

Appendix A



Planning Committee A

Report title:

324 Brockley Road, London, SE4 2BT

Date: 26 October 2021

Key decision: No.

Class: Part 1

Ward(s) affected: Crofton Park

Contributors: Alfie Williams

Outline and recommendations

This report sets out the Officer's recommendation of approval for the above proposal. The report has been brought before Committee for a decision due to the submission of five objections from local residents.

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Application details

Application reference number(s): DC/21/121564

Application Date: 28 April 2021

Applicant: Mr Hoveizi

Proposal: Retrospective planning permission for the installation of an external ventilation flue to the rear of 324 Brockley Road SE4

Background Papers: (1) Submission drawings
(2) Submission technical reports and supporting documents
(3) Internal consultee responses

Designation: Air Quality Management Area
Hopcroft Neighbourhood Forum
Local Open Space Deficiency
PTAL 3

Screening: n/a

1 SITE AND CONTEXT

Site description and current use

- 1 The application site is a three storey mixed-use Victorian property located on the western side of Brockley Road close to the junction with Beecroft Road. The property forms part of a shopping parade and is comprised of restaurant at ground floor level with residential units above. The commercial unit was previously in use as a beauty salon (Sui Generis) up until the beginning of 2021. This application relates to works to the commercial unit only.
- 2 The property is constructed of yellow stock bricks with a pitched roof. The upper floor windows on the front façade feature decorative stucco window lintels and surrounds. At ground floor level the restaurant has a black coloured aluminium shopfront. At the rear the property has a two storey outrigger. The rear boundary of the site adjoins Beecroft Lane, which is used for servicing the commercial units and provides access onto Beecroft Mews.

Figure 1. Site Location Plan

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Character of area

- 3 The surrounding area has a mixed character with this section of Brockley Road featuring shopping parades on both side of the road with residential accommodation on the upper floors. The side roads that adjoin Brockley Road are predominately residential and are characterised by terraces of Victorian housing. Beecroft Primary School is located to the north of the junction with Beecroft Road.

Heritage/archaeology

- 4 The site is not located within a conservation area and neither is the building listed. There are no listed buildings within the immediate vicinity of the application site.

Transport

- 5 The site has a PTAL of 3, which indicates a moderate level of public transport accessibility. The closest train station is Crofton Park located approximately 100m to the south of the site.

2 RELEVANT PLANNING HISTORY

- 6 ENF/21/00026: Unauthorised change of use f and installation of new ventilation flue – investigation ongoing.

3 CURRENT PLANNING APPLICATION

3.1 THE PROPOSALS

- 7 Retrospective planning permission is sought for the installation of an extraction ventilation flue to the rear elevation of the property. The flue is made from stainless steel

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and runs up the rear elevation adjacent to the northern boundary with No.322 Brockley Road and discharges 1m above the eaves line of the roof. This is shown in Photo 1 below.

Photograph 1: Rear elevation viewed from Becroft Road



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8 The change of use of the property from a beauty salon to a restaurant also requires planning permission but has not been applied for within this application. An informative would be attached advising the applicant that an application for the change of use will be required, should Members grant planning permission for this flue.

4 CONSULTATION

4.1 APPLICATION PUBLICITY

9 A site notice was displayed on 10 June 2021.

10 Letters were sent to residents and business in the surrounding area and the relevant ward Councillors on 1 June 2021 and 27 September 2021.

11 Eight responses received, comprising five objections and three letters of support.

12 Cllr Anwar also commented in support of the application on the grounds that the flue is crucial for the business to the function.

4.1.1 Comments in objection

Comment	Para where addressed
Visual impact	30
Loss of outlook	Error! Reference source not found.
Noise and vibration	Error! Reference source not found.-42
Smell	44

13 The objections also raised matters relating to letting and insuring neighbouring properties and fire safety. These matters are not material to the assessment of the application.

4.1.2 Comments in support

Comment	Para where addressed
Impact to the viability of the business	26

14 The comments in support also cited the quality of the food and service provided by the restaurant. These are matters for the consumers and are not material to the assessment of the application.

4.2 INTERNAL CONSULTATION

15 The following internal consultees were notified on 1 June 2021.

16 Environmental Protection: No objection subject to confirmation that the mitigation measures recommended in the NIA have been installed in order to protect residential amenity. Additionally, a condition for details of the filtration system has been requested in order to ensure that the impacts to air quality are minimised. See paras **Error! Reference source not found.-44** for discussion.

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5 POLICY CONTEXT

5.1 LEGISLATION

17 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).

5.2 MATERIAL CONSIDERATIONS

18 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.

19 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.

20 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 aforementioned directions and the test of reasonableness.

