

Manchester City Council
Planning Department
PO Box 532
Town Hall
Manchester
M60 2LA

Date: 19 January 2023

Our ref: 42052/05/SPM/HR/26175680v2

Dear Sir / Madam

39 Piccadilly | Application under Section 73 of the Town and Country Planning Act 1990 to vary condition 3 of 130327/JO/2021

On behalf of our client, Luxury Leisure, Lichfields is pleased to submit a planning application to Manchester City Council [MCC] and Local Planning Authority [LPA] pursuant to Section 73 [S73] of the Town and Country Planning Act 1990 to remove condition 3 (hours) of planning permission 130327/JO/2021 [the extant planning permission] for an Adult Gaming Centre [AGC] at Wellington House, 39 Piccadilly, Manchester. The extant planning permission was granted on 30 June 2021. Condition 3 currently allows the premises to trade for 24-hours but requires the opening hours to revert back to 8am until 4am from 30 March 2023. This application therefore seeks permission for, and considers the impact of, continued operation of the premises between the hours of 4am and 8am only.

For the avoidance of doubt, the description of development shall remain as it was under the original permission (ref. 118338/FO/2017) which states:

“Change of use of the ground and first floors to an amusement centre (sui generis), with external alterations, and associated works.”

Introduction and Background

Luxury Leisure has been trading its AGCs in Manchester for a number of years and they are popular leisure destinations. It has 250 premises nationally of which 100 trade 24 hours a day, 7 days per week. The applicant previously operated out of City Tower on the southern side of Piccadilly Gardens facing the main bus depot. Following grant of planning permission in March 2019 (ref. 118338/FO/2017) for change of use they have been trading from 39 Piccadilly.

On 7 May 2020, a S73 application ref. 126446/JO/2020 was approved pursuant to the original planning permission ref. 118338/FO/2017 which varied condition 4 (hours) (now condition 3) to allow the use of the premises to open 24 hours, 7 days a week for a temporary 18-month period only. Whilst a permanent 24-hour permission was originally sought by this application, the temporary 18-month period was proposed by planning officers at Manchester City

Council to allow at least a 12-month period (unaffected by the Government's COVID-19 lockdown restrictions) for monitoring to be undertaken to understand if the operational hours had any impact on crime and anti-social behaviour in the area. However, after the temporary permission for 24-hour operational hours was granted, the operations of the premises were severely affected by two national lockdowns and Greater Manchester's Tier 3 and 4 COVID-19 restrictions, restricting our client's ability to monitor and assess the potential impacts of the development with regard to potential crime and disorder issues.

On 30 June 2021, a further S73 application ref. 130327/JO/2021 was approved pursuant to planning permission ref. 126446/JO/2020 to vary condition 3 (hours) to allow for a further 18-month extension of the temporary 24-hour operation. This extension has allowed our client time to monitor the potential impacts of the extended hours on potential crime and anti-social behaviour. This application is therefore accompanied by robust evidence which demonstrates that 24-hour operation has no adverse impact on these issues and therefore seeks to remove condition 3 (hours) attached to the extant planning permission. For the avoidance of doubt, the application seeks the removal of time restrictions on trading from the premises. All other aspects of the use will continue as they currently exist and operate.

The Submission

This application was submitted via the Planning Portal on 19 January 2023 (ref. PP-11845060) and comprises this covering letter and the following documents:

- Completed Application Form;
- Noise Mitigations Statement prepared by Luxury Leisure; and
- Security and Compliance Statement prepared by Luxury Leisure.

For completeness, the application is also accompanied by the following information previously provided to the LPA under the previous applications:

- Luxury Leisure Security and Social Responsibility Letter;
- Greater Manchester Policy Security Measures Letter dated 5 June 2017 (ref. 2009/0534/CLT/01);
- Noise Impact Assessment prepared by Hepworth Acoustics dated September 2018 (Report No: P18-472-R01v1);
- Smoking Policy Statement; and,
- Waste Management Form and Basement Plan (Ref. Ref. 1395 SK09 P1).

