

Planning

Growth & Development

Delegated officer report for planning application

Application no. 141089/JO/2024

Date registered valid: 9 October 2024

Proposal: Variation of condition number 3 attached to planning permission reference 135897/FO/2023 to allow opening hours of the restaurant use (Class E) from 12:00 to 04:00 hrs daily

Address: 26 Bury New Road, Manchester, M8 8EL

Ward(s): Cheetham Ward

Applicant: Mrs Sanam Rafiq

Agent (if any): Mr Darren Pomfret, Manchester Building Design Ltd

Case officer: Steven McCoombe
Tel: 0161 234 4607
Email: steven.mccoombe@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 8 November 2024

Application details

Type of application: Variation or Removal of Condition

Development type: Change of use

Date of site visit: 25 October 2024

Standard consultations:

Printed: 16 October 2024 Expired: 6 November 2024

Neighbour notifications

Printed: 16 October 2024 Expired: 6 November 2024

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

This application site relates to a pavement-fronted, ground floor café/restaurant unit (Class E) – presently operated by Dixy Chicken. The host unit is situated within a relatively modern two-storey building which has been sub-divided to create two smaller retail units. The application premises relates to the end unit situated on the corner of Bury New Road and Dewhurst Street and adjoins a retail operation and fashion wholesale to one side and a wholesale business to the north.



View of front of the premises

The rear of the premises includes a small service yard and parking space accessed off Dewhurst Street.



View of the rear of the premises

The premises is situated within a busy commercial frontage comprising of small-scale retail, wholesale and food and drink units which extends on both sides of Bury New Road.

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

Description of area

The site is located adjacent to a busy, north/south arterial situated in an area defined by The Strangeways Local plan (2009) as 'The Workshop Village'. This is located on each side of Bury New Road and contains a mixture of large and small premises occupied by wholesalers, small-scale retail and distributors involved predominantly in textile, clothing, information communications and technology.

The area also includes a number of food and drink businesses, including a large banqueting business on the opposite side of Bury New Road. HMP Manchester (Strangeways) is situated a short distance to the south-east, whilst the city centre is situated approximately 1.5 km to the south.

Description of development

Variation of condition number 3 attached to planning permission reference 135897/FO/2023 to allow opening hours of the restaurant use (Class E) from 12:00 to 04:00 hrs daily

Consultations & Notification Responses

Local Residents/Occupiers – No representations received.

Greater Manchester Police (Design for Security) – concerns are raised about the proposed variation of hours and in particular the collection of late night orders.

Highway Services

Environmental Health - Since the previous application was approved under 135897, several upper floor units between 3-11 Bury New Road have been approved under the prior approval

procedure to be converted into residential properties, so closer receptors will be introduced to the site.

Conditions are recommended in relation to acoustic insulation and external equipment noise attenuation.

Policy

Local Development Framework

The principal document within the framework is the Manchester Core Strategy which sets out the spatial vision for the City and includes strategic policies for development during the period 2012 – 2027.

'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 also been saved until replaced by further development plan documents to accompany the Core Strategy. Planning applications in Manchester must therefore be decided in accordance with the Core Strategy, saved UDP policies and other Local Development Documents.'

The following policies within the Core Strategy are considered relevant:

Policy SP1 (Spatial Principle) refers to the key spatial principles which will guide the strategic development of Manchester together with core development principles. It is stated that developments in all parts of the city should create well designed places which enhance or create character, make a positive contribution to the health, safety and well-being of residents, consider the needs of all members of the community and protect and enhance the built environment. Further, development should seek to minimise emissions, ensure the efficient use of natural resources, reuse previously developed land wherever possible, improve access to jobs, services and open space and provide good access to sustainable transport provision.

Policy DM1 (Development Management) states that new development should have regard to more specific issues for which more detailed guidance may be given within supplementary planning documents. Issues include: the appropriate siting and appearance of development, the impact upon the surrounding area, the effects on amenity, accessibility, community safety and crime prevention, health, the adequacy of internal accommodation and amenity space and refuse storage/collection.

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

The below saved policy of the Unitary Development Plan is also considered relevant:

Policy DC10 (Food and Drink Uses) relates to development for the consumption of food and drink. Amongst the criteria with the policy, the Council should have regard to the general location of the proposed development and the effect upon the amenity of neighbouring residents.

Subsection DC10.4 states that where the proposed development is considered acceptable in principle, conditions may be imposed in order to protect the amenity of nearby residents. These conditions may amongst other things include a limitation on the hours of opening.

Policy DC26 (Development and Noise) states that the Council intends to use the development control process to reduce the impact of noise on people living and working in the City. In particular, consideration will be given to the effect of new development proposals which are likely to be generators of noise.

