

ITEM 2

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| Application Reference | DC/091642 |
| Location: | 138 Stockport Road Cheadle Stockport SK8 2DP |
| PROPOSAL: | Change of use from retail (Class E(a)) to a wine bar (Sui Generis Use) |
| Type Of Application: | Full Application |
| Registration Date: | 08.04.2024 |
| Expiry Date: | 03.06.2024 |
| Case Officer: | Eve Woolstencroft |
| Applicant: | MR Darren Shaw |
| Agent: | Studio Charrette |

DELEGATION/COMMITTEE STATUS

The application is presented to the Area Committee as 8 objections have been received.

DESCRIPTION OF DEVELOPMENT

Full planning permission is sought for the change of use of the ground floor of 138 Stockport Road from retail (Class E(a)) to a wine bar (Sui Generis Use).

The application also includes the creation of an outside seating area to the rear of the property and the erection of a 2 metre timber fence and gate to enclose the rear yard.

The proposed opening hours for the wine bar are as follows:

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|----------------------|---------------|
| Monday – Friday | 12:00 – 23:00 |
| Saturday | 12:00 – 23:00 |
| Sunday/ Bank Holiday | 12:00 – 23:00 |

The submitted planning statement states that outdoor seating is to cease at 10.30pm.

SITE AND SURROUNDINGS

The application site relates to the ground floor existing two storey terraced property sat within a row which is primarily occupied by commercial uses at ground floor level with residential uses to the first floors.

The site is bound to the north by Stockport Road, and to the east by Park Road with the Diamond Jubilee Recreation Ground beyond. To the south of the site there is an informal service road providing access to the rear of the adjoining commercial premises in the terraced row, beyond which there are residential dwellings along Park Road and Dryden Avenue.

The site is within a Predominantly Residential Area, and within Flood Zones 2 and 3 (medium to high risk).

POLICY BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise.

The Development Plan includes-

- Policies set out in the Stockport Unitary Development Plan Review adopted 31st May 2006 which have been saved by direction under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004; &
- Policies set out in the Stockport Local Development Framework Core Strategy Development Plan Document adopted 17th March 2011.

Saved policies of the SUDP Review

CDH1.2 : Non Residential Development In Predominantly Residential Areas

Core Strategy DPD Policies

CS1: OVERARCHING PRINCIPLES: SUSTAINABLE DEVELOPMENT – ADDRESSING INEQUALITIES AND CLIMATE CHANGE

SD-1: Creating Sustainable Communities

SD-6: Adapting to the impacts of climate change

CS8: SAFEGUARDING AND IMPROVING THE ENVIRONMENT

SIE-1: Quality Places

SIE-3: Protecting, Safeguarding and Enhancing the Environment

CS9: TRANSPORT AND DEVELOPMENT

CS10: AN EFFECTIVE AND SUSTAINABLE TRANSPORT NETWORK

T-1: Transport and Development

T-2: Parking in Developments

T-3: Safety and Capacity on the Highway Network

Supplementary Planning Guidance

Supplementary Planning Guidance does not form part of the Statutory Development Plan; nevertheless it does provide non-statutory Council approved guidance that is a material consideration when determining planning applications.

SMBC 'Sustainable Transport' SPD

National Planning Policy Framework

A Revised National Planning Policy Framework (NPPF) issued by the Secretary of State for Housing, Communities and Local Government (MHCLG) on 19th December 2023 and replaced the previous NPPF (originally issued in 2012, revised in 2018, 2019 and 2021). The NPPF has not altered the fundamental legal requirement under Section 38(6) of the Planning and Compulsory Purchase Act 2004 that decisions must be made in accordance with the Development Plan unless material considerations (such as the NPPF) indicate otherwise.

The NPPF representing the governments up-to-date planning policy which should be taken into account in dealing with applications focuses on achieving a lasting housing reform, facilitating the delivery of a greater number of homes, ensuring that we get planning for the right homes built in the right places of the right quality at the same time as protecting our environment. If decision takers choose not to follow the NPPF, then clear and convincing reasons for doing so are needed.

N.B. In respect of decision-taking the revised NPPF constitutes a "material consideration".

Para.1 "The National Planning Policy Framework sets out the Government's planning policies for England and how these should be applied".

Para.2 "Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise".

Para.7 "The purpose of the planning system is to contribute to the achievement of sustainable development".

Para.8 "Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- a) an economic objective*
- b) a social objective*
- c) an environmental objective"*

Para.11 "Plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.

Para.12 “.....Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed”.

