

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

JS5

Delegated Report and Decision for 2017/4737/P

Firstplan
Bramah House
65-71 Bermondsey Street
London
SE1 3XF

Application Ref: **2017/4737/P**
Please ask for: **John Diver**
Telephone: 020 7974 **6368**

11 May 2018

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Full Planning Permission Refused and Warning of Enforcement Action to be Taken

Address:

**Unit to the rear of 115-119 Finchley Road
LONDON
NW3 6HY**

Proposal: 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).

Drawing Nos: NSL Plant Noise Impact Assessment dated 4 August 2017 (86967) Revision 01, Planning, Design and Access Statement August 2017, Sirius Kitchen Ventilation Canopies Issue Number: CCA (B) 001, Chapman Ventilation DR2017 Order for Maintenance Services for: Deliveroo, 202-014-01 Revision C, 2017-075-100 Rev A, 2017-075-101 Rev A, 2017-075-102 Rev A, 2017-075-103 Rev B, 2017-075-107, 2017-075-104 Rev B, 2017-075-105 Rev B, 2017-075-106 Rev A and 2017-075-108.

The Council has considered your application and decided to **refuse** planning permission for the following reasons:

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).

Informative:

ENFORCEMENT ACTION TO BE TAKEN

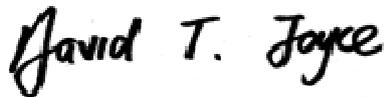
- 1 The Council has referred this matter to the planning enforcement team for formal action.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

You can find advice about your rights of appeal at:

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

Yours faithfully

A handwritten signature in black ink that reads "David T. Joyce". The signature is written in a cursive, slightly slanted style.

David Joyce
Director of Regeneration and Planning

Delegated Report (Refusal)		Analysis sheet N/A	Expiry Date: 17/10/2017
			Consultation Expiry Date: 01/11/2017
Officer John Diver		Application Number(s) 2017/4737/P	
Application Address Unit to the rear of 115-119 Finchley Road LONDON NW3 6HY		Drawing Numbers See decision notice.	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature
Proposal			
Retrospective application for the 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 (north, south and west elevations).			
Recommendation:	Refuse Planning Permission and Warn of Enforcement Action		
Application Type:	Full Planning Permission		

Conditions or Reasons for Refusal:	Refer to Decision Notice			
Informatives:				
Consultations				
Adjoining Occupiers:	No. of responses	57	No. of objections	57

Site notices were displayed from 11/10/2017- 01/11/2017.

Consultation responses objecting to the proposal have been received from:

- 4 Belsize Road;
- 13 Belsize Road;
- 25 Belsize Road;
- 26 Belsize Road;
- 28 Belsize Road;
- 39 Belsize Road;
- Flat 19, Cresta House 133 Finchley Road;
- Flat 37, Cresta House 133 Finchley Road;
- 2 Dobson Close;
- 5 Dobson Close;
- 6 Dobson Close;
- 10 Dobson Close;
- 11 Dobson Close;
- 14 Dobson Close;
- 15 Dobson Close;
- 16 Dobson Close;
- 39 Dobson Close;
- 40 Dobson Close;
- 42 Dobson Close;
- 44 Dobson Close;
- 49 Dobson Close;
- 53 Dobson Close;
- 56 Dobson Close;
- 58 Dobson Close;
- 59 Dobson Close;
- 69 Dobson Close;
- 70 Dobson Close;
- 2 Quex Court;
- 33 Achilles Road.

Summary of consultation responses:

A number of other responses were received with a street name, but no number or without an address:

- 10 without an address;
- 1 from Belsize Road;
- 2 from Dobson Close;
- 1 from Cresta House.

In summary, the objections generally relate to:

- Disturbances from plant noise;
- Disturbances from odour/cooking smells.

There are numerous other concerns which neighbouring residents have raised, however many of the points raised relate to the activity itself (including noise from scooters, operating hours, food waste disposal, vermin and foxes, pedestrian and road user safety, congestion, encouraging people to eat unhealthy takeaways, strain on waste and water systems) which are not part of this application, but have been noted particularly as they relate to the activity being carried out at the site.

**CAAC/Local groups
comments:**

Cresta House Residents Association and Hillgrove TRA have also submitted objection comments, primarily based issues of disturbances caused from noise and odour from the installed equipment / operation.

