

Location **259 West Hendon Broadway London NW9 7DJ**

Reference: **22/2697/RCU** Received: 20th May 2022
Accepted: 22nd June 2022

Ward: West Hendon Expiry: 17th August 2022

Case Officer: **Zakera Matin**

Applicant: Mr Sayed Ahmad Tabatabaei

Proposal: Sub-division of shop to form new takeaway (Sui Generis); Single storey rear infill extension; Removal of external seating area to rear; External flue. (RETROSPECTIVE APPLICATION)

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:

001, 002, 003, 004, 005, 006
Noise Impact Assessment: VA4373.220922.NIA
Odour Assessment: VA4373.220923.DOA
Odour Control (High Level of Odour Control)
Specification for Aylesbury Site: REF Extraction Canopy

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 The roof of the extension hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.

Reason: To ensure that the amenities of the occupiers of adjoining properties are not prejudiced by overlooking in accordance with policy DM01 of the Development Management Policies DPD (adopted September 2012).

- 5 The premises shall only be open for customers between the following hours:

0800 - 2100 Mondays - Sundays.

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 the London Plan 2021.

- 6 a) Notwithstanding the approved plans, 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 the use is first commenced and retained as such thereafter.

Reason: To ensure that the amenities of the neighbouring occupiers are not prejudiced by odour and smoke in accordance with policies DM01 of the Development Management Policies DPD (adopted September 2012), Policy CS14 of the Local Plan Core Strategy (adopted 2012) and Policies D13 and D14 of the London Plan 2021.

- 7 The ventilation and extraction plant shall be implemented in full accordance with approved document Specification for Aylesbury Site: REF Extraction Canopy and permanently retained as such

Reason: To ensure that the amenities of the neighbouring occupiers are not prejudiced by noise and vibration in accordance with Policies DM01 and DM04 of the Development Management Policies DPD (adopted September 2012), Policy CS14 of the Local Plan Core Strategy (adopted 2012) and Policies D13 and D14 of the London Plan (2021)

- 8 The rear garden shall not be used at any time as an amenity or sitting out area serving the take way.

Reason: To ensure that the amenities of the occupiers of adjoining properties are not prejudiced by overlooking in accordance with policy DM01 of the Development Management Policies DPD (adopted September 2012).

- 9 The existing unauthorised structure providing a seating area in the rear garden shall be demolished and the constituent materials permanently removed from the premises within three months of the date of this approval

In the event that the seating area is not removed within three months, the use hereby approved shall be ceased within one further month.

Reason: To safeguard the character and appearance of the host property and surrounding area and ensure that the amenities of the occupiers of adjoining properties are not prejudiced, in accordance with Policies DM01 and DM04 of the Development Management Policies DPD (adopted September 2012) and Policies D3 and D14 of the London Plan 2021.

- 10 a) Before the development hereby permitted is first brought into use, details of facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority.

b) The development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.

Reason: To ensure a satisfactory appearance for the development and satisfactory accessibility; and to protect the amenities of the area in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012); CS14 of the Adopted Barnet Core Strategy DPD (2012); and Policies D6 and SI7 of the London Plan 2021.

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. 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.

OFFICER'S ASSESSMENT

1. Site Description

The site relates to a three storey end of terraced property at 259 West Hendon Broadway which features shop at ground floor and residential accommodation upstairs. There is existing single storey structure comprising sitting area in the rear garden which would be removed.

Residential properties at Nos 5 and 6 Ramsey Close are located at the rear of the site. There is vacant land on south. No.261 West Hendon Broadway - a mid-terraced property - is sited to the north of the site.

The street is commercial in nature with mixed use. The site is not located in conservation

area and the building is not listed.

2. Site History

Reference: ENF/1385/21

Nature: Erection of a ground floor rear extension and external seating area without planning permission

Decision: Under consideration

3. Proposal

Sub-division of shop to form new takeaway (sui generis). Single storey rear infill extension, Removal of external seating area to rear. External flue. (RETROSPECTIVE APPLICATION)

The rear infill extension has a depth of 1.7m and sited between existing single storey rear projections. It has a width of 7.5m. It features a flat roof with 2.8m maximum height. The rear elevation features 2 windows and a door in the middle.

The rear elevation features a flue extract.

The single storey structure comprising sitting area in the rear garden would be removed.

4. Public Consultation

Consultation letters were sent to 77 neighbouring properties.

6 objections received as below:

- The construction materials are a probable risk of fire
- Impact on sewage
- Objection on the rear sitting area, which is detrimental to neighbouring amenity
- Amenity impact of the external flue to neighbouring and upstairs residents
- No emergency access from the rear of the building
- Concern regarding waste
- Noise and disturbance for neighbours

5. Planning Considerations

5.1 Policy Context

Revised 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 revised National Planning Policy Framework (NPPF) was published in July 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, creates better places in which to live and work and helps make development acceptable to communities.... being clear about design expectations, and how these will be tested, is essential for achieving this'. 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 new London Plan which sets out the Mayor's overarching strategic planning framework for the next 20 to 25 years was adopted on the 2nd March 2021 and supersedes the previous Plan. 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. 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.

