

Planning

Growth & Development

Delegated officer report for planning application

Application no. 133437/JO/2022

Date registered valid: 4 April 2022

Proposal: Variation of condition 4 (hours of opening) attached to planning permission referenced 079739/FU/2006/N1 to allow change in opening hours to 07.00 - 23.00 hrs daily

Address: 35 Old Church Street, Manchester, M40 2JN

Ward(s): Miles Platting & Newton Heath Ward

Applicant: Mr Muhammad Zulfaqar, Cafe 35 manchester, 35 Old Church Street, Manchester, M40 2JN

Agent (if any):

Case officer: Janine Renshaw-Livesey
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Email: janine.renshaw-livesey@manchester.gov.uk

Recommendation: Approve

Date of recommendation: 20 June 2022

Application details

Type of application: Variation or Removal of Condition

Development type: Change of use

Standard consultations:

Printed: 12 April 2022 Expired: 3 May 2022

Neighbour notifications

Printed: 27 May 2022 Expired: 17 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

Description of site/building

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

The application seeks a variation of condition to allow for extended hours of operation previously agreed under planning reference no. proposal is 079739/FU/2006/N1. The original consent granted permission to change of use of the ground floor of 35 Old Church Street Newton Heath from sandwich shop (class A1) to cafe (class A3). The area is predominantly commercial, of which the proposal site is an end of terrace. The access is taken from the side elevation. The access to the existing first floor flat is also taken from the side, whilst. The current hours of operation are 8:00 am to 5:00 pm. The proposed hours are 07.00 - 23.00 Monday - Sunday.

Two more recent planning application were approved for cafe uses along Old Church Street consistent with the hours applied for. The details are as follows.

119899/FO/2018 58 Old Church Street Change of from shop (Class A1) to restaurant/cafe (Class A3) with associated elevational alterations and installation of fume extraction flue to rear. Hours of Operation are: Monday to Saturday 10:00 hrs to 23:00 hrs
Sundays and Bank Holidays 11:00 hrs to 23:00 hrs.

118902/FO/2018 57 Old Church Street Change of use from retail (Class A1) to cafe (A3) together with new shopfront and installation of fume extraction flue. Hours of operation are 10:30 am to 22:00pm Monday to Friday,
11:00 am to 22:30pm Saturdays, Sundays and Bank Holidays.

Consultations & Notification Responses

The occupiers of the surrounding properties were consulted, and no representations were received

Environmental health were consulted and agreed the extended hours were acceptable in this location. Environmental health requested an external plant and equipment condition be attached to the consent however, given the nature of the planning application no further conditions can be added to the consent. Furthermore, the original permission had a fumes condition attached for the installation of a rear flue. The fumes condition will be transferred to the revised decision notice to be discharge at a later date.

Issues

Local Development Framework

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 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. Further, development should seek to minimise emissions, ensure the efficient use of natural resources, reuse previously developed land wherever possible, improve access to jobs, services and open space and provide good access to sustainable transport provision.

Policy DM1 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 C2 relates to development in district centres and states that development in District Centres should:

- o Prioritise delivery of key 'visitor' services, including retail, public and commercial services and food and drink. The Council will ensure that retail remains the principal use in Primary Shopping Areas, but also ensure that provision is made in District Centres for

commercial and service uses, leisure and community facilities and other uses which make a positive contribution to vitality and viability of centres. Subject to impact on

- o overall character and local amenity, the Council will support development which extends the time during which District Centres are active.
- o Promote the development of employment which provides opportunities for local people.
- o Promote the efficient use of land, particularly through considering options for multi-storey development. New development should positively contribute to the reuse and regeneration of land and premises, together with wider regeneration and investment strategies.
- o Contribute positively to the diversity and mix of uses within centres without undermining their primary retail function. Development should also promote a range of retailers and shop formats.
- o Promote choice and competition particularly where development will support the independent sector;
- o Remedy deficiencies in areas with poor access to facilities.
- o New development should respect and enhance the character of existing centres.
- o New development should deliver improvements to the quality and accessibility of the centre environment. Opportunities should be taken to adopt sustainable building design and practises to assist in adapting to climate change.

Policy C3 relates to North Manchester district centre. With respect to Newton Heath the policy states that there could be small increases in retail provision in Newton Heath, but development for other uses which promote vitality during the daytime will be supported. New development should improve connections between the centre and the existing large foodstore.

Development which brings a broader range of commercial and public uses to Newton Heath will be supported.

