

**hearing statement for the westminster city local plan examination  
in public.**

**Hearing Statement for the Examination in Public of the Westminster City Plan 2019  
-2040 on behalf of Mr Hakim Gholam and family, trading as No 1 Café. Reference 061.**

Hearing dates are understood to still be confirmed.

This Statement is essentially concerned with:

**(a) Matters in Question 1, Integrated Impact Assessment, item (8), whether issues of  
equality have been assessed and addressed?**

*Although there has been an Integrated Impact Assessment June 2019, this has not assessed issues of equality. The later Equalities Impact Assessment as an Addendum to the Integrated Assessment November 2019 does attempt an assessment but does not fully or properly address the equalities impacts.*

*Further material is brought to the Inspector's attention on the equalities issues and matters arising since the Regulation 19 Consultation submissions were made by the Representors. This includes advice being sought from the Equalities and Human Rights Commission. The request for advice from the Commission is submitted for the Examination in Appendix 1 to this Statement to assist and inform further the Inspectors in the task before them.*

*This Statement also includes further comments arising on the Local Planning Authority's post-consultation assessments and minor modifications.*

*It is concluded that there are serious equalities impacts left unresolved in the Plan which render the Plan unsound and possibly unlawful.*

**(b) Matters in Question 5 – Economy and Employment. The issue whether the Plan  
has been properly prepared, justified, effective, consistent with national policy and  
in general conformity with London Plan in relation to economy and employment.**

**Policy 17. Item 17. 17 Is the approach to food, drink and entertainment uses justified  
and implemented in practice in respect of the issue of over-concentration and how  
can this be defined?**

*This Statement concludes that the approach cannot be justified when the evidence base and assessment of impacts of all the uses in Policies 17, 18 and 19 are not consistent, being weighed favourably for public houses and adversely for uses with shisha smoking activities, without regard to falling demand in the case of the former and growing resident and tourist needs in the latter.*

*This is further aggravated by policies seeking to restrict uses where it is considered without a clear evidence base there is over-concentration. The post-consultation impact assessments and modifications proposed are reviewed and it is concluded that there is insufficient consideration and modification to address these deficiencies in respect of justification and implementation, and also in respect with over-concentration.*

**Policy 18. Item 18. Is the approach to the protection of public houses justified and sufficiently flexible?**

*The approach in the City Plan cannot be justified when the demand for services in public houses appears to be falling with more pubs closing.*

*This should not be assisted by applying less strict controls on their likely adverse impacts, both health and environmental, which are still being applied to other uses with similar functions and impacts, arising from shisha smoking or from other outside seating areas.*

*It appears, when contrasted with the proposed controls for shisha smoking, to be discriminatory for people with protected characteristics. The impacts arising can be similar and similar restrictive policies should apply to all such uses to meet the requirements of the Equalities Act 2010.*

*The post-consultation impact assessments and therefore to the modifications proposed are wholly inadequate with regard to the consumption of alcohol. These cannot be justified in the light of the restrictions required for similar impacts from shisha smoking. Policies adopted should be comparable and equally restrictive or flexible.*

**Policy 20. Item 20. Is the approach to the use of premises and outdoor areas for shisha smoking justified?**

*The objection to the City Plan is not just that the approach adopted for shisha smoking, usually part of a sui generis mixed use could not necessarily be justified, but that it is excessive and inflexible.*

*To adopt this approach in the City Plan it would have to be considered a separate, unique and significant use and problem in itself.*

*There is insufficient evidence or justification for this. If it is considered to be justified, and the evidence base for this is limited, it cannot be justified without equivalent regard to all other uses of premises and outdoor areas used for eating, drinking and smoking, and for social gatherings, with similar or worse impacts; whether environmental or on health.*

*To not do so, given the similar impacts arising from outside seating is discriminatory.*

**Item 20. Modification for Soundness.**

*If the strict policy criteria for outside eating and drinking with shisha smoking is considered justified, necessary and effective, then it must necessarily follow that the same restrictive policy criteria must apply to uses with similar impacts and the Plan modified accordingly.*

*In the post-consultation assessments and proposed modifications there has been inadequate justification for not modifying policies and the modifications to policy especially with regard to alcohol consumption and health are ineffective and meaningless.*

***The Plan is consequently unsound.***

Although there is some overlap with other related matters and issues I consider the above to be the most relevant Matters and Issues in Question for the Representors to raise and discuss by attendance at the Examination in Public to assist the Inspector in relation to the Responses already submitted.

This Statement is submitted on behalf of Mr Ali Faraj of Amypro Limited and family, trading as the Sara Café in Crawford Street, London W1, and on behalf Mr Hakim Gholam and family, trading as the No 1 Cafe in Church Street London NW8.

In this Statement I have also had regard to the National Planning Policy Framework 2019 issued in February 2019 just after the Regulation 19 Consultation on the City Plan was submitted. I have added updated comments to reflect this.

