

Committee	PLANNING COMMITTEE B	
Report Title	278-280 Kirkdale, SE26 4RS	
Ward	Sydenham	
Contributors	Ann McCormick	
Class	PART 1	20 October 2016

Reg. Nos. DC/16/097653

Application dated 25.07.2016

Applicant Acorn Ltd

Proposal Application submitted under Section 73 of the Town & Country Planning Act 1990 for a minor material amendment to vary condition (2) (approved plans & documents) of the planning permission DC/14/89804 granted 17 June 2015 for the demolition of the existing building at 278-280 Kirkdale SE26, and the construction of a five storey building with basement to provide a public house at ground and basement levels, together with 7 one bedroom self-contained flats with balconies above, **in order to allow the use of the approved basement and ground floors for a use falling within Use Class A2, as well as (already approved) A1 and A3.**

Applicant's Plan Nos. 08.13 DWGZB 09 Rev C; 08.13 DWGPL3099A;  
Application Site, Site Plan

Background Papers (1) Case File LE/240/278/TP  
(2) Local Development Framework Documents  
(3) The London Plan

Designation PTAL 5  
Secondary Frontage  
Sydenham District Centre  
Cobb's Corner Conservation Area

Screening N/A

## 1.0 Property/Site Description

1.1 The application site is situated on the south side of Kirkdale on a small, roughly rectangular plot of land immediately to the west of the railway line adjoining Sydenham Station.

- 1.2 The site formerly comprised two single storey shops which were demolished in 2013 and replaced with a five storey building with basement as approved under DC/07/66511.
- 1.3 The surrounding street is commercial in nature with a range of Use Classes as outlined within Appendix 1 of this report.
- 1.4 The site has a PTAL rating of 5.
- 1.5 The property is located within the Cobb's Corner Conservation Area. It is not a listed building.

## **2.0 Planning History**

- 2.1 DC/04/57020: Construction of four-storey building on the site of 278-280 Kirkdale to provide two retail units with cycle and refuse stores on the ground floor and 2x1 bedroom and 2x2 bedroom self-contained flats incorporating balconies on the upper floors, together with a roof garden. Granted 19/04/2005.
- 2.2 DC/07/66511: Demolition of existing building at 278-280 Kirkdale and construction of a five-storey building with basement to provide a public house at ground and basement levels, together with 7x1 bedroom self-contained flats with balconies above. Granted November 2007.
- 2.3 DC/14/089804: Application under Section 73 of the Town and Country Planning Act 1990 for a minor material amendment in connection with the planning permission dated 22 September 2010 (DC/07/66511) for the demolition of the existing building at 278-280 Kirkdale SE26, and the construction of a five storey building with basement to provide a public house at ground and basement levels, together with 7 one bedroom self-contained flats with balconies above in order to allow: the re-wording of Condition (1) to include drawing numbers 08.13.DWG PL3099A, 09.13.DWG.ZB099 Rev A, 07/1394/01B, and the change of use of the ground floor and basement from public house (Use Class A4) to retail or office within Use Classes A1 or A3. Granted 17 June 2015.

## **3.0 Current Planning Applications**

- 3.1 The application relates to a minor material amendment to vary condition (2) (approved plans & Documents) in connection with the planning permission (DC/14/89804) granted 17 June 2015 for the demolition of the existing building at 278-280 Kirkdale SE26, and the construction of a five storey building with basement to provide a public house at ground and basement levels, together with 7 one bedroom self-contained flats with balconies above, **in order to allow the use of the approved basement and ground floors for a use falling within Use Class A2, as well as (already approved) A1 and A3.** According to the applicant the commercial unit has not been occupied since construction and has been marketed for use with A1/A3 since 2014 with little interest.
- 3.2 As outlined within the applicant's submission, this minor amendment will facilitate the applicant, Acorn Ltd, who have been located within the area for over 20 years, and whose office is currently situated within the primary shopping frontage at 54

Sydenham Road to relocate to the subject site. This relocation will result in an increase of 3-4 additional members of staff to be recruited.

3.3 As such, the proposal involves the relocation of an existing A2 business to a different unit within the Secondary Shopping Frontage within the District Centre of Sydenham.

