

<b>Enforcement Delegated Report</b>	<b>Receipt date:</b>	<b>06/05/2022</b>
-------------------------------------	----------------------	-------------------

<b>Officer</b>	<b>Enforcement Case</b>
Gary Bakall	EN22/0358
<b>Breach Address</b>	<b>Photos &amp; Other material</b>
Nisa Local, 185-187 Haverstock Hill	See below

**Authorised Officer Signature**



23/11/22

**Alleged Breach**

Installation of refrigeration plant and enclosure at rear, ground floor level, of premises.

**Recommendation(s):** That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 as amended to permanently remove the Daikin ConveniPack and Booster refrigeration plant and timber enclosure from the rear, ground floor level, and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.

**Site Description**

The site is the ground floor and basement commercial unit of a four storey, plus basement, corner building located on the junction of Haverstock Hill and Glenloch Road, part of designated neighbourhood centre. The premises was a Bank for many years but has recently been occupied by a Nisa Local, convenience food store. The upper floors at this site and the surrounding area are predominantly residential. There is a service alley at the rear where the plant is located. The site is not a listed building but is within the Belsize conservation area.

**Investigation History**

- The case was opened in May this year and a number of site visits by the Council's environmental health's noise pollution team have determined that the unit is causing a statutory nuisance to neighbouring residential occupiers.
- A planning application (Ref: 2022/3337/INVALID) was submitted in August this year but it is still invalid despite requests for more information and in any case environmental health officers who have looked at the application do not think the mitigation measures proposed would meet the Council's standard planning condition of operating at 5db below background.

**Relevant policies / GPDO Category**

Relevant Policies

National Planning Policy Framework 2021  
London Plan March 2021  
Camden Local Plan 2017  
Policy A1 Managing the impact of development  
Policy A4 Noise and vibration  
Policy D1 Design  
Policy D2 Heritage

Policy CC1 Climate change mitigation  
Policy CC2 Adapting to climate change  
Policy TC3 Shops outside of town centres)  
Policy TC4 Town centre uses

## Assessment

**Planning history:** There is no relevant planning history.

**Issues:** The main issue relate to this close proximity of residential occupiers to the rear of the property where the refrigeration plant is located and noise nuisance from operation of this plant. Although the unit is not really visible being located in a service road design considerations are not overly important however the poor design of the timber enclosure is considered to detract from character and appearance of the host building and the surrounding Belsize Conservation Area. In this case the development is considered to lead to less than substantial harm to the significance of a designated heritage asset, the [National Planning Policy Framework \(paragraph 196\)](#) requires that this harm should be weighed against the public benefits of the proposal. In this case, the very limited public benefit does not outweigh the harm caused.

The chiller unit belongs to Nisa Local which is situated at GF and basement level of this four storey building which forms part of a terrace on the Western side of Fairfax Road. This site is densely surrounded by residential accommodation, not only featuring three storeys of residential accommodation above, directly next to the unit, but also featuring a separation distance of a few metres between the rear of the unit and the residential properties in Glenloch Road. The plant is within a partial enclosure that has been formed next to the brick bin store. Bedroom windows are located in the wall directly above the plant.



Despite the residential nature of the wider local area, this terrace includes a parade of GF commercial units, which the Council has sought to protect by designating as a Neighbourhood Centre. As outlined by Local Plan policy TC2, Neighbourhood Centres cater for the day-to-day shopping and service needs of their local populations and reduce the requirements for long journeys for facilities of daily use, helping to encourage sustainable communities. Neighbourhood centres are predominately of benefit to local communities due to their convenience shopping offer, however adopted policy allows for some range in uses provided that such uses minimise the impact on local residents and the local area. In this case although this convenience food shop would require refrigeration this cannot impact on local residents.

Policy A1 seeks to protect the quality of life of occupiers and neighbours by only granting permission to development that would not cause harm the amenity of residents. Policy A1 states that the Council will also seek to ensure development contributes towards strong and successful communities by

balancing the needs of development with the needs and characteristics of local areas and communities. Policy A4 states that the Council will seek to ensure that noise and vibration is appropriately controlled and managed to avoid undue harm. It states that the development should have regard to Camden's adopted Noise and Vibration Thresholds and that the Council will not grant planning permission for development likely to generate unacceptable noise and vibration impacts. The above two policies are supported by the guidance outlined in CPG 6 (Amenity).

In this instance environmental health have witnessed noise breakout from the unit audible from residential properties above the Nisa Local. This was deemed a statutory nuisance and warning of an Abatement Notice has been served. Although a planning application to retain the unit and provide some mitigation through the installation of acoustic enclosures has been made it is not clear from the acoustic report accompanying the application if the acoustic enclosures will attenuate the plant sufficiently to reduce the noise by 17db to meet planning conditions of 15db below background noise levels. The applicants have not sought to work with the Council to resolve this matter by providing additional information so that the application submitted at the beginning of August can be made valid. In addition, without an enforcement notice there is no legal requirement to implement any attenuation measures to reduce the noise nuisance. This is a chiller unit that operates on and off throughout the day and night.

The enclosure for the chiller unit has been erected without any apparent consideration for design. It is cheap timber and not brick the same as surrounding structures and is open allowing views of the plant. Due to the poor design of the enclosure the notice will require its removal.

#### Recommendation:

2.1 That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 as amended to permanently remove the Daikin ConveniPack and Booster refrigeration plant and timber enclosure from the rear, ground floor level, and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.

2.2 The notice shall allege the following breaches of planning control:

Erection of refrigeration plant and timber enclosure at ground floor level at rear.

2.3 What are you required to do

Permanently remove the refrigeration plant and enclosure and make good any resulting damage.

2.4 Period of Compliance: 1 month

2.5 REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:

The refrigeration plant is causing loss of amenity to neighbouring residential occupiers through noise nuisance and in the absence of an adequate noise and vibration assessment, the applicant has failed to demonstrate the development does not generate unacceptable noise and vibration impacts contrary to the aims of policies A1 (managing the impact of development) and A4 (Noise and Vibration) of the Local Plan.

The enclosure and plant is of a poor design that detracts from the surrounding Belsize conservation area contrary to policies D1 (Design) and D2 (Heritage) of the Local Plan.