

<b>1.4</b>	<b>Classification</b>	<b>Decision Level</b>	<b>Date</b>
	OPEN	DELEGATED	19/05/09
<b>From</b>		<b>Title of Report</b>	
HEAD OF DEVELOPMENT MANAGEMENT		DEVELOPMENT MANAGEMENT	
<b>Proposal:</b> (08-AP-0356)		<b>Address</b>	
Continued use of ground floor as shop (Use class A1 - retail).		21 NORTH CROSS ROAD, LONDON, SE22 9ET	
		<b>Ward</b> East Dulwich	
<b>Application Start Date</b> 01/04/2009		<b>Application Expiry Date</b> 27/05/2009	

## PURPOSE

- 1 To consider the above application, which is before the Community Council for determination because it is contrary to policies 1.8 and 4.6 of the Southwark Plan 2007.

## RECOMMENDATION

- 2 Grant, subject to conditions.

## BACKGROUND

### Site location and description

- 3 21 North Cross Road is a mid-terrace property within what was previously a parade of retail units, with ancillary residential above. Over the last few years several properties within the parade have been converted into residential or other non-retail uses (including the premises to the east of the application site). The premises to the west of the site is currently used as an Islamic Centre and has a large two storey rear extension which occupies the entire site. The break down of uses is as follows:
- 4
  - 11 North Cross Road - A1
  - 13 " - A1
  - 15 " - C3
  - 17 " - Unclear, possibly C3
  - 19 " - C3
  - 21 " - A1 (application site)
  - 23 " - D1
  - 25 " - C3
  - 27-31 " - A2
  - 33 " - A1
- 5 The area is residential in character, with houses on Fellbrigg Road and Ulverscroft Road, as well as those on North Cross Road, surrounding the application site. Nos.2 and 4 Ulverscroft Road bound the application site to the east, and the southern site boundary is shared with No.1 Fellbrigg Road. To the west is an access way (running along the rear of Nos.21-31 North Cross Road), providing shared access to the rear

of these properties. This access way runs along the full flank boundary of No.1 Fellbrigg Road.

- 6 The site is currently in use as a grocers/butchers shop at ground floor level with a flat above, accessed via a separate entrance from North Cross Road. The site forms part of the urban density zone and an air quality management area.

### **Details of proposal**

Full planning permission is sought for continued use of the ground floor of the premises as a shop (Use Class A1).

### **Planning history**

- 7 07-AP-2620 - Rear single-storey extension to provide additional storage for retail unit to front. Planning permission was REFUSED in January 2008 for the following reason:

*1. Notwithstanding access to the site not being made available, from the plans submitted it is considered that the proposal would have a detrimental impact on the amenity of neighbouring occupiers by way of loss of daylight/sunlight, potential loss of outlook and an increase sense of enclosure. The proposal is therefore contrary to Policy 3.2 'Protection of Amenity' of the Southwark Plan UDP 2007 [July].*

*2. The proposed extension would cover almost the entire rear yard of No.21 North Cross Road and be used to facilitate the unauthorised retail use. For these reasons the proposal would be prejudicial to the future conversion of the property back to its permitted residential use. As such, the proposal is contrary to Policies 3.2 'Protection of Amenity', 3.10 'Efficient Use of Land', 4.2 'Quality of Residential Accommodation' and 4.6 'Loss of Residential Accommodation' of the Southwark Plan UDP 2007 [July].*

- 8 06-AP-0005 - erection of a single storey rear extension to number 21 together with the creation of an internal link with number 23, to provide additional floorspace for use as a place of worship in connection with the existing hall/place of worship (Class D1) at 23 North Cross Road. Planning permission was REFUSED in September 2006 for the following reasons:

