

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135897/FO/2023

Date registered valid: 23 January 2023

Proposal: Change of use of the operation of the existing cafe (use class E(b)) to a hybrid use comprising a cafe (use class, E(b)) and the operation of a 'commercial kitchen' preparing food only for collection by online delivery companies (sui generis) between the hours of 22.00 and 04.00 hrs

Address: 26 Bury New Road, Manchester, M8 8EL

Ward(s): Cheetham Ward

Applicant: Mrs Sanam Rafiq, Dixy Chicken

Agent (if any): Mr Darren Pomfret, Manchester Building Design Ltd

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

Recommendation: Approve

Date of recommendation: 22 March 2023

Application details

Type of application: Full Application Consent

Development type: Change of use

Date of site visit: 16 February 2023

Standard consultations:

Printed: 1 February 2023 Expired: 22 February 2023

Neighbour notifications

Printed: 1 February 2023 Expired: 22 February 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

This application site relates to a pavement-fronted, ground floor café/restaurant unit (Class E) – presently operated by Dixy Chicken. The host unit is situated within a relatively modern two-storey building which has been sub-divided to create two smaller retail units. The application premises relates to the end unit situated on the corner of Bury New Road and Dewhurst Street and adjoins a retail operation and fashion wholesale to one side and a wholesale business to the north.



View of front of the premises

The rear of the premises includes a small service yard and parking space accessed off Dewhurst Street.



View of the rear of the premises

The premises is situated within a busy commercial frontage comprising of small-scale retail, wholesale and food and drink units which extends on both sides of Bury New Road.

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

Description of area

The site is located adjacent to a busy, north/south arterial situated in an area defined by The Strangeways Local plan (2009) as 'The Workshop Village'. This is located on each side of Bury New Road and contains a mixture of large and small premises occupied by wholesalers, small-scale retail and distributors involved predominantly in textile, clothing, information communications and technology.

The area also includes a number of food and drink businesses, including a large banqueting business on the opposite side of Bury New Road. HMP Strangeways is situated a short distance to the south-east, whilst the city centre is situated approximately 1.5 km to the south.

Description of development

Planning permission is sought for a change of use of the of the existing cafe (use class E) to allow for aa hybrid use comprising the existing café use (class E) and the operation of a 'commercial kitchen' preparing food only for collection by online delivery companies (sui generis) between the hours of 22.00 and 04.00 hrs.

The trade kitchen is proposed to operate between the hours of 22.00 through to 04.00 hrs daily to prepare food for collection only by online delivery platforms, with no visiting of the premises by the public.

It is anticipated that the employees of the online delivery platforms will on average visit the premises 5 to 6 times an hour during the proposed hours of operation.

Consultations & Notification Responses

Local Residents/Occupiers – No representations received.

Greater Manchester Police (Design for Security) – No objection.

Highway Services – No objection.

Parking restrictions are applicable on both sides of the junction of Dewhurst Street in addition to Bury New Road which prohibits vehicles from waiting/parking on the highway at any time. In relation to loading restrictions, these are only applicable on Bury New Road and only during weekday peak hours. Loading and unloading is therefore permitted on Dewhurst Street at any time.

The waste management proposals are acceptable from a highway perspective.

Environmental Health – The proposed use and hours of operation are acceptable in this commercial location.

North Neighbourhood team – The site is operating without a license to trade between these times, and this has been rejected at committee and upon appeal

Despite it having the license rejected, the premises has continued to open in a flagrant breach of this and its current planning conditions 113358/FO/2016.

Furthermore, by granting a planning condition to open until 4am increases the likelihood of nuisance being caused to the locality, especially given its proximity to the city centre.

There is no obvious parking nearby, meaning those accessing the business, either takeaway businesses or otherwise, would have to stop on existing double yellow lines and/or on loading bans which will cause nuisance to a main arterial route.

Policy

The following policy and guidance is considered relevant in consideration of this application.

- Saved policies CC10, DC26 of the UDP;
- Policies DM1, C10, EN19, SP1, T2, EC2 of the Core Strategy;
- Strangeways Local Plan (2009);
- National Planning Policy Framework (NPPF).

Planning History

113358/FO/2016

Change of use from retail (A1) to form restaurant (A3) with external elevational alterations including rear flue and new fenced bin store. *Approved 28 November 2016.*

032114

Change of use of rear of warehouse to a café. *Approved 12 September 1988.*

F02416

Use of ground floor bank premises as a wholesale warehouse with ancillary storage accommodation. *Approved 30 July 1975.*

Issues

Principle

It is considered that due to the location of the premises within a busy commercial frontage with a high degree of activity throughout the day and evening, coupled with the presence of similar nearby operations, the proposed use can be sustained in this location.

Given the busy nature of the area the position of the premises along a busy frontage in a highly commercialised area, on the fringes of the city centre and the absence of any nearby residential occupiers, any impact upon residential amenity is considered negligible.

In light of the above, the proposal is considered compliant with the principal, overarching policy. Namely, saved policies CC10 and DC10 of the UDP and policies C10, DM1, SP1 and T2 of the Manchester Core Strategy.

Impact on the District Centre

The application premises is not situated within a defined centre, but rather in a linear parade of commercial uses and principally cash and carry and distribution type use that span northwards from the northern fringe of the city centre. The immediate area is dominated by wholesale uses, interspersed with small-scale, retail and food and drink uses.

With reference to Policy C10 of the Core Strategy, due to the detachment of the site from the nearest centres of the Cheetham Hill and the City Centre, it is not considered that the proposed use would have an adverse impact upon the vitality and viability of these centres as a consequence of the cumulative impact of similar uses in or on the edge of the district centre, nor would the proposed use affect the importance of the centre for local shopping. In this regard, the proposed use is considered acceptable.

