining to some extent open air at the back / the noise and light pollution multiplies. It's not strictly necessary so why do it.

Objection 8

Introduction

1. As the owners and occupiers of 24 Lyndhurst Road we object to the above planning application ("the Application"). Our rear garden is within 15 metres or so of the development and the rear of our house is little further away at approximately 25 metres.
2. The Application is effectively a resubmission intended to address the reasons for refusal of a previous application (128264/FO/2020) in which the development was described as "installation of canopy at rear of premises to form an external seating area for customers".
3. The previous application was refused for two reasons:
 - 1) The erection of the proposed canopy would facilitate the more intensive use of the existing outside area of the existing premises to the detriment of the amenity of the occupiers of nearby residential properties. The proposed development would therefore be contrary to the provisions of Core Strategy policies SP1, DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26.
 - 2) The proposals due to their siting, scale, design and materials are considered to form an incongruous feature to the detriment of the visual amenity of the area and fail to preserve or enhance the Ballbrook Conservation Area in which the proposals are located. The proposed development would therefore be contrary to the provisions of Core Strategy policies SP1, DM1, EN3 and saved policy DC18.1.
4. These reasons for refusal continue to apply to the Application and it too should be refused.

The changes from the previous application

5. There are two essential changes proposed in the Application compared with the previous application.
6. First, the structure will no longer be open below its roof on its side and rear wall and what was previously the gap between the top of these walls and the roof soffit will be infilled by a few courses of brick.
7. Secondly, a revised noise impact assessment has been submitted - Clement Acoustics Noise Impact Assessment of 12th July 2021 (16472-NIA-01_Rev A) ("the NIA").

8. It is also now proposed that the hours of opening are reduced with a closing time of 21:00 hours each day required by condition and that the playing of live music is prohibited by condition.

9. These changes do not overcome the fundamental planning objections to the development.

Detrimental impact on residential amenity

10. The Application should be refused, as was the previous application, on the basis of detrimental impact on residential amenity. The NIA is a deeply flawed and wholly unreliable document and does not overcome the previous reason for refusal.

11. First, the NIA is based on the use of BS 4142 "Methods for rating and assessing industrial and commercial sound". However, BS 4142 is not a standard which should be used in the present case where the issue relates to noise and disturbance arising from the use of the new seating area which will extend the restaurant premises. Paragraph 1.3 of BS 4142 makes it quite clear that it is not intended to be applied to the rating and assessment of sound from a) recreational activities, b) music and other entertainment and, in particular, c) people. The assessment of sound from people, that is, the noise and disturbance associated in the present case with customers eating and drinking in the new seating area, is plainly therefore outside the scope of BS 4142. The fundamental failing of using an inappropriate standard renders the NIA worthless.

12. Secondly, the NIA itself makes it clear that it has misdirected itself in that it is (as set out in its executive summary) "designed to be suitable to discharge typical plant noise planning conditions" and is not therefore to "be relied upon for further reasons". The conclusions of the NIA state that the assessment has been "undertaken using manufacturer noise data to predict the noise limits, due to the proposed plant, at the nearby noise sensitive receptors." Plant noise is, of course, within BS 4142 (see paragraph 1.1) but is not the issue in the present case. The NIA is not fit for purpose in its own terms.

13. Thirdly, the predicted noise level of 60dB within the new seating area of the restaurant is unreliable. The consultation response of the Council's Environmental Health team ("EH") on the refused application (as set out in the delegated officer report) criticised the level of 62dB (now reduced without proper explanation to 60dB) used in the previous iteration of the NIA (dated 29th March 2021). It said that "[t]his seems very low as a normal conversation is usually about 60dB and noise from inside a restaurant can be around 70 - 80dB depending on the capacity." It necessarily follows that, starting from an unreliable prediction of noise within the seating area, the consequent calculations of the noise level at the receiver which depend on the prediction of noise within the seating area are unreliable.

14. Fourthly, measurements taken at a shisha bar (relied on in the NIA) cannot properly be used as a comparator for the predicted noise level within the new seating area given that no alcohol would be expected to be served in a shisha bar (but is, and would be, served in the subject premises). The comparison is rendered even more unhelpful given that the times and periods of the measurements relied on are not disclosed.

15. Fifthly, the NIA has taken no account of the fact that there is a rear door in the new seating area which will allow noise breakout from the premises when, as inevitably will be the case on warmer evenings, it will be left partially open to allow more natural ventilation.

16. Sixthly, the NIA fails to address L_{Amax} levels. This is a very significant failing in its own right. As stated in the EH consultation response on the refused application, people in the new seating area "will be eating and drinking, so the voices are likely to be elevated above the 62dB

they have predicted. Regardless of the predicted noise levels from customers (which are averaged over an hour in the report), the customers laughing, shouting etc will produce much higher LAMax noise levels which will be well above the average noise levels and are likely to be intrusive and detrimental to the amenity of nearby residents."

17. Seventhly, the NIA contains no assessment at all of the potential impact of noise and disturbance on the enjoyment of the garden areas of properties on Lyndhurst Road and Ballbrook Avenue in close proximity to the development. The EH consultation response on the refused application was quite clear on this point: "EH also asked that the applicant consider the noise levels at the nearest residential premises on Ballbrook Avenue and Lyndhurst Road. The noise from an external dining area is likely to cause detriment to these residents particularly when they are using their gardens, and no mention of this has been made in the report." The NIA has ignored this.

18. Turning to the Supporting Statement which accompanies the Application, it is inaccurate in its summary of the NIA in stating that the latter "concludes that there will be no adverse noise impact on the nearest residential properties". The conclusion of the NIA, flawed as the conclusion is for the reasons set out above, is not that there will be "no adverse noise impact" but that there will be a "low impact". The additional comment in the Supporting Statement that "the proposed structural amendments will provide further acoustic mitigation" is not justified by anything in the NIA.

19. The assessment of the previous application in the delegated officer report was as follows: "[t]his more intensive use in close proximity to residential properties is considered to give rise to unacceptable impacts on the residential amenity of occupiers of premises on upper floors on the terrace and on Ballbrook Avenue and Lyndhurst Road by virtue of the potential for noise and activity generated by the use of the covered area such as raised voices, shouts and other activity which would be associated with the use." That assessment holds as good for the Application as it did for the previous application.

