

Committee Report

Planning Committee on 16 December, 2009

Case No. 09/3050

RECEIVED: 14 September, 2009

WARD: Dudden Hill

PLANNING AREA: Willesden Consultative Forum

LOCATION: 1 Dudden Hill Parade, Dudden Hill Lane, London, NW10 1BY

PROPOSAL: Change of use of ground floor to cafe/restaurant to (use class A3) and erection of single-storey rear extension to rear of building

APPLICANT: Mr Haider Mushetet

CONTACT: Mr Safa Alattar

PLAN NO'S: 01RevA - Site Plans and Design Statement
02RevA - Exist Ground Floor Plans
03RevA - Exist First Floor Plans
04RevA - Exist Loft Floor Plans
05RevA - Exist Elevations
06RevA - Proposed Ground Floor Plan
07RevA - Proposed Roof Plan
08RevA - Proposed Elevations
09RevA - Proposed Fair and Refuse Plans
Un-numbered plans including:
External Duct Details
Extraction System Location

RECOMMENDATION

Approval

EXISTING

Ground floor retail unit as part of a neighbourhood shopping centre.

PROPOSAL

Full planning permission is sought for the retention of a café use, single storey canopy to side and front and single storey rear extension to the business premises.

HISTORY

09/0497. Full planning permission sought for change of use of ground floor to cafe/restaurant to (use class A3) and erection of single-storey rear extension to rear of building. Withdrawn

08/3233 Change of use of ground floor to Use Class A3 (cafe/restaurant), erection of canopy to side and front, single-storey extension to rear, and single-storey storage area in rear yard of business premises. Refused for the following reasons:

1. *"The proposed retention of the existing use of the premises as a cafe by reason of the proximity of residential accommodation, the scale of outdoor seating area, the anti-social opening hours and the failure to provide a suitable extract/ventilation system has and will*

have a detrimental impact on the amenity of local residents in terms of noise disturbance and fumes contrary to policies BE17, SH10 and SH16 of Brent's UDP 2004.

- 2. The existing projecting canopy by reason of its excessive forward projection and poor quality materials, is an unsightly extension to the building and has a detrimental impact on the character*

E/08/0762. Enforcement investigation opened in relation to the erection of a canopy to the front and side and the change of use of premises from retail to café.

95/0971. Advertisement consent was sought for the retention of free-standing illuminated advertisement hoarding. Appeal dismissed 24/05/1996.

89/1117. Full planning permission sought for change of use from retail to café (Use Class A3). Granted 07/11/1989.

- This planning permission was never implemented.

The property has been used for various uses including retail and office uses. For the purposes of this application the last authorised use was for retail.

POLICY CONSIDERATIONS

Brent UDP 2004

BE2 – Townscape: Local Context and Character

BE7 – Public Realm: Street scene

BE9 – Architectural Quality

BE17 – Building Services Equipment

EP2 – Noise and Vibration

SH4 – Local centres

SH10 – Food and Drink (A3) Uses

SH11 – Conditions for A3 Uses

SH16 – Local Centres

SH19 – Rear Servicing

SH23 – Forecourt Trading

Issues for any A3 use to address:

- Proximity of residential accommodation
- Specific nature and size of use
- Character of the area and the concentration and existing level of disturbance from a3 and similar uses
- Whether the proposed hours of opening would result in residential disturbance
- Practicality of providing extract ducting, ventilation, grease traps and/or noise insulation.

Impact on Residential Amenity

Character and Appearance

Parking and Servicing

CONSULTATION

24 neighbours, Thames Water, Transportation and Environmental Health consulted.

2 objections and a petition containing over 70 signatures from Dudden Hill Lane and Southview Avenue Residents Association have been received. On the following grounds:

- 1) Noise and Disturbance from those using the café
- 2) Not in keeping with the residential area
- 3) Impact on local primary school

- 4) Fumes from smokers
- 5) Anti-social operating hours
- 6) The works have already started
- 7) Loss of privacy
- 8) Lack of Parking and pressure on existing parking
- 9) Pedestrian Safety
- 10) Verbal abuse from the applicant
- 11) The ramp and raised concrete area is a hazard for pedestrians
- 12) Clarification of the legality of the wall in the courtyard of Mr Mushattat's premises.
- 13) Does the applicant have permission from the freeholder for the proposed extension.
- 14) Water, Sewage and Waste Disposal

Concerns have also been expressed that the Council is pandering to business over local residents

Transportation have no objections to the proposals provided that a condition is attached to ensure the provision of 2 cycle parking spaces.

