

Statement of Case (July 2022)

**Planning Appeal by Roofoods Ltd – Land to the rear of 115-119
Finchley Road**

Appeal Ref: TBC

LPA Ref: 2021/4792/P

Firstplan Ref: 17232/MM

Date: July 2022

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Appendices

Appendix 1 – Copy of the Decision Notice

Appendix 2 – The Committee Report (April 2022)

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Appendix 4 – Officer Report to Committee (October 2020)

Section 1 Introduction

- 1.1 This planning appeal is made under s.78 of the Town and Country Planning Act 1990 against the decision of Camden Council (**the Council**) on 22 April 2022 to refuse planning permission for “*use of the site as commercial kitchens and delivery centre (Sui Generis) on a permanent basis installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space*” (**the Development**) at the unit to the rear of 115-119 Finchley Road London NW3 6HY (**the Appeal Site**) (ref: 2021/4792/P). A copy of the refusal notice (**the Decision Notice**) is attached at **Appendix 1**.
- 1.2 This Statement of Case has been prepared by Firstplan on behalf of Roofoods Ltd (t/a Deliveroo Editions Ltd (**the Appellant**), who was also the applicant.
- 1.3 The appeal is submitted following the refusal by the Members of the Council’s Planning Committee, contrary to a recommendation for approval by their planning officers. A copy of the officer’s recommendation to Committee (**The Committee Report**) is attached at **Appendix 2**. There are four reasons for refusal. As stated on the Decision Notice these are as follows:-

1. The proposed use by virtue of its nature and intensity, in particular the volume and frequency of deliveries and the manner in which they are undertaken using disruptive and potentially dangerous vehicle manoeuvres, causes harm to the amenity of the area, pedestrian and highway safety contrary to policy A1 (Managing the impact of development) and T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan 2017 and policy T4 (Assessing and mitigating transport impacts) of the London Plan 2021.

2. The proposed use, by virtue of its nature and intensity generates odour which cannot be fully mitigated and due to its proximity to neighbouring residential causes harm to the amenity of the area, contrary to policy A1 (Managing the impact of development) of the Camden Local Plan 2017.

3. The proposed development, in the absence of a legal agreement securing a local employment and training package including an appropriate financial contribution,

would to lead to the exacerbation of local skill shortages and lack of training and employment opportunities for local residents, contrary to policies G1 (Delivery and location of growth), E1 (Economic development), E2 (Employment premises and sites) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

4. The proposed development, in the absence of a legal agreement securing a Operational Management Plan (including a community working group), would be likely to give rise to harmful impacts with local residents and conflicts with local road users and would be detrimental to the amenity of the area generally contrary to policies A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport), T3 (Transport infrastructure) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

- 1.4 The Appellant considers that a public inquiry is the most appropriate forum in which to determine the appeal. A justification for this request is provided under Section 6 of this Statement in accordance with the Procedural Guidance published by the Planning Inspectorate.
- 1.5 The Appellant is seeking to agree a Statement of Common Ground (**the SoCG**) with the Council, in which it is intended to set out all matters of agreement, and to identify the matters in dispute. A first draft of the SoCG, prepared by the Appellant, is submitted with this appeal.
- 1.6 This Statement adopts the following structure:
- **Section 2** - describes the site and summarises the relevant planning history;
 - **Section 3** - describes the development;
 - **Section 4** – sets out the relevant planning policy context;
 - **Section 5** – sets out the Appellant’s case;
 - **Section 6** – sets out the justification for a public inquiry

Section 2 Planning Background

a) Site and Surrounding Area

2.1 The Appellant will endeavour to secure agreement with the Council as to a description of the Appeal Site. The location of the Appeal Site will be described in detail, having regard to its relationship to the surrounding area. This will be incorporated into the SoCG when agreed.

2.2 In brief, the key elements of the description of the Appeal Site and surrounding area are as follows:-

- The Appeal Site is located within the defined Finchley Road/Swiss Cottage Town Centre. It is not situated within a Conservation Area nor is the building listed.
- The Appellant occupies the lower ground floor area of the building located to the rear of 115-119 Finchley Road, which extends to 460 sq m (gross). There is an associated open forecourt to the rear accommodating four unmarked car spaces;
- The Appeal Site is accessed via private access lane that runs down the side of 115 Finchley Road. Access from Finchley Road is controlled by an existing gate;
- In terms of the immediate surrounding area, the upper ground floor of 115-119 Finchley Road is divided into a mix of Class E retail and restaurant uses. Residential units are accommodated on the three upper floors of the building. To the north east of the Appeal Site is Cresta House, a nine-storey mixed use building with commercial uses accommodated on the ground, first and second floors with residential uses above. To the south and west of the Appeal Site are residential properties fronting onto Dobson Close;

b) Planning History

2.3 The following is a description of the planning history in relation to the Appeal Site based on the documentary records provided by the Council:-

- The Appeal Site formed part of the construction of a wider development relating to 115 – 121 Finchley Road. Planning permission was granted on 11 September 1959 (**ref: TP21868**) for the erection of a building, part two-part and part five storeys, comprising shops and supermarket on lower-ground and ground, five self-contained flats at first floor and five self-contained maisonettes

at second and third floors with ancillary garages at the rear. This permission was later renewed in 1960 (ref: TP21868/5675).

- Since the original construction, there have been numerous planning permissions granted relating to various parts of the wider site. The substantive planning permissions relating to the Appeal Site (117-119 Finchley Road) are considered to be as follows:-
 - **8400217** - *Alterations to shopfront for Comet store (granted 24 April 1984)*
 - **9005435** - *Sub-division of existing retail unit (A1) to form one hot food takeaway/restaurant (A3) and one retail unit (A1) and associated works (granted 18 January 1991)*
 - **9200229** - *Change of use of ground floor unit from retail (A1) to mix of A1 and B1 (granted 8 May 1992).*
 - **2017/4737/P** - *The installation of external plant, including 3 no. extract ducts, 4 no. flues, 3 no. air intake louvres, 1 rooftop extract and 3 no. air condenser units installation of external plant, including 3 no. extract ducts, 4 no. flues, 3 no. air intake louvres, 1 rooftop extract and 3 no. air condenser units (refused 11 May 2018)*
 - **2018/0865/P** - *Certificate of Lawfulness of an Existing Use for use of the Site as a Class B1c Commercial Kitchen (refused 11 May 2018).*

2.4 Planning permission was granted for a 14 month period from 17 September 2019 for the use of the Site 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 following a Public Inquiry to determine an appeal under Section 174 of the Town & Country Planning Act 1990 (as amended) (**the Appeal Decision**). A copy of the Appeal Decision is attached at **Appendix 3**.

2.5 Paragraph 113 of the Appeal Decision confirms that 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*”. The “controls” referred to were introduced in July 2019 and comprise the restriction on delivery vehicles collecting orders from the Site to bicycles and electric two wheeled vehicles (**ETWs**) (as well as on foot) only and the implementation of a bespoke Operational Management Plan (**OMP**), which regulates the operation of the Appeal Site. The Inspector goes on to state at paragraph 114 that “*monitoring would be essential for the trial period.*” The implementation of the OMP has been actively monitored by Deliveroo since the Appeal Decision.

- 2.6 Following extensive monitoring over a 6 month period, a planning application was subsequently submitted to allow for the permanent use of the site for commercial kitchens and a delivery centre and retention of the installed plant in May 2020. This was recommended for approval by the Council's planning officers and a copy of their report is attached at **Appendix 4**. Despite the officer's recommendation for approval for permanent planning permission, a further temporary planning permission for a 9-month period was granted by Members of the Committee on 3 March 2021 (**ref: 2020/2367/P**) (**the Temporary Planning Permission**) to allow for further monitoring of the site operation to take place.
- 2.7 A further planning application seeking the permanent use of the site for commercial kitchens and a delivery centre and retention of the installed plant was submitted in September 2021 (**ref: 2021/4792/P**) (**the Planning Application**). This is the application subject to this appeal and the Development is described in detail in the following section.

Section 3 The Development & Planning Application Process

3.1 This section will describe the Development for which permanent planning permission is sought and will set out the context in which the Planning Application was submitted and subsequently determined.

a) **The Development**

3.2 The Development seeks planning permission for the permanent use of the Appeal Site as commercial kitchens and delivery centre (Sui Generis) and retention of external plant to facilitate that use including three extract ducts, four flues, three air intake louvres and three air condenser units.

i) **The use of the Appeal Site**

The Deliveroo Editions Concept

3.2 Editions provides bespoke, fully-equipped, state of the art commercial kitchen units which are licensed and occupied by new and established restaurant partners. The kitchens are staffed and operated by the restaurant partners. Food is prepared and cooked within these kitchens by the restaurant partners and delivered to customers using Deliveroo's fleet of riders.

3.3 The concept provides a platform to support the restaurant industry, enabling restaurant partners to open in a new market without the up-front costs or risks of setting up and managing their own physical premises. Deliveroo does not charge partners a rent to occupy a kitchen pod at the Appeal Site. Instead, Deliveroo will take a commission against all orders made via the Deliveroo app. There is therefore zero upfront cost for partners to move into the Appeal Site - all they are required to do is source chefs and ingredients.

At a time when restaurant businesses have been particularly hard hit due to the COVID-19 restrictions, Editions is appealing to restaurants as it gives them the chance to launch, expand and test new innovations at minimal cost, creating in excess of 1,000 new restaurant jobs across the UK. In tandem, Editions is providing an essential delivery service for customers, as was most recently evidenced during the COVID pandemic.

- 3.4 Furthermore, Editions uses insights to identify cuisine gaps in the local market and predicts which menu items will succeed in each area, thereby reducing the risk of business failure for restaurants. The Editions concept also allows food entrepreneurs to prototype new food products and/or brands with the benefit of insights from Deliveroo. This in turn supports small businesses and start-ups to launch and trial their menus at low risk, both helping new chefs launch for the first time and more established restaurants to reach customers in new places.
- 3.5 In addition, Editions goes one step further using customer feedback to help chefs refine their product offering. Deliveroo is also able to help restaurant owners tailor their menu items using information on the conversion rate (how many people consider vs. purchase from the menu), giving them insights around menu items that are proving popular for customers in their area.
- 3.6 The focus of the model is “*last mile*” delivery and Deliveroo utilises the latest technology to ensure that the food is delivered to the customer in the most efficient way. Deliveroo’s real-time dispatch algorithm, ‘Frank’, constantly looks at available riders and orders, and then every two seconds, evaluates the most efficient way to dispatch them. This decision process is based on (i) machine-learning predictive models of when the food will be ready; (ii) how long every part of the delivery process will take; and (iii) which rider is best placed to fulfil that specific order based on distance, type of location and other factors. The result is that the technology can predict when a rider should arrive on site, minimising dwell time, and customers get an even more precise indication of when deliveries will arrive.
- 3.7 Each order that is serviced by Editions kitchens is processed in the following way:
- The customer creates an account on the Deliveroo app;
 - The customer logs into the Deliveroo app and places an order with the restaurant located at the Appeal Site;
 - The restaurant receives notification of an order being placed and, once it chooses to accept the order, prepares and cooks the food;
 - Deliveroo’s ‘Frank’ algorithm will assign a rider to the confirmed order. The rider must accept the delivery;
 - When the food is nearly ready, the Deliveroo app will notify the rider to go to the Site and pick it up;

- When the food is cooked, it is packaged and marked with the order number, and then taken to the shared dispatch area, to be collected by the assigned rider;
- The assigned rider collects the order from the Appeal Site and delivers the food to the customer;
- In practice, orders are “stacked” where possible for efficiency so that the rider is often carrying more than one order; and
- The customer can monitor the progress of their order and track the location of the assigned rider (once the order has left the Appeal Site) on the Deliveroo app.

3.8 Sales do not take place at the Appeal Site and there is no ability for customers to collect an order at the Site themselves. The transaction occurs entirely online and is completed via the online app.

The operation at the Site

3.9 The Appeal Site accommodates nine micro kitchen pods (eight extending to 32 sqm each and one larger kitchen pod of 48 sq m). Each pod is independent and shares a dedicated dispatch area where food from all restaurants in occupation is collected by the riders. The Site also accommodates management offices, storage and welfare facilities for kitchen staff and riders.

Restaurant Partners

3.10 Since the Appeal Site began trading in November 2017, a variety of restaurant partners have operated from the Appeal Site including, Pinza, Zia Lucia, Waleema, Motu, Honest Burger, Ekachai, The Good Earth, Kalmaki Street Greek and Ahi Poke. These businesses are a mix of ‘start-ups’, small independent restaurants and more established brands.

Hours of operation

3.11 The Appeal Site can be accessed from 08:00 seven days a week by the restaurant partners for food preparation. However, customers are only able to place orders via the app from 12:00 each day. Last orders are placed at 22:45 and the kitchens close at 23:00.

3.12 The busiest period for orders is generally between 19:00 and 21:00, which mirrors the casual dining sector on the high street. Orders typically drop off after 21:00.

The collection of orders

- 3.13 Riders using motorised vehicles are prevented from collecting orders from the Appeal Site. Only those riders who deliver on foot, bicycles and ETWs are allocated an order to collect from the Appeal Site. Riders enter the Site, go down the ramp and park their bicycles/ETW in the dedicated parking spaces prior to entering the building to reach the order dispatch point.

The Operational Management Plan

- 3.14 The operation of the Appeal Site is controlled in accordance with a bespoke OMP. The document was prepared with agreement from Officers from the Council and secured by a Section 106 agreement to the Appeal Decision. The OMP is kept under review by Deliveroo and following the further grant of temporary planning permission in March 2021, the OMP has been further revised.

- 3.15 The OMP covers the following elements:

- The operating hours of the Appeal Site;
- How those who use the Appeal Site will be expected to conduct themselves;
- How Deliveroo Rider deliveries will be managed;
- The responsibilities of the on-Site marshals;
- Servicing arrangements for the Appeal Site;
- How refuse and recycling is stored and collected;
- The noise mitigation measures employed on-site;
- Pest control;
- Site security;
- On-site staff training;
- Communication with local residents; and
- Complaints handling procedure and logging process.

ii) Description of the installed plant

- 3.16 The extract and ventilation equipment that has been installed is as follows:-

- Three extract ducts on the rear elevation of the building facing west; the ducts are 900mm by 600mm. The ducts start at 3.7m above ground level and protrude upwards to 9.5m above ground level;

- Four extract flues (three on south facing elevation and one on north facing elevation). The three flues are small, 0.3m diameter circles which are flush with the external wall of the building. The north facing flue is a narrow 0.3m wide pipe that starts at 2.4m above ground level and is 5.5m high;
- Two air intake louvres positioned on the north facing elevation and one on the south facing elevation;
- Three air condenser units positioned on the southern elevation; and
- One condenser for refrigeration.

3.17 The extract was retrofitted in August 2018 with fine filtration and UV-Ozone treatment, which provides a very high level of odour control. This has been maintained regularly by appointed contractors Leech Mechanical Services.

3.18 The extract ducts have been covered in 'brick wrap' vinyl in accordance with condition 14 attached to the Temporary Planning Permission.

c) The Planning Application

3.19 Further to the conclusions of the Members of the Planning Committee in October 2020 in respect of the Temporary Planning Permission that further monitoring should be carried out before a permanent permission be issued, the Appellant undertook the following additional monitoring of the Appeal Site:-

- TPA were instructed to undertake a review of the operation of the Appeal Site using survey data acquired from three days per month by an independent company between May 2021 and August 2021;
- Additional odour monitoring, including a joint site visit and sniff testing with the Council's Environmental Health Officer and an independent consultant (Robert Lockwood) in April 2021 and a further site visit including sniff testing in July 2021;
- A further review of the OMP following further discussions with Council Officers in March 2021 to include:-
 - Painted sign at the top of the access road reminding cyclists to turn left onto Finchley Road;

- Regular patrol of the area around the site since March 2021 by a member of the on-site team / marshal during trading hours;
 - Commitment to disperse riders congregating in groups of more than 3 people;
 - Restaurant partners are required to complete a site induction which explains the policies and procedures in the OMP; and
 - A marshal on site from 7:30 to ensure there are no deliveries before official opening hours.
- Regular CWG meetings have continued to occur since the previous planning submission in order to address any matters raised by local residents.

3.20 Subsequently, a planning application for the Development was submitted in September 2021. Evidence that the Appeal Site is operating in an acceptable manner and in line with the OMP was provided in support of the application.

3.21 The Council received 28 objections to the Planning Application. The majority of these representations were from Members of the Local Residents Group (**the LRG**). It should be highlighted that the LRG have been involved in the consultations relating to the site throughout the planning process and their opposition to the principle of the development is such that the Appellant is of the view that this small group of individuals would continue to vociferously object to the principle of the use of the site regardless of the measures which in place to regulate the operation and regardless of the fact that the use has in practice no unacceptable effects . Their detailed submission included assertions of the impacts directly attributed to the site and contained an appendix of 1,822 cases of alleged breaches of the OMP that they documented between 19.10.2020 and 07.12.2021 as supporting evidence. It should be highlighted that when these alleged incidents were reviewed by the Appellant, the vast majority of these alleged incidents (1,760 cases, which equates to over 96.5%) were not in fact breaches of the OMP.

3.22 The Council's planning officers concurred with the conclusions of the Appellant's evidence submitted with the Planning Application and the Committee Report provided a clear and robust recommendation in favour of the Development in advance of the Committee meeting in April 2022. Paragraph 20.1 concludes as follows:-

“The site is a commercial site in a mixed-use town centre and it would be unreasonable to expect a commercial use to operate in such an area without impact. The use supports the economy, local business and would also secure an employment and training plan. This, together with appropriate conditions and heads of terms

secured by a s106 legal agreement, including further review of the current controls, will ensure that the use can be managed and operate without causing unacceptable harm to amenity, the surrounding environment, pedestrians and the highway network in accordance with planning policy”

- 3.23 Notwithstanding the clear recommendation from professional officers of the Council, the Members determined to refuse the Application. The following section sets out the relevant planning policy framework, including the policies referred to in the four reasons for refusal specified on the Decision Notice.

Section 4 Planning Policy

- 4.1 In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 falls to be applied as a whole with the judgment as to whether a development accords with the development plan assessed against all relevant policies.
- 4.2 It is anticipated that a list of the planning policies will be agreed within the final SoCG. However, a brief outline of the policies considered most relevant by the Appellant is set out below.
- 4.3 In this context, the Appellant will refer in their evidence to relevant planning policy and guidance at the national, strategic and local level.
- 4.4 At the **national level**, the Appellant will make reference to the following sections of the National Planning Policy Framework (**the NPPF**), as revised in July 2021:-
- Part 2 – Achieving sustainable development
 - Part 6 – Building a strong, competitive economy
 - Part 7 – Ensuring the vitality of town centres
 - Part 8 – Promoting healthy and safe communities
 - Part 9 – Promoting sustainable transport
 - Part 11 – Making effective use of land
 - Part 12 – Achieving well-designed places
 - Part 15 – Conserving and enhancing the natural environment
- 4.5 Reference will also be made to relevant sections of the online National Planning Practice Guidance (**the NPPG**).
- 4.6 At the **strategic level**, the Appellant will refer to the following policies set out in the adopted London Plan (2021):
- **Policy GG1** Building strong and inclusive communities;
 - **Policy GG2** Making the best use of land;
 - **Policy SD6** Town Centres and High Streets;
 - **Policy E2** Providing suitable business space;
 - **Policy E3** Affordable workspace;

- **Policy E4** Land for industry, logistics and services to support London's economic function;
- **Policy E8** Sector growth opportunities and clusters;
- **Policy T4** Assessing and mitigating transport impacts;
- **Policy T7** Deliveries, servicing and construction;
- **Policy D4** Delivering good design;
- **Policy D14** Noise.

4.7 In terms of **local planning policies**, the following are principally relevant: :

Camden Local Plan (2017)

- **Policy E1** – Economic development
- **Policy E2** – Employment premises and sites
- **Policy A1** – Managing the impact of development
- **Policy A4** – Noise and vibration
- **Policy D1** – Design
- **Policy CC4** – Air quality
- **Policy CC5** – Waste
- **Policy TC2** – Camden's centres and other shopping areas
- **Policy TC4** – Town centre uses

Site Allocations Plan (2013)

- Finchley Road / Swiss Cottage policy

The following Camden Planning Guidance (CPG) documents:-

Employment sites and business premises CPG (2018) (relevant sections)

- Light industrial, industrial, storage and distribution
- Industrial kitchens for deliveries

Town Centres and Retail CPG (2018)

- Finchley Road / Swiss Cottage policy

Amenity CPG (2018)

Design CPG (2018)

4.8 The Appellant's evidence will show that the following principal conclusions can be drawn from a review of the planning policy framework:-

- The Site is situated within Finchley Road/Swiss Cottage Town Centre. Policy SD6 of the London Plan confirms that London's town centres are the main foci beyond the CAZ for commercial development;
- A wide range of uses should be supported in town centres not only to ensure their vitality and viability and that they continue to meet the needs of the local population, but also in response to the restructuring of the retail sector and changes in consumer behaviour;
- There is planning policy support at all levels for economic development supporting businesses of all sizes, particularly start-ups and small and medium business enterprises;
- There is increasing recognition of the important contribution of newer sectors such as last mile logistics to London's economy and meeting the needs of its residents and the need to address specific locational requirements'. This is reflected by the reference to delivery only kitchens within Camden's Planning Guidance; and
- Development proposals are required to demonstrate that they will not cause an unacceptable impact to the amenity of communities, occupiers and neighbours through noise and vibration, transport impacts and odour, fumes and dust. Where harm is identified, appropriate mitigation measures should be considered to minimise impact and these could be secured by conditions and/or legal agreements.

Section 5 The Appellant's Case

5.1 The Council's Planning Officers have twice concluded that the Development is acceptable in planning terms and duly recommended both the earlier application and the current z Planning Application for approval (most recently at Committee on 7 April 2022). The Council's officers concluded:-

"... the use has demonstrated a general ability to be controlled and adapted so as to mitigate and minimise impact on the immediate area, while supporting local economy. Therefore, officers recommend planning permission be granted subject to a S106 legal agreement to secure an OMP with regular review mechanisms included to ensure that the OMP can continue to adapt and improve as it has over the last two years. The s106 legal agreement will also secure an employment and training plan."

5.2 Notwithstanding this conclusion, the application was refused by Members of the Planning Committee on four grounds set out in para.1.3 above.

5.3 In respect of **reasons for refusal 3 and 4**, informative 1 attached to the Decision Notice confirms that *"entering into a legal agreement would overcome the reasons for refusal 3 and 4."* As set out in paragraph 18.1 of the Committee Report, the Appellant had agreed to enter into a legal agreement with the Council to secure the following:-

- Employment and Training Plan (to increase the potential for local employment);
- Operational Management Plan (including a regular review mechanism and the continued operation of a Community Working Group).

5.4 A copy of the draft legal agreement is submitted with this appeal. Accordingly a legal agreement will be completed and these two reasons for refusal are not substantiated. It is expected that it will be agreed as part of the SoCG that the above will continue to form part of a legal agreement. On this basis, it is not considered that reasons for refusal 3 and 4 will continue to be relevant.

5.5 In light of the above, it is considered that **reasons for refusal 1 and 2** are the matters of substance for assessment in respect of this appeal. Each reason is addressed below.

- a) **Reason for refusal 1 - The proposed use by virtue of its nature and intensity, in particular the volume and frequency of deliveries and the manner in which they are undertaken using disruptive and potentially dangerous vehicle manoeuvres, causes harm to the amenity of the area, pedestrian and highway safety**

- 5.6 The Appeal Site has a long and established access from Finchley Road (A41), which is part of the Transport for London Road Network (TLRN). This access is used as both an ingress and egress. The Appeal Site is accessed via a private lane that runs down the side of 115 Finchley Road that serves a dedicated open forecourt area to the rear of the unit. It is clear that the Appeal Site was built with the intention of accommodating commercial uses with associated deliveries.
- 5.7 Furthermore, the Appeal Site is situated within the defined boundary of the busy Finchley Road/Swiss Cottage Town Centre. Policy SD6 of the adopted London Plan (2021) confirms that town centres are *“the primary locations for commercial activity beyond the CAZ”*. It is therefore axiomatic that there will be a degree of impact from commercial uses as activities such as deliveries, servicing, comings and goings as these are all essential to the successful operation of businesses.
- 5.8 The Appellant’s evidence will demonstrate that the nature and intensity of the use is that other than for a three to four hour period each day, including the peak 7pm to 9pm periods, surveys have demonstrated that it generates a relatively low level of delivery activity, at or below a movement once every minute. In the peak hour it is busier, with up to 2.7 movements per minute, but that is generally confined to the two hour evening period. During this peak period, surveys have shown approximately 2.6 pedestrians pass the site entrance per minute. This is not at a level that poses a material constraint either to use of the pavement or the site access. It has to be viewed in the context of a busy town centre location where users of accesses and pedestrians are used to adapting their behaviour in accordance with the demand for available space.
- 5.9 In the 2019 Appeal Decision, the Inspector noted that *“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.”* (paragraph 48). It should be highlighted that these comments were largely based on observations of how the Appeal Site operated prior to July 2019 where the principal vehicle mode for undertaking deliveries from the Appeal Site was via motorised scooters. Riders on motorised scooters would park along the access road, utilising the kerbed concrete area along the southern side of the access and park along the wall on the northern side of the access road. Riders switched off their engines, parked their scooter and walked down the ramp to collect the order.

5.10 From the 3 July 2019, the Appeal Site commenced operation with customer deliveries via bicycles, electric two wheelers (ETWs) and by foot only. The use of bicycles and ETWs results in lower speeds on entry and exit, removes the need for off-site parking / waiting and has taken away the congestion which was previously experienced at the top of the site access. The Inspector concluded in paragraph 58 that *“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.”*

5.11 In line with the Inspector’s recommendations in September 2019, a bespoke OMP for the Appeal Site was formulated for the Appeal Site and extensive monitoring was undertaken by the Appellant to ensure its compliance. In light of this, the Council’s planning officers have recommended approval of the permanent use of the Appeal Site on two occasions in October 2020 and April 2022. Officer’s reached the following conclusion at paragraph 13.22 of the Committee Report in April 2022:-

“The evidence collected by the independent monitoring and the residents demonstrate that breaches represent a tiny proportion of the activity on the site, and casualty data shows that overall, there has been no significant effect on highway safety outcomes. The OMP appears to have been effective in managing the impacts, adapting and changing to the operations and dealing with repeat offenders who may present an actual risk or impact.”

5.12 Evidence from publicly available highway safety records illustrates that the Appeal Site access has operated safely throughout the five years of its operation and that there has been no increase in frequency of traffic collisions involving bicycles or ETWs at the site access or in its immediate vicinity since the site commenced operating. The highway safety records are clear evidence that the site is operating safely in accordance with Part F of Policy T4 of the London Plan and Policies T1 and T4 of the Camden Local Plan, with no detriment to highway safety. This is accepted by the Council within paragraph 13.4 of the Committee Report.

5.13 Further evidence will be provided utilising video and photographic records of Deliveroo rider activity and their interaction with other road users, illustrating that there is a high level of compliance with the OMP for the Appeal Site by Deliveroo Riders and that, due to the level of regulation set out in the OMP, Riders do not undertake disruptive and/or potentially dangerous manoeuvres. The Finchley Road (A41) is a busy road but weaving movements are an established part of the operation of the junction. The junction and other traffic signal controls on the A41 slow and regulate traffic, which allows riders to

safely exit the Appeal Site. The evidence will corroborate the Officer's conclusions in the Committee Report that technical breaches of the OMP are a tiny proportion of the overall movements from the Appeal Site and that where such technical breaches occur, they are addressed in line with the requirements of the OMP.

- 5.14 The evidence will also confirm the contractual arrangements with Riders enable the Appellant to ensure technical breaches can be dealt with swiftly in line with the OMP. There is a "three strikes" policy, which allows the Appellant to terminate the contract in the event that there are three similar breaches. This is a meaningful deterrent given the importance of a Deliveroo contract to the riders. It will be explained that the OMP provides for a complaints procedure in the event of poor rider behaviour/conduct and Deliveroo will be required to use its site data to identify any offending Riders.
- 5.15 In summary, the Appellant will demonstrate that the use of the Appeal Site and its management through the OMP is fully in compliance with policy A1 (Managing the impact of development) and T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan 2017 and policy T4 (Assessing and mitigating transport impacts) of the London Plan 2021, contrary to reason for refusal 1.
- 5.16 Accordingly, the Appellant will provide evidence that this ground for refusal is entirely unfounded. The important context here is that there have been no objections received to the Planning Application from either the highways team at the Council, or from Transport for London (**TfL**), who are responsible for Finchley Road, from which the site takes access.
- 5.17 The Appellant will also refer to the fact that both reasons for refusal 1 and 2 indicate that the Council has applied the wrong policy test to the application. It is not the expectation of the Local Plan, which provides the policy framework for new development in a densely developed inner London borough that necessary development can be accommodate without any effects on pre-existing levels of amenity. The test is whether impact on amenity on the area, pedestrian and highway safety is "**unacceptable**".
- 5.18 The development plan threshold of unacceptability in terms of amenity considerations is carefully chosen for this densely developed Inner London Borough and reflects the fact that the growth which the Local Plan seeks to deliver, particularly in town centre locations, cannot be delivered without some effects on existing levels of amenity. Similarly, the NPPF takes the same approach in relation to highway safety in paragraph 111, with the overarching test being that development should only be prevented or refused on highway grounds where there would be an unacceptable impact on highway safety.

5.19 It is noteworthy that the Council’s planning officers correctly applied the policy test when concluding on the acceptability of the use in paragraph 20.1 of the Committee Report as set out in paragraph 3.22 above.

b) The proposed use, by virtue of its nature and intensity generates odour which cannot be fully mitigated and due to its proximity to neighbouring residential causes harm to the amenity of the area

5.20 The Appellant will present evidence to demonstrate that this ground of refusal is unsubstantiated. The building within the Appeal Site is fitted with an odour control system which attains a “Very High” level of odour control when assessed according to the Defra guidance. Whilst that guidance has been withdrawn, it has not been replaced, and it remains in use by many local authorities (including the Council) as their principal odour control guidance.

5.21 The Appellant’s evidence will show that the installed odour control system comprises bag and panel filters for particulate removal an UV/Ozone unit; and Carbon filters provides a level of control beyond that required for the High categorisation of odour risk. The addition of the carbon filter takes the filtration system beyond the requirements for Very High control under the Defra guidance. There is therefore an exceptional level of odour control on this site.

5.22 As set out in paragraphs 12.1 to 12.3 of the Committee Report, the operation of the odour control system is subject to regular monitoring in line with a Plant Management Plan (**PMP**), which was agreed through the original Appeal Decision and included as a requirement as part of the Temporary Planning Permission. The PMP requires regular sniff testing and the frequent cleaning and maintenance of the extract equipment.

5.23 The PMP (like the OMP) has been subject to monitoring following the Appeal Decision. Odour Assessments were undertaken by an independent consultant (Robert Lockwood Associates) in March 2020, July 2020 and September 2021. A joint inspection was undertaken with the Council’s Environmental Health Officer in April 2021. As set out in Paragraph 12.3 of the Committee Report, it was concluded that there is no unacceptable impact arising from odour:-

“On the basis of the evidence presented, the Environmental Health officer has reviewed all the information and has confirmed that there would be no harmful impact on living conditions from the site as a result of odour from cooking within the application premises, and the current controls appear to be effective at mitigating the impact of the operations. Conditions (Condition 10 and Condition 11) that were

attached to the 2020 temporary planning permission would still be relevant and necessary and would therefore be attached to any permission to ensure the odour control equipment shall provide a Very High level of odour control and that all detailed requirements for operation and maintenance of the odour filtration and ventilation system is undertake in line with the plant management plan”

5.24 The Appellant will present evidence to demonstrate that the use of the Appeal Site does not cause an unacceptable impact on the amenity of nearby residential properties in line with the ‘test’ set out in Policy A1 through the following:-

- Regular sniff testing;
- Olfactometry measurements directly from the exhaust vents to measure the odour concentration in the exhaust;

5.25 In summary, the Appellant will confirm that odour is and can continue to be fully mitigated in accordance with policy A1 of the Camden Local Plan 2017.

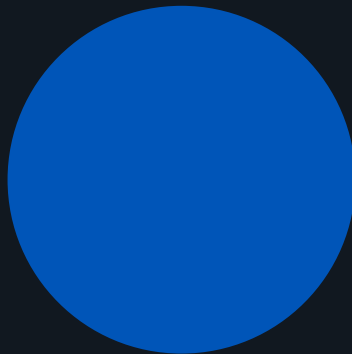
c) Planning balance

5.26 Reading the adopted development plan as a whole, the determination, which would be in accordance with the plan, would be to allow the appeal in line with the officer’s recommendation in the Committee Report.

5.27 The Appellant’s evidence will show that the operation is an important economic use, which has utilised a previously long standing vacant building in a defined Town Centre, has created a significant number of new jobs (in accordance with Local Plan Policy E1) and facilitates the growth of new and existing restaurant businesses, including SMEs and start-ups. The Appellant will contend that significant weight should be given to these economic benefits in determining an application for planning permission and that the Council has failed to consider all relevant development plan policies and material considerations and misapplied its own policy in reaching its conclusions on the acceptability of the use.

Section 6 Justification for an Inquiry

- 6.1 An Inquiry is the only suitable procedure for the consideration of this matter. This section sets out a justification for this, considering the criteria set out in the Planning Inspectorate Procedural Guide, dated November 2020, Annexe K.
- 6.2 Based on the reasons for refusal, the Appellant considers the following factors are material:
- There is a need for evidence to be tested through formal questioning by an advocate;
 - The issues are complex; and
 - The Development has generated local interest from a local resident's group (**the LRG**), who were represented at the previous Inquiry relating to the Appeal Site in 2019.
- 6.3 The evidence involved is highly technical and this includes transport evidence and odour survey data. The conclusions, methodologies and assumptions used for undertaking such surveys by both the Appellant and the Council will need to be explored and tested and the Appellant strongly contends that this can only take place through the formal cross examination of expert witnesses by an advocate.
- 6.4 There will also be a need for legal submissions. The Council's reasons for departing from its expert advice will require detailed and forensic exploration.
- 6.5 In addition, an Inquiry is considered to be an appropriate forum to enable the LRG to engage in the process properly.



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Appendix 1

Application ref: 2021/4792/P
Contact: Elaine Quigley
Tel: 020 7974 5101
Email: Elaine.Quigley@camden.gov.uk
Date: 22 April 2022

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk/planning

Firstplan
Broadwall House
21 Broadwall
London
SE1 9PL

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Full Planning Permission Refused

Address:
**Unit to the rear of 115-119
Finchley Road
London
NW3 6HY**

Proposal:

Use of the site as commercial kitchens and delivery centre (Sui Generis) on a permanent basis installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space (RETROSPECTIVE).

Drawing Nos: Existing Drawings: 2019-026-200 rev A; 2019-026-201; 2019-026-202; 2019-026-203 rev A; 2019-026-208.

Proposed Drawings: 2019-026-204 Rev D; 2019-026-205 Rev A; 2019-026-206 Rev A; 2019-026-212; 2017-075-021 Rev H; 2019-075-207 Rev A; 2019-075-209 Rev A; P0000027/001 Rev 0.

Supporting Documents: Covering letter prepared by Firstplan dated 30 September 2021; Planning Statement prepared by Firstplan dated September 2021; Review of adopted Operational Management Plan prepared by Firstplan dated April 2020; Transport Assessment prepared by TPA dated September 2021; Technical note prepared by Sharps Redmore dated 28 September 2021; Compliance Review - Odours prepared by Arup 22 May 2020; Odour Assessment Final prepared by Lockwood Environmental dated 23 July 2020; Odour Assessment 2021 Final prepared by Local Environmental dated 6 September 2021.

The Council has considered your application and decided to **refuse** planning permission for the following reason(s):

Reason(s) for Refusal

- 1 The proposed use by virtue of its nature and intensity, in particular the volume and frequency of deliveries and the manner in which they are undertaken using disruptive and potentially dangerous vehicle manoeuvres, causes harm to the amenity of the area, pedestrian and highway safety contrary to policy A1 (Managing the impact of development) and T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan 2017 and policy T4 (Assessing and mitigating transport impacts) of the London Plan 2021.
- 2 The proposed use, by virtue of its nature and intensity generates odour which cannot be fully mitigated and due to its proximity to neighbouring residential causes harm to the amenity of the area, contrary to policy A1 (Managing the impact of development) of the Camden Local Plan 2017.
- 3 The proposed development, in the absence of a legal agreement securing a local employment and training package including an appropriate financial contribution, would lead to the exacerbation of local skill shortages and lack of training and employment opportunities for local residents, contrary to policies G1 (Delivery and location of growth), E1 (Economic development), E2 (Employment premises and sites) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.
- 4 The proposed development, in the absence of a legal agreement securing a Operational Management Plan (including a community working group), would be likely to give rise to harmful impacts with local residents and conflicts with local road users and would be detrimental to the amenity of the area generally contrary to policies A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport), T3 (Transport infrastructure) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

Informative(s):

- 1 Entering into a legal agreement would could overcome reasons for refusal 3 and 4.
- 2 In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2021.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2021.

You can find advice about your rights of appeal at:

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'DPope', is positioned above the printed name.

Daniel Pope
Chief Planning Officer

Appendix 2

Address:	Land to the rear of 115-119 Finchley Road London NW3 6HY		1
Application Number(s):	2021/4792/P	Officer: Elaine Quigley	
Ward:	Swiss Cottage		
Date Received:	30/09/2021		
<p>Proposal: Use of the site as commercial kitchens and delivery centre (Sui Generis use) on a permanent basis, installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space (RETROSPECTIVE).</p>			
<p>Background Papers, Supporting Documents and Drawing Numbers:</p> <p>Existing Drawings: 2019-026-200 rev A; 2019-026-201; 2019-026-202; 2019-026-203 rev A; 2019-026-208.</p> <p>Proposed Drawings: 2019-026-204 Rev D; 2019-026-205 Rev A; 2019-026-206 Rev A; 2019-026-212; 2017-075-021 Rev H; 2019-075-207 Rev A; 2019-075-209 Rev A; P0000027/001 Rev 0.</p> <p>Supporting Documents: Covering letter prepared by Firstplan dated 30 September 2021; Planning Statement prepared by Firstplan dated September 2021; Review of adopted Operational Management Plan prepared by Firstplan dated April 2020; Transport Assessment prepared by TPA dated September 2021; Technical note prepared by Sharps Redmore dated 28 September 2021; Compliance Review – Odours prepared by Arup 22 May 2020; Odour Assessment Final prepared by Lockwood Environmental dated 23 July 2020; Odour Assessment 2021 Final prepared by Local Environmental dated 6 September 2021.</p>			
<p>RECOMMENDATION SUMMARY: Grant Conditional Planning Permission subject to Section 106 Legal Agreement</p>			
Applicant:		Agent:	
Roofoods Limited (Deliveroo Editions UK Ltd)		Firstplan Broadwall House 21 Broadwall London SE1 9PL	

ANALYSIS INFORMATION

Land Use Details:			
	Use Class	Use Description	Floorspace (Gross Internal Area (GIA) sq. m)
Existing	<i>B2 General Industry</i>		487 sq. m
	TOTAL		487 sq. m
Proposed	<i>Sui Generis</i>		487 sq. m
	TOTAL		487 sq. m

Parking Details:	
Existing	1 (car parking space) 37 (cycle parking spaces)
Proposed	1 (car parking space) 37 (cycle parking spaces)

OFFICERS' REPORT

Reason for Referral to Committee: An application which, in the view of the Director of Economy, Regeneration and Investment, should be considered by the Committee (Clause 4).

1 EXECUTIVE SUMMARY

- 1.1 This application is being referred to planning committee following the decision by the committee on 15th October 2020 to grant planning permission subject to s106 legal agreement for use of the site as commercial kitchens and delivery centre (sui generis use) for a temporary period of 9 months. The Director considered it reasonable on this occasion to refer the application directly back to the committee for a decision because they decided on the last application.
- 1.2 Planning permission was originally granted on 17th September 2019 following a public inquiry for the use of the site as commercial kitchens and delivery centre (Sui Generis use) on a temporary basis for 14 months (expiring 17th November 2020). A bespoke operational management plan (OMP) was secured as part of a S106 legal agreement, along with other controls, to cover the overall management arrangements and behaviour of riders and staff with deterrents and sanctions in place for any infringements to the plan that could

have negative impacts. Monitoring has been undertaken by the applicant from November 2019 to March 2020 and again in July 2020 in respect of the site operation and how it is being managed in line with the OMP and the conditions to try to ensure that the site can operate without unacceptable harmful impacts to the amenity of local residents, the local environment, and the highway network. A resolution to grant planning permission was granted on 15th October 2020 by Planning Committee members for the use of the site as commercial kitchens and delivery centre (Sui Generis use) on a temporary basis for a further 9 months. The s106 legal agreement was signed and the decision issued on 3rd March 2021. The current application is seeking to continue to use the site as commercial kitchens and delivery centre on a permanent basis. The monitoring information demonstrates that whilst many of the conditions and principles of the permission have been followed, technical infringements of the OMP have occurred during the additional monitoring period. However many of these have been dealt with by the on-site management team and on-site marshals in line with the OMP and so harmful impacts have been mitigated and managed. Detailed logs of behaviour and movements within and around the site have been kept by local residents. The concerns raised by local residents and evidence submitted by them has been given due consideration however overall the concerns raised are mainly technical breaches rather than breaches that cause harm. However, they also need to be viewed in the context of the overall operation of this commercial use in a town centre, within all the restrictions of its planning permission (including conditions).

- 1.3 Officers have given the economic benefits of the scheme significant weight. The use supports 9 businesses in the area, at a time where there is significant pressure on businesses from the current economic downturn. These include providing opportunities for new businesses to set up within the borough and to provide apprenticeships and training. Paragraph 80 of the NPPF, which sits within a Section entitled Building a Strong, Competitive Economy, states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Paragraph 80 also makes clear the importance of driving innovation and supporting areas with high levels of productivity. This proposal is in accordance with all of the above objectives.
- 1.4 Although the trial period has not seen complete technical compliance with every element of the OMP, the use has demonstrated a general ability to be controlled and adapted so as to mitigate and minimise impact on the immediate area, while supporting local economy. Therefore, officers recommend planning permission be granted subject to a S106 legal agreement to secure an OMP with regular review mechanisms included to ensure that the OMP can continue to adapt and improve as it has over the last two years. The s106 legal agreement will also secure an employment and training plan.

2.0 BACKGROUND

- 2.1 The previous planning application (ref 2020/2367/P) was presented to Planning Committee on 15th October 2020 for use of the site as commercial kitchens and delivery centre (Sui Generis) on a permanent basis installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space (RETROSPECTIVE). During the planning meeting Members raised concerns about a number of issues not being addressed sufficiently and therefore were not assured that the site was appropriate for the use without causing amenity impacts. Permission was granted subject to a s106 legal agreement for a further temporary period of 9 months to allow for additional monitoring to be undertaken to establish whether the use was suitable for the site and capable of compliance with any controls or conditions to mitigate for amenity impacts. A copy of the minutes of this Committee meeting is attached in Appendix 1 of this report. Following the drafting of the s106 legal agreement planning permission was granted on 3rd March 2021.
- 2.2 A copy of the previous committee report has been attached in Appendix 2 to this report as background to the issues that were raised and discussed. In order to prevent duplication, this report will focus on the monitoring that has taken place and the issues that have been raised by local residents since the planning committee decision on 15th October 2020. Where details remain unchanged between the previous committee report and this one, the relevant section of the previous committee report will be referenced.

