

Committee Report
Planning Committee on 13 January, 2010

Case No. 09/2426

RECEIVED: 23 November, 2009

WARD: Preston

PLANNING AREA: Wembley Consultative Forum

LOCATION: 16 The Broadway, Wembley, HA9 8JU

PROPOSAL: Change of use to cafe (Use Class A3) from retail (Use Class A1) and erection of a single-storey rear extension, rear extraction flue and bin store

APPLICANT: Mr Abdul Rahim

CONTACT: Mr Safa Alattar

PLAN NO'S: 01Rev A - site plan and design statement; 02 Rev A - Existing plan; 03 Rev A- existing elevations; 04 Rev A - porposed plans; 05 Rev A - porposed elevations; 06 Rev A - Proposed section & Extract Design Statement; 07 - extraction system location; 07RevA - extraction duct details; 09 Rev A - proposed section

RECOMMENDATION

Refuse consent

EXISTING

This application relates to a commercial unit located mid-way along a shopping parade on the western side of Preston Road, at the junction with East Lane. The unit forms part of a retail parade comprising 1-20 The Broadway which is designated as a Local Centre in Brent's adopted Unitary Development Plan. There is a service road located to the rear of the site. The authorised use of the unit is A1 (retail), however it is currently trading as the Elissa Cafe. There has been on-going enforcement investigations into the unauthorised change of use of the unit to A3, the erection of a covered area to the rear and the creation of an open seating area to the front.

PROPOSAL

Change of use to cafe (Use Class A3) from retail (Use Class A1) and erection of a single-storey rear extension, rear extraction flue and bin store

HISTORY

15/09/2009 - 09/1674 - Withdrawn

Retention of change of use to cafe (use class A3) and erection of a single storey rear undercover area and canopy, formation of an open internal seating area to the front of the premises and removal of shopfront

08/06/2009 - E/09/0357

The formation of a seating area to the front of the premises and the erection of a large wooden structure to the rear of the premises

22/02/2008 - E/08/0170

Without planning permission the material change of use of the premises to cafe/restaurant (A3) and erection of wooden type structure at rear of premises.

There is a refusal for a change of use of 16C from A1 to A3 under reference 06/3531. However, this appears to be the adjacent unit. It was refused due to concerns with the proposed extraction system.

POLICY CONSIDERATIONS

Adopted Unitary Development Plan 2004

- **STR11** Protection and enhancement of the built and natural environment
- **STR29** Development should sustain and enhance the vitality and viability of the Borough's town and District Centres
- **BE2** Townscape local context and character
- **BE4** Access for Disabled People
- **BE17** Building-Services Equipment
- **EP2** Noise & Vibration
- **EP4** Potentially polluting development
- **TRN3** Environmental Impact of Traffic
- **TRN11** The London Cycle Network
- **TRN22** Parking Standards Non-Residential Development
- **TRN34** Servicing in New Development
- **TRN35** Transport Access for Disabled People
- **H22** Protection of Residential Amenity
- **SH4** Local Centres
- **SH6** Non-Retail uses appropriate to primary shopping frontages
- **SH7** Change of use from retail to non-retail
- **SH10** Food & Drink (A3) Uses
- **SH11** Conditions for A3 Uses
- **SH16** Local Centres
- **SH19** Rear Servicing

SPG7 – Shopfronts and Shop Signs

- 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.
- Character and Appearance
- Parking and Servicing

CONSULTATION

Internal

Highways- No objection subject to alterations to the width of the access would need to be widened in order for the proposed servicing bay to be useable. A secure cycle store should also be provided.

Policy - On strict application of Policy SH16 of the Unitary Development Plan, the centre is already operating at 36% non-retail, and therefore exceeds the non-retail limit, particularly as the level of vacancy is not at 10%. However, the Local Centre figures are near margins of acceptability. The expansion of an existing business and the size of the centre and retail offer may allow the proposal as an exception to the policy guidelines within SH16.

Environmental Health – no objections subject to further information regarding the extraction system, which may be conditioned.

External

77 letters sent to neighbouring occupiers of the shops, residential units above the shops, and church to the rear and a nearby residential home. These properties have been notified on 30/11/09.

One letter received raising concerns regarding the impact of the proposed use on the rear service road.

A petition from 18 properties was received, raising the following objections to the application:

- There are already a number of A3 uses on the parade causing traffic and congestion
- There are already parking and loading problems in the area, which an A3 use will worsen
- There are already anti-social problems with people hanging around the centre
- The place is a smoking/ shisha area at the back of the premises, and this drug abuse and drunkard behaviour makes the area less safe. Allowing an extension to the smoking area will encourage a bigger crowd and cause more noise and disturbance.

