

APPLICATION NUMBER: 23/00544/FUL

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.
23/00544/FUL

CASE OFFICER
Rosalind Gralton

DETERMINATION DATE 12.06.2024 EXT OF TIME 13/01/2025

Address: 7-11 Oldham Road Rochdale OL16 1UA

Proposal: Change of Use from a first floor wine bar (Sui Generis) to a shisha café (Sui Generis) - Resubmission of 21/01506/FUL

PUBLICITY	Weekly list expired?	Y	Site notice expired?	Y
	Neighbour letters expired?	Y	Press Notice expired?	Y

DELEGATION	Significant departure from local plan?	N	Contrary to national policy?	N
	Applicant a Council Member or officer?	N	Contrary to previous decision?	N
	Major with 10 or more objections and recommending approval?	N	Called in or Planning Panel objection?	N

COMMENTS	Planning Panel comments received?	N
	Neighbour comments received?	Y

EIA	Screening opinion completed and saved to Onbase?	NA
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CONDITIONS	Pre-commencement conditions proposed?	N
	Pre-commencement conditions agreed (or notification period expired)?	N

RECOMMENDATION	REFUSE
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SITE

This application relates to the first floor of 7-11 Oldham Road, a two-storey mid terraced property positioned in Rochdale Town Centre and its Conservation Area, and within the defined urban area. The building is a Non-Designated Heritage Asset (NDHA). The first floor of the property is currently empty but was previously occupied as a wine bar (sui generis). The ground floor of the property is split in to three different commercial units consisting of retail, restaurant and bar (planning permission granted for takeaway (21/00415/FUL). The surrounding area is predominately commercial, with various shops, banks, takeaways, restaurants, bars and offices. The first floor is accessed from the side and rear of the building

Access to the first floor is via the side or from the rear. The rear is accessed via an access to the side of the property and through a courtyard to the rear. Directly opposite to the northeast is 28 Baron Street. The rear of 28 Baron Street faces towards the applicant property. Additionally, along with the adjoining 24a Baron Street, the properties are identified as NDHAs due to their architectural and historical significance. The rear of the property is clearly visible from Baron Street due to Baron Street being set on higher ground.

PROPOSAL

The application seeks planning permission to change the use of the first floor of 7 – 11 Oldham Road from a wine bar to a shisha café. The access for the proposed shisha café would be retained to the side and rear. The application is identical to the refused application 21/01506/FUL, except for the proposed flue at first floor on the rear elevation.

The majority of the internal layout would stay the same with only minor alterations.

Shisha smoking

The term shisha smoking is a way of smoking tobacco, sometimes mixed with fruit or molasses sugar, through a bowl and hose or tube. Shisha smoking is a very social activity, whose popularity has increased within the United Kingdom in recent years.

RELEVANT PLANNING POLICY**Planning (Listed Building and Conservation Areas Act) 1990 (as amended)**

Section 72 of the above Act states that in the exercise of planning functions with respect to any buildings or other land in a Conservation Area, special attention shall be paid to the desirability of preserving or enhancing the character of appearance of that area.

National Guidance

National Planning Policy Framework (NPPF)

Places for Everyone Joint Development Plan (PfE)

JP-P1 – Sustainable Places

JP-P2 – Heritage

JP-P6 – Health

Adopted Rochdale Core Strategy (CS):

SO1	To deliver a more prosperous economy
SO3	To improve design, image and quality of place
SD1	Delivering sustainable development
C6	Improving health and well being
E1	Establishing thriving town, district and local centres
E2	Increasing jobs and prosperity
E3	Focusing on economic growth corridors and areas
P1	Improving image
P2	Protecting and enhancing character, landscape and heritage
P3	Improving design of new development
G9	Reducing the impact of pollution
G11	Managing waste
T2	Improving accessibility
DM1	General Development requirements

Unitary Development Plan (UDP):

G/D/1	Defined Urban Area
G/S/1	Hierarchy and Role of Centres
BE/17	New Development Affecting Conservation Areas
S/6	District Centre, Local Centres and Linear Commercial Areas
R/3	Drake Street Physical Regeneration Area, Rochdale

RELEVANT SITE HISTORY

14/00093/FUL Change of use from vacant restaurant (Use Class A3) to Use Class A5 (hot food takeaway) and external alterations including new shop front and new extraction vent. (11 Oldham Road).
Decision: Grant subject to conditions.