5.3 NATIONAL POLICY & GUIDANCE

- National Planning Policy Framework 2021 (NPPF)
- National Planning Policy Guidance 2014 onwards (NPPG)
- National Design Guidance 2019 (NDG)

5.4 DEVELOPMENT PLAN

21 The Development Plan comprises:

- London Plan (March 2021) (LPP)
- Core Strategy (June 2011) (CSP)
- Development Management Local Plan (November 2014) (DMP)
- Site Allocations Local Plan (June 2013) (SALP)
- Lewisham Town Centre Local Plan (February 2014) (LTCP)

5.5 OTHER GUIDANCE

- Evening and night-time offer: A vision for Lewisham

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6 PLANNING CONSIDERATIONS

22 The main issues are:

- Principle of Development
- Urban Design
- Impact on Adjoining Properties

6.1 PRINCIPLE OF DEVELOPMENT

General policy

23 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.

24 The London Plan (LP) sets out a sequential spatial approach to making the best use of land set out in LPP GG2 (Parts A to C) that should be followed.

Policy

25 DMP 17 states that restaurants are expected to provide acceptable arrangements for the efficient and hygienic discharge of fumes and smells, including the siting of ducts, which should be unobtrusive

Discussion

26 The Development Plan is generally supportive of improvements and alterations to commercial units given the potential benefits to viability and the provision of services within local shopping parades. Furthermore, equipment for the dispersal of odour is a necessary requirement for restaurants as is made clear by DMP 17, and would assist with the general aim of the development plan to support night-time economy uses as expressed within LPP HC6 and supported by the night-time economy strategy for Lewisham contained within the *Evening and night-time offer: A vision for Lewisham document*.

6.1.1 Principle of development conclusions

27 In summary, the flue is an essential requirement for the day to day operations of the restaurant and therefore the principle of development is supported subject to an assessment of the visual impact and the impact to the living conditions of the neighbouring properties.

6.2 URBAN DESIGN

General Policy

28 The NPPF at para 126 states the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.

Policy

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29 LPP D3 and CSP 15 set out a clear rationale for high quality urban design. Further to this, DMP 30 requires planning applications to demonstrate a site specific response which creates a positive relationship with the existing townscape.

Discussion

30 The extraction flue is visible from public viewpoints on Beecroft Road due to the proximity of the property to the end of the parade. Flues and extraction equipment are typical of the rears of shopping parades but should be designed to minimise clutter and ensure that the visual impact to the surrounding area is not obtrusive. In this case the flue is well-located, aligned to one side and clear of the adjacent windows. The material, scale and projection above the eaves are considered appropriate.

6.2.1 Urban design conclusion

31 The equipment is considered to be appropriately located at the rear of the property and the scale and appearance would prevent any harmful visual impacts to the character of the surrounding area. As such, the development is considered to be compliant with the CSP 15 and DMP 30.

6.3 LIVING CONDITIONS OF NEIGHBOURS

General Policy

32 The NPPF at para 127 sets an expectation that new development will be designed to create places that amongst other things have a 'high standard' of amenity for existing and future users.

Policy

33 Paragraph 185 of the NPPF states that planning decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life

34 The National Planning Policy Guidance for Noise (July 2019) advises on how planning can manage potential noise impacts in new development. It states that local planning authorities' plan-making and decision taking should take account of the acoustic environment and in doing so consider whether or not:

- a significant adverse effect is occurring or likely to occur;
- an adverse effect is occurring or likely to occur; and
- a good standard of amenity can be achieved.

35 The NPPG establishes a noise exposure hierarchy with three levels:

- No observed effect level: this is the level of noise exposure below which no effect at all on health or quality of life can be detected.
- Lowest observed adverse effect level (LOAEL): this is the level of noise exposure above which adverse effects on health and quality of life can be detected.
- Significant observed adverse effect level (SOAEL): This is the level of noise exposure above which significant adverse effects on health and quality of life occur.

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- 36 The guidance does not provide values for the LOAEL or SOAEL. The Explanatory Note to the Noise Policy Statement for England (NPSE) states that “it is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times.”
- 37 PPG guidance for air quality is clear that odour can also be a planning concern due to the effect on local amenity.
- 38 LPP SI1 states new development amongst other requirements must endeavour to maintain the best ambient air quality (air quality neutral) and not cause new exceedances of legal air quality standards.
- 39 CSP 9 seeks to improve local air quality and minimise any negative air quality impacts.
- 40 DMP 17 states that restaurants should not result in any harmful impacts to the living conditions of nearby residents and in particular are expected to provide acceptable arrangements for the efficient and hygienic discharge of fumes and smells.
- 41 DMP 26 aims to reduce excessive noise or vibration which can be detrimental to human health and well-being.

