

PLANNING SUB-COMMITTEE A		AGENDA ITEM NO:B2
Date:	17 March 2020	NON-EXEMPT

Application number	P2018/3973/LBC
Application type	Listed Building Consent
Ward	St. Marys
Listed building	Grade II Listed Building
Conservation area	Barnsbury Conservation Area (and Article 4 Direction)
Development Plan Context	Core Strategy Key Area – Angel & Upper Street Archaeological Priority Area – Islington Village Within 50m of boundaries of the Angel and Upper Street North conservation areas Angel Town Centre Article 4 Direction (A1-A2 Town Centres) Cycle Route (Local) Cycle Route (Strategic) Site within 100m of Transport for London Road Network Article 4 Direction (A1 to A2)
Licensing Implications	No licensing details submitted
Site Address	10-16 Theberton Street N1 0QX
Proposal	Re-instatement and installation of walls at basement and ground floor levels to separate 14 and 16 Theberton Street, 10 and 12 Theberton Street and partially separate 12 & 14 Theberton Street; install a ground floor at rear of 12 and 14 Theberton Street by infilling atrium; installation of extractors to rear; and change of use of ground and basement floors of 12 and 14 Theberton Street to Class A3 restaurant with associated internal alterations.

Case Officer	Nathan Stringer
Applicant	Mr Mehmet Kocakerim
Agent	First Plan – Mark Shearman

1. RECOMMENDATION

The Committee is asked to resolve to **GRANT** planning permission subject to:

- 1.1 the conditions set out in **Appendix 1** (Recommendation B).

2. SITE PLAN



3. PHOTOS OF SITE/STREET

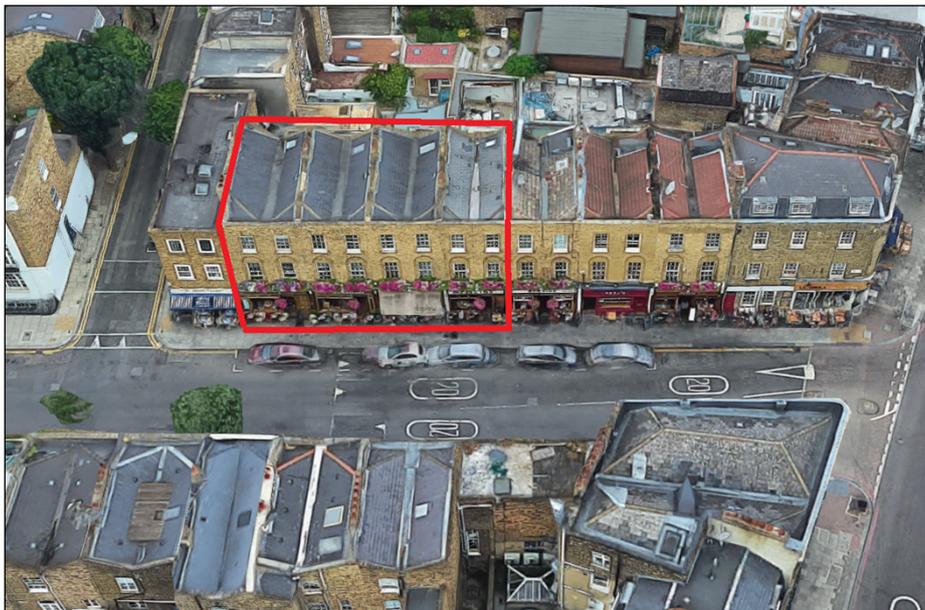


Image 1: Aerial view of site (highlighted in red)



Image 2: The front elevation of the site as viewed from Theberton Street



Image 3: Taken at the junction with Upper St with site is shown on the right



Image 4: Rear elevation (site shown in centre)

4. SUMMARY

- 4.1 The applications seek full planning permission and listed building consent for the change of use of the basement and ground floors of Nos. 12 and 14 Theberton Street to a restaurant (A3 Use Class), which lie adjacent on either side to 2no. existing lawful restaurant units at Nos. 10 and 16. The proposal also includes internal and external alterations across all four units, including re-instatement of walls and the installation of external extraction flues. These applications represent amended resubmissions of previously refused schemes which have been subject to planning enforcement action.
- 4.2 The units at Nos. 10-16 Theberton Street have previously been subject to extensive enforcement action due to the amalgamation of the building into one large restaurant, which could be used to host large groups and banquets. As such, the combined comings and goings were considered to have considerable potential to cause significant disturbance to nearby residents. The enforcement notice was upheld at appeal and further planning applications were refused. With regard to the principle of the proposed A3 uses at this location, the previous Inspectorate appeal decisions noted that the operation of separate restaurants at the site could be acceptable, subject to operational details. However, the internal layout and amalgamation of the A3 units led to concerns that the unit would be used as one very large restaurant venue, resulting in an unacceptable, cumulative impact from comings and goings of customers and their congregation on nearby pavements.
- 4.3 As part of the proposed scheme, there are significant internal alterations which include the partial reinstatement of the plan form of the units associated with the historic listed building. The ceilings within the units would also be reinstated, and the large rear atrium banqueting area that was previously associated with the larger restaurant would be removed and the ceilings and walls reinstated. The positioning of the historic stairs at No. 14 has been reinstated. All of these changes have been welcomed by the Design and Conservation Officer. It has been noted that the restoration of the historic form reverses some of the previous harm caused, which goes some way in addressing the previous enforcement matters. Whilst the flues installed to the rear of the property would impact the external fabric and setting to the rear, it is noted that several flues already exist on the

terrace. Given the benefits created by the internal reinstatement works, officers consider that on balance, the works proposed to the listed building would have a neutral impact.

- 4.4 Further benefit from the internal reinstatement of the ceiling and walls would ensure that the large amalgamated restaurant unit is subdivided into 3 smaller restaurants, which would be more akin to others located within the surrounding setting and within the wider Angel Town Centre. It is also noted that the overall number of covers across the units has been reduced from 181 to 150 (a reduction of 31) following the most recent planning application refusal; and that the largest open seating area at any of the units would be reduced from approximately 85 sqm to 31 sqm as a result of the reinstatement of the internal walls which brings the terrace as a whole closer to mirroring its historic plan form. This would ensure that the comings and goings from each individual restaurant would be further reduced, and the loss of the banquet area in the basement further ensures that the cumulative impact of the restaurant operations on the adjoining residents can be mitigated.
- 4.5 An up to date Acoustic Report and associated Acoustic Notes also accompanied the application. Public Protection have been consulted and are satisfied that the proposal is acceptable, subject to conditions providing limits to operational cumulative noise of the extractor flues, covering permitted operating hours, the monitoring of the noise survey details and timers on the flues, and internal insulation details.
- 4.6 The proposal is considered finely balanced bearing in mind the accumulation of restaurants in this section of the Angel Town Centre. On balance, given the remedial works proposed which would ensure that the existing larger restaurant across Nos. 10-16 Theberton Street would be incorporated into 3 intimate restaurants by removing the larger banquet area in the basement section; together with the reinstatement of historic plan form of the listed buildings; and given the results of the revised noise report which confirms that the restaurant would now comply with Council's noise standards, the proposal is considered acceptable subject to conditions.

5. SITE AND SURROUNDING

- 5.1 The application site is a three storey mid-terrace building (plus basement) located on the northern side of Theberton Street at nos. 10-16 Theberton Street and comprises commercial units at basement and ground floor with residential accommodation on the upper floors. The subject site has a significant planning history including enforcement investigations and action on the unauthorised amalgamation of the ground and basement level units to form a large single restaurant.
- 5.2 The site is occupied by four Grade II listed, three storey over basement, mid-terrace Georgian buildings. The site is located within the Barnsbury Conservation Area, the Angel and Upper Street Core Strategy Key Area, the Angel Business Improvement District (BID), the Angel Town Centre, and the (Licensing) Angel and Upper Street Cumulative Impact Area.
- 5.3 Adjoining the east of the site are three similar listed Georgian terraced properties (Nos. 4, 6 and 8 Theberton Street), each comprised of A3 restaurants at ground floor level with residential accommodation above. Beyond these properties, to the east of the site, is the junction of Theberton Street with Upper Street, both sides of which are lined by retail and commercial properties. Adjoining the west of the site is a three storey end-of terrace building (No. 18 Theberton Street) that comprises an A3 restaurant at ground floor level with residential accommodation above. Beyond this property, to the west, is the junction of Theberton Street with Studd Street. This is the boundary of the Angel Town Centre, beyond which point Theberton Street becomes a purely residential street. Studd Street

and Moon Street are also residential streets. To the south of the site, on the opposite side of Theberton Street, is a three storey terrace of Grade II listed Georgian buildings, which comprise commercial units at ground floor level with residential accommodation on the upper floors.

6. PROPOSAL (IN DETAIL)

- 6.1 The applications seek permission for the re-instatement and installation of walls at basement and ground floor levels to separate 14 and 16 Theberton Street, and 10 and 12 Theberton Street and partially separate 12 and 14 Theberton Street; installation of a ground floor at rear of 12 and 14 Theberton Street by infilling atrium; installation of 2no. extractors to rear; and change of use of ground and basement floors of 12 and 14 Theberton Street to Class A3 restaurant with associated internal alterations.
- 6.2 The proposal is brought to the committee because the application has received 20 objections from neighbouring residents, generating interest in the development. The main concerns from objectors include the impact of the proposed use on neighbouring amenity with regard to noise, odour, and disturbance.

Revisions and additional information

- 6.3 The applicant submitted revised drawings and additional acoustic information throughout the course of the officer assessment, to address officer comments and concerns. This includes the provision of acoustic notes outlining additional noise surveys undertaken, corrections to the rear elevation drawings, and further re-instatement of the internal plan form. Given the provision of the additional information, the application was re-consulted.

7. RELEVANT HISTORY

Planning applications

- 7.1 **P2015/4037/FUL:** Conversion and reconfiguration of the ground floor and basement of 10-16 Theberton Street to form three restaurants (Use Class A3) comprising the following restaurant 1, No.16 (ground floor and basement level); restaurant 2, front part of Nos. 12 and 14 (ground floor and basement level); restaurant 3, No.10 and rear part of Nos.12, 14 (ground floor and basement level and part basement level of No.16). **Refused 13/12/2019.**

REASON: The proposal, by reason of the large floor area and number of covers in restaurant No.3, would give rise to potential hosting and catering for large parties (such as weddings or business functions) or large numbers of smaller groups (standard restaurant diners). It is considered that the operating of such a large singular A3 unit would have the potential to result in unacceptable increases in the level of noise and disturbance experienced by adjoining neighbouring residential occupants and the wider neighbourhood. The potential for noise and disturbance is exacerbated by the presence of a banqueting scale facility at basement level, lack of noise mitigation measures to address noise transfer (such as additional insulation measures between restaurant and residential floors) and the absence of measures to control numbers of people arriving/leaving at the same time and large groups of people congregating outside of the premises to smoke. Therefore, the proposal is considered to be contrary to policies DM4.2 (Entertainment and the night-time economy), DM4.3 (Location and concentration of uses) and DM4.4 (promoting Islington's Town Centres) of the Islington Development Management Policies.

Appeal (APP/V5570/W/16/3165702) was dismissed for the reason below:

REASON: The proposal would cause significant harm to the living conditions of existing and future occupants of nearby residential dwellings with regard to noise. This would be contrary to policies DM4.2, DM4.3 and DM4.4 within Islington's Local Plan: Development Management Policies 2013 that seek, among other things, to ensure that proposals relating to entertainment and the night-time economy do not lead to significant adverse impacts on residential amenity and that the densities of restaurants and other similar uses do not lead to significant, negative cumulative impacts or cause unacceptable disturbance. Consequently, the development would not be in accordance with the development plan

- 7.2 **P2013/1041/FUL** – Basement & Ground Floors, 10-16 Theberton Street, London N1 0QX: Amalgamation of the ground floor and basement of the four individual properties (10, 12, 14 & 16 Theberton Street) and their use as a single A3 restaurant unit. **Refused 05/06/2013.**

REASON: The proposal would result in the creation of a large 'destination venue' restaurant capable of catering for either large parties of people (such as wedding or business functions) or a large number of smaller groups of people (standard restaurant dinners). As such, it is considered that the cumulative impact of the operation of such a large A3 unit, with banqueting scale facilities, would have the potential to result in an unacceptable increase in the level of noise and disturbance experienced by neighbouring residential occupiers, caused as a result of large numbers of people arriving / leaving at the same time and large groups of people congregating outside of the premises to smoke. Therefore, the proposal is considered to be contrary to policy Env17 (Protecting Amenity) of the Islington Unitary Development Plan 2002 and emerging policies DM18 (Maintaining and promoting small and independent shops), DM19 (Entertaining and the night-time economy), DM20 (Location and concentration of uses), and DM21 (Promoting Islington's Town Centres) of the Islington Development Management Policies (EiP Submission 2012)

- 7.3 **P112589** – 10 Theberton Street: Listed Building Consent application in connection with the conversion of the upper floors into two self-contained flats and the erection of a first floor rear extension. **Approved with conditions 20/07/2012.**
- 7.4 **P092209** – 16 Theberton Street: Listed building consent for formation of new basement under the rear of number 16 Theberton Street. (Full Planning Application P092208 also submitted) **Approved with conditions 04/01/2010.**
- 7.5 **P090256** – 12-16 Theberton Street: Listed building consent for conversion of upper floors to create 6x one-bedroom flats, together with erection of first floor rear extensions at 12 & 16 Theberton Street and general internal and external refurbishment (Full Planning Application P090255 also submitted) **Approved 06/08/2009.**
- 7.6 **P090273** -10 Theberton Street: Demolition of single storey rear extension, erection of new single storey full width, full length rear extension, excavation to create full width, full length rear basement extension, replacement of front uPVC windows on upper floors with traditional timber sash windows and internal alterations (Listed Building Application P090274 also submitted) **Approved with conditions 14/05/2009.**
- 7.7 **P090257** – 12-14 Theberton Street: Demolition of existing single storey rear extensions at 12 & 14 Theberton Street, erection of new double width single storey rear extension across 12 & 14 Theberton Street, excavation to create double width rear basement extension across 12 & 14 Theberton Street and installation of new shopfront at 12 Theberton Street (Listed Building Consent Application P090258 also submitted) **Approved with conditions 05/05/2009.**

- 7.8 **P081568** – 10-14 Theberton Street: Excavation and creation of rear basement extensions at properties 10, 12 and 14 Theberton Street, erection of ground floor extension at 12 Theberton Street and rebuilding of ground floor extension at 10 Theberton Street together with internal works in association with a lateral conversion of properties 12 and 14 Theberton Street comprising partial demolition of the party wall at ground floor level. **Refused 11/11/2008.**

REASON: The associated listed building consent application has been refused and it would therefore be premature to grant planning permission without the associated listed building consent.

- 7.9 **P081571** – 10-14 Theberton Street: Listed Building Consent application in connection with excavation and creation of rear basement extensions at properties 10, 12 and 14 Theberton Street, erection of ground floor extension at 12 Theberton Street and rebuilding of ground floor extension at 10 Theberton Street together with internal works in association with a lateral conversion of properties 12 and 14 Theberton Street comprising partial demolition of the party wall at ground floor level. **Refused 11/11/2008.**

REASON: The proposed internal alterations would have a detrimental effect on the architectural and historic interest of the Grade II listed buildings due to loss of the remaining original plan form of the buildings and loss of historic fabric within the buildings. Therefore, the proposal would be contrary to the guidance set out in PPG15

- 7.10 **880833** – 14 Theberton Street: Change of use of the ground floor from shop to estate agents (Class A2). **Approved with conditions 31/10/1988.**

Enforcement History

- 7.11 **APP/V5570/F/14/2225985:** Planning Enforcement appeal made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

The breach of planning control as alleged in the notice was: the amalgamation of the basement and ground floors of four individual properties (10,12,14 & 16) Theberton Street and their use as a single restaurant unit (A3).

Decision: Appeal dismissed; the enforcement notice is upheld and planning permission on the deemed application is refused.

Pre-applications

- 7.12 **Q2018/1437/MIN** – Pre-application for conversion from A2 to A3 for nos 12 and 14 at ground floor and basement levels, internal alterations.

8. CONSULTATION

Public Consultation

- 8.1 Letters were sent to occupants of 39 adjoining and nearby properties on 31 January 2019. A site notice and press advert were also displayed. Following the submission of revised plans and documents, the applications were re-consulted on 19 December 2019; they were again re-consulted on 23 January 2020 following a correction to the description of the proposed development. The public consultation of the application therefore expired on 6 February 2020, however it is the Council's practice to consider representations made up until the date of a decision.

8.2 At the time of the writing of this report, 20 objections had been received from the public with regard to the application, including a letter of objection from the Moon Street and Studd Street Residents' Association. The concerns raised are summarised below:

- size of the proposed restaurant at Nos. 12-14 is excessive, noting it would have the ability to cater for up to 70 covers on one floor, with potential operation as a destination venue (see **paragraphs 10.15-10.31**);
- the impact of a restaurant of such a scale on the wider amenity of neighbours given the size and number of covers (from 60 to 80 covers), including from noise, disturbance, and comings and goings (see **paragraphs 10.61-10.88**);
- concern that the pavement is too narrow for tables and chairs, A-frame boards, noting that when the restaurants are full there is often no room for pedestrians (see **paragraph 10.95**);
- impact of additional highway movements upon residents, including increased noise, rubbish and traffic (see **paragraphs 10.89-10.95**);
- detrimental impact of the development upon the character and appearance of the listed buildings and the wider conservation area (see **paragraphs 10.32-10.60**);
- concern regarding noise and odour impacts from proposed extraction equipment (see **paragraphs 10.65-10.85**);
- concern that the applicant has a significant history of non-compliance with building regulations/alcohol license and a disregard for regulations, and no confidence that conditions would be complied with (see **paragraphs 10.98-10.99**). (*Officer note: failure to comply with the conditions attached to either the planning permission or listed building consent would be a planning enforcement matter*); and
- concern regarding noise from existing extraction equipment (which were installed without planning permission and operate continuously), noting that the current systems are noisy and impact homes on the eastern side of Studd Street. Request that should permission be granted; the extractors are required to be upgraded using low sound emitting systems (see **paragraphs 10.98-10.99**). (*Officer note: the scope of this report is limited to the proposal under consideration, which does incorporate the installation of 2no. extraction flues (see paragraphs 10.65-10.85). Any concerns relating to the lawfulness of existing equipment is a planning enforcement matter and any noise nuisance would be dealt with under the Environmental Protection Act 1990*).

