

Agenda Item 6

**PLANNING APPLICATIONS COMMITTEE
2014**

Item No:

UPRN

APPLICATION NO.

DATE VALID

13/P2298

27/03/14

Address/Site 'Hot Pink' restaurant, 86 the Broadway, Wimbledon,
London SW19 1RH

(Ward)

Trinity

Proposal: 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

Drawing Nos: Site Location Plan, 135-07 (General Site Arrangement)

Contact Officer: David Thompson (0208 545 3116)

RECOMMENDATION

Grant variation of condition 2 (parking spaces) attached to planning permission 92/P0654 (01/09/1992) to allow outside customer seating for a temporary trial period of one year, subject to conditions.

CHECKLIST INFORMATION

- Is a screening opinion required: No
- Is an Environmental Statement required: No
- Has an Environmental Statement been submitted: No
- Press notice: Yes
- Site notice: Yes
- Design Review Panel consulted: No
- Number of neighbours consulted: 66
- External consultations: No
- Controlled Parking Zone: Yes (CPZ W3)
- UDP Site Proposal Designation - No
- Public Transport Accessibility Level - 6a (Excellent)

1. INTRODUCTION

- 1.1 This application is being brought to the Planning Applications Committee due to the number of objections that have been received

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 a restaurant and bar (A3 use class) known as 'Hot Pink'. There are two self contained flats above. The application site has a rear yard area which extends past the rear

boundary of Kings House, a detached two storey building in use as massage treatment rooms and alternative therapy centre with a frontage onto Kings Road. The yard is bounded to the south by the side boundary of the rear garden of 1 Kings Road, a residential property. Other residential gardens sit beyond. On the western boundary of the application site is 84 the Broadway, which is in use as a charity shop on the ground floor with flats on the upper floors, although the planning history for the site does not indicate that as such. To the east of the yard is another yard area related to the adjoining A3 use at 88 The Broadway. This is accessed off a continuous alley way that runs between no's 88 and 92 the Broadway and extends eastwards. Along this alley way is located Cobden Mews, 90 the Broadway; a two storey office building with nine off street parking bays that is on the site of a former print shop.

2. 2 No's 80-134 The Broadway are designated in the Adopted Merton Unitary Development Plan (October 2003) as secondary shopping frontage within Wimbledon Town Centre and the area is also part of a CPZ (controlled Parking Zone) W3. The terrace is comprised predominantly of shops (A1 use class) and restaurants and/or takeaway restaurants (A3 /A5 use class). The application site is not a listed building and it is not in a conservation area.

3. **CURRENT PROPOSAL**

- 3.1 Planning permission is sought under S73 of the Town and Country Planning Act 1990 for a variation of condition 2 of a previous planning permission Merton Ref: 92/P0654 dated 1st September 1992 for "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",
- 3.2 Condition 2 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.
- 3.2 The applicants propose to vary the condition to allow the garden to be used as an additional dining area for customers and have suggested a number of restrictive conditions in support of the proposal. They also advise that current restrictions on access to this area render its authorised use for parking facilities unfeasible.

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 - Granted subject to conditions 08/12/1992

94/P0464 Erection of extract ducting on rear elevation of property. Granted subject to conditions -22/07/1994

94/P0477 Display of an internally illuminated fascia sign and a non-illuminated double sided hanging sign. Advertisement Consent given 21/07/1994

99/P1066 Installation of new shopfront including "concertina" Windows and a canopy. Granted subject to conditions 06/08/1999

01/P2586 Installation of a new shopfront incorporating a retractable awning and sliding/folding glass doors. Granted subject to conditions 14/01/2002

02/P0127 Display of an illuminated fascia sign. Advertisement Consent Granted - 11 /02/2002

03/P1484 - Change of use of rear yard to outdoor bar grill, including retention of shelter (retrospective planning application) - Refused 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 (October 2000) and policy BE.21 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).

29/08/07 - Enforcement Notice served: Breach of planning control - unauthorised change of use of the rear yard of 86 The Broadway as an outdoor seating/bar grill area.

