

<b>Item No.</b> 7.3	<b>Classification:</b> Open	<b>Date:</b> 28 November 2016	<b>Meeting Name:</b> Planning Sub-Committee A
<b>Report title:</b>	<b>Development Management planning application:</b> Application 16/AP/1758 for: Full Planning Permission  <b>Address:</b> 75 SOUTHWARK PARK ROAD, LONDON SE16 3TY  <b>Proposal:</b> Change of use of commercial premises from a shop (Class A1) to a hot food take-away (Class A5) and the erection of an extractor duct to the rear elevation.		
<b>Ward(s) or groups affected:</b>	Grange		
<b>From:</b>	Director of Planning		
<b>Application Start Date</b>	30/08/2016	<b>Application Expiry Date</b>	25/10/2016
<b>Earliest Decision Date</b>	05/10/2016	<b>Target Decision Date</b>	05/12/2016

## RECOMMENDATION

1. Grant planning permission, subject to conditions.

## BACKGROUND INFORMATION

### Site location and description

2. This application relates to a retail unit (Class A1) located within a local shopping parade on the north side of Southwark Park Road in Bermondsey. The unit is at the far eastern end of the parade.
3. Opposite the parade, the south side of Southwark Park Road marks the northern extent of Thorburn Square Conservation Area and this side of the road is predominantly characterised by dwellinghouses.
4. There are dwellings too immediately adjoining the unit on its east side and the subject building also contains a flat, split over three floors, but whose habitable rooms are only within the upper floors. The property has previously been extended with a mansard roof extension and it is adjoined by similar mansard roofs at No.73 and No.71.
5. The entrance to Harris Academy (secondary school) is located beyond the western end of the shopping parade and its grounds extend around the rear of the parade.

### Details of proposal

6. The application seeks to change the use of the commercial premises from a shop (Class A1) to a hot food takeaway (Class A5) and associated with this to erect an extractor duct that would be attached to the rear elevation. The extractor duct would be installed on the west side of the building's main rear wall and would project to approximately 1m above the top of the roof-light windows in the mansard roof.

The opening hours proposed are:

Monday-Saturday: 09:00-23:00hrs (11pm)

Sunday and Bank Holidays: 10:00-22:00hrs (10pm)

**7. Planning history**

04/AP/1232

Full Planning Permission: Erection of additional floor to building in the form of a mansard roof extension, first-floor rear extension and new windows to provide additional bedrooms for the self-contained flat above the shop.

GRANTED: 06/12/2004

**8. Planning history of adjoining sites**

65 Southwark Park Road

Full Planning Permission: Change of use of ground floor shop to hot food take-away (A5 class use) with installation of extraction flue system to rear and new proposed opening hours: Sunday to Wednesday 11:00 to 23:00, Thursday to Saturday 11:00 to 00:00.

REFUSED: 09/07/2013

APPEAL DISMISSED: 18/12/2013

Reasons for refusal:

- i. The proposed use of the premises for a Class A5 take-away will, by reason of the flue location in close proximity to residential windows and gardens, result in noise and smells. Furthermore, the use would exacerbate the existing litter problem, detrimental to visual and residential amenity.
- ii. The proposed Class A5 use would be contrary to the aspirations of the council to promote a healthy lifestyle to residents, given its proximity to the Harris Academy and the existence of other take-aways in close proximity.

**KEY ISSUES FOR CONSIDERATION**

**Summary of main issues**

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

- a) The principle of the proposed development in terms of land use;
- b) The impact on the amenities of neighbouring occupiers including the visual impact of the duct;
- c) The impact on the local transport network;
- d) The impact on the health of children at Harris Academy.

