

London Borough of Camden Proof of Evidence Rear of 115-119 Finchley Road

JS2

Rule 6 Statement of Case of Camden Council

PLANNING SERVICES

**TOWN & COUNTRY PLANNING (DETERMINATION BY INSPECTORS)
(INQUIRIES) RULES 2000**

**RULE 6 STATEMENT OF CASE
of the London Borough of Camden**

APPEAL SITE

Rear of 115-119 Finchley Road, London NW3 6HY

APPELLANT

Roofoods Ltd

SUBJECT OF APPEAL

- Enforcement notice issued for change of use from light industrial use (Class B1) to Commercial Kitchens and Delivery Centre (Sui Generis); and installation of external plant, including 3 extract ducts, 4 flues, 3 air intake louvres, 1 rooftop extract and 3 air condenser units.

COUNCIL REFERENCE: EN17/1005

PLANNING INSPECTORATE REFERENCE: APP/X5210/C/18/3206954

1.0 SITE AND SURROUNDINGS

- 1.1. The appeal relates to a site located to the rear of 115-119 Finchley Road on the west side of Finchley Road near the Swiss Cottage underground station. The site measures approx. 487m² and is accessed via a private lane that runs down the side of 115 Finchley Road. There is an open forecourt area to the rear (west part of the site).
- 1.2. The building on the site is two storeys in height. It is made of brick and has a rectangular plan. The ground floor, which the appeal relates to, has a generous floor-to-ceiling height in line with its previous light industrial use. A suspended ceiling has been installed to the ground floor and the upper space houses extract flues and service equipment required by the commercial kitchens and delivery centre operated by Deliveroo. There is a separate first floor unit which is currently vacant but which has, in the past, been in commercial use.
- 1.3. The site is surrounded by residential properties to the north, south and west and on the upper floors of the commercial units along Finchley Road to the east of the building. Directly to the north of the site is the car-parking area for Cresta House (a 12 storey building with residential units on the upper nine floors and commercial on the lower three) which is accessed from Belsize Road. There was previously a fence separating the appeal site from the private carpark. This was removed in 2017, however during visits in March 2019 officers noted that a new metal fence and gate have been installed
- 1.4. It is noted that the townscape at the rear (west) and side (south) of the site has a strongly residential character defined by quiet streets, parking spaces and green verges with grass or shrubs. In this area, called Dobson Close, the buildings are 2-4 storeys in height. Directly to the rear of the appeal site is a terrace of individual houses which are two storeys in height. To the front of the site, at the top of the slip road leading to Finchley Road, the area has a more mixed-use character with, in addition to high density residential, other town centre uses such as the commercial parade 115-119 Finchley Road, office buildings like Cresta House

(ground, first and second floors in office use), and, on the opposite side of Finchley Road, the Odeon cinema and Ye Olde Swiss Cottage pub.

- 1.5. The site is located within the Finchley Road/ Swiss Cottage Town Centre. It is not located within a Conservation Area, nor is the building listed. Finchley Road (A41) is part of the Transport for London Road Network (TLRN).

2.0 PLANNING POLICY FRAMEWORK

2.1 The London Borough of Camden Local Plan was formally adopted on the 3rd July 2017. The Council's policies therefore have been adopted recently and are up to date. There are no material differences between these policies and the NPPF. The Council's policies should be given substantial weight in accordance with paragraphs 214 -216 of the NPPF.

2.2 The following are the Camden Local Plan policies relevant to the issues under consideration in this appeal:

- G1 Delivery and location of growth
- H2 Maximising the supply of self-contained housing from mixed use schemes
- A1 Managing the impact of development
- A4 Noise and Vibration
- TC4 Town Centre Uses
- D1 Design

Supplementary Planning Guidance

2.3 Camden Planning Guidance was formally adopted in 2011, 2015 and 2018. The following CPG sections are relevant to this appeal:

- CPG1 Design (updated March 2018)
 - Chapter 1 Introduction
 - Chapter 2 Design Excellence
 - Chapter 9 Building Services Equipment
- CPG Amenity (adopted March 2018)
 - Chapter 6 (Noise and vibration)

2.4 These Supplementary Planning Documents were adopted following extensive public consultation.

2.5 The following Draft CGP is relevant to this appeal:

- CPG Transport (Draft November 2018)
 - Chapter 9 Pedestrian and Cycle Movement

2.6 The full text of each of the guidance documents has been sent with the questionnaire documents.

Other policy documents

- National Planning Policy Framework (2019)
- London Plan (2016)
- Draft New London Plan (2017)

3.0 PLANNING HISTORY

Historic applications

3.1 Following the submission of the appeal, a full audit of the planning history of the appeal site as well as surrounding sites was undertaken to fully establish the lawful use of the site. See full details of planning history search at Appendix 1.

3.2 The appeal site was originally constructed as part of a wider redevelopment at 115-121 Finchley Road. This original 1956 permission (later renewed in 1960) granted consent for the erection of a, part two-part and part five storey building, comprising shops and supermarket on lower-ground and ground, five self-contained flats at first floor and five self-contained maisonettes at second and third floors with ancillary garages at the rear.

3.3 The original building was host to four commercial units (115, 117, 119 and 121), each of which featured a main ground floor retail area and basement within the main building below. In addition, the two central commercial units (117 & 119) projected rearwards to include the two storey rear building at both ground and lower ground floor level. It is the two storey rear building that is the subject of this appeal. Since its first construction, these commercial units have been subject to numerous planning applications including for their sub-division and changes of use. The planning history would indicate the following land uses changes to these units:

No.115

3.4 Permission was granted in 1961 for a new shop front and for the use of the unit to change from retail (A1) to a restaurant (A3). This unit does not feature access to the two storey rear building (appeal site), however, records show that its basement floor was extended to include the adjacent basement space of 117 as this appears in approved drawings from the late 60's onwards. This unit is currently vacant but has been host to restaurant/cafe uses ever since.

No.117 & 119

- 3.5 Records indicate that these two units have been merged and sub-divided as well as subject to changes of use a number of times. Permissions from the 1980's indicate that these two units were amalgamated into a single planning unit which contained a large double fronted sales area as well as the whole of the two storey rear building which was used as an ancillary store. Approved plans from 1984 show that whilst host to Comet Electronics store at the time, this combined unit included conveyor belts from the store up to ground level which remained in situ up until the current occupants (see ref. 8400217). In 1991, permission as then granted for the lateral sub-division of the larger unit back into two (ref. 9005435) with both units retaining part of the two storey rear building for use as stores and WCs. Under this permission, no.117 became a restaurant use and no.119 was retained as a retail unit. The units, including the rear two storey building, appear to have been kept as two separate units thereafter.
- 3.6 In 1992, permission was granted for no.119 (only) to be converted into a mix of uses including retail and offices (ref. 9200229). The approved drawing for this permission shows that the planning unit still retained both the ground floor frontage area as well as a half of the two storey rear building (split laterally) within its planning unit. Whilst the Council's description of development labels the use as being a mix of A1 and B1, a condition requires the ground floor front unit to be retained in retail use, by reference to a plan, showing the middle section as 'offices' and the rear section as 'training room'. The adjacent premises of No.117 are shown sketched into this plan, with a shop at the front and 'Red Cross Centre' at the rear. The Application for No.119 was made by the British Red Cross Society and the description of development in the application form was: "Change of use of rear part of ground floor to Red Cross Centre (comprising offices and training room) ancillary to existing retail shop".
- 3.7 To date, no.117 remains a restaurant and no.119 remains (in retail use). However, neither unit now benefits from access or use of any part of the two storey rear building which appears to have been severed from the units and subdivided to form a new and independent planning unit (the site that is subject to this appeal).

No.121

- 3.8 Permission was granted in 1961 for a change of use of this unit from retail to a dry cleaners. This unit appears to contain a basement but does not feature access into the two storey building to the rear. Records indicate that the permitted dry cleaners use remained in situ until 2008, when the property was converted back into a retail use.

