

**PLANNING INSPECTORATE REFERENCE: APP/X5210/C/22/3313310 &
APP/X5210/C/23/3316906**

LONDON BOROUGH OF CAMDEN REFERENCE: 2021/4163/P & EN21/0681

IN THE MATTER OF:

AN APPEAL AGAINST THE REFUSAL OF RETROSPECTIVE PLANNING PERMISSION FOR CHANGE OF USE OF CAFÉ/RESTAURANT (CLASS USE E) AT 178B ROYAL COLLAGE STREET AND STORAGE FACILITIES (CLASS USE B8) AT ARCHES 73,74 AND 75 AND AMALGAMATION OF 178B ROYAL COLLEGE STREET WITH ARCHES 74 AND 75 AND PART OF ARCH 73 TO CREATE COMMERCIAL KITCHEN AND DELIVERY CENTRE WITH ANCILLARY OFFICES (SUI GENERIS). EXTERNAL ALTERATIONS TO SHOPFRONT OF 178B ROYAL COLLEGE STREET AND PROVISION OF PLANT AND MACHINERY TO THE REAR OF THE ARCHES 73, 74 AND 75 IN ASSOCIATION WITH THE NEW USE

AND:

AN APPEAL AGAINST AN ENFORCEMENT NOTICE DATED 16 JANUARY 2023 RELATING TO 178B ROYAL COLLEGE STREET AND ARCHES 73, 74 AND 75 RANDOLPH STREET, LONDON NW1 0SP

**LOCAL PLANNING AUTHORITY'S
STATEMENT OF CASE**

28 April 2023

I. INTRODUCTION

1. This is the statement of case of the London Borough of Camden ("**the Council**") in respect of two appeals:
 - (a) The first appeal is made by Jacuna pursuant to s. 78 of the Town and Country Planning Act 1990 ("**TCPA 1990**") against the decision of the Council on 26 July 2022 to refuse to grant retrospective planning permission for the creation of a commercial kitchen and delivery centre ("**the Unauthorised Development**") (as more particularly described below) at 178B Royal College Street and Arches 73, 74 and 75 Randolph Street (together "**the Appeal Site**").
 - (b) The second appeal is made by Jacuna Kitchens Limited pursuant to s. 174 TCPA 1990 against an enforcement notice issued by the Council on 16 January 2023 ("**the Notice**") concerning the Unauthorised Development at the Appeal Site.
2. Although the two appeals are made by seemingly separate legal entities, the Council does not understand there to be any practical difference and will refer to both appellants collectively as "**Jacuna**", unless otherwise stated.
3. The Council resists both appeals and submits that they should be dismissed.

II. FACTUAL BACKGROUND

(1) Chronology of principal events

4. The principal events precipitating these appeals are as follows:

26 August 2021 - Following the enforcement investigation, Jacuna applied for retrospective planning permission pursuant to s. 73A TCPA 1990 for the Unauthorised Development ("**the Application**").

The development shown in the plans that accompanied the Application is the same as the development the subject of the Notice, save that the plant that has been installed at the Appeal Site does not match the plant shown in the submitted plans. The Council has sought to clarify the position with Jacuna through the Statement of Common Ground.

- 26 July 2022 - The Council refused the Application.
- 16 January 2023 - The Council issued the Notice.¹
- December 2022 - Jacuna appealed pursuant to s. 78 TCPA 1990 against the decision of the Council to refuse the Application.
- 17 February 2023 - Jacuna appeals pursuant to s. 174 TCPA 1990 against the Notice.

(2) Overview of the Unauthorised Development

5. Jacuna has amalgamated the premises at 178B Royal College Street and Arches 73, 74 and 75 Randolph Street (together with an external yard area) to form the Appeal Site. Jacuna then changed the use of the Appeal Site and undertook associated operational development to facilitate that change of use. More specifically, Jacuna changed the use of 178B Royal Collage Street from a café/restaurant (Class E) and Arches 73, 74 and 75 from storage (Class B8) to commercial kichen and delivery centre (sui generis).
6. The commercial kitchens are located within the arches and the delivery centre is operated from the shared rear lane/yard, accessed from Randolph Street. 178B Royal College Street is used as offices, connected with the commercial kitchen and delivery centre.
7. Jacuna controls the entirety of the Appeal Site (although the rear land/yard is shared with the neighbouring business, Getir). Jacuna lets individual kitchen pods to separate operators enabling them to operate food delivery services.
8. There is no public access to the site. Food orders are made online via an app to individual kitchen pod operators. Orders are collected by motorbike/moped courier and bicycles (referred to as “**ODP Riders**”) and are delivered to private addresses for consumption. Suppliers to each kitchen pod operator deliver goods by van to maintain stock.

¹ The Notice was preceded by an earlier enforcement notice that was withdrawn. This is not material to the present appeal.

9. External alterations have been made to the shopfront of 178B Royal College Street and plant and machinery has been installed to the rear of arches 73, 74 and 75. All of this operational development is in connection with the new use of the Appeal Site.

(2) Brief description of the Appeal Site

10. The Appeal Site is an irregular shape and is best described by the plan. See **Figure 1**, below. The Appeal Site is outline in red.



Figure 1: Site Location Plan (application 2021/4163/P, submitted by the applicant/appellant).

11. As shown above, the shop frontage faces Royal College Street, to the west of the Appeal Site's boundary. This is the site management office. The office is connected to the arches at the rear.

12. The arches house the commercial kitchen pods with access from these into the rear lane/yard that functions as the collection and delivery area. There are 16 kitchen pods.² See **Figure 2**, below. However, it is understood from discussions with the Appellant's planning agent the proposals may have been reduced to 15 kitchen pods. The Council does not consider that this discrepancy is material for the purposes of determining the appeals.

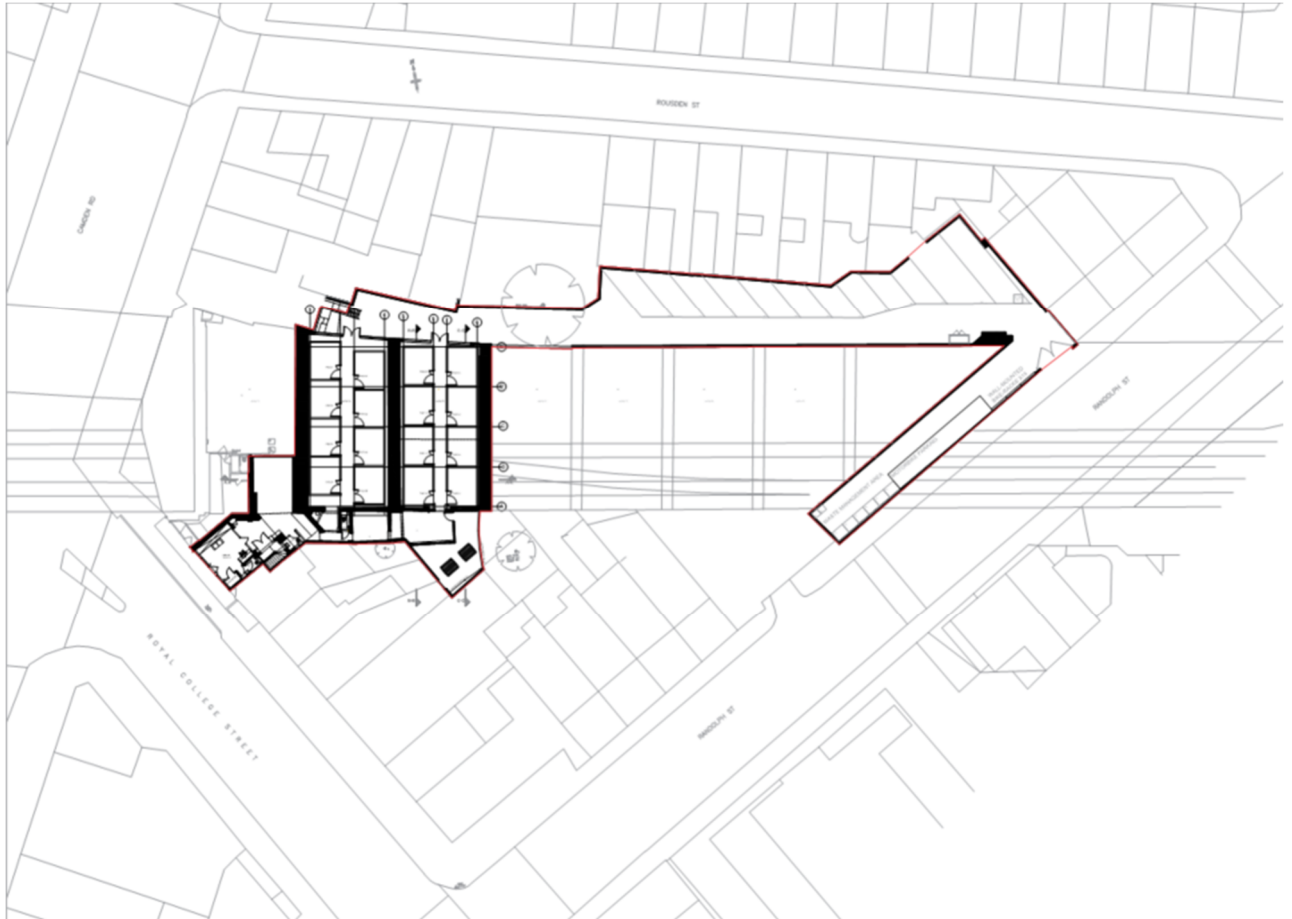


Figure 2: Proposed Block Plan showing 16 Kitchen Pods (application 2021/4163/P, submitted by the applicant/ appellant).

