

FAO Matthias Gentet
Development Management
Camden Town Hall
Judd Street
WC1H 9JE

Our ref: 0014/AEG/RHN1/170923.1
Your ref: 2019/1307/P

9 May 2019

Dear Matthias

Written Representations: Objection to Planning Application 2019/1307/P in respect of Rosa's Thai Café 26 Earlham Street London WC2H 9LN

We act on behalf of [REDACTED]

This letter is a written objection to Planning Application 2019/1307/P (the "**Application**").

1. Background

- 1.1 The background to this matter is set out in our letter to the Council dated 1 October 2018, but briefly our client has suffered unacceptable noise, vibration and odours from the Site caused by a new kitchen extract duct and intake duct which was installed by the Applicant without planning permission. Accompanying that letter was a report commissioned by our client (Environmental Noise Report HRS Services Limited dated 25th September 2018). At paragraph 2.5 therein it states:

"The plant is comprised of an extract fan unit with external rectangular ductwork which terminates at an area level with the balconies of Flat 14 Fielding Court. Both components were observed to be sources of noise."

- 1.2 After our client submitted a number of complaints, the Council issued a planning contravention notice on 18 October 2018 and requested that the Applicant submit a planning application for some new plant, with the intention that this would address the issues of noise and disturbance associated with the existing plant. The officer dealing with the issue, John Sheehy, confirmed in several emails that he understood that the cause of the unacceptable impacts was both the extract and intake ducts:

- i. Email from John Sheehy dated 18th October 2018 where he confirms that the Planning Contravention Notice asked the Site owner to provide "vi. a detailed commentary of the kitchen air handling system as a whole..."

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- ii. Email from John Sheehy dated 13th December 2018 "my colleagues in Environmental Health have advised me that in their view the equipment installed in May 2017... is in breach of planning control. This is based on their assessment of the acoustic report you submitted [note as above that this confirms that both elements – intact and extract ducts- are sources of noise] as well as findings from a visit to your client's property. I have advised Rosa's Café that the equipment in question needs to be removed ..."
- iii. Email from John Sheehy dated 25th January 2019 "only one element that is adjustable, this is the extract fan which serves the flue which discharges at roof level...The element in the rear courtyard, the kitchen intake, does not have an adjustable setting..."
- iv. Email from John Sheehy dated 28th February 2019 "The Balans equipment [an extract duct permission ref. no. 12014/3646/P] is likely to be in accordance with our standards. That is how planning compliant plant would operate. That is achievable at this site and I have made it clear that to achieve this the plant at Rosa's needs a complete solution, with both intake and extract replaced."

(Appendix 1 contains copies.)

- 1.3 Contrary therefore to you email of 2nd May 2019 stating the enforcement investigation EN17/1124 only relates to the air intake duct, the Council over the course of several emails has made it entirely clear that its enforcement investigation related to both intake and extract ducts.
- 1.4 The Site owner fitted an acoustic jacket and new filter on the intact duct on 1st February 2019. Following a Council site visit after its fitting, the Council determined the air handling equipment (assumed to be the intake duct) was still very noisy and it was well short of an acceptable temporary solution. A further update from the Council on 25th February 2019 confirmed that the Site owner had provided a timetable for submission of their plant application with installation thereafter.
- 1.5 It should be noted that the planning application for the Balans equipment included mitigation in the form of an inline duct silencer (para 9.1 of Environmental Noise Survey accompanying that planning application). (This is the extract duct in same rear lightwell - 32-34 Monmouth Street.)
- 1.6 The Applicant has submitted planning applications with references 2019/1307/P and 2019/1440/L. The letter submitted with the Application suggests that it has been carefully considered to ensure that appropriate mitigation measures are installed. We disagree with this assertion. The Application solely relates to the installation of an air handling unit as part of the intake duct; notably it does not include the extract duct. Accordingly the entirety of the extract duct would remain unlawful and without the benefit of a listed building consent thus not addressing the offence committed if the same was needed. The Applicant has made a deliberate decision to only include mitigation measures to the intake duct despite John Sheehy's confirmations (as set out above) that he had made it very clear to them that mitigation measures were required to both ducts. One can only assume this has been a deliberate attempt by the Applicant to do the bare minimum to try and avoid enforcement action.
- 1.7 The Application must be determined in accordance with the Council's development plan unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004). The Council's development plan is set out in its Local Plan (2017), and various supporting documents such as its Guidance on Amenities (2018)

and Local Area Requirements for Planning Applications (2018). We contend that the Application, if granted, would not comply with the Council's development plan.

