

## **SECTION '2' – Applications meriting special consideration**

**Application No :** 15/01951/FULL3

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

**Address :** 167 - 169 High Street Penge London  
SE20 7DS

**OS Grid Ref:** E: 535589 N: 170180

**Applicant :** Antic London

**Objections :** YES

### **Description of Development:**

Change of use of ground, first and second floors from Class A1 retail shop with ancillary office and commercial use on the second floor to mixed A3/A4 use as a cafe/restaurant/bar with function room and external elevational alterations at the rear.

Key designations:

Biggin Hill Safeguarding Birds  
Biggin Hill Safeguarding Area  
London City Airport Safeguarding  
London City Airport Safeguarding Birds  
London Distributor Roads  
Open Space Deficiency  
Primary Shopping Frontage  
Smoke Control SCA 1

### **Proposal**

The determination of this application was deferred from the Plans Sub-Committee meeting of 30th July 2015 in order to afford the applicants the opportunity to address the identified concerns raised from an Environmental Health perspective with regards to the potential noise and ventilation impacts, and concern that the proposed terraces would have been unneighbourly.

In response to the deferral of determination, the applicants have submitted revised plans deleting the outside terrace areas from the scheme in addition to an acoustic report and plans showing the position of the ventilation ducting.

The previous report is repeated below, updated to reflect the additional information, the deletion of the previously proposed terraces and the subsequent comments from the Environmental Health Officer addressing the revisions.

It is proposed to change the use of the ground, first and second floors of this retail shop with ancillary office use of the upper floors to a mixed A3/A4 use as a café/restaurant/bar with a function room.

The ground floor would be an open plan bar/café providing bakery goods, coffee, lunches and a wine bar during the day and a bar space at night.

On the first floor, a restaurant is proposed, with a kitchen and bar allowing the preparation of food for consumption on the premises.

The second floor function room would cater for events including christenings and weddings and for individual events.

On the basis of other Antic London pubs in the area, the assumed delivery and servicing pattern would involve a delivery from 1-2 vans daily with food supplies and 1-2 waste collections per week. A loading bay in front of the premises would facilitate the delivery cycle. It is intended that smaller vehicles would be capable of using the narrow rear access way which leads to the rear of the premises.

## **Location**

The application site lies on the north eastern side of Penge High Street within the Primary Shopping Frontage. It lies between a retail pharmacy and a charity shop (both within Class A1) and is currently occupied by a business selling fabric remnants and other household goods. The building is three storeys high, and the retail frontage is double width, with a large shop window in the left hand unit and a smaller shop window and double doors in the right hand unit.

At the rear, the site lies adjacent to a narrow service passage leading behind the shopping frontage and separating the yards and rear elevations from the rear gardens of dwellings fronting Raleigh Road. A residential development to provide a block of flats is currently under construction at Nos. 2 - 4 Raleigh Road and it is this block that is most closely related to the application site.

The rear elevation of the shopping frontage is irregular in terms of the built form of the individual properties, with some of the units having substantial brick built two and three storey rear extensions, interspersed with flat roofed single and first floor elements. The application site itself has part one/two/three storey rear elements. The flat roofed two storey elements lie towards either boundary and are linked by a metal walkway below which is a shallow pitched roof between and adjacent to the two storey projections.

## **Consultations**

A large number of letters have been received relating to the proposals.

Where objections have been raised, the concerns do not relate to the principle of the change of use, but can be summarised:

- The roof terrace will overlook gardens and windows of Raleigh Road.  
Smoking and noise associated with the use of the terrace and possible anti-

social behaviour would have an adverse impact on the residential dwellings nearby.

- Noise would echo from the terrace
- Loss of privacy

A substantial number of letters supporting the proposals have been received, stating:

- There is a lack of places open in the evening and the proposed use would complement the existing provision
- The provision of outside space is good, but the design needs to give thought to nearby residents
- The proposal would meet a huge demand for a quality café and eat-in restaurant
- The applicants have made a success of the Goldsmith's Arms
- Would be a community asset
- Would act as a catalyst for improvement along the High Street
- A destination coffee shop would be popular during the day time.

### Highways

From a technical highways perspective, the application is considered to be satisfactory on the basis of the high PTAL level and the submission of a satisfactory Delivery and Servicing Plan.

