

Delegated Report		Analysis sheet		Expiry Date:	12/04/2021
		N/A / attached		Consultation Expiry Date:	17/10/2021
Officer			Application Number(s)		
Obote Hope			2021/0101/P		
Application Address			Drawing Numbers		
32-34 Rosslyn Hill London NW3 1NH			Please refer to decision notice		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Installation of roof lantern and new railings, replacement condenser units and duct on the roof of the rear ground floor extension. (Retrospective).					
Recommendation(s):		Refused and Warning of Enforcement Action to be Taken			
Application Type:		Full Planning Permission			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:			No. of responses	06	No. of objections	06
Summary of consultation responses:	A site notice was displayed from 23/09/2021 to 17/10/2021. Press notice was displayed on 23/09/2021 to 17/10/2021.					
	<p>An objection was received from 1 Pilgrims Lane, summarised as follows:</p> <ul style="list-style-type: none">• light pollution from the new roof lantern, or skylights;• noise pollution from the new condenser unit on the roof; <p>An objection was received from 52 Pilgrims Lane, summarised as follows:</p> <ul style="list-style-type: none">• Noises are clearly audible in neighbouring properties;• The design of the roof lantern <p>An objection was received from 1 Pilgrims Lane, summarised as follows:</p> <ul style="list-style-type: none">• Constant disturbance to the many close residents;• Findings of the noise assessment <p>Four objections were received on behalf of 2A Pilgrims Lane including a report reviewing the applicant’s noise impact assessment by Vanguardia, summarised as follows:</p> <ul style="list-style-type: none">• The acoustic report does not meet the Council’s validation criteria;• Noise disturbance;• Accuracy of the drawings.• Constant disturbance to the many close residents;• Findings of the noise assessment• The unsightly new pipework;• The objective to mitigate and minimize adverse noise effects is unreasonable;• The Local Plan does not include an NR curve based assessment of the plant noise;• No acoustic enclosure is proposed;• The report states that the proposal is unlikely to achieve the LOAEL performance standard;• The derivation of the BS 4142 rating level does not include any objective quantifiable evidence, and;• No evidence to show the plant would improve the noise condition; <p>An objection was received from 52 Downshire Hill, summarised as follows:</p> <ul style="list-style-type: none">• Increase in noise and light pollution• The condenser and roof lantern are incongruous in the conservation area. <p>Downshire Hill Residents Association objection:</p>					

	<ul style="list-style-type: none"> • The proposals are visible from the upper stories of several properties including some in Downshire Hill. • The roof-light will be a source of unacceptable light pollution. • The air condensers are an inappropriate visual intrusion to the roof scape and will be a source of noise nuisance. • It is noted that that the unacceptable illuminated signage is still in place, and should be the subject of enforcement action.
CAAC/Local groups comments:	No response has been received.

Site Description

The application site is a 4 storey mid terrace building within a terrace of five buildings which are identified as positively contributing to the character and appearance of the Conservation Area. The site comprises the ground floor commercial unit at Nos. 32 and 34 which have a long and established history of restaurant use (Class E).

The property is located within the Hampstead Conservation Area. The basement and ground floor is used as a restaurant (Class E). The floors above are in occupation as offices.

The site is also located within the Hampstead Neighbourhood Plan area.

Relevant History

Application Site:

2014/6661/P – Planning permission was granted on 20.11.2014 for: Erection of single storey infill extension, creation of new rear doors at rear ground floor level. Installation of new rear external staircase.

2015/6180/P – Planning permission was granted 25.02.2016 for the erection of a first and second floor rear extension with balcony.

2005/3570/P – Lawful Development Certificate (existing) was granted on 23.12.2005 for the use of first, second and third floors as one residential unit.

2003/3617/P - Renewal of planning permission granted on 24/01/00 (ref.no. PW9902354/R2) for the erection of rear elevation ductwork and ventilation plant. Granted 06/02/2004.

PWX0202208 - Installation of conservation style rooflight and two roof ventilator cowlings on the rear roofslope and a boiler flue terminal. Granted 30/04/2002.

PW9902354 - The retention of two horizontal ventilation ducts (for air conditioning) and the replacement of an existing extractor fan and ventilation duct (for cooking) by a new ventilation duct and air handling equipment to the rear of the building. Granted 24/01/2000.