I have also had regard to the Adopted London Plan 2016 with amendments and the emerging New London Plan and provided comment regarding conformity.

I have also reviewed the Council's post-consultation assessments and made comments, on these, together with comments on the Schedule of Minor Modifications to support the conclusions summarised above.

These comments support the summary responses to the Matters in Question set out above.

I have prepared this Hearing Statement. My name is Alan Wipperman (BA MRICS MRTPI C Dip AF). A short summary of my qualifications and experience is in Appendix 2 with a signed RICS Statement of Truth.

**1. Further Comments - The National Planning Policy Framework (NPPF) 2019.**  
(Section and paragraph numbers relate to the NPPF 2019).

- 1.1 The Westminster City Plan 2019 – 2040 was submitted 19<sup>th</sup> November 2019 to the Secretary of State, sometime after the 24 January 2019. The Plan will have to be considered in the light of the NPPF 2019. This Statement provides additional comments arising from the NPPF 2019.
- 1.2 The revised NPPF 2019 continues to lay great emphasis on sustainable development which has three interdependent over-arching objectives. Economic, social and environmental.
- 1.3 Many food, drink and entertainment uses have smoking taking place outside. Where there is an element of shisha smoking it is nearly always part of a mixed use with a food and drink use. (Sui generis). However in the shisha smoking policy and related text, the City Plan will impose greater clearly targeted restrictions and criteria for approving and delivering shisha smoking as though it were a primary use to the wider public compared to other uses.
- 1.4 This is despite growing numbers of local minorities, both residents and tourists, in the City Plan area who seek out and want to be customers at snack bars, cafes and restaurants that offer shisha smoking. The growing number of outlets offering shisha smoking and serving customers confirms this, despite the many refusals of planning permissions, enforcement action, and appeals, under current planning policies.

- 1.5 For example, Mr Ali Faraj's family business in Crawford Street has been refused planning permission for nearly every application made, and only now operates after a number of successful planning appeals, including for an appeal for a matter as small as an application for adding one table and two chairs to their forecourt use to total 14 customers.
- 1.6 At Mr Gholam's family business, the No 1 Café in Church Street NW8, the use was also only given consent on appeal. (Copy appeal decisions can be supplied).
- 1.7 The Council have been resisting shisha smoking at external tables and chairs for many years and instead it could have been providing more opportunities to meet the needs of a changing and more diverse population with properly conditioned permissions. This could have added vitality and interest in the Plan area, but it has not. It now wishes to add further restrictions on these uses.
- 1.8 If this restrictive approach is then confirmed by this targeted policy for outside seating solely for shisha smoking only this will impact adversely on the economic objective for delivering economic benefits at the right time for a changing population, and also adversely impact on the social objective for current and future social and cultural well-being, not to add fairness and inclusion.
- 1.9 Shisha smoking has a social and community infrastructural function for minorities in the area, equivalent it is suggested, to those of public houses, as well as having an economic and tourism role, and offering business and employment opportunities to the local area.
- 1.10 If these restrictive policies are required for outdoor seating areas used for shisha smoking to meet the environmental objective in the NPPF 2019 then it must surely apply to all outside seating areas used for all food, drink and entertainment uses; especially when there is outside smoking and drinking of alcohol at public houses? Instead an equivalent policy for snack bars, cafes and restaurants as well as public houses, is absent. This cannot be sound.
- 1.11 Para. 11 for plan-making needs to be met and criteria should be applied to all such uses and not those used mainly by a minority with protected characteristics under the Equalities Act 2010.
- 1.12 In the Representors' earlier Regulation 19 submissions it was made clear that there was no sound or real evidence base for these targeted and discriminatory policies. The requirement of para. 31 have not been met, the Plan is unsound. (See para. 35-36).
- 1.13 Para. 80 for building the competitive economy requires local needs and strengths to be taken into account, and the development of catering with shisha smoking reflects these needs. It should now be seen as a strength for the City Plan area; contributing to the local economy and tourism. Especially so in and around the Edgware Road area and environs.
- 1.14 Para. 82 is also relevant. Conditions to permissions can control these uses where necessary and can be enforced. These policies are not needed unless they are required for all outside seating areas. The NPPF is not met.