Internal Consultees

8.3 **Design and Conservation Officer:** the unsympathetic design of the rear extraction flues would be balanced by the greater reinstatement of the historic separation between the properties. On balance, subject to conditions requiring the submission and approval of design details for internal works, the proposal would create a neutral impact on the significance of the heritage assets.

8.4 **Public Protection (Noise) Officer:** raises no objections to the proposal, subject to a number of conditions to ensure that noise generated by the operation of the restaurants does not cause undue harm to neighbouring residential amenity (outlined in **paragraph 10.80**).

External Consultees

8.5 None.

9. RELEVANT STATUTORY DUTIES & DEVELOPMENT PLAN CONSIDERATION & POLICIES

- 9.1 Islington Council (Planning Sub-Committee A), in determining the planning application has the following main statutory duties to perform:
- To have regard to the provisions of the development plan, so far as material to the application and to any other material considerations (Section 70 Town & Country Planning Act 1990);
 - To determine the application in accordance with the development plan unless other material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004) (Note: that the relevant Development Plan is the London Plan and Islington's Local Plan, including adopted Supplementary Planning Guidance.)
 - As the development affects the setting of listed buildings, Islington Council (Planning Committee) is required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses (S66 (1) Planning (Listed Buildings and Conservation Areas) Act 1990) and;
 - As the development is within or adjacent to a conservation area(s), the Council also has a statutory duty in that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area (s72(1)).
- 9.2 National Planning Policy Framework 2019 (NPPF): Paragraph 10 states: "at the heart of the NPPF is a presumption in favour of sustainable development."
- 9.3 At paragraph 8 the NPPF states that the planning system has three overarching objectives in achieving sustainable development, being an economic objective, a social objective and an environmental objective.
- 9.4 The NPPF seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.
- 9.5 Since March 2014 Planning Practice Guidance for England has been published online.
- 9.6 In considering the planning application account has to be taken of the statutory and policy framework, the documentation accompanying the application, and views of both statutory and non-statutory consultees.
- 9.7 The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include:
- Article 1 of the First Protocol: Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- Article 14: Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

9.8 Members of the Planning Sub-Committee must be aware of the rights contained in the Convention (particularly those set out above) when making any Planning decisions. However, most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of the rights contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate.

9.9 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Development Plan

9.10 The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The policies of the Development Plan that are considered relevant to this application are listed at Appendix 2 to this report.

9.11 Weight is attributable to the Draft London Plan.

9.12 The site has the following designations under the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013 and the Finsbury Local Plan 2013:

- Grade II listed buildings
- Barnsbury Conservation Area (and Article 4 Direction)
- Archaeological Priority Area – Islington Village
- Within 50m of boundaries of the Angel and Upper Street North conservation areas
- Core Strategy Key Area – Angel & Upper Street
- Angel Town Centre
- Article 4 Direction (A1-A2 Town Centres)
- Within 100m of TLRN
- Cycle Route (Local)
- Cycle Route (Strategic)
- Site within 100m of Transport for London Road Network

Supplementary Planning Guidance (SPG) / Document (SPD)

9.13 The SPGs and/or SPDs which are considered relevant are listed in Appendix 2.

10. ASSESSMENT

10.1 The main issues arising from this proposal relate to:

- Land Use
- Design and Conservation
- Neighbouring Amenity
- Highways and Transportation
- Accessibility
- Refuse and Recycling

Land Use

Existing lawful use

- 10.2 The last known lawful use of the properties at nos. 12 and 14 was as A2 (professional services); whilst the last known lawful use of at properties at nos. 10 and 16 was as A3 (restaurant). Notwithstanding the lawful use of the units, the properties have been amalgamated and operated as a single A3 restaurant unit. This combined use has been the subject of extensive planning enforcement history, including the issuing of an enforcement notice on 15 August 2014 requiring the cessation of the combined use. A subsequent appeal against this enforcement notice was dismissed dated 15 July 2015 and prosecuting proceedings for non-compliance of the Notice has resulted in a successful conviction.
- 10.3 In terms of the principle of the use, it must be noted that no permission has been granted for the A3 use of the units at nos. 12 and 14. As noted above, these have been operated unlawfully under the A3 use class. When taking into consideration the lawful use of unit nos. 12 and 14, the proposal would result in the loss of approximately 275 sqm of A2 commercial floorspace within the Angel Town Centre.
- 10.4 As noted above, the ground floors and basements of all of the units have previously been converted to serve as A3, and the interconnected layout of the units allows for their operation as a single restaurant. Specifically, at basement level wide openings have been created, resulting in a vast restaurant complex. These works and the associated A3 use were considered to be unlawful, and have been subject to enforcement notices. Albeit, the openings associated with the basement were granted (with alterations) listed building consent on appeal.
- 10.5 Policy DM4.4 of the Development Management Policies 2013 seeks to maintain and enhance the retail and service function of Islington's town centres, including the Angel Town Centre. However, there is no specific policy protection for A2 uses. Part A of the policy requires that application for more than 80 sqm of floorspace within the A Use Classes (including both A2 and A3 uses) should be located within designated Town Centres. Therefore, the replacement of the existing A2 use class with an A3 use, both within the A Use Classes, is acceptable in principle subject to the relevant considerations discussed further within the report below.

Principle of A3 uses in this part of Theberton Street

- 10.6 The application site is subject to a number of policy constraints relating to the A Use class function of the host building within the Angel Town Centre. Therefore, in terms of this proposal, it is important to consider the requirements of policies DM4.3 and DM4.4 of the Development Management Policies 2013.
- 10.7 Policy DM4.3, Part A states:
- 'A. Proposals for cafes, restaurants, drinking establishments, off licences, hot food takeaways, lap dancing clubs, nightclubs, casinos, betting shops, amusement centres and other similar uses will be resisted where they:*
- i. would result in negative cumulative impacts due to an unacceptable concentration of such uses in one area; or*
 - ii. would cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area.'*
- 10.8 Due to the borough's densely developed, mixed-use nature, a range of main Town Centre uses occur in close proximity to places where people live; therefore, it is important to ensure a mix and balance of complementary day and night-time uses that creates an attractive and vibrant area that co-exists successfully with neighbouring residential areas. Certain types of use can cause detrimental cumulative impacts as a result of their concentration or location. The Council will therefore resist applications for such uses where they would cause harm to the character, function and amenity of an area or negatively impact on the health and wellbeing of the borough's residents.
- 10.9 Specifically with regard to the Angel Town Centre, paragraph 2.6.9 of the Core Strategy 2011 outlines the area's role as a focus for Islington's evening economy, which includes internationally renowned theatres as well as restaurants. It advises that these uses benefit from being located near each other and the council wishes to build on this cluster and so strengthen the Angel as a cultural destination. However, the council will be robust in using its powers to ensure that the quality of life for residents in the area is not undermined by these activities.
- 10.10 Policy DM4.4, Part C states:
- 'C. Development within designated Town Centres is required to:*
- i. be appropriate to the scale, character and function of the centre;*
 - ii. contribute positively to the vitality and viability of the centre;*
 - iii. promote a vibrant and attractive place;*
 - iv. respect and enhance the heritage, character and local distinctiveness of the centre;*
 - v. provide a variety of different sized units;*
 - vi. meet the council's policies on Inclusive Design; and*
 - vii. will not cause detrimental disturbance from noise, odour, fumes or other environmental harm.'*
- 10.11 There are a significant number of A3 restaurant and café units within the immediate surrounds of the application site at Theberton Street (including lawful A3 uses at nos. 10 and 16), and within the Angel Town Centre in general. Noting that the proposed A3 use is not out of character with the surrounds, officers consider that the principle of the proposed A3 uses would meet criteria i), ii), and iii) as listed above. However, whilst the Council notes that the Angel area is a focus for Islington's evening economy, consideration must

be given any harmful impacts of the proposed increase in lawful A3 restaurant units within the vicinity.

- 10.12 With regard to the acceptability of separated A3 uses at the site, it must be noted that the principle of such uses was previously considered to be acceptable by the Planning Inspectorate under appeal reference APP/V5570/C/14/2225985 (appeal dismissed 24/06/2015) (Decision attached at **Appendix 3**). This is a significant material consideration in the assessment of the proposal. Specifically, with regard to the introduction of a restaurant uses at the site, paragraph 94 of the decision states:

“In this part of Islington, with its high concentration of retail and restaurant uses, I do not consider that the principle of separate A3 uses for Nos 12 and 14 would be significantly harmful. I acknowledge that this in theory would result in a concentration of restaurant uses along this part of the Street but the separate uses of these premises would not, in my view, be significantly and cumulatively different from the other separate lawful nearby A3 uses in Theberton Street and Upper Street.”

- 10.13 It is also noted that the principle of separate A3 uses did not warrant a reason for the refusal of the most recent planning application (ref: P2015/4037/FUL); rather, that application was refused as a result of the excessive size of the proposed floor area and number of covers in restaurant No.3, which was considered to have the potential to result in unacceptable increases in the level of noise and disturbance experienced by adjoining neighbouring residential occupants and the wider neighbourhood.
- 10.14 Overall, the principle of the proposed A3 uses at the site is acceptable, subject to further consideration with regard to the size of the proposed units and the resulting potential impacts upon neighbouring residential amenity.

Proposed unit sizes and potential operational impacts

- 10.15 This application, and the previously refused applications, relate to three restaurants across the properties known as ‘Restaurant 1’ (at No. 16), ‘Restaurant 2’ (No. 12-14) and ‘Restaurant 3’ (No. 10).
- 10.16 Under the previously refused planning applications refs: P2013/1043/FUL and P2015/4037/FUL (dismissed at appeal ref: APP/V5570/W/16/3165702), significant concerns were raised with regard the layout and capacity of the proposed restaurant/s. Each of these applications proposed the provision of large opening dining areas at both ground and basement levels with a double height atrium spanning across the rear of the units which could be used for banqueting spaces. As such, the combined coming and goings would have considerable potential to cause significant disturbance to nearby residents. Furthermore, the double height atrium space at the rear exasperated the levels of noise transfer from the basement space to nearby sensitive uses.
- 10.17 The continued A3 use of the site is subject to a number of previous planning and enforcement appeals, the most relevant to the application currently under consideration being:

- APP/V5570/C/14/2225985 (Appeal D) (attached at **Appendix 3**), dismissed and enforcement notice upheld 24/07/2015. The appeal was against an enforcement notice requiring the cessation of the use of the ground floors and combined basement area of nos. 10-16 as a single restaurant unit); and
- APP/V5570/W/16/3165702, dismissed 20/11/2017 (attached at **Appendix 4**). The appeal was against the Council's refusal to grant permission for the conversion and reconfiguration of the ground and basement levels of nos.10-16 to form three restaurants (P2013/1043/FUL).

10.18 Previous key findings from the above Planning Inspectorate decisions include:

“However, whilst finding that separate uses could be acceptable, I share the concerns of the Council and others about the premises being used for one very large restaurant venue. Having seen the combined basement spaces and taking into account the number of covers, it seems to me that the potential for noise and disturbance is far greater than that which is likely to be created by having four smaller premises. There have been no noise mitigation measures put forward by the appellant and from what I saw I consider that the generally hard internal surfaces would be likely to exacerbate and amplify any noise generated in such a huge space.” (Par. 95 of Appeal Decision APP/V5570/C/14/2225985 dated 24/07/2015).

“I observe from the plans and my site visit that all three restaurants would still be capable of accommodating large groups. As such, the combined comings and goings would still have considerable potential to cause disturbance to the closely situated occupants of nearby residential dwellings. I accept that the operation of separate restaurants would reduce the previously documented harm through a more staggered pattern of bookings. However, this would be counter-balanced by the increase in the number of covers and the fact that very large groups would still be able to book Restaurants 2 and 3. Consequently, an increase from the 150 covers noted by the previous Inspector would lead to an unacceptable, cumulative impact from the comings and goings of customers and their congregation on nearby pavements.” (Par. 9 of Appeal Decision APP/V5570/W/16/3165702 dated 31/10/2017).

10.19 Significant weight is attributed to the previous planning refusals, as well as the associated Planning Inspectorate appeal decisions. It is therefore important to outline what revisions have been made as part of this application to seek to overcome the previous reasons for refusal, specifically with regard to the most recently refused scheme (ref: P2015/4037/FUL).

Covers/Seating Area

10.20 Under the previously refused applications, the Council held concern that the significant expanse of proposed seating areas (notably at basement level) and the resulting customer covers would afford the capability for the restaurants to hold large ‘banqueting’ style events, which would have far greater potential for noise and disturbance than four smaller and more intimate restaurants next to each other. Specifically, the failure to reinstate the original basement form was considered to be unacceptable. Within the delegated report for the most recently refused 2015 application (the plans for which incorporated the use of a significant portion of the basement as a large open seating area associated with Restaurant 3), paragraph 20 states:

“It is officers’ view that the extension of restaurant 3 across the entire basement floor would not materially change the existing unauthorised arrangement sufficiently to be classed as an intimate small scale restaurant. It would have a similar operation to the existing arrangement with the banquet style area maintained at basement level. Such a size would not be characteristic within the area and the location of several units adjacent to each other and would therefore be contrary to policy DM4.3 of the Development Management Plan.”

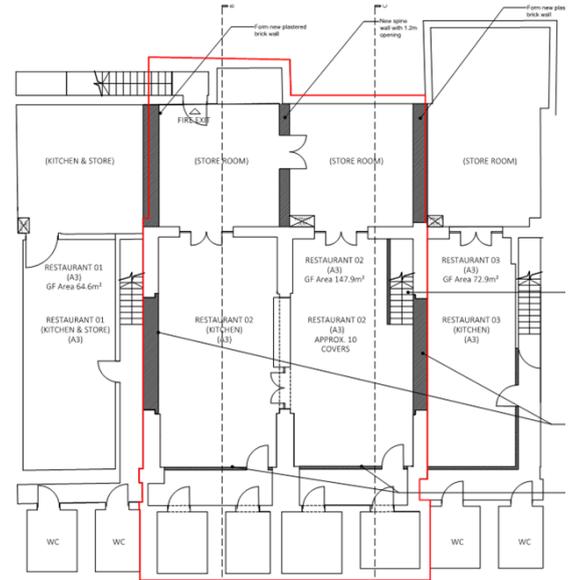
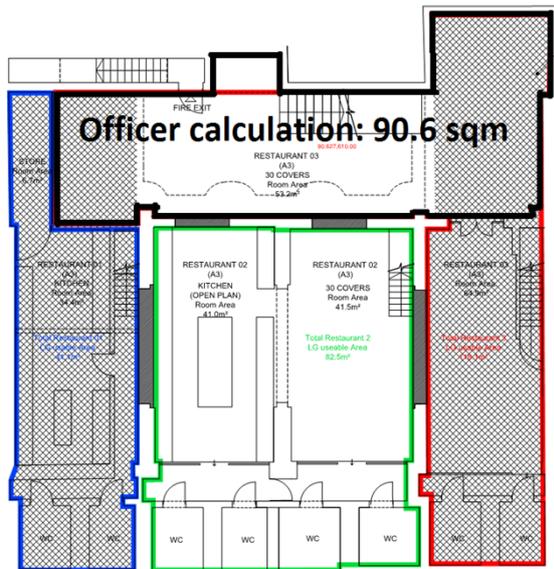
- 10.21 The proposal currently under consideration seeks to permanently close the majority of the openings at ground and basement floor levels, as well as infill the double storey atrium at the rear of the units to separate ground and basement levels in this location. These openings and atrium currently act to connect each of the restaurant units, and have led to the establishment of substantial open seating areas capable of hosting large banqueting groups.
- 10.22 Following the closure of openings and the infilling of the atrium, this application seeks permission to establish a lawful A3 use across three separate restaurants. Each of the proposed restaurants would cover both ground and basement floor levels, however only Restaurant 2 would include customer seating at basement level (approximately 10 covers). The remainder of the basement floorspace across the site would be used as kitchens and store rooms. Most of the existing openings between the units at basement level would be infilled, with the exception of two openings between unit nos. 12 and 14. Importantly, the large banqueting spaces (comprised of open seating areas at basement level across the units) associated with the previously refused applications have been removed.
- 10.23 A comparative analysis of the details of operation for each restaurant proposed under the current application, compared to those proposed under the most recently refused application (ref: P2015/4037/FUL), is shown in the tables below.

Property	Proposed Floorspace	Proposed covers	Previously refused	Difference +/-
Restaurant 1	GIA: 110 sqm Seating Areas: 45 sqm	30 covers	36 covers	-6 covers
Restaurant 2	GIA: 269 sqm Seating Areas: 140 sqm	80 covers	60 covers	+20 covers
Restaurant 3	GIA: 134 sqm Seating Areas: 59 sqm	40 covers	85 covers	-45 covers
TOTAL:	GIA: 513 sqm Seating Areas: 259 sqm	150 covers	181 covers	-31 covers

Table 1: Restaurant covers, proposed vs. previously refused

Property	Largest proposed open seating area	Previously refused largest open seating area	Difference +/-
Restaurant 1	Approx. 26 sqm	Approx 29 sqm	-3 sqm
Restaurant 2	Approx. 31 sqm	Approx. 41 sqm	-10 sqm
Restaurant 3	Approx. 30 sqm	Approx. 91 sqm	-61 sqm

Table 2: Largest open seating areas per restaurant, proposed vs. previously refused



NB: whilst the labels on the plans submitted for the previously refused 2015 application indicate that the largest open seating area for restaurant 3 at basement level was 53.2 sqm, scaled measurements of the plans indicated that the open area would, in fact, have covered 90.6 sqm. This exacerbated officer concerns with the proposal and contributed to the refusal of the application. For the table above, the floorspace figure as measured on the plans is used; however, for the avoidance of doubt, it is important to note that the current proposal represents a significant reduction in open seating floorspace when compared to either scenario. The previously refused basement plan (officers calculations shown) and proposed basement floorplan are shown in Images 1 and 2 below.

