

Committee: Development	Date: 9 th October 2013	Classification: Unrestricted	Agenda Item Number: 6.5
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Report of: Director of Development and Renewal	Title: Town Planning Application
Case Officer: Adrian Walker	Ref No: PA/13/01566
	Ward: Whitechapel

1. APPLICATION DETAILS

Location:	87 New Road, London, E1 1HH
Existing Use:	87 New Road – Restaurant (Use Class A3)
Proposal:	Variation of Condition 3 of Planning Permission dated 06/02/2009 Ref: PA/08/02662 to extend the hours of operation from between 10.00 am to 10.00 pm to between 11.30 am to 11.30 pm on any day.
Drawing Nos/Documents:	Planning Statement,
Applicant:	Needoo Grill
Ownership:	Mushtaq Ali Naveed Khan Khalid Bashir
Historic Building:	NA
Conservation Area:	Myrdle Street

2. EXECUTIVE SUMMARY

- 2.1 This application seeks permission under section 73 of the Town and Country Planning Act 1990 to vary Condition 3 attached to planning permission PA/08/02662 to extending the hours of operation of the restaurant at 87 New Road (use Class A3) from 10pm to 11.30pm on any day.
- 2.2 The main issue for Members to consider is whether the proposal would lead to an increase in late-night noise, disturbance and general activity in the locality and whether this would have an unacceptable impact on the amenities of local residents.
- 2.3 Officers consider that the hours of operation requested in this application are compatible with the mixed use character of New Road. It is not considered that extending the hours of operation from 10pm to 11.30pm would result in a significant amount of noise and disturbance from patrons coming and going and the proposal would therefore not have a detrimental impact on the amenity of nearby residents.

3. RECOMMENDATION

- 3.1 That the Committee resolve to **APPROVE** planning permission for the reason below;
- 3.2 The proposed variation of condition 3 of planning permission ref: PA/08/02662 to extend the hours of operation of the restaurant is not considered to have a significant impact on the amenity of residential occupiers in the immediate vicinity and is therefore considered acceptable and in accordance to policies SP01(2ci), SP03(2b) and SP10(4) of the Council's adopted Core Strategy (2010) and Policy DM25 of the Council's adopted Managing Development Document (2013). These policies require

development to protect, and where possible improve, the amenity of surrounding existing and future building occupants, as well as the amenity of the surrounding public realm.

4. PROPOSAL AND LOCATION DETAILS

Proposal

4.1 In February 2009 planning permission was granted for the change of use of the of ground and lower ground floors from retail (Use Class A1) to café/restaurant (Use Class A3) at 87 New Road (PA/08/02662).

4.2 A condition was placed on the permission restricting the time at which the restaurant could operate. The condition states:-

The use hereby approved shall only be carried out between 10:00 Hours and 22:00 Hours, Monday to Sunday including bank holidays.

Reason: In order to safeguard the amenity of adjacent residents and the area generally and to ensure compliance with policies HSG15 and DEV50 of the UDP (1998), together with policy DEV10 of the Interim Planning Guidance (2007).

4.3 This planning application seeks to vary this condition to allow the restaurant to operate between the hours of 11.30am and 11.30pm.

4.4 The amended condition would therefore state:-

The use hereby approved shall only be carried out between 11:30 Hours and 23:30 Hours, Monday to Sunday including bank holidays.

Site and Surroundings

4.5 The application site comprises the ground floor and basement of a three-storey terraced building.

4.6 The site is located on New Road. New Road has a mixed use character, where commercial uses predominate on the ground floor, with residential uses typically located above. To the South the Road becomes more residential. New Road is a relatively busy route linking Whitechapel High Street to Commercial Road. On the opposite side of the road from the site there are the larger buildings associated with the Royal London Hospital.

4.7 There are residential properties to the rear along Romford Road.

4.8 The site is located within the City Fringe Activity Area (which is part of the Tower Hamlets Activity Area 'THAA'). The site is outside the Town Centre boundary of the Whitechapel District Centre. The boundary of this centre lies approximately 50m to the north, past Stepney Way/Fieldgate Street.