Appeal Site Planning History

- 3.9 **May 2018** - Planning permission refused and warning of enforcement action for installation of external plant, including 3 no. extract ducts, 4 no. flues, 3 no. air intake louvres, 1 rooftop extract and 3 no. air condenser units (Retrospective), installation of external plant, including 3 no. extract ducts, 4 no. flues, 3 no. air intake louvres, 1 rooftop extract and 3 no. air condenser units. At the time of writing no formal determination had been made although recommendations to refuse had been issued.ref. 2017/4737/P.

Recommended reasons for refusal:

1. The extract ducts and rooftop plant equipment, by virtue of their siting and visual impact, would cause harm to the character and appearance of the host building and local area contrary to policy D1 (Design) of Camden Local Plan 2017.
2. The applicant has failed to demonstrate, by way of a suitably comprehensive acoustic survey & impact assessment and a risk-based odour control & impact assessment, that all plant equipment, when operating at full capacity, would be capable of doing so without causing harm to local amenity, contrary to policies A1 and A4 of the Camden Local Plan (2017).

3.10 **May 2018** - Certificate of Lawfulness of an Existing Use refused and warning of enforcement action for use of the unit to the rear of 115 Finchley Road as a Class B1c 'Commercial Kitchen'

Reason for Refusal:

1. The use as a commercial kitchen and delivery service is considered to be materially different to the previous use of the premises and therefore constitutes a material change of use. The applicant has failed to demonstrate, on the balance of probability, that the last lawful use of the premises was in the B1 use class, and that the use at the time of the application was also within the B1 use class. The change of use falls within the definition of 'development' as set out in section 55(1) of the Town and Country Planning Act 1990 (as amended), and would require planning permission. The use is therefore not lawful by reason of section 191(2)(a) of that Act.

4.0 SUBMISSIONS

4.1 The Appeal relates to an Enforcement Notice issued under Delegated Powers on 1st of June 2018. In the Notice, the breach was identified as:

“Change of use from light industrial use (Class B1) to Commercial Kitchens and Delivery Centre (Sui Generis); and installation of external plant, including 3 extract ducts, 4 flues, 3 air intake louvres, 1 rooftop extract and 3 air condenser units.”

4.2 The reasons for issuing the Notice were:

1. The breach of planning control has occurred within the last 10 years.
2. The high volume of vehicle deliveries serving the Property results in a significant noise nuisance and a harmful loss of amenity to adjacent occupiers contrary to Policy A1 of the Camden Local Plan 2017.
3. The use of the Property, in the absence of measures to control the unauthorised hours of operation, litter, storage, waste, recycling, servicing and delivery results in nuisance and a harmful loss of amenity to adjacent occupiers contrary to Policy A1 of the Camden Local Plan 2017.
4. The delivery vehicles and parking of these resulting from the unauthorised use of the Property has a harmful impact on highway safety in the vicinity of the site, causing difficulty for vulnerable users and neighbouring occupiers contrary to Policy A1 of the Camden Local Plan 2017.
5. The extract plant and associated equipment, by virtue of their siting and visual impact, cause harm to the character and appearance of the Property and the context of the local area contrary to policy D1 of Camden Local Plan 2017.

6. A suitably comprehensive acoustic survey and a risk-based odour control and impact assessment demonstrating that all plant equipment, when operating at full capacity, would be capable of doing so without causing harm to local amenity has not been provided. As a result the plant and equipment that have been installed at the Property are contrary to policies A1 and A4 of the Camden Local Plan 2017.
7. The plant equipment facilitates the unauthorised use of the Property, and whilst their operation and appearance may be controlled by planning condition, the use is unacceptable in principle and the associated operational development is therefore unacceptable.

