

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

**Application No :** 17/03273/RECON

**Ward:**  
**Kelsey And Eden Park**

**Address :** The Chinese Garage Ltd Wickham Road  
Beckenham BR3 6RH

**OS Grid Ref:** E: 537900 N: 168500

**Applicant :** Mr S Stoneham

**Objections :** YES

### **Description of Development:**

Minor material amendment under Section 73 of the Town and County Planning Act 1990 to allow a variation of the planning permission 16/02988/FULL1 for the change of use of the existing car showrooms and associated workshops (Sui Generis) and to two retail units (Class A1) and conversion of first floor to 2 two bedroom flats (Class C3) together with associated car parking, landscaping, external alterations and related internal works to Listed Building to allow removal of Condition 21 (Hours of Opening), 22 (Servicing Operations), and 23 (Use Class limitations).

Key designations:

Smoke Control SCA 18

### **Background**

The application is being reported to Planning Committee due to the applicant exercising their right of appeal against the Council's non-determination of the application. It will therefore be necessary for Members to consider whether the application should be contested at Appeal or not.

### **Proposal**

Planning permission for a minor material amendment under Section 73 of the Town and County Planning Act 1990 to allow a variation of the planning permission 16/02988/FULL1 for the change of use of the existing car showrooms and associated workshops (Sui Generis) and to two retail units (Class A1) and conversion of first floor to 2 two bedroom flats (Class C3) together with associated car parking, landscaping, external alterations and related internal works to Listed Building to allow removal of Condition 21 (Hours of Opening), 22 (Servicing Operations), and 23 (Use Class limitations).

To replace the above conditions the following reworded conditions are proposed:

Condition 21 of planning permission 16/02988/FULL1 currently states:

- The premises shall only be open for customer business between the hours of 09:00 and 20:00 on Monday to Friday, 09:00 to 19:00 on Saturday and 10:00 to 17:00 on Sundays and Bank Holidays.

It is proposed to amend the condition to read:

- The premises shall only be open for customer business between the hours of 07:00 and 23:00.

Condition 22 of planning permission 16/02988/FULL1 currently states:

- No movement of service vehicles or servicing of the commercial units shall take place at either premises except between the hours of 09:00 and 17:00 Monday to Friday.

It is proposed to amend the condition to read:

- No movement of service vehicles or servicing of the commercial units shall take place at either premises except between the hours of 08:00 and 20:00 aside from the delivery of newspapers.

Condition 23 of planning permission 16/02988/FULL1 currently states:

- Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the premises shall be used for retail use (Use Class A1) for (i) pets, pet food, and all pet related products, and ancillary pet care, treatment and grooming services, (ii) beers, wine, spirits and sundry goods and for no other purpose (including any other purpose in Use Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).

It is proposed to amend the condition to read:

- Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), Unit 2 of the premises shall be used for retail use (Use Class A1) for convenience goods with 10 per cent of the floorspace 3 for comparison goods. Unit 1 of the premises shall be used for the retail sale of beers, wine, spirits and sundry goods and for no other purpose (including any other purpose in Use Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).

### **Location and Key Constraints**

The site is located on the roundabout at the junction of Stone Park Avenue and South Eden Park Road. Vehicular and pedestrian access to the site is achieved

both from Stone Park Avenue and South Eden Park Road. The site is served by public transport with bus stops available on both of these roads which are classified as local distributor roads.

To the north west of the site, on the opposite side of Stone Park Avenue is another garage and car showroom. The site is located immediately to the south of Wickham Road neighbourhood shopping parade which contains nine small units including a convenience store, bakery, butcher, delicatessen, estate agents and pharmacy with off-street car parking.

The proposal occupies an out-of-centre location as defined by the NPPF Appendix 2 being located more than 300m from a designated town centre primary shopping area. The nearest designated centre is Beckenham town centre located approximately 1km to the north of the application site.

The boundary of Park Langley Conservation Area lies to the east of the site on the opposite side of the roundabout.

The application site currently comprises a Statutory Listed (Grade II) building built in 1928 in a design inspired by Japanese pagodas. The entire building is Statutory Listed, inclusive of the rear garage space and any structures within the curtilage. The site appears to have been used as a motor garage or car sales showroom since it was built. The front of the 'pagoda' part of the garage is laid out as a Chinese Garden.

Attached to the rear of the pagoda style building is a flat roofed single storey car workshop building and two storey office building, both of traditional appearance. The car showroom forecourts are used to display cars and associated car dealership branding/ signage as well as being used for customer and staff car parking. The office section of the building appears to have been in residential use at some stage.

### **Comments from Local Residents and Groups**

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

#### **Objections:**

Substantive public representations have been received which have been expressed and reiterated many times with the same concerns. The following is general summary of the main areas of repeated concerns expressed. Representations are grouped into the expressed categories of concerns.

All objections are available on the public file.

A number of template letters have been received expressing objections in respect effects to traffic and pedestrian safety, increased pollution, noise and disturbance by increased trading hours and servicing and harm to the viability of existing local shops.

