| Application Number | Date of Appln | Committee Date | Ward |
|---|---|---|---|
| 087060/FO/2008/S1 | 25th Jul 2008 | 23rd Oct 2008 | Old Moat Ward |

**Proposal** Change of use from community use (class D1) to hot food takeaway (A5)

**Location** 38 Old Moat Lane, Withington, Manchester, M20 3FL

**Applicant** Gani Martins, 29 Sandhurst Avenue, Manchester, Lancs, M20 1ED

## Description

The application relates to a two-storey semi detached building that has for the last seven years been used as a community centre by "Moativate." The first floor is used as a residential apartment.

The property forms part of a parade of 10 commercial units, uses are varied and include bookmakers, retail, hair salon and hot food takeaways. The parade is just outside the Withington District Centre.

The immediate area is predominantly residential in character and all four sides of the shopping parade are adjoined with residential properties.

The applicants are proposing to change of use of the existing community use (D1) on the ground floor to a hot food takeaway (A5), the only elevational changes relate to the rear elevation and involve the installation of a flue. The property currently benefits from level access and is therefore is accessible to all.

## Consultations

Local residents were notified about the planning application, 4 letters of objection and two petitions with approximately 130 signatures were received, the objections are summarised below:

- Noise associated with the comings and goings, especially late at night
- Rubbish
- There are too many takeaways on this parade
- Increase in traffic and congestion
- Another takeaway will contribute to the level of antisocial behaviour that already exists.
- Loss of the community use

## Issues

Unitary Development Plan - The relevant policies are H2.2 - States that the Council will not allow development, which will have an unacceptable impact on residential areas. The matters that the Council will consider, amongst other things, the scale and appearance of the development, traffic generation and road safety.

DC10.1 In determining planning applications for developments involving the sale of food or drink the Council will have regard to:

a. the general location of the proposed development;
b. the effect on the amenity of neighbouring residents;
c. the availability of safe and convenient arrangements for car parking and servicing;
d. ease of access for all, including disabled people; and
e. the storage and collection of refuse and litter.

DC10.2 The Council will normally accept the principle of developments of this kind in the City Centre, industrial and commercial areas, in shopping centres and, at ground level, in local shopping parades of more than 8 shops or offices.

DC10.3 Development will not normally be permitted where:

a. it is proposed outside the general locations mentioned above, or
b. there is a house or flat on the ground floor next to the proposed business, or only separated from it by a narrow street or alleyway.

DC26.1 The Council intends to use the development control process to reduce the impact of noise on people living and working in, or visiting, the City. In giving effect to this intention, the Council will consider both:
a. the effect of new development proposals which are likely to be generators of noise; and
b. the implications of new development being exposed to existing noise sources, which are effectively outside planning control.

DC26.5 The Council will control noise levels by requiring, where necessary, high levels of noise insulation in new development as well as noise barriers where this is appropriate.

Principle - The application site is situated within a parade of more than 8 shops, at present there are two hot food takeaways operating in this parade. Therefore, whilst the location of the use is generally acceptable, consideration needs to be given to the impact of the proposed use on nearby residential properties.

Residential amenity - The amenity of the residents of Old Moat Lane can be addressed through the imposition of conditions. The head of Environmental Health believes that a suitable scheme can be produced to attenuate any noise issues.

Crime and disorder - The architectural liaison officer has raised no issues with the proposed development. .

Hours of operation - A condition requiring the opening hours to be restricted to those applied for i.e.11.45 to 23.00 will be attached to this permission.

Loss of the community use - The applicant has stated that it was the church who ended the lease as they have decided to concentrate on other ways of reaching the young people and the wider community of Old Moat and Withington.

Conclusion – on balance it is considered that the application is acceptable, as the development proposal propsed accords with policy and would be acceptable in residential amenity terms subject to the imposition of appropriate conditions.

**Human Rights Act 1998 considerations** – 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 Unitary Development Plan, the Head of Planning 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. He believes that any restriction on these rights posed by the approval of the application is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

**Recommendation APPROVE**

On the basis that the proposed development is in accord with the City Councils Unitary Development Plan in particular policy H2.2 which seeks to protect the amenity of the occupiers of nearby residential accommodation from the adverse impact of development and policy Dc10 which sets down the locational criteria for food and drink uses and Dc26 in that the impact of noise will not be significant there are no material considerations of sufficient weight to indicate otherwise.

**Conditions and/or Reasons**

1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2) The development hereby approved shall be carried out in accordance with the following drawings and documents unless otherwise agreed in writing by the City Council as Local Planning Authority: Drawing stamped 25/07/2008 .

