

SECTION '2' – Applications meriting special consideration

Application No : 19/00963/FULL1

Ward:
Kelsey And Eden Park

Address : 96 Wickham Road Beckenham BR3 6QH **Objections:** Yes

OS Grid Ref: E: 537929 N: 168598

Applicant : Mr Peter Bolton

Description of Development:

Change of Use from Retail (Use Class A1) to Retail/Café/Restaurant (Use Class A1/A3).

Key designations:

Biggin Hill Safeguarding Area
London City Airport Safeguarding
Smoke Control SCA 18

UPDATE

The application was deferred from Plan Sub committee 3 held on 26th September 2019 to seek acoustic and ventilation details from the applicant that the change of use to a café/restaurant would not cause harm to neighbouring amenity. Further information has been provided in this respect and the application is therefore reported for further consideration by Members.

Proposal

Planning permission is sought for a change of use from A1 to A1/A3 restaurant/café use.

Location and Key Constraints

The application relates to a two-storey mid-terrace property that is located within a commercial parade. The surrounding area is characterised by a mix of commercial units on the ground with residential properties above.

No.96 Wickham Road is a café (Daisy Grey) on the ground floor with separate living accommodation above. The premises lie in the middle of a local parade of nine similar two storey premises close to the busy roundabout where Wickham Road meets Stone Park Avenue, South Eden Park Rd, Wickham Way and Hayes Lane. The parade is set back from Wickham Road behind a service road used for parking. There is an unmade track at the rear giving access to the back of the

Comments from Local Residents and Groups

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

- The owners have been trading under the wrong licence before doing their renovations.
- No.96 has been turned down for an A3 use a few times before & opening late.

Safer Neighbourhoods (Kelsey and Eden Park Ward)

- I would like to offer my support for this application, as chairman of the local safer neighbourhood group.

Comments from Consultees

Highways –

In the previous application 15/01934/FULL3 the applicant was asked to demonstrate with the help of a parking stress survey that by opening another restaurant/takeaway in this parade of shops with limited parking facilities close to a major roundabout would not cause congestion and increase the likelihood of road accidents with cars queuing across the London Distribution Route and there would not be an increase in parking.

The parking stress survey confirmed that the parking stress in the vicinity is high and it was decided to refuse the application as the takeaway element of the proposed business would cause undue traffic congestion and will be detrimental to the safety of other road users and pedestrians.

As there is no takeaway element in this application so I would have no objection to the application.

Environmental Health Officer – No objection - (10/03/2020)

I have reviewed the documentation provided, which took some time due to the layout and format of the plan. Whilst it is not ideal to have a kitchen extraction unit at single storey level the odours controls submitted should satisfy the recommendations of external guidance to mitigate odour, subject to appropriate installation, use and maintenance.

In relation to noise, the specific model of silencer has not been provided instead 4 options have been highlighted on the documentation provided. There is also no information in relation to the background noise levels in this area. To ensure that an appropriate fan an attenuation measures are in place the octave levels for the fan and attenuation by octave for the proposed silencers should be provided. To

overcome this I would recommend that the application is conditioned with the following:

At any time the combined plant noise rating level 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 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. All constituent parts of the new plant shall be maintained and replaced in whole or in part as often is required to ensure compliance with the noise levels.

Before any mechanical plant is used on the premises it shall be mounted in a way which will minimise transmission of structure borne sound or vibration to any other part of the building in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.

Based on the plans, it is now apparent that the kitchen area is situated in the single storey to the rear of the premises and therefore I do not consider any specific sound insulation measures are required for this application.

Environmental Health – Objection - (05/03/2019)

I haven't been able to find any information in relation to the sound proofing of the premises with adjacent residential uses, has this been considered anywhere?

We received noise complaints in relation to this premises in 2018 which would indicate that they have been opening past their permitted operating hours already. Given this, and with nothing to support otherwise, it is likely that this application will negatively impact upon the amenity of neighbouring residential premises and as such I would recommend that the application is refused.

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.

