

SECTION '2' – Applications meriting special consideration

Application No : 12/03837/FULL2

Ward:
Penge And Cator

Address : 57 High Street Penge London SE20 7HW

OS Grid Ref: E: 535181 N: 170492

Applicant : Mr D Juresh

Objections : YES

Description of Development:

Change of use from shop (Class A1) to restaurant/take-away (Class A3/A5) with ventilation ducting at rear

Proposal

This proposal is for the change of use from shop (Class A1) to restaurant/take-away (Class A5) with ventilation ducting at rear,

Location

The application property is a ground floor shop unit, located within a terraced building on the northern side of High Street Penge. The premises are currently in use as an internet café. The upper floors are in use as flats. The site is not part of a designated shopping frontage.

Comments from Local Residents

Nearby owners/occupiers were notified of the application and representations were received which can be summarised as follows:

- over-concentration of food and drink premises
- additional rubbish and waste
- noise and smell nuisance – extract flue will discharge near upper floor flat window
- late night noise and disturbance
- existing use remains viable
- no marketing evidence has been provided
- harmful to amenities of neighbouring residential properties
- would not accord with objectives of national and local planning framework, EMP5, EMP6, S5 and S9
- would result in undesirable parking within the area

Comments from Consultees

Cleansing advised that the refuse storage and collection arrangements should remain as existing.

The Metropolitan Police Crime Prevention Design Advisor (CPDA) made no comment on the application.

Highways raised no objection to the proposal.

Environmental Health (pollution) raised no objection in principle and recommended 2 conditions regarding noise from and details of the kitchen extract system.

Planning Considerations

The application falls to be determined in accordance with the following policies of the Unitary Development Plan:

- BE1 Design of New Development
- ER9 Ventilation
- S5 Local Neighbourhood Centres, Parades and Individual Shops
- S9 Food and Drink Premises

London Plan and National Planning Policy Framework are also key considerations in the determination of this application.

Planning History

The application most relevant to the current proposal is planning ref. 12/01602 for the change of use from shop (Class A1) to restaurant/take-away (Class A3/A5) with ventilation ducting at rear which was refused on the following grounds:

“The proposed use of the premises as a restaurant and hot food takeaway would give rise to an unacceptable loss of amenity to neighbouring residents, with particular regard to noise and disturbance and smell nuisance, contrary to Policies BE1, S9 and ER9 of the Unitary Development Plan”.

Conclusions

The main issues relating to the application are the effect that it would have on the character of the area (having regard to its shopping function) and the impact that it would have on the amenities of the occupants of surrounding residential properties.

The proposal will involve the change of use of an existing A1 retail unit which is currently in use as an internet café, to a restaurant/hot food takeaway within Classes A3 and A5. Although the site is within Penge, it does not fall within the district centre or a designated shopping frontage as defined within the Unitary Development Plan. In considering the acceptability of the proposed change of use in policy terms, in the absence of any term of vacancy at the premises it is necessary to consider whether the proposed use would contribute to the range of local services or provision local community facilities, and whether it would

contribute to the vitality of the centre by providing a service or attracting visitors during shopping hours (in accordance with Policy S5). The proposed use could be considered to contribute to the range of local services, and would provide a service, potentially attracting visitors during shopping hours, from lunchtimes onwards.

As noted above, whilst the site is not within a designated retail frontage, it is within a defined parade of shops, which runs between Nos. 21 to 81 High Street inclusive. Within this parade, there appear to be a total of 6 existing food and drink outlets in the parade. In view of the length of the parade and the spacing between other food and drink outlets, it is not considered that an over-concentration of similar uses would arise.

With regard to the impact of the proposed use on residential amenities, it is noted that there are a total of 4 flats within the application property, one on the ground floor at the rear and three within the upper floors of the building. The proposed use will operate during daytime hours and during the evening, up until 11pm. The previous application was refused as it was considered that the proposal give rise to an unacceptable degree of noise and disturbance, both within the building while customers are served and as a result of comings and goings through take-away custom.

