

Delegated Report		Analysis sheet		Expiry Date:		31/03/2015	
		N/A		Consultation Expiry Date:		11/03/2015	
Officer				Application Number(s)			
Alex McDougall				2015/0544/P			
Application Address				Drawing Numbers			
307-309 Finchley Road London NW3 6EH				Refer to draft decision notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposals							
Change of use of basement of Nos. 307-309 and ground floor of No. 309 from Strip Club (Sui Generis) to Night Club (Sui Generis)							
Recommendation(s):		Refuse Planning Permission					
Application Type:		Full Planning Permission					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	55	No. of responses	63	Objections Support	62 1
Summary of consultation responses:		<p>Site Notice 18/02/2015 – 11/03/2015.</p> <p>59 individuals and 4 residents' associations objected to the proposal on the following grounds:</p> <ul style="list-style-type: none"> <i>Use</i> - Not appropriate in residential location, not a late night area, fundamental difference between number and type of visitors (nightclub large number of outgoing people, strip club small number of discreet people), strain on A&E services, no knock on economic benefits to other businesses due to late opening house, existing use never granted permission, influence and affect safety of vulnerable young people in area (Officer Response: See section 2 below for more information), applicants have been involved in misrepresentation and scams (Officer Response: Not a relevant planning consideration) <i>Amenity</i> - Noise (music from building; people arriving, queuing, leaving, loitering; car stereos), vibration from bass music, disturbance, anti-social behaviours, damage to property, smoke from cigarettes, vandalism, rubbish on streets, drug use, police sirens, vomit on pavement, nearby pubs had caused many amenity issues before closing, existing use caused amenity impacts (Officer Response: See section 3 below for more information). <i>Transport</i> - Increased traffic, impact on parking on Finchley Road and 					

side streets, cabs stopping on street; former pub nearby resulted in severe traffic, lack of late night public transport in area; obstruction caused by pedestrians queuing **(Officer Response: See section 4 below for more information)**

- **Safety & Security** – Will attract crime to area, safety of intoxicated customers on narrow pavement and busy road, fighting, local constabulary objected to associated licensing application, too many people in an underground space **(Officer Response: The licensing application found that the site had a capacity for 300 people to safely congregate inside. See section 6 below for more information)**

Redington Frogmal Association comments:

The grounds of objection is summarised as follows:

- **Use** - Not appropriate in residential area **(Officer Response: See section 2 below for more information)**
- **Amenity** - Noise, antisocial behaviour, smoking **(Officer Response: See section 3 below for more information)**
- **Transport** - Increased traffic and loss of parking **(Officer Response: See section 4 below for more information)**

Site Description

The site is occupied by a pair of 4 storey terrace buildings on the western side of Finchley Road. The subject unit is comprised of the ground floor of No. 309 Finchley Road and the basement levels of Nos. 307 & 309 Finchley Road. The unit has been in use for the past 15 years as a strip club (use class Sui Generis) open from 8:00pm – 4:00am daily. The first floors of both buildings are occupied by residential flats.

The ground floor entrance to the site is located at No. 309 Finchley Road and there is a ground floor fire exit at the rear of the building which opens onto an alleyway which leads to Billy Fury Way, which runs between Finchley Road and West End Lane in West Hampstead. There is also a basement fire exit staircase which opens onto Lithos Road.

The area is characterised by commercial uses at ground/basement levels with office/residential above. The site is located in a secondary frontage within the Finchley Road & Swiss Cottage Town Centre. The site is not located in a conservation area. The building on the site is a non-designated heritage asset (local list).

Relevant History

307 – 309 Finchley Road (subject unit)

BE/19/F - An application for consent to the use of 309 Finchley Road as a licensed members social club. Refused 22/10/1956.

F6/8/1/281 - The use of the ground floor and basement at No. 309 Finchley Road, Hampstead as a non-residential club. Granted 03/02/1964.

F6/8/1/33827 - Change of use of ground floor and basement from restaurant to fish restaurant with take away facilities. Granted 04/03/1982. It is not clear that this permission was ever taken up.

The Applicant states that the strip club began operation in 1999 and as such benefits from lawful existing use rights. Council’s retail survey corroborates the existence of the strip club since at least 2004. Several neighbours attest to the fact that the unit was in use as a nightclub prior to 1999.

APP\PREMISES-VARY\000886 (Variation of Existing Licensing Application) – Resolved to Grant subject to conditions 21/05/2015.

