

**Application to vary Conditions 2, 5 and 13
of planning permission granted to application no. 121730/FO/2018**

for the 'change of use of the disused bank (Use Class A2) to a Class A4 drinking establishment including elevational alterations to create a new recessed shop front'

at **855 Stockport Road, Levenshulme, Manchester M19 3PW**

Saturday, 14 November 2020

App. ref. **126706/JO/2020**



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1.0 Conditions of planning permission

- 1.1 Conditional planning permission was granted on 22 January 2019 to an application (ref. no. 121730/FO/2018) for the 'change of use of the disused bank (Use Class A2) to a Class A4 drinking establishment including elevational alterations to create a new recessed shop front'.
- 1.2 This application (ref. **126706/JO/2020**) seeks to vary:
- **Condition 2** to allow a minor material amendment to the design of the new shop front and principal elevation;
 - **Condition 5** by adding a qualification that the acoustic insulation of the application premises from the residential upper floors of the same building does achieve satisfactory attenuation of noise disturbance for those residential occupants so long as they are employed in the café-bar business; and
 - **Condition 13** relating to the roller shutters on the basis that the phrasing of the planning condition is sufficiently ambiguous to possibly provoke unwarranted enforcement action.
- 1.3 **Conditions 6, 7, 11 and 15** imposed on the same planning permission have been addressed through a separate request for confirmation of the applicant's compliance with these conditions (**CDN/20/0303**). For information only:
- **Condition 6** relates to the opening hours of the premises, use of the covered forecourt area as an eating and drinking area and controls to prevent non-emergency public access to the rear yard;
 - **Condition 7** relates to management of the forecourt and external yard area;
 - **Condition 11** relates to the waste collection contract;
 - **Condition 15** requires details of the specifications, siting and appearance of secured storage for two bicycles within the rear service yard.
- 1.4 The two applications comprise all the conditions attached to the planning permission which need to be actively discharged or varied.

2.0 Condition 2 re: minor material amendment to new shop front design

- 2.1 Condition 2 of the of the granted planning permission states that the development approved by virtue of consent for app. ref. 121730/FO/2018 shall be carried out in accordance with the approved drawings submitted as part of that application.
- 2.2 New plan, section and elevation drawings are submitted as part of this application illustrating the appearance and detailing the materials used in the construction of the new recessed shop front and covered forecourt. So too are photographs in Appendix 1.
- 2.3 We seek the Council's approval for a minor material amendment in the design of the shop front; approval which will, in itself, discharge Condition 3.
- 2.4 Condition 3 of the granted planning permission states that:

Before the commencement of the authorised use, a scheme shall be submitted to and approved in writing by the City Council, as local planning authority, relating to the appearance and specification of materials to be used in the ground floor street frontage, forecourt and shopfront. The submitted scheme shall provide details of external cladding and returning reveals to new openings, fascia and piers, roller shutters (including housing and method of affixing, window frame design and surfacing of the forecourt area. The approved scheme shall be fully implemented before the commencement of the authorised use and maintained in situ thereafter.

Reason - To ensure that the appearance of the development is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located, as specified in policies SP1, EN1 and DM1 of the Core Strategy for the City of Manchester.

- 2.5 There are few changes to the external street elevation than what was proposed in the approved drawings. The stone pilasters and cornice framing the shop front are unaltered. The polyester powder-coated grey cladding on the fascia and central pier around the former bank's fenestration has been removed, revealing the original brickwork which has now been painted black. Timber railings have been added to the openings created by the removal of the former bank's glazing to separate the public thoroughfare of Stockport Road from the new covered shop forecourt. In the first iteration, these were thin, flimsy railings, painted grey. In the summer of 2020, they were replaced with a sturdier design where the top rail is painted grey and frame below is left unpainted. Both the removal of the powder-coated grey cladding and the new timber railings are improvements to the appearance and layout of the new café-bar.
- 2.6 The perforated roller shutters are also now fixed to the top of the new openings (rather than the recessed shop front), neatly positioned in the recess created by the original structural steel which runs immediately behind the new roller shutter mechanism.
- 2.7 The pair of roller shutters are steel with a perforated lath, powder coated in black (RAL 9005) satin to bond visually with the black timber fascia boards of the first floor. They each have an overall width of 4280 mm and clear opening width of 4110 mm; an overall height of 2700 mm and a clear opening height of 2350 mm. There are 31 visible lathes when the curtain is closed. A more detailed specification can be provided on request. Photographs are in Appendix 1.
- 2.8 The bar's name – 'Overdraught' – is painted in striking gold lettering on the grey fascia.
- 2.9 The recessed shop front is entirely new, and generally follows the indicative arrangement in the approved drawings. It features four timber doors, with fixed window lights above, flanked by fixed glazing with timber frames. The central double doors align with the existing wheelchair ramp; the

flanking single doors each open onto either side of the private covered forecourt. All timber elements are painted the same grey as the handrails and fascia board.

