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## Appeal Decision

Inquiry held on 30 July to 1 August 2019

Site visit made on 1 August 2019

**by Diane Lewis BA(Hons) MCD MA LL.M MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 September 2019**

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**Appeal Ref: APP/X5210/C/18/3206954**

**Land at rear of 115-119 Finchley Road, London NW3 6HY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Roofoods Limited against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice, numbered EN17/1005, was issued on 1 June 2018.
- The breach of planning control as alleged in the notice is Without planning permission: Change of use from light industrial use (Class B1) to 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.
- The requirements of the notice are:
  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 louver) 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 2017-075-102A 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.
- The period for compliance with the requirements is within four months of the Notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. The appeal on ground (c) was withdrawn by the appellant on 9 July 2019.

**Summary of Decision: The appeal is allowed, the enforcement notice as corrected is quashed and planning permission is granted in the terms**

**set out in the Formal Decision.**

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**PRELIMINARY MATTERS**

**The Inquiry**

1. In its opening statement the Council confirmed its view that it would not be proportionate to resist the ground (a) appeal, provided properly framed, enforceable environmental controls are offered by way of section 106 obligation or imposed by way of planning condition. During the course of the inquiry discussions took place between the Council and the appellant towards establishing such a position.
2. The Local Residents Group represents residents whose homes are near to the appeal site, including residents of Dobson Close, Cresta House, Belsize Road and flats alongside the access road to the site. The Local Residents Group was granted Rule 6 status and took a full part in the proceedings at the inquiry.
3. The inquiry was closed in writing on 2 September 2019 after the receipt of the outstanding documents, including the completed section 106 agreement dated 16 August 2019.

**The Enforcement Notice**

4. When alleging a material change of use it is not essential to recite the previous use. However, it is better to do so in order that it will be more obvious why the Local Planning Authority considers there has been a material change. Where the notice does recite the previous use, this should be accurate. However, case law has indicated that an enforcement notice is not invalid if it alleges a material change of use and recites the base use incorrectly. It is for the appellant to establish that there has been no material change of use, whatever the nature, character or status of the base use<sup>1</sup>. The notice is open to correction on appeal, including omission where there is uncertainty.
5. Having fully researched the planning history, the Council no longer considered that the previous use of the property was light industrial and prior to the inquiry requested a correction to the description of the alleged breach to omit the reference to past use. The appellant has not put forward evidence on the previous use of the premises to contradict the position taken by the Council and has withdrawn the appeal on ground (c). I am satisfied that deletion of the previous use from the allegation would not cause injustice to either the local planning authority or the appellant.
6. At the inquiry additional corrections to the enforcement notice were agreed. The installation of external plant facilitated the change of use. The alleged breach identifies one rooftop extract, which the appellant confirmed did not serve its premises. This element of plant should therefore be deleted from paragraph 3 of the notice and the requirements. This amendment would ensure the text is consistent with elevation plans attached to the notice.
7. The appellant and the Council agreed that there was no necessity to extend the area of Land to which the notice relates to include the rear yard and the side access way. However, the site visit confirmed that the appellant occupies the

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<sup>1</sup> *Ferris v SSE & Doncaster MBC* [1998] JPL 777

ground floor of the building only. Amended plans have been submitted in order to make this position clear in the description of the Land.

8. As there would be no injustice, I intend to correct the enforcement notice to take account of all these matters.

### **APPEAL ON GROUND (A) / DEEMED PLANNING APPLICATION**

9. The development at issue is derived directly from the description of the breach of planning control as corrected, namely a material change of use of the property to use as commercial kitchens and delivery centre (sui generis) and the installation of external plant to facilitate the use.

#### **Main issues**

10. The main issues are:

- a. the effect of the development on the quality of life of neighbouring occupiers and the amenity of the surrounding area, having particular regard to:
  - noise and disturbance;
  - odour;
  - highway safety, particularly for pedestrians in the vicinity of the site;
  - the character and appearance of the premises and the surrounding area.
- b. The effect of the development on local employment, businesses and the economy.
- c. Whether any harm can be overcome by planning conditions or planning obligations.

11. The conclusions on these issues will inform whether the use is acceptable for the property and is appropriately located, taking into account the site characteristics and the character of the area, the surrounding highway network and the operation of the business.

#### **Policy**

12. The development plan for the area in which the site is situated includes the London Plan (2016), the Camden Local Plan (2017) (the CLP) and the Site Allocations Plan (2013).
13. Material considerations include the National Planning Policy Framework, Planning Practice Guidance, the Noise Policy Statement for England and Camden Planning Guidance. The preparation of the draft London Plan is approaching an advanced stage with the completion of public examination hearings in May 2019 and the publication in July 2019 of a consolidation version incorporating all the suggested changes. The Panel's report containing recommendations is expected to be submitted to the Mayor in September 2019. I have had regard to the relevant draft policies identified in the statement of common ground. However, in the absence of information from the

parties on whether these policies are subject to objection I attach limited weight to them.

## **REASONS**

### **The site and the development**

14. Finchley Road/Swiss Cottage is the third largest town centre in the Borough and it is designated as a district centre in the London Plan. The linear centre runs either side of the A41 Finchley Road, largely confined to the frontage properties and contains a concentration of food, drink and entertainment uses.
15. The aim of the CLP is to deliver sustainable growth while continuing to preserve and enhance the Borough. Finchley Road/Swiss Cottage town centre is identified as a highly accessible location by Policy G1 and is one of the locations where the most significant growth is expected to be delivered. The CLP considers the centre to be generally suitable for a range of uses, including those that attract a large number of journeys. The CLP also recognises that these other highly accessible areas promoted for growth often include or are adjacent to residential communities. Development must take into account the full range of Plan policies and objectives, in particular those on amenity, design and heritage, sustainability, community safety, open spaces and transport. This policy direction is consistent with Policy 2.15 of the London Plan.
16. The appeal site is located towards the southern end of the town centre. The boundary defining the centre follows the southern edge of the site access way and the rear boundary of the service yard. Immediately to the north, the town centre area includes Cresta House, a tall block with commercial uses at the lower level and residential flats above. Residential development (part of the Hilgrove Estate) lies to the west and south of the site, outside the defined centre and comprises a mix of flats and houses in and around Dobson Close.
17. At the rear of 215-219 Finchley Road the land slopes gently down to the west. The appellant occupies the lower ground floor of the two storey building, with direct access from the service yard. The information available on the planning history indicates that the lower ground floor was used for ancillary storage in conjunction with the use of the frontage units. The change to the current use involved the creation of a new planning unit and a new chapter in the planning history.
18. 'Deliveroo Editions' is the term used by the appellant for the current use of the site as commercial kitchens and delivery centre. The building is laid out to provide nine equipped micro kitchen pods, which are staffed and operated by individual restaurant partners. The food prepared and cooked within the kitchens is delivered to customers using Deliveroo's fleet of riders. There is no ability for customers to visit the site to place or collect an order. Instead the transaction is done online and is completed via the online app.
19. The Swiss Cottage area was identified as a target location because of the large residential population that was under-served by the existing restaurant selection. The catchment area for an Editions site is typically about 3 kilometres with a maximum riding time of about 15 minutes for the delivery of orders. The catchment area of the appeal site extends to parts of Hampstead, Kilburn, St John's Wood, Camden and Kentish Town.

