

**Location** Rear Of 32 Finchley Lane London NW4 1DL

**Reference:** 22/5352/FUL Received: 3rd November 2022  
Accepted: 3rd November 2022

Ward: Hendon Expiry 29th December 2022

**Case Officer:** Helen McGuinness

Applicant: Mr J Adler

Proposal: Retention of single storey building and use by a bereavement charity for Shemira and storage of Shiva furniture (Sui Generis) (AMENDED DESCRIPTION).

## **OFFICER'S RECOMMENDATION**

Refuse

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 sub-division of the curtilage and associated outbuilding, by reason of its scale, siting and extent, would result in an unduly dominant addition to the original host property and would fail to respect the pattern of surrounding buildings and spaces, to the detriment of the character and appearance of the host property and surrounding area, contrary to Policies S1 and D3 of the London Plan (2021), Policies CS1 and CS5 of the Local Plan Core Strategy DPD (2012), Policy DM01 of the Local Plan Development Management Policies DPD (2012) the Residential Design Guidance SPD (2016) and the Sustainable Design and Construction SPD (2016).
- 2 The use of the outbuilding as a separate unit, by reason of its discordant function and distribution of activity and associated noise and disturbance, would result in an incongruous and unsympathetic development that would fail to respect the established pattern of development, to the detriment of the character of the application site and surrounding area, contrary to Policies S1 and D14 of the London Plan (2021), Policies CS1 and CS5 of the Local Plan Core Strategy DPD (2012), Policies DM01, DM04 and DM13 of the Local Plan Development

Management Policies DPD (2012) and the Sustainable Design and Construction SPD (2016).

- 3 The outbuilding and its use as a separate unit, by reason of its scale, siting and extent, discordant function and distribution of activity, would result in an incongruous and unduly dominant addition to the original host property, harmful loss of private amenity space to No 32 and wider associated noise and disturbance, to the detriment of the residential amenities of neighbouring occupiers, contrary to Policies S1, D6 and D14 of the London Plan (2021), Policies CS1 and CS5 of the Local Plan Core Strategy DPD (2012), Policies DM01, DM02, DM04 and DM13 of the Local Plan Development Management Policies DPD (2012) the Residential Design Guidance SPD (2016) and the Sustainable Design and Construction SPD (2016).
  
- 4 The application, by reason of the constrained nature of the site and low PTAL rating, has provided insufficient information to assess the parking, delivery and operational needs of the use so as to demonstrate that the development would not prejudice the safe and efficient function of the network by reason of associated activity and potential for a heightened level of parking pressure and congestion, to the detriment of highway and pedestrian safety and the free-flow of traffic, contrary to Policies T4, T6 and T7 of the London Plan (2021), Policy CS9 of the Local Plan Core Strategy (2012) and Policy DM17 of the Local Plan Development Management Policies DPD (2012).

**Informative(s):**

- 1 The plans submitted with this application are as follows;

2153\_2-NMA-00-ZZ-DR-A-00200  
2153\_2-NMA-00-ZZ-DR-B-00200  
2153\_2-NMA-00-ZZ-DR- B-00100  
2153\_2-NMA-01-ZZ-DR--B-00100  
2153\_2-NMA-00-ZZ-DR-A-00201  
2153\_2-NMA-00-ZZ-DR-A-00100  
2153\_2-NMA-01-ZZ-DR-A-00100  
2153\_2-NMA-00-ZZ-DR-A-00001  
2153\_2-NMA-00-ZZ-DR-B-00010  
2153\_2-NMA-00-ZZ-DR-A-00010

- 2 In accordance with paragraphs 38-57 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. The LPA has discussed the proposal with the applicant/agent where necessary during the application process. Unfortunately the scheme is not considered to accord with the Development Plan. If the applicant wishes to submit a further application, the Council is willing to assist in identifying possible solutions through the pre-application advice service.

## **OFFICER'S ASSESSMENT**

The application was withdrawn from the May meeting of the committee for officers to seek clarification on the exact nature of the use and the development description.

Following this, a further re-consultation was carried out on 19<sup>th</sup> May. No additional comments were received.

This application has been called before the Committee by Cllr Joshua Conway for the following reason(s):

*“The proposal serves an unfortunate communal need and it is a low density use with minimal comings and goings.*

*The bulk of the building is in keeping with the surroundings garages and therefore the proposal is in keeping with the character of the area.*

*The public objections are all easily addressed with conditions.*

*As a Councillor, I unfortunately understand too well the desperate need for this.”*

### **1. Site Description**

The building to which the application relates occupies the rear section of the garden which has been sub divided and is inclusive of the adjoining storage structure and air-conditioning A/C unit. The development has created a new planning unit.

The building measures 7.1m x 6.5m and is a single storey structure on a concrete base and with a flat roof. Internally it is subdivided into a 2 large rooms (one labelled for storage) and a WC. The use is not connected to or ancillary to the residential occupation of No. 32 Finchley Lane.

