

Planning

Growth & Development

Delegated officer report for planning application

Application no. 138513/FO/2023
Date registered valid: 22 November 2023
Proposal: Addition of roof terrace with retractable roof for mixed use as restaurant (E(b)) and for shisha smoking (sui generis).
Address: Huntsman Inn, 130 Wilmslow Road, Manchester, M14 5AH
Ward(s): Moss Side Ward

Applicant: Mr Saheeb Hussain
Agent (if any): Mr Yunus Jiva, AZH Consultancy
Case officer: Steven McCoombe
Tel: 0161 234 4607
Email: steven.mccoombe@manchester.gov.uk

Recommendation: Decline to Determine Application
Date of recommendation: 19 December 2023

Application details

Type of application: Full Application Consent

Development type: Minor Other

Date of site visit: 1 December 2023

Standard consultations:

Printed: 23 November 2023

Expired: 14 December 2023

Neighbour notifications

Printed: 23 November 2023

Expired: 14 December 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

The application site relates to a two storey, former public house (Huntsman Inn), which fronts the main arterial route of Wilmslow Road and is now occupied by 'Ta-Mya by Pasha' – a restaurant, which is presently vacant.



The building incorporates a two-storey extension to the rear, which backs onto an L shaped service yard, enclosed by a brick wall to the rear boundary and metal gates to side boundary, which allows access to Claremont Road.

To the front is a narrow, enclosed forecourt area with awning above.

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

Description of area

The site is situated within the heart of Rusholme district centre – a busy linear centre focused north to south along a long stretch of Wilmslow Road. The centre contains a variety of small-scale commercial uses, with a particular focus on food and drink establishments.

In terms of the immediate surroundings, the building is adjoined to one side by a two-storey supermarket selling world foods and to the other by a single storey clothes shop. Immediately to the front of the building is a pedestrian crossing. To the rear is a public pay and display car park, beyond which are two storey, terraced dwellinghouses along Claremont Road to the north-west and Whitecliff Close to the west respectively.

Description of development

Planning permission is sought for the addition of roof terrace to the rear of the existing building with retractable roof, for mixed use as restaurant (E(b)) and for shisha smoking (sui generis).

The application follows the refusal and subsequent dismissal at appeal (see below history) for a recent, earlier proposal for a change of use of the ground floor to restaurant/ shisha lounge (sui generis), together with amendments to the ground floor fenestration and an extension to boundary wall to the rear.

Prior to this the City Council declined to determine an application on 16 May 2023 for a change of use of the ground floor to a restaurant/shisha lounge (sui generis) with amendments to the ground floor fenestration and the addition of brick/glass boundary wall to the rear (Ref: 136642/FO/2023).

Consultations & Notification Responses

Local Residents/Occupiers – No representations received.

Environmental Health – Conditions are advised with regard to construction hours, acoustic insulation, the use of external areas, external equipment, waste management and air quality.

Highway Services - The ground floor and first floor will remain as existing. The proposals will add a roof terrace with a retractable roof. The proposed development extends only within the red-line boundary of the site and as such, does not impinge upon the adopted highway. The development will increase by 180sqm, it is accepted that no highway concerns in terms of safety or capacity are considered likely to arise.

Planning History

136642/FO/2023

Change of use of the ground floor to restaurant/shisha lounge (sui generis), amendments to ground floor fenestration and addition of brick/glass boundary wall to the rear. *Declined to Determine 16 May 2023.*

APP/B4215/W/22/3304111

Change of use of the ground floor to restaurant/ shisha lounge (sui generis) amendments to ground floor fenestration and extension to boundary wall to the rear. *Appeal Dismissed 9 December 2022.*

133383/FO/2022

Change of use of the ground floor to shisha smoking place (sui generis) and elevational alterations to ground floor and extension to rear boundary wall. Refused 30 June 2022.

