

**SECTIONS 172-177 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**THE TOWN AND COUNTRY PLANNING (ENFORCEMENT NOTICES AND APPEALS) (ENGLAND) REGULATIONS 2002**

**APPELLANT: JACUNA KITCHENS (“Jacuna”)**

**APPLICATION SITE: 178B Royal College Street and Arches 73, 74 and 75 Randolph Street, London, NW1 0SP**

**LPA: LONDON BOROUGH OF CAMDEN (“Council”)**

**ENFORCEMENT NOTICE: 18 NOVEMBER 2022**

**COUNCIL REF: EN21/0681**

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**ENFORCEMENT NOTICE GROUNDS OF APPEAL**

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**1. INTRODUCTION**

1.1 These Grounds of Appeal accompany an Enforcement Notice appeal made pursuant to section 174(1) of the Town and Country Planning Act 1990 (the ‘Act’), by Jacuna against an Enforcement Notice relating to land at 178B Royal College Street and Arches 73, 74 and 75 Randolph Street, London, NW1 0SP (‘the Site’).

1.2 The Enforcement Notice appeal is being pursued on the following grounds:

(a) That planning permission should be granted for what is alleged in the Notice;

(b) That those matters have not occurred;

(e) That copies of the Notice were not served as required by section 172 of the Town and country Planning Act 1990;

(f) That the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or to remedy any injury to amenity which has been caused by any such breach;

(g) The time given to comply with the Notice is too short.

1.3 Since the appeal is being lodged on ground (a), an application for deemed planning permission is also to be made under section 177(5) of the Act (as amended).

## **2. SITE CONTEXT**

2.1 The Site comprises the building at 178B Royal College Street ("No.178B"); and the railway arches underneath the London Overground railway line known as Arches 74 and 75 and part of Arch 73, Randolph Street. It also includes the internal access road and the area of hard standing adjacent to Randolph Street (see **Figure 1**).

2.2 No.178B is a three-storey building set within a terrace that runs along Royal College Street. The ground floor is currently being used as the ancillary office for Jacuna. Prior to this, it was used as a café (Use Class E), operated by Royal Café. Royal Café closed in 2016 and No.178B was vacant until Jacuna took occupation in 2019. The upper floors are in residential use. The remainder of the terrace is in a mix of commercial,

retail, and residential uses at ground floor and residential use at the upper floors.

- 2.3 The London Overground railway line runs diagonally north-west to south-east to the rear of No.178B, and underneath the railway line within the viaduct are Arches 73 to 80. Arches 74-75, which are being used by Jacuna for its commercial kitchen and delivery centre, are located at the far eastern end of the viaduct, before it runs above Royal College Street. The remaining arches (not part of the Site) to the east are used by Getir (as a delivery centre for app-based shopping) (bar the last arch, which is vacant).
- 2.4 Vehicular access to the arches is gained from Randolph Street and runs to the rear of the viaduct and where the frontage to the arches is located. The rear of Arches 73-75 internally adjoins with the rear of No.178B.



**Figure 1: Appeal site**

### **3. BACKGROUND**

- 3.1 At Nos. 178A and 178B Royal College Street and Arches 73, 74, 75, 76, 77, 79 and 80, planning permission ref. 2018/0565/P was granted 29 May 2018 (see **Figure 2** for the site plan) and permitted:

**“Change of use of arches (73, 74, 75, 76, 77, 79 and 80) from offices (B1) to storage (B8). Change of use at ground floor of 178A and B Royal College Street from retail (A1), tattoo parlour (sui generis) and cafe uses (A3) to retail use (A1). Erection of a covered access extension to rear of arches 73-75.”**



Figure 2: Site plan for 2018/0565/P

- 3.2 It is understood that Getir is operating under this permission. When Jacuna took occupancy of the Site it also thought it could continue to operate within the confines of this use. However, the Council served a Planning Contravention Notice on Jacuna on 21 May 2021 stating that its operation was considered by the Council to be sui generis, and that planning permission was required to change the use from Use Class B8.
- 3.3 Jacuna therefore submitted a planning application to the Council (ref. 2021/4163/P) on 26 August 2021 and sought planning permission for the following "proposed development":