- 1.15 Section 7 for town centre vitality does not really address the issues arising but shisha smoking brings vitality and character to an area as well as custom.
- 1.16 Section 8 seeks healthy, inclusive and safe places. Shisha smoking, like the consumption of alcohol, can be very unhealthy and can have very negative impacts. However these are not reasons for restricting activities at public houses. The negative impacts are acknowledged in the Proposed Modifications – see below. However accepting that places offering alcoholic drinks and seating outside for drinking and smoking can be considered acceptable as part of the necessary setting for social interaction within all communities, regardless of these serious impacts, finding that places offering shisha smoking cannot be considered acceptable is inconsistent and discriminatory. Loneliness and ill-health can be mitigated and community wellbeing supported for some but not for others. The reasons for accepting negative impacts for public houses and alcohol consumption but not shisha smoking are unclear and not demonstrated by evidence or even an equivalence of evidence. (Again see below).
- 1.17 Shisha smoking is not exclusive to a minority originally from one country. It is available to all. Not all those taking refreshment at premises offering shisha smoking will smoke shisha, many attend with friends and family, take refreshments or meals but do not smoke at all. Section 8 of the NPPF cannot be complied with unless all outside eating, drinking and smoking are treated equally and inclusively.
- 1.18 Para. 92 is important and relevant, sub-para.s (a) to (e). With appropriate conditions shisha smoking has been allowed to operate and can operate successfully in accordance with conditions. It does not justify these additional targeted policies, since the conditions used to date can control the use now. Enforcement can be combined with other legislation, as and when necessary, as with public houses. The NPPF is not met.
- 1.19 It is clear that the City Plan has failed to meet the requirements of the NPPF 2019. It is not inclusive and shisha smoking can be controlled by conditions and other legislation when needed, as remains the case with non-shisha smoking food and drink uses. The Plan is unsound.

## **2. The London Plan and the New London Plan.**

- 2.1 The adopted London Plan 2016 with 2017 “Fix” remains extant and the emerging New London Plan is currently delayed following an intervention by the Secretary of State.
- 2.2 The Adopted London Plan amended 2017 in Policy 4.8(A) requires Boroughs in (c) and (d) to provide policy for the loss of retail and related facilities including public houses and also identify areas under-served with shopping and services and facilities and support additional facilities. There is no reference to shisha smoking as a facility or service but it can be inferred to be included as such, given the function of the activity.
- 2.3 The Adopted London Plan states:
- “c provide a policy framework for maintaining, managing and enhancing local and neighbourhood shopping and facilities which provide local goods and services, and develop policies to prevent the loss of retail and related facilities that provide essential*

*convenience and specialist shopping or valued local community assets, including public houses, justified by robust evidence*

*d identify areas under-served in local convenience shopping and services provision and support additional facilities at an appropriate scale in locations accessible by walking, cycling and public transport to serve existing or new residential communities*

- 2.4 Although the City Plan has positive policies for maintaining public houses (See also para. 4.48A) but there are no positive policies for the additional provision of shisha smoking places in an area where there is clearly demand. Instead the City Plan seeks to restrict and reduce the number of places offering shisha smoking.
- 2.5 The City Plan does not therefore conform with the adopted London Plan policy 4.8.
- 2.6 Policy 4.8 (B) (c) also requires robust evidence. There is no robust evidence basis for the targeted shisha smoking policies as has been set out in the earlier representations submitted.
- 2.7 Likewise in the emerging New London Plan this now recognises that public houses are part of the cultural value of localities and Policy HC7 (A) (1) and (2) requires Boroughs in their development plan documents to:
- “1) protect public houses where they have a heritage, economic, social or cultural value to local communities, or where they contribute to wider policy objectives for town centres, night-time economy areas, Cultural Quarters and Creative Enterprise Zones*
- 2) support proposals for new public houses where they would stimulate town centres, Cultural Quarters, the night-time economy and mixed-use development, **taking into account potential negative impacts**”.*
- 2.8 It is accepted that the Westminster City Plan policies for public houses broadly follows this policy, although all potential negative impacts are not fully taken into account as is the case with shisha smoking. In detail, in the local areas of the Boroughs, each Plan should properly also take account of possible negative impacts referred to.
- 2.9 If external tables and chairs give rise to negative impacts from customers taking shisha then they also arise from those outside pubs taking alcohol and smoking. Similar criteria and policies should be applied to new or expanding public houses with external seating to those required for new or expanding external shisha smoking. (And for restaurants and cafes as well).
- 2.10 Shisha smoking can also be considered to contribute to the cultural value of local areas as well, and not exclusively for minorities.
- 2.11 Shisha smoking is a legal activity like other forms of smoking, it is a social activity and is in demand. Establishments offering shisha smoking should be treated similarly to pubs if the City Plan is to accord with the Adopted London Plan and the emerging New London Plan policies.
- 2.12 There is insufficient conformity with the London Plans.

**3 (A) MATTERS IN QUESTION 1, INTEGRATED IMPACT ASSESSMENT, ITEM (8), WHETHER ISSUES OF EQUALITY HAVE BEEN ASSESSED AND ADDRESSED?**