13. All vehicles access the site from Randolph Street to the east of the Appeal Site, through a gate beneath the railway lines running above the Appeal Site.
14. The Operational Management Plan (dated November 2022) ("**the OMP**") provided by Jacuna states that collection riders are supposed to park in the strip of space located to the left of the Appeal Site's entrance on Randolph Street.³ Collection riders are then supposed to walk around to the rear of the arches to collect food before returning to

² See the block plan (05CAM_EX_2.1EXBlockPlan_A2_1.200_r05), also provided by the Appellant as appendix B – Block Plan of their Operational Management Plan (Nov 2022).

³ OMP at [3] on p. 9.

their motorbike/bicycle and setting off for delivery.⁴ The OMP states there would be up to 30 motorbike collection riders on site at any time and that the average pick up time is 1-2 minutes.⁵

15. Delivery vans are supposed go through to the rear lane, where they unload and turn around before exiting in forward gear. The OMP submitted with the Application, states there would be 15 van deliveries per day and no more than 2 vans on site at any time. The OMP (as submitted with the appeal) states there would be 11 van deliveries per day, without explanation of the reduction in frequency.⁶ The Appellant has provided swept path analysis using a 3.5t Panel Van, included in the OMP as appendix A – ‘Delivery Turning Zone’, and also within the Transport Statement (December 2022, page 113) shown below as **Figure 3**.

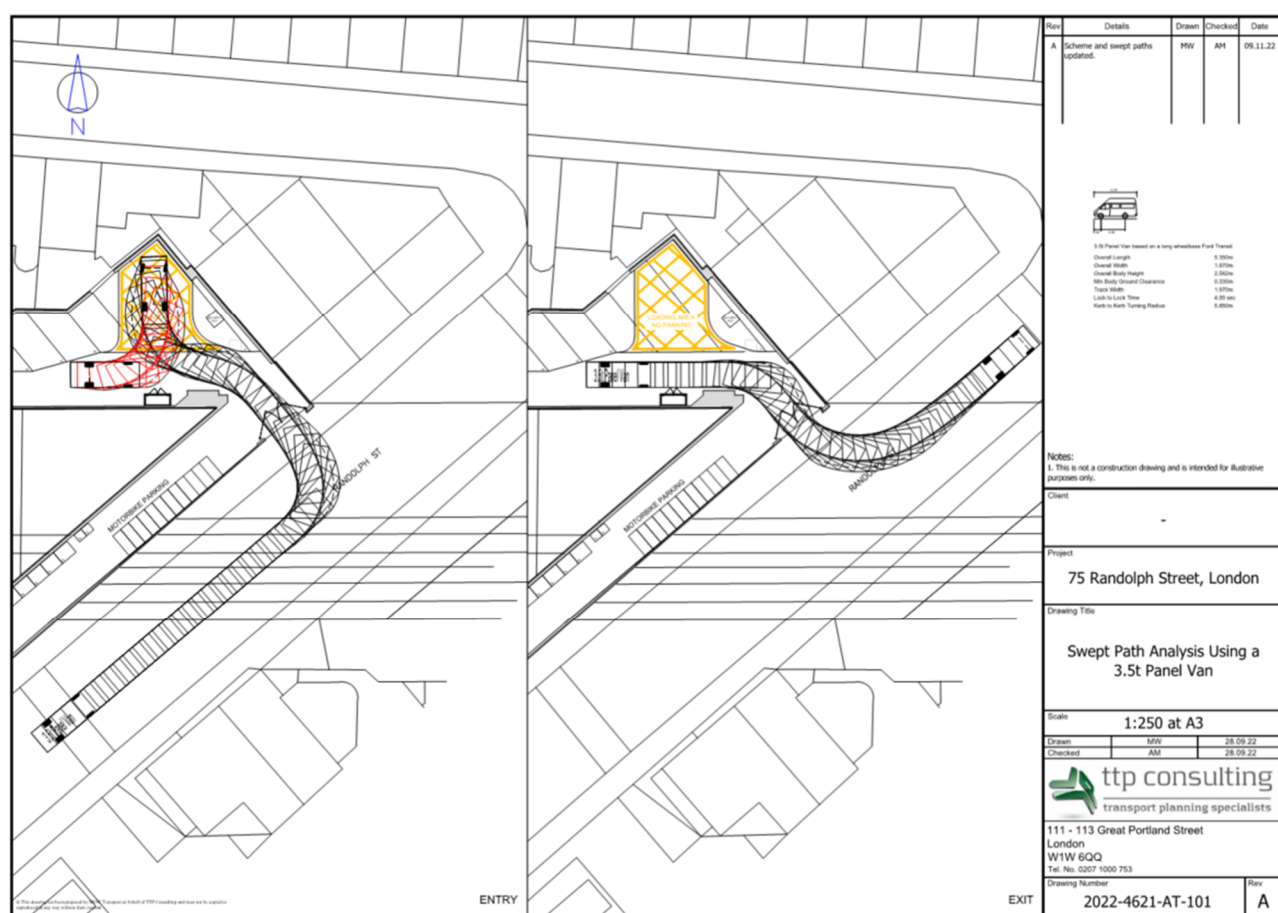


Figure 3: Swept path analysis plan (application 2021/4163/P, submitted by the applicant/ appellant).

⁴ OMP at [3] on p. 9.

⁵ OMP at p. 11 (7th bullet point) and [2] on p. 9.

⁶ OMP at [4] on p. 14.

16. An enclosed outdoor staff amenity space is located to the front of Arch 75. Staff at the site include: those working indoors in the kitchens (Chefs, Kitchen Porters) and office space (Jacuna management & one marshal); and those working outdoors in the rear lane Delivery-Drivers (Van deliveries), Collection-Riders (motorbike/moped/bike collections) and a marshal.
17. To clarify specific areas of the Appeal site, the Council has produced an annotated site plan layered over Jacuna's site location plan. See **Figure 4**, below.

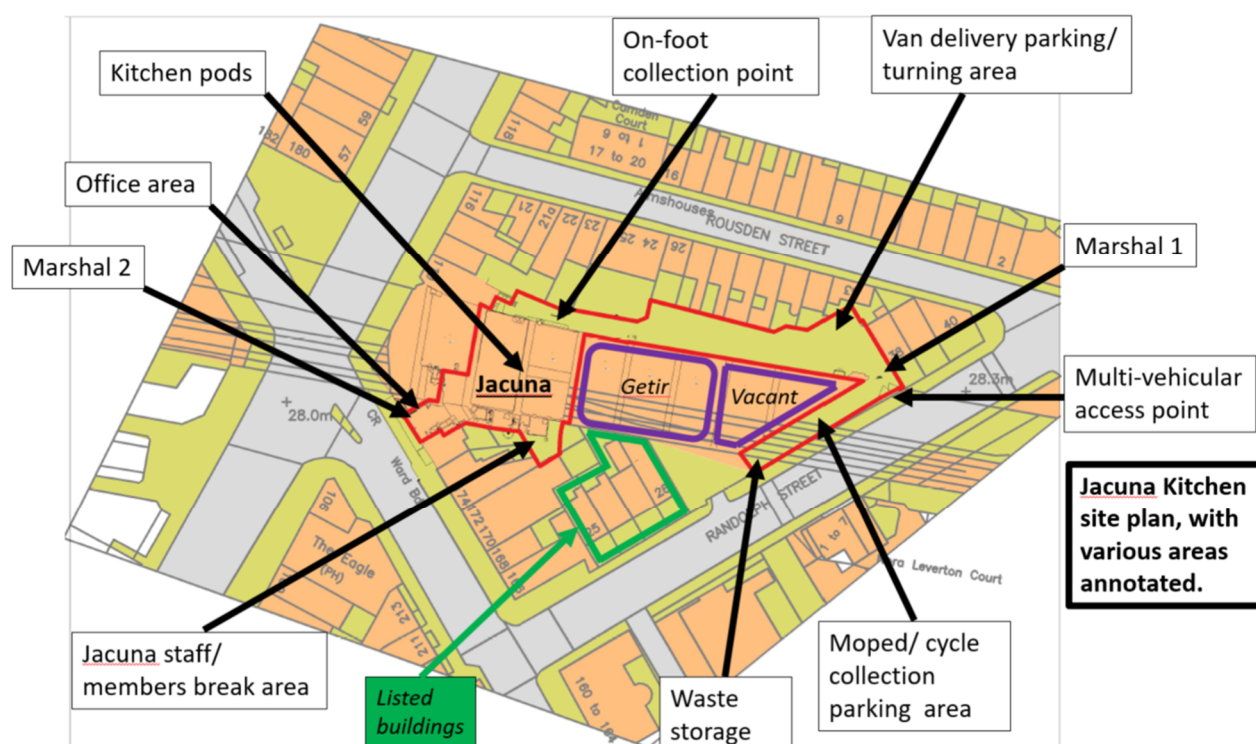


Figure 4: Site Location Plan (application 2021/4163/P, submitted by the applicant/apellant, with Council's own annotations).

