

Planning

Growth & Development

Delegated officer report for planning application

Application no. 142661/FO/2025
Date registered valid: 9 April 2025
Proposal: Erection of front extensions and part change of use to shisha bar
Address: 28 Burton Road, Manchester, M20 3EB
Ward(s): Old Moat Ward

Applicant: Mr Adel Hamdi
Agent (if any): Jacob Wade, P4B Architecture Ltd
Case officer: Janet Lawless
Tel: 0161 234 4535
Email: janet.lawless@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 04.06.2025

Application details

Type of application: Full Application Consent

Development type: Minor Other

Date of site visit: 30th May 2025

Standard consultations:

Printed: 28 April 2025 Expired: 20 May 2025

Neighbour notifications

Printed: 28 April 2025 Expired: 20 May 2025

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

The property that is the subject of this full application for a change of use of cafe /restaurant (Class E) to a café/bar with shisha (Sui Generis) is identified as 28 Burton Road on the application forms, however it also takes in number 2 Whitchurch Road. It is a 2- storey brick built mid terraced property that wraps around the junction of Whitchurch Road and Burton Road. It is located in a small commercial block of properties, which have forecourts to the frontage. There is an alleyway that runs alongside and to the rear. There is currently 50% of the forecourt associated with the premises occupied by a means of enclosure constructed in timber with a roof and partially open sides. There are double doors that lead into the main body of the property, within which is a cafe/ bar that has several large screen tv's on the wall showing sports. There is no parking associated with the property with the business solely reliant upon on street parking. The immediate highway frontage has double yellow lines and parking limited to three hours unless holding a resident exemption.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

There are commercial properties to the ground floor within the block, with residential to several of the upper floors, including immediately adjacent over the laundry use. There are in addition several independent access doors to the first floors above the properties in the block, some of which would also appear to have residential uses to the first floor. In addition, number 6 Whitchurch Road is one property away from number 208 Burton Road / 2 Whitchurch Road is the end property on the terrace and is a 2- storey residential dwellinghouse. On the opposite side of the junction wrapping around both Burton and Whitchurch Roads is Withington baths and leisure centre. The remainder of the immediate area comprises of residential properties in the form of dwellinghouses and purpose-built blocks of flats. Further along to the east is

Wilmslow Road which leads to Withington district centre. The area is well served by public transport.

Description of development

The proposal is for the erection of a steel framed extension with the majority of the sides and frontage being constructed in glazing in the form of bifold doors that would predominantly open up the sides and front of the property to the street, apart from the timber panelled base upon which the fenestration sits. The doors would be closed at close of business forming a fully enclosed glazed box on the property frontage. It would also replace the existing timber enclosure to the frontage, overall increasing the external area by 100%. It is proposed that the area to the front of the premises would be for the use of smoking shisha. The applicant is also proposing to operate the business of the cafe/bar and shisha area from 2:00pm until 2:00 am. Planning was granted under a Prior Approval application ref:120680/P3JDE/ 2018 for the change of use from a furniture shop to a café/ restaurant. One of the conditions was that the hours were to be submitted to and agreed in writing prior to the use becoming operational. The details to discharge that condition were never submitted.

Consultations & Notification Responses

Local Residents- Have been informed, 6 representations have been received, the main points of concern being as follows:

1/This is completely the wrong location for this type of business, there is zero parking available with double yellow lines being in front of the premises. Visitors to the business are fully parking on the pavement to both sides of Whitchurch Road and Burton Road.

2/Pedestrians cannot walk on the footpath, having to walk in the road.

4/ From a traffic point of view, it makes access and egress from Whitchurch Road onto Burton Road extremely dangerous, as due to the parked vehicles that park on both roads even around the junction, the view of oncoming traffic is obstructed in both directions.

5/ The fumes from the Shisha are very obvious when passing the premises, as there has been shisha smoking there for two years. It makes it unpleasant, and we have health concerns with the tobacco. If residents have windows open it can be smelt in the houses.

6/ The premises are already very busy all nights of the week, at 11:00pm the business is packed and causes unacceptable noise pollution particularly keeping our children awake. It would appear that there has been the smoking of shisha inside the premises too. This is not the right location at all for this use, with this part of Withington being at this point a mainly residential area.

