

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	14/08/2018
			<b>Consultation Expiry Date:</b>	16/07/2018
<b>Officer</b>			<b>Application Number(s)</b>	
John Diver			2018/1335/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
135 Finchley Road London NW3 6JH			See decision notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal</b>				
Installation of fixed LED lighting strips to existing aluminium perforated screen facade on the front and side elevations of the restaurant and bar (Use Class A3 / A4) (retrospective)				
<b>Recommendation:</b>	Refuse planning permission and warning of enforcement action to be taken			
<b>Application Type:</b>	Full Planning Permission			

<b>Conditions or Reasons for Refusal:</b>	<b>Refer to Decision Notice</b>			
<b>Informatives:</b>				
<b>Consultations</b>				
<b>Consultation summary:</b>	Site notices were erected near to the site on the 22/06/2018 (consultation expiry date 16/07/2018).			
<b>Adjoining Occupiers:</b>	No. of responses	<b>02</b>	No. of objections	<b>02</b>
<b>Summary of consultation responses:</b>	<p>Letters of objection were received from the owners/occupiers of flats 19 and 22 Cresta House (133 Finchley Road). Their comments raised can be summarised as follows:</p> <ul style="list-style-type: none"> <li>- Lighting overly prominent, unnecessary and out of character for Swiss Cottage</li> <li>- Would create light pollution, especially to adjoining neighbours</li> <li>- Potential road hazard, impacting drivers' vision, especially northbound traffic coming through Finchley Road</li> <li>- Would set precedent for in your-face neon lighting</li> </ul>			
<b>Cresta House Residents Association:</b>	<p>A letter of objection was received on behalf of the Cresta House RA (133 Finchley Road). Their comments raised can be summarised as follows:</p> <ul style="list-style-type: none"> <li>- The illuminated façades are not in keeping with the surrounding night-time street environment which is low key and above all residential</li> <li>- The illuminated façades bring Las Vegas to Swiss Cottage</li> <li>- There is no other building illuminated anywhere near to this degree – if at all - for miles in all directions</li> <li>- The double aspect 3 story high illuminated façades are in essence advertising hoardings [MIA admits as much in its Supporting Document:7.2] that give MIA an unfair advantage over all other night time businesses in the area</li> <li>- If the Council allows excessive neon lighting here, more will follow – if only in marketing self-defence</li> <li>- Previous enforcement investigation did not resolve the breach satisfactorily</li> </ul>			
<b>Centre Heights Residents Association:</b>	<p>Further to the above, a letter of objection was also received on behalf of the Centre Heights RA (137 Finchley Road). Their comments raised can be summarised as follows:</p> <ul style="list-style-type: none"> <li>- Fully endorse comments raised by Cresta House RA</li> <li>- Proposed lighting out of character for setting</li> <li>- Use of building inhibits quiet enjoyment of surrounding dwellings</li> <li>- Light pollution would affect whole area</li> </ul>			

## Site Description

The application site is located on the west side of Finchley Road close to the entrance of the Swiss Cottage underground station. It contains a 4-storey commercial building with a partially glazed front façade which is in use as a restaurant (Class A3) and drinking establishment (Class A4). The application site is not located within a Conservation Area; however it is within the Finchley Road/Swiss Cottage designated Town Centre. The unit marks the beginning of the Western primary retail frontage within the Town Centre. The adjacent Finchley Road is a TfL red route.

## Relevant History

The planning history relevant for this assessment can be summarised as follows:

### **No.135 Finchley Road**

**9500303** – Planning permission was granted on the 01/05/1998 for the 'Change of use of the lower ground upper ground and first floors from a bank within Class A2 to café/bar within Class A3'

**PW9703067**: Planning permission was refused on the 01/05/1998 for the '*The erection of a two storey building for use within Class A3 (Restaurant)*'.

#### Reasons for refusal:

- 1) The proposed A3 use would be likely to have a detrimental effect on the amenities of occupants and neighbouring residential properties by reason of noise, smells and general activities associated with the use.

A subsequent appeal of the above decision was allowed on the 11/11/1998 following written representations. This permission was eventually built out and a restaurant and later, bar use was established on site.

**2007/6299/P**: Planning permission was granted on the 19/03/2008 for the '*Change of use of basement, lower/upper ground and first floor from bar (Class A4) to office use (Class B1)*'. This permission was not implemented.

**2012/0076/A**: Advertisement consent was refused on the 31/05/2012 for the '*Display of internally illuminated digital display panel on monopole*'.

#### Reasons for refusal:

- 1) *The internally illuminated digital display panel, by virtue of its excessive size, illumination and visually prominent location would result in visual clutter and a dominant addition, contrary to policies...*
- 2) *The internally illuminated digital display panel, by virtue of its illumination, design using changing images, size and visually prominent location close to a road and pedestrian crossing, would be likely to distract drivers' attention on the approach to traffic lights to the detriment of highway and pedestrian safety, contrary to policies...*

A subsequent appeal of the above decision was dismissed on the 11/01/2013 following an informal hearing.

**2012/1984/P**: Planning permission was granted on the 29/05/2012 for the '*Installation of brick piers, metal railings and associated landscaping in connection with enclosure of an area of land adjacent to no.135*'

**2013/8151/A**: Advertisement consent was refused on the 14/02/2014 for the '*Digital media display on a freestanding advertising display unit*'.

#### Reasons for refusal:

- 1) *The internally illuminated digital media display panel, by virtue of its size, illumination and visually prominent location would result in visual clutter and a dominant addition to the streetscape, contrary to policies...*

A subsequent appeal of the above decision was dismissed on the 27/06/2014 following an informal hearing.

**2015/4946/P:** Planning permission was granted on the 11/11/2015 for the ‘Alterations to the fenestration at ground and first floor level for the replacement of the existing vertical framed windows between the ground and first floor level with horizontal aluminium double glazed windows’

**2015/5554/P:** Planning permission was granted on the 21/12/2015 for the ‘Installation of aluminium perforated screen facade fixed on aluminium rails on the existing front and side elevations.’ During the implementation of this permission, LED strip lighting which had not been permitted was also installed within the perforated screen facade. The subsequent use of this unpermitted lighting led to enforcement investigations commencing and eventually, the submission of this application for retrospective permission (see below).

**2016/3401/P:** Planning permission was granted on the 14/09/2016 for the ‘Erection of landscaping to side elevation of restaurant and bar (Class A3/A4), with associated deck, framed planters, balustrades, and awning to front elevation’

### **Relevant enforcement Investigations (no.135)**

**EN10/0393:** An enforcement investigation was opened on the 12/04/2010 regarding a suspected ‘change of use from bar to nightclub’. Following an investigation, the case was closed as no breach was found.

**EN16/0332:** An enforcement investigation was opened on the 12/04/2016 regarding a suspected ‘installation of unpermitted building illuminations’. Following an investigation, enforcement officers discovered that unpermitted LED lighting strips had been installed. As the use of the lighting was halted at the request of officers, the case was closed as the breach was deemed to have ceased.

## **Relevant policies**

### **National Planning Policy Framework (2018)**

### **The London Plan (2016)**

### **Camden Local Plan (2017)**

- A1 Managing the impact of development
- A4 Noise and vibration
- C5 Safety and security
- D1 Design
- D3 Shopfronts
- D4 Advertisements
- T1 Prioritising walking, cycling and public transport
- T3 Transport infrastructure
- TC2 Camden’s centres and other shopping areas

### **Camden Planning Guidance:**

- Advertisement CPG (2018)
- Amenity CPG (2018)
- Design CPG (1) (updated 2018)
- Town Centres and Retail CPG (2018)

## **Assessment**

### **1. Background**

1.1. As outlined in the planning history section of the report, following a series of applications for illuminated signage which were refused/dismissed, the owners of no.135 instead sought and gained planning permission for the installation of perforated metal cladding to wrap around the front and side facades (ref. 2015/5554/P). Although the cladding was considerable acceptable and was approved, during its installation lighting strips were installed within the screen to provide backlighting at night. This lighting was

not permitted and a subsequent enforcement investigation was opened (ref. EN16/0332). Following a site visit, enforcement officers advised that the lighting had required planning permission and that a breach had occurred. At this point, the owners of no.135 confirmed that they did not intend to use the lighting installed. As the lighting was no longer in use, the breach was considered to have ceased and no further action was taken.

## **2. Proposal**

2.1. Following on from the above, the owners of no.135 now seek retrospective permission for the use of the LED lighting installed within the metal cladding to the front and side facades of the building. The strip lighting has been installed in a grid pattern with a combined total area of approximately 88sqm with a maximum height of 9.7m (side elevation) and maximum width of 13.2m (front elevation). The LED strip lighting installed is controlled by a computer program that can be used to adjust colour, dim brightness and vary speeds/program. Despite this, the submitted lighting strategy confirms that the applicants would be willing to accept conditions to control the following elements:

- limit the maximum lumen levels (25cd/m<sup>2</sup>),
- for the lighting to remain static;
- for the colour to remain as white; and
- restricted hours of use (between 12:00 - 02:00 Sunday to Thurs and between 12:00 - 03:00 Friday and Saturday).

2.2. Given the above, the assessment has been made on the assumption that these conditions would be secured.

## **3. Assessment**

3.1. The proposed development would not involve any changes of use, sub-division or extension to the host building. The main issues to consider in this case are therefore as follows:

- Design and character;
- Amenities of adjoining occupiers; and
- Transport and access implications.

## **4. Design and conservation**

4.1. Policy D1 (Design) states that the Council will seek to secure high quality design in all cases. This policy states that in order to demonstrate high quality, developments should meet several criteria including: respecting local context and character; be sustainable and durable; comprise details and materials that are of high quality and complement the local character. It continues to state that the Council will resist development of poor design that fails to take the opportunities available for improving the character and quality of an area. Although the application site is not a retail unit, it does demark the beginning of the town centre and the parade of shops that form a primary retail frontage. As such the front elevation does behave like a shopfront in townscape context meaning that policy D3 (shopfronts) is applicable. This policy seeks to ensure that alterations made to shop fronts retain a high standard of design and remains sympathetic to the general characteristics of shopfronts in the area. Finally, although the lighting in itself is no an advert, the cladding when illuminated by the strip lighting performs much like an advert in that it attracts the attention of passers by / potential customers and draws attention to the business use inside. Policy D4 (Adverts) states that the Council will resist advertisements which: contribute to an unsightly proliferation of signage in the area; contribute to street clutter in the public realm; cause light pollution; have flashing illuminated elements; or impact upon public safety. Although an advertisement consent application has not been submitted, officers reserve the view that assessment against the Town and Country Planning (Control of Advertisements) Regulations 2007 would have additionally been required were works otherwise supported.

4.2. With regard to lighting, CPG1 (Design) notes that good lighting can provide a number of benefits including reducing the opportunity for criminal activity to take place, but warns that where used inappropriately, it can result in light pollution which is intrusive and can have an impact on residential amenity (para.9.29). CPG1 also notes that inappropriate lighting can also result in pooling of light which means that pedestrians walk from areas well lit to those with little light, impacting upon their perceptions of own safety.

