

<b>Address:</b>	51 Fairfax Road London NW6 4EN		<b>8</b>
<b>Application Number:</b>	2015/3916/P	<b>Officer:</b> Zenab Haji-Ismail	
<b>Ward:</b>	Swiss Cottage		
<b>Date Received:</b>	09/07/2015		
<b>Proposal: Change of use and subdivision of mixed A1/A3 to form an A3 unit at 51. Alteration to the shopfront and the installation of an extract duct from first floor to roof level on the rear elevation.</b>			
<b>Background Papers, Supporting Documents and Drawing Numbers</b>			
Site location plan, 1505/PL1_00.01/r A, 1505/PL1_00.02/r A, 1505/PL1_01.01/r A, 1505/PL1_02.02/r A, 1505/PL1_00.00A /r A and 10-429-P-121.			
<b>RECOMMENDATION SUMMARY: Grant conditional planning permission</b>			
<b>Applicant:</b>		<b>Agent:</b>	
Ms Manuela Rathaus-Alper 40 Gurney Drive London N2 0DE		Liquid Architects UK 40 Gurney Drive London N2 0DE	

### ANALYSIS INFORMATION

Land Use Details:			
	Use Class	Use Description	Floorspace
Existing	A1/A3 Shop		m <sup>2</sup> 138
Proposed	A3 Restaurants and Cafes		m <sup>2</sup> 76

Parking Details:		
	Parking Spaces (General)	Parking Spaces (Disabled)
Existing	0	0
Proposed	0	

## **OFFICERS' REPORT**

**Reason for Referral to Committee:      Creation of an A3 unit**

### **1.      SITE**

- 1.1      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 have been vacant for the last 6 to 12 months. In 2011 the premises was in commercial use (the lawful use being A1). The application site was granted consent in 2014 as an A1 and A3 across 51 and 53) until 2015. A partition has been inserted sometime in 2015 splitting nos 51 and 53 into two units. The application relates only to no 51 Fairfax Road.
- 1.2      The site forms part of the Fairfax Road Neighbourhood Centre, which in addition to the terrace also includes properties on Fairhazel Gardens.
- 1.3      The upper floors at this site and the surrounding area are 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.
- 1.4      The site is not a listed building and is not within a conservation area.

### **2.      THE PROPOSAL**

- 2.1      The proposal includes the following
  - Retrospective application for the splitting of the two units and change of use from A1/A3 to a deli/cafe (use class A3).
  - The installation of a new shopfront
  - The installation of an extract duct

#### **Revision**

- 2.2      Following a number of objections by neighbouring residents the applicants have revised the application to remove the air conditioning unit which was considered inappropriate by neighbouring residents. The proposal now seeks to obtain retrospective planning permission for the splitting of the unit into two and the change of use from a mixed restaurant/retail use (A1/A3) to a deli/café (use class A3) unit, the installation of a new shopfront and the installation of an extract duct to the rear which would extend along the rear of the building to ensure the residents above are not inconvenienced by odour and fumes.

### **3.      RELEVANT HISTORY**

- 3.1 2013/7370/P (18/08/2014) allowed at appeal for 'Change of use at ground and basement levels from retail (Class A1) to a mixed use of retail and restaurant uses (Class A1/A3), including the installation of rear kitchen extract duct from first floor to roof level.'

The inspector had imposed the following additional conditions in response to concerns raised by neighbours

*No customers shall be on the premises outside of the hours of 08:00 to 21:00 on any day.*

*No music shall be played on the premises in such a way as to be audible in any adjoining premises or on the adjoining highway.*

*The rear doors of the premises leading to the service road shall only be used in the case of emergency or for servicing (including the removal of refuse and recycling) between the hours of 08:00 until 19:00 each day.*

*Prior to commencement of the use hereby approved, the windows in the kitchen which face onto the service road at the rear shall be fixed shut and shall remain permanently fixed shut, unless otherwise agreed in writing by the Local Planning Authority.*

*No outdoor tables or seating shall be provided outside of the following times: 08:00 until 19:00 each day.*

*No deliveries to the premises shall take place outside of the following times: 08:00 until 19:00 each day.*

*Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.*

*The A3 element of the development hereby approved and as identified on drawing 1505/PL1\_01.01/r A shall provide for no more than 30 covers at any one time.*

- 3.2 2013/3896/P (11/04/2014) allowed at appeal for '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.'
- 3.3 2011/0962/P (11/04/2011) refused 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.

- 3.4 2011/5949/P (06/03/2013) Appeal dismissed 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.*

- 3.5 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 came into force on 23 October 2013, with a view to compliance by 23 February 2013.

- 3.6 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.*

#### 4. **CONSULTATIONS**

##### **Statutory Consultees**

- 4.1 Not applicable

##### **Conservation Area Advisory Committee**

- 5.2 Not applicable

##### **Adjoining Occupiers**

Number of letters sent	27	
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<i>Total number of responses received</i>	12	
<i>Number in support</i>	0	
<i>Number of objections</i>	11	

#### 4.4 Objections were received from the following residents

26 Fairfax Place, 29 Fairfax Road, 24 Fairfax Place, 22 Fairfax Place, Flat 3 Gladstone, Flat 1 Gladstone, Flat 9 Gladstone, Flat 3 Gladstone, Flat 6 Gladstone, 2-3 Newton Court, 4 Denham Court, 6 Walton Court, 1 Walton Court, 3 Walton Court, Flat 3 14 Fairfax Place, Flat 1 14 Fairfax Place, Flat 5 Gladstone Court, Flat 8 Gladstone Court, 49 Fairfax Road, 20 Fairfax Place, 16 Fairfax Place,

The residents objected to the application on the following grounds

- Concerns about the overconcentration of A3 use
- Concerns about the late night opening hours
- Concerns about noise and disturbance from the comings and goings of customers
- Concerns about noise from the air conditioning unit
- Concerns about smells and noise
- Concerns about parking
- Concerns about deliveries to the restaurant
- Concerns about noise from tables and chairs outside
- Concerns about potential rodents

## 5. POLICIES

### 5.1 LDF Core Strategy and Development Policies

The National Planning Policy Framework 2012

The London Plan 2015

#### 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)

CS7 (Promoting Camden's centres and shops)

CS14 (Promoting high quality places and conserving our heritage)

#### LDF Development Plan Policies (2010)

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

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)

### 5.2 Supplementary Planning Policies

CPG 1 Design (2015)  
CPG 6 Amenity (2011)  
CPG 5 Town centres, retails and employment (2013)  
CPG 7 Transport (2011)

## 6. ASSESSMENT

6.1 The principal considerations material to the determination of this application are summarised as follows:

- Land use
- Design
- Amenity
- Transport

### *Land use*

6.2 The application site, was previously occupied by an A1/A3 unit across nos 51 and 53 Fairfax Road. The previous permission allowed on appeal was for a change of use from retail (use class A1) to a mixed A1/A3 use. The operation has now ceased and the unit has now been converted back into two units. This application relates to no 51 Fairfax Road. This application differs from the previous planning permission under 2013/7370/P in as it relates to only one unit (51 Fairfax Road) and the change of use is from a mixed A1/A3 use to a deli/café (Class A3). The splitting from two units to one is considered acceptable in this instance as the operation of a smaller unit would have a lesser impact on the amenity of neighbouring residents.

6.3 The use of the restaurant is sensitive in this location given the proximity of residential units. The Inspector concluded in the recent appeal decision for application ref. 2013/7370/P that the use could be allowed if with appropriate conditions to manage the impact of the proposal on the neighbouring residents. The proposed change of use from A1/A3 to the deli/café use (use class A3) would, by virtue of the application site occupying a smaller floor area, require fewer covers to that that was approved under the previous permission.

6.4 With regards to the unit next door (no 53) the unit is currently vacant and is lawfully a mixed class A1/A3 use. In effect, if any future occupier wanted to incorporate cooking facilities at the premises planning permission would be required to install any extract duct or air conditioning units. This would be assessed at the time, as far as this particular application is concerned, the land use is considered acceptable.

### *Design*

6.5 The most significant change in relation to this application is the proposed shopfront which is considered to be sympathetically designed to sit well with its surrounding and as such is considered to be acceptable.

6.6 An extract duct would be installed to the rear of the property which would extend from ground floor level and terminate at roof level. Whilst the duct work is typically utilitarian in appearance, it is situated to the rear of the building in a discreet

manner in an area that has a back of the house feel. No objection is raised in relation to the impact of the ductwork on the appearance of the townscape.

### *Amenity*

- 6.7 The existing air conditioning unit has caused significant concerns to the neighbouring residents and there is a history of applications, enforcement cases and appeal decisions, the applicant has therefore removed this element from the scheme. The air conditioning unit which sat a metre below the residential window did not comply with relevant guidance.
- 6.8 Conditions have been attached requiring the applicant to submit details which would need to be agreed in writing of any mechanical equipment that may be used in order to extract odour and fumes.
- 6.9 In order to prevent smells and odour having an impact on the residents that occupy that upper floor flats, the duct work is proposed to be installed such that any fumes and odour would be carried away from the residents and does not carry out the odour and fumes past the residential units.
- 6.10 Whilst the duct work which would sit less than a metre away from the residential units above would have a negligible visual impact on the outlook. The impact is not considered to be detrimental enough to warrant a refusal.
- 6.11 The impact of the proposal has been considered by an environmental health officer who has no objection to the proposal subject to details in relation to the extract and duct which have been secured by conditions.
- 6.12 Neighbouring residents have expressed concerns about noise from both servicing, people loitering and tables and chairs. This would remain controlled through the conditions which ensure the windows to the rear would be fixed shut to minimise noise and disturbance, restrict the opening hours, the number of tables that could be used by the premise at any one time and a restriction on the hours whereby the café will be able to receive deliveries. These matters were considered by the appeal inspector and it is consistent and appropriate to continue to exercise control.
- 6.13 As there are residential properties surrounding above and to the rear, any incursion late into the evening could give rise to noise and disturbance to their occupants. Camden Planning Guidance 5 – Town Centres, Retail and Employment (CPG5) states that in some instances, depending on the location, character of the area, the nature of the proposed use and its likely impact on amenity, earlier closing times may be more appropriate. Consequently, a condition is recommended requiring the premise to be closed by 21:00 which is also consistent with the appeal inspector's view when the earlier scheme was allowed.
- 6.14 Subject to the conditions recommended, no objection is raise in terms of the impact of surrounding residential occupiers.



## *Transport*

- 6.15 The site sits within a controlled parking zone and the PTAL rating of the site is 6B which is an excellent accessibility level. It is not considered that the proposal would result in transport impact as customers are likely to walk or use public transport.

## 7. **CONCLUSION**

- 7.1 The retrospective splitting of one unit to form two units including the change of use from a mixed A1/A3 use to a deli/café (use class A3) is acceptable as the size of the smaller unit and the conditions attached to the draft decision notice would not give rise to a significant loss amenity through noise or disturbance to local residents. The extract duct is sensitively located to the rear given the limited visibility of the duct it is considered acceptable. Due nature of the proposal, it is unlikely to result in traffic generation.

## 8. **LEGAL COMMENTS**

- 8.1 Members are referred to the note from the Legal Division at the start of the Agenda.

## **APPENDIX1: CONDITIONS**

- 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: Site location plan, 1505/PL1\_00.01/r A, 1505/PL1\_00.02/r A, 1505/PL1\_01.01/r A, 1505/PL1\_02.02/r A, 1505/PL1\_00.00A /r A and 10-429-P-121.

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

- 3 No music shall be played on the premises in such a way as to be audible within any adjoining premises or on the adjoining highway.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 4 The use hereby permitted shall not be carried out outside the following times 08:00 to 21:00 on any day.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and



policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 5 No customers shall be on the premises outside of the hours of 08:00 to 21:00 on any day.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 6 The rear doors of the premises leading to the service road shall only be used in the case of emergency or for servicing (including the removal of refuse and recycling) between the hours of 08:00 until 19:00 each day.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 7 Prior to commencement of the use hereby approved, the windows in the kitchen which face onto the service road at the rear shall be fixed shut and shall remain permanently fixed shut, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 8 No outdoor tables or seating shall be provided outside of the following times: 08:00 until 19:00 each day.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 9 No deliveries to the premises shall take place outside of the following times: 08:00 until 19:00 each day.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 10 The A3 element of the development hereby approved and as identified on drawing 1505/PL1\_01.01/r A shall provide for no more than 30 covers at any one time.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 11 Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

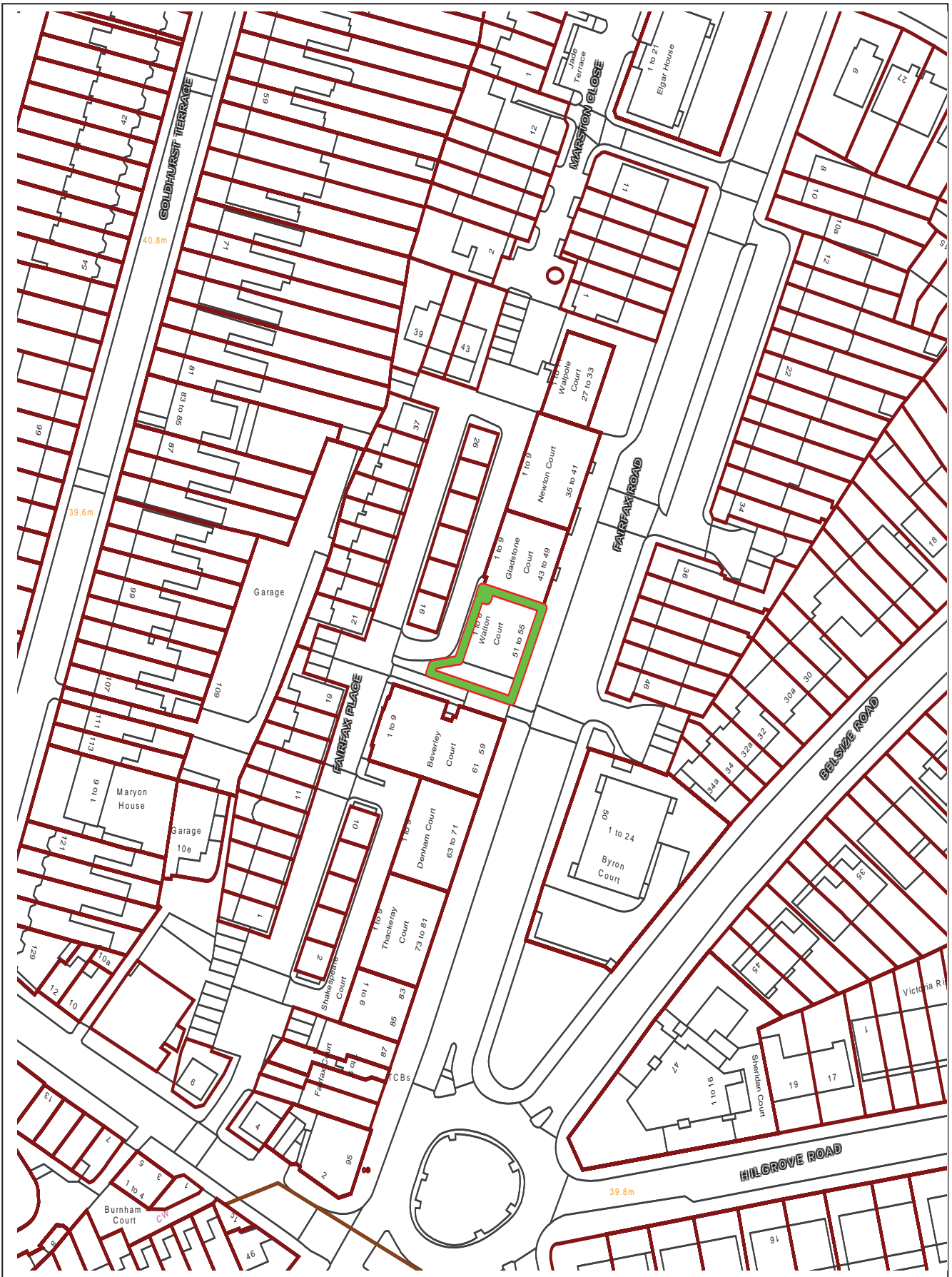
- 12 Prior to commencement of the development, details of anti-vibration measures and suitable cleaning schedule and/or maintenance contract for the extract system and odour control system shall be submitted to and approved in writing by the Council. The measures shall ensure that extract/ ventilation system and ducting are mounted with proprietary anti-vibration isolators and fan motors are vibration isolated from the casing and adequately silenced. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

Reason: To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by vibration, smell, steam and other effluent.

## **APPENDIX 2: INFORMATIVES**

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts which cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Argyle Street WC1H 8EQ, (tel: 020-7974 6941).
- 2 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.

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- 3 The installation of external air conditioning units and any other mechanical extractors would require a planning application to be submitted to and approved in writing by the local planning authority.



**Application No: 2015/3916/P**

**51 Fairfax Road  
London  
NW6 4EN**

**Scale:  
1:1250  
Date:  
3-Mar-16**



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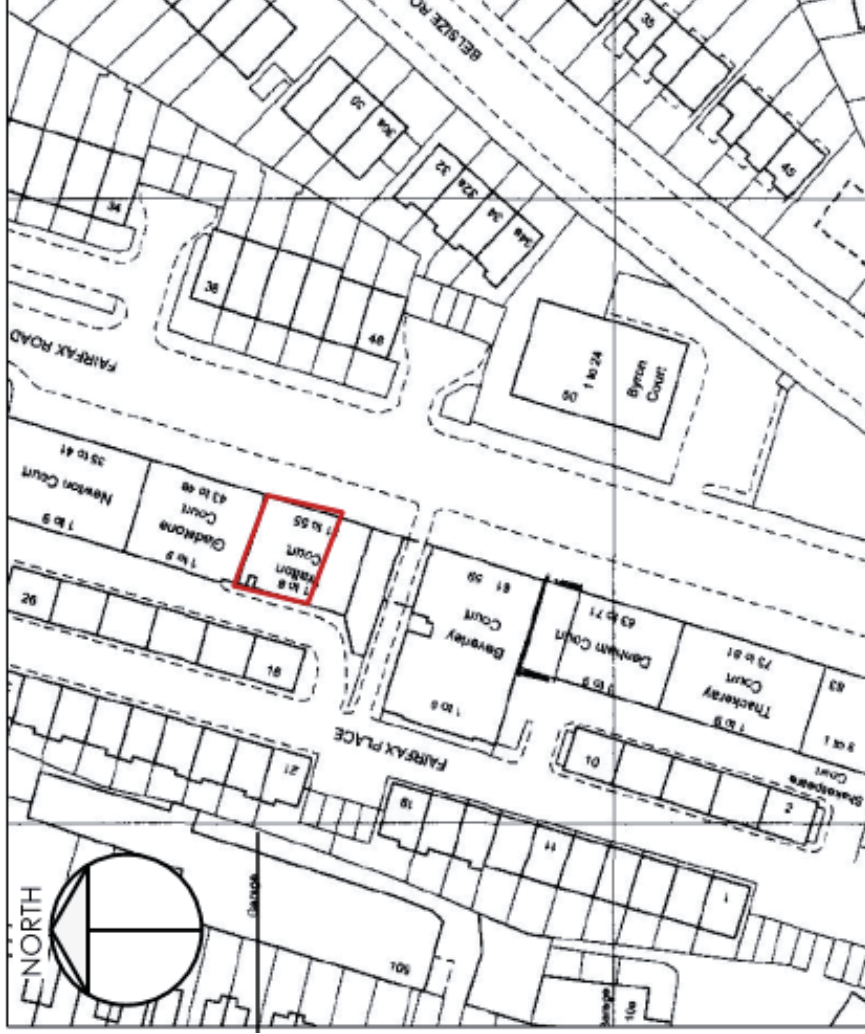
# 1. DC Committee

25 February 2016

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# 2015/3916/P

## 51 Fairfax Road





Front Elevation



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

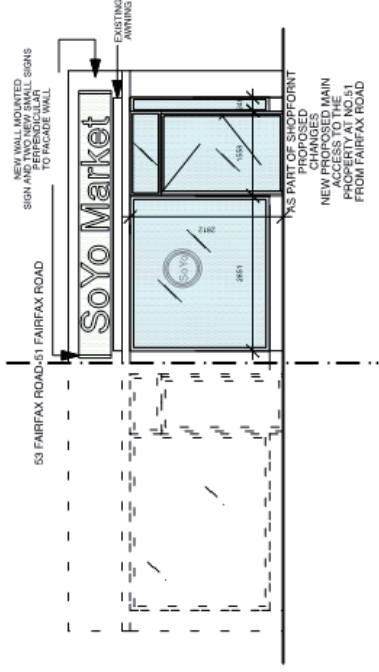
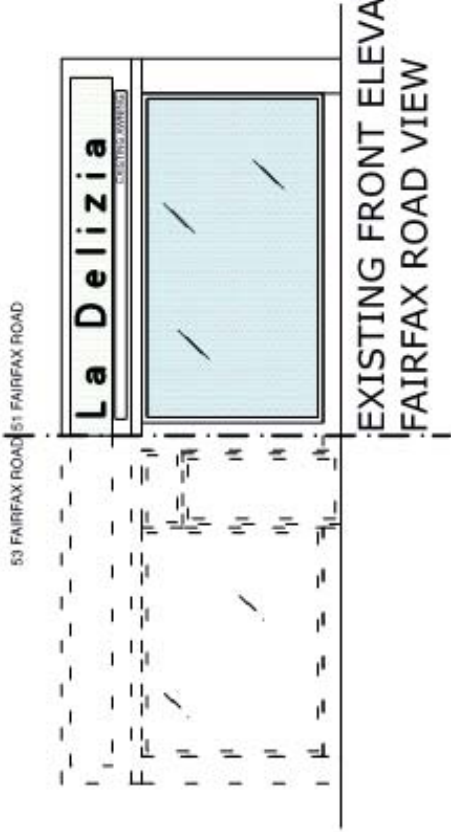


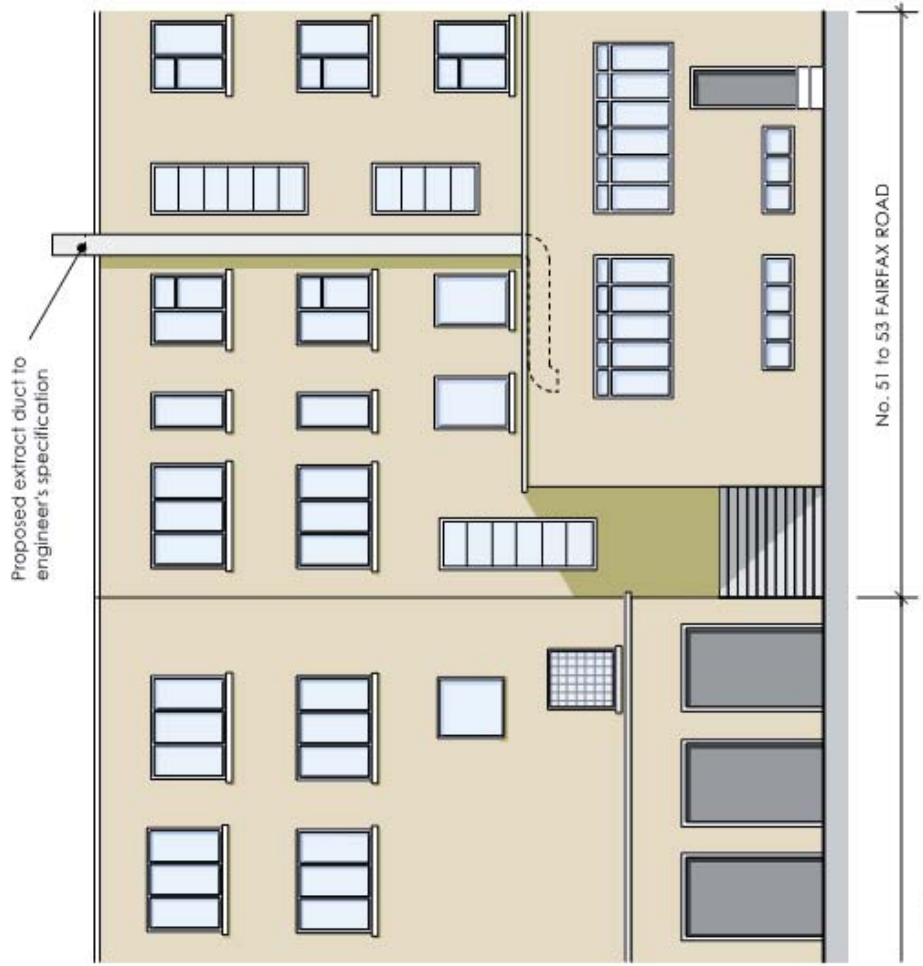
Rear of property



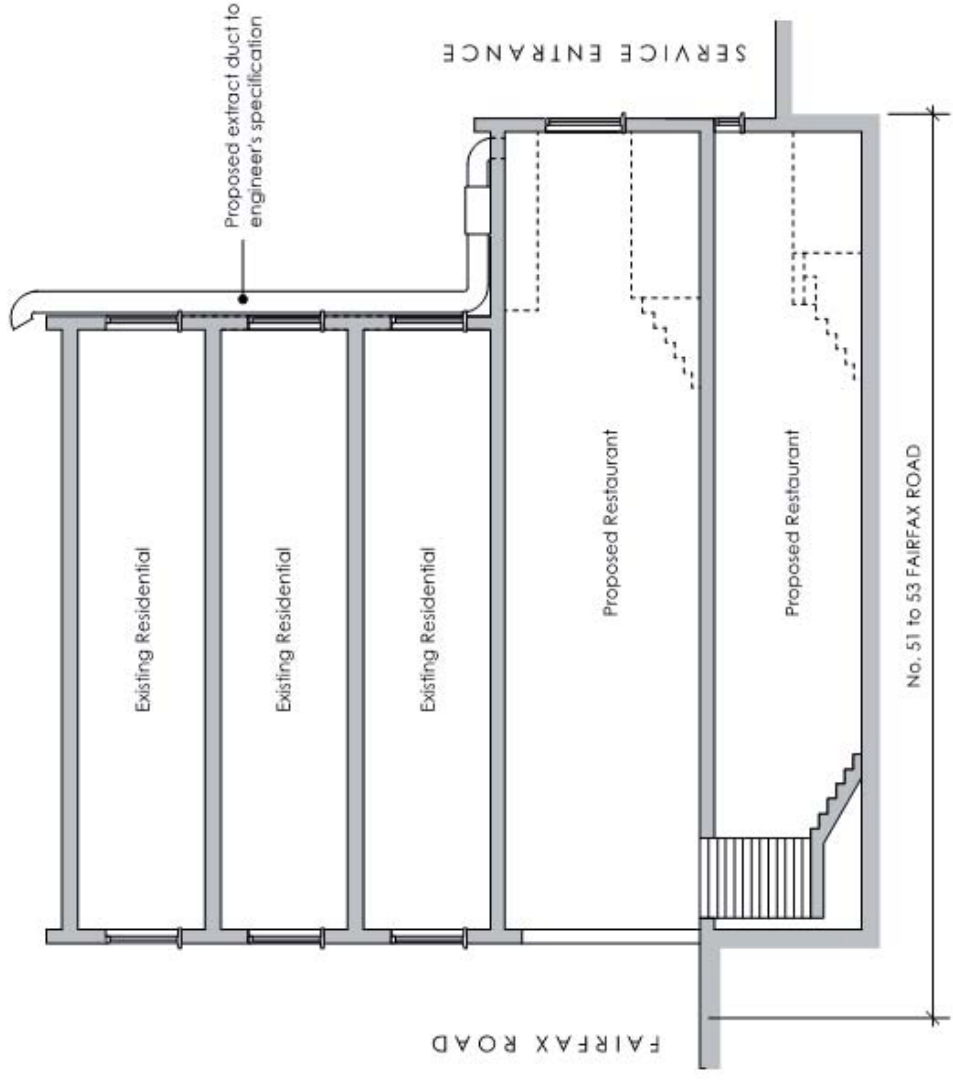
Rear of property from the north

PROPOSED FRONT ELEVATION -  
FAIRFAX ROAD VIEW



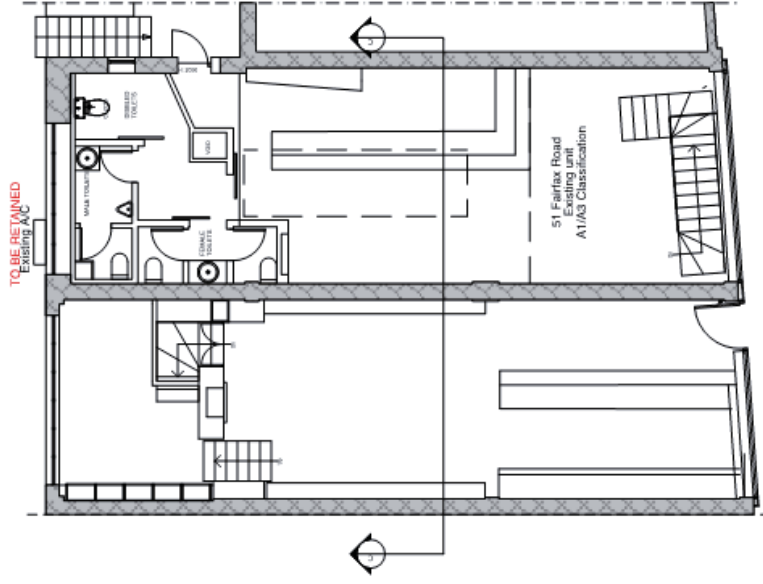


**2**  
121  
**Proposed Rear Elevation**  
scale 1:100 @ A3

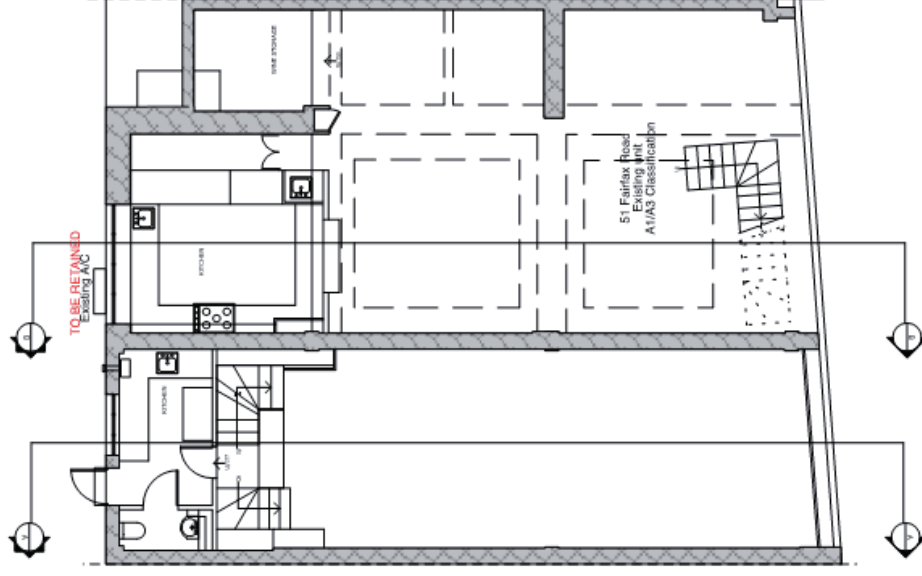


