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The Planning Inspectorate
Room 3b
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2 The Square
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BS1 6PN

Dear Ben White,

**Town and Country Planning Act 1990 as amended
Planning Appeal Statement (Local Planning Authority)**

Site: 49-51 Camden High Street, London, NW1 7JH, and Land and buildings in Carlow Street and Miller Street

Appeal by: MR SHERVIN AKHGAR of SABORES SHISHA

Enforcement Notice dated 22nd December 2023

I write in connection with the above Enforcement Notice appeal regarding the unauthorised installation of two flues and ancillary plant equipment located at the rear of No. 51, one flue and ancillary plant equipment located at the rear flat roof of the single storey extension to the rear of nos. 49-51, and the erection of a single storey extension which adjoins the extensions to the rear of nos. 49-51 and positioned on the 'Land and buildings in Carlow Street and Miller Street'.

The Council's case is primarily set out in the enforcement delegated report which has already been sent with the questionnaire. It is to be relied on as the principal statement of the case. Please note, it has just been spotted that 'reason (c)' of the notice has mysteriously disappeared in this report – this has been corrected on our public website. Copies of the relevant Camden Local Plan policies and accompanying guidance were also sent with the appeal questionnaire.

In addition, the Council would be grateful if the Inspector would consider the contents of this letter which includes confirmation of the status of policy and guidance, comments on the appellant's grounds of appeal (including **six** supporting appendices attached below), and further matters that the Council respectfully requests be considered without prejudice before deciding the appeal.

Kind regards,

Joshua Cheung
Planning Enforcement Officer at the London Borough of Camden
Supporting Communities Directorate

1. Summary;

- 1.1 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. The 'land and buildings in Carlow Street and Miller Street' is landlocked in between "Carlow House" and the rears of Nos 41-49.
- 1.2 Around August last year, Camden's planning enforcement team first received a complaint on various nuisances being produced by a variety of alterations undertaken by the appellant at the rear of the site.
- 1.3 On the 20th September 2023, the Council served a Planning Contravention Notice (PCN) to further our investigations. It alleged that the erection of rear extensions, flues (and ancillary plant equipment), and retractable blinds without planning permission may have occurred.
- 1.4 On the 27th October 2023, the Council received a completed version of the PCN, including three supporting documents. Two of which are invoices, which the appellant has submitted in this appeal. All these documents all been sent with the Council's questionnaire and is explored in this statement as the Council believes it is relevant to the reliability of some of the new evidence submitted in this appeal - notably, the appellant states several times, "the owner does not have pictures prior to installation".
- 1.5 In summary, the appellant claimed that all alleged works are immune from enforcement action since late August of 2019. However, a further desktop investigation demonstrates that only the openings in the rear single storey infill extension and associated retractable blinds, and the 'first part extension' benefit from immunity (this investigation and evidence is shown in the 'Investigation History' section of the Council's enforcement delegated report).
- 1.6 Accordingly, given the active complaints, and the scale and nature of the breaches, on the 22nd December 2023, an Enforcement Notice was served. Alleging 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 single storey extension to the rear of nos. 49-51.*
 3. *The erection of a single storey extension which adjoins the extensions to the rear of nos. 49-51 and positioned on the 'Land and buildings in Carlow Street and Miller Street'.*And requires within a period of THREE (3) months of it taking effect:
 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 single storey extension to the rear of Nos. 49-51 (as shown by the orange arrow in Appendix A).*
 3. *Completely remove the erection of a single storey extension to the rear of nos. 49-51 and positioned 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.*
- 1.7 A photo labelling all breaches is provided in Figure 2 (above paragraph 5.13) below for the Inspector's reference.

2. Planning history of the site;

2.1 The below history demonstrates that the Council is consistent in resisting unacceptable development at this site. The Council however seeks to grant permission where the visual amenity is preserved or enhanced:-

2.2 **2016/2240/P (51 Camden High Street, London, NW1 7JH, Camden Town Conservation Area)** - 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 7th June 2016.**

The apparent reason(s) for withdrawing: After attempting to engage with the applicant to address a variety of issues with the application, the Council notably advised them that there was a lack of detail regarding noise mitigation measures, odour control measures and storage of waste, and that the application was to be refused. The applicant (the appellant of this appeal) subsequently withdrew.

2.3 **2016/2459/P (51 Camden High Street, London, NW1 7JH, Camden Town Conservation Area)** - Installation of 4 x skylights to rear of ground floor roof. **Granted on the 21st June 2016.**

Reason(s) for granting: "The proposed rooflights would project by 200mm from the roof. Whilst rooflight that is flush with the roof would be preferable, the surrounding area as an established pattern of protruding rooflights and would remain subordinate to the existing roof and views of the rooflights would not be visible from the street. Therefore, the proposal would preserve and enhance the character and appearance of the existing building and the surrounding Camden Town Conservation Area. The location of the proposed rooflights would not have an unacceptable impact on nearby properties in terms of loss of privacy or outlook."

3. Status of policies and guidance framework;

3.1 In arriving at its current position, Camden Council has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The unauthorised development subject to this appeal was considered in the light of the following policies:-

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'

The 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 Design 2021

Section 2 (Design Excellence), Section 3 (Heritage), Section 5 (Alterations and extensions in non-residential development), and Section 9 (Building services equipment)

Camden Planning Guidance Amenity 2021

Section 6 (Noise and Vibration)

Camden Town Conservation Area appraisal and management strategy 2007

- 3.2 It is noted that the Council has begun the process of updating the local plan. There are no material differences between the NPPF and the Local Plan in relation to this appeal, to which having looked at the relevant emerging policies, I am of the opinion that there is no material difference that would alter the Council's decision and within this appeal.

4. Grounds of appeal;

- 4.1 The appellant has appealed against the Enforcement Notice under ground A only - the appellant seeks to acquire permission for the unauthorised works. They have submitted an appeal statement, including five supporting documents, which sets out their case.
- 4.2 The Council seeks to break down the appellant's appeal statement and accompanying evidence. Their case will be summarised and/or copied and pasted and formatted in italics, and addressed beneath.
- 4.3 However, the Council first raises and discusses a preliminary matter.

5. Preliminary matters (hidden Ground D appeal);

- 5.1 It is clear paragraphs 3.4 – 3.10 of the appellant's statement argues that all development alleged in the enforcement notice was immune from action prior to the service of the notice. The appellant did not include Ground D in their appeal form, but the Council will respond as follows.
- 5.2 The appellant relies on a signed letter with time-stamped photos from the contractor, and have reused the two 'PCN' invoices to demonstrate on the balance of all probability that the works within the notice were immune from action prior to the notice.
- 5.3 The signed letter states that all the works were "*completed in 2019*" and "*later invoiced for*" in September 2019. However, only photos of the installation of the now immune openings and associated awnings (dated between December 2018 and January 2019, referenced as "*2 x awning (specifications sent and agreed previously)*" in invoice 1903) have been provided to substantiate this claim. Whereby, it has been maintained that "*the current leaseholder (appellant) does not have photo evidence of the plant/flues in situ prior to occupation*", nor the other alleged works.
- 5.4 No accompanying evidence has been submitted to verify the invoices.
- 5.5 Lastly, it should be noted that the third document that was provided to the Council with the PCN was a signed lease agreement which notably and erroneously depicted that the No.51

“lease/title plan” includes parts of other properties. Alongside the actual Land Registry Title Plans (explored in the ‘Investigation History’ section of the enforcement delegated report), contact with Network Rail confirms the true boundaries – see Appendix 1 for this correspondence.

