

**Location**                    **9 Edgwarebury Lane Edgware HA8 8LH**

**Reference:**                **17/5781/RCU**                    Received: 11th September 2017  
Accepted: 3rd October 2017

Ward:                         Edgware                                Expiry 28th November 2017

Applicant:                    Mr Doron Sharafian

Proposal:                    Change of use from Class A1 (Retail) to Class A3 (Restaurants and Cafes) RETROSPECTIVE APPLICATION

**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 applicant has failed to provide sufficient evidence to demonstrate that the former 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).
- 2 The change of use would further reduce the percentage of A1 uses within the Edgware Town Centre to the detriment of the vitality and viability of this area and is therefore contrary to Policy DM11 of the Development Management Policies DPD (2012).

**Informative(s):**

- 1 The plans accompanying this application are: 16023 01.01 RevA; 16023 01.02 RevA; supporting statement from Emma of cafe armoma dated 21st November 2017.

- 2 In accordance with paragraphs 186-187, 188-195 and 196-198 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.

## Officer's Assessment

### 1. Site Description

The application site is located at 9 Edgwarebury Lane, Edgware, HA8 8LH. This site is currently being used as a café under the name Café Arome. The unit is a mid terrace property located within the secondary retail frontage of Edgware.

### 2. Site History

Reference: 15/03877/192

Address: 9 Edgwarebury Lane, Edgware, HA8 8LH

Decision: Unlawful

Decision Date: 18 August 2015

Description: Change of use from A1(Shops) to A3(Cafe)

Reference: 15/05999/FUL

Address: 9 Edgwarebury Lane, Edgware, HA8 8LH

Decision: Refused

Decision Date: 18 November 2015

Description: Change of use from class A1 retail to A3 restaurant/cafe use together with retention of a new shop front, extraction fans and external seating arrangement (Retrospective application)

Reasons for refusal:

*The applicant has failed to provide sufficient evidence to demonstrate that the former 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).*

*The change of use would further reduce the percentage of A1 uses within the Edgware Town Centre to the detriment of the vitality and viability of this area and is therefore contrary to Policy DM11 of the Development Management Policies DPD (2012).*

Appeal dismissed - 16/06/2016

In considering the development within the appeal decision, the Inspector stated that the proportion of A1 (retail) units within the secondary frontage was less than 62%. He acknowledged that the previous travel agent was unviable, but this did not mean that any other occupier in A1 use would not be unviable following effective marketing. On this basis there was a conflict with policy DM11. Furthermore, the Inspector determined that as there was no marketing it was not possible to determine that there was no demand for this use in the town centre. Hence there was also a conflict with policy DM12.

In paragraph 10 of the appeal decision, the Inspector also acknowledges that the restaurant would meet the demands of a sizeable Jewish community in that it serves kosher food contributing to the viability and vibrancy of the area and the local economy. In doing so, it would be possible that the proposed development contributes to the local economy. However, the appeal statement from the appellant also made reference to the special circumstances of a premises that would be a 'milky café' which is of scarcity

locally. However, this was accounted for by the Inspector who found that these special circumstances would not be sufficient to overcome the conflict with the relevant policies.

7 and 9 Edgwarebury Lane HA8 8LH

16/7837/FUL - Change of use to no 7 from A5 to A1 and the change of use of no 9 to A3/A5 - refused 08/11/2017

Reason for refusal:

The proposed development does not include a formal undertaking to secure the change of use of both units. In the absence of such an agreement the use is not considered to retain 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) contrary to Policy CS15 of the Local Plan Core Strategy (adopted September 2012), and the Planning Obligations SPD (adopted April 2013).

### **3. Proposal**

The application relates to the change of use from Class A1 (Retail) to Class A3 (Restaurants and Cafes) RETROSPECTIVE APPLICATION

### **4. Public Consultation**

Consultation letters were sent to 101 neighbouring properties.  
1 response has been received, comprising 1 letter of objection.

The objections received can be summarised as follows:

- No adequate provision has been made for refuse generated from the unit.
- Conditions have been imposed on applications for refuse but the problem has not been resolved.
- Reduction of car parking space and reduced provision for rubbish storage and collection.
- Flytipping on the public footway/service road.
- Existing problems are likely to worsen.

### **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 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 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.

#### The Mayor's London Plan 2017 (DRAFT)

'Whilst capable of being a material consideration, at this early stage very limited weight should be attached to the Draft London Plan. Although this weight will increase as the Draft London Plan progresses to examination stage and beyond, applications should continue to be determined in accordance with the 2016 London Plan.'

#### 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, 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.

#### Supplementary Planning Documents

Sustainable Design and Construction SPD (adopted October 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 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

Planning permission has previously been refused at the site for the change of use to a restaurant for the following reasons.

