

<b>Application Number</b>	<b>Date of Appln</b>	<b>Committee Date</b>	<b>Ward</b>
113327/FO/2016	27th Jul 2016	22nd Sep 2016	Withington Ward

**Proposal** Change of use from Sandwich Shop (A1) to Hot Food Takeaway (A5) involving the erection of extraction flue to rear of premises

**Location** 124 Mauldeth Road, Manchester, M14 6SQ

**Applicant** Gulesen, 124 Mauldeth Road, Manchester, M14 6SQ

**Agent** Ahmed Choudhry, Nada Architects, 169 Kingsway, Burnage, Manchester, M19 2ND

## Description

This application relates to a two storey mid parade commercial property with a self contained flat above. The property has a two storey outrigger at the rear and a single storey extension. There is a small rear yard with access to the alley. At the front of the property there is a large shop window and two entrances, one for the commercial unit and the other for the first floor flat.

The application site is located within Ladybarn local centre, a small centre of some 28 units based on Mauldeth Road at its junction with Rink Street. The application site is close to the junction of Mauldeth Road and Weld Road and is adjoined by an existing hot food take away. Weld Road is residential and there are residential properties across Weld Road and facing the site across Mauldeth Road. Mauldeth Road Primary School is located approximately 190 metres to the east of the site.

Ladybarn local centre comprised 28 units of which 15 are class A1 shops, 2, class A2 Financial and Professional Services, 3, class A3 cafes and restaurants, 0, class A4 Bars, 4, class A5 Hot food Take Aways, 1 Sui Generis use, 1, class D1 Non Residential Institution and 2 vacant units.

Permission is sought to change the use of the property from a sandwich shop class A1 to a hot food take away class A5. As part of the proposal a flue would be installed on the rear elevation of the outrigger. No other elevational alterations are proposed, however the submitted drawings show four tables provided within the premises. The proposed opening hours are 7.00am to 6.00pm seven days a week. Refuse would be stored in the rear yard.

## Consultations

Local residents/businesses - No representations received.

Strategic Area and Citywide Support Manager - No objections in principle however, should permission be granted then conditions should be attached restricting deliveries to between the hours of 7.30am to 8.00pm Monday to Saturday with no deliveries on Sundays, the approval of a detailed fume extraction system, a restriction on the opening hours to those applied for. The acoustic insulation of the premises and any externally mounted ancillary equipment and refuse storage.

Highways - The site is situated in a reasonably accessible location surrounded by residential properties which are likely to provide its customer base. It is anticipated that most customers would arrive by foot. No details are provided of cycle parking or refuse collection arrangements.

Greater Manchester Police Design for Security - No objections subject to any new fixtures being to Secured by Design standard.

## **Policy**

### **Core Strategy**

The relevant Core Strategy policies are SP1, DM1, C8 (Dave, do you mean C6 or C8, you go on to detail C8) and C10.

Policy SP1 is a generic development management policy relevant to most applications within the City. The Policy sets down the key spatial principles which will guide the strategic development of Manchester to 2027, these are:  
Beyond the regional centre and the airport the emphasis is on the creation of neighbourhoods of choice, providing high quality and diverse housing around district centres which meet local needs, all in a distinct environment.

All development should have regard to the character, issues and strategy for each regeneration area as described in the North, East, Central and South Manchester and Wythenshawe Strategic Regeneration Frameworks and the Manchester City Centre Strategic Plan.

Policy SP1 also sets down the Core Development Principles

Development in all parts of the City should:-

Make a positive contribution to neighbourhoods of choice including, amongst others:-  
-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.

Policy DM1 is relevant as it seeks to protect the amenity of an area from the adverse impacts of development. The policy states that All development should have regard to the following specific issues, amongst others:-

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.

Community safety and crime prevention.

Design for health.

Refuse storage and collection.

Vehicular access and car parking.