20. It therefore remains the case that the development for which permission is sought in the Application will be detrimental to residential amenity and that the proposal is still contrary to Core Strategy policies SP1, DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26. It is also contrary to paragraph 130f) of the National Planning Policy Framework ("the NPPF") which requires developments to ensure a "high standard of amenity" for those affected.

Detriment to visual amenity and failure to preserve or enhance the Ballbrook Conservation Area

21. The development now proposed is essentially unchanged in terms of siting, scale and design from the previous application whereas the materials differ only to the extent of the insertion of a few extra courses of brick to fill the previous gap between the top of the boundary walls and the roof soffit. The development continues to occupy the whole of the rear of 113 Lapwing Lane and still completely removes the open yard area which otherwise generally typifies the rear aspect of the terrace of properties of which number 113 forms part. The new brick courses will appear as an arbitrary upward extension of the existing walls and the cheap felted roof with its polycarbonate roof lights will remain.

22. The Application should therefore be refused, as was the previous application, on the basis that the proposals "form an incongruous feature to the detriment of the visual amenity of the area and fail to preserve or enhance the Ballbrook Conservation Area ... contrary to the provisions of Core Strategy policies SP1, DM1, EN3 and saved policy DC18.1." The development is the antithesis of the good design required generally by paragraph 126 of the NPPF which must apply with even greater force in a conservation area.

Other matters

23. There are two other matters which we raise in this objection. First, approval of the Application would set a regrettable precedent for the extension of food and drink premises in the terrace on Lapwing Lane into the whole of their rear yard areas with the prospect of bringing such uses into unacceptably close proximity to neighbouring residential properties. This is not a case of a mere fear or generalised concern of a precedent effect but one where the facts speak for themselves. If one food and drink establishment in a terrace (which, as here, contains several such establishments) is permitted to extend into the whole of its rear yard area there would be little reason why others should not be allowed to do likewise.

24. Secondly, the fact that the development would occupy the whole of its rear yard area means that the alleyway to the rear and side of the terrace of properties on Lapwing Lane will inevitably be used to manage waste from the premises. The waste management plan submitted with the Application shows as much. The fact that this is an existing arrangement does not alter the fact that the extended premises will generate more waste and impacts presently experienced such as the noise of glass bottles crashing into paladin bins will be exacerbated.

Conclusion

25. For all the reasons set out above the Application should be refused. The proposed conditions are completely inadequate to make the development acceptable.

Objection 9

Object on grounds of this is without precedent to have retail on this side of the property row. We are concerned with environmental and noise impacts.

We would sooner that the retail activity is confined to the other side of the row ie facing lapwing lane - which is in keeping with the other properties and will have no impact on local residents.

Moreover we would sooner that the wall is restored and the property is restored to its former state.

Objection 10

I object because this is situated in a residential neighbourhood and will back on to neighbours gardens. I am unconvinced that noise (from customers and music) will not cause a disturbance. There are currently 5 (one is a double unit) bars/restaurants in the arcade, and if this application were to be successful, I don't see how similar applications from others could be refused. That would potentially increase the noise disturbance five fold.

All bars and restaurants in the parade currently have outside seating at the front of their premises (and use the area in front of businesses that do not operate during the evenings) although they cannot play music outside. Surely this is enough.

Objection 11

I am not happy with the acoustic report;

It begins by referring to an assessment of "an outdoor dining area", rather than the enclosed space that is the subject of the application

I am concerned about the skylight windows, when open emitting noise from inside

It goes on to state that "Calculations were undertaken for the nearest identified receiver, identified as a first floor window. I feel that where I live 27 Ballbrook Avenue, my back wall is nearer to the building than the first floor window, an assessment should be done from my back wall and house.

The anticipated noise has been modelled as a plane source (paragraph 6.1) but no consideration is given to the fact that the rear door to the premises is routinely left open, or used by delivery drivers.

I think it an unnecessary addition to the restaurant as there is outdoor seating at the front of the restaurant

I feel this will set a precedent for the other businesses and we could end up with a complete row of bars almost in the back gardens of those people living on Ballbrook Avenue.

Objection 12

The Ballbrook Conservation Area is predominantly a residential area, dating back to the 1910's. The parade on Lapwing Lane is home to both some established and newer eateries and bars. However, the outside and additional seating areas have primarily been situated to the front of their establishments - not normally to the rear.

The rear of the parade simply provides access to the flats on Lapwing Lane and also serves as the storage area for the bins for those properties. It is a poorly lit and narrow alley and is not designed nor appropriate for an increase in any kind of traffic.

It is also unclear why an extension onto what is already a narrow and undesirable alleyway would be permitted.

I do not believe that the application should be permitted.

Noise

- The Alleyway to the rear of Lapwing Lane backs onto the homes of Ballbrook Ave residents, many of whom have bedrooms to the rear of their properties i.e. which would mean they are in the direct noise path of the proposed extension.

- Although the application states a 21.00pm close for that extension, the noise will cause disturbance as customers leave the premises and also the fact that staff will be clearing up afterwards

- I believe it would be hard to police a 21.00 close of a section of a restaurant and that business for the proprietor would take priority over the concerns of local residents

- In summer months this noise would be considerably more noticeable as windows etc would be open for both the restaurant and the homeowners, causing antisocial disruption

- As a parent with school age children, it is important that they be able to get to sleep without issues of noise from the area immediately surrounding our home

- Currently, unnecessary noise can be heard from the Lapwing area which disrupts and disturbs peace and quiet and residents trying to enjoy important relaxation time in the evening and on weekends, in their own gardens. Surely the fact that is, first and foremost, a residential area, should be taken into consideration

- An additional concern for noise is that from the Air Conditioning unit which is proposed to sit at first floor level. Sitting at this level will result in the noise travelling directly into the paths of the rear gardens. As this unit may be on beyond the 21.00 close, this will cause disturbances to the nearby residents.

Disturbance

- There is already a considerable amount of disturbance caused by noise from the alleyway. Bins being moved along the cobbles at antisocial hours, the emptying of glass into bins, staff chatting, delivery drivers collecting from the rear of properties, scooters (delivery) driving along the back on the alleyway. I do not think the residents can cope with an increased level of noise, which would occur if this proposal is granted.

