

SECTION '2' – Applications meriting special consideration

Application No : 13/02342/PLUD

Ward:
Petts Wood And Knoll

Address : Murinci Restaurant Station Square Petts
Wood Orpington BR5 1LZ

OS Grid Ref: E: 544467 N: 167630

Applicant : Mr And Mrs Ketenci

Objections : YES

Description of Development:

Occasional erection of temporary marquee (x2) to supplement the wedding catering/reception services provided
CERTIFICATE OF LAWFULNESS FOR A PROPOSED DEVELOPMENT

Key designations:

Conservation Area: Station Square Petts Wood
Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Local Cycle Network
London City Airport Safeguarding
Secondary Shopping Frontage

Proposal

This application was deferred from Plans Sub-Committee 3 by Members on 9th January to seek correct information on where the weddings will take place and to establish the legal position on carrying out weddings in the restaurant. The report is repeated below with updates indicated.

A legal determination is sought for the occasional erection of two temporary marquees to supplement the wedding catering/reception services provided at the existing restaurant.

Further information has been submitted to clarify that the structures would be used in connection with wedding ceremonies which may take place in the restaurant itself. They would be erected for no more than 28 days in any calendar year and would not be permanently fixed to the ground.

Location

The application site is located to the eastern edge of the central square situated within Station Square. The rear eastern edge is located to the Daylight Inn pub which forms the remainder of the square and to the west is the entrance to Petts

Wood Station. The site is located within the Station Square, Petts Wood Conservation Area.

Comments from Local Residents

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

- the use of the marquees for wedding would produce loud music that would be unacceptable

Comments from Consultees

Legal opinion has been sought and this is reflected within the conclusion of this report.

Update:

The Superintendent Registrar has provided the following comment in relation to the legal requirements for premises undertaking of wedding ceremonies:

The requirements for approved premises are established by the Marriage and Civil Partnerships (Approved Premises) Regulations 2005 and Amendment Regulations 2011. Premises are defined in the Regulations as a permanently immovable structure comprising at least a room, or any boat or other vessel which is permanently moored. Premises not within the meaning of this definition, such as the open air, a tent, marquee or any other temporary structure and most forms of transport, will not be eligible for approval.

No food or drink can be consumed in a licensed room for one hour before and one hour after the ceremony, and that any bar in the licensed room should be screened and inaccessible.

These requirements are integral to the licence and must be complied with. As the restaurant is one large open plan room which also contains the bar, very clear strategies will need to be in place, for example:

- Where the guests will initially meet and assemble, especially if drinks are provided prior to the ceremony
- Where the entire wedding party will move to after the ceremony for post ceremony refreshments
- How the bar will be screened off

Planning Considerations

This application requires the Council to consider, in the first instance, whether the proposal constitutes development under Part III, Section 55 of the Town and Country Planning Act 1990 (as amended) (the Act).

Secondly it falls to be considered whether the erection of the structures or the use of the land falls under development allowed under The Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO).

Planning History

A number of applications have been approved and refused for this site, of particular relevance is application ref. 97/01711 which granted permission for a change of use from Class A2 estate agents to the current Class A3 restaurant.

Application ref. 12/03219 was granted for the increase in height of the existing flat roof to the rear elevation and a rear dormer.

Application ref. 12/03220 was granted for an extraction fan and ducting to the rear flat roof.

A certificate of lawfulness for the siting of two 4 square metre removable parasols to the front of the curtilage onto station square was granted on the basis that the proposal did not constitute development for the purposes of the Act.

Conclusions

The structures would not be fixed to the ground, being secured with weights when in use, and are stated as being erected on the morning of an event and removed afterward for no more than 28 days per year.

It has also been stated by the applicants that in seeking a licence to hold wedding ceremonies it is a requirement that, by law, the ceremonies must be carried out within a separate room which cannot be used 1 hour before or after the ceremony and as a result the marquee would provide the second room and allow ceremonies to be carried out at the application property.

Members will note that it is the applicants' contention that the marquees are temporary structures with no permanent housing and would not be used for more than 28 days per calendar year. As such it is held that their erection would not amount to development requiring planning permission. It has been further clarified, in an email of 9th December, that the proposal would be lawful under either the 28 day rule (Class B of Part 4 of the GPDO) as a temporary use, or because it would not be development and there would be no change of use of the land.

Update: further clarification has been provided by email dated 24th February that the weddings will take place in the restaurant only.

Temporary Use and the GPDO

With regard to the temporary nature of the buildings and such uses, these are covered in two parts, Classes A and B, of Part 4 of the GPDO:

Class B of Part 4 of the GPDO allows the use of land for any purpose for not more than 28 days per calendar year. However, this Class does not grant permission for

such temporary development where the land in question is within the curtilage of a building, as is the case here.

Class A of Part 4, allows for the provision of moveable structures required temporarily in connection with operations being carried out on that land provided that any structure thereby permitted shall be removed. It is established that 'operations' within this Part does not relate to the use of the land, but rather the carrying out of operational development (i.e. building works already granted planning permission) and in this regard the proposal does not accord with the provisions of Class A as it is required for a use of the site not related to operational development being undertaken.

Development Not Requiring Permission

"Development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55 of the Act stipulates, at S.55 (2) that certain operations or uses shall not be held to involve development, at (f) that:

"in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class. "

The application site is considered to be within Class A3 (restaurant) and as such the use or operation within the land in question that also falls within Class A3 would be considered ancillary and, under the Act, would not require planning permission as it would not constitute development.

