

Delegated Report (Members Briefing)	Analysis sheet	Expiry Date:	04/01/2024
	N/A	Consultation Expiry Date:	14/01/2024
Officer		Application Number(s)	
Leela Muthoora		2022/3337/P	
Application Address		Drawing Numbers	
185-187 Haverstock Hill, London, NW3 4QG		See draft Decision Notice	
Proposal			
Installation of air conditioning and refrigerator units with aluminium enclosure to rear ground floor (part retrospective).			
Recommendation(s):	Grant conditional planning permission		
Application Type:	Full Planning Permission		

Conditions or Reasons for Refusal:	Refer to Decision Notice			
Informatives:				
Consultations				
Adjoining Occupiers:	No. of responses	05	No. of objections	04
Summary of consultation responses:	<p>A site notice was displayed near to the site on the 06/12/2023 (consultation end date 30/12/2023).</p> <p>The development was also advertised in the local press on the 07/12/2023 (consultation end date 31/12/2023).</p> <p>Four objections were received from neighbouring occupiers. Concerns arising from these objections are summarised below:</p> <ul style="list-style-type: none"> • Allowing the applicants to install an industrial size refrigeration unit is a major enabling factor in the running of a food business, especially perishable foods, and opens the door to other problems. • The applicants have in fact, at the same time as improperly operating their refrigeration unit, been improperly depositing their trash, including perishable foods, in a large, commercial bin, for which they have constructed a shelter, next to the refrigeration unit. The bin attracts intruders and rats, and the applicants' employees come and go from the common access area without regard to the flat occupants' privacy. • We are not only looking at the aesthetic unsuitability of the refrigeration unit, the noise nuisance, sleep deprivation and other interference with the immediate residents' quiet enjoyment, but health. • The building was not designed to accommodate a food business and it may not be feasible to legitimately transform it into one which does. • Entrance to no. 187 is not shown on the plans. Impact on the fire exit and route being reduced in width. • The residents have spent the past two years fighting the noise pollution from the applicant's unauthorised development. We cannot be expected to return to the unsupportable position we have suffered. • Indeed, there have been numerous break-ins by people going through the bins looking for food. I personally have encountered men late at night and early in the morning in the entrance to our flats, having got in through the gate. • Acoustic effects on the unit. • It forms a large metal unit that is unsightly. • As the refrigeration unit has been moved to the basement lightwell, why move it back. • A large portion of outside space has been taken up restricting residents' access. • Brick cladding is not appropriate in a conservation area. 			

	<p><u>Officer response:</u></p> <ul style="list-style-type: none"> • <i>The change of use from a bank to a retail unit does not require planning permission as they both fall within the same use Class E and does not constitute development.</i> • <i>Acoustic issues are addressed in paragraphs 4.3 to 4.5</i> • <i>Design issues are addressed in paragraphs 3.2 to 3.6</i> • <i>Access issues are addressed in paragraphs 5.2 to 5.4</i> • <i>Concerns about the bin store are addressed in paragraphs 3.6, 5.4 to 5.5</i> • <i>Concerns about Safety/Crime are addressed in paragraphs 6.1 to</i>
<p>CAAC/Local group comments:</p>	<p>No objections have been received from any local groups.</p> <p>Belsize CAAC had no objections to the planning application.</p>

Site Description

The site is the ground floor and basement commercial unit of a four storey, plus basement, corner building located on the junction of Haverstock Hill and Glenloch Road, part of designated neighbourhood centre. The premises was a bank for many years but has recently been occupied by a Nisa Local convenience food store.

The upper floors at this site and the surrounding area are predominantly residential. There is an alley at the rear where the plant is located which allows access to the residential flats above.

The site is not a listed building but is within the Belsize Conservation Area.

Relevant History

The planning history has been related to the use as a bank since the early 1960's. The most recent planning history related to the site and the current use is an Enforcement Notice and associated appeal decision that was dismissed 29 December 2023.

EN22/0358 – An enforcement investigation was opened in May 2022 and a number of site visits by The Council's Environmental Health noise pollution team determined that the unit is causing a statutory nuisance to neighbouring residential occupiers. This planning application (Ref: 2022/3337/INVALID) was submitted in August 2022 but remained invalid until November despite requests for more information. An enforcement notice was served on the 2nd December 2022 which required the removal of the AC unit by the 14th February 2023. The reasons for taking enforcement action where the noise levels from the unit did not comply with the noise thresholds set out in planning policy and given its location in a Conservation Area the enclosure is poorly designed and visible from the street.