The requisite application fee of £234 has been paid online via the Planning Portal.

Site Context and Description

The site comprises a 6 storey (7 with plant room and lift housing) retail / office building known as Wellington House on the northern side of Piccadilly Gardens. The ground and first floors of the building are occupied by Luxury Leisure that trades from the premises as Admiral. The site is currently in use as an AGC and permitted to trade 24/7 for a temporary period. There is a basement car park accessed from Back Piccadilly to the rear of the site which also serves as a bin store.

The ground floor of the building has an entrance on the corner of Piccadilly. A separate access is provided on the main Piccadilly frontage which serves the upper floors (i.e. the office and training uses (Use Class E) and a language school (Use Class F1). Its longest elevation extends along Lever Street and there is a rear entrance for servicing and deliveries located on Back Piccadilly. This rear entrance is secured by roller shutters and an iron gate. Bins are taken out of this access and emptied to the rear of the premises.

The surrounding area comprises a mix of retail, leisure and commercial uses. Adjoining units are occupied by restaurants and a Morrisons foodstore at ground floor which opens from 7am Monday - Saturday. There is a Travelodge on upper floors. The Travelodge operates 24/7 with customers able to access and exit the premises at all hours. The nearby Burger King and SPAR also operates 24/7.

The nearby McDonalds opens 06:00 – midnight as approved by planning permission ref. 107543/FO/2014/C2 approved in February 2015. There are a series of other premises that also open before 8am including Wetherspoons, Greggs, Starbucks, Caffè Nero, Costa Coffee and Tesco Express all within a short walk of the application site. These premises all front on to Piccadilly Gardens which is a focal point of activity in the city centre.

The site is well served by public transport links being in a city centre location. Market Street and Piccadilly Gardens tram stops and Piccadilly bus depot are located within 200m of the building and there is a line of bus stops immediately outside the building on Lever Street. Other city centre tram stops, bus stops and Manchester Piccadilly main line station are all within a short walk with some bus services running until 4am and resuming at 5am.

Planning Policy Context

The National Planning Policy Framework [the Framework] was last updated on 20 July 2021 by the Ministry of Housing, Communities and Local Government. The overarching aim of the Framework is to proactively deliver sustainable development to support the Government's economic growth objectives. The Framework [§8] identifies three dimensions to sustainable development, economic, social and environmental.

Section 8 of the Framework promotes healthy and safe communities. Paragraphs 92 and 97 are of particular relevance to decision making concerned with ensuring health, inclusive and safe communities.

Paragraph 56 is also relevant in for Local Planning Authorities in considering the imposition or wording of conditions. It states:

“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision-making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.”

Whilst the Government are currently consulting on changes to the Framework as part of the national policy reforms proposed by the Levelling-up and Regeneration Bill, the paragraphs above remain unaffected.

Planning Practice Guidance

On 29 November 2016, the Government published the national Planning Practice Guidance [PPG] which is a live online document which is regularly updated (last updated 24 June 2021).

Of particular relevance to this application are, Section 2b on ensuring the vitality of town centres, Section 14 on making an application (and related parts in Section 21b), Section 17a providing guidance on seeking planning permission via a S.73 as well as section 21a on use of conditions. Where relevant, this guidance is referred to below.

Development Plan

Having regard to Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, this statement considers the application conformity with the Development Plan, relevant national policy and guidance, as well as any other material considerations.

The relevant parts of the Development Plan for MCC comprises the Core Strategy [CS] adopted on 11 July 2012 together with the saved policies from the Manchester Unitary Development Plan [UDP] 1995.

The site is located within the city centre and there are ten specific city centre policies within the Core Strategy. The purpose of these policies is to promote a vital and viable city centre; policies CC1, CC4, CC7, CC8, CC9 and CC10 are directly relevant to the proposals.

