

WARDS AFFECTED:  
Kingswinford North and  
Wall Heath

REPORT TO CHAIRMAN OF DEVELOPMENT CONTROL COMMITTEE  
SEEKING AUTHORITY FOR ENFORCEMENT ACTION

**ENFORCEMENT**

LOCATION. \_Alterego, 843b High Street, Kingswinford, West Midlands,  
DY6 8AA

REF H/160/08/01

**BACKGROUND**

1. This report relates to the first floor use of a two storey property at 843b High Street, which is located within Kingswinford District Centre. The ground floor is occupied by a hot food takeaway trading under the name of Prego Pizza (no. 843 High Street) and until recently the first floor comprised a restaurant (A3) which occupied approximately 59m<sup>2</sup> of floor space. The first floor has recently been operating as a wine bar (A4) trading under the name 'Alter Ego'.
2. No. 839 High Street is a retail unit to the east of the site and has office accommodation above. No. 847 High Street is another hot food takeaway to the west of the site. The site property is located opposite the Arizona Crossing Public House, a Grade II Listed Building. Kingswinford District Centre is designated as a protected frontage within the Adopted Dudley UDP (2005).
3. The Local Planning Authority investigated a complaint in August 2010 concerning use of the first floor level at 843b High Street. The property was inspected in August 2010, which confirmed the first floor use was being used as wine bar, without the benefit of planning permission. This use was unauthorised and constituted a breach of planning control.

- 4 In October 2010, a retrospective planning application was submitted to regularise the planning breach. The application was registered with the reference number P10/1358, and the proposal related to the change of use of first floor from A3 Use Class to wine bar A4 Use Class. This application was duly considered against policies of the Adopted Dudley UDP and Supplementary Planning Guidance and was refused planning permission on 30<sup>th</sup> November 2010.
- 5 The planning application P10/1358 was refused planning permission for the following reasons-:
- i) Retention of the A4 use would cause unreasonable harm in terms of noise disturbance generated through pedestrian and vehicular movement during the late hours proposed to the detriment of neighbouring amenity and contrary to Policy CR11 – Retail (A3) Uses and Amusement Arcades and EP7 – Noise Pollution of the Adopted Dudley UDP (2005).
  - ii) The lack of an undertaking to make a contribution towards Transport Infrastructure Improvements is contrary to the requirements of UDP Policies DD7 – Planning Obligations and the Planning Obligations SPD, and would result in an increase in the demand on local facilities with no compensation or enhancement, thus resulting in harm to the wider community around the site.
- 6 During the determination of the planning application, the case officer also established that a raised fencing section has been installed at the rear of the property.
- 7 A site inspection was undertaken which revealed a rear elevated platform area has been created at the premises. Attached to the main rear gable wall of the main premises is a covered area building structure. Sited upon the platform area is a detached timber building structure. A fencing section

has also been provided around the perimeter of the platform area. Tables and chairs, an external heating appliance and other paraphernalia have been placed upon the platform area in conjunction with its use.

8 Aerial photographs have revealed that this structure has not been in situ for less than four years. The planning records have also revealed the structure does not have the benefit of planning permission and therefore would constitute a breach of planning control.

9 The raised platform has been assessed and it has been considered to be an inappropriate form of development. The provision of the platform and associated structures and fencing enclosing is considered to be unacceptable and detrimental to the character and appearance of the area. The development is a prominent incongruous addition due to its design, siting at first floor level and use of inappropriate materials to the detriment of the visual amenities of the area.

10 In respect of the recent planning refusal for the use of the first floor of this property as a wine bar and the planning considerations made towards the raised platform structure, it is now considered expedient to take enforcement action against both breaches of planning control.

#### **First floor use as a wine bar**

11 Without planning permission, and within the last ten years, the making of a materials change of use of the first floor level of the property as a wine bar (A4 Use Class).

#### **Rear platform area and associated fixtures**

12 Without planning permission, and within the last four years the creation of a rear elevated platform area, the erection of a covered area structure, the installation of a fencing structure enclosure, a timber building structure and the placement of tables, chairs, external heating appliances and any associated paraphernalia associated with the external use of the rear

platform. (For the avoidance of doubt the above mentioned structures and fixtures are shown in the photographs attached to the Notice).