- 3.1 Having made the Regulation 19 consultation submission, upon the instructions of the Hakim family trading as Al-Balad Restaurant, Mr Faraj and family trading as Sara Café and Mr Gholam and family, and with support and advice from Mr John Dagg of Trinity Chambers inquiries were made of the Equalities and Human Rights Commission in writing following the Commission's advice to write in on the matters raised. This was done in January 2020 in anticipation of the Local Examination of the Plan. The inquiry and the advice requested is attached as Appendix 1.
- 3.2 The advice of the Commission is still being pursued. The Inspectors are respectfully requested to take account of the matters raised with the Commission.
- 3.3 It is clear that there has not been adequate assessment of equality with regard to policies for shisha smoking and other food, drink and entertainment uses, especially public houses, where external seating and shelters are provided for eating, drinking and smoking of all types in the Assessments.
- 3.4 The Integrated Impact Assessment of June 2019 with regard to Policy 14 makes specific reference to shisha bars (a perjorative term in my opinion since few premises are primarily for shisha smoking. They are usually a mixed sui generis use. Although they can have a negative impact on health and environment there is now still only limited reference to these impacts for cafes, restaurants and public houses with drinking alcohol inside and out, and drinking, eating and smoking outside.
- 3.5 Policy 17 refers to negative impacts of shisha smoking for residents with nearby windows. The assessment acknowledges health impacts of public houses but without requiring similar policy controls to minimise health impacts from drinking and smoking outside public houses, from smoking shelters; (or other food and drink premises) on residents with nearby windows. Nor for the impacts from anti-social behaviour from alcohol consumption.
- 3.6 The Assessment does confirm how only public houses can benefit residents affected by loneliness and for cultural well-being without the need of any management plan, but not for other café and restaurant uses or where shisha smoking is undertaken. The Impact Assessment reveals a further layer of discrimination under-pinning policies in the Plan.
- 3.7 Minorities who do not attend pubs but like to attend places offering shisha smoking can it seems be allowed to go without company and cultural well-being; and then meeting their needs will be resisted. This Assessment itself is deeply flawed and biased.
- 3.8 Furthermore the Assessment states on Policy 17 and Objective 10 Noise the following, again targeting shisha smoking uses:

*“Food, drink and entertainment uses require mitigation of the negative impacts from any proposed new food, drink, entertainment and shisha smoking uses, which may include noise issues”.*

- 3.9 The Regulation 19 Consultation Response, previously submitted, makes clear this is not the case and the deficiencies and discriminatory approach complained is not addressed in the Assessment since the Response. (Please refer to the section on Policy 17 and the requested amendment and modifications sought).
- 3.10 There is reference to Objective 9, Air Quality. Under other legislation the smoking of shisha, indeed all forms of smoking in the open air is generally lawful. Smoking of all forms is also lawful in statutorily compliant shelters. (50% open sides). This is the case whether for shisha smoking or any other form of smoking. If the Air Quality Objective is to be achieved by restricting smoking then Policy 17 should apply where there is any form of outside smoking - or not at all and left to other legislation.
- 3.11 With over 500 public houses, wine bars and restaurants that are licensed as stated in the Assessment, these are very much more likely to be a cumulative problem with alcohol and smoking than the number of catering establishments offering shisha smoking. (See para. 3.28 of the Assessment). The Edgware Road area with its vibrant and cosmopolitan character is an exceptional area where shisha smoking is now part of the cultural character and visitor experience. Over-concentration does not really apply in such a context.
- 3.12 The Assessment appears to have little regard to the contrast of approach and the inequality of esteem when considering shisha smoking with other food drink and entertainment uses, especially public houses, and local and tourist growing minority needs. It does not address the equality concerns raised in the earlier Responses made. With no meaningful amendments the City Plan remains unsound.

#### **4. EQUALITIES IMPACT ASSESSMENT ADDENDUM TO THE INTEGRATED IMPACT ASSESSMENT NOVEMBER 2019.**

- 4.1 The Addendum notes:
- “According to GLA projections, 60% of Westminster’s population is White British and Irish or Other White, while the remaining 40% is from a different ethnic background. The largest ethnic group is Arab, followed by Mixed and Other Asian. Westminster has proportionally more Other White people (21%) than London (11%). 28% of Westminster’s population is of BAME ethnicity, which compares to the London average of 30%”.*
- 4.2 There is a variety of backgrounds in the area. With regard to religion the Addendum states:
- “The two largest religions in Westminster are Christian (45%) and Muslim (18%), followed by no religion (20%)”.*
- 4.3 This indicates there will be demands and needs for services and facilities for community and social interaction, and places to go for food, drink and entertainment at premises not offering licensed alcohol. These needs should be met in similar ways to the majority and other groups in the City area, but the policy towards shisha smoking is restrictive.
- 4.4 Unfortunately the document is a very general assessment and does not have any detailed regard to the impacts of the shisha smoking policy raised in the Response, save in the Equality Impact Assessment Screening in Section 5. The summary view is a colour coded system with Major Positive, Minor Positive, Neutral, Minor Negative, and Major Negative.

- 4.5 Nearly all policies appear to be assessed to major or minor positive, save a few relating to housing. In Section 15 shisha smoking policies are found to be major positive as well, stating:

*“The policy also provides protection from the proliferation of uses which may negatively impact on public health (e.g. hot food takeaways, betting shops, and shisha bars). This is likely to benefit younger people and children, helping them creating healthy eating habits since young age. Sensitive receptors including children, pregnant women, those with babies and those with disabilities are likely to benefit from the additional protection from harmful effects of uses such as shisha smoking”.*

- 4.6 No reference is made to other forms of smoking or to the harmful effects of alcohol arising from consumption of alcohol or from other forms of tobacco on pregnant women for example, despite these matters being raised in the Response submitted. No negative impacts arising for the minority communities attending places offering shisha smoking were found. This cannot be considered a sound and balanced assessment and the Plan cannot therefore be sound.