5. **CONSULTATION**

5.1 The application has been advertised by a press notice (wider interest) and site notice, and by letters of notification to occupiers of neighbouring properties. A total of 32 representations were received that have objected to the proposal on the following grounds:

- The proposal will generate additional noise and disturbance, cooking and smoke fumes and light intrusion to neighbouring residents, many of whom have young children.
- The noise and fumes generated by the proposal and the music that will be played will be concentrated because the site is partly enclosed by other buildings. This will intensify the impact that the additional thirty two seated diners would have on neighbouring residents.
- The proposal will result in an increased volume of refuse, which will attract vermin and result in harm to human health.
- The proposal will result in the likelihood that Cobden Mews, which is a secluded area off the main road and near to the application site, will

be subjected to anti social behaviour to the detriment of people who work in the building or who live locally.

- The hours of operation condition suggested by the applicants does not state when the use would commence and if this at 9 00am then this could cause sleep disruption to neighbouring residents who may wish to sleep beyond that time, particularly at weekends.
- The suggested condition to limit the number of diners to thirty two is arbitrary and could not be controlled. It does not take into account for example, people wishing to use the area to smoke.
- The omission of the word 'beer' in the description of development is a feeble attempt to distinguish between the use that went on when the premises were in the ownership of 'Reds' and the proposed use, which is effectively the same. Neighbouring residents still have to remove empty beer bottles from their front gardens every week just as they did under the previous ownership.
- The reference by the applicants to policy BE18 of the Merton Unitary Development Plan is misleading and irrelevant, as this policy is concerned with the loss of front or side gardens to off street parking rather than rear gardens.
- The current owners have already demonstrated their disregard for planning laws by installing decking in the garden without planning permission. With this in mind, it is unlikely that the owners will abide by the conditions that are imposed should planning permission be granted.
- The owners have also flouted planning and environmental health regulations by removing part of the original fume extract ducting and replacing it with shorter and wider apparatus that is inefficient, noisy and does not prevent grilled food odours from escaping into the atmosphere. This is because it does not discharge fumes at eaves height, but at a lower height of 5m.
- To allow the garden to be used by customers will enable the interior to be opened up, meaning that noise, music and cooking fumes from the restaurant will flood into that area, making conditions intolerable for neighbours.
- If the condition to vary the use of the rear area is allowed this will override the existing enforcement notice, which prevents the area from being used as anything other than a car park. The intensification of the use will be intolerable for residents, who are immediately adjacent to the rear boundary of the application site and who were subject to similar noise and disturbance during the previous ownership.
- How can the condition that customers be seated be enforced, this would be impossible to active. Furthermore, under the previous ownership, no music was played in the beer garden, but this did not prevent intolerable noise and disturbance from being generated.
- The introduction of thirty two additional seats will increase the existing capacity of the premises by 43%, this will have an unacceptable impact on neighbours in terms of increased noise and disturbance. To describe this as an alternative to interior seating is irrelevant. It will also be an intensification of the use of the premises, with an increase in the amount of waste and rubbish that would be generated.
- The suggested closing time of 8 00pm is not feasible, as customers who arrive at say, 7 30 pm are hardly likely to be refused admission to the garden, especially during fine weather.

5.2 .Two petitions were also submitted with a total of 51 signatures in support of the proposal.

5.3 Environmental Health - The Environmental Health Section would recommend the following conditions be attached should permission be granted.

Condition 1 -The area at the rear of the property shown on submitted drawing 135-007 shall only be used for seated dining meals.

Condition 2 -The area to the rear of the property on submitted drawing 135-007 shall not be used after 20.00pm Monday to Sunday.

Condition 3 - No music shall be played in the external area to the rear of the property.

Condition 4 -The maximum number of customers permitted in the external area to the rear of the property shall be no more 32 at any time.

Condition 5 - No cooking is permitted in the external area to the rear of the property

Condition 6 - No bar shall be installed in the external area to the rear of the property.

Condition 7 - Planning permission is for a temporary period of 1 year.

