

Planning

Growth & Development

Delegated officer report for planning application

Application no. 133930/LE/2022

Date registered valid: 31 May 2022

Proposal: Use of ground floor as a bar (drinking establishment with ancillary food) and the basement as a bar (drinking establishment) and night club with DJ events (Sui Generis)

Address: Basement And Ground Floor, 78 - 88 High Street, Manchester, M4 1ES

Ward(s): Piccadilly Ward

Applicant: James Stewart Koropisz Ltd 17 Harrogate Drive, Reddish, Stockport, SK5 6HP

Agent (if any): Kate Grimshaw KG Planning Ltd 26 Andrew Lane, Bolton, BL1 7JQ

Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: GRANT

Date of recommendation: 20 July 2022

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: Not Required

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 8 June 2022 Expired: 29 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: Smithfield Conservation Area 1987

Tree Preservation Order: Not applicable

Description of site/area



Photograph 1 Site Photograph source: case officer photograph

This application relates to the ground floor and basement of a building located on the corner of High Street and Back Tuner Street in an area known as the Northern Quarter of the City Centre. The site is within the Smithfield Conservation Area and there are no listed buildings adjacent to the site. The area surrounding the application site is commercial in nature although there are a number of residential developments nearby also. The Metrolink line runs close to the site along High Street and the Arndale Shopping Centre and its associated car park is within a short distance from the site.

Description of development

The applicant is seeking a certificate of lawful existing development for use of ground floor as a bar (drinking establishment with ancillary food) and the basement as a bar (drinking establishment) and night club with DJ events (Sui Generis).

Consultations & Notification Responses

Publicity – Notification letters were sent to local business and residential properties, one representation was received objecting to the certificate of lawfulness. A summary of the objection is provided below:

- When the property was function as a night club it caused noise and disturbance to nearby residents.
- Anti-social behaviour was often observe with customers arriving and leaving the premises;
- There seems to be a plethora of bars in the area, resident feels surrounded by them.

Issues

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is “the balance of probability” and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicants version of events or make them less then probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - *"If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"* In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

The Application

This application is pursued under subsection (1) of section 191 which provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land is lawful for planning purposes

Evidence – The following evidence has been submitted for consideration:

1. A site location plan edged in red.
2. Document providing various forms of evidence including testimonies, sales figures, reviews, website pages including social media and third party websites, news/media articles and YouTube.

Assessment – The site relates to the ground floor and basement of 78-88 High Street and according to the submitted documentation it has been operating as a cocktail bar on the ground floor and nightclub in the basement. The bar initially opened in 2009 as "Walrus & Tusk" and was later rebranded to "The Man With The Fish" in 2021.

The applicant has provided a document which provides a testimony from Andrew Blackburn, who is the managing director of the company that currently operates the bar unit and was previously director of finance for the previous tenant company. The statement provides information that the premises was a drinking establishment with ancillary food services on the ground floor and night club in the basement. A second testimony is provided by R. A. Stansfield who is the director of Unique Specialist Services Group Ltd who provides security services to various business in Greater Manchester including this site since 2009.

Sales Figures are provided from 2012 until 2022. The social media reviews are provided from a variety of sources (Facebook, Trip Advisor, Yelp etc) from 2010 until 2022 both positive and negative.

The document also provides screenshots from the Web Archive of the Man with the Fish and Walrus websites dating from 2010 until up to 2021.

Website links to various nights from the Manchester Evening news have been provided 2010, 2014, 2015, 2016 and 2018.

LPA have no evidence to contradict the applicants version of events or make them less then probable. There are a number of streetview screenshots provided by Google dating from July 2008 to August 2021 (two are provided below)

The local resident who wrote in to object raised that they have submitted a number of complaints against the premises with the City Council. The Licensing and Out of Hours Compliance Team provide information that details there have been a number of complaints at this address relating to loud noise or music every year (with the exception of 2021) from 2015 until as recently as May 2022.

Business rates have also provided information to demonstrate confirm that the use has been in operation since 2007 until 2018 where it was taken over by the current owners up and until the present day. Therefore, LPA have no evidence to contradict the applicants version of events or make them less then probable.

