

Contents

Contents.....	1
EXECUTIVE SUMMARY.....	2
Details of proposal.....	5
Consultation responses from members of the public and local groups.....	7
Planning history of the site, and adjoining or nearby sites.....	8
KEY ISSUES FOR CONSIDERATION	8
Summary of main issues	8
Planning policy	9
ASSESSMENT.....	9
Principle of the proposed development in terms of land use.....	9
Design.....	11
Landscaping, trees and urban greening.....	13
Ecology and biodiversity.....	14
Biodiversity Net Gain.....	15
Fire safety	15
Impact of proposed development on amenity of adjoining occupiers and surrounding area	15
Noise, vibration, odour and fumes	16
Transport and highways	17
Environmental matters	18
Mayoral and borough community infrastructure levy (CIL)	19
Consultation responses from internal consultees.....	19
Community impact and equalities assessment.....	21
Human rights implications	22
Positive and proactive statement	22
Positive and proactive engagement: summary table	22
CONCLUSION	23
BACKGROUND DOCUMENTS.....	23
APPENDICES	23
AUDIT TRAIL.....	24

Meeting Name:	Planning Committee (Smaller Applications)	
Date:	23 October 2024	
Report title:	<p>Development Management planning application: Application 24/AP/0841 for: Full Planning Application</p> <p>Address: Pavement between 285 Rye Lane and 289 Peckham Rye, London Southwark SE15 4UA</p> <p>Proposal: Erection of a temporary food kiosk (Class E(a)) for a period of 3 years. (This application represents a departure to Policy P57 Open Space of Southwark Plan 2022 by reason of development on Metropolitan Open Land (MOL)).</p>	
Ward(s) or groups affected:	Rye Lane	
Classification:	Open	
Reason for lateness (if applicable):	Not Applicable	
From:	Director of Planning and Growth	
Application Start Date: 01.05.2024	PPA Expiry Date: 31.10.2024	
Earliest Decision Date: 23/10/2024		

RECOMMENDATION

1. That the development which is located on Metropolitan Open Land (MOL) be granted temporary permission subject to conditions.

EXECUTIVE SUMMARY

2. The proposed development is for the erection of a temporary food kiosk (Class E(a)) - Display or retail sale of goods, other than hot food' for a temporary period of 3 years.
3. The application is being referred to Planning Smaller Applications Committee as the new development is contrary to the development plan, being the erection of a new food kiosk that is located on Metropolitan Open Land MOL, and not complying with policies relating to acceptable development on MOL.
4. The small scale, temporary nature of the proposal and the proposed design and positioning of the new kiosk would have little impact on the setting, accessibility, and quality of the MOL, and would not affect its openness or

detract from its character. The proposal would provide facilities that can be used by visitors to the park. The proposal would also preserve the appearance and character of the area and not give rise to neighbour amenity or highway impacts.

BACKGROUND INFORMATION

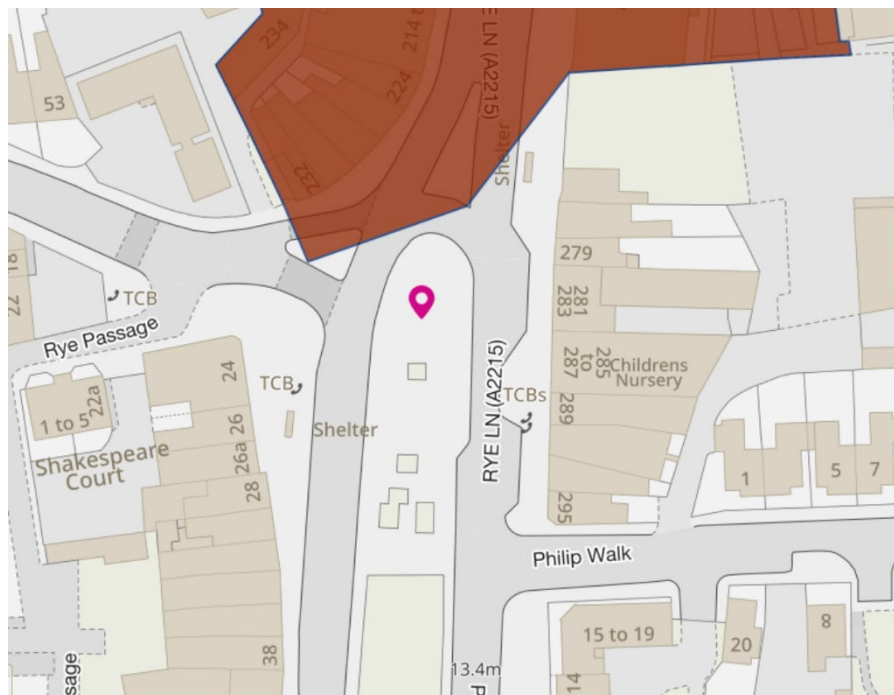
Site location and description

5. The application site is located on an elongated traffic island split in the gyratory of Peckham Rye the A2215. The site is located on the northern end of the island opposite its junction with Nigel Road to the west. The site is bounded by commercial units with residential above to its north, east and west elevations.
6. The site is not located in a Conservation Area however Rye Lane Conservation Area lies approximately 12m north of the site. There are no Listed Buildings nearby.
7. The site is subject to the following planning designations:
 - AV.14 Peckham – Area Vision Boundary
 - Peckham Major Town Centre
 - Peckham Rye Common and Piermont Green – Green Chain Park
 - Peckham Rye Common and Piermont Green - Site of Importance for Nature Conservation
 - Peckham Rye Common and Piermont Green – Metropolitan Open Land (MOL)
 - Peckham and Nunhead Action Area
 - Hot food takeaway primary school exclusion zone
 - East Southwark Critical Drainage Area

