

Location 792 Finchley Road London NW11 7TJ

Reference: 21/1623/FUL Received: 24th March 2021
Accepted: 26th March 2021

Ward: Golders Green Expiry 21st May 2021

Case Officer: Emily Bell

Applicant: N. Mizrachi

Proposal: Change of use from Retail to Cafe, with external seating. New extraction system with ventilation grille to rear window

OFFICER'S RECOMMENDATION

Approve subject to conditions

AND the Committee grants delegated authority to the Service Director – Planning and Building Control 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 Chair (or in their absence the Vice-Chair) of the Committee (who may request that such alterations, additions or deletions be first approved by the Committee)

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

2113-NMA-00-ZZ-DR-B-00001 Rev P1: Location Plan
2113-NMA-00-ZZ-DR-B-00005 Rev P1: Block Plan
2113-NMA-00-ZZ-DR-B-00010 Rev P2: Existing Arrangement
2113-NMA-00-ZZ-PH-B-00700 Rev P1: Existing Shopfront
2113-NMA-00-ZZ-DR-A-00010 Rev P5: Proposed Arrangement
2113-NMA-00-ZZ-DR-A-00011 Rev P2: Proposed External Seating Area
Design and Access Statement
Heritage Statement
NWV_1 GFR: Kitchen Vent Proposal
HA Acoustics: Noise Impact Assessment
EMAQ Odour Assessment

Nationwide Ventilation: INTROzone

Sound Insulation Test and Noise Impact Assessment REF HA/AD195-2/V1.2 April 2022

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 materials to be used in the external surfaces of the building(s) shall match those used in the existing building(s).

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).

- 4 a) The development shall be implemented in accordance with the details of extraction and ventilation as submitted and approved in the application.

b) The mitigation measures in respect of noise, vibration and odour shall be fully implemented in their entirety prior to the commencement of the use/first occupation of the development and retained as such thereafter.

Reason: To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring properties in accordance with Policy DM04 of the Development Management Policies DPD (adopted September 2012), the Sustainable Design and Construction SPD (adopted April 2013) and Policy 7.15 of the London Plan 2015.

- 5 No construction work resulting from the planning permission shall be carried out on the premises at any time on Sundays, Bank or Public Holidays, before 8.00 am or after 1.00 pm on Saturdays, or before 8.00 am or after 6.00pm pm on other days.

Reason: To ensure that the proposed development does not prejudice the amenities of occupiers of adjoining residential properties in accordance with policy DM04 of the Development Management Policies DPD (adopted September 2012).

- 6 The outside seating area hereby permitted shall be limited to the area shown on drawing no. 2113-NMA-00-ZZ-DR-A-00011 Rev P2 and shall not be open to members of the public before 9am or after 9pm on any day.

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

- 7 The level of noise emitted from the extraction and ventilation plant hereby approved 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.

- 8 The use hereby permitted shall not be open to members of the public before 9am or after 11pm on weekdays and Saturdays or before 9am or after 11pm on Sundays and Bank and Public Holidays, no food shall be available for delivery outside of these times.

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

- 9 No deliveries shall be taken at or dispatched from the site on any Sunday, Bank or Public Holiday or before 9am or after 9p.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.

- 10 a) The development shall be implemented in accordance with the measures set out within the Sound Insulation Test and Noise Impact Assessment REF HA/AD195-2/V1.2 April 2022 including the installation of the suspended ceiling.

b) The mitigation measures shall be implemented in their entirety prior to the commencement of the use or first occupation of the development and retained as such thereafter.

Reason: To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring residential properties in accordance with Policies DM04 of the Development Management Policies DPD (adopted September 2012), the Sustainable Design and Construction SPD (2016), and Policies D13 and D14 of the London Plan 2021.

- 11 Before the development commences details of the suspended ceiling and how it will be installed shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In order to safeguard the special architectural or historic interest of the Listed Building in accordance with Policy DM06 of the Development Management Policies DPD (adopted September 2012) and CS NPPF of the Local Plan Core

Strategy (adopted September 2012).