Image 1: previously refused basement plan

Image 2: proposed basement plan

- 10.25 The proposal represents a decrease in both overall capacity and open seating areas when compared to the most recently refused scheme. In total, across the three restaurants there would be 25 less covers, including 45 less covers at Restaurant 3 and 6 less in Restaurant 1. Whilst Restaurant 2 would see an increase in 20 covers, this is a result of the additional internal ground floor area created following the infilling of the rear double-storey atrium which previously acted to increase capacity for large banqueting style events. The increase of 20 covers for a total of 80 covers given its overall size and the mitigation measures with re-instatement of ceilings and walls is considered to be acceptable. Furthermore, the total number of covers at the three restaurants would be 31 less than previously refused; paragraphs 10.26-10.30 outline the justification of these covers.
- 10.26 Importantly, the proposed restaurants have been subject to significant internal reconfigurations when compared to the previously refused schemes. As noted above, the refused schemes included large expanses of open seating areas, including a very significant space within Restaurant 3 of 91 sqm at basement level spread across the rear of nos. 10-14 and below the double-height atrium space. The proposed partitions at both ground and basement levels, as well as the infilling of the atrium, would not only ensure that the restaurants are self-contained, but would also significantly reduce the size of the largest open seating areas at each restaurant. As outlined in the table above, the largest open seating area at any of the restaurants would not exceed approximately 31 sqm, significantly reducing the capacity for the venues to host larger group gatherings. This amount of open floor area, and the resulting customer capacity, is not considered to be excessive for a restaurant unit.

- 10.27 It must be noted that the previous Inspectorate appeal decision (ref: APP/V5570/C/14/2225985) makes specific reference to the likely acceptability of the separation of the properties into “*four smaller premises*”; and that the refused 2015 application was upheld at appeal (ref: APP/V5570/W/16/3165702) partly because the proposed separation of the site into three (rather than four) restaurants ensured that it would still be capable of accommodating large groups (as outlined at paragraph 9.17 of this report). However, the second appeal was largely upheld due to operational harm caused by an increase in restaurant covers and the fact that very large groups would still be able to gather in Restaurants 2 and 3. Whilst the proposal currently under consideration includes the provision of three (rather than four) separate restaurants, it differs from the previous schemes as it would no longer offer the opportunity for very large groups to gather for ‘banquet’ style functions, as a result of the:
- reduction in overall covers across the site; and
 - significant reduction in open seating area floor spaces following the re-instatement of walls
- 10.28 As noted above, the property at no. 12-14 Theberton Street would be operated as a single restaurant (Restaurant 2), rather than two separate units; and the restaurant would also allow for a greater number of covers (+20) than under the previously refused schemes. However, the layout of the restaurant has been revised throughout the course of the application at the request of officers to ensure that, despite the increase in covers, the resulting space does not afford an opportunity for large group gatherings. The resulting restaurant would operate across two frontages, and the units would largely be divided by internal partitions save for 2no. small doorway openings at each ground and basement floor levels. At ground floor, the resulting restaurant would be separated into four individual seating areas (each with a maximum cover of 20), with one seating area at basement level with a cover of 10. Therefore, whilst the overall cover numbers represents an increase upon the previous scheme, the layout and partitioning of the restaurant ensures that its operating impact would be more akin to two separate units with a shared kitchen rather than one large open-plan restaurant.
- 10.29 As discussed, the proposal includes important variations to the previously refused schemes, including the infilling of the double height atrium within the rear extension (resulting in significantly smaller spaces with lowered ceilings); the installation of separating walls; and the removal of the ground floor level barrelled ceilings at nos. 12, 14 and 16, and their replacement with insulated ceilings between the units and the flats above. The sound insulation measures proposed are discussed in greater detail within the neighbouring amenity section of this report at paragraphs 10.61-10.88.
- 10.30 Furthermore, officers note that the number of covers capable of being accommodated at the site is an important additional consideration in assessing the acceptability of the scheme. Therefore, a condition (Condition 12) has been recommended requiring the provision of detailed cover numbers the new A3 restaurant at Nos. 12-14 as part of a wider Scheme of Management Plan, which is to be submitted and approved by the Local Planning Authority prior to the first occupation of the unit.

10.31 It is therefore considered that the potential operational impacts of the proposed restaurant units would be acceptable, subject to the inclusion of appropriate conditions. This is discussed further within the neighbouring amenity section at paragraphs 9.62-9.89 of this report. Overall, officers consider that the proposed self-contained A3 restaurant units at nos. 10, 12-14 and 16 Theberton Street are acceptable in principle, subject to conditions, and the application therefore accords with policies DM4.3 and DM4.4 of the Development Management Policies 2013.

Design and Conservation

- 10.32 The application site comprises 4no. adjoining three-storey (plus basement) properties which form part of a Grade II listed early C19th terrace on the northern side of Theberton Street and within the Barnsbury Conservation Area. The significance of the buildings includes their architectural design and materials, evidence of the original plan-form and their own townscape contribution including their contribution to the character and appearance of the conservation area. It is also noted that there are a number of other Grade II listed building within proximity to the site, including at nos. 4-8 Theberton Street (adjoining), nos. 20-44 Theberton Street to the west and nos. 3-5 Theberton Street opposite.
- 10.33 Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
- 10.34 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 10.35 Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 10.36 The application site is located within the Barnsbury Conservation Area, which is the largest in Islington and is of outstanding importance. The area contains a wide variety of architectural styles with distinctive detailing, with a number of historic shopfronts which are critical to the character and historic charm of the area. It also contains many of the best examples of late-Georgian/early-Victorian residential developments in London, including some of the finest sequences of squares and terraces in London, such as Gibson Square (approximately 100m to the west of the site).
- 10.37 Policy CS9 of Islington's Core Strategy 2011 and Policy DM2.1 of Islington's Development Management Policies 2013 accord with the National Planning Policy Framework (NPPF) in seeking to sustain and enhance Islington's built environment. Taken together, they seek to ensure that proposed development responds positively to existing buildings, the streetscape and the wider context, including local architecture and character, surrounding heritage assets, and locally distinctive patterns of development.

- 10.38 Policy DM2.3 states that Islington's historic environment is an irreplaceable resource and the council will ensure that the borough's heritage assets are conserved and enhanced in a manner appropriate to their significance.
- 10.39 As discussed within the land use section of this report, the site is the subject of significant planning, listed building, and enforcement history. It is noted that a number of internal works had been undertaken without Listed Building Consent. An Enforcement Notice relating to internal and external alterations to the heritage assets (ref: E08/03958) was therefore issued in 2014. This was the subject of appeal ref: APP/V5570/F/14/2220720 (see **Appendix 3**), in which the Inspectorate dealt specifically with each individual fixture/fitting subject to the Notice. In the case of the properties at Nos. 10-16 Theberton Street, there were 29 contraventions subject to the Notice, most of which were deemed unacceptable and dismissed. The works dismissed have now been removed/altered and the Notice complied with to the satisfaction of the Council. However, the Inspector did allow the retention of a number of the Items, including:
- the insertion of elaborate timber doors and door surrounds into the rounded arch openings within the original real wall/s at basement level across all four units;
 - the installation of alarm boxes to the front elevation;
 - the insertion of barrelled ceilings at ground floor level of nos. 12, 14 and 16;
 - the creation of 4no. double door width openings between Nos. 10 and 12 at basement level;
 - the creation of 4no. double door width openings between Nos. 12 and 14;
 - the creation of 4no. double door width openings between Nos. 14 and 16;
 - the installation of valences to awnings;
 - the installation of internal cladding with cobble-rubble stone and tile to walls at ground floor; and
 - the creation of wide rounded arch openings with rear basement walls.
- the retention of rear openings between 10-12 and 14-16 subject to a downstand at ceiling level being inserted.
- 10.40 Whilst the Items outlined above were allowed at appeal, the associated appeal relating to the use of the properties as a single amalgamated A3 unit was dismissed (as were each of the subsequent planning appeals, as discussed previously within the land use section of this report). The applications under consideration therefore include additional internal and external alterations in order to ensure the demarcation of the units and therefore the acceptability of the use in both planning and listed building terms. The proposed internal works include: re-instatement and installation of previously removed party walls in the basement and ground floor between nos. 14 and 16 and nos. 10 and 12, re-instatement of a timber staircase and door, installation of a ground floor to remove the double height atrium, and removal of modern doors. The proposed external works include the installation of 2no. kitchen extract ducts at the rear.

Internal works

- 10.41 It is proposed to reinstate party walls in the basement and ground floor between nos. 14 and 16 and nos. 10 and 12, to match those previously removed. The proposed walls will be constructed of reclaimed brick and plastered to match the surviving walls. This work re-introduces previously demolished elements of the original plan-form and is therefore supported.

- 10.42 The proposal also includes the formation of new partitions between the basement WCs and the restaurant spaces, with traditional timber panel doors to match those previously removed. It is also proposed re-instate a timber door in the opening between the entrance hall and ground floor front room of no. 12. These works are supported in principle, subject to a condition on the Listed Building Consent (Condition 3) requiring that the re-instated doors shall be six panelled timber doors with mouldings to the ground floor, and four panelled doors with moulding to the basement floor.
- 10.43 It is also proposed to reinstate a timber staircase to match that previously removed between ground and basement floor levels at no. 12. This work re-introduces a staircase in the position of the removed original and is therefore welcomed.
- 10.44 The application also proposes the installation of a ground floor in the double-height atrium to the rear of nos. 12 and 14, including the removal of the modern staircase and all balustrades. The existing atrium occupies a modern extension to the building which is not of historic or architectural interest. The works are supported as they ensure that the internal spaces of the rear extension align to the vertical floor hierarchy of the host buildings, and reduce the harmful impact which a large double-height addition has had on the character and plan-form of the listed buildings.
- 10.45 It is also proposed to remove the modern doors between the rear extension and nos. 12 and 14. This is acceptable as one of the openings is not of historic interest and the other two historically relate to rear windows, not doorways.
- 10.46 Following the submission of the applications, the applicant has revised the proposal to enable more of the internal historic plan form to be reinstated. This includes the insertion of separating party walls between Nos. 12 and 14 within the rear extension at both ground and basement floor levels, to ensure that a level of delineation between the two units is created at rear. Although the ground and basement floor levels of these buildings have lost the vast majority of their historic detailing and finishes, there is clearly a benefit to reinstating the original cellular plan-form, and of reinstating more of the historic separation between the properties including the extension of this separation to within the two storey rear extension. The greater reinstatement of the historic separation between the properties is welcomed.
- 10.47 Overall, the proposed internal works aim to revert the interior of the listed buildings closer to their original plan form, and are considered to be acceptable in principle.

External works

- 10.48 The applications also propose the installation of 2no. kitchen extracts at the rear, one each at nos. 10 and 12, and the installation of an intake duct at the rear of no. 12. Both of the extracts would run along the rear elevation of the buildings (between closet additions at first floor level), and would terminate at the line of the butterfly parapet, approximately 2 metres above the top of the second floor window openings.
- 10.49 The Barnsbury Conservation Area Design Guidelines state:

“10.16. The Council is opposed to the erection of large vent pipes on the rear elevation of commercial properties where this is harmful to amenity. Where possible existing chimney flues should be used. Any new flues should be modest in size, and painted a dark colour.”

10.17. Large flues and vent pipes can often detract from the visual amenity of the area. The Council will therefore seek to ensure that these are appropriately located and are of a suitable size and design.”

- 10.50 The proposed kitchen extraction ducts, and in particular the entirely new duct, would compound the existing harm that has been caused to the rear of the terrace by cumulative mechanical plant. The extraction ducts and intake would be placed on some of the few rear elevations which retain something close to their historic appearance above ground level. They would cause harm to the historic and architectural interest of a designated heritage asset by reason of their unsympathetic design. Although the rear elevation of a terraced building is often one of the more appropriate locations for such plant, a listed building is subject to specific policies which mean that any interventions need to conserve or better reveal its special historic and architectural character. The proposed ducts would cause harm to the special historic and architectural character of the heritage asset, including to the setting of neighbouring heritage assets. This harm would be less than substantial.

Impact of the proposal upon significance of designated heritage assets, and Balance of harm

- 10.51 As noted above, the application properties are Grade II listed and are located within the Barnsbury Conservation Area. The site is also within proximity to, and adjoins, other Grade II listed buildings.
- 10.52 Therefore, in the determination of the applications, the assessment of the proposal must consider the impact on these heritage assets in accordance with the legislation set out in Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which is outlined below.
- Section 66(1) provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
 - Section 72(1) provides that in the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of (amongst others) the planning Acts, special attention shall be paid to the desirability of preserving or enhancing the character.
- 10.53 The South Lakeland District Council v Secretary of State for the Environment case and the Barnwell Manor case (East Northamptonshire DC v SSCLG) establish that “preserving” means “doing no harm”.
- 10.54 The decision of the Court of Appeal in Barnwell Manor confirms that the assessment of the degree of harm to the heritage asset is a matter for the planning judgement of the decision-maker. However, where the decision-maker concludes that there would be some harm to the heritage asset, in deciding whether that harm would be outweighed by the advantages of the proposed development, the decision-maker is not free to give the harm such weight as the decision-maker thinks appropriate. Rather, Barnwell Manor establishes that a finding of harm to a heritage asset is a consideration to which the decision maker must give considerable importance and weight in carrying out the balancing exercise.

- 10.55 There is therefore a “strong presumption” against granting planning permission for development which would harm a heritage asset. In the Forge Field case the High Court explained that the presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. Paragraph 196 of the NPPF provides that where a development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. A local planning authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.
- 10.56 The case-law also establishes that even where the harm identified is less than substantial (i.e. falls within paragraph 196 of the NPPF), that harm must still be given considerable importance and weight.
- 10.57 When more than one heritage asset would be harmed by the proposed development, the decision-maker also needs to ensure that when the balancing exercise is undertaken, the cumulative effect of those several harms to individual assets is properly considered. Historic England does not suggest that the cumulative effect of the individual instances of harm identified amounts to substantial harm and officers do not consider that the total harm (i.e. the cumulative effect of the several instances of harm identified) amounts to substantial harm.
- 10.58 In assessing the proposals hereby under consideration, special regard has been had to the desirability of preserving the listed buildings, their setting, and any features of special architectural interest which they possess; as well as the setting of the adjoining and adjacent listed buildings. Whilst the proposed extraction ducts at the rear elevation are clearly not desirable and would cause less than substantial harm to the heritage assets, the proposal would enable more of the internal historic planform to be reinstated. Although the ground and basement floors of these buildings have lost the majority of their historic detailing and finishes there is clearly a benefit to reinstating the original cellular plan-form, and of reinstating more of the historic separation between the properties including the extension of this separation to within the two storey rear extension.
- 10.59 Therefore, the unsympathetic design of the rear extractions would be balanced by the greater reinstatement of the historic separation between the properties. On balance, with the abovementioned revisions to the scheme, the works would create a neutral impact on the significance of the heritage assets. To ensure that the resulting impact of the rear extractors is minimised, a condition has been attached to both the planning permission (Condition 11) and Listed Building Consent (Condition 5) requiring the submission of detailed design drawings for the approval of the Local Planning Authority within 2 months of the decision notice date.
- 10.60 In accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special attention has been paid to the desirability of preserving or enhancing the character and appearance of the Barnsbury Conservation Areas. In accordance with Section 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in assessing the proposals hereby under consideration, special regard has been had to the desirability of preserving the listed buildings, their settings and any features of special architectural interest which they possess. Overall, subject to the recommended conditions, the proposal is considered to bring benefits in the form of greater reinstatement of the historic plan-form of the properties, which is considered to neutralise the less than substantial harm caused to the heritage assets by the introduction of the extraction ducts at the rear elevation. The

proposal therefore accords with the NPPF 2019, policies 7.4, 7.6 and 7.8 of the London Plan 2016, policy CS9 of the Islington Core Strategy 2011, and policies DM2.1 and DM2.3 of the Islington Development Management Policies (2013) and the guidance contained within the Urban Design Guide 2017 and the Conservation Area Design Guidelines.

Neighbouring Amenity

- 10.61 Policy DM2.1 of the Development Management Policies 2013 states that development should not have an adverse impact on neighbouring amenity in terms of noise, overshadowing, overlooking, privacy, sunlight and daylight receipt, over-dominance, sense of enclosure and outlook.
- 10.62 Policy DM6.1 Part G states that noise generating uses should, where possible, be sited away from noise sensitive uses.
- 10.63 Paragraph 6.19 of the Development Management Policies advises that the Council will expect noise generating uses and sources to be adequately separated from established residential areas and other noise sensitive uses (such as care homes, school and hospitals). However, given the borough's density and character it is acknowledged that noise generating uses cannot always be sited away from residential areas. Where potentially noisy developments (such as entertainment venues) are proposed within residential areas, the council will expect the use not to give rise to noise disturbance.
- 10.64 Policy 7.6 of the London Plan 2016 requires buildings and structures not to cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy and overshadowing, in particular. Policy DM2.1 of the Development Management Policies 2013 states that development should not have an adverse impact on neighbouring amenity in terms of noise disturbance, overshadowing, overlooking, privacy, sunlight and day light receipt, over-dominance, sense of enclosure and outlook.

Noise Pollution

Operational Noise

- 10.65 The amenity impacts relating to the A3 units primarily relate to noise and potential anti-social behaviour late at night.
- 10.66 The site has been subject to significant enforcement history with regard to its operation as a single restaurant unit. Subsequent planning applications have been refused (and upheld at appeal) due to concerns regarding the layout and capacity of the unit/s, each of which provided large open dining areas at both ground and basement levels which could be used for banqueting spaces. As such, the combined comings and goings were considered to have considerable potential to cause significance disturbance to nearby residents. Key findings by the Inspectorate with regard to the use include:

“[...] Having seen the combined basement spaces and taking into account the number of covers, it seems to me that the potential for noise and disturbance is far greater than that which is likely to be created by having four smaller premises... the generally hard internal surfaces would be likely to exacerbate and amplify any noise generated in such a huge space.” (Par. 95 of Appeal Decision APP/V5570/C/14/2225985 dated 24/07/2015) (See **Appendix 3**).