Background to the applicant and the use

- 2.3 Refer to section 2 of the previous planning committee report attached in appendix 2 of this report.

3 SITE

- 3.1 Refer to section 3 of the previous planning committee report attached in appendix 2 of this report

4 PROPOSAL

- 4.1 Refer to section 4 of the previous planning committee report attached in appendix 2 of this report for a comprehensive description of the proposal.

Changes to the management of the use

- 4.2 Since the committee's decision to grant temporary consent in October 2020 the following changes have been made to the management of the use to try to address the concerns of the local residents, particularly in relation to rider behaviour.

- Painted sign at the top of the access road reminding cyclists to turn left onto Finchley Road;
- Regular patrol of the area around the site since March 2021 by a member of the on-site team / marshal during trading hours;
- Commitment to disperse riders congregating in groups of more than 3 people;
- Restaurant partners are required to complete a site induction which explains the policies and procedures in the OMP; and
- Security staff are on site from 7:30 to ensure there are no deliveries before official opening hours.

Review of the OMP

- 4.3 As part of the legal agreement associated with the 2020 temporary planning permission one of the clauses (2.6) required the submission of a new operational management plan (OMP) within 4 weeks of the decision date. Discussions took place between the applicant and the Council over a period of months regarding a review to the original OMP where various clauses were highlighted as requiring further clarification to make the wording as clear and concise as possible. The clause requiring riders to turn left out of the site was discussed following complaints from local residents about the nature in which riders are exiting the site. It was considered necessary to seek clarification from Transport for London (TfL) about this manoeuvre and whether it was being carried out safely. This is discussed further in the Transport section below.

5 RELEVANT HISTORY

- 5.1 Planning permission was **granted** on 08/05/1992 (ref PL/9200229) at 119 Finchley Road for change of use of ground floor from Class A1 to mixed use of A1 and B1.
- 5.2 Planning permission was **refused and warning of enforcement action** to be taken (ref 2017/4737/P) on 11/05/2018 for installation of external plant, including 3 no. extract ducts, 4 no. flues, 3 no. air intake louvres, 1 rooftop extract and 3 no. air condenser units (Retrospective). There were 2 reasons for refusal relating to the visual impact of the extract ducts and rooftop plant and lack of information to demonstrate that all the plant, when operating at capacity, would not harm the local amenity.
- 5.3 A certificate of lawfulness of existing use (CLEUD) was **refused** and enforcement action authorised on 11/05/2018 (ref 2018/0865/P) for use of the unit to the rear of 115 Finchley Road as a Class B1c commercial kitchen. The use as a commercial kitchen was considered to be materially different to the previous use of the premises and constituted a material change of use.
- 5.4 An enforcement notice (ref EN17/1005) was issued on 1 June 2018 and in April 2019 against change of use from light industrial use (Class B1) to commercial kitchens and delivery centre (sui generis use); and installation of external plant,

including 3 extract ducts, 4 flues, 3 air intake louvres, 1 rooftop extract and 3 air condenser units. There were 7 grounds for issuing the notice:

1. The breach of planning control has occurred within the last 10 years
 2. The high volume of vehicle deliveries serving the property results in a significant noise nuisance and a harmful loss of amenity to adjacent occupiers contrary to Policy A1 of the Camden Local Plan 2017
 3. The use of the property, in the absence of measures to control the unauthorised hours of operation, litter, storage, waste, recycling, servicing and delivery results in nuisance and a harmful loss of amenity to adjacent occupiers contrary to Policy A1 of the Camden Local Plan 2017.
 4. The delivery vehicles and parking of these resulting from the unauthorised use of the property has a harmful impact on highway safety in the vicinity of the site, causing difficulty for vulnerable users and neighbouring occupiers contrary to policy A1 of the Camden Local Plan 2017.
 5. The extract plant and associated equipment, by virtue of their siting and visual impact, cause harm to the character and appearance of the property and the context of the local area contrary to policy D1 of the Camden Local Plan 2017.
 6. A suitably comprehensive acoustic survey and a risk-based odour control and impact assessment demonstrating that all plant equipment, when operating at full capacity, would be capable of doing so without causing harm to local amenity has not been provided. As a result the plant and equipment that have been installed at the property are contrary to policies A1 and A4 of the Camden Local Plan 2017.
 7. The plant equipment facilitates the unauthorised use of the property, and whilst their operation and appearance may be controlled by planning condition, the use is unacceptable in principle and the associated operational development is therefore unacceptable.
- 5.5 As part of the notice 10 steps were required to cease operations and remove the plant equipment (extract ducts, flues, louvres and air conditioning units) with effect from 13/07/2018 unless an appeal was submitted.
- 5.6 The applicant appealed the enforcement notice (ref APP/X5210/C/18/3206954). The appeal was **allowed** on 17th September 2019 and the enforcement notice was quashed and planning permission was granted on a temporary basis for 14 months to allow for further monitoring of the use and its impact on the neighbouring occupiers and the surrounding area (see background section above for further details of the Inspector's decision).

- 5.7 Temporary planning permission was **granted** subject to a s106 legal agreement (ref 2020/2367/P) on 3rd March 2021 for use of the site as commercial kitchens and delivery centre (Sui Generis), installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space (RETROSPECTIVE). During the planning committee meeting on 15th October 2020 Members raised concerns about a number of issues not being addressed sufficiently and therefore were not assured that the site was appropriate for the use without causing amenity impacts. Permission was granted subject to a s106 legal agreement for a further temporary period of 9 months to allow for additional monitoring to be undertaken to establish whether the use was suitable for the site and capable of compliance with any controls or conditions to mitigate for amenity impacts.

6. CONSULTATION SUMMARY

Statutory Consultees

Transport for London (TfL)

- 6.1 TfL did not raise objections at the public inquiry. There was no response to the recent consultation, officers have followed this up and were advised informally that TfL did not wish to comment further.

Local Groups

Cresta House Residents Association (CHRA) and the Local Residents Group (LRG) objection

- 6.2 An objection has been received from the CHRA and the LRG which raises significant concerns on a number of issues (summarised below). The 146 page objection includes photographic evidence and appendix 1 includes a list of over 1800 alleged breaches of the OMP by Deliveroo riders between October 2020 to July 2021. Appendix 2 includes a response from Transport for London. A copy of the objection is available to view on the Council's website.
- 6.3 The issues raised are summarised in line with the points listed in the executive summary in the objection and are detailed as follows:

Deliveroo has failed to comply with the following conditions in the OMP:

- (1) Deliveroo riders run red light
Officer's response: See section 13 (Transport)
- (2) Deliveroo riders cycle on pedestrian footpaths
Officer's response: See section 13 (Transport)
- (3) Deliveroo riders cycle the wrong way on the highway
Officer's response: See section 13 (Transport)

- (4) Deliveroo riders do not exit left but cut across the A41
Officer's response: See section 13 (Transport)
- (5) Deliveroo riders congregate beyond the site
Officer's response: See section 11 (Neighbouring Amenity)
- (6) Deliveroo riders obstruct the shared footpath
Officer's response: See section 13 (Transport)
- (7) Deliveroo marshals do not stop riders from beaching conditions
Officer's Response: See section 14 (Management of the site)
- (8) Deliveroo failed to stop the cooking smell nuisance
Officer's response See section 12 (Environmental impacts)
- (9) Deliveroo have made every effort to circumvent or disregard the objections from local residents (sabotaged residents monitoring the site, sabotaged conditions in the OMP. Sabotaged the OMP complaints procedure, sabotaged the community working group)
Officer's response: See section 11 (Neighbouring amenity)
- 10 Deliveroo cannot meet its obligation to reliably identify its riders
Officer's response: See section 13 (Transport)

Adjoining occupiers

- 6.4 Site notices were displayed outside 115 Finchley Road, 125 Finchley Road and 2 site notices were displayed at various locations in Dobson Close from 19th November 2021 to 13th December 2021. A press notice was advertised on 25th November 2021 to 19th December 2021.

Representations summary

Local residents

- 6.5 There have been 28 letters of objection from local residents at 15 Fairfax Place; Flat D, 31 Wincester Road, 51 Bray, Fellows Road, 19 Belsize Road, 22 Belsize Road, 39 Belsize Road, 26 Belsize Road, 16 Sheridan Court, 47 Belsize Road, Flat D, 11 Compayne Gardens, Flat 10, Farjeon House, Hilgrove Road, 14 Dobson Close, 53 Dobson Close, 69 Dobson Close, 70 Dobson Close, address at Makepeace Avenue, 9 Hickes House, Harben Road, Flat 2, 10 Minster Road, 129 South End Close, Flat 28, Harrold House, Finchley Road, 3 Elm Walk, 172 Goldhurst Terrace, Castleden House, 83 Finchley Road, Flat 19, Cresta House, 133 Finchley Road. Two residents from Dobson Close also objected but did not provide the house number and one resident who lives in Frognal provided only a post code. The objections are wide ranging and cover a variety of issues. These include the following key issues.

Consultation

- Local community haven't been adequately consulted

Officer comment: Site notices were displayed around the site and advertised in the local press

Additional supporting information required

- Noise reports should have been submitted

Officer comment: Acoustic reports for the plant have already been provided and assessed as acceptable under the previous applications.

Inappropriateness of the location

- Commercial kitchens shouldn't be in a residential area only in business parks.
- Use places too much stress on the limited site footprint and location.
- Sheer numbers of cyclists inevitably results in problems (potentially approx 200 orders per hour).
- Access to the site is constrained.
- Use offers no community benefits.

Officer comment: The site is in a busy London location in a designated town centre near good transport connections and infrastructure. Business and commercial uses are expected to be located in these types of areas.

Amenity (Noise and smells)

- Noise and smells from delivery of food.

Officer comment: The site is located next to other commercial units fronting Finchley Road with fewer controls in place, and these may also be the source of noise and smell. The existing controls on the application site are sufficient and tests by environmental health officers confirmed that the plant is effective and being operated in compliance with the controls.

Rider behaviour

- Inspector made it clear that drivers behaviour was responsibility of Deliveroo
- 69 incidents in 30 minute period shows the problems with the site (bike riding on pavement, cyclists running red lights, cyclists not turning left, cyclists blocking pavements, cyclists not stopping when they exit the site, cyclists cycling across pavement to enter the site)
- Riders are a menace on the road and jeopardise themselves and pedestrian safety.
- Street pavements are being blocked by waiting riders with bikes endangering pedestrians.
- Riders cycling through red lights.
- Riders cycling on the pavement.
- Riders waiting on the pavement at the top of the ramp whilst exiting / entering the site.
- Riders cycling straight across the Finchley Road rather than turning left.
- Riders congregating.
- Riders cycle down Dobson Close which is a private road where cycling is prohibited.

- Riders using public areas as bathrooms.
- Riders are intimidating local residents.
- Local policing should be addressed in terms of increased delivery scooter traffic.

Officer response: The OMP puts measures in place to manage and mitigate the behaviour of riders. However, there is a limit to the amount of control that can reasonably be exerted on those when outside the site, and technical breaches have been appropriately mitigated to minimise harmful impact.

Monitoring

- Marshals have limited effectiveness where 2 are not enough to carry out all the duties required of them.

Officer response: The OMP sets clear expectations on marshals and outlines their tasks in order to control rider behaviour. This was agreed between all parties during the Public Inquiry.

Character and appearance

- Chimney on the side of the building is a complete eye sore and is not in keeping with the local community.

Officer response: A condition was attached to the previous temporary planning permission to vinyl brick effect wrap the ductwork to give an appearance more like chimneys on the rear of the building. This condition would also be attached to this planning permission.

Rubbish and waste

- Deliveroo bags and kits found dumped in the Regis recycling centre shows little interest in following rules or caring for the environment.
- Food waste left on the street which will affect mice and rats.

Officer response: Regular refuse collection from the site is managed by the Council's appointed waste management partner. Food waste outside the site would fall under the control of the Council's street cleaners.

Applicant is untrustworthy

- Use opened without planning permission and no consultation with local residents.
- Applicant didn't advise local residents of plans to switch to bikes from motor bikes during the public inquiry.
- Deliveroo have stopped providing local residents with a response to each incident and instead give a blanket reply that all incidents have been dealt with.
- Community working group not being run properly – minutes of meetings not been circulated for months.
- No social distancing or mask wearing within the Editions site.

- Not sure how effective independent monitoring is at recording daily breaches of the OMP. Not comparative to local residents monitoring.

Officer response: The use commenced on site without the benefit of planning permission. The Inspectors decision in relation to the enforcement notice in 2019 and the Members decision in 2020 granted permission on a temporary basis which this application seeks to secure on a permanent basis. Due to the large number of complaints received from local residents it was not feasible to respond to each individual incident and regular updates were provided to ensure that local residents were informed regarding any actions taken.

7 POLICIES

- 7.1 Refer to section 7 of the 2020 planning committee report attached in Appendix 2 for a complete list of relevant policies and guidance documents. The documents that have been updated since the previous temporary permission are listed below. The policy changes contained within these documents do not affect the assessment of the proposal.
- 7.2 The National Planning Policy Framework (NPPF) was revised on 20th July 2021. This document sets out the governments planning policies for England and how these are expected to be applied.
- 7.3 The new London Plan was published in March 2021. The main changes to the wording to policies contained within this document mainly related to housing delivery which do not apply to this proposal.

ASSESSMENT

The principal considerations material to the determination of this application are considered in the following sections of this report:

8	Land Use
9	Design and Visual Appearance
10	Reporting incidents
11	Neighbouring Amenity
12	Environmental Impacts
13	Transport
14	Management of the site
15	Safety and Security

16	Refuse and Recycling
17	Employment and Training Opportunities
18	Planning Obligations
19	CIL
20	Conclusion
21	Recommendations
22	Legal Comments
22	Conditions
23	Informatives

8 LAND USE

- 8.1 Refer to section 8 of the 2020 planning committee report attached in Appendix 2. The only changes in policy (as noted in the policy section 7 above) since that time do not affect the assessment.

9 DESIGN AND VISUAL APPEARANCE

- 9.1 Refer to section 9 of the 2020 planning committee report attached in Appendix 2. The only changes in policy (as noted in the policy section 7 above) since that time do not affect the assessment.

10 REPORTING INCIDENTS

- 10.1 Refer to section 10 of the 2020 planning committee report attached in Appendix 2 for original monitoring details. In addition to the log book to record incidents the application also undertook additional monitoring of the site since the planning permission was granted in March 2021 for an additional temporary period of 9 months. The monitoring of the site has been undertaken through video surveys which have been carried out by an independent company 3 days a month between May 2021 and August 2021 prior to the submission of this application. The video surveys involved the use of cameras monitoring the entrance to the site along the A41, looking north and south. The site management and riders were not made aware of monitoring taking place. The survey data was assessed by Transport Planning Associates (TPA) within the Transport Assessment submitted in support of the current planning application.

- 10.2 The log of incidents has been included in the Transport Assessment (Appendix E) that has been submitted in support of the application and includes data from Thursday 6th May 2021 to Saturday 8th May, Thursday 3rd June 2021 to Saturday 5th June 2021, Thursday 8th July 2021 to Saturday 10th July 2021 and Friday 13th August 2021 to Sunday 15th August 2021. The details are provided below in Table 1.

	No of incidents	No of incidents considered breaches of the OMP	Outcome
06/05/2021	35	1 – cyclist on the footway	Security staff appear to warn rider
07/05/2021	38	0	N/A
08/05/2021	25	2 – cyclists on the footway	No action detailed
03/06/2021	48	0	N/A
04/06/2021	19	1 – cyclist on footway	Cyclist turned away by security
05/06/2021	32	0	N/A
08/07/2021	25	1 – cyclist on footway	No action detailed
09/07/2021	27	0	N/A
10/07/2021	21	2 – cyclists on footway	No action detailed
13/07/2021	37	0	N/A
14/08/2021	23	4 – cyclists on footway	No action detailed
15/08/2021	20	0	N/A

Table 1 (above): Rider activity on specified days in May, June and July 2021

- 10.3 In summary, the survey identified 11 breaches of the OMP over 12 survey days (approx. 1 breach per day). When the above is compared to the list of incidents submitted by local residents these exceed 1800 incidents over 263 days (approx. 7 breaches per day). It is evident from the submissions by the applicant and the local residents that breaches to the OMP have occurred during the course of the additional monitoring period. However, not every “incident” is actually a breach of the terms of the permission, or necessarily a harmful activity outside of the kinds of activity consistent with a town centre. The OMP is designed to minimise harmful impacts to a level acceptable and proportionate to a town centre, not a guarantee of 100% operational compliance with conditions and the plan. By setting a system up for dealing with breaches, it should mitigate impacts and enable the uses to co-exist without unacceptable harm to the amenity of local residents. In order to assess the impact of the operation on amenity and highway safety for pedestrians in terms of harm caused it is necessary to focus on harmful breaches - for example riders cycling on the pavement - rather than technical breaches such as the traffic cones not being in place at the bottom of the ramp on certain occasions or where one cyclist is waiting in an area in close proximity to the site where they are not blocking or restricting the pavement. The following sections covering

neighbouring amenity (Section 11), odour (section 12) and transport (Section 13) will further assess the issues that have been raised during the consultation period.

11 NEIGHBOURING AMENITY

- 11.1 Policy A1 (Managing the impact of development) aims to protect the quality of life of occupiers and neighbours. The policy expectation is that development would not cause unacceptable harm to amenity, not that there will be no impact of new development.

Congregation of riders

- 11.2 The OMP that was secured as part of the temporary planning permission includes measures to improve how the use functions and minimise the adverse effects on the locality. It requires the site marshals to ensure that cyclists do not congregate on the access ramp and / or create excessive noise. The OMP does not include further restrictions in relation to riders and where they wait prior to accepting deliveries from the Swiss Cottage Editions site. This issue was raised by local residents during the previous application and continues to be documented as an issue as part of the submissions received for the current application. A number of incidents have been recorded by local residents where cyclists are waiting in public areas prior to accepting deliveries. These areas include the pavement outside the entrance to Swiss Cottage tube station, the Olde Swiss Cottage pub to the east, and the Odeon Swiss Cottage to the east.
- 11.3 It should be highlighted that the congregation of riders in nearby locations waiting for orders was acknowledged by the Inspector in her decision but her comments related to motorbikes rather than push bikes and there was no recommendation for this to be monitored in the OMP. Furthermore, delivery riders congregate in town centres around food and drink uses, as well as popular retail outlets, in order to respond to orders from a wide range of outlets – and these are not subject to control. The responsibility of monitoring nearby locations is therefore not explicitly detailed in the existing OMP nor its necessity documented as a requirement at busier times for the operation. To ensure that riders are not congregating in groups in areas where this could become an issue for pedestrian safety, the applicant has a marshal/member of the site team who regularly monitors the area outside the parade of shops and Overground House to the north of the site and the Odeon to the east. In response to feedback from the local residents about riders congregating in certain areas in close proximity to the site and as part of the to the ongoing review of the OMP, this has now been extended to complete a circuit of the site which also includes Dobson's Close to the west and south of the site. In addition, it has also been agreed that the patrols will endeavour to disperse riders who are congregating in groups of more than 3 people. This will help to ensure that riders do not congregate in larger groups in these busier higher trafficked locations particularly in the evenings.

11.4 Anyone has a right to be on the public highway and there is a certain amount of standing on the highway that is incidental to its lawful use - particularly in a town centre location where more people congregate, provided that it does not amount to obstruction. Photographic evidence has been submitted of riders waiting in larger groups on the seating areas in the front of Swiss Cottage Library, the corner of the Olde Swiss Cottage pub adjacent to the tube station entrance and outside the Odeon. The riders are congregating in public spaces where people can gather but they do not appear to be obstructing the highway. These alleged breaches do not harm the character of the area or have any negative impacts, and it appears that the impact overall has been relatively well managed.

11.5 In paragraph 11.6 of the 2020 committee report the applicant had advised that they were willing to seek to identify an appropriate location to direct riders close to the site whilst waiting for orders in future discussions with local ward members and the Council. These discussions have been unable to take place due to ongoing COVID restrictions and social distancing measures. The applicant has again confirmed that they are keen to find a solution to the locals' concerns about the issue of riders congregating and are willing to enter into these discussions with members and the Council. This should form part of the review of the OMP now that pandemic restrictions have eased.

Noise (from vehicles and riders)

11.6 Please refer to paragraph 11.7 of the 2020 committee report appended to this report in appendix 2. In line with the recommendation stated in the last committee report the shift away from any motorised vehicles, secured by the permission under condition, has reduced the potential for noise and disturbance from the delivery operation, and a condition would be attached to any permission restricting the mode of transport for riders to and from the site (**Condition 4**).

11.7 Noise from voice communications has been assessed by Sharps Redmore to determine the impact of riders and marshals' voices at the nearest sensitive receptors. It has been demonstrated that as long as the rider waiting area is well managed the impact from voices is likely to have a negligible effect. There do not appear to be any recorded complaints from local residents about noise from voices from the site.

11.8 Paragraph 11.8 of the committee report advised that further measures should be included in the OMP to mitigate the impact of delivery drivers parking in the wrong streets and arriving at the site too early with their deliveries. Restaurant partners are required to complete a site induction which explains the policies and procedures in the OMP. This includes the hours of operation, the delivery times and how drivers should access the site. There do not appear to be any

recorded complaints from local residents in the objections to this application about delivery drivers so this issue appears to be managed effectively.

Noise (Plant)

- 11.9 A noise impact assessment has been submitted by Sharps Redmore (SR) in support of the application. The noise consultants confirm that the findings of the plant noise assessment reflect the noise requirements detailed in appendix 3 of the Local Plan where the noise level is 10dB below background noise levels. The Council's Environmental Health officer has reviewed the information and confirmed that the plant equipment and mitigation measures are in line with the noise assessment submitted as part of the application. The controls applied to the temporary permission appear to have been effective at mitigating the impact of the plant on the area in terms of noise. The proposal is considered acceptable subject to conditions to control the hours of operation of the external plant (**Condition 8**) and to limit the levels of noise from the explant plant (**Condition 9**).

Consultation

- 11.10 The LRG and other local residents have stressed in their objections that the applicant has stopped acknowledging receipt of their complaints since September 2021 when the application was submitted. There are also claims that the Community Working Group (CWG) meetings were unsuccessful with limited information being provided by the applicant to address complaints and time delays in sending minutes of the meetings after they had taken place. Not updating local residents on complaints made through the complaint procedure set out in the OMP is a breach. Due to the large number of complaints that were being logged over a short period of time it was unfeasible to respond to every alleged breach, many of which were either not identified as breaches, were other delivery riders or cyclists in the area, or were technical breaches with no demonstrable harmful impact. Instead of responding to individual complaints the applicant provided general updates which was considered a reasonable approach. The applicant claims that a large number of the complaints received in relation to riders and their behaviour could not be corroborated and may relate to cyclists generally in the area and or cyclists working for other delivery companies. The ability to track riders working from the Swiss Cottage Editions site still continues to be an issue when it comes to monitoring and this has been addressed in paragraph 13.21 of the Transport section below.
- 11.11 The applicant also advised that there was a lack of attendance of any local residents at the last CWG which was scheduled to be held in December 2021. In order for communication to continue between the applicant and the local community it is essential that the CWG continues to operate. This will place the obligation on the applicant to set up, advertise and convene the CWG meetings. This would be included as an ongoing requirement in the OMP and would be secured by s106 legal agreement.

12 ENVIRONMENTAL IMPACTS

12.1 Complaints about strong cooking smells from the site have still been identified through the objections received from local residents prior to the submission of the application. Odour assessments and report findings have been carried out in March 2020, July 2020 and September 2021 by an independent consultant (Lockwood Environmental Assessment and Management). The report states that a number of management controls have been implemented to mitigate the impacts of the site activities on the local area. These include:

- Installation of an extract odour filtration system.
- A schedule of extraction equipment maintenance as part of the plant management plan.
- Weekly sniff testing by the site manager since September 2019.
- The kitchen extraction system is cleaned quarterly and the grease panels / baffles in the extract hoods above the cooking areas are cleaned twice a week.

12.2 Local residents have complained that odours can still be experienced at specific locations (particularly around Cresta House) when the wind is blowing from a particular direction (south or south-west). The Council's Environmental Health officer has visited the site and on 23/04/2021 a joint sniff test was undertaken with the applicant's odour consultant. This was carried out on the roof of the building less than 1m away from the exit point of the flues. The kitchens were in full operation at the time of the visit. The Environmental Health officer confirmed that the site was operating within the requirements of the plant management plan.

12.3 Lockwood Environmental Ltd carried out a second independent on-site odour assessment (sniff test) to assess the effectiveness of the odour control measures that have been put in place. This was carried out on 29th July 2021 at 8 locations in the area as well as inside the kitchen and premises. The findings in the report conclude that no cooking odours from the applicant's kitchen ventilation system or the premises itself, were discernible at any assessment point outside the boundary of the site. The findings of the odour reports that have been submitted in support of the application have been strongly refuted by the local residents. The odour reports do acknowledge that smells can be experienced from the vents when standing next to them but within a 2m radius the smells are distinguishable but not strong. The site is near other food and drink uses in the town centre and these have variable quality of fume extraction systems, many of which are long running and not subject to planning control. As such, sensitive residential units in the area are within range of multiple sources of smell (and noise) in the town centre even where those from the site are adequately controlled. On the basis of the evidence presented, the Environmental Health officer has reviewed all the information and has

confirmed that there would be no harmful impact on living conditions from the site as a result of odour from cooking within the application premises, and the current controls appear to be effective at mitigating the impact of the operations. Conditions (**Condition 10** and **Condition 11**) that were attached to the 2020 temporary planning permission would still be relevant and necessary and would therefore be attached to any permission to ensure the odour control equipment shall provide a Very High level of odour control and that all detailed requirements for operation and maintenance of the odour filtration and ventilation system is undertake in line with the plant management plan.

13 TRANSPORT

Servicing

- 13.1 The local residents have demonstrated that delivery vehicles have been accessing Dobson Close to make deliveries to the site with 5 incidents being logged. The applicant advised that the suppliers were new to the site and the restaurant partners were notified about this. No further incidents have been logged and suppliers have complied with the requirements of the OMP. The current controls within the OMP relating to servicing appear to be effective at managing this impact.
- 13.2 In line with paragraph 13.1 of the 2020 committee report attached in Appendix 2 the hours that servicing and delivery vehicles can enter the site would continue to be secured by condition (**Condition 12**).

Riders and highway safety

- 13.3 A Transport Statement (TS) has been submitted in support of the application. It includes an analysis of personal injury collision data (PIC) which has been obtained from TfL for the area which extends from Adelaide Road to the south to the southern section of Finchley Road and Avenue Road that lies to the north of the site between the period 2014 to 2021. The injury statistics have been projected for the last year. The results were presented in Table 2.2 of the TS and are detailed below:

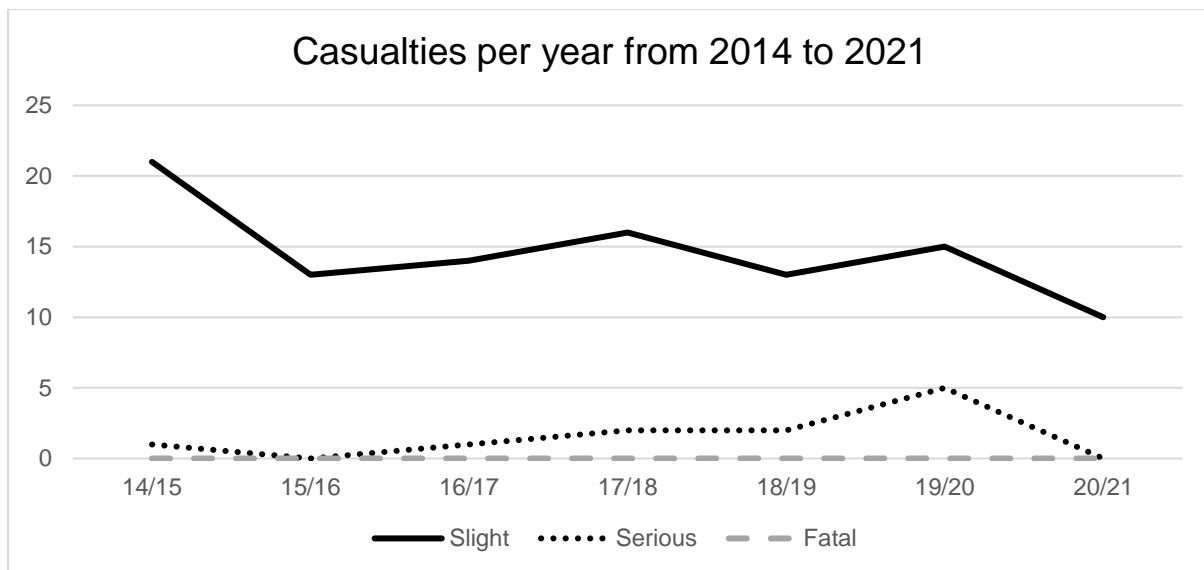


Figure 1 (above): Personal Injury Collision data in roads surrounding the site (2014-2021) taken from the TS prepared by Transport Planning Associates.

- 13.4 The data from TfL includes 113 PIC's for a 7 year period to April 2021. The records show that 90% of the PIC's were classed as slight and the remaining 10% were classed as serious. In terms of casualties and collisions the numbers have been consistent between October 2015 and September 2019 with a drop in numbers between October 2020 and April 2021. There has been a very slight increase in the number of serious casualties over the 7 year period. However, the total number is small, subject to random variations and no conclusions can be drawn from the numbers. Of the 11 collisions with a serious casualty, only three involved cyclists and none of these could be directly linked to the cyclists serving the editions site. Overall there has not been a significant increase in serious casualties since Deliveroo started operating from the site in October 2017.
- 13.5 The TS refers to surveys, carried out during 2021, to monitor Deliveroo rider behaviour and assess levels of compliance with the OMP. The monitoring was undertaken via video surveys over three days per month in May, June, July and August. The camera was mounted south of the access, facing north, and was able to capture the full width of Finchley Road at northern point of the gyratory. Two sample shots are shown below.



Figure 2 (above): Extract from video footage of the site looking north

13.6 The results of the survey are shown in the table below:

	May	June	July	August
OMP breaches	3	1	3	4
Total Deliveroo riders	4574	4388	4261	4137
Breaches as proportion	0.07%	0.02%	0.07%	0.10%

Table 2 (above): Results of camera surveys showing rider behaviour

- 13.7 In summary, the survey identified 11 breaches of the OMP over 12 survey days. The TS notes that “Deliveroo security staff were seen to stop the rider and take their details and in some cases the riders were turned away”. This has been followed up with the applicant and they have confirmed that the relevant riders received a warning or a notification in line with the requirements of the OMP. These breaches were dealt with, and represented a tiny proportion of the site activity (well under 1%).
- 13.8 A separate survey of breaches of conditions within the OMP has also been included in the objection submitted by the Local Residents Group (LRG). The breaches occurred in the date range 19 October 2020 to 6 December 2021. Data is recorded on 263 of the days. A total of 1,822 breaches were registered, most of which were traffic / highways related.
- 13.9 The LRG survey covers all the Swiss Cottage gyratory and some junctions with other roads and so has a larger scope than the TS survey submitted, which covers the area around the site entrance on Finchley Road.
- 13.10 Of the 1,822 breaches in the LRG survey, at least 462 occurred on the A41 northbound carriageway in view of the entrance i.e., within the scope of the TS survey. This equates to 2.8 per day. This is more than double the rate of breaches per day recorded in the TS survey. Even so, as a proportion of around 1,300 riders per day (based on the above table), this still represents only about 0.2% as a proportion of the total. Overall, the breaches are in the minority and the riders appear to be largely compliant and well managed.

13.11 A possible reason for the divergent results in the two surveys lies in the interpretation of wording in section 4 (Deliveroo Rider Deliveries) of the OMP that details how the riders should exit the site when heading south. It states that "All Riders will be required to turn left to exit the Site, and bicycle Riders will be prohibited from turning right and walking their bike on the pavement down Finchley Road". The primary aim of this OMP requirement is to restrict riders from cycling south, after leaving the site, on the northbound section of the A41 or on the footways – effectively into the oncoming traffic. A significant proportion of the riders do need to travel south and to do this, they cross over to the eastern side of the carriageway, as shown in the diagram below.



Figure 3 (above): Annotated aerial view illustrating how cyclists exit the site to join traffic heading south.

13.12 The local residents argue that the manoeuvre shown above breaches the OMP requirement to turn left as cyclists mainly exit straight out of the site and only turn left when they filter into the lanes of traffic turning right. The Highway Authority, TfL, were notified about the application however they did not want to comment, on the application. Camden have also been in discussions with Deliveroo regarding updates to their operation management plan (OMP). This has focused mainly on the issue of riders exiting the site safely in order to join the gyratory to then head south. Whilst the requirement of turning left out of the site is a matter of interpretation, this type of manoeuvre is not illegal provided it is carried out safely.

13.13 To reach the southbound carriageway, the riders need to cross a bus lane and three to four northbound traffic lanes to reach the right turn lane at the north

end of the gyratory island. The northbound lanes split and on the approach to the signals, there are chevrons between northbound lanes 3 and 4. The Highway Code states that for chevron bordered by broken white lines, they can be crossed if necessary and safe to do so. The start point of the chevrons is about 10m north of the site entrance so in most cases, it should not be necessary for them to be crossed by riders.

- 13.14 There are several traffic lights along this part of the A41: one set at the junction with Highgate Road and Adelaide Road which lies to the south of the site and another set just outside the site which allows breaks in the traffic and regulates the speed of traffic approaching the site. Riders can cross several lanes of Finchley Road adjacent to the site during gaps in the traffic. Photographic evidence has been provided by the local residents of riders weaving through heavily trafficked lanes. This is not technically a breach of the OMP and the riders or other road users are not at risk of causing an accident. Traffic is normally either stationary or slowing down to stop due to the traffic lights controlling the flow of traffic heading north along this part of Finchley Road so there is no notable demonstrable harm to highway safety as a result of this manoeuvre. Riders are expected to respect and abide by the Highway Code to ensure they are using the road network safely. This is included in Deliveroo's policies and procedures which are provided to all riders.
- 13.15 A copy of email correspondence between the LRG and the customer services advisers at TfL has been attached in appendix 2 of LRG's objection letter. The TfL letter of response dated 19 July 2021 states "*cyclists cutting through traffic are a clear breach of the road rules. These rules are enforced by the police and we have no authority to prosecute drivers, motorcyclists or cyclists for breaking the rules*". It is not clear which road rules the respondent is suggesting that cyclists are breaching. The Highway Code tells car users to look out for bikes and motorbikes who are filtering so this behaviour is not considered a breach of the Highway Code. Without the full transcript, including the questions that were asked by the local residents to TfL and the Metropolitan Police, it is not possible to discern if the respondents had a full understanding of the context of the use, or the remit of those officers.
- 13.16 The OMP requires the applicant to operate its facility in a particular way and this extends to how employers undertaking deliveries on their behalf behave including reference to the Highway Code. The Council is not the enforcing authority of the highway code. As a local planning authority we can only take action if there is a breach of the OMP. How riders behave in the road network is not controlled by the OMP. It must also be stressed that there have been no serious collisions in the area that can be directly attributed to the site as illustrated in the PIC results detailed in figure 1 and paragraph 13.4 above. It is evident that numerous incidents are being witnessed and recorded by local residents of riders filtering through traffic. This manoeuvre is not prohibited by the Highway Code. In fact Rules 160 and 211 of the Highway Code state that car drivers must be aware of other road users, especially cycles and

motorcycles who may be filtering through traffic. The applicant does require all riders to undergo cycle training before being allowed to ride for Deliveroo however there does not appear to be any requirement for annual refresher course for cycle training. As part of TfL's cycle safety programme they offer general cycle safety training with a useful on-line training package. Targeted training through the Council's cycle training provider can also be offered to continue to ensure cyclists are entering and exiting the site safely. Officers consider this targeting training should be required for riders working from the Swiss Cottage Editions site and would be incorporated into any future OMP secured as part of the continuing review under the S106 legal agreement to help reduce the number of incidents associated with road safety manoeuvres.

Rider behaviour

- 13.17 Approximately half of the incidents reported by local residents relate to rider behaviour when cycling within the vicinity of the site. These incidents include, but are not restricted to, cyclists cycling along the pavement, cycling through red lights, cycling the wrong way and cycling through public areas like parks – for example to the rear of the site along Dobson Close.
- 13.18 The rules for cyclists using the road are set out in the Highway Code (the updated version of which was updated in January 2022). The planning process is not there to duplicate that and is not the enforcing authority where it is breached. Responsibility of the behaviour of the riders in the wider public realm is something that is not within the power of the applicant to control. Despite this, the applicant has been exploring what it can do to ensure that the riders are abiding by the highway code. Deliveroo requires that all riders who accept work confirm that they will abide with Deliveroo's policies and procedures which includes an obligation to comply with the highway code. In terms of the OMP, the existing measures include where the applicant is made aware of riders breaching the highway code whilst working from the Swiss Cottage Editions site the cyclists are notified of the breach. In the event that the same rider commits 3 breaches or more within a 90 day period the applicant terminates their supply agreement. In order to try to mitigate any breaches committed by riders the site marshals are positioned at the top of the ramp to the site to enforce compliance of the OMP conditions. The applicant has confirmed that 4 riders have had their contract terminated within the last year demonstrating that this requirement in the OMP is being enforced and the controls effective.
- 13.19 In the 2020 committee report rider behaviour was discussed in paragraphs 13.12 to 13.15 (refer to Appendix 2 for a copy of the committee report). Officers recommended a review of the current OMP, to be secured by S106 legal agreement, to explore options to improve monitoring and reporting. For example, one solution to this issue would be to include a clearer tracking system of the Swiss Cottage Editions riders that would help to identify those who deliver to this site specifically and more clearly those who contravene the rules.

- 13.20 It has to be acknowledged that riders who accept work from Deliveroo do not wear any of the company's livery apart from a delivery food box. This in turn makes it difficult to identify who is delivering food on behalf of Deliveroo and who is working for another food delivery company. This matter was raised with applicant as part of the previous application and again as part of this application. The applicant has confirmed that due to their working practices they do not provide uniforms for the riders who accept delivery work from them. Riders are self-employed and can be working with multiple delivery food company's at the same time. It cannot be assumed that cyclists who are within the vicinity of the application site are working with this Deliveroo site.
- 13.21 This issue of identifying riders was discussed at the Inquiry but Deliveroo had previously expressed concerns with such a system due to issues associated with General Data Protection Regulation (GDPR). Following the additional monitoring period undertaken between April and September 2021 the applicant recorded only 11 breaches where cyclists were recorded cycling on the pavements. The remaining incidents could not be attributed to a rider working from the Swiss Cottage editions site at the time it was recorded. It is clear from the number of complaints received and evidence collated from local residents that this claim is strongly refuted with more than 1800 incidents being recorded by local residents of riders who have been seen entering or leaving the site or are heading towards or away from the site. Further monitoring and tracking of riders could be helpful to ensure cyclists are cycling safely and there is compliance with the OMP. Officers accept there may be barriers to more reliable monitoring of riders' behaviour but would strongly encourage the applicant to reconsider this or alternative options. The relevant deterrents and sanctions can then be issued and overall incident numbers could reduce even further.
- 13.22 A significant number of objections from local residents relate to rider behaviour and breaching the highway code. It has been concluded that the local planning authority is responsible for development that is granted along its highways. The local planning authority is required to determine planning applications in accordance with the development plan taking account of material considerations. There are obviously policies relating to transport including pedestrian and cycle safety are taken into account. That is the assessment that the local planning authority is required to make, not to assess whether someone accessing a site may or may not breach traffic rules, regardless of how close they are to a particular site. The evidence collected by the independent monitoring and the residents demonstrate that breaches represent a tiny proportion of the activity on the site, and casualty data shows that overall there has been no significant effect on highway safety outcomes. The OMP appears to have been effective in managing the impacts, adapting and changing to the operations and dealing with repeat offenders who may present an actual risk or impact.

Other issues

- 13.23 Concerns have been raised by local residents and local residents' groups about riders and their own personal hygiene and availability of bathroom facilities. It must be noted that this matter is not included in the OMP and would not be considered a breach. There is a toilet facility on-site that is available for riders to use where they can wash their hands and use the bathroom. From the incidents logged by the local residents the occurrences of urinating in public places happens off-site and the identities of the riders are not known. Riders are able to use public conveniences in the local area – including those in coffee shops. Library facilities in Swiss Cottage are still restricted due to maintenance work until June 2022 however cafes have been fully open since June 2021.

Enforcement

- 13.24 The requirements of the OMP have been in place to regulate the operations at the site. This includes the complaints procedure. If the Council become aware that the OMP is not being complied with, the enforcement team can investigate. This would initially involve a review of whether the complaints procedure set out in section 11 which require complaints to be sent to the applicant has been followed. They are required to acknowledge a complaint within 24 hours and investigate. If residents have previously raised the matter with the applicant but no action was taken, the enforcement team can at that stage review further action. If residents do not follow this process and the applicant is not given an opportunity to follow the complaints procedure which includes warnings to riders, it is highly unlikely that the Council would be successful in taking formal action.
- 13.25 The Enforcement Team has received a number of emails from local residents informing them of alleged breaches particularly associated with rider behaviour and alleged odours coming from the extract ducts. This has been deemed necessary by the local residents as they claim that responses from the applicant have been generic and unhelpful. The local residents' complaints were investigated by the Enforcement Team but no breaches were found. These issues are also discussed above in paragraphs 13.17 – 13.22 and paragraphs 12.1 to 12.3 of the Transport section and Environmental Impacts section respectively. Expecting the operator to respond to extremely high numbers of incident reports, regardless of whether they are reasonable and relate to the purpose of the OMP, or just reports of technical breaches with no demonstrable impact, could be considered unreasonable.

15. SAFETY AND SECURITY

- 15.1 There are 15 CCTV cameras positioned on the site both within the building and externally on the external envelope of the building. The CCTV cameras (would ensure) safety of both riders and personnel entering and leaving the site.

- 15.2 Lighting outside the building operates on a sensor for safety reasons. This ensures that the lighting is not continuously operating when the site is not in use. It is static and non-flashing and is kept at a low level to reduce any glare to neighbouring properties. The proposal would not harm the amenity of neighbouring residents and would be considered acceptable.

16 REFUSE AND RECYCLING

- 16.1 There would be dedicated areas for both general waste and recycling bins (each of 1,100 litre capacity) stored at the rear of the site.
- 16.2 Refuse collection is managed by Veolia, the Council's appointed waste management partner. Refuse collection vehicles access the site via Belsize Road, and across the car park to the rear of Cresta House. There is a locked gate that separates the site from the Cresta House car park. Veolia have gained formal access and have the ability to open the gate, through the Landlord of the building. Veolia reverse the refuse lorry into the rear of the site, and pull the bins from where they are stored in the car park space to the parked lorry to offload.
- 16.3 There would be 4 waste and 4 recycling collections per week. Refuse and recycling from other commercial operators that front onto Finchley Road and residents that occupy the upper floors of 115-119 Finchley Road is collected at the same time. This provision appears to be effective and so would be continued under any permission granted. The regular collection times prevent odour nuisance and is considered to meet the objectives of policies TC4 and CC5 (Waste).

