

Item No.	Classification:	Date:	Meeting Name:
7.4	OPEN	23 April 2013	Planning Sub-Committee A
Report title:	Development Management planning application: Application 12/AP/2343 for: Full Planning Permission Address: 77 HERNE HILL, LONDON, SE24 9NE Proposal: Change of use from Class A3 restaurant to a mixed Class A3/A4 drinking establishment - public house and Class D2 - entertainment.		
Ward(s) or groups affected:	Village		
From:	Head of Development Management		
Application Start Date 28/08/2012		Application Expiry Date 23/10/2012	

RECOMMENDATION

- 1 Grant detailed planning permission, subject to conditions.

BACKGROUND INFORMATION

- 2 This application has been called in to sub-committee for determination following a Member request; due to the level of local opposition to the proposal.

Site location and description

- 3 The site is an end of terrace ground floor commercial unit located on the corner of Herne Hill and Elfindale Road. The site is currently occupied by a restaurant (Class A3) with a large outdoor seating area. The site is within a retail parade and is part of protected shopping frontage SF37 (Nos. 63-77 odd). Surrounding the site to the north are neighbouring commercial uses within the shopping parade, to the east, west and south and above the site are residential dwellings. The site is not within a conservation area nor are any of the affected buildings listed.

Details of proposal

- 4 Planning consent is sought for a change of use of the premises in order to incorporate Class A4 use (drinking establishment) and Class D2 use (entertainment) in addition to the existing A3 use, in order to permit alcohol sale/consumption and live music. The proposed opening hours are 07:30-23:30 Monday - Saturday and 08:00-23:00 Sunday and Bank Holidays. In terms of capacity the internal area can accommodate 12 seated and 35 standing whilst the outside terrace can accommodate 21 seated.

Planning history

- 5 0001608: Planning permission refused 28/06/2001 for a change of use of the ground floor to restaurant (A3) plus alterations to the shopfront and installation of a ventilation duct. Reasons for refusal included the ventilation duct forming a visually obtrusive feature and the shopfront giving rise to additional noise emanating from the premises.
03/AP/0071: Planning permission granted 27/02/2003 for a change of use of ground

floor to a restaurant, alterations to shop front together with the provision of a ventilation duct on the rear elevation. As stated in the case officer's report, the use of the premises before this was as a delicatessen and the site included a seating area outside the shop. There were no conditions preventing the use of the outdoor area for dining and it is understood that the area has been used by the restaurant as a dining area since the date of this permission. This permission does not limit the hours of use of the restaurant.

09/AP/0485: Planning permission sought for the installation of new shopfront together with the erection of timber safety balustrade to the front terrace and change of use of terrace for a seating area for A3 restaurant use. The application was withdrawn by the applicant on 26/06/2009.

09/AP/1374 - Installation of new shopfront together with the erection of a raised outdoor seating terrace, steel safety balustrade, access ramp and change of use of terrace to a seating area for A3 restaurant use.

Refused permission on 24.08.2009 for the following reasons;

1). The proposal fails to demonstrate that the access ramp provided meets the required 1:12 gradient to be considered inclusive design. As such the proposal does not satisfy Strategic Policies SP1 Sustainability, equality and diversity, SP3 Quality and Accessibility and Policy 3.13 Urban design of the Southwark Plan [July 2007] and The Supplementary Planning Document Design and Access Statements 2007.

2). The solid wall, plus the railing, gives a boundary treatment to the outdoor eating terrace that is considered to be visually harmful due to its design, use of materials and height. As such, it is considered to detract from the quality of the townscape of this local shopping parade, and is contrary to Policy 3.12 Quality in Design and 3.13 Urban Design of the Southwark Plan 2007.

This refusal of planning permission was the subject of a successful appeal reference APP/A5840A/10/2122941/NWF. Permission allowed on appeal - 28/08/2010. A condition was imposed limiting the hours of use of the outdoor terrace to 8am - 11.30pm Monday to Saturday and 9am to 8pm on Sunday.

6 Enforcement history

08/EN/0525 - Development in front of existing shop
Case closed as the breach of planning control was regularised.

12/EN/0213 - Possible change of use from restaurant to night club/bar/public house.
Erection of an unauthorised structure in the rear garden.
Case closed as no breach of planning control.

12/EN/0269 and 12/EN/0311 are both duplicates of 12/EN/0213.