Policy C8 is relevant to this development in that it seeks to protect local centres. It 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 relates specifically to applications for food and drinks uses. The policy states that new development and redevelopment that supports the evening economy, contributes to the vitality of 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 hopping 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.

### Unitary Development Plan

The relevant saved Unitary Development Plan policies are DC10 and DC26

Policy DC10 is relevant as it is a development management policy that sets down the Councils approach to food and drink uses. The policy states that 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, 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.

Policy DC10 goes on to say that 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.

The policy also states that 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.
- of an area from the adverse impact of noise.

Policy DC26 relates to developments with the potential for generating noise and seeks to protect the amenity

### National Planning Policy Guidance

The relevant sections of the NPPF are paragraphs 11, 12, 13, 14, 23 and 64.

Paragraph 11 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Paragraph 12 Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

Paragraph 13 The National Planning Policy Framework constitutes guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications.

Paragraph 14 Says that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out of date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or
  - specific policies in the NPPF indicate development should be restricted.

Paragraph 23 says that in drawing up local plans, local planning Authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality.

### Other Considerations

#### Draft Supplementary Planning Document – Hot Food Take Aways

The City Council is currently consulting on a draft Supplementary Planning Document in respect of Class A5 Hot Food Take Aways. This emerging development management policy is a consideration that has some weight in the determination of applications for Hot Food Take Aways despite having not been formally adopted. The draft Supplementary Planning Document contains three policies which are as follows:

#### Policy 1 Vitality and Viability

Hot Food Takeaways (A5) will not be supported in district and local centres where the cumulative impact of introducing the facility would be detrimental to the vitality and viability of a centre and would affect the balance between the day time and night time economy and the health of the population.

A proposal will be considered to be harmful to the vitality and viability of a centre if it:

- Increases the number of A5 uses in a centre to more than 5% of all town centre uses (excluding housing);
- Creates a cluster of more than two A5 uses together;
- Reduces the number of units between A5 clusters to less than two none A5 uses.

Exceptions to the above are Manchester City Centre and Rusholme District Centre. A key role of these centres is to serve the night time economy. They have become known as locations for food and drink, attracting visitors from across Greater Manchester and beyond. In these centres applications will be assessed based on local impact taking into account the centre's overall role and character.

In centres, where vacancy levels are more than 10% (or 25% in centres with less than 20 units) every effort should be made to fill the unit with a town centre use (other than A5) before hot food takeaways will be permitted. In areas where it can be shown that the surrounding uses would be compatible, residential uses will be considered. Where there is no evidence of demand for a preferable use, hot food takeaways will be considered favourably even if this would increase the threshold of takeaways to above 5%.

The visual amenity of a street is adversely affected by shutters being down during the day, creating dead frontages. To prevent any harmful affect on the visual amenity of the street scene, shutters should be up between the hours 9am and 5.30pm.

#### Policy 2 Amenity

Hot food takeaways (A5 uses) will be considered against Core Strategy Policy DM1 Development Management and specific considerations include:

Hours of Opening - Unless affected by Policy 3 of this SPD, the hours of opening of an A5 Hot Food Takeaway will depend on whether it can be demonstrated that there would be:

- No unacceptable impact on residential amenity as set out in DM1 Development Management,
- There is an established night time economy,

- It would not adversely affect the character and function of the immediate area, including existing levels of background activity and noise.

Extraction of odours and noise abatement - Hot food takeaways must provide appropriate extraction systems to effectively disperse odours and show that they are meeting the minimum guidance in the Department of Environment, Food and Rural Affairs Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems 2005 and Odour Guidance for Local Authorities 2010. Applications must be accompanied by an Odour Impact Assessment (OIA) and include suitable mitigation measures. They must demonstrate that they have no adverse impacts on visual amenity, including location and external finish. Hot food takeaways must consider their impact on noise sensitive developments and any proposal that has the potential to cause noise disturbance to existing residential development or noise sensitive properties should be accompanied by a noise survey and assessment and only approved if the impact is shown to be acceptable.

