

1 SUMMARY OF APPLICATION DETAILS

Ref: 21/02891/FUL
Location: 77-79 Mitchley Avenue, South Croydon, CR2 9HN
Ward: Sanderstead
Description: Amalgamation and change of use from retail (class E(c)) to mixed use cafe/restaurant (class E(b)) & Takeaways (Sui Generis). Installation of new shopfronts and extraction flue to the rear elevation
Drawing Nos: Site location plan (received 14.12.21), block plan (received 14.12.21), 0163/77/79MITC-01 (received 14.12.21), 0163/77/79MITC-02 (received 14.12.21), 0163/77/79MITC-03 (received 14.12.21), mechanical delivery file dated 28.02.2021 (received 14.12.21)
Applicant: Mr Mehmet Tezgel
Case Officer: Hayley Crabb

- 1.1 This application is being reported to Planning Sub Committee because objections above the threshold as specified by the Committee Consideration Criteria have been received.

RECOMMENDATION

- 2.1 That the Committee resolve to GRANT planning permission.
- 2.2 That the Director of Planning and Strategic Transport has delegated authority to issue the planning permission and impose conditions and informatives to secure the following matters:

Conditions

- 1) 3 Years
- 2) Development to be carried out in accordance with the approved drawings except where specified by conditions
- 3) Materials
- 4) Mechanical details as specified in the application
- 5) Opening hours
- 6) Fire Safety Statement

Informatives

- 1) Healthier Catering Commitment

3 PROPOSAL AND LOCATION DETAILS

Proposal

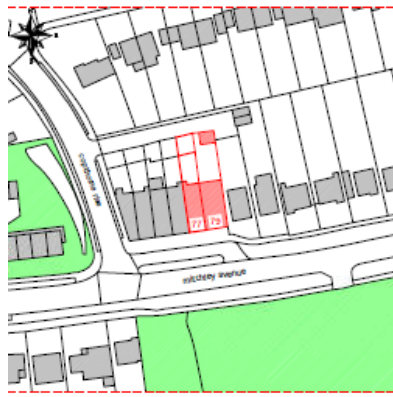
3.1 The proposal comprises the following:

- Amalgamation and change of use from retail (class E(c)) to mixed use cafe/restaurant (class E(b)) & Takeaways (Sui Generis).
- Installation of new shopfronts and extraction flue to the rear elevation

3.2 A revised application form with certificate B and information was submitted during the application process.

3.3 The agent sent an email dated 11.01.22 confirming the proposed hours of use as per the hours on the revised application form:

Monday to Sunday (including bank holidays) – 12:00 until 22.30



Site and Surroundings

3.4 The application site located on the north side of Mitchley Avenue and comprises a 3 storey building with commercial units located at ground floor level with residential accommodation above.

3.5 The surrounding area is mixed in use with residential properties and a local shopping parade providing a number of local amenities to local residents.

3.6 The site is designated as a shopping parade within the Croydon Local Plan.

3.7 The site is at high risk of surface water flooding.

Planning History

77-79 Mitchley Avenue, South Croydon

- 3.8 21/02892/ADV - Internally illuminated signage –Advertisement Consent granted on 04.02.22.

77 Mitchley Avenue, South Croydon

- 3.9 21/01043/FUL - Installation of a ventilation duct to the rear of the property and a proposed change of use as restaurant (Class E) and takeaway (Sui Generis) – Planning Permission granted on 09.06.2021.

4.0 SUMMARY OF KEY REASONS FOR RECOMMENDATION

- The use is considered acceptable
- The design and appearance of the development is appropriate for the site;
- There would be no undue harm to the residential amenities of adjoining occupiers;
- The development would not have a significant impact upon the highway network and considered acceptable;
- The scheme would not have an undue impact on trees.

5 CONSULTATION RESPONSE

- 5.1 The views of the Planning & Building Control Directorate are expressed in the MATERIAL PLANNING CONSIDERATIONS section below.

6 LOCAL REPRESENTATION

- 6.1 A total of 18 neighbouring properties were notified about the application and invited to comment. Site notices have also been erected. The number of representations received from neighbours and local groups in response to notification and publicity of the application were as follows:

No of individual responses: 42 Objecting: 18 Supporting: 23 Comment: 1

- 6.2 It should be noted that neighbouring properties and interested parties were re-consulted during the application process on the amended information/change of description.