- 1. The potential intensification of the use of premises at 21 and 23 North Cross Road as a place of worship, facilitated by the additional floorspace proposed, would result in a loss of amenity to local residents, by reason of the potential increase in noise and disturbance which is likely to be generated by increased numbers of people arriving at and leaving the building as well as activities within the premises. This would be contrary to Policies 2.2 'Provision of New Community Facilities' and 3.2 'Protection of Amenity' of the Southwark Plan 2006 [Modifications Version] and Policies E.3.1 'Protection of Amenity', C.1.1 'Premises for Community Facilities' and C.3.2 'New Religious Buildings' of the Southwark UDP (1995).*
- 2. In the absence of any evidence to the contrary (due to discrepancies on the submitted plans), the proposed extension may result in loss of amenity to the occupiers of neighbouring properties, by reason of potential loss of outlook, loss of daylight/sunlight, and increased sense of enclosure. As such, the proposal is contrary to Policies 2.2 'Provision of New Community Facilities' and 3.2 'Protection of Amenity' of the Southwark Plan 2006 [Modifications Version] and Policies E.3.1 'Protection of Amenity', C.1.1 'Premises for Community Facilities' and C.3.2 'New Religious Buildings' of the Southwark UDP (1995).*

3. *The proposed extension would cover the entire rear yard of No.21 North Cross Road and be used for purposes which would be unrelated to the use of No.21. For these reasons the proposal would be prejudicial to the future development of No.21. As such, the proposal is contrary to Policies 2.2 'Provision of New Community Facilities', 3.2 'Protection of Amenity', 3.10 'Efficient Use of Land' and 4.2 'Quality of Residential Accommodation' of the Southwark Plan 2006 [Modifications Version] and Policies E.3.1 'Protection of Amenity', C.1.1 'Premises for Community Facilities', C.3.2 'New Religious Buildings' and H.3.4 'Standards for Conversions' of the Southwark UDP (1995).*

- 9 03-AP-1911 - conversion of shop and upper parts to a 3 bedroom house, alterations to ground floor front elevation and installation of new door and window at rear ground level. Planning permission was GRANTED in December 2003.

### **Planning history of adjoining sites**

#### 23 North Cross Road

- 10 9901254 - a variation of condition to allow for longer opening hours (to between sunset and sunrise on any day of the year). Planning permission was REFUSED in October 2000 owing to concerns regarding disturbance to neighbouring occupiers due to noise from worshippers arriving and leaving the building, including traffic noise and general activity, particularly at unsociable hours of the morning.
- 11 An enforcement notice was served on 23/01/1998, to secure the removal of the external staircase and transparent enclosure.
- 12 9601016 - continued use of the building for teaching, meeting and praying. Planning permission was GRANTED in December 1996.
- 13 9600661 -change of use of the building for the purposes of teaching, meeting and praying and retention of the enclosure of the rear yard and external staircase. Planning permission was REFUSED in June 1996 owing to concerns regarding the enclosure of the rear yard and staircase.

### **FACTORS FOR CONSIDERATION**

#### **Main Issues**

- 14 The main issues in this case are:
- a] the principle of the development in terms of land use and conformity with strategic policies;
  - b] amenity;
  - c] transport.

#### **Planning Policy**

- 15 Southwark Plan 2007 [July]

1.8 - Location of developments for retail and other town centre uses  
3.2 - Protection of amenity  
3.7- Waste reduction

4.6 - Loss of residential accommodation

5.2 - Transport impacts

16 Planning Policy Guidance [PPG] and Planning Policy Statements [PPS]

PPS6: Planning for Town Centres (March 2005).

17 **Consultations**

Site notice date: 30/04/09

Press notice date: N/A.

Neighbour consultation letters sent: 29/04/09

Case officer site visit date: 12/05/09

18 Internal consultees

Transport Group  
Waste Management

Statutory and non-statutory consultees

N/A.

19 Neighbour consultees

Notification letters have been sent to properties on North Cross Road, Ulverscroft Road and Fellbrigg Road.

Re-consultation

N/A.

20 **Consultation replies**

21 Internal consultees

Transport Group

Servicing will continue as existing. However, it is requested that an informative be added to the decision notice, making the Applicant aware that any servicing which takes place on street, is subject to local restrictions.

Transport DC have no objections to this application, provided the above issues are addressed.

