



PLANNING COMMITTEE REPORT



PLANNING SUB-COMMITTEE A		
Date:	19 th January 2021	NON-EXEMPT

Application number	P2020/1364/FUL
Application type	Full Planning Application
Ward	St Marys
Listed building	Opposite Union Chapel Grade I Listed Building
Conservation area	Upper Street (North) Conservation Area
Development Plan Context	Highbury Corner Core Strategy Key Area Upper Street Local Shopping Area and Article 4 Direction (A1-A2) Locally Listed Building Within 100m of TLRN (Transport for London Road Network) Rail Safeguarding (Transport for London Tunnels) Article 4 Direction A1-A2 (Rest of the borough)
Licensing Implications	Site does not have a License to Sell Alcohol
Site Address	236 Upper Street, Islington London N1 1RU
Proposal	Retrospective change of use from a retail unit to a restaurant/cafes (Class E); the installation of mechanical plant (extractors and air conditioning unit) on the rear roof of the building; installation of an air conditioning unit in the rear garden; and a single storey rear extension to the building including installation of rooflights. Retention of existing shopfront alterations with use of the front tables and chairs and external alterations to rear elevation including installation of rooflights.

Case Officer	Daniel Jeffries
Applicant	Mr V Kizilkaya
Agent	Mr T Ay

1. RECOMMENDATION

The Committee is asked to resolve to **GRANT** planning permission subject to the conditions set out in Appendix 1.

2. SITE PLAN (SITE OUTLINED IN RED)



3. PHOTOS OF SITE/STREET



Image 1: Aerial view of site

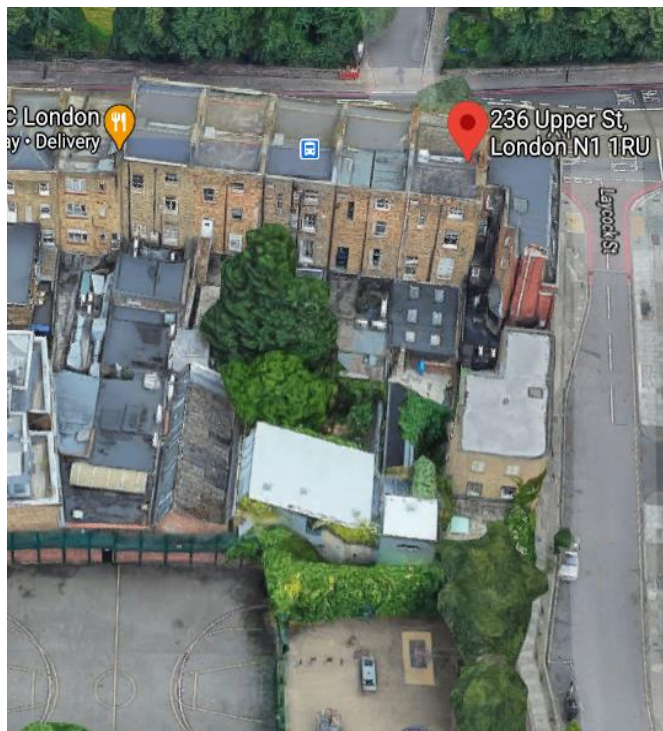


Image 2: Aerial view facing east



Image 3: View of roof of rear existing extension



Image 4: View of rear garden

4. SUMMARY

- 4.1 The application seeks retrospective planning permission for the change of use from an A1 retail unit to a restaurant/cafes. The proposal seeks to retain existing external alterations including the single storey rear extension and rooflights above, as well as the changes to the existing shopfront, with the use of the tables and chairs to the front. The application proposes the installation of mechanical plant (extractors and air conditioning unit) on the rear roof of the existing single storey extension, as well as an air conditioning unit within the rear garden.
- 4.2 In land use terms, the application does not include any evidence to demonstrate the loss of the existing retail unit would comply with Policy DM4.6, impact to the Local Shopping Area including the required 2 years marketing information. The lack of compliance with Policy DM4.6 is considered to result in harm to the Local Shopping Area, which counts against the scheme. However, given the Town and Country Planning (Use Classes) Regulations were updated on 1st September 2020, with the existing retail unit (former A1) and proposed restaurant (former A3) uses becoming Class E, alongside other town centre uses. This enables buildings to have a number of flexible uses and changes to a use within the same class do not require planning permission. Therefore, the change of use from retail to restaurant is not to be considered development as they are both now within the same Use Class E in accordance with recent Use Class Order regulations.
- 4.3 The proposal is considered to be compliant with the design advice found within the Islington Design Guide 2017 and Upper Street (North) Conservation Area Design Guidelines, and the objectives of policies CS8 and CS9 of the Islington Core Strategy (2011), and DM2.1 and DM2.3 of Development Management Policies (2013). It is therefore considered to preserve the visual appearance and historic character of the locally listed building and wider Upper Street (North) Conservation Area, and is acceptable in design terms.
- 4.4 Whilst the proposal has the potential for increased noise and odour to the surrounding area, given the proposed plant equipment and nature of the use, the Council's Environmental Health Pollution Officers have recommended a number of controls to mitigate this impact. In addition, conditions relating to preventing the use of the rear garden, as well as the opening hours and the front seating area are also recommended.
- 4.5 The proposal is considered to not detrimentally impact the wider public highway network including Upper Street, which is a TLRN road.
- 4.6 The proposal is considered to be acceptable and it is recommended that the application be approved subject to conditions.
- 4.7 The application is brought to committee because of the number of objections received (5).

