

CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 4 April 2017	Classification For General Release	
Report of Director of Planning		Ward(s) involved Harrow Road	
Subject of Report	69 Fernhead Road, London, W9 3EY		
Proposal	Use of ground floor as a takeaway (Class A5) and erection of full height kitchen extract duct to rear elevation.		
Agent	Benjamin Associates Ltd		
On behalf of	Mr Shamim Hussain		
Registered Number	16/10698/FULL	Date amended/ completed	18 January 2017
Date Application Received	9 November 2016		
Historic Building Grade	Unlisted		
Conservation Area	N/A		

1. RECOMMENDATION

Refuse permission – on land use and residential amenity grounds.

2. SUMMARY

Permission is sought for the change of use of the ground floor premises from a retail shop (Class A1) to a hot food takeaway (Class A5). It is also proposed to erect a full height kitchen extract duct to the rear elevation.

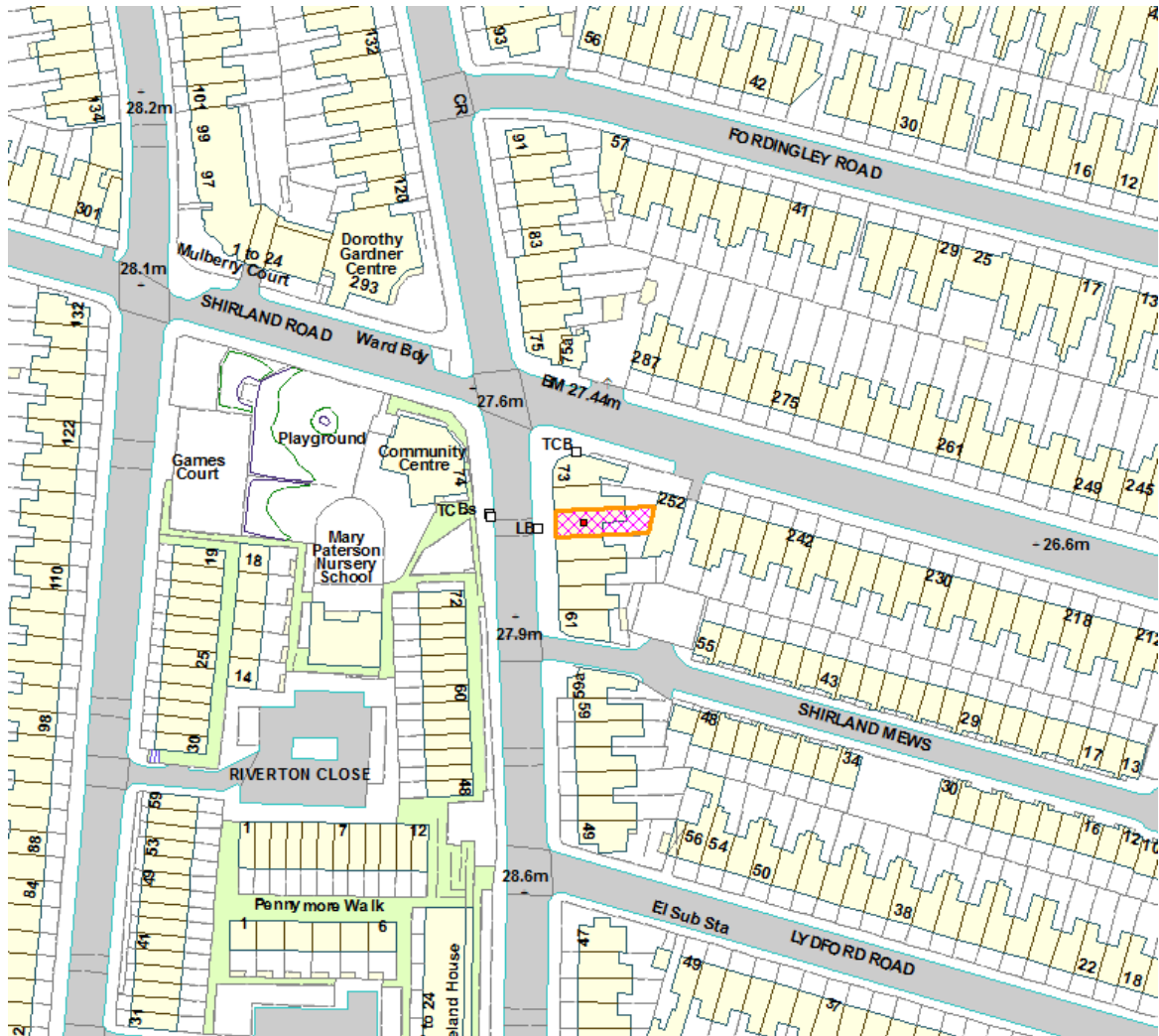
The application has received objection from 6 neighbouring residents and 12 comments in support of the application have been received.