Increased Traffic

- The alleyway is not designed to take extra traffic of pedestrians nor small vehicles.

Access

The alley provides essential and vital access to the flats and businesses at Lapwing Lane. Permitting the businesses to extend their establishments into the alley will further affect the accessibility which will be needed for the properties.

Privacy & safety

- My young children play in the garden and on their trampoline (which is located at the rear of my garden and just feet away from the proposed extension), I fear that they will be seen by customers from this extension whilst trying to play in the privacy of their own garden.
- Noise and adult conversation will travel and I do not wish to have to curtail the time my children are in the garden due to what may be taking place "just over the fence."
- As a family with a dog, I am concerned that the dog will be alerted to the additional noise and traffic directly behind our garden which will provoke him to bark. This will cause additional disturbance for others.

Precedent

- A concern remains that if Neighbourhood are to be granted this rear dining extension then the other establishments on the parade will also look to do similar, which will cause even greater issues for noise and pollution.

Environmental issues

- Additional seating area will naturally result in more customers which in turn leads to an increase in rubbish, Increased food waste and increased glass waste.
- All of this will result in more smells, more rubbish and will attract rats and vermin.
- There have already been increased sightings of rats in the area. I have also personally witnessed people using the alley as a toilet, especially as more delivery drivers are using the rear access to collect their orders.

Objection 13

I object to this application, which is simply a rehash of the earlier one. Very little has been added, apart from a couple of courses of bricks to the side (single skin). The roof and openings remain as before. Reliance is placed on an acoustic report, but that report is so strewn with errors and unsafe assumptions as to be worthless, as explained below.

The noise impact statement begins by referring to an assessment of "an outdoor dining area", rather than the enclosed space that is the subject of the application. It then states that "This report is designed to be suitable to discharge typical plant noise planning conditions, as per our original scope of work" (emphasis added). That scope has not been supplied, but noise emanating from plant and machinery is of an entirely different character to noise associated with gatherings of people in pubs and restaurants, and the report is therefore irrelevant. Most significantly, it states that it should not be relied upon for other uses, i.e. other than plant noise planning conditions. Even on its own terms, the report is entirely worthless as an assessment of the likely impact of the works the subject of the application.

It goes on to state that "Calculations were undertaken for the nearest identified receiver, identified as a first-floor window... It should be noted that if there are closer receivers... a reassessment will be necessary, and this should therefore be confirmed by the Client" (emphasis added). No indication of such confirmation is supplied, but in any event it is clear that the report has been prepared on a false premise. The distance has been measured from the centre of the extension, without any explanation for why that methodology has been adopted.

Even on that basis, the window above is no closer than the edge of the property to the rear (on Ballbrook Avenue). If the distance is taken between any opening to the dining area (as it should have been), then the rear of the residential property to the rear is less than the distance to the window above. Again, therefore, the report does not support the application, even on its own terms.

The report also assumes what it seeks to prove, in that it does not discount the "background noise" from plant which was installed as part of the unauthorised works the subject of the (amended) application. To re-cap, the application relates to works which were carried out without planning permission. As part of those works, the occupier installed a black extractor fan (or similar) above the dining area, on an external wall. No permission was sought or granted. The fan produces noise. There is also an A/C unit at first floor level, installed without permission, and also producing noise. Accordingly, when the authors of the report purported to measure the existing, background noise (paragraph 3.1), what they were actually measuring included the noise of the unpermitted development: the unauthorised fan and A/C unit, thereby increasing the apparent background noise level, and artificially reducing the apparent impact of noise emanating from within the premises.

The anticipated noise has been modelled as a plane source (paragraph 6.1), but this methodology is unjustified. No consideration has been given to the fact that the rear door to the premises is routinely left open, or used by delivery drivers. The report proceeds entirely on the assumption that the only outlet will be opening roof lights, but the door provides a much wider aperture and the calculations, assumptions and penalties are therefore wholly irrelevant on this basis alone. As a comparator, a "shisha bar" has been used, without any consideration of the different nature of sounds produced in an establishment serving alcohol. The anticipated noise is assumed not to be tonal, impulsive, or intermittent, but there is no basis for such assumption. To the contrary, the noise is very likely to be impulsive and intermittent, and a further penalty ought to have been applied. No consideration has been given to the effect of the playing of music within the venue, although the condition proposed in the supporting statement only refers to "live music".

There are many other issues with this report. It does not comply with the requirements of the relevant British Standard in that it does not even attempt to measure the impact on any receivers other than at a nearby window. It does not address, for example, the proximity of residential homes and gardens, and the impact that a noisy pub / restaurant would have on the residents. It assumes that any noise would be partially shielded by a window, which is not the case. At the proposed opening times, the adjoining gardens would be expected to be in use. Young children should not be subjected to the noise made by groups of people consuming alcohol a few metres away. The adjacent homes also include bedrooms as the closest point to the extension, some of which are used by young children.

The report closes by stating that "A noise impact assessment has then been undertaken using manufacturer noise data to predict the noise levels, due to the proposed plant, at the nearby noise sensitive receivers" (emphasis added). It appears that either (a) the authors were entirely confused about what issues they were addressing, (b) the report was simply copied or "re-purposed" from another job, or (c) the report was mixed up with another assignment. The text is littered with errors and typographical mistakes indicative of a lack of care in its preparation. Whatever the reason for the slapdash nature of the report, the authority can have no confidence that its purported conclusions are safely derived from accurate measurements or proper analysis, and it should be entirely discounted.

It is also regrettable that the applicant has misrepresented the conclusion of the acoustic report in the supporting statement. The statement that "the Report concludes that there will be no adverse noise impact on the nearest residential properties, and the proposed structural

amendments will provide further acoustic mitigation" is false and misleading. The report (such as it is) actually concludes that "if these [maximum allowable emissions] are adhered to, it is indicated that the dining area would have a low impact". Even that conclusion is based upon a number of assumptions, which are revealed by the terms of the report itself to be unsound. There is no finding that "further acoustic mitigation" is provided by the structural amendments, which are not addressed in the report.

The report does not deal with the noise from the A/C unit. The effect of installing such a unit between protruding extensions is to produce a "soundbox" effect, which amplifies the noise and directs it towards the properties to the rear. Nearby premises are subject to conditions as to the silencing of external plant. No such proposals are made by this applicant. The A/C unit should be removed.