A petition has been received from local residents and patrons of local grocery stores with approximately 230 signatories objecting to the planning application

### *Convenience retailer*

- No further retail shops are required in the area.
- Use will impact negatively on the local parade of shops and businesses.
- The area is already well served by local supermarkets
- A chain supermarket will be a detriment to local shops trading in the single stretch opposite.
- A chain such as Tesco's would likely cause 1 or more local trades in this stretch to have trouble surviving against a large conglomerate.
- For Tesco and Majestic Wines to want to expand further would alter irreversibly the character of this general retail area. The Park Langley/Chinese Garage area is primarily a small scale retail service for local people and big brother should be firmly excluded.
- The proposed Tesco would have a significant detrimental effect to the local family run shops on the parade at Wickham Road. Currently there are 3 convenience stores and 3 cafes on the parade offering the same goods and services as that which Tesco would offer. This will very likely lead to the closure of a number of existing businesses and as such the area will lose its attractive amenities and social hub.
- Will kill the exclusivity around the area and cause the local shops to suffer.
- Already a number of large supermarket type shops within the area at Tesco Westmorland, Tesco Beckenham, Tesco Elmers End, Sainsbury Beckenham Sainsbury Local Eden Park, Sainsbury West Wickham 1, Sainsbury West Wickham 2, Waitrose Beckenham, Waitrose Bromley. There really is no need for another.
- Allowing two large corporate chains to overtake the site is not in keeping with the general feel of the area which is local and family run.
- These shops are not required at this location, especially as there are many shops available to let at Shirley, West Wickham and Beckenham, which are the main shopping areas, for the local community.
- A wine shop is not needed because it will encourage drunken youths into the park.
- The introduction of new retail stores will severely and adversely affect the viability of the Langley shops leaving vacant shops which will be an eye sore and bring down the tone of the area. In addition the individuality of the existing stores adds charm to the area which will be taken away by the introduction of the proposed stores.
- Local area is being blighted by large supermarkets and superstores. We do not need any more in this area. No requirement for a new Tesco in this location.
- Use of one of the permitted retail units by Tesco or similar supermarket would run counter to the reasons for the previous restrictive conditions and would cause serious damage to the long established parade of shops in the immediate locality.

- Variations in the conditions of operation are not the minor matters. These are substantial differences that will affect local residents.
- Beckenham needs more houses, not more supermarkets.
- Tesco have a massive strong hold in the Borough. This will cause a general decline in the quality of the area.
- Healthy competition is to be encouraged but the last thing needed is a store that has an undeniable advantage over local traders.
- The parade of shops at the Chinese roundabout is a pleasant focus of the area and add a community spirit by being purely independent businesses.
- Shops would suffer due to unfair competition from such national retailers which has been proved to be the case in this situation in many areas.
- There is no need for alternative retail sites in the location.
- Park Langley does not need these types of shops. It has a local parade of shops which are well supported and offer everything you need locally.
- A supermarket would also have a detrimental effect on the parade of shops in terms of footfall if access for customers becomes more difficult due to increased traffic.
- No necessity for more commercial premises in this area. Object because it will put the neighbouring shops and post office out of business.
- Unrestricted retail use for a site of a size such as here will have a serious adverse impact upon existing traders in the vicinity and result in closures within the long-established businesses and valued facilities they offer.
- The 2016 assessment was specifically in connection with a proposal inter alia for two very specific, specialised users. The 2017 update perpetuates the inaccuracies of that of 2016 and fails to recognise or address the major distinction in impact between the initial restricted use proposal and the presently sought effectively completely open one.
- Object to the site being used by Tesco or any other supermarket. In short a business with a smaller throughput of customers is the only one that the area could reasonably accommodate.
- Conditions rightfully imposed on the original permission in December 2016 signify the Council's concern at the risks inherent in an unrestricted permission for A1 uses. Permission should be refused for amending those conditions as now proposed by the applicant.
- The original sequential assessment does not apply for a convenience store, as it cannot be demonstrated that another Tesco is needed, given the existing ones at Westmoreland Road & Elmers End.

#### *Traffic and Highways issues*

- Roundabout has high volumes of traffic passing through at all times. Introducing a new shop will impact on the traffic making the area more dangerous to drivers and pedestrians.
- Surrounding area does not have the space to accommodate additional parking which will result in unsafe parking on local roads.
- Entry and exit of vehicles accessing the Tesco store is highly likely to impact of the movement of traffic on South Eden Park Road and Stone Park Avenue. Extended opening hours would compound this issue.

- 3 large secondary schools with many pupils using this route to school. Concerns about the safety element of increased traffic around an already congested area.
- Deliveries from 8 until 8 would cause increased congestion during rush hours. This is already an incredibly busy and potentially dangerous roundabout. The original proposed hours of 9 to 5 deliveries would have avoided this.
- Insufficient on-site parking provision to meet demand that would be generated by the development.
- Concerns regarding the pedestrian crossing safety at this five way junction. The development would increase the risk significantly.
- Concerns regarding impact for parking availability for local park.
- The usage pattern of a Tesco would be very different from that of a Pets at Home shop. The access and parking requirements for a mini supermarket can't possibly be the same as those for a pet shop.
- Opening a Tesco store would have a far more extreme impact on the number of vehicle visits per day than the consented store type therefore having a considerable effect on increased traffic in the area.
- There is a planned housing development about to be built along South Eden Park Road which will increase the traffic flow towards the Chinese Garage roundabout adding to the congestion.
- Unlikely people will walk to the supermarket. No mention of recent traffic accidents near the site.

