

Planning

Growth & Development

Delegated officer report for planning application

Application no. 133708/JO/2022

Date registered valid: 6 May 2022

Proposal: Variation of condition number 6 (hours of opening) attached to planning permission reference 126793/FO/2020 to allow the premises to open for the following extended hours: Sunday to Wednesday 08:30 to 23:00 and Thursday to Saturday - 08:30 to 02:30

Address: 575 Barlow Moor Road, Manchester, M21 8AE

Ward(s): Chorlton Park Ward

Applicant: Mr Jiwan Dhanik Singh Sizzler 575 Barlow Moor Road, Manchester, M21 8AE

Agent (if any): Mr Rakesh Mistry m83 Associates Ltd 187 Water Street, Manchester, M3 4JD

Case officer: Linda Marciniak
Tel: 0161 234 4636
Email: linda.marciniak@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 29 June 2022

Application details

Type of application: Variation or Removal of Condition
Development type: Minor Retail
Date of site visit: None for JO application
Standard consultations: Printed: 19 May 2022 Expired: 9 June 2022
Neighbour notifications: Printed: 19 May 2022 Expired: 9 June 2022
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
Listed building: Not applicable
Conservation area: Not applicable
Tree Preservation Order: Not applicable

Description of site/building

The application site is a mid-terrace ground floor restaurant with 2 floors of residential above situated on the western side of Barlow Moor Road in the Chorlton District Centre. There is a canopied external seating area at the front separated from the footpath by planters. The site is bounded by residential houses on Silverwood Avenue at the rear separated by a cobbled alleyway and by other commercial uses either side. There is a dedicated parking lay-by in front for 5-6 cars and a bus stop nearby.

The site received the approval of the Planning and Highways Committee for the change of use from a bank to food and drink use in 2005 (Ref: 073567/FU/2004/S1) with later delegated consents for a rear conservatory and outdoor seating (Ref: 080341/FO/2006/S1), canopy and outdoor seating (Ref: 101729/FO/2013/S1), change of use from bar to restaurant (Ref: 126793/FO/2020) and signage (Ref: 126794/AO/2020).

The first and second floors received the Prior Approval of the Local Planning Authority for change of use from offices to 2no. residential flats in 2014 (Ref: 106834/P3JPA/2014/S1).

Description of area

The site lies within the Chorlton District Centre in an area characterised by a mix of uses including cafes, bars, restaurants, estate agents, banks, general convenience shopping and hair salons with residential units above and to the rear.

Description of development

Variation of condition number 6 (hours of opening) attached to planning permission reference 126793/FO/2020 to allow the premises to open for the following extended hours: Sunday to Wednesday 08:30 to 23:00 and Thursday to Saturday - 08:30 to 02:30.

The existing opening hours granted approval on Condition 6 of the above application are:

Monday to Friday 08.30am to 11pm
Saturday 08.30am to midnight
Sundays / Bank Holidays 10am to 10pm

Consultations & Notification Responses

Neighbour notifications – A total of 34no. neighbours were notified of the application. The following comments were received:

I am a local resident and have already made complaint to the council regarding the noise associated with the business located at 575 Barlow Moor Rd, Singh Sizzler. I have contacted the owner and manager of the business directly to ask for consideration of the local residents in dealing with the noise (mainly related to the air conditioning unit) but have not had any satisfactory engagement.

I am concerned with this application for extended opening hours as this will further extend the noise disruption that is currently having to be endured by the local residents.

Extending opening hours of food and drink premises in this area past midnight will cause noise and disturbance to residents in neighbouring dwellings.

We also question the statement in the application form that "The premises has not had any complaints regarding noise". It is our understanding that nearby residents have complained about noise, particularly from karaoke sessions.

Chorlton Councillors

I am making this representation on behalf of Chorlton Park Councillor's.

We take exception to the application to extend opening hours on Thursday - Sunday up to 02.30.

This is not a city centre location and whilst the night-time economy is a vital part of the Chorlton economy this extension is excessive.

The surrounding area to Sizzler is still a residential area. There are flats above all the commercial premises and residential streets on either side of Sizzler. The noise inevitably associated with the comings and goings of patrons at this late hour will cause unreasonable disruption to nearby homes. We already suffer with problems of vehicle noise as doors open and close and engines rev. If the bar is allowed to operate until 02.30, these problems will extend far too late into the early hours.

