



Date: Monday 20th March 2023
PINS Refs: APP/X5210/C/23/3314141
Our Ref: EN21/0360
Contact: Gary Bakall
Direct Line: 020 7974 5618
Email: gary.bakall@camden.gov.uk

Room 3B
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Mr Eland

Appeal by Lit Retail Ltd

Site address: 185-187 Haverstock Hill, Basement and Ground Floor, London, NW3 4QG

Appeal against

- **The service of an enforcement notice dated 2nd December 2022 requiring permanent removal of the refrigeration plant and enclosure and making good any resulting damage.**

The Council's case is largely set out in the officer's delegated report, which details the site and surroundings, the site history and an assessment of the proposal. Copies of the reports were submitted alongside the appeal questionnaires.

In addition to the documents sent with the questionnaire I would be pleased if the Inspector would take into account the following information and comments before deciding the appeal.

1.0 Summary

1.1 The subject property is a late 19th century, highly ornamented building with Dutch Gables on the roof. It is in a prominent position on the corner of Glenloch Road which contains two storey residential houses with mansard roofs. It is on the end of a terrace of properties and contains commercial on the ground and basement floors with 3 storeys of residential above, comprising 6 flats in total. The closest flat, B, has a bedroom window about 2m away from the plant, see pictures below. The property is within a designated neighbourhood shopping centre and, like the surrounding streets, part of the Belsize Park Conservation Area, the property is not listed.

1.2 The property was a bank for many years but changed to a Nisa convenience store after the changes to the Use Classes Order introduced Class E that allowed changes of use between high street uses without the need for planning permission. Although the bank did have air conditioning units on the rear elevation the new convenience store requires refrigeration plant because of the chilled and frozen produce it sells. The previous units were only operated during bank hours and did not cause a nuisance through noise unlike the current refrigeration plant that is louder, has an intermittent, tonal character and operates twenty four hours a day. Environmental Health officers have witnessed the noise at night and consider it a statutory nuisance and have served an abatement notice under s80 of the Environmental Protection Act 1990 (see appendix 1).

1.3 The Council recognises that commercial premises such as this requires refrigeration however it is a sensitive location surrounded by residential uses and the appellant has made no real attempt to mitigate the noise issue.



1.4 This statement covers the appeal on grounds; (c) that those matters (if they occurred) did not cause a breach a breach of planning control; (a) that planning permission should be granted for the development; (f) that the steps required by the notice exceed what is necessary to remedy any breach or remedy any injury to amenity caused by such breach; (g) that the compliance period specified is not reasonable.

2.0 Status of policies and guidance

2.1 In considering the application, the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case.

2.2 The Camden Local Plan was adopted on the 3rd. July 2017.

2.3 The latest NPPF was adopted in July 2021 and the Council's policies are in accordance in relation to this appeal.

2.4 The relevant policies in the Local Plan are set out in the Delegated report.

Please note that the full text of the relevant policies was submitted alongside the questionnaire documents.

3.0 Comments on the Appellant's Grounds of Appeal

SUMMARY OF GROUNDS OF APPEAL

The appellant's grounds of appeal (ground c, a, f, g) are addressed beneath:

3.1. The appellants ground of appeal (c) – “that those matters (if they occurred) do not constitute a breach of planning control”. The appellant states in the appeal statement that as there was air handling equipment already located in that area that upgrading this equipment would not require planning approval.

3.2 Planning permission was never granted, or previously sought, for air handling equipment at this site. Historic photographic evidence does show that in 2014 smaller air conditioning units were fixed on to the rear elevation closer to the bedroom window of flat B, these units are no longer there and were removed sometime between January and August 2021 before the current equipment was installed.

3.3 The current refrigeration plant and associated booster unit are materially different to the previous two a.c. units. They are located in a different position, the main refrigeration unit is much larger and fixed to the floor, in an enclosure closer to the junction with Glenloch Road and the booster unit although located on the wall is in a different position to the a.c. units and smaller.

3.4 Residents have stated that the previous a.c. units were not audible above the background noise levels and were only on during the banks opening hours, the current units are much louder (30db above background), are intermittent in nature with a regular operational cycle and distinct change in tone and a droning that continues all through the night.

3.5 The Council contends that the current plant is materially different to the plant it

replaced and that in any case when the previous plant was removed the established use that plant had by being in place in excess of four years was lost.

3.6 The appellant's Ground (a) appeal "that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted..." The appellant states that plant was already existing, the shop cannot operate without refrigeration plant and will have to close, retrospective planning permission has been applied for and an acoustic specialist is working to resolve the issue and the residents should be used to some noise from plant living above commercial premises.

3.7 The appellants first point that the plant was already existing has been largely covered above in the ground c appeal however I would add that even if the previous equipment was still in use the Council would still take action under Environmental Protection Act as the noise from the units is a statutory nuisance.

