

Delegated Report		Analysis sheet		Expiry Date:		25/05/2023	
		N/A / attached		Consultation Expiry Date:		N/a	
Officer				Application Number(s)			
Matthew Dempsey				2023/1371/P			
Application Address				Drawing Numbers			
82 Camden High Street London NW1 0LT				Please refer to the Decision Notice.			
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature				
Proposal(s)							
Details of extract flue and plant installation in relation to condition 6 of 2022/3459/P, 14/10/2022; for, Minor Material Amendment (S73) to amend Condition 2 (Approved plans) of ref: 2021/3936/P dated 07/07/2022 for 'Retrospective application to change the use of the ground and basement unit from a mixed A1 (retail), A3 (cafe) and A4 (bar) Sui Generis use to Class E (b) and retention of air-conditioning unit on the rear at first floor level and a cooking extract grille at the rear.							
Recommendation(s):		Refused and Warning of Enforcement Action to be Taken					
Application Type:		Approval of Details					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	00	No. of responses	00	No. of objections	01
Summary of consultation responses:		One objection was received from a member of the public. Their concerns relate to noise nuisance, and breach of planning controls regarding works carried out.					
CAAC/Local groups* comments: <small>*Please Specify</small>		<p>The site is within the Camden Town Conservation Area, however there is no statutory consultation with the public or amenity groups for this type of application.</p> <p>For the avoidance of doubt, the Camden Town Conservation Area Advisory Committee (CT CAAC) did not make any representations in this case.</p>					

Site Description

The host site is a four storey building with commercial frontage at ground floor facing Camden High Street within a terrace of similarly scale properties on the east side of the street.

The site is not listed, but it is located within the Camden Town Conservation Area. It is also within the Camden Town Business Improvement District.

Relevant History

Planning history:

2015/6874/P - Change of use of ground floor from A1 (retail) to A3 (restaurant). **Prior Approval Required, approval refused 28/01/2016.**

2018/0107/P - Change of use of existing ground floor unit from retail (Class A1) to mixed A1 (retail), A3 (cafe) and A4 (bar) Sui Generis use. **Granted 09/11/2018.**

2018/2686/P - Installation of new shopfront (retrospective). **Refused and warning of enforcement action to be taken 14/12/2018.**

2018/0666/P - Installation of new shopfront. **Withdrawn 27/04/2018.**

2021/3936/P - Retrospective application to change the use of the ground and basement unit from a mixed A1 (retail), A3 (cafe) and A4 (bar) Sui Generis use to Class E (b) and retention of air-conditioning unit on the rear at first floor level and a cooking extract grille at the rear. **Granted 07/07/2022.**

Enforcement history:

EN21/0401 - Two air con units and kitchen extractor without planning permission

EN21/0492 - Installed extractor fan for the kitchen. All the cooking fumes from greasy fried food coming though in bedroom. They don't have planning permission for extractor fan. They were granted permission, to re-heat prepared food only, not open full service kitchen.

EN21/0621 - Unauthorised works to basement.

EN21/0659 – live music.

EN22/0104 - Two air conditioning units have not been removed. Causing stress. Previous EN21/0401.

EN22/0472 - 2x air con units and 1x kitchen extractor fan used outside of permitted hours.

EN22/0519 - kitchen extractor directly outside bedroom window 8am..

EN22/0570 - Illegal equipment directly outside bedroom window in the morning, all the fry up smells coming out.

EN22/0671 - Loud noise from fans above background level in breach of planning conditions..

Relevant policies

National Planning Policy Framework (2021)

The London Plan (2021)

Camden Local Plan (2017)

G1 Delivery and location of growth

A1 Managing the impact of development

A4 Noise and vibration

D1 Design

Camden Planning Guidance

CPG Amenity (2021)

CPG Design (2021)

Assessment

1.0 The Proposal

1.1. The application is in relation to the submission of details (extract flue and plant post completion report) required to fully discharge condition 6 of the original planning permission (2022/3459/P, 14/10/2022). This condition requires that a post completion report to demonstrate that compliance with the conditions of the original permission and specifically that; the flue and plant are installed as per approved plans, mitigation measures have been installed and that the noise from the plant should comply with condition 2 of the original permission regarding noise levels.

1.2. It should be noted that the full impact and extent of the proposed development other than the relevant condition has been previously assessed. The requirements of this condition therefore relate purely to the demonstration that the report is compliant with Camden's Local Plan policies and show that the plant produces a level of noise which ensures that the amenities of nearby residents are not negatively impacted by the development.

2.0 Assessment

2.1. The wording of the original condition 6 is as follows:

Condition (6)

Within two months of the date of the installation of the extract flue and plant, a post-completion report shall be submitted demonstrating compliance with the above conditions, namely:

- a) that the flue and plant has been installed in accordance with the approved details and plans, and on what date; and
- b) that the mitigation measures have been installed in accordance with the approved details and plans, and conditions 3 and 4 of this permission; and
- c) that the noise from the plant complies with condition 2 of this permission.

Reason: To ensure that the amenity of occupiers of the development site and surrounding premises is not adversely affected by noise, vibration and odour in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

2.2 Linked to this application for the avoidance of doubt; the wording of the original conditions 2, 3 and 4 referred to within condition 6 are as follows:

Condition (2)

The external noise level emitted from plant, machinery or equipment at the development hereby approved shall be lower than the lowest existing background noise level by at least 10dBA, by 15dBA

where the source is tonal, as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with the machinery operating at maximum capacity.