#### *Air pollution*

Not only cause excessive traffic, noise and congestion but will also have major detrimental impact on air pollution levels killing off wildlife from Kelsey Park.

#### *Pollution, Noise and disturbance*

- Extended trading hours will create more noise and disturbance for local residents beyond traditional working hours would seriously harm the amenity and quiet enjoyment of the residents close by.
- Extended delivery hours number and size of delivery vehicles will create more noise and disturbance for local residents. Roads surrounding the plot are not large enough to allow large scale deliveries.
- Use will involve extra vehicles will using the area creating more noise and disturbance.
- Increased traffic and footfall would have a negative impact on the local community
- Vehicle noise and air pollution will increase as a result of this proposed application.
- Gardens run along the proposed car park for Tesco meaning lots of noise until late and a huge problem with lighting.
- Consider the impact of the Tesco Express' in Westmoreland Road, the corner of Penge High Street and Royston Road and on Croydon Road Beckenham, near the Beckenham War Memorial. Each of these has also

led to increased noise from people and cars both early in the morning and late at night.

- Concerns regarding additional wind blown rubbish from a food retailer.

### *Character*

- Would not enhance the look of the area and would completely destroy the character of the neighbourhood. Loss of the small village feel to the area, so it's not in keeping.
- Brash signage would destroy the visual aspects of the grade two listed buildings and village style community.
- This is a local landmark which should be sympathetically changed and a Tesco or any other convenience / supermarket shop is not in keeping. To bring Tesco to this beautiful area is wrong and not needed. We have a local community and no space for Tesco.
- These types of large stores would change the character of the area and most likely destroy the visual aspect of the grade two listed building.
- The development is on the very edge of a conservation area and is not in keeping with the current street vernacular.
- Village atmosphere which is long established would be destroyed by the addition of a supermarket.
- Any structural change would ruin what is a treasured landmark.
- Reckless to convert this heritage site to a local Tesco store.
- Chinese garage is an iconic feature. Its use will be completely to the detriment of the local area.
- Maintaining the current ambience of the area and the current local shops is a major concern that should be taken account of.
- The Chinese-roundabout is an icon for Beckenham and to change it to a Tesco express is highly unnecessary. The building is incredibly unique and to mask it off with another Tesco express would be damaging to the area.
- Personality of the area would be changed if another supermarket were built on this pivotal point of old Beckenham.
- Not in keeping with the residential nature of the area.
- Will impact on the amenities and enjoyment of the adjacent Park Langley Conservation Area
- This area of Beckenham still has a village feel. Building a superstore in the heart of the area will likely damage this feel.
- Totally inappropriate to site a Tesco (and wine store) here. There are adequate shops within the surrounding area.
- Intended provider adds nothing required that would positively add to or enhance the Beckenham/Kelsey Park/Langlely area.
- Any new or changed onsite landscaping should preserve or, ideally, enhance this individualistic landmark, recognising its listed status and its iconic local status.

### *Publicity*

- Concerns raised regarding the publicity undertaken to advertise the application.

Officer response: The application has been advertised according to statutory requirements including a site notice and press advert. Additionally a greater extent of notification was undertaken by direct letter to advertise the application to local residents.

#### *Other*

- Current permission is based on 'bulk' use and no or minimal overlap with other local independent traders.
- Concerns that the type of retailer will create a hub for anti social activity which will have an adverse effect on the community.
- Concerns regarding the addition of more littering and the children from the local schools loitering.
- Reduction of residential property values because of industrial look to area.
- Preference to see housing on the site or an open space area, pub , café or restaurant.
- The site should be used for a use that would enhance the local area such as social or sheltered housing or an educational, recreational, community or health facility.
- Concerns raised with respect to tactics used by the applicant to gain planning permission through stealth and treats to board up the building if the application fails.
- Comments that the site has been deliberately allowed to deteriorate.

#### Support:

The following representations expressing support have also been received.

- The area needs a supermarket within walking distance to local houses.
- Will be an asset to the area. There is a lack of local convenience stores open at useful hours.
- An empty boarded up site left to rot with (no doubt graffiti) will be much worse for the area. Allowing this will ensure the listed building is kept in good repair.
- Positive suggestions for the sites use would be more helpful. If this is the only possible offer than it must be better than the building being boarded up and left to deteriorate.

#### Local Groups:

##### *Park Langley Residents Association:*

Objections on the grounds that a convenience retailer (Tesco) as opposed to Pets at Home would cause more traffic issues, noise and disturbance and impact to local independent retailers.

##### *Bromley Friends of the Earth:*

Objections that there would be an increase noise and air pollution, operating hours will lead to increased anti-social behaviour, effects to viability and closure of local shops changing the character of the area.

*Beckenham Society:*

Objections to the site being suitable for a 'convenience retailer' and the future viability of existing nearby shops.

### **Comments from Consultees**

Highways:

The applicant was asked to submit a Transport Statement including details of the impact of an enlarged retail food store on the vitality and viability of this busy round about, the impact of the food store on the vehicular trip generation and comparison of the traffic generated associated with the consented scheme (Pets at Home and Majestic Wine) and the traffic generated associated with proposed scheme (TESCO store and Majestic Wine)., the impact of the development upon the highway network generally and conditions of highway safety, the impact on the approved servicing and refuse collection facilities.

