



Appeal Decision

Inquiry Held on 11-13 January 2022

Site visit made on 14 January 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 03 February 2022

Appeal Ref: APP/V5570/C/18/3201989

Unit 4, Roman Way Industrial Estate, 149 Roman Way, London N7 8XH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Roofoods Ltd against an enforcement notice issued by the Council of the London Borough of Islington.
- The enforcement notice was issued on 26 March 2018.
- The breach of planning control as alleged in the notice is without planning permission, making a material change in the use of the land to Takeaway Food Preparation, Collection and Delivery (Sui Generis), the erection of 6 x extract flues to the upper southern elevation and short chimney to roof.
- The requirements of the notice are:
 - 1) Cease the use of the site as a Takeaway Food Preparation, Collection and Delivery Hub;
 - 2) Cease the use of the 6 x extract flues to the southern elevation;
 - 3) Cease the use of the short chimney to the roof;
 - 4) Remove all cooking facilities, cooking equipment and associated partitioning from the land;
 - 5) Remove the 6 x extract flues to the southern elevation;
 - 6) Remove the short chimney to the roof;
 - 7) Remove all materials and debris from the land and repair any resulting damage to the building.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matter

1. There is duplication between the requirements of the notice. For example, requirement 2, which is to cease the use of the extract flues, would not be necessary as requirement 5 requires their removal within the same timescale. I have a duty to get the notice in order. However, as I am allowing the appeal and quashing the notice, and the issue concerns the requirements only, I have not used my powers of correction in this instance.

The Ground (a) appeal and the deemed planning application

Background

2. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the material change of use of the land

to Takeaway Food Preparation, Collection and Delivery (Sui Generis), the erection of 6 x extract flues to the upper southern elevation and a short chimney to roof.

3. The main issues are: (i) the effect of the development on the living conditions of neighbouring occupiers, with regard to noise from petrol powered scooters; (ii) the effect of the development on air quality; (iii) whether the development results in the loss of business floorspace to the detriment of the area's primary economic function, and (iv) whether any adverse impacts could be mitigated by conditions and/or planning obligations.

Living conditions of neighbouring occupiers with regard to noise from petrol powered scooters

The Site

4. The site comprises an industrial unit located centrally within the Roman Way Industrial Estate. It is a single storey (with mezzanine) terraced unit facing onto the central access road through the industrial estate and extends to 218 sqm. The building accommodates five commercial kitchens plus shared ancillary storage rooms, WCs, a dispatch room and a waiting area for delivery drivers. Delivery riders park within the site forecourt, where there is delineated space for 10 scooters and five bikes. There is associated extract plant and equipment located on the upper southern elevation and on the roof.
5. Directly to the north of the unit is a mainline railway, running through Caledonian Road and Barnsbury Station. The station has a regular 'London Overground' service, with 12 trains per hour operating at off peak hours daily, including Sundays and Bank Holidays. These services operate up to midnight seven days a week, including Sundays and Bank Holidays. A further row of industrial units are located to the south in-between the site and the closest residential dwellings situated on Offord Road. The principal vehicular access to the estate is from Roman Way to the east. However, there is a secondary access to the west from Offord Street. This access is controlled by a gate, which is shut at 19:00hrs each day when the industrial estate is in operation.
6. The site is operated by Deliveroo 'Editions', which currently provides commercial kitchens for occupation by five restaurant partners¹. Food is prepared and cooked within these kitchens and delivered to the customers by delivery riders. The orders are placed via the Deliveroo 'app' and delivery riders are assigned using an algorithm. The relevant rider collects the delivery from the site and takes it to the customer. Sales do not take place at the site and there is no ability for customers to collect an order themselves.
7. The site can be accessed from 08:00hrs Mondays to Saturdays by the restaurant partners for food preparation. However, customers are only able to place orders from 12:00hrs. The restaurants close at 22:00hrs and no more collections and deliveries take place after that time. The site does not operate on Sundays or Bank Holidays. The site supports 48 full time employees, excluding the self-employed riders. The onsite Editions team comprises six employees, including the manager and a dedicated support team, whose responsibilities include site operations and maintenance.

¹ Layout as shown on plan refs 2019-056-07, 06, 05, 04, 03, 02 and 01.

