

Application Number	Date of Appln	Committee Date	Ward
121709/FO/2018	29th Nov 2018	14 th February 2019	Didsbury West Ward

Proposal Change of use from retail (Class A1) to restaurant (Class A3) with new shop front and extraction flue to rear

Location 111 Lapwing Lane, Manchester, M20 6UR

Applicant Mr Weifeng Jiang , 111 Lapwing Lane, Manchester, M20 6UR,

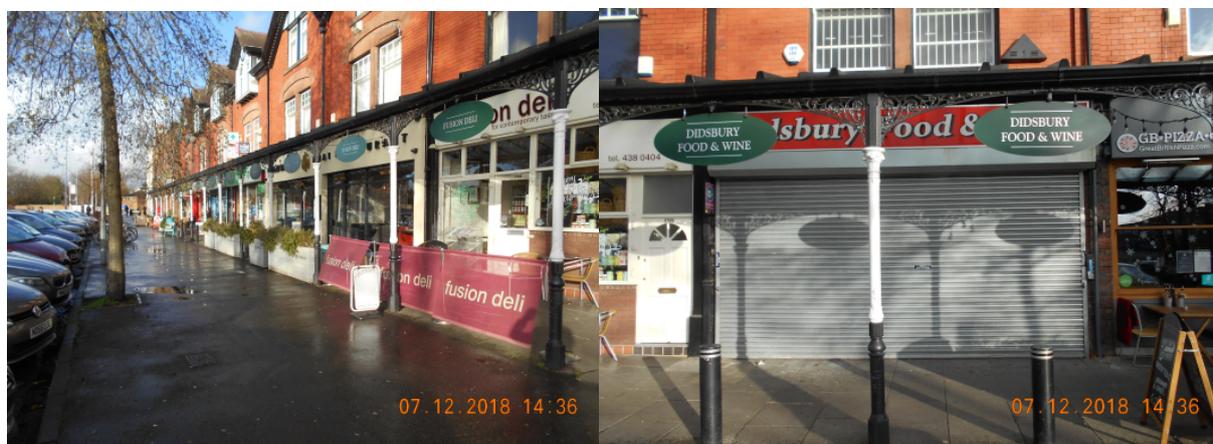
Agent Mr Ahmed Choudhry, NADA Architects, 169 Kingsway, Burnage, Manchester, M19 2ND

Description

The application site relates to a vacant retail/off-licence shop formerly known as Didsbury Food and Wine which occupies one unit within a parade of nine mixed units that includes, a bar, cafés, a post office and a pharmacy. In addition to the Edwardian parade there is also a Pizza Express restaurant and a former bank which fronts the corner of Palatine Road and Lapwing Lane. The property is three storeys in height and in 2017 permission was granted to create two, one bedroom apartments on the upper floors (117372/FO/2017). The property fronts Lapwing Lane, where there are eighteen car parking spaces directly in front of the parade, a bus stop and tram services from the West Didsbury Metrolink Stop.

At the rear the property is an alleyway which provides access to the rear yard.

The application site is located within the Ballbrook Conservation Area with the surrounding area comprising of residential streets consisting of Edwardian housing built between 1910 and 1914, mostly by developers Booth and Britten, who employed the architect George Westcott. The same team also created the terrace of shops with a cast-iron and glass canopy on Lapwing Lane in 1913.



Consultations

Publicity – A site notice was placed outside the property, a press advert and two notification letters have been sent to publicise the application. The representations below are the responses received in reply to the publicity.

Local residents/public opinion – Six representations have been received objecting to the planning application with the comments summarised as follows:

Loss of Retail:

- Lapwing Lane Arcade is one of a few examples of an Edwardian row of shops the main purpose of the Arcade was to provide shops to serve the locality;
- The Arcade is at a tipping point between the number of retail uses and food and drink uses as only 5 out of 10 units are still retail which includes the application site;
- A loss of another shop will create problems for the local community being able to meet their daily needs;
- The application is contrary to both the NPPF paragraph 92c and d and policy DC10.2 of the Unitary Development Plan for the City of Manchester;
- The unit has only been closed for a short time and there is no reason as to why the unit could be let to another retail use;
- 4 out of the 5 food and drink uses are closed during the normal daytime trading hours in the morning. Which has created a depressing and negative change to the vitality and the character of the area;
- Concerns have been raised that the unit will function like a takeaway and this will result in a higher number of meals prepared or consumed when compared to solely a restaurant A3 use.