- 4.7 Policy 17 is found to positive with no negative impacts, minor or major. The Assessment states:

*“The policy protects public houses, which can play an important role as social hubs within a community. This is particularly important to enhance community wellbeing through improving **social cohesion and participation in community life**. This is likely to have a differential positive impact on older people who are typically more at risk of social isolation”.*

- 4.8 If public houses can have this beneficial effect where do people go who do not want to attend places offering alcohol? How can their social cohesion and participation in community life be provided? The Assessment mentions this and continues:

*“It is recognised, however, that public houses can be associated with drinking and anti-social behaviour and they might not cater for the wider community. The policy is likely to have a differential impact on some ethnic/faith groups (who do not drink alcohol). Furthermore it might have a negative impact on public health, particularly of those with disabilities, younger and older people who may be encouraged to drink alcohol”.*

- 4.9 Despite these somewhat in passing comments of the health and anti-social impacts arising for those using public houses, and a mention of a differential impact on some ethnic/faith groups, (A significant minority of the City’s population) it is concluded there is no negative impacts – all are positive or neutral. No policy changes for public houses or shisha smoking is found. This conclusion is simply unsound.

- 4.10 The Assessment of 17 goes further with regard to shisha smoking, stating:

*“Shisha smoking is a different activity to cigarette smoking. It is offered commercially at a number of premises across the city and since the introduction of smoke-free legislation it has become more visible, taking place outside premises and on the street, sometimes late into the night. This can have an impact on the amenity of public places for residents and our ability to manage the urban environment with our partners”.*

- 4.11 The impacts are no different to those arising from outdoor seating areas to other premises used late into the night for drinking and smoking. Conditions can control the use and a targeted policy has been adopted. It is covered by the same legislation as other forms of smoking and should be assessed in the same way. If these controls are needed for shisha smoking they are needed for other outside seating areas.

*“While we recognise that shisha smoking is particularly prevalent within specific ethnic and faith groups, and that tackling the issues caused by this activity in a targeted way can give rise to perceptions of discrimination, the policy does not intend to prohibit shisha smoking or disadvantage any protected group in doing so. The restriction on the use of premises and outdoor areas for shisha smoking is intended to protect the health and amenity of local residents and users. The overall impact will be positive in seeking to improve health outcomes and reduce incidences of nuisance”.*

4.12 If improving health outcomes and reducing incidences of nuisance are the impacts to be addressed then the policy must be applied to all places where alcohol and smoking takes place. No perception of discrimination would then arise.

4.13 If this is the underlying concern in policy then it is not clear why the Planning Authority is unwilling to extend the restrictions to the majority white Christian, or other ethnicities and religious people in the population as well. This omission is seen as positive, see below:

*“The policy is expected to have differential positive health impacts on certain ethnic and faith groups, where shisha smoking is more prevalent, and on sensitive receptors including those with disabilities, children and young people, old people and pregnant women”.*

4.14 The Addendum then refers to the document “Reducing the Harm of Shisha” of 2017 as evidence for the policy and how to manage the alleged and actual negative effects:

*“The council prepared “Reducing the Harm of Shisha” in 2017, which looked at how effectively manage the negative impacts connected with shisha smoking. The strategy was subject to an EqIA. While some potential negative impacts on equality groups have been identified, the policy as a whole is considered to provide a positive impact across all groups, with particular benefits to those with a disability, LGBTQI+ people, children and young people, old people, pregnant women, those with babies and those on low incomes”.*

4.15 No equivalent document for reducing the harm of drinking or other forms of smoking has been undertaken to manage the negative impacts in planning policy. Indeed the opposite approach has been taken, as set out in the Response earlier and comments made above.

4.16 If restrictive policy is required for shisha smoking at external tables and chairs and shelters then the same or similar policies are required for drinking alcohol and smoking in a similar way. This concern was not addressed save in passing and no action taken.

4.17 The Addendum simply fails to assess and address the unbalanced equality impacts.

## **5. SCHEDULE OF PROPOSED MINOR MODIFICATIONS TO THE REGULATION 19 PUBLICATION DRAFT CITY PLAN NOVEMBER 2019.**

5.1 There is no reference to shisha smoking in the modifications proposed.

5.2 There are two references to alcohol. The first following are accepted representations by Longmartin and Shaftesbury PLC for para. 2.10 regarding the night time economy adding “balanced and well managed” and “that” to will not be dominated by alcohol consumption.

5.3 The second follows changes after accepted representations from the NHS, HUDUs and CCGs, M/EE/10, changing para. 17.5, adding “although the public health risks of alcohol are recognised”. This amendment will have no impact and will make no meaningful difference to the Plan for the planning decision maker.