Para.38 “Local planning authorities should approach decisions on proposed development in a positive and creative way..... Decision-makers at every level should seek to approve applications for sustainable development where possible”.

Para.47 “Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing”.

Para.124 “The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.

Para. 139. “Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents which use visual tools such as design guides and codes.”

Planning Practice Guidance

The Planning Practice Guidance (NPPG) is a web-based resource which brings together planning guidance on various topics into one place (launched in March 2014) and coincided with the cancelling of the majority of Government Circulars which had previously given guidance on many aspects of planning.

NEIGHBOUR REPRESENTATIONS

Local residents and businesses have been consulted and 8 letters have been received objecting to the application, with the grounds for objection summarised as follows:-

-There are inaccuracies within the submitted planning statement with no information provided about refuse removal from the site given the late operating hours proposed.

-The post office and first floor flat adjacent to the wine bar has been reported as vacant however this was between tenants and is now occupied.

-The acoustic assessment has taken into account the north side residents across from the proposed site but has made no reference to the occupied flats above the parade or the houses to the rear of the site on which this will impact the most as it is the quieter part of the area.

-The noise from the proposed rear yard will act as an echo chamber due to the positioning of the surrounding properties, the flats and one house located under 5 metres from the rear yard. Late night activities to the rear are highly likely to impact on us given the nature of people under the influence of alcohol. Despite the "not allowing alcohol sales in that area after 21.30" in the rear yard, what other acoustic assessment has been provided for this areas and what measures would be taken to ensure that the wider community are not impacted by noise late at night.

-The nearby bar has given rise to antisocial behaviour impacts as well as noise impacts from the glass bins being emptied late at night and early in the morning. The proposed use could give rise to the same impacts.

-Concerns raised with regards to the cumulative impact of noise and waste from the existing bar use and the proposed.

-Issues raised with regards to the impact on parking, the area is already very busy throughout the day and night due to limited parking in the area and the demarcated areas mentioned are limited to a certain length of time. Parking is not enforced by the Council. Parking will overspill to nearby residential roads which already have limited parking.

-The adjacent property usually parks up to 4 cars in this area behind the hair salon, if gated rear yard is allowed how will they have sufficient access for staff to park?

-Queries raised with regards to where will deliveries be taking place, times of deliveries, frequency.

-The proposed use would lead to security issues for users of adjacent businesses due to antisocial behaviour from the bar.

-Objection to the use of the rear yard for outside seating, outside seating to the front would not have a detrimental impact to residential properties.

-The proposal could impact other businesses that have been use for a long time.

- The application includes misleading statements regarding the current use of the land at the back of the property, which has been used for vehicle parking for the adjacent business.
- The application fails to provide necessary details on the sizing, width, and height of the fencing planned.
- The proposed layout does not provide adequate access for emergency services to reach the back door of the adjacent business, posing significant safety risks.
- The proposal could give rise to potential damage to the adjacent property from construction activity.
- The development encourages the public to use a back entrance, currently utilized mainly by shop owners, thus invading the private space of existing businesses.
- A 'prescriptive right of way' may have been established under UK law due to the length of time access over the adjoining land has been used.

CONSULTEE RESPONSES

Environment Agency

Environment Agency position

Flood Risk

We have reviewed the submitted Flood Risk Assessment - ref: March 2024/FRA Charrette & Graham Cockburn Planning Consultant in support of this change of use application. The proposed development will only meet the National Planning Policy Framework's requirements in relation to flood risk if the following planning condition is included.

Condition The development shall be carried out in accordance with the submitted flood risk assessment (ref: March 2024/FRA Charrette & Graham Cockburn Planning Consultant) and the following mitigation measures it details:

- *Entrances into the development to be fitted with flood gates across door thresholds and airbrick covers to be fitted to prevent ingress of flood water.*
- *The development shall sign-up to receive Flood Warning information from the Environment Agency.*
- *A flood plan is to be produced and displayed prominently on the premises for the information of staff (and patrons). The plan will include advice and guidance on what to do during a flood event and include emergency access and egress routes away from flooding.*

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/ phasing arrangements. The

measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reasons

To reduce the risk of flooding to the proposed development and future occupants

Contaminated Land

The proposed development site appears to have been the subject of past industrial activity which poses a risk of pollution to controlled waters.

We have not undertaken a detailed review of the risk posed to controlled waters from land contamination and would therefore advise that you refer to our published Guiding Principles for Land Contamination which outlines the approach we would wish to see adopted to managing risks to the water environment from this site.

