Proposed Change of Use from A3 (Café) to Sui Generis (Shisha Café)

Blue Mist Café
108 Wilmslow Road
Rusholme
M14 5AJ

Planning Statement

Prepared on behalf of Mr A Sampetrean

1. Introduction

a. This planning statement is submitted in support of the planning application for the change of use from a café / restaurant (A3) to a shisha café (sui generis) at 108 Wilmslow Road, Rusholme M14 5AJ.

b. The application has been prepared in accordance with the reasoning provided by Inspector Moore in her decision letter (DL) dated the 11th September 2019 (copy in appendix) , appeal ref APP/B4215/C/18/320937, and in particular the comments made in the Inspectors determination on the ground (a) application of that appeal.

c. The Inspector, in dismissing the appeal on ground (a) determined that the proposed hours of operation (3:00am Fridays and Saturdays, 2:00am Sunday to Thursday) that whilst an improvement on the hours that the premises currently operates to would not be sufficient to address her concerns with regard to the potential impact on the living conditions of residents on Eva Street and Ravensdale Street.

d. As is the norm in appeal decisions, the Inspector did not explicitly state what opening hours for the proposed use would be appropriate, however she did reference the following :-

- DL,Paragraph 44 – "*The main parties agree that the Curry Mile is recognised as an area where the streets are busy into the early hours of the morning. I was also told that there are several establishments that operate under historic permissions and remain open until the early hours. While the Council disputes this assertion, my attention was drawn to a delegated written report in respect of No 72 Wilmslow Road, in which the planning officer advised that opening hours extending to 01:00am and 02:00am would be in line with similar consents in the Rusholme District Centre."*

- DL Paragraph 49 – "*The appellant indicated that a planning condition to restrict the hours of opening from midday to 02:00am on Sunday to Thursday and midday to 03:00am on Fridays and Saturdays would be acceptable. This would be an improvement on the current situation but, in my view, would not be sufficient to address the planning concerns identified*."

- DL Paragraph 52 – When Inspector Moore considered the potential impact from parking and associated activities on the neighbouring properties on Eva Street and Revensdale Street in relation to the fallback position, as a restaurant, (noting that the premises have no limitation on opening hours) she determined

  "*People, especially families do not tend to visit a restaurant during the early hours of a morning on a regular and frequent basis*".

Whilst we would respectfully disagree with Inspector Moores inference that a restaurant on the Curry Mile (that is promoted by the Council for its vibrant nightlife) would not be visited by customers in the early hours of the morning, we reason from those comments that the Inspector would deem an operation that did not extend into the early hours of the morning would strike an acceptable planning balance.

e. The Council were contacted on the 25th September 2019 to seek their views on the matter. The Council verbally advised in pre app that they will continue to assert that the use of the premises for the smoking of shisha will be considered contrary to their adopted "Planning Policies" and to that end they will refuse any application for such a use, regardless of the proposed operating hours or any other measure to mitigate any potential impacts.

f. The agent for the application wrote to the Council on the 2nd October 2019, asking the Council to reconsider its position having due regard to the Inspectors decision letter. As at the time of the submission of this planning application there has been no reply to that request.

g. Importantly the Planning Inspectorate has recently upheld two appeals for similar uses at No.72 Wilmslow Road and No.119 Wilmslow Road (see decision letters in appendix) where the use was found accord with the Councils adopted planning policy and the applicant considers that these set a strong precedent that should be followed when weighing the planning balance.