3.4 No external alterations or changes to any other conditions are proposed.

#### **4.0 Consultation**

4.1 This section outlines the consultation carried out by the Council following the submission of the application and summarises the responses received. The Council's consultation exceeded the minimum statutory requirements and those required by the Council's adopted Statement of Community Involvement.

4.2 Site notices were displayed, a Press Notice was advertised on 10 August 2016 and letters were sent to 111 neighbouring properties and the relevant Ward Councillors. The Council's Highways team and Conservation Officer were also consulted together with Network Rail and the Sydenham Society.

4.3 Two objections were received from the Sydenham Society and a Ward Councillor.

#### **5.0 Policy Context**

##### Introduction

5.1 Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

A local finance consideration means:

- (a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or
- (b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL)

5.2 Section 38(6) of the Planning and Compulsory Purchase Act (2004) makes it clear that 'if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'. The development plan for Lewisham comprises the Core Strategy, the Development Management Local Plan, the Site Allocations Local Plan and the Lewisham Town Centre Local Plan, and the London Plan. The NPPF does not change the legal status of the development plan.

## National Planning Policy Framework

- 5.3 The NPPF was published on 27 March 2012 and is a material consideration in the determination of planning applications. It contains at paragraph 14, a 'presumption in favour of sustainable development'. Annex 1 of the NPPF provides guidance on implementation of the NPPF. In summary, this states in paragraph 211, that policies in the development plan should not be considered out of date just because they were adopted prior to the publication of the NPPF. At paragraphs 214 and 215 guidance is given on the weight to be given to policies in the development plan. As the NPPF is now more than 12 months old paragraph 215 comes into effect. This states in part that '...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)'.
- 5.4 Officers have reviewed the Core Strategy for consistency with the NPPF and consider there is no issue of significant conflict. As such, full weight can be given to these policies in the decision making process in accordance with paragraphs 211, and 215 of the NPPF.

## Other National Guidance

- 5.5 The DCLG launched the National Planning Practice Guidance (NPPG) resource on the 6<sup>th</sup> March 2014. This replaced a number of planning practice documents.

## London Plan (2015 as amended)

- 5.6 In March 2016 the London Plan (March 2015) was updated with minor amendments. The policies relevant to this application are:

Policy 4.7 Retail and town centre development  
Policy 7.4 Local character

## Core Strategy

- 5.7 The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The Core Strategy, together with the Site Allocations, the Lewisham Town Centre Local Plan, the Development Management Local Plan and the London Plan is the borough's statutory development plan. The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Lewisham Core Strategy as they relate to this application:

Core Strategy Policy 6 Retail hierarchy and location of retail development  
Core Strategy Policy 15 High quality design for Lewisham  
Core Strategy Policy 16 Conservation areas, heritage assets and the historic environment.

## Development Management Local Plan

- 5.8 The Development Management Local Plan was adopted by the Council at its meeting on 26 November 2014. The Development Management Local Plan, together with the

Site Allocations, the Lewisham Town Centre Local Plan, the Core Strategy and the London Plan is the borough's statutory development plan. The following lists the relevant strategic objectives, spatial policies and cross cutting policies from the Development Management Local Plan as they relate to this application:

5.9 The following policies are considered to be relevant to this application:

DM Policy 14 District Centre Shopping frontages  
DM Policy 19 Shop fronts, signs and hoardings  
DM Policy 30 Urban design and local character  
DM Policy 36 New development, changes of use and alterations affecting designated heritage assets and their settings: conservation areas, listed buildings, schedule of ancient monuments and registered parks and gardens.

## **6.0 Planning Considerations**

6.1 The main considerations for this application are:

### Principle of Development

6.2 Guidance for determining S73 applications is set out in the NPPG which states that a minor material amendment is one '*whose scale and nature results in a development which is not substantially different from the one which has been approved*'. This is not a statutory definition but the Department for Communities and Local Government agree with this statement.

6.3 The proposed amendments comprise changing the proposed Use Class of the ground floor and basement from already approved A1/A3 use to include A2 use, thereby becoming A1/A2/A3. The reason for this proposed change in use is to allow the applicant (Acorn Ltd) to relocate their estate agent office from 54 Sydenham Road to the subject site.