Condition 8 - No external lighting shall be installed without the prior approval in writing of the Local Planning Authority.

Condition 9 - Details of an acoustic fence treatment to the boundary adjoining 1 Kings Road to be submitted and approved by the local planning authority. The boundary treatment should ensure that noise from the proposed use will not increase the background noise level by no more than 5 dB(A)L90 (dB (A)) (5 minute measurement period) when measured at the nearest effected residential property.

6. **POLICY CONTEXT**

6.1 Adopted Merton Unitary Development Plan (October 2003) saved policies

BE15 (New Buildings and Extensions; Daylight, Sunlight . Privacy, Visual Intrusion and Noise.

BE22 (Design of new Development)

PE1 (Air Quality)

PE2 (Pollution and Amenity)

PE3 (Light Pollution)
S3 (Secondary Shopping Frontages)
S8 (Food and Drink (A3) Uses)
TC6 (Promoting Vitality and Viability) Policy
WTC1 (A Mixed Use Town Centre)
Policy WTC5 (Leisure and Entertainment Facilities)

6.2 Merton Adopted Core Planning Strategy (July 2011)

CS6 (Wimbledon Sub Area)
CS 7 (Centres)
CS20 (Parking, Servicing and Delivery)

6.3 National Planning Policy Framework (2012)

7. **PLANNING CONSIDERATIONS**

7.1 Background to the proposal

7.2 The premises have been in A3 use since planning permission was granted for a change of use from A1 (shop) 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 condition read as follows:

7.3 *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.

7.4 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 way over it, therefore the land was rendered as dead space. While 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 (see planning history for .03/P1484).

- 7.5 The unauthorised activity continued and an Enforcement Notice was issued in August 2007 requiring that the use of the yard as an outdoor eating and drinking area ceases. The owners appealed against the notice, but the appeal was withdrawn and subsequently they complied with the notice.

The key planning consideration related to this application therefore is the impact that the proposal would have on neighbouring residential amenity, The loss of amenity space to the flats above the premises that was a refusal reason for the retention of the beer garden in 2003 is no longer relevant as the first floor flat is in use as storage area ancillary to the restaurant and the loft flat is rented by members of staff at the premises.

- 7.6 Neighbouring Residential Amenity

- 7.7 The application site is in the eastern quarter of the town centre and is designated as secondary shopping frontage; food and drink uses feature predominantly in this part of the town centre rather than the area designated for Primary and Core frontage, clustered around Wimbledon station and in and around the Centre Court shopping centre.

- 7.8 The application site has residential occupation on the upper floors, which is a relationship that continues along the remainder of the terrace. In addition, the site is bounded to the south by residential properties on Kings Road and South Park Road and it is these properties which also need to be considered in terms of the impact that the proposal would have on their existing living conditions.

The site is in a town centre within a location where urban and suburban land use patterns merge and where a balance between the interests of residents and the vibrancy of the town centre needs to be maintained. Saved UDP policy WTC1 stresses the need for a variety of uses to be provided, while saved policy WTC5 seeks to encourage leisure and entertainment facilities provided that the amenity of residents is protected

- 7.9 Saved UDP policy S8 states that food and drink uses may be acceptable provided that they will not have an unacceptable impact on local amenity and the general environment. In this regard, attention has been paid to the history of the site when the unauthorised beer garden was in use. The application is also being considered mindful of the aim of saved UDP policy WTC1, which is to achieve a balance of mixed land uses in town centres, to ensure that the viability and vitality of the centre is maintained by encouraging activities outside normal shopping hours.

The objections that have been received have been given careful consideration and some of them make reasonable points that have planning merit, with regard to the conditions that have been suggested by the applicants. Some of these objections have been made with the experience in mind of the breaches of planning control that took place in the previous ownership; although it is also noted that the enforcement notice was complied with and that no subsequent complaints were made to either planning enforcement section or to Environmental Health officers.

