

Planning

Growth & Development

Delegated officer report for planning application

Application no. 131036/FO/2021

Date registered valid: 13 August 2021

Proposal: Change of use from Class E Retail to Hot Food Takeaway (Sui Generis) together with the installation of shop front and rear extraction flue

Address: 6 Kingsway, Manchester, M19 2DD

Ward(s): Rusholme Ward

Applicant: Ali Hayat, 6 Kingsway, Manchester, M19 2DD

Agent (if any): Mr Ahmed Choudhry, Nada Architects, 169 Kingsway, Manchester, M19 2ND

Case officer: Robert Tyrer
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Recommendation: REFUSE

Date of recommendation: 13 December 2021

Application details

Type of application: Full Application Consent

Development type: Change of use

Date of site visit: 28 September 2021

Standard consultations:

Printed: 20 September 2021 Expired: 11 October 2021

Neighbour notifications

Printed: 20 September 2021 Expired: 11 October 2021

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

The application site relates to the ground floor of a mid terrace two storey property located within a parade of 6 shops. The application site is currently occupied by Autospares a Class E retail shop. The application site fronts Kingsway a major highway in and out of the City. At the rear the property has a rear yard that is accessed from Kingsway Avenue which is a predominantly residential street.



Photograph 1 Application site as viewed from Kingsway

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is predominantly residential in nature.

Description of development

The applicant is seeking a change of use from Class E Retail to Hot Food Takeaway (Sui Generis) together with the installation of shop front and rear extraction flue

Consultations & Notification Responses

Local Residents/Public Opinion – A total of 27 representations were received objecting to the application. A summary of the main themes that were raised are as follows:

- Noise and Disturbance – Approximately half of the objections raised concerns about the noise and disturbance especially later into the night.
- Litter/Odour and Smells – The majority of objections raised concerns with the potential for an increase in litter in the area, some residents also raised concerns with odours and smells.
- Parking and Traffic – Over half of the representations raised concerns with parking in the area, with concerns also being raised about existing issues with car parking and deliveries.
- Existing Takeways in the area – Approximately half of the representations raised concerns about the amount of existing take away units in the area.
- Schools – Some of the objections raised concerns regarding the proximity of the site to the local schools.

Highway Services – Highway Services have not objected to the application, consider that the level of trips is unlikely to be dissimilar to that previously experienced, with trips to be of a short-stay nature and staggered across the day.

The site has a regular bus services that run along Kingsway, and the site is considered to be well accessed by sustainable modes.

Highways have raised that it is likely that a significant proportion of visitors will arrive on foot from the surrounding residential area.

The levels of car parking in this location is considerable, Highways acknowledge that parking demands associated with the takeaway are likely to be short-stay with a high turnover of vehicles anticipated.

Highways seek further clarification regarding delivery services whether it will be operational in conjunction with the take-away or whether it will sole operate for pick up. Should a delivery service be proposed, highways have requested that the applicant should confirm where delivery vehicles will be expected to park/load.

Cycle storage for cycle parking for staff should be made within the curtilage of the site.

The proposed flue is not located on the adopted highway and there is sufficient headroom clearance is provided.

Entrance doors should open inwards to prevent obstruction on the adjacent footway.

The designated bin storage area is shown at the rear of the site, this is considered to be an appropriate location for highways provided that there is no obstruction on the adjacent highway.

The submitted waste management strategy confirms that waste will be collected by the appointed waste contractor from the collection point on Kingsway Avenue. The bins will then be returned to the secured bin store by the tenants. This is acceptable from a Highways perspective.

Temporary traffic management / Road and footway closures / Hoarding and scaffolding: The applicant should be advised that any requirements for licensing, hoarding / scaffolding, skips and any associated temporary traffic management arrangements will need discussion and agreement with the council's Highway Applications and Network Resilience teams

Environmental Health – No objection, requested conditions relating to fume/odours, hours of opening, serving/delivery hours, acoustic insulation both internally and for external equipment, refuse storage as the waste management strategy is considered to be acceptable.

Issues

Local Policy

Manchester Core Strategy Development Plan Document (2012) - The Core Strategy was adopted on the 11th July 2012 and replaces a large number of policies in Manchester's Unitary Development Plan.

The Unitary Development Plan (UDP) for the City of Manchester (1995) - The Unitary Development Plan for the City of Manchester was adopted in 1995 and has largely been replaced with the policies contained within the Core Strategy. However, there are a number of policies that are extant.

