LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/0869 **Ward:** St Anns

Date received: 07/03/2016

Drawing number of plans: SE 1250_6 & SE 1250_5

Address: 261 West Green Road N15 3BH

Proposal: Variation of Condition 4 (storage purposes) following a grant of planning permission HGY/2011/0818 to use first floor storage area as waiting/ seating area.

Applicant: Mr Can Topcu

Ownership: Private

Officer contact: Matthew Gunning

2. SUMMARY OF RECOMMENDATION

GRANT PERMISSION

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

Proposed development

3.1 This is an application for the variation of Condition 4 (storage purposes) following a grant of planning permission HGY/2011/0818 to use first floor storage area as waiting/ seating area.

Site and Surroundings

3.2 The application site is located on the southern side of West Green Road on the corner with Clinton Road. The premises was formerly a bank but is now a restaurant (known as 'The Banc'). The site is outside West Green Road shopping frontage and is surrounded by residential use. Next to the site is a public house (McCool's).

Relevant Planning and Enforcement history

3.3 OLD/1987/2035 - Change of use to servicing and installation of electrical components – Approved 19-05-87

OLD/1988/1985 REF 24-08-88 - Demolition of existing derelict building and construction of 2BR town houses.

OLD/1988/1986 REF 24-08-88 - Demolition of existing derelict - building, construction of 2BR Town Houses. (Duplicate).

HGY/2009/1711 GTD 01-12-09 - Change of use from A1 to A3 (Cafe), demolition of single storey storage building at the rear garden and erection of a new canopy to provide smoking area.

HGY/2010/0676 GTD 01-06-10 - Installation of extractor fan to existing

HGY/2011/0818 - Installation of 2-storey canopy to rear of property - Approved 30/06/2011

HGY/2015/0698 - Change of use of the rear garden into a smoking and cafe area (Sui Generis) use class with open space forming part of the existing A3 use class restaurant in the main building – Refused

4. CONSULTATION RESPONSE

4.1 The following were consulted regarding the application:

1) LBH Environmental Health Team:

5. LOCAL REPRESENTATIONS

5.1 No representations received.

6 MATERIAL PLANNING CONSIDERATIONS

6.1 The main issues in terms of this application are considered to be:

- Background;
- Scope of a Section 73 Application; and
- Proposed Change.

Background

6.2 An application was approved for the installation of a two-storey canopy to rear of the property in 2011. Condition 4 of the consent restricted the use of the first floor space of the canopy (That the first floor of the canopy building hereby approved shall be used for storage purposes only in connection with the main building and shall not at any time be used as a smoking area or sitting out area).

6.3 This application seeks to vary this condition to use first floor storage area as waiting area. The application here is theoretically a retrospective application as the space in question is already used as a seating area.

Scope of a Section 73 Application

6.4 As with any planning condition imposed on a planning permission, the applicant is entitled to make a S.73 application to seek to vary or remove the condition.

6.5 It is important to note that when assessing a S.73 application the previously granted planning permission is a material consideration, to which significant weight can and indeed should be attached in the assessment of the proposal. As discussed below

the proposed amendment is not significant, however an application is needed to regularise this change.

Proposed Change

6.6 The approved plans for the application HGY/2011/0818 confirms the grant of permission of the erection of new canopy to be used as smoking area on ground floor and storage on first floor mezzanine. This application seeks to change the use of the first floor storage into a waiting area for the customers who are generally waiting to be seated.

6.7 This area will not serve any hot food nor will it be used as a smoking area. The designated waiting area will be available for customers with limited hours. Hours will be until 11pm from Sunday to Thursday and Midnight on Friday and Saturday nights. It will be strictly a non smoking area.

6.8 In making a decision on this application it is important to point out that the ground floor of the structure in question and the external area between this structure and the main building is used as an external seating area. The change in the curtilage of the restaurant did not require planning permission as it falls within the same planning unit. The primary lawful use of the premises is as an A3 restaurant. Typically a primary use or any ancillary use may be carried on within any part of that planning unit without requiring planning consent.

6.9 In this instance because of the wording of condition 4 there is a planning control on the use of this first floor pace in question. Given current background noise levels at the closest residential receptors in connection with the external space to this restaurant and noise from the local road network, a dominant noise sources, the use of the space in question is not considered to be significant. As pointed out above the space in question is already in use as an external seating area. It is also noted that the existing structure/ enclosure partly acts as a noise barrier.

6.10 The level of activity and noise generated in connection with the space in question is not considered to be significant when compared with the rest of the planning unit. Similarly it is not considered that an 'intensification of use' argument could be sustained in relation to this case given the current level of external seating on site.

6.11 It is acknowledged that the operation of restaurant where it is located near to residential properties needs to ensure that there is no significant adverse impact on residential amenity. In terms of local planning policy saved UDP Policies UD3 and ENV6 require development proposals to have no significant adverse impact on residential amenity including noise, fumes and smell nuisance. The closest residential property to the proposed outdoor dining area is at 1 Clinton Road. The rear garden of this property is located further back than the structure in question. Behind the structure are residential properties- Naco House, Black Boy Lane. No objections were received in respect of this application.

6.12 As referred to above in considering the impact of the use of the space in question account must be taken of the existing baseline noise conditions of the existing lawful planning use on site and the existing activity generated.

6.13 Given the above this application is considered to be acceptable.

6.14 Notwithstanding the above Officers would point out that the Local Authority has duties and powers (under the Control of Pollution Act, 1974) to deal with noise problems that affect residents in the event that any subsequent complaint was made.

8. RECOMMENDATION

GRANT PERMISSION subject to conditions

Registered No. HGY/2016/0869

Applicant's drawing No.(s) SE 1250_6, SE 1250_5

Subject to the following condition:

The hours of use for the proposed first floor seating area, to be used as a non smoking area, shall be restricted between the hours of 08.00 and 23.00 Sunday to Thursday and 8.00 and 0.00 on Fridays and Saturdays and shall not operate outside of those hours without a prior grant of planning permission.

Reason: In the interest of protecting the residential amenities of the area.

The hours of use for the proposed first floor seating area, to be used as a non smoking area, shall be restricted between the hours of 08.00 and 23.00 Sunday to Thursday and 8.00 and 0.00 on Fridays and Saturdays and shall not operate outside of those hours without a prior grant of planning permission.

Reason: In the interest of protecting the residential amenities of the area.