

SECTION '2' – Applications meriting special consideration

Application No : 16/02709/FULL3

Ward:
Bromley Common And
Keston

Address : 44 Chatterton Road Bromley BR2 9QE

OS Grid Ref: E: 541727 N: 167849

Applicant : Mr F Ummak

Objections : YES

Description of Development:

Change of use from retail shop (Class A1) to hot food take-away (Class A5) with installation of ventilation ducting at rear.

Key designations:

Biggin Hill Safeguarding Area
London City Airport Safeguarding
Smoke Control SCA 19

Proposal

Planning permission is sought for the change of use of the host retail shop (Class A1) to a hot food take-away falling within Class A5, including the installation of ventilation ducting at the rear of the premises.

It is proposed to operate a fried chicken takeaway business from the ground floor of the property, which was formerly used as a newsagents.

The proposed Class A5 use would operate between the hours of 11am and 11pm on Monday to Saturday and 11am and 10pm on Sundays. The submitted floor plan shows the front half of the ground floor comprising a customer waiting area and service counter/kitchen preparation area behind, with an extraction canopy over the cooking range. At the rear of the premises is a small lobby area/WC with a storage and preparation area adjacent to the small retained yard area. Ventilation ducting runs internally from the extraction canopy at the front part of the ground floor to a vertical join adjacent to the rear first floor outrigger element.

The vertical external ducting would comprise a stainless steel core with GRP brick effect cover to give the ducting the appearance of a brick chimney. The ducting would extend vertically above the pitched roof of the first floor projection by approx. 2.4m, with its highest point approx. 1.5m lower than the main ridgeline.

Location

The application site lies within the Chatterton Road local neighbourhood centre which runs from the junction with Southlands Road to the junction with Mosslea Road and comprises a large number of retail and commercial units.

The site lies on the south western side of Chatterton Road adjacent to a tailor/dry cleaners at No. 46 and a off-licence/grocery at No. 42. Also within this specific run of ground floor commercial units is a dispensing chemist, a café with inside and outside seating and a tailors premises beyond which is a block of flats.

Opposite the site the run of commercial units is longer, set between the junctions of Chatterton Road with Walpole Road and Pope Road. Within that section of commercial units is a hot food takeaway at No. 65.

The host property comprises a three storey Victorian building with a maisonette on the upper floors accessed via a private entrance door.

Consultations

Neighbouring owners/occupiers were notified of the application and representations have been received, which can be summarised as follows:

- Chatterton Road has at least 4 other hot food takeaways and no need for another
- There is already a strong smell of cooking foods coming into neighbouring gardens and another duct would be very intrusive
- The use would generate rubbish and littering which would make the area look unpleasant
- The road is almost permanently congested by people stopping and ignoring parking restrictions and the volume of traffic is already high
- Would result in double parking
- People will congregate on the pavement outside
- Motorbikes would be parked on the pavement in preparation for deliveries
- Concern about the future maintenance of the extract installation
- The shop front would be ugly and brightly lit with a corporate colour scheme out of keeping
- The existing use was financially viable and the property has not been empty for any period of time
- There is a demand for shop units in the neighbourhood centre and the proposal would be contrary to Policy S5 and Policy S9 of the Unitary Development Plan
- The application does not explain where the need for A5 comes from
- The change of use would not take the opportunity to improve the character and quality of the area and the proposal may attract anti-social behaviour
- There is an existing and increasing obesity crisis and the provision of a fried chicken shop is not needed in an area with varied eating options.

Technical comments

Highways

The site is located within a controlled parking area with pay and display meters in the immediate vicinity. The previous use of the site was as a newsagent which in trip attraction terms would have been likely to attract a number of visitors during the day. The proposed take-away use would also attract visitors throughout its hours of opening and it is not considered likely that such a use would significantly increase the overall number of vehicle trips being made to this location. In addition, the on street parking controls will have an impact on this in that the ability to park at a destination can impact upon a person's decision to drive to a particular destination. There are therefore no objections to the proposal from a highways perspective.

Environmental Health

Concerns were initially raised regarding the potential impact of the use on the first floor maisonette in terms of internal sound transference, particularly in view of the hours of operation. In response to these concerns the applicant submitted an assessment of the existing airborne sound insulation and a scheme of mitigation. The submitted report incorrectly stated that the required standard would be 43dB, which is not considered sufficient in a commercial to residential relationship unlike in a residential/residential relationship. The level of existing sound insulation is not adequate but probably not such as to make reasonable adaptations impossible and a planning condition requiring upgrades to the existing ceiling, possibly by a secondary suspended ceiling, would address this issue.