5. SITE AND SURROUNDINGS

- 5.1 The site is located on the west side of Upper Street and forms the ground floor and basement level of a mid-terraced four storey building. The unit has been used as a retail unit and is part of a row of commercial premises forming part of the Upper Street Local Shopping Area.
- 5.2 The surrounding area is characterised by four storey buildings on the west side of Upper Street, with retail/commercial uses at ground floor and ancillary accommodation or residential units above. The site itself is within the Upper Street Conservation Area and is within the Highbury Corner Core Strategy Key Area.

6. PROPOSAL (IN DETAIL)

- 6.1 The application seeks retrospective planning permission to change of use from a retail unit (formerly Class A1 use) to a restaurant/café (formerly Class A3 use). The proposal seeks to retain the existing external alteration including the single storey rear extension and rooflights above, as well as changes to the existing shopfront, with the use of the tables and chairs to the front. The application proposes the installation of mechanical plant (extractors and air conditioning unit) on the rear roof of the existing single storey extension, and the installation of an air conditioning unit within in the rear garden.

7. RELEVANT HISTORY:

236 Upper Street

Planning

- 7.1 870764: Retention of a new shopfront. Approved on 23/09/1987
- 7.2 951258: Change of use of the ground floor to the part sale of hot food (Class A3 of the Town and Country Planning (Use Classes) Order 1987) in connection with the principle use of that floor for the sale of cold foods. Approved on 14/12/1995
- 7.3 982322: Alterations to front façade. Approved on 05/07/1999.
- 7.4 P2014/2740/PRA: Application to obtain the prior approval of the Local Planning Authority in relation to the temporary (Flexible) change of use from Sandwich shop (A1 Use) to Restaurant (A3 Use). **(Withdrawn)**
- 7.5 P2017/4769/FUL: Single storey extension to the rear at ground floor level and installation of air conditioning units above the flat roof at rear ground floor level. **(Withdrawn)**
- 7.6 P2018/0520/PRA: Change of use from Class A1 (shops) to Class A3 (Food and Drink) including installation of an air conditioning unit and ESP extractor system. **(Withdrawn)**
- 7.7 P2018/0625/FUL: Erection of rear shop extension at ground floor level. **(Withdrawn)**
- 7.8 P2018/0884/FUL: Change of use from Class A1 (shops) to Class A3 (restaurants and cafes); the installation of mechanical plant (extractors and air conditioning unit) on the rear roof of the building; installation of an air conditioning unit in the rear garden; and a rear extension to the building including installation of rooflights. Retention of existing shopfront alteration and external alterations to rear elevation including installation of rooflights. **(Withdrawn)**

Enforcement

- 7.9 E/2015/028: Without planning permission, the erection of a means of enclosure. Case Closed on 23/07/2015.
- 7.10 E10/04696: Unauthorised roller shutter. Enforcement Notice Issued on 18/01/2011. Notice complied with on 12/09/2011
- 7.11 E/2018/0011: Works to rear yard and possible change of use.

235 & 236 Upper Street

Planning

- 7.12 992231: Change of use of basement/ground shop unit at No.236 and its incorporation into the 'Tut 'n' Shive' Public House as an ancillary Coffee Bar, construction of rear ground level extension to both properties and external alterations to ground floor facades. **Refused** on 31/07/2000.

REASON: The proposed development would cause the effective loss of a retail unit within a protected local shopping centre. The proportion of non-retail units would be increased above the maximum of one-third as permitted by Policy S18 of the Islington Unitary Development Plan and would adversely affect the potential range of shops required to meet local needs.

REASON: The proposed form of the new shopfront to 236 Upper Street is out of keeping with the traditional form of shopfronts in the Upper Street Conservation Area.

REASON: The proposed development is likely to cause noise and disturbance and therefore have a serious adverse effect on the amenities of adjoining and nearby residential occupiers.

- 7.13 P000774: Change of use of no. 236 from mixed A1/A3 to A3 (food/drink) and erection of single storey rear extension. Alterations to ground floor side and front elevations. **Refused** on 13/09/2000.

REASON: The proposed development would cause the effective loss of a retail unit within a protected local shopping centre. The proportion of non-retail units would be increased above the maximum of one-third as permitted by Policy S18 of the Islington Unitary Development Plan and would adversely affect the potential range of shops required to meet local needs.

REASON: The proposed form of the new shopfront to 236 Upper Street is out of keeping with the traditional form of shopfronts in the Upper Street conservation Area.

REASON: The proposed development is likely to cause noise and disturbance and therefore have a serious adverse effect on the amenities of adjoining and nearby residential occupiers.

- 7.14 P001567: Installation of new fascia signs and associated lighting. **Refused** on 21/02/2001.

REASON: The size, position and nature of the proposed advertisement would have a serious adverse effect on the visual amenity of the area contrary to Policy Env9 of the Islington Unitary Development Plan.

8. CONSULTATION

Public Consultation

- 8.1 Letters were sent to occupants of 18 adjoining and nearby properties at Upper Street, Laycock Street and Witherington Road on the 24th June 2020. This is in addition to the display of a site notice and a press advert. Following the submission of an amended Noise Assessment further consultation letters were sent on 3rd December 2020. The consultation period expired on 18th December 2020.
- 8.2 At the time of the writing of this report a total of 5 responses had been received from the public with regard to the application. The issues raised can be summarised as follows (with the paragraph that provides responses to each issue indicated within brackets):

Design

- Visual appearance and impact on the surrounding area
(Paragraphs 10.18 to 10.38)

Neighbouring Amenity

- Noise from use and plant equipment, including use of rear garden and from openings;
- Increased odour to surrounding properties
- Light pollution
(Paragraphs 10.39-10.52)

Accessibility

- Lack of accessible accommodation
- Impact on access to upper floor flats
(Paragraphs 10.58-10.59)

Other matters

- Works carried out without planning permission
- Lack of information in relation to changes required to sewage systems, water supply and electricity,
- Potential risk of rodent infection
(Paragraphs 10.61-10.62)

External Consultees

- 8.3 **Transport for London:** No objections but requested that adequate cycle storage provision, the carriageway/footway are not blocked and the existing parking controls are adhered.