*The applicant has failed to provide sufficient evidence to demonstrate that the former 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).*

*The change of use would further reduce the percentage of A1 uses within the Edgware Town Centre to the detriment of the vitality and viability of this area and is therefore contrary to Policy DM11 of the Development Management Policies DPD (2012).*

Since the previous refusal and subsequent dismissal at appeal the applicant has submitted a further application with supporting statement to justify the use of the unit as a restaurant/cafe. The particular cafe which is currently in operation is a dairy only Kosher restaurant to serve the local Jewish community. The applicant's statement says:

*According to Jewish law milk-based food has to be kept strictly separate from meat-based food. Therefore there are two distinct types of meal which all religious Jews have to observe and keep separate. That also applies to the designation of two different types of restaurant - "milky" ones and "meaty" ones.*

*Café Arome is unique as it is the only milky restaurant which holds a kosher certificate under the supervision of Rabbi E Schneebalg. This is of utmost importance as Rabbi Schneebalg is not only one of the leading Rabbis of the Edgware community, but provides a kosher certificate which is accepted by all Jewish communities including the strictly orthodox members of Edgware and beyond. Such members of the community simply did not eat outside of their homes for years but now do eat in our milky establishment due to the kosher certificate it holds. Café Arome obviously fills this void in the community.*

The context of the restaurant is that it will serve a sizeable Jewish community. Whilst this is taken into account it is not considered that this benefit to the local community would not outweigh the development plan conflict that has been identified.

In determining the previous appeal the inspector noted.

*Policy CS6 of the Barnet's Local Plan Core Strategy 2012 promotes the successful and vibrant centres to serve the needs of residents, workers and visitors and ensure that new development is of an appropriate scale and character for the centre in which it is located. The policy also requires food, drink and entertainment to be part of a healthy evening economy. Policy 4.8 of the London Plan 2011 (Alterations 2013, 2015 & 2016) supports a successful, competitive and diverse retail sector which promotes sustainable access to goods and services.*

*In this regard, the restaurant provides a new restaurant use, particularly meeting the demands of a sizeable Jewish community in that it serves kosher food contributing to the viability and vibrancy of the area, including its local economy. For these reasons, it is*

*argued that these development plan policies support the scheme. However, there is a conflict with Policies DM11 and DM12 of the DMP which consider the impact of loss of retail uses on the viability and vibrancy of the shopping area. By virtue of this and these policies specific relevance, I attach substantial weight to the proposal's conflict with these policies. For this reason, looking at the scheme in the round, the change of use is contrary to the development plan.*

The proposal does not comply with policies DM11 and DM12 of the development management plan policies in terms of the loss of an A1 unit in a secondary retail frontage, in these specific circumstances it is considered that there are other material considerations that should be taken into account when assessing the application and would it is acknowledged bring a benefit to the local and wider Jewish community. Whilst further information has been provided since the original application which sets out the business nature of the restaurant this does not include any form of marketing information to demonstrate that there is no demand for the unit as A1 retail use.

The previous application was refused on the basis that the combined proportion of Class A1 retail units within the secondary retail frontage would fall below 65%. Since this application was submitted an update retail survey has been carried out to review any change in ownership use that would alter the percentages of retail and non-retail uses within the secondary frontage.

In considering whether the change of use would harm the viability or vitality of the town centre, development management policy DM11 need to be considered. Policy DM11 b(ii) states that development proposal which reduce the combined proportion of class A1 retail use at ground floor level (including vacant) in the secondary frontage below 65% will not be permitted. Policy DM11 also states that proposals should not create an over-concentration of similar uses which detract from the retail function of the town centre. Further, Policy DM11 b(iii) states that changes from a retail use (Class A1) will be strongly resisted unless it can be demonstrated that there is no viable demand for continued Class A1 use. When it can be demonstrated that the site has been marketed effectively for Class A1 use acceptable alternatives to Class A1 use will be Class A2, A3, A4, A5 or community uses.

An assessment has been undertaken of the proportion of use classes along the secondary shopping frontage in the Edgware town centre.

Class A1(including vacant) - 61.7% (76)

Class A2 - 10.6% (13)

Class A3 - 16.3% (20)

Class A4 - 0.8% (1)

Class A5 - 5% (6)

Class B1 - 3.3% (4)

Class B2 - 0.8% (1)

Class ASG- 1.6% (2)

These calculations indicate that currently 61.7% of the units within the secondary retail frontage are in retail use (including vacant units) and 38.3% of units are in non-retail use. As such, the existing number of Class A1 units in this area does not meet the minimum level required under Policy DM11. The subject unit changing use from Class A1 to Class A3 would worsen the status quo in this instance, and as such is not considered an acceptable change of use when taking into account the vitality or viability of the Edgware town centre.

An updated retail survey has been carried out as of 2017/2018 to account for any change in use that has occurred in the time between the previous application and the current application. The latest retail survey of the secondary frontage reveals that the total number of retail and vacant units remains at 76 of the total secondary retail frontage. Therefore, no changes of use of pre-existing non-retail units to retail use have occurred since the previous application and therefore the retail offering remains the same and below the required threshold of 65%. It is therefore considered, that any loss of retail would be harmful to the viability and vitality of the retail frontage and would result in a further percentage reduction from the necessary standard.

#### Impact on the amenities of neighbours

There are residential uses above the premises, however, the application site is located within a busy town centre location and the use itself would be typical of that within a town centre.

In regards to noise and disturbance it is considered that appropriate conditions for details of the kitchen equipment including extraction flue. Although, the equipment is already operational it is considered that mitigation measures can be implemented retrospectively if required following the results of the reports in relation to the noise and odour generated by the equipment. Sound insulation is also recommended to protect the residential properties above.

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

A condition has been imposed on the application for details of the refuse storage. The issues in regards to rubbish being left on the service road is a wider issue and is not directly as a result of the restaurant use.

#### **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.



