

PLANNING APPLICATIONS COMMITTEE 16 MARCH 2017

<u>APPLICATION NO.</u>	<u>DATE VALID</u>
16/P3406	18/08/2016
Address/Site	86 The Broadway, Wimbledon, SW19 1QG
Ward	Trinity
Proposal:	Removal of condition 2 (restricting use of part of rear curtilage to staff parking only) attached to application 92/P0654 relating to the change of use of ground floor from shop to restaurant. Removal of condition 2 sought in order to allow use of rear curtilage as an external dining area in association with the existing ground floor A3 restaurant use.
Drawing Nos	Site Location Plan, 238_SHG_W101, Planning Statement, Acoustic Assessment (Amended Feb 2017).
Contact Officer:	Tim Lipscomb (0208 545 3496)

RECOMMENDATION

Grant temporary planning permission for a period of one year subject to planning conditions.

CHECKLIST INFORMATION

- Heads of Agreement: No
- Is a Screening Opinion required: No
- Is an Environmental Statement required: No
- Has an Environmental Statement been submitted: No
- Press notice: No
- Site notice: Yes
- Design Review Panel consulted: No
- Number of neighbours consulted: 84
- External consultations: No
- Controlled Parking Zone: Yes (W3)
- Flood Zone: Flood Zone 1 (Low risk)

- Conservation Area: No
- Listed Building: No
- Protected trees: No
- Public Transport Access Level: 6b

1. **INTRODUCTION**

- 1.1 This application is being brought to the Planning Applications Committee for determination due to the number of objections received. In addition, the application has been brought before the Committee at the request of Councillor Chirico.

2. **SITE AND SURROUNDINGS**

- 2.1 The application site is on the ground floor of a three storey mid-terrace property within a commercial parade on the north side of The Broadway near to the junction with Kings Road and Gladstone Road. It is in use as a restaurant at ground floor level (Use Class A3). The current occupier is 'Chicken Shop and Dirty Burger'. There are toilets serving the restaurant at first floor level. The remainder of the first floor and the second floor accommodates a self-contained flat (No.86a, accessed from the west elevation of the building).
- 2.2 There is a deep single storey rear extension at the rear beyond which is a yard area (a previously unauthorised use as a beer garden ceased in 2007 following enforcement action). The yard has an imitation grass covering and there is a single storey timber building located adjacent to the rear boundary. Two trees are located on the western boundary. The yard is bounded by timber fencing.
- 2.3 The neighbouring buildings on The Broadway are generally comprised of commercial uses at ground floor, with residential flats above. The neighbouring property at no 88 to the east is in use as a restaurant (Use Class A3), currently occupied by Gourmet Burger Kitchen. To the west, no 90 is a charity shop (Use Class A1) with flats above.
- 2.4 The western side boundary of the yard adjoins the rear elevation and rear boundary of Kings House, a three-storey commercial building in use as massage treatment rooms and alternative therapy centre, with a frontage onto Kings Road. The northern rear boundary of the yard and the existing timber outbuilding abuts the side garden boundary of 1, Kings Road, a residential dwelling, with other residential dwellings beyond.
- 2.5 To the eastern boundary of the yard is a parcel of land to the rear of and forming part of No.88 The Broadway. This area is open and laid to hardstanding. Vehicular access can be obtained from the alleyway to the

east. This alleyway has a vehicular access onto The Broadway running between no's 88 and 92.

- 2.6 The alleyway also serves Cobden Mews, a two-storey office building located to the rear of the main Broadway frontage buildings, beyond the yard area belonging to no 88..
- 2.7 There is a continuous side boundary fence between the rear yard at the application site and the adjoining area of hardstanding at no. 88, which is in separate ownership. Hence, there is no vehicular access available to the rear of the application site.
- 2.7 The application site is designated as lying within Wimbledon Major Centre in a Secondary Shopping Frontage in the adopted Merton Sites and Policies Plan July 2014. It is located within a Controlled Parking Zone.

