

Report of the Head of Planning & Enforcement Services

Address 691 UXBRIDGE ROAD HAYES

Development: Change of use from Class A1 (Retail) to Class A3 for use as restaurant, involving installation of extractor system to rear, and outdoor sitting area with block paving and folding canopy (Part Retrospective)

LBH Ref Nos: 30353/APP/2011/995

Drawing Nos: ID/691UR/11A Existing/Proposed elevations, floor plans
Design & Access Statement

Date Plans Received: 26/04/2011 **Date(s) of Amendment(s):**

Date Application Valid: 09/05/2011

1. SUMMARY

Planning permission is sought retrospectively for the change of use from a retail unit to a restaurant, the scheme proposes changes to and retention of a forecourt enclosure and the proposed installation of a flue on the rear elevation.

It is proposed to remove the existing canopy plus plastic sheeting and replace it with a folding canopy reduced to a depth of 3.9m. The outdoor sitting area would be re-designed by replacing the timber boundary fence with plant containers and replacing the existing decking with new block paving.

The proposed change of use would in principle not harm existing convenience shopping for local residents. The proposed flue to the rear is considered acceptable. However the proposed canopy, forecourt enclosure and boundary treatment would by reason of their overall siting, design and appearance be visually detrimental to the street scene.

Accordingly, the application is recommended for refusal.

2. RECOMMENDATION

REFUSAL for the following reasons:

1 NON2 Non Standard reason for refusal

The proposed enclosure of the forecourt area to the front of the premises, including the proposed canopy, block paving and plant containers would represent a visually intrusive form of development, which by virtue of its design, size and position to the front of the existing building, and its close proximity to adjoining dwellings, would be detrimental to the appearance of the existing building and the character and appearance of the street scene generally. It would therefore be contrary to policies BE13, BE15 and BE19 of the adopted Hillingdon Unitary Development Plan Saved Policies (September 2007).

2 NON2 Non Standard reason for refusal

The proposed outdoor seating area by reason of its location, use and lack of noise attenuation measures to prevent noise break out, would result in a significant increase in noise and disturbance to nearby residential properties, and as such would constitute an un-neighbourly form of development, resulting in a material loss of residential amenity.

The proposal is therefore contrary to policy OE1 of the Hillingdon Unitary Development Plan Saved Policies (September 2007).

INFORMATIVES

1 I52 Compulsory Informative (1)

The decision to REFUSE planning permission has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

2 I53 Compulsory Informative (2)

The decision to REFUSE planning permission has been taken having regard to the policies and proposals in the Hillingdon Unitary Development Plan Saved Policies (September 2007) set out below, including Supplementary Planning Guidance, and to all relevant material considerations, including the London Plan (July 2011) and national guidance.

BE13	New development must harmonise with the existing street scene.
BE15	Alterations and extensions to existing buildings
BE19	New development must improve or complement the character of the area.
OE1	Protection of the character and amenities of surrounding properties and the local area
S6	Change of use of shops - safeguarding the amenities of shopping areas
S7	Change of use of shops in Parades
AM14	New development and car parking standards.
AM2	Development proposals - assessment of traffic generation, impact on congestion and public transport availability and capacity
AM7	Consideration of traffic generated by proposed developments.

3. CONSIDERATIONS

3.1 Site and Locality

The application site forms part of the two storey block located on the southern side of Uxbridge Road Hayes near its junction with Angel Lane. It comprises a ground floor retail unit in use as a cafe with residential above on the first floor.

The front forecourt, which was previously used for informal parking, has been converted to provide an outdoor seating area. Timber panels have been erected along the front and side boundaries of the forecourt, and a canvass retractable canopy roof with plastic sheeting along the front and sides have been erected over the forecourt, effectively enclosing the forecourt area. The surface comprises timber decking.

To the west of the application site lies 693 Uxbridge Road Hayes, a retail unit with residential above. To the east lies 681-689 Uxbridge Road Hayes, comprising residential units. The street scene comprises a mix of commercial and residential uses and the application site lies within the developed area as identified in the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

3.2 Proposed Scheme

The proposal involves the change of use of the ground floor from retail to a restaurant within class A3.

It is proposed to remove the existing canopy plus plastic sheeting and replace it with a folding canopy reduced to a depth of 3.9m. The outdoor sitting area would be re-designed by replacing the timber boundary fence with plant containers and replacing the existing decking with new block paving.