“I observe from the plans and my site visit that all three restaurants would still be capable of accompanying large groups. As such, the combined comings and goings would still have considerable potential to cause disturbance to the closely situated occupants of nearby residential dwellings.” (Par. 9 of Appeal Decision APP/V5570/W/16/3165702 dated 31/10/2017) (See **Appendix 4**).

- 10.67 As discussed within the land use section of this report at paragraphs 10.2-10.31, the proposal differs from the previously refused schemes in that it would result in the creation of three separate restaurants with reduced overall covers. The capacity of the units to host large banqueting spaces has also been removed as a result of the re-instatement of ceilings and walls as well as reconfiguration of the internal layout with storage spaces and kitchens situated within the previous banqueting space. Therefore, the potential operational impacts of the proposed restaurant units would be acceptable, subject to the inclusion of appropriate conditions to protect neighbouring amenity levels.
- 10.68 Upon submission, the applicant provided an Acoustic Report and Acoustic Design Note in support of the application. These were reviewed by the Council’s Public Protection (Noise) officer, who requested that the Acoustic Report be updated to include details regarding the noise from patrons outside affecting nearby residents inside (internal L_{Amax} s from outdoor activity); as well as clarification regarding the relatively low quoted representative sound levels within the premises; and details of measures and controls proposed to ensure that the quoted levels are representative, do not rise, and impacts minimised (i.e. layout changes will not mean larger groups/functions, isolation of speakers from structure, controls of amplified music, smoking areas/patrons arriving or leaving etc.).
- 10.69 The applicant subsequently submitted a revised Acoustic Note to cover the requested additional items. Measurements of the sound transmission between the restaurant and the residences above were undertaken on a Friday night at 21:00. The results demonstrate noise levels 5dB more than the figure previously quoted. However, the revised document failed to provide adequate detail with regard to the restaurant conditions during the survey (no notes were provided regarding measurement position, number of diners, whether music was playing etc.)
- 10.70 Subsequently, the applicant submitted a further Acoustic Note which provides details of two additional acoustic surveys undertaken on both a quiet weekday evening (Tuesday) and on a busy Friday evening between 19:30-21:00. For these surveys, measurements were taken within the front seating area of no. 10 and the rear ground floor mezzanine and rear basement area of no. 14. The Tuesday evening acoustic survey was undertaken while the restaurant was at around one-third full capacity, whereas the Friday evening survey was undertaken while the restaurant was at full capacity with all tables occupied.
- 10.71 The noise limit criteria as set out within the submitted Noise Report are set out in Table 3 below. The Council’s Public Protection (noise) officer has raised no concerns with regard to the proposed criteria.

Source	Criteria
Operational noise emissions to adjoining properties	Operation noise shall not exceed a level of LAeq,5min 30dB within adjoining premises to 23:00 hours and LAeq,5min 25dB beyond this time.
Mechanical services plant and equipment	The rating level of the new equipment shall be at least 5dBA below the prevailing background level at 1m from the most-affected residential property, when assessed in accordance with BS 4142:2014.
Patron noise to the front façade	Noise from patrons to not increase the pre-existing ambient sound level by more than 2.9dBA, equating to a “none/not significant” effect description, as defined by IEMA Guidelines. Individual LAfmax values from patrons should not exceed the 10 th highest measured existing LAfmax level to outside of 1 st floor façade during the late evening period.

Table 3: Acoustic criteria

10.72 The results of the internal sound level surveys, measured in LAeq, are shown in Table 4 below.

Internal sound level measurements (LAeq)			
Survey Date	Measured levels (front seating area at No. 10)	Measured levels (rear ground floor mezzanine at No. 12)	Measured levels (rear basement at No. 12)
Friday 15 th March 2019	80dB	–	–
Tuesday 27 th August 2019	71bD	70dB	69dB
Friday 30 th August 2019	78dB	78dB	75dB

Table 4: internal sound level measurement survey results

10.73 The results indicate that the acoustic levels at the rear seating areas are generally lower than those at the front, due to less patrons per unit area. Measured sound levels over the course of the March survey were LAeq 80dB. The measured spectral data in octave bands, and calculated operational sound transmission into the bedroom of Flat 12A (directly above the rear of the unit at no. 12), are shown in Table 5 below (LAeq 80dB).

Calculated operational sound transmission into Flat 12A Bedroom (LAeq 80dB)									
Description	63	125	250	500	1k	2k	4k	8kHz	
Measured source sound level Leq dB	64	67	74	79	77	70	63	54dB	80dBA
Measured sound insulation of separating floor	22	34	38	45	50	57	62	68dB	Dw(+C'tr) 49(-5)
Calculated sound level	42	33	36	34	27	13	1	0dB	34dBA

Table 5: calculated operational sound transmission into Flat 12A Bedroom

10.74 These results demonstrate that the calculated noise levels into the adjoining habitable rooms are up to 9dBA above the sound level criteria of LAeq 25dB beyond 23:00 and

4dBA above the criteria of LAeq 30dB up to this time. The information provided recommends that in order to meet the above criteria, the sound insulation performance of the separating floor (between the restaurant units and the flats above) is to be improved by at least 9dB. Works to achieve this would likely include the removal of the (non-original) barrelled ceiling to the front of the restaurants at nos. 12-14, and the removal of existing ceilings to the rear (within the modern extension). The applicant's acoustic consultant recommends that once the ceilings have been removed and separating walls constructed, a primary ceiling of two layers 15mm SoundBloc plasterboard is affixed to the joists of the separating floor with mineral wool insulation between joists.

The applicant has also undertaken two external sound level surveys, taken at nominally 1m from a first floor window overlooking Theberton Street using a microphone on a telescopic pole arrangement between 21:30-00:00 hours. During the course of the survey, the area was witnessed as being busy (even into the later periods) with actively high traffic. The results of both surveys indicate that the measured LAFmax levels were dominated by traffic sources. During the course of the first survey, the author noted that the noise levels from patrons was at a "very low level". During the second noise survey, undertaken on Tuesday 27th August, it was noted that the measured noise levels reduced past 23:00 hours, and that overall the figures were generally lower than those measured on the Friday. The noise events were logged throughout the survey and related closely with observed traffic activity, along with non-associated pedestrians and other street activity. The levels measured reflect the noise consultant's opinion that "people leaving the restaurant generally did not wait outside to talk but moved down the street." Therefore, the results indicate that noise from patrons entering and leaving the premises did not impact the measured levels.

Extracts/Intake

- 10.75 The proposed extraction/intake equipment to be installed at the rear nos. 10 and 12 will provide supply and extract ventilation to the kitchen. The fans are to be installed internally, ducted at first-floor roof level and the kitchen extract ducts will rise up the rear of the building and terminate at the eaves. The information submitted provides details of computer modelling used to calculate the noise contribution from the plant to outside the nearest noise sensitive windows (the windows to the flats immediately adjacent to the ductwork). The cumulative calculated specific sound levels, calculated in accordance with BS 4142:2014, are shown below in Table 6.

Description	
Calculated specific sound level at first floor flats overlooking rear façade	LAeq 47dB
Background sound level	LA90 57dB
Acoustic feature correction	0dB
Rating level	Lar 47dB
Excess of rating level over background sound level	-10dB

Table 6: assessment for equipment during operational hours

- 10.76 The installation of duct-mounted attenuators on the atmospheric side of each of the extraction fans has been incorporated into the above calculations. Officers note that there are a number of existing extraction ducts and equipment at the rear of the site (associated with adjoining restaurants), and the resulting background noise is elevated as existing. Therefore, any increase in sound level, even marginal, has the potential to cause an adverse impact upon amenity. Whilst the Council's standard criteria is for such equipment to achieve a level of 5dBA below the background LA90 sound level, taking into consideration the existing elevated sound level, the extraction plant has been designed to ensure that the specific noise level is 10dBA below the current background sound level. This is to ensure that the proposal does not result in an increase to the overall cumulative sound.
- 10.77 The Council's Public Protection (Noise) officer has reviewed the submitted acoustic notes, paying close attention to the result of the surveys as outlined above. Following the submission of the additional information requested, the officer raises no objections to the proposal, subject to the inclusion of a number of conditions to ensure that noise generated by the operation of the restaurants does not cause undue harm to neighbouring residential amenity. Specifically, conditions are recommended to be attached to the planning permission, requiring the following:
- the submission of full particulars and details of a scheme for sound insulation between the restaurant and residential users above, for approval prior to the first occupation of the development (Condition 6);
 - the commissioning of a report (Condition 7) to assess the acoustic performance of the sound insulation scheme as approved. The report shall be submitted to and approved in writing by the Local Planning Authority within three months of the approval of sound installation and noise control measures approved as part of condition 6 being installed),
 - limits to the operative cumulative noise level LAeq Tr arising from the proposed plant, which when measured or predicted at 1m from the façade of the nearest noise sensitive premises, shall be a rating of at least 10dB(A) below the background noise level LAF90 Tbg (Condition 8). Officers note that this condition is 5dB more stringent than the Council's usual requirement, taking into account the existing elevated noise background sound levels with other plant in the vicinity; and
 - the submission of a report (Condition 9) for the approval of the Local Planning Authority. to assess the noise from the proposed mechanical plant to demonstrate compliance with the noise level restrictions set out in condition 8.
- 10.78 As discussed previously, there are a number of internal mitigation measures proposed to be implemented in order to reduce noise transfer between the restaurant units and the nearby sensitive uses, including the re-installation of ceilings and walls; removal of the rear atrium; an overall reduction in restaurant covers; and the removal of the large banqueting area. Overall, this would lead to a reduction in comings and goings during the operational hours of the restaurants.

10.79 Taking into consideration the information submitted, and subject to the recommended conditions, Officers consider that it has been adequately demonstrated that the proposal would not cause undue harm to the neighbouring amenity with regard to noise disturbance.

Odour and fumes

10.80 Officers note that the extraction equipment has the potential to affect the amenity of nearby residential units as a result of cooking smells. However, the extractor units proposed would terminate at least 1m above the rear windows of the dwellings above. It is considered that any adverse impacts of the extractors on amenity could be successfully mitigated, subject to the detailed design of the extractors.

10.81 Therefore, a condition has been recommended for the planning permission (Condition 11), requiring that the flues are fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration (carbon filters rated with a 0.4-0.8 second residence time, or alternatively fine filtration followed by carbon filtration and by counteractant/neutralising system to achieve the same level as above.

10.82 Subject to the above condition, it is considered that the proposal would not cause undue harm to neighbouring residential amenity with regard to odour pollution.

Night time disturbance and late night economy

10.83 Appendix 10, table 10.2 of the Development Management Policies 2013 provides guidance and standards for reducing impacts of noise generating entertainment uses, including façade treatments and the location of likely noisy sources.

10.84 Notwithstanding the noise survey result discussed above, in order to ensure that the proposed development does not have an adverse impact on neighbouring residential amenity, including cumulative impacts given the location of the site within a high concentration of night-time uses, a condition (Condition 12) requiring the submission and approval of a Scheme of Management prior to the first occupation of the new A3 restaurant unit at nos. 12-14 has been recommended for the planning permission. This condition does not cover the units at nos. 10 and 16, as it is noted that these are already subject to a lawful A3 use. The scheme of management would include details of mitigation measures in order to protect residential amenity with regard to noise, waste and anti-social behaviour, notably:

- covers numbers and method of dispersion of covers within the restaurant;
- a full dispersal policy and procedure;
- signs to request patrons to leave in a quiet manner;
- bottling out and waste management noise and times;
- control and levels of noise from amplified music;
- control and noise from any designated smoking area;
- close down policy; and
- private hire facilities/functions.

10.85 Further, a condition has been recommended (Condition 5) limiting the hours of operation of the new A3 unit at Nos. 12 and 14 to between 07:00 and 23:00 Monday to Thursday and Midnight Friday and Saturday, and 08:00 and 22:00 on Sundays and Bank Holidays.

Other amenity matters

- 10.86 The proposed extraction and intake ducts would run along the rear (north) elevation of the building, and would not cause undue harm with regard to overshadowing, access to sunlight and daylight, over-dominance, sense of enclosure or outlook. The proposal does not involve the erection of any structures, or the creation of new window openings. It would therefore not cause undue harm with regard to increased overlooking and loss of privacy.

Conclusion

- 10.87 Following the assessment of the proposal, officers have recommended that a number of conditions are attached to the planning permission in order to ensure that the operation of the units does not cause undue harm to neighbouring amenity. This includes conditions setting out noise limits for extraction flues (and the submission of a noise compliance report); requiring details for internal insulation schemes (and the submission of a compliance report); the provision of odour filtration measures within the flues; restrictions to hours of operation; and the provision of a scheme of operational management.
- 10.88 Overall, subject to the recommended conditions, the proposed separated A3 restaurant uses and associated extraction and intake ducts are not considered to result in undue harm to the levels of amenity afforded to nearby residential occupiers. The application is therefore considered to be acceptable with regard to neighbouring amenity, and accords with Policy 7.6 of the London Plan 2016 and Policy DM2.1 of the Development Management Policies 2013.

Highways and Transportation

- 10.89 The site is located within the Angel Town Centre, and is easily accessible by public transport including the Angel Underground Station (approx. 600m away) and local bus stops (approx. 30m away), with 24-hour transport connections at the weekend. The site has a PTAL rating of '6a', which is the second-highest and indicates that it has excellent accessibility to public transport. Furthermore, Theberton Street is a restricted parking area, with 1 hour paid parking limits. It is therefore considered unlikely that patrons would arrive via private vehicle. Overall, it is considered that the operation of the restaurants not cause undue harm to the functioning of the public highway with regard to customer comings and goings. To ensure that the dispersion of patrons entering and exiting the unit is managed effectively, it is recommended that a full dispersal policy and procedure is provided as part of the Scheme of Management (Condition 12) to be submitted for approval by the Local Planning Authority prior to the first occupation of the approved A3 unit at Nos. 12-14.

Servicing and Delivery

- 10.90 Policy DM8.6 of the Development Management Policies states that delivery and servicing should be provided off-street, particularly for commercial developments over 200 sqm gross floor area, that details of the delivery and servicing needs for the development should be submitted, and that delivery and servicing bays should be strictly controlled. Owing to the constraints of the site, an appropriate off street location for deliveries is not available.

- 10.91 The A3 'Restaurant 2' unit at nos. 12-14, the last lawful known use of which is as A2, would cover an area in excess of 200 sqm. It is therefore considered necessary to ensure that the delivery and servicing arrangements for the unit are suitable. Given the constraints of the site, off-street servicing would not be possible, and on-street servicing would therefore be required. This is consistent with the operations of the other commercial units along Theberton Street. Deliveries must not conflict with the servicing arrangements of neighbouring users, and it must be demonstrated that there would be minimal disruption to the local highway network, and to ensure that the process is effectively managed to ensure safe manoeuvres.
- 10.92 Therefore, a condition (Condition 13) has been recommended requiring that details of delivery and servicing for the A3 'Restaurant 3' unit at nos. 12-14 are submitted and approved by the Local Planning Authority prior to the first occupation of the unit. A condition (Condition 14) limiting deliveries, collections unloading and loading between the hours of 08:00-20:00 Monday to Saturday, and not at all on Sundays, is also recommended.

Cycling

- 10.93 Policy DM8.4 (Walking and cycling) Part C of the Development Management Policies 2013 requires the provision of secure, sheltered, integrated, conveniently located, adequately lit, step-free and accessible cycle parking. Additionally, Policy CS10 (Sustainable design) Part H of the Core Strategy 2011 seeks to maximise opportunities for cycling. The expected provision of cycle parking is outlined within Appendix 6 of the Development Management Policies 2013, which identifies the need for 1 cycle parking space for each 60 sqm of A3 floorspace. In this instance, this would be applicable to the uplift of lawful A3 floorspace only, and therefore 5no. cycle parking spaces are required to be provided for the unit at nos. 12-14.
- 10.94 At present, no cycle parking is provided within the existing site, and none is shown on the proposed plans. However, officers note that the constraints of the site as a Grade II listed building reduce the scope for provision of cycle parking spaces internally. It is also noted that the site is located within the Angel Town Centre and with excellent accessibility to public transport (with a PTAL rating of '6a'). Therefore, whilst the omission of cycle parking provision for the A3 unit is undesirable, it is not considered to warrant a reason for the refusal of the application.

Pedestrian safety

- 10.95 Concern has been raised by residents that the pavement at this location is insufficient in width to accommodate tables and chairs and A-frame boards, and noting that when the restaurants are full there is often little room for pedestrians including wheelchair users. Officers note that the pavement at this location is approximately 3.2m in width. Whilst the concerns regarding pavement dining and the use of A-frame boards is noted, these do not form part of the application currently under consideration. The placement of tables and chairs upon the pavement requires a separate Tables and Chairs license, which is only issued following an assessment of the capacity of the pavement to accommodate such items.

Accessibility

- 10.96 Policy DM2.2 seeks to ensure that all developments demonstrate that they provide ease of and versatility in use, and deliver safe, legible and logical environments. In this instance, it is acknowledged that the units are positioned over two floors with the only access to basement level being made via internal staircases. The proposal would therefore not comply with the Council's Inclusive Design requirements. However, the lack

of compliance is not considered to warrant refusal given the application relates to an existing statutorily listed building of restricted size and layout.

Refuse and Recycling

- 10.97 The application does not provide details of refuse and recycling storage for the units. However, officers note that there is sufficient space shown on the plans to provide the required storage. Therefore, a condition (Condition 15) has been recommended requiring details of the proposed refuse and recycling facilities to be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the new A3 'Restaurant 2' unit at nos. 12-14. This does not apply to the existing lawful A3 units at nos. 10 and 16.

Other Matters

- 10.98 Concerns have been raised by some neighbouring residents with regard to the applicant's history of non-compliance with building regulations, alcohol licenses and a disregard for regulations. It has been stated that some residents do not have confidence that the recommended conditions would be complied with. Whilst Officers have considered these concerns, it is important to note that each application is assessed on its own merit; any failure to comply with the conditions attached to either the planning permission or listed building consent would be a planning enforcement matter. This is outside of the scope of the applications at hand.
- 10.99 Concerns have also been raised with regard to the noise impacts of the existing extraction equipment, noting that the current systems are noisy and cause harm to the amenities afforded to residents at properties on the eastern side of Studd Street. Officers note that the scope of the assessment under these applications is limited to the proposal under consideration, which incorporates the installation of 2no. extraction flues at the rear of nos. 10 and 12. Several conditions have been recommended in order to control the design and operation of these flues. Any concerns relating to the lawfulness of existing equipment is a planning enforcement matter.

