

Report of the Head of Planning, Sport and Green Spaces

Address 23 - 25 SWAKELEYS ROAD ICKENHAM

Development: Change of use from retail (Use Class A1) a Mixed Use (sui generis) comprising elements of retail/restaurant and cafe use(Retrospective)

LBH Ref Nos: 62382/APP/2012/1252

Drawing Nos: Planning Statement
12/2638/3A
12/2638/2A
12/2638/1A
Location Plan to Scale 1:1250

Date Plans Received: 23/05/2012 **Date(s) of Amendment(s):**
Date Application Valid: 29/05/2012

1. **SUMMARY**

Retrospective planning permission is sought for a change of use from A1 retail to A1/A3 (shops, restaurant, cafe) for use as a Boulangerie and patisserie. The proposed change of use would enhance, rather than harm, the vitality and viability of Ickenham Village Local Centre and is therefore considered to comply with Policy 2.15 of the London Plan (2011) and the NPPF (2012)

2. **RECOMMENDATION**

APPROVAL subject to the following:

1 COM4 **Accordance with Approved Plans**

The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 12/2638/1A and 12/2638/2A and shall thereafter be retained/maintained for as long as the development remains in existence.

REASON

To ensure the development complies with the provisions Hillingdon Local Plan: Part Two Saved UDP Policies (November 2012) and the London Plan (July 2011).

2 COM23 **Hours of Use (Restaurant etc.)**

The premises shall only be used between the hours of 0700 and 2100 on Mondays to Saturdays and 0900 to 1800 on Sundays and not at all on Bank and Public Holidays. There shall be no staff allowed on the premises outside these hours.

REASON:

In order to ensure that the use remains appropriate to the town centre location and in order to safeguard the amenity of the occupants of surrounding properties in accordance with Policies S6, S12 and OE1 of the Hillingdon Unitary Development Plan.

INFORMATIVES

1 I52 **Compulsory Informative (1)**

The decision to APPROVE 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 APPROVE 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.

AM2	Development proposals - assessment of traffic generation, impact on congestion and public transport availability and capacity
AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.
BE4	New development within or on the fringes of conservation areas
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
OE3	Buildings or uses likely to cause noise annoyance - mitigation measures
S6	Change of use of shops - safeguarding the amenities of shopping areas
S9	Change of use of shops in Local Centres
LPP 2.15	(2011) Town Centres
LPP 4.7	(2011) Retail and town centre development
LPP 4.8	(2011) Supporting a Successful and Diverse Retail Sector
LPP 7.15	(2011) Reducing noise and enhancing soundscapes

3 I53 Compulsory Informative (2)

The decision to GRANT/REFUSE planning permission has been taken having regard to the policies and proposals in the Hillingdon Unitary Development Plan Saved Policies (September 2007) as incorporated into the Hillingdon Local Plan (2012) set out below, including Supplementary Planning Guidance, and to all relevant material considerations, including the London Plan (July 2011) and national guidance.

AM2	Development proposals - assessment of traffic generation, impact on congestion and public transport availability and capacity
AM7	Consideration of traffic generated by proposed developments.
AM14	New development and car parking standards.
BE4	New development within or on the fringes of conservation areas
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4 I28 Food Hygiene

The Council's Commercial Premises Section should be consulted prior to the use of the premises so as to ensure compliance with the Food Safety Registration Regulations 1990, Hygiene (General) Regulations 1970, The Food Act 1984, The Health and Safety at Work Act 1974 and any other relevant legislation. Contact: - Commercial Premises Section, 4W/04, Civic Centre, High Street, Uxbridge, UB8 1UW (Telephone 01895 250190).

3. CONSIDERATIONS

3.1 Site and Locality

The application site is located towards the eastern end of Swakeleys Road. It comprises two shops, Nos.23 and 25, on the ground floor of a two storey, brick built parade of shops. The adjoining unit to the east is a hairdressers, whilst the adjoining unit to the west is a bank. There are flats located on the first floor above the application properties. The unit is accessed from a service road to the south of Swakeleys Road which is a major distributor road providing good access for deliveries and emergency vehicle access.

