



## Appeal Decision

Hearing held on 26 March 2024

Site visit made on 26 March 2024

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 May 2024**

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### **Appeal A Ref: APP/X5210/W/22/3312728**

#### **178A Royal College Street and Arches 73, 74 and 75 Randolph Street, London NW1 0SP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Jacuna against the decision of London Borough of Camden.
  - The application Ref 2021/4163/P, dated 26 August 2021, was refused by notice dated 26 July 2022.
  - The development proposed is the change of use of café/restaurant (Class Use E) at 178A Royal Collage Street and storage facilities (Class Use B8) at arches 73,74 and 75 and amalgamation of 178A 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 178A 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.
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### **Appeal B Ref: APP/X5210/C/23/3316906**

#### **Land at 178A Royal College Street and Arches 73, 74 and 75 Randolph Street, London NW1 0SP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Jacuna Kitchens Limited against an enforcement notice issued by the Council of the London Borough of Camden.
  - The notice, numbered EN21/0681, was issued on 16 January 2023.
  - The breach of planning control as alleged in the notice is without planning permission: change of use of café/restaurant (Class Use E) at 178A Royal Collage Street and storage facilities (Class Use B8) at arches 73, 74 and 75 and amalgamation of 178A 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 178A 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.
  - The requirements of the notice are to: 1. permanently cease the use of the ground floor of 178A 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.
  - The period for compliance with the requirements is: within a period of six (6) months of the notice taking effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### **Decisions**

1. Appeal A is dismissed.
2. The enforcement notice subject of Appeal B is corrected and varied by:

- deleting paragraph 2 and substituting it for 'Land at 178A Royal College Street and Arches 73, 74 and 75 Randolph Street, London NW1 0SP'.
  - deleting paragraph 5.2 and substituting it for 'permanently remove the plant and machinery from the rear of Arch 74 and 75 as shown on plan Ref: JK\_JK\_05CAM\_AD\_1.2PlanElevationSection\_A1\_1.100\_R07'.
  - deleting paragraph 5.3 and substituting it for 'restore the property following completion of the above works to its previous condition'.
3. Subject to this correction and variations, Appeal B is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Preliminary Matters**

4. Although the names of the appellant for each appeal differ slightly, it has been confirmed that they are one of the same entities, and I have considered the appeals on that basis and refer to them as 'the appellant'.
5. The description of development for Appeal A has been taken from the Decision Notice for the refused planning application, as it more accurately describes the development. The description of the alleged breach also reflects that, so I have considered both appeals based on that description of development.
6. Shortly after the Hearing closed, the appellant submitted a signed and dated s106 agreement ('s106') in relation to Appeal A and ground (a) on Appeal B.

### **The Enforcement Notice**

7. I have a duty to ensure that the enforcement notice subject of Appeal B (EN) is in order. The EN alleges operational development and a material change of use. The purposes of the EN are to remedy the breach of planning control and to remedy the injury to amenity caused by the breach.
8. Under s176(1) of the Act, as amended, it is open to me to correct any defect, error or misdescription in the EN or to vary its terms, provided I am satisfied that the correction or variation will not cause any injustice.
9. The main parties agreed that the site address was incorrect. I shall correct the EN to this effect, as it does not cause any injustice. To ensure clarity to requirement 5.2 given the various plans of the plant and machinery, the main parties agreed that this requirement should be varied to refer to a plan that shows the situation on the ground. They also agreed that requirement 5.3 should be varied so that the exterior of the property is restored to its previous condition following completion of the works specified in the other requirements. This is to avoid any uncertainty about what anyone seeking to comply with that requirement needs to do. I consider that the variations will not cause any injustice; a matter agreed by the main parties at the Hearing.

### **Reasons**

#### **Appeal A and Appeal B on ground (a)**

#### **Main Issues**

10. The main issues in respect of Appeals A and B (ground (a)) are: (a) the effect of the proposal from deliveries and collections on pedestrian and highway safety in Randolph Street; (b) the effect of the proposal on the living conditions

of neighbouring residents in Rousden Street, Randolph Street, and Camden Road, with regards to noise from vehicular deliveries and collections; and (c) whether the proposal makes adequate provision in respect of bats, and local employment, skills, and training.

