

**Section '4' - Applications recommended for REFUSAL or DISAPPROVAL OF DETAILS**

**Application No :** 18/02106/FULL1

**Ward:**  
**Chelsfield And Pratts**  
**Bottom**

**Address :** 21 Windsor Drive, Orpington BR6 6EY

**OS Grid Ref:** E: 546700 N: 164032

**Applicant :** Mrs Shu Juan Zhang

**Objections :** YES

**Description of Development:**

Change of use from A1 (retail) to A3 (restaurant) incorporating single-storey rear extension and associated ventilation equipment.

Key designations:

Biggin Hill Safeguarding Area  
London City Airport Safeguarding  
Open Space Deficiency  
Smoke Control SCA 28

**Proposal**

The application proposes the change of use of the unit from A1 (shop) to A3 (restaurant), single storey rear extension and associated ventilation equipment. The extension will have a rearward projection of approx. 6m, a width of approx. 5.3m to span the width of the site, and the extraction equipment is to be located upon the roof space of the single storey rear extension.

The application site is a three storey terraced property with a commercial unit at ground floor level facing Windsor Drive and accessible by pedestrians from the front, and there is residential accommodation above at first and second floor level.

The applicant now occupies the first and second floors, which are accessible via an external staircase to the rear of the building, whereas the retail unit is accessed from the front by vehicle and pedestrians.

The proposed floor area of the kitchen is 88 sqm.

The proposed opening hours of the restaurant use would be as follows:

Monday to Friday - 10:30 - 22:00  
Saturdays - 10:30 - 23:00  
Sundays and bank Holidays - 12:00 - 22:00.

The application was supported by the following documents:

- Design and Access Statement
- Technical details of the ventilation system

### **Location and Key Constraints**

The application site is located on the south-eastern side of Windsor Drive, and hosts a three storey terraced property with a commercial unit at ground floor level facing Windsor Drive and residential accommodation above at first and second floor level. The applicant now occupies the first and second floors, which is accessible via an external staircase to the rear of the building.

### **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

- Have lost count how many times an application for a fast food restaurant has been made in this historic parade of shops.
- The Sandwich bar two doors away called Bread and Butter are constantly asked by various kebab owners to sell his premises in the hope that once the Council allow this proposal to proceed it would set a precedent and the flood gates will open for several hot food outlets to be granted and the ruination of another parade of shops will have begun;
- The objection is not just based upon the ambiance of the area but more from the concerns of the immediate local residents;
- Not one person within 100 dwellings either side has supported this application. All fear the smells from the kitchen will be over powering and because over 21 flats front doors and bedrooms are at the rear where the proposed chimney will be our quality of life will be significantly degraded. I am sure no Council member would like to live alongside any fast food takeaway shop for the same reasons as I state: the smells and fumes will be overwhelming and cannot be masked;
- The addition of litter on the highway will definitely be increased and cause deterioration in the area;
- The increased noise levels will disturb all the local residents of which 5 immediate properties have children under the age of eight years old;
- The proximity of the pub is very close and will encourage more late night revellers to spill onto the streets and head to a Chinese that then will cause distress disturbance and a proliferation of litter. As it is the Pub often play music late into the night at maximum volume;
- There is always a requirement for fast food establishments but not near local residents, please;
- The other point is the Additional proposal for the single storey rear extension and associated ventilation equipment - this additional building will allow the restaurant to have more covers and seating equalling more noise pollution;

- The associated ventilation equipment barely meets the necessary standards of health and safety but the most important factor is no ventilation equipment will expel the smells away. The top of the chimney is in line with my bedroom and my neighbours children's bedrooms. All too often local residents concerns are not heard and if they live nearby long term rented accommodation not even their views are solicited;
- There is a local campaign that the local press will be made aware of to beg the Council to standby their original position and prevent this planning application to be granted;
- I send comments on behalf of the many residents whom live adjacent to the proposed change of use retail unit. Please be aware that several people have approached this family to buy the shop to sell birthday cards and antiques but they refused to sell because they hope to wear the Council down into permitting the change of use. The owners have several restaurants and care not about the impact these have on the local community as it's not where they live.
- Concerns re security, well-being and economic affects for the community;