8. *Figure 1- Site Location Plan*



9. *Figure 2 - Proximity of site to Rye Lane Conservation Area*



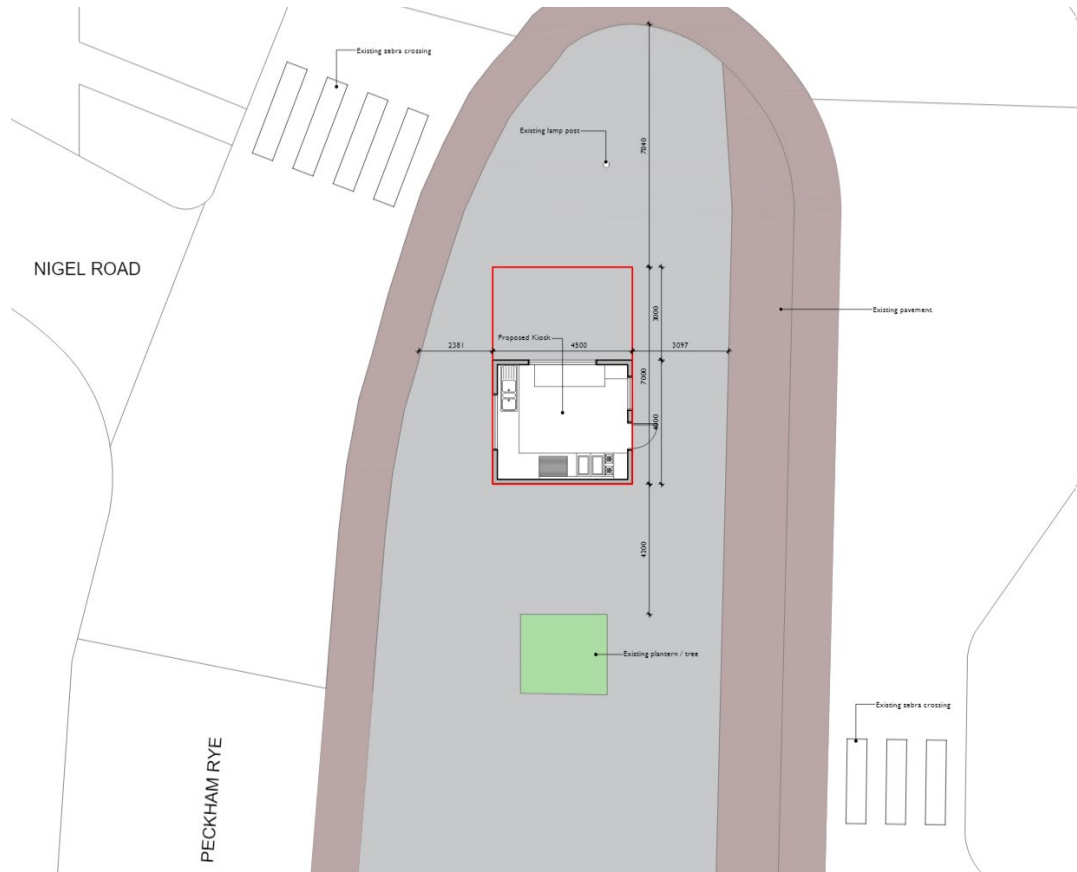
10. *Figure 3 - Existing traffic island – facing south west*



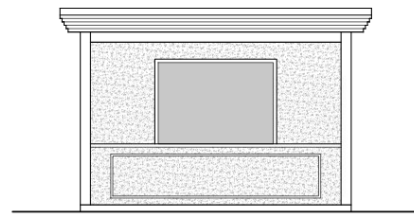
Details of proposal

11. The proposed development is for the erection of a temporary food kiosk (Class E(a)) for a temporary period of 3 years.
12. Class E is for Commercial, Business and Service with sub-category A defined as the 'Display or retail sale of goods, other than hot food'.
13. The initial description of development sought permission for a permanent food kiosk. This was amended during the application to a temporary permission for a period of 3 years.
14. The proposed kiosk would be of a painted grey timber material and would have the following dimensions:
 - Maximum height: 3m
 - Maximum width: 4.5m
 - Maximum depth: 4m
 - Footprint = 18m²

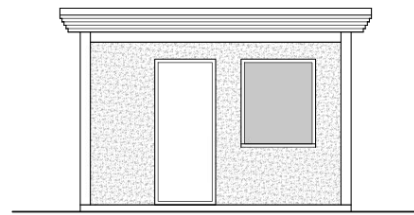
15. *Figure 4 - Proposed site plan*



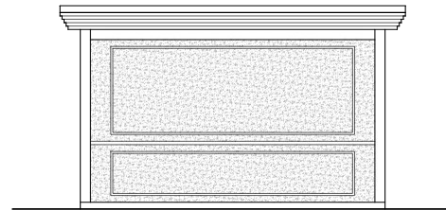
16. *Figure 5 - Proposed elevations*



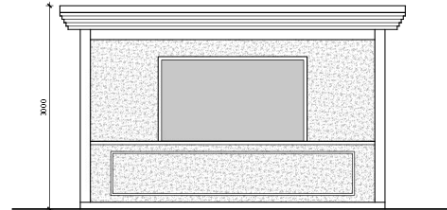
Front Elevation: A
1:50 at A2
0m 0.5m 1m 2.5m



Side Elevation: B
1:50 at A2



Rear Elevation: C
1:50 at A2
0m 0.5m 1m 2.5m



Side Elevation: D
1:50 at A2

Amendments to the application

17. The application initially proposed a permanent kiosk but this was amended to a temporary period of 3 years during the assessment following Case Officer advice that a permanent structure would unlikely be considered acceptable.
18. The application was further amended to move the proposed kiosk an additional 0.9m north from the existing planter / tree and display the existing zebra crossings on the site plan. This was following public objections and comments received by the Urban Forester.

