

SECTION '2' – Applications meriting special consideration

Application No : 14/00848/FULL3

Ward:
Chislehurst

Address : 43 High Street Chislehurst BR7 5AF

OS Grid Ref: E: 543869 N: 170778

Applicant : Cote Restaurants Ltd

Objections : YES

Description of Development:

Change of use of ground floor of No 45 High Street from Class A1 (Retail) to Class A3 (Cafe/Restaurant) and provision of single storey rear extension to Nos 43 and 45 both to be used as single enlarged restaurant. Alterations to shopfront at Nos 43 and 45 and installation of associated plant at rear.

Key designations:

Conservation Area: Chislehurst

Biggin Hill Safeguarding Birds

Biggin Hill Safeguarding Area

Green Chain Walk

London City Airport Safeguarding

London City Airport Safeguarding Birds

Retail Shopping Frontage Chislehurst

Proposal

This application was deferred by the Planning Sub-Committee (No. 3) which convened on 3rd July to be reconsidered under List 2 of this committee agenda. The report presented to Members of that previous committee is repeated below.

The proposal involves the following:

- single storey flat-roofed extension (with two skylights) which will project up to 20.3m beyond the existing rear building line of the host buildings at Nos. 43 and 45;
- the existing retail shop unit at No 45 will be converted to Class A3 use, and together with the existing restaurant unit at No 43, will form one enlarged restaurant (Class A3) encompassing the two existing shop units and the proposed extensions;
- replace the two existing shopfronts;
- provision of associated plant at the rear, above the proposed rear extension

The application is accompanied by a Planning Statement.

Location

The application site is situated along the western side of Chislehurst High Street, approximately 60 metres south of its junction with Willow Grove.

Comments from Local Residents

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

- property has been empty for many years
- high-end chain will improve the look of the area
- Chislehurst Town Team - appearance of shop front and locally listed building should be protected
- Chislehurst Town Team - positive proposal which offsets loss of retail space; better to be in use than empty
- two properties have been empty for a long time
- proposal will enhance the High Street and attract more visitors
- proposal will regenerate the area
- question how building works can be carried out at the rear with no rear access; and neighbouring home-owning resident would be affected by this
- Chislehurst Business Group - welcome addition to the High Street
- Portfolio Holder for Renewal and Recreation - having property occupied by such an excellent operator would be a very good thing for the town

Comments from Consultees

The following comments were received from the Environmental Health division:

1. In order to comply with Bromley's general specification, the kitchen extract system should discharge at least 1.0m above eaves level.
2. The amount of external plant at the rear of the building is likely to give rise to loss of amenity to neighbouring occupiers by virtue of the noise generated. Some form of enclosure or a system of baffles should be erected in order to protect the neighbours.

No technical Highways objections have been raised.

No objection has been raised by the Advisory Panel for Conservation Areas.

Planning Considerations

The application falls to be determined in accordance with the following policies of the Unitary Development Plan (UDP) and the London Plan:

- BE1 Design of New Development
- BE10 Locally Listed Buildings
- BE11 Conservation Areas

- S4 Local Centres
- S9 Food and Drink Premises
- S10 Non-Retail Uses in Shopping Areas

Chislehurst is a Local Centre designated in the UDP

Planning History

There is a detailed planning history relating to Nos. 43 and 45 High Street. These are summarised below.

Under ref. 86/01135, planning permission was refused to convert No. 45 from retail use to a wine bar. This was on the basis that the proposal would involve the loss of a retail unit and contribute to a significant break in the retail frontage; and on the basis that, due to inadequate parking in the area to accommodate the use, the proposal would prejudice the free flow of traffic in the area. The application was subsequently dismissed at appeal.

Under ref. 98/00604, planning permission was refused for the change of use of the ground floor and basement of No. 45 from retail to an employment bureau office (Class A2).

Under ref. 06/00764, planning permission for a change of use of the ground floor at No. 45 from retail to restaurant and bar (A3/A4) at these premises was refused on the following ground:

"The proposal would result in the unacceptable loss of a Class A1 retail unit, which would be harmful to the retail character of this Local Town Centre, and the proposed Class A3/A4 use would contribute to an overconcentration of similar uses, thereby contrary to Policy S.3 of the adopted Unitary Development Plan and Policies S4 and S7 of the second deposit draft Unitary Development Plan (September 2002)."