Planning history of adjoining sites

- 7 75 Herne Hill - 06/AP/0302 - Erection of a 2 storey rear extension to the existing shop to provide ancillary accommodation in connection with ground/basement chemist (Class A1).
Approved.

KEY ISSUES FOR CONSIDERATION

8 Summary of main issues

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

- a) The principle of the development in terms of land use and conformity with strategic policies of The Core Strategy 2011, the saved policies of The Southwark Plan 2007 (July) and the provisions of The National Planning Framework.
- b) The impact on the visual, residential and commercial amenity of the area.
- c) Transport impacts.
- d) All other relevant material planning considerations.

Planning policy

9 Core Strategy 2011

SP2 - Sustainable transport
SP3 - Shopping, leisure and entertainment
SP10 - Jobs and businesses
SP13 - High environmental standards

Southwark Plan 2007 (July) - saved policies

Policy 1.9 - Small scale shops and services outside the town and local centres and protected shopping frontages
Policy 3.2 - Protection of amenity
Policy 5.2 - Transport impacts
Policy 7.10 - Herne Hill, The Blue and Nunhead Neighbourhood Areas.

National Planning Policy Framework (NPPF)

The NPPF came into effect on 27 March 2012 and is a material planning consideration.

- 1). Building a strong, competitive economy
- 2). Ensuring the vitality of town centres

Principle of development

- 10 Saved policy 1.9 of the Southwark Plan states that planning permission for a change of use from A1 Use Class within protected shopping frontages will be granted provided that the following criteria are met:

- i) The proportion of units within the protected shopping frontage in A1 use does not fall below 50%; and
- ii) The premises have been vacant for a period of at least 12 months with demonstrated sufficient effort to let, or have not made a profit over a 2 year period; and
- iii) The proposal would not result in a material loss of amenity for surrounding occupiers; and
- iv) The proposed use provides a service involving visits to the premises by members of the public; and
- v) The proposal would not harm the vitality or appearance of the protected shopping frontage.

The present use of the site is Class A3 restaurant and this will continue to be the

primary use albeit with Class A4 and D2 uses as well, in order to allow drinking and live music. The incorporation of A4 and D2 use will not have any additional adverse impact on the Protected Shopping Frontage as the existing unit is not in Class A1 use.

The operation of a successful business incorporating A3, A4 and D2 uses, which attracts visits by members of the public, is considered to maintain the vitality of the shopping area and as such is considered acceptable with regards to Saved Policy 1.9 - Changes of use within protected shopping frontages of the Southwark Plan and SP3 - Shopping, leisure and entertainment and SP10 - Jobs and businesses of the Core Strategy 2011 (April).

Environmental impact assessment

- 11 The proposed use lies outwith the scope of The Town and Country Planning (Environmental Impact Assessment) Regulations 1999 and as such an EIA will not be required. No significant environmental impacts will arise.

Impact of proposed development on amenity of adjoining occupiers and surrounding area

- 12 It is appreciated that a significant concern of local residents centres on noise, including the potential for disturbance due to music, patrons using the outside area and customers arriving at, and leaving from the premises. Concerns are also raised that the site is not appropriate for the proposed use.

The wider character of the area is residential; however, the immediate locality is a parade of commercial premises fronting a busy classified road. Given the immediate context, the proposed use is considered acceptable. The current use is A3 restaurant which also permits the selling of alcohol. The proposed development aims to include both A4 and D2 uses, with the expectation being that the new mixed use will allow people to have a drink before or after their meal and enjoy live music/entertainment including purchasing beverages in isolation.

In terms of soundproofing, the applicants are providing an internal noise lobby and the following soundproofing measures:

Bar ceiling - Upper ceiling one layer of 18mm NSSC1 and one layer of 9mm soundblock membrane with a 30cm gap between upper ceiling and newly formed ceiling filled with 100mm Acoustic Mineral Wool. Newly formed ceiling with 9mm soundblock membrane, two layers of 12.5mm acoustic plasterboard with a 5mm plaster finish and Wallrock Fibreliner lining paper.

Side windows - Cover with 18mm plywood, 12.5mm plasterboard, 12mm glass mirror and infilled with 9mm soundproof membrane

The main issue of noise breakout from within the premises can be mitigated by way of conditions. The applicants are proposing to install an internal noise lobby in addition to the sound proofing. The noise lobby and soundproofing are considered sufficient to protect local residents from any undue impacts particularly with regard to the maximum capacity of the premises. With these measures, no objections are raised by the Environmental Protection Officer.

