

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135663/JO/2022

Date registered valid: 21 December 2022

Proposal: Variation of condition 1 attached to planning permission 104105/FO/2013/S1 to allow increase in opening hours to 11.00 to 03.00 hrs daily

Address: 440 Wilmslow Road, Manchester, M20 3BW

Ward(s): Old Moat Ward

Applicant: Mr M Imran, Burger House

Agent (if any): Mr R Anwar, RA Design & Project Management Ltd

Case officer: Steven McCoombe
Tel: 0161 234 4607
Email: steven.mccoombe@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 10 May 2023

Application details

Type of application: Variation or Removal of Condition

Development type: Change of use

Date of site visit: 27 January 2023

Standard consultations:

Printed: 12 January 2023 Expired: 2 February 2023

Neighbour notifications

Printed: 12 January 2023 Expired: 2 February 2023

Site notice

Posted: 27 January 2023 Expired: 17 February 2023

Press advert

Published: 17 January 2023 Expired: 7 February 2023

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building and surroundings

The application site relates to a ground floor unit situated at the corner of Wilmslow Road and Queen Street West. The premises is currently occupied by 'Burger House' hot food takeaway.

Wilmslow Road forms a major north/south arterial route, which links the area with the city centre to the north and the airport to the south.



View of application premises along Wilmslow Road

The site lies at the northern end of Withington District Centre and is situated within Withington Conservation Area.

The immediate area is characterised by a variety of small-scale retail, office and food and drink uses, as well as upper floor residential flats. The sides roads off Wilmslow Road are predominantly residential in nature.

Listed building: Not applicable

Conservation area: Withington Conservation Area 1983

Tree Preservation Order: No

Description of development

Variation of Condition 1 attached to planning permission 104105/FO/2013/S1 seeks to allow an increase in opening hours to 11.00 to 03.00 hrs daily.

Planning permission referenced 104105/FO/2013/S1 granted retrospective planning permission for a change of use from (Class A1) Dry Cleaners to (Class A3) café – Now Class E.

Condition 1 of this permission restricts the hours of opening to the following.

11.00am to 10.30pm Monday to Friday

11.00am to 11.00pm Saturday

11.00am to 10.00pm Sundays and Bank Holidays

The current application seeks to extend the hours of operation until 03.00 hrs daily.

It should be noted that the authorised use of the premises is for the consumption of food and drink on the premises (Class A3 – now Class E).

Planning permission referenced 104105/FO/2013/S1 related to a retrospective application for change of use from (Class A1) dry cleaners to (Class A3) cafe, (now Class E), but the current use is clearly a hot food take-away (sui-generis). This is outlined within the submitted Planning Statement that accompanies the current application. As such, it appears that a material change of use has occurred, for which planning permission has not been granted.

In this respect it is not therefore possible to rely on conditions for a use that has no relationship to the current use, in order to bring about a material change. The 2013 permission is effectively spent and can no longer be relied upon.

Following registration of the application however, a determination of the proposal is necessary. The application has therefore been assessed on the proposed hours of use of the premises only. The existing unauthorised use of the premises and the associated signage can be progressed separately via enforcement proceedings.

Consultations & Notification Responses

Local Residents/Occupiers – No representations received.

Local Ward Members - Councillor Gavin White states that the current opening hours are in keeping with wider planning policies for Withington Village Conservation Area, and the wider residential area that it is within. The cumulative impact of more and more late opening of premises, and late licenses being granted is not considered acceptable.

Withington Civic Society - The Society notes the already large number of hot food takeaway premises in Withington Village. Extending the hours of these premises would be contrary to policy and would add to the existing issues of noise, littering and general disturbance affecting a residential area. These issues were regarded as bad enough for Manchester Council to designate the area as a Stress Area requiring a special policy in the Statement of Licensing Policy 2021-2026.

The original planning permission sets out various conditions relating to waste, fume extraction and noise. There is no evidence to show that these conditions have ever been met.