3. **CURRENT PROPOSAL**

- 3.1 The proposal is for the removal of Condition 2 attached to planning permission 92/P0654, granted on 8 December 1992. This planning permission allowed the change of use of the ground floor from shop to restaurant, along with the erection of extensions.
- 3.2 Condition 2 of 92/P0654 states:

'The garage(s) and/or car parking space(s) shown on the approved drawing 0792/4A shall be provided before commencement of the use of the land or building(s) hereby permitted and thereafter shall be kept free from obstruction and shall not be used for purposes other than the parking of vehicles in conjunction with the development hereby permitted.'

Reason for Condition:

To ensure the provision of adequate off-street parking in order to prevent additional parking in surrounding streets which could be detrimental to amenity and prejudicial to highway safety.'

The approved drawing showed two car parking spaces occupying part of the rear yard area.

- 3.3 The application proposes the removal of the condition and use of part of the rear yard area for external dining, in connection with the existing A3 restaurant use. The rear portion of the yard area adjoining the garden of 1, Kings Road would not form part of the dining area.
- 3.4 The applicant has suggested the following conditions:

- The area at the rear of the Property shown on approved Drawing no.238_SHG_101 shall only be used by seated restaurant customers in accordance with the A3 use.
 - The area to the rear of the Property shall not be used after 20.00.
 - No music shall be played in the external area to the rear of the Property.
 - The maximum number of customers permitted in the external area to the rear of the Property shall be no more than 26 at any one time.
 - No cooking is permitted in the external area to the rear of the Property.
 - No bar shall be installed in the external area to the rear of the Property.
 - An acoustic barrier, as shown on Drawing no.238_SHG_101 shall be installed and maintained prior to the development commencing.
- 3.5 In addition the applicant suggests that an Operational Management Plan be employed, which seeks to ensure that the use of the external area is properly maintained and managed in accordance with the above restrictions.
- 3.6 The submitted plan shows a fence with integrated planters would be erected 5.7m from the rear boundary with No.1 Kings Road and along the 2 side boundaries of the proposed eating area. The fence would be 2.5m in height to the rear facing King's Road properties and 1.8m in height to the sides of the outside space. The accompanying planning statement advises that this will be an acoustic timber fence. The acoustic assessment recommends that the acoustic barriers should provide minimum sound reduction index of Rw 20 dB, which equates to a timber barrier formed from solid laths at least 20mm thick, well-sealed and with no gaps between.
- 3.7 The planning statement advises that the existing flooring to the yard area would be made good (although details of materials for the floor covering are not specified in the application). Moveable tables and chairs would be placed in the dining area.
- 3.8 The existing trees on site would be retained.

4. **PLANNING HISTORY**

- 4.1 **92/P0654 - CHANGE OF USE OF GROUND FLOOR FROM SHOP TO RESTAURANT, ERECTION OF SINGLE STOREY REAR EXTENSION INVOLVING DEMOLITION OF EXISTING ADDITION ERECTION OF REAR EXTENSION TO MAISONETTE AT SECOND FLOOR LEVEL AND INSTALLATION OF VENTILATION DUCTING ON SIDE**

ELEVATION. Grant Permission (subject to conditions) 08-12-1992.

- 4.2 94/P0464 - ERECTION OF EXTRACT DUCTING ON REAR ELEVATION OF PROPERTY. Grant Permission subject to Conditions 22-07-1994.
- 4.3 94/P0477 - DISPLAY OF EXTERNALLY ILLUMINATED FASCIA SIGN AND A NON- ILLUMINATED DOUBLED SIDED HANGING SIGN. Grant Advertisement Consent 21-07-1994.
- 4.4 99/P1066 - INSTALLATION OF A NEW SHOPFRONT INCLUDING 'CONCERTINA' WINDOWS AND A CANOPY. Grant Permission subject to Conditions 06-08-1999.
- 4.5 01/P2586 - INSTALLATION OF A NEW SHOPFRONT INCORPORATING A RETRACTABLE AWNING AND SLIDING/FOLDING GLASS DOORS. Grant Permission subject to Conditions 14-01-2002.
- 4.6 02/P0127 - DISPLAY OF AN ILLUMINATED FASCIA SIGN. Grant Advertisement Consent 20-02-2002.
- 4.7 **03/P1484 - CHANGE OF USE OF REAR YARD TO OUTDOOR BAR GRILL, INCLUDING RETENTION OF SHELTER (RETROSPECTIVE PLANNING APPLICATION). Refuse Permission 21-08-2003.**