Discussion:

- 5.6 First and foremost, without further photos or other evidence of the works subject to this appeal, the claim that all works were “*completed in 2019*” continues to be vague and unverifiable. This lack of evidence is reflected in their statement, where the appellant has not provided a clear breakdown or timeline of works that occurred after the installation of the awnings.
- 5.7 It is questionable to why the contractor/appellant only took or provided this appeal photos of the installation of the openings and awnings, and not the other works subject to this appeal.
- 5.8 Without further evidence to verify the invoices themselves, the weight that can be afforded to them is limited.
- 5.9 The time-stamped photos and lack of other evidence is indicative of the Council’s investigations of a “2019 refurbishment” and “2021 refurbishment” as detailed within the enforcement delegated report. In summary, the ‘Investigation History’ section shows photos from Google Reviews, Sapores’ Facebook photos and announcements, and Google Earth Imagery shows that some works outlined in the invoices were installed in early 2019 during an extensive round of refurbishments - the openings and awnings and the ‘first part extension’, which are accepted as immune from action and have not been included in the notice. And another round of extensive refurbishments mid 2021 – which would include the unauthorised works which are subject of this appeal.
- 5.10 The Council has recently received more photos that further substantiate a ‘2019 round’ of refurbishments (see Figure 1). These photos were taken in September 2019 in connection with a Food Safety complaint made to the Council. It is clear that the unauthorised extension and the flue and ancillary plant equipment behind No 49-51 – subject of this appeal – was not in place at this time. The invoices are dated Between August - September 2019. The claim that all works were completed then invoiced after is false.
- 5.11 In fact, the ‘first part extension’ was not yet built either, where it appears there was a prior timber and polycarbonate lean-to infill. The immune awnings are also visible – pursuant to the photos provided by the appellant.
- 5.12 These new photos, alongside the evidence within the enforcement delegated report, on the balance of all probabilities all works alleged in the notice were installed during the ‘2021 round’ of refurbishments, thus were not immune from action prior to the service of the notice.



Figure 1 – Photos of the rear area of the site in September 2019. Blue arrow indicates the position of where the as-built unauthorised extension is. Orange arrow indicates the position of where the as-built unauthorised flue and equipment behind No 49. Awnings present.

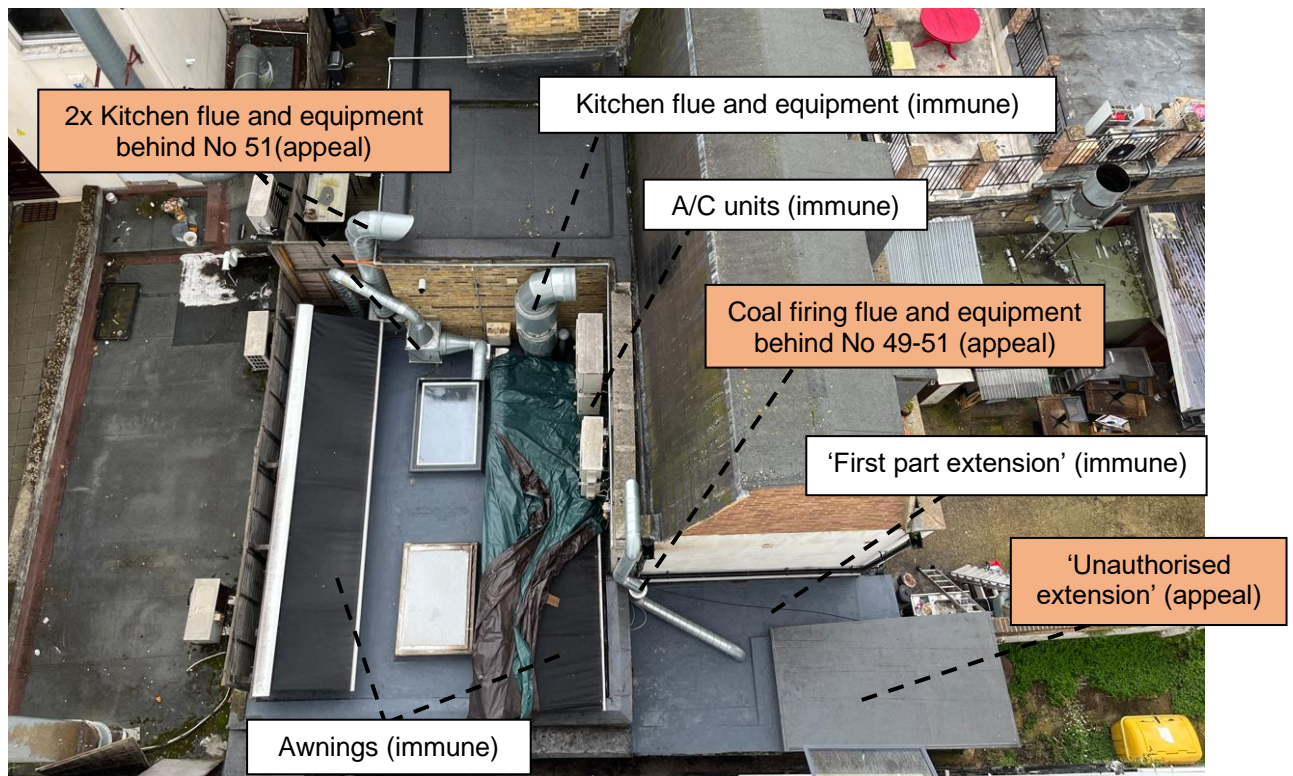


Figure 2 – Photo labelling all works undertaken by the appellant at the rear of the site for comparative purposes (highlighted in orange are the subjects of this appeal).

5.13 The Council has demonstrated a clear timeline of events that is most likely to have occurred, where we have accepted some works have become immune from action, but that the remaining works (alleged in the notice) were not. The evidence the Council has provided is directly contrary to the appellant's. It is the onus of the appellant to discharge the burden of proof. They have failed to do so against the Council's evidence.

6. Ground A: that planning permission should be given for what is alleged in the notice;

- 6.1 Given the appellant solely appealed under Ground A but made inadvertant Ground D arguments, we would reiterate that immune works at the site or elsewhere does not correlate to the Council's implicit acceptance of these unconsented works. Nor justification for further unauthorised works – especially for amenity contentious development such as flues and ancillary plant equipment. Meaning in this appeal, similar authorised development elsewhere should hold limited weight, and its merits be assessed on a case-by-case basis.

