

2015/6484/P 309 West End Lane



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Photo 1: Application site 'Rouge Lounge' with existing terrace area

Delegated Report (Members Briefing)		Analysis sheet	Expiry Date:	14/01/2016
		N/A	Consultation Expiry Date:	02/06/2016
Officer			Application Number(s)	
Seonaid Carr			2015/6484/P	
Application Address			Drawing Numbers	
309 West End Lane London NW6 1RD			See draft decision	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Variation of condition 2 (hours of use) granted under reference 2005/2639/P dated 20/02/08 for retention of the change of use from retail use (Class A1) to restaurant/cafe use (Classes A3) including the placing of tables and chairs in the forecourt.				
Recommendation(s):	Grant Variation of condition			
Application Type:	Variation or Removal of Condition(s)			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	00	No. of responses	04	No. of objections	00
			No. Electronic	00		
Summary of consultation responses:	<p>4 letters of objection have been received as part of the application, these are summarised below:</p> <ul style="list-style-type: none"> • The café already operates later than 8pm to the detriment of residents of 309. • We are directly affected by them lighting coals inside and smoking. • Changing their status to A2 surely can't be allowed when no extraction system is in place. • A restaurant would need to install an exhaust shaft which would create noise pollution and odour. The site is not adequate for the installation of safety measures necessary for a restaurant. • The same application was refused in 2005 for the change of use. • The pavement is not wide enough for tables and chairs outside. It is often difficult to walk down the pavement when there is a lot of foot traffic because of the number of premises with tables and chairs in the forecourt. • There has been ongoing issues with the residents regarding the smoke from the shisha coals and the noise continuing until after midnight. 					
CAAC comments:	West End Green CAAC were consulted on the proposal however no response has been received.					

Site Description

The site is located on the west side of West End Lane within the West End Lane Town Centre, where the pattern of development is commercial units to the ground floor and residential above. It relates to a ground floor unit located within a four storey mid-terrace property. The premise has most recently operated as a shisha café (Use Class A3) which previously operated outside the hours of the condition, it is understood the premises has ceased operation and is currently not in use .

The site is within the West End Green Conservation Area however it is not listed.

Relevant History

2013/5045/P - Variation of condition 2 (the use hereby permitted shall not be open to customers outside the hours of 08.00 to 20.00) of planning permission ref 2005/2639/P (approved on appeal ref APP/X5210/C/07/2057396 (dated 20/02/2008) for the retention of the change of use from retail use (Class A1) to restaurant/cafe use (Classes A3) including the placing of tables and chairs in the forecourt, namely to allow opening of the premises between 08.00 to 23.30 Mondays to Saturdays and 08.00 to 22.30 on Sundays). **Application refused** on grounds of impact on neighbour amenity in terms of noise and disturbance.

The above application was subsequently dismissed at appeal. The Inspector concluded the following:

- The variety of uses and later operating hours in the vicinity suggests that the area is likely to be busy throughout the day and into the night, a degree of noise and disturbance is to be expected in this location.
- The condition was imposed to protect neighbour amenity, a number of people have objected and there is record of objection from the Council's Environmental Health department.
- Allowing the increased hours would increase cases of noise and disturbance into the night when residents might reasonably expect to relax or sleep.
- The Inspector was aware of premises in the area operating with late opening house, many with outside seating but was not aware of planning permission and it was confirmed by the Council many are unrestricted by condition or pre-date current planning policies.
- Proposed variation would harm the living conditions of neighbouring occupants.

2005/2639/P - Retention of the change of use from retail use (Class A1) to restaurant/cafe use (Classes A3) including the placing of tables and chairs in the forecourt. **Application refused** on grounds of loss of A1 use and impact on town centre.

The above application was subsequently **allowed** on appeal and the inspector imposed the following condition:

'The use hereby permitted shall not be open to customers outside the hours of 0800 to 2000 hours'

Enforcement History

In 2013 a breach of condition notice was served due to the premises operating outside of the hours of condition 2. The Council prosecuted the applicant and were successful with the defendant being fined for operating beyond 20:00. Following this it Enforcement officers monitored the premises and received complaints from residents that it continued to operate beyond 20:00, however the applicant claimed that the use was for personal use by friends and family and not paying customers, so no further enforcement action was taken.

There is a current enforcement enquiry on the site in regards to some of the decking area, however this is not the subject of this application.

Relevant policies

The National Planning Policy Framework (2012)

The London Plan (2011)

LDF Core Strategy and Development Policies (2010)

CS7 (Promoting Camden's centres and shops)

CS14 (Promoting high quality places and conserving our heritage)

DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses)

DP26 (Managing the impact of development on occupiers and neighbours)

Fortune Green and West Hampstead Neighbourhood Plan (2015)

Camden Planning Guidance (2010)

CPG3 Amenity

Assessment

1. Revision

1.1 When initially submitted the applicant sought to operate the premises and street terrace until 11:00pm Monday to Saturday and 10:30pm on Sunday. Officers considered this would not overcome the previous reason for refusal nor the grounds on which and Inspector dismissed the appeal. Therefore during the course of the application officers negotiated the use of the terrace until 9:30pm.

