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Date: 7 May 2021
Our ref: 42052/05/SPM/IZ/19686355v2
Your ref: PP-09805637

Dear Sir / Madam

39 Piccadilly | Application under Section 73 of the Town and Country Planning Act 1990 to vary condition 3 of planning permission ref. 126446/JO/2020

On behalf of our client, Luxury Leisure, Lichfields hereby submits a planning application pursuant to S.73 of the Town and Country Planning Act 1990 (as amended) relating to premises at 'Wellington House', 39 Piccadilly, Manchester. The application seeks the:

"Variation of condition 3 (hours) attached to planning permission referenced 126446/JO/2020 *to allow the use of the premises 24 hours, 7 days a week for an additional temporary 18 month period due to the disruption caused by Government COVID-19 restrictions, including provisions to allow the permitted operational hours to revert back to those originally approved thereafter."*

As grant of a S.73 application creates a new planning permission, for the avoidance of doubt the description of development would continue to be as per the original planning permission *118338/FO/2017* which states:

"Change of use of the ground and first floors to an amusement centre (sui generis), with external alterations, and associated works."

Introduction and Background

Luxury Leisure has been trading its adult gaming centres [AGC's] in Manchester for a number of years and they are popular leisure destinations. It has 238 premises nationally of which 100 trade 24 hours a day, 7 days per week. The applicant previously operated out of City Tower on the southern side of Piccadilly Gardens facing the main bus depot. Following grant of planning permission (ref. 118338/FO/2017) for change of use they have been trading from 39 Piccadilly since March 2019.

On 7 May 2020, a S.73 application ref. 126446/JO/2020 was approved pursuant to the original planning permission ref. 118338/FO/2017 which varied condition 4 (hours) (now condition 3) to allow the use of the premises to open 24 hrs, 7 days a week for a temporary 18 month period only. Whilst a permanent 24hr permission was originally sought by this application, the temporary 18-month period was proposed by planning officers at Manchester City Council to allow at least a 12 month period (unaffected by the Government's COVID-19 lockdown restrictions) for monitoring to be undertaken to understand if the operational hours had any impact on crime and anti-social behaviour in the area. It was therefore my client's

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intention to collate robust evidence during this period for submission to the LPA as part of a proposed application to remove the hours condition in the future. However, since this temporary permission for 24-hour operational hours was granted, the operations of the premises has been severely affected by two national lockdowns and Greater Manchester's Tier 3 and 4 COVID-19 restrictions.

The planning permission to trade 24/7 was granted in May 2020 which was during a period of national lockdown. This was lifted in July and the premises was able to trade 24/7 until mid-September. Following this, the premise was then affected by the national 10pm curfew between September and October 2020, closure under Tier 3, and national closure, such that it has remained closed since October. On this basis, the premise has only been able to operate 24/7 for 11.5 weeks since the temporary 24/7 permission was granted up until the curfew hours were introduced by the Government on 22 September 2020. As such, my client has not been able to gather the evidence for the period we expect the Council will require to approve a permanent 24/7 use. We therefore request another temporary 24/7 use for an additional 18 months to make up for the disruption to operation caused by Government restrictions over the previous 12 months.

The Submission

The application was submitted via the Planning Portal on 7 May 2021 (ref. PP-09805637). The requisite fee of £234.00 has been paid electronically via the Planning Portal. In addition to this letter the following documents are submitted with this application:

- Application form and certificate prepared by Lichfields;
- Luxury Leisure Security and Social Responsibility Letter;
- Greater Manchester Policy Security Measures Letter dated 5 June 2017 (ref. 2009/0534/CLT/01);
- Noise Impact Assessment prepared by Hepworth Acoustics dated September 2018 (Report No: P18-472-R01v1);
- Smoking Policy Statement; and,
- Waste Management Form and Basement Plan (Ref. Ref. 1395 SK09 P1).

Site Context and Description

The site comprises a 6 storey (7 with plant room and lift housing) retail / office building known as 'Wellington House' on the northern side of Piccadilly Gardens. The ground and first floors of the building are occupied by Luxury Leisure that trades from the premises as Admiral. The site is currently in use as an AGC and permitted to trade 24/7 for a temporary period. The third and fourth floors are occupied by Rathbone Training (a charity and provider of apprenticeships and work-based skills training which is part of the NCG Group). There is a basement car park accessed from Back Piccadilly to the rear of the site which also serves as a bin store.

