

Delegated Report		Analysis sheet	Expiry Date:	23/08/2017
		N/A	Consultation Expiry Date:	02/08/2017
Officer			Application Number(s)	
Matthias Gentet			2017/3702/P	
Application Address			Drawing Numbers	
46 Birchington Road LONDON NW6 4LJ			See decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Erection of raised terrace in front forecourt bounded with brick walls/piers, metal railings and associated platform lift to restaurant (Class C3)				
Recommendation(s):		Refuse Planning Permission		
Application Type:		Full Planning Permission		

Conditions or Reasons for Refusal:	Refer to Decision Notice
Informatives:	

Consultations

Adjoining Occupiers:	No. notified	49	No. of responses	13	No. of objections	13
			No. electronic	09		

Summary of consultation responses:	<p>Site Notice (displayed on 12/07/2017 and expired on 02/08/2017).</p> <p><u>Summary of Objections</u></p> <p>13 x objections were received from the Owner/occupier at:</p> <ul style="list-style-type: none"> - 11Birchington Road - Basement Flat, 13D Birchington Road - Basement Flat, 15A Birchington Road - 22 Birchington Road - 27 Birchington Road - First Floor Flat, 28 Birchington Road - 30 Birchington Road - 31C Birchington Road - Flat First Floor, 31 Birchington Road - Flat 1, 33 Birchington Road - 33A Birchington Road - 33A Birchington Road <p>These are summarised as follow</p> <ul style="list-style-type: none"> - Noise from late night parties (See Amenity Section) - Smoking on the terrace (See Amenity Section) - Parking congestion, especially weekends (See officer comment) - Development does not benefit to residents (See officer comment) - Lack of consideration from restaurant owners to residents in terms of noise (See Amenity Section) - Fly-tipping and rubbish littering. (See officer comment) <p><u>Officer Comment:</u></p> <p>If the application were recommended for approval, a Service Management Plan secured by s106 could overcome a number of these issues. Issues 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).</p>
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CAAC/Local groups comments:	N/A
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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:

2016/5627/P – (refused on 13/01/2017 and **dismissed on appeal** ref: APP/X5210/W/17/3168796 on 19/05/2017) - Erection of timber enclosure and decking to forecourt of restaurant (Class A3) [retrospective].

2016/0654/P – (granted on 10/01/2017) - 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.)

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.

Site Enforcement History:

EN16/0229 – Operating outside of the operating hours stipulated on planning application ref: 2016/0652/P – closed on 03/03/2017.

EN15/1152 – Unauthorised installation of timber decking and associated timber enclosure on front forecourt area – The timber terrace has now been removed and the case has been closed on 21/07/2017. *[in connection with the refused application reference: 2016/5627/P]*

Relevant policies

Camden Local Plan 2017

A1 – Managing the Impact on Development

A4 – Noise and vibrations

D1 – Design

Camden Planning Guidance 2015 (as amended)

CPG1 (Design) – Chapter 1, 2 & 4

Camden Planning Guidance 2013 (as amended)

CPG6 (Amenity) – Chapter 4 & 7

National Planning Policy Framework 2012

The London Plan 2016

Fortune Green and West Hampstead Neighbourhood Plan 2017

Assessment

1. Proposal and Background

1.1 Planning permission is sought for the erection of a raised terrace in the front forecourt, to be bounded with brick walls/piers, metal railings and an associated platform lift to accommodate external sitting to be used by customers of the restaurant (Class C3).

1.2 It is be noted that an unauthorised timber terrace which formed part of a previous application reference: 2016/5627/P - was refused. The refusal, appealed by the applicant, was dismissed by the Planning Inspectorate [See Relevant History above].

1.3 This new application is independent from the unauthorised timber terrace, and is to be assessed on its merit. However, the existing plans show the unauthorised timber terrace to be in situ. Since the submission of this application, the timber structure has been physically removed, and the forecourt has been restored to its original state, but remains on the submitted existing drawings.

1.4 Following officer's comments, the scheme has been revised twice. The applicant hoped to incorporate a second disabled access which has been considered inappropriate by the Council's Access Officer in terms of its safety and its incompatibility with DDA requirements.

1.5 For completeness, revisions included::

- i) New disabled access ramp to the right of the proposed terrace;
- ii) Addition of a disabled platform lift to the right of the proposed terrace in the place of the proposed ramp or between the existing steps and the existing ramp on the left hand side of the forecourt; and
- iii) Addition of a disabled platform lift within the existing ramp on the right hand side

1.6 This report is based on the latest revision of the scheme – item iii as detailed above.

2. Assessment

2.1 The main matters for assessment include Design and Amenity

3. Design

3.1 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.

3.2 The raised terrace would be located on the forecourt of the premises measuring 4.2m in depth and 7m in width. This incorporates an existing ramp to the right hand side of the forecourt giving access to the upper ground floor level of the restaurant in the 'L' shape i.e going up from the pavement straight towards the building and turning right in the direction of the platform in front of the entrance to the restaurant. There is also the presence of stairs located to the central view point of the forecourt, directly opposite the entrance of the restaurant. The rest of the area is flat and paved.

