

Our ref: hk/O/HD/ManChtmHill/APC/26.03.25

26 March, 2025

Manchester City Council  
Planning – Development Control  
Via Planning Portal

Dear Planning Officers,

**Proposed use of premisses as Class E at Unit 2, 40 Bury Old Road, Cheetham Hill Shopping Centre, Manchester, M8 5EL**

We act as planning consultants to Heavenly Desserts Cheetham Hill Limited.

Heavenly Desserts (HD) is one of the UK's leading desert café operators with over 50 premises throughout the UK. Each venue is individually designed, and the subject premises will employ 25 staff (10 full-time/15 part-time) and operate from 0900 to 0000 hours each day of the week. HD offers an array of elegant hot and cold drink and dessert options including cookie dough, brownies, ice cream, crepes and waffles. There is no scratch cooking on site and there is no requirement for extraction equipment. There will be 38 covers. No alcohol is served or permitted on the premises. The premises has level access and is compliant with Part M of the building regulations. **There are no external alterations proposed, and this application is to establish the principle of the proposed use only.**

Cheetham Hill Shopping Centre is a modern 70,763 sq.ft (6,574 sq.m) pedestrianised retail development with a road frontage on to Bury Old Road. The centre comprises 28 commercial retail units anchored by a large Tesco Supermarket and has a free 530 space car park.

Planning permission (072818/FD/2004/N1) was granted on 8 December 2004 for the Cheetham Hill Shopping Centre including Use Classes A1, A2, A3, B1 and D1. Condition 24 limited Class A1 and Class A2 units within the mall to a maximum floorspace of 5,851 sq.m. Class A3 units were limited to 2 with a maximum floorspace of 475 sq.m.

On 9 February 2009, planning permission (091519/JO/2009/N1) was granted to vary condition 24 to increase the number of A3 (and A5 units) from 2 to 3, with a total floorspace of 475 sq.m.

On 8 July 2015 planning permission (108498/FO/2015/N1) was granted for change of use of part of existing mezzanine of Unit 16 from A1 retail floor space (Class A1) to cafe/restaurant (Class A3), extension of existing mezzanine floor within units 17 and 18 to create additional A1 floor space, and new shop fronts to units 17 and 18. This scheme did not result in the loss of any A1 units but was part of a scheme to bring three A1 units into use. The loss of existing A1 floorspace at mezzanine level (85 sq.m.) was more than compensated for by the proposed extension of the mezzanine floor for A1 use (173 sq.m.).

As you know, the government amended the Use classes Order in September 2020, and this is a material planning consideration. The changes were introduced as a direct result of the Coronavirus pandemic, which exacerbated long standing weaknesses in the high street retail sector that was slowly harming the long-term vitality and viability of centres.

The radical de-regulatory changes to the 1987 Use Classes Order apply to all uses of land and buildings across England. As of 1st September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (SI 2020/757) (2020 Regulations) came into force. The new regulations revoke Part A, and Part D of the 1987 Use Classes Order (England) and also modified Part B.

This means that the following use classes no longer exist –

**Class A1. Shops**

**Class A2. Financial and professional services**

**Class A3. Restaurants**

**Class B1. Business**

**Class D1. Non-residential institutions**

**Class D2. Assembly and leisure**

In its place the government has created a new broader use class being as follows –

- **Class E. Commercial, Business and Service**

Use, or part use, for all or any of the following purposes—

- a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,*
- b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,*
- c) for the provision of the following kinds of services principally to visiting members of the public—*

*(i) financial services,*  
*(ii) professional services (other than health or medical services), or*  
***(iii) any other services which it is appropriate to provide in a commercial, business or service locality,***

- d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,*
- e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,*
- f) for a crèche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*
- g) for—*

*(i) an office to carry out any operational or administrative functions,*  
*(ii) the research and development of products or processes, or*  
*(iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*

As per the legislation a building in Class E may be in use for a number of uses ‘*concurrently or at different times of day*’ suggesting there can be complete flexibility within the Use Class. It follows that buildings can be used flexibly for all the above without the requirement for planning permission.

In support, we further refer you to formal governmental Planning Practice Guidance (PPG) advice published on 18 September 2020 under the heading ‘*Is movement between uses within the same use class development?*’ which clarifies that –

**Movement from one primary use to another within the same use class is not development and does not require planning permission.**

**The Commercial, Business and Service use class provides for use, or part use, for all or any of the purposes set out in that Class.**

Paragraph 012b of PPG published on 20 August 2021 further advises that

**in considering an application for the discharge, modification or removal of conditions limiting changes of use within any of the expanded classes of use, the local planning authority should have regard to the new regulations and the advice in this guidance**

In a further nod towards the full-scale diversification of commercial uses that is supported by the Government we refer you also to a revision to paragraph 036 of PPG which includes a new line advising that an *"article 4 direction cannot be used to restrict changes between uses in the same use class of the Use Classes Order"*. As such, the direction of travel of national planning policy guidance is that the Government seeks to provide a de-regulatory planning framework that provides flexibility for businesses impacted by Covid-19 to adapt and diversify to meet changing demands.

