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| Item No. 7.2 | Classification: OPEN | Date: 15 October 2014 | Meeting Name: Planning Sub-Committee A |
| Report title: | Development Management planning application: Council's own development Application 14/AP/2406 for: Full Planning Permission Address: 60-62 HOPTON STREET, LONDON SE1 9JH Proposal: Change of use of ground floor of 60-62 Hopton Street from a cultural centre (within use class D1) to an A1 retail shop with hours of operation between 07:00 to 19:30, 7 days per week. | | |
| Ward(s) or groups affected: | Cathedrals | | |
| From: | Head of Development Management | | |
| Application Start Date 23/07/2014 | | Application Expiry Date 17/09/2014 | |
| Earliest Decision Date 31/08/2014 | | | |

RECOMMENDATION

- 1 That this matter is considered by the planning sub-committee as more than 5 objections have been received in respect of an application for the council's own development in accordance with Part 3F paragraph 10(b) of the council constitution; and that planning permission is granted subject to conditions.

BACKGROUND INFORMATION

Site location and description

- 2 The site is on the ground floor of the Falcon Point flats. It is at the eastern end of the building and can be accessed from both the river facing side to the north and Hopton Street to the south. It has two glazed frontages. Along the eastern side is a pedestrian access from Hopton Street to the riverside and Blackfriars Station.
- 3 Falcon Point is a late twentieth century mixed use development of flats over commercial units on the ground floor. It is set within an area of predominantly hard landscaping. The ground floor is lower than the raised area predominantly used by pedestrians to walk alongside the river.
- 4 The site is in the central activity zone, Bankside and Borough opportunity area, strategic cultural area, Bankside and Borough town centre and is a protected shopping frontage, subject to Article 4 directions. In addition it is within the Thames policy area and floodplain.

Details of proposal

- 5 To materially change the use of the premises from a cultural centre (within use class D1) to an A1 retail shop.

Planning history

- 6 98016748 planning permission dated 27/4/99 for change of use to cultural centre involving exhibitions, promotions, meetings, administration plus ancillary cafe cold snacks and retail sales.

Permission was subject to a condition (3) limiting hours of use from 0800 to 1830.

- 7 06/EN/0393 Enforcement type: Change of Use (COU)
Use of unit as a sushi house
Sign-off date 22/02/2008 Sign-off reason: Final closure - breach ceased (FCBC)
- 8 13/EN/0038 Enforcement type: Change of use (COU)
Opening of a cafe/restaurant in contravention of an enforcement notice.
Sign-off date 02/04/2013 Sign-off reason: Final closure - breach ceased (FCBC)

Planning history of adjoining sites

- 9 54 Hopton Street
03AP0030 Permission refused for retention of outdoor seating area 9 June 2003, refusal upheld on appeal on 10 April 2004 APP/A5840/A/03/1121051. Inspector assessed that noise from seating would be intrusive and disturbing to nearby residential occupiers, it could be caused by phone conversations, children screaming or shouting, or crockery being dropped and tables moved.
- 10 47 Hopton Street (Bankside 4)
Condition 27 of Permission 10-AP-0577 limited the use of the development for commercial purposes from 8:00am to midnight Monday to Saturday and 9:00am to 11:00pm on Sundays in order to protect residential amenity.
- 11 64 Hopton Street (Sampson House)
Condition 28 of permission 12/AP/3940 issued 28/3/14 restricts the use of A1-A5 and D1 uses in the development to 7:00am to 11:00pm Monday to Sunday to safeguard residential amenity.

KEY ISSUES FOR CONSIDERATION

Summary of main issues

- 12 The main issues to be considered in respect of this application are:
- a) principle of land use
 - b) effect on amenity

Planning policy

- 13 National Planning Policy Framework (the Framework)
Core planning principles
Section 1 Building a strong and competitive economy
Section 8 Promoting healthy Communities
- 14 London Plan July 2011 consolidated with revised early minor alterations October 2013
Policy 3.16 Protection and enhancement of social infrastructure
- 15 Core Strategy 2011
Strategic Policy 1 Sustainable development
Strategic Policy 3 Shopping, leisure and entertainment

Strategic Policy 10 Jobs and businesses
Strategic Policy 13 High environmental standards

- 16 Southwark Plan 2007 (July) - saved policies
Policy 1.9 Change of use within protected shopping frontages
Policy 2.1 Enhancement of community facilities
Policy 3.2 Protection of amenity
- 17 The council's cabinet on 19 March 2013, as required by para 215 of the NPPF, considered the issue of compliance of Southwark planning policy with the National Planning Policy Framework. All policies and proposals were reviewed and the Council satisfied itself that the policies and proposals in use were in conformity with the NPPF. The resolution was that with the exception of Policy 1.8 (location of retail outside town centres) in the Southwark Plan all Southwark Plan policies are saved. Therefore due weight should be given to relevant policies in existing plans in accordance to their degree of consistency with the NPPF.

