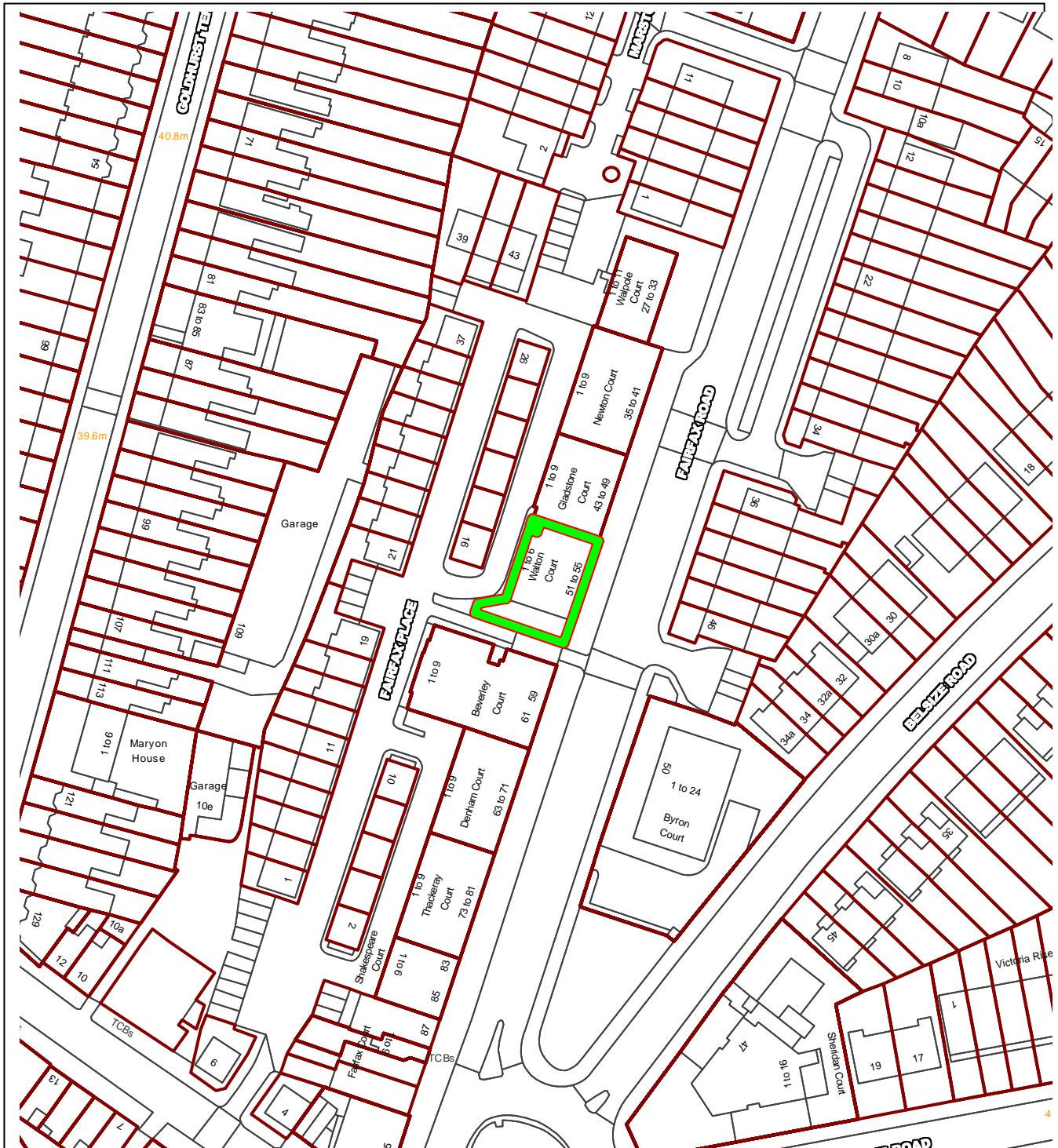


NORTHGATE SE GIS Print Template

51 Fairfax Road- 2013/3896/P



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Side of properties on Fairfax Place with rear of Fairfax Road to the right



Rear of property from the south (note the existing unit)