**“Change of use of café/restaurant (Class Use E) at 178B Royal Collage Street and storage facilities (Class Use B8) at arches 73,74 and 75 and amalgamation of 178B Royal College Street with Arches 74 and 75 and part of Arch 73 to create commercial kitchen and delivery centre with ancillary offices (Sui Generis). External alterations to shopfront of 178B Royal College Street and provision of plant and machinery to the rear of the Arches 73, 74 and 75 in association with the new use. (Retrospective).”**

- 3.4 The Council refused the planning application under delegated authority on 26 July 2022 and the decision notice cites five reasons for refusal which are broadly similar to the reasons for serving the Enforcement Notice. The refusal has now been appealed and is being dealt with under Appeal Reference: APP/X5210/W/22/3312728 submitted on 8 December 2022.
- 3.5 Subsequent to this refusal of the planning application the Council issued the Enforcement Notice.

#### **4. ENFORCEMENT NOTICE**

- 4.1 The Enforcement Notice is dated 18 November 2022. The reasons for serving the Notice are:
- 4.2 *“(a) the change of use has occurred within the last 4 years*
- 4.3 *(b) The proposed use by virtue of its nature and intensity, in particular the volume and frequency of deliveries and collections, 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.”*
- 4.4 *(c) The proposed use, by virtue of the nature and intensity of deliveries and collections generates vehicular noise which has not been fully mitigated, and due to the proximity of 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.*
- 4.5 *(d) The proposed development, in the absence of a legal agreement securing a local employment and training package, would lead to the exacerbation of local skill shortages and lack of training and employment opportunities for 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.”*
- 4.6 *(e) The proposed development, in the absence of a legal agreement securing a satisfactory 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), CC5 (waste) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.*

4.7 **(f)** *In the absence of a Bat survey, the development has potentially harmed the local bat population and biodiversity, contrary to policy A1 (Managing [sic] the impact of development [sic]) and A3 (Biodiversity) of the London Borough of Camden Local Plan 2017.”*

4.8 The steps required to address the Notice are:

*Within a period of SIX (6) months of the Notice taking effect:*

4.8.1 *Permanently cease the use of the ground floor of 178B and Arches 74 and 75 and part of Arch 73 as commercial kitchen and delivery centres with ancillary offices;*

4.8.2 *Permanently remove the plant and machinery from the rear of Arch 74 and 75 and*

4.8.3 *Make good the exterior of the proper following the completion of the above works.*

## **5. GROUNDS OF APPEAL**

5.1 **Ground (a) - that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted ....**

5.2 Without prejudice to Jacuna’s submissions under the other grounds of appeal, the basis of this Ground of Appeal is that planning permission should be granted for what is alleged in the Notice.

5.3 We will refer to the documents enclosed with this appeal and also submitted with the planning appeal referred to above (Appeal Reference: APP/X5210/W/22/3312728) and will seek to demonstrate that the proposed development:

- Is a use that is acceptable in principle in this employment location.
- Provides numerous economic benefits and brings into use employment floorspace that suffered a longstanding vacancy.

- Operates in a manner that respects and does not harm the amenity of neighbouring residents, in terms of noise or intensification related to comings and goings from the site. Neighbouring residents live in a busy Inner London area where there is already a high-level of background noise, particularly from the London Overground railway line that is above and in front of their properties.
- Operates in a manner that is safe in terms of transport matters and does not cause conflict between pedestrians and vehicles. Additional trips to and from the appeal site are mainly mopeds / motorbikes and cycle trips and these have no adverse impact on the local highway network.
- Can operate with impacts mitigated by imposition of conditions that will be clear and enforceable by the Council.
- Improves the frontage of Royal College Street Neighbourhood Centre, compared to a previous dilapidated/empty frontage.
- Causes no ecological harm to local bat populations because the site is not suitable for bat roosting.