Internal Consultees

- 8.4 **Environmental Health Pollution (Acoustic) Officer:** No objection subject to conditions relating to noise levels, a verification report to be submitted and the installation of timer to control the hours of operation between 08:00 to 23:00 hours each day.
- 8.5 **Environmental Health Pollution (Odour) Officer:** No objections subject to conditions relating to the details of the proposed filters and for the extraction equipment to be regularly cleaned and maintained.
- 8.6 **Policy (Land use) Officer:** No objection to the change of use, particularly given the change to Class E.
- 8.7 **Street Trading:** Confirmed that the premises does not have a tables and chairs licence as it has its own private forecourt so wouldn't need a licence from Street Trading.

9. RELEVANT STATUTORY DUTIES & DEVELOPMENT PLAN CONSIDERATIONS AND POLICIES

Details of all relevant policies and guidance notes are attached in Appendix 2. This report considers the proposal against the following development plan documents

National Guidance

- 9.1 Islington Council (Planning Sub-Committee A), in determining the planning application has the main following 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.)
- 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 The National Planning Policy Framework 2019 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.
- 9.4 Since March 2014 Planning Practice Guidance for England has been published online.
- 9.5 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.
- 9.6 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.
- 9.7 Members of the Planning Sub-Committee A 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.
- 9.8 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

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

Designations

- 9.10 The site has the following designations under the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 2013, and Site Allocations 2013:
- Upper Street (North) Conservation Area
 - Highbury Corner and Holloway Road Core Strategy Key Area
 - Upper Street Local Shopping Area and Article 4 Direction (A1-A2)
 - Locally Listed Building
 - Within 100m of TLRN (Transport for London Road Network)
 - Rail Safeguarding (Transport for London Tunnels)
 - Article 4 Direction A1-A2 (Rest of the borough)

Supplementary Planning Guidance (SPG) / Document (SPD)

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

Emerging Policies

Draft London Plan (Intend to Publish Version), December 2019

- 9.12 The draft new London Plan was published for consultation in December 2017. The consultation period ended on Friday 2 March 2018. In accordance with section 338(3) of the GLA Act, the Secretary of State appointed a Panel to conduct an examination in public ("EIP") this opened on 15 January 2019 and continued until May 2019. The Panel of Inspectors made several recommendations to the Mayor on the 8 October 2019 and the Mayor responded on the 9 December 2019 with an 'Intend to Publish' version of the plan. The Secretary of State considered the 'Intend to Publish' version and the proposed changes and made several Directions in March and December 2020 setting out changes to some policies. On 21 December 2020 the Mayor formally approved a new 'Publication London Plan', prepared to address the Secretary of State's Directions which has been sent to the Secretary of State for his consideration. The Secretary of State has up to 6 weeks to decide if he is content for the Mayor to formally publish the London Plan. Given the advanced stage at which the draft London Plan is at the policies in the plan which are not subject to Directions can be afforded significant weight. Given what is proposed in the application, the Directions are not considered to effect the assessment of this case. The emerging London Plan policies have been taken into account. Relevant policies in the emerging London Plan are set out below:

Policy D1 – London's form, character and capacity for growth

Policy D8 – Public Realm

Draft Islington Local Plan 2019

- 9.13 The Regulation 19 draft of the Local Plan was approved at Full Council on 27 June 2019 for consultation and subsequent submission to the Secretary of State for Independent Examination. From 5 September 2019 to 18 October 2019, the Council consulted on the Regulation 19 draft of the new Local Plan. Submission took place on 12 February 2020 with the examination process now in progress.

In line with the NPPF Local Planning Authorities may give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

9.14 Emerging policies relevant to this application are set out below:

- Policy R8 – Location and Concentration of Uses
- Policy R10 – Culture and the Night-Time Economy
- Policy R11 – Public House
- Policy T4: Public realm
- Policy T5: Delivery, servicing and construction

10. ASSESSMENT

10.1 The main issues arising from this proposal relate to:

- Land Use
- Neighbouring Amenity
- Design, Conservation and Heritage
- Highways and Transport
- Accessibility
- Refuse and Recycling

Land Use

10.2 The application site is located within the Highbury Corner and Holloway Road Core Strategy Key Area which is protected by Policy C4 of Islington Core Strategy. In terms of land use, the proposed development would involve the change of use of the retail floorspace (130sqm) to a restaurant.

10.3 To confirm, in reference to the Land Use Gazetteer, the former use of a restaurant was A3, and as such is now Class E.

Loss of Retail

10.4 The Town and Country Planning (Use Classes) Regulations were updated on 1st September 2020, with former use classes A1 (Retail), A2 (Financial and Professional Services), A3 (Café/Restaurant), B1 (Office, Research and Development and Light Industrial) and parts of D1 (Medical Centre, Crèche, Day Nursery) and D2 (Gymnasium) becoming Class E. This enables buildings to have a number of flexible uses and changes to a use within the same class do not require planning permission. Therefore, the change of use from retail to restaurant/café use would not be considered to constitute development as they are both now within the same use class.