The 2006 application was subsequently dismissed at appeal, the Appeal Inspector considering that:

"...on balance, both national guidance and development plan policy objectives weigh against the proposal. An additional establishment of the type proposed would add to the concentration of similar uses in this part of the town centre and, in conjunction with the restaurants either side of the site, would harm the retail character of this sensitive location."

Under ref. 08/00756, planning permission was refused for a change of use of No. 45 from retail to estate agent (Class A2), on the basis that the proposal would be harmful to the retail character and vitality of the Chislehurst High Street due to the resultant concentration of similar uses within close proximity of each other.

Under ref. 08/02300, planning permission was granted for a single storey rear extension to No. 45.

Permission was also granted to extend the restaurant area at No. 43 under ref. 09/02615, although this too remains unimplemented.

Under ref. 09/02617, an application at No. 45 for a single storey rear extension and change of use of basement, first and second floors and the rear part of the ground floor from retail to restaurant (Class A3) was refused on the following ground:

"The proposal would result in the further proliferation of A3 uses in this part of Chislehurst High Street and would result in the loss of part of an A1 use, thereby harmful to the retail character of this local centre, and contrary to Policies S4 and S9 of the Unitary Development Plan."

Under ref. 10/03016, planning permission was granted in March 2011 for a single storey extension to the rear of Nos. 43 and 45 which would provide additional kitchen and dining space at the existing restaurant at No. 43. The front part of No. 45 would remain in retail use.

Conclusions

The main issues relating to the application are the effect that it would have on the retail character of Chislehurst High Street (with particular focus on the loss of the existing designated retail use at No 45) and on the character and appearance of the Chislehurst Conservation Area.

Policy S4 of the UDP relates to local centres where the Council will not normally permit a change to a non-retail use where:

- (i) it would not harm the retail character of the shopping frontage;
- (ii) have no adverse impact on residential amenity;
- (iii) would not create a concentration of similar uses;
- (iv) attract visitors during shopping hours; and
- (v) complement the shopping function of the centre

Amongst the criteria set out in Policy S9 (Food & Drink Premises) are that proposals should not result in an over-concentration of food and drink establishments, out of character with the retailing function of the area.

Policy S10, regarding non-retail uses in shopping areas, also advises that in retail frontages, the Council will not normally permit uses that do not offer a service to visitors unless:

- (i) there has been long term vacancy and a lack of demand for a retail or service use can be proven; and
- (ii) the proposed use is in premises where it would not undermine the retail viability of the centre.

As noted above No 45 has been the subject of previous planning applications that have sought a change of use away from A1 retail use, and which have consistently been refused by the Council, in part due to the harm to the retail character of the local centre.

Since No 43 benefits from an existing restaurant (Class A3) use, and planning permission has previously been granted (under ref. 10/03016) to enlarge this unit to encompass an area to the rear of Nos. 43 and No 45, the key consideration in terms of the retail character of Chislehurst High Street concerns the loss of the retail use at No 45 to form part of an expanded restaurant encompassing Nos. 43 and 45 in their entirety.

No. 45 is situated in a central position in the town centre, between the junction with Willow Grove in the north and the public car park at the southern end, where there are more than 30 ground floor units, with A1 uses substantially outnumbered by premises in other uses. No. 45 is flanked to the north by a restaurant (occupying the former police station at No. 47) and to the south by a restaurant use that is currently vacant (No. 43, which forms part of this planning application); No. 41 is in use as an estate agents. Elsewhere in the centre, uses in Classes A2, A3, A4 and A5 are well represented. However, there is a limited range of shops selling comparison goods.

Whilst it is acknowledged that the unit at No. 45 has been vacant for approximately 15 years, a key consideration in assessing this case is the marketing background of the property, and whether sufficient supporting evidence has been provided to demonstrate that there has been a long term vacancy as well as a lack of demand for a retail use (see Policies S4 and S10).

