

Planning

Growth & Development

Delegated officer report for planning application

Application no. 132136/JO/2021

Date registered valid: 4 November 2021

Proposal: Variation of condition number 3 (hours of opening) from planning approval reference 117695/FO/2017 to allow the following opening hours: Monday to Sunday - 12:00 to 23:00hrs

Address: 542 Wilmslow Road, Manchester, M20 4BY

Ward(s): Withington Ward

Applicant: Mr Michael McDonald 5 The Beeches, Manchester, M20 2BG, Manchester, M20 2BG

Agent (if any):

Case officer: Linda Marciniak
Tel: 0161 234 4636
Email: linda.marciniak@manchester.gov.uk

Recommendation: Approve

Date of recommendation: 22 December 2021

Application details

Type of application: Variation or Removal of Condition

Development type: Minor Other

Date of site visit: None

Standard consultations:

Printed: 12 November 2021 Expired: 3 December 2021

Neighbour notifications

Printed: 12 November 2021 Expired: 3 December 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 is an end of terrace ground floor take-away situated on the western side of Wilmslow Road in the Withington ward. The property is at the southern end of a parade of 5 which also includes a convenience store, hairdressers, tobacco shop and vegetarian takeaway. Consent was granted for a change of use from A1 convenience store to A5 hot food takeaway in 2017 (Ref: 117695/FO/2017).

There is a private area of forecourt outside and a communal parking and service yard at the rear. Visiting members of the public can park for up to 2 hours on street in a 36-metre long dedicated parking bay which runs the length of the parade, including for approximately 15 metres (3 car lengths) beyond to the south. There are also 10no. cycle parking spaces outside.

It is not understood whether there is a flat above the shop unit. Flats are listed on the Planning notification as being above Nos.530 and 534.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The site is within a mainly mixed-use area on a key and busy radial route into the city and south Manchester.

The dominant land use is the Christie Hospital which is adjacent to the site and extends for 300 metres south along the main road frontage and 280 metres towards Palatine Road to the west. Facing the site to the east is a similar parade of 6no. independent shop units, including takeaways, with further hospital alongside.

To the rear, beyond the service yard is a short terrace of 5no. Victorian houses on Tatton View. These properties have long front gardens abutting the service yard with a gap of 47 metres between the rear of the site and their front elevations.

The Red Lion public house is on the next block north of Oak Road and facing this on the eastern side of the road is a terrace of 3no. Victorian houses converted into flats.

Description of development

Variation of condition number 3 (hours of opening) from planning approval reference 117695/FO/2017 to allow the following opening hours: Monday to Sunday - 12:00 to 23:00hrs.

Condition 3 of the above application approved the following opening hours which this application seeks to vary:

Monday to Friday 17:00 to 22:00

Saturday 12:00 to 23:00

Sunday and Bank Holidays 12:00 to 22:00

The application proposes to amend these hours so that the takeaway would be open:

Monday to Sunday 12.00 to 23.00.

Consultations & Notification Responses

A total of 20no. addresses were notified of the application, including the dwellings on Tatton View to the rear and the 2no. flats above Nos. 530 and 540 Wilmslow Road. No comments were received. Other consultation responses are detailed below.

Withington Civic Society

WCS objects to the application in its entirety. Whilst the premises are just outside the Withington Stress Area, the proximity of that area should be taken into account

Background:

1. There is already an excessive number of food takeaways in the area
2. Extended takeaway hours will inevitably increase the already substantial litter problem.
3. The area has a very high density of students, contributing to a great deal of night-time noise for residents. Extended takeaway hours will contribute to the number of people who congregate on the street eating (and no doubt drinking).

In determining the current hours for the premises in 2018 under reference 117695/FO/2017 the planning officer gave the following reason:

Reason - In interests of residential amenity in order to reduce noise and general disturbance in accordance with saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Core Strategy.

We agree with that decision and believe it should be upheld. The application, if granted, would have an adverse impact on the area and in our view should be refused.

Highways

Highways have no objection to the proposed change in opening hours.