Discussion

- 42 The scale and siting of the flue ensure that the impact to outlook from the adjacent upper floor windows is partial and restricted to oblique angles with the majority of the aspect largely unimpeded. A Noise Impact Assessment (Gellieron Scott, May 2021) has been submitted in support of the application and provides an assessment of the background noise levels and the noise generated by the equipment. The report finds that the impact to the nearest window in terms of noise break-in would be 13 dB above the lowest background sound level during operating hours. Therefore, mitigation measures would be required to ensure that the noise impact from noise break-in would be reduced to 5dB below the background sound level as recommended by the relevant guidance. To achieve the necessary mitigation the report recommends that an attenuator is fitted in duct to the fan. The NIA has been reviewed by an Environmental Protection Officer who has accepted the methodology and conclusions of the report. The applicant has confirmed that the mitigation measures are due to be installed in October 2021. Condition 2 has been imposed to secure evidence that the attenuator has been installed
- 43 The NIA also considers the impact from noise transference via vibration. The report recommends that anti-vibration mounts be installed to ensure that vibration does not give rise to structure-borne noise from the flue and ductwork located alongside the external wall of the residential building. The agent has since confirmed that the mounts have been installed.
- 44 A report (Delta Catering) has been provided containing a specification for the extraction equipment installed including details of the fan. The application, has been reviewed by an Environmental Protection Officer who has requested further information in the form of a Ventilation System Report providing further details of the filtration and a post installation certificate. This will be secured by condition within three months of the decision, should Members resolve to grant planning permission for this flue. The flue discharges 1m above the height of the eaves and therefore significantly above the windows of the residential accommodation as required.

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6.3.1 Impact on neighbours conclusion

45 The impact to residential amenity is considered to be acceptable subject to the installation of the recommended noise attenuation condition. The development is therefore compliant with the relevant national and regional guidance as well as DMPs 17 and 26.

7 LOCAL FINANCE CONSIDERATIONS

46 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).

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

48 The CIL is therefore a material consideration and the applicant has completed the relevant form. In this case the proposed development would not be CIL liable as the change of use does not include the creation of additional floorspace.

8 EQUALITIES CONSIDERATIONS

49 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.

50 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.

51 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.

52 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

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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>

53 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

54 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>

55 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.

9 HUMAN RIGHTS IMPLICATIONS

56 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

57 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.

58 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,

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carefully consider the balance to be struck between individual rights and the wider public interest.

59 This application has the legitimate aim of making an alteration to a commercial building. The rights potentially engaged by this application, including Article 8 and Protocol 1, Article 1 are not considered to be unlawfully interfered with by this proposal.

10 CONCLUSION

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

61 The visual impact of the development is considered appropriate for the building due to its scale, appearance and siting. No adverse impacts to the surrounding residential accommodation have been identified subject to the installation of the recommended noise attenuation. Evidence that the noise attenuation has been installed in accordance with the recommendations of the NIA will be secured by Condition. Therefore, the proposed development is considered to be acceptable and compliant with the relevant national, regional and local policies.

11 RECOMMENDATION

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

11.1 CONDITIONS

1) APPROVED PLANS

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

PL-001; PL-002; PL-003;

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

2) NOISE ATTENUATION

(a) Within one month of the date of this permission, evidence shall be submitted to and approved in writing by the local planning authority demonstrating that an attenuator has been installed to the specification set out in Section 6.0 of the Noise Impact Assessment (Gellieron Scott, May 2021) hereby approved.

(b) The facilities as approved under part (a) shall be permanently retained and maintained thereafter.

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Reason: In order that the local planning authority may be satisfied that the development would result in an acceptable impact to the amenity of the neighbouring properties and to comply with DM Policies 17 Restaurants and Cafes and 26 Noise and vibration of the Development Management Local Plan (November 2014).

3) VENTILATION

(a) Within three months of the date of this permission a Ventilation System Report detailing the measures undertaken to mitigate air pollution shall be submitted to and approved in writing by the local planning authority. The report shall include the following information:

(b) The report shall include of the following information:

- I. Details of filtration system to remove airborne pollutants. The filtration system shall have a minimum efficiency of 75% in the removal of Nitrogen Oxides/Dioxides, and Particulate Matter (PM2.5, PM10) in accordance with BS EN ISO 10121-1:2014 and BS EN ISO 16890.
- II. The position of the ventilation intakes demonstrating a suitable distance away from flues, ventilation extracts, and roads.
- III. A post installation certificate of the ventilation strategy.

(c) The facilities as approved under part (a) shall be permanently retained and maintained in accordance with manufacturers specifications thereafter.

Reason: In order that the local planning authority may be satisfied that the development is not going to result in significant health impacts to existing and future residents from a deterioration in local air quality and to comply with Policy SI 1 Improving air quality of the London Plan (March 2021) and DM Policy 23 Air quality of the Development Management Local Plan (November 2014).

11.2 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) The applicant is advised that an application for planning permission is required for the change of use of the premises to a restaurant.

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12 BACKGROUND PAPERS

- 1) Submission drawings
- 2) Submission technical reports and supporting documents
- 3) Internal consultee responses

13 REPORT AUTHOR AND CONTACT

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