The building is accessed from Aprey Gardens, where a number of detached garages are located and accessed.

The surrounding area mainly consists of residential use, however it is noted there are a number of commercial and office spaces along Finchley Lane.

The site does not contain any listed buildings and is not located within a Conservation Area.

The single storey building is currently in use by a bereavement charity for storage and for the purposes of Shemira. The use and creation of the structure were implemented in 2021.

## **2. Site History**

### Planning

Reference: 19/5987/FUL

Address: 32 Finchley Lane, London, NW4 1DL

Decision: Approved subject to conditions

Decision Date: 7 February 2020

Description: Use of 6 room HMO (House in Multiple Occupancy) for up to 6 persons

Reference: 20/0967/CON

Address: 32 Finchley Lane, London, NW4 1DL

Decision: Approved

Decision Date: 13 July 2020

Description: Submission of details, Condition 4a (Cycle Parking) pursuant to planning permission 19/5987/FUL dated 07/02/2020

Reference: 20/4668/FUL

Address: 32 Finchley Lane, London, NW4 1DL

Decision: Approved subject to conditions

Decision Date: 15 December 2020

Description: Conversion of current 6 room HMO to a 7 room HMO (Sui Generis) for up to 7no persons

Reference: 21/5550/FUL

Address: 32 Finchley Lane, London, NW4 1DL

Decision: Approved subject to conditions

Decision Date: 19 January 2022

Description: Partial excavation of front section of basement to create an ancillary workspace with associated lightwell (amended description)

Reference: H/02165/09

Address: 32 Finchley Lane, London, NW4 1DL

Decision: Approved subject to conditions

Decision Date: 13 August 2009

Description: Single storey rear infill extension at lower ground level.

### Enforcement

Reference: ENF/0492/21

Address: 32 Finchley Lane, London, NW4 1DL

Decision: Case Closed

Date: 04/2021

Description: Outbuilding to be used as a Separate Self Contained Unit

Reference: ENF/1488/21

Address: Rear of 32 Finchley Lane, London, NW4 1DL

Decision: Pending Consideration

Date: 12/2021

Description: Unauthorised Use of Garages as a Mortuary/Morgue

### **3. Proposal**

This application seeks permission for the retention of single storey building and use by a bereavement charity for Shemira and storage of Shiva furniture (Sui Generis) (AMENDED DESCRIPTION).

*(Shemira: lit. 'guarding over the dead body' - Jewish law requires that dead bodies are not left unattended, and Shemira is when someone sits in the building where the body is to ensure it is not unattended).*

The use and creation of the new planning unit was implemented in 2021.

#### **4. Public Consultation**

Consultation letters were sent to 69 neighbouring properties.

34 responses have been received, comprising 21 letters of objection, and 14 letter of support.

The objections received can be summarised as follows:

-There is no privacy and for children to see this kind of operation is not good to for their mental well-being.

-It causes traffic congestion because they block the road.

-Unlawful building

-No planning permission was applied for constructing a 'garage' at No 32 Finchley Lane. It is to be noted that this property has been developed in a highly unusual manner if proposed solely for the purposes of a domestic garage.

-It is claimed that there is no commercial activity proposed or currently taking place but it is well known in the community that it is used it as a morgue.

-Ethical concerns for the nature of the use.

-Engaging in activities that are potentially hazardous to both people and the environment. We have no idea if the Control of Substances Hazardous to Health (COSHH) Regulations covering the storage and use of chemicals and other potentially harmful substances are being adhered to.

-This double garage being used for a morgue, with no coffin only body bags, right onto the pavement and the road, in front of the general public, is cause for great concern.

-It is problematic when an organisation's service affects children, church families and their children. This is a Safeguarding Concern for children and adults at risk. I do not believe it is right or appropriate for this service to take place in a residential neighbourhood.

-I strongly object to planning permission being given for a mortuary to be set in in garage on a residential road.

-There is the parking issue and the hearse blocking the road while the coffin is loaded or parking on the pavement resulting in pedestrians, especially kids, having to walk on the road.

-Garages should not be used for commercial storage and distribution in residential area, as there is severe shortage of parking spaces.

-Individuals and children witness this and are traumatised.

-Concern rats might be attracted to such a site.

-The back of Finchley Lane where the garages are sited is Aprey Gdns., It is a normal road with through traffic.

-This application seems very misleading stating it is for storage, but it does not explain that it is being used as a morgue to store dead bodies! How can this be allowed in a residential neighbourhood.

-Despite the protestations of the commenter representing the organisation claiming to have carefully considered the location, it is in practice a completely unsuitable location simply by means of their inability to access the premises for the required purpose without causing obstruction of the pavement, road, adjacent properties, or all of the above.