17 EMPLOYMENT AND TRAINING OPPORTUNITIES

- 17.1 The development currently employs 29 people, including 6 employees of Deliveroo. On top of this are the riders. Due to the nature of the business the riders are self-employed however the applicant has advised that approximately 60% of the riders are registered as residing in Camden. The local residents dispute this claim citing the rider petition that was submitted by the applicant in support of the application which included the postcodes of the riders addresses many of which do not live in Camden. There is nothing in the development plan that states that provision of jobs should only be given weight where the employees live in Camden. Notwithstanding this the use supports 10 businesses in the area (nine kitchens and the site operator). The Council are keen to see links to local employment so that local residents are recruited into work wherever possible. This would require a commitment by the applicant to advertise opportunities locally in the first instance before they are advertised formally on their national website. The applicant also agreed to set up a local grant programme for voluntary and community sector (VSC) organisations. These employment and training opportunities would be secured by s106 agreement and would be an additional obligation not secured under the terms of the temporary permission.

18 PLANNING OBLIGATIONS

18.1 The proposal would include the following obligations:

Operation of the use

- Operational Management Plan (OMP) – a bespoke continuing OMP (to include a community working group (CWG))
- Regular review of the current OMP to ensure that it can continue to adapt and improve. These would include but not restricted to:
 - (i) Annual cycle training for all riders,
 - (ii) Options for possible locations for riders to wait for orders,
 - (iii) Regular review mechanisms
 - (iv) Requirements for applicant to ensure that riders abide by the Highway Code and the measures that will be implemented if there is non-compliance

Employment

Employment and training plan – to increase the potential for local employment

19 CIL

19.1 The change of use of an existing building is not liable to Community Infrastructure Levy (CIL) unless it involves an extension which provides 100 sq. m or more of additional floorspace or involves the creation of a new dwelling even when it is below 100 sq. m. As the proposal does not include an increase in floorspace it is not liable to pay a CIL contribution.

20 CONCLUSION

20.1 The principle of the use in this town centre location complies with the objectives of policy TC4. The Planning Inspector concluded that the use did result in a harmful and unacceptable impact on the quality of life of neighbouring occupiers and the character and amenity of the surrounding area contrary to A1; however a temporary permission was granted with the agreed mitigation measures in place that were secured by the OMP as part of the s106 legal agreement. The applicant sought to address some of these concerns by upgrading the ventilation equipment (improvement in the control of odour) and a change to the delivery operation from motorised scooters to push bikes to reduce congestion at the site access and improve pedestrian safety. The site appears to be closely and well managed. No evidence has been provided by any party that motorbikes or motorised scooters have accessed the site since they were prohibited in July 2019 (apart from one isolated incident when the motorbike rider was from another delivery company trying to deliver to the flats above the site fronting onto Finchley Road). This was a very significant operational change and has been enforced successfully. Hours of operation and servicing have been introduced, along with noise limits and odour control. A wide range of controls are also incorporated in the OMP and on the whole, there has been significant improvement in the impact of the use since issuing the enforcement notice. Additional monitoring has been carried out of the site since the planning committee decision to grant a further temporary consent in March 2021. The majority of local residents' concerns relate to rider behaviour and highway

safety. However, the behaviour appears to be well managed with no demonstrable harmful impacts. Technical breaches appear to be a tiny proportion of the overall activity of the site (less than 1%). Where potentially harmful or risky behaviour has been identified, action has been taken and the controls have provided a framework for the use to operate with acceptable levels of impact. The site is a commercial site in a mixed-use town centre and it would be unreasonable to expect a commercial use to operate in such an area without impact. The use supports the economy, local business and would also secure an employment and training plan. This, together with appropriate conditions and heads of terms secured by a s106 legal agreement, including further review of the current controls, will ensure that the use can be managed and operate without causing unacceptable harm to amenity, the surrounding environment, pedestrians and the highway network in accordance with planning policy.

21 RECOMMENDATION

21.1 Planning Permission is recommended subject to conditions and a Section 106 Legal Agreement covering the following Heads of Terms:-

- Operation Management Plan (including Community Working Group)
- Review of the current OMP
- Employment and training plan

22 LEGAL COMMENTS

22.1 Members are referred to the note from the Legal Division at the start of the Agenda.

23 CONDITIONS

1	<p>The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>Existing Drawings: 2019-026-200 rev A; 2019-026-201; 2019-026-202; 2019-026-203 rev A; 2019-026-208.</p> <p>Proposed Drawings: 2019-026-204 Rev D; 2019-026-205 Rev A; 2019-026-206 Rev A; 2019-026-212; 2017-075-021 Rev H; 2019-075-207 Rev A; 2019-075-209 Rev A; P0000027/001 Rev 0.</p> <p>Supporting Documents: Covering letter prepared by Firstplan dated 30 September 2021; Planning Statement prepared by Firstplan dated September 2021; Review of adopted Operational Management Plan prepared by Firstplan dated April 2020; Transport Assessment prepared by TPA dated September 2021; Technical note prepared by Sharps Redmore dated 28 September 2021; Compliance Review – Odours prepared by Arup 22 May 2020; Odour Assessment Final prepared by Lockwood Environmental dated 23 July 2020; Odour Assessment 2021 Final prepared by Local Environmental dated 6 September 2021.</p>
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	Reason: For the avoidance of doubt and in the interest of proper planning.
2	<p>Materials to match (FLUE)</p> <p>The three extract ducts on the rear elevation of the building shall be individually wrapped in the brick effect Metamark vinyl wrap to match the brickwork on the rear elevation in accordance with the proposed plan 2019-026-212 hereby approved within 3 months of the date of the decision.</p> <p>The brick effect vinyl wrap shall thereafter be permanently retained and maintained in accordance with the manufacturer's recommendations.</p> <p>Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 of the Camden Local Plan.</p>
3	<p>Number of kitchens</p> <p>The number of kitchens on the premises shall at no time exceed nine.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
4	<p>Restriction on mode of transport</p> <p>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.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
5	<p>Hours of operation</p> <p>No deliveries from the premises to customers shall be carried out outside the following times: 1200 to 2300 hours.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
6	<p>Restriction to collections</p> <p>No collection of orders from the premises shall take place by customers at any time.</p>

	Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.
7	<p>Time clocks</p> <p>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.</p> <p>Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
8	<p>Timer equipment</p> <p>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)</p> <p>Fan Operational speed (Hz) 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</p> <p>The timer equipment shall thereafter be permanently retained and maintained in accordance with the manufacturer's recommendations.</p> <p>Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
9	<p>Noise</p> <p>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.</p> <p>Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>

10	<p>Odour (control)</p> <p>For so long as the use continues the odour control equipment shall provide a Very High level of odour control, as outlined in "Control of Odour & Noise from Commercial Kitchen Exhaust Systems" by Dr Nigel Gibson dated 05/09/2018.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
11	<p>Odour and ventilation system (maintenance)</p> <p>The use shall not proceed other than in accordance with the approved scheme for maintenance of the odour filtration and ventilation system. 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.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
12	<p>Deliveries</p> <p>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.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
13	<p>Cycle parking</p> <p>The cycle parking and e-charging spaces shall be installed on site in accordance with plan 2017/075/021 Rev H (forming part of the Operational Management Plan dated 1 August 2019 and Review of adopted Operational Management Plan prepared by Firstplan dated April 2020) and shall thereafter be retained for the parking of bicycles and the charging of electric two wheeled vehicles.</p> <p>Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the London Borough of Camden Local Plan 2017.</p>

1	<p>Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).</p>
2	<p>All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319 or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)</p> <p>Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.</p>

APPENDIX 1

Copy of the Minutes of the planning committee meeting dated 15th October 2020

THE LONDON BOROUGH OF CAMDEN

At a meeting of the PLANNING COMMITTEE held on THURSDAY, 15TH OCTOBER, 2020 at 7.00 pm as a remote meeting via Microsoft Teams.

MEMBERS OF THE COMMITTEE PRESENT

Councillors Heather Johnson (Chair), Flick Rea (Vice-Chair), Danny Beales, Marcus Boyland, Oliver Cooper, Adam Harrison, Samata Khatoon, Jenny Mulholland, Andrew Parkinson, Nazma Rahman, Georgie Robertson, Peter Taheri and Anna Wright

MEMBERS OF THE COMMITTEE ABSENT

Councillors Oliver Lewis, Lazzaro Pietragnoli and Sue Vincent

ALSO PRESENT

Councillors Leo Cassarani and Maria Higson

The minutes should be read in conjunction with the agenda for the meeting. They are subject to approval and signature at the next meeting of the Planning Committee and any corrections approved at that meeting will be recorded in those minutes.

MINUTES

1. GUIDANCE ON REMOTE MEETINGS HELD DURING THE CORONAVIRUS NATIONAL EMERGENCY

RESOLVED –

THAT the remote meeting procedures be agreed.

2. APOLOGIES

Apologies for absence were received from Councillors Lazzaro Pietragnoli and Sue Vincent.

An apology for lateness was received from Councillor Peter Taheri.

3. DECLARATIONS BY MEMBERS OF PECUNIARY AND NON-PECUNIARY INTERESTS IN RESPECT OF ITEMS ON THIS AGENDA

In respect of item 8(4), Land to the Rear of 115-119 Finchley Road, the Chair remarked that a number of Committee members may have occasionally used and would likely to continue to use the services of Deliveroo, the applicant. She had received legal advice that this was not a prejudicial interest and was noted in the interests of transparency only.

8(4) LAND TO THE REAR OF 115-119 FINCHLEY ROAD, LONDON, NW3 6HY

Consideration was also given to the written submissions and depositions referred to at item 5 above. The Planning Officer advised in his introduction of the receipt of a late written submission in objection, though this raised no new issues.

Committee members noted the large number of compliance breaches and questioned whether it was possible to condition the use when the business model incentivised delivery riders to break compliance. Advice was sought in terms of the weight that could be placed on compliance or failure to comply with the Operational Management Plan (OMP).

The Planning Officer remarked that the failure to comply with the OMP and other conditions was an enforcement matter but provided some evidence as to whether the controls proposed would be able to ever sufficiently mitigate the use. The permission was however with the land and not the operator, so the test of the Committee was whether the use could take place on this site with any potential operator. Ultimately, breaches of conditions and the Section 106 legal agreement could be enforced through the courts if necessary.

The use was considered to be Sui Generis given it combined two primary functions – kitchens and distribution – that combined fell outside a specific use class. For avoidance of doubt, if permission was granted then the use would have to remain kitchens and distribution, not simply anything that would be classed as Sui Generis. If the Committee was of the view that no occupier could operate the site with this use without causing residential amenity impacts, no matter how well conditioned, then this would be justification for not granting the application.

Debating the proposals and the advice received, Committee members queried what weight could be given to a conclusion that a kitchen and delivery centre was possible at this location, but the vast majority of known operators would cause amenity impacts based on the way they were known to operate. The applicant was a larger, well-known operator so on balance more likely to be able to ensure compliance, and yet was unable to do so currently.

They also queried the scope for a temporary planning permission for more monitoring, noting the Planning Inspector had been sufficiently concerned to only grant a temporary planning permission. There had been some improvement, such as through the use of pedal bikes instead of mopeds, but there did not appear to be sufficient evidence as of yet that the impact of the use on this site could ever be sufficiently mitigated. A site visit might also be helpful to the Committee.

The Planning Officer advised that multiple temporary planning permissions were to be avoided normally, but there was no legal bar so long as a justifiable reason were given. It was a matter for the Committee to decide how long was appropriate to ensure the monitoring evidence required was secured but noted that difficulties in getting a fully accurate picture given the impact of the Covid-19 pandemic meant that a period longer than 6 months may be merited. Committee members noted this but suggested that 6 months would be sufficient to provide the evidence sought. Other Committee members suggested that 9 months was more appropriate and anything longer than that would be failing residents.

Invited to comment, the applicant's representative outlined over 200,000 orders had been delivered from the site over the period in question, including a number to residents living within 100m of the site. In that period only 5 residents had submitted formal complaints, and on investigation a number of those were associated with other premises and food delivery operators. The lockdown period was a particular challenge for them as none of the usual spots such as cafés had been open for riders to wait in. That was no longer the case and there had only been two formal complaints lodged since August.

He continued by noting that the marshal monitoring route had been expanded to include Castleden House after reports of riders congregating. This was just one example of changes made following complaints and further matters could be discussed at the working group. A number of issues had been addressed even when there was no direct link to the site or the issue fell outside the domain of the site. In terms of the business model, a rider's fee was based on an estimated delivery time and riders were free to choose whatever route they felt was safe and secure; it was not based on speed of delivery as suggested. The average rider worked 15 hours a week but there were many regulars who they could have conversations with to discuss compliance with the OMP. They were also able to email individuals and groups of riders to inform them of expected behaviour.

Committee members raised concerns that the applicant had not adequately addressed a number of the issues raised and therefore had not provided assurance that the site was appropriate for the use without causing amenity impacts.

Asked to comment, Councillor Leo Cassarani remarked that the site had been used by the applicant for three years and while there had been improvements recently this felt like sufficient evidence to conclude the site could not sustain a kitchen / delivery use. While noting the technical 'town centre' location, there were too many neighbouring residential units and therefore the site was inherently constrained, and it was not clear how it would get past those constraints. The applicant could not keep adding marshals indefinitely to keep policing further and further away from the site as riders found new places to congregate.

The Planning Officer outlined in response to a question that if the application was refused, the use would have to cease on 16 November 2020 and in all likelihood the

applicant would appeal. He added that Committee members had set out a reason for a temporary permission, namely that there was currently insufficient evidence to conclude the site could maintain the use without amenity impacts and a temporary permission would provide that evidence.

Committee members debated whether there was sufficient evidence at this time to determine whether the use was sustainable on the site, and if not what length of temporary permission would be appropriate noting the advice of officers.

It was moved and seconded that planning permission be granted subject to an additional condition to limit that permission to 9 months only in order to undertake additional monitoring to establish whether the use was suitable for the site and capable of compliance with any controls or conditions to mitigate for amenity impacts. This was put to the vote and with 8 votes in favour, 5 against and no abstentions it was:

RESOLVED –

THAT planning permission be granted subject to conditions and a Section 106 legal agreement as set out in the report and the following additional condition:

- i) The permission to be limited to 9 months for the reason that additional monitoring was required to establish whether the use was suitable for the site and capable of compliance with any controls or conditions to mitigate for amenity impacts.

**ACTION BY: Director of Economy, Regeneration and Investment
Borough Solicitor**

APPENDIX 2

COPY OF COMMITTEE REPORT PRESENTED TO PLANNING COMMITTEE ON 15 OCTOBER 2020

Address:	Land to the rear of 115-119 Finchley Road London NW3 6HY		4
Application Number(s):	2020/2367/P	Officer: Elaine Quigley	
Ward:	Swiss Cottage		
Date Received:	29/05/2020		
<p>Proposal: Use of the site as commercial kitchens and delivery centre (Sui Generis use) on a permanent basis, installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space (RETROSPECTIVE).</p>			
<p>Background Papers, Supporting Documents and Drawing Numbers:</p> <p>Existing Drawings: 2019-026-208; 2019-026-203 Rev A; 2019-026-202; 2019-026-201; 2019-026-200 Rev A.</p> <p>Proposed Drawings: 2019-026-204 Rev D; P0000027/001 Rev 0; 2019-075-209 Rev A; 2019-075-207 Rev A; 2019-026-206 Rev A; 2019-026-205 Rev A; 2017-075-021 Rev H; 2019-026-212; Extract from brochure of Metamark 7 Series (High Performance Calendered Sign Vinyl) from Metamark The Materials Company.</p> <p>Supporting Documents: Summary of Monitoring undertaken since March 2020; Transport Statement dated May 2020; Review of adopted Operational Management Plan dated April 2020; Assessment of noise from fixed plant equipment dated 13th May 2020; Planning Statement dated May 2020; Assessment of noise from Deliveroo Editions operations dated 21st May 2020; Compliance Review – Odours dated 22 May 2020; Extract from brochure of Metamark 7 Series (High Performance Calendered Sign Vinyl) from Metamark The Materials Company; Community Working Group Minutes dated 12th August 2020</p>			
<p>RECOMMENDATION SUMMARY: Grant Conditional Planning Permission subject to Section 106 Legal Agreement</p>			
Applicant:		Agent:	
Roofoods Limited (Deliveroo Editions UK Ltd)		Firstplan Broadwall House 21 Broadwall London SE1 9PL	

ANALYSIS INFORMATION

Land Use Details:			
	Use Class	Use Description	Floorspace (Gross Internal Area (GIA) sq. m)
Existing	<i>B2 General Industry</i>		487 sq. m
	TOTAL		487 sq. m
Proposed	<i>Sui Generis</i>		487 sq. m
	TOTAL		487 sq. m

Parking Details:	
	Parking Spaces (General)
Existing	1 (car parking space) 37 (cycle parking spaces)
Proposed	1 (car parking space) 37 (cycle parking spaces)

OFFICERS' REPORT

Reason for Referral to Committee: An application which, in the view of the Director of Economy, Regeneration and Investment, should be considered by the Committee (Clause 4).

1 EXECUTIVE SUMMARY

- 1.1 This application is being referred due to the time restrictions on the current temporary planning permission. It would need to be referred to Members' Briefing Panel due to the number of objections, however, if the panel then advised the Director to refer it to committee, this would extend the decision beyond the expiry date of the consent with November being the earliest committee date. Given this and the nature of the objections received, the Director considered it reasonable on this occasion to refer the application directly to the committee for a decision.
- 1.2 Planning permission was originally granted on 17th September 2019 following a public inquiry for the use of the site as commercial kitchens and delivery centre (Sui Generis use) on a temporary basis for 14 months (expiring 17th November 2020). A bespoke operational management plan (OMP) was secured as part of a S106 legal agreement, along with other controls, to cover the overall management arrangements and behaviour of riders and staff with

deterrents and sanctions in place for any infringements to the plan. Monitoring has been undertaken by the applicant from November 2019 to March 2020 and again in July 2020 in respect of the site operation and how it is being managed in accordance with the OMP and the conditions to try to ensure that the site can operate without unacceptable harmful impacts to the amenity of local residents and to the local environment and highway network. The current application is seeking permanent permission to continue to use the site as commercial kitchens and delivery centre. The monitoring information demonstrates that whilst many of the conditions and principles of the permission have been followed, infringements of the OMP have occurred during the monitoring period. However many of these have been dealt with by the on-site management team and on-site marshals. Detailed logs of behaviour and movements within and around the site have been kept by local residents. The concerns raised by local residents and evidence submitted by them has been given significant weight. However, they also need to be viewed in the context of the overall operation of this commercial use in a town centre, within all the restrictions of its planning permission (including conditions). Although controls imposed on the use by the current temporary permission appear to have reduced the impact, officers consider some further measures could also be explored to secure greater compliance with the OMP.

- 1.3 Officers have given the economic benefits of the scheme significant weight. The use supports 10 businesses in the area, at a time where there is significant pressure on businesses from the current economic downturn. These include providing opportunities for new businesses to set up within the borough and to provide apprenticeships and training. Paragraph 80 of the NPPF, which sits within a Section entitled Building a Strong, Competitive Economy, states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Paragraph 80 also makes clear the importance of driving innovation and supporting areas with high levels of productivity. This proposal is in accordance with all of the above objectives.
- 1.4 Although the trial period has not seen complete compliance with every element of the OMP, the use has demonstrated a general ability to be controlled and adapted so as to mitigate much of the impact on the area, while supporting local economy. Therefore, officers recommend planning permission be granted subject to a S106 legal agreement to secure an operation management plan and an employment and training plan. However, it is also recommended that under the terms of the S106 legal agreement the applicant be required to enter into an immediate review of the current OMP. This should focus on additional measures to secure better compliance, particularly around bike movements on the highway near the site.

2 BACKGROUND

- 2.1 Deliveroo (Roofoods Ltd) is an online food delivery company that operates in over 200 locations across the UK and across Europe. Its subsidiary operation,

Deliveroo Editions, focuses on growing a network of ghost kitchens – kitchens located off-site from restaurants for the preparation of delivery only meals.

Change of use of the site

- 2.2 The site was subject to an unauthorised change of use to 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. The council issued an enforcement notice on 1 June 2018 (EN17/1005) requiring the use the cease.

The appeal

- 2.3 An appeal was lodged by the applicant under section 174 of the Town and Country Planning Act 1990 against the enforcement notice. The appeal was deliberated at a 4 day Public Inquiry that was held from 30th July 2019 to 2nd August 2019.
- 2.4 After the enforcement notice was issued and during the course of the appeal the applicant made changes to its operation particularly around the mode of transport used for deliveries. The use of motorised scooters for customer deliveries to and from this site ceased and on 3rd July 2019 all deliveries have been carried out on foot, by pedal bike and by electric two-wheeled vehicles (ETW). The operational changes were taken into consideration as part of the appeal in determining the planning permission, and the improvements have also been considered in assessing this application. These were among a range of restrictions secured by officers as part of the appeal.
- 2.5 The main issues identified by the Inspector were:
- (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 could be overcome by planning conditions or planning obligations
- 2.6 The temporary permission was granted to allow further monitoring of the operation to take place in order to continue to assess the effect of the operation on the area with the controls that had been agreed during the Inquiry. These agreed controls were secured by legal agreement and comprised the following:
- The restriction on delivery vehicles collecting orders from the site to bicycles and electric 2 wheeled vehicles
 - The implementation of a bespoke operational management plan (OMP) that regulates the operation of the site. This is a working document that can be amended and updated where and when necessary.

2.7 Eleven conditions were also attached to the temporary permission to manage the impact of the development and to safeguard the amenity of neighbours. These were mainly controls on the number of kitchens on the premises, the delivery mode of transport to and from the site, hours of operation, servicing, and noise and odour from the condenser units and extract ducts.

2.8 The applicant has been required to monitor the operation over the 12 month period since the appeal. As part of the submission the applicant has provided evidence that it has been in active use over this period. This includes monitoring information between November 2019 and May 2020, and the minutes of the Community Working Group which is required to meet every 3 months during the first 12 months.

The Operational Management Plan (OMP)

2.9 The OMP was drafted and agreed between the applicant and the Council during the Public Inquiry. It covers a number of matters, including operating hours of the site, behaviour and conduct of riders and staff, training and responsibilities of staff and riders, servicing arrangement and communication with the local community and the Council. Provision is made for the monitoring and review of the OMP and this was detailed in the s106 that was secured as part of the temporary planning permission. The OMP has not been revised since its initial agreement between the applicant and the Council as it was considered necessary to monitor the operation and how the applicant was adhering to the responsibilities and requirements set out within it. The matters arising from the OMP will be discussed later in the relevant amenity and highways sections.

Monitoring of the operation

2.10 In paragraph 114 of the appeal decision the Inspector confirmed that “*monitoring would be essential for the trial period.*” Following the appeal decision the applicant instructed Firstplan Planning Consultancy to undertake the monitoring exercise. The applicant advised that an independent company was not instructed to carry out the monitoring as Firstplan knew the site and had planning and environmental expertise. The structure and content of the proformas were agreed between the applicant and the Council to cover all the elements of the OMP. Monitoring was carried out by 2 members of staff with one located at the top of the ramp and one located at the bottom of the ramp (see Figure 2 below) for 1 hour.



Figure 2 (above): Location of surveyors carrying out the monitoring (locations 1 and 2)

- 2.11 Monitoring was also carried out around the site to take account of any noise and odour coming from the site and to check if riders were waiting for orders in surrounding streets in close proximity to the site. There were 4 survey locations that included Cresta House to the north (Location 1), outside no. 6 Dobson Close (Location 2), the lower car park (Location 3) and upper car park (Location 4) in Dobson Close (see Figure 3 below). These surveys were conducted over a period of an hour.

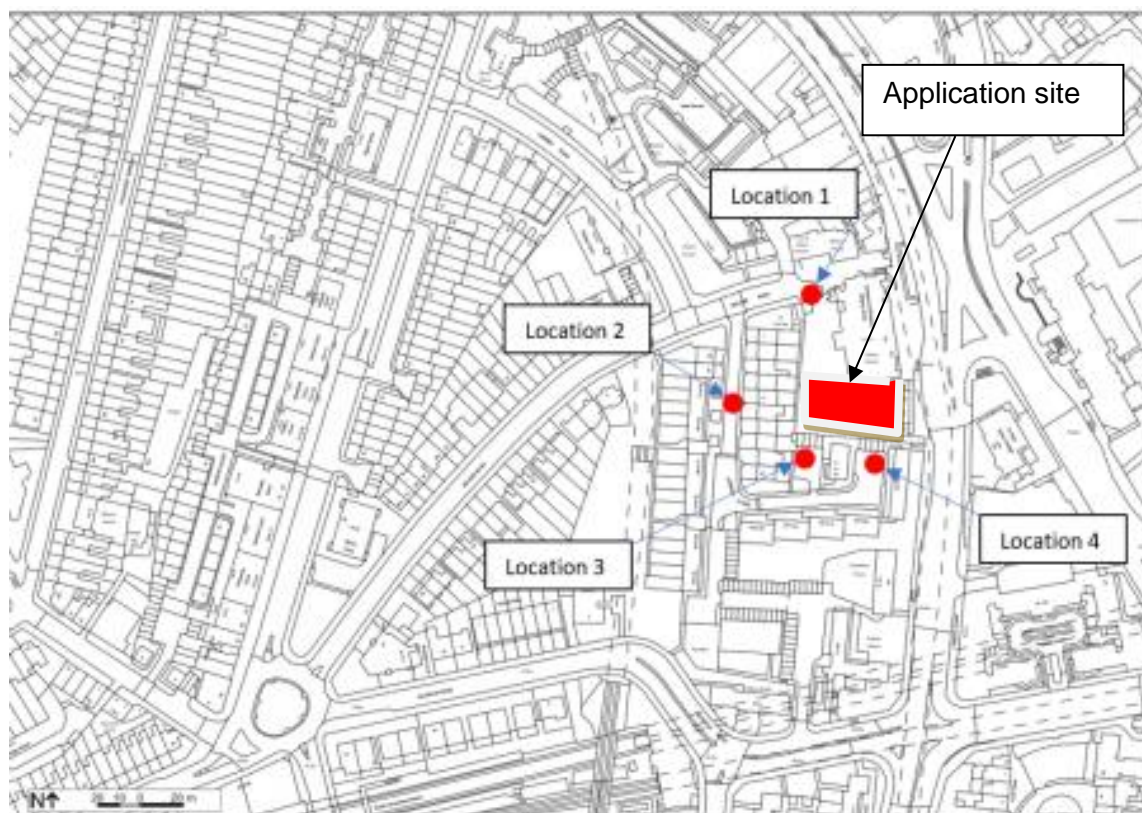


Figure 3 (above): Map showing locations where monitoring around the site was undertaken

- 2.12 15 surveys were undertaken between Thursday morning and Sunday evenings over 5 months between November 2019 and March 2020. The chosen days were considered to represent the peak times for rider deliveries thereby giving an account of the busiest times of the site operation. Further dates had been planned to carry out monitoring sites throughout March however these had to be cancelled due to the Government imposed lockdown in relation to the Covid-19 pandemic. Three more monitoring visits were undertaken over June and July 2020 following the easing of lockdown measures and results submitted as part of the planning application.
- 2.13 The applicant has also submitted summaries of the on-site log book information that they hold in relation to any infringements by riders or restaurant delivery partners identified by the on-site marshals over the same period. Officers queried the form that this information took with the suggestion that any sensitive information could be redacted. This issue was also discussed at the Public Inquiry and the Council was satisfied that the case to withhold personal information was sound. The applicant advised that when an incident is logged it contains personal and sensitive information (for example rider ID's) that would be required to be redacted. Therefore in practice summaries of the information were considered the best way to present the information as too much information would otherwise be required to be redacted that would render it meaningless.

Consultation

- 2.14 The Planning Inspector made it clear during the Inquiry that monitoring for a trial period would be necessary to achieve the purpose of the temporary permission. A community working group (CWG) was considered integral to the monitoring of the use in order to facilitate consultation with the local community over the temporary period. Local residents and representatives of local residents groups (maximum of 8 people) make up the CWG. The local groups consist of representatives from Cresta House Residents Association, Hilgrove Estate Tenants and Residents Association and Local Residents Group who were one of the Rule 6 parties at the appeal. One of the clauses in the legal agreement states that meetings should be scheduled to take place every 3 months during the first calendar year of the planning permission. CWG meetings have taken place on 05/02/2020 at Swiss Cottage Library; 09/04/2020 (postponed due to national lockdown), 27/05/2020 (online), and 12/08/2020 (online).
- 2.15 The OMP includes a dedicated email address that local residents can use to notify the applicant about any concerns and or suggestions. Deliveroo are expected to send an acknowledgment of any complaint received within 24 hours and this can include a request for further information regarding any alleged incident. The alleged incident is investigated by the site manager and the complainant is then informed of the outcome and steps taken to address/ resolve the complaint. Two records of complaints are kept (i) an on-site incident log (ii) log of incidents reported by the local community. The applicant advised

that it was necessary to amalgamate the logs in order to avoid duplication of entries and to make it easier to group complaints by issues that require investigation.

3 SITE

- 3.1 The application site (approx. 487 sq. m in area) is in the Finchley Road / Swiss Cottage Town Centre surrounded by commercial and residential uses. It is located to the rear of 115-119 Finchley Road (west side of Finchley Road and near to the Swiss Cottage tube station). The site is accessed via a private lane off Finchley Road that runs immediately to the south of 115 Finchley Road. The main access to the building is south facing. There is an open forecourt area to the rear (west part of the site) that includes a bin storage area, a car parking space for delivery vehicles and a space that includes a dedicated electric charging point for electric bikes.
- 3.2 The site is surrounded by residential properties to the north, south and west and on the upper floors of the commercial units along Finchley Road (east of the building). Directly to the north of the site is the car parking area for Cresta House which is accessed from Belsize Road (a 9 storey building with residential units on the upper six floors and commercial on the lower three). The land to the rear of Cresta House is separated by a wire fence and locked gate. To the south and west of the site are two storey residential properties that front onto Dobson Close.
- 3.3 It is not located within a Conservation Area nor does it contain or is it within the setting of any listed buildings. Finchley Road (A41) is part of the Transport for London Road Network (TLRN).
- 3.4 The existing building is a two storey brick building which extends to the rear of 115-119 Finchley Road. The applicant occupies the lower ground floor. There is access to the upper floor of the building from Finchley Road which is occupied by separate commercial tenants and is a separate operation from the lower ground floor level. The upper floor area of the building does not form part of the planning application. Deliveroo commenced operating on site in October 2017.

4 PROPOSAL

- 4.1 Planning permission is sought for use of the site as commercial kitchens and delivery centre (*Sui Generis* use) on a permanent basis, installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space. The use has been operating for approximately 2 years. Planning permission was granted at appeal for the use and associated equipment on a temporary basis for 14 months. This was to see if the initial impacts of the unauthorised use, which led to the enforcement notice, could be mitigated through controls negotiated by officers and secured as part of the appeal. This planning application seeks planning permission to continue the use on a permanent basis.

The operation – Deliveroo Editions concept

- 4.2 Deliveroo Editions is the term used by the applicant for the current use of the site as commercial kitchens and delivery centre. The building is laid out to provide 9 fully equipped micro kitchen pods which are staffed and operated by individual established restaurant partners. The restaurant partners include Pinza, Zia Lucia, Waleema, Motu, Honest Burger and Busaba. Food is prepared and cooked and delivered to customers using Deliveroo's fleet of riders. The riders to this site can only arrive on foot, or can use pedal cycles and electric two wheeled bikes. No riders on scooters or motor bikes have the ability to pick-up deliveries from this site. The site serves an extensive radius of residents many of whom live within 500m of the site. However the catchment area for an Editions site is typically approximately 3 kilometres with a maximum riding time of about 15 minutes for the delivery of the orders. The catchment area of the site extends to parts of Hampstead, Kilburn, St John's Wood, Camden Town and Kentish Town.
- 4.3 There is no ability for customers to visit or access the site. Orders and sales are placed solely online, prepared fresh to order and delivered immediately by delivery riders.
- 4.4 The Editions concept provides a platform enabling restaurant partners to open and deliver without the up-front costs or risks of setting up and managing their own premises. It also allows established restaurants to reach new customers in places where they do not have an existing restaurant in the area. For consumers, it provides variety and choice of different types of cuisines to be delivered directly to their doors within a short space of time. All orders are taken via the Deliveroo app which customers have to download.
- 4.5 The focus of the business model is "last mile" delivery. Deliveroo uses the latest technology to ensure that food is delivered in the most efficient way to the customer. Deliveroo's real-time dispatch algorithm, known as Frank, searches for available riders and orders, and every two seconds evaluates the most efficient way to dispatch them. This technology predicts when a rider should arrive to the site, reducing time spent waiting to collect deliveries and provides customers with more precise real-time expectation of when they will receive their food deliveries.

The operation on site

- 4.6 The site includes 9 micro kitchen pods measuring approximately 32 sq. m with a larger kitchen pod measuring 48 sq. m. Each pod is independent and includes a preparation and cooking area. There is a shared dispatch area where meals are placed from all kitchens to be collected by the delivery riders. There is a waiting area for riders to wait for the collection of orders, a staff toilet, management offices, and cold and dry storage areas.

Hours of operation

- 4.7 The site can be accessed from 08:00am and operates 7 days a week. Kitchen prep is carried out from this time. Orders can be placed from 12:00 noon every day and can be received up until 22:45 and the kitchens close at 23:00.

- 4.8 All plant equipment and noise generating activities finish by 24:00. The level of commercial cooking activity and comings and goings from delivery personnel remains at its highest / most intense when the highest proportion of customers are at home wishing to make a food order. This is generally between the times of 19:00 and 21:00.

Collection of orders

- 4.9 The Deliveroo app notifies the rider to go to the site to collect the order when it is almost ready to be dispatched. Riders enter the site from the Finchley Road entrance where their order is checked by a site marshal who is positioned at the top of the ramp. Riders are only allowed to enter the site if they have a valid order to collect. The riders travel down the ramp on the southern side of the building to the cycle parking area. They enter the building by the southern side entrance and go to the dispatch room where they collect the food order and leave the site the same way.
- 4.10 During the Covid-19 pandemic national lockdown period when businesses were allowed to reopen and operate, riders were unable to enter the building to wait for their orders due to social distancing procedures. Only 3 riders can enter the dispatch area. The riders therefore have to wait outside the building at the bottom of the ramp at a safe distance from each other to await the collection of their order.
- 4.11 The number of riders can range from approximately 20 to over 100 per hour during various times of the day during various days of the week. Not more than 30 riders are permitted into the site at any one time and this is controlled by the OMP.

Marshals

- 4.12 Marshals are employed to monitor activities and behaviour on site. One traffic marshal is onsite from 08:00am Monday to Saturday (when supplier deliveries are made). However, some delivery drivers tried to access the site before 8am so now someone is onsite from 7:20am to ensure compliance. Two marshals are present on site when the site is open for trading. During trading hours one marshal is located at the top of the ramp to ensure only riders with confirmed orders access the site. They monitor behaviour and conduct of the riders when they enter and leave the site. They are also responsible for ensuring that no more than 2 delivery vehicles delivering goods to the site are allowed entry into the site at any time. The second marshal is located at the bottom of the ramp. They ensure that riders park their bikes appropriately and wait quietly for orders. The second marshal also assists the parking and manoeuvring of the delivery vehicles into and out of the parking area at the rear of the site.

Cycle parking

- 4.13 There are 5 low hoop bike racks that accommodate 5 bikes, 14 Sheffield racks that accommodates 26 bikes or 12 e-scooters and an additional 6 spaces that accommodate 6 e-scooters.

5 RELEVANT HISTORY

- 5.1 Planning permission was granted on 08/05/1992 (ref PL/9200229) at 119 Finchley Road for change of use of ground floor from Class A1 to mixed use of A1 and B1.
- 5.2 Planning permission was **refused and warning of enforcement action** to be taken (ref 2017/4737/P) on 11/05/2018 for installation of external plant, including 3 no. extract ducts, 4 no. flues, 3 no. air intake louvres, 1 rooftop extract and 3 no. air condenser units (Retrospective). There were 2 reasons for refusal relating to the visual impact of the extract ducts and rooftop plant and lack of information to demonstrate that all the plant, when operating at capacity, would not harm the local amenity.
- 5.3 A certificate of lawfulness of existing use (CLEUD) was **refused** and enforcement action authorised on 11/05/2018 (ref 2018/0865/P) for use of the unit to the rear of 115 Finchley Road as a Class B1c commercial kitchen. The use as a commercial kitchen was considered to be materially different to the previous use of the premises and constituted a material change of use.
- 5.4 An enforcement notice (ref EN17/1005) was issued on 1 June 2018 and in April 2019 against change of use from light industrial use (Class B1) to commercial kitchens and delivery centre (sui generis use); and installation of external plant, including 3 extract ducts, 4 flues, 3 air intake louvres, 1 rooftop extract and 3 air condenser units. There were 7 grounds for issuing the notice:
 8. The breach of planning control has occurred within the last 10 years
 9. The high volume of vehicle deliveries serving the property results in a significant noise nuisance and a harmful loss of amenity to adjacent occupiers contrary to Policy A1 of the Camden Local Plan 2017
 10. The use of the property, in the absence of measures to control the unauthorised hours of operation, litter, storage, waste, recycling, servicing and delivery results in nuisance and a harmful loss of amenity to adjacent occupiers contrary to Policy A1 of the Camden Local Plan 2017.
 11. The delivery vehicles and parking of these resulting from the unauthorised use of the property has a harmful impact on highway safety in the vicinity of the site, causing difficulty for vulnerable users and neighbouring occupiers contrary to policy A1 of the Camden Local Plan 2017.
 12. The extract plant and associated equipment, by virtue of their siting and visual impact, cause harm to the character and appearance of the property and the context of the local area contrary to policy D1 of the Camden Local Plan 2017.
 13. A suitably comprehensive acoustic survey and a risk-based odour control and impact assessment demonstrating that all plant equipment, when

operating at full capacity, would be capable of doing so without causing harm to local amenity has not been provided. As a result the plant and equipment that have been installed at the property are contrary to policies A1 and A4 of the Camden Local Plan 2017.

14. The plant equipment facilitates the unauthorised use of the property, and whilst their operation and appearance may be controlled by planning condition, the use is unacceptable in principle and the associated operational development is therefore unacceptable.

5.5 As part of the notice 10 steps were required to cease operations and remove the plant equipment (extract ducts, flues, louvres and air conditioning units) with effect from 13/07/2018 unless an appeal was submitted.

5.6 The applicant appealed the enforcement notice (ref APP/X5210/C/18/3206954). The appeal was **allowed** on 17th September 2019 and the enforcement notice was quashed and planning permission was granted on a temporary basis for 14 months to allow for further monitoring of the use and its impact on the neighbouring occupiers and the surrounding area (see background section above for further details of the Inspector's decision).

6 CONSULTATION SUMMARY

Statutory Consultees

Transport for London (TfL)

6.1 No response received to date. TfL did not raise objections at the public inquiry.

Local Groups

Cresta House Residents Association (CHRA) objection:

6.2 An objection has been received from the CHRA which raises significant concerns on a number of issues (summarised below). The 37 page objection includes photographic evidence and appendix 1 includes a list of over 400 alleged breaches of the OMP by Deliveroo riders between September 2019 and July 2020 – the majority of which have been witnessed from May 2020 to July 2020. Appendix 2 includes the dates and reference numbers of the logs of complaints to Camden's Environmental Health Team regarding odours associated with the operation. A copy of the objection is available to view on the Council's website.

6.3 The issues raised are summarised in line with the headings in the objection and are detailed as follows:

(1) Deliveroo has not stopped the cooking smell nuisance caused by the 9 kitchens

Officer's response: See section 12 (Environmental Impacts - Odour)

(2) Deliveroo has not stopped its riders from congregating outside the site

Officer's response: See section 11 (Amenity)

(3) Deliveroo has not stopped its riders from cycling the wrong way on the road or cycling on the footpaths

Officer's response: See section 13 (Transport)

(4) Deliveroo refuses to comply with the condition that riders must turn left to exit the site

Officer's response: See section 13 (Transport)

(5) Deliveroo cannot meet its obligation to reliably identify its riders

Officer's response: See section 13 (Transport)

(6) Consultation with local community and the Community Working Group (CWG)

Officer's response: See section 11 (Neighbouring Amenity)

(7) Deliveroo Editions does not benefit the local community

- Location of operation surrounded by a peaceful residential community
- Trading hours – site trades 112 hours per week not 77 hours per week as cited in the planning statement
- Deliveroo an essential service to local people?

Officer's response: See section 8 (Land use)

(8) Assessment of the trial period

- Local residents surrounded by Deliveroo workers
- Evidence demonstrates that the site is not operating correctly

Officer's response: See section 14 (Management of the site)

(9) Conclusions

- Site situation in this particular town centre is of little to no benefit to local residents

Officer's response: See section 8 (Land use)

- Sites hours of operation are 112 hours per week not 77 hours per week as claimed

Officer's response: See section 8 (Land use)

- The manner in which monitoring exercise was carried out renders the results unrepresentative and hence the conclusions drawn from them wholly unreliable

Officer's response: The monitoring exercise was undertaken over a specified period, over certain days at peak times. The results of the exercise have been read in conjunction with the evidence provided by the local residents of rider and marshal behaviour thereby allowing a full planning assessment to be undertaken

- Results from smell nuisance that originates three stories above ground by sniffing at ground level were unrepresentative and results therefore should not be taken seriously

Officer's response: See section 12 (Environmental Impacts)

- The Deliveroo Editions has not facilitated the growth of new or existing restaurants

Officer's response: The advantage of the Editions concept for business is that they can set up on site without significant up-front costs and investment because the kitchen units are fully equipped which can support businesses of all sizes in particular start-ups, small and medium-size enterprises.

- The creation of 6 jobs does not outweigh the harm to local amenity

Officer's response: See section 11 (Neighbouring amenity)

- No evidence to backup claim that Editions have made essential food deliveries to local people housebound by COVID-19

Officer's response: There is no policy requirement for the applicant to make deliveries of essential food to local residents during lockdown.

Winchester Road Residents Association (WRRRA) objection:

- Greatly puzzled as to who would want food delivered by these boys and men? They have no access to toilets and hand washing. Many look to be in dire need of a bath after hours on the road let alone being able to wash their hands. A few days ago, while walking down the rose path, a bushy pathway on the east side of Swiss Cottage Open Space, a young man in Deliveroo gear cycled into the pathway, parked his bike there and quite unabashed by my presence took a pee in the bushes. No hand washing could take place. I strongly recommend that we take care as to whom serves up our food. This is most distasteful; a fine example of the abuse of human dignity that the gig economy offers workers, imposes on the environment, and deludes the public into thinking its providing a service, an unhygienic one too.