I also have concerns about waste management. The state of the alley is already poor, and it attracts foxes and, I suspect, vermin. Other premises adjoining the alley are required to maintain their bins on their own land, and this establishment should do the same.

Finally, the proposal that the dining area will only be used until 9pm is worthless. It is incapable of being policed, and unlikely to be observed. The premises adjoining the lane routinely ignore restrictions on operating hours and, for example, the emptying of glass bins at unsocial hours.

Accordingly, the amended application wholly fails to address the reasons for which the original application was dismissed: "the proposed canopy would facilitate the more intensive use of the existing outside area of the existing premises to the detriment of the amenity of the occupiers of nearby residential properties. The proposed development would therefore be contrary to the provisions of Core Strategy policies SP1, DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26", or indeed the comments of the environmental health team in relation to noise.

Objection 14

I would like to object to the proposal on the grounds that:

- a) the noise created would disturb nearby neighbours;
- b) that it would set a precedent for other eateries to extend their outside seating in a similar manner;
- c) that it would impinge on what is a residential area and in no way enhance the conservation area.

Objection 15

As residents who live behind the proposed development we wish to register our strong objections to the grant of the application.

All the present food outlets on that part of Lapwing Lane point towards Lapwing Lane itself. To grant this application would create a precedent for the encroachment of those premises on the passage way at the rear of that group of premises, which would be very detrimental to the houses, such as ours, which are situated behind and to the side of the passage way. We do not know whether you have sought the views of residents in the flats which adjoin the proposed development, but on their behalf we should stress that, being only a few yards away from it, they will be very adversely affected indeed.

Even if this were not to be treated as a precedent - setting case, it is clear to us that environmental detriment in the area is increasing despite any assurances that might have been given by the businesses. We would stress the following facts - 1. Empty bottles are regularly, and noisily, deposited in bins at 10 or 11 at night: 2. Music is heard from the Wine and Wallop wine bar on summer evenings: 3. The dustbins used by some of the premises are not equal to the task of accommodating the refuse that is being created, with the result that during some parts of the week refuse is left on the side of the bins.

John Leech - Objection

I am writing to oppose this application. Allowing tables and chairs out of the back would set a dangerous precedent and result in unacceptable noise and disturbance for residents on Ballbrook Avenue

The application also has unacceptable waste management proposals. It is not acceptable for storage of their bins to be in the alleyway. It ought to be noted that an additional license condition was attached to their neighbours' license application to ensure that ALL bins are kept on the premises and NOT in the alleyway. Keeping bins in the alleyways is not considered acceptable and leads to the area being scruffy and encourages dumping, which has been a problem behind the shops on Lapwing Lane.

Ballbrook Conservation Area Group - Objection

The views of the residents of the Ballbrook Conservation Area were sought by email. These were originally being collated by Jane Bracewell but following her stepping down on 4 November, residents were invited to re-submit their comments to Iyinka Abibi of 27 Ballbrook Avenue. This response is based on the responses received to that second request. 12 responses were received. Of these, all objected to the proposal.

Analysis of the Proposal

The amended application relates to building works which were completed without permission, and for which retrospective permission has previously been refused. No planning application preceded the original work. The amended application has itself been modified, to cover an A/C unit that has already been installed at first floor level.

The previous retrospective application was refused for two reasons:

- 1) The erection of the proposed canopy would facilitate the more intensive use of the existing outside area of the existing premises to the detriment of the amenity of the occupiers of nearby residential properties. The proposed development would therefore be contrary to the provisions of Core Strategy policies SP1, DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26.
- 2) The proposals due to their siting, scale, design and materials are considered to form an incongruous feature to the detriment of the visual amenity of the area and fail to preserve or enhance the Ballbrook Conservation Area in which the proposals are located. The proposed development would therefore be contrary to the provisions of Core Strategy policies SP1, DM1, EN3 and saved policy DC18.1.

The assessment of the previous application in the delegated officer report was as follows: "[t]his more intensive use in close proximity to residential properties is considered to give rise to unacceptable impacts on the residential amenity of occupiers of premises on upper floors on the terrace and on Ballbrook Avenue and Lyndhurst Road by virtue of the potential for noise and activity generated by the use of the covered area such as raised voices, shouts and other activity which would be associated with the use."

The amended application does not overcome these objections. Whilst some courses of brick are proposed between the top of the existing wall and the roof, the existing roof (with opening polycarbonate windows), and back door, will remain. No sound mitigation measures are proposed.

The "noise impact assessment" accompanying the application is expressly based on BS 4142 "Methods for rating and assessing industrial and commercial sound", which has no application to recreational activities, music, or people. The assessment is also stated to be "designed to be suitable to discharge typical plant noise planning conditions" and is not to "be relied upon for further reasons". No reliance can therefore be placed on this assessment.

The Council's Environmental health team made the following comments in relation to the earlier, refused application:

(1) Of the assumed noise level of 62dB used in that application, that "[t]his seems very low as a normal conversation is usually about 60dB and noise from inside a restaurant can be around 70 - 80dB depending on the capacity";

(2) That people "will be eating and drinking, so the voices are likely to be elevated above the 62dB they have predicted. Regardless of the predicted noise levels from customers (which are averaged over an hour in the report), the customers laughing, shouting etc will produce much higher LAMax noise levels which will be well above the average noise levels and are likely to be intrusive and detrimental to the amenity of nearby residents"; and

(3) "EH also asked that the applicant consider the noise levels at the nearest residential premises on Ballbrook Avenue and Lyndhurst Road. The noise from an external dining area is likely to cause detriment to these residents particularly when they are using their gardens, and no mention of this has been made in the report."

The amended application does not address these concerns:

(1) Without explanation, the amended application has actually used a lower assumed figure of 60dB;

(2) The amended application has ignored the second comment, and does not provide any evaluation of LAMax or its effects on the amenity of residents; and

(3) The amended application also ignores the third comment, and has only purported to measure the noise travelling to the flats on Lapwing Lane. It has also ignored the presence of a door to the rear (facing Ballbrook Avenue) which is often left open in summer.