Unauthorised flues and ancillary plant equipment (Design)

- 6.2 **Appellant:** *“The flues and ancillary plant equipment are installed at the rear of the building and are not highly visible from publicly accessible land. Importantly, the flues cannot be seen from Camden High Street and do not impact the street scene or contribute to street clutter. Location at the rear of the site against the façade ensure the flues are not obtrusive or adversely impact key features of the conservation area.”*
- 6.3 **Response:** Firstly, the Council has not contended that the flues and equipment create street clutter, but exacerbate the existing clutter at the rear. The fact that it does not create street clutter is not justification to impose this issue to the overlooking residential occupiers at the rear, where many only have windows facing this area.
- 6.4 Camden High Street is one of the borough's most commercial areas, so it is accepted that there might be some immune development that would unfortunately erode the appearance of the Conservation Area. Again, this is not an invitation or justification to impose further clutter. In this light, the appellant has failed to mention the flues and equipment's immediate context. As depicted in Figure 2, there is already a clutter of immune works erected by the appellant. As such, the Council refutes the notion that the flues' concealment to passerbys equates to non-obtrusive additions to this part of the Conservation Area, and that these flues and equipment further the existing harm to the surrounding outlook.
- 6.5 **Appellant:** *“Flues in this area are a common feature to the rear of buildings on Camden High Street due to commercial uses. Many of the neighbouring buildings along the southern side of Camden Highstreet have flues of a larger scale. The flues and ancillary plant are simple in design, comprising stainless steel tubing fixed to the flat roof, similar to existing plant at 51 Camden High Street and neighbouring buildings. The plant does not extend beyond the roofline of neighbouring buildings. At a maximum, the flues extend to sit on top on the second storey, below the roof height of neighbouring buildings and reducing visibility.”*
- 6.6 **Response:** In regards to neighbouring equipment, what the appellant is describing is a general design principle that Camden applies in granting permission for most extract systems - a single flue (and ancillary plant equipment) that terminates above the roofline and located on the rear façade of the property. Further broad examples are provided in Appendices 2 – 4 below. The appellant is correct in identifying this as the pattern of development in the vicinity. Even if the appellant had followed suit in this regard, they are still required to sufficiently address the amenity concerns, which the Council considers they have not.
- 6.7 If designed in close consideration with the height and depth of the properties, tall flues will be concealed from street level. The appellant's design argument that the flues are not above roof level is therefore not a valid point. See Figures 3 and 4 below, where adjacent Papa Johns

and KFC flues cannot be seen from Plender Street (off Camden High St) though their flues terminate above the roofline. See again the broad examples in Appendices 2 – 4 which further demonstrates this.



Figure 3 – View from Plender Street of the roofscape of 47 – 61 Camden High St.



Figure 4 – Flues and plant equipment of Papa Johns and KFC (red arrows), Nos 53 - 55.

- 6.8 Nonetheless, they have instead installed three low-level flues that are spalled across the rear of the site, so the citation of the surrounding flues for their design case is inapplicable.
- 6.9 Lastly, insofar each individual flue can be considered 'simple' in design, the excessive scale and intensity of flues and equipment results in jarring and dominant new additions that provide no visual relief. Further, their non-uniform positioning on the roof and each vent pipe's differing directions reads as disorganised. These effects are aggravated against the clutter of existing immune works. In this regard the appellant has again failed to address the cumulative impact.
- 6.10 **Appellant:** "Given that the flues and plant are discreetly located and of standard design commonly seen in the area it is considered that they are in line with D1 (Design) and D2

(Heritage) of Camden's Local Plan 2017, CPG Design and amenity and Camden Town Conservation Area statement Guidance."

- 6.11 **Response:** In summary, Policies A1, D1, and D2 of the Local Plan, CPG Design, and the Camden Town Conservation Area statement guidance states:

"The Council 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."

"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"

- 6.12 The appellant has failed to consider and demonstrate that the flues and plant equipment do not impact the outlook of the area. Whilst they are in an 'inconspicuous' position (the rear), they are highly conspicuous in terms of their cumulative impact – which comprises their bulk, positionings, and size. They therefore add clutter to the rear and impacts the residential outlook. Insofar the location of the flues at the rear can be considered as a benefit, this does not convincingly outweigh the outlined harm.

- 6.13 Not all flues are contained within the envelope of the appellant's property (No.51).

"The Council will seek to preserve and, where appropriate, enhance Camden's designated conservation and areas and heritage assets, as well as non-designated heritage assets including those on an off the local list."

- 6.14 The site lies within the Camden Town Conservation Area, where we seek to protect and enhance it, thus will resist development that contributes to further detriment. Great weight should therefore be given to protect the rear area of the site from unnecessary clutter and harm to outlook.

"The Council seeks liveable places, stating development should be of good design and contribute to making places better for people", and "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".

- 6.15 The Council does not contend the flues, in a strictly design sense, make the area less liveable, but can make it less enjoyable to do so.

- 6.16 In light of all the above, the appellant has failed to demonstrate that the flues and plant equipment are subservient and positively contributes to, or even preserves (via minimal visual impact), the appearance host building and surrounding Conservation Area. All unauthorised flues and ancillary plant equipment are contrary to Policies A1, D1, and D2 of the Camden Local Plan (2017), CPG Design, CPG Amenity, and the Camden Town Conservation Area statement guidance.

Unauthorised flues and ancillary plant equipment (Amenity)

- 6.17 Please again note, no further arguments or evidence in connection with the amenity impacts of the unauthorised flues and plant equipment have been submitted other than the five paragraphs 3.17 - 3.21 (summarised in paragraph 6.18 below) and the noise impact assessment by ES Acoustics.

Noise:

- 6.18 **Appellant:** *"The assessment found that at present the noise emissions associated with the flues and plant operation would result in a likelihood of **significant adverse impact** when compared against Camden Noise Guidelines. However, the report has undertaken additional works that demonstrate that mitigation measures can be undertaken."* The appellant then broadly describes what the 'mitigation' would do, then states "the appellant will undertake necessary works to retrofit, ensuring the flues and plant meet regulation". Meaning at current time, they do not.
- 6.19 **Response:** ES Acoustics has identified the operating unauthorised flues and equipment in aggregate produce a current noise rating level of 65dB. In relation to the measured background rating of 52dB, the unauthorised works are 23dB above the Council's noise standards (10dB below background) and "would result in a likelihood of significant adverse impact".
- 6.20 Paragraph 5.4 of their report have identified Carlow House (the large adjacent residential development) to be at notable risk as they require open windows for cooling and ventilation. This is potentially the case for many other adjacent properties and overlooking occupiers.
- 6.21 Paragraph 5.4 also notably states "*It should however be noted that even in the absence of the flues and associated plant under assessment, the World Health Organization guideline value of 45 dB(A) outside a bedroom window is already exceeded simply due to the existing noise profile of the area*" - details of these guidelines have been included in the report in paragraphs 3.3.2 – 3.3.3. This appears to be a result of surrounding extract systems from adjacent properties, including the immune flue and four air conditioning units the appellant has erected. In aggregate, this report confirms the Council's 3rd reason for issuing the notice, and points toward the flues and equipments' (including the one immune) poor designs.
- 6.22 Whilst the appellant wishes to meet the criterion of 42dB with the proposed mitigation retro fits, (which their specification documents and management plans have not been provided), what they are particularly missing is a convincing sequential test to demonstrate exactly why three kitchen extract systems (including the existing immune) are required at the site.
- 6.23 Accordingly, the Council contends that even if mitigations measures are implemented, the addition of three extra sets of flues and plant equipment without sufficient justification imposes an unnecessary risk of even a "low likelihood of adverse impact" to the existing cumulative noise of this 'busy urban environment'.
- 6.24 In the absence of specification documents of these mitigation measures, we are unable to assess their scale and bulk, and may cause further harm to this part of the Conservation Area and residential outlook via their individual and cumulative scale and bulk.