### Environmental Health

Environmental Health comments in respect of the revised scheme state that the latest submitted details for the extraction system (in conjunction with the submitted technical specification) are satisfactory.

With regards to noise, the methodology and conclusions of the noise report are considered satisfactory. The noise report relies on an internal noise level of 85dB which is a fairly cautious estimate of noise from a busy A3 premises occupied to capacity. It may also represent a reasonable prediction of noise from a certain type of A4 premises when operating to capacity as a standard pub with no music (or very non-intrusive background music only).

A concern is raised that permission is sought for an A4 use which covers use of the premises as a bar which may play louder music and provide space for dancing with DJs or live bands. A function room is included which would imply hires for birthday parties, wedding celebrations etc. Other Antic venues do offer these types of facilities. In such premises at times the internal noise level would very likely exceed 85dB by a significant margin. Most pubs or bars that use a sound system for a DJ or live acts would require a noise limiter to be set at around 95dB to provide an enjoyable level of music for patrons. The acoustic report suggests that a noise limiter is installed. This may need to be set at around 80dB to keep within an overall internal noise level of 85dB to account for people noise. A music noise level of 80dB would be acceptable for background music, but would not allow the premises to operate a business model including louder music or hiring and use as

an events venue. While the current application may accept this, the A4 use class would allow a future operator to lawfully run a different type of premises. If permission is to be granted while protected adjacent dwellings it would have to be on the basis of very restrictive conditions.

Licensing requirements have recently been derestricted so alcohol venues can now put on live and recorded music without a license. If permission is granted, conditions relating to amplified sound or music, live music performance, sound insulation works and the submission of an acoustic assessment are recommended, in addition to conditions to protect residential amenity by restricting the hours of operation.

The applicants responded to the suggested conditions, requesting that consideration be given to including the recommended live music condition within a general condition relating to noise limiter installation for amplified sound generally rather than as a separate condition, since it is asserted that a noise limiter can be used in the same way for live music as for general amplified sound. However, the Environmental Health Officer responded, stating that some live music may be unamplified (or only amplified through the limited sound system) but the unamplified sound pressure level could still exceed 85dB or have the potential to cause nuisance, including drum and bass instruments etc.

### Thames Water

No objections are raised in respect of the water or sewerage infrastructure capacities.

### **Planning Considerations**

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

- BE1 Design of new development
- S1 Primary frontages
- S9 Food and drink premises
- T18 Road safety

Policies in the London Plan and the NPPF are also material to the determination of the application.

### Planning History

There is no relevant planning history to report.

### **Conclusions**

The main issues in the determination of this application are the impact that the proposed change of use would have on the vitality and viability of the shopping

centre and the impact that the proposal would have on the residential amenities of neighbouring residents.

The proposal would result in the loss of a double retail unit in a primary frontage. As such it is necessary to carefully consider whether the proposal would comply with the requirements of Policy S1 which states that in order to be permitted, proposals should not harm the retail character of the shopping frontage, should generate pedestrian foot-fall, should complement the shopping function of the area, should not create a concentration of similar uses and should not have an adverse impact on residential amenity.

In the immediate stretch of frontage premises, the use of the premises is predominantly as retail shops, with 2 Class A2 banks/building societies. It is not considered that the proposed change of use would undermine the retail function of the frontage or result in an over-concentration of similar uses, and in providing a day-time opening as a restaurant/coffee shop the proposal would generate a pedestrian foot-fall and a use that would complement the shopping function of the area.

However, while the proposed change of use is generally acceptable in principle, the impact on residential amenity falls to be considered with reference to Policies BE1 and S1. Policy S1 states that changes of use within primary retail frontages will not be acceptable if there would be an adverse impact on residential amenity.

It is evident that there are some residential flats in the upper floors of the retail frontage close to the application site, and it was noted at the site visit how close the proposed terraces would be to the new flats currently under construction at Nos. 2-4 Raleigh Road. The rear of the application site relates directly to the rear of 2 - 4 Raleigh Road since they are directly opposite each other on either side of the narrow access way. The rear elevation of the flats immediately abut the boundary and the approved plans for application ref. 13/03506 indicate that the first floor and second floor rear facing windows and balconies will serve habitable rooms including bedrooms and the third floor rear flat will incorporate a terrace wrapping around the living/kitchen/dining room at the rear.