**6. Ground (b) - That the breach of control alleged in the Enforcement Notice has not occurred as a matter of fact.**

6.1 This ground is raised owing to the site boundary that the Council have sought to rely upon associated with the Enforcement Notice. The Council has referred to land shown in “black” but has incorporated a plan within the Notice showing a red line boundary. It is unclear why this specific red line boundary has been selected. It relates to 178B only and does not appear to bear any relation to the area that the Council has sought to identify on the Notice. Accordingly, as a matter of fact it does not appear that the area identified through the Notice conforms with the red line boundary. The planning unit does not correspond to the Notice plan.

**6.2 Ground (e) – That copies of the Enforcement Notice were not served as required by Section 172 of the Act.**

6.3 Jacuna will provide evidence that neither Jacuna as lessee nor as the Occupier of the Site received copies of the Notice. Jacuna were only sent a copy of the Notice by ArchCo as the superior lessee/Landlord of the Site by email on 22 November 2022.

**7. Ground (f) - That the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach”**

7.1 The Notice has been issued by the Council against a change of use and requires cessation of the use. However, steps 2 and 3 of the Notice exceed what is required to remedy the breach, are imprecise and do not make clear what steps should be taken to remedy the breach.

7.2 The requirement to remove “plant and machinery from the rear of Arch 74 and 75” does not make it clear what should be removed from the totality of the Site. The requirement to “make good the exterior of the property following the completion of the above works” does not directly relate to the breach and furthermore does not make it clear what should be done. In this regard the Notice is imprecise and leaves Jacuna without knowing the precise steps it should take to remedy any breach.

**8. Ground (g) – That the time given to comply with the Notice is too short.**

8.1 The Notice provides for a six-month compliance period. The Appellant would seek 12 months to accommodate commercial interests (namely employment that could be lost and/or commercial commitments which would mean a loss of income that would be detrimental and cause overall harm to the business).

8.2 With assistance from the Inspector Jacuna will give evidence to support the need for a twelve-month period for compliance. This will be based on



several factors not least of all finding alternative premises within an acceptable period of time to avoid loss of contracts and valuable employees. The average unexpired licence term for Jacuna's Members is 18 months. Many of the brands served by the use are independent food brands whose business is conducted exclusively from the Site and six months is an inequitable time to allow them to stop their business or find alternative premises for the reasons mentioned above.

- 8.3 Close to 40 people will need to find alternative employment as a result of any site closure, particularly if Jacuna is unable to find an alternative premises and particularly those for whom the Site is their sole operating establishment.
- 8.4 The process of finding another site is likely to entail further assistance from a planning consultant to submit a planning application on their behalf, potentially also involving work from co-consultants on matters relating to transport, and other matters.
- 8.5 Upon any purchase or lease terms being agreed, a window of two months to submit the planning application will be argued as being reasonable, and whilst an application may well be subject to a statutory determination period of two months, there is then the likelihood of delays by the determining authority. Given current application timelines, this would likely take at least six months.
- 8.6 Jacuna's lease with ArchCo has 8 years' time remaining. If the Enforcement Notice is upheld and Jacuna could not operate from the Site, it would be unable to service its payments of rent. The likely consequence is that Jacuna would need to find an alternative tenant to take over its current lease. It is extremely unlikely that this could happen quickly.
- 8.7 Jacuna would therefore need to be given time to negotiate with its various suppliers since, in many instances, it would be required to give notice to terminate agreements in breach of the contractual minimum terms (many of these contracts have recently renewed).

8.8 Jacuna will no longer be able to make use of the property and will be under an obligation to remove items from the Site. Jacuna will want to recycle as many those materials as possible for other projects. The process of stripping out has been estimated as likely to take between 16 and 24 weeks and would require ArchCo's sign off at each stage:

## **9. CHOICE OF PROCEDURE**

9.1 It is considered that this is a complex case involving judgements to be made about the status of the site that will involve evidential matters of fact (potentially to be given on oath) and expert judgment which needs to be tested through cross-examination.

9.2 Experts will be needed to present evidence on technical aspects relating to the use of the Site as well as the planning merits of the ground (a) appeal. In order that this evidence can be fully understood a public inquiry would be the appropriate forum for the determination of this matter. For all these reasons we suggest an inquiry would most likely be the most appropriate forum to consider this matter.

**Shoosmiths**