Disposal of Waste Products and Customer Litter - All planning applications should be accompanied by a waste management strategy setting out how a hot food takeaway will deal with its own waste and also the waste generated by customers. All waste generated by the business should be accommodated on site.

Consideration should also be given to the need to mitigate for the impact of customer waste on the surrounding area. The Manchester City Council guidance GD04 Waste Storage and Collection Guidance for New Developments, Environmental Protection should be used in the preparation of a waste strategy.

Highway Safety - Planning permission for A5 uses will only be granted where there would not be an adverse impact on highway safety and the amenity of the surrounding area. Proposals should take account of the likely needs of both customers and the operator's delivery requirements.

Regard will be given to:

1. Existing traffic conditions;
2. The availability of public parking provision in close proximity to the premises, including suitable on-street parking;
3. The availability of an adequate loading and unloading area.

Policy 3 Hot food take aways and Schools.

Where a Hot food take away is proposed within 400 metre radius of a primary or secondary school, and proposal meets planning policy in other respects, planning permission will only be permitted subject to the condition that opening hours are restricted to the following:

- A primary school: the hot food takeaway is not open to the public between 3 pm to 5.30pm on weekdays.
- A secondary school: the hot food takeaway is not open to the public before 5.30pm on weekdays.

The only exception to this approach will be where the proposal is within centres designated in the Local Plan and can demonstrate that the introduction of such a use will meet all other relevant policies.

The proposed development will be tested against the Councils policies in the following sections.

## **Issues**

### Principle

The general principle of locating Hot food take aways in local centres and parades of more than 8 units is established in Core Strategy policy C10 and saved Unitary Development Plan policy DC10 and thus the broad principle of the proposed use in this location accords with this general thrust of policy. However, Core Strategy policy C10 and the emerging draft Supplementary Planning Document on Hot Food take Aways both refer to the cumulative impact of such uses and the resultant impact on the viability and vitality of the centre. This issue is addressed in more detail in the following sections.

### Composition of Ladybarn Local Centre

On the site visit carried out in association with this application 28 commercial units were identified within the local centre. Of these 15 were shops - use class A1; 2 were financial and professional services offices – use class A2; 3 were Cafes and Restaurants – use class A3; none were drinking establishments - use class A4; 4 were Hot food take aways – use Class A5; 1 Non Residential Institutions – use class D1, there is 1 Sui Generis use and 2 vacant units. Thus 25% of the properties within the Centre are in food and drink use, Classes A3, A4 and A5 and 14% of the properties are Hot Food Take Aways Class A5.

There is therefore concern that the composition of the district centre is already weighted towards food and drink uses and that this conflicts with Core Strategy policy C10 and emerging draft Supplementary Planning Document Policy 1.

### Vitality and Viability

Core strategy policy C10 suggests that the acceptable upper limit for A4 and A5 uses before they impact on the viability and vitality of the centre is 15%. The percentage A5 uses in Ladybarn Local centre is 14%, there are no A4 uses, and thus the level of A4 and A5 uses is on the borderline for impacting upon the centres vitality and viability. However, this is a small centre, 28 units and the addition of a single additional A5 use would take this figure up to 17%. Concern is expressed that the centre is at the tipping point and that any further A5 uses would detract from the retail character of the centre. Currently vacancies are not an issue. Accordingly it is considered that the proposed development would conflict with Core Strategy policy C10 and Policy 1 of the emerging Draft Supplementary planning Document on Hot Food Take Aways.

### Locational requirements

Core Strategy policy C10 and saved Unitary Development Plan policy DC10 both identify District Centres as acceptable locations for hot food take aways. However

Core Strategy policy C10 says that such uses would not be acceptable where there is a high concentration of bars Class A4 and Hot food take aways Class A5. Thus whilst in locational terms the proposed development could accord with saved Unitary Development policy DC10, it would conflict with Core Strategy policy C10. Given that Core Strategy policy C10 is the more up to date planning policy then significant material weight is attached to that policy. It is also considered that in locational terms the proposal would conflict with policy 1 of the emerging Draft Supplementary Planning Document.