14/00427/DOC Submission of details to comply with condition 2 on planning permission 14/00093/FUL. (11 Oldham Road).

Ground floor – 9 Oldham Road

21/00415/FUL Change of use from wine bar (Sui Generis) to hot food takeaway (Sui Generis) including installation of flue on rear elevation.
Decision: Grant subject to conditions.

21/01332/DOC	Submission of details to comply with condition 6 (bin storage) on planning permission 21/00415/FUL. Request completed.
21/01506/FUL	Change of use of first floor from wine bar (sui generis) to shisha cafe (sui generis) Reason for refusal: <i>Due to the creation of a substantially enclosed premises, the proposal would unduly impact on the amenity of the users of the property by increasing the level of pollution and creating an unacceptable condition for users of the property. This would therefore have a detrimental impact on the health and wellbeing of the users of the property. As such it is considered that the proposal is contrary to Policies G9 and DM1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.</i>
21/01803/VRCON	Application to vary condition 6 of planning permission 21/00415/FUL in relation to bin storage. Decision: Grant subject to conditions.

CONSULTATION RESPONSES

Conservation And Design

No objections

Highways And Engineering

No comments received to date

Env Health - Noise/Odours

This section has no objections to the proposals

Public Health

Comments provided

GM Fire Service

No objection, advice on sprinkler system. It is expected a building regulations application is to be submitted.

Gtr Manchester Ecology Unit

No comment to make

REPRESENTATIONS

The application was publicised by way of neighbour notification, press notice and site notice. Two responses were received objecting to the application. The comments are summarised as follows:

- The proposed change of use for the property to serve Shisha may not align with UK law regarding smoking areas. The property may not meet the necessary criteria for legal operation as a Shisha establishment.
- Risk to public health and safety.

- Walls and floors are thin, if a shisha cafe is opened we will hear the operation, a distraction for neighbouring business.
- Risk of fire

ANALYSIS

Principle of Development

The application site is located within the Defined Urban Area as allocated under the Rochdale Unitary Development Plan. As such policy G/D/1 is relevant to any applications on the site and this establishes that development should be located in the urban area so as to support urban regeneration and protect the countryside. The site is also within Rochdale Town Centre.

Policy E1 of the Council Core Strategy is also relevant and which states 'we will focus retail leisure, cultural, office, residential and other development to promote the viability and vitality of the borough's town centres. To do this we will 'support the expansion of the evening economy through a number of mixed uses such as restaurants/bars/ theatres and quality housing on appropriate sites, or through conversion of upper floors, which will enhance the vitality of the centre, making it a more vibrant, active and safer place in the afternoon and evening' .

The proposal would see the change of use of the first floor from a wine bar to a shisha cafe. Both uses do help support the evening economy within Rochdale Town Centre.. Furthermore, it is noted that the premises are vacant and the introduction of the shisha café would allow the vacant premises to be occupied again.

In light of the above, it is considered that the principle of providing a shisha café at the site is acceptable and in accordance with Policy E1 of the Core Strategy and the National Planning Policy Framework. However, consideration needs to be given to other material considerations below.

Amenity of the occupiers of the proposed shisha bar

Policy DM1 of the adopted Core Strategy states that all development proposals, including changes of use of land and buildings, extensions and alterations, will be expected to demonstrate that they:

- B. Are compatible with surrounding land uses, both in terms of its impact upon those uses and the impact of the surrounding land uses upon the amenities of future residents/users;
- D. Mitigate against any impacts due to noise, air, dust, light and odour pollution, traffic generation or inadequate access, where such mitigation is identified as being necessary.

Policy G9 states that we will reduce all forms of pollution, contamination and land instability in the borough, by requiring that development does not have impacts that lead to an unacceptable increase in air, water, noise, light or other pollution. Additionally, Policy C6, states the council will improve health and well-being, reduce health inequality, through '*seeking high quality design of buildings, streets and spaces to create neighbourhoods that are safe to use*' and '*not allowing the over concentration of takeaway food premises where they may impact adversely on the amenity of residents*'.

Paragraph 135 of the NPPF states that planning policies and decisions should ensure that developments create places that are safe, inclusive and accessible and

which promote health and well-being, with a high standard of amenity for existing and future users.

Paragraph 191 of the NPPF also states that 'planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.'