The site lies within the Core Shopping Area of Ickenham Local Centre and the Ickenham Village Conservation Area as identified in the policies of the adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

3.2 Proposed Scheme

Retrospective planning permission is sought for the change of use from A1 (Retail) to A1/A3 (shops/restaurant/cafe) for use as a boulangerie and patisserie with a coffee shop. both 23 and 25 have a seating area inside as well as a counter serving customers. No building works form part of this application to the shop front or to the rear of the property. Outdoor seating is provided and located on the pavement.

The bin store and recycling area are located to the rear of the property. The opening hours are shown to be Monday to Saturday 8am - 4pm and Sundays and Bank Holidays 9am - 2pm.

3.3 Relevant Planning History

25054/APP/2012/97 25 Swakeleys Road Ickenham

Change of use from Use Class A1 (Shops) to A1/A3 (Shops/ Restaurants and Cafes) for use as a boulangerie, patisserie and coffee shop (Retrospective)

Decision: 29-02-2012 Refused

62382/ADV/2007/8 23 & 25 Swakeleys Road Ickenham Middx
INSTALLATION OF INTERNALLY ILLUMINATED SIGNS.

Decision: 09-03-2007 Refused

62382/APP/2007/102 23 & 25 Swakeleys Road Ickenham
INSTALLATION OF REPLACEMENT SHOP FRONTS

Decision: 20-03-2007 Approved

Comment on Relevant Planning History

Planning application reference 25054/APP/2012/97 was refused for the following reasons:

1. The proposal fails to demonstrate that it would not (by reason of the loss of a retail unit) lead to the erosion of the retail function of the Ickenham's Core Shopping Area, harming its vitality and viability, contrary to Policy S9 of the Adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).
2. In the absence of any proposed mitigation measures regarding the control of noise and other emissions from the site in relation to the nearby residential properties, the application has failed to demonstrate that the development will safeguard the amenities of those properties. The proposal is therefore contrary to Policies OE1, OE3 and S6 of the Hillingdon Unitary Development Plan (Saved Policies, September 2007).
3. The proposal has failed to provide adequate waste storage facilities, in a suitable location, in accordance with the Council's adopted standards, and therefore the proposal is contrary to policy S6 of the Unitary Development Plan Saved Policies September 2007.

4. Planning Policies and Standards

UDP / LDF Designation and London Plan

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

Part 1 Policies:

Part 2 Policies:

- | | |
|------|---|
| AM2 | Development proposals - assessment of traffic generation, impact on congestion and public transport availability and capacity |
| AM7 | Consideration of traffic generated by proposed developments. |
| AM14 | New development and car parking standards. |
| BE4 | New development within or on the fringes of conservation areas |
| 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 |

OE3	Buildings or uses likely to cause noise annoyance - mitigation measures
S6	Change of use of shops - safeguarding the amenities of shopping areas
S9	Change of use of shops in Local Centres
LPP 2.15	(2011) Town Centres
LPP 4.7	(2011) Retail and town centre development
LPP 4.8	(2011) Supporting a Successful and Diverse Retail Sector
LPP 7.15	(2011) Reducing noise and enhancing soundscapes

5. Advertisement and Site Notice

5.1 Advertisement Expiry Date:- **29th August 2012**

5.2 Site Notice Expiry Date:- Not applicable

6. Consultations

External Consultees

4 adjoining and nearby properties and Ickenham Residents Association have been notified of the application by means of a letter dated 30th May 2012. The application was advertised in the 8th August 2012 edition of the Uxbridge Gazette and a site notice also displayed on 1st June 2012. No response received.

A petition with 726 signatories was submitted as part of the application in support of the proposal.

Internal Consultees

Environmental Protection Unit:

In July 2012 the Council's EPU Team provided the following comment 'No objections subject to normal conditions for an A3 use'.

A discussion with the Council's EPU Team on the 22nd April 2014 indicated that the site has not generated any complaints to EPU in respect of noise or odour, despite having been in operation since at least August 2011 (2 years and 8 months). On this basis it was considered that the previously standard A3 use conditions would be unduly onerous and unnecessary and the development would be acceptable subject to a condition relating to the hours of operation.

Access officer:

The existing shop unit appears to provide level access from the pedestrian footway into premises. The plan, as proposed, includes an accessible toilet which seemingly complies with the standards as detailed in BS 8300:2009. The layout of the outdoor tables and chairs appear to maintain an obstruction-free corridor in excess of 2m wide.

Conclusion: no objection from an accessibility point of view.