20. Data from the appellant provides an indication of the amount of activity generated. A traffic survey in June 2018 showed that the busiest peak hour occurred between 1900 and 2000 hours on Thursday night with 164 scooter movements, equating to approximately 2.7 scooter movements per minute. Data from the past year illustrated that during any 15 minute period the maximum number of pickups from the site was 24, giving a maximum of 96 per hour and a total of 192 scooter movements per hour<sup>2</sup>. The highest density of orders comes from the south, in the St John's Wood, South Hampstead, Regents Park areas.
21. The use commenced on site in October 2017. In the period after the issue of the enforcement notice the appellant has made changes to the operation of the use and most recently the use of motorised scooters for customer deliveries has ceased. As from 3 July 2019 all deliveries are to be done by bicycle, electric two-wheeled vehicle or by foot. I am satisfied that the use has not materially changed and the operational changes are able to be taken into account in determining the deemed planning application.
22. The Camden Planning Guidance: Employment sites and business premises acknowledges the growth in industrial scale kitchens with a delivery service to customers, usually by scooter. Existing industrial areas are considered the most appropriate for such uses. Nevertheless, this direction as to location is within local guidance and no policy in the development plan requires an industrial area location for these types of uses. The approach set out in the Guidance is to consider the impact of the development based on the criteria in CLP Policy A1 Managing the impact of development, and other relevant policies.

### **Quality of life**

23. CLP Policy TC4 seeks to ensure that the development of town centre uses does not cause harm to the local area or the amenity of neighbours. Matters for consideration identified by the policy include the impact on nearby residential uses; parking, stopping and servicing and the effect of the development on ease of movement on the footpath; noise and vibration generated either inside or outside the site; fumes likely to be generated and the potential for effective and unobtrusive ventilation. Similar factors are identified in Policy A1 that aims to protect the quality of life of occupiers and neighbours. The policy expectation is that development would not cause unacceptable harm to amenity.
24. CLP Policy A4 is specific to the control of noise and vibration. The London Plan Policy 7.15 identifies ways development proposals should seek to manage noise. Significant adverse noise impacts on health and the quality of life should be avoided.

### **Noise and disturbance**

25. Planning Practice Guidance advises on when noise is likely to be of concern. Noise above the 'lowest observed adverse effect level' boundary (LOAEL) starts to cause small changes in behaviour and/or attitude. Consideration needs to be given to mitigating and minimising those effects, taking account of the economic and social benefits being derived from the activity causing the noise. Noise above the 'significant observed adverse effect level' boundary (SOAEL) causes material changes in behaviour and/or attitude and should be avoided.

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<sup>2</sup> Document 24 in appellant's response on peak kitchen capacity

26. The potential sources of noise and disturbance are the fixed plant and equipment installed to facilitate the use, delivery and service vehicles and the riders. The sensitive receptors are the residents of the nearest dwellings to the site in Dobson Close (to the south and west) and Cresta House and the flats above 115-121 Finchley Road.

*Fixed plant and equipment*

27. The kitchen pods have associated ventilation and refrigeration plant equipment. In accordance with CLP (appendix 3) the design criterion is that noise from the fixed plant equipment should not exceed a rating level of 10 dB below background noise levels (15 dB if tonal components are present). The background noise levels considered to be representative of the typical noise climate at the properties in Dobson Close are 50 dB L<sub>A90</sub> daytime (0700 to 2300 hours) and 45 dB L<sub>A90</sub> night time (2300 to 0700 hours).

28. The appellant carried out a plant noise assessment to support the deemed planning application. The assessment demonstrates that the predicted rating noise levels from the Deliveroo fixed plant equipment comply with the CLP design criterion. It is explained that the principal noise reduction measures at the site are the use of atmospheric side attenuators to the extract and supply fan systems and the selection of intrinsically quiet refrigeration plant equipment.

29. The Council confirmed that the baseline noise survey to establish the background noise climate complied with the Council's requirements and also accepted the conclusions of the noise assessment. The monitoring exercise conducted by the Council over a 4 week period in March/April 2019 did not identify a problem of noise from ventilation and refrigeration plant. Disturbance from plant noise was raised in objections to the appellant's planning application and the application for a lawful development certificate submitted before the enforcement notice was issued<sup>3</sup>. However, the Rule 6 Party did not dispute the appellant's technical evidence. The accounts and records submitted by residents for this appeal made little mention of noise from plant and extraction equipment.

30. On unaccompanied site visits to the area I heard plant noise in Dobson Close. The investigations by the noise experts for the appellant and the Council found that the noise was likely to have been from plant unconnected to Deliveroo Editions, referring to other ventilation equipment at high level at the rear of the building. On the accompanied site visit we visited Cresta House and according to later information from the Rule 6 Party a statutory noise nuisance was found by the Council investigating noise from Deliveroo's external extractor fan. This report has not been accepted by the appellant who maintained that investigations found that the noise source did not service the appeal premises.

31. I conclude that it is very important that at all times the installed equipment achieves the design criterion to avoid disturbance to residents. If that standard is attained, and the technical evidence indicates that it would be, the development is unlikely to generate unacceptable noise impacts from ventilation and refrigeration plant equipment required in association with the use. A suitably worded planning condition(s) is the means to secure this

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<sup>3</sup> Applications ref 2017/4737/P and 2018/0865/P



requirement. Subject to these provisos the development complies with Policy A4 in relation to this matter.

*Noise from vehicles and riders*

32. Motorised scooters provided the primary delivery method, supported by cycles and delivery on foot. Scooters were not allowed to go down the access ramp into the service yard but had to wait and park at the top of the ramp by the footway along Finchley Road.
33. The appellant acknowledged that scooter noise is recognised as having a character that makes it more annoying than general road traffic noise. As a result of noise survey work by the appellant in January 2019 levels of noise at the facades of a few of the nearby flats in Dobson Close were estimated to be above SOAEL. As mitigation, screening was installed enclosing the site railings along the southern site boundary and marshalling of the area was modified to reduce the numbers of scooters parking, starting up and pulling away on the access slope.
34. As a result some improvement took place but the appellant accepted that during busier periods noise levels from scooters on the access way were above LOAEL at some noise sensitive receptors in Dobson Close. Council officers when monitoring the use in April 2019 noted a number of instances when noise from delivery bikes was audible in the vicinity of the site. Deliveroo's decision to switch operations at the site to use only bicycles and electric two-wheeled vehicles would overcome this impact. To secure this improvement a mechanism has to be in place to ensure motorised scooters are not used as one of the delivery methods in the future.
35. As part of the overall arrangements the appellant proposed to provide bicycle racks and parking space for electric scooters in the service yard near the despatch room and pick-up point. The parking would be in close proximity to dwellings and gardens in Dobson Close, in an area where the background noise level is significantly lower than on Finchley Road. Consequently the switch in mode of delivery would lead to a potential source of noise intrusion from voices of riders, other delivery personnel and marshals.
36. There was common ground between the appellant and the Council that with the switch in the mode of operation all sensitive noise receptors would experience noise below the LOAEL and therefore require no specific noise control measures. Relevant factors included the location where riders would wait and communicate, sound attenuation due to distance and screening and the noise levels from the continuous road traffic in the area.
37. Residents submitted records of instances of noise disturbance in 2018 of shouting, use of mobile phones by marshals and drivers when parking occurred on the slip road. The Local Residents Group also felt strongly that Deliveroo should adhere to its earlier promise that drivers would not be allowed to park in the rear yard.
38. I found Dobson Close has a quiet environment in the evenings and unexpected sudden noises were intrusive. A small number of dwellings back onto the rear yard, with first floor rear windows and a few dormers above the level of boundary screening. There is a significant difference between the agreed day and night time background noise levels. The objective evidence indicates that

noise from loud voices occasionally could be above the night time background level. Because of their intrusive sounding nature such noises would result in disturbance to nearby residents, including sleep disturbance.