An appeal was made against this enforcement notice on 05/01/2023, Ref: APP/X5210/C/23/3314141.

A Stop Notice was served on the 21st December 2023 and took effect on the 24th December 2023. Site visits were made on the 24th, 27th December and 3rd January to confirm the unit was not operational. The owners had decided to also close the store.

On the 29th December 2023 the Planning Inspectorate issued their decision on the Enforcement Notice. The appeal was dismissed supporting the Council on all grounds and the compliance period was kept at 1 month. The Enforcement Notice required the removal of the plant which has been complied with. The units have been temporarily stored in the front lightwell and the retail unit has reopened.

Relevant policies

National Planning Policy Framework 2023

The London Plan 2021

Camden Local Plan 2017

- A1 - Managing the impact of development
- A4 - Noise and vibration
- D1 - Design
- D2 – Heritage
- C5 – Safety & Security

- C6 - Access for All
- CC1 - Climate change mitigation
- CC2 - Adapting to climate change
- TC2 - Camden's centres and other shopping areas
- TC4 - Town centre uses

Camden Planning Guidance

- Amenity CPG (January 2021)
- Design CPG (January 2021)
- Energy efficiency and adaptation CPG (January 2021)
- Town centres and retail CPG (January 2021)

Belsize Conservation Area Statement 2002

Draft Camden Local Plan

The Council has published a new [Draft Camden Local Plan](#) (incorporating Site Allocations) for consultation (DCLP). The DCLP is a material consideration and can be taken into account in the determination of planning applications which has limited weight at this stage. The weight that can be given to it will increase as it progresses towards adoption (anticipated 2026).

Assessment

1. Proposal

1.1 Planning Permission is sought for the following installation of air conditioning and refrigerator units with aluminium enclosure to rear ground floor.

1.2 The property was a bank for many years but changed to a convenience store after the changes to the Use Classes Order introduced Class E that allowed changes of use between high street uses without the need for planning permission. The convenience store requires refrigeration plant because of the chilled and frozen produce it sells. The previous bank had air conditioning units on the rear elevation; however, the proposed equipment and enclosure is materially different to the plant it replaced.

1.3 The proposal seeks permission for Compressor Ventilation Plant and associated Booster unit located in the rear access way to the upper floor flats to provide air conditioning and refrigeration to the shop. The proposal also seeks permission for an aluminium acoustic enclosure clad in brick slips to ensure attenuation. For the rest of this report the proposal will be referred to collectively as equipment and enclosure.

1.4 The first set of drawings showed the enclosure would measure 7.5m in height and approximately 5.5sqm in floor area. A revision was made during the application to amend the design of the enclosure following concerns raised by officers to reduce the height to 5m which enlarged the floor area to approximately 7sqm. Additional revised drawings included the alterations to the access and boundary enclosure.

2. Assessment

2.1. The principal planning considerations are the following:

- Design and Heritage
- Residential Amenity

3. Design and Heritage

3.1. The Council's design policies are aimed at achieving the highest standard of design in all developments. The following considerations contained within policy D1 are relevant to the application: development should respect local context and character; comprise details and materials that are of high quality and complement the local character; and respond to natural features. Policy D2 'Heritage' states that in order to maintain the character of Camden's conservation areas, the Council will not permit development within conservation area that fails to preserve or enhance the character and appearance of that conservation area.

3.2. The Belsize Conservation Area Statement (2002) advises that 'Belsize Parade' (Nos 147-169 and 171-183 and 185-189 Haverstock Hill) are late 19th century, four storey buildings forming a local shopping parade with flats above, contemporary with and in a similar style to the Glenloch area to the west. A set-back building line creates a broad pavement which is enhanced by a continuous row of mature trees. The Inspector noted the rear part of the appeal site on Glenloch Road has a much quieter and residential character, where background noise levels fall, with properties comprising two-storey red brick terraces with a basement and an attic storey within a slate-faced mansard.

