

# **Petersham Nurseries**

## **Statement of Grounds and Procedure**

**Petersham Nurseries**  
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February 2024

**T O W N**  
**L E G A L**  
**L L P**

10 Throgmorton Avenue  
London  
EC2N 2DL

[town.centre@townlegal.com](mailto:town.centre@townlegal.com)  
[townlegal.com](https://townlegal.com)

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## **Statement of Grounds and Procedure**

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# **Petersham Nurseries**

## **Statement of Grounds and Procedure**

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# 1. Introduction

- 1.1. The enforcement notice dated 15 January 2024 was issued by the London Borough of Richmond upon Thames Council ('the Council') in respect of certain alleged planning breaches at Petersham Nurseries, Petersham Road, Petersham, Richmond, TW10 7AB (herein referred to as 'the site'). (This follows withdrawal by the Council of its previous enforcement notice issued on 23 November 2023 in relation to which an appeal had been lodged by Mr Francesco Boglione. That appeal was given reference APP/L5810/C/23/3335055).
- 1.2. The enforcement notice is found at **Appendix 1** and sets out at Section 3 that the alleged breach of planning control is as follows:

*"Planning permission reference 08/4312/FUL was granted by the Council on 29 July 2009 for Continuation of Planning Permission granted 11 December 2007 (07/1235/FUL), to allow permanent mixed use as garden centre (Class A1) and café/restaurant (Class A3), subject to conditions. A copy of planning permission reference 08/4312/FUL is attached ("the Planning Permission").*

*It appears to the Council that the following conditions attached to the Planning Permission have not been complied with:*

**U27543 NS04 Hours of Use – Café/Restaurant**

*There shall be no sale of food for consumption on or off the premises during the following times: Tuesday to Sunday – before 1000hrs and after 1630hrs and on Sundays – before 1100hrs and after 1630hrs. The A3 premises shall not be open on Mondays. A notice to this effect shall be displayed at all times on the premises so as to be visible from outside.*

*REASON: To safeguard the MOL, conservation area, amenities of nearby residential properties and the area generally.*

**U27544 NS05 Café/Restaurant areas**

*The café/restaurant areas shall be confined solely to the areas identified for these purposes on Approved Drawing Number DP7/2857 for Permission 07/1235/FUL.*

*REASON: To safeguard the MOL, conservation area, amenities of nearby residential properties and the area generally.*

*These conditions are being breached because the café/restaurant is operating*

*outside of the permitted hours (in breach of condition NS04 hours of use) and the extent of the café/restaurant area has increased in size beyond that permitted under Approved Drawing Number DP7/2857 (in breach of condition NS05 café/restaurant areas).”*

1.3. On behalf of Petersham Nurseries Limited and Mr Francesco Boglione (herein collectively referred to as the ‘Appellant’), the enforcement notice is being appealed on the following grounds which are outlined in more detail in the following sections:

- Ground A;
- Ground D;
- Ground F; and
- Ground G.

## 2. Site Context

- 2.1. Petersham Nurseries is located off Petersham Road, to the rear of 143 Petersham Road, also known as Petersham House. The Nurseries comprise three glass greenhouse structures and separate brick and timber buildings, together with outdoor areas, which together accommodate the plant and shop sales and display areas, seating areas, the kitchen, toilets and staff office. The areas are shown on the plan at **Appendix 2**. The site throughout has plants/goods available for purchase and seating areas, both indoors and outdoors. It is a single planning unit which falls within Class E.
- 2.2. The site is located within Petersham Conservation Area and within Metropolitan Open Land (MOL), as designated in the adopted Local Plan. The site is accessed via Church Lane which runs between Petersham House and St Peter's Church and alongside the Nurseries. There are several listed buildings in the area – Petersham House (Grade II\*), 141 Petersham Road (Grade II), St Peter's Church (Grade II\*) and other listings within the churchyard, as well as non-designated heritage assets as designated in the Council's Local List.
- 2.3. **The Council asserts that the historic lawful use as A1 was an inappropriate use in the MOL and that the matters alleged in the enforcement notice are inappropriate development<sup>1</sup>, which is disputed by the Appellant.**
- 2.4. Petersham Meadows and a separate vehicle turning area and garage are located to the north of the site, both of which are owned by the Council. Parking is not permitted in the turning area, but it is subject to licence which allows for the turning of delivery vans, customer cars, as well as those visiting the meadows and other adjoining owners. Petersham Meadows is allocated as an Other Site of Nature Importance (OSNI) in the adopted Local Plan.
- 2.5. Petersham Nurseries is a family-owned and run business. They are a major employer, employing approximately 170 staff, most of whom live locally. Both full and part-time staff play a significant role in the local community, undertaking many charitable events and contributions over the course of the last 20 years.
- 2.6. The Petersham Nurseries ethos is to encourage positive living through consideration of the environment. They do this through responsible sourcing for all facets of the business, reducing wastage and recycling as much as possible to ensure they minimise the impact the