Cllr Gavin White- The business with regards to the smoking of shisha has not been well managed over the years with activity resulting in the initiation of compliance action. The opening hours requested would be unacceptable given the proximity of the use to residential properties. Highway safety within the vicinity of the site is also an issue with users and visitors to the premises parking illegally on the pavements, double yellow lines and parking around the junction making it dangerous in terms of pedestrian and highway safety, with vehicles fully blocking the pavement.

A lot of the works to the premises have already taken place, and so the application should really be retrospective. The shop front and signage are not compliant with shop front policy and the signage is unacceptable on a key route into Withington Conservation area and Withington village.

Withington Civic Society- object to the proposal.

1/ As well as nearby residential properties there is a flat above the laundry/dry cleaners next door which is immediately adjacent to the proposed smoking area.

2/ The applicants are requesting to operate the business from 2:00 pm to 2:00 am where within these hours, food, drinks and the smoking of Shisha is to be provided. Whilst the premises fall

just outside of the Withington Special Policy Area from a licensing perspective, this is a residential area, and the hours proposed far exceed acceptable hours when considering the detrimental impact that this type of use has on the residential amenity of neighbouring residential properties.

3. We consider the plans submitted to be completely inadequate. The description in the Design and Access Statement alludes to a permanent glazed structure but there are no drawings to back this up.

4. Furthermore, there would be conflict with paragraph 130 of the Planning Policy Framework which says that planning decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development and that they are visually attractive. Paragraph 134 of the Framework says that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design. (National Design Guide).

Finally, the National Planning Policy Framework states in para 96 "Planning policies and decisions should aim to achieve healthy, inclusive and safe places." This proposal would be completely contrary to this advice.

Environmental Health- no objections subject to the attachment of conditions relating to a management plan, noise and hours of use, to any consent granted.

Highways- no objections. Greater Manchester Police would comment from a hostile vehicle mitigation perspective.

Policies

The National Planning Policy Framework (December 2024) - The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally prepared plans for housing and other development can be produced. Planning law requires that applications for planning permission be determined in accordance with the development plan, i.e. the Core Strategy Development Plan Document and accompanying policies unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.

Paragraph 11 states that plans and decisions should apply a presumption in favour of sustainable development, which for decision-taking means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Core Strategy Development Plan Document - The Core Strategy Development Plan Document 2012 -2027 ("the Core Strategy") was adopted by the City Council on 11th July 2012. It is the key document in Manchester's Local Development Framework. The Core Strategy replaces significant elements of the Unitary Development Plan (UDP) as the document that sets out the long- term strategic planning policies for Manchester's future development.

A number of UDP policies have been saved until replaced by further development plan documents to accompany the Core Strategy. Planning applications in Manchester must be decided in accordance with the Core Strategy, saved UDP policies and other Local Development Documents. Relevant policies in the Core Strategy are detailed below:

Policy SP1, Spatial Principles - Development in all parts of the City should make a positive contribution to neighbourhoods of choice including creating well designed places that enhance or create character and protect and enhance the built and natural environment.

Policy DM1, Development Management - This policy states that all development should have regard to a number of specific issues, the most relevant of which in this instance are as follows:

- . Appropriate siting, layout, scale, form, massing, materials and detail.
- . Impact on the surrounding areas in terms of the design, scale and appearance of the proposed development. Development should have regard to the character of the surrounding area.
- . Effects on amenity, including privacy, light, noise, vibration, air quality, odours, litter, vermin, birds, road safety and traffic generation. This could also include proposals which would be sensitive to existing environmental conditions, such as noise.
- . Accessibility: buildings and neighbourhoods fully accessible to disabled people, access to new development by sustainable transport modes.
- . Community safety and crime prevention.
- . Design for health.
- . Refuse storage and collection.
- . Vehicular access and car parking.

Policy C 8, Local Centres - This policy states that local shopping and service provision in local centres should be retained where it remains viable and provides an important service to the local community. The provision of new small scale retail facilities will be encouraged where they would provide for local every day needs and would not be harmful to the vitality and diversity of nearby centres. Careful consideration will be given to the impacts of new commercial development on residential amenity, which is particularly an issue for food and drink uses. Development proposals in local centres which would not reflect the local role of these centres will be assessed according to policy C9.