We also recommend that you consult with your Environmental Health / Environmental Protection Department for further advice on generic aspects of land contamination management. Where planning controls are considered necessary, we would recommend that you seek to integrate any requirements for human health protection with those for protection of the water environment. This approach is supported by Paragraph 109 of the National Planning Policy Framework.

Lead Local Flood Authority (Flood Risk Engineer)

No comments.

Highways Engineer

The building is small in scale and the floorspace that would be created for drinking purposes would not be of an area that would generate a significant volume of traffic or demand for parking space.

Whilst I acknowledge the use would generate a demand for circa 6-7 additional parking spaces compared to the current retail use I do not consider I could reasonably argue that this is excessive or that such spaces could not be accommodated on street within proximity to the site, without giving rise to highway operation and safety concerns. I therefore raise no concerns.

Environmental Health Officer (Noise)

No Objection subject to conditions

OPERATIONAL PHASE

The proposal has potential to generate noise from activities, plant or equipment, general noise and hours of use.

Whilst the premises is located in the middle of a parade of commercial premises in a small district service centre; residential properties are located opposite on the A560 Stockport Road and to the rear at Park Road and Dryden Avenue. The adjacent

property at 136 Stockport Road has ground floor commercial use and residential accommodation at first floor level. The layout of the proposed development has a staircase and store/stock room at first floor level on the party wall with the flat.

The proposed hours of operation are detailed on the planning application form:

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|----------------------|---------------|
| Monday – Friday | 12:00 – 23:30 |
| Saturday | 12:00 – 23:30 |
| Sunday/ Bank Holiday | 12:00 – 23:00 |

A licensed premises (Premises Licence: 20/01385) is located at 130 Stockport Rd. To prevent, significant adverse impacts upon amenity, condition 5 of planning approval DC/075193, granted 20th August 2020, restricts the opening hours of the public house to 11:00 – 23:00. The licensed premises at 130 Stockport Rd, has not generated noise complaint to this service.

PREMISES LICENCE

Live & Recorded - no licence permission is required for a performance of amplified live music and any playing of recorded music, between 8.00am and 11.00pm on any day, on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.

COMMERCIAL KITCHEN EXTRACTION

No external plant is detailed on the proposed plans.

If external commercial kitchen extract or refrigeration plants are necessary, the plant would likely require planning permission and further noise and odour impact assessment at time of application, to address impact upon the amenity of the area and residential receptors.

ANALYSIS

Principle of the Change of Use

The site is located within a row of commercial uses and within a Predominantly Residential Area. There is an existing drinking establishment within the row at no. 130 Stockport Road that was granted planning permission under application ref. DC/075193, granted 20th August 2020. The application seeks permission for the change of use of the ground floor unit from a shop (Use Class E (a)) to a wine bar (Sui Generis Use). It is noted that neighbour representations have raised concerns regarding the suitability of the proposed use in this location.

Policy CDH1.2 of the UPD Review states that non-residential development will be permitted in Predominantly Residential Areas where it can be accommodated without detriment to the residential amenity of adjacent dwellings or the residential area as a whole. In particular account will be taken of:

- (i) noise, smell and nuisance;
- (ii) traffic generation and safety and accessibility by sustainable

transport modes;
(iii) parking;
(iv) hours of operation;
(v) proximity to dwellings;
(vi) the scale of the proposal; and
(vii) whether or not the character of the area will be changed.

Paragraph 11.18 of the supporting text to Policy CDH1.2 states that commercial and industrial development will only be acceptable in Predominantly Residential Areas where the proposal is small-scale and can be accommodated without detriment to residential amenities or loss of dwelling stock (see UDP Policy HP1.3, Avoidance of Loss of Dwellings).

The principle of the change of use of the site from a retail use to a wine bar is therefore supported by Policy CDH1.2 of the UPD Review subject to all other material circumstances as assessed later in this report.

It is noted that neighbour representations raise concerns regarding the viability of the proposed use and impact on neighbouring businesses. Due to the scale, siting and nature of the proposed development, this is not a material planning consideration in this instance and is not afforded significant weight in this planning assessment.

Design and Siting

The proposal would provide activity to a vacant commercial unit. The submitted application states that there would be no elevation alterations to existing property or shopfront. The proposal includes a 2 metre timber fence with gate that would enclose the rear yard area. The proposed boundary treatment would be typical of rear yard/garden areas within the immediate area and would not be highly visible within the street scene due to its location to the rear of the property. It is noted that any proposed signage would require separate advertisement consent. The proposal thus is considered to have a neutral impact upon the character and appearance of the site within the street scene, and the visual amenity of the area, in accordance with Core Strategy DPD policies CS8 and SIE-1, and addressing criteria (vi) and (vii) of Policy CDH1.2 of the UPD Review.