10.5 The Town and Country Planning (Use Classes) Regulations 2020 detail that where an application is submitted prior to the updated regulations coming into force, as is the case here, it must be determined by reference to the uses or use classes under the Use Classes Order in force on 31st August 2020. Notwithstanding this, the updated Use Class Order is a material planning consideration in the assessment of the application.

- 10.6 Therefore, in this instance, the acceptability of the change of use would be subject to an assessment against the relevant planning policy.
- 10.7 Policy DM4.6 of Development Management Policies (2013) seeks to ensure an appropriate mix and balance of uses within the Upper Street Local Shopping Area, and maintains and enhances the retail and service function of the designation.
- 10.8 Part B of Policy DM4.6 seeks to ensure development for existing ground floor retail units are protected from Change of Use unless all of the following criteria are satisfied:
- i. The premises has been vacant for a continuous period of at least 2 years and continuous marketing evidence for this 2 year vacancy is provided which demonstrates that there is no realistic prospect of the unit being used in its current use in the foreseeable future;
 - ii. The proposal would not result in a harmful break in the continuity of retail frontages;
 - iii. Individually, or cumulatively, the proposed replacement use would not have an adverse effect on the vitality, viability and predominantly retail function of the Local Shopping Area.
- 10.9 Any marketing evidence submitted to support a loss of retail floorspace should comply with the requirements of Appendix 11 of the Development Management Policies. This includes evidence of active marketing (including advertisements, particulars and brochures, registration with at least one commercial property agent, and marketing of the site at a reasonable rate), response and details of response (such as prospective occupants, further viewings, asking rate, and reasons for declining the site) and a market demand analysis.
- 10.10 The application has not included any marketing evidence or other information to demonstrate that the loss of the retail unit would be acceptable in regards to this policy. Therefore in the absence of this information, it is considered that the proposal would result in harm to the function Local Shopping Area, as the application fails to demonstrate that the change of use would be acceptable in land use terms, which weighs against the scheme.

Proposed restaurant

- 10.11 Whilst the application has failed to demonstrate the loss of the existing use would be acceptable against adopted planning policy, given the existing ground floor town centre commercial uses, including a wide choice and number of retail, cafes, sandwich bars, banks, restaurants and active ground floor commercial units along this extensive section of Upper Street, it is considered that the further introduction of restaurant in this location is considered acceptable, subject to all other material planning considerations.

Class E restrictions

- 10.12 As noted above, the Town and Country Planning (Use Classes) Regulations were amended on 1st September 2020. The amended Use Class regulations omit the former Use Class A1 and introduces a new Use Class E, which encompasses retail use, together with many other town centre uses. The application proposes the change of use to restaurant, with no other uses proposed. Significant weight needs to be given to the relatively recent Use Class Order changes which means that the previous A1 use can change to a wider series of uses including a restaurant within use Class E. This is a material consideration and bearing in mind this fact and the busy commercial nature of the area around the site on a main thoroughfare, it is considered that the council could not reasonably justify the refusal of the application on a land use basis.

- 10.13 It is considered that the other uses that are encompassed by Class E would not be an appropriate use for the site or within the surrounding local context without the submission of further details and mitigation measures.
- 10.14 The proposed site is considered appropriate for financial and professional services (former A2) and business floorspace (former B1) given the day-to day operation is similar to that of the existing retail unit.
- 10.15 The potential use of the building as clinic, health centre or nursery (former D1) is considered not appropriate given no information to demonstrate otherwise, these uses would be expected to cause a strain upon the local highway and traffic which is considered as part of neighbouring amenity. The building is also considered not to be conducive or suitable for such uses given its layout and constraints.
- 10.16 The use of the site as a gym or other form of indoor recreation (former D2) is considered inappropriate as such uses would expect longer operating hours and are generally of an intensive day-to day operation which would need further information to demonstrate would have an acceptable on the surrounding area.
- 10.17 As such, a condition is recommended restricting the use of the development to only restaurant (as proposed), business floorspace, retail unit or financial and professional services use and no other use within Class E of the Use Class Order 2020. Should any other use be proposed, this would require the submission of an application and appropriate supporting documentation

Design and Conservation

- 10.18 Paragraph 193 of the NPPF (2019) states that '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). Furthermore, at paragraph 196: '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.
- 10.19 London-wide planning policies relevant to design and conservation are set out in Chapter 7 of the London Plan, and the Mayor of London's Character and Context SPG is also relevant. At the local level, Policy CS9 of Islington's Core Strategy (CS) 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.
- 10.20 Policy DM2.3 seeks to ensure that the borough's heritage assets are conserved and enhanced in a manner appropriate to their significance. Development that makes a positive contribution to Islington's local character and distinctiveness will be encouraged. It seeks to ensure developments within the setting of a listed building are of good quality contextual design. It also seeks to retain, repair and reuse of non-designated heritage assets. Proposals that unjustifiably harm the significance of a non-designated heritage asset will generally not be permitted.
- 10.21 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 Upper Street (North) Conservation Area. Section 61(2) and 16(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, seeks to ensure special attention has been paid to the desirability of preserving or enhancing the character and appearance of the setting of listed buildings. Whilst the Grade I Listed Building (Union Chapel) is located on the opposite side of Upper Street (east), given the scale of the proposal and separation distance, the site is not considered to be within its setting.

10.22 The design advice found within the Islington Urban Design Guide 2017 and Upper Street (North) Conservation Area Design Guidelines should be taken into consideration in the design assessment of the proposal.

10.23 The proposal includes a number of different external alterations with an assessment of these elements set out below:

Shopfront

10.24 Policy DM4.8 seeks to ensure new shopfronts and alterations to existing shopfronts to demonstrate a high quality of design, which complements the original design, proportions, materials and detailing of the shopfront, surrounding street scene and the building of which it forms a part.

