

**PLANNING SERVICES**

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

**John Sheehy**

**PROOF OF EVIDENCE  
FOR PUBLIC INQUIRY COMMENCING ON 30<sup>th</sup> of July 2019**

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**APPEAL SITE**

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

**APPELLANT**

Roofoods Limited

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**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.

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**COUNCIL REFERENCE:**

EN17/1005

**PLANNING INSPECTORATE REFERENCE:**

APP/X5210/C/18/3206954

## **PROOF OF EVIDENCE OF JOHN SHEEHY**

### **QUALIFICATIONS**

- i. I have a Bachelor of Arts Degree in History from Trinity College Dublin, Ireland and a Masters Degree in Regional and Urban Planning from University College Dublin, Ireland. I am eligible for membership of the Royal Town Planning Institute. I have worked in the Council's Planning Service since October 2005. I am a Senior Planning Officer in the Enforcement Team. I also worked in Camden's Planning Site Development Team for over 2 years and Development Management Team for 4 years.
- ii. Prior to my employment with the London Borough of Camden I worked for Slough Borough Council as a Planning Policy officer for 6 months.
- iii. During the period in which I worked in the Development Management team I dealt with a number of applications for sites in the West Hampstead and Swiss Cottage wards. I have also dealt with numerous sites in this area in my current role as Planning Enforcement Officer.

## STRUCTURE OF THIS PROOF

i. In my evidence I provide a summary of the enforcement case which is the subject of this appeal.

ii. My evidence will be divided into five sections:

In Section 1 (Investigation History) I will set out details of the investigation that led to the issuing of Planning Enforcement Notices in May 2018 and in April 2019 (which is subject to a separate appeal).

In Section 2 (Relevant Planning History) I shall provide a summary of the planning history relevant to the appeal.

In Section 3 (Planning policy and guidance) I shall highlight national, regional and local planning policies and guidance pertinent to the issues raised in my assessment.

In Section 4 (Site and Surroundings) I will describe the appeal site and surrounding area.

In Section 5 (Submissions) I will explain the Council's decision to issue the Enforcement Notice with reference to the Town and Country Planning Act 1990 and evidence regarding the planning use of the site. In this section I will also outline the Council's response to the appellant's grounds of appeal.

iii. In addition to myself, the Council will call one other witness:

- Camilo Castro-Llach, Environmental Health Officer, who will provide further evidence regarding noise and odour impact of the development.

## 1.0 INVESTIGATION HISTORY

- 1.1 An enforcement complaint was received on 26<sup>th</sup> of September 2017 stating that works were being carried out to the appeal property and that Deliveroo were preparing to occupy the premises.
- 1.2 Planning permission had not been granted for the use of the site as a commercial kitchens and delivery centre (Sui Generis Use) nor for the external alterations that were underway. An application for installation of external plant had been submitted in August 2017 (ref. 2017/4737/P). This was registered on 5<sup>th</sup> of October 2017.
- 1.3 Officers visited the site on 27<sup>th</sup> of October 2017 and advised Deliveroo that planning permission was needed for the use as a commercial kitchens and delivery centre.
- 1.4 Deliveroo stated that that, in their view, their use of the property did not involve a change of use. They provided a legal opinion from Sasha White QC to support their case and stated that they were preparing an application for a Certificate of Lawful Development which would set out the details of the operation and management of the site.
- 1.5 In November 2017 Deliveroo started operating at the appeal site with two of the 9 kitchens opening.
- 1.6 An application for Certificate of Lawfulness was submitted on 19<sup>th</sup> of February 2018. The description of Development was "*Use of the unit to the rear of 115 Finchley Road as a Class B1c 'Commercial Kitchen'*". This application was accompanied by an Operational Management Plan, a Delivery Noise Impact Assessment, the legal opinion of Sasha White QC and drawings (ref. 2018/0865/P)
- 1.7 Both this application and the application for external plant were determined in May 2018. The decision for both applications was Refusal and Warning of Enforcement Action to be Taken.

- 1.8 Following these decisions, an Enforcement Notice was issued on 1<sup>st</sup> of June 2018 requiring the use as commercial kitchen/ delivery centre to cease, the external plant to be removed and the building to be made good. The alleged breach set out in the Enforcement Notice was: *“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”*, ref. EN17/1005.
- 1.9 On 12<sup>th</sup> of July 2018 an Appeal against the Enforcement Notice was submitted, on the following grounds: Ground A; Ground C; Ground F; and Ground G. This is the appeal that is under consideration here.
- 1.10 A Start Letter was received from the Planning Inspectorate on 16<sup>th</sup> of January 2019 identifying Written Representations as the format of the appeal. After correspondence with both parties, a letter was sent on 31<sup>st</sup> of January 2018 stating that the appeal was to proceed instead by way of Public Inquiry and setting out the appeal timetable.
- 1.11 A Statement of Case was submitted by the Council on 28<sup>th</sup> of March 2019. In paragraph 4.6 this stated that the Enforcement Notice would be amended to remove reference to Class B1 use within the alleged breach. A second Enforcement Notice was issued on 23<sup>rd</sup> of April 2019 with the following alleged breach: *“Use of the premises as a Commercial Kitchens and Delivery Centre (Sui Generis); and installation of external plant, including three (3) extract ducts, four (4) flues, three (3) air intake louvres, one (1) rooftop extract and three (3) air condenser units”*, ref. EN19/0359. This Enforcement Notice has been appealed separately.
- 1.12 After the submission of the Rule 6 Statement and the issuing of the second Enforcement Notice the Appellant approached the Council and proposed significant changes to the use including switching from motorbikes to use of bicycles for deliveries, stacking of orders to reduce trips and technical updates to support the changes in the operation.
- 1.13 In accordance with government guidance on appeals which advises parties to work together to narrow down the range of issues in dispute, Council officers met with representatives of the Appellant on 20<sup>th</sup> of May to discuss the proposed

operational changes on a without prejudice basis. The appellant stated that their aim was to submit a planning application seeking permission for the use with the proposed changes and to write to the Planning Inspectorate to request that the Appeal be put in abeyance to allow time for this to be determined.

- 1.14 As part of an application the Council would be able to control the use in terms of hours of operation, litter, servicing, storage, deliveries, waste and recycling, none of which are subject to control now given that no planning permission is in place. In addition, the appellant proposed to submit reports relating to Noise and Odour and expressed a willingness to enter into a legal agreement with Camden to secure a detailed premises management plan as well as planning benefits aimed at making the development acceptable in planning terms.
- 1.15 The Appellant wrote to the Planning Inspectorate on the 4<sup>th</sup> of June stating their intention to submit a planning application and an appeal against the second Enforcement Notice and requested for the appeal to be held in abeyance.
- 1.16 Having briefed Councillors about Deliveroo's request, officers wrote to PINS on the 17<sup>th</sup> of June to confirm that the Council did not object to the appeal being held in abeyance.
- 1.17 At the time of writing the appeal has not been held in abeyance and the use appears to be operating in a broadly similar way to when the Notice was issued, as a commercial kitchens and delivery centre with deliveries being carried out by motorbike. From telephone conversations with the appellant and reports from neighbouring occupiers it appears that a switchover to bicycles for deliveries may have taken place within the last week, however at the time of writing this has not been verified by officers. No evidence or reports in relation to noise, odour, litter, storage, waste recycling and premises management have been presented by the Appellant to the Council in relation to their Ground A case.
- 1.18 Should evidence and reports be provided as part of the Appellant's proof submission the Council will take it into consideration and provide comments in a Statement of Common Ground with suggested conditions to secure any requirements, without prejudice to the Council's case.