The Policy Background

8. The statutory development plan comprises the Islington Core Strategy 2011 (Core Strategy), the Local Plan: Development Management Policies 2013 (DMP) and the London Plan 2021. The Draft Islington Local Plan 2019 (the emerging Local Plan) is at a relatively advanced stage with the examination now in progress. The Council's long-term transport ambitions are set out in its Transport Strategy (2020-2041), as reflected in the emerging Local Plan.
9. Policy DM2.1 of the DMP is a generic policy that concerns design and amenity. Criterion (x) requires development to provide a good level of amenity including consideration of noise and the impact of disturbance, hours of operation, vibration, pollution and fumes between and within development. Policy DM6.1 relates to healthy development and Part G requires applicants to demonstrate that noise generating uses within residential areas will not give rise to noise nuisance. Policy DM8.2 relates to managing transport impacts, with criterion (vi) requiring development to have no significant negative impacts from transport arrangements on the local and wider environment.
10. Policies D13 and D14 of the London Plan require new noise and other potentially nuisance generating development, close to residential and noise sensitive uses, to mitigate and manage noise impacts. Policy DH5 of the emerging Local Plan reflects the London Plan policies.
11. National policy and guidance are also relevant. Paragraph 185 of the National Planning Policy Framework 2021 (the Framework) says that planning policies and decisions should ensure that new development is appropriate for its location. This includes the need *to mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life*. The Framework references the "Noise Policy Statement for England" 2010 (NPSE), which sets out the following aims. *Through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government Policy on sustainable development:*
 - *avoid significant adverse impacts on health and quality of life;*
 - *mitigate and minimise adverse impacts on health and quality of life;*
 - *where possible, contribute to the improvement of health and quality of life.*
12. The NPSE makes it clear that there is a need to integrate consideration of the economic and social benefits of development with proper consideration of adverse environmental effects, including noise impacts. This should avoid noise being treated in isolation, that is, focussing solely on noise impacts without taking account of other related factors.
13. The Planning Practice Guidance (PPG) sets out that it is important to look at noise in the context of the wider characteristics of a development proposal, its likely users and surroundings, as these can have an important effect on whether noise is likely to pose a concern. The PPG also refers to the NPSE with reference to how noise impacts should be determined. This would include identifying whether the overall effect of the noise exposure is, or would be, above or below the 'significant observed adverse effect level' and the 'lowest observed adverse effect level', described as:

- Significant observed adverse effect level (SOAEL): This is the level of noise exposure above which significant adverse effects on health and quality of life occur.
 - Lowest observed adverse effect level (LOAEL): This is the level of noise exposure above which adverse effects on health and quality of life can be detected.
 - No observed effect level (NOEL): This is the level of noise exposure below which no effect at all on health or quality of life can be detected.
14. The above policy and guidance documents set out a framework, which requires a proper assessment of noise impacts on health and the quality of life while taking account of the wider Government policy on sustainable development. In essence, where significant adverse impacts are identified as a result of an assessment by a relevant competent person, a proposal is likely to be unacceptable. Other adverse effects must be mitigated and minimised as far as possible.

Reasons

15. It is common ground that the main source of noise from Deliveroo site operations is from scooter movements. The Council considers this is having an impact within the LOAEL and, as such, scooter noise should be mitigated and reduced to a minimum. It is suggested that this would be achieved by imposing a planning condition restricting the use of scooters, which the appellant opposes for reasons of business viability. Both the Council and the appellant have submitted assessments by competent persons, which reach different conclusions in relation to this matter. The principal area of disagreement between the noise specialists concerns the methodology for assessing scooter noise and the resultant assessment of impacts.
16. It is possible to apply objective standards to the assessment of noise and its effect by several methods. The approach described in BS4142:2014² is agreed as appropriate by both parties to consider the effects of scooter noise emanating from the industrial estate and its impact on the adjoining Offord Road occupants. The method requires an assessment of background and residual noise levels, and the prediction of new noise levels (with any penalty corrections) to gain a rating level, which enables a comparison with the existing background level. This is used to make an initial estimate of impact, which is considered in the context of the site.
17. Mr Clive Bentley, on behalf of the appellant, and Mr Torben Andersen, on behalf of the Council, carried out assessments using the BS4142 methodology taking their measurements during the busier periods of trading. The noise experts have been able to reach agreement in several areas but there are some key differences. Mr Bentley is of the opinion that the greatest level difference between rating and background noise from site activities is 2dB. This would be experienced at two of the third floor windows to the rear of the Offord Road premises. The level difference at all other premises (and other floors) would be below this.
18. In terms of the impact, a level difference of 2dB is indicative of a low, less than adverse impact, when assessed using BS4142. This assessment fits with his subjective assessment of scooter noise. Mr Bentley considers that, although

² British Standard (BS) 4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound'.

scooter noise can be heard, it does not cause a change in behaviour (such as turning up the television, speaking more loudly and so on) and that it may slightly affect the character of the area, but not to an extent which would be a change to the quality of life for those living there. In other words, there is no adverse effect.