Site Description

The subject site (approx. 487 m²) is located to the rear of 115-119 Finchley Road (west side of Finchley Road and near to the Swiss Cottage tube station). The site is accessed via a private lane off Finchley Road that runs down the side of 115 Finchley Road. The main access to the building is south facing. There is an open forecourt area to the rear (west part of the site).

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 (east of the building). Directly to the north of the site is the car parking area for Cresta House which is accessed from Belsize Road (a 9 storey building with residential units on the upper six floors and commercial on the lower three). There was previously a fence separating the subject site from the private carpark, however this appears to have been removed recently. The site is located within the Finchley Road/ Swiss Cottage Town Centre, it is not located within a Conservation Area and nor is the building listed.

The existing building is a two storey brick building which extends to the rear of 115-119 Finchley Road. There is access to the upper floor of the building from Finchley Road which is occupied by separate commercial tenants than the lower ground floor level.

Relevant History

Planning application at 119 Finchley Road, PL/9200229 granted 8th May 1992 for the 'Change of use of ground floor from class A1 to mix use of A1 and B1, as shown on drawing no 47902R'.

2018/0865/P- Lawful Development Certificate- Use of the unit to the rear of 115 Finchley Road as a Class B1c 'Commercial Kitchen'- Recommended for Refusal.

Relevant policies

Camden Local Plan 2017

G1 Delivery and location of growth
A1 Managing the impact of development
A4 Noise and vibration
D1 Design

Camden Planning Guidance

CPG1 Design (updated March 2018) - Chapters 1, 2 and 11
CPG Amenity (adopted March 2018) – Chapter 5 (Noise and vibration)

London Plan 2016

National Planning Policy Framework 2012

Assessment

1. Proposal

1.1. Retrospective planning permission is sought for the installation of ventilation equipment at the site, including:

- 3 no. extract ducts (three on rear elevation facing west). The silver ducts are 900mm by 600mm. The ducts start at 3.7m above ground level and protrude upwards to 9.5m above ground level;
- 4 no. flues (3 on south facing elevation and one on north facing elevation). The three flues facing south are small, 0.3m diameter circles which are flush with the external wall of the building. The north facing flue is a narrow 0.3m wide pipe that starts at 2.4m above ground level and is 5.5m high;

- 3 no. air intake louvres. The louvres are 1500mm by 950mm. (two on north facing elevation, one on south facing elevation); and
- 3 no. air condenser units. The units are 1000mm by 700mm (all three on rear, west facing elevation).
- Further plant and extract ducts have been installed at roof level and are labelled as 'existing' on submitted plans.

1.2. It should be noted that 'Deliveroo' has started operating commercial kitchens within the unit, however this planning application is not for this activity or use and relates solely to the extraction equipment which has already been installed at the site.

1.3. It is also note that submitted statements and reporting does not make specific mention of the pre-existing rooftop plant on site. As this equipment appears to have been installed without express planning permission within the last year (see appendix one), is within the 'red line' boundary of the site and is shown on submitted plans, the application also seeks to retrospectively apply for this equipment and the description has been amended accordingly.

2. Assessment

2.1. The principal material considerations in the determination of this application are summarised as follows:

- Impact upon the character and appearance of the host building and local area (Design);
- Impact upon the residential amenities of neighbouring occupiers (Amenity).

Design

2.2. The Council's design policies are aimed at achieving the highest standard of design in all developments. Policy D1 requires developments of all types to, inter alia, respect local context and character; comprise details and materials that are high quality and complement local character; and carefully integrates building services equipment. Policy D1 states that the Council will resist development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions. The subtext to this policy states that building servicing equipment, including ducting, should be contained within the envelope of a building or be located in a visually inconspicuous position. (para.7.34).

2.3. CGP1 (Design) furthers the above with specific guidance in relation to the appropriate design and specification of proposed or replacement building servicing equipment such as air handling and ventilation equipment. The relevant guidance is summarised at paragraph 11.7 where it is stated that design considerations for proposed or replacement plant should include:

- screening or other techniques to minimise the impacts of plant, machinery and ducting must, in themselves, not cause visual blight;
- plant and machinery on roofs should not be visible from the street, public vantage points or from immediately adjacent buildings;
- the design and materials used for plant, machinery and ducting, as well as for ancillary structures such as screening, where located on the exterior of the building, must be consistent with those of the building; and
- where possible, plant and machinery should be designed in such a way that does not lead to issues of safety and security.