Principle of development

- 18 The current permitted use is a D class use, although use as a place of worship is excluded by condition.
- 19 The use as a community centre has broad policy support. The NPPF refers to the need for planning to make provision for community facilities as part of the planning process. This is reflected in policy 3.16 of the London Plan that acknowledges a demand for enhanced community facilities. Policy 2.1 of the Southwark Plan shows how these strategic considerations will translate to the process of development management. Policy 2.1 is reproduced below.

Policy 2.1 Enhancement of community facilities

- 20 Planning permission for a change of use from D class community facilities will not be granted unless:
- i. The applicant demonstrates to the satisfaction of the LPA that the community facility is surplus to requirements of the local community and that the replacement development meets an identified need; or*
- ii. The applicant demonstrates that another locally accessible facility with similar or enhanced provision can meet the identified needs of the local community facility users.*
- 21 The applicant has provided a planning statement which sets out their reasons why they consider the policy to be complied with.
- 22 At this site the first use considered under the April 1999 permission was that of a Chinese cultural centre, latterly there has been an attempt to operate the site as a gallery or artists exhibition space with cafe. To say that an area has a surplus of galleries seems odd, as a gallery has a value that it is hard to see there could be a surplus of, for planning purposes however it has to be assumed that sufficient galleries in an area can exist.
- 23 It is the case that a gallery style use has struggled on this site. Attempts to hold sales or exhibitions have foundered, because they have either considerably exceeded the permitted hours, or resulted in goods being displayed for sale outside the red line area of the site. Unfortunately a permanent gallery has not established and residents have had to endure sporadic bouts of loss of amenity from a failure to abide by conditions

on the few occasions a use for the site has been found. The statement in the planning statement that in practice the site has not been used for three years is accepted. It is also noted that no objection has been received from anyone seeking to retain or use this space for a cultural purpose, or from local residents seeking retention.

- 24 The immediate shopping parade has six units only two of which are in A1 use. Policy 1.9 seeks to retain 50% A1 use. In this sense the return to an A1 use is welcome both in terms of restoring policy compliance and by restoring local shopping facilities.
- 25 The planning statement identifies seven alternative galleries within half a mile of the site. Tellingly three of the galleries listed are within 100 metres of the site. This is not therefore a location with a shortage of provision of this type of use. That factor, together with the fact that the site has not been actively used by the local community is sufficient to achieve compliance with policy 2.1.

Environmental impact assessment

- 26 Not required for a proposal of this size and scope

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

- 27 The block is one designed to have commercial units beneath it. The use proposed as an A1 shop appears to have existed prior to the cultural centre permission of April 1999. The applicant is also proposing a restriction on hours of operation.
- 28 There have been objections to the hours of use proposed from residents of the residential block on the basis that this will result in loss of amenity. Objectors do not seek to prevent the change of use, but restrict its hours of operation. Different hours are proposed by different objectors, but Falcon Point Management Group suggest closure on Monday, 9:00 to 18:00 Tuesday to Saturday and 10:00 to 16:00 on Sunday.
- 29 The block is not located on a main road. It is however within 50 metres of Blackfriars mainline rail station and close to the riverside a major pedestrian route. The majority of shops in the borough are either historic or were permitted at a time when it was not considered necessary to restrict hours of operation by planning condition. Trading patterns are such that it is now considered appropriate that a restriction on hours of operation could now be imposed.
- 30 In setting such conditions a definite harm to amenity needs to be identified. A shop use is not generally considered to be particularly problematic. It is a generalisation, but visits tend to be relatively short term, not a group activity and not an activity linked to noise in the way that an A3 (restaurant) or A4 (bar) use might be. Nevertheless some noise will still be generated from those going to and from a shop.
- 31 The noise that the shop may generate needs to be considered in the context of the wider area. In terms of pedestrian footfall this is now a busy central London location, characterised by those visiting the station and the cultural uses in the area. It is an area of mixed developments in a urban area rather than a shop in a suburban residential area.
- 32 The shop entrances on both frontages are beneath balconies of the flats above. Photographs of each elevation show that the flats are recessed immediately above each entrance to form a balcony. It is not considered that there is a particular feature of Falcon Point that separates it from other similar mixed use developments.