### Support

- I write to support this application for the extension and change of use. The family who propose to establish a restaurant live above the premises and are not likely to want to create problems for themselves. They own the freehold and it is in their interest to maintain the premises and the local ambiance to the highest possible standards. They are proposing to establish a high end Chinese restaurant and not a cheap & cheerful takeaway creating noise and rubbish. The Council can certainly put some strict conditions with regards to hours of operation and refuse and ventilation management. The rear of these shops is an access road that has usual fly-tipping and dangerous rubbish including exposed asbestos, soiled mattresses and so on, so it is highly unhealthy for all the residents especially young children.
- I am a local estate agent in the parade and in 4 years I have not had any approach for anyone wanting to rent the shop for retail use. Frankly speaking all retail parades are under pressure from online retail outlets so we have to be more creative with our empty premises.
- I have dealt with the family at the premises and feel confident that they will make a good job of continuing to be good neighbours.
- I am writing to support this application for the extension and change of use. I live above number 21 and I see no issues with the proposed restaurant.
- The proposal is for a high end Chinese restaurant, and not a cheap takeaway. As such, noise levels should be kept to a minimum, and it is highly unlikely that any neighbours would be able to hear any noise. The objections to the smells from the chimney are also unfounded. Current ventilation technologies are very good, it is unlikely that smells will reach the neighbours. The presence of the pub is also irrelevant - people from the pub tend to go and find kebab shops and takeaways. They do not go and dine in a high end restaurant! In addition, the restaurant does not intend to open as late as the pub. The pub opens until midnight; the restaurant plans to close earlier than that.

- Furthermore, the objections raised by 17a to the extension do not make any sense. As stated in the application, the purpose for the extension is to house kitchen equipment, not for additional restaurant seating. Therefore, there will not be extra people and no extra noise. Currently, the back is very untidy and contains lots of rubbish left by fly tippers. Tidying the back will benefit all the nearby residents.
- The existence of an additional restaurant will benefit the entire high street by attracting more people, meaning that local businesses will also benefit. It would also provide extra jobs for the local community.

### **Comments from Consultees**

Environmental Health Pollution Officer: The application has been considered and it is recommended that permission be refused as no effective kitchen extraction system is proposed.

The principal concern is that the kitchen extract system discharges at low level and is therefore likely to give rise to cooking odour complaints and loss of amenity. The generic information submitted would indicate that the applicant intends to fit carbon filters (quantity not specified) and a high efficiency contra-rotating fan (model not specified) as well as a silencer and sound absorbent cladding (no specific information regarding either is included). However the information provided is not considered appropriate or sufficient in order to alleviate technical concerns currently raised.

A detailed specification should be provided to demonstrate compliance with Bromley's Standard, and details of the reasons for specifying attenuators and the noise reduction expected should also be provided.

Drainage Engineer: no technical objections.

Highways: The proposal is essentially a change of use from A3 café, as permitted by the previous application, to A3 restaurant. The site has a PTAL rating of 2 (low) where car use by customers could be expected and London Plan Parking Standards suggest 2 parking spaces should be provided. No information has been provided regarding the operational needs of the unit in terms of deliveries and staff parking and how the site would deal with these, and whilst the site has rear access, no detail is provided regarding how the area would be utilised in connection with the above and indeed residential parking.

Notwithstanding this, no technical Highway objections are raised.

### **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 4th 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.

### London Plan Policies

#### 7.15 Reducing and Managing Noise

### Unitary Development Plan

BE1 Design of New Development

S5 Local Neighbourhood Centres, Parades and Individual Shops

S9 Food and Drink Premises

ER9 Ventilation

### Emerging Local Plan

Draft Policy 37 Design of new development

Draft Policy 96 Neighbourhood Local Centres, Local parades and Individual Shops

Draft Policy 98 Restaurants, Pubs and Hot Food Takeaway

Draft Policy 121 Ventilation and Odour Control

### Supplementary Planning Guidance

Supplementary Planning Guidance 1 General Design Guidance

Supplementary Planning Guidance 2 Residential Design Principles

### **Planning History**

15/01138/FULL2 - Proposed change of use from post office to restaurant/take away (A3 /A5) and single storey rear extension - Refused

Reason: 1. The proposed single storey rear extension is considered a bulky and incongruous form of development due to its size, scale and design which would be out of place within the surrounding locality. Furthermore, the proposed extension would remove the outdoor amenity space utilised by the first and second floor flats contrary to policy BE1 and the outdoor space standards as laid out within the London Plan Housing Supplementary Planning Guidance (2015).

