

2017/5155/P - 40 Goodge Street

(including selected premises referred to in Officer's report - numbered 1-15)



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Map key:

Goodge Street

1. Trattoria Mondelo (no.36)
2. Rev J W Simpson (no.32)
3. The Fitzrovia PH (no.18)
4. Icco Pizzeria (no.46)
5. Spaghetti House (no.15-17)
6. Wrap It Up (no.19)
7. Sanxia Renjia (no.29)
8. Yoi Sho (no.33)
9. Draft House PH (no.43)
10. Wok To Walk (no.45)
11. Salt Yard (no. 54)
12. Benito's Hat (no.56)
13. One Tun PH (no.58-60)

Charlotte Street

14. Trattoria Pescatori (55-57)
15. Herman Ze German (43)

Photo – Kua Aina, 40 Goodge Street (host site)



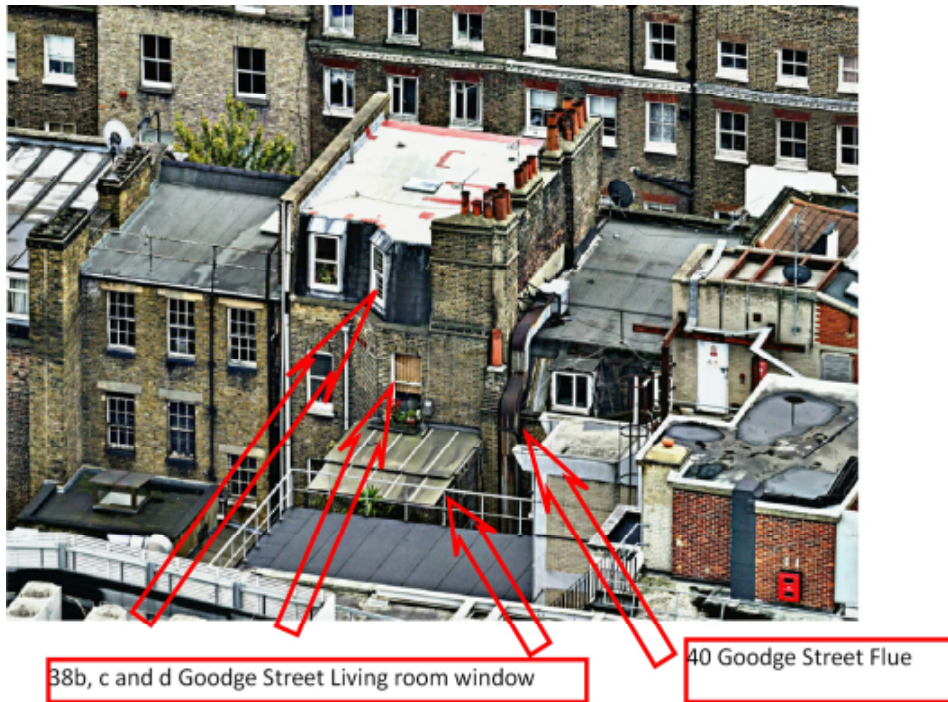
1. Rear elevation - previous (replaced) extract flue (left photo) / previously unauthorised flue (right photo)



2. Rear elevation & flat roof - previous (replaced) extract flue (left photo) / authorised flue & condensers (right photo)



3. Rear elevation - previous (replaced) extract flue & neighbouring windows



4. Rear flat roof - previous (replaced) air handling units and cold water tank systems



5. Rear flat roof – authorised wall-mounted condenser (left photo) / x2 authorised condensers with other plant behind at neighbouring property at no. 42 Goodge St (right photo)



6. View to side – existing plant at neighbouring properties at 42 Goodge St / 44-46 Charlotte St



7. Side facing properties - corner of Goodge Street & Charlotte Street



8. Rear facing properties - Scala Street



Delegated Report		Analysis sheet		Expiry Date:	28/11/2017
(Members' Briefing)		N/A		Consultation Expiry Date:	02/11/2017
Officer			Application Number(s)		
Tony Young			2017/5155/P		
Application Address			Drawing Numbers		
40 Goodge Street London W1T 2QP			Refer to draft decision notice		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Variation of condition 4 (requiring automated clocks to be installed to ensure equipment does not operate between 22:00 and 08:00 hours) in relation to planning permission (2015/3833/P) dated 09/11/2015 for replacement and extension of flue stack, and installation of condensers; namely to exclude 2 refrigeration condensers from restricted operational hours and to vary the restricted operational hours to between 23:00 and 08:00 Mon-Fri and between 23:00 and 09:30 Sat-Sun.					
Recommendation(s):		Grant Permission			
Application Type(s):		Variation of Condition			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	3	No. of responses	01	No. of objections	01
			No. Electronic	01		
<p>Site notice was displayed from 11/10/2017 to 01/11/2017 Press notice was published on 12/10/2017 and expired 02/11/2017</p>						