19. In contrast, Mr Andersen is of the opinion that the greatest level difference between rating and background noise would be 4dB and this would be experienced by at least five and potentially 10 dwellings with windows facing the industrial estate. It is considered that the other dwellings along Offord Road would also be affected, although at a lower level. Mr Andersen considers that scooter noise from the site can be heard and causes small changes in behaviour, attitude or other physiological response, eg turning up the volume of a television, speaking more loudly, and where there is no alternative ventilation, having to close windows for some of the time because of the noise. This would be an effect within the LOAEL and, as such, should be mitigated to reduce adverse effects to a minimum.
20. In terms of the respective BS4142 assessments, there are some minor differences in the measured background noise levels at the upper floors of the Offord Road properties, but the greater dispute relates to the scooter noise levels. Mr Andersen adopted a method of isolating scooter noise and modelling its transmission to receptors. Mr Bentley used a method of identifying scooter noise within recordings to enable the contribution of sound from scooters to be considered separately.
21. In written evidence and during the Inquiry, both parties sought to challenge the reliability of the methods used. Mr Bentley's evidence was challenged on the basis that he had not taken full account of wind speed and direction. It was also suggested that measurements may have been affected by site managers being aware that he was undertaking measurements on the relevant day. Mr Andersen's approach was argued to be less robust due to, among other things, lack of a specific measurement of scooter noise at the assessment location. However, I do not consider the margins of difference to be unexpected given that separate assessments have been undertaken at different times. I also saw that scooter noise is variable and is dependent on the type of vehicle and the way it is driven.
22. Ultimately, the disagreement between the parties has narrowed to a difference between the rating and background noise levels from on-site activities of at most 2dB (Mr Bentley) or 4dB (Mr Andersen). It is agreed that Mr Bentley's assessed difference is indicative of a less than adverse effect. In relation to Mr Andersen's assessment, BS4142 states that a difference of around +5dB is likely to be an indication of an adverse impact depending on context³. The disparity, however, is not significant and, in my opinion, reflects the difficulties in assessing noise from scooters, which have a particular character. I consider that, in reality, the effect level is likely to be a combination of the two conclusions reached by the specialists following the BS4142 assessments.
23. A further area of disagreement concerns whether additional methodologies should be used. Mr Andersen considers that other assessment methods can and should be applied to provide a comprehensive picture. As such, he has carried out additional noise impact assessments, to assess onsite scooter noise, firstly

³ BS 4142 11(c).

using the IEMA comparison methodology⁴. The approach taken was to compare the level difference with and without scooters using an applied penalty of 5dB, to account for the difference in the character of scooter noise. This assessment concluded that the greatest level difference at the rear of the Offord Road properties would be 5dB, which would be classified as SOAEL. This would occur on a Thursday afternoon, between 12:00 and 19:00hrs, and Friday evening between 19:00 and 23:00hrs.