Under such Certificate applications the onus is upon the applicant to sufficiently demonstrate evidence that supports their proposal. In this instance the Council has sought clarification from the applicants as to the proposed use and why it is considered to be lawful (as listed above). It therefore falls to be determined if, on the basis of this evidence provided, the proposal constitutes a material change of use.

Although the proposal is finely balanced between constituting development or otherwise, it is not considered that a wedding ceremony falls within Class A3 and as such the proposed use at the frequency specified would not, on balance, be held as ancillary. The Act is clear that any operation or use that falls outside of the designated list, namely (2)(f) above, is considered to be development that requires planning permission and therefore it is considered that the proposal is development that requires planning permission.

Background papers referred to during production of this report comprise all correspondence on file ref. 13/02342, excluding exempt information.

as amended by documents received on 19.11.2013 09.12.2013

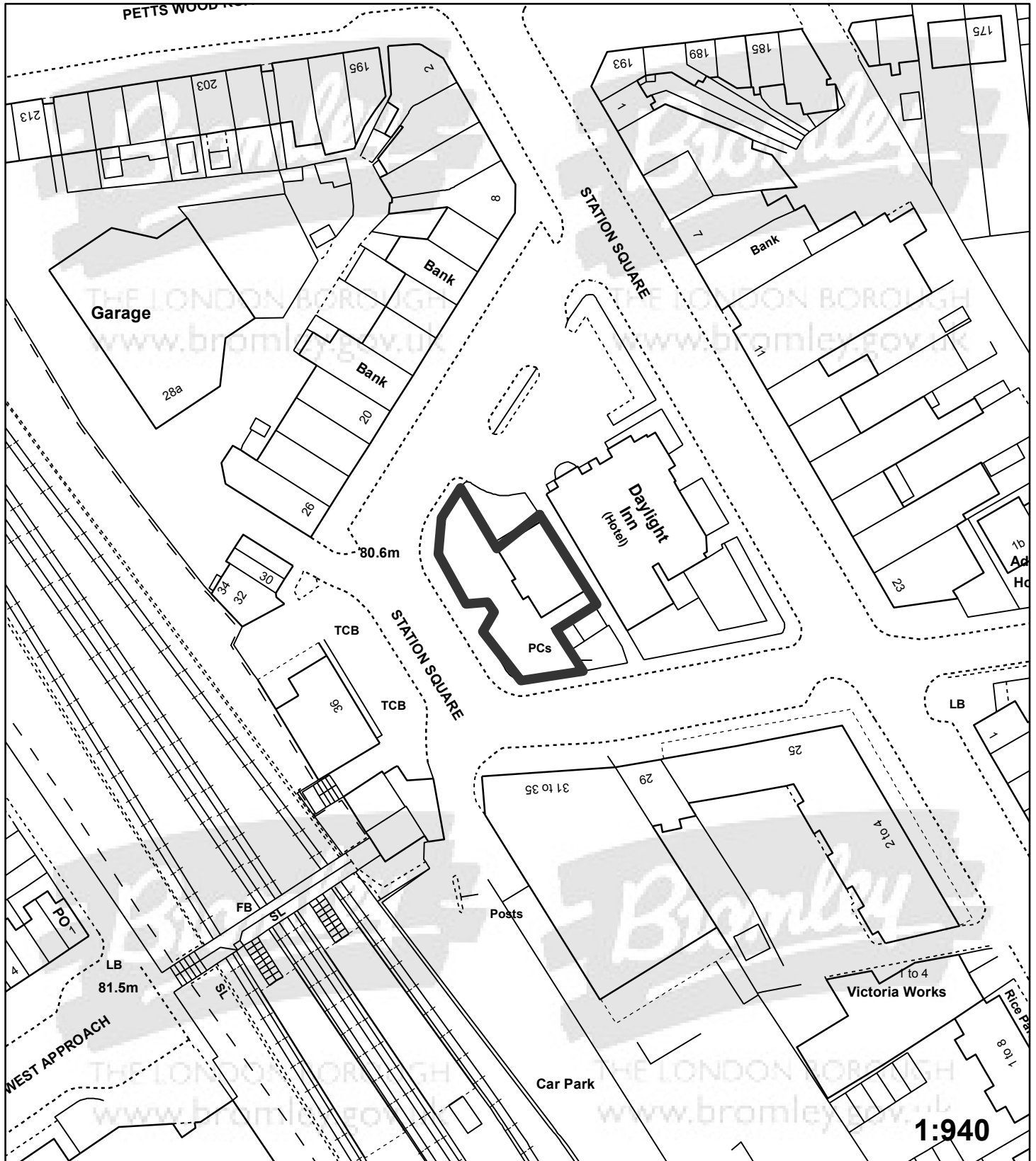
RECOMMENDATION: CERTIFICATE BE REFUSED

- 1 The proposed use constitutes a change of use which requires planning permission and does not constitute permitted development by virtue of Class A or Class B of Part 4, Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Application:13/02342/PLUD

Address: Murinci Restaurant Station Square Petts Wood Orpington BR5 1LZ

Proposal: Occasional erection of temporary marquee (x2) to supplement the wedding catering/reception services provided
CERTIFICATE OF LAWFULNESS FOR A PROPOSED DEVELOPMENT



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

© Crown copyright and database rights 2013. Ordnance Survey 100017661.