

**Location**                      **The Alexandra 1 Church Lane London N2 8DX**

**Reference:**                      **15/02918/FUL**                      Received: 12th May 2015  
Accepted: 12th May 2015

Ward:                              East Finchley                              Expiry 7th July 2015

Applicant:                      Mrs Ruta Lebiodaite

Proposal:                              Change of use from A4 (drinking establishment) to A3 (restaurants and cafes) combined with secondary sui generis use (shisha). Removal of existing canopy structures at rear and erection of new canopy structure with perspex roof. Single storey front/side extension

**Recommendation:** Approve subject to conditions

- 1     The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Drawing no./SI-000; Drawing no./SI-001; Drawing no./PL-010 Rev A; Drawing no./PL-011 Rev A; Drawing no./PL-012; Drawing no./PL-013; Drawing no./PL-014; Drawing no./SI-003; Drawing no./PL-000 Rev B; Drawing no./PL-001 Rev B; Drawing no./PL-002 Rev D; ; Drawing no./PL-003 Rev B; ; Drawing no./PL-004 Rev B.

Reason: For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).

- 2     The front extension and canopy at the rear shall be demolished and all materials resulting from the demolition shall be removed within three months of the date of failure to meet requirement (i) below:

(i) within three months of the date of this decision, the flat roof of the front extension shall replace the current hipped roof and the canopy at the rear shall be implemented as approved and shall be permanently retained as such thereafter.

Reason:

To safeguard the character and appearance of the host dwelling and general area in accordance with policy DM01 of the Adopted Barnet Development Management Policies DPD (2012).

- 3     The restaurant use with internal seating within the building hereby permitted shall not be open to members of the public before 8:30am or after 11.30pm Mondays to Thursdays, before 8.30am on Fridays or after 1:30am on Friday night/ Saturday

morning, before 9am and after 1:30am on Saturdays, or before 9am or after 11pm on Sundays and Bank and Public Holidays.

Reason: To safeguard the amenities of occupiers of adjoining residential properties.

- 4 The restaurant and shisha uses located under the rear canopy or outside of the building hereby permitted shall be vacated and not used by members of the public after 11:30pm Mondays to Saturdays and after 11pm on Sundays and Bank and Public Holidays.

Reason: To safeguard the amenities of occupiers of adjoining residential properties.

- 5 The shisha use within the hereby permitted building and structures shall not be open to members of the public before 11.30am.

Reason: To safeguard the amenities of occupiers of adjoining residential properties.

- 6 No deliveries shall be taken at or dispatched from the site on any Sunday, Bank or Public Holiday or before 9.00 am or after 7.00 p.m. on any other day.

Reason: To prevent the use causing an undue disturbance to occupiers of adjoining residential properties at unsocial hours of the day.

- 7 No flues, ducting, air conditioning units or piping shall be constructed on the exterior of the building.

Reason: To safeguard the amenities of neighbouring occupiers in accordance with policies DM01 and DM04 of the Adopted Barnet Development Management Policies 2012.

### **Informative(s):**

- 1 In accordance with paragraphs 186 and 187 of the NPPF, the Local Planning Authority (LPA) takes a positive and proactive approach to development proposals, focused on solutions. The LPA has produced planning policies and written guidance to assist applicants when submitting applications. These are all available on the Council's website. The LPA has negotiated with the applicant/agent where necessary during the application process to ensure that the proposed development is in accordance with the Development Plan.
- 2 Notwithstanding the planning recommendation, the applicant is advised that the canopy would still be required to comply with Environmental Health standards for smoking shelters; this would include the removal of the plastic sheeting and palm trees located at the rear.
- 3 The Community Infrastructure Levy (CIL) applies to all 'chargeable development'. This is defined as development of one or more additional units, and / or an increase

to existing floor space of more than 100 sq m. Details of how the calculations work are provided in guidance documents on the Planning Portal at [www.planningportal.gov.uk/cil](http://www.planningportal.gov.uk/cil).

The Mayor of London adopted a CIL charge on 1st April 2012 setting a rate of £35 per sq m on all forms of development in Barnet except for education and health developments which are exempt from this charge. Your planning application has been assessed at this time as liable for a £4,865 payment under Mayoral CIL.

