

Delegated Report		Analysis sheet		Expiry Date:	07/11/2023
		N/A / attached		Consultation Expiry Date:	25/11/2023
Officer			Application Number(s)		
Daren Zuk			2023/3803/P		
Application Address			Drawing Numbers		
135 Finchley Road London NW3 6JH			Please refer to decision notice.		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Alterations to external area including boundary fencing, planters, decking, and stairs.					
Recommendation(s):		Refuse planning permission and warn of enforcement action.			
Application Type:		Full Planning Permission			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	00	No. of responses	00	No. of objections	00
Summary of consultation responses:	<p>A site notice was displayed from 01/11/2023 which expired 25/11/2023</p> <p><i>No responses were received following statutory consultation.</i></p>					
C.R.A.S.H.	<p>The Combined Residents' Association of South Hampstead (C.R.A.S.H.) objected to the proposal, providing the following comments on 28/11/2023:</p> <p><i>CRASH objects to this application because it believes that it has been submitted purely to deflect the council's attention from ongoing breaches of existing planning consents (2016/5714/P and 2016/3401/P). The council's enforcement team are aware of these breaches. CRASH requests the council to refuse consent for the current application until such time as the existing breaches have been rectified and the site made compliant.</i></p> <p>Further comments were received on 12/12/2023:</p> <p><i>The original design for the Finchley Road elevation (the design that was given consent and the design that that was ignored by the applicant) was for a dwarf brick wall topped by metal railings and backed by planting. We are now being offered cheap and nasty 'composite' boarding topped by equally cheap and nasty 'artificial' planting (which we all know means plastic which loses colour and turns grey after twelve months). The Council's own planning policies require 'good design', not this tat.</i></p> <p><i>The original design (the consented design) had no provision for an entrance on the Finchley Road and its creation has led to years of disputes with neighbours over smelly and rotting food waste discarded on the public footpath - not to mention the foxes, pigeons, rats and other vermin attracted by the waste. Even now, after the applicant has supposedly 'cleaned up his act' the gates to the bin area are routinely left open with the consequent problems just mentioned. The gates shown on the current (revised) plans will cause the same problems and lead to the same disputes as we have now. BTW why is no bin storage area shown on the drawings?</i></p> <p><i>The original design (the consented design) had a gate on the Belsize Road elevation for refuse removal. CRASH can see no reason why the Belsize Road gate, which still exists and is still shown on the revised plans, should not be used for bin collection, thereby nullifying the Finchley Road problem.</i></p> <p><i>The original design (the consented design) had the outside areas as 'patio' areas with 'real' planting. Without consent, the areas have been used as rubbish areas and storage areas, and these latest plans seek to 'legalise' these blatant breaches of the planning process.</i></p> <p><i>CRASH remains opposed to the revised plans and retains its objection.</i></p>					

Site Description

The application site is located on the west side of Finchley Road close to the entrance of the Swiss Cottage Underground Station. It is adjacent to a four-storey marble-clad building with glazed facade which is in use as a restaurant and drinking establishment (Class E). The site is not located within a conservation area; however, it is within the Finchley Road/Swiss Cottage designated Town Centre.

The application relates to external decking, fencing, and planting that was erected not in compliance with the original 2016 permission.

Relevant History

9500303 – Change of use of the lower ground upper ground and first floors from a bank within Class A2 to café/bar within Class A3 – **Granted May 1995**

PW9605135 – The erection of a four-storey building comprising retail use on lower ground and ground levels with residential use on first and second floors. **Refused 11/06/1997**

PW9703068 – The erection of a two-storey building for use within Class A2 (financial and professional services) of the Town and Country Planning (Use Classes) Order 1987. **Granted 26/05/1998**

2007/6299/P – Change of use of basement, lower/upper ground and first floor from bar (Class A4) to office use (Class B1). **Granted 19/03/2008**

2012/1984/P – Installation of brick piers, metal railing and associated landscaping in connection with enclosure of an area of land. **Granted 29/05/2012**

2013/8151/A – Digital media display on a freestanding advertising display unit. **Refused 14/02/2014 – Appeal Dismissed 27/06/2014**

