

CONSULTATION SUMMARY

Case reference number

2024/4434/P

Case Officer:

Leela Muthoora

Application Address:

153 Fortess Road, London, NW5 2HR

Proposal

Installation of an ESP (Electrostatic Precipitator) ventilation extract system to rear ground floor of restaurant.

Representations

Consultations:	No. of responses	2	No. of objections	2
----------------	------------------	---	-------------------	---

Summary of representations <i>(Officer response(s) in italics)</i>	<p>The owner/occupiers of No. 151 Fortess Road have objected to the application on the following grounds:</p> <p><u>Summary of comments</u></p> <ol style="list-style-type: none">1. The site notice was not displayed correctly as it was in front of 149 not 153 Fortess Road. The application was not communicated to 151 Fortess Road.2. The restaurant's opening hours from 7am to 11pm, with alcohol sales from 11am to 11pm, the late-night operations will financially affect their business.3. The premises license was granted in August. A new premises license application should be submitted based on the current planning application, with updated drawings, a new noise survey, and an accurate assessment of community impacts. The planning and licensing applications should have been considered together.4. The change of use application and proposal for ESP ventilation application should have been carried out together to assess the development.
--	--

5. The change of use is unlawful and was refused in 1999. The use could harm residential amenity due to noise, fumes, refuse, traffic, and light pollution, affecting the viability of the shopping area and neighbouring properties.
6. Photos and online reviews show breaches of planning, the premises have served hot food for more than 10 years and has operated without planning permissions. Additional planning is required for building works shown on the floor plan.
7. Reports of residential neighbour concerns in relation to noise and light pollution, potential safety issues, due to the late-night operation and potentially leading to intoxicated behaviour.
8. Concerns in relation to noise and vibration from equipment to neighbouring commercial premises. The noise survey was conducted prior to the current application and should be updated. The noise assessment is questioned due to discrepancies in measurement locations, with residents feeling their flats were not adequately considered.
9. Other breaches of regulations, including licensing, trading hours, food safety, noise from street furniture and garden, anti-social behaviour, and crime.
10. The objectors made business decisions based on the neighbouring business being a coffee shop with limited hot food, no alcohol sales, and restricted trading hours. They consider the change of use is unfair to their business as it directly competes in terms of services and clientele, affecting their sales, for which they seek compensation for financial losses. There are high numbers of cafes and restaurants in Fortess Road and could lead other businesses applying for longer hours.
11. The current lease terms do not permit the sale of alcohol or hot food and specifies that premises should only be used as a bakery and café within class A1. The non-compliant trading benefits property owners from increase rent, creating an unfair competitive environment.

Summary of response to comments

1. *The site notice was attached to the lamppost for the 21-day consultation period, which complies with the statutory obligation. The requirement is to display site notices near the site and are attached to street furniture, as appropriate. Applications are also published on the website and notifications sent to people who have signed up for email alerts.*
2. *The planning history does not include any restrictions on opening hours on previous decisions, and therefore, it would be unreasonable to restrict opening hours beyond those approved on the licence. The opening hours and hours of*

sale of alcohol from the premises was approved by a Licensing Panel of elected Councillors and are within the licensing framework hours.

- 3. Licensing and planning are two separate regulatory regimes, and the law does not allow us to refuse applications because premises do not have the appropriate consent required under a separate regulation. Duplication with other regulatory regimes should be avoided.*
- 4. The current planning application is for an ESP ventilation duct and grille not a change of use. The application for change of use was made under an application for a Lawful Development Certificate (LDC) and the duct and grille under a full planning application. They are distinct applications, which have different considerations. An application for a LDC is an assessment against regulations set out in legislation and an application for Planning Permission is assessed in accordance with the Development Plan, in particular, policies adopted in the Local Plan 2017. Due to the amendments to The Town and Country Planning (Use Classes) Regulations 2020 which, in effect, amalgamated commercial, business and services uses under 'Class E', the use as a restaurant is a lawful use as the change between café and restaurant no longer constitutes development, as set out in the Use Class Order. A certificate was granted in July 2024 based on current legislation.*
- 5. The comment refers to the reasons for refusal of a change of use in 1999, which was determined under the legislation and development plan policies relevant at the time of determination. As explained in point 4, the Use Class Order changed in 2020 and in this instance, limits the scope to which town centre planning policies can be applied.*
- 6. A report was made to enforcement team in 2016 about the change of use from café to restaurant; however, no breaches of planning use were found. It is noted that under the earlier Use Class Order (1987), cafés could serve some types of hot food. No further reports of breaches of planning have been received by the council since then. As stated previously Class E is a general commercial use typical of town centres which includes café and restaurant uses. Following a visit to the site, it was observed that a timber structure and canopy has been erected to the rear yard without planning permission and has been passed to the enforcement team for further action.*
- 7. Objections were received for the previous proposal, under ref: 2024/3073/P, which the council refused planning permission. The current application has received no objections from the residential neighbours regarding impacts on design, amenity, noise, or safety. Safety concerns regarding issues related to intoxication should be referred to licensing and the police, as relevant. This application which is for a ventilation duct and grille; therefore, in this instance, these matters fall outside of the scope of the control of development in question.*

8. *The applicant has submitted a noise assessment which has been reviewed by the council Environmental Health officer. No contradictory evidence has been provided by the objectors. The noise assessment is relevant to the current application as it measures background noise and references the noise levels of the current proposal. The comments refer to an objection regarding a discrepancy in the measurement locations from the previous application which was refused.*
9. *The proposal is for a ventilation system, with an external grille. The use, opening hours, alcohol sales, pavement seating and food ratings do not fall within the scope of this application. Licensing, Environmental Health, Pavement Licences, Food Safety and Planning are separate regulatory regimes, and the law does not allow us to refuse applications because premises do not have the appropriate consents required under separate regulations. Evidence of breaches of opening and trading hours, noise disturbances, anti-social behaviour or safety concerns fall within separate legislation and should be reported to the relevant authorities.*
10. *Competition between businesses and financial losses incurred are not material planning considerations. While there may be impacts from cumulative town centre issues since the changes in the Use Class legislation in 2020 this is beyond the scope of this development and largely falls outside the control of planning regulation.*
11. *Lease issues are a civil matter with the property owner that fall outside the control of planning.*

Recommendation: Grant planning permission