The London Borough of Barnet adopted a CIL charge on 1st May 2013 setting a rate of £135 per sq m on residential and retail development in its area of authority. All other uses and ancillary car parking are exempt from this charge. Your planning application has therefore been assessed at this time as liable for a £18,765 payment under Barnet CIL.

Please note that Indexation will be added in line with Regulation 40 of Community Infrastructure Levy.

Liability for CIL will be recorded to the register of Local Land Charges as a legal charge upon your site payable should you commence development. Receipts of the Mayoral CIL charge are collected by the London Borough of Barnet on behalf of the Mayor of London; receipts are passed across to Transport for London to support Crossrail, London's highest infrastructure priority.

You will be sent a 'Liability Notice' that provides full details of the charge and to whom it has been apportioned for payment. If you wish to identify named parties other than the applicant for this permission as the liable party for paying this levy, please submit to the Council an 'Assumption of Liability' notice, which is also available from the Planning Portal website.

The CIL becomes payable upon commencement of development. You are required to submit a 'Notice of Commencement' to the Council's CIL Team prior to commencing on site, and failure to provide such information at the due date will incur both surcharges and penalty interest. There are various other charges and surcharges that may apply if you fail to meet other statutory requirements relating to CIL, such requirements will all be set out in the Liability Notice you will receive. You may wish to seek professional planning advice to ensure that you comply fully with the requirements of CIL Regulations.

If you have a specific question or matter you need to discuss with the CIL team, or you fail to receive a 'Liability Notice' from the Council within 1 month of this grant of planning permission, please email us at: [cil@barnet.gov.uk](mailto:cil@barnet.gov.uk).

Relief or Exemption from CIL:

If social housing or charitable relief applies to your development or your development falls within one of the following categories then this may reduce the final amount you are required to pay; such relief must be applied for prior to commencement of development using the 'Claiming Exemption or Relief' form available from the Planning Portal website: [www.planningportal.gov.uk/cil](http://www.planningportal.gov.uk/cil).

You can apply for relief or exemption under the following categories:

1. Charity: If you are a charity, intend to use the development for social housing or feel that there are exception circumstances affecting your development, you may be eligible for a reduction (partial or entire) in this CIL Liability. Please see the documentation published by the Department for Communities and Local Government at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6314/19021101.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6314/19021101.pdf)

2. Residential Annexes or Extensions: You can apply for exemption or relief to the collecting authority in accordance with Regulation 42(B) of Community Infrastructure Levy Regulations (2010), as amended before commencement of the chargeable development.

3. Self Build: Application can be made to the collecting authority provided you comply with the regulation as detailed in the [legislation.gov.uk](http://legislation.gov.uk)

Please visit <http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil> for further details on exemption and relief.

## **Officer's Assessment**

### **1. Site Description**

The application site is a two storey end-of-terrace building located on the southern side of Church Lane, near the junction with High Road in the East Finchley Ward. The property is not listed nor does it lie within a conservation area. It is however locally listed. The properties on this section of the road are generally characterised by commercial units on the ground floor and residential accommodation on the floors above.

To the east, the site borders the Esso Petrol Station at the junction with High Road. Further to the north east, approximately 50 metres from the site lies Martin Primary School. To the north, lies a three storey block of flats known as Rew Lodge.

The documents submitted indicate that the use of the upper floor is currently offices and other facilities ancillary to the ground floor commercial unit. At the time of the site visit, there was no evidence of the first floor being used for independent residential accommodation.

### **2. Site History**

Reference: 15/01019/FUL

Address: The Alexandra, 1 Church Lane, London, N2 8DX

Decision: Withdrawn

Decision Date: 12 May 2015

Description: Change of use from A4 (drinking establishment) to A3 (restaurants and cafes), erection of 2 no. canopy structures to rear, rebuild of existing canopy in rear garden, demolition of outbuilding and rebuild with a new canopy in rear garden, erection of new roof to front patio area

Reference: 15/01020/ADV

Address: The Alexandra, 1 Church Lane, London, N2 8DX

Decision: Withdrawn

Decision Date: 12 May 2015

Description: 1 no illuminated fascia sign to front, 3 no. illuminated signs to side.,

Reference: 15/02919/ADV

Address: The Alexandra, 1 Church Lane, London, N2 8DX

Decision: Pending Consideration

Decision Date: No Decision Made.