- 3.3. In the assessment of the appeal scheme, the Inspector considered that the unpainted timber enclosure round the chiller unit was at odds with the more traditional materials found elsewhere on the appeal building and Belsize Conservation Area generally. The Inspector noted the prominence of the development was accentuated by its visibility from public vantage points on Glenloch Road and suggested there may be alternative design options for the enclosure which could be explored, in consultation with the Council that would satisfactorily integrate with the existing traditional building without causing harm to the Belsize Conservation Area.
- 3.4. In terms of plant equipment and enclosure, The Belsize Conservation Area Statement (2002) guidelines BE42 (p.43) advises that in assessing applications for air handling equipment, 'the Council will be concerned about the siting of the equipment, particularly in visually sensitive locations and in the proximity of residential accommodation, to ensure that local amenity is protected.'
- 3.5. The scheme was revised during the course of this application to seek a reduction in height of the enclosure and amend the materials from the aluminium and timber enclosure to brick slip cladding to match the host building. The reduction in height has resulted in increased width and floorplan of the structure. Whilst the structure will be visible from Glenloch Road, its impact is lessened being set behind the existing lawful structure currently in use as a bin store and the installation of a fence which limits the visibility. The scale is necessary to accommodate the acoustic mitigation necessary due to the proximity of residential occupiers. The acoustic enclosure would be visible from the side elevation on Glenloch Road; however, it would be read as a half storey a rear addition subordinate to the host building.
- 3.6. The exposed bin store proposed is not considered suitable and accordingly, it is recommended that a condition is proposed to require the submission of details of the brick-slip cladding and a door to cover this area. If the quality of the proposed brick slips are of a sufficiently high quality, the use of bricks across the structure will ensure it is not at-odds with the host building and would be discreet than an exposed metal enclosure. Subject to this condition, the materials of the enclosure are considered acceptable. As such, the Council consider the equipment and enclosure would be appropriately located and would respect the appearance of the host building as it would result in an acceptable extension.
- 3.7. Special attention has been paid to the desirability of preserving or enhancing the character or appearance of the conservation area, under s.72 of the Listed Buildings and Conservation Areas Act 1990 as amended by the Enterprise and Regulatory Reform Act (ERR) 2013.
- 3.8. It is considered that the proposal would result in less than substantial harm to the host building and this section of the conservation area, with some public benefit from enabling the retail facility to function. On balance, it is considered that the proposed equipment and enclosure, subject to conditions included in the decision would not harm the character and appearance of the host property and would preserve the special character of the Belsize Conservation Area, Policies D1 and D2 of the Camden Local Plan 2017 and BE42 of the Belsize Conservation Area Statement 2002.

4. Neighbour Amenity & Noise

- 4.1. Policy A1 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. Policy A1 states that the Council will also seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities. Policy A4 states that the Council will seek to ensure that noise and vibration is appropriately controlled and managed through noise mitigation measures to avoid undue harm on people's health and wellbeing. It states that 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. The above two policies are supported by the guidance outlined in Camden Planning Guidance Amenity (2021).
- 4.2. The policies and supplementary guidance set out how noise and vibration impacts should be considered early in the design process. Following enforcement action which was successful at appeal, the proposal for the equipment and a revised proposed design for the enclosure is sought.
- 4.3. The site is densely surrounded by residential accommodation, not only featuring three storeys of residential accommodation above comprising of six flats in total, directly next to the unit, but also featuring a separation distance of a few metres between the rear of the unit and the residential properties in Glenloch Road. Bedroom windows are located in the wall directly above the equipment, and the closest, Flat B, has a bedroom window about two metres away from the plant. The acoustic consultant recognises the equipment requires significant attenuation to prevent it being a nuisance.
- 4.4. The proposal seeks the retention of the installed equipment of Daikin ConveniPack (Compressor Ventilation Plant) and associated Booster in the open passageway to the rear of the premises. The application is accompanied by a Noise Impact Assessment Report (prepared by Acoustical Control Engineers Consultants) dated 20 December 2023, reference B5540.2. The report details the results of an environmental noise survey that has been carried out. It establishes the lowest background noise level in the vicinity over a 24hour period, allowing noise emission limits to be calculated and set in compliance with the Borough's noise criteria. A lowest noise level (LA90) of 44 decibels has been measured during the survey, indicating a noise emission limit of 26 decibels at the nearest receptor. The report has identified the nearest residential receptor at a distance of two metres. The application satisfactorily demonstrates that the noise emitted by the chiller ventilation plant will comply with the derived noise limits, provided the chiller ventilation plant is enclosed within an acoustic enclosure with an insertion loss as described in the applicants' acoustic consultant's report. The Council is satisfied that the proposal will be in compliance with Camden's noise criteria subject to the attenuation provided by the acoustic enclosure. Conditions stipulating the maximum noise levels the new plant and equipment can operate are recommended in the decision. If the equipment were to cause a nuisance the Council's enforcement team could take further action.
- 4.5. In addition to the standard conditions ensuring that the noise criteria continues to be adhered to and that anti-vibration mountings are used, a condition is recommended to require that a post-installation report is submitted within one month of installation to ensure that the equipment has been installed correctly.

