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<b>Application Number</b>	<b>Date of Appln</b>	<b>Committee Date</b>	<b>Ward</b>
085220/FO/2007/C3	8th Jun 2009	10th Sep 2009	City Centre Ward

**Proposal** Change of use of part of the ground floor from A1, A2, B1, and D1 to A3 (restaurant and cafe) with ancillary bar use

**Location** 360 Development, Duke Street, Castlefield, Manchester, M3 4NF

**Applicant** SGB Properties, 18 Warrington Street, Ashton-under-Lyne, 026 6AS

**Agent** Whitebox Architecture Ltd, 2 Swinton Square, King Street, Knutsford, WA16 6HH

### **Description**

The application relates to the ground floor unit of the 360 building on Duke Street within Castlefield. The building is predominantly residential with the ground floor unit, which is currently vacant, having previously been used as a temporary sales office and having consent under the original planning permission for use for A1 (shops), A2 (financial and professional services), B1 (business) and D1 (non-residential institutions). The unit has its main frontage on Duke Street, with return elevations on Duke Place and Rice Street.

The proposal is to change the use of the unit to a restaurant with an ancillary bar (A3). A refuse storage area would be created within the unit, with collections taking place on Duke Place near its corner with Duke Street. It is proposed to extract cooking fumes and odours out of the unit through a ground floor building void at the corner of Duke Street and Duke Place, which is currently screened by a wall.

### **Consultations**

**Publicity** – Occupiers of neighbouring properties in the vicinity have been notified. Ten letters of objection to the latest proposal have been received, based on the following:

- Parking facilities in the area are inadequate;
- Oversupply of restaurants;
- Smells;
- Noise from outside and within the building (ceilings in some apartments are not to the acoustic standard they should be);
- Litter;
- Dirt on pavements from bins;
- Smokers congregating and anti-social behaviour directly outside and underneath residential windows and balconies;
- Disturbance from service area and waste collection point being close to residential windows;
- Already unresolved restaurant related hygiene and odour problems from adjacent restaurants at 73-83 Liverpool Road;
- Loss of privacy;
- Proposed opening hours too late;
- Increase in crime and disorder relating to the premises being broken into and encouraging more anti-social behaviour on the adjacent Roman Fort area;

- Application lacking in information regarding: exit route for bins; acoustics, lighting; signage; materials; bin ventilation; additional windows; air conditioning; drainage;
- Original unit not built for A3 usage.

Head of Traffic Services – No objections.

Head of Environmental Health – Has concerns regarding the proposed fume extraction point being located at street level directly below residential accommodation, which is a location that is not recommended, and the need to rely on equipment, which is not known by the Head of Environmental Health. Also recommends the following conditions be attached should the application be approved: waste management; hours (restricted to 8am to 11.30 pm Sunday to Thursday and 8 am to midnight on Fridays and Saturdays); noise; and servicing hours.

Head of Environment and Operations (Refuse/Sustainability) – No objections received.

Greater Manchester Police – Has made various comments and recommendations for measures including: laminated glazing; earlier closing hours; external areas be well lit; monitored CCTV; concern if unit were to become a bar or nightclub; managers should liaise with City Safe; a suitable monitored intruder alarm system be installed; and the recessed doorway could become a congregation point.

## Issues

Unitary Development Plan - The following policies are considered to be relevant to the determination of this application:

H2.2 - States that the Council will not allow development, which will have an unacceptable impact on residential areas.

DC10.1 (Food and Drink Uses)- 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.

DC10.2 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.

Other policies relevant to the consideration of the application include E3.5 (promote measures for a safer environment), RC3 (Mixed Uses), and RC20 (Area 27) Small Area Proposals.

Guide to Development in Manchester: Supplementary Planning Document and Planning Guidance - The Guide aims to support and enhance the on going shaping of the City by providing a set of reasoned principles which will guide developers, designers and residents to the sort of development we all want to see in Manchester.

Planning Policy Statement 1: Delivering Sustainable Development (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.

The Regional Spatial Strategy (RSS) for North West England - The RSS provides a framework for development and investment in the region over the next fifteen to twenty years. The policies relevant to this application include Policies DP 1 - Spatial Principles and DP 2 - Promote Sustainable Communities - Building sustainable communities.

Principle of the use - The application site lies within an area characterised by a mix of uses with a number of restaurants which also operate alongside residential uses, as well as other City Centre uses such as the Museum of Science and Industry, hotels, pubs and shops nearby. It is considered therefore that the use, in terms of providing an active use in the building and within the City Centre, is considered to be acceptable in principle, but this also needs to be considered in the context of issues of amenity and especially residential amenity and these are set out below.

#### Amenity

Fume and Vapours – The building, and in particular this unit, was not built with a restaurant use in mind and sufficient risers have not therefore been incorporated into the building capable of accommodating the fume extraction system that would be required for such a use. The applicant therefore proposes to extract fumes and odours out of the building at street level into a void in front of the building that is used to ventilate the underground car park. This void is directly below the windows of residential properties on the first floor of the building, and, as the Head of Environmental Health has stated, this is not a position that should be recommended. The applicant has provided details of an extraction system that they believe would neutralize all odours before they are expelled from the building. However, the system proposed, including its efficiency or reliability in heavy use, is not one that is known to the City Council and, given the position of the extract, it is considered that there is therefore potential for the proposal to have a detrimental impact on the amenity of residents within the building. For this reason it is considered that the application should be refused.

