

Location **16 Sussex Ring London N12 7HX**

Reference: **17/4439/FUL** Received: 11th July 2017
Accepted: 12th July 2017

Ward: Totteridge Expiry 6th September 2017

Applicant: Mr Haijri Alija

Proposal: Change of use from Class A1 (Coffee and cold food shop) to mixed
Class A1 & Class A3 (coffee and cold and hot food shop). Installation
of extractor flue to rear

Recommendation: Refuse

AND the Committee grants delegated authority to the Head of Development Management or Head of Strategic Planning to make any minor alterations, additions or deletions to the recommended conditions/obligations or reasons for refusal as set out in this report and addendum provided this authority shall be exercised after consultation with the Chairman (or in his absence the Vice- Chairman) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

- 1 The application fails to demonstrate effective marketing to support the loss of the existing A1 (retail use) and the proposed retained A1 use is not considered to represent a suitable level of retail floorspace to maintain the vitality and viability of the existing retail provision in the locality. The proposal would therefore be contrary to Policies CS6 of the Local Plan Core Strategy (adopted September 2012), Policies DM12 of the Development Management Policies DPD (adopted September 2012), the Residential Design Guidance SPD (adopted April 2013) and the Sustainable Design and Construction SPD (adopted April 2013).

Informative(s):

- 1 In accordance with paragraphs 186 and 187 of the NPPF, the Council takes a positive and proactive approach to development proposals, focused on solutions. To assist applicants in submitting development proposals, the Local Planning Authority (LPA) has produced planning policies and written guidance to guide applicants when submitting applications. These are all available on the Council's website. A pre-application advice service is also offered.

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. In accordance with paragraph 189 of the NPPF, the applicant is encouraged to utilise this service prior to the submission of any future formal planning applications, in order to engage pro-actively with the LPA to discuss possible solutions to the reasons for refusal.

- 2 The plans accompanying this application are: Drawing No. KT-04112014-N127HX-1 (EXISTING PLANS AND ELEVATIONS) and KT-04112014-N127HX-2 (PROPOSED PLANS AND ELEVATIONS), Planning Statement and Noise Assessment Report.

Officer's Assessment

1. Site Description

The application site contains a two storey, mid terrace property on the South West corner of Sussex Ring cross roads. The property contains a commercial unit at ground floor and residential accommodation at first floor level. The application property is not listed nor located within a conservation area).

2. Site History

15/00947/FUL: Change of use from A1 Cafe to A3 Coffee Shop and installation of extractor flue at the rear. Refused August 2015. i) insufficient evidence to demonstrate the unit has been actively and continuously marketed. ii) Fails to demonstrate that the flue would not have an adverse impact upon the amenities of the occupiers of adjoining commercial and residential units.

16/4988/FUL: Change of use from A1 (Coffee Shop) to A3 (Cafe). Installation of extractor flue to rear. Refused September 2016 - insufficient evidence to demonstrate the unit has been actively and continuously marketed. Appeal Dismissed.

3. Proposal

This application proposes the change of use from A1 (Coffee and cold food shop) to mixed Class A1 & Class A3 (coffee and cold and hot food shop) and installation of extractor flue to the rear.

The flue would measure 5.5 m high above the roof of the ground floor rear extension and would be set down from the main ridge of the roof by in excess of 1.3m.

4. Public Consultation

Consultation letters were sent to 50 neighbouring properties. A site notice was also displayed. One comment of support has been received and can be summarised as follows:

- Expansion into hot food will further enhance the offer; and
- There are similar uses in the immediate vicinity.

The application has been called to committee by Cllr Richard Cornelius for the reason that the cafe opposite the application site has been granted a planning permission for such a change of use and it seems illogical that this permission should be denied to the application property too.

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 March 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.
- Relevant Development Management Policies: DM01, DM02, DM04, DM11, DM12.

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. In respect of the proposed change of use of the existing retail shop unit to Use Class A3 (Restaurants & Cafes), policy DM11 (bi) and (biii) and DM12 of the Council's Local (Development Management Policies) DPD (adopted September 2012) is relevant.

Supplementary Planning Documents

Sustainable Design and Construction SPD (adopted 2016)

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

Background

The applicant seeks approval for 'Change of use from A1 (Coffee and cold food shop) to mixed Class A1 & A3 (Coffee and cold and hot food shop). Installation of extractor flue to rear'. Two similar applications were submitted under reference nos. 16/4988/FUL dated 22 September 2016 and 15/00947/FUL dated 21 August 2015. The applications were refused for the following reasons:

Planning application reference no. 16/4988/FUL:

The applicant has failed to provide sufficient evidence to demonstrate that this A1 shop unit has been actively and continuously marketed as a shop (Use Class A1) for at least 12 months, at an appropriate price for both rent and sale, prior to the submission of the application and that there has been no interest expressed in the unit for retail or similar use, contrary to policy 4.8 of The London Plan (2015), policy CS6 of the Barnet Core Strategy (2012) and policy DM12 of the Development Management Policies DPD (2012).

