



The applicant did not seek to engage with the LPA prior to the submission of this application through the established formal pre-application advice service. The LPA has discussed the proposal with the applicant/agent where necessary during the application process. Unfortunately the scheme is not considered to accord with the Development Plan. If the applicant wishes to submit a further application, the Council is willing to assist in identifying possible solutions through the pre-application advice service.

- 3 This is a reminder that should an application for appeal be allowed, then the proposed development would be deemed as 'chargeable development', defined as development of one or more additional units, and / or an increase to existing floor space of more than 100 sq m. Therefore the following information may be of interest and use to the developer and in relation to any future appeal process:

The Mayor of London adopted a Community Infrastructure Levy (CIL) charge on 1st April 2012 setting a rate of £35 per sq m on all forms of development in Barnet except for a £0 per sq m rate for education and health developments. This planning application was assessed as liable for a £4,865.00 payment under Mayoral CIL at this time.

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 were set at a rate of £0 per sq m. This planning application was assessed as liable for a £18,765.00 payment under Barnet CIL at this time.

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

Liability for CIL is recorded to the register of Local Land Charges as a legal charge upon a site, payable should development commence. The Mayoral CIL charge is 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.

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

The Community Infrastructure Levy becomes payable upon commencement of development. A 'Notice of Commencement' is required to be submitted to the Council's CIL Team prior to commencing on site; 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 any appeal being allowed, please contact us: [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 Extension: 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 [www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil](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: Approved subject to conditions

Decision Date: 15 October 2015

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.

The alterations and extensions have been carried out. 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.

37 responses have been received, comprising 30 letters of objection and 7 letters of support.

Councillors will be aware that the application was referred by the Finchley and Golders Green Planning Sub-Committee on the 15th October 2015 to the Planning Committee. The correspondence below summarises both the responses received initially, since the referral and following the submission of the noise report.

#### *Objections*

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 to residential properties
- Excessive noise & disturbance in late hours of the night
- 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

- Original pub was quiet
- Eating/ Drinking establishment ok but it is a residential area and shisha causes noise
- No allocated parking and users parking on yellow lines, kerbsides and driveways.
- Concern about access for emergency services.
- Smoke and smell causing great nuisance.
- Shisha smoking close to bedrooms
- Health concerns regarding second hand smoke
- Each shisha pipe equivalent to 200 cigarettes
- The adjacent site, previously a petrol filling station, is currently vacant; shisha would have an adverse impact on the long term future planning of this site for alternative uses, such as housing
- The noise report is inaccurate and does not reflect the true impact on the nearest residents
- Noise report makes assumptions that all noise will be at normal speech level and considers it as a typical use (rather than mixed use to include shisha).
- The noise report does not consider the removal of the tree plants to comply with smoking laws- this will alter the calculations
- Measurements for report taken in winter; use will be different in summer with more people.
- Light pollution due to design impacting neighbour's properties
- Smoking previously at the front (not rear)
- No historic planning permission or shelter at the rear and no licencing at the rear.

Mike Freer MP has objected on the following grounds:

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

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

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)

### *Support*

The letters of support received can be summarised as follows:

- No comparison to previous use (great improvement)
- Restaurant is not noisy- only noise from A1000
- Dispute the opening hours imposed by Council in recommendation compared to pub hours
- Restaurant without alcohol licence (less susceptible to anti-social behaviour)
- Welcome addition to the area
- Attractive culinary alternative for professionals and enhancement to the neighbourhood
- Previous use was a massive disturbance to neighbours
- Concern about hours of opening restrictions. Consider hours to be unfair.
- Mature clientele & interior has been divided well
- Do not want the closure of yet another facility

## **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. Councillors will be aware that since the last committee meeting, a noise report has been submitted to the Council's Environmental Health Scientific Services who have reviewed the comments and consider that the report is insufficient with the following concerns raised:

- The potential for noise nuisance has been inadequately addressed by the report and the follow up comments, and the report relies on favourable assumptions.
- The report does not consider the nearest residential occupiers on Church Lane
- The assessment does not consider impulsive maximum noise levels such as raised speech, laughing or shouting. The site includes 4 television screens and associated speakers on each corner of the site; the noise can easily breakout from the eastern side of the structure.
- Consider that the rear additional would be a shisha bar/lounge and therefore different in nature to a 'normal restaurant'
- Unclear how many customers will be present at any one time.
- Report could have used a lower background level.

It must be noted that there is a there is a large access road separating the properties on Leopold Road to the south from the host site. On balance, given the previous use as a public house, planning officers consider that the comments raised by Environmental Health Scientific Services with regards to noise could be addressed with more restrictive conditions including restrictions on the opening hours (more restrictive at the rear), limiting the hours of use of the shisha use, requiring details of noise mitigation measures and requiring the submission of an accurate noise report.

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 Council's Health and Safety team (part of Environmental Health) 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 smoking legislation.

Notwithstanding this, the Council's Scientific Team (part of Environmental Health) carried out an investigation since the submission of the noise report and witnessed a statutory odour nuisance, under the Environmental Protection Act 1990, with the smell noticeable from properties on Leopold Road and at the front entrance of Martin Primary School. As smoke free legislation makes it a requirement for smoking structures to be 50% open to air which is on the eastern side, it has resulted in smoke drift. EH Officers have specified that the activity at the shisha bar has resulted in a material change in the behaviour of some nearby residents and consider the odour to be a nuisance under the Environmental Protections Act 1990.

Whilst consideration has been given to smoking in the former pub, the volume of smoke emitted from a shisha pipe and person smoking is significantly greater than smoking cigarettes. Therefore, the potential with 43 persons smoking shisha will significantly increase the amount of smoke/odour produced from the previous use as an open beer garden which was usually closed late in the evening and at night.

In light of this assessment, officers consider that the resultant odour from the shisha use causes substantial impact on the amenities of neighbouring occupiers. Whilst a ventilator / extraction system has been proposed as a solution by the agent, EH officers would be concerned about the plant diverting the problem to another location. It is therefore not considered that the concern regarding the amenities of occupiers could be addressed by a condition.

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), weight needs to be given to the fact that the premises were formerly a public house and there is no physical manifestation of the shisha bar use externally. The area has no particular use class designation and as mentioned above the development is considered to be in accordance with planning legislation in terms of its impact on the character; however it would have an impact on the amenity of neighbouring occupiers by virtue of the residue odour from the shisha element.

#### **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**

Having taken all material considerations into account, whilst the proposal is not considered to be detrimental to the character and appearance of the surrounding area, the shisha use results in a significant adverse effect to the amenities of neighbouring occupiers due to the result odour. The proposal is therefore deemed unacceptable and as such the application is recommended for REFUSAL.