Residential Amenity

- The proposal will have an adverse impact on residential amenity, as the Arcade is located within a residential area and was never intended to be a centre for evening activity and associated problems of noise, parking, odour and waste disposal;
- Noise from the commercial extractor unit is likely to cause nuisance and loss of amenity to the properties at the rear of the application site;
- May result in noise and disturbance from the disposal of bottle glass waste and from moving the bins to the front of the parade for waste collection;

Odour/Refuse

- Concerns have been raised regarding the odour as residents to the rear of the parade have frequently noticed distinctive cooking smells since opening of the restaurant at 105-107 Lapwing Lane;
- The accompanying odour assessment is deficient as it does not address the cumulative effect of the proposal and those that already occur;

- The assessment is limited by the fact that it has only considered the use as a sushi restaurant but the application seeks an unrestricted A3 use and in the future may not be used as a sushi restaurant;
- The location of the waste is only several metres away from the closest gardens and the accumulation of litter and waste together with the frequency of waste collection (once a week) may attract vermin, particularly if it is strong smelling fish.

Car Parking

- Volume of on street car parking in the area, particularly on Lyndhurst Road (south east of the application site) is an existing issue which already affects local residents due to Christie staff parking and this problem has extended to the evening with the opening of Chili Banana in 2016;
- There is a highway safety implication due to vehicles parking on either side of the road making manoeuvres difficult to perform. The proposal would have an unacceptable impact on highway safety and contrary to paragraph 109 of the NPPF.

Heritage

- The flue would have an adverse impact on the setting of the Conservation Area, failing to preserve or enhance its appearance;
- The supporting heritage statement states that the rear is very well screen by tree cover, but the principal tree identify and relied upon in the heritage statement has been removed.
- Whilst there are already flues at the rear, this should not be used as a reason to justify a further flue which can be viewed from residential properties.

Environmental Health – Environmental Health raised no objections to the proposal and recommended conditions relating to acoustic insulation of the property, any external equipment should also be acoustically insulated and hours of servicing and deliveries.

Environmental Health considered that the Waste Management Strategy provided with the application is acceptable.

However Environmental Health raised concerns regarding the position of the flue in relation to a dormer window on the rear of the property. This concern has been addressed in amended drawings provided by the applicant.

Ballbrook Conservation Area Group – Currently 5 out of 10 units in the arcade are retail (Use Class A1) and 5 are restaurants/cafes (Use Class A3). If approved the application will tip the balance in favour of restaurants/cafes.

The group recognise the changing shopping habits of local people within the last century have changed, they are disappointed that another retail outlet would be removed. However, on balance the group also recognise that a thriving class A3 outlet would enhance the prosperity of the arcade compared to an empty unit.

The group have raised no concerns and support the changes to the proposed shop front as it would enhance and harmonise more with the other units within the arcade.

However, the group would like to highlight the concerns of the residents in Ballbrook Avenue and Lyndhurst Road whose rear gardens back on to the rear of 111 Lapwing Lane are concerned with the appearance of the proposed flue.

The group would also like to dispute the assumption that the flue is screened, as all the trees are within the gardens of the houses on Ballbrook Avenue and Lyndhurst Road. One of the trees has been felled and some are deciduous, therefore provide very little cover in the winter months. Therefore if the application is approved, the group seek a condition requiring that the flue to blend in to the surroundings, for example matt black colour, similar to the flue at Chilli Banana (105-107 Lapwing Lane). In addition the condition should specify that any flue design must minimise both operational noise and odours from the restaurant. The group noted that in response to the second notification that the flue was a darker colour.

The plans indicate seating for only 16 people and no WC facilities for customers. The group question as to whether the main operation would be a takeaway as referred to in the Odour assessment.

There is a difference in the opening hours stated on the application form and the design and access statement and heritage statement. The group is concerned that customers leaving the premises late at night would cause unacceptable noise/disturbance. The group propose a condition attached to any approval that limits the closing time to no later than 22:00.

The group accepts that some customers will walk or travel by public transport to the proposal. However, the change of use would generate demand for car parking spaces on residential roads of the Conservation Area every day particular in the evenings. The Group are appalled at the prospect of further inconvenience of additional non-residential car parking on Ballbrook Conservation Area roads.

The number of tables/covers in the restaurant/café is not indicative of the volume of food preparation that will be undertaken. Accordingly, there is insufficient information on the likely levels of cooking fumes, cooking odour, food waste disposal, and odour associated with the waste. This is because the application fails to provide any information of the likely volume of food preparation of the intended capacity of the cooking facilities.

