MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	138903/FO/2023
Date registered valid:	1 February 2024
Proposal:	Proposed change of use from retail with ancillary basement storage (Use Class E) to drinking establishment with food provision and ancillary basement storage (Sui Generis).
Address:	89 Oldham Street, Manchester, M4 1LW
Ward(s):	Piccadilly Ward
Applicant:	Mr Umar Vanden Closed Doors Industries
Agent (if any):	Mr Ian Hunter Plande
Case officer:	Emily Booth Tel: 0161 234 4193 Email: emily.booth@manchester.gov.uk
Recommendation:	Refuse
Date of recommendation:	27 March 2024

Application details

Type of application: Full Application Consent

Development type: Change of use

Date of site visit: 20 February 2024

Standard consultations:
Printed: 8 February 2024 Expired: 29 February 2024

Neighbour notifications
Printed: 8 February 2024 Expired: 29 February 2024

Site notice
Posted: 20 February 2024 Expired: 12 March 2024

Press advert
Published: 13 February 2024 Expired: 27 February 2024

Departure from Development Plan: No

Environmental Statement: Not required.

Description of site/building

Listed building: Not applicable.

Conservation area: Smithfield Conservation Area 1987

Tree Preservation Order: Not applicable

Description of area

The application relates to a property at 89 Oldham Street And 54 Church Street was last used as a shop and 54 Church Street, which was last used as a shop. The property is 3-storeys in height and is within a relatively low-rise terrace of buildings are located between Hilton Street and Whittle Street. The building is not listed but is within the Smithfield Conservation Area and is adjacent the Stevenson Square Conservation Area. The property has a frontage on Oldham Street and there is no obvious access to the rear of the property from surrounding streets.

The site is within an area of the City Centre known as the Northern Quarter which contains a variety of uses including bars, restaurants, cafes, offices, residential apartments, hotel uses, car parking and places of worship. Many of the uses within the Northern Quarter are independent.

The application states that the upper floors of the property are used as residential apartments.

Description of development

Planning permission is sought for the change of use of the property from a shop (Use Class E) to a drinking establishment with food provision (Sui Generis). There would be a smoking area externally. There are no external alterations proposed.

Consultations & Notification Responses

Highway Services - A cycle storage area will be provided within the premises containing 2no. cycle parking spaces. Waste is to be stored in the basement and collected from the rear on Tib Street.

Environmental Health - Advised that they are concerned that the Nova Acoustic report has not properly assessed the noise from proposed use and so at this stage please look to refuse the application just because there is not enough information contained in the report to demonstrate that it would not cause noise disamenity to the NSR's.

Nove have conducted their baseline noise measurements over a weekend period when the ambient noise levels will be higher. The baseline survey would need to cover the quietest times which would be like Monday/Tuesday nights.

As the applicant is proposing a smoking area to the rear, this is of concern as people will be going out up to 02:00 hours and no noise survey has been conducted at the rear to demonstrate that this is suitable. There looks to be no acoustic lobby to the rear of the premises so there is no mitigation in place when the rear door is in use.

Nova have proposed some mitigation to the internal ceiling/floor but have not tested the level difference of this if they say in the report the upper floors are to be residential so at the levels proposed will it meet our criteria.

It is unclear from the application where the AC units are to be situated if they are not existing.

Greater Manchester Police - Advised that they have no further comments to add. However, would like to reiterate the points highlighted in the CIS, which are below:

- The premises should be covered with a comprehensive CCTV and monitored alarm system.
- Any new external doors, windows & Glazing should be certified to a burglary resistant standard.

It is highly recommended that these points are considered, along with the remaining points in section 3.3 of the report.

Publicity - A site notice was displayed on site and letters were sent to surrounding occupiers.

One objection has been received and is summarised as follows:

My business shares the alley way to the rear of the building with the venue 'Behind Closed Doors' and with other businesses who operate throughout the day. We have always been very aware that the alley way is also an emergency route and have prioritised the safety and maintenance of good access at all times. During this time, it has gone from one bar (ourselves) who need access, to possibly six businesses who need to use it. I have had to make many calls over the last couple of years to ask our neighbours to clear their waste as we have been unable to open our premises until it has been cleared. We have always paid a private company to remove our waste to ensure it doesn't build up and have requested our neighbours to do the same. Due to the volume, this can now take longer to collect due to the various types of waste. It is already difficult enough to manage the situation and I do not feel that it will be safe to allow another business to add to the volume as the alley way does not have capacity and would put each venue at risk. I would welcome a site visit and some consultation to discuss a solution prior to a licence being granted as I am concerned over fire safety and hygiene issues.