Odour and vibrations:

- 6.25 **Appellant:** *“The plant does not extend beyond the roofline of neighbouring buildings”. “The flues are unlikely to result in additional adverse impact to neighbours over other/existing flues and plant at 51 Camden High Street and the neighbouring commercial premises. All flues are directed away from neighbouring buildings towards the centre of the site and airspace at the centre of surrounding buildings, avoiding discharge of extraction air and odour towards facades or windows.”*
- 6.26 **Response:** As stated, the appellant has not provided any evidence to demonstrate how *“the flues are unlikely to result in additional adverse impact to neighbours over other/existing flues and plant at 51 Camden High Street and the neighbouring commercial premises”*. Whereby, no further arguments other than the above have been put forward by the appellant in connection with odour. The lack of supporting documents such as management plans, odour risk assessments, and mitigation furthers the doubt, ambiguity, and uncertainty in this Ground A appeal.
- 6.27 The appellant fails to provide evidence to prove that ‘directing the flues into the air space at the centre of surrounding buildings results in no discharge of odours and fumes to the rear facades and windows of residential occupiers’.
- 6.28 Paragraph 2.8 – 2.10 of the Government Guidance Combustion appliances and fuel storage systems: Approved Document J states:
- “Flues should be high enough to ensure sufficient draught to clear the products of combustion... The outlet from a flue should be above the roof of the building in a position where the products of combustion can discharge freely and will not present a fire hazard, whatever the wind conditions...The chimney heights and/ or separations shown may need to be increased in particular cases where wind exposure, surrounding tall buildings, high trees or high ground could have adverse effects on flue draught”* (See Appendix 5).
- 6.29 This is supported by our local guidance from CPG Design (2021) which 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”.*
- 6.30 Officers have visited the rear of the site during traditionally off-peak hours (15:00 – 16:00pm) in the middle of the week late last year. Cooking, coal fumes, and shisha smoke smells were discernible through sniff tests - to which we continue to receive complaints on odour and noise. There is therefore reason to believe that their low level nature contributes to these complaints.
- 6.31 Accordingly, in line with the absence of details of the as-built flues and equipment, it is considered these works are not effectively designed to filter or discharge such odours. Improperly abated kitchen-based odours alone can pose a threat to the livability of an area. If compounded with unfiltered coal burning fumes which comprise more toxic and arguably more pungent fumes, this threat is exacerbated. There will also be legitimate concerns of the short and long-term health implications of overlooking residents - particularly those who require open windows to circulate/cool their flats. Whereby, mitigation measures have also not been mentioned/proposed.

6.32 If the Inspector is minded to consider the unauthorised flues and equipment as good quality, Figure 5 shows an accumulation of an oil-based byproduct on the adjacent roofs from cooking fumes, which would be indicative that the flues and equipment are not/poorly maintained, reflecting the lack of a management plan (for both the existing immune flue and unauthorised). Neighbours would remain consistently impacted by the unauthorised works.

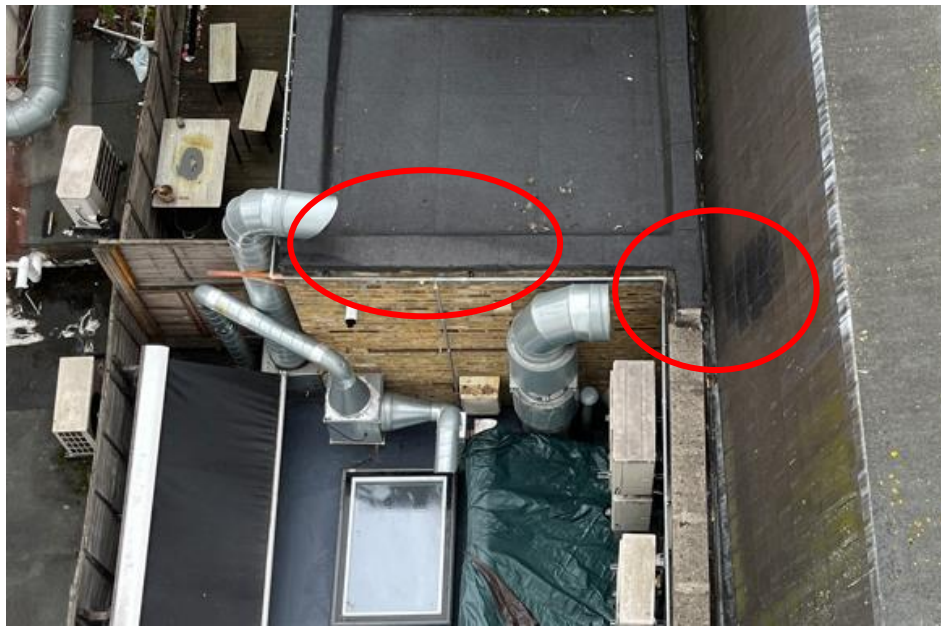


Figure 5 – Accumulation of oil-based byproduct from the kitchen extracts' discharge on adjacent roofs (red circles).

6.33 Lastly, it should be noted that the Council believes that any amended proposal to increase the height of each of the three flues' would not be an appropriate solution moving forward. As this would exacerbate the outlined design harm the Council has set, notably through the introduction of even more dominant steel ducting. Further, particular regard should be paid to the rear of No 51 being directly in front of the residential windows of Carlow House (Figure 6).

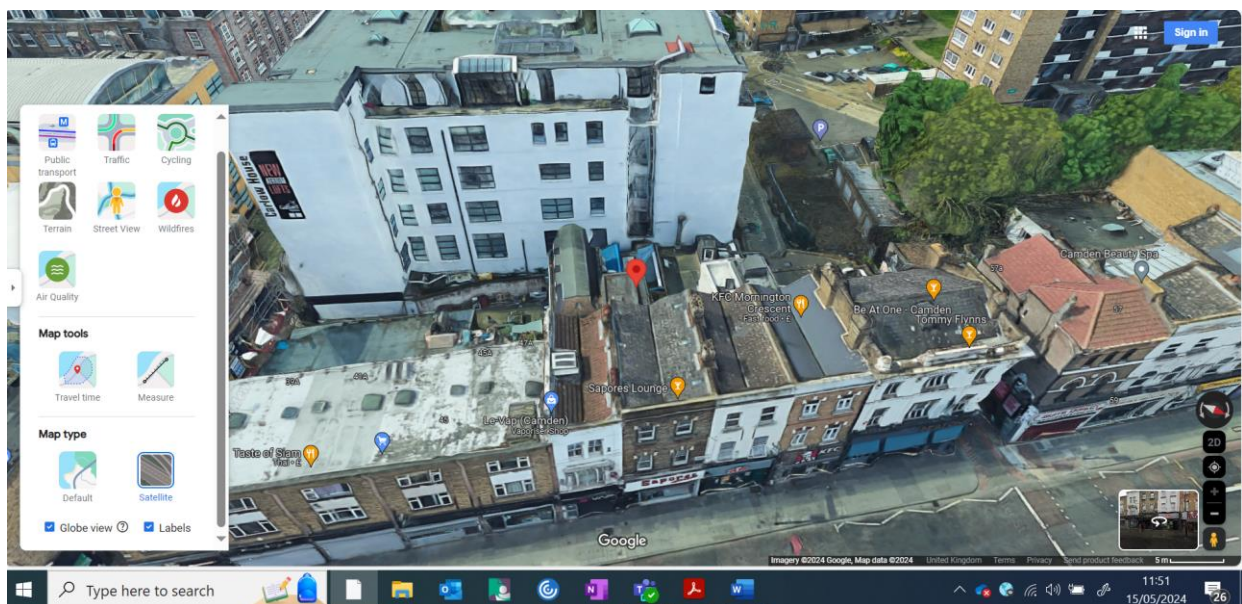


Figure 6 – Position of No 51 in relation to Carlow House.