The ground floor of the building has an entrance on the corner of Piccadilly. A separate access is provided on the main Piccadilly frontage which serves the upper floors (i.e. the office (B1a) and training uses (D1). Its longest elevation extends along Lever Street and there is a rear entrance for servicing and deliveries located on Back Piccadilly. This rear entrance is secured by roller shutters and iron gate. Bins are taken out of this access and emptied to the rear of the premises.

The surrounding area comprises a mix of retail, leisure and commercial uses. The adjoining building is vacant although planning permission (ref. 118163/FO/2017) has been granted in December 2018 for:

Change of Use from A2 Banking Activities to C1 Hotel Use from first to fifth floor and A1 (Shop) /A3 (Restaurant and Cafe)/A4 (Drinking Establishment) /D2 (Assembly and Leisure) uses at Basement,

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Ground Floor and Proposed Mezzanine Floor, and roof extensions to fourth and fifth floor and extensions to existing light well from first floor to fifth floor.

It is understood that this permission will be implemented to enable the existing Travelodge hotel to extend across the upper floors. The Travelodge opening hours are not restricted by condition. The trading hours of the other units are to be agreed through discharge of condition applications. There is no record on the Council's online planning register that these have been agreed. At the current time this permission has not been implemented and the premises appear entirely vacant.

The rest of the block is occupied by restaurants and a Morrisons foodstore at ground floor which opens from 7am Monday -Saturday. There is a Travelodge on upper floors. The Travelodge operates 24/7 with customers able to access and exit the premises at all hours. The nearby SPAR at 89 Piccadilly also operates 24/7.

There is a nearby Burger King also fronting onto Piccadilly Gardens. The unit first gained approval for a Wimpy takeaway in 1978 (ref. F09189) and there are no restrictive conditions on the permission. Burger King's usual trading hours are 06:00-05:30 (23 and a half hours) each day.. The nearby McDonalds opens 06:00 – midnight as approved by planning permission ref. 107543/FO/2014/C2 approved in February 2015. There are a series of other premises that also open before 8am including Wetherspoons, Starbucks, Caffe Nero and Tesco Express all within a short walk of the application site. These premises all front on to Piccadilly Gardens which is a focal point of activity in the city centre.

The site is well served by public transport links being in a city centre location. Market Street and Piccadilly Gardens tram stops and Piccadilly bus depot are located within 200m of the building and there is a line of bus stops immediately outside the building on Lever Street. Other city centre tram stops, bus stops and Manchester Piccadilly main line station are all within a short walk with some bus services running between 2am and 4am.

Proposed Development

The application proposal consists of a S.73 planning application seeking an extension of time for the temporary permission for a further 18 months through the variation of condition 3 of planning permission ref. 126446/JO/2020. The application is to enable the unrestricted trading from the premises. All other aspects of the use will continue as they currently exist and operate.

Planning Policy Context

The National Planning Policy Framework [the Framework] was last updated on 19 June 2019 by the Ministry of Housing, Communities and Local Government. The overarching aim of the Framework is to proactively deliver sustainable development to support the Government's economic growth objectives. The Framework [§8] identifies three dimensions to sustainable development, economic, social and environmental.

Section 8 of the Framework promotes healthy and safe communities. Paragraphs 91 and 95 are of particular relevance to decision making concerned with ensuring health, inclusive and safe communities.

Paragraph 55 is also relevant in for Local Planning Authorities in considering the imposition or wording of conditions. It states:

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.

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Planning Practice Guidance

On 29 November 2016, the Government published the national Planning Practice Guidance [PPG] which is a live online document which is regularly updated.

Of particular relevance to this application are, Section 2b on ensuring the vitality of town centres, Section 14 on making an application (and related parts in Section 21b), Section 17a providing guidance on seeking planning permission via a S.73 as well as section 21a on use of conditions. Where relevant, this guidance is referred to below.

Development Plan

Having regard to Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, this statement considers the application conformity with the Development Plan, relevant national policy and guidance, as well as any other material considerations.

The relevant parts of the Development Plan for Manchester comprises the Core Strategy [CS] that was adopted on 11 July 2012 together with the saved policies from the Manchester Unitary Development Plan [UDP] 1995 and the Proposals Map.

The site is located within the city centre and there are ten specific city centre policies within the Core Strategy. The purpose of these policies is to promote a vital and viable city centre; policies CC1, CC4, CC7, CC8, CC9 and CC10 are directly relevant to the proposals.