Presently one unit in the shopping centre, Ladbrokes (Unit 1) is in sui generis betting shop use (former Class A2). Two units are in sui generis hot food takeaway use (Unit 23 Dixy Chicken and Unit 26 Pepes). All other units within the development scheme are in Class E use. This includes other similar uses to the proposed HD use which were formerly identified as Class A1 premises within the development scheme such as Costa Coffee (Unit 13), Chai Inc (Unit 11) and the Italian Gelato Co (Unit 22). HD operates in much the same way as the above coffee shop uses which traditionally operated as Class A1 uses.

As such, this application for planning permission seeks to regularise the proposed use of Unit 2 as a Class E use in light of the previous conditions attached to the overall development.

We note that on 12 October 2023 Manchester City Council granted a Certificate of Lawful Use application at the subject premises Ref 137597/LP/2023 - Use of unit as a Cookie shop (Class E). the Certificate of lawful use states –

**The existing use of the property falls within Class E(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended), and the proposed use, as detailed within the submitted application form and supporting information, is to be a 'cookie shop', which would also fall within Class E(a) of the same order. Accordingly, the change of use is within the same class and is therefore excluded from the definition of development and no planning permission would be required.**

In approving the Certificate of Lawful Use application the officer reported that –

*Therefore, as the former use as a furniture store would have fallen within the A1 use class which now has become Class E(a) and that the proposed use would comply with the definition of Class E (a) proposal would not constitute change of use and therefore is excluded from the definition of development and no planning permission would be required.*

*As the change of use described here does not constitute development by the Use Classes Order and that the change of use is not reliant on the GPDO to change, article*

*3(4) does not apply here. Therefore, no conditions apply from previous planning applications are a change of use allowed by the GPDO.*

The proposed cookie shop use did not have any internal seating but sought to trade similar product being desert and ice cream. Officers did not take into considerations restrictive conditions on the type of uses permitted in the centre.

HD is investing £400,000 in the property and is creating 25 high street jobs at a time when traditional high street operators are in decline. Naturally this level of investment in the high street requires security of tenure and HD seeks to ensure that they are able to operate from the premises as a Class E operator whether that be as an E(a), E(b) or E (c) (iii) use within the E Use Class.

The application site is currently in use as a furniture retailer under the trade name Mobel Complete Furnishing Solutions but is closing down imminently. Liquidators were appointed on 17 December 2024 the registered company was officially wound up. Prior to use as a furniture shop the premises was operated from its development as a retail unit to approximately 2018 as a pawnbroker.

HD will secure the long-term viable use of the premises and enhance the local vitality and viability of Cheetham Hill District Centre by positively enhancing footfall to the centre during the day and in the evening.

With regard to the development plan, the adopted Core Strategy identifies Cheetham Hill as a district shopping centre and policy C1 supports uses that enhance vitality and viability in district centres. Policy C2 supports *‘thriving district centres, with distinct local character, providing a good range of accessible key services, including retail, health facilities, public services, leisure activities and financial and legal services’*. Policy C2 states –

**Development in District Centres should:**

- **Prioritise delivery of key 'visitor' services, including retail, public and commercial services and food and drink. 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. Subject to impact on overall character and local amenity, the Council will support development which extends the time during which District Centres are active;**
- **Promote the development of employment which provides opportunities for local people;**
- **Promote the efficient use of land, particularly through considering options for multi-storey development. New development should positively contribute to the reuse**

**and regeneration of land and premises, together with wider regeneration and investment strategies;**

- **Contribute positively to the diversity and mix of uses within centres without undermining their primary retail function. Development should also promote a range of retailers and shop formats;**
- **Promote choice and competition particularly where development will support the independent sector;**
- **Remedy deficiencies in areas with poor access to facilities.**

The subject proposal is for the principle of unrestricted Class E use. There is no impact on amenity as this is a town centre location and there is no residential use in the immediate vicinity. Refuse and servicing will continue from the rear gated service yard. There is no impact on amenity with ample free parking available in the rear car park. The proposed use creates jobs and investment in Cheetham Hill centre as well as enhancing footfall and the vitality of the daytime and evening economy.

If you have any queries related to this proposal, please do not hesitate to contact these offices in the first instance.

Yours sincerely,

**HARIS KASUJI BA MA MRTPI**