

Committee	PLANNING COMMITTEE A	
Report Title	49 Montpelier Vale, Blackheath, SE3 0TJ	
Ward	Blackheath	
Contributors	Monique Wallace	
Class	PART 1	16 February 2017

<u>Reg. Nos.</u>	DC/16/96814
<u>Application dated</u>	25.05.16
<u>Applicant</u>	Mr May, of Russell + May Associates on behalf of Michael Caine
<u>Proposal</u>	Change of use from A1 (Retail/Shops) to A4 (Drinking Establishments) of 49 Montpelier Vale Ground Floor and Basement Floor.
<u>Applicant's Plan Nos.</u>	1213/02, 1213/10, 1213/01, Photographs, Design and Access Statement, received 25/5/17; Proposal statement received 3/1/17.
<u>Background Papers</u>	(1) Case File LE/410/49/TP (2) Local Development Framework Documents (3) The London Plan
<u>Designation</u>	Area of Archaeological Priority Areas of Special Character Shopping Non-Core Area Major District Centre PTAL 4 Blackheath Conservation Area B Road

## 1.0 Property/Site Description

- 1.1 The application property is a four storey plus basement and attic building at the junction of Montpelier Vale and Royal Parade. The ground floor occupies a much deeper footprint than the rest of the building. This is a feature of the entire terrace of which the property is part.
- 1.2 The ground floor and basement is currently occupied as a retail shop. The upper floors are in residential use, accessed by a separate entrance in Royal Parade. The flat roof of the ground floor projection at the front is used as a roof terrace by the residential accommodation on the first floor.
- 1.3 This application relates to the retail premises on the ground floor and basement.
- 1.4 The building is not Listed and is within the Blackheath District Centre, which is within the Blackheath Conservation Area.
- 1.5 The application site is within a secondary shopping frontage as identified on the Core Strategy Policies map.

## **2.0 Planning History**

- 2.1 In 1999 under reference DC/99/44729, planning permission was **refused** for the change of use of the ground floor of 49 Montpelier Vale SE3 to an A2 office.
- 2.2 In June 2014, a Lawful Development Certificate was **granted** under Class D of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (Amended) in respect of the proposed change of use of the ground floor and basement of 49 Montpelier Vale from a shop (Use Class A1) to use as a restaurant/cafe (Use Class A3) for a temporary period of two years starting on 1 July 2014. Not implemented, now **expired**.

## **3.0 Current Planning Application**

### The Proposal

- 3.1 The current application is for the conversion of the existing A1 retail shop at 49 Montpelier Vale to an A4 (Drinking Establishment) use, described as a wine bar.
- 3.2 The proposal does not involve any physical alterations to the property that would require planning permission.

### Supporting Documents

- 3.3 The application was submitted with drawings showing the existing and proposed elevations (no change) and the existing and proposed floor plans, showing the layout of the new A4 use.
- 3.4 Photographs and a Design and Access Statement were also submitted, which states at paragraph 4.1 that the site is to be used as a wine bar with tables and chairs at both ground and basement levels. The Design and Access Statement also refers to refuse management and access to the site for wheelchair users.
- 3.5 Copies of a planning proposal statement (hand written) was sent to neighbours advising them of the intended use. A copy of this letter was copied and submitted as a case copy document.

## **4.0 Consultation**

- 4.1 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 and letters were sent to residents and business in the surrounding area and the relevant ward Councillors. The Council's Licensing team were also consulted.

### Written Responses received from Local Residents and Organisations

- 4.3 Three objections were received to the proposals from the occupiers of Flats 1 and 2, 43a Montpelier Vale, Flat above 49 Montpelier Vale (directly above the application site) and 8 Senlac Road.
- 4.4 The objections to the proposals are summarised as follows:
- The change of use would result in additional refuse problems.

- The new use would result in music being heard by local residents.
- Blackheath is saturated with places to eat and drink.
- The tables outside would be exposed to pollution from passing traffic
- A bar would have longer opening hours, which would be detrimental to the amenities of nearby occupiers.
- The cigarette smoke would compromise the enjoyment of the roof terrace above the shop unit.
- There is nowhere suitable for air conditioning units and ventilation ducting.
- The Victorian building does not have adequate sound proofing.
- The loss of the A1 unit would harm the retail offer in Blackheath.
- There is a direct correlation between drinking establishments and anti-social behaviour.
- Another drinking establishment in the vicinity would exacerbate parking problems
- Insufficient capacity for additional waste to be created by the use.

