

<b>Committee:</b> Development	<b>Date:</b> 12 <sup>th</sup> March 2014	<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> Adrian Walker	<b>Ref No:</b> PA/13/02318
	<b>Ward:</b> Whitechapel

## 1. APPLICATION DETAILS

<b>Location:</b>	93 New Road, London, E1 1HH
<b>Existing Use:</b>	Retail (Use Class A1)
<b>Proposal:</b>	Proposed change of use from a retail shop A1 into a restaurant A3.
<b>Drawing Nos/Documents:</b>	KOM/177-32, KOM/177-31 Location Plan, Design and Access Statement, Impact Statement
<b>Applicant:</b>	Mr T. Parvez
<b>Ownership:</b>	Mr T. Parvez
<b>Historic Building:</b>	No
<b>Conservation Area:</b>	Myrdle Street

## 2. SUMMARY OF MATERIAL PLANNING CONSIDERATIONS

- 2.1 Given the mixed use nature of the area and the proximity of the unit to other shops and the Whitechapel District Centre it is considered that the loss of the A1 retail unit is acceptable, as there is a more than adequate provision of local shops in the area.
- 2.2 The proposed restaurant would only cater for 24 customers at one time and therefore it is considered that this number of patrons is not going to have a significant impact on the noise and disturbance of people coming and going to the detriment of the local residents.
- 2.3 The proposed restaurant would not result in an over-concentration of this type of use and is in accordance with objectives of Core Strategy policy SP01, which seeks to promote a vibrant mix of uses in the designated Activity Areas.
- 2.4 The proposed flue is discretely placed at the rear of the premises and will not be readily visible from the streetscene and would not harm to the character and appearance of the Myrdle Street Conservation Area.

## 3. RECOMMENDATION

3.1 That the Committee resolve to **GRANT** planning permission

3.2 Conditions on Planning Permission

- (1) Time Limit (Three Years)
- (2) Development to be built in accordance with approved plans
- (4) Hours of operation limited to 8am-11pm Monday to Sunday
- (5) Plant noise to be 10dB(A) below lowest background noise
- (6) Provision and retention of bin store

## 4. PROPOSAL AND LOCATION DETAILS

### Proposal

- 4.1 The proposal seeks to change the use of the existing shop (Use Class A1) at 93 New Road to a restaurant (Use Class A3).
- 4.2 The main land use issues relate to
  1. The loss of the retail unit,
  2. The concentration of restaurants in the area, and
  3. The provision of new restaurant floorspace.

### Site and Surroundings

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

The site is located on New Road. New Road has a mixed use character, with commercial uses predominant 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.

There are residential properties to the rear along Romford Road.

The site is located within the City Fringe Activity Area (which is part of the Tower Hamlets Activity Area). 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.

The site is located within the boundary of the Whitechapel Vision SPD

The site is located within the Myrdle Street Conservation Area.

The site is not Listed.

### Planning History

#### 93 New Road London E1 1HH

- 4.4 **PA/10/02692** Change of use of ground floor and basement from Use Class A1 retail to Use Class A3 restaurant, together with installation of kitchen extract duct and flue to the rear elevation of the building. **Refused** 08/08/2011

### Reasons:

1. The proposed Use Class A3 restaurant would result in an over concentration of similar uses within the local area, and that the cumulative impact and levels of disturbance associated with these uses would have a detrimental impact on local residents. The proposal is therefore contrary to the requirements of Policies SP01(2c) of the adopted Core Strategy (2010), saved Policy S7 of the Unitary Development Plan (1998) and Policy RT5 of the Interim Planning Guidance (2007). These policies seek to prevent the over-concentration of

evening and night-time economy uses where they would have a detrimental impact on residential amenity.

