

Application Number	Date of Appln	Committee Date	Ward
090468/JO/2009/S1	26th Jun 2009	22nd Oct 2009	Withington Ward

Proposal Variation of condition 4 of planning permission 080264/FU/2006/S1 to allow premises to open until 00.30 Sunday to Thursday and 02.00 Fridays and Saturdays

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

Applicant Mrs Jenny Brooks, 33 Tideswell Road, Hazel Grove, Stockport, Cheshire, SK7 6JF,

Agent Mr Philip Garner, Garner Town Planning Ltd, PO Box 138, Stockport, Cheshire, SK6 8WT,

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 as a café/bar on the ground and first floors with ancillary uses in the basement.

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 shop front 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. This consent was only part implemented due to problems with being able to use the basement.

The approved hours of opening for the ground floor and basement were 9.00am to midnight seven days a week.

Subsequently planning permission to regularise the unauthorised use of the first floor and two outside seating areas were refused in May 2009, ref 089123/FO/2009/S1.

Planning permission was granted in September 2009, ref 090834/FU/2009/S1, for the change of use of first floor to provide toilets and ancillary seating area, effectively to compensate for the basement area, in connection with the existing ground floor restaurant/cafe/bar use. A condition was attached to the approval restricting the hours of opening to 9.00am to midnight seven days a week, ie. The hours as previously approved by Committee.

This application seeks to vary the opening hours by an additional 30minutes Sunday to Thursday and 2.00am Friday and Saturday. In support of the application the applicant has indicated that two nearby bars, stay open until 2.30 am seven days a week and one until 2.00am seven days a week. This is being investigated.

Consultations

Local Residents/Businesses – One letter has been received objecting to the proposed development. The writer strenuously opposes the application. Their flat adjoins the premises in question and when they purchased the flat, the premises were not in use as a bar. Their objection is due to the noise that will result if this application is approved. Since the bar at this premises opened they already experience disturbance at night. Although the bar has a smoking area at the back of the premises, many customers smoke outside the bar on the pavement which is directly outside their bedroom window. People are frequently noisy but currently this is not generally too much of an issue as most of the noise has died down by 11:30pm on weeknights. If this planning application goes through then it is likely they will experience noise until nearly 1am on weeknights and much later on weekends.

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.

Regulatory and Enforcement Services – In March 2009 Enforcement and Regulatory Services negotiated with the applicant closing times of half past midnight Sunday to Thursday and 2.00am Friday and Saturday as a variation to the Premises License and on that basis have no objections to the current application.

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 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 - In granting the original permission for the use of the premises the City Council was mindful of the property's relationship to the residential accommodation on Egerton Crescent and the opening hours granted reflected this. It is this relationship that determines the hours that are acceptable rather than the hours operated by other similar premises in the area.

Comparison of closing times

	Sunday to Thursday	Friday and Saturday
Planning permission	Midnight	Midnight
April License	0.30am	2.00am
Current application	0.30am	2.00am

Residential amenity - The application site is located close to the junction of Wilmslow Road and Egerton Crescent, which is the first available street leading into the residential areas to the east of the district centre. Consequently groups of people leaving the premises are less likely to have dispersed and the noise generated particularly in the early hours would detract from the amenity of local residents. In addition there is residential accommodation adjacent to the application site who would not only suffer a similar loss of amenity when patrons are vacating the premises but also from patrons standing outside of the premises to smoke.

Opening hours of other nearby premises - The applicant has referred to three other bars in the immediate area which it is claimed all open until 2.00am or 2.30am. Two of the premises are adjacent to the application site, one does not

have permission for use as a bar, the other is required by a condition attached to its planning permission to close at 11.30pm Sunday to Thursday and midnight Friday and Saturday. The third premises is located across and further to the north along Wilmslow Road and does not have the same relationship to residential properties. The planning permission for this property requires the premise to close at 11.30pm seven days a week. These apparent breaches of Planning control will be investigated further.

Licensing – In considering the grant of a license there are four areas which can be considered, these are:- the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. Regulatory and Enforcement Services in commenting on applications for a license are constrained by these four areas. In this case they were concerned about the hours applied for and negotiated a reduction to those granted and the subject of this application. The planning system is not constrained in this manner and can attach greater weight to issues such as residential amenity. In this case it is believed that the impact of the proposed later opening hours on the amenity of the occupiers of nearby properties is sufficiently great to justify refusing planning permission.

Conclusion - The close proximity of the application site to residential properties is such that there is a very real potential for a loss of amenity in it is allowed to remain open until the early hours of the morning. That other premises in the area open until such times is not in itself justification for allowing all properties to open late, and in this case there is a question mark over the legality of the late opening of the premises referred to.

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

Conditions and/or Reasons

1) The proposal would have a detrimental impact on the amenity of neighbouring residents, particularly in relation to those residing on Egerton Crescent, due to the increase in the comings and goings to and from the property, and associated noise, disturbance and increase in traffic late at night and during the early hours of the morning, contrary to policies DC10, DC26, H2.2 and RF1 in 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: 090468/JO/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
Licensing Unit
Greater Manchester Police
Crime Reduction Officer
Withington Civic Society
440 to 478, 472a, 476a, 480-494, 482a, 490a Wilmslow Road,
437 to 439, 459a, 441 to 489 Wilmslow Road,
2a, 3 to 23, 5a, 5b Egerton Crescent,
14 to 22, 13 to 19 Swinbourne Grove,
1a, 3 to 11 Parsonage Road,
2a, Egerton Crescent,
Flats 1 to 4, 2 Egerton Crescent,
4 to 8 Egerton Crescent,
Flat s 1 to 6, 465 Wilmslow Road,
Flats 1 and 2, 487 Wilmslow Road,
3 Queen Street West,
2, 2a, Copson Street,

Representations were received from the following third parties:

Flat 2, 465 Wilmslow Road, Manchester, M20 4AN

Relevant Contact Officer : Dave Morris
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Email : d.morris@manchester.gov.uk