18. The Appeal Site is within the Camden Broadway Conservation Area and also adjacent to the listed buildings at 25-28 Randolph Street.
19. There are a number of residential receptors in close proximity to the Appeal Site, in particular on Rousden Street, Randolph Street and Royal College Street (flats above commercial premises).
20. As noted above and indicated on the site plan in **Figure 4**, the rear lane/yard is a shared space. Getir currently occupy Arches 76, 77 and 78 for the purposes of its business as a grocery delivery company. Arches 79-80 are understood to be vacant. Getir operate with their delivery riders using electric scooters/ electric mopeds only.

Getir utilise the rear land/yard for access to their premises (including by motor vehicle, electric scooter and electric moped).

(3) The Application

21. Jacuna submitted the Application in an attempt to regularise the breach of planning control that is the subject of the subsequent Notice. Following the initial consultation process, the Appellant provided the Council with additional information which was considered before the determination of the Application.
22. A number of objections were made to the Application, in particular from local residents who were concerned about amenity and highway impacts.
23. The Council refused to grant retrospective planning permission for the Unauthorised Development for five reasons, as follows:

- ‘1. The proposed use by virtue of its nature and intensity, in particular the volume and frequency of deliveries and collections, and the manner in which they are undertaken using disruptive and potentially dangerous vehicle manoeuvres, causes harm to the amenity of the area, pedestrian and highway safety contrary to policy A1 (Managing the impact of development) and T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan 2017 and policy T4 (Assessing and mitigating transport impacts) of the London Plan 2021.*
- 2. The proposed use, by virtue of the nature and intensity of deliveries and collections generates vehicular noise which has not been fully mitigated, and due to the proximity of neighbouring residential causes harm to the amenity of the area, contrary to policy A1 (Managing the impact of development) of the Camden Local Plan 2017.*
- 3. The proposed development, in the absence of a legal agreement securing a local employment and training package, would lead to the exacerbation of local skill shortages and lack of training and employment opportunities for local residents, contrary to policies G1 (Delivery and location of growth), E1 (Economic development), E2 (Employment premises and sites) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.*
- 4. The proposed development, in the absence of a legal agreement securing a satisfactory Operational Management Plan (including a community working group), would be likely to give rise to harmful impacts with local residents and conflicts with local road users and would be detrimental to the amenity of the area generally contrary to policies A1 (Managing the impact of development), T1 (Prioritising*

walking, cycling and public transport), (T3 (Transport infrastructure), CC5 (waste) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

5. *The proposed development, in the absence of a Bat survey, would lead to potential loss of local bat population and biodiversity, contrary to policy A1 (Managing the impact of development) and A3 (Biodiversity) of the London Borough of Camden Local Plan 2017.'*

(4) The Notice

24. Following an enforcement investigation, the Council issued the Notice.

25. The Notice alleges the following breach of planning control:

'Without planning permission: Change of use of café/restaurant (Class Use E) at 178B Royal Collage Street and storage facilities (Class Use B8) at arches 73,74 and 75 and amalgamation of 178B Royal College Street with Arches 74 and 75 and part of Arch 73 to create commercial kitchen and delivery centre with ancillary offices (Sui Generis). External alterations to shopfront of 178B Royal College Street and provision of plant and machinery to the rear of the Arches 73, 74 and 75 in association with the new use.'⁷

26. The stated reasons for issuing the Notice are materially identical to the Council's reasons for refusing the Application, save that the Council has also noted that the change of use enforced against occurred within the last 4 years.⁸

27. The Notice requires the following steps to be taken within 6 months of the Notice taking effect:

1. *Permanently cease the use of the ground floor of 178B and Arches 74 and 75 and part of Arch 73 as commercial kitchens and delivery centres with ancillary offices;*
2. *Permanently remove the plant and machinery from the rear of Arch 74 and 75; and*
3. *Make good the exterior of the property following the completion of the above works.'*

⁷ See the Notice at [3] on p. 1. This description is materially identical to the description of development on the decision notice for the Application.

⁸ See the Notice at [4] on pp. 1 – 2. Note: Jacuna does not dispute that the change of use occurred within the last 4 years.

(5) Relevant planning history of the Appeal Site.

178A & 178B Royal College Street and Arches 73 – 80:

28. **2017/5000/PRE** - Change of use of arches from B1a offices to B8 warehouses; change of use at ground floor of 178A and B Royal College Street from A1 and A3 tattoo parlour and cafe uses respectively, to retail use ancillary to the main B8 warehouse use of the arches; small extension to rear of arches. **Pre-application advice issued on 20/12/2017.** Pre-app advice: Proposals would require further detail and consideration (design, transport access and servicing, amenity).

178A & 178B Royal College Street and Arches 73, 74, 75, 76, 77, 79 and 80:

29. **2018/0565/P** - Change of use of arches (73, 74, 75, 76, 77, 79 and 80) from offices (B1) to storage (B8). Change of use at ground floor of 178A and B Royal College Street from retail (A1), tattoo parlour (sui generis) and cafe uses (A3) to retail use (A1). Erection of a covered access extension to rear of arches 73-75. **Planning permission granted on 29/05/2018 (“the 2018 Permission”).**
30. The 2018 Permission was granted subject to a number of conditions. The Council draws particular attention to conditions 5, 7 and 8. The decision notice is at **Appendix D**. The delivery and servicing strategy approved under condition 3 and 8 of the 2018 Permission is at **Appendix D**.
31. Getir purport to operate from Arches 76, 77 & 78 under the 2018 Permission. There is an ongoing enforcement investigation to determine whether Getir are operating in accordance with the 2018 Permission.

178A & 178B Royal College Street:

32. **2018/0844/P** - Installation of new shopfront. **Planning permission granted on 17/09/2018.**
33. **2018/1482/A** - Display of a fascia sign and one externally illuminated projecting sign at 178A and 178B. Display of panel sign on Randolph Street. **Planning permission granted on 17/09/2018.**

178 Royal College Street:

34. **2019/2377/P** - Erection of single storey rear extension at lower ground floor level with roof terrace and garden access stair. (Householder consent) **Planning permission granted on 21/08/2019.**
35. **2020/0764/P** - Details of site contamination as required by condition 4 of planning permission dated 21/08/2019 ref. 2019/2377/P for Erection of single storey rear extension at lower ground floor level with roof terrace and garden access stair. (Approval of details) **Approval granted on 08/04/2020.**

Shops And Premises At Ground Floor, 178b Royal College Street (& Arch 73 to rear):

36. **2022/3918/P** - Change of use of from; storage (Class B8) to Quiz Boxing venue (Class E - indoor recreations), with alteration to shopfront. **Recommended for approval – draft decision 05/04/2023.**

Arches 88 & 89 Randolph Street

37. **PE9800871** - Formation of new access to existing arches, as shown on drawing number 4511/230/01. **Planning permission refused on 18/02/1999.**

Arches 74-79 Randolph Street (& Arches 87-91 Baynes Street)

38. **PEX0200413** - Refurbishment of rail arches comprising the demolition of an extension to the north of arches 90-91, the construction of new extensions to the north of arch 88 and to the south of arch 78, the provision of new arch infill walls to the north and south elevations, and associated works including the provision of 2 plant and machinery enclosures, 3 bin stores, 2 cycle stores, 2 new security gates to Randolph Street, 7 car parking spaces and 2 delivery bays, and the resurfacing of the service area, in connection with the change of use of the arches from a mixture of uses within the B1, B2 and B8 Use Classes to B1. (Revised plans submitted). **Planning permission granted on 04/09/2003.**

