

<b>Application Number</b>	<b>Date of Appln</b>	<b>Committee Date</b>	<b>Ward</b>
111295/FO/2016/S2	18th Feb 2016	28th Jul 2016	Burnage Ward

**Proposal** Change of use from A1 (retail use) to A4 (drinking establishment)

**Location** 228 Fog Lane, Burnage, Manchester, M20 6EL

**Applicant** Miss Elena Rowe , 66 Stapleton Street, Salford, M6 7WG.

### **Description**

This application relates to the ground floor of a two storey terraced building comprising of a vacant A1 shop unit on the ground floor and residential flat on the first floor.

Permission is sought to change the use of the ground floor from A1 (retail use) to A4 (drinking establishment).

The submitted drawings show a ground floor containing 11 tables, with the bar area in a central position within the property next to the kitchen. The toilet would be at the rear of the building and the rear yard used for the storage of bins and waste only.

At the front of the property would be a small outdoor seating area for two tables.

The building forms a parade of shops on Fog Lane which is identified in the Core Strategy document as a Local Centre.



## Consultations

**Local Residents/Public Opinion** – Local residents have been notified of the application twice, once for the original submission and a second time for additional information in the form of a noise survey and planning statement. A summary of the comments received to each notification has been provided below:

### 1<sup>st</sup> Notification

A total of twelve objections were received a summary of the comments raised are provided below:

- Object to another licensed property on the parade of shops of Fog Lane. There have been many problems associated with the Cake Shop that include litter, noise, smoking, anti-social behaviour and car parking. Residents efforts to improve the area by removing litter, installing planters will be undermined by granting permission;
- Residents objected to another potential source of litter, noise and anti-social behaviour in a residential area;
- Resident is impressed with recent initiatives to improve the area and fear that a drinking establishment would not help to improve the area;
- The combination of a number of hot food take aways with a drinking establishment will attract anti-social behaviour to the area;
- Concerns were raised that the road is a major school route and of anti-social behaviour associated with a drinking establishment;
- Another resident raised concerns with patrons leaving the establishment at night and has asked the Council to ensure that there will be enough toilets to discourage people from using the rear alleyway and planters as a toilet and that there should be no rear exit to the establishment; and,
- Concerned about noise travelling into the living accommodation of the flat above the unit, however has said they would not object if this wasn't going to be an issue.

A total of five representations were received in support of the application a summary of their comments are provided below:

- The Fog Lane parade is in urgent need of regeneration by local independent businesses and attracting more locals of an entrepreneurial mindset into the area has the potential of vastly improving the area. The resident has full confidence that the applicants will work to improve the area and have a positive impact by breaking up the barrage of takeaways and fast food premise;
- Welcome a bar/pub in the area as the nearest bar/pub is fair distance away;
- Another resident states that a greater variety of services/uses in the local parade is needed and that the proposal does not look like the type of venue that would attract anti-social behaviour.

In addition to the representations received from local residents a representation was received from another owner of a micro pub who operates in another local authority area. They state that they operate their drinking establishment on reduced hours and

that their clientele are hardworking or retired real ale enthusiasts. Their customers are not typically heavy drinkers and they do not experience the same level of problems compared to their previous tenancy of a public house.

They also state there is a flat next to the micro pub and that they do not hear any noise from the micro pub and provide details of how the pub operates and that the proposal would be a benefit to Burnage.

## 2<sup>nd</sup> Notification

A total of one representation was received supporting the application, a summary of their comments has been provided below;

- The residents often make use of the various services and amenities on offer within the parade and a late night bar would be advantageous to the resident as they often finish work late and like to unwind with a beer.

**Fog Lane East Community Group** – Fog Lane East Community Group responded to the second notification of this application. In their representation they state that they support the application as the group believe that the proposed business will be an asset to the area with the potential to make Fog Lane more attractive to further community-facing businesses and to reverse the current trend of increased number of takeaways.

