

Committee	PLANNING COMMITTEE B	
Report Title	37 Deptford High Street, London, SE8 4AD	
Ward	New Cross	
Contributors	Alfie Williams	
Class	PART 1	17 October 2019

Reg. Nos. DC/19/112017

Application dated 24.04.19

Applicant Isla Ray Ltd

Proposal An application submitted under Section 73 of the Town & Country Planning Act 1990 for a Minor Material Amendment in connection with the Prior Approval (DC/17/104830) dated 26 January 2018 for the change of use the ground floor of 37 Deptford High Street, SE8, from retail use (Class A1) to restaurant/cafe use (Class A3) :- in order to allow a variation of Condition (2) for the hours of opening to increase to midnight on Thursdays and 1am Friday and Saturday nights (i.e. 1am on Saturday and 1am on Sunday).

Plan Numbers Site Location Plan; Heritage Statement; Design And Access Statement; Supporting Letter;

Background Papers

- (1) Case File DE/156/37/TP
- (2) Core Strategy (June 2011)
- (3) Development Management Local Plan (November 2014)
- (4) The London Plan (March 2016)

Designation

Deptford District Centre
Primary Shopping Frontage
Area of Archaeological Priority
Deptford High Street Conservation Area
Deptford Neighbourhood Forum
PTAL 6a

1 SUMMARY

- 1 This report sets out Officer's recommendation for the above proposal. The report has been brought before members for a decision as there are three or more valid planning objections.

2 SITE AND CONTEXT

Site description and current use

- 2 The application site is the ground floor of a three storey terraced property located on the western side of Deptford High Street. The ground floor is in use as a restaurant/café, known as Isla Ray, following prior approval for a change of use from retail granted in January 2018. The first and second floors of the property are in residential use and do not form part of this application.
- 3 At ground floor level the property has a timber shopfront painted black with painted logo and lettering on the fascia. The shopfront features three large glazed panels and a door aligned to the right. On the floors above the property is painted white and has uPVC casement windows.
- 4 To the rear of the property is a large yard. The area immediately to the rear of the property is in use as an outdoor seating area, with the rear part of the yard used for servicing and refuse. The side of the yard provides access to the flat above via timber staircase adjacent to the seating area. The flat is set back from the rear elevation of the ground floor shop due to a large single storey rear extension.

Character of area

- 5 The surrounding area is predominantly commercial in character owing to its designation as a Major District Centre (see map below).



Map 1: extract from Local Plan policies map showing Major District Centre designation: site of 37 Deptford High Street edged in red

- 6 The area south of the train station is Primary Shopping Frontage, with the area to the north Secondary Shopping Frontage, resulting in a relatively high concentration of retail uses. The High Street also features a vibrant night-time economy, mainly concentrated on Resolution Way and the Market Yard, with many restaurants, bars, pubs, nightclubs and music venues bringing activity in the evening. Residential use is confined to the upper floors of buildings.

Heritage/archaeology

- 7 The property is located within the Deptford High Street Conservation Area and dates from the late 1700s. The building was almost certainly originally built as a house and features a three bay frontage with blank window recesses over the original entrance bay. The property forms part of a group comprising Nos 33-37 Deptford High Street. Nos 33 and 35 still retain their original double span pantile roofs. It is not statutory or locally listed.
- 8 Deptford High Street is characterised by modestly scaled buildings, generally between one and four storeys in height and built on narrow plots with uninterrupted frontages, which create a strong sense of enclosure. London stock brick is the dominant material; however, there are a variety of finishes to the front elevations, including render, paint, and artwork.

Transport

- 9 The property is located within a highly accessible location (PTAL 6a) with Deptford Station and Deptford Bridge DLR Station within short walking distance. The area is also served by 24 hour public transport including several night-bus routes on New Cross Road and a tube service from New Cross Gate Station, approximately 1.1km away.

