

Planning

Growth & Development

Delegated officer report for planning application

Application no. 137016/FO/2023

Date registered valid: 18 July 2023

Proposal: Change of use from a cafe (Class E) to a cafe/shisha establishment (sui generis).

Address: 181-183 Wilmslow Road, Manchester, M14 5AP

Ward(s): Rusholme Ward

Applicant: Mr Hiwa Zada

Agent (if any): Mr Ahmed Choudhry Nada Architects

Case officer: David Lawless
Tel: 0161 234 4543
Email: david.lawless@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 15 September 2023



Application details

Type of application: Full Application Consent

Development type: Change of use

Date of site visit: 1 August 2023

Standard consultations:

Printed: 27 July 2023 Expired: 17 August 2023

Neighbour notifications

Printed: 27 July 2023 Expired: 17 August 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

This application relates to a ground floor commercial property at the rear of no. 181-183 Wilmslow Road. The premises, which is currently in use as a café/shisha establishment, fronts Denison Road.

The site is located within Rusholme District Centre. Adjoining to the north are commercial properties with residential above, much of which appears to be accessed from the rear alley. Facing across Denison Road are further commercial uses. To the east, beyond the rear alleyway which runs parallel with Wilmslow Road, there is an apartment complex (Hamilton Lodge) and Park Crescent, a residential roundabout located. The site adjoins the Victoria Park Conservation Area.

Listed building: No

Conservation area: No

Tree Preservation Order: No

Description of development

Change of use from a cafe (Class E) to a cafe/shisha establishment (sui generis).

Consultations & Notification Responses

Local Residents – No comments received.

Environmental Health – Recommends a number of conditions designed to protect residential amenity.

Greater Manchester Police – Recommend the implementation of a number of physical improvements to the premises, along with suggestions on how the use is managed.

Policies

The National Planning Policy Framework (Sept 2023) – The National Planning Policy Framework (NPPF) 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 NPPF 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.

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, the most relevant of which in this instance are 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.

- Refuse storage and collection.
- Vehicular access and car parking.

Policy C 8, *Local Centres* – This policy states that local shopping and service provision in local centres should be retained where it remains viable and provides an important service to the local community. The provision of new small scale retail facilities will be encouraged where they would provide for local every day needs and would not be harmful to the vitality and diversity of nearby centres. Careful consideration will be given to the impacts of new commercial development on residential amenity, which is particularly an issue for food and drink uses. Development proposals in local centres which would not reflect the local role of these centres will be assessed according to policy C9.

Policy C 10, *Leisure and the Evening Economy* – 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.

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 – Section 38(6) Planning and Compulsory Purchase Act 2004 requires that decisions are to be made in accordance with the development plan, unless material considerations indicate otherwise. Paragraphs 2 and 47 in the NPPF reinforces this requirement, while paragraph 12 states that the presumption in favour of sustainable development does not change the statutory status of the development plan as a starting point for decision making, and that where a planning application conflicts with an up-to-date development plan, permission should not normally be granted.

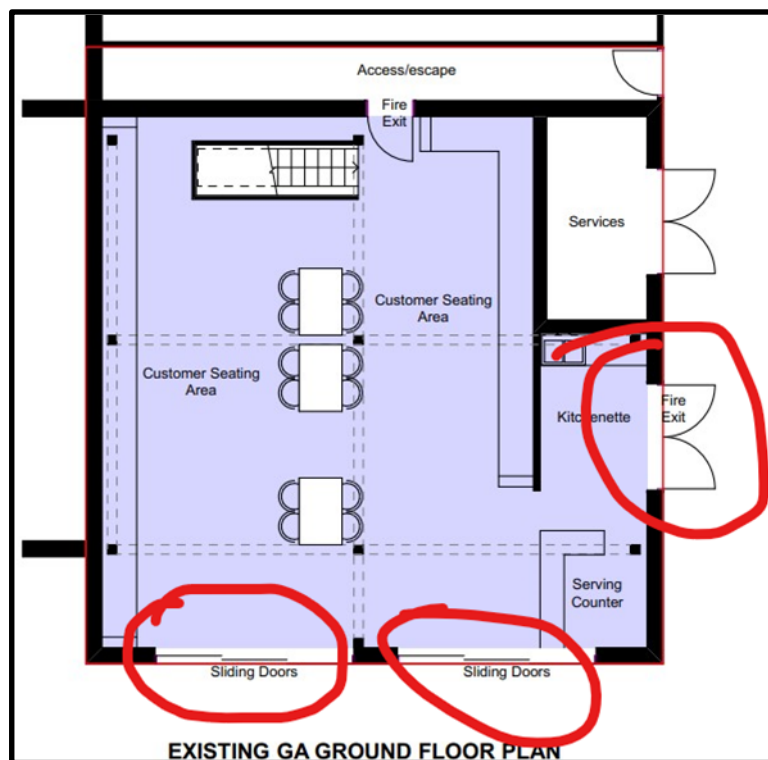
Given the unduly negative impact the shisha facility would have upon nearby residents it is considered that the proposal conflicts with Policies DM1 and SP1 in the Manchester Core Strategy and saved UDO Policy DC26. As such the principle of the change of use is not considered acceptable.

Residential Amenity – It is acknowledged that smoking inside the building would not result in undue harm to nearby residents by way of noise and disturbance. However, as with the appeal decision for 130 Wilmslow Road¹, it is recognised that as smoking in an enclosed public space is prohibited by the Health Act (2006), the sliding doors at the front of the premises would be opened in an effort to overcome the limitations of the Health Act.



