

<b>Application Number</b>	<b>Date of Appln</b>	<b>Committee Date</b>	<b>Ward</b>
102550/FO/2013/S1	28th May 2013	25th Jul 2013	Old Moat Ward

**Proposal** Retrospective Application for the enclosing of part of the existing canopy to external seating area involving UPVC glazed screens.

**Location** 110-112 Burton Road, Didsbury, Manchester, M20 1LP

**Applicant** Mr Colin Lowes , Mandeville, Tower Road, Poynton, Cheshire, SK12 1DD,

**Agent** Mr Sean O'Reilly, Bate and Taylor Architects, Macintosh House, 4A Cambridge Street, Manchester, M15GG,

### **Description**

This application relates to a ground floor double unit within a parade of two storey properties comprising commercial uses on the ground floor with residential over. There is a deep forecourt to the properties and yards to the rear. The parade is located at the northern edge of the Burton Road local centre. Facing the site across Burton Road, to the rear of the property and to the north of the parade are residential properties.

Planning permission ref 083291/FO/2007/S1 was granted in August 2007 for the change of use of the premise to a café/bar (sui generis). The approval was subject to the following conditions (amongst others):-

- The premises shall not be open outside the following hours, unless otherwise agreed in writing by the City Council as local planning authority:-

Sunday - Thursday 8:00-23:30,  
Fridays & Saturdays 8am-midnight

- Deliveries, servicing and collections, including waste collections are restricted within the following times:

Monday to Saturday 7:30 to 20:00  
No deliveries/waste collections on Sundays/Bank Holidays.

- No amplified sound or any music shall be produced or played in any part of the site outside of the building.

- The outside seating area shall only be used between the following times:

Sunday to Thursday 8:00 to 22:00  
Friday to Saturday 8:00 to 22:30

- The external sliding/folding doors must not be left open or used after the following hours:

Sunday to Thursday 8:00 to 22:00  
Friday to Saturday 8:00 to 22:30

- No servicing or other activity shall be carried out in the rear alley after the following hours:

Sunday to Saturday 7:30 to 20:00

- All windows and doors should be shut after:

22:00pm Sunday to Thursday  
22:30pm Friday and Saturday

Subsequently planning permission ref 087605/FO/2008/S1 was granted in October 2008 for the erection of a glass canopy at the front of the property and the creation of an outside seating area, in the form of a substantial raised deck. Conditions were attached to the approval in respect of the times the outside seating area could be used to those of the previous application, no amplified music and the need for the doors and windows to be closed after a certain time, again the same as for the earlier permission.

Since that time there have been two applications seeking to vary the opening times. In October 2008 permission ref 087594/JO/2008/S1 which sought to vary the following conditions attached to planning permission 083291/FO/2007/S1, Condition 5 to extend the opening hours on Fridays and Saturdays from 08.00 - midnight to 08.00 - 02.00. Condition 10 to allow the outside seating area to be used at the following times Sunday - Thursday 08.00 - 22.30, Friday - Saturday 08.00 - 23.30. Condition 11 to allow the external sliding/folding doors to be left open during the following times Sunday - Thursday 08.00 - 22.30, Friday - Saturday 08.00 - 23.30. and condition 13 to allow the windows to be left open until during the following times Sunday - Thursday 08.00 - 22.30, Friday - Saturday 08.00 - 23.30. This application was refused.

In September 2010 an appeal against the non determination of an application for the variation of Condition No. 5 attached to planning consent 083291/FO/2007/S1 to allow the premises to open between 8am to 12am Sunday to Wednesday and 8am to 1am Thursday to Saturday was dismissed.

There are a number of unauthorised advertisements on the property and these are the subject of a separate application, and discussions with the applicant are on going to resolve the matter.

This current application seeks to regularise the partial enclosure of the area beneath the canopy which is part rigid and part retractable, which was itself approved under ref. 087605/FO/2008/S1. The enclosure projects 3m from the front face of the original building and comprises a series of full height uPVC frames with two sets of double doors giving access to the remaining outside seating area. The enclosure has created an additional 25.5 sq m of internal floor space with a corresponding reduction in outside seating space. The hours of opening remain unchanged

## **Consultations**

Local residents/businesses – 2 letters of objection have been received . The grounds for objection are summarised below.

1. The development will result in an increase in the internal capacity of the premises. This could lead to problems with parking, noise and general nuisance.

West Didsbury Residents Association – Have made the following representations in respect of the application.

1. The effect of the development is to turn what was previously an outdoor seating area into an extension of the indoor seating area.