- 2.10 The forecourt surface is roughly polished concrete which blends in unobtrusively with the grey painted timber forming the shop front and railings.
- 2.11 The built design closely follows the consented proposals which accorded with Saved UDP Policy DC14 (shop fronts and related signs).
- 2.12 The application site is neither part of a listed building nor located within a designated conservation area and is entirely unfettered by statutory heritage considerations.
- 2.13 Painting constitutes 'minor operations' within Class C of part 2 of Schedule 2 of the General Permitted Development Order 2015 and is, therefore, in the absence of an Article 4 direction, not subject to development control. That consideration notwithstanding, the applicant has clearly sought to present the new café-bar in an aesthetically coherent and demure appearance which makes a positive contribution to the streetscape.
- 2.14 In summary, the detailed proposals are uncontentious in principle and very well executed. They should prove satisfactory.

3.0 Condition 5 (acoustic treatment of the application premises)

3.1 Condition 5 of the granted planning permission states that:

Before the commencement of the authorised Class A4 use, a scheme shall be submitted to and approved in writing by the City Council as local planning authority, detailing arrangements for the acoustic treatment of the ground floor application premises, including the forecourt eating / drinking area and any associated externally mounted equipment to achieve satisfactory attenuation of noise disturbance to upper floor and neighbouring residential uses. The agreed scheme shall be related to an acoustic report and noise survey that shall inform attenuation measures, which shall be implemented in full before the use commences and maintained in situ thereafter.

Reason - To safeguard the amenities of the occupiers of the building and occupiers of nearby properties pursuant to policies SP1 and DM1 of the Core Strategy for the City of Manchester and saved policy DC26 of the Unitary Development Plan for the City of Manchester.

3.2 The proposals affecting noise levels involve:

- the use of the premises' interior as a café-bar;
- the use of the covered forecourt as an open-air eating and drinking area;
- retention of the existing air-conditioning plant in the rear yard for use during longer opening hours (than the previous use of the commercial premises as a bank).

3.3 Clement Acoustics have produced a Noise Impact Assessment (Rev. C) to inform the appropriate noise attenuation measures for the commercial premises. This is included as part of this application.

3.4 Overall, the Noise Impact Assessment's 'calculations show that noise emissions from various noise sources should meet the requirements of the Local Authority with the recommended mitigation installed as stated [t]herein'. Our own assessment of the report's conclusions and data with close reference to national and local planning policy concludes the same.

3.5 Section 4.0 (Results) and Appendix 14511-TH1 (Time History) of the Noise Impact Assessment demonstrate that the minimum background noise level (LA90: 5min) during the proposed operating hours (11:00-01:00), measured over a period of 5 days, was 50 dB(A).

3.6 The Noise Impact Assessment sets empirically predictive noise levels for the three proposed noise-emitting uses in Section 6.0 and assesses the anticipated noise impact in Sections 7.0, 8.0 and 9.0. Throughout their report, Clement Acoustics have used stringent criteria to present a robust assessment of noise impact.

3.7 The conclusion of the Noise Breakout Assessment through the External Façade (Section 7.0) is that the transmission of noise to the nearest sensitive windows (the first floor residential window above adjacent building) due to the effects of the bar activity would be at a level of 25 dB(A). Considering the high ambient background noise level (50 dB(A)), this would be classed as an indication of the sound source having a very low impact.

3.8 The conclusion of the Noise Impact Assessment for the External Seating Area (Section 8.0) is that continuous use of this area during trading hours would result in a noise rating level of 40 dB(A) at the nearest noise sensitive windows (the first floor residential window above adjacent building). This too is considered to have a low impact; 10 dB lower than the typical ambient background noise.

3.9 The conclusion of the Noise Impact Assessment for Plant Installation (Section 9.0) is that retention of the existing air-conditioning units would produce a noise level of 26 dB(A) at the nearest sensitive

receiver (a residential window on the rear elevation of the adjacent building). Appendix B3 demonstrates that this is due to the extensive natural screening of the building envelope.