The keys issues are:

- The impact of the proposed use on the character and function of the Fernhead Road Local Centre.
- The impact of the kitchen extract duct on the appearance of the building and this part of the City.
- The impact of the proposed use and kitchen extraction equipment on the amenity of neighbouring residents.

The proposal is considered to harm the character and function of the Fernhead Road Local Centre and would harm the residential amenity of the adjoining occupiers as a result of increased noise and disturbance, particularly in the evenings and at night. The proposal therefore fails to accord with Policies SS7, TACE 9 and ENV 6 in the Unitary Development Plan adopted in January 2007 (the UDP) and Policies S21, S24, S29 and S32 of Westminster's City Plan adopted in November 2016 (the City Plan). It is therefore recommended that the application is refused for the reasons set out in the draft decision letter.

3. LOCATION PLAN



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4. PHOTOGRAPHS

Front elevation (top) and rear elevation from Shirland Road (bottom).



5. CONSULTATIONS

NORTH PADDINGTON SOCIETY

Any response to be reported verbally.

ENVIRONMENTAL HEALTH

No objection.

HIGHWAYS PLANNING MANAGER

No objection in terms of car parking, cycle parking and servicing. Delivery Management Plan required in relation to delivery service and details of waste storage required.

ADJOINING OWNERS/ OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 42.

Total No. of replies: 20.

No. of objections: 8.

No. in support: 12.

Eight emails from seven respondents raising objection on all or some of the following grounds:

Land Use

- An A3 unit would be more in keeping.

Amenity

- Increase opening hours will attract transient customers later into the night and therefore increased noise disturbance.
- Extractors will increase noise disturbance.
- Potential loitering and late night customers.
- Cooking smells

Highways

- Leaving out of waste/refuse.
- Increase parking pressure and traffic.
- Delivery drivers and use of residential parking bays
- Highway safety implications of delivery drivers.

Other

- Health implications of takeaway outlet opposite playground, nursery and community centre.
- No site notices put up.
- Fire risk

Twelve emails/letters received in support on all or some of the following grounds:

- Would provide better offer of food outlets.
- Would highlight cultural diversity.
- An additional restaurant will not cause disruption and will bring up the area.

PRESS ADVERTISEMENT/ SITE NOTICE

Yes

6. BACKGROUND INFORMATION**6.1 The Application Site**

The application site is a mid-terrace property in use as a retail shop unit at ground floor level, which is currently occupied as a newsagents. The shop has a floor area of 33m² (GIA). There is residential accommodation on the upper floors and below at basement level.

The site is located within the Non-Core Frontage of the Fernhead Road Local Centre and is also within the North Westminster Economic Development Area. This site is not within a conservation area, nor is the building listed.

6.2 Recent Relevant History

1 May 1995 – Permission granted for alterations including excavation of front basement to provide a lightwell in connection with conversion of basement, 1st & 2nd floors to self-contained flats (94/08947/FULL).

2 August 2005 – Permission granted for conversion of first and second floors into two flats (05/04067/FULL).

7. THE PROPOSAL

Permission is sought for change of use of the ground floor from a retail shop (Class A1) to a hot food takeaway (Class A5) and erection of a full height kitchen extract duct on the rear elevation.

8. DETAILED CONSIDERATIONS**8.1 Land Use**

The relevant land use policies are SS7 and TACE9 in the UDP and S21 in the City Plan.

Policy S21 in the City Plan seeks to protect existing Class A1 retail uses except where the unit is not viable as demonstrated by long-term vacancy. In this instance, there is no evidence provided to demonstrate that the existing Class A1 use is unviable and the application site is still occupied by a newsagents which continues to trade.

Part (C) of Policy SS7 in the UDP states that outside the Core Frontage at ground floor level permission will be granted for the loss of a Class A1 use if the proposal:

1. would not be detrimental to the character or function of the centre, nor have a harmful effect on the vitality or viability of the centre;

2. would not reduce the range of local convenience shops, or have a detrimental effect on local shopping facilities;
3. would not result in more than three non-A1 units located consecutively in a frontage;
4. would not undermine the balance of A1 to non-A1 uses within the frontage or centre as a whole.

The policy application in support of Policy SS7 (in paragraph 7.86) states that local convenience shops, which include newsagents, are particularly important and will not be permitted to change use.

