Planning

Growth & Development

Delegated officer report for planning application

Application no.	139074/FO/2024
Date registered valid:	23 January 2024
Proposal:	Change of Use from first floor residential unit (Use Class C3) to a Wellbeing Studio comprising Yoga Space and Sports Therapy Room (Use Class E), with associated works to alter ground floor shop front
Address:	169 Fog Lane, Manchester, M20 6FJ
Ward(s):	Burnage Ward
Applicant:	Mr Earl Davis, P4 Restore Limited
Agent (if any):	Mrs Katie Flynn, Peppercorn Planning
Case officer:	Steven McCoombe Tel: 0161 234 4607 Email: steven.mccoombe@manchester.gov.uk
Recommendation:	Approve
Date of recommendation:	14 March 2024

Application details

Type of application: Full Application Consent

Development type: Minor Other

Date of site visit: 2 February 2024

Standard consultations:
Printed: 24 January 2024 Expired: 14 February 2024

Neighbour notifications
Printed: 24 January 2024 Expired: 14 February 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

The application site relates to the first floor 169 Fog Lane - a two-storey, mid terrace property comprising a gym/fitness studio at ground floor level, with a 1-bedroom flat above. The property forms part of a parade of commercial/residential parade within a designated local centre.



View from Fog Lane

The property includes a forecourt and a small yard area to the rear. The existing ground floor is currently used in conjunction with the neighbouring ground floor unit at 171 which also forms part of the fitness studio, occupied by Project 4.

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

Description of area

The application site is located within a local centre which extends east to west along Fog Lane. The immediate area contains a variety of small-scale, commercial uses at ground floor level, with residential flats to the upper floors of some of the premises. The sides roads off Fog Lane are predominantly residential in character.

A short distance to the east is the main north/south arterial route of Kingsway, whilst within a short walking distance to the north-east, is Burnage railway station.

Description of development

Planning permission is sought to change the use of the first floor from a 1 bedroom residential flat to a yoga studio and therapy room with ancillary office space. The use would form an ancillary element to the existing use of the ground floor and neighbouring premises as a gym/fitness studio.

In addition, it is proposed to install bi-fold door to the ground floor frontage in place of the existing shopfront.

The proposed hours of use would align with the rest of the business.

Consultations & Notification Responses

Local Residents/Occupiers – No representations received.

Environmental Health – No objection. A condition should be included to restrict the opening times to those applied for along conditions relating to waste management and a restriction to the use of the upper floor to Class E(d).

Planning History

105737/FO/2014/S2

Change of use from Class A1(Retail) to Class A5 (Takeaway). *Approved 19 August 2014*.

Policy

The following policy and guidance is considered relevant to the consideration of this application:

-Saved Policy DC26 of the UDP;
-Policies C1, C8, EC2, DM1 and SP1 of the Core Strategy;
-Place for Everyone (consultation draft);
-National Planning Policy Framework (NPPF).

Issues

Principle

The application property is situated within an established commercial parade forming part of a local centre and would complement services currently offered by the existing occupier. The use

would add to the vitality of the centre and extend the fitness and well-being service on offer to the local community.

The property is located in a highly sustainable location, easily accessible by a choice means of transport and with mitigation in place to control noise along with controls placed on the specific use of the first floor, any impact to residential amenity can be satisfactorily ameliorated. On this basis, the proposal is considered compliant with the aforementioned policy and guidance.

Specific issues are outlined further below.

Residential Amenity

Given the position of the host premises within an established commercial parade forming part of a designated local centre, it is not anticipated that the proposed use as a yoga and treatment use would give rise to harmful levels of pedestrian/vehicular activity or any significant noise and disturbance.

Whilst the application as originally submitted proposed a use within Use Class E(d) – indoor sport, recreation and fitness, the Council is concerned about the potential for a variety of commercial uses being capable of accommodated to the first floor, where upper floor residential uses neighbour the property. Moreover, a use within Class E(d) would allow for a gym use and such a use can generate noise and disturbance through the use of gym equipment and the dropping of free weights etc.. As such, the use of the upper floor has been restricted to that of a yoga studio/treatment room only with a restriction placed on the of gym equipment and weights. A suitable condition has been included.

