

## List No. 6

<b>Woodhouse Park Ward</b>	<b>Application Number</b> 084645/FO/2007/S2	<b>Date of Appln</b> 2nd Oct 2007	<b>Committee Date</b> 20th Dec 2007
--------------------------------	--	--------------------------------------	--

**Proposal** Retrospective application for the erection of timber enclosed smoking shelter to the side elevation.

**Location** The Mountain Ash, Portway, Wythenshawe, Manchester, M22 6SF

**Applicant** Tracey McLoughlin, The Mountain Ash, Portway, Wythenshawe, Manchester, M22 6SF

**Agent**

### Description

This application was previously presented to the Wythenshawe Area Committee (WAC) meeting of 22nd November 2007, where it was considered and recommended for refusal in accord with officer recommendation.

This application is for the erection of a timber enclosed smoking shelter. On inspection of the site it was discovered that the shelter had already been erected, therefore making the application retrospective.

The timber smoking shelter is situated on the north elevation of the Mountain Ash public house, which is located on the west side of Portway adjacent to Burnsall Walk. The timber smoking shelter covers a floor area of 44m<sup>2</sup> and is 3 meters in height at its highest point with a shallow mono-pitched roof.

The surrounding area is predominantly residential, with some retail and commercial premises located within the shopping parade on Burnsall Walk.

### Consultations

Local Residents - Two letters of objection have been received the main comments of which are outlined below:

i) Construction has taken place prior to the application being made, a projection television and seating, in the form of benches, have also been installed.

ii) A large proportion of the car park has also effectively been converted into a beer garden.

iii) The modifications have impacted severely on the lifestyle of local residents; windows cannot be opened before midnight because of the level of noise and foul language.

iv) Increase in noise and disturbance.

v) The applicant has clearly intended to bypass the planning system by building without permission.

Licensing Unit - A Licensing hearing was determined on 29th September 2007. The hours granted were as follows:

The provision of regulated entertainment restricted to:

## List No. 6

Monday to Thursday	10.00hrs until 23.30hrs
Friday and Saturday	10.00hrs until 00.00hrs
Sunday	10.00hrs until 22.30hrs

The supply of alcohol restricted to:

Monday to Thursday	10.00hrs until 23.30hrs
Friday and Saturday	10.00hrs until 00.00hrs
Sunday	10.00hrs until 22.30hrs

Opening hours for the premises restricted to:

Monday to Thursday	10.00hrs until 00.00hrs
Friday and Saturday	10.00hrs until 00.30hrs
Sunday	10.00hrs until 23.15hrs

The following licensing conditions were also imposed:

- i) External drinking area to close no later than 23.00.
- ii) The management of the premises will ensure that noise from regulated entertainment will be inaudible at the nearest residential premises.
- iii) Prominent signs shall be displayed requesting that customers respect local residents and leave quietly.
- iv) Telephone numbers for taxi firms shall be displayed in a prominent location or provide a facility for customers to order cabs
- v) Staff shall be trained to recognise and refuse service to customers who have had too much to drink, to handle potential trouble makers and diffuse difficult situations.
- vi) Keep windows and doors shall be kept closed when regulated entertainment is in use.
- vii) Any air-conditioning or ventilation machinery shall not produce excessive noise.
- viii) A noise limiter shall be installed and maintained at a level set by Environmental Health.

Head of Environmental Health - That the following condition be applied to any approval:

The smoking shelter shall not be used outside the following hours unless otherwise agreed in writing by the City Council as local planning authority: -

Monday to Sunday 10:00am to 23:00

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to policy H2.2 of the adopted UDP for the City of Manchester.

Greater Manchester Police (Architectural Liaison Unit) - Having looked at the drawings and the site, I note that the shelter has already been erected. I question the location of the shelter given the proximity of the adjacent dwelling and the concern this may give to residents of this property in terms of noise,

## **List No. 6**

disturbance and concentration of smoke fumes. There appears to be more suitable locations for the shelter elsewhere around the building where disturbance to neighbours would be minimal.

Head of Landscape Practice MEDC - No comments to make.

## **Issues**

Unitary Development Plan - Reference is made to the following policies:

- i. H2.2 - particular reference is made to the consideration of development in terms of its impact on residential amenity in terms of noise disturbance;
- ii. DC26.3 - States that development that is likely to generate high levels of noise will not be permitted in residential areas.

Wythenshawe Strategic Regeneration Framework - This document provides a strong vision for Wythenshawe over the next 10 - 15 years, guiding the improvement of public services for Wythenshawe residents and shaping future development. At the heart of the Strategic Regeneration Framework (SRF) is a vision for Wythenshawe as Manchester's Garden City, based both on Wythenshawe's uniqueness and the opportunities in the area. This brings together the positive aspects of Wythenshawes housing and green space with the continued growth of the areas economy and potential for further job creation, better quality shops and lifestyle facilities.

It is acknowledged that the SRF is not part of the adopted UDP for Manchester, but it is Council policy for Wythenshawe. The framework clearly follows the adopted UDP and is a much more current and specific document for the Wythenshawe area. The Wythenshawe SRF document will inform the Local Development Framework for the City of Manchester i.e. the replacement to the exiting UDP.

In general terms it is considered that the proposal is generally consistent with the Wythenshawe SRF document in terms of its aspirations for business development. Consideration needs to be given to the relationship of the development in respect of neighbourhood regeneration.

