

LOCATION: 387-389 Hendon Way, London, NW4 3LP

REFERENCE: H/05368/13

Received: 15 November 2013

Accepted: 15 November 2013

WARD(S): West Hendon

Expiry: 10 January 2014

Final Revisions:

APPLICANT: Fortune Foods

PROPOSAL: Change of use from Class A1 (Retail) to mixed-use Class A1 (Retail), plus Class A5 (Hot Food Takeaway). New extraction flue to rear elevation.

RECOMMENDATION: Approve Subject to Conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans: HNDWY-L000; HNDWY-L001; HNDWY-L101; HNDWY-P001; HNDWY-P101; HNDWY-P002; HNDWY-P102; HNDWY-E001; HNDWY-E101; HNDWY-S001; HNDWY-S101.

Reason:

For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and CS NPPF and CS1 of the Adopted Barnet Core Strategy DPD (2012).

- 2 This development must be begun within three years from the date of this permission.

Reason:

To comply with Section 51 of the Planning and Compulsory Purchase Act, 2004.

- 3 The level of noise emitted from the flue plant hereby approved shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

Reason:

To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring properties in accordance with policies DM04 of

the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

- 4 Before development commences, a report should be carried out by a competent acoustic consultant and submitted to the Local Planning Authority for approval, that assesses the likely noise impacts from the development of the ventilation/extraction plant. The report shall also clearly outline mitigation measures for the development to reduce these noise impacts to acceptable levels.

It should include all calculations and baseline data, and be set out so that the Local Planning Authority can fully audit the report and critically analyse the contents and recommendations. The approved measures shall be implemented in their entirety before (any of the units are occupied / the use commences).

Reason:

To ensure that the amenities of neighbouring premises are protected from noise from the development in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

- 5 The development shall be constructed/adapted so as to provide sufficient air borne and structure borne sound insulation against internally/externally generated noise and vibration. This sound insulation shall ensure that the levels of noise generated from the (specified use) as measured within habitable rooms of the development shall be no higher than 35dB(A) from 7am to 11pm and 30dB(A) in bedrooms from 11pm to 7am.

A scheme for mitigation measures shall be submitted to and approved by the Local Planning Authority prior to development. The approved mitigation scheme shall be implemented in its entirety before (any of the units are occupied / the use commences).

Reason:

To ensure that the proposed development does not prejudice the amenities of occupiers of the residential properties in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

- 6 The hot food takeaway hereby permitted shall at all times be ancillary to and occupied in conjunction with the retail unit and shall not at any time be used as a separate unit, the hours of use of both the retail and hot food takeaway will be between 10am-10pm (as existing).

Reason:

To ensure that the development does not prejudice the vitality and viability of the Secondary Retail Frontage in accordance with Policy DM11 of the Development Management Plan Policies (2013).

- 7 The retail unit will maintain retail display units at all times and these units shall be retained thereafter.

Reason:

To ensure that the development does not prejudice the vitality and viability of the Secondary Retail Frontage in accordance with Policy DM11 of the Development Management Plan Policies (2013).

INFORMATIVE(S):

- 1 i) In accordance with paragraphs 186 and 187 of the NPPF, the Council takes a positive and proactive approach to development proposals, focused on solutions. The Local Planning Authority has produced planning policies and written guidance to guide applicants when submitting applications. These are all available on the Council's website. A pre-application advice service is also offered. The Local Planning Authority has negotiated with the applicant / agent where necessary during the application process to ensure that the proposed development is in accordance with the Council's relevant policies and guidance.
- 2 You are advised to engage a qualified acoustic consultant to advise on the scheme, including the specifications of any materials, construction, fittings and equipment necessary to achieve satisfactory internal noise levels in this location.

In addition to the noise control measures and details, the scheme needs to clearly set out the target noise levels for the habitable rooms, including for bedrooms at night, and the levels that the sound insulation scheme would achieve.

The council's supplementary planning document on Sustainable Design and Construction requires that dwellings are designed and built to insulate against external noise so that the internal noise level in rooms does not exceed 30dB(A) expressed as an Leq between the hours of 11.00pm and 7.00am, nor 35dB(A) expressed as an Leq between the hours of 7.00am and 11.00pm (Guidelines for Community Noise, WHO). This needs to be considered in the context of room ventilation requirements

The details of acoustic consultants can be obtained from the following contacts: a) Institute of Acoustics and b) Association of Noise Consultants.

The assessment and report on the noise impacts of a development should use methods of measurement, calculation, prediction and assessment of noise levels and impacts that comply with the following standards, where appropriate: 1) BS 7445 (1991) Pts 1, 2 & 3 (ISO 1996 pts 1-3) - Description and measurement of environmental noise; 2) BS 4142:1997 - Method of rating industrial noise affecting mixed residential and industrial areas; 3) BS

8223: 1999 - Sound insulation and noise reduction for buildings: code of practice; 4) Department of transport: Calculation of road traffic noise (1988); 5) Department of transport: Calculation of railway noise (1995); 6) Department of transport : Railway Noise and insulation of dwellings.

1. MATERIAL CONSIDERATIONS

National Planning Policy Framework

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The 'National Planning Policy Framework' (NPPF) was published on 27 March 2012. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that "good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people". The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would "significantly and demonstrably" outweigh the benefits.

The Mayor's London Plan July 2011

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2031. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

The Mayor's Housing Supplementary Planning Guidance (November 2012) provides guidance on how to implement the housing policies in the London Plan.

Relevant Local Plan (2012) Policies

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents (DPD). Both DPDs were adopted on 11 September 2012.

Relevant Core Strategy DPD (2012): Policies CS NPPF, CS1, CS5.

Relevant Development Management DPD (2012): Policies DM01, DM02, DM04, DM11.