24. However, it is accepted that the IEMA guidance does not specifically give a method for applying corrections, and typically, corrections are not used for an assessment of this nature. I note that Mr Bentley used the IEMA methodology to assess scooter noise on the surrounding roads, as he considered this the most appropriate method to use where road traffic is the dominant source of noise. The 5dB penalty applied by Mr Bentley was derived from published studies. However, it does not follow that a similar correction can be applied in a different context when road traffic noise is not dominant. I am not satisfied, therefore, that this methodology as used by Mr Torben can be relied upon. It is preferable to base my conclusions on the BS4142 methodology, which is agreed is appropriate and is directly applicable to the site circumstances.
25. Mr Andersen goes further and makes an assessment using Appendix 10 of the Local Plan, 'Noise Exposure Categories and Standards', which contains guidance that is intended to inform Policy DM6.1. This includes standards that should be used when assessing industrial and commercial uses in residential areas. The relevant section refers to BS4142:1997, due to the adoption date of the Local Plan, but it is agreed that it should be read in line with the most recent version of BS4142. Applicants should demonstrate that at least 1m from the nearest sensitive façade the predicted noise levels, of a certain character, resulting from the development will be at least 10dB below the existing background levels. Although Mr Andersen adapted the methodology in relation to the penalty system, the results are that the noise from scooters was not compliant with the requirements at any time during the assessment period.
26. However, Appendix 10 comprises guidance to be used in assessing noise nuisance and was developed from BS4142:1997. This document has since been updated in recognition of the NPSE that introduced the provision that audible noise may not be adverse. Policy DM6.1 requires evidence that noise generating uses within residential areas should not give rise to noise nuisance. It was agreed during the Inquiry that site operations do not give rise to such impacts, and so relying on a method that leads to contrary conclusions would be unsound.
27. Therefore, in terms of the methodology for assessing scooter noise, I consider that the agreed use of the up-to-date version of BS4142 is the most appropriate. I do not see any justification for using other methods to supplement this methodology as doing so would lead to a risk of basing conclusions on unreliable or unsound results. Nonetheless, it is important to take account of the experiences of people living alongside the site, as these can inform and supplement the assessments of impact.

⁴ Institute of Environmental Management and Assessment: Guidelines for Environmental Noise Impact Assessment 2014.

28. A number of local residents are opposed to the development and there were objections relating to the previous planning application⁵ as well as to this appeal. The objections from those residents who live in the Offord Road properties closest to the site relate to scooter noise, but this tends to be in the context of wider concerns about noise and disturbance and can be attributed to several sources. Also, it is not possible to attribute scooter noise from the industrial estate solely to the Deliveroo operations, as there is another business nearby that uses petrol powered scooters for deliveries. Moreover, the impacts must be considered in context.
29. The site is on a relatively busy, medium-sized industrial estate, which lies within a densely developed residential area in inner London. The other units are occupied by a commercial laundry, a brewery, and other uses which rely on delivery riders. Within the industrial estate, noise from plant and equipment was predominant at the time of my site visit, which took place over the lunchtime period on a weekday. In the surrounding roads, the main source of noise was from road traffic. The type and levels of noise are consistent with the location. Moreover, the site is designated as suitable for business or employment uses, where the intensification of business floorspace is encouraged. In order to achieve the Council's strategic aim of supporting the local economy, an element of noise from industrial and commercial uses should be anticipated and managed.
30. The Council's preferred method of mitigating the noise is to prevent the use of petrol powered scooters, which would eliminate the noise source altogether. In my opinion, this would be appropriate if the noise assessments were showing effects within SOAEL, which should be avoided. In support of its position, the Council referred me to a site at Finchley Road in Camden which was granted permission subject to a condition requiring deliveries to be carried out by foot, bicycle or electric two wheeled vehicles only⁶. However, the site-specific circumstances were clearly different and that appeal decision does not justify the imposition of a similar condition in this case.
31. The Council has also expressed concern about the potential intensification of use, for example, if a popular food outlet started operating at the site with a larger volume of orders. The appellant's position is that there is no scope for material intensification as its restaurant partners include some of the top performing. I accept this point and consider it unlikely that the operations at the site would intensify to such an extent that the scooter noise would reach unacceptable levels.
32. I consider that the noise assessments, combined with neighbour comments, show that there is a relatively small group of people, living in houses adjoining the industrial estate, who are affected by noise from scooters serving the development in a way that causes them to change their behaviour. It may be that certain houses are less well insulated against noise or those people affected are more noise sensitive. However, the assessments have shown that the effects are marginal and, at worst, would fall within LOAEL. Mitigation is, therefore, appropriate to minimise the adverse effects on health and the quality of life. The main parties have agreed a suite of conditions that have this aim. As explained, I do not find sufficient justification for the condition that would

⁵ Ref P2019/2774/FUL.

⁶ Ref APP/X5210/C/18/3206954 dated September 2019.

prevent the use of scooters by the delivery riders because the impacts are not so great that they should be avoided.

33. I consider that the suggested condition to limit the planning permission to three years is necessary and reasonable. The temporary permission will allow the Council to monitor site operations and ensure that any adverse effects continue to be mitigated as far as possible, while enabling a review after three years should circumstances change. This would sit alongside a condition restricting hours of use to the current hours of operation, the establishment of a community working group and an operational management plan which, in combination, aim to ensure that the site is well-managed and local people have the opportunity to engage with the site operators. I find this mitigation appropriate to address the likely level of impact, while also enabling the continued use of the site for commercial purposes.