1.19 The Council will work to put forward an agreed position with the Appellant on as many matters as possible. This is discussed in greater detail below in connection with the Ground A appeal.

### **Authorised planning use**

1.20 The appeal relates to the lower ground floor of the two-storey element at the rear of the site. Deliveroo's use comprises a Commercial Kitchens and Delivery Centre which is considered to be a Sui Generis use.

1.21 The planning history of the site indicates that the lower ground floor area was most recently used as storage and ancillary space serving Class A1 and Class A3 uses on the ground floor.

1.22 The use by Deliveroo as a Commercial Kitchens and Delivery Centre represents a change of use from the previous ancillary uses to an operation which, in terms of planning use class, is considered to be in Sui Generis use. In addition, there is no record of permission to separate the lower ground floor which the appeal relates to from the remainder of the unit to form an independent planning unit. This matter was addressed in the Council's Statement of Case in response to the Appellant's Grounds of Appeal. Section 3 and section 5 of the Statement of Case submitted in March 2019 set out the findings of an officer audit that was carried out into the planning history of the space that Deliveroo occupy. For convenience the Statement of Case is appended to this Proof of Evidence at JS2. This concludes that the development has resulted in a material change of use of the premises which requires planning permission.

1.23 The Appellant has withdrawn their Ground C appeal. This was confirmed when the proof was near finalisation and given the time constraints, rather than substantially amend the proof, the relevant sections have been retained as they may assist the Inspector with other areas of the appeal.

## 2.0 RELEVANT PLANNING HISTORY

### Recent History and Enforcement Notice which this appeal relates to

- 2.1 **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).

- 2.2 **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', ref. 2018/0865/P.

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.

2.3 An Enforcement Notice issued under Delegated Powers on 1<sup>st</sup> 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.”*

2.4 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.

2.5 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. Reinstate 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.

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

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

### **Established Lawful Use and Planning Unit**

2.8 As set out in section 3 of the Council's Statement of Case, following the submission of the appeal, a full audit of the planning history of the appeal site as

well as surrounding sites was undertaken. A full list of all relevant applications was provided in appendix one of this document.

- 2.9 Whilst a summary of this history was provided at paras. 3.1-3.8 of the Council's Statement of Case, the following section will explore this further with the intent of providing further clarity on the existing lawful use of the site, and the definition of the lawful planning unit. Please see appendix JS3 for full versions of the plans and final documents referred to below, which are all publicly visible on the Council's website.

Application #1 – 1960: Host building, 115-121 Finchley Road (ref.TP21868/5675),

- 2.10 The original consent for the host building dates from the 1960 (ref.TP21868/5675), when conditional permission was granted for the *“Erection of a building, part two-part and part five storeys, 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 on the site (115-121 Finchley Road, and the alteration of the existing means of access to the highway”*. This building included both a four storey plus basement frontage block, as well as integral two-storey rear projection (the subject of this appeal). A copy of this decision is provided in appendix JS3.
- 2.11 Two conditions were applied to the permission. The first related to the securing of external facing materials details in order to *“ensure that the external appearance of the building is satisfactory”*. The second required the car parking spaces to the rear to be provided and permanently retained *“for the accommodation of vehicles of occupiers and users of the premises only”*. The reason given for this condition was in order to ensure the *“permanent retention of the garage space for parking purposes, to avoid obstruction of the surrounding streets by waiting vehicles and to safeguard to amenities of adjacent premises”*. This decision was made in a different policy context with regard to transport planning. However, it is noteworthy that these conditions emphasise that both the external appearance of the property as well as the resulting impacts upon

amenity and highways caused via uncontrolled vehicular movements on and off the site from the dedicated cross over and ramp have been a concern of the Council since this time.

2.12 At ground and lower ground floor levels, the original building was host to five commercial units (115, 117, 119 and 121), though nos.117 and 119 were initially combined to form a supermarket with ancillary storage and servicing area at lower ground floor level. Each unit within the frontage contained an area of basement below the main frontage block. In addition, the combined central units (117 & 119) projected rearwards to include the two storey rear building at both ground and lower ground floor level. Units 115 and 121 included the ground floor and lower ground levels within the frontage block only.

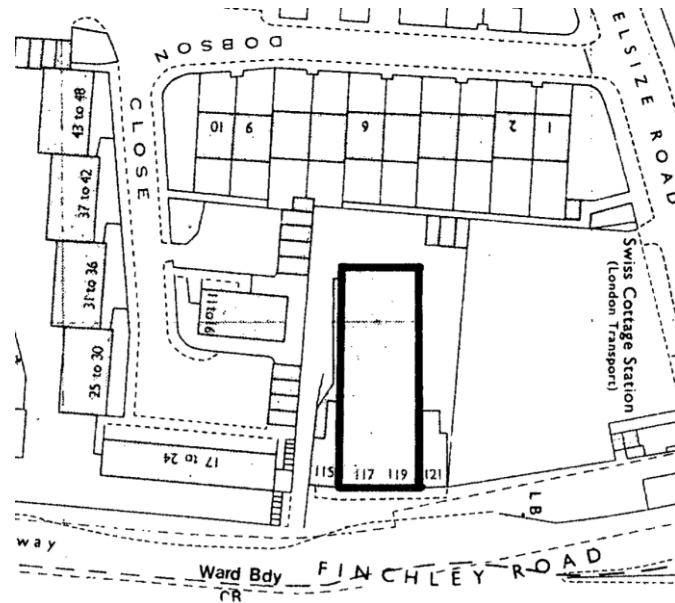
2.13 As set out in summary in the Statement of Case, records indicate that these two units have been merged and sub-divided as well as being subject to changes of use a number of times since first built. The most pertinent of these applications for the purposes of setting out the lawful use of the site and the extent of the planning unit will now be discussed in turn.