Werewolf Beer Ltd, Arch 87 Randolph Street:

39. **2021/2516/P** - Use of site as micro brewery/tap room with tables and chairs in the arch and garden. **Planning permission refused on 03/01/2023.**

III. RELEVANT POLICIES AND GUIDANCE

(1) Camden Local Plan

40. The Camden Local Plan (“**the Local Plan**”) was adopted on 3 July 2017. The policies cited below are of relevance to the application (and policies in the reasons for refusal are annotated with an asterisk):

- (a) A1 Managing the impact of development *
- (b) A3 Biodiversity *
- (c) A4 Noise and vibration
- (d) C1 Health and Wellbeing
- (e) C5 Safety and Security
- (f) C6 Access for all
- (g) CC4 Air Quality
- (h) CC5 Waste *
- (i) D1 Design
- (j) D2 Heritage
- (k) D3 Shopfront
- (l) D4 Advertisements
- (m) DM1 Delivery and Monitoring *
- (n) E1 Economic development *
- (o) E2 Employment premises and sites *
- (p) H3 Protecting existing homes
- (q) G1 Delivery and location of growth *
- (r) TC1 Quantity and location of retail development
- (s) TC2 Camden’s centres and other shopping areas

- (t) TC3 Shops outside of centres
- (u) TC4 Town centre uses
- (v) TC5 Small and independent shops
- (w) T1 Prioritising walking, cycling and public transport *
- (x) T2 Parking and car-free development
- (y) T3 Transport infrastructure *
- (z) T4 Sustainable movement of goods and materials

41. Regard should also be had to Appendix 3 of the Local Plan.

42. All of these policies in the Local Plan have been recently adopted and up to date. They should be accorded full weight in accordance with paragraph 219 of the NPPF. There are no material differences between the Council's adopted policies and the NPPF in relation to this appeal. The full text of the relevant adopted policies was sent with the questionnaire documents.

(2) Camden Planning Guidance:

43. The following parts of the Camden Planning Guidance are relevant:

- (a) CPG Access for all (2019)
- (b) CPG Adverts (2018)
- (c) CPG Air Quality (2021)
- (d) CPG Amenity (2021)
- (e) CPG Design (2021)
- (f) CPG Employment sites and business premises (2021)
- (g) CPG Planning for health and wellbeing (2021)
- (h) CPG Town centres and retail (2021)
- (i) CPG Transport (2021)

44. The revisions to the various CPGs have no material implications for the matters relevant to this appeal.

(3) The Camden Broadway Conservation Area Appraisal and Management Strategy (2009).

45. This document (“**the CAA**”) was adopted on the given date and defines the special character of the conservation area (“**the CA**”) and sets out the Council’s approach for its preservation and enhancement.

46. The CAA describes the special interest of the CA as follows:

‘The Camden Broadway Conservation Area is a small area comprising a mix of commercial and residential uses. Its character can be divided into two distinct types, and is defined by the busy, main traffic routes through the area (Camden Road, Royal College Street and St Pancras Way) which, on Camden Road and Royal College Street support commercial uses at ground floor level, and by the quieter, residential streets which run between these (Rousden Street and Randolph Street), the height, materials and plot layout broadly respect the C19 development of the area.

The railway line runs east-west through the conservation area and its twin supporting bridges are a major presence in the area.⁹

(4) The London Plan (2021)

47. The London Plan is the statutory Spatial Development Strategy for Greater London prepared by the Mayor of London. The current London Plan was adopted in March 2021. Chapters 1 (Planning London’s future – Good Growth), 2 (Spatial Development Patterns), 3 (Design), 6 (Economy), 7 (Heritage and Culture), 8 (Green Infrastructure and Natural Environment), 9 (Sustainable Infrastructure) and 10 (Transport), of the London Plan 2021 are most applicable to the determination of this appeal. The reasons for refusal refer specifically to policy T4 (Assessing and mitigating transport impacts).

(5) The National Planning Policy Framework (2021)

48. Of particular relevance to this appeal are the following paragraphs of the NPPF:

- (a) paragraph 11 (presumption in favour of sustainable development);

⁹ See pp. 5 – 6.

- (b) paragraph 59 (effective enforcement action);
- (c) paragraph 81 (conditions for businesses);
- (d) paragraph 83 (locational requirements of different sectors);
- (e) paragraph 104 (transport issues to be addressed by development);
- (f) paragraph 111 (highways grounds for refusing planning permission);
- (g) paragraph 112 (highways expectations of development);
- (h) paragraph 113 (need for a travel plan, transport statement or transport assessment);
- (i) paragraph 134 (refusing planning permission for development of poor design);
- (j) paragraph 174 (protection of the natural and local environment);
- (k) paragraph 179 (protecting and enhancing biodiversity); and
- (l) paragraph 185 (pollution).

49. Regard should also be had to the Noise Policy Statement for England (“**NPSE**”), referred to in the NPPF, and the Planning Practice Guidance (“**PPG**”).

IV. APPEAL UNDER GROUND (A) AND THE REFUSAL TO GRANT PLANNING PERMISSION.

50. The appeal pursuant to s. 78 TCPA 1990 and s. 174(2)(a) raise the same planning issues and are dealt with together here.

(1) Reason for refusal 1:

51. The first reason for refusal states:

‘The proposed use by virtue of its nature and intensity, in particular the volume and frequency of deliveries and collections, and the manner in which they are undertaken using disruptive and potentially dangerous vehicle manoeuvres, causes harm to the amenity of the area, pedestrian and highway safety contrary to policy A1 (Managing the impact of development) and T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan 2017 and policy T4 (Assessing and mitigating transport impacts) of the London Plan 2021.’

Nature and intensity of use

52. The Unauthorised Development gives rise to a high volume and frequency of deliveries and collections, in particular on weekends and outside normal working hours and into the evening. Jacuna's Transport Statement (December 2022) ("**the TS**") indicates that the existing trip generation peaks on a Saturday and Sunday (although the trips on other days are also high).¹⁰ Further, although the existing distribution of trips by hour has not been provided, the TS indicates that the peak hour will be 2000 – 2100, with the peak period being from c. 1800 until 2200.¹¹ These hours and days of operation are significantly different to the permitted operating hours under the 2018 Permission (see condition 5).
53. The principal mode of delivery/collection is motor vehicle, specially delivery vans for suppliers and mopeds for ODP riders. This has been observed by the Council's officers and is consistent with the TS.¹²
54. With regards to delivery vans, the OMP at time of the application suggested there would be 15 delivery vans per day, 90 vans per week (Monday – Saturday). The revised OMP suggests there would be 11 vans per day or 66 vans per week. In either instance, this is a high number of movements and is significantly in excess of the permitted deliveries under the 2018 Permission (see condition 8 and the Parking & Servicing Strategy).

Manner in which deliveries and collections are being undertaken

55. The deliveries and collections are being undertaken in an unsafe and uncontrolled manner, giving rise to a significant highway safety concern.
56. There is a network of one way streets around the Appeal Site. This prevents quick access from certain directions (in particular the north and the east).¹³ As a result, delivery riders have been observed driving the wrong way down Randolph Street, by both the Council's officers and Jacuna's transport consultants.¹⁴
57. In the Council's experience, such behaviour is common for uses of this nature because the last mile delivery model places particular pressure on the delivery rider and their

¹⁰ TS at Table 3.1 on p. 15.

¹¹ TS at Table 3.3 on p. 17.

¹² TS at Table 3.1 on p. 15.

¹³ TS at [3.30] and Figure 3.1 on p. 21.

¹⁴ TS at [3.18] on p. 18.

movements cannot be effectively controlled. In this regard, the Council relies on the appeal decision concerning a dark kitchen at 115 – 119 Finchley Road, London NW3 6H7 (“**the Deliveroo DL**”) (at **Appendix B**). See paragraphs DL 51, 68 and 90 – 91 in particular.