Consultation responses from members of the public and local groups

19. One site notice was initially displayed at the site on 15.05.2024. The application was re-advertised following an update in the description to advertise temporary permission and departure from the development plan. Three site notices were displayed (1x at the site 1x on Rye Lane west and 1x on Peckham Rye east) from 03.07.2024. A Press Notice was also issued on 04.07.2024.
20. 18 public comments were received (across both consultation periods); 17 objections and 1 comment of support, at the time of writing. These are outlined below.
21. Objections:
 - Close to multiple food businesses, overconcentration
 - Affect existing local businesses
 - Increase in congestion and overcrowding on footpath.

- Increase in litter
- Unsuitable placement in the way of pedestrians and zebra crossing
- Increase in smoke
- Introduction of additional competition in the form of food kiosks would exacerbate the already declining customer traffic
- Increase in accidents from customers crossing road to kiosk
- Exhaust fumes and pollutants from the vehicles passing by could easily contaminate the food being served at the kiosk, posing serious health risks to customers specially if food is to be stored on site
- Distraction to drivers and pedestrians
- Smells harming surrounding ecology
- Blocks zebra crossing which affects wheelchair users
- Block businesses view from other side of road.

22. Support:

- Accessible location with space for other things on the island
- Benefit to community and tourists.

23. The material planning considerations have been addressed throughout the officer report below.

Planning history of the site, and adjoining or nearby sites.

24. Any decisions which are significant to the consideration of the current application are referred to within the relevant sections of the report. A fuller history of decisions relating to this site, and other nearby sites, is provided in Appendix 3.

KEY ISSUES FOR CONSIDERATION

Summary of main issues

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

- Principle of the proposed development in terms of land use
- Design
- Landscaping, trees and urban greening
- Ecology and biodiversity
- Biodiversity Net Gain
- Fire safety
- Impact of proposed development on amenity of adjoining occupiers and surrounding area
- Transport and highways
- Environmental matters, including flood risk
- Mayoral and borough community infrastructure levy (CIL)
- Consultation responses and community engagement
- Community impact, equalities assessment and human rights.

26. These matters are discussed in detail in the 'Assessment' section of this report.

Legal context

27. Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. In this instance the development plan comprises the London Plan 2021 and the Southwark Plan 2022. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision-makers determining planning applications for development within Conservation Areas to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Section 66 of the Act also requires the Authority to pay special regard to the desirability of preserving listed buildings and their setting or any features of special architectural or historic interest which they possess.
28. There are also specific statutory duties in respect of the Public Sector Equalities Duty which are highlighted in the relevant sections below and in the overall assessment at the end of the report.

Planning policy

29. The statutory development plans for the Borough comprise the London Plan 2021 and the Southwark Plan 2022. The National Planning Policy Framework (2023) and emerging policies constitute material considerations but are not part of the statutory development plan. A list of policies which are relevant to this application is provided at Appendix 2. Any policies which are particularly relevant to the consideration of this application are highlighted in the report.

ASSESSMENT

Principle of the proposed development in terms of land use

30. The application proposes the erection of a food kiosk on Metropolitan Open Land for a temporary period of 3 years. The acceptability of the principle of the land use comprises two factors, whether the proposed use is acceptable with regard to impact upon the MOL and whether the commercial use is acceptable in this location.

Metropolitan Open Land

31. As the site forms part of MOL, it should be protected from inappropriate development in accordance with national planning policy tests that are applied to Green Belt, as required by Chapter 13 'Protecting the green belt' of the National Planning Policy Framework (NPPF) (2023) and Policy G3 'Metropolitan Open Land' of the London Plan (2021). These policies outline that development in MOL should only be approved in very special circumstances. Paragraphs 154 and 155 of the NPPF outline that such exceptional circumstances can include the provision of appropriate facilities in connection with existing use of land or a change of use for outdoor sport, recreation, cemeteries, burial grounds or allotments, as long as these facilities preserve the openness of the green belt.

32. Policy P57 (Open space) of the Southwark Plan 2022 states that development will not be permitted on Metropolitan Open Land (MOL). In exceptional circumstances development may be permitted when:
1. *It consists of ancillary facilities that positively contribute to the setting, accessibility and quality of the open space and if it does not affect its openness or detract from its character. Ancillary facilities on MOL must be essential for outdoor sport or recreation, cemeteries or for other uses of land which preserve the openness of MOL and do not conflict with its MOL function; or*
 2. *It consists of the extension or alteration of an existing building providing that it does not result in disproportionate additions over and above the size of the original building or*
 3. *It consists of the replacement of an existing building, provided that the new building is no larger than the building it replaces.*
33. The proposal is listed as a departure application, as the proposed use for Class E(a) is not cited as related to outdoor sport, recreation, cemetery and cannot be considered ancillary.
34. The application site relates to an existing traffic island to the north of Peckham Rye Park which has been included in the designation of the Peckham Rye Common and Piermont Green Metropolitan Open Land (MOL). The landowners are Southwark Council and as such the applicant would require a license from the Council for use of the land, though this does not form a part of planning considerations. The proposed kiosk would be situated entirely on existing hardstanding to the northern edge of the MOL boundary, occupying a footprint of approximately 18m².
35. It is considered that the existing site location offers limited contribution to the Metropolitan Open Land designation as it comprises hardstanding on a traffic island located over 100m from the northern section of Peckham Rye Park, being even further away from the main park grounds. The kiosk would be of modest dimensions no higher than 3m and would not form a permanent structure at the site. Given the small-scale nature of the building and its distance from the park, it would not detract from the openness experienced at Peckham Rye Common and Piermont Green. The kiosk would be prefabricated and placed onto the hardstanding for a temporary period of 3 years after which the land would then be vacant again.
36. Given the site's location to the very northern edge of the MOL boundary on hardstanding, with a considerable distance away from the open space of Peckham Rye Park and Common, it is considered the proposal would have negligible impact on the openness, accessibility or quality of the MOL. The immediate vicinity of the site is urbanised and comprises commercial units, to which the proposed kiosk would relate well to the setting of the area. It is therefore considered that in this case, an exception to the MOL policy can be made.

