

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	18/09/2017
		N/A / attached	<b>Consultation Expiry Date:</b>	n/a
<b>Officer</b>			<b>Application Number(s)</b>	
John Diver			2017/3860/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
51 Fairfax Road London NW6 4EN			<i>See draft decision notice</i>	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
Details of post-completion noise report required by conditions 11/13 of planning permission 2015/3916/P dated 05/04/2016 for the 'change of use to restaurant (A3), alteration to the shopfront and the installation of extract duct'.				
<b>Recommendation:</b>		Refused and Warning of Enforcement Action to be Taken		
<b>Application Type:</b>		Approval of Details		

<b>Conditions or Reasons for Refusal:</b>	<b>Refer to Draft Decision Notice</b>			
<b>Informatives:</b>				
<b>Consultations</b>				
<b>Summary of consultation:</b>	As the submitted application is for the approval of details reserved by condition, in line with the Town and Country Planning (Development Management Procedure) Order 2015 no official public consultation process was required Notwithstanding this, any comments received in relation to the approval of details application have been duly considered when determining the application.			
<b>Adjoining Occupiers:</b>	No. of responses	<b>08</b>	No. of objections	<b>08</b>
<b>Summary of responses:</b>	<p>Letters of objection were received from the owner/occupiers of nos. 16, 20, 22, 25, 29, 35, 49, and 51 Fairfax Place who have objected to the submitted details for discharge on the following grounds:</p> <ol style="list-style-type: none"> <li>1. Flue has caused noise and disturbances to surrounding residential neighbours whilst operating</li> <li>2. Issue of noise and disturbance worsened by unauthorised AC units in operation</li> <li>3. Noise measurements must be taken of all the machinery running together at high volume. You cannot rely on the restaurant to turn it down when they won't even comply with the condition to shut at 9pm</li> <li>4. Operating machinery is certainly not lower than background noise levels</li> <li>5. As machinery as initially installed is noisy, this is likely to get worse over time</li> <li>6. Restaurant has remained open on several occasions until 23:00pm despite being restricted to close by 21:00pm.</li> <li>7. Fairfax place is a quiet residential street and noise conditions were imposed to protect this level of amenity</li> <li>8. A flue is clearly audible in the evening in adjacent habitable rooms, conditions noise thresholds are not being achieved</li> </ol>			
<b>CAAC/Local groups comments:</b>	n/a			

## 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 application site relates to a ground and basement floor. The site forms part of the Fairfax Road Neighbourhood Centre, which in addition to the terrace also includes properties on Fairhazel Gardens. 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. The site is not a listed building and is not within a conservation area.

## Relevant History

### Parent application:

**2015/3916/P:** Planning permission granted at 51 Fairfax Road for the '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'

Subsequent approval of details application **2017/1755/P** (dated 08/05/2017) fully discharged outstanding conditions 5, 9, and 10, and partially discharged conditions 11 and 13 attached to the above permission. Conditions 11/13 (duplicated) required the submission of a noise report for plant equipment and external noise levels following by a post-completion report to confirm the success of attenuation measures. Whilst the initial noise report was considered acceptable and approved, this application seeks to discharge the final element of these outstanding conditions (post-completion report).

### Other planning history for the site:

**2013/7370/P:** Planning permission refused at 51-53 Fairfax Road for the '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'.

#### Reason for refusal:

1) *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. This permission was allowed at appeal on the 18/08/2014.*

**2013/3896/P:** Planning permission refused at 51 Fairfax Road 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". The reason for refusal was:

#### Reason for refusal:

1) *The proposed air conditioning units by virtue of their close proximity to neighbouring residential properties and the proposed duration of their operation are likely to cause noise disturbance and harm to the amenity of nearby residents. This is contrary to Core Strategy policy CS5 and Development Policies DP26 and DP28 of the Camden Local Development Framework. This permission was allowed at appeal on the 11/04/2014.*

**2012/5787/P:** Planning permission refused at 51 Fairfax Road for "Installation of air conditioning unit on rear elevation at first floor level in connection with existing retail unit (Retrospective)"

#### Reason for refusal:

1) *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*

**2011/5949/P:** 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.

Reason for refusal:

- 1) *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.*

*The subsequent appeal was dismissed on the 06/03/2013.*

**2011/0962/P:** Planning permission was refused at 51-53 Fairfax Road on the 10/11/2011 for the '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'.

