

Enforcement Delegated Report

Receipt date:

13/12/2023

Officer

Joshua Cheung

Enforcement Case(s)

EN23/1002

Breach Address(es)

49 - 51 Camden High Street, London, NW1 7JH

&

Land and buildings in Carlow Street and Miller Street

Photos & Other material



Authorised Officer Signature

13/12/2023

Alleged Breach

Without planning permission:

1. The installation of two flues and ancillary plant equipment located at the rear of No 51.
2. The installation of one flue and ancillary plant equipment located at the rear flat roof of the No 49-51 single storey extension.
3. The erection of a single storey extension which adjoins the No 49-51 extension located on the 'Land and buildings in Carlow Street and Miller Street'.

Recommendation(s):

That the Borough Solicitor be instructed to issue Enforcement Notices under Section 172 of the Town and Country Planning Act 1990 as amended **requiring the removal of the three unauthorised flues at the rears of No 49-51, and the single storey extension, which adjoins the No 49-51 extension, located on the 'Land and buildings in Carlow Street and Miller Street'** and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.

Site Description

49 and 51 Camden High Street are three-storey buildings that form part of the long parade of mix-use properties on the West side of Camden High Street. These sites are not listed but lie within the Camden Town Conservation Area and Camden Town Business Improvement District. They have modern ground floor shopfronts. At No 51, a traditional façade at first and second floors pursuant with the typical features of Georgian terraced properties. At the rear, there are three extensions: one ground floor single storey infill, one first floor single storey, and one second floor single storey.

At No 49, white painted stucco first and second floors, intricate detailing around the first-floor window. At the rear, there is one single storey extension directly adjacent to the rear elevation, and a two-storey residential development (No 49a) with a mansard roof – included in the same Land Registry reference as No 49.

The 'land and buildings in Carlow Street and Miller Street' is landlocked in between "Carlow House" and the rears of Nos 41-49.

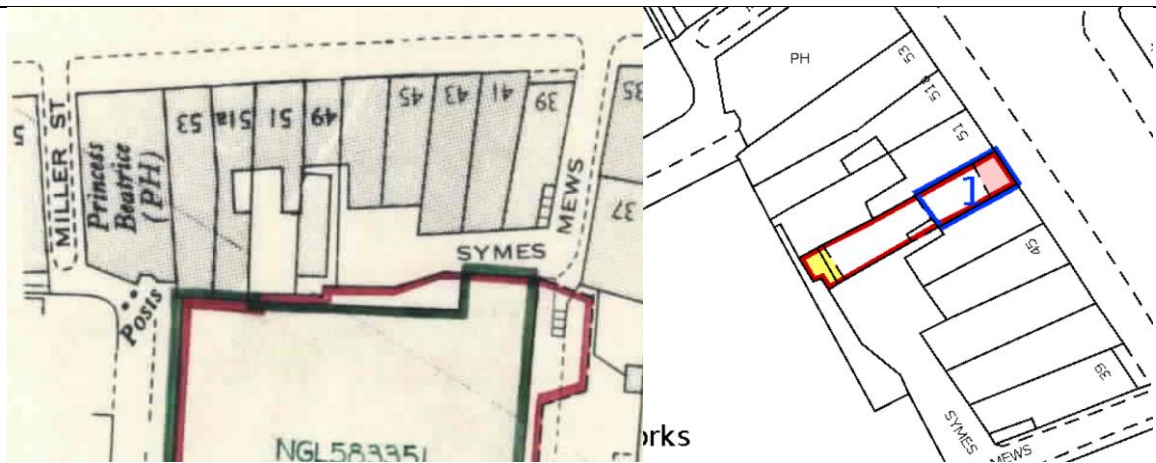
Investigation History

01-AUG-23 – Complaint made to the Council in relation to the installation of a variety of flues and a rear extension that falls outside the demise of No 51 (initial ref: EN23/0645). It is cited that 'Sapores (51 Camden High Street)', the responsible business of the unauthorised works, is undertaking new works to a flue, and that another outbuilding was erected late 2020 / early 2021.

A site visit was undertaken to witness the alleged works. Subsequent desktop investigations reveal there are no consents for a variety of works undertaken by Sapores, some of which are found to encroach the adjacent land:

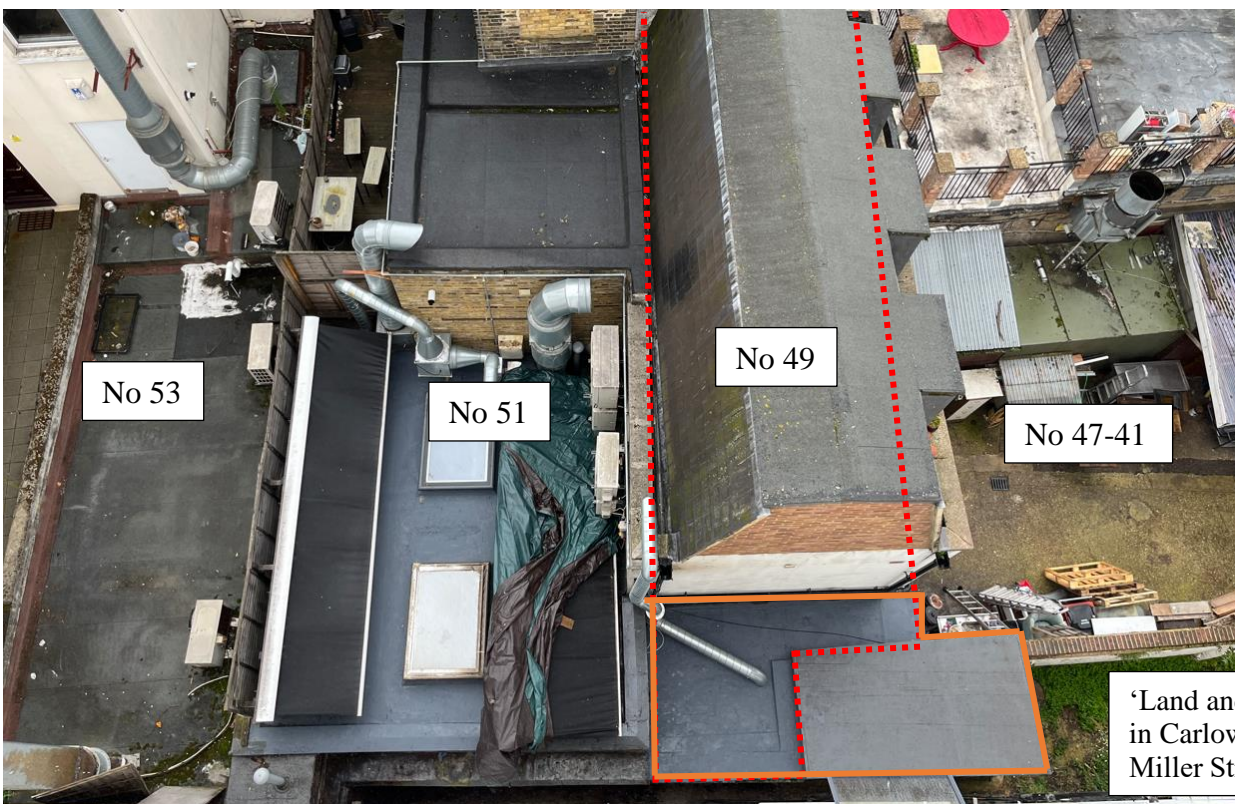


Land Registry title plan of 51 Camden High Street (red outline) and 51a (green outline), brown shade showing the 'rights of way'.



