

<b>Committee:</b> Development	<b>Date:</b> 4 <sup>th</sup> March 2010	<b>Classification:</b> Unrestricted	<b>Agenda Item Number:</b>
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<b>Report of:</b> Director of Development and Renewal	<b>Title:</b> Town Planning Application
<b>Case Officer:</b> Ila Robertson	<b>Ref No:</b> PA/09/02084
	<b>Ward:</b> Bow East

## 1. APPLICATION DETAILS

<b>Location:</b>	137 Tredegar Road, London, E3 2EU
<b>Existing Use:</b>	
<b>Proposal:</b>	Change of use of retail shop (Use Class A1) to restaurant (Use Class A3) and installation of fume extraction system.
<b>Drawing Nos/Documents:</b>	Site Plan, II, III, IV
<b>Applicant:</b>	Mrs Amanda Hallam
<b>Ownership:</b>	Owned by Applicant
<b>Historic Building:</b>	n/a
<b>Conservation Area:</b>	Roman Road Market

## 2. SUMMARY OF MATERIAL PLANNING CONSIDERATIONS

2.1 The local planning authority has considered the particular circumstances of the case against the Council's approved planning policies contained in the Tower Hamlets Unitary Development Plan 1998, the Council's Interim Planning Guidance 2007, associated supplementary planning guidance, the London Plan and Government Planning Policy Guidance and has found that:

1. The proposed change of use is likely to result in an unacceptable increase in noise and disturbance to residential occupiers through an increase in activity, particularly in the evening. As such, the proposal is contrary to Policies DEV2, DEV50, S7 and HSG15 in the Unitary Development Plan 1998 and Policies DEV1, DEV10 and RT5 of the Interim Planning Guidance (2007): Core Strategy and Development Control which seek to protect the amenity of nearby residential occupiers.

2. The proposed extraction flue is an unsympathetic addition to the building that will fail to preserve or enhance the character of the Roman Road Market Conservation Area. As such, the proposal fails to meet the requirements of policy DEV1 in the UDP, policies DEV2 and CON1 in the Interim Planning Guidance which seek to ensure that development is appropriate in the locality.

3. It has not been demonstrated that the proposed extraction system can adequately neutralise the cooking odour from the proposed restaurant and that the use of the system would not result in an unacceptable level of noise to the adjoining residential properties. The proposal would therefore fail to comply with Policies DEV2, DEV50, S7 and HSG15 in the Unitary Development Plan 1998 and Policies DEV1, DEV10 and RT5 of the Interim Planning Guidance (2007): Core Strategy and Development Control which seek to protect the amenity of nearby residential occupiers.

4. No means of storage and collection of refuse generated by the proposed A3 use have

been provided to prevent an environmental nuisance. As such, the proposal is contrary to policy DEV55 of the Tower Hamlets Unitary Development Plan (1998) which requires that developments which are likely to generate significant quantities of waste include adequate arrangements for its collection and storage.

### **3. RECOMMENDATION**

- 3.1 That the Committee resolve to REFUSE planning permission for the reasons above.

### **4. PROPOSAL AND LOCATION DETAILS**

#### **Proposal**

- 4.1 The application proposal is to change the use of the ground floor unit from a retail shop (Use Class A1) to a restaurant (Use Class A3) and the installation of an extraction flue located at the rear of the building.
- 4.2 The proposed ground floor layout comprises cooking, serving and seating area. The layout shown on the submitted plans appears to show a serving counter which is often associated with a takeaway function. Whilst a limited takeaway service may be permissible if it is ancillary to the restaurant function, the principal use being applied for is Class A3 and not a Class A5 takeaway.
- 4.3 The galvanised steel extraction flue is to be located on the rear western flank elevation and projects 0.9 m above the existing roofline.
- 4.4 Whilst reference is made in the supporting documentation to a new shop front, no details of this have been provided. As such, it is not being considered as part of this application.

#### **Site and Surroundings**

- 4.5 The site is located on the north side of Tredegar Road, on the corner Tredegar Road and Hewison Street. The proposal relates to the ground floor of two storey end of terrace building. The unit was previously a shop though it is currently vacant. The flat above the application site has a separate access from Hewison Street.
- 4.6 There are adjoining residential properties to the north and west of the site and the surrounding area is largely residential in nature.

