

Appendix 9

Environment Directorate / Development Management

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Petersham Nurseries Ltd
Phil Villars, PMV Planning

Letter Printed 4 September 2023

FOR DECISION DATED
4 September 2023

Dear Sir/Madam

The Town and Country Planning Act 1990, (as amended)
Decision Notice

Application: 21/3108/ES191
Your ref:
Our ref: DC/WEW/21/3108/ES191/ES191
Applicant: Petersham Nurseries Ltd
Agent: Phil Villars, PMV Planning

WHEREAS in accordance with the provisions of the Town and Country Planning Act 1990 and the relevant Orders made thereunder, you have made an application received on **2 September 2021** for a **CERTIFICATE OF LAWFUL USE OR DEVELOPMENT** relating to:

Petersham Nurseries Petersham Road Petersham Richmond

for

A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner:

- 1. The cafe/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**

You are advised that the above works/use at the premises edged red on the decision drawings specified on the attached schedule were/was lawful within the meaning of

Section 191 of the Town and Country Planning Act 1990 (as amended) for the reason(s) summarised and detailed on the attached schedule.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. Angus', with a long horizontal flourish extending to the right.

Robert Angus
Head of Development Management

SCHEDULE OF CONDITIONS AND INFORMATIVES FOR APPLICATION 21/3108/ES191

APPLICANT NAME

Petersham Nurseries Ltd

AGENT NAME

Phil Villars, PMV Planning

SITE

Petersham Nurseries Petersham Road Petersham Richmond

PROPOSAL

A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner:

1. The cafe/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

The reason(s) and/or informatives(s) applicable to this application are as follows:

SUMMARY OF CONDITIONS AND INFORMATIVES

CONDITIONS

U0164056	Approval of ES191
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INFORMATIVES

U0082843	Decision drawings - Part 1
U0082844	Decision Drawings - Part 2
U0082845	Decision Drawings - Part 3
U0082846	Decision drawings - Part 4
U0082847	Split decision

DETAILED CONDITIONS AND INFORMATIVES

DETAILED CONDITIONS

U0164056 Approval of ES191

It has been satisfactorily proven on the balance of probability that the breach of condition described in the modified description of development has been continuously taking place for more than ten years at the time of the submission of this application.

DETAILED INFORMATIVES

U0082843 Decision drawings - Part 1

For the avoidance of doubt the Drawing(s) No(s) to which this decision refers are as follows:-

- Item 1.1 - Statement of Truth by Skye Gyngell received on 15 March 2022
- Item 1.2 - Statement of Truth by Charlotte Senn
- Item 1.3 - Statement of Truth by Bobby Melton
- Item 1.4 - Statement of Truth by Charlotte Hollands
- Item 1.5 - Statement of Truth by Yvonne Damant
- Item 1.6 - Statement of Truth by Francesco Boglione
- Item 2.1 - Unsigned/unprocessed Temporary Event Notice - Saturday 7 June 2008 between 18.00-23.00
- Item 2.2 - Unsigned/unprocessed Temporary Event Notice - Wednesday 18 June 2008 between 18.00-00.00
- Item 2.7 - Temporary Event Notice Application form - 3 April 2010 between 18.00-23.30 (café in Greenhouse no.1)
- Item 2.10 - Temporary Event Notice Application form - 1 May 2010 between 18.00-23.30 (café in Greenhouse no.1)
- Item 2.12 - Temporary Event Notice Application form - 5 June 2010 between 18.00-23.30 (café in Greenhouse no.1)
- Item 2.14 - Temporary Event Notice Application form - 3 July 2010 between 18.00-23.30 (café in Greenhouse no.1)
- Item 2.16 - Temporary Event Notice Application form - 7 August 2010 between 18.00-23.30 (café in Greenhouse no.1)
- Item 2.17 - Temporary Event Notice Application form - 4 September 2010 between 19.00-23.00
- Item 2.18 - Temporary Event Notice Application form - 1 October 2010 between 19.00-23.00
- Item 2.19 - Temporary Event Notice Application form - 23 October 2010 between 19.00-23.00
- Item 2.20 - Temporary Event Notice Application form - 6 November 2010 between 19.00-23.00
- Item 2.21 - Temporary Event Notice Application form - 20 November 2010 between 19.00-23.00
- Item 2.22 - Temporary Event Notice Application form - 4 December 2010 between 19.00-23.00
- Item 2.23 - Temporary Event Notice Application form - 20 December 2010 between 19.00-23.00
- Item 2.25 - Temporary Event Notice Application form - 7 May 2011 between 18.00-23.30
- Item 2.26 - Temporary Event Notice Application form - 14 May 2011 between 18.00-23.30
- Item 2.27 - Temporary Event Notice Application form - 18 May 2011 between 18.00-23.30
- Item 2.28 - Temporary Event Notice Application form - 2 June 2011 between 18.00-23.30