There are therefore no objections to the proposal subject to conditions relating to the hours of operation and the pre-commencement submission of details of adaptations and subsequent implementation and retention thereof. In addition a condition relating to the noise rating level of the kitchen extraction plant is recommended.

Planning Considerations

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

- BE1 -Design of new development
- Policy S5 - Local neighbourhood centres, parades and individual shops
- Policy S9 - Food and drink premises
- Policy ER9 - Ventilation
- T18 - Road safety

London Plan

- 7.4 Local Character
- 7.5 Public Realm
- 7.8 Heritage Assets and Archaeology
- 4.7 Retail and town centre development

4.8 Supporting a successful and diverse retail sector and related facilities and services

National Planning Policy Framework

The NPPF is a material consideration in the determination of this application.

Planning History

There is no relevant planning history to report.

Conclusions

The main issues relating to the application are:

- the impact that the change of use would have upon the vitality of the centre and the range of local services in terms of the loss of the existing Class A1 retail shop and its use as a hot food takeaway
- the impact of the proposal on the visual and residential amenities of the area
- the impact of the proposal on traffic congestion and highways safety.

The impact that the change of use would have upon the vitality of the centre and the range of local services in terms of the loss of the existing Class A1 retail shop and its use as a hot food takeaway

Policies S5 and S9 of the Unitary Development Plan are of particular relevance, seeking to ensure, inter alia, that the change of use from a retail shop would not harm the vitality and viability of the neighbourhood centre and would not result in a proliferation of or over-concentration of food and drink establishments which might undermine the retailing function of the area.

The applicant is unable to demonstrate that there has been a long-term vacancy and lack of demand for Class A1 retail premises within the locality. The closure of the newsagent directly correlated with the commencement of some internal fitting out of the proposed A5 use. No information has been provided to show that any marketing exercise has been carried out to attempt to secure a retail tenant of the unit. As such the proposal would not comply with S5(ii) of the Unitary Development Plan which makes the protection of retail uses a high priority, particularly local convenience shops. It is acknowledged however that immediately adjacent to the site is a retained convenience store and that another newsagent is located at the other end of Chatterton Road and that the size of the local neighbourhood centre affords the opportunity within it for there to be a wide retail provision alongside hot food and drink establishments.

Chatterton Road is a busy local neighbourhood centre providing a large range of shops including independent and specialist retail units covering a broad range of retail offerings. It is noted that there are a number of existing premises providing hot food. The majority of these premises cater for eating in as well as delivery or takeaway services, including two Indian restaurants, and at least 4 eat-in cafes. In terms of the existing hot food takeaway provision, which would specifically fall

within Class A5 of the Use Classes Order, in the row of units opposite the application site is a long-established takeaway premises, and at the opposite end of Chatterton Road is a fish and chip shop, a kebab shop and a further takeaway at Tiffin Choice.

In the context of the neighbourhood centre as a whole it is not considered that the proposal would result in a proliferation of A5 uses, nor overall an overconcentration of food and drink establishments in comparison with retail premises. While the hours of opening of the premises would not fully tally with the retail shopping hours of the centre, including as they would evening opening hours, it is considered that the proposed use would complement the retail provision of the centre, notwithstanding the fact that there has been no demonstration of a lack of demand for retail premises by way of long-term vacancy/retail marketing.

On balance it is considered that the potential adverse impacts associated with the loss of the retail unit (i.e. upon the day to day needs of local residents and the vitality and viability of the retail function of the area) would not apply in the case of this particular proposal, taking into account the size of the neighbourhood centre and the broad range of retail provision in the locality. As such, it is considered that the refusal of planning permission on the grounds of loss of retail would be difficult to sustain.

The impact of the proposal on the visual and residential amenities of the area

Concerns have been raised regarding the potential for the use to result in unacceptable noise and disturbance, littering and unpleasant smells associated with the extraction. In particular it is necessary to consider the impact of the day to day use of the ground floor premises on the residential amenities of occupants of the upper floor residential units in the row of properties as well as the potential that unpleasant odour might impact on residents adjacent to the site.

The applicant has submitted information relating to the sound insulation and potential for airborne noise transference between the ground and first floors of the host property. While the information submitted is not considered to wholly address the potential noise transference as existing, the Environmental Health Officer has considered the issue and concluded that the impact of the proposal on immediate upstairs neighbours could be adequately addressed by way of conditions. No EHO objections are raised regarding the impact of the proposal on the residential amenities of the wider locality in terms of the adequacy of the ventilation ducting and the hours of operation.

