

Delegated Report		Analysis sheet		Expiry Date:	09/01/2017
		N/A		Consultation Expiry Date:	
Officer			Application Number(s)		
Matthias Gentet			2016/5627/P		
Application Address			Drawing Numbers		
Shop and Premises at Basement and Ground Floor 46 Birchington Road London NW6 4LJ			Site Location Plan; Existing Ground Floor Plan (sheet 1); [Proposed] Detailed Elevations of Terrace (sheet 6), Ground Floor Plan (sheet 2), 46NW64LJ H2 - Part Floor Plan; [Existing and Proposed] Right Side Elevations (sheet 5), Left Side Elevations (sheet 4), Front/Side Elevations (sheet 3).		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Erection of timber enclosure and decking to forecourt of restaurant (Class A3) [retrospective].					
Recommendation(s):		Refuse Planning Permission			
Application Type:		Full Planning Permission			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	20	No. of responses	05	No. of objections	05
Summary of consultation responses:	<p data-bbox="424 465 1501 607">Comments were received following the statutory consultations carried out in the form of consultation letters to the relevant parties (expiry date: 06/12/2016), a Site Notice (erected on 18/11/2016 and expiring on 09/12/2016).</p> <p data-bbox="424 685 767 719"><u>Summary of Objections:</u></p> <p data-bbox="424 757 1517 831">An objection from the Owner/occupier at Flat 1, 33 Birchington Road, NW6 4LL, has been received, summarised as follow:</p> <ul data-bbox="472 835 1449 1122" style="list-style-type: none"> o Breach their restrictions on the use of the decking after 6pm; o A lot of noise from customers on the decking on many occasions; o It is 1.30am and customers leaving the restaurant; o Decking should be removed and restaurant closed at 8pm; o The Neon lights on residential street should not be allowed, very obtrusive; o Big issues with street parking with the cars from owner and customers. <p data-bbox="424 1160 707 1193"><u>Officer's Response:</u></p> <p data-bbox="424 1198 1477 1272"><i>The signage is being dealt under a separate application which is currently going through its own assessment.</i></p> <p data-bbox="424 1310 1513 1491"><i>The increase in parking within Birchington Road is clearly acerbated by the lateness of the customers leaving the premises. However, any issue relating to parking would have been a consideration when assessing the change of use to A3 application which was subsequently granted planning permission under application reference: 2014/5696/P (See Relevant History below)</i></p> <p data-bbox="424 1529 1449 1637"><i>This application is only for the assessment of the retention of the timber structure. The impact of the parking – though clearly an issue – is not a planning consideration for this particular proposal.</i></p> <p data-bbox="424 1675 1485 1783"><i>Parking (Transport) may need to be made aware of the problem, and have the area monitored over the certain period of time to ensure that traffic violations aren't taking place.</i></p> <p data-bbox="424 1821 1422 1895"><i>For any matters relating to the use of the terrace, raised in the above objection: See paragraph 2.3, 2.4, 2.5 & 2.6 in the below Assessment.</i></p> <p data-bbox="424 2007 1485 2080">An objection from the Owner/occupier at 27 Birchington Road, NW6 4LL, has been received, summarised as follow:</p> <ul data-bbox="472 2085 1477 2148" style="list-style-type: none"> o Strongly oppose permission for the decking; o Residents are told decking would not be used after 6pm, Neon sign 					

- would be removed and device fitted to main door that automatically cut the music when front door in use;
- Diners on the decking until 8/9pm every night, smokers consuming alcohol until 12noon-1am;
- Noise from customers leaving the establishment disturb the neighbours, many of whom have bedrooms at the front;
- Neon sign still flashing very few seconds 5 different colours;
- No device to cut off music at all;
- Decking and Neon sign should be removed;
- This is a residential street. The building was previously a retail outlet closing at 6pm.

Officer's Response:

The signage is being dealt under a separate application which is currently going through its own assessment.

The noise caused by the music played on the premises, though clearly an issue, cannot be taken into consideration for the assessment of this proposal which is only for the retention of the timber terrace. If a device was/is to be put in place to ensure that the music is cut when the door is in use, this would be for Environmental Health to look into. It would appear that this issue would occur regardless of the terrace being there or not, and the structure being in place is not the cause of the level of the music not be reduced or cut when the entrance to the restaurant is being used.

For any matters relating to the use of the terrace, raised in the above objection: See paragraph 2.3, 2.4, 2.5 & 2.6 in the below Assessment.