4.3 The Notice requires the following steps to be taken:

Within four months of the Notice taking effect:

1. Permanently cease the use of the premises as a Commercial Kitchens and Delivery Centre.
2. Permanently remove the three (3) extract ducts from the west-facing elevation of the Property;
3. Permanently remove the four (4) flues from: the south-facing elevation (3 flues); and the north-facing elevation (1 flue) of the Property;
4. Permanently remove the three (3) air intake louvres from: the north-facing elevation (2 air intake louvres); and the south elevation (1 intake louvre) of the Property;
5. Permanently remove the three (3) air condenser units from the west-facing elevation of the Property;
6. Permanently remove the one (1) air extract from the rooftop of the Property;

7. Permanently remove any brackets and cabling associated with the flues, louvres and condenser units from the elevations of the Property;
8. Permanently remove any other associated items of air handling equipment from the exterior of the Property and return the exterior of the Property to the layout shown on "Existing elevation" drawings 2017-075-101-A and 2017-075-102-A attached to this notice.
9. Reinststate the brick flank wall by closing the unauthorised openings with bricks to match the nearby areas of wall in terms of colour, texture, bond and mortar;
10. Make good the exterior of the Property following the completion of the above works.

4.4 The Notice was due to take effect on 13/07/2018, unless an Appeal was submitted by that date.

4.5 Compliance with the Notice was due on 13/11/2018.

4.6 The Local Planning Authority draws attention to its position set out in the reason for refusing the CLEUD application to the effect that it was not satisfied that the Applicant had established that the last lawful use of the premises was B1. This remains the Council's position, notwithstanding the reference to B1 use in the Enforcement Notice, which was included in error. The Council will apply for the Enforcement Notice to be amended to delete the reference to 'light industrial (Class B1)', in order to reflect the planning history set out above, which does not establish that the existing lawful use of the premises is Class B1.

5.0 GROUNDS OF APPEAL

5.1 The Appellant has appealed against the Enforcement Notice under grounds A, C, F and G and has submitted an Appeal Form and a Grounds of Appeal Statement which sets out their case. For the purposes of this Rule 6 statement, the points made in the Appellant's submissions are summarised below.

Ground C: that there has not been a breach of planning control;

5.2 The Appellant has stated that there is no provision within Class B1(c) as to what is a "traditional" or "typical" light industrial use is or how it should operate. The only relevant considerations under the terms of the Town and Country Planning (Use Classes) Order (1987) (as amended) for determining whether a use falls within Class B1(c) are whether the use comprises an "industrial process" and secondly, whether it "can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit".

5.3 The Appellant maintains that the use comprises an "industrial process" as it involves the making of an "article" in the "the course of any trade or business" and the delivery of the said finished "article". As such, the use of the Site by the Appellant is a light industry use. The Appellant states that the concept of making deliveries is inherent to many industrial uses including Deliveroo Editions, as the purpose of making the article is to deliver it to the end user, in furtherance of the trade or business. The Appellant has stated that the further assessments such as Noise Impact Assessments, Transport Assessments and an Odour Assessment will demonstrate that the use can operate without impact on residential amenity.

Ground A: that planning permission should be given for what is alleged in the notice;

5.4 The Appellant states that their revised Assessments will demonstrate that the proposed use can take place with no detrimental harm to the amenity of nearby residents or that any harm what is caused is not significant and does not outweigh the benefits of the Appellant's operation.

5.5 The Appellant also states that weight should be given to the socio-economic benefits associated with the Appellant's use of the Site for food preparation and delivery. The works involve improvement to and investment in existing industrial stock; the provision of significant employment; benefits for the local food supply chain and the expansion of restaurant businesses into the surrounding area.

Ground F: that the steps required to comply with the Notice are excessive, and lesser steps would overcome the objections;

5.6 The Appellant has stated that the requirements of the Notice, namely to cease the use of the site as Commercial Kitchen and Delivery Centre and to remove all external plant and associated fixtures are excessive and beyond what would be required to cease the harm identified in the Notice.

5.7 The Council does not point to any technical evidence supporting the reason for issuing the Notice based on the impact on neighbour amenity and the impact on highway safety.

5.8 No account has been given by the Council, the Appellant states, to the use of mitigation measures that could be used to remedy the breach.

5.9 Further details with regard to Ground F will be provided in the Statement of Case.

Ground G: that the time given to comply with the Notice is too short.