Item 2.29 - Temporary Event Notice Application form - 4 June 2011 between 18.00-23.30

Item 2.30 - Temporary Event Notice Application form - Thursday 9 June 2011 between 18.00-23.30

Item 2.31 - Temporary Event Notice Application form - Saturday 11 June 2011 between 18.00-23.30

Item 2.32 - Temporary Event Notice Application form - Thursday 16 June 2011 between 18.00-23.30

Item 2.33 - Temporary Event Notice Application form - Saturday 18 June 2011 between 18.00-23.30

Item 2.34 - Temporary Event Notice Application form - Thursday 23 June 2011 between 18.00-23.30

Item 2.35 - Temporary Event Notice Application form - Saturday 25 June 2011 between 18.00-23.30

Item 2.40 - 2.41 - Temporary Event Notice Application form - 18:00 Friday 4 May 2012 - 23.00 Saturday 5 May 2012

Item 2.42 - Temporary Event Notice Application form - Saturday 12 May 2012 between 19.00-23.00

Item 2.43 - Temporary Event Notice Application form - Saturday 19 May 2012 between 19.00-23.00

Item 2.44 - Temporary Event Notice Application form - Saturday 26 May 2012 between 19.00-23.00

Item 2.45 - Temporary Event Notice Application form - Saturday 9 June 2012 between 19.00-23.00

Item 2.46 - Temporary Event Notice Application form - Saturday 16 June 2012 between 19.00-23.00

Item 2.47 - Temporary Event Notice Application form - Saturday 23 June 2012 between 19.00-23.00

Item 2.48 - Temporary Event Notice Application form - Saturday 7 July 2012 between 19.00-23.00

Item 2.49 - Temporary Event Notice Application form - Saturday 14 July 2012 between 19.00-23.00

Item 2.50 - Temporary Event Notice Application form - Saturday 21 July 2012 between 19.00-23.00

Item 2.51 - 2.52 - Temporary Event Notice Application form - 18:00 Friday 27 July 2012 - 23.00 Saturday 28 July 2012

Item 2.53 - 2.54 - Temporary Event Notice Application form - 18:00 Friday 29 June - 23.00 Saturday 30 July (No year)

Item 2.55 - 2.56 - Temporary Event Notice Application form - 18:00 Friday 3 August 2012 - 23.00 Saturday 4 August 2012

Item 2.61 - Temporary Event Notice Application form - Saturday 20 April 2013 between 18.00-23.30

Item 2.62 - Temporary Event Notice Application form - Saturday 27 April 2013 between 18.00-23.30

Item 2.64 - Temporary Event Notice Application form - Saturday 18 May 2013 between 18.00-23.30

Item 2.64 - Temporary Event Notice Application form - Friday 24 May 2013 between 18.00-23.30

Item 2.65 - 2.66 - Temporary Event Notice Application form - 18:00 Friday 24 May 2013 - 23.00 Saturday 25 May 2013

Item 2.67 - Temporary Event Notice Application form - Saturday 1 June 2013 between 18.00-23.30

Item 2.68 - 2.69 - Temporary Event Notice Application form - 18:00 Friday 14 June 2013 - 23.00 Saturday 15 June 2013

Item 2.70 - 2.71 - Temporary Event Notice Application form - 18:00 Friday 12 July 2013 - 23.00 Saturday 13 July 2013

Item 2.72 - Temporary Event Notice Application form - Friday 2 August 2013 between 17.00-24.00

Item 2.73 - Temporary Event Notice Application form - Saturday 14 September 2013 between 18.30-24.00

Item 2.75 - Temporary Event Notice Application form - Friday 13 December 2013
between 17.00 - 23.30