2015/2018/P – Removal of 15m U-shape strip of flat roof and redundant plant from existing bar/club Lawful Development Certificate. **Granted 21/05/2015**

2015/4946/P – Alterations to the fenestration at ground and first floor level for the replacement of the existing vertical framed windows between the ground and first floor level. **Granted 11/11/2015**

2015/5554/P – Installation of aluminium perforated screen façade fixed on aluminium rails on the existing front and side elevations. **Granted 21/12/2015**

2016/3401/P – Erection of landscaping to side elevation of restaurant and bar (Class A3/A4), with associated deck, framed planters, balustrades, and awning to front elevation. **Granted 14/09/2016**

2016/5714/P – Submission of a management strategy and landscaping details, as required by conditions 4i & ii and 6 of planning permission ref 2016/3401/P (dated 14/09/2016) for the erection of landscaping to side elevation of restaurant and bar, with associated deck, framed planters, balustrades and an awning to front elevation. **Granted 08/12/2016**

Relevant policies

National Planning Policy Framework 2023

The London Plan 2021

Camden Local Plan 2017

A1 Managing the impact of development

D1 Design

Camden Planning Guidance

CPG Amenity (2021)

CPG Design (2021)

CPG Town centres and retail (2021)

Assessment

1. Proposal

1.1 The proposed works comprise a redesign of the exterior space adjacent to the restaurant unit at 135 Finchley Road. The outdoor space will be used as ancillary space for the business functions of the restaurant and will not be used as outdoor seating for patrons of the restaurant. The works include:

- Erection of a low-level black composite wall, planters, and gate along the Finchley Road pavement boundary, to be used as street level access for staff and a fire escape assembly point;
- New composite decking platform level with the Finchley Road pavement, with cycle and ancillary storage underneath;
- New composite decking from the lower-level staircase to the upper level, to allow access from the front to the rear of the site;
- New black composite panelled boundary walls along the south boundary (stairs to Swiss Cottage Underground Station entrance);
- The low-level yard and rear walls fronting Belsize Road (west boundary) will remain as existing timber decking and fencing; and
- Proposed artificial planters to screen the frontage of the low-level wall and gate along Finchley Road and along the south boundary.

2. Revisions

2.1 The application originally included the erection of an external covered staircase to provide access from the first floor of the restaurant to the ground floor at pavement level. This element of the proposal was not supported and was subsequently omitted from the scheme.

3. Assessment

3.1 The main planning considerations material to the determination of this application are:

- Design
- Amenity

4. Background

4.1 The current proposal seeks permission for an alternative scheme different than the approved 2016 application (ref. 2016/3401/P). The original permission consisted of:

- Erection of timber decking to a height of 0.7m maximum above ground level, covering an area of approximately 43sqm, with planters in the centre of the deck covering approximately 8sm, and a ramp to be constructed to the side elevation to the south of 135 Finchley Road; and
- Rendered dwarf wall with a height of 1.1m with metal railings to be erected along the Finchley Road boundary.

4.2 A subsequent application was submitted for details relating to Condition 6 (Landscaping / method of enclosure), under ref. 2016/5714/P. Condition 6 stated:

No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

4.3 The submitted details were considered appropriate in terms of the proposed plant species and densities, planter design, and substrate depth. The proposed method of enclosure in the form of timber screening was not considered to appear incongruous or detract from the area generally and would be of a sufficient height and depth to ensure that the area was properly enclosed. The condition was therefore discharged on 08/12/2016.

1.1 Although Conditions 4 (Management Strategy Details) and 6 (Landscaping / method of enclosure) were discharged, two remaining conditions are yet to be discharged. These include Condition 7 which required that landscaping details are to be implemented prior to the occupation of the permitted use of the development, and Condition 8 which requires that the access ramp / decking be fully compliant to Building Regulations Part M4(2).

1.2 An enforcement file was opened in 2022 (EN22/0551) following a complaint that a structure was erected on the lower-level outdoor area not in accordance with the 2016 permission. It was determined that a breach of condition had taken place, thus the submission of the current application.