PW9802549 – Planning permission for the retention of an air conditioning unit at rear ground floor level. Refused on 16/09/1999. Reason for refusal:

The air conditioning unit, by reason of its close proximity to the habitable rooms of adjoining residential premises, adversely affects the amenities of the occupiers of those premises in terms of noise, smell and loss of outlook.

EN21/0270 – There is a current enforcement case for various works carried out by this new restaurant that don't have planning permission (new vents, fan signage, metal poles in the middle of the pavement outside to allow a low fence to be installed to seal off an outdoor dining area).

Relevant policies

National Planning Policy Framework 2021

London Plan March 2021

Camden Local Plan 2017

Policy A1 Managing the impact of development

Policy A4 Noise and vibration

Policy D1 Design

Policy D2 Heritage

Policy CC1 Climate change mitigation
Policy CC2 Adapting to climate change
Policy TC3 Shops outside of town centres)
Policy TC4 Town centre uses

Hampstead Neighbourhood Plan 2018-2033

Policy DH1: Design
Policy DH2: Conservation areas and listed buildings

Camden Planning Guidance 2021

CPG Design
CPG Amenity

Hampstead Conservation Area Appraisal and Management Strategy 2001

Assessment

1 Background and proposal

- 1.1 The application site at ground floor level is in commercial use (Class E) currently being used as a restaurant. The commercial unit was previously operated by the Carluccio's Restaurant chain, and is surrounded by a mixture of residential and commercial uses. The neighbouring buildings consist of predominantly rows of Victorian terraced houses along Rosslyn Hill some featuring commercial (restaurant, café and shop) uses on the ground floor with dwellings and/or professional offices above. The submission of this application has been made following an enforcement investigation (EN20/1071) and seeks retrospective planning permission for the installation of a roof lantern and metal railings, replacement of 3 x condenser units and ventilation ductwork.
- 1.2 The agent confirmed that there have been four air conditioning condenser units previously installed on the rear roof of 32 Rosslyn Hill, with 3 Samsung units serving the restaurant space and one Danfoss unit serving the kitchen's walk-in fridge.
- 1.3 The principal considerations material to the determination of this application are summarised as follows:
 - Design and Appearance
 - Energy and Sustainability
 - Residential amenity

2 Design and Appearance

- 2.1 Policy D1 of the Local Plan requires extensions and alterations to consider the character, setting, context and the form and scale of neighbouring buildings; and the character and proportions of the existing building. Through Policy D2, the Council will seek to preserve and, where appropriate, enhance Camden's conservation areas. Policy DH2 of the Hampstead Neighbourhood Plan states that new development should not harm a designated or non-designated heritage asset and policy DH1 requires development proposals to respect and enhance the character and local context of the relevant character areas.
- 2.2 CPG 'Design' states that the Council will only permit development within conservation areas that preserves and where possible enhances the character and appearance of the area. It further explains that when making a balanced judgment having regard to the scale of any

harm or loss and the significance of the asset(s) affected, the Council will take account of the desirability of sustaining and enhancing the significance of any heritage asset/s and putting them to viable uses consistent with their conservation; the positive contribution that the conservation of heritage assets can make to sustainable communities including their economic vitality and health and wellbeing; and the desirability of new development that affects heritage assets to preserve and enhance local character and distinctiveness.

- 2.3 Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area when considering applications relating to land or buildings within that Area.
- 2.4 The National Planning Policy Framework (NPPF) 2021 para 199 states that the LPA 'when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'.
- 2.5 Although additional plant is proposed which would be visible in certain views within the public realm, it would sit within a 'back of house' context and would not significantly worsen the existing situation given parts of the existing ductwork have been removed. There are a number of items of plant and machinery serving the host building and other ground floor commercial uses within the parade which are visible from Downshire Hill and to a lesser extent from Pilgrim's Lane.
- 2.6 It is not clear if all of the existing condensers benefits from planning permission, but historic street views show the equipment has been in place since at least 2008 and is therefore immune from enforcement action. Within this context, the proposals would not be an incongruous addition and would not impact the appearance of the building to such an extent as to cause harm to the significance of the conservation area.
- 2.7 The roof lantern would effectively be of a similar size and location to the existing without the concrete boarding which has been replaced with glazing. The roof lantern is considered an improvement on the current run down poor roof form and would enhance the appearance of the building, as such, there is no objection to this element of the proposals.