West Didsbury Residents Association (WDRA) – WDRA do not oppose the application.

In respect of the proposed shopfront changes, WDRA have no fundamental objection to it but have raised that an amended design should be sought to allow the reinstatement of the low riser wall beneath the front window to reflect the design as when built.

WDRA would oppose any subsequent development away from the presently outlined business model towards a more alcohol led or takeaway/delivery led model.

The biggest issue with the proposal is that if approved the proposal would further reduce the diversity of the retail offer along the Lapwing parade and create additional cumulative impact of a food and drink use.

The flue due to the size and proximity may impact upon the visual and amenity of the residents of the flat and other business and residents on Ballbrook Avenue. WDRA would like an improvement to the flue design.

Provided that the use operates as proposed WDRA do not considered that car parking demand for the proposed use will create unreasonable hardship for nearby residents.

WDRA have raised discrepancy with the proposed opening hours as they differ between the application form and the design and access statement.

WDRA observe that the forecourt would not be used for associated customer seating and would like confirmation that it will not be used.

Councillor Richard Kilpatrick - I would like to add my support for the comments made by WDRA and to add in the importance of regular waste collection from a premises that will be using fresh fish for sushi preparation. This may be something that officers have precedent on but the refuse collection conditions should reply to this sushi restaurant as it is in other areas.

Policies

National Planning Policy Framework

The central theme to the revised 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.

The Framework underlines 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.

Relevant to this application, Section 6 provide guidance in relation to ‘Building a Strong Economy’, Section 7 ‘Ensuring the vitality of town centres’, Section 8 ‘Promoting healthy and safe communities’, Section 11 underlines the need to ‘Make Effective Use of Land, Section 12 provides design guidance – ‘Achieving Well-Designed Places’ and Section 16 ‘Conserving and enhancing the historic environment’.

National Planning Policy Guidance (March 2014)

The Government produced a suite of documents to act as a live resource which set out advice and best practice on a wide range of planning issues following a detailed review of planning policy guidance as a way of streamlining policy. The relevant sections of the NPPG in this case are as follows:

Design states that where appropriate the following should be considered:

- layout – the way in which buildings and spaces relate to each other;
- form – the shape of buildings;
- scale – the size of buildings;
- detailing – the important smaller elements of building and spaces;
- materials – what a building is made from.

The Development Plan in Manchester comprises of:

Manchester Core Strategy Development Plan Document (2012) - The Core Strategy was adopted on the 11th July 2012 and replaces a large number of policies in Manchester's Unitary Development Plan.

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 **Core Strategy** policies for this application are as follows:

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.

These key principles are applied to all planning applications within the City and the application has been considered in accordance with the policy.

Policy 'EN 1 Design Principles and Strategic Character Areas'

Policy EN 1 states that all development in Manchester will be expected to follow the seven principles of urban design, as identified in national planning guidance and

listed above and have regard to the strategic character area in which the development is located. Opportunities for good design to enhance the overall image of the City should be fully realised, particularly on major radial and orbital road and rail routes.

Policy EN 3 'Heritage'

Policy EN3 states that the Council will encourage development that complements and takes advantage of the distinct historic and heritage features of its districts and neighbourhoods, including those of the City Centre. New developments must be designed so as to support the Council in preserving or, where possible, enhancing the historic environment, the character, setting and accessibility of areas and buildings of acknowledged importance (this includes conservation areas).

Policy DM1 'Development Management'

Policy DM1 seeks to ensure that new development contributes to the overall aims of the Core Strategy. The issues which should be considered are those which will ensure that detailed aspects of new development complement the Council's broad regeneration priorities and particularly by contributing to neighbourhoods of choice. This policy also seeks to protect the amenity of an area from the adverse impacts of development.

Policy C10 'Leisure and the Evening Economy'

Policy C10 states that new development, and redevelopment that supports the evening economy, contributing to the vitality of district centres and supporting a balanced and socially inclusive evening/night-time economy will be permitted, subject to impacts on residential amenity, any cumulative impact or concentration of hot food take-aways and bars, and maintaining a balance between day-time and night-time economies.

The relevant **UDP** policies for this application are as follows:

DC10 'Food and Drink Uses'

Saved UDP Policies DC10.1 to DC10.4 sets out the considerations to be made when assessing proposals for food and drink uses.

Policy DC10.1 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 (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.

Policy DC10.2 states 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.

Policy DC10.3 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.

Policy DC10.4 states that 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.