- 5.4 Applying the same restrictions proposed for shisha smoking to outside seating and smoking areas for public houses and other food and drink places would make a difference for the planning decision maker.
- 5.5 **It is clear even the minor modifications drafted after acceptance of a representation are also discriminatory with no easing of policy for shisha smoking and yet no effective additional restriction for premises associated with alcohol consumption.**
- 5.6 It is also worth noting that there appears to be only one reference in the Schedule to an individual person, a Ms Colvin, having achieved any modification of any kind to the Plan. All other modifications appear to have been made for clarity by the Council or following representations made by mainly major organisations or businesses. The City Council does not appear to have taken a balanced approach to representations made.
- 5.7 It must be a major concern that there are many major land holders named in the Schedule whose interests may be at variance to the wider population and small business occupiers.

Alan Wipperman BA MRICS MRTPI C Dip AF

25 June 2020

(Microsoft Office Word. Word count including appendices 5719).

**APPENDIX 1.**

**Advice sought from the Equalities and Human Rights Commission in January  
2020.**

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28 January 2020

Ms Rebecca Hilsenrath  
Chief Executive Officer  
The Equality and Human Rights Commission  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX

Dear Ms Hilsenrath

**RE: WESTMINSTER CITY COUNCIL CITY PLAN 2019 – 2040 REGULATION 19 VERSION AND EARLIER CONSULTATION VERSIONS ETC. – REQUEST FOR ADVICE WITH REGARD TO SECTION 149 OF THE EQUALITIES ACT 2010.**

I write to you in the first instance seeking advice in respect of the concerns of my clients and myself, regarding the approach adopted by Westminster City Council in the preparation and publication of recent planning policy documents.

If some of the policies are adopted or used now as emerging policy this could give rise to adverse impacts and discrimination for local minority ethnic and religious communities and businesses offering shisha smoking within the City of Westminster area. This is in comparison to other communities and major ethnicity groups who will not be subject to such policies despite similar adverse amenity impacts arising from other forms of smoking with outside seating often with alcohol being consumed. In the case of public house uses these will be positively treated.

It appears some social infrastructure is being positively considered and other social infrastructure is not.

The advice is set out in more detail as enclosed with further supporting materials.

I, and my clients, would appreciate the Commission's advice.

Yours sincerely

Alan Wipperman BA MRICS MRTPI C Dip AF

**alan wipperman & co – a firm regulated by the RICS**

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**Request for advice from the Equality and Human Rights Commission regarding the Public Sector Equality Duty (Sect. 149 of the Equality Act 2010) as applied to the approach of Westminster City Council regarding 'Shisha Cafes' and restaurants and other premises offering shisha as a part of their services: the Draft Westminster City Plan 2019-2040 (Regulation 19), prepared under the Planning and Compulsory Purchase Act 2004 (as amended).**

***Introduction and background.***

1. This request is made by myself, Alan Wipperman, a Chartered Surveyor and Chartered Town Planner, on behalf of the clients listed below, all of whom provide shisha smoking services as part of their family owned and operated café and restaurant businesses in Westminster:

- (i) Mr Hakim Gholam and family, trading as The No.1 Cafe, 1, Church Street, London NW8 8EE;
- (ii) Messrs Hussein, Ali and Khodor Hakim, and family, and their company, Donise Limited, trading as the Al Balad Restaurant at 11, Edgware Road, London W2 2ER;
- (iii) Mr Ali Faraj, Mr Ahmad Al-Husseini and family, and Amypro Limited trading as Sara Cafe at 13A Crawford Street, London W1U 6BZ.

2. I have made representations for these clients in the City of Westminster, City Plan 2019-2040, Local Plan process. However, to date, the Council has not acknowledged that a discrimination issue arises. I have raised this in conjunction with town planning arguments and in submissions in July 2019, and also in December 2018. (Copies of the July 2019 submissions are enclosed without appendices but provided by email. No December submission was made for Mr Gholam and family). I had raised some of these matters previously in 2013-14 in response to the City Council's consultation on the Westminster City Plan "CMP Revision" in Booklet No. 5, "Food, Drink, Entertainment, Tourism, Arts and Culture" which made specific references to the impacts of shisha smoking, especially in the Edgware Road, and at the same considered positive action following the loss of public houses. The Consultation proposed a draft Shisha Smoking Policy CM24), but that Policy was not progressed or adopted – this document is submitted and can be found in the emailed appendices to the December 2019 submissions.

3. As the Commission Officers will probably be aware 'shisha' is a particular form of tobacco smoking where the (variously favoured) tobacco smoke is drawn by the seated smoker through a pipe linked to a 'shisha flask', having passed through water. The cafe and restaurant proprietors hire out the flasks to customers, provide and light the tobacco. Customers sit at tables outside the premises, often under cover, but as regulated by the Health Act 2006 (which applies to all forms of tobacco smoking).

