

Committee	PLANNING COMMITTEE C	
Report Title	129 BURNT ASH ROAD, LONDON, SE12 8RA	
Ward	LEE GREEN	
Contributors	Russell Brown	
Class	PART 1	15 <sup>th</sup> December 2016

<u>Reg. Nos.</u>	DC/14/90439
<u>Application dated</u>	05.01.2015
<u>Applicant</u>	Italia Food Limited
<u>Proposal</u>	The construction of a single storey extension and a chiller room to the rear of 129 Burnt Ash Road, SE12 to replace the existing external chiller room, together with the insertion of a new rear fire exit door.
<u>Applicant's Plan Nos.</u>	Site Location Plan Received on 7th January 2015  Design & Access Statement (Received on 21st January 2015  1836-P-001 Rev A Received on 9th March 2015  Heritage Statement; Noise Impact Assessment Received on 2nd June 2015
<u>Background Papers</u>	(1) Case File LE/395/129/TP (2) Adopted Core Strategy (2011) (3) Development Management Plan (2014) (4) The London Plan (March 2016)
<u>Designation</u>	Lee Manor Conservation Area
<u>Screening</u>	N/A

## **2.0 Property/Site Description**

2.1 The property is a three storey mid-terrace property located on the east side of Burnt Ash Road (A2212) with A4 use (Bar Luciano) on the ground floor and residential on the upper floors stretching from 129-131. There is a bay window topped with a small lean-to tiled roof at first floor level. To the rear of the commercial premises, there is a ground floor single storey infill extension and an external chiller room. There are steps leading up to the first floor level. A service road runs behind the property leading to Buckdean Close.

The external chiller room is a metal container, which measures 2.85m wide by 2.5m deep and 2.75m high and painted white. It sits on a platform and is raised off ground level by approximately 10cm. The infill extension is currently rendered and painted white. Prior to the unauthorised development, the rear yard appears to

have had an informal parking arrangement. In reality, the rear yard is used partly for bin storage (wheelie bins for the commercial and general waste bins for the residential upper floors), which keeps them off the road. It is also noted that there is no formal crossover to the rear area (an unauthorised concrete ramp of indeterminate age appears to exist providing access).

- 2.2 The site sits within a row of similar properties in a local shopping parade. There is a further local shopping parade located on the opposite side of Burnt Ash Road and two more beyond the rail bridge to the south of the site.
- 2.3 The site is located within Lee Manor Conservation Area, subject to an Article 4 direct, but it is not a listed building or within the vicinity of one.

### **3.0 Relevant Planning History**

- 3.1 DC/14/87455: The change of use of the ground of 129 Burnt Ash Road from a hairdressers/beauty salon (A1) to a restaurant within Use Class A3. **Granted.**
- 3.2 DC/14/87808: The installation of a new shop front at 129 Burnt Ash Road SE12. **Granted.**
- 3.3 DC/15/90438: A retrospective temporary retention of a timber ground extension and external chiller room. The temporary retention is required until a planning submission has been approved for a brick built extension. **Withdrawn and returned on 2nd April 2015.**
- 3.4 EN/14/00414: Alleged unauthorised construction of a timber lean-to and a large timber platform to the rear of the property. **Awaiting outcome of the planning application.**

### **4.0 Current Planning Application**

#### The Proposal

- 4.1 The application proposes the construction of a single storey extension and a chiller room to replace the existing timber extension and unauthorised external chiller room respectively to the rear of the property.
- 4.2 The proposed single storey extension would house a staff room and measure 4.15m deep by 2.6m wide by 3.7m high. The proposed chiller room would have steel painted doors and would measure 3.35m deep by 2.6m wide by 3.2m high. The works would result in the loss of one of the two informal parking spaces available to the rear of the property; however, the external chiller room currently prevents the use of the other. The materials proposed are brick to match the existing building and felt for the flat roof.
- 4.3 Also proposed is a new timber door in the rear elevation measuring 2.25m by 1m wide for use as a fire exit.
- 4.4 The applicant was invited to include the air conditioning unit on the rear wall of the property in this application, but no response was received to this request.

However, it is found that the air condition units are located to the adjoining property at 127 Burnt Ash Road.

- 4.5 A Noise Impact Assessment has been submitted to demonstrate that the noise impact of the proposed external chiller room will comply with noise emission design criterion.

