

7 May 2014

Mr Olivier Nelson  
Regeneration and Planning  
The London Borough of Camden  
Camden Town Hall  
Argyle Street  
London WC1H 8EQ



Letter by post and email.

Dear Mr Nelson

**RE: MONTE CRISTO - 56-58 FORTUNE GREEN ROAD LONDON NW6 1DT.**

**RETENTION OF WORKS AND CHANGE OF USE OF 56-58 FORTUNE GREEN ROAD LONDON NW6 1DT FROM MOTOR VEHICLE SHOWROOMS (SUI GENERIS) TO CLASS A1/A3 MIXED USE SANDWICH BAR/CAFE AND SHISHA SMOKING PLACE (SUI GENERIS) AND ASSOCIATED WORKS OF DECKING AND HANDRAIL AND BALUSTRADING.**

**REFERENCE NO.S: 2014/2409/P & 2014/2421/A**

Following the on-site inspection I have looked at the responses to the application and no new comments appear to have been made since the 1<sup>st</sup> May.

If there are any further responses, especially any statutory consultation responses, I should be pleased to comment further on these if you would kindly forward same.

I would comment on behalf of the Applicants in the light of the responses to their application below in no particular order:

Ms Jane Lehrer 16 April and an earlier email 15 April.

Ms Lehrer's comments are made by her from Jane Lehrer Associates and the address is redacted although it appears that she lives and perhaps also works in Agamemnon Road where the Monte Cristo customers are said to park. Jane Lehrer Associates appears to be a theatrical agency.

She complains about walking past the premises and suffering appalling noise, which must therefore be worse for those living nearby or above, although the residents over are thought not to have complained. (Further comment on the residents over is made below).

However she is also concerned that the men visiting the premises are quite intimidating and aggressive when asked to move their cars. It appears this is made all the more unpleasant by remarks made when women walk by alone, and that this is scary. This is not a description the Applicants recognise of their business or their customers.

The Monte Cristo business is available and open to both men and women. Many women, often with a Levantine background, also undertake shisha smoking, or smoke outside, and many people of both sexes accompany family and friends who do smoke, but they do not, most taking refreshments when they attend together.

alan wipperman & co – a firm regulated by the RICS

If there has been such conduct it is my opinion that this would be rare and exceptional and not normally associated with shisha smoking of itself. The assertions being made about customer conduct may not be material planning considerations. However the Applicants advise should any customer misconduct themselves in this way they would ask them to stop or leave.

If such anti-social behaviours are taking place with a Police Station so close by, then such conduct can be complained of, firstly to the Applicants who will be more than willing to take action if any of their customers misbehave in such a manner, or if need be, to the local authority and/or the police. They have recourse to other legislation if persistent and significant misconduct of the type alleged continues.

The premises are said to be open well past midnight despite agreeing to close by 9pm. I understand both from the Applicants, and also Mr Vickers of the Council's Enforcement staff, that no agreement was made to close by 9pm as is alleged by some. An earlier closing had been suggested. The usual time allowed on appeal for external seating use for this type of application is 11pm and sometimes allowed to midnight. The Applicants are seeking to operate externally until 11pm and this use and time can be controlled by condition.

Parking and traffic jams are alleged to be caused by poor parking solely arising from this use. However there could be parking generated by other uses, for example Tesco and the Gym nearby, which will generate significant parking, as well as the other commercial users around the Green. Other objectors have mentioned the gym as a cause of parking pressure.

It is always difficult for any small business to control where their customers park and it is difficult to differentiate who parked when and where.

Shortly after you and Mr Vickers left the site a car parked outside Monte Christo on the junction within the double yellow lines as shown in the photograph below, but the driver walked past the subject property to another business presumably, leaving some 20 minutes later. Such parking may give the impression they were attending the subject property. Any other use of the property could also generate equally active parking needs in the vicinity whether A1 or other use class.



