

Planning

Growth & Development

Delegated officer report for planning application

Application no. 135851/FO/2022
Date registered valid: 8 February 2023
Proposal: Change of use of retail shop (Class E) to hot food takeaway (sui generis) together with fume extraction flue
Address: 67 Victoria Avenue, Manchester, M9 0RD
Ward(s): Higher Blackley Ward

Applicant: Miss Cristina Adriana Mihailescu
Agent (if any): Mr Rashid Ahmed Tuedge
Case officer: Steven McCoombe
Tel: 0161 234 4607
Email: steven.mccoombe@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 5 April 2023

Application details

Type of application: Full Application Consent

Development type: Minor Other

Date of site visit: 30 March 2023

Standard consultations:

Printed: 20 February 2023 Expired: 13 March 2023

Neighbour notifications

Printed: 20 February 2023 Expired: 13 March 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

The application site relates to a two storey, detached building of predominantly masonry construction.



The building encompasses a vacant, ground floor retail unit with associated, roller shuttered shop front and a residential flat to the first floor. To the rear is a small yard area.

The building immediately fronts an open forecourt area to Victoria Avenue. To the east is an end terraced property housing a vacant retail unit to the ground floor. To the west of the site and separated by a narrow alleyway is 69 Victoria Avenue – a terraced, two storey residential dwellinghouse.

Opposite the site to the north is new residential development of 12 dwellinghouses and 20 apartments.

To the south are mixed use properties along Hill Lane and adjoining the site to the south-west is E-ACT Blackley Academy.

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

Description of area

With the exception of local shops focused around the Victoria Avenue/Hill Lane junction and E-ACT Blackley Academy to the south west, the local area is principally residential in character, comprising a combination of flats and dwellinghouses.

Immediately to the east is a parade of three retail units including a vacant retail unit, butchers and convenience store. Neighbouring the application property to the west are terraced dwellinghouses, incorporating enclosed front garden areas.

Description of development

Planning permission is sought for the change of use of the ground floor shop to create a hot food takeaway (sui generis) along with an associated fume extraction flue to the eastern, side elevation of the host building. The applicant states that the proposed use would operate a pizza takeaway.

The proposed hours of operation are 4pm to 11pm Monday to Thursday and 4pm to 12 (midnight) Friday to Sunday.

Consultations & Notification Responses

Local Residents/Occupiers – 1 objection has been received. Concerns are raised in relation to the number of existing takeaway in the area, noise generated by the proposed flue, rubbish and litter associated with the proposed use, anti-social behaviour, general noise and disturbance and exacerbation of existing parking problems.

Environmental Health – Conditions are requested in relation to fume extraction, hours of use, servicing hours and waste management.

Highway Services - In comparison to the former retail consent, the proposed change of use is likely to generate some increase in vehicle trips. It would be useful to understand the maximum capacity of the restaurant/takeaway for a full assessment to be made. Staff numbers should also be referenced.

No off-street parking is available. Given its location, the site is considered to be suitably accessible by sustainable modes and is in close proximity to a number of bus routes, and therefore a number of visitors are likely to arrive on-foot or via sustainable modes, and form part of linked or pass-by visits.

Should a delivery service be proposed, the applicant should confirm where delivery vehicles will be expected to park/load.

Secure and sheltered cycle parking provision should be made, within the curtilage of the site for staff.

Pedestrian access will remain as existing which is considered acceptable.

A designated refuse storage area is to be provided within the curtilage of the site which will ensure no build-up of waste of the highway. This is acceptable in principle, subject to confirmation of an appropriate loading location given the proximity to the pedestrian crossing.

Detail is also sought regarding all associated deliveries, both in terms of vehicle frequency, anticipated dimensions and loading locations.

Greater Manchester Police (Design for Security) – No concerns but it is recommended that opening hours should not exceed similar uses in the area and consideration should be given to CCTV coverage, security standards for any new shopfront and the installation of an intruder alarm.

Planning History

128096/FO/2020

Change of use of ground floor shop and first floor flat to 4 person House in Multiple Occupation (Class C4) together with elevational alterations including a new entrance door. *Refused 6 November 2020.*

044549/FO/NORTH1/93

Proposed part single part two storey side and rear extensions to existing shop with flat over to form store and extended bedroom and lounge. *Approved 14 March 1994.*

041593

Change of use from an off-licence to a hot food take-away. *Refused 13 July 1992.*

025099

Change of use from a launderette to an off-licence shop. *Approved 9 October 1985.*

Policy

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.