3 RELEVANT PLANNING HISTORY

- 10 In October 2011, Planning Permission (DC/11/077795) was granted for the change of use from amusement centre to a retail Jewellers and pawnbrokers (use class A1).
- 11 In June 2017, prior approval under Class C of Part 3 of Schedule 2 of the General Permitted Development Order (DC/17/100997) for a change of use from retail use (Class A1) to restaurant/cafe use (Class A3) was refused as the cumulative floor space of the existing building changing use under Class C would have exceeded the 150 square metres limit.
- 12 In January 2018, prior approval under Class C of Part 3 of Schedule 2 of the General Permitted Development Order for a change of use from retail use (Class A1) to restaurant/cafe use (Class A3) was granted (DC/17/104830) subject to conditions relating to (1) sound insulation (including the approval of further details), (2) opening hours and (3) control of amplified music. Condition 2 of this permission is the subject of this application.
- 13 In May 2018, Condition (1) of that permission (further details of sound insulation) was discharged.
- 14 In July 2018, planning permission was granted for the use of part of the yard area at the rear of 37 Deptford High Street SE8 as a sitting out area (DC/18/106939) subject to a condition restricting the operating hours until 9pm.
- 15 In August 2019, planning permission was granted for an increase to the area of the outdoor seating area in the rear yard (DC/19/112466).

4 CURRENT PLANNING APPLICATION

4.1 THE PROPOSALS

16 The application is for a minor-material amendment to the prior approval application granted permission in January 2018 to allow a change of use from retail (Use Class A1) to a restaurant/café (Use Class A3). The amendment concerns Condition 2 of the permission, which restricts the opening hours until 11pm, full wording below:

The premises shall only be open for customer business between the hours of 9am to 11pm on everyday 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 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)

17 The proposed amendment would see an extension to the opening hours until midnight on Thursdays and 1am Friday and Saturday nights (i.e. 1am on Saturday and 1am on Sunday). The extension to the opening hours only applies to the inside area. The operating hours for the outdoor seating would remain 9am until 9pm.

5 CONSULTATION

5.1 APPLICATION PUBLICITY

18 Site notices were displayed on 5 June 2019 and a press notice was published on 5 June 2019.

19 Letters were sent to residents and business in the surrounding area and the relevant ward Councillors on 29 May 2019.

20 Three responses were received, comprising three objections.

5.1.1 Objections

Material planning consideration	Para where addressed
Harm to residential character	40-44
Noise and disturbance	46-48

5.2 INTERNAL CONSULTATION

21 The following internal consultees were notified on 29 May 2019.

22 Environmental Health: raised no objections to the application as the increase to the opening hours would accord with the change to the licence.

23 Conservation: raised no objections.

6 POLICY CONTEXT

6.1 LEGISLATION

24 Planning applications are required to be determined in accordance with the statutory development plan unless material considerations indicate otherwise (S38(6) Planning and Compulsory Purchase Act 2004 and S70 Town & Country Planning Act 1990).

25 Planning (Listed Buildings and Conservation Areas) Act 1990: S.66/S.72 gives the LPA special duties in respect of heritage assets.

6.2 MATERIAL CONSIDERATIONS

26 A material consideration is anything that, if taken into account, creates the real possibility that a decision-maker would reach a different conclusion to that which they would reach if they did not take it into account.

27 Whether or not a consideration is a relevant material consideration is a question of law for the courts. Decision-makers are under a duty to have regard to all applicable policy as a material consideration.

28 The weight given to a relevant material consideration is a matter of planning judgement. Matters of planning judgement are within the exclusive province of the LPA. This report sets out the weight Officers have given relevant material considerations in making their recommendation to Members. Members, as the decision-makers, are free to use their planning judgement to attribute their own weight, subject to the test of reasonableness.

6.3 NATIONAL POLICY & GUIDANCE

- National Planning Policy Framework 2019 (NPPF)
- National Planning Policy Guidance

6.4 DEVELOPMENT PLAN

29 The Development Plan comprises:

- London Plan Consolidated With Alterations Since 2011 (March 2016) (LPP)
- Core Strategy (June 2011) (CSP)
- Development Management Local Plan (November 2014) (DMP)
- Site Allocations Local Plan (June 2013)
- Lewisham Town Centre Local Plan (February 2014) (LTCP)

6.5 SUPPLEMENTARY PLANNING GUIDANCE

30 London Plan SPG/SPD:

- Town Centres (July 2014)
- Culture & Night Time Economy (November 2017)

6.6 OTHER MATERIAL CONSIDERATIONS

31 The Mayor of London published a draft London Plan on 29 November 2017 and minor modifications were published on 13 August. The Examination in Public commenced on 15 January 2019 and concluded on 22 May 2019. This document now has some limited weight as a material consideration when determining planning applications but does not

form part of the development plan. The relevant draft policies are discussed within the report (DLPP).