Application #2 – 1982: No.117 & 119 (ref. 35429)

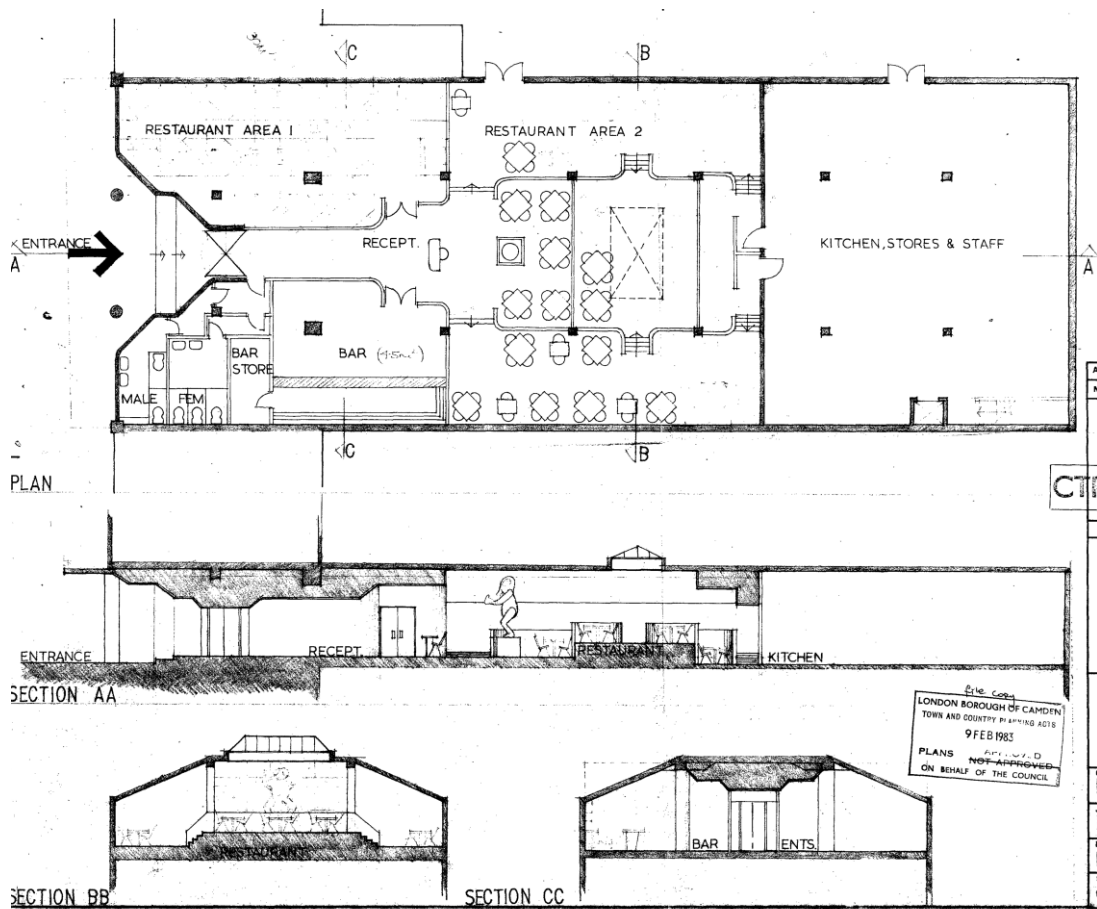
2.14 The first application on record in relation to these two units dates from 1982 (ref. 35429). This application sought permission for the combined units (no.117&119, including their rear projections) to be amalgamated at ground floor level only to provide a large restaurant. Consent for these works was conditionally granted, though the permission was subject to a personal condition which provided that the permission “*shall not enure for the benefit of the land*”. The application form confirms that the existing use at that time was still as a supermarket, which is understood to have occupied a similar space with ancillary storage /servicing area below at lower ground floor level.

2.15 Although this permission allowed for the severing of the planning unit between ground and lower ground floor levels as well as conversion to restaurant (A3), the

personal condition meant that the lawful use of the unit would have reverted back to retail (A1) upon the vacation of the unit by the applicant (My Kinda Enterprises).



Approved Site plan excerpt 1982 (ref. 35429)



Approved ground floor plan & section excerpt 1982 (ref. 35429)

Application #3 – 1984: No.117 & 119 (ref. 8400217)

- 2.16 Two years later in 1984, another application was submitted in relation to the combined unit (ref. 8400217), with the site location plan matching that shown in above. The application form states that the site was to be used as an electrical/gas appliances retail store (reverting to lawful use A1 use following lapse of personal permission) by the operator Comet. As the lawful use had reverted back to retail, permission was not required for a change of use, though permission was sought for a new shopfront.
- 2.17 The approved plans from this application show that the retail store operated with the majority of the ground floor being for the display and sales of goods and a section of the rear ground floor and whole of lower ground floor being used as ancillary storage. An existing conveyor system is shown as being refurbished to transport the bulky electrical goods from the storage area up to the sales floor<sup>1</sup>. As such, at this point in time the combined units at both floors operated as a single planning, in retail use.

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<sup>1</sup> NB. It is believed that this is the same conveyor system that had been present within the site up until the current operator undertook building works to fit out and sub-divide. This is recorded at page 4 of Appendix 3 (Images 7 and 8) submitted as part of application 2018/0865/P.

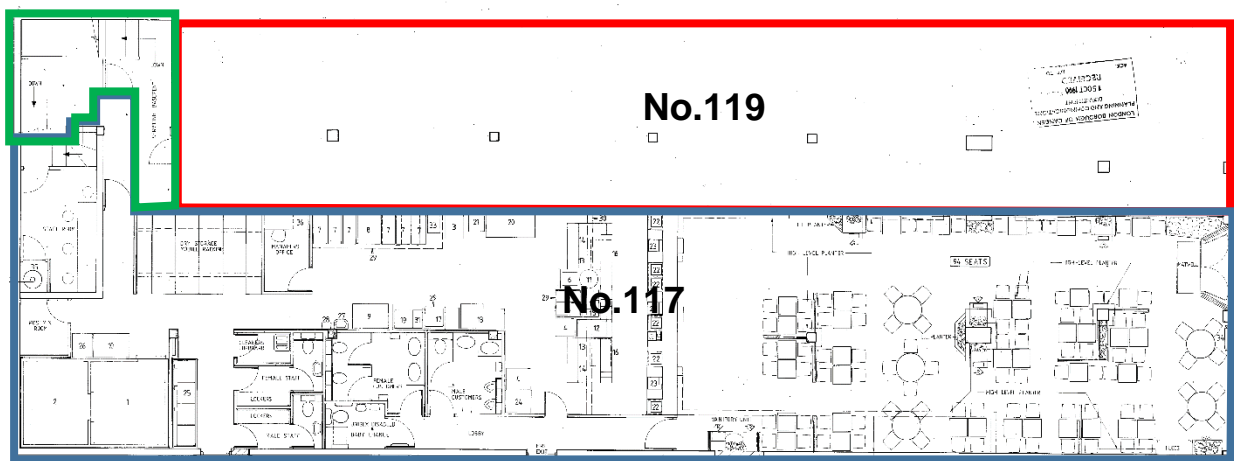




Application #4 – 1990: No.117 & 119 (ref. 9005435)