- 7.10 It should be stressed that notwithstanding the objections that have been made on the grounds that the proposal is merely a contrivance to provide another beer garden, the conditions that are recommended to accompany the variation of the condition should ensure that a repetition of the unauthorised activity does not recur. 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 planning permission for the rear garden when the temporary permission expires.

The applicants have proposed a number of restrictive conditions in support of the proposal and Environmental Health have concurred with them and have recommended an additional condition requiring that details of a suitable acoustic barrier be provided by the applicants before the use commences. In their advice to the case officer they have listed these conditions and the majority of them are recommended in this report for inclusion in a temporary planning permission.

- 7.11 The applicants have also submitted a robust planning statement in support of the proposal. In the statement they have been keen to stress that the garden will not simply revert back to the unauthorised beer garden and the resulting noise, disturbance and anti social behaviour that it involved. The applicants state clearly that there will be no bar facility, no barbeque grill or any other cooking facility, no more than a maximum of 32 patrons at any time, seated at light, moveable tables and no use of the area at all after 8 00pm. The applicants have also submitted a management operational plan, which is attached to the end of this report as an appendix. This sets out how the management of the restaurant will enforce the controls that are recommended as conditions of the temporary planning permission.
- 7.12 For example, customers will be guided to their table by members of staff and are then shown menus. Customers who do not have a table will not be served food. No orders will taken after 7 15pm and at 7 30pm customers who are dining will be politely reminded that the garden closes at 8 00pm. The management plan also states that noisy behaviour will not be tolerated and that staff will monitor activity in the garden to ensure that the rules are complied with.
- 7.13 These controls are considered to be reasonable and capable of being implemented. They have been set out to ensure that there is no repetition of the unneighbourly impact that the unauthorised beer garden had on the surrounding area, when the premises were in the previous ownership.

8. **CONCLUSION**

- 8.1 It is concluded that with the conditions that are recommended in place, the variation of condition 2 to allow the external area at the rear of the restaurant is permissible on a trial basis.
- 8.2 Accordingly, it is recommended that the variation of condition 2 be granted for a temporary period of one year subject to conditions.

RECOMMENDATION

13/P2298

GRANT PLANNING PERMISSION.

Subject to the following conditions:

1. A.1 Temporary Permission (Land and Uses a) (28/03/2015)
2. A.7 Approved Plans
3. A Non Standard Condition

The area at the rear of the property shown on approved drawing No 135 -007 shall only be used by seated restaurant customers in accordance with the authorised A3 (restaurants and cafes) use class of the premises.

Reason for condition: To safeguard the amenities of the area and the occupiers of neighbouring properties and to ensure compliance with policy PE.2 of the Adopted Merton Unitary Development Plan October 2003

4. A Non Standard Condition: The area to the rear of the property on submitted drawing 135-007 shall not be used by customers or staff before 10 00am or after 8 00pm Monday to Sunday.

Reason for condition: To safeguard the amenities of the area and the occupiers of neighbouring properties and to ensure compliance with policy PE.2 of the Adopted Merton Unitary Development Plan October 2003

5. A Non -Standard Condition: No music shall be played in the external area to the rear of the property at any time when the premises are in use.

Reason for condition: To safeguard the amenities of the area and the occupiers of neighbouring properties and ensure compliance with policy PE.2 of the Adopted Merton Unitary Development Plan October 2003

6. A Non-Standard Condition: No cooking is permitted in the external area to the rear of the property

Reason for condition: To safeguard the amenities of the area and the occupiers of neighbouring properties and to ensure compliance with policy PE.2 of the Adopted Merton Unitary Development Plan October 2003

7. A Non Standard Condition: No bar facility shall be installed in the external area to the rear of the property.

Reason for condition: To safeguard the amenities of the area and the occupiers of neighbouring properties and to ensure compliance with policy PE.2 of the Adopted Merton Unitary Development Plan October 2003

8. C6 Refuse and Recycling (Details to be submitted)
9. D9 No External Lighting
10. A Non Standard Condition

Details of an acoustic treatment between the boundary with 1Kings Road and the proposed seating area shall be submitted and approved in writing by the local planning authority before the use that is hereby permitted commences. The boundary treatment should ensure that noise from the proposed use will not increase the background noise level by no more than 5 dB(A)L90 (dB (A)) (5 minute measurement period) when measured at the nearest effected residential property.