[LEFT] - Land registry title plan of the 'Land and buildings in Carlow Street and Miller Street' (red outline). SEPARATE TO CARLOW HOUSE (NGL583351).

[RIGHT] - Land registry title plan of 49 Camden High Street (red outline), blue outline showing ground and basement premises for the shop, yellow shade showing a 'rights of way'.

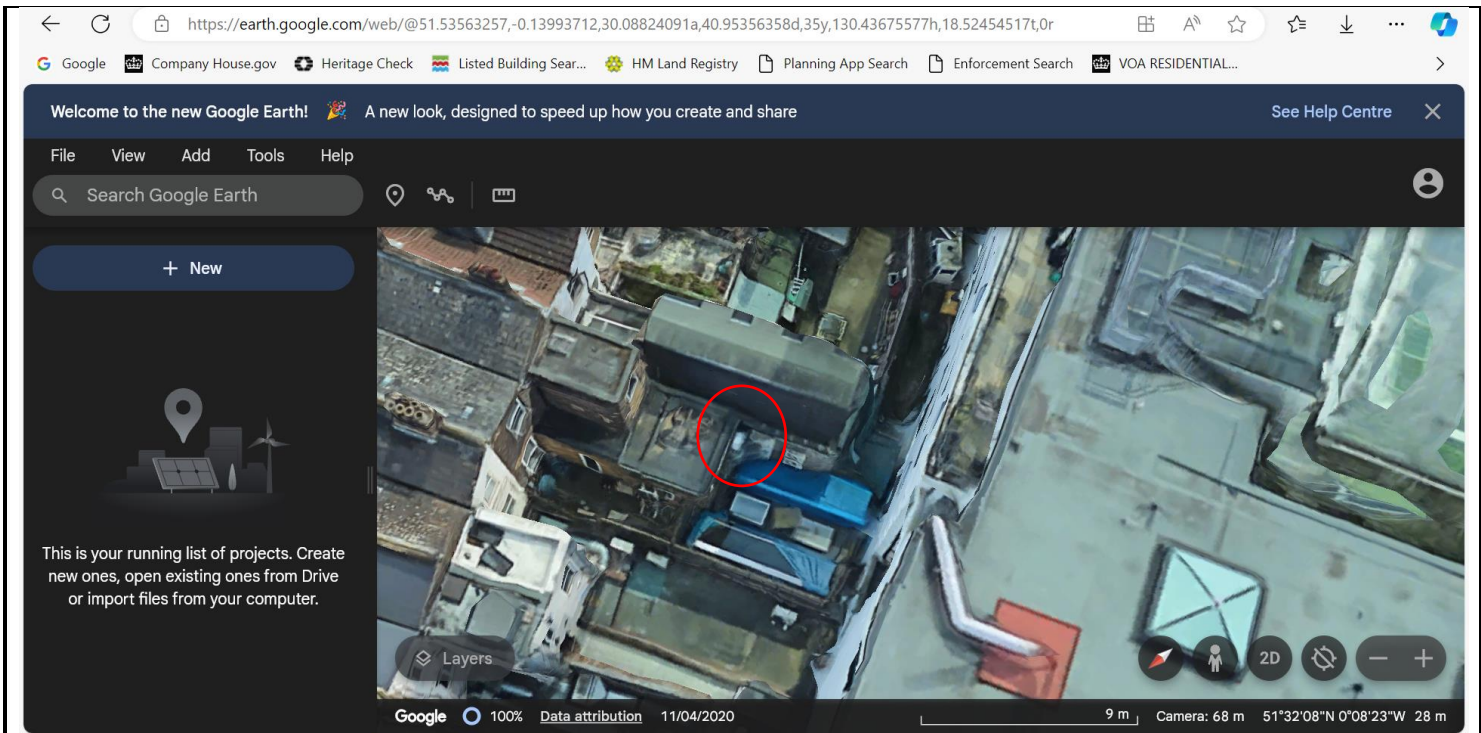


Red dots of the demise of No 49, against the **orange outline** of the single storey 'No 49-51 extensions' erected by Sapores (responsible business at No 51) without planning permission shows both over development and encroachment of land via the unauthorised extensions. Further, no consents found for the four flues or two retractable awnings.

19-SEP-23 – PCN served in regard to the No 49-51 extensions, four flues, and retractable blinds.

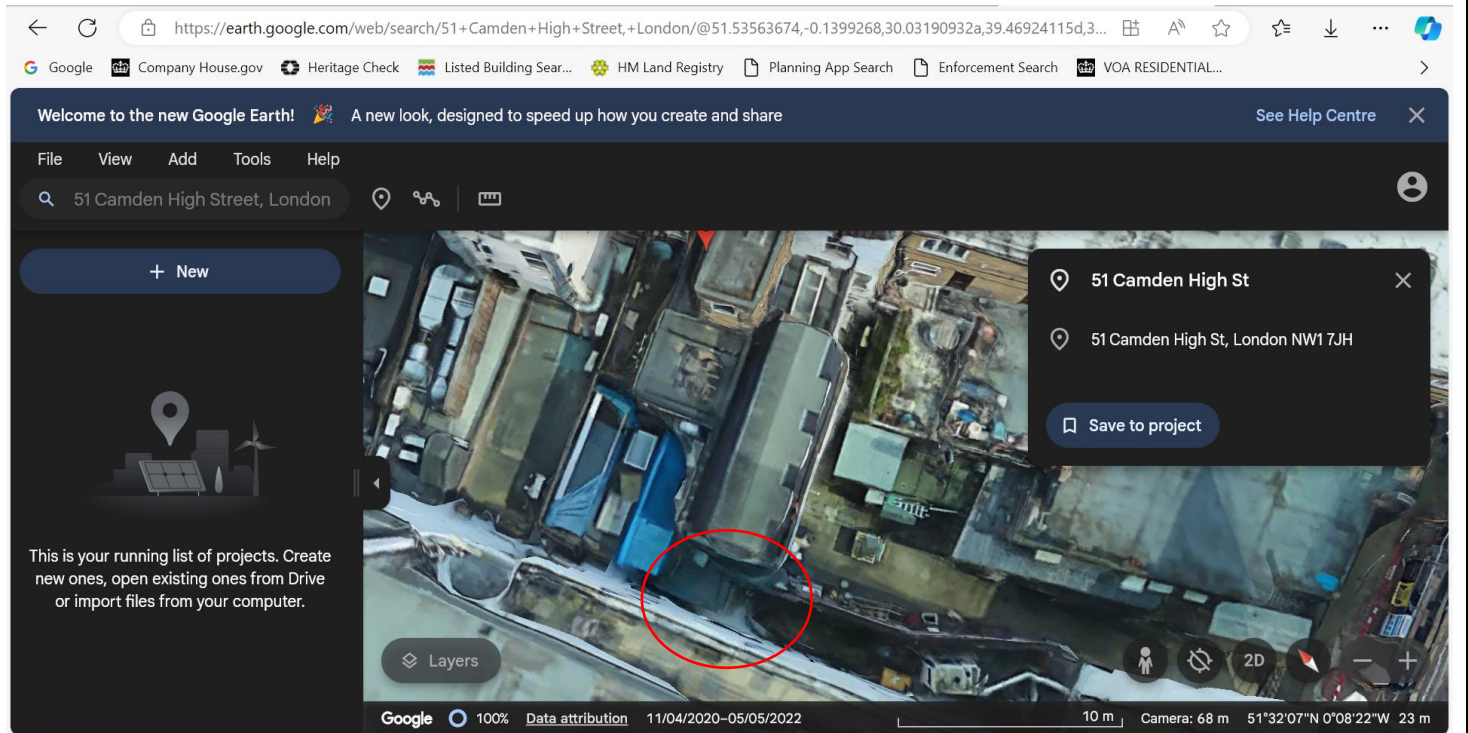
27-OCT-23 – PCN returned with accompanying documents (one lease contract and two invoices dated 29-AUG-19 and 03-SEP-19).