307 Finchley Road (adjoining site)

2012/5202/P - Change of use from retail shop (Class A1) to drinking establishment (Class A4).
Refused 27/11/2012. Reasons for refusal:

1. The proposed change of use, by reason of the loss of a retail unit and the further concentration of non-retail uses within a Secondary Retail Frontage, would be detrimental to the character, function, vitality and viability of the town centre contrary to policy CS7 (Promoting Camden's centres and shops) of the London Borough of Camden Local Development Framework Core Strategy and policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) the London Borough of Camden Local Development Framework Development Policies.
2. The proposed change of use, by reason of its size, proximity to existing entertainment, food, and drink establishments and its proximity to existing and potential residential premises would harm the amenities of local residents, contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and to policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses), DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise and vibration) of the London Borough of Camden Local Development Framework Development Plan.

317 Finchley Road (nearby site)

2014/5208/P - Erection of six storey building comprising retail (Class A1) at ground floor and 9 flats above (2x1bed, 6x2bed,1x3bed) (Class C1) following demolition of existing public house (Class A4). Council resolved to grant planning permission 14/05/2015 subject to satisfaction completion of legal agreement.

Relevant policies

National Planning Policy Framework 2012

The London Plan 2015 (consolidated with alterations since 2011)

Camden LDF Core Strategy and Development Policies 2010

CS1 Distribution of growth

CS3 Other highly accessible areas

CS5 Managing the impact of growth and development

CS7 Promoting Camden's centres and shops

CS10 Supporting community facilities and services

CS17 Making Camden a safer place

CS19 Delivering and monitoring the Core Strategy

DP12 Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses

DP13 Employment sites and premises

DP14 Tourism development and visitor accommodation

DP15 Community and leisure uses

DP16 The transport implications of development

DP17 Walking, cycling and public transport

DP26 Managing the impact of development on occupiers and neighbours

DP28 Noise and vibration

DP29 Improving access

Camden Planning Guidance (updated 2013)

CPG5 Town Centres, Retail and Employment

CPG6 Amenity

CPG7 Transport

CPG8 Planning Obligations

Assessment

1. Detailed Description of Proposed Development

1.1. The proposal is detailed as follows:

- Change of use of existing strip club (sui generis) to night club (sui generis). The nightclub would have the following operating parameters:
 - Area: 300sqm.
 - Capacity: 300 guests, 12 staff (10 bar/security staff, 2 managers). Increase from 150 (100% increase) approved under previous licensing approval.
 - Opening Hours:
 - 10:00 – 1:00 Monday to Wednesday
 - 10:00 – 2:00 Thursday
 - 10:00 – 3:00 Friday to Saturday
 - 10:00 – 23:00 Sunday & Public Holidays
 - Marketing: Towards 18 – 35 year olds.
- Minor internal works would be required for the conversion, primarily the removal of staging from the basement level.

1.2. During the course of assessment the applicant reduced the proposed opening hours (from a maximum of 4:00am) to correspond to the licensing approval.

2. Principle of Development

Existing Use

2.1. While the unit has a history of permissions for clubs and restaurants, there appears to be no specific approval on record for use of the site as a strip club. However, based on Council's retail survey, licensing records and public submissions, it is considered to be reasonable to accept that the use has been regularised through use over time.

Proposed Use

2.2. The proposed use as a night club is similar to that of the existing strip club in that they have similar hours of operation, serve alcohol, provide little if any food, and play music. However, the primary difference is that a strip club has a lower customer capacity, is generally attended by more discreet individuals and does not experience as many problems relating to intoxication and congregation to the front of the premises.

2.3. Both uses are defined as uses in their own right (sui generis) and planning permission is required for a change of use between the two.

2.4. Council LDF policy CS7 seeks to promote a range of new food, drink and entertainment uses, of an appropriate scale and character for the area, that will create successful and vibrant centres which meet the need of residents, workers and visitors without having a harmful impact on residents and the local area. DP12 contains several criteria by which to assess such applications. Those criteria, and Council's assessment, are contained below.

- *the effect of non-retail development on shopping provision and the character of the centre in which it is located;*

The existing use is non-retail and as such the proposal would not result in a further reduction in the retail character of the area.

- *the cumulative impact of food, drink and entertainment uses taking into account the number and distribution of existing uses and non-implemented planning permissions, and any record of harm caused by such uses;*

The majority of the food and drink premises in the area are located at The O2 Centre, 255 Finchley Road, approx. 250m from site. The O2 includes several restaurants, some with bar facilities, open until 12:30am – 1:00am. There are no pubs/bars (Use Class A4) or other nightclubs currently operating in the immediate vicinity of the site. No. 317 Finchley Road was formerly in use as a pub, and could be brought back into use as a pub without permission, but is currently vacant.

