

Planning

Growth & Development

Delegated officer report for planning application

Application no. 131180/FO/2021

Date registered valid: 25 August 2021

Proposal: Change of use from retail shop (Class E) to a hot food takeaway (Sui Generis) including installation of extraction flue

Address: 232 Fog Lane, Manchester, M20 6EL

Ward(s): Didsbury East Ward

Applicant: Mahmood Hassan

Agent (if any): Lazo Mohamed

Case officer: Janet Lawless
Tel: 0161 234 4535
Email: janet.lawless@manchester.gov.uk

Recommendation: Approve

Date of recommendation: 22 June 2023

Application details

Type of application: Full Application Consent

Development type: Minor Other

Date of site visit: second visit 20th March 2023

Standard consultations:

Printed: 30 September 2021 Expired: 21 October 2021

Neighbour notifications

Printed: 30 September 2021 Expired: 21 October 2021

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 application comprises of a single unit 2 storey mid terraced commercial property within a parade of shops and commercial uses within this particular block, with multiple blocks making up the whole parade. The property is identified as 232 Fog Lane in the Burnage ward of the City. The last use of the ground floor was one half of a double fronted unit in use as a clothing shop, whilst the first floor is currently in use as residential.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is predominantly residential on the side roads, with both sides of Fog Lane in this location being in commercial / retail use. There is residential accommodation in the form of flats above some of the ground floor commercial units. Christ Church United Reformed Church is located on the opposite side of Fog Lane.

Description of development

The proposal is for the change of use of the property from retail to a hot food take away together with the installation of a flue to the rear of the property.

Consultations & Notification Responses

Local Residents have been informed- 2 representations have been received the main points of concern being as follows: There are already too many takeaways along Fog Lane. It will generate a considerable amount of disturbance, due to traffic and customers and staff parking illegally preventing residents parking near their own homes. There will be disturbance from

noise from customers and an increase in antisocial behaviour and littering. Adding another takeaway would make this a less desirable place to live.

Highways- Given that the proposed development is resultant in a hot-food takeaway, the number of vehicular trips associated with the site is unlikely to be dissimilar to that previously experienced.

Given its location the site is considered to be suitably accessible by sustainable modes and is in close proximity to a number of bus routes, and therefore a number of visitors are likely to arrive on-foot or via sustainable modes, and form part of linked or pass-by visits.

It should be noted that the surrounding highway is heavily parked, with limited capacity to support any further on-street car parking. Vehicles should refrain from parking on the zigzags adjacent to the front of the property.

It is understood that the unit will operate a take-away service. The applicant should confirm whether a delivery service will be operational in conjunction with the take-away or whether it will solely operate for pick-up.

Should a delivery service be proposed, the applicant should confirm where delivery vehicles will be expected to park/ load in order.

In line with MCC Residential Guidelines, secure and sheltered cycle parking provision should be made, within the curtilage of the site, in particular for staff cycles.

The applicant should be advised that all external entrance doors (with the exception of fire doors) should be inwardly opening in order to prevent obstruction on the adjacent footway.

In relation to waste management, a suitably sized bin store is being provided to the rear of the property. It is noted that the occupant will manoeuvre the waste receptacles to the pick-up point next to 242 Fog Lane for collection and return to the storage point on emptying, ensuring no obstruction on the highway. This is understood to be the existing arrangement for the current use.

Whilst in principle this is accepted all servicing vehicles should load at an appropriate distance away from the signals on Fog Lane.

Environmental Health- No objections subject to the attachment of conditions relating to hours of operation, hours of servicing, Fumes, waste management, Noise breakout and noise relating to external plant and equipment.

Greater Manchester Police- No objections subject to the attachment of a condition to any consent granted relating to compliance with Secure by Design Standards.

Issues

Policy

Core Strategy

The relevant Core Strategy policies are SP1, DM1 and C10

Policy SP1 is a generic development management policy relevant to most applications within the City. The Policy sets down the key spatial principles which will guide the strategic development of Manchester to 2027, these are:

Beyond the regional centre and the airport the emphasis is on the creation of neighbourhoods of choice, providing high quality and diverse housing around district centres which meet local needs, all in a distinct environment.

All development should have regard to the character, issues and strategy for each regeneration area as described in the North, East, Central and South Manchester and Wythenshawe Strategic Regeneration Frameworks and the Manchester City Centre Strategic Plan. Policy SP1 also sets down the Core Development Principles

Development in all parts of the City should:-

Make a positive contribution to neighbourhoods of choice including, amongst others:-

-making a positive contribution to the health, safety and wellbeing of residents considering the needs of all members of the community regardless of age, gender, disability, sexuality, religion, culture, ethnicity or income.