A flue is proposed centrally positioned on the rear wall. It would extend to the eaves of the roof and then run along the roof slope.

3.3 Relevant Planning History

30353/APP/2008/1320 691 Uxbridge Road Hayes

CHANGE OF USE FROM CLASS A1 (SHOPS) TO CLASS A3 (RESTAURANTS, SNACK BARS, CAFES) FOR USE AS A CAFE, WITH A FRONT CANOPY

Decision: 19-06-2008 Refused

30353/APP/2010/1146 691 Uxbridge Road Hayes

Change of use from Class A1 (Retail) to Class A3 for use as restaurant, and involving installation of extract system to rear, and retention of forecourt enclosure comprising canopy timber fencing and decking.

Decision: 09-08-2010 Withdrawn

30353/APP/2010/1893 691 Uxbridge Road Hayes

Change of use from Class A1 (Retail) to Class A3 for use as restaurant, involving installation of extract system to rear, and retention of forecourt enclosure comprising canopy timber fencing and decking (Part retrospective application.)

Decision: 29-11-2010 Refused

Comment on Relevant Planning History

The above application ref: 30353/APP/2008/1320 was refused for the following reasons:

1. The proposed front canopy, columns and sliding curtain walls, by reason of their overall size, siting, design and appearance would represent a visually intrusive form of development which would be detrimental to the appearance of the existing building and the character and appearance of the street scene generally. It would therefore be contrary to policies BE13, BE15 and BE19 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

2. The proposal fails to provide adequate information to demonstrate how fumes/odour would be expelled from the premises without harming the amenities of nearby residents.

In the absence of sufficient information, the Local Planning Authority has been unable to assess the proposal in terms of its impact on the residential amenities of adjoining

residents, contrary to policy OE1 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

The above application ref: 30353/APP/2010/1893 was refused for the following reason:

1. The proposed enclosure of the forecourt area to the front of the premises, including the proposed canopy, timber decking and timber walls would represent a visually intrusive form of development, which by virtue of its design, size and position to the front of the existing building, and its close proximity to adjoining dwellings, would be detrimental to the appearance of the existing building and the character and appearance of the street scene generally. It would therefore be contrary to policies BE13, BE15 and BE19 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

The current application seeks to overcome the previous concerns/reasons for refusal and now proposes the following;

- Remove the existing canopy and replace it with a folding canopy reduced to a 3.9m depth;
- Replace the timber boundary fence with plant containers; and
- Replace existing decking with new block paving.

4. Planning Policies and Standards

UDP / LDF Designation and London Plan

The following UDP Policies are considered relevant to the application:-

Part 1 Policies:

- | | |
|--------|--|
| PT1.10 | To seek to ensure that development does not adversely affect the amenity and the character of the area. |
| PT1.18 | To maintain, enhance and promote town centres as the principle centres for shopping, employment and community and cultural activities in the Borough. |
| PT1.19 | To maintain a hierarchy of shopping centres which maximises accessibility to shops and to encourage retail development in existing centres or local parades which is appropriate to their scale and function and not likely to harm the viability and vitality of Town or Local Centres. |

Part 2 Policies:

- | | |
|------|--|
| BE13 | New development must harmonise with the existing street scene. |
| BE15 | Alterations and extensions to existing buildings |
| BE19 | New development must improve or complement the character of the area. |
| OE1 | Protection of the character and amenities of surrounding properties and the local area |
| S6 | Change of use of shops - safeguarding the amenities of shopping areas |
| S7 | Change of use of shops in Parades |
| AM14 | New development and car parking standards. |
| AM2 | Development proposals - assessment of traffic generation, impact on congestion |

and public transport availability and capacity

AM7 Consideration of traffic generated by proposed developments.

5. Advertisement and Site Notice

5.1 Advertisement Expiry Date:- Not applicable

5.2 Site Notice Expiry Date:- Not applicable

6. Consultations

External Consultees

13 adjoining owner/occupiers have been consulted. Two letters of objection have been received raising the following concerns;

- (i) Noise from the premises is disruptive to local residents; and
- (ii) The premise is open until 4am on some days.

THAMES WATER

Waste Comments

Thames Water recommends the installation of a properly maintained fat trap on all catering establishments. We further recommend, in line with best practice for the disposal of Fats, Oils and Grease, the collection of waste oil by a contractor, particularly to recycle for the production of bio diesel.