The conclusion to the Supporting Statement to the amended application does not give an accurate or fair summary of the noise impact assessment. The summary states that the assessment "concludes that there will be no adverse noise impact on the nearest residential properties", whereas the assessment itself refers to a "low impact". The comment in the Supporting Statement that "the proposed structural amendments will provide further acoustic mitigation" is not justified by anything in the assessment.

Finally, it should be noted that the A/C unit that is also the subject of the application is not addressed in the supporting statement or acoustic report. The unit is installed in a location between lateral brick walls that produce a "sound box" effect, amplify the noise, and direct it towards the properties to the rear. Its height means that the sound travels into the nearby properties. It is not stated to be subject to a 9pm cut-off, as is the case with the extension.

It therefore remains the case that the development for which permission is sought in the Application will be detrimental to residential amenity and that the proposal is still contrary to Core Strategy policies SP1, DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26. It is also contrary to paragraph 130f) of the National Planning Policy Framework

("the NPPF") which requires developments to ensure a "high standard of amenity" for those affected.

As to the visual impact, the addition of a few courses of brick does not address the previous reason for refusal, noted above, that the proposals "form an incongruous feature to the detriment of the visual amenity of the area and fail to preserve or enhance the Ballbrook Conservation Area ... contrary to the provisions of Core Strategy policies SP1, DM1, EN3 and saved policy DC18.1."

Other Comments from Residents

The following text is taken directly from the responses from residents.

Approval of the Application would set a regrettable precedent for the extension of food and drink premises in the terrace on Lapwing Lane into the whole of their rear yard areas with the prospect of bringing such uses into unacceptably close proximity to neighbouring residential properties. This is not a case of a mere fear or generalised concern of a precedent effect but one where the facts speak for themselves. If one food and drink establishment in a terrace (which, as here, contains several such establishments) is permitted to extend into the whole of its rear yard area there would be little reason why others should not be allowed to do likewise.

The fact that the development would occupy the whole of its rear yard area means that the alleyway to the rear and side of the terrace of properties on Lapwing Lane will inevitably be used to manage waste from the premises. The waste management plan submitted with the Application shows as much. The fact that this is an existing arrangement does not alter the fact that the extended premises will generate more waste and impacts presently experienced such as the noise of glass bottles crashing into paladin bins will be exacerbated.

Please put my tally down to stop this extension and to actually have the unauthorized building removed. As this was built without prior approval it should be removed without delay!
The alleyway is already an eyesore and a health hazard and should be addressed immediately.

I would like to object to the proposal on the grounds that:

- a) the noise created would disturb nearby neighbours;
- b) that it would set a precedent for other eateries to extend their outside seating in a similar manner;
- c) that it would impinge on what is a residential area and in no way enhance the conservation area.

This proposal will not directly affect my household, however if my home backed on to the alley behind the arcade, I would not be happy about this. If this is the view of those of our neighbours directly affected by this, then I feel we, as a community should support their objection.

There are currently 5 (one is a double unit) bars/restaurants in the arcade and if this application was successful, I don't see how similar applications from the others could be refused. That would potentially increase the noise disturbance fivefold.

Applications for increased opening hours could be made at a later date.
Premises could change hands.

I walked down this alley today and was shocked at the state of it. The bins were mostly overflowing. There were large empty cans of cooking oil left in the ally (not in a bin), together with loose cardboard boxes. Litter was also present and at least one drain was blocked,

resulting in a puddle. Hardly a suitable fire exit. The present state of the alley does not discourage rodents and foxes.

We wish to object to the planning application for 113 Lapwing Lane due to the detrimental effects on the neighbours. Also it could set a precedent for the whole row of Lapwing Lane premises, which are mainly food outlets, to extend closer to the rear of properties on Ballbrook Avenue. Better to just continue use of tables out of the front of the premises rather than at the back closer to residential properties.

We don't support the new plans. It doesn't affect us directly but I know it will have an impact on the residential homes immediately behind the row of shops.

We also fear that if the plans are passed it will only be a matter of time until they extend their hours. Also, permitting this building will likely set a precedent for neighbouring businesses to do the same.

I would like to register an objection to the proposals for lapwing Lane outdoor eating area
I would like to object to this proposed planning application for the following reasons:

I am not happy with the acoustic report;

It begins by referring to an assessment of "an outdoor dining area", rather than the enclosed space that is the subject of the application

I am concerned about the skylight windows, when open emitting noise from inside
It goes on to state that "Calculations were undertaken for the nearest identified receiver, identified as a first floor window. I feel that where I live 27 Ballbrook Avenue, my back wall is nearer to the building than the first floor window, an assessment should be done from my back wall and house.

The anticipated noise has been modelled as a plane source (paragraph 6.1) but no consideration is given to the fact that the rear door to the premises is routinely left open or used by delivery drivers.

I think it an unnecessary addition to the restaurant as there is outdoor seating at the front of the restaurant

I feel this will set a precedent for the other businesses and we could end up with a complete row of bars almost in the back gardens of those people living on Ballbrook.

There is already a considerable amount of disturbance caused by noise from the alleyway. Bins being moved along the cobbles at antisocial hours, the emptying of glass into bins, staff chatting, delivery drivers collecting from the rear of properties, scooters (delivery) driving along the back on the alleyway. I do not think the residents can cope with an increased level of noise, which would occur if this proposal is granted.

Neighbour support

I think this proposal is shows more consideration to the neighbouring properties on Ballbrook Ave, than the original proposal.

I agree we should support this application.

Problems in the back alley are an environmental health issue. This limited addition of tables and the decision not to have music plus limiting hours to 21:30, won't significantly increase the existing problems there. I believe that Neighbourhood do not store their bins in the back alley

and only fill the bottle bins the next morning. I understand also that any food waste is double bagged on the advice of the refuse collection company to reduce Ingres by rodents. I understand that a response under the banner of the Ballbrook Conservation Area is being submitted and that this submission does not necessarily reflect the consensus of the residents of the Ballbrook area. As it is being done by one of the immediate neighbours on Ballbrook Ave that back onto the back alley to 113 Lapwing Lane.

Applicants' comments

The applicant responded to the Council's concerns regarding the air-conditioning unit and bin storage in the rear and side alleyway:

The air conditioning was faulty and as soon as it was reported to myself I had an engineer visit and fix it, it's been there for the past 4 years without any problems from the neighbours upstairs - I think I've already supplied you the spec for that (we actually only use it for about 2 months of the year as well)

The bins have ALWAYS been kept in the back alley way (every business keeps them there as they are too big to fit through the gateway) I know Steve Rowe from the council and have many conversations with him and as long as they are kept tidy of which they are has no problems with this.