REMARKS

The application proposes to change the use of a unit that was previously retail, (use class A1.) It has been occupied by “Elissa Café” for some time. According to Business Rates the current occupation has run from 05/10/09 onwards, but the previous occupation was May 2005 to October 2009. The unit has within the last year been used for smoking shisha. The shopfront has been removed and set back into the unit by several meters so that when the solid roller shutter is up there is an area to the front of the unit that is open to the front and enclosed on the other sides. The lack of a shopfront results in the use of a solid shutter during the day when the unit is not open, which is unsightly and contrary to local planning policy guidelines. Policy SH21 of Brent’s Unitary Development Plan and SPG7 sets out the Council’s guidelines on Shopfronts. Solid shutters are not normally permitted.

A structure has also been erected to the rear of the unit without planning permission. This comprises in part of wooden panels, some brickwork and wooden posts topped with a corrugated plastic roof. This area covers the whole of the rear curtilage of the unit. It is open at the top of the sides. The area has been used for smoking shisha. The applicants state that the rear structure has been in place for over 4 years. This is not the case, the rear structure is of temporary nature and aerial photographs demonstrate that the structure does not pre-date 2008.

The applicant states that they have been running the unit for over 6 years. The applicant now seeks an A3 consent. The application also includes a single storey rear extension with an associated extractor duct that runs up the back of the property and vents at ridge level. The existing shop has a floorspace of 50sqm, and the proposed extension incorporating an extended internal seating area totalling 25sqm. The proposed rear extension will require at least the partial removal of an existing covered structure to the rear of the premises that does not benefit from planning permission.

Loss of A1

The application seeks to change an A1 use class to an A3 use class. Policy SH16 guides that within Local Centres non-retail uses will generally only be acceptable if the application will result in no more than 35% of the shop units being within non-retail use unless there is a vacancy rate of at least 10%. The parade currently consists of 20 units, which were surveyed by your officer as:

PROPERTY NAME	DESCRIPTION	USE CLASS	
VACANT - was CHINA PRESENTATIONS	GIFT SHOP	vacant was A1, vacant since 20/05/08 (VACANT)	1
was CHINA PRESENTATIONS, now Astrologer operating 9am-9pm 7 days a week	GIFT SHOP	unauthorised B1; authorised A1, (VACANT)	2
CLEAN	DRY CLEANERS	A1	3
WEMBLEY SAUNA/ MASSAGE	SAUNA	SUI GENERIS	4
KUTTING PROFESSIONALS	HAIR DRESSERS	A1	5
MALIK LAW CHAMBERS	SOLICITORS	A2	6
RAEI & CO - ACCOUNTANTS	ACCOUNTANTS	A2	7
SUNRISE CAFÉ	CAFÉ / TAKEAWAY	A3	8
AQUA MARINE	AQUARIUM SALES	A1	9
SIMINS HAIR SALON	HAIRDRESSERS	A1	9C
THE COPPER'S JUG	PUBLIC HOUSE	was A4	10A
COFFEE SHOP	COFFEE SHOP	A1 (applic in for A3 but not yet permitted)	11
LESLIES HAIR SALON	HAIRDRESSERS	A1	12
OAKLEY TRAINING CENTRE	TRAINING CENTRE	D1	12b
BARISH - BAR & EATERY	RESTAURANT	A4	13
PEACE PHARMACY	CHEMIST	A1	14
DAY 1 - LOCAL EXPRESS	OFF LICENSE/ SHOP	A1	15
ELISSA CAFÉ	CAFE	A1 (applic for A3 but not yet permitted)	16
STYLING CORNER HAIR SALON	HAIRDRESSERS	A1	16A
TAYYAB HALAL MEAT 17	BUTCHER	A1	17
VARSANI & CO- Solicitors	SOLICITORS	A2	18
INSTANT SECURITY SYSTEMS	LOCKSMITH'S SHOP	A1	19-20

The Local Centre currently has 14 operational retail units, which, (including unit 16,) consists of 64% of the Centre's units. If number 16 is permitted as a change of use from retail, the proportion of A1 units within the Local Centre will fall to 59%. This will result in 41% non-retail units, which breaches the 35% non-retail use (as stated within Policy SH16). 2 units are currently vacant within the parade (this includes the use occupied by the Astrologer given the unauthorised and temporary nature of this use). As a result the vacancy rate of the parade is 9%. A vacancy rate of 10% is required in order to justify any further loss of retail.