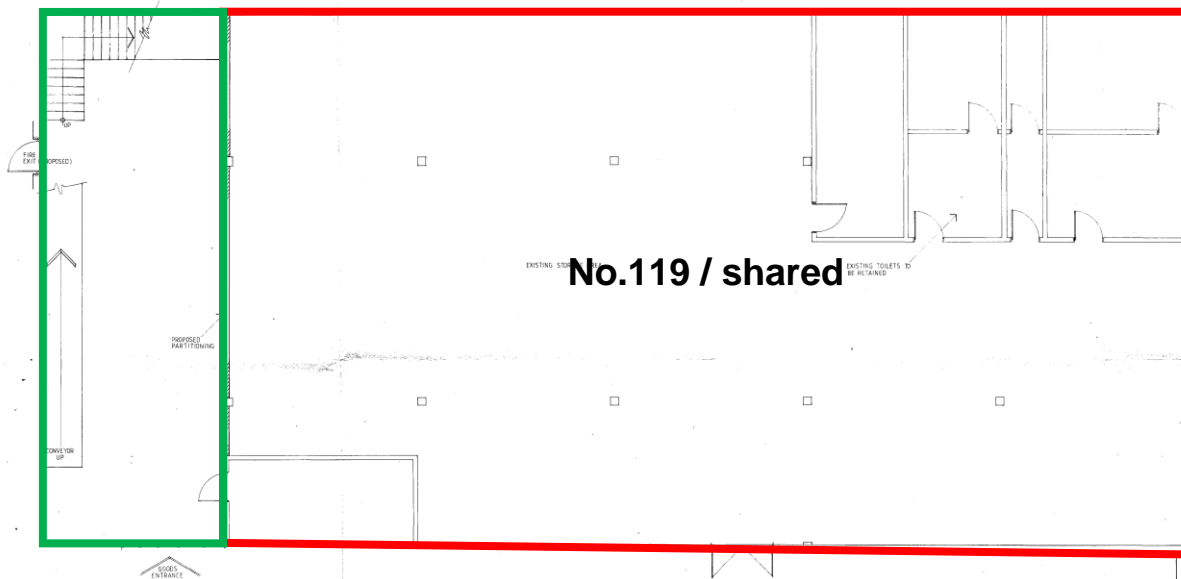
2.19 In 1990, an application was submitted for the “*Subdivision and change of use of existing retail (A1) unit to form one hot food takeaway restaurant (A3) and one retail (A1) unit and accompanying works of conversion*”. The application was submitted on behalf of Kentucky Fried Chicken (KFC) and was approved in January 1991.

2.20 Approved plans show that “*accompanying works of conversion*” included the installation of partitions to sub-divide the space. At ground floor level, this included a central partition running front to back as well as rear partitions to allow both units access into the shared ‘servicing basement’ (see green area below), with the existing conveyor shown as to be retained.



*Approved ground floor plan excerpt/mark up 1990 (ref. 9005435)*

2.21 At lower ground floor level, the approved plans from 1991 indicate that the rear was to be retained as a shared access / fire escape. The existing conveyor is shown as retained, providing servicing access from the goods entrance at rear car park. The remainder of the lower ground floor (LGF) is shown as ‘existing storage area’, though it is also shown as being sub-divided with no indication as to which occupier was to use which part of the space.



*Approved lower ground plan excerpt / mark up 1990 (ref. 9005435)*

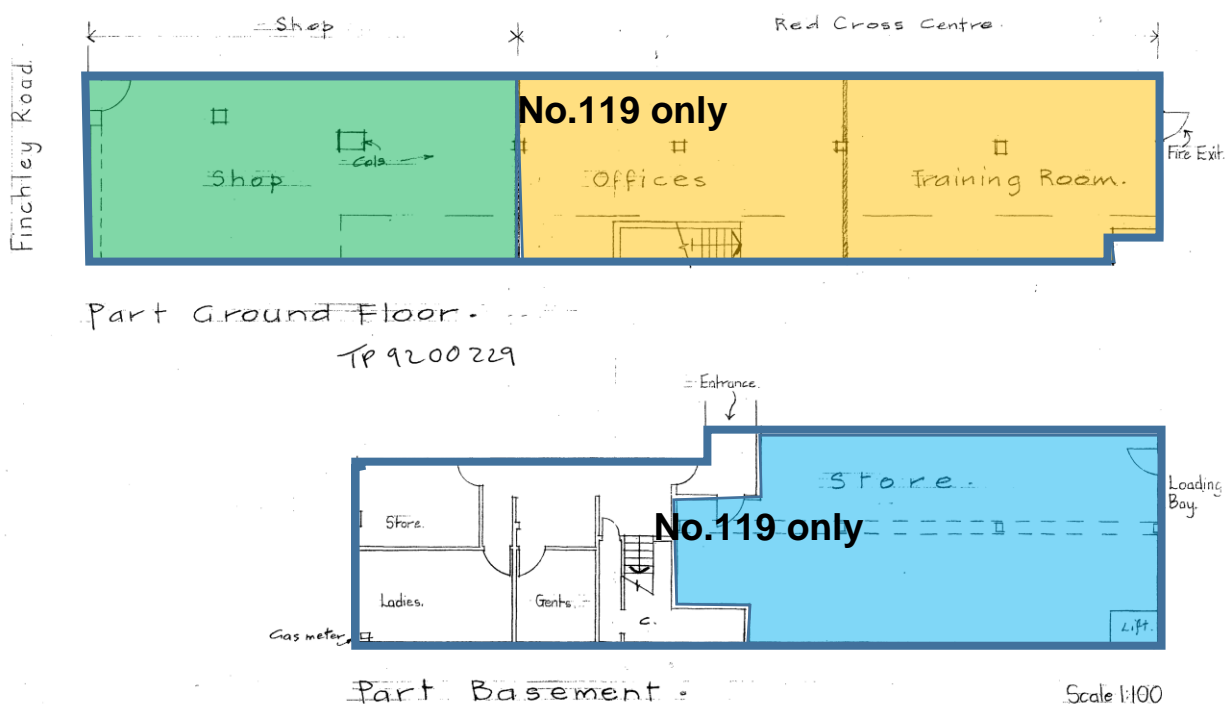
- 2.22 As the submitted application form discusses a change of use at ground floor only and the LGF space is labelled as 'existing storage', the existing lawful use of the space at that time (retail – A1) would have been retained, though in practice the space could have been shared between the two units/uses (A1/A3). In section 5 of the application form, the total area to which the change of use applies is stated as 590sqm. As from submitted plans the ground floor area of no.117 alone is approximately 375sqm and the total LGF area is approx.480sq, this would suggest that the remaining LGF area was to be split between the two units.
- 2.23 This permission was granted subject to numerous conditions, including hours of operation, that sound insulation details should be submitted and approved and that all air handling equipment be satisfactorily sound-attenuated. These were all applied in order to safeguard the amenities of adjoining premises and the area generally. The application of these conditions highlights how noisy operations on site and resulting impacts to neighbours has remained a concern for the Council.
- 2.24 Further to this application, there were no more submissions that related to a) both units no.117 and 119 or b) solely no.117. It is understood that this permission was implemented shortly after and that no.117 was subsequently operated in accordance with the layouts as approved for a number of years. Google street view imagery illustrates that in 2008 KFC remained on the site, where they

continued to operate until their closure in c.2012/2013. Since this point, two other restaurant operators have since taken the unit, with a third commencing fit out at the time of writing following a period of vacancy meaning that this unit remains in a lawful use as A3.