Officer's response See section 11 (Neighbouring amenity)

Local Residents' Group (Rule 6 party) involved in the appeal objection:

6.4 Formation of CWG, meetings and local residents' complaints

- The Council had responsibility to inform Deliveroo of the local community groups who would form the CWG. The list was outdated and included groups like local schools
- Meetings mainly around benefits that Deliveroo bring to the area
- First CWG meeting was in person. The second was at the beginning of Covid-19 outbreak and was deferred. The third was by a platform that was not accessible to all and had technical problems

Officer's response: See section 11 (Neighbouring Amenity)

Signage

- Missing for a considerable amount of time
- Doesn't reflect new trading hours
- CWG informed of change to hours by site manager accidentally during 2nd meeting

Officer's response: See section 8 (Land use)

Legal planning permission

- Deliveroo are operating without planning permission and therefore illegal. If wider community were aware of this there would be more reports of incidents
- Site has been running illegally for several years

Officer's response: Planning permission was granted in September 2019 to operate on a temporary basis until 17th November 2020. It has therefore been operating legally since this time.

OMP

- How can it continue to be enforced when the site already fails to keep to the OMP
- Breaches reduced however may have been down to operation knowing they were being surveyed rather than improvements to enforcement
- Significant differences in the number of breaches between applicant and local residents
- OMP not sufficiently enforced

Officer's response: See section 14 (Management of the site)

Impact of site on the area

- No improvement to transport impact of bikes crossing the pavement or entering the bus lanes

Officer's response: See section 13 (Transport)

- Riders loitering for work in the side streets – residents unable to socially distance

Officer's response: See section 11 (Neighbouring Amenity)

- Litter and untidiness associated with rider behaviour

Officer's response: Riders would be expected to deposit any rubbish in nearby litter bins

- Noise and disturbance from delivery drivers

Officer's response: See section 11 (Neighbouring Amenity)

Odour

- Strong cooking Smells and odour

Officer's response: See section 12 (Environmental Impacts)

External plant

- Eyesore
- Brings industrial look to otherwise residential area

Officer's response: See section 9 (Design and Visual Appearance)

Adjoining Occupiers

- 6.5 Site notices were displayed outside 115 Finchley Road, 125 Finchley Road, and 2 site notices were displayed at various locations in Dobson Close from

03rd July 2020 to 27th July 2020 and a press notice was published from 09th July 2020 to 02nd August 2020.

Representations summary

Local residents

- 6.6 There have been 17 letters of objection from local residents at 15 Fairfax Place, Flat D 11 Compayne Gardens, 19 Cresta House, 133 Finchley Road, 119 Cresta House, 133 Finchley Road; 83 Finchley Road; unspecified address on Finchley Road, 53 Dobson Close, 69 Dobson Close, 4 addresses on Dobson Close (no numbers given); Castleden House, 83 Finchley Road, 70 Dobson Close (x 2); local resident who lives in the area but did not provide an address; unspecified address in Harden Road. The objections are wide ranging and cover a variety of issues. The following include a summary of the key issues:

Unsuitability of the site

- The intensity of use unsuitable for the site
- Quality of life of local residents has been greatly affected
- Disrespect for the local community from occupying the site without planning permission, to dismissing residents' complaints with all kinds of excuses means they are not good neighbours
- Local residents are not aware that the site is operating illegally otherwise there would be more complaints

Officer's response: See section 11 (Neighbouring Amenity) and section 13 (Management of the site)

Ineffectiveness of OMP

- Incidents recorded in the reports prove that the OMP has not effectively "bedded-in"
- Deliveroo riders still breaching the OMP in February 2020 shows how ineffective the OMP is. Deliveroo riders are still trying to gain access to the site from Dobson Close or cycling on the pavement. Deliveroo cannot effectively implement their OMP.
- Marshals are not enforcing the OMP and ignore any breaches of road rules of common courtesy to pedestrians

Officer's response: See section 14 (Management of the site)

Communication with local residents

- Deliveroo don't consult with local community before acting or inform the local residents about what is going on
- Disregard and respect for local residents

Officer response: See section 11 (Neighbouring amenity)

Amenity (noise and disturbance)

- Nuisance to neighbours
- Noisy all and at night
- Deliveries have occurred and continue to occur out of the stipulated hours
- Delivery vehicles regularly come into Dobson Close so the driver can obtain pedestrian access to the Deliveroo site

- Delivery vehicles are noisy as they are reversing in Dobson Close, outside the windows of local residents.
- Marshals are often noisy, shouting to / at the riders or to delivery personnel from one end of the slip road to the other.

Officer response: See Section 11 (Neighbouring amenity)

Increased trading hours

- Deliveroo have not informed the local community about the changes to the trading hours (signs at the entrance to the site still show old trading times).
- Not a benefit to the community
- Results in increased traffic on the slip road, more riders around the neighbourhood all day, increasing traffic on private roads such as Dobson Close
- Disruption to the neighbourhood is far greater than they would like to admit due to increased trading hours and clearing up after service finishes

Officer's response: See section 8 (Land Use) and section 13 (Transport)

Congregation of riders

- The riders congregate outside their premises at 117 Finchley Road as well as the pavements within its vicinity along Finchley Road and more recently congregated further afield around Harben Road area.
- The last mile system that Deliveroo uses is direct cause of the problems the local community have to face. The last mile system means the riders have to race to the site to collect their orders and therefore congregate in the neighbourhood and use any shortcut they can find in doing so.
- Riders are parking their bikes in the entrance to the flats at Castleden House for long periods of time whilst waiting to accept orders making it impossible for residents to enter or leave their own homes whilst also maintaining appropriate social distancing in line with COVID-19 guidelines.

Officer's response: See section 11 (Neighbouring amenity)

Disturbance from odour from cooking smells

- Noise and smells emanating from a food processing factory in a residential area. Such establishments should be located on commercial / industrial estates
- Site produces strong cooking smell and with additional vents they plan to build this will worsen the situation and adversely affect the quality of life for local residents. The cooking smells were especially unbearable on warm days and on occasions whereby the wind direction dictated how their cooking smells travelled.
- Unable to have my windows open in my flat because of the smell of cooking odours from the Deliveroo site. These are not the cooking smells of my neighbours as have been suggested by Deliveroo but are emanating from the Deliveroo kitchens. "Sniff" tests have been carried out by Deliveroo agents but these are not done at a high enough level to be of any use and so any data collected is not a true representation of the odours we residents surrounding the site notice.

- Often a very strong smell of cooking oil wafting across from the Deliveroo site.

Officer's response: See section 12 (Environmental impacts)

Highway / Public safety (pedestrians and road users)

- Delivery operation has raised issues relating to parking of bikes and use of the footway with 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.
- The problems with cyclists and now scooter deliveries has gotten worse and they are a complete menace to pedestrians and road users.
- Riders accelerate to get up the slip road and they have little or no regard for pedestrians crossing the top of the slip road to access shops/buses/residences. If admonished for their speed they are often rude and disrespectful
- Delivery bikers show no regard for residents using the roads and pavements and ignore the law when it suits them
- Riders sighted making dangerous manoeuvres, cutting across multiple lanes on Finchley Road (A41). Endangering their lives and those of motorists
- Behaviour of riders has remained unchanged despite change to electric bikes and push bikes
- Riders regularly ride on the local pavements, again with no regard for pedestrians.
- Pedestrians have to move out of the way of cyclists on the pavement
- Delivery vans can block the entrance so pedestrians have to move out into the road (bus lane) which is dangerous

Officer's response: See section 13 (Transport)

Servicing and Deliveries

- Access for deliveries is inadequate and often blocks pedestrians passage along the pavement
- Deliveries being made via the slip road are also trying to occur before the stipulated time of 8am.
- Delivery vans are still using Dobson Close as a car park. The most recent example is the company Carnevale using Dobson Close on 4th Jun 2020 (identified supplier of Deliveroo site). Shows the OMP is not working

Officer's response: See section 13 (Transport)

Character and appearance of the premises and the surrounding area

- Massive chimneys were erected without planning permission. They are an eyesore and can be clearly seen from the surrounding residences
- Unsightly chimneys which are an eyesore
- Officer's response: See section 8 (Design and Visual Amenity)
- The riders hang around the local area and sprawl on the pavements, waiting in neighbouring roads, leave their bags and bikes in the way of pedestrians, leave rubbish behind (drink bottles / cans / food wrappers) and bring the local area down with their presence.

- Riders make the area look untidy

Officer's response: See section 11 (Neighbouring amenity)

Support

- 6.7 2 letters of support have been received from 131 Belsize Road and 6 Brondesbury Road (a driver at Swiss Cottage Edition):

- Allows more food options in the area
- Encouraging low emission transport
- E-bike charging facility is needed
- If the site were to close it would have a huge financial impact on the riders

Responses to additional information

- 6.8 Additional information was submitted during the course of the application including a summary of the Swiss Cottage Editions log-book entries, minutes of the May 2020 CWG meeting, additional monitoring information, a signed petition by Deliveroo riders in support of the application, a letter of support from the 6 of the restaurant partners and the submission of an independent odour report.

Local Groups

- 6.9 **Cresta House Residents Association – objects**

A further letter was submitted by the CHRA in relation to the additional information submitted by the applicant. A letter was also submitted that was for the attention of the Chair of the Planning Committee. The following concerns were raised:

Summary of log book

- No dates and time for the incidents they report
- Clump incidents together
- Omits first 7 months of 12 month trial period and omits first 4 months of complaints from residents
- Residents report multiple instances of similar behaviours because riders kept repeating the same breaches of conditions. This is the basis of the 3 strikes you are out policy at the heart of the monitoring system
- Number of complaints shouldn't count as there are many reasons why local residents have not wanted to participate in objecting to Deliveroo's operations including many people didn't know about the application as it was submitted at the height of the COVID-19 crisis; residents find it intimidating to gather evidence of Deliveroo activities and locals are worn out fighting planning applications

Officer responses: See section 10 (Reporting incidents). All objections raising material planning considerations are taken into consideration as part of the assessment of any planning application

Local employment

- Petition submitted on behalf of riders shows that of the 85 riders only 16 have postal codes in NW3 or NW6 the rest come from further parts of

North London, Croydon, East London, Harrow, South West London, West London and Watford

- Riders do not need Editions to work they could deliver for other delivery providers in the area or in other Deliveroo locations
- No noticeable benefits to the local community other than the noticeable impact of switching from motorbikes to bicycles on both noise and congestion at the site
- There was no noise problem at the site before the arrival of Deliveroo Editions and there was no congestion problem at the site before the arrival of Deliveroo Editions

Officer's response: See section 17 (Employment and Training Opportunities)

Odour

- The report accounts for nuisance smells experienced at ground level but not above ground level
- Smells identified from sniff tests as coming out the extracts (mixed cooking smell and burger meat smell) are the smells reported by residents of Cresta House
- Tests report current extract reduces cooking smell but does not report by how much or that it removes the smells
- Methodology is flawed as only small number of tests (0) were carried out at 9th floors whereas preponderance of smell nuisance reports came from 5th and 9th floors of Cresta House
- More needs to be done to get to the bottom of the smell nuisance experienced by local residents

Officer's response: See section 12 (Environmental Impacts)

Congregation and marshals

- After 1 year why are Deliveroo now instructing their Marshals to patrol and photograph all offsite areas where riders are reported to congregate while waiting for orders. If this is to be continued a third marshal will have to be hired to ensure that 1 marshal remains at the top of the ramp. Riders appear to know that marshals are coming. Photographs taken by marshals showing empty sites needs to be treated with care.

Officer's response: It is acknowledged that this issue of congregating riders has only recently been addressed by the applicant. The photographic evidence from local residents which shows riders congregating in various locations has been reviewed and taken into consideration as part of the overall assessment of the application.

6.10 Local Residents Group (Rule 6 Party) - objects

- There are a high number of incidents and the reasons behind the breaches are irrelevant. There are 95 breaches logged by the applicant despite the OMP which should have had ample time to bed in.

Officer's response: See section 14 (Management of the site)

- The Inspector said in her decision that it should not be the burden of the CWG or local residents to monitor transgressions. Each event is evidence of the disruption caused to locals.

Officer's response: See section 14 (Management of the site)

- CWG involves explaining the impact of the breaches of the OMP and its negative impact on the neighbourhood. Deliveroo attempt to rectify the issue and it seems a new one appears. This is not sustainable and if planning permission were granted the CWG would not be able to help to enforce the OMP and standards would eventually slip to the further detriment of the residents

Officer's response: See section 14 (Management of the site)

- Ability to complain is not in the public domain. There is no signage nor any explanation that the site is being run under conditions and that the public can report breaches.

Officer's response: See section 14 (Management of the site). Local residents can log a complaint with the Council's enforcement team if there are any issues associated with the operation and its impact on the local environment or local community

- Industrial plant has illegally erected in the building and is against Camden's planning regulations

Officer's response: The plant was installed in 2017 without the benefit of planning permission. The Inspectors decision granted permission on a temporary basis and this includes permission for the plant that is required to serve the use

- Frequent cooking smells

Officer's response: See section 12 (Environmental Impacts)

- Objection is to the location of the site and its negative impact on local residents, impact on highway and road users and its equipment and associated smells. The operation could be relocated to a more suitable site without the loss of employment

Officer response: See sections 11 (Neighbouring Amenity), Section 12 (Environmental Impacts) and Section 13 (Transport)

- For completeness of evidence it is requested that (1) Deliveroo can confirm that both log books have been kept for the entire duration of the s106 agreement and (2) publish all the minutes of all the CWG meetings since it was formed as only one has been published so far

Officer response: Deliveroo has confirmed that both log books have been kept since November 2019. The minutes of all CWG meetings have been published as part of the application

Adjoining Occupiers

6.11

Local residents

6 additional objections were received from local residents at 19 Cresta House, 133 Finchley Road, 53 Dobson Close, 69 Dobson Close, 70 Dobson Close and a resident of Dobson Close who did not provide a postal address were received. Similar objections were received to the

revised information as those issues already raised above as part of the original consultation. In terms of the response to the independent odour report the following issues were raised:

Cooking Odour

- Odour issues with 9 kitchens
 - Odour report is a farce – sniff tests from various locations did not go higher than ground level in Dobson Close so did not experience the cooking odours that residents experience everyday
 - Restaurant operators in Deliveroo site could emit same “smell of burnt, oily, fatty, sweet spicy cooking odours” rather than blaming Z Zang restaurant. Z Zang Korean restaurant is part of the Swiss Cottage Edition site
 - Sniff test appears crude
 - Harmful particles (odourless and colourless) emitting from the vents
- Officer's response: See section 12 (Environmental Impacts)*

Noise

- Additional ducts and flues bound to produce excessive noise
- Officer's response: See section 11 (Neighbouring Amenity)*

Location of the site is unsuitable

- Riders appear to travel from other boroughs to work at Swiss Cottage so they could move if the operation moves – no loss of local jobs
 - Operation is unsuitable in a densely populated residential area
- Officer's response: See section 8 (Land use) and section 17 (Employment and training opportunities)*

Deliveries to Dobson Close and Cresta House carpark

- Delivery vans / lorries are still coming into Dobson Close. Care has not been taken by Deliveroo to ensure their partners are advised of the appropriate directions to get into the slip road. Needs to be addressed if they are allowed to remain onsite

Officer's response: See section 13 (Transport)

- Photos show trucks requiring through access via Cresta House carpark. External carpark at Cresta House is not suitable for Deliveroo to use it as a delivery depot

Officer's response: The photo shows a Veolia lorry driving from the site through Cresta House car park to collect refuse (Camden's contracted waste management company). This has been agreed with the landlord who owns the building. Refer to Section 16 (Refuse and recycling).

- Misleading photographic evidence
- Riders are moved from gathering point and then photos are taken by Deliveroo showing there are no riders in the vicinity. Misleading of the true events taking place

Officer's response: The photographic evidence submitted by all parties has been reviewed as part of the overall assessment of the application in order to gain a full understanding of the issues raised

7 POLICIES

- 14.1 The National Planning Policy Framework (NPPF) sets out the government's planning policies for England and how these are expected to be applied. It must be taken into account in preparing the Development Plan, and is a material consideration in planning decisions. The revised NPPF was published 24 July 2018 and updated on 19 February 2019, replacing the previous document published in March 2012.
- 7.2 The Camden Local Plan was adopted by the Council on 3 July 2017 and replaced the Core Strategy and Camden Development Policies documents as the basis for planning decisions. Other local documents which are of relevance include the Proposals Map and Camden Planning Guidance (CPG).
- 7.3 The London Plan 2016, along with the Mayor's Supplementary Planning Guidance (SPG) are also important considerations.
- 7.4 The Mayor has considered the Inspectors' recommendations and, on 9 December 2019 the Mayor issued to the Secretary of State his intention to publish the New London Plan. The Intend to Publish London Plan forms a material consideration in the determination of this application.
- 7.5 In making any decisions as part of the planning process, account must be taken of all relevant statutory duties including section 38(6) of the Planning and Compulsory Purchase Act 2004. Section 149 of the Equality Act 2010 is also relevant to the determination of the applications. It sets out the Public Sector Equality Duty, which states that a public authority must have due regard to eliminate discrimination, harassment and victimisation; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.6 The most relevant Camden Local Plan 2017 policies are listed below:
- G1 (Delivery and location of growth)
 - C5 (Safety and security)
 - C6 (Access for all)
 - E1 (Economic development)
 - E2 (Employment premises and sites)
 - A1 (Managing the impact of development)
 - A4 (Noise and vibration)
 - D1 (Design)
 - CC1 (Climate change mitigation)
 - CC2 (Adapting to climate change)
 - CC4 (Air quality)
 - CC5 (Waste)
 - TC4 (Town centre uses)
 - T1 (Prioritising walking, cycling and public transport)
 - T2 (Parking and car-free development)

T3 Transport infrastructure)
T4 (Sustainable movement of goods and materials)
DM1 (Delivery and monitoring)

7.7 Relevant supplementary planning guidance is listed below:

Camden Planning Guidance (CPG):

CPG Access for all
CPG Amenity
CPG Air Quality
CPG Design
CPG Developer contributions
CPG Employment sites and business premises
CPG Town centres and retail
CPG Transport

Site Allocations Plan (Draft, March 2020)

ASSESSMENT

The principal considerations material to the determination of this application are considered in the following sections of this report:

8	Land Use
9	Design and Visual Appearance
10	Reporting incidents
11	Neighbouring Amenity
12	Environmental Impacts
13	Transport
14	Management of the site
15	Safety and Security
16	Refuse and Recycling
17	Employment and Training Opportunities
18	Planning Obligations
19	CIL
20	Conclusion

21	Recommendations
22	Legal Comments
22	Conditions
23	Informatives

8 LAND USE

- 15.1 The site is located in the southern part of Finchley Road / Swiss Cottage Town Centre which 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. Policy TC4 considers the centre to be generally suitable for a range of uses, including those that attract a large number of journeys. It also recognises that highly accessible locations like Finchley Road/ Swiss Cottage town centre which are identified as locations where the most significant growth is expected to be delivered are adjacent to residential communities. The use by the applicant as a commercial kitchens and delivery centre is considered to fall within a sui generis use. The site is located behind an existing parade of shops that fronts onto Finchley Road. The parade does not fall within the primary or secondary shopping frontages that mainly make up the Finchley Road Town Centre. The site itself does not have a presence on the high street in terms its frontage and would not affect the creation of new or retention of existing shopping provision and would not harm the vitality or viability of the town centre in terms of its impact on the primary and second shopping frontages.
- 15.2 Employment sites and business premises CPG acknowledges the growth of industrial scale kitchens with a delivery service to customers, usually by scooter. Existing industrial areas are considered the most appropriate for such uses. However, this direction as to location is within local planning guidance and there is no policy in the development plan that requires an industrial area location for these types of uses. There is therefore no objection to the use subject to the development being assessed against the full range of local plan policies, in particular those on amenity, design and heritage, pedestrian safety and transport.
- 15.3 Recent changes to the Use Classes Order signal the government's intent to allow commercial uses to function more freely without planning constraint. The new class E provides for a wide range of commercial uses including office, light industry, retail, food and drink, and any service appropriate in a commercial area. Many commercial units in the area fall into class E and so have a wide range of lawful use rights.
- 15.4 Officers consider the use of this site for this commercial function, and the controls which accompany it, to be appropriate, subject to the other material considerations discussed in this report.

Hours of operation

- 15.5 Policy TC4 advises that harm to amenity or the local area can be managed by planning conditions and obligations by applying controls to the hours of operation of a use. National policy also encourages the use of mitigation to overcome adverse effects to make an unacceptable development acceptable. Deliveroo Editions' trading hours are 08:00 hours to 23:00 hours with the delivery period to customers being controlled to between 12:00 to 23:00 hours. In the Inspector's appeal decision she agreed that these operating hours struck the right balance and were consistent with the Town Centres and Retail CPG. Conditions were attached to secure this. Concerns have been raised by local residents that trading hours appear to have changed and are being extended. The applicant had originally operated on a Monday from 12 noon to monitor demand for deliveries. Lunch time deliveries from 12 noon have now commenced from 15th June every day of the week. This is in line with the permitted times that deliveries can be made to customers under the temporary permission. Due to the town centre location of the site and its close proximity to residential development a condition (**Condition 5**) would be attached to any planning permission to restrict the times in which deliveries to customers can take place from 12:00 hours to 23:00 hours. The current controls appear to have been effective in restricting the hours for deliveries, mitigating the impact of an uncontrolled use. The proposed condition is clear and enforceable and there is no reason to believe it will not continue to be effective.
- 15.6 There have been incidents logged by the applicant and the local residents where some suppliers have tried to access the site before 08:00am. Of the 62 incidents recorded in the log book by the applicant 40% related to suppliers being refused entry due to non-compliant delivery time. Over 80% of these suppliers complied with the request and have complied with the hours of operation condition. The remaining suppliers who continue to breach the condition by arriving earlier than the required opening hours were contacted notifying them of the breach of condition and the breach of the OMP (secured by S106 legal agreement). During the course of the application the applicant has advised that security guards would now be onsite from 07:30 to avoid new or irregular suppliers trying to deliver to the site before the 08:00 opening times. Again, the existing controls appear to have successfully secured high levels of compliance and where issues occurred, the operator has responded and adapted the operation to ensure better compliance. A similar condition is therefore imposed to secure compliance (**condition 12**). The requirements of the OMP should be reviewed however to enable measures to be outlined that ensure the additional presence prior to 8am. This would be secured under the terms of the s106 legal agreement.
- 15.7 Concerns have been raised by local residents that the signage outside the site has not been updated to reflect the new trading hours. They also suggest that the details of the contact email address are too small and complained that there is no phone number or named person to contact in the event of raising an issue regarding the site operation. The applicant has confirmed that the signage will be updated and the size of the email address will be increased. As one specific person is not available on all days the request to add a named person was declined.

- 15.8 No collection of orders by customers takes place from the premises and this was conditioned as part of the temporary permission. Again, this appears to have been successful in mitigating the potential impact by minimising the number of movements to the site. The condition (**Condition 6**) would be required to be attached to any future planning permission to minimise the number of movements to and from the site to protect residential and general amenity.
- 15.9 In order to control the number of movements at the site access a condition to limit the number of kitchens to nine was required as part of the temporary planning permission. This restriction has also seen compliance ensuring the general intensity of the use does not grow to a level where impacts become unacceptable. This would be necessary as part of any future planning permission (**Condition 3**) to continue to control the intensity of the use of the site.

9 DESIGN AND VISUAL APPEARANCE

- 9.1 Policy D1 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. The Council's Design CPG also advises that building services equipment should be incorporated into the host building. In relation to refurbished buildings, it advises that external plant should be avoided and if it can't be avoided it should be positioned to minimise its visual impact.
- 9.2 The plant installed on the building to facilitate the use includes 3 external extract ducts on the rear elevation of the building that exit from the internal plant room and terminate 1m above the roof. The applicant has stated that the plant cannot be accommodated within the building because the extraction ducts need to terminate above the eaves height of the roof to improve air dispersion. The duct filter system lies within the plant room inside the building at ground floor level. The applicant does not own or have access to the first floor of the property which restricts the ability to install the vertical ducts internally within the building. The Council's Environmental Health officer has advised that kitchen extract ducts need high level discharge with a sufficient straight line to ensure strong velocity for discharge into the atmosphere. As a consequence discharging at the ground floor level (i.e. into the car park area) through louvres is not an option and would be in breach of Environmental Health requirements. Therefore it would not be feasible for the ducting to be relocated internally within the building.
- 9.3 The three external stacks extend a storey in height and visually dominate the rear elevation of the building. There are views of the rear elevation of the building from the rear of properties on Dobson Close and it is visible from the car parking area of Dobson Close properties to the south. In para 61 of the Inspector's decision it was confirmed that 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.*" She concluded that the extract ducts are harmful to the character and appearance of the surroundings and fail to comply

with policies A1 and D1. The appeal, however, was not dismissed on this basis and no conditions were attached to require any mitigation measures to be undertaken.

- 9.4 However the applicant has explored options to mitigate the external appearance of the extract ducts. One of the options that was considered was to paint the extract ducts a matt black colour in order to reduce their visibility; they are currently shiny grey in appearance. The applicants advised that it would not be possible to paint the extract ducts due to the finish of the ductwork. The required solution would be to apply a vinyl 'brick effect' wrap to the ductwork. This would require the existing ducting to be removed and remanufactured off-site with a suitable vinyl wrap to be applied in a factory environment and then reinstalled. The site would be required to close for up to 2 weeks whilst this work was undertaken. A proposed elevation plan and photomontage of the vinyl wrap have been provided as part of the application. The stacks would have the appearance more of 3 brick chimneys on the rear of the building. This would help to minimise the visual appearance of the stacks and would improve the appearance of the rear elevation of the building when viewed from surrounding public vantage points. If planning permission is granted on a permanent basis a condition would be attached to ensure that this work would be undertaken within 3 months of the decision date (**Condition 2**).

10 REPORTING INCIDENTS

- 10.1 A summary of the log book has been submitted that covers the period from March 2020 to July 2020. The log book contains 3 separate elements:
1. An on-site incident' log that includes a log of an incident on or around the site (including maintenance issues) and a log of the issues affecting suppliers delivering to the site on behalf of restaurant partners
 2. A rider incident log that lists any incidents involving riders collecting orders from the site
 3. A residents' complaints log detailing any complaints made about the site by residents or other interested parties
- 10.2 A total of 487 entries were made into the log book held by Deliveroo during this period. Of these entries it is shown that 144 recorded incidents relate to breaches of the OMP (82 to rider behaviour and 62 to supplier incidents) with the remaining entries either relating to non-Deliveroo activity, rider issues not relevant to the rider log, delivery vehicles accessing the site that aren't suppliers to a particular restaurant or miscellaneous matters (staff sickness or lateness). This would equate to approximately 5 incidents per week. When this is compared to the list of incidents submitted by local residents the breaches exceed 400 which equates to approximately 5 incidents a day over the same period of time. Residents have stressed that this is only a fraction of incidents that occur as they cannot and should not have to monitor the use more widely. It is evident from the submissions by the applicant and the local residents that breaches to the OMP have occurred during the course of the monitoring period. However, not every "incident" is actually a breach of the terms of the permission, or necessarily a harmful activity outside of the kinds of activity consistent with a town centre. The OMP is not a guarantee of 100% operational

compliance with conditions and the plan. However by setting a system up for dealing with breaches, it is there to mitigate impacts and enable the uses to co-exist without unacceptable harm to the amenity of local residents. In order to assess the impact of the operation on amenity and highway safety for pedestrians in terms of harm caused it is necessary to focus on harmful breaches - for example riders cycling on the pavement - rather than technical breaches such as the traffic cones not being in place at the bottom of the ramp on certain occasions. No complaints have been received by the Enforcement Team to report any incidents of any breaches to the OMP. The following sections covering neighbouring amenity (Section 11), odour (section 12) and transport (Section 13) will further assess the issues that have been raised during the consultation period.

11 NEIGHBOURING AMENITY

- 11.1 Policy A1 (Managing the impact of development) aims to protect the quality of life of occupiers and neighbours. The policy expectation is that development would not cause unacceptable harm to amenity, not that there will be no impact of new development.

Congregation of riders

- 11.2 During the Inquiry the Rule 6 Party (Local Residents Group consisting of representatives of the local community) produced evidence that the Deliveroo motor bike riders dominated areas beyond the confines of the premises with riders congregating in front of the Odeon Cinema, taking up parking spaces on Finchley Road and waiting in residential areas such as in Belsize Road and near the children's playground off Hilgrove Road to wait to collect orders. This introduced noise and additional traffic in neighbouring streets where it didn't exist before. During the processing of the Appeal, shortly before the Inquiry, Deliveroo's delivery operation model at the site changed from motor bikes to pedal bikes (approximately 80%) and e-scooters (approximately 20%) and on-site cycle parking was created to try to reduce harmful impacts including reduction in noise levels. A condition was attached to the temporary permission to restrict the mode of transport to foot, bicycle or electric two wheeled vehicle (ETW). This control has been successfully implemented at the site with all delivery vehicles collecting orders from the site by bicycle and electric two wheeled vehicles. There has only been one potential and unsubstantiated breach which demonstrates a significant improvement to the operation of the site. The OMP that was secured as part of the temporary planning permission included measures to improve how the use functions and minimise the adverse effects on the locality. It requires the site marshals to ensure that cyclists do not congregate on the access ramp and / or create excessive noise. The OMP does not include further restrictions in relation to riders and where they wait. From the on-site monitoring undertaken by First Plan between November 2019 and March 2020 no riders were observed to be waiting on the access ramp or along Dobson Close or Belsize Road. Local residents have provided photographic evidence to show cyclists congregating in various locations around the site to wait for their orders. This includes, but is not restricted to, areas in front of Overground House, 125 Finchley Road (within the parade of shops) that lies approximately 15m to the north of the site, Harben Road that

lies approximately 100m to the northwest of the site and Castleden House that lies approximately 60m to the south. Due to the nature of the operation where deliveries have to be collected and delivered within 15 minutes, riders are found to be waiting at locations close to the site. The issue of riders waiting outside the parade of shops at 115-119 Finchley Road and waiting in the quieter residential areas was exacerbated during the lockdown period as the high street shops were not open for riders to wait and have a break or wait there before receiving a delivery. Fewer orders were also available to riders meaning there was more waiting time between orders.

- 11.3 In town centre locations it is not uncommon to see delivery riders on bikes and scooters in the locale both cycling on local streets and sitting having breaks. It is acknowledged by officers that individuals and groups of riders have been identified and documented by local residents waiting in locations further from the site. Examples include the pavement outside TfL and under Cresta House to the north, behind Odeon Swiss Cottage to the east, and outside Swiss Cottage Pub to the east. From the photographic evidence submitted by local residents the majority of riders are congregating in small groups either sitting on benches or are sitting outside buildings where the pavement is sufficiently wide to accommodate them. It is not ideal that riders are congregating in groups outside the parade of shops at 115-119 Finchley Road and outside Overground House or outside the Odeon site. However from reviewing the photographic evidence that has been submitted by local residents the riders are not shown to be blocking the pavement and, in most cases, pedestrians can still move freely along it so the congregation of riders in the locations is not considered harmful or dangerous to pedestrian safety. Anyone has a right to be on the public highway and there is a certain amount of standing on the highway that is incidental to its lawful use - particularly in a town centre location where more people congregate, provided that it does not amount to obstruction. This is not considered to result in material harm to the character of the area and it appears that the impact has been relatively well managed.
- 11.4 The applicant has argued that it is not possible to confirm that the riders identified as congregating close to the site are all riders attending the Swiss Cottage Editions site but may be waiting to collect orders from other restaurants and fast food outlets in the southern part of Finchley Road within a 500m radius. The applicants undertook a visit to Finchley Road / Swiss Cottage Town Centre in 2019 and confirmed that there are 39 food outlets (within Class A3 and / or A5 use) within the town centre. Of the 39 food outlets, 28 of these outlets are partnered with a food delivery service (including 14 with Deliveroo). Accordingly, it is likely that a proportion of the riders were waiting to collect orders from food outlets in the town centre rather than the Editions site itself. The applicant has stressed that the riders who carry Deliveroo packs may be collecting deliveries for other online food delivery platforms such as Just Eat or Uber Eats. Notwithstanding this, it is reasonable to assume that those riders in closest proximity to the site are waiting for deliveries from Swiss Cottage Editions. It is acknowledged that it is very difficult to control the locations where workers sit to have breaks particularly when they congregate 60m to 100m away from the site.

- 11.5 The congregation of larger groups of cyclists in close proximity to the site can result in additional visual clutter (bikes) on the pavement and can be intimidating particularly in the evenings leading to a perception of being unsafe in the local area. During the CWG meeting in May it was agreed by the applicant that the area outside the parade of shops to the north of the site would be monitored by the on-site team who patrol the vicinity of the site with a target of every 15 minutes. During the CWG meeting in August the applicant confirmed that the site team have been making regular monitoring walks of the areas around Overground House and the Odeon and are seeking to move riders who may be waiting there. This has been confirmed by local residents in their written responses. In order to ensure that the top of the ramp is not left unmanned the applicant has advised that a site team member would conduct the monitoring walk. It should be highlighted that the congregation of riders waiting for orders was acknowledged by the Inspector in her decision but her comments related to motorbikes rather than push bikes and there was no recommendation for this to be monitored in the OMP. The responsibility of monitoring nearby locations is therefore not explicitly detailed in the existing OMP nor its necessity documented as a requirement at busier times for the operation. However to ensure that this does not become an issue for pedestrian safety, a marshal/ member of the site team would be regularly monitoring the area outside the parade of shops and Overground House to the north of the site and the Odeon to the east to ensure that riders do not congregate in larger groups in these busier higher trafficked locations particularly in the evenings. Officers consider this demonstrates responsive management of the use to address issues, but nonetheless this requirement should be included in any updated OMP as part of a review of the plan secured by s106 legal agreement.
- 11.6 The applicant has advised that they are willing to seek to identify an appropriate location to direct riders close to the site whilst waiting for orders in future discussions with local ward members and the council however these discussions have not yet taken place and do not form part of the current planning application. They can, and should, however form part of the review of the OMP.

Noise (from vehicles and riders)

- 11.7 Since July 2019 the use of motorised vehicles at this site has been prohibited. All deliveries from the premises to customers are now carried out by foot, bicycle or electric two wheeled vehicle. Bicycles and two-wheeled electric vehicles are silent so there is no noise impact from their use. This also appears to be a restriction of the temporary permission which has proven effective with high compliance. The shift away from any motorised vehicles, secured by the permission under condition, has reduced the potential for noise and disturbance from the delivery operation, and a condition (**Condition 4**) would be attached to any permission restricting the mode of transport for riders to and from the site.
- 11.8 Delivery vans access the site from Finchley Road and can park in the allocated parking space at the rear of the site to make their deliveries. Local residents have documented times where drivers have entered the site playing loud music and talking loudly on their phones. The OMP currently requires delivery drivers

to turn off the audible reversing alarm (where possible) however it doesn't control the behaviour of the delivery staff. Due to the sensitive nature of the rear of the site it is essential that delivery drivers are made aware of and respect the quiet environment of the local residents, particularly the residents of Dobson Close during the early morning deliveries. Officers recommend a review of the OMP be secured by S106 legal agreement to incorporate further measures to mitigate impact of delivery drivers.

Noise (voice communications)

- 11.9 One of the requirements of the OMP is that no riders are permitted to park past the bottom of the ramp which is marked by cones from 12 noon and this is monitored by one of the on-site marshals. This is to ensure that activity at the rear of the site is kept to an absolute minimum as it is the quieter part of the site next to residential properties fronting onto Dobson Close. The applicant has instructed expert acoustic consultants Sharps Redmore to undertake an operation noise assessment of the site to determine the impact of the Deliveroo workers' voices at the nearest sensitive receptors. The report demonstrates that, provided the rider waiting area (indoors or outdoors), can be well managed, the impact from voices is likely to have a negligible effect. Prior to the Covid-19 pandemic, national lockdown riders were expected to wait inside the rider waiting area within the building to collect the deliveries. During the course of the application the applicant submitted an annex document to the OMP setting out temporary procedures in response to the Covid-19 pandemic. This included the need to restrict the number of riders who can access the rider dispatch waiting area to 3 due to the social distancing measures that were in place (2m). The majority of riders (21) wait in a marked waiting area on the access ramp. The OMP seeks to control behaviour including noise intrusion from voices of riders. Riders are not permitted to have conversations and / or communicate in raised voices outside the building. This is managed by the site marshal at the bottom of the ramp. A noise buffer has also been installed on the fencing to the southern boundary of the site to try to mitigate noise transference between the site and residents living to the south in Dobson Close. During the 4 month monitoring period 10 incidents of noise from raised voices were recorded by the applicant. These identified incidents appear to have occurred as a result of unrelated incidents rather than recurring patterns of behaviour and 80% of the incidents were dealt with by one of the site marshals. The monitoring report acknowledged that appropriate action was not taken on 2 occasions. These occurred when the marshal was not at the top of the ramp at the time. This highlights the importance of having marshals at the top of the ramp at all times to manage riders' behaviour whilst onsite. This would be addressed in any updated OMP secured as part of a review in the S106 legal agreement.
- 11.10 A site visit was undertaken by Sharps Redmore to confirm that the noise control measures and the operation of the site are in line with the operational noise planning conditions imposed by the Planning Inspector. Sharps Redmore have confirmed that the noise control measures are in place and all the requirements are being complied with. A site visit by the Council's Environmental Health officer was undertaken to confirm that the operation of the site is in line with the noise assessment submitted as part of this application and the requirements of

the Planning Inspector. The only exception witnessed was riders not using the indoor waiting area. During the site visit it was confirmed that operational noise from the site is unlikely to have any adverse effect on residential receptors.

- 11.11 Local residents have confirmed that incidents have occurred between November 2019 and July 2020 where they have noted raised voices between staff on site, particularly between marshals and riders. The OMP sets clear expectations of conduct and behaviour on site particularly in relation to noise from raised voices onsite. The site team had logged the incidents and the relevant members of staff were given warnings.

Noise (plant)

- 11.12 The kitchen pods have associated ventilation and refrigeration plant equipment. The closest noise sensitive receptors to the site are located in Dobson Close (south and west). A noise report has been submitted in support of the application. The assessment demonstrates that the predicted rating noise levels from the fixed plant equipment complies with the green design criterion for plant noise detailed in appendix 3 of the local plan where the noise level is 10dB below background. Local residents have not raised specific complaints about noise from the plant equipment. The Council's Environmental Health officer has visited the site and confirmed that the plant equipment and mitigation measures are in line with the noise assessment submitted as part of the application. The controls applied to the temporary permission appear to have been effective at mitigating the impact of the plant on the area in terms of noise. The proposal is considered acceptable subject to conditions to control the hours of operation of the external plant (**Condition 8**) and to limit the levels of noise from the external plant (**Condition 9**).

Consultation with local groups

- 11.13 Concerns have been raised about the time taken to set up the community working group (CWG) (approximately 6 months) as well as the nominated persons invited to attend the CWG. The Local Residents Group confirmed that they were not invited to attend the CWG even though they appeared at the Inquiry as a Rule 6 Party. The legal agreement secured as part of the temporary planning permission sets out the details of how the CWG should be set up which entitles any person who has a direct interest in the operation to be part of the group with a restriction on the number of people (max 8). The members of the Rule 6 party were therefore entitled to be part of the Group. One of the representatives of the Cresta House Residents Association was also a member of the Rule 6 party and is one of the members of the CWG. This was undertaken with the Council's input. Despite the national pandemic 3 CWG meetings have taken place (copies of the minutes of the meetings have been submitted as part of the application submission).
- 11.14 In order to engage with the local community the applicant should continue to update the local community through a Community Working Group with the view to providing a forum for the applicant to discuss issues and where local residents can raise any concerns regarding the operation. This would be included as an ongoing requirement in the OMP and would be secured by s106 legal agreement.

- 11.15 Concerns have been raised by local residents and local residents' groups about riders and their own personal hygiene and availability of bathroom facilities. There is a toilet facility on-site that is available for riders to use where they can wash their hands and use the bathroom. From the incidents logged by the local residents the occurrences of urinating in public places happens off-site and the identities of the riders are not known. Riders are able to use public conveniences in the local area – including those in coffee shops. Normally Swiss Cottage Library would be open which offers public toilet facilities however during the pandemic all libraries in Camden have been shut since 23rd March with Swiss Cottage not opening until 05th October 2020.

12 ENVIRONMENTAL IMPACTS

- 12.1 In advance of the appeal Arup undertook an odour assessment to establish the mitigation measures required to ensure there were no smells from the Deliveroo kitchens that could be detected at neighbouring properties. Several steps were taken to respond to concerns raised in the original enforcement notice. The installed mitigation measures include an extract odour filtration system with bag and panel filters for particulate removal; UV/ Ozone unit (Purified Air UV-O 1000) and carbon filters. This type of system is considered to provide a very high level of odour control as defined by relevant guidance. The detailed requirements for operation and maintenance of the odour filtration and ventilation system were included in a plant management plan that was secured by condition. Between the date of the Inspector's decision (November 2019) and the submission of the application a large number of complaints from local residents have been received by the Council's Environmental Health team about cooking smells from the site. The applicant has undertaken weekly sniff testing since September 2019. Additional sniff testing by the planning consultants was undertaken between November 2019 and March 2020.
- 12.2 Complaints about strong cooking smells from the site have been identified through the objections received from local residents during the course of the application. In response to the concerns raised about the effectiveness of the odour control measures and in consultation with the Council a further report was commissioned. An independent consultant with experience of odour assessments was asked to undertake repeat surveys at various nearby receptors.
- 12.3 The independent odour consultant undertook 5 separate visits to carry out an odour assessment at more than 10 locations in the area. The assessment demonstrated that no cooking odours from the Deliveroo kitchen ventilation system, or the premises itself, were discernible at any assessment point outside the boundary of the site.
- 12.4 In response to a cooking odour complaint from a Cresta House resident the Council's Environmental Health officer undertook a site visit on 26th June 2020 with the independent odour consultant. The Environmental Health officer was able to stand on the flat roof of the first floor of the building and sniff into the extract ducts that serve the Deliveroo site whilst the kitchens were working at

full capacity. Environmental Health officers undertook another sniff test on the flat roof at first floor level 2m from the extract ducts and confirmed that there was no discernible cooking smells from them. It was not possible to carry out visits to properties in Dobson Close during the time of the site visit due to the restrictions there were in place during the national lockdown and entering people's properties. However as no discernible smells were identified 1m away from the extract ducts it was not considered necessary to undertake sniff tests from properties along Dobson Close which are further away at 17m from the rear of the site.

- 12.5 During this visit that was carried out on 26th June 2020 it was noted that the extract duct serving the neighbouring restaurant (Z Zang) at 115 Finchley Road, is unlikely to have any odour control equipment in place. This is due to the age of the extract equipment which appears to be historic so there are no planning controls in place to manage any smells from it. The cooking smells were strongest from the flats above the commercial units fronting 115-119 Finchley Road. Therefore it has been confirmed that the neighbouring restaurant, Z Zang, is the source of cooking smells experienced in the area. No odour complaints have been received by Environmental Health from these residents. The Council's Environmental Health officer has contacted Z Zang to ensure that appropriate control measures are put in place to control the cooking odours, but this is not within the control of the application site. The restaurant has not contacted the Council to date. It has not been possible to follow this up as the Environmental Health response service was suspended for 6 months during the national lockdown and has only recommenced investigations last week. On the basis of the evidence presented, the Environmental Health officer has confirmed that there would be no harmful impact on living conditions from the site as a result of odour from cooking on the application premises, and the current controls appear to be effective at mitigating the impact of the operations. Conditions (**Condition 10 and Condition 11**) would be attached to any permission to ensure the odour control equipment shall provide a Very High level of odour control and that all detailed requirements for operation and maintenance of the odour filtration and ventilation system is undertaken in line with the plant management plan.

