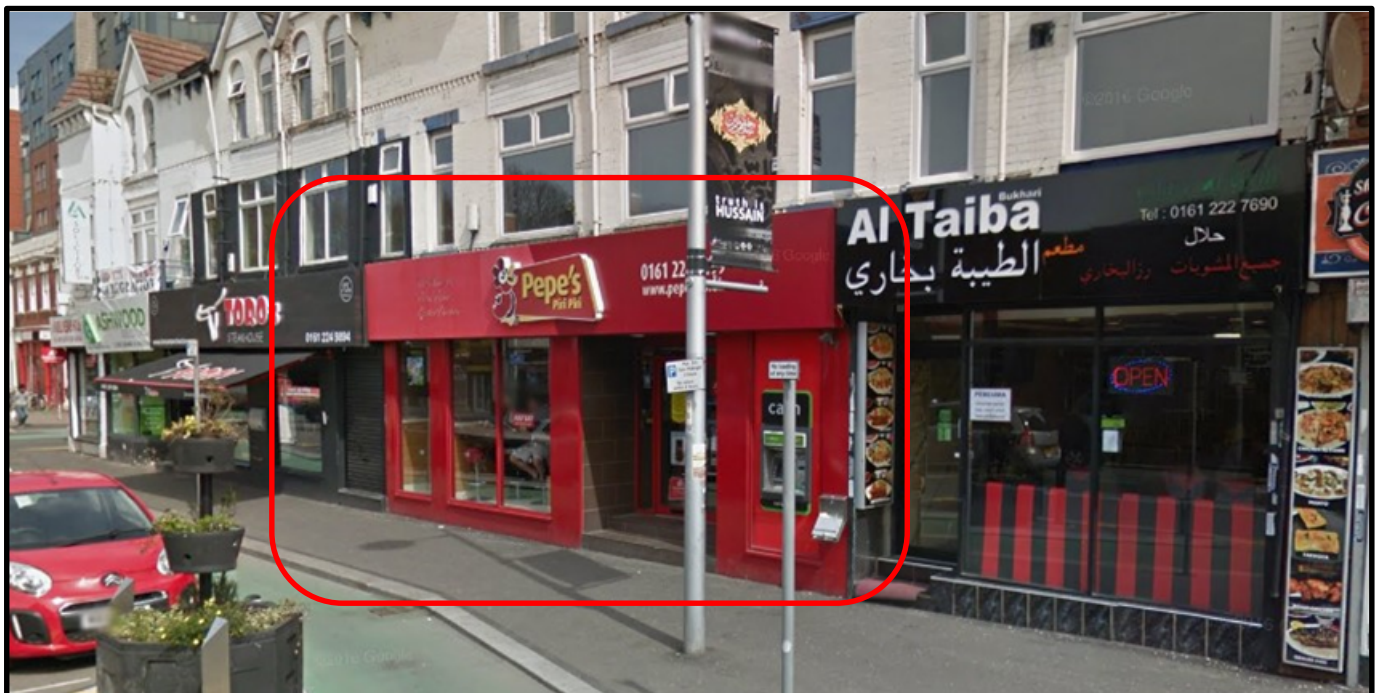


Planning

Growth & Development

Delegated officer report for planning application

Application no.	136155/JO/2023
Date registered valid:	3 February 2023
Proposal:	Variation of condition no.2 (hours of opening) attached to planning permission 040262 to allow the premises to open between 12.00pm to 1.30am on Mondays to Thursdays and 12.00pm to 2.00am on Fridays to Sundays.
Address:	17-19 Wilmslow Road, Manchester, M14 5TB
Ward(s):	Rusholme Ward
Applicant:	Mr Mohammed Ansir, ANHB Food Ltd t/aPepes piripiri
Agent (if any):	
Case officer:	David Lawless Tel: 0161 234 4543 Email: david.lawless@manchester.gov.uk
Recommendation:	Approve
Date of recommendation:	20 December 2023



Application details

Type of application: Variation or Removal of Condition

Development type: Change of use

Standard consultations:

Printed: 20 February 2023 Expired: 13 March 2023

Neighbour notifications

Printed: 20 February 2023 Expired: 13 March 2023

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/area

17/19 Wilmslow Road is a three storey mid-terraced commercial building within the Rusholme District Centre. There is a food outlet on the ground floor with associated accommodation above. Food and drink uses are located on either side of the application site, while on the other side of Wilmslow Road there are further commercial units. To the rear of the site, beyond an alleyway there are a number of residential properties.

Listed building: No

Conservation area: No

Tree Preservation Order: No

Description of development

Planning permission to use the property as a restaurant with take-away facility was approved in 1992. That consent was subject to condition no. 2 which limited when the premises could open:

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

Sunday to Thursday, 8.00 a.m. to 11.30 p.m.

Fridays and Saturdays, 8.00 a.m. to midnight.

Reason – To safeguard the amenities of the occupiers of nearby residential accommodation.

The applicant is now applying to vary the opening hours to the following:

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

Mondays to Thursday - 8.00am to 1.30am

Fridays to Sundays - 8.00am to 2.00am

Originally the applicant proposed to open until 3.00am on Mondays to Thursdays and 4.00am on Fridays to Sundays but given concerns about these hours the application was amended to those hours shown above.

Consultations & Notification Responses

Local Residents/Businesses – One letter of support have been received:

- Happy to support the extension of opening hours, it will benefit those who like me finish work late and are unable to buy / order healthy grilled food after 1am.

Environmental Health – Suggests the imposition of a number of conditions designed to protect residential amenity.