- 33 The history of adjoining sites (paras 9 to 11 above) identifies three relevant planning decisions. Taking them in turn 54 Hopton Street concerned outside seating for Starbucks cafe, which a planning inspector found to be harmful to amenity because it allowed people to congregate outside the cafe, with resultant noise and disturbance for residents immediately above. The inspector noted a high background noise level of 60db , but still considered that sporadic noise from an external use such as tables and chairs would be unacceptable to residential amenity. The decision though does not relate to a shop use, but an exposed use immediately in front of one of the commercial units.
- 34 When the existing commercial units at Bankside 4 were permitted beneath the flats and the proposed units at Sampson House permitted, hours broader than those proposed by the applicant were considered to be acceptable. While it is the case that each site must be considered on its merits it is also the case that planning authorities should act in a consistent manner. It is not considered that there is any characteristic of significance that separates this unit from those that exist at Bankside 4 or those proposed at Sampson House.
- 35 Paragraph 19 of section 1 of the NPPF states;
- The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.*
- 36 This is an area and location in which a business should be able to flourish. Planning conditions should not unnecessarily restrict and diminish economic activity on a site well suited for it. It is therefore assessed that the appropriate hours condition would be to ensure that during periods in which people are likely to be asleep 2300 to 0700 the shop should be closed. this would reflect assessments made recently on similar developments in the locality. The applicant has proposed more restrictive opening hours of 07:00 to 19:30. It would not be appropriate to impose a condition for greater hours than those sought as these were the hours consultees considered. To permit extended hours would be to permit more than had been applied for.

- 37 The site plan identifies a pre-existing refuse store that can be utilised by the shop.

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

- 38 None.

Transport issues

- 39 The size and location of the site is such that it is unlikely to generate significant vehicle movements to the area. The shop will need to be serviced, but this is a pre-existing unit that would be serviced in any event, no significant increase in servicing will result. To protect residential amenity it is appropriate that deliveries be limited to the hours of operation.

Sustainable development implications

- 40 The proposed development is likely to restore a use on the site bringing vitality and activity to the site. The site is currently empty and vacant. The development is therefore likely to have economic, environmental and social benefits and therefore can be considered to be sustainable.

Other matters

- 41 The applicant has described this proposed development as "Change of use of ground floor of 60-62 Hopton Street from a Cultural Centre (within use Class D1) to an A1 Retail Shop with hours of operation between 07:00 to 19:30, 7 days per week". Strictly speaking the hours of operation are not part of the proposed development. Having regard to the objections received it was helpful to publicise clearly the proposed hours of operation as these have been the main item of concern.
- 42 In terms of the recommended planning permission the development description is "Change of use of ground floor of 60-62 Hopton Street from a cultural centre (within use class D1) to an A1 Retail Shop" with hours of operation confined to a condition. This gives greater flexibility to the decision maker in terms of an overall decision, or amendment to conditions if seen fit. It is not considered to prejudice either objectors or applicant.
- 43 The site is in the flood plain protected by the Thames barrier a shop use is classified as less vulnerable in the NPPF technical guidance. The change of use does not result in any alteration in the flood risk vulnerability of the site.

Conclusion on planning issues

- 44 There are no in principle objections to the proposed use at this site, which is considered to be sustainable development. No objection to the change of use has been raised. Objections have been raised to the proposed hours of operation. Despite this the proposed hours are recommended as a condition, because they are in total less than hours granted for similar commercial premises in nearby developments. The hours proposed are considered to provide adequate protection of residential amenity at this site.

Community impact statement

- 45 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) The residents of the flats above this site are most likely to be effected, it has been assessed though that the proposed hours of operation offer adequate protection to their amenity and do not result in any adverse impact by virtue of any protected characteristic any such resident might have.

Consultations

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

Consultation replies

- 47 Details of consultation responses received are set out in Appendix 2.

Summary of consultation responses

- 48 7 objections have been raised primarily on the basis of the hours of operation sought by the applicant.

24 Falcon Point

- Opening hours applied for are very long, shop is situated with bedrooms immediately above the entrance of the shop. In practice opening and closing will add an additional half hour to the permitted hours at either end of the day. No respite at the weekends.
- Remainder of objection not considered to relate to the application.

86 Falcon Point

- This property is within a S.S. frontage as stated in the Southwark plan. It is on the end of the block and therefore accessible from 3 sides.
- 12.5 hours each day, 7 days a week together with the added hours for delivery of supplies is far too excessive for this type of frontage.
- Falcon Point is primarily a residential block with 110 flats. The living room/ kitchen is one room running front to back. There are 3 other A1 shop units, in this frontage, plus a housing office and Bankside gallery, which is classed as D1. The flats already suffer from excessive noise penetration from the new Blackfriars station's constant announcements, noise from vast numbers of commuters morning and evening, who rush directly past the side of the flats from the station to access Southwark St. and the constant noise from people along the riverwalk. The commuters and the riverwalk users also talk very loudly on their mobile phones. The noise rises and residents have little peace and quiet as the noise is all around them.
- A shop directly beneath, open for this length of time each day, including Sundays is far too excessive and the residents would get no peace, as viable shops often attract potential customers who stand outside and chat after hours. All can be heard in the flats on the 1st and 2nd floors above, as too can the supply lorries often arriving at night to avoid the congestion charge.
- I do not object to the change to A1 use but whilst I understand Southwark Property need to attract the highest rental return for this property I do believe 9am- 6pm Mon.-Sat. and 10am - 4pm Sundays would be fair to all. Residents have to be allowed some quiet time and this should be of priority concern and consideration.