**Planning policy**

10. National Planning Policy Framework (Published 27 March 2012)

Section 1: Building a strong, competitive economy

Section 4: Promoting sustainable transport

Section 8: Promoting healthy communities

Section 12: Conserving and enhancing the historic environment

11. The London Plan (2016)  
 Policy 2.15 - Town centres  
 Policy 3.16 - Protection and enhancement of social infrastructure  
 Policy 3.18 - Education facilities  
 Policy 4.1 - Developing London's economy  
 Policy 4.7 - Retail and town centre development  
 Policy 4.8 - Supporting a successful and diverse retail sector and related facilities and services  
 Policy 6.3 - Assessing effects of development on transport capacity  
 Policy 6.9 - Cycling  
 Policy 6.10 - Walking  
 Policy 6.13 - Parking  
 Policy 7.1 - Building London's neighbourhoods and communities
12. Southwark Core Strategy (Adopted 6 April 2011)  
 Strategic Policy 3 - Shopping, leisure and entertainment  
 Strategic Policy 4 - Places for learning, enjoyment and healthy lifestyles  
 Strategic Policy 10 - Jobs and businesses  
 Strategic Policy 12 - Design and conservation  
 Strategic Policy 13 - High environmental standards
13. Southwark Unitary Development Plan (Adopted 28 July 2007) (Saved Policies)  
 The council's cabinet on 19 March 2013, as required by paragraph 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.
- 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 3.6 - Air quality  
 Policy 3.7 - Waste reduction  
 Policy 3.12 - Quality in design  
 Policy 3.18 - Setting of listed buildings, conservation areas and world heritage  
 Policy 5.2 - Transport impacts  
 Policy 5.3 - Walking and cycling

**Summary of consultation responses**

14.

Total number of representations:	16				
In favour:	4	Against:	12	Neutral:	0
Petitions in favour:	0	Petitions against:	0		

15. A summary of the issues raised by the 12 objections reads as follows:
- Will have a detrimental impact on the health of local school children given its proximity to schools, particularly the Harris Academy.
  - There are very few fresh, healthy eating options in the immediate vicinity and the

proposal is contrary to the council's Health and Wellbeing Strategy 2015-2020.

- The emerging New Southwark Plan (Policy DM41) sets a 400 metre exclusion zone for new A5 uses next to schools. The map of the exclusion zones in the preferred option indicates that this row of shops is within an exclusion zone, meaning this application would have to be rejected on these grounds alone. Although the New Southwark Plan is still emerging, the policies within hold some weight and the direction of policy about restricting A5 uses next to schools has been clear for many years at local, regional and national level.
- It is unnecessary and unwanted.
- The existing hot food takeaways in the parade cause litter, unpleasant odours, noise and disturbance from customers congregating/lingering outside particularly at night and traffic congestion from deliveries and customers stopping at the parade and the proposal will exacerbate all of this.
- The same application was made for No.65 Southwark Park Road in 2013 and was rejected by the council (upheld at appeal) on these grounds and this application is identical.
- It will exacerbate an existing unresolved drainage problem in the area which causes an unpleasant odour.
- The extractor duct would be sited right beside the rear living room window of the upstairs flat. It will prevent the opening of windows, will block out light, will be unsightly and will create noise.

#### **The principle of the proposed development in terms of land use**

16. Saved policy 1.10 of the Southwark Plan states that 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;
- Refer to the amenity section of this report.
- 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;
- There is another local convenience shop at 65 Southwark Park Road. In addition, 'The Blue' Local Town Centre is within 400m of the site and provides a number of A1 retail uses within a Protected Shopping Frontage.
- 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.
17. The site is currently vacant but no information has been submitted in respect of point (iii). However, the policy only requires conformity with points (i) and either (ii) or (iii).

Therefore, subject to demonstrating a satisfactory impact on existing residential amenity, which shall be discussed later in this report, the proposed change of use is considered to be acceptable in principle.

18. A number objections received have raised the point that there are too many take-aways in this area, that there is already an over-concentration and could lead to the encouragement of childhood obesity issues. However, the proposal is compliant with the above policy, and there are no policies in the Southwark Plan, the Core Strategy or the London Plan which seek to restrict hot food takeaways in this area.
19. With regards to the comment relating to emerging New Southwark Plan policy DM41 Hot food takeaways, para 216 of the NPPF states that weight may be given to such policies according to:
  - The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
  - The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
  - The degree of consistency of the relevant policies in the emerging plan to the policies in this framework (the closer the policies in the emerging plan to the policies in the framework, the greater the weight that may be given).

