

Committee: Development	Date: 3 August 2016	Classification: Unrestricted
Report of: Corporate Director Development & Renewal		Title: Applications for Planning Permission
Case Officer: Piotr Lanoszka		Ref No: PA/15/01526
		Ward: St Dunstons

1. APPLICATION DETAILS

Location: 216 - 218 Mile End Road, London, E1 4LJ

Existing Use: Retail

Proposal: Application for variation of conditions no. 5 'hours of operation', 8 'use of rear yard' and 10 'use of rear yard and details thereof' of planning permission ST/96/00059 dated 04/02/1998 for: "Conversion and change of use from light industrial, office and storage into ground floor retail shop, first and second floors into 2 x 2 bedroom flats, demolition of rear single storey buildings to form vehicle parking spaces plus ancillary uses to the retail shop, and the retention of existing warehouse, with access for the rear activities from Beaumont Grove, E1."

Variation of condition 5 is to extend the hours of operation of the shop from 8:00 - 20:00 Mondays to Saturdays to 9:00 to 21:00 Mondays to Sundays. Deliveries to take place between 10:00 - 18:00 Mondays to Saturdays. No deliveries would take place on Sundays.

Variation of conditions 8 and 10 is to allow the rear yard to be used as a customer car park. The rear yard would be in use 9:00 - 21:00 Mondays to Saturdays and 10:00 - 16:00 on Sundays.

[Amended proposal: Rear yard to be in use between the hours of 10:00 - 16:00 on Sundays (opening 1 hour later)]

Drawings and documents: Cover letter by Rahims, dated 28/04/2015; Site Location Plan; and Transport Statement by Royal HaskoningDHV, ref 9Y0528, dated January 2015, incorporating drawing ref 9Y0528-P-01 rev P2.

Applicant and owner: Rahim Brothers Ltd

Historic Building: None

Conservation Area: Stepney Green

2. BACKGROUND

- 2.1 An application for variation of conditions relating to the operation of a medium sized retail shop located within the Stepney Green Neighbourhood Centre to allow longer operating hours during the week, as well as Sunday opening and provision of customer car parking at rear was considered by the Development Committee at their meeting on 8th June 2016. The officer recommendation was to grant planning permission with conditions.
- 2.2 The Committee resolved not to accept the officer recommendation to grant permission, resolved that permission should be refused and indicated the following reasons for refusal:
- Adverse highway impacts;
 - Adverse amenity impacts.
- 2.3 This report considers the reasons for refusal in the context of the officer's original assessment of the application and whether these are likely to be sustainable in the event of an appeal.

3. ADDITIONAL INFORMATION

- 3.1 The applicant has amended the proposal with respect of the Sunday opening hours for the rear yard. The yard is now open for customer parking one hours later: between the hours of 10:00 – 16:00.
- 3.2 Following the June Development Committee, the applicant has also submitted a number of documents which are listed below:
- a) An extract from Wikipedia, the free online encyclopaedia for entry 'British Bangladeshi';
 - b) Schedule of the dates of purchase of Louisa Street properties backing onto Rahim's yard;
 - c) St Dunstan's Ward Profile by LBTH Corporate Research Unit (May 2014);
 - d) Schedule comparing prices and product availability between Rahims and Co-op (June 2016);
 - e) 'Development Committee Issues' supporting statement ref CSA22.06.16;
 - f) Schedule showing opening hours of other retail premises in the vicinity;
 - g) Copy of consultation letter sent to neighbours, dated 06/07/2015;
 - h) Copy of consultation letter sent to Louisa Street residents, dated 01/07/2015;
 - i) Stifford entre Stepney Green Fair brochure with Rahims logo among supporters;
 - j) Letter from Old Palace Primary School thanking for contributions towards a fund raising event;
 - k) Specification of a traffic management system with annotated photographs;
 - l) Summary of the proposal, dated 20/07/2016;
 - m) Correspondence with Thames Water regarding sewer repairs on Mile End Road; and
 - n) Letter setting out the case for the proposal, dated 20/07/2016.
- 3.3 The submitted documents will be addressed in the update report along with any further consultation responses received.

4. COMMITTEE REASONS FOR REFUSAL

Amenity

- 4.1 While the majority of retail premises in the vicinity of the site are open until later in the evening and on Sundays, these premises front onto main roads and do not poses substantial rear yards with ancillary warehouses in very close proximity to residential

accommodation. The site's circumstances are unique and while the longer opening hours of the retail unit fronting onto Mile End Road, and Sunday opening, would not cause significant disturbance given the background noise and activity on Mile End Road, the significantly intensified use of the rear yard and the introduction of activity on Sundays have potential to result in noise disturbance to adjoining residents. This disturbance would likely be significantly greater than from the use of the yard for employees' and residents' parking as currently permitted. It is evident from the consultation responses that the current operation of the premises, in breach of condition, has significantly affected the living conditions of adjoining residents.