- 6.3 The following local groups/societies made representations:

- The Riddlesdown Residents' Association (no objection)

- 6.4 The following Councillor made representations:

- Councillor Helen Redfern (no objection)

6.5 The following issues were raised in representations. Those that are material to the determination of the application, are addressed in substance in the MATERIAL PLANNING CONSIDERATIONS section of this report:

Objections

Summary of objections	Response
Loss of retail shop/overdevelopment	Addressed in Section 8.2-8.8 of this report.
Not in keeping with the area/obtrusive by design/misleading	Addressed in Section 8.9-8.10 of this report. (Officer comment – The proposed advertisement the subject of application 21/02892/ADV has been re-located to fascia level to unit 79)
Residential amenity/overlooking/privacy	Addressed in Section 8.11-8.19 of this report
Noise/smells/air pollution/hygiene/hours of use	Addressed in Section 8.13-8.19 of this report
Vermin/rubbish/litter	Addressed in Section 8.22 of this report
Alternative location	Officer comment: Each application is judged on its own individual merits
Traffic/parking/highway safety	Addressed in Section 8.20-8.21 of this report
Impact on trees	Addressed in Section 8.25 of this report

Flooding	Addressed in Section 8.26 of this report
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Support

Would rejuvenate the parade/be great for the area, fantastic for the local community/jobs/improve the area and property value	Addressed in Section 8.8 of this report
Use buildings and create business opportunities	Addressed in Section 8.8 of this report
With influx of new developments another restaurant is needed in the area	Addressed in Section 8.8 of this report

6.6 The following issues were raised in representations that are not material to the determination of the application:

- Residents' Association/members (Officer comment: This is a matter between the residents' association and its members).
- Renovations (Officer comment: This is not a planning consideration).
- Quaker area (Officer comment: Covenants/lease clauses are a matter between third parties)

6.7 The following issues were raised in representations that are procedural matters:

- Notice (Officer comment: A revised application with a certificate B has been submitted with notice served on certain parties)
- Site Notices (Officer comment: Adjoining/neighbouring properties were consulted. There is not a requirement to erect site notices as well as neighbour notification letters, however site notices were erected on Mitchley Avenue and Copthorne Rise given the development being erected to the rear of the parade of shops on Copthorne Rise. A representation states the site notice fronting Mitchley Avenue was removed. It is considered adjoining occupiers have been adequately consulted).

6.8 The Riddlesdown Residents' Association raised an objection (and referral in the event planning permission recommended for approval) in relation to the proposed development and raised the following points as their main concerns:

- Use class/nearby school
- Hours of use/alcohol licence
- Signage details (Officer comment: The signage is the subject of a separate application, application number 21/02892/ADV and addressed where relevant in the report in respect of the advertisement application)
- Bi-fold doors
- Refuse
- Highways and parking

6.9 Following the re-consultation process the residents' association has responded "As many of the proposals by the applicant, that the RRA previously objected to have been addressed within this revised application, the RRA wish for our previous two objections on applications 21/02891/FUL and 21/02892/ADV to be withdrawn".

6.10 Councillor Helen Redfern submitted a representation recorded as neutral. The

- Proposed kitchen extractor fan inadequate;
- The kitchen for the whole new restaurant situated below the balcony garden of No.77a/cooking fumes/noise; and
- Other extractor units on the parade (Marmaris Café (No.75) has an extractor unit which extends 2-3 metres into the rear garden. King Fish Bar (No.71b) has an extractor unit taking fumes up the rear wall and onto the roof).

7 RELEVANT PLANNING POLICIES AND GUIDANCE

7.1 In determining any planning application, the Council is required to have regard to the provisions of its Development Plan so far as is material to the application and to any other material considerations and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. The Council's adopted Development Plan consists of the London Plan (2021), the Croydon Local Plan (2018) and the South London Waste Plan (2012).

8.0 MATERIAL PLANNING CONSIDERATIONS

8.1 The principal issues relate to:

- a. Principle of development
- b. The character and appearance of the street scene and the original building
- c. The residential amenities of the adjoining occupiers.
- d. Highways/Refuse
- e. Fire Safety