11. SUMMARY AND CONCLUSION

Summary

- 11.1 A summary of the proposal is set out at section 4 of this report.

Conclusion

- 11.2 It is recommended that planning permission be granted subject to conditions and planning obligations as set out in Appendix 1 – RECOMMENDATIONS.

APPENDIX 1 – RECOMMENDATIONS

RECOMMENDATION A – FULL PLANNING APPLICATION

That the grant of planning permission be subject to **conditions** to secure the following:

List of Conditions:

1	Commencement
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
2	Re-instatement works
	<p>CONDITION: Notwithstanding Condition 1, the re-instatement of internal walls, doors and floors hereby permitted shall be completed in their entirety in accordance with the approved plans and particulars within 6 months of this permission and thereafter shall be so maintained,</p> <p>REASON: To ensure that the unauthorised operations cease within a reasonable timeframe and replaced by the development hereby approved, and in the interest of the character, appearance and setting of the heritage assets.</p>
3	Approved plans list
	<p>CONDITION: The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>Acoustic impact of proposed change of use to A3 restaurant 180802-R001 dated 10/09/2018; Acoustic Design Note 180802-R002 dated 03/01/2019; Acoustic Design Note 180802-R004 dated 19/05/2019; Acoustic Design Note 180802-R005 dated 10/09/2019; Site Location Plan 18028; and drawing numbers: 522. (1).1.001 Rev D, 522. (1).1.002 Rev D, 522. (1).1.003 Rev A, 522(1).1.101 Rev C, 522. (1).1.102 Rev B, 522. (1).2.001, 522. (1).2.002 Rev C, and 522. (1).5.001.</p> <p>REASON: To comply with Section 70(1)(a) of the Town and Country Planning Act 1990 as amended and also for the avoidance of doubt and in the interest of proper planning.</p>
4	Materials (Compliance)
	<p>MATERIALS (COMPLIANCE): The development shall be constructed in accordance with the schedule of materials noted on the plans and within the Design and Access Statement. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.</p> <p>REASON: In the interest of securing sustainable development and to ensure that the resulting appearance and construction of the development is of a high standard.</p>

5	Hours of Operation
	<p>HOURS OF OPERATION: The A3 unit at Nos. 12-14 Theberton Street shall not operate outside the hours of:</p> <p>Monday to Thursday – 07:00am to 11.00pm Friday to Saturday – 07.00am to Midnight Sunday and Bank Holidays – 08:00am to 10.00pm</p> <p>REASON: To ensure that the proposed development does not have an unacceptable adverse impact on neighbouring residential amenity.</p>
6	Noise Insulation Measures
	<p>NOISE INSULATION MEASURES: Notwithstanding Condition 1, full particulars and details of a scheme for sound insulation between the ground and basement floor restaurant use and upper floors residential of the buildings at Nos. 12-14 Theberton Street shall be submitted to and approved in writing by the Local Planning Authority within 3 months of the decision notice date. The sound insulation and noise control measures shall be carried out strictly in accordance with the details so approved, shall be implemented and shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the Local Planning Authority.</p> <p>REASON: To address potential sound transmission from the basement and ground floor operation to residential uses above given the juxtaposition of noise generating uses and noise sensitive residential properties.</p>
7	Operational Noise Compliance
	<p>OPERATIONAL NOISE COMPLIANCE CONDITION: Notwithstanding Condition 1, a report is to be commissioned by the applicant, using an appropriately experienced & competent person, to assess the noise from the restaurant use to demonstrate compliance with Islington's Technical Advice For Consultants On Sound Insulation And Noise Control Criteria For Entertainment Licensed Premises. The report shall include site measurements following completion of the sound insulation. The report shall be submitted to and approved in writing by the Local Planning Authority within 3 months of the sound installation and noise control measures approved as part of Condition 6 being installed.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
8	Mechanical Plant Noise
	<p>CONDITION: The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level $L_{Aeq Tr}$ arising from the proposed plant, measured or predicted at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 10dB(A) below the background noise level $L_{AF90 Tbg}$. The measurement and/or prediction of the noise should be carried out in accordance with the methodology contained within BS 4142: 2014.</p> <p>REASON: To control plant noise from kitchen extracts.</p>

9	Mechanical Plant Compliance Report
	<p>MECHANICAL PLANT COMPLIANCE REPORT: Notwithstanding Condition 1, a report is to be commissioned by the applicant, using an appropriately experienced & competent person, to assess the noise from the proposed mechanical plant to demonstrate compliance with condition 8. The report shall include site measurements of the plant insitu. The report shall be submitted to and approved in writing by the Local Planning Authority with 3 months of the installation of the plant hereby approved. REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
10	Hours of operation (plant and extract)
	<p>CONDITION: Prior to the hereby approved plant equipment being used, a timer shall be installed and thereafter shall be so maintained limiting the operation of the/any mechanical plant to between the hours of:</p> <p>Monday to Thursday - 07:00am to 11.00pm Friday to Saturday - 07.00am to Midnight Sunday and Bank Holidays - 08:00am to 10.00pm</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
11	Flues/Extraction Systems:
	<p>FLUES/EXTRACTION SYSTEMS (DETAILS) CONDITION: Notwithstanding the hereby approved plans and documents, detailed drawings of the design of the kitchen extraction flues and intake duct shall be submitted to the Local Planning Authority within 2 months of the decision notice date. Details provided shall include treatment, materiality and colour.</p> <p>The kitchen extraction flues and intake duct shall be carried out strictly in accordance with the details so approved and shall be so maintained thereafter.</p> <p>The flues shall be fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration (carbon filters rated with a 0.4-0.8 second residence time) or alternatively fine filtration followed by carbon filtration and by counteractant/neutralising system to achieve the same level as above.</p> <p>The filter systems of the approved flue / extraction units shall be regularly maintained and cleaned; and any filters and parts requiring cleaning or replacement shall be easily accessible.</p> <p>REASON: To ensure that the resulting appearance and construction of the development is of a high standard, and in the interest of protecting future residential amenity.</p>

12	Scheme of Management
	<p>SCHEME OF MANAGEMENT CONDITION: A scheme of management for the A3 (restaurant) unit at Nos. 12-14 Theberton Street hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the unit. The Scheme of Management shall include:</p> <ul style="list-style-type: none"> a) covers numbers and method of dispersion of covers within the restaurant; b) a full dispersal policy and procedure; c) signs to request patrons to leave in a quiet manner; d) bottling out and waste management noise and times; e) control and levels of noise from amplified music; f) control of any noise from any designated smoking area; and g) close down policy. <p>The operation of the unit shall at all times be carried out in accordance with the approved Scheme of Management.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring amenity, including cumulative impacts given the location of the site within close proximity to residential uses.</p>
13	Delivery and Servicing
	<p>CONDITION: Details of delivery and servicing of the hereby approved A3 unit at Nos. 12-14 Theberton Street shall be submitted to and approved by the Local Planning Authority prior to the first occupation of the units.</p> <p>The servicing arrangements shall be operated strictly in accordance with the details so approved, shall be maintained as such thereafter and no change there from shall take place without the prior written consent of the Local Planning Authority.</p> <p>REASON: To ensure that the resulting servicing arrangements are satisfactory in terms of their impact on highway safety and the free-flow of traffic.</p>
14	Hours of Delivery and Servicing
	<p>CONDITION: Deliveries, collections, unloading, loading for the hereby approved A3 unit at Nos. 12-14 Theberton Street shall only be carried out between the following hours:</p> <p>Monday to Saturday – 08.00am to 08.00pm Sundays/Bank Holidays – not at all.</p> <p>REASON: To minimise the impact of deliveries and servicing on neighbour amenity.</p>
15	Details of refuse and recycling
	<p>CONDITION: Prior to the first use of the hereby approved A3 unit at Nos. 12-14 Theberton Street, details of refuse and recycling storage and management shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full and retained thereafter into perpetuity.</p> <p>REASON: To ensure the proposal benefits from adequate refuse and recycling facilities.</p>

16	Condition
	<p>CONDITION: For the avoidance of doubt and notwithstanding the details shown on the hereby approved drawing number 522.(1).2.002 Rev, no permission is granted for the use of brick pier downstands between unit nos. 12 and 14 within the rear extension at basement or ground floor levels. The demarcation of the units at both basement and ground floor levels shall be undertaken via the re-insertion of new spine walls, in accordance with the hereby approved drawing numbers 522.(1).1.001 Rev D and 522.(1).1.002 Rev D.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring amenity, including cumulative impacts given the location of the site within close proximity to residential uses.</p>

List of Informatives:

2	Other Legislation
	<p>You are advised that the planning permission hereby approved would be subject to fully complying with other legislation outside the realms of the planning regulations including licensing, environmental acts, building control and fire safety regulations.</p>

RECOMMENDATION B – LISTED BUILDING CONSENT

That the grant of listed building consent be subject to **conditions** to secure the following:

List of Conditions:

1	Commencement
	<p>3 YEAR CONSENT PERIOD FOR LBC: The works hereby permitted shall be begun not later than three years from the date of this consent.</p> <p>REASON: To comply with the provisions of Section 18(1)(a) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
2	Re-instatement of internal walls, doors and floors
	<p>CONDITION: Notwithstanding Condition 1, the re-instatement of internal walls, doors and floors hereby permitted shall be completed in their entirety in accordance with the approved plans and particulars within 6 months of this permission and thereafter shall be so maintained,</p> <p>REASON: In order to safeguard and enhance the special architectural or historic interest of the heritage asset.</p>
3	Internal doors
	<p>CONDITION: The new doors shall be six panelled timber doors with mouldings to the ground floor, and four panelled doors without mouldings to the basement floor. The doors shall be recessed panelled doors and not raised and fielded panelled doors and shall be retained as such thereafter.</p> <p>REASON: In order to safeguard the special architectural or historic interest of the</p>

	heritage asset.
4	All external and internal works to match (compliance)
	<p>CONDITION: All new external and internal works and finishes and works of making good to the retained fabric shall match the existing adjacent work with regard to the methods used and to material, colour, texture and profile. All such works and finishes shall be maintained as such thereafter.</p> <p>REASON: In order to safeguard the special architectural or historic interest of the heritage asset.</p>
5	Flues/Extraction Systems
	<p>FLUES/EXTRACTION SYSTEMS (DETAILS) CONDITION: Notwithstanding the hereby approved plans and documents, detailed drawings of the design of the kitchen extraction flues and intake duct shall be submitted to the Local Planning Authority within 2 months of the decision notice date. Details provided shall include treatment, materiality and colour.</p> <p>The kitchen extraction flues and intake duct shall be carried out in accordance with the details subsequently so approved and shall be so maintained thereafter.</p> <p>REASON: In order to safeguard the special architectural or historic interest of the heritage asset</p>

List of Informatives:

2	Other Legislation
	You are advised that the planning permission hereby approved would be subject to fully complying with other legislation outside the realms of the planning regulations including licensing, environmental acts, building control and fire safety regulations.

APPENDIX 2: RELEVANT POLICIES

This appendix lists all relevant development plan policies and guidance notes pertinent to the determination of this planning application.

1. National Guidance

The National Planning Policy Framework 2019 and Planning Policy Guidance (PPG) seek to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF and PPG are material considerations and have been taken into account as part of the assessment of these proposals.

2. Development Plan

The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, Finsbury Local Plan 2013 and Site Allocations 2013. The following policies of the Development Plan are considered relevant to this application:

- a. **The London Plan 2016** - Spatial Development Strategy for Greater London
 - Policy 4.1 – Developing London’s economy
 - Policy 4.4 – Promoting Town Centres
 - Policy 4.6 – Support for and enhancement of arts, culture, sport and entertainment
 - Policy 5.3 – Sustainable design and construction
 - Policy 6.9 – Cycling
 - Policy 6.10 – Walking
 - Policy 7.2 – An inclusive environment
 - Policy 7.4 – Local Character
 - Policy 7.6 – Architecture
 - Policy 7.8 – Heritage assets and archaeology
 - b. **Islington Core Strategy 2011**
 - Policy CS5 – Angel and Upper Street
 - Policy CS9 – Protecting and enhancing Islington’s built and historic environment
 - Policy CS14 – Retail and services
 - c. **Development Management Policies June 2013**
 - Policy DM2.1 – Design
 - Policy DM2.2 – Inclusive design
 - Policy DM2.3 – Heritage
 - Policy DM3.7 – Noise and vibration (residential uses)
 - Policy DM4.2 – Entertainment and the night-time economy
 - Policy DM4.3 – Location and concentration of uses
 - Policy DM6.5 – Landscaping, trees and biodiversity
 - Policy DM7.1 – Sustainable design and construction
 - Policy DM8.2 – Managing transport impacts
 - Policy DM8.3 – Public transport
 - Policy DM8.4 – Walking and cycling
 - Policy DM8.5 – Vehicle parking
 - Policy DM8.6 - Delivery and servicing for new developments
 - Appendix 6 – Cycling
- ### **3. Designations**
- Grade II listed buildings
 - Barnsbury Conservation Area (and Article 4 Direction)
 - Archaeological Priority Area – Islington Village
 - Within 50m of boundaries of the Angel and Upper Street North conservation areas
 - Core Strategy Key Area – Angel & Upper Street
 - Angel Town Centre
 - Article 4 Direction (A1-A2 Town Centres)
 - Within 100m of TLRN

- Cycle Route (Local)
- Cycle Route (Strategic)
- Site within 100m of Transport for London Road Network

4. SPD/SPGS

- Urban Design Guide 2017
- Conservation Area Design Guidelines



Appeal Decisions

Site visit made on 24 June 2015

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 July 2015

Appeal A – Notice LBEN 1 - Ref: APP/V5570/F/14/2220714 4 Theberton Street, Islington, London N1 0QX

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mehmet Kocakerim against a Listed Building Enforcement Notice (LBEN 1) issued by the London Borough of Islington (the LPA).
 - The Council's reference is E/2014/0347.
 - The notice was issued on 15 May 2014.
 - The alleged contraventions (numbered 1 to 11) of listed building control are set out in Appendix 1 attached to and forming part of the notice.
 - The various requirements of the notice, in relation to each of the 11 alleged contraventions, are also set out Appendix 1.
 - The differing periods for compliance with the requirements are also set out in Appendix 1.
 - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
-

Appeal B – Notice LBEN 2 - Ref: APP/V5570/F/14/2220716 8 Theberton Street, Islington, London N1 0QX

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mehmet Kocakerim against a Listed Building Enforcement Notice (LBEN 2) issued by the London Borough of Islington (the LPA).
 - The Council's reference is E/2014/0348.
 - The notice was issued on 15 May 2014.
 - The alleged contraventions (numbered 1 to 9) of listed building control notice are set out in Appendix 1 attached to and forming part of the Notice.
 - The requirements of the notice, in relation to each of the 9 alleged contraventions, are also set out in Appendix 1.
 - The differing periods for compliance with the requirements are also set out in Appendix 1.
 - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Appeal C – Notice LBEN 3 - Ref: APP/V5570/F/14/2220720 10, 12, 14 & 16 Theberton Street, Islington, London N1 0QX

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mehmet Kocakerim against a listed building enforcement notice issued by the London Borough of Islington (the LPA).
- The Council's reference is E08/03958.
- The notice was issued on 15 May 2014.
- The alleged contraventions (numbered 1 to 29) of listed building control are set out in

Appendix 1 attached to and forming part of the notice.

- The requirements of the notice, in relation to each of the 29 alleged contraventions are also set out in Appendix 1.
 - The differing periods for compliance with the requirements are also set out in Appendix 1.
 - The appeal is made on ground (e) only, as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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**Appeal D - Notice PEN 1 – Ref: APP/V5570/C/14/2225985
10, 12, 14 & 16 Theberton Street, Islington, London N1 0QX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mehmet Kocakerim against an enforcement notice issued by the London Borough of Islington (the LPA).
 - The Council's reference is E/2014/0369.
 - The notice was issued on 15 August 2014.
 - The breach of planning control as alleged in the notice is: the amalgamation of the basement and ground floors of four individual properties (10, 12, 14 & 16) Theberton Street and their use as a single restaurant unit (A3).
 - The requirement of the notice is to cease the use of the ground floors and combined basement area of four individual properties (10, 12, 14 & 16 Theberton Street N1 0QX) as a single restaurant unit (A3).
 - The period for compliance with the requirements is three (3) months.
 - The appeal is proceeding on ground (a) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. **Appeal A:** The appeal is allowed in part and dismissed in part. The LBEN 1 is varied but otherwise upheld as varied (see formal decision below).
2. **Appeal B:** The appeal is allowed in part and dismissed in part. The LBEN 2 is varied but otherwise upheld as varied (see formal decision below).
3. **Appeal C:** The appeal is allowed in part and dismissed in part. The LBEN 3 is varied but otherwise upheld as varied (see formal decision below).
4. **Appeal D:** The appeal is dismissed; the enforcement notice PEN1 is upheld and planning permission on the deemed application is refused (see formal decision below).

The Notices and matters of clarification

5. There are 3 Listed Building Enforcement Notices (LBENs 1, 2 & 3) and one Planning Enforcement Notice (PEN 1). The allegations, requirements and compliance periods are set out in Appendices to each notice (Appendix 1) under Schedules 2, 4 and 5 attached to the notices. These are summarised below for each of the decisions relating to LBEN 1 (Appeal A), LBEN 2 (Appeal B) and LBEN 3 (Appeal C). The breach of control, requirements and compliance period for PEN 1 (Appeal D) are set out above.

6. LBEN 1 (Appeal A) relates to No 4 Theberton Street; LBEN 2 (Appeal B) to No 8; and LBEN 3 (Appeal C) and PEN 1 (Appeal D) to Nos 10 to 16 inclusive. There is a detailed planning history relating to all properties (for part see below). I am only empowered to deal with these four notices and the allegations, requirements and compliance periods therein. In Appeal D there was no appeal under ground (c) although on behalf of the appellant it is contended that planning permission for the amalgamated restaurant use is not required. I deal with this matter below under Appeal D.

Background information and relevant policy

7. All of the six late Georgian, terraced, appeals properties are listed in Grade II and comprise three stories with basements. They date back to around the 1830s. They are located on the east side of Theberton Street and within the Barnsbury Conservation Area (BCA). All of the ground floors are presently used as restaurants, although one unit (No 14) is part retail to the front. The various properties are all owned by the Appellant. There are links at basement level between Nos 10 to 16. The initial alleged contraventions of listed building control date back to November 2008 and these are set out in the detailed planning history submitted by the Council. Some works were stated to be '*permitted*' by the conservation officer via an e-mail of February 2009. These works related to '*like for like repairs*'; '*minimum works*' to keep the buildings watertight and '*minimum works to maintain the structural stability*' of the buildings. There was also enforcement action taken in relation to retractable canopies in August 2010 but, following approvals and consents, these enforcement files were closed.

Appeals A, B and C

8. In March 2013 the LPA wrote to the appellant referring to a total of 98 alleged contraventions of listed building control. Since 2008 over 60 various applications for planning permission (PP); Listed Building Consent (LBC) and Advertisement Consent (AC) have been dealt with by the LPA. Most were approved but the creation of rear basement extensions and some conversion works for the upper floors to create flats were, amongst others, refused permission and consent. A change of use from office to restaurant was allowed on appeal in 2009 at No 16. These and the rest of the applications are all set out in Table A attached to the LPA delegated report dated 14 May 2014.

9. Some of the alleged contraventions of listed building control relate to non-compliance with some of these earlier planning permissions (PP) and listed building consents (LBC). These contraventions are all set out in the various 'Appendix 1' details below. There is an 'Appendix 1' attached to all three LBEN notices. With regard to what has already been granted permission and/or consent, the Appellant specifically refers to LBC (P110482) and AC (P110687) for the erection of the retractable canvas canopy and the discharge of Condition No 4 (P110482C4) attached to the LBC.

Appeal D

10. The four ground floors and basements at Nos 10, 12, 14 and 16 are all connected and, at the time of my visit, appeared to be operating as one planning unit in A3 use (though with the part retail element to the front of No 14). Numbers 8 and 10 ('Mem and Laz') operate as two restaurants with only one kitchen in No 8. Number 10 is linked at basement level to Nos 12, 14 and 16. There are no approvals in place for the linked use. The LPA also indicates that there is no PP in place for A3 use at No 12, yet this is currently being used in association with No 14 ('Biskuvi Café'). This also does not have an authorised A3 use. At the time of my visit this unit was partly in use as retail (A1). It is contended on behalf of the appellant that PP is not required for the amalgamation of the individual premises into a combined A3 uses. However, an appeal under ground (c) has not been made and I must base my decisions on all of the submissions. I deal with this particular matter in detail below under Appeal D.

11. At No 16 (known as 'La Vita e bella') the LPA noted that the basement and ground floor were operating as a restaurant. The use of the basement, ground and first floor for restaurant use was granted on appeal in 2009. However, various conditions attached to the permission/consent have not been discharged. These include

conditions relating to refuse storage; extract system; the shopfront; doors and secondary glazing; noise attenuation and ventilation. On this basis the LPA contends that the use of No 16, as a restaurant, is in breach of planning control. In July 2012 the Council's Licensing Team issued a 'Closure Notice' pursuant to Section 19 of the Criminal Justice and Police Act 2001. On 5 June 2013 planning permission was refused for the amalgamation of the units at 10, 12, 14 and 16 to a single A3 restaurant use. Nos 12 and 14 had also previously been in use as a A2 office.

12. During my visit I inspected all of the frontages to the premises and specifically noted each and every one of the matters alleged to be contraventions of listed building control. I also inspected the interior of the premises and noted in particular the rear and basement areas to Nos 10 to 16 which had been amalgamated into one large restaurant area with some storage use in one of centrally located units. However, the storage was for typical restaurant furniture and the space was still capable of being used as part of the combined basement restaurant area.

Relevant Policies

13. The relevant policies for Appeals A, B and C are Core Strategy Policy CS9 (Protecting and enhancing Islington's built and historic heritage) and Policy DM 2.3 of Development Management Policies (Conserving and enhancing the historic environment). These are up to date and accord with national policy in the National Planning Policy Framework (NPPF) which also seeks to conserve and enhance the historic environment. The NPPF seeks to ensure that when considering the impact of development (or works) great weight is given to the asset's conservation and that where any loss or harm would lead to less than substantial harm to significance, then the harm should be weighed against the public benefits of the proposals including securing its optimum viable use.

14. The relevant policies for Appeal D are DM2.1 (Protecting Amenity); DM4.1 (Maintaining and promoting small independent shops); DM4.2 (Entertaining and the night-time economy); DM4.3 (Location and concentration of uses) and DM4.4 (Promoting Islington's Town Centres).

15. In reaching my decisions in these appeals I have taken into account all of the relevant NPPF policies and the guidance set out in Planning Practice Guidance (PPG). I have had special regard to sections 16 (2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) and have paid special attention to section 72 of the same Act. Other material considerations in these appeals include the English Heritage (EH), Historic Environment Good Practice Guide in Planning, Notes 2 and 3 and Islington's SPG (Conservation Area Design Guidelines) Barnsbury Conservation Area. The former replace earlier EH conservation advice and PPS 5.

Main issues

16. The main issues in Appeals A, B and C are the effects that the various works have had on the listed buildings, their settings and their features of architectural and historic interest and on the character and appearance of the conservation area. For each of the appeals I have set out an introduction and then considered each of the alleged numbered contraventions separately. I have also considered the cumulative impact in relation to each notice.

17. The main issues in Appeal D relate to the effects of the alleged change of use on the living conditions of nearby residents with particular reference to noise and disturbance caused by the cumulative effect of the combined uses of the properties for A3 purposes (see Appeal D below).

Appeal A on ground (e) No 4, LBEN1

Introduction

18. It is difficult to envisage that any co-ordinated thought, (in terms of the effect on the listed building), went into the design of the frontage to No 4 (or the other frontages). The overall 'hotchpotch' (or mismatching nature) of fixtures and fittings detracts markedly from the character of the listed building. Most of the various unauthorised works carried out are harmful to the listed building. Each element of the works is perceived as being randomly chosen to suit some immediate need based on a particular situation at any one time. Some light fittings are black, some are chrome finished and others are clearly neither modern, nor based on any appropriate historic type fitting. Most are also inappropriately and seemingly randomly positioned on the historic shop frontage without any consideration whatsoever for either their individual or cumulative effect on the architectural detailing of the building.

19. The overall result, in my view, is that most of the unauthorised works (items 1 to 11), as carried out, has resulted in harm being caused to the integrity of the building, to its setting and to its architectural and historic features. I do not accept that the shop fronts are basically modern and, therefore that the works have not impacted upon the architectural and historic interest. The underlying historic frontages are still distinctly noticeable and although some of the timber work might have a modern appearance the basic architectural features of pilasters, heads to pilasters, bracketed fascia stops and timber cornicing are all still recognisable. Having reached this conclusion on the majority of the allegations, however, I do find that some of the elements are acceptable in their own right and I now turn to each of the allegations.

Assessment of each of the alleged contraventions (11 No)

1. Installation of three external spotlights to illuminate the fascia sign

20. The black spotlights are fixed at a high level on the fascia and, although small in themselves, they are inappropriate for this historic frontage. Due to their basic size, colour and modern appearance, they detract markedly from the character of the listed building and are perceived as obtrusive and harmful elements attached to the building. They have not been positioned in any logical position; they contribute to the negative 'hotchpotch' of harmful fittings and I do not consider that LBC should be granted for their retention.

2. Installation of three upward facing Ansell spotlights at first floor level

21. The upward facing spotlights, on the other hand, are not attached to the timber fascia of the shop frontage and are positioned above the top of the timber shop front. This means that they line through with the bottom of the brickwork. I consider that these elements are appropriate and that they are not visually harmful to the building. Even when their cumulative effect is taken into account, they are not perceived as part of the harmful clutter or 'hotchpotch' of fittings attached to the frontage. I consider, therefore, that LBC should be granted for these Ansell spotlights.

3. Installation of two small lights on the pilasters of the shop front

22. These two lights are also small but add to the un-coordinated visual clutter to the frontage of the listed building. Like item 1 above, I consider that they detract from the appearance of the building and, for the same reasons; I do not consider that they should be granted LBC.

4. Incorporation of wrought iron detailing to the shop front stall riser

23. The modern wrought iron detailing to the shop front stallriser looks distinctly incongruous when seen against the basic timber detailing of the pilasters and the rest of the shop front. The black painted metalwork is more akin to some form of internal decorative feature and looks distinctly out of character. In my view, it should play no part in the design of a historic frontage of this date and age. I find it harmful to the building, to its setting and to the architectural and historic lower part of the frontage/stallriser. For these reasons, I do not consider that LBC should be granted for the retention of this part of the unauthorised works.

5. Installation of an alarm box to front elevation at first floor level

24. I do not consider that the alarm box looks incongruous. It is not overly large and is the sort of fitting one would expect, and indeed need, on a building such as this. I noted other alarm boxes in the vicinity and I find this one to be acceptable. LBC will be granted for this item.

6. Display of a hanging sign to the front elevation at first floor level

25. There are many hanging signs in the vicinity and I noted their detailing. The one attached to No 4, despite the wrought iron frame and hanging fixture is not in itself discordant. I do not consider that its design or detailing detracts from the design qualities of the listed building. However, I find that due to its modern design and its position at such a high level, it detracts markedly from the historic and architectural first floor windows. I do not consider therefore that it is acceptable in architectural and historic terms. I do not consider that LBC should be granted for this sign.

7. Installation of a CCTV camera on right hand side of pilaster

26. Whilst accepting the need for CCTV installations, I consider that this particular fixture, albeit small, is incongruous when seen in the context of the overall frontage and the other inappropriate fixtures. Within a short space of each other there are modern black spotlights, shiny chrome spotlights (with ill-fitting round brackets) and the CCTV camera. Again I find that the overall visual clutter is harmful to the integrity of the listed building, its setting and its features or architectural and historic interest: namely the pilasters and framework to timber shop front. It follows that I do not consider that LBC should be granted for this item.

8. Installation of two external lights and a lantern above front door

27. These two lights and the black lantern are another example of a complete mismatch in design which detracts from the appearance of the listed building. In particular the two lights are fixed with a round bracket fixing to a smaller section of the upper timber frame. Because the fixings are larger than the part of the timber framing, they look completely out of place and are crudely fixed. The black lantern light also looks incongruous with its inappropriate ornate detailing. It exacerbates the overall negative appearance of the fixtures to this part of the building. These two elements clearly add to the visual harm to this part of the listed building and, again, I do not consider that LBC should be granted for their retention.

9. Application of weather-struck pointing, front elevation first and second floor levels

28. Having seen the weather-struck pointing, I share the Council's concerns about the effect on the listed building. I acknowledge that the pointing is not all that pronounced and that the Flemish Bond yellow brickwork is still distinctly recognisable. However, when seen from across the road the resulting appearance is one which

results in an unacceptable 'patchwork type' looking façade. The lines of the pointing, rather than the subtlety of the brickwork colour, dominates and detracts from the architecturally and historically interesting Georgian elevations.

29. I also agree with the Council that the use of 'cement mortar' compromises the integrity of the brickwork. I have noted the agent's and the contractor's comments on weather-struck pointing and accept the arguments regarding the inconvenience and expense that would be caused if the works carried out were considered to be unacceptable. I also noted other nearby examples of such pointing. However, the arguments put forward cannot be justification to retain further inappropriate pointing that, in my view, has affected the integrity of the building, its setting and the features of architectural and historic importance (the brickwork façades)

10. Application of valence to awning not in accordance with drawing Ref 238. (1) 4-001 of LBC P110482 dated 01 July 2011.

30. I find this item to be insignificant and I do not consider that the small valence to the approved awning causes any noticeable visual harm to the building. I saw other valences in the locality and consider that this particular one does not harm the building; its setting or any of its architectural or historic features. Nor does it significantly contribute to the cumulative effect of the other unauthorised works. I conclude, therefore, that LBC should be granted for this item.

11. Internal cladding with cobble / rubble stone and tile to walls and ceiling

31. There is nothing before me to indicate the state or condition of the interior to No 4 prior to works commencing and the Council accepts that there is no evidence to indicate any loss of any historic fabric. The Council also acknowledges that there must be some scope to alter the interior of listed premises and indeed, such works can be reversed at a future date. Having seen these works as carried out I find them somewhat bizarre and extreme in design terms for a Georgian property of this age. However, the plan form to No 4 was still recognisable and the finishes appeared to be mainly applied rather than structural. The list description does not detail any specific internal areas and thus, overall, I do not consider the principle of such decoration to be a significant issue with regard to the effect on the listed building.

Overall conclusion

32. I have found that the majority of the items above have harmed the listed building, its setting and some of its features of architectural and historic interest. It follows that these unauthorised works neither preserve nor enhance the character or appearance of the Barnsbury Conservation Area.

33. But, for the reasons set out above I have concluded that items 2, 10 and 11 are acceptable and Appeal A succeeds in relation to these matters. LBC will be granted for these items and LBEN 1 will be varied to remove the requirements relating to these works.

34. However, Appeal A fails in relation to items 2, 3, 4, 5, 6, 7, 8 and 9. LBC will not be granted for the works which have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA)

Appeal B on ground (e) No 8, LBEN 2
Introduction

35. Many of the items dealt with under Appeal A above are the same as for Appeal B. I have not, therefore, repeated the reasoning in full where the items are the same or

similar. Again I have considered the cumulative impact and have found some items to be acceptable.

Assessment of each of the alleged contraventions (9 No)

1. Installation of three external spot lights that illuminate the fascia sign

36. For the same reasons as set out in Appeal A (item 1, paragraph 20) above, I do not consider that LBC should be granted for these particular spotlights which appear to be the same as those fixed to the No 4 frontage.

2. Installation of three upward facing Ansell spotlights at first floor level

37. For the same reasons as set out in Appeal A (item 2, paragraph 21) above, I consider that LBC should be granted for these upward facing spotlights. I do not find them to be harmful to the listed building in any way.

3. Installation of an alarm box to the front of the building at first floor level

38. For the same reason as set out in Appeal A (item 5, paragraph 25) above, I consider that LBC ought to be granted for the alarm box. In my view this is 'diminimis' in terms of its impact on the listed building and should be allowed to remain in place.

4. Installation of two small lantern lights on the pilasters of the shop front

39. Having seen these two lights attached to the pilasters I consider that they are inappropriate and harmful fixtures. Again the style and detailing detracts from the pilasters and the fittings contribute to the negative effect on the character of the building, its setting and its features of architectural and historic interest. I do not consider that LBC should be granted for these fittings.

5. Installation of a CCTV camera on the right hand pilaster when viewed facing front

40. This is yet another case whereby a random fitting has been attached to the frontage, seemingly without any thought about its specific visual effect on the building. The CCTV camera does not match others that have been used and again contributes to the insensitive and inappropriate hotchpotch of inappropriate works to the building. I accept that it is not large and that some form of security is needed. However, due to its specific design and its cumulative visual impact, I find that it is harmful to the building and to its setting. I do not consider that LBC should be granted for this particular fixture.

6. Installation of two external lights and a lantern above the front door

41. For the same reasons set out in Appeal A (item 8, paragraph 27) above, I do not consider that LBC ought to be granted for these harm external lights and the lantern light above the front door to the premises.

7. Display of a hanging sign to the front elevation at first floor level

42. This particular sign is attached to a wrought iron bracket. Again it is at a high level between two of the windows and I find that its position and modern bracket detailing detract from the historic and architectural first floor windows. I do not consider therefore that it is acceptable in architectural or historic terms. I do not consider that LBC should be granted for this particular sign.

8. Application of weatherstruck pointing to the front elevation

43. For the reasons set out in Appeal A (item 9, paragraphs 28 & 29) above, I do not consider that LBC ought to be granted for the pointing as carried out.

9. Incorporation of valence to awning not in accordance with the approved drawing (Ref 238.(1)4-001 of LBC dated 30 June 2011

44. For the reasons set out in Appeal A (item 10, paragraph 30) above I consider that LBC ought to be granted for the incorporation of the valence.

Overall conclusion

45. In this appeal, again I have found that the majority of the items above have harmed the listed building, its setting and some of its features of architectural and historic interest. It follows that these unauthorised works neither preserve nor enhance the character or appearance of the Barnsbury Conservation Area.

46. But, for the reasons set out above, I have concluded that items 2, 3, and 9 are acceptable and Appeal B succeeds on ground (e) in relation to these matters. LBC will be granted for these items and LBEN 2 will be varied to remove the requirements relating to these works.

47. However, Appeal B fails in relation to items 1, 4, 5, 6, 7 and 8. LBC will not be granted for the works which have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

**APPEAL C on ground (e) Nos 10 to 16 LBEN3 (29 Allegations)
No 10 Theberton Street (Mem and Laz)**

Introduction

48. Again some of the items dealt with under Appeal A and/or B above are the same as for Appeal C. I have not, therefore, repeated the reasoning in full where the items are the same or similar. Again I have considered the cumulative impact and have found some items to be acceptable.

1. Installation of an alarm box to the front elevation at first floor level

49. With regard to this item, as for similar items in Appeals A and B (items 5 and 3, paragraphs 24 & 38 respectively), I find that the alarm box is acceptable and that LBC should be granted.

2. Installation of a brass and black door handles to the front door

50. I acknowledge that these two items in themselves could be considered to be 'de-minimis' and that, under any normal situation it might not necessarily be considered expedient to issue a LBEN notice. However, when seen in the context of all of the other harmful additions/accretions to the front of this listed building I agree with the Council that the door handles jar with and detract from what should simply be a door with an appropriate Georgian door knob. Thus, in the overall circumstances, I find these to be harmful to the listed building and I do not consider that these two items should be granted LBC.

3. Removal of boundary wall between No 10 and 12 Theberton Street to rear

51. I have noted that the original boundary wall was to have been dealt with to match approved drawings (Ref TS2) of the LBC (Ref P081570). This was clearly to ensure that the historic plan form of the building could still be read and understood. By removing the wall the definition of the historic boundary has been lost and I agree

with the Council that this has caused harm to the integrity of the listed building. I do not consider, therefore, that LBC should be granted for the works as carried out and the appeal fails on this point.

52. I have noted, however, that the requirement of the notice LBEN 3 (iii), gives an alternative to reinstating the original wall. This requires a downstand at ceiling level in the same position as the former wall. In my view this would be adequate to ensure that the plan form could be understood but it would still be for the appellant to decide which alternative form of this requirement was to be carried out.

4. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level

53. The doors are of an elaborate design and, like the wall and ceiling finishes in other parts of the properties they do not possess any particular design links to a Georgian terraced property of this age. Again there is nothing before me to indicate the state or condition of the interior prior to the doors being installed. There is no evidence to indicate any loss of any historic fabric and from my inspection it would appear that the square openings have remained behind the formed curved heads of the doors.

54. The Council has previously acknowledged that there must be some scope to alter the interior of listed premises and again, these works can be reversed at a future date. The plan form to No 10 is still recognisable and the doors are applied decorative materials and do not affect the historic structure of the building. The list description does not detail any specific internal areas and thus, overall, I do not consider that the principle of the door installations to be an issue with regard to the effect on the listed building. I consider, therefore that LBC should be granted for their retention.

5. Installation of a CCTV Camera on the left hand pilaster

55. Again, although this is a small item, no thought seems to have been given to any co-ordinated appearance of the CCTV cameras on the frontage of the buildings. This results in further visual clutter to the frontage of No 10 and so for the same reasons as set out in Appeal A (item 7, paragraph 26) and Appeal B (item 5, paragraph 40), I do not consider that LBC should be granted for this particular fixture.

6. Installation of lantern light on pilaster between Nos 10 and 12

56. In my view this is another example of an inappropriate and visually obtrusive light fitting which adds to the unacceptable cumulative harmful effect on the listed building. For similar reasons set out in Appeal A (item 8, paragraph 27 – lantern) and Appeal B (item 4, paragraph 39), I find that the fitting is harmful to the building, to its setting and to its features of architectural and historic interest. LBC will not be granted for this item.

No 12 Theberton Street (Daphne Room)

7. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level

57. For the same reasons as those given in item 4 above (paragraphs 53 and 54), relating to No 10, I find that these doors and surrounds are acceptable and LBC will be granted.

8. Creation of a 4 x double door openings between Nos 10 and 12 basement

58. Again, for the reasons set out in item 4 above (paragraphs 53 and 54) I do not consider that any significant harm has been caused by these openings to the integrity of the listed building or to its features of architectural and historic interest. In my view the plan forms of the respective properties are still be recognisable and this will be more so if the former boundary walls or downstands required are reinstated. I consider that LBC ought to be granted for these double door openings.

9. Insertion of suspended barrelled ceilings at ground floor level

59. For the reasons set out in Appeal A (item 11, paragraph 31), I consider that LBC ought to be granted for the barrel ceiling. It is evident from the detailing and the internal height that the structural elements are still in place and that the works are, in my view, reversible.

10. Incorporation of modern wrought iron detailing to the shopfront

60. I find this to be most inappropriate and for the same reasons as set out in Appeal A (item 4, paragraph 23) I do not consider that LBC should be granted for the retention of this wrought iron decorative feature.

No 14 Theberton Street (Biskuvi Café)

11. Insertion of elaborate timber doors and door surrounds into the rounded arch openings within original rear wall at basement level

61. For the same reasons as set out in item 4 above (paragraphs 53 and 54) I do not consider that these doors and surrounds have detrimentally affected the listed building. LBC will, therefore be granted for their retention.

12. Creation of a 4 x double door width openings between Nos 12 and 14

62. Again For the same reasons as set out in item 4 above (paragraphs 63 and 54) I do not consider that these double door width openings have detrimentally affected the listed building. LBC will, therefore be granted for their retention.

13. Removal of boundary wall between No 14 and 16 Theberton Street rear

63. This is a similar situation to item 3 above (paragraph 51) and again I have noted that the original boundary wall was to have been re-built. This was again to ensure that the historic plan form of the building could still be read and understood. By removing the wall the definition of the historic boundary between the two properties has been lost and I agree with the Council that this has caused harm to the integrity of the listed buildings. I do not consider, therefore, that LBC should be granted for the works as carried out and the appeal fails on this point.

64. I have noted, however, that the requirement of the notice again gives an alternative to reinstating the original wall. This requires a downstand at ceiling level in the same position as the former wall. In my view this would be adequate to ensure that the plan form could be understood but it would still be for the appellant to decide which alternative form of this requirement was to be carried out.

14. Installation of light on pilaster of the shopfront between Nos 12 & 14

65. For the same reasons given for item 6 above (paragraph 56) I find that this fitting is harmful to the integrity of the listed buildings to their setting and to their historical and architectural features. The appeal fails on this item and LBC will not be granted.

15. Incorporation of modern wrought iron detailing to the shopfront

66. The modern wrought iron detailing to the shop front stallriser has the same detrimental effect as on the other units. It looks distinctly incongruous when seen against the basic timber detailing of shop front. The black painted metalwork looks distinctly out of character. As indicated above, in my view, such inappropriate decorative features should play no part in the design of a historic frontage of this date and age. I find it harmful to the building, to its setting and to the architectural and historic lower part of the frontage/stallriser. For these reasons, I do not consider that LBC should be granted for the retention of this part of the unauthorised works.

16. Insertion of suspended barrelled ceilings at ground floor level

67. For the same reasons as set out above in paragraph 59, I consider that these works are acceptable and that LBC should be granted.

No 16 Theberton Street (La Vita e bella)

17. Removal of a stud wall and insertion of a waterfall feature

68. At the time of my visit the waterfall feature was not in operation. However, it was clear how it would have operated and how it would visually affect this partition wall in the listed building. In my view the feature has resulted in another bizarre and harmful effect on the listed building. By replacing the partition wall the perceived plan form has been detrimentally affected and the feature wall has affected the integrity of the building as well as one of its defining architectural features: that is, the wall between the unit and the staircase entrance to the floors above. I do not consider that it should be allowed to remain and LBC will not be granted for its retention

18. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level

69. For the reasons set out paragraphs 53 and 54 above I consider that these timber doors and surrounds are acceptable and that LBC ought to be granted for their retention.

19. Incorporation of modern wrought iron detailing to the shopfront

70. For the reasons set out in paragraphs 23, 60 and 66 above, I do not consider that LBC should be granted for this inappropriate wrought iron decorative feature.

20. Creation of a 4 x double door width openings between Nos 14 and 16

71. Again For the same reasons as set out in item 4 above (paragraphs 53 and 54) I do not consider that these double door width openings have detrimentally affected the listed building. LBC will, therefore be granted for their retention.

21. Insertion of suspended barrelled ceilings at ground floor level

72. Again, for the reasons set out in Appeal A (item 11, paragraph 31), I consider that LBC ought to be granted for the barrel ceiling. It is again evident from the detailing and the internal height that the structural elements are still in place and that the works are, in my view, reversible.

Nos 10, 12, 14 and 16 Theberton Street

22. Installation of three external spotlights to fascia sign

73. For the same reasons as set out in Appeal A (item 1, paragraph 20) above, I do not consider that LBC should be granted for these particular spotlights which are the same as those fixed to the No 4 frontage.

23. Installation of three upward facing Ansell spotlights at first floor level

74. For the same reasons as set out in Appeal A (item 2, paragraph 21) above, I consider that LBC should be granted for these upward facing spotlights. I do not find them to be harmful to the listed building in any way.

24. Display of a hanging sign to front elevation at first floor level

75. This is yet another different sign but it is still mounted at a high level. I find that due to its modern design and its position at such a high level, like the others, it detracts markedly from the historic and architectural first floor windows. I do not consider therefore that it is acceptable in architectural and historic terms. I do not consider that LBC should be granted for this sign.

25. Installation of a lantern above the front entrance door

76. For the same reasons set out in paragraph 56 above, I find that this particular light fitting is harmful to the listed building and that LBC should not be granted.

26. Application of weatherstruck pointing to the front elevation first and second floor

77. Having seen these sections of pointing from the other side of the street I consider that they are the most untidy and visual harmful sections of the works carried out. Therefore, for the reasons set out in paragraphs 28 and 29 above, I do not consider that LBC ought to be granted for the works.

27. Valence to awning not in accordance with drawing (Ref 238.(1)4-001

78. For similar reasons set out in paragraph 30 above, I find this item to be acceptable and LBC will be granted for its retention.

28. Internal cladding with cobble/rubble stone and tile to walls ground floor

79. For the same reasons as set out under Appeal A, (item 11, paragraph 31) I find these works to be acceptable and LBC will be granted for their retention.

29. Creation of wide rounded arch openings within rear wall at basement

80. For the same reasons as set out above for similar works in other properties (items 4, 8 and 12, paragraphs 53, 54 58 and 62 above) I conclude that this item of work does not cause harm to the integrity of the building, or to any of its architectural and historic features. I consider therefore that LBC should be granted for this item.

Overall conclusions on Appeals A, B and C (LBEN1, LBEN2 and LBEN3)

81. Where I have concluded above that that LBC ought not to be granted for the relevant items/allegations, I consider that all of these works are contrary to Core Strategy Policy CS9 (Protecting and enhancing Islington's built and historic heritage) and Policy DM 2.3 of Development Management Policies (Conserving and enhancing the historic environment). I also consider that they are contrary to NPPF policies relating to the requirement for good design (section 7) and conserving and enhancing the historic environment (section 12).

82. As indicated above, the NPPF seeks to ensure that when considering the impact of development (or works) great weight is given to the asset's conservation and that where any loss or harm would lead to less than substantial harm to significance, then the harm should be weighed against the public benefits of the proposals including securing its optimum viable use. Clearly the harm is less than substantial and the assets are not under any threat of loss. However, the cumulative effect has had a significant and harmful impact on the integrity of the listed buildings, their settings and their architectural and historic features. There are no public benefits which outweigh the harm caused.

83. With regard to the external elements of the works which I have found harmful, it follows that these have neither preserved nor enhanced the character or appearance of the Barnsbury Conservation Area. Prior to my visit I walked around the conservation area and also took into account the physical matters brought to my attention during the site visit. These included nearby examples of similar uses, signage and fixtures/works on other listed buildings.

84. Where I have found elements of the works to be satisfactory in listed building terms I will vary the notices accordingly and I also conclude that the acceptable external items preserve the character and appearance of the conservation area. However, any LBC for works in the amalgamated basement area does not preclude the need for planning permission for the combined A3 use (see Appeal D below).

85. In reaching my conclusions on appeals A, B and C, I have taken into account all other matters raised by the Council; those made on behalf of the appellant and those made by interested persons. The matters include the detailed and complex planning history relating to all properties; the details set out in the initial grounds of appeal; the report from the Building Restoration Specialist relating to pointing; the planning and heritage considerations; all planning and heritage policy matters raised; the general assessment; the appendices submitted and the final comments dated 21 August 2014.

86. However, none of these factors carries sufficient weight to alter my conclusions on the main issues and the specific allegations set out in the three LBEN notices. Nor is any other matter of such significance so as to change my decisions in Appeals A, B and C. The formal decisions for Appeals A, B and C are set out below. I now turn to Appeal D.

Appeal D: The appeal on ground (a)

87. In this appeal and in considering whether or not planning permission should be granted, I have had special regard to the duty under s66 of the PLBCAA. In Appeals A, B and C above I have discharged that duty under s16 in relation to each of the allegations. In this appeal I have also considered the duty in relation to the specific effect on the listed buildings with regard to the alleged breach being the amalgamation of the four basements and their use as a single restaurant. With regard to the various works carried out and which have enabled the alleged use to take place, the issues and my conclusions are obviously the same as set out in Appeals A, B and C.

88. In planning terms there are other main issues resulting from the amalgamation of the four units (basements and ground floors) into a single restaurant. The first is the effect of the loss of any retail unit in this part of Islington and the second, but most critical in my view, is the effect on the living conditions of nearby neighbours with particular reference to noise and disturbance.

89. Prior to my formal site visit I inspected the surrounding area and in particular noted the proximity of residential uses above the premises along this part of Theberton

Street and others in the locality. I also noted the dwellings in Studd Street which are closest to the rear of Nos 10 to 16 and others in Moon Street. There are significant representations from residents and Residents' Associations in the immediate area.

90. The Council contends that the amalgamated use is contrary to Development Management Policies, DM2 (Protecting Amenity), DM4.1 (Maintaining and promoting small and independent shops), DM4.2 (entertaining and the night time economy), and DM4.3 (Location and concentration of uses).

The enforcement notice and the existing uses

91. On behalf of the appellant it is contended that planning permission for the amalgamation of the units is not required. However, I disagree. According to the Council's records there are no formal permissions in place for A3 use of Nos 12 and 14 and it would appear that No 14 has been used latterly for a mixed use of retail and restaurant. Furthermore, I agree with the Council that, despite the authorised restaurant uses for the other parts of 10 to 16, any individual restaurant use (for separate units) will have a significantly different character of usage than one large restaurant.

92. Having inspected all of the premises I consider that, as a matter of fact and degree, the use of the cavernous basement area, currently used as a restaurant, will have significantly different characteristics of use than separate restaurants in adjoining premises. In the particular, I agree with the Council that the potential for the creation of noise and disturbance is far higher from the one large volume than from four separate spaces divided by party walls. I note that the covers are restricted to 150 due to licensing requirements but, nevertheless, this is significantly higher than any figure relating to the individual use of restaurants in this part of Theberton Street.

The principle of A3 uses in this part of Theberton Street

93. The Council's appeal statement refers to policy DM4.1 which seeks to maintain and promote small independent shops and to policy DM4.3 which seeks to resist restaurants where they would result in cumulative impacts due to unacceptable concentrations of noise and disturbance. However, the report dealing with the application to amalgamate the premises (P2013/1041/FUL) refers to the last lawful use of Nos 12 and 14 as being in A2 office use. If that is the case then, what in effect is sought is the change of use of Nos 12 and 14 to A3 use together with their amalgamation with the A3 uses in Nos 10 and 16.

94. Whilst accepting the aims and objectives of policy DM4.1, it would appear that the actual loss of a lawful use would be that of A2 offices. In this part of Islington, with its high concentration of retail and restaurant uses, I do not consider that the principle of separate A3 uses for Nos 12 and 14 would be significantly harmful. I acknowledge that this in theory would result in a concentration of restaurant uses along this part of the Street but the separate uses of these premises would not, in my view, be significantly and cumulatively different from the other separate lawful nearby A3 uses in Theberton Street and Upper Street.

The amalgamated use of Nos 10, 12, 14 & 16

95. However, whilst finding that separate uses could be acceptable, I share the concerns of the Council and others about the premises being used for one very large restaurant venue. Having seen the combined basement spaces and taking into account the number of covers, it seems to me that the potential for noise and disturbance is far greater than that which is likely to be created by having four smaller and more intimate restaurants next to each other and in separate premises.

There have been no noise mitigation measures put forward by the appellant and from what I saw I consider that the generally hard internal surfaces would be likely to exacerbate and amplify any noise generated in such a huge space.

95. My concerns in this respect are reinforced by the representations from people living close to the premises and the fact that the large basement area backs on to the residential properties in Studd Street and indeed, once formed a rear yard or open area. In addition it would appear that residents are also concerned about the combined use of the restaurants and the manner in which the pavement is used for eating, drinking and smoking.

97. The evidence is quite clear that the living conditions of residents who live some distance away (for example at Nos 26 and 34) are clearly affected. Having noted the locations of nearby residential properties and the relationships of some windows to the rear of the appeal premises, I consider that such a large restaurant in this mixed residential commercial area is unacceptable due to the levels of noise and disturbance already caused.

98. I note that the Theberton Street Residents' Association has consistently objected to the creation of a single restaurant at Nos 10 to 16 and objected to the application which was refused planning permission in June 2013. The evidence from Moon Street and Studd Street Residents' Associations also reinforces my view that the amalgamated use has significantly affected the living conditions of nearby residents. As well as evidence about the levels of noise and disturbance to the rear of the building, there are also written submissions from those living further up Theberton Street (Nos 26 and 34 for instance). It is clear that the noise carries for some distance and that the undue disturbance is caused by the use of the appeal premises for residents who live some distance away.

99. From the submissions before me and from noting the proximity of the A3 uses to nearby residential accommodation, I can only conclude that the quality of life for residents has been detrimentally and significantly harmed by this unauthorised amalgamated use of the appeal premises. I find that this is contrary to policies DM2, DM4.1, DM4.2 and DM4.3. It is also contrary to the policies of the NPPF which seek to ensure positive improvements in peoples' quality of life; a high quality of design and a good standard of amenity for all existing and future occupants of land and buildings. To allow this particular change of use would have the opposite effect of these fundamental aims and objectives of the NPPF.

100. I do not consider that planning permission should be granted for the amalgamated use currently being carried out at Nos 10, 12, 14 & 16 and Appeal D therefore fails on ground (a) and the deemed application also fails.

Other Matters

101. In reaching my conclusions on Appeal D, I have taken into account all other matters raised by the Council, by interested persons and on behalf of the appellant. These include the considerable planning history, consents and permissions already granted; the detailed grounds of appeal; the general assessment; comments on the reasons for issuing the enforcement notice; all references to local and national policy; the impact on residential amenity; the various appendices submitted and the final comments dated 2 December 2014.

102. However, none of these alters my conclusions on the main points at issue and particularly on the effect on residents' living conditions. Nor is any other matter of such significance to change my decision that the appeal should be dismissed and

planning permission refused under the deemed application. The formal decision is set out below.

FORMAL DECISION

APPEAL A: Notice LBEN1: See also amended Appendix 1 below

103. I direct that the notice be varied by the deletion of requirements I and II under Schedule 4 of Appendix 1 to the notice for items numbered 2, 5, 10 and 11. I also direct that the times for compliance in schedule 5 of Appendix 1, for items 2, 5, 10, and 11 be deleted.