- 2.4. The subject site is surrounded by residential properties on all sides. Due to the nature of the site, its level in comparison to surrounding properties and its height, views of the building are afforded from above from a large number of surrounding residential units. These include almost all flats in Cresta House, Finchley Road where properties have terraces facing toward the site; the residential units above 115-119 Finchley Road (three storeys above the commercial units with rear elevation windows facing the site); as well as to the south where two parallel four-storey block of flats (one next to Finchley Road and both with access via Dobson Close) with windows and Juliette balconies in the rear with views towards the site. Additionally, to the west of the site along Dobson Close are a group of two-storey terraced properties with rear gardens facing towards the site. To the north of the site is 8 Swiss Terrace, an 8-storey block of flats with windows facing south towards the site. The site is effectively surrounded on all sides by residential properties, all of which features views towards the application site. Cumulatively, this large collection of private views results in the site having considerable influence in the creation of a sense of character within the local area, particularly as the site transitions between the busier Finchley Road and the more domestic and tighter-grained development to the west.
- 2.5. Of the installed plant equipment, it is considered that the three silver extract ducts (rear elevation facing west) as well as the rooftop plant are the most visible from public viewpoints on the streets surrounding the site. The rear ductwork rises from 3.7m above ground level up the back of the building to a height of 9.5m. The rooftop plant sits 1.3m above the ridge height of the building (10.3m above ground floor level) and is unobscured in views in all directions. Site visits were conducted by planning officers on the 27th October 2017 and the 11 April 2018 and it was noted that the equipment was visible in public views from the south east part of Dobson Close and from the north on Belsize Road looking south. The ducts are also visible from the west part of Dobson Close.
- 2.6. In both the public and the extensive private views afforded towards the site, the installed plant equipment appears highly prominent, particularly the three extract ducts on the west facing elevation and the roof level equipment. The equipment, being of reflective light metallic materials, bulky appearance and prominent siting with no screening in views, cumulatively act to add visual clutter to the host building and harm its character as well as that of the surrounding area. The combined visual impact of the extract equipment are consequently considered harmful due to their prominence, the number and siting of flues, their height, visibility and materiality and contrary to Policy D1 of the Camden local Plan 2017. On the whole the proposed extract ducting represents an harmful addition to the host building and local area (being landlocked by primarily domestic development) and the fact it is located at the rear does not mean the impact is less harmful given the extensive private views afforded from all sides.

Neighbouring Amenity

- 2.7. Policy A1 sets out how the Council will protect the quality of life of building occupiers and neighbours by only granting permission for development that does not cause harm to their amenity. Pertinent factors for consideration given by policy A1 in relation to this application include: noise and vibration levels; and odour, fumes and dust. Policy A4 (Noise and vibration) furthers the above to state that the Council will only grant permission for noise generating development, including any plant and machinery, if it can be operated without causing harm to amenity.

Noise and vibration

- 2.8. Where development that generates noise is proposed, the Council will require an acoustic report to ensure neighbouring amenity is not harmed (Policy A4). Policy A4 as well as Local Plan Appendix 3 (Noise Thresholds) set the parameters for the assessment of proposed sources of noise in areas sensitive to sounds. Given that the proposed development would include the retention of numerous sources of noise generation from mechanical plant on a property surrounded on all sides by residential units, these standards would apply in this instance. Appendix three (pg.312) states that relevant standards (i.e. BS 4142) or guidance document(s) should be

referenced when determining values for Lowest Observed Adverse Effect Level (LOAEL) and Significant Observed Adverse Effect Level (SOAEL) for non-anonymous noise and that at a 'Rating Level' of 10 dB below background noise levels is expected (15dB if tonal components are present). In this instance, the 'Rating Level' of 10 dB below background levels would be considered necessary to remain in accordance with policies A1/A4.