Policy DM1 is relevant as it seeks to protect the amenity of an area from the adverse impacts of development. The policy states that All development should have regard to the following specific issues, amongst others:-

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.

Community safety and crime prevention.

Design for health.

Refuse storage and collection.

Vehicular access and car parking.

Policy C10 relates specifically to applications for food and drinks uses. The policy states that 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 day-time 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.

Unitary Development Plan

The relevant saved Unitary Development Plan policy is DC10.

Policy DC10 is relevant as it is a development management policy that sets down the Councils approach to food and drink uses. The policy states that in determining planning applications for developments involving the sale of food or drink for consumption on the premises, or for hot food to be consumed off the premises, the Council will have regard to:

- a. the general location of the proposed development, including any reference to the area in other policies in the Plan;
- b. the effect on the amenity of neighbouring residents;
- c. the availability of safe and convenient arrangements for car parking and servicing;

- d. ease of access for all, including disabled people; and
- e. the storage and collection of refuse and litter.

Policy DC10 goes on to say that the Council will normally accept the principle of developments of this kind in the City Centre, industrial and commercial areas, in shopping centres and, at ground level, in local shopping parades of more than 8 shops or offices.

The policy also states that development will not normally be permitted where:

- a. it is proposed outside the general locations mentioned above, or
- b. there is a house or flat on the ground floor next to the proposed business, or only separated from it by a narrow street or alleyway.

Policy DC26 relates to developments with the potential for generating noise and seeks to protect the amenity of an area from the adverse impact of noise.

Supplementary Planning Document - Hot Food Take Aways

The Hot food Take Away Supplementary Planning Document sets down additional criteria to be considered in determining applications for A5 uses including the number and density of such uses and the proximity to schools.

Principle

The proposed development is located within a well- established local centre where the principle of A5 uses accords with the locational requirements of policies C10 and DC10 and is acceptable in principle.

Viability and Vitality

The supplementary planning document identifies a threshold of 10% of units before the viability and vitality of a centre starts to be affected. Consideration must also be given to the number of vacant units this can in itself detract from the viability and vitality of centres. The SPD allows for additional units above the 10% where there are issues with vacancies

Further, within this parade there are only four other A5 uses and one that appears vacant the remainder offering a range of goods and services. A vacant shop would it is considered detract from the viability and vitality of the parade.

Fume extraction

The proposed fume extraction system involves the installation of a flue up the side of the outrigger at the rear of the property. In planning terms this is acceptable. The applicant has submitted details of the filtration and fume extraction system and it is considered by colleagues in Environmental Health to be acceptable subject to a condition requiring implementation of the approved scheme.

Refuse storage

The scheme for the storage of refuse is considered to be acceptable. An appropriate condition is proposed.

Opening hours

The opening hours have been amended to reflect those of the adjacent food and drink relates uses (Classes E, A4 and A5) within the parade. It is considered that closing times of 11.00pm Saturday to Friday and 10:00pm Sunday are acceptable and would not significantly harm the amenity of the area.

Parking

As a local Centre location, a unit such as this would not be expected to provide its own parking. This is however, a sustainable location with good public transport links along Fog Lane and to the east along Kingsway (A34). The property would also be accessed on foot and by cycle.

Servicing

The premises would be serviced from the highway which is the case for the majority of properties in the local centre. A condition is proposed restricting the servicing time as requested by Environmental Health.

Shop front- There are no changes proposed for the shop front.

Noise insulation.

An appropriate condition is proposed in respect of the acoustic insulation of both the building and external plant.

Residential Amenity

There is no indication that there is residential accommodation above the premises, there is residential above some of the neighbouring units and there is residential accommodation to the rear separated by the alley. Residential accommodation in and immediately adjacent to district centres would not normally expect the same level of amenity as those in suburbs, however, there needs to be a degree of protection and in this instance, it is considered that the limited opening hours and the acoustic insulation of the property should ensure that there is not significant adverse impact. Appropriate conditions are proposed.

Conclusion.

On balance it is considered that the scheme accords with Council policy including the SPD and is therefore acceptable.

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: Approve

Article 35 Declaration

Officers have worked with the applicant/agent in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application. In this instance, additional technical specifications were required and subsequently submitted by the agent. The application has been determined in accordance with both national and local policy. Appropriate conditions have been attached to any consent granted.

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:

01 Proposed Floor Plans and Elevations- received 25.08.21.

Location Plan-received 26.07.21.

