



## Delegated Report

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**Application No:** 20230199

**Location:** 12 - 14 High Street, Gravesend Kent

**Description:** Application for the approval of conditions 2, 3 and 4 attached to planning permission reference number 20230097 relating to (2) Refuse and Storage Collection, (3) Odour Mitigation and (4) Noise Mitigation.

**Applicant:** Ms Julia Santomauro

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### Submitted Documents/Plans

Cover letter  
Application form  
Drawing no. 230120-S-001 (site plan)  
Noise Assessment by inacoustic  
Odour Assessment by inacoustic  
Photos received 18 July 2023  
Acoustic Assessment by Able Acoustics received 6 October 2023

### Relevant Planning History

|                 |                                                                                                                                                                                                                                                                                                                                                                         |                          |                   |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------|
| <b>20230097</b> | Application for variation of condition 1 attached to appeal reference APP/K2230/W/22/3297812 for change of use of 12-14 High Street from A1 (retail) to A3 (restaurant) including the installation of a new shop front; to allow replacement of the following approved drawings, 3358:007 and 3358:009 rev A, with the submitted drawing 3358.007D Proposed Elevations. | <b>Approved</b>          | <b>28.03.2023</b> |
| <b>20190250</b> | Retrospective application for the change of use from A1 (retail) to A3 (restaurant) including the installation of a new shopfront.                                                                                                                                                                                                                                      | <b>Refused</b>           | <b>26.11.2021</b> |
|                 |                                                                                                                                                                                                                                                                                                                                                                         | <b>Allowed on Appeal</b> | <b>02.12.2022</b> |

### Consultations, Publicity and Representations

#### GBC Environmental Protection (8 March 2023)

Conditions 3 and 4 are relevant to Environmental Protection.

#### *Condition 3 – Kitchen/ventilation extract equipment:*

The Odour Assessment submitted is acceptable in terms of both methodology and findings. It has been undertaken in compliance with the relevant/latest guidance on odour control in commercial

kitchen exhaust systems. The conclusion is that level of filtration and high level discharge is sufficient in relation to odour control from the restaurant and I would agree with this.

In respect of odour, the kitchen extract system is acceptable, and I can recommend that Condition 3 in relation to this part (odour) can be discharged.

Condition 2 as specified by the Appeal Inspector, also references noise from the kitchen extract system and this has been addressed in Noise Assessment report submitted. Again, methodology and findings of the Noise Assessment are accepted.

However, the part of Condition 3 relating to noise should not be discharged until the mitigation measures as outlined in section 3.5.4 of the Noise Assessment have been fully installed. In particular, the assessment references an acoustic fan jacket to attenuate noise from the externally located kitchen extract fan to acceptable levels.

Once proof has been submitted that the mitigation measures have been installed (and ideally this should be by way of a post completion noise assessment to measure that post mitigation noise levels achieve the relevant standards), then the 'noise' part of Condition 3 can hopefully be discharged.

#### *Condition 4 – Sound insulation*

An assessment has been undertaken of the internal building fabric in terms of its sound insulation qualities as specified in the Appeal Inspectors decision and Condition 4. A sound insulation test was carried out of the partition between the restaurant and the residential unit on the 1<sup>st</sup> floor. The results indicate that the partition affords a level of sound insulation greater than that required by the Building Regulations.

In this respect, this is fine, and Condition 4 can be fully discharged.

*Following the advice above the applicant sent in some photos (22 May, 17 and 19 July) which did not fulfil the requirements of the condition and the Environmental Protection Officer responded (27 July) with:*

I refer to the additional information submitted in respect of Condition 3 re: Kitchen Extract and Ventilation equipment. Ideally, I would have preferred a post completion test to be undertaken, however this is not a requirement of the condition so I can't insist on this. The photographic 'proof' will therefore be considered.

With regards to the mitigation measures outlined in section 3.5.1 of the Noise Assessment, I would make the following comments:

**The standalone AC unit which is situated 2m above ground level and immediately to the rear of the restaurant, can be mitigated using a louvred enclosure. This can be installed around the unit in its existing condition.** The enclosure has been installed but no technical specification or manufacturers details has been submitted. I can't therefore ascertain how much noise reduction it will offer. Has the enclosure recommended in the report been fitted or an alternative?

**The twin AC fans, which is situated further away from the rear of the restaurant and below the extract flues, will require an acoustic enclosure that surrounds both individual units, such as an Environ Environmental System - this can be installed around the units in their existing condition.** As above. The enclosure has been installed but no technical specification or manufacturers details has been submitted. I can't therefore ascertain how much noise reduction it

will offer. Has the enclosure recommended in the report been fitted or an alternative?

**Kitchen extract - to mitigate noise from this item and of this nature, an acoustic fan jacket should be installed.** A fan jacket has been installed but again, no technical specification or manufacturers details has been submitted. I can't therefore ascertain how much noise reduction it will offer. Has the jacket recommended in the report been fitted or an alternative?

**Silencer between the extract fan and the cowl/outlet at the top.** Looking at the photograph submitted of the fan jacket, it does not look like a silencer has been installed. This is still outstanding.

Based on the above, I'm afraid that I'm still not in a position to be able to recommend that the condition 3 be discharged.

*Following this an acoustic assessment was submitted (6 October 2023) however this makes the same recommendations as the original report. The following response was received from the GBC Environmental Protection Officer:*

The Noise Impact Assessment submitted by Able Acoustics (Ref P1547/01 dated October 2023) has been reviewed. The report represents a post completion test of the kitchen extract system in terms of noise. The methodology of the report is accepted, and the report is very thorough.

It is acknowledged in the report that the mitigation installed is different to that recommended in section 3.5.4 of the original NIA and has not been acoustically certified. For example, although a jacket has been placed around the fan/flue, there are no details of its acoustic quality and the enclosures around the various air handling units also non-acoustic. This re-affirms information provided in earlier consultation responses given regarding this condition. The result of the BS4142 assessment is that the rating levels of the noise from the various plant and extract equipment is well over (+19dB) the background noise levels at the facade of the nearest noise sensitive premises. Even with correction for closing a window, internal noise levels are in excess of those specified in BS8233:2014. The conclusion of the noise assessment is that with regards to BS4142, the noise from the plant/extract equipment is likely to be a 'significant adverse impact' and any mitigation measures installed so far are ineffective.

Section 6.2 and 6.3 of the NIA outlines the level of sound attenuation required for each piece of plant/equipment and details on mitigation measures that can be incorporated to achieve this. This includes:

- Purpose built and certified acoustic enclosures for the twin fan units (16dB reduction required).
- A louvred system or combination of louvred system and re-location of the single fan (16 dB reduction required).
- Silencing system for the extract system to reduce the overall level by 15dB (this could be fan jacket as advised in the earlier report with additional silencer as needed). In addition, it is recommended that a silencer be fitted to the cowl/exhaust point to further reduce sound transmission. The report states that ideally the fan should be housed internally in combination with an in-duct silencing system but it is not known if this is possible.

Other alternatives for the twin fan and single fan units would be to remove them and replace them with 'quieter' units such that the aggregate sound level is reduced by 16dB or relocate the units (this

will be subject to further assessment and probably planning consent).

This NIA demonstrates that the noise mitigation measures, as recommended in the previous report have not been installed adequately and are ineffective in controlling noise. The continued operation of the units will result insignificant adverse impact in terms of BS4142.

Unfortunately, this mean that the Condition 3 still cannot be discharged. The applicant is advised to take on board the recommended mitigation option as detailed in the NIA by Able Acoustics which has provided both noise emissions reduction targets for equipment along with details of manufacturers details. The mitigation measures should be installed by a competent installer and all technical specification details obtained.

You may wish to consider partially discharging the condition as the part relating to odour control has been satisfactorily complied with as advised in the consultation response dated 7<sup>th</sup> March 2023. Only the noise part of the condition is still outstanding.

If partial discharge is not possible, it is recommended that the application for discharge of Condition 3 is refused, and the applicant should resubmit the application once the advised mitigation measures have been installed and can be evidenced.

### GBC Waste Services

The bin storage is acceptable.

### **Analysis**

Planning application 20190250 was allowed by the Planning Inspectorate (reference APP/K2230/W/22/3297812). This application seeks approval to discharge conditions 2, 3 and 4 listed below.

Condition 2:

2. *Unless within three months of the date of this decision a scheme for the refuse storage and collection arrangements ensuring adequate provision for non-recyclable waste, food waste and recyclable waste, is submitted in writing to the local planning authority for approval, the use of the site shall cease and all equipment and materials bought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.*

*If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease and all equipment and material bought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.*

*Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained and remain in use. 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 limited specified in this condition will be suspended until that legal challenge has been finally determined.*

The applicant has submitted a plan showing the position of refuse storage and the path of the bins

to the public highway. The details provided are acceptable and this condition can be discharged.

Condition 3:

3. *Unless within three months of the date of this decision a scheme for a extract ventilation system and odour control equipment particularly regarding odour elimination abilities and likely noise emissions, is submitted in writing to the local planning authority for approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.*

*If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease and all equipment and material brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.*

*Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use and maintained in accordance with the manufacturer's instructions.*

*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 limited specified in this condition will be suspended until that legal challenge has been finally determined.*

The applicant has submitted an odour assessment and noise assessment in support of discharging this condition. No concerns are raised with regards to odour however extensive email exchanges between the council and the applicant have been taking place in relation to noise and the latest acoustic report still does not address the concerns raised.

It is acknowledged in the report that the mitigation installed is different to that recommended in section 3.5.4 of the original NIA and has not been acoustically certified. Although a jacket has been placed around the fan/flue, there are no details of its acoustic quality and the enclosures around the various air handling units also non-acoustic. This re-affirms information provided in earlier consultation responses given regarding this condition. The result of the BS4142 assessment is that the rating levels of the noise from the various plant and extract equipment is well over (+19dB) the background noise levels at the facade of the nearest noise sensitive premises. Even with correction for closing a window, internal noise levels are in excess of those specified in BS8233:2014. The conclusion of the noise assessment is that with regards to BS4142, the noise from the plant/extract equipment is likely to be a 'significant adverse impact' and any mitigation measures installed so far are ineffective.

Section 6.2 and 6.3 of the NIA outlines the level of sound attenuation required for each piece of plant/equipment and details on mitigation measures that can be incorporated to achieve this. This includes:

- Purpose built and certified acoustic enclosures for the twin fan units (16dB reduction required).
- A louvred system or combination of louvred system and re-location of the single fan (16 dB reduction required).
- Silencing system for the extract system to reduce the overall level by 15dB (this could be fan jacket as advised in the earlier report with additional silencer as needed). In addition, it

is recommended that a silencer be fitted to the cowl/exhaust point to further reduce sound transmission. The report states that ideally the fan should be housed internally in combination with an in-duct silencing system but it is not known if this is possible.

Other alternatives for the twin fan and single fan units would be to remove them and replace them with 'quieter' units such that the aggregate sound level is reduced by 16dB or relocate the units (this will be subject to further assessment and probably planning consent).

This NIA demonstrates that the noise mitigation measures, as recommended in the previous report have not been installed adequately and are ineffective in controlling noise. The continued operation of the units will result insignificant adverse impact in terms of BS4142.

Condition 4:

4. *Unless within three months of the date of this decision a sound insulation assessment demonstrating the construction that separates the residential and commercial unit resists the transmission of airborne sound, is submitted in writing to the local planning authority for approval, the use of the site shall cease and all equipment and materials bought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.*

*In the event that it does not resist the transmission of airborne sound then the report shall provide suitable details of the substantially enhanced sound insulation performance of/sound reduction achieved by relevant floors/ceilings. If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease and all equipment and material bought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.*

*Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.*

*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 limited specified in this condition will be suspended until that legal challenge has been finally determined.*

The applicant has provided a noise assessment in support of discharging this condition. A sound insulation test was carried out of the partition between the restaurant and the residential unit on the 1<sup>st</sup> floor. The results indicate that the partition affords a level of sound insulation greater than that required by the Building Regulations. This condition can be discharged.

## **Conclusion**

Sufficient information has been provided in order for Condition 2 and 4 to be discharged. However this application is also to discharge condition 3 and as outline in the report, this condition cannot yet be discharged. As such the whole application has to fail as a split decision cannot be issued.

## **Recommendation**

Refusal of details:

The submitted report is clear that the mitigation measures recommended by the original assessment dated 24 February 2023 have not been installed and that the continued operation of the system in the format assessed would result in a significant adverse impact on surrounding receptors. None of the recommendations have been implemented other than non-acoustically certified attempts which appear ineffective.

**See draft Decision**

|                                                                                                  |                                                                                                   |
|--------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| <b>Case Officer:</b> Alison Webster                                                              | <b>Team Leader:</b> Faye Hobbs                                                                    |
| <b>Signed:</b>  | <b>Signed:</b>  |
| <b>Dated:</b> 23 October 2023                                                                    | <b>Dated:</b> 26 October 2023                                                                     |