Reason for condition:

To safeguard the amenities of the area and the occupiers of neighbouring properties and to ensure compliance with policy PE.2 of the Adopted Merton Unitary Development Plan October 2003.



HOT PINK GRILL

DRAFT GARDEN OPERATIONAL MANAGEMENT PLAN

Introduction

The objective of these rules and procedures is to ensure Hot Pink's garden is used responsibly by customers and managed professionally by all members of staff. All staff must understand and support our commitment to being responsible neighbours to our local residents.

We have a duty to ensure the operation of Hot Pink and the garden does not have any adverse impact on our local residents. The rules must be followed at all times without exception. If you have any queries about these rules, you must consult a member of management.

All members of staff must read, understand and agree to comply with the rules contained in this document.

Planning Conditions & Premises Licence

The following conditions are imposed on our planning consent. These conditions must be complied with at all times without fail:

- The area at the rear of the Property shown on approved drawing 135-007 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 32 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.

In addition, Hot Pink has a duty under the Licensing Act 2003 to promote the Licensing Objective of the Prevention of Public Nuisance. This means the use of the garden must not cause our residents any nuisance whatsoever.

Customer Ordering Procedure

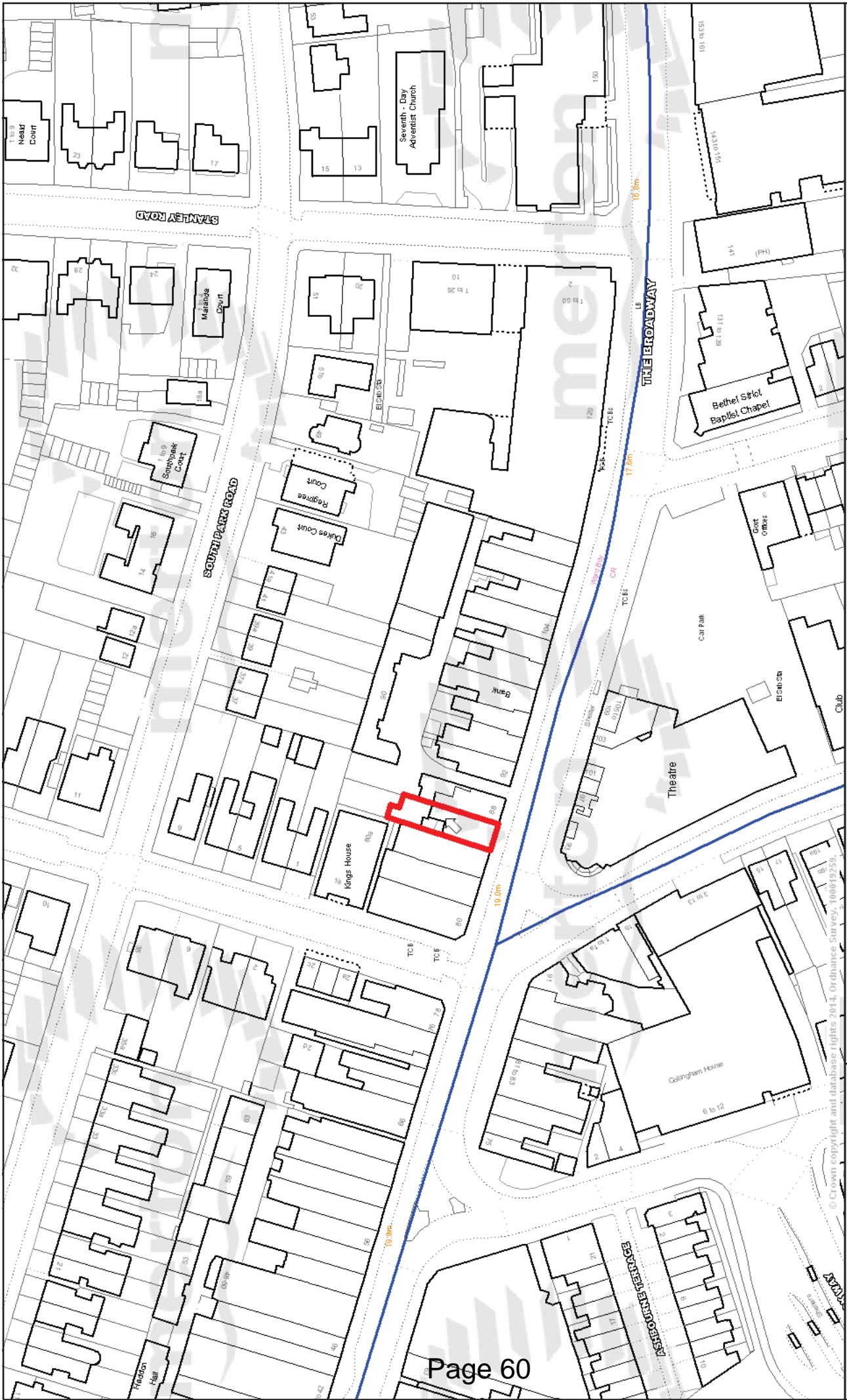
Staff must guide customers to a table when they enter the restaurant or garden. Customers are then shown menus before ordering at the till. Customers must provide their table details when ordering. Customers must not be allowed to order unless they have a table.