The application site is within a frontage of seven shop units between Shirland Road and Shirland Mews. The shop units are currently in use as a restaurant (Class A3) at No. 71-73, an office (Class B1) at No. 67 Fernhead Road, a restaurant (Class A3) at No. 65, a hairdressers at No.63 and a retail shop at No.61 (Class A1). The proposed change of use would therefore result in more than three consecutive non-A1 units within the frontage and this would be specifically contrary to part (C)(3) of policy SS7.

The loss of the existing Class A1 local convenience shop would reduce the range of local convenience shops and would have a detrimental impact on the range of local shopping facilities available to local residents. This would be contrary to part (C)(2) of Policy SS7.

In terms of the character and function of the centre, the existing mix of uses within the frontage comprises three Class A1 units and 4 non-A1 units. The introduction of an additional non-A1 unit would result in 70% of the units being non A1 in this location which would undermine the existing balance within the frontage, to the detriment of the retail character and function of the parade. This would be contrary to part (C)(1) of Policy SS7.

In terms of part (C)(4) the shop units to the north of Shirland Road are more predominantly retail in terms of use and therefore the overall character and function of the Local Centre as a whole would not be harmed to the extent that permission could reasonably be withheld on this ground.

In summary, the change of use proposed, which would result in the loss of a Class A1 local convenience shop in favour of provision of a Class A5 takeaway is considered to be unacceptable in land use terms as it would erode the retail character and function of the local centre, contrary to Policies SS7 and TACE9 in the UDP and Policy S21 in the City Plan.

8.2 Townscape and Design

The scheme proposes the installation of a full height kitchen extract duct to the rear elevation to provide ventilation and extraction of cooking smells and fumes resulting from the preparation of hot food.

The proposed kitchen extract duct would be discreetly sited between the deep closet wings to the buildings in this terrace and would be no more prominent than the existing kitchen extract ducts to the rears of Nos. 65 and 71 Fernhead Road. Had the application been recommended favourably, a condition would have been recommended to ensure the duct was painted black and maintained in that colour. Subject to such a condition, and due

to its extremely discreet location, the proposed kitchen extract duct is not considered to be objectionable in design terms and would accord with Policies DES1 and DES5 in the UDP and Policy S25 in the City Plan.

8.3 Residential Amenity

In terms of the amenity impact and the impact on the residential environment, the relevant policies are TACE 9, ENV 6 and ENV 7 in the UDP and S24, S29 and S32 in the City Plan.

Policy S24 of the City Plan states that new entertainment uses will need to demonstrate that they are appropriate in terms of the type and size of use, scale of activity, relationship to any existing concentrations of entertainment use and any cumulative impacts and adverse impacts on residential amenity, health and safety, local environment quality, and the character and function of the area.

As the floorspace of the premises is 33m² and the application site is outside of the Central Activities Zone, Policy TACE9 is also relevant in assessing the impact of the proposed use. The policy states that permission will be granted where there is no adverse effect on residential amenity or local environment quality as a result of noise, vibration, smells, increased late night activity, or increased parking and traffic, and where there is no adverse effect on the character or function of the area.

A number of objections have been received on the grounds of noise disturbance as a result of the proposed opening hours and an increased number of customers visiting the site.

It is considered that a hot food takeaway and any associated delivery service is likely to attract more noise and activity, particularly in the evenings, than would be associated with a retail shop use. There are residential flats located immediately above and below the premises. No acoustic report or other evidence has been provided to show that the activity will not significantly raise background noise levels outside the premises and cause increased disturbance late at night as a result of increased pedestrian and vehicular movement. Given the hours of use proposed (11:00 to 10:30 Monday to Sunday) and the noise generated by the coming and going to delivery drivers and collecting customers it is considered that the proposal would result in increased noise disturbance to the adjoining residential properties which would fail to meet the requirements of Policy TACE 9 and ENV 6 in the UDP and S24, S29 and S32 in the City Plan. The proposal is therefore considered to be unacceptable in terms of residential amenity and noise disturbance.

The application includes the proposed installation of kitchen extraction equipment to the rear of the building. The applicant has provided an acoustic report which demonstrates that with the installation of noise attenuation measures the cumulative noise emissions levels would comply with the criteria set out in Policy ENV 7 in the UDP. Environmental Health have reviewed this acoustic report and are satisfied that, subject to the conditions they suggest, the proposed kitchen extraction equipment would not cause noise disturbance to neighbouring noise sensitive properties.

Concerns have been expressed that odour nuisance would be caused; however, given the kitchen extract would terminate above roof level, the proposal would not result in significant odour nuisance to neighbours.