Reason: To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by noise from mechanical installations/ equipment in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

Condition (3)

Prior to use, machinery, plant or equipment at the development shall be mounted with proprietary anti vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced and maintained as such.

Reason: To ensure that the amenity of occupiers of the development site and surrounding premises is not adversely affected by vibration in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017

Condition (4)

The operation, and maintenance of the odour abatement equipment and extract system, including the height of the extract duct and vertical discharge outlet, must be at all times in accordance with the 'EMA +Control of Odour and Noise from Commercial Kitchen Exhaust Systems and suggested mitigation form odour assessment 20212483M483C, dated 21 October 2021. Approved details shall be implemented prior to the commencement of the use of the equipment and thereafter be permanently retained.

Reason: To ensure that the amenity of occupiers of the development site/surrounding premises is not adversely affected by cooking odour.

2.3. In order to seek approval of condition 6, a Noise Survey and Odour Impact Assessment was prepared by Compliance for Buildings Ltd have been submitted to the Council alongside application documents. No specific post-completion report has been provided as stipulated by the condition.

2.4 The applicant has provided sets of photographs within the submitted reports to give an indication of the as installed equipment. However, there is limited detail provided to clarify that the as approved plant and flue have been installed as per condition 6a). Furthermore, the photograph of the flue cap shown on page 27 of the applicant's Noise Survey appears not to match the as approved drawing from application ref 2023/3459/P (Proposed Rear and Side Elevations 08.08.2022 060101).

2.5 Condition 6b) requires that mitigation measures should be installed to prevent impact on neighbouring amenity with regards to vibrations and/ or cooking odours. Details of the mitigations are provided within the submitted reports but not evidence of their installation.

2.6 The details have been reviewed by the Council's Environmental Health Officer who found that the proposals are unacceptable in Environmental Health terms.

2.7 As identified by the Council's EHO, the 'Impact assessment' in section 5 of the noise survey calculates failure to comply with condition 2 of the original permission (and therefore failure to comply with condition 6c), noted above.

2.8 The 'Discussion' in section 6 of the applicants noise survey confirms failure to comply and also that the duty speed of the supply fan would have to be limited to ensure compliance which in itself would not be in compliance to "machinery operating at maximum capacity" as per condition 2. The EHO notes that mitigations has been suggested however concerns remain regarding the supply fan and this is not considered and viable solution for the operation of the complete system.

2.9 In light of the above, the submitted reporting is not considered to have adequately demonstrated that the plant equipment installed onsite has been installed and constructed in accordance with the

approved scheme, and the development is in breach of condition 6 of the original planning permission (2022/3459/P, 14/10/2022). As the submitted details are not sufficient to confirm compliance with the relevant condition, the details may not be approved in their current form.

2.10 The submitted Noise Survey and Odour Impact Assessment fails to demonstrate that the installed plant complies with the requirements secured by condition 6 of application 2022/3459/P, resulting in noise and disturbance to the detriment of the residential amenities of adjoining occupiers. As such, the resulting associated harmful noise and disturbance from the operational plant is contrary to policies A1 (Managing the impact of development) and A4 (Noise and vibration) of the London Borough of Camden Local Plan 2017.

3.0 Recommendation

3.1 Refuse approval of details and warning of enforcement action to be taken.

3.1 That the Borough Solicitor be instructed to issue a Beach of Condition Notice under Section 187A of the Town and Country Planning Act 1990 (as amended) with regards to condition 6 of planning permission 2022/3459/P granted on 14/10/2022 and officers be authorised in the event of non-compliance to prosecute under that section.

The notice shall allege the following breach of planning control:

Failure to comply with condition 2 of 2022/3459/P, which reads as follows:

The external noise level emitted from plant, machinery or equipment at the development hereby approved shall be lower than the lowest existing background noise level by at least 10dBA, by 15dBA where the source is tonal, as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with the machinery operating at maximum capacity.

Reason: To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by noise from mechanical installations/ equipment in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

Failure to comply with condition 6 of 2022/3459/P, which reads as follows:

Within two months of the date of the installation of the extract flue and plant, a post-completion report shall be submitted demonstrating compliance with the above conditions, namely:

- a) that the flue and plant has been installed in accordance with the approved details and plans, and on what date; and
- b) that the mitigation measures have been installed in accordance with the approved details and plans, and conditions 3 and 4 of this permission; and
- c) that the noise from the plant complies with condition 2 of this permission.

Reason: To ensure that the amenity of occupiers of the development site and surrounding premises is not adversely affected by noise, vibration and odour in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

WHAT YOU ARE REQUIRED TO DO:

Cease the operation of the plant, machinery and equipment until an updated noise validation test is submitted to and approved in writing by the local planning authority demonstrating that the plant, machinery and equipment has been installed in accordance with the approved details and the noise level from any plant and equipment, together with any associated ducting or vents, is be 15 dB(A) or more below the lowest relevant measured LA90 (15min) at the nearest noise sensitive premises. The

method of assessment is to be in accordance with BS4142:2014.

PERIOD OF COMPLIANCE:

28 days

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

The failure to comply with the approved noise level from plant and equipment and failure to demonstrate installation in accordance with the approved plans is causing nuisance through elevated noise levels to neighbouring residential occupiers and fails to protect the living conditions of nearby residents to the detriment of residential amenity, and is thereby contrary to policy A1 (Managing the impact of development) and A4 (Noise and vibration) of Camden's Local Plan 2017.