Reasons for refusal –

- 1) The use of the rear yard as an outdoor bar grill by virtue of its proximity to residential properties represents an inappropriate form of development, detrimental to the amenity of the area, contrary to policies EP.2 and S.16 of the Adopted Unitary Development Plan (April 1996), policies BE.24, PE.3 and S.8 of the Second Deposit Draft Unitary Development Plan (Oct 2000) and Policy BE21 of the Proposed Modifications (June 2003).
 - 2) The use of the rear yard as an outdoor bar grill results in the loss of residential amenity space for the upper floors of the property to the detriment of residential amenity and contrary to policy H.14 of the Adopted Unitary Development Plan (April 1996) and policy HS.1 of the proposed modifications Unitary Development Plan (June 2003).
- 4.8 05/P2550 - ADVERTISEMENT CONSENT FOR DISPLAY OF EXTERNALLY ILLUMINATED PROJECTING SIGN & FACIA SIGN. Grant Advertisement Consent 09-01-2006.
 - 4.9 05/P2734 - INSTALLATION OF RESTAURANT KITCHEN VENTILATION AND EXTRACTION SYSTEM INCLUDING DUCTING. Withdrawn Decision 06-01-2006.

- 4.10 06/P0396 - MODIFICATIONS TO EXISTING RESTAURANT KITCHEN VENTILATION AND EXTRACTION SYSTEM INCLUDING DUCTING. Grant Permission subject to Conditions 16-05-2006.
- 4.11 **Enforcement Notice – 29/08/2007: Breach of planning control – unauthorised change of use of the rear yard of 86 The Broadway as an outdoor seating/bar grill area.**
- 4.12 07/P2379 - ALTERATIONS TO EXISTING RESTAURANT KITCHEN VENTILATION AND EXTRACTION SYSTEM INCLUDING FAN AND DUCTWORK. Grant Permission subject to Conditions 28-11-2012.
- 4.13 13/P0763 - APPLICATION FOR ADVERTISEMENT CONSENT FOR THE DISPLAY OF AN INTERNALLY ILLUMINATED FASCIA SIGN AND PROJECTING BOX SIGN. Withdrawn Decision 20-04-2016.
- 4.14 13/P1773 - APPLICATION FOR ADVERTISEMENT CONSENT FOR THE DISPLAY OF EXTERNALLY ILLUMINATED FASCIA SIGN, 1 x EXTERNALLY ILLUMINATED HANGING SIGN, AND 1 x INTERNALLY ILLUMINATED BRONZE EFFECT MENU CASE. Grant Advertisement Consent 01-08-2013.
- 4.15 **13/P2298 - VARIATION OF CONDITION 2 (PARKING SPACES) ATTACHED TO LBM PLANNING PERMISSION 92/P0654 (01/09/1992) TO ALLOW FOR OUTSIDE CUSTOMER SEATING IN REAR GARDEN. Refused Permission 13-06-2014.**
Reason for refusal:
The variation of Condition 2 of planning permission 92/P0654 dated 01/09/1992 to allow outside customer seating for a temporary trial period of one year, by reason of the proximity of the garden to residential properties in the area would have an unacceptable adverse impact on the living conditions of neighbouring residents, due to increased noise and disturbance and would be contrary to Adopted Merton Unitary Development Plan (October 2003) policies BE15, BE23 and SE8.
- 4.16 16/P1017 - APPLICATION FOR ADVERTISEMENT CONSENT FOR THE DISPLAY OF AN EXTERNALLY ILLUMINATED FASCIA SIGN AND INTERNALLY ILLUMINATED PROJECTING SIGN. Grant Advertisement Consent 27-04-2016.
- 4.17 16/P1018 - ALTERATIONS TO SHOP FRONT. Grant Permission subject to Conditions 27-04-2016.