- *the impact of the development on nearby residential uses and amenity, and any prejudice to future residential development;*

The nearest residential uses are located at:

- Upper floor flats along the terrace, including the subject site.
- Norfolk Mansions, Lithos Road, 30m from entrance.
- Nos. 1+ Lithos Road, 35m from entrance
- No. 2+ Lithos Road, 45m from entrance

As such there is considerable residential occupation in the vicinity of the site. The impact on the amenity of adjoining properties is considered in Section 3 below.

- *parking, stopping and servicing and the effect of the development on ease of movement on the footpath;*

Transport is discussed in Section 4 below.

- *noise and vibration generated either inside or outside of the site;*

Noise and Vibration is discussed in Section 3 below.

- *fumes likely to be generated and the potential for effective and unobtrusive ventilation;*

There is no kitchen facilities proposed as part of the application and as such there will be no associated plant. The proposal would result in an intensification of the use of the site and as such there will be increased smoking on the footpath to the front of the site.

- *the potential for crime and anti-social behaviour, including littering;*

The proposal is likely to result in an increase in anti-social behaviour resulting from intoxicated patrons. Crime is discussed in section 6 below. The proposal is not considered to result in a material increase in littering as it would not provide customers with anything which could be discarded.

2.5. Camden Planning Guidance for Town Centres, Retail and Employment (CPG5) provides the following Finchley Road & Swiss Cottage town centre specific guidance:

- *To prevent harmful impacts on the large residential population within this centre, new or expanded food, drink and entertainment uses should be small in scale. Small in scale is generally considered to be 100sq m. Larger premises may be considered acceptable for restaurants, which generally have less impact than other food, drink and entertainment uses. The Council will consider the nature of the proposed use and its location, taking into account the level and proximity of housing, when assessing the acceptability of a proposal in terms of its size.*

While there is no increase in the size of the unit, which is approximately 300sqm, the proposal would result in a 100% increase in patronage to the site. As such the proposal is

considered to constitute an expanded drinking and entertainment venue. Given the proximity of the site to adjoining residential occupiers, the intensification of use is considered to be unacceptable.

- *Due to the large amount of housing above shop premises on Finchley Road, the Council does not consider that it is appropriate to allow new or expanded nightclubs in the Finchley Road/Swiss Cottage centre.*

As discussed above a strip club is considered to have minimal impact on the amenity of adjoining properties due to the discreet nature of the clientele. The proposal would constitute a new nightclub and as such is specifically singled out as not being appropriate in this frontage. It should be noted that this is the only town centre in Camden with such a restriction.

- *To avoid concentrations of evening and night time uses that could create harmful impacts, we will not permit development that would result in more than two consecutive food, drink and entertainment uses in a row.*

The proposal is bound by a retail unit to the south and a minicab office to the north and as such does not fall into this category.

2.6. CPG5 also provides more general guidance for entertainment premises:

- *In more commercial areas within the Town Centre, that have significant amounts of food, drink and entertainment uses, limited residential development and are well served by public transport during the late evening/night, later closing times (beyond midnight) may be applied.*

The O2 centre, which contains lower impact uses and is better separated from adjoining sensitive uses, is only allowed to operate until 1:00am on weekends.

The site is in close proximity to residential uses, as such opening times beyond midnight are generally not considered to be appropriate. While the existing use on the site is open until 4:00am, as outlined above, the impact from such a use is not considered to be as significant.

2.7. For the reasons listed above the proposal is considered to be unacceptable in principle. Notwithstanding, a full assessment is provided below, with reference to the following material considerations:

- Residential Amenity
- Transport
- Waste
- Safety & Security
- Access

3. Residential Amenity

3.1. LDF policy DP12 requires that shopping, services, food, drink, entertainment and other town centre uses not cause harm to the local area or the amenity of neighbours and states that consideration should also be given to the cumulative impact of food, drink and entertainment uses. In addition, LDF policy DP26 aims to protect the quality of life of neighbours that might be affected by developments by preventing noise disturbance, odour, fumes and dust, ensuring provision of adequate facilities for storage (refuse and recycling), etc.

