

Delegated Report		Analysis sheet	Expiry Date:	12/02/2024
		N/A / attached	Consultation Expiry Date:	18/02/2024
Officer			Application Number(s)	
Sam FitzPatrick			2023/2692/P	
Application Address			Drawing Numbers	
35 Gray's Inn Road London WC1X 8PG			Please refer to decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Installation of plant equipment to flat roof of building including air conditioning units, extractors, and associated ductwork. (Retrospective).				
Recommendation(s):	Refuse planning permission and warn of enforcement action			
Application Type:	Full Planning Permission			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				
Consultations				
Adjoining Occupiers:	No. of responses	01	No. of objections	01
Summary of consultation responses:	<p>Site notices were displayed from 19/01/2024 to 12/02/2024 and a press notice was published on 25/01/2024 that expired on 18/02/2024.</p> <p>One objection was received from a local resident, whose concerns can be summarised as follows:</p> <ul style="list-style-type: none"> • The plant equipment would negatively impact amenity in terms of noise and disturbance due to the close proximity to residential units and would not meet the requirements set out in Local Plan policies; • The location of the plant units would undermine the outlook from nearby windows and have an overbearing impact on the residential units; • The plans do not adequately show the location and extent of the application site or proposed units; • The noise impact assessment includes inaccuracies such as incorrectly referring to rooms as not being noise sensitive and suggests further mitigation would be needed. <p><u>Officer Response</u></p> <ol style="list-style-type: none"> 1. Please see section 4 of this report for concerns relating to amenity impacts, which includes reference to noise, disturbance, and outlook. 2. It is noted that the submitted drawings do lack detail with regard to showing neighbouring properties and the location of plant. This is referenced in section 4 of the below report. 			

Site Description

The application site is located on the west side of Gray's Inn Road, just north of the junction with Theobalds Road. The site is a four storey building plus basement and roof level, which consists of a commercial unit at ground and basement level and residential units above. The property is located within the Bloomsbury Conservation Area and is noted as making a positive contribution to the conservation area, but is not listed. However, it is located immediately adjacent to the Grade II listed Yorkshire Grey pub.

Relevant History

Application site

8602011 – Relocation of the existing extract duct for the restaurant at 35 Grays Inn Road from its present location on the rear wall of 2 Theobalds Road to the rear wall of 35 Grays Inn Road. **Temporary permission granted 19/04/1988 until 30/03/1990.**

8501485 – The installation of a ground floor frontage and the retention of an extract duct at the rear of 35 Gray's Inn Road. **Planning permission refused 30/12/1985.**

Reasons for refusal:

- 1) The extract duct because of its siting, adversely affects the appearance of the area which is adjacent to the Bloomsbury Conservation Area, and additionally adversely affects the amenity of adjacent residential occupiers by reason of noise and disturbance.

Nearby sites

134 Gray's Inn Road

2023/3485/P – Retention of air condition unit and louvre at ground floor fascia level on front facade (Retrospective application). **Planning permission refused and warning of enforcement action to be taken issued 17/09/2024.**

Reasons for refusal:

- 1) Due to its location on the building, design and appearance, the air conditioning unit is an incongruous addition which would harm the character and appearance of the building and the Hatton Garden Conservation Area.
- 2) The proposal has failed to justify the need for the air conditioning unit, by way of a Cooling Hierarchy Assessment and Thermal Modelling, thereby failing to minimise carbon emissions.

43 Theobald's Road

2020/4928/P – Alterations to existing flue extract on rear elevation and installation of plant on rear extension roof, removal of awning to shopfront, all in relation to existing take-away use (Class use Sui-generis). (Retrospective). **Planning permission refused and warning of enforcement action to be taken issued 25/09/2024.**

Reasons for refusal:

- 1) The proposed development, by virtue of insufficient noise mitigation associated with the roof-top plant, would fail to achieve a minimum 'rating level' of 10dB below background levels at all testing locations, and thus would fail to safeguard the amenities of adjoining residential occupiers by virtue of potential noise nuisance.

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
- **CC1** Climate change mitigation
- **CC2** Adapting to climate change
- **D1** Design
- **D2** Heritage

Camden Planning Guidance

- CPG Amenity (Jan 2021)
- CPG Design (Jan 2021)
- CPG Energy efficiency and adaptation (Jan 2021)

Bloomsbury Conservation Area Appraisal and Management Strategy 2011

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, but has limited weight at this stage. The weight that can be given to it will increase as it progresses towards adoption (anticipated 2026).