Environmental Health

No comments to make.

Issues

The following policies are relevant to the consideration of this application:

Policies C10, DM1 and SP1 of the Core Strategy

Saved policies DC26 and DC10 of the UDP

Hot Food Takeaway Supplementary Planning Document (March 2017)

National Planning Policy Framework (NPPF)

Hours

Policy 2 of the HFT SPD considers amenity issues in the context of their opening hours which is material to this application. It states that:

Unless affected by Policy 3 of this SPD (HFT's and schools), the hours of opening of a hot food takeaway will depend on whether it can be demonstrated that there would be:

No unacceptable impact on residential amenity as set out in DM1 Development Management;

There is an established night-time economy and;

It would not adversely affect the character and function of the immediate area, including existing levels of background activity and noise.

Residential amenity

Residential amenity is unlikely to be harmed by the additional hour in the evening from 10 to 11pm nor from the earlier opening between Monday to Friday.

As noted above, there are two known flats above 2 of the other units in the parade one of which is an A5 use with approved later opening hours (see below). Environmental Health have not reported any noise complaints from residents arising from these hours and have no objection to the current proposal. In terms of residents living on Tatton View, there would be no adverse impact as all comings and goings are at the front of the building. Furthermore, the distance between the front of these houses and rear of the site is 47 metres. This is sufficient to mitigate any noise and disturbance from refuse disposal.

Additionally, the use is an existing one so any residents living in flats above units in the parade, will already be familiar with the activities at ground level. This includes an elevated level of background noise and disturbance from activities on street including traffic, noise from car engines revving, stereo systems and doors slamming, comings and goings to the convenience store, public house and restaurant opposite, together with an active student population on a very busy and key radial route.

With regards to the comments of the Withington Civic Society and the issue of the student population and a perceived increase in noise, the demographic in this area mainly comprises established family housing south and east of Arnfield Road, the student population largely living further north and east

Night-time Economy

The night-time economy along this stretch of Wilmslow Road has a much quieter character compared to Withington Village. Nevertheless, there are popular and long-established businesses which serve a local population and no bars other than the Red Lion PH to the north. The general absence of bars in this area creates a very different character compared to the Village.

In terms of the existing opening hours, four out of the 11no. shop units on both sides of this section of Wilmslow Road are A5 or historic A3/A5 uses, with only 1 other (Lotus takeaway) on the same side as the site. For comparison, and where histories are available, conditions attached on approval granted the following opening hours:

Wilmslow Road – East side

521 (Japan Deli) – unknown (Current hours on web: 12.00pm to 10.00pm Monday to Friday, Saturday and Sunday 5.00pm to 10.00pm)
525 (Ginger Café) – unknown (No web hours)
527-529 (Aladdin restaurant) - Monday to Saturday 12.00pm to 11.00 pm, Sundays - 3.00pm to 10.00pm
531 (Mike's Fish and Chips) - 11.30am to 9.00pm seven days a week.
533 (Shakedown) - 09:00 to 22:30 Monday to Saturday, 09:30 to 22:00 Sunday & Bank-holiday

Wilmslow Road – West side

536 (Lotus takeaway) - The shop shall be closed between midnight and 8.00 a.m. on Mondays to Fridays and between 1.00 a.m. and 8.00 a.m. on Saturdays and Sundays.

It is noted that the Public House is also open until 11pm, 7 days a week.

Precedent therefore exists for later opening hours which are not unreasonable in the context of the existing permitted hours. As there are only 2no. A5 uses in the parade on this side of Wilmslow Road, the additional hours are unlikely to lead to a detrimental loss of existing levels of amenity.

Litter

In terms of litter generation, the proposal has not indicated that any additional waste capacity will be required, and a revised WMS was not requested at the time of validation. It is noted that 2no. waste bins are shared between the 5no. units in the parade on this side of the road, including one outside the site. This is sufficient to meet the needs of patrons using the takeaway who might eat outside the premises.