Health, Safety and Licensing have notified the Planning Service that numerous complaints have been received from residents in relation to late night noise, late night refreshment and smoking within an illegal smoking shelter. Following investigation of these matters a prosecution was brought against Mr Haider in which he was found guilty. Since the prosecution Mr Haider has continued to allow smoking on the premises, knowing that this is illegal.

Environmental Health have commented that in recent months they have received complaints regarding noise and odour arising from the premises and successful enforcement action was recently taken against the owner in respect of breaches of smoking regulations. They have asked that should approval be recommended that they be consulted so as to ensure stringently worded conditions are attached to secure the necessary site improvements.

Further representations from local that were sent through to Sarah Teather MP, have also been sent through. Sarah Teather MP has requested to be kept informed as to how the application proceeds.

REMARKS

Previous Breaches of Planning Control

As set out in the history section of this report there have been breaches of planning control at this site over the past year since the cafe has been in operation. While it is recognised that these breaches have resulted in significant disturbance for the neighbouring residents this report is based on the content of the submitted planning application. This report examines the current proposals in relation to the relevant planning policies in the UDP and whether the concerns of the residents could be addressed with the suitable conditions and reference to non-planning legislation.

Principle of the A3 use

The commercial unit at 1A Dudden Hill Parade forms part of a local neighbourhood retail centre which comprises of 4 retail units on the ground floor of a 3 storey terraced block at 1-4 Dudden Hill Parade. Policy SH10 sets out the criteria by which A3 uses are considered acceptable within shopping centres, this report will examine each of the criteria in turn in relation to the existing use of 1 Dudden Hill Parade as a café (A3 use)

- i) Proximity of residential accommodation:
1-4 Dudden Hill Parade is a 3-storey terraced block with commercial uses on the ground floor and residential on the first and second floors. It is on the corner with Southview Avenue which is a residential street and there are two storey residential dwellings on the opposite side Dudden Hill Lane from the subject property. While it is predominantly a residential area there is no reason to suggest that a café use is unacceptable solely by reason of the proximity of

residential. However policy SH10 states that there should be no detrimental impact on the amenity of neighbouring residential occupiers. The proposed hours of operation will now be restricted to between 8am in the morning and 7pm in the evening. Thus any activity in the premises will be within normal working hours. A cafe use is not usually considered to generate a level of noise that would be out of keeping with a local shopping parade. In addition the outdoor seating area has been removed from the proposal. Thus it is considered that there will be no detrimental impact on the amenity of neighbouring residents. Conditions will be attached to ensure that there will be no outdoor seating without the prior written consent of the local planning authority and that relevant sound insulation is installed to ensure that the amenity of neighbouring residents is protected.

ii) Nature and size of the use proposed

The café is to be used for the preparation and serving of hot food and drinks. The existing unit has an internal floor area of 47sqm with a further 25sqm proposed with the new extension. The total floor area for the proposed development is 75sqm. It should be emphasised that the applicant does not propose to have any outdoor seating areas and therefore if sheesha smoking is to occur it would need to take place in accordance with the relevant Environmental Health and Health Safety and Licensing legislation. Environmental Health have stated that successful enforcement action was recently taken against the owner in respect of breaches of smoking legislation and have concerns about the applicants ability to comply with this in the future. An informative will be attached to any approval to ensure that the applicant is aware of this and the need to comply with The Smoke-Free (Premises and Enforcement) Regulations 2006. The nature and size of the use proposed is considered to be acceptable.

iii) Character of the area, concentration of similar uses and disturbance from such uses. Dudden Hill Parade is on Dudden Hill Road which is classified as a distributor road through the Borough with a high vehicle flows. The predominant use in the area is residential while the other commercial uses in the parade include retail and A2 type uses. There is one vacant unit at the other end of the parade (unit 4). It is considered that there is not an over-concentration of A3 type uses in this area, the nearest similar uses are on Neasden Lane which is over 450m from the site and Burnley Road which is over 600m from the site. Therefore it is considered that a cafe use (use class A3) would not be out of keeping with the character of the local shopping parade and that there would not be an over concentration of such uses on Dudden Hill Parade.

iv) Proposed hours of opening causing disturbance.