Policies SP1 and C1 support the City Centre as the regional focus for commerce, culture, leisure and tourism. Policy C10 seeks to promote leisure uses in the city centre where they contribute to vitality and support a balanced and socially inclusive evening/night-time economy.

Policy DM1 sets out specific development management considerations and includes the need for development to be acceptable in terms of design, crime impact and neighbour amenity.

The site is located within area 9 'Piccadilly and Oldham Street' as identified by saved Policy RC20 of the Manchester UDP where the non-retail services are considered to contribute to street activity and complement neighbouring shops providing a useful service to the substantial numbers of people walking through the area.

Compliance with these policies is set out below where the proposals are considered in more detail.

Supplementary Planning Documents

The Council has adopted Supplementary Planning Documents [SPDs], only one of which is considered relevant to this proposal. The 'Guide to development in Manchester SPD' was adopted in April 2007 and provides guidance on a variety of planning considerations including design and crime prevention which are of particular relevance to this planning application.

Other Material Considerations

The Places for Everyone [PFE] plan is a joint development plan which sets out how nine Greater Manchester's boroughs should develop up until 2037. PFE is currently undergoing an examination in public, with adoption expected in 2023. Policies JP-P4 (New Retail and Leisure Uses in Town Centres)

and JP-Strat 2 (City Centre) of the draft PFE plan supports the maintenance and enhancement of retail and leisure uses in the city-centre. Policies JP-S 4 (Resilience) and JP-P 1 (Sustainable Places) of the draft PFE plan seek to ensure that development is managed to reduce opportunities for crime and anti-social behaviour.

Manchester City Centre Strategic Plan 2015 – 2018 provides a vision for the city centre and includes main priorities for the next few years. It divides the city centre into defined areas and the site falls within 'Piccadilly'. The Plan refers to 'significant improvements' in the Piccadilly Gardens area and specifically describes how *"public and private investment has led to new high-quality commercial space and leisure facilities."*

Planning Considerations

The extant planning permission currently allows the premises to trade temporarily for 24-hours as a sui generis leisure use with the opening hours resuming to 8am until 4am thereafter. The principle of the sui generis leisure use at the premises has already been established by the extant planning permission. It is considered that the only issues of relevance to the consideration of this application for permanent 24-hour operation are impact on crime and amenity relating to the operation of the premise for the four hours between 4am and 8am only.

Crime Impact

As we have set out in the previous applications for the site, Luxury Leisure takes crime prevention very seriously at all of its premises. Policy DM1 of the CS amongst other things requires all development to have regard to community safety and crime prevention with further detail provided in the Guide to Development in Manchester SPD. The emerging PFE plan Policies JP-S 4 and JP-P 1 seek to ensure that development is managed to reduce opportunities for crime and anti-social behaviour. The proposal seeks to make the 24-hour operation of the premises permanent, allowing it to continue to trade through the night as it is permitted to do at present.

As such, this application is accompanied by a Security and Compliance Statement which sets out a summary of the existing security measures and an assessment of the success of these during the temporary 24-hour trading period. These include prohibition of alcohol on the premises, operation of a 'Think 25' policy, employment of a security department, obligatory minimum staff presence on the shop floor and involvement in local centre schemes such as 'shop watch'. Other measures include: 47 CCTV cameras, including 4 external cameras, a monitored dualcom intruder and hold-up alarm with mobile PA units for staff and static buttons in the office and the use of door supervisors. Luxury Leisure also has procedures in place for making the premises secure so that counting and securing the takings can be carried out in a secure environment and for staff leaving the premises, so that staff safety is not compromised. This includes a three safe system, comprising a 'day safe', time-lock safe and deposit safe to reduce the risk of robbery or burglary. There would not be any Cash Vehicle In Transit (CVIT) collections between 4am and 8am.

Further detail of the security measures can also be found in the accompanying security and social responsibility letter which was considered as part of the original change of use application. Luxury Leisure's physical security measures all meet the required standards and recommendations in relation

to doors, access control, CCTV, lighting and management and maintenance set out by Greater Manchester Police in the enclosed Greater Manchester Policy Security Measures Letter [GMPSML].

