

Planning

Growth & Development

Delegated officer report for planning application

Application no.	136717/FO/2023
Date registered valid:	11 April 2023
Proposal:	Retrospective application for the retention of balustrading, installation of a retractable awning and use of the forecourt as an external seating area
Address:	78-80 Wilmslow Road, Manchester, M14 5AL
Ward(s):	Moss Side Ward
Applicant:	Mr Dawood Said
Agent (if any):	Mr Ahmed Choudhry, NADA Architects
Case officer:	David Lawless Tel: 0161 234 4543 Email: david.lawless@manchester.gov.uk
Recommendation:	Approve
Date of recommendation:	31 October 2023

Application details

Type of application: Full Application Consent

Development type: Minor Other

Date of site visit: 17 May 2023

Standard consultations:

Printed: 9 May 2023 Expired: 30 May 2023

Neighbour notifications

Printed: 9 May 2023 Expired: 30 May 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

54 to 84 Wilmslow Road is a three storey terraced row with commercial properties occupying the ground floors and opening onto Wilmslow Road. The first and second floors were historically maisonette flats accessed via an elevated first floor walkway at the rear of the buildings and numbered 23 to 53 Aspinall Street. Several of these properties remain occupied as flats, while some have been converted into office or incorporated into additional floorspace for the ground floor commercial units.

This application relates to no. 78-80 Wilmslow Road, which is currently in use as a café.

Listed building: No

Conservation area: No

Tree Preservation Order: No

Description of development

Retrospective application for the retention of balustrading, installation of a retractable awning and use of the forecourt as an external seating area

Consultations & Notification Responses

Local Residents/Businesses – No comments received.

Rusholme and Fallowfield Civic Society – No comments received.

Highway Services – Have made the following comments:

- The proposed development extends only within the red-line boundary of the site and as such, does not impinge upon the adopted highway.
- As the proposed tables and chairs are located on an area of privately owned forecourt between the edge of the adopted highway and the property, a tables and chairs licence will not be required.
- The proposed development is located on a length of footway, subject to a high volume of pedestrian movement. The proposed seating area will not impact the adopted highway.
- In this location, street furniture in the form of a street tree is located on the adopted footway.
- The proposed seating area does not project onto the adopted highway and therefore retains the full adopted highway footway clearance of 2m. This is considered sufficient to accommodate pedestrian demands in this location.
- All furniture is to be stored internally within the premises outside of operational hours. This is considered appropriate in preventing unnecessary obstruction of the adjacent highway.
- The retractable awning and balustrading will not be located on the adopted highway, which is acceptable to highways. It is requested that the headroom clearance of the awning should be greater than 2.5m.

Environmental Health – Suggested the imposition of a number of conditions designed to protect residential amenity and public health.

Policies

The National Planning Policy Framework (September 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 issues, in this instance the most relevant are considered as follows:-

- Appropriate siting, layout, scale, form, massing, materials and detail.
- Impact on the surrounding areas in terms of the design, scale and appearance of the proposed development. Development should have regard to the character of the surrounding area.

- 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.
- Accessibility: buildings and neighbourhoods fully accessible to disabled people, access to new development by sustainable transport modes.
- Community safety and crime prevention.
- Design for health.
- Adequacy of internal accommodation and external amenity space.
- Refuse storage and collection.
- Vehicular access and car parking.
- Effects relating to biodiversity, landscape, archaeological or built heritage.
- Flood risk and drainage.

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.

Places for Everyone Plan – The Places for Everyone Plan is a Joint Development Plan Document, providing a strategic plan and policies, for nine of the 10 boroughs which make up Greater Manchester. Once the Places for Everyone Plan is adopted it will form part of Manchester’s development plan.

To date, five consultations have taken place in relation to the Plan. The Examination of the Plan, following its submission in February 2022, began in November 2022. Following the completion of the Examination of the Plan, main modifications have now been proposed which will now become the subject of further public consultation. The City Council’s Executive agreed the Main Modification on 4 October 2023 and endorsed an 8 week period of public consultation on the Main Modifications commencing no earlier than 9 October 2023. Any representations will be forwarded to the Examination team managing the Plan. The Inspectors will consider all representations on the proposed Modifications before finalising the examination report.