Policies SP1 and C1 support the City Centre as the regional focus for commerce, culture, leisure and tourism. Policy C10 seeks to promote leisure uses in the city centre where they contribute to vitality and support a balanced and socially inclusive evening/night-time economy.

Policy DM1 sets out specific development management considerations and includes the need for development to be acceptable in terms of design, crime impact and neighbour amenity.

The site is located within area 9 'Piccadilly and Oldham Street' as identified by saved Policy RC20 of the Manchester UDP where the non-retail services are considered to contribute to street activity and complement neighbouring shops providing a useful service to the substantial numbers of people walking through the area.

Compliance with these policies is set out below where the proposals are considered in more detail.

Supplementary Planning Documents

The Council has four adopted Supplementary Planning Documents [SPD]. Only one is considered relevant to this proposal. The 'Guide to development in Manchester SPD' was adopted in April 2007 and provides guidance on a variety of planning considerations including design and crime prevention which are of particular relevance to this planning application.

Other Material Considerations

The Greater Manchester Spatial Framework [GMSF] will provide a Greater Manchester-wide strategic plan for the area. The latest publication of the plan was published in October 2020. However, Stockport Council withdrew its support in December 2020 and the remaining nine authorities have agreed to push ahead with a new version of the Spatial Strategy. The GMSF is at an early stage in its preparation and as such is afforded no further consideration within this planning statement.

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Manchester City Centre Strategic Plan 2015 – 2018 provides a vision for the city centre and includes main priorities for the next few years. It divides the city centre in to defined areas and the site falls within 'Piccadilly'. The Plan refers to 'significant improvements' in the Piccadilly Gardens area and specifically describes how *"public and private investment has led to new high-quality commercial space and leisure facilities."*

Planning Considerations

Having considered the constraints and relevant policies relating to the site and the existing use of the premises, it is considered that the following issues are of relevance to the consideration of this application:

1 Amenity; and,

2 Crime Impact.

The principle of development has been established by the existing planning permission for the premises.

Amenity

The site is located in Manchester City Centre within the Primary Shopping Area [PSA]. The proposals relate to an extension to the existing temporary permission which permits 24/7 trade at the premises until 7th November 2021 as a sui generis leisure use. As such the principle of the development has already been deemed acceptable. Notwithstanding this, Core Strategy [CS] policies support the location of leisure development within the city centre; a main objective of Policy C1 is for the city centre to become the regional focus of uses including leisure and SP1, CC1 and CC4 echo the aim to focus and encourage leisure and entertainment uses in the city centre. CC10 seeks to the develop the city centre as a location that appeals to a wide range of people and the provision of a complementary leisure activity amidst other uses accords with this objective. As such the presence of leisure uses in this location is to be expected and should be a material consideration when balancing any impact on amenity of any noise sensitive uses within the city centre.

The site is surrounded by a mix of predominantly commercial premises. There are no adjoining noise sensitive premises that would be impacted by the proposals continuing to trade between the hours of 4am and 8am for an additional 18 months.

Prior to the national lockdown in March 2020, the premises had operated as an AGC for a continuous period of just under a year. During this time Luxury Leisure has not been subject to any noise complaints during the time it has have operated from the premises. Given that the premises has traded between 8am and 4am, daily for over a year without any noise complaint and operated for 11.5 weeks 24/7 between July and September 2020, it is not anticipated that the business would cause noise disturbance to the nearby premises if the premises were permitted to open between 4am and 8am for an additional 18 months. Most notably because the premises does not project amplified sound and is likely to only attract a small number of customers during these night time hours at any one time. Luxury Leisure has successfully traded from the premises for 11.5 weeks and also successfully trades 24/7 from 80 of its 230 premises nationally. The business is therefore well equipped to continue to operate through night time hours and has robust and tested measures in place to ensure its safe and amenable operation.

With regard to the additional 18 months of permitted 24 hour trade it should be acknowledged that the city centre environment will have a number of noise sources that cannot be avoided. This includes other premises serving the evening economy such as public houses, restaurants and takeaways and those opening in the early hours such as convenience stores and coffee shops. Examples have been provided earlier in this letter that include Burger King, McDonalds, Spar, Starbucks, Tesco Express, Morrison's, SPAR and Travelodge. These premises operate either 24/7 or open pre-8am. There are also other local noise sources such as the

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adjacent bus stops and Piccadilly gardens which is popular public meeting spot which has a high pedestrian footfall.

