

Application Number	Date of Appln	Committee Date	Ward
088194/JO/2008/C1	19th Nov 2008	15th Jan 2009	Ardwick Ward

**Proposal** Continued Use of Ground Floor Unit as Class A5 (Hot Food Take-Away) (granted consent under application ref no 085690) with variation of hours condition (Condition 5) to allow premises to operate 09.00 - 00.00 Sunday to Thursday and 09.00 -03.00 Friday and Saturday

**Location** Ground Floor, 126 York Street, Ardwick, Manchester, M1 7XN,

**Applicant** Sub 20 Ltd T/a Dominos Pizza, 32 St Davids Drive, Wentworth Gate, Englefield Green, Egham, Surrey, TW20 OBA

**Agent**

### **Description**

The application relates to ground floor unit within a 5 storey building comprising 17 one bedroom self contained residential units for use by post graduate students with a vacant basement unit which has consent for a Class A3 (Restaurant & Café) Use.

In May 2008 consent was granted subject to conditions for a change of use of the then vacant ground floor to Class A5 (Hot Food Take Away) Use (application ref no 085690). One of the conditions stated that the premises should not be open outside the hours of 09.00 -23.00 Monday to Sunday. These were the hours applied for and the Head of Environmental Health had no objection to these hours. This application seeks to vary that condition to allow the use to operate as follows:

09.00 to 00.00 Sunday to Thursday and

09.00 to 03.00 Friday and Saturday

The building lies within an area of the City Centre known as the Higher Education Precinct which contains a variety of uses including bars, hot food take aways, shops and some residential uses. The use as a hot food take away commenced operation during the summer of 2008.

In support of the application the applicants have stated that the request to extend the hours of trading is due to demand for food delivery after 23.00.

### **Consultations**

Publicity - The application was advertised as a public interest development and occupiers of adjacent and nearby properties were notified about the scheme. 3 letters of objection have been received from occupiers of the residential accommodation within the building. The basis of the objections is summarised below:

- On the basis that the operation of Dominos is already very noisy in the evening and that an extension of hours will prolong those problems.
- That there will be noise from people waiting outside for their pizzas;
- That there will be more pollution from delivery vehicles coming to and from the premises;
- That there will be further problems from cooking smells being discharged near to residents windows;

Head of Environmental Health - Has no objection to the proposed extension of hours.

Greater Manchester Police (Architectural Liaison Officers) - Have no comments to make on the proposal.

Licensing Unit - A licence for the extended hours was granted on 7th October 2008.

### **Issues**

The Unitary Development Plan for Manchester - The following UDP Policies the are of relevance to this application:

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

DC10 'Food and Drink' Uses - which supports the provision of developments involving the sale of food or drink within the City Centre provided that they would not have a detrimental impact on the amenity of neighbouring residents

DC26.6 Development and Noise - which states that the development control process will be used to reduce the impact of noise on people living and working in the City and that developments likely to result in unacceptably high levels of noise will not be permitted in residential areas.

RC20 (Area 29) Small Area Proposals - which states that small scale commercial units such as shops and restaurants which serve the daily needs of the student population will be acceptable.

Principle of the Extended Hours of Opening - The use of the ground floor unit as a take away was approved subject to conditions in May 2008 (as detailed above). It should also be noted that the condition which limited the hours of operation was a reflection of the hours applied for and there was no indication from the Head of Environmental Health at that time that any longer hours of operation would have been resisted. Since the principle of the use is established the main consideration here is whether it would be acceptable for the take away to operate for a further 4 hours on Friday and Saturday night and a further hour for the remainder of the week.

It is clear from the application that the extension of hours is sought due to a demand for the product outside of the hours for which consent was originally sought and it is considered that the extended hours of operation would be in

keeping with the character of the area and the vibrancy and late night activity associated with this lively part of the City Centre.

Residential Amenity / Hours of Operation - Whilst the accommodation above the take away is in use for residential apartments this part of the City Centre is not primarily a residential area but very much a mixed use area with bars, shops and cafe uses. There are also some halls of residence next to the application site. Grosvenor Street where the building has its primary frontage has a number of late night bars as follows:

Footage and Firkin (junction of Grosvenor Street and Oxford Road),

10.00 - 02.00 Monday to Saturday; and  
10.00 - 01.00 Sunday

Sand Bar (122 Grosvenor Street),

10.00 - 01.00 Monday to Thursday;  
10.00 - 02.00 Thursday to Saturday; and  
10.00 - 00.00 Sunday

Trof (135 Grosvenor Street) and at 126 Grosvenor Street.