It should also be noted that the Local Planning Authority is also considering an application at 11 the Broadway for a change of use to A3 from A1. If this was to be allowed, the proportion of A1 units would decrease to 55% and non-retail units would increase to 45%.

Your officers have sought planning policy advice. The policy officer guides that the limits set out within Policy SH16 are not absolute, other factors can be taken into account in determining an

application. For example the policy allows for expansion of existing businesses as an exception to the normal policy. This proposal at 16 is seeking to expand an established business within the parade. Likewise, the proposal to number 11 enables the expansion of food offer at an existing business.

The policy officer also guides that the overall size of the centre should be considered in order to determine whether a higher proportion of non-retail would affect the potential range of shops that could be provided in the units that are left available as retail shops. The policy intends to retain retail uses and essential services within Local Centres. If a change of use resulting in a loss of A1 at 16 is permitted, there will still be a range of retail offer within the parade. The proposed loss of A1 will not necessarily harm the vitality and viability of the centre. However, there are other policy considerations.

Proposed A3 use

The proposed enlarged café with an A3 use at number 16 complies with Policy SH6 that defines in principle appropriate town centre uses. Policy SH10 sets out guidelines that can be used to assess the appropriateness of a site for A3 use.

i) Proximity of residential accommodation:

Number 16 The Broadway has residential flats above the main ground floor unit. There is also a rear elevated walkway running along the back of the units, above the existing ground-floor unit. This type of relationship is common within local centres and does not necessarily represent harm to neighbouring occupiers. The proposal will entail the erection of a single storey rear extension that projects 5.5m from the original rear build-line of the property. The submitted drawings show that the existing temporary structure will be removed as a result of the proposed extension. However, there are some doubts about the layout of the proposed extension and how this will relate to the residential properties above. This is discussed further below.

ii) Nature and size of the use proposed

The applicants state that the unit will be used for up to 150 customers in one day. There will be ready-prepared and cooked food on the premises, including 2 donner kebab machines, Lebanese and Mediterranean style foods. It should be noted that the applicants are only applying for A3 use and not A5, although A5 uses are more commonly associated with the sale of kebabs.

The applicant states that they have been operating from the site for 6 years. There have been complaints about the nature of the use and in particular the use of the rear undercover area in terms of noise and smells, which are aggravated as the structure is not enclosed. The proposal seeks to replace the structure with a smaller extension. The proposed extension is shown to be an enlarged seating area. The applicant states that this is for a cold drink service. The extension is enclosed apart from the rear elevation that appears to have wide concertina style doors. This causes concern. It would enable customers to access the rear service yard and potentially enables the continuation of shisha smoking and external uses of the rear curtilage, which is not considered acceptable. The applicants indicate that this area will also be used for servicing. A servicing area is considered necessary.

iii) Character of the area, concentration of similar uses and disturbance from such uses.

It should be noted that both units 11&16 The Broadway have made applications to change their use from A1 to A3. The Broadway currently consists of 20 units, the range of units is set out in the table above. The objector's comments are noted but there is only one existing A3 unit within The Broadway, number 8, Sunrise café. The rest of the units within the parade are within use classes A1, A2 or A4. It is therefore considered that there is not an over-concentration of A3 type uses in this area.

iv) Proposed hours of opening causing residential disturbance.

The applicant has confirmed that they intend to open from 10am to midnight every day of the week.

The extraction system is proposed to be operated from 11am to 9pm daily. The applicants are proposing insulation measures between the unit and first floor residential properties immediately above. The length of the proposed opening hours causes concern particularly as the property has in the past been the subject of complaints regarding noise and disturbance to residential properties. The length of opening hours has the potential to cause noise nuisance.

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

The applicant has provided details of a high-level extraction system in land within their ownership. The extract duct will be sited up the back of the property adjacent to the rear elevation. It will be brick clad to eaves and exposed thereafter with angled flues that follow the roof and vent by the chimney. The applicant has also provided details of internal canopies and air inlet pipes. They have indicated that they will install a Gybroc insulation system in the floor between the ground floor commercial unit and the residential units above. The information provided has been sufficient to satisfy Environmental Health subject to conditions requiring the submission of more technical specifications regarding the extraction system.