## **5.0 Consultation**

- 5.1 No pre-application advice was sought.
- 5.2 The Council's consultation met the minimum statutory requirements and those required by the Council's adopted Statement of Community Involvement.
- 5.3 A site notice was displayed and 10 letters were sent to the closest residents.

### Written Responses received from Local Residents and Organisations

- 5.4 Four objections were received from neighbouring occupiers not directly consulted, who raised concerns regarding the following:
- The air conditioning unit at the back of the kitchen is generating too much noise.
  - No consultation was had with the residents of Buckdean Close prior to the construction of the external chiller room as it is easier to gain planning consent retrospectively.
  - The external chiller room is an eyesore.
  - Siting the external chiller room on a parking space has had knock-on negative effects to parking in Buckdean Close and to noise during unsocial hours.
  - This proposal is part of larger plans to develop the rear of the site and they would reduce the cohesion, "morale" and upkeep of Buckdean Close.
  - There is constant noise pollution from the refrigeration motors and the opening and shutting of the door of the external chiller room.
  - The residential setting of Buckdean Close would become industrialised in nature.
- 5.5 The Council's Conservation Officer had no objections to the principle of the extensions and the proposed design. However, it was requested that a condition be attached that requires the brick to be matching the brick of the main building in type, size, finish and colour.

### Amenity Societies Panel

- 5.6 ASP had no objection.

## **6.0 Policy Context**

### Introduction

- 6.1 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).

6.2 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) makes it clear that any determination under the planning acts must be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for Lewisham comprises the Core Strategy, the Development Management 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

6.3 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 that (paragraph 211), 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)'.

6.4 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

6.5 On 6 March 2014, DCLG launched the National Planning Practice Guidance (NPPG) resource. This replaced a number of planning practice guidance documents.

#### London Plan 2015 (amended March 2016)

6.6 On 14 March 2016 the London Plan (consolidated with alterations since 2011) was adopted. The policies relevant to this application are:

- Policy 7.4 Local character
- Policy 7.6 Architecture
- Policy 7.8 Heritage assets and archaeology

#### Core Strategy

- 6.7 The Core Strategy was adopted by the Council at its meeting on 29 June 2011. The Core Strategy, together 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:

Spatial Policy 5 Areas of Stability and Managed Change  
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

- 6.8 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 Core Strategy and the London Plan is the borough's statutory development plan. The following policies are relevant to this application:-

DM Policy 1 Presumption in favour of sustainable development  
DM Policy 26 Noise and vibration  
DM Policy 30 Urban design and local character  
DM Policy 31 Alterations/extensions to existing buildings  
DM Policy 36 New development, changes of use and alterations affecting designated heritage assets and their setting: conservation areas, listed buildings, schedule of ancient monuments and registered parks and gardens

#### Residential Standards Supplementary Planning Document (updated May 2012)

- 6.9 Paragraph 6.2 (Rear Extensions) states that when considering applications for extensions the Council will look at these main issues:

- How the extension relates to the house;
- The effect on the character of the area - the street scene and the wider area;
- The physical impact on the host building, and the amenity of occupiers of neighbouring properties;
- A suitably sized garden should be maintained.

- 6.10 Paragraph 6.4 (bulk and size) advises that extensions should be smaller and less bulky than the original building and reflect its form and shape. Traditionally, extensions to buildings are subsidiary to the main structure. Over-dominant extensions may destroy the architectural integrity of existing buildings and may be out of character with adjacent buildings.

#### Lee Manor Conservation Area Character Appraisal (March 2008)

- 6.11 The application site is located in Character Area 3: Lee Railway Station and shops and the building makes a positive contribution to the special interest of the Conservation Area.

## **7.0 Planning Considerations**

- 7.1 The relevant planning considerations are the design of the proposals and their visual impact on the character and appearance of the host property, the

Conservation Area and the impact of the noise generating development on the amenities of neighbouring occupiers in the immediate vicinity.

