

<b>Item No.</b> 7.1	<b>Classification:</b> OPEN	<b>Date:</b> 6 September 2016	<b>Meeting Name:</b> Planning Sub-Committee B
<b>Report title:</b>	<b>Development Management planning application:</b> Application 16/AP/1055 for: Full Planning Permission  <b>Address:</b> 3 EAST DULWICH ROAD, LONDON SE22 9BA  <b>Proposal:</b> Retention of a change of use from A3 Cafe to A5 Takeaway.		
<b>Ward(s) or groups affected:</b>	Peckham Rye		
<b>From:</b>	Director of Planning		
<b>Application Start Date</b> 07/04/2016		<b>Application Expiry Date</b> 02/06/2016	
<b>Earliest Decision Date</b> 20/05/2016			

## RECOMMENDATION

1. Grant planning permission subject to conditions.

### Site location and description

2. The application site is the ground floor of a three storey end-of-terrace building. It currently is used for the purposes of A5 takeaway, and the upper floors are residential.
3. The property is located within the Suburban Density Zone and Air Quality Management Area. It is not listed, nor is it located within a conservation area. It falls just outside the boundary of the Peckham and Nunhead Action Area which is approximately 70m to the east; is not located within a Controlled Parking Zone.

### Details of proposal

4. Planning consent is sought for change of use from an A3 cafe to an A5 takeaway. The change has already taken place, but the planning permission for the change of use was not sought. This application is intended to regularise the change of use that has already taken place. It was originally proposed that an electrostatic precipitator and an odour neutraliser be installed to improve odour control. Officers consider that the current system's routing is not adequate and the addition of such odour control to it would not alleviate odour emanating from the ground floor premises itself. Instead it is recommended that a condition be imposed to secure a new exhaust system as detailed below.

### Planning history

5. TP/2666-3/DW  
Continued use of the ground floor of 3 East Dulwich Road, SE22 as a cafe/restaurant within Class A3 of the Town and Country Planning (Use Classes) Order 1987  
Granted permission on 23/09/1989.

## **Planning history of adjoining sites**

6. 3A East Dulwich Road  
15/AP/3930 Full Planning Application  
Change of use of commercial premises from A1 Shops (Hair & Beauty) to Sui Generis (Nail & Beauty)

Granted permission on 27/11/2015

## **Summary of main issues**

7. The main issues to be considered in respect of this application are:
- a) Principle of development in terms of land use and conformity with strategic policies;
  - b) Impact of proposed development on amenity of adjoining occupiers;
  - c) Impact of proposed development on the character and appearance of the building and surrounding area;
  - d) Transport issues.

## **Planning policy**

### National Planning Policy Framework (the Framework)

8. Section 1 - Building a strong, competitive economy  
Section 2 - Ensuring the vitality of town centres  
Section 7 - Requiring good design  
Section 11- Conserving and enhancing the natural environment

### London Plan July 2015 consolidated with alterations since 2011

9. Policy 4.7 - Retain and town centre development  
Policy 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes

### Core Strategy 2011

10. Strategic Policy 1 - Sustainable development  
Strategic Policy 3 - Shopping, leisure and entertainment  
Strategic Policy 13 - High environmental standards

### Southwark Plan 2007 (July) - saved policies

11. 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 those 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.

Policy 1.10 Small scale shops and services outside the town and local centres and protected shopping frontages  
Policy 3.1 Environmental effects  
Policy 3.2 Protection of amenity  
Policy 3.7 Waste reduction

## Policy 5.2 Transport impacts

12. Sustainable Design and Construction SPD 2009.

### **Principle of development**

13. The application site is not located within a town centre or a Protected Shopping Frontage. Saved Policy 1.10 'Small scale shops and services outside the town and local centres and protected shopping frontages' states:

"Outside town centres, local centres and protected shopping frontages, development will only be permitted for a proposal for a change in use between A Use Classes or from A Use Classes to other uses, when the applicant can demonstrate that:

- i) The proposed use would not materially harm the amenities of surrounding occupiers; and
  - ii) The use that will be lost is not the only one of its kind within a 600m radius and its loss would not harm the vitality and viability of nearby shops or shopping parades; or
  - iii) 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 two year period."
14. The change of use subject to this application would be from a cafe (A3) to a takeaway (A5), which would allow the planning unit to remain within an A class use. The change of use is thus acceptable in principle.