3.2. The main amenity concern is whether the entertainment and drink establishment would

unacceptably affect the amenities of the local residents. There are residential flats above the application premise and the upper floor levels of the adjoining premises. Lithos Road is primarily residential. The primary amenity impacts are broken down into categories below.

Noise/vibration from music and sound within the unit

3.3. This premises previously operated as a strip club. While the strip club was licenced to allow music, the nature of operation was discrete with music played at level to allow conversation between patrons. However, it must be noted that 13 complaints of noise nuisance were received in 2013. The proposal to operate as a nightclub would permit the playing of loud amplified music as the dominant activity, with music played at higher levels in contrast to the previous operation.

3.4. The applicant has submitted an acoustic report which outlines how sound transmission through the building will be controlled. While the acoustic report has been submitted in support of the application, it raises serious concerns which are summarised below:

- The acoustic assessment illustrates that predicted noise from the venue, operated as a nightclub, will greatly exceed World Health Organisation (WHO) guideline noise levels for rest and sleep, at the nearest residential properties.
- Predicted noise levels exceeds noise limits in Camden's Noise and Vibration Policy 'DP28' for entertainment venues, Camden's standard noise conditions for entertainment venues and British Standard's 8233: 2014 which sets internal noise levels for residential properties.
- To comply with the noise limits, the report provides a 'noise control strategy' for sound insulation. However, the report states the 'noise strategy' is based on 'assumptions' and not on existing building fabric. Therefore the strategy is unreliable.
- The report falls short of detailing the type of sound system to be used at the venue and location of speakers to design a more credible sound insulation strategy.
- The report falls short of an assessment for fix plant i.e. air conditioning units to serve the site.

3.5. In regards to the test noise level of 110dBA, described in the report as typical nightclub noise, the recommended insulation strategy is not sufficient to mitigate high pitched noise and lower base frequencies at adjoining residential units as well as other nearby residential properties.

- Being a terraced Victorian construction, it is likely that there are many structural connections and flanking transmission paths for low frequency noise to travel to the connected sensitive residential dwellings.
- There is no mention of follow up testing to demonstrate whether the acoustic mitigation will achieve sufficient sound controls at a building not originally designed for regulated entertainment, and according to records historically known for causing residents a nuisance.
- The Applicant was informed of the above concerns and did not provide a response. Even with a revised noise strategy, Council is not convinced that the venue, in this vicinity can operate as a night club without causing residents some form of nuisance.

Noise from people queuing, smoking, loitering, leaving unit

3.6. The proposal would increase patronage from 150, as approved under the existing license, to 300 patrons. This will increase the number of revellers remaining in the area, in the early

hours, posing risk of antisocial behaviour and public nuisance.

3.7. Such uses have a tendency to have large numbers of customers arriving, queuing, and leaving at around the same times. Upon leaving such premises, customers have a tendency to loiter while they await friends, decide on transport options, and the like.

3.8. There would also be nuisance from smokers using the pavement to the front of the site (there being no suitable space on the premises).

3.9. The Applicant has submitted a draft management plan outlining the following methods to minimise amenity impacts on adjoining occupiers:

- *Security at the venue will be ensured by 7-8 fully trained security staff and 3 door staff under the control of 2 managers. This is equivalent to a ratio of 30 guests per security staff.*
- *Schedule the arrival of guests to spread out arrivals over a large period of time and ensure the number of guests arriving does not exceed the venue's capacity. This will help reduce queues to the front of the venue. A maximum queue length of 25 will be maintained.*
- *If the venue reaches capacity guests will be told there is a one-in-one-out policy and be advised to seek an alternative venue, assisted with public transport or organising taxis.*
- *Those asked to leave the club will be escorted to a suitable means of transport.*
- *Staff will encourage those leaving the venue to do so quickly and quietly.*

3.10. Concern is raised that the operator will have little control over how many customers arrive, and how and when customers arrive. It is also noted that there are no other late night uses in the area which would increase the likelihood of customers waiting for entry when the venue is at capacity.

Noise from vehicles

3.11. Concern is raised regarding sound (motors, doors slamming, and music) emanating from vehicles dropping off and picking up patrons or those parked in the area. Again, this is an amenity impact not easily managed by staff, irrespective of the management plan.

Servicing

3.12. Matters such as deliveries from the street may also have the potential to cause nuisance to nearby residents if not adequately controlled. While minimal details of servicing have been submitted with this application it is considered that they could be restricted to appropriate times as part of a service management plan (discussed in more detail below).

3.13. The proposed use would not have a kitchen therefore there would not be nuisance from the cooking in terms of noise from ducting and cooking fumes and odour.

