

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: Thursday 28 February 2013

Decision Type: Non-Urgent Non-Executive Non-Key

Title: APPEALS BY CAPITAL SHOPPING CENTRES LTD (CSC)
AGAINST THE COUNCIL'S DECISION TO REFUSE PLANNING
AND LISTED BUILDING CONSENT FOR DEVELOPMENT AT
QUEEN'S GARDENS, BROMLEY

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Chief Officer: Director of Renewal & Recreation

Ward: (All Wards)

1. Reason for report

1.1 This report seeks Members views as to whether the ground of refusal relating to the impact on residential amenity should be defended at the forthcoming public inquiry.

2. **RECOMMENDATION(S)**

2.1 Members views are requested

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment
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Financial

1. Cost of proposal: £ none for the purpose of this report
 2. Ongoing costs: Non-Recurring Cost:
 3. Budget head/performance centre: Central Contingency
 4. Total current budget for this head: £150,000
 5. Source of funding: Existing revenue budget for 2012/13
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Staff

1. Number of staff (current and additional): 53 fte's (excluding Building Control, Land Charges)
 2. If from existing staff resources, number of staff hours: 14
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Legal

1. Legal Requirement: Non-Statutory - Government Guidance:
 2. Call-in: Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): several thousand
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: no comments received

3. COMMENTARY

- 3.1 Members will recall that a report was submitted to DC Committee on January 29th 2013 seeking Members' views on whether the ground of refusal relating to the impact on residential amenity should be defended. The report was deferred to undertake further analysis of new information received and for a complete copy of an appeal to be appended. An updated report is set out below.
- 3.2 Development Control Committee on June 28th 2012 refused planning permission for an application for planning permission (12/01340) and consent for an application for listed building consent (12/01340). Both applications related to a proposal to extend The Glades Shopping Centre by adding 5 restaurants and relocation of the listed gates within the Gardens.
- 3.3 The applicants (Capital Shopping Centres – CSC) have appealed against this decision and the appeal will be heard at a public inquiry.
- 3.4 The agents have written to the Council in a letter dated 10th December 2012, a copy of which is attached to this report. In short they have asked that the Council withdraw that part of the reason for refusal that states 'and be detrimental to the amenities of residential properties in the vicinity of Queens Gardens by reason of increased evening activity resulting in noise and disturbance.'
- 3.5 In support of their request the appellants make the following points:-
- This reason for refusal did not appear in the first refusal for application 11/03466 which was for a larger scheme than the 2012 application.
 - The Council's Environmental Health Officer did not object advising that the application was in accordance with guidance in the National Planning Policy Framework which states the planning decision should aim to 'avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development' and that the conditions could be used to mitigate other adverse impact.
 - A previous application at the Abbaye restaurant (now Belgo) on the north-west side of the Gardens for an external seating area was refused and then allowed on appeal (06/00916). The Inspector acknowledged that some noise was expected and that this would be acceptable given the public nature of the gardens and the town centre location of the site. Furthermore the Inspector noted that other forms of control are available to manage operational matters.
 - In May 2007 the Council granted full permission for the same development (May 2007).
 - In an email from the current appellants dated January 30th 2013 it is pointed out that while the appeal decision has a 6 year time limit, the subsequent approval under ref 06/03751 does not.
 - Policy OSM anticipates restaurant development along the edge of Queens Gardens in an area closer to the residential properties than the appeal scheme.

- The proposed use is for A3 and not for A4 (drinking establishments) or A5 (hot food takeaways) so the primary use is for the sale and consumption of food and drink on the premises.
- The LPA is required to have evidence to substantiate each reason for refusal with reference to the statutory development plan and other material considerations and the introduction of fresh and substantial evidence at appeal can constitute unreasonable behaviour.
- Given the nature of the proposed development, the development plan allocation for restaurant development at Queens Gardens, the proposed conditions and no objection from the Environmental Health Officer, it is the appellants' view that the application on amenity grounds cannot be reasonably upheld and evidenced at appeal. It would be beneficial to focus on the differences between the main parties of the appeal thereby reducing time and costs associated with the appeal.