The applicant has confirmed that the café opening hours will be from 0800hrs to 1800hrs 7 days a week. These hours are considered appropriate on what is a distributor road in through the Borough and while it is predominantly residential, the proposed opening hours would be in keeping with normal opening hours for similar type shopping parades. While there have been letters of objection and complaints relating to significant disturbance to local residents until the early hours of the morning, if the applicant abides by the opening hours there should not be any disturbance from the cafe after 1800hrs in the evening. Therefore the proposed use is considered to have acceptable operating hours, which will be enforced by condition. Should the applicant operate outside of these hours or occupy the premises with more than 2 people between the hours of 2200 and 0700 then appropriate enforcement action should be taken to address in breach of condition.

v) Practicality of providing extract ducting, ventilation, etc.

Details of the proposed extract system have been sought and Environmental Health have been consulted on these. The proposed ventilation shaft is shown on the plans with a width of 300mm and will terminate 1m above the neighbouring rear dormer. The applicant has also stated that they will attach a sound insulation system to ensure there is no noise disturbance for neighbouring residents. The detailed extract ducting shows that the width will be larger than this to reduce noise disturbance. To ensure that a suitable extract system that is in keeping with the character and appearance of the building and that it will not result in disturbance for neighbouring residents, a condition will be attached requiring the submission and written

approval of further details of the extract system prior to works commencing. The owner and residents of the residential flat above have no objection to the proposed routing of the extract system.

Proposed single storey rear extension

The proposed single storey rear extension is of a minor scale and is to be located at the rear of the building. It is not considered to have a detrimental impact on the character and appearance of the building as it is out of view from the principle streetscene and will not have a detrimental impact on the amenity of neighbouring residents.. It is proposed to be constructed of materials to match the existing. There is an existing rear access way to the upstairs flats which at present is completely enclosed by boundary fencing. A condition will be attached to the proposal to ensure that there is lighting installed on the boundary with the neighbouring pedestrian access-way to improve security on this access-way. The proposed single storey rear extension is in keeping with the relevant Council policies for extensions to buildings.

Parking/Servicing and Pedestrian Safety

The existing use in terms of car-parking and servicing standards is the same as the previous authorised use. As there is no change to the servicing or car-parking arrangements the use is considered to be acceptable in relation to parking and servicing. There is one servicing space, 2 parking spaces and a refuse storage area proposed in the rear service yard. The refuse storage area appears to show provision for domestic refuse, while it is of a size that could accommodate adequate refuse storage further details of this area will be sought by condition. Transportation have confirmed that this level of provision would be in keeping with the relevant parking and servicing standards. A condition will be attached to ensure that the rear servicing yard is reserved for these uses and not used to provide additional seating or facilities for patrons. However the applicants have failed to take the opportunity to provide additional secure cycle parking therefore it is not in compliance with cycle parking standards. A condition will be attached to approval requiring provision of cycle parking and the refuse storage details.

Other issues raised by objectors

The above headings have addressed the majority of the issues raised by objectors. The issues raised in relation to crime, the environment, health and safety and sewage and water services can be dealt with by legislation outside of planning control, where necessary the Council have attached conditions to control them or informative's to ensure that the applicant is aware of the need to comply with the relevant legislation. In particular the water and sewerage services would be covered by the relevant utilities provider which in this case is Thames Water while smoking legislation is enforced by the Council's Environmental Health Team. The Local Planning Authority are aware that certain works have already taken place and have taken enforcement action where possible.