5. **CONSULTATION**

- 5.1 Standard 21-day site notice procedure and individual letters to 84

neighbouring occupiers. 64 letters of representation has been received from 26 different addresses, objecting on the following grounds:

- Noise, odour, smoke disturbance, excessive rubbish and general nuisances caused by customers.
- Removal of this condition would negate the Enforcement Notice and there would then be no control over the use of the rear yard.
- Do not accept findings of Acoustic Assessment, as it is based on estimations and assumptions and is not robust.
- Suggestion that acoustic assessment is flawed. (numbers of people talking or laughing simultaneously is unrealistic, noise levels and effect of peaks is understated, people will talk louder to overcome the background noise, not all customers would be seated, report has misidentified 4 Kings Road, the area is not large enough for 26 seated diners etc).
- The site is surrounded on three sides and creates an echo effect, which is not taken into account in the Acoustic Assessment.
- The space could be used as a beer garden as there is no condition to ensure customers have to buy food.
- There is a plan to have breakfast with bottomless drinks, meaning that patrons will be inebriated and loud from 10am onwards.
- Acoustic barrier would not be sufficient to block noise, particularly to upper floors windows to neighbouring properties.
- The Acoustic Barrier is already in place and does not alleviate noise.
- Proposal would breach World Health Organisation Noise limits.
- Suggestion that roof be added to the dining area.
- Continuous noise disturbance for 10 hours a day.
- Concerns over successful implementation of management plan – will standing customers be told to be seated by staff? Etc. (Unenforceability of management plan).
- The serving of alcohol will increase noise levels.
- Daytime noise is a concern as well as noise in the evening.
- If permitted, in the future there may be bar and grill use outside also.
- Light pollution.
- Waste management and disposal – 26 additional customers will create additional waste.
- Vermin infestation.
- Impact on local parking/parking shortage.
- The reduction in numbers of customers, by 6, since the previous proposal, would not make any difference to the overall noise disturbance.
- This proposal should be refused for the same reasons as the previous proposal.
- Loud music is already played at the site causing disturbance. If doors are open it would be significantly worse.
- There is no business case for the proposal – there are already sufficient burger restaurants in the area.

- Anti-social behaviour.
- Assertion that the occupiers of No.88 The Broadway have no right to block access and the area could be used for parking.
- Setting of a precedent.

5.2 Transport Planning:

No vehicles can access the site as future residents will have no right of way over the open area to the rear of 90 The Broadway. At present this area reads as an open area for parking however it is privately owned.

Given that the site has a PTAL of 6b with bus, train, tube and tram available within the PTAL calculation area and located within a designated town centre area as such no objection is raised in relation to the potential increase in patrons using the restaurant.

We have no objection to the above proposals as it will not generate a significant negative impact on the performance and safety of the surrounding highway network.

5.3 Highways:

Highways have no objection to the removal of Condition 2 on this application.

5.4 Environmental Health (Noise):

Further to your consultation in relation to the above planning application and having considered the information submitted, should you be minded to approve the application then I would recommend the following planning conditions:-

- The noise level increase arising from the use of the external area shall not be more than those supplied in the ACAAcoustics report 160714-002E dated December 2016.
- The area at the rear of the property shown on the documents submitted shall only be used by patrons for seated dining meals.
- The external area relating to the application shall not be used after 20:00 hours.
- No music shall be played in the external area to the rear of the property and the rear doors shall not be kept open to facilitate music being audible outside.
- The maximum number of customers permitted in the external area to the rear of the property shall be no more 26 at any time.
- No cooking is permitted in the external area to the rear of the property.

- No bar shall be installed in the external area to the rear of the property.
- Any external lighting shall be positioned and angled to prevent any light spillage or glare beyond the site boundary.
- The acoustic barrier, shown on drawing no 238_SHG_101 shall be installed prior to the development use commencing and maintained thereafter.

6. **POLICY CONTEXT**

6.1 London Plan (March 2015) (as amended by Minor Alterations to the London Plan March 2016):

- 4.7 Retail and town centre development
- 6.3 Assessing effects of development on transport capacity
- 7.2 An inclusive environment
- 7.3 Designing out crime
- 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes

6.2 LDF Core Planning Strategy (July 2011)

- CS6 Wimbledon Sub-Area
- CS7 Centres
- CS8 Housing Choice
- CS14 Design
- CS20 Parking, Servicing and Delivery
- CS21 Open Space, Nature Conservation, Leisure and Culture