The soundproofing and lobby will limit noise breakout from the premises itself. Any noise or nuisance arising from customers leaving the premises is considered adequately mitigated by limiting hours of operation to 11.30pm at the latest and limiting use of the outdoor terrace to 10pm at the latest. At present, there are no hours conditions on the restaurant use, and the terrace can be used in connection with

the restaurant until 11.30pm.

Controlling the hours to those similar to a public house, which would normally be found within a residential area, is considered sufficient to limit any harm from patrons leaving the premises. Again, these conditions are supported by the Environmental Protection Officer.

Impact of adjoining and nearby uses on occupiers and users of proposed development

- 13 There is the risk that potential noise complaints would harm the ability of the current occupier to undertake the full use of the site however given the details of soundproofing and conditions outlined in the previous section, this is considered unlikely.

Traffic issues

- 14 The premises are not increasing in size and as such the capacity of the unit will not be increasing. Whilst there is likely to be an increase in the number of people on the premises at any one time due to the ability to purchase alcohol before and after a meal, it is not considered that this will significantly impact on parking availability or traffic generation within the area, as it will not represent a significant increase in patronage over and above the current arrangement.

Design issues

- 15 No external alterations are proposed and therefore no design issues arise.

Impact on character and setting of a listed building and/or conservation area

- 16 The proposal will have no adverse impact on any listed buildings or conservation areas.

Impact on trees

- 17 The proposal will have no adverse impact on any trees.

Planning obligations (S.106 undertaking or agreement)

- 18 No planning obligations or S106 Agreements are required as part of this planning application.

Sustainable development implications

- 19 The proposal raises no sustainable development implications.

Other matters

- 20 S143 of the Localism Act 2011 states that any financial sum that an authority has received, will, or could receive in the payment of CIL as a material "local financial consideration" in planning decisions. The requirement for Mayoral CIL is a material consideration. However, the weight to be attached to a local finance consideration remains a matter for the decision-maker. Mayoral CIL is to be used for strategic transport improvements in London, primarily Crossrail. In this instance the site is not vacant and no additional floorspace is proposed, and as such, CIL is not payable.

Conclusion on planning issues

- 21 Having carefully assessed the various potential amenity impacts associated with the proposed use based on the maximum capacity of the indoor and outdoor space and the significant level of local opposition, it was considered, on balance, that permission can be granted subject to conditions that will sufficiently mitigate any potential adverse impacts with regards to noise and disturbance.

Community impact statement

- 22 In line with the Council's Community Impact Statement the impact of this application has been assessed as part of the application process with regard to local people in respect of their age, disability, faith/religion, gender, race and ethnicity and sexual orientation. Consultation with the community has been undertaken as part of the application process.

- a) The impact on local people is set out above.
- b) There are no issues relevant to particular communities/groups.
- c) There are no likely adverse or less good implications for any particular communities/groups.

Consultations

- 23 Details of consultation and any re-consultation undertaken in respect of this application are set out in Appendix 1.

Consultation replies

- 24 Details of consultation responses received are set out in Appendix 2.
- 25 Summary of consultation responses
All comments received in response to the proposed development have been summarised and addressed below;

Environmental Protection - No objection to the principle of this change of use as the premises has been operating under a license since it was granted earlier in the year, previously the premises held events using Temporary Event Notices. There have been no substantiated complaints received from nearby residents for some time. The hours of use proposed are appropriate for the area and it is strongly recommended that they are enshrined in a planning condition to prevent the extension of hours in the future. It is strongly recommended that the applicant amend the plans to include a noise lobby to the front door to the premises. The other sound control measures detailed on the planning file are satisfactory.

Response - Noted and agreed, the applicant has amended the plans to include a noise lobby at the main entrance to the premises and the recommended conditions will be attached to any consent issued.

Licensing - No response to date.

Response - Noted.

Planning Enforcement - The previous investigation into unauthorised use of the premises was closed with no breach of planning control identified.

Response - Noted. Whilst the Enforcement Team have previously stated that gaining permission for a drinking establishment in this location would be unlikely, it is

considered that the combined A3, A4 and D2 use is an acceptable use for this site and will have no adverse impact on the residential amenity of the area or the protected shopping frontage subject to conditions.