National Planning Policy Framework

The central theme to the revised NPPF is to achieve sustainable development. The Government states that there are three dimensions to sustainable development: an economic role, a social role and an environmental role.

The Framework underlines a “presumption in favour of sustainable development”. This means approving development, without delay, where it accords with the development plan and where the development is absent or relevant policies are out-of-date, to grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF.

Sections 4, 12 and 15 are considered relevant to the consideration of this application.

National Planning Policy Guidance (2014)

The Government produced a suite of documents to act as a live resource which set out advice and best practice on a wide range of planning issues following a detailed review of planning policy guidance as a way of streamlining policy.

The relevant sections of the NPPG in this case are as follows:

Noise

Noise needs to be considered when development may create additional noise or would be sensitive to the prevailing acoustic environment (including any anticipated changes to that environment from activities that are permitted but not yet commenced).

Local planning authorities’ should take account of the acoustic environment and in doing so consider:

- whether or not a significant adverse effect is occurring or likely to occur;
- whether or not an adverse effect is occurring or likely to occur; and
- whether or not a good standard of amenity can be achieved.

Mitigating the noise impacts of a development will depend on the type of development being considered and the character of the proposed location. In general, for noise making developments, there are four broad types of mitigation:

- engineering: reducing the noise generated at source and/or containing the noise generated;
- layout: where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose-built barriers, or other buildings;
- using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;
- mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.

Other legislative requirements

Section 149 Equality Act 2010 provides that in the exercise of all its functions the Council must have regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between person who share a relevant protected characteristic and those who do not. This includes taking steps to minimise disadvantages suffered by persons sharing a protect characteristic and to encourage that group to participate in public life. Disability is a protected characteristic.

Planning History

135897/FO/2023

Change of use of the operation of the existing cafe (use class E(b)) to a hybrid use comprising a cafe (use class E(b)) and the operation of a 'commercial kitchen" preparing food only for collection by online delivery companies (sui generis) between the hours of 22.00 and 04.00 hrs. *Approved 20 March 2023.*

113358/FO/2016

Change of use from retail (A1) to form restaurant (A3) with external elevational alterations including rear flue and new fenced bin store. *Approved 28 November 2016.*

032114

Change of use of rear of warehouse to a café. *Approved 12 September 1988.*

F02416

Use of ground floor bank premises as a wholesale warehouse with ancillary storage accommodation. *Approved 30 July 1975.*

Issues

Principle

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.

The NPPF at paragraphs 2 and 47 reinforces this requirement and at 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.

In the case of this application, the principle of the proposed variation of operational hours to the restaurant use is not considered acceptable.

It is maintained that the proposed variation would cause undue noise and disturbance, which in in turn would undermine the living conditions of the nearest residential occupiers, whilst undermining the general amenity of the area within an emerging residential neighbourhood. The proposed hours of use until 4am would be the latest food and drink use in the immediate area by far, and the Council are concerned that such hours of use would set an unwelcome

precedent in the area and the potential cumulative impact of uses operating in the early hours of the morning would change the character of the area, whilst adversely effecting future living conditions. The Council has a duty to safeguard the amenity of the area both now and in the future and the proposed variation of operating hours in this instance would be the antithesis to this objective.

The proposal is therefore contrary to the aforementioned policy and guidance.

Amenity

Policies DM1 and SP1 of the Core Strategy indicate that consideration should be given to the effects of development upon the amenity, living conditions and the well-being of residents.

Saved policy DC26 of the UDP states that consideration will be given to the effect of new development proposals which are likely to be generators of noise.

Saved policy DC10 of the UDP advises that the Council should have regard to the general location of the proposed development and the effect upon the amenity of neighbouring residents.

Paragraph 135(f) of the NPPF states that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

In the case of this application, the City Council are concerned that the nearest residential occupiers to the opposite side of Bury New Road would be unduly impacted from activities associated with the late night/early morning uses at unsociable times.

At present, opening hours for the existing restaurant are restricted to 12.00 to 22.00 hrs daily. The proposed variation seeks to extend these hours by 6 additional hours until 04.00hr daily. This is considered excessive.

The latest food and drink use in the area open to the general public is the Manzil restaurant and banqueting hall opposite. The proposed opening hours variation would allow the host restaurant to become the latest restaurant use in the area and later even that food and drink uses closer to the northern fringe of the city centre situated to the south.

Daytime hours are typically defined as being 07.00 to 23.00 hours. The additional hours sought would be outside of these hours, when background noise levels would be much lower.

Whilst it is acknowledged that the restaurant is situated in busy, predominantly commercial area adjacent to a main arterial route, the area has seen an emergence of residential uses, the latest following prior approval being granted for the use of the upper floors for apartments approximately 58 metres away at 3-11 Bury New Road. It is anticipated that this trend will continue further along Bury New Road in addition to historic upper floor residential usage to building in the immediate area.