An objection from the Owners/occupiers at **33A Birchington Road, NW6 4LL**, has been received, summarised as follow:

- The decking and signage are not appropriate for this residential street, both in terms of appearance and in terms of noise generation and other loss of amenity;
- The decking has a negative impact on the visual amenity and character of Birchington Road. It is unattractive and is not congruous with the other properties on Birchington Road;
- It has no regards for the architectural features on the locality;
- It acts as a platform with people standing on it overlooking onto the pavement;
- The sign is intrusive and negatively impacts on the visual amenity and character of the street when used in a flashing and changing colour mode;
- Vila Ronel has been open well beyond its permitted hours on a number of occasions, with people out on the decking making noise, sometimes as late as 1am;
- The licence conditions were breached on a daily basis during the summer and early autumn months, with customers dining and drinking on the decking well into the evening;
- The late night problems seem to be particularly acute at the end of events held at Vila Ronel. People seem to congregate out on the decking for 30-45 minutes, rather than dispersing;
- The external decking is wholly inappropriate on this residential street;
- The decking has increased the "floor area / size" of the premises in comparison to what was originally approved for A3 us;

	<ul style="list-style-type: none"> ○ Street parking is now a problem making it harder for residents to find parking on our street, and can be particularly frustrating when as late as 12.30am the parking spaces are being take up by customers, long after the hours the venue is officially permitted to be open. <p><i><u>Officer's Response:</u></i> <i>The refused application in 2013 was refused, and the appeal was dismissed. Therefore no permission was ever granted (see Relevant History below).</i></p> <p><i>The signage is being dealt under a separate application which is currently going through its own assessment.</i></p> <p><i>For any matters relating to the use of the terrace, raised in the above objection: See paragraph 2.3, 2.4, 2.5 & 2.6 in the below Assessment.</i></p> <p><i>For any matters relating to the design of the terrace, raised in the above objection: See paragraph 2.2, 2.6, 2.7, 2.8 & 2.9</i></p>
<p>CAAC/Local groups comments:</p>	<p>No local group or CAAC were consulted. No response was received.</p>

Site Description

The site comprises a two storey plus basement building, located on the north-west- side of Birchington Road near to the junction with Kilburn High Road. The basement and ground floor are currently in use as a restaurant (class A3). The first floor level of the property has been sub-divided into two residential flats. The area is of mixed commercial/residential uses.

The site falls within the Kilburn Town Centre. The site is not listed and neither is it located within a designated conservation area.

Relevant History

Site History:

2016/0654/P – (on going) - Details of waste storage and removal required by condition 8 of planning permission granted on 23/12/2014 (reference: 2014/5696/P for the change of use of ground floor and basement from shop (Class A1) to restaurant (Class A3) including extract duct to roof at rear.)

2016/0653/A – (on going) - Display of internally illuminated fascia sign.

2014/5696/P – (granted on 23/12/2016) - Change of use of ground floor and basement from shop (Class A1) to restaurant (Class A3) including extract duct to roof at rear.

2013/1491/P – (refused and dismissed on appeal ref: APP/X5210/A/13/2204843 on 14/03/2014) - Change of use of ground floor and basement from shop (Class A1) to restaurant (Class A3) including extract ducts to roof at rear.

2010/1374/P – (granted subject to S106 Legal Agreement on 10/11/2010) - 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.

Site Enforcement History:

EN16/0229 – (on going) - Operating outside of the operating hours stipulated on planning application ref: 2016/0652/P.

EN15/1218 – (on going) - The restaurant has now erected a neon sign above the door continually flashing alternating between 4 different colours.

EN15/1152 – (on going) - Unauthorised installation of timber decking and associated timber enclosure on front forecourt area.

Relevant policies

LDF Core Strategy and Development Policies

Core Strategy Policies

CS5 – Managing the impact of growth

Development Policies

DP24 – Securing high quality design

Camden Planning Guidance 2015 (as amended)

CPG1- Design – Chap 1, 2 & 4

National Planning Policy Framework 2012

The London Plan 2016

Assessment

1. Proposal and Background

1.1 Planning permission is sought for the following:

1.2 The retention of a timber enclosure and decking within the forecourt to a restaurant to accommodate external sitting to be used by customers.

1.3 It is noted at this stage that the proposal is the subject of an enforcement case reference: EN15/1152 opened as a result of the structure having been erected without the required planning permission. The application is therefore retrospective.

1.4 An earlier application for the retention of the timber structure was received in January this year, but was invalidated due to issues with submitted details and the lack of fee. It was subsequently withdrawn following receipt of this resubmission.