2. The proposal would, in the absence of any marketing information to demonstrate otherwise, result in the unacceptable loss of a viable retail unit contrary Policy S5 of the Unitary Development Plan.

3. The proposal would, due to the lack of information provided with regards to the type, size or location of ventilation equipment, be prejudicial to the amenities of occupants of nearby residential accommodation by reason of cooking smells and noise contrary to Policies ER9 and S9 of the Unitary Development Plan and Policy 7.15 of the London Plan 2015.

15/04284/RESTCA - Change of use of shop from Class A1 (Retail) to Class A3 (Restaurant) (56 day application for prior approval under Schedule 2, Part 3 Class C of the GPDO) - Prior Approval Required and Refused

Reasons:

1. The proposed ventilation is unsatisfactory as it provides no odour abatement and in the absence of evidence to suggest the contrary, would adversely impact residential amenity by virtue of noise. The extent of the proposed opening hours would exacerbate noise within the site by virtue of transient pedestrian and vehicle movements within close proximity to neighbouring dwellings contrary to policy BE1 and S9 of the Unitary Development Plan, Policy 7.15 of The London Plan and the Mayors SPG Housing (2012).

2. The applicant has failed to provide sufficient information in respect of refuse and waste management and in accordance with PART W (3) (b) of the GPDO (2015) therefore the Council are unable to fully assess the impact of refuse, contrary to saved policy BE1 and S9.

3. The proposed siting and location of the ventilation ductwork is considered incongruous, prominent and unsightly when viewed from the rear of 21 Windsor Drive contrary to policy BE1 of the Unitary Development Plan.

4. The proposed Class A3 is not considered to contribute to the vitality or range of local services within the shopping parade and in the absence of information to demonstrate otherwise, the loss of the A1 unit would have a detrimental impact upon the vitality of the shopping parade given the extent of neighbouring A3/A5 uses and the loss of a viable retail unit contrary to policy S5 of the Unitary Development Plan.

15/04507/FULL1 - Proposed single storey rear extension - Refused

Reasons: The proposed single storey rear extension is considered a bulky and incongruous form of development due to its size, scale and design which would be out of place within the surrounding locality. Furthermore, the proposed extension would remove the outdoor amenity space and access utilised by the first and second floor flats contrary to policy BE1 of the Unitary Development Plan.

16/00724/RESTCA - Change of use of shop from Class A1 (Retail) to Class A3 (Restaurant) - Prior approval required and refused

Reasons:

1. The applicant has failed to provide any information in respect of hours of opening, and in accordance with PART W (3) (b) of the GPDO (2015) therefore the Council are unable to fully assess the impact of the opening hours on the surrounding residential amenity, contrary to saved policy BE1 and S9, Policy 7.15 of The London Plan and the Mayors SPG Housing (2012).

2. The applicant has failed to provide sufficient information in respect of ventilation, and in accordance with PART W (3) (b) of the GPDO (2015) therefore the Council are unable to fully assess the impact of ventilation, noise and odour, contrary to saved policy BE1 and S9.

3. The applicant has failed to provide sufficient information in respect of refuse and waste management and in accordance with PART W (3) (b) of the GPDO (2015) therefore the Council are unable to fully assess the impact of refuse, contrary to saved policy BE1 and S9.

4. The applicant has failed to provide sufficient information in respect of transport and highways and in accordance with PART W (3) (b) of the GPDO (2015) therefore the Council are unable to fully assess the impact on parking demand, contrary to saved policy BE1 and S9.

5. The proposed Class A3 is not considered to contribute to the vitality or range of local services within the shopping parade and in the absence of information to demonstrate otherwise, the loss of the A1 unit would have a detrimental impact upon the vitality of the shopping parade given the extent of neighbouring A3/A5 uses and the loss of a viable retail unit contrary to policy S5 of the Unitary Development Plan.