Issues

Issues and Policy

The Adopted Core Strategy for the City of Manchester

Policy EN1 (Design Principles and Strategic Character Areas) advises that developer's will be expected to consider the City's heritage, including its listed buildings, conservation areas, archaeological remains and historic street pattern.

Policy EN3 (Heritage) advises that new developments must be designed so as to support the Council in preserving or, where possible, enhancing the historic environment.

Policy CC4 (Visitors, Tourism and Leisure) advises that development in the City Centre which improves facilities for visitors, including Manchester residents, will be promoted.

Policy CC7 (Mixed Uses) advises that active ground floor uses (shops, food and drink and leisure) will be appropriate in locations which have an established public function, or as part of a development which will create such an environment.

Policy CC9 (Design and Heritage) advises that development in Manchester should preserve or enhance the heritage assets affected.

CC10 (A Place for Everyone) states that development that promotes high standards of accessibility to buildings and across spaces in the City Centre.

Policy SP1 (Spatial Principles) advises that development in all parts of the City should protect and enhance the built environment.

Policy DM1 (Development Management) advises that all development should be appropriately sited, scaled, formed, massed and detailed with appropriate layout and materials and should have regard to the character of the surrounding area and effects on built heritage.

The Unitary Development Plan for the City of Manchester

Saved Policy DC18.1 (Conservation Areas) states that the Council will seek to preserve and enhance the character of its designated conservation areas by carefully considering issues including the effect of signs and advertisements.

Saved 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, or visiting, the City.

Places for Everyone -

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'.

You can view the Inspectors' Report on the GMCA's website at Places For Everyone - Greater Manchester Combined Authority (greatermanchester-ca.gov.uk). In addition, a hard copy is

available in Manchester Central Library, St Peters Square, Manchester M2 5PD between 9am - 8pm Monday to Thursday and 9am - 5pm Friday and Saturday.

The nine constituent local authorities will now consider the Inspectors' Report and the adoption of Places for Everyone, with the plan going to the Full Council meeting in Manchester on 20 March 2024. The first Council meetings to approve the plan will be Salford and Wigan (28 February).

There will be a period of six-week post adoption (i.e. from 21 March) when a judicial review challenge may be made. This will trigger a process of consideration by the Courts as to whether a JR is sufficient grounds to be heard (there is a one-step oral hearing appeal process if a Judge decides to reject the ground for a JR from the outset).

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. The following policies are relevant to this application.

Policy JP-P 1 (Sustainable Places) aims to become one of the most liveable city regions in the world, consisting of a series of beautiful, healthy and varied places, each having the following key attributes that all development, wherever appropriate, should be distinctive, with a clear identity, visually stimulating, socially inclusive, resilient, adaptable, durable, resource efficient, safe, supported by critical infrastructure, functional and convenient, incorporating accessibility, legible easy to move around, well connected, comfortable and inviting, incorporating high quality and well managed green infrastructure and public realm, well served by local shops, services and amenities.

Policy JP-P 6 (Health) Health advises that to help tackle health inequality new development will be required, as far as practicable, to maximise its positive contribution to health and wellbeing, whilst avoiding any potential negative impacts of new development, support healthy lifestyles and be supported by a Health Impact Assessment for relevant developments. Improvements in health facilities will be supported including through requiring, where appropriate, the provision of new or improved health facilities as part of new developments that would significantly increase demand, enabling the continued enhancement and successful operation of our hospitals; and facilitating greater integration of health and social care, and the provision of integrated wellness hubs.

National Policy

Sections 16, 66 and 74 of the Listed Buildings and Conservation Areas Act 1990 requires that special consideration is given to the preservation of the significant fabric and setting of listed buildings and conservation areas. Development decisions should, therefore, accord with the requirements of the NPPF and to section 16 (Conserving and Enhancing the Historic Environment).