Summary of consultation responses from local residents, CAAC/Local groups, etc

Residents at Flat 3, 38 Goodge Street objected to the proposals, summarised as follows:

1. *“Noise limit was monitored by the client themselves and not a third party or the council. It exceeds anything we have known for the past eighteen years. The noise from the condenser unit for the refrigeration has yet to be monitored as apart from the cooking facility so the impact against ambient night time noise has not been determined. The noise from the extractor flue is improved but it is still noticeable above other air conditioning units on this side of rear courtyard of Goodge Street, Scala Street and Charlotte Street.”*
2. *“Triple filter system needed to alleviate the charcoal burning of this type of cooking was first identified by a Camden officer on one of the site visits to our home but has not been followed up. Smoke and fumes were always part of the request for action by the council from the onset of the situation and the main reason why the flue was extended from the rear to the front. Smoke emanates from the flue on the roof and it can be seen clearly intermittently back and front and whilst people are walking up and down the street at lunchtimes etc. Obviously these fumes come in our front windows. It must be the Council’s responsibility to address this issue surely?”*
3. *“At the moment, the extractor flue is operating until 11.30 to 11.45pm each evening; in no way does it ever get switched off at 10pm and therefore the timer switch although installed, is not in operation. It makes no sense to agree to increased hours and at the same time informing enforcement to act on the existing hours.”*
4. *“The application also lists restaurants in the area but only one is in our neighbourhood part of Goodge Street, Mondello, that is next door to us on the other side. There is no noise from this restaurant beyond 10.30pm and they do not have, or have had for the past 19 years, any noticeable extraction equipment in use. (Icco is across the junction below the mosque). The other restaurants are on Tottenham Court Road and Newman Street (!) and are not comparable with the close proximity of permanent residential in this part of Goodge Street.”*

Officer response to above:

1. The previous Environmental Health and Planning Enforcement investigations into earlier similar noise complaints, made before 2015, were closed following investigation. Mitigation measures were put in place at the time and a post-installation noise assessment carried out. The assessment confirmed all proposed equipment to be compliant with Camden’s noise standards. As such, planning permission and discharge of noise conditions were approved in 2017 (see also sections 3 and 4 of report for further details). A new noise assessment carried out in May 2019 during night-time hours shows the 2 refrigeration condensers to be compliant. Any new complaints can be investigated by the Council’s Planning Enforcement and/or Environmental Health Teams as appropriate.

2. An investigation by an Environmental Health Officer was unable to identify or associate any smoke or burning with the restaurant. A triple filter system has never formed part of any application proposals nor any formal recommendation from Environmental Health Officers. It would be unreasonable to require the applicant to introduce such a system in the absence of any evidence associating the particular restaurant with excessive odours or smells of this kind.
3. Any alleged breach of condition with regard to the use of automatic clocks can be investigated by the Council's Planning Enforcement Team. This remains the case regardless of any approval to vary this condition.
4. The case officer has taken into consideration any relevant premises serving food and drink within the immediate vicinity and wider locality (see section 4 of report).

Cllr Adam Harrison objected to the proposal as follows:

5. *"I object to the application 2017/5155/P. It is disturbing that an application be made when there is clearly an outstanding issue around noise from this restaurant disturbing residents. I have continued to have correspondence from residents this year suggesting that the issues are ongoing. These should be resolved prior to any granting of permission."*

Officer response to above:

5. See officer's response 1 above and section 4 of report for further details.

Charlotte Street Association objected to the proposal, summarised as follows:

6. *Although it might appear reasonable to extend the terminal hour for the mechanical equipment/duct from 10pm to 11pm Mon to Sun, noise of the equipment/duct is noticeably above the other background/ambient noise. Thus, we think that the noise level of the equipment needs to be reduced before allowing the extended hours.*
7. *It is unreasonable to have a morning start time of 7.30am Mon to Fri, instead of the usual 8.00am next to residential.*
8. *The 2 refrigeration condensers could be on 24 hours a day, Monday to Sunday. The residents find these noisy. The noise levels of these condensers need to be below the background/ambient noise level before the hours restriction is lifted.*
9. *The Report says that there is no current Environmental Health or Planning enforcement investigation. I know that the residents reported the situation over a fairly long time period, and that there was a long dialogue back and forth with Environmental Health and Planning, so the residents eventually gave up as this matter went on and on without any satisfactory outcome. Residents at no. 38 still have smells and noise affecting their flat.*