Application #5 – 1992: No. 119 only (ref. 900229)

2.25 The only other application of relevance for the purposes of the appeal relates to no.119 only and was submitted by the British Red Cross in 1992. In the submitted application form, permission is sought for the “*Change of use of rear part of ground floor to red cross centre (comprising offices and training room) ancillary to existing retail shop*”. In section 7 of the form it is set out that the total site has an area of 400sqm made up of 210sqm retail and 190sqm ancillary storage.

2.26 The plans indicated that the lower ground floor had been split lengthways between no.117 and 119 as at ground floor above, with an internal stair added to provide access. They show that the uses would be spread within the unit as indicated by the colours below (green= retail; orange=office and training room; blue=ancillary storage). This was approved in May 1992.



Approved plans excerpt / mark up 1992 (ref. 900229)

- 2.27 Given that the Red Cross intended to operate the entire site as a single unit and that the only additional uses proposed were described as ‘ancillary to the existing retail use’, it is arguable that these works did not fall under the definition of development as set out under s.55 of the Act. However, the final decision notice for this permission did describe the works as follows: *“Change of use of ground floor from class A1 to mix use of A1 and B1”* and the application was conditionally approved. At this point, the unit was therefore permitted to change from retail (A1) to a mix of retail / ancillary storage and office and training centre, which would in fact represent a sui generis use. This would not be considered to be a dual use as the uses within the unit were not separate and distinct and did not have their own individual entrance.
- 2.28 There have been no further planning applications for this unit. Despite this, the unit has been in continuous use for retail purposes since at least 2008. Given the uncertain status of the Red Cross use, it may have been the case that the unit was related to a retail operator following the Red Cross without express permission but that the retail use has once again become lawful due to the passage of time.

#### Planning history summary

- 2.29 As set out above, records show that the area of the lower ground floor to which this appeal relates was a feature of the original 1960’s design of the host building. It was designed to host ancillary storage and servicing areas to the retail supermarket unit above and was integral to this, single, planning unit (nos.117 and 119 combined). The entirety of the lower ground floor would therefore have had a lawful use as ancillary retail (A1) and operated as a single planning unit.
- 2.30 This remained the case from its construction until circa 1990, when planning permission was granted for the subdivision of the combined unit to form a restaurant (A3 at no.117) and retail unit (A1 at no.119) at ground floor level. Approved plans show that the basement was retained as ancillary storage spaces and servicing area. Though the exact boundary of the demise between the two

units at basement level is not explicitly labelled, the evidence would suggest that remaining ancillary storage spaces were split between the two units above so that each retained some storage space.

2.31 This is reinforced by a subsequent application submitted by the Red Cross in 1992 that related to no.119 only. In the approved drawings for this application, the basement level is shown as being split down the middle to follow the partitions of host units above. Under this approval, consent was granted for the planning units at no.119 to be formalised at lower ground floor to provide fully separated spaces for the tenants. (At this time, the entirety of no.119 (GF and LGF) was permitted to operate under a mixed use, sui generis use class. At this point, the area subject to the Appeal Site incorporated the lower floors of two units and hosted ancillary A3 beneath 117 and ancillary Sui Generis use beneath 119 which as noted above was at ground floor a use involving retail, office and training space.

2.32 In light of the above planning history, it can be confirmed that planning permission has never been granted for the subdivision of the lower ground floor of the rear projection to form an independent planning unit. Approved plans all show this space to be integral to the commercial units above. Furthermore, upon a closer inspection of the approved documents, it is confirmed that planning permission has never been granted for a change of use of any of the five commercial units within the host building to operate under a B1 Use Class.

#### Further evidence

2.33 Following the submission of the appeal, officers have also consulted the public records from the Building Control team in an attempt to shed further light on the works undertaken on site. Despite the numerous planning applications as set out above, only one Building Control application is recorded for the host building (115-121).

2.34 The only building control record on file was received by the Council on the 10/08/2017 and related to the following description of works "*Conversion of*

*warehouse building into catering operation”* (ref.17/5/06660). It is understood that these works related to those undertaken by the Appellants when they moved in to operate on the site. As the application type was an ‘Initial Notice of Approved Inspector’, the Council made no formal determination and was only able to accept the notice. To date no record of a final certificate has been received as confirmed by the officers from the Council’s Building Control department.

### **Established Lawful Use and Planning Unit Conclusion**

2.35 With the above in mind, the Council maintains its position that the amalgamation of units at lower ground floor level and severing of this floor from the commercial units above to form a new and independent planning unit combined with a change of use to purposes best described as ‘Commercial Kitchens and Delivery Centre’ fell within the definition of development set out under the Act. In line with the refused certificate of lawful development, it is therefore maintained that planning permission was required for the development undertaken on site. This is regardless of the eventual position taken in terms of the use class for operation of the ‘Commercial Kitchens and Delivery Centre’.

### **3.0 PLANNING POLICY AND GUIDANCE**

#### **Local Development Plan policy status**

- 3.1 Copies of all the Camden Local Plan policies that formed part of the original reasons for issuing the Enforcement Notice were sent as part of the Questionnaire. In issuing the Enforcement Notice, the Council had regard to relevant legislation, national planning policy and practice guidance, development plan policies, supplementary planning guidance and the particular circumstances of the case. In making any decisions requiring regard to be had to the development plan, including the Council's decision to issue an Enforcement Notice under s.172 and the Inspector's decision in relation to the deemed planning application under s.172(2) of the 1990 Act, the determination must be made in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004.

#### **National Planning Policy Framework (NPPF)**

- 3.2 The revised NPPF was published on 19 February 2019 and sets out the government's planning policies for England and how these are expected to be applied. This revised Framework replaces the previous National Planning Policy Framework published in March 2012, and revised in July 2018. It provides a national planning policy framework against which all planning applications and decisions must be made. It sets out a presumption in favour of sustainable development as a golden thread running through the decision making process. The policies contained in the NPPF are material considerations for the purposes of determining this appeal.

#### **Camden Local Plan (2017)**

- 3.3 The Camden Local Plan and supporting policies map were adopted by the Council on 3 July 2017 following Examination in Public. As a result, the Local Plan is up to date.

### London Plan - Consolidated with alterations since 2011 (2016)

- 3.5 This document, published in March 2015, is consolidated with all the alterations to the London Plan since 2011. It is the policies in this document (and any subsequent Alterations to it) that form part of the development plan for Greater London, and which should be taken into account in taking relevant planning decisions, such as determining planning application. This is to remain in accord with s.38 of the Planning and Compulsory Purchase Act 2004.
- 3.6 Boroughs' local development documents have to be 'in general conformity' with the London Plan, which is also legally part of the development plan that has to be taken into account when planning decisions are taken in any part of London unless there are planning reasons why it should not.

### Emerging New London Plan submission draft 2017

- 3.7 A draft New London Plan was published by the Mayor for consultation in December 2017, with the consultation period ending on Friday 2 March 2019. The draft London Plan was subsequently considered by a formal Examination in Public which ran between Tuesday 15 January 2019 and Wednesday 22 May 2019. A Panel Report is currently being produced that will set out its findings in relation to the EIP matters and may include recommendations relating to the content of the draft London Plan published in December 2017 or associated matters. The Mayor may not publish the London Plan until after he has received the Panel report. As such, formal adoption is not expected until late 2019 / early 2020.
- 3.8 The current 2016 Plan is still the adopted Development Plan, but the Draft London Plan is a material consideration in planning decisions. The significance given is attributed more weight as it moves through the process to adoption. Given that the panel report is yet to be published, limited weight is afforded to the emerging Plan at this stage.