A comparison of the trip generation as given in Table 2.1 and 2.2 on page 3 and 4 of the Technical Note predicts that the likely total traffic generated for the proposed convenience store would be far greater than that for consented scheme.

I noticed on the Technical Note that the majority of the selected regions and areas are from East Anglia, Yorkshire and Scunthorpe etc which do not represent traffic in Bromley. Trip rates generated from these cities cannot be applied to London. The applicant should have selected sites for TRICS data of existing London based TESCO Express stores. Also selected sites for TRICS data have much smaller GFA than the proposal. In my opinion the applicant should have also calculated trip generation between 0900 hours and 1000 hours as this is the time when there would be more shopping trips. So I am not satisfied with site selection to predict traffic generation.

The applicant should have submitted a parking accumulation survey for the site. There are only 33 parking spaces in total including 2 spaces for the apartments on the proposed site as per drawing number PL02 Rev E and 8 spaces to be used for staff. The traffic generation as per table 2.2 on page 4 of the Technical Note between 1700 hours to 1800 hours is 57 arrivals and 50 departures. This is not acceptable as simply there is not enough parking on site for this many cars. Simply 23 consented spaces would not be able to accommodate the parking demand associated with proposed convenience store and Majestic Wine.

I am of the opinion that there would be a pro rata increase in the number vehicles in the local road network which would significantly generate levels of congestion on Chinese Roundabout. The applicant should have submitted a study of impact on the roundabout i.e. ARCARDY i.e. assessment of capacity of roundabout and

delays and PICADY i.e. priority intersection capacity and delays. The information submitted with this application is not sufficient.

In short I am not satisfied with the revised scheme (TESCO and Majestic Wine) as it will attract additional traffic on to a site with insufficient parking and generate more vehicular trips and also result in a harmful effect on highway safety as compared to consented scheme (Majestic Wine and Pets at Home).

**Environmental Health – Pollution:**

No objections to the opening hours being amended to 0700 to 2300 hours. While this will clearly have a negative impact on the amenity of residents, particularly those living in the flats above, I do not believe that it would be so serious that it could be justified in the event of an Appeal.

As far as the deliveries are concerned, I appreciate the desire to avoid the rush hours but any relaxation in delivery times would have a detrimental impact on residents both above and adjacent. Whilst mitigation measures, such as an acoustic barrier, may be feasible to protect adjacent residents they would give little benefit to those on the flats above. If the applicant is seeking a change to 0800 to 2000 hours for deliveries then there are mitigation measures which could be adopted to reduce the impact on residents; such measures could include (but not limited to) more stringent times for large lorries, protocol for turning off on-board refrigeration, quiet roll cages, etc. Most of the measures would be standard procedure for convenience stores who wish to be regarded as good neighbours.

### **Policy Context**

Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

Section 38 (6) of the Planning and Compulsory Purchase Act (2004) makes it clear that any determination under the planning acts must be made in accordance with the development plan unless material considerations indicate otherwise.

According to paragraph 216 of the NPPF decision takers can also give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);

- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

The Council is preparing a Local Plan. The submission of the Draft Local Plan was subject to an Examination In Public which commenced on 4<sup>th</sup> December 2017 and the Inspector's report is awaited. These documents are a material consideration. The weight attached to the draft policies increases as the Local Plan process advances.

The development plan for Bromley comprises the Bromley UDP (July 2006), the London Plan (March 2016) and the Emerging Local Plan (2016). The NPPF does not change the legal status of the development plan.

#### National Planning Policy Framework (NPPF)

14: Achieving sustainable development

17: Principles of planning

20 to 22: Building a strong, competitive economy

23 to 27: Ensuring the vitality of town centres

29 to 32, 35 to 37: Promoting sustainable transport

#### London Plan Policies

- 3.3 Increasing housing supply
- 3.4 Optimising housing potential
- 3.5 Quality and design of housing developments
- 3.8 Housing choice
- 3.9 Mixed and balanced communities
- 4.1 Developing London's Economy
- 4.7 Retail and Town Centre Development
- 5.2 Minimising carbon dioxide emissions
- 5.3 Sustainable design and construction
- 5.4 Retrofitting
- 5.7 Renewable energy
- 5.11 Green Roofs and Development Site Environs
- 5.13 Sustainable Drainage
- 5.14 Water quality and wastewater Infrastructure
- 5.15 Water use and supplies
- 5.16 Waste self-sufficiency
- 5.17 Waste capacity
- 5.18 Construction, excavation and demolition waste
- 5.21 Contaminated land
- 6.3 Assessing effects of development on transport capacity
- 6.9 Cycling
- 6.12 Road Network Capacity
- 6.13 Parking

- 7.2 An inclusive environment
- 7.3 Designing out crime
- 7.4 Local character
- 7.5 Public Realm
- 7.6 Architecture
- 7.8 Heritage Assets and Archaeology
- 7.9 Heritage-Led Regeneration
- 7.13 Safety, security and resilience to emergency
- 7.14 Improving Air Quality
- 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes
- 8.3 Community infrastructure levy

