

Location **1277 High Road London N20 9HS**

Reference: **16/7912/FUL** Received: 13th December 2016
Accepted: 18th January 2017

Ward: Totteridge Expiry 15th March 2017

Applicant: Mr Fadi Antar

Proposal: Change of use from Sui Generis to restaurant (Use Class A3). Erection of conservatory to rear.

Recommendation: Approve subject to conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos. 1, 2A, 3, 4, 5A, 6A, 7E, 8C, 9B.

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 This development must be begun within three years from the date of this permission.

Reason: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.

- 3 The premises shall be used for Use Class A3 (Restaurant) and for no other purpose (including any other purpose in Class A of the Schedule to the Town and Country Planning (Use Classes) Order, 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: To enable the Local Planning Authority to exercise control of the type of use within the category in order to safeguard the amenities of the area.

- 4 The use hereby permitted shall not be open to members of the public before 09:00 or after 02:00 Fridays to Saturdays, or before 09:00 or after 01:00 Sundays to Thursday and Bank and Public Holidays.

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

- 5 The materials to be used in the external surfaces of the single storey rear extension hereby approved shall match those used in the existing building.

Reason: To safeguard the visual amenities of the building and surrounding area in accordance with Policy DM01 of the Development Management Policies DPD

(adopted September 2012) and Policies CS NPPF and CS1 of the Local Plan Core Strategy (adopted September 2012).

- 6 The level of noise emitted from the flue shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of a neighbouring residential property.

Reason: To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring properties in accordance with Policies DM04 of the Development Management Policies DPD (adopted September 2012) and 7.15 of the London Plan 2015.

- 7 a) No development other than demolition works shall take place until a detailed assessment for the kitchen extraction unit, which assesses the likely impacts of odour and smoke on the neighbouring properties is carried out by an approved consultant. This fully detailed assessment shall indicate the measures to be used to control and minimise odour and smoke to address its findings and should include some or all of the following: grease filters, carbon filters, odour neutralization and electrostatic precipitators (ESP). The equipment shall be installed using anti-vibration mounts. It should clearly show the scheme in a scale diagram and shall be submitted to and approved in writing by the Local Planning Authority
b) The development shall be implemented in accordance with details approved under this condition before first occupation or the use is commenced and retained as such thereafter.

Reason: To ensure that the amenities of the neighbouring occupiers are not prejudiced odour and smoke in the immediate surroundings in accordance with policies DM01 of the Development Management Policies DPD (adopted September 2012) and Policy CS14 of the Local Plan Core Strategy (adopted 2012).

- 8 a) The site shall not be brought into use or first occupied until details of the means of enclosure to the rear of the site have been submitted to and approved in writing by the Local Planning Authority.
b) The development shall be implemented in accordance with the details approved as part of this condition before first occupation or the use is commenced and retained as such thereafter.

Reason: To ensure that the proposed development does not prejudice the appearance of the locality and to confine access to the permitted points in the interest of the flow of traffic and conditions of general safety on the adjoining highway in accordance with Policies DM01, DM03, DM17 of the Development Management Policies DPD (adopted September 2012), and Policies CS NPPF and CS1 of the Local Plan Core Strategy (adopted September 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 The applicant is advised to engage a qualified kitchen extraction consultant to advise on the scheme, including the specifications of any materials, construction, fittings and equipment necessary to achieve satisfactory smoke and odour control. Please note that:
 - Flue(s) must be 1.5 m* above eaves or any open able windows in the vicinity (within 20 metres of the flue) if there are sensitive premises in the vicinity. The final discharge must be vertically upwards. There should be no hat or cowl on the top of the flue. If flues are to be attached to neighbouring noise/vibration sensitive premises they must incorporate anti-vibration mounts, flexible couplings and silencers. *If the flue is in a Conservation area then this height may be reduced to 1m above eaves.
 - The assessment and report on the noise impacts of a development should use methods of measurement, calculation, prediction and assessment of noise levels and impacts that comply with the following standards, where appropriate: DEFRA Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems (DEFRA, January 2005); DEFRA Odour Guidance for Local Authorities (DEFRA, March 2010). Please note that in addition to the above, consultants should refer to the most relevant and up to date guidance and codes of practice if not already listed in the above list.
- 3 The applicant is reminded that any alterations to extraction or ventilation equipment at this site is likely to constitute development which requires planning permission in its own right. Advice should be sought from the Local Planning Authority and the Council's Environmental Health department prior to the submission of an application, to ensure that adequate information is submitted to accompany an application.