The National Planning Policy Framework was published on 24th July 2018. According to paragraph 48 of the NPPF decision makers can also give weight to relevant policies in emerging plans according to:

- a) The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- b) 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
- c) The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF

The development plan for Bromley comprises the London Plan (March 2016) and the Bromley Local Plan (2019). The NPPF does not change the legal status of the development plan.

The application falls to be determined in accordance with the following policies:-

London Plan

- Policy 5.2 Minimising carbon dioxide emissions
- Policy 5.3 Sustainable design and construction
- Policy 7.3 Designing out crime
- Policy 7.4 Local character
- Policy 7.6 Architecture
- Policy 7.8 Heritage assets.
- Policy 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes
- Policy 8.3 Community infrastructure levy

Bromley Local Plan

- Policy 30 Parking
- Policy 37 General Design of Development
- Policy 41 Conservation Areas
- Policy 94 District Centres
- Policy 101 Shopfronts and Security Shutters
- Policy 116 Sustainable Urban Drainage
- Policy 119 Noise Pollution
- Policy 121 Ventilation and Odour Control
- Policy 123 Sustainable Design and Construction

Planning History

Under planning application ref:- 15/01934/FULL3 planning permission was refused for Change of use from retail shop (use class A1) to restaurant/takeaway (use class A3 (A5)), installation of ventilation extraction system to rear. The application was refused on the following grounds:

1. *The proposal would give rise to unacceptable levels of activity and general noise and disturbance, detrimental to the residential amenities that the occupants of nearby residential properties could reasonably expect to be*

able to continue to enjoy, and thereby contrary to Policy S9 of the Unitary Development Plan.

2. *In the absence of sufficient parking capacity in the vicinity of the application site to satisfactorily accommodate the additional traffic associated with the proposed use, the proposal would be likely to undermine the free flow of traffic along surrounding roads, inconvenience other road users and pedestrians, and prejudice road safety conditions in general, contrary to Policies S9 and T18 of the Unitary Development Plan.*

Under reference 11/00591 planning permission was granted for Change of use from Class A1 Shop to Class D1 (Surgery/therapy/gallery use).

Under reference 95/01009 an application for a change of use to a restaurant was refused on the following grounds:

- "01 *The proposed change of use would result in the unacceptable loss of a retail unit detrimental to the retail character and amenity of this local shopping parade, contrary to Policy S.4 of the Unitary Development Plan.*
- 02 *The proposed use by reason of the days and hours of operation would give rise to unacceptable levels of activity and general noise and disturbance detrimental to the residential amenities that the occupants of nearby properties could reasonably expect to be able to continue to enjoy, thereby contrary to Policy S.6 of the Unitary Development Plan.*
- 03 *The proposed system of ventilation would not ensure that odours would be effectively dispersed without having a detrimental impact upon the residential amenities of nearby occupants, thereby contrary to Policy S.6 of the Unitary Development Plan."*

A subsequent appeal was dismissed.

Under reference 88/04870, planning permission was granted for a single storey rear extension.

Considerations

The main issues to be considered in respect of the current proposal are:

- Principle of the change of use
- Design
- Neighbouring amenity
- Highways Impacts

Principle

The application seeks permission for the change of use of the premises from A1 (retail) to a mixed A1/A3 (Retail/Restaurant/ Café) use. The applicant has set out in an email to the Council that the shop was granted an alcohol licence in 2017 to

operate between the following hours Monday - Saturday 08:00-23:00 & Sunday 08:00 -22:00.

The existing café seeks to offer a more extensive food menu to its existing customers providing pop-up experiences such as Charcuterie and Vegan Dining. The restaurant seeks to provide a mixture of cold and warm dishes with food prepared off-site, transported and reheated before being served.

The proposed hours of opening are specified as follows:

Monday to Saturday	08:00 - 22:00 &
Sunday	08:00 - 21:00

The shopping parade on Wickham Road is not designated as a primary or secondary shopping frontage within the Bromley Local Plan, though it does form a neighbourhood / local parade. Policy 96 states that a change of use to non-A1 uses will only be considered if the use proposed contributes to the range of local services or the provision of local community facilities, or where there is appropriate alternative provision within reasonable walking distance.