Conclusion

34. I find that there are no significant adverse noise impacts, which should be avoided. I consider that noise from scooters arriving at and leaving the unit is noticeable for some occupiers of adjoining dwellings on Offord Road, when they have their windows open in the evening. However, there is also other noise associated with the industrial estate and from the nearby railway. The level and character of scooter noise is such that, when assessed against BS4142 and taking account of the context and other noise sources present, it has a low impact. However, I consider that planning conditions are necessary and reasonable to ensure the site continues to operate as it does now, to put in place a mechanism for engaging with local people and to enable a review of the permission after three years.
35. I conclude that, subject to the imposition of planning conditions, the development provides a good level of amenity with regard to noise from petrol powered scooters and does not give rise to noise nuisance. There are no significant negative impacts from scooter noise on the local and wider environment. As such, the development would comply with Policies DM2.1, DM6.1 and DM8.2 of the Local Plan, Policies DM13 and DM14 of the London Plan and Policy DH5 of the emerging Local Plan, which seek to mitigate and manage noise impacts. The development meets the aims of the Framework insofar as it seeks to ensure development is appropriate for its location.

The effect of the development on air quality

Reasons

36. The Council considers that the development would not meet development plan policy as it concerns a use reliant on petrol powered scooters, which would inevitably contribute to air pollution. This would not accord with its Air Quality Strategy (2019-2023), which seeks to improve air quality by lowering exposure to the main pollutants. However, during the Inquiry it was accepted that the air quality effects of the development would not, in themselves, justify the imposition of the condition to restrict the use of petrol powered scooters. This indicates that the Council accepted the appellant's evidence on this matter, which includes an Air Quality Assessment⁷. The assessment provided a review

⁷ ARUP dated 15 December 2020.

of air quality in the area and included a modelling study to predict the changes in concentrations of nitrogen dioxide and fine particulate matter.

37. Islington is covered by an Air Quality Management Area (AQMA), which was extended from partial coverage to complete coverage of the Borough in 2003. However, the review of existing air quality in the area shows an improvement in the period 2015-2019. The modelling assessment shows that the predicted changes in pollutant concentrations were negligible, when applying the Institute of Air Quality Management guidance. As the assessment was carried out in 2019, a further traffic survey was undertaken in October 2021 and the modelling assessment was repeated. In this case, a worse case assumption was made regarding vehicle types, using a comparator of a light goods vehicle. The change was still considered negligible.
38. The Council argued that the London Plan policy on air quality, Policy SI 1, and Policy S7 of the emerging Local Plan, require development proposals to be air quality neutral. However, the relevant assessment is a mechanism to ensure the robust consideration of the impacts, it does not seek the elimination of all emissions. There is no relevant London Plan benchmark for the assessment of air quality neutrality for this type of development and nor is it of a scale or type of development to which the emerging Local Plan seeks to apply this requirement. The development has been shown to have a negligible impact in an area where air quality is improving. Therefore, it would not lead to a deterioration of poor air quality nor create an unacceptable risk of high levels of exposure.
39. My attention was also drawn to Policy T2, part G of the emerging Local Plan, which seeks to minimise the impact of non-sustainable transport modes. The Council argued that the development was not compliant as it did not maximise alternative modes of transport. However, I note that the site provides four charging points and has supported an increased use of electric scooters, over the period 2019 to date, with 27% of collections being made by e-scooters.

Conclusion

40. I conclude on this matter that the development would not cause significant harm to air quality. It accords with Policies DM6.1 of the Local Plan and Policy SI 1 of the London Plan, which seek to avoid significant harm to air quality and reduce levels of exposure to poor air quality. The development also accords with Policies S7 and T2 of the emerging Local Plan, which seek to mitigate or prevent adverse impacts on air quality and promote sustainable modes of transport, although Policy T2 was agreed to carry limited weight. The development meets the aims of the Framework insofar as it seeks to improve air quality or mitigate harmful impacts.