3.8 The Council has tried to work with the appellant to resolve this situation through a planning application for an acceptable scheme however the appellant has made no real attempt to comply with Camden's Local Plan policies A1-Managing the Impact of Development; Policy A4-Noise and Vibration or Camden planning guidance on amenity. Policy A1 clearly states that the Council will seek to protect the quality of life of neighbours and will not grant permission if the development causes unacceptable harm to amenity and that in seeking to protect this amenity noise and vibration levels will be taken into account. This development does cause unacceptable harm to the amenity of neighbours, the noise levels from the plant is a statutory nuisance, please see attached abatement notice. The appellant has had nearly a year since the Council first contacted them to try and mitigate and minimise this noise nuisance but has failed to do so. The text accompanying policy A1 states at para 6.19 that the World Health Organisation states excessive noise can seriously harm human health, disturb sleep and have cardiovascular and behavioural effects

3.9 Policy A4 – noise and Vibration seeks to ensure that problems with noise nuisance are appropriately considered at the design stage. The policy refers to Camden's noise and Vibrations thresholds and states and states that planning permission will not be granted for development likely to generate unacceptable noise and vibration impacts; and only be granted for plant and machinery if it can be operated without causing harm to amenity. The accompanying text further states at para. 6.91 that plant will have a greater impact in areas where noise sensitive uses such as residential co-exist with other uses, such as this, and the Council will take into consideration the general character of noise such as when it is intermittent and/or has a distinct sound, like this plant has.

3.10 If planning permission is granted for plant it has to be shown through an acoustic report accompanying the planning application that the equipment can operate at 10db below the background noise level and in the case of intermittent and tonal sound such as this plant it has to operate at 15db below the background noise level. Details of expected noise levels are contained in appendix 3 of the local plan and the Council's supplementary guidance on amenity. In appendix 3 at Table C – Noise levels applicable to proposed industrial and commercial development (including plant and machinery) it states that outside bedroom windows at night ratings at 5db above background or anything above 88db is a red rating with Significant Observed Adverse Effect Level (SOAEL).

3.11 The appellants provided an acoustic report which accompanied there planning application (see appendix 2) this states at para 6.14 that the lowest background noise at night is 40db and that if the current equipment operates at 47db and would need to be

attenuated with an acoustic cabinet which would reduce its noise levels by 17db to try and make the noise level innocuous in comparison to the background noise level but apparently would still not meet the Council's noise criteria of 15db below background. However the report states the acoustic cabinet would have to be designed so that it would allow sufficient air flow so that the plant could operate. An acoustic report provided by the closest neighbour (attached here at appendix 3 for completeness) finds a similar background noise level of 40db (see para 3.6) at night and that the current plant was running at 55db during the day and 47.6db at night, over 5db above the background and requiring a reduction of 20-30db to meet the Council's criteria.

- 3.12 A planning application to retain the plant was submitted on 4th August 2008 (Ref: 2022/3337/INVAID) following a planning enforcement investigation. In September the Council contacted the appellant to state that without a plan, elevations or details of the acoustic enclosure the application could not be validated, no further details were submitted and the Council contacted the appellant again in November to request the same information, again no response from the appellant. As discussed above the acoustic report submitted with the application (attached at appendix 2) states at para 6.9; "Sound from the CVP (refrigeration plant) is currently not innocuous because it is readily identifiable when the unit operates at full speed." The report goes on to state the unit will have to be 'significantly attenuated' to become innocuous. The unit has still not been 'significantly attenuated' and is still running at 47db (see appendix 3).
- 3.13 The enclosure currently around the refrigeration plant (CVP) is not fitted with acoustic panels and is poorly designed consisting of unpainted timber and plywood with no attempt made to try and blend the structure into the surroundings or provide any real acoustic barrier. This enclosure does not meet the Council's Local Plan policy D1 – Design in that it does not respect local context and character, does not preserve the Belsize Park Conservation Area and does not comprise details and material that are of high quality and complement the local character.
- 3.14 **The appellants ground (f) appeal: "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity, which may be caused by any such breach." The appellant states that the steps (removal of the plant) are excessive and will lead to the closure of the shop and that lesser steps could be agreed for a new design that meets the Council's satisfaction.**
- 3.15 As already stated, the Council has given the appellant ample opportunity to resolve this issue already, the matter was first raised with them in May last year and despite employing an acoustic consultant who recognised that the unit required 'significant attenuation' to stop being a nuisance at night no attenuation appears to have taken place. The Council does not want to see the shop close but it is not for the Council to design an acceptable scheme for the appellant, they need to come up with a design that meets our criteria regarding noise levels and then submit to the Council for planning approval. The appellant had an acoustic report in August last year but has not progressed the matter at all either submitting a design that can meet the Council's policies or even attenuate the plant and/or provide an acoustic enclosure. It is not possible to amend the notice so that it just remedies the injury to amenity, under the circumstances it can only seek to remedy the breach of planning control.
- 3.16 **The appellants ground (h) appeal: "that the time given to comply with the notice is too short." The appellant states that the time limit should be increased to 4 months so that a design solution can be agreed with the Council and implemented so that the shop does not close.**

3.17 Nobody wants to see the shop close but as already stated, the Council has given the appellant ample opportunity to resolve this issue already, the matter was first raised with them in May last year and despite employing an acoustic consultant who recognised that the unit required 'significant attenuation' to stop being a nuisance at night no attenuation has taken place and the Council cannot see how increasing the compliance period by 3 months will enable the appellant to come up with a design solution, have it agreed with the Council and implement it if they do not already have a workable design.

4.0 Conclusion

- 4.1** The Council, or neighbouring residents, do not want to see this convenience store close but it cannot continue with the current refrigeration plant as it is clearly too loud and is causing significant loss of amenity through noise pollution to existing residential occupiers. The appellant should have taken real steps to try and resolve this through attenuation of the plant including designing and getting planning permission for an acoustic enclosure so that the plant meets the Council's noise standards.

5.0 Other Matters

- 5.1** On the basis of information available and having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeals.
- 5.2** Should any further clarification of the appeal submissions be required please do not hesitate to contact Gary Bakall on the above direct dial number or email address.

Yours sincerely

Gary Bakall

Deputy Manager, Planning Enforcement
Culture and Environment Directorate