

# Enforcement Delegated Report

Receipt date:

27/09/2023

## Officer

Angela Ryan

## Enforcement Case

EN23/0770

## Breach Address

260 Kilburn High Road  
London  
NW6 2BY

## Photos & Other material

On File

## Authorised Officer Signature



22/01/2024

## Alleged Breach

Installation of a flue on the flat roof of the single-storey rear extension

## Recommendation(s):

**That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended, requiring the removal of the flue that has been installed on the flat roof of the single-storey rear extension, and to pursue any legal action necessary to secure compliance and officers be authorised that in the event of non-compliance, to prosecute under section 179 or appropriate power**

## Site Description

The site comprises a three-storey, plus attic storey building located on the east side of Kilburn High Street. The site is currently used as a restaurant at ground floor level with 3 self-contained residential flats located above. The area is characterised by mixed-use development, with commercial uses typically located at ground floor level, with residential use above.

The site is not listed, neither does it lie within a designated conservation area.

## Investigation History

27/09/23- complaint received about noise emanating from an extractor.

26/10/23- Ad-hoc site visit undertaken, verified that a flue was installed on the flat roof of the rear extension. I spoke to the Owner over the telephone enquiring when the flue was installed and was advised that it had been there for a number of years and that works of repair had recently been undertaken

31/10/23- received an e-mail from Owner enquiring about the above site visit, that they had not received a formal letter about any complaint, and that they would like to work with the Council to resolve any issues. On the same date, I replied to the Owner via an e-mail and confirmed that the flue on the roof appears to be a new one, but that the person who I had spoken to over the telephone had confirmed that the flue was not new and that a broken pipe had been replaced. I also confirmed that the person who I spoke to over the telephone at the time of the site visit agreed to send me photographs of what the flue looked like prior to it being dismantled. On the same date, I received an e-mailed from the Owner advising that they are awaiting the requested photographs of the old flue, that details of the company who carried out the works would be provide with a maintenance certificate (to date not provided), and that their pressing concern is to satisfy the Council's concerns and demonstrate that they are compliant/no planning breach had occurred.

27/11/2023- sent an e-mail to Owner advising that I had not heard from them and that in order for the enforcement case to be closed I would need evidence that the flue installed at the rear is not a new one and that the current flue had been there for more than 4 years.

30/11/2023- sent an e-mail to Offender confirming that I had looked at the planning history, which confirmed that there was a restaurant at basement level prior to 2020 but that they had a shared kitchen with no.258 Kilburn Road and also shared a flue. In 2020, legislation was altered, putting restaurants and retail uses into a new use class (class E). That in all probability the current flue installed had not been there for 4 years, and that a retrospective planning application is required to be submitted within 21 days from the date of the e-mail otherwise I will have no other operation but to consider taking formal enforcement action.

10/12/2023- E-mail received from Offender with images attached showing extraction flue from 2019, and that a more detailed report had been commissioned showing the upgrade of plant machinery ( to date report not submitted). The upgrade was to ensure that there were no noise related issues, and that noise issues have been sufficiently addressed.

22/12/2023- E-mail sent to Offender confirming images sent relating to front of the property were irrelevant as issue relates to the flue installed at the rear, and that the images showing plant equipment at the rear of the site are dated 11/04/2020 therefore it does not verify 4 years, and if there is no further evidence then a retrospective application needs to be submitted for consideration of its retention

08/01/2024- E-mail received from Offender with images attached, which they hoped provided the necessary clarification

09/01/2024- E-mail sent to Offender advising images sent do not prove the equipment had been there for 4 years and that the equipment shown in the images is different from what is on the flat roof of the rear extension at present. That the new equipment would require planning permission, and if it cannot be proven that the current flue has been in place for 4 years or more then they need to apply for retrospective planning permission. Failing this, I will have no other option but to issue a formal enforcement notice to see the planning breach resolved.

### **Relevant policies / GPDO Category**

**NPPF 2023: paragraph 59**

**London Plan 2021**

Policies D14

**Camden Local Plan 2017**

A1- Managing the impact of development

A4- Noise and Vibration

D1- Design

**Camden Planning Guidance:**

**Design (2021)- Chapter 9**

**Amenity (2021)- Chapter 6**

### **Assessment**

#### **Relevant Planning history:**

**03/08/2017-** Permission **granted-** for change of use of basement level from retail (Use Class A1) to restaurant (Use Class A3) and amalgamation of the basement level with the basement and rear ground floor of No.258 Kilburn High Road to form one A3 unit. (Ref: 2016/6314/P)

**21/02/2019-** Permission **refused with warning of enforcement** action for change of use from A1 to A3 at ground floor level with associated shopfront alterations (retrospective application) (Ref:2018/3574/P). The decision was appealed and the appeal was dismissed 07/10/2019 (Ref:

**Issues:**

A flue has been installed on the flat roof of the single-storey rear extension, and was installed without the benefit of planning permission.

Design: There are no design issues with the flue, it is considered acceptable in this location.

**Amenity:**

Policy A4 – Noise and Vibration of the Camden Development Policies aims to ensure that noise and vibration is controlled and managed, and sets out the Council's thresholds for noise and vibration. The current standard stipulates that vibration levels should be 0.2 to 0.4 VDV (Vibration Dose Values) ms<sup>-1.75</sup> between 07:00-23:00hrs day and evening and between 0.13 VDV ms<sup>-1.75</sup> between 23:00-07:00hrs at night. In terms of noise levels they should not exceed 72dBL<sub>AEQ</sub> in the day and 62dBL<sub>AEQ</sub> at night.

The Council acknowledges that a noise complaint has been made in respect to noise nuisance. In the absence of an acoustic report being submitted to demonstrate that the flue that has been installed at the rear of the site meets the Council's noise standards, the development may give rise to noise nuisance to future occupiers of the building and to the residential units located above and to the rear of the site and is thereby considered to be unacceptable in principle.

**Recommendation:**

That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended requiring the removal of the flue that has been installed on the flat roof of the single-storey rear extension, 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.

**The notice shall allege the following breaches of planning control:**

Unauthorised installation of a flue on the flat roof of the single-storey rear extension

**WHAT ARE YOU REQUIRED TO DO:**

1. Totally remove the flue and associated fixtures and fittings from the flat roof of the single-storey rear extension; and
2. Remove any resulting debris from the site and repair any damage caused as a result of the above works

**PERIOD OF COMPLIANCE:** Two months

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

1. In the absence of sufficient acoustic information to confirm compliance with the Council's noise standards, it has not been demonstrated that the equipment installed does not cause or have the potential to cause a loss of amenity through noise nuisance to neighbouring residential occupiers contrary to policy A4 (Noise and vibration) of Camden's Local Plan 2017

## **HUMAN RIGHTS ACT**

Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In this case, service of the Notice to bring about an improvement to existing residential amenity due to noise nuisance is considered to be reasonable and proportionate.