7 PLANNING CONSIDERATIONS

32 The main issues are:

- Principle of Development
- Impact on Adjoining Properties

7.1 BACKGROUND

General policy

33 The National Planning Policy Framework (NPPF) at Paragraph 11, states that there is a presumption in favour of sustainable development and that proposals should be approved without delay so long as they accord with the development plan.

34 Lewisham is defined as an Inner London borough in the London Plan. LPP 2.9 sets out the Mayor of London's vision for Inner London. This includes among other things sustaining and enhancing its recent economic and demographic growth; supporting and sustaining existing and new communities; addressing its unique concentrations of deprivation; ensuring the availability of appropriate workspaces for the area's changing economy; and improving quality of life and health.

Policy

35 Section 73 of the Town and County Planning Act 1990 allows Local Planning Authorities the power to grant a fresh permission for the development of land without complying with conditions previously imposed. Guidance for determining s.73 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".

Discussion

36 The development, which the application under s.73 seeks to amend, has by definition been judged to be acceptable in principle at an earlier date. Consequently, the extent of the material planning considerations in this case are narrow and only the amendments being applied for should be considered at this stage. Since the original planning permission will still be capable of implementation, the only the practical consequences of imposing a revised opening hours condition should be considered. As such, the assessment pivots on the relative merit or harm of allowing the premises to remain open until the hours proposed in their application rather than 11 o'clock

37 When determining the application the LPA have to consider the application in the light of current policy and other relevant material considerations. The LPA therefore has to make a decision focusing on national or local policies, which might have changed since the original grant of planning permission as well as the merits of the changes sought.

38 Officers are satisfied that the impact of the proposed amendments are minor material in the context of the original application and no material changes to planning policy or other relevant material considerations have occurred since the original permission was granted.

39 Therefore, the principle of the minor material amendment is considered acceptable. The material planning consideration relevant to this application is the impact of the extended hours on the living conditions of the neighbouring properties.

7.2 PRINCIPLE OF DEVELOPMENT

Policy

40 The Mayor of London's Culture & Night-Time Economy SPG defines the night-time as taking place between 6pm and 6am and estimates that the night-time economy is worth £26bn and accounts for 1 in 8 jobs and 10% of employment in town centres.

41 LPP 4.6 states that local authorities should identify, manage and co-ordinate strategic and more local clusters of evening and night time entertainment activities. CS Spatial Policy 2 identifies Deptford District Centre as a location for major new retail and leisure development, including contributions towards the local night-time economy.

42 The draft London Plan encourages greater support for the night-time economy. DLPP HC6 recognises the night-time economy as being increasingly important to London's economy and emphasises the importance of promoting London as a 24-hour city. It states boroughs should (B)(1) promote the night –time economy in places such as this with access via Night Buses.

43 HC6 sets out different areas of night-time activity function at different scales that have different catchments. The policy classifies three distinct categories, N1 Areas of international or national significance, N2 Areas of regional or sub-regional significance and N3 Areas with more than local significance. Figure 7.7 of the draft London Plan identifies Deptford District Centre as an NT3 Area. NT3 Areas generally draw visitors from other parts of London and tend to feature smaller venues and premises. Promoting and managing the night-time economy within Deptford is therefore an important consideration for development effecting restaurants, bars, pubs, nightclubs and music venues.

Discussion

44 There is a clear policy objective within London Plan, the SPG, the emerging London Plan, the Core Strategy to support the night-time economy, with the Deptford District Centre identified as an location for the concentration of these uses. The proposed increase to the opening hours would enhance the contribution the business would make to night-time economy within Deptford, adding to the vibrancy and vitality of the high street, and as such would be compliant with the principles of the aforementioned policies.