## WHAT IS REQUIRED TO BE DONE

### **First floor use as a wine bar**

- 13
- i) Permanently and completely cease the use of the first floor level of the property as a wine bar
  - ii) Permanently and completely remove all fixtures and fittings, apparatus/equipment and any remaining removable items which facilitate the use of the first floor level as a wine bar.
  - iii) To remove any externally displayed advertisements/signage associated with the use of the first floor level as a wine bar
  - iv) Permanently and completely remove all the debris created as a result of fulfilling the other requirements of the Notice.

### **Rear platform area and associated fixtures**

- i) Permanently and completely cease using the rear elevated platform at the premises;
- ii) Remove from the elevated platform all chairs, tables, external heating appliances and other associated paraphernalia associated with the external use of the rear platform.
- iii) Remove the detached timber building from the elevated platform
- iv) Dismantle and remove the fencing enclosure structure from the platform area
- v) Dismantle and remove the covered way structure from the rear gable wall

- vi) Dismantle and demolish the rear elevated platform area
- vii) Permanently and completely remove all the debris created as a result of fulfilling the other requirements of the Notice.

## TIME FOR COMPLIANCE

14

### **First floor use as a wine bar**

Four months after the Notice takes effect

### **Rear platform area and associated fixtures**

Two months after the Notice takes effect

## REASONS FOR ENFORCEMENT

15

### **First floor use as a wine bar**

The retention of the A4 use would cause unreasonable harm in terms of noise disturbance generated through pedestrian and vehicular movement during the late hours proposed to the detriment of neighbouring amenity and contrary to Policy CR11 – Retail (A3) Uses and Amusement Arcades and EP7 – Noise Pollution of the Adopted Dudley UDP (2005).

The lack of an undertaking to make a contribution towards Transport Infrastructure Improvements is contrary to the requirements of UDP Policies DD7 – Planning Obligations and the Planning Obligations SPD, and would result in an increase in the demand on local facilities with no compensation or enhancement, thus resulting in harm to the wider community around the site.

### **Rear platform area and associated fixtures**

The development undertaken is unacceptable and detrimental to the character and appearance of the area. The raised structure and

associated fixtures appears as prominent incongruous addition due to its design, siting at first floor level and use of inappropriate materials to the detriment of the visual amenities of the area and contrary to Policy CR11 - Retail (A3) Uses and Amusement Arcades and DD1 - Urban Design of the Adopted Dudley UDP (2005)

## **RECOMMENDATION**

- 16 It is recommended that if enforcement action is authorised against both planning breaches, separate enforcement notices should be issued against the first floor use and against the provision of the rear platform area.

### **Background documents**

Planning application report P10/1358

Planning application decision report P10/1358

Photographs taken on 18<sup>th</sup> August 2010 and 26<sup>th</sup> November 2010

Location plan of the premises

<b>DRAFT OFFICER'S REPORT</b>	DELE

Planning application number	P10/1358
Site Address	Alter Ego, 843B High Street Kingswinford
Case officer	Sarah Wilkes
Date	24 <sup>th</sup> November 2010
Report vetted by	C Cheetham
Date report vetted	30.11.10
Recommendation	Refuse

## **SITE AND SURROUNDINGS**

1. The application site is 0.01ha and comprises the first floor of a two storey unit set within Kingswinford District Centre. The ground floor is occupied by a hot food takeaway (no. 843 High Street) and until recently the first floor comprised a restaurant (A3) which occupied approximately 59m<sup>2</sup> of floor space. The first floor has recently been operating as a wine bar (A4) known as Alter Ego. A bamboo style enclosure has also been erected at first floor level to the rear of the premises.
2. No. 839 High Street is a retail unit to the east of the site and has office accommodation above. No. 847 High Street is another hot food takeaway to the west of the site.
3. The site is situated within Kingswinford District Centre and is designated as a protected frontage within the Adopted Dudley UDP (2005). The site sits opposite The Grade II Listed PH now known as Arizona Crossing.

## **PROPOSAL**

4. It is proposed to retain the A4 use which has been implemented without the benefit of planning consent. The application form indicates

that the wine bar opens from 18:00hrs to 00:00hrs Monday to Thursday, 18:00hrs to 03:00hrs Friday and Saturday and 18:00hrs to 00:00hrs on Sundays and Bank Holidays.