39. In such circumstances the guidance indicates mitigation is required to protect quality of life for residents. With reference to Policy A4, the CLP states that planning conditions restricting opening hours will be imposed to prevent adverse impact on nearby noise sensitive users. In the operational management plan measures also are proposed to control behaviour and noise from voices on site. I will return to consider these forms of mitigation below.

### **Odour**

40. The CLP (paragraph 6.22) requires all development likely to generate nuisance odours to install appropriate extraction equipment and other mitigation measures. The commercial kitchens fall into this category.
41. Based on the experience of residents living in Cresta House and Dobson Close, cooking smells became noticeable when Deliveroo started its operations. They reported that the smells were particularly objectional around June 2018 when they opened windows in the warmer weather. After August 2018 an improvement was noticed. In 2019 smells were logged during April and later in June. The Council recorded cooking smells within the locality of the site on three evenings during the monitoring period in March/April 2019.
42. There are three extract ducts on the rear elevation of the building that lead from the internal plant room. One duct serves three kitchens. The individual operators have produced a range of different food types, including food types that result in the highest odour releases. A high level of odour control is required.
43. The probability is that the system installed at the outset did not provide the necessary degree of control. In August 2018 the system was upgraded with the addition of bag and panel filters for particulate removal, a UV Ozone unit and carbon filters. The upgraded system should provide a very high level of odour control, sufficient to mitigate a risk of odour nuisance from the site when measured against an accepted risk assessment methodology. The Council agreed that results of the dispersion modelling, carried out by the appellant, indicate that even if odours were emitted from the site they normally would be carried over nearby housing and would not be detectable by the occupants. Furthermore, the level of plume rise would not be sufficient to affect the upper level of nearby flats. The odour sniff testing, one of a range of recommended assessment techniques, did not detect any strong odours or identify the Deliveroo site as the source of any cooking odour that was detected.
44. The reported experience of residents is not totally consistent with such conclusions. I recognise that not all reports of cooking smells are able to be directly linked to the commercial kitchens on the site. The appellant's evidence, comparing reported instances of odour with Met Office data on wind direction and speed, concludes that the site is not a plausible source of odours in many of the cases. Nevertheless, the urban fabric could influence wind direction at a very local level around the site. More significantly there were no other similar sized commercial kitchens so close to the affected dwellings that could have caused odour from cooking. The sniff testing was carried out on three visits



between 1700 and 1745 hours but was restricted to Belsize Road, Hilgrove Road and Finchley Road. It is not conclusive either way.

45. I conclude that harm was caused to residential amenity by the change of use. A system providing a high level of odour control is necessary. The installed measures should now provide the required standard of odour control. Regular maintenance would be essential to ensure the effective operation of the odour control system at all times. Planning conditions would be an appropriate mechanism to ensure policy compliance.

### ***Highway safety***

46. CLP Policy A1 resists development that fails to adequately address transport impacts affecting communities, occupiers and neighbours and the existing transport network and requires mitigation measures where necessary. The Framework requires safe and suitable access to be achieved for all users. Applications for development should minimise the scope for conflicts between pedestrians, cycles and vehicles. Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.
47. The site is accessed via an existing vehicular crossover with the A41 Finchley Road, which forms part of the Transport for London Road Network (TLRN). The footway is approximately 3 metres wide at the point of access. Immediately to the south of the site access is a pedestrian route providing a short cut linking Finchley Road with the Hilgrove Estate. There are bus stops to the north and south within close proximity of the access. Finchley Road is one way northbound where it passes the site, with four running lanes and a designated bus lane. The highway forms part of the one-way system around Swiss Cottage. Traffic signalled controlled junctions regulate the flow of traffic and provide pedestrian crossing facilities.
48. The delivery operation has raised issues related to the parking of scooters and their use of the footway, the high volume of riders accessing and egressing onto and using the local highway network and the use of the access by delivery vehicles servicing the commercial kitchens.

### ***Scooters and pedestrians***

49. Until the beginning of July 2019 scooters provided the primary delivery method and they parked in the limited space at the top of the access road. The appellant acknowledged that this scooter parking frequently caused congestion around the site access. The Council in issuing the enforcement notice cited the harmful impact on highway safety and the difficulties caused for vulnerable users and neighbouring occupiers. The monitoring in April 2019 identified numerous conflicts between pedestrians and scooters, including incidents when riders had to brake sharply and pedestrians had to move around the vehicle. The photographic evidence and the personal accounts from local residents demonstrated conflict between scooters and pedestrians. Attention was drawn to the increased risk for those with mobility issues and more vulnerable highway users. Transport for London (TfL), the highway authority for the TLRN, expressed concern about the access to the site being blocked by scooters and bikes. In addition to the obstruction of the footway, TfL had safety concerns arising from pedestrians having to step into the road, which increases the

potential for collisions. These types of incidents are demonstrated in the residents' photographic evidence.

50. The footway at the site access is a busy pedestrian route throughout the day because of the town centre location and the proximity to bus stops, the underground station, pedestrian crossing facilities and the residential area. A survey in June 2018 showed that 155 pedestrians passed the access between 1900 and 2000 hours on a Friday evening. No personal injury accident has been recorded at this location (records up until December 2018). However, there is strong evidence that the parking of scooters at the top of the site access caused unacceptable obstruction and increased the risk to personal safety, especially for pedestrians. The switch in delivery mode and more especially the provision of parking space for bicycles and e-scooters within the site should ease difficulties related to congestion and obstruction but not necessarily overcome the conflict between delivery bikes/scooters and pedestrians.
51. The pavement along the western side of Finchley Road is not designated as a shared cycle/pedestrian way. Residents and Council officers reported incidents of scooters being driven along the footways, as well as cyclists using the footway. My observations on site confirmed that delivery riders cycled along the footways. Operational factors are likely to be a contributory reason because riders are under pressure to deliver the orders within 15-20 minutes and therefore are likely to look to use the shortest/quickest route. I noticed that riders heading south or west avoided going round the one-way system by using the footway. This practice would increase the risk of conflict with pedestrians and would be contrary to the Policy TC4 objective of encouraging ease of movement on the footpath.

*Access to and use of the highway network*

52. The use also has generated a high volume of movements at the site access and required delivery riders to negotiate the major flows of traffic on the immediately surrounding the highway network. Residents reported riders cutting across streams of traffic and personal experiences of having to brake sharply. Council monitoring reports support these observations.
53. The site access has good visibility to the south. There have been two reviews of personal injury accident data, one covering a five year period to December 2016 and the second a five year period to December 2018. The earlier data set predated the commencement of the use, although the records of accidents involving cyclists and motorcyclists do not indicate a particular inherent safety issue. Details of the later data set have not been provided by the appellant. As a matter of fact it is reported that there was no record of a traffic incident involving a pedestrian at or immediately adjacent to the access and the one motorcycle/scooter related incident was recorded in January 2017.
54. The available highway safety data is not conclusive evidence that the site is able to operate safely, bearing in mind that the use commenced from October 2017 and the switch in mode of delivery only occurred at the beginning of July 2019. Nevertheless, it is significant that the concern of TfL has been confined to the obstruction of the footway and no objection was raised in relation to safety on the A41 and the related links in the one-way system. The A41 carries a very high volume of traffic across multiple lanes. The series of traffic signals regulate the flow of traffic on the one-way system and has the effect of

creating breaks in traffic flow past the site entrance that enables riders to join the carriageway safely. Even so the volume and flows of traffic is such that delays do occur for riders waiting at the site entrance, which in turn may increase risks and encourage hazardous turning and weaving movements. At peak delivery times, when several riders are waiting for a break in the traffic, the footway becomes obstructed as shown in photographic evidence from the Local Residents Group<sup>4</sup>.