### **Summary of consultation responses**

15. 18 responses to the planning application have been received. The main concerns are:
- 1. Unpleasant odour created by cooking on site;
  - 2. Rubbish left on the pavement by the customers of the takeaway shop leading to untidy appearance and attraction of vermin;
  - 3. Impact on the health of young children that attend schools nearby as they can conveniently visit the shop;
  - 4. Inappropriate parking created while people access the takeaway shop.

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

#### Odour

16. The proposal was to install an electrostatic precipitator and odour neutraliser in order to reduce cooking fumes leaving the premises and affecting the amenity of adjoining occupiers. This however is not likely to deal with odour emanating from the premises itself (at ground floor level) because it would only reduce odour from the terminus of the flue, presently at roof level through the chimneys. The chimney cowls present a limit on the amount of air that can flow through the system and may explain why there is odour affecting people from the ground floor- the present system simply does not have capacity to remove odourous air from the cooking process.
17. The solution to this problem would be to construct a new, bespoke kitchen exhaust system that would have capacity to remove odourous air from the premises. There is the potential to have the flue routed along the eastern flank of the building to discharge at height. It is recommended that a condition be imposed requiring the submission of a suitable system, for it to be constructed and used in a timely manner,

should planning permission be granted.

#### Refuse

18. The design and access statement includes information for provision of recycling and waste storage. It is stated that refuse would be stored within the side alleyway of the property. However, it is noted that the side alleyway is not part of the application site. Space to the rear exists that could accommodate bins for the refuse storage and some existing provision for storing waste cooking oil is provided to the rear. As such, a condition requiring further details regarding storage of commercial waste is recommended to ensure that storage arrangements are suitable.
19. For the purposes of assessing the change of use, it is considered that sufficient space would exist to accommodate commercial waste and that the proposed new A5 use would not be significantly different from the lawful A3 that was use in terms of refuse storage. Many objections reference the litter that has accrued from the use. This seems to be from inconsiderate customers leaving waste on the street rather than using bins close by. It is an offence to drop litter which is controlled through a separate regulatory regime and not a matter that officers believe would warrant a reason for refusal.

#### Opening hours

20. The permission granted in 1989 for the use of the premises as a cafe/restaurant did not include a restriction on the hours of use. This application seeks opening hours to be 11:00 to 23:00 daily Monday to Sunday. It is therefore considered that the proposed opening hours would be acceptable within the context and would not lead to disturbance detrimental to the amenity of adjoining occupiers.

#### Proximity to schools

21. The application site falls just outside Peckham and Nunhead Action Area Plan that sets out a policy in relation to A5 uses and their proximity to secondary schools; a policy that cannot be applied on this site and while it is understandable that there is concern about an A5 use close to the action area, there is no policy that would prevent the land use proposed.

#### **Design issues**

22. No external alterations have been proposed.

#### **Transport issues**

23. The property is not located within a Controlled Parking Zone. It is stated in the design and access statement that deliveries and waste collection would be arranged some time between late morning and early afternoons to avoid disturbance to local residents. Servicing arrangements would be similar to those required for the lawful A3 use and would not cause a significant impact on the highway.
24. Concern has been expressed about people parking on the road outside the site to use the premises. There are some parking restrictions on East Dulwich Road which can be enforced should illegal parking take place.

#### **Other matters**

25. No planning history exists in relation to the existing internally illuminated advertisements. Advertisements do not form part of this application and the applicant

is informed that an advertisement consent may be necessary to regularise the installation of the advertisements at the premises.

### **Conclusion on planning issues**

26. The change of use subject to this application is considered acceptable would not give rise to significant impacts which would be detrimental to the amenity of neighbouring occupiers.

### **Community impact statement**

27. 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.

### **Consultations**

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

### **Consultation replies**

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

### **Human rights implications**

30. 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.
31. This application has the legitimate aim of providing a new A5 unit. 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/2666-3  Application file: 16/AP/1055  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: <a href="mailto:planning.enquiries@southwark.gov.uk">planning.enquiries@southwark.gov.uk</a> Case officer telephone: 0207 525 7708 Council website: <a href="http://www.southwark.gov.uk">www.southwark.gov.uk</a>