Policy C 10, Leisure and the Evening Economy - New development and 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 the following considerations:

1) Cumulative impact - in areas where there is already a concentration of bars (A4), hot food takeaways (A5) and other night-time uses which are detrimental to the character or vitality and viability of the centre, there will be a presumption against further facilities.

2) Residential amenity - the proposed use should not create an unacceptable impact on neighbouring uses in terms of noise, traffic and disturbance.

3) Balance - new uses in Manchester centres should support both the daytime and evening/night-time economies whilst not undermining the role of the primary shopping area. When considering the impact of a proposed bar or hot food take away regard will be had to the above policy and also:

- . The existing number of similar establishments in the immediate area and their proximity to each other.
- . The type and characteristics of other uses, such as housing, shops and public houses.
- . The existence of vacant shop units and the condition of the unit.
- . The importance of the location for local shopping, and the number, function and location of shops that would remain to serve the local community.
- . The character of the centre and its frontage, and the nature of the use proposed.
- . The potential impacts of the proposal on the wider community; and
- . Any known unresolved amenity, traffic or safety issues arising from existing uses in the area.

Saved UDP Policy DC26, "Development and Noise" - Policy DC26.1 states that 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.

Policy DC26.2 states that new noise-sensitive developments (including large-scale changes of use of existing land or buildings), such as housing, schools, hospitals or similar activities, will be permitted subject to their not being in locations which would expose them to high noise levels from existing uses or operations, unless the effects of the noise can realistically be reduced. In giving effect to this policy, the Council will take account both of noise exposure at the time of receiving a planning application and of any increase that may reasonably be expected in the foreseeable future.

Places for everyone GM Spatial Plan

The Inspectors' Report on the examination of the Places for Everyone plan was published on 15 February 2024. The Inspectors' Report sets out and justifies their recommendations in relation to the plan, and they have concluded that all legal requirements have been met and that with the recommended main modifications set out in the appendix to their report, the Places for Everyone plan is 'sound'.

The nine constituent local authorities have now adopted the Plan following consideration of the Inspectors' Report.

Given the stage the Plan has reached, the Plan and its policies is now a material planning consideration in the determination of planning applications. The Plan and its policies must therefore be given significant weight in the planning balance.

Policy JP-P6 (Health) - States that development should maximise its positive contribution to health and wellbeing, whilst avoiding any potential negative impacts of new development. It is considered that the development would result in an overly intensive use of the site. It would generate levels of activity, harmful vapours, noise and disturbance that would be harmful to the character and amenities of the area. Policy JP-P6 would not be accorded with.

JP-S1 (Sustainable development) - In this case, the development would utilise an existing building but would be increasing the footprint with the extensions to facilitate the smoking of shisha. However, potentially adverse social impacts would be related to attributable to the operation of the proposed shisha use. This includes excessive activity, noise and disturbance attributable to the development and the associated harm caused to the character of the area through the increase in noise and vehicles from patrons of the application property. Policy JP-S1 would not be accorded with.

Issues

Principle of the Proposal - Section 38(6) Planning and Compulsory Purchase Act 2004 requires that decisions are to be made in accordance with the development plan, unless material considerations indicate otherwise. Paragraphs 2 and 48 in the NPPF reinforces this requirement, while paragraph 12 states that the presumption in favour of sustainable development does not change the statutory status of the development plan as a starting point for decision making, and that where a planning application conflicts with an up-to-date development plan, permission should not normally be granted.

Given the unduly negative impact the shisha facility would have upon nearby residents it is considered that the proposal conflicts with Policies DM1 and SP1 in the Manchester Core Strategy and saved UDP Policy DC26. As such the principle of the change of use is not considered acceptable.

Residential Amenity - It is acknowledged that smoking inside the building would not result in undue harm to nearby residents by way of noise and disturbance. However, as with the appeal decision for 181-183 Wilmslow Road, it is recognised that as smoking in an enclosed public space is prohibited by the Health Act (2006), the bi-folding doors at the front and internal sides of the premises would be opened in an effort to overcome the limitations of the Health Act. The applicant has stated that these doors would remain open during the hours of business, which they are proposing as 2:00 am to 2:00 pm with the constant open position of these doors, it is considered that the noise, disturbance and odours associated with the shisha smoking element of the proposal would have a detrimental impact upon the levels of residential amenity enjoyed by the residents of Burton Road and Whitchurch Road. This would be exacerbated further while residents utilised their amenity space and would be more acute late at night into the early hours of the morning and when during the warmer months, bedroom windows could reasonably be expected to be left open.

