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Mrs Julie Roscoe
Head of Planning
Manchester City Council
Town Hall
Albert Square
Manchester
M60 2LA

Ljr/161077vc/rt01

FAO Rob Griffin

Dear Mrs Roscoe

102 Manchester Road, Chorlton, Manchester, M21 9SZ
Application for Variation of Condition 16 of Planning Permission 115325/FO/2017

Introduction

On behalf of our client, Retail Property Investments Ltd, please find enclosed an application under Section 73 of the Town and Country Planning Act to vary condition 16 of Planning Permission 115325/FO/2017.

Planning permission 115325/FO/2017 was granted on 28 April 2017 for *'Change of use of ground floor from office to form 2 no. restaurant units (Use Class A3), single storey front extension, external bin store, car parking, together with elevational alterations'.*

The application was approved at Manchester City Council's Planning and Highways Committee meeting on 27 April 2017. This decision followed a recommendation for approval from Manchester City Council's Planning Department.

During the discussion of the application by Committee Members it was suggested that an additional planning condition be added to an approval due to concerns raised regarding the possible impact of an ancillary takeaway offer being provided by restaurant/café uses on the highway and pedestrian safety. Condition 16 was duly added and states:

> *'The units hereby approved shall be used as a Class A3 restaurant and cafe use (for the sale of food and drink for consumption on the premises) only and there will be no ancillary sale of food or drink for consumption off the premises.*
>
> *Reason - For the avoidance of doubt and in the interests of highway and pedestrian safety as additional associated vehicular movements to the premises would exacerbate on street parking in the vicinity of the site.'*

Following the grant of planning permission, the applicant has been in discussions with a number of restaurant/café operators about them occupying the approved A3 units. Talks have progressed to a point, however the prospective operator of Unit 2 has confirmed that the restrictions imposed

by condition 16, which prevents ancillary takeaway provision, would ultimately mean an agreement could not be reached. This application therefore seeks to vary the wording of condition 16. The following revised wording is proposed:

> *'Unit 1 hereby approved shall be used as a Class A3 restaurant and cafe use (for the sale of food and drink for consumption on the premises) only and there will be no ancillary sale of food or drink for consumption off the premises.*
>
> *Reason - For the avoidance of doubt and in the interests of highway and pedestrian safety as additional associated vehicular movements to the premises would exacerbate on street parking in the vicinity of the site.'*

Amending this condition will allow a deal to be reached with the prospective end operator of Unit 2. It will allow the unit to be occupied by a high quality restaurant operator which will enhance the current food and drink offer in Chorlton as well as ensuring that the planning and regeneration benefits associated with planning permission 115325/FO/2017 can be achieved.

The following sections of this letter set out the planning policy context of relevance to the proposed variation of condition application, followed by an appraisal of the proposed amendment to condition 16.

Planning Policy Context

The revised proposal should be considered against national and local planning policy requirements. Planning policy and guidance of relevance to the application and which provides the context for its assessment is provided within the following documents:

- National Planning Policy Framework (2012);
- National Planning Practice Guidance;
- Manchester Core Strategy Development Plan Document (2012); and,
- Saved Policies of the Unitary Development Plan for Manchester (1995).

National Planning Policy Framework (2012)

Published on 27 March 2012, the NPPF sets out the Government's planning policies for England. The document states that the purpose of the planning system is to contribute to the achievement of sustainable development. It seeks to achieve this objective by:

Achieving Sustainable Development

- Setting out that there is a need for the planning system to perform a number of roles, including an economic role, social role and environmental role (Paragraph 7).

- Seeking improvements in the conditions in which people live, work, travel and take leisure (Paragraph 9).

Core Planning Principles

- Setting out 12 principles which planning should achieve including amongst other things, always seeking to secure a good standard of amenity for all existing and future occupants of land and buildings.

The Presumption in Favour of Sustainable Development

- Determining planning applications for planning permission in accordance with the development plan unless material considerations indicate otherwise (Paragraph 11).

- Approving development proposals that accord with the development plan without delay (Paragraph 14).

Section 1: Building a Strong, Competitive Economy

- Ensuring that the planning system does everything it can to support sustainable economic growth and not act as an impediment (Paragraph 19).

- Advising that investment in business should not be over-burdened by the combined requirements of planning policy expectations. Planning policies should recognise and seek to address potential barriers to investment (Paragraph 21).

Section 2: Ensuring the Vitality of Town Centres

- Promoting competitive town centre environments and requiring local planning authorities to pursue policies to support their viability and vitality (Paragraph 23).