2. Design

2.1 Local Plan Policy D1 (Design) states that the Council will aim to achieve the highest standard of design in all developments and requires development to be of the highest architectural and urban design quality, which improves the function, appearance, and character of the area. The supporting text to this policy states that development should consider the form and scale of neighbouring buildings, the character and proportions of the existing building, the scale of surrounding development, and the impact on existing rhythms, symmetries and uniformities in the townscape.

2.2 The erection of low-level black composite wall, planters, and gate along the Finchley Road pavement boundary are acceptable in principle, as this arrangement is similar to that of the approved 2016 scheme. However, the use of composite material for the wall and planters with artificial plants is considered a significant negative departure from the approved rendered brick wall which will result in a negative impact to the host building and wider area. Composite materials are not considered appropriate or of a sufficiently high quality for use on such a publicly visible site. The material is considered to age poorly and is not in keeping with materials used elsewhere on the site or the surrounding area thus creating a disjointed and mismatched design and appearance. Further, the use of artificial plants in lieu of proper planting is considered to harm the character of the host building, surrounding area, and is not suitable for a fronting boundary within a town centre.

2.3 The proposed decking platform level with the Finchley Road pavement is acceptable in principle, as the undercroft area (accessed from the lower level) would provide ancillary and cycle storage for restaurant employees. The new upper-level area would not detract from the character of the host building nor wider area and would allow for employee access to the lower level. However, the use of composite decking is considered unacceptable for use on a prominent frontage within a town centre and would detract from the character of the host building and wider area.

- 2.4 Along the south boundary of the site, adjacent to the stairs to the Swiss Cottage Underground Station entrance, a black composite boundary wall is proposed along with planters to be filled with artificial plants. Similarly, the proposed Finchley Road boundary wall, the use of composite materials and artificial plants is not considered appropriate for use within publicly visible and highly utilised town centre frontage. The material is considered out of character, of poor quality, and does not respond to the design or character of the host building or wider area.
- 2.5 The low-level yard and rear walls fronting Belsize Road (west boundary) will remain as built timber decking and fencing. It is noted that the as built condition does not comply with the as approved 2016 scheme, which included timber planting boxes, timber planter wall frame, and a sliding security gate. The as built condition does not incorporate planting as approved and has replaced the security gate with a fully timber clad door and wall. These elements were included in the original 2016 permission to help mitigate the impacts of the development on the public realm, thus creating a more inviting and safe area outside the Swiss Cottage Underground Station entrance. The result is a rear frontage that creates a negative impact on the surrounding public realm, specifically with relation to the Swiss Cottage Underground Station entrance.
- 2.6 The proposed composite boundary walls/planters, artificial plants for screening, due their design and materiality, are considered to be inappropriate nor of a sufficient quality for use on a highly visible frontage within a town centre context. The retention of the non-compliant timber screening at the rear, which was not built to the approved plans, creates a negative impact on the surrounding public realm. Cumulatively, the proposal is considered to cause harm to the host building, wider area, and public realm which is contrary to Policy D1 of the Camden Local Plan 2017 and CPG Design.

3. Amenity

- 3.1 Policy A1 of the Local Plan seeks to protect the quality of life of occupiers and neighbours. The factors to consider include visual privacy, outlook; sunlight, daylight and overshadowing; artificial lighting levels; noise and vibration; odour, fumes and dust; and impacts of the construction phase, including the use of Construction Management Plans.
- 3.2 Due to the scale and scope of the proposed works, they are not considered to give rise to any amenity impacts to neighbouring residential occupiers with regards to loss of daylight/sunlight, outlook, or privacy. Thus, the proposal complies with Policy A1 of the Camden Local Plan 2017 and CPG Amenity.

4. Recommendation

4.1 Refuse planning permission on the following grounds:

- The proposed boundary wall, artificial planting, and retention of existing timber screening, by reason of its design, scale, and materiality, would harm the character and appearance of the host property, and the wider area, contrary to Policy D1 (Design) of the London Borough of Camden Local Plan 2017.

4.2 Warn of enforcement action – the matter will be passed to the enforcement team for further action.