Accepting this, the premises already incorporates measures to mitigate against unacceptable levels of noise disturbance. For example, Luxury Leisure displays signs at its premises asking customers to leave the premises quietly to respect neighbours during night time hours. They also have a smoking policy and designated smoking area to control noise levels from smokers congregating outside the premises. Such noise levels are limited given the site context. The applicant also provided a noise impact assessment that demonstrated the premises are sufficiently insulated and the expected sound levels are such that further acoustic insultation is not necessary in this instance. This said, the proposed use is not an activity that generates amplified sound or is known to be particularly noisy. Further, it is relevant that the premises are located in Manchester City Centre, fronting on to one of the busiest and liveliest public spaces in the city.

It is also relevant that in considering the application to change the use of the application site to an AGC the case officer states in the committee report:

"… considering the hours of operation of some other adjacent use associated with the night-time economy some of which operate 24 hours the proposed hours of operation area considered to be acceptable."

The case officer recognises that there are premises already operating 24/7 in the vicinity and uses that are naturally associated with the night time economy. The existing temporary permission also demonstrates the Council's acceptance that 24/7 trade should not be resisted in this location. In the absence of any compelling reason to restrict the hours at the application site it follows that trading hours should be supported to match the trading hours of these premises referred to and acknowledge by the case officer and extended the permitted 24/7 trade by an additional 18 months

Overall, the proposed development is to enable unrestricted trading of an existing sui generis leisure use in the city centre for an additional 18 months. The proposed development accords with the Development Plan that promote leisure uses in the city centre subject to them not having a detrimental impact on amenity.

Crime Impact

As was set out in the previous applications for the site, Luxury Leisure takes crime prevention very seriously at all of its premises. Policy DM1 of the CS amongst other things requires all development to have regard to community safety and crime prevention with further detail provided in the Guide to Development in Manchester SPD. The proposals seek an 18-month extension for the temporary 24/7 permission which would allow the premise to continue to trade through the night as it is permitted to do at present. As such substantial detail regarding the security measures are set out here as well as in the accompanying security and social responsibility letter that accompanied the original application for change of use. In addition, Luxury Leisure has also committed to providing the security measures set out in the Greater Manchester Policy [GMP] letter dated 5 June 2017 (ref. 2009/0534/CLT/01).

To be clear, Luxury Leisure already has robust security measures and procedures in place at the premises and already trades 24 hours per day from the premises (approved on a temporary 18-month period). The security in place has been agreed with the Local Planning Authority and Greater Manchester Police as part of the change of use planning permission and continues to be fit for purpose throughout a 24 hour period. Additional security measures to facilitate a 24 hour period are not therefore considered necessary. This is because of the absence of crime related incidents associated with customers of the AGC since Luxury Leisure started trading from the premises.

The security detail is submitted again as part of this application to reiterate the security measures deemed acceptable as part of the change of use application and the previous S.73. These are security provision already

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operating at the premises that would continue should the extension of time for the 24/7 trading hours be approved. These include prohibition of alcohol on the premises, operation of a 'Think 25' policy, employment of a security department, obligatory minimum staff presence on the shop floor and involvement in local centre schemes such as 'shop watch'.

Luxury Leisure's physical security measures all meet the required standards and recommendations in relation to doors, access control, CCTV, lighting and management and maintenance set out by Greater Manchester Police in the enclosed Greater Manchester Policy Security Measures Letter [GMPSML] (Ref. 2009/0534/CLT/01). Any new fittings would be certified to 'Secured By Design' standards. In addition to the recommendations made in the GMPSML, Luxury Leisure has installed a monitored dualcom intruder and hold-up alarm with mobile PA units for staff and static buttons in the office. Access control is achieved for significant parts of the day (evening and night) through the use of door supervisors.

Luxury Leisure also has procedures in place for making the premises secure so that counting and securing the takings can be carried out in a secure environment and for staff leaving the premises so that staff safety is not compromised. There would not be any Cash Vehicle In Transit (CVIT) collections between 4am and 8am.

Luxury Leisure takes social responsibility seriously and has an adopted approach to responsible gambling that it implements across all its premises. This includes:

- Display of 'gamble responsibly' signage throughout stores including GamCare helpline and 'stay in control' leaflets;
- Employees are trained to identify when customers may be out of control with their gambling and there is a procedure in place for approaching and discussing the matter with them;
- Offering the customers (for no charge) the ability to use a gambling management tool (Gamblewise) to help manage their time at the venue using ibeacon technology;
- Offering customers the ability to self-exclude from the premises should they so choose; and,
- Luxury Leisure offers support and advice to those affected by problem gambling.