### *Servicing*

55. The planning history indicates that the rear yard has been used for parking and servicing of the block of properties. The development has created an additional planning unit and separate use, independent of the frontage buildings. The service yard remains available for use by other occupiers of the block.
56. The Rule 6 Party has provided evidence that indicated inadequate servicing space or access for vehicles making deliveries of food for the kitchens. Delivery vans have been observed parked in the residents' car parks in Dobson Close and obstructing the footway and vehicle flow at the site access. Pedestrian movement was impeded and inconvenience caused to other highway users.
57. The appellant demonstrated through swept path analysis that a 7.5 t (7.2 m long) vehicle would be able to enter and leave the site in forward gear. On the accompanied site visit a delivery van arrived and, although the manoeuvre was carried out eventually, space was very tight and guidance by a marshal was essential. A high degree of management on timing and use of vehicles would be required.

### *Conclusions*

58. The development did not achieve a safe and suitable access for all users of the highway and in particular it created conflict between pedestrians, cycles and vehicles. The acceptability of the use rests on whether the change in delivery mode and the additional management measures would provide appropriate mitigation to overcome the inherent difficulties of the site access in order to secure compliance with development plan and national policy requirements.

### ***Character and appearance***

#### *External plant*

59. CLP Policy D1 (criterion o) requires development to carefully integrate building services equipment, supporting the expectation expressed in the justification to Policy A1 in relation to odour control and mitigation. In the Camden Planning Guidance on Design a key message is that building services equipment should be incorporated into the host building aesthetically. In relation to refurbished development external plant should be avoided but if unavoidable it should be positioned to minimise its visual impact.
60. As I have already described when considering odour, there are three external extract ducts on the rear elevation of the building that exit from the internal plant room. The appellant stated that this plant was not accommodated within the building because the mechanical and electrical consultants recommended that all extraction ducts be placed above eaves height to improve air

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<sup>4</sup> For example Inquiry Document 5 photo dated 21.07.19; Document 7 photo dated 07.07.19.

dispersion. However, this does not explain adequately why the stacks could not be accommodated inside the building. It could be relevant that the appellant does not occupy the upper floor of the building.

61. The result is that the three external stacks extend a storey in height and visually dominate the rear elevation of the building. The visual impact on Finchley Road has been minimised. In contrast the plant is directly opposite the back of the residential terrace on Dobson Close and is visible from nearby residential streets and spaces. The building was largely neutral in its appearance in its surroundings, whereas now it has taken on an industrial appearance and is out of character.
62. The other pieces of external plant are of a smaller scale and are more discreetly located on the side and rear of the building. Limited visual harm results.
63. In conclusion, the installation of the extract ducts to facilitate the development is harmful to the character and appearance of the surroundings and fails to comply with CLP Policies A1 and D1 and the relevant Camden Planning Guidance on Design.

#### *Amenity*

64. The Framework expects developments will function well and add to the overall quality of the area. An aim is to ensure places are safe, inclusive and accessible with a high standard of amenity. CLP Policy D1 requires development to integrate well with the surrounding streets, improving movement through the site and wider area. The supporting text emphasises the importance of making roads, pavements and spaces between buildings fully accessible. The aim is to ensure good quality access and circulation arrangements, including improvements to existing routes and footways. Policy T1 promotes walking in the Borough and seeks to ensure developments improve the pedestrian environment.
65. With reference to the Camden Planning Guidance, Finchley Road/Swiss Cottage generally serves the local population by reason of the nature of the retail offer. Loss of retail uses are controlled to protect the retail function and character. The scale and number of food, drink and entertainment uses are also managed to avoid cumulative impacts on the amenity of residents and to maintain the distinctive character of this town centre.
66. With these considerations in mind the Rule 6 Party has drawn attention to the dominance of the Deliveroo riders within the centre, well beyond the confines of the premises. Local residents are no longer able to park and shop because either parking spaces have been used for motorcycle parking or parked cars in short term spaces have become hemmed in by motor bikes. Riders have also congregated in front of the Odeon Cinema and become an intimidating presence. Fast food restaurants have become rest areas for riders. The presence of riders waiting in the residential area, such as in Belsize Road and near the children's playground off Hilgrove Road, in turn has introduced noise and additional traffic. Other unwelcome effects have included the parking of delivery vans in the residential area and the use of Belsize Road and the Cresta House car park as a means of access for the collection of waste from the premises. The obstruction of the footway around the site access and the riding

- of bikes on the footway are additional effects that residents have found to be detrimental to the amenity of the public realm and the local area character.
67. Residents have supported their experiences by photographic evidence and when I visited the area several of these occurrences were evident. They are significant considerations in assessing the effect of the use on the character and quality of the locality.
68. Some understanding of these impacts may be gained by reference to details of the operation. The focus of the model is 'last mile' delivery, where the appellant uses the latest technology to ensure the food is delivered to the customer in the most efficient way. Delivery of prepared food to customers is undertaken using riders individually contracted to Deliveroo. When the food is nearly ready, the rider is notified to come to the site and pick it up. For the collecting rider to be allocated an order, s/he has to be logged onto the Deliveroo app and be located within range of the site. The Deliveroo real time despatch algorithm 'FRANK' constantly looks at available riders and orders and every two seconds evaluates the most efficient way to dispatch them. The decision process includes which rider is best placed to fulfil the specific order based on distance, type of location and other factors, such as vehicle type. The technology enables prediction of when a rider should arrive at the site, minimising dwell time and the customer should have a more precise indication of when the order will arrive. The rider is expected to deliver the food to the customer in about 15-20 minutes and progress of the delivery can be monitored on the app.
69. It appears that the delivery process and securing the delivery of an order is affected by the distance the rider is to the site. Consequently, riders are encouraged to wait around and near the premises, across the road, in the adjacent residential streets or in cafes in the town centre. Whilst this may not bother some people, I find it understandable that residents are concerned when it impacts on their ability to park close to shops, to walk around the town centre without intimidation and to feel at ease in their home environment.
70. The appellant informed the inquiry that a review of the town centre showed there were 39 food outlets of which 28 offer a food delivery service and that of the 28 outlets 14 offer a Deliveroo service. This information indicates that not all riders waiting around or parking in the town centre will be serving the appeal site. However, the probability is that the riders nearest the site, such as outside the Odeon, in Dobson Close and Belsize Road, would be involved in the delivery operation. The introduction of the new use has exacerbated a deterioration in the amenity of town centre and the way it functions.
71. The introduction of the use has been harmful to amenity, the pedestrian environment and the overall quality of the area, resulting in conflict with CLP Policies D1 and T1. The changes in operation, by excluding the use of motorbikes and allowing riders to park and wait within the site, would be likely to reduce the harmful impacts. The proposed on-site parking space has been shown to be numerically adequate for the current level of use and capacity of the nine kitchens. The despatch area inside the building is very small. Even with the change in layout its ability to comfortably accommodate some 24 riders is very doubtful, when account is taken of the need for circulation room to collect the orders and to maintain safe access into and out of the room<sup>5</sup>.