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<sup>1</sup> Paragraph 20 of the report to committee regarding application reference 07/1235/FUL; Page 9 of the officers report for application reference 10/2914/VRC; Page 9 of the officers report for application reference 12/0067/VRC; Page 13 of the report to committee for application reference 14/0345/VRC and reiterated the enforcement report to committee (18/0025/EN/BCN).

nursery and the café/restaurant has on the environment. The business has been awarded a Green Michelin Star, for the last four consecutive years – given to restaurants who are at the forefront of the industry for sustainable practices and operations.



### 3. Planning History

- 3.1. The site has been in use as a garden centre, selling plants and associated products to the general public since 1962. Planning history records show that planning permission was granted for greenhouse structures between 1967 and 1970 (LPA refs. 67/183, 67/884, 67/2117 and 70/560).
- 3.2. In June 1998 a Certificate of Lawful Existing Use or Development (CLEUD) for the use of the premises as '*Use as a garden centre comprising open sales and display of plants and garden centre products; covered sales and display of garden centre products; ancillary storage and equipment plus sales office; plant growing areas; and public entrance courtyard and vehicle turning and loading area*' was granted by the Council (LPA ref. 98/0525) and is appended at **Appendix 3**. The effect of the 1998 certificate was that the site could be used for open A1 retail use (now Class E) without the need for planning permission and had no restriction on hours or areas of operation.
- 3.3. A café/restaurant was opened in 2004, ancillary to the garden centre use. In 2007, following discussions with the Council, who held the view that the café/restaurant was no longer ancillary to the primary retail (A1) function of the garden centre and that a mixed use A1/A3 approval was required, a planning application was submitted to regularise the use.
- 3.4. A temporary planning permission was granted for this mixed use of the site, from the previous A1 use, was granted on 11 December 2007 (LPA Ref. 07/1235/FUL – **Appendix 4**). Condition 1 stated that the consent was for one year only, expiring on 30 November 2008. The reason the consent was temporary was to monitor and review the use after it had been in operation and to see if the impacts could be successfully mitigated, much of this was based on the success of the Green Travel Plan and mitigating impacts from travel to and from the site and the associated impacts on the Metropolitan Open Land, Conservation Area, neighbouring listed buildings and generally the surrounding environment.
- 3.5. During the course of the temporary permission, the Green Travel Plan was adhered to.
- 3.6. An application for planning permission to allow permanent A1/A3 mixed use of the site was approved by the Council on 29 July 2009 (LPA ref. 08/4312/FUL – **Appendix 5**). This was approved by the Council following a year of observing travel management in line with the Green Travel Plan and found that there was no harm to neighbour amenity, Metropolitan Open Land, important views from Richmond Hill or highways and parking in the area. The permanent permission was subject to a number of conditions and the wording and status of the conditions attached to the decision notice are set out below.

Condition reference	Condition wording	Status
U27539 NS01 - Green Travel Plan & Review	<p>Within 3 months of the date of this permission a full travel plan which accords with Transport for London's "Guidance for Workplace Travel Planning for Development (2008)" shall be developed and submitted to and approved by the local planning authority in writing ("first approval date") and shall be implemented on the first approval date and shall be reviewed and revised annually by each anniversary of the first approval date and in accordance with the requirements set out in i) to l v) below:</p> <p>i) by a date no later than 10 months after the first approval date a survey methodology shall be submitted for the travel plan which shall be iTrace compliant to the local planning authority for its approval in writing</p> <p>ii) by a date no later than 12 months after the first approval date a revised travel plan incorporating the results arising from the approved survey methodology shall be submitted to the local planning authority for its approval and the approved revised travel plan including any revisions or suggestions made by the local planning authority shall be implemented upon receipt of such approval;</p> <p>iii) by a date no later than 2 months prior to the submission of a revised travel plan each year in accordance with iv) below, a survey methodology for the travel plan which is iTrace compliant shall be submitted to and approved by the local planning authority;</p> <p>iv) a revised travel plan shall be submitted to the local planning authority for its approval annually by each anniversary of the first approval date for a period of 10 years from the first approval date and on each occasion the</p>	The condition has been discharged via references 08/4312/DD02 and 08/4312/DD04