Environmental Health – If recommended for approval, conditions are requested in relation to the acoustic attenuation of external equipment and a noise management plan relating to the movement of delivery vehicles.

Highway Services – No objection. The applicant is advised that condition 2 of permission referenced 104105/FO/2013/S1 should be adhered to. This states "No loading or unloading shall be carried out on the site outside the hours of 7.30am to 8.00pm Monday to Saturday, No loading or unloading on a Sunday or Bank Holiday"

Planning History

104105/FO/2013/S1

Retrospective application for change of use from (Class A1) Dry Cleaners to (Class A3) café.
Approved 20 December 2013.

078487/FO/2006/S1

Change of use of building from mixed use comprising laundrette (Class A1) on ground floor and office (Class A2) on first floor to office (Class A2) and retail (Class A1) on ground floor and one flat on first floor. *Approved 13 April 2006.*

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.

The following policies within the Core Strategy are considered relevant:

Policy SP1 (Spatial Principle) 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, accessibility, community safety and crime prevention, health, the adequacy of internal accommodation and amenity space and refuse storage/collection.

Unitary Development Plan for the City of Manchester, 1995 (Saved Policies)

The below saved policies of the Unitary Development Plan are also considered relevant:

Policy DC10 (Food and Drink Uses) – states within the policy narrative that in determining applications involving the sale of food and drink, regard should be had to general location of proposed development, the effect on the amenity of neighbouring residents and the availability of safe arrangements for parking and servicing. The policy states further that the use of conditions may be imposed to protect the amenity of residents, including limitations on the hours of opening.

Policy DC26 (Development and Noise) 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.

The Framework underlines a “presumption in favour of sustainable development”. This means approving development, without delay, where it accords with the development plan and where the development is absent or relevant policies are out-of-date, to grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF.

Sections 4, 12 and 15 are considered relevant to the consideration of this application.

National Planning Policy Guidance (2014)

The Government produced a suite of documents to act as a live resource which set out advice and best practice on a wide range of planning issues following a detailed review of planning policy guidance as a way of streamlining policy.

The relevant sections of the NPPG in this case are as follows:

Noise

Noise needs to be considered when development may create additional noise or would be sensitive to the prevailing acoustic environment (including any anticipated changes to that environment from activities that are permitted but not yet commenced).

Local planning authorities’ should take account of the acoustic environment and in doing so consider:

- whether or not a significant adverse effect is occurring or likely to occur;
- whether or not an adverse effect is occurring or likely to occur; and
- whether or not a good standard of amenity can be achieved.

Mitigating the noise impacts of a development will depend on the type of development being considered and the character of the proposed location. In general, for noise making developments, there are four broad types of mitigation:

- engineering: reducing the noise generated at source and/or containing the noise generated;
- layout: where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose-built barriers, or other buildings;
- using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;
- mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.

Issues

Principle

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.

The NPPF at paragraphs 2 and 47 reinforces this requirement and at 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.

In the case of this application, the principle of the proposed opening hours is not considered acceptable.

It is maintained that the proposed variation to the opening hours is excessive and would cause undue noise and disturbance, which in turn would undermine the living conditions of nearby residential occupiers.

Residential Amenity

Policies DM1 and SP1 of the Core Strategy indicate that consideration should be given to the effects of development upon the amenity, living conditions and the well-being of residents.

Saved policy DC10 states that that in determining applications involving the sale of food and drink, regard should be had to general location of proposed development and the effect on the amenity of neighbouring residents.

Saved policy DC26 states that consideration will be given to the effects of new development proposals which are likely to be generators of noise.

Guidance contained within paragraph 130(f) of the NPPF, states that planning decisions should ensure that developments create places with a high standard of amenity for existing and future

users, whilst paragraph 174(e) states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

In the case of this application, the City Council is concerned that the proposal would result in an isolated late-night use that would become a magnet for late night food consumers and online delivery drivers. This in turn would result in undue noise and disturbance at unsociable hours.