The answers and invoices stipulate that all outlined works were installed before the 03-SEP-19, thereby immune from action. However, the below investigations would reveal only one of the four flues, the 'first part extension', and the two retractable blinds are immune from action. Where Google Earth Imagery, online investigations, and photos from the complainants would show that the other three flues and the 'second part extension' are still unlawful – the subject of this report/notice. The Council has asked for further/new information on these particular works, but to date no sufficient evidence has been provided to demonstrate that these particular works are immune from action and do not create nuisances, against our findings.



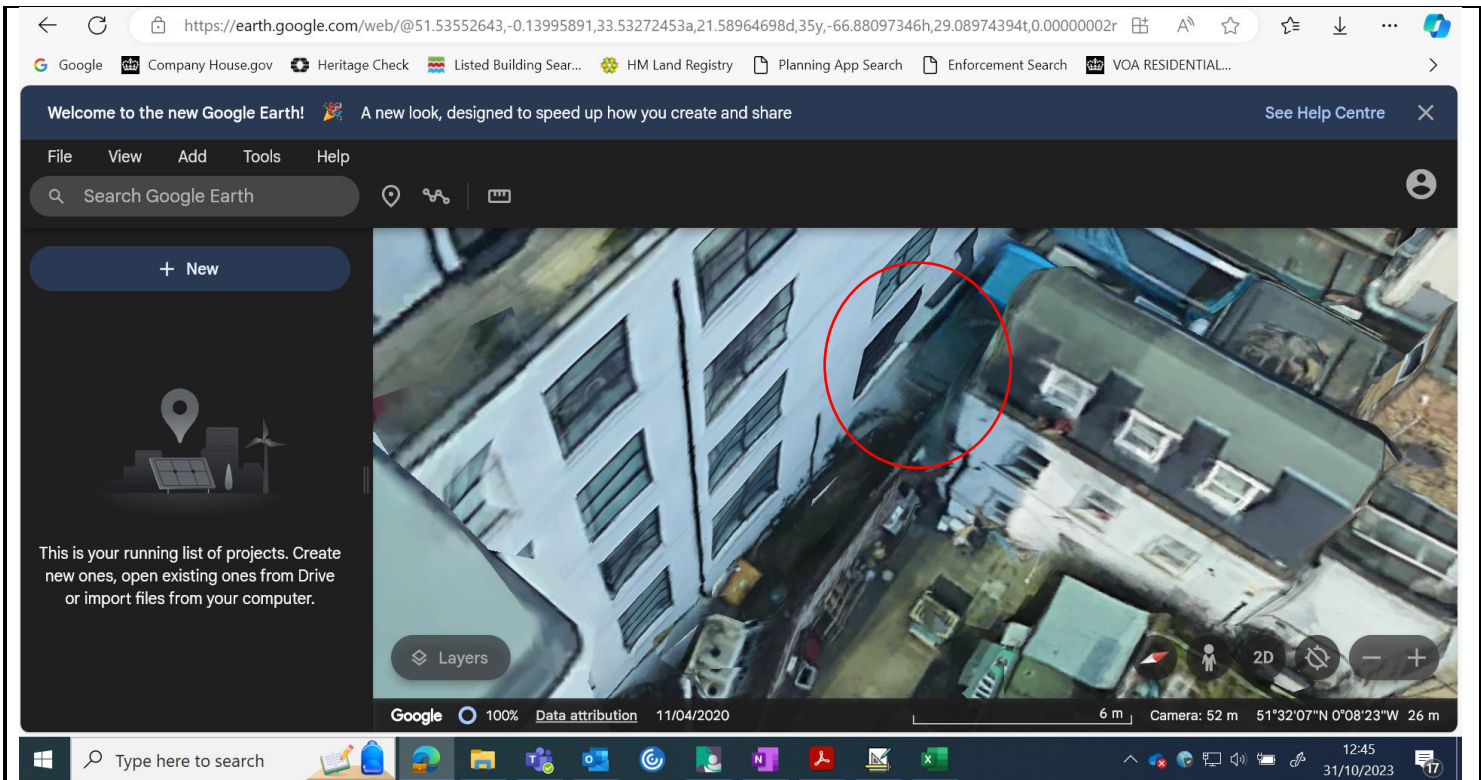
11-APR-20 imagery clearly shows that only one flue (circled) was present at the time, contrary to the PCN. It does show that the two retractable awnings (under the blue tarpaulin sheets) were also in place.

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Imagery also shows that there was an extension ('first part extension') directly at the rear of No 49, but does not extend past a residential window of the opposite Carlow House, contrary to the PCN.