Informative(s):

- 1 In accordance with paragraphs 38-57 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. A pre-application advice service is also offered and the Applicant engaged with this prior to the submissions of this application. 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 permission of the New Hampstead Garden Suburb Trust Ltd may also be necessary and this can be obtained from: The Trust Manager, The New Hampstead Garden Trust Ltd, 862 Finchley Road, London NW11 6AB (Telephone 020 8455 1066). See <http://www.hgstrust.org/> for more information.
- 3 The developer is required apply to the Highway Authority for a Projection Licence under Highways Act 1980 for any overhanging over the public highway. The overhang must be a minimum height of 2.7 metres above the footway and 4.1 metres above the carriageway.
- 4 The flue must be installed with anti-vibration mounts.

OFFICER'S ASSESSMENT

The application was considered by Planning Committee C on 11/10/2021 and was deferred in order to give the applicant an opportunity to assess and mitigate against noise

and disturbance from the future use of the building as a cafe. It was noted that the assessment should include the potential impact on upper floor residential occupiers. The applicant submitted 'Sound Insulation Test and Noise Impact Assessment REF HA/AD195-2/V1.2 April 2022'. The council's Environmental Health officers were satisfied with the findings of the report. The majority of the system is internal and therefore vibration/noise transfer is likely to occur through the ceiling of the café. As per the recommendation of the noise assessment, a new suspended ceiling has been indicated on the proposed plans (2113-NMA-00-ZZ-DR-A-00010 Rev P5).

1. Site Description

The application site is part of a group of terraced properties known as Arcade House. It comprises of 2 storeys with accommodation within the roof, flanked on either side by three storey front gabled projections. It is located on the north eastern side of Finchley Road within the Garden Suburb and forms part of a Primary Retail Frontage, which provides a range of commercial services and uses including retail and financial services.

Arcade House is a grade II statutory listed building with retail units at ground floor and flatted units above. This application relates to the ground floor commercial unit.

The site is also located within the Hampstead Garden Suburb Conservation Area and is subject to an Article 4 Direction.

The adopted Conservation Area Character Appraisal notes;

"The oldest part of Hampstead Garden Suburb embodies the social and aesthetic visions of its progenitors. It has a wide variety of housing, maisonettes, small and large cottages, and social housing. There are public buildings and recreational facilities serving the Suburb as a whole. Aesthetically, it is an early expression of Unwin's planning ideas and his belief that excellence in architectural design could be applied to cottages and major buildings alike.

The road layout exploits the gently undulating land; there are curved roads, views from the rise of the low slopes, intimate closes linked by twittens and careful treatments of corners so that vistas are closed with attractive focal buildings. The ambiance is village-like, with small greens, allotments and tennis courts provided for relaxation. The retention of boundary oak trees from the pre-existing field boundaries, together with the street trees, hedges and the generous gardens, make a lush green setting for the houses. Where roads are too narrow for street trees, trees in front garden take on an increased importance.

To the south, the grade II-listed Arcade House and Temple Fortune House mark the entrance to the Suburb from Finchley Road. The design is heavily influenced by the fortified town of Rothenberg in Bavaria and skilfully brings together shops and flats into buildings that make a dramatic statement about the entry into a designed environment.

Temple Fortune House and Arcade House are important architectural statements contributing to the character of the area. The sense of a planned streetscape does not continue after these buildings. Moving northwards the developments are varied: the Art Deco influenced style of the M&S store; blocks of NeoGeorgian flats; Birnbeck Court; a modern sheltered housing complex, consciously designed to use materials and detailing commonly found in the Suburb; and, more exotically, the green tiled 'Pantiles'. Individually, these are all interesting buildings which address the scale of the street, being of a similar height and mass, but they do not relate to each other to create any particular effect. In this central section the pavements are very wide, even where parking bays encroach onto the

paved area. There are no street trees until after the junction with Willifield Way, so the general feel on the eastern side of the road is very open, even somewhat bare."

2. Site History

Nil.

3. Proposal

This application seeks consent for the change of use from Retail to Cafe, with external seating. New extraction system with ventilation grille to rear window.

Additional odour control and acoustic details were submitted during the course of the application.