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<sup>5</sup> Document 5

Space in the rear yard has been reserved for the storage of waste and refuse, although access for waste collections would still be via the Cresta House car park. The operational management plan is proposed as a measure to improve how the development functions and minimise the adverse effects on the locality. The likelihood of doing so is assessed below.

### **Local employment, businesses and the economy**

72. The development enables a range of restaurant businesses to become established, to grow and diversify, as demonstrated by the case studies of occupiers of the premises and individual representations from businesses there. An advantage of the Deliveroo Editions concept for businesses is that they can set up on site without significant up-front costs and investment because the kitchen units are fully equipped and support services are provided. Experience and techniques may be shared between occupiers. This model is in accordance with objectives of the CLP set out in Policy E1 to support businesses of all sizes, in particular start-ups, small and medium-sized enterprises. The development also offers and contributes to a stock of premises suitable for firms of differing sizes and which are available for firms with differing resources, consistent with Policy E1.
73. The development has brought back into use part of a vacant building, which involved an initial significant capital investment and resulted in a short term positive economic effect in terms of employment, provision of building services and supplies. In the order of 29 people are employed at the site, including 6 employees of Deliveroo. In 2018, a total of 1,340 riders made deliveries from the site, 780 of whom are registered as residing in Camden. Additional economic benefits for the area are derived from the spending by employees on goods and services and stimulation of spending in the supply chain. The estimation of revenue generated and the delivery figures indicate that the service has been successful and fulfils a consumer demand.
74. In so far as the scope of the evidence demonstrates, the development is consistent with national and development plan policy that encourages the creation of conditions in which businesses can invest, expand and adapt, albeit on a small and localised scale. There is anecdotal evidence that existing town centre businesses have lost trade but without more specific evidence this consideration has little weight.

### **Initial conclusions**

75. The change of use has economic benefits but it has resulted in a harmful and unacceptable impact on the quality of life of neighbouring occupiers and the character and amenity of the surrounding area.
76. The appellant has sought to address the adverse effects. The upgrade to the ventilation equipment has resulted in an improvement in the control of odour. Very recent changes to the delivery operation have reduced congestion at the site access. The use of planning conditions and planning obligations is essential to the acceptability of the development.

### **Planning conditions and planning obligations**

77. Planning Practice Guidance states that when properly used conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by



mitigating the adverse effects. Referring to the Framework, planning conditions must only be used where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects (the six tests). Planning obligations must only be sought where they are (i) necessary to make the development acceptable in planning terms, (ii) directly related to the development, and (iii) fairly and reasonably related in scale and kind to the development.

78. The statutory tests set out of Regulation 122 of the Community Infrastructure Levy Regulations 2010 do not apply where a deemed application has been made under section 174(2)(a) because the definition of 'relevant determination' in Regulation 122(3) does not refer to enforcement provisions. I have taken the view that the caveat contained in clause 3.7 of the section 106 agreement in effect does not apply and the obligations are enforceable.
79. Policy DM1 of the CLP provides for the use of planning obligations and other suitable mechanisms to support sustainable development, secure the infrastructure, facilities and services to meet needs generated by the development and mitigate the impact of development. The primary purpose of planning conditions and planning obligations in this case would be to mitigate the adverse impacts of the development that have been identified. Policy TC4 also allows for use of planning conditions and obligations in appropriate cases to address issues including (i) hours of operation, (ii) noise, vibration, fumes and the siting of plant and machinery, (iii) the storage of waste and refuse and (iv) community safety. The Camden Planning Guidance on town centres contains a useful table on impacts and controls.
80. The appellant and the Council have submitted an agreed list of planning conditions as part of the statement of common ground, which follows on from a discussion on planning conditions at the inquiry. A section 106 agreement has also been completed which requires the appellant to establish a community working group and to ensure the unit is occupied and managed in accordance with an Operational Management Plan. The Council confirmed that on the basis of the conditions and the obligations there are no grounds for objection to the deemed planning application in respect of technical issues on odour, plant noise and other noise associated with the operation of the site including but not limited to deliveries. The Rule 6 Party maintained its opposition to the development.

### ***Planning conditions***

81. The use of motor scooters as the primary mode of delivery has been shown to cause unacceptable obstruction of the footway. Restricting the mode of transport to foot, bicycle or electric two wheeled vehicle would be necessary to address this issue in conjunction with revised parking and waiting arrangements. It would reduce but not overcome the potential for conflict with pedestrians at the site access.
82. Restricting the time in which deliveries to customers can take place would be necessary because of the location of the site close to residential development. A tighter restriction on trading hours than the 2300 hours proposed would not be reasonable to the operator having regard to the town centre location and the purpose of the use. The proposed delivery period to customers (1200 to 2300 hours) strikes the right balance and is consistent with Camden Planning Guidance: Town centres and retail. No collection of orders by customers takes

place from the premises and this feature of the operation should be confirmed by condition to protect residential and general amenity and to ensure consistency with the proposed management measures. An additional condition to limit the number of kitchens to nine would be a means of controlling the number of movements at the site access.

83. Control of noise from all fixed plant on the site would be necessary to safeguard living conditions of residents and protect the amenity of the area. Two conditions are proposed, one would place a control on hours of operation of the external plant and the second would limit the levels of noise. I consider both conditions would be necessary because of the proximity of the equipment and plant to residential properties. The specified level(s) of noise emissions is in accordance with the policy requirement of the CLP and is more stringent than that stated in British Standard 4142:2014. The statement of common ground confirmed that the values could be achieved, based on the evidence of the plant noise assessment.
84. The detail of the wording of the condition on noise levels<sup>6</sup> would benefit from minor changes, having had regard to the further comments of the parties and the requirements within the CLP and Camden Planning Guidance on Amenity regarding control of noise and acoustic reports. To date reliance has been placed on noise modelling to demonstrate the ability to comply with the stated noise levels. Given that the equipment is installed and operational, an assessment to demonstrate compliance with the condition could reasonably be expected to measure actual operational noise levels.
85. The odour control equipment would be required to provide a very high level of control. To ensure enforceability, the proposal is to define this level by reference to an accepted technical source in the absence of government guidance on the matter<sup>7</sup>. A plant management plan provides the detailed requirements for operation and maintenance of the odour filtration and ventilation systems. On this basis there should be no harmful impact on living conditions as a result of odour from cooking on the premises.
86. Experience has demonstrated that servicing of the premises has caused obstruction to traffic flow and pedestrian movement on the adjacent highway. To date, not all servicing has taken place either from within the site or dedicated loading bays, resulting in a loss of residential amenity. The proposed restriction on the period of time for servicing and delivery vehicles to be on site, 0800 to 1600 hours, would avoid peak delivery times to customers and is necessary and reasonable. Access to the site would be under the control of the appellant/occupier as would ensuring that parking, turning and circulation space is available within the site. However, where delivery vehicles park is not necessarily under the control of the operator of the site. Consequently, a condition requiring delivery vehicles to park within the curtilage of the building or marked loading bays is not reasonable or enforceable. This matter is more appropriately dealt with through the Operational Management Plan (OMP) secured through a planning obligation.
87. The installation and continued provision of cycle parking and e-charging standings is a reasonable and enforceable condition. This provision would encourage riders to park within the site, rather than obstruct the footway.

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<sup>6</sup> Condition 4 in Appendix 1 to the statement of common ground dated 2 August 2019

<sup>7</sup> The Defra Guidance was withdrawn in September 2017.

Linked to the required modes of delivery, such measures would be consistent with policies to reduce carbon emissions.