In addition, further conditions have been placed on opening hours to align with the remainder of the business at ground floor and next door, as well as the need to provide a noise impact assessment and any appropriate acoustic insulation, in order to prevent any undue noise transfer or breakout. With such measures in place, given the context of the immediate area and where levels of amenity can be expected to be lower, the impact to amenity can be satisfactorily sustained.

Visual Amenity

The proposal involves the replacement of the shopfront with a full height, glazed, bi-folding door. It is considered that the elevational change would offer a lightweight, transparent approach, entirely consistent with a commercial frontage and of similar appearance to a shopfront window, albeit with slimline vertical divisions. The impact to the character of the host building and to the appearance of the street-scene is considered negligible.

Impact to the Highway

The proposed accommodation is intended to form an ancillary offer to the existing fitness studio. Given the modest amount of floorspace involved and likely visitor numbers, it is not considered that there would be any material impact to existing vehicular movements, trip generation and parking demand. As such, the impact to the operation of the highway is considered satisfactory. It should also be noted that the site lies adjacent to a close to a busy arterial route with good bus links and within walking distance of a railway station which would aid travel to the site by means other than by private car.

Waste Management

The applicant states that waste from the development will be limited to paper towels and plastic bottles, with no greater waste production than the former takeaway and residential unit, and therefore the current bin storage area situated at the rear of the property would be sufficient.

The principle of the proposed arrangement and the ability to accommodate any marginal uplift in waste as a result of the use of the first floor in connection with the existing use, is considered acceptable.

A condition is included to ensure compliance with the submitted strategy.

Climate Change

The host property is situated within a highly sustainable location within a busy local centre, close to a busy, arterial route and railway station. Further, the proposed use is intended to create a complementary offer for the existing fitness studio business. As such, there is unlikely to be a significant uplift in vehicular emissions or impact to air quality which would affect climate change to a noticeable degree.

On this basis, it is not believed that the impact to air quality or climate change should form a barrier to development.

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 polices 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: Approve

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. Pre application advice has been sought in respect of this matter. The proposal is considered to be acceptable and therefore determined within a timely manner.

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

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:

Location plan and drawings referenced 23-J4526-PL004 and 23-J4526-PL005, received by the City Council as Local Planning Authority on 23 January 2024.

Reason - To ensure that the development is carried out in accordance with the approved plans, pursuant to policies SP1 and DM1 of the Manchester Core Strategy.

3) The materials to be used on the external surfaces of the building, shall match those of the existing building in type, size, colour and texture.

Reason - In the interests of visual amenity, pursuant to policies SP1 and DM1 of the Manchester Core Strategy.

4) The development hereby approved shall only be implemented in accordance with the submitted Waste Management Strategy, as detailed within the submitted strategy pro forma and location plan, received by the City Council as Local Planning Authority on 13 March 2024. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use or development is in operation.

Reason - In the interests of amenity and public health, pursuant to policies DM1 and SP1 of the Manchester Core Strategy.

5) The use of the first floor hereby approved shall not be operational outside the following hours:

Monday to Friday 06.00 - 20.00 hrs;
Saturdays, Sundays and Bank Holidays 08.00 - 23.00 hrs.

Reason - In interests of amenity, in order to reduce noise and general disturbance in accordance with saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Manchester Core Strategy.

6) Deliveries, servicing and collections, including waste collections shall not take place outside of the following hours:

07.30 to 20.00 hrs Monday to Saturday;

No deliveries/waste collections on Sundays and Bank Holidays.

Reason - To safeguard the amenities of nearby occupiers, pursuant to Policies DM1 and SP1 of the Manchester Core Strategy.

