

Planning Reference Number: 132530/FO/2021

Change of use of ground floor from Hairdressing Salon to Bar/Restaurant (sui generis) together with single storey rear extension, installation of extraction flue and creation of external seating areas

Appeal Against Conditions 3 and 4

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1 Introduction

- 1.1 This appeal is against Condition 4 on Permission REF: 132530/FO/2021. The condition reads as follows:

‘The hours of use of the external seating area at the front of the property in connection with the use of the site as a café-bar/restaurant, shall not be operational after 9.30pm daily.’

- 1.2 This appeal is being lodged on the basis that the condition does not meet the ‘six tests’ due to it being unreasonable in nature. The grounds for appeal are set out in section 2 below.

2 Grounds of Appeal.

- 2.1 The appeal site is within an area known for its many bars, takeaways and restaurants, the change of use application that was granted permission changed the appeal premises from a hair salon to a mixed of hair salon and café/bar.

- 2.2 The premises is on Wilmslow Road in the area of Manchester known as Fallowfield. There are many businesses in this area and along this road in particular.

- 2.3 The condition was attached to the permission by the Council for the following reason:

‘To safeguard the amenities of the occupiers of nearby residential accommodation when the development is complete, pursuant to saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Core Strategy for Manchester.’

- 2.4 The location and nature of the proposed development means to allow the customers to use the outdoor area for all of the opening hours will not have a significant impact on the amenity of the occupiers of nearby residential

accommodation. Below is a list of nearby bars/establishments with longer opening hours and outdoor seating areas during these hours (details of their locations have been provided on the plan at Appendix A):

Friendship Inn – directly opposite Appeal site. Has a large outdoor seating area open until 11pm.

Nest Bar – Has an outdoor seating area very similar to what is proposed at the Appeal site with people allowed to remain outside until 12am. Only 5 properties away from the appeal site.

Abdul's Takeaway – Immediately next door to appeal site, has an outdoor seating area and is open until 5am.

Atlantic Fish Bar – Next to the appeal site on the other side, open until 3am and has many people congregating/queuing outside.

The Great Central (Wetherspoons) – Has a large road facing outdoor smoking area which is used until 12am.

Blue Café Shisha Bar – Outdoor seating area four properties down from the appeal site. Open and outdoor seating area used until 3am.

There are also countless other examples in the wider Fallowfield area, which will be apparent to the Inspector when carrying out their site visit.

- 2.5 We are therefore firmly of the view that it is unreasonable to impose these hours on the outdoor area, as it will not impact on the area significantly more than what already occurs as a result of the night time activity in the local area. The applicant has had to make the change of use application in order to create a business that remains profitable in the area, and to restrict this business in a way that others aren't would compromise this profitability and would hinder the business in a way that is clearly unreasonable. The proposed outdoor seating area is very modest in scale and will not result in a cumulative impact that will negatively impact upon the residents' amenity in the local area.

- 2.6 Furthermore, the noise report submitted with the applicant has identified that the noise from customers sat outside will be 'low' at both day and night.
- 2.7 It is therefore proposed that this condition is altered to reflect the opening hours of similar properties in the area, i.e. similar to 'Nest' Bar which has outdoor seating until 12am.
- 2.8 The Appellant is also appealing against condition 3 which stipulates the general opening hours. It is appreciated that the Appellant accepted this condition during the application process, but this was merely to move things forward and get a permission issued, as the applicant had been in the system for a long time at this point.
- 2.9 The application was submitted with a noise report that suggest the following hours:
- Monday- Thursday 08.00-00.00
 - Friday – Saturday 08.00-02.00
 - Sunday and Bank Hols 09.00- 23.00
- 2.10 The noise report suggested measures that would make these hours acceptable, these hours were also suggest by the Council's own environmental protection team. These hours are not dissimilar to other properties within very close proximity to the appeal site, and are not unreasonable or unacceptable in this context.
- 2.11 The restriction in the hours proposed would mean that the proposed café/bar would not be able to compete financially with the other bars in the area, due to them having longer opening hours available to them.
- 2.12 The Council have not provided any technical evidence in support of their claim that the opening hours for the bar and the outdoor seating area would increase noise above present background levels, therefore the restriction via these conditions is unacceptable. The council have failed to consider the technical evidence provided in the form of the noise report and seem to have attached these unreasonable conditions due to pressure from local residents.

- 2.13 To confirm, it is proposed that Condition 3 should be amended so that it reads as follows:

The premises shall not be open outside of the following hours:

08.00-00.00 Monday to Thursday

08.00-02.00 Friday to Saturday

09.00 - 23.00 Sundays and Bank Holidays

- 2.14 With regards to Condition 4, it is proposed that it is amended so that it reads as follows:

The hours of use of the external seating area at the front of the property in connection with the use of the site as a café-bar/restaurant, shall not be operational after 12am Monday to Saturday and 10:30pm on Sunday and Bank Holidays.

Appendix A – Nearby Properties mentioned above, relative to the appeal site (edged red):