Barnet's Draft Local Plan 2021

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 2021 (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.

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:

- Principle of the development
- 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

During the course of the application, the proposal has been amended by removing the single storey structure with rear sitting area, increasing the height of the flue and additional specifications.

Principle of the development

It has been proposed to sub-divide existing shop to form new takeaway pizza outlet and keep half of the shop as existing shop. The subdivided pizza shop would feature a kitchen and external flue at rear. The single storey structure with outdoor sitting area would be removed.

It is noted that the site is located along a commercial street which features retail and other commercial use at ground floor and residential use and office use at upstairs.

The site is not located within a Primary Retail Frontage.

Policy DM12 states that,

The council will protect existing local centres, parades and isolated shops unless it can be demonstrated that:

- there will be no significant reduction of shopping facilities as a result; and
- that alternative facilities that are similarly accessible by walking, cycling or public transport exist to meet the needs of the area.

The current use falls under use class E, "for the display or retail sale of goods, other than hot food, principally to visiting members of the public."

The proposal would result in a net loss of Class E floorspace, however it would not reduce the number of viable Class E premises as such. The proposal would not result in a significant reduction in shopping facilities, as the site is in close proximity to alternative shopping facilities and the proposed use falls within the former Class A5 - sui generis under the 2020 Amendment to the Use Classes Order. As such, it is considered that the proposal would comply with Policy DM12.

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

Policy CS5 Protecting and enhancing Barnet's character to create high quality places' seeks to ensure that development in Barnet respects local context and distinctive local character creating places and buildings of high quality design. Policy DM01 states that development proposals should be based on an understanding of local characteristics. Proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.

The proposed take away pizza shop would be located in an existing subdivided shop in a commercial street and not considered to be detrimental to the character of the area and street.

The proposal includes a rear infill extension which has a depth of 1.7m and is sited between existing single storey rear projections. It has a width of 7.5m. It features a flat roof with 2.8m maximum height. The rear elevation features 2no windows and a door in the middle. The material would match the existing. This element is considered to be a modest and proportionate extension at the rear and would respect the character of the building and the area.

The rear elevation features a flue extract. The proposed external flue would not be visible from the street and is not atypical of commercial premises elsewhere on West Hendon Broadway. The top of the extract would be 1.5m above the eaves of the building. The principle of the kitchen extract system is considered to be acceptable, and installation would be satisfactorily achieved with limited impact to the character and appearance of the application site, street scene and wider area.

The single storey structure with siting area in the rear garden would be removed and the use by customers restricted by way of condition.

Overall, the proposal is not considered to have any detrimental impact on the character of the area and street scene.

Whether harm would be caused to the living conditions of neighbouring residents

Policy DM01 states that, Development proposals should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users.

It further mentions that, "Schemes which significantly harm the amenity of neighbouring occupiers will be refused planning permission. Protecting amenity helps to protect the wellbeing of the boroughs residents."

The proposed single storey rear extension would be an infill extension at the rear and would not extend beyond the existing side projections. Because of the modest depth of 1.7m and maximum height of 2.8 with flat roof, this element of the proposal is not considered to have any detrimental impact on neighbouring amenity.

The existing ground floor is currently used as shop. The proposed subdivision to provide a take away pizza shop at this location which is commercial in nature and situated on a busy thoroughfare, is not considered to cause unacceptable additional noise and disturbance for residential occupiers above the shop and at the rear - in particular with the use of the rear

amenity area restricted by way of condition.

The proposal includes a kitchen flue and extract at the rear. The Environmental Health officer has been consulted regarding the details of the kitchen extract and noise and odour impact. The officer assessed the submitted drawings and noise and odour report and requested amendment to increase the height of kitchen flue 1.5 m above the eaves of the building to mitigate any detrimental impact for neighbours.

The officer commented that the submitted odour assessment makes appropriate suggestions for mitigation regarding the level of risk identified. The applicant is requested to provide further odour abatement by way of condition in the event of an approval.

Subject to condition, it is considered that, the proposed extract system would not have any detrimental impact on the amenities of residential flats above in terms of noise, odour and outlook and would comply with Barnet Local plan.

5.4 Response to Public Consultation

- Outdoor siting area and structure would be removed
- The flue height amended to mitigate any detrimental impact on neighbouring occupiers.
- Impact on sewage is not a material planning consideration and would be dealt with at Building Control stage

6. Equality and Diversity Issues

The proposal does not conflict with either Barnet Council's Equalities Policy or the commitments set out 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 nearby occupiers. This application is therefore recommended for APPROVAL