- 4.2 This disturbance to the amenity of adjoining residents would not necessarily be outweighed by the likely economic benefits of the proposal. Members are entitled to place more weight on safeguarding residential amenity, in particular given the unique characteristics of the application site as a retail premises.
- 4.3 As such, a refusal reason on amenity grounds is considered to be defensible on appeal.

Highways

- 4.4 The rear yard is accessed through a narrow /tunnel from Beaumont Grove. The tunnel's width does not allow vehicles to pass in both directions often leading to vehicles backing up on Beaumont Grove or having to reverse if another vehicle is already in the tunnel. There are also limited visibility splays where the tunnel meets the footway of Beaumont Grove, meaning that vehicles exiting the site have limited visibility of pedestrians.
- 4.5 While the vehicular access through the tunnel is historic with planning permission for servicing, deliveries and resident and employee parking, the introduction of customer parking is likely to result in a significant increase in vehicular movements. Customers are also likely to be less familiar with the particular challenges of accessing the site and might be less aware of the highway safety risks involved. While certain measures such as signs advising that the car park is full, or alerting vehicles and pedestrians to the presence of a car within the tunnel could have some effect in reducing the threat to safety, this is unlikely to be eliminated completely given the lack of adequate sightlines and lack of passing spaces and refuges. Given that a 'car park full' sign would have to be operated manually, questions are also raised about the effectiveness of such an arrangement.
- 4.6 Provision of customer car parking spaces is also not conducive to the policy objective of promoting sustainable transport and it is likely that creating an expectation of availability of customer car parking would lead to a general increase in parking stress in the vicinity. Vehicles waiting for a free parking spot or to access the car park through the tunnel would also impede the smooth flow of traffic given that there would not be a waiting area provided or safeguarded on the adjoining highways. This obstruction can have a particular impact on smooth traffic flow and highway safety given the close proximity of the site to the junction of Beaumont Grove and Mile End Road which forms part of the strategic road network and which carries a significant number of bus routes and a cycle superhighway.
- 4.7 These highway impacts would not necessarily be outweighed by the likely economic benefits of the proposal. Members are entitled to place more weight on safeguarding the safe and efficient operation of the transport network, in particular given the substandard vehicular access to the customer car park.
- 4.8 As such, a refusal reason on highway grounds is considered to be defensible on appeal.

5. IMPLICATIONS OF REFUSING PLANNING PERMISSION

- 5.1 The officer recommendation has been to grant planning permission but it is the Committee's prerogative to disagree with that recommendation if there are clear planning reasons for doing so.
- 5.2 In coming to an alternative view the Committee has to take into account the provisions of the development plan, any other relevant policies and relevant material considerations.
- 5.3 If planning permission is refused, there are a number of routes that the applicant could pursue:
- 5.4 Appeal to the Secretary of State. An appeal would be determined by an independent Inspector appointed by the Secretary of State. Whilst officers have recommended approval, any appeal would be vigorously defended on behalf of the Council.
- 5.5 To pursue an alternative scheme. The applicant could commence pre-application discussions on an amended scheme that seeks to address the reasons for refusal and submit a fresh planning application..

Financial implications - award of costs

- 5.6 In dealing with appeals, all parties, including the Local Planning Authority, are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
- 5.7 Unreasonable behaviour in the context of an application for an award of costs may be either:
 - procedural – relating to the process; or
 - substantive – relating to the issues arising from the merits of the appeal.
- 5.8 An example of the former might be failing to keep to the requirements of an appeal timetable to submit statements of case or other evidence. An example of the latter might be taking a decision which could be described as unreasonable in the context of all of the evidence available to the decision maker. It is this latter aspect that the Committee members in their role as decision makers need to be mindful of.

6. RECOMMENDATION

- 6.1 The officer recommendation to **GRANT** planning permission remains unchanged.
- 6.2 However if members are minded to **REFUSE** planning permission the following reasons are recommended:

Amenity

- (i) The proposed variation of conditions would result in a significant increase in the activity within the rear yard resulting in noise disturbance and unacceptably harming the living conditions and amenity of the adjoining residents. This would be contrary to the principles of the National Planning Policy Framework (2012), policy 7.15 of the London Plan (2011 with subsequent alterations), policy SP03 of the Core Strategy (2010), and policy DM25 of the Managing Development Document (2013).

Highways

- (ii) The proposed variation of conditions would result in a significant intensification in the use of the Beaumont Grove access tunnel resulting in unacceptable highway safety implications, congestion and adverse impact on the smooth flow of traffic on Beaumont Grove & at the junction of Beaumont Grove and Mile End Road. This would be contrary to the general principles of the National Planning Policy Framework (2012), policies 6.3 and 6.13 of the London Plan (2011 with subsequent alterations), policy SP09 of the Core Strategy (2010), and policies DM20 and DM22 of the Managing Development Document (2013).