6.34 In summary Policies A1 and A4 of the local plan, CPG Design, and CPG Amenity state:

“The Council 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”

“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”

6.35 The noise report demonstrates that the unauthorised flues and ancillary plant equipment are actively over the noise threshold. Whilst noise mitigating measures have been suggested, we are in the absence of sufficient justifications on why they are required for the operation of the business, given one (immune) already exists.

6.36 Instances of vibrations have been cited to the Council – another topic not sufficiently explored by the appellant. This would particularly affect the livability of surrounding residential occupiers in the evening. Given the lack of specifications of the existing flues and equipment, we are unable to verify that measures such as anti-vibration mounts have been installed or maintained, nor their overall quality.

6.37 Odours and fumes from coal combustion have not been sufficiently addressed and mitigated against. The low levels of the flues and surrounding tall buildings make them inappropriate and harmful additions in relation to the surrounding residential amenity.

6.38 All the above is supported by the NPPF:

“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.”

6.39 In light of all the above, the appellant has failed to demonstrate how the unauthorised flues and ancillary plant equipment are compliant with Policies A1 and A4 of the Camden Local Plan (2017), CPG Design, and CPG Amenity.

6.40 It should be noted this enforcement case is unique as the Council cannot find any permissions or other active or historic informal or formal enforcement cases within the borough which regards more than two low level flues being erected at single mid-terrace property. The three unauthorised flues in aggregate are unequivocally not a pattern of lawful/authorised development in the immediate area, and would support that low-level flues are contrary to policy and guidance.

6.41 It should also be noted, whilst paragraph 4.5.2 of the noise report states that the kitchen is operational between 11:30am – 23:00pm and the indoor shisha trading between 11:30am – 1:00am, official sites and media platforms suggest operations extend past 2:00am (Mon-Sun)

(Appendix 6 below). Not only is this concerning given the hours tested and assessed by the noise report, but these house are being investigated by the Council's Licensing Team. The trading of indoor shisha consumption is also being enforced against by the Council's Health & Safety Team. Whilst there are no conditions restricting the operation hours, this further demonstrates the impact that these flues operating until 2am can have on neighbouring amenity.

- 6.42 The unlawful use of the premises as an indoor shisha lounge would correlate to greater incidences of coal being fired than if shisha is only smoked on the forecourt of the premises (lawful), as there is more seating indoors. The unlicensed hours of operation into the early am would disturb sleepers.
- 6.43 At this time, it is therefore the Council's contention that this adverse harm excessively carries through into anti-social hours, furthering the adverse harm to the residential amenity through odour, noise, and vibrations.
- 6.44 If the inspector is minded to allow the appeal we would request a condition that specifies the hours the flue and equipment should not be operational (see paragraph 8.4 below).

Unauthorised extension (Design and amenity)

- 6.45 **Appellant:** *"The extension is not readily visible from publicly accessible land. The structure is of a similar size scale and design that is common to the rear of commercial buildings in the area. The extension is single storey and of small scale ensuring it is subservient to the host building. The walls have been finished in a dark grey to further remove dominance of the structure when viewed in the surrounding context. Additionally, the flat roof sits below the level of neighbouring windows, further minimising visibility".*
- 6.46 **Response:** Again, the Council rejects the argument that because it is not visible from the street that it does not result in an incongruous addition. The extension alongside the variety of unauthorised and immune works (as depicted in Figure 2) further harms the residential outlook of the property. Whilst not as stark as the unauthorised flues, this extension, when framed against the now immune first part extension behind No.49, is in fact a dominant structure.
- 6.47 **Appellant:** *"The extension is finished in a discreet grey finish, below neighbouring window height, used only for storage limited visibility from publicly accessible land in keeping with existing extensions of the building and the existing building line."*
- 6.48 **Response:** As stated in the delegated report, this "first part extension" is used for coal firing. The unauthorised extension, though just for storage, is likely to result in comings and goings being physically extended to "below the neighbouring window". Which can further the harm to amenity.

7. Conclusion

- 7.1 The Council has presented a clear timeline of works, including evidence that strongly contradicts the appellant's claims and own evidence, which were already arguably limited in reliability and validity, respectively. It is the appellant's onus to discharge the burden of proof

that all works in the notice were immune from action prior to the service of the notice, they have failed to do so.

- 7.2 The appellant has failed to demonstrate that the unauthorised works positively or even neutrally contributes to the character and appearance host building and surrounding Conservation Area. The Council has argued that these works have a cumulative impact that has resulted in further bulky and incongruous clutter to the rear 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.
- 7.3 In relation with the unauthorised flues and ancillary plant equipment, the appellant has notably failed to provide a variety of important documents for the Council to assess - details of the as-built and noise mitigation measures. The appellant has also failed to sufficiently address vibration and odour abatement (existing and proposed).
- 7.4 The appellant has therefore failed to demonstrate that the two flues and ancillary plant equipment located at the rear of No. 51; and the one flue and ancillary plant equipment located at the rear flat roof of the single storey extension to the rear of nos. 49-51 are compliant with Camden's Noise standards and safeguard the amenities of neighbouring occupiers. Alongside the inherent issue of the low level of the flues, this 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.
- 7.5 The appellant has failed to justify through a sequential test that the three unauthorised flues and ancillary plant equipment are required for the site.

8. Without prejudice, suggested conditions should the inspector be minded to allow the appeal

Alleged breaches 1 and 2: The installation of two flues and ancillary plant equipment located at the rear of No. 51; and The installation of one flue and ancillary plant equipment located at the rear flat roof of the single storey extension to the rear of nos. 49-51.

- 8.1 Details of the retro-fit measures as outlined within the Plant Noise Impact Assessment Report (ref: 20670.PNIA-RPT.01) dated 2nd February 2024 for the *two flues and ancillary plant equipment located at the rear of No. 51 and one flue and ancillary plant equipment located at the rear flat roof of the single storey extension to the rear of nos. 49-51* should be submitted within 1 month of the decision. Upon written approval from the Council the *two flues and ancillary plant equipment located at the rear of No. 51 and one flue and ancillary plant equipment located at the rear flat roof of the single storey extension to the rear of nos. 49-51* should be fully retro-fit in accordance with the relevant consent within ONE (1) Month of that decision. This should be retained and maintained thereafter.

Reason: For the avoidance of doubt and in the interest of proper planning. To ensure the development does not impact the appearance of the host building and surrounding Conservation Area and will safeguard the amenity of the area in accordance with Policies A1, A4, D1, and D2 of the Camden Local Plan 2017.

- 8.2 The external noise level emitted from plant, machinery / equipment shall be lower than the lowest existing background noise level by at least 10dBA, by 15dBA where the source is tonal,

as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity. The noise assessment shall be carried out where required to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary.

Reason: To ensure that the amenity of occupiers of the development site / surrounding premises is not adversely affected by noise from mechanical installations / equipment in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

- 8.3 Machinery, plant or equipment at the development shall be mounted with proprietary anti-vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced within TWO (2) Months of the decision and maintained in perpetuity. Failure to comply will result in the revocation of the planning permission and imposition of the enforcement notice requirements

Reason: To ensure that the amenity of occupiers of the development site and surrounding premises is not adversely affected by vibration in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

- 8.4 Machinery, plant or equipment at the development shall be not be in operation outside the hours of 08:00-19:00 on any given day.