*Photograph taken after shortly after your site visit 1 May 2014.*

It is then suggested that the proposed use will destroy the neighbourhood and this has not been the case where other well run catering businesses offering shisha smoking are undertaken. Further comments are made in a separate earlier email but are covered above.

Mrs V Stein, 18 April.

Mrs Stein does not state where she lives and any address that may have been given is redacted. It is not therefore clear how well the subject property can be seen or observed. However she raises two concerns.

The first is that Fortune Green Road is already heavily congested and the use will bring more cars to the area. However as above this could happen with any use of the subject property. Associated with this is dangerous parking attributed to customers but for the reasons given above this may or may not be the case. Other legislation I available to deal with this problem. If there are regular congestion problems arising in the locality there may be a need for a change in parking controls.

The second is the assertion that an outside shisha café is not what the residents of West Hampstead want. This may be what some want and others do not but the business is new and reasonably well patronised to date, suggesting there is both a demand and need for the use amongst the many other catering offers in Fortune Green. Others are already offering shisha meeting a growing demand in West Hampstead, and in the wider Camden area the use is likely to grow, as the characteristics of the resident population change, as has been the case in Westminster.

Relevant Health Act Regulations for smoking enclosures apply to the external use and provided these are complied with then there should be no significant risk of pollution to residents, staff or customers. Shisha smoking is treated the same way as other types of smoking.

Noise can be controlled by condition both by limiting hours of use, by noise limitation imposed and checked by measurement. These concerns would be common to any external seating areas associated with other similar uses for example outside public houses, cafes, or restaurants.

JC. 21 April.

No full name or address is given and details are redacted. Reference to "Wet Signatures" is not understood.

The objector alleges that the use is primarily shisha smoking. However this can only be established over time and with regard to the total customers using shisha alone as a proportion of all customers over the day, and the year, whether taking shisha smoking, or not.

Accordingly the application being made is for the internal and external use as A1/A3 use with ancillary shisha smoking externally. If after time it should be considered that the balance of the uses change to be primarily shisha smoking with ancillary A1/A3 use, and such that a revised permission is required, then the local planning authority can always require this to be applied for. It is important to recognise that a few people shisha smoking can give the impression that many seated at tables around them are also shisha smoking and not see the internal customers as well. It is not always easy to see in and fully assess overall use.

The local source of customers to date as advised by the Applicants in discussion with their customers is disputed. However the basis of dispute appears to be casual external observation and without detailed survey this appears unreliable. In any event car based activities can arise from any commercial use of the premises.

It is alleged the plans submitted are in some way inaccurate with regard to physical limits and that details are incorrect. This does not appear to be the case having regard to the title plan. The application is proposed as shown. The moveable chiminea for charcoals for the pipes was not shown in a fixed location at the time of the application.

However, following a site visit by a Council Officer and the concerns raised over the risk of injury, the burner was replaced by a single chiminea and this will now be sited within the railed area where bicycles can also be stored. This small area will be railed off pending permission by the Applicants.

As far as I am aware the plans are accurate but if the local planning authority have any concerns please contact me. If the burner location needs to be specifically shown please advise, however the location of the burner can be controlled by condition.

Again noise and disruption is raised as well as pollution. Again customers are alleged to predominantly drive to the property and that they then park on both sides of the road. These allegations and concerns have been considered and assessed above.

Smoking shisha in a commercial area within which this property is located is acceptable as the many appeal decisions demonstrate as referred to in the Planning Statement, and this is acceptable is confirmed even when close to, adjacent to, or below residential property.

The location of JC as a resident is not known.

JW Lawrence 22 April.

The objector confirms residence in Agamemnon Road and refers to assertions made in the Planning Statement. Having had some experience of analysing catering activities with ancillary shisha smoking (A1/A3 and A3) and also having reviewed many appeal decisions it is the objector asserting that "the use is in fact exactly the opposite" that makes an assertion. There is a clear misunderstanding of the Use Classes Order in suggesting an A3 use.