Residential Amenity – Due to the existing, commercial context of the area, the similarity of other neighbouring operations, existing background noise levels and the position of the premises along the major north/south arterial route of Bury New Road, it is not believed that there would be any significant or material impact in terms of background noise levels and levels of activity.

On balance, given that the premises is situated within a commercial area in a busy part of Cheetham Hill, it is considered that the amenity of residents would not be unduly affected.

Highway Impact– The application does not contain any visitor parking within the curtilage of the property. The proposed use would therefore rely on on-street parking in the locality for any parking demand. This is typical of many other businesses in the area and the application parade in particular.

It is anticipated that the delivery vehicles of the online delivery platforms which will collect food deliveries from the premises will on average visit the premises 5 to 6 times an hour during the proposed hours of operation and would predominantly involve the use of bicycles or scooters.

As a large proportion of the surrounding area is industrial/commercial in nature, it is anticipated that parking availability within surrounding streets (where permitted) would not be an issue during the evening when parking demand and vehicle movements would be much lower and when the commercial kitchen is expected to generate the highest level of demand. It is therefore considered that parking demand associated with the proposed change of use would not give rise to local operational/safety issues and any vehicles can be satisfactorily accommodated on-street.

On balance, it is felt that occupation of the unit for the proposed hybrid use would not result in a materially different or detectable impact in terms of coming and goings and vehicle movements. Highway Services who were consulted during the processing of the application are satisfied that the proposed change of use would not result in any significant adverse effects upon the highway. On this basis, the impact is considered satisfactory.

Refuse storage – In comparison to other businesses in the parade, the submitted scheme indicates space within the rear yard for the storage of refuse.

The submitted details indicate sufficient storage for receptacles within the rear yard. The waste is to be collected by a private contractor (Viridor) on a weekly basis. Environmental Health and Highway Services raise no concerns regarding the proposed arrangement.

On this basis, subject to effective implementation, the refuse storage/collection arrangement is considered satisfactory. An appropriate condition has been included to ensure compliance and to prevent receptacles being stored outside the premises other than on the day of collection.

Fume extraction – The host premises already include a fume extraction flue in the form of steel, ventilation pipe to the rear elevation. The proposed use would continue to operate in accordance with the existing fume extraction measures.

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 / agent in a positive and proactive manner to guide the application through all stages of the planning process and resolve any issues that arose in dealing with the planning 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 and documents:

Location plan received by the City Council as Local Planning Authority on 5 January 2023.

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 restaurant use (Class E) shall not operate outside the following hours:-

12.00 to 22.00 hrs daily.

Reason - In interests of amenity, in order to reduce noise and general disturbance in accordance with saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Manchester Core Strategy.

4) The commercial kitchen element of the proposed use (sui generis) shall not operate outside the following hours:-

22.00 to 04.00 hrs daily.

Reason - In interests of amenity, in order to reduce noise and general disturbance in accordance with saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Manchester Core Strategy.

5) The use hereby approved shall only be implemented in accordance with the Waste Management Strategy and bin collection plan received by the City Council as Local Planning Authority on 5 January 2023 and 23 January 2023 respectively. No waste receptacles shall be stored outside the curtilage of the host premises other than on the day of collection.

Reason - In the interests of amenity and public health, pursuant to saved policy DC10 of the Unitary Development Plan for the City of Manchester policies DM1 and SP1 of the Manchester Core Strategy.

6) The commercial kitchen element of the proposed use (sui generis) to operate between the hours of 22.00 to 04.00 daily, shall be for the sole purpose of preparing food for delivery/collection only and shall not allow for the visiting of the general public or for the personal collection or ordering of food by customers of the business at any time during these hours.

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

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Greater Manchester Police

First Floor, The Legendary Building, 18 - 22 Bury New Road, Manchester, M8 8FR
Ground Floor, The Legendary Building, 18 - 22 Bury New Road, Manchester, M8 8FR
Advertising Right JC Decaux 035101 On Gable Of 31, 31 Bury New Road, Manchester, M8 8EQ
Unit 7, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 6, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 5, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 4, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 3, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 2, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Unit 1, Cheetham Business Park, Dewhurst Street, Manchester, M8 8FT
Millar GB Limited, 10 Hornby Street, Manchester, M8 8DQ
Second Floor, 2 Dewhurst Street, Manchester, M8 8FT
First Floor, 2 Dewhurst Street, Manchester, M8 8FT
First And Second Floors, 26 Bury New Road, Manchester, M8 8EL
Ground Floor Rear, 26 Bury New Road, Manchester, M8 8EL
28C Bury New Road, Manchester, M8 8EL
28D Bury New Road, Manchester, M8 8EL
Sohal Imports Ltd, 1 Dewhurst Street, Manchester, M8 8FT
The Legendary Building, 18 - 22 Bury New Road, Manchester, M8 8FR
33 Bury New Road, Manchester, M8 8EQ
31 Bury New Road, Manchester, M8 8EQ
29 Bury New Road, Manchester, M8 8EQ

Appendix 2 – Planning constraints

Article 4 Direction - City Centre PD Restriction - Class B1(c) To C3
Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Article 4 Direction - City Centre PD Restriction - Class B1(a) To C3
Aircraft Safeguarding Zone - Aircraft Safeguarding - Not Affected
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Flood Zones Type 2 (low to medium risk) -
Flood Zones Type 2 (low to medium risk) -
Flood Zones Type 3 (high risk) -
Benefitting From Flood Defences -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH AREA