#### Vacancies

At the time the centre was surveyed there were two vacant units within the centre. This number would fall below the 5% threshold where consideration could be given to allowing changes of use to A5 in centres where there is already a high concentration of such uses due to there being a high vacancy rate and treating the change of use as an exception to policy 1 of the emerging Draft Supplementary Planning Document.

#### Operating Hours

The proposed opening hours of 7.00am to 6.00pm seven days a week are not considered to be excessive, and broadly coincide with the opening hours of other shops within the centre.

#### Refuse storage

The proposed development intends to store refuse in the rear yard with it being put out for collection at appropriate times. This is considered to be an acceptable solution and should planning permission be granted could be the subject of an appropriate condition.

In respect of refuse storage it is considered that the proposed development accords with Core Strategy policies SP1, C10 and DM1 and saved Unitary Development Plan policy DC10.

#### Parking

The proposed development is within a sustainable location in a local shopping centre. The site has good access to public transport and is within walking distance of a substantial residential population. In view of the location of the premises within the local centre there would not normally be a requirement for the use to provide its own dedicated parking the development therefore accords with Core Strategy policies C10 and DM1 and policy 2 of the emerging draft Supplementary Planning Document.

#### Fume extraction

There was insufficient information in the application to assess the effectiveness or otherwise of the proposed fume extraction system. Should consent be granted an appropriate condition would be required requiring the approval of the fume extraction system.

## Residential amenity

The cumulative impact of a further Hot food take away could, it is considered, detract from the amenity of residents due to the increased noise and associated comings and goings to the premises and in the area immediately surrounding it. Though this would be mitigated by the limited opening hours and the relationship of the property to the nearest dwellings

There is also some potential for a loss of amenity arising due to the relationship of the rear of the property to residential properties on Weld Road as a result of refuse storage and fume extraction. However, again the limited opening hours would minimise any such impact as would the proper maintenance of the extraction system.

On balance it is considered that whilst there is some potential for the proposed use to impact on residential amenity it is not considered to be so great as to justify the refusal of planning permission.

## Schools

The emerging supplementary planning document refers to the acceptable relationship of hot food take aways to schools, this being a 400 metre radii. Within this distance provided a proposals meets all other policy requirements a new hot food take away could be acceptable subject to controls over hours of opening. The exception to this is in a designated centre. Therefore whilst the site is within 400 metres of Mauldeth Road Primary School this aspect of the policy can only be given limited weight in the decision making process due to the fact that the supplementary guidance is only in draft form.

## Conclusion

Ladybarn is a small local centre into which food and drink uses are starting to make inroads and as indicated earlier in this report a small increase in numbers has a significant impact in terms of the percentage of food and drink uses. On balance it is considered that the cumulative impact of a further hot food take away would harm the range of goods and services on offer and consequently the viability and vitality of the centre.

On balance it is considered that the proposed development would conflict with Core Strategy Policies SP1, DM1 and C10 and the emerging Draft Supplementary Planning Document on Hot Food Take Aways.

**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

policies 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**

The proposal would not improve the social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There are no conditions which could reasonably have been imposed, which would have made the development acceptable and it is therefore not possible to approve the application.

**Reason for recommendation**

1) The use of the property as a hot food take away (use class A5) would result in an overconcentration of such uses within Labyarn Local Centre to the detriment of the viability and vitality of the Centre. The proposed development is therefore contrary to the provisions of Core Strategy Policy C10.

**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: 113327/FO/2016 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:**

Highway Services  
Environmental Health  
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:**

None received

**Relevant Contact Officer :**      Dave Morris

**Telephone number** : 0161 600 7924  
**Email** : d.morris@manchester.gov.uk



Application site boundary ● Neighbour notification  
© Crown copyright and database rights 2016. Ordnance Survey 100019568