Item 2.77 - Temporary Event Notice Application form - Friday 14 February 2014
between 17.00 - 24.00

Item 2.78 - 2.79 - Temporary Event Notice Application form - 18:00 Friday 16 May 2014
- 23.00 Saturday 17 May 2014

Item 2.80 - 2.81 - Temporary Event Notice Application form - 18:00 Thursday 5 June
2014 - 24.00 Friday 6 June 2014

Item 2.81 - 2.82 - Temporary Event Notice Application form - 18:00 Friday 6 June 2014
- 24.00 Saturday 7 June 2014

Item 2.83 - Temporary Event Notice Application form - Saturday 21 June 2014 between
18.00-24.00

Item 2.84 - Temporary Event Notice Application form - 17.00 Thursday 17 July 2014 to
24.00 Saturday 19 July 2014

Item 2.87 - Temporary Event Notice Application form - 18.00 Thursday 7 August to
24.00 Saturday 9 August 2014

Item 2.90 - Temporary Event Notice Application form - 18.00 Thursday 18 September
2014 to 24.00 Saturday 20 September 2014

Item 2.93 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 29
November 2014

Item 2.100 - Temporary Event Notice Application form - 18.00 - 24.00 Friday 5
December 2014

Item 2.101 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 6
December 2014

Item 2.102 - Temporary Event Notice Application form - 18.00 - 24.00 Friday 19
December 2014

Item 2.103 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 20
December 2014

Item 2.104 - Temporary Event Notice Application form - 17.00 - 24.00 Saturday 14
February 2015

Item 2.105 - Temporary Event Notice Application form - 18.00 Thursday 14 May 2015 -
24.00 Saturday 16 May 2015

Item 2.108 - Temporary Event Notice Application form - 18.00 Thursday 4 June 2015 -
24.00 Saturday 6 June 2015

Item 2.111 - Temporary Event Notice Application form - 17.00 - 24.00 Friday 19 June
2015

Item 2.113 - Temporary Event Notice Application form - 18.00 Thursday 9 July 2015 -
24.00 Saturday 11 July 2015

Item 2.116 - Temporary Event Notice Application form - 18.00 Thursday 23 July 2015 -
24.00 Saturday 25 July 2015

Item 2.119 - Temporary Event Notice Application form - 17.00 - 24.00 Saturday 26
September 2015

Item 2.121 - Temporary Event Notice Application form - 18.00 Friday 23 October 2015 -
24.00 Saturday 24 October 2015

Item 2.126 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 14
November 2015

Item 2.129 - Temporary Event Notice Application form - 18.00 - 24.00 Friday 4
December 2015

Item 2.130 - Temporary Event Notice Application form - 18.00 - 24.00 Friday 11
December 2015

Item 2.131 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 12
December 2015

Item 2.133 - Temporary Event Notice Application form - 18.00 Friday 12 February 2016
- 24.00 Saturday 13 February 2016

Item 2.135 - Temporary Event Notice Application form - 18.00 - 24.00 Friday 18 March
2016

Item 2.136 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 16 April
2016

Item 2.137 - Temporary Event Notice Application form - 18.00 Thursday 5 May 2016 -
24.00 Saturday 7 May 2016

Item 2.140 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 28 May 2016

Item 2.141 - Temporary Event Notice Application form - 18.00 Thursday 23 June 2016 - 24.00 Saturday 25 June 2016

Item 2.144 - Temporary Event Notice Application form - 18.00 Thursday 7 July 2016 - 24.00 Saturday 9 July 2016

Item 2.147 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 22 October 2016

Item 2.150 - Temporary Event Notice Application form - 18.00 - 24.00 9 December 2016

Item 2.152 - Temporary Event Notice Application form - 18.00 Thursday 15 December 2016 - 24.00 Saturday 17 December 2016

Item 2.155 - Temporary Event Notice Application form - 18.00 Friday 10 February 2017 - 24.00 Saturday 11 February 2017

Item 2.161 - Temporary Event Notice Application form - 18.00 7 July 2017 - 24.00 8 July 2017

Item 2.165 - Temporary Event Notice Application form - 18.00 - 24.00 13 July 2017