## APPENDICES

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

## AUDIT TRAIL

Lead Officer	Simon Bevan, Director of Planning		
Report Author	Lasma Putrina, Planning Officer		
Version	Final		
Dated	23 August 2016		
Key Decision	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments Sought	Comments included
Strategic Director, Finance and Governance		No	No
Strategic Director, Environment and Leisure		No	No
Strategic Director of Housing and Modernisation		No	No
Director of Regeneration		No	No
Date final report sent to Constitutional Team			24 August 2016

## APPENDIX 1

### Consultation undertaken

**Site notice date:** 18/04/2016

**Press notice date:** n/a

**Case officer site visit date:** 19/04/2016

**Neighbour consultation letters sent:** 13/04/2016

#### Internal services consulted:

Environmental Protection Team Formal Consultation [Noise / Air Quality / Land Contamination / Ventilation]

#### Statutory and non-statutory organisations consulted:

n/a

#### Neighbour and local groups consulted:

9d East Dulwich Road London SE22 9BD	Flat 1 5 East Dulwich Road SE22 9BA
9c East Dulwich Road London SE22 9BD	Flat 1 3 East Dulwich Road SE22 9BA
9b East Dulwich Road London SE22 9BD	Flat 2 5 East Dulwich Road SE22 9BA
Flat 4 11 East Dulwich Road SE22 9BD	Flat 2 3 East Dulwich Road SE22 9BA
9f East Dulwich Road London SE22 9BD	19a Solway Road SE22 9BG
9e East Dulwich Road London SE22 9BD	154 Peckham Rye East Dulwich SE22 9QH
9a East Dulwich Road London SE22 9BD	Flat 1 Beech Court 1b East Dulwich Road SE22 9BA
27 Solway Road London SE22 9BG	The Maisonette Rear Of 1 East Dulwich Road Se22 9ba
26 Solway Road London SE22 9BG	Unit 1a 1 East Dulwich Road SE22 9BA
5a-9 East Dulwich Road London SE22 9BD	4, Beech Court 1b East Dulwich Road SE22 9BA
Flat 3 11 East Dulwich Road SE22 9BD	19a Solway Road East Dulwich SE22 9BG
Flat 2 11 East Dulwich Road SE22 9BD	Solway Road London
Flat 1 11 East Dulwich Road SE22 9BD	Flat 3 176 Peckham Rye SE22 9QA
Vallance House 162 Peckham Rye SE22 9QH	144 Peckham Rye London SE22 9QH
140 Peckham Rye London SE22 9QH	Flat A 24 Solway Road East Dulwich SE22 9BG
Unit 1 A East Dulwich Rd se22 9ba	20 Solway Road London SE22 9BG
5 East Dulwich Road London SE22 9BA	174 Peckham Rye London SE22 9QA
3 East Dulwich Road London SE22 9BA	Flat 2 Hazel Court, 1a East Dulwich Road London SE22 9BA
First Floor And Second Floor Flat 1 East Dulwich Road SE22 9BE	Flat 2 Hazel Court 1a East Dulwich Rd SE22 9BA
3a East Dulwich Road London SE22 9BA	
1 East Dulwich Road London SE22 9BA	

**Re-consultation:** n/a

## APPENDIX 2

### Consultation responses received

#### Internal services

Environmental Protection Team Formal Consultation [Noise / Air Quality / Land Contamination / Ventilation]

#### Statutory and non-statutory organisations

None

#### Neighbours and local groups

Flat A 24 Solway Road East Dulwich SE22 9BG  
Flat 1 Beech Court 1b East Dulwich Road SE22 9BA  
Flat 2 Hazel Court 1a East Dulwich Rd SE22 9BA  
Flat 2 Hazel Court, 1a East Dulwich Road London SE22 9BA  
Flat 3 176 Peckham Rye SE22 9QA  
Solway Road London  
The Maisonette Rear Of 1 East Dulwich Road Se22 9ba  
Unit 1 A East Dulwich Rd se229ba  
Unit 1a 1 East Dulwich Road SE22 9BA  
Vallance House 162 Peckham Rye SE22 9QH  
Vallance House 162 Peckham Rye SE22 9QH  
140 Peckham Rye London SE22 9QH  
144 Peckham Rye London SE22 9QH  
154 Peckham Rye East Dulwich SE22 9QH  
174 Peckham Rye London SE22 9QA  
19a Solway Road East Dulwich SE229BG  
19a Solway Road SE229BG  
20 Solway Road London SE22 9BG  
4, Beech Court 1b East Dulwich Road SE22 9BA