7. MAIN PLANNING ISSUES

7.01 The principle of the development

Policy S9 of the Adopted Hillingdon Unitary Development Plan (Saved Policies September 2007) states that in local centre, including Ickenham, planning permission will only be granted for change of use from class A1 shops outside the core areas. The core area contains the minimum number and range of shops to enable the centre to carry out its role

of providing for the needs of people who do not live close to a town centre, thus reducing the need to travel to such a centre for goods and services that could be provided more locally. In order to ensure that they retain a strong retail core with more than just the bare minimum number of shops, the policies governing changes of use are more restrictive than those for town centres.

The previous application (Ref: 25054/APP/2012/97) was refused by the Local Planning Authority as on the basis of the information submitted and available at the time it appeared to the Local Planning Authority that the use fell principally within use Class A3. This assessment was based on the floorspaces shown dedicated to activities on the submitted floorplans (e.g. as more than 50% of the floorspace was dedicated to a seating area with tables and chairs also located outside the shop front).

The current application is accompanied by further information from the applicant and officers have undertaken additional site visits in order to inform the decision making process.

It is noted that Circular 03/2005 provided some useful guidance in relation to the assessment of such applications, relevant extracts are provided below:

'Primary purpose

12. The Courts have held that the first thing to consider in determining whether a material change of use has occurred (or will occur) is the existing primary use of the land. Each case will always be a matter for individual determination by fact and degree. In particular, local planning authorities will need to take into consideration more than just the amount of floor space occupied by the different uses. For example, in the case of a premises which incorporates restaurant use as well as pub or bar use, the local planning authority will need to determine whether the existing primary use of the premises is as a restaurant (A3), or as a drinking establishment (A4), or a mixed use. This will depend on such matters as whether customers come primarily to eat, or drink, or both. It is the main purpose of that use that is to be considered.'

'Mixed uses

13. Where the primary use of land or premises is a mixture of different uses, such mixed use does not fall into any of the classes set out in the amended Order. The use will therefore be sui generis.

14. Planning Permission is not always required for the change of use from one mixed use to another. The question is whether or not the change of use is material, in planning terms. Where the change of use does not amount to a material change, there will be no development, and no need to obtain planning permission.'

'Sandwich bars

34. As indicated above in paragraph 12, in considering where individual uses fall, it is the primary purpose that should be considered. A sandwich bar does not necessarily cease to be in the shops class merely because, for example, it also sells a limited amount of hot drinks, hot soup or food that is heated up. Similarly, it is possible for a few sandwich bar customers to eat on the premises, including at tables within or outside their establishments (e.g. on the forecourt) without involving a material change of use.

Provided that this is only an ancillary part of their business, the classification of the business as a sandwich bar would rightly remain in the A1: Shops use class where the

retail sales element is the primary purpose.'

'Coffee Shops

36. Coffee shops will need to be considered on a case by case basis. Whether their primary purpose is as a shop, i.e. premises for the sale of beverages to be taken away, or as a cafe, where the primary purpose is consumption of beverages on the premises, or indeed whether it is a mix of both uses.'

Circular 03/2005 was cancelled on the 6th March 2014 and replaced by the National Planning Practice Guidance (NPPG), accordingly it no longer forms a part of adopted national planning policy. However, the NPPG provides no advice on this matter, either compliant with or contrary to the previous Circular. Given the circular set out advice on the basis of court decisions, which would remain a material consideration it is considered that this is the correct basis on which to make an assessment of the proposal.

Having regard to this advice it is correct for the Local Planning Authority to take a view on whether the proposed use is in fact A1 or a mixed use (sui generis) having regard to the material facts before it.

In this respect the applicant has expressed the view in their supporting statement that the principal use of the premises is the sale of bread, cakes, sandwiches and coffee. The applicant has also advised that the percentage of the sales which are consumed on the premises are estimated to be approximately 30% (although this is not supported by any evidence base).

This must be considered alongside other available information including the following:
In addition to the sale of bread, cakes, sandwiches and coffee; the store also has areas dedicated to the display of other A1 goods which would clearly be for sale rather than for consumption on the premises including areas for the display of pictures/artwork and two general goods display cabinets.
Notwithstanding the aforementioned information, over 50% of the floor area is dedicated to persons eating goods on the premises.

Having regard to all of the information now available, officers are of the view that customers visit the premises to both consume goods on site and to buy goods for use elsewhere and accordingly that the use is a mixed use (sui generis).