The statement confirms that Luxury Leisure's reporting shows there have been zero security incidence between the hours of 4am and 8am since June 2019 when the trial of 24-hour operation commenced. As such we consider this to be robust evidence that the continued operation of the premises between the hours of 4am and 8am have had no adverse impacts on crime or anti-social behaviour.

The applicant takes community safety and crime prevention very seriously and the level of detail provided with this application confounds this. The proposals are considered to protect the vitality and viability of the town and centre in accordance with policies of the Development Plan and the Framework.

Amenity

The site is located in Manchester City Centre within the Primary Shopping Area [PSA]. Core Strategy [CS] policies support the location of leisure development within the city centre; a main objective of Policy C1 is for the city centre to become the regional focus of uses including leisure and SP1, CC1 and CC4 echo the aim to focus and encourage leisure and entertainment uses in the city centre. CC10 seeks to develop the city centre as a location that appeals to a wide range of people and the provision of a complementary leisure activity, amidst other uses, accords with this objective. The location of leisure development within the city centre is supported further in the emerging PFE plan (Policies JP-P4 and JP-Strat 2). As such the presence of leisure uses in this location is to be expected and should be a material consideration when balancing any impact on amenity of any noise sensitive uses within the city centre.

The site is surrounded by a mix of predominantly commercial premises. The accompanying noise impact assessment provided to the LPA during the change of use application demonstrated the premises are sufficiently insulated and the expected sound levels are such that further acoustic insulation is not necessary in this instance. The premises also benefits from an automatic door inside the lobby, which only opens when customers enter or leave, and concrete flooring, both of which provide some additional sound insulation to the premises. This said, there are no adjoining noise sensitive premises that would be impacted by the proposals continuing to trade between the hours of 4am and 8am. The use of the premises as an AGC is not an activity that generates amplified sound or is known to be particularly noisy. It also only attracts a small number of customers at any one time during the hours of 4am to 8am.

Other mitigation measures include the display of signs at its premises asking customers to leave the premises quietly to respect neighbours during night time hours. They also have a smoking policy and designated smoking area to control noise levels from smokers congregating outside the premises. Such noise levels are limited given the site context within Manchester City Centre, fronting on to one of the busiest and liveliest public spaces in the city. Indeed it is relevant that in considering the application to change the use to an AGC the case officer states in the committee report:

"... considering the hours of operation of some other adjacent use associated with the night-time economy some of which operate 24 hours the proposed hours of operation area considered to be acceptable."

The case officer recognises that there are premises already operating 24/7 in the vicinity and uses that are naturally associated with the night-time economy. The existing temporary permission also demonstrates the Council's acceptance that 24-hour trade should not be resisted in this location. In the absence of any compelling reason to restrict the hours at the application site it follows that trading hours should be supported to match the trading hours of these premises referred to and acknowledge by the case officer and allow the premises to trade 24/7.

In summary, Luxury Leisure has successfully traded from the premises for the last three years and also successfully trades 24/7 from 100 of its 250 premises nationally. The business is therefore well equipped to continue to operate through night-time hours and has robust and tested measures in place to ensure its safe and amenable operation. Indeed, the Noise Mitigation Statement submitted alongside this application confirms that since the premises opened in March 2019, there have been zero noise complaints. This includes the temporary period of 24-hour operation. As such we consider this to be robust evidence that the continued operation of the premises between the hours of 4am and 8am have had no adverse impacts on local amenity.

Overall, the proposed development accords with the Development Plan that promotes leisure uses in the city centre subject to them not having a detrimental impact on amenity.

Other Matters

Waste Management

The bin storage arrangement would be unchanged to that implemented previously at the building by Nationwide and currently operated at the Premises by Luxury Leisure. There is a secure internal waste storage area in the basement of the building. For completeness the basement plan has been provided (Ref. 1395 SK09 P1) and a Waste Management Form has also been submitted. For the avoidance of doubt, no changes are proposed to the waste management procedures as part of this application.