### ***Planning obligations***

88. The intention is that the planning conditions and obligations are complementary and work alongside each other.
89. The OMP covers a number of matters, including operating hours of the site, conduct, training and responsibilities of staff and riders, servicing arrangements and communication. Provision is made for its monitoring and review and a dispute resolution procedure is included in the document. The obligation is necessary because the OMP seeks to control operations and procedures that extend beyond the site boundary that are unable to be dealt with by planning condition. The element of duplication with planning conditions, as with control of site trading hours and operation of the kitchen ventilation system and of all plant and equipment, is acceptable when placed in the context of the overall management arrangements secured through the obligation.
90. The success of the OMP relies to a considerable extent on the individual members of staff and visitors, including riders, complying with the Code of Conduct controlling behaviour, the ability of marshals to carry out all their responsibilities and the effectiveness of deterrents and sanctions. The appellant accepted that it would be quite hard to control how people behave but considered that the prospect of the termination of contract would be a sufficient deterrent. However, identifying riders who did not comply with site policy and procedure would not be easy, whether because of the need for accurate information or the constraints on using the Deliveroo app. Also the appeal site does not have a dedicated fleet of riders because Deliveroo riders are contracted to provide services within the zone.
91. The marshal positioned at the site entrance would have a long list of responsibilities and at busy times it is doubtful that all could be effectively carried out. Traffic marshals have been employed at the site since about July 2018. Past experience, albeit pre-dating the OMP, does not encourage confidence. By way of illustration, the Council found during monitoring in April 2019 that despite marshals being present pedestrian safety was being undermined by Deliveroo motorbike riders.
92. The purpose of the proposed Community Working Group is to facilitate consultation between the appellant and the local community with a view to minimising disruption to amenity and the environmental harm arising from operations taking place at the site. Success would depend on the continuing involvement of residents and accountability of the appellant. The likelihood is that it would be most productive during the initial bedding-in period of the proposed management practices. Whilst potentially a useful forum for enabling dialogue between parties, the Council would remain the primary body for enforcing the planning conditions and obligations through statutory powers.

### ***Conclusions***

93. Subject to certain amendments, a set of conditions based on those proposed is capable of meeting the six tests. The planning obligations satisfy the policy tests set out in the Framework and I am able to take them into account as a

reason for granting planning permission. They are necessary in order to make the development acceptable.

94. The conditions and obligations would enhance the quality of development and offer mitigation for adverse effects caused by the development. The effectiveness of certain of the proposed measures, which rely heavily on controlling human behaviour and marshalling, is uncertain. Measures introduced before have not provided the necessary degree of control and have had to be reviewed, most notably in relation to the mode of delivery and rider parking and waiting facilities.

### **Planning Balance and Conclusions**

95. The town centre is a focus for growth and the appeal site is well located for the operator because of the proximity and accessibility to a large customer catchment. Balanced against those locational advantages the premises and the associated operational plant are adjacent to and surrounded by housing. The site access crosses a very well used pedestrian route and is onto a major traffic route.
96. The following section draws together my conclusions on the main issues in terms of compliance with the development plan and national policy, taking account of the proposed planning conditions and the planning obligations.

### ***Development plan***

#### *Quality of life*

97. The fixed plant and equipment are predicted to be operated without causing harm to amenity with the safeguards that have been put in place. Vehicle noise would be unlikely to cause undue disturbance primarily because the switch in mode of delivery effectively resolves vehicle noise from delivery scooters. In addition, servicing would be during the working day and numbers of deliveries to the premises would be small in number. On all these issues the proposal complies with CLP Policy A4 and Policy 7.15 of the London Plan.
98. Within the permitted hours of use the control of noise from voices of riders, staff and marshals would be largely reliant on individual responsibility and behaviour. I have reservations about the ability to secure adherence to good practice and the capacity of the waiting area to accommodate riders. Noise disturbance to nearby residents is a possibility, especially during the evenings and into the early part of the night when residents are trying to sleep. I am not able to conclude that the development can be operated without harm to amenity, a test in Policy A4 for granting permission.
99. Comprehensive measures have been put in place to control odour and so protect amenity to achieve compliance with Policy A1.
100. The location of the site and the means of access to serve the use are not conducive to highway safety, taking account of the high volume of rider movements generated at peak delivery times, the pedestrian flows past the site entrance and the delivery time requirements essential to the concept. Policy 2.15 of the London Plan requires development proposals to contribute towards an enhanced environment and public realm in the town centre. Ease of movement on the footway is identified as a specific consideration by Policy TC4. The CLP focuses on vulnerable road users in the consideration of highway

safety in applying Policy A1. It has not been demonstrated to date that the proposed marshalling arrangements, code of conduct and sanctions would be effective in preventing conflicts, overcoming the serious harm that occurred prior to July 2019 and ensuring policy compliance.

101. TfL has not objected to the increased use of the A41 one-way system and local highway network by electric scooters and bicycles. This advice from the highway authority for the TLRN is the key factor in my conclusion that there are no highway safety grounds related to the highway network for resisting permission. The comprehensive arrangements proposed for servicing through the OMP, which rely primarily on management of the servicing operation rather than behaviour, offer the prospect of adequately addressing the highway safety implications in this regard.
102. Overall, I am unable to conclude that the development has adequately addressed the transport impact on the community and neighbours and the direction of Policy A1 is that the development should be resisted.
103. The installation of the three extract ducts is essential to ensure adequate ventilation to the kitchens. The three steel vents fitted on the rear of the building are harmful to the character and appearance of the residential surroundings. This element of plant fails to comply with CLP Policies A1 and D1 and the relevant Camden Planning Guidance on Design.
104. The remaining amenity considerations relate to the character of the town centre and adjacent residential area and focus on the quality of streets and spaces, ease of movement and a feeling of community safety. Successfully integrating the use into the urban fabric, respecting patterns of movement and for many their familiar and valued home environment, relies primarily on the operational management plan. Improvements on the initial impacts of the new use can reasonably be expected from the revised delivery, parking and rider waiting arrangements, regulation of servicing times and delivery vehicles, the increased level of marshalling and site management of waste storage and collection. However, I have already highlighted concern on the ability of marshals to effectively carry out their many responsibilities, especially at the critical peak times. The probability is that riders associated with the premises would continue to spill out into the nearby residential streets, although to a lesser degree. All matters considered the use would cause moderate harm to area character, more particularly related to ease of movement and the objective of ensuring streets and spaces are pleasant and safe.

*Economic considerations*

105. The development is supported by CLP Policy E1, particularly because of the provision of serviced accommodation for start-ups and small businesses and the small contribution to local employment. The development of e-tailing and more efficient delivery systems is supported by Policy 4.8 of the London Plan.

*Development with mitigation*

106. The acceptability of the development rests on appropriate and effective mitigation being secured through the use of planning conditions and the planning obligations in the section 106 agreement. These measures would offer protection to amenity and the quality of life for near neighbours and local residents but for the reasons set out above it is uncertain whether the

substantial harm identified would be mitigated sufficiently to ensure overall compliance with the development plan.