## Camden's supplementary planning guidance

- 3.8 Camden Planning Guidance (CPGs) provide advice and information on how we will apply our planning policies. The Council has reviewed its Camden Planning Guidance documents to support the delivery of the Camden Local Plan following its adoption in 2017. The update was carried out in two phases to manage the amount of material to be consulted on at any one time and ensure that relevant revised CPG documents take into account changes to the London Plan and to national planning policy. The CPG documents are 'material considerations' in planning decisions, although they have less weight than the Local Plan or other development plan documents.
- 3.9 The previous CPG 1, 3, 4, 5, 6, 7 and 8 documents have now been fully superseded. The CPG documents as Phase 1 of the review were adopted by Council on 26 March 2018 following consultation. This included the Amenity CPG. The CPG documents as Phase 2 were adopted on 15 March 2019 following consultation. This included the Air quality, Design, Developer contributions, Employment sites and business premises, Town centres and Transport CPGs.

## Relevant development plan policies for appeal

- 3.10 The Development Plan for the area comprises London Plan July 2016 and the Camden Local Plan 2017. The following Local Plan and London Plan policies are the relevant development plan policies against which the Ground A deemed application should be assessed:

### **Local Plan (2017)**

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

- TC4 Town Centre Uses

### **The London Plan (2016)**

- Policy 2.15 Town centres
- Policy 4.7 Retail and town centre development
- Policy 7.4 Local character
- Policy 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes

### **Supplementary Guidance**

#### Camden's supplementary planning guidance:

- CPG Amenity (March 2018)
- CPG Design (March 2019)
- CPG Transport (March 2019)

## **4.0 SITE AND SURROUNDINGS**

- 4.1 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. 487m<sup>2</sup> 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).
- 4.2 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. 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.
- 4.3 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.
- 4.4 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.

4.5 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).

## 5.0 ASSESSMENT

5.1 The appellant has appealed against the Enforcement Notice on the following grounds:

- Ground A, that that planning permission should be given for what is alleged in the notice;
- Ground F, that the steps required to comply with the Notice are excessive and lesser steps would overcome the objections;
- Ground G, that the time given to comply with the Notice is too short.

5.2 This Ground was appealed but has been withdrawn by the Appellant:

- Ground C, that there has not been a breach of planning control.

This Ground was withdrawn at a very late stage and given the time constraints involved in finalising this document, rather than substantially revising this proof, the section below relating to Ground C has been retained; it was also considered that this information would assist the Inspector with other aspects of the appeal.

### **Grounds of Appeal**

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

5.3 The opening of Deliveroo's operation at the site has caused a material change of use of the land to a Commercial Kitchens and Delivery Centre which is a Sui Generis use, and therefore comprises development under Section 55(1) of the Town and Country Planning Act 1990. The external alterations carried out to the building by the addition of external flues comprise building operations. As a result, the change of use and the physical works required planning permission and in the absence of this they are in breach of planning control.

- 5.4 In section 3 and section 5 of the Council's Statement of Case submitted in March 2019 officers set out the findings of an audit that was carried out into the planning history of the space that Deliveroo occupy, namely the lower ground floor at the rear of 115 and 117 Finchley Road. For convenience, the Statement of Case is appended to this Proof of Evidence.
- 5.5 The audit established that numbers 117 and 119 were amalgamated in the 1980s into a single retail unit which stretched, at ground floor level, from the Finchley Road front of the property to the back wall with storage at lower level, in the space that Deliveroo now occupy.
- 5.6 Following a 1991 planning permission, the ground floor unit was subdivided with 119 operating in Class A1 use with ancillary training spaces at rear upper ground floor and 117 in Class A3 use subject to a personal condition for use only by My Kinda Enterprises and to revert back to Class A1 use on their vacation of the unit. The lower ground level was occupied with storage and ancillary spaces supporting the Class A1 and the Class A3 units on the ground floor.
- 5.7 The planning history demonstrates that these units have been severed with the part the building located at the rear building, having been subdivided to form an independent planning unit.
- 5.8 Further research carried for this Proof is set out in section 2 above. This demonstrates that in applications the rear two storey element of the building has always formed part of the units 117 and 119 Finchley Road. Planning permission has never been granted for a subdivision of the property to form a separate planning unit at either level. The planning history shows that these units continued into the area above the area where Deliveroo currently operates, with the lower level formerly serving ancillary functions such as storage.
- 5.9 In addition, while a B1 element was granted in the upper floor rear of 119 within a wider mixed use permission (ref. 900229), planning permission has never been

granted for a change of use for any of the units within the lower ground floor to operate as a B1 Use.

- 5.10 The history of decisions at the site indicates that the use of the site by Deliveroo as a Commercial Kitchens and Delivery Centre, which is considered to be a Sui Generis use, has resulted in a material change of use of the premises which requires planning permission.
- 5.11 In its Statement of Case the Council commented on the Appellant's assertion that the Commercial Kitchens and Delivery Centre is a Class B1 use (paragraphs 5.12-25 of JS2). Notwithstanding the above comments and section 2 above, even if the existing use was established as Class B1 use, the Council's position remains as set out in the Statement of Case, that the use subject to the Notice is a Sui Generis use and that planning permission is required for the change of use.
- 5.12 The physical works that have been carried out to install flues to the exterior of the building are integral to the unlawful change of use. These works require planning permission as they comprise development under Section 55 of the Town and Country Planning Act 1990 and fall within the scope of the Enforcement Notice directed against the change of use.
- 5.13 In light of the above considerations the Inspector is respectfully requested to find that the Ground C appeal is not established.

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

- 5.14 As set out in paragraphs 1.12 - 1.17 above, the Appellant has been considering significant changes to the operation of the unit, in particular using bicycles for deliveries rather than motorbikes, stacking orders to reduce trips and using

technology to support these operational changes. If these measures were implemented the use of the premises would change significantly and the impacts on neighbours and the wider area would be greatly reduced.

- 5.15 In addition to these proposed changes, the Appellant has stated that it is willing to enter into a legal agreement with the Council to secure a detailed premises management plan and a set of planning benefits aimed at making the development acceptable in planning terms. At the time of writing this Proof officers had not verified whether these operational changes were implemented.
- 5.16 The Council would be willing to consider operational changes and entering a Legal Agreement to secure planning obligations that would make the development acceptable in planning terms. Alternatively it may be possible that planning conditions could be attached to address some of the issues, though there are likely to be some matters which would need to be dealt with by way of planning obligation.
- 5.17 No evidence or reports in relation to noise, odour, litter, storage, waste recycling and premises management have been presented by the Appellant to the Council in relation to their Ground A case.
- 5.18 Should evidence and reports be provided as part of the Appellant's proof submission the Council will take these into consideration and provide comments in a Statement of Common Ground with suggested conditions to secure any requirements, without prejudice to the Council's case.
- 5.19 In the absence of the above reports and evidence, none of which have been submitted to date, the Council is required to respond to the Ground A case on its merits and outline its position. This is as set out below.