13 TRANSPORT

Servicing

- 13.1 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. This would be secured by condition (**Condition 12**).
- 13.2 Only 2 vehicles are allowed to access the site at any one time. The applicant has demonstrated through swept path analysis that a 7.5 tonne (7.2m long) vehicle would be able to enter and leave the site in forward gear. Although the space is tight there is a marshal available to guide drivers as they manoeuvre to exit the parking space at the rear of the site and leave the site in first gear. The Council's Transport Officer has raised no concerns regarding this aspect of the servicing of the site. The current management on timing and use of vehicles (in terms of size of vehicle) has been controlled by the OMP that was

secured as part of the temporary planning permission. The management of the servicing would be secured through the OMP if planning permission is granted. Access to the site, parking, turning and circulation space within the site falls within the control of the applicant. However, as confirmed by the Planning Inspector during the appeal, where the delivery vehicles park is not necessarily under the control of the applicant. The monitoring results submitted by the applicant show that no deliveries were made outside of the delivery hours. However local residents have cited several occasions when delivery vehicles have tried to enter the site before 8am. The behaviour of the drivers resulted in disturbance to local residents. These incidents were included in Deliveroo's on-site log book. The applicants have advised that in each of the identified cases the suppliers were new to the site and the restaurant partners were notified of the incidents. In all the cases the suppliers have now complied with the rules stipulated in the OMP and there has been no further breach reported. The current controls appear effective at managing this impact.

- 13.3 The local residents have demonstrated through photographic evidence that delivery vehicles have been accessing Dobson Close (which is a private road) to make deliveries to the site with one company in particular making several early morning deliveries before 08:00 hours in early November 2019. The applicant has advised that delivery driver's satellite navigation systems identify the car park area behind Dobson Close as the Swiss Cottage Editions site rather than the actual site address. The OMP states that the marshals are tasked with using reasonable endeavours to ensure that supplier vehicles servicing the site do not park in the bus stop on Finchley Road and / or Dobson Close. In order to reduce the responsibilities of the marshals the exact location of the site and how delivery vehicles arrive at the site from Finchley Road should be clearly and regularly relayed to all restaurant suppliers. Any breaches by the suppliers that are logged by the site team and / or marshals should be appropriately dealt with through the OMP. If repeated breaches occur and it becomes a pattern of operational activity at the site, enforcement action can be taken.

Riders and pedestrians

- 13.4 The location of the site and the means of access to serve the use are constrained and are not favourable 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. Policy A1 and T1 seek to protect local amenity and promote walking in the borough respectively. The supporting paragraphs of these policies advise that any development should consider and address the needs of vulnerable road users in terms of road safety when they are accessing and using the highway network.
- 13.5 The pavement adjacent to the site access is a busy pedestrian route throughout the day because of the town centre location and the close proximity to bus stops, and the Swiss Cottage underground station. Prior to July 2019 the

primary delivery method was by scooters which led to conflict between pedestrians and riders as the bikes were parked at the top of the access road. This frequently caused congestion around the site access. The site now only operates using push bikes and ETW bikes to make deliveries to customers. This was a control measure secured by the current temporary planning permission. This has improved the congestion around the site entrance, and the change of vehicle to bikes has reduced the risk resulting from pedestrian conflict. It has also successfully promoted more sustainable modes of transport in line with development plan policy. There have been a few reports of cyclists causing obstructions at the top of the ramp. This has been accompanied by photographic evidence from local residents. Although this is technically a breach of the OMP, riders have to pause at the top of the ramp as they wait for a break in the traffic to cycle onto Finchley Road. They are not loitering or gathering at the top of the ramp to cause an obstruction to pedestrians waiting to cross. Consequently this is not considered to result in demonstrable harm to pedestrian safety. Two incidents were recorded during the monitoring period where a rider did not look when pulling into the site and almost collided with a pedestrian. During both these incidents the marshal covering the top of the ramp was on a break. No action was taken in accordance with the OMP.

- 13.6 It is essential that riders' behaviour into and out of the site is continuously monitored to ensure the safety of pedestrians and rider safety. The recorded times when riders did have incidents with pedestrians appears to correspond with the times when the marshal was not present at the top of the ramp. This highlights the importance of having marshals at the top of the ramp at all times to manage riders entering and exiting the site. This would be addressed in any updated OMP and officers recommend a review of the OMP be secured by legal agreement to explore measures that will ensure improved compliance.

Riders and highway safety

- 13.7 This part of Finchley Road is part of the Transport for London Road Network (TLRN) and Transport for London (TfL) is the highway authority responsible for it. The site access has good visibility to the south and to the north. The applicant has submitted personal injury collision data (PIC) which has been obtained from TfL for the area which extends from Adelaide Road to the south to the southern section of Finchley Road and Avenue Road that lies to the north of the site. The data from TfL includes 59 PIC's for a 5 year period to 30 September 2019. The records show that 90% of the PIC's were classed as slight and the remaining 10% were classed as serious. In terms of casualties and collisions the numbers have been consistent between October 2015 and September 2019. The number of serious incidents has increased from 1 in October 2016 - September 2017 to 2 in October 2017 to September 2018 and 2 in October 2018 to September 2019. There has not been a significant increase in serious casualties since Deliveroo started operating from the site in October 2017.
- 13.8 From the evidence submitted by local residents there appears to be one witnessed occasion where a rider cycled directly out into the pathway of a moving car. No collisions or casualties have been reported by local residents during the monitoring period. TfL did not object to the increased use of the A41

one-way system and local highway network by bicycles and e-scooters during the enforcement case and they were not present as a witness at the Public Inquiry. Nor have TfL responded to consultation for this application. Officers consider there are no reasonable highway safety concerns in terms of the vehicular highway network.

- 13.9 The road system is made up of four lanes of traffic and a designated bus lane and is part of a one way system heading northwards along this part of Finchley Road. There are traffic lights to the south of the site that control the flow of traffic at the junction of Finchley (south to north) and Adelaide Road (east to west). These traffic lights regulate the flow of traffic and can provide a break in the traffic travelling south to north along Finchley Road when riders can safely exit the site into the left hand lane to travel north or cross two lanes of traffic to filter into the right hand lanes to navigate the gyratory system to travel south.
- 13.10 The use has generated a high volume of movements at the site access and requires delivery riders to negotiate the major flows of traffic along this part of Finchley Road. Local residents have provided photographic evidence of riders undertaking manoeuvres to try to cross from the site access over two lanes of traffic to get into the right hand lane to head south. It is not clear from some of the photos submitted if the traffic was moving at the time or was stationary from being held at the traffic lights. However it is evident that some riders are weaving in and out of traffic in order to cross the lanes of traffic to travel south. This presents a potential risk to the safety of highway users, particularly delivery drivers themselves. The OMP requires all riders to turn left when exiting the site.
- 13.11 From the photographic evidence submitted the photos show some riders crossing when there is no other vehicular traffic in the photo. Although this behaviour is technically a breach of the OMP the rider or other road users are not at risk of causing an accident so there is no significant demonstrable harm to highway safety as a result of this incident. Riders are expected to abide by the Highway Code to ensure they are using the road network safely. This is included in Deliveroo's policies and procedures which are provided to all riders but officers consider this should be incorporated into any future OMP secured as part of a review under the S106 legal agreement.
- 13.12 In order to circumvent crossing several lanes to exit the site shortcuts have been taken by cyclists both to save time and to make their journey safer. The main shortcut entails riders exiting from the site and walking or cycling their bikes down the pavement to travel south. As detailed in paragraph 13.10 above one of the requirements of the OMP is that riders are required to turn left to exit the site and will be prohibited from turning right and walking their bike on the pavement down Finchley Road. It is a breach of the Highway Code (Section 64) to cycle on the pavement. This infringement of the OMP and Highway Code has been evidenced and documented in the monitoring report submitted by the applicant. This is supported by evidence submitted by local residents in their objections where at least 20% of breaches relate to riders cycling along the pavement mainly to access the site. This appears to be the main notable breach of the existing permission controls. The monitoring report confirms that

riders who tried to enter the site by cycling along the pavement were stopped by the marshal and given a warning in line with the OMP. The OMP does anticipate situations of bad rider behaviour and sets down a complaints procedure, a disciplinary procedure and a procedure for recording and retaining complaints so that Deliveroo can report back individually to local residents and through the CWG. Deliveroo are required by the OMP to investigate and deal with complaints; however local residents are concerned that these infringements are still occurring (as recently as July 2020) with individual riders cycling away from the site outside Castleden House, outside 100 Avenue Road, cycling down to the site in front of Cresta House and Overground House. Deliveroo have advised that from their onsite incident log that of the 326 entries 60 (18%) of the breaches related to riders cycling on the pavement. The riders were notified through the proper procedures and given a warning. From the residents' complaints log submitted to Deliveroo only 9 complaints (16 different instances) related to riders cycling on the pavement. However the local residents have submitted at least 70 incidents relating to this issue.

- 13.13 Deliveroo has advised that approximately 30% of the incidents relating to rider behaviour relate to riders on the pavement travelling to the McDonalds which lies approximately 3 minutes' walk to the north of the site. It is difficult to identify the Swiss Cottage Editions riders as they are not contracted to Deliveroo exclusively and can be contracted to provide services for other online food delivery companies such as Uber Eats and Just Eat. Both of these companies provide a takeaway delivery service for McDonalds and KFC London which are 3 mins walk away from the site. Officers believe that whilst the level of the problem may not be to the extent suggested by residents, it does nonetheless appear to be a recurring issue.
- 13.14 During the Inquiry it was accepted by the applicant that it would be hard to control people's behaviour. This is made more difficult by the fact that identifying riders who do not comply with site policy and procedure is not easy. This is due to (i) the need for accurate information and (ii) the identified constraints on using the Deliveroo app such as difficulties identifying riders who are not logged into the app and are not identified as available to receive orders or who are riding in a group of delivery riders who are also logged into the Deliveroo app. The local residents' group has stated that Deliveroo cannot meet its obligation to reliably identify its riders and have included examples where Deliveroo have failed to identify riders from photos that they have taken with dates and times attached. The success of the OMP relies on the riders complying with the Code of Conduct that controls behaviour as well as the ability of the marshals to carry out all their responsibilities. Whilst these concerns are only one part of the controls and restrictions that mitigate impact of the use, the majority of which have been relatively effective, this element is more difficult to control. Officers recommend a review of the current OMP, to be secured by S106 legal agreement, to explore options to improve monitoring and reporting. For example, one solution to this issue would be to include a clearer tracking system of the Swiss Cottage Editions riders that would help to identify those who deliver to this site specifically and more clearly those who contravene the rules. This was discussed at the Inquiry but Deliveroo have previously expressed concerns with such a system due to issues associated with General

Data Protection Regulation (GDPR). Officers accept there may be barriers to this but encourage the applicant to reconsider this or alternative options. The relevant deterrents and sanctions can then be issued and overall incident numbers could reduce further.

- 13.15 Local residents have also documented riders walking through Dobson's Close and taking the external stairs on the southern boundary of the site to access the site. The OMP clearly states that riders are not permitted to access the site using the steps from Dobson Close. The applicant has advised that this route was mainly taken by new riders who amended their behaviour when informed of the rules. Those who failed to comply were given notifications. Where the same riders were documented as using this route again the riders were prevented access to the site by the marshal and the order was reallocated to another rider. Local residents are concerned about this and have cited a number of incidents where riders have accessed Dobson Close via the external stairs. It is considered necessary for a review of the OMP to be secured as part of the S106 legal agreement to explore further measures that can improve levels of compliance, or address new issues raised over the trial period.
- 13.16 Local residents have identified repeated incidents where riders have cycled along the pavements, accessed the site from the external stair from Dobson Close or are congregating in close proximity to the site. The marshal positioned at the site entrance has an extensive list of responsibilities and at busy times it may not be possible to effectively manage them all. It is considered that the need for a marshal to be monitoring the top of the ramp at all times is essential to the successful operation of the site. When one of the marshal is on a break there is a marshal or a site team member to cover the top of the ramp duties so that this area is monitored at all times. This should allow for the monitoring of the surrounding environment, and allowances for breaks without reducing the number of marshals on-site.

14 MANAGEMENT OF THE SITE

- 14.1 Local residents have raised concerns about the suitability of the site for the business given all of the issues that have been raised in relation to rider behaviour, congregation of riders in nearby locations and highways matters with regards to pedestrian safety. This is compounded by the fact that marshals are required to monitor riders both inside and outside of the site. The changes in the operation and controls imposed, such as excluding the use of motorbikes and allowing riders to park and wait within the site, have reduced the harmful impacts to the local environment by reducing noise levels and disturbance from motorbike engines, and improving pedestrian safety along Finchley Road. The applicant has acknowledged that riders have been congregating in locations close to the site and has proposed an improved system to monitor areas which have been identified by local residents to ensure that they are dispersed by either marshals or the site team. The congregation of riders are therefore being dispersed from the immediate environs away from the site which meets the conditions requirements of the OMP. From the evidence submitted the majority of the riders are seated in locations where they are not obstructing the highway and pedestrians can continue to walk along the footpath safely.

- 14.2 Whilst there have been reports of riders waiting in and around the area, and some riders have mounted the footpath, it appears that many of the restrictions and controls applied to the site have been effective at mitigating and reducing the impact of the use since the council issued the enforcement notice. Whilst the use is not operating without impact, the impact is overall not harmful. It is considered that the use can operate from the site providing it is well managed in terms of its operations and behaviour of staff and riders, both within and immediately outside of the site. The conditions attached to the temporary permission are sufficient and effective in their controls to manage the operations of the proposed use and would be attached to any future planning permission. Of the eleven planning conditions only one has been breached (condition 10) that relates to the hours that servicing vehicles unload and load at the site. The applicant has sought to address this matter by ensuring that a marshal is present on site from 07:30am. Due to the nature of some of the objections received during the consultation period and the demonstrable harm associated with the breaches – for example riders cycling on the pavement and accessing the site via the staircase adjacent to Dobson Close to the south of the site, it is considered necessary for a review of the OMP to be secured as part of the S106 legal agreement to explore further measures that can improve levels of compliance, or address new issues raised over the trial period. .
- 14.3 In accordance with the OMP, rider behaviour is subject to Deliveroo's Policies and Procedures which require them to abide by the Highway Code. The OMP also sets clear expectation on marshals and outlines their tasks in order to control rider behaviour. The OMP sets out a Disciplinary Procedure in the case of breaches by riders of Deliveroo's Policies and Procedures. If residents become aware of such breaches they can raise them directly with Deliveroo. Section 11 of the OMP sets out how such complaints will be handled. Deliveroo has confirmed that there have been 3 instances where riders have fallen foul of the 3 notification rule and are no longer allowed to operate from Swiss Cottage Editions site as a consequence. This demonstrates that continuous breaches are being appropriately dealt with in line with the disciplinary procedure in the OMP. Should Deliveroo not deal with a complaint fully and in a timely fashion, the next stage is for a resident to complain to the planning enforcement team about a breach of condition or a breach of the OMP, which would be a breach of planning control. The Council's Enforcement Team has received no complaints about the operation of the site since the temporary permission was granted. This is a strong indication that the procedures are, on the whole, working effectively. Nonetheless, if breaches do occur that are not adequately addressed, the council will have the power to take further action.

15 SAFETY AND SECURITY

- 15.1 There are 15 CCTV cameras positioned on the site both within the building and externally on the external envelope of the building. The CCTV cameras (would ensure) safety of both riders and personnel entering and leaving the site.
- 15.2 Lighting outside the building operates on a sensor for safety reasons. This ensures that the lighting is not continuously operating when the site is not in

use. It is static and non-flashing and is kept at a low level to reduce any glare to neighbouring properties. The proposal would not harm the amenity of neighbouring residents and would be considered acceptable.

16 REFUSE AND RECYCLING

- 16.1 There would be dedicated areas for both general waste and recycling bins (each of 1,100 litre capacity) stored at the rear of the site.
- 16.2 Refuse collection is managed by Veolia, the Council's appointed waste management partner. Refuse collection vehicles access the site via Belsize Road, and across the car park to the rear of Cresta House. There is a locked gate that separates the site from the Cresta House car park. Veolia have gained formal access and have the ability to open the gate, through the Landlord of the building. Veolia reverse the refuse lorry into the rear of the site, and pull the bins from where they are stored in the car park space to the parked lorry to offload.
- 16.3 There would be 4 waste and 4 recycling collections per week. Refuse and recycling from other commercial operators that front onto Finchley Road and residents that occupy the upper floors of 115-119 Finchley Road is collected at the same time. This provision appears to be effective and so would be continued under any permission granted. The regular collection times prevent odour nuisance and is considered to meet the objectives of policies TC4 and CC5 (Waste).

17 EMPLOYMENT AND TRAINING OPPORTUNITIES

- 17.1 The development currently employs 29 people, including 6 employees of Deliveroo. Due to the nature of the business the riders are self-employed however the applicant has advised that approximately 60% of the riders are registered as residing in Camden. The local residents dispute this claim citing the rider petition that was submitted by the applicant in support of the application which included the postcodes of the riders addresses many of which do not live in Camden. Notwithstanding this the use supports 10 businesses in the area (nine kitchens and the site operator). The Council are keen to see links to local employment so that local residents are recruited into work wherever possible. This would require a commitment by the applicant to advertise opportunities locally in the first instance before they are advertised formally on their national website. The applicant also agreed to set up a local grant programme for voluntary and community sector (VSC) organisations. These employment and training opportunities would be secured by s106 agreement and would be an additional obligation not secured under the terms of the temporary permission.

18 PLANNING OBLIGATIONS

- 18.1 The proposal would include the following obligations:

Operation of the use

- Operational Management Plan (OMP) – a bespoke continuing OMP (to include a community working group (CWG))
- Review of the current OMP to explore additional measures to improve compliance

Employment

Employment and training plan – to increase the potential for local employment

19 CIL

- 19.1 The change of use of an existing building is not liable to Community Infrastructure Levy (CIL) unless it involves an extension which provides 100 sq. m or more of additional floorspace or involves the creation of a new dwelling even when it is below 100 sq. m. As the proposal does not include an increase in floorspace it is not liable to pay a CIL contribution.

20 CONCLUSION

- 20.1 The principle of the use in this town centre location is considered to comply with the objectives of policy TC4. The Planning Inspector concluded that the use did result in a harmful and unacceptable impact on the quality of life of neighbouring occupiers and the character and amenity of the surrounding area contrary to A1; however a temporary permission was granted with the agreed mitigation measures in place that were secured by the OMP as part of the s106 legal agreement. The applicant sought to address some of these concerns by upgrading the ventilation equipment (improvement in the control of odour) and a change to the delivery operation from motorised scooters to push bikes to reduce congestion at the site access and improve pedestrian safety. No evidence has been provided by any party that motorbikes or motorised scooters have accessed the site since they were prohibited in July 2019 (apart from one isolated incident when the motorbike rider was from another delivery company trying to deliver to the flats above the site fronting onto Finchley Road). This was a very significant operational change and has been enforced successfully. Hours of operation and servicing have been introduced, along with noise limits and odour control. A wide range of controls are also incorporated in the OMP and on the whole, there has been significant improvement in the impact of the use since issuing the enforcement notice. Most of the controls have been effective at mitigating the most significant impacts and whilst there has not been total compliance, all of the time, the controls have provided a framework for the use to operate with acceptable levels of impact. The site is a commercial site in a mixed-use town centre and it would be unreasonable to expect a commercial use to operate in such an area without impact. The use supports the economy, local business and would also secure an employment and training plan. This, together with appropriate conditions and heads of terms secured by a s106 legal agreement, including further review of the current controls, will ensure that the use can be managed and operate without causing unacceptable harm to amenity, the surrounding environment, pedestrians and the highway network in accordance with planning policy.

21 RECOMMENDATION

21.1 Planning Permission is recommended subject to conditions and a Section 106 Legal Agreement covering the following Heads of Terms:-

- Operation Management Plan (including Community Working Group)
- Review of the current OMP
- Employment and training plan

22 LEGAL COMMENTS

22.1 Members are referred to the note from the Legal Division at the start of the Agenda.

23 CONDITIONS

1	<p>The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>Existing Drawings: 2019-026-208; 2019-026-203 Rev A; 2019-026-202; 2019-026-201; 2019-026-200 Rev A.</p> <p>Proposed Drawings: 2019-026-204 Rev D; P0000027/001 Rev 0; 2019-075-209 Rev A; 2019-075-207 Rev A; 2019-026-206 Rev A; 2019-026-205 Rev A; 2017-075-021 Rev H; 2019-026-212.</p> <p>Supporting Documents: Summary of Monitoring undertaken since March 2020; Transport Statement dated May 2020; Review of adopted Operational Management Plan dated April 2020; Assessment of noise from fixed plant equipment dated 13th May 2020; Planning Statement dated May 2020; Assessment of noise from Deliveroo Editions operations dated 21st May 2020; Compliance Review - Odours dated 22 May 2020; Extract from brochure of Metamark 7 Series (High Performance Calendered Sign Vinyl) from Metamark The Materials Company; Community Working Group Minutes dated 12th August 2020</p> <p>Reason: For the avoidance of doubt and in the interest of proper planning.</p>
2	<p>Materials to match (FLUE)</p> <p>The three extract ducts on the rear elevation of the building shall be individually wrapped in the brick effect Metamark vinyl wrap to match the brickwork on the rear elevation in accordance with the proposed plan 2019-026-212 hereby approved within 3 months of the date of the decision.</p> <p>The brick effect vinyl wrap shall thereafter be permanently retained and maintained in accordance with the manufacturer's recommendations.</p> <p>Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 of the Camden Local Plan.</p>

3	<p>Number of kitchens</p> <p>The number of kitchens on the premises shall at no time exceed nine.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
4	<p>Restriction on mode of transport</p> <p>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.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
5	<p>Hours of operation</p> <p>No deliveries from the premises to customers shall be carried out outside the following times: 1200 to 2300 hours.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
6	<p>Restriction to collections</p> <p>No collection of orders from the premises shall take place by customers at any time.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
7	<p>Time clocks</p> <p>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.</p> <p>Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
8	<p>Timer equipment</p> <p>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)</p> <p>Fan Operational speed (Hz)</p>

	<p>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</p> <p>The timer equipment shall thereafter be permanently retained and maintained in accordance with the manufacturer's recommendations.</p> <p>Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
9	<p>Noise</p> <p>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.</p> <p>Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
10	<p>Odour (control)</p> <p>For so long as the use continues the odour control equipment shall provide a Very High level of odour control, as outlined in "Control of Odour & Noise from Commercial Kitchen Exhaust Systems" by Dr Nigel Gibson dated 05/09/2018.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
11	<p>Odour and ventilation system (maintenance)</p> <p>The use shall not proceed other than in accordance with the approved scheme for maintenance of the odour filtration and ventilation system. 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</p>

	<p>the odour filtration and ventilation system is being operated and maintained in full accordance with the Plant Management Plan.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
12	<p>Deliveries</p> <p>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.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
13	<p>Cycle parking</p> <p>The cycle parking and e-charging spaces 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 retained for the parking of bicycles and the charging of electric two wheeled vehicles.</p> <p>Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the London Borough of Camden Local Plan 2017.</p>

24 INFORMATIVES

1	<p>Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).</p>
2	<p>All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319 or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)</p> <p>Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public</p>

	Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.
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Appendix 3



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

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.

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 use¹. 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

¹ *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 hour². 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.

² 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_{A90} daytime (0700 to 2300 hours) and 45 dB L_{A90} 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 issued³. 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

³ 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 Group⁴.

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

⁴ 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 room⁵.

⁵ 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 levels⁶ 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 matter⁷. 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.

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

⁷ 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)

Fan	Operational speed (Hz)
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, L_{A90} during the day (between 0700 and 2300 hours) and is 45 dB, L_{A90} 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

Plans

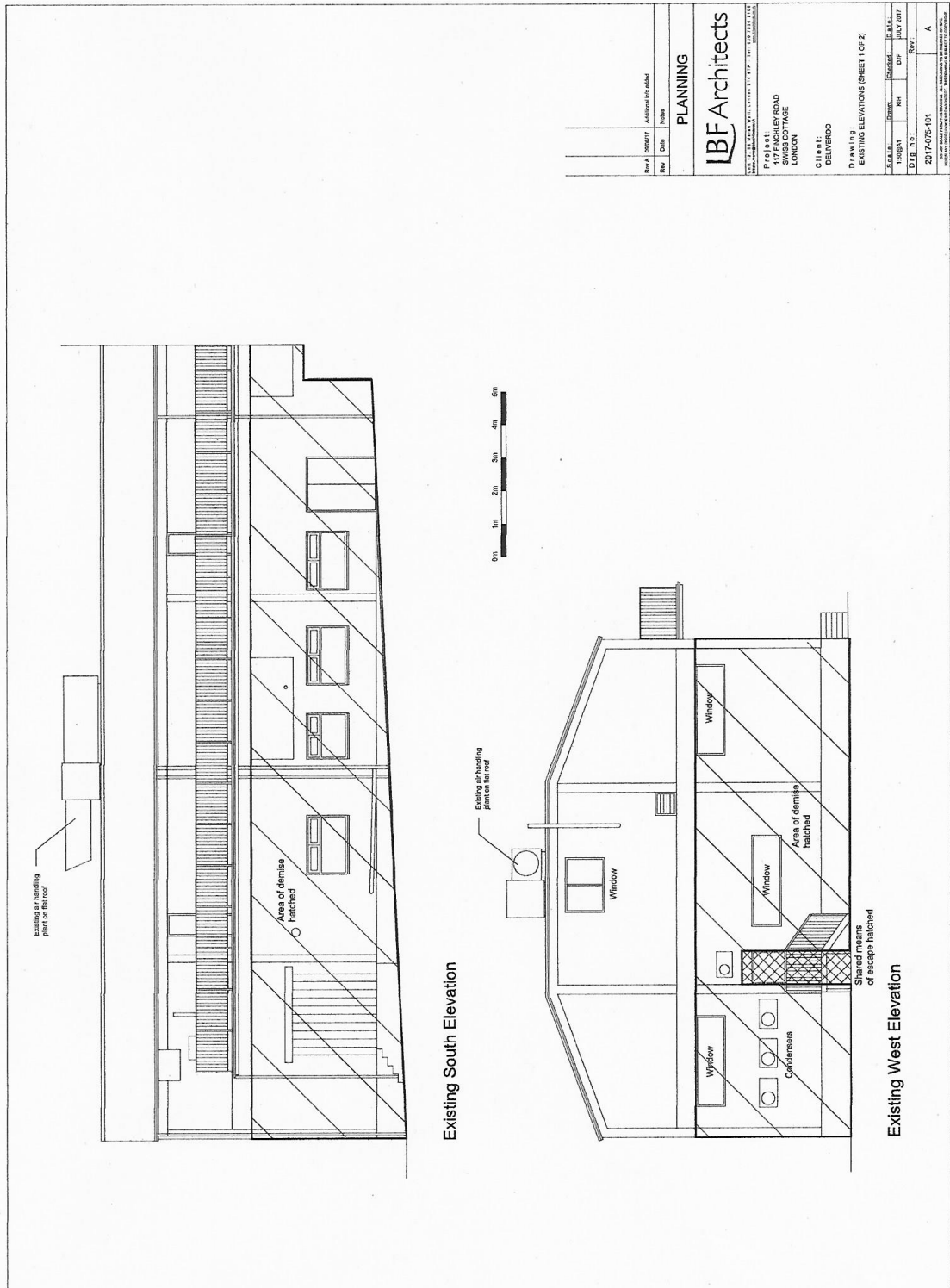
These are the plans 2017-075-101-A and 2017-075-102-A referred to in my decision dated: 17 September 2019

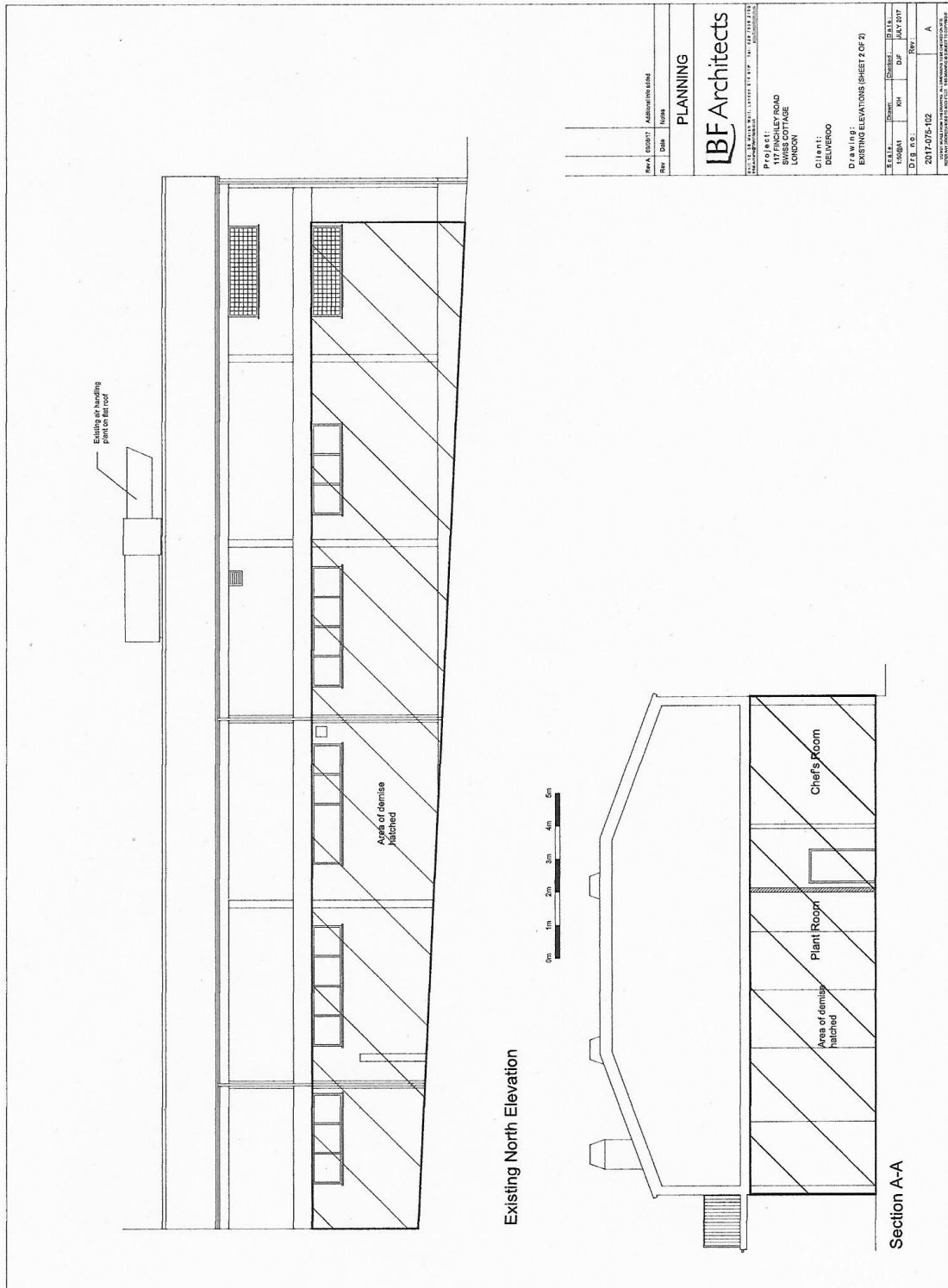
by Diane Lewis BA(Hons) MCD MA LLM MRTPI

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

Reference: APP/X5210/C/18/3206954

This space is intentionally blank, the plans are on the following two pages.





Appendix 4

Address:	Land to the rear of 115-119 Finchley Road London NW3 6HY		4
Application Number(s):	2020/2367/P	Officer: Elaine Quigley	
Ward:	Swiss Cottage		
Date Received:	29/05/2020		
<p>Proposal: Use of the site as commercial kitchens and delivery centre (Sui Generis use) on a permanent basis, installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space (RETROSPECTIVE).</p>			
<p>Background Papers, Supporting Documents and Drawing Numbers:</p> <p>Existing Drawings: 2019-026-208; 2019-026-203 Rev A; 2019-026-202; 2019-026-201; 2019-026-200 Rev A.</p> <p>Proposed Drawings: 2019-026-204 Rev D; P0000027/001 Rev 0; 2019-075-209 Rev A; 2019-075-207 Rev A; 2019-026-206 Rev A; 2019-026-205 Rev A; 2017-075-021 Rev H; 2019-026-212; Extract from brochure of Metamark 7 Series (High Performance Calendered Sign Vinyl) from Metamark The Materials Company.</p> <p>Supporting Documents: Summary of Monitoring undertaken since March 2020; Transport Statement dated May 2020; Review of adopted Operational Management Plan dated April 2020; Assessment of noise from fixed plant equipment dated 13th May 2020; Planning Statement dated May 2020; Assessment of noise from Deliveroo Editions operations dated 21st May 2020; Compliance Review – Odours dated 22 May 2020; Extract from brochure of Metamark 7 Series (High Performance Calendered Sign Vinyl) from Metamark The Materials Company; Community Working Group Minutes dated 12th August 2020</p>			
<p>RECOMMENDATION SUMMARY: Grant Conditional Planning Permission subject to Section 106 Legal Agreement</p>			
Applicant:		Agent:	
Roofoods Limited (Deliveroo Editions UK Ltd)		Firstplan Broadwall House 21 Broadwall London SE1 9PL	

ANALYSIS INFORMATION

Land Use Details:			
	Use Class	Use Description	Floorspace (Gross Internal Area (GIA) sq. m)
Existing	<i>B2 General Industry</i>		487 sq. m
	TOTAL		487 sq. m
Proposed	<i>Sui Generis</i>		487 sq. m
	TOTAL		487 sq. m

Parking Details:	
	Parking Spaces (General)
Existing	1 (car parking space) 37 (cycle parking spaces)
Proposed	1 (car parking space) 37 (cycle parking spaces)

OFFICERS' REPORT

Reason for Referral to Committee: An application which, in the view of the Director of Economy, Regeneration and Investment, should be considered by the Committee (Clause 4).

1 EXECUTIVE SUMMARY

- 1.1 This application is being referred due to the time restrictions on the current temporary planning permission. It would need to be referred to Members' Briefing Panel due to the number of objections, however, if the panel then advised the Director to refer it to committee, this would extend the decision beyond the expiry date of the consent with November being the earliest committee date. Given this and the nature of the objections received, the Director considered it reasonable on this occasion to refer the application directly to the committee for a decision.
- 1.2 Planning permission was originally granted on 17th September 2019 following a public inquiry for the use of the site as commercial kitchens and delivery centre (Sui Generis use) on a temporary basis for 14 months (expiring 17th November 2020). A bespoke operational management plan (OMP) was secured as part of a S106 legal agreement, along with other controls, to cover the overall management arrangements and behaviour of riders and staff with

deterrents and sanctions in place for any infringements to the plan. Monitoring has been undertaken by the applicant from November 2019 to March 2020 and again in July 2020 in respect of the site operation and how it is being managed in accordance with the OMP and the conditions to try to ensure that the site can operate without unacceptable harmful impacts to the amenity of local residents and to the local environment and highway network. The current application is seeking permanent permission to continue to use the site as commercial kitchens and delivery centre. The monitoring information demonstrates that whilst many of the conditions and principles of the permission have been followed, infringements of the OMP have occurred during the monitoring period. However many of these have been dealt with by the on-site management team and on-site marshals. Detailed logs of behaviour and movements within and around the site have been kept by local residents. The concerns raised by local residents and evidence submitted by them has been given significant weight. However, they also need to be viewed in the context of the overall operation of this commercial use in a town centre, within all the restrictions of its planning permission (including conditions). Although controls imposed on the use by the current temporary permission appear to have reduced the impact, officers consider some further measures could also be explored to secure greater compliance with the OMP.

- 1.3 Officers have given the economic benefits of the scheme significant weight. The use supports 10 businesses in the area, at a time where there is significant pressure on businesses from the current economic downturn. These include providing opportunities for new businesses to set up within the borough and to provide apprenticeships and training. Paragraph 80 of the NPPF, which sits within a Section entitled Building a Strong, Competitive Economy, states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Paragraph 80 also makes clear the importance of driving innovation and supporting areas with high levels of productivity. This proposal is in accordance with all of the above objectives.
- 1.4 Although the trial period has not seen complete compliance with every element of the OMP, the use has demonstrated a general ability to be controlled and adapted so as to mitigate much of the impact on the area, while supporting local economy. Therefore, officers recommend planning permission be granted subject to a S106 legal agreement to secure an operation management plan and an employment and training plan. However, it is also recommended that under the terms of the S106 legal agreement the applicant be required to enter into an immediate review of the current OMP. This should focus on additional measures to secure better compliance, particularly around bike movements on the highway near the site.

2 BACKGROUND

- 2.1 Deliveroo (Roofoods Ltd) is an online food delivery company that operates in over 200 locations across the UK and across Europe. Its subsidiary operation,

Deliveroo Editions, focuses on growing a network of ghost kitchens – kitchens located off-site from restaurants for the preparation of delivery only meals.

Change of use of the site

- 2.2 The site was subject to an unauthorised change of use to 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. The council issued an enforcement notice on 1 June 2018 (EN17/1005) requiring the use the cease.

The appeal

- 2.3 An appeal was lodged by the applicant under section 174 of the Town and Country Planning Act 1990 against the enforcement notice. The appeal was deliberated at a 4 day Public Inquiry that was held from 30th July 2019 to 2nd August 2019.
- 2.4 After the enforcement notice was issued and during the course of the appeal the applicant made changes to its operation particularly around the mode of transport used for deliveries. The use of motorised scooters for customer deliveries to and from this site ceased and on 3rd July 2019 all deliveries have been carried out on foot, by pedal bike and by electric two-wheeled vehicles (ETW). The operational changes were taken into consideration as part of the appeal in determining the planning permission, and the improvements have also been considered in assessing this application. These were among a range of restrictions secured by officers as part of the appeal.
- 2.5 The main issues identified by the Inspector were:
- (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 could be overcome by planning conditions or planning obligations
- 2.6 The temporary permission was granted to allow further monitoring of the operation to take place in order to continue to assess the effect of the operation on the area with the controls that had been agreed during the Inquiry. These agreed controls were secured by legal agreement and comprised the following:
- The restriction on delivery vehicles collecting orders from the site to bicycles and electric 2 wheeled vehicles
 - The implementation of a bespoke operational management plan (OMP) that regulates the operation of the site. This is a working document that can be amended and updated where and when necessary.

2.7 Eleven conditions were also attached to the temporary permission to manage the impact of the development and to safeguard the amenity of neighbours. These were mainly controls on the number of kitchens on the premises, the delivery mode of transport to and from the site, hours of operation, servicing, and noise and odour from the condenser units and extract ducts.

2.8 The applicant has been required to monitor the operation over the 12 month period since the appeal. As part of the submission the applicant has provided evidence that it has been in active use over this period. This includes monitoring information between November 2019 and May 2020, and the minutes of the Community Working Group which is required to meet every 3 months during the first 12 months.

The Operational Management Plan (OMP)

2.9 The OMP was drafted and agreed between the applicant and the Council during the Public Inquiry. It covers a number of matters, including operating hours of the site, behaviour and conduct of riders and staff, training and responsibilities of staff and riders, servicing arrangement and communication with the local community and the Council. Provision is made for the monitoring and review of the OMP and this was detailed in the s106 that was secured as part of the temporary planning permission. The OMP has not been revised since its initial agreement between the applicant and the Council as it was considered necessary to monitor the operation and how the applicant was adhering to the responsibilities and requirements set out within it. The matters arising from the OMP will be discussed later in the relevant amenity and highways sections.

Monitoring of the operation

2.10 In paragraph 114 of the appeal decision the Inspector confirmed that “*monitoring would be essential for the trial period.*” Following the appeal decision the applicant instructed Firstplan Planning Consultancy to undertake the monitoring exercise. The applicant advised that an independent company was not instructed to carry out the monitoring as Firstplan knew the site and had planning and environmental expertise. The structure and content of the proformas were agreed between the applicant and the Council to cover all the elements of the OMP. Monitoring was carried out by 2 members of staff with one located at the top of the ramp and one located at the bottom of the ramp (see Figure 2 below) for 1 hour.



Figure 2 (above): Location of surveyors carrying out the monitoring (locations 1 and 2)

- 2.11 Monitoring was also carried out around the site to take account of any noise and odour coming from the site and to check if riders were waiting for orders in surrounding streets in close proximity to the site. There were 4 survey locations that included Cresta House to the north (Location 1), outside no. 6 Dobson Close (Location 2), the lower car park (Location 3) and upper car park (Location 4) in Dobson Close (see Figure 3 below). These surveys were conducted over a period of an hour.

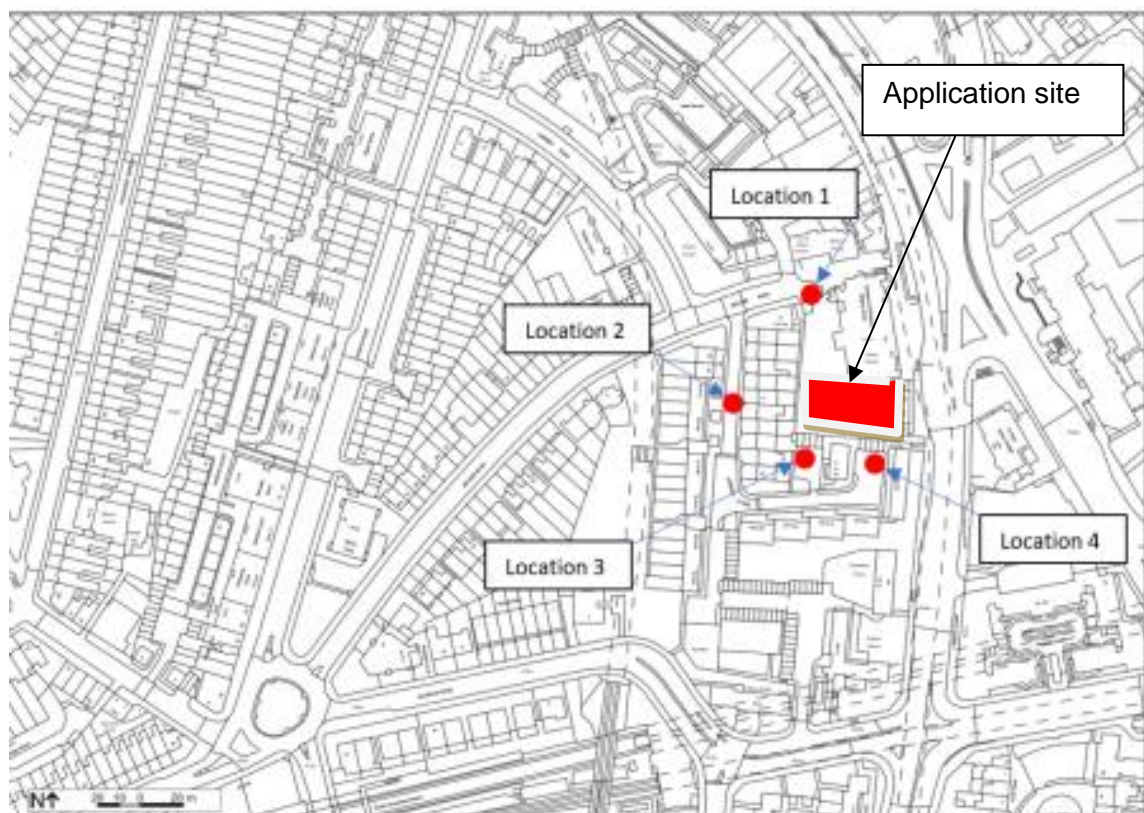


Figure 3 (above): Map showing locations where monitoring around the site was undertaken

- 2.12 15 surveys were undertaken between Thursday morning and Sunday evenings over 5 months between November 2019 and March 2020. The chosen days were considered to represent the peak times for rider deliveries thereby giving an account of the busiest times of the site operation. Further dates had been planned to carry out monitoring sites throughout March however these had to be cancelled due to the Government imposed lockdown in relation to the Covid-19 pandemic. Three more monitoring visits were undertaken over June and July 2020 following the easing of lockdown measures and results submitted as part of the planning application.
- 2.13 The applicant has also submitted summaries of the on-site log book information that they hold in relation to any infringements by riders or restaurant delivery partners identified by the on-site marshals over the same period. Officers queried the form that this information took with the suggestion that any sensitive information could be redacted. This issue was also discussed at the Public Inquiry and the Council was satisfied that the case to withhold personal information was sound. The applicant advised that when an incident is logged it contains personal and sensitive information (for example rider ID's) that would be required to be redacted. Therefore in practice summaries of the information were considered the best way to present the information as too much information would otherwise be required to be redacted that would render it meaningless.