10.25 Paragraphs 5.194 to 5.217 of the UDG provides advice in relation to acceptable forms of shopfront design. It advises that *new shopfronts to historic buildings should follow the principles of traditional shopfront design. They should be well proportioned and comprise of pilasters, corbel brackets, cornice, fascia, clerestory, a shop window divided with mullions and a stallriser.*

10.26 Paragraph 18.23 of the Conservation Area Design Guidelines advises that *the Council will not usually permit the removal of part or all of an original shopfront as listed in Schedule 18.3.* Whilst it is noted that the host building is not within Schedule 18.3 it also advises it would not allow any alteration to a shopfront which is detrimental to the character of the area.

10.27 Paragraph 18.24 of the CADG considers that shopfronts in the area provide a visual focus and interest and are an important factor in creating the character of the area. It provides detailed advice in relation to new shopfronts including the use of traditional materials, including painted timber, as well as reinforcing the UDG recommendations.

10.28 In this instance, the alterations to the existing shopfront are retrospective, and the application seeks to regularise these changes. Whilst the proposal has resulted in the loss of the pre-existing shopfront (shown below), this was not a historic shopfront and its loss is considered acceptable.



Images 5 and 6: Photo from May 2017 showing pre-existing shopfront (left) and existing shopfront (right)

10.29 In terms of the existing shopfront subject to this application, the proposal is considered to be broadly compliant with the shopfront guidance and would be an improvement on the design of the previous shopfront, in keeping with the visual appearance of the host building and wider streetscene. The existing shopfront proposed to be retained includes signage, as such an informative has been included to remind the applicant for the submission of an advertisement consent application.

Rear extension

10.30 Whilst it is noted that the UDG paragraphs 5.134 to 5.138 relates to rear extensions to residential properties, the advice is considered to be relevant which recommends that rear extensions must be subordinate to the original building; extensions should be no higher than one full storey below eaves to ensure they are sufficiently subordinate to the main building.

10.31 Paragraph 18.20 of the CADG advises that in order to preserve the scale and integrity of the existing buildings it is important that rear extensions are subordinate to the mass and height of the main building. Rear extensions will be permitted on their merits and only where the scale, design and materials to be used are in keeping with the existing property and where all other planning standards are met.

10.32 The alterations to the existing single storey rear extension have already taken place. The application seeks to regularise the enlargement of the pre-existing full width single storey extension, which has been extended by a further 2.7m in depth, resulting in a total projection from the rear elevation of the main part of the host building by 7.6m.

10.33 It is acknowledged that the increase in depth of the rear extension would result in a large addition to the rear elevation of the host building. However, the assessment of this increase in depth should take into consideration the scale of the host building, and the existing rear additions within the terrace to which the host building relates. Whereas the proposal subject to this application would result in a separation distance between the rear elevation and the rear boundary wall, of 6.47m, the adjacent buildings to the north cover the full width and depth of their respective sites. In this context the enlargement of the pre-existing rear addition is considered acceptable in design terms.

10.34 The fenestration details associated with the rear addition include rooflights above the flat roof and glazed windows and doors to the rear elevation. The proposed rooflights would be positioned above the flat roof of the rear addition. Whilst the rooflights would protrude from the flat roof, they would not be readily visible from the public realm and are similar in design to those found on other rear additions found along this terrace. The rear elevation would have a set of glazed doors, with windows to the upper half of the elevation and wooden panelling to the lower half. Given the limited views from the public realm, the alterations are considered to be in keeping with the host building and wider area.

Plant equipment

10.35 Paragraphs 5.182 to 5.185 of the UDG provides advice in relation to building services and equipment, advising that *commercial extraction equipment should be located to the rear of commercial properties and should not be visible from public views.*

10.36 The Conservation Area Design Guidelines (para 18.14) provides advice that *the Council is opposed to the erection of plant rooms, air conditioning units and other services including water tanks and radio or satellite equipment at roof level where this can be seen from street level or public space, including long views from side streets.*

- 10.37 The proposal includes proposed plant equipment to the rear of the host building, being to the bottom of the rear garden at ground floor level, as well as at first floor, above the existing single storey rear addition. Whilst the equipment would project above the first floor roof and ground floor rear garden, the design is restricted in height, and cover only a small section of the roof and rear garden, and would not be visible from the public realm. It is therefore considered that the proposal would be broadly compliant and acceptable in design terms.
- 10.38 Given the above, the proposal is considered to preserve the visual appearance and historic character of the locally listed host building and wider conservation area, and compliant with the design advice found within Islington Urban Design Guide 2017 and Upper Street (North) Conservation Area Design Guidelines, and policies CS8 and CS9 of Islington Core Strategy (2011) and DM2.1 and DM2.3 of Development Management Policies (2013).

Neighbouring Amenity

- 10.39 The Development Plan contains policies that seek to appropriately safeguard the amenities of residential occupiers when considering new development. London Plan policy 7.6 identifies that buildings should not cause unacceptable harm to the amenity of in particular, residential buildings in respect of matters including privacy and overshadowing.
- 10.40 Policy DM2.1 of the Development Management Policies Document 2013 identifies that satisfactory consideration shall be given to noise and the impact of disturbance, vibration, as well as overshadowing, overlooking, privacy, direct sunlight and daylight receipt, over-dominance, sense of enclosure and outlook.
- 10.41 This section of Upper Street is characterised by a mixture of commercial units on the ground floor, with both residential units and ancillary accommodation on the upper floors. The adjoining buildings include a public house to the south, and a retail shop to the north.
- 10.42 The application seeks to change the use of the host premises from a retail unit, being a sandwich shop, to a restaurant. As noted in the land use section, since the changes to the Use Class Order on 1 September 2020, the existing and proposed use fall within Class E. In addition to these two uses, Class E includes a number of other uses. It is therefore important to assess the appropriateness of these uses including the potential impact on the amenity of the occupiers of neighbouring properties, including those on the upper floors of the host building.