4.9 The site is located within the Myrdle Street Conservation Area.

4.10 The site is not Listed.

Planning History

4.11 85 and 87 New Road

- **PA/13/01607** Change of use at 85 New Road from shop (A1 use class) to restaurant (A3 use class) with rear extension to provide waiting area, toilets (including one disabled) and seating for the existing restaurant at 87 New Road. This application was heard at September's Development Committee where Members were minded to grant planning permission. This application is currently stands as a deferred item for this committee.
- **PA/13/00823** Change of use at 85 New Road from shop (A1 use class) to restaurant (A3 use class) with rear extension to provide waiting area, toilets (including one disabled) and seating for the existing restaurant at 87 New Road (No new cooking and extraction facilities required now or in the future). - **Refused** 11/06/2013
- **PA/13/01566**– 87 New Road – Variation of Condition 3 of Planning Permission dated 06/02/2009 Ref: PA/08/02662 to extend the hours of operation from between 10.00 am to 10.00 pm to between 11.30 am to 11.30 pm on any day. Pending decision
- **PA/09/02482** – 87 New Road – Demolition of raised parapet wall around roof of rear extension at upper ground floor level and reconstruction in brick to match with the existing building (Revised proposal following refusal). **Permitted** 29/01/2010
- **PA/09/01266**– 87 New Road – Retrospective consent for the retention of a 1100mm extension to the parapet on the existing rear extension. **Refused** 09/10/2009
- **PA/08/02662** – 87 New Road – Change of use of ground and lower ground floors from retail (Use Class A1) to café/restaurant (Use Class A3), operating hours from 10am to 10pm Monday to Sunday, including bank holidays, and alterations to shop front. **Permitted** 06/02/2009

Enforcement

- 4.12 **ENF/13/00161** – 87 New Road London E1 1HH - Trading outside of conditioned hours and carrying out works without planning permission. On-going investigation awaiting the outcome of this application.

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:

Government Planning Policy Guidance/Statements:

National Planning Policy Framework 2012

Spatial Development Strategy for Greater London (London Plan):

- The proposal fails to have any provision for the management of waste

(Officer comment: This comment is not applicable for this application which is only concerned with the hours of operation)

- The applicant has already started work on the development

(Officer comment: This comment is not applicable for this application which is only concerned with the hours of operation)

- The proposal will adversely impact upon on-street parking provision and traffic congestion.

(Officer comment: It is not considered that extending the hours of operation of the restaurant would have a noticeable impact upon on-street parking provision and traffic congestion.)

- The proposal will result in increased noise disturbance to neighbours

(Officer comment: This will be discussed in the material planning consideration section of the report)

- The proposal will result in increased levels of air pollution and litter

(Officer comment: This will be discussed in the material planning consideration section of the report)

7.3 The following issues were raised in representations supporting the proposal

- Need for a the business to operate longer hours to meet the demands of the customers
- To be in line with other restaurants in the area

(Officer comment: This will be discussed in the material planning consideration section of the report)

8. MATERIAL PLANNING CONSIDERATIONS

The S73 Process

8.1 Section 73 of the Town and Country Planning Act 1990 allows an application to be made to develop land without compliance with conditions previously attached, or to grant planning permission subject to conditions that differ from those on the previous planning permission.

8.2 S73 states that on receipt of such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted. The effect of granting an application under S73 is a new planning permission.

8.3 Condition 3 attached to planning permission PA/08/02662 states:-

The use hereby approved shall only be carried out between 10:00 Hours and 22:00 Hours, Monday to Sunday including bank holidays.

Reason: In order to safeguard the amenity of adjacent residents and the area generally and to ensure compliance with policies HSG15 and DEV50 of the UDP (1998), together with policy DEV10 of the Interim Planning Guidance (2007).

- 8.4 The condition was imposed in 2009 to protect those living in the area from excessive noise and disturbance arising from the use of the restaurant. Therefore the main issue for Members to consider is whether the extension of the operating hours are now likely to cause excessive noise and disturbance.

Amenity

- 8.5 Policy SP10 of the Adopted Core Strategy (2010) and policy DM25 of the Managing Development Document (2013) seek to protect, and where possible improve, the amenity of surrounding existing and future residents and building occupants, as well as the amenity of the surrounding public realm.
- 8.6 The potential amenity impacts of this proposed extension relate to late-night noise, disturbance and general activity in the locality associated with the comings and goings from people using the restaurant beyond the time currently permitted.
- 8.7 It is acknowledged that this part of New Road comprises a mix of commercial and residential uses where a degree of additional noise and disturbance can be expected. However, there is still the need to control the hours of operation of commercial properties to acceptable times in order to safeguard and preserve residential amenity in line with the Council's adopted policies.
- 8.8 The petition that was received in objection to the application was both in relation to this application and the planning application for the change of use of the neighbouring premises at 85 New Road in order to extend the existing restaurant (PA/13/01607). The objections that have been raised that are relevant to this application are the increase of air pollution, litter and noise and disturbance.
- 8.9 There are a number of existing restaurants close to the application site that have permission to operate to similar times as those requested in this application. Restaurants at 83-89 Fieldgate Street (PA/09/02660) and 97 New Road (PA01/00750) have both been granted planning permission to operate until midnight.
- 8.10 The hours of operation requested in this application are considered to be compatible with the mixed use character of New Road. It is also noted that the Council's Environmental Health Section have not objected to the application, nor advised that there is a history of noise complaints in relation to the property. It is not considered that extending the closing time from 10pm to 11.30pm would create a significant amount of noise and disturbance from patrons coming and going. Officers consider that the proposal would therefore not have a materially detrimental impact to the amenity of nearby residents.

