Application Number 109974/JO/2015/S1  Date of Application 7 September 2015  Committee Date 15 October 2015  Ward Chorlton Ward

Proposal  Removal of condition no. 11 attached to planning permission ref: 084593/FO/2007/S1 to enable the use of the external area to the front for external dining and drinking

Location  133 Beech Road, Chorlton-Cum-Hardy, Manchester, M21 9EQ

Applicant  Mr James Plant, Mish Mash, 133 Beech Road, Chorlton, Manchester, M21 9EQ,

Agent  Mr Matthew Wyatt, JWPC Limited, 1B Waterview, White Cross, Lancaster, LA1 4XS,

Description

This application relates to a large single storey former chapel currently in use as a restaurant within Class A3. The building is set back at the rear of the site with the rear and one of the side walls of the building forming the boundaries of the site. There is a passage down one side of the building approximately 3.5 metres wide and at the front of the property is a grave yard approximately 10 metres deep and 16.5 metres wide. The front of the property is enclosed by an approximately 1.8 metre high brick wall. The graveyard is elevated in relation to the adjoining street level. There is a single entrance gate to the site located centrally on the Beech Road frontage.

The site which is within the Beech Road local shopping centre and the Chorlton Green Conservation Area; is adjoined to the west by the ‘Famous Trevor Arms’ a long established public house; to the south by the gable walls of residential properties on Stanley Grove; and, to the east by the site of a derelict detached building, currently the subject of an application for a mixed retail/residential development. Facing the site across Beech Road are commercial properties on Beech Road and Stockton Road.

Planning permission was granted in February 2008 reference 084593/FO/2007/S1 for the change of use of the former chapel from storage (Class B8) to restaurant (Class A3) including elevational alterations and erection of a side entrance porch and flue enclosed within a false chimney. The permission was subject to a condition which restricted the opening hours to 8.00am to 11.00pm seven days per week.
This application seeks to remove the condition prohibiting the use of the grave yard as an outside seating area. At the time of the site visit eight tables and a number of chairs were arranged on the grave yard which has a loose gravel surface. There was also a single patio heater. The application gives no indication as to the hours of use for the outside seating area the implication being that these would be the same as the hours of opening for the restaurant.
The Premises License for the property allows for the sale of alcohol between 11.00am and 11.30pm seven days a week, with patrons required to leave the premises by midnight. In addition condition 9 attached to the premises license requires all external tables and chairs to be removed from the outside area by 9.00pm Sunday to Thursday and 11.00pm Friday and Saturday. Condition 10 says that alcohol consumed outside the premises shall only be consumed by patrons seated at tables.

**Consultations**

**Local residents**

Five letters have been received to the proposed development, the comments are summarised below.

- The premises have had an outside seating area since it opened.
- One objector lives opposite the premises and suffers from the noise generated. On a couple of occasions they have had to phone the restaurant post 11.00pm to ask them to take their patrons inside.
- There is no issue with food being served outside during the day it is in the evening the problems arise.
- It is considered that a limit of 10.00pm should be put on the use of the outside area.
- The noise from patrons carries down Stockton Road which is a residential street.
- Beech Road is a vibrant area, however, there needs to be a balance between the residents and establishments working and living side by side.
- A limited number of tables to be provided would be acceptable.
- The more intensive use of the premises will result in increased demand for parking which will take place in the surrounding residential streets.
- The original condition was imposed to protect residents amenity and its removal will result in similar issues with noise fumes and odours as experienced with the beer garden at the Beech public House.

**Strategic Area and Citywide Support Manager (Environmental Health)**

The applicant has provided an acoustic survey alongside the application which has been assessed as part of the consideration of the application. It is understood that food is available at Mish Mash until 9.30pm, therefore it must be taken into consideration, that the main use of the external area, either currently or in the future, may be for drinking.

Environmental Health do not accept some of the assumptions made within the acoustic report particularly in terms of the comparison with another premises within the area which they considered have significantly less capacity than the proposal site. Environmental Health therefore do not accept the comparison of the two premises.

It is noted that conditions were attached to the original planning approval relating to minimising the impact of the use on residential amenity. These are still relevant to the continued use of the premises.
On the basis of the above points and the findings of the acoustic report, they recommend that more restrictive hours than on the main building (which are 11.00am to 11.00pm seven days a week) are imposed, and suggest terminal hours of 9.00pm Sunday to Thursday and 11.00pm Friday and Saturday.

Highways Development Management

It is not considered that the removal of condition 11 would have an unacceptable impact in terms of the highway.

Policy

The following policies are relevant in that they relate to the impact that food and drink relates uses can have on residential amenity

Core Strategy

The relevant Core Strategy Policies are DM1, C10 and EN3.

Policy DM1 – Seeks to protect the amenity of an area from the adverse impact of development including the affect of noise and odours.

Policy C10 – In considering applications in respect of leisure and the evening economy consideration will be given to the impact on residential amenity in terms of, amongst others, noise.

Policy EN3 – new developments should be designed so as to support the Council in preserving or enhancing the City’s conservation areas.

Unitary Development Plan

The relevant saved Unitary Development Plan policies are DC10, DC18 and DC26.