3.14. Based on the outstanding concerns listed above, it is considered that the proposed use would result in noise and general disturbance to a level that would detrimentally affect the amenities of local residents, contrary to LDF policies CS5, DP12 and DP26

4. Transport

4.1. The site is located on Finchley Road at the junction with Lithos Street, part of the red route network maintained by TfL. There is no vehicular access to the site and none is proposed. The site has a Public Transport Accessibility Level (PTAL) of 6a (excellent) which indicates that it is highly accessible by public transport. The nearest station is Finchley Road and Frognal, located in close proximity to the north of the site, whilst Finchley Road station is located to the south and the three West Hampstead stations (Underground, Overground and Thameslink) are located to the west. The nearest bus stops are located on Finchley Road just

to the north of the site. This site lies within the Swiss Cottage: Finchley Road (CA-R) CPZ (Controlled Parking Zone). The CPZ is significantly over-saturated, with 1.1 permits issued per space.

- 4.2. The Red Route operates between 7am and 7pm Monday to Saturday, although parking is permitted outside the site for up to 30 minutes between 7am and 4pm. Between 4pm and 7pm the parking area is utilised as a northbound bus lane. The residential side streets are all within controlled parking zones. The CPZ spaces are likely to be occupied by residents prior to the peak hours of operation of the proposed use. As such it is likely that any drop offs and parking would occur on Finchley Road.
- 4.3. In terms of servicing and deliveries, this is expected to be broadly similar to the existing use in that it will take place from Finchley Road, although there could be an increase in the number of deliveries of beverages etc and the accompanying refuse and recycling collection given the nightclub use. If approval were to be recommended a servicing management plan would be secured via condition.
- 4.4. In terms of patrons arriving at the site, this is also likely to be similar in terms of people arriving and departing by taxi, bus and rail/Underground, although there would be an increase in the volume of people. There is a minicab office located directly adjacent to the site at No. 311 Finchley Road, which is likely to be heavily used by people leaving the site late at night. This is likely to add to the numbers of people waiting outside the site or in close proximity as they wait for their taxis to arrive, further adding to issues of noise and amenity for neighbours. There are 2 night bus services which run past the site on Finchley Road, these are the N13 which runs between Aldwych and North Finchley and the N113 which runs between Trafalgar Square and Edgware. These services could experience higher flows of passengers with the proposed nightclub use although this is not expected to affect their capacity given the likely numbers involved. It is considered that there are adequate transport options for those departing the venue to complete their journey at any time of day or night.
- 4.5. Although few if any visitors are expected to travel to the site by cycle, there are 3 Sheffield cycle stands capable of accommodating up to 6 cycles located outside the site on Finchley Road.
- 4.6. For the reasons listed above the proposal is considered to be acceptable in transport terms as it would not harm local traffic conditions in line with LDF policy DP17.

5. Waste

- 5.1. The application is accompanied by a draft waste management plan (contained within the planning statement) which outlines how waste will be collected. The waste would be stored on site and moved to curb side for collection by private contractor. This is a common arrangement along commercial streets and as such is considered to be acceptable.

6. Safety & Security

- 6.1. Appendix 4 of CPG5 suggests measures which could be included to maximise the safety of such uses, including designing the development to minimise crime, requiring installation and monitoring of CCTV and/or financial contributions to town centre management. There are no physical changes proposed to the building and the access from street level is considered to be common to such uses. Were the application to be recommended for approval the back door could be secured shut (other than for use as a fire escape) and CCTV required by condition. Subject to such conditions it is considered that the proposal could adequately dissuade crime. Any crime or fighting outside of the premises would be the responsibility of the local constabulary.

7. Access

7.1. The proposal is a publicly accessible space and as such is required to provide adequate access for less able-bodied persons. The front door has level access and includes a bar area at ground floor level. While there would be no step-free access to the basement, given the historic nature of the building it is not considered to be reasonable to require such access at this time. Notwithstanding, the applicant would still be liable to comply with the requirements of the Disability Discrimination Act.

8. Conclusion

8.1. While the proposal would result in a slight reduction in the hours of operation of the existing unit, it is considered that the 100% increase in the capacity, the nature of the use, the impact of music within the site and the lack of ability to control movements to, from and outside the site, would have an unacceptable impact on the amenity of the adjoining and nearby occupiers, contrary to LDF policies CS5, CS7, DP12, DP26 and DP28.

9. Recommendation

9.1. Refuse Planning Permission.