**Greater Manchester Police Crime Prevention Team** - Did not object to the application but recommended the following:

- Any new external fittings (i.e. shutters, windows or doors) should be certified to Secured by Design standards.
- Any new glazing in external doors, ground floor or easily accessible windows should include at least one pane of laminated glass rated as P4A under EN 356.
- A chute deposit safe (certified to LPS 1183) should be included behind the bar, which would reduce the amount of cash held in tills during busy periods.
- If cash is to be kept within the premises overnight then a time delay safe certified to LPS 1183 should be installed and kept within a secure room that is only accessible by the members of staff.
- Any access doors between the seating and bar area should open outward and should be secured with an internal thumb lock. Tills should be positioned out of customers reach but ideally fronting customers.
- A CCTV system should be included within this proposal and should be capable of monitoring the following areas: external doorways, all internal spaces including the bar and seating areas.
- Signage should be displayed to indicate the areas of the premises that are restricted to staff only.
- 'Chelsea Clips' should be fitted to the underside of tables/counters to allow customers to secure their bags or jackets while keeping it in view.
- Any staff areas that are to be included within the proposal should be access controlled and restricted to members of staff only.
- Dusk till dawn lighting should be installed above all external doors.

**Environmental Health** - Environmental Health have objected to the application and have raised concerns that the amenity of the nearby residents will be adversely impacted upon with regards to noise from an A4 use class at this location. In particular they are concerned with noise from patrons coming and goings, use of the outside space, noise from associated plant and equipment travelling through the building and from disposing of waste by staff in outside areas. Environmental Health have also stated that adequate noise control could be difficult to achieve at the property with respect to the internal arrangements shown on the plans and the limitations of the building itself.

Environmental Health also provided further comments following the submission of the acoustic report and revised planning statement off the applicant. However, in reviewing the report, Environmental Health have stated that the acoustic report does not address the original concerns that they had to the application proposals.

### **Issues**

**Core Strategy** - The Core Strategy was adopted on the 11<sup>th</sup> July 2012 and replaces a large number of policies in Manchester's Unitary Development Plan. The relevant policies within the Core Strategy are as follows:

#### **Policy SP1 'Spatial Principals'**

Policy SP1 sets out the key spatial principles which will guide the strategic development of Manchester to 2027, the policy states that all development in 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.
- 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.

Of Particular relevance to this application are the following policies

#### **Policy DM1 'Development Management'**

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, odours, litter, vermin, birds, 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 waste.
- Vehicular access and car parking.
- Effects relating to biodiversity, landscape, archaeological or built heritage.
- Green Infrastructure including open space, both public and private.
- The use of alternatives to peat-based products in landscaping/gardens within development schemes.
- Flood risk and drainage.
- Existing or proposed hazardous installations.

#### Policy C8 'Local Centres'

Policy C8 states that local shopping and service provision in local centres should be retained where it remains viable and provides an important service to the local community. The provision of new small scale retail facilities will be encouraged where they would provide for local every day needs and would not be harmful to the vitality and diversity of nearby centres. Careful consideration will be given to the impacts of new commercial development on residential amenity, which is particularly an issue for food and drink uses.

#### Policy C10 'Leisure and the evening economy'

Policy C10 states that new development 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 daytime 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.

**The Unitary Development Plan (UDP) for the City of Manchester (1995)** - The Unitary Development Plan for the City of Manchester was adopted in 1995 and has largely been replaced with the policies contained within the Core Strategy. However, there are a number of policies that are extant. The relevant policies in this case are as follows:

DC 10 'Food and Drink'

Extant policies DC10.1 – DC10.5, contained within part 2 of the UDP, outlines criteria for food and drink uses. The relevant parts of the policy are:

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.

DC10.2 The Council will normally accept the principle of developments of this kind in the City Centre, industrial and commercial areas, in shopping centres and, at ground level, in local shopping parades of more than 8 shops or offices.

DC10.3 Development will not normally be permitted where:

- a. it is proposed outside the general locations mentioned above, or
- b. there is a house or flat on the ground floor next to the proposed business, or only separated from it by a narrow street or alleyway.