We would also be very worried about the impact on parking congestion and anti-social parking around the bar if it were allowed to operate so late.

Recently, two neighbouring businesses applied for permission for late hours and following our representation agreed to a midnight close at the weekend. We would urge Sizzler to accept midnight as a reasonable time to close on Friday - Saturday and 23.00 Sunday - Thursday as agreed by recently by the other businesses.

Environmental Health

I write in response to your memorandum of the 19 May 2022 regarding the above application and to inform you that I have considered the application and recommend that the application is refused.

The restaurant is located on the ground floor of 575 Barlow Moor Road with flats above on the first and second floors. There appear to be flats above other commercial premises along that parade of shops. The restaurant also has an external seating area to the front.

I have checked, and there do not appear to be any other restaurants in the vicinity that have such a late terminal hour. This would mean that those who want to eat / drink after going out to a pub / club would be more likely to visit this premises.

The noise generated by patrons arriving and departing, dining outside and congregating outside to smoke / vape would be more noticeable in the early hours of the morning as the background noise level drops. Noise from these activities could be detrimental to the amenity of surrounding residents. Noise from patrons dining inside and noise from kitchen activities could also be detrimental to the residents of the flats above the restaurant.

Should the restaurant operate until 02:30hrs then the kitchen extraction system will also be operating for longer, and once the background noise levels have dropped this may also be detrimental to nearby residents, particularly the occupier of the flats above the restaurant.

The applicant has not submitted a noise report assessing the effect of the above activities on nearby residents to support their application or proposed any mitigation measures that could be employed to protect nearby residents.

I feel that opening until 02:30hrs Thursdays to Saturdays is excessive and will be detrimental to the amenity of nearby residents which is why I recommend that this application be refused.

Information for Developers guidance documents can be downloaded using the following link:
http://www.manchester.gov.uk/info/500207/planning_and_regeneration/1962/additional_planning_guidance/3

Chorlton Voice

No comments received.

Issues

National Planning Policy Framework (revised July 2021)

The National Planning Policy Framework (NPPF) was revised and updated in July 2021. It provides the background against which local plans are drawn up and applications for planning permission are considered.

Unitary Development Plan for the City of Manchester (adopted 1995)

The site is unallocated in the UDP, but the following saved general policies apply:

DC10.1 In determining planning applications for developments involving the sale of food or drink for consumption on the premises, or for hot food to be consumed off the premises (whether or not other activities, such as a nightclub, are included), the Council will have regard to: a. the general location of the proposed development, including any reference to the area in other policies in the Plan; b. the effect on the amenity of neighbouring residents; c. the availability of safe and convenient arrangements for car parking and servicing; d. ease of access for all, including disabled people; and e. the storage and collection of refuse and litter

With regards to development and noise Development Control policy DC26 states that the council intends to use the development control process to reduce the impact of noise on people living and working in, or visiting, the city. In giving effect to this intention, the council will consider the effect of the new development proposals, which are likely to be generators of noise.

DC26.1 – Noise

This policy states that the Council intends to use the development control process to reduce the impact of noise on people living and working in, or visiting, the City. In giving effect to this intention, the Council will consider both:

- a. the effect of new development proposals which are likely to be generators of noise; and
- b. the implications of new development being exposed to existing noise sources which are effectively outside planning control.

Core Strategy

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.

Appendix C of the Core Strategy has a list of superseded policies and their replacements.

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 specific policies are considered to be particularly relevant to the proposed development:

Policy C10 - Leisure and the Evening Economy

New development and redevelopment that supports the evening economy, contributes to the vitality of district centres and supports a balanced and socially inclusive evening/night-time economy will be permitted, subject to the following considerations:

1. Cumulative impact – in areas where there is already a concentration of bars (A4), hot food takeaways (A5) and other night-time uses which are detrimental to the character or vitality and viability of the centre, there will be a presumption against further facilities.
2. Residential amenity – the proposed use should not create an unacceptable impact on neighbouring uses in terms of noise, traffic and disturbance.
3. Balance - new uses in Manchester centres should support both the day-time and evening/night-time economies whilst not undermining the role of the primary shopping area. When considering the impact of a proposed bar or hot food take away regard will be had to the above policy and also:

The existing number of similar establishments in the immediate area and their proximity to each other;

The type and characteristics of other uses, such as housing, shops and public houses;
The existence of vacant shop units and the condition of the unit;
The importance of the location for local shopping, and the number, function and location of shops that would remain to serve the local community;
The character of the centre and its frontage, and the nature of the use proposed;
The potential impacts of the proposal on the wider community; and
Any known unresolved amenity, traffic or safety issues arising from existing uses in the area.