-They also claim that it's not a residential area, despite being in the back garden of a residential property and directly overlooked the immediate neighbours and a considerable number of opposite properties including my own.

-The site of this property, on a residential street in full view of many surrounding houses and close to a school, is completely inappropriate as a location for a morgue.

-This is NOT an industrial area but a residential area and inappropriate place for this business.

-Parking our car in our garage and exiting it has become greatly hindered. 6 bins had to be removed from the front of our garage, all belonging to No 32. They obviously move them as they require access to conduct their business from their garage.

-The residents of No 32 (currently an HMO) have to take their rubbish out from their front door, walk along Finchley lane then First avenue and then deposit their rubbish into the wheelie bins on Aprey Gardens. They have not been allowed access directly from the rear.

-This is to allow clear access to the business being conducted in the garage of No 32. It is unacceptable -mainly unhygienic- for 6 householders to have to use a public footpath to throw their rubbish away. This raises further issues of Health and Safety that Barnet will have to look into.

-If a funeral directors office is granted permission, it will set up a precedent for further garage conversions into offices. This will lead to no space for bins, lack of parking and traffic issues in an otherwise quiet residential neighbourhood.

The support received can be summarised as follows:

-As a volunteer for a charity that deals with families who have lost a loved one I think that this is a much needed facility and the location is perfect.

-In the summer especially such a facility is needed with a temperature controlled fridge.

- It is ideal for such a facility to be local as the family want the body to remain nearby.
- This end of Aprey gardens is almost non-residential and comprises mainly of garages which makes it a further ideal spot.
- This facility has been finished to a high spec and does not carry any risk of rodents etc.
- The facility can look at dropping the curb which would enable any vehicles to back directly up to the garage which will ensure no removal of bodies can be seen by passers-by and also ensure there will be no congestion of traffic.
- In general, this facility is primarily used as general storage.
- Their services and infrastructure fill is very important to a large part of our local community.
- When there is a bereavement, they step in to assist the family and carry out their vital job with an unparalleled level of respect in the most discreet manner possible.
- When called upon they are always on hand to assist the relevant burial society or undertakers to carry out their work in the most sensitive fashion.
- When there is a bereavement, they step in to assist the family and carry out their vital job with an unparalleled level of respect in the most discreet manner possible.
- As a neighbour I can attest to this they are considerate and thoughtful to others on a very quiet road.
- On the rare occasion they do deal with a deceased they have an extremely clean facility and have also purchased large tall dividers so it is hidden from the public eye when bringing or taking a deceased for the few hours that maybe required.
- Fuelled by selfless volunteers, we offer a wide range of services including setting up a funeral and the house of mourning called a shiva house. We have a large amount of gear including visitors chairs, low chairs, low tables, prayer books, lecterns, AC machines, umbrellas, speaker systems, gazebos, lights etc.
- The location was handpicked, approved by our trustees and committee as appropriate for our requirements.
- Please be aware that we are not a burial society, undertakers or run a mortuary, and we do not generally get involved in dealing with the actual body. We are a charity here purely to assist the families during a difficult period.
- We have also taken the care to purchase partitions to be used at a drop off or pickup to ensure it is discreet and not a spectacle for the wider public.
- Their services and infrastructure fill an important niche and is absolutely critical for the local community.
- The facility is NOT a commercial entity at all - rather an organisation run entirely by volunteers who assist families in a local community in times of bereavement. The facilities themselves are of a very high standard indeed, scrupulously clean, and the actual room



where a body is held is refrigerated, thus mitigating the risk of rodents.

## **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 Revised National Planning Policy Framework (NPPF) was published on 20 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, 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.

Existing policies in Barnet's Local Plan (2012) should not be considered out-of-date simply because they were adopted prior to the publication of the revised NPPF. Due weight should be given to them, according to their degree of consistency with the revised NPPF

#### The Mayor's London Plan 2021

The London 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 2041. 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 Draft Local Plan -Reg 22 - Submission was approved by the Council on 19th October 2021 for submission to the Secretary of State. Following submission the Local Plan will now undergo an Examination in Public. The Reg 22 document sets out the Council's draft planning policy framework together with draft development proposals for 65 sites. It represents Barnet's draft Local Plan.

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, DM13, DM17.

### 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.
- Highways impact

## **5.3 Assessment of proposals**

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

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 DM13(b) states:

*New community or educational uses should be located where they are accessible by public transport, walking and cycling, preferably in town centres or local centres.*

New community or educational uses should ensure that there is no significant impact on the free flow of traffic and road safety. New community or educational uses will be expected to protect the amenity of residential properties.

Under the interpretation of DM13, officers consider that the proposed use of the site by a bereavement charity serves a community purpose- however it is not intended as an openly public community use.

The current building occupies a considerable area to the rear of No 32 Finchley Lane. The structure measures 7.1m x 6.5m with an additional 3.3 metre in depth adjoining storage structure.