16/02189/RESTCA- Change of use of shop from class A1 (retail) to class A3 (restaurant) ( 56 day application in respect of noise, odour, waste, opening hours, highways, service provision, sustainability and appearance under Class C Part 3 of the GPDO- Grant Prior Approval

16/04445/FULL1 - Proposed single storey rear extension and installation of kitchen extract system - Application refused

Reasons:

1. The proposed single storey rear extension is considered a bulky and incongruous form of development due to its size, scale and design which would be considered out of character within the surrounding locality contrary to Saved Policy BE1 Design of New Development of the adopted Unitary Development Plan (2006).
2. The proposed access to the flats, by reason of its location, size, elevated position and proximity to neighbouring properties would result in overlooking and a loss of privacy to neighbouring residential occupiers contrary to Saved Policy BE1 Design of New Development of the adopted Unitary Development Plan (2006).

17/03328/FULL3 - Proposed change of use from A1 (shop) to A3 (restaurant), single storey/basement extension, two storey outbuilding with undercroft parking and associated ventilation equipment - application refused

Reasons:

1. The proposed single storey rear extension is considered a bulky and incongruous form of development due to its size, scale and design which would be considered out of character within the surrounding locality and overbearing to neighbouring properties contrary to Saved Policy BE1 Design of New Development of the adopted Unitary Development Plan (2006).
2. The proposed raised roof garden, by reason of its location, size, elevated position and proximity to neighbouring properties would result in overlooking and a loss of privacy to neighbouring residential occupiers contrary to Saved Policy BE1 Design of New Development of the adopted Unitary Development Plan (2006).
3. The proposal would, due to the lack of an effective ventilation/flue system, be prejudicial to the amenities of occupants of nearby residential accommodation by reason of noise and disturbance (including smell) contrary to Policies ER9 and S9 of the Unitary Development Plan and Policy 7.15 of the London Plan 2015.

## **Considerations**

The main issues to be considered in respect of this application are:

- Resubmission
- Principle
- Design
- Highways
- Neighbouring amenity

## Resubmission

The current application is a resubmission following previous refusals. The depth and design of the proposed rear extension has been amended, and additional information has been provided relating to the ventilation equipment.

## Principle

There is a significant planning history with regard to this property the most pertinent of which is application reference 16/02189/RESTCA for the change of use of the existing shop from class A1 (retail) to class A3 (restaurant). The application was a 56 day application in respect of noise, odour, waste, opening hours, highways, service provision, sustainability and appearance under Class C Part 3 of the GPDO. As part of the application a condition was imposed which prevented the cooking of food on the premises that required the use of ventilation or extraction systems. Whilst the prior approval was granted, given that this is yet to be implemented this current application includes the change of use of the premises from retail (A1) to class A3 (restaurant) to include the erection of extraction and ventilation equipment to allow for primary cooking on the site.

Under Policy S5 the change of use away from class A1 will be acceptable if the proposed use contributes to the range of local services or community services, and contributes to the vitality of the centre. Alternatively the proposal may be considered acceptable if the application is able to demonstrate that there has been a long term vacancy of the site and a lack of demand for Class A1 uses as well as community uses. Policy BE1 also makes reference to the development respecting the amenity of occupiers of neighbouring buildings and those of future occupiers, ensuring that their environments are not harmed by noise.

It is noted that whilst previous applications resisted the change of use of the premises to A3 (café/restaurant use), under the most recent prior approval application it was stated that whilst there was an absence of evidential information suggesting that there is a lack of demand for an A1 use within this locality, the Council have undertaken a recent survey of the units along the shopping parade in which it was found that there are 9 A1 uses and 10 units not in A1 use. As such, the application concluded that given that the shop unit is currently vacant and has been vacant for a considerable period of time, and that there is still a high percentage of A1 units along the shopping parade, the loss of the A1 unit to A3 is no longer considered a cogent stand-alone reason for refusal.

Officers do not consider that there has been a material change in circumstance since the determination of the prior approval application to warrant a different view, and subject to the consideration of the rest of the policy requirements in respect of residential amenity, the principle of the change of use would be found to be acceptable.