Saved Policy DC 18 'Conservation Areas'

DC18.1 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 the effect of major changes to the appearance of existing buildings.

Save Policy 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:

the effect of new development proposals which are likely to be generators of noise; and 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:

- in residential areas;
- rear schools, hospitals, nursing homes and similar institutions;
- 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:

engineering solutions, including reduction of noise at source, improving sound insulation of sensitive buildings or screening by purpose-built barriers;

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

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.

DC26.6 Exceptions to the general policy will be considered on their merits. The Council accept, as an example, that the occasional use of outdoor facilities such as sports stadia for concerts can be acceptable in certain circumstances. Any such proposal will be considered in the light of consultation with local residents and others, and the practicability of appropriate conditions on any approval.

Issues

The principle of the use – Saved policy DC10.2 states that the principle of food and drink uses is acceptable where they sit within a parade of 8 or more shops or offices. The parade is neither a designated local centre nor within the boundaries of Didsbury District centre. However, despite the lack of a designation in the Core Strategy the parade does function like a local centre as it provides a variety of different services/facilities for the local community it serves.

Policy C10 of the Core Strategy requires that new development, and redevelopment that supports the evening economy, contributing to the vitality of district centres and supporting a balanced and socially inclusive evening/night-time economy will be permitted, subject to impacts on residential amenity, any cumulative impact or concentration of hot food take-aways and bars, and maintaining a balance between day-time and night-time economies.

Matters that will require consideration, in order to assess the acceptability of any proposal are impacts on residential amenity, hours of use, fume extraction, parking, servicing and refuse. In this instance it is also necessary to consider the proposal in the context of its appearance within a conservation area.

The Use

In 2015 changes were made to the Town and Country Planning (General Permitted Development) (England) Order 2015 that allow a change of use from a use in class A1 (retail shop) to a use falling within Class A3 (restaurants and cafes) for units with a cumulative floor space of the existing building of 150 square metres or less. In order to do so the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- a. noise impacts of the development,
- b. odour impacts of the development,
- c. impacts of storage and handling of waste in relation to the development,
- d. impacts of the hours of opening of the development,
- e. transport and highways impacts of the development,
- f. whether it is undesirable for the building to change to a use falling within Class A3 (restaurants and cafes) of the Schedule to the Use Classes Order because of the impact of the change of use on adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops) or, as the case may be, Class A2 (financial and professional services) of that Schedule, but only where there is a reasonable prospect of the building being used to provide such services, or
- g. where the building is located in a key shopping area, on the sustainability of that shopping area, and
- h. the siting, design or external appearance of the facilities to be provided under Class C(b),

The fall-back is a material consideration in the decision making process, of which the Permitted Development (PD) rights given by the Order comprise an element. Thus when making a decision on a planning application it may be argued with some effect that a development carried out, could be implemented using permitted development rights. The weight to be given to such a material consideration varies according to whether what could be undertaken using the GPDO would have a broadly similar or worse impact to what is proposed; and the reasonable likelihood or possibility that, if permission were refused, permitted development rights would in fact be resorted to. As the unit has an existing floor space of 127 square metres the applicant could apply for the change of use using this route. This is considered to be the fall-back position subject to consideration against the other matters set out in the legislation.

At present the parade consists of; a take-away (A5), a café/bar (Sui Generis), a beauty salon (Sui Generis), a vacant Bank (A2), three café/restaurants (A3) and four shops (A1).

The applicant seeks to change the use of a currently vacant off-licence (A1) into a restaurant use (A3). As with any proposal that results in the loss of a retail unit in a shopping parade consideration has to be given to its impact on the vitality and viability of the parade. Both policy C10 and saved policy DC10 seek to protect, support and promote the role of existing shopping parade. In particular to achieve a balance of retail and non-retail uses on the parade. This is further reinforced by NPPF which requires that decision should be taken to guard against the unnecessary

loss of valued facilities and services, particular where this would reduce the community's ability to meet its day to day needs;

Concerns have been raised from residents, Ballbrook Conservation Group and West Didsbury Residents association regarding the balance of uses and whether the parade is at a tipping point between retail uses and food and drink uses. Therefore careful consideration needs to be given as to whether there is a harmful concentration of non-retail uses in this case food and drink uses.

Furthermore residents have expressed concerns at the later opening hours of the food and drink uses in terms of its impact on the vitality of the parade but also the visual impact of closed units.

In considering application policy C10 advises that on balance issues, new uses in centres should support both the day time and evening/night-time economies whilst not undermining the role of the primary shopping area.