The building is a single storey structure on a concrete base and with a flat roof measuring 2.7 metres in height. Internally the development is subdivided into a 2 large rooms (one labelled for storage) and a WC.

The applicant has submitted an activities management plan stating the proposed use on site mainly consists of storage for furniture used during Shiva e.g., prayer books, chairs and related furnishings.

The applicant has stated that there is occasional attendance at the site for the purpose of Shemira.

It is accepted that outbuildings are commonly found in rear gardens and used for a variety of purposes including workshops. However, they are generally part of and ancillary to the host property, rather than functioning as a separate use beyond being ancillary to a residential premises.

Aprey Gardens is a residential street of semi-detached dwellings and its established character, land use and function are residential.

As a result of this discordant function and distribution of activity and associated noise and disturbance, it is considered that the proposal would result in an incongruous and unsympathetic development that would fail to respect the established pattern of development and would have an unacceptable impact on the character and appearance of the host dwelling, street scene and wider locality.

Furthermore, the proposed size and scale of the proposed building and sub-division of the curtilage is considered to result in an unduly dominant addition to the original host property - occupying as much as 42% of the former rear amenity area of No 32 Finchley Lane, failing to respect the pattern of surrounding buildings and spaces, to the detriment of the character and appearance of the host property and surrounding area.

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

Given the existing outbuildings in neighbouring plots, officers consider the scale and location of the proposed building to not result in a harmful impact to neighbouring amenities in terms of loss of light or outlook.

Nonetheless, due to the proposed use of the building, the scale, siting and extent, discordant function and distribution of activity, would result in an incongruous and unduly dominant addition to the original host property, harmful loss of private amenity space to No. 32 meaning that the future need of residents would not be able to be met on site, and wider associated noise and disturbance, to the detriment of the residential amenities of neighbouring occupiers.

In that respect, the applicant has provided insufficient information to appropriately assess noise mitigation measures when considering the air-conditioning A/C unit. Furthermore, in the absence of a pre-determined pattern of use, the additional comings and goings of individuals relating to the uses on site are also a consideration when determining adverse

impact to neighbouring amenities.

Additionally, the scale of the building greatly reduces the amount of usable and available amenity space to the rear of No 32.

The building, storage and A/C unit will occupy as much as 42% of the available amenity space. When considering the red line boundary as produced on the plans provided by the applicant, the available amenity space is significantly reduced from 102.15 sqm to 21.43sqm. This is an overall reduction of 79.02%, leaving an insufficient quantity and quality of space in order to meet the likely needs of future residents.

### Highways Impacts

The site is not in a CPZ and the PTAL score of the site is 2 (low).

During the lifetime of the application the description of works were amended to more accurately reflect the use of the proposed building. However, the applicant has not provided any information to indicate predicted footfall, operational hours and vehicle operations on site. Therefore, in the absence of this information officers are unable to determine if the proposal will result in the adverse impact on the highways network.

### The Planning Balance

Officers have assessed the planning merits of the development in this report. The positive impacts created by the proposed development are recognised, with the charity providing a necessary service for the community. However, officers also consider that the outbuilding and its use have introduced a form of development that fails to respect the character and appearance of the site and locality. The outbuilding itself is considered to have reduced the amenity space for residents at 32 Finchley Lane to an unacceptable degree. It is further considered that the activity associated with the use is detrimental to the amenities of neighbouring residents and given the nature of the use such impacts would be difficult to mitigate through the use of conditions. Officers conclude that the positive merits of the proposal do not outweigh the harm identified in the report.

## **5.4 Response to Public Consultation**

All relevant planning matters have been considered in the assessment of the application above.

## **6. Equality and Diversity Issues**

Section 149 of the Equality Act 2010, which came into force on 5th April 2011, imposes important duties on public authorities in the exercise of their functions, including a duty to have regard to the need to:

- "(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

For the purposes of this obligation the term "protected characteristic" includes:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

Officers have in considering this application and preparing this report had regard to the requirements of this section and have concluded that a decision to refuse planning permission for this proposed development will comply with the Council's statutory duty under this important legislation.

Although recognising the positive impacts created by the proposed development, officers do not consider these carry sufficient material weight to justify the construction of an unacceptable and harmful building in terms of character, appearance and amenity which is considered to be contrary to the policies of the Development Plan, as set out elsewhere in the report.

## **7. Conclusion**

It is considered that the proposal would result in a considerable harmful effect on the character and appearance of the site, streetscene and wider locality as well as an unacceptable impact on residential amenity. The proposal is therefore considered contrary to Policies CS NPPF, CS1, CS5 and CS13 of the Barnet's Adopted Core Strategy (2012) and Policy DM01 of the Adopted Development Management Policies DPD (2012).

Therefore, the proposal is recommended for REFUSAL.