Policy S9 of the UDP highlights the need to ensure that any proposed change of use to a restaurant or drinking establishment does not have an adverse impact on surrounding residents by way of increased noise and disturbance. The application proposes the erection of a flue/ventilation system which is to be sited on the flat roof profile of the proposed single storey rear extension to the rear of the premises. The extraction flue is to extract horizontally from this raised position. Comments from the Environmental Health Officer states that the principal concern is that the kitchen extract system discharges at low level and is therefore likely to give rise to cooking odour complaints and loss of amenity.

The generic information submitted would indicate that the applicant intends to fit carbon filters (quantity not specified) and a high efficiency contra-rotating fan (model not specified) as well as a silencer and sound absorbent cladding (no specific information regarding either is included).

In order to overcome the concerns, the following should be addressed:

- The flue should discharge at least 1.0m above the eaves or the highest window/opening in the building or adjacent buildings;
- A detailed specification should be provided to demonstrate compliance with Bromley's standard;
- Details of the reasons for specifying attenuators and the noise reduction expected should be provided.

The kitchen extract system should either comply with the Bromley Standard Specification or with the DEFRA specification available on their web site.

On balance therefore it is recommended that permission be refused as no effective kitchen extraction system is proposed and as such the development would give rise to unacceptable noise/disturbance to neighbouring residential properties.

## Design

Design is a key consideration in the planning process. Good design is an important aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. The NPPF states that it is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes.

The NPPF requires Local Planning Authorities to undertake a design critique of planning proposals to ensure that developments would function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development. Proposals must establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit; optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses and support local facilities and transport networks. Developments are required to respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation. New development must create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and are visually attractive as a result of good architecture and appropriate landscaping.

London Plan and UDP policies further reinforce the principles of the NPPF setting out a clear rationale for high quality design.

Whilst previous applications concerning the property have proposed single storey rear extensions of varying lengths, this application proposes a single storey rear extension which would measure 6m along the north-eastern flank elevation and 2m along the south-western flank elevation, effectively squaring-off the rear elevation

of the property at ground floor. The roof profile would be flat, to a height of approx. 3.4m from ground level.

The development is proposed to facilitate an extension to the restaurant space to provide a kitchen area.

It is acknowledged that the area is characterised by large outbuildings and modest rear extensions, and the rear extension currently proposed is considered to be in keeping with the scale of existing rear extensions within the area.

### 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.

In terms of neighbouring residential amenity, at present there is an existing external staircase and small terrace area located at first floor level to the rear of the application site; this arrangement is replicated to the rear of most residential properties to the rear of the commercial parade. This arrangement has resulted in some overlooking, given that the second floor flats are also accessed via this staircase and landing area which passes directly in front of the first floor flat windows. It is not clear how the amenity space will be accessed from the plans submitted following development of the proposed single storey rear extension. It is acknowledged that there is already some overlooking, and the current application should not exacerbate the issue any further.

With regard to the proposed ventilation system, it is considered that at present, the level of detail is insufficient and as no effective kitchen extraction system is proposed, the development is considered likely to give rise to unacceptable levels of noise/disturbance to neighbouring residential properties. On this basis, the application should be resisted in its current form.

### 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 site has a PTAL rating of 2 (low) where car use by customers could be expected and London Plan Parking Standards suggest 2 parking spaces should be provided.

No information has been provided regarding the operational needs of the unit in terms of deliveries and staff parking and how the site would deal with these, and whilst the site has rear access, no detail is provided regarding how the area would be utilised in connection with the above and indeed residential parking. Notwithstanding this, no technical objections have been raised, nor were they raised under the previously refused schemes and as such, it is considered that given the relatively small-scale nature of the restaurant use as proposed, the proposal is acceptable in highways terms.

## **CIL**

The Mayor of London's CIL is a material consideration. CIL is not payable on this application.

## **Conclusion**

Having had regard to the above it was considered that the development in the manner proposed is unacceptable in that it would result in a significant loss of amenity to local residents and impact detrimentally on the character of the area, by reason of inadequate ventilation equipment for an A3 restaurant use.

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: APPLICATION BE REFUSED**

The reasons for refusal are:

- 1 The proposal would, due to the lack of an effective ventilation/flue system, be prejudicial to the amenities of occupants of nearby residential accommodation by reason of noise and disturbance (including smell) contrary to Policies ER9 and S9 of the Unitary Development Plan and Policy 7.15 of the London Plan 2015.**