09.00 - 02.00 Sunday to Thursday; and  
09.00 - 03.00 Friday and Saturday.

The Zoo / The Pub (126 Grosvenor Street)

10.00 - 02.00 Sunday to Wednesday; and  
10.00 - 03.00 Thursday to Saturday

Whilst the impact that the extended hours may have on nearby residents needs to be considered, this needs to be done in the context of the nature of this part of the City Centre.

The proposal could result in an increase in comings and goings later in the evening than at present and there could be some disturbance associated with this. However given the nature of the area in terms of the proximity of other late night premises, the proposed extended hours are not considered to be unreasonable.

Crime and Disorder - GMP have no objections to the proposal and it is considered that there would be no adverse impact in terms of crime and disorder as a consequence of the extended opening hours.

Objectors Comments - The issues raised about problems with the level of cooking fumes could be dealt with under other legislation if this becomes a problem for the occupants of the residential accommodation.

## **Conclusion**

In assessing the merits of this application, careful consideration has been given to the impact of the extended hours on the amenity of residents in the area.

Given the location and nature of the immediate area adjacent to the application site it is considered on balance to be acceptable and is unlikely to result in a significant or unacceptable loss of amenity.

**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 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**

on the basis that the proposals subject to compliance with the conditions below, generally accord with the policies contained within the Development Plan specifically the Unitary Development Plan Policies Policy H2.2 (Housing), DC10.1, DC10.2 and DC10.4 (Food and Drink Uses), DC26.5 (Development and Noise) and RC20 (Area 29) (Small Area Proposals) would be in a City Centre location, would be compatible with the mix of uses in the area, and would not have an unacceptable detrimental impact on the amenity of nearby residents.

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

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:

(a) PL106, C4338-P02 Rev B;

(b) Richard Unwin's letter dated 21 April 2008

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policy H2.2; of the Manchester Unitary Development Plan.

3) No development shall commence until details of the measures to be incorporated into the development ( or phase thereof ) to demonstrate how secure by design accreditation will be achieved have been submitted to and approved in writing by the City Council as local planning authority. The development shall only be carried out in accordance with these approved details. The development hereby approved shall not be occupied or used until the Council as local planning authority has acknowledged in writing that it has received written confirmation of a secure by design accreditation.

Reason - To reduce the risk of crime pursuant to Policy E3.5 of the Unitary Development Plan of the City of Manchester and to reflect the guidance contained in Planning Policy Statement "Delivering Sustainable Development".

4) Within 3 months of the date of this consent the ground floor unit , together with any externally mounted ancillary equipment, shall be acoustically insulated in accordance with a scheme submitted to and approved in writing by the City Council as local planning authority in order to secure a reduction in the level of noise emanating from the equipment.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation, pursuant to policy H2.2 of the Manchester Unitary Development Plan.

5) The window(s) at ground level, fronting onto York Street and Grosvenor Street shall be retained as a clear glazed window opening at all times and views into the premises shall not be screened or obscured in any way unless agreed in writing by the City Council as local planning authority.

Reason - The clear glazed window(s) is an integral and important element in design of the ground level elevations and are important in maintaining a visually interesting street-scene consistent with the use of such areas by members of the public, and so as to be consistent with Policy DC14 of the Unitary Development Plan for the City of Manchester.

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

09.00 to 00.00 Sunday to Thursday; and  
09.00 to 03.00 Friday and Saturday

Reason - In interests of residential amenity in order to reduce noise and general disturbance in accordance with Policies H2.2 and DC26 and the Unitary Development Plan for the City of Manchester.