The submission of further information including an acoustic report and the deletion of the external terraces to address the significant concerns raised from an Environmental Health perspective is welcomed, and, subject to suitable conditions it is considered that the proposed use has the potential to operate without detriment to the residential amenities of neighbouring properties. The previous concerns relating to the loss of privacy associated with the rear terraces no longer apply, and subject to planning conditions it is considered that the operation of the premises could be implemented without noise nuisance to neighbouring residents.

It is necessary to carefully consider whether the conditions recommended by the Environmental Health officer would meet the six tests for conditions as detailed in para. 203 of the NPPF, and to ensure that the aim of protecting residential amenity is carefully balanced with the operating requirements of the applicants.

With regards to the potential use of a live music condition, it is difficult to conceive of a condition that would satisfy both the amenities of neighbouring residents and the potential for live music acts to operate from the premises; while small acoustic live acts may have a limited impact on residential amenity, it would be difficult to enforce a condition limiting the type of instruments which might reasonably be played without causing a noise nuisance.

On balance, and taking into account the proximity of neighbouring residential properties to the application site, Members may consider that the use of condition prohibiting live music would meet the tests in the NPPF of reasonableness, enforceability, necessity, relevance (to planning, and the development) and precision.

With regards to the elevational alterations to the rear of the premises, these alterations would have a limited impact on visual amenity as a consequence of the small scale of the alterations, and the proposal would therefore be compliant with Policy BE1 in this respect.

as amended by documents received on 07.07.2015 09.09.2015

### **RECOMMENDATION: PERMISSION**

Subject to the following conditions:

- 1 The development to which this permission relates must be begun not later than the expiration of 3 years, beginning with the date of this decision notice.**

**Reason: Section 91, Town and Country Planning Act 1990.**

- 2 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority.**

**Reason: In the interest of the visual and residential amenities of the area and to accord with Policy BE1 of the Unitary Development Plan.**

- 3 Any music or amplified sound (including television, films or amplified human speech) played on the premises shall be played through a Formula Sound AVC-2D noise limiter (or suitable alternative by written agreement of the Local Planning Authority) and the limiter shall be set and sealed to the satisfaction of the Local Planning Authority and permanently maintained as such thereafter.**

**Reason: In the interest of the amenities of the occupiers of neighbouring residential properties and to accord with Policies BE1, S1 and S9 of the Unitary Development Plan.**

**4 The premises shall not be used for the performance of live music at any time.**

**Reason: In the interest of the residential amenities of the area and to accord with Policies S1 and S9 of the Unitary Development Plan**

**5 Details of the proposed scheme of sound insulation works (in line with the recommendations of Acoustic Plus Noise Impact Assessment re. 103018.ph.Issue 1) shall be submitted to the Local Planning Authority for approval. Once approved, the scheme shall be installed in full in accordance with the approved details prior to the use commencing and shall be permanently maintained as such thereafter.**

**Reason: In the interest of the residential amenities of the area and to accord with Policies S1 and S9 of the Unitary Development Plan.**

**6 Prior to the commencement of the development an acoustic assessment shall be submitted to the Local Planning Authority to detail the impact of fixed plant on the local ambient noise environment in line with BS4142: 2014. The results of the assessment along with any necessary mitigations to achieve a plant noise rating level of 10dB below typical existing background LA90 shall be submitted to the Local Planning Authority for approval. Once approved the plant and mitigations shall be installed fully in accordance with the approved scheme and permanently maintained thereafter.**

**Reason: In the interest of the residential amenities of the area and to accord with Policies S1 and S9 of the Unitary Development Plan.**

**7 The premises shall not operate except during the hours of 08.00 to 00.00 Sundays to Thursdays and 08.00 - 01.00 Fridays and Saturdays.**

**Reason: In the interest of the residential amenities of the area and to accord with Policies S1 and S9 of the Unitary Development Plan.**

**8 The ventilation system indicated on the approved drawing(s) shall be completed before the use hereby permitted first commences and shall thereafter be permanently retained in an efficient working manner.**

**Reason: In order to comply with Policies S9 and ER9 of the Unitary Development Plan and in the interest of the amenities of nearby residential properties.**