Description: Installation of 1no. externally illuminated fascia sign and 1no. externally illuminated wall mounted sign (Retrospective Application)

Reference: C06650B/07

Address: The Alexandra, 1 Church Lane, London, N2 8DX

Decision: Approve subject to conditions

Decision Date: 22 February 2008

Description: First floor rear extension to existing flat.

Reference: C06650A

Address: The Alexandra, 1 Church Lane, London, N2 8DX

Decision: Approve subject to conditions

Decision Date: 29 September 1998

Description: Single storey side extension.

Reference: C06650

Address: The Alexandra, 1 Church Lane, London, N2 8DX

Decision: Approve subject to conditions

Decision Date: 20 March 1979

Description: Single storey rear extension

### **3. Proposal**

The applicant seeks planning permission for the change of use from A4 (drinking establishment) to A3 (restaurants and cafes) combined with secondary sui generis use (shisha). In addition, the removal of existing canopy structures at rear and erection of new canopy structure with perspex roof, and a single storey front/side extension.

At the front, the extension has a depth of 4.9m to infill up to the existing front façade and side elevation. The extension at the front is proposed to be changed from the pitched roof (which does not benefit from consent) to a flat roof with a height of 3.3m.

At the time of the site visit, the canopy at the rear was partially built. The structure would not be visible from the side elevation (petrol garage) or from the streetscene. The canopy including alterations, as proposed would be set 1 metre away from the main building and from the boundary with the petrol station, to comply with Environmental Health smoking shelter legislation and have a maximum height of 2.5 metres.

### **4. Public Consultation**

Consultation letters were sent to 74 neighbouring properties.

24 responses have been received, comprising 24 letters of objection.

The objections received can be summarised as follows:

- Parking and highways issues
- Out of character
- Entirely inappropriate given its location located opposite a school/ petrol station
- Smoke/ smell
- Excessive noise & disturbance
- Object to the signs
- Principle of smoking is unacceptable
- Anti-social behaviour
- Too many restaurants already
- Encroach onto privacy of neighbours/ overlooking
- Signs (part of separate application)
- Light disturbance
- Visual impact
- Eyesore
- Increased activity

Mike Freer MP has objected on the following grounds:

- Detrimental impact on visual amenity
- Noise & disturbance to local residents.

In addition, Councillor Arjun Mitra has requested that the application is referred to the planning Area Sub Committee. The grounds for objection specified were 'detrimental impact on neighbours and overdevelopment'.

Since the consultation period has closed, one of the objectors has withdrawn his objection and provided the following comments:

- Addressed concerns regarding shisha signs which have been removed.
- Attractive and positive addition to neighbourhood (better than previous establishment)

## **5. Planning Considerations**

### **5.1 Policy Context**

#### National Planning Policy Framework and National Planning Practice Guidance

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The National Planning Policy Framework (NPPF) was published on 27 March 2012. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that 'good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people'. The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would 'significantly and demonstrably' outweigh the benefits.

#### The Mayor's London Plan 2015

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2050. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

#### Barnet's Local Plan (2012)

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents. Both were adopted in September 2012.

- Relevant Core Strategy Policies: CS NPPF, CS1, CS5.
- Relevant Development Management Policies: DM01, DM02, DM04, DM12, DM17.

The Council's approach to development as set out in Policy DM01 is to minimise the impact on the local environment and to ensure that occupiers of new developments as well as neighbouring occupiers enjoy a high standard of amenity. Policy DM01 states that all development should represent high quality design and should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers. Policy DM02 states that where appropriate, development will be expected to demonstrate compliance to minimum amenity standards and make a positive contribution to the Borough. The development standards set out in Policy DM02 are regarded as key for Barnet to deliver the highest standards of urban design.

## Supplementary Planning Documents

Sustainable Design and Construction SPD (adopted April 2013)

- Provides detailed guidance that supplements policies in the adopted Local Plan, and sets out how sustainable development will be delivered in Barnet.

### **5.2 Main issues for consideration**

The main issues for consideration in this case are:

- Whether harm would be caused to the character and appearance of the existing building, the street scene and the wider locality;
- Whether harm would be caused to the living conditions of neighbouring residents.