- f. Impact on trees
- g. Other

Principle of development

- 8.2 On 1st September 2020, the Town and Country Planning (Use Classes) Order 1987 (as amended) was revised. The amendments included the introduction of additional use classes and the re-classification of some uses. The existing ground floor has a class E(a) (previously A1) use as a shop. The site is located within a shopping parade as defined by the Croydon Local Plan (2018). It is proposed to amalgamate the ground floor units of no. 77 and no. 79 and change the use to class E(b) for use as a restaurant (formerly A3) with an ancillary takeaway use (formerly A5) which falls within a Sui Generis use.
- 8.3 Policy DM6 of the Croydon Local Plan specifies that, within a shopping parade, the change of use to A5 (takeaways) is 'acceptable in principle as long as it does not result in more than 50% of the ground floor units falling outside the A1 Use Class' (retail). It also states that all other changes to a non-Class A (now class E) ground floor space within parades will be refused. The policy also states that expansions of non-Class A uses will be refused unless it relates to a Community Use.
- 8.4 Prior to the adoption of the new use classes order, the proposed change of use would have resulted in a change from A1(shops) to A3 (restaurant and cafes) with an ancillary A5 (hot food takeaway) use. As a result of the new use classes order, A1 and A3 uses now fall within Class E which, in isolation, would not result in a material change to the existing land use and would therefore be acceptable. The units were previously used as an estate agent/property services office (not retail use), therefore the proposal would not result in any loss of retail use, and the change of use to restaurant use would also not require planning permission, meaning that the main consideration regarding change of use is the ancillary takeaway use.
- 8.5 Under the new use classes order, the ancillary takeaway use would have previously been an A5 (hot food takeaway) however, under the new use classes order would result in a sui generis use which would subsequently constitute towards a material change of use. It should be noted that planning permission has been granted to change the use of no. 77 (only) - change of use as restaurant (Class E) and takeaway (Sui Generis) under application 21/01043/FUL. Consideration was given to the changes to the use classes order and it was considered that the use was appropriate within the proposed location and that the proposed development could be supported in this regard. Takeaways are therefore already permitted from part of the site, and the main impact would be an increase in the amount of indoor seating available for the restaurant use.
- 8.6 The London Plan was adopted in 2021 and therefore Policy E9-Retail, markets and hot food takeaways will apply to the proposed takeaway use. Part D states

that development proposals containing A5 hot food takeaway uses, now Sui Generis under the new use classes order, should not be permitted where these are within 400 metres walking distance from the entrances and exits of an existing or proposed primary or secondary school. Boroughs that wish to set a locally-determined boundary from schools must ensure this is sufficiently justified. Boroughs should also carefully manage the over-concentration of A5 hot food takeaway uses within town centres and other areas through the use of locally-defined thresholds in Development Plans.

- 8.7 According to the government's website, the distance to the nearest primary school (Harris Primary Academy, Kenley) is 0.57 miles and 917m away; therefore over 400m away from the site and compliant with Policy E9. Furthermore, whilst this proposal would amalgamate two shop units, the use would remain the same as approved under application 21/01043/FUL therefore considered acceptable. With regard to Section E of Policy E9 with regards to encouraging operators to comply with the Healthier Catering Commitment standards. It is recommended for an informative to be placed on the decision notice in line with application 21/1043/FUL.
- 8.8 Representations have been received objecting to the proposal. That the proposal would result in the loss of retail and an overdevelopment. Representations have also been received in support of the proposal. That the proposal would rejuvenate the parade/be great for the area, fantastic for the local community/jobs/improve the area and property value/use buildings and create business opportunities and with the influx of new developments another restaurant is needed in the area. It is considered as a result of the changes in the use classes and approved permission, that in this instance the use is appropriate within the proposed location and that the proposed development can be supported in this regard.

The character and appearance of the street scene and the original building

- 8.9 Policy D3 of the London Plan (2021) states proposals should deliver buildings that enhance local context, respond to local distinctiveness and be compliant with building types, forms and proportions and be high quality, pay attention to detail and use attractive and robust materials. Policy DM10 of the Croydon Local Plan (2018) - All new developments should contribute to enhancing a sense of place and improving the character of the area. Policy DM11 of the Croydon Local Plan (2018) seeks to ensure shopfronts are attractive, secure and of high quality design, the Council will support proposals for new shopfronts and related alterations that respect the scale, character, materials and features of the buildings of which they form part. The Councils Supplementary Planning Guidance 1 on Shopfront and Signs and Policy D3 of the London Plan (2021) is also of relevance.
- 8.10 It is proposed to alter the frontage of no. 77 and no. 79. Each unit would have a new shopfront and an extract flue proposed at the rear (as per application 21/01043/FUL) (see existing and proposed plans below). Whilst the frontage of no.

79 would have a bi-fold style window, it is considered the proposed changes to the front elevation would not have an undue impact on the appearance of the building or parade in which it sits or on the visual amenity of the street scene and character of the area. The extract flue proposed on the rear elevation is considered to be subordinate to the main building as per application 21/01043/FUL and would therefore be acceptable in terms of its impact and therefore is in accordance with the Policy D3 of the London Plan (2021), Policies DM10 and DM11 of the Croydon Local Plan (2018).



The residential amenities of the adjoining occupiers

8.11 Policy DM10.6 of the Croydon Local Plan (2018) states the Council will not support development proposals, which would have an adverse effect on the amenities of the occupiers of adjoining buildings. Policy D3 of the London Plan (2021) is also

of relevance which states development proposals should provide secure safe and inclusive environments, secure outlook, privacy and amenity.