4. The practice of shisha smoking probably derives India or Persia, but is common in the Levant, the Middle East, and North Africa though also found in India, Pakistan and Bangladesh. The customers at establishments offering shisha smoking in Westminster are

largely either from the Levant, the Middle East and North Africa, or have a family background from these areas, or are tourists visiting London, and are predominantly of the Muslim faith.

5. Customers attend as individuals, with friends and visitors, and with families, and the sandwich bars, cafes, and restaurants that offer shisha smoking often perform a social function for the various local minority communities to meet and interact, as part of their accessible local social infrastructure.

6. The shisha sessions are often combined with taking refreshments, comprising beverages, such as tea, coffee, and fruit juices, and food, often snacks, but also sometimes full meals especially where the establishment is a restaurant. Alcohol is not usually provided or served.

7. The concern is with the (draft) policy of Westminster towards shisha establishments and their customers *as compared with traditional public houses and bars, where the impacts of social gatherings and smoking external to the premises, such as noise, odours and anti-social behaviours can be very similar; and also where adverse health impacts can arise*. Prima facie the Council's approach appears to lean very much in favour of the latter uses and against shisha establishments.

8. The wider concerns of my clients is that their businesses (and therefore their customers and their local communities, their visitors and tourists) are to be subject to a different policy and criteria treatment from that applied to public houses, other restaurants, cafes and bars where smoking (cigarettes, cigars, pipes), necessarily outside the building since 2006, is also an established pattern, and where similar impacts can arise. Practising Muslims do not, often patronise public houses, restaurants and bars where alcohol is provided, because they mainly do not consume alcoholic drinks.

**The Draft Westminster City Plan Regulation 19 Version - 2019 to 2040. Pages 79, and 86-88.**

9. The most relevant part of the plan is attached as an extract in Appendix 1. Policy 17 (p.86) concerns 'Food drink and entertainment.' The favoured treatment of public houses will be noted: "**B. Public houses will be protected throughout Westminster ....**". They are clearly regarded as community assets. The earlier version of the Plan issued as a draft for consultation is also reproduced with relevant extracts and is in Appendix 2.

10. In contrast the approach to shisha smoking at 'F' is strict; "*The use of premises and outdoor areas for shisha smoking will not take place under or adjacent to windows of existing residential properties*". It can reasonably be asked why such explicit requirements are not applied also to public house, restaurant and café, and bar proposals where external tables are being proposed or provided for use by seated customers often smoking and drinking alcohol.

11. The principal concern is with paragraphs 17.10 - 17.13 (p.88). In paragraph 17.10 it is stated '*Shisha smoking creates smoke containing chemicals which are linked to several life limiting diseases ....*'. This is not disputed - but it is true of all tobacco smoke and all forms of smoking. The risk to health applies equally to the smoke from cigarettes, cigars, and (traditional) pipes. Why then is only shisha smoking identified for special mention? Why is the

wider public health risks associated with public houses, other restaurants, cafes etc. ignored where external smoking shelters and tables are often provided?

12. Furthermore there are also many life limiting diseases and impacts from alcohol consumption (and also noise and anti-social behaviours that can rise from alcohol consumption) but these are not, it seems considered at all, or not in the same way in the Plan.

13. Paragraph 17.13 should be read in totality: it goes to the environmental impact of shisha establishments. There is no disagreement that sensible regulation for all such uses is appropriate. But again, why are the same points not made in respect of bars and public houses, restaurants and cafes, etc. with (often) drinking and smoking taking place outside the buildings and extending into the street?

14. There is a further reference in paragraph 15.12, p.79 concerning town centres and high streets: *"A predominance of uses such as shisha bars , betting shops and fast food takeaways , can undermine town centre vitality and viability and be detrimental to public health"*. Could not a predominance of cafes, bars, restaurants, and public houses have the same effect? No detailed evidence appears to have been provided to demonstrate that shisha smoking in particular, has had such impacts, in the preparation of this Plan or in the earlier draft Shisha Smoking Policy documents or Town Centre Health Checks?

#### **Discrimination.**

15. Shisha smokers are predominantly Muslim. This, and the association of this social activity with people of particular racial origins – mainly Arabic speaking backgrounds, and mainly with backgrounds from the Levant, the wider Middle East, North Africa, and the Magreb, as well as beyond - means that they and the establishments, mainly family owned and operated small businesses, and their communities, are open to discrimination, if their businesses and their customers are not treated fairly.

16. It is my view is that the language, the approach and the policies of the Draft Westminster City Plan 2019-2040 Regulation 19 Version, and the earlier Draft for Consultation, ( as well as the draft Shisha Smoking Policy issued for consultation but not adopted) will once again discriminate in future against the availability and enjoyment of shisha smokers as compared with the availability of smoking generally associated with cafes, restaurants, and especially with bars and public houses serving alcohol, where the adverse environmental, social and health impacts can be similar, or indeed, arguably worse.