DC10.4 Where, having regard to the preceding policies, the Council considers the proposed development to be acceptable in principle, conditions may be imposed in order to protect the amenity of nearby residents. These conditions may, amongst other things, include limitations on the hours of opening, and the need to deal satisfactorily with noise, fumes, smells, the storage of refuse and the collection of litter.

DC10.5 The Council will consider on their individual merits proposals for larger, free-standing restaurants, public houses, clubs etc. which require a main road location and do not clearly meet the locational criteria set out in policy.

Policy DC18.1 'Conservation Areas' states that the Council will give particularly careful consideration to development proposals within Conservation Areas. The Council will seek to preserve or enhance the character of its designated Conservation Areas by considering the following issues:

- I. The relationship of new structure to neighbouring buildings and spaces;
- II. The effect of major changes to the appearance of existing buildings.

#### DC26 'Development and Noise'

DC26.1 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.

DC26.2 New noise-sensitive developments (including large-scale changes of use of existing land or buildings), such as housing, schools, hospitals or similar activities, will be permitted subject to their not being in locations which would expose them to high noise levels from existing uses or operations, unless the effects of the noise can realistically be reduced. In giving effect to this policy, the Council will take account both of noise exposure at the time of receiving a planning application and of any increase that may reasonably be expected in the foreseeable future.

DC26.3 Developments likely to result in unacceptably high levels of noises will not be permitted:

- a. in residential areas;
- b. near schools, hospitals, nursing homes and similar institutions;
- c. near open land used frequently for recreational purposes.

DC26.4 Where the Council believes that an existing noise source might result in an adverse impact upon a proposed new development, or where a new proposal might generate potentially unacceptable levels of noise, it will in either case require the applicant to provide an assessment of the likely impact and of the measures he proposes to deal satisfactorily with it. Such measures might include the following:

- a. engineering solutions, including reduction of noise at source, improving sound insulation of sensitive buildings or screening by purpose-built barriers;
- b. layout solutions, including consideration of the distance between the source of the noise and the buildings or land affected by it; and screening by natural barriers or other buildings or noncritical rooms within a building; and
- c. administrative steps, including limiting the operating times of the noise source, restricting activities allowed on the site or specifying an acceptable noise limit. Any or all of these factors will be considered appropriate for inclusion in conditions on any planning permission.

DC26.5 The Council will control noise levels by requiring, where necessary, high levels of noise insulation in new development as well as noise barriers where this is appropriate.

For reasons outlined further in this report, the proposal is considered not to be in accordance with the local development framework and saved UDP policies.

### **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 outline a “presumption in favour of sustainable development”. This means approving development, without delay, where it accords with the development plan and where the development plan 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.

**Planning History** – There have been three previous planning applications at this property, the first application was for a single storey rear extension and was approved in 1997 (reference: 053019/FO/SOUTH1/97). The second application was received in 2014 for a single storey extension and shop front elevations and this was also approved (reference: 106156/FO/2014/S2). The most recent approved application was in 2015 for a change of use from ground floor shop (Class A1) to physiotherapy clinic (D1) (reference: 109048/FU/2015/S2).



**The Principle** – The property is located within the Fog Lane local centre. Extant policy DC 10 establishes the principle of locating food and drink uses within local shopping centres. Above the unit is a first floor flat and the property is close to residential properties on Norwood Avenue. Policies SP1, DM1 and C10 of the Core Strategy and extant Unitary Development Plan policies DC10 and DC26 seek to protect the amenity of residents from the adverse impacts of development and in this case the use of the building as a drinking establishment in close proximity to residential accommodation is considered to give rise to the potential for a loss of amenity.

Matters that will require consideration, in order to assess the acceptability of any proposal are accessibility, cumulative impact of food and drink uses within the local centre, hours of operation, servicing and refuse arrangements and impacts on residential amenity.