In addition to the general activity associated with the shisha use, it is considered that the comings and goings of customers to the venue would impact on existing levels of residential amenity. The slamming of car doors, playing of car radios and the starting of engines, along with raised voices, would all contribute to the reduction in residential amenity enjoyed by the occupants of the residential properties on both Burton Road and Whitchurch Road.

In respect of odours emanating from the premises, it is acknowledged that Environmental Health consider the imposition of a condition to be sufficient to limit any impact. However, the imposition of such a condition would not prevent disamenity when the bifold doors would be opened which according to the application would be whenever the business was open.

The premises are in a position where there is a large footfall particularly of users passing for Withington baths and Leisure centre, a good number of which would be young children. The fumes and odours would enter into the public realm in large quantities and for long periods of time.

Visual Amenity

The structure that currently occupies one half of the forecourt is not in fact constructed as consented under planning permission 123405/FO/2019. The one that currently occupies the site is of a much inferior design and materials to that approved. Therefore, whilst aesthetically the glazed structure proposed to both sides of the forecourt is visually an improvement when compared to the unauthorised structure currently occupying the site, there would have been less of a visual upgrade had the lightweight pergola structure as approved been implemented. The structure as previously approved was only proposed for one half of the forecourt, which still retained some openness on the frontage, however, the enclosure as now proposed would occupy all the frontage, and at a prominent corner location which now appears as a permanent visually intrusive feature when viewed within the context of the other open forecourts.

Pedestrian and Highway Safety

Whilst Highways officers have no concerns regarding the proposed extension it is still considered that the increase in what will be available to patrons of the premises will have a detrimental impact on pedestrian and highway safety. At the front of the premises there are double yellow lines, which reduces the parking availability within the vicinity of the site. There is a central reservation at the junction which narrows the road. Any forecourt parking currently available for the business would be lost with the replacement of the existing front extension and its increase in footprint to extend across the full forecourt area. In addition, this raises visibility issues for any of the businesses that use the open forecourt for staff or visitor parking as there would now be a solid structure that wraps around the corner meaning that the vehicle would have had to pull a good way off the forecourt and onto the public footpath to ensure safe egress. There are already vehicles there late into the night that bump up the kerb and park all along the footpath, this adds to the difficulty of clear visibility splays for people wishing to use the forecourt parking in a safe manner and this also renders the footpath unavailable for pedestrians. The competition for parking spaces within the vicinity of the site is evident from

patrons of the premises. This is likely to increase with the increase in footprint and offer of the premises.

Over- intensification – Whilst it is acknowledged that the café / shisha bar will function with the internal area operating as it previously operated, the extended area to the front of the property will provide an area that would be used for smoking shisha as the following extract from the Design and Access statement shows:

‘In addition to the existing café / restaurant, the outdoor area will be expanded which will be for the smoking of shisha in addition to eating. The two elements will not conflict with one another, where the customers in the café will be able to eat/ drink without any direct interaction with any smoke and vice versa’.

The shisha use is therefore likely to attract another layer of patrons to the property for the smoking of shisha which, would result in intensification of the use, without the servicing and parking to support the additional visitors. This would also contribute to the additional generation of noise of the use of the external area to the detriment of the residential character of the neighbourhood. It is therefore considered that the proposal would result in over-intensification of the property and the site.

Health Act 2006 - Smoking in enclosed public spaces is prohibited in England, pursuant to the Health Act 2006. It is not clear how the intended use of the premises for the smoking of shisha would comply with the relevant legislation, given that the premises is open to the public and has the potential to be substantially enclosed.

City Council guidance refers to the definition of enclosed or substantially enclosed premises as the following:

A Substantially Enclosed Premises will be considered to be substantially enclosed if it has a ceiling or roof, but there are openings in the walls which are less than half of the total area of walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut.