### Unitary Development Plan

- BE1 Design of New Development
- BE2 Mixed use Developments
- BE8 Statutory Listed Buildings
- EMP5 Development outside Business Areas
- ER7 Contaminated Land
- H1 Housing Supply
- H7 Housing density and Design
- H12 Conversion of non-residential buildings to residential use
- S7 Retail and Leisure Development - Outside existing centres
- T1 Transport Demand
- T2 Assessment of Transport Effects
- T3 Parking
- T6 Pedestrians
- T7 Cyclists
- T17 Servicing of Premises
- T18 Road Safety

### Emerging Local Plan

- 1 Housing Supply
- 4 Housing Design
- 30 Parking
- 31 Relieving Congestion
- 32 Road Safety
- 33 Access for All
- 34 Highway Infrastructure Provision
- 37 General Design of Development
- 38 Statutory Listed Buildings
- 73 Development and Trees
- 77 Landscape Quality and Character
- 83 Non Designated Employment Land
- 91 Proposals for Main Town Centre Uses
- 96 Neighbourhood Centres, Local Parades and Individual Shops
- 112 Planning for Sustainable waste management
- 113 Waste Management in New Development

- 114 New Waste Management Facilities and Extensions and Alterations
- 115 Reducing flood risk
- 116 Sustainable Urban Drainage Systems (SUDS)
- 117 Water and Wastewater Infrastructure Capacity
- 118 Contaminated Land
- 119 Noise Pollution
- 120 Air Quality
- 123 Sustainable Design and Construction
- 124 Carbon dioxide reduction, Decentralise Energy networks and Renewable Energy

#### Bromley Town Centre Area Action Plan (2010)

- Policy IA1 Bromley North Village improvement scheme
- Policy BTC18 Bromley Central High Street improvements
- Policy OSJ St Mark's Square Bromley South (Site K)
- Policy OSG West of Bromley High Street (Site G)

#### Supplementary Planning Guidance

Housing: Supplementary Planning Guidance. (March 2016)

Technical housing standards - Nationally Described Space Standard (March 2015)

#### **Planning History**

The site has been in use as a garage since for many decades. The majority of the previous planning applications have related to minor alterations to the shopfront, signage or alterations relating to the Listed Building. The main and relevant applications are listed below.

87/00393/FUL: Installation of car wash within existing building and elevational alterations. Approved 09.04.1987.

87/00394/FUL: Laying out of hard surface to existing car parking area at rear. Approved 09.04.1987

87/00395/FUL: Single storey rear extension. Approved 09.04.1987

87/01727/FUL: Amendment of condition 97 of 870393 relating to Installation of car wash. Refused 16.07.1987

88/02122/FUL: Single storey portable building comprising spray booth and enlarged enclosure. Approved 04.08.1988

97/00047/FUL: 2 air ducts on roof to serve paint spraying facility within workshops. Retrospective application. Approved 19.03.1997

97/00316/LBCALT: Two air ducts on roof to serve paint spraying facility in workshop Listed Building Consent. Retrospective Application. Approved 19.03.1997

04/02202/FULL1: Change of use of workshop to car showroom including elevational alterations, replacement fencing to car park, repositioning of car park spaces, waste collection facilities and oil storage tank. Approved 04.08.2004.

04/02203/LBC: Elevational alterations. Listed building consent. Approved 04.08.2004

07/02910/LBC: Replacement roof tiles. Listed building consent. Approved 23.11.2007

11/03737/ELUD. Replacement of corroded steel beams and columns to rear elevation of workshop. Certificate of lawfulness for an existing development. Approved 27.01.2012

16/03003/LBC: Change of use of the existing car showrooms and associated workshops (Sui Generis) and to two retail units (Class A1) and conversion of first floor to 2 two bedroom flats (Class C3) together with associated car parking, landscaping, external alterations and related internal works to Listed Building. (LISTED BUILDING CONSENT). Approved 5.12.16.

16/02988/FULL1: Change of use of the existing car showrooms and associated workshops (Sui Generis) and to two retail units (Class A1) and conversion of first floor to 2 two bedroom flats (Class C3) together with associated car parking, landscaping, external alterations and related internal works to Listed Building. Approved 5.12.2016

## **Considerations**

The main issues relating to the application are the effect that the alterations from the approved scheme (Ref 16/02988/FULL1) with reference to the proposed changes detailed above regarding restrictive planning conditions would have on the vitality and viability of designated retail centres within the area, the impacts to the adjacent highway and the impact that it would have on the amenities of the occupants of surrounding residential properties.

The principle of the redevelopment of the site has been accepted under previous applications as detailed above along with the alterations to the main building and conversion to flats.

This assessment will focus on the proposed changes to the extant planning permission only.

## Retail

The main issue to consider is, has provided sufficient evidence to justify the sale of an unrestricted range of convenience and comparison goods from Unit 2 to allow Tesco to operate an Express style store format from the unit.

The 2016 planning application identified specific operators for Unit 1 (Majestic Wine) and Unit 2 (Pets at Home) and the retail impact assessment contained within the 2016 Retail Statement (RS) was undertaken based on the premise that the identified operators would trade a very limited range of goods. On that basis the Council imposed a condition (no. 23) on the 2016 planning permission restricting the sale of goods from Units 1 and 2 as detailed above. The current application proposes re-wording condition no. 23 to widen the range of retail goods that can be sold from Unit 2 to allow Tesco to operate an Express format store from the unit.