Use Class E(a) – Display or retail sale of goods, other than hot food

37. The proposed development would be for Class E(a) the 'Display or retail sale of goods, other than hot food'. The Planning Statement outlines that the proposed kiosk would sell vegetarian/vegan salads, wraps and mocktails. The application site is in the Peckham Major Town Centre and Hot food takeaway primary school exclusion zone. Therefore P35 'Town and Local Centres' and P48 'Hot food takeaway' of the Southwark Plan 2022 would apply to the proposed development.
38. The site is within the Peckham Major Town centre, where uses such as shops, professional services and restaurants are supported by policies, such as Southwark Plan Policy P35 (Town and local centres). The provision of retail/sale of food/drink units in this location would contribute to the vitality of the area. It is noted that objectors express concern regarding an overconcentration of business in the area and the introduction of a food kiosk would lead to additional competition and declining customer traffic. Rye Lane and Peckham Rye roads adjacent to the application site host a wide number of town centre uses. It is not considered that the addition of a temporary unit would significantly harm the vitality or viability of the town centre.
39. As outlined, the application site is also located in the 'Hot food takeaway primary school exclusion zone'. This means that P48 (Hot food takeaway) of the Southwark Plan 2022 restricts the development of new hot food takeaways. Given the nature of the proposed use Class E(a) being a kiosk for display or retail sale of goods, other than hot food to be consumed away from the premises, it is important to restrict the use of the kiosk to prohibit the cooking of hot food. It is noted that whilst the internal layout is subject to change, it displays hob rings/grills that could be used for the cooking of any hot food. As such a compliance condition is recommended to restrict the use of the kiosk for the cooking of any hot food in line with the permitted use class and to ensure ongoing compliance with P48.

Design

Site context

40. *Figure 6 - Aerial photo of the site*



Site layout

41. *Figure 7 - Site layout in context*



42. The proposed kiosk would be of modest dimensions with a maximum flat roof height of 3m, a depth of 4m and a width of 4.5m. It would be located 4.2m north from the existing tree/brick planter and between the lamppost to the northern edge of the traffic island. The structure would be prefabricated and not fixed into the existing pavement. It would be constructed of timber painted in a grey colour.
43. The site lies south of the Rye Lane Conservation Area boundary by approximately 12m. The council's Design and Conservation Team expressed concern that the kiosk would not respond well to its setting or the nearby conservation area. Given the modest dimensions and that the kiosk would be temporary, it is not considered that the proposed kiosk would cause significant detrimental harm to the character of the area or nearby conservation area. It would not appear as an overbearing structure in the context of the existing traffic island. As the structure would be prefabricated and not permanently fixed into the site, there is limited control over the proposed design of the kiosk. As such the proposal is deemed acceptable in design terms.

Landscaping, trees and urban greening

44. The proposed kiosk's southern elevation was initially located 3m north of the existing planter / tree on the traffic island. The Urban Foresters consultation comments outlined that whilst the proposed kiosk does not currently directly affect a small tree in the adjacent raised brick planter, its location 3m from the planter means the canopy would require pruning to avoid a constraint in future.
45. It was outlined by the case officer that the position of the kiosk should be amended within the red line boundary so that it is located further from the tree canopy to avoid potential conflicts due to close proximity. Alternatively, an Arboricultural Impact Assessment may be submitted prior to determination to consider this issue.

46. The applicant amended the proposal so that the kiosk was moved an additional 0.9m north of the existing brick planter. As such a distance of 4.2m is maintained between the planter and the southern elevation of the proposed kiosk. It is now considered that the proposed kiosk maintains a good separation distance away from the tree canopy to avoid future constraints and so the proposal would be acceptable in respect of impact on trees.

Ecology and biodiversity

47. The application site is in the Peckham Rye Common and Piermont Green Site of Importance for Nature Conservation (SINC).
48. The council's ecologist has reviewed the information provided by the applicant. P60 'Biodiversity' of the Southwark Plan 2022 notes the following:

1. Development must contribute to net gains in biodiversity through:

- 1. Enhancing the nature conservation value of Sites of Importance for Nature Conservation (SINCs), Local Nature Reserves (LNRs), designated ancient woodland, populations of protected species and priority habitats/species identified in the United Kingdom, London or identified and monitored in the latest adopted Southwark Nature Action Plan; and*
- 2. Protecting and avoiding damage to SINCs, LNRs, populations of protected species and priority habitats/ species; and*
- 3. Including features such as green and brown roofs, green walls, soft landscaping, nest boxes, habitat restoration and expansion, improved green links and buffering of existing habitats.*

2. Any shortfall in net gains in biodiversity must be secured off site through planning obligations or as a financial contribution.