58. The OMP states that no more than 2 delivery vans would be on site at any one time.¹⁵ Whilst the swept path analysis, provided by Jacuna (after the determination of the Application), may be able to demonstrate on paper that a 3.5t panel van can technically perform the manoeuvres required to turn in the space available; in reality, the area highlighted as ‘Loading Area No Parking’ is within the shared rear lane. On site visits, Council Officers have witnessed that this loading area is seldom free from parked cars taking up the space.¹⁶ Further, there is an inconsistency with the OMP which permits up to 7.5t vans, whereas the swept path analysis has been undertaken on the basis of a 3.5t van.¹⁷ Therefore, swept path analysis has not been provided for these larger vans.
59. Accordingly, it is not considered that the swept path analysis demonstrates safe vehicle ingress and egress for delivery vans, in particular for two delivery vans at the same time. Vans unable to turn around are required to enter or leave the site in reverse gear which is unacceptable due to highways safety concerns, in particular given the adjacent pedestrian footway and cycleway. The Council’s officers have witnessed vehicles reversing into the road across the cycle path with no supervision. Given the tight constraints of the Appeal and lack of available space it is not realistic to consider that two vans could safely manoeuvre within the site, and this would have an unacceptable knock-on effect at the junction with the public highway on Randolph Street.
60. With regards to delivery riders, the OMP suggests there would be up to 30 riders on site at any time between 10:00 and 23:00, spending approximately 1-2 minutes on site.¹⁸ This is broadly consistent with the TS. A collection rider is supposed to park their moped/bicycle in the designated area fronting Randolph Street, and then walk around

¹⁵ TS at PDF p. 113.

¹⁶ It should also be noted that the OMP suggests in addition to deliveries and collections there would also be Biffa waste vehicles for refuse and re-cycling requiring access on Mondays, Wednesdays and Fridays, plus a further weekly collection of waste oil. A site visit witnessed that there is also a separate recycling waste collection from a company called ‘first mile’, whose bins are stored within the rear yard area and at times within the allocated car parking spaces.

¹⁷ OMP at [5] on p. 14.

¹⁸ OMP at [3], seventh bullet point on p. 11. It is unclear whether this is referring to moped drives or moped drivers and bicycle riders.

to the rear of the arches on foot to collect an order before returning to their moped/bicycle and setting off to the private delivery address. There are a number of difficulties with this:

- (a) In reality, Council Officers have witnessed very few riders using the designated parking space, instead choosing to ride their moped around the rear lane, closer to residential properties, to collect orders. The Council did not witness any of the riders being stopped by marshals when doing this. It is also an understandable approach, given (1) the time pressures on delivery riders; (2) the poor access to the moped and bicycle parking area caused by the position of the gate – when the gate is open (i.e. set back into the Appeal Site), then access around it into the parking area is constrained; and (3) the congested nature of the parking area, in particular the adjacent waste storage, making this an unattractive option for delivery riders.
- (b) The TS states that parking is provided for up to 15 bicycles and up to 12 mopeds.¹⁹ This leaves little, if any surplus capacity at peak hours. For example, the TS predicts more than 12 mopeds an hour in six hours. That is an average figure, but there are likely to be peaks and troughs and it is realistic to expect that at some times there will be greater than 12 riders with mopeds on site; indeed, such a prediction is consistent with the OMP.
- (c) There is no safe location for offsite waiting, either in the event that the on site parking is full (when the OMP indicates that access will be refused²⁰) or when delivery riders congregate in advance of receiving orders (a known phenomenon – see the Deliveroo DL at DL 66 – DL 70). This gives rise to both highway safety concerns and amenity concerns (addressed below).

Inadequate mitigation

- 61. Jacuna seeks to mitigate the highway safety concerns via the OMP. The Council does not consider that this is adequate or realistic mitigation.
- 62. In this regard, the starting point is to recognise that OMPs for dark kitchens are inherently problematic in the Council's experience. For example, in the Deliveroo DL the Inspector said at [90] – [91]:

¹⁹ TS at [4.3] on pp. 25 – 26; fourth and fifth bullet points.

²⁰ OMP at [3], seventh bullet point on p. 11.

'90. *The success of the OMP relies to a considerable extent on the individual members of staff and visitors, including riders, complying with the Code of Conduct controlling behaviour, the ability of marshals to carry out all their responsibilities and the effectiveness of deterrents and sanctions. The appellant accepted that it would be quite hard to control how people behave but considered that the prospect of the termination of contract would be a sufficient deterrent. However, identifying riders who did not comply with site policy and procedure would not be easy, whether because of the need for accurate information or the constraints on using the Deliveroo app. Also the appeal site does not have a dedicated fleet of riders because Deliveroo riders are contracted to provide services within the zone.*

91. *The marshal positioned at the site entrance would have a long list of responsibilities and at busy times it is doubtful that all could be effectively carried out. Traffic marshals have been employed at the site since about July 2018. Past experience, albeit pre-dating the OMP, does not encourage confidence. By way of illustration, the Council found during monitoring in April 2019 that despite marshals being present pedestrian safety was being undermined by Deliveroo motorbike riders.'*

63. This analysis applies with even greater force in the present case because the Appeal Site is not exclusive to Deliveroo, instead it connected to the Deliveroo, Uber Eats and Just Eat networks.²¹ In particular, this means that the ability to educate riders in a co-ordinated way about the OMP and to sanction riders (so as to ensure compliance with the OMP) is significantly reduced, if not impossible. Indeed, the very vague approach to sanctions in the OMP is consistent with these concerns.²²

64. The Council understands that Jacuna is currently attempting to operate the Appeal Site in accordance with the OMP. This has proved a useful test of the OMP's effectiveness. It is clear from the observations of the Council's officers that the OMP is not being adhered to and thus does not form realistic or adequate mitigation. See **Appendix E**.

65. Further, on close examination, it is apparent that the mitigation in the OMP is inadequate in multiple respects.

(a) The OMP contains no explanation as to how ODP Riders will be trained on the procedures set out in the OMP. The OMP explains that training will be given to staff employed at the Appeal Site, but not ODP Riders.²³ It appears that the

²¹ OMP at [8] on pp. 12 – 13.

²² OMP at [4] – [5] on p. 10.

²³ OMP at [4] – [5] on p. 3.

only way the OMP and Code of Conduct will be drawn to ODP Riders' attention will be via a display at the entrance to the Appeal Site.²⁴ The OMP states that *'on-Site staff will be responsible for ensuring that all new visitors to the site (including ODP Riders) are made aware of it'*.²⁵ This approach is wholly unrealistic and inadequate. First, given the nature of the ODP Rider's task – in particular the time pressures that they operate under – it is not realistic to consider that they will stop and read the code of conduct. Secondly, simply displaying the code of conduct is unlikely to be effective, even if it is read, given that English will not be the first language of all ODP Riders and it is ineffective method of training even for English speakers. Thirdly, it is unrealistic to assume that the marshal will stop ODP Riders and draw their attention to the code of conduct. The Council's officers have not witnessed this behaviour and it is unfeasible given the excessive responsibilities placed on the marshals already. Finally, the suggestion that ODPs will be asked to pass on the instructions to the ODP Drivers is also unrealistic and ineffective.²⁶ This is a process that Jacuna cannot control or have any oversight over. It is vague and will be ineffective.

- (b) As already explained above, the provisions in the OMP for moped/bicycle parking are unrealistic and the Council's officers have observed these procedures being routinely breached without any apparent enforcement action by the marshal.²⁷
- (c) The approach to sanctions in the OMP is inadequate. Jacuna cannot sanction the ODP Riders directly, instead they are restricted to reporting the rider to the ODP.²⁸ This is dependent on the marshal photographing the ODP Rider's ID which is also unrealistic.²⁹ The OMP suggest that further training will be given to the ODP Rider, but Jacuna is unable to control this.³⁰ Further, the OMP states: *'An ODP Rider who fails to comply on more than one occasion will be banned from collecting from the Site. Such will be communicated to and reinforced by the ODPs where possible'*.³¹ It is unclear how a particular ODP

²⁴ OMP at [2] on p. 8.

²⁵ Ibid.

²⁶ OMP at p. 9, ante-penultimate bullet point.

²⁷ OMP at [3] on p. 9.

²⁸ OMP at [4] on p. 10.

²⁹ Ibid.

³⁰ OMP at [5] on p. 10.

³¹ Ibid

Rider will be banned, given the ordering/delivery app is outside of Jacuna's control and in the absence of any specific detail. This is all the more the case given the marshals have not been observed checking ODP drivers into/out of the Appeal Site. Taken together, the OMP does not contain an effective sanctions regime. This undermines all of the proposed measures.

- (d) The OMP suggests that a traffic marshal shall be in place to manage the vehicles accessing and egressing the site, however they have not been witnessed in place during unannounced site visits.³² The OMP suggests two marshals would be employed, increased from 1 marshal in the initial submission.³³ However it is understood that the second marshal would be located within the office space on Royal College Street to prevent riders from accessing the site from this entrance. Therefore, the single rear lane marshal would be responsible for up to 30 motorbike collection riders at a time (at least one every two minutes) along with the van deliveries (all of which are related to Jacuna's operation and not taking into account vehicle movements related to Getir's operations – when this is added in, Jacuna suggest that there will be 50 vehicle movements per hour).³⁴ Given this, the Council does not consider that a single marshal (or even two marshals) could undertake their allocated responsibilities adequately.³⁵ Quite simply, the marshal(s) would be swamped.
- (e) Jacuna states that its deliveries will not take place at the same time as the deliveries related to Getir/other occupiers within the Appeal Site.³⁶ However, no mechanism is given to secure this objective and it does not appear to the Council that there is an appropriate mechanism. It is also inconsistent with the Council's observation of parked cars within the Appeal Site.