On balance, while the concerns of local residents are noted, it is not considered that the use of the premises as a hot food take away would have a significantly adverse impact on the amenities of neighbouring properties subject to safeguarding conditions relating to the hours of operation and the installation of the ventilation ducting as per the application submission and in accordance with Policy ER9 of the Unitary Development Plan.

The application design and access statement and documents makes no reference to there being a delivery service associated with the proposed use, which would

tally with some of the existing hot food takeaways in Chatterton Road. In view of the potential that the delivery of food from the site may generate additional noise and disturbance associated with the comings and goings of delivery vehicles and in view of the lack of any information relating to such a proposal, it is considered that if Members are minded to grant planning permission a condition should be imposed to prevent deliveries off-site in order that such an operation may be considered in the light of detailed information and circumstances at that time.

While littering and other anti-social behaviours have been linked to the potential hot food takeaway use in representations, it is not considered that planning grounds exist to refuse planning permission for the proposal on the basis of potential anti-social behaviours.

With regards to the impact of the proposal on visual amenity, the proposed ventilation ducting would be somewhat tall in relation to the existing outrigger element. It would however have the appearance of a chimney, with GRP cladding to mimic the appearance of brickwork. Being sited at the rear of the premises and in view of the design of the ducting, it is considered that the proposal would not have a significantly adverse impact on the visual amenities of the area.

The impact of the proposal on traffic congestion and highways safety

No technical highways objections have been raised in respect of the proposal. In view of the highways comments received it is not considered that the proposal would have a detrimental impact on the safety of any road users. On-street parking is controlled during retail hours by metered parking bays, and in the evenings the parking immediately adjacent to the site is free. In addition, it is not considered that the proposed use would generate a significant increase in parking demand or trip generation in comparison with the existing/former use of the retail premises.

Conclusion

While the applicants have not demonstrated a lack of demand for retail premises within the centre, on balance it is considered that the loss of the host retail unit would not have a significant harmful impact on the retail character and function of the area, nor would it result in an over concentration in food and drink establishments in the context of the neighbourhood centre as a whole, or the Walpole to Pope Road subsection of the centre.

Strong concerns have been raised regarding the impact of the proposal on residential amenity, and the likelihood that the use may generate or attract anti-social behaviour including congregation and littering. In view of the comments of the Environmental Health Officer and subject to safeguarding conditions it is not considered that the proposal would result in a significant impact on residential amenity. While it is acknowledged that takeaway uses can in certain instances result in littering or other anti-social behaviours, it is not considered that legitimate planning grounds exist to refuse planning permission on this basis.

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** Customers shall not be admitted to the premises before 11am on any day, and all customers shall have left the premises by 11pm on Monday to Saturday and 10pm on Sundays.

REASON: In order to comply with Policy S9 of the Unitary Development Plan and in the interest of the amenities of nearby residential properties.

- 4** There shall be no home delivery service provided from the restaurant use hereby permitted without the written approval of the Local Planning Authority.

REASON: In order to comply with Policy S9 of the Unitary Development Plan and in the interest of the amenities of nearby residential properties.

- 5** a.) No development shall commence until full details of adaptations to party walls and/or ceilings between residential and non-domestic uses have been submitted to and approved in writing by the local planning authority. The details shall include relevant drawings and specifications of the proposed works of sound insulation against airborne noise to meet $D'_{nT,w} + C_{tr}$ of not less than 50dB.

b.) The development shall only be occupied once the soundproofing works as agreed under part (a) have been implemented in accordance with the approved details.

c.) The soundproofing shall be retained permanently in accordance with the approved details.

Reason: In the interests of residential amenity and to comply with Policy 7.15 of the London Plan.

- 6 At any time the plant noise Rating level from the kitchen extraction plant shall not exceed the measured typical background L90 level at any noise sensitive location. For the purposes of this condition the Rating and background levels shall be calculated fully in accordance with the methodology of BS4142:2014. Furthermore, at any time the measured or calculated absolute plant noise level shall not exceed 10dB below the typical background noise level (LA90 15 minute) in this location.**

REASON: In the interest of the residential amenities of the occupiers of neighbouring residential properties at to accord with Policy ER9 of the Unitary Development Plan.

- 7 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.

You are further informed that:

- 1 Please be aware that planning permission/consent may be required for other proposals related to this application (e.g. shopfront/advertisements).**