***Other considerations***

*The Framework*

107. The development caters for local business needs by providing a platform to support the restaurant industry and by utilising the latest technology. The chosen location meets the requirements of the enterprise and is easily accessible to the customer catchment in the surrounding residential area. The new delivery arrangements to customers promote the use of sustainable transport modes. The effective use of the building in meeting the requirements of the appellant has to be balanced against safeguarding the environment and ensuring safe and healthy living conditions.
108. The development functions well from the point of view of the occupiers of the kitchens and the operator and probably customers too but not necessarily for neighbouring residents and users of the town centre. The safety and suitability of the access relies on a high degree of management that may not be reasonably achievable. The site location and access constraints limit the scope to minimise the conflict between pedestrians and cyclists. Satisfactory resolution of the pedestrian/cycle conflict at the access is an important factor when considering the acceptability of the impact on highway safety.
109. The development has not added to the overall quality of the area in the short term. Over its lifetime the visual harm to neighbouring residents would be a constant and it has been necessary to put in place a community working group to minimise disruption to amenity and the environmental harm on the local community.

*The draft London Plan*

110. Similar to the development plan and the Framework, there is a tension between the economic and the environmental / social policy objectives.

***Conclusion on planning balance***

111. The quality of the local environment and ease of movement for all are important policy objectives. The use has been shown to require a high degree of planning and management control. I have reservations for the reasons explained that the measures very recently proposed and put in place will successfully mitigate the identified harm. Consequently, I am unable to conclude that when considered as a whole the development plan supports granting planning permission for the use. The direction provided by the Framework is not clear cut.
112. Nevertheless, the development plan and national policy encourages the use of mitigation to overcome adverse effects to make an unacceptable development acceptable. Very significantly, the Council has concluded that granting planning permission through the deemed planning application would secure the purpose of bringing the development within planning control and making it acceptable. The context is of commercial premises within a town centre location, where optimising the use of brownfield land is a policy objective. The economic advantages of the use and the service it provides are very relevant.



113. A planning permission for a limited period (section 72 of the 1990 Act) offers a way forward. A trial run is needed to assess the effect of the development on the area with all the controls that have been developed in the run up to and during the inquiry. Planning Practice Guidance recognises that a temporary planning permission may be appropriate in the circumstances.
114. Such an outcome would not provide the permanent resolution sought by the appellant and the Rule 6 Party. Monitoring would be essential for the trial period to achieve its purpose but a Community Working Group is an integral part of the planning agreement. There would be limited additional burden on all concerned. Varying time periods were proposed, the appellant suggesting a longer period of two years. In my view a year would be an adequate period to assess the effectiveness of the planning conditions and planning obligations in protecting the amenity of nearby residents and the users of the town centre. My conclusion is that a temporary planning permission for a year is justified and a proportionate outcome in this case. There is no presumption that a temporary grant of planning permission will then be granted permanently.
115. As indicated above, amendments to the detailed wording of the planning conditions put forward by the Council and the appellant are necessary to ensure compliance with the six tests. For the avoidance of doubt short time periods are included where necessary for the implementation of proposed measures. A condition to provide for a time limited permission will have an allowance built into the time period for cessation of the use and removal of external plant at the end of the assessment period.
116. To recap, all conditions are imposed to manage the impact of the development and to safeguard the amenity of neighbours. An additional reason for condition 3 is to safeguard the pedestrian environment and assist ease of pedestrian movement. Control on the time for servicing (condition 10) is required to minimise conflict with peak delivery times to customers. The maintenance of bicycle stands and e-charging installed within the site is to avoid obstruction of the footway and encourage the use of sustainable transport modes. The planning obligations are essential elements of the overall package of environmental controls and management of the use.

## **Conclusion**

117. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted for a time limited period. The appeal on grounds (f) and (g) does not therefore need to be considered.

## **Decision**

118. It is directed that the enforcement notice is corrected:
- In paragraph 2 by the deletion of the description of the Land to which the notice relates and the substitution of the description: Land at Rear of 115-119 Finchley Road, London, NW3 6HY, lower ground floor, as shown outlined in black on the attached location plan and as hatched black on the attached existing elevations drawings 2017-075-101-A and 2017-075-102-A ("the Property").
  - In paragraph 3 by the deletion of the description of the breach of planning control alleged and the substitution of the description: Without planning permission a material change of use of the Property to use as

Commercial Kitchens and Delivery Centre (Sui Generis) and installation of external plant to facilitate that use including three (3) extract ducts, four (4) flues, three (3) air intake louvres and three (3) air condenser units.

- In paragraph 5 requirement 5 by the deletion of "4west-facing" and the substitution of the words "west-facing";
- In paragraph 5 by the deletion of requirement 6 and renumbering the following requirements 6 to 9.
- By the substitution of the two plans annexed to this decision for the existing elevations drawings 2017-075-101-A and 2017-075-102-A attached to the enforcement notice.

119. Subject to the corrections above, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at the rear of 115-119 Finchley Road (lower ground floor), London NW3 6HY, referred to in the notice, for commercial kitchens and delivery centre (sui generis) and the installation of external plant to facilitate that use including three (3) extract ducts, four (4) flues, three (3) air intake louvres and three (3) air condenser units, subject to the following conditions:

- 1) The use hereby permitted shall be for a limited period being the period of 14 months from the date of this decision. The use hereby permitted shall cease on or before that date and all external plant and equipment facilitating the use shall be removed from the site no later than 15 months after the date of this decision.
- 2) The number of kitchens on the premises shall at no time exceed nine.
- 3) Deliveries from the premises to customers shall be carried out by foot, bicycle or electric two wheeled vehicle only and not by any other mode of transport.
- 4) No deliveries from the premises to customers shall be carried out outside the following times: 1200 to 2300 hours.
- 5) No collection of orders from the premises shall take place by customers at any time.
- 6) Other than the Optyma condenser unit to the chilled room, within fourteen days of the date of this decision automatic time clocks shall be fitted to all external plant and equipment at the premises to ensure that the equipment does not operate outside the following times: 0800 to 0000 hours.

During the final hour of operation (2300 to 0000) all kitchen extract and air supply equipment shall operate at no more than half operational speed (as defined in the table below)

<b>Fan</b>	<b>Operational speed (Hz)</b>
Extract Fan EF1	36.80 Hz

Extract Fan EF2	38 Hz
Extract Fan EF3	39 Hz
Supply Fan SF1	25 Hz
Supply Fan SF2	26 Hz
Supply Fan SF3	30 Hz

The timer equipment shall thereafter be permanently retained and maintained in accordance with the manufacturer’s recommendations.

- 7) The level of noise emitted from all fixed plant on the site shall not exceed a value which is 10 dB below the background noise level at 1 metre from the façade of any dwelling or premises used for residential purposes or an alternative representative location approved in writing by the local planning authority. Background noise level is 50 dB, LA90 during the day (between 0700 and 2300 hours) and is 45 dB, LA90 at night (between 2300 and 0700 hours). The assessment period shall be 1 hour during day time periods and 15 minutes during night time periods. If the plant hereby approved has a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps) the level shall be 15 dB below the background noise level instead of 10 dB below.
- 8) For so long as the use continues the odour control equipment shall provide a Very High level of odour control, as defined by ‘Control of Odour and Noise from Commercial Kitchen Exhaust Systems’ by Dr Nigel Gibson dated 5-9-2018.
- 9) The use shall not proceed other than in accordance with the approved scheme for maintenance of the odour filtration and ventilation system dated 31 July 2019 and submitted as part of the enforcement appeal reference APP/X5210/C/18/3206954 (the ‘Plant Management Plan’). The Plant Management Plan shall at all times cover cleaning of washable grease filters and frequency of inspection of all filters (grease filters, pre-filters and carbon filters). There shall be no primary cooking or reheating of food on the premises unless the odour filtration and ventilation system is being operated and maintained in full accordance with the Plant Management Plan.
- 10) No deliveries shall be taken at or despatched from the premises and no loading or unloading of goods from servicing vehicles shall take place outside the hours of 0800 to 1600 Monday to Saturday. No servicing/deliveries shall take place on Sundays or on Bank or Public Holidays.
- 11) Within seven days of the date of this decision the cycle parking and e-charging standings shall be installed on site in accordance with plan 2017/075/021 Rev I (forming part of the Operational Management Plan dated 1 August 2019) and shall thereafter be kept available for the parking of bicycles and the charging of electric two wheeled vehicles.