*Site context*

11. The appeal site comprises the building at 178A Royal College Street, railway arches 74 and 75 and part of arch 73 underneath the London Overground railway line, a shared internal access road, and an area of hardstanding adjacent to Randolph Street.
12. No 178A is a three-storey building set within a terrace that runs along Royal College Street. The ground floor is subject of the appeals and is used as the office. The upper floors of No 178A are in residential use. Other properties in the terrace are used for commercial, retail and residential uses at ground floor with residential use at the upper floors.
13. The London Overground railway line extends from north-west to south-east to the rear of No 178A. Arches 73 to 80 lie beneath the railway line within the viaduct. Arches 74-75 are located at the western end of the viaduct, before it runs above Royal College Street. The remaining vacant arches, which are not part of the appeal site, are to the east and share the rear lane and access onto Randolph Street. The rear of Arches 73-75 internally join the rear of No 178A.
14. An external area of hardstanding is to the rear of the arches. The rear elevations/gardens of properties on Rousden Street back onto this. The hardstanding varies in width, and parking spaces are laid out on it. Access to the site for deliveries and collections is from Randolph Street, which is a lit one-way street that is accompanied by a cycle lane allowing travel in either direction and pedestrian footways on either side of the road. The London Overground passes above the site entrance. Four columns on either side of the road support the bridge at the join of the pedestrian footways and the cycle lanes. The access is narrow, but a vehicle larger than a car can pass one at a time in either direction.
15. To the west, at the junction of Royal College Street and Camden Road, is Camden Road London Overground station (Grade II listed). Residential properties are on Royal College Street. Camden Town is around 250m to the south of the site with Kentish Town about 300m to the north.
16. Part of the site is located within the Camden Broadway Conservation Area ('the CA'). The viaduct is not within the CA. The Grade II listed buildings at 25-28 Randolph Street are adjacent to the appeal site.

*The operation and the operational management plan*

17. Arches 73, 74 and 75 provide commercial kitchen space for 15 tenants, associated storage space, fridges, and an amenity area for people working in the kitchens. One of the tenants has amalgamated two of the kitchens into a single kitchen unit. I have considered the appeals on that basis.
18. Each kitchen can be occupied by a different operator who produces food that is ordered online, collected by motorbike/moped couriers and bicycles (ODP Riders), and then delivered to customers. The kitchens do not have a commercial presence on the road. Customers do not visit the site to order or collect their food.

19. Orders are collected when they are ready by an ODP Rider. Technology informs ODP Riders when orders can be collected, and three different Online Delivery Platform (ODP) (Deliveroo, Uber Eats and Just Eat) have riders operating from the appeal site. ODP Riders are mobile and not based at any single location. They collect orders from numerous food outlets within the area. Many are, however, regular attendees of the appeal site.
20. The Transport Statement confirms that there is an average of 350 two-way movements per day from the development. Higher two-way movements were observed on a Saturday, with the highest (392) two-way movements on a Sunday. At full occupation of all the kitchens, the potential number of two-way movements associated with food deliveries would be around 525 on average and 588 based on a peak number of movements.
21. Up to 11 deliveries would be made to the kitchens using vans each day on Monday to Saturdays. In total that would be around 55 deliveries per week.
22. The appellant says that ODP Riders on mopeds and bicycles enter the site and immediately bear left and use a designated parking area, which contains ten cycle stands and a marked area for moped parking. The same area, which is enclosed, lit and subject of CCTV, provides numerous refuse bins that are wheeled to and from the road when collections take place. Upon arrival in the designated parking area, ODP Riders are said to turn off their engines and walk to the rear of arches 73, 74 and 75 to collect their orders before returning to their mode of transport and exiting the site onto Randolph Street to carry out the delivery. Up to 30 ODP Riders are on site at any one time, and they spend between one to two minutes on site.
23. An Operational Management Plan (OMP) has been worked to for just over a year. In that time, it has been revised. The latest version of the OMP dates from November 2023. This outlines that signs, cones, and a marshal are stationed within the appeal site just after the left turn to the designated parking area. A marshal has been present since January 2024. Collectively they are intended to form a 'barrier' to ensure ODP Riders use the designated parking area and do not enter the rear of the site on their moped or bicycle, and to manage delivery vehicles in and out of the site. Delivery vehicles use the rear part of the site to park while the delivery is carried out. There are two parking spaces available beyond the barrier to facilitate this. No more than two delivery vans would be on site at any one time.
24. ODP Riders are provided with a copy of the OMP, and they are expected to adhere to its contents. If not, the marshal is expected to initially reinforce the expectations of the OMP. If issues persist, the appellant will make a complaint about the ODP Rider with their ODP to raise awareness of an issue and to potentially change behaviour, with the final step being to ban the ODP Rider from the appeal site if all other measures have not worked. The appellant is to maintain a log of banned ODP Riders to prevent them from accessing the site even if they try.