	approved revised travel plan including any revisions or suggestions made by the local planning authority shall be implemented upon receipt of such approval.	
U27540 NS02 - Cycle Parking	Additional cycle parking facilities shall be provided in accordance with detailed drawings to be submitted to and approved in writing by the Local Planning Authority, such drawings to show the position, design, materials and finishes thereof.	Discharged under reference 08/4312/DD02
U27541 NS03 - Servicing and Deliveries	Within 6 weeks of the permission hereby granted the applicant is required to submit a servicing and delivery schedule to be submitted to and approved in writing by the Local Planning Authority, and should include measures to prevent servicing and delivery taking place during the peak hours of 11:30 to 15:00 hours Monday – Saturday and at any time on Sunday and restrictions on the weights of vehicles allowed to visit the site.	Discharged under reference 08/4312/DD03
U27543 NS04 - Hours of Use – Café/Restaurant	There shall be no sale of food for consumption on or off the premises during the following times: Tuesday to Sunday – before 10:00hrs and after 16:30hrs and on Sundays – before 11:00hrs and after 16:30hrs. The A3 premises shall not be open on Mondays. A notice to this effect shall always be displayed at all times on the premises so as to be visible from outside.	Non-compliance since 2009
U27544 NS05 – Café/Restaurant Areas	The Café/Restaurant areas shall be confined solely to the areas identified for these purposes on Approved Drawing Number DP7/2857 for Permission 07/1235/FUL.	Non-compliance since 2009
U27545 NS06 - Extraction Equipment	Any equipment required to effectively suppress the emission of fumes or smell and obviate any other nuisance from cooking	Discharged under reference 08/4312/DD01

	processes carried out in the premises to be installed shall be submitted to and approved in writing by the Local Planning Authority.	
U27546 NS07 - Air Conditioning Equipment	No air conditioning apparatus, equipment or ducting shall be erected, placed or fixed to any part of the roof or external faces of the building(s), otherwise than as submitted to agreed in writing by the Local Planning Authority.	No action required
U27547 NS08 – Personal Permission	The A1/A3 mixed use hereby permitted shall only be carried out by Mr Francesco Boglione for the period during which the premises are owned by Mr Francesco Boglione.	Superseded by application reference 21/3108/ES191

- 3.7. The mixed A3 use was restricted by areas and hours. The A1 use had no such restriction and could operate without restrictions within the site's red line boundary.
- 3.8. An application for planning permission to vary condition NS04 (hours of use) of LPA ref. 08/4312/FUL to include opening between 19:00 and 23:00 on Thursday, Friday and Saturday evenings was submitted to the Council in 2010 but was withdrawn on 11 August 2011 (LPA ref. 10/2914/VRC – **Appendix 6**). Though the application was not determined, an officer's report was prepared and raises concerns regarding alleged impacts as a result of impact on the MOL and residential amenity. **The report notes that evening restaurant openings have occurred for at least two years. The report stated that it was difficult to support an objection to the character and amenity of the Conservation Area and transport concerns may be able to be overcome with more rigorous surveys, such as measuring a non-evening as a baseline against an evening operation to capture the difference in car trips.**
- 3.9. A subsequent application for planning permission was submitted to open in the evening on Saturdays and was refused by the Council on 29 March 2012 (LPA ref. 12/0067/VRC – **Appendix 7**). **This application was refused again due to the alleged detriment of the character of the MOL and adverse effect on residential amenity. The officer's report confirms that the impact to the Conservation Area is unsustainable as a reason for refusal and also acknowledges that issues regarding transport had been overcome.**
- 3.10. A further application for planning permission was submitted on 3 February 2014 and was refused on 18 January 2018 (LPA ref. 14/0345/VSC – **Appendix 8**) for the variation of condition NS04 to allow the sale of food for the consumption on the premises between the hours of 9:00 and 18:00 on Mondays, Tuesdays and Wednesdays, 9:00 and 23:00 on

Thursdays, Fridays and Saturdays and between 11:00 and 18:00 on Sundays. The Environmental Health Officer confirmed that they had no objection to evening openings insofar as they were properly managed (which they believed they could be). The application was refused on the basis of inappropriate use which would allegedly be detrimental to the character and function of the MOL and would result in adverse effect on residential amenity.