Given the above, it is clear that the premises could not be legally used for smoking in any form, including shisha, as the premises can be defined or categorised as enclosed. The extraction of smoke from inside the premises, as proposed by the applicant, would not overcome the requirements under the Health Act; door or window openings cannot be taken into account in terms of the open nature of a premises, either when open or closed. The building which includes a ceiling, is considered to be enclosed on four sides, in which case it would be illegal to use the building itself for the smoking of shisha.

Whilst it is acknowledged that it is not the role of the planning system to duplicate other legislative controls, account should be taken of the relevant law surrounding smoking in enclosed public spaces.

Other Legislative Requirements

Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

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 a right to a fair hearing and to this end the local planning authority 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 Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing 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. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Refuse

Article 35 Declaration

The proposal would not improve the social and environmental conditions of the area, nor does it comply with the development plan and therefore does not comprise sustainable development. There are no conditions which could reasonably have been imposed, which would have made the development acceptable, and it is therefore not possible to approve the application.

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

- 1) The proposed use of the ground floor as a café/shisha establishment (Sui Generis) would have a detrimental impact on the amenity and living conditions of the nearest residential occupiers as a result of the unacceptable levels of noise, disturbance and activity, including comings and goings, associated with the nature of the use. The proposed use is therefore contrary to saved policy DC26 of the Unitary Development Plan for the City of Manchester, policies DM1 and SP1 of the Manchester Core Strategy and the National Planning Policy Framework.

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Withington Civic Society

24C Burton Road, Manchester, M20 3EB
Flat Above, 4 Whitchurch Road, Manchester, M20 1FX
6A Whitchurch Road, Manchester, M20 1FX
6 Whitchurch Road, Manchester, M20 1FX
Flat Above, 28 Burton Road, Manchester, M20 3EB
Withington Baths & Leisure Centre, 30 Burton Road, Manchester, M20 3EB
26A Burton Road, Manchester, M20 3EB
Flat 9, 9 Brigadier Close, Manchester, M20 3BX
Flat 6, 9 Brigadier Close, Manchester, M20 3BX
Flat 4, 9 Brigadier Close, Manchester, M20 3BX

Flat 1, 9 Brigadier Close, Manchester, M20 3BX
25C Burton Road, Manchester, M20 3GB
23B Burton Road, Manchester, M20 3GB
4 Whitchurch Road, Manchester, M20 1FX
32A Burton Road, Manchester, M20 3EB
Withington Adult Learning Centre, 24A Burton Road, Manchester, M20 3EB
23 Burton Road, Manchester, M20 3GB
32 Burton Road, Manchester, M20 3EB
26 Burton Road, Manchester, M20 3EB
24 Burton Road, Manchester, M20 3EB
27A Burton Road, Manchester, M20 3GB
25B Burton Road, Manchester, M20 3GB
25A Burton Road, Manchester, M20 3GB
23C Burton Road, Manchester, M20 3GB
23A Burton Road, Manchester, M20 3GB
Flat 12, 29 Burton Road, Manchester, M20 3GB
Flat 11, 29 Burton Road, Manchester, M20 3GB
Flat 10, 29 Burton Road, Manchester, M20 3GB
Flat 9, 29 Burton Road, Manchester, M20 3GB
Flat 8, 29 Burton Road, Manchester, M20 3GB
Flat 7, 29 Burton Road, Manchester, M20 3GB
Flat 6, 29 Burton Road, Manchester, M20 3GB
Flat 5, 29 Burton Road, Manchester, M20 3GB
Flat 4, 29 Burton Road, Manchester, M20 3GB
Flat 3, 29 Burton Road, Manchester, M20 3GB
Flat 2, 29 Burton Road, Manchester, M20 3GB
Flat 1, 29 Burton Road, Manchester, M20 3GB
27 Burton Road, Manchester, M20 3GB
25 Burton Road, Manchester, M20 3GB
1 Barnett Avenue, Manchester, M20 3FA
2 Whitchurch Road, Manchester, M20 1FX
24B Burton Road, Manchester, M20 3EB
Flat 8, 9 Brigadier Close, Manchester, M20 3BX
Flat 7, 9 Brigadier Close, Manchester, M20 3BX
Flat 5, 9 Brigadier Close, Manchester, M20 3BX
Flat 3, 9 Brigadier Close, Manchester, M20 3BX
Flat 2, 9 Brigadier Close, Manchester, M20 3BX

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA