

<b>Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>	24/08/2015 Extended: 19/11/2015
		N/A		<b>Consultation Expiry Date:</b>	30/07/2015 Extended: 19/11/2015
<b>Officer</b>			<b>Application Number(s)</b>		
Matthias Gentet			2015/2582/P		
<b>Application Address</b>			<b>Drawing Numbers</b>		
13 South End Road London NW3 2PT			Refer to Decision Notice		
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>		
<b>Proposal(s)</b>					
Retrospective installation of 2 x duct pipes and an Air Conditioning (AC) unit to the rear mezzanine roof to be used in connection with an existing ground floor (with rear mezzanine) bakery					
<b>Recommendation(s):</b>		Refused Permission and Warning of Enforcement Action to be Taken			
<b>Application Type:</b>		Full Planning Permission			

Conditions or Reasons for Refusal:	Refer to Decision Notice					
Informatives:						
<b>Consultations</b>						
Adjoining Occupiers:	No. notified	<b>14</b>	No. of responses	<b>08</b>	No. of objections	<b>08</b>
			No. electronic	<b>04</b>		
Summary of consultation responses:	<p>Comments were received following the statutory consultation carried out in the form of consultation letters to the relevant parties (expiry date: 21/07/2015), Site Notice (erected on: 03/07/2015 and expiring on 24/07/2015) and a Press Advert (published on 09/07/2015 and expiring on 30/07/2015).</p> <p>The proposal was put out for re-consultation following the introduction of the AC unit. A follow up objection was received from an adjacent neighbour which has been added below to the already received objections from 1A Maryon Mews.</p> <p style="text-align: center;"><u>Summary of Comments and Objections:</u></p> <p>An objection from the Owner/Occupier at <b>2A Maryon Mews, London, NW3 2PU</b> has been received, summarised as follow:</p> <ul style="list-style-type: none"> <li>○ Bakery a serious threat to our peace and quiet;</li> <li>○ Ducts are noisy and could cause pollution;</li> <li>○ Bakery in action very early in the morning hours</li> <li>○ Ugly vents and air conditioning erected without planning permission;</li> <li>○ Major sound proofing.</li> </ul> <p>A objection from the Owner/Occupier at <b>11 South End Road, London, NW3 2PT</b> has been received, summarised as follow:</p> <ul style="list-style-type: none"> <li>○ Duct pipes are a nuisance and a dramatic change to sight and smell, right in front of my kitchen window;</li> <li>○ Machines cause disturbance through vibration;</li> <li>○ Noise is unbearable and my kitchen is vibrating;</li> <li>○ Want to support local businesses but Council to ensure bakery is not to create permanent disruption;</li> <li>○ Request duct pipes to be re-routed.</li> </ul> <p>A objection from the Owner/Occupier at <b>1A Maryon Mews, London, NW3 2PU</b> has been received, summarised as follow:</p> <ul style="list-style-type: none"> <li>○ Suffered considerable noise disturbance from the bakery;</li> <li>○ Back of shop used to be a quiet garage/store room but now new plans are going to change this and cause a lot more noise and disturbance;</li> <li>○ Suggest installing an additional brick partition wall;</li> <li>○ Since bakery has opened, I have suffered noise disturbances at various times of the day, evening, night time and early morning;</li> <li>○ Can feel the vibration when vents are on and can hear a loud hum</li> </ul>					

inside my home;

- Disturbed during the day and woken up regularly in the night by two large retarder equipment machines;
- Woken up early each morning by activity of baker from 5am;
- Expert's interim report found one of the vents has a high noise level with vibration noticeable in walls;
- ventilation in cupboard results in noise level similar to loud hand tool;
- Fan and vent not adequately isolated from the structure of the building;
- Various other noise from machines and people is perceptible;
- Scale of business substantially greater than of previous retail;
- Operation hours of bakery longer than a café;
- Bakery is unusual among the shops on South End Road in that it directly adjoins private residence;
- Allows noise and vibration to pass directly into my living room and bedroom;
- Conditions to be applied to approval.
- If permission were to be considered conditions would be required to ensure the use is not harmful as it currently is.
- The Camden Environmental Health Weekend Noise Service visited the occupier and confirmed that the vent should not be audible inside my home.

An objection from the Owner/Occupier at **11 Maryon Mews, London, NW3 2PU** has been received, summarised as follow:

- Bakery receives deliveries at 5am approx. with inherent noise early in the morning;
- creates disturbance with adjoining neighbours;
- Sound proofing between walls of bakery and house at No1A to be considered;

An objection from the Owner/Occupier at **35 Pond Street, London, NW3 2PN** has been received, summarised as follow:

- Bakery is already fully operational before permission is granted;
- Noise coming into my room from the roof of the bakery which is switched on and off at irregular interval;
- High pitch humming sound could be heard in our back garden;
- If permission were to be considered conditions would be required to ensure the use is not harmful as it currently is.