The applicant takes community safety and crime prevention very seriously and the level of detail provided with this application confounds this. The proposals are considered to protect the vitality and viability of the town and centre in accordance with policies of the Development Plan and the Framework.

Other Matters

Waste Management

The bin storage arrangement would be unchanged to that implemented previously at the building by Nationwide and currently operated at the Premises by Luxury Leisure. There is a secure internal waste storage area in the basement of the building. For completeness the basement plan has been provided (Ref. 1395 SK09 P1) and a Waste Management Form has also been submitted. For the avoidance of doubt, no changes are proposed to the waste management procedures as part of this application.

S.106 Contributions

Policy PA1 of the CS sets out what contributions may be requested if needs arise as a result of a development. As with the change of use application and the previous S.73 application it is not considered that the proposals would trigger contributions most notably due to the significant amount of detail submitted with this application on the proposed security procedures and physical measures that Luxury Leisure would implement. It seems disproportionate to seek contributions towards any additional security, not least

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because no such contribution was required as part of the change of use application. On this basis, it is not considered that a request for planning contributions associated with this proposal would meet the tests outlined in the PPG[1].

Conclusions

This statement has demonstrated that the proposed extension to the trading period for the existing development would not be detrimental to the amenity of the area. This is particularly given the longstanding trading of the premises in the area and for the just under a year at this particular premises as well as the lack of any amplified sound, the nature of neighbouring uses, and specified crime prevention measures. There is no evidence that the unrestricted hours would directly result in crime and anti-social behaviour and as such there is no known risk that the proposals would detract from the vitality and viability of the area and community safety. A temporary permission for 24/7 trade has already been approved on this site and this application only seeks to extend these due to the overriding Government restrictions which have prevented the 24/7 operation for a significant amount of time during this period.

Furthermore, Paragraph 55 of the Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. For the reasons set out in this letter coupled with the fact that a temporary permission has already been accepted by officers, we consider that the approval of an additional 18-month temporary permission is entirely reasonable considering the recent disruption caused by Government COVID-19 restrictions. T

Development Plan

It is considered that the proposed development is entirely in accordance with the Development Plan. Specifically, the proposals have regard to the considerations set out in Policy DM1 of the CS. The proposed development would not have a detrimental impact on amenity. In compliance with the CS and Policy C10 specifically, due regard has been given to impact on neighbouring uses. The proposed use would complement the existing 'night-time' uses in the area and as such strengthen the existing evening economy.

Sustainable Development

The development already performs a positive economic, social and environmental role. The extended hours has the potential to create employment opportunities for up to 3 additional staff member on a permanent basis. This would result in a total of 28 employees at the premises.

The employees and visitors to the proposed development during the extended hours will also make further contributions to the local economy through associated retail and related spending. This may be at any one of the local premises that would be open at times between 4am and 8am.

The development benefits from convenient public transport connectivity with bus stops adjacent to the premises. This can be utilised by staff and visitors negating the need to travel by non-car modes for the majority of people which is a direct environmental benefit of this town centre location.

[1] Planning Practice Guidance - Paragraph: 001 Reference ID: 23b-001-20161116

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Overall Conclusions

The proposals accord with the Policies contained within the Development Plan and bearing in mind Section 38(6) of the Planning and Compulsory Purchase Act 2004, the proposal should be determined in accordance with the plan in the absence of any other material considerations that indicate otherwise.

It is also concluded that the proposed development performs a positive economic, social and environmental role and comprises sustainable development in accordance with the provisions of the Framework [§ 7].

On the basis of the above and in accordance with the balance of considerations as required by the aforementioned Acts and set out in the Framework, it is considered that the proposal amounts to sustainable development and in terms of paragraph 14 there are no significant demonstrable adverse impacts arising from the proposals that would outweigh the benefits of the scheme. As set out in this letter, the application seeks an additional 18-month extension to the temporary 24/7 permission due to the impact of COVID-19 on the operation of the premise. As such, this permission would simply extend the previous permission which is already deemed acceptable by the LPA.

We therefore consider that planning permission should be granted for the proposed development.

We trust that the enclosed information allows for the application to be validated and determined at the earliest opportunity. However, should you require any further information, please do not hesitate to contact me on 0161 837 6130.

Yours faithfully



Imogen Zulver
Planner

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