

SECTION '2' – Applications meriting special consideration

**Application No :** 12/02433/FULL3

**Ward:**  
**Penge And Cator**

**Address :** 211 - 215 High Street Penge London  
SE20 7PF

**OS Grid Ref:** E: 535664 N: 170023

**Applicant :** Fastgrow Investments Limited

**Objections :** YES

**Description of Development:**

Change of use of ground floor retail unit (Class A1) at 211-213 High Street to restaurant (Class A3) and installation of extract duct to rear elevation

Key designations:

Biggin Hill Safeguarding Birds  
Biggin Hill Safeguarding Area  
London City Airport Safeguarding  
London City Airport Safeguarding Birds

**Proposal**

It is proposed to change the use of Nos. 211-213 from the current retail hardware shop to a restaurant Class A3 and also to install a ventilation extraction duct to the rear elevation.

**Location**

The application property is located at the southern end of Penge High Street within the secondary frontage of the Penge District Shopping Centre.

It is located within a Victorian terrace of 12 units including 2 double units and a triple unit of which the application unit forms a part. The 2 upper floors above the shops are in residential use and are accessed via an access way in Kingsdale Road.

Directly opposite the application units is 'The Moon and Stars' public house and a Sainsbury's supermarket. Of the 12 units that make up the terrace 6 are in retail use and 6 are in non retail use, this includes one other restaurant use.

**Comments from Local Residents**

Nearby owners/occupiers were notified of the application and 5 representations were received including letters from those residents living in maisonettes above the application units. The nature of the objections can be summarised as follows:

- severe lack of parking in surrounding roads
- proposal for a restaurant seating up to 80 with no parking facilities will put extra pressure on already congested adjacent streets
- proliferation of restaurant and takeaway uses in Penge High Street
- lack of adequate fire escape for occupants of residential upper floor in the event there is a fire in the proposed kitchen
- the change of use would impact upon the quality of life for nearby residents as quiet enjoyment of rear amenity space would be impossible because of noise generated by patrons of the restaurant
- noise and disturbance resulting from comings and goings of customers using the restaurant, slamming of car doors and revving of engines
- to gain access to the maisonettes above the proposed restaurant you walk across the roof of the proposed restaurant. The roof is constructed from 3 inch thick wood with a tarmac top layer and there are concerns that this would be a fire hazard and could potentially block our means of escape or restrict access for fire services.
- the proposed location for refuse storage is not practical, not only is it the current parking area, it is open to being used as general dumping ground and is also the access / egress points to maisonettes above proposed restaurant, as a result this could impede access to these homes
- the restaurants would be situated under the living room of the upper floor maisonettes and there is very little soundproofing
- the proposed extraction flue will be an eyesore
- the terrace area where it is proposed to locate the extract flue is effectively the rear garden of the maisonettes above the proposed restaurant
- the large lantern rooflights located projects into the rear garden / terrace of the flats above and will impact on privacy as staff and customers will have access to views

### **Comments from Consultees**

Highways - The development is located on the corner of Cottingham Road and High Street; High Street, Penge (A234) is a London Distributor Road. The site is located in an area with a high PTAL rate of 5 (on a scale of 1 - 6, where 6 is the most accessible).

There are waiting restrictions (No Waiting at Any Time) within vicinity of the site.

No off street car parking would be provided. However, it is considered that as the area has parking restrictions and good transport links; the development would not have a significant impact on the parking and road safety within the local road network. Therefore no objections are raised to the proposal.

Environmental Health- No objections are raised from an Environmental Health point of view.

Drainage - No comment.

### **Planning Considerations**

The main policies in this instance are Policy S2 and Policy S9. Policy S2 concerns 'secondary frontages' and permits changes of use from Class A1 retail provided that the use provides a service that complements the shopping function of the town centre and there is no adverse impact on residential amenity. Policy S9 concerns 'food and drink premises' and it raises similar concerns to Policy S2 in addition it states that the Council will only permit proposal for additional restaurants / takeaways where the proposal does not cause undue traffic congestion or prejudice the safety of other road users, or result in an overconcentration of such users.

### **Planning History**

Under planning ref. 03/00052, planning permission was refused for a similar proposal which concerned the entire triple unit, Nos. 211-215. The proposal comprised change of use of ground floor from retail shop to restaurant/hot food takeaway (Class A3) and external ventilation ducting at rear.

The grounds for refusal were as follows:

1. The proposal lacks adequate means of ventilation to deal with cooking odours and as such the proposal would be detrimental to the residential amenities of the locality by reason of adverse smell and noise effects, contrary to Policy S.6 of the Unitary Development Plan and Policy S7 of the second deposit draft Unitary Development Plan (September 2002).
2. The proposal would result in an unacceptable over concentration of non-retail food and drink establishments, out of character with the retailing function of the area and contrary to Policy S.3 of the adopted Unitary Development Plan and Policies S2 and S7 of the second deposit draft Unitary Development Plan (September 2002).