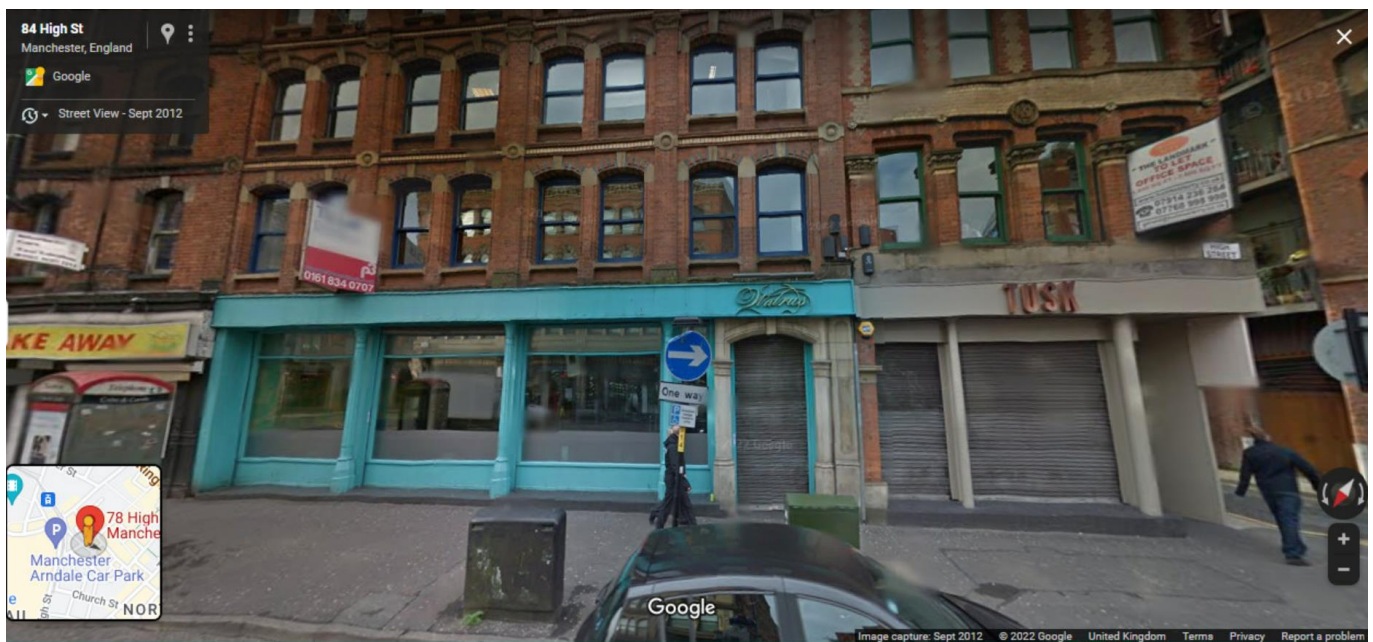


Image 1 Google Street View image captured September 2012 source:

<https://www.google.com/maps/place/78+High+St,+Manchester+M4+1ES/@53.4843239,-2.2376591,3a,75y,156.68h,93.43t/data=!3m7!1e1!3m5!1smdPrVjFL2EjSwEHdknrYkw!2e0!5s20120901T000000!7i16384!8i8192!4m8!1m2!2m1!1sBasement+And+Ground+Floor+78+-+88+High+Street+Manchester+M4+1ES!3m4!1s0x487bb1b8a368a0f3:0x7e026a8b6f1470dc!8m2!3d53.48427!4d-2.237577> Accessed 19.07.2022



Image 2 Google Street View image captured August 2021 source:

<https://www.google.com/maps/place/78+High+St,+Manchester+M4+1ES/@53.4843239,-2.2376591,3a,75y,156.68h,93.43t/data=!3m7!1e1!3m5!1smdPrVjFL2EjSwEHdknrYkw!2e0!5s20120901T000000!7i16384!8i8192!4m8!1m2!2m1!1sBasement+And+Ground+Floor+78+-+88+High+Street+Manchester+M4+1ES!3m4!1s0x487bb1b8a368a0f3:0x7e026a8b6f1470dc!8m2!3d53.48427!4d-2.237577> Accessed 19.07.2022

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: GRANT

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

1) From the evidence available and with reference to the relevant planning legislation, Manchester City Council is satisfied that use is lawful by reason of the said use having been in existence for a period of 10 years up to the date of this application.