3 Energy and Sustainability

- 3.1 Paragraph 154 of the NPPF states that planning policies should seek to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, which can help to reduce greenhouse gas emissions, such as through its location, orientation and design. More sustainable options should always be explored first before resorting to solutions involving active cooling – this approach is referred to by the London Plan policy SI 4 (managing heat risk) as the 'cooling hierarchy'.
- 3.2 Policy CC2 of the Camden Local Plan also states that active cooling (air conditioning) will only be permitted where dynamic thermal modelling demonstrates that there is clear need for it and after other measures in the cooling hierarchy have been considered.
- 3.3 The applicant has provided no justification in accordance with London Plan Policy SI 4 and Local Plan policy CC2 to demonstrate how the 'cooling hierarchy' has been considered, nor has an overheating assessment been conducted to demonstrate a need for the new cooling. As such the proposed development is unacceptable in this regard and contrary to policy CC2

and this forms a further reason for refusal.

4 Residential Amenity

- 4.1 Policies A1 and A4 of the Local Plan seeks to ensure that development protects the quality of life of occupiers and neighbours by only granting permission to development that would not harm the amenity of neighbouring residents. This includes privacy, outlook, noise, vibration and impact on daylight and sunlight. Policy DH1 of the Hampstead Neighbourhood Plan also requires development to protect the amenity of neighbouring properties. Camden's Local Plan Document is supported by CPG (Amenity).
- 4.2 Policy D4 of the London Plan 2020 states that where it is not possible to achieve separation of noise-sensitive development and noise sources without undue impact on other sustainable development objectives, then any potential adverse effects should be controlled and mitigated through applying good acoustic design principles.
- 4.3 Paragraph 185 of the NPPF states that planning policies should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development and in doing so, they should:
- mitigate and reduce to a minimum potential adverse impact resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;
 - identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
 - limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation
- 4.4 The original acoustic assessment submitted in support of the application was assessed by the Council's Environmental Health Officer who found that noise guidelines had not been followed within the report such as Noise Policy Statement for England, National Planning Policy Framework (NPPF); Planning Practice Guidance on Noise, Camden Council's Local Plan, version June 2017 and BS 4142:2014.
- 4.5 In response, a revised acoustic assessment was provided. The report found that the predicted noise level from the four air conditioning condenser units is 47 dB LAR. This is 3 dB above the worst-case background noise level measured at the site. The submitted acoustic report does not confirm compliance with the noise criteria and additional noise control measures would be required to meet this standard. Further, a sound absorbing screen around the condensers is unlikely to achieve the LOAEL performance standard and a bespoke acoustic enclosure around the condensers would be required.
- 4.6 The applicant considers that as the air conditioning condenser units are replacement rather than new units it would be unreasonable to expect these to meet the stringent LOAEL standard of 10 dB below background. This is a consideration that cannot be accepted by the authority and compliance with the Camden Council's Local Plan, version June 2017 (Green) criteria is required. Furthermore, the noise mitigation measures would require additional acoustic enclosures which are not proposed and which themselves may result in unacceptable design impacts. Accordingly, the units would have a detrimental impact on the amenity of neighbouring occupiers, and this forms a reason for refusal.
- 4.7 The proposed roof lantern is large but in replacement of a similarly proportioned unglazed structure. The nearest overlooking windows do not serve residential premises and whilst other surrounding premises are in residential use it is not considered that any indirect light

spillage from the restaurant premises below would be likely to result in significant harm to amenities given the restaurant lighting would be switched off out of hours.

- 4.8 In light of the above, and in the absence of details showing that the requirements of policies A1 and A4 can be satisfactorily met, it is concluded that the new air condenser units in this location are unacceptable and this forms an additional reason for refusal.

5 Recommendation

- 5.1 Recommendation 1: Refuse planning permission and enforcement action to be taken.
- 5.2 Recommendation 2: That the Borough Solicitor be instructed to issue an **Enforcement Notice** under Section 172 of the Town and Country Planning Act 1990 as amended to remove the 3 no. x air conditioning unit to the rear at first floor level and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.