However, the submitted drawings do not accurately represent the property's roof shape, which is angled in a mansard style to the rear. There are therefore some concerns about the practicality of the siting of the extract duct and how it will be affix to particularly the horizontal roof slope and relate to neighbouring residential windows alongside. In addition, the applicant has confirmed that they own the 2 flats upstairs, and has served certificate A. The proposed extract duct will rise up through the rear elevated walkway and there is some doubt about the practicality of this.

Furthermore, the proposed rear elevation shows that there is approximately a metre wide space between the edge of the property and the nearest dormer window in which to site the extract duct. However, on your officer's site visit the distance appears significantly less than this. There is therefore some doubt that the extract duct can be achieved in the manner proposed in land within the applicant's ownership. If an extraction system cannot reasonably be installed the proposal will harm the amenity of neighbouring occupiers, either above or adjoining the premises, by way of noise, vibration and smell. As such, the proposal would be contrary to policies BE2, SH9 SH10, SH19, EP2 and EP4 of Brent's Unitary Development Plan 2004.

Impact on residential amenities

The proposed layout results in a rear extension with wide opening concertina doors. The extension is stated to provide a sitting area for drinking cold drinks. The design of the proposed extension does not give your officers certainty that the proposed layout will not enable the perpetuation of an external shisha area. The design and style of the rear door is such that there is a direct link between the internal sitting area and the external yard. The yard should be in use as a servicing area and refuse store. The layout therefore represents a poor relationship between a restaurant area and servicing paraphernalia, particularly as changes are required to the servicing layout. It is not considered appropriate that customers use the external yard area. Intensive use of the yard by members of the public would result in unreasonable levels of noise and disturbance. It may potentially lead to fumes if the shisha continues. This would be exacerbated by the long proposed opening hours of the unit. The proposal would therefore harm the amenities of local residential properties. This is contrary to Policies EP2, EP4, H22 and SH10.

Environmental Health is satisfied in principle with the technical specifications of the extraction system, subject to the submission of further information as conditions. This includes:

- The dimensions mentioned under the "cooker and donner machine" paragraph on drawing 06 do not correspond
- The types of filters proposed including manufacturer's name, filter name and product code should be provided
- Details of the cooker hood its opening dimensions, depth in relation to the appliances, velocity in meters/ second
- The overall system extraction rate in m3/s
- The noise levels of the system, (in decibels) based on the chosen fittings, indicating the acoustic performance of the proposed system or providing an acoustic assessment

demonstrating no harm to neighbouring amenities based on the existing background noise level of the site.

- Confirmation of the proposed ventilation maintenance schedule. The stated 2 years checks are not acceptable and it is recommended to have 6 month checks as a minimum.
- Height of the extraction system

Your officers have concerns about the feasibility of the system in terms of the ability to be able to insert an extract duct through the residential walkway, the ability to affix the extract duct onto the rear mansard roof, (which is not shown on the submitted drawings,) and the availability of space within the applicant's ownership to insert an extract duct without interfering with the windows serving residential properties at upper floors. As such the applicant has failed to demonstrate a feasible extraction system and in the absence of this, the proposal will harm local amenities contrary to policies BE2, SH10, EP2 and EP4 of Brent's Unitary Development Plan 2004.

Character and appearance

The submitted drawings appear to show that the existing and proposed shopfronts will not alter. The existing recessed shopfront does not benefit from planning permission and the plans do not show that it exists. However, the Design Statement confirms that it will be retained. The open nature of the frontage results in the use of the security shutter when the unit is shut. The opening hours are stated to be 10am to midnight, but when your officer has visited the site in the morning, the unit has not been open. The use of a solid shutter during the day when the unit is not open, is considered unsightly and contrary to local planning policy guidelines within SPG7 and Policy SH21.

The rear extension is set below the residential properties at upper floors. The proposed single storey rear extension should represent a visual improvement upon the existing temporary structure. Many of the other units along the parade have been extended to the rear, and therefore the rear extension is not out of keeping with the character of the area. The extension does not impinge on the functionality of either of the adjoining commercial units and will not obstruct access to the service road to the rear. This complies with parameters within policy BE2.

There are a number of other extraction systems to the rear of the western side of the parade. The extraction vent will represent the first high-level flue. High-level flue outlets are preferred by Environmental Health in order to limit nuisance potential by dispersing fumes at higher levels. However, the flue will have a greater visual impact. The applicant has proposed to brick-clad the flue up to eaves level but it is unclear what material it will be finished in above this. The flue outlet is located close to a chimney and has been angled so that it is less visible to the public realm to the front of the units. If the extraction system could be installed in accordance with the submitted details, then the visual impact of the system would be reduced to acceptable levels. However, there are drawing inaccuracies meaning that officers have concerns about the feasibility of the system.