66. It follows that the OMP does not provide adequate mitigation for the transport impacts of the Unauthorised Development.

Planning policy conflicts

67. Having regard to the foregoing matters, the Council has identified the following policy conflicts.

³² OMP at p. 11.

³³ Ibid at [1].

³⁴ TS at [3.48] on p. 24. However, the Council questions whether this is robust, given it is only a very small increase on the peak movements for Jacuna alone. The true number is likely to be higher.

³⁵ OMP at [3] – [4] on pp. 11 – 12.

³⁶ OMP at p. 12, fifth bullet point; and p. 15 at [11].

68. Policy A1(c) states the Council will '*resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network*'. This is repeated as a relevant factor in part (h) of that policy. Policy A1 is supported by the CPG on Transport which highlights the importance of ensuring that deliveries/collections are adequately controlled, especially outside normal working hours.³⁷
69. The Unauthorised Development conflicts with this policy because the transport impacts, in particular the impacts on highway safety, have not been adequately addressed. The OMP is not adequate mitigation.
70. Policy T1 of the Local Plan states the Council 'will promote sustainable transport by prioritising walking and cycling'. The Unauthorised Development is contrary to this policy because it gives rise to adverse highway safety impacts for pedestrians and cyclists adjacent to the Appeal Site and who must negotiate the footway/cycleway adjacent to the entrance.
71. Policy T4(F) of the London Plan requires that development proposals should not increase road danger. The Unauthorised Development does increase road danger, in particular from the behaviour of ODP Riders when accessing the Appeal Site, the absence of safe ingress and egress for delivery vans accessing the Appeal Site and the absence of adequate mitigation.
72. In addition, the Unauthorised Development is contrary to the NPPF. More particularly:
- (a) The potential transport impacts of the Unauthorised Development have not been addressed in accordance with paragraph 104(a). Further, the impacts of the Unauthorised Development are inconsistent with the promotion of sustainable transport, contrary to paragraph 104(b).
 - (b) Safe and suitable access to the Appeal Site has not been achieved for all users, contrary to paragraph 110(b).
 - (c) Pursuant to paragraph 111, planning permission should be refused because of the impact on highway safety.

³⁷ See especially [4.19] – [4.20] on p. 28.

(2) Reason for refusal 2

73. The second reason for refusal states:

'The proposed use, by virtue of the nature and intensity of deliveries and collections generates vehicular noise which has not been fully mitigated, and due to the proximity of neighbouring residential causes harm to the amenity of the area, contrary to policy A1 (Managing the impact of development) of the Camden Local Plan 2017.'

Nature and intensity of deliveries and collections

74. The Council repeats the submissions above regarding the nature and intensity of deliveries and collections at the Appeal Site.

75. The following matters are particularly pertinent under this reason for refusal:

- (a) The context of the Appeal Site is important. Although the local area does contain areas of high activity, in particular along key traffic routes, these are immediately adjacent to quieter residential areas, including Randolph Street, as described in the CAA (quoted above).
- (b) The peak hours of operation are outside normal working hours, stretching late into the evening.
- (c) The principal means of delivery is by moped. Moped (scooter) noise is recognised as having a character that makes it more annoying than general road traffic noise: this was apparent on site visits by the Council's officers and is confirmed by the Deliveroo DL at DL 33.
- (d) The use of 7.5 t delivery vans (as suggested by the OMP) will have generate greater noise than the 3.5 t delivery vans (for example from their greater bulk).

Noise monitoring undertaken by Jacuna

76. Jacuna have provided two noise reports. The first report (dated 25 August 2021) considers the installed plant only. The second report (dated November 2022 and expressed to be an Addendum) considers transport noise (**"the Addendum NR"**).

77. The Council makes the following submissions on the utility and robustness of the Addendum NR:

- (a) The Addendum NR relies on a single noise monitoring location which appears to have been within the bicycle parking area.³⁸ The Addendum NR does not give any explanation as to why this location was chosen or how it is representative, given that location is intended for (static) bicycles and does not capture the activities observed by the Council's officers in the rear yard area (e.g. driving up to the collection point, turning around and driving back).
- (b) The Addendum NR does not clearly identify the noise sensitive receptors. A generic description is given, but no details.³⁹ In particular: (1) no details are given as to how the noise survey and calculations were undertaken to ensure robust results for those noise sensitive receptors; and (2) the calculations of the impact on those receptors is not set out such that it can be scrutinised.
- (c) The Addendum NR appears to be focussed on mopeds only, without any account of delivery vehicles. For example it states: '*since all the deliveries and collections are carried on scooters/mopeds, there are no other sources of noise that need to be considered (noise from car doors being slammed etc)*'.⁴⁰ As already explained, the Unauthorised Development includes deliveries by vans. These have not been considered and thus the Addendum NR is not representative.
- (d) The noise impact assessment is based on a comparison with a baseline daytime ambient level of 53.4 dB L_{Aeq}.⁴¹ This figure is derived from noise monitoring between 0700 – 1000.⁴² This approach is not robust because 0700 – 1000 is not representative of the prevailing noise levels, especially in the evening. The Appeal site is in an inner city and therefore hours between '07:00 to 10:00, daytime' can be classed to include the main rush hour and therefore higher levels than what would be reordered as a baseline in the later hours of the day (e.g. outside rush hour and in the evening). It follows that the key comparative exercise at the heart of the noise impact assessment is flawed and fails to take into account quieter times.
- (e) The submitted assessment has used L_{Aeq} (average noise levels) to assess the impact of the development but has not assessed the effects of the L_{Amax} levels

³⁸ Addendum NR at Figure 3.2 on p. 12.

³⁹ Addendum NR at [1.2].

⁴⁰ [5.1] on p. 18.

⁴¹ [5.1] on pp. 18 – 19 – see final paragraph within that section.

⁴² Table 4.3 on p. 14.

from the Appeal Site. These levels are significantly higher: 94.6 dB (compared to a baseline of 85.4 dB, subject to the criticism of that baseline above). L_{Amax} is an important metric for consideration in this case because of the distinct character of moped (scooter) noise (see above), in particular the single noisy events when those mopeds are started up, the engine revved etc. Those single events will increase as the operation of the Unauthorised Development increases. It follows that the Addendum NR does not comprehensively assess the effects of the Unauthorised Development.

78. For these reasons, the Council submits that the Addendum NR does not robustly analyse the noise effects of the Unauthorised Development.
79. Without prejudice to the foregoing submissions, the Council makes the following submissions on the acceptability of the noise impacts recorded in the Addendum NR:
 - (a) The PPG defines the Lowest Observed Adverse Effect Level (“**LOAEL**”) as: *‘Present and intrusive: Noise which can be heard and causes small changes in behaviour and/or attitude, e.g. turning up volume of television; speaking more loudly; closing windows some of the time because of the noise. Potential for non-awakening sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life.’* The Council considers that the daytime (07:00 – 23:00) threshold is between 45dB and 55dB $L_{Aeq,16hr}$ and night time (23:00 – 07:00) threshold is between 40dB and 45dB $L_{Aeq,8hr}$.⁴³
 - (b) The PPG defines the Significant Observed Adverse Effect Level (“**SOAEL**”) as: *‘Noticeable and disruptive: Noise causes a material change in behaviour and/or attitude, e.g. having to keep windows closed most of the time, avoiding certain activities during periods of intrusion. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening, and difficulty getting back to sleep. Quality of life diminished due to change in acoustic character of the area.’* The Council considers that the daytime (07:00 – 23:00) threshold is between 55dB and 66dB $L_{Aeq,16hr}$ and night time (23:00 – 07:00) threshold is between 45dB and 57dB $L_{Aeq,8hr}$.⁴⁴

⁴³ See Appendix 3 to the Local Plan.

⁴⁴ Ibid

- (c) Measured daytime L_{Amax} noise levels brings the site into the SOAEL range and the average daytime L_{Aeq} levels will have be above LOAEL. These effects have not been considered in the acoustic submission.
- (d) As the dominant noise source is from the current operations of the site, this is likely to lead to noise complaints against the operator from occupiers of the residential receptors in warmer months because internal noise levels will be affected with the windows open in warmer months. This would result in an unsustainable living situation for current occupiers.
- (e) It is reasonable that in the warmer summer months occupiers will be opening windows for natural air, exposing them to elevated noise levels even with a distance correction and open window attenuation L_{Amax} levels would still in excess of 65dB and will be clearly audible within residential receptors.
- (f) There is no quantitative definition of statutory noise nuisance. It is generally accepted however, that if a noise level is at least 5dB (or 10dB if tonal) below the minimum background $L_{90(15minutes)}$ at 1m from the nearest noise sensitive residential window, then the risk of a statutory noise nuisance is likely to be avoided. This criteria is not met based on the recorded results.