Policy DC10 – Seeks to protect the amenity of residents from the impact of food and drink related uses.

Policy DC18 – Seeks to preserve or enhance the City’s conservation areas

Policy DC26 – seeks to protect the amenity of residents from the adverse impact of noise generating uses.

Core Strategy policies DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26 are relevant in that they relate to the impact that food and drink relates uses can have on residential amenity or seek to protect the amenity of residents from noise. Core strategy policy EN3 and saved Unitary Development Plan policy DC18 relate to the impact that the outside seating area will have on the character of the Chorlton Green Conservation Area. The impact of the proposed development on these policies is addressed in the following sections.
Issues

Principle

Outdoor dining is a common part of the Beech Road local centre, with a majority of food and drink uses having outside seating areas. When planning permission for the use of the application property was granted in 2008 this was not the case and the planning permission was granted although there were concerns from residents, particularly on Stanley Grove to the rear. At that time a condition was attached to the planning permission to preclude the use of the outside areas. It is considered that given the location of the premises within a local centre the principle of allowing the use of the external area is now considered to be acceptable and accord with Core Strategy Policy C10 and saved Unitary Development Plan policy DC10.

Use of the graveyard.

The property has not been used a chapel since planning permission was granted for a change of use to storage in October 1961. In that the proposed development does not involve any form of excavation there are no planning reasons for refusing permission based on its previous use as a grave yard.

Hours of operation

The current planning permission for the premises allows it to operate until 11.00pm seven days a week. The premises license allows the property to remain open until midnight, and serve alcohol only until 11.30pm. This apparent conflict between licensing hours and planning hours is not uncommon as the licensing and planning regimes are required to consider different issues and where such discrepancies arise the licensee should adhere to the more restrictive hours. In this instance the premises license also attached conditions to the use of the outside area, namely that the tables and chairs should be removed from the outside at 9.00pm Sunday to Thursday and 11.30pm Friday and Saturday. Another condition requires patrons drinking outside to be sat at a table. This effectively precludes the use of the outside area after the prescribed times.

Having regard to the proximity of residential accommodation, the restrictions imposed through Licensing, the current planning hours of use, and the comments of Environmental Health it is considered necessary to attach a condition which restricts the hours that the external area can be used. Whilst the comments of Environmental Health are noted, in particular that they recommend a time of 11pm on Friday and Saturday nights, given the size of the external area at the property and the use of the property as a restaurant it is considered appropriate to restrict the hours of use for Fridays and Saturdays until 10pm.

In determining the appropriate times regard is made to the most recently granted planning permission for an outside seating area at 32 Beech Road (The Launderette) which was allowed on appeal to be used until 10.00pm seven days a week. The seating area at 32 Beech Road has a closer relationship to residential accommodation but has a much smaller external area than the application site.
In this instance it is considered that the appropriate times of use of the external area are from 8.00am to 9.00pm Sunday to Thursday and 8.00am to 10.00pm Friday and Saturday. This provides a balance between the needs of the existing business and the amenity of nearby residential properties given the size of the external area. This will also allow the premises to manage the removal of tables and chairs in accordance with its license. It is considered that these proposed hours would accord with Core Strategy policies DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26.

**Extent of the proposed use.**

A condition was attached to the original planning permission for the use of the premises as a restaurant prohibiting the use of the passage at the side of the property for any purpose including smoking by both staff and patrons as it could potentially create an uncontrollable source of noise close to the residential properties on Stanley Grove to the rear. The applicant has recognised this condition in the Design and Access statement and has excluded it from the outside seating area, which would be located at the front of the property away from residential accommodation to the rear. The applicant has been asked to supply a drawing clearly indicating the extent of the outside seating area and should planning permission be granted this would be the subject of a condition.

**Residential amenity**

There is residential accommodation above some of the commercial uses in the immediate vicinity of the application site, however, the occupiers of such accommodation would not expect the same levels of amenity as those in a more suburban location, although any impact must still be within acceptable limits. In addition there is residential accommodation nearby on Stanley Grove and Stockton Road. One resident has referred to noise being funnelled up Stockton Road from the bars and impacting on the amenity of residents. It is acknowledged that it is more difficult to control noise from outside areas with the most obvious way being to require the outside area to close earlier than the building, this approach is reflected in the premises license which requires the tables to be removed by 9.00pm Sunday to Thursday and 11.00pm Friday and Saturday. A second condition requires diners and drinkers using the outside area to be sat at tables.

Having considered the representations of residents and the comments of the Strategic Area and Citywide Support Manager it is considered that in order to ensure that residents do not suffer any undue loss of amenity it is necessary to restrict the hours of use of the external area.

In addition it is considered necessary given the external area is to be used for dining to preclude the playing of live or amplified music outside of the building. An appropriately worded condition is proposed to be attached to any approval.

On balance it is considered that the proposed hours restriction would accord with Core Strategy policies DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26.
Capacity

There is no indication in the application as to the total number of covers/tables proposed although currently there are 8 tables. Whilst the area available for use is larger than at 32 Beech Road, the licensing requirement for the removal from outside of the tables would act as a disincentive for there to be a significant increase in the number of tables, both in terms of the effort required to move the tables and the amount of space they would take up within the building. In light of the proposed restriction in terms of hours of use and the requirements of the premises license it is not considered necessary to seek to restrict the numbers of tables.

