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PLANNING STATEMENT

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Emery Planning Partnership Ltd
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1. INTRODUCTION

1.1 This application seeks planning permission for the removal of condition 1 of planning permission 098463/FO/2012/C2 under section 73 of the Town and Country Planning Act 1990.

1.2 Planning permission was granted on 20th June 2012 for

> *"Use of pavement for external seating area, in association with, and ancillary to the approved A4 (drinking establishment) at 1 New York Street (ref:098658/FU/2012/C2) for a temporary period of 12 months."*

1.3 Condition 1 of the planning permission states:

> *"The permission hereby granted is for a limited period only, expiring on 20 June 2013; and the buildings, works and use comprising the development for which permission is hereby granted are required to be respectively removed, discontinued and the land shall be reinstated. Unless otherwise agreed in writing by the City Council as Local Planning Authority.*
>
> *Reason;- In the interests of amenity and to safeguard the amenities of the occupiers of nearby properties, pursuant to policy RC4(Environment), RC13(Pedestrians and Cyclists), RC3 (Mixed Use), H2.2(Housing), E3.5 (Environment), DC9.1 (Access for Disabled People), DC10.1. 10.2, 10.3 and 10.4 (Food and Drink Uses), DC26 (development and Noise) DC18.1 (Conservation Areas) and DC19.1 (Listed Buildings);of the Manchester Unitary Development Plan, the National Planning Policy Framework in particular section 12 (conserving and Enhancing the Historic Environment) and the emerging Core Strategy for the City of Manchester, in particular policies DM1 (Development Management), CC9 (Design and Heritage) and EN3 (Heritage)."*

2. APPLICATION

2.1 This application seeks to remove condition 1 on planning approval 098463/FO/2012/2 to gain permanent planning permission for the use of the pavement as an external seating area in connection with the established A4 unit.

Background

2.2 At the time of the submission of application 098463/FO/2012/C2, the description on the submitted application forms read "proposed external seating area". However the description of the application was changed by the City Council at the time of determination to read *'use of pavement for external seating area, in association with, and ancillary to the approved A4 (drinking establishment) at 1 New York Street for a temporary period of 12 months*'. This wording was changed without any form of agreement with the applicant.

2.3 It is however condition 1 that limits the time period to 12 months and not the description of development. This is clarified by the case of I'm Your Man Limited v. Secretary of State for the Environment – [1999] P.L.C.R. 109. In the 'I'm Your Man' case, planning permission was sought for a 7 year temporary use of land. Whilst reference was made in the description of development to the 7 year temporary consent, this was not translated into any conditions to limit the use in any way. The judge concluded that because the planning system is a creature of statute and that because there was no power to impose a consent subject to any limitations other than the imposition of conditions that the purported limitation in the description of development was of no effect and that a permanent consent had been granted.

2.4 In the case of this application and notwithstanding the description of development, the removal of condition 1 would constitute the grant of a permanent consent.

3. POLICY CONTEXT

Circular 11/95

3.1 Circular 11/95 deals with the use of conditions in planning permission. Paragraph 109 states "that a temporary permission will normally only be appropriate either where the applicant proposes temporary development, or when a trial run is needed in order to assess the effect of the development on the area".

3.2 In this instance, a 12 month temporary time limit was imposed to allow activities to be monitored. As no incidents are understood to have been reported in connection with use of the site, there is no justifiable reason why a permanent consent can now not be issued.

The Development Plan

3.3 The development plan comprises the Manchester Core Strategy (July 2012) and the saved policies of the Manchester UDP.

Manchester Core Strategy (July 2012)

3.4 The site is within the City Centre as shown on the Core Strategy Key Diagram.

3.5 Policy C10: Leisure and Evening Economy states that redevelopment 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 considerations regarding cumulative impact, residential amenity and balance.

Manchester UDP (July 1995)

3.6 The application site falls within the local plan policy area 10 of the City Centre Local Plan.

3.7 Within policy DC10.1 the principle of the premises for the sale of food and drink within a city centre is acceptable subject to certain criteria. These being:

a) location
b) affect on amenity
c) area of safe and convenient pavement
d) ease of access for all
e) storage for refuse and litter.

3.8 The location of the ground floor unit as a drinking establishment is acceptable and has been granted planning permission under application 09617/FU/2011/C2.

3.9 At the time of the previous application (098463/FO/2012/C2) all of the above 5 points of the policy were considered to be acceptable.

4. PROPOSAL

4.1 This planning application seeks the removal of condition 1 to allow the permanent use of the exterior seating area in association with the existing A4 use on the site.

4.2 The reason for the imposition of condition 1 was due to the concern of officers that the proposed development may lead to anti-social behaviour. As a result it was recommended that a temporary permission be granted to enable the site to be monitored. The key planning consideration is therefore whether there has been any anti-social behaviour as a result of the temporary use.

4.3 Submitted with this application is a report from the Greater Manchester Police (GMP) updating the previous crime impact statement. This report confirms that since the grant of the temporary permission, there have been no reported incidents of any anti-social behaviour which have been caused or directly related to this unit. Consequently the GMP are happy with the proposed development.

4.4 The accompanying crime impact statement, whilst making reference to 17 calls to the police, apart from one incident of misuse of the site by a vagrant and a reported theft, the police are happy to support the continued use of the site.

4.5 Likewise the landlords have also reported no incidents of any anti-social behaviour and are happy for the use of the external area to continue. In this regard a letter from Bruntwood Ltd, who are the lessees of the unit is also attached with this application and supports the current proposal.

4.6 All other aspects of the previous consent including the management strategy will remain to enable the application to continue with its current successful operations on this site.

4.7 Circular 11/95 is clear that a temporary permission will normally only be appropriate either where the applicant proposes a temporary development or where a trial run is needed in order to assess the effect of the development on the area. In this case there have been no incidents of anti-social behaviour during the 12 month temporary period and there is no reason to withhold the grant of planning permission.

5. SUMMARY AND CONCLUSIONS

5.1 The temporary time limit was initially introduced to enable the effect of the development to be assessed. From the submitted crime impact statement and supporting letter from Bruntwood Ltd it is clear that anti-social behaviour has not occurred. Consequently there should be no objection to a permanent consent being granted.

5.2 As there have been no reported incidents on this site it is considered that there is no reason now to withhold a permanent consent for the permanent use of the external area. Subsequently there can be no justified planning reasons to refuse this application.

5.3 The proposal fully accords with the Development Plan and in particular policy C10 of the recently adopted core strategy and extant policy DC10.1 of the Manchester UDP. The proposal would further add to the vitality of the city centre as a whole. Within the context of the presumption in favour of sustainable development set out within the NPPF we respectfully request that this application is approved.