- 3.11. An informative attached to the decision notice issued on 18 January 2018 for LPA ref. 14/0345/VSC advised that:

*“Officers understand that the use of the premises is currently operating in breach of both condition NS05 ‘Café/Restaurant Areas’ and NS04 ‘Hours of Use – Café/Restaurant of planning permission 08/4312/FUL. This application has been determined on the basis of the information submitted to it, which has included no request to vary condition NS05 ‘Café/Restaurant Areas’ or the associated drawing. The Council is ready to enter into formal pre-application discussions to advise the applicants of relevant policy and guidance in respect of this matter.”*

- 3.12. In response to the refusal, the applicant entered into pre-application discussions with the Council and, following a meeting in the Spring of 2018, submitted a draft application to the Council in December 2018, but no response was received from the Council. A planning contravention notice was received on 9 April 2021, without prior warning.
- 3.13. On 31 August 2021, a CLEUD application was submitted to the Council regarding conditions NS04, NS05 and NS08 of 08/4312/FUL (LPA ref: 21/3108/ES191 – **Appendix 9**). The CLEUD application was submitted due to the passage of time and the continuous use of the operational areas of the site and the evening operations and was supported by significant evidence. The period that the application covered was between 2009 – 2019 ie since the grant of planning permission on 29 July 2009. The submitted evidence was from a variety of sources and demonstrates that the breach of conditions NS04 and NS05 had been continuous over at least a ten-year period. Over this period and as demonstrated above, there were several planning applications that were submitted to the Council, which was fully aware of the extent of the operation at Petersham Nurseries. The Council decided not to pursue enforcement action.
- 3.14. On 4 September 2023, the Council amended the description of the certificate application and granted a certificate for the following:

*1. The café/restaurant has been in operation selling food and beverages to visiting customers between 10am-5pm Tuesday to Sunday excluding Mondays in exceedance of the hours specified in condition NS04 of LPA ref: 08/4312/FUL*

*2. The areas used for the preparation, sale and consumption of food and beverages have operated in exceedance of the areas specified in condition NS05 of LPA ref 08/4312/FUL to the extent that they have also operated in the areas identified as 1 and 2 within the submitted Statement of Truths insofar as they also correlate with the red line delineated on the updated drawing Reference Plan 02-277-03 RP02 received October 2022.*

*3. The business has been carried out by Petersham Nurseries Ltd, notwithstanding that the land has remained in the ownership of Francesco Boglione.*

- 3.15. The CLEUD certified a small extension of opening hours, a larger operational restaurant/café area and that the personal condition was no longer applicable. The Council did not accept the evidence submitted regarding evening use and of the café/restaurant operating over the full area the CLEUD sought confirmation for.
- 3.16. On 13 September 2023, the Planning Committee considered a report by officers to take enforcement action against Petersham Nurseries (contained at **Appendix 10**). The Committee resolved to take enforcement action against all evening operations and those seating areas used in the daytime that were closest to neighbouring properties. **The Council accepted that there would be no impact on heritage assets.**