Impact on the Character of the Chorlton Green Conservation Area

The removal of condition 11 would bring into use the forecourt of this prominent building within the Chorlton Green Conservation Area. The grave yard itself is largely screened from view by people on Beech Road by the boundary wall. The use of this area will ensure that it remains in a tidy condition which it is considered would be a benefit to the visual amenity of the area. That the tables and chairs used are not fixtures and the use of a gravel surface are considered to be appropriate solutions for this type of activity in the conservation area. The proposed development therefore helps preserve and enhance the conservation area and accords with Core Strategy policy EN3 and saved Unitary Development Plan policy DC18.

Parking

There is a recognised parking problem on Beech Road and in the surrounding residential streets. However, Beech Road is an existing local centre and the provision of dedicated parking for a commercial use within it would not normally be a requirement. There is also a substantial catchment area for the centre within easy walking distance. Highways Development Management do not consider that the additional capacity at the premises caused by the removal of condition 11 would ultimately have any significant impact on parking in the area. It is therefore considered that on balance the proposed development would accord with Core Strategy conditions DM1 and C10 and saved Unitary Development Plan policy DC10.

Conclusion

It is considered that the use of the external area would bring the use of the premises into line with other food and drink outlets on Beech Road. Subject to the proposed hours condition it is not considered that there would be any significant impact on the amenity of residents. The proposed development is therefore considered to comply with Core Strategy policies DM1, C10 and EN3 and saved Unitary Development Plan policies DC10, DC18 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 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 issues arising from the consideration of this application.

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 unless otherwise agreed in writing by the City Council as Local Planning Authority: drawing 526/04D, report ref 06168-004 dated July 2006 by Philip Acoustics Ltd and drawing ...........................................

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to Core Strategy policies DM1, C10 and EN3 and saved Unitary Development Plan policies DC10 and DC18 of the Manchester Unitary Development Plan.

3) The land to the side of the former chapel shall not be used for any trade or business purposes or by patrons or staff wishing to smoke.

Reason - To protect the amenity of the occupiers of nearby residential properties from the adverse affects of noise generated by the use of these outside areas pursuant to Core Strategy policies DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26.
4) The fume extraction system approved in respect of planning permission 084593/FO/2007/S1 and detailed on drawing 526/04 D in report ref.06168-004 dated July 2006 shall be implemented in full and shall be maintained in accordance with the manufacturers specifications and kept in use at all times when the use hereby approved is operating.

Reason - In the interests of the amenities of the occupiers nearby properties in order to comply with Policies H2.2, DC10, and DC26 of the Unitary Development Plan for the City of Manchester.

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

8.00am to 11.00pm seven days a week

Reason - In interests of residential amenity in order to reduce noise and general disturbance in accordance with Core Strategy policies DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26.

6) No loading or unloading shall be carried out on the site outside the hours of 7.30am to 8.00pm Monday to Friday and 9.00am to 8.00pm Saturday.

Reason - In order to protect the amenity of local residents and in accordance with Core Strategy policy DM1 and saved Unitary Development Plan policies DC10 and DC26.

7) The premises shall be acoustically insulated and treated to limit the break out of noise in accordance with the scheme set down in the report by Philip Acoustics ref 06168-004 dated July 2006.

Reason - To safeguard the amenities of the occupiers of the building and occupiers of nearby properties, pursuant to Core Strategy policies DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26.

8) All storage of refuse and material for recycling shall take place within the designated area shown on drawing 526/04D

Reason - To protect the amenity of the occupiers of nearby residential accommodation from the adverse affects of odours and noise pursuant to Core Strategy policies DM1, C10 and EN3 and saved Unitary Development Plan policies DC10 and DC18.

9) The external area shown on drawing number ..................shall only be available for use to patrons for dining or drinking between the hours of 8.00am to 9.00pm Sunday to Thursday and 8.00am to 10.00pm Fridays and Saturdays.

Reason - In the interest of residential amenity, pursuant to Core Strategy policies DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26.
10) The self closing devises fitted to the external door in accordance with condition 14 attached to planning permission 084593/FO/2007/S1 shall be maintained and the doors shall not be prevented in any way from closing.

Reason - To prevent the breakout of noise through open doors pursuant to Core Strategy policy DM1 and saved Unitary Development Plan policy DC26.

11) There will be no live within the building or the curtilage of the site.

Reason - To protect the amenity of the occupiers from the adverse affect of loud music pursuant to Core Strategy policy DM1 and saved Unitary Development Plan policy DC26.

12) There will be no live or amplified music played outside of the building or the curtilage of the site.

Reason - To protect the amenity of the occupiers from the adverse affect of loud music pursuant to Core Strategy policy DM1 and saved Unitary Development Plan policy 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: 109974/JO/2015/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
Beech Road Traders
Chorlton Civic Society

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:

31, 48 Stockton Road

Relevant Contact Officer : Dave Morris
Telephone number : 0161 600 7924
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