2. The proposed kitchen extract duct riser would neither preserve nor enhance the character and appearance of the Myrdle Street Conservation Area, which is contrary to the requirements of Policy SP10(2) of the Council's adopted Core Strategy (2010), saved Policy DEV27 of the Unitary Development Plan (1998), Policy CON2 of the Interim Planning Guidance (2007), Policy 7.8 of The London Plan, and government guidance set out in Planning Policy Statement 5: Planning for the Historic Environment (2010). These policies and government guidance seek to ensure that development proposals either preserve or enhance the character and appearance of the Borough's Conservation Areas.
  3. Insufficient information has been provided to demonstrate that the proposed kitchen extract system would adequately protect the amenity of neighbouring residents from undue odour nuisance. As such, the proposal is contrary to the requirements of Policy SP10(4) of the adopted Core Strategy (2010), saved Policies DEV2 and S7 of the Unitary Development Plan (1998) and Policy DEV1 of the Interim Planning Guidance (2007). These policies require development to protect, and where possible improve, the amenity of surrounding existing and future residents and building occupants, as well as protect the amenity of the surrounding public realm.
  4. Insufficient information has been provided to demonstrate that the proposed Use Class A3 restaurant includes adequate facilities for the storage and collection of waste and recyclables. The proposal is therefore contrary to the requirements of saved Policy DEV55 of the Unitary Development Plan (1998) and Policy DEV15 of the Interim Planning Guidance (2007). These policies require planning applications to be considered in light of the adequacy and ease of access to the development for waste collection and the adequacy of storage space for waste given the frequency of waste collections.
- 4.5 **PA/10/00957** Retention of use as a retail shop (Use Class A1) at ground floor and basement. **Permitted** 19/08/2010

### **Neighbouring Sites**

#### **85 New Road**

- 4.6 **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. **Permitted** 11/10/2013
- 4.7 **PA/13/01566** 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. **Permitted** 11/10/2013
- 4.8 **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

**Reason:**

The proposed restaurant would add to the proliferation this use along New Road. This will result in an over-concentration of this type of use and detract from the objectives of Core Strategy policy SP01, which seeks to promote a vibrant mix of uses in the designated Tower Hamlets Activity Area. The over-concentration of restaurant uses in the area will lead to adverse impacts on residential occupiers of the area in terms of increased noise & disturbance from patrons coming and going to the restaurants. The proposal is therefore contrary to the objectives of policies SP01(2c) of the adopted Core Strategy (2010) and policy DM1(4) of the adopted Managing Development (2013).

### **83 New Road**

- 4.9 **PA/12/00605** Change of use from (A1) retail to mixed use coffee shop and restaurant (A1/A3) with no primary hot food cooking facilities, no associated extract flue system and seating area limited to ground floor only; including retention of No.4 AC units and alterations to shop front including new access door. **Refused** 23/11/2012

#### **Reasons:**

1. The restaurant element of the proposed use will have an adverse impact on the amenity of residents of the area by virtue of increased noise and disturbance associated with patrons coming and going. The proposal is therefore contrary to the objectives of policy SP01(2c) of the adopted Core Strategy (2010), policy S7 of the adopted Unitary Development plan 1998 and policy DM25(e) of the Managing Development DPD (Submission Version May 2012).
2. The restaurant element of the proposed use will result in the proliferation of such uses outside of a designated Town Centre, which is contrary to the objectives of policy DM1(4) of the Managing Development Development Plan Document (Submission Version 2012), which seeks to direct such uses into designated centres. The proposal will lead to the over-concentration of such uses in the area and as such is contrary to the objectives of policies SP01(2c) of the adopted Core Strategy (2010), policy S7 of the adopted Unitary Development plan 1998 and policy DM1(4) of the Managing Development DPD (Submission Version May 2012).

### **89-91 New Road**

4.10

- PA/10/02327** Change of use of ground floor from retail shop (Use Class A1) to restaurant (Use Class A3) with extract system. **Refused** 04/01/2011

#### **Reasons:**

1. The proposed Class A3 restaurant would result in an over concentration of similar uses within the local area, and that the cumulative impact and levels of disturbance associated with these uses would have a detrimental impact on local residents. The site is not located in a designated town centre. The proposal is therefore contrary to the requirements of Policies SP01(2c), SP03(2b) and SP10 of the adopted Core Strategy (2010) and Policy RT5 of the Interim Planning Guidance (2007), which seek to prevent the over-concentration of evening and night-time economy uses where they would have a detrimental impact on residential amenity.
2. The proposed extraction flue would have a detrimental impact on the appearance of the rear elevation of the building, and would detract from the

character and appearance of the Myrdle Street Conservation Area contrary to the requirements of Policy SP10(4) of the Core Strategy (2010), saved Policies DEV1 and DEV9 of the Unitary Development Plan (1998) and Policy DEV2 of the Interim Planning Guidance (2007).