### **Licensing**

- 3.17. In September 2022, the Council granted Petersham Nurseries Ltd a new premises licence under the Licensing Act 2003. The opening hours authorised under the new licence are: Monday - 09:00 to 17:00; Tuesday - 09:00 to 17:00; Wednesday - 09:00 to 23:00; Thursday - 09:00 to 23:00; Friday - 09:00 to 23:00; Saturday - 09:00 to 23:00 and Sunday - 11:00 to 17:00. The licence permits the sale of alcohol up to 17:00hrs seven days a week and additionally, on no more than three days per week on Wednesdays to Saturdays, up until 22:30. The licence, report to committee and associated appendices are contained at **Appendix 11**.
- 3.18. As part of the application, Petersham Nurseries offered up several additional controls which have formed conditions on the premises licence. This includes limiting the sale of alcohol after 5pm to a more limited area (Greenhouse 1 and the pergola area – **Appendix 2**), limiting the sale of alcohol beyond 5pm to three nights per week, and changing the start time on Sundays to be after 11am to ensure no conflict with St Peter's Church, and specific conditions agreed with the police. The licence had been subject to public consultation and assessed the four licensing objectives, which include public nuisance. **This means that the issues of noise and disturbance resulting from people arriving and leaving later in the evening were considered acceptable.**

- 3.19. The premises licence was granted and has been in operation since November 2022 with no complaints. The premises licence is a material planning consideration.

## 4. Grounds of Appeal

4.1. The appeal is made on the following grounds:

- **Ground A:** As set out in further detail below, planning permission should be granted for evening openings (illustrated in the purple areas) and the daytime seating areas (pink areas) marked on the map at **Appendix 12**. Planning permission should be granted as it is in accordance with the Development Plan as a whole, national policy in the NPPF and PPG, and there are no other considerations which indicate otherwise.
- **Ground D:** The breach of planning control for evening operations and seating areas marked on the map at Appendix 12 has occurred without significant disruption for more than 10 years.
- **Ground F:** The steps required by the notice regarding the activities exceed what is necessary to remedy the breach of planning control.
- **Ground G:** The period specified in the notice is insufficient and unreasonable to remedy the alleged breach as it will have severe impacts on the local employment market and supply chains.

### Ground A

4.2. Permission is sought for an extension to the hours of operation to allow up to three evenings per week between Wednesday to Saturday (the seating areas are shown in purple on the map at **Appendix 12**). This regularises the operation permitted for the premises under a premises licence granted by the Council in 2022. The relevant planning fee for this application has been paid and a copy of the receipt is contained at **Appendix 13**.

4.3. Permission is also sought for an extended area for the preparation, consumption of food and beverages in the area marked in pink on the map at **Appendix 12**. This area will only be used for seating in the daytime.

4.4. The Council's Development Plan comprises the London Plan (2021) and Richmond's Local Plan (2018). The National Planning Policy Framework (NPPF, December 2023) is a material planning consideration. The site falls within the Ham and Petersham Neighbourhood Plan area and there are other supplementary planning documents which are material to this appeal. The Council are preparing a new Local Plan which was submitted for examination in January 2024. The emerging Local Plan and its evidence base are of limited weight.

4.5. The site is designated in the Local Plan as MOL, which has the same level of protection as Green Belt. **The Appellant does not consider that the site meets MOL purposes in national**



planning policy or that the matters the subject of this appeal amount to “inappropriate development”. Evidence from the activities which have taken place over many years will also show that the evening use and use of the areas the subject of the enforcement notice has no unacceptable impact on MOL openness.

### Evening openings

- 4.6. Evidence will be provided that confirms evening ‘supper clubs’ have always been strictly managed, operating on a reservation only basis and in line with the Appellant’s own Evening Management Plan which controls movements and minimises disturbance. The Evening Management Plan sets a strict management procedure to limit the noise arising from vehicles and customers leaving the site in the evening. Transport operations arising from evening operation are in accordance with the Development Plan, as a whole, and specific policies in the adopted Local Plan including LP1, LP3 LP4, LP5, LP8, LP10, LP12, LP13, LP43, LP44 and LP45 and emerging Local Plan policies including LP1, LP2, LP7, LP26, LP28, LP29, LP30, LP31, LP34, LP35, LP45, LP47, LP48 and LP53.
- 4.7. Evidence will demonstrate that evening openings are acceptable in relation to the sense of openness of the Metropolitan Open Land and will not create an urbanising element as a result of noise, light, built form or highways perspective and are in accordance with adopted Local Plan including policies LP1, LP5, LP12, LP13 and emerging Local Plan policies, including LP2, LP34 and LP35.
- 4.8. The Appellant understands only two formal complaints to the Council’s Environmental Health team have been received over the last 19 years of operation. We understand that one of these was a private event at Petersham House. Evidence will demonstrate that noise arising from the evening openings are acceptable in relation to adjoining or nearby neighbours and is in accordance with adopted Local Plan policies including LP1, LP3, LP4, LP8, LP10, LP44, LP45 and emerging Local Plan policies including LP2, LP7, LP21, LP26, LP28, LP34, LP35, LP40, LP45, LP47, LP48 and LP53. No specific policies that relate to noise are set out by the Council and it can be inferred that concerns as to noise were not a reason for issuing the enforcement notice.
- 4.9. Evidence will also be provided to demonstrate that the relationship between the site and Petersham Meadows, an Other Area of Nature Importance (OSNI), is acceptable and accords with the Development Plan, including LP10, LP12, LP13 and LP18 of the adopted Local Plan and emerging Local Plan policies, including LP34, LP35, and LP40.
- 4.10. Evidence will be provided that the evening operation contributes to the night-time economy and tourism of the area and is supported by the Development Plan, when read as a whole, and specific policies in the adopted Local Plan, including LP1, LP40, LP43 and emerging Local Plan policies including LP1, LP2, LP7, LP21 and LP26 and the Ham and Petersham Neighbourhood Plan.