Metropolitan Police Service - No objection.

Response - Noted.

Lambeth Council - No response to date.

Response - Noted.

- 26 Following neighbour consultation, 17 letters of objection have been received, the main points of which have been summarised and addressed below;

Objection - The proposed change of use will result in increased disturbance from noise due to live/recorded music, people arriving/leaving including late at night and early in the morning.

Response - It is appreciated that a significant concern of local residents centres on noise, including the potential for disturbance due to music, patrons using the outside area and customers arriving to and leaving from the premises. The current use is for A3 which also includes the selling of alcohol. The applicant seeks to amend this in order to include both A4 use and D2 use with the expectation being that the new use will allow people to have a drink after their meal and enjoy live music/entertainment. The proposed use itself would not be considered acceptable in its own right however given that it will be combined with A3 use the proposal is acceptable on balance. The main issue of noise can be mitigated by way of condition. The applicants are proposing to install a noise lobby in addition to the sound proofing being proposed. The noise lobby and soundproofing together with conditions to limit the use of the outdoor area are considered sufficient to protect local residents from any undue impacts. Given that the main impacts can be sufficiently mitigated by way of planning conditions, it would be unreasonable of the Council to withhold consent.

Objection - The proposed use may increase parking problems within the area thereby reducing the availability to local residents.

Response - The premises is not increasing in size and as such the capacity of the unit will not be increasing. Whilst there will be a slight increase in the number of people on the premises at any one time due to the ability to purchase alcohol before and after a meal it is not considered to be a threat to parking availability or traffic generation within the area as it will not represent a significant increase in patronage from the present situation.

Objection - Late night activity may result in an increase in crime and disorder, littering and public urination.

Response - The opening hours are increasing by one hour and this in itself is not considered to be a threat to the local area in terms of increased levels of perceived and actual crime. The Metropolitan Police Service has been consulted on the proposed and have raised no objections.

Objection - Some drivers will leave the premises under the influence of alcohol resulting in a public safety issue.

Response - This is an assumption that is not based on fact and as such is not considered to be a planning issue.

Objection - The proposal may harm children due to sleep deprivation caused by noise and the increased risk of crime.

Response - Local children will not be put at risk as a result of the proposal. As detailed above the opening hours are increasing by one hour and this in itself is not considered to be a threat to the local area in terms of increased levels of perceived

and actual crime. The Metropolitan Police Service have been consulted on the proposed and have raised no objections. Furthermore the noise lobby and soundproofing together with conditions to limit the use of the outdoor area are considered sufficient to protect local residents from any undue impacts.

Objection - Drinkers on the outside area will cause an increase in noise disturbance.

Response - Use of the outside seating area will be restricted by way of planning condition in order to protect amenity and to reduce noise impacts.

Objection - The proposal is out of context with the character of the surrounding area which is mostly residential.

Response - The wider character of the area is residential however the immediate locality is a parade of commercial premises fronting a busy classified road. Given the immediate context, the proposed use is considered acceptable

Objection - Current and future owners/operators may open doors and windows during live/recorded music resulting in increased disturbance.

Response - It will be a conditioned requirement of any consent issued that the windows remain closed during live/recorded/amplified music.

Objection - The premises are not designed as a music venue and cannot suppress the sound of live music or gatherings of people.

Response - The Environmental Protection Team have been consulted on the proposal and are satisfied that the proposed sound proofing measures are sufficient to safeguard amenity.

Objection - A warning letter from Dennis Sangweme to the owner stated ' Planning permission is unlikely to be granted for a drinking establishment at this location'.

Response - Whilst the Enforcement Team have previously stated that gaining permission for a drinking establishment in this location would be unlikely, it is considered that the combined A3, A4 and D2 use is an acceptable use for this site and will have no adverse impact on the residential amenity of the area or the protected shopping frontage subject to conditions.

Objection - The increased noise and disturbance associated with the venue will impact upon the residential amenity of surrounding occupiers and their gardens.

Response - As detailed above the noise lobby and soundproofing together with conditions to limit the use of the outdoor area are considered sufficient to protect local residents from any undue impacts.

Objection - At previous meetings it was suggested that a double entry door would be the only solution to prevent escaping noise. This was dismissed by the applicant.