*Design and conservation*

- 7.2 Paragraph 63 of the NPPF states that ‘in determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area’. Paragraph 131 states that ‘in determining applications, local planning authorities should take account of the desirability of new development making positive contribution to local character and distinctiveness.
- 7.3 NPPF Section 7 Requiring good design states that the Government attaches great importance to the design of the built environment. Core Strategy Policy 15 states that the Council will apply national and regional policy and guidance to ensure highest quality design and the protection or enhancement of the historic and natural environment, which is sustainable, accessible to all, optimises the potential of sites and is sensitive to the local context and responds to local character.
- 7.4 Core Strategy Policy 15 High quality design for Lewisham states that the Council will apply national and regional policy and guidance to ensure highest quality design and the protection or enhancement of the historic and natural environment, which is sustainable, accessible to all, optimises the potential of sites and is sensitive to the local context and responds to local character.
- 7.5 Core Strategy Policy 16 states that the Council will ensure that the value and significance of the borough’s heritage assets and their settings, conservation areas, listed buildings, archaeological remains, registered historic parks and gardens and other non-designated assets such as locally listed buildings, will continue to be monitored, reviewed, enhanced and conserved according to the requirements of government planning policy guidance, the London Plan policies, local policy and Historic England best practice.
- 7.6 DM Policy 30 states that the Council will require all development proposals to attain a high standard of design, including alterations and extensions to existing buildings. DM Policy 31 Alterations and extensions to existing buildings including residential extensions states that development proposals for alterations and extensions will be required to be of a high, site specific, and sensitive design quality, and respect and/or complement the form, setting, period, architectural characteristics, detailing of the original buildings. High quality matching or complementary materials should be used, appropriately and sensitively in relation to the context.
- 7.7 DM Policy 36 states that the Council will require a statement that describes the significance of the asset and its setting and an assessment of the impact on that significance for development proposals affecting heritage assets. Also required is clear and convincing justification if the significance of an asset may be harmed or lost through physical alteration or destruction, or development within its setting. The Council will not grant planning permission where:
- a. alterations to existing buildings is incompatible with the special characteristics of the area, its buildings, spaces, settings and plot coverage, scale, form and materials; or

b. development, which in isolation would lead to less than substantial harm to the building or area, but cumulatively would adversely affect the character and appearance of the Conservation Area.

- 7.8 The existing unauthorised external chiller has a negative impact on the host building, the rear terrace of which the property forms part and the public realm in general. It is currently the subject of an enforcement investigation, which would seek either its removal or replacement with a suitably designed enclosure. This application is as a result of the enforcement investigation and seeks to provide such a suitable enclosure. The proposed chiller would be enclosed within a brick extension designed to complement the host property in terms of materials, form and scale. It is considered therefore to offer an appropriate response to the current unacceptable situation.
- 7.9 The proposals would extend the length of the rear yard, measuring a combined 7.5m and leaving a gap of 80cm to the road. No objection is raised to the loss of part of the rear yard to the extensions given that two parking space was never a formal arrangement (only one space is served by a crossover) and in addition the photographs show the bins serving the residential and shop are stored in the remaining part.
- 7.10 The scale of the proposed structures are subordinate to the main building. The design and matching materials of the extension and chiller room are considered acceptable. Although they would both be visible from a public highway, they are not considered to cause harm to the architectural integrity or character of the main property or to the character and appearance of this part of Lee Manor Conservation Area. However, a condition is proposed to ensure that the brick matches the brick of the main building in type, size, finish, colour and mortar construction. The steel door for the chiller room is felt to be acceptable given the use of the structure, the noise-generating element of which could be controlled by condition.
- 7.11 The creation of an opening in the rear elevation for a new fire door is considered acceptable. Timber is an appropriate, traditional material for it.
- 7.12 It is part of the proposal that the unauthorised chiller room would be removed on completion of the rear extension to safeguard the special characteristics of the Conservation Area. The applicant has confirmed that should the application be approved the works, subject to engaging a building contract and building control requirements, commence within 12 months. In this respect, and having regard to the fact that the extension is unauthorised, an 18-month commencement period (as opposed to the default 3 years) has been agreed with the applicant. Failure to commence within the stated period would trigger the service of an enforcement notice under delegated authority for removal of the chiller.
- 7.13 Therefore, the proposed structure is considered to be appropriate in its scale, design and materials and thereby would preserve the character and appearance of the property and this part of Lee Manor Conservation Area in accordance with Core Strategy Policies 15 and 16, DM Policies 30, 31 and 36 and paragraphs 6.2 and 6.4 of the Residential Standards SPD.