Daylight/Sunlight and Outlook

- 10.43 The proposal is not consider to result in any significant loss of daylight/sunlight or outlook to neighbouring properties over and above the existing situation. The alterations to the shopfront would largely replicate the existing situation, and would result in any further projection in comparison with the previous situation.
- 10.44 In terms of the alterations to the rear, it is acknowledged that the proposal allows for the extension of the rear addition by a further 2.7m, the adjacent property to the north, no. 237 Upper Street, has a rear addition which extends the full width and depth of the plot and this would therefore not be impacted. The adjacent property to the south, no. 235 Upper Street, has a rear addition of a similar depth, and there is a staircase positioned adjacent to the shared boundary, ensuring there would be no detrimental impact on this property.
- 10.45 The proposed plant equipment would be restricted in height and set away from the existing windows, and is not considered to result in any significant loss of daylight/sunlight or outlook to neighbouring properties.

Noise

- 10.46 A noise assessment has been submitted titled 'Planning Compliance Report ref. 21163.PCR.01 Rev.C by KP Acoustics' for the proposed plant equipment. This report has been reviewed by the Council's Environmental Health (Acoustic) Officer, who has confirmed that subject to conditions relating to noise levels, the submission of an associated verification report and the installation of a timer to control the hours of use, no objections are raised.
- 10.47 In addition to the above recommended conditions, a further condition is recommended to restrict and prevent the use of the rear garden apart for maintenance purposes or in the event of an evacuation, and to ensure the windows and doors of the rear elevation remain shut. Whilst it is acknowledged that the proposal has an external area to the front elevation, given that it is adjacent to a busy street it is not considered to result in any significant increase in disturbance to residential occupiers
- 10.48 The application seeks permission to allow for the opening hours of between 07:00 and 23:00 hours Monday to Sundays. Whilst the proposed hours would have a similar closing time to other restaurants along Upper Street, the start would be earlier. However, this start would be similar to the existing situation at the host premises and is considered acceptable.
- 10.49 As noted in land use section, the amended Use Class regulations omit the former Use Class A1 and introduces a new Use Class E, which encompasses several town centre uses including the proposed restaurant. In addition to the existing and proposed uses, there are other Class E uses which are considered to be appropriate for this location being for financial and professional services (former A2) and business floorspace (former B1) given the day-to-day operation is similar to both the retail and restaurant function. However, as noted above the use of the building as clinic, health centre or nursery (former D1) or a gym or other form of indoor recreation (former D2) are considered not appropriate. Given no information to demonstrate otherwise, these uses would be expected to cause a strain upon the local highway and traffic which is considered as part of neighbouring amenity and would expect longer operating hours and are generally of an intensive day-to day operation which would not complement the residential nature of its immediate location. A condition has been recommended to restricting the use of the development in line with the above, and as such would require a subsequent application to demonstrate that these uses would be acceptable, with appropriate documentation.

Odour

- 10.50 The proposed restaurant has the potential to increase odours to the surrounding area. As such a proposed extraction flue would be located to the roof of the existing rear addition. The Council's Environmental Health Pollution (Odour) Officer has recommended that prior to its first use, details of the filters and Electrostatic Filters (ESPs) are submitted and approved. A condition to this effect is recommended.

Light Pollution

- 10.51 Representations have been received raising concern in relation to light pollution as a result of the additional openings. However, the limited scale of the openings and their numbers are such that it is unlikely that the proposal would result in a significant increase over and above the existing situation to warrant refusal of the application.

Conclusion

- 10.52 Overall, due to the mitigation measures identified above, the proposal is considered to be compliant with Development Management Policies DM2.1.

Highways and Transport

- 10.53 The site has excellent access to public transport and the Public Transport Accessibility (PTAL) rating is 6b (where 6 is the best and 0 the worst). There are several bus routes in the surrounding area, close proximity to the Highbury and Islington Underground, Overground and Rail Stations. The site also is positioned on the west side of Upper Street, which is part of the TLRN (Transport for London Road Network).
- 10.54 Policy DM8.2 seeks to ensure developments meet the transport needs of the development and address its transport impacts in a sustainable manner and in accordance with best practice. Transport for London have raised no objections to the proposal. However, they have requested that the Council ensures that the development, including during its construction, would not obstruct the footway or carriageway, as well as providing sufficient cycle storage. They also recommended that any vehicles adhere to the existing restrictions within the CPZ (controlled parking zone) being Monday to Friday 08:30 to 18:00 hours, Saturdays 08:30 to 13:30 hours and on match days, Monday to Friday 08:30 to 20:30 hours, Saturdays 08:30 to 16:30 hours and Sundays 12:00 hours to 16:30 hours. Given that the majority of the works have already been completed, an informative has been recommended, reminding the applicant of these requests.
- 10.55 The existing external seating to the front of the site is not proposed to be enlarged and would be contained within the existing forecourt. A condition is recommended restricting the hours of use of the front seating area.
- 10.56 Policy DM8.4 seeks to ensure minor developments creating new commercial units of 100sqm or greater, are required to provide cycle parking in accordance with the minimum standards set out in Appendix 6. It confirms that 1 cycle storage space is required per 60sqm of floor area for restaurants. The application form confirms that the site area is 115 sqm, therefore a minimum of 1 cycle storage space is required. Whilst no cycle storage has been detailed, a condition has been recommended to secure a minimum of 1 cycle parking space within 3 months of the date of the decision notice.
- 10.57 Policy DM8.6 sets out that provision for delivery and servicing for new developments. Whilst limited information has been provided in this regard, the proposal would continue to use the existing arrangements, and is therefore considered acceptable in this regard.