5.10 The Appellant has stated that the 4-month compliance period set out in the Notice would be insufficient to allow a managed and orderly closure of the site and the relocation of the business.

5.11 A 12-month compliance period would enable contracts to be honoured and ensure no detrimental impact on the associated businesses, employees and riders who

operate in and around the site. In addition, a 12-month timeframe would allow the Appellant to locate a suitable replacement site to operate the business from.

DISCUSSION

Ground C: that there has not been a breach of planning control;

- 5.12 The Council will argue that the works involve a material change of use of the land to a Sui Generis use and therefore comprise “development” under Section 55(1) of the Town and Country Planning Act 1990. The Council will set out that, as a result, the works require planning permission and in the absence of this they are in breach of planning control. This submission is made both on the basis of the Enforcement Notice as drafted and on the basis of the amendment sought above, in order to reflect the planning history which does not establish that the lawful use of the Appeal Site is Class B1. On either footing, however, the Council will submit that a material change of use has occurred without planning permission and the Appeal on Ground C should be dismissed.
- 5.13 On the amended basis and in accordance with the planning history, a change to Class B1c (which is what the Appellants claim the use to be) would require planning permission, since there is no relevant planning permission for such use and the Appellants have not demonstrated a lawful use on the basis of lapse of time.
- 5.14 On the basis of the Enforcement Notice as drafted, the Council will demonstrate that the Light Industrial and Commercial Kitchens with Delivery Centre, are materially different to each other and that they do not fall into the same use class, namely Class B1 for Light Industrial use and Sui Generis for Commercial Kitchens and Delivery Centre. The Council will demonstrate that the material difference between the uses is characterised by different types of activity, most notably in the case of Commercial Kitchens and Delivery Centre by frequent customer demand-led individual deliveries which are not characteristic of B1 light industrial use, but which form a fundamental, integral, and non severable part of the current

use. The B1(c) Class contains no 'to order' or 'on demand' element within the normal scope of B1 uses unless it is ancillary, and the introduction of the use, the subject of the Enforcement Notice has led to a change in the character of the primary use of the land in this respect from the lawful B1 use.

- 5.15 The Council will argue that a characteristic of delivery from class B1 light industrial use is that it is generally carried out in bulk and during working hours, which may be capable of being ancillary. Delivery from B1 light industrial use is therefore much less frequent than is the case with the Commercial Kitchens and Delivery Centre use that is operating at the site, a use that has been developed by Deliveroo and is not in operation elsewhere in the borough.
- 5.16 Each individual order which is prepared at the appeal site is delivered from the premises to the address provided by the customer; the majority of trips are by motorbike. The Council will demonstrate that the delivery element of the existing use is of a different nature to that of a B1 use as it is dictated by individual customer demand and by individual item rather than in bulk. As a result, it is unpredictable in volume, intensity and timing. It is noted that the times when the unit will be at its busiest are in the evening, which coincides with when local residents are most likely to be in their homes.
- 5.17 There has been a material change of use and the Council is of the view that they do not fall within the same use class and that, as a result, planning permission is required for the change of use. Such an application could, in theory, be used to control the Commercial Kitchens and Delivery Centre use and attenuate harm. However, in this case, given the residential nature of the location, and the nature of the deliveries, controls to the use would be inadequate to eliminate all of the harm that has been identified in the Notice. This is discussed in more detail below in relation to the Ground A appeal.
- 5.18 Furthermore, and without prejudice to the points above on the inherent character of the use, the Town and Country Planning Use Classes Order states that for an industrial use to fall within class B1(c) it needs to be capable of being carried out

“in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, grit or dust”.