### *Assessment*

- 5.20 The development set out in the Notice is contrary to the Camden Local Plan and the NPPF and there are no material considerations which mean that planning permission should be granted.



5.21 The Council's concerns in relation to the amenity of adjoining occupiers relate principally to noise and odour from the use and to highway safety, in particular for vulnerable users in the vicinity of the site.

5.22 The Enforcement Notice sets out four reasons which relate to the amenity impacts of the use. These are as follows.

- 2. The high volume of vehicle deliveries serving the site 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 premises, in the absence of measures to control 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 and parking resulting from the use of the site 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.*
- 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 are contrary to policies A1 and A4 of the Camden Local Plan 2017.*

5.23 The owner is required to take the following steps:

- 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. *Reinstate 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.*

5.24 Policy A1 Managing the Impact of Development states that the Council will seek to protect the quality of life of occupiers and neighbours. We will:

- a. *seek to ensure that the amenity of communities, occupiers and neighbours is protected;*
- b. *seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities;*
- c. *resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network;*
- d. *require mitigation measures where necessary.*

5.25 The factors we will consider include:

- h. *transport impacts, including the use of Transport Assessments, Travel*

*Plans and Delivery and Servicing Management Plans;*

*j. noise and vibration levels;*

*k. odour, fumes and dust.*

Monitoring Exercise

- 5.26 In order to gather evidence in relation to the Ground A appeal, intensive monitoring of the use was carried out over the course of a 4-week period lasting from late March until late April 2019. During this period Council officers monitored the entrance to the premises, the nearby areas of Finchley Road and the surrounding streets from 7pm to 9pm, mainly on weekends as this is the time when the use is at its most intensive.
- 5.27 The exercise aimed at establishing the amount of delivery motorbikes that visited the site, the number of incidents of conflict between motorbikes and pedestrians as well as other important measures relating to the operation of the use. Officers observed the site from parked vehicles or vantage points within the public domain overlooking the site entrance. Monitoring visits were conducted by pairs of officers who recorded their findings on a standard template. The evidence of these officers is presented in Appendix JS1 together with Written Statements from the officers involved. Subject to availability these officers can provide evidence to the Inquiry. Working together enabled one officer to carry out a walk-around to gather evidence of smells, noise and impact on street conditions while their colleague continued logging traffic to and from the site entrance.
- 5.28 This evidence gathered as part of the monitoring exercise relates to the issues identified in reasons 2, 3, 4 and 6 for issuing the notice, namely:
- The impact of vehicle deliveries on the amenity to adjacent occupiers (reason 2);
  - The impact of the absence of controls over hours of operation, litter, storage, waste, recycling, servicing and delivery on the amenity of adjacent occupiers (reason 3);

- The impact of vehicle deliveries on highway safety in the vicinity of the site, in particular for vulnerable users (reason 4); and
- The impact of noise and odours from the use on the amenity of local residents (reason 6).

5.29 The evidence gathered during the Monitoring Exercise is presented in full in JS1.

The following table sets out a summary of this:

	<b>Motorbike visits to site</b>	<b>Incidents of Motorbike – pedestrian conflict on pavement</b>	<b>Motorbikes using stretches of pavement other than crossover</b>	<b>Motorbikes parked over wider areas of pavement on Finchley Rd</b>	<b>Noise from motorbikes audible in the vicinity of the site</b>	<b>Smells/ Odours emanating from the appeal site</b>
<b>30<sup>th</sup> March (Sat)</b>	165	57	5	Yes	Yes	No
<b>5<sup>th</sup> April (Fri)</b>	177	104	22	Yes (34)	Yes	Yes
<b>6<sup>th</sup> April (Sat)</b>	115	7	0	No	Yes	No
<b>7<sup>th</sup> April (Sun)</b>	110	11	2	No	No	Not clear
<b>10<sup>th</sup> April (Wed)</b>	84	-	-	Yes	No	No
<b>12<sup>th</sup> April (Fri)</b>	114	16	4	Yes	Yes	Yes
<b>13<sup>th</sup> April (Sat)</b>	113	9	6	Yes (6)	-	-
<b>14<sup>th</sup> April (Sun)</b>	97	2	12	Yes (4)	-	-
<b>19<sup>th</sup> April (Fri)</b>	62	0	0	-	-	-
<b>21<sup>st</sup> April (Sun)</b>	114	0	1	No	Yes	No
<b>26<sup>th</sup> April (Fri)</b>	144	36	13	Yes (10)	Yes	Yes

#### Impact on street conditions and on vulnerable users

5.30 Policy A1 states that the Council will seek to protect the quality of life of occupiers and neighbours and that it will grant planning permission for development unless this causes unacceptable harm to amenity. Clause A1(c) states that the Council will resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network. Paragraphs 6.8 - 6.10 of the supporting text relate to Transport Impacts. These highlight the particular importance of pedestrian safety and that of vulnerable road users.

- 5.31 During the monitoring period the number of motorbike delivery visits over the two-hour evening peak ranged from a low of 62 on Friday 19<sup>th</sup> of April to a high of 177 on Friday the 5<sup>th</sup> of April. Eight of the eleven evenings of the monitoring period had over 100 motorbike visits.
- 5.32 Each visit involves an arrival and a departure. Due to the one-way-system the delivery motorbikes access the property from the south along Finchley Road. When a motorbike delivery rider needs to access the site they ride over the crossover and into the parking area at the top of the slip road. At times when there is significant pedestrian traffic the rider will need to wait for a gap in the flow. During all of the evenings of the monitoring period there were marshals at the site entrance assisting the flow of delivery riders.
- 5.33 As set out in the table above, officers observed significant levels of conflict when motorbike delivery riders sought to access the slip road. This is set out in detail in JS1 which includes contemporaneous notes as well as Officer Written Statements. The highest recorded number of incidents in a two-hour period was 104. Examples of conflict as recorded by officers in their notes included pedestrians having to change direction or step out onto the road. As can be seen from the monitoring proofs and templates at JS1 there were examples of groups of pedestrians having to split up and riders coming from behind single pedestrians, turning onto the crossover and startling them. Other incidents of conflict recorded in JS1 involved pedestrians with luggage, bags or children's buggies having to slow down or change their path to avoid contact. When there were large numbers of motorbikes and there was not enough space for them to park at the top of the slip road, the delivery riders would have to wait on the crossover. In my opinion, from the point of view of a pedestrian approaching the site entrance, this collection of motorbikes formed a visual barrier and undermined the perceived safety of the footway.
- 5.34 During the period of the monitoring exercise there were no recorded incidents of collisions between delivery riders and pedestrians. Due to the weight, mass and speed of delivery motorbikes there would be an asymmetrical impact in the case of a collision involving a pedestrian. All pedestrians and in particular vulnerable and disabled people have a need to feel safe and secure on the footway. As a result development should not give rise to a *perception* of reduced footway safety. The requirement for

development to address this need is set out in Policy 1A(c) and paragraph 6.10. In addition to the perception of safety, supporting sustainable forms of transport such as walking and improving conditions for pedestrians is a long standing Council objective. This is set out in, for example, Local Plan Policy T1 Prioritising Walking, Cycling and Public Transport.

