

Planning statement supporting an application for change of use of 181-183 Wilmslow Road Rusholme Manchester M14 5AP

Preface

The premises are located within an area commonly known as “Curry Mile”. It forms the ground floor and basement.

The use sought is ‘shisha café’.

The use complements the character, vitality and viability of Rusholme District Centre compliant with policies C2 and C10 of the core strategy.

Detail

The policies seek to ensure that development supports a balanced evening and night-time economy in the area, contributing to the viability, vitality and character of the district centre.

The area is characterised by a diverse mix of businesses, including restaurants, takeaways, jewellers, cafes, shisha cafes, food shops, pharmacies, opticians - giving the general impression of a vibrant business centre with a substantial retail element.

A large number of businesses in this locale are a mixture of eating places, takeaways and similar, creating a distinctive ‘cafe feel’ which helps animate the street scene in front of an otherwise architecturally plain modern or older buildings. In this case the upper storeys are substantially set-back from the café entrance. The cafes in this area are used by a diverse range of customers, in a diverse range of ways, including shisha, food and drink, and some in combination. There is a definitive ‘vibe’.

The Council has previously been unsuccessful when contending on appeal shisha cafe proposals lead to an over-concentration of non-retail premises within the district centre to the detriment of the centre. There have also been assertions shisha engenders a fear of crime, diminishing the attractiveness of the locality, but again on appeal the council's claims were considered unfounded.

With reference to living conditions, there are flats on the upper floor of the building but these are well set back from the premises frontage and the premises already have restaurant lawful use. The use is entirely confined within the building, so the noise from customers and distinctive odours from shisha pipes are not capable of causing disturbance to neighbouring residents. Compared to the restaurant approved use there is still venting, mitigating any harm. The use does not create additional comings and goings of customers compared to Class E, and in context of an acknowledged late-night vibrancy of the locality, there is no change in this distinctive café vibe. Consequently, the use compliments character within the commercial scene and makes a particular contribution to shisha flavour which would not be likely to harm the vibrancy of the area, a good fit in the “Curry Mile”.

Licencing and health matters are for the relevant enforcement agencies, not planning decision taking.

Unfortunately, the council has persisted with a negative perception of shisha despite there being little if any evidence it does more than compliment viability and vibrancy, as well as the overall character of this district centre, Curry Mile, with its varied food and culinary offers. Given the

rejection of the council's previous assertions on appeal, refusal of this proposal could place the council at cost risk.

Law

The issue of whether a material change of use takes place is one of fact and degree. But what must be considered is definable character of the use of the land, not the particular purpose of a particular occupier¹. In this context it is also important to bear in mind that the UCO simply defines certain changes of use, so they are not to be treated as 'development' per s55. The Order does not operate so as to treat a change from a use within a use class to another use outside that class or any other use, as a material change of use². Given class E is the lawful use, any breach must be expedient to enforce, and here it would not.

As the proposal is in accordance with the development plan and there are no material considerations otherwise (or none that tip the balance, thus the presumption in favour applies), planning permission must be granted in accordance with section 38(6) PCPA 2004. Furthermore, the proposal is 'sustainable' development as defined by the Framework, which cements the conclusion permission must be granted.

¹ Westminster CC v Great Portland Estates [1985] AC 661 at 669G

² Rann v SSE [1980] JPL 109