- 3.10 The City Council's Planning & Noise Technical Guidance (2015) closely follows the national Planning Practice Guidance and BS 8233 : 2014 Guidance on Sound Insulation and Noise Reduction for Buildings. The document provides a suite of noise level design targets in Section 3.6.1ff.
- 3.11 Section 3.6.1.2 (Entertainment Venues) of the City Council's Planning & Noise Technical Guidance confirms the 'lack of consensus on an assessment method for noise levels within habitable rooms with regard to entertainment noise. The design aim, however, should be to design to "inaudible"'. Pursuant to that aim, policy boils down to two criteria in respect of controlling entertainment noise:
- Music noise levels in the 63Hz and 125Hz octave centre frequency bands (Leq) should be controlled so as not to exceed (in habitable rooms) 47 dB and 41dB (Leq), respectively;
 - 'Entertainment noise (LAeq) should be controlled to 10 dB below the background noise level (LA90) without the entertainment noise present, in each octave band at the nearest noise sensitive location'.
- 3.12 Bearing in mind the ambient background noise level of 50 dB, the most stringent policy criterion sets a maximum level of 40 dB at the nearest noise sensitive location.
- 3.13 Clement Acoustics' robust assessment (including noise penalties) amply demonstrates that the proposed use of the premises as a café-bar will not result in the maximum noise level of 40 dB being breached in any event. The noise impact is: 25 dB (internal bar noise); 40 dB (recessed forecourt seating area noise); 26 dB (plant noise). The City Council's design aim that new development should be inaudible is demonstrably met.
- 3.14 The low noise impact notwithstanding, Clement Acoustics propose a noise management plan in Section 11.0 to ensure these calculated noise emission levels are not exceeded. These are that:
- amplified music noise levels inside the bar do not exceed an overall limit of 79 dB(A);
 - loudspeakers are resiliently fixed to the building structure, such that structure-borne noise is minimised;
 - the external seating area and all external doors and windows should be closed at 23:00;
 - staff should be instructed to ensure that entrance doors are kept closed where possible;
 - any new external glazed elements should be selected to provide a sound reduction performance of at least Rw 31 dB;
 - staff should also remind the café-bar's patrons of the residential nature of surrounding premises and behaviour outside the premises should be monitored accordingly.
- 3.15 Much of this has already been accomplished, going above and beyond the requirements:
- Music played is recorded music and of background or incidental levels only (as required by Annex 2 of the Premises' Licence);
 - windows are non-opening and doors are kept closed where possible and shut from 22:00 (as required by Annex 3 of the Premises' Licence);
 - the new external glazed windows of the shop front are fitted with 10.8mm clear laminate safety glass with an expected sound reduction performance of Rw38 (as shown in the specifications for Pilkington Optiphon which are submitted with this application);
 - the applicant will paint a sign on the glazed shop front reminding patrons to be mindful of their residential neighbours when leaving the premises.
- 3.16 Clements Acoustics' assessment is predicated on the fact that the 'residential spaces above the commercial unit itself are understood to form part of the same lease and will be used as staff accommodation. In this way, the flat is not considered noise sensitive'.