The objector sees a reason for the shisha smoking case being made. The reason for the case being strongly made with regard to shisha smoking is that there is first an argument that the differentiation of shisha smoking from other forms of smoking viewed as incidental to other uses may be wrong in law, both in planning and equalities law. Therefore if viewed as a separate use then the use needs to be clarified and explained. Secondly that the use is often misunderstood by objectors and often refused, even when recommended by planning officers to members. It is often neither understood nor accepted by some as part of a possible street scene. I regret if J W Lawrence finds this approach offensive.

The charcoal burner issue is material and relevant and this has been attended to as referred to above. It will be placed on non-combustible material as a further precaution.

Reference to the decking area is made and it is said to be out of keeping with the area and that there are no other similar decked areas. This does not appear to be correct. The café further along Fortune Green Road has a decked area as referred to in the Statement to the application:



It is suggested that the existing shop commercial uses have limited impact compared to the subject property and activity, however there are quite a number of cafes, restaurants and take-aways with evening opening and external tables and chairs as well as the Gym and the busy Tesco branch in the vicinity. I have not reviewed all opening hours of all premises but some inquiry of websites has been made.

It should be noted that the Gym's website claims it is open 24 hours a day 7 days a week. The Tesco store website states it is open 6.00 to 23.00 hours seven days a week. Bombay Nights website, at No. 90, a restaurant, is open until 11.30pm, and to midnight on Friday and Saturday. It is not clear whether it offers external seating and if so until when.



The website of Sushi-Kou at No. 82 Fortune Green Road states it is open to 23.00 hours Tuesday to Sunday. It also has an enclosed external forecourt, but again it is not known if this is used of an evening.

However there are other uses operating until 11pm or later giving rise to street activity and parking in this area and the Gym is open 24 hours a day. The assertion of use and activity is not perhaps objective.



The objector also asserts patrons of Monte Cristo have been the cause of being woken up at night as a matter of fact when leaving. However this may or may not have been the case as it can be difficult to link such problems to a particular user on waking. Other uses operate late into the night and for 24 hours and could also be the cause.

It is further asserted that the parking problems have arisen only as a result of Monte Cristo whereas other objectors have indicated previous problems with patrons of the Gym etc. Parking will be a problem regardless of most classes of occupier and users at 55-58 Fortune Green Road in this locality as they will be in much of London.

In order to address the concerns raised the Applicants will as already offered, adopt a Management Plan to deal with possible issues arising from noise, nuisance and parking insofar as any catering business owner can. They will display notices asking customers to park politely and leave quietly, respecting neighbours of an evening. Residents can complain to the Applicants if particular problems arise. They are approachable and accommodating and will deal with genuine concerns. The provision of a Management Plan would be an acceptable condition to any permission.

I am advised that when there was storm damage to the canopy the Applicants called in an emergency repair engineer who made noise late at night and the residents in the flats above complained. The Applicants apologised and have provided them with their personal mobile number so they can contact them if ever they have a concern in future.

**This is the only complaint from the residents over the Applicants are aware of.**

K Williams, 22 April.

No address given. Concerns about noise and traffic congestion as customer all seem to arrive by car. These concerns are addressed above. The burner issue has been addressed above.

A Hodgson, 23 April.

A dangerous corner with parking on the double yellow lines of an evening. This also happens during the day as I observed above and on that occasion was nothing to do with the subject property.

The enclosure of a smoking place is illegal unless compliant with the relevant Health Act Regulations and these require the sides to be 50% open. If not then this is an offence and is a matter to be controlled by other legislation. If this should be the case then this is a matter for the Environmental Health Department and is not a material planning consideration save with regard to appearance. It is usual for one screen to be attached to one side and moved accordingly to the prevailing winds. The burner concern has been dealt with above and again is primarily a matter for other legislation.

The excessive user argument appears to relate both to Fortune Green Road and West End Lane together. However there is a primary A1 use proposed and it is a use that would be better than locating a retail type property to residential as has already taken place nearby, and accords with the Portas Review and Camden's own planning policies and the draft Neighbourhood Plan, as well as the NPPF.