2. Noise and Vibration

- 2.1 The Council's Policy A4 'Noise and vibration' is clear that the Council will not grant planning permission for a "*development likely to generate unacceptable noise and vibration impacts*" (Paragraph 6.85). It also notes that "*there is a proliferation of fixed machinery, such as air conditioning units in Camden's centres which cumulatively can have a harmful impact*" (Paragraph 6.87).
- 2.2 The Council's 'Planning Guidance on Amenity' requires that an acoustic report should accompany an application where plant, ventilation, air extraction or conditioning equipment and flues are proposed (Paragraph 6.4). It is clear from Chapter 6 of the guidance that an acoustic report should include an assessment of the impact of vibration. The Noise Impact Assessment prepared by Noise Solutions Limited does not cover any assessment of the substantial vibration impacts affecting our client, despite the fact that a significant part of the nuisance is being caused by vibration.
- 2.3 The guidance also requires that such an assessment should consider guidance from B6472-1:2008 'Guide to evaluation of human exposure to vibration in buildings Part 1: Vibration sources other than blasting' (Paragraph 6.26). This guide is not mentioned in the Noise Impact Assessment and the Council's requirements have therefore not been complied with.
- 2.4 This is particularly relevant in light of the recent decision in *R on the Application of Katherine Kerswell v London Borough of Lewisham* (Case Number CO/4444/2018), in which the High Court found that if the effect of a development was going to be significant and disturbing vibration in another property, "*it is ludicrous... to say this has got nothing to do with planning considerations.*" The Local Plan requires compliance not only with airborne noise but also with structural noise (perceived as vibrations).
- 2.5 Appendix 3 of the Council's Local Plan requires that vibration inside dwellings should be limited to 0.2 to 0.4 VDV ms^{-1.75} between 07:00 and 23:00 and 0.13 VDV ms^{-1.75} between 23:00 and 07:00. There is nothing in the Application which confirms whether or how these limits are going to be met.
- 2.6 You stated that with regards to vibration this can be dealt with by condition. However, given no assessment of the same has been undertaken it would be premature to grant the application until such assessment is carried out to demonstrate compliance with policy standards. As per the above case, any permission granted without addressing a highly material consideration, namely effect on amenity from vibration, would be unlawful.

3. Our proposals

- 3.1 If the Council decides, unlawfully in our view for the reasons set out above, to grant the Application we propose that certain conditions be added and that the Applicant be required to take certain steps before the Permission can be granted.
- 3.2 We propose that the following conditions be added to the Permission:
 - (a) a noise levels condition requiring noise levels at sensitive facades to be at least 10dB below background noise levels, as per the Council's current policy;
 - (b) a vibration level condition requiring compliance with policy levels;

- (c) proposed mitigation of atmospheric side attenuation to be fitted to the ventilation systems and a 20dB enclosure to be installed around the fan before use [this is important as the noise assessment's results assume the same have been fitted so it is important to ensure they are fitted];
- (d) an assessment and report to be carried out post-installation (and pre use) and submitted to the Council, to include actual noise levels and actual vibration levels, and if this indicates that the Applicant is in breach of noise level conditions then all use of the plant is to cease until such time as additional mitigation measures have been approved and installed;
- (e) automatic clocks to be fitted to the equipment prior to commencement, to ensure that the plant does not operate between 23:00 and 08:30; and
- (f) a draft maintenance report for the air handling unit to be submitted to the Council for approval, and when approved to be complied with [important to ensure attenuation measures do not lose their effectiveness over time]..

4. Conclusion

- 4.1 For the reasons given above, we consider that the Application is contrary to the Council's development plan. The Application cannot be lawfully approved without the vibration assessment. Our client was promised a comprehensive solution, and whilst some measures have been taken by the Applicant there remain significant unacceptable impacts on our client.
- 4.2 We request that you request that the Applicant address the issues set out above, and only determine the Application once satisfactory assessments and plans have been submitted.
- 4.3 We have written under separate cover as regards the enforcement investigation relating to the unlawful extract duct.

We look forward to hearing from you.

Yours sincerely



RUSSELL-COOKE LLP

Direct Dial: +44 (0)20 8394 6457
E-mail: alex.ground@russell-cooke.co.uk