Neighbourhood Compliance Team – There are on-going problems with anti-social behaviour, noise issues and a huge problem with inappropriate disposal of Commercial Waste. There is also an issue with vermin which is mainly caused by the amount of food waste which is being disposed of on the Street and in the alleyways. All of this has a detrimental effect on the quality of life for residents who live directly behind the businesses. A lot of complaints are received from the residents who live in the immediate area around 17 to 19 Wilmslow Road. Please take this into account when any decision is made regarding the above application.

Rusholme and Fallowfield Civic Society – No comments received.

Policies

The National Planning Policy Framework (December 2023) – The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally prepared plans for housing and other development can be produced. Planning law requires that applications for planning permission be determined in accordance with the development plan, i.e. the Core Strategy Development Plan Document and accompanying policies, unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions.

Paragraph 11 states that plans and decisions should apply a presumption in favour of sustainable development, which for decision-taking means:

- (c) approving development proposals that accord with an up-to-date development plan without delay; or
- (d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Paragraph 12 states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

Core Strategy Development Plan Document – 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 been saved until replaced by further development plan documents to accompany the Core Strategy. Planning applications in Manchester must be decided in accordance with the Core Strategy, saved UDP policies and other Local Development Documents. Relevant policies in the Core Strategy are detailed below:

Policy SP1, *Spatial Principles* – Development in all parts of the City should make a positive contribution to neighbourhoods of choice including creating well designed places that enhance or create character and protect and enhance the built and natural environment.

Policy DM1, *Development Management* – This policy states that all development should have regard to a number of specific issues, of which the following are most relevant:

- 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.

Saved UDP Policy DC26, "Development and Noise" – Policy DC26.1 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. In giving effect to this intention, the Council will consider both:

- a) the effect of new development proposals which are likely to be generators of noise; and
- b) the implications of new development being exposed to existing noise sources which are effectively outside planning control.

Policy DC26.2 states that new noise-sensitive developments (including large-scale changes of use of existing land or buildings), such as housing, schools, hospitals or similar activities, will be permitted subject to their not being in locations which would expose them to high noise levels from existing uses or operations, unless the effects of the noise can realistically be reduced. In giving effect to this policy, the Council will take account both of noise exposure at the time of receiving a planning application and of any increase that may reasonably be expected in the foreseeable future.

Issues

Principle of the Proposal – The closing times of the various food and drink outlets in the district centre vary from 11.30pm to 3.00am depending what day of the week it is. Furthermore, there are several food and drink uses that do not have any opening restrictions at all. One of the properties close to the application site, namely no. 2 Wilmslow Road, had permission to open until 2.00am. Given this, there is no objection in principle to the proposed hours, especially as they have been reduced to reflect those already in existence throughout the district centre. However, any potential disamenity to nearby residents must be assessed and the possibility of attached additional conditions to mitigate against any such disamenity considered.

Residential Amenity – It is recognised that the level of residential amenity expected to be enjoyed when living close to a district centre such as Rusholme, which is known for its food and drink offers, is much lower than that expected in a predominantly residential area. Notwithstanding

this, existing levels of residential amenity should be preserved as much as possible and it is for this reason that two additional conditions suggested by Environmental Health would be attached to any consent granted. One condition would require the building to be acoustically insulated to prevent noise breakout, while the other condition would require external plant and machinery to be acoustically insulated.

It is considered that imposing these additional conditions would help to mitigate against any possible disamenity arising from the proposed hours.

Visual Amenity – The proposal would not have a detrimental impact upon the existing levels of visual amenity enjoyed within the district centre.

Refuse Storage – The concerns about storage of commercial waste is recognised. However, it would not be appropriate to impose further refuse conditions on this application as the original consent contained such a condition.

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 in a positive and proactive manner to resolve any matters arising in relation to dealing with the planning application.

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

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

Mondays to Thursday - 8.00am to 1.30am
Fridays to Sundays - 8.00am to 2.00am

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation, pursuant to Policy DM1 in the Manchester Core Strategy and saved UDP Policy DC26.

2) a) Externally mounted ancillary plant, equipment and servicing 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 commencement of the use hereby approved 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. 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.

b) Prior to the operation of the scheme a 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 Policy DM1 in the Manchester Core Strategy and Saved UDP Policy DC26.

3) 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 report should also take into account patrons arriving and leaving and potentially congregating outside the premises. The scheme shall be implemented in full before the development hereby approved commences.

b) Prior to the operational phase of the development hereby approved, a verification report shall be submitted 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 Policy DM1 in the Manchester Core Strategy and Saved UDP Policy DC26.

Appendix 1 – List of consultees & neighbours notified

Environmental Health
Rusholme, Fallowfield & Moss Side Civic Society
23A Wilmslow Road, Manchester, M14 5TB
23C Wilmslow Road, Manchester, M14 5TB
23B Wilmslow Road, Manchester, M14 5TB
2 Rusholme Place, Manchester, M14 5TE
9 Banff Road, Manchester, M14 5TA

5 Banff Road, Manchester, M14 5TA
4 Rusholme Place, Manchester, M14 5TE
Flat Above, 17 - 19 Wilmslow Road, Manchester, M14 5TB
Dixy Chicken, 9 Wilmslow Road, Manchester, M14 5TB
11 Wilmslow Road, Manchester, M14 5TB
401 Great Western Street, Manchester, M14 4AH
21 Wilmslow Road, Manchester, M14 5TB
13 - 15 Wilmslow Road, Manchester, M14 5TB
23 Wilmslow Road, Manchester, M14 5TB
8 Rusholme Place, Manchester, M14 5TE
6 Rusholme Place, Manchester, M14 5TE
10 Rusholme Place, Manchester, M14 5TE
7 Banff Road, Manchester, M14 5TA
3 Banff Road, Manchester, M14 5TA
1 Banff Road, Manchester, M14 5TA

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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Area Team Boundary - Name: SOUTH AREA