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.'

The following policies within the Core Strategy are considered relevant:

Policy SP1 (Spatial Principles) 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.

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.

Policy C1 (Centre Hierarchy) relates to commercial centres hierarchy and states that the development of town centre uses (as defined in national planning policy) will be prioritised in the centres identified in this policy, taking account of the different roles of the city centre, district centres and local centres. In order to maintain the vitality and viability of its centres, provide services as locally as possible and minimise the need to travel by car,

It identifies the centre hierarchy as Manchester city centre, district centres and then local centres. It states that district centres have an essential role in providing key services to the city's neighbourhoods including shopping, commercial, leisure, public and community functions, ensuring that residents can access such services easily. They are also a focus for the city's residential neighbourhoods, providing an important opportunity to define local character. Development in these centres should primarily respond to the needs of the catchment and recognise the need to support the vitality and viability of other centres.

Policy C8 (Local Centres) relates to local shopping and service provision in local centres which 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.

With specific reference to Local Centre, locations which are not identified in the Local Development Framework but which perform the same function in terms of scale and meeting local needs will also be considered to be local centres.

Policy C10 (Leisure and the Evening Economy) states that district and local centres play a vital role, not only as places to shop but because they provide the opportunity for a wide range for leisure services to be delivered locally. The city needs to achieve a better balance of evening and night-time activities and a better distribution throughout the city. In some areas concentrations of uses associated with the evening economy have led to problems with anti-social behaviour, while other parts of the city suffer from lack of activity during the evening. It is important that the uses within centres are carefully balanced so that evening/night-time uses are complementary to neighbouring uses.

The policy states that when considering the impact of a proposed restaurant/takeaway, regard will be had to this policy and also factors including the character of the centre and its frontage

and the nature of the use proposed and the potential impacts of the proposal on the wider community.

This policy aims to encourage evening and night-time economy uses that contribute to the vitality of the Manchester's centres and that support the creation of a safe, balanced and socially inclusive evening economy, stating that centres, in particular the city centre and district centres, have an important role as the focus for the City's evening economy.

Where permission is granted, the Council will seek to ensure that any potential harm to the area, from the proposal, can be controlled, for example by limiting the hours of operation and the Core Strategy notes that smaller groups of shops are often found within primarily residential areas and are therefore less commercial in character, stating that proposals for commercial uses which are busy in the evening in Local Centres will be carefully considered to ensure that the amenity and character of the surrounding area is protected.

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

Policy DC10 (Food and Drink Uses) states that in determining planning applications for developments involving the sale of food or drink for consumption on the premises, the Council will have regard to, in this instance:

- The general location of the proposed development;
- The effect on the amenity of neighbouring residents;
- The availability of safe and convenient car parking;
- Access for all;
- The storage and collection of refuse.

Policy DC10.3 specifically states that 'Development will not normally be permitted where:

- a. it is proposed outside the general locations mentioned above, or
- b. there is a house or flat on the ground floor next to the proposed business, or only separated from it by a narrow street or alleyway'.

Policy DC26 (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.

Hot Food Take-Away Supplementary Planning Document (March 2017)

This document seeks to build on the objectives and policies in the Manchester Core Strategy, as set out above in order to promote a healthy population, sustainable communities and thriving district centres (in conjunction with Core Strategy policies SP1, C1, C2, C9 and C10).

The Core Strategy seeks to promote centres as locations for a mix of uses including food and drink, and as places that improve access to healthy food. Centres are identified as suitable locations for the development of the night-time economy, provided proposals meet policies controlling the harmful effects of uses on residential amenity and overall centre character.

The SPD has 3 policy objectives:

Policy 1 - Vitality and Viability.

This states that a proposal will be considered to be harmful to the vitality and viability of a district or local centre if it:

-Increases the concentration of hot food takeaway ground floor frontages in a centre to more than 10% of all non-residential ground floor frontages. In centres where the proportion of hot food takeaway ground floor frontages is approaching 10%, consideration will also be given to the impact of the proposal on the character of the area surrounding the application site.

Applications will not normally be permitted if the proposal would lead to the proportion of hot food takeaway frontages being more than 10% of non-residential ground floor frontages in a particular part of the centre concerned; creates a cluster of more than two hot food takeaways together; reduces the number of units between hot food takeaway clusters to less than two non-A5 uses.