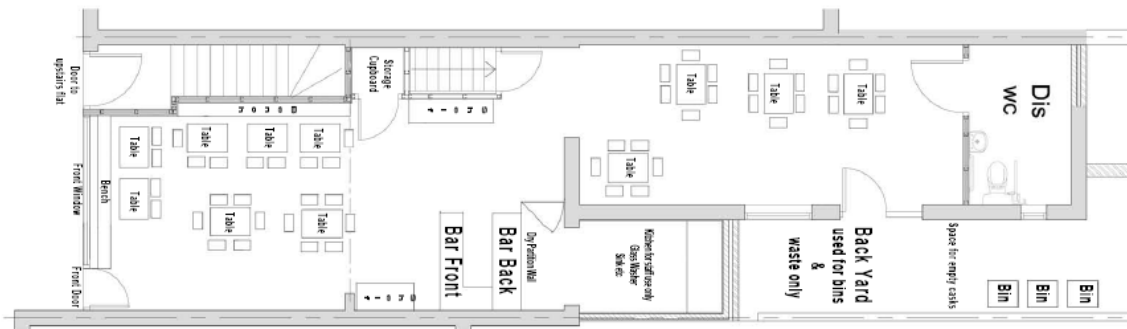
**Accessibility** –The proposal would provide an accessible toilet on the ground floor and the existing entrances surfaces are level. The level of accessibility is considered acceptable.

**Cumulative impact of food and drink uses within the local centre** - Local Centres perform an important role by ensuring that residents have convenient access to day-to-day shopping needs, and are especially important to those who have limited mobility. The Core Strategy states that the Council will manage the range of facilities available within local centres to maintain a reasonable level of provision. During the time of this application there were no other drinking establishments (A4 uses) within the local centre, however there are a number of hot food take aways (A5) within the parade. If approved this would be the first A4 use approved within the local centre. It is not considered that the proposed use would give rise to detrimental impacts on the character or vitality and viability of the centre as a result of cumulative impact with other food and drink uses in the centre.

**Residential Amenity** – The application site is in close proximity to residential properties on Norwood Avenue. In addition there is a first floor flat above the application unit.

Taking into consideration this close relationship there is the potential for a loss of amenity to the occupiers of the residential properties caused by people arriving/leaving by car or taxis stopping outside of the residential properties, people congregating and talking outside the premises and similarly groups arriving/leaving the premises on foot.

In addition there is the potential for a loss of amenity arising from noise breakout from the building especially into the flat above. As shown in proposed floor plan (figure 1), the existing flat entrance is accessed from the front of the property.



**Figure 1: Proposed Floor Plan**

The proposal also includes a designated outdoor seating area for two tables as there is a small forecourt at the front of the unit which could lead to further noise from patrons drinking or smoking outside. This concern is also shared with Environmental Health who have objected to this application.

The applicant has submitted an acoustic report together with a revised planning statement outlining how noise could be mitigated at the property. Following assessment of this information Environmental Health are still concerned with the proposal at this property as they believe, that if approved, an A4 drinking establishment would result in the a loss of amenity to local residents, particularly those living above this unit . They state that the information provided does not overcome their objection to this application and they state that if this particular proposal could be controlled with conditions to mitigate against their concerns they would have included these within their recommendation.

Furthermore an objection to the application has been received from the residents who live above the unit. Although a further representation was received stating that if noise wasn't going to be an issue then they would not oppose the application.

It is therefore considered that the relationship of the application site to the residential properties is such that there is the potential for loss of amenity and that the change of use is therefore contrary to the provision of Core Strategy policies DM1 and C10 and extant Unitary Development Plan policies DC10 and DC26.

**Hours of operation** – The applicant has applied for the following:

- Monday, Tuesday – Closed
- Wednesday and Thursday – 15:30 – 22:00
- Friday and Saturday – 13:30 – 23:00
- Sunday – 13:30 – 22:00

It is noted that these hours are similar to the existing takeaway units on Fog Lane.