Response - The applicant has amended the plans in order to include a noise lobby, thereby improving sound attenuation.

Human rights implications

- 27 This planning application engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.
- 28 This application has the legitimate aim of providing A3, A4 and D2 use. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this proposal.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file: TP/2545-77 Application file: 12/AP/2343 Southwark Local Development Framework and Development Plan Documents	Chief Executive's Department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: planning.enquiries@southwark.gov.uk Case officer telephone: 020 7525 5365 Council website: www.southwark.gov.uk

APPENDICES

No.	Title
Appendix 1	Consultation undertaken
Appendix 2	Consultation responses received
Appendix 3	Recommendation

AUDIT TRAIL

Lead Officer	Gary Rice, Head of Development Management	
Report Author	Terence McLellan, Senior Planning Officer	
Version	Final	
Dated	11 March 2013	
Key Decision	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance & Corporate Services	No	No
Strategic Director, Environment and Leisure	No	No
Strategic Director, Housing and Community Services	No	No
Director of Regeneration	No	No
Date final report sent to Constitutional Team	12 April 2013	

Consultation undertaken

Site notice date: 03/09/2012

Press notice date: Not required.

Case officer site visit date: 03/09/2012

Neighbour consultation letters sent: 31/08/2012

Internal services consulted:

Environmental Protection
Licensing
Planning Enforcement

Statutory and non-statutory organisations consulted:

Metropolitan Police
Lambeth Council

Neighbours and local groups consulted:

31/08/2012 FLAT 2 75 HERNE HILL LONDON SE24 9NE
31/08/2012 1A ELFINDALE ROAD LONDON SE24 9NN
31/08/2012 FLAT E 79 HERNE HILL LONDON SE24 9NE
31/08/2012 FLAT 1 75 HERNE HILL LONDON SE24 9NE
31/08/2012 1B ELFINDALE ROAD LONDON SE24 9NN
31/08/2012 BASEMENT FLAT 77 HERNE HILL LONDON SE24 9NE
31/08/2012 FLAT ONE 75 HERNE HILL LONDON SE24 9NE
31/08/2012 77A HERNE HILL LONDON SE24 9NE
31/08/2012 77 HERNE HILL LONDON SE24 9NE
31/08/2012 3 ELFINDALE ROAD LONDON SE24 9NN
31/08/2012 77B HERNE HILL LONDON SE24 9NE
31/08/2012 REAR OF 73 HERNE HILL LONDON SE24 9NE
31/08/2012 2 ELFINDALE ROAD LONDON SE24 9NW
31/08/2012 FLAT C 79 HERNE HILL LONDON SE24 9NE
31/08/2012 FLAT D 79 HERNE HILL LONDON SE24 9NE
31/08/2012 FLAT A 79 HERNE HILL LONDON SE24 9NE
31/08/2012 FLAT B 79 HERNE HILL LONDON SE24 9NE
20/06/1837 28 FRANKFURT ROAD LONDON SE24 9NY
20/06/1837 54 ELFINDALE ROAD HERNE HILL LONDON SE24 9NW
20/06/1837 46 ELFINDALE ROAD LONDON SE24 9NW
20/06/1837 PO Box 27845 London SE24 9XA
20/06/1837 by email
20/06/1837 8 FRANKFURT ROAD LONDON SE24 9NY
20/06/1837 4 Elfindale Road London SE24 9NW
20/06/1837 4 Frankfurt Road London SE24 9NY
20/06/1837 6 FRANKFURT ROAD LONDON SE24 9NY
20/06/1837 30 ELFINDALE ROAD LONDON SE24 9NW

Re-consultation:

Numbers 40, 42 and 44 Herne Hill (Lambeth) postcode - SE24 9QP - Consulted on 05/03/2013

Consultation responses received

Internal services

Environmental Protection - No objections subject to conditions.

Planning Enforcement - The previous investigation into unauthorised use of the premises was closed with no breach of planning control identified.

Statutory and non-statutory organisations

Metropolitan Police - No objections.

Lambeth Council - No response.

Neighbours and local groups

Nos. 2, 4, 15, 30, 46 and 54 Elfindale Road

No. 62 Fawnbrake Avenue

Nos. 4, 6, 8, 15 Frankfurt Road

Herne Hill Society

Nos.75 and 77A Herne Hill

No. 13 Rollscourt Avenue

2 anonymous

Comments report above.