#### *Pedestrian and highway safety in Randolph Street*

25. Randolph Street is a relatively busy one-way street for vehicles, while it offers two-way movements for pedestrians and cyclists. The four bridge columns on approach to the site access inhibit the visibility of ODP Riders and delivery drivers leaving the site, whether that be pedestrians, cyclists, or vehicles. Equally, pedestrians and cyclists approaching the site access are not able to

see ODP Riders or delivery vehicles exiting the site until they are next to the site access. Similarly, vehicles on Randolph Street seeking to turn into the appeal site would not have a clear vision of ODP Riders or delivery vehicles exiting the site until near to the turn.

26. There is real potential for conflicts to arise, even if some might be at a relatively low speed. Conflicts between vehicles and more vulnerable road users would be to the detriment of the latter, especially. That potential has not translated into recorded accidents, but that does not mean conflicts have not arisen or could not happen in the future, as people using the road and the site access are required to make quick judgments about whether it is safe to join the road or enter the site.
27. The site-specific conditions and the number and type of movements involved in the proposal, which are inevitably higher at times of the day when people order food, indicate that it an OMP is necessary in the interests of highway safety. Without a satisfactory OMP in place, the potential exists for unacceptable highway safety impacts. As the appellant has been working to the OMP for over a year now, there has been an opportunity to consider whether the OMP has been put into practice, to what extent it has been successful, and whether any changes may potentially overcome any issues.
28. A marshal has been on site since January 2024 and is expected to be in place between the hours of 08:00 and 23:00 (multiple marshals split across two or more shifts). However, Council Officers have visited the site and witnessed ODP Riders disregarding the signs and cones and not using the designated parking area. That is not to say every ODP Rider does, but it shows some aren't adhering to the OMP. Furthermore, Council Officers and residents said that a marshal has not always in place to manage where ODP Riders park and to manage deliveries. I have no reason to doubt these testimonies. On the site visit after the Hearing, at least two bicycles ignored the cones, sign and marshal and went to the rear of the kitchens to collect orders. They did not use the designated parking area. I did, however, see a moped ODP rider park in the designated parking area and walk around to collect the food order.
29. Specifically, subject to a condition to secure details of the designated parking area, I consider that it could offer satisfactory manoeuvring and parking facilities for ODP Riders that are safe, of sufficient size for the number of ODP Riders involved, while allowing mopeds and bicycles to enter and leave the site in forward gear.
30. The kiosk now in place for the marshal is likely to encourage a consistent presence (with changeovers for bathroom breaks with a site manager) during the site's operational hours as it is lit, heated, and provides a view of the access. However, the 'barrier' while improved, has been shown through site visits not to be effective either alone or in tandem with other measures in the OMP to prevent ODP Riders from travelling to the kitchens other than on foot or to ensure that they use their designated parking area.
31. The barrier only has the potential to work if ODP Riders adhere to the OMP, they are challenged if they do not, and the OMP is enforced by the appellant. I am not clear that the challenge does always take place. There is no evidence to indicate that the marshal has reminded ODP Riders of the OMP and its content. During busier times, there would be a greater likelihood of ODP Riders not adhering to the OMP during the peak periods. It would also become