The existing commercial use appears to be motor vehicle showroom which would not prove in my opinion, to be likely to be any better in terms of vitality, parking and environmental impacts.

Rea Flick Councillor forwarded from A Hodgson, 23 April.

Rea Flick is a Liberal Democrat Councillor and passes on with no comment the objection made by A Hodgson as considered above. The photographs supplied about the burner have been considered and responded to above.

Ir, 24 April.

This objector has not given their name or address or it has been redacted but apparently lives in Achilles Road. They say the use is out of keeping with the area and attracts rowdy young people walking back to my street. It is not clear how they are identified as being from Monte Cristo since the Gym also causes problems. However the concern is noted and the Applicants will be asking their customers to be quiet when leaving.

Sophie Oxenham and Amir Ramezani, 25 April.

The objectors have given their address in Burrard Road and live fairly close to the subject property and so some weight can be given to their concerns. Their first concern is about the health risks of smoking for their teenagers but there is legislation to stop under-age smoking or for the Applicants to offer smoking to those under 18 which would be an offence.

However they and their children are welcome to visit for refreshments and many customers attend who do not smoke. This is a personal choice but the concern is noted.

The concerns about smell are also noted and it is agreed these are distinctive but these dissipate quickly and the impact should not be any more significant than that of a pub smoking shelter. The dissipation has been found acceptable at many appeals for those living above or adjacent or further down nearby roads.

Parking and noise concerns are noted but these can arise from other uses in the area as well. Again the Applicants will ask their customers to park politely and respect neighbours.

Clare and Philip Wilson, 14 April.

No address given or redacted. The existence of the two uses offering shisha smoking in West End Lane is referred to in my Planning Statement. Shisha smoking can take place in small parades and local centres as well as more significant centres and it could be wrong in law to oblige a culturally specific use to certain locations only as suggested.

The objectors then suggest West End Lane is the appropriate location for many cultures and a third "smoking house" would tip an undefined balance. It would not appear appropriate to comment further on this objection.

The position of the TV screens is not a matter for planning control. The sound is not loud outside. Sound limitations can be applied by condition.

Mrs Casey Hammett, Undated.

No address given. She states that this venture has caused chaos with reference to parking. It is noisy and smelly. These matters have been referred to above.

In addition to the individuals submitting the above redacted representations, a Schedule has been published with names and addresses given for objections made mainly 14-15 April. It is therefore possible to give these objections a more meaningful consideration.

Brenda Eisenberg, 45 Achilles Road.

Not suitable for a residential area flats above, etc. Bad congestion and very difficult to find parking as a resident, now made worse by the volume of cars from the shisha café. Large groups gather due to outside seating until the early hours. Not in keeping with an area of families and small children.

These concerns have been dealt with above.

Paul Bramley, 35 Ingham Road.

It is out of place with the local environment. Customers are not local and drive parking on double yellow lines. Parking chaos. Noise and smell. Café culture does not fit the neighbourhood.

These concerns have been dealt with above. Café culture already prevails in many shopping locations.

Tim Birmingham, Burrard Road.

Significant congestion from illegal parking. Parking difficulties for residents. Disturbance and noise in a residential area.

These matters have been considered above.

Nikki Krieger, 14 Ardwick Road.

We are a local family dismayed by noise and traffic caused by this establishment at weekends and late into the night. Noise and talking from cars outside. No problem with this use elsewhere but not in this gorgeous corner.

Matters raised again considered above.

Shahina Farid, 32 Ulysses Road.

Inappropriate in a residential area. Flats above and families in nearby roads. Large groups gather causing noise and disturbance. Parking and congestion.

Matters raised considered above.

G Scaizo, 2 Achilles Road.

Beautiful Greek area comment not understood. Noise and strong smell of tobacco until the early hours. Unfair with noise and revving waking up locals.

Matters raised considered above.

Kate B. 48 Mepebury Road.

Countless dangerous situations with double parking.