Policy JP-P1 of PfE, states all development shall be comfortable and inviting, with indoor and outdoor environments offering a 'high level of amenity that minimises exposure to pollution' and 'addresses microclimate issues such as sunlight, indoor air quality, overheating, shade, wind and shelter'.

As noted previously, the site is located within Rochdale Town Centre with the area surrounding the site being predominantly commercial in nature. Within close vicinity to the site there are numerous takeaways, retail units and offices. Due to the nature of the proposed use, it is likely that most of the comings and goings to the property would be in the late afternoon and evening. Furthermore, it is noted that the existing use of the first floor is as a wine bar with the likely comings and goings being similar in nature. It is therefore considered that the proposed use would share an acceptable relationship with the neighbouring uses. Additionally, the Council's Environmental Health Officer raised no objections to the proposal.

Policy JP-P6 of PFE, relating to Health, states in order to help tackle health inequality, new development will be required, as far as practicable, to maximise positive contribution to health and wellbeing, whilst avoiding any potential negative impact of new development. While the wording of this is not strictly applicable to this application, the supporting text at paragraphs 9.32 to 9.37 provide a background to the policy, outlining the health inequality experienced in Greater Manchester equates to a life expectancy of 3-4 years lower than the national average for men and women. Additionally, the text specifies this is in part due to the prevalence of long term conditions, including respiratory diseases, with smoking a significant issue.

The proposed change of use relates to the first floor and the three units on the ground floor would be retained as they are presently. One letter of objection was received with concerns raised specific that the proposed use may not align with UK law regarding smoking areas, while another objection raised concerns regarding risk of smoke, fire, health and nuisance to the ground floor occupants of the building. The Council's Public Health team were consulted on the application, detailing the legislation of the Health Act 2006, which prohibits smoking in enclosed and substantially enclosed parts of virtually all premises that are open to the public or used as a place of work by more than one person. This includes lounges and cafes where waterpipes are offered; commonly known as shisha bars. Specific to this, waterpipes can only be legally smoked outside, or where requirements for a property are met for the structure to be over 50% open. The opinion of Public Health Team is clear:

'The approval of this application for change of use from a first floor wine bar to a shisha café at 7-11 Oldham Road, Rochdale, OL16 1UA would be in contravention of the Health Act 2006 and The Smoke-free (Premises and Enforcement) Regulations 2006 if the smoking of shisha pipes was to take place

within premises that are enclosed or substantially enclosed. Environmental Health therefore object to the application based on the information received.'

As it stands the property would remain substantially enclosed on the basis of the submitted plans. The opening of windows would not suffice to meet the requirements of the Health Act 2006. Again, although the inability to comply with Health Act 2006 is not within the remit of planning, as noted above, planning consideration needs to be given to the amenity impact of the proposal in regards to pollution and the health implications. It is noted that the proposal would consist of a shisha cafe where tobacco would be smoked within a substantially enclosed space. Additionally no details of ventilation system to be used within the property has been provided. This would mean that toxic fumes would remain within the property and inhaled by users of the property, including not only the smokers', but employees and any non-smokers within the property. On the basis of the information above, there is sufficient information to assume the proposed use of the building, as presented on the submitted plans, would pose a risk to the health and wellbeing of all users of the building.

As such the proposal would unduly impact on the amenity of the users of the property by increasing the level of pollution. This would therefore have a detrimental impact on the health and wellbeing of the users of the property. As such it is considered that the proposal is contrary to Policies G9, C6 and DM1 of the adopted Rochdale Core Strategy, Policy JP-P1, Policy JP-P6 of the Places for Everyone Joint Development Plan and the National Planning Policy Framework.

Visual Amenity and Heritage

The site is located within a Conservation Area, and the building, along with the neighbouring properties of 24a and 28 Baron Street are NDHAs. The impact on the designated and non-designated heritage assets is a material planning consideration. Policy P2 of the adopted Core Strategy states that the Council will protect the Borough's heritage by conserving, enhancing and promoting key heritage assets, both statutory and non-statutory, including consideration of their wider settings. Saved UDP Policy BE/17 only permits development that preserves or enhances the character and appearance of the conservation area. Section 72 of the Planning (Listed Buildings and Conservation Areas Act) 1990 (as amended) requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

Policy P3 of the adopted Core Strategy requires all new developments, regardless of location in the borough, to adhere to high standards of design. Policy DM1 of the Core Strategy states that all development proposals will be expected to demonstrate that they are of high quality design and take the opportunity to enhance the quality of the area, in addition to requiring a number of other basic planning considerations.