7) a) Any externally mounted ancillary plant, equipment and servicing to be installed shall be selected and/or acoustically treated in accordance with a scheme designed so as to achieve a rating level of 5dB (LAeq) below the typical background (LA90) level at the nearest noise sensitive location. Prior to its installation, the scheme shall be submitted to and approved in writing by the City Council as Local Planning Authority in order to secure a reduction in the level of noise emanating from the site.

b) Prior to any externally mounted ancillary plant, equipment and servicing to be installed becoming operational, an approved verification report shall be submitted to and approved in writing by the City Council as Local Planning authority to validate that the work undertaken throughout the development conforms to the recommendations and requirements in the approved acoustic report. The report shall also undertake post completion testing to confirm that the noise criteria have been met. Any instances of non - conformity with the recommendations in the report shall be detailed along with any measures required to ensure compliance with the agreed noise criteria.

Reason - To minimise the impact of the development and to prevent a general increase in pre-existing background noise levels around the site, pursuant to saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies DM1 and SP1 of the Manchester Core Strategy.

8) a) In the event of any noise complaints regarding the use of the first floor as a Yoga Studio and Treatment Room being received by Manchester City Council's Environmental Health team, the applicant shall acoustically insulate the premises to limit the break out of noise in accordance with a noise study of the premises and a scheme of acoustic treatment that has been submitted to and approved in writing by the City Council as Local Planning Authority within 3 months of the compliant being received.

b) The scheme shall be implemented in accordance with a timetable agreed in writing by the City Council as Local Planning Authority and a verification report shall be submitted to the Council to validate that the work undertaken conforms to the recommendations and requirements in the approved acoustic consultant's report. The report shall also undertake post completion testing to confirm that acceptable criteria have been met. Any instances of non-conformity with the recommendations in the report shall be detailed along with any measures required to ensure compliance with the agreed noise criteria.

c) Where entertainment noise is proposed the LAeq (entertainment noise) shall be controlled to 5dB below the LA90 (without entertainment noise) in each octave band at the facade of the nearest noise sensitive location, and internal noise levels at structurally adjoined residential properties in the 63HZ and 125Hz octave frequency bands shall be controlled so as not to exceed (in habitable rooms) 47dB and 41dB (Leq,5min), respectively.

Reason - To prevent undue noise and disturbance and to safeguard residential amenity, since the use of the first floor for a commercial use has the potential for noise transfer to adjoining properties and the use of bi-folding doors to the ground floor has the potential for noise break-out, pursuant to saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies DM1 and SP1 of the Manchester Core Strategy.

9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) the first floor shall not be used for any other use purpose other than a 'yoga and treatment room'. No gym equipment or weights shall be in use on the first floor at any time.

Reason - To safeguard residential amenity, pursuant to policies SP1 and DM1 of the Manchester Core Strategy.

Appendix 1 – List of consultees & neighbours notified

Environmental Health

234A Fog Lane, Manchester, M20 6EL
228A Fog Lane, Manchester, M20 6EL
173 Fog Lane, Manchester, M20 6FJ
Top Flat, 169 Fog Lane, Manchester, M20 6FJ
173A Fog Lane, Manchester, M20 6FJ
Top Flat, 165 Fog Lane, Manchester, M20 6FJ
Fountain Solicitors, 165 Fog Lane, Manchester, M20 6FJ
228 Fog Lane, Manchester, M20 6EL
Flat 1, 236 Fog Lane, Manchester, M20 6EL
171A Fog Lane, Manchester, M20 6FJ
171 Fog Lane, Manchester, M20 6FJ
236 Fog Lane, Manchester, M20 6EL
230 - 232 Fog Lane, Manchester, M20 6EL
238 Fog Lane, Manchester, M20 6EL
234 Fog Lane, Manchester, M20 6EL
167 Fog Lane, Manchester, M20 6FJ
Flat 2, 167A Fog Lane, Manchester, M20 6FJ
Flat 1, 167A Fog Lane, Manchester, M20 6FJ

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Area Team Boundary - Name: SOUTH AREA