

<b>Application Number</b>	<b>Date of Appln</b>	<b>Committee Date</b>	<b>Ward</b>
089939/FO/2009/C2	28th Apr 2009	19th Nov 2009	City Centre Ward

**Proposal** Installation of replacement flue to rear of building to 1m above eaves level with capped rain resistant cowl.

**Location** 68 - 70 High Street, Manchester, M4 1EA,

**Applicant** Mr Saeed Moosavi , 68 - 70 High Street, Manchester, M4 1EA,

**Agent** ,

### **Description**

This application relates to a 4 storey building known as 68-70 High Street which has elevations onto High Street, Turner Street and Edgehill Street and lies within the Smithfield Conservation Area. The ground floor of the building is currently occupied by a hot food take away known as Kebabish. Permission for use of the ground floor of the premises as a hot food takeaway was granted in 1994.

The building lies within a part of the City Centre known as the Northern Quarter which is characterised by a variety of uses including bars, restaurants, commercial, residential and hotel uses. There is residential accommodation located to the rear of the application site at 5 Edgehill Street in a property known as Northpoint House.

Planning permission is sought for the erection a flue to the rear of the building within the rear service yard. The flue would measure approximately 10.6 m and would terminate at 1m above eaves level with a waterproof cap. There is an existing flue on the building which emerges from the ground floor roof within the service yard and reaches a height of approximately 3.5 m above that level. This flue does not have the benefit of planning permission and has been the subject of investigation by the Enforcement Team. More detail of this investigation is given below.

The application has been accompanied by an acoustic survey which seeks to demonstrate that there would not be an unacceptable level of noise output as a result of the operation of the flue.

### **Site History/ Background**

The Planning Service were first made aware that an unauthorised flue was being installed to the rear of the premises by a local resident on 4th March 2009. This was investigated and the applicant was advised that no further work should take place at that time.

The applicant was then told that if he did not want to remove the flue he would need to apply for retrospective planning permission for it.

The applicant stated that he would wish to retain a flue as it is necessary to allow for this long established business to operate efficiently and to prevent disamenity. A series of meetings then took place between 10th March 2009 and 28th March 2009

between planning officers and the applicant to advise him about the supporting information that would be required with his application. In these meetings planning officers reiterated that he should not be operating any flue as it was unauthorised.

On 28th April 2009 an application was received and registered in respect of a proposed flue measuring approximately 1m.

During the period between the initial complaint by and the submission of the planning application, the Head of Regulatory Services was made aware of issues that had been raised by the complainant about asbestos.

The Head of Regulatory Services (Pollution Section) initially had concerns about the proposed flue due to its location and form and advised that the applicant needed to demonstrate that fumes and odours could be discharged without causing disamenity to local residents (including through any unacceptable level of noise output caused by the operation of the flue).

Between the end of June 2009 and the beginning of October 2009 there were a series of discussions and meetings between the applicant and officers from the Pollution Section of Regulatory Services that sought to resolve the issues relating to their concerns about the proposed flue. The result of this was that the proposed design of the flue was amended to the 10.6m flue now proposed. Revised plans and a revised acoustic survey were submitted and the comments from the Head of Regulatory Services (Pollution Section) are detailed below in the consultation section.

### **Consultations**

**Publicity** - The application was advertised as affecting a conservation area and occupiers of adjacent and nearby properties were notified about the scheme. A site notice detailing the revised scheme was placed near to the site on 14th October 2009 and allowed a 3 week period for representations to be made about the proposals. This expired on 4th November 2009.

23 letters of objection were received from local residents in respect of the original scheme for the shorter flue. The basis for the objections is as follows:

- That the submitted drawings do not accurately reflect what has been installed on site;
- That whilst an acoustic survey has been provided there is no assessment of other forms of pollution.
- That the measurements contained in the acoustic report do not demonstrate that there will not be an unacceptable level of noise outbreak as a result of the operation of the flue.
- That the flue that has been installed does not have the finish as detailed in the submission;
- That as this is a conservation area the flue is not in keeping with the area;
- That a larger flue will increase smoke and noise pollution in the area;

2 letters of objection have been received from local residents in respect of the revised scheme. The basis of the objections is as follows:

- That the flue will create noise and / or pollution;
- That the flue is too close to a residential building;
- That the unauthorised installation of the flue created the potential for pollution from asbestos.
- That there are regulations which state that no flues should be erected on the outside of buildings.
- That the proposed flue will result in a significant the loss of amenity for adjacent residents.

Comments have also been made about a number of issues not directly related to the planning applications as follows:

- That the applicant has applied for a licence to operate as a hot food take away until 2am Monday to Thursday and 4am Friday and Saturday which will increase existing kitchen activities and as a consequence the amount of waste effluents and nuisance odours, noise from waste collections, pigeons and rats attracted by that waste and late night noise from anti social activity from post bar / club drinkers.
- That the current unauthorised flue has been operational on a number of occasions and causes noise and odour nuisance for adjacent residents.
- That the proposed and existing unauthorised flues are not replacement flues and that there was never an external flue in place prior to the installation of the current unauthorised flue.
- That despite being repeatedly told that he cannot operate the existing unauthorised flue by Pollution Section Officers and Planning Officers, he has continued to operate the flue illegally.