3. Insufficient information has been provided to adequately demonstrate that the proposed kitchen extract system would protect neighbouring residential amenity with regard to noise disturbance. As such, the proposal is contrary to the requirements of Policy SP03(2b) and Policy SP10(4) of the adopted Core Strategy (2010), saved Policies DEV2, DEV50 and S7 of the Unitary Development Plan (1998) and Policies DEV1 and DEV10 of the Interim Planning Guidance (2007). These policies require development proposals to protect the amenity of surrounding existing and future residents and building occupants, as well as protect the amenity of the surrounding public realm.

### **83 New Road**

- 4.11 **PA/10/01878** Change of use ground floor and basement from Class A1 retail / wholesale to Class A3 restaurant with ancillary hot food takeaway. **Refused** 23/12/2010

#### **Reasons:**

1. The proposed Class A3 restaurant would result in an over concentration of similar uses within the local area, and that the cumulative impact and levels of disturbance associated with these uses would have a detrimental impact on local residents. The site is not located in a designated town centre. The proposal is therefore contrary to the requirements of Policies SP01(2c), SP03(2b) and SP10 of the adopted Core Strategy (2010) and Policy RT5 of the Interim Planning Guidance (2007), which seek to prevent the over-concentration of evening and night-time economy uses where they would have a detrimental impact on residential amenity.
2. Insufficient information has been provided for the Council to be able to determine whether the proposed duct riser and flue are acceptable in design terms, as required by Policy SP10(4) of the Core Strategy (2010), saved Policies DEV1 and DEV9 of the Unitary Development Plan (1998) and Policy DEV2 of the Interim Planning Guidance (2007). Furthermore, insufficient information has been provided for the Council to be able to determine whether the proposed duct riser would protect or enhance the character and appearance of the Myrdle Street Conservation Area, as required by Policy SP10(2) of the adopted Core Strategy (2010), saved Policy DEV27 of the Unitary Development Plan (1998), Policy CON2 of the Interim Planning Guidance (2007), Policy 4B.12 of the London Plan (2008) and Planning Policy Statement 5: Planning for the Historic Environment (2010).
3. Insufficient information has been provided to adequately demonstrate that the proposed kitchen extract system would protect neighbouring residential amenity with regard to noise disturbance. As such, the proposal is contrary to the requirements of Policy SP03(2b) and Policy SP10(4) of the adopted Core Strategy (2010), saved Policies DEV2, DEV50 and S7 of the Unitary Development Plan (1998) and Policies DEV1 and DEV10 of the Interim Planning Guidance (2007). These policies require development proposals to protect the amenity of surrounding existing and future residents and building occupants, as well as protect the amenity of the surrounding public realm.

4. The applicant has failed to demonstrate that the proposal includes adequate provision for the storage and collection of waste refuse and recyclables, which is contrary to the requirements of saved Policy DEV55 of the Unitary Development Plan (1998) and Policy DEV15 of the Interim Planning Guidance (2007). These policies require planning applications to be considered in light of the adequacy and ease of access to the development for waste collection and the adequacy of storage space for waste given the frequency of waste collections.

**Officer Comment:**

As noted above, several previous applications for change of use to Use Class A3 have been dealt with by the Council. The majority of these have been refused (PA/13/00823, PA/12/00605, PA/10/02692, PA/10/02327, PA/10/01878). However, The most recent permission (PA/13/01607) has been approved. This is dealt with in further detail under Land Use in part 8 of this report.

## 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):**

4.7 - Retail and Town Centre Development

7.15 - Reducing Noise and Enhancing Soundscapes

**Core Strategy Development Plan Document 2025 (adopted September 2010):**

SP01 - Refocusing on Town Centres

SP03 - Creating Healthy and Liveable Neighbourhoods

SP10 - Creating Distinct and Durable Places

**Managing Development Document (Adopted 2013):**

DM1 - Development within Town Centre Hierarchy

DM2 - Local shops

DM15 - Local job creation and investment

DM24 - Place Sensitive Design

DM25 - Amenity

**Supplementary Planning Guidance:**

Myrdle Street Conservation Area Appraisal

Whitechapel Vision SPD 2013

## 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:

6.3 **LBTH Transportation & Highways**

Transportation and Highways have no objection to this proposal.