6.3 Sites and Policies Plan and Policies Map (July 2014)

- DM R1 Location and scale of development in Merton's town centres and neighbourhood parades
- DM R5 Food and drink / leisure and entertainment uses
- DM D2 Design considerations in all developments
- DM D3 Alterations and extensions to existing buildings
- DM EP2 Reducing and mitigating noise
- DM EP4 Pollutants
- DM T2 Transport impacts of development
- DM T3 Car parking and servicing standards

6.4 Other guidance:

- SPG: Food and Drink (A3 Uses) 1999
- National Planning Policy Framework (2012)
- National Planning Policy Guidance (2014)

7. **PLANNING CONSIDERATIONS**

7.1 The main planning considerations concern the impact on neighbouring amenity.

7.2 The principle of development is acceptable, subject to the impact on neighbouring amenity.

7.3 Background to proposals

7.4 The premises have been in A3 use since planning permission was granted for a change of use from a retail shop (A1) in 1992. In 2002 the site was occupied by a new A3 user known as 'Reds Bar and Grill'. A condition of the 1992 planning permission for the change of use restricted the land at the rear of the site to a staff parking area:

'The garage(s) and/or car parking space(s) shown on the approved drawing 0792/4A shall be provided before commencement of the use of the land or building(s) hereby permitted and thereafter shall be kept free from obstruction and shall not be used for purposes other than the parking of vehicles in conjunction with the development hereby permitted.'

Reason for Condition:

To ensure the provision of adequate off-street parking in order to prevent additional parking in surrounding streets which could be detrimental to amenity and prejudicial to highway safety.'

7.5 However, it subsequently transpired that access to the land could only be gained via the rear of the adjoining site at 88 The Broadway and that the owners of the application site have no right of access over it. Therefore, the land was rendered as dead space. Whilst in the ownership of 'Reds Bar and Grill' the land began to be used as a beer garden and a complaint was made to the Council's planning enforcement section that noise and disturbance was taking place until late at night. Following an investigation by enforcement officers, a retrospective planning application was made for the change of use of the yard to an outdoor bar grill and this was refused in 2003 under delegated powers for the following reasons:

1. The use of the rear yard as an outdoor bar grill by virtue of its proximity to residential properties represents an inappropriate form of development, detrimental to the amenity of the area, contrary to policies EP2 and S16 of the Adopted Unitary Development Plan (April 1996), policies BE24, PE3 and S8 of the Second Deposit Draft Unitary Development Plan (October 2000) and policy BE21 of the Proposed Modifications (June 2003).

2. The use of the rear yard as an outdoor bar grill results in the loss of residential amenity space for the upper floors of the property to the detriment of residential amenity and contrary to policy H14 of the Adopted Unitary Development Plan (April 1996) and policy HS1 of the proposed modifications Unitary Development Plan (June 2003).
- 7.6 An Enforcement Notice was served in August 2007 requiring that the use of the yard as an outdoor seating/bar grill area cease. This Enforcement Notice was subsequently complied with.
- 7.7 Under application ref. 13/P2298 permission was refused for the variation of Condition 2 of the 1992 permission at the Planning Applications Committee, the officer recommendation to grant a temporary planning permission of one year was overturned by the Committee, for the following reason:
1. The variation of condition 2 of planning permission 92/P0654 dated 01/09/1992 to allow outside customer seating for a temporary trial period of one year, by reason of the proximity of the garden to residential properties in the area, would have an unacceptable adverse impact on the living conditions of neighbouring residents, due to increased noise and disturbance, that would be contrary to Adopted Merton Unitary Development Plan (October 2003) policies BE15, BE23 and SE8
- 7.8 The key differences between the current proposal and the refusal under 13/P2298 are as follows:

	13/P2298	16/P3406
Acoustic Assessment	No	Yes
Closing time of garden	8pm	8pm
Music	No	No
Maximum number of customers	32	26
Cooking	No	No
Bar	No	No
Acoustic Barrier	Yes, details to be submitted by condition	Yes, included in the proposal.
Separation distance to the rear of the site	4m	5.7m