Reason for refusal:

- 1) *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.*

Relevant planning enforcement history:

**EN17/0732** – Complaint received in relation to an Air conditioning units installed at the rear ground floor restaurant unit without express permission. Following officer advice equipment was removed.

**EN17/0227** - Complaint received in relation to Non-compliance with conditions 7 (Servicing) and 12 (Hours of Use) attached to 2015/3916/P. Breach of Condition Notice was served.

**Relevant policies**

**NPPF (2012)**

**The London Plan 2016**

**Camden Local Plan (2017)**

- G1 - Delivery and location of growth
- A1 Managing the impact of development
- A4 Noise and vibration
- D1 Design

**Camden Planning Guidance:**

- CPG 1 – Design
- CPG 6 – Amenity

It should be noted that in July 2017 the Camden Local Plan was formally adopted following a process of public examination. After this point the previous policy framework (within which the parent application was approved) became superseded. The now superseded policies which were of relevance to the condition as originally applied are as follows:

**LDF Core Strategy (2010)**

*CS5 – Managing the impact of growth and development*

## **Development Policies (2010)**

DP26 – Managing the impact of development on occupiers and neighbours

DP28 - Noise and vibration

### **Assessment**

#### **1. Proposal and background**

- 1.1. The submitted application is in relation to the submission of final details (post-completion report) to fully discharge conditions 11/13 (duplicated) of the original planning (2015/3916/P). As outlined in the planning history section, this condition was two part and required both an initial report noise report to demonstrate that adequate attenuation could be provided to remain within the Council's adopted noise criteria thresholds as well as a post-completion report to demonstrate that such attenuation measures are actually achieved on site.
- 1.2. It should be noted that the full impact and extent of the proposed development other than the remaining condition has been previously assessed. The requirements of this condition therefore relate purely to the demonstration that the mitigation measures installed onsite have, in line with approved reporting, resulted in an adequate level of noise and vibration attenuation so as to ensure that the amenities of nearby residents are not impeded by the development.

#### **2. Revisions**

- 2.1. Following an initial review of the submitted noise report, the applicants were advised that the information included within the report was insufficient to address the condition requirements and that the details would likely be refused. In response, an updated report was submitted (Rev A) which was considered by the applicant to have addressed the outstanding concerns. The following assessment has been based upon the most recent reporting.

#### **3. Assessment**

##### Conditions 11&13 –

- 3.1. The wording of the original condition(s) is as follows:

*Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of the external noise level emitted from plant/ machinery/ equipment and mitigation measures as appropriate. The measures shall ensure that the external noise level emitted from plant, machinery/ equipment will be lower than the lowest existing background noise level by at least 10dBA, by 15dBA where the source is tonal, as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity.*

*A post installation noise assessment shall be carried out where required to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.*

*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.*

3.2. As noted above, as part of the previous discharge of conditions application (2017/1755/P dated 08/05/2017) the first element of these conditions was previously approved following the submission of a Noise Impact Assessment prepared by Clement Acoustics. This report had demonstrated that subject to the installation of appropriate noise attenuation measures, under a worst case assessment (i.e. utilising the loudest mode of operation for the equipment) the external noise level emitted from equipment will be lower than the lowest existing background noise level by 15dBA (5dBA lower than the requirement of the condition as the source is considered non-tonal). Only the second element of the above conditions (post installation report) therefore remains outstanding and is therefore the subject of this assessment.

#### Post-installation noise assessment

3.3. In order to address the outstanding elements of conditions 11 and 13, a post completion 'Acoustic Commissioning Report' prepared by Clement Acoustics has been submitted alongside a covering letter. These details have been reviewed alongside the Council's Environmental Health Noise team.

3.4. The submitted report states that the consultants were "*commissioned by Delicatessen, to undertake an assessment of an installed extract fan*". The report forms an assessment based upon the installed extractor fan only and makes no reference to any other mechanical plant. Furthermore, this report concludes that submitted "*Measurements and calculations show that noise emissions from the condenser meet the requirements of the Local Authority provided the operation duty is not exceeded*".