10. *The context of this part of Goodge Street is different. 40 Goodge Street are housing association/social housing family flats. Behind the rear of these buildings there has been an exceptional build-up of noise from various mechanical plants and ducts over the years at the rear of these buildings, and thus particularly affecting the overlooking residential flats and there has been serious “noise creep” despite Camden’s planning conditions for new equipment.*

Officer response to above:

6. See officer’s response 1 above and section 4 of report for further details.
7. The proposed extension of operational hours to an earlier time of 07.30 hours has now been omitted from proposals. In addition, the restriction on Saturday and Sunday mornings has been changed from the currently approved 08:00 hours to a later 09:30 hours start, resulting in a later use of any relevant approved equipment on weekend mornings to the benefit of residential amenity.
8. Predicted noise from the condensers as calculated in a new noise assessment would be at least 12dB(A) below the typical background noise level at the nearest and/or most affected noise sensitive premises. This would comply with the requirements of condition 6 attached to the approval which specifies a level at least 10dB(A) below the typical background noise level (see section 4 of report for further details).
9. See officer’s response 1 above and section 4 of report for further details.
10. The site context has been taken into consideration during the assessment (see section 4 of report for further details).

Site Description

The application site is a 4 storey building located within a terrace of properties on the northern side of Goodge Street, and sits between Charlotte Street to the west and Whitfield Street to the east. The ground floors within this part of Goodge Street are mostly occupied by restaurant/café and retail uses with mainly residential units above. The ground floor is currently used as an A3 café/restaurant.

The application site sits within Charlotte Street Conservation Area. The building is not listed, but is identified as making a positive contribution to the special character and appearance of the area (Charlotte Street Conservation Area Appraisal and Management Strategy - adopted July 2008). The site also falls within Fitzrovia Central London Area.

Relevant History

Application site:

2016/0394/P - Details of anti-vibration attenuation measures (condition 5) and post-installation noise assessment (condition 6) as required by planning permission (2015/3833/P) dated 09/11/2015 for replacement and extension of flue stack and installation of condensers. Granted approval dated 30/03/2017

2015/3833/P - Replacement of external rear extract flue and installation of 2 air conditioning condensers and 2 refrigeration condensers on rear ground floor flat roof and wall (all retrospective), and proposed

alterations to extend flue stack in connection with existing restaurant use. Granted planning permission dated 09/11/2015

9201385 - Change of use and works of conversion to provide a one bedroom flat on the first floor and a three bedroomed maisonette on the second and third floors. Granted planning permission dated 29/04/1993

CTP32062 - Change of use of part of the basement from stores to use as an extension to the restaurant on ground floor and the remainder of the basement. Granted planning permission dated 05/05/1981

CTP6307 - The use of the first floor of No. 40 Goodge Street, Camden as an extension to the existing restaurant on the ground floor. Granted planning permission dated 02/01/1969

TP2293 - To remove the existing and to install a new shop front at No. 40, Goodge Street, St. Pancras, and to carry out internal alterations in connection with the use of the ground floor for the purposes of a restaurant and the basement for associated storage and to erect a metal ventilating duct on the rear elevation to terminate 3'0" above the roof line. Granted planning permission dated 20/02/1964

Wider locality:

2016/3615/P no. 51) - Change of use from Class A1 (shops) to mixed Class A1 (retail) and Class A3 (restaurants and cafes). Granted planning permission dated 18/10/2016

2015/3117/P (no. 58) - Erection of kitchen extract flue to rear of building. Granted planning permission dated 28/10/2015

2013/4064/P (no. 56) - Installation of flue and replacement plant equipment to rear in connection with existing restaurant. Granted planning permission and warning of enforcement action dated 17/01/2014

2013/4100/L (no. 56) - Installation of flue and replacement plant equipment to rear in connection with existing restaurant. Granted listed building consent and warning of enforcement action dated 17/01/2014

Relevant policies

National Planning Policy Framework 2019

The London Plan March 2016

Camden Local Plan 2017

A1 - Managing the impact of development

A4 - Noise and vibration

TC4 – Town centre uses

Camden Planning Guidance

Amenity – Noise and vibration – chapter 6 (March 2018)

Town centres – Fitzrovia and South West Bloomsbury – paragraphs 3.50-3.57 (March 2018)

Charlotte Street Conservation Area Appraisal and Management Strategy (adopted July 2008)

Fitzrovia Area Action Plan (adopted March 2014)

Assessment

1. Proposal

1.1 This application was previously reported to the Members' Briefing panel on 30th April 2018 with a recommendation for approval. The panel did not refer the application to Planning Committee and instead requested further information and assurances regarding the proposed variation. Following further discussions between the applicant and the Council, further information and an amendment to operational hours have been submitted for consideration by the panel. In addition, since this was last reported to members, a late objection was received from Charlotte Street Association.

1.2 This application seeks to vary condition 4 of planning permission ref. 2015/3833/P dated 09/11/2015 to permit extended operational hours with regard to the use of the kitchen extract flue and 2 air conditioning condensers, and to exclude 2 refrigeration condenser units from the restricted operational hours.

1.3 The existing condition (imposed under application ref. 2015/3833/P) requires that an automatic time clock is fitted to ensure that the kitchen extract flue and condenser units that form part of the proposals do not operate between 22:00 and 08:00 hours. The automatic time clock shall thereafter be permanently retained and maintained in accordance with the manufacturer's recommendations.

1.4 This application seeks to:

- a. extend the operational hours with regard to the use of the kitchen extract flue and 2 air conditioning condensers so they do not operate between 23:00 to 08:00 hours (Mon-Fri) and 23:00 to 09:30 hours (Sat-Sun); and
- b. exclude the 2 refrigeration condensers from the restricted operational hours.

2. Amendments / further information

2.1 The original proposed extension of operational hours to an earlier time of 07.30 hours has now been omitted from the proposals.

2.2 A new noise impact assessment and survey have been carried out in May 2019 and submitted for the night-time period (between 23:00 hours to 07.00 hours) as the previous noise survey hadn't covered this period and in order to provide the most up-to-date data.

3. Assessment

3.1 The principal consideration material to the determination of this application is the implications for the proposal on the living conditions and amenity of neighbouring occupants with particular regard to noise and vibration.

4. Amenity

4.1 Local Plan Policy A1 (Managing the impact of development) seeks to protect the amenity of Camden's residents by ensuring the impact of development is fully considered and by only granting permission to development that would not harm the amenity of communities, occupiers and neighbouring residents. More specifically, Local Plan Policy TC4 (Town centre uses) seeks to ensure that the development of town centre uses such as food and drink provision does not cause harm to the local area or the amenity of neighbours.

4.2 This is supported specifically by Camden Planning Guidance (Amenity – Chapter 6, Noise and vibration) which recognises that food and drink uses can pose particular difficulties in terms of noise and disturbance as their peak operating time often includes early morning and evening hours, and so requires the potential impact on the amenity of neighbouring properties to be fully

considered and assessed. While Local Plan Policy A4 (Noise and vibration) also seeks to ensure that noise and vibration in particular are managed and controlled adequately in order to minimise any potential disturbance.