Head of Regulatory Services (Pollution Section)- Has no objection in principle to the proposed flue subject to the equipment having an adequate level of acoustic insulation and the scheme being implemented in accordance with the recommendations about acoustic insulation submitted with the application. Conditions relating to these requirements are recommended to be attached to any planning permission granted by Committee.

Manchester Conservations Area and Historic Buildings Panel - Did not wish to be consulted.

### **Issues**

The Unitary Development Plan for Manchester - For the reasons outlined below, the proposed A4 (Drinking Establishment Use) is considered to be consistent with the relevant UDP Policies

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

DC18.1 Conservation Areas - which states that the Council will seek to preserve and enhance the character and setting of its designated conservation areas.

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.

Regional Spatial Strategy - In terms of regional policy, it is not considered that any policy is of particular relevance in this case.

In addition to the above, Central Government provides national planning guidance in the form of Planning Policy Guidance Notes (PPGs) and more recently on some planning issues, Planning Policy Statements (PPSs).

PPS1 'Delivering Sustainable Development' underpins the planning system and sets out the overarching policies on the delivery of sustainable development. Emphasis is placed on the need for good design to ensure attractive, usable, durable and adaptable places.

The Guide to Development in Manchester (SPD) - This document offers design advice and sets out the City Council's aspirations and vision for future development and contains core principles to guide developers to produce high quality and inclusive design.

Impact on Character of Conservation Area - Whilst it would be preferable for the flue to be located inside the building the applicant states that the landlord of the premises will not allow this as due to the age of the building it could damage the structure of the building and may be a fire hazard which would affect his ability to get the building insured. It is not unusual for flues to be located on the external elevations of buildings, particularly in older properties where there is no specific internal area built in to the property where such equipment could be obviously located and where very often multiple tenancies within the building preclude the physical possibility of them being located internally.

Notwithstanding the above, the flue would be tucked away within a rear service yard and whilst it would be visible to some of the occupiers of Northpoint House, this would be very limited. Additionally, its location within the recess formed by the service yard means that its visibility from adjacent streets would also be limited. The colour of the flue has some impact on its level of visibility and impact on visual amenity and this could be controlled via the imposition of an appropriate condition imposed upon any planning permission granted.

Whilst it is unfortunate that some occupiers of Northpoint House would have a limited view of the flue, it is acknowledged that in a mixed use City Centre environment there will be circumstances where the siting of a flue externally is the only feasible way that fumes can be extracted from premises which prepare and cook food. The visual

impact of this can be limited by ensuring that the flue is painted an appropriate colour which would allow it to blend in with the colour of the rear façade of the building that is the subject of this application.

In view of the above it is felt that on balance the proposed flue would not have an adverse impact on the character of the Smithfield Conservation Area.

Residential Amenity / Hours of Operation - Whilst the principle of the proposed flue is considered to be acceptable the impact that it may have on nearby residents needs to be considered carefully. This particular flue has been considered in terms of its efficiency in reducing smells from this long established business and in terms of design to minimise visual impact. The applicant has demonstrated that the flue can be adequately acoustically insulated such that there will be no break out of noise as a result of its operation and the carrying out of appropriate works to ensure this appropriate level of insulation is implemented could be controlled via the imposition of an appropriate condition imposed upon any planning permission granted.

In view of the above the proposal is considered to be consistent with the relevant policies relating to residential amenity and development and noise.

Timescales for implementation/ Statutory Nuisance Notification - As the application is in part retrospective in that it relates to an unauthorised flue (albeit that it is now proposed to install a flue which is taller than the existing), and given the evidence that the current flue has been operating without the benefit of planning permission and causing disamenity to adjacent residents (evidenced by the servicing of the Statutory Noise Nuisance by the Head of Environmental Health): it is considered appropriate that a condition is imposed upon any planning permission granted by Committee, which would give a specific timescale within which the applicant needs to install the flue.

The deadline for compliance with the Statutory Noise Nuisance is 22 December 2009. Therefore in the interests of consistency, it is recommended that the Committee set this as a deadline for full implementation of the proposed flue and any necessary acoustic insulation measures in a condition imposed upon any planning permission granted by Committee.

Comments on application- Most of the material issues raised by objectors have been considered above. Issues relating to litter and anti social behaviour are noted but are not relevant issues for consideration in the context of this application.

As regards issues relating to the hours of operation, whilst this is not an issue that is of relevance to this application, it is noted that there was a condition on the original 1994 consent which limits the hours of opening to 08.00 to 00.00. Should the applicant wish to operate outside of these hours he will have to formally apply to vary that condition and in considering any such application the impact that any extended hours would have on the amenity of adjacent residents would have to be evaluated.

The comments regarding the danger posed by the removal of asbestos were referred to the Health and Safety Executive by the Head of Regulatory Services.