Item 2.166 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 29 July 2017

Item 2.167 - Temporary Event Notice Application form - 18.00 - 24.00 Saturday 2 September 2017

Item 2.168 - Temporary Event Notice Application form - 18.00 - 24.00 Thursday 28 September 2017

Item 2.169 - Temporary Event Notice Application form - 18.00 - 24.00 Thursday 26 October 2017

Item 2.170 - Temporary Event Notice Application form - 18.00 - 24.00 Friday 27 October 2017

Item 2.171 - Temporary Event Notice Application form - 18.00 - 24.00 Friday 3 November 2017

Item 2.172 - Temporary Event Notice Application form - 18.00 - 24.00 Friday 17 November 2017

Item 2.173 - Temporary Event Notice Application form - 18.00 Thursday 30 November 2017 - 24.00 Friday 1 December 2017

Item 2.176 - Temporary Event Notice Application form - 18.00 Thursday 14 December 2017 - 24.00 Saturday 16 December 2017

Item 2.180 - Temporary Event Notice Application form - 18.00 Thursday 15 February 2018 - 24.00 Friday 16 February 2018

Item 2.181 - Temporary Event Notice Application form - 18.00 10 May 2018 - 24.00 11 May 2018

Item 2.185 - Temporary Event Notice Application form - 18.00 - 24.00 Thursday 7 June 2018

Item 2.186 - Temporary Event Notice Application form - 18.00 - 24.00 14 June 2018

Item 2.187 - Temporary Event Notice Application form - 18.00 21 June 2018 - 24.00 22 June 2018

Item 2.189 - Temporary Event Notice Application form - 18.00 - 24.00 29 June 2018

Item 2.190 - Temporary Event Notice Application form - 18.00 5 July 2018 - 24.00 6 July 2018

Item 2.193 - Temporary Event Notice Application form - 18.00 - 24.00 1 September 2018

Item 2.194 - Temporary Event Notice Application form - 18.00 - 24.00 21 September 2018

Item 2.196 - Temporary Event Notice Application form - 18.00 - 24.00 29 November 2018

Item 2.198 - Temporary Event Notice Application form - 18.00 - 24.00 7 December 2018

Item 2.200 - Temporary Event Notice Application form - 18.00 13 December 2018 - 24.00 15 December 2018

Item 2.203 - Temporary Event Notice Application form - 18.00 14 February 2019 - 24.00 15 February 2019

Item 2.205 - Temporary Event Notice Application form - 18.00 - 24.00 23 March 2019

Item 2.206 - Temporary Event Notice Application form - 18.00 2 May 2019 - 24.00 3 May 2019

Item 2.208 - Temporary Event Notice Application form - 18.00 - 24.00 16 May 2019
 Item 2.209 - Temporary Event Notice Application form - 18.00 6 June 2019 - 24.00 7 June 2019
 Item 2.213 - Temporary Event Notice Application form - 18.00 11 July 2019 - 24.00 12 July 2019
 Item 2.215 - Temporary Event Notice Application form - 18.00 - 24.00 24 August 2019
 Item 2.219 - Temporary Event Notice Application form - 18.00 - 24.00 31 October 2019
 Item 2.220 - Temporary Event Notice Application form - 18.00 - 24.00 1 November 2019
 Item 2.221 - Temporary Event Notice Application form - 18.00 - 24.00 7 November 2019
 Item 2.222 - Temporary Event Notice Application form - 18.00 14 November 2019 - 24.00 15 November 2019
 Item 2.224 - Temporary Event Notice Application form - 18.00 - 24.00 21 November 2019
 Item 2.226 - Temporary Event Notice Application form - 18.00 - 24.00 29 November 2019
 Item 2.227 - Temporary Event Notice Application form - 18.00 - 24.00 6 December 2019
 Item 2.228 - Temporary Event Notice Application form - 18.00 11 December 2019 - 24.00 13 December 2019
 Item 3.1 - Charity Dinner Menu - Tuesday 27 June 2006 (No corresponding TEN)
 Item 3.2 - Supper Club Menu - Saturday 1 May 2010 (event corresponds with Item 2.10 - Temporary Event Notice Application form)
 Item 3.3 - Supper Club Menu - Friday 1 October 2010 (event corresponds with Item 2.18 - Temporary Event Notice Application form)
 Item 3.4 - Supper Club Menu - Saturday 3 July 2010 (event corresponds with Item 2.14 - Temporary Event Notice Application form)
 Item 3.5 - Supper Club Menu - Saturday 4 April 2010 (No corresponding TEN) (same as Item 3.6) (Note: Officer check - Date Error by Organiser, should be Saturday 3 April 2010)
 Item 3.6 - Supper Club Menu - Saturday 4 April 2010 (No corresponding TEN) (same as Item 3.5)
 (Note: Officer check - Date Error by Organiser, should be Saturday 3 April 2010)
 Item 3.7 - Supper Club Menu - Saturday 7 August 2010 (event corresponds with Item 2.16 - Temporary Event Notice Application form)
 Item 3.8 - Supper Club Menu - Saturday 4 September 2010 (event corresponds with Item 2.17 - Temporary Event Notice Application form)
 Item 3.9 - Supper Club Menu - Saturday 5 June 2010 (event corresponds with Item 2.12 - Temporary Event Notice Application form)
 Item 3.10 - Supper Club Menu - Saturday 6 November 2010 (event corresponds with Item 2.20 - Temporary Event Notice Application form)
 Item 3.11 - Supper Club Menu - Saturday 20 November 2010 (event corresponds with Item 2.21 - Temporary Event Notice Application form)