The relevant **Core Strategy** policies for this application are as follows:

SP1 – Spatial Principles

DM1 – Development Management 1

C1 – Centre Hierarchy

C10 – Leisure and Evening Economy

The relevant **UDP** policies for this application are:

DC10 Food and Drink Uses

Hot Food Take Away SPD (March 2017)

National Policy

National Planning Policy Framework (NPPF) - The NPPF sets out broad national policies on themes such as housing, historic environment, town centres, design, climate change and the Green Belt.

Central to the broad policy direction contained within the NPPF is the notion of sustainable development; development which effectively balances economic, social and environmental factors.

In particular NPPF states that in terms of design:

124. The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

And,

127. Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

130. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

The Principle – Extant UDP policy DC10.2 establishes the principles for and seeks to guide food and drink uses to the City Centre, industrial and commercial areas, in shopping centres, and at ground floor level in local shopping parades of more than eight shops or offices.

The small parade of shops on Kingsway are not considered to be a district centre or a local centre as defined by the Core Strategy (2012) under policy C1 nor is it located within a shopping parade of 8 or more units.

Core Strategy policy C10 states that there will be a presumption against hot food takeaways and night time uses where there is already a high concentration of such uses and that new uses in Manchester centres should support both the day-time and evening/night-time economies whilst not undermining the role of the primary shopping area. Factors taken into account include the existing number of similar establishments in the immediate area, the existence of vacant shop units, the function of the centre and the potential impact on the wider community.

Vitality and Viability/Balance of Uses – It is recognised in the Core Strategy that a vibrant evening economy is important, however this needs to be balanced against the other functions of the centre and in particular the need to support the day time economy.

Development Plan policy and in particular policy C10 of the Core Strategy and saved policy DC10 of the UDP advocate that such uses should be situated with neighbourhood centres or established shopping locations, including shopping parade of at least 8 units. Regard should also be had to existing number of similar establishments in the immediate area, the type and characteristics of other uses and the importance of the location for local shopping and the potential impacts on the wider community.

The application site forms a parade of 6 shops and therefore is not considered to be a suitable location for a hot food take away and such a use would harm the character of the parade as it reduces the number of other uses for the local residents and users of the parade.

The proposed operating hours indicate that the hot food takeaway will be open from 11am until Midnight Monday to Sundays and Bank Holidays.

However, Policy 3 of the Hot Food Take Away SPD requires that where a hot food take away is proposed within 400 metre radius of a primary or secondary school, and proposal meets planning policy in other respects, planning permission will only be permitted subject to the condition that opening hours are restricted to the following:

- A primary school: the hot food takeaway is not open to the public between 3pm to 5.30pm on weekdays.
- A secondary school: the hot food takeaway is not open to the public before 5.30pm on weekdays.

The proposal is located within 400 metres of MEA Central (high school) and Birchfields Primary School and therefore both policy 2 and policy 3 would require the restriction of opening hours on week days to after 5:30pm. Therefore the take away would be an evening use during weekdays. The application at the time of the site visit appeared to still be in use, and whilst it is acknowledged that if it were to become vacant, a vacant unit would not contribute to vitality or viability of the shopping parade however, a use that is open only in the evening will not contribute or support the day time economy either.

Local centres and smaller parades are often found in residential areas and therefore less commercial in nature. In this case to the rear of the site is Kingsway Avenue which is a residential street (photographs 2 and 3). Above the premises is also a residential flat (<https://www.tax.service.gov.uk/check-council-tax-band/property/3866822000>) which is accessed from the rear as shown in both the existing and proposed floor plans. There are also flats above 2, 4, 8 and 10 Kingsway.



Photograph 2 and 3 Kingsway Avenue

Refuse Storage – A waste management strategy was provided with the application and details that the bin storage area will be located within the rear yard together with the refuse storage for the first floor flat.

The strategy details that a 1100 litre Residual Waste, 1100 litre Mixed Dry Recycling and a 240 litre Food Waste bins will be provided.

Environmental Health consider that the waste management strategy is acceptable.

Fume Extraction –Environmental Health have requested that in terms of fume/odours that the information provided should be subject to a condition as the applicant should have completed a risk assessment to demonstrate what is being proposed is sufficient in the control of odours, and show a plan of the proposed system.

Had the proposal been acceptable this could be a condition of any approval as per the wording recommended by Environmental Health.

Parking – There is parking area to the front of the parade, and therefore it is accepted that there are suitable short-stay parking opportunities for customers arriving via private vehicles outside of the parade. Highways have noted that demands for parking in this area is considerable but that the take away are likely to be short stay with a high turnover of vehicles. Residents have raised concerns with the impact of development on parking on the nearby residential streets.