Reason: To ensure that the amenity of occupiers of the development site and surrounding premises is not adversely affected by noise, vibrations, and odours during anti-social hours in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

If any further information or clarification on any matter associated with this case is required, please do not hesitate to contact Joshua Cheung on the above email or direct dial number.

APPENDICES BELOW

APPENDIX 1 – Correspondence with Network Rail.

RE: [REDACTED] - IMPORTANT: land and buildings in Carlow Street and Miller Street

To

Joshua Cheung

Cc

[REDACTED]

@networkrail.co.uk>

Reply

Reply All

Forward

Fri 22/12/2023 11:11

You replied to this message on 03/01/2024 10:25.

EXTERNAL EMAIL

Beware – This email originated outside Camden Council and may be malicious Please take extra care with any links, attachments, requests to take action or for you to verify your password etc.

OFFICIAL

Afternoon Joshua,


Thank you for your email.

From our records, Network Rail appear to be the freeholder of the small strips of land around Carlow House. (Titles 293522 & 316496).

The land at what is now Carlow House was purchased by the London Midland & Scottish railway Company between 1924 and 1925. These conveyances included the building and surrounding roads. The roads were adopted by the council as public highway, and there are two letters within the conveyance for the purchase of this land that document this.

The building was sold in June 1986 by British Rail (now title NGL583351). The sales conveyance stated that British Rail were the successors in title to the London Midlands & Scottish Railway, therefore Network Rail are successors in title to British Rail. This left the roads around within Network Rails Ownership. This is illustrated by the bright green area on the below extract (current ownership)

Titles:
NR Titles include red areas minus the green area.



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RE: [REDACTED] - IMPORTANT: land and buildings in Carlow Street and Miller Street

To

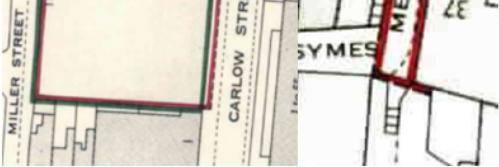
Joshua Cheung

Cc


[REDACTED]

@networkrail.co.uk>

You replied to this message on 03/01/2024 10:25.



Current Ownership:

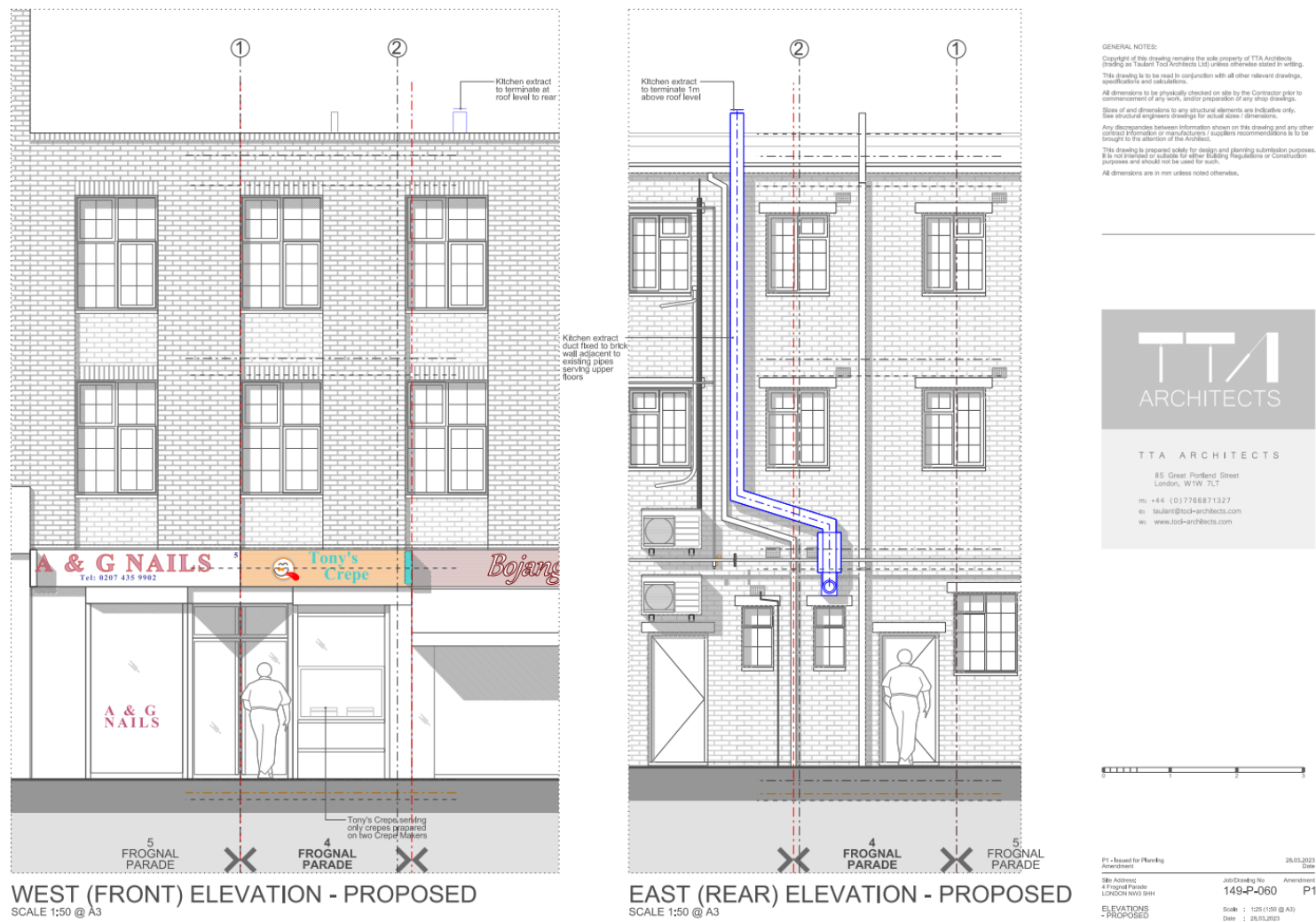


If you require anything else on this, please let me know.

Many thanks,

[REDACTED]

APPENDIX 2 – 2023/1394/P (Frognaal Parade, 158 Finchley Road, London, NW3 5HH) - Proposed installation of extract flue to rear of property to serve ground floor hot food takeaway. Granted on the 3rd October 2023.