Whilst smaller groups of shops are often found in residential areas such as Lapwing Lane, they tend to be less commercial in nature. If approved, at least three occupied retail units would remain and there would a change to four café/restaurant uses on the parade. On balance, it is considered to be acceptable for a small parade as it is considered that a further food use in this parade whilst resulting in a greater number of this type of use would still retain a suitable balance between day-time and night-time economies. In addition the use of a currently vacant unit as a commercial premises would generate activity in the local parade. However it should be noted any further planning applications for food and drink uses in the parade would be subject to the same issues and consideration.

A condition of the approval could restrict the closing of roller shutters during the daytime.

Therefore the principle is considered to be in general accordance with the criteria set out in Policy C10.

Residential Amenity – The parade of shops is located close to the junction of Lapwing Lane and Palatine Road and is commercial by nature. However, there are a number of residential properties to the rear and side of the parade on Ballbrook Avenue and Lyndhurst Road and in some of the upper floors of the parade including two that have recently been approved above the ground floor of the application property.

Concerns have been raised by local residents regarding the additional noise and disturbance especially late at night. The proposed use could result in a total of up to 16 customers at any one time. However, on balance and given the number of customers the unit could accommodate it is considered that the proposed restaurant would not give rise to more detrimental impacts than the other existing uses within the parade and those adjacent near the corner of Palatine Road and Lapwing Lane. Furthermore the opening hours applied for (see below) are in line with the existing food and drink uses within the parade.

The application does not include for any proposed outdoor seating area, however, there are examples of outdoor seating on the parade. It is proposed that a condition should be attached to any approval to ensure that if this area is to be used for external dining then the hours of use of that area should be submitted for approval prior to its use in order to protect the residential amenity of residential properties on the upper floors of the building.

Environmental Health, whilst not objecting to the proposals in terms of noise impacts, have requested that a number of conditions be attached to any approval including to acoustically insulate the premises prior to first use and any associated external equipment.

Hours of Use – The proposed hours of use are as follows:

Monday to Friday: 11:00 – 23:00

Saturday: 11:00 – 23:00

Sundays and Bank Holidays: 11:00 - 23:00

The hours proposed are similar to the opening hours of Pizza Express (97 Lapwing Lane), Chilli Banana (105-107 Lapwing Lane) and Wine and Wallop (99 Lapwing Lane) which all open at 11:00 and close between 23:00 and midnight. Environmental Health have reviewed the opening hours and have raised no concerns with the proposed times.

Fume Extraction – Residents on both Lyndhurst Road and Ballbrook Road, together with the Ballbrook Conservation Group have raised concerns regarding the appearance of, and odours and smells emanating from the flue. Furthermore, concerns have been raised that the submitted report does not take into consideration of the cumulative impact of the existing flues within the parade especially as some residents already experience smells from an existing restaurant on the parade.

The submitted odour assessment acknowledges that due to the predominant wind direction (westerly), the wind would and does blows any emissions past the immediate residential properties in the terrace block and towards those at the rear of the properties in the east/ northeast of the site.

The submitted assessment has identified that with the mitigation measures identified within the report that ensure that the resulting emissions from the proposed restaurant would not result in any significant adverse impact on the adjacent residential properties. Environmental Health have not raised objections to the proposal with regards to fumes and odours. In terms of cumulative impact Environmental Health have provided additional comments that there may be a cumulative impact of multiple flues but this would depend on the age and how well they are maintained. As a result they have requested the imposition of a condition regarding the submission of a scheme for fume extraction to mitigate any impact in terms of odours and smells. It is considered that the provision of a modern flue that met the requirements of Environmental Health would not give rise to cumulative impacts that would warrant a refusal of the application. To ensure that the cumulative impact of additional flue on the parade is maintained it is recommended that a condition is attached ensure that there is adequate maintenance schedule that

is carried out for the duration of the use. furthermore Environmental Health have requested the imposition of a condition regarding the submission of a scheme for fume extraction to mitigate any impact in terms of odours and smells.

Environmental Health raised in their comments that the applicant should investigate the possibility of extending the flue so it discharges above window level, to ensure adequate dispersal and protect the amenity of the residents in the flats above the application site. In response the applicant has provided an amended flue drawing to address this matter and Environmental Health reviewed this information and consider that a higher flue should aid dispersal and will reduce the likelihood of odours causing disamenity to the residents in the flats above. . It is recommended that the final details of the extraction system are dealt with through a suitably worded condition.