5.19 The surroundings of the Site will be described and demonstrated to constitute a residential area.

5.20 The Council will also refer to Local Plan policy H2 which seeks to maximise the supply of self-contained housing from mixed use schemes. Paragraph 3 of the policy states that *“In the Central London Area and the town centres of Camden Town, Finchley Road/ Swiss Cottage and Kilburn High Road, where development involves additional floorspace of more than 200sqm (GIA), we will require 50% of all additional floorspace to be self-contained housing”*. The Council will state that the low floorspace threshold shows that the Council strongly encourages self-contained residential development in town centres. The supporting text to policy H2 sets out the benefits of self-contained housing in town centres (para. 3.43) as being:

- reducing the need to travel between homes, jobs and services;
- increasing community safety and security by providing a range of activities that attract people at different times during the day and evening;
- contributing to the creation of areas that are diverse, distinctive and attractive; and
- allowing an efficient use of land, with housing developed above those uses which benefit from direct ground floor access or a street-level frontage, such as shops.

5.21 The Council will, in addition, refer to Policy TC4 Town Centre Uses which seeks to manage potential harm to amenity from development in town centres. This demonstrates the development plan clearly envisages town centre locations as also being residential areas.

5.22 The Council will argue that these policies identify town centres as suitable for self-contained residential development and that the policies encourage and facilitate self-contained residential use in town centre locations. The Council will argue that a use which harms the amenity of residents of self-contained housing in town

centre locations cannot be considered as a Class B1(c) use any more than if it was located in a different kind of residential area, such as one of the residential suburbs in other parts of the Borough; the statutory words are “*which can be carried out in **any residential area***” (emphasis added).

5.23 The Council will demonstrate the extent and nature of the impact on residential amenity resulting from the development by reference to technical observations made by the Council’s Environmental Health officers in relation to application 2018/0865/P (Appendix 2). The Council will also refer to comments and objections made by neighbouring residential occupiers in relation to these applications 2017/4737/P and 2018/0865/P which are appended to this statement at Appendix 3. It is noted that the extract equipment currently being used by Deliveroo at the site is the same as it was when these consultation responses were received. Further technical evidence from monitoring of the site by officers will be submitted to demonstrate the extent of the disturbance on neighbour amenity.

5.24 The Council will also demonstrate that the works that have been carried out to install flues to the exterior of the building are integral to the unlawful material change of use and therefore properly fall within the scope of the enforcement notice directed against the change of use.

5.25 Officers will also respond to comments that the Appellant has made under this ground.

Ground A that planning permission should be given for what is alleged in the notice;

5.26 The Council will argue that the works are not in accordance with the Council’s planning policies, in particular in relation to harm to the amenity of adjoining occupiers, to (highway safety) in particular for vulnerable users in the vicinity of the site (with reference to paragraphs. 6.8 - 6.10 of the Local Plan and policy A1c) and to the character and appearance of the local area.

- 5.27 The Council will provide evidence that will demonstrate the risk to highway safety, in particular to vulnerable users, and the detrimental impact on amenity by the operation of the Commercial Kitchen and Delivery Centre at the site. The Council will refer to concerns raised by Transport for London in relation to safety on the public highway and footway (Appendix 4).
- 5.28 The Council will provide evidence showing that a very significant amount of equipment has been installed at the premises for handling odours and fumes from the kitchens. In Reason 6 of the Enforcement Notice the Council identified a potentially serious breach of planning control at the site; this reason states that a suitably comprehensive acoustic survey and a risk-based odour control and impact assessment demonstrating that all plant equipment, when operating at full capacity, would be capable of doing so without causing harm to local amenity has not been provided. As a result, the plant and equipment that have been installed at the Property are contrary to policies A1 and A4 of the Camden Local Plan 2017.
- 5.29 Given the number of kitchens at the site (9) and the noise and fumes that could be generated from their use, the impact from the Commercial Kitchen and Delivery Centre use on the amenity of neighbouring occupiers is potentially very serious. However, to date an assessment has still not been received addressing reason 6 of the Notice. If an assessment is received, officers will review it. If necessary officers will provide further evidence and may call specialist witnesses.
- 5.30 The Council will argue that the enhancements to employment, the local food supply chain and restaurant uses in the area do not outweigh the harm that is caused by the operation of the use.
- 5.31 Officers will also respond to the comments that the Appellant has made under this ground and will respond to evidence provided by the Appellant or by any third party.