- 4.3 The suitability of installing kitchen extract flue and condensers at the rear of the premises as already been considered. An application for planning permission was submitted in 2015 (ref. 2015/3833/P) for the '*replacement of external rear extract flue and installation of 2 air conditioning condensers and 2 refrigeration condensers on rear ground floor flat roof and wall (all retrospective), and proposed alterations to extend flue stack in connection with existing restaurant use.*' The proposal was fully assessed and planning permission was granted on 09/11/2015 subject to conditions.
- 4.4 Details of anti-vibration attenuation measures (condition 5) and post-installation noise assessment (condition 6) as required by the above planning permission were subsequently submitted for consideration in 2016 (ref. 2016/0394/P). The details were fully assessed and reviewed by a Council Environmental Health Noise Officer who confirmed that the proposed sound insulation and anti-vibration measures would ensure that external noise levels of all plant units and equipment would be compliant with noise criteria and in accordance with policies and guidance. As such, both conditions were granted approval on 30/03/2017.
- 4.5 With regard to the current proposals to relax the time restriction for the operation of the approved equipment by 1 hour in the evening until 23:00 hours (Monday to Sunday), a Council Environmental Health Noise Officer has raised no objections given that all equipment is considered to be compliant with Camden's noise criteria. The Environmental Health Noise Officer confirmed that a new noise report is not necessary for this element of the proposed variation given that the alteration by an hour would apply to plant and equipment already assessed and approved as being compliant with Camden's noise standards.
- 4.6 The original proposal also included an extension of operational hours in the morning to an earlier time of 07.30 hours; however, following concerns raised by the Member's Briefing panel and objectors concerning this proposed extension of operational hours, the applicant has amended the proposals so as to omit this proposed earlier extension from the proposal.
- 4.7 A consultation response was received from a local resident objecting to the proposal on the basis of excessive noise from plant and equipment at the rear. However, it is noted that previous Environmental Health and Planning Enforcement investigations were closed following investigation and subsequent planning permission and discharge of noise conditions applications being approved as noted above. Therefore, in the absence of any new evidence to the contrary, it is considered unreasonable to assume that the approved plant and equipment is not compliant with the conditions attached to the planning approval or Camden's noise criteria in general. Any new noise complaints can be investigated under noise nuisance legislation.
- 4.8 Late evening restaurant/café, bar and pub use is already an established characteristic of the street and wider locality, and as such, nearby residents would already experience and not be unfamiliar with some level of noise and disturbance commensurate with a vibrant commercial street. There are a variety of premises in both the immediate vicinity and wider locality of the host property serving food and/or drink through restaurant, café, bar or public house uses. While it is accepted that the operation and functioning of each premises is unlikely to be exactly the same as any other premises (or indeed the host site itself), many of them are permitted to operate at comparable hours to those being applied for in this current application. In the more immediate vicinity, these include Trattoria Mondelo (no.36), Rev J W Simpson (no.32), The Fitzrovia PH (no.18), Icco Pizzeria (no.46), Spaghetti House (no.15-17), Wrap It Up (no.19), Sanxia Renjia (no.29), and Yoi Sho (no.33). In the wider locality, these include Black Sheep Café (no.5-7), Draft House PH (no.43), Wok To Walk (no.45), Salento Green Life (no. 51), Salt Yard (no. 54), Benito's Hat

(no.56), One Tun PH (no.58-60), Barrica Bar (no.62), Trattoria Pescatori (55-57 Charlotte Street), and Herman Ze German (43 Charlotte Street).

- 4.9 Notwithstanding that some of the above premises may not choose to operate currently to the full extent of their permitted opening hours, it would seem unreasonable to restrict the applicant from operating the permitted Class A3 use by a further hour so as to benefit from reasonable operational hours should they choose to do so. The ability of the host premises to operate in such a way is considered to be consistent with paragraphs 3.50-3.57 of Camden Planning Guidance (Town centre and retail – Fitzrovia and South West Bloomsbury) and Principle 5 (Retail Provision) of the Fitzrovia Area Action Plan which seeks to support independent businesses and recognises the important role that food and drink uses play in adding viability and vitality within appropriate commercial environments including at weekends and during the evening.
- 4.10 The host site (no.40) comprises a ground floor Class A3 restaurant/café use with residential flats above. This arrangement is fairly typical of this part of Goadge Street with ground floor premises mostly occupied by restaurant/café and retail/commercial uses and with residential units above. Some degree of noise and disturbance is to be expected at the application site, given the nature of its Class A3 use and commensurate with the vibrant commercial street in which it is located within the Charlotte Street Conservation Area. As stated above, all plant units and equipment have been assessed as being compliant with Camden's noise criteria and to be in accordance with policies and guidance. The relaxation of the restriction on operational use of the kitchen extract flue and 2 air conditioning condensers by an hour might encourage more customers to visit the restaurant; however, it is not considered that this is likely to lead to a significant increase in footfall of customers visiting the premises so as to generate any undue additional noise or disturbance likely to harm to the living conditions and general amenity of neighbouring occupants.
- 4.11 Furthermore, it should be noted that the hours of use of the premises is not time restricted through any planning condition, the opening hours being imposed through Licensing regulations via its premises licence. As such, the proposed variation in operational hours would not allow the approved plant and equipment to operate later in the evening than the permitted opening hours. In this context, and the context of this particular location and environment, a variation of the permitted operational hours until 23:00 in the evening and no later is considered appropriate.
- 4.12 Moreover, it is noted that along with seeking a degree of relaxation of the restricted hours, the proposal also includes a restriction of the operational hours of the equipment at weekends which would benefit local residents. In particular, the proposals would restrict operational use by a further 1 and a half hours on both Saturday and Sunday mornings (extending the restriction from 08:00 hours currently to a proposed 09:30 hours start), thereby resulting in a later use of any relevant approved equipment on weekend mornings. As noted above, the applicant has also amended the proposals to omit any change to earlier operational times on weekdays in light of objections raised.
- 4.13 The proposal also seeks to exclude 2 refrigeration condenser units entirely from the restricted operational hours so that they can operate in the interests of food safety and hygiene standards. This would allow for a safe temperature to be maintained for all stored food. It would not necessarily mean that the refrigeration condensers would be operational 24/7, but only as and when necessary to maintain the correct temperature for food. A Council Environmental Health Noise Officer has confirmed this to be a typical and necessary function of these units, and that it helps to prevent overheating, and as such, raised no objection to the proposed removal of the 2 approved refrigeration condensers that control food temperatures from condition 4. This was based on the approved details and measures referred to above (ref. 2016/0394/P) ensuring that