2. Business activities at the premises are presently governed by planning approval 083291 and premises licence 100187, each of which contain conditions intended to minimise the impact of the business on the amenity of neighbours. WDRA request that any new planning approval contains equivalent conditions.

3. The increased interior capacity of the premises gives rise to concerns that this will lead to an increase the level of late night disturbance likely to be experienced by nearby residents including residents above the row of shops containing the application premises.

4. The existing planning consent 083291 is for a sui-generis café/bar. WDRA are anxious that the distinction between café/bar and bar continues to be maintained. WDRA have concerns that the effective enlargement of the inside business area may be conducive to a de facto change of use from café/bar to bar with an attendant reduction in numbers of meals and drinks served to seated patrons and a corresponding increase in the numbers of vertical drinking patrons not being served a meal. They seek conditions in any approval to support the retention of the existing permitted sui-generis use and precluding any slide into use solely as a bar.

5. Provided conditions are included that address the above points, WDRA do not wish to raise any formal objection.

Highway Development – There are no highway objections to the proposal.

Strategic Area and Citywide Support Manager – any comments will be reported.

## **Issues**

Core Strategy – The relevant Core Strategy policies are SP1, DM1 and C10.

Policy SP1 – Outlines the spatial principles which will guide development in the City. In particular it seeks to create well designed places that enhance or create character.

Policy DM1 - Seeks to protect the amenity of an area from the adverse impact of development.

Policy C10 – Addresses leisure and the evening economy and says that uses should not create an unacceptable impact on neighbouring uses in terms of noise traffic and disturbance.

Unitary Development Plan – Saved Policies DC10 and DC26 are relevant to this development.

Policy DC10 sets down the criteria to be considered in determining applications for food and drink uses, in particular the need to protect residential amenity.

Policy DC26 seeks to protect the amenity of residents from the affects of noise generated by developments.

The impact of the development in terms of these policies is discussed in more detail in the following sections.

Principle – The principle of enlarging the property in front of the building line and into the forecourt is established through the granted of planning permission 087605/FO/2008/S1 for the canopy and the raised deck. The issues for this application are therefore the impact on amenity caused by the creation of additional capacity within the building and the impact of the glazing panels on the visual amenity of the area.

Visual amenity – The site occupies a prominent location on the west side of Burton Road to the north of the local centre. The construction of the canopy and raised deck has already raised the visual profile of the business in the street scene, however, the glazed enclosure under the canopy, as constructed, does not fully enclose the area beneath the canopy. As such the visual impact of the glazed is most visible at the

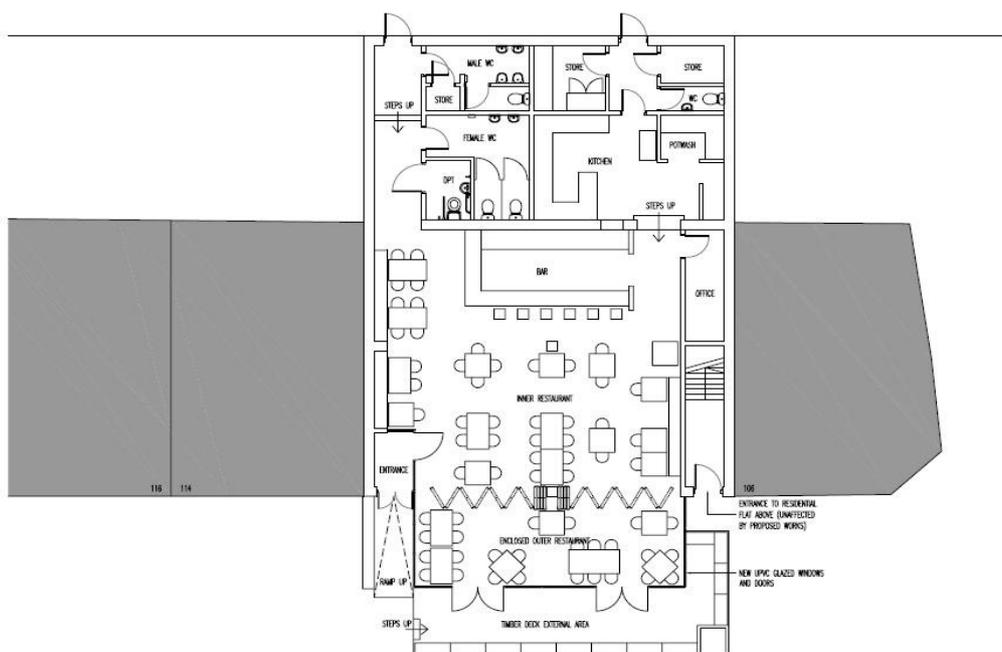


gables. By slightly setting back the front face of the enclosures beneath the canopy its visual impact is significantly reduced. On balance it is considered that the

proposed enclosure does not have an adverse impact on the visual amenity of the area and therefore accords with the principles of policies SP1 and DM1.