Accessibility

- 10.58 Policy DM2.2 seeks to ensure developments demonstrate that they provide for ease of and versatility in use. Whilst it is acknowledged that the proposal would not provide accessible accommodation, it is not considered to warrant the refusal of the application given it relates to an existing building.
- 10.59 Concerns have been raised in relation to the existing tables and chairs restricting access to the upper floor flats. A condition has been recommended to ensure that the tables and chairs are restricted to the existing forecourt and do not obstruct this access.

Refuse and Recycling

- 10.60 The existing site has on-street collections for refuse and recycling on Monday to Saturdays between 18:00 and 19:00 hours and 00:00 and 01:00 hours. Given the existing arrangements the proposal is not considered to detrimentally impact this situation and is therefore considered acceptable in this regard.

Other Matters

- 10.61 Representations have been received raising concerns regarding the works subject to this application having been carried out without planning permission. However, following an investigation by Council's Planning Enforcement Team the applicant has submitted this application to seek to regularise relevant works.
- 10.62 Representations received also raise concern regarding a lack of information in relation to changes required to sewage systems, water supply and electricity, as well as the potential risk of rodent infection, as a result of the development. These are not material to the consideration of the application.

11. SUMMARY AND CONCLUSION

Summary

- 11.1 The application does not include any evidence to demonstrate the loss of the existing retail unit would comply with Policy DM4.6, impact to the Local Shopping Area including the required 2 years marketing information. The lack of compliance with Policy DM4.6 is considered to result in harm to the Local Shopping Area, which counts against the scheme. However, given the Town and Country Planning (Use Classes) Regulations were updated on 1st September 2020, with the existing retail unit (former A1) and proposed restaurant (former A3) uses becoming Class E, alongside other town centre uses. This enables buildings to have a number of flexible uses and changes to a use within the same class do not require planning permission. Therefore, in general, the change of use from retail to restaurant would not be considered development as they are both now within the same use class.
- 11.2 The proposed external alterations are considered to preserve the visual appearance and historic character of the locally listed building and wider Upper Street (North) Conservation Area, and acceptable in design terms.
- 11.3 The proposal is considered not to result in any significant loss of amenity to occupiers of neighbouring properties, given the conditions recommended by the Council's Environmental Health Pollution Officers, as well as restrictions preventing the use of the rear garden.
- 11.4 In accordance with the above assessment, it is considered that the proposed development is consistent with the policies of the London Plan, the Islington Core Strategy, the Islington Development Management Policies and associated Supplementary Planning Documents and should be approved accordingly.

Conclusion

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

APPENDIX 1 – RECOMMENDATIONS

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	Approved Plans List
	<p>DRAWING AND DOCUMENT NUMBERS: The development hereby approved shall be carried out in accordance with the following approved plans:</p> <p>Design and Access Statement, Planning Compliance Report ref. 21163.PCR.01 Rev.C by KP Acoustics dated 27/11/2020, Structural Calculation Report dated February 2020, Plant Equipment Manufacturing details, Photos, NP-18-164/Rev.1.5 – Block Plan, NP-18-163/Rev.1.5 – Pre-Existing, Existing and Proposed Basement Floor Plans, NP-18-162/Rev.1.5 - Pre-Existing, Existing and Proposed Ground Floor Plans, NP-18-164/Rev.1.5 - Pre-Existing, Existing and Proposed Roof Plan (Rear), NP-18-171/Rev.1.5 - Existing Section, NP-18-170/Rev.1.5 - Pre-Existing Section, NP-18-171/Rev.1.5 - Proposed Section, NP-18-174/Rev.1.5 - Pre-Existing, Existing and Proposed Rear Elevations, NP-2020-02-01-0001/Rev.1.0 - Pre-Existing Front Elevation, NP-2020-02-03-0002/Rev.1.0 - Existing / Proposed Front Elevation,</p> <p>REASON: To comply with Section 70(1)(a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.</p>
3	Materials (Compliance)
	<p>CONDITION: The development shall be constructed in accordance with the schedule of materials noted on the approved plans and within the application form. 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>
4	Operational Hours (Compliance)
	<p>CONDITION: The hereby approved restaurant use (and any other use within Class E) shall only operate between the hours of:</p> <ul style="list-style-type: none"> • Mondays to Sundays 07:00 to 23:00 hours only. <p>REASON: To protect the amenities of surrounding residents.</p>
5	Front Seating Area (Compliance)
	<p>CONDITION: The outdoor seating area fronting Upper Street and shown on drawing no. NP-18-164/Rev.1.4 shall not be used/occupied by customers other than within the following hours:</p> <ul style="list-style-type: none"> • Monday to Sundays 7:00 to 22:00 hours. <p>The outdoor area shall be contained within the existing front forecourt, shall not obstruct access to the residential entrance to the upper floor flats or the footway of Upper Street. There</p>