**LBTH Waste Policy and Development**

Waste storage arrangement is not presented in the plan. Please provide the detail plan.

*Officer comment: The applicant has provided an amended drawing which shows a dedicated area for waste storage which is considered acceptable.*

**LBTH Environmental Health Officer**

All the other data has been supplied and as long as the filtration system complies with BS4142 and the extractor system complies with your criteria, and odour/smoke emissions will be minimised and hence reduce likelihood of any odour complaints from the Pollution team I accept the planning application PA/13/02318.

## 7. LOCAL REPRESENTATION

- 7.1 A total of 34 neighbouring properties within the area shown on the map appended to this report were notified about the application and invited to comment. A site notice was also displayed and the application was advertised in East End Life. 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: 4            Objecting: 4            Supporting: 0  
No of petitions received:    1 objecting containing 21 signatories

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

- The proposal will result in increased levels of air pollution, litter and infestation
- The proposal will result in increased noise disturbance to neighbours
- The proposal will result in an over-concentration of restaurants in the area
- The proposal will adversely impact upon on-street parking provision

## 8. MATERIAL PLANNING CONSIDERATIONS

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

1. The loss of the retail unit
2. The concentration of restaurants in the area
3. The provision of new restaurant floorspace.
4. The suitability of the rear flue
5. Highways Impacts

### Loss of Retail Unit.

#### Policy Considerations

- 8.2 Consideration has been given to a number of policies which guide development involving the loss of A1 retail uses in certain locations. Policy SP01 (2) of the Core Strategy (2010) seeks to ensure the scale and type of uses within town centres are consistent with the town centre hierarchy and SP02 (Part 5) promotes areas outside and at the edge of town centres as places which support and assist in the creation of sustainable communities. Part (a) of Policy SP02(5) promotes mixed use development at the edge of town centres.
- 8.3 The site is within the THAA, but outside the Whitechapel Centre Boundary. Policy DM2 of the Managing Development Document (Adopted 2013) seeks to ensure the existing level of local shop provision is maintained and complements the town centre network. In summary, this Policy also goes on to explain how the loss of A1 will only be supported where there is a shop within 300m walking distance, the shop has been vacant for more than 12 months, and there is no viable prospect of retail use.
- 8.4 It is noted that the retail unit is not currently vacant however the site is in close proximity to other retail shops and that shops within the Whitechapel District Centre are only 50 - 100m away.



- 8.5 On balance given the mixed use nature of the area and the proximity of the unit to other shops and the Whitechapel District Centre it considered that the loss of the A1 retail unit is acceptable, as there is a more than adequate provision of local shops in the area.

#### Introduction of A3 use

- 8.6 Policy SP01.2c of the Core Strategy (2010) seeks to ensure evening and night time economy uses, including restaurants, are not over-concentrated in areas where they will have a detrimental impact on local people.
- 8.7 Policy DM1 (2) of the Managing Development Document (Adopted 2013) explains that within the Tower Hamlets Activity Areas (THAA), a mix of uses will be supported. Policy DM1 (4) states that 'restaurants, public houses and hot food takeaways (class A3, A4 and A5) will be directed to the CAZ, THAA and town centres, provided that: a) They do not result in an over concentration of such use.
- 8.8 It is noted that part b of this policy, which states that '*In all town centres there are at least two non-A3, A4 and A5 units between every new A3, A4 and A5 unit*' is not relevant here as the site is outside of the Town Centre Boundary.
- 8.9 Consideration has also been given to Policy SP03 of the Core Strategy which supports healthy and active lifestyles, through seeking to reduce the over concentration of any use type that distracts from the ability to adopt healthy lifestyles
- 8.10 Whitechapel Vision SPD promotes a mix of cafes, restaurants, bars and leisure activities to support the night-time economy but no specific guidance on land use or concentration.
- 8.11 The key issue here is whether the proposal leads to an over-concentration of A3 uses in the vicinity.