1. Proposal and background

- 1.1. Retrospective planning permission is sought for the installation of plant equipment to the flat roof at the rear of the building. This includes four air conditioning units and multiple fans, which would be installed to the existing ductwork.
- 1.2. Ductwork was permitted to be installed to the rear elevation of 35 Gray's Inn Road on a temporary basis in 1988, to be removed by 30th March 1990. However, the position of the ductwork to the rear elevation of 2 Theobalds Road was not ever granted permission, having been refused in 1985. The existing ductwork matches that which was refused in 1985, rather than that which was temporarily approved.
- 1.3. Although the existing ductwork was not ever permanently approved, the period of time that has since passed would likely mean that the ductwork in its current position would no longer be considered to be unlawful. The later additions of the air conditioning units and the fans that planning permission is now retrospectively being sought for are the subject of this report and planning application.

2. Assessment

- 2.1. The principal considerations material to the determination of this application are as follows:
 - Design and heritage
 - Amenity
 - Energy and sustainability

3. Design and heritage

- 3.1. Local Plan Policy D1 (Design) states that the Council will aim to achieve the highest standard of design in all developments and requires development to be of the highest architectural and urban design quality, which improves the function, appearance, and character of the area. Local Plan Policy D2 (Heritage) states that the Council will seek to preserve and, where possible, enhance Camden's rich and diverse heritage assets and their settings, including conservation areas and the setting of its listed buildings.
- 3.2. The Council's 'CPG Design' outlines that rooftop plant should be concealed and should not be visible from the street or from public vantage points. Installations should also be consistent with the host property in terms of the design and materiality.
- 3.3. The application site is located within the Bloomsbury Conservation Area, wherein the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character and appearance of that area. The property is recognised as a positive contributor by the Bloomsbury Conservation Area Appraisal and Management Strategy. The strategy also states that there are a number of current issues impacting the character and appearance of the conservation area, including alterations to existing buildings – in particular the "*addition of prominent roof level plant/fire escapes that detract from both the building and the character and appearance of the area*" (paragraph 5.4).
- 3.4. The proposal includes the addition of four air conditioning units. Although the submission states that only three of the units would be new additions and one would be a replacement, the existing air conditioning unit shown in the existing plans has not been granted consent. Multiple fans connected to the existing ductwork are also proposed.
- 3.5. It is noted that the location of the proposed plant is all situated to the flat roof to the rear of the property, which is bounded by high walls on three sides. As such, there is very little public visibility of the area at which the plant is sited, and there would be very minimal

impact in terms of increasing the visual prominence of the area of plant equipment. Whilst screening or concealment of plant equipment would generally be preferred, the location of the plant to the rear flat roof (which is a typical location for equipment of this kind) would have limited visual impact and would not be considered to result in unacceptable harm to the character and appearance of the Bloomsbury Conservation Area.

3.6. It is noted that there is a Grade II listed building located immediately to the south; the Yorkshire Grey public house lies on the corner of Gray's Inn Road and Theobalds Road, directly adjacent to the application site. However, the significance of the listed building is largely found in its street-facing elevations, rather than the rear. The proposed plant equipment would be located to the rear and would sit well below the roofline of the listed building, so would not compromise its setting or detract from the appreciation of its special interest in any way. For this reason, it would not be considered that the proposed works would harm the setting of the adjacent listed building.

3.7. The proposal would preserve the character and appearance of the conservation area overall. The council has had special regard to the desirability of preserving the character and appearance of the Conservation Area.

3.8. As such, the proposal is not considered to result in unacceptable impacts on the character and appearance of the host building or the wider conservation area, nor on the setting of the adjacent listed building.

4. Amenity

4.1. Policy A1 (Managing the impact of development) seeks to protect the amenity of Camden's residents by ensuring the impact of development is fully considered. It seeks to ensure that development protects the quality of life of occupiers and neighbours by only granting permission for development that would not harm the amenity of neighbouring residents. This includes privacy, outlook, light availability, and noise. The Council's guidance contained within 'CPG Amenity' provides specific guidance with regards to these aspects.