Design – The vertical proportion of the panels reflects the design of the canopy and is considered to be an appropriate solution. The proposal therefore accords with policies SP1 and DM1.

Intensification of use – The enclosure has increased the internal floor space by 25.5 square metres, an approximate increase in public area of 33% with a corresponding reduction in the outside seating area. The inside areas can be used for an extra 1.5 hours a day, thus weather permitting any intensification of the use is restricted to a relatively short period of time which it is considered can be controlled through conditions, including restrictions on the opening hours, and a requirement to keep windows and doors closed to prevent the breakout of noise. Such conditions were attached to the original permission. On balance it is considered that the additional enclosed floor space, shown as 26 covers on the submitted drawing, would not result in a significant intensification of use that the amenity of the area would be adversely affected. The development therefore accords with the provisions of policies SP1 and DM1 of the Core Strategy and saved Unitary Development Plan policy DC10.



Residential amenity – The application site is located at the north end of the local centre and is in close proximity to residential properties. In this respect the Planning Service has sought to protect the amenity of residents by resisting attempts to extend the opening hours beyond midnight. This application does not seek to extend the opening hours and whilst the additional enclosed floor space means that it can accommodate more patron for longer, they would still be vacating the premises and a reasonable hours and not potentially causing a disturbance in the early hours. On balance it is therefore considered that there would be no significant loss of amenity from the development and that it accords with policies SP1 and DM1 of the Core Strategy and Saved Unitary Development Plan policies DC10 and DC26.

Conclusion – On balance it is considered that the works the subject of this application do not significantly change the nature or scope of the business carried on and are therefore in accord with policy and acceptable.

**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 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 31 Declaration**

Officers have worked in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application.

### **Reasons for Recommendation**

Approve on the basis that the proposal is in accord with the City Council's Core Strategy in particular policy SP1 which outlines the spatial principles which will guide development in the City. In particular it seeks to create well designed places that enhance or create character, policy DM1 which seeks to protect the amenity of an area from the adverse impact of development, policy C10 which addresses leisure and the evening economy and says that uses should not create an unacceptable impact on neighbouring uses in terms of noise traffic and disturbance and saved Unitary Development Plan policy DC10 which sets down the criteria to be considered in determining applications for food and drink uses, in particular the need to protect residential amenity and policy DC26 seeks to protect the amenity of residents from the affects of noise generated by developments and there are no material considerations of sufficient weight to indicate otherwise. The Guidance contained in the National Planning Policy Framework supports approval of this application.

### **Conditions to be attached to the decision**

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

MH905-01, 02, 03 and 04

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.

2) The outside seating area shall only be used between the following times:

Sunday to Thursday 8:00 to 22:00

Friday to Saturday 8:00 to 22:30

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

3) No amplified sound or any music shall be produced or played in any part of the site outside of the building.

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

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

Sunday - Thursday 8:00-23:30, Fridays & Saturdays 8am-midnight

Reason - In interests of residential amenity in order to reduce noise and general disturbance in accordance with the saved policy H2.2 of the Unitary Development Plan for the City of Manchester.

5) The doors to the glazed screen must not be left open or used outside of the following hours:

Sunday to Thursday 8:00 to 22:00

Friday to Saturday 8:00 to 22:30

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

### **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: 102550/FO/2013/S1 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  
Withington Civic Society  
West Didsbury Residents Association  
102 to 106, 106A, 110 to 122, 114A, 121 to 127, 123B, 123C, 127A Burton Road,  
Flats 1 to 5, 98 Burton Road,  
Flats 1 to 6, 100 Burton Road,  
1, 2, 12 Langford Road,  
5, 5a to 5D Central Road,  
3, 3A to 3D Central Road,  
1, 1A to 1C Central Road,  
Flats 1 to 15, 2 Central Road,  
Top Flat, 102 Burton Road,  
Flat, 110 - 112 Burton Road  
Flat Above, 116 Burton Road,

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

12 Langford Road, Manchester, Manchester, M20 1QA  
West Didsbury Residents Association

**Relevant Contact Officer :** Dave Morris  
**Telephone number :** 0161 600 7924  
**Email :** d.morris@manchester.gov.uk