3.6 Prior to the Committee meeting representations were received from the Bromley Civic Society which raised concerns as follows:

- The case put forward by CSC does not correctly reflect the findings of the 2007 Abbaye decision. The concern related to the contention by CSC that 'The Inspector concluded that the level of disturbance was acceptable due to the town centre location.' The Civic Society consider that the appeal decision reflects that the level of disturbance would not be judged except by use of a trial period at the end of which it could well be decided that the level of disturbance was unacceptable.
- Members would need legal opinion as to whether or not the contested ground for refusal of the CSC scheme can be substantiated.
- Other considerations relate to the relevance of the NPPF para 123 regarding protection of areas of tranquillity and protection from noise that gives rise to adverse impacts on health and quality of life as a result of new development. The Civic Society point out that as the Queens Gardens is a designated heritage asset with protected inherent open space and tranquil gardens the CSC appeal Inspector will address these matters.

3.7 In response to the appellants request Members may wish to take into account the following information when reaching a decision.

- The first application (11/03466) for the 5 restaurants was refused on the following grounds:

'The proposal would be an over-intensive development of the site, detrimental to the character and appearance of the Bromley Town Centre Conservation Area by reason of its size, site coverage, design and the loss of openness and public amenity to Queens Gardens, contrary to policy BE1 of the Unitary Development Plan, policy OSM of the Bromley Town Centre Plan and the Conservation Area Statement.'

- The second, smaller, application (12/01339) for the 5 restaurants was refused on the following grounds:

'The proposal would be an over-intensive development of the site, detrimental to the character and appearance of the Bromley Town Centre Conservation Area by reason of its size, site coverage, design and the loss of openness and public amenity to Queens Gardens, and be detrimental to the amenities of residential properties in the vicinity of Queens Gardens, by reason of increased evening activity resulting in noise and disturbance, contrary to policy BE1 of the Unitary Development Plan, policy OSM of the Bromley Town Centre Plan and the Conservation Area Statement.'

- The appeal is against the second application. A 3 day public inquiry will be held on May 1st, 2nd and 3rd 2013.
- An application (06/00916) for the external seating area at the Abbaye restaurant was approved with a time limit condition (6 years) imposed by the Inspector in March 2007. An application 06/03751 was approved without the 6 year limit by Plans Sub Committee 2 on May 10th 2007 (Copies of Decision Notices are attached).
- The Council's Environmental Health Officer has reiterated his original comments on application 12/01339 stating that:

The nearest residential property is far enough away to provide reasonable attenuation over distance.

There will be some noise from any restaurant but this will be largely contained inside the units and there wouldn't be very noisy outdoor drinking areas of the sort you might get with an A4 use.

There may be some noise from arrivals and departures but the effect is likely to be minimal.

In terms of people in the area, presumably people walking to cars are most likely to go to the Pavilion car park in the other direction from the residential properties. People walking to the town centre locations may pass through the Gardens and past residential properties but it is unlikely that this would have a significant impact.

Given the town centre location the possibility of some additional audible noise from people using the area is not enough to recommend refusal on noise grounds.

- No objections to the development have been received from residents in Lownds Court, the closest residential dwellings to the appeal site.
- Objections have been received by the Council from properties in Queens Road but not on the grounds of the impact on residential amenity.
- The appellant has advised that if the Council do not pursue the element of the reason for refusal relating to the impact on the proposed restaurant development on the amenity of residents, CSC will not pursue a claim for costs in relation to this matter.

- The Council will have to be able to satisfy the Planning Inspector that there is persuasive evidence, not available to the Council when the earlier and larger application was refused, which justifies the addition of the words at issue in the ground of refusal. If the Council cannot substantiate that part of the reason for refusal on amenity grounds and should an Inspector concur with the appellants case an award of costs is likely.

4. FINANCIAL IMPLICATIONS

4.1 A successful claim for costs against the Council could be expected if the appellants succeed in their appeal against the refusal of permission. It is not possible to put a figure to the level of costs. An amount of £150,000 is held in the central contingency as a provision for any potential costs that may be incurred for any planning appeals.

5. LEGAL IMPLICATIONS

Addressed in the report

6. PERSONNEL IMPLICATIONS

None for purposes of this report.

Non-Applicable Sections:	Legal Implications, Personnel Implications
Background Documents: (Access via Contact Officer)	Letter from Nathaniel Lichfield and Partners dated 10 December 2012 and email dated January 30 th 2013