APP/B4215/C/21/3284746

Breach of condition 13 attached to planning permission referenced 120947/FO/ 2018 which states that: No part of the premises shall be used for the smoking of shisha at any time and none of the areas outside the building, including to the rear, shall be used as an external seating area or for use by patrons of the premises. *Appeal Dismissed and Enforcement Notice Upheld 4 March 2022.*

APP/B4215/W/19/3226481

Dispute of Condition No.13 attached to planning permission referenced 120947/FO/ 2018 which states that: No part of the premises shall be used for the smoking of shisha at any time and none of the areas outside the building, including to the rear, shall be used as an external seating area or for use by patrons of the premises. *Appeal Dismissed 9 July 2019.*

120947/FO/2018

Change of use from public house (Class A4) to restaurant (Class A3) together with the erection of two storey extension to rear and elevational alterations including front canopy. *Approved 17 December 2018.*

110905/FO/2015/S1

Change of use and subdivision of public house (Class A4) to two hot food take-aways (Class A5), erection of front single-storey extension with terrace area above, installation of two flues to the rear, single-storey detached outbuilding and a gated access from Claremont Road. *Approved 4 May 2016.*

102581/FO/2013/S1

Erection of part single, part two-storey rear extension and full height glazing to front elevation and installation of flue and air conditioning equipment. *Approved 8 July 2013.*

Background

Planning permission was granted in 2018 for the change of use of the building from a public house (Class A4) to restaurant (Class A3), together with the erection of two storey extension to rear and elevational alterations including front canopy (Ref: 120947/FO/2018).

This permission includes a condition (13) that states:

No part of the premises shall be used for the smoking of shisha at any time and none of the areas outside the building, including to the rear, shall be used as an external seating area or for use by patrons of the premises.

Reason - For the avoidance of doubt and to safeguard the amenities of the occupiers of nearby properties, pursuant to saved policies DC10 and DC26 of the Unitary Development Plan and policies SP1 and DM1 of the Core Strategy.

An appeal was lodged in July 2019 against the imposition of this condition (Ref: APP/B4215/W/19/3226481) which was subsequently dismissed. The Inspector noted that the removal of the condition would cause material harm to the living conditions of the occupiers of nearby residential properties due to noise, general disturbance and unpleasant odours emanating from the premises. The smoking of shisha from the premises would materially harm nearby local residents' reasonable enjoyment of their homes.

Following the dismissal of the appeal, the premises began to allow the smoking of shisha at the premises. This culminated in a planning enforcement notice being served for breach of the aforementioned condition 13.

The enforcement notice was subsequently appealed (Ref: APP/B4215/C/21/3284746) in March 2022.

The Inspectorate concluded that that the appeal should not succeed and condition 13 is reasonable and necessary to prevent unacceptable harm to the living conditions of nearby residents arising from noise and disturbance and odours.

Following the enforcement notice, the applicant submitted a planning application for a change the use of the ground floor to a shisha smoking place (sui generis), together with elevational alterations to the ground floor and extension to rear boundary wall. This application (Ref: 133383/FO/2022) was refused by the City Council on 30 June 2022. A subsequent appeal (Ref: APP/B4215/W/22/3304111) was dismissed on 9 December 2022.

Subsequent to this a further application was submitted (Ref: 136642/FO/2023) which again sought a change of use of the ground floor to restaurant/shisha lounge (sui generis), with amendments to ground floor fenestration and addition of brick/glass boundary wall to the rear. The City Council declined to determine the application with reference to both Sections 70A and Section 70C of the Town and Country Planning Act 1990 (as amended).

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.

Policy SP1 (Spatial Principles) - 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, flood risk, green infrastructure, parking/access, accessibility, community safety and crime prevention, health, the adequacy of internal accommodation and amenity space and refuse storage/collection.

In addition, the below, saved policy of the UDP is considered relevant.

Saved policy DC26 (Noise) of the UDP 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.

Section 4 provides guidance on the decision-making process and mirrors legislation in stating that planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

Section 12 'Achieving well-designed places' states at paragraph 130:

Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*
- f) create 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; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

Paragraph 134 goes on to state that:

'Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.'

Issues

The application follows the refusal of planning permission and the dismissal of an associated planning appeal for a similar proposal and also the dismissal of an enforcement appeal involving the same use as that proposed. Namely, the use of the premises involving the smoking of shisha (sui generis).

In the case of this application, the City Council has exercised its powers in declining to determine the current application.

There has been no change to development plan policy, or a material change in circumstances since the dismissal of appeals for similar development. In the interests of inhibiting the use of 'repeat' applications with intention of, over time, wearing down opposition to the development, the City Council have used its discretionary powers to decline to determine the application.

Pursuant to subsection 70C of the Town and Country Planning Act 1990, the City Council as Local Planning Authority has declined to determine the application. Consideration of the approach with respect to the relevant legislation is set out below.