- 8.12 The proposed works in terms of their appearance, design and scale would not be detrimental to the amenities of the neighbouring occupiers in terms of loss of light, loss of privacy/overlooking and are therefore deemed acceptable.
- 8.13 Concern has been raised regarding the proposed kitchen extractor fan being inadequate, situated in close proximity to no. 77a, cooking fumes/noise etc.
- 8.14 The application has been supported with a Mechanical Delivery File which details the proposed method of extraction from the kitchen area in relation to noise and odour pollution. It should be noted that these details are the same as that previously approved under application number 21/01043/FUL (for no. 77). Given the previous approval and Officers have considered that the proposed mitigation measures provided are satisfactory in terms of their noise vibration and odour control, it is not considered that there would be sufficient harm to substantiate a sustainable reason for refusal. It is recommended to condition this as part of the planning permission in line with application 21/01043/FUL.
- 8.15 The applicant has applied for the following opening hours:
Monday to Sunday (including bank holidays) – 12:00 until 22.30
- 8.16 Application number 21/1043/FUL (previously approved) proposed the following opening hours:
Monday to Friday – 07:00am until 10:30pm.
Saturday – 07:00am until 10:30pm.
Sunday – 07:00am until 10:30pm.
- 8.17 A condition was attached to application 21/01043/FUL restricting opening hours to the hours specified in 8.16 above.
- 8.18 Whilst the proposed opening hours vary to that previously approved and neighbouring properties in terms of their opening hours, they are shorter overall, and the proposed closing time of 10:30pm is the same as previously considered acceptable. Whilst the current proposal would provide outside space (also shown on the approved plans the subject of application 21/01043/FUL), it is not considered to be unreasonable and would not result in material harm to the amenity of the surrounding occupiers and is therefore acceptable. The opening hours have been conditioned as part of the planning permission.
- 8.19 Whilst the amalgamation of the two shops would intensify the use, it is considered it would not result in material harm to the amenity of the surrounding occupiers as to withhold planning permission. In summary, the application is in accordance with

Policy D3 of the London Plan (2021) and Policies DM10 and DM23 of the Croydon Local Plan (2018).

Highways/Refuse

- 8.20 Policies DM29 and DM30 of the Croydon Local Plan (2018) are of relevance. Policy T4 of the London Plan (2021) is also of relevance.
- 8.21 Whilst the proposal would intensify the use, it is considered given planning permission has previously been granted for the same use under application number 21/01043/FUL and its siting, that it would not have a significant effect on the highway network to withhold planning permission in this instance and therefore acceptable when assessed against Policies DM29 and DM30 of the Croydon Local Plan (2018). As noted above, change of use to a restaurant would not require planning permission, and the primary change for consideration is the proposed ancillary takeaway use. There is parking associated with the shopping parade on Mitchley Avenue, with 1 hour maximum parking on weekdays between 08.00 and 18.30, and the proposed use is not considered to result in harm due to parking impacts. The takeaway element of the use may result in some additional traffic, but it would be a small unit with accordingly limited impacts, there is already a takeaway use within the parade (Kings Fish Bar at no.71) (so this is an established impact within the locality), and there are no identified planning policy conflicts which would warrant refusal.
- 8.22 The revised block plan shows refuse facilities at rear. The waste would be stored and collected from the rear garage via the service road at rear. It should be noted that application 21/01043/FUL did not include refuse facilities. However on site it was noted that the adjoining shops have their waste bins at rear. It is considered that suitable facilities would be provided and would therefore be acceptable when assessed against Policy DM13 of the Croydon Local Plan (2018). With regards to vermin, this would be an Environmental Health matter as would if an insufficient level of hygiene is not provided.

Fire Safety

- 8.23 Policy D5 of the London Plan (2021) seeks for inclusive design and Policy D12 of the London Plan (2021) states in the interests of fire safety and to ensure the safety of all building users, all development proposals must achieve the highest standards of fire safety.
- 8.24 A Fire Safety Strategy has been submitted. The strategy outlines internal measures and that a fire appliance would be able to access the building. Given the location of the site, it is considered the details are adequate. It is recommended for this to be secured via condition, however it should be noted that fire safety together with other matters dealt with under building regulations legislation will be dealt with by Building Control.

Impact on trees

- 8.25 There is a tree to the rear of the site. It is considered the proposed use would not have an undue impact to influence the decision and therefore acceptable when assessed against Policy DM28 of the Croydon Local Plan (2018).

Other

- 8.26 The application site has been identified as being at high risk of surface water flooding. Due to there not being any additional floor space created via extensions as a result of the proposed development, and the proposed use not resulting in increased exposure to flood risks (or risk to life) it is considered that the proposed development would result in a minimal impact to surface water flooding and the proposals are therefore acceptable when assessed against Policy DM25 of the Croydon Local Plan (2018).
- 8.27 It is therefore recommended for planning permission to be granted.

9 OTHER MATTERS

- 9.1 All other planning considerations including equalities have been taken into account.