7.3 LIVING CONDITIONS OF NEIGHBOURS

General Policy

45 DMP 17 states that changes of use to restaurants and cafés (A3) and drinking establishments (A4) will only be considered acceptable where 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.

7.3.1 Noise and disturbance

46 Officers recognise that Deptford High Street is a mixed-use location with residential accommodation on some upper floors and on side streets, and therefore there is a need to balance the promotion of the night-time economy with the impact to residential amenity. However, there is an expectation that night time activity is more acceptable in a

district centre such as this than in wholly residential areas. Local residents objecting to the proposal have noted the potential for increased disturbances arising from music, customers leaving the premises and late night servicing and disposal of refuse.

47 The increase to the opening hours would be confined to Thursdays, capped at 12am and Fridays and Saturdays, capped at 1am, which is compliant with the licence and in keeping with many of the other similar uses located within the local area. The proposed opening hours are therefore judged to be appropriate for a busy town centre location and would not result in disturbances above the typical levels and times currently experience on Deptford High Street. As such officers are satisfied that disturbances resulting from customers leaving the premises at these later times would be acceptable.

48 In terms of disturbance resulting from within the premises, conditions were imposed on the original permission restricting the use of amplified music. Further, a condition for sound insulation was discharged following consultation with the Environmental Health Department. Officers are of the view that any disturbance from (1) noise break-out from the bar; and (2) noise and/or vibrations transmitted through the structure would not harm the living conditions of neighbours. Therefore the change to the hours would be acceptable from this perspective, and no additional sound insulation would be required. Furthermore, the increase to the opening hours would not apply to the outdoor seating area, which is restricted to 9pm.

7.3.2 Impact on neighbours conclusion

49 The proposed amendment would comply with the policy objective to support the night-time economy of Deptford. The opening hours are broadly in keeping with the typical operating hours of other similar uses on Deptford High Street. Therefore, the extension to the opening hours is not considered to generate disturbances above typical levels and the conditions and restrictions imposed on the original permission and use of the outdoor area are considered sufficient to safeguard the amenity of the adjoining properties.

8 LOCAL FINANCE CONSIDERATIONS

50 Under Section 70(2) of the Town and Country Planning Act 1990 (as amended), a local finance consideration means:

- 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
- sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy (CIL).

51 The weight to be attached to a local finance consideration remains a matter for the decision maker.

52 The CIL is therefore a material consideration and the applicant has completed the relevant form.

9 EQUALITIES CONSIDERATIONS

53 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.

- 54 In summary, the Council must, in the exercise of its function, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - advance equality of opportunity between people who share a protected characteristic and those who do not;
 - foster good relations between people who share a protected characteristic and persons who do not share it.

55 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.

56 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: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

57 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

58 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: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>

59 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.

10 HUMAN RIGHTS IMPLICATIONS

60 In determining this application the Council is required to have regard to the provisions of the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights. “Convention” here

means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant including

- Article 8: Respect for your private and family life, home and correspondence
- Protocol 1, Article 1: Right to peaceful enjoyment of your property

61 This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as Local Planning Authority.

62 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with the above Convention Rights will be legitimate and justified. Both public and private interests are to be taken into account in the exercise of the Local Planning Authority's powers and duties. Any interference with a Convention right must be necessary and proportionate. Members must therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

11 CONCLUSION

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

64 The proposed extension to the opening hours of the restaurants is considered to be appropriate for the Deptford District Centre and as such is not considered to be harmful to the amenity of the neighbouring residential properties.

12 RECOMMENDATION

65 That the Committee resolve to **GRANT** planning permission subject to the following conditions and informatives:

12.1 CONDITIONS

1) SOUND INSULATION

The soundproofing shall be retained permanently in accordance with the details as approved in permission DC/19/106558.

Reason: In the interests of residential amenity and to comply with DM Policy 26 Noise and vibration of the Development Management Local Plan (November 2014).

2) OPENING HOURS

The premises shall only be open for customer business between the hours of 9am to 11pm Sunday to Wednesday, 9am to 12am Thursday and 9am to 1am Friday and 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)

3) AMPLIFIED SOUND

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 of the Development Management Local Plan (November 2014).

12.2 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, 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.