Failure to implement these recommendations may result in this and other properties suffering blocked drains, sewage flooding and pollution to local watercourses. Further information on the above is available in a leaflet, 'Best Management Practices for Catering Establishments' which can be requested by telephoning 01923 898 188

Water Comments

With regard to water supply, this comes within the area covered by the Veolia Water Company. For your information the address to write to is - Veolia Water Company The Hub, Tamblin Way, Hatfield, Herts, AL10 9EZ - Tel - 0845 782 3333.

Internal Consultees

HIGHWAYS:

Existing A1 sandwich shop is part of a small shopping parade in Uxbridge Road, which is Borough Strategic Road Network. Parking restriction in Uxbridge Road is self enforcing with the exception of existing parking lay-by in front of the shop. Bus stops are within walking distance of the site and nearby customers are likely to walk to the proposed Restaurant as it is within an easy reach of public transport.

The nearby lay-by could be utilised for deliveries, and may also be used for patrons parking. Submitted application form indicates that there will be two part time staff on a daily basis, but the applicant fails to propose cycle parking for staff use which is contrary to policy AM9 (ii) of the Council's UDP (adopted 1998) saved policies.

Policy AM14 of the UDP refers to the Council's vehicle parking standard contained in the Annex 1.

The London Borough of Hillingdon UDP (adopted 1998) saved policies, 27th September 2007, requires maximum of two vehicle parking and four cycle parking spaces for similar use.

However, considering that currently the shop has started trading, with no major changes to internal seating, with proposal to employ two part time staff for the A3 use, No objection is raised on the highways aspect of the proposals subject to a suitable condition being attached requesting the applicant to provide details of covered and secure cycle storage for 2 no. cycles.

ENVIRONMENTAL PROTECTION UNIT:

I refer to your memo dated 10/5/2011 in respect of the above proposal and EPU have the following comments to make concerning the application.

The application site is within a mixed-use residential and commercial area in the southern part of Uxbridge Road in Hayes. There have been a number of complaints from residents primarily relating to disturbance from customers using the facility during late evenings/early morning, deliveries/waste collection and amplification of sound from the use of television entertainment.

Therefore, should the application be approved EPU will recommend that the following conditions be imposed prior to any consideration.

Proposed ventilation system

I have reviewed specification of details of the proposed extract system submitted by the applicant and prepared by purified Air Limited and I confirm that it appears to be in accordance with guidance specified by DEFRA The Control of noise and odour from kitchen extraction system January 2005.

However EPU will recommend the following condition to be imposed:

Condition 1 - N11B Noise affecting residential property

The rating level of noise emitted from the plant and/or any machinery hereby approved shall be at least 5 dB below the existing background noise level.

The noise levels shall be determined at the nearest residential property. The measurements and assessment shall be made in accordance with British Standard BS4142 Method for rating industrial noise affecting mixed residential and industrial areas.

REASON: To safeguard the amenity of the surrounding area in accordance with policy OE1 of the Hillingdon Unitary Development Plan.

Condition 2 - N5 Scheme for site noise control

The development shall not begin until a scheme, which specifies the provisions to be made for the control of customer noise emanating from the site, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include such combination of physical and administrative measures as may be approved by the Local Planning Authority. Thereafter, the scheme shall be implemented and maintained in full compliance with the approved measures.

REASON: To safeguard the amenity of the surrounding area in accordance with policy OE1 of the Hillingdon Unitary Development Plan.

Condition 3 - N15 Hours restriction for amplified music/sound

No music and/or other amplified sound including sound arising from the use of television entertainment shall be audible at any time from the development site premises inside surrounding or any nearby residential premises.

REASON: To safeguard the amenity of the occupants of surrounding properties in accordance with policy OE1 of the Hillingdon Unitary Development Plan.

Condition 4

H2 Deliveries and collections, including waste collections, shall be restricted to the following hours; 08:30 hrs to 21:00 hrs Monday to Saturday and not at all on Sundays and Bank/Public Holidays.

REASON: To safeguard the amenity of surrounding areas.

Condition 5

H1 Restaurants/Cafes

No persons other than staff shall be permitted to be on the premises between the hours of 23.30 and 08.00 hours

REASON: To ensure that the amenity of the occupiers of adjoining or nearby properties is not adversely affected in accordance with Policy OE3 of the Hillingdon Unitary Development Plan.