- increasingly problematic for a marshal to manage the situation and enforce the OMP, particularly in the context of the number of movements involved by ODP Riders who operate under time pressure. The situation that I observed, even though it is a snapshot in time, does not instil confidence in the effective operation of the OMP.
32. Without an effective barrier, ODP riders are and will be able to traverse the site access and maneuver at greater speed as they enter Randolph Street. This would increase the potential for conflict with pedestrians, cyclists, and vehicles, to the demise of highway safety.
  33. Giving ODP Riders a copy of the OMP, expecting them to adhere to its content, and a marshal to reinforce the OMP if required is not training, in my view, given the time constraints that OMP Riders operate within. If the appellant raises a complaint about an ODP Rider with their ODP that would create awareness of an issue and potentially change behaviour, but the appellant has no input or control over the outcome of that. The appellant cannot also directly sanction the ODP Rider. Therefore, unless repeat offending issues are actively monitored by the marshal/appellant, recorded, and if any ODP Riders who fail to adhere to the OMP are banned, as the OMP says that they would be, potential remains for the OMP not to be complied with.
  34. The appellant can ban an ODP Rider from the site. That is a measure that can bring about change, but it requires the appellant to maintain a log of banned ODP Riders and needs the marshal to recognise them. That is problematic for four reasons. The first is that they could have a helmet on and use an alternative moped, which could be hired on a short-term basis. The second is that they could revert to a bicycle, which may prove harder to identify compared to a registration plate. The third issue is that the recognition done in the winter months would be carried out when the site entrance is darker, which would make it harder to carry out the recognition quickly and accurately. The fourth issue is the number and frequency of ODP Riders arriving and departing the site during evening hours, which could especially affect the marshal's ability to practically carry out the recognition quickly and accurately.
  35. The marshal is also tasked with ensuring no more than 30 ODP Riders are in the car park at any one time, that they do not loiter or smoke on the site. The marshal is also responsible for ensuring ODP Riders respect the Highway Code. The OMP also states that if an ODP Rider behaves illegally, the appellant will file a report with the police.
  36. The appellant's own survey shows that numerous ODP Riders have travelled down the street, cycle lane or pedestrian footway in the wrong direction to access the appeal site. Despite knowing this, the practice has continued and has been witnessed by Council Officers and residents. It also happened during the site visit. A resident explained the unacceptable safety issues for cyclists travelling in the cycle lane in the correct direction along Randolph Street. I agree with those submissions. I also heard that after a resident recently challenged an ODP Rider, they were met with a confrontational attitude.
  37. ODP Riders should not be breaking the Highway Code to access the site. In doing so they are not, at the very least, following the OMP. The practice would not occur if the use did not operate at the site. It is an unwanted effect of the proposal that has unsafe effects for all road users, including those travelling in the wrong direction. The appellant cannot enforce the Highway Code, but there

- is no record of the appellant reporting incidents despite their own survey and the first-hand experiences of residents and the Council.
38. The appellant can only stop individuals carrying out this practice by banning them, but they would need evidence and someone to monitor that. The marshal simply cannot do this while managing the barrier and carrying out their other duties. Given the existing ineffectiveness of the marshal or the appellant in preventing this unacceptable practice, I am doubtful whether any OMP could resolve this matter.
  39. Given the transient nature of the ODP Rider labour force, not every ODP Rider may read English. Without copies of the OMP in different languages it is likely to affect its contents being adhered to and potentially limits its effectiveness until an ODP Rider is banned from the site.
  40. The number of deliveries arriving at the site is relatively modest, and the number of delivery vehicles on the site at any one time could be managed by the marshal, as they would typically take place during times of the day when ODP Riders are not as numerous. A planning condition to control when deliveries take place would assist here. However, the OMP says that a 7.5 tonne vehicle would be used. That is out of kilter with the swept path analysis which relates to a 3.5 tonne vehicle. The use of the former would be difficult due to the width of the access and the space within the site to manoeuvre especially if there are parked vehicles in other spaces.
  41. In summary, the current OMP before me does not provide an effective set of measures to overcome or prevent the unacceptable harm to highway safety from occurring. This is due to the ineffectiveness of the barrier, the considerable burden placed upon the marshal, and the use of 7.5 tonne delivery vehicles.
  42. However, the OMP is a living document, and the s106 requires the submission of an OMP and its subsequent review each year. The current OMP is not effective, even after discussions between the parties and changes to it, but I need to consider whether there is a potential workable OMP that could overcome the identified harm. That said, wholesale changes to the current OMP are not likely.
  43. An OMP is necessary, as without it, the proposal causes and has the potential to cause unacceptable harm to highway safety. There is policy support for an OMP through Policies A1, A4, T1, and T4 of the Camden Local Plan (Local Plan). I consider that the OMP would meet the statutory tests set out in the Framework and in Regulation 122 of the CIL Regulations. An OMP would therefore assist with minimising the harmful impacts identified, but it is whether they would satisfactorily overcome the issues identified.
  44. Swept path analysis shows that 3.5 tonne vehicles can enter and leave the site in forward gear and use the parking spaces to the rear. If vehicles of this size are used for deliveries and the parking spaces within the site, which I understand to be for the appellant's use only, are kept free for them, and the marshal ensures that only two delivery vehicles are on site at any one time, I consider that the highway safety concerns relating to delivery vehicles could be overcome through the OMP secured by the s106. Furthermore, I note the concern about ODP Riders loitering in the area and causing highway safety issues, however, the s106 could seek to address that with a code of conduct.