Design and Access Statement- received 16.11.21.

Therminox Technical Specification-received 16.11.21.

Therminox Installation Detail- received 16.11.21.

Plasmaclean Data Sheet- received 12.03.23.

Plasmaclean Installation Details- received 15.03.23.

Plasmaclean Technical Specification -received 15.03.23

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

3) a) Fumes, vapours and odours shall be extracted and discharged from the premises in accordance with the approved technical specifications :

Plasma Clean Technical Specification for odour control units for commercial kitchens dated 12.03. 2023 and Therminox Flue specifications received 16.11.2021.

b) Prior to commencement of the use hereby approved confirmation shall be submitted for the approval of the City Council as local planning authority that the approved scheme has been implemented.

Reason - In the interests of the amenities of occupiers of nearby properties pursuant to saved policy DC26 of Unitary Development Plan and Policies SP1 and DM1 of the Manchester Core Strategy.

4) The premises shall not be open outside the following hours:-

Monday To Saturday

Start Time: 10:00 - End Time:23:00

Sundays and Bank Holidays

Start Time 11:00 - End Time: 22:00

Reason - In interests of residential 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 Core Strategy.

5) Deliveries, servicing and collections, including waste collections shall not take place outside the following hours: 07:30 to 20:00, Monday to Saturday, no deliveries/waste collections on Sundays/Bank Holidays.

Reason - In order to protect the amenity of local residents and in accordance with policies SP1 and DM1 of the Core Strategy.

6) a) The premises shall be acoustically insulated and treated 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. The scheme shall be implemented in full before the use commences or as otherwise agreed in writing by the City Council as local planning authority. 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.

b) Prior to occupation of the development a verification report will be required to validate that the work undertaken throughout the development 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.

Reason - To safeguard the amenities of the occupiers of the building and occupiers of nearby properties pursuant to saved policy DC26 and policies SP1 and DM1 of the Manchester Core Strategy.

7) a) Before the development commences a scheme for the storage and disposal of refuse shall be submitted to and approved in writing by the City Council as local planning authority. New developments shall have refuse storage space for segregated waste collection and recycling. Internal and external storage areas are required.

b) 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 development and public health pursuant to policy DM1 of the Core Strategy.

8) Prior to the use hereby approved becoming operational, space and facilities for staff cycle storage shall be provided in accordance with details to be submitted to and approved in writing by the City Council as local planning authority. The approved space and facilities shall then be retained and permanently reserved for bicycle parking.

Reason - To ensure that adequate provision is made for cycle storage so that persons occupying the development have a range of options in relation to mode of transport in order to comply with policies SP1, T1 and DM1 of the Core Strategy.

Informative

· Any new external fittings (i.e. shutters, windows or doors) should be certified to Secured by Design standards.

- Any new glazing in external doors, ground floor or easily accessible windows should include at least one pane of laminated glass rated as P4A under EN 356.
- A CCTV system should be included within these premises and should be capable of monitoring the following areas: external doorways, all internal spaces.
- Signage should be displayed to indicate the areas of the premises that are restricted to staff only.
- Any staff areas that are to be included within the proposal should be access controlled and restricted to members of staff only.
- Dusk till dawn lighting should be installed above all external doors.

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Greater Manchester Police

Flat 2, 167A Fog Lane, Manchester, M20 6FJ
Flat 1, 167A Fog Lane, Manchester, M20 6FJ
15 Norwood Avenue, Manchester, M20 6EX
11 Norwood Avenue, Manchester, M20 6EX
228A Fog Lane, Manchester, M20 6EL
234A Fog Lane, Manchester, M20 6EL
173A Fog Lane, Manchester, M20 6FJ
Flat 1, 236 Fog Lane, Manchester, M20 6EL
Top Flat, 165 Fog Lane, Manchester, M20 6FJ
Top Flat, 169 Fog Lane, Manchester, M20 6FJ
173 Fog Lane, Manchester, M20 6FJ
Fountain Solicitors, 165 Fog Lane, Manchester, M20 6FJ
228 Fog Lane, Manchester, M20 6EL
234 Fog Lane, Manchester, M20 6EL
167 Fog Lane, Manchester, M20 6FJ
171A Fog Lane, Manchester, M20 6FJ
171 Fog Lane, Manchester, M20 6FJ
13 Norwood Avenue, Manchester, M20 6EX
9 Norwood Avenue, Manchester, M20 6EX
7 Norwood Avenue, Manchester, M20 6EX
169 Fog Lane, Manchester, M20 6FJ
236 Fog Lane, Manchester, M20 6EL

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