4.2. Due to the scale and positioning of the proposed plant equipment, it is not considered that there would be any resulting unacceptable impact with regards to light availability or privacy; the primary amenity consideration would be with regards to noise impacts and outlook.

4.3. Although the location of the proposed plant equipment is in reasonably close proximity to the residential windows to the rear of the application site (no.35 Gray's Inn Road), the drawings appear to indicate that there would be a distance of approximately 3.1m from the air conditioning units to the rear wall of the properties on King's Mews. Although not shown in the submitted drawings, this wall would include residential windows, which serve properties on King's Mews.

4.4. Notwithstanding any other potential amenity impacts to the nearby properties, the existing view from neighbouring windows prior to the installation of the plant equipment would have been primarily that of the lightwell area, so the plant equipment would not obstruct any views or harm the outlook of occupants. Additionally, the units themselves are considered to be appropriate features that would not be out of place in a commercial equipment area such as this. Combined with their modest size, the proximity and position of the units relative to nearby windows, and the relatively small amount of plant, the proposal would not be considered to be detrimental to the outlook of residents. However, given the unacceptability of the works, any revised scheme should position any plant or associated equipment as far from residential properties as possible in order to avoid impacts on outlook.

4.5. It is noted that currently there are no acoustic screens or enclosures proposed as part of the development. Whilst the assessment on noise impacts are discussed below, if

another application were to be submitted that included acoustic enclosures of any form, then an assessment with regards to their amenity impacts (including outlook) would be undertaken.

- 4.6. Appendix 3 of the Local Plan sets out the noise thresholds for development and Table C sets out the noise levels applicable to proposed industrial and commercial developments (including plant and machinery). It states that plant should achieve a minimum 'rating level' of 10dB below background levels, both during the day and the night.
- 4.7. A Noise Impact Assessment (prepared by Anglia Consultants, dated 07/11/2023) was submitted in support of the application. This has been reviewed by the Council's Environmental Health Officer, who has advised that the report is limited and does not adequately demonstrate that the noise impact of the development would be acceptable. The noise report states that, prior to mitigation being proposed, a number of matters require clarification. These are: the required plant noise guideline to meet BS4142:2014; that there are no noise sensitive rooms on the rear façade of 35 Gray's Inn Road; and whether the rooms to the rear façade of 30 King's Mews are noise sensitive.
- 4.8. As previously noted, Appendix 3 of the Local Plan makes clear that it is expected that noise reports and assessments will use British Standard 4142:2014 'Methods for rating and assessing industrial and commercial sound'. The appendix also states that Camden's thresholds for noise and vibration evaluate noise impact in terms of various 'effect levels', described in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). Noise reports should follow appropriate noise guidelines such as the Noise Policy Statement for England, NPPF, PPG on Noise, BS 8233 'Guidance on sound insulation and noise reduction for buildings', and Camden's Local Plan. These should then be used to demonstrate that the emitted noise levels should be lower than the typical existing background noise level by at least 10dBA, by 15dBA where the source is tonal, as assessed according to BS4142:2014 with all machinery operating together at maximum capacity.
- 4.9. Using the Valuation Office Agency (VOA) records, it appears that there are four flats within 35 Gray's Inn Road (located at the first, second, third, and fourth floors, respectively). Whilst it cannot be confirmed without floor plans, this would suggest that there are likely to be some noise sensitive rooms to the rear façade of the application site. Similarly, it has been confirmed by objections received to this application, alongside reviewing relevant planning history (in particular application ref. 2012/3877/P), that habitable rooms are located to the rear façade of 30 King's Mews.
- 4.10. The submitted noise report appears to confirm that the proposal would fail to comply with the Council's requirements relating to noise and disturbance, as it states that "*if [the rear of 30 King's Mews] found to be sensitive, mitigation of noise from the existing plant would be extremely difficult, especially if there was a 10dB below background requirement*". As such, the plant as currently proposed fails to comply with the Council's policies.
- 4.11. The applicant has also provided a follow-up letter from the sound consultants that put together the original noise report (dated 26/04/2024), which states that the scheme would need to be redesigned to significantly reduce noise levels at the rear façade of the King's Mews properties. This would include covering the condenser units with acoustic enclosures and relocating and/or replacing the extract fans where necessary. As concluded in this note, the "*proposed plant layout for 3 Gray's Inn Road will not comply with the requirements of Camden Council*". Therefore, additional mitigation would be required to bring the noise levels down further so that 10dB below background levels can be achieved. As such, the development would fail to safeguard the amenities of adjoining residential occupiers, contrary to Policies A1 and A4 of the London Borough of Camden local Plan, which constitutes a reason for refusal.