3.5. As the wording of conditions 11/13 expressly state that in order to adhere to the restrictions imposed, it must be demonstrated that "*all machinery operating together at maximum capacity*" remains within the appropriate threshold levels in order to discharge this section of the condition. In this case, submitted reporting has assessed the impact of one element of mechanical plant (air extract system) but has not discussed the possible existence of any further equipment. The existence of further plant has not been discussed either way (i.e. either to confirm that this is the only equipment or to provide details of other plant). As a premises such as this would usually feature a cool room equipped with a compressor as well as potential air conditioning units, the scope of the report is considered insufficient without this confirmation of total existing plant. To illustrate the above, enforcement action was recently taken in relation to unauthorised air conditioning units which were installed to the rear of the unit and were operating without permission. Enforcement complaints had been submitted in relation to these AC units due to the level of noise they created and the subsequent disruption caused. Although these units have since been removed following the issue of an enforcement notice, this would indicate the desire of the applicants to include further plant of this nature. Furthermore, the submitted reporting clearly states that when the noise monitoring of the air extraction unit was undertaken, it was not completed at maximum capacity as per the condition but was instead recorded at 'operation duty'. Correspondence was subsequently sent to Clements Acoustics on the 24/08/2017 to seek to confirm whether further recordings had been taken at full capacity or whether any additional plant was present on site and needed incorporating into the assessment. No responses to these requests were forthcoming.

3.6. Further to the above highly concerning omissions in submitted reporting, the Council's Noise officers have additionally raised a number of other specific concerns with the revised report including:

- A lack of confirmation of the duration of recordings taken
- A lack of confirmation of the noise parameter (eg/ LAeq) used
- Objection to the assumptions of 'attenuation by distance loss' factored into calculations in table 4.1 – where it is reasoned that noise levels will be reduced by 12 dB due to the separation distance to nearest sensitive source (4m). This is considered to overestimate the distance loss factor due to the enclosed nature of the rear of the site and the level of

surrounding reflective surfaces.

- Report contained contradictory information with regards to the location of measurements taken and fails to confirm that recordings were taken at 1m from the façade
- Finally, it is noted that measurements were not undertaken in third Octaves (reported stated taken in Octaves), so an assessment to determine if the equipment was 'tonal' is not possible.

3.7. Several recent environmental health (noise) as well as planning enforcement complaints were received in relation to issues of noise and disturbances caused by the operation of plant equipment combined with the continued operation of the business beyond permitted opening hours. As these complaints were at odds with the finding of the submitted post installation noise report, Noise Monitoring equipment was installed by the Council in a habitable room at loft level of an opposing residential property in order to observe and record ongoing noise levels. Analysis of these sound recordings plainly show that whilst operating, a clear mechanical plant fan noise (hum) can be heard from within adjacent residential properties. This evidence, combined with the lack of confirmation described above is considered to demonstrate that the plant equipment as installed fails to provide noise attenuation measures to limit to below background noise levels as required by conditions 11/13.

3.8. In light of the above, the submitted reporting is not considered to have adequately demonstrated that the plant equipment installed onsite has included adequate attenuation measures for noise and vibration as required by condition as part of the original permission (2015/3916/P). Furthermore, the post installation report as well as the Council's evidence demonstrates that the equipment as installed has not achieved the levels of attenuation measures for noise and vibration as was proposed under the previous Noise Report, approved as part of approval of details application 2017/1755/P dated 08/05/2017. As the submitted details are not sufficient to confirm compliance with these noise criteria, the details may not be approved in their current form. As further evidence was invited but was not forthcoming, the application is recommended for refusal with subsequent enforcement action in relation to the installed equipment to be taken.

#### **4. Recommendation**

4.1. A) Refuse approval of details and Warning of Enforcement Action to be Taken

4.2. B) Authorise enforcement action

That the Borough Solicitor 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 breach of conditions 11 & 13 of planning permission 2015/3916/P dated 05 April 2016 with regard to the failure to ensure that appropriate mitigation measures as previous agreed as installed to plant/machinery/equipment so as to ensure that external noise levels emitted from aforementioned plant remain within permitted thresholds.

#### **The Notice shall require within a period of 3 calendar months of the Notice taking effect:**

- 1) Cease the operation of the unit as a Class A3 restaurant until such time as noise from the plant and machinery is in line with prescribed levels set out in conditions 11/ 13 of application 2015/3916/P, as demonstrated by an updated post installation noise assessment submitted and approved in writing by the Council.

**REASONS WHY THE COUNCIL CONSIDERS IT EXPEDIENT TO ISSUE THE NOTICE:**

- (1) The submitted details fail to demonstrate that the installed plant/machinery/equipment complies with the acceptable noise thresholds as secured by conditions 11 and 13 of application 2015/3916/P, resulting in noise and disturbance to the detriment of the residential amenities of adjoining occupiers contrary to policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy, policies DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.