

Delegated Report		Analysis sheet	Expiry Date:	20/09/2018
		N/A	Consultation Expiry Date:	02/09/2018
Officer		Application Number(s)		
Matthias Gentet		2018/3522/P		
Application Address		Drawing Numbers		
Karma Bakery 13 South End Road London NW3 2PT		See draft decision		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Installation of 2 x extractor flues and 1 x air conditioning (AC) unit to roof of rear extension in connection with existing bakery (retrospective).				
Recommendation(s):		Refused with Warning of Enforcement Action to be Taken		
Application Type:		Full Planning Permission		

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:			No. of responses	01	No. of objections	01
Summary of consultation responses:	<p>A Press Notice was published on 09/08/2018 and expired on 02/09/2018, Site Notices were displayed on 02/08/2018 and expired on 26/08/2018 and Consultation Letters were issued on 31/07/2018 and expired on 21/08/2018.</p> <p><u>Summary of response</u></p> <p>An objection from an agent on behalf of a neighbouring resident was received, summarised as follow:</p> <ul style="list-style-type: none"> - Duct pipes and air conditioning units continue to have a very significant adverse impact upon the amenity of the property; - Client has vacated in 2016 the property due to noise pollution suffered by him; - Acoustic consultants were jointly instructed by our client and Karma (bakery) to produce reports which contained recommendations; - Not all recommendations were put into effect; - Further recommendations were made in November 2017, none of which have been implemented. 					
Hampstead CAAC	No comments received from the Hampstead CAAC .					
Hampstead Neighbourhood forum	No comments received from the Hampstead Neighbourhood forum					

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

Site History

2015/2582/P – (refused with Warning of Enforcement Action to be Taken on 23/12/2015) - 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.

Reasons for refusal:

The proposed development, by way of the level of noise created from the two duct pipes and Air Conditioning unit, significantly harms the living conditions of the neighbouring occupiers by way of noise and general disturbance. Thus, 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.

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.

Enforcement Site History

EN15/0636 - Installation of 2no x ducting and A/C unit to the rear mezzanine roof area - Ongoing

Adjacent Sites

South End Road

No9

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.

No14

PE9800385 – (granted on 27/05/199) - The installation of ventilation system including the erection of an external duct.

No19

P9601847R3 – (granted on 07/02/2015) - Creation of new access door at rear ground floor level and addition of external ventilation duct.

Relevant policies**National Planning Policy Framework 2018****The London Plan (2016)****The Draft New London Plan 2017****Camden Local Plan 2017**

A1 – Managing the Impact of Development

A4 – Noise and vibration

D1 – Design

D2 – Heritage

Camden Planning Guidance 2018 (as amended)

CPG – Amenity – Chapter 6

CPG – Design – Chapters 2, 3 and 11

Hampstead Neighbourhood Plan (October 2018)

Policy DH1 - Design

Policy DH2 - Conservation areas and listed buildings

Hampstead Conservation Area Appraisal (October 2002)

1. Proposal and Background

- 1.1 Planning permission is sought for the retention of 2no extractor flues and an air conditioning (AC) unit to roof of rear extension in connection with existing bakery at ground floor level.
- 1.2 The proposal is a resubmission to the previous application reference: 2015/2582/P refused on 23/12/2015 with Warning of Enforcement Action to be Taken [See relevant history above]. The reasons for the refusal was that, as stated in the Officer's Report (under application reference: 2015/2582/P – *'the Council had 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.'*
- 1.3 Furthermore, the finding of the Environmental Health Office, who attended the site at the time (2015) in response to noise complaints having been lodged with the Council by neighbouring residents, were that *the AC unit and ventilation system could clearly be heard at a level deemed to be unacceptable (a statutory nuisance). 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.*
- 1.4 This resubmission is attempting to regularise the status of the unauthorised plant equipment. Despite the refusal with Warning of Enforcement Action to be Taken, no Enforcement Notice was ever issued to address the breach.
- 1.5 The proposal has been assessed based on the details provided as part of this application.
- 1.6 The Acoustic Report has been revised through the course of this application. The original version was found to be incomplete. Following contact between the applicant and the Council's Environmental Health Officer, a revised Acoustic Report was provided, which forms part of the final assessment of the development.

2. Assessment

- 2.1 The principle considerations in the determination of this application are:
- Design and Heritage
 - Amenity

3. Design and Heritage

- 3.1 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.
- 3.2 Policy D1 (Design) of the Camden Local Plan 2017 states that *'The Council will expect developments to consider the character and proportions of the existing building, where alterations are proposed, the prevailing pattern, density and scale of surrounding development.'*

- 3.3 The policy states further that *'Building services equipment, such as air cooling, heating, ventilation and extraction systems, lift and mechanical equipment, as well as fire escapes, ancillary plant and ducting should be contained within the envelope of a building or be located in a visually inconspicuous position.'*
- 3.4 Policy D2 (Heritage) of the Camden Local Plan 2017 states that *'The Council will require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area.'*
- 3.5 Both duct pipes and Air Condenser unit have been in place since 2015 - prior to the original application reference: 2015/2582/P - and 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. No changes/alterations have taken place since the previous assessment. Due to the presence of the small parapet wall bordering the flat roof, and the location of the duct pipes within the 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.
- 3.6 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 and does not result in detrimental harm.
- 3.7 The proposed plant equipment, in terms of its size, scale, location and materials to be used is considered to be acceptable and in accordance with policies D1 and D2.

4. Amenity

- 4.1 In view of the new policies having taken effect since the 2015 application, by means of the Camden Local Plan 2017 having now superseded the Camden Development Policies and Camden Core Policies, the acoustic acceptability of the plant equipment is to be assessed against policies A1 and A4 of the Camden Local Plan 2017. Of relevance in this instance, the noise thresholds for acceptable impacts set out within the Local Plan were more stringent than those under the previous policy context. The Council sought to alter its acceptable noise thresholds so as to ensure that the residential amenity may be appropriately safeguarded in dense urban environments such as the application site.

Odour

- 4.2 It must also be noted that the assessment of the odour emanating from the duct pipes has already been previously assessed under the 2015 application [See relevant history above]. The same Odour Report dated 27th July 2015 has been re-submitted. Disturbances from odour did not previously form a reason for refusal and no further objection is raised in this regard at this point..

Noise

- 4.3 Policy A1 (Managing the impact of development) states that *'The Council will seek to protect the quality of life of occupiers and neighbours. We will grant permission for development*

unless this causes unacceptable harm to amenity. Noise and vibration can have a major effect on amenity. The World Health Organisation (WHO) for example states that excessive noise can seriously harm human health, disturb sleep and have cardiovascular and behavioural effects. Camden's high density and mixed-use nature means that disturbance from noise and vibration is a particularly important issue in the borough.'

4.4 Policy A4 (Noise and vibration) also states that '*The Council will seek to ensure that noise and vibration is controlled and managed. Development should have regard to Camden's Noise and Vibration Thresholds (Appendix 3). We will not grant planning permission for:*

- development likely to generate unacceptable noise and vibration impacts; or*
- development sensitive to noise in locations which experience high levels of noise, unless appropriate attenuation measures can be provided and will not harm the continued operation of existing uses.*

We will only grant permission for noise generating development, including any plant and machinery, if it can be operated without causing harm to amenity.'

4.5 Officers from the Council's Environmental Health team have reviewed both the initial and revised Noise Impact Assessments submitted alongside the application. In both cases they advise that the level of information provided and methodology used to inform reporting does not align with British Standards guidelines or the Council's adopted requirements and thus its conclusions that detrimental impacts will be avoided cannot be reasonably relied upon to safeguard residential amenity.

4.6 It is noted that the application site is located in very close proximity to a number of residential units, and that the Council has a record of noise complaints being received regarding the application site. The need to clearly and robustly assess and mitigate noise emissions in line with national and local stipulations is therefore seen as critical.

4.7 Noise officers note that the submitted reporting has based its assessment upon the superseded Noise Emission thresholds of 5 dB(A) (for non-tonal) / 10dB(A) (for tonal) less than the existing background measurement (LA90) rather than the 10dB(A) (non-tonal) - 15dB(A) (tonal) now required. This level must include total noise from fixed plant associated with the application site when at a point 1m external to sensitive facades, when all plant/equipment (or any part of it) is in operation. Its conclusions that, with attenuation measures, levels would be 5dB(A) below background levels would therefore still remain contrary to adopted policy requirements and would be unacceptable in this regard.

4.8 Further to the above, the Noise Officer have also outlined a number of erroneous elements within the submitted initial and revised reporting which call in to question the validity of the report and its finding (notwithstanding the above). This would include:

- Inadequate background noise monitoring
- No confirmations that BS methodology has been followed

4.9 In view of the feedbacks as provided by the Council's Environmental Health Officer, it is clear that both Acoustic Reports have been found to be unsatisfactory, and cannot support the retention of both ducts and the Air Condenser unit. The development is therefore contrary to policies A1 and A4. In the absence of more comprehensive report, the development is thus considered contrary to policies A1 and A4 of the Local Plan.

5. Conclusion

5.1 The proposed duct pipes and Air Condenser unit, 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 policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.

5.2 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 policies A1 (Managing the Impact of Development) and A4 (Noise and vibration) of the Camden Local Plan 2017.

6. Recommendation

- a. Refuse Planning Permission; and
- b. Serve an enforcement notice.

That the Borough Solicitor 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 handling unit (Air Conditioning) 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 breaches of planning control:

Installation of 2 x duct pipes and an air handling (air conditioning) unit to the rear mezzanine roof.

WHAT ARE YOU REQUIRED TO DO:

1. Remove the 2 x duct pipes and air handling unit (air conditioning) unit to the rear mezzanine roof; and
2. Make good any resulting damage.

PERIOD OF COMPLIANCE:

3 months

REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:

The applicant has failed to demonstrate, by way of a suitably comprehensive acoustic survey and noise impact assessment, that the cumulative impact of the unauthorised and pre-existing plant equipment, when operating together at full capacity, would be capable of doing so without causing harm to local amenity by means of noise and disturbance, contrary to policies A1 and A4 of the Camden Local Plan (2017).