Rear of property



Rear of property from the north

Delegated Report		Analysis sheet		Expiry Date:		03/09/2013	
(Members Briefing)		N/A		Consultation Expiry Date:		08/08/2013	
Officer				Application Number(s)			
Christopher Heather				2013/3896/P			
Application Address				Drawing Numbers			
51 Fairfax Road London NW6 4EL				See draft decision notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
Retention of replacement air conditioning unit, installation of additional replacement air conditioning unit, installation of acoustic baffles to both units, all on rear elevation of premises.							
Recommendation(s):		Grant conditional planning permission					
Application Type:		Full Planning Permission					
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	23	No. of responses	07	No. of objections	07
				No. Electronic	07		
Summary of consultation responses:		<i>Neighbouring amenity</i> <ul style="list-style-type: none"> Object on the grounds of constant noise which will severely impact on the quiet enjoyment of a residential home (<i>paragraphs 6-14</i>). Despite being refused planning permission previously, the existing air conditioning unit has been allowed to operate for the past 18 months and is left running 7 days a week from early morning until when the unit closes in the evening, and sometimes overnight. This is especially problematic in summer months when windows are open, and in the evening when there is less traffic and the streets are quieter. To add another unit will add to the problem. There is a "canyon" of walls which exacerbates the noise and they would be better off on 					

	<p>the roof. The acoustic screens are unlikely to reduce the volume (<i>paragraphs 6-14</i>).</p> <ul style="list-style-type: none"> • Request for the unit to be relocated to the roof (<i>paragraphs 5 and 12</i>). • The noise survey does not address the requirements of DP28 and the periods throughout the day which it refers to (<i>paragraph 7</i>). • The noise level recorded previously in the acoustic report was 35db but is now recorded as 34db (<i>paragraphs 7 and 9</i>). • The acoustic baffles are unlikely to address the problem as the units are located so close to properties (<i>paragraphs 9 and 10</i>). • The existing unit appears to be getting noisier over time as it ages. The air conditioning units on other properties are not used as intensively and some are switched off altogether (<i>paragraph 11</i>). <p><i>Other matters</i></p> <ul style="list-style-type: none"> • The commercial unit itself is operating as an A3/A4 unit without planning permission (<i>paragraph 14</i>). • It is unclear why an A1 unit requires 2 large air conditioning units to run until 11pm when we live in a temperate climate and for most of the year the temperature is less than 15 degrees (<i>paragraph 14</i>). • The application is made in order to allow it to continue to operate as an unauthorised A3/A4 use (<i>paragraph 14</i>). • If planning permission is granted subject to conditions it will be difficult in practice to enforce based on recent history (<i>paragraph 15</i>).
<p>CAAC/Local groups* comments: *Please Specify</p>	<p>None</p>

Site Description

The site is a four storey building which forms part of a long and continuous terrace on the western side of Fairfax Road. The ground and basement floors are in commercial use (the lawful use being A1, the current use being a mix of A1 and A3 across 51 and 53) with residential above. The site forms part of the Fairfax Road Neighbourhood Centre, which in addition to the terrace also includes properties on Fairhazel Gardens.

Beyond this the surrounding area is predominantly residential. There are two passages through the terrace to allow access to the rear where in addition to servicing areas for the commercial units are a number of residential properties. Opposite the site is further residential. The nearest residential unit is approximately 6m away

The site is not a listed building and is not within a conservation area.

Relevant History

November 2011: Planning permission (Ref: 2011/0962/P) refused at **51-53 Fairfax Road** for 'Change of use from retail use (Class A1) at ground floor and basement level to a mixed retail (Class A1) and restaurant use (Class A3) including installation of extract flue from first floor to roof level on rear elevation'. The reason for refusal was:

The proposed restaurant would result in an increase in late night activity, noise and disturbance to the detriment of the amenity of local residents contrary to policy CS5 and CS7 of the LDF Core Strategy and DP12 and DP26 of the LDF Development Policies.

November 2011: Planning application (Ref: 2011/5949/P) submitted at 51 Fairfax Road for 'Change of use from retail (Class A1) at ground and basement to coffee shop/restaurant (Class A3) including installation of extract flue from first floor to roof level on rear elevation and alterations to shopfront'. This was heard at committee on **28 June 2012** where there was a resolution to grant but with a section 106 legal agreement to cover a number of aspects relating to neighbouring amenity. The applicant subsequently resolved not to enter into such an agreement and appealed against non-determination. In the absence of a legal agreement the deemed reason for refusal was:

The proposed restaurant would result in an increase in late night activity, noise and disturbance to the detriment of the amenity of local residents contrary to policy CS5 and CS7 of the LDF Core Strategy and DP12 and DP26 of the LDF Development Policies.