17. My clients would value the Commission's opinion before the Planning Inspectorate proceed with the Local Plan Examination. The Draft City of Westminster Plan 2019 - 2040 Regulation 19 Version has now been approved by Westminster City Council and has recently been submitted to the Secretary of State and the Local Plan Examination stage will follow.

(In addition to the Appendices to this Submission additional documents are enclosed by way of background information as listed after the appendices).

Alan Wipperman BA MRICS MRTPI C Dip AF

28 January 2020

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The appendices to the advice request, being extracts from the Westminster City Plan 2019 – 2040 versions from 2018 and 2019, are not reproduced, but can be supplied. The last appendix page to the advice request is reproduced below which makes reference to the additional documents submitted to the Commission with the Request.

Further enclosures/attachments to the Letter/Submission to the Equalities and Human Rights Commission by way of further and detailed background:

- 1 Copies of the Three Client's Representations on the Regulation 19 Draft without the full appendices (July 2019).
- 2 Relevant Extracts from the City of Westminster Committee Report to the Meeting of the Cabinet 21<sup>st</sup> October 2019.
- 3 Representations submitted to the City of Westminster Planning Department on behalf of two clients in December 2018 on the Draft Westminster City Plan 2019 – 2040 (Consultation Version).
- 4 Extracts from the City of Westminster Consultation on the Westminster City Plan Consultation - CMP Revision February 2014 with a Draft Shisha Smoking Policy CM24 but with positive proposals for public houses.
- 5 Representation made in response to the Consultation in 2014. Letter 17<sup>th</sup> April 2014.
- 6 Extracts from the City Plan Evidence Base - Town Centre Health Checks Report 2018-19. (No reference is made to the adverse impacts of shisha smoking on town centre health in the evidence base).
- 7 Westminster Council's Conservative Group's website page referring to shisha smoking.

The Commission may also wish to refer to the City Council's Draft Shisha Smoking Strategy 2017

[https://www.westminster.gov.uk/sites/default/files/ev\\_e\\_013\\_reducing\\_the\\_harm\\_of\\_shisha\\_towards\\_a\\_strategy\\_for\\_westminster\\_wcc\\_2017.pdf](https://www.westminster.gov.uk/sites/default/files/ev_e_013_reducing_the_harm_of_shisha_towards_a_strategy_for_westminster_wcc_2017.pdf)

**STATEMENT OF TRUTH.**

As required by the Royal Institution of Chartered Surveyors Guidance as an Expert Witness I believe that the facts as I have stated in this Statement to be true, and the opinions I have expressed to be correct.

I am not being paid on any incentive or success related fee basis in this matter.

I am advising Mr Ali Faraj and family and their company Amypro Limited and Mr Hakim Gholam of No 1 Cafe and his family, and submit this Statement for them and it forms part of their instructions.

Mr Hussein Hakim and family and their company, Donise Limited, wish their representations to stand as previously submitted in writing and do not wish to partake in the Hearings and this Statement is not submitted on their behalf.

Alan Wipperman BA MRICS MRTPI C Dip AF.

25 June 2020.

**Experience and Qualifications.**

1. I have been a Member of the Royal Town Planning Institute since election in 1979 and a Member of the Royal Institution of Chartered Surveyors since 1981.
2. I hold a CNAAB BA First Class Honours Degree in Town and Country Planning (1976) winning the RTPI Book Prize for that year. I have since graduation worked on planning, property and development matters throughout the UK and the Irish Republic. I am 66 years of age and resident in Little Bardfield in Essex.
3. In my wider experience I have worked, inter alia, as a Planning Officer at Thurrock Borough Council, including assessing housing land availability, and later as a Senior then Principal Executive Assistant at the London Transport Estates Department, with departmental responsibility for planning policy responses throughout London, as well as working on planning applications for the Executive.
4. I have been the Assistant Estate Manager, Port of London Authority during the docklands redevelopment period and have worked on property development and funding development as a development surveyor with Investors in Industry plc.
5. Since 1984 I have been either a partner or a principal in private practices based in Essex and Hertfordshire, or in London. From 1984-1987 I was partner in Brian Dadd Commercial based in Buckhurst Hill with considerable local work in Epping Forest District. I now practice as a consultant and principal of Alan Wipperman & Company – Property and Planning – based in Essex which was established in 1987. I have undertaken many planning applications and appeals and certificate applications and appeals.

6. I have advised many clients on planning and property matters in the Westminster City Plan area over the years, with considerable experience of planning applications and appeals with a shisha smoking activity as part of the use since the 2007 smoking ban.

7. I know Westminster City Plan area reasonably well, especially the Edgware Road/Church Street areas, where I have been involved in some successful appeals for uses including shisha smoking.

8. I have acted for Ali Faraj's family for many years and know the Sara Café site well with a number of successful appeals relating to the property securing the current use and shopfront with constant opposition from the Authority since 2009-10.

9. I have acted for the Hakim Gholam family more recently but know the property and the use there for some years.