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policy H2.2 of the Manchester Unitary Development Plan.

3) No development that is hereby approved shall commence unless and until samples and specifications of all materials to be used on all external elevations of the development have been submitted to and approved in writing by the City Council as local planning authority. The development shall be constructed only

using the approved materials unless otherwise agreed in writing by the City Council as local planning authority.

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 policy H2.2 of the Unitary Development Plan for the City of Manchester.

4) Before development commences a scheme for the extraction of any fumes, vapours and odours from the premises hereby approved shall be submitted to, and approved in writing by, the City Council as local planning authority. The approved scheme shall be implemented prior to occupancy and shall remain operational thereafter.

Reason - In the interests of the amenities of the occupiers nearby properties in order to comply with Policy H2.2 of the Unitary Development Plan for the City of Manchester.

5) Deliveries, servicing and collections, including waste collections shall be carried out on the site outside the hours of 07.30hrs to 20.00hrs Monday to Saturday and no deliveries / collections on Sundays or Bank Holidays.

Reason - In order to protect the amenity of local residents and in accordance with Policy H2.2 in accordance with the Unitary Development plan for the City of Manchester.

6) Before development commences the scheme for the extraction of fumes, vapours and odours from the premises hereby approved shall be implemented

Reason - In the interests of the amenities of the occupiers nearby properties in order to comply with Policy **** of the Unitary Development Plan for the City of Manchester.

7) The fume extraction flue herby approved shall be painted in colour to be agreed by the City Council as Local Planning Authority.

Reason -
In the interests of visual amenity, pursuant to policies H2.2 and DC10 as set out in the Unitary Development Plan for Manchester.

**Local Government (Access to Information) Act 1985**

The documents referred to in the course of this report are either contained in the file(s) relating to application ref: 087060/FO/2008/S1 held by planning or are City Council planning policies, the Unitary Development Plan for the City of Manchester, national planning guidance documents, or relevant decisions on other applications or appeals, copies of which are held by the Planning Division.

**The following residents, businesses and other third parties in the area were consulted/notified on the application:**

Environmental Health

Greater Manchester Police
Steve Hobson, Crime Reduction Officer
30 Old Moat Lane, Manchester, M20 3FL
30a, Old Moat Lane, Manchester, M20 3FL
28 Old Moat Lane, Manchester, M20 3FL
360 Yew Tree Road, Manchester, M20 3FR
24-26, Old Moat Lane, Manchester, M20 3FL
31 Old Moat Lane, Manchester, M20 3EE
29 Old Moat Lane, Manchester, M20 3EE
40 Old Moat Lane, Manchester, M20 3FL
358 Yew Tree Road, Manchester, M20 3FR
42 Old Moat Lane, Manchester, M20 3FL
356 Yew Tree Road, Manchester, M20 3FR
3 Ince Close, Manchester, M20 3GJ
1 Ince Close, Manchester, M20 3GJ
7 Ince Close, Manchester, M20 3GJ
5 Ince Close, Manchester, M20 3GJ
11 Ince Close, Manchester, M20 3GJ
9 Ince Close, Manchester, M20 3GJ
15 Ince Close, Manchester, M20 3GJ
13 Ince Close, Manchester, M20 3GJ
44 Old Moat Lane, Manchester, M20 3FL
46 Old Moat Lane, Manchester, M20 3FL
48 Old Moat Lane, Manchester, M20 3FL
33 Old Moat Lane, Manchester, M20 3EE
35 Old Moat Lane, Manchester, M20 3EE
37 Old Moat Lane, Manchester, M20 3EE
39 Old Moat Lane, Manchester, M20 3EE
43 Old Moat Lane, Manchester, M20 3EE
45 Old Moat Lane, Manchester, M20 3EE
47 Old Moat Lane, Manchester, M20 3EE
49 Old Moat Lane, Manchester, M20 3EE
51 Old Moat Lane, Manchester, M20 3EE
53 Old Moat Lane, Manchester, M20 3EE
34 Old Moat Lane, Manchester, M20 3FL
32 Old Moat Lane, Manchester, M20 3FL
36 Old Moat Lane, Manchester, M20 3FL
38 Old Moat Lane, Manchester, M20 3FL
38a, Old Moat Lane, Manchester, M20 3FL

**Representations were received from the following third parties:**

Steve Taun, 90 Old Moat Lane, Withington
Jimmy Hor 36 Old Moat Lane
PJ Hei, 40 Old Moat Lane
Mr Sai Hung Lai, 28 Old Moat Lane

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