all plant and equipment would be compliant with the conditions attached to the main planning approval and Camden's noise criteria.

- 4.14 However, following concerns raised at a previous Members' Briefing panel meeting and objections received by the Charlotte Street Association, as well as the fact that the 2 refrigeration condenser units are proposed to operate beyond the agreed operational hours (in particular during the night-time between 23:00 hours to 07:00 hours which can be a particular noise-sensitive time period for residents), further assurances were sought from the applicant.
- 4.15 As a consequence, a new noise survey was carried out in May 2019 with the condenser units operating together at maximum operational levels between 23:00 hours to 07:00 hours. Based on this survey data, a noise assessment was submitted to the Council that included calculations that predicted noise from the relevant plant to be at least 12dB(A) below the typical background noise level at the nearest and/or most affected noise sensitive premises. This would be in compliance with the level required by condition 6 attached to the original planning permission (2015/3833/P) which specified an external noise level requirement of at least 10dB(A) lower than the lowest existing background noise level.
- 4.16 The noise assessment has been fully assessed and reviewed by a Council Environmental Health Noise Officer who confirmed that the external noise levels of the relevant mechanical plant would be compliant with Council noise criteria without the need for any additional mitigation measures. As such, the proposed exclusion of the 2 refrigeration condensers from the restricted operational hours is considered to be appropriate. All other approved plant and equipment would continue to be required to operate in accordance with planning permission granted and any conditions attached to that approval, in line with Camden's noise criteria, and within the agreed hours of operation.
- 4.17 Overall, the proposals are therefore considered unlikely to result in undue harm to the living conditions and general amenity of neighbouring occupants and to accord with policies A1, A4 and TC4, and with Camden Planning Guidance, and are acceptable.

5. Recommendation

- 5.1 It is recommended that a variation of condition be granted permission.

DISCLAIMER

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 10th June 2019, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

Application ref: 2017/5155/P
Contact: Tony Young
Tel: 020 7974 2687
Date: 3 June 2019

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DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Variation or Removal of Condition(s) Granted

Address:

**40 Goodge Street
London
W1T 2QP**

DECISION

Proposal:

Variation of condition 4 (requiring automated clocks to be installed to ensure equipment does not operate between 22:00 and 08:00 hours) in relation to planning permission (2015/3833/P) dated 09/11/2015 for replacement and extension of flue stack, and installation of condensers; namely to exclude 2 refrigeration condensers from restricted operational hours and to vary the restricted operational hours to between 23:00 to 08:00 (Mon-Fri) and 23:00 to 09:30 (Sat-Sun).

Drawing Nos: Cover letter and email from Kua-Aina dated 30/08/2017 and 14/08/2018 respectively; Noise impact assessment report from Sound Licensing Ltd. dated 16/05/2019.

The Council has considered your application and decided to grant permission subject to the following condition(s):

Condition(s) and Reason(s):

- 1 For the purposes of this decision, condition no.4 of planning permission 2015/3833/P shall be replaced with the following condition:

REPLACEMENT CONDITION 4

Automatic time clock(s) shall be fitted to the kitchen extract flue and 2 air

conditioning condenser units that form part of these proposals to ensure that the equipment does not operate between 23:00 and 08:00 hours, Monday to Friday, and between 23:00 and 09:30 hours, Saturday and Sunday. The timer equipment shall thereafter be permanently retained and maintained in accordance with the manufacturer's recommendations.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1, A4 and TC4 of the London Borough of Camden Local Plan 2017.

Informative(s):

- 1 This approval under Section 73 of the 1990 Act effectively varying the relevant condition of the previous planning permission is subject otherwise to the same terms, drawings, conditions (and obligations where applicable) as attached to the previous planning permission.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Director of Regeneration and Planning

DECISION