- 7.9 In addition, the current application is accompanied by an Acoustic Assessment, whereas the previous application was not. The Acoustic Assessment has been carried out in accordance with BS 8233:2014 and has measured background noise levels at the site. A computer model has been set up to calculate noise emissions to nearby residential properties. The Assessment concludes that the noise impacts to nearby residential properties would be within World Health Organisation levels (Guidelines for Community Noise 1999). The Assessment concludes that the noise levels would result in an imperceptible change in loudness and an impact description of 'Slight'.
- 7.10 Neighbouring Amenity
- 7.11 Policy DM D2 seeks to ensure that development does not adversely impact on the amenity of nearby residential properties.
- 7.12 Policy DM R5 aims to ensure that food and drink uses are located in a suitable location for customers, but do not cause unacceptable environmental or social impacts.
- 7.13 Policy DM EP2 seeks to ensure that development which has the potential to adversely impact on local amenity by way of noise or vibration is not permitted unless the potential noise problems can be overcome by suitable mitigation measures.
- 7.14 The application site is within the Town Centre, within a secondary shopping frontage. Food and drink uses feature predominantly in this part of the town centre. However, the neighbouring food and drink uses do not have external rear terraces which are used for dining or drinking to the rear. Although it is noted that there is a roof terrace at Nos.80 and 82 The Broadway, towards the frontage of the buildings.
- 7.15 To the immediate rear of the site is the garden of 1 King's Road, a semi-detached, two-storey dwellinghouse. No.1 King's Road would be separated from the proposed dining area by 5.7m, with an acoustic fence up to a height of 2.5m and the existing timber outbuilding to the rear part of the site standing between the terrace and the boundary of No. 1 King's Road, which is demarcated by a close board timber fence (beyond No.1 Kings Road and to the rear of Cobden Mews are residential properties with rear gardens).
- 7.16 To the immediate side of the site (west), is Kings House, a three-storey building in use as massage treatment rooms and alternative therapy centre, fronting on to Kings Road. There are windows to the east elevation, facing on to the application site. These windows are obscurely glazed and serve WCs, shower rooms and kitchens at ground floor level

and stairways and printer rooms at first floor level and a staff restroom at second floor level.

- 7.17 To the east is Cobden mews, an office building, with no windows facing on to the application site.
- 7.18 There are also residential flats above the main frontage buildings facing onto The Broadway. These flats have rear facing windows which could be affected by the proposed use of the yard as a seating/dining area.
- 7.20 There are residential properties in close proximity to the site, most notably, the residential properties to the rear of the site and flatted units above main frontage buildings.
- 7.21 The use of the yard area as a dining/seating area would create noise and the key consideration is whether the resulting noise would result in material harm to neighbouring amenity.
- 7.22 The application is accompanied by an Acoustic Assessment, whereas the previous refused application was not supported by a technical acoustic assessment. The submitted assessment has been amended following the identification of discrepancies by officers and neighbours and has also been amended to show the rear part of the acoustic barrier to be 2.5m in height.
- 7.23 It is noted that there is a substantial amount of objections to the proposal based on noise disturbance. Objectors have cited potential flaws in the methodology of the Acoustic Assessment. Concerns include:
- numbers of people talking or laughing simultaneously is unrealistic,
 - noise levels and effect of peaks is understated,
 - people will talk louder to overcome the background noise,
 - not all customers would be seated,
 - report has misidentified 4 Kings Road (Fig. 4 photograph),
 - the area is not large enough for 26 seated diners.
- 7.24 For clarity, the application has been amended to rectify some errors in the Acoustic Assessment and Figure 4 is now correct (whereas previously the photograph at Figure 4 was incorrectly annotated). In addition, the site layout plan is accurate and to scale and demonstrates that the tables and chairs could be accommodated. In addition, it should be noted that whilst there is a fence with planters at the site currently, this is not the acoustic fence that the application refers to. Therefore, the acoustic fence is not already in place as asserted in some of the objection letters. Any future introduction of a bar or grill outside would require permission as conditions would stipulate that no bar or grill is allowed in the external dining area.