45. However, whether an OMP is successful or not largely depends on the individual and collective adherence to it by staff and visitors to the site, in particular ODP Riders, given the number and frequency of their movements. The success of an OMP also depends on staff diligently carrying out their responsibilities, and the effectiveness of any warnings or sanctions. Both are essential, as ODP Riders are not employed by the appellant. Therefore, the only meaningful control the appellant has is to ban ODP Riders from the site.
46. Even with that deterrent in place, the current OMP has been ineffective in terms of ensuring ODP Riders access the site in the correct direction and that they use the designated parking area before walking around to the rear of the kitchens. I am not satisfied that a revised OMP would yield a different result.
47. I have outlined the difficulties of identifying ODP Riders who do not comply with any site policies or procedures as well as the practical difficulties of a marshal being able to carry out all their responsibilities for every ODP Rider entering and leaving the site, especially during busier times. That would apply regardless of the mode in which collections are made. Although the s106 includes a provision to identify spaces to park bicycles and electric two-wheeled vehicles at the site, it is not the appellant's case to limit collections to bicycles and e-bikes only. Nor did they agree to a planning condition to that effect. So, while provision may be made for e-bikes at the site, the operation now and the in the future involves mopeds.
48. Despite provision for a working group, which would provide a useful forum for any issues to be raised, discussed, and actioned, I consider an OMP can only mitigate the potential harmful highway safety effects so far. This is because the measures have not proven to be effective against human behaviour, even with a marshal and barrier in place. There is no substantive evidence of improvements. I am not therefore satisfied that an OMP for this site will achieve the necessary controls, even with a review mechanism.
49. Although I found that the s106 could overcome the harm to highway safety arising from deliveries, that does not alter or outweigh my conclusion on this issue that the proposal causes unacceptable harm to pedestrian and vehicular safety in Randolph Street from collections, even with an OMP and planning conditions in place. Accordingly, the proposal does not comply with Local Plan Policies A1, T1 and T4 and Policy T4 of The London Plan which jointly seek to resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network, and promote the movement of goods and materials by bicycle where possible.
50. The proposal also conflicts with paragraphs 108 b), 114 b) and 115 of the National Planning Policy Framework (the Framework) which seek to secure safe and suitable access for all so that there is not an unacceptable impact on highway safety and to realise the opportunity to change transport technology and usage.
51. Numerous other Local Plan Policies have been cited in relation to this issue. None are relevant to the issue of highway safety and cover other issues such as crime and the fear of crime (Policy C5), accessibility and inclusion (Policy C6), on-street parking and car-free development (Policy T2), and strategic infrastructure projects and the removal or severance of existing transport infrastructure (Policy T3).



*Living conditions - noise*

52. Two noise reports have been submitted by the appellant. One solely considers plant installed at the site, which is not a matter in dispute subject to the imposition of planning conditions for a plant management plan and to control the level of noise emitted from fixed plant on the site. The other (Noise Impact Assessment – Addendum (NIAA) considers transport noise.
53. Residential properties on Camden Road, Rousden Street, and Randolph Street back onto or border the access and rear yard area. Although there is high activity on Camden Road and Royal College Street, Rousden Street and Randolph Street are quieter, though the vicinity of the appeal site is influenced by noise from passing trains on the overground line above the site. Residents living in the area will be accustomed to that.
54. ODP Riders use mopeds and bicycles, but the former are the principal means of delivery. They have a distinct character compared to other vehicular traffic. It was recognised in the Finchley Road decision<sup>1</sup> that moped noise is more annoying than general road traffic noise. That could be from noise due to moped engines being revved, mopeds accelerating and from manoeuvres being carried out to enter and leave the site. The walls on either side of the site entrance and the overground train line could contribute to the noise being experienced in the wider area, including by residents living next to the site.
55. A single monitoring location has been used to measure noise levels from all incoming traffic entering the site from Randolph Street. While the monitoring location used offers an acoustic snapshot of the area, it did not capture any actual noise recordings arising from deliveries or collections to the rear of the site. The OMP, whether that be the current version of any potential future version, would seek to stop any ODP Riders from driving around to the rear of the site. However, that practice has not been eliminated, and the NIAA does not assess collection related noise arising from the rear of the site. Nor does the NIAA assess noise from delivery vehicles on the site at all. That is out of kilter with the current and proposed operation of the site.
56. The vicinity of the site is inherently noisy. No residential receptors are specifically identified in the NIAA, but numerous residents have rooms that back onto the site that are served by windows. Noise conditions near to the appeal site are likely to fluctuate during the day, particularly in response to train movements and traffic movements associated with the appeal site. Therefore, using a baseline daytime ambient level from the hours of 07:00 to 10:00 is not likely to be representative of the prevailing noise levels in the area. Furthermore, in assessing the effect of the proposal, the NIAA draws comparisons between average noise levels rather than maximum noise levels, which are considerably higher than the average and relate to single noise events such as moped noise which is of a distinct character.
57. For these reasons, I share the Council's concerns about the robustness of the NIAA in assessing the effect of the proposal on residents living conditions. That said, both parties agreed at the Hearing that both average daytime (during operational hours) and nighttime noise levels are within the Significant Observed Adverse Effect Level (SOAEL) category. This is defined as noticeable and disruptive with noise causing a material change in behaviour and/or