#### **Planning History**

- 4.7 The following planning decisions are relevant to the application:
- 4.8 PA/06/1798 Change of use from Class A1 (Shop) to Class A3 (Restaurant) – refused on 6<sup>th</sup> February 2007 for the following reasons:

*1. The proposed use is likely to result in an unacceptable level noise and disturbance to adjoining residential properties and would therefore conflict with policies DEV2, HSG15, S5 and S7 in the Unitary Development Plan 1998 and Policy DEV1 in the Local Development Framework Submission Document 2006 which seek to protect residential amenity.*

*2. The noise levels generated by the proposed plant and equipment are*

too high. Noise levels generated by all plant and equipment should be 10dBA below the lowest background noise levels. Furthermore no/insufficient information has been provided regarding the:

- a) details of the terminus of the duct;
- b) details of the make up or supply;
- c) the proposed mechanical ventilation of the proposed dining areas to the premises or the proposed basement storeroom;
- d) the proposed mechanical ventilation of the WC accommodation;
- e) the location of the extract fan, attenuator(s) and filtration system including the size of the ductwork and anti-vibration mountings and flexible isolator units to the extractor fan.

*The proposal therefore fails to comply with Environmental Health requirements and would result in an unacceptable level of noise to the adjoining residential properties. The proposal would therefore conflict with Policy DEV2 of the Unitary Development Plan (UDP) 1998 and Policy DEV1 in the Local Development Framework Submission Document 2006 which requires that development proposals should protect the amenity of occupiers.*

- 4.9 PA/07/1112 Change of use from retail (Use Class A1) to restaurant and takeaway (Use Class A3 and Use Class A5). Installation of extraction system – refused on 8<sup>th</sup> June 2007 for the following reason:

*1. The proposed A3/A5 use would lead to intensification of the use of the site and would therefore adversely impact upon and affect the amenity of nearby Tredgar Road residents, by reason of some associated noise, increase in pedestrian activity and movement, contrary to Unitary Development Plan (UDP) policies ST6, DEV1, DEV2, DEV50 and HSG15.*

2. The proposed use is likely to result in an unacceptable level noise and disturbance to adjoining residential properties and would therefore conflict with policies DEV2, HSG15, S5 and S7 in the Unitary Development Plan 1998 and Policy DEV1 in the Local Development Framework Submission Document 2006 which seek to protect residential amenity.

A subsequent appeal was dismissed by the Inspectorate on 10<sup>th</sup> April 2008.

## 5. POLICY FRAMEWORK

- 5.1 For details of the status of relevant policies see the front sheet for “Planning Applications for Determination” agenda items. The following policies are relevant to the application:

### 5.4 Spatial Development Strategy for Greater London (London Plan) (2008)

4A.20 Reducing noise and enhancing soundscapes

### 5.2 Unitary Development Plan 1998 (as saved September 2007)

Policies:	DEV1	Design Requirements
	DEV2	Amenity
	HSG15	Development Affecting Residential Amenity
	DEV50	Noise

DEV55	Development and Waste Disposal
S5	Other Shopping Parades and Isolated Uses
S7	Special Uses

**5.3 Interim Planning Guidance for the purposes of Development Control**

Policies:	DEV1	Amenity
	DEV2	Design Requirements
	DEV4	Safety and Security
	DEV10	Disturbance from Noise Pollution
	DEV15	Waste Storage
	DEV16	Walking and Cycling Routes and Facilities
	DEV19	Parking for Motor Vehicles
	RT2	Secondary Shopping Frontages
	RT5	Evening and Night-Time Economy

**5.5 Community Plan** The following Community Plan objectives relate to the application:

- A better place for living safely
- A better place for living well
- A better place for creating and sharing prosperity
- A better place for learning, achievement and leisure
- A better place for excellent public services

**6. CONSULTATION RESPONSE**

6.1 The views of the Directorate of Development & Renewal are expressed in the MATERIAL PLANNING CONSIDERATIONS section below.

6.2 The following were consulted regarding the application:

**London Fire and Emergency Planning Authority (Statutory Consultee)**

6.3 No planning issues raised

**LBTH Environmental Health**

6.4 Details of the extraction system are inadequate. An acousticians report is required to demonstrate that the extraction system will function effectively and not cause noise nuisance. In terms of odour, further information is required to demonstrate that the system is appropriate for the proposed use.