Proposed mitigation

80. The only mitigation proposed by Jacuna is the OMP. The Council's submissions above about the effectiveness of the OMP apply equally here. In addition, the Council makes the following submissions.
- (a) The OMP states: '*Delivery drivers will be asked to turn off the audible reversing alarm, where safe and possible*'.⁴⁵ It is inferred that Jacuna is attempting to suggest mitigation for the noise of deliveries, however in reality it is not usually possible to de-activate reversing alarms, nor is it often considered safe to do so. This is particularly the case with the Appeal Site given its tight and congested nature.
 - (b) More appropriate mitigation would be to prevent the use of mopeds (scooters) and for ODP Riders to travel by push bicycle or e-bicycle only. This was a key factor in the Inspector's decision to grant a temporary planning permission in

⁴⁵ OMP at [9] on p. 15.

the Deliveroo DL (see DL 97). Jacuna has refused to implement this mitigation. It should be noted that Getir do use an electric fleet (all branded).

- (c) More appropriate mitigation would also be to restrict the number, nature and timing of deliveries by van. This has not been proposed by Jacuna.

Planning policy conflicts

- 81. Policy A1 states the Council will seek to protect the quality of life of occupiers and neighbours and specifically highlights noise as one of the factors to be considered. For the reasons give, the noise effects of the development have not been accurately assessed. Further, on the information available, the Unauthorised Development will give rise to unacceptable noise impacts, in particular on nearby residential receptors.
- 82. Further and for the same reasons, the Unauthorised Development is not in accordance with the NPPF. More particularly:
 - (a) the environmental impacts of the traffic arising from the Unauthorised Development have not been identified, assessed, and appropriately mitigated, contrary to paragraph 104(d);
 - (b) the Unauthorised Development does not improve local environmental conditions but in fact makes them worse, in particular for nearby residential receptors, contrary to paragraph 174(e); and
 - (c) the Unauthorised Development does not mitigate and reduce to a minimum potential adverse impacts resulting from noise and does not avoid noise giving rise to significance adverse impacts on health and quality of life, contrary to paragraph 185(a).

(3) Reason for refusal 3:

- 83. The third reason for refusal states:

'The proposed development, in the absence of a legal agreement securing a local employment and training package, would lead to the exacerbation of local skill shortages and lack of training and employment opportunities for local residents, contrary to policies G1 (Delivery and location of growth), E1 (Economic development), E2 (Employment premises and sites) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.'

84. This reason for refusal is capable of being overcome by a planning obligation. An appropriate planning obligation has not yet been provided by Jacuna, but the Council is open to negotiating the same before the appeal hearing.
85. The Council does not understand Jacuna to contest the need for such a planning obligation, but in any event it is justified by the Local Plan. More particularly:
- (a) Policy G1 of the Local Plan states that one of the key priorities for delivering growth and harnessing its benefits is the delivery of training and jobs for local people.
 - (b) Policy E1 of the Local Plan states the Council will support local enterprise development with employment and training schemes for local people.
 - (c) Policy E2 of the Local Plan states the Council will consider redevelopment of business premises where the scheme would increase employment opportunities for local residents, including training and apprenticeships.
 - (d) Policy DM1 of the Local Plan states the Council will use planning contributions to support sustainable development and to mitigate the impacts of development.
86. It follows that absent such a planning obligation, planning permission should be refused.

(4) Reason for refusal 4

87. The fourth reason for refusal states:

'The proposed development, in the absence of a legal agreement securing a satisfactory Operational Management Plan (including a community working group), would be likely to give rise to harmful impacts with local residents and conflicts with local road users and would be detrimental to the amenity of the area generally contrary to policies A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport), T3 (Transport infrastructure), CC5 (waste) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.'

Deficiencies in the OMP

88. The Council relies on its submissions above in respect of the OMP. Drawing these matters together, the Council has the following concerns about the OMP:

- (a) There is no adequate provision for training ODP Riders or drawing the provisions of the OMP to the attention of the ODP Riders, as explained above. This is a fundamental flaw in the efficacy of the OMP.
- (b) The manoeuvring and parking expectations for moped/bicycle parking is unrealistic and is being breached by ODP Riders.
- (c) The approach to sanctions in the OMP is inadequate, in particular ODP Riders who Jacuna cannot sanction directly, as explained above.
- (d) The expectation on the marshals are unrealistic and unachievable, as already explained by reference to the highways safety impacts. This is an issue of wider concern and is also relevant to the (inadequate) mitigation of noise impacts which also relies on the actions of marshals. 4.31 The OMP provides an extensive list of responsibilities for the marshals to carry out. The safe and successful operation of the overall site relies heavily on the ability of the marshals to carry out these responsibilities and as such, this flaw is fundamental to the success of the OMP. The Council's observations on site visits show that the marshal was not in place and even when in place was ineffectual in enforcing the OMP or preventing ODP drivers from breaching the OMP. The Council's concerns in this regard are consistent with the Deliveroo DL and its experience of similar uses in the Borough.
- (e) There is no effective mechanism to co-ordinate Jacuna's deliveries with the deliveries of other occupiers. Further, there is insufficient controls placed on those deliveries.
- (f) The anticipated switching off of audible reversing alarms is unrealistic and unlikely to occur, as explained above.
- (g) The use of an electric fleet/push bike fleet should be included in the OMP but has been omitted, as explained above.
- (h) The OMP contains no provisions to prevent loitering by ODP drivers, for example when waiting for an order to be assigned to them, giving rise to anti social behaviour. Such behaviour is apparent elsewhere in the Borough from similar uses (as evidenced in the Deliveroo DL) and mitigation is required to ensure that this does not occur at the Appeal Site. This is particularly the case given the absence of any welfare space within the Appeal Site for ODP drivers

and the approach of the OMP to restrict entry to only those ODP drivers with a confirmed order.

89. In summary, the Council submits that the OMP is not fit for purpose. The OMP does not contain realistic or adequate mitigation for the impacts of the Unauthorised Development. Further, where attempt is made to provide mitigation, those measures are expressed imprecisely and are ultimately unenforceable, either by Jacuna in the first instance or by the Council in the exercise of its enforcement powers.
90. Ultimately, the Council has considered how far its concerns could be addressed by revisions to the OMP or by a condition requiring submission and approval of an OMP. The Council does not consider that such an approach is acceptable. There are three reasons for this:
- (a) First, the OMP has been significantly revised through discussions between the Council and Jacuna. Despite this, the OMP remains inadequate. In these circumstances, it is difficult to see how any further revisions are likely to be sufficient to adequately address the issues identified above.
 - (b) Secondly, although Jacuna controls the Appeal Site and has a contractual relationship with the occupiers of the 16 kitchen pods, it does not appear that Jacuna has any meaningful control over the ODP drivers who are controlled by Deliveroo/Uber Eats/Just Eat. It is this lack of control which limits the mitigation that can be provided in the OMP and which prevents the proper enforcement of the OMP in its current form.
 - (c) Thirdly, given the foregoing, a condition requiring a revised OMP would not comply with paragraph 56 of the NPPF, in particular because it is not reasonable to expect Jacuna to produce an OMP containing provisions that Jacuna is unable to secure.

Planning policy conflicts

91. Policy A1 of the Local Plan states that the Council will seek mitigation measures where necessary and highlights the importance of satisfactory management plans relating to acceptable developments to protect the quality of life of locals. For the reasons above, the OMP is not a satisfactory management plan and does not secure the necessary mitigation measures.

92. Policy T1 of the Local Plan states the Council will promote sustainable transport by prioritising walking and cycling. The proposed development is considered to fail in this regard. The transport impacts of the Unauthorised Development unacceptably affect the pedestrian footway and cycleway. Further, the Unauthorised Development could utilise an electric fleet (like Getir) but it has not done so.
93. Policy T3 of the Local Plan states the Council will seek to protect transport infrastructure, highlighting the importance of routes and facilities for walking and cycling. The proposed development is considered to have unacceptable negative impacts on the existing pedestrian route along Randolph Street and the adjacent cycleway.
94. Policy CC5 of the Local Plan states the Council will seek to ensure developments include facilities for the storage and collection of waste and recycling. Whilst the Block Plan and OMP do provide some information, in order to satisfy this policy requirement further detail and control is required. The waste management storage area is adjacent to the motorbike parking area at the side lane immediately to the west of the entrance gate. A close up of the waste management area and motorbike parking is provided below:



Figure 5: Proposed Block Plan (close up) showing waste management area and motorbike parking facility (application 2021/4163/P, submitted by the applicant/ appellants).