**1**  
121  
**Proposed Section**  
scale 1:100 @ A3

GROUND FLOOR LEVEL

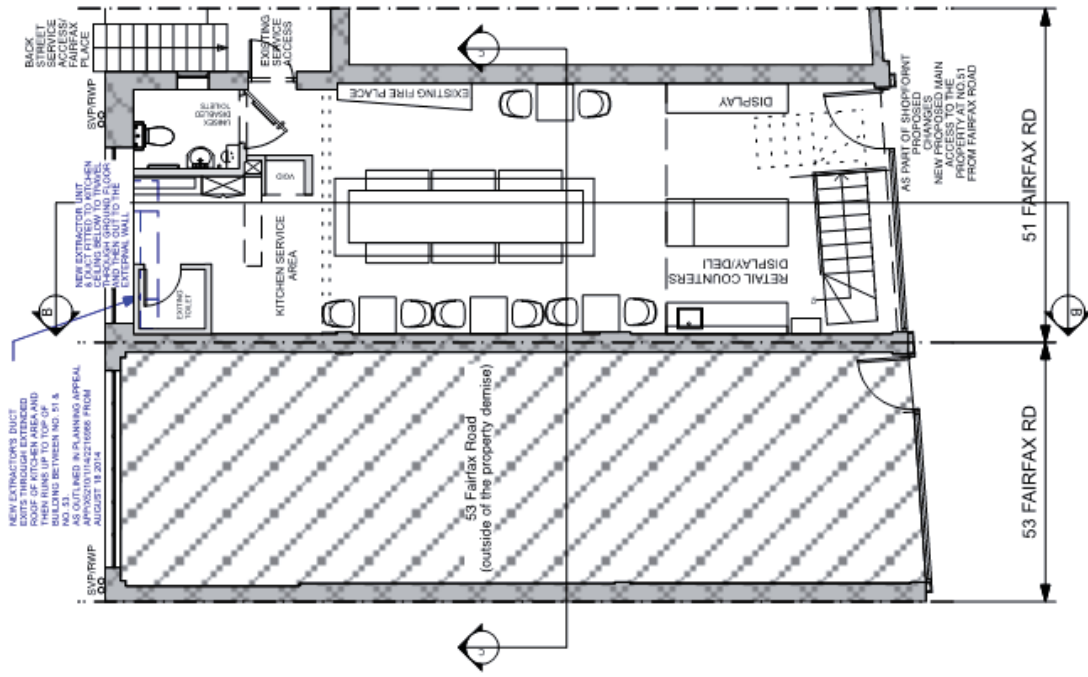


BASEMENT LEVEL





GROUND FLOOR LEVEL



BASEMENT LEVEL

