

**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
FINAL COMMENTS**

30 August 2023

ENFORCEMENT APPEAL REF: APP/X5210/C/23/331690

1. This section provides the Council's comments in relation to various statements made in the Appellant's Hearing Statement dated May 2023 and in the Appellant's Statement of Case dated 28th April 2023, all in the above appeal.
2. The comments below should be read in conjunction with the Council's Statement of Case dated 28th April 2023.
3. In response to paragraph 5.2.12 of the Appellant's Statement, the Council would comment as follows.
4. The Council's position is that the Appellant is well aware that the internal elements of the plant and machinery (e.g. those parts that have been installed internally) do not require planning permission. Therefore, it is clear that the requirement to remove the "plant and machinery" from the rear of Arch 74 and 75 only relates to the external aspects which require planning permission. Therefore there is no doubt or lack of clarity in respect of the notice.
5. Further, it is clear that it is those external areas of arches 74 and 75 from where the flue is required to be removed where the exterior should be made good. Requirement (3) contained in the enforcement notice that was issued clearly states "*make good the exterior of the property following the completion of the above works*", those works being the removal of the plant and machinery from arches 74 and 45. Again, the wording of the notice is neither imprecise nor unclear.
6. In response to paragraph 5.2.2, it follows from the above that the requirements as set out in the Enforcement Notice are clear and Jacuna is aware of the precise steps that are required to remedy the breach of planning control.

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7. This section provides the Council's comments in respect to the Appellant's Further Hearing Statement dated 9th June 2023, which responds to the Council's Statement of Case dated 28th April 2023.
8. Paragraph 2.2 in the Appellant's Further Hearing Statement confirms that updated drawings have been submitted to the Council. It should be noted that these updated drawings were not assessed or considered as part of the application process as they were submitted subsequent to the planning application being refused and the appeal

being lodged. The updated plans as submitted show a true reflection of the 'as installed' plant and machinery that is located on the rear elevation of arch 74 and 75, as opposed to the scheme that was assessed and subsequently refused in respect to the application submission. Notwithstanding the above, the Council does not consider that the appeal process is the correct forum for the updated plans to be assessed and considered as they have not gone through the planning process nor been formally consulted on which is a statutory requirement. It is also necessary for the Appellant to confirm whether the installed plant was assessed in the noise reports or that shown incorrectly on the earlier submitted plans.

9. In regard to paragraph 2.6 of the Appellant's Further Hearing Statement, it should be noted that the delivery riders were observed and recorded in real time going down the wrong way down Randolph Street. All the mopeds recorded were categorised dependent on the businesses that they were affiliated to and 100% (i.e. all) of those mopeds going down the wrong way on Randolph Street and observed were those affiliated to Jancuna. Further, several different officers witnessed examples of poor riding exacerbated by the lack of marshalling on multiple occasions.
10. The strategy relating to the permission 2018/0565/P is for 9am to 5.30pm Monday - Saturday (no trading at all on Sundays) and does not relate to mopeds. It is for delivery / collection vans at a frequency of 4 per week, max 7.5tn vehicles. The Appellant's OMP suggests 11 vans per day (between 8am and 4pm Mon-Sat), again with max of 7.5tn vehicles. (However, it is notable the swept path analysis has been carried out using a 3.5tn Panel Van not large vehicles up to 7.5tn, i.e. the analysis has not been carried out for the max vehicle size proposed by the Appellant.
11. Paragraph 2.19 of the Appellant's Further Hearing Statement confirms that the Appeal Site is to close by 11pm. It also states that the traffic survey states that there was no traffic entering or exiting the site from 10pm that would result in no activity until 9am the next morning. Whilst the Council considers that the 10pm cut-off period for traffic entering the site is reasonable, this does not account for vehicles that are parked within the site where staff may leave beyond the 10pm cut off period and the other external activity associated with closing up and going home. Therefore, there is the potential for noise nuisance from traffic to occur beyond 10pm at night.

AUTHORITY FOR ISSUING THE ENFORCEMENT NOTICE

12. Paragraph 4.2 of the Appellant's First Statement of case questions Council's authority for issuing the Enforcement Notice subject to the appeal.
13. As already set out in paragraph 114 of the Council's Statement of Case, the Council would like to reiterate that 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). Without prejudice to this submission (which is a total answer), the Appellant's arguments are hopeless in any event for the following reasons.
14. The decision to issue the Enforcement Notice was an officer's delegated decision as opposed to Planning Committee's decision, as has been suggested by the Appellant in paragraphs 4.2 – 4.6 of their First Statement of Case.
15. The delegated report in respect of planning application reference 2021/4163/P was prepared by case officer Matthew Dempsey ("the Delegated Report"). Paragraph 10 of the Delegated Report sets out the case officer's recommendation, which covers both the refusal of planning application reference 2021/4163/P (Paragraph 10.1 of the Delegated Report) and authority to issue an enforcement notice "requiring cessation of the use of the ground floor of 1788B and Arches 74 and 75 and part of Arch 73 as commercial kitchens and delivery centres with ancillary offices and removal of the plant and machinery, and to pursue any legal action necessary to secure compliance and officers be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control" (Paragraph 10.2 of the Delegated Report).
16. The respective delegated decisions in respect of each of the case officer's recommendations were taken by Elizabeth Beaumont, Appeals and Enforcement Team Leader, in line with the Council's Constitution – Delegations by the Executive Director Supporting Communities ("the Scheme of Delegation").
17. In respect of issuing enforcement notices, pursuant to paragraph 88 of the Scheme of Delegation, Team Managers (such as Ms Beaumont) are delegated "To take enforcement action under planning legislation, to issue appropriate statutory notices under planning legislation and or other relevant legislation and to issue and serve enforcement notices and the taking of action in default if necessary."

18. Planning permission for planning application under planning application reference 2021/4163/P was refused by the Council under delegated authority given to Elizabeth Beaumont as a Team Leader and decision notice dated 26 July 2022 was issued to this effect.
19. As Team Leader, Elizabeth Beaumont actioned the recommendation and directed the Borough Solicitor to issue an enforcement notice as per the case officer's recommendation stated in paragraph 10.2 of the Delegated Report. The first enforcement notice was dated 18 November 2022, however it was withdrawn by the Council due to an administrative issue and is not subject to this appeal.
20. A subsequent delegated authority was given by Elizabeth Beaumont by a further email to the Council's Legal Department instructing to re-issue the enforcement notice correcting the administrative issue and a new enforcement notice was issued in line with the case officer's recommendation set out in paragraph 10.2 of the Delegated Report. This enforcement notice was issued on 16 January 2023 and is subject to the current appeal.
21. Whilst the Delegated Report provided full background of the case, the delegated decisions were taken by the Team Leader subsequent to the issue of the Delegated Report and the Council does not consider that there was a need for separate delegated reports to cover the re-issue of the notices, especially given the unchanged circumstances. Therefore, the Council considers that the Appellant's assertions in paragraphs 4.4 and 4.5 of their First Statement of Case remain irrelevant and academic.