7.25 The Council's Environmental Health Officer has reviewed the submitted Acoustic Assessment and raises no objection subject to the following conditions:

- The noise level increase arising from the use of the external area shall not be more than those supplied in the ACAAcoustics report 160714-002E dated December 2016.
- The area at the rear of the property shown on the documents submitted shall only be used by patrons for seated dining meals.
- The external area relating to the application shall not be used after 20:00 hours.
- No music shall be played in the external area to the rear of the property and the rear doors shall not be kept open to facilitate music being audible outside.
- The maximum number of customers permitted in the external area to the rear of the property shall be no more 26 at any time.
- No cooking is permitted in the external area to the rear of the property.
- No bar shall be installed in the external area to the rear of the property.
- Any external lighting shall be positioned and angled to prevent any light spillage or glare beyond the site boundary.
- The acoustic barrier, shown on drawing no 238_SHG_101 shall be installed prior to the development use commencing and maintained thereafter.

7.26 The mitigation measures proposed will rely on on-going management to ensure that the measures are adhered to. It would appear that the noise impact to neighbouring properties would be within reasonable tolerances.

7.27 Any conditions imposed to minimise the impact of the proposal must pass the 6 tests set out in the National Planning Policy Guidance 2014 (NPPG):

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.

7.28 In this case it is critical that any conditions are enforceable. The measures put forward will rely on careful on-going management. In order to ensure that guests do not use the area after 8pm, it is considered necessary to impose a condition that no bookings or table reservations in this external dining area are permitted after 7pm. Also, a condition to secure details of

- the types of tables and chairs and hard surfacing intended is recommended, to ensure that noise from tables and chairs scraping is minimised.
- 7.29 In addition, a condition to secure details of any lighting is recommended.
- 7.30 However, the conditions will ultimately rely on careful on-going management in practice and if it transpires that the conditions have not been complied with, an Enforcement Notice could be served to ensure that any unauthorised activity ceases. As mentioned above, any such breaches would have a strong bearing on any future application for a permanent permission for the rear yard area when the temporary permission expires.
- 7.31 Whilst it cannot be guaranteed that there would not be any disturbance to surrounding occupiers, the raft of mitigation measures put forward will minimise the impact as far as reasonably practicable.
- 7.32 The NPPG states that temporary planning permissions can be appropriate to allow a trial run in order to assess the effect of the development on the area. In this case, whereby the resultant impact cannot be predicted to a definitive degree, it is considered that a temporary planning permission only would be reasonable.
- 7.33 The raft of mitigation measures proposed, if implemented properly, should ensure that disturbance is minimised. However, in recognition of the history of the site and its sensitive nature, it is recommended that a temporary planning permission for a one year trial period is recommended, on the strict understanding that should any of the conditions that are recommended be breached, it will have a strong bearing on any future application for a permanent permission for the rear yard area when the temporary permission expires.
- 7.34 Highway, traffic and parking considerations
- 7.35 Core Strategy Policy CS 20 considers matters of pedestrian movement, safety, servicing and loading facilities for local businesses and manoeuvring for emergency vehicles as well as refuse storage and collection.
- 7.36 It has been established that the use of the rear yard as a car park has not occurred for the past ten years. It would appear that the condition cannot be complied with due to rights of access issues, as in order to use this rear area for parking, access across the rear of No.88 (outside of the control of the applicant) would be required.

- 7.37 The Council's Transport Planner raises no objection to the use of the yard for non-parking purposes as the site is in an accessible, high PTAL area, wherein public transport options are available, and in any event, the use of the rear area for staff parking is not possible.
- 7.38 The site has not been used for parking for several years. The site is within the Town Centre with a high PTAL rating. Therefore, it is considered that the increase in customers that the proposal would yield would be accommodated for by the existing transport network and no additional parking is considered to be necessary.
- 7.39 The proposal is considered to be acceptable in highway and transport terms.
- 7.40 Refuse and recycling
- 7.41 Concerns have been raised by neighbours regarding existing problems with litter and refuse storage. The increase in customers would mean an increase in waste. However, there is ample space on site to provide refuse/recycling storage and details of refuse/recycling storage can be secured by way of condition to ensure that it is sufficient and not harmful to amenity.
- 7.42 Issues of vermin cannot form a reasonable reason for refusal as preventative measure can be taken. This would be a matter for Environmental Health legislation.