Appendix 1 – List of consultees & neighbours notified

78 - 88 High Street, Manchester, M4 1ES
74 - 76 High Street, Manchester, M4 1ES
First Floor And Second Floor, 102A High Street, Manchester, M4 1HP
Muslim Youth Foundation, Ground Floor, Clydesdale House, 27 Turner Street, Manchester, M4 1DY
67B High Street, Manchester, M4 1FS
72 High Street, Manchester, M4 1ES
102A High Street, Manchester, M4 1HP
Jewel House, 75 - 77 High Street, Manchester, M4 1FS
38 Thomas Street, Manchester, M4 1ER
Flat, 92 High Street, Manchester, M4 1ES
Basement And Ground Floor, 74 - 76 High Street, Manchester, M4 1ES
Second Floor, 65 High Street, Manchester, M4 1FS
Flat 14, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 1, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 27, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 24, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 408 To 415, Clydesdale House, 27 Turner Street, Manchester, M4 1DG
Flat 110 To 117, Clydesdale House, 27 Turner Street, Manchester, M4 1DG
Basement Left, 30 - 32 Thomas Street, Manchester, M4 1ER
Ground Floor Right, 27 Turner Street, Manchester, M4 1DQ
Flat 16, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 28, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 32, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 29, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 210 To 217, Clydesdale House, 27 Turner Street, Manchester, M4 1DG
Flat 201 To 209, Clydesdale House, 27 Turner Street, Manchester, M4 1DG
Fourth Floor, 65 High Street, Manchester, M4 1FS
Flat 6, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 23, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 17, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 310 To 317, Clydesdale House, 27 Turner Street, Manchester, M4 1DG
Third Floor, 65 High Street, Manchester, M4 1FS
First Floor Unit 1A, The Land Mark, 21 Back Turner Street, Manchester, M4 1ES
Flat 20, 11 - 21 Turner Street, Manchester, M4 1DY
90 High Street, Manchester, M4 1ES
Flat 101 To 109, Clydesdale House, 27 Turner Street, Manchester, M4 1DG
Second Floor, 92 High Street, Manchester, M4 1ES
HEMISPHERE, Second Floor And Third Floor, 30 - 32 Thomas Street, Manchester, M4 1ER
Ground Floor, 78 - 88 High Street, Manchester, M4 1ES
Fifth Floor, 65 High Street, Manchester, M4 1FS
First Floor, 65 High Street, Manchester, M4 1FS
EXPERT WITNESS PUBLISHERS LTD, Second Floor, The Land Mark, 21 Back Turner Street, Manchester, M4 1FR
Flat 9, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 4, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 2, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 19, 11 - 21 Turner Street, Manchester, M4 1DY
Ground Floor, 27 Turner Street, Manchester, M4 1DQ
27 Turner Street, Manchester, M4 1DQ

11 - 21 Turner Street, Manchester, M4 1DY
Flat 301 - 309, Clydesdale House, 27 Turner Street, Manchester, M4 1DG
Flat 401 To 407, Clydesdale House, 27 Turner Street, Manchester, M4 1DG
First Floor, 92 High Street, Manchester, M4 1ES
First Floor, 30 - 32 Thomas Street, Manchester, M4 1ER
Third Floor, The Land Mark, 21 Back Turner Street, Manchester, M4 1FR
Fourth Floor, The Land Mark, 21 Back Turner Street, Manchester, M4 1FR
Fourth Floor Dooley Associates, The Land Mark, 21 Back Turner Street, Manchester, M4 1FR
LIFELINE PROJECT, First Floor Unit 1B, The Land Mark, 21 Back Turner Street, Manchester, M4 1ES
Folk And Sole Hemisphere, 30 - 32 Thomas Street, Manchester, M4 1ER
34 - 36 Thomas Street, Manchester, M4 1ER
31 Thomas Street, Manchester, M4 1NA
Flat 10, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 22, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 31, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 12, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 11, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 7, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 26, 11 - 21 Turner Street, Manchester, M4 1DY
100 - 102 High Street, Manchester, M4 1HP
67A High Street, Manchester, M4 1FS
92 High Street, Manchester, M4 1ES
Basement, 65 High Street, Manchester, M4 1FS
NORMA&DOROTHY LIMITED, Sixth Floor, 65 High Street, Manchester, M4 1FS
Flat 21, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 15, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 8, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 3, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 30, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 5, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 25, 11 - 21 Turner Street, Manchester, M4 1DY
Flat 18, 11 - 21 Turner Street, Manchester, M4 1DY

Appendix 2 – Planning constraints

Article 4 Direction - City Centre PD Restriction - Class B1(a) To C3
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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Conservation Area - Smithfield Conservation Area 1987
Area Team Boundary - Name: CENTRL