Consultation

- 2.14 The Planning Inspector made it clear during the Inquiry that monitoring for a trial period would be necessary to achieve the purpose of the temporary permission. A community working group (CWG) was considered integral to the monitoring of the use in order to facilitate consultation with the local community over the temporary period. Local residents and representatives of local residents groups (maximum of 8 people) make up the CWG. The local groups consist of representatives from Cresta House Residents Association, Hilgrove Estate Tenants and Residents Association and Local Residents Group who were one of the Rule 6 parties at the appeal. One of the clauses in the legal agreement states that meetings should be scheduled to take place every 3 months during the first calendar year of the planning permission. CWG meetings have taken place on 05/02/2020 at Swiss Cottage Library; 09/04/2020 (postponed due to national lockdown), 27/05/2020 (online), and 12/08/2020 (online).
- 2.15 The OMP includes a dedicated email address that local residents can use to notify the applicant about any concerns and or suggestions. Deliveroo are expected to send an acknowledgment of any complaint received within 24 hours and this can include a request for further information regarding any alleged incident. The alleged incident is investigated by the site manager and the complainant is then informed of the outcome and steps taken to address/resolve the complaint. Two records of complaints are kept (i) an on-site incident log (ii) log of incidents reported by the local community. The applicant advised

that it was necessary to amalgamate the logs in order to avoid duplication of entries and to make it easier to group complaints by issues that require investigation.

3 SITE

- 3.1 The application site (approx. 487 sq. m in area) is in the Finchley Road / Swiss Cottage Town Centre surrounded by commercial and residential uses. It is located to the rear of 115-119 Finchley Road (west side of Finchley Road and near to the Swiss Cottage tube station). The site is accessed via a private lane off Finchley Road that runs immediately to the south of 115 Finchley Road. The main access to the building is south facing. There is an open forecourt area to the rear (west part of the site) that includes a bin storage area, a car parking space for delivery vehicles and a space that includes a dedicated electric charging point for electric bikes.
- 3.2 The site is surrounded by residential properties to the north, south and west and on the upper floors of the commercial units along Finchley Road (east of the building). Directly to the north of the site is the car parking area for Cresta House which is accessed from Belsize Road (a 9 storey building with residential units on the upper six floors and commercial on the lower three). The land to the rear of Cresta House is separated by a wire fence and locked gate. To the south and west of the site are two storey residential properties that front onto Dobson Close.
- 3.3 It is not located within a Conservation Area nor does it contain or is it within the setting of any listed buildings. Finchley Road (A41) is part of the Transport for London Road Network (TLRN).
- 3.4 The existing building is a two storey brick building which extends to the rear of 115-119 Finchley Road. The applicant occupies the lower ground floor. There is access to the upper floor of the building from Finchley Road which is occupied by separate commercial tenants and is a separate operation from the lower ground floor level. The upper floor area of the building does not form part of the planning application. Deliveroo commenced operating on site in October 2017.

4 PROPOSAL

- 4.1 Planning permission is sought for use of the site as commercial kitchens and delivery centre (*Sui Generis* use) on a permanent basis, installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space. The use has been operating for approximately 2 years. Planning permission was granted at appeal for the use and associated equipment on a temporary basis for 14 months. This was to see if the initial impacts of the unauthorised use, which led to the enforcement notice, could be mitigated through controls negotiated by officers and secured as part of the appeal. This planning application seeks planning permission to continue the use on a permanent basis.

The operation – Deliveroo Editions concept

- 4.2 Deliveroo Editions is the term used by the applicant for the current use of the site as commercial kitchens and delivery centre. The building is laid out to provide 9 fully equipped micro kitchen pods which are staffed and operated by individual established restaurant partners. The restaurant partners include Pinza, Zia Lucia, Waleema, Motu, Honest Burger and Busaba. Food is prepared and cooked and delivered to customers using Deliveroo's fleet of riders. The riders to this site can only arrive on foot, or can use pedal cycles and electric two wheeled bikes. No riders on scooters or motor bikes have the ability to pick-up deliveries from this site. The site serves an extensive radius of residents many of whom live within 500m of the site. However the catchment area for an Editions site is typically approximately 3 kilometres with a maximum riding time of about 15 minutes for the delivery of the orders. The catchment area of the site extends to parts of Hampstead, Kilburn, St John's Wood, Camden Town and Kentish Town.
- 4.3 There is no ability for customers to visit or access the site. Orders and sales are placed solely online, prepared fresh to order and delivered immediately by delivery riders.
- 4.4 The Editions concept provides a platform enabling restaurant partners to open and deliver without the up-front costs or risks of setting up and managing their own premises. It also allows established restaurants to reach new customers in places where they do not have an existing restaurant in the area. For consumers, it provides variety and choice of different types of cuisines to be delivered directly to their doors within a short space of time. All orders are taken via the Deliveroo app which customers have to download.
- 4.5 The focus of the business model is "last mile" delivery. Deliveroo uses the latest technology to ensure that food is delivered in the most efficient way to the customer. Deliveroo's real-time dispatch algorithm, known as Frank, searches for available riders and orders, and every two seconds evaluates the most efficient way to dispatch them. This technology predicts when a rider should arrive to the site, reducing time spent waiting to collect deliveries and provides customers with more precise real-time expectation of when they will receive their food deliveries.

The operation on site

- 4.6 The site includes 9 micro kitchen pods measuring approximately 32 sq. m with a larger kitchen pod measuring 48 sq. m. Each pod is independent and includes a preparation and cooking area. There is a shared dispatch area where meals are placed from all kitchens to be collected by the delivery riders. There is a waiting area for riders to wait for the collection of orders, a staff toilet, management offices, and cold and dry storage areas.

Hours of operation

- 4.7 The site can be accessed from 08:00am and operates 7 days a week. Kitchen prep is carried out from this time. Orders can be placed from 12:00 noon every day and can be received up until 22:45 and the kitchens close at 23:00.

- 4.8 All plant equipment and noise generating activities finish by 24:00. The level of commercial cooking activity and comings and goings from delivery personnel remains at its highest / most intense when the highest proportion of customers are at home wishing to make a food order. This is generally between the times of 19:00 and 21:00.

Collection of orders

- 4.9 The Deliveroo app notifies the rider to go to the site to collect the order when it is almost ready to be dispatched. Riders enter the site from the Finchley Road entrance where their order is checked by a site marshal who is positioned at the top of the ramp. Riders are only allowed to enter the site if they have a valid order to collect. The riders travel down the ramp on the southern side of the building to the cycle parking area. They enter the building by the southern side entrance and go to the dispatch room where they collect the food order and leave the site the same way.
- 4.10 During the Covid-19 pandemic national lockdown period when businesses were allowed to reopen and operate, riders were unable to enter the building to wait for their orders due to social distancing procedures. Only 3 riders can enter the dispatch area. The riders therefore have to wait outside the building at the bottom of the ramp at a safe distance from each other to await the collection of their order.
- 4.11 The number of riders can range from approximately 20 to over 100 per hour during various times of the day during various days of the week. Not more than 30 riders are permitted into the site at any one time and this is controlled by the OMP.

Marshals

- 4.12 Marshals are employed to monitor activities and behaviour on site. One traffic marshal is onsite from 08:00am Monday to Saturday (when supplier deliveries are made). However, some delivery drivers tried to access the site before 8am so now someone is onsite from 7:20am to ensure compliance. Two marshals are present on site when the site is open for trading. During trading hours one marshal is located at the top of the ramp to ensure only riders with confirmed orders access the site. They monitor behaviour and conduct of the riders when they enter and leave the site. They are also responsible for ensuring that no more than 2 delivery vehicles delivering goods to the site are allowed entry into the site at any time. The second marshal is located at the bottom of the ramp. They ensure that riders park their bikes appropriately and wait quietly for orders. The second marshal also assists the parking and manoeuvring of the delivery vehicles into and out of the parking area at the rear of the site.

Cycle parking

- 4.13 There are 5 low hoop bike racks that accommodate 5 bikes, 14 Sheffield racks that accommodates 26 bikes or 12 e-scooters and an additional 6 spaces that accommodate 6 e-scooters.

5 RELEVANT HISTORY

- 5.1 Planning permission was granted on 08/05/1992 (ref PL/9200229) at 119 Finchley Road for change of use of ground floor from Class A1 to mixed use of A1 and B1.
- 5.2 Planning permission was **refused and warning of enforcement action** to be taken (ref 2017/4737/P) on 11/05/2018 for installation of external plant, including 3 no. extract ducts, 4 no. flues, 3 no. air intake louvres, 1 rooftop extract and 3 no. air condenser units (Retrospective). There were 2 reasons for refusal relating to the visual impact of the extract ducts and rooftop plant and lack of information to demonstrate that all the plant, when operating at capacity, would not harm the local amenity.
- 5.3 A certificate of lawfulness of existing use (CLEUD) was **refused** and enforcement action authorised on 11/05/2018 (ref 2018/0865/P) for use of the unit to the rear of 115 Finchley Road as a Class B1c commercial kitchen. The use as a commercial kitchen was considered to be materially different to the previous use of the premises and constituted a material change of use.
- 5.4 An enforcement notice (ref EN17/1005) was issued on 1 June 2018 and in April 2019 against change of use from light industrial use (Class B1) to commercial kitchens and delivery centre (sui generis use); and installation of external plant, including 3 extract ducts, 4 flues, 3 air intake louvres, 1 rooftop extract and 3 air condenser units. There were 7 grounds for issuing the notice:
1. The breach of planning control has occurred within the last 10 years
 2. The high volume of vehicle deliveries serving the property results in a significant noise nuisance and a harmful loss of amenity to adjacent occupiers contrary to Policy A1 of the Camden Local Plan 2017
 3. The use of the property, in the absence of measures to control the unauthorised hours of operation, litter, storage, waste, recycling, servicing and delivery results in nuisance and a harmful loss of amenity to adjacent occupiers contrary to Policy A1 of the Camden Local Plan 2017.
 4. The delivery vehicles and parking of these resulting from the unauthorised use of the property has a harmful impact on highway safety in the vicinity of the site, causing difficulty for vulnerable users and neighbouring occupiers contrary to policy A1 of the Camden Local Plan 2017.
 5. The extract plant and associated equipment, by virtue of their siting and visual impact, cause harm to the character and appearance of the property and the context of the local area contrary to policy D1 of the Camden Local Plan 2017.
 6. A suitably comprehensive acoustic survey and a risk-based odour control and impact assessment demonstrating that all plant equipment, when operating at full capacity, would be capable of doing so without causing harm to local amenity has not been provided. As a result the plant and

equipment that have been installed at the property are contrary to policies A1 and A4 of the Camden Local Plan 2017.

7. The plant equipment facilitates the unauthorised use of the property, and whilst their operation and appearance may be controlled by planning condition, the use is unacceptable in principle and the associated operational development is therefore unacceptable.
- 5.5 As part of the notice 10 steps were required to cease operations and remove the plant equipment (extract ducts, flues, louvres and air conditioning units) with effect from 13/07/2018 unless an appeal was submitted.
- 5.6 The applicant appealed the enforcement notice (ref APP/X5210/C/18/3206954). The appeal was **allowed** on 17th September 2019 and the enforcement notice was quashed and planning permission was granted on a temporary basis for 14 months to allow for further monitoring of the use and its impact on the neighbouring occupiers and the surrounding area (see background section above for further details of the Inspector's decision).

6 CONSULTATION SUMMARY

Statutory Consultees

Transport for London (TfL)

- 6.1 No response received to date. TfL did not raise objections at the public inquiry.

Local Groups

Cresta House Residents Association (CHRA) objection:

- 6.2 An objection has been received from the CHRA which raises significant concerns on a number of issues (summarised below). The 37 page objection includes photographic evidence and appendix 1 includes a list of over 400 alleged breaches of the OMP by Deliveroo riders between September 2019 and July 2020 – the majority of which have been witnessed from May 2020 to July 2020. Appendix 2 includes the dates and reference numbers of the logs of complaints to Camden's Environmental Health Team regarding odours associated with the operation. A copy of the objection is available to view on the Council's website.
- 6.3 The issues raised are summarised in line with the headings in the objection and are detailed as follows:
 - (1) Deliveroo has not stopped the cooking smell nuisance caused by the 9 kitchens
Officer's response: See section 12 (Environmental Impacts - Odour)
 - (2) Deliveroo has not stopped its riders from congregating outside the site
Officer's response: See section 11 (Amenity)
 - (3) Deliveroo has not stopped its riders from cycling the wrong way on the road or cycling on the footpaths

Officer's response: See section 13 (Transport)

(4) Deliveroo refuses to comply with the condition that riders must turn left to exit the site

Officer's response: See section 13 (Transport)

(5) Deliveroo cannot meet its obligation to reliably identify its riders

Officer's response: See section 13 (Transport)

(6) Consultation with local community and the Community Working Group (CWG)

Officer's response: See section 11 (Neighbouring Amenity)

(7) Deliveroo Editions does not benefit the local community

- Location of operation surrounded by a peaceful residential community
- Trading hours – site trades 112 hours per week not 77 hours per week as cited in the planning statement
- Deliveroo an essential service to local people?

Officer's response: See section 8 (Land use)

(8) Assessment of the trial period

- Local residents surrounded by Deliveroo workers
- Evidence demonstrates that the site is not operating correctly

Officer's response: See section 14 (Management of the site)

(9) Conclusions

- Site situation in this particular town centre is of little to no benefit to local residents

Officer's response: See section 8 (Land use)

- Sites hours of operation are 112 hours per week not 77 hours per week as claimed

Officer's response: See section 8 (Land use)

- The manner in which monitoring exercise was carried out renders the results unrepresentative and hence the conclusions drawn from them wholly unreliable

Officer's response: The monitoring exercise was undertaken over a specified period, over certain days at peak times. The results of the exercise have been read in conjunction with the evidence provided by the local residents of rider and marshal behaviour thereby allowing a full planning assessment to be undertaken

- Results from smell nuisance that originates three stories above ground by sniffing at ground level were unrepresentative and results therefore should not be taken seriously

Officer's response: See section 12 (Environmental Impacts)

- The Deliveroo Editions has not facilitated the growth of new or existing restaurants

Officer's response: The advantage of the Editions concept for business is that they can set up on site without significant up-front costs and investment because the kitchen units are fully equipped which can support businesses of all sizes in particular start-ups, small and medium-size enterprises.

- The creation of 6 jobs does not outweigh the harm to local amenity
Officer's response: See section 11 (Neighbouring amenity)

- No evidence to backup claim that Editions have made essential food deliveries to local people housebound by COVID-19

Officer's response: There is no policy requirement for the applicant to make deliveries of essential food to local residents during lockdown.

Winchester Road Residents Association (WRRRA) objection:

- Greatly puzzled as to who would want food delivered by these boys and men? They have no access to toilets and hand washing. Many look to be in dire need of a bath after hours on the road let alone being able to wash their hands. A few days ago, while walking down the rose path, a bushy pathway on the east side of Swiss Cottage Open Space, a young man in Deliveroo gear cycled into the pathway, parked his bike there and quite unabashed by my presence took a pee in the bushes. No hand washing could take place. I strongly recommend that we take care as to whom serves up our food. This is most distasteful; a fine example of the abuse of human dignity that the gig economy offers workers, imposes on the environment, and deludes the public into thinking its providing a service, an unhygienic one too.

Officer's response See section 11 (Neighbouring amenity)

Local Residents' Group (Rule 6 party) involved in the appeal objection:

6.4 Formation of CWG, meetings and local residents' complaints

- The Council had responsibility to inform Deliveroo of the local community groups who would form the CWG. The list was outdated and included groups like local schools
- Meetings mainly around benefits that Deliveroo bring to the area
- First CWG meeting was in person. The second was at the beginning of Covid-19 outbreak and was deferred. The third was by a platform that was not accessible to all and had technical problems

Officer's response: See section 11 (Neighbouring Amenity)

Signage

- Missing for a considerable amount of time
- Doesn't reflect new trading hours
- CWG informed of change to hours by site manager accidentally during 2nd meeting

Officer's response: See section 8 (Land use)

Legal planning permission

- Deliveroo are operating without planning permission and therefore illegal. If wider community were aware of this there would be more reports of incidents
- Site has been running illegally for several years

Officer's response: Planning permission was granted in September 2019 to operate on a temporary basis until 17th November 2020. It has therefore been operating legally since this time.

OMP

- How can it continue to be enforced when the site already fails to keep to the OMP
- Breaches reduced however may have been down to operation knowing they were being surveyed rather than improvements to enforcement
- Significant differences in the number of breaches between applicant and local residents
- OMP not sufficiently enforced

Officer's response: See section 14 (Management of the site)

Impact of site on the area

- No improvement to transport impact of bikes crossing the pavement or entering the bus lanes

Officer's response: See section 13 (Transport)

- Riders loitering for work in the side streets – residents unable to socially distance

Officer's response: See section 11 (Neighbouring Amenity)

- Litter and untidiness associated with rider behaviour

Officer's response: Riders would be expected to deposit any rubbish in nearby litter bins

- Noise and disturbance from delivery drivers

Officer's response: See section 11 (Neighbouring Amenity)

Odour

- Strong cooking Smells and odour

Officer's response: See section 12 (Environmental Impacts)

External plant

- Eyesore
- Brings industrial look to otherwise residential area

Officer's response: See section 9 (Design and Visual Appearance)

Adjoining Occupiers

- 6.5 Site notices were displayed outside 115 Finchley Road, 125 Finchley Road, and 2 site notices were displayed at various locations in Dobson Close from 03rd July 2020 to 27th July 2020 and a press notice was published from 09th July 2020 to 02nd August 2020.

Representations summary

Local residents

- 6.6 There have been 17 letters of objection from local residents at 15 Fairfax Place, Flat D 11 Compayne Gardens, 19 Cresta House, 133 Finchley Road, 119 Cresta House, 133 Finchley Road; 83 Finchley Road; unspecified address on Finchley Road, 53 Dobson Close, 69 Dobson Close, 4 addresses on Dobson Close (no numbers given); Castleden House, 83 Finchley Road, 70 Dobson Close (x 2); local resident who lives in the area but did not provide an address; unspecified address in Harden Road. The objections are wide ranging and cover a variety of issues. The following include a summary of the key issues:

Unsuitability of the site

- The intensity of use unsuitable for the site
- Quality of life of local residents has been greatly affected
- Disrespect for the local community from occupying the site without planning permission, to dismissing residents' complaints with all kinds of excuses means they are not good neighbours
- Local residents are not aware that the site is operating illegally otherwise there would be more complaints

Officer's response: See section 11 (Neighbouring Amenity) and section 13 (Management of the site)

Ineffectiveness of OMP

- Incidents recorded in the reports prove that the OMP has not effectively "bedded-in"
- Deliveroo riders still breaching the OMP in February 2020 shows how ineffective the OMP is. Deliveroo riders are still trying to gain access to the site from Dobson Close or cycling on the pavement. Deliveroo cannot effectively implement their OMP.
- Marshals are not enforcing the OMP and ignore any breaches of road rules of common courtesy to pedestrians

Officer's response: See section 14 (Management of the site)

Communication with local residents

- Deliveroo don't consult with local community before acting or inform the local residents about what is going on
- Disregard and respect for local residents

Officer response: See section 11 (Neighbouring amenity)

Amenity (noise and disturbance)

- Nuisance to neighbours
- Noisy all and at night
- Deliveries have occurred and continue to occur out of the stipulated hours
- Delivery vehicles regularly come into Dobson Close so the driver can obtain pedestrian access to the Deliveroo site
- Delivery vehicles are noisy as they are reversing in Dobson Close, outside the windows of local residents.

- Marshals are often noisy, shouting to / at the riders or to delivery personnel from one end of the slip road to the other.

Officer response: See Section 11 (Neighbouring amenity)

Increased trading hours

- Deliveroo have not informed the local community about the changes to the trading hours (signs at the entrance to the site still show old trading times).
- Not a benefit to the community
- Results in increased traffic on the slip road, more riders around the neighbourhood all day, increasing traffic on private roads such as Dobson Close
- Disruption to the neighbourhood is far greater than they would like to admit due to increased trading hours and clearing up after service finishes

Officer's response: See section 8 (Land Use) and section 13 (Transport)

Congregation of riders

- The riders congregate outside their premises at 117 Finchley Road as well as the pavements within its vicinity along Finchley Road and more recently congregated further afield around Harben Road area.
- The last mile system that Deliveroo uses is direct cause of the problems the local community have to face. The last mile system means the riders have to race to the site to collect their orders and therefore congregate in the neighbourhood and use any shortcut they can find in doing so.
- Riders are parking their bikes in the entrance to the flats at Castleden House for long periods of time whilst waiting to accept orders making it impossible for residents to enter or leave their own homes whilst also maintaining appropriate social distancing in line with COVID-19 guidelines.

Officer's response: See section 11 (Neighbouring amenity)

Disturbance from odour from cooking smells

- Noise and smells emanating from a food processing factory in a residential area. Such establishments should be located on commercial / industrial estates
- Site produces strong cooking smell and with additional vents they plan to build this will worsen the situation and adversely affect the quality of life for local residents. The cooking smells were especially unbearable on warm days and on occasions whereby the wind direction dictated how their cooking smells travelled.
- Unable to have my windows open in my flat because of the smell of cooking odours from the Deliveroo site. These are not the cooking smells of my neighbours as have been suggested by Deliveroo but are emanating from the Deliveroo kitchens. "Sniff" tests have been carried out by Deliveroo agents but these are not done at a high enough level to be of any use and so any data collected is not a true representation of the odours we residents surrounding the site notice.
- Often a very strong smell of cooking oil wafting across from the Deliveroo site.

Officer's response: See section 12 (Environmental impacts)

Highway / Public safety (pedestrians and road users)

- Delivery operation has raised issues relating to parking of bikes and use of the footway with 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.
- The problems with cyclists and now scooter deliveries has gotten worse and they are a complete menace to pedestrians and road users.
- Riders accelerate to get up the slip road and they have little or no regard for pedestrians crossing the top of the slip road to access shops/buses/residences. If admonished for their speed they are often rude and disrespectful
- Delivery bikers show no regard for residents using the roads and pavements and ignore the law when it suits them
- Riders sighted making dangerous manoeuvres, cutting across multiple lanes on Finchley Road (A41). Endangering their lives and those of motorists
- Behaviour of riders has remained unchanged despite change to electric bikes and push bikes
- Riders regularly ride on the local pavements, again with no regard for pedestrians.
- Pedestrians have to move out of the way of cyclists on the pavement
- Delivery vans can block the entrance so pedestrians have to move out into the road (bus lane) which is dangerous

Officer's response: See section 13 (Transport)

Servicing and Deliveries

- Access for deliveries is inadequate and often blocks pedestrians passage along the pavement
- Deliveries being made via the slip road are also trying to occur before the stipulated time of 8am.
- Delivery vans are still using Dobson Close as a car park. The most recent example is the company Carnevale using Dobson Close on 4th Jun 2020 (identified supplier of Deliveroo site). Shows the OMP is not working

Officer's response: See section 13 (Transport)

Character and appearance of the premises and the surrounding area

- Massive chimneys were erected without planning permission. They are an eyesore and can be clearly seen from the surrounding residences
- Unsightly chimneys which are an eyesore
- Officer's response: See section 8 (Design and Visual Amenity)
- The riders hang around the local area and sprawl on the pavements, waiting in neighbouring roads, leave their bags and bikes in the way of pedestrians, leave rubbish behind (drink bottles / cans / food wrappers) and bring the local area down with their presence.
- Riders make the area look untidy

Officer's response: See section 11 (Neighbouring amenity)

Support

- 6.7 2 letters of support have been received from 131 Belsize Road and 6 Brondesbury Road (a driver at Swiss Cottage Edition):

- Allows more food options in the area
- Encouraging low emission transport
- E-bike charging facility is needed
- If the site were to close it would have a huge financial impact on the riders

Responses to additional information

- 6.8 Additional information was submitted during the course of the application including a summary of the Swiss Cottage Editions log-book entries, minutes of the May 2020 CWG meeting, additional monitoring information, a signed petition by Deliveroo riders in support of the application, a letter of support from the 6 of the restaurant partners and the submission of an independent odour report.

Local Groups

- 6.9 **Cresta House Residents Association – objects**

A further letter was submitted by the CHRA in relation to the additional information submitted by the applicant. A letter was also submitted that was for the attention of the Head of the Planning Committee. The following concerns were raised:

Summary of log book

- No dates and time for the incidents they report
- Clump incidents together
- Omits first 7 months of 12 month trial period and omits first 4 months of complaints from residents
- Residents report multiple instances of similar behaviours because riders kept repeating the same breaches of conditions. This is the basis of the 3 strikes you are out policy at the heart of the monitoring system
- Number of complaints shouldn't count as there are many reasons why local residents have not wanted to participate in objecting to Deliveroo's operations including many people didn't know about the application as it was submitted at the height of the COVID-19 crisis; residents find it intimidating to gather evidence of Deliveroo activities and locals are worn out fighting planning applications

Officer responses: See section 10 (Reporting incidents). All objections raising material planning considerations are taken into consideration as part of the assessment of any planning application

Local employment

- Petition submitted on behalf of riders shows that of the 85 riders only 16 have postal codes in NW3 or NW6 the rest come from further parts of North London, Croydon, East London, Harrow, South West London, West London and Watford

- Riders do not need Editions to work they could deliver for other delivery providers in the area or in other Deliveroo locations
- No noticeable benefits to the local community other than the noticeable impact of switching from motorbikes to bicycles on both noise and congestion at the site
- There was no noise problem at the site before the arrival of Deliveroo Editions and there was no congestion problem at the site before the arrival of Deliveroo Editions

Officer's response: See section 17 (Employment and Training Opportunities)

Odour

- The report accounts for nuisance smells experienced at ground level but not above ground level
- Smells identified from sniff tests as coming out the extracts (mixed cooking smell and burger meat smell) are the smells reported by residents of Cresta House
- Tests report current extract reduces cooking smell but does not report by how much or that it removes the smells
- Methodology is flawed as only small number of tests (0) were carried out at 9th floors whereas preponderance of smell nuisance reports came from 5th and 9th floors of Cresta House
- More needs to be done to get to the bottom of the smell nuisance experienced by local residents

Officer's response: See section 12 (Environmental Impacts)

Congregation and marshals

- After 1 year why are Deliveroo now instructing their Marshals to patrol and photograph all offsite areas where riders are reported to congregate while waiting for orders. If this is to be continued a third marshal will have to be hired to ensure that 1 marshal remains at the top of the ramp. Riders appear to know that marshals are coming. Photographs taken by marshals showing empty sites needs to be treated with care.

Officer's response: It is acknowledged that this issue of congregating riders has only recently been addressed by the applicant. The photographic evidence from local residents which shows riders congregating in various locations has been reviewed and taken into consideration as part of the overall assessment of the application.

6.10 Local Residents Group (Rule 6 Party) - objects

- There are a high number of incidents and the reasons behind the breaches are irrelevant. There are 95 breaches logged by the applicant despite the OMP which should have had ample time to bed in.

Officer's response: See section 14 (Management of the site)

- The Inspector said in her decision that it should not be the burden of the CWG or local residents to monitor transgressions. Each event is evidence of the disruption caused to locals.

Officer's response: See section 14 (Management of the site)

- CWG involves explaining the impact of the breaches of the OMP and its negative impact on the neighbourhood. Deliveroo attempt to rectify the issue and it seems a new one appears. This is not sustainable and if planning permission were granted the CWG would not be able to help to enforce the OMP and standards would eventually slip to the further detriment of the residents

Officer's response: See section 14 (Management of the site)

- Ability to complain is not in the public domain. There is no signage nor any explanation that the site is being run under conditions and that the public can report breaches.

Officer's response: See section 14 (Management of the site). Local residents can log a complaint with the Council's enforcement team if there are any issues associated with the operation and its impact on the local environment or local community

- Industrial plant has illegally erected in the building and is against Camden's planning regulations

Officer's response: The plant was installed in 2017 without the benefit of planning permission. The Inspectors decision granted permission on a temporary basis and this includes permission for the plant that is required to serve the use

- Frequent cooking smells

Officer's response: See section 12 (Environmental Impacts)

- Objection is to the location of the site and its negative impact on local residents, impact on highway and road users and its equipment and associated smells. The operation could be relocated to a more suitable site without the loss of employment

Officer response: See sections 11 (Neighbouring Amenity), Section 12 (Environmental Impacts) and Section 13 (Transport)

- For completeness of evidence it is requested that (1) Deliveroo can confirm that both log books have been kept for the entire duration of the s106 agreement and (2) publish all the minutes of all the CWG meetings since it was formed as only one has been published so far

Officer response: Deliveroo has confirmed that both log books have been kept since November 2019. The minutes of all CWG meetings have been published as part of the application

Adjoining Occupiers

6.11

Local residents

6 additional objections were received from local residents at 19 Cresta House, 133 Finchley Road, 53 Dobson Close, 69 Dobson Close, 70 Dobson Close and a resident of Dobson Close who did not provide a postal address were received. Similar objections were received to the revised information as those issues already raised above as part of the

original consultation. In terms of the response to the independent odour report the following issues were raised:

Cooking Odour

- Odour issues with 9 kitchens
- Odour report is a farce – sniff tests from various locations did not go higher than ground level in Dobson Close so did not experience the cooking odours that residents experience everyday
- Restaurant operators in Deliveroo site could emit same “smell of burnt, oily, fatty, sweet spicy cooking odours” rather than blaming Z Zang restaurant. Z Zang Korean restaurant is part of the Swiss Cottage Edition site
- Sniff test appears crude
- Harmful particles (odourless and colourless) emitting from the vents

Officer's response: See section 12 (Environmental Impacts)

Noise

- Additional ducts and flues bound to produce excessive noise

Officer's response: See section 11 (Neighbouring Amenity)

Location of the site is unsuitable

- Riders appear to travel from other boroughs to work at Swiss Cottage so they could move if the operation moves – no loss of local jobs
- Operation is unsuitable in a densely populated residential area

Officer's response: See section 8 (Land use) and section 17 (Employment and training opportunities)

Deliveries to Dobson Close and Cresta House carpark

- Delivery vans / lorries are still coming into Dobson Close. Care has not been taken by Deliveroo to ensure their partners are advised of the appropriate directions to get into the slip road. Needs to be addressed if they are allowed to remain onsite

Officer's response: See section 13 (Transport)

- Photos show trucks requiring through access via Cresta House carpark. External carpark at Cresta House is not suitable for Deliveroo to use it as a delivery depot

Officer's response: The photo shows a Veolia lorry driving from the site through Cresta House car park to collect refuse (Camden's contracted waste management company). This has been agreed with the landlord who owns the building. Refer to Section 16 (Refuse and recycling).

- Misleading photographic evidence
- Riders are moved from gathering point and then photos are taken by Deliveroo showing there are no riders in the vicinity. Misleading of the true events taking place

Officer's response: The photographic evidence submitted by all parties has been reviewed as part of the overall assessment of the application in order to gain a full understanding of the issues raised

7 POLICIES

- 7.1 The National Planning Policy Framework (NPPF) sets out the government's planning policies for England and how these are expected to be applied. It must be taken into account in preparing the Development Plan, and is a material consideration in planning decisions. The revised NPPF was published 24 July 2018 and updated on 19 February 2019, replacing the previous document published in March 2012.
- 7.2 The Camden Local Plan was adopted by the Council on 3 July 2017 and replaced the Core Strategy and Camden Development Policies documents as the basis for planning decisions. Other local documents which are of relevance include the Proposals Map and Camden Planning Guidance (CPG).
- 7.3 The London Plan 2016, along with the Mayor's Supplementary Planning Guidance (SPG) are also important considerations.
- 7.4 The Mayor has considered the Inspectors' recommendations and, on 9 December 2019 the Mayor issued to the Secretary of State his intention to publish the New London Plan. The Intend to Publish London Plan forms a material consideration in the determination of this application.
- 7.5 In making any decisions as part of the planning process, account must be taken of all relevant statutory duties including section 38(6) of the Planning and Compulsory Purchase Act 2004. Section 149 of the Equality Act 2010 is also relevant to the determination of the applications. It sets out the Public Sector Equality Duty, which states that a public authority must have due regard to eliminate discrimination, harassment and victimisation; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.6 The most relevant Camden Local Plan 2017 policies are listed below:
- G1 (Delivery and location of growth)
 - C5 (Safety and security)
 - C6 (Access for all)
 - E1 (Economic development)
 - E2 (Employment premises and sites)
 - A1 (Managing the impact of development)
 - A4 (Noise and vibration)
 - D1 (Design)
 - CC1 (Climate change mitigation)
 - CC2 (Adapting to climate change)
 - CC4 (Air quality)
 - CC5 (Waste)
 - TC4 (Town centre uses)
 - T1 (Prioritising walking, cycling and public transport)
 - T2 (Parking and car-free development)

T3 Transport infrastructure)
T4 (Sustainable movement of goods and materials)
DM1 (Delivery and monitoring)

7.7 Relevant supplementary planning guidance is listed below:

Camden Planning Guidance (CPG):

CPG Access for all

CPG Amenity

CPG Air Quality

CPG Design

CPG Developer contributions

CPG Employment sites and business premises

CPG Town centres and retail

CPG Transport

Site Allocations Plan (Draft, March 2020)

ASSESSMENT

The principal considerations material to the determination of this application are considered in the following sections of this report:

8	Land Use
9	Design and Visual Appearance
10	Reporting incidents
11	Neighbouring Amenity
12	Environmental Impacts
13	Transport
14	Management of the site
15	Safety and Security
16	Refuse and Recycling
17	Employment and Training Opportunities
18	Planning Obligations
19	CIL
20	Conclusion

21	Recommendations
22	Legal Comments
22	Conditions
23	Informatives

8 LAND USE

- 8.1 The site is located in the southern part of Finchley Road / Swiss Cottage Town Centre which 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. Policy TC4 considers the centre to be generally suitable for a range of uses, including those that attract a large number of journeys. It also recognises that highly accessible locations like Finchley Road/ Swiss Cottage town centre which are identified as locations where the most significant growth is expected to be delivered are adjacent to residential communities. The use by the applicant as a commercial kitchens and delivery centre is considered to fall within a sui generis use. The site is located behind an existing parade of shops that fronts onto Finchley Road. The parade does not fall within the primary or secondary shopping frontages that mainly make up the Finchley Road Town Centre. The site itself does not have a presence on the high street in terms its frontage and would not affect the creation of new or retention of existing shopping provision and would not harm the vitality or viability of the town centre in terms of its impact on the primary and second shopping frontages.
- 8.2 Employment sites and business premises CPG acknowledges the growth of industrial scale kitchens with a delivery service to customers, usually by scooter. Existing industrial areas are considered the most appropriate for such uses. However, this direction as to location is within local planning guidance and there is no policy in the development plan that requires an industrial area location for these types of uses. There is therefore no objection to the use subject to the development being assessed against the full range of local plan policies, in particular those on amenity, design and heritage, pedestrian safety and transport.
- 8.3 Recent changes to the Use Classes Order signal the government's intent to allow commercial uses to function more freely without planning constraint. The new class E provides for a wide range of commercial uses including office, light industry, retail, food and drink, and any service appropriate in a commercial area. Many commercial units in the area fall into class E and so have a wide range of lawful use rights.
- 8.4 Officers consider the use of this site for this commercial function, and the controls which accompany it, to be appropriate, subject to the other material considerations discussed in this report.

Hours of operation

- 8.5 Policy TC4 advises that harm to amenity or the local area can be managed by planning conditions and obligations by applying controls to the hours of operation of a use. National policy also encourages the use of mitigation to overcome adverse effects to make an unacceptable development acceptable. Deliveroo Editions' trading hours are 08:00 hours to 23:00 hours with the delivery period to customers being controlled to between 12:00 to 23:00 hours. In the Inspector's appeal decision she agreed that these operating hours struck the right balance and were consistent with the Town Centres and Retail CPG. Conditions were attached to secure this. Concerns have been raised by local residents that trading hours appear to have changed and are being extended. The applicant had originally operated on a Monday from 12 noon to monitor demand for deliveries. Lunch time deliveries from 12 noon have now commenced from 15th June every day of the week. This is in line with the permitted times that deliveries can be made to customers under the temporary permission. Due to the town centre location of the site and its close proximity to residential development a condition (**Condition 5**) would be attached to any planning permission to restrict the times in which deliveries to customers can take place from 12:00 hours to 23:00 hours. The current controls appear to have been effective in restricting the hours for deliveries, mitigating the impact of an uncontrolled use. The proposed condition is clear and enforceable and there is no reason to believe it will not continue to be effective.
- 8.6 There have been incidents logged by the applicant and the local residents where some suppliers have tried to access the site before 08:00am. Of the 62 incidents recorded in the log book by the applicant 40% related to suppliers being refused entry due to non-compliant delivery time. Over 80% of these suppliers complied with the request and have complied with the hours of operation condition. The remaining suppliers who continue to breach the condition by arriving earlier than the required opening hours were contacted notifying them of the breach of condition and the breach of the OMP (secured by S106 legal agreement). During the course of the application the applicant has advised that security guards would now be onsite from 07:30 to avoid new or irregular suppliers trying to deliver to the site before the 08:00 opening times. Again, the existing controls appear to have successfully secured high levels of compliance and where issues occurred, the operator has responded and adapted the operation to ensure better compliance. A similar condition is therefore imposed to secure compliance (**condition 12**). The requirements of the OMP should be reviewed however to enable measures to be outlined that ensure the additional presence prior to 8am. This would be secured under the terms of the s106 legal agreement.
- 8.7 Concerns have been raised by local residents that the signage outside the site has not been updated to reflect the new trading hours. They also suggest that the details of the contact email address are too small and complained that there is no phone number or named person to contact in the event of raising an issue regarding the site operation. The applicant has confirmed that the signage will be updated and the size of the email address will be increased. As one specific person is not available on all days the request to add a named person was declined.

- 8.8 No collection of orders by customers takes place from the premises and this was conditioned as part of the temporary permission. Again, this appears to have been successful in mitigating the potential impact by minimising the number of movements to the site. The condition (**Condition 6**) would be required to be attached to any future planning permission to minimise the number of movements to and from the site to protect residential and general amenity.
- 8.9 In order to control the number of movements at the site access a condition to limit the number of kitchens to nine was required as part of the temporary planning permission. This restriction has also seen compliance ensuring the general intensity of the use does not grow to a level where impacts become unacceptable. This would be necessary as part of any future planning permission (**Condition 3**) to continue to control the intensity of the use of the site.

9 DESIGN AND VISUAL APPEARANCE

- 9.1 Policy D1 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. The Council's Design CPG also advises that building services equipment should be incorporated into the host building. In relation to refurbished buildings, it advises that external plant should be avoided and if it can't be avoided it should be positioned to minimise its visual impact.
- 9.2 The plant installed on the building to facilitate the use includes 3 external extract ducts on the rear elevation of the building that exit from the internal plant room and terminate 1m above the roof. The applicant has stated that the plant cannot be accommodated within the building because the extraction ducts need to terminate above the eaves height of the roof to improve air dispersion. The duct filter system lies within the plant room inside the building at ground floor level. The applicant does not own or have access to the first floor of the property which restricts the ability to install the vertical ducts internally within the building. The Council's Environmental Health officer has advised that kitchen extract ducts need high level discharge with a sufficient straight line to ensure strong velocity for discharge into the atmosphere. As a consequence discharging at the ground floor level (i.e. into the car park area) through louvres is not an option and would be in breach of Environmental Health requirements. Therefore it would not be feasible for the ducting to be relocated internally within the building.
- 9.3 The three external stacks extend a storey in height and visually dominate the rear elevation of the building. There are views of the rear elevation of the building from the rear of properties on Dobson Close and it is visible from the car parking area of Dobson Close properties to the south. In para 61 of the Inspector's decision it was confirmed that 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.*" She concluded that the extract ducts are

harmful to the character and appearance of the surroundings and fail to comply with policies A1 and D1. The appeal, however, was not dismissed on this basis and no conditions were attached to require any mitigation measures to be undertaken.

- 9.4 However the applicant has explored options to mitigate the external appearance of the extract ducts. One of the options that was considered was to paint the extract ducts a matt black colour in order to reduce their visibility; they are currently shiny grey in appearance. The applicants advised that it would not be possible to paint the extract ducts due to the finish of the ductwork. The required solution would be to apply a vinyl 'brick effect' wrap to the ductwork. This would require the existing ducting to be removed and remanufactured off-site with a suitable vinyl wrap to be applied in a factory environment and then reinstalled. The site would be required to close for up to 2 weeks whilst this work was undertaken. A proposed elevation plan and photomontage of the vinyl wrap have been provided as part of the application. The stacks would have the appearance more of 3 brick chimneys on the rear of the building. This would help to minimise the visual appearance of the stacks and would improve the appearance of the rear elevation of the building when viewed from surrounding public vantage points. If planning permission is granted on a permanent basis a condition would be attached to ensure that this work would be undertaken within 3 months of the decision date (**Condition 2**).