	<p>shall be no fixed seating installed within the outside area and all temporary seating shall be removed from the outside area outside of the above hours.</p> <p>REASON: To mitigate against noisy activities that may lead to noise transfer and ensure that the proposed use does not have an adverse impact on neighbouring residential amenity.</p>
6	Rear External Area (Compliance)
	<p>CONDITION: The outdoor area to the rear of the site marked as 'Garden Area' on drawing no. NP-18-164 shall not be used by customers or staff for the hereby approved or any other use within Class E, other than for maintenance purposes or in the event of an evacuation. The windows and doors on the hereby approved rear extension shall remain shut during its occupation by customers. These measures shall be retained thereafter into perpetuity.</p> <p>REASON: To protect the amenities of surrounding residents.</p>
7	Noise Levels (Compliance)
	<p>CONDITION: The design and installation of new items of fixed plant shall be such that when operating the cumulative noise level LAeq 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 5dB(A) below the background noise level LAF90 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: In order to protect the amenities of surrounding occupiers.</p>
8	Verification Report (Details)
	<p>CONDITION 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 7. The report shall include on site measurement of the plant insitu. The report shall be submitted to and approved in writing by the Local Planning Authority within two months of the decision notice date and any noise mitigation measures shall be permanently retained thereafter.</p> <p>REASON: In order to protect the amenities of surrounding occupiers.</p>
9	Timer (Compliance)
	<p>CONDITION: Prior to the hereby approved plant equipment first being used, a timer shall be installed limiting the operation of the kitchen extraction system and the condenser unit to between the hours of 08:00 to 23:00 each day only. The plant shall not be operated outside of these hours. The timer shall be maintained as such thereafter.</p> <p>REASON: In order to protect the amenities of surrounding occupiers.</p>
10	Filters (Details)
	<p>CONDITION: Prior to the first use of the hereby approved plant equipment details of the filters and ESPs to control odour shall be submitted and approved in writing by the Local Planning Authority. The approved details shall be implemented in full and retained thereafter into perpetuity, and shall regularly be maintained and cleaned throughout its use.</p> <p>REASON: In order to protect the amenities of surrounding occupiers.</p>
11	Cycle Storage (Compliance)
	<p>CONDITION: Within 3 months the hereby approved development storage for a minimum of 1 no. cycle shall be provided and retained thereafter into perpetuity.</p> <p>REASON: To promote sustainable forms of transport.</p>

12	Class E (Compliance)
	<p>CONDITION: The restaurant use hereby approved shall not be used for a Gym or Creche/Nursery or any other use falling within Class E parts (d) and (f) within of the Town and Country Planning (Use Classes) Regulations 2020, without first obtaining planning consent from the Local Planning Authority.</p> <p>REASON: In order to protect the amenities of surrounding residential occupiers.</p>
13	Delivering and Servicing (Compliance)
	<p>CONDITION: For the hereby approved development, delivery and servicing vehicles shall ensure that they do not obstruct the footway or carriageway of Upper Street and comply with the requirements of the existing Controlled Parking Zone (CPZ).</p> <p>REASON: To ensure there is no conflict with the existing users of the footways and carriageways of a TLRN road</p>

List of Informatives:

1	Community Infrastructure Levy (CIL)
	<p>Under the terms of the Planning Act 2008 (as amended) and Community Infrastructure Levy Regulations 2010 (as amended), this development is liable to pay the London Borough of Islington Community Infrastructure Levy (CIL) and the Mayor of London's Community Infrastructure Levy (CIL).</p> <p>The Council will issue a CIL Liability Notice stating the CIL amount that will be payable on the commencement of the development. Failure to pay CIL liabilities when due will result in the Council imposing surcharges and late payment interest.</p> <p>Further information and all CIL forms are available on the Planning Portal at www.planningportal.gov.uk/cil, and the Islington Council website at www.islington.gov.uk/cil. CIL guidance is available on the GOV.UK website at www.gov.uk/guidance/community-infrastructure-levy.</p>
2	Advertisement Consent
	It is advised that a separate application is submitted for advertisement consent for the alterations to the signage.
3	Transport for London Licence
	Should the applicant wish to install scaffolding or a hoarding on the footway whilst undertaking this work, separate licences may be required with TfL, please see, https://www.tfl.gov.uk/info-for/urban-planning-and-construction/highway-licences .
4	Footway and carriageway of Upper Street
	It is advised that the footway and carriageway on Upper Street should not be blocked during the construction works, including skips or materials and temporary obstructions during the works must be kept to a minimum, and vehicles should comply with the existing parking controls.

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 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.

- National Planning Policy Framework 2019

2. Development Plan

The Development Plan is comprised of the London Plan 2016, Islington Core Strategy 2011, Development Management Policies 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 7.4 Local character

B) Islington Core Strategy 2011

- Policy CS4 Highbury Corner and Holloway Road
- Policy CS8 Enhancing Islington's character
- Policy CS9 Protecting and enhancing Islington's built and historic environment
- Policy CS13 Employment spaces

C) Islington Development Management Policies 2013

- Policy DM2.1 – Protection of Amenity
- Policy DM2.2 – Inclusive Design
- Policy DM2.3 – Heritage
- Policy DM4.2 – Entertainment and Night Time Economy
- Policy DM4.3 – Location and Concentration of Uses
- Policy DM4.6 – Local Shopping Area
- Policy DM4.8 – Shopfronts
- Policy DM8.2 – Transport Impacts
- Policy DM8.4 – Walking and cycling
- Policy DM8.6 – Delivery and servicing

3. Designations

- Upper Street (North) Conservation Area
- Highbury Corner Core Strategy Key Area
- Upper Street Local Shopping Area and Article 4 Direction (A1-A2)
- Locally Listed Building
- Within 100m of TLRN (Transport for London Road Network)
- Rail Safeguarding (Transport for London Tunnels)
- Article 4 Direction A1-A2 (Rest of the borough)