49. The ecologist outlined that as the site is a SINC, the implications of the removal of or harm any of the habitat onsite caused by the proposed development should be considered. Whilst the site is in a SINC, the proposed kiosk would be located to the northern edge of the traffic island, situated entirely on hardstanding and would be of a temporary nature with no permanent foundations. As such it is not considered that the proposal would cause any considerable damage to the SINC.
50. It was also outlined that there should be no increase of lighting onto the SINC or nearby street trees caused by the development. A pre-occupation condition for a bat lighting plan to be submitted is recommended and has been agreed by the applicant. As such, subject to conditions, the development is not considered harmful to nature conservation.

Biodiversity Net Gain

51. In England, Biodiversity Net Gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021). This statutory framework is referred to as 'biodiversity net gain' in Planning Practice Guidance to distinguish it from other or more general biodiversity gains.
52. Based on the information provided by the applicant, this site is considered to be exempt from the requirement to deliver mandatory BNG as it is located entirely on hardstanding.

Fire safety

53. Policy D12 (A) of the London Plan 2021 requires that all development must submit a planning fire safety strategy. The fire safety strategy should address criteria outlined in Policy D12 (A).
54. Paragraph 3.12.9 of the policy explains that fire statements should be produced by someone who is "third-party independent and suitably-qualified". The council considers this to be a qualified engineer with relevant experience in fire safety, such as a chartered engineer registered with the engineering council by the Institution of Fire Engineers, or a suitably qualified and competent professional with the demonstrable experience to address the complexity of the design being proposed. This should be evidenced in the fire statement. The council accepts fire statements in good faith on that basis. The duty to identify fire risks and hazards in premises and to take appropriate action lies solely with the developer.
55. Summary of information contained in Planning Fire Safety Strategy:
 - The kiosk window and doorway would provide egress in the event of a fire
 - The site would not be connected to a water supply albeit water containers would be stored in the kiosk
 - Fire extinguishers and fire blankets would be installed in the kiosk
 - In the event of a fire, the staff would meet outside of the kiosk to the pavement
 - Signs would be attached to the kiosk to prevent smoking outside the kiosk.
56. Notwithstanding that this is a fairly basic assessment, not prepared by an individual with specialist fire safety qualifications, it deals with the key points of the planning policy. The proposal is for a single-storey prefabricated food kiosk and does not present unusual risks in relation to fire safety and on balance, the information provided satisfies the requirements of planning policy.

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

Outlook and privacy

57. The proposed kiosk would be located on a traffic island in an area constructed on hardstanding. There would be a serving window to the northern elevation, a window and access door to the eastern elevation and a window to the western elevation.
58. Given the sites location and nature of the proposal being a food kiosk, it is not considered that the proposed windows and doors to the kiosk would cause any harmful overlooking or privacy impacts to nearby residential properties above commercial on Rye Lane or Peckham Rye.

Daylight and sunlight

59. As outlined above, the proposed kiosk would be located on a traffic island between 285 Rye Lane and 289 Peckham Rye. The kiosk would be of modest dimensions reaching a maximum height of 3m. The kiosk would not interfere with any nearby residential properties habitable windows to cause an adverse impact on daylight and sunlight levels.

Sense of enclosure and loss of outlook

60. The proposed kiosk would have a maximum height of 3m, depth of 4m and width of 4.5m. It would be located on a traffic island to which pedestrian crossings are located to the southeast and northwest of the site. The kiosk would be of modest dimensions and leave adequate distance to each of the footpaths and pedestrian crossings. It would not be of a scale to impact on nearby properties outlook nor would it cause a sense of enclosure given its location on a central traffic island.
61. A public objection has noted that the placement of the kiosk would block the public's view of their business from the other side of the road. The kiosk would not be of a scale to significantly block views from all directions on adjacent streets.

Noise, vibration, odour and fumes

62. Given the temporary nature of the structure, there would be no plant or kitchen extract equipment installed with the kiosk. The council's environmental protection team were consulted on the application and raised no objections to the proposal. As such no adverse impacts by way of noise and vibration associated with the use are expected.
63. The application notes that the proposed kiosk would operate between the following hours:

12:00pm – 22:00pm on all days.

A compliance condition is recommended to ensure the unit does not operate outside the above stated hours. This is in the interest of protecting neighbour's amenity. Public objections express concern regarding the proposed use attracting crowds at night. However, the hours outlined above ensures that the site closes earlier than other food establishments in the local area, minimising any potential noise risk to nearby properties. Further to this, the site does not

provide any outdoor facilities for consumption on the premises as such significant noise generation is deemed unlikely due to the nature of the use.

64. Public objections also note concern about increased smells from the proposed kiosk and fumes from the surrounding area affecting food. As noted earlier in the assessment, given that the site is for proposed use Class E(a) which does not permit the sale of hot food, and the sites location in a hot food takeaway exclusion zone, a condition would be appropriate to prohibit the use of the kiosk for hot food. It is therefore considered that the kiosk would not generate heightened levels of odour to cause a significant impact on members of the public in the area. Any potential impact on the kiosks food from pollution is not a material consideration to the planning application.

Transport and highways

Servicing and deliveries

65. Given the small scale of the proposed kiosk and its temporary nature, it is not expected that high volumes or servicing or deliveries would be required. The Planning Statement outlines that cooking material and water would be brought to and from site.

Refuse storage arrangements

66. The transport team outlined that commercial waste must be managed privately. Given that the site does not benefit from external yard space, it is assumed that the waste would be stored internally and presented outside on collection day.
67. Public objections note concern regarding an increase in litter as a result of the proposal. It is noted the existing traffic island has public waste bins, with the nearest being southeast of the tree / brick planter. As outlined throughout the assessment, the kiosk would not present opportunities for consumption at the kiosk as no tables or chairs would be provided. It would be expected that customers consume the goods away from the site.

Car parking

68. The proposed kiosk would be a temporary structure for a period of 3 years. No car parking spaces are proposed with the development. The proposed car-free development is acceptable.