- 3.17 Our own view is also that what constitutes satisfactory attenuation of noise disturbance to the upper floors of 855 Stockport Road and neighbouring residential uses (required by Condition 5) cannot be measured in the same way for the reasons outlined below.
- 3.18 The starting point is the planning unit. *Burdle v Secretary of State for the Environment* [1972] set out three different tests to determine the planning unit. The building at 855 Stockport Road passes both the first and second tests to be considered as a single planning unit on the basis that the building incorporates retail space (Class A4) with residential space above (Class C3) and storage (Class B8) in the basement below. Both the C3 and B8 uses could be said to be ancillary to the main A4 use in that they house staff and goods on site to enable the efficient running of the A4 business [test 1]. They can certainly be said to be composite uses on account of the bar owner living in the residential accommodation above [test 2]. The site geography reinforces the case law. Neither flats nor basement can be accessed from the public realm. The only access is through the padlocked metal gate in Bankley Street and through the external rear yard which is an active service area for the shop and not communal space. There is no street-level door on Stockport Road by which one can easily access the upper floors independently of the shop, thus giving rise to the possibility that the upper floors could constitute a separate planning unit. Currently, the demonstrable use of the building at 855 Stockport Road makes it a single planning unit. The residential accommodation does not comprise a separate planning unit from the shop. Therefore, it is not unreasonable that the Noise Impact Assessment produced by Clement Acoustics focuses on impact on neighbouring amenity to the planning unit.
- 3.19 Turning to what constitutes 'satisfactory attenuation of noise disturbance to the upper floors' of the same planning unit (which is in an ancillary or composite use of the cafe-bar): this reasonably cannot be the same measures as those reasonably applicable to prevent noise disturbance of neighbouring properties occupied by third parties. Whereas a neighbouring resident's only recourse to mitigating adverse noise impact from the café-bar is to call the City Council's Environmental Health Department and request they intervene, if the noise from the café-bar disturbs the applicant in her own flat, all she has to do is turn the volume down or ask her staff to turn it down. And if there is a commercial incentive to keep the volume at a high level, then it is entirely within her power to undertake structural works to provide the noise attenuation she requires. This fundamental difference in the abilities of the owner-occupier and an unrelated neighbour to control noise is a material consideration in planning terms.
- 3.20 The Noise Policy Statement for England 2010 and the Noise PPG (last updated July 2019) are both predicated on the principle that noise is 'unwanted sound' which causes a change in behaviour, attitude or health. Both documents (and the City Council's Planning & Noise Technical Guidance) contain a 'noise exposure hierarchy' (at para. 005 of the PPG). The table notes a category of noise which is 'present and not intrusive'. What does this mean? It means that 'noise can be heard, but does not cause any change in behaviour, attitude or other physiological response. Can slightly affect the acoustic character of the area but not such that there is a change in the quality of life.' The hierarchy guides that in this case there is 'no observed adverse effect' and 'no specific measures are required'. Para. 3.6 of the City Council's Planning & Noise Technical Guidance confirms that this is the target for new development.
- 3.21 For the avoidance of doubt: the music volume in the café-bar does break out through the ceiling of the ground floor into the first floor flat above. The applicant has reported that she can hear sound, though not to the level that it disturbs her. The definition of noise from the cafe-bar downstairs being 'present and not intrusive' is correct. And therefore, it follows in policy terms that no specific measures are required to address this. As it stands, the use of the ground floor premises as a cafe-bar playing background music constitutes sustainable development which is fully compliant with both national and local planning policies.
- 3.22 That all said, we appreciate the well-intentioned concern of the City Council's Environmental Health officers that perhaps 'insufficient consideration has been given to a future circumstance that may lead

to the residential accommodation being let independently and thereby separated from the Class A4 use'. Although we consider this a hypothetical scenario which can be addressed through Environmental Health's exercise of its extensive powers under the Housing Act 2004 and the Housing Health and Safety Rating System (England) Regulations 2005 inter alia, we are willing to vary the wording of Condition 5 so as to qualify it unambiguously enough for this currently hypothetical eventuality to be regulated through the Planning Acts too.

- 3.23 We suggest that Condition 5 is varied to include the following wording at the end of the existing wording (after '...maintained in situ thereafter.')

'The existing noise attenuation measures between the café-bar and the residential accommodation above is acceptable only insofar as the residential accommodation is occupied by a person solely or mainly employed or last employed in the café-bar business. Before the residential accommodation is let to a third party unrelated to the running of the café-bar business, an acoustic report confirming the satisfactory attenuation of noise disturbance to the upper floors shall be submitted to and approved in writing by the City Council.'

- 3.24 Should this wording be acceptable to the City Council and Condition 5 accordingly varied, it should also be considered fully discharged.

4.0 Condition 13 (roller shutters)

4.1 Condition 13 of the granted planning permission states that:

The authorised roller shutters to the Stockport Road shopfront elevation shall remain in open position during the hours of 10.30 am and until the premises close in accordance with the authorised opening times.

Reason - In interests of residential amenity and to safeguard the appearance and character of Levenshulme District Centre, pursuant to policies SP1, C2, C10 and DM1 of the Core Strategy for the City of Manchester and saved policy E3.3 of the Unitary Development Plan for the City of Manchester.

4.2 There is concern that the phrasing of this planning condition may be interpreted as requiring the commercial occupier or building owner to raise the roller shutters every day irrespective of the trading status of the premises. Were the planning condition interpreted in this way, it would place an unreasonable burden on the occupier of the premises.

4.3 Condition 10 in the planning permission granted on 20 March 2014 to neighbouring Fred's Ale Bar at 843 Stockport Road (application ref. 104942/FO/2014/N2) is better phrased. There should also be a caveat to account for 'extraordinary circumstances', such as the roller shutters being broken or the need for them to remain closed by order of the government, local authority, emergency services, etc, such as is indeed required at the current time.

4.4 Correspondence with the case officer indicates that the City Council would be amenable to rephrasing this condition to read as follows:

'Upon occupation of the authorised Class A4 unit, any roller shutters on the frontage of the related unit at 855 Stockport Road shall be open / raised on days that the business is trading from 12:00 noon until the unit closes that same trading day.'

4.5 The applicant is willing to accept this new wording.

4.6 Since trading would commence at 12:00, it is likely that the roller shutters would be raised considerably earlier and, as such, there would be little material difference to the original planning condition.