



Officer Report

Application Number:	HGY/2023/1409
Application Type:	Removal/variation of conditions
Address:	Ground Floor Shop, 454 West Green Road, Tottenham, London, N15 3PT
Proposal:	Variation of condition 3 to increase the opening hours to 9:00 am - 12:00 am Sunday to Thursday and 9:00 am - 1:00 am Friday to Saturday.
Case Officer:	Kwaku Bossman-Gyamera
Valid Date:	13/07/2023
Applicant:	Mr Gunac Yaman
Agent:	Mr Tanyel Gulbahar

RECOMMENDATION

Refuse

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. PROPOSED DEVELOPMENT AND LOCATION DETAILS

Proposed Development

1.1 This application seeks to vary condition 3 to increase the opening hours to 9:00 am - 12:00 am Sunday to Thursday and 9:00 am - 1:00 am Friday to Saturday.

Site and Surroundings

1.2 The application site is relating to two – three storey mid terrace buildings with the ground floor at nos.454 and 456 West Green Road occupied by existing restaurants with residential accommodation above.

1.3 The application site is not located within a conservation area and does not fall within the curtilage of a listed building.

Relevant Planning and Enforcement History

1.4 The most recent planning history in relation to the site is as follows.

454 – 456 West Green Road

- HGY/2022/2036 – GRANTED 12/09/2022 - Amalgamation of two separate ground floor commercial units at 454 and 456 West Green Road to form one restaurant within the E Use Class.

454 West Green Road

- HGY/2017/0684 – GTD 03/04/2017 Conversion of existing maisonette above restaurant into two self-contained apartments (1x studio/1 person flat, 1 x 1 bed/2 person flat).
- HGY/2007/2234 – GTD 20/12/2007 Display of 1 x internally illuminated sign.
- HGY/2007/2233 – GTD 20/12/2007 Installation of cash point machine.

456 West Green Road

- HGY/2013/2407 – GTD 12/03/2014 Part change of use of restaurant and wine bar to social club.

2. CONSULTATION RESPONSE

2.1 The responses below were received following consultation on the application:

Internal:

- 1) LBH Transportation Team: There are no transport objection regarding this application.
- 2) LBH Environmental Health Team: Objection on the grounds that no noise or ventilation assessments submitted.

3. LOCAL REPRESENTATIONS

3.1 The application has been publicised by way of 18 letters. The number of representations received from neighbours, local groups, in response to notification and publicity of the application were as follows:

No of individual responses: 4

Objecting: 4

Supporting: 0

3.2 The following issues were raised in representations that are material to the determination of the application and are addressed in the next section of this report:

- The Licensing Authority has received an application for a Premises licence that spans across 4 shop units in total 454-460 West Green Road. The applicant is intending to use the rear area across the four shop units as a shisha lounge and refers to the use of retractable roof across the whole area. The lateness of the hour that this large space should be in use and the impact that noise arising from patrons and or music will impact on nearby residential properties will need to be properly considered. In terms of other nuisance, the smoke and or smells from the shisha activity may also impact on nearby residential.
- This development has not been ethically conducted and what is worse is that they have no respect for the law. How will they have respect for their neighbours. In June they hosted a birthday party that went well into the early hours of the morning. They have an open-air section that is unbearably loud and, even when the music is turned down and doors are closed, we can hear people shouting and the music blaring.
- This neighbourhood does not need a restaurant come nightclub. It needs respectful establishments that abide by laws and respect its residents.

- they have applied for E class status - that your development is on the basis that they are not to disrespect neighbours with noise, vibrations or fumes, yet they already have done all of that and have not officially opened. Yet they are hosting parties until early morning.

- Main concern is the noise from the restaurant when the roof is open and also when its close is the roof sound-proof. This is because some of my tenant's work from home and sometimes they have zoom calls and also late at night when my tenants want to go to sleep, and the roof is open the noise from the restaurant will not let them to get to sleep.

4. MATERIAL PLANNING CONSIDERATIONS

4.1 The main planning considerations raised by the proposed development are:

1. Principle of development.
2. Impact on neighbouring amenity.

Principle of development

4.2 No Land use issued raised.

Scope of Section 73 planning application

4.3 An application can be made under S.73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a S.73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. A S.73 application results in a new permission being issued.

4.4 Guidance for determining S.73 applications is set out in the NPPG which states that a minor material amendment is one "whose scale and nature results in a development which is not substantially different from the one which has been approved." This is not a statutory definition but the Department for Levelling Up, Housing, Communities and Local Government agree with this statement. It is further stated that the development which the application under S.73 seeks to amend will by definition have been judged to be acceptable in principle at an earlier date. Consequently, the extent of the material planning considerations is somewhat restricted and only the amendments being applied for should be considered at this stage. Having said that, when determining the application, the local planning authority (LPA) will have to consider the application in the light of current policy. The LPA therefore has to make a decision focusing on national or local policies which may have changed significantly since the original grant of planning permission as well as the merits of the changes sought.