The New Southwark Plan has undergone two stages of public consultation, the last on a preferred option of the plan policies. Consultation on a submission version of the policies and examination are still to follow. As such interested parties have not put forward the evidence they may wish the examiner to consider.

Several authorities have adopted similar policies (restricting the availability of takeaways) after public examination, demonstrating the general consistency of such policies with the NPPF. However, at some examinations and appeals an unusual burden of evidence has been demanded to justify this particular policy area.

Given the cautious approach taken by inspectors to this relatively new policy area and as interested parties may still submit evidence before examination, limited weight should be granted to the policy unless further evidence of the health impact of a proposed takeaway is provided.

### **Environmental impact assessment**

20. The likely impacts of the proposed development are not so significant that the application falls within the scope of the Town and Country Planning (Environmental Impact Assessment Regulations) 2011 and as such there is no requirement for an EIA.

### **The impact on the amenities of neighbouring occupiers including the visual impact of the duct**

21. The proposal includes details of an acceptable extractor duct located appropriately at the rear of the premises and discharging no lower than 1m above the top of the highest residential windows.
22. The proposed hours of use of 9am-11pm between Monday and Saturday and 10am-10pm on Sundays (and Bank Holidays) are considered to be very reasonable considering the prevailing residential character of the locality (with the obvious exception of the remainder of the commercial units in the parade and the Harris

Academy).

23. A condition preventing the hot food take-away from operating a delivery service using motorised vehicles (such as cars, vans, mopeds or motorcycles) is also recommended. This does not preclude the operation of a delivery service using non-motorised vehicles, e.g. bicycles. The purpose of the condition would be to minimize the noise and disruption caused to residential neighbours from any delivery service.
24. The council's environmental protection team (EPT) have recommended that the application be approved subject to conditions requiring the submission of a detailed scheme for the ventilation of the kitchen and the submission of a report detailing the expected and actual noise levels of the extractor plant and duct. Subject to these conditions it is considered that any potential impact to existing residential amenity through unpleasant odours and/or noise would be adequately mitigated.
25. Although on-site space at the back of the premises is limited, sufficient space exists to accommodate the commercial refuse storage needs of the proposed hot food take-away business. However, no details have yet been provided therefore it is recommended that a condition be imposed to require the submission of such details.
26. The current occupier of the flat above the premises objects on the grounds that the duct would prevent the opening of windows, would block out light, would be unsightly and would create noise. However, the proposed rear elevation shows clearly that while the duct would be sited close to the east side of the first-floor rear window (which serves a small kitchen) it would not obstruct its opening. Given its siting fully to the side of the window it is considered that it would not cause any noticeable, let alone harmful, loss of daylight to this room nor would its perceived unsightliness be readily visible from within the flat. In addition, consequent to the conditions that are recommended, the applicant would also need to demonstrate that any noise generated by the plant and duct would remain within acceptable limits and the council's environmental protection team consider the matter capable of being resolved to their satisfaction through the conditions that they have suggested.
27. Some of the objections received claim that the circumstances of the current application with a previous refused application for a hot food take-away at 65 Southwark Park Road are the same. This refused application was subsequently dismissed at appeal for reasons which included the impact on neighbouring residential amenity. However, officers have examined this case in detail and have found there to be significant differences between the cases.
28. Between Thursday and Sunday inclusive the takeaway proposed in this application at No.75 intends to cease trading an hour earlier than in the case of the refused takeaway at No.65 and on the other days of the week (Monday-Wednesday) it would close no later than in the case of the proposal at No.65, i.e., 11pm.
29. The detailed comparison of the intended closing times is as follows:

	No. 65 (refused)	No. 75 (this application)
Monday	11pm	11pm
Tuesday	11pm	11pm
Wednesday	11pm	11pm
Thursday	12am (midnight)	11pm
Friday	12am (midnight)	11pm
Saturday	12am (midnight)	11pm
Sunday	11pm	10pm