*(OFFICER COMMENT: This is addressed in the Amenity Section of the report. It is not considered that this matter can be dealt with by condition as it may require changes to the external appearance of the system to satisfy these LBTH Environmental Health requirements)*

**LBTH Highways**

6.5 - Concerns regarding the servicing of the proposed restaurant - the applicant has not outlined the frequency of deliveries, size of delivery vehicle to be used or the location from which the proposed A3 restaurant is to be serviced.

- Cycle parking facilities have not been supplied for the proposed A3 restaurant and should be provided in line with LBTH policy whereby either a minimum of 2 spaces are

provided or 1 space per 20 staff for staff use and 1 per 20 seats for visitors use are provided (whichever is greater).

*(OFFICER COMMENT: This is addressed in the Highways Section of the report)*

## **7. LOCAL REPRESENTATION**

7.1 A total of 149 neighbouring properties within the area shown on the map appended to this report were notified about the application and invited to comment. The application has also been publicised in East End Life and on site. The number of representations received from neighbours and local groups in response to notification and publicity of the application were as follows:

No of individual responses:	77	Objecting:	40	Supporting:	37
No of petitions received:		0 objecting containing	0 signatories		
		0 supporting containing	0 signatories		

7.2 The following issues were raised in representations that are material to the determination of the application, and they are addressed in the next section of this report:

### *In objection*

- Noise and disturbance from increased footfall;
- Littering & anti-social behaviour;
- Flue – damage character and appearance of the area;
- Smell from extraction system;
- Could be used for other uses in the A3 Class;
- Accessible alternatives in reasonable walking distance;
- Unit vacant though no evidence that it has been marketed;
- Congestion & parking issues;
- Out of character with residential area;
- Previously a takeaway on Mostyn Grove not relevant to this application;
- Not in accordance with healthy eating objectives.

### *In support*

- Inadequate provision of restaurants in the local area within close walking distance for residents and businesses.

7.3 The following issues were raised in representations, but they are not material to the determination of the application:

- Impact on house prices

## **8. MATERIAL PLANNING CONSIDERATIONS**

8.1 The main planning issues raised by the application that the committee must consider are:

1. Land Use
2. Design
3. Amenity
4. Highways
5. Other

### **Land Use**

- 8.2 The application proposal is to change the use of the existing unit from a shop (Class A1 Use) to a restaurant (Class A3 Use).
- 8.3 Policy S5 in the UDP relates to applications for the change of use of small shops or 'corner shops' from retail use to other uses. The policy states that such changes of use may be considered favourably where it has been demonstrated that the property has been actively marketed for retail use; there is adequate provision in the locality to meet local needs; and, where the proposed use would not be detrimental to the amenity of residents.
- 8.4 The application property was most recently occupied by a convenience store however is currently vacant. The applicant has not submitted any evidence to demonstrate that the unit has been actively marketed during this period of vacancy. However, the intention of the policy is to ensure that there is an adequate provision of shops within a reasonable walking distance to serve the local area. As such, given that there are retail shops within walking distance located on Roman Road and Tredegar Road, it is considered that in principle the loss of the retail use can be accepted.
- 8.5 However, in terms of the acceptability of a restaurant. This is not considered appropriate for amenity reasons which will be discussed in the amenity section of the report.
- 8.6 It should be noted that whilst the application details specify the use as being a 'Fish and Chip Restaurant', if permission is granted for a Class A3 Use, the premises could lawfully be used for any use within this class. This includes restaurants and cafes for the sale of food and drink for consumption on the premises.

### **Design**

- 8.7 Policy DEV1 in the UDP and DEV2 in the IPG requires development to take into account, and be sensitive to the character of the surrounding area. Policy CON2 in the IPG states that proposals in Conservation Areas will only be supported where they preserve or enhance the character of the Conservation Area.
- 8.8 The external changes proposed to the building relate only to the extraction flue. It is proposed to install the flue on the rear western flank elevation with the ductwork cast from galvanised steel.
- 8.9 Whilst the supporting documents submitted with the application refer to a replacement shop front, no drawings have been provided with the application therefore this has not been considered as part of this application.
- 8.10 Due to the location of the flue to the rear of the property, it will be visible from surrounding residential properties. The upper section will project above the roof line and this portion will also be visible from the street. It is considered that the proposed flue is an unsympathetic addition that would fail to preserve or enhance the character and appearance of the Roman Road Market Conservation Area.
- 8.11 As such, the proposal fails to comply with the requirements of Policy DEV1 in the UDP, Policies DEV2 and CON1 in the IPG which seek to ensure that development is appropriate in the locality.