In terms of the ventilation duct to the rear which would discharge adjacent to the rear dormer window on the rear roofslope it was considered that insufficient detail was provided with regard to the noise output and technical specification for the ventilation system. In the absence of this information it is was not possible to determine whether the ventilation system could operate without giving rise to a loss of amenity to local residents through noise and smell nuisance and in view of the number of residential properties in the vicinity of the site it is not considered that this matter could reasonably be controlled by condition.

In order to overcome previous concerns, the current proposal provides additional information relating to the proposed ventilation duct which would include two silencers and extract system to reduce the effect of cooking smells and fumes. Again no technical objections have been raised by the Council's Environmental Health Division and given further information has been supplied as to the specification of the ventilation duct, this is considered to have overcome previous concerns in relation to the detrimental impact on the residential amenities of adjoining owner/occupiers.

In response to the concerns that the proposal would open until 11pm every day, further information has been supplied by the applicant in relation to the hours of operation of food establishments in the vicinity which the applicant states open until 11pm and in some instances beyond this. In the cases of No. 31-33, No. 73 and No. 75 as quoted by the applicant, no planning history appears to exist relating to the change of use of the ground floor of these properties to A3/A5. In relation to No. 103 although this is located approximately 330m from the application site was permitted to open until 11pm on any day (planning ref. 90/02445).

No. 79 (which has residential accommodation in the upper floors) also cited by the applicant was granted permission from change of use to A3 at appeal under planning ref: 91/00898/FUL with permitted open hours until 11pm. In this instance the Planning Inspector found that the provision of sound insulation could reduce the transmission of noise to the flats on the upper floors of the building, were permission to be granted for the current proposal a similar condition is suggested. The Inspector also found that in terms of disturbance resulting from the movement of customers coming and going from the premises due to the volume of traffic along High Street and to other nearby premises that would be open in the evening this must result in a high ambient level in the area. Accordingly, any additional noise generated by customers was deemed not to be significant. Therefore in light of this hours of operation until 11pm are considered to be acceptable in this instance.

Having had regard to the above it was considered that the development in the manner proposed is acceptable in that it would not result in a loss of amenity to local residents nor impact detrimentally upon the character of the area and has satisfactorily overcome the previous grounds of refusal.

Background papers referred to during production of this report comprise all correspondence on files refs. 12/03837 and 12/01602, excluding exempt information.

RECOMMENDATION: PERMISSION

Subject to the following conditions:

- | | | | |
|---|-----------------|--|-------------|
| 1 | ACA01
ACA01R | Commencement of development within 3 yrs
A01 Reason 3 years | |
| 2 | ACJ04
ACJ04R | Provision of window display
J04 reason | |
| 3 | ACJ09
ACJ09R | Restricted hours (restaurant use) (2 in)
J09 reason | 11:00 23:00 |
| 4 | ACJ26
ACJ26R | Ventilation system for restaurant/take-a
J26 reason | |
| 5 | ACK01 | Compliance with submitted plan | |

Reason: In the interests of the residential amenities of the adjoining properties and the visual amenities of the area, in line with Policies BE1 and S9 of the Unitary Development Plan.

- 6 The ceilings and walls between the restaurant/hot food takeaway hereby permitted and the upper floors and rear wall of the premises and the adjacent properties shall be so adapted as to achieve a reasonable resistance to airborne sound and heat transference as far as is practical having regard to existing construction. These works shall be implemented before the use hereby permitted commences in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and shall be permanently retained thereafter.

Reason: In order to comply with Policy S9 of the Unitary Development Plan and to ensure a satisfactory standard of amenity for adjacent properties.

Reasons for permission:

In granting permission the Local Planning Authority had regard to the following policies of the Unitary Development Plan:

- BE1 Design of New Development
- ER9 Ventilation
- S5 Local Neighbourhood Centres, Parades and Individual Shops
- S9 Food and Drink Premises

London Plan and National Planning Policy Framework are also key considerations in the determination of this application.