6.4 No external changes or alteration to any other conditions are proposed. The changes are minor when judged against the scheme in its entirety and do not change the nature or scale of the approved scheme. It is therefore considered appropriate to deal with the proposed alterations as a minor material amendment.

6.5 DM Policy 14 'District Centre shopping frontages' sets out the criteria for considering proposals involving the loss at ground floor level of shops (Class A1). While it is noted that the ground floor unit is currently vacant, this policy applies as it has planning permission for businesses falling within both Use Class A1 and A3.

6.6 As the site lies within Sydenham district town centre and is identified as a secondary shopping frontage with the Policies Map, the proposed minor material amendment would also be expected to meet all of the following criteria as required under Part 2 of DM Policy 14:

a. Introduce an A2, A3, A4 or D2 use

- b. Not harm the amenity of adjoining properties, including that created by noise, smell, litter, and incompatible opening hours (all of which may be controlled by appropriate conditions)
- c. Not create an over-concentration of non-retail uses so as to create a break in the retail frontage of 3 or more non-A1 uses together
- d. Not harm the retail character, attractiveness, vitality and viability of the centre including unreasonably reducing the percentage of A1 units
- e. Retain an appearance which is compatible with adjoining shop units including window presentation
- f. Provide an active frontage at ground floor level

6.7 The site is located within Sydenham district town centre and falls within a secondary shopping frontage. The surrounding area consists of a mix of retail, cafes, betting offices, banks and estates agents among others. A comprehensive list of units and their associated Use Classes within the surrounding area is provided at Appendix 1. The area surveyed covered c. 640m from Sydenham Station (Stop E) (adjacent to 'Pure Gym', 291 Kirkdale) to the corner of Sydenham Road/Mayow Road. A total of 115 units were surveyed.

6.8 Objections were received citing the saturation of A2 use in the area as well as querying if 70% retail was still available in the core area of the high street from the Cobbs to Mayow. It should be noted that in relation to 70% of A1 uses, DM Policy 14 'District centres shopping frontages' states that '*70% of A1 uses in the primary shopping frontage...should be maintained*'. As the site is situated within the secondary shopping frontage, this requirement does not apply.

6.9 Having surveyed the uses of 115 surrounding units in close proximity to the site, the following was established:

A1 Use Class: 54.7% (63 units)

A2 Use Class: 14.78% (17 units)

A3 Use Class: 12.17% (14 units)

A4 Use Class: 0.86% (1 unit)

A5 Use Class: 1.73% (2 units)

D1 Use Class: 3.47% (4 units)

D2 Use Class: 0.86% (1 unit)

Sui Generis: 8.69% (10 units)

Other (vacant): 2.60% (3 units)

- 6.10 In relation to the above criteria as provided under DM Policy 14, it is clear that the proposal meets all six aspects:
- 6.11 A) The proposal will introduce an A2 use
- 6.12 B) There will be no harm to the amenity of adjoining properties
- 6.13 C) There will not be 3 or more non-A1 uses together. The immediately adjoining units comprise of a DIY Store, Bookstore, Charity Shop, Convenience Store, Newsagents, Pharmacy (all Use Class A1), Credit Union (Use Class A2) and Café (Use Class A3).
- 6.14 D) The proposal will not unreasonably reduce the percentage of A1 units. Following a site visit by Officers and as outlined with Appendix 1, 54.7% of units in the immediately surrounding area comprise of A1 Use. The proposal involves the relocation of an existing A2 unit in the area, and furthermore, the ground floor unit of the subject site is currently vacant, and therefore does not result in a loss of an existing A1 unit.
- 6.15 E) The appearance of the ground floor unit will remain the same.
- 6.16 F) The proposed relocation of an existing business will provide an active frontage.
- 6.17 In light of the above, the proposed variation of condition to allow A2 use at this site is considered to be appropriate.