Section 70C of the Town and Country Planning Act 1990

Section 70C of the Town and Country Planning Act 1990 states that a Local Planning Authority may decline to determine an application if granting planning permission for the development would involve granting, whether in relation to whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice constituting a breach of planning control.

Does Section 70C apply in this case?

On 14 September 2021 the City Council issued an enforcement notice for a breach of planning control.

Namely, that on 17 December 2018 planning permission was granted for a change of use of the host property from a public house to a restaurant, together with the erection of a two storey, rear extension and elevational alterations, including a front canopy (Ref: 120947/FO/2018).

The permission was subject to conditions. Condition 13 of the permission states:

No part of the premises shall be used for the smoking of shisha at any time and none of the areas outside the building, including to the rear, shall be used as an external seating area or for use by patrons of the premises.

Reason - For the avoidance of doubt and to safeguard the amenities of the occupiers of nearby properties, pursuant to saved policies DC10 and DC26 of the Unitary Development Plan and policies SP1 and DM1 of the Core Strategy.

The City Council alleged that planning permission was implemented in breach of this condition in that the smoking of shisha was taking place at the premises. As such, an enforcement notice was issued which required:

1. Permanently cease the use of any part of the premises for the smoking of shisha.
2. Remove from the land all shisha pipes, tobacco and associated paraphernalia.

A compliance period of 7 day was stipulated.

In response to the this, the enforcement notice was appealed.

On 4 March 2022, the appeal was dismissed.

A paragraph 7 of the appeal decision, the Inspector notes that:

'In the appellant's submission it is clear at paragraph 6.1.2 that they are seeking, along with physical changes, approval for the change of use from a restaurant to restaurant/shisha lounge (sui generis).'

It was concluded at paragraph 17 that:

'Condition 13 is reasonable and necessary to prevent unacceptable harm to the living conditions of nearby residents arising from noise and disturbance and odours. Therefore, it accords with policies DC10 and DC26 of the UDP and policies SP1 and DM1 of the Core Strategy and National Planning Policy Framework, insofar as they aim to protect amenity'.

The Inspector concludes that the appeal should not succeed, and planning permission not granted, but with variation of the period for compliance from 7 days to 1 month.

In this case, whilst the current application involves amendments to the rear of the building involving the addition of a roof terrace with retractable roof, there is a high degree of similarity between the use sought and that previously considered unacceptable on multiple occasions.

As the City Council has already deemed the use unacceptable and have taken formal action to request cessation of the smoking of shisha at the premises, any approval of the matters presently before the Council would be in direct contradiction of those decisions previously made.

In order to prevent the applicant wearing down opposition to the change of use and by incremental changes in attempt to make the use more acceptable, the City Council as Local Planning Authority has declined to determine the application, pursuant to Section 70C of the Town and Country Planning Act 1990. An appropriate entry will be made in the planning register to reflect this decision.

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: Decline to Determine Application

Article 35 Declaration

The proposal would not improve the social and environmental conditions of the area, nor does it comply with the development plan and therefore does not comprise sustainable development. There are no conditions which could reasonably have been imposed, which would have made the development acceptable, and it is therefore not possible to approve the application.

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

1) The City Council has exercised its powers to decline to determine the application, pursuant to Section 70C of the Town and Country Planning Act 1990.

Under Section 70C of the Town and Country Planning Act 1990 (as amended) a Local Planning Authority may decline to determine an application for planning permission, if granting that permission would involve granting, wholly or partly, a permission for any matters specified in a pre-existing enforcement notice. A notice is "pre-existing" if it had been issued before the receipt of the planning application being determined as specified by Section 70C(2).

On 14 September 2021 the City Council issued an enforcement notice for a breach of planning control which alleged that condition 13 of planning permission referenced 120947/FO/2018 was not being complied with. This states:

No part of the premises shall be used for the smoking of shisha at any time and none of the areas outside the building, including to the rear, shall be used as an external seating area or for use by patrons of the premises.

Reason - For the avoidance of doubt and to safeguard the amenities of the occupiers of nearby properties, pursuant to saved policies DC10 and DC26 of the Unitary Development Plan and policies SP1 and DM1 of the Core Strategy.

On 4 March 2022, an appeal against the notice was lodged with the Secretary of State.

It was concluded that that the appeal should not succeed, and planning permission not granted.

