

<b>Delegated Report</b>		Analysis sheet		Expiry Date:	04/04/2013
		N/A / attached		Consultation Expiry Date:	14/03/2013
Officer			Application Number(s)		
Miheer Mehta			2013/0761/P		
Application Address			Drawing Numbers		
2 England's Lane London NW3 4TG			Refer to Decision Notice		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
CMD 4/4/13			See 4/4/13		
Proposal(s)					
Installation of brick and louvred enclosure at rear ground level to accommodate and ventilate the extraction equipment in connection with the existing cafe/restaurant (Class A3).					
Recommendation(s):		Refuse Permission and Issue Enforcement Notice			
Application Type:		Full Planning Permission			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	17	No. of responses	04	No. of objections	02
Summary of consultation responses:	<b><i>A Site notice was erected on the 13/02/2013 – 06/03/2013 and a press notice was also displayed in the Ham&amp;High on the 21/02/2013.</i></b>					
	<u>Local Residents</u> 21 Antrim Mansions – Objects for the following reasons;  a) The installation of the proposed flue, by reason of this close proximity to residential uses and the method of ventilation is most likely to result in the emission of fumes and ineffective ventilation. This would result in a loss of (i) quality of life and (ii) amenity for occupiers and neighbours and (iii) subject them to disturbance from plant and machinery.  b) In the case of 66 Mansfield Road, LB Camden resisted the installation of a low level flue of the type applied for in this case and required the installation of a conventional high level, vertical flue.  c) The applicant states that there have been no complaints about the present low level flue; however serial complaints have been made to LB Camden Environmental Health Dept from Cllr Tom Simon and occupiers of flats 1, 4, 21 and 36 since 2010 to 2013.  (See Officer's comments)  1 Antrim Mansions – Objects for the following reasons;  d) The proposed work will directly impact me from a noise and odour viewpoint on my premises which back directly on to this address. I am already assaulted with the smell of cooking and the associated noise of the staff sitting around in the area.  (See Officer's comments)  2, 2B, 2C Englands Lane, Flat 1, 2 and 3 Antrim House and Flat 2, Priory Mansions England's Lane are in support of the application.  <b><i>Officer's comments</i></b> – Consultation for the proposed development included sending letter to neighbouring occupiers, a site notices and a press notice.  <i>In response to concerns of raised in relation to points a) and d), these have been addressed in the main report. Point b) is in regards to a separate case, and each case is dealt with on its own merits. In regards to point c) Environmental Health have confirmed no complaints have been made, however, even if complaints were made this was due to the existing system, not the proposed system as part of this application.</i>					

<b>CAAC/Local groups* comments:</b> *Please Specify	<b>Belsize CAAC – No objection raised.</b>
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## Site Description

The application relates to a corner site at the junction of England's Lane and Antrim Road. The building on the site is 3-storeys in height and contains loft accommodation. The ground floor commercial unit is currently in use as "Ginger and White", which is essentially a coffee shop which also sells hot food, sandwiches and cakes, and has display windows onto both streets; the upper floors of the property are in residential use.

The ground floor unit is part of a commercial parade which forms part of the England's Lane Neighbourhood Centre. The site is located within the Belsize Conservation Area.

## Relevant History

### Application site:

**October 2010 ref. 2010/0028/P** - Planning permission granted for the subdivision of the existing shop unit (Class A1) into 2 separate units to provide a restaurant (Class A3) and a shop unit (Class A1).

A number of conditions were stated as part of the application, none of which were discharged;

1. Notwithstanding the details of the extract duct on the rear elevation that are demonstrated on the drawings hereby approved, the details of the precise form and location of the extract duct shall have been submitted to and approved by the Council prior to the commencement of the relevant part of the work. The extract duct shall not be provided otherwise than in accordance with any approval given, and shall thereafter be maintained in effective order to the reasonable satisfaction of the Council.