Access to the roof, I had a roofer go up there ONCE to attend a leak that we had, the neighbours complained about this to my landlord and said that I need to inform the tenants that if we were to go up on the roof that we would let them know - of which I have agreed to.

They mention about the poor construction but we've had plans drawn up to amend this, and with the extra soundproofing I intend to do I don't see this as an issue, and the agreement states I can't have music nor anyone in there past the hours of 21:00 anyway.

It is not possible to incorporate any waste storage in the rear yard, and as stated above, this is common to most units on the parade and has been the case for a number of years.

In regard to the bin being kept within the perimeter of Neighbourhood we have never been able to do this, like every other business the bins don't fit through the gate as it measure 78cm in width, and the waste bin measure 120 x 105 cm so impossible to get it through the gateway.





I have attached some pictures of the alleyway where you can see where all the other businesses keep their bins, I presume if I'm to keep mine in the yard then so will every other business on the Lapwing Lane parade, that will be very difficult as especially when most of the shops/ cafes and restaurants have already converted their yards so they wouldn't be able to do that anyway.

I spoke with Steve Rowe at the council again last week and he is happy with this as he understands these bins do not fit through the alleyway.

Policy

The Development Plan

The Development Plan consists of:

- o The Manchester Core Strategy (2012);
- o Extant policies within the Unitary Development Plan for the City of Manchester (UDP) (1995);
- o The National Planning Policy Framework (2021)

The Manchester Core Strategy (2012)

The Manchester Core Strategy was adopted on the 11 July 2012 and replaces a large number of policies in Manchester's Unitary Development Plan. The policies that are material to this application include:

Policy SP1 'Spatial Principles' one of the key spatial principles is the emphasis on the creation of neighbourhoods of choice, providing high quality and diverse housing around district centres which meet local needs, all in a distinct environment.

The policy goes on to state that development in all parts of the City should:

- o Make a positive contribution to neighbourhoods of choice including;
- o Creating well designed places that enhance or create character.
- o Making a positive contribution to the health, safety and well-being of residents;
- o Considering the needs of all members of the community;
- o Protect and enhance the built and natural environment.
- o Minimise emissions, ensure efficient use of natural resources and reuse previously developed land wherever possible;
- o Improve access to jobs, services, education and open space by being located to reduce the need to travel and provide good access to sustainable transport provision.

Policy EN1 'Design principles and strategic character areas' states that all development in Manchester will be expected to follow the seven principles of urban design. Opportunities for good design to enhance the overall image of the City should be fully realised, particularly on major radial and orbital road and rail routes. Proposals for new development must clearly detail how the proposed development addresses the design principle, reinforces and enhances the local character of that part of the City and supports the achievement of the Core Strategic objectives.

Policy EN3 'Heritage' states that the Council will encourage development that complements and take advantage of the distinct historic and heritage features of its districts and neighbourhoods. New developments must be designed so as to support the Council in preserving or, where possible, enhancing, the historic environment, the character, setting and accessibility of areas and buildings (including Conservation Areas).

Policy EN19 'Waste' states that the Council will require all developers to demonstrate the proposals consistency with the principles of the waste hierarchy (prevention, reduction, re-use, recycling, energy recovery, and disposal).

Policy C10 'Leisure and the Evening Economy' seeks to protect the residential amenity of an area from the adverse impact of developments that relate to the evening and night-time economy.

Policy DM1 'Development Management' all development should have regard to the following specific issues:

- o Appropriate siting, layout, scale, form, massing, materials and detail.
- o Impact on the surrounding areas in terms of the design, scale and appearance of the proposed development. Development should have regard to the character of the surrounding area.
- o Effects on amenity, including privacy, light, noise, vibration, air quality, odours, litter, vermin, birds, road safety and traffic generation. This could also include proposals which would be sensitive to existing environmental conditions, such as noise.
- o Community safety and crime prevention;
- o Design for health.
- o Adequacy of internal accommodation and external amenity space.
- o Refuse storage and collection.
- o Vehicular access and car parking.

For the reasons set out below, it is considered that the proposal accords with the above Core Strategy policies.

Saved UDP policies

The Unitary Development Plan for the City of Manchester (1995).

For the reasons set out below, the proposed development is considered to accord with the following saved UDP policies which are material to the application:

DC10 (Food and Drink Uses) Extant policy DC10 states that in determining planning applications for developments involving the sale of food or drink for consumption on the premises, or for hot food to be consumed off the premises, the Council will have regard to:

- a) The general location of the proposed development;
- b) The effect on the amenity of neighbouring residents;

- c) The availability of safe and convenient arrangements for car parking and servicing;
- d) Ease of access for all, including disabled people;
- e) The storage and collection of refuse and litter.

If the Council considers the proposed development to be acceptable in principle, conditions may be imposed in order to protect the amenity of nearby residents. These conditions, amongst other things, include limitations on the hours of opening, and the need to deal satisfactorily with noise, fumes, smells, the storage of refuse and the collection of litter (DC10.4).

DC26.1 (Development and Noise) Extant policy DC26.1 states that the development control process will be used to reduce the impact of noise on people living and working in the City and that developments likely to result in unacceptably high levels of noise will not be permitted in residential areas.

DC18.1 (Conservation Areas) Extant policy DC18.1 states that the City Council will seek to preserve and enhance the character of its designated Conservation Areas.

National Planning Policy Framework (July 2021)

The central theme of the NPPF is to achieve sustainable development. The Government states that there are three dimensions to sustainable development: an economic role, a social role and an environmental role. Chapter 16 of the Framework requires that the significance of heritage assets is identified and that developments affecting heritage assets should seek to preserve and enhance them, assessing the level of harm that could potentially ensue and highlight the public benefits which could outweigh any harm.

Issues

Residential Amenity

The rear yard that is the subject of this application is located within a suburb where external dining has gained immense popularity, particularly since restoration of the Victorian Lapwing Lane Arcade canopy to the front which accommodates external seating under much of its length. A similar pattern of dining on the road frontage is observed at nearby Burton Road. At the site, this has created a vibrant and active frontage to the busy Lapwing Lane elevation that is very popular especially during the evenings, weekends and summer months.