The Agent has provided comprehensive information in regard to the marketing background of Nos. 43 and 45, which has been carefully considered, and is summarised as follows:

- marketing commentary for the period June 2009 - March 2013, including sales brochure, provided by Davis Coffey Lyons relating to the prospective enlargement of the existing restaurant at No. 43, encompassing the rear of No. 45 for use as double fronted A3/A1 retail unit
- marketing commentary for period April 2013 - October 2013, including sales brochure, provided by Shelley Sandzer relating to the prospective enlargement of the existing restaurant at No 43, encompassing the rear of No. 45 for use as double fronted A3/A1 retail unit
- two marketing brochures by Linays and Ibbett Mosely (both undated) relating to No. 45
- representations from Linays confirming that No. 45 was marketed as an A1 unit from June 2003, but it is unclear when marketing efforts ceased
- a letter from Ibbett Mosely to a previous Agent dated 6 January 2011 confirming that No 45 had been marketed for more than 12 months as a shop premises and there has been a deterioration in trading conditions. The letter goes on to say that there have been "enquiries from retailers in the "A1 use" category, this has concerned "start up" businesses seeking quite different, smaller size premises. It has not been possible to find an existing business of sufficient financial standing, capable of making a success of the location." A further letter from that firm dated 15 April 2011 is provided to the applicant setting out potential marketing options.
- letter from Paul Williams (the owner of the shops) relating to tenure of premises, and citing one expression of interest in 2001

The Agent has not confirmed whether the currently-vacant restaurant unit at No. 43 has been marketed independently as a stand-alone restaurant since it was vacated in 2011. He confirms that the "eventual strategy of marketing the units" at Nos. 43 and 45 simultaneously was taken since no "realistic" offers had been received for No. 45, despite some 10 years of marketing. However, he does not quantify what he deems "realistic": an important consideration given the backdrop of low vacancy rates in Chislehurst High Street, and Ibbett Mosely's admission in 2011 that there had been enquiries of interest from retailers, albeit in their words, of insufficient "financial standing".

Based on the above information it appears that since 2011 (when planning permission was granted for an enlarged restaurant unit at No. 43, and when No. 43 was vacated by the previous restaurant owner) that marketing efforts have been concentrated at marketing Nos. 43 and 45 simultaneously as an enlarged unit. There is a lack of information to show that marketing efforts were also undertaken to market these two units individually, in order to maintain the existing status-quo so that No. 45 could be used for retail purposes.

Taking account of the above factors it is not considered that sufficient supporting evidence has been provided to demonstrate that there has been a lack of demand for a retail use at No. 45. Furthermore, it is not considered that the long-term vacancy at No. 45 provides sufficient justification in itself to support the loss of this retail unit. It is therefore not considered that concerns expressed by the Council in relation to previous applications regarding the harm to the High Street retail frontage have been overcome.

The Agent has stated that, under the terms of the 2013 General Permitted Development Order, a change of use from Class A1 to Class A3 can be undertaken for a period of up to two years. However, by the Agent's own admission, the applicant would seek a lease exceeding two years. Furthermore, the amalgamation of No. 45 to the enlarged restaurant unit at No. 43 would itself require planning permission (under the terms of the 2010 permission). These GPDO amendments provide a short-term measure by which to deal with vacant shop premises.

Turning to other considerations, no objections are raised in respect of the proposed replacement shopfront which will maintain a broadly similar appearance to the existing structure and maintain some distinction between the units at Nos. 43 and 45. In addition, since the single storey rear extension has previously been permitted this element is considered acceptable.

However, given the amount of the plant at the rear of the proposed restaurant, in the absence of some form of enclosure, this is likely to give rise to loss of amenity to neighbouring residents by reason of noise generated. It is also considered that this could harm the visual appearance of the development at the rear, to the detriment of the character and appearance of the host building and of the Chislehurst Conservation Area.

Background papers referred to during production of this report comprise all correspondence on files refs. 86/01135, 98/00604, 06/00764, 08/00756, 08/02300, 09/02615, 09/02617, 10/03016 and 14/00848, excluding exempt information.