In **March 2013** the appeal was dismissed.

June 2012: Enforcement case (Ref: EN12/0563) opened at **51 Fairfax Road** into an alleged breach of control into "Installation of air conditioning unit on rear elevation at ground floor level in connection with existing retail unit (Retrospective)". An enforcement notice was served, but was later withdrawn. A further notice was served which comes into force on **23 October 2013**, with a view to compliance by **23 February 2013**.

December 2012: Planning permission (Ref: 2012/5787/P) refused at for "Installation of air conditioning unit on rear elevation at first floor level in connection with existing retail unit (Retrospective)". The reason for refusal was:

The air conditioning unit is detrimental to the amenity of neighbouring properties due to noise nuisance and failing to meet the required standard for noise emission near to sensitive receptors. This is contrary to Core Strategy policy CS5 and Development Policy DP28 of the Camden Local Development Framework.

Relevant policies

LDF Core Strategy and Development Policies 2010

CS1 (Distribution of growth)
CS4 (Areas of more limited change)
CS5 (Managing the impact of growth and development)
CS14 (Promoting high quality places and conserving our heritage)

DP22 (Promoting sustainable design and construction)
DP24 (Securing high quality design)
DP26 (Managing the impact of development on occupiers and neighbours)
DP28 (Noise and vibration)

Camden Planning Guidance

CPG 1 Design
CPG 6 Amenity

Assessment

Proposal and background

1. The proposal seeks to obtain planning permission for an existing unit, which is already in place, and an additional unit. Both would have baffles around them to reduce the noise.
2. There is quite an extensive background to this. The most recent planning application was refused as the noise report submitted alongside it indicated that it would not meet the Council's required standard. Since then an enforcement notice has been served, but the outcome of this is dependent on the outcome of this planning application.

3. The objections note that the current use does not have the benefit of planning permission, and this is correct. The most recent planning application concerning the use was resolved to be granted at committee subject to a section 106 agreement, but rather than agree to this the applicant resolved to appeal against non-determination. The subsequent appeal was dismissed as the hours of operation proposed by the applicant were not agreed with. The 23:00h opening was considered too late, and whilst the inspector did not specify the time she considered was reasonable, the Council had proposed 21:00h.
4. There have been enforcement notices stemming from the case which was opened in June 2012 (EN12/0563). They relate to the existing unauthorised unit, whereas the planning application refers to this as well as the second unit now proposed. On 12 July 2013 an enforcement notice was served which was to come into effect on 23 August 2013. This required the air conditioning unit to be switched off between 8pm and 8am, and that it then be removed within 4 months of the notice being served. On 29 July 2013 a temporary stop notice was served which came into effect immediately and required that the use of the unit cease between 8pm and 8am. This was effectively to cover the period before the enforcement notice came into effect. Unfortunately, the original enforcement notice was subsequently withdrawn on 11 September 2013 due to an error. A replacement was issued on the same day which required that it be switched off between 8pm and 8am and be removed within 4 months of it taking effect on 23 October 2013. Therefore, it should not currently be operating between 8pm and 8am and the period for its removal has now begun. The outcome of this application will affect what action is taken. It is noteworthy that there is a difference between the hours on the enforcement notice and the draft decision notice now proposed, with the latter suggesting 11pm. This is because the applicant has now provided information to demonstrate that there would be no problem with the unit operating to 11pm with the proposed baffles in place. This information was not available when the enforcement notice was originally served, hence why a more conservative approach was taken.
5. The other issue is the unauthorised change of use. A separate enforcement case (EN13/0006) relates to this. This is a separate matter, and although an application is awaited it has not been received. No enforcement notices have been served to date. The acceptability or otherwise of the use would not be altered by what is decided about the air conditioning unit.