The DAS submitted with the 2016 application shows that Unit 2 provides 594 sqm gross floorspace although the documents accompanying the current S73 application do not specify the net sales area. Applying a standard net to gross ratio of 70:30, the current proposal, if granted, would allow the operator to trade up to 416 sqm net for an unrestricted range of convenience goods of which up to 42 sqm net could be used for the sale of an unrestricted range of comparison goods. Although Tesco Express is currently the identified operator of Unit 2, the unit could be occupied by any convenience operator. The current application, if granted, would therefore significantly change the nature of the proposed retail use of Unit 2 by allowing the operator to trade an unrestricted range of convenience goods from up to 594 sqm gross floorspace.

The NPPF articulates a town-centre first approach to retail development. In decision-making terms these objectives are established in paragraphs 24 and 26 which relate to the sequential approach and impact test respectively.

The NPPF requires applications for retail development in excess of 2,500 sqm that are 'outside of town centres which are not in accordance with an up-to-date Local Plan' to include an assessment of the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and, the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.

NPPF paragraph 27 makes it clear that an application can only be refused on retail grounds where it 'fails to satisfy the sequential test or is likely to have a significant adverse impact'.

Planning policy guidance (PPG) paragraph 010 confirms that it is applicant's responsibility to demonstrate compliance with the sequential test and that 'failure to undertake a sequential assessment could constitute a reason for refusing permission'.

Paragraph 010 also confirms that the sequential test is passed if there are no suitable and available sites in sequentially preferable locations and that a planning

application should be refused where the proposal fails to satisfy the sequential test. However, Paragraph 010 also emphasises that compliance with the sequential and impact tests does not guarantee that permission is granted and that local planning authorities will have to consider all material considerations in reaching a decision.

In relation to impact on planned investment, PPG paragraph 0156 states that the impact test should be 'undertaken in a proportionate and locally appropriate way drawing on existing information where possible'. In relation to impact on planned investment PPG paragraph 016 confirms that the following issues should be considered in this regard; the policy status of the investment; the progress made towards securing the investment; and the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence.

London Plan Policy 4.7B parts b and c confirm that all new retail, commercial, culture and leisure proposals must comply with the sequential approach and impact test.

Bromley UDP Policy S7 (Retail and Leisure Development) confirms that all proposals for new retail or leisure floorspace located outside of defined centres must comply with the sequential approach and where proposals comply then applicants must demonstrate that the proposals will not have an adverse impact on the vitality or viability of existing centres.

Chapter 5 of the BTCAAP identifies 12 opportunity sites within Bromley town centre for redevelopment and 3 sites include allocations for additional retail floorspace. The opportunity sites which are being progressed include Bromley North Village improvement scheme (Policy IA1), Bromley Central High Street improvements (Policy BTC18), St Mark's Square Bromley South (Policy OSJ and Site K) and West of Bromley High Street (Site G).

Draft Policy 91 Proposals for Main Town Centre Uses of the emerging Local Plan outlines the sequential test for considering proposals for Class A1 uses in the Borough, with a preference for locating such uses in existing town centres. It states that retail proposals outside of Town Centres, over 2,500 sqm should include an assessment of the impact of the proposal on existing and proposed investment in centres in the vicinity, as well as on town centre vitality and viability up to five years from the time the application is made.

The applicant's sequential assessment is contained in the Retail Statement Update (RSU) (paragraphs 2.1 – 5.4) and the 2017 letter prepared by Rapleys (November 2017) responding to the Council's comments on the RSU. Section 3 (methodology) of the RSU outlines the parameters of the sequential assessment.

Section 4 (summary) of the RSU states that whilst vacant units were identified in each of the centres considered, none of these premises were suitable as they did not have adjacent car parking, either dedicated or shared, and the units were too small to accommodate Majestic Wine and Tesco's floorspace requirements. As also concluded in the previous Retail Statement, the allocated sites identified were

not suitable as they were either not available or the Council's aspirations for the site are not viable for the potential retailers.

The RSU concludes that the identified vacant units are unsuitable because they do not provide adjacent car parking and that the allocated sites are either unavailable or unviable for the proposed development as concluded in the previous 2016 RS. Additionally, the 2017 Rapleys letter states that alternative sites in Bromley Town Centre, Beckenham District Centre and Penge District Centre were discounted for the reason that Tesco already has a presence in these centres.

The RSU sequential assessment has significant flaws: the sequential assessment method does not apply reasonable flexibility as set out in the PPG and relevant case law, and the applicants report has not set out compelling evidence for dismissing the preferable sites.

#### *Review of sequential assessment method:*

The sequential assessment has been carried out for the combined floorspace requirements of Unit 1 (Majestic wine) and Unit 2 (Tesco). However, it is considered that there is no requirement to undertake a sequential assessment of Unit 1 since the current application only relates to widening the range of retail goods sold from floorspace within Unit 2.

The specific criteria applied for identifying suitable sites for the current proposal including 'on-site parking; roadside location with high visibility/prominence; and the presence of other Tesco stores' are considered to go beyond the scope of flexibility set out in the PPG.