Policy EN19 Waste - Requires consideration of the submitted details relating to determine if the applicant has satisfactorily demonstrated how:

- o Both construction and demolition waste will be minimised and recycled on site wherever possible;
- o The sustainable waste management needs of the end user will be met.

Policy T2 states that the Council will take account of the circumstances of each proposal to establish what level of parking is appropriate.

Unitary Development Plan for the City of Manchester (Saved Policies)

The below saved policies of the Unitary Development Plan are 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:

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

- o The storage and collection of refuse.

Policy DC26 - seeks to reduce the impact of noise generating development. The Council will consider the effect of new development proposals and the implications of new development being exposed to existing noise sources. Developments likely to result in unacceptably high noise levels will not be permitted.

National Planning Policy Framework

The central theme to the 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 (paragraphs 6 & 7).

Paragraphs 11, 12, 13 and 14 of the NPPF outlines 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.

Issues

Principle

It is considered that due to the location of the premises within a district centre the use is complementary to other uses within the centre where other food related uses are present. The increase in hours within this location is unlikely to adversely impact upon residential amenity as the site is situated within a busy frontage centre where residential occupancy is low and, those occupiers that do exist, would have a lower expectation of living conditions given the existing commercial context.

In light of the above, the proposal broadly complies with the principal, overarching policy. Namely, saved policy DC10 of the UDP and policies C2, C3, C10, DM1, SP1 and T2 of the Core Strategy.

Impact on the District Centre

The principal policies in this instance relate to policies C2 and C3 of the Manchester Core Strategy.

Policy C2 of the Core Strategy states that the Council will ensure that retail remains the principal use in Primary Shopping Areas, but also ensure that provision is made in district centres for commercial and service uses, leisure and community facilities and other uses which make a positive contribution to vitality and viability of centres. Development should also promote employment opportunities, contribute to the diversity and mix of uses within centres and contribute to the re-use of premises.

Policy C3 which relates to centres in the north of the city goes on to state that development which brings a broader range of commercial and public uses to Newton Heath will be supported

In this case, the proposed use will add to the diversity of uses in the centre and allowing the applicant to extend the hours will contribute to the viability of the business.

Residential Amenity - Due to the existing, semi-commercial context of the area, the similarity of other neighbouring operations, existing background noise levels and the position of the

premises just off the major arterial route of Droylsden Road, it is not believed that there would be any significant or material impact in terms of background noise levels and levels of activity later into the evening.

On balance, given that the premises is situated within a commercial parade, within a busy district centre, it is considered that the amenity of residents would not be so adversely affected as to justify refusing the increased hours permission.

Car Parking and Impact upon the Highway

Policy T2 of the Core Strategy states that states that the Council will take account of the circumstances of each proposal to establish what level of parking is appropriate.

In comparison to the authorised retail use of the premises, other units within the shopping centre and much of the district centre, no off road car parking is provided within the curtilage of the premises or for the sole use of occupiers/visitors of the building.

It is considered that the given the highly sustainable location of the premises with proximity to public transport and also through the use of linked trips, any impact upon car parking is unlikely to be detectable. Similarly, given the number of staff proposed and the anticipated number of patrons, there will be minimal impact upon the operation of the highway network.

The proposed is also not likely to result in a material difference in parking demand or more so than existing retail use and any parking shortfall can be adequately catered for by the rear of premises there is an enclosed service yard and beyond that lies an informal tarmac car parking area, and in addition to the car parking spaces provided there appears to be unrestricted parking along the parade of units along the rear of Old Church Street.

It is not considered that the use would have an undue impact upon existing car parking operations or the operation of the highway.

Noise - This type of development can sometimes generate noise through the plant and fume extraction equipment on site and from the activities of patrons. The former has been addressed through acoustic attenuation and an appropriate condition is proposed in this respect.

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: Approve

Article 35 Declaration

Officers have worked with the applicant / agent in a positive and proactive manner to guide the application through all stages of the planning process and resolve any issues that arose in dealing with the planning application.

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

1) The premises shall not be open outside the following hours, unless otherwise agreed in writing by the City Council as Local Planning Authority: -

* Monday to Sunday 07.00 - 23.00.

Deliveries, servicing and vehicle/equipment movements on the premises or outdoor parking/amenity areas shall be restricted to the above opening hours.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation, pursuant to policy H2.2 of the adopted UDP.