It is a fundamental requirement of the NPPF that planning proposals contribute to the achievement of "sustainable development". In order to meet this key planning objective, in this instance, the development should sustain and contribute to the stimulation of a thriving historic environment.

Paragraph 196 states that in determining planning applications, local planning authorities should take account of:

(a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.

(b) the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring.

(c) the desirability of new development making a positive contribution to local character and distinctiveness; and

(d) opportunities to draw on the contribution made by the historic environment to the character of a place.

Paragraph 200 advises that local planning authorities should require an applicant to submit sufficient information to describe the significance of any heritage assets affected, including any contribution made by their setting.

Paragraph 203 states that in determining applications, local planning authorities should take account of:

(a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.

(b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

(c) the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 207 advises that any harm to or loss of a designated heritage asset should require clear and convincing justification. Substantial harm or loss should be exceptional and substantial harm to or loss of designated heritage assets of the highest significance, including grade I and II* listed buildings should be wholly exceptional.

Paragraph 208 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Section 12 (Achieving Well Designed Places) advises that the government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. It promotes the creation of places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users 52; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Section 8 (Promoting healthy and safe communities)

Paragraph 92 states that planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

(a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other - for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages.

(b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion - for example through the use of attractive, well-designed, clear and legible pedestrian and cycle routes, and high-quality public space, which encourage the active and continual use of public areas; and

(c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs - for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

Under these criteria the acceptability of the proposal has been considered:

Residential Amenity and the amenity of surrounding occupiers -

This is a critical issue, as amongst other things, it examines the impact that the scheme would have on nearby and adjoining occupiers. It includes the consideration of issues such as impact on noise and disturbance. The closest residential accommodation is understood to be located above the premises and there are other residential properties close by.

The City Council's Environmental Health Service has only assessed the submitted acoustic report and has not assessed any waste or opening hours or fumes information due to fundamental issues with this document. The report is insufficient and unacceptable for the following reasons:

- It has not assessed the impact of the use on the quietest times of the week.
- It has not included the smoking area to the rear and a noise survey has not been conducted in this location.
- The impact on the use above has not been adequately assessed.
- There is insufficient information on the air-conditioning condensers, including no information on their location.

The deficient information that has been submitted strongly indicates that the proposal would cause unacceptable noise levels in the location detrimentally affecting residential amenity and the proposed use is therefore unacceptable.

Unacceptably high noise levels would cause disturbance to residents and office workers nearby and would cause issues for surrounding occupiers including sleep problems and concentration problems. The use as currently proposed would work against the creation of sustainable communities and places for the reasons.

The applicant was given chance to withdraw this application but didn’t do so.

Given the above the proposals are considered to be contrary to Policies SP1, CC7 and DM1 of the Adopted Core Strategy for the City of Manchester and saved policy DC26 of the Unitary Development Plan for the City of Manchester in relation to the impact on residential amenity and Policy JP-P1 and JP-P6 of Greater Manchester's emerging Places for Everyone Guidance, Government Guidance contained in Section 8 (Promoting healthy and safe communities) and Section 12 (Achieving Well Designed Places).

Highway Impacts -

The site is located adjacent to adopted highway Oldham Street with adoption extending to the back of the footway. There is no on-site parking.

The use would include 2 secure cycle parking spaces.

Waste would be stored within an internal refuse store and would be collected from Tib Street.

These measures would have been required to be implemented by condition if the application could have been approved and the waste management proposals were considered acceptable by the City Council's Environmental Health Service.

The City Council's Highway services have confirmed that there are no objections.

Crime and Disorder -

The comments received from Greater Manchester Police would have been required to be implemented by condition if the application could be approved.

Disabled Access -

Level access would be available into the property and throughout the ground floor.

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: Refuse

Article 35 Declaration

In assessing the merits of an application officers will seek to work with the applicant in a positive and proactive manner to seeking solutions to problems arising in relation to dealing with the

application. In this instance this has included advice about the information required to be submitted to support the application and advice and support and ultimately insufficient information submitted to address consultation comments.