Whether the development results in the loss of business floorspace to the detriment of the area's primary economic function

Reasons

41. The site is within an industrial estate that is designated as an Employment Growth Area for its local or strategic economic potential or value. The original planning permission for the industrial estate was for light industrial use. Policy CS13 of the Core Strategy aims to safeguard existing employment space, defined as activities that generate employment. Policy DM5.1 seeks to

- encourage the intensification, renewal and modernisation of existing business floorspace. Policy DM5.2 of the Local Plan seeks to resist the loss of business floorspace, defined as “activities or uses that fall within the B-use class (ie offices, industry or warehousing)”. The emerging Local Plan proposes that the site be designated as a Locally Significant Industrial Site (LSIS) and Policy B2 part C requires that within LSISs, the overriding priority land uses are industrial (B1(c), B2 and B8), and sui generis uses which are akin to industrial uses.
42. The appellant argues that the development is compliant with the relevant policies as the component activities at the site, the preparation and cooking of food and its delivery to customers, comprise B-uses or employment. The Council maintains that the development is a sui generis use and it cannot be decoupled in the way the appellant suggests. Thus, the development is considered contrary to Policy DM5.2. However, it is agreed that the use is akin to industrial uses and, as such, it would not be in conflict with the emerging policy.
 43. Under DM5.2 the loss of business floorspace will be resisted. In this case, the use is not within a B-use class and there is conflict with Part A of the policy. Part B says that, in addition, the loss of floorspace will be resisted where it would have a detrimental impact on the area’s primary economic function. The unit is fully occupied by five restaurant partners and it supports 48 full time employees, from management to kitchen staff, and also the self-employed delivery riders. There are additional benefits resulting from the supply chain, including maintaining and operating the kitchens, and providing goods and other services. The appellant also says that the facility enables restaurants to expand their customer base. Hence, although the development results in the loss of business floorspace as defined in the policy, it does not have a detrimental impact of the area’s primary economic function.
 44. Policy DM5.4 concerns the size and affordability of workspace, which would normally be workspace with a rental value below market rate. The Council considers the unit would have provided affordable workspace that could have been occupied by small or micro enterprises. Although the kitchens could be used for small start-up businesses, the reality is that the current occupiers are well-established and with a strong customer base. Hence, the operation of the unit by Deliveroo amounts to a loss of affordable workspace. It has been agreed that on-site provision of such workspace is inappropriate due to the nature of the operation and the size of the unit. In exceptional circumstances, the policy allows for financial contributions to secure off-site provision, which would be secured through planning obligations under Section 106 of the Town and Country Planning Act 1990 (Section 106 Agreement).
 45. The main parties have negotiated and agreed planning obligations to address the loss of the affordable workspace. The size of the contributions has been established using the Council’s Supplementary Planning Document (SPD)⁸, which supports Policy DM5.4 in relation to off-site provision. One obligation requires an affordable workspace contribution, to be spent by the Council towards the provision of micro, small and/or affordable workspace facilities. In addition, the parties have agreed a condition requiring a scheme for mentoring young people within the company, for the life of the development. The financial contribution agreed, plus the condition, would assist in closing the identified

⁸ Planning Obligations (Section 106) (2016).

gap in the Borough's supply of workspace and opportunities for small service-based and light industrial businesses or start-up enterprises.

46. Also, an obligation requiring an employment and training contribution, to be spent by the Council towards improving the prospects of local people accessing jobs in the development, has been agreed. The SPD sets out that other obligations relating to the economy and employment may be required if the circumstances of a specific development make them necessary. In this case, the contribution seeks to offset the loss of the affordable workspace. It would be used to fund initiatives, which aim to improve local employment opportunities, provide skills development and training opportunities, and remove barriers to employment and progression. Thus, the contribution would assist in the Council's strategy to address worklessness.

Conclusion

47. Overall, I am satisfied that the obligations agreed would address the harmful effect resulting from the loss of affordable business workspace. I find that the Section 106 agreement is necessary to make the development acceptable in planning terms, it is directly related to the development and is fairly and reasonably related in scale and kind to the development. As such, it meets the tests set out in paragraph 57 of the Framework. A certified copy of the executed document has been submitted and I am satisfied that it will be effective. The planning condition is necessary and reasonable for the reasons explained above.
48. The development results in the loss of business floorspace, but not to the detriment of the area's primary economic function, and the loss of affordable workspace is suitably mitigated. The development complies with Policy CS13, Policies DM5.1, DM5.2 and DM5.4 of the Local Plan, and Policy B2 of the emerging Local Plan, which seek to protect the area's primary economic function.