Policy SP1 - Spatial Principles

Policy SP1 states under Core Development Principles, that Development in all parts of the City should:

Make a positive contribution to neighbourhoods of choice including:

- creating well designed places that enhance or create character;
- making a positive contribution to the health, safety and wellbeing of residents;
- considering the needs of all members of the community regardless of age, gender, disability, sexuality, religion, culture, ethnicity or income; - protect and enhance the built and natural environment.
- Minimise emissions, ensure efficient use of natural resources and reuse previously developed land wherever possible; and
- Improve access to jobs, services, education and open space by being located to reduce the need to travel and provide good access to sustainable transport provision.

Policy DM1 - Development Management

This policy follows the principles advocated in the aforementioned policies and informs that all development should have regard to the following specific issues for which more detailed guidance may be given within a supplementary planning document:

- Appropriate siting, layout, scale, form, massing, materials and detail.
- Impact on the surrounding areas in terms of the design, scale and appearance of the proposed development. Development should have regard to the character of the surrounding area.
- Effects on amenity, including privacy, light, noise, vibration, air quality and road safety and traffic generation. This could also include proposals which would be sensitive to existing environmental conditions, such as noise.
- Accessibility: buildings and neighbourhoods fully accessible to disabled people, access to new development by sustainable transport modes.
- Community safety and crime prevention.
- Design for health.
- Adequacy of internal accommodation and external amenity space.
- Refuse storage and collection.
- Vehicular access and car parking.
- Effects relating to biodiversity, landscape, archaeological or built heritage.
- Green Infrastructure including open space, both public and private.
- Flood risk and drainage.
- Existing or proposed hazardous installations.
- Developers will be required to demonstrate that new development incorporates sustainable construction techniques.

For reasons outlined below, it is considered the proposal does not accord with the above policies.

Noise / Nuisance

The application proposes to extend the hours between Thursday and Saturday until 2.30am. Whilst Core Strategy policy C10 supports a healthy and diverse night-time economy in District Centres, this has to be balanced against the amenity of local residents who live near to noise-generating land uses. This principle is also expressed in saved UDP policy DC26.1.

Consideration is therefore given to the fact there are 2no. flats above the premises as well as occupiers living at Nos.3, 5, 7 and 9 Silverwood Avenue. It is also understood that there are flats above neighbouring premises on Barlow Moor Road.

On assessment of the proposal, it is considered that the extended hours would expose residents to prolonged periods of noise and disturbance that would have a detrimental impact on existing levels of amenity. This would undermine the mixed character of the District Centre, contrary to Core Strategy policy C10.

Noise and disturbance would come from the voices of patrons and staff using or working in the restaurant which could include raised voices talking, laughing, and shouting, together with the general comings and goings to and from the premises and on street at this time and after dispersal. There could also be noise from car engines, stereo systems and doors slamming. Prolonged noise would be audible to residents at times when they can reasonably expect to enjoy use of their homes undisturbed and when many would be sleeping. As such, the proposal is contrary to saved UDP policy DC26.1 and to Core Strategy DM1.

Environmental Health have assessed the application and object to the proposal on the basis that the extended hours would subject residents to an excess of noise and that of any kitchen equipment including extraction systems and any humming from the flue. This would spill over into the early hours of the morning, a time when general ambient noise would be lower.

Some residents have reported concerns with existing levels of noise from the business and have approached the owner which has not led to any noise reduction. Any approval of the application would therefore compound the disturbance already experienced by residents to detrimental effect.