There is no mention of where deliveries would be collected from and if it were at the rear then it is likely to have an impact on the residential amenity of the residents on Kingsway Avenue.

Residential Amenity – Over half of the objections received raised concerns with noise and disturbance, a Hot Food Takeaway (sui generis use) within this parade would give rise to potential generation of an unacceptable level of pedestrian and vehicular activity (high turnover of vehicles as noted by highways), associated noise and disturbance and the congregation of people in and adjacent to the premises especially later within the evening, which would affect the privacy and amenity of local residents especially those at the rear on Kingsway Avenue but also the first floor flats above 2, 4, 8 and 10 Kingsway.

Conclusion – Whilst the proposal would provide a small number of employment opportunities it is considered that on balance that the benefits do not outweigh the adverse harm the proposal would cause on both the vitality and viability of the local shopping parade and on the residential amenity of the nearby residents.

It is considered that the proposed development would conflict with Core Strategy Policies SP1, DM1 and C10, extant policy DC10.3 of the Unitary Development Plan for the City of Manchester, and the Supplementary Planning Document on Hot Food Take Aways.

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:

Article 35 Declaration

Officers have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application. Officers have communicated their concerns about this proposal to the applicant before and during the course of the planning application, but these concerns have not been overcome. The proposal is considered to be contrary to the development plan and therefore refused in a timely manner.

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

1) The proposed use would have an adverse impact upon the residential amenity of surrounding occupiers due to its potential generation of an unacceptable level of pedestrian and vehicular activity, associated noise and disturbance and the congregation of people in and adjacent to the premises, which would thereby affect the amenity of neighbouring and local residents. The proposed use is therefore considered to be contrary to saved policies DC10 and DC26 of the Unitary Development Plan for the City of Manchester and policies SP1, C10 and DM1 of the Manchester Core Strategy and Hot Food Take Away SPD (March 2017)

2) The creation of a hot food takeaway (Sui Generis Use) at 6 Kingsway is an inappropriate use, as it is located outside an established and defined shopping parade/centre where hot food take away uses are usually considered to be appropriately located, to avoid any adverse impacts on the character or amenities of the occupiers of residential premises. The proposed use is therefore considered to be contrary to saved policy DC10 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Manchester Core Strategy and Hot Food Take Away SPD (March 2017)

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health

14 Kingsway Avenue, Manchester, M19 2DH
10 Kingsway Avenue, Manchester, M19 2DH
4 Kingsway Avenue, Manchester, M19 2DH
3 Kingsway Avenue, Manchester, M19 2DH
2 Kingsway Avenue, Manchester, M19 2DH
16 Kingsway Avenue, Manchester, M19 2DH
12 Kingsway Avenue, Manchester, M19 2DH
1 Kingsway Avenue, Manchester, M19 2DH
Flat 2, 4A Kingsway, Manchester, M19 2DD
Flat 1, 4A Kingsway, Manchester, M19 2DD
2A Kingsway, Manchester, M19 2DD
KINGSWAY SUPERSTORE LTD, 2 - 4 Kingsway, Manchester, M19 2DD
Chemist, 10 Kingsway, Manchester, M19 2DD
Top Flat, 8 Kingsway, Manchester, M19 2DD
Top Flat, 6 Kingsway, Manchester, M19 2DD
Flat Above, 12 Kingsway, Manchester, M19 2DD
Top Flat, 10 Kingsway, Manchester, M19 2DD
1 Kingsway, Manchester, M19 2UX
Flat 1, 14 Kingsway, Manchester, M19 2DD
Flat 6, 1 Kingsway, Manchester, M19 2UX
Flat 3, 1 Kingsway, Manchester, M19 2UX
Basement And Ground Floor, 8 Kingsway, Manchester, M19 2DD
12 Kingsway, Manchester, M19 2DD
14 Kingsway, Manchester, M19 2DD
8 Kingsway Avenue, Manchester, M19 2DH
10 Kingsway, Manchester, M19 2DD
8 Kingsway, Manchester, M19 2DD
Flat 8, 1 Kingsway, Manchester, M19 2UX
Flat 7, 1 Kingsway, Manchester, M19 2UX
Flat 5, 1 Kingsway, Manchester, M19 2UX
Flat 4, 1 Kingsway, Manchester, M19 2UX
Flat 2, 1 Kingsway, Manchester, M19 2UX
Flat 1, 1 Kingsway, Manchester, M19 2UX
6 Kingsway Avenue, Manchester, M19 2DH

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
Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface
Area Team Boundary - Name: SOUTH