The proposed hours of use are;

Monday to Thursday: 9am to 11pm

Friday: 9am to 2pm (Nov - March) and 9am to 4pm (April - October)

Saturday: Closed

Sunday: 9am to 11pm

4. Public Consultation

Site notice: 06/04/2021

Press notice: 08/04/2021

133 consultation letters were sent to neighbouring properties.

13 letters of objection have been received.

The views of objectors can be summarised as follows;

- Noise disturbance
- Fumes and odour from cooking
- Disruption from deliveries
- Out of character with Conservation Area
- Hours of opening
- Enough food establishments on Finchley Road
- Increased fire risk
- Littering
- Loss of privacy
- Construction noise
- Increases in traffic
- Congestion
- Lack of parking
- Increased rubbish
- Potential for rats
- Impact on young children
- Passages blocked for residents at Arcade House
- Moped delivery people hanging about outside
- No marketing information submitted
- Where will pick up orders wait / park
- Noise and odour information submitted insufficient
- Users of garden at Temple Fortune House have suffered since A3 premises opened, how will this be prevented here.

Other / internal consultations:

Highways: No objection subject to suggested informative. The outdoor seating is on the private property frontage.

Environmental Health: No objection subject to suggested conditions and informatives, following additional acceptable information on odour control measures

The Hampstead Garden Suburb Trust have granted Provisional Consent for the proposals.

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 updated in 2021. 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 2021

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.

The new London Plan which sets out the Mayor's overarching strategic planning framework from 2019 up to 2041 was adopted in March 2021, replacing the London Plan 2016.

Barnet's Local Plan (2012)

Barnet's Draft Local Plan on 26th November 2021 was submitted to the Planning Inspectorate for independent examination which will be carried out on behalf of the Secretary of State for the Department of Levelling Up, Housing and Communities. This is

in accordance with Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

The Regulation 22 Local Plan sets out the Council's draft planning policy framework together with draft development proposals for 65 sites. The Local Plan 2012 remains the statutory development plan for Barnet until such stage as the replacement plan is adopted and as such applications should continue to be determined in accordance with the 2012 Local Plan, while noting that account needs to be taken of the policies and site proposals in the draft Local Plan and the stage that it has reached.

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, DM06, DM11.

Supplementary Planning Documents

Sustainable Design and Construction SPD (2016)

Hampstead Garden Suburb Conservation Area Character Appraisal and Design Guidance (2010)

The Council Guide 'Hampstead Garden Suburb Conservation Area Design Guidance' as part of the Hampstead Garden Suburb Character Appraisals was approved by the Planning and Environment Committee (The Local Planning Authority) in October 2010. This leaflet in the form of supplementary planning guidance (SPG) sets out information for applicants on repairs, alterations and extensions to properties and works to trees and gardens. It has been produced jointly by the Hampstead Garden Suburb Trust and Barnet Council. This leaflet was the subject of separate public consultation.

5.2 Main issues for consideration

The main issues for consideration in this case are:

- Principle of the change of use
- Whether the alterations would be a visually obtrusive form of development which would detract from the character and appearance of the individual Listed building, street scene and this part of the Hampstead Garden Suburb Conservation Area.
- Whether harm would be caused to the living conditions of neighbouring residents;
- Whether harm would be caused to trees of special amenity value.

5.3 Assessment of Proposals

Hampstead Garden Suburb is one of the best examples of town planning and domestic architecture on a large neighbourhood or community scale which Britain has produced in the last century. The value of the Suburb has been recognised by its inclusion in the Greater London Development Plan, and subsequently in the Unitary Development Plan, as an 'Area of Special Character of Metropolitan Importance'. The Secretary of State for the Environment endorsed the importance of the Suburb by approving an Article 4 Direction covering the whole area. The Borough of Barnet designated the Suburb as a Conservation Area in 1968 and continues to bring forward measures which seek to preserve or enhance the character or appearance of the Conservation Area.

The ethos of the original founder was maintained in that the whole area was designed as a complete composition. The Garden City concept was in this matter continued and the

architects endeavoured to fulfil the criteria of using the best of architectural design and materials of that time. This point is emphasised by the various style of building, both houses and flats, in this part of the Suburb which is a 'who's who' of the best architects of the period and consequently, a history of domestic architecture of the period of 1900 - 1939.