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<sup>1</sup> Appeal Decision Ref: APP/X5210/C/18/3206954

attitude, e.g. having to keep windows closed most of the time, avoiding certain activities during periods of intrusion. There is also potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening, and difficulty getting back to sleep. People's quality of life is diminished due to change in acoustic character of the area.

58. As a result, there is potential for noise complaints to arise from residential occupiers due to the noise caused by the proposal. This is more likely during the summer months, when residents typically open their windows. In that situation, they would experience higher noise levels than those measured as corrections are made to account for the fabric of buildings and distance. It would be unreasonable to expect residents to keep their windows shut as a form of mitigation against the proposal's effect, as that would affect their living conditions. Enforcing this measure would also be impractical and outside of the appellant's control. While there is no quantitative definition of statutory noise nuisance, the risk would exist based on the measured noise in the NIAA.
59. Controlling the hours for collections would eliminate noise issues after 22:00 when residents are likely to be more sensitive to noise events as background noise levels are typically quieter. However, residents would still be subject to noticeable and disruptive noise when the site is operational.
60. The use of an electric fleet of mopeds or push bike fleet for food collections and deliveries would offer acoustic benefits and likely overcome the effects of noise from deliveries and collections, but this does not form part of the appellant's proposal, nor do they agree that it should form part of any OMP or condition.
61. It has also been suggested that audible reversing alarms on delivery vehicles could be switched off or white noise versions used. Neither can, however, be controlled by the appellant, as the delivery vehicles are not theirs. Moreover, although delivery vehicles are likely to enter and leave the site in forward gear, that may not always be the case. In that eventuality, it would be necessary for other road users to be aware of any delivery vehicles reversing near the site entrance to avoid conflict.
62. For the reasons set out, I conclude that the proposal causes unacceptable harm to the living conditions of neighbouring residents in Rousden Street, Randolph Street, and Camden Road, with regards to noise from vehicular deliveries and collections. The proposal therefore conflicts with Local Plan Policies A1 and A4 which jointly seek to protect the quality of life for occupiers and neighbours from noise, among other things.

*Bats, local employment, skills and training*

63. The completed s106 would secure a financial contribution towards the impacts of the development on bats so that alternative habitat is provided nearby. The s106 also secures a local employment, skills and training plan to provide local employment and apprentice opportunities, supporting the local economy.
64. Paragraph 48 of the Camden Planning Guidance: Employment Sites and Business Premises (ESBP) sets out the Council's expectation that developers will assist with training and employment initiatives via section 106 agreements where the development impacts on the availability of jobs for Camden residents. This paragraph then lists several types of development, and while the proposal is not one of those listed, I agree with the main parties that this is not a closed list of development types. They also agree that there is an

employment impact arising from the proposal. Given this, and the site's area, which is above the 1000m<sup>2</sup> threshold in ESBP paragraph 72, I consider the contribution and measures secured through the s106 in respect of local employment, skills and training and bats to meet the statutory tests set out in the Framework and in Regulation 122 of the CIL Regulations.

65. As such, they are material considerations in this appeal. On this basis, the proposal accords with Local Plan Policies A3, E1, E2, G1 and DM1 as well as the ESBP and the Camden Planning Guidance: Biodiversity. Jointly, these policies, among other things, seek to create conditions for economic growth and to harness the benefits for local residents and businesses by supporting local employment, training and apprenticeship schemes for Camden residents.