Impact on Residential Amenity

Neighbour representations have raised concerns regarding the impact of the proposal on noise and disturbance, these impacts are considered below.

The proposed wine bar would occupy the ground floor of the property and there would be an office, meeting room and WC at first floor. The adjacent property to the east no. 140 Stockport Road is in use as a beauty salon at ground floor and an aesthetics outlet at first floor. The neighbouring property to the west no. 136 Stockport Road is a Post Office at ground floor and residential flat at first floor. To the south of the site there are residential dwellings on Dryden Avenue and Park Road. There are also residential dwellings on the opposite side of Stockport Road. The sensitive nature of these existing uses has been considered in the assessment of this proposal.

The proposal would generate more noise and disturbance than the existing use as a printing shop, due the operational aspects of the use including later opening hours. The layout of the proposed development has a staircase and store/stock room at first floor level on the party wall with the adjacent upper floor flat. An acoustic report highlights that the party wall between the application site and the adjoining properties is of solid construction brick and plaster and there is a solid wooden floor. It is therefore considered that noise transfer impacts to adjoining properties would be not be significant. Environmental Health officers concur with the noise assessment.

In addition, the site is situated to the north of residential properties along Park Road and Dryden Avenue. An assessment of the impact of noise outbreak to these properties is therefore required. The site is separated from these properties by the rear yard and service road, however this degree of separation alone is considered unlikely to mitigate the impacts of noise and disturbance associated with the proposed use.

The application is supported by an acoustic report which has aided in this assessment. The Environmental Health Officer (Noise) raises no objections in relation to noise and disturbance as a result of the proposed change of use, and their comments are contained within the consultee responses section above.

Environmental Health officers note that the proposal site and residential properties located opposite on the A560 Stockport Road, are located within a DEFRA road noise contour mapped area. Road Noise levels are indicated as being between:

| | |
|------------|--------------------------|
| Daytime | 60 - 74.9 dB LAeq, 16 hr |
| Night-time | 55 - 64.9 dB LAeq, 8 hr |

The site is additionally classified as being in a DEFRA 'Noise Important Area' where the highest 1% of noise levels at residential locations can be found.

The application initially applied for opening hours until 23:30 Monday to Saturday, however, for consistency, it is considered appropriate to align the proposed hours of operation with those of the existing public house at no. 130 Stockport Road within the same parade.

There is an outdoor seating area proposed within the rear yard area, the proposed site plan shows 4 tables with benches and the area would be enclosed by a 2 metre timber fence with a gate. An operating schedule submitted states that outside seating and smoking is to cease at 10.30 pm and a condition is recommended in this regard. There would be no amplified sound in the outside area and this would be conditioned in order to minimise noise impacts to nearby residents.

Although it is recognised there is residential accommodation close to the site, it is not considered that the proposal would give rise to unduly harmful impacts on residential amenity by way of noise and disturbance, given the number of covers that can be accommodated and the operating hours.



Proposed Outdoor seating area and relationship with nearby residential properties

It is recommended that a compliance condition is attached to any permission granted to limit the opening hours of the public house to 12:00-23:00 in accordance with the comments from Environmental Health. This condition is considered reasonable and necessary to ensure that the proposed use does not result in significant adverse impacts upon the amenity of the adjoining occupiers, in accordance with saved UDP policy CDH1.2 and Core Strategy DPD policies CS8, SIE-1 and SIE-3. It is considered that given the existing background noise levels, the proposed use subject to conditions limiting opening hours, would not give rise to significant additional impact on residential amenity with regards to noise and disturbance.

It is recommended that a compliance condition is attached to any permission granted to require that the use is carried out in accordance with the recommendations set out within the submitted acoustic assessment in order to ensure that the proposed use operates without detriment to the residential amenity of surrounding properties, in accordance with saved UDP policy CDH1.2 and Core Strategy DPD policies CS8, SIE-1 and SIE-3.

In view of the above and in the absence of an objection from the Environmental Health Officer (Noise), it is considered that the relatively small scale nature of the proposal could be accommodated on the site without detriment to the residential amenity of surrounding properties, in accordance with Core Strategy DPD policies CS8, SIE-1 and SIE-3, and is considered to address criteria (i), (iv), (v) of Policy CDH1.2 of the UPD Review.