In order to be considered as 'suitable' sites, sites must be able to accommodate the type of development proposed 'by approximate size, type, and range of goods sold'. A medium-sized convenience store (up to 594 sqm gross) could operate viably in a town centre or edge-of-centre location without the need for on-site parking or roadside location. A large proportion of trips to a convenience store of this size would likely be 'top up shopping trips' which would not require visitors to use a trolley or a car to transport goods home. It is therefore considered that the requirements for on-site parking and roadside location are beyond the scope of flexibility set out in the PPG. Furthermore, there are numerous examples of convenience stores of this type located in Bromley including those operated by Tesco which do not have adjacent on-site parking.

Generally, requirement for flexibility excludes the 'identity of an individual retailer' and that 'the sites covered by the sequential test search should not vary from applicant to applicant according to their identity'. Therefore, the presence of other Tesco stores in centres is not material and it would be flawed if the Council place weight on this in determining the current application in dismissing preferable sites.

#### *Review of assessment of alternative sites.*

Although the RSU sets parameters for the sequential assessment, the report does not provide a clear assessment of the alternative sites identified in Appendix 2 of

the 2016 RS for the current proposal. Instead the RSU relies on the findings of the 2016 RS sequential site assessment to justify the conclusions of the RSU sequential assessment.

The parameters of the 2016 RS sequential assessment were based on the assumption that the Unit 2 would be occupied by Pets at Home. The Council previously accepted that Pets at Home are a bulky goods retailer and as such the car parking requirement was justified for the 2016 RS sequential assessment.

However, the current proposals would significantly change the nature of the proposed retail use of Unit 2. Specifically, there is no evidence to suggest that a convenience store could not be viably operated without on-site car parking. Therefore, the sequential assessment of sites contained in the 2016 RS, prepared some 18 months ago and for a different retail proposition, is not a reliable basis for demonstrating compliance with the sequential approach against the NPPF paragraph 24 for this S73 application.

Paragraphs 5.3-5.4 of the RSU present a brief assessment of two additional retail units in Bromley town centre which have become vacant since the original RS was prepared.

The RSU states that the former HMV unit located at 90-92 High Street is unsuitable because the ground floor area at 263 sqm gross is below the required threshold for the proposed occupiers. It is agreed that this unit is unsuitable for the proposal being too small to accommodate the minimum floorspace requirement for Unit 2 at 280 sqm.

The RSU states that the former BHS Store on Bromley High Street is unavailable because the unit is not being actively marketed and unsuitable because the site does not provide any surface level car parking. It is agreed that this unit is unavailable since the building is not currently advertised as being for sale or to let at the time of writing. However, we disagree that the unit is unsuitable due to the lack of car parking for the reasons set out in this section.

In conclusion, the application has failed to satisfy requirements of the sequential test as set out in the NPPF paragraphs 24 and 26, London Plan Policy 4.7 and UDP Policy S7 which constitutes a reason for the refusal of planning permission under the NPPF paragraph 27.

#### *Retail impact assessment*

The current application should also be supported by a proportionate assessment of impact in order to demonstrate that the proposals comply with the impact test as set out in the NPPF paragraph 26. The applicant's retail impact assessment is set out in the RSU. Section 6 (conclusion) of the RSU states that:

'The proposal will not cause any significant adverse impact to the policy protected shopping hierarchy. The proposal will have an acceptable relationship to relevant centres which have all been assessed to be vital and viable.'

The RSU does not provide an assessment of impact which justifies the conclusion made in Section 6. The PPG is clear that the impact assessment should include a consideration of impact on town centre vitality and viability including investment and trade in the town centre however the RSU has not considered any of these indicators for the current S73 application.

The RSU appears to justify the current application against NPPF paragraph 26 based on the findings of the impact assessment contained in the 2016 RS. However, the Council concluded for the 2016 planning application that the potential impact of the proposals on the viability and vitality of existing centres would be acceptable on the basis that the applicant's retail impact assessment found:

'that the nature of the retailers proposed will ensure that trade is primarily drawn from out of centre retailers and that existing centres are robust enough to withstand the impacts of a development of the scale proposed.'

The current proposal would significantly alter the nature of proposed retail use of Unit 2 and therefore the application should be supported by an assessment of impact which takes account of the nature of the proposed retail use. It is considered that the proposed convenience store would be likely to divert trade from other similar convenience stores located in designated centres within the area of search however the likely impact on trade in town centres has not been assessed.

In conclusion, the application does not provide sufficient evidence to demonstrate that the proposal would not have a significant adverse impact on designated centres as set out in NPPF paragraph 26 and London Plan Policy 4.7.

### Highways

The NPPF recognises that transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. The NPPF clearly states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

London Plan and UDP Policies encourage sustainable transport modes whilst recognising the need for appropriate parking provision. Car parking standards within the London Plan, UDP and emerging draft Local Plan should be used as a basis for assessment.

The Council's Highway Officer has reviewed the current application and raised significant concern regarding the impact of an enlarged retail food store on the adjacent round about, with respect to the impact of the food store on the vehicular trip generation and comparison of the traffic generated associated with the consented scheme (Pets at Home and Majestic Wine) and the traffic generated associated with proposed scheme (TESCO store and Majestic Wine), the impact of the development upon the highway network generally and conditions of highway safety and the impact on the approved servicing and refuse collection facilities.