Waste Management

There are not known to be any waste related problems at this site so as this application is for continued use of the ground floor for A1 use, no objections are raised.

Statutory and non-statutory consultees

N/A.

22 Neighbour consultees

One representation has been received objecting to the proposal on the following grounds:

1. The use of the premises for retail purposes is having an adverse impact upon 2 Ulverscroft Road and will continue to do so if planning permission is granted;
2. The proposals for this site are linked to 23 North Cross Road which is in use as an Islamic centre as both properties are owned by the East Dulwich Islamic Centre;
3. The current retail use of the site is in breach of planning laws and number 21 is in essence a residential property in a residential part of the road;
4. The Council has failed to act following a number of enforcement complaints regarding the unauthorised use as a shop;
5. Granting planning permission would set an undesirable precedent;
6. It is doubtful the premises is profitable and it appears that it is being used as a facility to serve the East Dulwich Islamic Centre;
7. The premises was used for residential purposes when acquired by the East Dulwich Islamic Centre and it is considered that the trustees of the centre are using or seeking to use the premises as an extension of the place of worship next door;
8. Odour and waste from the existing retail use;
9. This application should be considered in the context of the previous refusals for the site;
10. The proposal represents an overdevelopment of a site which is inadequate to accommodate the needs of the East Dulwich Islamic Centre, and a larger site with more room to expand should be sought;
11. Lack of community integration;
12. The proposal would change what is a back garden to a back yard to a shop which would result in the following:

- loss of outlook
- creation of an eyesore;
- if further development were allowed this would result in loss of daylight and sunlight, an increased sense of enclosure, loss of security, loss of wildlife and biodiversity.

13. If planning permission is granted, the ground floor of the premises could not be used as a residence without the grant of further planning permission;
14. increased demand for parking;
15. traffic congestion;
16. increased pollution;
17. the proposal is contrary to the Council's Spatial Strategy which seeks to increase housing in the Borough;
18. the proposal is contrary to policies in the Southwark Plan (SP10, 11, 15);
19. if planning permission is granted it should be subject to conditions which preserve the rear garden as a garden and prevent losses of amenity to the neighbouring residents.

#### Re-consultation

N/A.

## 23 **PLANNING CONSIDERATIONS**

### **Principle of development**

- 24 Policy 1.8 of the Southwark Plan seeks to guide retail and other town centre uses to town and local centre locations. It states that outside these locations, retail, leisure, entertainment and other town and local centre uses will only be permitted subject to certain criteria, namely demonstration of need, the carrying out of a sequential test to

establish that there are no suitable sites in town, local and edge of centre locations, no harm to the vitality and viability of town and local centres and accessibility by public transport.

- 25 No information has been submitted to demonstrate how the proposal would comply with policy 1.8. However, when the current occupier purchased the building in 2006 it was already being used as a shop on the ground floor with a flat above, and has been used as such ever since consequently no sequential test has been carried out.
- 26 In December 2003 planning permission was granted for conversion of the shop and upper parts to a 3 bedroom house, alterations to the ground floor front elevation and installation of new door and window at rear ground level (reference:03-AP-1911). The officer's report for this application states that the ground floor was designated as a shop but the planning agent advised that it had been used as residential for approximately 50 years. Council tax records support this to a degree, as the property has been rated solely as residential since 1993 when Council tax was first introduced. It is noted however, that the physical works of removing the shopfront have not been carried out.
- 27 In 2005 the Council received an enquiry regarding use of the ground floor as a halal grocery shop and it was advised at the time that planning permission would be required for this change as it appeared that the property had been in use as a dwelling. In September 2006 an enforcement case was opened regarding the unauthorised use of the ground floor as a shop, but no action was taken (reference: 06-EN-0482).
- 28 The Council did not consider it expedient to take enforcement action in September 2006 and if this application is refused, the Council would be obliged to take action. Although the proposal is contrary to policy 1.8, the site forms part of an informal parade of shops (albeit containing 3 residential properties) therefore the retail use is consistent with the adjoining properties. The retail use appears to have been in place since at least September 2006 and has not caused any harm to the Lordship Lane district town centre which is functioning well; protected shopping frontage 35 is located at the western end of North Cross Road and is functioning very well, with 70% of the units in A1 use and no vacancies. As such, in spite of the lack of a sequential test, it cannot be demonstrated that the proposal is having an adverse impact on the adjacent town centre or protected shopping frontage.
- 29 Policy 4.6 of the Southwark Plan states that development will not be permitted where it results in a net loss of residential floorspace, except where:
  - i) the environment is unsuitable for housing or the existing standard of accommodation is unsatisfactory; or
  - ii) the residential accommodation is on a site which is designated for a different use in preference to housing; or
  - iii) the replacement of the existing residential floorspace would otherwise contravene one or more of the criteria i to vi in policy 3.11 Efficient Use of Land and exceeds the current densities in Appendix 2.
- 30 The use of the ground floor for retail purposes has resulted in the loss of 62.2 sqm of residential floorspace since at least 2006. As stated, it was not considered expedient to take enforcement action then, and is not considered expedient to do so now given the limited floorspace involved and the largely retail nature of the parade.
- 31 In spite of the proposal being contrary to policies 1.8 and 4.6 of the Southwark Plan, for the reasons set out above, no objections are raised in principle.