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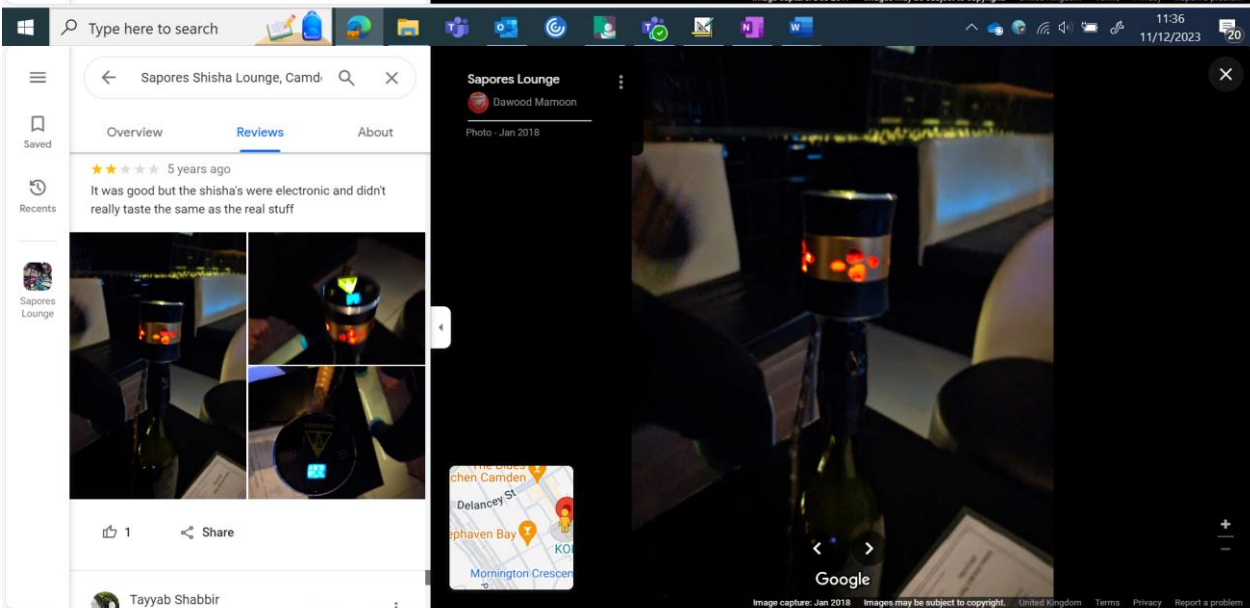
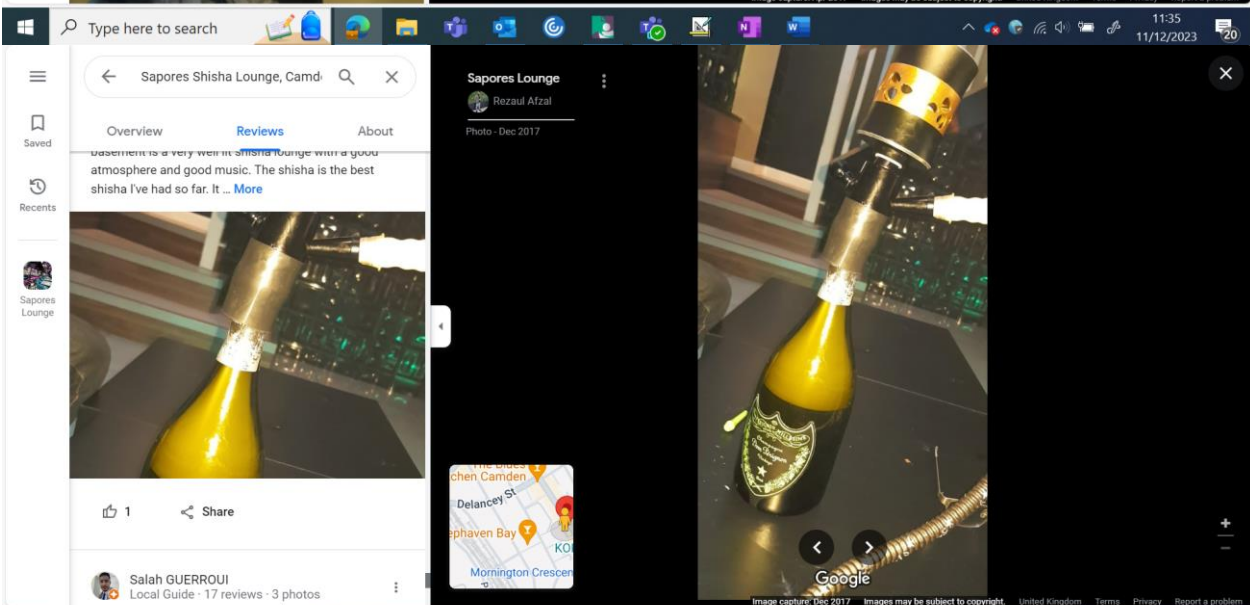
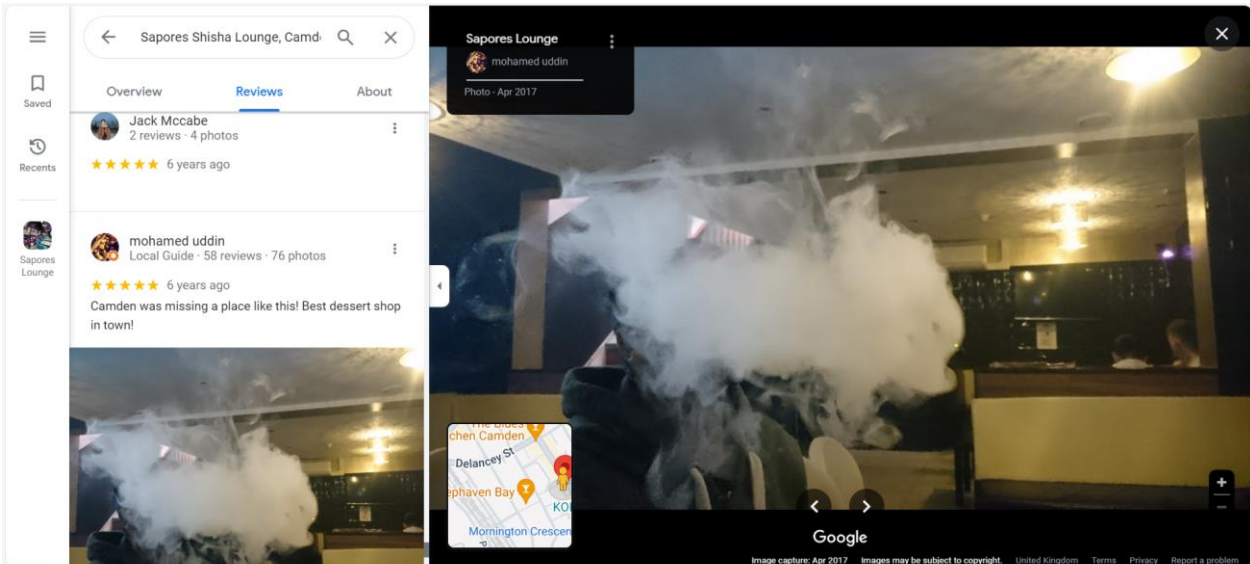
Another angle of the 'first part extension' - it does not extend past this residential window.