Ground F: that the steps required to comply with the notice are excessive, and lesser steps would overcome the objections;

- 5.32 The Council will argue that the steps that are required by the Notice are reasonable and proportionate to deal with the harm that is identified in the Notice.
- 5.33 In the Ground F appeal the onus is on the Appellant to propose alternative steps to remedy the breach.
- 5.34 In their Ground F comments the Appellant has made observations in relation to the Notice Requirements and has stated that no account has been given by the Council to the use of mitigation measures that could remedy the harm identified in the Notice. It is not clear what mitigation measures the Appellant is referring to as these have not been identified in their Grounds of Appeal Statement.
- 5.35 The Council and the Appellant have been in correspondence with regard to improvements to the operation and management of the premises. Improvements that have taken place include posting traffic marshals on the top of the slip road and installation of sound reduction measures to the southern flank fence. The additional measures discussed in correspondence do not form part of the Appellant's Ground F submission and may be presented later. Without prejudice to any further proposals, the Council will state that the management measures implemented thus far do not go far enough because the Council's evidence set out in paragraph 5.23 above demonstrates the disturbance to neighbour amenity from the ongoing use.
- 5.36 The steps required by are reasonable and proportionate in relation to the disturbance caused by the breach, which has been
- 5.37 No alternative lesser steps have been proposed to overcome the objections identified in the Notice. In the absence of a list of alternative lesser steps no further comments are made under this ground in addition to those which are set out above.

Ground G: that the time given to comply with the Notice is too short

- 5.38 The Council will argue that a period of four months is an adequate amount of time to carry out the works required by the Notice.
- 5.39 In terms of operational development, the requirements of the Notice relate only to dismantling and removal of items. None of the requirements involve construction works or the erection or alteration of any structures. There are no Notice requirements which require specialist builders or contractors who may be difficult to find in a short timeframe and there is no reason why the carrying out of the requirements would be technically unfeasible within the four-month period.
- 5.40 With regard to the change of use, it is important that the compliance period should be of limited length because the site was developed without planning permission and the use, along with the air handling equipment, has caused significant harm to the amenity of adjoining occupiers, to highway safety in the vicinity of the site and to the character and appearance of the local area.
- 5.41 The proposal of a 12-month compliance period in the context finding alternative accommodation for the business is not intrinsically related to the act of complying with the enforcement notice but is similar to a request for a temporary planning permission to allow the continued use of the site while the Appellant searches for an alternative location to operate from.
- 5.42 A more suitable location for a Commercial Kitchens and Delivery Centre would be somewhere that the use could operate without having an impact on the amenity of residential occupiers or on highway safety. A suitable location could be within an industrial area, albeit that the use is sui generis. There appears to be no reason why the jobs that the Appellant refers to in their statement could not be retained by relocation to this type of area.
- 5.43 As a result of the above, the Council will argue that the 4-month compliance period set out in the Notice is reasonable and proportionate.

6.0 APPROPRIATE CONDITIONS

- 6.1 Appropriate planning conditions for the proposal will be set out in the Statement of Common Ground.

7.0 DOCUMENTS

7.1 The Council may refer to all or part of the following list of legislation, national planning guidance, and documents and any other it considers relevant, having regard to the Appellant's case to be identified in its Statement of Case or any other change of circumstances:

- Acts of Parliament and Statutory Instruments
- Government Advice,
- Relevant case law and appeal decisions
- Comments and objections received by the Council from neighbouring occupiers and Transport for London in relation to applications 2017/4737/P and 2018/0865/P
- Environmental Heath observations in relation to application 2017/4737/P

7.2 Documents will be made available for inspection online at the following link, using the planning application reference EN17/1005:

<http://planningrecords.camden.gov.uk/Northgate/ComplaintsEnforcements/EnfSearch.aspx>

7.3 or at Council Offices, 5 St Pancras Square, London N1C 4AG.

7.4 If an appointment is made at least 24 hours in advance, officers will ensure that documents are ready for inspection. The Council Offices are open 0900-1700 Monday to Friday.