Other Matters

Highways and Transportation

49. It is agreed that the appellant's use of the site is not considered to have a harmful impact on the local highway network. It is acknowledged that the use is associated with an increase in scooter movements but the appellant has demonstrated through a Transport Statement⁹ that the industrial estate and the surrounding area can accommodate the level of use. I note the comments from objectors relating to an increase in scooters, but not all of the scooters on local roads are in direct consequence of the use of the site by Deliveroo. In any event, the road network can accommodate the vehicles without risk to highway safety. Other objectors cite concerns about breaches of traffic regulations by the delivery riders. There is no evidence that any accidents have resulted and, again, not all scooter/moped rides are connected with the site. However, the imposition of a condition requiring a community working group would enable local residents to engage with the developer over any such matters.
50. Local residents have expressed concerns about the noise from scooters in the vicinity of the site and its impact on residential amenity. However, the appellant's noise assessment concludes that the scooter noise resulting from

⁹ TPA Transport Statement dated October 2019.

the use of the site by Deliveroo has a negligible effect on noise sensitive receptors on the surrounding road network. These findings are not disputed by the Council and there is no reason for me to find otherwise.

51. I conclude on this matter that the development does not result in a negative impact on the operation of the transport infrastructure and provides appropriate servicing and delivery, in compliance with Policies DM8.2 and DM8.6 of the Local Plan. The development provides a good level of amenity, with regard to noise from petrol powered scooters on the local road network and does not give rise to noise nuisance. There are no significant negative impacts from scooter noise on the local and wider environment. As such, the development complies with Policies DM2.1 and DM6.1 of the Local Plan, DM13 and DM14 of the London Plan and policy DH5 of the emerging Local Plan, which seek to mitigate and manage noise impacts.

Plant/extract equipment

52. The main parties have agreed that the installed plant equipment is acceptable in terms of design and amenity. The appellant's noise assessment of the fixed plant equipment¹⁰ concludes that the predicted noise levels comply with the Council's noise level requirements and would be compliant with the Framework in avoiding significant adverse impact. As such, the development complies with Policies DM2.1, DM6.1 and DM8.2 of the Local Plan, DM13 and DM14 of the London Plan and policy DH5 of the emerging Local Plan, which seek to mitigate and manage noise impacts.
53. Odour is also a concern to some local residents and the appellant has assessed the risk of odour nuisance from the site¹¹. It is recommended that the site is fitted with odour control equipment, which is agreed can be secured by a planning condition. I consider the development is in accordance with Policy DM2.1 of the Local Plan, which aims to ensure a good level of amenity, subject to appropriate planning conditions which are necessary to regulate the operation of plant/extract equipment.

Site operations

54. Neighbours report antisocial behaviour from riders serving the Deliveroo site. The appellant has in place an Operational Management Plan, which covers matters such as managing collections of orders and on-site restrictions. The site management team are responsible for reporting any breaches. A condition for an updated management plan will be imposed, which is agreed by the parties, and I consider that its operation alongside the Community Working Group would address these issues. I find that, subject to the conditions, the development would achieve a good level of amenity in accordance with Policy DM2.1 of the Local Plan.
55. A local resident has expressed concern that the use is having an adverse impact on trade for independent restaurants, however, there is little explanation or evidence. In any event, the economic benefits would outweigh any such effects.

¹⁰ Sharps Redmore 2 December 2021.

¹¹ Michael Bull and Associates 9 December 2021.

Conditions

56. I have considered the suggested planning conditions and obligations where relevant above. I have amended the draft wording of the conditions relating to schemes to be submitted. This is because the development has already occurred and there must be some sanction or mechanism for enforcement in the event of non-compliance. This was agreed with the main parties at the Inquiry. I have not imposed the suggested plans condition because the alterations have taken place and, thus, it is not necessary.