1.5 Drawings details are to be read at pre-built and as built/proposed. The application is assessed on the basis of the plans submitted, and the acceptability of the proposal on principle.

2. Assessment

The issues are Design and Amenity

Design

2.1 One of the considerations in the determination of this application is the impact of the proposal on the appearance of the host building, the character and appearance of the residential street.

2.2 The structure is set on a slope and measures 2m in height (at the shallow end) and 2.1m in height (at the highest point) by 6.8m in width (excluding the ramp located on the left hand side) and 8.4m (with the ramp) by 5.2m in depth. The timber structure's overall area is 43.7sqm which includes the L shaped ramp occupying 14.4sqm. There are sets of two metal bars between the timber posts acting as guard rails, along with 27no small spotlights incorporated around the perimeter of the terrace, between each posts. The size of the unauthorised structure covers the entire area of the forecourt, and access to the restaurant and the terrace is gained by means of the L shaped ramp.

2.3 The site is located some 20m away from the nearest residential property, and is also adjacent to the Lloyds Bank located on the junction of Birchington Road and Kilburn High Road, which is a very busy commercial street. Although the site address is in close proximity to Kilburn High Road, it is also within a residential road where a small stretch of Birchington Road provides commercial space as an over spill from the properties located on Kilburn High Road. Due to its

proximity to residential, any commercial development must be done with sensitivity and be mindful of its impact on the residents within Birchington Road and beyond.

DP24 also states that *'in order to best preserve and enhance the positive elements of local character within the borough, we need to recognise and understand the factors that create it. Designs for new buildings, and alterations and extensions, should respect the character and appearance of the local area and neighbouring buildings. Within areas of distinctive character, development should reinforce those elements which create the character. Where townscape is particularly uniform attention should be paid to responding closely to the prevailing scale, form and proportions and materials. In areas of low quality or where no pattern prevails, development should improve the quality of an area and give a stronger identity'*.

The structure is considered to be out of keeping with the character and appearance of the existing street (Birchington Road) and is considered to present an incongruous feature within the streetscene. It is considered to be overly-large and dominant in terms of its relationship with the host building and in the context of the street and is therefore considered to be detrimental in terms of its design as it is considered to detract from the character and appearance of the host building and the prevailing character and appearance of Birchington Road and is considered to create an unacceptable precedent. The development is therefore considered to be contrary to policy DP24 of Camden's LDF.

Amenity

- 2.4 The opening hours of the restaurant, as approved under planning permission reference: 2014/5696/P (See Relevant History above), have been conditioned as follows: *4. The use hereby permitted shall not be carried out outside the following times 09.00 to 23.30 Mondays to Saturdays and 9.30 to 22.30 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.
- 2.5 The restaurant use is permitted to operate between 9.00 to 23.30 Mondays to Saturdays and 9.30 to 22.30 on Sundays and Bank Holidays. It is acknowledged the forecourt area could be used informally for tables and chairs. Its use has been formalised with the creation of this unauthorised raised platform and enclosure. In view of the opening hours, the presence of the terrace allows customers to sit/dine/drink/smoke outside late at night, disturbing the peace and quiet of the residential street, and is therefore detrimental to the existing amenity of local residents. Camden's Policy CS7 clearly states that *'the Council will ensure that development in its centres is appropriate to the character, size and role of the centre in which it is located, and does not cause harm to neighbours and the local area'*.
- 2.6 Twenty seven lights have been installed on the structure. The presence of so many lights on the periphery of the structure, adjacent to residential properties and within the front streetscape - is unjustified. Moreover, these lights would advertently create light pollution and no mitigation measures can be put in place in order to reduce their negative impact on the amenity of the neighbours and the residential area.
- 2.7 Given the above, the lights are contrary to Camden Planning Guidance CPG6 (Amenity) stating that the Council will seek to ensure that artificial lighting is sited in the most appropriate locations to cause minimal disturbance to occupiers and adjoining neighbours. In view of the siting of the development – within a residential area, the lights around the unauthorised timber structure are inappropriate.

3. Conclusion

3.1 The proposal is considered to be unacceptable by virtue of its size, design and location. It is too large, too high and too bulky and is an incongruous feature that is unsuited to the area and is detrimental to the character and appearance of the host and adjacent buildings and the existing streetscape, and is thereby contrary to policies CS5, DP24 and DP26 of Camden's LDF.

4. Recommendation

4.1 Refuse Planning Permission