2. Proposals

2.1 The applicant is seeking to amend the existing condition which controls the hours of operation of terrace from:

The use hereby permitted shall not be open to customers outside the hours of 0800 to 2000 hours.

To

The internal areas of the ground floor hereby permitted shall not be open to customers outside the hours of 1100 to 2300 housing Monday to Saturday and 1100 to 2230 on Sunday and bank holidays. The external forecourt/terrace area shall not be used outside the hours of 1100 to 2130hours.

2.2 Due to the nature of the proposed variation of condition the assessment is only in relation to the amenity impact of extending the opening hours on neighbouring residential properties.

3. Assessment

3.1 The site comprises a café/restaurant (class A3) located within a parade of units with commercial on the ground floor with residential at first floor and above. There is an area to the front covered with a canopy and used for external seating, which measures 19.5sqm. This equates to around 50% of the total restaurant unit being within the forecourt area.

3.2 It is important to note the use of the premises is not the subject of this application, as noted by some of the objectors. The use of the premises was established as part of the appeal application (2005/2639/P), therefore this application is only with regard to the hours of use of the premises.

3.3 It was established within the previous application that the use of the internal area of the premises until the proposed hours would be acceptable. This is based on the fact the site is within a designated Town Centre where it is expected that premises would be open until 23:00.

3.4 Within the previous application concern was raised in respect of use of the external forecourt area and the impact this would have on neighbouring residents. During the course of this application officers have negotiated the amended opening time of 21:30 for the terrace area, which the applicant has agreed to.

3.5 It is considered that 21:30 would be an appropriate time for a terrace to cease operation when situated within a Town Centre area where there would typically still be activity at this time of night by way of people coming and going to shops, bars and restaurants and traffic movements along West End Lane. It is considered that closure of the terrace at 21:30 would safeguard the amenity of neighbouring residents.

3.6 It is also worth noting that within the designated Town Centre, there are a number of premises which have external seating areas. Such areas form part of the character of the area, contributing to it's viability and character. Within the previous applications, officers accepted the use of the terrace but resisted long hours of its use. It is considered that terminating the use at 21:30 would provide the premises with a viable terrace area for its occupants without causing undue harm to the neighbouring

residents amenity.

3.7 The Council's Environmental Health noise officers have reviewed the proposal and raise no objection to the hours of use and consider them reasonable for the area. It is noted there have been instances where residents have complained of noise from the unit, however these have been related to the previous occupier of the ground floor unit.

3.8 It is also worth noting the Camden Statement of Licensing Policy 2011, which includes the Tables and Chairs policy. It is noted within this document that within a designated Town Centre operation is allowed under 2300 Monday to Thursday, 2330 Friday and Saturdays and 2230 on Sundays. However this is dependent on a list of criteria within the policy, it is not to say that a license for these hours of use will automatically be given. In this instance it is considered the proposed hours would be reasonable for the area.

3.9 It is acknowledged that residents have raised concerns above regarding the smoke and odours they have experienced as a result of the use of the premises as a shisha café, however as noted above this application is solely in respect of the hours of use. This issued of air quality is dealt with by Environmental Health. The Council's Environmental Health team are aware of the premises and have served the relevant notice which is part of the reason why the premises has ceased operation. However in respect of this application air quality would not be a material consideration as the use of the premises has already been agreed as part of the previous application Ref: 2005/2639/P which was granted at appeal.

3.10 In light of the above it is considered the proposed operating hours set out in the condition above are considered to overcome the previous reason for refusal and no objection is raised.

4. Recommendation: Grant variation of condition

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 4th July 2016, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

Mrs Carolyn Apcar
Apcar Smith Planning
Kinetic House
Theobald Street
Borehamwood
Hertfordshire
WD6 4PJ

Application Ref: **2015/6484/P**
Please ask for: **Seonaid Carr**
Telephone: 020 7974 **2766**

30 June 2016

DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Variation or Removal of Condition(s) Granted

Address:
309 West End Lane
London
NW6 1RD

DECISION

Proposal:
Variation of condition 2 (hours of use) granted under reference 2005/2639/P dated 20/02/08 for retention of the change of use from retail use (Class A1) to restaurant/cafe use (Classes A3) including the placing of tables and chairs in the forecourt.

Drawing Nos: Email from the agent Carolyn Apcar dated 30 June 2016.

The Council has considered your application and decided to grant permission subject to the following condition(s):

Condition(s) and Reason(s):

- 1 For the purposes of this decision, condition no.2 of planning permission 2005/2639/P shall be replaced with the following condition:

REPLACEMENT CONDITION 2

The internal areas of the ground floor hereby permitted shall not be open to

Executive Director Supporting Communities



customers outside the hours of 1100 to 2300 housing Monday to Saturday and 1100 to 2230 on Sunday and bank holidays. The external forecourt/terrace area shall not be used outside the hours of 1100 to 2130hours.

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 DP12 and DP26 of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 This approval under Section 73 of the 1990 Act effectively varying the relevant condition of the previous planning permission is subject otherwise to the same terms, drawings and conditions as attached to the previous planning permission.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Executive Director Supporting Communities

DECISION