Section 4: Promoting Sustainable Transport

- Advising that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe (Paragraph 32).

- Local authorities should seek to improve the quality of parking in town centres so that it is convenient, safe and secure (Paragraph 40).

Decision-taking

- LAs approaching decision-taking in a positive way to foster the delivery of sustainable development (Paragraph 186).

- LAs looking for solutions rather than problems, with decision-takers at every level seeking to approve applications for sustainable development where possible, and LAs working proactively with applicants to secure developments that improve economic, social and environmental conditions of the area (Paragraph 187).

- LA's should consider whether otherwise unacceptable development could be made acceptable through the use of conditions (Paragraph 203).

- Requiring planning conditions to only be imposed where they are:
    - necessary;
    - relevant to planning and;
    - to the development to be permitted;
    - enforceable;
    - precise and;
    - reasonable in all other respects. (Paragraph 206)

National Planning Practice Guidance (NPPG)

The National Planning Practice guidance is a web-based resource which provides planning guidance on various topics. It was launched in March 2014 and coincided with the cancelling of the majority of Government Circulars which had previously given guidance on many aspects of planning. NPPG provides guidance on the use of planning conditions in the planning system. Of relevance to the application proposal it advises that:

- When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.

Paragraph: 001 Reference ID: 21a-001-20140306

- Whether it is appropriate for the Local Planning Authority to impose a condition on a grant of planning permission will depend on the specifics of the case. Conditions should help to deliver development plan policy and accord with the requirements of the National Planning Policy Framework, including satisfying the 6 tests for conditions. The 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.

Paragraph: 004 Reference ID: 21a-004-20140306

- Any proposed condition that fails to meet any of the 6 tests should not be used. This applies even if the applicant suggests it or agrees on its terms or it is suggested by the members of a planning committee or a third party. Every condition must always be justified by the local planning authority on its own planning merits on a case by case basis. Specific circumstances where conditions should not be used include:
    - Conditions which unreasonably impact on the deliverability of a development…
    - Conditions reserving outline application details…
    - Conditions requiring the development to be carried out in its entirety…
    - Conditions requiring compliance with other regulatory requirements (eg Building Regulations, Environmental Protection Act)…
    - Conditions requiring land to be given up…
    - Positively worded conditions requiring payment of money or other consideration…

Paragraph: 005 Reference ID: 21a-005-20140306

Manchester Core Strategy Development Plan Document (2012)

The Core Strategy, adopted in July 2012, is the key Development Plan Document against which proposals should be judged. Core Strategy objectives and policies of particular relevance to the application for revised access arrangements include:

- Policy SP 1 'Spatial Principles' which states that spatial principles which will guide the strategic development of Manchester emphasise the creation of neighbourhoods of choice. Development should 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 and natural environment; minimise emissions, ensure the efficient use of natural resource and reuse previously developed land wherever possible; and improve access to jobs and services by being located to reduce the need to travel and provide good access to sustainable transport provision.

- Policy C 1 'Centre Hierarchy' states that development in district centres should respond to the needs of the catchment and recognise the need to support the vitality and viability of other centres. The written justification for the policy states that different but complementary uses, during the day and in the evening, can reinforce each other, making centres more attractive to local residents, shoppers and visitors.

- Policy C 2 'District Centres' supports development that contributes to a thriving district centre with local character. Development in District Centres should prioritise the delivery key 'visitor' services, including retail, public and commercial services and food and drink uses. The Council will ensure that retail remains the principal use in Primary Shopping Areas, but also ensure that provision is made in District Centres for commercial and service uses, leisure and community facilities and other uses which make a positive contribution to vitality and viability of centres.

- Policy C 6 'South Manchester District Centres - Chorlton, Didsbury, Fallowfield, Levenshulme and Withington' states that development in Chorlton will provide a substantial increase in retail, alongside improvements to other commercial and community services. New

development should also make a contribution to the character of the centre, including a range of unit sizes and environmental improvements.

- Policy C 10 'Leisure and the Evening Economy' states that development that supports the evening economy, contributes to the vitality of district centres and supports a balanced and socially inclusive evening/night-time economy will be permitted, subject to consideration of any cumulative impact; potential impact on residential amenity; and ensuring a balance of uses is retained which does not undermine the role of the primary shopping area.

- Policy T 2 'Accessible area of opportunity and need' seeks to ensure that new development is accessible by walking/cycling/public transport. The policy advises that the Council will take the circumstances of each proposal into account to establish what level of parking is appropriate.

