

Address:	Ground and basement floors 46 Birchington Road London NW6 4LJ		12
Application Number:	2014/5696/P	Officer: David Peres Da Costa	
Ward:	Kilburn		
Date Received:	09/09/2014		
Proposal: Change of use of ground floor and basement from shop (Class A1) to restaurant (Class A3) including extract ducts to roof at rear.			
Drawing Numbers: Site location plan; 14/GL/01R; 14/GL/02R; 14/GL/03R; 14/GL/04R; 14/GL/05R; 14/GL/06R; 14/GL/07R; 14/GL/08R; 14/GL/09; CBLD-10931-01 Rev D; 24 Acoustics Noise impact assessment dated 29/8/14			
RECOMMENDATION SUMMARY: Grant planning permission			
Applicant:		Agent:	
Mr Ben Baker The old barn Mountway Potters bar Herts		gfplanning Limited 1 Woodlands Avenue Wanstead London E11 3RA	

ANALYSIS INFORMATION

Land Use Details:			
	Use Class	Use Description	Floorspace
Existing	A1	<i>Shops</i>	220m ²
Proposed	A3.	<i>Restaurants and cafes</i>	220m ²

OFFICERS' REPORT

Reason for Referral to Committee: The application is reported to committee as the development involves the change of use to Class A3 [Clause 3(iv)].

1. SITE

- 1.1 The application site is a two storey plus basement level property on the north-west side of Birchington Road near to the junction with Kilburn High Road. The basement and ground floor levels of the property are in retail use. The first floor level of the property has two residential flats. The existing retail unit is currently vacant.
- 1.2 The east side of the property joins to another retail unit. The west side of the property is located opposite to the commercial units and flats at 102-110 Kilburn High Road. The rear of the site also joins to other commercial properties.
- 1.3 The site falls within the Kilburn Town Centre. The site is not in a conservation area.

2. THE PROPOSAL

- 2.1 It is proposed to change the use of the commercial unit on the basement and ground floor levels from retail to restaurant. The kitchen of the proposed restaurant would be located on the basement level. The proposed restaurant would have 19 tables and 82 chairs in total. There would also be associated ducting works on the roof. An extract flue is proposed at the rear of the property.

3. RELEVANT HISTORY

- 3.1 **2013/1491/P:** Change of use of ground floor and basement from shop (Class A1) to restaurant (Class A3) including extract ducts to roof at rear. Refused 02/07/2013
Reason for refusal:
 - 1) *The proposed Class A3 restaurant use would be detrimental to the character of the local area and the amenities of neighbouring residential properties by virtue of its size and proximity to neighbours which would create excessive noise and disturbance.*
 - 2) *Insufficient information has been submitted to demonstrate that ventilation and extract ducting would comply with the Council's noise standards and not cause noise nuisance to the nearest residential properties.*
- 3.2 Appeal dismissed 14/03/2014
The inspectors report states the following: *I acknowledge that the proposal would result in a beneficial use of this building which would support the Kilburn High Road centre. Subject to appropriate conditions, it would not result in harm to the character of the area or the amenities of neighbouring residents. The amenities of the residents of the flats above could also, for the most part, be protected by*

measures set out in conditions suggested by the parties. However, because of the intimate relationship between the extractor system and the living room of flat 46B, I consider it necessary that the details demonstrate that it could operate without harm to the amenities of the occupants of that accommodation.

I consider it reasonable to require that it be demonstrated that an indicative extraction system and representative equipment, together with necessary mitigation measures, could be installed without harm to the amenities of the residents above. The details submitted do not demonstrate this or provide any indication of the scale or nature of the mitigation requirements that would be necessary within the living area of flat 46B

- 3.3 **2010/1374/P:** Change of use of ancillary retail storage (Class A1) at first floor level to two self contained one bedroom flats (Class C3) and associated external alterations including steps to provide independent access from an existing side passage and the installation of first floor windows to the front and within each side wall. Granted 10/11/2010

4. **CONSULTATIONS**

4.1 **Adjoining Occupiers**

<i>Number of letters sent</i>	53
<i>Total number of responses received</i>	0
<i>Number in support</i>	0
<i>Number of objections</i>	0

- 4.2 No letters of representation have been received

5. **POLICIES**

- 5.1 **National and regional policy**
NPPF 2012
London Plan 2011 (as amended 2013)

- 5.2 **Local Development Framework**
Core Strategy and Development Policies 2010
 CS1 (Distribution of Growth)
 CS3 (Other Highly Accessible Areas)
 CS5 (Managing the Impact of Growth and Development)
 CS7 (Promoting Camden's centres and shops)
 CS11 (Promoting sustainable and efficient travel)
 CS14 (Promoting High Quality Places and Conserving Our Heritage)
 CS18 (Dealing with our waste and encouraging recycling)
 DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses)
 DP16 (The transport implications of development)
 DP17 (Walking, cycling and public transport)

DP20 (Movement of goods and materials)
DP24 (Securing High Quality Design)
DP26 (Managing the Impact of Development on Occupiers and Neighbours)
DP28 (Noise & vibration)

5.3 **Supplementary Planning Policies**

6. **ASSESSMENT**

6.1 **Background**

6.2 The proposed development was previously refused planning permission. The reasons for refusal were:

1) The proposed Class A3 restaurant use would be detrimental to the character of the local area and the amenities of neighbouring residential properties by virtue of its size and proximity to neighbours which would create excessive noise and disturbance.