Parking/ servicing

The proposed extension is to be constructed over the only land within solely the applicant's ownership that they may have parked upon. The proposal will not increase the parking requirement for the unit. Policy TRN22 guides that up to one parking space could be required. However, a servicing bay is considered more important. Brent's Unitary Development Plan guides that a servicing bay capable of housing a 6m by 3m transit-sized vehicle should be provided. The applicants have demonstrated this provision. However, the Council's Highway Engineers have raised concerns about the proposed access width, which should be widened to the whole entrance to enable improved manoeuvrability. They require that the bin store is relocated to enable this. The Engineers also require 2 secure cycle spaces. These matters could be dealt with through revisions to the layout as there is capacity within the site. However, officers have not sought revisions due to concerns about the principle of the use, and as such the unsatisfactory servicing arrangement will form a reason for refusal. This will create displacement parking. The site is at a busy road junction

between two local distributor roads and further parked vehicles would harm the free-flow of traffic and highway safety.

The layout of the proposed rear extension could lead to the potential presence of customers within the yard and this would prevent the effective servicing of the unit within its curtilage. The displacement of vehicles from the curtilage would impinge upon the local service road, cause congestion and harm the free-flow of vehicles on the local highway network contrary to Policy TRN3.

Summary

In summary, the proposed A3 use at 16 The Broadway has been carefully considered. The premises has been used for smoking shisha in recent times. Officers have doubts over the ability of the applicants to install an extraction system and without a viable system, the type and range of cooking proposed at the premises will cause harm to the amenities of neighbouring occupiers. Officers also have concerns about the layout of the proposal, which incorporates the ability to facilitate external use by customers of the rear curtilage. The streetscene is harmed by the appearance of a solid shutter on the frontage of the unit when the unit is not open. The layout of the servicing area also requires amendments.

Some of these details may have been sought through further clarification. However, given that the Council has received complaints about the operation of the unit, concerns about the possibility of the unit continuing to operate in an unneighbourly way could not be easily disregarded.

Application 09/3050 regarding 1 Duddenhill Parade was reported to committee on 16/12/09. This proposed a change of use of ground floor to cafe/restaurant (Use Class A3) and erection of single-storey rear extension to rear of building. Members were minded to refuse the application by reason of noise and disturbance resulting from the activity of users, in terms of vehicular parking and patrons entering and leaving the premises that would result in a detrimental impact on the amenity of adjoining and nearby residents in the flats above the premises and dwellings on Southview Avenue contrary to policy SH10 of Brent's UDP 2004. The current proposal is similar to this.

Policy SH16 seeks to safeguard appropriate levels of retail within Local Centres by limiting the level of non-retail uses. This level has already been reached, and exceptions are only permissible in exceptional circumstances. The concerns about the operation of 16 The Broadway are such that the proposal cannot be supported by officers. In contrast to unit 11 The Broadway, which has demonstrated that they can operate without harm to local amenities.

RECOMMENDATION: Refuse Consent

CONDITIONS/REASONS:

- (1) The applicants have failed to demonstrate that the change of use to A3 would not result in a loss of amenity for neighbouring occupiers, either above or adjoining the premises, as they have not shown extraction/ ventilation equipment capable of being installed on site, and as such the proposed cooking processes will lead to excessive fumes and smells. In addition, proposed customers using external areas in the lengthy proposed opening hours will result in excessive levels of noise, disturbance and fumes and the use of a solid shutter on the shopfront is considered harmful to appearance of the unit. As such, the proposal would be contrary to policies BE2, H22 SH9 SH10, SH19, SH21, EP2 and EP4 of Brent's Unitary Development Plan 2004 and SPG7.

- (2) The applicants have failed to demonstrate a layout that enables servicing vehicles to access and egress the site safely. The lack of an accessible servicing bay will lead to the displacement of vehicles onto a public highway, which would harm the free-flow of traffic and highway safety. Furthermore the lack of secure cycle storage on site reduces the site's accessibility and encourages vehicle use. This is contrary to policies SH19, TRN3, TRN11 and TRN34 of Brent's Unitary Development Plan

INFORMATIVES:

None Specified

REFERENCE DOCUMENTS:

Brent's Unitary Development Plan 2004
SPG7 – Shopfronts and Shop Signs

Any person wishing to inspect the above papers should contact Amy Collins, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5222



Planning Committee Map

Site address: 16 The Broadway, Wembley, HA9 8JU

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