30. In the case of the appeal at No.65 one of the adjoining ground-floor commercial units was lawfully in use as a dwellinghouse therefore the proposed takeaway there would have shared a party wall with a dwellinghouse, a situation which the inspector acknowledged was 'relatively unusual'. Due to this situation and the lack of a detailed noise report, the inspector was concerned at the proximity of the extractor's fan/motor unit to the ground floor party wall with the studio flat and separate first floor living accommodation at No.67 stating that, 'where the adjacent shop has been converted to a dwelling and a higher degree of protection may be justified than if it was in commercial use.'
31. However, in this application at No.75 the nearest residential accommodation is a flat (No.75a) above the unit and a 3-bay Victorian dwelling house (No.77) which adjoins the site on its east side. The adjoining commercial unit on the west side is a café ('Rose Café') which is the side of the unit where the kitchen extractor system would be installed. There would therefore be a distance of several metres as well as an internal partition wall and an external party wall between it and the adjoining dwellinghouse at No.77.
32. A further difference is that the current application has been accompanied by a broadly acceptable noise assessment report whereas the proposal for a hot food takeaway at No.65 was not.
33. Some of the objections received have raised the issue that the existing hot food takeaways in the parade (of which there are two) cause litter, unpleasant odours, noise and disturbance from customers congregating/lingering outside particularly at night and traffic congestion from deliveries and customers stopping at the parade and that the proposal will exacerbate all of this as well as an ongoing local drainage problem.
34. However, it is not fair to assume that the proposal will replicate and exacerbate existing issues elsewhere. The conditions which have been suggested are considered adequate to ensure that the environmental effects of the proposed use and its impact on the amenity of local residents will not be unduly harmful.

#### **The impact on the local transport network**

35. A minimum of two cycle spaces associated with the use would normally be required. However, given the restrictions on site, there are no places to provide cycle storage in a convenient way.
36. There are no off-street parking spaces available for the take away, and therefore customers arriving by car would have to find on street parking locally. Hot food take-away uses can lead to short-term parking nearby while food is ordered and collected or just collected. Notwithstanding that a hot food take-away would typically attract more car trips than a shop, the unit in question is modest in size and most of the area around the site (to the north, south and east) is outside of a controlled parking zone, meaning that there would be short-term customer on-street parking available nearby and utilising this capacity would be unlikely to result in significant overspill parking elsewhere. As such, the transport planning team are of the opinion that the proposal would have an acceptable impact on the highway network.
37. An area at the rear of the site would be used for the storage of refuse. It shall be conditioned that this area remains for this specified use. Littering and refuse storage arrangements were raised in letters of objection. The refuse containers at the rear would not be available to customers, but there appear to be street bins at the front for discarded wrappers. Further information on refuse management at the site would be gained through the submission of a service management plan.

### **The impact on the health of children at Harris Academy**

38. It is a strategic objective of the council's adopted core strategy that people should have access to healthy food and a healthy lifestyle. Objective 1C states that the negative impact of development on health will be addressed. Details of how this is to be achieved in respect of new development borough wide are emerging, with a draft policy in the New Southwark Plan proposed to accompany existing restrictions on the location of new A5 uses within an exclusion zone around secondary schools in the Peckham and Nunhead Area Action Plan.
39. Whilst this may be indicative of the council's emerging approach there is no such development plan policy in place in respect of Southwark Park Road and the adjacent Harris Academy. Consequently it is not possible to apply such an approach to this proposal, and it does not necessarily follow that Class A5 automatically implies that unhealthy food would be provided.
40. It is accepted that such uses provide an attractive draw for secondary school pupils when available so close, but there is also an onus on the educational sector to assist in addressing the issue.
41. Overall, whilst it is the council's laudable objective to promote a healthy lifestyle (specifically access to healthy food), there is as yet no clear development plan policy in place that would provide a justifiable basis for the refusal of the application on this ground. Similarly, while the council is also seeking to limit the clustering of such similar uses there is again no clear development plan policy that would justify a refusal on this ground. Officers therefore conclude that there is no clear planning justification to conclude that the location of the property for the proposed use would be unsuitable having regard to its proximity to the Harris Academy and other class A5 uses, or in respect of the council's strategic objective to promote healthy lifestyles.