7) No loading or unloading of deliveries to the unit (servicing and collections including waste collections) shall be carried out on the site outside the hours of

07.30 -20.00 Monday to Saturday and no deliveries / waste collections (as detailed above) shall take place on Sundays or Bank Holidays;

Reason - In order to protect the amenity of local residents and in accordance with Policy H2.2 in accordance with 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: 088194/JO/2008/C1 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

Stuart Pizzey, Crime Reduction Officer

129 Grosvenor Street, Manchester, M1 7HE

Umist, Metallurgy Building, Grosvenor Street, Manchester, M1 7HS

Umist, Grosvenor Place Hall Of Residence, Grosvenor Street, Manchester, M1 7HR

128 York Street, Manchester, M1 7XN

Mcnally`s Sports Bar, 136 York Street, Manchester, M1 7XN

Student Flights, 149-153, Oxford Road, Manchester, M1 7EE

Flat 14, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

On The Eighth Day Co-operative Ltd, 111 Oxford Road, Manchester, M1 7DU

Flat 4, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 5, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 3, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 9, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 12, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 18, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 6, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 21, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 20, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 7, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 13, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 15, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 1, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 2, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 17, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

Flat 23, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU

The Gay Centre, 45-51, Sidney Street, Manchester, M1 7HB

Manchester Islamic Institute, 5 Sidney Street, Manchester, M1 7HB

Zahra Books, 45-47, Sidney Street, Manchester, M1 7HB

Kings Church, Kings House, Sidney Street, Manchester, M1 7HB

Zoo, 126 Grosvenor Street, Manchester, M1 7HL

Babylon Restaurant, 125 Oxford Road, Manchester, M1 7DU

Johnny Road House Music, 123 Oxford Road, Manchester, M1 7DU  
Pizza Co, 121 Oxford Road, Manchester, M1 7DU  
109 Oxford Road, Manchester, M1 7DU  
Flat 10, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU  
Flat 8, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU  
Flat 11, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU  
Flat 22, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU  
Flat 19, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU  
Flat 16, The Eighth Day, 113 Oxford Road, Manchester, M1 7DU  
Parting Of The Waves, 127a, Oxford Road, Manchester, M1 7DY  
Marriots Pantry, 127 Oxford Road, Manchester, M1 7DY  
129 Oxford Road, Manchester, M1 7DY  
Flat 3, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 14, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 8, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 1, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 6, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 2, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 12, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Abduls, 133-135, Oxford Road, Manchester, M1 7DY  
Flat 15, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 13, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 10, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 11, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 9, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 4, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 5, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Flat 7, Akhtar House 129-135, Oxford Road, Manchester, M1 7DY  
Barclays Bank Plc, 137 Oxford Road, Manchester, M1 7DY  
Footage, Grosvenor Street, Manchester, M1 7DZ  
Idea, 135 Grosvenor Street, Manchester, M1 7HE  
133 Grosvenor Street, Manchester, M1 7HE  
The Grosvenor, 133a, Grosvenor Street, Manchester, M1 7HE  
133b, Grosvenor Street, Manchester, M1 7HE  
Apartment 15, 126 York Street, Manchester, M1 7XN  
Apartment 8, 126 York Street, Manchester, M1 7XN  
Apartment 6, 126 York Street, Manchester, M1 7XN  
Apartment 4, 126 York Street, Manchester, M1 7XN  
Apartment 16, 126 York Street, Manchester, M1 7XN  
Apartment 2, 126 York Street, Manchester, M1 7XN  
Apartment 1, 126 York Street, Manchester, M1 7XN  
Apartment 12, 126 York Street, Manchester, M1 7XN  
Apartment 7, 126 York Street, Manchester, M1 7XN  
Apartment 11, 126 York Street, Manchester, M1 7XN  
Apartment 5, 126 York Street, Manchester, M1 7XN  
Apartment 10, 126 York Street, Manchester, M1 7XN  
Apartment 3, 126 York Street, Manchester, M1 7XN  
Apartment 9, 126 York Street, Manchester, M1 7XN  
Apartment 14, 126 York Street, Manchester, M1 7XN  
Apartment 17, 126 York Street, Manchester, M1 7XN  
Apartment 13, 126 York Street, Manchester, M1 7XN  
131 Grosvenor Street, Manchester, M1 7HE  
1 Hillcourt Street, Manchester, M1 7HU

Attelier T L Ltd, 120-122, Grosvenor Street, Manchester, M1 7HL  
Architects Britch, 120 Grosvenor Street, Manchester, M1 7HL  
Zen Couriers, 120-122, Grosvenor Street, Manchester, M1 7HL

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

Viridis Liew, Apt 8, 126 York Street Manchester  
Stephanie Kenning, Apt 9, 126 York Street  
Judith Rutman, Apt 6, 126 York Street

**Relevant Contact Officer :** Angela Leckie  
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