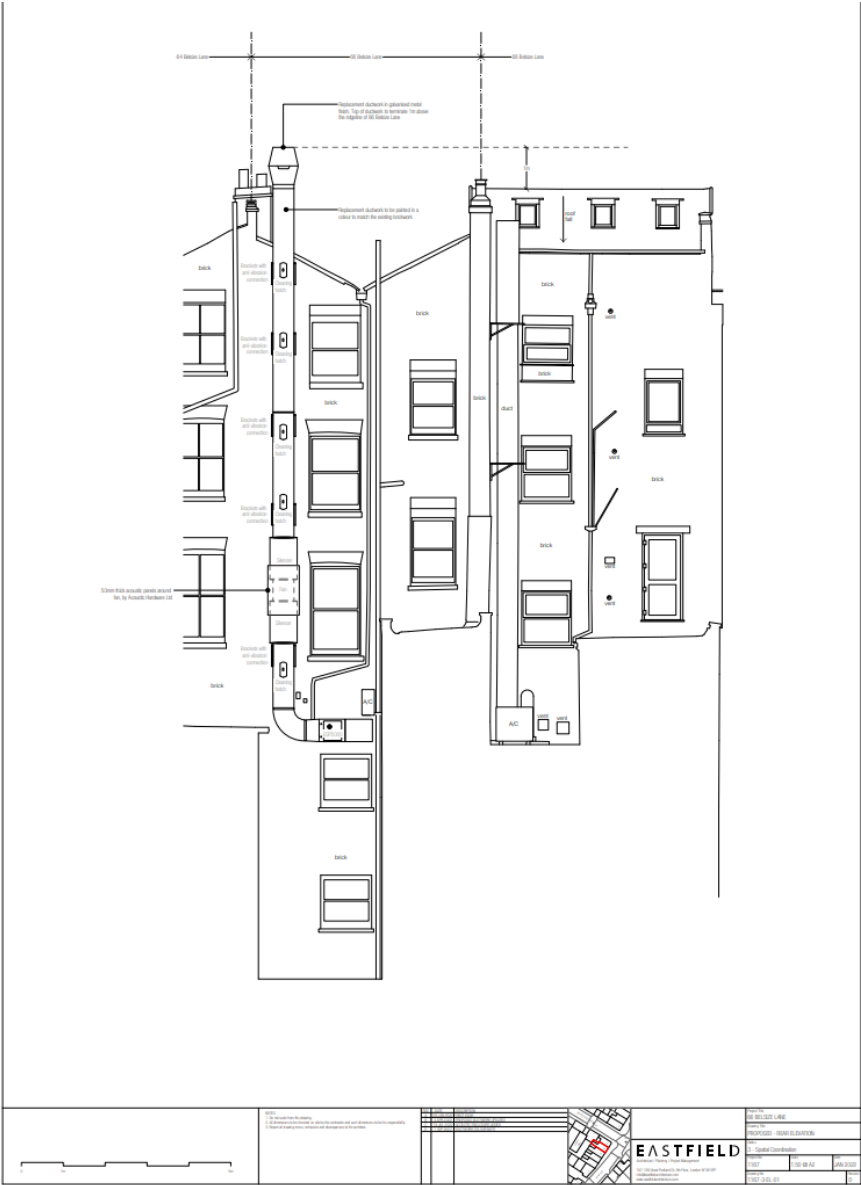


Proposed front and rear elevation drawings



Roofscape of the terrace – not visible from street level

APPENDIX 3 – 2022/2058/P (66 Belsize Lane London NW3 5BJ, Article 4 Direction, Belsize Park Conservation Area) - Installation of replacement kitchen extract ductwork on rear elevation. Granted on the 6th December 2022.