It is maintained that the additional hours proposed is excessive and would have a detrimental impact on the occupiers of the nearest residential properties, as consequence of noise and disturbance. Principally, due to increased comings and goings, on-street parking turnover, delivery collection, vehicular manoeuvring, the potential congregation of people outside the premises and potential anti-social behaviour. The effects could be further realised following the dispersal of prospective patrons along residential side roads such as Swinbourne Grove to the other side of Wilmslow Road.

At present, opening hours for the existing premises do not allow opening beyond 10.30pm on weekdays, 11pm on Saturdays and 10pm on Sundays. This roughly aligns with other similar establishments in the area.

Whilst the applicant refers within their Planning Statement to other premises in the immediate area with similar or later hours of use to those proposed, none of these have the benefit of planning permission.

Many of these properties are historic and have not been through a planning process. In terms of Withington district centre, the latest planning approval of opening hours for night-time use relates to the former Natwest bank opposite at 437 Wilmslow Road, which allows until 00.30hrs during the week and 01.00hrs at the weekend.

The Council are concerned that to allow the hours of operation until 3am in the morning could set a precedent for other similar premises in the area to operate such hours. The cumulative effects of late-night opening would have a significant, negative impact on the living conditions of the nearest residential occupiers, including those in residential first floor flats above commercial premises

Relevant development policy seeks to protect the amenity of existing occupiers.

In this case, the proposed hours of operation is considered immoderate and that on balance, the existing opening hours strike a reasonable balance between the needs of the business and the living conditions of surrounding residents. The additional hours proposed would tip that balance and materially increase noise and disturbance in the vicinity of the site to the detriment of residents' living conditions. On this basis, the proposed variation of hours is not considered acceptable.

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 refused in a timely manner.

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

1) The additional hours of operation proposed would have a detrimental impact upon the level of amenity afforded to nearby occupiers, forming an isolated early morning use, resulting in unacceptable levels of additional activity, vehicle movements and general noise and disturbance at unsociable hours. The proposed application is therefore contrary to saved policies DC10 and DC26 of Unitary Development Plan for the City of Manchester, policies DM1 and SP1 of the Manchester Core Strategy and the National Planning Policy Framework (NPPF).

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Withington Civic Society

444A Wilmslow Road, Manchester, M20 3BW
443A Wilmslow Road, Manchester, M20 4AN
Withington Contact Centre, Withington Methodist Church, 439 Wilmslow Road, Manchester, M20 4AN
Assist Care, Withington Methodist Church, 439 Wilmslow Road, Manchester, M20 4AN
449A Wilmslow Road, Manchester, M20 4AN
445 Wilmslow Road, Manchester, M20 4AN
445A Wilmslow Road, Manchester, M20 4AN
Ground Floor, 440 - 442 Wilmslow Road, Manchester, M20 3BW
Withington Methodist Church, 439 Wilmslow Road, Manchester, M20 4AN
444 Wilmslow Road, Manchester, M20 3BW
442 Wilmslow Road, Manchester, M20 3BW
1 Queen Street West, Manchester, M20 3BQ
Flat At, Victoria Hotel, 438 Wilmslow Road, Manchester, M20 3BW
443 Wilmslow Road, Manchester, M20 4AN
Victoria Hotel, 438 Wilmslow Road, Manchester, M20 3BW
First Floor, 440 Wilmslow Road, Manchester, M20 3BW
446 Wilmslow Road, Manchester, M20 3BW
Southside Tequila Joint, 447 - 449 Wilmslow Road, Manchester, M20 4AN
Flat 2, 441 Wilmslow Road, Manchester, M20 4AN
441 Wilmslow Road, Manchester, M20 4AN
Flat 1, 441 Wilmslow Road, Manchester, M20 4AN
3 Queen Street West, Manchester, M20 3BQ

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
Conservation Area - Withington Conservation Area 1983
Area Team Boundary - Name: SOUTH AREA