Previously planning conditions imposed on the extant permission restricted opening times and servicing arrangement to a greater extent than that now proposed, that in connection with the type of bulky goods retailer, lead to trip generation and servicing arrangements with an acceptable impact on the local highways.

It has been concluded as detailed above in the Highway Officers comments that the revised scheme (Tesco and Majestic Wine) will attract additional traffic on to a site with insufficient parking and generate more vehicular trips and result in a harmful effect on highway safety as compared to the consented scheme (Majestic Wine and Pets at Home).

Therefore, the revised proposal is considered generally unacceptable from a highways safety perspective.

### Neighbouring amenity

Policy BE1 of the UDP seeks to protect existing residential occupiers from inappropriate development. Issues to consider are the impact of a development proposal upon neighbouring properties by way of overshadowing, loss of light, overbearing impact, overlooking, loss of privacy and general noise and disturbance.

Previously planning conditions imposed on the extant permission restricted opening times and servicing arrangement to a greater extent than that now proposed. Externally the parking layout incorporated strips and areas of landscaping buffers around the marked parking spaces. This helped soften the parking areas and provided a buffer to adjacent residential properties reducing noise and disturbance and improving the visual appearance of the site to the streetscene. The design of the external area remains unchanged. However the hours of opening are now detailed to be significantly greater to open between 07:00 and 23:00 on all days of the week and servicing is to be allowed over a greater period from 08:00 to 20:00 also on all days of the week when previously weekends were excluded.

In terms of noise and disturbance, concern has been raised by local residents regarding the extent to which the retail units would now be open for customer business. Given the nature of the use, the extent of the opening hours will be extended beyond what currently operates at the site and mostly beyond the opening hours in the parade of shops opposite. It was previously considered prudent to restrict the hours of opening comparatively with similar stores in the region to alleviate any harm in terms of residential amenity to an acceptable level.

The Councils Environmental Health officer has reviewed the proposed revision to servicing and hours of opening. No objections to the opening hours being amended to 0700 to 2300 hours have been raised. Although it is acknowledged that will have some negative impact on the amenity of residents, particularly those living in the flats above, it is not considered that it would not be so serious that it could be refused on this basis.

As far as the servicing and deliveries are concerned, it is appreciated that the desire to avoid the rush hours may help the local highway network but any relaxation in delivery times would have a detrimental impact on residents both above and adjacent.

However, on balance mitigation measures, such as an acoustic barrier, may be feasible to protect adjacent residents. However, they would give little benefit to those on the flats above. Other mitigation measures could also be introduced which could be adopted to reduce the impact on residents. It is anticipated that such measures could include (but not limited to) more stringent times for large lorries, protocol for turning off on-board refrigeration, quiet roll cages, etc. Most of the measures would be standard procedure for convenience stores who wish to be regarded as good neighbours.

On this basis subject to additional conditions for further information, it is not considered that the alterations to hours of opening and servicing arrangements will have a negative detrimental effect on residential amenity that would warrant withholding planning permission.

### CIL

The Mayor of London's CIL is a material consideration. CIL is payable on this application and the applicant has completed the relevant form.

### **Conclusion**

The current application has failed to satisfy the requirements of the sequential test and that the proposal would not have a significant adverse impact on designated centres as set out in the NPPF Paragraphs 24, 26 and 27, London Plan Policy 4.7, UDP Policy S7 and Policy 91 of the Proposed Submission Draft Local Plan which is likely to have significant adverse impact on existing, committed and planned public and private investment in centres in the catchment area of the proposal and a detrimental impact on town centre vitality and viability, including local consumer choice and trade in local town centres and the wider area.

Furthermore, the alterations to the proposed development will attract additional traffic on to a site with insufficient parking and generate more vehicular trips and would be likely to result in significant and unacceptable traffic congestion in the local road network inconvenient to road users and detrimental to the free flow of traffic and conditions of general safety.

Background papers referred to during production of this report comprise all correspondence on the files set out in the Planning History section above, excluding exempt information.

## **RECOMMENDATION: RESOLVE TO CONTEST APPEAL**

**Grounds for contesting the Appeal are as follows:**

- 1 The alterations to the proposed development comprising minor material amendments under Section 73 of the Town and County Planning Act 1990 to allow a variation of the planning permission 16/02988/FULL1 fail to satisfy the requirements of the sequential test and that the proposal would not have a significant adverse retail impact on designated centres which is likely to have significant adverse impact on existing, committed and planned public and private investment in centres in the catchment area of the proposal and a detrimental impact on town centre vitality and viability, including local consumer choice and trade in local town centres and the wider area contrary to Policy S7 of the Unitary Development Plan, Draft Policy 91 of the Proposed Submission Draft Local Plan, Policy 4.7 of the London Plan and Paragraphs 24, 26 and 27 of the NPPF**
  
- 2 The alterations to the proposed development comprising minor material amendments under Section 73 of the Town and County Planning Act 1990 to allow a variation of the planning permission 16/02988/FULL1 will attract additional traffic on to a site with insufficient parking and generate more vehicular trips and would be likely to result in significant and unacceptable traffic congestion in the local road network inconvenient to road users and be detrimental to the free flow of traffic and conditions of general safety contrary to Policy T18 of the Unitary Development Plan, Draft Policy 32 of the Proposed Submission Draft Local Plan and Policy 6.12 of the London Plan.**