**Servicing and refuse** – It is proposed that refuse storage would be at the rear of the premises. In reviewing the information submitted Environmental Health raise concerns that the waste management could cause potential noise issues with residents from the movement of bins and depositing of waste by the staff.

The applicant has attempt to address these concerns in the revised planning statement by stating that there would be no filling of glass bottles outside of the following hours:

Monday to Friday - 09:00 – 18:00  
Sunday – 11:00 – 16:00

No details were provided for Saturday.

In addition the submitted planning statement also states that there will be a 'bar policy' of encouraging customers to take-away bottles rather than consume them on the premises. It is unclear how this would be managed or how effective this would be, there could also be a potential consequence of additional littering in the vicinity of the bar.

**Conclusion** – Overall, it is considered that the proposed use of the premises as a drinking establishment would have a detrimental impact on the amenity of neighbouring residents, particularly in relation to those residing on Norwood Avenue and the flat above, due to the increase in the comings and goings to and from the premises, and associated noise, disturbance and increase in vehicular and pedestrian traffic particularly late at night. The proposed change of use is therefore contrary to the provisions of Core Strategy policies SP1, DM1 and C10 and Saved Unitary Development Plan policies DC10 and DC26.

**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 the right to a fair hearing and to this end the Committee 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 polices of the Unitary Development Plan, the Head 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 refusal of the application is proportionate to the wider benefits of refusal 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**

Officers have worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application. Officers have communicated their concerns about this proposal to the

applicant and agent during the course of the planning application, but these concerns have not been overcome. The proposal is considered to be contrary to the development plan and therefore is recommended for refusal.

### **Reason for recommendation**

1) The use of the premises as a drinking establishment would have a detrimental impact on the amenity of neighbouring residents, particularly in relation to those residing on Norwood Avenue and the flat above the application property, due to: the increase in the comings and goings to and from the premises; associated noise generated by the use including waste disposal; noise and disturbance and increase in vehicular and pedestrian traffic particularly late at night. The proposed change of use is therefore contrary to the provisions of Core Strategy policies SP1, DM1 and C10 and Saved Unitary Development Plan policies DC10 and DC26.

### **Local Government (Access to Information) Act 1985**

The documents referred to in the course of this report are either contained in the file(s) relating to application ref: 111295/FO/2016/S2 held by planning or are City Council planning policies, the Unitary Development Plan for the City of Manchester, national planning guidance documents, or relevant decisions on other applications or appeals, copies of which are held by the Planning Division.

### **The following residents, businesses and other third parties in the area were consulted/notified on the application:**