Highway Safety and Parking

Neighbour representations have raised concerns regarding car parking provision, delivery movements, highway safety and traffic generation.

The Council's Highway Engineer raises no objections and their comments are contained within the consultee responses section above. In particular, it is commented that the change in volume and nature of traffic to the site is not expected to result in any significant detrimental impact on road safety or the operation of the local highway network.

There are cycle stands on Stockport Road in close proximity to the property and the site is located just outside Cheadle district centre and is well served by public transport. It is noted that neighbour representations received raise concerns in relation to car parking, however on the basis of the comments of the Highways Engineer, this lack of car parking provision is not considered to result in significant adverse impacts in terms of highway safety, such that it would be reasonable to refuse the application on this basis, given the sustainable location of the site.

Waste would be stored within the rear yard area and a condition is recommended to require the submission of a management plan to detail how the use would be managed in terms of its deliveries and refuse collection. It is recommended that a condition to this effect is attached to any permission granted in order to ensure that the development is serviced in a safe manner, having regard to Policies SIE-1 and T-3 'of the Core Strategy. This condition is also considered to address the concerns raised in a neighbour representation in relation to waste disposal.

In view of the above, in the absence of objections from the Highway Engineer, the proposal is considered acceptable from a highway safety and parking perspective, in accordance with Core Strategy DPD policies SD-6, SIE-1, T-1, T-2 and T-3 and the Sustainable Transport SPD, and is considered to address criteria (ii) and (iii) of Policy CDH1.2 of the UPD Review.

Flood Risk and Drainage

The site is located within Flood Zones 2 and 3 (medium to high risk). The Environment Agency has been consulted and have raised no objection subject to the following recommended condition:

The development shall be carried out in accordance with the submitted flood risk assessment (ref: March 2024/FRA Charrette & Graham Cockburn Planning Consultant) and the following mitigation measures it details:

- *Entrances into the development to be fitted with flood gates across door thresholds and airbrick covers to be fitted to prevent ingress of flood water.*
- *The development shall sign-up to receive Flood Warning information from the Environment Agency.*
- *A flood plan is to be produced and displayed prominently on the premises for the information of staff (and patrons). The plan will include advice and guidance on*

what to do during a flood event and include emergency access and egress routes away from flooding.

The applicant has given due consideration to the proposals impact on flood risk and the proposed mitigation measures are considered to be acceptable.

Other Matters

A neighbour representation has been received which raises concerns regarding the accuracy of a statement made in the application submission regarding the vacancy the adjoining residential flat. Notwithstanding the occupancy statement of the unit, the impacts of the proposal on current or future impacts have been assessed as part of this application.

Representations have been received which raise concerns regarding the enclosure of the rear yard area has been used for vehicle parking for the adjacent business. It has been indicated that the neighbouring business could have a legal right of access over the land to the rear given the length of the time that it has been used for parking. These comments have been considered, however, this would be a civil legal matter that would be separate to planning legislation.

A representation has been received that raises concern that the proposal could potential damage to the adjacent property from construction activity. It is noted that the only physical changes to the property would the erection of a fence to enclose the rear yard and proposal does not include the erection of any extensions or substantial building work. Whilst there may be some impacts to neighbouring properties during the fit out of the unit, any damage caused to any neighbouring properties or encroachment would be a civil legal matter.

Representations have also indicated that the development encourages the public to use the rear of the property. It is noted that a gate is proposed to the rear yard, however, the applicant has indicated that this will be used for waste transportation and servicing only and that patrons would access and egress the premises from the frontage on Stockport Road.

A neighbour representation has been received which raises concerns regarding the anti-social behaviour implications of the proposal. In relation to anti-social behaviour, this is addressed to some extent under the assessment of noise and disturbance above, and also to some extent by the submitted operating schedule and would be covered separately by the premises license.

SUMMARY

The use is considered acceptable in principle and the re-use of the commercial unit would provide an active frontage which would support the vitality of the area and create employment opportunities.

The impact on nearby residents has been carefully considered. Although it is recognised there will be additional impacts in terms of noise and disturbance, it is considered any impacts can be mitigated through the imposition planning conditions.

On this basis the use would not give rise to unduly harmful impacts on residential amenity in terms of noise, or an increase in comings and goings that would warrant refusal of the application.

In conclusion, the proposal is considered to comply with relevant saved UDP and Core Strategy DPD policies and does not conflict with the policies of the NPPF. As such, the application is recommended for approval.

RECOMMENDATION

GRANT subject to conditions.