9. Other Planning Issues

- 9.1 The hours of operation permitted by this variation of condition should be reflected on any permission given to the change of use at 85 New Road

10. Human Rights Considerations

- 10.1 In determining this application the Council is required to have regard to the provisions of the Human Rights Act 1998. In the determination of a planning application the following are particularly highlighted to Members:-
- 10.2 Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights. "Convention" here means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant, including:-
- Entitlement to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in the determination of a person's civil and political rights (Convention Article 6). This includes property rights and can include opportunities to be heard in the consultation process;
 - Rights to respect for private and family life and home. Such rights may be restricted if the infringement is legitimate and fair and proportionate in the public interest (Convention Article 8); and
- Peaceful enjoyment of possessions (including property). This does not impair the right to enforce such laws as the State deems necessary to control the use of property in accordance with the general interest (First Protocol, Article 1). The European Court has recognised that *"regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole"*.
- 10.4 This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as local planning authority.
- 10.5 Members need to satisfy themselves that the measures which are proposed to be taken to minimise, inter alia, the adverse effects of noise, construction and general disturbance are acceptable and that any potential interference with Article 8 rights will be legitimate and justified.
- 10.6 Both public and private interests are to be taken into account in the exercise of the Council's planning authority's powers and duties. Any interference with a Convention right must be necessary and proportionate.
- 10.7 Members must, therefore, carefully consider the balance to be struck between individual rights and the wider public interest.
- 10.8 As set out above, it is necessary, having regard to the Human Rights Act 1998, to take into account any interference with private property rights protected by the European Convention on Human Rights and ensure that the interference is proportionate and in the public interest.
- 10.9 In this context, the balance to be struck between individual rights and the wider public interest has been carefully considered. Officers consider that any interference with Convention rights is justified.

11.0 Equalities Act Considerations

11.1 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. Officers have taken this into account in the assessment of the application and the Committee must be mindful of this duty inter alia when determining all planning applications. In particular the Committee must pay due regard to the need to:

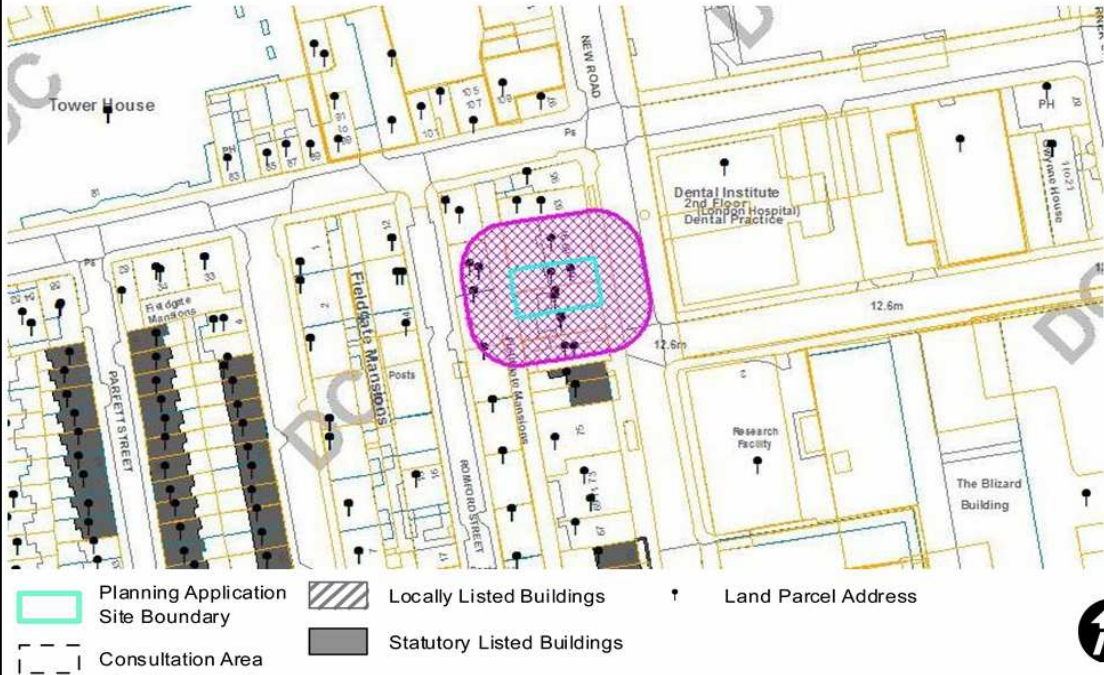
1. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
2. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
3. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

12.0 Conclusions

12.1 All other relevant policies and considerations have been taken into account. Planning permission should 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.

13.0 Site Map

Planning Application Site Map
 Planning Application Reference: PA/13/01607



This Site Map displays the Planning Application Site Boundary and the neighbouring Occupiers / Owners who were consulted as part of the Planning Application process. © Crown copyright and database rights 2013 Ordnance Survey, London Borough of Tower Hamlets 100019288