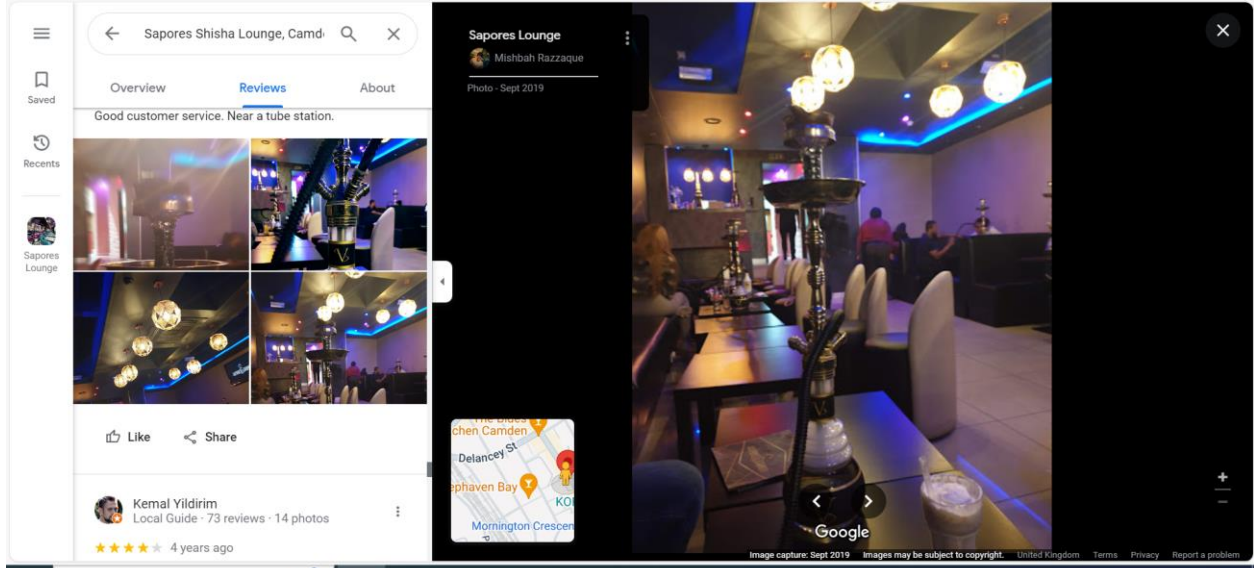
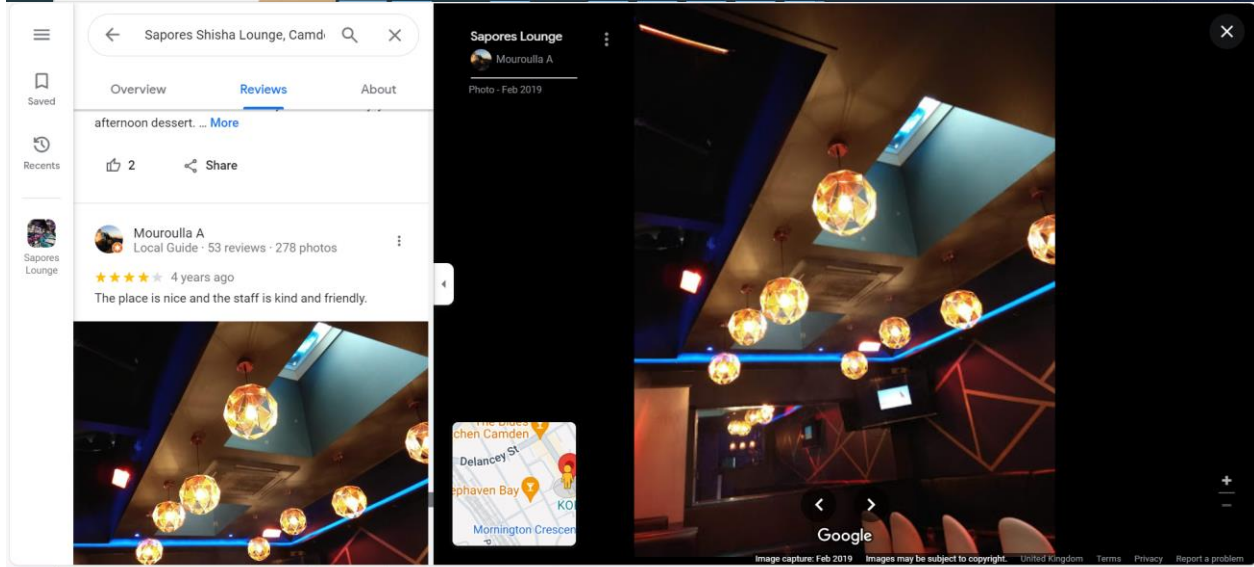
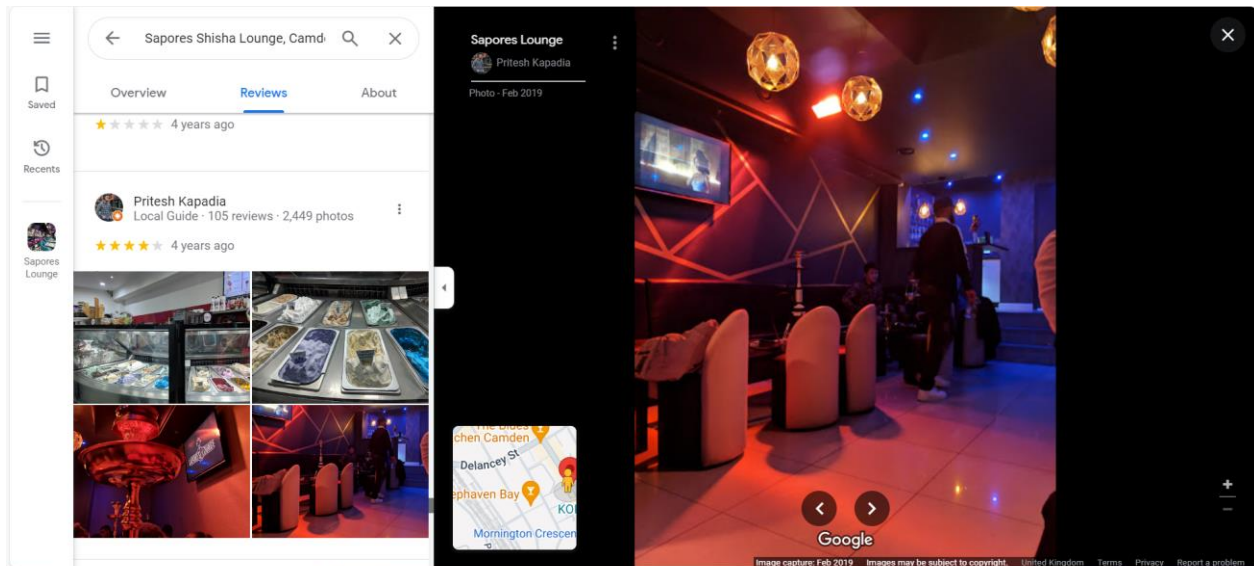
No 49-51 extensions: 'First part extension' (red – immune) and the 'Second part extension' which extends past the residential window (orange – unlawful)

Google review photos and Sapores' Facebook page appear to show that there were two rounds of refurbishment. One during 2019 and another during 2021:

Apr 2017 – Jan 2018 (before the 2019 refurbishment and some of the works outlined in the provided invoices):