This ensures all customers have a table and our capacity limits, particularly in the garden (32), are not breached.

The Rules

1. The garden can only be used by seated restaurant customers. Under no circumstances whatsoever can the garden be used for 'vertical drinking' i.e. persons standing and drinking.
2. No music can be played in the garden whatsoever.
3. There must be no changes to the seating layout. The maximum number of customers permitted in the garden is 32. Under no circumstances whatsoever can more than 32 customers be permitted in the garden.
4. The garden cannot be used after 20.00 (seven days a week). Under no circumstances whatsoever can the garden be used beyond 20.00.
5. No orders can be taken from customers in the garden after 19.15. This ensures customers have time to finish their meal in time for the 20.00 closure.
6. Customers using the garden in the evening must be made aware of the 20.00 closure before they order. From 19.30 onwards customers must be politely reminded of the garden's closure at 20.00.
7. By 20.00 the garden must be completely clear of customers. Care should be taken to ensure no noise is made when customers are leaving the garden.

8. Customer behaviour that may cause a disturbance or nuisance to our local residents will not be tolerated. Examples of this type of behaviour include shouting; raised voices; intoxication; unruly; and/or any other form of antisocial behaviour.
9. Staff must regularly monitor and patrol the garden at all times the garden is open to ensure these rules are complied with. Staff must ensure customers do not use the garden outside the permitted hours.
10. In the event a customer demonstrates behaviour contrary to these rules the duty manager must immediately ask the customer to quieten down and respect our local residents. If the customer fails to comply with a first warning that customer must be politely asked to leave the premises immediately.
11. No cooking is allowed in the garden. Cooking is only permitted inside the premises.
12. Under no circumstances whatsoever may the garden be used as a bar area.
13. An incident log should be recorded and maintained in respect of all incidents occurring in the garden. Relevant incidents include: customers acting otherwise than in accordance with these rules; attempted unauthorised use of the garden outside the permitted hours; complaints received by customers; complaints received by local residents; accidents; and any other relevant incidents. The incident log must be regularly checked by a member of management.
14. Notices must be displayed in the garden area reminding customers to respect our local residents and use the garden as quietly as possible.



London Borough of Merton
 100 London Road
 Morden
 Surrey
 SM4 5DX

Scale 1/1250

Date 11/3/2014

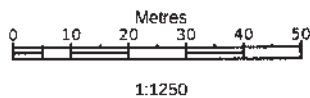
86 The Broadway

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London Borough of Merton

-6 AUG 2013

Planning Development Control