Conclusion

The proposed cafe use and single storey rear extension are considered to be in accordance with the relevant planning policies as set out above. While it is recognised that the applicant has operated an unauthorised business in this location for the past 12 months the amended proposals are in accordance with the relevant policies and with the control permitted with the attached conditions it is considered that there will not be a significantly detrimental impact on neighbouring residents. Furthermore to alleviate the concerns of local resident the Council will investigate any reported breach of condition and if necessary will take suitable enforcement action to ensure that there is no detrimental impact on the residential amenity of neighbouring residents.

RECOMMENDATION: Grant Consent

REASON FOR GRANTING

- (1) The proposed development is in general accordance with policies contained in the:-
Brent Unitary Development Plan 2004

Relevant policies in the Adopted Unitary Development Plan are those in the following chapters:-

Built Environment: in terms of the protection and enhancement of the environment

Environmental Protection: in terms of protecting specific features of the environment and protecting the public

Town Centres and Shopping: in terms of the range and accessibility of services and their attractiveness

Transport: in terms of sustainability, safety and servicing needs

CONDITIONS/REASONS:

- (1) The premises shall only be used for the preparation or sale food and for ancillary purposes between the hours of 0800 and 1800 on Mondays to Sundays.

Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties.

- (2) The proposed flue extraction systems shall be installed and maintained as per the manufacturers guidance and shall be fully removed at such time as the use hereby approved ceases.

Reason: To safeguard the amenities of the adjoining occupiers.

- (3) All plant machinery and equipment (including refrigeration and air conditioning systems) to be used by reason of this approval shall be so installed, maintained and operated as to prevent the transmission of noise and vibration into any neighbouring premises.

Reason: To safeguard the amenities of the adjoining occupiers.

- (4) No development shall take place before a scheme of sound insulation and ventilation for the building has been submitted to and approved in writing by the Local Planning Authority. Thereafter the building shall not be occupied until the approved scheme has been fully implemented.

Reason: To safeguard the amenities of the neighbouring residents.

- (5) No outdoor seating or tables may be place on the forecourt of the premises without the prior written approval of the Local Planning Authority.

Reason: To safeguard the amenities of the adjoining occupiers.

- (6) The areas approved by the Local Planning Authority for car parking, loading, unloading and parking of service vehicles; and refuse storage shall be used only for those purposes.

Reasons: To ensure that these areas are permanently retained for these uses in compliance with the Council's parking and servicing standards, in the interests of the general amenities of the locality and in the interests of the free flow of traffic and conditions of highway safety within the site and on the neighbouring highways.

- (7) Details of lighting, baffled so as to avoid glare, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development, for the neighbouring pedestrian access-way to the first floor flats at Nos. 1a and 2a Dudden Hill Parade The approved details shall be fully implemented.

Reason: In the interests of safety, amenity and convenience.

- (8) No amplified sound or other music shall be played in the external courtyard areas as outlined in the plan.

Reason: To protect the amenity of neighbouring residents.

- (9) The premises shall be used as a cafe/restaurant and for no other purpose including for the sale and consumption of alcohol, as a bar, public house, food delivery or nightclub within class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 without the prior written permission of the Local Planning Authority.

Reason: To limit the use of the premises to protect the amenity of neighbouring residences.

- (10) No more than 2 persons shall occupy the premises between the following hours:

Monday to Sunday - 2200hours and 0700hours.

Reason: To protect the amenity of neighbouring residents outside normal hours of operation.

- (11) Further details of the refuse storage and secure cycle stores shall be submitted to and approved by the Local Planning Authority prior to the commencement of any works on site. The works shall be completed in accordance with the approved details.

Reason: In order to ensure that the development is satisfactory and contributes to the character and appearance of the area.

INFORMATIVES:

- (1) The applicant's attention is drawn to the need to comply with (among other regulations) the requirements of the following legislation:
- (i) Food Hygiene (General) Regulations 1970
 - (ii) Smoke-free (Premises and Enforcement) Regulations 2006.

REFERENCE DOCUMENTS:

UDP 2004

Any person wishing to inspect the above papers should contact Robin Sedgwick, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5229



Planning Committee Map

Site address: 1 Dudden Hill Parade, Dudden Hill Lane, London, NW10 1BY

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