### **Sustainable development implications**

42. None.

### **Other matters**

43. None.

### **Conclusion on planning issues**

44. For the reasons set out above the application is recommended for grant.

### **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) There are no issues relevant to particular communities/groups likely to be affected by the proposal; and
  - c) There are no likely adverse or less good implications for any particular



communities / groups.

### 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.
48. Summary of consultation responses (16)  
Of the 16 responses received, 4 were comments in support, and 12 were comments objecting. A summary of the objections raised through consultation is outlined in paragraph 16 above.

### 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 seeking to change the use of a shop (A1) to a hot food take-away (A5). 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/115-75 Application file: 16/AP/1758 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 5405 Council website: www.southwark.gov.uk

## APPENDICES

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

## AUDIT TRAIL

<b>Lead Officer</b>	Simon Bevan, Director of Planning	
<b>Report Author</b>	Ciaran Regan, Senior Planner	
<b>Version</b>	Final	
<b>Dated</b>	28 November 2016	
<b>Key Decision</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	No	No
Strategic Director of Environment and Leisure	No	No
Strategic Director of Housing and Modernisation	No	No
Director of Regeneration	No	No
<b>Date final report sent to Constitutional Team</b>		16 November 2016

## APPENDIX 1

### Consultation undertaken

**Site notice date:** 08/09/2016

**Press notice date:** 18/08/2016

**Case officer site visit date:** 08/09/2016

**Neighbour consultation letters sent:** 12/09/2016

#### 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:

65a Southwark Park Road Se16 3ty	63a Southwark Park Road London SE16 3TY
65 Southwark Park Road London SE16 3TY	61a Southwark Park Road London SE16 3TY
57 Southwark Park Road London SE16 3TY	73a Southwark Park Road London SE16 3TY
75 Southwark Park Road London SE16 3TY	82 Southwark Park Road London SE16 3RS
77 Southwark Park Road London SE16 3TY	61 Southwark Park Road London SE16 3TY
69a Southwark Park Road London SE16 3TY	69 Southwark Park Road London SE16 3TY
63 Southwark Park Road London SE16 3TY	84 Southwark Park Road London SE16 3RS
59 Southwark Park Road London SE16 3TY	86 Southwark Park Road London SE16 3RS
Ground Floor And First Floor Flat 67 Southwark Park Road SE16 3TY	88 Southwark Park Road London SE16 3RS
Ground Floor Flat 67 Southwark Park Road SE16 3TY	67 Southwark Park Road Southwark SE16 3TY
School Keepers House Harris Academy SE16 3TZ	1 Alma Grove London SE1 5PY
71a Southwark Park Road London SE16 3TY	75 Southwark Park Road Se16 3ty
First Floor Flat 65 Southwark Park Road SE16 3TY	115 Firt Road London SE1 5Pu
Ground Floor And First Floor Flat 57 Southwark Park Road SE16 3TY	24 Alma Grove London SE1 5PY
71 Southwark Park Road London SE16 3TY	84 Southwark Park Road Bermondsey SE16 3RS
75a Southwark Park Road London SE16 3TY	164 Lynton Road Bermondsey SE1 5RB
73 Southwark Park Road London SE16 3TY	76 Southwark Park Road London SE16 3RS
80 Southwark Park Road London SE16 3RS	74 Southwark Park Road London SE16 3RS

**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

1 Alma Grove London SE1 5PY  
115 Firt Road London SE1 5Pu  
164 Lynton Road Bermondsey SE1 5RB  
24 Alma Grove London SE1 5PY  
59 Southwark Park Road London SE16 3TY  
63 Southwark Park Road London SE16 3TY  
65a Southwark Park Road Se16 3ty  
67 Southwark Park Road Southwark SE16 3TY  
73 Southwark Park Road London SE16 3TY  
74 Southwark Park Road London SE16 3RS  
75 Southwark Park Road Se16 3ty  
75a Southwark Park Road London SE16 3TY  
76 Southwark Park Road London SE16 3RS  
82 Southwark Park Road London SE16 3RS  
84 Southwark Park Road Bermondsey SE16 3RS  
84 Southwark Park Road London SE16 3RS