*Impact on the amenity of neighbouring occupiers*

- 7.14 DM Policy 31 states that residential development should result in no significant loss of privacy and amenity (including sunlight and daylight) to adjoining houses and their back gardens.
- 7.15 The proposal would have no impact on residential amenity, which exists at first floor level, and there is no amenity residential or commercial amenity for consideration on the ground floor adjoining each side of the property.
- 7.16 The objections received by the residents at Buckden Close state that the air conditioning units at the back of the kitchen, the refrigeration motors and the opening and shutting of the external chiller room door are generating excessive noise levels. Following an early morning site visit, officers have determined that the air conditioning unit, which are the subject of the complaint, are attached to the rear of the adjoining property at 127 Burnt Ash Road. Regarding the chiller, the officer witnessed the door being opened and then shut. It is considered that it would be unreasonable to recommend that the application be refused on the basis that these motions create an audible, but not excessive one-off noise. Having assessed the Noise Impact Assessment submitted with the application for the new chiller room, the Senior Environmental Protection Officer did not have any objections to this application being granted.
- 7.17 Therefore, the proposal is found to be acceptable in terms of noise considerations and impact on neighbouring amenity.

#### Other issues raised during consultation

- 7.18 Issues regarding the cohesion and upkeep of Buckdean Close are not planning matters. Notwithstanding, the proper planning of the rear of the site would contribute to maintain order to Buckdean Close, particularly in terms of bin storage.
- 7.19 The issues raised by parking have been partly addressed above in terms of the rear area not being formal parking and that the area is largely used for the storage of commercial and residential refuse bins. Furthermore, even if the loss of formal parking were a consideration, the Council cannot reasonably demonstrate that the loss of 2 parking spaces would give rise to an unacceptable impact on parking conditions in the area.

#### Equalities Considerations

- 7.20 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.21 In summary, the Council must, in the exercise of its function, have due regard to the need to:
- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - (b) advance equality of opportunity between people who share a protected characteristic and those who do not;

(c) Foster good relations between people who share a protected characteristic and persons who do not share it.

- 7.22 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 7.23 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 7.24 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
1. The essential guide to the public sector equality duty
  2. Meeting the equality duty in policy and decision-making
  3. Engagement and the equality duty
  4. Equality objectives and the equality duty
  5. Equality information and the equality duty
- 7.25 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>
- 7.26 The planning issues set out above do not include any factors that relate specifically to any of the equalities categories set out in the Act, and therefore it has been concluded that there is no impact on equality.

### Conclusion

- 8.0 The Local Planning Authority has considered the particular circumstances of the application against relevant planning policy set out in the Development Management Local Plan (2014), the Core Strategy (2011) The London Plan (2016) and the National Planning Policy Framework (2012).
- 9.0 Based on the details submitted, it is considered that this application is acceptable, as the external chiller room would be removed once the construction of the single storey extension and chiller room have been completed. As such, this application

would not significantly harm the main property, this part of the Lee Manor Conservation Area or the amenities of the neighbouring occupiers.

**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 18 months beginning with the date on which the permission is granted.

Reason: To prevent further visual harm to the appearance of the Lee Manor Conservation Area in accordance with Policy 15 of the Core Strategy (June 2011) and DM Policies 30, 31 and 36 of the Development Management Local Plan (November 2014).

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

Site Location Plan Received on 7th January 2015

Design & Access Statement (Received on 21st January 2015

1836-P-001 Rev A Received on 9th March 2015

Heritage Statement; Noise Impact Assessment Received on 2nd June 2015

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) The single storey rear extension shall be constructed in brick to match the brick of the main building in type, size, finish, and colour and mortar construction.

Reason: To ensure that the design is delivered in accordance with the details submitted and assessed so that the development achieves the necessary high standard and detailing in accordance with Policy 15 of the Core Strategy (June 2011) and DM Policies 30, 31 and 36 of the Development Management Local Plan (November 2014).

- 4) The rating level of the noise emitted from the chiller room hereby permitted on the site shall be 5dB below the existing background level at any time. The noise levels shall be determined at the façade of any noise sensitive property. The measurements and assessments shall be made according to BS4142:2014.

Reason: To safeguard the amenities of the adjoining premises and the area generally and to comply with DM Policy 26 Noise and vibration of the Development Management Local Plan (November 2014).

- 5) Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the use of the flat roofed extension hereby approved shall be as set out in the application and no development or the formation of any door providing access to the roof shall be carried out, nor shall the roof area be used as a balcony, roof garden or similar amenity area.

Reason: In order to prevent any unacceptable loss of privacy to adjoining properties and the area generally and to comply with Policy 15 High quality design for Lewisham of the Core Strategy (June 2011) and DM Policy 31 Alterations and extensions to existing buildings including residential extensions of the Development Management Local Plan (November 2014).

## **INFORMATIVES**

**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, positive discussions took place which resulted in a Noise Impact Assessment being submitted.