- Policy DM 1 'Development Management' sets out various issues that development should have regard to, including: effects on amenity such as privacy, light, noise, vibration, air quality, odours, litter, vermin, birds, road safety and traffic generation.

Saved Policies of the Unitary Development Plan for Manchester (1995)

The Unitary Development Plan (UDP) was superseded by the Core Strategy. However, a number of UDP polices have been 'saved'. Extant polices contained within the UDP which are relevant to the proposal include:

- Policy DC10 'Food and Drink Uses' seeks to ensure that food and drink uses protect the amenity of nearby residents; have safe and convenient arrangements for car parking and servicing; ease of access for all; and provide for adequate storage and collection of refuse and litter.

Appraisal

The Need to Vary Condition 16

As discussed within the introduction of this letter, condition 16 prevents the restaurant/café units from having an ancillary takeaway offer which is currently preventing a high quality end operator from reaching an agreement within the applicant to operate from Unit 2, which is in turn preventing the approved development from being implemented.

Planning permission 115325/FO/2017 granted planning permission for two A3 units. The A3 use class includes restaurants/café and comprises 'use for the sale of food or drink for consumption on the premises'.

Case Law recognises that primary uses often include one or more ancillary activities. For instance large industrial undertakings may embody activities for ancillary storage for its raw material or products, offices to house its administration staff, and a catering use in the form of a canteen. With regard to A3 uses, these may include an ancillary takeaway use (use class A5), or have an ancillary shop (use class A1). The provision of an ancillary use does not change the primary use of

the planning unit. Condition 16 recognises that the uses that fall within the A3 use class can usually operate an ancillary takeaway provision without there being a material change of use. Condition 16 was therefore attached to withdraw this right which would usually be enjoyed by A3 uses.

Condition 16, as it is currently worded, does not allow an ancillary takeaway offer to be provided from the restaurant units. Changing this in respect of Unit 2 will enable an agreement to be reached with the prospective end-user. This would then allow the approved work to implement planning permission 115325/FO/2017 to begin once pre-commencement conditions have been discharged.

The implementation of the planning permission will deliver a series of positive planning and regeneration benefits for Chorlton including:

- Providing active use at ground floor of the building with restaurant/cafe uses which will complement and enhance the existing restaurant offer within Chorlton. The uses will provide additional facilities for local residents and visitors, and encourage linked trips and increased spending in local businesses.

- Providing a high quality glazed extension and other external works which will significantly improve the appearance of the building and enhance the Manchester Road streetscene.

- Creating employment opportunities during the construction/fit-out stage of development and once the restaurant units are operational.

- Increasing activity and vibrancy on surrounding streets which will help to reduce opportunities for anti-social behaviour and crime to be committed.

The proposed variation of condition 16 will allow these benefits to be achieved. The application proposal is therefore in accordance with the provisions of the NPPF and Core Strategy Policies SP 1, C 1, C 2, C 6, and C 10.

Does the Condition Satisfy the Six Tests of Planning Conditions?

Paragraph 206 of the NPPF requires that planning conditions are only imposed where they are necessary; relevant to planning and; to the development to be permitted; enforceable; precise and; reasonable in all other respects. These conditions are known as 'the six tests'. NPPG advises that conditions which do not meet all the six tests should not be used.

Condition 16 currently fails to meet all the six tests. Specifically, it is not considered to be necessary; relevant to the development to be permitted; or, reasonable in all other respects. An explanation of why the condition fails to meet these tests is provided under the headings below:

Is the condition necessary?

Planning permission 115325/FO/2017 was granted 28 April 2017. The application was approved at Manchester City Council's Planning and Highways Committee meeting on 27 April 2017. This decision followed a recommendation for approval from Manchester City Council's Planning Department.

The Officer's Committee report provided 15 draft conditions. Three conditions related to highways, specifically: parking management (12), service management (13) and construction management (14). At the planning committee, Condition 16 was set by the members to restrict the ancillary sale of food or drink for consumption off the premises. This was a condition that was not considered necessary by MCC highway officers when reviewing the impact of the proposal.

The stated reason given for attaching condition 16 was '*For the avoidance of doubt and in the interests of highway and pedestrian safety as additional associated vehicular movements to the premises would exacerbate on street parking in the vicinity of the site.'*

A Highways Technical Note prepared by SK Transport has been submitted as part of this application and considers whether this condition is necessary in the interest of highway and pedestrian safety. The note confirms that previously agreed TRICS rates have included similar restaurants across the UK which provide a takeaway facility. This means that the trip activity associated with the consumption of food offsite has already been presented to and agreed by MCC without condition 16 being deemed necessary.