The character of the rear of the site is however very different with considerably quieter ambient background noise. Resident's bedrooms of the flat above are located on this rear elevation and the alleyway boundary is shared with the rear gardens of houses on Ballbrook Avenue. This elevation of the building therefore provides respite from the noise and activity on the Lapwing Lane frontage, consistent with its original service yard function. Other rear yards in the parade have retained their service yard function accommodating various ancillary services; chillers, fume extraction and refuse storage.

The application refused in 2020 noted that the lack of acoustic insulation offered by the canopy structure would give rise to the potential for noise and activity generated by the use of the covered area such as raised voices, shouts and other activity which would be associated with the use.

The amended application has sought to address those concerns by a number of means; the in-situ timber sections of wall above the original brick are proposed to be replaced with several courses of brick up to a timber fascia/soffit level to form an enclosed space. The original yard gate leading out into the alleyway is retained. The canopy roof, a sloping timber/membrane

structure with 4no. polycarbonate rooflights is to be insulated, the hours of use of the yard area are proposed to be limited to a 9pm finish and no amplified music would be permitted in this area. These matters carry material weight in support of the proposal; meeting the broad objectives set out in national and local policy; promoting the efficient use of land and buildings and economic growth, including of the night-time economy (NPPF). Alongside policies within the Core Strategy and saved UDP policy, it also requires that development is sustainable; this includes matters of design and residential amenity.

In this application, the submitted Noise Impact Assessment (NIA) is based on a stated 12no. covers that would be accommodated in this area; however, the business website clearly advertises that the space accommodates 20no. covers; this is then taken as the definitive number. It also notes that 2no. of the rooflights are openable.

The yard area which previously accommodated a degree of servicing space has recently been further extended and fitted out with tables and fixed seating for diners. The restaurant's publicity indicates that on some nights, diners can enjoy a pizza whilst a live DJ plays or live football games are shown. This would be in the main restaurant area. On such nights, it is not unreasonable to consider that in addition to the 20no. diners who can be accommodated in the rear yard area, considerably more patrons could be standing whilst enjoying a drink.

The Council has considered the proposals to mitigate the original concerns; imposing conditions which requires use of the rear yard area to cease at 9pm, prohibiting amplified music and acoustic insulation.

The operating hours of the bar/restaurant are:

Monday – Thursday 4pm-10pm

Friday 4pm –11:30pm

Saturday 1pm –11:30pm

Sunday 1pm–7pm.

Imposing a 9pm curfew of the rear yard area in practice would be difficult to enforce. It relies on bar staff policing this area which on weekends means closing it off 2.5 hours before the closing time of the main bar/restaurant on the busiest trading days of the week.

Moreover, any benefits of the proposed acoustic insulation and building up of the rear boundary walls would be invalidated by noise leakage when the rooflights and rear gate was open, for example, in the warmer summer months and when delivery drivers arrive at the back gate to collect orders. This is a service which has seen increasing demand in response to Covid-19 which has further intensified the use, noise and activity at the rear of the site. The NIA states that the rear first floor window is 3-metres from the centre of the canopy roof. It does not acknowledge that the window is for a bedroom. In the warmer summer months, when residents wished to keep windows open, they would be subject to an elevated level of noise, particularly if rooflights are open for prolonged periods and the rear gate is open intermittently.

The NIA considers that the noise emissions when rooflights are open as comparable to a “shisha bar with a capacity of 50no. people”. This however does not factor in predicted elevated noise levels when alcohol is served. In addition to a 9pm curfew, the report recommends a Noise Management Plan which includes: “Reasonable steps, such as regular patrols, should be taken to monitor and control behaviour to minimise unreasonable noise due to patrons”. The Council considers that such measures whilst well-intentioned, are unenforceable in practice.

The application has been assessed by the Environmental Health Officer who has no objection to the proposal provided conditions for the above measures are adhered to and that the roof

area is enclosed. The EHO has also accepted the NIA but as noted, there are omissions which have a material bearing on the impact of the proposal on residential amenity as set out above.

Lastly, the Council is mindful that any approval of the use has the potential to establish a precedent for similar recreational uses of rear yards at other premises in the parade; this would give rise to a harmful cumulative noise impact. Residents who choose to live above the bar/restaurant have done so in the knowledge that the rears are quiet areas which offer respite from the front elevation. Residents who were subject to continuing noise and disturbance would resort to issuing further complaints which would place an additional burden on the Local Authority.

The Council considers that even with the boundary walls built up to canopy level, the proposal facilitates a more intensive use of the existing yard area where patrons' raised voices, laughter and shouts in close proximity to resident's bedroom windows, exacerbated when rooflights and the rear gate would be open, would be to the detriment of their amenity, contrary to saved UDP policies DC10(b) and DC26.1 and Core Strategy policy DM1.

Air-conditioning unit

Residents' amenity has reported as being further affected by the siting of the air-conditioning unit directly below a bedroom window where its hum and vibration has led to disturbed sleep. The applicant has provided a statement that the unit had a fault and had been repaired.

A complaint was raised by a resident of the flat above the commercial premises regarding noise and vibration from the air-conditioning unit which is affixed to the external wall forming a resident's bedroom. The complaint was addressed to the Council's Environmental Health team who advised the resident to keep a diary of nuisance noise events. This was not followed by the resident and the noise complaint case was closed by the EHO.

The applicant has stated that there was a fault with the unit which was resolved when an engineer was called to investigate.

The EHO has recommended a condition that the unit complies with the recommended acoustic condition. This requires that it achieves the Council's standard for noise emissions which achieves a rating that is 5dB (LAeq) below the typical background (LA90) level at the nearest noise sensitive location. This condition is pre-commencement which is belated as the use is already in operation. Any future permission would need to be re-worded so that testing and submission of acoustic data on the air-conditioning unit must commence within 3 months of the date of any permission, in the interests of residential amenity, pursuant to saved UDP policies DC10(b) and DC26.1 and to Core Strategy policy DM1.