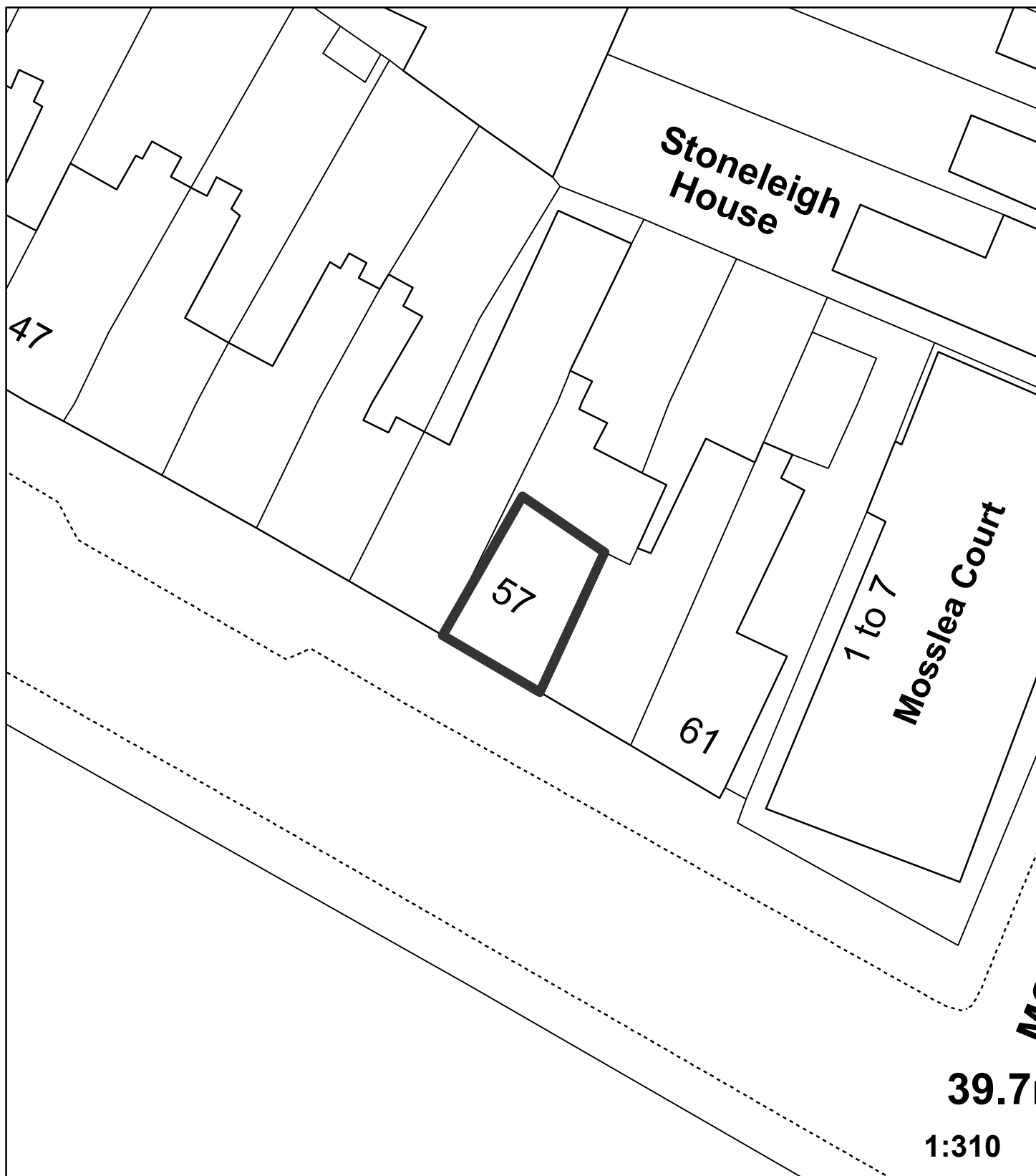
The development is considered to be satisfactory in relation to the following:

- (a) the loss of a retail unit is acceptable in this instance;
- (b) the relationship of the development to adjacent properties;
- (c) the character of the development in the surrounding area.

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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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