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

- 32 Policy 3.2 of the Southwark Plan seeks to ensure an adequate standard of amenity for existing and future occupiers.
- 33 Concerns have been raised by a neighbouring resident that the current proposal is intrinsically linked with the East Dulwich Islamic Centre at number 23 (place of worship), as both properties are within the same ownership. Concerns are raised that the retail use subject to this application is not actually a retail use but part of the Islamic centre, and that future applications to extend the centre would be harmful to the amenity of neighbouring occupiers. There are also concerns regarding use of the rear garden for storage and that what is essentially a rear garden would become a back yard to a shop.

The application before Members relates solely to the use of the ground floor of the premises for retail purposes. It may well be that applications are submitted in the future for expansion of the place of worship, and these would be assessed on their own merits, and the impacts upon neighbouring residents would be fully considered.

The ground floor retail use has existed since at least 2006 and does not appear to have resulted in any significant loss of amenity to neighbouring residents. There is an overgrown yard at the rear of the building which contains a dilapidated garage / store.

The yard is not currently used for storage and the plans do not indicate that it would be. However, in order to safeguard the amenities of 2 and 4 Ulverscroft Road and 1 Fellbrigg Road from adverse impacts in terms of odour and loss of visual amenity, a condition preventing the rear garden from being used for storage is recommended, to ensure compliance with policy 3.2. It is unclear where refuse associated with the shop is stored, therefore a further condition requiring details to be submitted for approval is recommended, to ensure compliance with policy 3.7 'Waste reduction'.

### **Traffic issues**

- 34 Policy 5.2 of the Southwark Plan seeks to ensure that developments would not result in any adverse highway conditions.
- 35 The limited size of the retail unit is such that it is likely to have a very limited catchment, with most people travelling to the site on foot. It is not considered that the continued use of the ground floor for retail purposes would result in any adverse highway conditions.

### **Other matters**

- 36 There are no other matters arising from the proposal.

### **Conclusion**

- 37 The application is for a retail use outside a town or local centre and involves the loss of residential floorspace, contrary to policies 1.8 and 4.6 of the Southwark Plan. However, given the location of the site within an informal parade of shops, because the ground floor has been in retail use since at least 2006 without harming the vitality and viability of the adjacent town centre and protected shopping frontage and owing to the limited loss of residential floorspace, it would not be expedient for the Council to pursue enforcement action, particularly as no action was taken in September 2006. The use has not resulted in any loss of amenity or adverse highway conditions. Therefore, on balance, it is recommended that conditional planning permission be

granted.

## 38 COMMUNITY IMPACT STATEMENT

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.

### **SUSTAINABLE DEVELOPMENT IMPLICATIONS**

There are no sustainable development implications arising from this proposal.

### **HUMAN RIGHTS**

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.

The rights potentially engaged by this application, including a 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.

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