*Other matters*

66. The significance of the CA derives from the 19<sup>th</sup> century layout of streets, its associated historic built form, and the mix of commercial and residential uses that populate it. Parts of the CA are particularly busy, while other parts are relatively quiet and more residential in character. Although the use and operation of the proposal at the appeal site involves comings and goings, in the context of the CA as a whole, which involves commercial uses and busy highways, I consider the use to have a neutral effect on the CA.
67. No 178A was constructed at a later date and has a wider frontage than its host terrace, which is identified as making a positive contribution to the CA. The frontage at No 178A replicates the fenestration pattern of the adjacent terraced buildings but allows for an additional window bay at first and second floor levels. The wider building of No. 178 retains the character seen on historic buildings along Royal College Street, with the 19<sup>th</sup> century origins and features still evident. The former shop front made a negative contribution to the significance of the CA due to its poor state. Although the current shop front has kept its modern appearance, there are numerous modern shop fronts in the CA already. Hence, a neutral effect has occurred on the CA.
68. The plant equipment falls within the CA, yet it is commonly found at the rear of premises in the CA, especially given the variety of uses that exist. Therefore, a neutral effect has been caused by the plant equipment on the CA.
69. Although the appeal site does not reflect the overtly later Georgian/early Victorian appearance and characteristics in Nos 25-28, with their channelled rustication, recessed arches signifying the principal levels, and private gardens that inform their relationship with the local grid layout, the use, plant, and modern shop front would not alter the understanding or experience of the terraces historic significance and setting. As such, a neutral effect is caused.
70. Camden Road Overground Station holds historic and architectural significance due to the design of the station, its function as a station on the railway, and the position of the Bonny Street and Royal College Street frontages that provide access to both sides of the railway. The appeal site is heavily influenced by the railway leading into the station, though there is no functional link between the two, and any intervisibility is not intentional. The site does not contribute to the significance of the station through its setting. Hence, a neutral effect is caused.
71. The appellant is a start-up business that contains different restaurant businesses who themselves are typically small start-up businesses. There are

direct and in-direct jobs emanating from the proposal linked to deliveries and collections, operational management of the site and the kitchens. The proposal encourages spending in the local economy, supports each restaurant kitchen, and the people employed through the use. These economic benefits reflect the thrust of Framework paragraph 85, and I give them moderate positive weight.

72. The proposal has brought vacant railway arches back into use. This attracts limited positive weight as the Framework and Local Plan Policy G1 both encourage the effective use of land.

### **Planning Balance and Conclusion on Appeal A and ground (a) for Appeal B**

73. The proposal causes unacceptable harm to highway safety and neighbouring residents living conditions. The use of planning conditions and the OMP secured through the s106 agreement would help manage and mitigate those harmful effects, but together they do not overcome the unacceptable harm, to which I afford substantial weight, or the proposal's conflict with Local Plan Policies A1, A4, T1 and T4 and Policy T4 of The London Plan. No harm or policy conflict is, however, caused in respect of bats, local employment, skills and training.
74. Those identified harms would be permanent and enduring for as long as the site operates. There are no other considerations that alter or outweigh my view that I should take a decision other than in accordance with the development plan. Thus, I shall not grant permanent planning permission for the proposal.
75. A 12-month planning permission is suggested to test the OMP's effectiveness. The degree of harm caused to highway safety and residents living conditions would be confined to any specified period, but that does not diminish the potential consequences of highway safety conflicts or the importance of residents living conditions. Given that the use has been operating with the current OMP in place, and despite revisions to that and the site's operation, the identified harms have not changed. This period has shown the ineffectiveness of the OMP, and I am not satisfied that an updated OMP would lead to the necessary change to ensure highway safety and residents living conditions. Therefore, there are no other considerations that indicate that I should make a decision other than in accordance with the development plan, and I will not grant temporary planning permission.
76. For the reasons set out, I conclude that Appeal A is dismissed, and Appeal B on ground (a) fails and planning permission is refused.

### **Appeal B on ground (f)**

77. The purposes of the notice are to: remedy the breach of planning control; and remedy the injury to amenity caused by the breach.
78. I have addressed the appellant's points on ground (f) relating to requirements 5.2 and 5.3 above by ensuring that the EN is precise, reasonable, and in order. While no other matters were raised on ground (f), the appeal on ground (f) succeeds to the extent set out.

### **Appeal B on ground (g)**

79. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed.
80. The notice stipulates six months for the notice's requirements to be complied with. The appellant suggests 12 months as an alternative for various reasons.

These include the need to remove specialist equipment, notice periods, the effect of brands moving and being able to find alternative premises, the effect of the notice on employees, and the financial effect on the appellant's business at the appeal site and their wider operation.