10 REPORTING INCIDENTS

- 10.1 A summary of the log book has been submitted that covers the period from March 2020 to July 2020. The log book contains 3 separate elements:
1. An on-site incident' log that includes a log of an incident on or around the site (including maintenance issues) and a log of the issues affecting suppliers delivering to the site on behalf of restaurant partners
 2. A rider incident log that lists any incidents involving riders collecting orders from the site
 3. A residents' complaints log detailing any complaints made about the site by residents or other interested parties
- 10.2 A total of 487 entries were made into the log book held by Deliveroo during this period. Of these entries it is shown that 144 recorded incidents relate to breaches of the OMP (82 to rider behaviour and 62 to supplier incidents) with the remaining entries either relating to non-Deliveroo activity, rider issues not relevant to the rider log, delivery vehicles accessing the site that aren't suppliers to a particular restaurant or miscellaneous matters (staff sickness or lateness). This would equate to approximately 5 incidents per week. When this is compared to the list of incidents submitted by local residents the breaches exceed 400 which equates to approximately 5 incidents a day over the same period of time. Residents have stressed that this is only a fraction of incidents that occur as they cannot and should not have to monitor the use more widely. It is evident from the submissions by the applicant and the local residents that breaches to the OMP have occurred during the course of the monitoring period. However, not every "incident" is actually a breach of the terms of the permission, or necessarily a harmful activity outside of the kinds of activity

consistent with a town centre. The OMP is not a guarantee of 100% operational compliance with conditions and the plan. However by setting a system up for dealing with breaches, it is there to mitigate impacts and enable the uses to co-exist without unacceptable harm to the amenity of local residents. In order to assess the impact of the operation on amenity and highway safety for pedestrians in terms of harm caused it is necessary to focus on harmful breaches - for example riders cycling on the pavement - rather than technical breaches such as the traffic cones not being in place at the bottom of the ramp on certain occasions. No complaints have been received by the Enforcement Team to report any incidents of any breaches to the OMP. The following sections covering neighbouring amenity (Section 11), odour (section 12) and transport (Section 13) will further assess the issues that have been raised during the consultation period.

11 NEIGHBOURING AMENITY

- 11.1 Policy A1 (Managing the impact of development) aims to protect the quality of life of occupiers and neighbours. The policy expectation is that development would not cause unacceptable harm to amenity, not that there will be no impact of new development.

Congregation of riders

- 11.2 During the Inquiry the Rule 6 Party (Local Residents Group consisting of representatives of the local community) produced evidence that the Deliveroo motor bike riders dominated areas beyond the confines of the premises with riders congregating in front of the Odeon Cinema, taking up parking spaces on Finchley Road and waiting in residential areas such as in Belsize Road and near the children's playground off Hilgrove Road to wait to collect orders. This introduced noise and additional traffic in neighbouring streets where it didn't exist before. During the processing of the Appeal, shortly before the Inquiry, Deliveroo's delivery operation model at the site changed from motor bikes to pedal bikes (approximately 80%) and e-scooters (approximately 20%) and on-site cycle parking was created to try to reduce harmful impacts including reduction in noise levels. A condition was attached to the temporary permission to restrict the mode of transport to foot, bicycle or electric two wheeled vehicle (ETW). This control has been successfully implemented at the site with all delivery vehicles collecting orders from the site by bicycle and electric two wheeled vehicles. There has only been one potential and unsubstantiated breach which demonstrates a significant improvement to the operation of the site. The OMP that was secured as part of the temporary planning permission included measures to improve how the use functions and minimise the adverse effects on the locality. It requires the site marshals to ensure that cyclists do not congregate on the access ramp and / or create excessive noise. The OMP does not include further restrictions in relation to riders and where they wait. From the on-site monitoring undertaken by First Plan between November 2019 and March 2020 no riders were observed to be waiting on the access ramp or along Dobson Close or Belsize Road. Local residents have provided photographic evidence to show cyclists congregating in various locations around the site to wait for their orders. This includes, but is not restricted to, areas in front of Overground House, 125 Finchley Road (within the parade of

shops) that lies approximately 15m to the north of the site, Harben Road that lies approximately 100m to the northwest of the site and Castleden House that lies approximately 60m to the south. Due to the nature of the operation where deliveries have to be collected and delivered within 15 minutes, riders are found to be waiting at locations close to the site. The issue of riders waiting outside the parade of shops at 115-119 Finchley Road and waiting in the quieter residential areas was exacerbated during the lockdown period as the high street shops were not open for riders to wait and have a break or wait there before receiving a delivery. Fewer orders were also available to riders meaning there was more waiting time between orders.

- 11.3 In town centre locations it is not uncommon to see delivery riders on bikes and scooters in the locale both cycling on local streets and sitting having breaks. It is acknowledged by officers that individuals and groups of riders have been identified and documented by local residents waiting in locations further from the site. Examples include the pavement outside TfL and under Cresta House to the north, behind Odeon Swiss Cottage to the east, and outside Swiss Cottage Pub to the east. From the photographic evidence submitted by local residents the majority of riders are congregating in small groups either sitting on benches or are sitting outside buildings where the pavement is sufficiently wide to accommodate them. It is not ideal that riders are congregating in groups outside the parade of shops at 115-119 Finchley Road and outside Overground House or outside the Odeon site. However from reviewing the photographic evidence that has been submitted by local residents the riders are not shown to be blocking the pavement and, in most cases, pedestrians can still move freely along it so the congregation of riders in the locations is not considered harmful or dangerous to pedestrian safety. Anyone has a right to be on the public highway and there is a certain amount of standing on the highway that is incidental to its lawful use - particularly in a town centre location where more people congregate, provided that it does not amount to obstruction. This is not considered to result in material harm to the character of the area and it appears that the impact has been relatively well managed.
- 11.4 The applicant has argued that it is not possible to confirm that the riders identified as congregating close to the site are all riders attending the Swiss Cottage Editions site but may be waiting to collect orders from other restaurants and fast food outlets in the southern part of Finchley Road within a 500m radius. The applicants undertook a visit to Finchley Road / Swiss Cottage Town Centre in 2019 and confirmed that there are 39 food outlets (within Class A3 and / or A5 use) within the town centre. Of the 39 food outlets, 28 of these outlets are partnered with a food delivery service (including 14 with Deliveroo). Accordingly, it is likely that a proportion of the riders were waiting to collect orders from food outlets in the town centre rather than the Editions site itself. The applicant has stressed that the riders who carry Deliveroo packs may be collecting deliveries for other online food delivery platforms such as Just Eat or Uber Eats. Notwithstanding this, it is reasonable to assume that those riders in closest proximity to the site are waiting for deliveries from Swiss Cottage Editions. It is acknowledged that it is very difficult to control the locations where workers sit to have breaks particularly when they congregate 60m to 100m away from the site.

11.5 The congregation of larger groups of cyclists in close proximity to the site can result in additional visual clutter (bikes) on the pavement and can be intimidating particularly in the evenings leading to a perception of being unsafe in the local area. During the CWG meeting in May it was agreed by the applicant that the area outside the parade of shops to the north of the site would be monitored by the on-site team who patrol the vicinity of the site with a target of every 15 minutes. During the CWG meeting in August the applicant confirmed that the site team have been making regular monitoring walks of the areas around Overground House and the Odeon and are seeking to move riders who may be waiting there. This has been confirmed by local residents in their written responses. In order to ensure that the top of the ramp is not left unmanned the applicant has advised that a site team member would conduct the monitoring walk. It should be highlighted that the congregation of riders waiting for orders was acknowledged by the Inspector in her decision but her comments related to motorbikes rather than push bikes and there was no recommendation for this to be monitored in the OMP. The responsibility of monitoring nearby locations is therefore not explicitly detailed in the existing OMP nor its necessity documented as a requirement at busier times for the operation. However to ensure that this does not become an issue for pedestrian safety, a marshal/ member of the site team would be regularly monitoring the area outside the parade of shops and Overground House to the north of the site and the Odeon to the east to ensure that riders do not congregate in larger groups in these busier higher trafficked locations particularly in the evenings. Officers consider this demonstrates responsive management of the use to address issues, but nonetheless this requirement should be included in any updated OMP as part of a review of the plan secured by s106 legal agreement.

11.6 The applicant has advised that they are willing to seek to identify an appropriate location to direct riders close to the site whilst waiting for orders in future discussions with local ward members and the council however these discussions have not yet taken place and do not form part of the current planning application. They can, and should, however form part of the review of the OMP.

Noise (from vehicles and riders)

11.7 Since July 2019 the use of motorised vehicles at this site has been prohibited. All deliveries from the premises to customers are now carried out by foot, bicycle or electric two wheeled vehicle. Bicycles and two-wheeled electric vehicles are silent so there is no noise impact from their use. This also appears to be a restriction of the temporary permission which has proven effective with high compliance. The shift away from any motorised vehicles, secured by the permission under condition, has reduced the potential for noise and disturbance from the delivery operation, and a condition (**Condition 4**) would be attached to any permission restricting the mode of transport for riders to and from the site.

11.8 Delivery vans access the site from Finchley Road and can park in the allocated parking space at the rear of the site to make their deliveries. Local residents have documented times where drivers have entered the site playing loud music

and talking loudly on their phones. The OMP currently requires delivery drivers to turn off the audible reversing alarm (where possible) however it doesn't control the behaviour of the delivery staff. Due to the sensitive nature of the rear of the site it is essential that delivery drivers are made aware of and respect the quiet environment of the local residents, particularly the residents of Dobson Close during the early morning deliveries. Officers recommend a review of the OMP be secured by S106 legal agreement to incorporate further measures to mitigate impact of delivery drivers.

Noise (voice communications)

- 11.9 One of the requirements of the OMP is that no riders are permitted to park past the bottom of the ramp which is marked by cones from 12 noon and this is monitored by one of the on-site marshals. This is to ensure that activity at the rear of the site is kept to an absolute minimum as it is the quieter part of the site next to residential properties fronting onto Dobson Close. The applicant has instructed expert acoustic consultants Sharps Redmore to undertake an operation noise assessment of the site to determine the impact of the Deliveroo workers' voices at the nearest sensitive receptors. The report demonstrates that, provided the rider waiting area (indoors or outdoors), can be well managed, the impact from voices is likely to have a negligible effect. Prior to the Covid-19 pandemic, national lockdown riders were expected to wait inside the rider waiting area within the building to collect the deliveries. During the course of the application the applicant submitted an annex document to the OMP setting out temporary procedures in response to the Covid-19 pandemic. This included the need to restrict the number of riders who can access the rider dispatch waiting area to 3 due to the social distancing measures that were in place (2m). The majority of riders (21) wait in a marked waiting area on the access ramp. The OMP seeks to control behaviour including noise intrusion from voices of riders. Riders are not permitted to have conversations and / or communicate in raised voices outside the building. This is managed by the site marshal at the bottom of the ramp. A noise buffer has also been installed on the fencing to the southern boundary of the site to try to mitigate noise transference between the site and residents living to the south in Dobson Close. During the 4 month monitoring period 10 incidents of noise from raised voices were recorded by the applicant. These identified incidents appear to have occurred as a result of unrelated incidents rather than recurring patterns of behaviour and 80% of the incidents were dealt with by one of the site marshals. The monitoring report acknowledged that appropriate action was not taken on 2 occasions. These occurred when the marshal was not at the top of the ramp at the time. This highlights the importance of having marshals at the top of the ramp at all times to manage riders' behaviour whilst onsite. This would be addressed in any updated OMP secured as part of a review in the S106 legal agreement.
- 11.10 A site visit was undertaken by Sharps Redmore to confirm that the noise control measures and the operation of the site are in line with the operational noise planning conditions imposed by the Planning Inspector. Sharps Redmore have confirmed that the noise control measures are in place and all the requirements are being complied with. A site visit by the Council's Environmental Health officer was undertaken to confirm that the operation of the site is in line with the

noise assessment submitted as part of this application and the requirements of the Planning Inspector. The only exception witnessed was riders not using the indoor waiting area. During the site visit it was confirmed that operational noise from the site is unlikely to have any adverse effect on residential receptors.

- 11.11 Local residents have confirmed that incidents have occurred between November 2019 and July 2020 where they have noted raised voices between staff on site, particularly between marshals and riders. The OMP sets clear expectations of conduct and behaviour on site particularly in relation to noise from raised voices onsite. The site team had logged the incidents and the relevant members of staff were given warnings.

Noise (plant)

- 11.12 The kitchen pods have associated ventilation and refrigeration plant equipment. The closest noise sensitive receptors to the site are located in Dobson Close (south and west). A noise report has been submitted in support of the application. The assessment demonstrates that the predicted rating noise levels from the fixed plant equipment complies with the green design criterion for plant noise detailed in appendix 3 of the local plan where the noise level is 10dB below background. Local residents have not raised specific complaints about noise from the plant equipment. The Council's Environmental Health officer has visited the site and confirmed that the plant equipment and mitigation measures are in line with the noise assessment submitted as part of the application. The controls applied to the temporary permission appear to have been effective at mitigating the impact of the plant on the area in terms of noise. The proposal is considered acceptable subject to conditions to control the hours of operation of the external plant (**Condition 8**) and to limit the levels of noise from the external plant (**Condition 9**).

Consultation with local groups

- 11.13 Concerns have been raised about the time taken to set up the community working group (CWG) (approximately 6 months) as well as the nominated persons invited to attend the CWG. The Local Residents Group confirmed that they were not invited to attend the CWG even though they appeared at the Inquiry as a Rule 6 Party. The legal agreement secured as part of the temporary planning permission sets out the details of how the CWG should be set up which entitles any person who has a direct interest in the operation to be part of the group with a restriction on the number of people (max 8). The members of the Rule 6 party were therefore entitled to be part of the Group. One of the representatives of the Cresta House Residents Association was also a member of the Rule 6 party and is one of the members of the CWG. This was undertaken with the Council's input. Despite the national pandemic 3 CWG meetings have taken place (copies of the minutes of the meetings have been submitted as part of the application submission).
- 11.14 In order to engage with the local community the applicant should continue to update the local community through a Community Working Group with the view to providing a forum for the applicant to discuss issues and where local residents can raise any concerns regarding the operation. This would be

included as an ongoing requirement in the OMP and would be secured by s106 legal agreement.

- 11.15 Concerns have been raised by local residents and local residents' groups about riders and their own personal hygiene and availability of bathroom facilities. There is a toilet facility on-site that is available for riders to use where they can wash their hands and use the bathroom. From the incidents logged by the local residents the occurrences of urinating in public places happens off-site and the identities of the riders are not known. Riders are able to use public conveniences in the local area – including those in coffee shops. Normally Swiss Cottage Library would be open which offers public toilet facilities however during the pandemic all libraries in Camden have been shut since 23rd March with Swiss Cottage not opening until 05th October 2020.

12 ENVIRONMENTAL IMPACTS

- 12.1 In advance of the appeal Arup undertook an odour assessment to establish the mitigation measures required to ensure there were no smells from the Deliveroo kitchens that could be detected at neighbouring properties. Several steps were taken to respond to concerns raised in the original enforcement notice. The installed mitigation measures include an extract odour filtration system with bag and panel filters for particulate removal; UV/ Ozone unit (Purified Air UV-O 1000) and carbon filters. This type of system is considered to provide a very high level of odour control as defined by relevant guidance. The detailed requirements for operation and maintenance of the odour filtration and ventilation system were included in a plant management plan that was secured by condition. Between the date of the Inspector's decision (November 2019) and the submission of the application a large number of complaints from local residents have been received by the Council's Environmental Health team about cooking smells from the site. The applicant has undertaken weekly sniff testing since September 2019. Additional sniff testing by the planning consultants was undertaken between November 2019 and March 2020.
- 12.2 Complaints about strong cooking smells from the site have been identified through the objections received from local residents during the course of the application. In response to the concerns raised about the effectiveness of the odour control measures and in consultation with the Council a further report was commissioned. An independent consultant with experience of odour assessments was asked to undertake repeat surveys at various nearby receptors.
- 12.3 The independent odour consultant undertook 5 separate visits to carry out an odour assessment at more than 10 locations in the area. The assessment demonstrated that no cooking odours from the Deliveroo kitchen ventilation system, or the premises itself, were discernible at any assessment point outside the boundary of the site.
- 12.4 In response to a cooking odour complaint from a Cresta House resident the Council's Environmental Health officer undertook a site visit on 26th June 2020 with the independent odour consultant. The Environmental Health officer was

able to stand on the flat roof of the first floor of the building and sniff into the extract ducts that serve the Deliveroo site whilst the kitchens were working at full capacity. Environmental Health officers undertook another sniff test on the flat roof at first floor level 2m from the extract ducts and confirmed that there was no discernible cooking smells from them. It was not possible to carry out visits to properties in Dobson Close during the time of the site visit due to the restrictions there were in place during the national lockdown and entering people's properties. However as no discernible smells were identified 1m away from the extract ducts it was not considered necessary to undertake sniff tests from properties along Dobson Close which are further away at 17m from the rear of the site.

- 12.5 During this visit that was carried out on 26th June 2020 it was noted that the extract duct serving the neighbouring restaurant (Z Zang) at 115 Finchley Road, is unlikely to have any odour control equipment in place. This is due to the age of the extract equipment which appears to be historic so there are no planning controls in place to manage any smells from it. The cooking smells were strongest from the flats above the commercial units fronting 115-119 Finchley Road. Therefore it has been confirmed that the neighbouring restaurant, Z Zang, is the source of cooking smells experienced in the area. No odour complaints have been received by Environmental Health from these residents. The Council's Environmental Health officer has contacted Z Zang to ensure that appropriate control measures are put in place to control the cooking odours, but this is not within the control of the application site. The restaurant has not contacted the Council to date. It has not been possible to follow this up as the Environmental Health response service was suspended for 6 months during the national lockdown and has only recommenced investigations last week. On the basis of the evidence presented, the Environmental Health officer has confirmed that there would be no harmful impact on living conditions from the site as a result of odour from cooking on the application premises, and the current controls appear to be effective at mitigating the impact of the operations. Conditions (**Condition 10 and Condition 11**) would be attached to any permission to ensure the odour control equipment shall provide a Very High level of odour control and that all detailed requirements for operation and maintenance of the odour filtration and ventilation system is undertaken in line with the plant management plan.

13 TRANSPORT

Servicing

- 13.1 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. This would be secured by condition (**Condition 12**).
- 13.2 Only 2 vehicles are allowed to access the site at any one time. The applicant has demonstrated through swept path analysis that a 7.5 tonne (7.2m long) vehicle would be able to enter and leave the site in forward gear. Although the space is tight there is a marshal available to guide drivers as they manoeuvre to exit the parking space at the rear of the site and leave the site in first gear. The Council's Transport Officer has raised no concerns regarding this aspect

of the servicing of the site. The current management on timing and use of vehicles (in terms of size of vehicle) has been controlled by the OMP that was secured as part of the temporary planning permission. The management of the servicing would be secured through the OMP if planning permission is granted. Access to the site, parking, turning and circulation space within the site falls within the control of the applicant. However, as confirmed by the Planning Inspector during the appeal, where the delivery vehicles park is not necessarily under the control of the applicant. The monitoring results submitted by the applicant show that no deliveries were made outside of the delivery hours. However local residents have cited several occasions when delivery vehicles have tried to enter the site before 8am. The behaviour of the drivers resulted in disturbance to local residents. These incidents were included in Deliveroo's on-site log book. The applicants have advised that in each of the identified cases the suppliers were new to the site and the restaurant partners were notified of the incidents. In all the cases the suppliers have now complied with the rules stipulated in the OMP and there has been no further breach reported. The current controls appear effective at managing this impact.

- 13.3 The local residents have demonstrated through photographic evidence that delivery vehicles have been accessing Dobson Close (which is a private road) to make deliveries to the site with one company in particular making several early morning deliveries before 08:00 hours in early November 2019. The applicant has advised that delivery driver's satellite navigation systems identify the car park area behind Dobson Close as the Swiss Cottage Editions site rather than the actual site address. The OMP states that the marshals are tasked with using reasonable endeavours to ensure that supplier vehicles servicing the site do not park in the bus stop on Finchley Road and / or Dobson Close. In order to reduce the responsibilities of the marshals the exact location of the site and how delivery vehicles arrive at the site from Finchley Road should be clearly and regularly relayed to all restaurant suppliers. Any breaches by the suppliers that are logged by the site team and / or marshals should be appropriately dealt with through the OMP. If repeated breaches occur and it becomes a pattern of operational activity at the site, enforcement action can be taken.

Riders and pedestrians

- 13.4 The location of the site and the means of access to serve the use are constrained and are not favourable 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. Policy A1 and T1 seek to protect local amenity and promote walking in the borough respectively. The supporting paragraphs of these policies advise that any development should consider and address the needs of vulnerable road users in terms of road safety when they are accessing and using the highway network.

- 13.5 The pavement adjacent to the site access is a busy pedestrian route throughout the day because of the town centre location and the close proximity to bus stops, and the Swiss Cottage underground station. Prior to July 2019 the primary delivery method was by scooters which led to conflict between pedestrians and riders as the bikes were parked at the top of the access road. This frequently caused congestion around the site access. The site now only operates using push bikes and ETW bikes to make deliveries to customers. This was a control measure secured by the current temporary planning permission. This has improved the congestion around the site entrance, and the change of vehicle to bikes has reduced the risk resulting from pedestrian conflict. It has also successfully promoted more sustainable modes of transport in line with development plan policy. There have been a few reports of cyclists causing obstructions at the top of the ramp. This has been accompanied by photographic evidence from local residents. Although this is technically a breach of the OMP, riders have to pause at the top of the ramp as they wait for a break in the traffic to cycle onto Finchley Road. They are not loitering or gathering at the top of the ramp to cause an obstruction to pedestrians waiting to cross. Consequently this is not considered to result in demonstrable harm to pedestrian safety. Two incidents were recorded during the monitoring period where a rider did not look when pulling into the site and almost collided with a pedestrian. During both these incidents the marshal covering the top of the ramp was on a break. No action was taken in accordance with the OMP.
- 13.6 It is essential that riders' behaviour into and out of the site is continuously monitored to ensure the safety of pedestrians and rider safety. The recorded times when riders did have incidents with pedestrians appears to correspond with the times when the marshal was not present at the top of the ramp. This highlights the importance of having marshals at the top of the ramp at all times to manage riders entering and exiting the site. This would be addressed in any updated OMP and officers recommend a review of the OMP be secured by legal agreement to explore measures that will ensure improved compliance.

Riders and highway safety

- 13.7 This part of Finchley Road is part of the Transport for London Road Network (TLRN) and Transport for London (TfL) is the highway authority responsible for it. The site access has good visibility to the south and to the north. The applicant has submitted personal injury collision data (PIC) which has been obtained from TfL for the area which extends from Adelaide Road to the south to the southern section of Finchley Road and Avenue Road that lies to the north of the site. The data from TfL includes 59 PIC's for a 5 year period to 30 September 2019. The records show that 90% of the PIC's were classed as slight and the remaining 10% were classed as serious. In terms of casualties and collisions the numbers have been consistent between October 2015 and September 2019. The number of serious incidents has increased from 1 in October 2016 - September 2017 to 2 in October 2017 to September 2018 and 2 in October 2018 to September 2019. There has not been a significant increase in serious casualties since Deliveroo started operating from the site in October 2017.

- 13.8 From the evidence submitted by local residents there appears to be one witnessed occasion where a rider cycled directly out into the pathway of a moving car. No collisions or casualties have been reported by local residents during the monitoring period. TfL did not object to the increased use of the A41 one-way system and local highway network by bicycles and e-scooters during the enforcement case and they were not present as a witness at the Public Inquiry. Nor have TfL responded to consultation for this application. Officers consider there are no reasonable highway safety concerns in terms of the vehicular highway network.
- 13.9 The road system is made up of four lanes of traffic and a designated bus lane and is part of a one way system heading northwards along this part of Finchley Road. There are traffic lights to the south of the site that control the flow of traffic at the junction of Finchley (south to north) and Adelaide Road (east to west). These traffic lights regulate the flow of traffic and can provide a break in the traffic travelling south to north along Finchley Road when riders can safely exit the site into the left hand lane to travel north or cross two lanes of traffic to filter into the right hand lanes to navigate the gyratory system to travel south.
- 13.10 The use has generated a high volume of movements at the site access and requires delivery riders to negotiate the major flows of traffic along this part of Finchley Road. Local residents have provided photographic evidence of riders undertaking manoeuvres to try to cross from the site access over two lanes of traffic to get into the right hand lane to head south. It is not clear from some of the photos submitted if the traffic was moving at the time or was stationary from being held at the traffic lights. However it is evident that some riders are weaving in and out of traffic in order to cross the lanes of traffic to travel south. This presents a potential risk to the safety of highway users, particularly delivery drivers themselves. The OMP requires all riders to turn left when exiting the site.
- 13.11 From the photographic evidence submitted the photos show some riders crossing when there is no other vehicular traffic in the photo. Although this behaviour is technically a breach of the OMP the rider or other road users are not at risk of causing an accident so there is no significant demonstrable harm to highway safety as a result of this incident. Riders are expected to abide by the Highway Code to ensure they are using the road network safely. This is included in Deliveroo's policies and procedures which are provided to all riders but officers consider this should be incorporated into any future OMP secured as part of a review under the S106 legal agreement.
- 13.12 In order to circumvent crossing several lanes to exit the site shortcuts have been taken by cyclists both to save time and to make their journey safer. The main shortcut entails riders exiting from the site and walking or cycling their bikes down the pavement to travel south. As detailed in paragraph 13.10 above one of the requirements of the OMP is that riders are required to turn left to exit the site and will be prohibited from turning right and walking their bike on the pavement down Finchley Road. It is a breach of the Highway Code (Section 64) to cycle on the pavement. This infringement of the OMP and Highway Code has been evidenced and documented in the monitoring report submitted by the

applicant. This is supported by evidence submitted by local residents in their objections where at least 20% of breaches relate to riders cycling along the pavement mainly to access the site. This appears to be the main notable breach of the existing permission controls. The monitoring report confirms that riders who tried to enter the site by cycling along the pavement were stopped by the marshal and given a warning in line with the OMP. The OMP does anticipate situations of bad rider behaviour and sets down a complaints procedure, a disciplinary procedure and a procedure for recording and retaining complaints so that Deliveroo can report back individually to local residents and through the CWG. Deliveroo are required by the OMP to investigate and deal with complaints; however local residents are concerned that these infringements are still occurring (as recently as July 2020) with individual riders cycling away from the site outside Castleden House, outside 100 Avenue Road, cycling down to the site in front of Cresta House and Overground House. Deliveroo have advised that from their onsite incident log that of the 326 entries 60 (18%) of the breaches related to riders cycling on the pavement. The riders were notified through the proper procedures and given a warning. From the residents' complaints log submitted to Deliveroo only 9 complaints (16 different instances) related to riders cycling on the pavement. However the local residents have submitted at least 70 incidents relating to this issue.

- 13.13 Deliveroo has advised that approximately 30% of the incidents relating to rider behaviour relate to riders on the pavement travelling to the McDonalds which lies approximately 3 minutes' walk to the north of the site. It is difficult to identify the Swiss Cottage Editions riders as they are not contracted to Deliveroo exclusively and can be contracted to provide services for other online food delivery companies such as Uber Eats and Just Eat. Both of these companies provide a takeaway delivery service for McDonalds and KFC London which are 3 mins walk away from the site. Officers believe that whilst the level of the problem may not be to the extent suggested by residents, it does nonetheless appear to be a recurring issue.
- 13.14 During the Inquiry it was accepted by the applicant that it would be hard to control people's behaviour. This is made more difficult by the fact that identifying riders who do not comply with site policy and procedure is not easy. This is due to (i) the need for accurate information and (ii) the identified constraints on using the Deliveroo app such as difficulties identifying riders who are not logged into the app and are not identified as available to receive orders or who are riding in a group of delivery riders who are also logged into the Deliveroo app. The local residents' group has stated that Deliveroo cannot meet its obligation to reliably identify its riders and have included examples where Deliveroo have failed to identify riders from photos that they have taken with dates and times attached. The success of the OMP relies on the riders complying with the Code of Conduct that controls behaviour as well as the ability of the marshals to carry out all their responsibilities. Whilst these concerns are only one part of the controls and restrictions that mitigate impact of the use, the majority of which have been relatively effective, this element is more difficult to control. Officers recommend a review of the current OMP, to be secured by S106 legal agreement, to explore options to improve monitoring and reporting. For example, one solution to this issue would be to include a clearer

tracking system of the Swiss Cottage Editions riders that would help to identify those who deliver to this site specifically and more clearly those who contravene the rules. This was discussed at the Inquiry but Deliveroo have previously expressed concerns with such a system due to issues associated with General Data Protection Regulation (GDPR). Officers accept there may be barriers to this but encourage the applicant to reconsider this or alternative options. The relevant deterrents and sanctions can then be issued and overall incident numbers could reduce further.

- 13.15 Local residents have also documented riders walking through Dobson's Close and taking the external stairs on the southern boundary of the site to access the site. The OMP clearly states that riders are not permitted to access the site using the steps from Dobson Close. The applicant has advised that this route was mainly taken by new riders who amended their behaviour when informed of the rules. Those who failed to comply were given notifications. Where the same riders were documented as using this route again the riders were prevented access to the site by the marshal and the order was reallocated to another rider. Local residents are concerned about this and have cited a number of incidents where riders have accessed Dobson Close via the external stairs. It is considered necessary for a review of the OMP to be secured as part of the S106 legal agreement to explore further measures that can improve levels of compliance, or address new issues raised over the trial period.
- 13.16 Local residents have identified repeated incidents where riders have cycled along the pavements, accessed the site from the external stair from Dobson Close or are congregating in close proximity to the site. The marshal positioned at the site entrance has an extensive list of responsibilities and at busy times it may not be possible to effectively manage them all. It is considered that the need for a marshal to be monitoring the top of the ramp at all times is essential to the successful operation of the site. When one of the marshal is on a break there is a marshal or a site team member to cover the top of the ramp duties so that this area is monitored at all times. This should allow for the monitoring of the surrounding environment, and allowances for breaks without reducing the number of marshals on-site.

14 MANAGEMENT OF THE SITE

- 14.1 Local residents have raised concerns about the suitability of the site for the business given all of the issues that have been raised in relation to rider behaviour, congregation of riders in nearby locations and highways matters with regards to pedestrian safety. This is compounded by the fact that marshals are required to monitor riders both inside and outside of the site. The changes in the operation and controls imposed, such as excluding the use of motorbikes and allowing riders to park and wait within the site, have reduced the harmful impacts to the local environment by reducing noise levels and disturbance from motorbike engines, and improving pedestrian safety along Finchley Road. The applicant has acknowledged that riders have been congregating in locations close to the site and has proposed an improved system to monitor areas which have been identified by local residents to ensure that they are dispersed by either marshals or the site team. The congregation of riders are therefore being

dispersed from the immediate environs away from the site which meets the conditions requirements of the OMP. From the evidence submitted the majority of the riders are seated in locations where they are not obstructing the highway and pedestrians can continue to walk along the footpath safely.

- 14.2 Whilst there have been reports of riders waiting in and around the area, and some riders have mounted the footpath, it appears that many of the restrictions and controls applied to the site have been effective at mitigating and reducing the impact of the use since the council issued the enforcement notice. Whilst the use is not operating without impact, the impact is overall not harmful. It is considered that the use can operate from the site providing it is well managed in terms of its operations and behaviour of staff and riders, both within and immediately outside of the site. The conditions attached to the temporary permission are sufficient and effective in their controls to manage the operations of the proposed use and would be attached to any future planning permission. Of the eleven planning conditions only one has been breached (condition 10) that relates to the hours that servicing vehicles unload and load at the site. The applicant has sought to address this matter by ensuring that a marshal is present on site from 07:30am. Due to the nature of some of the objections received during the consultation period and the demonstrable harm associated with the breaches – for example riders cycling on the pavement and accessing the site via the staircase adjacent to Dobson Close to the south of the site, it is considered necessary for a review of the OMP to be secured as part of the S106 legal agreement to explore further measures that can improve levels of compliance, or address new issues raised over the trial period. .
- 14.3 In accordance with the OMP, rider behaviour is subject to Deliveroo's Policies and Procedures which require them to abide by the Highway Code. The OMP also sets clear expectation on marshals and outlines their tasks in order to control rider behaviour. The OMP sets out a Disciplinary Procedure in the case of breaches by riders of Deliveroo's Policies and Procedures. If residents become aware of such breaches they can raise them directly with Deliveroo. Section 11 of the OMP sets out how such complaints will be handled. Deliveroo has confirmed that there have been 3 instances where riders have fallen foul of the 3 notification rule and are no longer allowed to operate from Swiss Cottage Editions site as a consequence. This demonstrates that continuous breaches are being appropriately dealt with in line with the disciplinary procedure in the OMP. Should Deliveroo not deal with a complaint fully and in a timely fashion, the next stage is for a resident to complain to the planning enforcement team about a breach of condition or a breach of the OMP, which would be a breach of planning control. The Council's Enforcement Team has received no complaints about the operation of the site since the temporary permission was granted. This is a strong indication that the procedures are, on the whole, working effectively. Nonetheless, if breaches do occur that are not adequately addressed, the council will have the power to take further action.

15 SAFETY AND SECURITY

- 15.1 There are 15 CCTV cameras positioned on the site both within the building and externally on the external envelope of the building. The CCTV cameras (would ensure) safety of both riders and personnel entering and leaving the site.
- 15.2 Lighting outside the building operates on a sensor for safety reasons. This ensures that the lighting is not continuously operating when the site is not in use. It is static and non-flashing and is kept at a low level to reduce any glare to neighbouring properties. The proposal would not harm the amenity of neighbouring residents and would be considered acceptable.

16 REFUSE AND RECYCLING

- 16.1 There would be dedicated areas for both general waste and recycling bins (each of 1,100 litre capacity) stored at the rear of the site.
- 16.2 Refuse collection is managed by Veolia, the Council's appointed waste management partner. Refuse collection vehicles access the site via Belsize Road, and across the car park to the rear of Cresta House. There is a locked gate that separates the site from the Cresta House car park. Veolia have gained formal access and have the ability to open the gate, through the Landlord of the building. Veolia reverse the refuse lorry into the rear of the site, and pull the bins from where they are stored in the car park space to the parked lorry to offload.
- 16.3 There would be 4 waste and 4 recycling collections per week. Refuse and recycling from other commercial operators that front onto Finchley Road and residents that occupy the upper floors of 115-119 Finchley Road is collected at the same time. This provision appears to be effective and so would be continued under any permission granted. The regular collection times prevent odour nuisance and is considered to meet the objectives of policies TC4 and CC5 (Waste).

17 EMPLOYMENT AND TRAINING OPPORTUNITIES

- 17.1 The development currently employs 29 people, including 6 employees of Deliveroo. Due to the nature of the business the riders are self-employed however the applicant has advised that approximately 60% of the riders are registered as residing in Camden. The local residents dispute this claim citing the rider petition that was submitted by the applicant in support of the application which included the postcodes of the riders addresses many of which do not live in Camden. Notwithstanding this the use supports 10 businesses in the area (nine kitchens and the site operator). The Council are keen to see links to local employment so that local residents are recruited into work wherever possible. This would require a commitment by the applicant to advertise opportunities locally in the first instance before they are advertised formally on their national website. The applicant also agreed to set up a local grant programme for voluntary and community sector (VSC) organisations. These employment and training opportunities would be secured by s106 agreement and would be an additional obligation not secured under the terms of the temporary permission.

18 PLANNING OBLIGATIONS

18.1 The proposal would include the following obligations:

Operation of the use

- Operational Management Plan (OMP) – a bespoke continuing OMP (to include a community working group (CWG))
- Review of the current OMP to explore additional measures to improve compliance

Employment

Employment and training plan – to increase the potential for local employment

19 CIL

19.1 The change of use of an existing building is not liable to Community Infrastructure Levy (CIL) unless it involves an extension which provides 100 sq. m or more of additional floorspace or involves the creation of a new dwelling even when it is below 100 sq. m. As the proposal does not include an increase in floorspace it is not liable to pay a CIL contribution.

20 CONCLUSION

20.1 The principle of the use in this town centre location is considered to comply with the objectives of policy TC4. The Planning Inspector concluded that the use did result in a harmful and unacceptable impact on the quality of life of neighbouring occupiers and the character and amenity of the surrounding area contrary to A1; however a temporary permission was granted with the agreed mitigation measures in place that were secured by the OMP as part of the s106 legal agreement. The applicant sought to address some of these concerns by upgrading the ventilation equipment (improvement in the control of odour) and a change to the delivery operation from motorised scooters to push bikes to reduce congestion at the site access and improve pedestrian safety. No evidence has been provided by any party that motorbikes or motorised scooters have accessed the site since they were prohibited in July 2019 (apart from one isolated incident when the motorbike rider was from another delivery company trying to deliver to the flats above the site fronting onto Finchley Road). This was a very significant operational change and has been enforced successfully. Hours of operation and servicing have been introduced, along with noise limits and odour control. A wide range of controls are also incorporated in the OMP and on the whole, there has been significant improvement in the impact of the use since issuing the enforcement notice. Most of the controls have been effective at mitigating the most significant impacts and whilst there has not been total compliance, all of the time, the controls have provided a framework for the use to operate with acceptable levels of impact. The site is a commercial site in a mixed-use town centre and it would be unreasonable to expect a commercial use to operate in such an area without impact. The use supports the economy, local business and would also secure an employment and training plan. This, together with appropriate conditions and heads of terms secured by

a s106 legal agreement, including further review of the current controls, will ensure that the use can be managed and operate without causing unacceptable harm to amenity, the surrounding environment, pedestrians and the highway network in accordance with planning policy.

21 RECOMMENDATION

21.1 Planning Permission is recommended subject to conditions and a Section 106 Legal Agreement covering the following Heads of Terms:-

- Operation Management Plan (including Community Working Group)
- Review of the current OMP
- Employment and training plan

22 LEGAL COMMENTS

22.1 Members are referred to the note from the Legal Division at the start of the Agenda.

23 CONDITIONS

1	<p>The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>Existing Drawings: 2019-026-208; 2019-026-203 Rev A; 2019-026-202; 2019-026-201; 2019-026-200 Rev A.</p> <p>Proposed Drawings: 2019-026-204 Rev D; P0000027/001 Rev 0; 2019-075-209 Rev A; 2019-075-207 Rev A; 2019-026-206 Rev A; 2019-026-205 Rev A; 2017-075-021 Rev H; 2019-026-212.</p> <p>Supporting Documents: Summary of Monitoring undertaken since March 2020; Transport Statement dated May 2020; Review of adopted Operational Management Plan dated April 2020; Assessment of noise from fixed plant equipment dated 13th May 2020; Planning Statement dated May 2020; Assessment of noise from Deliveroo Editions operations dated 21st May 2020; Compliance Review - Odours dated 22 May 2020; Extract from brochure of Metamark 7 Series (High Performance Calendered Sign Vinyl) from Metamark The Materials Company; Community Working Group Minutes dated 12th August 2020</p> <p>Reason: For the avoidance of doubt and in the interest of proper planning.</p>
2	<p>Materials to match (FLUE)</p> <p>The three extract ducts on the rear elevation of the building shall be individually wrapped in the brick effect Metamark vinyl wrap to match the brickwork on the rear elevation in accordance with the proposed plan 2019-026-212 hereby approved within 3 months of the date of the decision.</p>

	<p>The brick effect vinyl wrap shall thereafter be permanently retained and maintained in accordance with the manufacturer's recommendations.</p> <p>Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 of the Camden Local Plan.</p>
3	<p>Number of kitchens</p> <p>The number of kitchens on the premises shall at no time exceed nine.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
4	<p>Restriction on mode of transport</p> <p>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.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
5	<p>Hours of operation</p> <p>No deliveries from the premises to customers shall be carried out outside the following times: 1200 to 2300 hours.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
6	<p>Restriction to collections</p> <p>No collection of orders from the premises shall take place by customers at any time.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
7	<p>Time clocks</p> <p>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.</p>

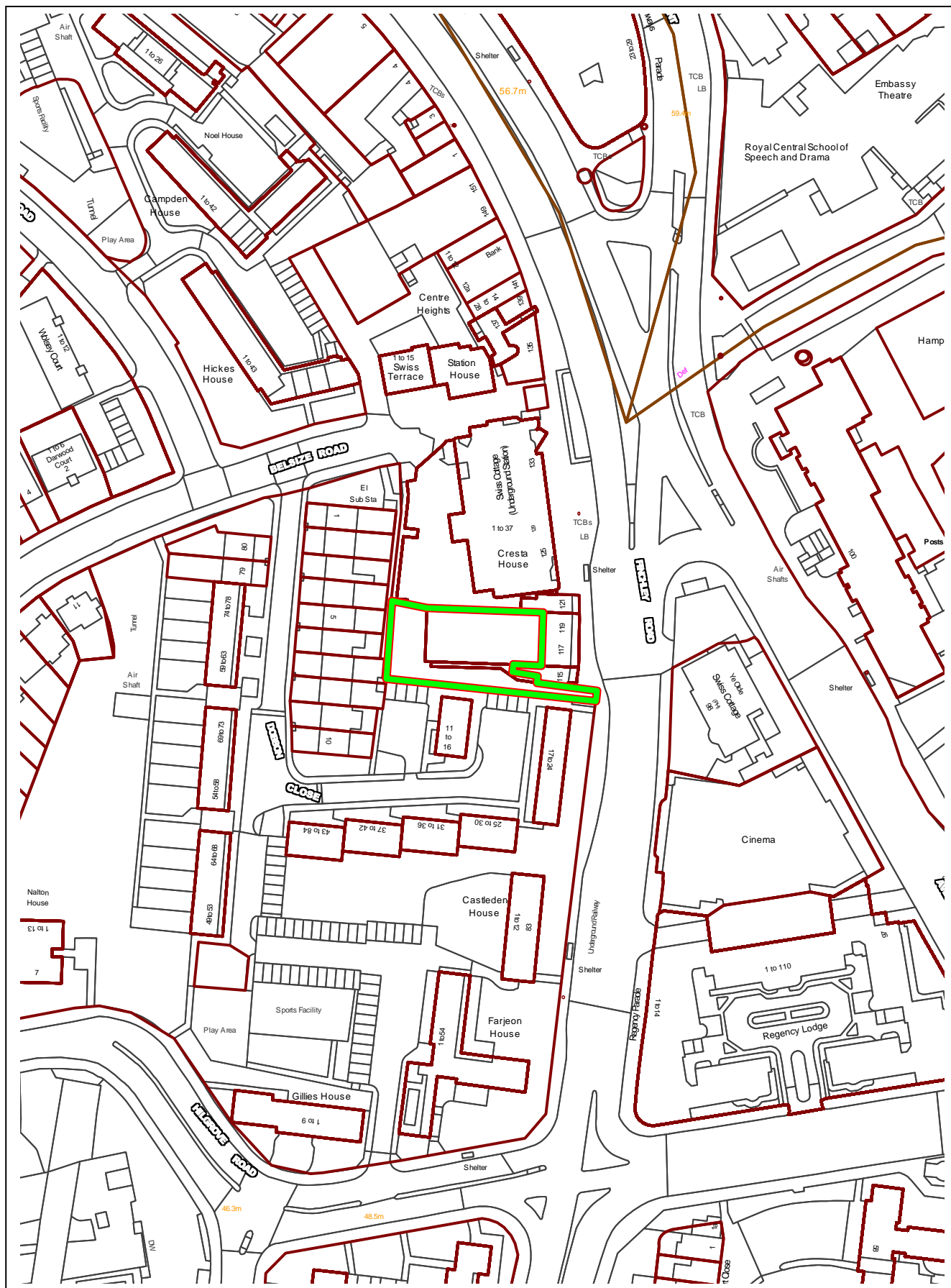
	Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.
8	<p>Timer equipment</p> <p>During the final hour of operation (2300 to 0000) all kitchen extract and air supply equipment shall operate at no more than half operational speed (as defined in the table below)</p> <p>Fan Operational speed (Hz) 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</p> <p>The timer equipment shall thereafter be permanently retained and maintained in accordance with the manufacturer's recommendations.</p> <p>Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
9	<p>Noise</p> <p>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.</p> <p>Reason: To safeguard the amenities of neighbouring noise sensitive receptors in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
10	<p>Odour (control)</p> <p>For so long as the use continues the odour control equipment shall provide a Very High level of odour control, as outlined in "Control of Odour & Noise from Commercial Kitchen Exhaust Systems" by Dr Nigel Gibson dated 05/09/2018.</p>

	Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.
11	<p>Odour and ventilation system (maintenance)</p> <p>The use shall not proceed other than in accordance with the approved scheme for maintenance of the odour filtration and ventilation system. 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.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
12	<p>Deliveries</p> <p>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.</p> <p>Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.</p>
13	<p>Cycle parking</p> <p>The cycle parking and e-charging spaces 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 retained for the parking of bicycles and the charging of electric two wheeled vehicles.</p> <p>Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the London Borough of Camden Local Plan 2017.</p>

24 INFORMATIVES

1	Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).
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2	<p>All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319 or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)</p> <p>Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.</p>
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Application No: 2020/2367/P

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

**Scale:
1:1527**

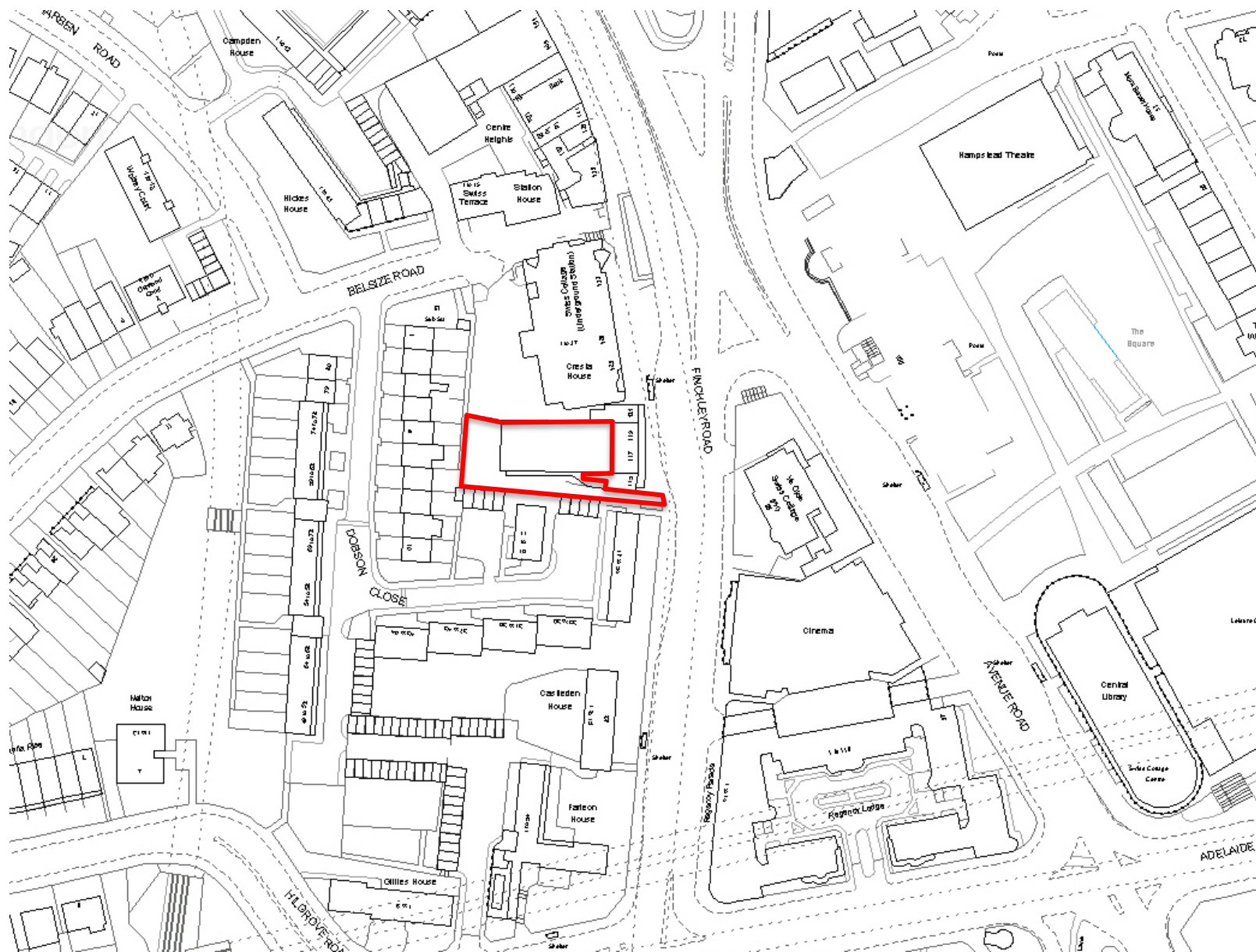
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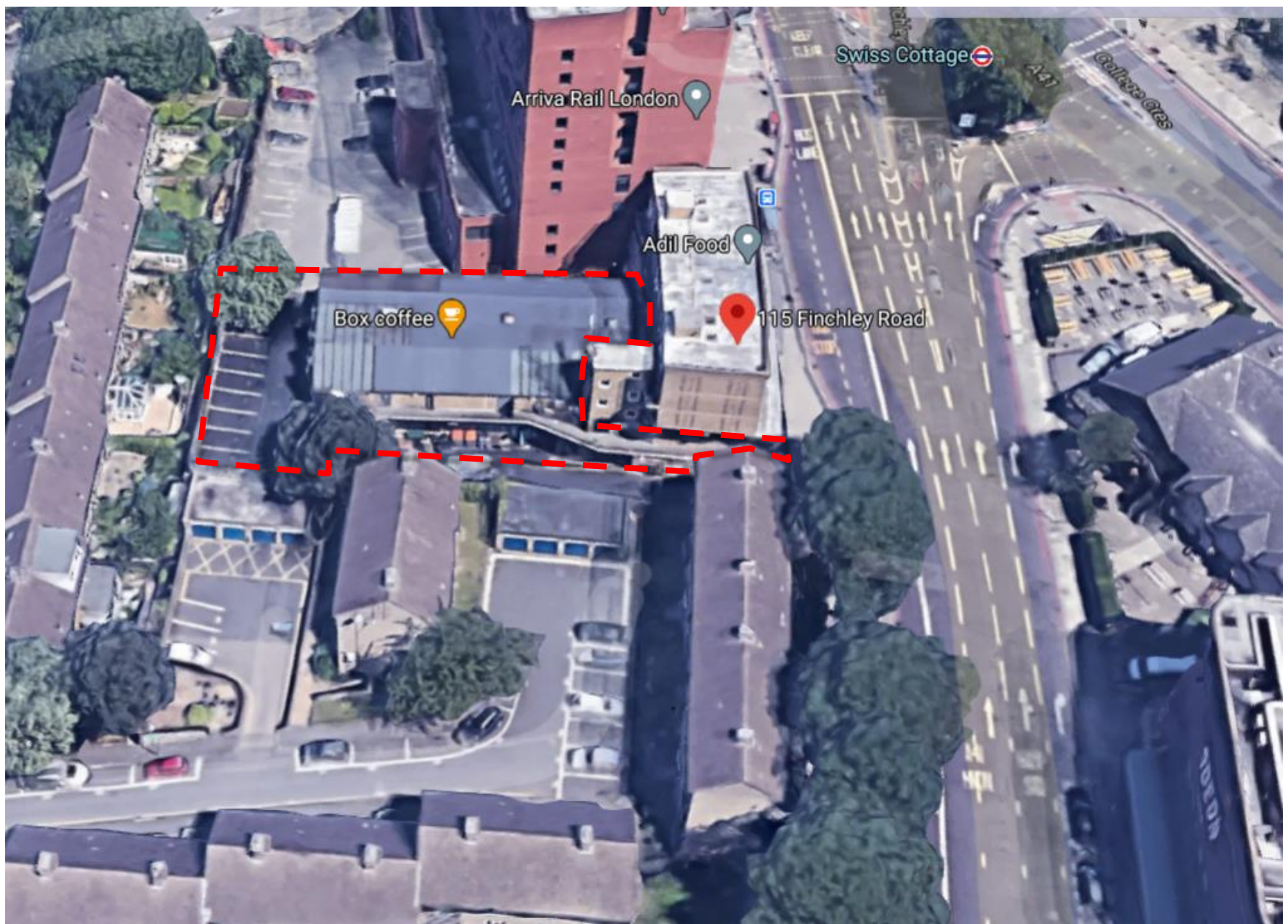


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Planning Committee

15 October 2020









View of site entrance looking west from Finchley Road



(Above): View from the top of the ramp looking west (application building is on the right)



(Above): View of dedicated bin store at the rear of the site with nos. 5, 6 and 7 Dobson Close behind



Above: Riders queuing on the ramp waiting to collect orders



Above: Photo of inside the riders dispatch room



Above: External steps from Finchley Road to Dobson Close adjacent to the southern boundary of the site



Above: Southern boundary of the site looking over to properties at 11-16 (inclusive) Dobson Close to the south



Above: Rear elevation of properties at 17-24 (inclusive) Dobson Close to the south of the site



Above: Cresta House, 133 Finchley Road and car parking area to the rear with application site to the rear



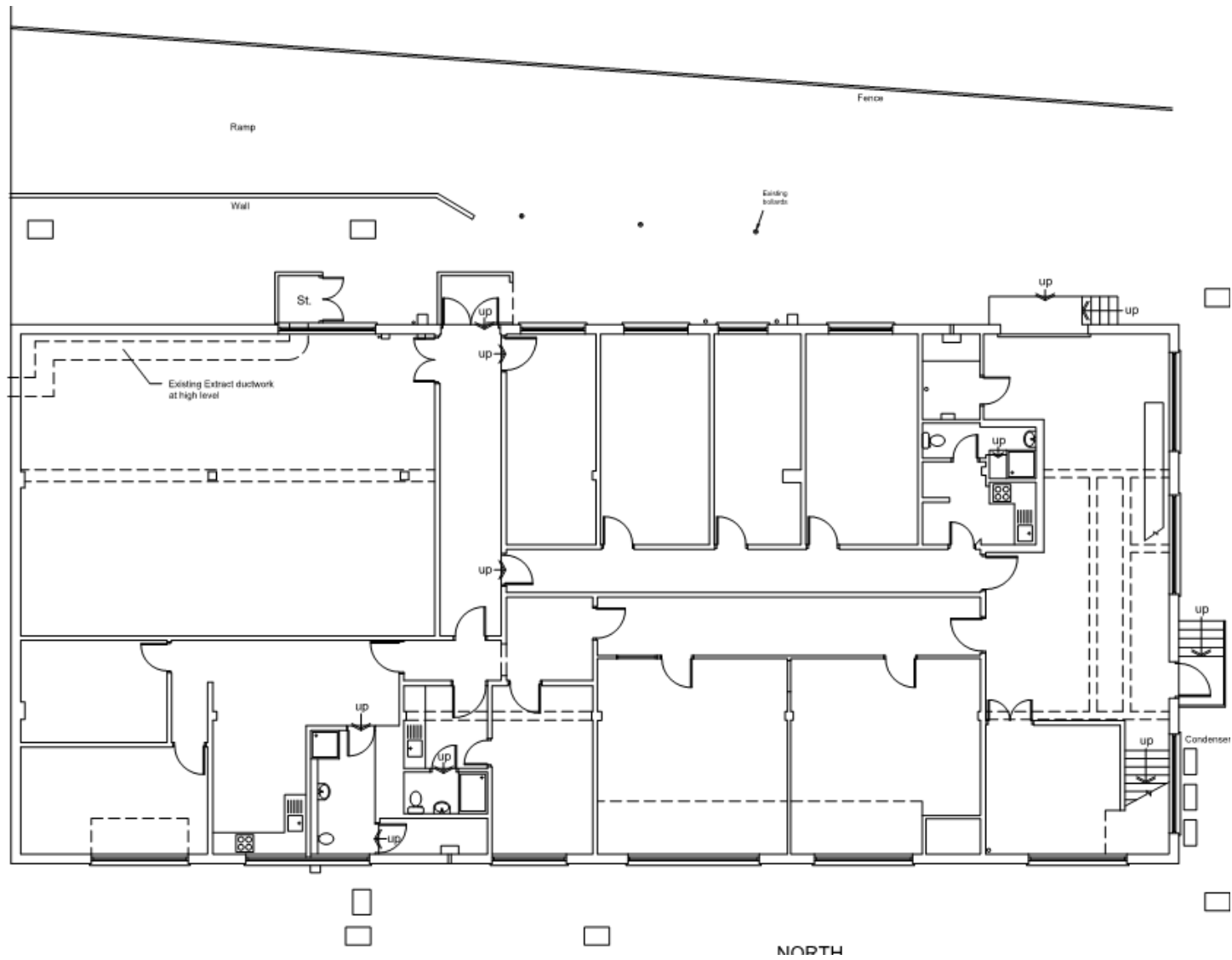
Left: View of 3 extract ducts on the rear elevation

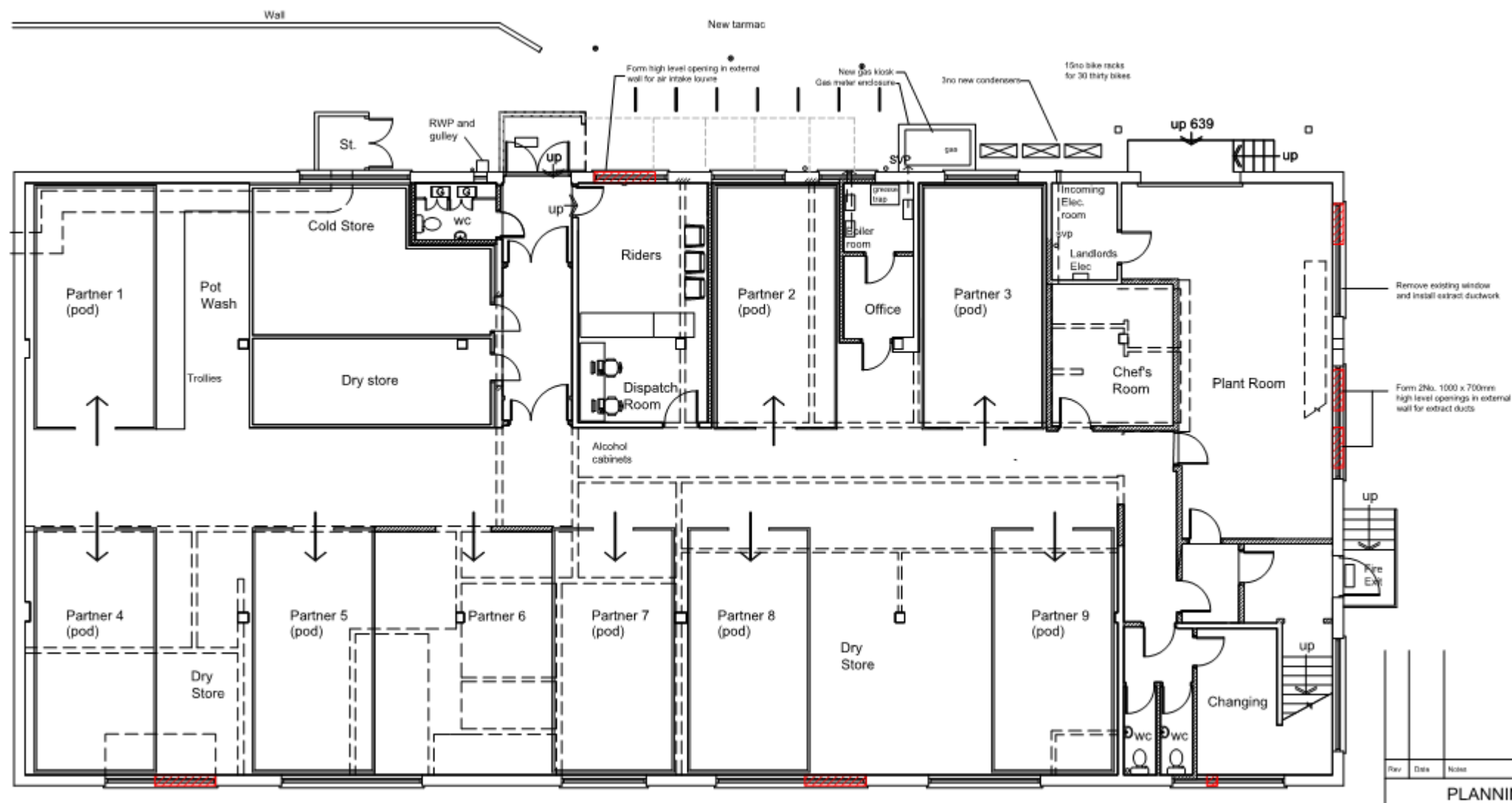


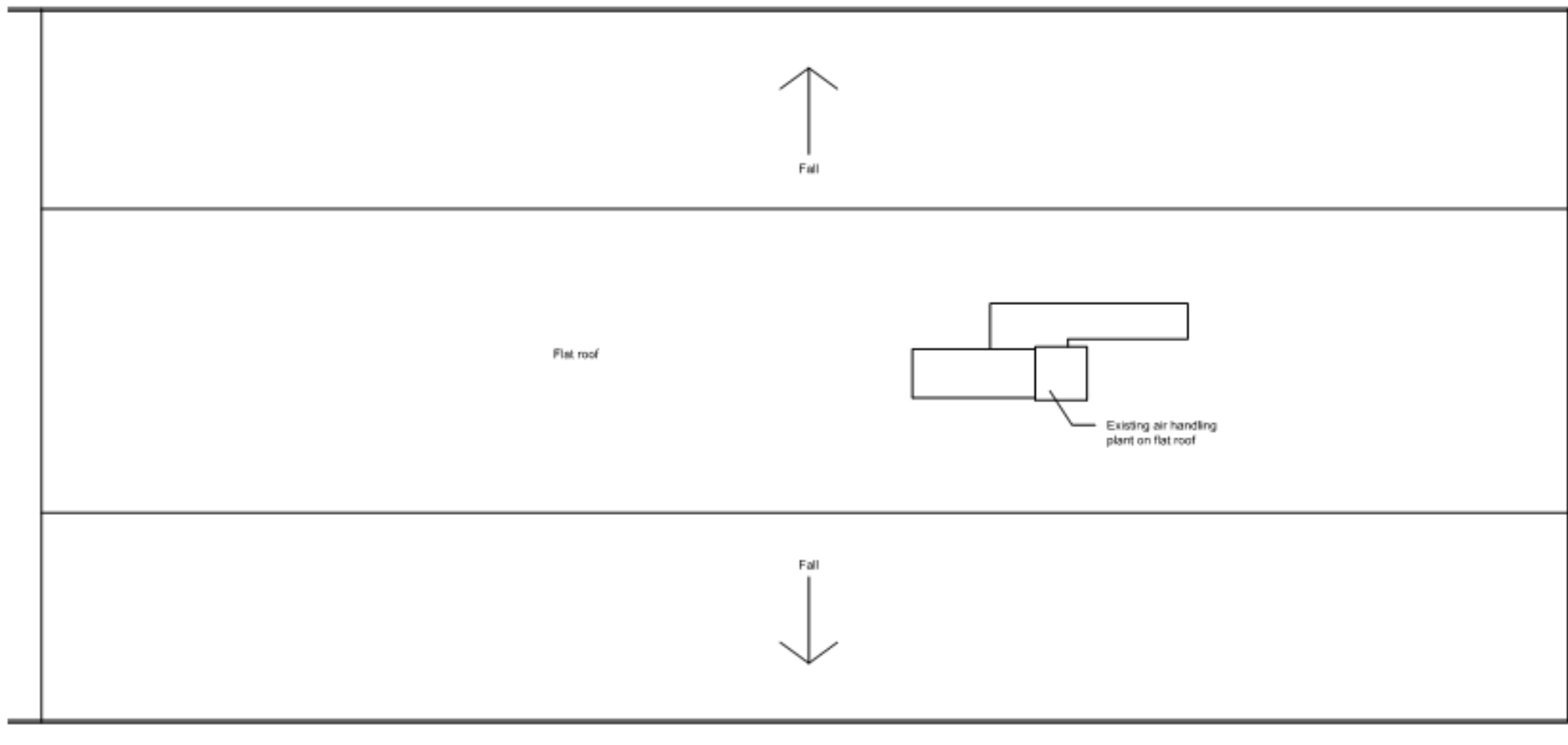
Left: Image of duct wrapped in brick effect vinyl

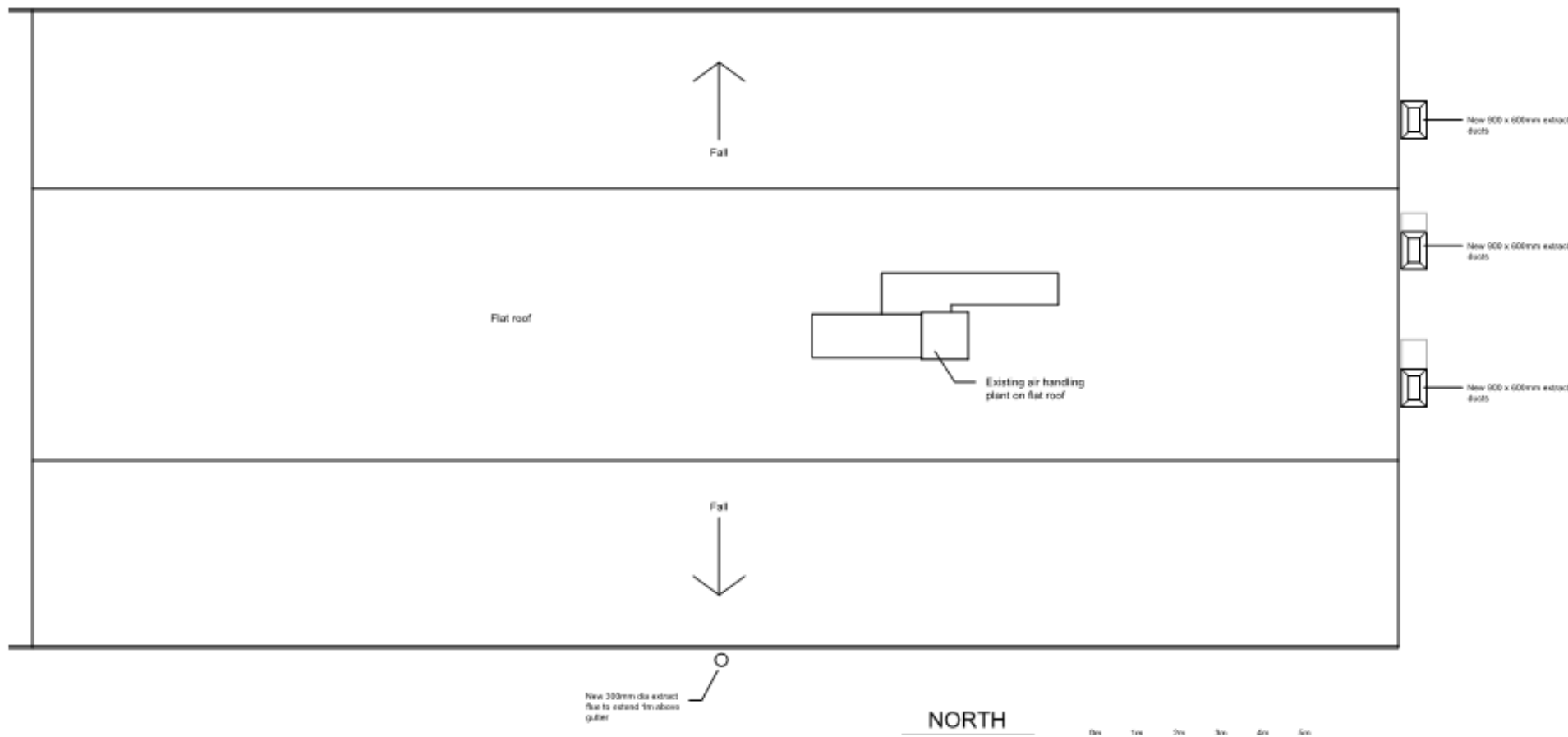


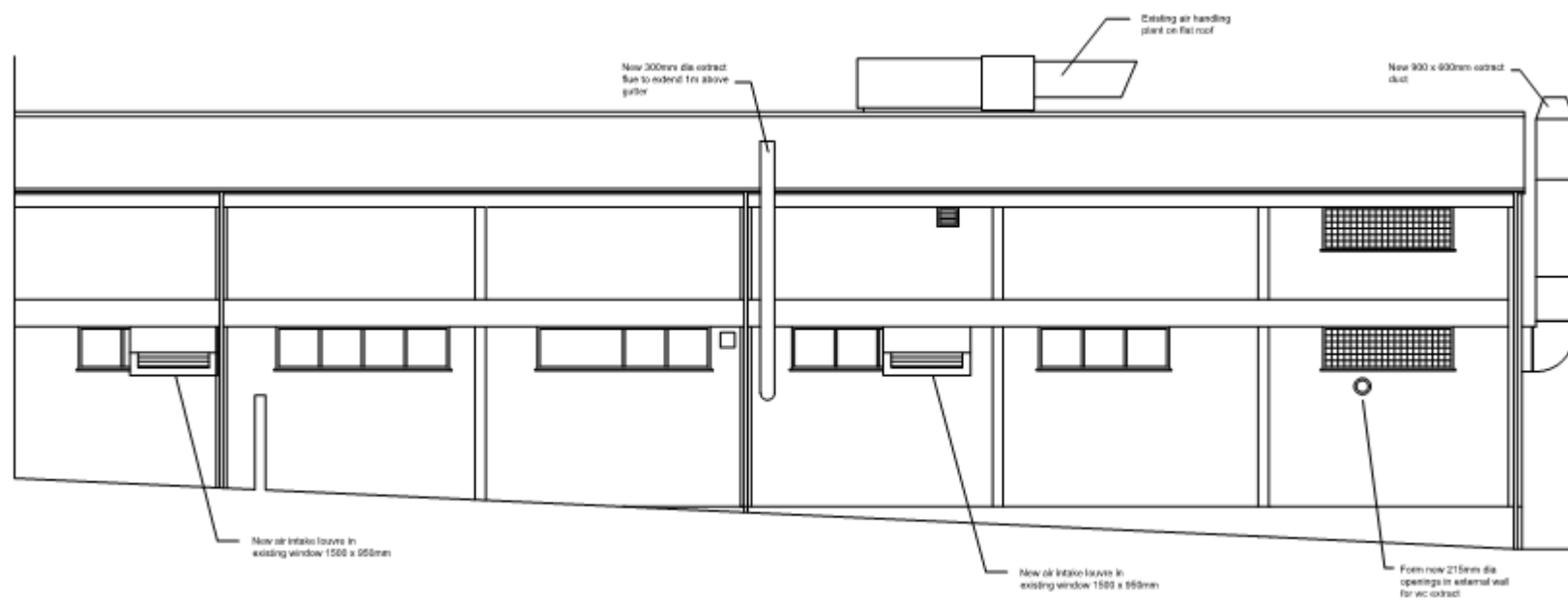
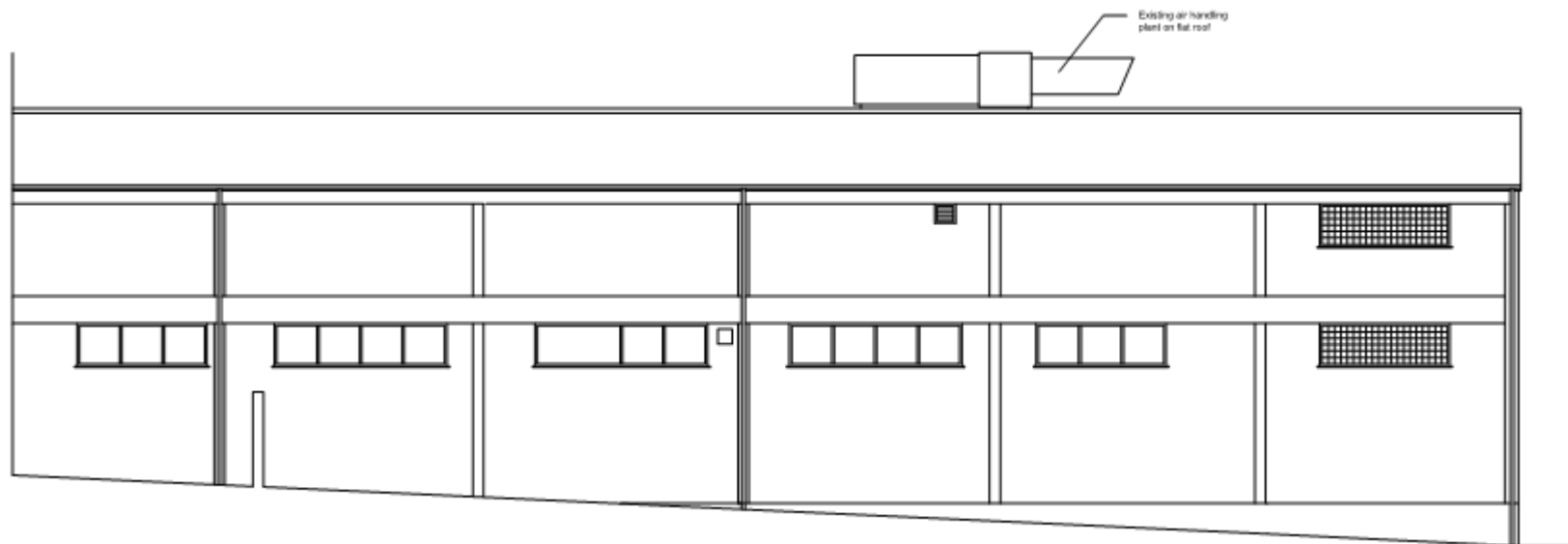
Above: Photo of the Z Zang extract duct at the rear of no. 115 Finchley Road

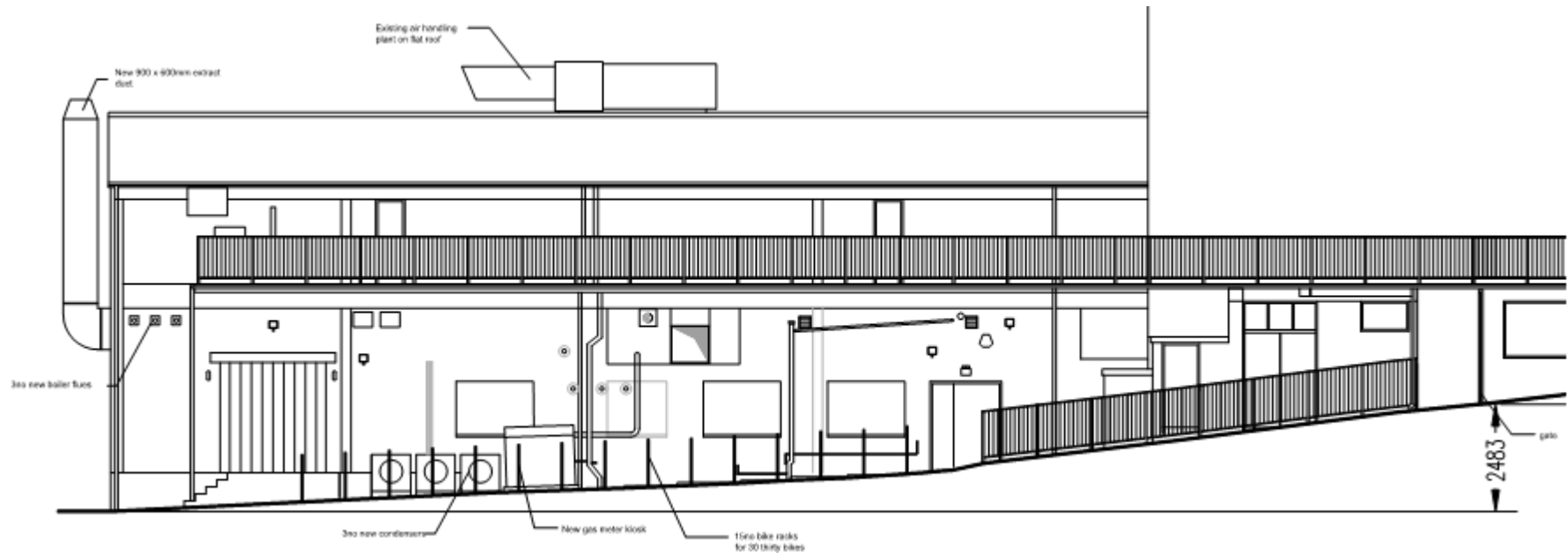
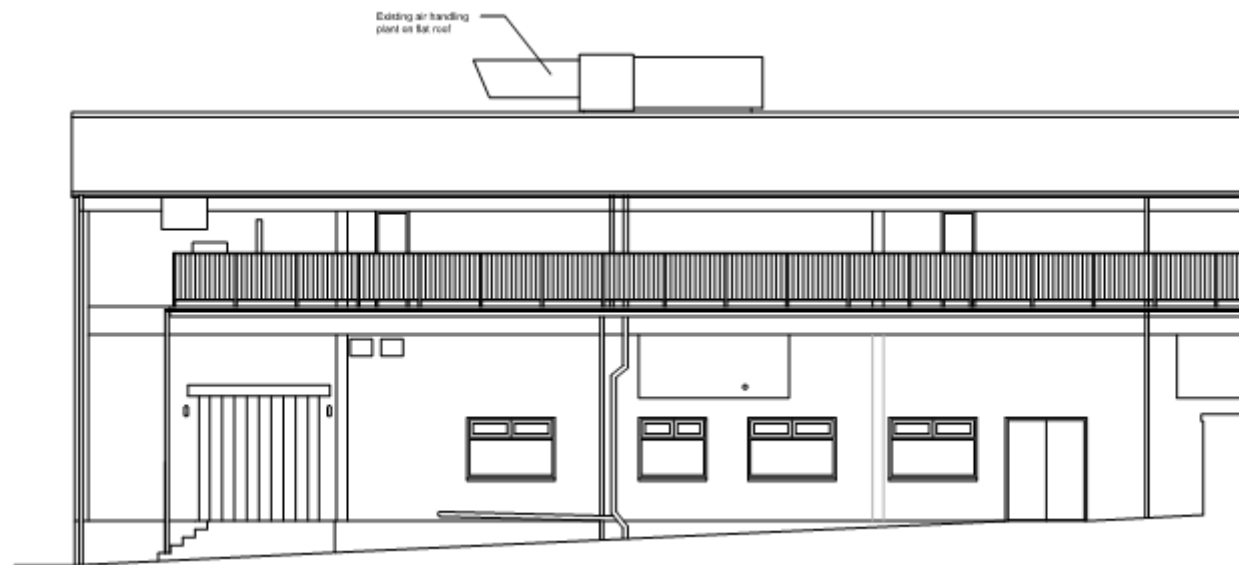


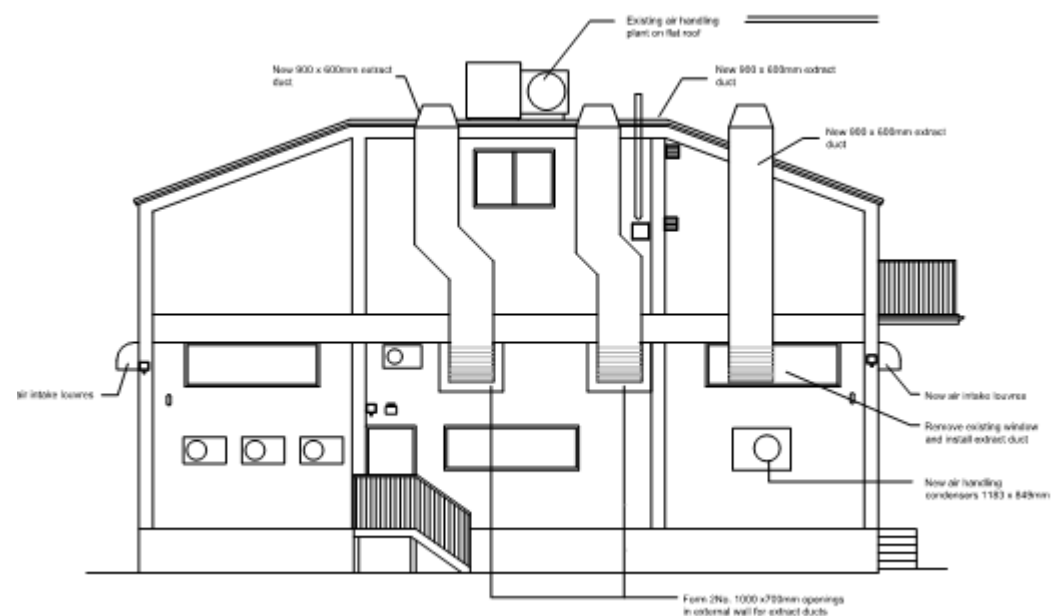
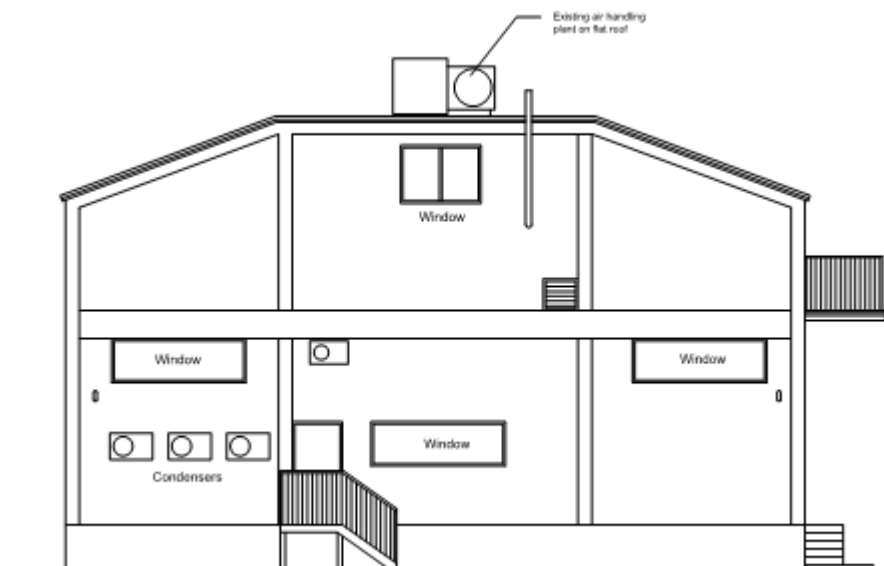


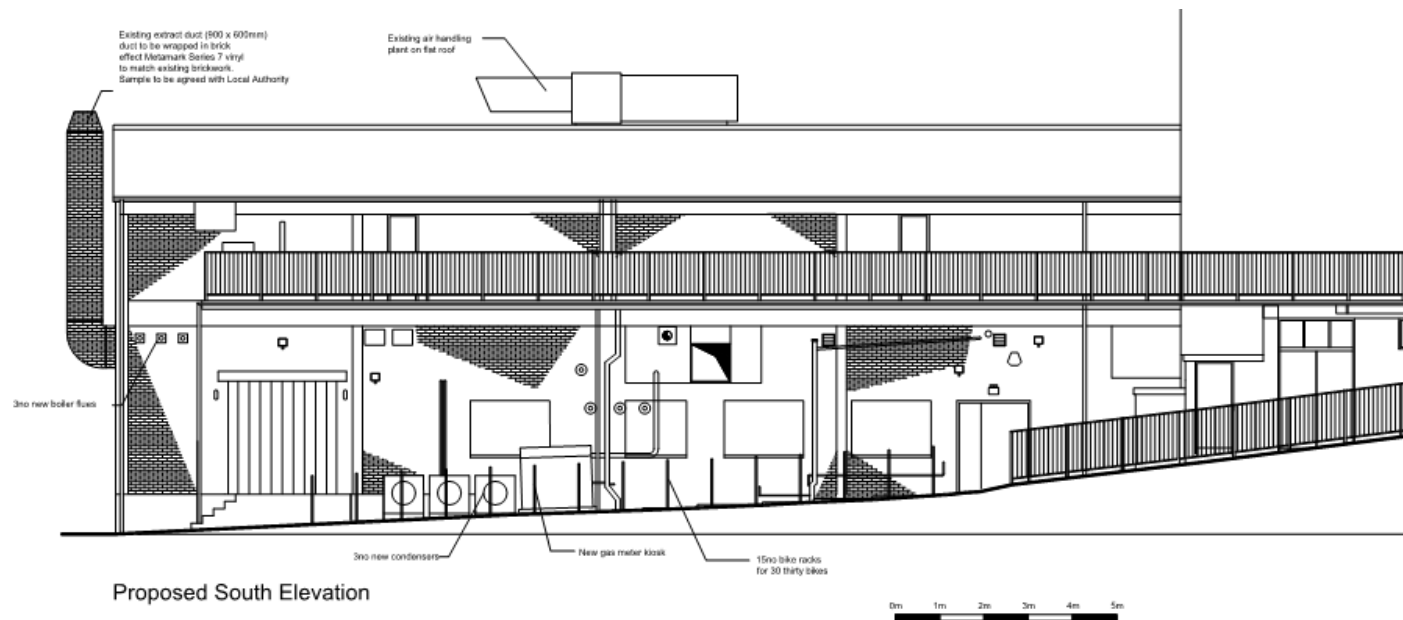




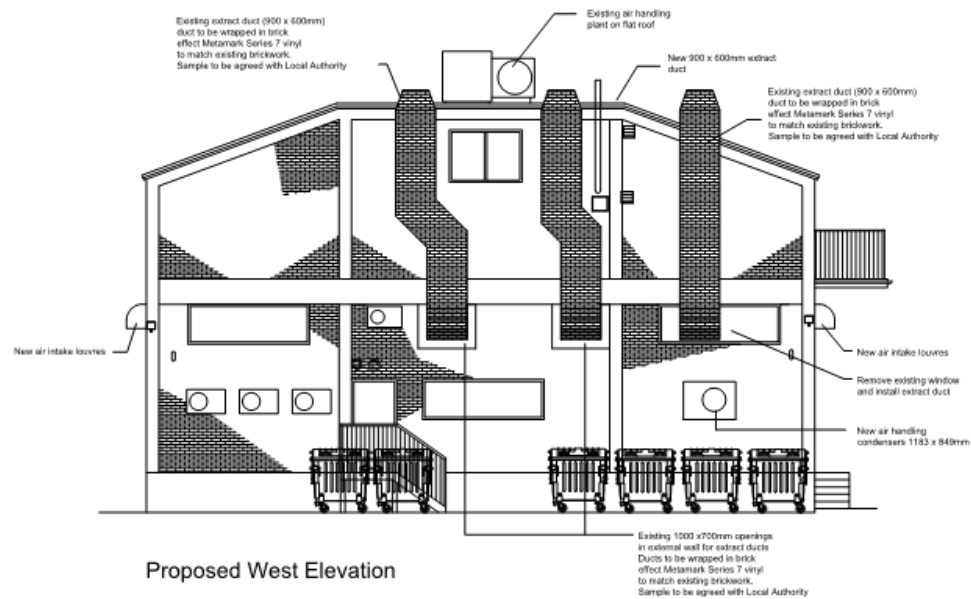








Proposed South Elevation



Proposed West Elevation



Photographic example of duct wrapped in brick effect vinyl.
The brickwork graphic for this proposal will be printed to match the surrounding brickwork