Waste Management

It is noted that the previous application did not raise the matter of waste storage as a reason for refusal, following no objection from the Environmental Health team. Concerns with this application have however been raised by residents, the EHO, a local Councillor and by the Council's Waste Compliance team in the present application. At this site, waste for both the commercial premises and residents is entirely managed from the alleyway, including bins stored in view of the Lapwing Lane elevation. This has impacts on the character of the Conservation Area.

The Council sought to address the issue of managing waste by requiring that some waste generated by the development is managed from within the rear curtilage. This would reduce the number of containers within the alleyway and be consistent with the more recent permissions

which have included waste provision in their yard areas. It would also address the cumulative impact of waste containers building up in the side and rear alleyways which are detracting from the visual gains made to the Lapwing Lane Arcade frontage in the Conservation Area, and help to tackle the growing problem of fly-tipping which is evident in the area.

Whilst it is noted that some businesses also manage waste in the alleyway to the side and rear, permissions granted on nearby commercial premises have sought to address this issue by inclusion of some waste management on site. This includes a change of use at 97 Lapwing Lane from retail to a bar, approved with rear in-curtilage bin storage (Ref: 102309/FO/2013/S2), provision of 2no. waste containers in the rear yard in applications at 105 Lapwing Lane (Ref: 111568/FO/2016/S2) and 105-107 Lapwing Lane (Ref:115526/JO/2017) and a change of use at 111 Lapwing Lane, a same size plot as the application site, from retail (Class A1) to restaurant (Class A3), which included the provision of a 4m x 1.4m bin store within the rear yard (Ref: 121709/FO/2018).

Saved UDP policy DC10.1(e), and Core Strategy policy DM1 require that adequate arrangements are made for waste management and bin storage at food and drink premises. The site has the capacity to accommodate some waste storage, for example, the smaller 240L containers associated with recycling waste. The applicant responded to the Council's request stating that it is not possible to amend the layout of the design to accommodate bin storage, that the rear gate is too narrow, and that waste has always been managed from the alleyway. On the basis of the above, the proposal is contrary to the above policy framework.

Privacy

Relates to previous occasions where contractors or workmen have been on the canopy roof to carry out maintenance work. Residents living above the commercial premises have not previously been notified in advance. The applicant has agreed to do this following complaints to the landlord.

Character

The proposed canopy over the rear yard to create a seating area for 20no. diners represents a non-conforming use of a rear yard area within the parade. Approximately 3no. of the units have some form of extension over the rear yard but none are known to accommodate additional diners. This has implications for the character of the area.

The applicant has stated that the use was necessary to meet the social distancing demands required during the Covid-19 pandemic. Whilst the Council is supportive of the challenge businesses faced at the height of the imposed restrictions, it cannot be used as a justification for a permanent use of the rear yard area for dining when this is out of character with the pattern of development in the local area. It also has implications for a responsible approach to waste management.

Conservation Area

The second reason for refusal of the 2020 application was on the grounds of the siting, scale, design and materials which would fail to preserve and enhance the appearance of the Conservation Area.

The present proposal raises the height of the rear boundary walls by 3-5 courses to enable the canopy roof to form an enclosed space. There are no concerns with the visual impact of this element of the proposal. Neighbouring boundary walls are higher in places at the rears of some

properties and, being at the rear of the site, the proposal has little impact on the appearance of the Conservation Area.

The significance of the designated land described in designation relates to the quality of building frontages, their architecture, materials and trees. The character is also formed of other less tangible elements. In the Council's view, this includes the appearance of street scene and how land use is managed to facilitate responsible and considerate care over the environment. Removing the opportunity to store an element of waste in the rear yard, contributes to the over-proliferation of waste containers spilling over onto the Lapwing Lane street scene, which has a negative impact on the appearance of the Conservation Area. This is contrary to saved UDP policy DC18.1 and Core Strategy policy EN3, which seeks that development preserves and enhances the character of the Conservation Area.

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 a right to a fair hearing and to this end the local planning authority 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 Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) 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. She believes that any restriction on these rights posed by the recommendation given 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

Article 35 Declaration

The local planning authority in making its decision has had due regard to paragraph 47 of the National Planning Policy Framework as well as the development plan, national planning policy and other material considerations and has refused the application for the reasons outlined in the delegated report. Concerns were raised with regards to the management of waste from within the site curtilage, with the LPA seeking the accommodation of some waste containers within the rear curtilage, in line with other premises within the parade. The proposal would not improve the social and environmental conditions of the area, which is designated land, and therefore does not comprise sustainable development. Negotiations with the agent has not resolved the matters of concern and there are no conditions which could reasonably be imposed which could overcome those concerns. The application is therefore recommended for refusal.

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) The proposal facilitates a more intensive use of the existing yard area where patrons' raised voices, laughter and shouts in close proximity to resident's bedroom windows, exacerbated when rooflights and the rear gate would be open, would be to the detriment of their amenity,

contrary to saved UDP policies DC10(b) and DC26.1 and Core Strategy policies C10, DM1 and SP1.

2) The proposal, by enclosing all of the rear yard, removes the opportunity to accommodate smaller waste containers in this space which is contrary to the general character of open yards at the rears of properties in the parade, and leads to an accumulation of waste containers in the alleyways to the side and rear which is in view of the parade frontage. This has a negative impact on the character and appearance of the conservation area, contrary to saved UDP policies DC10.1 and DC18.1 and to Core Strategy policies EN3, EN19, DM1 and SP1.

Appendix 1 – List of consultees & neighbours notified

Environmental Health
Ballbrook Conservation Area Group
West Didsbury Residents Association
Environmental Health
Ballbrook Conservation Area Group
West Didsbury Residents Association

26 Lyndhurst Road, Manchester, M20 6AA
Flat 2, 111A Lapwing Lane, Manchester, M20 6UR
Flat 1, 111A Lapwing Lane, Manchester, M20 6UR
113A Lapwing Lane, Manchester, M20 6UR
115A Lapwing Lane, Manchester, M20 6UR
25 Ballbrook Avenue, Manchester, M20 3JG
115 Lapwing Lane, Manchester, M20 6UR
117 Lapwing Lane, Manchester, M20 6UR
111 Lapwing Lane, Manchester, M20 6UR
23 Ballbrook Avenue, Manchester, M20 3JG
21 Ballbrook Avenue, Manchester, M20 3JG

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Conservation Area - Ballbrook Conservation Area 1992
Area Team Boundary - Name: SOUTH