Where there is no evidence of demand for a preferable use, hot food takeaways will be considered favourably even if this would increase the threshold of takeaways to above 10% of ground floor frontages.

The area, in which the site is located, is not a local centre identified in the Core Strategy as described by Policy C1 which lists all district centres and many of Manchester's local centres and also states that any locations not identified but which perform the same function in terms of scale and meeting local needs which will also be considered to be local centres.

Policy 2 - Amenity.

This states that hot food takeaways must consider their impact on noise sensitive developments and any proposal that has the potential to cause noise disturbance to existing residential development or noise sensitive properties should be accompanied by a noise survey and assessment and only approved if the impact is shown to be acceptable.

In relation to highway safety the policy states that planning permission for hot food takeaways will only be granted where there would not be an adverse impact on highway safety and the amenity of the surrounding area. Proposals should take account of the likely needs of both customers and the operator's delivery requirements. Regard will be given to:

1. Existing traffic conditions;
2. The availability of public parking provision in close proximity to the premises, including suitable on-street parking;
3. The availability of an adequate loading and unloading area.

The policy states for edge of centres in close proximity to residential units, careful consideration should be given ensuring the lives of people in the local area are not negatively affected by amenity issues. Hot food takeaways open at different hours to most town centre uses often opening later and this has the potential to affect residential amenity. The character and roles of centres differ throughout.

Policy 3 - Hot Food Takeaways and Schools

Should a proposed new hot food takeaway otherwise be considered to be acceptable, this policy restricts the opening times of new takeaways within 400m of a primary school as follows:-

-A primary school: the hot food takeaway is not open to the public between 3 pm to 5.30pm on weekdays.

-A secondary school: the hot food takeaway is not open to the public before 5.30pm on weekdays.

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.

Section 4 provides guidance on the decision-making process and mirrors legislation in stating that planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

Section 8 provides guidance on promoting healthy and safe communities.

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 change of use is not considered acceptable and would give rise to harmful impacts to residential amenity, whilst exposing school age children to a use that has the potential to contribute to childhood obesity due to the proximity of the proposed use to a school.

The proposal is therefore in conflict with saved policies DC10 and DC26 of the UDP, policies DM1, SP1, C8 and C10, of the Manchester Core Strategy, Hot Food Takeaways (SPD) and the National Planning Policy Framework (NPPF). There are no material considerations to indicate otherwise.

Residential Amenity

The primary issue of concern relates to the impact upon residential amenity.

Overarching policy as referred to below, seeks to protect the amenity of residents as a consequence of new development:

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

-Policy C8 Careful consideration will be given to the impacts of new commercial development on residential amenity, whilst policy C10 states that regard should be had to the impact on the wider community as a result of uses associated with the evening economy.

-Saved policy DC10 relates specifically to food and drink uses and states amongst the policy criteria that regard should be had to the general location of proposed development, the effect on the amenity of neighbouring residents.

-Saved Policy DC10.3 is directly applicable in this case and states that Development will not normally be permitted where there is a house or flat on the ground floor next to the proposed business, or only separated from it by a narrow street or alleyway.

-Saved policy DC26 seeks to protect residents from noise generating uses.

-Hot Food Takeaway (SPD) was produced in response to concerns regarding the proliferation of new hot food takeaway uses throughout the city and notes that careful consideration should be given to ensuring the lives of people in the local area are not negatively affected by amenity issues. Planning permission for hot food takeaways will only be granted where there would not be an adverse impact on highway safety and the amenity of the surrounding area. Proposals should take account of the likely needs of both customers and the operator's delivery requirements.

In this case, the proposed site occupies a detached position at the end of a small parade with a local centre focused around the Victoria Avenue/Hill Lane junction.

The host premises is only separated from a neighbouring residential property at 69 Victoria Avenue by a narrow alleyway. Further residential properties are situated to the west along Victoria Avenue, with a recently constructed residential development situated directly opposite, to the other side of Victoria Avenue

It is considered that the potential levels of disturbance associated with the proposed use would be particularly problematic during the evening when the hot food take away would see most of its trade and at a time when most residents can reasonably expect to enjoy their property undisturbed.