Appearance/Impact on Conservation Area – The proposal includes a new shop front which is similar to the shop front approved under 117372/FO/2017 that allow the first and second floor flats to be accessed from the front of the parade. All the materials are shown to match the existing materials and are not considered to result in harm on the designated heritage asset which in this case is the Ballbrook conservation area.

At the rear, a new door would be inserted to allow access to the rear yard and a flue erected from the kitchen.

There were concerns raised regarding the visual appearance of the proposed flue, however in terms of its impact on the conservation area this is not considered to be significant given its location to the rear with limited views from public areas. It is acknowledge that the flue would be visible from the rear gardens of some of the properties on Ballbrook Avenue and Lyndhurst Road. However the appearance of the flue would be similar to others installed to the rear of the parade and it is considered that its visual appearance would be improved further if the flue were to be painted. In response to these concerns the applicant has amended the diameter of the flue and has indicated that the flue would be a dark grey colour. It is considered that with these amendments together (figure 1) with its positioning the proposed flue would not be readily visible from public areas in the conservation area and is acceptable.

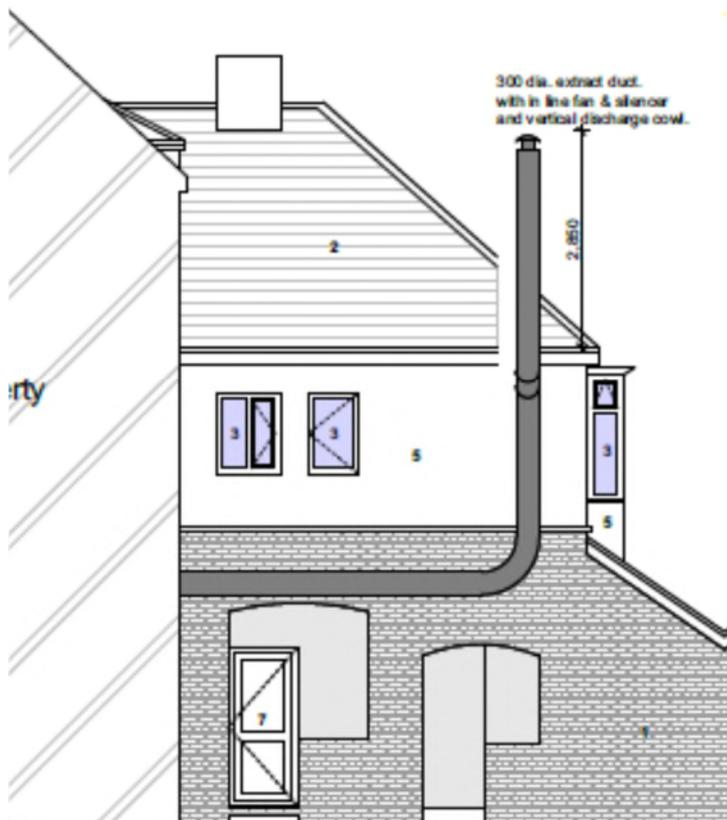


Figure 1: Amended Flue design and position

Highways/Car Parking – A number of residents have raised concerns with regards to the impact upon car parking and although no dedicated customer on-street parking facilities are provided, this is common for facilities of this nature in a local parade of shops. The proposal will not result in any changes to the highway and as with the previous use there will be similar requirement in terms of servicing and customers.

However, this parade is served by eighteen car parking spaces situated directly to the front of the property, these spaces are restricted to two hours between 8:00 and 18:00. In addition to this provision the parade is served by good public transport links in the form of buses, the tram stop and taxi bays located opposite.

It is therefore considered that any additional parking and servicing required by the use of the premises as a restaurant can be adequately catered for on the surrounding streets and would not give rise to unacceptable impacts that would warrant refusal of the application.

Servicing/Refuse – The applicant submitted a waste management strategy with the application which details the waste collection and disposal requirements for the proposed restaurant.

The waste management strategy shows that there would be three receptacles for waste:

1. Mixed dry recycling;

2. food waste, and;
3. residual waste.

Three individual bins for each of the above waste streams will be located in the commercial kitchen area, with a further residual waste bin would be positioned in the w.c and in the general serving area behind the counter.