On this basis the proposal would still result in the loss of an A1 use within the core area of Ickenham Local Centre, which if considered in isolation could be considered contrary to Policy S9 of the Local Plan Part 2: Saved Policies UDP. However, this policy was originally adopted in 1998 and has not been updated since, accordingly it is necessary to consider the development having regard to the particular circumstances of the case and other adopted policy documents.

However, it is apparent that the proposed shop continues to provide a substantial element of retail activity in the form of sales of general retail goods and the proposed unit provides a cake shop and patisserie which provides a useful local service and facility to people within the village of Ickenham. The value of this facility to local people is evidenced by the receipt of a very large petition in support of the application.

It has been accepted by the Local Planning Authority in the past that coffee shops which provide an element of on site eating/drinking can provide a valuable facility which can enhance the vitality of a shopping parade by increasing footfall, particularly in the light of

changes to shopping behaviour and the overall retail sector. An example of such a decision was the grant of permission for a coffee shop at 100-102 High Street Ruislip which is currently occupied by Costa (Ref: 12237/APP/2005/2255). Based on the information before the Authority, including the petition of support from customers it is considered that such an argument would also hold true in this case, with the proposed use serving to increase footfall and the vitality and viability of the centre overall.

Policy 2.15 of the London Plan adopted in July 2011 seeks to support developments which sustain and enhance the vitality and viability of centres. Further, the National Planning Policy Framework (NPPF) which was adopted in March 2012 seeks to support sustainable economic development, in particular development which provides for economic growth and enhance town centre vitality. When considered in this context the benefits of the development are considered to weigh in favour of granting permission in this particular case.

Overall, it is considered that the development would enhance, rather than harm, the vitality and viability of Ickenham Town Centre and would therefore be in compliance with Policy 2.15 of the London Plan and the NPPF.

7.02 Density of the proposed development

Not applicable to this application.

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

The site falls within Ickenham Village Conservation Area, however no external changes are proposed. As such, the proposal is not considered to be detrimental to the character and appearance of the Conservation Area, therefore complying with Policy BE4 of the Adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

7.04 Airport safeguarding

Not applicable to this application.

7.05 Impact on the green belt

Not applicable to this application.

7.07 Impact on the character & appearance of the area

The proposed development does not involve any external alterations to the building and would therefore not impact on the character and appearance of the Conservation Area. Therefore, the development complies with Policies BE4, BE13 and BE19 of the adopted UDP (Saved Policies September 2007).

7.08 Impact on neighbours

The first floor of the building is in residential use. Whilst no objections have been received from the flats immediately above the site, the Environmental Protection Unit have recommended restrictions on operating hours, hours for deliveries and collections, including waste collection and sound insulation scheme to be provided to specify the provisions to be made for the control of noise transmission to adjoining dwellings. This would overcome the previous reason for refusal. As such, this would comply with Policies OE1 and OE3 of the Adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

7.09 Living conditions for future occupiers

Not applicable to this application.

7.10 Traffic impact, car/cycle parking, pedestrian safety

Policy AM7 states that all proposals for development will be assessed against their contribution to traffic generation and their impact on congestion and the present and potential availability of public transport and its capacity to meet increased demand. There is no existing parking and the proposed use would not increase the need for parking.

Given the site's location in a Local Centre, it is considered the change of use would not intensify visits to the Local Centre so as to detrimentally affect the current parking provision. As such, this would comply with Policy AM7 and AM14 of the Adopted Hillingdon Unitary Development Plan (Saved Policies September 2007).

7.11 Urban design, access and security

No external alterations are proposed in this application.

7.12 Disabled access

The shop front would have level access from the pedestrian footway into the premises and there is a disabled toilet within the site which complies with the standards as detailed in BS 8300:2009.

7.13 Provision of affordable & special needs housing

Not applicable to this application.

7.14 Trees, Landscaping and Ecology

Not applicable to this application.

7.15 Sustainable waste management

The applicant has provided a plan to show the location of bin store and recycling area to the rear of the site, which would comply with the council's requirements.

7.16 Renewable energy / Sustainability

Not applicable to this application.

7.17 Flooding or Drainage Issues

Not applicable to this application.

