

Committee	PLANNING COMMITTEE C	
Report Title	121 Burnt Ash Road, SE12 8RA	
Ward	Lee Green	
Contributors	Alfie Williams	
Class	PART 1	19 September 2019

Reg. Nos. DC/19/112456

Application dated 29/05/2019

Applicant Pars Dental

Proposal Change of use of 121 Burnt Ash Road SE12 from Use Class A1 retail unit to Use Class D1 Dental Practice

Plan Numbers Existing and Proposed floor plan; Site Plan; Block Plan; Marketing Statement; Planning Statement; Design & Access Statement; Heritage Statement

Background Papers

- (1) Case File LE/395/121/TP
- (2) Core Strategy (June 2011)
- (3) Development Management Local Plan (November 2014)
- (4) The London Plan (March 2016)

Designation

Lee Manor Conservation Area
Lee Manor Conservation Area Article 4 Direction
Lee Neighbourhood Forum
PTAL 3

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 3 or more valid planning objections.

2 **SITE AND CONTEXT**

2.1 **SITE DESCRIPTION AND CURRENT USE**

2 The application site is three storey mixed use mid-terrace property with a commercial unit at ground floor and residential accommodation on the upper floors. The property is located within a parade of shops on the eastern side of Burnt Ash Road. This application relates to the ground floor commercial unit only. The unit was in retail use selling windows, but has been vacant for approximately two years.

3 The property is constructed from London stock bricks and features a bay window at first floor level with a contemporary shopfront in the ground floor. The retail unit is accessed by a single door in the shopfront. The residential accommodation is accessed via stairs at the rear of the property from Buckden Close. The retail unit also has access onto Buckden Close via an area of hardstanding which provides one staff car parking space.

2.2 CHARACTER OF AREA

4 The surrounding area is predominantly commercial with shopping parades on both sides of Burnt Ash Road featuring a mix of uses includes retail, cafés, restaurants, a dental practice and a public house. The upper floors of the parade are comprised of residential units. On the eastern side of the Burnt Ash Road the parade extends both sides of Lee Station.

5 The side roads off Burnt Ash Road are residential in character. The section of Burnt Ash Road immediately to the north of the parade is residential with large Victorian Villas on the western side and more contemporary housing on the eastern side. Lee Green District Centre is located approximately 800m to the north of the site.

2.3 HERITAGE/ARCHAEOLOGY

6 The property is located within Character Area 3 of the Lee Manor Conservation Area and is subjected to an Article 4 Direction restricting certain residential permitted development rights. The Character Appraisal notes that the parades on both sides of Burnt Ash Road were purpose built with shops at ground floor and residential accommodation above.

2.4 TRANSPORT

7 The site has a PTAL of 3. However, Burnt Ash Road is served by three bus routes and the property is approximately 100m from Lee Station. Parking restrictions on Burnt Ash Road including double yellow lines and short stay parking bays. There is a CPZ in operation in the surrounding roads restricting parking between 10am and 12 noon.

3 RELEVANT PLANNING HISTORY

8 None relevant to this application.

4 CURRENT PLANNING APPLICATION

4.1 THE PROPOSALS

9 The application is for the change of use of ground floor retail unit (use class A1) to provide a two-surgery dental practice (use class D1). The proposed development would require internal alterations to provide two treatment rooms, one x-ray room, one disabled access toilet, a reception, a decontamination room and a staff room.

10 No external changes are proposed to the building however, it has been indicated that new signage would be affixed to the shopfront. The practice would employ four members of staff. The on-site parking space and access at the rear of the site would be maintained.

5 CONSULTATION

5.1 APPLICATION PUBLICITY

11 Site notices were displayed on 10 July 2019 and a press notice was published on 10 July 2019.

12 Letters were sent to residents and business in the surrounding area, the relevant Ward Councillors, the Lee Manor Society and the Lee Neighbourhood Forum on 01 July 2019.

13 Five responses were received from local residents, comprising five objections.

5.1.1 Objections

Material planning consideration	Para where addressed
Loss of the retail use	Paras 30-36
Parking stress	Para 52

14 A number of non-material planning considerations were also raised as follows:

15 The impact on the existing dental practice located in Lee is not a material planning consideration given that medical facilities are not afforded policy protection from competition. The lack of pre-application consultation is not material to this application given that it is not a policy requirement. Officers also note that the consultation carried out for this application was compliant with the Council's Statement of Community Involvement and the relevant statutory requirements.

