

Application Number	Date of Appln	Committee Date	Ward
089123/FO/2009/S1	2nd Mar 2009	28th May 2009	Withington Ward

Proposal Retrospective Application for use of the first floors in connection with the ground floor and basement cafe/bar (sui generis) and use of first floor balcony and rear yard as outside drinking areas

Location Bar One, 461 - 463 Wilmslow Road, Withington, Manchester, M20 4AL,

Applicant Mrs Jennifer Anne Brooks , 33 Tidewell Road, Hazel Grove, Stockport, SK7 6JF

Agent Mr Peter Holden, Thompson & Cooke, 100 Market Street, Stalybridge , Cheshire, SK15 2AB

Description

This application relates to a two storey building with basement, a former bank premises located within Withington Village District Shopping Centre and Conservation Area. At the rear of the property there is a single storey flat roofed extension and a small yard. The premises are currently operating without the benefit of planning permission as a café/bar on all three floors with outside seating on a terrace above the single storey extension and in the rear yard.

Adjoining to either side are commercial uses, the premises to the south being a modern mixed development comprising a commercial use on the ground floor with flats above. Facing the site across Wilmslow Road are further commercial units. To the rear of the site is a small car park beyond which are residential and commercial properties on Egerton Crescent.

In October 2006 planning permission ref 080264/FU/2006/S1 was granted for the change of use of the basement and ground floor of a former bank to a mixed use comprising restaurant, cafe and bar (sui generis) including installation of a flue to rear elevation and alterations to the front elevation. Permission was granted as an exception to policy WB6 which precludes further changes of use from commercial to food and drink uses along the Wilmslow Road frontage within Withington Village. The reason to the policy states: Approximately one quarter of the properties along this stretch of Wilmslow Road are in Class A3 use (now classes A3, A4, and A5) and a number of others already have planning consent to change their use to Class A3. The approval of further Class A3 establishments would conflict with approved traffic management proposals for Wilmslow Road which will involve pavement widening, single lanes in either direction and 24 hour per day waiting restrictions. Food and drink uses attract a significant proportion of passing trade and additional activity of this nature would encourage levels of short-stay kerbside parking which would disrupt the free flow of traffic and thereby pose problems of highway and pedestrian safety. The cumulative visual effect of these uses, which often require shopfront designs and signs unsympathetic to the properties and incongruous features such as external flue pipes, together with the litter generated, detract from the character of the Withington Conservation Area which is centred upon the shopping centre. The approval of further food and drink uses would also erode the retail character of these important frontages

within the shopping centre and would thereby affect the local shopping role of Withington Village. Any further increase in the number of Class A3 uses along Wilmslow Road would exacerbate the inter-related problems identified above and thereby conflict with the aim of improving the appearance and role of the Village. The permission was granted as an exception to the policy as it was believed that the use of the premises as a restaurant/café and bar was unlikely to generate as much passing trade, seeking short term parking spaces, as a takeaway and that its impact on the highway network and highway safety would be unacceptable. It was also considered that the use as a restaurant/café/bar would have least impact on the elevations of the bank and therefore cause less harm to the character of the conservation area.

It subsequently came to light that the first floor was being used as additional floorspace and external seating areas had been created in the form of a roof terrace above the single storey extension and within the rear yard. This application seeks to regularise the position regarding these breaches of the original planning permission.

The approved hours of opening for the ground floor and basement were 9.00am to midnight seven days a week. The original license granted in October 2009 adhered to the approved hours, there was no outside drinking areas covered in the license. In April 2009 a variation of license was granted for the following opening hours, Sunday to Thursday 9.00am to half past midnight and Friday and Saturday 9.00 am to 2.00 am. The license also allowed the use of the outside seating areas until 11.00pm. The application forms propose opening times until half past midnight Sunday to Wednesday and 2.30am Thursday to Saturday. The outside seating area was to close at 11.00pm.

Consultations

Local residents /businesses – One letter has been received objection to the proposed development on the grounds that that the proposal has resulted in an increase in noise, traffic and the general level of activity.

Withington Civic Society – have the following comments :-

- Given that this is a retrospective application it will be essential to consult with the Greater Manchester Police and Environmental Health to see whether crime, anti-social behaviour and noise have been a problem. Furthermore, it will be important to canvass the views of neighbouring traders and the occupiers of surrounding residential properties to see whether they have been affected, most notably by late night noise.
- Presumably the relevant MCC department will investigate whether the necessary fire detection, fire equipment and egress arrangements are in place.
- We would have to question whether use of the terrace up until 11PM is appropriate. 9PM would seem more than adequate if the interests of residents are to be protected.

Ward Members – Councillors Alison Firth, Simon Wheale and Brendon Jones have made the following comments in respect of the application:-

-the use of the first floor balcony and rear yard as outside drinking areas. The applicant has already started to use these areas for drinking without planning permission by placing tables and chairs in these areas.

It is their understanding that the rear yard is for car parking particularly for those attending Withington Methodist Church and also for people using the shops and, during the day, the Post Office. They would not be keen to see the outside area used for drinking being that it looks onto the church and it would also limit parking for people using local facilities. It would also cause a danger of glasses being dropped onto the cars below. They feel the applicant is trying to increase the drinking area of this pub by stealth as the original application was only for the ground floor and basement. The bar now wishes to expand into the first floor, the rear yard and the balcony.

Residents of Parsonage Road are not keen to have noise carried out late at night while they are sleeping. There are families in the area with children and such expansion would be detrimental to local residents.

Greater Manchester Police – any comments will be reported

Regulatory and Enforcement Services – Any Comments will be reported.

Licensing – A variation to the original license was granted on 15th April 2009. The amended license allows the premises to open until half past midnight Sunday to Thursday and 2.00am Friday and Saturday. The outside areas can be used until 11.00pm Seven days a week.