U0082844 Decision Drawings - Part 2

For the avoidance of doubt the Drawing(s) No(s) to which this decision refers are as follows:-

Item 4.1 - Till receipt (Restaurant) - 19/5/12 @16.56
 Item 4.2 - Till receipt (Restaurant) - 19/5/12 @22.36
 Item 4.3 - Till receipt (Restaurant) - 19/5/12 @22.37
 Item 4.4 - Till receipt (Restaurant) - 19/5/12 @22.33
 Item 4.5 - Till receipt (-) - 20/5/12 @17.00
 Item 4.6 - Till receipt (Shop) - 20/5/12 @17.10
 Item 4.7 - Till receipt (Shop) - 20/05/12 @17.18
 Item 4.8 - Till receipt (Shop) - 20/05/12 @17.02
 Item 4.9 - Till receipt (Shop) - 29/06/13 @17.04
 Item 4.10 - Till receipt (Shop) - 29/06/13 @17.07
 Item 4.11 - Till receipt (Shop) - 29/06/13 @17.14
 Item 4.12 - Till receipt (Restaurant) - 29/06/13 @17.19
 Item 4.13 - Till receipt (Shop) - 29/06/13 @17.22

Item 4.14 - Till receipt (Restaurant) - 17/08/13 @16.55
Item 4.15 - Till receipt (Restaurant) - 17/08/13 @17.00
Item 4.16 - Till receipt (Restaurant) - 08/12/13 @17.17
Item 4.17 - Till receipt (Restaurant) - 08/12/13 @17.16
Item 4.17(2) - Till receipt (Restaurant) - 08/12/13 @17.19
Item 4.18 - Till receipt (Restaurant) - 08/12/13 @17.25
Item 4.19 - Till receipt (Restaurant(?)) - 23/03/14 @17.37
- Till receipt (Restaurant) - 06/04/14 @17.08
Item 4.20 - Till receipt (TH) - 06/06/14 @16.40
Item 4.21 - Till receipt (Restaurant) - 06/06/14 @17.15
Item 4.22 - Till receipt (Shop) - 06/06/14 @19.15
Item 4.23 - Till receipt (Shop) - 06/06/14 @19.48
Item 4.24 - Till receipt (Shop) - 06/06/14 @19.53
Item 4.25 - Till receipt (Shop) - 06/06/14 @20.03
Item 4.26 - Till receipt (Shop) - 06/06/14 @20.20
Item 4.27 - Till receipt (Shop) - 06/06/14 @20.24
Item 4.28 - Till receipt (Shop) - 06/06/14 @20.27
Item 4.29 - Till receipt (Restaurant) - 06/06/14 @20.56
Item 4.30 - Till receipt (Restaurant) - 06/06/14 @21.53
Item 4.31 - Till receipt (Restaurant) - 06/06/14 @21.54
Item 4.32 - Till receipt (Restaurant) - 06/06/14 @21.56
Item 4.33 - Till receipt (Restaurant) - 16/01/16 @16.52
Item 4.34 - Till receipt (Restaurant) - 16/01/16 @17.19
Item 4.35 - Till receipt (Restaurant) - 17/01/16 @16.52
Item 4.36 - Till receipt (Restaurant) - 17/01/16 @17.03
Item 4.37 - Till receipt (Restaurant) - 17/01/16 @17.04
Item 4.38 - Till receipt (Restaurant) - 17/01/16 @17.07
Item 4.39 - Till receipt (Restaurant) - 31/01/16 @16.41
Item 4.40 - Till receipt (Shop) - 31/01/16 @16.56