95. Site visits by the Council's officers revealed that in reality the waste management area bears little resemblance to the layout as shown on plan. Further it is very doubtful that 30 motorbikes could safely park and manoeuvre in and out of this space along with the proposed waste storage as shown or the actual waste storage in place at the site.
96. The OMP suggests that waste collection vehicles will reverse into the site and bins will be pulled from the storage area to offload.⁴⁶ If the vehicles reverse in towards the rear lane, it is not considered there would be sufficient space to manoeuvre the bins given the narrow pinch point between front and rear lane. If the vehicle only reverses a little bit on to the edge of the site, there would be space to manoeuvre the bins, but the front of the vehicle would be blocking the pedestrian right of way and the public

⁴⁶ OMP on p. 17.

highway for bicycles using the designated cycle lane and larger vehicles using the roadway. This would give rise to adverse highway safety effects. In any case the full details are not explained or appropriately controlled by the OMP.

97. Policy DM1 of the Local Plan states the Council will work with a range of partners to ensure that opportunities for creating the conditions for growth and harnessing its benefits for the borough are fully explored and shall monitor the implementation of the Local Plan policies and infrastructure provision on a regular basis. Whilst a community working group is proposed within the latest OMP revision, again the detail is limited. It is not considered sufficient to offer Zoom meetings only. Whilst this approach may afford greater accessibility which is accepted as being desirable, local residents are local and may expect to be able to visit the sites as part of community engagement and ongoing relationship building with developers in their community. Further and more generally, the OMP does not adequately mitigate the impact or implementation of the Unauthorised Development and thus does not support sustainable development, contrary to parts (d) and (e) of the policy.
98. Finally, if, contrary to the foregoing, it is considered that a revised OMP would be acceptable, the Council submits that any planning permission should be temporary (as in the case of the Deliveroo DL) to allow a period of testing and monitoring. This is in accordance with the guidance in the PPG and is justified in this case given the ongoing failure of Jacuna to adhere to the OMP in its current form. For the avoidance of doubt, the grant of a temporary planning permission is the Council's secondary position. The Council's primary position is that planning permission should not be granted.

(5) Reason for refusal 5

99. Reason for refusal 5 states:

'The proposed development, in the absence of a Bat survey, would lead to potential loss of local bat population and biodiversity, contrary to policy A1 (Managing the impact of development) and A3 (Biodiversity) of the London Borough of Camden Local Plan 2017.'

100. Jacuna has provided a bat survey dated September 2022. As acknowledged by the specialist from Bioscan the survey *'cannot form a comprehensive assessment of the former position'* given the assessment was carried out after the offending development has taken place. This position has been echoed by the Council's nature conservation officer who has questioned the value of the bat survey. Ultimately the Council does not consider that it provides a robust basis for assessment.

101. Policy A1 of the Local Plan states the Council will seek to ensure developments contribute towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities; and will require mitigation measures where necessary. This includes consideration of lighting and noise, both of which may harm bats.
102. Policy A3 of the Local Plan states the Council will protect and enhance sites of nature conservation and biodiversity; and will grant permission for development unless it would directly or indirectly result in the loss or harm to, or adversely affect the status or population of priority habitats and species.
103. Notwithstanding Jacuna's failure to undertake pre-development bat surveys, the Council recognises that a pragmatic approach is required. To that end, the harm arising from the Unauthorised Development could be adequately mitigated by the provision of bat boxes (or, if not possible, a financial contribution towards the provision of bat boxes near to the Appeal Site). This would need to be secured by a planning condition and/or planning obligation.

(6) Planning balance & conclusion

104. For the reasons above, the Council considers that the Unauthorised Development fails to comply with the development plan, read as a whole. The Council remains of this view even if the third and fifth reasons for refusal are overcome by a planning condition or obligation. Although not forming part of the reasons for refusal or necessary for the appeal to be dismissed, the other conflicts with policy noted in the officer's delegated report further support this conclusion, albeit they are of a lesser magnitude.
105. Further, the Council does not consider that there are other material considerations of sufficient weight to indicate that planning permission should be granted contrary to the development plan. In this regard, the only other material consideration relied on by Jacuna is the creation of jobs and associated economic benefits.⁴⁷ This is a factor to which only limited weight can be provided given the absence of detailed analysis or evidence in support (for example, details about the jobs provided, pay, training opportunities etc or the scale of the economic effects arising from the Unauthorised Development).

⁴⁷ See Appeal Statement at [4.8].

106. It follows, applying s. 38(6) of the Planning and Compulsory Purchase Act 2004 that planning permission should not be granted.

V. GROUND (F) - THE STEPS REQUIRED TO COMPLY WITH THE REQUIREMENTS OF THE NOTICE IS EXCESSIVE AND LESSER STEPS WOULD OVERCOME THE OBJECTIONS.

107. As there is a clear breach of planning at the appeal site (the current use being unauthorised) and the current use is considered to be unacceptable in principle, the requirements as set out in the notice are the only recourse to ensure that the breach of planning control are cured. There are no lesser steps that can be taken in order to ensure that the current breach is rectified. Further, no lesser steps are possible to remedy the harm to amenity arising from the Unauthorised Development, in particular giving the failure of the OMP, as described above.
108. Jacuna contends that steps 2 and 3 of the notice are imprecise and do not make clear what steps should be taken to remedy the breach. This is not accepted. The plant and machinery that must be removed is that installed as part of the Unauthorised Development. This is obvious and is known to Jacuna. Further, making good the exterior of the premises is the necessary step following the removal of the plant and machinery. Such making good is directly related to remedying the breach of planning control.
109. Further and in any event, the Council is seeking to agree a list of the plant and machinery that has been installed by Jacuna as part of the Unauthorised Development. If considered necessary, this list could be inserted into the steps required by the Notice by amendment pursuant to s. 176 TCPA 1990 without any injustice or prejudice to any party.

VI. GROUND (G) - THE TIME GIVEN TO COMPLY WITH THE NOTICE IS TOO SHORT

110. Whilst the Council acknowledges that the cessation of the use may lead to a loss of employment and could be detrimental and cause harm to the business, it should be noted that the Appellant does not confirm whether the employees are directly employed by Jacuna Kitchens or by the businesses that they facilitate. If the latter is the case then there will be opportunity for redeployment.

111. Jacuna relies on the time required for purchasing a lease and the time it would take to submit a planning application and for it to be determined. The Council submits that the time to comply with the Notice should not be contingent on whether a planning application is submitted and determined. This is particularly the case in circumstances where enforcement action has been ongoing for some time.
112. Further and in any event, allowing a period of 12 months for compliance, without any means of ensuring adequate mitigation or compliance with the OMP, would have the effect of granting a temporary but uncontrolled planning permission. The harm identified above would continue throughout that period without the necessary or any mitigation.

VII. CONDITIONS & OTHER MATTERS

113. Should the inspector be minded to allow the appeal, it would be requested that conditions in Appendix A are attached the decision.
114. Jacuna has questioned the process by which the Notice was issued under delegated authority. Such matters fall outside of the scope of an appeal pursuant to s. 174 TCPA 1990: see ***Britannia Assets (UK) Limited v Secretary of state for Communities and Local Government*** [2011] EWHC 1908 (Admin).
115. In any event, the Council resists any suggestion that the Notice has been issued incorrectly. More particularly:
- (a) The issue of the Notice was within the scope of the delegated report. The delegated authority was to issue an enforcement notice against the Unauthorised Development. This was done. The fact that it was done following the withdrawal of an earlier enforcement notice does not change the fact that an enforcement notice was issued against the Unauthorised Development, within the scope of the delegated authority (in particular in circumstances where the Chief Planning Officer himself has extensive delegated powers.
 - (b) There is no material discrepancy between the reasons on the Notice and the reasons in the delegated report. The delegated report recommended enforcement action because the time limit for so doing had not elapsed. This was accurately recorded on the Notice. In any event, it is not disputed by Jacuna and thus this argument is entirely academic.

VIII. CONCLUSION

116. For the reasons above, the Council submits that both appeals should be dismissed.

APPENDICES:

- 117. Appendix A – Suggested conditions, obligations and informatives should the Appeal be allowed.
- 118. Appendix B – Appeal Decision Ref: APP/X5210/C/18/3206954 (Deliveroo).
- 119. Appendix C – Decision Notice Ref: 2021/4792 & Site Location Plan (Deliveroo).
- 120. Appendix D – Decision Notice Ref: 2018/0565/P & Parking & Servicing Strategy.
- 121. Appendix E – Jacuna site surveys.