Flat in Block 1 Falcon Point, objection in similar terms from Flat 33 Falcon Point and Falcon Point Management Group and a further unidentified resident by email

- This unit (60-62 Hopton Street) is located within Falcon Point, a council estate managed by FPMG, a Tenant Management Organisation (TMO). This is a largely residential area with 110 flats in ten blocks. Bankside lofts are situated opposite Falcon Point. Number 60-62 Hopton Street is a secondary shopping frontage in the Southwark Plan, and the proposed hours of operation are excessive and inappropriate within this setting.
- There are five other mixed use units within Falcon Point – Hollywell Music, the TMO office, Starbucks, a Newsagent plus Bankside Gallery. No other ground floor units within Falcon Point have these operating hours.
- Therefore 07.00 to 19.30 opening hours giving 12.5 hrs per day seven days a week would set an unwelcome precedent. This means out of the 168 hours in a week this shop unit could be potentially open for 87.5 hours giving residents a respite of just 80.5 hours in the week. It is worth mentioning that people will

congregate around the shop – using their phones, smoking and shouting (as they do at some of the other units here). There are three entrances into number 62 Hopton Street.

- Activity in the unit before 9am is likely to cause noise and disturbance to residents. If the shop opened at 7am every day someone would have to be at the premises well before this time to get ready for opening. This could mean shutters being rolled up, door slamming and external lights on at 6.30am. The council has a duty of care and I would expect Southwark to support resident's quiet enjoyment of their homes.
- Deliveries and servicing to number 62 are likely to be outside operating hours (as they are for some other units on the ground floor) making extended operating hours by default.
- Therefore, I propose 9.00hrs – 18.00hrs five days a week and 10.00hrs until 16.00hrs on Sundays with one day closed altogether (such as a Monday) as more reasonable and appropriate in a high density residential area. This would give residents some brief respite from constant activities in a ground floor shop with three entrances.
- I request that the current proposed opening hours of 7.00hrs to 19.30hrs be refused and more resident friendly hours adopted as suggested. I also believe that it will affect parking as vehicles deliver goods, cars stopping etc...currently the Residents spaces are often taken up in this way thus there is no room for our cars. We have endured... and no doubt will continue to...constant building and development on our doorsteps, with little attempt to consider residents' needs for some peace and respite...I therefore support the idea of limited hours/closed day as below.

105 Falcon Point

- Whilst I have no objection to the change of use to A1, I am firmly of the opinion that a firm restriction should be placed on opening hours. The other units within the development operate on the basis of shorter opening hours and it would be unfair to residents to create a precedent that would, no doubt, be followed as the other leases came up for renewal.
- It is accepted that the area is developing rapidly but I take the view that the Council needs to take a balanced approach and be mindful of its duty, on matters within its control, to ensure that residents benefit from the quiet enjoyment of their homes.
- I would therefore suggest that trading within this unit should be restricted to 9am-6pm six days a week with one day per week when the shop would remain closed.

Human rights implications

- 49 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.
- 50 This application has the legitimate aim of providing retail floorspace. 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/1536-G Application file: 14/AP/2406 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 7007 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 | Gavin Blackburn, Senior Enforcement Officer | |
| Version | Final | |
| Dated | 2 October 2014 | |
| Key Decision | No | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| Officer Title | Comments Sought | Comments included |
| Strategic Director, Finance and 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 | 2 October 2014 | |

Consultation undertaken

Site notice date: 08/08/2014

Press notice date: n/a

Case officer site visit date: n/a

Neighbour consultation letters sent: 06/08/2014

Internal services consulted:

n/a

Statutory and non-statutory organisations consulted:

n/a

Neighbour and local groups consulted:

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Managers Flat Founders Arms SE1 9JH
Sampson House 64 Hopton Street SE1 9JH
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60-62 Hopton Street London SE1 9JH
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Founders Arms 52 Hopton Street SE1 9JH
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Part Ground Floor Sampson House SE1 9JH
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The Community Space 18 Great Guildford Street SE1 0SY
21 Falcon Point Hopton Street SE1 9JW

Re-consultation: n/a

APPENDIX 2

Consultation responses received

Internal services

None

Statutory and non-statutory organisations

None

Neighbours and local groups

Email representation

1 Falcon Point Hopton Street SE1 9JW

24 Falcon Point Hopton Street SE1 9JW

33 Falcon Point Hopton Street SE1 9JW

86 Falcon Point Hopton Street SE1 9JB

105 Falcon Point Hopton Street SE1 9JB

Falcon Point Management Group