7.18 Noise or Air Quality Issues

This application does not require an extract flue and EPU have suggested restricting opening hours. This would ensure no significant noise disturbance would occur to any neighbouring occupiers. Therefore, the development would comply with Policy OE1 and OE3 of the adopted UDP (Saved Policies September 2007).

7.19 Comments on Public Consultations

No comments received.

7.20 Planning Obligations

Not applicable to this application.

7.21 Expediency of enforcement action

Whilst no enforcement notice has been served, this is an unauthorised use and refusal of the application will result in the possibility of enforcement action being pursued.

7.22 Other Issues

No further issues for consideration in the determination of this application.

8. Observations of the Borough Solicitor

General

Members must determine planning applications having due regard to the provisions of the development plan so far as material to the application, any local finance considerations so far as material to the application, and to any other material considerations (including regional and national policy and guidance). Members must also determine applications in accordance with all relevant primary and secondary legislation.

Material considerations are those which are relevant to regulating the development and use of land in the public interest. The considerations must fairly and reasonably relate to the application concerned.

Members should also ensure that their involvement in the determination of planning applications adheres to the Members Code of Conduct as adopted by Full Council and also the guidance contained in "Probity in Planning, 2009".

Planning Conditions

Members may decide to grant planning consent subject to conditions. Planning consent should not be refused where planning conditions can overcome a reason for refusal. Planning conditions should only be imposed where Members are satisfied that imposing the conditions are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. Where conditions are imposed, the Council is required to provide full reasons for imposing those conditions.

Planning Obligations

Members must be satisfied that any planning obligations to be secured by way of an agreement or undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 are necessary to make the development acceptable in planning terms. The obligations must be directly related to the development and fairly and reasonably related to the scale and kind to the development (Regulation 122 of Community Infrastructure Levy 2010).

Equalities and Human Rights

Section 149 of the Equalities Act 2010, requires the Council, in considering planning applications to have "due regard" to the need to eliminate discrimination, advance equality of opportunities and foster good relations between people who have different "protected characteristics". The "protected characteristics" are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The requirement to have "due regard" to the above goals means that members should consider whether persons with particular "protected characteristics" would be affected by a proposal when compared to persons who do not share that protected characteristic. Where equalities issues arise, members should weigh up the equalities impact of the proposals against the other material considerations relating to the planning application. Equalities impacts are not necessarily decisive, but the objective of advancing equalities must be taken into account in weighing up the merits of an application. The weight to be given to any equalities issues is a matter for the decision maker to determine in all of the circumstances."

Members should also consider whether a planning decision would affect human rights, in particular the right to a fair hearing, the right to respect for private and family life, the protection of property and the prohibition of discrimination. Any decision must be proportionate and achieve a fair balance between private interests and the public interest.

9. Observations of the Director of Finance

Not applicable to this application.

10. CONCLUSION

The proposed change of use would enhance, rather than harm, the vitality and viability of Ickenham Village Local Centre and is therefore considered to comply with Policy 2.15 of the London Plan (2011) and the NPPF (2012).


11. Reference Documents

Hillingdon Unitary Development Plan (Saved Policies September 2007).
Supplementary Planning Document 'Accessible Hillingdon'.
Supplementary Planning Document Noise.
The London Plan 2011.
National Planning Policy Framework (March 2012)
National Planning Practice Guidance (April 2014)

Contact Officer: Mandeep Chaggar

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<p>Notes</p> <p> Site boundary</p> <p>For identification purposes only.</p> <p>This copy has been made by or with the authority of the Head of Committee Services pursuant to section 47 of the Copyright, Designs and Patents Act 1988 (the Act). Unless the Act provides a relevant exception to copyright.</p> <p>© Crown copyright and database rights 2014 Ordnance Survey 100019283</p>	<p>Site Address</p> <p style="text-align: center;">23 - 25 Swakeleys Road Ickenham</p>		<p>LONDON BOROUGH OF HILLINGDON</p> <p>Residents Services Planning Section</p> <p>Civic Centre, Uxbridge, Middx. UB8 1UW Telephone No.: Uxbridge 250111</p>
	<p>Planning Application Ref:</p> <p style="text-align: center;">62382/APP/2012/1252</p>	<p>Scale</p> <p style="text-align: center;">1:1,250</p>	
	<p>Planning Committee</p> <p style="text-align: center;">North Committee</p>	<p>Date</p> <p style="text-align: center;">May 2014</p>	



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