- 4.11. The site has operated as a garden nursery since the 1960s, with the majority of greenhouses on site since the 1970s. The site is surrounded by a mix of brick walls and hedges that obscure the site from outside view. The greenhouses have electricity and are internally lit. The paths between the greenhouses and to the entrance of the site are lit by fairy lights (i.e. low levels of lighting). Technical information and expert witnesses will demonstrate that any light spill from the site or from vehicles leaving the site is in keeping with the area and is acceptable in relation to the character, openness and visual impact of the MOL, the Petersham Conservation Area or residential amenity. **The retail fallback position will be explained to demonstrate that a purely retail operation could operate all day into the evening, seven days a week, without requiring consent and this could include external lighting and music (see below).**
- 4.12. The CLEUD issued under LPA ref: 21/3108/ES191 permits operation of the café/restaurant selling food and beverages between 10am-5pm Tuesday to Saturday and 11am – 5pm on Sundays. Customers can make a reservation for the café but the Teahouse operates on a ‘walk-in’ basis. Customers can visit the retail element of the site without a reservation. This often means that if a table is not available in the café or Teahouse, customers will browse in the retail element while a table becomes available. Tables will be used several times throughout the day. There is no limit on the number of customers in the day time.
- 4.13. In contrast, the evening operation is managed on a ‘reservation only’ basis and is limited to Greenhouse 1 and the pergola area (used only occasionally during warmer months). When customers make their reservation, they are provided with sustainable travel information, are off site by 11pm and there are parking attendants ensuring vehicles are moved quickly and efficiently off site. The evening dining has one sitting.
- 4.14. The number of customers for evening dining is far fewer than the daytime use, which benefits from planning permission.
- 4.15. Evidence will be presented in relation to the existing night-time character of the local area, a description of the lighting of the site and an assessment of effect on night-time character. The evidence will also demonstrate that in the evenings the impacts have been shown to be acceptable in relation to residential amenity and the MOL, in terms of traffic, noise and heritage considerations.

### **Operational Areas**

- 4.16. Technical information and expert witnesses will demonstrate that the seating areas on the reference plan are acceptable in relation to neighbouring occupiers and MOL from a noise, heritage, light and transport perspective and are in accordance with the Development Plan and adopted and emerging Local Plan policies outlined in the ‘Evening Operation’ section

above.