#### Amenity of Future Occupiers and Neighbours

- 6.18 The impact of the development upon existing residential occupiers surrounding the site was considered and deemed to be acceptable when planning permission was granted for the original proposal under DC/07/66511 and indeed through application DC/14/089804 for the rewording of Condition (1) for the change of use of ground floor and basement from public house (A4) to retail or office within Use Classes A1 or A3.
- 6.19 The present application does not present an opportunity to re-consider the impact of the development in its entirety in respect of impact upon neighbouring amenity. It is only reasonable and appropriate to consider the impact of the amendments sought.
- 6.20 The change in use from a proposed A1 or A3 use to include an A2 use is seen to result in similar effects. As such, the hours of opening conditioned as part of DC/14/089804 grant of permission shall be implemented as part of this application. This provides that *'premises shall not be open for customer business between the hours of 12 midnight and 8am on any day of the week.'*
- 6.21 From the above, it is considered that the relocation of an existing A2 Use Class business in the area would not give rise to a saturation of A2 Use within the surrounding streetscene.
- 6.22 As a result, the proposal is considered to be appropriate.

#### Community Infrastructure Levy

6.23 The above development is CIL liable.

## **7.0 Equalities Considerations**

7.1 Section 149 of the Equality Act 2010 (“the Act”) imposes a duty that the Council must, in the exercise of its functions, have due regard to:-

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

7.2 The protected characteristics under the Act are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.3 The duty is a “have regard duty” and the weight to attach to it is a matter for the decision maker bearing in mind the issues of relevance and proportionality.

7.4 In this matter there is no impact on equality.

## **8.0 Conclusion**

8.1 For the reasons set out in this report, the proposed amendments are considered to be minor material as they will not change the nature and scale of the development as originally approved.

8.2 This application has been considered in the light of policies set out in the development plan and other material considerations.

8.3 The proposed amendments would not adversely affect the design of the scheme or amenity of future occupiers or existing neighbours. As a result, it is recommended that planning permission is granted.

## **9.0 RECOMMENDATION**

**GRANT PERMISSION** subject to the following conditions:-

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which permission is granted (22 September 2010).

Reason: As required by Section 91 of the Town and Country Planning Act 1990.

- (2) The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:



08.13 DWGZB 09 Rev C; 08.13 DWGPL3099A; 07/1394/01B; un-numbered survey/elevation plan; Application Site; Site Plan.

Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.

- (3) No new external finishes, including works of making good, shall be carried out other than in materials to match the existing.

Reason: To ensure that the highest quality demonstrated in the plans and submission is delivered so that local planning authority may be satisfied as to the external appearance of the building(s) and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character.

- (4) All window and door openings shall be constructed with minimum 90mm deep external reveals

Reason: To ensure that the local planning authority may be satisfied as to the external appearance of the building and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and DM Policy 30 'Urban design and local character' of the Development Management Local Plan (November 2014).

- (5) Notwithstanding the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking, re-enacting or modifying that Order), no plumbing or pipes, other than rainwater pipes, shall be fixed on the external faces/front elevation of the building.

Reason: It is considered that such plumbing or pipes would seriously detract from the appearance of the building and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and DM Policy 30 'Urban design and local character' of the Development Management Local Plan (November 2014).

- (6) The premises shall not be open for customer business between the hours of 12 midnight and 8am on any day of the week.

Reason: In order to safeguard the amenities of adjoining occupants at unsociable periods and to comply with Paragraph 120 of the National Planning Policy Framework and DM Policy 14 District centres shopping frontages of the Development Management Local Plan (November 2014).

- (7) The shopfront hereby permitted shall have a level or ramped access (maximum gradient: 1 in 12) and the entrance door shall be a minimum 900mm clear opening width and such features shall be retained permanently.

Reason: In order to comply with Policies 14 Sustainable movement and transport and 15 High quality design for Lewisham of the Core Strategy (June 2011) and DM Policy 19 Shopfronts, signs and hoardings of the Development Management Local Plan (November 2014).

- (8) The proposed development shall be carried out in all respects in accordance with the proposals contained in the application and the plans or drawings submitted therewith and hereby permitted in writing by the local planning authority, or as shall have been agreed in writing by the local planning authority, before any part of the building is occupied.

Reason: To ensure that the development is carried out to the satisfaction of the local planning authority

### **INFORMATIVES**

- (1) **Positive and Proactive Statement:** The Council engages with all applicants in a positive and proactive way through specific pre-application enquiries and the detailed advice available on the Council's website. On this particular application, no pre-application advice was sought. However, as the proposal was clearly in accordance with the Development Plan, permission could be granted without any further discussion.