Although these apartments are subject to planning conditions requiring acoustic insulation, the Council still have significant concerns that the proposed variation of hours would be excessive and has the potential to impact upon residential amenity.

It is believed that the impact would more one of amenity, due to irregular instances of general disturbance, rather than measurable noise levels which could constitute a statutory noise nuisance.

Residents would be subjected to noise and disturbance at a time when they are reasonably entitled to relaxation time and undisturbed sleep. The impact would be especially acute during warmer weather when windows may well be open. Noise could manifest itself as a result of vehicle movements, engine noises, the use of equipment and people walking and conversing loudly.

The proposed use of the restaurant until 04.00 hrs would form an isolated late night/early morning use in the area, but there is concern that to allow such hours of use could open the floodgates for the other food and drink uses in the area to apply for similar hours of opening. The cumulative impact of late-night hours of opening would in turn change the character of the area within an area that is likely to be subject to significant change.

In addition to the granting of prior approval for residential uses, the premises is situated within an area that is subject to an emerging strategic regeneration framework.

A multi-disciplinary team has been appointed to draw up a Strangeways and Cambridge Strategic Regeneration Framework between Manchester and Salford City Councils to guide the transformation of the neighbourhood over the next decade and beyond. The vision is to build upon the strong business base it already has and presents an opportunity to contribute to create new jobs, new homes and high-quality public spaces.

The Framework is at a relatively early stage yet to be consulted upon and whilst reference to this may be considered premature, the Council are seeking to safeguard the area from uses and operations that could harm existing and future levels of amenity, given the likely creep of residential developments.

It is considered that on balance, the existing opening hours of use strike a reasonable balance between the needs of the business and the living conditions of existing and future surrounding residents. The additional hours proposed would tip that balance and materially increase noise and disturbance in the vicinity of the site to the detriment of residents' living conditions. On this basis, the proposal is considered contrary to development plan policy and national planning guidance.

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

Officers have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application. Officers have communicated their concerns about this proposal to the applicant during the course of the planning application, but these concerns have not been overcome. The proposal is considered to be contrary to the development plan and therefore refused in a timely manner.

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

1) The additional hours of use sought would generate an unacceptable level of additional activity, vehicle movements and general noise and disturbance at unsociable hours. The proposed application is therefore contrary to saved policies DC10 and DC26 of Unitary Development Plan for the City of Manchester, policies DM1 and SP1 of the Manchester Core Strategy and the National Planning Policy Framework (NPPF) which seek to safeguard amenity and protect the character of an area.

Appendix 1 – List of consultees & neighbours notified

Environmental Health
Greater Manchester Police

26C Bury New Road, Manchester, M8 8EL
Unit 5B, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 5A, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
26B Bury New Road, Manchester, M8 8EL
26A Bury New Road, Manchester, M8 8EL
First Floor, The Legendary Building, 18 - 22 Bury New Road, Manchester, M8 8FR
Ground Floor, The Legendary Building, 18 - 22 Bury New Road, Manchester, M8 8FR
Unit 3E, Jury Street Centre, Dewhurst Street, Manchester, M8 8FT
First Floor, 2 Dewhurst Street, Manchester, M8 8FT
Unit 7, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 6, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 5, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 4, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 3, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 2, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 1, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
28D Bury New Road, Manchester, M8 8EL
1 Dewhurst Street, Manchester, M8 8FT
First And Second Floors, 26 Bury New Road, Manchester, M8 8EL
Ground Floor Rear, 26 Bury New Road, Manchester, M8 8EL
19 Bury New Road, Manchester, M8 8FW
The Legendary Building, 18 - 22 Bury New Road, Manchester, M8 8FR
Unit 3D, Jury Street Centre, Dewhurst Street, Manchester, M8 8FT
Unit 3C, Jury Street Centre, Dewhurst Street, Manchester, M8 8FT
Unit 3B, Jury Street Centre, Dewhurst Street, Manchester, M8 8FN
Advertising Right JC Decaux 035101 On Gable Of 31, 31 Bury New Road, Manchester, M8 8EQ
33 Bury New Road, Manchester, M8 8EQ
31 Bury New Road, Manchester, M8 8EQ

Appendix 2 – Planning constraints

Article 4 Direction - City Centre PD Restriction - Class B1(c) To C3
Article 4 Direction - Removal of PD Rights Change Of Use From Class C3 To Class C4
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Flood Zones Type 2 (low to medium risk) -
Flood Zones Type 3 (high risk) -
Benefitting From Flood Defences -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH AREA