4.3. Being located on Finchley Road adjacent to the entrance to the Swiss Cottage underground station, the site is located within a thoroughly urban setting and is surrounded by much taller developments. The

immediate vicinity contains a broad mixture of architectural styles and periods. The Camden Character Study (2015) describes the Finchley Road / Swiss Cottage area as being characterised by a busy but fragmented high street with active uses at ground floor and residential above, with buildings fronting directly onto the street. Within the local area, excessive illuminated signage or external lighting has generally been resisted by the Council, meaning that other than modest projecting signs at ground level shop fronts are generally non-illuminated. There are no examples of similar backlit cladding to any building in the local vicinity.

- 4.4. The existing, modest building sits between the two much larger buildings of Cresta House and Centre Heights (both +9 storeys) but is very prominent, particularly in long views from the South. Officers accept that the existing building is not of particular architectural merit and that the back lit screen would add visual interest due to the intricate pattern within the existing metal cladding. Notwithstanding this, the proposed lighting is of such a large scale that it would appear totally at odds with the prevailing character of the local area. As aforementioned, where illuminations existing within the town centre, these include modest internally lit projecting signs and fascia boards at street level only. In contrast, on the Finchley road elevation (front) the lighting would extended up to 2 storeys above pavement level and would result in the vast majority of both of the publicly visible elevations of the property being lit in a manner which would appear highly intrusive and incongruous. The illuminations would result in the application building (a modest infill surrounded by much taller and grander developments) appearing overly assertive in the streetscene and detracting from local character. This has been evidenced by photographs submitted by residents as well as taken by enforcement officers outlined in appendix one (although it should be noted that the lumen levels have not been confirmed for these images). The resulting light spill from the external lighting would be visible from a distance and would add visual clutter to the streetscene. Officers also note that the detailing within the cladding could be revealed with the application of a white paint to the exterior of the façade without the need for harmful illuminations. Considering the above, officers consider the illuminations to result in harm to the character and appearance of the local area, contrary to the requirements of policies D1, D3 and D4.

## **5. Residential Amenity**

- 5.1. Policy A1 seeks to protect the quality of life of occupiers and neighbours by only granting permission to development that would not harm the amenity of residents. This includes factors such as privacy, outlook, implications to natural light, artificial light spill, odour and fumes as well as impacts caused from the construction phase of development. Policy A4 seeks to ensure that residents are not adversely impacts upon by virtue of noise or vibrations.
- 5.2. The lighting strips do not result in any loss of natural light, outlook or privacy to any adjoining occupier. Being of LED construction, the lighting strips do not emit any noise, vibrations or odours which might be disruptive to residential amenity. The remaining matter for consideration therefore remains the potential for light spill to disrupt the occupiers of surrounding residential developments.
- 5.3. As previously discussed, the local area is characterised by buildings with commercial lower floors and residential accommodation above. This is true for both of the larger blocks adjoining the site (Cresta House – no.133 & Centre Heights – no.137 Finchley Road) which contain a large number of flats. Notwithstanding this, due to the aspect of the elevations within which the lighting has been installed, the artificial light spill would not directly affect any window within Centre Heights and would oppose the flank elevation to Cresta House only. As no primary habitable room windows exist on this flank and the Council would have the ability to apply conditions relating to luminosity, static lighting, colour and timings, it is not considered that the use of the lighting would result in detrimental harm to these neighbouring occupiers. In terms of the occupiers/users of buildings on the East side of Finchley Road, the lighting would be highly prominent in their views towards the West. Given that a separation distance of +60m would be retained and the conditions outlined at the end of the report could be applied, it is not however considered that the resulting impact would constitute a detrimental loss of amenity to those occupiers. Given that the application of conditions (outlined at the end of the report) would address concerns in terms of residential amenity, this does not form a reason for refusal.

## **6. Transport**

- 6.1. As outlined in the site description, the application site is immediately adjacent to the TfL underground entrance to the Swiss Cottage station as well as Finchley road - a TfL red route. While the proposed lighting would have the potential to cause a significant distraction to road users, these concerns could be

addressed via the conditions outlined below. Following consultations with the Council's Transport officers, it was confirmed that were these conditions secured the lighting would not result in harm to the safety of road users. Following consultation with TfL, it was confirmed that subject to appropriate conditions no objection was raised.