The parade of shops on Wickham Road consists of a mix of predominately retail uses and one A2 use. Having consideration for the range of local services currently provided within close proximity to the application site, it is not considered that the loss of one retail unit would result in a detrimental impact upon the local shopping parade and the services available. Furthermore, the proposed mixed use of A1 / A3 use is not considered to result in an overconcentration of cafés / restaurants or takeaways and the change of use is therefore considered acceptable in principle.

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.

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

It is noted that the existing shopfront and awning has been altered when the premises became Daisy Grey café. A search of the Council's records shows that the external alterations to the shopfront do not have permission. Should planning permission be granted a retrospective planning application should be made to the Council to regularise the shopfront alterations.

An extraction/ventilation system is shown to the rear of the premises which the Environmental Health Officer has stated is not ideal, with the odours being extracted at single storey level, however on balance, has not raised a specific objection.

In relation to noise, the specific model of silencer has not been provided instead 4 options have been highlighted on the documentation provided. There is also no information in relation to the background noise levels in this area. To ensure that an appropriate fan for attenuation measures are in place the octave levels for the fan and attenuation by octave for the proposed silencers should be provided by way of a condition.

Neighbourhood Amenity

Policy 37 of the Bromley Local Plan 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.

The Environmental Health Officer has provided updated comments following additional information received from the applicant. Based on the information received objections are no longer raised regarding ventilation and noise.

Other than the extraction/ventilation system the proposal would not include any other external alterations. The proposed change of use is not considered to result in any significant harm to light, outlook, noise, ventilation or visual amenities of nearby residents.

The application was previously refused in 2015 for a change to use to A3 on the basis that the use could give rise to unacceptable levels of activity and general noise and disturbance, detrimental to the residential amenities that the occupants of nearby residential properties could reasonably expect to be able to continue to enjoy. Based on the additional information provided by the applicant in relation to noise and ventilation and the comments of the Environmental Health Officer the application is considered to overcome the Council's previous concerns.

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 is considered that the development in the manner proposed is acceptable.

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: 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: To comply with Section 91 of the 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 order to comply with Policy 37 of the Bromley Local Plan and in the interests of visual and residential amenity.

- 3. The materials to be used for the external surfaces of the building shall be as set out in the planning application forms and / or drawings unless otherwise agreed in writing by the Local Planning Authority.**

Reason: In order to comply with Policy 37 of the Bromley Local Plan and in the interest of the appearance of the building and the visual amenities of the area.

- 4. 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: To comply with Section 91 of the Town and Country Planning Act 1990

- 5. The materials to be used for the external surfaces of the building shall be as set out in the planning application forms and / or drawings unless otherwise agreed in writing by the Local Planning Authority.**

Reason: In order to comply with Policy 37 of the Bromley Local Plan and in the interest of the appearance of the building and the visual amenities of the area.

- 6. 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 order to comply with Policy 37 of the Bromley Local Plan and in the interests of visual and residential amenity.

- 7. At any time the combined plant noise rating level 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 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. All constituent parts of the new plant shall be maintained and replaced in whole or in part as often is required to ensure compliance with the noise levels.

Before any mechanical plant is used on the premises it shall be mounted in a way which will minimise transmission of structure borne sound or vibration to any other part of the building in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.

8. The premises shall be used as a Restaurant/Café and only and for no other purpose falling within Class A3 of 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 with or without modification.

Reason: In the interest of the vitality and viability of the shopping area and to allow the impact of the use of the site to be reconsidered in the light of circumstances at the time, to accord with Policy 96 of the Bromley Local Plan.

9. The Class A3 use hereby permitted shall not open outside the hours of 08:00-22:00 Monday to Saturday and 08:00-22:00 on Sundays, and any statutory Bank Holidays.

Reason: In order to comply with Policy 37 of the Bromley Local Plan in order to protect neighbouring residential amenity.

You are further informed that :

- 1 The applicant is advised to submit a retrospective planning application to the Council to regularise the shopfront alterations.