#### Overconcentration in the area.

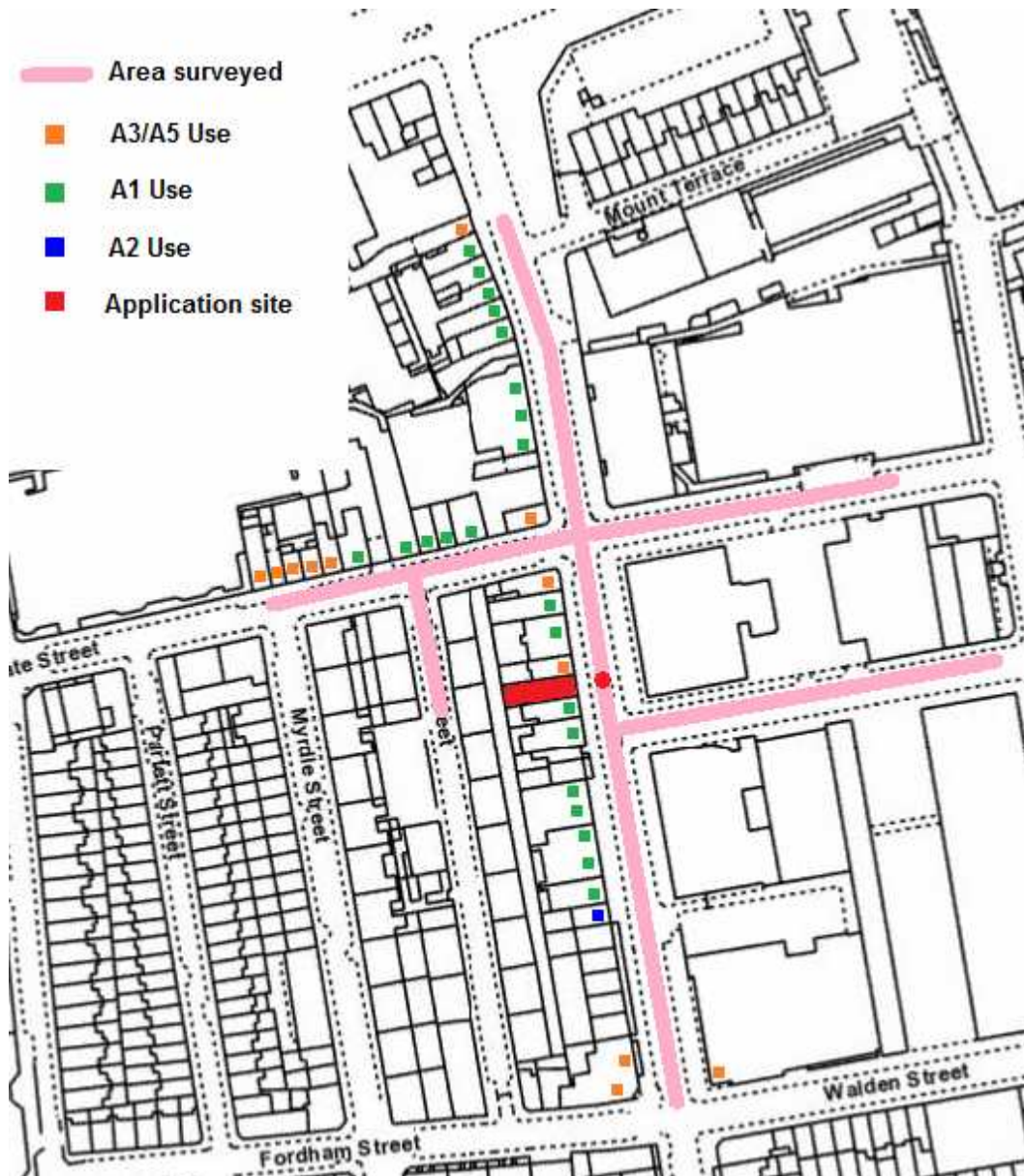
- 8.12 There are other restaurants already trading within the vicinity of the site. These include 131 New Road, 119 New Road, 97 New Road, 95 New Road, 93 New Road, 87 New Road (Needoo), and 49-53 (Sahara Grille) New Road. There is also a large restaurant on Fieldgate Street (Tayabbs).
- 8.13 The Authority is concerned about the proliferation of restaurant uses along New Road, and the adverse impact that this proliferation will have on the amenity of the residential occupiers of the areas - in terms of potential for increased noise and disturbance from patrons coming and going. There is also concern that a mixed balance of uses should be retained in the area. Four letters of objection and one petition has been received from a number of residents close to the premises who have raised concerns about the existing levels of air pollution, litter, and noise disturbance and the increase to this that a new restaurant will create.