Design

6. The site does not fall within a conservation area, but policies CS14 and DP24 ensure that design is an important consideration across the borough regardless of any specific designations. In appearance the unit to be retained and the new one are what would be expected of air-conditioning units. They are essentially a box with a fan to one side mounted on a metal bracket to the rear of the premises. They would sit alongside another similarly sized air-conditioning unit, and a few metres to the south is a larger unit. Looking along the rear of properties within the Neighbourhood Centre there are many examples of air-conditioning units which appear to have been in place for a number of years, even if there are limited planning records for them. The baffles would be timber in appearance and whilst this would be different to an uncovered air-conditioning unit, and slightly larger, it is difficult to argue that the difference is either better or worse.
7. The rears of the properties in this terrace reflect the commercial uses of the ground floors, and they are generally utilitarian with no particular architectural merit. There is public access to them as they back onto Fairfax Place. This aside, the retention of one unit and the addition of another is not considered to be detrimental to the overall appearance of the terrace. Although utilitarian in appearance, such units are best sited to the rear where they are least visible, and low down where long views are less likely, and the units do accord with these principles. Therefore, it is considered that there is no conflict with the policies referred to above. One objection suggests that the units would be better placed on the roof. There are no known reasons why such units could not be placed on the roof, but it is not considered possible to require this given the existing appearance of the rear.

Neighbouring amenity

8. Policies CS5, DP26 and DP28 are of relevance, and reference has also been had to Camden Planning Guidance 6 on Amenity (CPG6). The objections make a number of points about noise. One of the units is

already in place and objections state that it has been operating for a considerable portion of the day and up to 7 days a week. The proximity of it to residential properties has been highlighted as being particularly problematic, and exacerbated by a “canyon” of walls.

9. The applicant has submitted a noise impact assessment (NIA) which has been assessed by Environmental Health officers against the Council’s noise standards. The NIA has detailed the noise standards which are required to be met, and compared the air-conditioning units with the baffle on them. The noise survey which forms the basis of the assessment was carried out over a 24 hour period in March 2012. From 07:00h to 23:00h the minimum background noise level was measured to be 43dB, and between 23:00h and 07:00h it was 35dB. Although an objection suggests that the guidance within DP28 has not been followed, it is noted that a 24 hour period is required by the policy and that it does divide this into those two time periods. With the survey being carried out at the site itself the results do take account of the specific circumstances of the site, and so are applicable regardless of the position of the walls and how they affect noise.
10. The guidance within DP28 is that when operating the noise emissions should be at least 5dB below the existing background measurement at a point 1m from the sensitive facades. When equipment would have a particularly distinguishable noise then special attention should be given to it, and a reduction of 10dB may be justified. The NIA identifies the nearest sensitive façade as being opposite where the units are proposed.
11. The applicant has used the stricter reduction of 10dB as the yardstick, whereas the reduction of 5dB is more usual for an air-conditioning unit. The standard aimed for is 33dB (10dB below the background level of 43dB) between 07:00h and 23:00h, with 08:00h to 23:00h being the hours requested by the applicant. The previous planning application was refused because the noise was predicted to be 2dB over the standard, hence why mitigation measures are now proposed. Based on the manufacturer’s specification the NIA has concluded that an acoustic baffle should be installed around each unit. Following on from this recommendation it is proposed to be constructed of timber no less than 10mm thick with a 30-50mm absorbent non-flammable backing (such as Rockwool of fibre glass). The barrier would be positioned as close as possible to the units and be large enough so as to block the line of sight to the nearest window. With this in place the noise level at the nearest sensitive receptor is predicted to be 32dB, and so under the stricter standard by 1dB, and 6dB under the standard more usual for air-conditioning units.
12. Therefore, with the baffles in place the proposal would meet both standards for noise from plant. It is recommended that a condition requires the baffle to be in place in order for this improvement to be secured and a condition could be imposed to ensure that it is installed around the two units and maintained in place thereafter. With this it is not expected that there would be noise nuisance caused to neighbours.
13. An objection notes that noise from air-conditioning units increases over time as they age. This is undoubtedly true, but a condition would be imposed to ensure that the required standard is met and at the point that it was not then this could be enforced against.
14. In terms of whether or not the units could be placed on the roof, the argument is the same when considering neighbouring amenity as it is for design: if it is not possible to identify a particular problem with the current location then this could not be required.
15. It is important that the hours when the unit is operated is controlled to ensure that nuisance is not caused to neighbouring properties. The applicant has proposed that they can operate between 08:00h and 23:00h. Reference is made to the recent appeal decision which rejected the proposal that the unit itself be open until 23:00h. The inspector’s conclusion was reached having considered a number of factors but was principally concerned with people arriving and leaving the site. Although the appeal decision is a material consideration, the hours of operation for the proposed air conditioning unit cannot automatically be rejected based upon its conclusion, as they would have different impacts than a restaurant use. It is difficult to object to the hours the applicant proposes the units to operate given that the NIA demonstrates that they accord with the relevant guidance for the time period of 07:00h to 23:00h.