A subsequent appeal against this decision was dismissed. The Inspector considered the main issues to be the effect of the proposal on the vitality and viability of Penge District Shopping Centre and on the living conditions of adjoining residential occupiers with particular reference to smells and noise. On the latter issue the Inspector concluded that "the proposal would not harm the living conditions of adjoining residential occupiers and would accord with Policy S6 of the UDP. With regards to the impact on the vitality of the Penge District Shopping Centre the stated as follows:

"..my view is that a growth in non-retail uses could threaten its future by hampering its ability to meet the shopping needs of the community. PPG6 points out that there should be scope for flexibility in secondary frontages.

However, if the proposal were to be implemented, 8 out of 12 units within the parade between Kingsdale Road and Cottingham Road would be in non-retail uses. To my mind, this is a significant proportion that would seriously dilute its shopping function. Furthermore, together with the adjoining bank, the use of a triple unit for Class A3 would result in a run of 5 units in non-retail use on the edge of the defined centre. I consider this would break up the retail frontage contrary to the provisions of S.3.

I conclude that the proposal would harm the vitality and viability of Penge district shopping centre and would be contrary to Policy S3 of the UDP.”

The Inspector concluded that he did not consider the previous application would result in an over-concentration of Class A3 uses, but would result in a proliferation of non-retail uses generally which would be harmful to the retail character and function of the Penge as a shopping centre.

Under planning ref. 04/00598, planning permission was refused for essentially the same proposal as currently being considered. The grounds for refusal were as follows:

1. The proposal would result in a proliferation of non-retail uses within the parade which would undermine the retail character and function of Penge District Shopping Centre thereby contrary to Policies S.2 and S.3 of the adopted Unitary Development Plan and Policies S2 and S7 of the second deposit draft Unitary Development Plan (Sept 2002).

A subsequent appeal was allowed the Inspector considered the main issue to be the effect of the proposal on the vitality and viability of Penge District Shopping Centre. He considered that the 50:50 split between retail and non retail uses was a “reasonable mix given the location of the parade on the periphery of the shopping centre” Apart from the retail units within the parade, there is a strong retail presence in the vicinity, including a Sainsbury’s supermarket opposite the appeal premises. There is only one other hot food establishment in the parade.”

With regard to residential amenity the Inspector stated:

“Residents concerns related mainly to noise, smells and build up of refuse. The conditions suggested by the Council should minimise the noise smells and heat emanating from the restaurant premises and from the ventilation extraction system. Given the possibility of controlling opening hours by the condition put forward by the Council and the presence of other A3 uses nearby , particularly the large pub opposite the appeal premises, I do not consider the disturbance attributable to customers leaving the premises would be sufficient to create significant additional problems for nearby residents.”

## **Conclusions**

In support of his application the applicant has stated that Nos. 211- 215 has been marketed as one large unit and 3 separate units since March 2012, the marketing agents have confirmed that the unit has not generated any interest during this time.

One of the main considerations in this instance is whether or not there have been any significant changes to take into account since the previous proposal was allowed on appeal. A new Unitary Development Plan has been adopted since that the appeal decision in January 2005 but the main thrust and substance of the relevant retail policies remain for the most part unchanged.

In terms of the character and make up of the parade, the 50:50 retail to not retail split remains at ground floor level with only one other food and drink use. At first floor level No.197-199 has been granted change of use of part of the second floor for amateur boxing.

There are no technical objections from an Environmental Health or Highways point of view.

From the residents point of view one concern that did not seem to be fully addressed by the appeal Inspector was the light spillage and possible loss of privacy from the large rooflight lanterns this could be achieved by way of a condition.

Whilst appreciative of the considered letters of concerns from residents regarding amenity issues, it is also necessary to consider the history of this site and the Inspectors reasoning in allowing the previous proposal which is essentially for the same proposal.

In this instance there do not appear to be material planning considerations that would lead to a different recommendation that would be sustainable at appeal.

Background papers referred to during production of this report comprise all correspondence on files refs. 03/00052, 04/00598 and 12/02433, excluding exempt information.

## **RECOMMENDATION: PERMISSION**

Subject to the following conditions:

- |   |                 |  |                      |
|---|-----------------|--|----------------------|
| 1 | ACA01<br>ACA01R | Commencement of development within 3 yrs<br>A01 Reason 3 years |                      |
| 2 | ACJ09<br>ACJ09R | Restricted hours (restaurant use) (2 in)<br>J09 reason         | 9am 11pm             |
| 3 | ACJ11<br>CJ11R  | Soundp'fing. etc for rest./t-away (1 in)<br>J11 reason         | ground floor ceiling |
| 4 | ACJ26<br>ACJ26R | Ventilation system for restaurant/take-a<br>J26 reason         |                      |
| 5 | ACH18           | Refuse storage - no details submitted                          |                      |

ACH18R Reason H18

- 6 Details of measures to prevent light spillage or views into or out of the roofs lanterns on the rear terraces shall be submitted and approved in writing by or on behalf of the Local Planning Authority. The approved works shall be implemented before the use hereby permitted commences and shall be permanently maintained thereafter.

**Reason:** In order to comply with Policies S2 and S9 of the Unitary Development Plan and in the interest of the amenities of residents at Nos. 211a -215a High street Penge.

- 7 AJ02B Justification UNIQUE reason OTHER apps

Policies (UDP)

S2 Secondary Frontages

S9 Food and Drink Premises

**Application:**12/02433/FULL3

**Address:** 211 - 215 High Street Penge London SE20 7PF

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"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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