- 6.2. Whilst conditions could be applied to address impact to road safety, officers do note that the lighting whilst in use would act to mask the internally illuminated London Underground sign situated immediate to the South of the unit due to its brightness. In views from the South, this would act to reduce the legibility of this station entrance and would harm pedestrian ease of access. Given that the application of conditions to limited the brightness of signage would act to lessen this impact and there would remain other signage for the other underground entrances, this would not be considered to warrant a reason for refusal under policies T1 or T3.

## **7. Recommendation**

- 7.1. i) Refuse planning permission; and  
ii) warning of enforcement action to be taken

## **8. Suggested conditions**

8.1. In the event of an successful appeal, the Council would request that the following conditions are applied:

(1)

The intensity of the illumination of the external lighting shall not exceed 2500 candelas per square metre during the day and 400 candelas per square metre during the hours of darkness in line with the maximum permitted recommended luminance as set out by 'The Institute of Lighting Professional's 'Professional Lighting Guide 05: The Brightness of Illuminated Advertisements' 2015.

Reason: To ensure that the advertisement does not harm the character and appearance of the streetscene and does not create a distraction to pedestrian or vehicular traffic and therefore cause a hazard to highway safety. In accordance with the requirements of policies A1, D1, D4 and T1 of the Camden Local Plan 2017 and Transport for London Guidance for Digital Roadside Advertising 2013

(2)

The external lighting shall be statically illuminated and remain white in colour.

Reason: To ensure that the advertisement does not harm the character and appearance of the streetscene and does not create a distraction to pedestrian or vehicular traffic and therefore cause a hazard to highway safety. In accordance with the requirements of policies A1, D1, D4 and T1 of the Camden Local Plan 2017 and Transport for London Guidance for Digital Roadside Advertising 2013.

(3)

The use of the external lighting hereby permitted shall not be carried out outside the following times 12:00 – 23:00 Mondays to Saturdays and 12:00 – 22:00 on Sundays and Bank Holidays.

Reason: To safeguard the amenities of the adjoining premises and the character of the area generally in accordance with the requirements of policies D1, D3, D4, A1, TC1 and TC2 of the London Borough of Camden Local Plan 2017.

**Appendix one: (Images of the lighting in situ)**

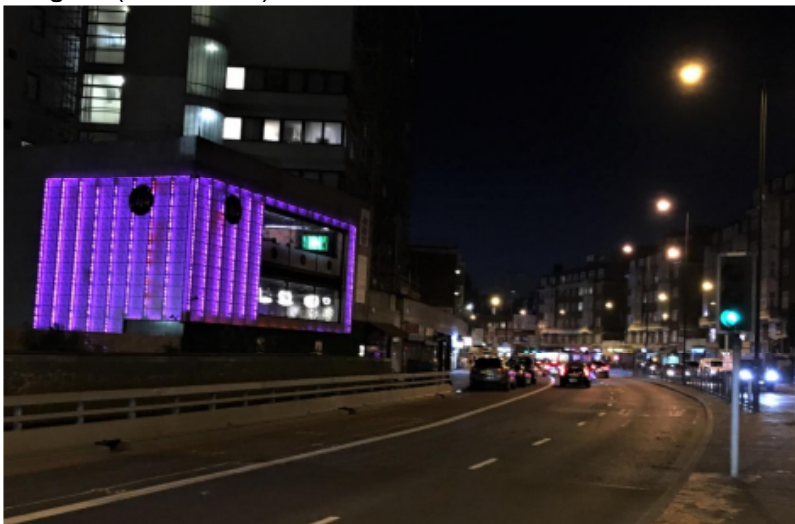
Image 1 (Oct 2016)



Image 2 (Nov 2017)



Image 3 (June 2018)





*(Please note that the lumen levels have not been confirmed in the above images)*