S.106 Contributions

Policy PA1 of the CS sets out what contributions may be requested if needs arise as a result of a development. As with the change of use application and the previous S73 applications it is not considered that the proposals would trigger contributions most notably due to the significant amount of detail submitted with this application on the proposed security procedures and physical measures that Luxury Leisure would implement. It seems disproportionate to seek contributions towards any additional security, not least because no such contribution was required as part of the change of use application. On this basis, it is not considered that a request for planning contributions associated with this proposal would meet the tests outlined in the PPG¹.

Conclusions

There have been no security incidents or noise complaints between the hours of 4am and 8am whilst the premises has been allowed to operate during these times. On this basis, this statement is considered to robustly demonstrate that the continued 24-hour operation of the existing premises would have no adverse impact on the amenity or crime and anti-social behaviour.

¹ Planning Practice Guidance - Paragraph: 001 Reference ID: 23b-001-20161116

Paragraph 55 of the Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. For the reasons set out in this letter coupled with the fact that a temporary permission has already been accepted by officers, we consider that the existing restriction on operational hours is not necessary or reasonable to make the development acceptable in planning terms and thus the removal of this condition is entirely reasonable given the evidence submitted with this application.

Development Plan

It is considered that the proposed development is entirely in accordance with the Development Plan. Specifically, the proposals have regard to the considerations set out in Policy DM1 of the CS. The proposed development would not have a detrimental impact on amenity. In compliance with the CS and Policy C10 specifically, due regard has been given to impact on neighbouring uses. The proposed use would complement the existing 'night-time' uses in the area and as such strengthen the existing evening economy.

Sustainable Development

The development already performs a positive economic, social and environmental role. The extended hours have the potential to create employment opportunities for up to 3 additional staff members on a permanent basis. This would result in a total of 28 employees at the premises.

The employees and visitors to the premises during the extended hours will also make further contributions to the local economy through associated retail and related spending. This may be at any one of the local premises that would be open at times between 4am and 8am.

The development benefits from convenient public transport connectivity with bus stops adjacent to the premises. This can be utilised by staff and visitors negating the need to travel by non-car modes for the majority of people which is a direct environmental benefit of this town centre location.

Overall Conclusions

The proposals accord with the Policies contained within the Development Plan and bearing in mind Section 38(6) of the Planning and Compulsory Purchase Act 2004, the proposal should be determined in accordance with the plan in the absence of any other material considerations that indicate otherwise.

It is also concluded that the proposed development performs a positive economic, social and environmental role and comprises sustainable development in accordance with the provisions of the Framework [§7]. On the basis of the above and in accordance with the balance of considerations as required by the aforementioned Acts and set out in the Framework, it is considered that the proposal amounts to sustainable development and in terms of paragraph 14 there are no significant demonstrable adverse impacts arising from the proposals that would outweigh the benefits of the scheme.

As set out in this letter, the application seeks to remove condition 3 (hours) attached to planning permission ref. 130327/JO/2021 to enable the premises to continue to operate 24/7. Previous S73 applications have been approved to extend the operating hours at the site to enable Luxury Leisure to monitor the impacts that 24/7 operations would have in relation to crime and anti-social behaviour. This monitoring has found no additional adverse impacts from the extended opening hours. It is

therefore considered that the removal of condition 3 which restricts opening hours should be entirely acceptable to officers.

We trust that the enclosed information allows for the application to be validated and determined at the earliest opportunity. However, should you require any further information, please do not hesitate to contact me on 0161 837 6130.

We would be grateful if the LPA can work proactively with us to help us secure approval of the application prior to the temporary period for 24-hour operation expiring on 29 March 2023 to ensure no break in trade for Luxury Leisure or cancelled shifts for existing employees at the premises.

Yours sincerely



Imogen Zulver
Senior Planner