The proposed kitchen extract duct would run up the rear elevation close to residential windows on the upper floors. However, given its relatively shallow projection from the building, it would only be seen in more oblique views from these windows and as a consequence, it would not result in a material loss of amenity in terms of loss of light or increased sense of enclosure. As such, the proposed kitchen extract equipment would accord with Policy ENV13 in the UDP and Policy S29 in the City Plan.

8.4 Transportation/ Parking

In terms of the impact on parking and traffic, whilst the proposals are considered undesirable no objection has been raised by the Highways Planning Manager. In relation to car parking, whilst no parking is proposed, it is considered that the impact of the change of use on residential parking bays is likely to be minimal due to the site being located within a Controlled Parking Zone.

With regards to servicing, given the location, the proposals size and the proposed use it is considered that there is unlikely to be a significant change in the servicing generated by the site and any change can be accommodated without significant impact on the operation of the highway network. Double yellow lines in the vicinity of the site allow loading and unloading to occur.

There have been concerns raised by the Highways Planning Manager with regards to the impact of the delivery service on of parking for other uses and increase fumes in the area. Had the proposal been considered to be acceptable a condition would have been recommended to secure the submission of a Delivery Management Plan prior to commencement of the use to clear set out how deliveries would occur and what steps would be taken to minimise the impact on the public highway.

Furthermore, a condition would have been recommended to secure details of waste and recycling storage.

8.5 Economic Considerations

No economic considerations are applicable for a development of this size.

8.6 Access

The existing level access to the shop unit would not be altered.

8.7 Other UDP/ Westminster Policy Considerations

One objection relates to health concerns, and the proximity of a nursery and community centre to the application site.

The NNPF makes "sustainable development" the "core principle underpinning planning" and that principle contains the objective of a "healthy and just society". The NPPF states that planning should take account of and support local strategies to improve health. The London Plan policies seek to address the main health issues facing the Capital (i.e. obesity, cancer). The Policy 3.2 'Improving health and addressing health inequalities'

states that new developments should be designed constructed and managed in ways that promote healthy lifestyles to help to reduce health inequalities. Since April 2013 local authorities have had statutory responsibility for public health, this involves promoting and enabling people to live healthy lives.

The built environment can affect behavioural choice which can affect health. The Westminster Joint Strategy needs assessment 2013-2014 carried out to inform revision to the City Plan highlights that about 23% of Year 6 children are classified as obese. Overweight and obesity are linked to many health risks and risk tends to increase with increasing BMI and waist size. Obesity has been linked to fast food/takeaways.

The High Court judgement *R. (Copeland) v Tower Hamlets LBC* [2010] identifies that the proximity of the hot food takeaway to schools is a material planning consideration in assessing an application. The application site is in close proximity of one nursery school (Mary Paterson), one primary school (Queens Elizabeth II Jubilee School) and one secondary school (Paddington Academy), which are all within 0.6 miles of the site, with the nursery located directly opposite.

Policy S29 of the City Plan clearly mentions that developments should maximise opportunities to contribute to health and well-being, including supporting opportunities for improved life chances and healthier lifestyle choices.

Whilst the concerns raised by the objector are clearly relevant planning considerations and in some circumstances the introduction of a hot food takeaway use could reasonably be resisted on the grounds set out above, in this instance given that the closest education premises to the site is a nursery for children below school age, and as the site does not lie within a cluster of existing takeaways, it is not considered that the application could be refused in this instance. It is not therefore considered that the proposal would compromise the promotion of healthy lifestyles and as such, the objection raised cannot be supported.

8.8 London Plan

This application raises no strategic issues.

8.9 National Policy/Guidance Considerations

The City Plan and UDP policies referred to in the consideration of this application are considered to be consistent with the NPPF unless stated otherwise.

8.10 Planning Obligations

Planning obligations are not relevant in the determination of this application.

8.11 Environmental Impact Assessment

An Environmental Impact Assessment was not required for a development of this scale.

8.12 Other Matters

Objection has been raised to the lack of a site notice for the application. However, the City Council's records identify that a site notice was erected on 14 February to advertise the submission of the application.

Concerns have been expressed regarding increased fire risk; however, this is not a material planning consideration and the fit out and specification of the premises would need to be compliant with building control regulations and all other relevant legislation, were permission granted for a hot food takeaway use.