2. The extract duct shall be extended to the highest point of the premises and shall discharge vertically upwards, with a vertical discharge point of 1m above the eaves of the roof and away from any openable windows. The discharge end shall not be fitted with a Chinaman's Hat, but shall be fitted with an accelerator cone to increase the discharge velocity in order to assist the dispersion of fumes/odours at high level so as to prevent odour/fumes nuisance adjoining residents.

3. The proposed extract system shall be fitted with both removable/washable and carbon activated filters to prevent smells & fumes nuisance to nearby residents. Grease filters shall be an integral part of the canopy, followed by course pre-filter, fine pre-filter and finally activated carbon filters.

**August 1986** Planning permission refused for change of use from retail shop to Estate Agents office, ref. 8601143.

### Other sites:

#### **2b England's Lane**

**October 1987** Planning permission granted for change of use from retail to mixed cafe/retail use, ref. 8702693.

## Relevant policies

### **LDF Core Strategy and Development Policies**

CS1 (Distribution of growth),  
CS5 (Managing the impact of growth and development),  
CS7 Promoting Camden's centres and shops  
CS14 (Promoting high quality places and conserving our heritage)

DP12 Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses.

DP16 The transport implications of development

DP24 Securing High Quality Design

DP25 Conserving Camden's Heritage

**Camden Planning Guidance 2011**  
**CPG 6 Amenity**  
**Belsize Park Conservation Area Statement (2002)**  
**London Plan 2011**  
**NPPF 2012**

**Assessment**

**Proposal**

Permission is sought for the following;

- Installation of brick and louvred enclosure to the face of the rear ground floor elevation at the rear of the commercial unit to accommodate and ventilate the extraction equipment in connection with the existing cafe/restaurant (Class A3).
- As part of this proposal, this would include the removal of the existing extraction equipment located in the same location as the proposed extraction equipment.

**Background**

The property is in use as a coffee shop (A3) and has had planning permission for A3 use (see planning history); however the conditions attached to this permission were never discharged. In land use terms, the principle of the use of the commercial unit as A3 is accepted. Therefore the concerns relate to the existing extraction system on site and this proposal was put forward by the applicant due to an enforcement investigation. The enforcement investigation confirmed the main issue was that the A3 use was implemented but the approved extractor flue was not installed. The existing occupier has an unlawful extraction system installed, which does not have a flue that runs above the eaves of the roof of the building. It is considered that the current extraction system impacts detrimentally to neighbouring residents in terms of noise and odour.

The existing kitchen is located to the rear of the ground floor commercial property, which is set at a lower level to the main commercial area located to the front. There is an access way from the kitchen into the courtyard to the rear. The proposed extraction equipment enclosure would be located on the outer wall of the rear elevation of the kitchen and would replace the existing system and would face an internal courtyard.

There is also an existing flue which emerges from the neighbouring property at 2b Englands Lane. This flue projects horizontally onto the flank wall of the back addition of the adjoining property and is low level. It does not appear that planning permission was approved for the erection of this flue, however, it is considered likely that the flue has been in place for over 4 years and therefore would now be considered lawful. This flue is considered to create unacceptable noise and odours to neighbouring properties and is a for a more intensive A3 use. It is considered that this flue and the existing flue at the application property collectively provides for a poor environment in regards to noise and odours.

**Design**

Extraction flue and ventilation

The original permission proposed a ventilation duct that would sit along the inside wall of the back addition and rise above the eaves line of the roof. It is considered due to legal consent not being granted from the freeholder and some of the leaseholders of the flats (above the commercial unit), this would not be possible. This is a legal matter and therefore appears to be a significant issue.

Camden Planning Guidance 2011 specifies that in general ducting should be integrated within the building. Where this is not possible it should be located on rear or side elevations and must not obscure access to daylight and sunlight or provide nuisance for occupants of the development or adjacent buildings.