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

1) There is insufficient evidence to demonstrate that the noise levels generated by the use, including the outdoor smoking area, would not cause unacceptable noise levels. In particular It has not been possible to demonstrate that the proposal would not cause any unduly harmful impacts on nearby residential accommodation including upper floor residential accommodation. The proposal would therefore be contrary to policies CC7 (Mixed Uses), DM1 (Development Management) and SP1 (Spatial Principles) of the Core Strategy and saved policy DC26 (Development and Noise) of the Unitary Development Plan, Policy JP-P 1 (Sustainable Places) JP-P 6 (Health) of Greater Manchester's emerging Places for Everyone Guidance, Government Guidance contained in Section 8 (Promoting healthy and safe communities).

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Greater Manchester Police

CLEVER BEANS LTD, Second Floor, 72 Tib Street, Manchester, M4 1LG
95 Oldham Street, Manchester, M4 1LW
85 Oldham Street, Manchester, M4 1LW
Third Floor, 72 Tib Street, Manchester, M4 1LG
First Floor Flat, 58 Oldham Street, Manchester, M4 1LE
Apartment 14, 31 Tib Street, Manchester, M4 1JZ
Apartment 13, 31 Tib Street, Manchester, M4 1JZ
Apartment 12, 31 Tib Street, Manchester, M4 1JZ
Apartment 11, 31 Tib Street, Manchester, M4 1JZ
Apartment 10, 31 Tib Street, Manchester, M4 1JZ
Apartment 9, 31 Tib Street, Manchester, M4 1JZ
Apartment 8, 31 Tib Street, Manchester, M4 1JZ
Apartment 7, 31 Tib Street, Manchester, M4 1JZ
Apartment 6, 31 Tib Street, Manchester, M4 1JZ
Apartment 5, 31 Tib Street, Manchester, M4 1JZ
Apartment 4, 31 Tib Street, Manchester, M4 1JZ
Apartment 3, 31 Tib Street, Manchester, M4 1JZ
Apartment 2, 31 Tib Street, Manchester, M4 1JZ
Apartment 1, 31 Tib Street, Manchester, M4 1JZ
93 Oldham Street, Manchester, M4 1LW
91 Oldham Street, Manchester, M4 1LW
66 Tib Street, Manchester, M4 1LG
Flat 1, 89 - 95 Oldham Street, Manchester, M4 1LW
Flat 8, 89 - 95 Oldham Street, Manchester, M4 1LW
Flat 6, 89 - 95 Oldham Street, Manchester, M4 1LW
Flat 2, 89 - 95 Oldham Street, Manchester, M4 1LW
Flat 4, 89 - 95 Oldham Street, Manchester, M4 1LW
70 Tib Street, Manchester, M4 1LG
72 Tib Street, Manchester, M4 1LG
74 Tib Street, Manchester, M4 1LG
89 - 95 Oldham Street, Manchester, M4 1LW
91 - 95 Oldham Street, Manchester, M4 1LW
Serviced Apartment 2, Marlee Court, 62 Tib Street, Manchester, M4 1LG
Basement, 91 - 95 Oldham Street, Manchester, M4 1LW
Serviced Apartment 1, Marlee Court, 62 Tib Street, Manchester, M4 1LG
Marlee Court, 62 Tib Street, Manchester, M4 1LG
First Floor, 72 Tib Street, Manchester, M4 1LG
Flat 10, 89 - 95 Oldham Street, Manchester, M4 1LW
Flat 7, 89 - 95 Oldham Street, Manchester, M4 1LW
Flat 5, 89 - 95 Oldham Street, Manchester, M4 1LW
Flat 3, 89 - 95 Oldham Street, Manchester, M4 1LW
Flat 9, 89 - 95 Oldham Street, Manchester, M4 1LW
31A Tib Street, Manchester, M4 1LX
58 Oldham Street, Manchester, M4 1LE
54 Oldham Street, Manchester, M4 1LE
52 Oldham Street, Manchester, M4 1LE
87 Oldham Street, Manchester, M4 1LW
68 Tib Street, Manchester, M4 1LG

Appendix 2 – Planning constraints

Article 4 Direction - City Centre PD Restriction - Class B1(c) To C3
Article 4 Direction - City Centre PD Restriction - Class B1(a) To C3
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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Conservation Area - Smithfield Conservation Area 1987
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: CENTRAL