In the opinion of the Local Planning Authority, the current planning proposal relates to matters pertaining to a "pre-existing" enforcement notice.

As the Council have already deemed the development to be unacceptable and have taken formal action, any approval of the matters presently before the Council would be in direct contradiction to those decisions previously made. Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990, the Council as Local Planning Authority, hereby declines to determine the application. An appropriate entry will be made in the planning register to reflect this decision.

Therefore, pursuant to Section 70C of the Town and Country Planning Act 1990 (as amended), the City Council as Local Planning Authority, hereby declines to determine the application.

As the decision to decline to determine the application has been made within the statutory 8 week period, there is no right of appeal to the Secretary of State against non-determination under Section 78 as that right is lost under the provision of Section 78(2)(aa).

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Greater Manchester Police

499 Claremont Road, Manchester, M14 5WU
Second Floor, 215 Wilmslow Road, Manchester, M14 5AG
Zara Hair And Beauty, First Floor, 215 Wilmslow Road, Manchester, M14 5AG
Ground Floor, 215 Wilmslow Road, Manchester, M14 5AG
Basement, 215 Wilmslow Road, Manchester, M14 5AG
554 Claremont Road, Manchester, M14 5XL
Flat 7, 203A Wilmslow Road, Manchester, M14 5AQ
Flat 6, 203A Wilmslow Road, Manchester, M14 5AQ
Flat 5, 203A Wilmslow Road, Manchester, M14 5AQ
Flat 4, 203A Wilmslow Road, Manchester, M14 5AQ
Flat 3, 203A Wilmslow Road, Manchester, M14 5AQ
Flat 2, 203A Wilmslow Road, Manchester, M14 5AQ
Flat 1, 203A Wilmslow Road, Manchester, M14 5AQ
205 Wilmslow Road, Manchester, M14 5AQ
203 Wilmslow Road, Manchester, M14 5AQ
215 Wilmslow Road, Manchester, M14 5AG
211 Wilmslow Road, Manchester, M14 5AG
124 Wilmslow Road, Manchester, M14 5AH
132 - 142 Wilmslow Road, Manchester, M14 5AH
First Floor, 132 - 142 Wilmslow Road, Manchester, M14 5AH
207 Wilmslow Road, Manchester, M14 5AQ
Ground Floor, 132 - 142 Wilmslow Road, Manchester, M14 5AH
199 - 201 Wilmslow Road, Manchester, M14 5AQ
205B Wilmslow Road, Manchester, M14 5AQ
Flat At, Huntsman Inn, 130 Wilmslow Road, Manchester, M14 5AH
209 Wilmslow Road, Manchester, M14 5AG
209A Wilmslow Road, Manchester, M14 5AG
120A Wilmslow Road, Manchester, M14 5AJ
11 Whitecliff Close, Manchester, M14 5XN
5 Whitecliff Close, Manchester, M14 5XN
550 Claremont Road, Manchester, M14 5XL
495 Claremont Road, Manchester, M14 5WU
489 Claremont Road, Manchester, M14 5WU
526 Claremont Road, Manchester, M14 5XL
481 Claremont Road, Manchester, M14 5WU
491 Claremont Road, Manchester, M14 5WU
120B Wilmslow Road, Manchester, M14 5AJ
552B Claremont Road, Manchester, M14 5XL
552 Claremont Road, Manchester, M14 5XL
213 Wilmslow Road, Manchester, M14 5AG
126 - 128 Wilmslow Road, Manchester, M14 5AH
122 Wilmslow Road, Manchester, M14 5AH
552A Claremont Road, Manchester, M14 5XL
485 Claremont Road, Manchester, M14 5WU
483 Claremont Road, Manchester, M14 5WU
9 Whitecliff Close, Manchester, M14 5XN
7 Whitecliff Close, Manchester, M14 5XN
3 Whitecliff Close, Manchester, M14 5XN

1 Whitecliff Close, Manchester, M14 5XN
548 Claremont Road, Manchester, M14 5XL
528 Claremont Road, Manchester, M14 5XL
524 Claremont Road, Manchester, M14 5XL
522 Claremont Road, Manchester, M14 5XL
501 Claremont Road, Manchester, M14 5WU
497 Claremont Road, Manchester, M14 5WU
493 Claremont Road, Manchester, M14 5WU
487 Claremont Road, Manchester, M14 5WU

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