5. Whilst the bamboo style enclosure has also recently been erected to the rear of the wine bar, planning permission has not been sought for this feature and is not therefore being considered under this planning application.
6. The application is accompanied by a Heritage Statement.

## HISTORY

7.

APPLICATION No.	PROPOSAL	DECISION	DATE
97/50942	Extension at first floor above existing hot food takeaway to create restaurant.	Approved with Conditions	31/07/97
P00/51508	Retention of enclosure of yard to form small storage area by adding a timber Perspex sheeted roof (retrospective).	Approved	04/10/00

## PUBLIC CONSULTATION

8. Direct notification was carried out to all surrounding neighbouring properties. Six letters of objection have been received two of which are from ward councillors. The objections raise the following issues;
  - Highway Safety issues caused by doormen and post barriers on the pavement in front of the premises and by patrons congregating on the pavement to smoke.
  - That there is a lack of documentary evidence to support the justifications for the need for this type of establishment.



- Concerns over the capacity of the venue, poor access and escape routes.
- Public nuisance, litter, anti-social behaviour and noise disturbance.
- Late night opening hours.

## OTHER CONSULTATION

9. **Group Engineer (Development):** No objection subject to a financial contribution towards transport infrastructure improvements
10. **Head of Environmental Health & Trading Standards;** Objects to the proposal on the grounds that the opening times would cause disturbance to nearby residents.
11. **Head of Historic Environment;** No objection

## RELEVANT PLANNING POLICY

- Adopted Unitary Development Plan (2005)
  - AM14 Parking
  - CR1 Hierarchy of Centres
  - CR4 Protected Frontages
  - CR11 Retail (A3) Uses and Amusement Arcades
  - DD4 Development in Residential Areas
  - DD6 Access and Infrastructure
  - DD7 Planning Obligations
  - EP7 Noise Pollution
- Supplementary Planning Document
  - Parking Standards and Travel Plans
  - Planning Obligations

## ASSESSMENT

12. Key Issues

- Principle
- Amenity
- Highway Safety
- Planning Obligations

### Principle

13. According to information supplied by the applicant the floor space has been vacant for approximately 2 years when the former restaurant ceased to trade. Policy CR1 states that when assessing new proposals the protection of these centres' vitality and viability will be paramount. Whilst UDP Policy CR11 refers to A3 uses, it should be taken to include A3, A4 and A5 uses (which all previously fell into the A3 Use Class).
14. Although the ground floor of the application site is located within the Protected Frontage, this does not apply to first floor uses. It is considered that there would be no adverse impact on the vitality and viability of the town centre as a result of the proposal. In these respect, the principle of the proposal is therefore considered acceptable and compliant with Policy CR1 – Hierarchy of Town Centres and Regeneration Areas and CR4 – Protected Frontages of the Adopted Dudley UDP (2005).
15. Policy CR11 acknowledges that wine bars can be an important element of town centres, adding to their diversity and providing refreshments and leisure facilities in their own right and as an ancillary activity to shopping. In order to comply with policy CR11 there should however be no adverse impact upon environmental quality, residential amenity, public or highway safety. An assessment of these issues therefore needs to be made in order to establish whether or not the proposal is compliant with this policy.

### Amenity

16. As no external alterations are proposed, The Head of Historic Environment is satisfied that there would be no demonstrable harm to the setting of the nearby Grade II Listed Building. There would be no

demonstrable harm to the visual amenities of the area and in this respect the proposal therefore complies with Policy HE6 – Listed Buildings of the Adopted Dudley UDP (2005).

17. The Head of Environmental Protection and Trading Standards objects to the proposal on the grounds that music, pedestrian movement and vehicle movement from taxis etc during the late opening hours proposed would likely cause disturbance to nearby residents including those residing in flats above retail units on Market Street and the High Street. Objections to the proposal following public consultation also raised issues of noise disturbance and public nuisance as a result of the venue which has been operating since approximately late July 2010. In this respect the proposal is therefore considered contrary to Policy EP7 – Noise Pollution and CR11 – Retail (A3) Uses and Amusement Arcades of the Adopted Dudley UDP (2005).