*Diane Lewis*, Inspector

## APPEARANCES

### FOR THE APPELLANT:

Simon Bird QC	Instructed by Town Legal LLP
He called	
Nathan Hanks	Director at Transport Planning Associates
Keith Metcalfe BSc(Hons)	Director and Acoustic Consultant, Sharps
MIOA	Redmore
Clive Bentley BSc(Hons)	Associate Acoustic Consultant, Sharps Redmore
CEnv CSci MCIEH MIEEnvSc	
MIOA	
Dr Michael Bull BSc DIC	Director at Ove Arup & Partners Ltd
PhD MChemE MIEEnvSci	
FIAQM CEng CSci CEnv	
Michael Mills BSc(Hons)	Partner at Firstplan
DIPTP MRTPI	

### FOR THE LOCAL PLANNING AUTHORITY:

Morag Ellis QC	Instructed by Mistry Pritej, Planning Solicitor Council of the London Borough of Camden
She called	
John Sheehy BA MA	Senior Planning Officer, Enforcement, Council of the London Borough of Camden

### FOR THE LOCAL RESIDENTS GROUP (Rule 6 Party):

Esther Drabkin-Reiter	Instructed by Louise McLaughlan, Council of the London Borough of Camden
She called	
Councillor Leo Cassarani	Ward Councillor for Swiss Cottage
Mark Hutchinson	Resident
Edie Raff	Resident

### INTERESTED PERSONS:

Jacqueline Prooth	Resident
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## DOCUMENTS submitted at the inquiry

- 1 Bundle of plans for planning application ref 2017/4737/P
- 2 Bundle of plans for planning application ref 2019/3408/P
- 3 Operational Management Plan 25 July 2019
- 4 Rebuttal by Dr Bull
- 5 Photographs submitted by Rule 6 Party (impact after switchover from motorbikes)
- 6 Bundle of Policy documents submitted by Rule 6 Party
- 7 Photographs submitted by Rule 6 Party (shared use of footway)
- 8 Appellant's opening statement
- 8a *Arnold v Secretary of State for Communities and Local*

- 8b *Government and Guildford Borough Council* [2017] EWCA Civ 231
- Miaris v Secretary of State for Communities and Local Government and Bath and North East Somerset Council* [2016] EWCA Civ 75
- 9 Opening statement on behalf of the Local Planning Authority
- 9a Council's response to Pre-Inquiry Note 3
- 10 Plan of proposed entrance and egress 2017-075-021 H
- 11 Photographs dated 30 July 2019
- 12 Camden Planning Guidance Developer Contributions March 2019
- 13 Swept path analysis plans SP06, SP07, SP08
- 14 Internal layout plan
- 15 Photograph of riders' despatch room
- 16 Representation by Fadi Chafi
- 17 Representation by Andrew Kwok
- 18 Draft s106 agreement (31 July 2019)
- 19 Operational Management Plan 31 July 2019
- 20 Opening statement on behalf of the Local Residents Group
- 20a *Kotegaonkar v Secretary of State for Environment Food and Rural Affairs and Bury Metropolitan Borough Council* [2012] EWHC 1976 (Admin)
- 21 Revised planning conditions 1 August 2019
- 22 Plant management plan 31 July 2019
- 23 Draft s106 agreement (1 August 2019)
- 24 Note of clarification by the appellant
- 25 Closing statement on behalf of the Local Residents Group
- 26 Closing submissions on behalf of the local planning authority
- 27 Closing submissions on behalf of the appellant

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## Plans

These are the plans 2017-075-101-A and 2017-075-102-A referred to in my decision dated: 17 September 2019

**by Diane Lewis BA(Hons) MCD MA LLM MRTPI**

**Land at: Rear of 115-119 Finchley Road, London NW3 6HY**

**Reference: APP/X5210/C/18/3206954**

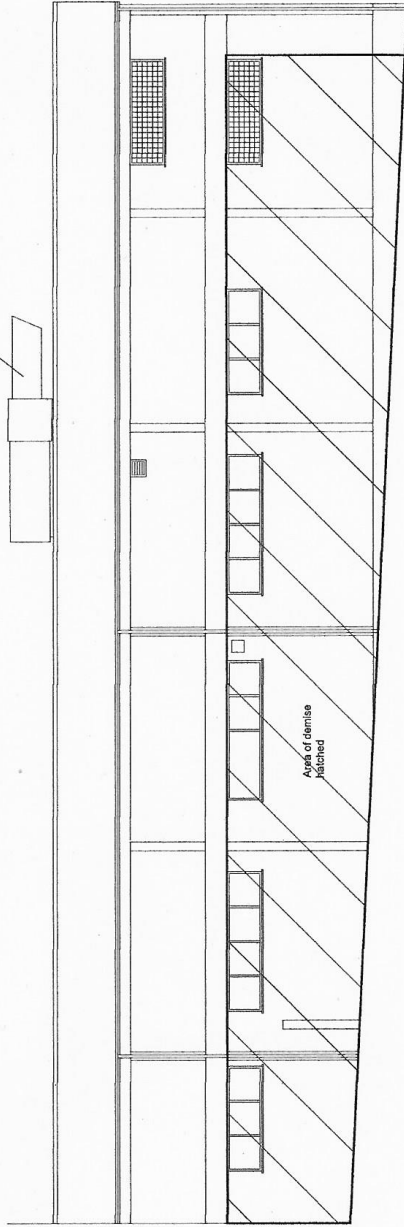
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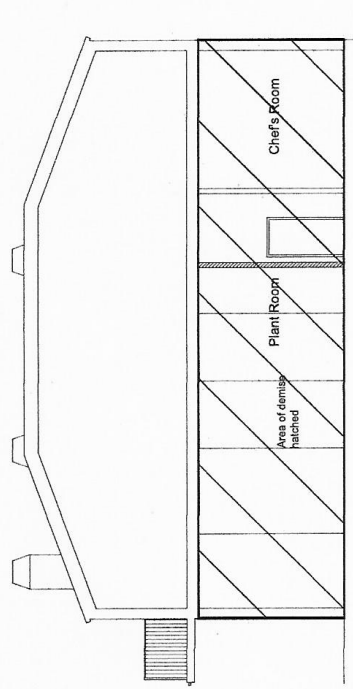




Existing air handling  
plant on flat roof



Existing North Elevation



Section A-A

Plan Date: 10/05/17  
 Rev: 01  
 Name: Admin/Rev/04/04

PLANNING

**IBF Architects**

PROJECT:  
 617 FINCHLEY ROAD  
 CANTON ROAD  
 LONDON

CLIENT:  
 BELVEROO

DRAWING:  
 EXISTING ELEVATIONS (SHEET 2 OF 2)

SCALE	DATE	BY	CHKD	DATE
1:500	10/05/17	RH	DP	JULY 2017
DIB NO:				Rev:
2017-075-102				A

IBF ARCHITECTS LTD, 10, WINDMILL STREET, LONDON, N1 2EJ, U.K.