Parking

Sufficient parking exists outside the site and, after 6pm, on sections of Tatton Grove to the north. The dedicated parking lay-by can accommodate approximately 8no. cars. There are two further lay-by parking areas nearby accommodating a further 6no. vehicles. Given that the majority of trade will peak in the evenings, the demand for on street parking will likely be much less during these hours when hospital traffic has reduced. Highway Services have assessed the application and have not raised any objections on grounds of parking or highway safety.

Other matters

The concerns of Withington Civic Society are noted, and the main points addressed above.

In terms of conflict with the Withington Stress Area Licensing policy which covers Withington Village with the express aim of reducing crime, disorder and public nuisance, it is noted that the Stress Area objectives broadly align with those in the Supplementary Planning Guidance for Hot Food Takeaways (March 2017) and Core Strategy policy C10 (Leisure and the Evening Economy).

In addressing the concerns raised by the WCS and as they note, the site lies outside the Stress Area. It is in fact some 267 metres south of the nearest point of its boundary, which is the junction of Wilmslow and Palatine roads.

Furthermore, and specifically with reference to hot food takeaways, which includes all new and material variation applications and extension of the hours for licensable activities, the policy notes that minor variations are usually excluded, and that each application will be considered on its individual merits.

In Planning terms, against this test, those in the SPD and policies C10, DC10 and DC26, the proposal is acceptable; it is an existing land use which seeks a minor variation to the hours of operation particularly in the evening which is the main focus of the Stress Area policy; it is sufficiently spatially separated from the main Stress Area for there to be any significant overspill activity; it is in a short parade where Planning assessments for any future applications outside of the current Class E parameters, can be effectively managed within the existing Planning regulatory framework, and it is situated within a very different context to the defined Withington Stress Area.

Conclusion

Based on the above, the proposal is considered to have acceptable impacts on residential amenity, litter and parking, in accordance with saved UDP policies DC10 and DC26, Core Strategy policies C10, DM1 and SP1 and with the guidance contained within the Hot Food Takeaway SPD.

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: Approve

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 approved the application subject to the conditions below and for the reasons outlined in the delegated report. A total of 20no. neighbours and consultees were notified of the application by letter. 1no. objection was received which has been taken into consideration in the assessment of this application.

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

2) The development hereby approved shall be carried out in accordance with the following drawings and documents received on the 4th of November 2021 or as stated:

Application Form

MCC Planning Decision Notice

Reason - To ensure that the development is carried out in accordance with the approved plans pursuant to policy DM1 of the adopted Core Strategy for the City of Manchester.

3) The premises shall not be open outside of the following opening hours without the prior written consent of the City Council as Local Planning Authority:

Monday to Sunday - 12:00 to 23:00hrs

Reason - In the interests of residential amenity pursuant to saved UDP policies DC10 and DC26 and to Core Strategy policies SP1 and DM1.

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Withington Civic Society

Flat Above, 534 Wilmslow Road, Manchester, M20 4BY
Top Flat, 540 Wilmslow Road, Manchester, M20 4BY
Health Centre Next To 533, Wilmslow Road, Manchester, M20 4BA
531 Wilmslow Road, Manchester, M20 4BA
536 Wilmslow Road, Manchester, M20 4BY
534 Wilmslow Road, Manchester, M20 4BY
10 Tatton Grove, Manchester, M20 4BP
538 Wilmslow Road, Manchester, M20 4BY
531A Wilmslow Road, Manchester, M20 4BA
4 Tatton View, Manchester, M20 4BU
12 Tatton View, Manchester, M20 4BU
540 Wilmslow Road, Manchester, M20 4BY
533 Wilmslow Road, Manchester, M20 4BA
8 Tatton View, Manchester, M20 4BU
6 Tatton View, Manchester, M20 4BU
2 Tatton View, Manchester, M20 4BU
16 Tatton View, Manchester, M20 4BU
14 Tatton View, Manchester, M20 4BU
10 Tatton View, Manchester, M20 4BU
531 Wilmslow Road, Withington, Manchester, M20 4BA

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
Area Team Boundary - Name: SOUTH