Based on their substantial experience, the potential operator has advised that the ancillary takeaway offer will be low and only amount to around 5% of the custom. Such custom is likely to be split 50:50 between collection by customer in person and Deliveroo type collection by bikes/motorbikes.

The Highways Technical Note confirms that due to the site's location close to existing residential areas of Chorlton most personal collection trips would be undertaken on foot, either take the form of a local resident walking to collect food or as part of linked pedestrian trip with surrounding facilities in the District Centre. As noted above, any car trips associated with this activity is already included in the vehicle forecast for the site.

The Deliveroo trips will be undertaken by bike or motorbike and there is sufficient space both on-site and surrounding the site for these vehicles to park while the food is loaded.

On the basis of these conclusions, it is demonstrated that an ancillary takeaway provision for Unit 2 would not exacerbate on street parking in the vicinity of the site and not have a detrimental impact on highway and pedestrian safety. Following the proposed amendment to condition 16, the proposed scheme will continue to comply with provisions of the NPPF, Core Strategy policies T 2 and DM 1 and Saved UDP Policy DC10. It is therefore concluded that the condition is not necessary.

Is the condition relevant to the development to be permitted?

Condition 16 was added following comments of Committee Members and a perceived concern that existing takeaway uses in Chorlton District Centre were having a harmful impact on highway safety. NPPG confirms that a condition cannot be imposed to remedy a pre-existing problem or issue not created by the proposed development.

Chorlton District Centre covers a large area and the character of the local highway network varies depending on the location. Whilst there may be perceived issues in one part of the District Centre this is not the case in other parts. As previously discussed there is no evidence to suggest

that a low level of ancillary takeaway offer would result in a level of on street parking which would have a detrimental impact on highway and pedestrian safety in the vicinity of the site. On the contrary, the Highways Technical Note has confirmed that there wouldn't be an adverse impact. On this basis it is concluded that the condition is not relevant to the development to be permitted.

Is the condition reasonable in all other respects?

In addition to being unnecessary and not relevant to the development to be permitted, it is also considered that condition 16 is unreasonable since it is currently preventing planning permission 115325/FO/2017 from being implemented. NPPG is clear that conditions should not be used where they would unreasonably impact on the deliverability of a development. As has been explained in this letter, although an ancillary takeaway offer is a relatively small part of the overall restaurant's business it is a vital part and is necessary in order to compete on an even basis with competition who provide these services. Without the ability to provide a takeaway offer, the prospective end-user would be unwilling to agree a deal to occupy the premises. On this basis, it is clear that condition 16 is preventing a deal being reached for the occupation of Unit 2 which is ultimately preventing the planning permission from being implemented. Condition 16 is therefore currently unreasonable.

In summary, it has been established that condition 16 does not satisfy three of the six tests which planning conditions must meet. The condition should therefore be amended as sought in order to ensure that planning permission 115325/FO/2017 can be implemented and the associated planning and regeneration benefits associated with the application delivered.

Conclusion

This application has been submitted to vary condition 16 of planning permission 115325/FO/2017. The condition was added following comments made by Committee Members, however for the reasons given within this letter it is concluded that the condition does not meet three of the six tests which planning conditions must satisfy. The application is supported by a Highways Technical Note which demonstrates that the condition is neither necessary nor relevant to the development, whilst it has been clearly established that it is currently preventing the approved development from being delivered and is therefore unreasonable. Variation of the condition will allow the development to be implemented and the planning and regeneration benefits associated with the approved development to be delivered. We are therefore pleased to submit this application on behalf of our client Retail Property Investments Ltd and look forward to working with Manchester City Council to progress the application to a positive determination.

Submission Documents

The application is supported by the following information:

- Completed and Signed Application Forms for 'Variation of Condition' and Completed Certificates.
- Drawing 1463 PL 0001 'Existing Site Location Plan' prepared by DV Architects.
- Highways Technical Note (170712/SK21679/TN01(-02)) prepared by SK Transport.

The above information has been submitted alongside the application forms via the planning portal. A cheque for the planning application fee (amounting to £195 and made payable to Manchester City Council) has been submitted in the post.

We trust that this information is sufficient to enable validation and determination of the application. However, if you require any further information please do not hesitate to get in touch.

Yours sincerely



Ralph Taylor BSc MPLAN MRTPI
Planner

CC Abraham Halpern and Peter Rowe, Retail Property Investments Ltd