Therefore, there are obvious constraints with the application site and in order to continue to use the commercial unit as A3, the applicant has tried submitted a low-level extraction system. Whilst on site, it was apparent that the frying of chips within a relatively small fryer appears to be the main instigator that triggers odour and the knock-on effect is the noise from the fan within the existing extractor system. The extraction system proposed is geared up for smaller and less demanding food businesses, however it requires more maintenance.

The proposed extraction system comprises of a new "quieter" extractor fan, which replaces the existing fan. A new duct will be proposed which curves out from the location of the fan and sits facing in the direction of the rear of the adjacent property (2b Englands Lane). This proposed duct also includes a silencer which reduces noise emitting externally. The duct would face into the louvre (made from aluminium), which is part of the brick enclosure. The brick enclosure would also include a wooden door (which would provide maintenance access) and would have rubber seals around it with a bitumen roof on concrete lintels.

Overall the brick enclosure would be minimal in size and would be similar in appearance to adjoining storage areas linked within the buildings in close proximity. The flue would not be visible from the wider public along Antrim Road; however the enclosure may be visible from limited vantage points within Antrim Road, although an existing black iron gate would prevent full view of the enclosure. It is considered that its appearance would be acceptable and would not be a significant addition that would compromise the host building.

It is considered that the proposal would be sensitively positioned and appropriately insulated in comparison to the existing flue which improves the existing situation. However, It is considered that given the wider context the proposed appearance would not have a detrimental impact on the character and appearance of the host building or the wider conservation area.

### **Amenity**

The existing flue at the application property was erected unlawfully. The existing flue at the rear of 2b Englands Lane was also erected unlawfully, however it is now immune from Enforcement Action. It is considered that both of these existing flues create a poor environment for local residents. Both of the commercial units have residential flats on the upper floors which would receive the most significant impact in terms of noise and odour from these flues. Other neighbouring flats would still be impacted either by window openings or overlooking of these flues.

The proposed flue is in a similar position to the existing flue. It is clear that the existing situation is not great, in particular in terms of noise and odour.

### **Noise**

An Acoustic Report was submitted as part of the application. The Report concludes that the proposed ventilation equipment would meet Camden's Noise Criterion and would not have a detrimental impact on the amenity of neighbouring occupiers in terms of levels of noise in comparison to the existing situation subject to meeting the specific requirements addressed by the Environmental Health Officer (see within smells/fumes section below).

### **Vibration**

No concerns have been raised in relation to vibration on both the existing and proposed ventilation system.

### **Smells/Fumes**

According to the Department for Environment, Food and Rural Affairs (DEFRA) it is advised that low-level discharge should be avoided and should not discharge into a courtyard. Generally, extract ducts and flues should terminate 1m above eaves height in order to protect the amenity of any neighbouring residents. In this case the proposed flue would terminate to the rear of the building at low level. In order to ensure that the proposed odour control system is sufficient to ensure that there is no detrimental impact on the amenity of residential occupiers or residents further away, details were submitted by the applicant. The proposed system includes a maintenance schedule which provides daily, fortnightly, monthly, quarterly and annual checks to ensure the proposed system is effective.

The Council's Environmental Health Team was consulted on the proposal scheme and considered that the method of odour control would be sufficient to compensate for the flue terminating below eaves height subject to a number of conditions, which are detailed below.

*"Having considered the acoustic report provided by Envirosound and planning statement provided by Analytica Business Solutions, dated the 5<sup>th</sup> February 2013, I'm satisfied odours and noise will be suitably mitigated from the proposed low level extract."*

"As such as, while I have no objections to this proposal, I recommend the inclusion of the following conditions to form part of the any permission.