The choice of individual design elements was carefully made, reflecting the architectural period of the particular building. Each property was designed as a complete composition and design elements, such as windows, were selected appropriate to the property. The Hampstead Garden Suburb, throughout, has continuity in design of doors and windows with strong linking features, giving the development an architectural form and harmony. It is considered that a disruption of this harmony would be clearly detrimental to the special character and appearance of the Conservation Area. The front of the properties being considered of equal importance as the rear elevation, by the original architects, forms an integral part of the whole concept.

Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 states that 'In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.'

It is one of the core principles of the NPPF that heritage assets should be conserved in a manner appropriate to their significance. Chapter 16 of the National Planning Policy Framework sets out that the local planning authority should identify and assess the particular significance of any heritage asset...They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

In line with the Planning (Listed Building and Conservation Area) Act 1990 special regard is given to preserving the heritage asset. In this instance, it is considered that there is no harm associated with the proposal to the heritage asset and is therefore acceptable having regard to the provisions of Policy DM06 of the Development Management Policies and Section 16, 72 of the Planning (Listed Building and Conservation Areas) Act 1990. Accordingly, it is recommended that planning permission should be granted.

This application seeks consent for the change of use to cafe and minor alterations (including signage and external seating) to the existing retail unit within the host Grade II listed building.

Principle of the change of use

The unit is currently a Retail Shop, that used to formerly sell clothing and is currently vacant.

Use Class E of the Use Classes Order 1987 (as amended) was introduced on 1st September 2020 and covers the former use classes of A1 (shops), A2 (financial and professional), A3 (restaurants and cafes) as well as parts of D1 (non-residential institutions) and D2 (assembly and leisure) and puts them all into one new use class E.

The Use Classes Order specifies classes for the purposes of section 55(2)(f) of the Town and Country Planning Act 1990, which provides that a change of use of a building or other

land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class. It is noted that both the existing use A1 and proposed use A3 would fall under the new governing use class E. Under the new use class order the proposal would not constitute development and therefore such a change would not require the express approval of the LPA.

Taking into consideration all of the above, it is considered that the proposed change of use from former A1 to A3 would not have any detrimental impact to the viability and vibrancy of Temple Fortune shopping parade and is of a typical and appropriate use found within a shopping parade. Furthermore, such a change would be supported by recent changes to the Use Class Order.

Impact on the character of the Listed Building and wider Conservation Area

External works

The external works proposed include the removal of the previous tenants lighting and awning from the front of the site; the existing shopfront will be repaired & redecorated.

New signage is proposed to the recessed area above the front door. A separate advert application for this element of the proposals will be required.

Vinyl window advertisements will be applied internally to both sides of the front windows advertising the premises, as this is not on the outside of the building and can be easily removed it does not require formal advertisement consent.

A row of external seating for 10 customers is proposed to the front of the unit, positioned 1.8m away from the existing shopfront and lining up with the existing front projection of Arcade House. Adjacent to the external pillars on the front of the site containers for refuse and recycling will be kept during business hours. All equipment will be monitored and maintained during opening hours and taken in at the end of each day.

At the rear of the site, it is proposed to install a new vent through the existing sash window. The vent will serve the internal extraction and ventilation system, which has been reviewed and assessed by the Council's Environmental Health department, who raised no objection to the details.

The external proposals to the listed building are minor in their nature, and not considered to be harmful to either the character and appearance of the host listed building, nor detrimental to the special of the Hampstead Garden Suburb Conservation Area in this town centre location.

Internal works

Internally the main area to remain as existing; the unit will be redecorated, and redundant services removed.

A new accessible WC & baby change unit will be provided with drainage connected to existing drainage in basement and non-slip vinyl flooring laid over the existing floor covering and coved skirtings. This is considered to be acceptable and could be removed for future occupiers.

At the rear of the unit within the preparation area, an extract system is proposed to be

installed to a specialist supplier's design. The details of the noise and odour mitigation have been assessed by the Council's Environmental Health department who, subject to the additional information provided, are satisfied that the measures to reduce noise and odours.

All the back of house prep / storage / wc areas to be re-finished to Food Standards Agency & Council requirements.