### **5.3 Assessment of proposals**

#### Impact on character

Policy DM11 advises that the Council will protect all retail uses in the existing local centres, parades and isolated shops. The pre-ample to this policy also states that 'preventing an over concentration of similar non Class A1 uses is important to maintaining the vitality and viability of the local centre or parade'.

The proposed change of use from A4 to A3 would still maintain a retail element and is not considered to compromise the vitality and viability of this section of Church Lane. In addition, this section of Church Lane is not considered as a town centre due to the small number of shops, as defined by chapter 13 of the Development Management Policies DPD. Whilst it is acknowledged that there are other restaurants in the East Finchley town centre, the proposed change of use is not considered to unbalance the character of the area, competition between units is not a material consideration and the Town Centre does not form part of the immediate vicinity.

Consideration has been given to the existing use of the ground floor unit as a public house. It is not considered that the change of use to a restaurant would result in a heightened level of activity to that previously experienced. With regards to the principle or morality of the location of a unit comprising of shisha use, this is not considered to be a material consideration in the determination of a planning application. Furthermore, the applicant has indicated that the shisha use will be ancillary to the A3 use.

The height of the proposed structure at the front is considered to be subordinate and would not detract from the character of the locally listed building, particularly when considering the previous structure serving the public house. It must be noted that the structure currently on site has been erected without consent and the Council does not support the hipped roof, however the proposed flat roof of the front extension, which would be no higher than the adjoining ridge height is considered to be acceptable.

At the rear, although the canopy, as proposed, would cover the majority of the rear garden, it is not considered that this would be out of character given the similar extensions on Church Lane and as such this reason alone does not warrant refusal. It must be noted, that the structure as built is larger than that proposed. A condition has been added to ensure that the proposed changes to the physical structures as presented as proposed are implemented within three months from approval.

In conclusion, the proposal is not considered to be detrimental to the character and appearance of the host property and of the general vicinity.

#### Impact on neighbouring occupiers



The plans indicate that the existing use of the first floor was ancillary to the ground floor use, and this will remain for the proposed use. During the site visit, it was not evident that the upper floor was being used as an individual unit.

The use as an A4 unit with ancillary sui generis accommodation (for shisha) is not considered to differ with regards to the level of user activity. On balance it is therefore not considered that the proposed use would give rise to an unacceptable level of noise and disturbance than previously experienced by the A4 use. In addition, there is a large access road separating the properties on Leopold Road to the south from the host site. A condition has been attached to address the opening hours for the unit as a whole, and a further condition to restrict the use at the rear of the site (under the canopy) to address concerns from neighbours regarding noise and disturbance. It must be noted that the hours of operation specified in the condition are less than the previous A4 use. With regards to the shisha element, a condition has been attached for this to commence after 11:30am.

Due to the canopy at the rear being located on the ground floor only, it is not considered that this would give rise to overlooking into the private gardens of neighbouring occupiers.

With regards to the proposed shisha element, the applicant has confirmed that this would be solely located at the rear of the site and ancillary to the restaurant use. The Environmental Health team have commented on the proposals and the proposed structure at the rear, and subject to the removal of the plastic drip sheet and high level palm trees, the canopy at the rear would comply with Environmental Health requirements regarding smoking shelters.

The Council's Highways team were consulted as part of the previous application which was withdrawn by the applicant. The Highways officer considered that the proposal, given the original A4 use, "is not expected to have a detrimental impact on the public highways and I have no objection on highways grounds"

#### **5.4 Response to Public Consultation**

It is considered that the planning related objections have been addressed in the report above.

With regards to the suitability of the shisha establishment in this location (within close proximity of the school and petrol station), this aspect does not constitute a material consideration and as such little weight can be given to it. The area has no particular use class designation and as mentioned above the development is considered to be in accordance with planning legislation.

#### **6. Equality and Diversity Issues**

The proposal does not conflict with either Barnet Council's Equalities Policy or the commitments set in the Equality Scheme and supports the Council in meeting its statutory equality responsibilities.

#### **7. Conclusion**

The proposal is considered to accord with the requirements of the Development Plan and is therefore recommended for approval.