The parking concerns of the objector are noted but this should be properly enforced against the customers of whatever establishments are causing such problems.

Frank West, 42 Burrard Road.

Parking outside all day on a single yellow line. Increase in parking after gym. Eyesore and smell of smoke walking on opposite side. Not an asset to the area.

Parking concerns noted however but as observed there can be more than one source. Matters raised considered above.

Ricardo Cumerfato, 19a Alvanev Gardens.

Great to see a nice addition to Fortune Green Road. Does the application block the illegal parking blocking the street?

Again parking concerns noted but these are more than the result of this business alone. There may be a need for a review of parking controls and enforcement.

**This is essentially a supporter.**

Andrew Shaw, 26 Burgess Hill.

Object to restaurant and shisha house.

This is not what is being applied for.

Public Order nuisance will arise. If there were to be such a consequence then there is other legislation for a closure notice if required. Objections appear to be traffic and highway safety related. These matters are considered above. Likewise noise and nuisance to neighbours again considered above.

A poor public health example to children as this could apply to any adult smoking in the street but this concern does not appear to be a material planning consideration.

Summary.

The majority of the objections submitted are those usually raised with regard to a catering establishment offering shisha smoking which operates until 11pm or midnight.

The first area of concern is noise, nuisance, and disturbance from customers seated outside or coming and going. This is the case with any external tables and chairs use whether outside a pub or café, but this is usually acceptable in a commercial area. This is the case even if on the very edge, as was demonstrated in the Appeal decision for 1 Church Street, with residential over and adjacent, or in Crawford Street in nearby Westminster again with residential over and adjacent. (See the Planning Statement).

Many objectors appear to live some distance away from the subject property. It is difficult to know where all are located as their details have been redacted. However it appears most are not that close or over the property and the impacts complained of are mainly street noise from coming and goings, or the fleeting characteristic smell when passing close by.

This kind of noise and nuisance can be often mis-attributed when disturbance arises and where there are other uses operating to 11pm and beyond, as in this area with a gym operating 24 hours.



The causes of noise and disturbance may be widespread and may not be specific to the use complained of. The Applicants will address this as best they can within the proposed management Plan.

Some matters of customer conduct appear to be unusual and may be a one off event or for other legislation.

The imposition of conditions together with the potential use of Breach of Conditions Notice can control the number of customers inside and outside, the noise levels measured, and the hours of use. This is usually considered sufficient by Inspectors at appeal.

There is often a difference in assessment of a new use with some finding a new use vibrant, active and interesting and others finding it a nuisance and disruptive. Some of the objector's assessments are assertive and appear to be based upon casual external observation when passing by or living some distance away.

The second concern is smell and odours and smoking. There are also some concerns about under-age smoking, health and matters of example of conduct, which do not appear to be material planning considerations. As long as the smoking is undertaken lawfully there should be sufficient dissipation of smoke and odours to be acceptable. This is usually found to be the case at appeal.

The third concern is parking and congestion. This appears to have been a problem before Monte Cristo opened with the Gym being mentioned and operating from the new buildings close by, but with any use at 56-58 there could be such problems, compared to vacancy. If there is a real parking issue then there is legislation and potential action to enforce against the obstruction of the highway whomever the cause.

There is a difference in view as to whether customers are local or not but this remains to settle down over time. Any use of these premises will generate activity and use and parking.

The Applicants have noted the burner concern and this is being addressed and can also be dealt with by condition.

The Management Plan can seek to deal with complaints from residents about the use or about customer's behaviour. If there are real problems then there are further enforcement and sanctions available. If the shisha use is considered to grow into a dominant sui generis use then a new application can be sought.

The proposed use does comply with policy and guidance as the Statement confirms and with suitable conditions it should be capable of being run well and acceptably in this location.

The concerns of residents are noted but there does not appear to be significant adverse impacts for residents being raised that are clearly attributable to the use as proposed.

If there are any matters arising you wish to discuss please do not hesitate to contact me.