2) Within six months of this decision the premises shall be acoustically insulated and treated to limit the breakout of noise in accordance with a noise study of the premises and a scheme of acoustic treatment that has been submitted to and approved in writing by the City Council as local planning authority. The approved scheme shall be implemented in full, or as otherwise agreed in writing by the City Council as local planning authority.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation, pursuant to policies SP1 and DM1 of the Core Strategy.

3) Within three months of this decision a scheme for the storage and disposal of refuse shall be submitted to and approved in writing by the City Council as Local Planning Authority. The details of the approved scheme shall be implemented as part of the development and shall remain in situ whilst the use or development is in operation.

Reason - In the interests of public amenity pursuant to Policies DM1 of the Core Strategy.

4) Within six months of this decision a scheme for the extraction of any fumes, vapours and odours from any kitchen areas within the development hereby approved shall be submitted to, and approved in writing by, the City Council as Local Planning Authority.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation, pursuant to policies SP1 and DM1 of the Core Strategy and extant policy DC10 of the Unitary Development Plan for the City of Manchester.

5) Details of the portable ramp shall be submitted to and approved in writing by the City Council as local planning authority unless otherwise agreed in writing

Reason- In the interest of highway and pedestrian safety pursuant to policy DM1 and T1 of the Core Strategy and extant policy DC10 of the Unitary Development Plan for the City of Manchester.

Appendix 1 – List of consultees & neighbours notified

Environmental Health

54 Old Church Street, Newton Heath, Manchester, M40 2JF
39A, Old Church Street, Newton Heath, Manchester, M40 2JN
29 Old Church Street, Newton Heath, Manchester, M40 2JN
Bennetts, 45A, Old Church Street, Newton Heath, Manchester, M40 2JN
Kingfisher Fish Bar, 31 Old Church Street, Newton Heath, Manchester, M40 2JN
Greggs Of Manchester Ltd, 58 Old Church Street, Newton Heath, Manchester, M40 2JF
White Lion Inn, 52 Old Church Street, Newton Heath, Manchester, M40 2JF
50 Old Church Street, Newton Heath, Manchester, M40 2JF
Daisy Chain, 76 Old Church Street, Newton Heath, Manchester, M40 2JF
N Akhter, 56 Old Church Street, Newton Heath, Manchester, M40 2JF
New Crown Inn, 23 Old Church Street, Newton Heath, Manchester, M40 2JN
Hard Times, 43 Old Church Street, Newton Heath, Manchester, M40 2JN
Brian Stevens Hairdressers, 39 Old Church Street, Newton Heath, Manchester, M40 2JN
Lloyds Tsb Bank Plc, 64 Old Church Street, Newton Heath, Manchester, M40 2JF
1A, Millwright Street, Newton Heath, Manchester, M40 2JG
1 Millwright Street, Newton Heath, Manchester, M40 2JG
Chaplins Pizzas, 47 Old Church Street, Newton Heath, Manchester, M40 2JN
The Wool Shop, 45 Old Church Street, Newton Heath, Manchester, M40 2JN
Martins Swiss Confectioners, 41 Old Church Street, Newton Heath, Manchester, M40 2JN
The Fruit Bowl, 37 Old Church Street, Newton Heath, Manchester, M40 2JN
Tasty Muffin, 35 Old Church Street, Newton Heath, Manchester, M40 2JN
Health & Vegetarian Store, 33 Old Church Street, Newton Heath, Manchester, M40 2JN
Sykes Labels, 27 Old Church Street, Newton Heath, Manchester, M40 2JN
Charlie Girl, 25 Old Church Street, Newton Heath, Manchester, M40 2JN
Delta Stores, 78 Old Church Street, Newton Heath, Manchester, M40 2JF
Greg Hull Butchers, 70 Old Church Street, Newton Heath, Manchester, M40 2JF
Robinson Jewellers, 68 Old Church Street, Newton Heath, Manchester, M40 2JF
Around A Pound, 62 Old Church Street, Newton Heath, Manchester, M40 2JF
Shuhel Tandoori, 48 Old Church Street, Newton Heath, Manchester, M40 2JF
Remar Association Uk, 44-46, Old Church Street, Newton Heath, Manchester, M40 2JF
Heath Sons & Broom, 74-76, Old Church Street, Newton Heath, Manchester, M40 2JD
Open Doors, 54 Old Church Street, Newton Heath, Manchester, M40 2JF
94C, Old Church Street, Newton Heath, Manchester, M40 2JF
94B, Old Church Street, Newton Heath, Manchester, M40 2JF
Harris Florist, 48A, Old Church Street, Newton Heath, Manchester, M40 2JF

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 -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH1