



Appeal Decision

Site visit made on 24 November 2025

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date 23 December 2025

Appeal Ref: APP/Y5420/C/23/3330435

34 High Street, Hornsey, London N8 7NX

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended (the Act).
- The appeal is made by Mr Fation Gjana against an enforcement notice issued by the Council of the London Borough of Haringey.
- The notice was issued on 29 August 2023.
- The breach of planning control as alleged in the notice is 'without planning permission, the erection of a rear extraction system and material change of use to a mixed-use incorporating restaurant and shisha lounge'.
- The requirements of the notice are to:
 1. Remove the unauthorised extraction system in its entirety.
 2. Cease the use of the premises for shisha smoking.
 3. Remove from the land any debris resulting from carrying out steps 1) and 2) above.
- The period for compliance with the requirements is: 2 November 2023.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed; the enforcement notice is upheld as corrected and varied and planning permission is refused.

Enforcement Notice

1. It is important that the notice is in order to begin with. Section 5 'what you are required to do' also refers to one (1) month for compliance, whereas section 6 'time for compliance' describes this period with a date, which has been overtaken by the appeal process. I shall therefore correct the notice as issued to clarify a time period of one (1) month without injustice to any party.

Ground (a)

2. Ground (a) is that planning permission ought to be granted for the breach of planning control stated in the notice. This is the erection of a rear extraction system and material change of use to a mixed-use incorporating restaurant and shisha lounge. The rear extraction system I saw at my site visit includes one external duct on the extended flat roof part of the restaurant and an internal duct in the shisha lounge at the rear, with solid upper side walls. The evidence before me, which informed the enforcement notice when it was issued, is two external ducts, no internal duct and mesh upper side walls. This is, therefore, what I have considered.

Main Issues

3. The main issues are:

- the effect of the rear extraction system on the living conditions of the occupier of No.34a High Street, with regard to noise disturbance;
- the effect of the shisha lounge on the living conditions of the occupier of No.34a High Street with regard to noise disturbance, and on the occupier of No.34a High Street and neighbouring occupiers with regard to smoke, odour and general disturbance; and
- the effect of the rear extraction system and the shisha lounge on the character and appearance of Hornsey High Street Conservation Area.

Reasons

Rear extraction system

4. This is a kitchen extract fan, two ducts (one tall, one short) with vents and a condenser unit with fan for air conditioning. The appellant's Acoustic Assessment Report (AAR)¹ includes survey measurements, said to establish the background noise climate, and manufacturer noise levels for the rear extraction system, which includes silencers. Further mitigation is not proposed for the fan, ducts or vents though the condenser should be housed in an acoustic enclosure. On this basis, for daytime and evening/early morning restaurant operating hours (14:30 to 00:30 Monday to Friday and to 00:00 Sunday and Public Holidays) the AAR predicts rear extraction system noise levels 10dB below the equivalent background levels.
5. This figure would otherwise accord with the Council's general guidance. However, the guidance requires the 10dB noise reduction to be assessed 'at a point 1 metre outside the façade of the closest/worst affected residential receptor'. It is common ground this is the rear of No.34a High Street above the restaurant, next to the flat roof. I saw that this property has habitable room windows which could include bedrooms near the rear extraction system.
6. Noise measuring equipment was placed on the flat roof, perpendicular to No.34a. But considering what I saw at my site visit and photographs in the AAR, there is little to counter that it was set back more than 1m from the windows of No.34a. The appellant has not suggested that this was in accordance with the guidance or necessary or appropriate for any other reason. The equipment was thus also further from the rear extraction system and a similar tall duct and vent for a café next to the restaurant, also in close proximity to the windows of No.34a.
7. I accept that the rear extraction system meets modern manufacturer or industry noise emission standards and is more efficient than the old single duct and vent it replaced. I heard it in operation on a Monday afternoon at a time when the restaurant should be open. Even if it was closed to facilitate my site visit, there is little to suggest that the AAR has measured actual noise levels with the rear extraction system operating in situ and as this may, for instance, influence noise direction or reflection in this location. Nor does the AAR confirm if the restaurant was, in fact, open during the 24 hour baseline survey period and if the rear extraction system was operating. It is also not explicit about whether the café was open or if the survey took account of this other duct and vent operating.
8. Even if the restaurant was open during the survey, it is not clear how busy it was on that November Monday afternoon and evening, into early Tuesday morning or if the

¹ Ref 13212.RP01.AAR.0 – RBA Acoustics, December 2023

retractable roof was open. There is also little to suggest that the AAR considered, likely, busier later weekday or weekend openings or the prospect of the retractable roof open more during summer months. This includes times when residents generally anticipate less intrusion or more conducive living conditions and it is unreasonable for residents to mitigate new noise impact by having to shut windows.

9. I appreciate that the old duct and vent no longer exist but there is little to suggest a likely scale of betterment or to counter, on the face of it, propensity for more noise from two ducts and vents next to windows of No.34a. Moreover, a photograph in the AAR does not show a previous condenser unit in the same position as now and I have not been informed one was elsewhere on the flat roof. In any event, even if there has been comparative improvement, this does not necessarily mean absence of unacceptable noise disturbance for planning purposes. This can occur at a level below statutory nuisance and there is evidence of noise complaints received by the Council since the rear extraction system was installed.
10. As a result, I cannot be certain that the AAR is representative of the background noise climate or noise disturbance experienced by the occupier of No.34a before or after the rear extraction system was installed. This casts significant doubt in my mind about the scope of mitigation as necessary only for the condenser unit, as well as the validity of the predicted noise levels, including the claimed 10dB reductions. It also means that I am not able to consider a split decision to grant planning permission for one or other of the two ducts and vents. I am not, therefore, satisfied the appellant has demonstrated that the erection of the rear extraction system does not harm the living conditions of the occupier of No.34a High Street, with regard to noise disturbance. I give significant weight to this consideration.
11. In these circumstances, the rear extraction system is at odds with Policy SP11 of the Haringey Local Plan Strategic Policies 2013 (HLP), Policy DM1 of the Haringey Development Management DPD 2017 (HDM) and Policies D4, D13 and D14 of the London Plan 2021 (LP). These include that by design and mitigation, development should minimise impact on health, ensure a high standard of amenity for neighbouring residents and improve quality of life by avoiding significant noise impact.

Shisha lounge

12. The appellant's Noise Impact Assessment (NIA)² considers patrons talking in raised voices as the dominant noise source in the shisha lounge in relation to No.34a. This is said to have been with the 'roof closed' and 'the latest hour at which the roof may be open' (23:30 Monday to Saturday and 23:00 Sunday). Taking account of this, proposed mitigation is a replacement glazed roof or a proprietary retractable roof with solid panels. On this basis, and either way, a predicted noise level 'more than 10dB below'.
13. However, the NIA is informed by the same background noise climate survey as the AAR. There is little to suggest it is any more credible for the purpose of the NIA. It is also on the assumption that music played in the lounge is at a 'background level and without amplified bass'. But there is little to suggest that a planning condition could control either characteristic. Furthermore, and in the absence of further clarity, the NIA refers to an open roof as meaning the retractable roof closed and the upper side walls covered with mesh, which, amongst other things, allowed

² Ref 13212.RP02.NIA.0 - RBA Acoustics, December 2023

noise from the shisha lounge to escape in these directions. There is little evidence that the NIA has taken account of noise levels when either or both sections of the retractable roof are open, thus this location and direction.

14. As a result, I cannot be certain that the NIA is based on a representative background noise climate or that noise experienced by the occupier of No.34a from the shisha lounge has been adequately assessed. This casts significant doubt in my mind about the proposed mitigation for noise from activity in the shisha lounge. Also, about the validity of the predicted noise levels, including the claimed reduction more than 10dB below.
15. There is little evidence that the appellant has addressed smoke and odour, including that there is no air quality assessment. I saw that a single shisha pipe results in the exhalation or discharge of lingering smoke with a distinctive aroma. There is little to counter that with the retractable roof closed, smoke vented outside through the mesh upper side walls. With the roof open, some smoke drifted upwards towards the sky and spread sideways, over the walls, swirled by wind at the time.
16. As I also saw, there is little to suggest that plots adjoining No.34, closest to the shisha lounge, are used as gardens. However, the narrower part of the shisha lounge, under one section of retractable roof, is reasonably close to No.34a to the north and the upper floors of other residential properties either side of it. The first floor windows are at about the height smoke permeated over the lounge walls. Although the wider, back part of the shisha lounge, under the other section of retractable roof, is further away it is nonetheless likely that smoke from both parts could be blown towards these windows by the prevailing south-west wind, including upwards to second floor windows.
17. I acknowledge that shisha lounge hours of use could be controlled by a condition but this restriction has not been advanced by the appellant as part of the details of the development before me. This would not, anyway, prevent smoke egress during authorised hours. I have no reason to doubt that the shisha lounge is carefully managed by restaurant staff, including how many individual or shared shisha pipes are used at once. But this could still be a significant number and are not matters that could reasonably be controlled by a planning condition or be practicably enforced by the Council. The potential impact of smoke and odour is also likely to be significantly more pronounced than was demonstrated to me because of the increased, cumulative intensity of both characteristics from several shisha pipes used in this covered or open-air part of the restaurant.
18. The effect of noise or smoke and odour includes at times (such as evenings or weekends or in summer months) when residents generally anticipate less intrusion and more conducive living conditions. It would be unreasonable for residents to mitigate these new impacts by having to shut windows.
19. There is little evidence of any other 'general disturbance' and whether shisha pipe smoking in the lounge already complies, or would comply, with relevant smoking regulations is a separate matter for the appellant.
20. Taking account of all the above, I am not satisfied the appellant has demonstrated that the shisha lounge does not harm the living conditions of the occupier of No.34a High Street, with regard to noise, or the living conditions of the occupier of No.34a

High Street and neighbouring occupiers with regard to smoke and odour. I give significant weight to each of these considerations.

21. In these circumstances, the shisha lounge is at odds with HDM Policy DM1 and LP Policies D13 and D14. These include that by design and mitigation development should minimise impact on health and ensure a high standard of amenity for neighbouring residents to improve quality of life by avoiding significant noise, fumes or odour impact.

Hornsey High Street Conservation Area (the CA)

22. The Council alleged adverse impact on the CA. Though this was not a reason for issuing the enforcement notice, I have a duty to consider preserving or enhancing the character or appearance of a Conservation Area³, which is a designated heritage asset⁴. The Council confirmed to me it has not published any appraisal or assessment of the CA.
23. I saw that the terrace including No.34 is formed of largely intact three-storey Victorian or Edwardian buildings in commercial and residential use. They form a parade along one side of High Street. The largely original façades and this mix of uses are locally distinctive and contribute positively to the significance of the CA. The rear extraction system and shisha lounge were not apparent to me from this part of the CA.
24. These buildings evidently also had a high degree of unity and cohesion at the back, most with three-storey outriggers (including No.34) and set in long, likely mainly open plots which at the end now form the CA boundary. Many of these features have been eroded, including by single and two-storey extensions of disjointed design and form and most of the plots (not developed with extensions) are now yards or contain disparate outbuildings in ancillary commercial use. Much of this later development makes no positive contribution to the significance of the CA. However, the main sequence of rear outriggers at upper levels, including roof form, is still distinguishable and otherwise largely unchanged, including above No.34. As such, these parts of these buildings continue to make a positive contribution to the significance of the CA.
25. The old duct and vent was similar in position and vertical height to second floor ridge as the taller of the two new ducts and vents and also attached to the rear gable elevation. But photographs before me show a previous slim, unencumbered square profile whereas the new duct and vent is circular with a large diameter and thicker square box section lower down. From side roads to the southwest I saw that this duct and vent are conspicuous in close and more distant public view from in the CA, towards its edge and just beyond in its setting. Although low down, the smaller duct and vent was a new structure and added appreciable visual clutter, as does the new condenser unit located where there was none before. Both can be observed by those who live in the adjoining residential properties.
26. These parts of the rear extraction system are a discordant adjunct that jar with the rear elevation above No.34 and those in this terrace, so detract from the look and feel of this part of the CA. So too does the similar café duct and vent next to the rear extraction system, but even if it is lawful development it is not a welcome

³ Section 72(1) - Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

⁴ National Planning Policy Framework

precedent, so does not justify the taller new duct and vent. Some other ducts or vents are similar in size and position on some other buildings nearby, in this part of the CA. But even if they are lawful development they are not in this terrace or, anyway, 'common' on the backs of buildings in this part of the CA.

27. There is no scheme for an acoustic enclosure for the condenser unit, nor for a replacement glazed roof or a proprietary retractable roof with solid panels. The possible form of design, including with due regard to the CA, remains to be seen. These considerations are therefore relevant to an in principle decision to grant planning permission in a Conservation Area so cannot be left to a planning condition, as the appellant suggests.
28. There is little evidence that the rear extension at No.34, or use of it as part of the restaurant, are matters pursued by the enforcement notice taken at its face. Nor about why the Council considers the additional use of this part of it as a shisha lounge has adverse impact on the CA. Albeit that restaurant use now extends to the rear of this plot, there is no apparent in principle reason why the shisha lounge does not complement the restaurant or the mixed use nature of this part of the CA.
29. Considering all the above, the negative presence of the rear extraction system causes less than substantial harm to the significance of this part of the CA. Despite that the shisha lounge causes no harm in this regard; the rear extraction system does not therefore preserve the character or appearance of the CA overall. I give significant weight to this consideration.
30. Consequently, the rear extraction system does not comply with HLP Policy SP11, HDM Policy DM1 and LP Policy D4. These include that development should deliver harmonious, high quality design and make a positive contribution so as to enhance the quality of built environment as well as respect local context and historic significance to enhance the sense of distinctive place and identity.
31. These findings need to be balanced with the fact that there is no apparent reason why the restaurant is not otherwise a suitable and appropriate use in this location and that it requires an extraction system. I also accept that the shisha lounge, with the retractable roof, is likely valued by patrons and generated business to help sustain the restaurant and, in turn, the local economy. These considerations have moderate weight.
32. The benefits of the rear extraction system and shisha lounge do not, therefore, outweigh the less than substantial heritage harm in the wider public interest. Accordingly, the appellant has not demonstrated that the harm to the significance of the CA has a clear and convincing justification.

Planning Balance and Conclusion

33. There is harm to living conditions and to the CA, in conflict with policies of the development plan. Other material considerations do not indicate that ground (a) should be determined other than in accordance with the development plan taken as a whole. Consequently, for the reasons given above, planning permission should not be granted so ground (a) fails.

Ground (g)

34. The enforcement notice requires the rear extraction system to be removed, not any fixtures or fittings. There is then no apparent reason why shisha smoking could not cease within the one month period in the notice.
35. The rear extraction system could be dismantled into constituent parts but it is mostly high up on the building. Removing it would need scaffolding or a crane, including time to find a suitable, available specialist contractor or general builder and to coordinate these works. I accept that one month is not sufficient for this, but there is little to persuade me that six months sought by the appellant is necessary instead, including that other alleged 'remedial works' have not been explained.
36. I accept that removing the rear extraction system without an alternative is likely to significantly impinge on the operation of the restaurant meantime. The Council has not suggested that a rear extraction system is unacceptable per se. On the other hand, an unjustified or inordinate extension of time would perpetuate adverse impact, including to people's living conditions.
37. With all this in mind, I consider that it would be proportionate to allow a three month period to remove the rear extraction system. This would also give time for the appellant, should he wish, to seek to agree a new extraction system with the Council, as well as a means to facilitate the shisha lounge.
38. The Council has referred me to powers it has under section 173A(1)(b) of the Act. This gives it discretion to extend the period for compliance, such as if any planning application the appellant might submit had not been determined by the end of three months. But that would be a separate matter between the main parties whereas the period in the notice must be reasonable to begin with.
39. Consequently, on the evidence before me, the one month period in the notice does not fall short of what is reasonable to take the step in section 5(2) to cease the use of the premises for shisha smoking. But this time period does fall short of what should reasonably be allowed in respect of the step in section 5(1) to remove the unauthorised extraction system in its entirety. Thus ground (g) succeeds to this extent and I shall vary the notice accordingly.

Formal Decision

40. It is directed that the enforcement notice is corrected and varied as follows:

- Section 5 – delete all wording after the end of bullet point 3.
- Section 6 – delete '2 November 2023' and insert:

'Requirement 5(1) – three (3) months.'

'Requirement 5(2) – one (1) month.'

41. Subject to this correction and these variations, the appeal is dismissed and the enforcement notice is upheld. Planning permission is also refused on the application deemed to have been made under section 177(5) of the Act.

Robin Buchanan

INSPECTOR