#### Highway Safety

18. The Group Engineer (Development) raises no objection to the proposal in light of the site's position within Kingswinford District Centre. Subject to a contribution towards transport infrastructure improvements the proposal therefore complies with Policy DD6 – Access and Infrastructure of the Adopted Dudley Unitary Development Plan (2005).

#### Planning Obligations

19. The proposed development has a requirement to provide planning obligations to mitigate against the consequential planning loss to the existing community.

#### *Offsite Contributions:*

The proposal attracts a requirement for a commuted sum to be paid towards the following infrastructure:

- Transport Infrastructure Improvements - £207.68
- Management and monitoring charge - £250

Total Offsite Contribution = £457.68

20. The applicant has not agreed to the above commuted sum and the lack of an undertaking to make a contribution towards Transport Infrastructure Improvements is contrary to the requirements of UDP Policies DD7 – Planning Obligations and the Planning Obligations and Nature Conservation SPD's, and would result in an increase in the demand on local facilities with no compensation or enhancement, thus resulting in harm to the wider community around the site.

#### Other Matters

21. Concerns were raised regarding the capacity of the venue and the number of patrons allowed in at any one time. Concerns were also expressed that the venue has limited access and escape routes given that it is at first floor level. These matters are not however material to the determination of this planning application.

### **CONCLUSION**

22. Whilst the broad principle of the A4 use is considered acceptable and there would be no demonstrable harm to highway safety, retention of the wine bar would cause unreasonable harm in terms of noise generated through pedestrian and vehicular movement to the detriment of neighbouring amenity. The establishment is already in operation and the objections raised from the public consultation process demonstrate that disturbances are already being experienced. The lack of an undertaking to make a contribution towards transport infrastructure improvements would also result in an increase in the demand on local facilities with no compensation or enhancement. The proposal, therefore contravenes the following Council policies; DD7 – Planning Obligations, CR11 – Retail (A3) Uses and Amusement Arcades and EP7 Noise Pollution of the Adopted Unitary Development Plan (2005), Supplementary Planning Documents; Planning Obligations.

### **RECOMMENDATION**

27. It is recommended that the application be refused for the following reasons;

1. Retention of the A4 use would cause unreasonable harm in terms of noise disturbance generated through pedestrian and vehicular movement during the late hours proposed to the detriment of neighbouring amenity and contrary to Policy CR11 – Retail (A3) Uses and Amusement Arcades and EP7 – Noise Pollution of the Adopted Dudley UDP (2005).
2. The lack of an undertaking to make a contribution towards Transport Infrastructure Improvements is contrary to the requirements of UDP Policy DD7 – Planning Obligations and the Planning Obligations SPD, and would result in an increase in the demand on local facilities with no compensation or enhancement, thus resulting in harm to the wider community around the site.

**TOWN & COUNTRY PLANNING ACT 1990 (as amended)**

**TOWN & COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995**

**Deposited on: 06 October 2010**

**Application number:P10/1358**

Applicant:

MR JIMMY LEE, ALTER EGO  
843B, HIGH STREET  
KINGSWINFORD  
WEST MIDLANDS  
DY6 8AA

Agent:

SITE:

**843B, HIGH STREET, KINGSWINFORD,, WEST MIDLANDS**

PARTICULARS OF PROPOSED DEVELOPMENT:

**CHANGE OF USE OF FIRST FLOOR FROM A3 TO WINE BAR A4 (RETROSPECTIVE)**

The Dudley Metropolitan Borough Council as local planning authority hereby **refuses** permission for the above described development proposed in the application numbered as shown above and in the plans and drawings attached thereto, a copy of which is attached to this notice.

The reason(s) for the Councils' decision is/are:

1. Retention of the A4 use would cause unreasonable harm in terms of noise disturbance generated through pedestrian and vehicular movement during the late hours proposed to the detriment of neighbouring amenity and contrary to Policy CR11 – Retail (A3) Uses and Amusement Arcades and EP7 – Noise Pollution of the Adopted Dudley UDP (2005).
2. The lack of an undertaking to make a contribution towards Transport Infrastructure Improvements is contrary to the requirements of UDP Policies DD7 – Planning Obligations and the Planning Obligations SPD, and would result in an increase in the demand on local facilities with no compensation or enhancement, thus resulting in harm to the wider community around the site.