Impact on neighbouring amenity

4.5 London Plan Policy D6 outlines that design must not be detrimental to the amenity of surrounding housing, in specific stating that proposals should provide sufficient daylight and sunlight to surrounding housing that is appropriate for its context, while also minimising overshadowing. London Plan Policy D14 requires development proposals to reduce, manage and mitigate noise impacts.

4.6 DPD Policy DM1 'Delivering High Quality Design' states that development proposals must ensure a high standard of privacy and amenity for a development's users and neighbours. Specifically, proposals are required to provide appropriate sunlight, daylight and aspects to adjacent buildings and land, and to provide an appropriate amount of privacy to neighbouring properties to avoid overlooking and loss of privacy and detriment to amenity of neighbouring resident.

4.7 Condition 3 attached to the previously approved scheme Ref: HGY/2022/2036 to Amalgamation of two separate ground floor commercial units at 454 and 456 West Green Road to form one restaurant within the E Use Class – Stated:

- The use hereby permitted shall not be operated before 09:00 hours or after 23:00 hours Monday to Friday, before 9:00 or after 23:30 Saturday, before 09:30 hours or after 22:00 hours Sundays and Bank Holidays.

4.8 This was justified within approved permission HGY/2022/2036 so that the opening hours would not adversely impact on the residential amenity of the residents on West Green Road to a lesser extent any potential residents on the upper floor No.454-456 West Green Road and the adjoining residential streets. Whilst this predominantly a commercial area there is also a substantial level of residential property, most in the upper floors of building where the lower floors are used commercially. The application has the potential to affect the amenities of residential occupiers not only in West Green Road also in the surrounding street, where the rear elevations of buildings can be affected by noise from the rear area of the application site.

4.9 The hours sought by this application are an extension of those permitted, when an application to extend hours of use is made the starting point is the reasonableness or otherwise of the existing hours. If those hours are too constrictive the next step is to examine whether the extension sought is acceptable. This approach is adopted precisely to avoid the situation in which an application has to select precisely the hours that might be acceptable and enable a grant of an extension that is possible not as much as that requested on the face of the application. The approved scheme made plain that 11:30 pm is considered a reasonable closing time for restaurants.

4.10 The Environmental Protection advise that there have been a substantial number of complaints of noise and disturbance from local residents relating to this site, and this is confirmed by the considerable number of objections from local residents. It is considered that the proposed opening hours are excessive in this location and would have a negative impact on near by residential amenity. Furthermore, following consultation with Environmental Protection, it was recommended for refusal as there were no acoustic or ventilation report submitted to assess the impact on the surrounding occupiers.

4.11 The applicant has exceeded his permitted hours resulting in enforcement action directed towards protecting the privacy and amenity of nearby residents. Those residents are entitled to a degree of certainty about the position of the neighbouring business which cannot seek extension in the face of considered a reasonable closing time, because this will undermine residents understanding, trust and certainty in the planning position. The interest and rights of residents and the business owner have to be balanced and, in this instance, they favour the rights of residents, and the application should be declined.

4.12 On balance of evidence therefore it appears likely that the proposed extension of hours would result in an increase in the level of noise and disturbance to nearby residential occupiers, to the extent that the proposal is contrary to the requirement in Policy DM1 of the adopted DPD which requires development must not cause significant harm to the amenities of nearby residential occupiers.

Conclusion

4.13 The proposed variation of the opening hours would not be acceptable in this instance as it is considered to be excessive and would negatively impact on the residential amenity, in terms of noise and disturbance, of the residential occupiers on West Green Road, surrounding streets and to a lesser extent any potential residential occupiers above the restaurant. No ventilation and

extract details have been submitted to assess the impact of noise and odour in relation to the extended hours. As such contrary to policy DM1 of the Development Management, Development Plan Document (adopted 2017), Policy SP11 of the Haringey Local Plan 2017 and Policy D14 of the London Plan (2021). it is recommended that the variation of Condition 3 is refused.

4.14 All other relevant policies and considerations, including equalities, have been taken into account. Planning permission should be refused for the reasons set out above. The details of the decision are set out in the RECOMMENDATION.

5. CIL APPLICABLE

The increase in internal floor area would not exceed 100 sq.m. and therefore the proposal is not liable for the Mayoral or Haringey's CIL charge.

6. RECOMMENDATION

REFUSE PERMISSION

Refusal Reasons:

In the absence of any noise survey assessing the potential impact of the increased opening hours on the amenity of neighbouring residential occupiers, or details of measures to mitigate potential noise and other issues, the proposed variation of opening hours would not be acceptable due to the likely negative impact on residential amenity due to increased noise and disturbance late at night, contrary to policy DM1 of the Development Management, Development Plan Document (adopted 2017), Policy SP11 of the Haringey Local Plan 2017 and Policy D14 of the London Plan (2021).