8 CONCLUSION

- 8.1 The principle of development is considered to be acceptable. Although the Acoustic Assessment indicates that there is unlikely to be a noise nuisance (the Council's Environmental Health Officer raises no objection subject to conditions), much is dependent on adherence to conditions and how the space is managed. Therefore, it is considered that a temporary planning permission for a period of one year to allow for a trial run to test the impact of the proposal would be reasonable.
- 8.2 Following the expiry of this period the applicant would need to apply for full planning permission if the use of the outside area as a dining area were to continue, at which point the impact on neighbouring amenity would be re-assessed.

RECOMMENDATION

Grant planning permission for the removal of Condition 2 of application ref. 92/P0654 subject to the following conditions:

1. The use of the land as an outside dining area hereby permitted shall be discontinued and the tables and chairs permanently removed on or before 1 year from the date of this planning permission.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2 and DM R5 of the Council's adopted Sites and Policies Plan 2014.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: 238_SHG_W101.

Reason: For the avoidance of doubt and in the interests of proper planning

3. The external dining area shown on the approved plans shall only be used by seated restaurant customers in accordance with the authorised A3 (restaurants and cafes) Use Class of the premises.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

4. The use of the area as an external dining area shall not commence until details of tables and chairs to be used, along with details of hard surfacing in the external dining area, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details. The agreed hard surfacing shall be carried out prior to the first use of the external dining area.

Reason: In order to minimise noise disturbance and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

5. The external dining area, shown on drawing 238_SHG_W101, shall not be used by customers before 10:00 hours or after 20:00 hours.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

6. No reservations or table bookings shall be taken for customers using the outside dining area after 7pm.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

7. No music shall be played in the external area to the rear of the property and the rear doors shall not be kept open to facilitate music being audible outside.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

8. The maximum number of customers permitted in the external area to the rear of the property shall be no more 26 at any time.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

9. No cooking or other food preparation shall take place in the external area to the rear of the property.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

10. No bar shall be installed in the external area to the rear of the property.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

11. Prior to the commencement of development, details (to include materials and elevational drawings) of the proposed acoustic barrier shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in strict accordance with the approved details. The agreed acoustic barrier shall be erected prior to the first use of the external dining area.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

12. D09 No External Lighting: No external lighting shall be installed without the prior approval in writing of the Local Planning Authority.

Reason: To safeguard the amenities of the area and the occupiers of neighbouring properties and ensure compliance with the following Development Plan policies for Merton: policies DM D2 and DM EP4 of Merton's Sites and Policies Plan 2014.

13. The noise level increase arising from the use of the external area shall not be more than those supplied in the ACAAcoustics report 160714-002D dated February 2016.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 D3 of the Council's adopted Sites and Policies Plan 2014.

14. The use of the external dining area shall take place strictly in accordance with the submitted Operational Management Plan.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 D3 of the Council's adopted Sites and Policies Plan 2014.

15. The external dining area shall not be used/occupied by staff between the hours of 20.30 to 09.00 hours.

Reason: Having regard to the impact on neighbouring amenity and to comply with Policies DM D2, DM R5 and DM EP2 of the Council's adopted Sites and Policies Plan 2014.

16. No development shall take place until a scheme for the storage of refuse and recycling has been submitted in writing for approval to the Local Planning Authority. No works which are the subject of this condition shall be carried out until the scheme has been approved, and the development shall not be occupied until the scheme has been approved and has been carried out in full. Those facilities and measures shall thereafter be retained for use at all times from the date of first occupation.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse and recycling material and to comply with the following Development Plan policies for Merton: policy 5.17 of the London Plan 2015, policy CS17 of Merton's Core Planning Strategy 2011 and policy DM D2 of Merton's Sites and Policies Plan 2014.

Informatives:

1. In accordance with paragraphs 186 and 187 of the NPPF, The London Borough of Merton (LBM) takes a positive and proactive approach to development proposals focused on solutions. LBM works with applicants/agents in a positive and proactive manner by:
 - i) Offering a pre-application advice and duty desk service.
 - ii) Where possible, suggesting solutions to secure a successful outcome.
 - iii) As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

- i) The applicant was offered the opportunity to submit amended documentation in order to make the proposal acceptable in planning terms.

[Click here](#) for full plans and documents related to this application.

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