Officer's Assessment

1. Site Description

The application site contains a detached two storey building. The front façade contains four sets of full-height doors at ground floor level with arches to the top (three within the main two storey façade and one within a single storey side element). The first floor contains three windows, directly above the doorway arches. The building has a tall parapet, with the hipped roof set back from the edges of the building. The roof contains dormer windows. Internally, the building contains four floors (basement, ground, first, and second floor within the roofspace). The rear part of the building contains a large single storey projection.

The last formal use of the building was as a nightclub/bar. That use ceased a number of years ago. Since then, the building has been subject to occupation by squatters. The front forecourt area, which previously comprised a large timber decked area, has been used for the sale of second-hand goods.

The site is located within Whetstone Town Centre and is part of the Primary Shopping Frontage. To the south of the application site is the two storey building which currently contains Boots at ground floor, and residential units above. To the north is a three storey row, with commercial units at ground floor level within front-projecting shopfronts.

2. Site History

B/02522/08: 1277 High Road, London, N20 9HS. Retention of retractable awning together with ancillary supporting structure.

Decision: Refused. **Decision Date:** 8 January 2009.

N09677E/07: 1277 High Road, London, N20 9HS. Single storey external smoking area to rear.

Decision: Approved subject to conditions. **Decision Date:** 20 September 2007.

3. Proposal

This application seeks the change of use of the building from a sui-generis use to a restaurant, falling within Use Class A3.

In addition, the application proposes the construction of a conservatory to the rear. This would wrap around the perimeter of the existing single storey rear projection and would require the demolition of an existing detached storage building to the rear. The proposal would have a depth to the rear of 2.5 metres (1.8m back from the site boundary), and increase the width of the single storey rear projection by 3.9 metres to the south (retaining a 1.8m gap to the boundary) and 3.2 metres to the north (up to the existing boundary wall structure).

It should be noted that when originally submitted, this application included a proposed seating area to the front of the building. However, as that area would have been constructed on the Public Highway, it has since been removed from the plans and no longer forms part of this application. Therefore, this application is only for the development referred to above.

4. Public Consultation

Consultation letters were sent to 90 neighbouring properties. A site notice was also displayed. 37 responses have been received, comprising 37 letters of objection.

The objections received can be summarised as follows:

- The pavement area which is being suggested as seating is part of the public highway and will prevent pedestrians from walking.
- There have been problems with noise from the existing layout, and extending the building closer to neighbours and using a glass roof could increase the noise, making it hard to sleep.
- The previous incarnations of the building have attracted problems with drugs, drunken people in the rear car park and the police being called.
- This is a residential area, not conducive to having a nightclub which will be open until 3am seven days a week.
- Object to the conservatory as it is intended to be used as a shisha smoking lounge.
- Area has the wrong demographic for this development.
- User's parking will spill into neighbouring residential roads.
- Proposed use will allow for the sale of alcohol which will lead to noise, disruption and Anti-Social Behaviour.
- It is unlikely that guests will be attending between 11pm and 3:30am to use the restaurant, therefore it will become a late night drinking venue and to attract young people will have loud music.
- Object to loud music and late opening in this area of residential suburban London. We do not want a 'Costa-del-Whetstone'.
- Rear conservatory will reduce the acoustic insulation of the entire building.

Friern Barnet and Whetstone Resident's Association:

- The construction of the conservatory would give rise to a material intensification of the use, and therefore increased customers gathering outside the premises and leaving in cars late at night and in the early hours of the morning. This is likely to cause disturbance which would be detrimental to the amenity of local residents.
- The locality has become increasingly residential in character as offices have been converted to residential use. This means what was previously an acceptable level of noise and disturbance from the current use should no longer be considered acceptable.
- The change in the character of the area is such that the premises are now unsuitable for any night-club use.

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 Government's 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 2016

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 2031. 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, CS6.
- Relevant Development Management Policies: DM01, DM02, DM03, DM04, DM11 and DM17.

Supplementary Planning Documents

Sustainable Design and Construction SPD (adopted 2016)

- 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 vitality and viability of Whetstone Town Centre
- 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 the vitality and viability of Whetstone Town Centre

Policy DM11 sets out the development principles for Barnet's Town Centres. It notes that the council will expect a suitable mix of appropriate uses as part of development within town centres to support their continued vitality and viability.

At DM11(b)(i) this policy notes that 'a development proposal which reduces the combined proportion of Class A1 retail use at ground floor level in the primary frontage below 75% will not be permitted. In this instance, the existing use and previous use is not Use Class A1, and therefore the introduction of the proposed Use Class A3 use would not contradict this policy requirement.