- 2.9. Submitted alongside the application was a Noise Impact Assessment (NIA) report dated 04 August 2017 prepared by NSL Ltd. A revised version of this report was received by the Council in December 2017 following a request to demonstrate compliance with the Camden Local Plan 2017 policies. The submitted reporting has been reviewed alongside the Council's Environmental Health officers who also attended the site on Sunday 29 April 2018.
- 2.10. The submitted NIA includes an existing noise climate assessment, informed by onsite measurements taken over a 22hr period between midday Wednesday 02 August and 10:00 Thursday 03 August 2017. This survey concluded that the lowest background levels observed during this period were 54-59 $L_{A90,15min}$ during the day and 52-58 $L_{A90,15min}$ during the night. Given the aforementioned thresholds set out in the Local Plan, the report therefore reasons that maximum plant noise emissions at nearest receptors should be limited to 44dB(A) during the day and 42dB(A) during the night. Comparing this benchmark against the manufacturer plant noise data for two of the equipment types proposed, the NIA concludes that subject to attenuation measures, the cumulative noise emissions from the plant will comply with appropriate design criteria.
- 2.11. While, at face value, the NIA concludes that the installed plant would remain in accordance with the Council's policy requirements in relation to noise emissions, officers raise concerns regarding the scope of the report and its methodology.
- 2.12. Firstly, concern is raised with regard to the environmental sound survey completed and the resulting effect on measured existing background noise levels. Within submission documents as well as the NIA itself it is stated that that plant equipment will operate between 09.00 – 23.00 seven days a week. The existing noise climate assessment includes a 22hr period only, taken mid-week. Due to the nature of the site and the surrounding areas, officers note that it is likely that levels of background noise levels are lower during weekends, and especially during Sunday's, than during the week when one would reasonably expect sources from road traffic to be higher. This is also the day where surrounding residents are most sensitive to noise impacts. Given that table 5 of the NIA outlines predicted noise levels at the maximum design criterion for the daytime (44dB) and only -3dB below design criterion for the night time levels, any further reduction to existing background noise levels would thus render the equipment unacceptable in line with policy requirements. Given the sensitivities of the site and surrounding residential uses and the fact that plant equipment would operate until 23:00 daily, officers are therefore not convinced that the submitted NIA provides a robust enough basis to demonstrate the potential noise impact across all days.
- 2.13. Secondly, also with regard to the environmental sound survey completed, it is noted that the monitoring equipment for the survey included a single recorder which had been affixed to a lamp post within the rear parking area to 121 Finchley Road. While this location is considered by the applicant to be representative of the nearest sensitive receptor, given the sensitivities of the site officers consider that this monitoring should have taken place at the nearest sensitive receptor. If this had of not been possible due to access issues, then it would have been expected that this should be mentioned in the report. The noise climate in this car park is dominated by a large plant room on the ground floor facing the monitoring location. This plant room is unlikely to be audible at the nearest sensitive receptor and, although other plant items might be audible, the level of uncertainty increases substantially.
- 2.14. Thirdly, it is noted that at no point in the submitted NIA report is reference made to the pre-existing plant at roof level. Officers note that this plant may serve the upper floor unit which is understood to have separate tenants, however, as this equipment was never granted express

permission and evidence points towards it being installed within the last 3 years (see appendix one of this report), it would be expected that the cumulative impact of all plant equipment be assessed together. Within the NIA, the cumulative impact assessment has not included the existing rooftop plant and only the 'Fläkt Woods' kitchen extract and AHU values are given in Appendix D/used within calculations. Without full details in relation to the overall predicted noise levels emitted from all plant within the site operating together, officers cannot be confident that levels at noise sensitive receptors would remain within acceptable limits. In fact, given that the predicted cumulative noise levels omitting the pre-existing rooftop plant are the same as the maximum design criterion for the daytime (44dB), a view is taken that the plant is unlikely to comply given the information presented at this stage. This view has been evidenced by the recent submission of numerous complaints received by the Council's Environmental Health team from local residents with regard to disturbances from noise associated with plant equipment.

2.15. In light of the above officers are of the view that the submitted reporting has failed to fully demonstrate that all plant operating in tandem on the host property would remain within the Council's acceptable noise thresholds for emissions, particularly during the weekend when background levels may be lower and the Observed Adverse Effect Level thus exacerbated. Given that the submitted reporting predicts that the combined impact of the three AHUs and kitchen extracts (only) would be at the maximum acceptable levels based upon weekday background noise levels; officers remain unconvinced that it would be possible to attenuate all equipment to the necessary levels to remain policy compliant. Given the retrospective nature of the application and its ongoing impact upon residential amenity, this issue could therefore not be dealt with via condition. In the absence of more comprehensive report, the development is thus considered contrary to policies A1 and A4 of the Local Plan.

2.16. In terms of vibrations, officers note that due to the siting and nature of the equipment, a condition to retrospectively install anti-vibration fixings and pads to the extract ducts and plant could be applied if the scheme were otherwise acceptable. Impacts from vibration therefore does not form a reason for refusal.