It is maintained that the use would have a detrimental impact on the occupiers of those properties due to increased comings and goings, on-street parking turnover, delivery collection vehicular manoeuvring and the potential congregation of people outside the premises due to the creation of an isolated late-night use.

The harmful impact would be more acute later at night for the nearest occupiers along Victoria Avenue and during the warmer months, bedroom windows could reasonably be expected to be left open. Given that the premises intends to open until 11.00pm Monday to Thursday and until midnight on weekends, there is a reasonable chance that noise nuisance and disturbance could occur

On this basis, the proposed use would significantly harm the living conditions of neighbouring occupiers contrary the aforementioned policy and guidance.

Hot Food Takeaways and Schools

Reducing children's exposure to foods contributing towards obesity such as those sold in hot food takeaways, is a key theme of the City Council's Supplementary Planning Document

(SPD) relating to hot food takeaway. The aim of the policy is to ensure that during times when children are making food choices, such as lunch time and after school, the environment and availability of hot food takeaways is not encouraging unhealthy choices. The use of a 400m buffer is considered to be approximately a 5 minute walk time and a reasonable distance from schools within which to control environments to the benefit of children.

In this case, to the rear, the application site immediately neighbours E-ACT Blackley Academy - a specialist primary school serving children between 3-11 years old.

Due to the immediate proximity of the application site to the primary school, the site lies within the 400 metre threshold specified within Policy 3 of the Hot Food Takeaway Supplementary Planning Document.

In such cases, acceptable opening hours are specified within the policy, in order to minimise the use/reliance on hot food takeaways by younger people. In this case the premises seeks operating hours of 4pm to 11pm Monday to Thursday and 4pm to 12 (midnight) Friday to Sunday and therefore in the excess of the recommended hours of when hot food takeaways should not open when within 400 metres of a primary school (between 3.20 and 5pm on weekdays).

The proposed use therefore has the potential to attract younger children to the premises just after typical school closure time and would therefore be contrary to policy 3, of the Hot Food Takeaway Supplementary Planning Document, policy SP1 of the Core Strategy and section 8 of the NPPF which all advocate that all new development should make a positive contribution to the health, safety and wellbeing of residents.

Due to the prescription nature of the policy contained within the SPD in particular, the proposed use is in clear contravention of the policy.

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 proposed use of the premises as a hot food take away would have a detrimental impact on the amenity of neighbouring residents, particularly those residing on 69 Victoria Avenue, due to increased comings and goings, the congregation of people in and adjacent to the premises, associated noise and disturbance and an increase in vehicular and pedestrian traffic, particularly late at night. The proposed change of use is therefore contrary to the provisions of saved policies DC10 and DC26 of the Unitary Development Plan for the City of Manchester, policies DM1, C8, C10 and SP1 of the Manchester Core Strategy, Hot Food Takeaway (SPD) and the National Planning Policy Framework (NPPF).

2) The proposed hot food take away would be situated within 400 metres of a primary school (E-ACT Blackley Academy) and would be open for business between the hours of 3.00pm and 5.30 pm weekdays thereby exposing children to foods that contribute towards obesity. The proposed development is therefore contrary to the provisions of policy SP1 of the Manchester Core Strategy and Policy 3 of the Hot Food Take Away Supplementary Planning Document (SPD).

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Greater Manchester Police

E-ACT Blackley Academy, Victoria Avenue, Blackley, Manchester, M9 0RD
Top Flat, 223 Hill Lane, Manchester, M9 6RG
231 Hill Lane, Manchester, M9 6RG
225 Hill Lane, Manchester, M9 6RG
65 Victoria Avenue, Blackley, Manchester, M9 0RD
63 Victoria Avenue, Blackley, Manchester, M9 0RD
61 Victoria Avenue, Blackley, Manchester, M9 0RD
73 Victoria Avenue, Blackley, Manchester, M9 0RD
71 Victoria Avenue, Blackley, Manchester, M9 0RD
69 Victoria Avenue, Blackley, Manchester, M9 0RD
63A Victoria Avenue, Blackley, Manchester, M9 0RD
Flat, 225 Hill Lane, Manchester, M9 6RG
229 Hill Lane, Manchester, M9 6RG
227 Hill Lane, Manchester, M9 6RG
223 Hill Lane, Manchester, M9 6RG

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 - Not Affected
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Historic Landfill Site 250m Buffer -
Area Team Boundary - Name: NORTH AREA