The supporting text to DM11 explains that the Core Strategy supports a healthy evening economy. Non-retail uses, where an active street frontage can be maintained, can help maintain the viability and vitality of some of the town centres. Uses including those in the evening economy can make a contribution providing appropriate planning conditions or licensing limits any harmful impacts on nearby residential amenity.

DM11(b)(v) notes that evening economy uses will be expected not to have an adverse affect on the amenities of local residents and be in keeping with the scale and character of the surrounding area. The appraisal below discusses in detail the potential impacts of the proposed use on the amenities of neighbours. In respect of the scale and character of the surrounding area, it is noted that this development would only extend the building to the rear, with the front façade remaining as existing. The scale and massing of the application

building would not be materially altered. The proposed use as a restaurant would be in keeping with the surrounding premises, which are a mixture of retail units, cafes, public houses and restaurants. The proposal would bring back into use a vacant site within the town centre. It is considered that the proposed restaurant use would be appropriate for this town centre location.

Impact on the character and appearance of the host building and the wider area

The proposed conservatory would change the appearance of the building when viewed from the carpark to the rear. The existing brick extension would be enlarged, and have a larger proportion of glazing. The resultant structure would remain subordinate in scale to the host building. It would be viewed from the car park area which has a mixed character with various single storey buildings, workshops and extensions visible. It is not considered that the proposal would harm the character or appearance of this area.

Impact on the amenities of neighbours

The proposed change of use would not result in any adverse impact on the amenities of neighbours. The proposed use as a restaurant would likely result in less noise and disturbance than the previous use of the building as a nightclub. Conditions are recommended to this planning permission which would restrict the hours of operation of the proposed use.

It is noted that the applicant has obtained a premises licence from the London Borough of Barnet. Whilst not directly relevant to this application, it is considered important to note the following conditions of that licence:

- Playing of recorded music permitted indoors only, 09:00 to 01:30 Friday to Saturday, and 09:00 - 00:30 Sunday to Thursday.
- Hours open to the public 09:00 to 02:00 Friday to Saturday, 09:00 to 01:00 Sunday to Thursday,
- Non-standard timings and seasonal opening times: Christmas Eve, Christmas Day, Boxing Day, New Years Eve, New Years Day, all public bank holidays, Good Friday, Easter Sunday, Easter Monday, Diwali Festivities and Eid Festivities all from 09:00hrs until 04:00hrs.
- All amplified music is to be played through a noise limiter, which shall be set at a level agreed by an officer qualified in noise at Barnet Council. The level at which the music will be played will be at background level only unless a Temporary Event Notice is applied for.
- No music shall be played or relayed in the area proposed as the conservatory.

It should be noted that this is only a sample of the conditions considered relevant to this planning application. Other conditions, relating to the provision of late night refreshment and the sale or supply of alcohol are included on the licence but are not considered relevant to this planning application as they would not directly relate to any material planning considerations. By way of a comparison, The Griffin Public House (located directly opposite this application site) has a licence allowing opening between 10:00 and 00:30 Sunday to Wednesday, and 10:00 to 01:30 Thursday to Saturday.

The hours of use will be comparable to other restaurants in the vicinity and subject to these conditions it is not considered that the use of the building as a restaurant would be harmful to the amenities of neighbours.

In respect of the extraction and ventilation equipment which would be required for the kitchen use, the applicant has confirmed that the existing equipment to the rear of the site will be retained and utilised. Therefore, this application does not include any changes to the external extraction and ventilation equipment.

5.4 Response to Public Consultation

The majority of objections received make reference to the use of the building as a night club, and make references to opening hours up to 3am. It should be noted that the use proposed is a restaurant (Use Class A3) and not a nightclub. Issues in respect of the previous incarnations of the site are not material to the current application.

In respect of concerns with the impact on parking, the application site is located in a town centre which does have a car park and much unrestricted parking on the High Road and surrounding roads. It is not considered that this proposed development would materially or demonstrably harm highway safety or the free flow of traffic.

Noise from within the premises is controlled under the terms of the licence and is not a specific planning matter as music could be played from the premises without the need to first obtain planning permission.

This application no longer proposes a new flue or kitchen extraction equipment, and no longer proposes an outdoor seating area to the front.

Planning permission would not be required for the space to be used for smoking shisha. However, the premises would need to comply with the relevant smoke free legislation which is entirely separate from planning.

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, it is considered that subject to compliance with the attached conditions, the proposed development would have an acceptable impact on the character and appearance of the application site, the street scene and the locality. The development is not considered to have an adverse impact on the amenities of neighbouring occupiers. This application is therefore recommended for approval.