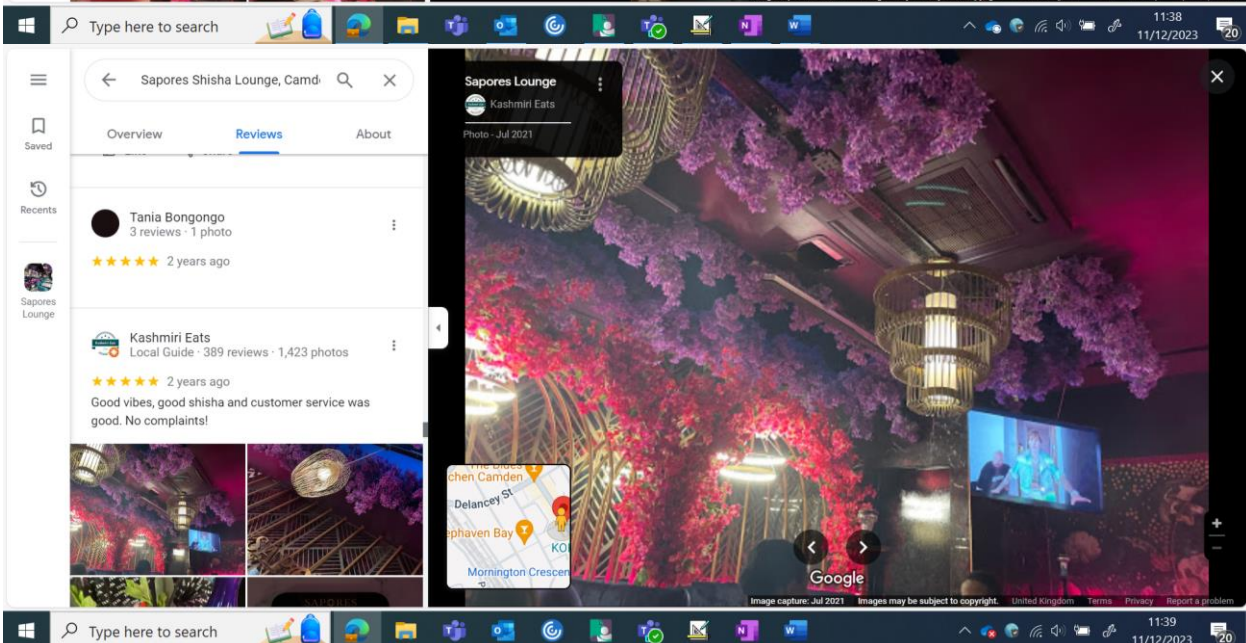
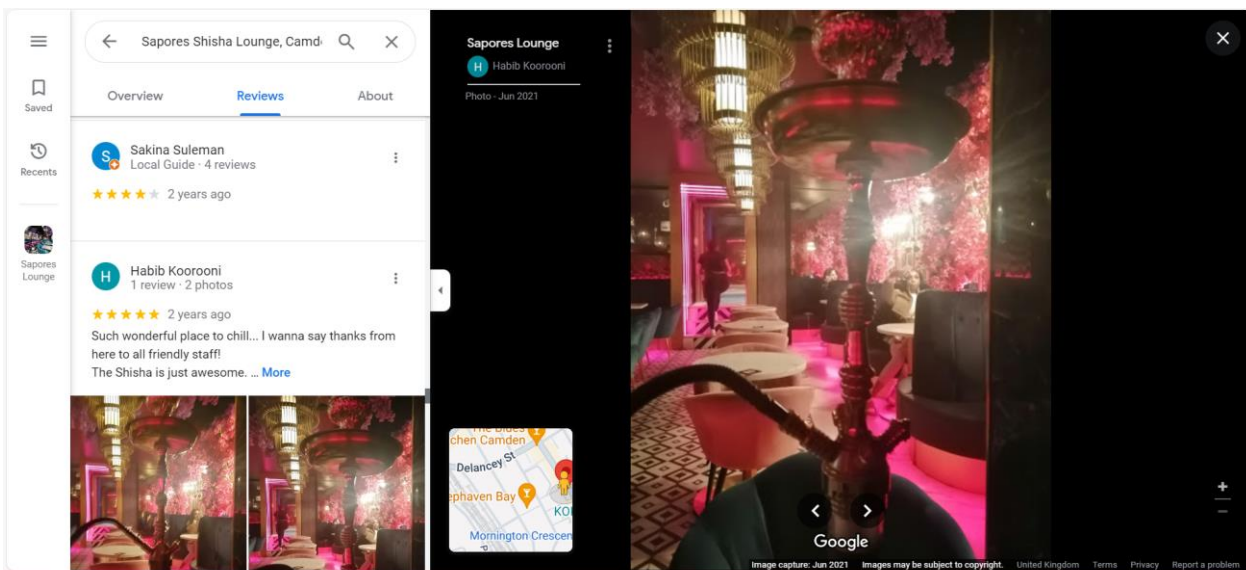


Feb - Sept 2019 (the 2019 refurbishment - when it was likely the 'first part' extension, one flue, and the two retractable awnings were installed (now immune))





Jun 2021 (the 2021 refurbishments and works undertaken – when it was likely three additional flues, and the second part extension were installed – pursuant with the Google Earth Imagery and the initial enforcement complaint – the subject of this report/notice).



Accordingly, on the balance of probability, the 'first part extension' alongside one flue and the two retractable awnings are immune from action as they were undertaken during the '2019 refurbishment works'. However, the 'second part extension' (referenced in the Alleged Breaches as *single storey extension on the 'Land and buildings in Carlow Street and Miller Street'* - but referenced in the assessment section as '**the rear extension**'), the two flues located at the rear of No 51, and flue on the flat roof at the rear of No 49 were built after 11-APR-20 during the 2021 refurbishment, thus unlawful.

Further, in regard to the flue at the rear of No 49, the Council is in receipt of photos that did show there was an existing flue, again no further evidence was provided to confirm its age, but was recently replaced and is materially different, thus unlawful.

06-DEC-23 – Site visit made to confirm the use of the three flues and rear shed (both parts). Agents and photographs confirm that the flue on the first part of the extension is used for burning coals for shisha consumption, and second part is used as general storage. Agents state that two flues are used to extract exhaled shisha smoke and burning tobacco from the enclosed room, and one flue for extracting cooking fumes from the basement floor kitchen. Officer verbally informs that the Council is considering formal action.