### Blackheath Society

4.5 Objections were raised to the proposals, summarised as follows:

- There are already enough drinking establishments in the village
- The loss of A1 would threaten the balance of Village
- No evidence has been provided to show that the A1 use is not viable.
- The change of use would harm the amenities of nearby residential occupiers, which might drive them out of the Village, thus irreversibly changing its character.
- The change would result in additional car parking, which would exacerbate an already unsatisfactory situation.

### Lewisham Licensing

4.6 The Licensing team did not object to the proposals but provided the following comments.

- The application site is within Cumulative Impact Zone (CIZ). In such areas, the applicant has to demonstrate that the new use would not:
  - Exacerbate crime and disorder
  - Reduce public safety
  - Cause a public nuisance
  - Expose children to further harm.
- A4 premises increase the presence of crime and disorder.
- A Licence application would need to be presented to the Licensing committee for their consideration.

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

## London Plan (March 2016)

5.6 The policies relevant to this application are:

- Policy 2.15 Town centres
- Policy 4.1 Developing London's economy
- Policy 4.7 Retail and town centre development
- Policy 4.8 Supporting a successful and diverse retail sector and related facilities and services
- Policy 6.11 Smoothing traffic flow and tackling congestion
- Policy 6.13 Parking
- Policy 7.1 Lifetime neighbourhoods
- Policy 7.4 Local character
- Policy 7.8 Heritage assets and archaeology
- Policy 7.13 Safety, security and resilience to emergency
- Policy 7.14 Improving air quality
- Policy 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes

## 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:

- Spatial Policy 3 - District Hubs
- Core Strategy Policy 6 - Retail hierarchy and location of retail development
- Core Strategy Policy 14 - Sustainable movement and transport
- 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 centres shopping frontages                                   |
| DM Policy 17 | Restaurants and cafés (A3 uses) and drinking establishments (A4 uses) |
| DM Policy 20 | Public houses                                                         |
| DM Policy 26 | Noise and vibration                                                   |
| DM Policy 27 | Lighting                                                              |
| DM Policy 29 | Car parking                                                           |

DM Policy 30	Urban design and local character
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.

### Blackheath Conservation Area Appraisal 2007

- 5.10 The application building is referred to in the Appraisal as being part of Character area 9. Particular reference is made to the uniqueness of the properties within the area, and the high quality of the shop fronts.

### Town and District Centres Retail Report 2015

This document confirms that Blackheath has the lowest vacancy rates of all the Town and District centres in the borough. The document advises that all centres have experienced a decline in A1 provision, which can be attributed to the rise in internet shopping.

## **6.0 Planning Considerations**

- 6.1 The main issues to be considered in respect of this application are:

- a) Principle of Development
- b) Highways and Traffic Issues
- c) Neighbour Amenity

### Principle of Development

- 6.2 The principle of development in this case is formed of two parts; 1) whether the loss of the A1 (retail) use is acceptable and 2), whether the change of use to A4 (drinking establishments) is acceptable.

### *Loss of A1*

- 6.3 London Plan Policy 2.15 Town Centre states that boroughs should ensure that developments sustain competitive choice of goods and services. Annex 2 of the London Plan is a list of the Town and District Centres within London. Here, Blackheath is referred to as a District Centre that has a low potential of growth. The supporting text to the annex states that Borough policies should therefore encourage the optimum use of the existing units within the centre. London Plan Policy 4.8 Supporting a successful and diverse retail sector and related facilities and services states that decisions should 'b) support convenience retail,' particularly in District Centres in order to support lifetime neighbourhoods. Point g) of the same policy states that clusters of retail uses should be managed having regard to their impacts to the centre's vitality and viability, competitiveness, local identity, security and safety and economic benefits.

- 6.4 Core Strategy Policy 6 identifies Blackheath in the retail hierarchy as a District Centre. Development Management Local Plan Policy 14 (DM 14) is explicit in its requirements when it comes to the proposed loss of an A1 unit in a secondary shopping frontage and states that the loss of an A1 unit would only be acceptable in the following circumstances:

- The A1 unit is being replaced with an A2, A3, A4 or D2 use
- The change of use would 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)
- Not result in 3 or more non-A1 uses together
- Not harm the retail character, attractiveness, vitality and viability of the centre including unreasonably reducing the percentage of A1 units
- Retain/provide an active frontage at ground floor level