Given the stage the Plan has reached and level of public consultation and scrutiny it has received, the Plan and its policies are 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.

Issues

Principle of the Proposal – As the use and enclosure of the premises for outdoor seating has been provided to the front of the other units in this parade, there is no objection in principle to the proposal. Notwithstanding this, the impact upon residential and visual amenity must be assessed.

Residential Amenity – As the forecourt area forms part of the planning unit and can already legitimately used for outside seating, it is not considered that the proposed development would impact further on the amenity of the area. In any event, given existing background noise levels and the busy nature of the immediate area and the main thoroughfare of Wilmslow Road, any impact as a consequence of noise and disturbance is considered negligible. The hours of use condition relating to the existing use of the premises has been included again as a safeguard and reflects the original opening hours of the restaurant.

Design and Visual Amenity – The proposed design of the enclosing balustrade and canopy reflects that of other neighbouring premises within the host parade. The balustrade extends the full width of the forecourt (apart from an access point) and maintains a consistent height with the adjoining enclosures to the north and south. The proposed balustrading and screening is of timber construction with glazed inserts which again is consistent with the other external seating areas in the parade. On balance, the overall design and impact to the visual amenity is acceptable and is comparable to the prevailing appearance of this terrace of commercial uses.

Pedestrian Access – As the proposed tables and chairs are to be located on an area of privately owned forecourt between the edge of the adopted highway and the property, access along the public footway would not be impeded.

In terms of access to the premises, the existing premises incorporates a stepped access from the forecourt.

Enforcement Action – The property has been the subject of an enforcement notice (ENF/13735/17) which required the following to be undertaken:

1. Cease the use of the land at 78-80 Wilmslow and land on the east side of Aspinall Street as a mixed use café, hot food takeaway and Shisha smoking place.
2. Remove the decking, including timber planter boxes, from the front forecourt area.
3. Remove the retractable plastic drapes from the canopy above the front forecourt area.
4. Restore the shop front and forecourt to its condition before the breach took place.
5. Remove the single storey rear extension, including the shipping container, from the land on the east side of Aspinall Street.
6. Remove all building materials, rubble and waste arising from carrying out the above steps.

As this planning application relates to the front of the building it is noted that points 2 and 3 have been complied with. It should be noted that the balustrading that is the subject of this application is not the timber planter boxes referred to above.

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 seek solutions to problems arising in relation to dealing with the planning application. No such problems have arisen on this application.

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 received on 11 April 2023:

- a) Location Plan
- b) Drawing no. 23-1137 (01)001 PL0
- c) Drawing no. 23-1137 (02)001 PL0
- d) Drawing no. 23-1137 (03)001 PL0

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 outside seating area hereby approved shall only be used for purposes ancillary to the main food and drink uses of the premises and for no other purpose.

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

4) The outdoor seating area hereby approved shall not be open outside the following hours:-

a) 10.00am, to midnight

Reason - To safeguard the amenity of the nearby occupiers, pursuant to saved policies DC10 and DC26 of the Unitary Development Plan for the City of Manchester, policies DM1 and SP1 of the Manchester Core Strategy and the National Planning Policy Framework.

5) No amplified sound or any music shall be produced or played in any part of the site outside of the building.

Reason - To safeguard the amenity of nearby occupiers, 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.

Appendix 1 – List of consultees & neighbours notified

Highway Services

Environmental Health

Rusholme, Fallowfield & Moss Side Civic Society

82 Wilmslow Road, Manchester, M14 5AL

84 Wilmslow Road, Manchester, M14 5AL

131 - 133 Wilmslow Road, Manchester, M14 5AW

129 Wilmslow Road, Manchester, M14 5AW

First Floor, 123 Wilmslow Road, Manchester, M14 5AN

76 Wilmslow Road, Manchester, M14 5AL

123 - 127 Wilmslow Road, Manchester, M14 5AN

49 Aspinall Street, Manchester, M14 5UD

51 Aspinall Street, Manchester, M14 5UD

53 Aspinall Street, Manchester, M14 5UD

47 Aspinall Street, Manchester, M14 5UD

45 Aspinall Street, Manchester, M14 5UD

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

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: SOUTH AREA