[LEFT] – Extraction fan connecting to the flue at the rear of No 49 (coal fumes)

[LEFT-MIDDLE & RIGHT-MIDDLE] – 'Openings' in the rear room for the two unlawful flues at the rear of No 51 (shisha smoke and tobacco burning)

[RIGHT] – Extraction fan connecting to the immune flue at the rear of No 51 (cooking odour)

Relevant policies / GPDO Category

National Planning Policy Framework 2023

- Chapter 12, para 126-135 - 'Achieving well designed places'
- Chapter 15, para 185 - 'Ground conditions and pollution'
- Chapter 16 – 'Conserving and enhancing the historic environment'

London Plan 2021

- D4 – Delivering good design
- D14 – Noise
- HC1 – Heritage and conservation growth

Camden Local Plan 2017

- A1 - Managing the impact of development
 - TC4 – Town centre uses
- A4 - Noise and vibration
- D1 – Design
- D2 – Heritage

Camden Planning Guidance 2021

- CPG Design (2021) – Section 2 (Design Excellence), Section 3 (Heritage), Section 5 (Alterations and extensions in non-residential development), and Section 9 (Building services equipment)
- CPG Amenity (Jan 2021) – Section 6 (Noise and Vibration)

Camden Town Conservation Area appraisal and management strategy 2007

Assessment

Planning history of the site:

2016/2240/P - Change of use of basement and ground floor from retail (Class A1) to restaurant (Class A3); installation of extraction system. **Withdrawn by the applicant on the 07-JUN-16.**

2016/2459/P - Installation of 4 x skylights to rear of ground floor roof. **Granted on the 21-JUN-16.**

Issues:

The main issues for consideration are:

- Design and heritage;
- Impact of development; and
- Amenity

Design and heritage

Policy D1 of the Local Plan requires alterations and extensions to consider the character, setting, context and the form and scale of neighbouring buildings; and the character and proportions of the existing building. Further, it states that building services equipment, such as air cooling, heating, ventilation and extraction systems, lift and mechanical equipment, as well as fire escapes, ancillary plant and ducting should be contained within the envelope of a building or be located in a visually inconspicuous position.

This is supported by CPG Design, which seeks liveable places, stating development should be of good design and contribute to making places better for people. In regard to proposed extensions, they should be sensitively and appropriately designed and do not spoil the appearance of the property or harm the amenity of the area - giving much consideration to the materials that will be used. Building services equipment should not be a dominant feature of the building and should be positioned to minimise its visual impact and designed in such a way that does not lead to issues of health, safety and security.

Policy D2 of the Local Plan states the Council will seek to preserve and, where appropriate, enhance Camden's designated conservation areas and heritage assets, as well as non-designated heritage assets including those on an off the local list.

CPG Design and the Camden Town Conservation Area statement reiterate Policy D2, and also adds that the Council will, when making a balanced judgment having regard to the scale of any harm or loss and the significance of the asset(s) affected, take account of the desirability of sustaining and enhancing the significance of any heritage assets and 'Non-Designated Heritage Assets'. Further, CPD Design particularly states the Council requires that the development must undertake a detailed building survey in advance of any works will help in identifying the most appropriate solution for accommodating building services equipment; and confirm with the LPA as to whether consent is required should be sought in advance of any works commencing.

'The rear extension':

The 'rear extension' is located on the 'Land and buildings in Carlow Street and Miller Street' and is considered to be an addition to the existing extension at the rear of No 49, which again was erected by Sapores and is immune from action. It is noted that its immunity, or immunity of any other nearby development for this matter, does not correlate to the Council's implicit acceptance of these unconsented works, and that any existing clutter should not equate to the justification for further harm to this area.

The Council contends that the 'rear extension' contributes to the over development at the rear of these properties. The 'rear extension' does not have any architectural detailing (including windows, eaves, parapets..) and appears to be made of plywood and timber with a dark grey paint / wax cotton lining (weather proofing) finish, which results in a very solid, bulky, and incongruous addition. When framed against the existing extension, which is similar in design, form, and materiality, the negative effect of the unauthorised works is amplified.

These unauthorised works therefore contribute to the unfavourable cumulative visual clutter at the rear of these properties and cannot be considered to respond positively contribute to the appearance of the surrounding area. It therefore cannot be considered to preserve or enhance the conservation area or residential outlook either. Whilst the design harm is less than substantial, there are no corresponding benefits to outweigh this harm, to which any benefits that could be identified are entirely private.

Two flues at the rear of No 51, and the flue on flat roof rear single storey extension at No 49:

The Council contends that the installation of three additional flues is excessive, where in design terms, the installation of the differing variety (design, form, direction, position, size) of extract ducts unequivocally results in dominant and unnecessary roof clutter which is harmful to the host building and wider area. It is noted that the visibility of this area is limited and plant equipment including flues and ac units are prevalent given the commercial ground floor uses. However, it is still necessary to ensure that plant equipment is sited appropriately, and clutter reduced where possible given the location in a conservation area, the character of the host buildings and the outlook from residential windows.

Impact of development and Amenity

Policy A1 of the Local Plan seeks to protect the quality of life of occupiers and neighbours by only granting permission to development that would not cause harm the amenity of residents by way of assessing a variety of considerations, including the impacts on outlook, noise, vibration, and odours and fumes. Policy A1 also cites our commitment to protect amenity through assessing the impact of food, drink and entertainment uses by referencing other relevant policies, particularly Policy A4 'noise and vibration' and TC4 'Town centre uses'.

Policy TC4 states Camden's image as a dynamic and attractive place is in part due to the number and quality of restaurants, bars and entertainment venues in the borough, identifying Camden Town and Covent Garden having particular concentrations of such premises. These areas play an important part in the night time economy of Camden and of London, socially, economically and in terms of job provision. However, night time activity can also lead to problems such as antisocial behaviour, crime and fear of crime, noise, congestion and disturbance. This is backed by CPG Amenity, which further states Where such uses are proposed, access routes, outdoor standing/seating areas, smoking areas, pub gardens, etc. should be sited away from noise sensitive facades and/or effectively screened. Whilst the use of the property is not the subject of this enforcement notice, Policy TC4 holds material weight as the harm caused by the alleged works are directly linked to the use of No 51 as a Shisha Bar.

Policy A4 states that the Council will seek to ensure that noise and vibration is appropriately controlled and managed to avoid undue harm. It states that the development should have regard to Camden's adopted Noise and Vibration Thresholds and that the Council will not grant planning permission for development likely to generate unacceptable noise and vibration impacts.

CPG Design Section 9 states Where mechanical or passive ventilation is required to remove odour emissions, the release point for odours must be located above the roofline of the building and, wherever possible, adjacent buildings. CPG Amenity states requires special attention to the implementation of noise mitigation measures, and that proposed development must be accompanied by acoustic reports to demonstrate compliance with our noise standards.

The NPPF states planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

'The rear extension':

It is cited that the rear extension is used for "general storage". However, a site visit reveals the presence of a very large space next to the basement kitchen that is cited to serve as a storage room. No evidence has been provided in relation to the utilisation of existing internal space for storage prior to the construction of the 'rear extension'.

Irrespective of its current use, the extension provides the business greater floor space, which has encroached onto adjoining land and nearer to residential development, for Saporess to carry out business activities - potentially further impacting nearby residential occupiers through operational noise.