- 5.35 As part of the monitoring exercise and as set out in the Summary Table above, evidence was also gathered on the use of wider areas of footway on Finchley Road to access the site entrance (in order to avoid the one way system) and on Deliveroo riders parking on other areas of pavement in the Finchley Road and surrounding streets. A consistent pattern of behaviour in both categories was noted in officer monitoring records at JS1. The use of the pedestrian footway by Deliveroo motorbike riders to access the site has in my view resulted in an undermining of the sense of pedestrian safety of the footway.
- 5.36 As noted above, marshalls were at the site entrance assisting the flow of delivery riders during the monitoring period. Despite their presence a significant amount of evidence was gathered during the monitoring period as recorded in JS1 indicating that pedestrian safety was being undermined by Deliveroo motorbike riders.
- 5.37 It is my opinion that the pattern of use of the entrance slip road as recorded during the monitoring exercise is much more intensive than would be the case if the premises were used as a storage use or for an industrial use. This would be likely to involve van and lorry movements in smaller numbers than the volume of motorbike delivery riders recorded at the site.
- 5.38 The evidence gathered in the monitoring exercise and appended at JS1 clearly indicates that the delivery element of the use fails to adequately address the transport impacts of the development and that as a result it fails to comply with policy A1(c).

## Noise and Odour

### *Noise and Vibration*

- 5.39 The Inspector is directed to the Proof of Evidence of the Council's Environmental Health Officer Camilo Castro-Llach.
- 5.40 When officers visited the site in October 2017 air handling and kitchen extract equipment were being installed. These works were subject to application 2017/4737/P which was registered in October 2017 and decided in May 2017 (Refusal and Warning of Enforcement Action).
- 5.41 The equipment that was installed is as follows:
- 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 plans submitted with 2017/4737/P namely 2017-075-107 and 2017-075-108.

5.42 Policy A1 states that the Council will seek to protect the quality of life of occupiers and neighbours and that it will grant planning permission for development unless this causes unacceptable noise and vibration (j).

5.43 The reason for refusal for application 2017/4737/P decided in May 2018 was:

*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).*

5.44 Reason 6 of the Enforcement Notice sets out how the Appellant can address the issue of noise, namely to provide:

*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*

5.45 As stated in the Proof of Evidence of my colleague, Camilo Castro Llach, the Appellant has failed to demonstrate that the Council's acoustic standards are being achieved. It is understood that a report has been prepared that provides further evidence which could address the reasons for issuing the Notice on the basis of noise and vibration, however, the Council has not had sight of this. Officers will review any documents or reports that are submitted by the Appellant and are prepared to confirm that objections to the scheme in relation to plant noise would be dropped if our requirements could be shown to be achieved. This is as previously stated in paragraph 5.31 of the Council's Statement of Case dated 28<sup>th</sup> of March 2019.



## *Odour*

- 5.46 The Inspector is directed in the first instance to the Proof of Evidence of the Council's Environmental Health Officer, Camilo Castro-Llach.
- 5.47 Policy A1 states that the Council will seek to protect the quality of life of occupiers and neighbours and that it will grant planning permission for development unless this causes unacceptable harm to amenity, and that the Council will consider odour, fumes and dust (e).
- 5.48 During the monitoring exercise officers gathered evidence of cooking odours within the locality of the site. Evidence gathered on three of the eleven evenings (5<sup>th</sup> of April, 12<sup>th</sup> of April and 28<sup>th</sup> of April) indicated cooking odours from the site within the surrounding area. The officer notes from 7<sup>th</sup> of April indicate a smell of frying in the area but the officer could not be certain if this emanated from the Deliveroo premises.
- 5.49 It should be noted that there are numerous restaurants in the surrounding area and it may be that these were the source of odours. However, the appeal site comprises nine kitchens and the extract point is at first floor level, below the eaves of neighbouring residential properties such as Cresta House. As a result, a detailed odour report is required which sets out the filtration capacity of the equipment and demonstrates that when all kitchens are in operation at maximum capacity or when deep frying or other greasy cooking is taking place there will be no adverse impact on neighbour amenity by reason of odour and fumes. A maintenance programme should also be provided demonstrating that the equipment is checked and upgraded at regular intervals.
- 5.50 The requirement for such a report is made clear in the enforcement notice and in the paragraph 5.31 of the Statement of Case in which the Council states that it is willing to consider further evidence.

## Other issues

- 5.51 As stated in Policy A1 the Council seeks to protect the quality of life of occupiers and neighbours and will grant planning permission for development unless this causes unacceptable harm to amenity. The absence of measures to control litter, storage,

waste, recycling and servicing is identified in the Enforcement Notice as causing a loss of amenity.

- 5.52 While no evidence of such harm was collected as part of the monitoring exercise, in the absence of controls there is no way of preventing such impacts in the future or if another user occupied the site.
- 5.53 The Council will review any documents that are submitted by the appellant in relation to these matters and will suggest conditions to be considered by the Inspector, without prejudice to the Council's case.

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

- 5.54 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. The absence of alternative steps is acknowledged in the Inspector's Pre Inquiry Note 2 dated 07.07.19, page 4.
- 5.55 Comments in relation to the appellant's Ground F have been offered in the Council's Statement of Case which is appended at JS2 paragraphs 5.32 – 5.37.
- 5.56 The Council's position is that the steps required by the Notice are reasonable and proportionate in relation to the harm caused by the breach.
- 5.57 The Council will consider any Ground F steps that are set out in the appellant's Proof of Evidence.

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

- 5.58 Comments in relation to the appellant's Ground G have been offered in the Council's Statement of Case which is appended at JS2 paragraphs 5.38-5.43. As outlined in the Statement of Case there no reason why the carrying out of the requirements would be technically unfeasible within the four-month period set out in the Notice.
- 5.59 In terms of setting this compliance period officers took account of the economic impact on the company and employees plus the loss of a service to the public. These matters were balanced against the fact that the use was developed without planning permission and has caused harm to the amenity of adjoining occupiers and to highway safety in the vicinity of the site.
- 5.60 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. In general terms a suitable location could be within an industrial area such as the Regis Road Industry area which is located in the Kentish Town area of Camden, albeit that the Deliveroo 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.
- 5.61 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 CONDITIONS**

- 6.1 A list of suggested conditions, without prejudice to the Council's case, will be provided with the Statement of Common Ground

## APPENDICES

Appendix JS1	Evidence from Monitoring Exercise by officers
Appendix JS2	Rule 6 Statement of Case of Camden Council
Appendix JS3	Historic applications: plans and documents
Appendix JS4	Enforcement Notice for EN17/1005
Appendix JS5	Delegated Report and Decision Notice for 2017/3737/P
Appendix JS6	Delegated Report and Decision Notice for 2018/0865/P