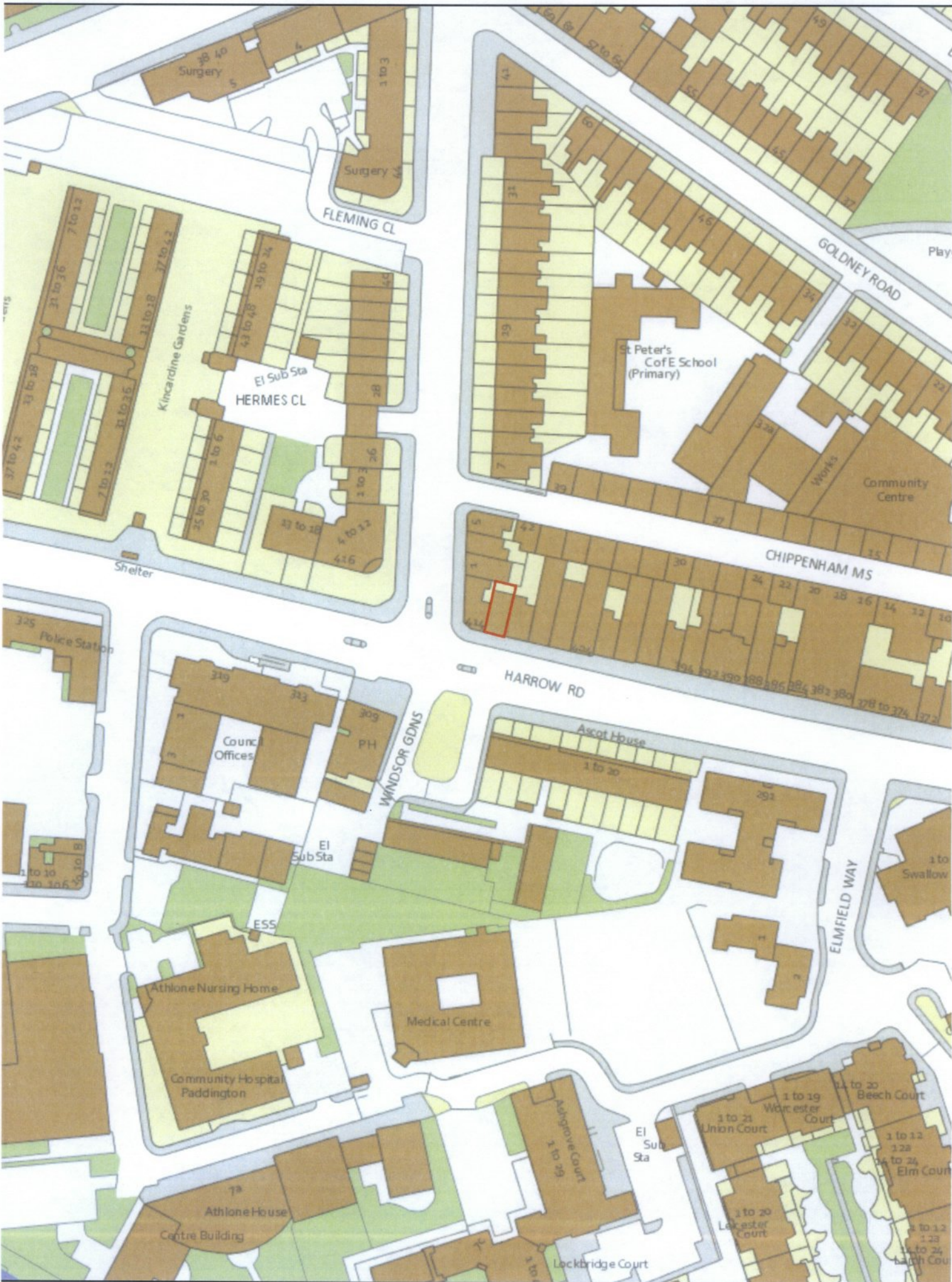


CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 10 March 2015	Classification For General Release	
Report of Operational Director Development Planning		Wards involved Harrow Road	
Subject of Report	Ground Floor and Basement, 412 Harrow Road, London W9 2HU		
Breach	Change of use from a restaurant (Class A3) to a hot food takeaway operation (Class A5 use).		
Agent	N/A		
On behalf of	N/A		
Registered Number	10/46117/M (ENF)	TP / PP No	TP/3777
Date Breach Reported	07.10.2010	Date amended/ completed	N/A
Category of Application	N/A		
Historic Building Grade	Unlisted		
Conservation Area	Outside Conservation Area		
Development Plan Context - London Plan July 2011 - Westminster's City Plan: Strategic Policies 2013 - Unitary Development Plan (UDP) January 2007	Outside London Plan Central Activities Zone Outside Central Activities Zone Outside Local Shopping Centres		
Stress Area	Outside Stress Area		
Current Licensing Position	Premises licence issued on 3 February 2015 (14/09347/LIPT)		

1. RECOMMENDATION

That an Enforcement Notice be issued requiring that within 56 days of the notice taking effect the use as a hot food takeaway operation shall cease except between the hours of 10:00 and 23:00 on Monday to Saturday and 11:00 and 22:30 on Sundays and Bank Holidays and that the associated ventilation equipment shall not be used except between the hours of 10:00 and 23:00 on Monday to Saturday and 11:00 and 22:30 on Sundays and Bank Holidays.





412 HARROW ROAD, W9

2. SUMMARY

No.412 Harrow Road is a three storey mid-terrace property close to the intersection of Harrow Road and Chippenham Road. The unit occupies the ground floor and basement premises. The terrace contains local shops and services at ground floor level, but does not form part of a designated shopping area. Immediately adjacent to the west of the subject property is a restaurant and adjacent to the east is a dental surgery. There are residential flats on the floors above the premises, and on the upper floors of the properties either side.

In October 2010 it came to the attention of the Planning Enforcement Team that a change of use had been undertaken without planning permission from the lawful use as a restaurant (Class A3 use) to a hot food takeaway operation (Class A5 use). The material change of use from the lawful use as a restaurant to the current use is unauthorised, and accordingly the current use is not subject to any conditions including any relating to the hours of operation or the operation of associated plant.

The late night operation of the premises (currently until approximately 01.00 hours) causes nuisance to residents in the flats above and adjacent, due to the noise of customers and the mopeds used for the delivery service leaving and arriving, and due to the operation of the associated ventilation equipment late into the night.

The impact of the change of use is considered to relate solely to potential noise and nuisance resulting from the unrestricted hours of operation and unrestricted operation of associated plant, which can be effectively controlled by condition. It is therefore not considered appropriate to use enforcement powers to require the unauthorised use to cease.

It is considered appropriate, reasonable and proportionate to 'under-enforce' by serving an enforcement notice requiring the premises to comply with reasonable conditions restricting the hours of operation and restricting the times during which the associated plant can be operated, to protect the current and future residential occupants of the flats at upper floor levels of the building.

Informal negotiations have failed to resolve the planning breach. The owners have been repeatedly encouraged to seek planning approval for the material change of use undertaken, but have chosen not to submit such an application.

3. CONSULTATIONS

ENVIRONMENTAL HEALTH

No objection.

HIGHWAYS PLANNING MANAGER

No objection.

CLEANSING MANAGER

No objection.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS

No. Consulted: 23; Total No. of Replies: 2.

- One response raising concerns regarding the operation of the business and its impact upon residents; regarding the cleanliness of the premises and reports that it has resulted in mice at the flat above; and concerns that the operation of a hot food takeaway business affects the saleability of the flat above.
- One response raising concerns about the noise of the ventilation equipment.

4. BACKGROUND INFORMATION

4.1 The Application Site

No.412 Harrow Road is a three storey mid-terrace property close to the intersection of Harrow Road and Chippenham Road. The unit occupies the ground floor and basement premises. The terrace contains local shops and services at ground floor level, but does not form part of a designated shopping area. Immediately adjacent to the west of the subject property is a restaurant and adjacent to the east is a dental surgery. There are residential flats on the floors above the premises, and on the upper floors of the properties either side. The property is not listed and is not within a conservation area.

The ground floor contains a counter with menus displayed in illuminated panels above, and a kitchen area to the rear. There is space for six to seven persons to consume food on the premises, which is considered an ancillary part of the primary use as a takeaway operation.

4.2 Relevant History

21 May 1992 - planning permission was granted for a change of use from a delicatessen/off-licence to a restaurant (RN 92/00009/FULL).

12 September 1996 - planning permission was granted for relocation of the rear kitchen extract duct (RN 96/06668/FULL).

5. THE BREACH OF PLANNING CONTROL

Within the last 10 years and without the necessary express planning permission, the material change of use of the premises from a restaurant with ancillary hot food takeaway service (Class A3 use) to a hot food takeaway operation with ancillary seating (Class A5 use).

6. DETAILED CONSIDERATIONS

6.1 Land Use

The site is not subject to any specific designations in the City Plan or UDP that would restrict a change of use from the lawful use for Class A3 (restaurant) purposes. Accordingly, the impact of the change of use relates solely to amenity implications which are assessed in Section 6.3 of this report.

6.2 Townscape and Design

No material alterations have been undertaken to the premises as a result of the unauthorised use.

6.3 Amenity

There are residential flats immediately above the use at first and second floor levels in the property, and further residential flats at first and second floor levels within the terraced properties adjacent either side.

Hours of operation

It is understood that the current operation closes at approximately 01.00 hours, with deliveries undertaken by the three mopeds used for the delivery service until this time. Such operation causes noise and disturbance to the immediately surrounding residential occupiers, and in particular those on the first and second floor levels above the premises, as a result of people entering and leaving the premises and gathering in the street outside the premises, and also

the noise of the delivery vehicles starting up and pulling in to park on the pavement below the front-facing windows.

It is recognised that there is a tendency for takeaway operations such as pizza outlets, kebab shops or fried chicken shops to generate late night noise and disturbance, and this leads to unwelcome impact on the residential environment. The Planning Practice Guidance published in 2014 specifically mentions takeaway fast food activities as having the potential to '*have particular impacts, not least because activities are often at their peak in the evening and late at night*'.

Such late night operation fails to comply with City Plan Policy S29 which states that '*the Council will resist proposals that result in an unacceptable material loss of residential amenity*' and Policy S32 which seeks to minimise exposure to external noise. It also fails to accord with UDP Policy ENV 6 relating to the impact of noise from development on noise sensitive properties, and the Westminster Noise Strategy 2010-2015 which seeks to guard against noise-generating uses in areas with a strong residential character.

It is considered that the proposed hours of opening between 10:00 to 23:00 Monday to Saturday and 11:00 and 22:30 on Sundays and Bank Holidays are appropriate in noise and amenity terms, and that restricting the use to comply with these hours will safeguard the amenity of surrounding residential occupants.

Operation of associated plant

Concerns have been raised that the ventilation duct associated with the use causes noise that is clearly audible within the flats above. During a site inspection within the flats above the premises it was noted that the ventilation duct is positioned immediately adjacent to the rear-facing windows, which are within the kitchens of the two flats. The inspector who visited confirmed that the ventilation duct does generate noise within the complainant's kitchen. The equipment was installed in 1996 following grant of planning approval, and is therefore lawful. However, in view of the concern raised, it is recommended that a condition be imposed to restrict the hours of use of the plant in order to address this issue.

Accordingly, it is considered appropriate to include a condition restricting the use of the plant pertaining to the use to between the hours of 10:00 and 23:00 on Monday to Saturday and 11:00 and 22:30 on Sundays and Bank Holidays. The condition would ensure that the use of the equipment complies with UDP Policy ENV 6 relating to the impact of noise from development on noise sensitive properties, and the Westminster Noise Strategy 2010-2015 which seeks to guard against noise-generating uses in areas with a strong residential character.

6.4 Transportation / Parking

No objections raised by the Highways Planning Manager.

6.5 Other UDP/Westminster Policy Considerations

Not applicable.

6.6 London Plan

The proposal does not raise strategic issues and does not have significant implications for the London Plan.

6.7 Planning Obligations

Not applicable.

6.8 Environmental Assessment including Sustainability and Biodiversity Issues

The proposal is of an insufficient scale to require an environmental assessment.

6.9 Other Issues

Not applicable.

6.10 Conclusion

The change of use is considered acceptable in land use, amenity and highways terms. Subject to restrictions relating to hours of operation and the use of associated plant, the change of use will accord with the National Planning Policy Framework (2012); Planning Policy Guidance (2014); Policy 7.15 of the London Plan (2011); Policies S29 and S32 of the City Plan (2013); 'Saved' Policy ENV6 of the adopted Unitary Development Plan (2007); and the supplementary planning guidance contained in the Westminster Noise Strategy 2010-2015 (March 2010).

BACKGROUND PAPERS

1. Premises licence issued on 22 February 2013 (12/10331/LIPN)
2. Copy of application for temporary licence for external tables and chairs (13/03794/STTC) and letter confirming withdrawal of application following refusal of planning permission.
3. Certificate of Lawfulness of Existing Use dated 3 June 1997 (RN. 97/03773/CLEUD)
4. Planning permission dated 18 June 2013 (RN 13/03314/FULL)
5. Planning permission refused on 8 April 2014 (RN 12/09342/TCH)
6. Email from owner/occupier within Chenies House dated 11 November 2014.
7. Email from owner/occupier within Chenies House dated 12 November 2014

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT KAREN BALL ON 020 7641 2932 OR BY E-MAIL – kball@westminster.gov.uk