2. Site and Context

a. The application site is located in the heart of Rusholme District Centre known as "The Curry Mile". The appeal site is located within a parade of restaurants, cafes and hot food takeaways, the parade being set within the commercial district that extends over half a mile, linking the district centres of Fallowfield through towards the City Centre.

b. The "Curry Mile" has an international reputation for providing Asian and Middle Eastern cuisine and refreshments to the both local and wider population of Manchester; and as an international tourist attraction with a unique vibrant multicultural offering that is famed for its streets being busy into the early hours of the morning.

c. There are currently 19 business located within the parade that contains the application site (which extends from Claremont Road to Grandale Street. Many of these outlets, be they restaurants, cafes, hot-food takeaways or shops operate under historic permissions, so can open 24 hours a day if they so desired, and certainly do open until the early hours of the morning, and have done for decades.

d. The area is vibrant with little sign of any vacant/under utilised premises.

e. All the aforementioned businesses utilise the alley way that separates the commercial properties from the residential properties located on Eva Street on the opposite (West) side of the alleyway.

f. The alleyway is a public right of way and extends along the rear of the application site (between Claremont Road and Grandale Street).

g. The application site has operated as a shisha café for in excess of 8 years (acknowledged by Inspector Moore in her DL, paragraph 33) into the early hours of the morning. During that period there have been no complaints made to the Council in relation to noise and disturbance emanating from the premises or noise and disturbance as a result of customers coming and going from the premises.

h. Inspector Moore sought to distinguish her decision (DL paragraph 51) from that of Inspector Rogers, who upheld an appeal on ground (a) for an identical use at 119 (sic) Wilmslow Road, by stating the site determined by Inspector Moore was "*considerably smaller*".

   Regrettably Inspector Moore reasoning is questioned in that this application site extends to approximately 790m2, with a potential occupancy of 570 customers and No.119 extends to approximately 648m2 (arranged over 3 floors) with a potential occupancy of 510 customers.

   It is accepted that No.119 does have a different "relationship" with nearby residential properties (this site is located approximately 140m to the North of No.108) however the site has no parking / servicing areas and relies solely on its customers using the same public transport, public car parks and / or on-street parking available to the application site.

i. The site has excellent access to transport links other than private cars. The site has a Greater Manchester Accessibility Level of 8, which is the highest level that can be awarded. Wilmslow Road is accepted as being the busiest bus corridor in Europe (see Wikipedia page in appendix) with services running 24 hours a day. In addition there are dedicated cycle lanes.

j. Inspector Moore stated at paragraph 47 of the DL that "…..*I understand the area is well-served by public transport but the appellant ceded this would be limited during the night time*". The agent would respectfully correct the Inspectors comments as at no time during the inquiry did the appellant cede that public transport was limited during the night time.

k. Indeed the "independent" GMAL rating of 8 speaks to the contrary. There are 2 bus stops within 60m on the application site one giving routes to the city centre and the other to East Didsbury, Fallowfield and beyond. Both bus stops serve buses 143, 142, 147, 42A, 43 and 42.

l. The 142 bus route alone stops in these locations every 15minutes Mondays to Thursdays, every 10 minutes Fridays and Saturdays and every 30 minutes on Sundays from midnight till 04:00. In addition the 43 provides nigh time services stopping every 30 minutes at the aforementioned stops from midnight to 04:00 seven days a week.

m. The site has excellent public transport options throughout the night and into the early morning hours.

3. Proposed Development

a. The proposal is for the change of use of the premises from a restaurant / café (A3 use class) with unrestricted opening hours to a shisha café (sui generis use class) with the proposed opening hours :-

   Sunday to Thursday 09:00 – 22:30
   Friday and Saturday 09:00 – 23:00

b. There will be no physical changes to the building to facilitate the proposed change of use, and no new plant / equipment will be installed.

c. The site has an existing charcoal oven (see details in appendix) with a flue that terminates at 9.4m above ground level and a minimum of 17m away from the nearest residential property.