### **Fallback Position**

- 4.17. The 2009 permanent permission (LPA ref: 08/4312/FUL) has no restrictions on hours, areas of use or scale of A1 sales. The 2009 permission stated the lawful use of the site was A1/A3 (with restrictions on the A3 operation in terms of areas and hours of operation). No such limitations exist on the A1 operation.
- 4.18. Following the change to the Use Class Order in September 2020, A1 use was superseded by Class E which permits the change between uses within the Class E operation without planning permission.
- 4.19. Submissions will be made that there are two fallback positions that are material to the consideration of the ground (A) appeal:
- 4.20. **Fallback 1: The site could operate as Class E across the whole site with no restriction of hours or areas of operation in planning terms (except those set by the conditions in LPA ref: 08/4312/FUL regarding café/restaurant operation).**
- 4.21. **Fallback 2: The CLEUD granted in 2023 (LPA ref: 21/3108/ES191) sets restrictions on areas and hours of operation for the café/restaurant use but does not limit the number of covers/tables/chairs. The café/restaurant operation could be intensified during the permitted hours. There is no restriction on the retail (Class E) operation in terms of areas or hours of operation (other than those set by condition regarding the café/restaurant operation).**
- 4.22. For both fallback positions, evidence will be supplied that the operation could have a more impactful operation compared to the operation sought for the ground (A) appeal.
- 4.23. The site falls within the MOL. **The use of the restaurant in the evenings is not considered to be inappropriate development in the MOL and nor is the use of the areas identified in the enforcement notice.** There is no restriction in operational areas or hours of the A1 (now Class E) use. The A3 element has intensified, and this is acknowledged in the CLEUD decision for LPA ref: 21/3108/ES191. As such, the difference in managed evening operation proposed as part of the ground (A) appeal is not material when viewed against the fallback positions. However, if it is deemed that there is a material difference and that, contrary to the Appellant's submissions, the evening restaurant use is inappropriate development in the MOL, Very Special Circumstances will be presented and demonstrated that planning permission should be granted and that the development accords with the development plan as a whole, including the adopted Local Plan policies LP1, LP5, LP12, LP13 and emerging Local Plan policies LP2, LP34 and LP35.

### **Ground D**

- 4.24. The Appellant is appealing ground (D) as the evening openings and operational areas have

been occurring on a continuous basis for more than 10 years and evidence will be supplied including, but not limited to, timestamped photographs, till receipts, staff timecards, officer reports from historic planning applications and press articles. Under oath, witnesses will supply firsthand evidence to support the ground (D) appeal.

### **Ground F**

- 4.25. The Appellant is appealing ground (F) as the steps required by the notice to remedy the breach exceed what is necessary. The Council require all evening operation to stop and some outdoor seating areas to cease. Evidence will be provided and reiterated by expert witnesses that evening openings have taken place continuously for more than 10 years. The evenings are managed effectively to not harm the residential amenity, Conservation Area or MOL. The requirements set out in the enforcement notice exceed what is necessary to remedy the breach and would have excessive detrimental impacts on this successful business.
- 4.26. Furthermore, when considered against the fallback position of the site benefitting from unrestricted retail use (except for the limited sale of food and beverages), the steps set out by the Council in the notice are excessive.

### **Ground G**

- 4.27. The Appellant will appeal ground (G) as the notice takes effect two months after the enforcement notice comes into effect. If the Appellant had to adhere to the notice, it would mean ceasing all evening openings and restricting the operational area significantly. This would result in a substantial loss of staff, impact the wider supply chain and will harm the viability of the business. The pressure on small businesses has been immense over the last several years so the business would require a period of at least six months is required to comply with the notice.

## 5. Appeal Procedure

- 5.1. The appeal should be heard by public inquiry due to the nature of the evidence. Evidence will be given under oath by witnesses to explain the operation of the site being continuous for a period exceeding 10 years. The topics by which evidence will be given will also need to be tested by an advocate and be given by experts in the relevant field. Expert witnesses will be called to give evidence including, but not limited to, planning, highways, noise, heritage and landscape and visual impacts. These are complex matters that must be thoroughly tested.
- 5.2. The appeal has generated substantial local interest and will be contentious. The site employs over 170 predominantly local residents, does significant and important outreach in the community, is a nationally and internationally recognised restaurant. The most recent application attracted local interest amounting to a petition with over 6,500 signatories in support with only 36 comments (comprising 34 objections and two observations) to the most recent application and a petition with over 6,500 signatories in support. There has always been significant interest in this site; the first planning application in 2007 received over 5,600 representations via petition in support. A similar level of interest is expected as part of this appeal.
- 5.3. Witnesses will give evidence under oath with regards to the alleged breach and expert witnesses will be called to give evidence on several topics, including but not limited to, planning, highways, noise, heritage, landscape and visual impacts. Following submission of the appeal referred to in paragraph 1.1, the Planning Inspectorate had confirmed that a public inquiry would be appropriate and had given a time estimate of three days.
- 5.4. The Appellant reserves its right to claim for costs and to add to or amend these grounds should further information be disclosed which has been requested pursuant to the Freedom of Information Act 2000.