In opening these doors and potentially the kitchenette doors shown below, it is considered that the noise, disturbance and odours associated with the shisha smoking element of the proposal would have a detrimental impact upon the levels of residential amenity enjoyed by the residents of Hamilton Lodge. This would be exacerbated further while residents utilised their amenity space and would be more acute late at night and when during the warmer months, bedroom windows could reasonably be expected to be left open.

¹ ENF/14909/20 - 130 Wilmslow Road, Rusholme. Breach of condition 13 attached to planning permission 120947/FO/2018 (no shisha smoking inside or outside premises). Appeal dismissed (ref. APP/B4215/C/21/3284746) on 4 March 2022.



In addition to the general activity associated with the shisha use, it is considered that the comings and goings of customers to the venue would impact on existing levels of residential amenity. At the front of the premises there are a number of car parking spaces that would undoubtedly be used by patrons of the premises. The slamming of car doors, playing of car radios and the starting of engines, along with raised voices, would all contribute to the reduction in residential amenity enjoyed by the occupants of Hamilton Lodge.

In respect of odours emanating from the premises, it is acknowledged that Environmental Health consider the imposition of a condition to be sufficient to limit any impact. However, the imposition of such a condition would not prevent disamenity when the sliding doors would be opened. Furthermore, there is the prospect that the pavement at the front of the premises would be utilised for the smoking of shisha and the odours from this location would impact upon existing amenity levels.

Health Act 2006 – Smoking in enclosed public spaces is prohibited in England, pursuant to the Health Act 2006. It is not clear how the intended use of the premises for the smoking of shisha would comply with the relevant legislation, given that the premises is open to the public and substantially enclosed.

City Council guidance refers to the definition of enclosed or substantially enclosed premises as the following:

A Substantially Enclosed Premises will be considered to be substantially enclosed if it has a ceiling or roof, but there are openings in the walls which are less than half of the total area of walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut.

Given the above, it is clear than the premises could not be legally used for smoking in any form, including shisha, as the premises can be defined or categorised as enclosed. The extraction of smoke from inside the premises, as proposed by the applicant, would not overcome the requirements under the Health Act; door or window openings cannot be taken into account in terms of the open nature of a premises, either when open or closed. The building which includes a ceiling, is considered to be enclosed on four sides, in which case it would be illegal to use the building itself for the smoking of shisha.

Whilst it is acknowledged that it is not the role of the planning system to duplicate other legislative controls, account should be taken of the relevant law surrounding smoking in enclosed public spaces.

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: Refuse

Article 35 Declaration

Officers have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application. Officers have communicated their concerns about this proposal to the applicant during the course of the planning application, but these concerns have not been overcome. The proposal is considered to be contrary to the development plan and therefore it is recommended for refusal.

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

1) The proposed use of the ground floor as a café/shisha establishment (Sui Generis) would have a detrimental impact on the amenity and living conditions of the nearest residential occupiers as a result of the unacceptable levels of noise, disturbance and activity, including comings and goings, associated with the nature of the use. The proposed use is therefore contrary to saved policy 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.

Appendix 1 – List of consultees & neighbours notified

Environmental Health

Greater Manchester Police

Rusholme, Fallowfield & Moss Side Civic Society

Flat 4, 1 Park Crescent, Manchester, M14 5DU

Flat 3, 1 Park Crescent, Manchester, M14 5DU

Flat 2, 1 Park Crescent, Manchester, M14 5DU

Flat 1, 1 Park Crescent, Manchester, M14 5DU

Flat 11, 1 Park Crescent, Manchester, M14 5DU

Flat 10, 1 Park Crescent, Manchester, M14 5DU

Flat 9, 1 Park Crescent, Manchester, M14 5DU

Flat 8, 1 Park Crescent, Manchester, M14 5DU

Flat 6, 1 Park Crescent, Manchester, M14 5DU

187 Wilmslow Road, Manchester, M14 5AQ

185 Wilmslow Road, Manchester, M14 5AP

Flat 7, 1 Park Crescent, Manchester, M14 5DU

Flat 5, 1 Park Crescent, Manchester, M14 5DU

Flat 14, 1 Park Crescent, Manchester, M14 5DU

Flat 13, 1 Park Crescent, Manchester, M14 5DU

Flat 12, 1 Park Crescent, Manchester, M14 5DU

Ground Floor, 181 - 183 Wilmslow Road, Manchester, M14 5AP

179 Wilmslow Road, Manchester, M14 5AP

Top Flat, 179 Wilmslow Road, Manchester, M14 5AP

Flat 22, Hamilton Lodge, Park Crescent, Manchester, M14 5QU

Flat 20, Hamilton Lodge, Park Crescent, Manchester, M14 5QU

Top Flat, 187 Wilmslow Road, Manchester, M14 5AQ

Flat 24, Hamilton Lodge, Park Crescent, Manchester, M14 5QU

Flat 23, Hamilton Lodge, Park Crescent, Manchester, M14 5QU

Flat 21, Hamilton Lodge, Park Crescent, Manchester, M14 5QU

Flat 19, Hamilton Lodge, Park Crescent, Manchester, M14 5QU

2 Park Crescent, Manchester, M14 5RE

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) -

Susceptible to Surf Water Flood (Middle) -

Area Team Boundary - Name: SOUTH AREA