Other matters

16. A number of other matters have been raised by objectors. As noted above the unit does not have planning permission for its current use and there is a separate investigation into this currently with the enforcement team. This is not considered to bear on the acceptability of this planning application, although there is certainly no support for the way in which the applicant has not obtained planning permission before operating. It is also questioned why an A1 unit (which is what the site's lawful use is) would need 2 air conditioning units to run until 11pm. Many A1 units do have air conditioning units, but that aside it is not considered possible to restrict them to particular uses. Following on from this, it is suggested that the application has been made in order to allow the unauthorised use to continue. Whether this proposal for the a/c units receives planning permission or not would not commit the Council to a particular position on the use itself, which would be dealt with on its own merits with the recent appeal decision being a significant factor in this.
17. Finally, it is queried whether or not conditions can be enforced, but the power exists for them to be enforced against if they are breached.

Conclusion

18. In design terms the proposal is considered acceptable: the rears of properties in this terrace are quite utilitarian and the addition of the units with baffles would not impact negatively on the appearance of the building or terrace to the extent that an objection could be raised. The other main consideration is the impact on neighbouring amenity, and this specifically concerns noise. A baffle is now proposed which would ensure that the units would accord with the strictest standard the Council uses. This is considered acceptable and in accordance with the relevant policies. There have been a number of issues due to the operation of the site, but they are not considered to suggest that this particular planning application should be refused. Equally, the granting of permission does not imply acceptability of any future applications at the site or the hours over which they could operate.

Recommendation: Grant conditional planning permission.

DISCLAIMER

Decision route to be decided by nominated members on 4th November 2013. For further information please go to www.camden.gov.uk and search for 'members briefing'

Christopher Wickham Assocs
35 Highgate High Street
London
N6 5JTApplication Ref: **2013/3896/P**
Please ask for: **Christopher Heather**
Telephone: 020 7974 **1344**

03 October 2013

Dear Sir/Madam

DRAFT
DECISIONTown and Country Planning Act 1990 (as amended)
Town and Country Planning (Development Management Procedure) Order 2010
Town and Country Planning (Applications) Regulations 1988**Full Planning Permission Granted**Address:
51 Fairfax Road
London
NW6 4EL**DECISION**

Proposal:

Retention of replacement air-conditioning unit, installation of additional replacement air-conditioning unit, and installation of acoustic baffles to both units, all on rear elevation of premises.

Drawing Nos: Location plan; 10-429-P-011 C2; Proposed A/C Baffles - 3D; Proposed A/C Baffles - Elevation; Proposed A/C Baffles - top view, Noise Impact Assessment (Ref: 7648-NIA-02, dated 7 June 2013).

The Council has considered your application and decided to grant permission subject to the following condition(s):

Conditions and Reasons:

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan; 10-429-P-011 C2; Proposed A/C Baffles - 3D; Proposed A/C Baffles - Elevation; Proposed A/C Baffles - top view, Noise Impact Assessment (Ref: 7648-NIA-02, dated 7 June 2013).

Reason: For the avoidance of doubt and in the interest of proper planning.

- 3 The units hereby permitted shall not be used except between 08:00hrs and 23:00hrs.

Reason: To safeguard the amenities of the adjoining premises in accordance with policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 4 Prior to the first use of each unit following the date of this planning permission, the baffles hereby approved shall be installed around each unit in accordance with the specification outlined in the Noise Impact Assessment (Ref: 7648-NIA-02, dated 7 June 2013) and maintained as such thereafter

Reason: To safeguard the amenities of the adjoining premises in accordance with policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 5 Noise levels at a point 1 metre external to sensitive facades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment (or any part of it) is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Council's Compliance and Enforcement team [Regulatory Services], Camden Town Hall, Argyle Street, WC1H 8EQ (Tel.

No. 020 7974 4444 or on the website
<http://www.camden.gov.uk/ccm/content/contacts/council-contacts/environment/contact-the-environmental-health-team.en> or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

Your attention is drawn to the notes attached to this notice which tell you about your Rights of Appeal and other information.

Yours faithfully

DRAFT

Culture and Environment Directorate
(Duly authorised by the Council to sign this document)

DECISION