Construction Site Informative:

Pursuant to the Control of Pollution Act 1974, the Clean Air Act 1993, the Environmental Protection Act 1990 and any other relevant legislation, you are advised as follows:

(i) Demolition and construction works which are audible at the site boundary should only be carried out between the hours of;

- 0800 and 1800 on Monday to Friday

- 0800 and 1300 on Saturday.

No such work must be carried out on Sundays and Bank Holidays. All noise generated during such works must be controlled in compliance with British Standard 5228;

(ii) Measures must be taken to eliminate the release of dust and odours caused by the works that may create a public health nuisance.

(iii) No bonfire at any time

WASTE MANAGEMENT:

I would make the following comments on the above application regarding waste management.

a) The application is for a restaurant. One x 1,100 litre type of bulk bin is usually needed to safely and hygienically contain the waste arising from this type of business. Two bulk bins are shown on the plan, one could be used for collecting recyclable waste.

b) The bulk bins should be sited on an area of hard-standing, with a smooth surface, so that it can be washed down with water and disinfectant. The surface should be cambered so the run off flows towards a proper drain.

c) The collectors should not have to cart a bulk bin more than 10 metres from the point of storage to the collection vehicle (BS 5906 standard). The collection crew would therefore need to access the rear of the shop, via the service road. Alternatively the owners would have to present the bulk bin at an agreed collection point on the allocated day.

d) The gradient of any path that the bulk bins have to be moved on should ideally be no more than 1:20, with a width of at least 2 metres. The surface should be smooth. If the path is raised above the area where the collection vehicle parks, then a dropped kerb is needed to safely move the bin to level of the collection vehicle.

7. MAIN PLANNING ISSUES

7.01 The principle of the development

The application site forms part of a small parade. Local shopping parades serve an important role in providing convenience shopping that caters for the needs of local residents. Paragraph 8.22 and policy S7 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007) seeks to ensure that all residential areas are within half a mile of a least 5 essential shop uses, although not necessarily within the same parade. For some local shopping areas the closure of just one essential shop may be so significant as to precipitate the closure of other shops and the ultimate demise of the

centre as a whole. The LPA seeks to protect vulnerable parades and corner shops which have a particularly important role for the local community and to provide opportunities for the establishment of new essential shop uses in existing class A1 premises. Ideally there should be no less than 3 (essential shops) in the smaller parades and a choice of essential shops in the larger parades.

The application site is currently the only shop within this parade (a small parade of 6 units) which remains within Use Class A1. However, the Hayes End Parade, which begins at the Texaco Garage immediately opposite the site, has 55 units and 27 of these (approx 49%) remain within Use Class A1. Given the very close proximity of other parades and the number of essential shop uses which are present within the Hayes End Parade it is considered that the local community would still be served by an adequate level of such facilities.

It should be noted that the change of use was also considered acceptable for application 30353/APP/2008/1320 which forms a material consideration to determination of this application.

As such, the loss of this retail unit would not harm local convenience shopping provision, in accordance with policy S7 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

7.02 Density of the proposed development

This is not applicable to this application.

7.03 Impact on archaeology/CAs/LBs or Areas of Special Character

This is not applicable to this application.

7.04 Airport safeguarding

This is not applicable to this application.

7.05 Impact on the green belt

This is not applicable to this application.

7.07 Impact on the character & appearance of the area

It is proposed to remove the existing front canopy with plastic sheeting and replace it with a folding canopy reduced to a depth of 3.9m. The plans also demonstrate that the outdoor sitting area would be re-designed by replacing the existing timber boundary fence with plant containers to the front and side of the forecourt and replacing the existing decking with new block paving.

Overall it is still considered that the provision of the canopy, block paving and plant containers would by reason of their overall siting, design and appearance represent a visually intrusive form of development which would be detrimental to the appearance of the existing building and the character and appearance of the street scene generally. It would therefore be contrary to policies BE13, BE15 and BE19 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

The proposal fails to overcome the reason for refusal of the previous scheme.

7.08 Impact on neighbours

In terms of assessing the effects of the proposal on residential amenity, the relevant factors are those of noise, odour and general disturbance.

The nearest residential properties lie above and adjacent to the application site. A ventilation duct is proposed on the rear elevation of the building which projects sufficiently

above the eaves of the roof so as to ensure that fumes would expel away from the residential properties. The Environmental Health Officer has raised no objections to the siting of the flue.