A comment from the Owner/Occupier at **1 Maryon Mews, London, NW3 2PU** has been received, summarised as follow:

- The work was done without planning permission.

Officer's response to comments and objections:

Concerns were raised regarding noise and vibration caused by the equipment/machinery used in the baking process located inside the premises. This issue cannot be taken into consideration in the assessment of the proposal as this internal equipment does not require planning permission. The current application relates to the

	<p>retention of external duct pipes and AC unit which have been erected on the roof of the mezzanine extension to the rear of the bakery.</p> <p>A visit was made by an Environmental Health Officer in the middle of the night to 1A Maryon Mews and their findings are inconsistent with the information provided in both submitted Noise Reports. The Environmental Health Officer deemed that the noise constitutes a statutory nuisance. The Noise Reports are therefore inaccurate and unacceptable and contrary to the Environmental Health Officers comments that noise from the AC unit should not be heard from inside the adjacent property. See para 2.9-2.13 (Amenity) below within the main body of the report for a full assessment.</p>
CAAC	Hampstead CAAC was consulted on 30/06/2015 and 26/10/2015 and no comments were submitted.

## Site Description

The application site is located on the western side of South End Road and relates to a ground floor bakery (with a mezzanine floor to the rear) within a three storey mid-terrace building, with residential units above.

The premises is part of a row of 3 storey properties with elegant facades in close proximity to the southern edge of Hampstead Heath consisting mostly of commercial units at ground floor with residential units above. Maryon Mews is located directly to the rear of the site and can be gained by 2 separate entrances – one located two doors to the north-west and the second one is further down. Maryon Mews is of private access only. The Royal Free hospital is located to the south on Pond Street.

The site lies within Hampstead Conservation Area. The host building is not listed.

## Relevant History

### Host Site:

**2015/3010/A** – (granted on 12/08/2015) - Display of non-illuminated fascia sign. [Retrospective];

**2007/0980/P** – (granted on 16/04/2007) - Installation of a new timber shopfront to existing Class A1 (Retail) shop;

**PWX0202796** – (granted on 17/12/2002) - Replacement of existing store by a 2 storey rear extension for use as ancillary storage to shop;

### Adjacent Sites:

**2004/5437/P** – (granted on 30/03/2004) - Removal of existing extract fan and erection of new ventilation duct on rear elevation of building for the ground floor restaurant and cafe (Class A3) use - 9

**South End Road;**

**PE9800385** – (granted on 27/05/199) - The installation of ventilation system including the erection of an external duct - **14 South End Road;**

**P9601847R3** – (granted on 07/02/2015) - Creation of new access door at rear ground floor level and addition of external ventilation duct - **19 South End Road;**

**Relevant policies**

**LDF Core Strategy and Development Policies**

**Core Strategy Policies**

CS5 – Managing the impact of growth

CS14 – Promoting high quality places and conserving our heritage

**Development Policies**

DP24 – Securing high quality design

DP25 – Conserving Camden's Heritage

DP26 – Managing the impact of development on occupiers and neighbours

DP28 - Noise and Vibration

**Camden Planning Guidance 2015 (as amended)**

CPG1- Design

CPG6 – Amenity – Chap 2 & 4

**Hampstead Conservation Area Appraisal Published October 2002**

### 1. Proposal and Background

1.1 Planning permission is sought for the following:

1.2 To install 2 x duct pipes and an AC unit to the mezzanine rear roof terrace in connection with an existing bakery. The proposed development would be placed at first floor level.

1.3 It is noted at this stage that the proposal has been the subject of several noise complaints from various neighbours as detailed in the above section "Summary of consultation response". These have been addressed in the Officer's Response and also, in the Amenity paragraphs (2.11 to 2.18) below.

1.4 A Noise report was submitted with the original submission. Following the subsequent receipt of objections from neighbouring occupiers regarding a high level of noise and vibration affecting the properties directly abutting the site, and the fact that the duct pipes and ventilation system were installed and activated prior to planning permission having been granted, an updated Noise Report was requested.

### 2. Assessment:

#### Design:

2.1 One of the considerations in the determination of this application is the impact of the proposal on the appearance of the host building and the character and appearance of the conservation area and rear streetscape.

2.2 The proposal, though yet to be granted, has already been implemented. Both duct pipes and the Air Conditioning (AC) unit are now in place on the rear flat roof. The application is therefore to be determined as retrospective.

2.3 The flat roof measures 6.1m in length x 4.3m in width and has an area of around 25.2sqm.

2.4 Both duct pipes are located away from the front of the rear flat roof with one erected near the centre and along the right hand side of the roof and the other in the far right hand corner of the roof area, against the back and side walls. The AC unit is set against the rear wall of the host building.