- Only the proposal as sited within the Planning statement dated the 5<sup>th</sup> February 2013 shall be conditioned to form any such permission. The extract system shall be fitted with removable washable bafflers and suitable replaceable grease block filters as described in the Planning Statement to prevent smells and fumes. Grease filters shall be an integral part of the canopy with fine pre-filter, followed by course pre-filter/baffle.
- The development hereby permitted shall be carried out in accordance with the Planning statement dated 5<sup>th</sup> February 2013 that includes the mechanical services plan and appendix detailing restrictions of equipment and maintenance schedule dated 5<sup>th</sup> February 2013; and drawing proposed plan and proposed detail dated the 5<sup>th</sup> February 2013. The extract duct shall be low level and fitted with a silencer with dispersal via a venturi effect reducing louvre sufficient for an air volume of 1250 l/s so as to prevent odour/fumes nuisance adjoining residents.
- Any such permission granted, shall restrict food preparation to the existing type, limiting any deep-frying to a single fryer with an oil capacity no larger than 6 litres. Any deviation from the mechanical service plan or type of food preparation to affect the existing malodour characteristic, as cited in the Planning Statement dated the 5<sup>th</sup> February 2013 shall require further planning permission to mitigate the odour and noise.
- 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).**"

Notwithstanding the Environmental Health officer's observations, planning officers considered the wording and specific requirements of the suggested conditions were not compliant with Circular 11/1995 and therefore are not enforceable. Consequently the low level flue can not be acceptable in protecting neighbouring amenity.

It is considered that these conditions would not be possible to enforce against due to their specific nature. It is also apparent that no conclusive evidence exists which confirms similar low level systems are effective in the short or long term and consistent maintenance is required to prevent odours emitting. Therefore, this proposal would be inconclusive and ineffective when compared to a more traditional extractor flue. The constraints of not being able to erect an extractor flue along the inside flank wall of the property in accordance with the original permission which would sit above the eaves

line of the roof would remain the ongoing issue.

Whilst the noise of the fan may be reduced, when compared to the existing situation, it is considered that the proposed flue would still have a detrimental impact on the amenity of neighbouring occupiers in terms of fumes and noise.

### Outlook

Concerns have been raised in regards the proposed impact on the outlook of residents in the properties on the upper floors. The planning system cannot protect views from individual private properties, but it can take into account outlook in terms of the effect of buildings that have an overbearing appearance or impact on neighbouring properties.

The nearest windows to the proposal are at first floor level (above upper ground floors to the rear). The existing outlook of these windows is towards the rear of the site. The resulting outlook of the proposal would be a similar situation; the brick enclosure and felt roof would be visible from the windows but would directly below the back addition and generally out of view. The proposal would not be considered to have an overbearing appearance or impact on neighbouring occupiers.

### **Other matters**

The agent has provided confirmation that the applicant would be in a position to remove the existing extraction system and implement this proposed extraction system within 3 months of the date of this decision. The chair of the management company that represents all of the leaseholders in Antrim House and Priory Mansions has also confirmed there to be no objection to this proposal in principle.

### **Conclusion**

It is considered that the overall objective to remedy the existing situation and provide an adequate sound insulated and odour attenuated ventilation system has failed. The existing business is in operation and the applicant has proposed a solution, which in this instance, due to the various constraints and issues raised, is not in accordance with the spirit of the Council's policies and it is considered that the proposal would be unacceptable.

### **Recommendation**

1. Refuse planning permission

2. Issue Enforcement Notice

That the Head of Legal Services be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended and to pursue any legal action necessary to secure compliance and officers be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

**The Notice shall allege the following breach of planning control:**

The unauthorised erection of a low level extract duct.

### **WHAT YOU ARE REQUIRED TO DO:**

The notice shall require that within a period of 6 calendar months of the notice taking effect:

1. The unauthorised extract duct/extraction system and associated fixtures are removed and cease the A3 use;

or

2. Implement the planning permission 2010/0028/P in its entirety, fully discharging the outstanding



conditions.

**REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE.**

1. The proposed equipment, by reason of its low lying location, ineffective method of ventilation for fumes and attenuation of noise would harm the amenity of neighbouring residents contrary to policies CS5 Managing the impact of growth and development, DP26 Managing the impact of development on occupiers and neighbours and DP28 Noise and Vibration of the London Borough of Camden LDF (Adopted 2010).