- 6.5 The Town and District Centres Retail Report 2015 confirms that Blackheath has the lowest vacancy rates of all the Town and District centres in the borough with a vacancy rate of 0.8%; in 2011 it was 2.5%, 2014 it was 0%, thus showing that the vacancy levels fluctuate, albeit slightly.
- 6.6 The proposal is to provide an A4 use and would not result in there being three non-A1 uses as the unit is at the end of a parade, with an A1 unit immediately adjoining. Further, the proposal is to replace the A1 unit with an A4 unit and, would retain an active frontage. Lastly, the findings of the Town and District Centres Retail Report 2015 confirms that the Blackheath Town centre has very low vacancy rates and officers do not consider that the loss of an A1 unit would cause any material harm to the viability and vitality of the District Centre. The policies provide parameters which aim to protect the vitality and viability of shopping areas, and the proposed change of use principally complies with those requirements. Subject to further consideration regarding neighbour amenity, the principle of the loss of A1 is considered to be acceptable.

#### *Change of use to A4*

- 6.7 Core Strategy Spatial Policy 3 states that development decisions should ensure that the character of the Blackheath Village should be preserved and enhanced. The Town and District Centres Retail Report 2015 states that all centres (except for New Cross and Blackheath, which have gained an additional pub each, and Downham (no change)) have experienced a decline in pubs. The report also states that, in 2015, the proportion of A1 (retail) and A3-A4 (restaurants, bars and pubs) were 54% and 24% respectively in Blackheath District Centre.
- 6.8 DM Policy 20 Public Houses refers to the retention of Public Houses only. DM 17 (Restaurants and cafés (A3 uses) and drinking establishments (A4 uses)) however, is again explicit in the requirements needed to be attained before a change of use to A4 can be supported:
- The location is acceptable
  - The proposed use does not detrimentally affect the vitality of the shopping area
  - There is no harm to the living conditions of nearby residents, including that created by noise and disturbance from users and their vehicles, smell, litter and unneighbourly opening hours

- Any traffic generated from the proposed use is appropriately managed

- 6.9 The application site is within the District Centre and therefore is considered to be an appropriate location. As established against the requirements of DM 14 (District centres shopping frontages), the proposed use would not detrimentally affect the vitality of the shopping area as the loss of an A1 unit, and the gain of an A4 unit is not considered to unreasonably reduce the level of A1 provision, nor would it result in the overprovision of non-A1 units.
- 6.10 The impact to amenity and highways will be considered in later paragraphs of this report.
- 6.11 Subject to further consideration regarding the impact to neighbour amenity and highways, officers consider the principle of the loss of A1 and the change of use to A4, to be acceptable.

### Design

- 6.12 No alterations are proposed to the external façade of the application unit, while officers are satisfied that the A4 use would maintain an active frontage throughout the day in accordance with the requirements of DM 14 (District centres shopping frontages) and 17 (Restaurants and cafés (A3 uses) and drinking establishments (A4 uses)).

### Highways and Traffic Issues

- 6.13 Core Strategy Policy 14 Sustainable movement and transport aims to encourage sustainable modes of transport, and to facilitate this ambition, the policy states that the Council will take a restrained approach to parking provision.
- 6.14 Objections have been raised on the grounds that the change of use would lead to further parking and congestion in the vicinity of the application site. The Design and Access statement submitted with the application advises that the change of use would not have any implications upon the existing parking and flow of traffic around the site.
- 6.15 District Centres benefit from excellent access to public transport. Blackheath Village has a Public Transport Accessibility Level (PTAL) of 4 (good).
- 6.16 Officers consider that the proposed change of use to A4 would result in more vehicular movement and parking around the district centre, but only marginally and to an acceptable level given the limited floorspace of the unit and its proximity to good public transport links.

- 6.17 With regard to servicing, officers consider that the existing refuse storage and collection arrangements, with the correct management secured by condition, would be acceptable.

### Impact on Adjoining Properties

- 6.18 Objections have been received with regard to neighbour amenity, namely the impact of noise and disturbance upon the nearby residential occupiers and with regard to anti-social behaviour.

