

Application Number/s: 132505/JO/2021

Applicant: Rec Room Bars Limited

Agent: None

Location: Dorsey House, 8 Dorsey Street, Manchester

Proposal: Variation of Condition 2 (Temporary Permission) and 3 (Hours) to 129086/JO/2021

Ward: Piccadilly

Description of Site and Surrounding Area

The application relates to the ground floor bar known as 'Alvarium', located within Dorsey House in the city centre of Manchester.

Building

Dorsey House is a five-storey building with the street address '8 Dorsey Street'. The building is adjoined to 31 Tib Street/10 Dorsey Street, a seven-storey building. the building is brick built with the bar contained within the ground floor unit.

Surrounding Area (including Conservation Area)

The application building is within the Smithfield Conservation Area. The application building is not listed and there are no listed buildings within the setting of the application building. Dorsey Street is a no-through road and the surrounding area is characteristically mixed use, with residential, bars and retail proximate to the application site.

Description of Proposal

The application seeks permission to vary conditions to previous planning permission granted under 129086/JO/2021. The application seeks removal of Condition 2 (Temporary Consent) and to vary Condition 3 (Hours of Operation).

Relevant Planning History

114891/JO/2016 – Variation of Conditions 2 and 3 attached to application
111996/JO/2016/C2. Outcome: Application Temporarily Approved

117761/JO/2017 – Variation of Conditions 2 and 3 attached to application
114891/JO/2016. Outcome: Application Temporarily Approved

121551/JO/2018 – Variation of Conditions 2 and 3 attached to application
117761/JO/2017. Outcome: Application Temporarily Approved

125626/JO/2019 – Variation of Conditions 1, 2 and 3 attached to application
121551/JO/2018. Outcome: Application Temporarily Approved

129086/JO/2021 – Variation of Conditions 2 and 3 attached to application
129086/JO/2021. Outcome: Application Temporarily Approved

The Planning Submission

The application is supported by the following information:

- Planning Statement
- Noise Impact Assessment

Publicity LBC

Site Notice/s Posted and Dates: Posted 19/01/22, Expired 09/02/22

Press Adverts Published and Dates: None Required

Neighbour Notification: Consulted 11/01/22

Representations Received: None

Consultations

Environmental Health

No objection. Confirmed that no complaints have been received from a licencing perspective.

Ward Councillors

No comments received.

Policy

The Development Plan

The Development Plan consists of: The Manchester Core Strategy (2012); and Saved policies of the Unitary Development Plan for the City of Manchester (1995). The Core Strategy is the key document and sets out the long-term strategic planning policies for Manchester's future development.

A number of UDP policies have been saved. Planning applications in Manchester must be decided in accordance with the Core Strategy and saved UDP policies as directed by section 38 (6) of the Planning and Compulsory Purchase Act 2004 unless material considerations indicate otherwise.

The relevant policies within the Core Strategy are as follows:

Manchester Core Strategy Development Plan Document (July 2012)

Policy SP1 'Spatial Principles' – Development in all parts of the city should make a positive contribution to neighbourhoods that:

- Create well designed places that enhance or create character
- Make a positive contribution to the health, safety and wellbeing of residents
- Consider the needs of all members of the community
- Protect and enhance the built an natural environment
- Minimise emissions
- Improve access to jobs, services, education and open space

- Be located to reduce the need to travel and provide good access to sustainable transport

Policy C10 ‘Leisure and the Evening Economy’ – Development that supports the evening economy, contributes to vitality of district centres and supports a balanced and socially inclusive evening night-time economy will be permitted, subject to the following considerations:

- Cumulative impact
- Residential amenity
- Balance

When considering the impact of proposed bars, regard should be had to:

- The existing number of similar establishments in the immediate area
- The type and characteristics of other uses
- The existence of vacant units
- The importance of the location for local shopping
- The character of the centre and its frontage
- The potential impacts of the proposal on the wider community
- Any known unresolved amenity traffic or safety issues

Policy DM1 ‘Development Management’ – All development should have regard to a variety of specific issues. For this specific scheme, those issues include:

- Effect on amenity, including noise, vibration.
- Community safety and crime prevention

Saved Policies of the Manchester Unitary Development Plan

10 – Food and Drink Uses – In determining applications for developments involving the sale of food or drink for consumption on the premises, the LPA shall have regard to :

- The general location of the proposed development
- The effect on the amenity of local residents
- The availability of safe and convenient arrangements for car parking and servicing
- Ease of access for all, including disabled people
- Storage and collection of refuse and litter.

26 – Development and Noise – The LPA shall use the development control process to reduce the impact of noise on people living, working or visiting the city. This will include considering the effect of new development proposals that are likely to be noise generators and the implications of new development being exposed to existing noise sources.

Other Material Considerations

City Centre Strategic Plan 2015-2018 (March 2016)

On the 2 March 2016 the City Council's Executive approved the City Centre Strategic Plan which seeks to provide an up-to-date vision for the City Centre within the current economic and strategic context along with outlining the key priorities for the next few years for each City Centre neighbourhood. This document seeks to align itself with the Manchester Strategy (January 2016) along with the Greater Manchester Strategy. Overall the City Centre plan seeks to "shape the activity that will ensure that the City Centre continues to consolidate its role as a major economic and cultural asset for Greater Manchester and the north of England".

Manchester Strategy (January 2016)

The strategy sets the long-term vision for Manchester's future and how this will be achieved. An important aspect of this strategy is the City Centre and how it will be a key driver of economic growth and a major employment centre. Furthermore, increasing the centre for residential is fundamental along with creating a major visitor destination.

National Planning Policy Framework (July 2021)

The revised NPPF re-issued in July 2021. The document states that the 'purpose of the planning system is to contribute to the achievement of sustainable development. The document clarifies that the 'objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs' (paragraph 7). In order to achieve sustainable development, the planning system has three overarching objectives – economic, social and environmental (paragraph 8).