Paragraphs 131 and 135 of the National Planning Policy Framework (NPPF) state that good design is a key aspect of sustainable development and that planning policies and decisions should ensure that developments function well and add to the overall quality of the area and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Paragraph 205 of the NPPF states that 'when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation'. In regard to non-designated heritage assets, paragraph 209 of the NPPF states 'the effect of an application on the significance of

a non-designated heritage asset should be taken into account in determining the application.'

The application proposes the erection of a flue to the first floor rear elevation. No other external alterations or extensions are proposed to the property. The proposed flue, while not a desirable feature in design nor in respect of the non-designated heritage asset or conservation area, was considered by the Conservation Officer, and given its overall size and siting on the building, would not be unacceptable from a design or heritage perspective. In the instance of the application subject to an approval, a planning condition could be secured in order to ensure appropriate materials are used. It is noted that the flue is not included in the description of development, and in the instance the application were to be approved, the description would be amended and publicity would be carried out in accordance with legislative requirements.

It is noted that the for a shisha cafe to comply with the requirements of the Health Act 2006, the premises cannot be enclosed or substantially enclosed. The proposal as it is, would therefore fail to comply with the legislation.

The alterations required to comply with the legislation, would include the removal of 50% of the external walls and therefore require planning permission. These alterations to the scheme were not requested by officers, as the designation of the property within a conservation area and its status as a non-designated heritage asset would mean that such works are unlikely to be acceptable alterations to the building.

With the use of the property as a shisha cafe, the waste output is likely to be similar to that of a wine bar. It is considered that the existing arrangements would be retained and as such would not be worse than the existing situation on site, and would likely be acceptable from a visual amenity perspective. In the instance this was unacceptable, a condition would be secured prior to occupation of the building as a shisha bar for details to be submitted of the waste management arrangements.

Therefore based upon the proposed plans, it is considered that the development would not unduly impact on the visual amenity of the street scene and would not adversely impact the character or appearance of the area. Additionally, the proposal would not impact on the significance of the non-designated heritage assets. The design of the proposal is therefore considered to accord with the requirements of policies P2, P3 and DM1 of the adopted Rochdale Core Strategy and the National Planning Policy Framework.

Highways

Policy T2 of the adopted Core Strategy seeks to improve accessibility by locating development where good access to public transport is available or can be provided and in all circumstances, prioritises the safety, accessibility and amenity of those who live or have business in the area. Policy DM1 also states that all development proposals should provide satisfactory vehicular access with adequate parking, manoeuvring, and servicing arrangements taking into account of the proposed use and location. Paragraph 115 of the National Planning Policy Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The highways department raised no objection to the proposal, noting that in highway terms the proposed use would be similar to the existing use and do not expect additional highways impact. The application does not propose any parking and there is no dedicated off-street parking available for the property. The highways

department did not consider the lack of parking was an issue owing to the site being located within Rochdale town centre and therefore in a highly sustainable location with access to amenities and public transport. Officers concur with this position.

As such it is considered that the proposal would be acceptable in terms of road safety and parking, and therefore in accordance with policies DM1 and T2 of the Adopted Core Strategy and the National Planning Policy Framework.

RECOMMENDATION

Refuse for the following reason:

1. Due to the creation of a substantially enclosed premises, the proposal would unduly impact on the amenity by increasing the level of pollution, thereby causing a detrimental impact on the health and wellbeing of the users of the property. As such it is considered that the proposal is contrary to Policies G9, C6 and DM1 of the adopted Rochdale Core Strategy, Policy JP-P1 and JP-P6 of Places For Everyone Joint Development Plan, and the National Planning Policy Framework.

Procedure Statement

The proposal would not improve the economic, social and environmental conditions of the area nor does it comply with the development plan and therefore does not comprise sustainable development. There were no amendments to the scheme, or conditions which could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application.

Informative

For the avoidance of doubt, this decision relates to the following list of submitted plans:

- **Proposed side elevation of flue – 1810/6**
- **Proposed ground floor plans – 1810/4**
- **Proposed first floor plans – 1810/5**
- **Proposed elevations – 1810/6**
- **Location Plan**

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