The waste containers would be stored within the rear external yard and will be collected on a weekly basis for mixed dry recycling and food waste and either on a weekly or fortnightly basis for residual waste to the front of Lapwing Lane via the rear alleyway,

Furthermore it is recommended that the servicing hours are restricted to Monday to Saturday 7.30 am to 8.00 pm with no deliveries or waste collections on Sundays or Bank Holiday Mondays and a further condition to prevent the refuse, glasses or glass bottles being disposed of in outside receptacles between the hours of 21:00 and 08:00 to further protect the amenities of the nearby residents.

Other matters –Concerns have been raised regarding the lack of w.c within the unit, however this is clearly shown on the proposed floor plan at the rear of the unit and therefore there are no concerns in this regard.

Concerns have been raised regarding a takeaway use, however the application is for a restaurant use and a take away would require permission as it falls under a separate use class.

Conclusion – It is considered that on balance the proposed change of use would not give rise to unacceptable impacts to warrant refusal of the application. The use would introduce additional activity to a parade that has been subject of recent environmental improvements led by a local organisation and bring back into use a currently vacant unit. It is not considered that the proposed use would give rise to unacceptable impacts in terms of residential amenity either by way of noise, odours or an increase in comings and goings within a commercial parade. The scheme is considered to be in accordance with the guidance contained within saved policies DC10, DC18, DC26 and Core Strategy policies EN3, DM1, C10 and SP1

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 approval of the application is proportionate to the wider benefits of approval 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 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 during the course of the planning application and these concerns have been addressed in amended drawings.

The scheme is considered to be in accordance with the guidance contained within saved policies of the Unitary Development Plan for the City of Manchester 1995 and the Core Strategy Development Plan Document 2012.

Reason for recommendation

Conditions to be attached to the decision

1) The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason - Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.

2) The development hereby approved shall be carried out in accordance with the following drawings and documents:

(01)001 PL3, (04)001 PL2 and (05)001 PL2 stamped as received by the City Council as Local Planning Authority, on the 05.02.2019

Waste Management Strategy and Fellows Environmental document stamped as received by the City Council as Local Planning Authority, on the 14.11.2018

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policies SP1 and DM1 of the Core Strategy.

3) The premises shall not be open outside the following hours:-

Monday to Friday - 12:00 - 23:00

Saturday 12:00 - 23:00

Sunday/Bank Holidays 12:00 - 23:00

Reason - In interests of residential amenity in order to reduce noise and general disturbance in accordance with saved policy DC26 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Core Strategy.

4) Deliveries, servicing and collections, including waste collections shall not take place outside the following hours: 07:30 to 20:00, Monday to Saturday, no deliveries/waste collections on Sundays/Bank Holidays.

Reason - In order to protect the amenity of local residents and in accordance with policies SP1 and DM1 of the Core Strategy.

5) The refuse storage and disposal shall be carried out in accordance with Waste Management Strategy and Fellows Environmental document stamped as received by the City Council as Local Planning Authority, on the 14.11.2018

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 health, pursuant to policies DM1 and SP1 of the Manchester Core Strategy.

6) No refuse, glasses or glass bottles shall be disposed of in outside receptacles between the hours of 21:00 and 08:00 hrs

Reason - To protect the amenity of the occupiers from noise caused by putting out refuse, glasses or bottles late in the evening and early morning pursuant to policies D10 and DC26 of the Unitary Development Plan, and DM1 and SP1 of the Core Strategy for the City of Manchester.

7) Prior to the first use of the forecourt for outdoor seating a schedule of hours and seating layout shall be submitted to and approved by the City Council as local planning authority.

The approved hour and seating layout shall be used for external dining or drinking unless otherwise expressly granted by a planning permission.

Reason – In the interests of residential and visual amenity of the area in which the premises are located pursuant to policies SP1 and DM1 of the Core Strategy.

8) Before development commences a scheme for the extraction of any fumes, vapours and odours from the premises hereby approved shall be submitted to, and approved in writing by, the City Council as local planning authority. The approved scheme shall be implemented prior to occupancy and shall remain operational thereafter.

Reason - In the interests of the amenities of the occupiers nearby properties in order to comply with saved policy DC10 of the Unitary Development Plan for the City of Manchester and policies SP1 and DM1 of the Core Strategy.

9) Before any use hereby approved commences, the premises shall be acoustically insulated and treated to limit the break out 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.

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

10) Before first occupation of the development the building, together with any externally mounted ancillary equipment, shall be acoustically insulated in accordance with a scheme submitted to and approved in writing by the City Council as local planning authority in order to secure a reduction in the level of noise emanating from the equipment.