4. Consideration of Planning Issues

a. The planning merits of the proposed change of use were addressed in detail during the recent public inquiry; and whilst Inspector Moore dismissed the appeal for the change of use, her decision letter makes it very clear that it was **only** the "originally" proposed opening hours of 03:00 Friday / Saturday and 02:00 Sunday to Thursday that led her to dismiss the appeal.

b. The Council have routinely approve similar uses that have in essence identical planning considerations when assessed in accordance with the Development Plan, specifically:-

   130 Wilmslow Road – A3 / A4 licensed restaurant open till 00:30 – App Ref 120947/FO/2018
   98 Wilmslow Road – A3 open till 23:30 - App Ref 118025/FO/2017
   88 Wilmslow Road – A3 open till midnight – App Ref 114443/FO/2016
   179 Wilmslow Road – A5 open till 02:00 – App Ref 120666/FO/2018
   235-237 Wilmslow Road – A3 open till midnight – App Ref 119443/FO/2018
   130 Wilmslow Road – A5 (formation of 2 No. HFTAs) open till 02:00 – App Ref 110905/FO/2015/S1

c. The above permissions reinforce the Councils stated position that opening hours extending to 01:00am and 02:00am are in line with similar consents within the Rusholme District Centre, as referenced by Inspector Moore in paragraph 44 of her decision letter.

d. This application seeks consent for the change of use of the premises with a closing time of 23:00 on Fridays and Saturdays and 22:30 Sundays to Thursdays.

e. This application is supported by a Planning Noise Impact Assessment that clearly shows the proposal fully complies with the Councils published guidance "Planning and Noise – Technical Guidance December 2015".

f. As referenced in section 1(d) of this Planning Statement, Inspector Moore, whilst not stating which operating hours would be appropriate for the site, made several clear references to the Councils policy as stated in the appeal at No.72 Wilmslow Road where opening hours between 01:00 and 02:00 were in line with other consents in Rusholme District Centre.

g. Inspector Moore also stated that the proposal to reduce the operating hours of this site from the current 04:00 each day to 03:00 Friday and Saturday / 02:00 Sunday to Thursday would not be sufficient to address her concerns with the potential effect on the amenity of the residents in Eva Street and Ravensdale Street.

h. Importantly, Inspector Moors also stated that she considered the fall back position (ie A3 restaurant) would not lead to materially significant comings and goings from customers using the premises who may park in Eva Street or Ravensdale Street and return to their vehicles as this would be unlikely in the early hours of the morning.

i. Given these comments / reasoning from Inspector Moore it is reasonable to infer that if the proposed use had been put before her with operating hours that "did not" extend into the early hours of the morning she would have been inclined to allow the appeal on ground (a).

j. The application site enjoys a GMAL rating of 8 for access to modes of transport other than private cars, the highest level that can be achieved. As detailed in in section 2(k), (l) and (m) of this report the application site enjoys excellent public transport links with 3 night buses stopping within 60m with a frequency on average of every 15 minutes from midnight till 04:00 throughout the week.

k. Inspector Moore made reference to the potential for disturbance / hazard to nearby residents when the sites dedicated refuse storage bins were being accessed and commented that this potential nuisance could be addressed by way of condition. The appellant proposes a condition to be attached to require the applicant to access the dedicated refuse storage bins via the roller shutter doors only between the hours of 09:00 and 22:00 daily.

l. The applicant would support any proposals for the rear alleyway to be gated / secured, or alternatively gates / fencing to be installed at the end of Eva Street. Similarly they would support any scheme for permit parking for residents only on Eva Street and Ravensdale Street. However, regrettably, such provisions are entirely within the control of the Council and can not be implemented unilaterally by the applicant.

m. This planning application should be determined on its merits against relevant material consideration, and the Councils determination of planning applications should not be swayed by any prospect for future financial gain with respect to prosecutions under pending enforcement action (R v Knightland Foundation and another [2018] EWCA Crim 1860).

5. Appendix

108 Wilmslow Road – PINS Decision Letter
72 Wilmslow Road – PINS Decision Letter
119 Wilmslow Road – PINS Decision Letter
Wikipedia Page – Wilmslow Road Busiest Bus Corridor in Europe
Transport For Greater Manchester – Night Time Bus Schedule
Stagecoach Bus Stops Adjacent to Application Site