### **Amenity**

- 8.12 Policy S7 in the UDP requires that consideration be given to the amenity of nearby residents when assessing proposals for restaurants. The application site is located in a

predominately residential area. Therefore policy HSG15 of the UDP is also relevant. This policy states that non-residential development will normally only be allowed where it is likely to have no adverse effects upon residential amenity.

- 8.13 Other relevant policies are DEV2 and DEV50 in the UDP and Policies DEV1 and DEV10 in the IPG which seek to protect the amenity of residents.
- 8.14 The introduction of a restaurant would inevitably lead to activity being generated both during the day and into the evening. This is a predominantly residential area where an increased level of activity, in particular in the evening, is not expected. It is considered that the noise and disturbance from customers travelling to and from the restaurant, the likelihood of groups congregating outside and noise from the manoeuvring of vehicles would be detrimental to the amenity of the adjoining residents.
- 8.15 In the appeal decision for application PA/07/1112 for the change of use to a restaurant/take away, the Inspectorate states that the noise of *'car doors banging and manoeuvring vehicles would disturb those living nearby as would the conversations of customers visiting on foot. I conclude, therefore, that the proposal would be seriously detrimental to the living conditions of nearby residents.'*
- 8.16 It is accepted that a use incorporating a takeaway is likely to result in a greater intensity of activity than a restaurant use. However, it is considered that the level of disturbance from the proposed use would still be at an unacceptable level. The nature of the use encourages groups of people rather than individuals to visit the premises. Furthermore the limited seating area is likely to lead to a high turn-around of customers. It is also noted that a limited takeaway service may be permissible if it is ancillary to the restaurant function.
- 8.17 Details of the specification for the extraction flue have been submitted with the application. However, Council's Environmental Health officers do not consider that the specification details are sufficient to demonstrate that the extraction will adequately neutralise the cooking odours. It has also not been demonstrated that the use of the extraction system will not give rise to noise issues.
- 8.18 For the reasons detailed above, it is considered that the proposal would be contrary to Policies DEV2, DEV50, S7 and HSG15 in the UDP and Policies DEV1, DEV10 and RT5 of the IPG which seek to protect the amenity of nearby residential occupiers.

### **Highways**

- 8.19 Saved policy T16 of the UDP states that new development proposals will be assessed in relation to the ability of the existing and proposed transport system to accommodate any additional traffic that is likely to be generated.
- 8.20 Policies CP41 and DEV19 of the IPG seek to ensure the integration of new development with transport, recognising that this is fundamental to achieving more sustainable patterns of travel in Tower Hamlets.
- 8.21 The subject site is located on a corner site where parking is restricted during the daytime. The site is located in a sustainable location with good access to public transport. During the daytime, it is likely that the limited parking provision will encourage use of more sustainable transport methods. In the evenings, when the restrictions are reduced, some customers are likely to drive to the restaurant. Given the limited availability of parking in the locality and size of the restaurant, it is not considered that the impact would be significant enough to warrant refusal of the scheme.

- 8.22 In terms of services, it is recommended that a service management plan (required by condition) would be an appropriate way of controlling the servicing of the site. This is an existing shop which currently has deliveries etc. As such, it is considered that it is reasonable to condition a management plan to ensure that deliveries are coordinated and carried out at appropriate times. As such, a reason for refusal on this basis can not be substantiated.
- 8.23 Cycle parking facilities have not been supplied for the proposed A3 restaurant. Cycle parking could be provided on the forecourt of the site (required by condition) if planning permission were granted.