104. The appeal succeeds in part under ground (e) in relation to items numbered 2, 5, 10 and 11 as set out in Appendix 1, Schedule 2 to the notice. Listed Building consent is granted for these items of work at 4 Theberton Street, London N1 0QX.

105. Otherwise, the appeal is dismissed under ground (e) in relation to items numbered 1, 3, 4, 6, 7, 8, and 9 as set out in Appendix 1, Schedule 2 to the notice and LBEN 1 is upheld as varied. Listed Building Consent is refused for these items of work carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended at 4 Theberton Street, London N1 0QX.

106. APPENDIX 1 – To Notice LBEN 1

Appeal A: Ref: APP/V5570/F/14/2220714

4 Theberton Street ('Kilis Kitchen')

The alleged contraventions of listed building control

1. Installation of three external spotlights to illuminate the fascia sign.
2. Installation of three upward facing Ansell spotlights at first floor level.
3. Installation of two small lights on the pilasters of the shop front.
4. Incorporation of modern wrought iron detailing to the shop front stall riser
5. Installation of an alarm box to front elevation at first floor level.
6. Display of a hanging sign to the front elevation at first floor level.
7. Installation of a CCTV camera on right hand side of pilaster viewed from front.
8. Installation of two external lights and a lantern above front entrance door ground floor.
9. Application of weatherstruck pointing, front elevation first and second floor levels.
10. Application of valence to awning not in accordance with drawing Ref 238.(1) 4-001 of Listed Building Consent (LBC) P110482 dated 01 July 2011.
11. Internal cladding with cobble /rubble stone and tile to walls and ceiling at ground floor level.

For the avoidance of doubt the amended requirements of the notice LBEN1 following the variations are as follows:

- (i) Remove all of items numbered 1, 3, 4, 6, 7, 8 and see (iii) below for item 9.
- (ii) Repair any damage to the building with materials to match existing and remove resulting debris from the land for each of the alleged contraventions numbered 1, 3, 4, 6, 7, 8, and 9 above.
- (iii) Carefully remove the weatherstruck pointing (item 9) using hand held tools taking care not to damage the edges of the bricks and re-point with a well-aggregated 1:3 (hydraulic lime sand) lime mortar with a flush or slightly recessed joint. The pointing shall be undertaken in accordance with the Council's Maintenance guide 1. Brickwork and Mortar.

The times for compliance

The times for compliance are as follows:

- (i) For allegations numbered 1, 3, 4, 6, 7, and 8 Three (3) months.
- (ii) For allegation numbered 9 Five (5) months.

FORMAL DECISION

APPEAL B: LBEN 2 See also amended Appendix 1 below

107. I direct that the notice be varied by the deletion of requirements I and II under Schedule 4 of Appendix 1 to the notice for items numbered 2, 3 and 9. I also direct that the times for compliance in schedule 5 of Appendix 1, for items 2, 3 and 9 be deleted.

108. The appeal succeeds in part under ground (e) in relation to items numbered 2, 3 and 9 as set out in Appendix 1, Schedule 2 to the notice. Listed Building consent is granted for these items of work at 8 Theberton Street, London N1 0QX.

109. Otherwise, the appeal is dismissed under ground (e) in relation to items numbered 1, 4, 5, 6, 7, and 8 as set out in Appendix 1, Schedule 2 to the notice and LBEN 2 is upheld as varied. Listed Building Consent is refused for these items of work carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended at 4 Theberton Street, London N1 0QX.

110. APPENDIX 1 - To Notice LBEN 2

Appeal B: Ref: APP/V5570/F/14/2220716

8 Theberton Street (Mem & Laz)

The alleged contraventions of listed building control

1. Installation of three external spot lights that illuminate the fascia sign at ground floor level.
2. Installation of three upward facing Ansell spotlights at first floor level.
3. Installation of an alarm box to the front of the building at first floor level
4. Installation of two small lantern lights on the pilasters of the shop front.
5. Installation of a CCTV camera on the right hand pilaster when viewed facing shopfront.
6. Installation of two external lights and a lantern above the front entrance door of the shopfront at ground floor level.
7. Display of a hanging sign to the front elevation at first floor level.
8. Application of weatherstruck pointing to the front elevation of the property at first and second floor levels.
9. Incorporation of a valence to awning not in accordance with the approved drawing (Ref 238.(1)4-001 of Listed Building Consent dated 30 June 2011.

For the avoidance of doubt the revised requirements of the notice LBEN 2 following the variations are as follows:

The requirements of the notice are to:

- (i) Remove all items numbered 1, 4, 5, 6, 7 and see (iii) below for item 8.
- (ii) Repair any damage to the building with materials to match existing and remove resulting debris from the land for each of the alleged contraventions 1, 4, 5, 6, 7 and 8 above.
- (iii) Carefully remove the weatherstruck pointing using hand held tools taking care not to damage the edges of the bricks and re-point with a well-aggregated 1:3 (hydraulic lime sand) lime mortar with a flush or

slightly recessed joint. The pointing shall be undertaken in accordance with the Council's Maintenance guide 1. Brickwork and Mortar.

The times for compliance

The times for compliance are as follows:

- (i) For allegations numbered 1, 4, 5, 6, and 7, Three (3) months.
- (ii) For allegation numbered 8 Five (5) months.

FORMAL DECISION

APPEAL C: LBEN 3 See also Appendix 1 to notice below

111. I direct that the notice be varied by the deletion of requirements I and II under Schedule 4 of Appendix 1 to the notice for items numbered 1, 4, 7, 8, 9, 11, 12, 16, 18, 20, 21, 23, 27, 28 and 29. I also direct that the times for compliance in schedule 5 of Appendix 1, for the same numbered items be deleted.

112. The appeal succeeds in part under ground (e) in relation to items numbered 1, 4, 7, 8, 9, 11, 12, 16, 18, 20, 21, 23, 27, 28 and 29. as set out in Appendix 1, Schedule 2 to the notice. Listed Building consent is granted for these items of work at 10 to 16 Theberton Street, London N1 0QX.

113. Otherwise, the appeal is dismissed under ground (e) in relation to items numbered 2, 3, 5, 6, 10, 13, 14, 15, 17, 19, 22, 24, 25, and 26, as set out in Appendix 1, Schedule 2 to the notice and LBEN 3 is upheld as varied. Listed Building Consent is refused for these items of work carried out in contravention of Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended at 4 Theberton Street, London N1 0QX.

**114. APPENDIX 1 – To Notice LBEN 3
Appeal C: Ref APP/V5570/F/14/2220720**

The alleged contraventions of listed building control

No 10 Theberton Street ('Mem and Laz')

1. Installation of an alarm box to the front elevation at first floor level
2. Installation of a brass and black door handles to the front door of the shop.
3. Removal of boundary wall between No 10 and 12 Theberton Street to the former rear yard.
4. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix C and forming part of the notice.
5. Installation of a CCTV Camera on the left hand pilaster when viewed facing the shopfront.
6. Installation of a lantern light on the pilaster of the shopfront between Nos 10 and 12 Theberton Street.

No 12 Theberton Street ('Daphne Room')

7. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix C and forming part of the notice.
8. Creation of a 4 x double door width openings between Nos 10 and 12 at basement level as depicted on the attached photograph, headed

Appendix E and forming part of the notice.

9. Insertion of suspended barrelled ceilings at ground floor level.
10. Incorporation of modern wrought iron detailing to the shopfront stall riser.

No 14 Theberton Street ('Biskuvi Café')

11. Insertion of elaborate timber doors and door surrounds inserted into the Rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix F and forming part of the notice.
12. Creation of a 4 x double door width openings between Nos 12 and 14 at basement level as depicted on the attached photograph, headed Appendix G and forming part of the notice.
13. Removal of boundary wall between No 14 and 16 Theberton Street to the former rear yard.
14. Installation of a small light on the pilaster of the shopfront between Nos 12 and 14 Theberton Street.
15. Incorporation of modern wrought iron detailing to the shopfront stall Riser.
16. Insertion of suspended barrelled ceilings at ground floor level.

No 16 Theberton Street ('La Vita e bella')

17. Removal of a stud wall and insertion of a waterfall feature within the restaurant at ground floor level as depicted on the attached photograph headed Appendix I and forming part of the notice.
18. Insertion of elaborate timber doors and door surrounds inserted into the rounded arch openings within original rear wall at basement level as depicted on the attached photograph headed Appendix K and forming part of the notice.
19. Incorporation of modern wrought iron detailing to the shopfront stall riser.
20. Creation of a 4 x double door width openings between Nos 14 and 16 at basement level as depicted on the attached photograph, headed Appendix L and forming part of the notice.
21. Insertion of suspended barrelled ceilings at ground floor level.

Nos 10, 12, 14 and 16 Theberton Street

22. Installation of three external spotlights to fascia sign.
23. Installation of three upward facing Ansell spotlights at first floor level.
24. Display of a hanging sign to front elevation at first floor level.
25. Installation of a lantern above the front entrance door of the restaurant at ground floor level.
26. Application of weatherstruck pointing to the front elevation of the property at first and second floor levels.
27. Incorporation of a valence to awning not in accordance with the approved drawing (Ref 238.(1)4-001.
28. Internal cladding with cobble/rubble stone and tile to walls at ground floor level.
29. Creation of wide rounded arch openings within original rear wall at basement level.

For the avoidance of doubt the revised requirements of the notice LBEN 3 following variation are as follows:

The requirements of the notice (LBEN3) are as follows:

- (i) Remove items 2, 5, 6, 10, 13, 14, 15, 17, 19, 22, 24, 25, 26, and 28 above. For item 26 see also (v) below.
- (ii) Repair any damage to the building with materials to match existing and remove resulting debris from the land for each of the numbered items above.
- (iii) Reinstate original boundary wall (item 3) to define the historic boundary wall between Nos 10 and 12 Theberton Street to match the approved drawings (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008. The parts of the walls to be reinstated are high-lighted in blue on the attached Appendix B: OR Install a downstand at ceiling level measured 400mm (wide) x 300mm (high) in the same location as the original boundary wall indicated on the approved drawing (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008 (item 3).
- (iv) Reinstate original boundary wall (item 13) to define the historic boundary wall between Nos 14 and 16 Theberton Street to match the approved drawings (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008. The parts of the walls to be reinstated are high-lighted in blue on the attached Appendix H: OR Install a downstand at ceiling level measured 400mm (wide) x 300mm (high) in the same location as the original boundary wall indicated on the approved drawing (Ref TS2) of Listed Building Consent (Ref P081570) dated 11 November 2008 (item 13).
- (v) Carefully remove the weatherstruck pointing (item 26) using hand held taking care not to damage the edges of the bricks and re-point with a well-aggregated 1:3 (hydraulic lime sand) lime mortar with a flush or slightly recessed joint. The pointing shall be undertaken in accordance with the Council's Maintenance guide 1. Brickwork and Mortar (item 26)

The times for compliance

The times for compliance are as follows:

- (i) For allegations Nos 3, 13, 16, 17, and 26, - Five (5) months.
- (ii) For all other remaining numbered allegations/items (2, 5, 6, 19, 14, 15, 19, 22, 24 & 25) which have not been granted listed building consent, - Three (3) months.

FORMAL DECISION

APPEAL D: PEN 1

115. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

Anthony J Wharton

Inspector



Appeal Decision

Site visit made on 31 October 2017

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th November 2017.

Appeal Ref: APP/V5570/W/16/3165702

10-16 Theberton Street, Islington, London N1 0QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mehmet Kocakerim against the decision of the Council of the London Borough of Islington.
 - The application Ref: P2015/4037/FUL, dated 28 September 2015, was refused by notice dated 17 November 2016.
 - The development proposed is the conversion and reconfiguration of the ground floor and basement of 10-16 Theberton Street to form three restaurants (Use Class A3) comprising the following: restaurant 1, No. 16 (ground floor and basement level); restaurant 2, front part of Nos. 12 and 14 (ground floor and basement level); restaurant 3, No. 10 and rear part of Nos. 12 and 14 (ground floor and basement level and part basement level of No. 16).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the proposal is in a conservation area and relates to a listed building I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. The Council and the appellant have changed the description of development. As this more accurately reflects the proposal and is not disputed I have used it for the purposes of this appeal.

Main Issue

4. The main issue is the effect of the proposed change of use on the living conditions of the existing and future occupants of nearby residential dwellings with regard to noise.

Reasons

5. The appeal relates to four, Grade II listed, mid-terrace Georgian buildings situated on the north side of Theberton Street within the Barnsbury Conservation Area (CA). Residential accommodation is present on the upper floors of the terrace and above the commercial frontages of the facing terrace. These frontages give way to a residential area a short distance to the west.
6. The ground floors and basements of the appeal premises have already been converted to serve an A3 use. The layout is such that they are interconnected

and have the potential to operate as a single restaurant, despite being individually branded. This is especially the case at the basement level where wide openings have been created in the walls of the adjoining properties which has led to the creation of what has been described as a 'vast restaurant complex'. The works and use associated with the conversion were unlawful and have been subject to enforcement notices which have been largely upheld at appeal¹. Two of the properties, Nos 12 and 14, only have a lawful A2 use at the current time.

7. The proposal is seeking to permanently close the majority of the openings that connect each property and establish a lawful A3 use in three separate restaurants. Restaurant 1 (No 16) would have 30 covers and a total area of approximately 102 m². Restaurant 2 (Nos 12-14) would have 60 covers and a total area of approximately 151 m². Restaurant 3 (No 10) would have 85 covers and a total area of approximately 188 m². These areas include the cumulative floorspace rather than just the 'usable space', as indicated on the submitted plans (Ref: 434.(1).1.001 B and 434.(1).1.002 B).
8. Notwithstanding any enforcement action on matters relating to the harm that has already been caused to the listed building, I find that the proposed use of the ground floor and basement would not be detrimental to the special interest of the listed building or the significance of the CA. This is because the proposal only relates to internal alterations that would reinforce the original, compartmented plan form of the listed building. Furthermore, any other alterations associated with the proposed use that may further affect the historic building fabric or layout would require listed building consent and are thus controlled.
9. I observe from the plans and my site visit that all three restaurants would still be capable of accommodating large groups. As such, the combined comings and goings would still have considerable potential to cause disturbance to the closely situated occupants of nearby residential dwellings. I accept that the operation of separate restaurants would reduce the previously documented harm through a more staggered pattern of bookings. However, this would be counter-balanced by the increase in the number of covers and the fact that very large groups would still be able to book Restaurants 2 and 3. Consequently, an increase from the 150 covers noted by the previous Inspector would lead to an unacceptable, cumulative impact from the comings and goings of customers and their congregation on nearby pavements.
10. I acknowledge the previous Inspectors comments in relation to the proposed A3 use at this location and the attempt that has been made to overcome the Council's concerns. Whilst I have given the relevant decision² careful consideration I do not find it similar in all respects. This is because I do not have any evidence before me that establishes the capacity of similar, nearby restaurants on Therberton Street or Upper Street. The previous Inspector noted that the number of covers were significantly higher than other nearby restaurants but did not provide any numerical comparisons. Consequently, I do not find the separate A3 use of the different appeal properties directly comparable. Furthermore, the context of the residential properties above the premises on Upper Street is not the same given the greater levels of general activity along this busy, arterial route.

¹ APP/V5570/F/14/2220714, APP/V5570/F/14/2220716, APP/V5570/F/14/2220720, APP/V5570/C/14/2225985

² APP/V5570/C/14/2225985

11. Given the high acoustic reflectivity of the hard surfaces that characterise the interior, I also find that there would be significant potential for airborne noise transmission from within the building, especially from the double height dining area associated with Restaurant 3. Customers would inevitably raise their voices when the restaurant is full in order to be heard above the general clamour that is typically associated with such spaces in my experience. This would not only affect nearby residents, who may be using outside areas during the summer, but also the occupiers of the closely situated, first floor flats. The first impact has already been documented by one nearby resident despite a lack of windows on the rear elevation of the restaurants.
12. Turning to the second impact, I note from the sound insulation report³ that potential impacts were only measured in the residential dwellings directly above Nos 14 and 16. Whilst the effect of a restaurant at No 12 was clearly considered, this was based on opinion rather than any quantitative measurement. As such, the potential for significant noise impact cannot be ruled out. I acknowledge that there were no objections from the residents directly above the restaurants but find this only carries limited weight because these properties are owned by the appellant. Consequently, any objection is unlikely to be forthcoming. Given the above, I find the assessment inadequate and that the potential harm could not be controlled through a suitable condition under such circumstances.
13. This is also the case for the proposed extraction equipment. The noise assessment⁴ for the latter indicates that the measurement of ambient background noise was only carried out over a limited period of time between 20:43 and 22:17. As such, the extent to which the extraction equipment might exceed the ambient background noise levels was only partially assessed. This is because the opening times extend beyond these hours and includes a significant period of time when nearby residents are more likely to be at home and thus exposed to potential noise impacts that could be influenced by a more variable, ambient background. I also note that measurements were only taken at two locations and excluded the nearest receptors, i.e. residential properties immediately above the restaurants. Although the assessment states that one of the positions was on the restaurant roof, figure 1 clearly shows that this was not well related to the position of the rear extensions of the first floor, residential units which would be closer to the proposed plant. Consequently, I find the results unrepresentative and an unsound basis for informed decision-making. To this end, the evidence before me does not support the restriction of opening hours via a suitably worded condition as I have no informed basis upon which to determine the effectiveness of any specific opening restriction.
14. Given the above, I conclude that the proposal would cause significant harm to the living conditions of existing and future occupants of nearby residential dwellings with regard to noise. This would be contrary to policies DM4.2, DM4.3 and DM4.4 within *Islington's Local Plan: Development Management Policies 2013* that seek, among other things, to ensure that proposals relating to entertainment and the night-time economy do not lead to significant adverse impacts on residential amenity and that the densities of restaurants and other similar uses do not lead to significant, negative cumulative impacts or cause

³ 10-16 Theberton Street, UKAS Accredited Sound Insulation Test Report (Ref: 8028-SI-01). February 2013.

⁴ Noise Assessment of Kitchen Extract Plant (Ref: 5278). January 2016.

unacceptable disturbance. Consequently, the development would not be in accordance with the development plan.

Conclusions

15. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

Roger Catchpole

INSPECTOR