4.12. Odour impacts on adjoining occupiers must also be considered given the use of the site as a restaurant and the air ventilation equipment proposed. An odour report was submitted with the application which has been reviewed by the Council's Environmental Health Officer, who has confirmed that the odour management and abatement proposed was acceptable.

5. Energy and sustainability

5.1. Local Plan policies CC1 and CC2 are designed to require all developments to minimise the effects of climate change and meet the highest feasible environmental standards, as well as require development to be resilient to climate change, including through adopting appropriate climate change adaptation measures. In accordance with this and CPG 'Energy efficiency and adaptation', active cooling will only be permitted where it is demonstrated that there is a clear need for it, and after all the preferred measures have been incorporated in line with the cooling hierarchy.

5.2. The applicant has provided a cooling statement as part of the Design and Access Statement, which sets out how internal heat generation has been minimised where possible, including by using low energy LED lighting and optimising pipework distances. Additionally, the statement argues that it is not feasible to reduce the amount of heat entering the building due to the existing structure, and that that other passive ventilation measures would not be adequate to provide effective cooling.

5.3. Although it may be likely that, due to the constraints of the site and the use as a restaurant, the lack of cross ventilation combined with the internal heat gain from occupants and from cooking would justify the use of cooling, this is not demonstrated by way of dynamic thermal modelling. The lack of dynamic thermal modelling to demonstrate that the risk of overheating requires mitigation would constitute a reason for refusal.

5.4. The cooling statement that has been provided does not provide adequate justification as to the amount of active cooling; even if the principle of active cooling through air conditioning units could be accepted, the use of four units is not clearly justified. CPG 'Energy efficiency and adaptation' states that "*applicants need to identify the cooling requirement of the different elements of the development... where cooling [is] proposed, the efficiency of the system and details of controls should be provided*" (paragraph 10.9). Although specification sheets have been provided, there is no demonstration of why the specific amount of active cooling as proposed is required. As such, the lack of adequate information in the cooling statement justifying the proposed active cooling would fail to comply with policies CC1 and CC2 of the Local Plan and would constitute a reason for refusal.

6. Recommendation

6.1. **Refuse planning permission for the following reasons:**

- 1) The proposed development, by virtue of insufficient noise mitigation associated with the roof-top plant equipment, would fail to achieve a minimum 'rating level' of 10dB below background levels at the nearest noise sensitive locations, and would thus fail to safeguard the amenity of neighbouring occupiers by virtue of potential noise nuisance, contrary to Policies A1 and A4 of the London Borough of Camden Local Plan 2017.
- 2) The proposal has failed to justify the need for the air conditioning units, by way of a sufficient cooling statement and thermal modelling, thereby failing to demonstrate that carbon emissions would be minimised, contrary to Policies CC1 and CC2 of the London Borough of Camden Local Plan 2017.

6.2. **Issue an enforcement notice:**

That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 as amended, regarding the installation of plant equipment to the flat roof of the building, including air conditioning units, extractors, and associated ductwork, 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:

The installation of plant equipment to flat roof of building including air conditioning units, extractors, and associated ductwork.

What you are required to do:

- i) Completely remove the unauthorised plant equipment, including the air conditioning units and extractors.
- ii) Make good any resulting damages and return the site to its previous state.

Period of compliance: One month

Reasons why the Council considers it expedient to issue the notice:

1. The plant equipment, including the air conditioning units, by virtue of insufficient noise mitigation associated with the roof-top plant equipment, fail to achieve a minimum 'rating level' of 10dB below background levels at the nearest noise sensitive locations, and would thus fail to safeguard the amenity of neighbouring occupiers by virtue of potential noise nuisance, contrary to Policies A1 and A4 of the London Borough of Camden Local Plan 2017.
2. The air conditioning units, in absence of a sufficient cooling statement and thermal modelling, do not minimise carbon emissions contrary to Policies CC1 and CC2 of the London Borough of Camden Local Plan 2017.