2) Insufficient information has been submitted to demonstrate that ventilation and extract ducting would comply with the Council's noise standards and not cause noise nuisance to the nearest residential properties.

6.3 The decision was the subject of an appeal and although the appeal was dismissed, the inspector did not support the first reason for refusal. The inspector acknowledged '*that the proposal would result in a beneficial use of this building which would support the Kilburn High Road centre. Subject to appropriate conditions, it would not result in harm to the character of the area or the amenities of neighbouring residents. The amenities of the residents of the flats above could also, for the most part, be protected by measures set out in conditions suggested by the parties*'. (The suggested conditions restricted the hours of opening until 23:30 Monday to Saturday and 22:30 on Sundays and Bank Holidays and also included a standard noise condition)

6.4 Unlike the previous application, the proposed extractor flue will not run through the upper floor flat. Rather, it will then run externally on the west flank of the building at first floor and roof levels.

6.5 **Land use**

6.6 The existing retail unit is outside the core frontage and therefore its loss is not likely to harm the retail function and character of the Kilburn town centre. The appeal decision establishes that the property is an appropriate location for a restaurant use provided suitable conditions are included. The loss of the retail unit and the principle of a change of use to a restaurant are therefore accepted.

6.7 **Design**

6.8 Policy DP24 requires all developments to be of the highest standard of design and to consider the character and constraints of the site and impact on views and vistas. In addition, CPG1 suggests that building service equipment where, because

of its nature, it cannot be integrated within the building should not be a dominant feature of the building and cause visual blight.

- 6.9 The proposed duct would be located at the rear of the property and it would track up the side of the pitch roofed to terminate 1m above the existing central chimney. Give its significant set back from the front of the building (18m) the proposed duct would not be visible in street views along Birchington Road. It would be visible from neighbouring properties but would not appear out of place in the Kilburn town centre where a/c units are visible on side and rear elevations. The rear of the application site is visible from the rear of the nearby properties on Kilburn High Road, Quex Mews and Quex Road and flank of 42 Birchington Road. It is noted that some of the residential properties in the surrounding area have satellite dishes and a/c units on their rear elevations. The proposed ducts in this context would not significantly harm the appearance of the host building or the surrounding area.
- 6.10 A condition would be added to ensure that the proposed ducting is painted a colour to match the existing roof tiles in order to mitigate the impact of its appearance.
- 6.11 **Amenity**
- 6.12 There are two flats at first floor level. Residential flats are located on upper floors to the south-west, across the passageway at the rear of 104-106 Kilburn High Road, with the nearest windows at a distance of 3m from the premises. Residential properties are also located to the rear of the site, towards the north-west, off Quex Mews and along Birchington Road to the north-east.
- 6.13 Plant
- 6.14 The proposed restaurant, on the ground and basement floors, will include extraction equipment. The applicant has provided a noise impact assessment. The nearest noise sensitive properties are the residential flats on the first floor of the building, with the nearest window at a distance of approximately 1.5m from the external ductwork, 5m from the extract discharge and 4m from the supply intake. The lowest background noise level was 44dB. The supply and extract fans will be located inside the building. The supply fan will be ducted to an intake louvre and the extract ductwork will exit the building and discharge at roof level. The noise report indicates that the Council's noise criteria will be met if appropriate attenuation is installed on the supply fan intake and extract fan discharge and the ductwork is lagged (with a product with a barrier core of minimum superficial mass 5kg/m²). The Council's environmental health team have confirmed that the noise report is acceptable. It is recommended that a condition is included to ensure that the attenuation is provided in accordance with the noise report as well as a noise condition. The suggested conditions will ensure that the extraction system does not harm neighbouring amenity.
- 6.15 Sound insulation
- 6.16 The noise report recommends that remedial works be carried out to the separating floor construction (between the restaurant and the flats) so that a minimum airborne sound insulation of 65dB is achieved. A condition would be added to this effect .

6.17 Hours of operation

6.18 It is recommended that a condition be included to limit the hours of operation to 09.00 to 23.30, Mondays to Saturdays and 9.30 to 22.30 on Sundays and Bank Holidays. This is accordance with the condition recommended at the previous appeal and are the opening hours assumed in the submitted noise report.

6.19 **Transport**

6.20 The site has a very good public transport accessibility (PTAL 6a). The main issue in terms of transport is the impact of servicing the restaurant (deliveries and refuse and recycling collection on the transport network). Given the size of the proposed A3 use it is not anticipated that a significant level of deliveries and servicing activity would be likely to take place. The proposal is considered to be acceptable in transport terms.

6.21 **CIL**

6.22 The CIL liability form submitted with the application states that the existing shop unit had been occupied for its lawful use for 6 months of the 12 previous months and no additional floor area is proposed. However the supporting statement states that the application unit was last occupied for retail purposes in September 2012. Given the last use of the site is unclear the proposal could be liable to a MoL 's CIL payment of 11,000 if planning permission is granted.