2.5 The mezzanine flat roof is bordered by a small parapet which allows a certain degree of screening of the two duct pipes and AC unit.

2.6 Due to the presence of the small parapet wall and the location of the duct pipes within the rear flat roof area and the AC unit against the rear wall, the proposal is not visible from the Maryon Mews at street level. The proposal can, however, be viewed by surrounding residential units at upper floor level.

2.7 The material used for the duct pipes – galvanised steel – though modern in aesthetic does not detract from the character or appearance of the host and surrounding buildings or the conservation area. There are similar features within the prevailing pattern of development, which is expected to the rear of a commercial parade, including a tall duct pipe towering over the application site located at the adjacent 11 South End Road. The AC unit is of a typical design and material for this type of mechanical feature. Though not of great aesthetic, it nonetheless affords a reasonable appearance as a mechanical fixture.

2.8 The proposed development, in terms of its size, scale, location and materials to be used is considered to be acceptable and would preserve the appearance and character of the host and

adjacent buildings, the rear streetscape and the conservation area in accordance with Core Policy CS5 (Managing the impact of growth), CS14 (Promoting high quality places and conserving our heritage) and Development Policies DP24 (Securing high quality design), DP25 Conserving Camden's Heritage) and DP26 (Managing the impact of development on occupiers and neighbours).

### Amenity

2.9 The amenity aspect of the proposal is limited to the 2 external duct pipes on the rear flat roof and AC unit. Any issues with the internal settings such as noise from internal equipment used for baking as well as voices that can be heard (from staff) are not material considerations as they do not form part of the planning application. Such issues would be a matter for Environmental Health and other relevant departments.

2.10 Regarding issues in relation to smell emanating from the duct pipes, an Odour Report was submitted and found to be satisfactory by Environmental Health.

2.11 The Council has significant concerns regarding the level of noise created by the presence of the AC unit and duct pipes. Although two Noise Reports have been submitted, they have failed to reflect the actual noise nuisance caused by the plant in place and their contents are considered to be incorrect. Due to the findings of the Environmental Health Officer who has attended the property adjacent to the site confirming the audibility of the AC unit into the neighbour's living room and bedroom (1A Maryon Mews), the noise complaints from surrounding residents in relation to the proposal was is currently on site and incorrect noise level details submitted as part of the original Noise Reports, the proposal is contrary to the Camden Planning Guidance (CPG6 Amenity) and Camden Development Policies DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise and Vibration).

2.12 All of the surrounding neighbours have raised objections over the proposal and noise caused by the AC unit and ventilation system. In particular, the neighbour most affected by the noise disturbance at 1A Maryon Mews has kept a diary of noise pollution from the AC unit and ventilation system and resulted in an Environmental Health Officer visiting the site to witness the noise nuisance.

2.13 The Environmental Health Officer's findings were that the AC unit and ventilation system could clearly be heard at a level deemed to be unacceptable (a statutory nuisance).

2.14 Despite the findings within the Noise Reports submitted by the applicant, the actual noise from the proposal conflicts with the noise level reading provided in both reports which has been demonstrated by noise complaints and a visit from the Environmental Health Officer.

### **3. Conclusion:**

3.1 The applicant has failed to demonstrate that the proposal would not harm the amenity of any of the surrounding occupiers or neighbours and the retrospective development is currently causing a significant disruption to all the adjoining occupiers by way of noise and general disturbance. Therefore the proposal is considered to be contrary to Policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (noise and vibration) of the London Borough of Camden Local Development Framework Development Policies.

### **Recommendation:**

- a. Refuse planning permission; and**
- b. Serve an enforcement notice.**

That the Head of Legal Services be instructed to issue an **Enforcement Notice** under Section 172 of the Town and Country Planning Act 1990 as amended to remove the 2 x duct pipes and an Air Conditioning (AC) unit to the rear mezzanine roof 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 breach of planning control:**

Installation of 2 x duct pipes and an Air Conditioning (AC) unit to the rear mezzanine roof.

**WHAT YOU ARE REQUIRED TO DO:**

1. Remove the 2 x duct pipes and an Air Conditioning (AC) unit to the rear mezzanine roof; and
2. Make good any resulting damage.

**PERIOD OF COMPLIANCE**

The Notice shall require that **2 x duct pipes and an Air Conditioning (AC) unit** be removed within a period of **3 months** of the Notice taking effect.

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

The applicant has failed to demonstrate that the proposal would not harm the amenity of any of the surrounding occupiers or neighbours and the retrospective development is currently causing a significant disruption to all the adjoining occupiers by way of noise and general disturbance. Therefore the proposal is considered to be contrary to Policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (noise and vibration) of the London Borough of Camden Local Development Framework Development Policies.