Supplementary Planning Documents and Guidance

The Council has adopted two supporting planning documents to implement the Core Strategy and Development Management Policies DPDs. These are now material considerations. The Residential Design Guidance SPD and Sustainable Design and Construction SPD are now material considerations.

Relevant Planning History:

Site history for current landparcel :

112171 - 387-389 Hendon Way, London, NW4 3LP

Case Reference: **H/05368/13**

Application:	Planning	Number:	H/01180/13
Validated:	26/03/2013	Type:	CON
Status:	DEC	Date:	10/06/2013
Summary:	AP	Case Officer:	Malachy McGovern
Description:	Submission of details of conditions no.3 (Landscaping), no.9 (Levels), no.14 (Ramp, gradient and basement layout) and no. 16 (Soil investigation report) pursuant to planning permission H/04337/10 dated 06/12/10.		

Application:	Planning	Number:	H/03511/13
Validated:	13/08/2013	Type:	CON
Status:	DEC	Date:	07/10/2013
Summary:	AP	Case Officer:	Graham Robinson
Description:	Submission of details for Condition 6 (services adjacent to trees), 7 (aborculturist method statement), 12 (air pollution mitigation), 13 (acoustic report), 17 (contamination measures), and 18 (drainage details) pursuant to planning permission reference H/04337/10 dated 06/12/2010.		

Application:	Planning	Number:	H/04337/10
Validated:	27/10/2010	Type:	APF
Status:	DEC	Date:	09/12/2010
Summary:	APC	Case Officer:	Sally Fraser
Description:	Extension of time limit for implementation pursuant to planning application W/00189/S/06 involving "Erection of 2 No. two storey blocks to provide a total of 9 self contained flats and associated car parking spaces accessed off Hendon Way. Provision of basement level to provide commercial car storage for Hendon Way Motors with associated single storey pavilion building for pedestrian access to basement level", allowed on appeal ref: APP/N5090/A/07/2048739 dated 08/11/07.		

Consultations and Views Expressed:

Neighbours Consulted: 28 Replies: 1 letter (37 signatures)

Neighbours Wishing To Speak 0

The objections raised may be summarised as follows:

- Odour control/smell - hot food is sold from premises with bad smells. Smell emanating from this flue and shop will be uncomfortable and a massive nuisance.
- Detrimental to private roof areas.
- Too close to residential dwellings. The heat may cause damp within flats.
- Out of character with the block
- Noise from cooking/extra disturbance from the flue.
- Health and safety/vermin issues - the back has been plagued by rats for years which needs to be constantly managed. Vagrants raid the bins in the evenings.
- Increased fire risk - Increase contents insurance.
- Problems obtaining a mortgage which will make it difficult to buy and sell.
- Applicant has disregarded Kennyland Court residents - not spoken to residents about proposal. Tried to impose parking restrictions. Left empty pallets outside shop. Business interest come above residents.

Internal /Other Consultations:

Date of Site Notice: 28 November 2013

2. PLANNING APPRAISAL

Site Description and Surroundings:

The application site is a mid terrace retail unit at ground floor level with residential units above (Kennyland Court). Sited on Hendon Way within the Hendon Central Secondary Retail Frontage. There is a car park to the rear of the site.

Proposal:

The application seeks planning permission for the change of use from A1 to a mixed use Class A1 (retail) and A5 (hot food takeaway). New extraction flue to the rear.

Planning Considerations:

The property is located in the Secondary Retail Frontage of the Hendon Central Town Centre. Policy DM11 requires that secondary retail frontages maintain 65% of the frontage as A1 and vacant units in order to retain the vitality and viability of the town centre.

Policy DM11 also states that 'Change from a retail use (Class A1) will be strongly resisted unless it can be demonstrated that there is no viable demand for Class A1 use.' The applicant is required to submit evidence that the site has been marketed for A1 use, acceptable alternatives will be Class A2, A3, A4, A5 or a community use.

The proposal seeks to change the use of the existing A1 shop to a mixed use A1/A5 (hot food takeaway). As the proposal involves a partial change of use and that the A5 element of the existing floor space of the unit is ancillary to the A1 use with the kitchen area measuring approx 11.56m² and the A1 retail area open to the public measuring 67.26m². The counter will be shared with part used for retail sales and another section for hot food takeaway sales. The kitchen will be sited within an existing storage area within the unit which is currently not used by the public and as such the proposal will not reduce the amount of retail display within the unit. The fridge and office will not be accessible to the public. It is considered that the proposal would not result in the loss of an A1 unit within the Secondary Retail Frontage with the A1 function of the unit being the predominate use. The two uses of A1 selling convenience goods including food and A5 hot food takeaway are considered to be able to function together without detrimental harm to the retail element. The proposal will still have an active shopfront and will appear as a retail unit within the street context.

The proposed flue is sited to the rear of the property and will terminate 1m above the roof level of the building. The proposal is considered to be acceptable subject to conditions to protect the residential amenities of occupiers within Kennyland Court including the requirement for a noise report, details of insulation between the commercial and residential units and that the noise must not exceed 5dB.

The opening hours of the A5 hot food takeaway will match that of the existing retail unit between 10am-10pm Monday to Sunday and will not be open independent of the retail unit.

3. COMMENTS ON GROUNDS OF OBJECTIONS

There were no objections to this application.

4. EQUALITIES AND DIVERSITY ISSUES

The proposals do not conflict with either Barnet Council's Equalities Policy or the commitments set in our Equality Scheme and supports the council in meeting its statutory equality responsibilities.

5. CONCLUSION

The application is recommended for **APPROVAL**.

SITE LOCATION PLAN: 387-389 Hendon Way, London, NW4 3LP

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