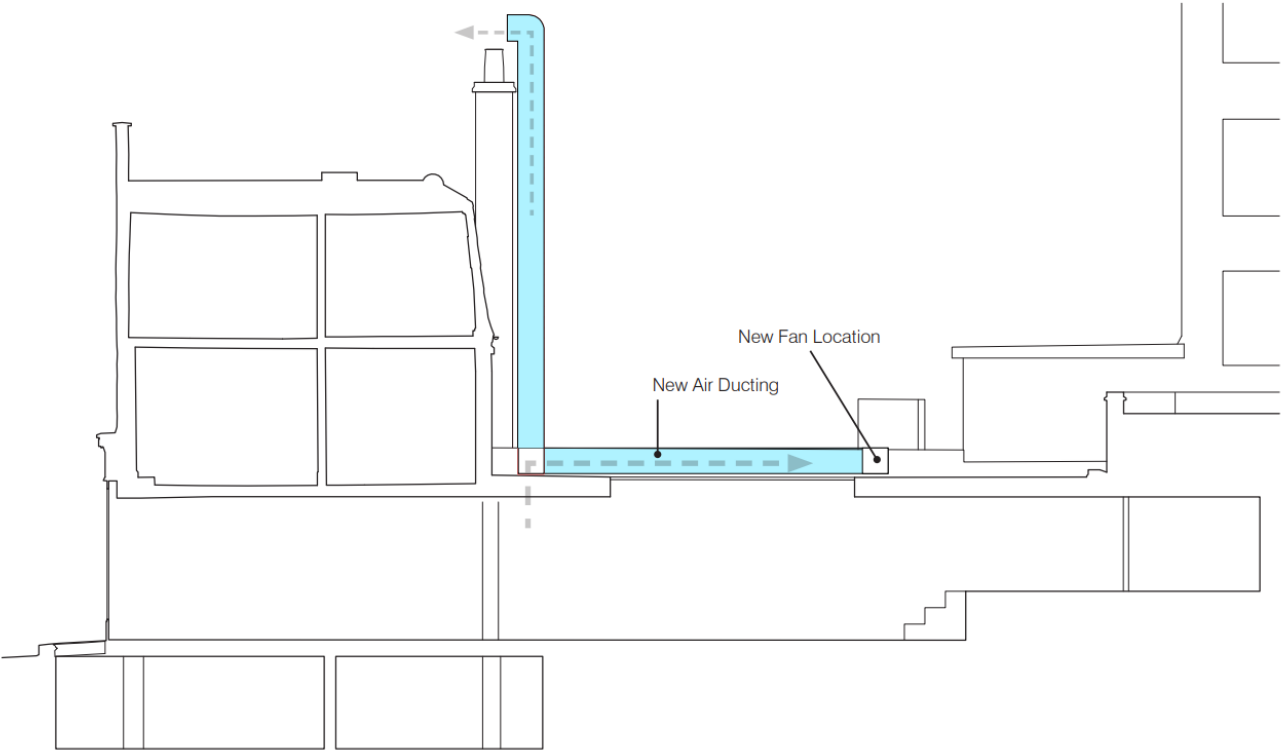


Proposed rear elevation drawing



Roofscape of the terrace – not visible from street level

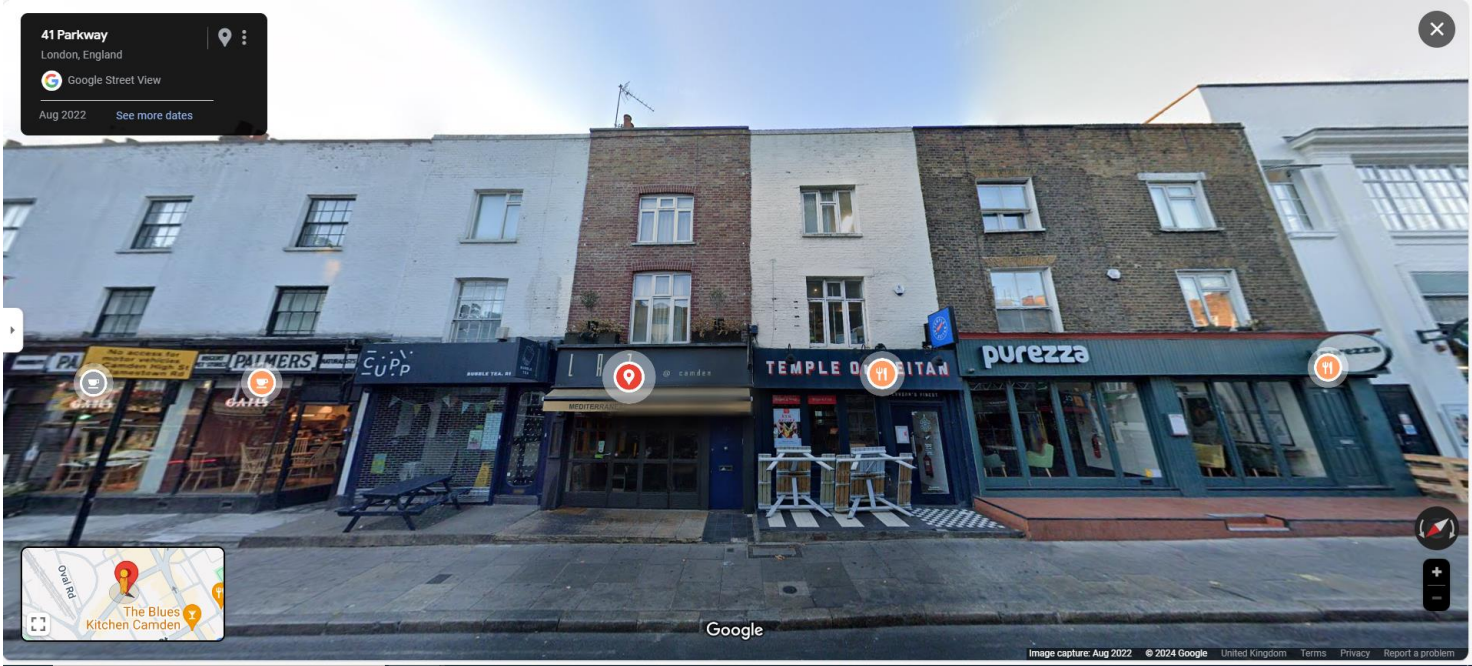
APPENDIX 4 – 2018/1262/P (41 Parkway London NW1 7PN, Camden Town Conservation Area) - Relocation of plant and kitchen extract system to flat roof at first floor level to restaurant (A3) unit (retrospective). Granted on the 13th September 2019.



AS BUILT SECTION

SCALE 1:50
SCALE 1:1

Proposed section drawing – flue and ancillary plant equipment at the rear



Roofscape of the terrace – not visible from street level



ADDITIONAL PROVISIONS FOR APPLIANCES BURNING SOLID FUEL WITH A RATED OUTPUT UP TO 50kW

2.6 For multi-fuel appliances, the *flue* should be sized to accommodate burning the fuel that requires the largest *flue*.

Table 2 Size of flues in chimneys

| Installation (1) | Minimum flue size |
|--|--|
| Fireplace with an opening of up to 500mm x 550mm | 200mm diameter or rectangular/square flues having the same cross-sectional area and a minimum dimension not less than 175mm |
| Fireplace with an opening in excess of 500mm x 550mm or a fireplace exposed on two or more sides | See paragraph 2.7. If rectangular/square flues are used the minimum dimension should be not less than 200mm |
| Closed appliance of up to 20kW rated output which: a) burns smokeless or low-volatiles fuel (2) or b) is an appliance which meets the requirements of the Clean Air Act when burning an appropriate bituminous coal (3) or c) is an appliance which meets the requirements of the Clean Air Act when burning wood (3) | 125mm diameter or rectangular/square flues having the same cross-sectional area and a minimum dimension not less than 100mm for straight flues or 125mm for flues with bends or offsets |
| Pellet burner or pellet boiler which meets the requirements of the Clean Air Act (3) | 125mm diameter This may be reduced to no less than 100mm when permitted by the appliance manufacturer and supported by calculation according to BS EN 13384-1:2002. This calculation can be applied to an individual installation or manufacturers can provide precalculated designs. |
| Other closed appliance of up to 30kW rated output burning any fuel | 150mm diameter or rectangular/square flues having the same cross-sectional area and a minimum dimension not less than 125mm |
| Closed appliance of above 30kW and up to 50kW rated output burning any fuel | 175mm diameter or rectangular/square flues having the same cross-sectional area and a minimum dimension not less than 150mm |
| Notes: | |
| 1. Closed appliances include cookers, stoves, room heaters and boilers. | |
| 2. Fuels such as bituminous coal, untreated wood or compressed paper are not smokeless or low-volatiles fuels. | |
| 3. These appliances are known as 'exempted fireplaces'. | |

2.7 For fireplaces with openings larger than 500mm x 550mm or fireplaces exposed on two or more sides (such as a fireplace under a canopy or open on both sides of a central *chimney* breast) a way of showing compliance would be to provide a *flue* with a cross-sectional area equal to 15 per cent of the total face area of the fireplace opening(s) (see Appendix B). However, specialist advice should be sought when proposing to construct *flues* having an area of:

- more than 15 per cent of the total face area of the fireplace openings; or
- more than 120,000mm² (0.12m²).

Height of flues

2.8 *Flues* should be high enough to ensure sufficient draught to clear the products of combustion. The height necessary for this will depend upon the type of the appliance, the height of the building, the type of *flue* and the number of bends in it, and an assessment of local wind patterns. However, a minimum *flue* height of 4.5m could be satisfactory if the guidance in Paragraphs 2.10 to 2.12 is adopted. As an alternative approach, the calculation procedure within BS EN 13384-1:2005 can be

used as the basis for deciding whether a *chimney* design will provide sufficient draught.

2.9 The height of a *flue* serving an open fire is measured vertically from the highest point at which air can enter the fireplace to the level at which the *flue* discharges into the outside air. The highest point of air entry into the fireplace could be the top of the fireplace opening or, for a fire under a canopy, the bottom of the canopy. The height of a *flue* serving a closed appliance is measured vertically from the appliance outlet.

Outlets from flues

2.10 The outlet from a *flue* should be above the roof of the building in a position where the products of combustion can discharge freely and will not present a fire hazard, whatever the wind conditions.

2.11 *Flue outlet* positions which can meet the requirements in common circumstances are shown in Diagram 17. The *chimney* heights and/or separations shown may need to be increased in particular cases where wind exposure, surrounding tall buildings, high trees or high ground could have adverse effects on *flue* draught.

APPENDIX 6 – Saporesh opening and closing times.

OverviewReviewsAbout

Saporesh Lounge

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Trendy hookah lounge with lavish decor serving cocktails, steaks, kabobs & American-style waffles.
✓ Dine-in ✓ Takeaway

51 Camden High St, London NW1 7JH

Open now

Tuesday12 pm–3 am

Wednesday12 pm–3 am

Thursday12 pm–3 am

Friday12 pm–3 am

Saturday12:30 pm–3 am

Sunday12:30 pm–3 am

Monday12 pm–3 am

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info@saporeshlounge.co.uk

+44 20 7388 1973

Quick link

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GALLERY

Menu

Restaurant

Opening Hours

Sunday-Thursday :
2:00 PM To 2:00AM

Friday-Saturday :
2:00 PM To 2:00AM

Lounge

Direction

Saporesh Desserts, Basement, 51 Camden High St,NW1 7JH

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Saporesh Lounge

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Shisha lounge and restaurant

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Our restaurant @SaporeshRestaurant

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51 Camden High Street, London, United Kingdom NW1 7JH

saporesh.co.uk

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14:0414/05/2024

Top to bottom: Google Maps, Official Website, and Instagram snapshots of Saporesh opening and closing times.