#### Recent applications in the area

- 8.14 As can be seen in the planning history section of the report, there has been a number of similar applications in the vicinity of the site over the last few years. The Authority's concern about the proliferation of restaurant uses in this area had resulted in the majority of the applications being refused. However, more recently a planning application at 85 New Road was granted planning permission on 11<sup>th</sup> October 2013

(ref. PA/ PA/13/01607). At the time of this application the officer carried out a survey of the nearby area to assess the concentration of uses within the area.

8.15 This survey looked at the 36 commercial units in a walking distance of approximately 100m along the road from 85 New Road (the application site) as shown on the plan below;



The results of the officer's survey were as follows;

A1 (Retail including sandwich/coffee shops)	23	64%
A2 (Financial and professional)	1	3%
A3/A5 (Restaurants/Takeaways)	12	33%

8.16 This information was presented to Members at committee where it was considered that the results did not show that there was a clear overconcentration in the area especially in the absence of specific guidance as to what might constitute over-concentration.

8.17 This is the first change of use application since the previous approval. Officers do not consider that there has been any substantial change in concentration of uses within the area and therefore in this instance the addition of an A3 unit in this location would be acceptable.

8.18 Given the size of the proposed restaurant it is considered that the number of patrons is not going to have a significant impact on the noise and disturbance of people coming and going to the detriment of the local residents. As a restaurant rather than a takeaway it is considered unlikely to generate litter. There is also no reason why a well-run restaurant should lead to air pollution or infestation.

8.19 On balance it is considered that the proposed restaurant would not result in an over-concentration of this type of use and is in accordance with objectives of Core Strategy policy SP01, which seeks to promote a vibrant mix of uses in the designated Activity Areas. Subject to conditions the restaurant uses is not considered to have adverse impacts on residential occupiers of the area in terms of increased noise & disturbance from patrons coming and going to the restaurants. The proposal is therefore in accordance with the objectives of policies SP01(2c) of the adopted Core Strategy (2010) and policy DM1(4) of the adopted Managing Development Document (2013).

#### Other issues associated with change of use to restaurant.

8.20 The proposal includes a new kitchen and extraction system with a flue. This flue is discreetly placed at the rear of the premises and will not be readily visible from the streetscene. Subject to conditions the proposal would not harm to the character and appearance of the Myrdle Street Conservation Area, in accordance with Policy SP10 (2) of the Council's adopted Core Strategy (2010), Policies DM24 and DM27 of the Managing Development Document (2013) and government guidance set out in Section 12 of the National Planning Policy Framework (2012). These policies and government guidance seek to ensure that development is well designed and that it preserves or enhances the character and appearance of the Borough's Conservation Areas and historic buildings.

#### Transport and Highways

8.21 The proposal would slightly increase delivery and other vehicle trips to and from the site. However, the proposal is located in an established commercial area; therefore this proposal will not have any major impact on the highways. The applicant could use the loading bay located in front of the proposed development for servicing and LBTH Highways and Transport have raised no objection. Objections have been raised by local residents in regards to increased parking pressure, given the relatively small size of the restaurant is not considered that the change of use would result in increased parking pressure on in the local vicinity.

#### Waste

8.22 The proposal did not originally include any provision of waste which LBTH Waste Policy raised as an objection. Revised details were subsequently submitted by the applicant that show an area of storage for waste on the grounds floor level which is considered acceptable. It is therefore considered that the proposal includes adequate facilities for the storage of waste and recyclables, in accordance with Policy DM14 of the Managing Development Document (2013), and Policy 5.17 of the London Plan

(2011). These policies seek to ensure that developments include adequate provisions for the storage of waste and recyclables within the development given the frequency of collections.

## **9.0 Other Planning Issues**

9.1 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.

It is not considered that this application raises any equalities issues.

## **10.0 Conclusions**

10.1 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.

## 11.0 Site Map