## Directorate of the Urban Environment

Planning Services, 3 St.James's Road, Dudley, West Midlands DY1 1HZ

Tel: (01384) 814136 Fax: (01384) 814141

Email: [development.control@dudley.gov.uk](mailto:development.control@dudley.gov.uk)

[www.dudley.gov.uk](http://www.dudley.gov.uk)



In addition to the above you should also be aware of the notes attached to this decision notice.

A handwritten signature in black ink that reads "J B Millar". The signature is written in a cursive style.

**J B Millar**

**Director of the Urban Environment**

## This is not a Decision under the Building Regulations or other Legislation

### APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions then you can appeal to the secretary of state:
  - a) Under Section 78 of the Town and Country Planning Act 1990 (non-householder)
  - b) under section 78 of the Town and Country Planning Act 1990 (householder)
  - c) in the case of Listed Building Consents under Sections 20 and 21 of the Planning (Listed Buildings and Conservation Areas) Act 1990
  - d) in the case of Certificates of Lawful Use or Development under Sections 195 and 196 of the Town and Country Planning Act 1990 (as amended)
  - e) in the case of advertisements under Regulation 17 of the Town and Country Planning (Control of Advertisements, England) Regulations 2007.
- If you want to appeal, then you must do so within 6 months of the date of this notice in respect of appeals referred to in paragraphs a) and c) above, within 12 weeks of this notice in respect of appeals referred to in paragraph b) above, or within 8 weeks in respect of appeals referred to in paragraph e). There is no time limit in respect of appeals referred to in paragraph d) above. Appeals must be made using a form which can be obtained online at [www.planningportal.gov.uk/pcs](http://www.planningportal.gov.uk/pcs) or from The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. N.B. **Only the applicant has the right to appeal.**
- The Secretary of State can allow longer periods for giving notice of an appeal, but he will not normally be prepared to use his power unless there are special circumstances which excuse the delay in giving notice of the appeal.
- The secretary of state need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to statutory requirements, to the provisions of any development order and to any directions given under a development order. In practice, the secretary of state does not refuse to consider appeals solely because the local planning authority based its decision on a direction given by him.
- You have the right to appeal to the secretary of state where consent to fell or lop trees is refused or if you object to any conditions attached to your consent. The appeal must be made within 28 days of receiving the decision on your application. The secretary of state may allow or dismiss an appeal or vary the original decision by the authority in any respect. As in any case of orders to which there are objections, the appeal will normally be decided on the basis of written representations but both the applicant and the authority have the right to a public local enquiry or hearing. To appeal a decision made on an application relating to trees, you should contact the Planning Inspectorate, The Environment Team, Room 4/04, Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.

### PURCHASE NOTICE

- If either the local planning authority or the secretary of state refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonable beneficial use in its existing state nor render the land capable of a reasonable beneficial use, by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act, 1990.
- This decision is given under the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (General Permitted Development) Order 1995 (amended).
- You are reminded of the need to ensure due compliance with the Building Regulations 1991 (as amended), with other Public General Enactments relating to the development (in particular the Public Health Act 1936 and 1961, Clean Air Act 1993 the Highways Acts 1959, 1971 and 1980, the Control of Pollution Act 1974, the Planning (Hazardous Substances) Act 1990, the Environmental Protection Act 1990, and with the Local Enactments for the time being in force in the Borough. Nothing herein contained is to be regarded as dispensing with such compliance beyond the extent (if any) herein specified. The permission specified does not modify or affect any personal or restrictive covenant applying to the land or any right of any person entitled to the benefit thereof.
- Should the development result in the provision of a building or premises to which the public are admitted or in which persons are to be employed, the applicant is reminded of the need to observe Sections 4, 7 and 8A of the Chronically Sick and Disabled Persons Act 1970 (as amended) and the codes of practice "Design of buildings and their approaches to meet the needs of disabled people" (BS 8300).
- If the development will result in the provisions of an educational building then the applicant is reminded of the need to observe Sections 7 and 8 of the Chronically Sick and Disabled persons Act 1970 and DfES constructional standards.  
**It is advisable that this notice be carefully retained, possibly with the deeds of the property**





**ALTER  
EGO**

DY6 8AA

VODKA BAR & LATE LOUNGE

18/08/2010 15:09