Cycle parking and cycling facilities

69. The transport team have outlined in their consultation comments that the proposal should provide 2 long-stay cycle spaces and 2 visitor spaces in line with policy requirements for food retail use.
70. Given the prefabricated and temporary use of the site, it is not considered pertinent to request cycle parking facilities. The site is in a PTAL 6a, indicating an excellent level of access to public transport. There would be no outside

seating area as part of the proposal and so customers would be required to purchase and consume the food elsewhere. As such the absence of long and short stay cycle parking facilities is considered acceptable in this instance and no monetary contribution to facilities would be sought given the temporary permission.

Highways impacts

71. Public objections express concern regarding the proposed kiosk causing congestion to the existing traffic island and public safety impacts to road users and pedestrians/wheelchair users when crossing the road.
72. An updated proposed site plan was provided at the request of the case officer illustrating the locations of the existing zebra crossings in relation to the proposed kiosk. It is noted that the proposed kiosk would be of a sufficient distance away from each crossing, with at least an 8m to the crossing at the east and 4.5m west. As such the location of the kiosk is unlikely to give rise in increased congestion given the ample clearance distance surrounding the kiosk and the adjacent zebra crossings.
73. The highways team were consulted on the application as the surrounding roads are adopted highways. No objections or comments were provided by the team. Given the modest scale of the structure and its set back from all elevations on the traffic island, it is not considered to pose a significant distraction to road users. Any advertisement that would not be classed as having deemed consent would require a separate advertisement consent application to be assessed.

Environmental matters

Flood risk

74. The NPPF 2023 states that planning decisions must take into account the current and long-term implications for flood risk in order to minimise the vulnerability of communities and improve resilience. Where development is necessary in higher risk areas, development should be made safe for its lifetime without increasing flood risk elsewhere. Certain steps need to be followed when reaching a planning decision on development in higher risk areas, with risks managed through suitable adaptation measures. The advice of flood risk management authorities also needs to be taken into account (NPPF, 166).

Site Context

75. The development site is in Flood Zone 1 as identified by the Environment Agency flood map. Zone 1 is lowest risk, which indicates a low probability of flooding. The site is also within the East Southwark Critical Drainage Area. This means it is an area where, when there is heavy rainfall, local flooding occurs. Given that the proposal is for a minor temporary development that is not a fixed structure, an assessment of flood risk is not required.

Mayoral and borough community infrastructure levy (CIL)

76. The proposal does not involve new build of at least 100m² gross internal area (GIA) floorspace or involve the creation of one or more dwellings. As such the development is not CIL liable.

Consultation responses from internal consultees

77. Summarised below are the material planning considerations raised by internal and divisional consultees, along with the officer's response where necessary.

78. Ecology:

- The site designations are Metropolitan Open Land, Site of Importance for Nature Conservation (SINC) and Green Chain Link
- The development site is within the Peckham Rye and Piedmont Green Borough Grade SINC
- Policy P60 states that developments should avoid damage to SINC. This site is a SINC and the implications of the removal of or harm any of the habitat onsite caused by the proposed development should be considered
- This temporary development is situated entirely on hardstanding
- There should be no increase of lighting on the SINC or nearby street trees caused by the development
- Recommended conditions - PTO14 - Bat lighting.

Officer comment:

- The ecologist's comments have been considered in the Ecology and Biodiversity section of the report.

79. Parks and cemeteries team:

- Do not see the merits in such an operation on this land
- On the basis this area is MOL and it is highly visible a kiosk would detract from the area
- Do not support this proposal and would not seek to approve nor issue a licence for a kiosk.

Officer comment:

- The objections from the Parks and Cemeteries team have been noted and the principle of development has been assessed in the report.
- Licensing is separate to planning as such whether a license would be issued does not form a consideration of this application.

80. Planning policy team:

- The site designations are MOL Metropolitan Open Land, SINC and Green Chain Link. The entire site is located within Metropolitan Open Land (MOL)
- Policy P57 sets out that development will not be permitted on Metropolitan Open Land (MOL) or Borough Open Land (BOL) except in exceptional circumstances
- Development on the site would be a departure from Local Plan Policy P57. MOL has the same weight as greenbelt as set out in the NPPF.

- The development of this kiosk is not ancillary to the use of the park, within the footprint of the existing building, or consist of the replacement of a building. The development would therefore not meet the exceptional circumstances set out in policy P57. The section of MOL that the kiosk is proposed on the top end of the park and is on hand standing at the junction of Peckham Rye and Rye Lane. The sense of openness at this junction should also be considered.
- This application has been revised to a temporary permission for three years, and would be acceptable for this time period.
- The development site is also within a SINC. Peckham Rye and Piedmont Green is a Borough Grade SINC.
- Policy P60 states that developments should avoid damage to SINC. This site is a SINC and the implications of the removal of or harm any of the habitat onsite caused by the proposed development should be considered.

Officer comment:

- The planning policy team's comments have been considered in the principle of the proposed land use section of the report.

81. Urban forester:

- Whilst the proposed kiosk does not currently directly affect a small tree in the adjacent raised brick planter, it's location 3m from the planter means the canopy will require pruning to avoid a constraint in future.
- Should it otherwise be considered acceptable, the position should be amended within the red line so that the kiosk is located further from the tree canopy to avoid potential conflicts due to close proximity.
- Alternatively, an arboricultural impacts assessment may be submitted prior to determination to consider this issue.

Officer comment:

- The urban forester's comments have been considered in the landscaping and trees section of the report.