Section 4 – Decision-making – States that local planning authorities should approach decisions on proposed developments in a positive and creative way, making use of pre-application discussions etc. In addition, applications should be determined in accordance with the development plan, unless material considerations indicate otherwise. In this instance, the proposal will be assessed on up to date development plan and any other material considerations. The applicant made use of pre-application discussions and a site visit.

Paragraph 55 states that LPAs should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

Paragraph 56 states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other aspects.

National Planning Practice Guidance (NPPG)

Noise – Decision making needs to take account of the acoustic environment and in doing so will consider whether or not a significant adverse effect is occurring or likely to occur and whether or not a good standard of amenity can be achieved.

Use of Planning Conditions – When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise

have been necessary to refuse planning permission, by mitigating the adverse effects. Conditions must be exercised in a way that is clearly seen to be fair, reasonable and practicable.

Section 70(1)(a) of the Act enables the LPA in granting planning permission to impose 'such conditions as they think fit'. This power needs to be interpreted in light of material considerations such as the NPPF. Rigorous application of the '6 tests' can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible.

Under Section 72 of the Act, the LPA may grant planning permission for a specified temporary period. For example, in the situation that a temporary trial run is needed in order to assess the effect of the development on the area. It is rarely justifiable for a temporary planning permission to be granted a second time. Subsequent permissions can be granted permanently or refused.

Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission (such as new residential development in the open countryside for only agricultural or forestry workers). A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.

Equality Act (2010)

S149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

Issues

Principle of Use

The planning unit has been in continuous and approved use as a bar for a number of years. The principle of the use of the planning unit as a bar is accepted.

Removal of Condition – Temporary Use

The application seeks to remove the condition limiting the use of the bar for a temporary period.

Section 72 of the Town & Country Planning Act allows the LPA to grant temporary permission for development if for, amongst other reasons, the LPA would like to assess the effect of the development on the area. A temporary planning permission should not be extended and upon the conclusion of that temporary permission, the use should therefore be refused or approved on a permanent basis.

The temporary use of the bar has now been extended five times, with this application being the sixth time. This is in direct conflict with the Town and Country Planning Act, as well as the National Planning Practice Guidance. The LPA should therefore proceed to either refuse or approve this use on a permanent basis.

It is evident through the lack of any neighbour objections and consultation with the environmental health team that no complaints have been received. As such, the continued imposition of the temporary use condition is unreasonable and unnecessary and fails the '6 tests' a planning condition must meet.

Variation of Condition – Hours of Operation

The application seeks to vary the condition limiting the approved bar's hours of operation. The hours of operation are already approved/agreed from a licencing standpoint. The hours of operation have been set for an unbroken period of over five years as:

- 1200 – 2300 Monday to Thursday
- 1200 – 0100 Friday and Saturday
- 1200 – 2230 Sundays and Bank Holidays

Previous conditions have stipulated that, upon the expiration of the temporary permission as stipulated in Condition 2 (applied for to be removed), the hours of operation must change to:

- 1200 – 2300 Monday to Saturday
- 1200 – 2230 on Sundays and Bank Holidays

The applicant has submitted an application to vary the above condition to retain the hours of operation as has been approved for a period of 5 years. The change would result in the bar being able to operate for an additional 2 hours on Fridays and Saturdays.

Due consultation with neighbours has taken place. A site notice has been posted, local councillors have been consulted and environmental health have been consulted. No party has provided any objection to the proposed variation of this condition. The LPA's environmental health consultation garnered a 'no objection' response, with the environmental health team confirming in writing that they have had no complaints regarding the operation of the bar from 1200-0100 on Fridays and Saturdays or otherwise.

Upon consideration, it is therefore considered that the hours of operation as applied for on a permanent basis duly accord with Core Strategy policies SP1 and DM1, as well as saved Unitary Development Plan policy DC26.1. It would be thus unreasonable and unnecessary to apply the temporary conditions again.

Conclusion

That the variation/removal of conditions as applied for are acceptable and would accord with policies as set out in Manchester's up to date development plan.

Human Rights Act 1998

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 the right to a fair hearing and to this end the Committee 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 of the application 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:

That planning conditions be varied/removed as followed:

Officers have worked in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application. Appropriate conditions have been attached to the approval.

1. The development hereby approved shall be carried out in accordance with the following drawings and documents:

- The submitted basement and ground floor plans, received via email on 19 May 2016
- The submitted waste management strategy, received via email on 25 July 2016
- The submitted Internal Music Noise Levels Commissioning visit prepared by Lighthouse Acoustics (Reference 0643/LE/02 dated 04 December 2019) – Received 15 December 2021
- The submitted Internal Music Noise Levels document prepared by Lighthouse Acoustics (Reference 0643/LO/05 dated 14 December 2021) – Received 15 December 2021
- The submitted Operating Statement, stamped as received by the Local Planning Authority on 13 January 2021

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.

2. The bar premises shall not trade or otherwise be open to the public outside the following hours:

12.00 to 23.00 Monday to Thursday

12.00 to 01.00 on Fridays and Saturdays

12.00 to 22.30 on Sundays and Bank Holidays.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation, pursuant to policy DM1 of the Core Strategy.

3. The development hereby approved shall be carried out in accordance with the submitted acoustic reports from Clement Acoustics ref. 9804-NIA-01 Rev B (particularly Section 8), dated 25 February 2016 and 9804-NIA-02, dated 25 February 2016, as amended by the additional acoustic commentary provided by Lighthouse Acoustics, ref. 0643/le/02, dated 4 December 2019 and ref. 0643/le/05 dated 14 December 2021

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.