3.3 There is a levelled access to the far left of the forecourt leading to a gated side passage. This has not been included as part of the measurements of the forecourt as it is not being affected by the proposal.

3.4 The boundary wall would be made of yellow bricks with red bricks capping and would measure 0.8m in height and have black metal railings atop measuring 0.9m in height also affixed to 10 no. red brick piers measuring 1.9m in height by 0.4m in width. Four more piers would also be added within the forecourt along the right side of the existing ramp up to the right of the entrance to the restaurant. Access to the new terrace would be from the street by a new entrance consisting of 2 steps and centred within the front boundary wall.

3.5 The terrace would be raised above ground by approximately 0.3 to 0.4m based on the details

provided on the proposed street elevation. However, it is unclear how high the level of the terrace is actually going to be. There are currently 4 steps from the forecourt to the entrance platform. Yet the proposed floor plan of the forecourt only shows 3 – 2 new access steps to the terrace and 1 of the existing steps to the entrance platform.

- 3.6 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 accommodation, any commercial development must be done with sensitivity and be mindful of its impact on the residents within Birchington Road and beyond.
- 3.7 Policy D1 (Design) states that *'good design takes account of its surroundings and preserves what is distinctive and valued about the local area. Careful consideration of the characteristics of a site, features of local distinctiveness and the wider context is needed in order to achieve high quality development which integrates into its surroundings. Character is about people and communities as well as the physical components.'*
- 3.8 The direction in which the proposal has evolved has not taken into consideration the impact of the development onto the surrounding/adjacent residential area. The height of the boundary wall that is to enclose the raised platform is highly unsuitable and would once again introduce a bulky feature within the residential streetscape that is formed of low level boundary walls with no added railings. Although some of the 'residential' piers seem to be tall, they are few in numbers allowing the rhythmic design of long low level boundary walls and 2 piers demarking the entrance to the front garden with just one small step. This generic design is repeated in continuous sequence throughout Birchington Road. Based on this, the scheme therefore is not replicating the design of the boundary treatments within Birchington Road that would be expected and is therefore an incongruous fixture that is unsuited to the area and is detrimental to the host and adjacent buildings and the streetscape.

Associated access implications

- 3.9 The installation of the disabled platform lift within the existing left ramp would create a much smaller ramp that would lead up to the platform lift and as a result, would also increase the gradient of the newly created shorter ramp.
- 3.10 The current ramp provides easy and safe access to any wheelchair users. Increasing the gradient would not be DDA compliant. Nevertheless, it is difficult to assess the details of the latest revision accurately due to the lack of sectional drawings through the proposed - and the existing – ramp to provide an accurate reading in terms of measurements and gradients. Suffice to say, the reduction in length of the left hand side ramp would detrimentally alter the gradient to allow for the implementation of the proposed platform lift.
- 3.11 The various alternatives were looked at by the Access Officer and found not to conform with DDA requirements.
- 3.12 Notwithstanding the matter of the incompatibility of either a second disabled access ramp – as originally proposed and found to be unacceptable in terms of ease of use by wheelchair users – or the introduction of platform lifts in various locations within the forecourt, the size and bulk of the amended boundary wall is also considered to be unacceptable. Its original design was to have its overall height to stand at 1.5m (the highest point measured from the piers). This has now increased to 1.9m which is short of the highest 2.1m of the timber terrace by only 200mm but still of a significant height that is not in continuity with what is found along the front gardens in Birchington Road.

4. Amenity

4.1 The opening hours of the restaurant, as approved under planning permission reference: 2014/5696/P (See Relevant History above), have been conditioned to not fall outside of 'the following times 09.00 to 23.30 Mondays to Saturdays and 9.30 to 22.30 on Sundays and Bank Holidays.'

4.2 It is acknowledged the forecourt area could be used informally for tables and chairs without further consents required. The creation of a raised terrace and enclosure would however encourage customers to sit/dine/drink/smoke outside potentially late at night.. The potential noise issue was brought up by the Inspector in his decision as follow:

I would expect activity within the street to be fairly limited during evening and night time hours, and noise generated by customers using the decking during the evening would therefore be likely to give rise to noise nuisance to neighbouring residents. However, the evening and night time use of the decking and the playing of live or amplified music could be controlled by conditions.

I conclude that the imposition of conditions relating to hours of use, music and external lighting would ensure that the development would not have a harmful effect upon the living conditions of the occupants of neighbouring residential properties, with particular regard to noise nuisance and light pollution,

4.3 Any breach of these conditions would trigger the opening of an Enforcement case to be dealt with accordingly.

4.4 As such, the use of the proposed raised terrace is not considered to be detrimental to the amenity of Birchington Road and its residents, subject to the same conditions to be attached.

5. Conclusion

6. The proposal by virtue of its size, design and location, would resulting in an incongruous fixture that is unsuited to the area and is detrimental to the host and adjacent buildings and the streetscape, contrary to policy policies D1 and A1 of the Camden Local Plan 2017.**Recommendation**

6.1 Refuse Planning Permission