The internal proposals are not considered to harm the character and appearance of the host Grade II Statutory listed building. Details of the suspended ceiling and how it will be installed are to be conditioned to ensure no harm to the historic fabric of the building.

Impact on the amenity of neighbouring occupiers

The modest external and internal alterations to the listed building are not considered to give rise to any loss of amenity to neighbouring occupiers.

In terms of the impact on neighbours from noise from the proposed ventilation and odour system, as detailed above, the Council's Environmental Health department has both assessed the initially submitted noise details and the subsequent odour details and raises no objection to the development on these grounds. Following the consideration by Planning Committee C, further noise assessment was carried out. A new suspended ceiling is proposed to minimise internal noise transfer.

The proposed hours of use reflect religious observance of the Jewish faith and therefore close early on Fridays and do not open at all on Saturday's. This is similar to other premises along the High Street. Other uses such as convenience shops or restaurants could be open with similar hours so this element of the proposals is not considered to give rise to any greater impact on the amenity of neighbouring occupiers in terms of noise and disturbance compared to other uses. Given the presence of flats above the shops, it is considered appropriate to limit the use of the outside seating area to no later than 9pm.

Impact on trees

The proposals which are to a commercial unit on the High Street and away from any vegetation will not have a detrimental impact on the health of trees.

5.4 Response to Public Consultation

The concerns raised by objectors are noted.

Any potential noise disturbance and fumes or odour from cooking are mitigated through the introduction of the internal extract and ventilation system which has been reviewed by the Council's Environmental Health department, who raise no objection to the proposals on these grounds.

It is expected that there will be some noise from deliveries, but this would be the same for any business operating on site and not specific to the proposed use.

It is not considered that the proposals are out of character with the Conservation Area; this part of the CA is part of the High Street where commercial and business premises are expected.

The proposed hours of opening are similar to other food premises along Finchley Road and could be opened for similar times if were another use within Class E.

The point raised that there are enough food establishments on Finchley Road is noted but for the reasons given above the application is considered acceptable within the current Use Class Order and the development will not harm the vitality of this part of Finchley Road.

It is not considered that the proposals give rise to any increased fire risk.

The proposals are not considered to give rise to a loss of privacy to the occupiers of the residential units on the upper floors of the building. Access into the unit is kept to the front of the site which is part of the town centre, it is not expected that customers will be accessing the residential parts of the building.

Noise from construction is expected when a premises is taken over by new occupiers. A condition specifying the hours of construction is applied to this permission.

The proposed development has been reviewed by the Council's Highways department who raise no objection to the proposals; it is not expected that the proposed development would result in significant increases to traffic or congestion in the locality. Whilst the immediate roads are subject to a CPZ, there are roads without a CPZ within walking distance and therefore it is not considered that there is a lack of parking in the surrounding area.

Concerns related to increased rubbish and the potential for rats are noted. The new premises will have bins monitored and maintained for the external seating which will be put away at the end of the day. Two bin store areas are provided within the private service road to the rear of the unit. Waste & recycling bins will be located in those areas until removed by a private waste contractor.

The proposed development is not considered to have a detrimental impact on young children.

The existing passages should not be blocked for residents at Arcade House as a result of the development.

It is now more common to see moped delivery people hanging about outside various premises which offer some sort of delivery feature. However, the presence of delivery drivers is not a material planning consideration in this case. Use of the premises as a takeaway facility would normally require planning permission.

In this instance no marketing information was required to be submitted with this application due to the change to the use Class Order in 2020 which allowed for the proposed change of use as proposed.

The comments made that the noise and odour information submitted is insufficient is noted. Additional information to address odour was submitted during the course of the application and the Council's Environmental Health department consider the development will not impact the neighbours in terms of odour.

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 support the Council in meeting its statutory equality responsibilities.

7. Conclusion

Having taken all material considerations into account, the proposed alterations would not detrimentally impact on the qualities of statutory listed application property, or group of which it forms part, as well as protecting the character of this part of the Hampstead Garden Suburb Conservation Area. The proposed alterations are such that, as conditioned, they preserve the amenities of the occupiers of the neighbouring properties and the character and appearance of the individual site, street scene, conservation area, and area of special character.

