

**supplementary hearing statement for an additional question for the
westminster city local plan examination in public.**

**Supplementary Statement for the Additional Question to the Examination in Public
of the Westminster City Plan 2019-2040.**

**Submitted on behalf of: Mr Ali Faraj and family, and Amypro Limited trading as the
Sara Café.**
EIP/WCC Reference: 030.

**This Supplementary Statement is only concerned with the Additional Question
posed by the Inspector:**

“Other matters

***18 What are the implications of the changes to the Use Classes Order set out above
on the legal compliance and soundness of the City Plan particularly with regard to
(but not limited to) objectives 2,3 and 4 and the policies contained within the Spatial
Strategy, Housing and Economy and Employment sections of the City Plan?”***

Response:

The City Plan was drafted before the changes in the Use Classes Order 1987 as amended and to be further amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. The Additional Question seeks to identify the implications of these changes for objectives and policies in the Plan; in particular Economy and Employment for this Representor.

Consequential revisions to the National Planning Policy Framework and the National Planning Practice Guidance have not as yet been issued. Consequential amendments to the General Permitted Development Order 2015, as amended, have not been issued, but transitional provisions carry forward the intent of the Order to July 2021, by which the time the City Plan may well have been adopted.

In earlier submissions, first to the Council during consultations and then in the submission of representations to this Examination, the emerging City Plan has been challenged as being unsound by reason of the provisions of the Equalities Act 2010. The challenges have been made with regard to adverse policy impacts on some local businesses and the local economy, and the failure to assess inclusive community and visitor needs.

These deficiencies and failures impact upon the Plan’s Objectives 2, 3, and 4, and policies in the Spatial Strategy, and especially so in the Sections of Economy and Employment, but also upon wider community needs and infrastructure and inclusion.

More specifically, impact assessments will apply disproportionately as a consequence of the very different treatment of, and favourable policies for, drinking establishments, and in particular public houses, in the emerging City Plan in comparison, in particular to caterers offering shisha smoking, especially so where there are external tables and chairs used by diners, drinkers (alcoholic and non-alcoholic), and smokers (European or shisha smoking).

These may now be sui generis uses, (although arguably if food consumption is the main activity Class E(b), but also towards other food and drink uses with external tables and chairs for public use, whether in Class E(a) or Class (b) use. (Formerly A1 or A3 uses). Likewise for mixed A1/A3 uses which should now fall wholly within Class E, i.e. the non-drinking establishments still offering some alcoholic drinks and inviting European style smoking to take place.

In contrast, the sui generis mixed use A1/A3 uses and uses with shisha smoking taking place and no alcohol being offered will still likely be considered to be sui generis uses, or will be A1 uses or A3 uses with shisha smoking being offered without amounting to a material change of use, and now falling within Use Class E(a) or E(b) respectively. (Where on site food consumption is the primary activity, arguably, the use should be E3(b).

These will be places used by minorities in the community as part of their particular community and social infrastructure, where shisha smoking is offered at external tables and chairs of necessity under other legislation. These establishments will still be treated very unfavourably, despite their external impacts being similar to all uses offering external tables and chairs under the new Use Classes following the City Plan's intended policies. (And also where adverse impacts from alcohol drinking could be even more significant).

However, the impending changes in the Use Classes Order could make it even more difficult to open and expand new shisha smoking offers in conjunction with existing food and drink/catering uses, as these are more likely to be considered mixed sui generis uses outside Class E, **following the unsound approach set out in the plan**. As has been referred to in earlier submissions, the Plan seeks to make any ancillary level of activity involving shisha smoking a material change of use – rather than follow a lawful approach of matters of fact and degree for the planning decision maker to judge case by case.

This could lead to more enforcement actions, more concerns over arising over breaches of lease user clauses by landlords, and the eventual closure of such businesses; whilst at the same time public house uses are to be encouraged, safeguarded and supported – also now with a sui generis use status.

Changes in the Use Classes Order could also make it easier to safeguard and protect formerly Class A4 drink establishment uses, and public houses in particular, and allow them to expand and offer external tables and chairs and places to drink and smoke externally, more readily, as part of a sui generis use. Public houses and other operators and the wider community will be able to rely on favourable policies to protect these uses and allow more establishments to open or accept the expansion of existing establishments.

This is despite the categorisation of many such uses being sui generis once the new Regulations take effect, as although planning permissions will more often be required than, perhaps, was the case before, the policies will be favourable. This will give more opportunities for the local planning authority to exercise control over these uses, but for one part of the community positively, and for the minority ethnic and religious ones, negatively.

Community and social benefits including opportunities for a reduction in loneliness could then depend upon the ethnicity and religion of the operator and customers. This would not be inclusive.

The decision as to whether shisha smoking is an ancillary use that does not give rise to a material change of use should be a planning judgement on a case by case basis. This representation has already been made and examples given. The Plan needs amendment.

Where the use gives rise to a material change of use, whether by reason of it becoming the primary use or by the creation of a mixed A1/shisha smoking use or A3/shisha smoking use does appear to not materially change, whether the original use falls in future falls within Class E(a) or E(b) or one of the other E use classes, or is a sui generis use. The use would still be subject to the emerging targeted policies for shisha smoking.

Likewise with Public Houses/Drinking Establishments currently falling within a Class A4 use these will become sui generis uses and changes of use will require a full planning permission. Future changes of use from these uses will need a full planning permission subject to the emerging policies in the City Plan. A change to a use for restaurant or café with shisha smoking would still be resisted even if there were a local need.

The Use Class changes will further reinforce the inequalities in the application of these highly differentiated policies in the City Plan, safeguarding and protecting in particular existing public house and other drinking establishment uses with or without external tables and chairs, and new establishments. These former A4 uses will be treated more favourably than the existing and proposed former A1 or A3 uses and enterprises (and on occasion A4 and public house uses) usually associated as a basis for a change of use to a mixed use with shisha smoking.

The Implications for the City Plan are that the emerging policies, explanatory paragraphs and policy criteria will become even more discriminatory in effect than was the case before the Use Class Order changes in the 2020 Regulations if left unchanged.

This further renders the Plan unsound without changes to the Plan policies and will damage inclusivity, especially with regard to the Plan Objectives and the Economy and Employment sections of the Plan.

Amendments to the City Plan as suggested are still required.

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3 September 2020