9. BACKGROUND PAPERS

1. Application form.
2. Memo from Highways Planning Manager dated 24 February 2017.
3. Memo from Environmental Health dated 14 March 2017.
4. Email from the occupier of 71b Fernhead Road dated 5 February 2017.
5. Emails from an occupier of 71c Fernhead Road dated 5 February 2017 and 10 February 2017.
6. Email from the occupier of 63 Fernhead Road dated 7 February 2017.
7. Email from the occupier of 22a Ashmore Road dated 7 February 2017.
8. Email from the occupier of Basement Flat, 71 Fernhead Road dated 7 February 2017.
9. Email from the occupier of Prince Chemist, 486 Harrow Road, dated 9 February 2017.
10. Email from an occupier of 34a Barnsdale Road dated 10 February 2017.
11. Email from an occupier of 71c Fernhead Road dated 13 February 2017.
12. Email from the occupier of 64 Pratt Street, Camden dated 13 February 2017.
13. Email from the occupier of 60-70, Fernhead Road dated 14 February 2017.
14. Email from an unnamed occupier of an unspecified property in Fernhead Road dated 14 February 2017.
15. Email from the occupier of 69b, Fernhead Road dated 16 February 2017.
16. Email from the occupier of Basement Flat, 63 Fernhead Road dated 22 February 2017.
17. Email from the occupier of 49a Lydford road dated 16 February 2017.
18. Email from an occupier of 61b Fernhead Road dated 19 February 2017.
19. Email from an occupier of 61b Fernhead Road dated 19 February 2017.
20. Email from the occupier of 67 Fernhead Road dated 21 February 2017.
21. Email from the occupier of the Basement Flat, 63 Fernhead Road dated 22 February 2017.
22. Email from an occupier of 34a Barnsdale Road dated 26 February 2017.

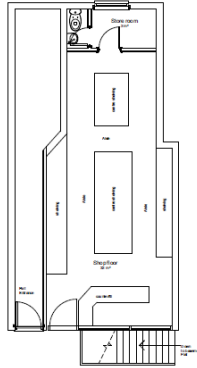
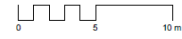
Selected relevant drawings

Existing and proposed plans and elevations.

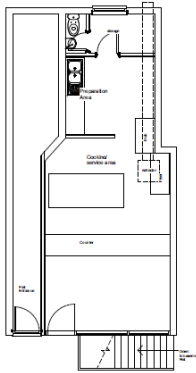
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: OLIVER GIBSON BY EMAIL AT ogibson@westminster.gov.uk.

10. KEY DRAWINGS



Existing Ground Floor
1: 50



Proposed Ground Floor
1: 50



Existing Front Elevation
1: 100



Proposed Front Elevation
1: 100



Existing rear elevation
1: 100



Proposed rear elevation
1: 100



BA Building Associates Ltd
Chartered Building Surveyor
11 Darnley Road
London W14 9LJ
Tel: 0208 455 1988 Fax: 0208 251 0714
www.ba-building.co.uk

Mr S Hussain
Address: RV Hubs
69 Fernhead Road
Kilburn
London NW5 2EY
Project Name: Change from Class A1 to A5
Project Number: 89FER01
Date: October 2016
Drawn by: M Benjamin
Checked by: MSB
Sheet Number: A101
Scale: As indicated

DRAFT DECISION LETTER

Address: 69 Fernhead Road, London, W9 3EY,

Proposal: Use of ground floor as a takeaway (Class A5) and erection of full height kitchen extract duct to rear elevation.

Reference: 16/10698/FULL

Plan Nos: A101 (as amended showing existing and proposed plans and elevations), site location plan, email from Mahbubar Rahman dated 18 January 2017 (confirming hours of opening), Planning Compliance Noise Impact Report dated 18 January 2017 (Ref: VA1682.170116.NIA) and Ventilation and Extract Statement.

Case Officer: Victoria Coelho

Direct Tel. No. 020 7641 6204

Recommended Condition(s) and Reason(s)

- Reason:
- 1 The proposed hot food takeaway use (Class A5) would lead to the loss of a retail shop unit (Class A1) in use as a local convenience shop within the Fernhead Road Local Centre. This would harm the retail character and function of the Local Centre and reduce the range of shops for local people. This would be contrary to Policy S21 of Westminster's City Plan (November 2016) and Policies SS7 and TACE9 of our Unitary Development Plan that we adopted in January 2007.
- Reason:
- 2 The proposed hot food take away use (Class A5) would increase levels of noise and cause late night disturbance for nearby residents, particularly those who live immediately above and below the ground level premises. This would be harmful to residential amenity contrary to Policies S24, S29 and S32 of Westminster's City Plan (November 2016) and Policies TACE 9 and ENV6 of our Unitary Development Plan that we adopted in January 2007.

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way so far as practicable. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (November 2016), Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service. However, we have been unable to seek solutions to problems as the principle of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.

Item No.

2

Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.