- 6.19 Both DM policies 14 and 17 aim to ensure that changes of use do not result in an unreasonable level of impact on neighbour amenity. However, given the location of the site within a district centre, it would be expected that there would be a greater degree of noise and activity compared to a principally residential area. Given that the principle of a drinking establishment use is acceptable in a district centre, consideration should be given to mitigating the harm of noise and disturbance arising from the use, balancing this against the requirements of the business.
- 6.20 The planning application form does not state the proposed hours of operation. The district centre location affords the ability of later opening times than would be allowed for a more residential environment. Therefore officers recommend that the business only be open for patrons between the hours of 10am-10:30pm Monday-Wednesday, 10am-11:00pm Thursday and Sunday and Bank Holidays and 10am-12:00am Friday-Saturday. This should be secured by way of a condition.
- 6.21 Officers also recommend a further condition ensuring that loud music is minimised outside of the venue; that is, any live bands and amplified music levels are to be contained with the basement area as to minimise harm to neighbour amenity to a reasonable level given the location. Given the change to A4 use which necessitates longer opening hours, a further condition requiring sound proofing should also be secured by condition.
- 6.22 With regard to noise and disturbance from patrons loitering outside of the venue, Officers consider that it would be unreasonable and unenforceable to request that the space outside is kept clear. Notwithstanding this, officers consider that any noise derived from patrons talking and smoking outside of the venue would not result in noise levels that were inappropriate for a District Centre location.
- 6.23 The proposed use does not include a kitchen on the floorplans and no ventilation/extraction equipment is proposed. If such equipment is required in the future, a separate planning application would need to be submitted.

## **7.0 Community Infrastructure Levy**

- 7.1 The above development is not CIL liable.

## **8.0 Conclusion**

- 8.1 This application has been considered in the light of policies set out in the development plan and other material considerations.
- 8.2 Officers consider that the proposed loss of A1 and change of use to A4 is appropriate for the District Centre location, resulting in acceptable levels of impact to neighbour amenity.

## **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 the permission is granted.

**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:

1213/02, 1213/10, 1213/01, Photographs, Design and Access Statement, received 25/5/17; Proposal statement received 3/1/17.

**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. (a) The use hereby approved shall commence until full written details, including relevant drawings and specifications of the proposed works of sounds insulation against airborne noise to meet D'nT,w + Ctr dB of not less than 55 for walls and/or ceilings where residential parties non domestic use shall be submitted to and approved in writing by the local planning authority.  
  
(b) The use shall only commence once the soundproofing works as agreed under part (a) have been implemented in accordance with the approved details.  
  
(c) The soundproofing shall be retained permanently in accordance with the approved details.

**Reason:** In the interests of residential amenity and to comply with DM Policy 26 Noise and vibration, DM Policy 14 District centres shopping frontages DM Policy 17 Restaurants and cafés (A3 uses) and drinking establishments (A4 uses) of the Development Management Local Plan (November 2014).

4. (a) The change of use shall not occur until details of proposals for the storage of refuse and recycling facilities for the commercial unit hereby approved, have been submitted to and approved in writing by the local planning authority.  
  
(b) The facilities as approved under part (a) shall be provided in full prior to occupation of the development and shall thereafter be permanently retained and maintained.

**Reason:** In order that the local planning authority may be satisfied with the provisions for recycling facilities and refuse storage in the interest of safeguarding the amenities of neighbouring occupiers and the area in general, in compliance with Development Management Local Plan (November 2014) DM Policy 30 Urban design and local character and Core Strategy Policy 13 Addressing Lewisham waste management requirements (2011).

5. The premises shall only be open for customer business between the hours of 10am-10:30pm Monday-Wednesday, 10am-11:00pm Thursday and Sunday and Bank Holidays and 10am-12:00am Friday-Saturday.

**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 26 Noise and Vibration, DM Policy 14 District centres shopping frontages DM Policy 17 Restaurants and cafes (A3 uses), and drinking establishments (A4 uses) of the Development Management Local Plan (November 2014).

6. No music, amplified sound system or other form of loud noise (such as singing or chanting) shall be used or generated which is audible outside the premises or within adjoining buildings.

**Reason:** To safeguard the amenities of the adjoining premises and the area generally and to comply with Paragraph 120 of the National Planning Policy Framework and DM Policy 26 Noise and Vibration and DM Policy 32 Housing design, layout and space standards of the Development Management Local Plan (November 2014).

### **Informatives**

- A. **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 and proactive discussions took place with the applicant prior to the application being submitted through a pre-application discussion. As the proposal was in accordance with these discussions and was in accordance with the Development Plan, no contact was made with the applicant prior to determination.
- B. The applicant is advised that any use associated with the implementation of this permission (including the serving of food and/or alcohol) will constitute commencement of development. Further, all pre commencement conditions attached to this permission must be discharged, by way of a written approval in the form of an application to the Planning Authority, before any such use takes place.
- C. Pre-commencement Conditions (3) and (4) attached to this decision notice are necessary in order to protect the amenities of nearby residential occupiers and to ensure that refuse is managed appropriately in the District centre location.