5.2 INTERNAL CONSULTATION

16 The following internal consultees were notified on 01 July 2019.

17 Highways Department: raised no objections.

18 Conservation: raised no objections.

6 POLICY CONTEXT

6.1 LEGISLATION

19 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).

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

21 MATERIAL CONSIDERATIONS

22 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.

23 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.

24 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.

6.2 NATIONAL POLICY & GUIDANCE

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

6.3 DEVELOPMENT PLAN

25 The Development Plan comprises:

- London Plan Consolidated With Alterations Since 2011 (March 2016) (LPP)
- The relevant draft policies are discussed within the report (DLPP)
- 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)

Draft London Plan (expect 2019): 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 is not yet part of the development plan.

6.4 SUPPLEMENTARY PLANNING GUIDANCE

26 Lewisham SPG/SPD:

- Shopfront Design Guide Supplementary Planning Document (March 2006)

7 PLANNING CONSIDERATIONS

27 The main issues are:

- Principle of Development
- Urban Design and conservation
- Transport

7.1 PRINCIPLE OF DEVELOPMENT

General policy

28 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.

29 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

30 LLP 3.17 states that the Mayor will support the provision of high quality health and social care appropriate for a growing and changing population, particularly in areas of under provision or where there are particular needs

31 CSP 6 states that the Council will only consider a change of use from a retail unit where evidence is established that there is no economic prospect of such uses continuing.

32 DMP 16 establishes a criteria for considering changes of use of retail units located within local shopping parades; (i) the availability of similar alternative shopping facilities within a comfortable walking distance (approximately 400 metres or less) (ii) a balance to the number and type of units within the parade (iii) that reasonable attempts have been made to market vacant shop units, for more than 12 months, at an appropriate rent (iv) the replacement use will result in no harm to the amenity of adjoining properties.

Discussion

(i) Availability of similar alternative shopping facilities

33 The parades on either side of Burnt Ash Road contain a variety of A1 retail uses including an off licence, convenience store, hair salon, barbershop, shoe repairers and hardware store. Additionally, the parade to the south of Lee Station contains a large Coop store, a newsagents and pharmacy. Officers are therefore satisfied that the local area is well served by a variety of retail uses within the local parades which support the provision of essential daily goods and services.

(ii) Balance to the number and type of units

34 As documented above the parades on Burnt Ash Road contain a variety of retail uses combined with non-retail uses such as restaurants, cafés, hot food takeaways and estate agents. It is recognised that there is an existing dental practice located on the western side of Burnt Ash Road. However, the provision of a second dentist is not considered to unbalance the parade given that these are large parades, which provide a wide variety of uses.

(iii) Marketing

- 35 DMP 16 states that 12 months marketing at an appropriate rent will be required to justify the loss of a retail unit. The Marketing Statement submitted with the application provides evidence of marketing dating back to June 2017. The marketing included listing with a local John Payne commercial estate agent, listing on the John Payne and Zoopla websites, EGI Property Link and the display of two signs affixed on the shopfront. The Marketing Statement documents that the marketing resulted in no expressions of interest other than as a A3 use, which was not considered to be appropriate by the sites owner.
- 36 The marketing period exceeds the 12 months required by DMP 16 and is considered to be extensive given the number of mediums used to advertise the unit. The rate is judged to reasonable compared to similar units within Lewisham.

(iv) Neighbouring amenity

- 37 The impacts to adjoining occupiers arising from the change of use would be limited. The area is a busy local shopping area where a certain amount of noise would be expected. The use of the ground floor of the application site as a dental surgery is judged to have a reduced impact to residential occupiers above compared to retail window sales. The hours of operation for the surgery may also be limited to daytime use, which would improve amenity for adjoining occupiers in the evenings.
- 38 No operational works fall to be considered, and issues of outlook, privacy and daylight and sunlight are not relevant to the application. The impacts to the living conditions of neighbours are acceptable and in accordance with the policy cited above.
- 39 The D1 use class is broad and contains a number of uses that would be inappropriate in this location (given the proximity to residential accommodation above) such as places of worship or community halls. Therefore, a condition is recommended restricting the use of the unit to medical facilities.

7.1.1 Principle of development conclusions

- 40 The London Plan is supportive of the provision of healthcare facilities to cater for London's expanding population. The loss of the retail unit is considered to be acceptable in this instance as the requisite marketing evidence has been submitted and there would be no harm to the provision or services or residential amenity within the local parades. As such, the proposed development is compliant with LLP3.17, CSP 6 and DMP 16.