Two flues at the rear of No 51, and the flue on flat roof rear single storey extension at No 49:

The two flues at the rear of No 51 are required to facilitate for the extraction of exhaled shisha smoke and tobacco burning through the two (now immune) openings and retractable awnings on the flat roof within the ground floor rear extension. The flue at the rear of No 49 facilitate for the extraction of soot and fumes via the preparation (burning) of coal. Enquiries to our Health and Safety Team, reveal that Sapoires' operations as a shisha lounge are non-compliant with the Health Act 2006, and are commencing their own enforcement action. A comment from our Health and Safety team was provided to Planning Enforcement:

*Having looked at the images provided, it appears as though the premises will not be compliant with the **Health Act 2006**. **Section 2(1)** of the Act mentions that any premises that are open to the public, must be 'smoke-free'. **Section 2(4)** mentions that premises must be smoke-free if they are 'enclosed' or 'substantially enclosed'. [And then goes on to cite Regulation 2 and 4 of the Act on the definitions of "smoke-free" and "roof"].*

It is therefore noted that these unauthorised flues are ancillary to the unlawful use of the rear room as a shisha lounge. It should also be noted that the business has a record of 'Temporary event licenses' allows them to host large gatherings outside trading hours, thus an increase of noise, vibrations, and odour by way of the use of the unauthorised equipment to provide for food and shisha consumption.

In light of all the above, in the absence of formal noise and odour reports, the Council cannot be certain that the flues (including the one immune from action) will not produce noise, vibrations, and odour nuisances in perpetuity. Whereby, complaints have already been made regarding such noise and odour nuisances during and outside of business hours, and odour has been witnessed (cooking and shisha smoke) during off-peak business hours.

All three unauthorised flues are also low level and do not terminate above the roof line. In terms of amenity, these designs will, if not already, produce adverse safety, health and amenity issues. In the absence of evidence demonstrating why it is necessary to have four flue systems instead of one, the Council considers the installation of the three unauthorised flues as excessive.

In aggregate, these alleged breaches are contrary to Policy A1, A4, D1, and D2 of the Local Plan, CPG Design, CPG Amenity, and Camden Town Conservation Area statement guidance.

Recommendation:

That the Borough Solicitor be instructed to issue Enforcement Notices under Section 172 of the Town and Country Planning act 1990 as amended removal of **requiring the removal of the three identified unauthorised flues at the rears of No 49-51, and the single storey extension, which adjoins the No 49-51 extension, located on the 'Land and buildings in Carlow Street and Miller Street'**, and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.

The notice shall allege the following breaches of planning control:

Without planning permission:

1. The installation of two flues and ancillary plant equipment located at the rear of *No 51*.
2. The installation of one flue and ancillary plant equipment located at the rear flat roof of the No 49-51 single storey extension.
3. The erection of a single storey extension *which adjoins the No 49-51 extension located on the 'Land and buildings in Carlow Street and Miller Street'*.

WHAT ARE YOU REQUIRED TO DO:

1. Completely remove the two flues and ancillary plant equipment at the rear of No 51 (as shown by red arrows in Appendix A).
2. Completely remove the flue and ancillary plant equipment located at the rear flat roof of the No 49-51 single storey extension (as shown by the orange arrow in Appendix A).
3. Completely remove the erection of a single storey extension which adjoins the No 49-51 extension located on the 'Land and buildings in Carlow Street and Miller Street' (as shown by the red outline in Appendix A and B).
4. Remove all resultant material and make good any damages caused by the above operations.

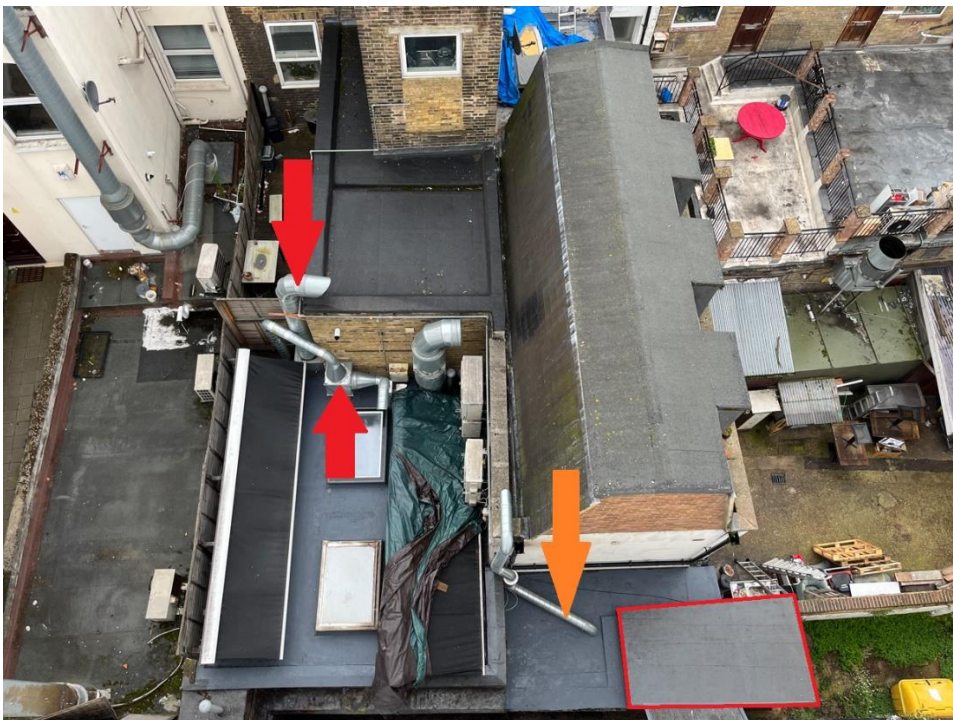
PERIOD OF COMPLIANCE: THREE (3) months

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

1. The two flues and ancillary plant equipment located at the rear of No. 51, and the flue and ancillary plant equipment located at the rear flat roof of the Nos. 49-51 single storey extension by virtue of their designs, sizes, bulk, positionings, and locations, add clutter which is harmful to the character and appearance of the host building, neighbouring buildings and this part of the Camden Town Conservation Area. In the absence of a scheme, the development also fails to safeguard the amenities of neighbouring occupiers contrary to policies A1 (Amenity), A4 (Noise), D1 (Design), and D2 (Heritage) of Camden's Local Plan 2017, CPG Design, CPG Amenity and Camden Town Conservation Area statement guidance.
2. In the absence of an acoustic report to demonstrate compliance with Camden's Noise standards, the development also fails to safeguard the amenities of neighbouring occupiers contrary to policies A1 (Amenity), A4 (Noise), D1 (Design), and D2 (Heritage) of Camden's Local Plan 2017, CPG Design, CPG Amenity and Camden Town Conservation Area statement guidance.
3. The single storey extension which adjoins the Nos. 49-51 extension located on the 'Land and buildings in Carlow Street and Miller Street' by virtue of its design, location, size, and bulk, add clutter which is harmful to the character and appearance of the host building, neighbouring buildings and this part of the Camden Town Conservation Area contrary to policies A1 (Amenity), D1 (Design), and D2 (Heritage) of Camden's Local Plan 2017, CPG Design, CPG Amenity and Camden Town Conservation Area statement guidance.

Appendices (as inserted within the Enforcement Notice)

Appendix A



Appendix B