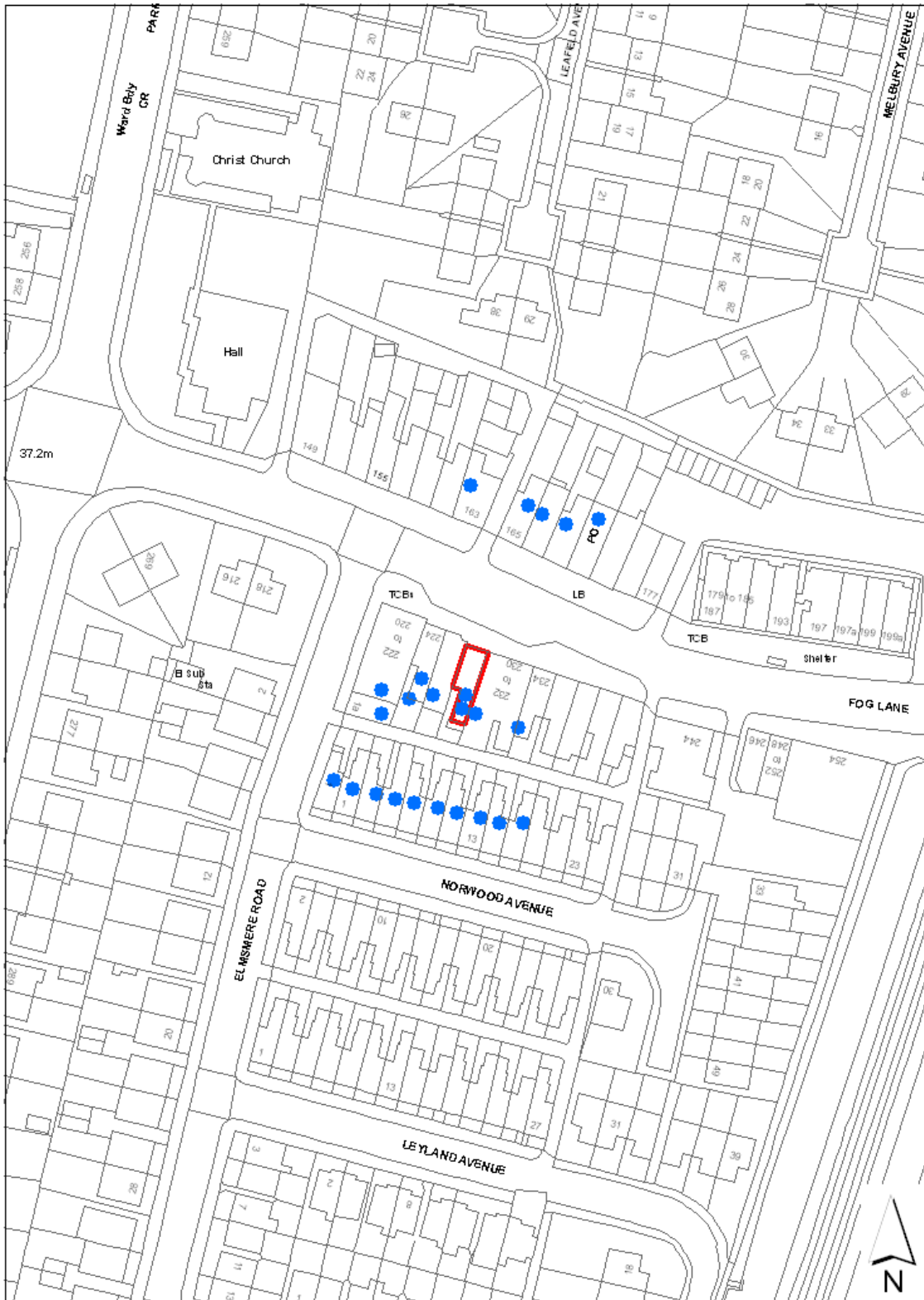
Greater Manchester Police

A map showing the neighbours notified of the application is attached at the end of the report.

### **Representations were received from the following third parties:**

3 Norwood Ave, Didsbury, Manchester, M20 6EX  
9 Norwood Ave, Didsbury, Manchester, M20 6EX  
16 Norwood Avenue, Didsbury, Manchester, M20 6EX  
43 Norwood Avenue, Manchester, M20 6EX  
37 Norwood Avenue, Didsbury, Manchester, M20 6EX  
29 Norwood Avenue, Didsbury, Manchester, M20 6EX  
37 Norwood Avenue, Didsbury, Manchester, M20 6EX  
22 Elmsmere Road, Manchester, M20 6FL  
37 Norwood Avenue, Didsbury, Manchester, M20 6EX  
60 Leyland Avenue, Manchester, M20 6EW  
30 Newville Drive, Withington, Manchester, M20 4TL  
100 Stephens Road Manchester, M20 4XD  
100 Broadlea Road, Burnage, Manchester, M19 1BS  
228A Fog Lane, Manchester, M20 6EL  
21a Compstall Road, Romiley, Stockport, Cheshire, SK6 4BT  
171a Fog Lane, Manchester, M20 6FJ

**Relevant Contact Officer :** Robert Tyrer  
**Telephone number :** 0161 234 4068  
**Email :** r.tyrer@manchester.gov.uk



 Application site boundary  Neighbour notification  
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