Issues

Unitary Development Plan – The relevant policies are H2.2 which seeks to protect the amenity of residents from the adverse impacts of development, policy WB6 which prohibits the further conversion of commercial units into food and drink uses along the Wilmslow Road frontage within Withington Village, policy DC10 which sets down the criteria to be considered in the determining of applications for food and drink uses, including the impact on the amenity of residential properties and policy DC26 which seek to protect residents from noisy development.

Regional Spatial Strategy - The RSS was adopted as part of the Development Plan for the City of Manchester in September 2008. The relevant policies are:

DP1 Which sets down the Spatial principles that underpin the RSS

DP2 Which Promotes sustainable communities, including the fostering of sustainable relationships between homes, workplaces and other concentrations of regularly used services and facilities.

Principle – The previous planning permission for the change of use of the basement and ground floor was approved on the basis that Policy WB6 which,

whilst establishing a presumption against food and drink uses on the Wilmslow Road frontage, leaves a window of opportunity for such developments in special circumstances. In this case the then recent changes to the use classes order precluded the use of the premises and a hot food takeaway, thus significantly reducing passing trade vying for limited on-street parking spaces and secondly, the building has a particular architectural style which can be enhanced by the use as a café, restaurant, /bar in a way that is unlikely to happen if the premises are used for retailing. In that the City Council has previously accepted the principle of a food and drink use within the premises as an exception to policy WB6 the extension of the use to other parts of the premises are acceptable in principle subject to detailed consideration of the impact of the individual elements.

Disabled access – The original approved scheme was only accessible at ground floor level, where there is an accessible toilet, and this remains the case with no access to the upper floor or the outside seating areas.

First floor – The first floor of the premises accommodates the toilets and a function suite as well as the access to the roof terrace. This enables the premises to be used more intensively generating more activity both within the premises and outside on Wilmslow Road. In granting the earlier permission part of the justification for allowing the development was that it would not generate as much activity as a hot food take away, at that time the old A3 Food and Drink class had been broken up and take away hot food shops were put into a class of their own, so planning permission would always be required to change to one from another use. It is considered that the increase in floorspace has significantly expanded activity both within the building and on Wilmslow Road to a point where the activity generated causes harm in the in the manner that policy WB6 sought to avoid.

Outside seating areas – The site is within a district centre where ordinarily outside seating is considered acceptable, however, this is generally at the front of the property and set against the backdrop of the noise generated by pedestrian and vehicular traffic in the centre. In this case the outside seating is located at the rear and is separated from residential accommodation by a car park. Consequently there is a high probability that residents would suffer a loss of amenity due to noise, particularly in the evening despite the intention to cease using these areas at 11.00pm. The elevated nature of one of the outside areas would exacerbate any problems. Recent legislation in respect of smoking ensures that such areas are well used throughout the year and therefore any loss of amenity would not be confined to warmer nights.

Opening Hours – The opening hours indicated on the application forms differ from those recently granted by Licensing, in respect of the closing times.

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Planning app	00.30	00.30	00.30	00.30	02.30	02.30	02.30
License	00.30	00.30	00.30	00.30	00.30	02.00	02.00

Permission is sought to use the outside seating areas until 11.00pm, the same as for the license. The applicant has written separately to the Head of Planning requesting the variation of the opening hours in accordance with condition 4

attached to planning permission 080264/FU/2006/S1, however, this permission relates only to the ground floor and basement and not the first floor or the outside areas, the opening hours are therefore a consideration for this application. The use of the outside seating areas until 11.00pm would exacerbate the loss of amenity to residents of nearby residential properties by enabling the use to carry on late into the evening. The later opening for the premises would it is considered exacerbate the adverse impact that the intensification of use would have on Withington Village.

Conclusion – It is considered that the extension of the use into the first floor of the property causes harm in terms of the amount of activity within the building and also on Wilmslow Road in a manner that the Committee felt would not be the case when they granted planning permission for the ground floor and basement, and that would be exacerbated by allowing the premises to remain open longer. In addition, the introduction of outside seating at the rear of the café, restaurant/bar would have a significant impact on the amenity of local residents both in terms of its close proximity to their houses and also the use late at night. For these reasons the application cannot be supported and indeed it is therefore proposed that Enforcement Action be pursued in relation to the unauthorised activity.

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 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 to secure the cessation of the unauthorised use of the first floor and the outside seating areas.

Conditions and/or Reasons

1) The noise generated by patrons using the outside seating areas in the rear yard and on the roof terrace would by reason of their close proximity to residential accommodation on Egerton Crescent have a detrimental impact on the amenity of the occupiers of those properties, throughout the day but particularly late at night. The proposed development is therefore contrary to the provisions of policies H2.2, Dc10 and DC26 of the Unitary Development Plan for the City of Manchester.

2) The use of the first floor and the rear yard and the creation of a roof terrace would result in the intensification of the use of the premises, which would be detrimental to the character of Withington Village District Shopping Centre and Conservation Area by reason of the increased noise generated particularly late at night and the detrimental affect the additional activity both pedestrian and vehicular on highway safety. The proposed development is therefore contrary to the provisions of policy WB6 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: 089123/FO/2009/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:

Environmental Health
Greater Manchester Police
Steve Hobson, Crime Reduction Officer
Area Policing Team
Withington Civic Society
Licensing Unit
3 to17, 2A, 2 to 8 Egerton Crescent
14 Swinbourne Grove,
453 to 465, 454 to 474 Wilmslow Road,

Representations were received from the following third parties:

Councillor Simone Wheale
Councillor Alison Firth
Councillor Brendon Jones

Relevant Contact Officer : Dave Morris
Telephone number : 0161 234 4539
Email : d.morris@manchester.gov.uk