The application is also opposed by Chorlton Councillors for the above reasons and who also note that the proposal is contrary to the existing opening hours for similar establishments in the District Centre. For comparison, details held on the Planning Register indicate that approved opening hours close at either 10pm (No. 565B BMR) Monday to Sunday, 11pm (Nos.404, 569 and 571 BMR) Monday to Sunday, or 11pm / midnight on Fridays and Saturdays (416-418, 559A and 557B BMR). The extended opening hours are therefore out of character with the pattern of opening hours for similar establishments in the local area.

The agent was advised of these concerns and given the opportunity to revise the hours before the decision was issued. No response was received.

On the basis of the above, the proposal is contrary to saved UDP policy DC26.1 and to Core Strategy policies C10, DM1 and SP1 and the application is recommended for refusal.

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

The local planning authority in making its decision has had due regard to paragraph 47 of the National Planning Policy Framework as well as the development plan, national planning policy and other material considerations and has refused the application for the reason attached to the Decision Notice and as outlined in the delegated report. The proposal raised several objections from residents and Elected Members on public notification together with the concerns of Environmental Health which have been taken into consideration in the assessment of the proposal. The agent was notified in writing on the 27th of June 2022 of the Council's concerns and invited to amend the hours before the Decision Notice was issued. No response was received.

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

1) The proposed extended opening hours between 08:30am to 02:30am Thursdays to Saturdays would lead to a loss of existing levels of residential amenity for residents living above and in close proximity to the site, including at Silverwood Avenue to the rear, at a time when they can reasonably expect to enjoy use of their homes undisturbed. Prolonged and elevated levels of noise and disturbance would be generated by patrons and staff inside and outside the premises including raised voices, shouts and laughter, together with the general comings and goings of patrons entering and leaving the premises, the operation of kitchen extraction and any other noise-generating kitchen and bar equipment plus noise from dispersal at closing time around the premises. This is contrary to saved UDP policy DC26.1 and Core Strategy policies C10, DM1 and SP1.

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Chorlton Voice

Flat 3, 1 Silverwood Avenue, Manchester, M21 8BN
Flat 2, 1 Silverwood Avenue, Manchester, M21 8BN
Flat 1, 1 Silverwood Avenue, Manchester, M21 8BN
3 Silverwood Avenue, Manchester, M21 8BN
Flat 3, 571A Barlow Moor Road, Manchester, M21 8AE
Flat 2, 571A Barlow Moor Road, Manchester, M21 8AE
Flat 1, 571A Barlow Moor Road, Manchester, M21 8AE
Flat 2, 573A Barlow Moor Road, Manchester, M21 8AE
Flat 1, 573A Barlow Moor Road, Manchester, M21 8AE
Second Floor, 575 Barlow Moor Road, Manchester, M21 8AE
First Floor, 575 Barlow Moor Road, Manchester, M21 8AE
Kentoms Garage, Silverwood Avenue, Manchester, M21 8BN
573 Barlow Moor Road, Manchester, M21 8AE
Flat 2, 418 Barlow Moor Road, Manchester, M21 8AD
Flat 1, 418 Barlow Moor Road, Manchester, M21 8AD
422B Barlow Moor Road, Manchester, M21 8AD
420A Barlow Moor Road, Manchester, M21 8AD
Flat 2, 5 Silverwood Avenue, Manchester, M21 8BN
420 Barlow Moor Road, Manchester, M21 8AD
571 Barlow Moor Road, Manchester, M21 8AE
6 Groby Road, Manchester, M21 8AF
577 Barlow Moor Road, Manchester, M21 8AE
569 Barlow Moor Road, Manchester, M21 8AE
426A Barlow Moor Road, Manchester, M21 8AD
Flat 1, 5 Silverwood Avenue, Manchester, M21 8BN
Flat 3, 5 Silverwood Avenue, Manchester, M21 8BN
426 Barlow Moor Road, Manchester, M21 8AD
424 Barlow Moor Road, Manchester, M21 8AD
422 Barlow Moor Road, Manchester, M21 8AD
577A Barlow Moor Road, Manchester, M21 8AE
424A Barlow Moor Road, Manchester, M21 8AD
8 Groby Road, Manchester, M21 8AF
422A Barlow Moor Road, Manchester, M21 8AD
418 Barlow Moor Road, Manchester, M21 8AD

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
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: SOUTH