RECOMMENDATION: PERMISSION BE REFUSED

The reasons for refusal are:

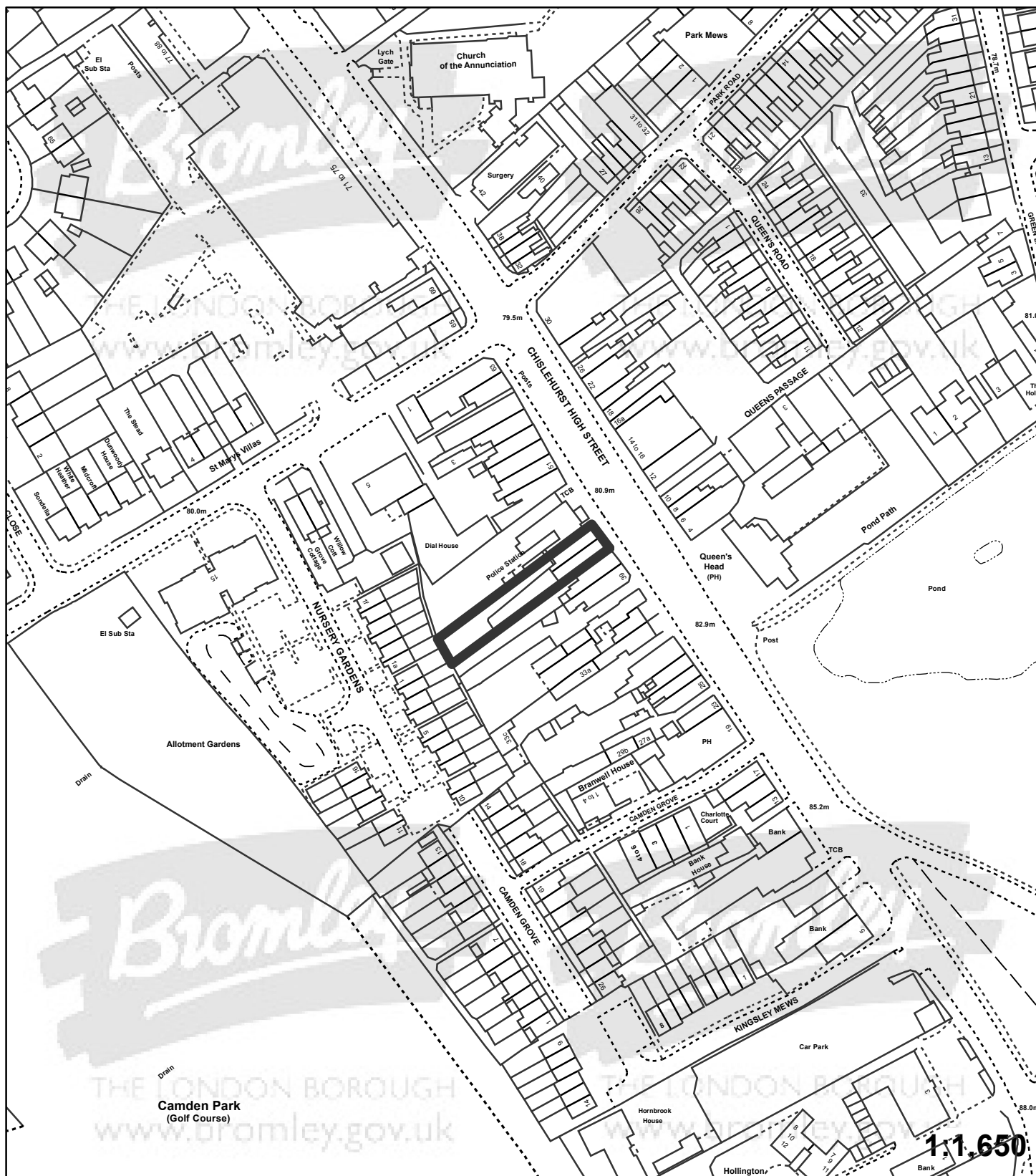
- 1 The proposal would result in the unacceptable loss of a Class A1 retail unit, which would be harmful to the retail character of this Local Town Centre, and would lead to an overconcentration of similar uses and an unacceptable break in the retail frontage along this part of Chislehurst High Street, contrary to Policies S4, S9 and S10 Unitary Development Plan.

- 2 The amount of the plant at the rear is likely to give rise to loss of amenity to neighbouring residents by reason of noise generated, and appear visually unsightly, thereby harmful to the character and appearance of the host building and of the Chislehurst Conservation Area, and contrary to Policies BE1, BE10 and BE11 of the Unitary Development Plan.

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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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