82. Design and conservation team:

- The installation of an independent prefabricated timber kiosk, painted grey in the proposed location is not expected to result in a positive contribution to the area which has a greater potential.
- The case officer is to confirm whether the proposed use falls as an ancillary facility that positively contribute to the setting, accessibility and quality of the MOL. If the use is acceptable, a purposely designed structure, that respond to the character of the area and nearby conservation area should be adopted and should be integrated well with an overall landscape development of the traffic island.
- Though the scale of the unit does not appear excessive in the location, the exterior design of kiosk unit is required to respond to its immediate setting. It is also noted that there exist few trees in planters to the southern part of island, sometimes used as a seating by public. But it is the rear blank wall of the kiosk that faces this area.
- The proposal in its current form is not supported as it does not appear to respond well to its setting or the nearby conservation area or the quality of MOL.

Officer comment:

- The design and conservation team's comments have been considered in the design section of the report.

83. Environmental protection team:

- No objection or comment

Officer comment:

- Noted.

84. Transport team:

- For this proposal, the required amount of long-stay cycle parking is therefore 2 spaces. 2 visitor spaces must also be provided to meet requirements of 1 space per 20 sqm GEA for first 750 sqm and 1 space per 150 sqm GEA thereafter, minimum of 2 visitor spaces.
- As the site is in PTAL 6a, the proposed car-free development is acceptable.
- As per Southwark Plan Policy P54, on-street parking permits will not be available for residents or businesses in current or future CPZs.
- No vehicle access or crossover have been proposed. As the proposal is car-free, this accords to adopted policy.
- The proposed pedestrian access accords to adopted policy.
- Commercial waste must be managed privately.

Officer comment:

- The Transport Team's comments have been considered in the transport and highways section of the report.

85. Highways team:

- No comments on the application.

Officer comment:

- Noted.

Community impact and equalities assessment

86. The council must not act in a way which is incompatible with rights contained within the European Convention of Human Rights.

87. The council has given due regard to the above needs and rights where relevant or engaged throughout the course of determining this application.

88. The Public Sector Equality Duty (PSED) contained in Section 149 (1) of the Equality Act 2010 imposes a duty on public authorities to have, in the exercise of their functions, due regard to three "needs" which are central to the aims of the Act:

1. The need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act

2. The need to advance equality of opportunity between persons sharing a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to:
 - Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
 - Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
 - Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

89. The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

90. The protected characteristics are: race, age, gender reassignment, pregnancy and maternity, disability, sexual orientation, religion or belief, sex, marriage and civil partnership.

Human rights implications

91. This planning application engages certain human rights under the Human Rights Act 1998 (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.

92. This application has the legitimate aim of constructing a food kiosk. 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.

Positive and proactive statement

93. The council has published its development plan and Core Strategy on its website together with advice about how applications are considered and the information that needs to be submitted to ensure timely consideration of an application. Applicants are advised that planning law requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

94. The council provides a pre-application advice service that is available to all applicants in order to assist applicants in formulating proposals that are in accordance with the development plan and submissions that are in accordance with the application requirements.

Positive and proactive engagement: summary table

Was the pre-application service used for this application?	YES
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If the pre-application service was used for this application, was the advice given followed?	YES
Was the application validated promptly?	YES
If necessary/appropriate, did the case officer seek amendments to the scheme to improve its prospects of achieving approval?	YES
To help secure a timely decision, did the case officer submit their recommendation in advance of the agreed Planning Performance Agreement date?	YES

Conclusion

95. It is therefore recommended that planning permission be granted, subject to conditions.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Local Development Framework and Development Plan Documents	Planning and Growth Directorate 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 0254 Council website: www.southwark.gov.uk

APPENDICES

No.	Title
Appendix 1	Recommendation (draft decision notice)
Appendix 2	Relevant planning policy
Appendix 3	Planning history of the site and nearby sites
Appendix 4	Consultation undertaken
Appendix 5	Consultation responses received

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth	
Report Author	Agneta Kabele, Planning Officer	
Version	Final	
Dated	10 October 2024	
Key Decision	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director, Resources	No	No
Acting Strategic Director, Environment, Sustainability and Leisure	No	No
Strategic Director, Housing	No	No
Date final report sent to Constitutional Team		11 October 2024

Recommendation

This document shows the case officer's recommended decision for the application referred to below.

This document is not a decision notice for this application.

Applicant	MR R Kembora	Reg. Number	24/AP/0841
Application Type	Minor application		
Recommendation		Case Number	PP-12922741

Draft of Decision Notice

for the following development:

Erection of a temporary food kiosk (Class E(a)) for a period of 3 years.

(This application represents a departure to Policy P57 Open Space of Southwark Plan 2022 by reason of development on Metropolitan Open Land (MOL)).

Pavement Between 285 Rye Lane London Southwark And 289 Peckham Rye, London Southwark SE15 4UA

In accordance with application received on 25 March 2024 and Applicant's Drawing Nos.:

Existing Plans

Proposed Plans

PROPOSED LAYOUT AND ELEVATIONS P5 REV B received 25/03/2024

Other Documents

EXISTING AND PROPOSED BLOCK PLAN P3 REV C received 19/09/2024

PROPOSED SITE PLAN P2 REV C received 19/09/2024

Time limit for implementing this permission and the approved plans

2. The development hereby permitted shall be permitted for a period of three years until 31/10/2027, on or before which date the structure shall be removed from the site and the land restored to its former condition.

Reason:

The type of building is not such as the Local Planning Authority is prepared to approve other than for a limited period.

Permission is subject to the following Pre-Occupation Condition(s)

3. Prior to the new development being first brought into use/occupied a bat friendly Lighting Plan shall be submitted to and approved by the Local Planning Authority.