6.23 **Refuse/Recycling**

6.24 It is considered that there is sufficient space within the ground floor unit to accommodate the necessary refuse/recycling storage requirements for the food and drink use, however a condition would be included to secure details of the refuse and recycling storage prior to commencement of the use.

7. **CONCLUSION**

7.1 The inspector concluded that the proposed restaurant would *support the Kilburn High Road centre* and therefore the change of use is accepted. Subject to conditions limiting hours of operation and requiring sound mitigation measures on the extraction and ducting equipment, the restaurant would not harm the local character of the area or the amenity of nearby noise sensitive properties by way of noise, fumes or servicing.

7.2 Planning Permission is recommended subject to conditions.

8. **LEGAL COMMENTS**

8.1 Members are referred to the note from the Legal Division at the start of the Agenda.

Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The extract duct shall be painted a colour to match the existing roof tiles. All other external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan; 14/GL/01R; 14/GL/02R; 14/GL/03R; 14/GL/04R; 14/GL/05R; 14/GL/06R; 14/GL/07R; 14/GL/08R; 14/GL/09; CBLD-10931-01 Rev D; 24 Acoustics Noise impact assessment dated 29/8/14

Reason:

For the avoidance of doubt and in the interest of proper planning.

- 4 The use hereby permitted shall not be carried out outside the following times 23:30 to 09:00 Mondays to Saturdays and 22:30 to 9.30 on Sundays and Bank Holidays.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 5 Before the use commences sound insulation shall be provided between the ground floor and the first floor so that a minimum airborne sound insulation of 65dB is achieved.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 6 Before the use commences, the extract ventilating system shall be provided with acoustic isolation and sound attenuation in accordance with the scheme approved by the local planning authority. All such measures shall thereafter be retained and

maintained in accordance with the manufacturers' recommendations.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 7 Noise levels at a point 1 metre external to sensitive facades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment (or any part of it) is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 8 Before the development commences, details of the location, design and method of waste storage and removal including recycled materials, shall be submitted to and approved by the local planning authority in writing. The facility as approved shall be provided prior to the commencement of the use and permanently retained thereafter.

Reason: To ensure that sufficient provision for the storage and collection of waste has been made in accordance with the requirements of policy CS18 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts which cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Argyle Street WC1H 8EQ, (tel: 020-7974 6941).
- 2 Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Council's Compliance and Enforcement team [Regulatory Services], Camden Town Hall, Argyle Street, WC1H 8EQ (Tel.

No. 020 7974 4444 or on the website
<http://www.camden.gov.uk/ccm/content/contacts/council-contacts/environment/contact-the-environmental-health-team.en> or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.

- 3 The Mayor of London introduced a Community Infrastructure Levy (CIL) to help pay for Crossrail on 1st April 2012. Any permission granted after this time which adds more than 100sqm of new floorspace or a new dwelling will need to pay this CIL. It will be collected by Camden on behalf of the Mayor of London. Camden will be sending out liability notices setting out how much CIL will need to be paid if an affected planning application is implemented and who will be liable.

The proposed charge in Camden will be £50 per sqm on all uses except affordable housing, education, healthcare, and development by charities for their charitable purposes. You will be expected to advise us when planning permissions are implemented. Please use the forms at the link below to advise who will be paying the CIL and when the development is to commence. You can also access forms to allow you to provide us with more information which can be taken into account in your CIL calculation and to apply for relief from CIL.

<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

We will then issue a CIL demand notice setting out what monies needs to paid when and how to pay. Failure to notify Camden of the commencement of development will result in a surcharge of £2500 or 20% being added to the CIL payment. Other surcharges may also apply for failure to assume liability and late payment. Payments will also be subject to indexation in line with the construction costs index.

Please send CIL related documents or correspondence to CIL@Camden.gov.uk

- 4 You are advised that condition 4 means that no customers shall be on the premises and no noise generating activities associated with the use, including preparation and clearing up, shall be carried out otherwise than within the permitted time.
- 5 Your attention is drawn to the need for compliance with the requirements of the Environmental Health regulations, Compliance and Enforcement team, [Regulatory Services] Camden Town Hall, Argyle Street, WC1H 8EQ, (tel: 020 7974 4444) particularly in respect of arrangements for ventilation and the extraction of cooking fumes and smells.
- 6 The Council supports schemes for the recycling of bottles and cans and encourages all hotels, restaurants, wine bars and public houses to do so as well. Further information can be obtained by telephoning the Council's Environment Services (Recycling) on 0207 974 6914/5 or on the website <http://www.camden.gov.uk/ccm/content/environment/waste-and-recycling/twocolumn/new-recycling-rubbish-and-reuse-guide.en>.

- 7 You are reminded that filled refuse sacks shall not be deposited on the public footpath, or forecourt area until within half an hour of usual collection times. For further information please contact the Council's Environment Services (Rubbish Collection) on 020 7974 6914/5. or on the website <http://www.camden.gov.uk/ccm/content/contacts/council-contacts/environment/contact-street-environment-services.en>.