Regional Spatial Strategy for the North West - Formerly RPG13, this provides planning guidance for the North West region. Since 2004, the RSS has formed part of the development plans, as such the weight to be attached to its policies has increased. It contains policies that address core principles of development including the following:

DP2: Enhancing the Quality of life - Ensuring development provides a high quality of life for this and future generations.

DP3 Quality in New Development - Ensuring that new development demonstrates good design and respect for its setting.

## List No. 6

The North West Plan, Draft Regional Spatial Strategy (RSS) - Publicised in January 2006, this draft RSS document provides a framework for the physical development of the region over the next 15 to 20 years. Policy DP1 is relevant in its requirements to "make more sustainable, transparent decisions" and "ensure quality in development".

### Planning Policy Statement Note 1 (PPS1): Creating Sustainable Communities

PPS1 encourages the promotion of urban and rural regeneration to improve the well-being of communities, improve facilities, promote high quality and safe development and create new opportunities for the people living in those communities. In addition to this PPS1 clearly outlines the importance of creating sustainable communities.

Residential Amenity - The premises is located approximately 11 metres (36 ft) from houses on Burnsall Walk and residential uses are located above the shops within the parade on Burnsall Walk. Whilst the public house and its proximity to residential properties already results in a certain degree of residential disamenity it is considered that the timber smoking shelter introduces a new level of disturbance, by bringing a new external use closer to residential properties. This view is born out by the complaints received from the residents living closest.

Anti - social behaviour - Whilst criminal and anti-social activity is a matter for the Police, the potential for the proposal to generate additional noise disturbance late at night and disturbance late at night is material to the consideration of this planning application.

Noise - The development has a particular impact due to the proximity of the premises to neighbouring residential uses and the potential for noise disturbance in the late hours of the night. The noise disturbance is more pronounced as significant numbers of patrons are able to congregate outside for longer periods in relative comfort due to the sheer mass of the smoking shelter.

## CONCLUSION

The proposal significantly affects residential amenity and potentially exacerbates existing problems of noise disturbance and anti-social behaviour. The proposal is therefore contrary to policies H2.2 and DC26.3.

**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 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

## **List No. 6**

development proposal. He 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 AND ENFORCE**

Instruct the City Solicitor to take such action as is necessary including enforcement action under Section 172 of the Town and Country Planning Act 1990 (amended) to secure the cessation of the use and the removal of the unauthorised structure.

Wythenshawe Area Committee - Recommend refusal .

### **Conditions and/or Reasons**

1) The proposal has resulted in increased levels of noise, activity and disturbance, throughout the day and particularly during the sensitive late evening period when the impact on residential amenity is most detrimental. The disamenity resulting from the associated increase in noise and activity external to the licensed premises would be unacceptable by virtue of its adverse impact on the residential amenity of residents of nos 15 to 19 Burnsall Walk and would thereby be contrary to policies H2.2 and DC 26 Planning and Noise.

2) Due to the scale and massing of the timber smoking shelter to the side of the premises it is considered to be detrimental to the visual amenities of the neighbouring residents and the resulting detrimental impact on residential amenity would be contrary to policy H2.2 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: 084645/FO/2007/S2 held by planning or are City Council planning policies, the Unitary Development Plan for the City of Manchester, national planning guidance documents, or relevant decisions on other applications or appeals, copies of which are held by the Planning Division.

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

Chief Executive's Landscape Practice Group  
Environmental Health  
Licensing Unit  
Greater Manchester Police  
Steve Hobson, Crime Reduction Officer  
1 Pitchcombe Road, Manchester, M22 1QZ  
2 Pitchcombe Road, Manchester, M22 1QZ  
32 Barrowfield Road, Manchester, M22 1RT  
34 Barrowfield Road, Manchester, M22 1RT  
36 Barrowfield Road, Manchester, M22 1RT  
38 Barrowfield Road, Manchester, M22 1RT  
109 Portway, Manchester, M22 1XB

**List No. 6**

111 Portway, Manchester, M22 1XD  
Gillani Minimarket, 2 Burnshall Walk, Manchester, M22 1SG  
6 Burnshall Walk, Manchester, M22 1SG  
8 Burnshall Walk, Manchester, M22 1SG  
10 Burnshall Walk, Manchester, M22 1SG  
15 Burnshall Walk, Manchester, M22 1SG  
17 Burnshall Walk, Manchester, M22 1SG  
19 Burnshall Walk, Manchester, M22 1SG  
21 Burnshall Walk, Manchester, M22 1SG  
23 Burnshall Walk, Manchester, M22 1SG  
2a, Burnshall Walk, Manchester, M22 1SG  
4a, Burnshall Walk, Manchester, M22 1SG  
6a, Burnshall Walk, Manchester, M22 1SG  
8a, Burnshall Walk, Manchester, M22 1SG  
10a, Burnshall Walk, Manchester, M22 1SG  
Post Office, 4 Burnshall Walk, Manchester, M22 1SG  
40 Barrowfield Road, Manchester, M22 1RT  
42 Barrowfield Road, Manchester, M22 1RT  
44 Barrowfield Road, Manchester, M22 1RT  
Mountain Ash Hotel, Portway, Manchester, M22 1SF

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

Mr And Mrs A E Johnson, 17 Burnshall Walk, Manchester, M22 1SG  
P Byrne, 19 Burnshall Walk, Manchester, M22 1SG

**Relevant Contact Officer :** Melanie Tann  
**Telephone number :** 0161 234 4538  
**Email :** m.tann@manchester.gov.uk