Odours and Fumes

2.17. Odours, fumes and dust can be generated from commercial cooking and can have the potential to cause a range of health problems, including respiratory diseases, as well as harm residential amenity. In accordance with policy A1, the Council will expect all development likely to generate nuisance odours to install appropriate extraction equipment and other mitigation measures. These should be incorporated within the building where possible. CPG1 continues to state that in order to avoid harm to residential amenity, where mechanical or passive ventilation is required to remove odour emissions, the release point for odours must be located above the roofline of the building and, where possible, adjacent buildings (para.11.10). This is in line with DEFRA guidance relating to the design of kitchen extract systems.

2.18. In this instance the proposal would lead to a total of 4 extract ducts (1 pre-existing and 3 recently added by the applicant added) venting at roof level of the host building. At least three out of four of these ducts would discharge gaseous by-products from commercial kitchens associated with fast food/takeaway cooking. As the ground level of the site is below that of Finchley Road, these discharge points would each remain below the level of all habitable room windows to flats with Cresta House and the flats within 115-119 Finchley Road. These discharge point are also at a similar level to a number of habitable room windows at first floor or above to properties to the West and South. Given the above and the sheltered nature of the site, officers raise significant concern with regard to concentrations of odours or fumes resulting in disturbances to surrounding occupiers. This concern has been evidenced by the recent submission of numerous complaints from residents received by the Council with regard to disturbances from strong odours in neighbouring properties. The applicant has submitted an 'Order for Maintenance Services for Deliveroo' report prepared by Chapman Ventilation presenting the proposed preventive maintenance schedule. While this has gone some way in addressing concerns in relation to the continued servicing and management of this equipment, limited information has been forthcoming

in terms of an analysis to estimate the odour risk of the proposed site or demonstration of appropriate design for the odour abatement systems to be used. Given the sensitivities of the site and its surroundings, the low discharge point for extract systems and the intensive commercial cooking use occurring on site; this lack of information raises significant concerns.

2.19. Due to the size of the kitchen, the proximity of the nearest sensitive receptors/residential units and the site history, the Council would expect (as a minimum) an assessment of these systems installed in line with Annex C of "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems, Defra (2005)". Given the lack of any formal assessment in line with this National guidance, the Council's Environmental Health and planning officers feel that the information submitted does not provide enough evidence to demonstrate that the required level of odour control is in place for this particular scenario (multiple kitchens) and that the proposed development will not cause significant loss of amenity. Given the extensive number of complaints from residents in relation to odour, it is not considered appropriate to secure full details via condition. Further concern is raised by the uncertainty of proposals shown on the submitted Ventilation plan (202-014-01 Rev C) which is annotated with labels such as 'Potential Odour Control Plant deck required' without any further discussion.

2.20. In light of the above, in the absence of comprehensive reporting demonstrating the appropriate design of the odour abatement system installed, this equipment is cannot be found to align with the requirements of policy A1.

3. Recommendation

- 3.1. 1) Refuse planning permission;
- 2) Authorise enforcement action.

Given the above considerations and the retrospective nature of the application, officers have now issued instructions to the Council's Legal Services and Planning Enforcement teams.

APPENDIX ONE: Historic Imagery of site

July 2013 – Source Google Earth:



June 2015 – Source Google Earth:

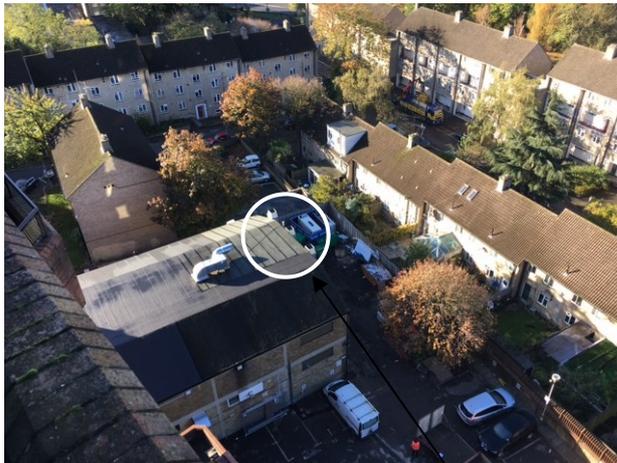


April 2017 – Source Google Earth:



'Pre-existing' Roof
plant installed

October 2017 – Officer's photographs taken during site visit



Commercial kitchen
extract and AHUs
recently installed