The Environmental Protection Unit considers that subject to planning conditions relating to noise mitigation, hours of operation and deliveries, these would be sufficient to maintain the residential amenity of the occupiers of adjoining and nearby residential properties, should planning permission be granted.

However, given the Secretary of States tests relating to planning conditions and the nature of the proposal it is considered that conditions relating to noise and general disturbance would mostly not be enforceable at this location. This is a retrospective application, where actual impacts would have been able to be observed by near by residential occupiers. Objections have been received which indicate that noise from the use of the outdoor seating area does adversely impact upon amenity.

It is noted that the previous application was not refused on the basis of noise and disturbance. There is however a material difference between the current application and the previously refused scheme, in that evidence in the way of an objection from a near by resident has been provided which indicates the use results in noise and disturbance.

It is also considered that the proposed canopy and plant containers to be provided within the revised scheme would not mitigate any potential noise break out from the outside seating area. The proposal is therefore contrary to policies OE1 and S6 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007) and 7.15 of the London Plan 2011.

7.09 Living conditions for future occupiers

This is not applicable to this application.

7.10 Traffic impact, Car/cycle parking, pedestrian safety

Considering that currently the shop has started trading, with no major changes to internal seating, with proposal to employ two part time staff for the A3 use, no objection is raised on the highways aspect of the proposals subject to a suitable condition being attached to any approval requesting the applicant to provide details of covered and secure cycle storage for two cycles. As such, the proposal would comply with policy AM2 of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

7.11 Urban design, access and security

This is not applicable to this application.

7.12 Disabled access

There is a ramped access at the entrance to the unit. Any other accessibility issues could be addressed by condition.

7.13 Provision of affordable & special needs housing

This is not applicable to this application.

7.14 Trees, landscaping and Ecology

This is not applicable to this application.

7.15 Sustainable waste management

No details of waste receptacles have been submitted however, there appears to be sufficient space at rear to provide such facilities. As such, a condition could be recommended requiring the provision of waste receptacles that would meet the Council's

standards if the application were to be approved.

7.16 Renewable energy / Sustainability

This is not applicable to this application.

7.17 Flooding or Drainage Issues

This is not applicable to this application.

7.18 Noise or Air Quality Issues

The proposed flue would be located to the rear and would be of a modest size. Due to its siting, projecting above the eaves of the roof, it is considered to be sufficiently located as to expel cooking fumes away from the residential properties. The Environmental Health Officer raises no objections to the proposed location of the flue and recommends conditions to control odour and noise. Subject to the discharge of these conditions, it is considered that the proposed flue would not harm the amenities of nearby residents by reason of noise and odour.

As stated in paragraph 7.8, it is considered that the proposed outdoor seating area would harm the amenities of nearby residents by reason of noise and general disturbance.

7.19 Comments on Public Consultations

With regards to the third party comments these are addressed in the report.

7.20 Planning obligations

This is not applicable to this application.

7.21 Expediency of enforcement action

This is not applicable to this application.

7.22 Other Issues

There are no other relevant issues.

8. Observations of the Borough Solicitor

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application.

In addition Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

9. Observations of the Director of Finance

This is not applicable to this application.

10. CONCLUSION

Planning permission is sought retrospectively for the change of use from a retail unit to a restaurant, the proposed changes to and retention of a forecourt enclosure and the proposed installation of a flue on the rear elevation.

It is proposed to remove the existing canopy plus plastic sheeting and replace it with a folding canopy reduced to a depth of 3.9m. The outdoor sitting area would be re-designed by replacing the timber boundary fence with plant containers and replacing the existing decking with new block paving.

The proposed change of use would in principle not harm existing convenience shopping for local residents. The proposed flue to the rear is considered acceptable. However the proposed canopy, forecourt enclosure and boundary treatment would by reason of their overall siting, design and appearance be visually detrimental to the street scene.

Accordingly, the application is recommended for refusal.

11. Reference Documents

Adopted Hillingdon Unitary Development Plan (Saved Policies September 2007)
London Plan (July 2011).

Contact Officer: Jacques du Plessis

Telephone No: 01895 250230



Notes



Site boundary

For identification purposes only.

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Site Address

**691 Uxbridge Road,
Hayes**

Planning Application Ref:

30353/APP/2011/995

Planning Committee

Central and South

Scale

1:1,250

Date

**August
2011**

**LONDON BOROUGH
OF HILLINGDON**
Planning,
Environment, Education
& Community Services

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