81. I have had regard to the various cost implications that the appellant says that they would need to cover if their appeal was unsuccessful, and the stated six-month compliance period was upheld. I have no reason to doubt the figures stated by the appellant.
82. So long as the site is operational, services such as cleaning, waste management, pest control, and internet support will be needed. Costs are also incurred for a marshal. It is practical and reasonable for those services to be needed, especially given my earlier findings. However, all these services were started or renewed after the EN was issued, some many months after and on 12-to-18-month contracts. These terms may be the shortest that the appellant could enter into, but I have not seen any substantive evidence to support that.
83. An additional cost that the appellant says they would incur is to remove the specialist equipment installed on site and to return the site to its previous state. I understand the appellant obtained a quote for those works, though I have not seen a copy of that quotation, nor has more than one quote been sought. In any event, the EN does not require the inside of the site to be returned to its previous condition. Therefore, the quote received may include services that exceed what is required by the EN. They may be requirements of the landlord, but there is no evidence of that either way. I am also unclear why 12 months would be needed to remove equipment that does not seem to have taken as long to install in the first place.
84. A 10-year lease was taken out by the appellant with a break clause in December 2020. The break clause is in December 2025, with the appellant liable to pay rent for six months thereafter. The lease was taken out well before the EN, and accounting for the break clause, the remaining rent is considerable, albeit reducing as each month passes.
85. A Master Services Agreement (MSA) was signed in 2021 before the EN being issued. The MSA is a partnership agreement between the appellant and Uber Eats with leased kitchen pods for their brands across all of the appellant's sites in exchange for rent and investment commitment. I note the appellant's heavy reliance on the partnership and that Camden is a highly desirable site, as is much of central London to the appellant and Uber Eats.
86. The brands at the site are committed to the area, though the appellant may be able to accommodate a couple of the brands elsewhere, but not everyone as there are no dark kitchen sites in the area. The appellant's closest competitor's site is around a mile away. Moving here would mean that brands would be cut off from their local clientele to the ODP delivery radius in operation. However, there is no detailed analysis of any potential location that either the brand(s) or the appellant's operation could potentially move to, or to support the contention that there are no suitable alternatives.
87. To leave the site, each brand would need to provide at least 90 days termination notice. That is well within the realm of the six month period, though brands may find it difficult to re-locate within that period, and all that comes with moving. This would suggest a longer compliance period, especially

as moves would affect people employed by the brands. There would also be a direct job loss to the site manager, though marshals and cleaners are employed by third parties, not the appellant, so I discount that effect.

88. Bringing these matters together, the appellant would need to pay current contracts, rent and money to remove specialist equipment. Balanced against that is the profit that the site makes each month on average. Even if I agreed to extend the compliance period to 12 months, the costs to the business are likely to exceed the profits it makes from this site, which is one of the appellant's best performing sites. However, the appellant operates 13 other sites, and although the appeal site makes a good contribution to its overall profits, there is no substantive evidence to support the appellant's stance that removing the Camden site would seriously undermine the business's financial viability even with the MSA in place. When this is added to the lack of any detailed analysis of potential alternative sites or locations that the brands could potentially move to, I do not consider extending the compliance period to 12 months to be reasonable. The limited evidence concerning the removal of specialist equipment and the fact that contracts have been entered into recently only support my view.
89. There is merit in extending the compliance period on account of the brands themselves, so that they can re-locate, but not to the 12 months that the appellant suggests. I do also need to balance any extension to the compliance period against the harms to highway safety and residents living conditions that would ensue in the meantime, without the control measures in the s106 and the suggested list of planning conditions. Weighing these matters up, I consider, on balance, that the compliance period stated in the EN is proportionate and reasonable given the effects the use has and has the potential to cause. As such, the appeal on ground (g) fails.

### **Overall Conclusion**

90. For the reasons set out above, I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the deemed application.

*Andrew McGlone*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Barry Cransfield	Senior Director, Pegasus Group
Andrew Murdoch	Director, TTP Consulting
Kyriakos Papanagiotou	Director, KP Acoustics Group
Amanda Brodie	Solicitor, Gateley Legal
Karen Howard	Solicitor, Gateley Legal

### FOR THE LOCAL PLANNING AUTHORITY:

Matthew Henderson	Counsel
Matthew Dempsey	Senior Planning Officer, London Borough of Camden
Angela Ryan	Enforcement Officer, London Borough of Camden
Steve Cardno	Planning Highways, London Borough of Camden
Janeela Odera	Solicitor, London Borough of Camden

### INTERESTED PARTIES:

Bruce Saunders  
Mark Edmonds

### DOCUMENTS:

- 1 – Plan Ref: 05CAM\_EX\_2.1ExBlockPlan\_A2\_1.200\_R05
- 2 – Plan Ref: JK\_JK\_05CAM\_AD\_1.2PlanElevationSection\_A1\_1.100\_R07