Conclusion

57. The development concerns a sui generis use that is operating on an industrial estate within an urban residential area. The loss of the affordable business workspace can be adequately mitigated through planning obligations and a condition. Overall, the use brings benefits to the local area, in terms of economic growth and productivity, while considering both local business needs and wider opportunities for development. This benefit carries significant weight. The scheme also has minor social benefits arising from the young persons' mentoring scheme and the service the use provides to customers living locally.
58. The noise assessments have reached different findings on the likely impact on adjoining residents from scooter noise emanating from within the site. Although the areas of disagreement have been narrowed, there is conflicting opinion with the Council maintaining that the impacts would have an effect within the LOAEL and, as such, should be mitigated to reduce adverse effects to a minimum. The mitigation sought is a planning condition to prevent the use of petrol powered scooters. Although comments from local residents support the Council's position, the evidence shows that the case is marginal and I have found the noise impacts to be low. Therefore, I do not agree that the restrictive condition is necessary. However, I do consider that a small group of residents would be affected and, therefore, I agree that a temporary planning condition should be imposed. This would enable a period of time to operate the unit with other controls in place, such as the Operational Management Plan and the Community Working Group, and to continue to engage with those residents affected.
59. I find that the benefits of the development outweigh the harm resulting from the use of petrol powered scooters. The development is in accordance with the development plan as a whole and no material considerations indicate that planning permission should be refused. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice. The appeal on grounds (f) and (g) does not fall to be considered.

Formal Decision

60. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the land to Takeaway Food Preparation, Collection and Delivery (Sui Generis), the erection of 6 x extract flues to the upper southern elevation and a short chimney to roof at Unit 4, Roman Way Industrial Estate, 149 Roman Way, London N7 8XH as shown on the plan attached to the notice and subject to the following conditions:

- 1) The use hereby permitted shall be for a limited period being the period of 36 months from the date of this decision. Thereafter the use hereby permitted shall be discontinued.
- 2) Collections and deliveries from the premises to customers shall only be carried out between 12:00 and 22:00 hrs Mondays to Saturdays and not at any time on Sundays or on Bank or Public Holidays.

Deliveries to and servicing of the premises shall only be carried out between 08:00 and 17:00 hrs Mondays to Saturdays and not at any time on Sundays or on Bank or Public Holidays.

- 3) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for a 'young persons' mentoring scheme' shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out in accordance with the approved timetable.

The approved young persons' mentoring scheme specified in this condition shall thereafter operate in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for an 'operational management plan' shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

- iv) The approved scheme shall have been carried out in accordance with the approved timetable.

The approved operational management plan specified in this condition shall thereafter operate in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for a 'community working group' shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out in accordance with the approved timetable.

The approved community working group specified in this condition shall thereafter operate in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) The cumulative noise level (LAeq Tr) arising from any items of fixed plant at the premises shall be a rating level of at least 5dB(A) below the background noise level LAF90 Tbg, measured or predicted at 1m from the façade of the nearest noise sensitive premises, for the lifetime of the development. The measurement and/or prediction of the noise shall be carried out in accordance with the methodology contained within BS 4142:2014 +A1:2019.
- 7) Within 30 days of this decision, the flues shall be fitted with fine filtration or electrostatic precipitation followed by carbon filtration (carbon filters rated with 0.2-0.4 second residence time) or alternatively fine filtration followed by a counteractant/neutralising system (eg UV ozone system) to achieve the same level as above. All equipment installed shall thereafter be operated and maintained in accordance with the manufacturers' instructions and retained for so long as the use hereby permitted continues.

Debbie Moore Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Simon Bird QC of Counsel instructed by Bryan Cave Leighton Paisner LLP

He called:

Mr Nathan Hanks	Director of Transport Planning Associates
Dr Michael Bull	Director of Michael Bull and Associates
Mr Keith Metcalfe	Director and Acoustic Consultant of Sharps Redmore
Mr Clive Bentley	Acoustic Consultation and Partner of Sharps Acoustics LLP
Mr Michael Mills	Partner of Firstplan

FOR THE LOCAL PLANNING AUTHORITY

Ms Sarah Sackman of Counsel instructed by the Council of the London Borough of Islington

She called:

Andrew Jarratt	London Borough of Islington
Torben Andersen	Director with RBA Acoustics Ltd
Owen Griffiths	London Borough of Islington

DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Appeal notification letter dated 20 December 2021 and list of addresses
2. Transport Statement October 2019
3. Post Hearing Letter dated 20 December 2021
4. Islington's Planning Obligations (Section 106) Supplementary Planning Document (December 2016)
5. Draft Conditions and Community Working Group Scheme
6. Planning permission for Hamilton Brewery Ref 2020/1511

DOCUMENTS SUBMITTED AFTER THE INQUIRY BY AGREEMENT

1. Signed and Executed Section 106 Agreement