7.2 URBAN DESIGN

General Policy

- 41 The NPPF at para 124 states the creation of high quality buildings and places is fundamental to what the planning and development process should achieve.

7.2.1 Appearance and character

Policy

42 DM Policy 31 Alterations and extensions to existing buildings including residential extensions states that development proposals for alterations and extensions, including roof 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, including external features such as chimneys, and porches. High quality matching or complementary materials should be used, appropriately and sensitively in relation to the context.

Discussion

43 No external alterations are proposed to the buildings and therefore there are no urban design considerations. However, the proposed development would return a vacant unit to use providing an active frontage, which would contribute to the vitality of the area and is therefore considered a planning merit.

44 However, it is noted that the submission indicates that the intention is to provide signage on the shopfront. An informative will be added advising the applicant that any signage that would not accord with the parameters of **Class 5 of Town and Country Planning (Control of Advertisements) Regulations 2007 for advertisements on business premises** would require an application for advertisement consent.

7.2.2 Impact on Heritage Assets

Policy

45 Section 72 of the of the Planning (Listed Buildings and Conservation Areas) Act 1990 gives LPAs the duty to have special regard to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

46 CSP 16 ensures the value and significance of the borough's heritage assets are among things enhanced and conserved in line with national and regional policy.

47 DMP 36 echoes national and regional policy and summarises the steps the borough will take to manage changes to Conservation Areas, Listed Buildings, Scheduled Ancient Monuments and Registered Parks and Gardens so that their value and significance as designated heritage assets is maintained and enhanced.

Discussion

48 The proposed development would not result in any external alteration to the property and would therefore have no impact on the character and appearance of the Conservation Area. As such, it is not necessary to consider the wider public benefits of the proposal.

TRANSPORT IMPACT

7.2.3 Cycling

Policy

49 The Council supports the NPPF's guidance on promoting sustainable transport methods. For this reason, the Council requires residential development to provide cycle parking in accordance with the requirements of Table 6.3 of the London Plan.

Discussion

50 The London Plan cycle parking minimum standards requires one space per five members of staff for health care facilities. The proposed development would therefore require one cycle parking spaces however no cycle parking would be provided as part of this development. This is considered to be acceptable in this case given that this application relates to the conversion of an existing unit without cycle parking facilities.

7.2.4 Parking

Policy

51 CSP 14 states that the Council will take a restrained approach to parking provision.

Discussion

52 The proposed development would not result in any increase to the on-site provision of car parking which would accord with the principles of CSP 14. The dental practice would operate arrivals by appointment and as such is not likely to result in significant increases to parking stress. This is considered an improvement on any potential retail use. It is also noted that there are short stay parking bays in the vicinity of the property on Burnt Ash Road.

7.2.5 Servicing and refuse

53 The application does not provide information relating to the servicing of the unit. However, the proposed use is not likely to have extensive servicing requirements and is capable of being serviced at the rear.

54 The dental practice would generate clinical waste which would require specialised collection. The specific details of the waste management are recommended to be secured by condition prior to the occupation of the unit.

8 LOCAL FINANCE CONSIDERATIONS

55 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).

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

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

9 **EQUALITIES CONSIDERATIONS**

58 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.

59 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.

60 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.

61 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>

62 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

63 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>

64 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**

65 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

66 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.

67 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**

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

69 Officers consider the proposed dental practice to be an appropriate use for the property, which would result in an acceptable impact to residential amenity and the local highways network. The loss of the retail use is considered to be acceptable in this instance as it would not result in harm to the provision of services within the parade and it has been adequately justified that there is no reasonable economic prospect of such uses continuing.

12 RECOMMENDATION

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

12.1 **CONDITIONS**

1) FULL PLANNING PERMISSION TIME LIMIT

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) APPROVED PLANS

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

Existing and Proposed floor plan; Site Plan; Block 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) REFUSE & RECYCLING

(a) Prior to occupation, details of the proposals for the storage and collection of the refuse and recycling for the unit should be 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).

4) RESTRICT USE CLASS

Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the premises shall be used for clinics or health centres and for no other purpose (including any other purpose in Class (D1) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).

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 16 Local

12.2 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, positive discussions took place which resulted in further information being submitted.

- 2) You are advised that external signage that would not accord with the parameters of Class 5 of Town and Country Planning (Control of Advertisements) Regulations 2007 for advertisements on business premises would require the submission of an application for advertisement consent.