**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), DC18.1 (Conservation Areas), DC26.6 (Development and Noise) would not subject to conditions relating to the acoustic insulation of the flue cause disamenity to nearby residents, would be fully accessible and would not have an adverse impact on the character of the conservation area.

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

1) The development hereby approved shall be completed and all conditions complied with by 22 December 2009 unless otherwise agreed in writing.

Reason - When in use the current unauthorised flue operates in an unsatisfactory manner which causes disamenity to adjacent occupiers. Therefore in order to safeguard the amenities of the occupiers of nearby properties, pursuant to policies H2.2 and DC 26.6 of the Unitary Development Plan for the City of Manchester there is a need for this to be replaced with the approved flue within a specified timescale.

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) Drawing dated 21.04.09 Rev B stamped as received by the City Council as Local Planning Authority on 09-11-09; and; and

(b) Recommendations and operating noise levels as detailed in AB Acoustics E-mail dated 06-10-09.

Reason - To ensure that the development is carried out in accordance with the approved plans. Pursuant to policy H2.2 and DC26.6 of the Manchester Unitary Development Plan.

3) The operation of the flue, hereby approved shall not commence unless and until final details of the colour that the flue is to be painted has been submitted to and approved in writing by the City Council as local planning authority and the painting of the flue has been completed unless otherwise agreed in writing by the City Council as local planning authority.

Reason - To ensure that the appearance of the development is acceptable to the City Council as local planning authority in the interests of the visual amenity of the area within which the site is located, as specified in policy DC18.1 of the Unitary Development Plan for the City of Manchester.

4) The permission hereby granted does not grant or imply the granting of permission for the flue currently in situ on the application premises.

Reason

For the avoidance of doubt and in order to safeguard the amenities of the occupiers of nearby properties, pursuant to policies H2.2 and DC 26.6 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: 089939/FO/2009/C2 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

Flat 2, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 3, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 23, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 7, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 20, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 25, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 18, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 31, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 8, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 14, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 21, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 19, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 4, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 24, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB

Flat 30, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 10, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 26, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 1, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 12, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 29, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 9, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 28, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
English Lounge, 64-66, High Street, Manchester, M4 1EA  
Video Shop, 2 Turner Street, Manchester, M4 1DZ  
The Shalimar Restaurant, 68-70, High Street, Manchester, M4 1EA  
Little Aladdin, 72 High Street, Manchester, M4 1ES  
Flat 1, 11-21, Turner Street, Manchester, M4 1DY  
13a, Turner Street, Manchester, M4 1DY  
17a, Turner Street, Manchester, M4 1DY  
Flat 32, 11-21, Turner Street, Manchester, M4 1DY  
Flat 15, 11-21, Turner Street, Manchester, M4 1DY  
Flat 17, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 27, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 11, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 15, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 16, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 5, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 6, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 22, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Oklahoma, 74-76, High Street, Manchester, M4 1ES  
Flat 2, 11-21, Turner Street, Manchester, M4 1DY  
Flat 22, 11-21, Turner Street, Manchester, M4 1DY  
Flat 4, 11-21, Turner Street, Manchester, M4 1DY  
Flat 21, 11-21, Turner Street, Manchester, M4 1DY  
Flat 3, 11-21, Turner Street, Manchester, M4 1DY  
Flat 25, 11-21, Turner Street, Manchester, M4 1DY  
Flat 11, 11-21, Turner Street, Manchester, M4 1DY  
Flat 14, 11-21, Turner Street, Manchester, M4 1DY  
Flat 30, 11-21, Turner Street, Manchester, M4 1DY  
Flat 24, 11-21, Turner Street, Manchester, M4 1DY  
Flat 17, 11-21, Turner Street, Manchester, M4 1DY  
Flat 12, 11-21, Turner Street, Manchester, M4 1DY  
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Flat 16, 11-21, Turner Street, Manchester, M4 1DY  
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Flat 27, 11-21, Turner Street, Manchester, M4 1DY  
Flat 8, 11-21, Turner Street, Manchester, M4 1DY  
Flat 23, 11-21, Turner Street, Manchester, M4 1DY  
Flat 29, 11-21, Turner Street, Manchester, M4 1DY  
Flat 9, 11-21, Turner Street, Manchester, M4 1DY

Flat 19, 11-21, Turner Street, Manchester, M4 1DY  
Flat 6, 11-21, Turner Street, Manchester, M4 1DY  
Flat 5, 11-21, Turner Street, Manchester, M4 1DY  
Flat 28, 11-21, Turner Street, Manchester, M4 1DY  
Flat 13, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB

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

Flat 502 , 25 Church Street, Manchester , M4 1PE  
Flat 2, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 3, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 20, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 18, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 14, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 21, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 19, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 24, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
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Flat 11, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 16, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 5, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 22, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
Flat 9, 11-21, Turner Street, Manchester, M4 1DY  
Flat 13, Northpoint House, 5 Edgehill Street, Manchester, M4 1BB  
11-21 Turner Street

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