Noise and general disturbance – The applicant has carried out a noise report and it is considered that the unit could be adequately insulated to prevent unacceptable levels of noise transferring to the residential properties. The applicant has applied for hours

until 1am, which is of concern due to the relationship of the unit to residential apartments. In this area it has been normal to restrict the hours of opening and if the application was to be approved a condition restricting the hours should be attached. Whilst the use of the unit as a restaurant would increase the comings and goings outside the restaurant it is considered that limiting the hours of use would restrict this to an acceptable level. A condition on any approval for appropriate servicing hours would prevent disamenity to residents from collection and delivery vehicles.

Crime and Disorder – The applicant has considered the recommendations of the Police and has put forward measures to address these. The proposed use is a restaurant, rather than a bar or nightclub, both of which would require a separate planning permission, so it is considered that the use would not add to anti-social behaviour in the area.

Access – Level access is provided into and throughout the unit.

Parking/Servicing - The site is located within the City Centre and is therefore well served by public transport. The arrangements for bin storage and servicing are considered to be adequate.

Neighbour Objections – Most of the comments from neighbours have been dealt with above. The general comments regarding litter and hygiene would be dealt with through appropriate management of the unit. The applicant has provided additional information to cover points raised by residents and signage would be dealt with under a separate application.

**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 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**

On the basis that the proposal is not in accordance with policies H2.2 or DC10 of Manchester City Council's Unitary Development Plan, and contrary to PPS1 "Delivering Sustainable Development", in that it will create a detrimental impact upon the adjoining residential properties in term of residential amenity

## Conditions and/or Reasons

1) The proposed use of the premises as a restaurant would have a detrimental impact upon the residential amenities enjoyed by the occupants of the building by reason of the cooking fumes and odours that would be extracted directly below windows of residential properties. The proposed development is therefore contrary to the provisions of policies H2.2 and 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: 085220/FO/2007/C3 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  
Environment & Operations (Refuse & Sustainability)  
Engineering Services  
Greater Manchester Police  
1 Wellington Place, Manchester, M3 4AG  
Ellis Brigham Mountain Sports, Wellington Mill, Duke Street, Manchester, M3 4NF  
Flats 1 - 12, Westpoint 3-9, Duke Street, Manchester, M3 4NF  
Olliers Solicitors, Castlefield Chambers, 11 Duke Street, Manchester, M3 4NF  
Apartments 101 - 117, 73 Liverpool Road, Manchester, M3 4AQ  
Apartments 201 - 217, 73 Liverpool Road, Manchester, M3 4AQ  
Apartments 301 - 319, 73 Liverpool Road, Manchester, M3 4AQ  
2 Duke Street, Manchester, M3 4NF  
Apartments 1 - 59, 2 Duke Place, Manchester, M3 4ND  
Oyster Retail Recruitment Ltd, Westpoint, Duke Street, Manchester, M3 4NF  
Apartments G1 – G8, 1 Rice Street, Manchester, M3 4JL  
Apartments 1/1 – 1/12, 1 Rice Street, Manchester, M3 4JL  
Apartments 2/1 – 2/12, 1 Rice Street, Manchester, M3 4JL  
Apartment 3/1 – 3/10, 1 Rice Street, Manchester, M3 4JL  
Apartments 4/1 – 4/10, 1 Rice Street, Manchester, M3 4JL  
Apartments 5/1 – 5/6, 1 Rice Street, Manchester, M3 4JL  
Apartment 6/1, 1 Rice Street, Manchester, M3 4JL  
Service Point, Liverpool Road, Manchester, M3 4AQ  
Akbars, Liverpool Road, Manchester, M3 4JN  
Meditech Media Ltd, Nucleus, 21 Rice Street, Manchester, M3 4JL

## Representations were received from the following third parties:

G6, 1 Rice Street, Manchester, M3 4JL  
9 Westpoint, 3-9 Duke Street, Manchester, M3 4NF  
73 - 83 Liverpool Road, Manchester, M3 4AQ

Flat 404, 1 Rice Street, Manchester, M3 4JL  
Flat 1, Westpoint, 3 - 9 Duke Street, Manchester M3 4NF  
Apartment 308, 73 Liverpool Road, Manchester, M3 4AQ  
Apartment 2/8, 1 Rice Street, Manchester, M3 4JL  
Apartment 1/4, 1 Rice Street, Manchester, M3 4JL  
Apartment 5/6, 1 Rice Street, Manchester, M3 4JL  
Apartment 1/8, 1 Rice Street, Manchester, M3 4JL  
Apartment 5/1, 1 Rice Street, Manchester, M3 4JL  
Apartment 4/5, 1 Rice Street, Manchester, M3 4JL  
Apartment 4/8, 1 Rice Street, Manchester, M3 4JL  
Apartment 4/9, 1 Rice Street, Manchester, M3 4JL  
Apartment 2/4, 360, 1 Rice Street, Castlefield, Manchester  
Apt 210 Vicus, 73 Liverpool Road, Manchester  
Apt.1/12, 360 Apartments, 1 Rice Street, Manchester  
G6, 360 Apts, 1 Rice Street, Manchester  
Apt 301 Vicus, 73 Liverpool Rd  
Flat 3/3, 360 Development, Duke Street, Castlefield, Manchester  
Flat 4/4 360 Building, 1 Rice Street  
Flat G4, 360 Development, 1 Rice Street, Manchester M3 4JL

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