The recommended lighting specification using LED's (at 3 lux) because they have little UV. The spectrum recommended is 80% amber and 20% white with a clear view, no UV, horizontal light spread ideally less than 70° and a timer.

If required a 3D plan of the illumination level should be supplied so the Local Planning Authority can assess potential impact on protected species.

Reason: To ensure compliance with the Habitats Regulations and the Wildlife & Countryside Act (1981), (as amended), and because bats are known to be active in vicinity of the development site.

Permission is subject to the following Compliance Condition(s)

4. The materials to be used in the implementation of this permission shall not be otherwise than as described and specified in the application and on the drawings hereby approved unless the prior written consent of the Local

Planning Authority has been obtained for any proposed change or variation.

Reason: To ensure that the new works blend in with the existing building in the interest of the design and appearance of the building in accordance with the National Planning Policy Framework (2023); Policy D4 (Delivering good design) of the London Plan (2021); Policy P13 (Design of places) and Policy P14 (Design quality) of the Southwark Plan (2022).

5. The use class hereby permitted does not permit any primary cooking on site or hot food takeaway.

Reason:

This is in accordance with the NPPF (2023), London Plan (2021) and P48 (Hot Food Takeaway), P56 (Protection of amenity) and P65 (Improving air quality) of the Southwark Plan 2022.

6. The use hereby permitted shall not be carried out outside of the hours of 12:00pm - 22:00pm on all days.

Reason:

To safeguard the amenity of neighbouring residential properties in accordance with the Southwark Plan 2022 Policy P56 (Protection of amenity); Policy P66 (Reducing noise pollution and enhancing soundscapes), and the National Planning Policy Framework 2023.

Informatives

Relevant planning policy**National Planning Policy Framework (the Framework) 2023**

The revised National Planning Policy Framework ('NPPF') was published on 19 December 2023 and sets out the national planning policy and how this needs to be applied. The NPPF focuses on sustainable development with three key objectives: economic, social and environmental.

Paragraph 224 states that the policies in the Framework are material considerations, which should be taken into account in dealing with applications.

The relevant chapters from the Framework are:

- Chapter 7 Ensuring the vitality of town centres
- Chapter 8 Promoting healthy and safe communities
- Chapter 9 Promoting sustainable transport
- Chapter 11 Making effective use of land
- Chapter 12 Achieving well-designed and beautiful places
- Chapter 13 Protecting Green Belt (applies to Metropolitan Open Land)
- Chapter 14 Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 Conserving and enhancing the natural environment

The London Plan 2021

On 2 March 2021, the Mayor of London published the London Plan 2021. The spatial development strategy sets a strategic framework for planning in Greater London and forms part of the statutory Development Plan for Greater London. The relevant policies are:

- Policy SD6 Town centres and high streets
- Policy E9 Retail, markets and hot food takeaways
- Policy D4 Delivering good design
- Policy D12 Fire safety
- Policy D14 Noise
- Policy G2 London's Green Belt
- Policy G3 Metropolitan Open Land
- Policy G6 Biodiversity and access to nature
- Policy G7 Trees and woodlands
- Policy SI 1 Improving air quality
- Policy T4 Assessing and mitigating transport impacts
- Policy T5 Cycling
- Policy T6 Car Parking
- Policy T7 Deliveries, servicing and construction

Southwark Plan 2022

The Southwark Plan 2022 was adopted on 23 February 2022. The plan provides strategic policies, development management policies, area visions and site allocations which set out the strategy for managing growth and development across the borough from 2019 to 2036. The relevant policies are:

- P13 Design of places
- P14 Design quality
- P18 Efficient use of land
- P35 Town and local centres
- P48 Hot food takeaways
- P53 Cycling
- P54 Car parking
- P56 Protection of amenity
- P57 Open space
- P60 Biodiversity
- P61 Trees
- P65 Improving air quality
- P66 Reducing noise pollution and enhancing soundscapes
- P68 Reducing flood risk

Emerging planning policy

The following emerging SPDs are undergoing consultation in summer 2024 and are due to be adopted in May 2025:

- Affordable Housing SPD (updated)
- Climate and Environment SPD
- Householder SPD

Relevant planning history

No relevant planning history

Consultation undertaken

Site notice date: 03/07/2024

Press notice date: 04/07/2024

Case officer site visit date: 15.05.2024

Neighbour consultation letters sent:

Internal services consulted

formal consultation and response to Pol

LBS Urban Forester

LBS Design & Conservation Team [Surgery]

LBS Environmental Protection

LBS Transport Policy

LBS Highways Development & Management

LBS Ecology

Statutory and non-statutory organisations

Neighbour and local groups consulted:

Re-consultation:

Consultation responses received**Internal services**

formal consultation and response to Pol
LBS Urban Forester
LBS Design & Conservation Team [Surgery]
LBS Environmental Protection
LBS Transport Policy
LBS Highways Development & Management
LBS Ecology

Statutory and non-statutory organisations**Neighbour and local groups consulted:**

55 Nightingale Road 55 London
291 rye lane Peckham SE15 4UA
277 rye lane New Addington London
48 Choumert Road London SE15 4AX
291 rye lane Peckham SE15 4UA
21 wivenhoe close London Se153QJ
33 London Se25 4bn
26A Peckham Rye Peckham SE15 4JR
26 galata square peckham se15 3pl
London Se15 3pl
Se15 3nn3 15 hugonuet square London
Se15 3nn
36 brimstone court Peckham rye London
8 hazel cloae Peckham London
Flat 2 Bramley Court Scylla Road
London
Flat4 emblem court Friern road London
15 Huguenot sq London
295 Crystal Palace LONDON Se229jl
Flat 11 russell court heaton road
Peckham Se15 3nw
Flat 54 co-operation house 253 rye lane
London