### **Other Planning Issues**

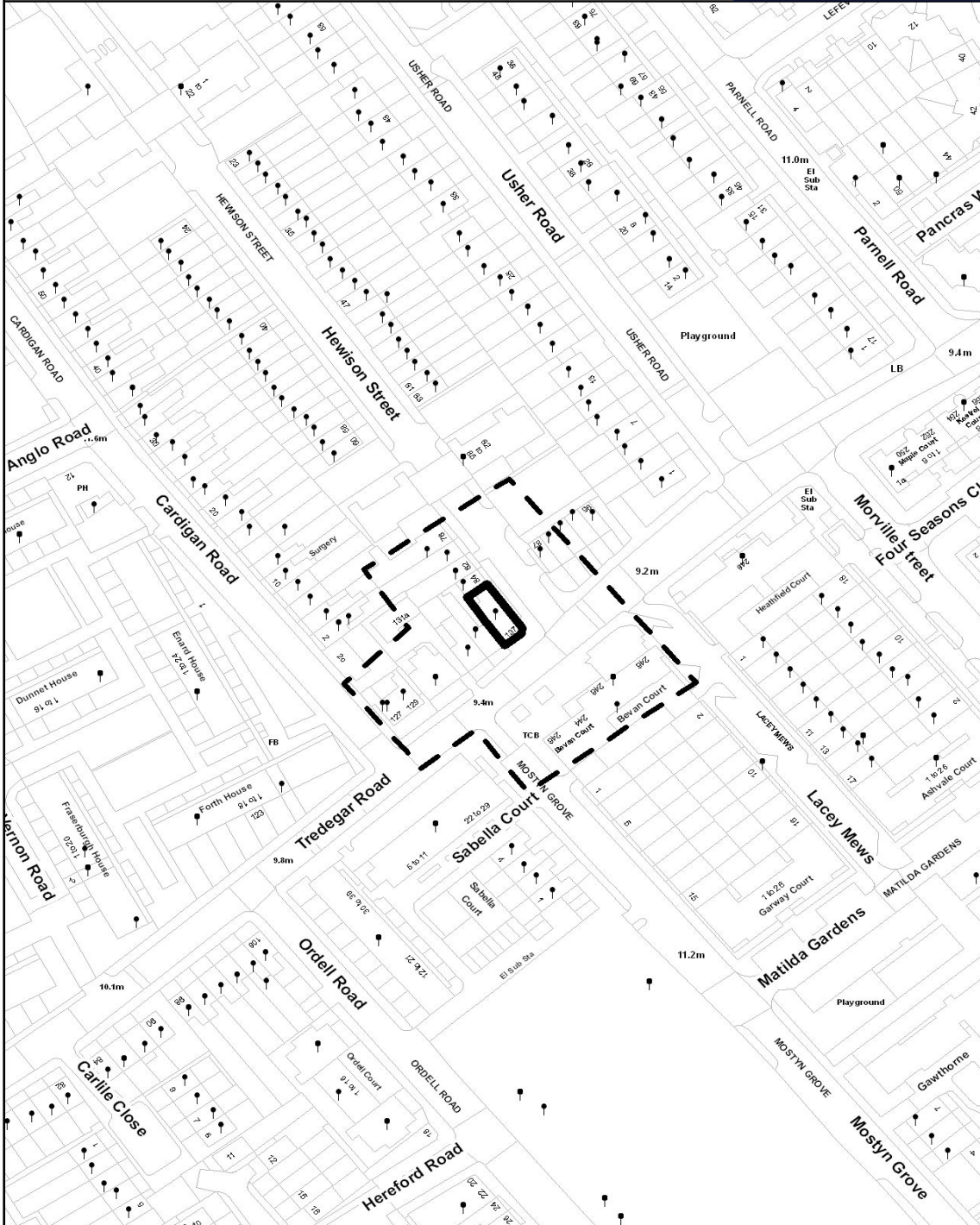
- 8.24 No means of storage and collection of refuse generated by the proposed A3 use has been provided to prevent an environmental nuisance. As such, the proposal is contrary to policy DEV55 of the Tower Hamlets Unitary Development Plan (1998) which requires that developments which are likely to generate significant quantities of waste include adequate arrangements for its collection and storage.
- 8.25 With regard to the Council's healthy eating objectives, it should be noted that there are no adopted planning policies at the national, regional or local level which require consideration to be given to healthy eating. As such, limited weight has been given to this matter and it is not considered that refusal on this basis could be sustained.

### **Conclusions**

- 8.26 All other relevant policies and considerations have been taken into account. Planning permission should not be granted for the reasons set out in the SUMMARY OF MATERIAL PLANNING CONSIDERATIONS and the details of the decision are set out in the RECOMMENDATION at the beginning of this report.



# Planning Application Site Map



Planning Application Site Boundary

Statutory Listed Buildings



Consultation Area



Land Parcel Address



1:1,500

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