4.6. Subject to the recommended conditions, it is considered that the amenity issues previously experienced by residents have been addressed with the proposed mitigation and the amenity of neighbours will be protected in accordance with policies A1 and A4 of the Camden Local Plan 2017 and BE42 of the Belsize Conservation Area Statement 2002.

5. Access

5.1. Local Plan policy C6 and Camden Planning Guidance Access for all states The Council will expect all buildings and places to meet the highest practicable standards of accessible and inclusive design so they can be used safely, easily and with dignity by all. Alterations to existing buildings and spaces should take the opportunity to improve access for all.

5.2. While the location of the refrigeration equipment within the basement lightwell provided a temporary solution until the noise impacts were resolved, this location is not feasible in the long term due to ventilation and the acoustic enclosure required. While the location of the equipment to the rear reduces the width of the area, and the installation of the fence encloses it, the arrangement allows access and egress for the residential neighbours by using the existing access to the neighbouring flats. Revised plans showing this access have been submitted, and local residents have been given an opportunity to comment on them. While the enforcement team have requested further improvements the applicant could make, the internal access arrangements are a civil matter between the freeholder and tenants.

5.3. Objections have been received in relation to the use of the external space being used for retail use as there is an understanding this is a shared space with the residential properties above as it forms residential access to some of the flats on the floors above. The previous commercial occupant, a bank, had access to this rear space from a door at the rear, however given the use they did not use this space on a daily basis. The Council has been advised that this area formed additional amenity space for the upper flats, and this would be lost due to the development. The applicant has been using this space to store cages after deliveries whilst their lift within the front light well is fixed. This allows cages to be taken directly to the basement on delivery and kept there until they are removed. They have converted a brick outbuilding which was previously internally accessed into a bin store for the unit. This is located next to the residential bin store for the flats above. Residents have reported that the bin store for the commercial use has been kept in a poor state and accessed regularly by the staff of the commercial unit. The use of this area is considered ancillary to the operation of the commercial unit. Any issues regarding whether this is a residential or commercial area falls within matters of ownership, outside of the scope of this application.

5.4. Any noise disturbance to the residential flats from bins, trolleys or problems is outside the control of planning as it is not considered a change of use has taken place.

5.5. On balance, considering the limitations of the available suitable locations within the site, the proposal broadly complies with the Local Plan policy C6 and Camden Planning Guidance Access for all.

6. Safety and Security

- 6.1. Local Plan policy C5 states The Council will aim to make Camden a safer place, by requiring developments to demonstrate that they have incorporated design principles which contribute to community safety and security. The Council will require all developments to incorporate appropriate design, layout and access measures to help reduce opportunities for crime, the fear of crime and to create a more safe and secure environment.
- 6.2. The existing residential access which is being relocated was a locked/secured gate. The applicant has relocated the access to an existing shared gate which fronts a path to access other residential units within the building which is unlocked. There is a locked gate for existing residents at the end of the path, there is no such locked gate for the relocated residents. Concerns have been raised by the existing residents who use the shared gate and the Metropolitan Police Design Out Crime Officer (DOCO) regarding the angular route provide a concealment opportunity, making it vulnerable to antisocial behaviour and crime. Planning permission would not have been required for the fence or changing the access route to the units above, however, as the change to the access results from the proposal it is considered appropriate to secure the gate is locked to replicate the existing situation.
- 6.3. Some of the recommendations by the DOCO are outside the scope of the application given the route is already a residential access route. The main difference for the residents affected as a result of the development is the loss of their locked access. To address concerns raised, the recommendation includes a condition to add a lock to the gate in accordance with the advice and to prevent concealment opportunities and reduce opportunities for antisocial behaviour and crime, and limit access to residents and their visitors.
- 6.4. On balance, considering the scope of the application in relation to the development and the associated alterations to access, and subject to the condition attached to the decision, the proposal broadly complies with the Local Plan policy C5.

7. Conclusion

- 7.1. The proposed plant equipment and associated enclosure subject to the conditions recommended is in general accordance policies A1, A4, C6, D1 and D2 of the Camden Local Plan 2017 and the Belsize Conservation Area Statement 2002.

8. **Recommendation:** Grant Planning Permission subject to conditions.

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 1st July 2024, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.