Appeal Reference no. APP/N5090/W/16/3162530:

The appeal was made by the applicant against the abovementioned refusal and the appeal was dismissed. The Inspector noted the following:

The applicant failed to suggest that the application property would not continue to be a successful business without an A3 Use permitted. There was no explanation of how the rent values were considered reasonable, and the unit was described as vacant when it clearly was not. The Inspector noted that during their site visit the premises appeared to be part of a lively and vibrant local centre which clearly and effectively serves the needs of the local community. The inspector raised concerns that granting a planning permission would threaten the sustainability of the area in the long term and undermining the aim of the development plan. It would result in an unjustified loss of an A1 retail unit. The proposal was considered as not complying with Policy CS6 of the Core Strategy and DM12 of the Development Management Policies DPD (2012).

Planning application reference no. 15/00947/FUL:

1 The reason for refusal in relation to marketing is as follows:

'The applicant has failed to provide sufficient evidence to demonstrate that this A1 shop unit has been actively and continuously marketed as a shop (Use Class A1) for at least 12 months, at an appropriate price for both rent and sale, prior to the submission of the application and that there has been no interest expressed in the unit for retail or similar use'.

2 The reason for refusal in relation to the vent/flue is as follows:

'The applicant has failed to provide a Noise Report with sufficient information regarding necessary mechanical equipment and flue(s) for the extraction and ventilation of heat, fumes and odours from the use, or any associated odour control and/or noise attenuation measures. The application therefore fails to demonstrate that the development would not have an adverse impact upon the amenities of the occupiers of adjoining commercial and residential units'.

Whether harm would be caused to the character and appearance of the existing building, the street scene and the wider locality

The existing use of the property is a Class A1 use as a commercial coffee/eating shop at ground floor. The proposal seeks permission to change from Class A1 Use to mixed Classes A1 and A3 uses at ground floor with residential above.

The proposal does not fall within a primary or secondary retail frontage as designated with Barnet's Development Management Policies and as such Policy DM12 would be relevant as it refers to local shopping parades and isolated shops. Policy DM12 states that:

The council will protect all retail uses (Class A1) in the existing local centres, parades and isolated shops unless it can be demonstrated that:

- i. there will be no significant reduction of shopping facilities as a result; and
- ii. that alternative shopping facilities that are similarly accessible by walking, cycling or public transport exist to meet the needs of the area; and
- iii. the proposed use is within Class A2, A3, A4, A5 or meets an identified local need; and
- iv. there is no demand for continued Class A1 use, and that the site has been marketed effectively for such use.

A proposal that either creates an over concentration of Class A2, A3, A4 and A5 uses or has a significant adverse effect on the amenity of existing residents will be refused. Community uses will be expected to present an active frontage at ground floor and be able to demonstrate a similar weekday footfall to a Class A1 use. Proposals for residential use should not cause a break in a frontage.

The application submission does not provide any details or evidence in regards to the marketing of the property to demonstrate lack of demand for Class A1 use which is considered not to comply with Policy DM12.

The proposal seeks a part A1/ part A3 use. However, were such a permission to be granted, the Local Planning Authority would have no way to control the level of A3 activity and therefore to ensure that a significant A1 element is retained.

Although the proposal stated that the existing use (coffee and cold food shop) is to be maintained and have a small expansion on the menu to allow some hot food, the submitted information is not strong enough to demonstrate how to control/retain Class A1 use on this property.

The application is therefore considered to fail to comply with Policy DM12.

It is noted that planning permission was granted at No. 1 Sussex Ring for 'change of use from A1 use to A3 use (bakery). In recommending approval, the officer report notes 'at the time this application was submitted, the application site was vacant. The commercial side includes ten units, of which five are currently [At the time of the previous application] in A1 use'. The report explains that the proposal would not result in a reduction in shopping facilities as it would bring an empty unit previously occupied by a catering business back into use. On the basis of this information, it appears that No. 1 was granted planning permission on the basis that an empty unit would be brought back into use. Whilst described as an A1 use, it is not clear whether the previous use was A1 and in any case the development proposed at that time would not have resulted in the loss of an A1 use.

The proposal also includes the installation of an extractor vent to the rear elevation. The site includes residential properties above the retail unit. A Noise Report was submitted with the application and subsequently assessed by the Environmental Health department. The application was fully assessed in relation to noise and potential nuisance on the neighbouring amenities. The report was found to be acceptable and therefore no adverse impact is envisaged on the neighbouring amenities in relation to the proposed extractor flue. It is further considered that the submitted drawings along with the additional

information contain sufficient detail to fully assess the impact relating to this element of the proposed development.

5.4 Response to Public Consultation

No objections were received.

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 fail to accord with the requirements of the Development Plan and is therefore recommended for refusal.