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

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: 121709/FO/2018 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:

**Environmental Health
Ballbrook Conservation Area Group**

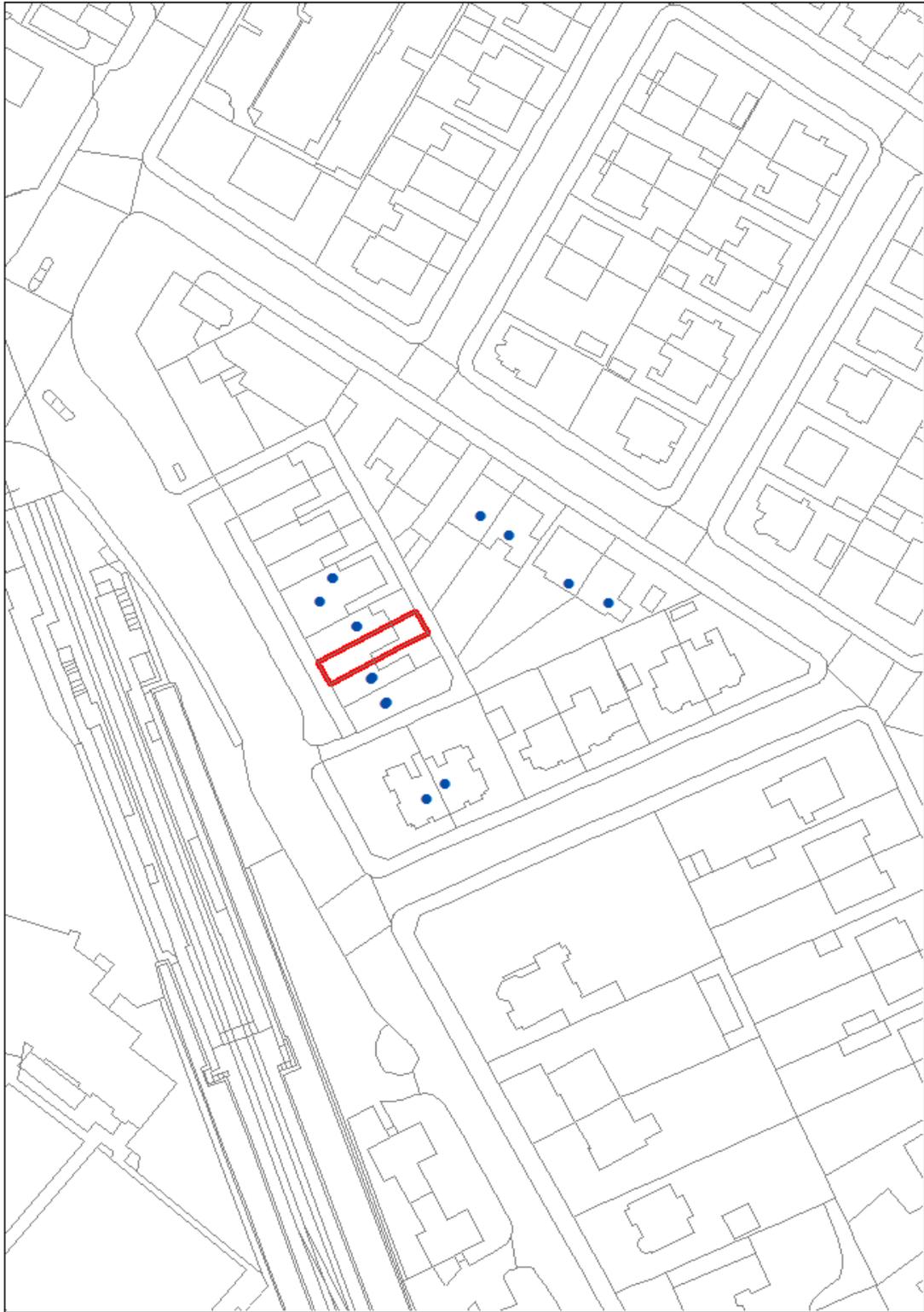
A map showing the neighbours notified of the application is attached at the end of the report.

Representations were received from the following third parties:

Environmental Health
Ballbrook Conservation Area Group
West Didsbury Residents Association

24 Lyndhurst Road, Manchester, M20 6AA
26 Lyndhurst Road, Manchester, M20 6AA
25 Ballbrook Avenue, Manchester M20 3JG
23 Ballbrook Avenue, Manchester, M20 3JG

Relevant Contact Officer : Robert Tyrer
Telephone number : 0161 234 4068
Email :



 Application site boundary  Neighbour notification
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