Item 4.41 - Till receipt (Shop) - 31/01/16 @16.57
Item 4.42 - Till receipt (Shop) - 31/01/16 @16.58
Item 4.42 - Till receipt (Shop) - 31/01/16 @16.59
Item 4.44 - Till receipt (Restaurant) - 31/01/16 @17.13
Item 4.45 - Till receipt (Restaurant) - 31/01/16 @17.27
Item 4.46 - Till receipt (Shop) - 21/02/16 @16.44
Item 4.47 - Till receipt (TH) - 21/02/16 @16.50
Item 4.48 - Till receipt (TH) - 21/02/16 @16.51
Item 4.49 - Till receipt (Restaurant) - 21/02/16 @17.11
Item 4.50 - Till receipt (Restaurant) - 21/02/16 @17.13
Item 4.51 - Till receipt (restaurant) - 21/02/16 @17.16
Item 4.52 - Till receipt (Bottle of Eisola) - 08/03/16 @17.13
Item 4.53 - Till receipt (Restaurant) - 16/01/16 @17.02
Item 4.54 - Till receipt (Restaurant(?)) - 18/02/17 @17.51
- Till receipt (Restaurant(?)) - 21/01/17 @17.37
Item 4.55 - Till receipt (Restaurant(?)) - 09/04/17 @18.04
- Till receipt (Restaurant(?)) - 26/03/17 @18.07
Item 4.56 - Till receipt (Restaurant(?)) - 10/06/17 @17.30
- Till receipt (Restaurant(?)) - 06/05/17 @18.23
Item 4.57 - Till receipt (Restaurant(?)) - 15/07/17 @18.01
- Till receipt (Restaurant(?)) - 05/08/17 @17.26
Item 4.58 - Till receipt (Restaurant(?)) - 14/10/17 @17.39
- Till receipt (Restaurant(?)) - unclear date @17.11
Item 4.59 - Till receipt (Restaurant(?)) - 20/12/17 @17.34
- Till receipt (Restaurant(?)) - 25/11/17 @18.14
Item 4.60 - Till receipt (Restaurant(?)) - 16/02/18 @20.23
- Till receipt (Restaurant(?)) - 28/01/18 @17.38
Item 4.61 - Till receipt (Restaurant(?)) - 28/04/18 @17.54
- Till receipt (Restaurant(?)) - unclear date/time
Item 4.62 - Till receipt (Restaurant(?)) - 30/06/18 @17.43
- Till receipt (Restaurant(?)) - 20/05/18 @17.40

Item 4.63 - Till receipt (Restaurant(?)) - 26/08/18 @17.51
- Till receipt (Restaurant(?)) - 07/07/18 @17.31
Item 4.64 - Till receipt (Restaurant(?)) - 27/10/18 @17.55
- Till receipt (Restaurant(?)) - 16/09/18 @17.44
Item 4.65 - Till receipt (Restaurant(?)) - 25/11/18 @17.56
- Till receipt (Restaurant(?)) - 16/12/18 @18.06
Item 4.66 - Till receipt (Restaurant(?)) - 24/02/19 @17.36
- Till receipt (Restaurant(?)) - 06/01/19 @17.55
Item 4.67 - Till receipt (Restaurant(?)) - 24/03/19 @17.44
- Till receipt (Restaurant(?)) - 21/04/19 @18.03
Item 4.68 - Till receipt (Restaurant(?)) - 22/06/19 @18.11
- Till receipt (Restaurant(?)) - 25/05/19 @18.04
Item 4.69 - Till receipt (Restaurant(?)) - 18/08/19 @17.35
- Till receipt (Restaurant(?)) - 14/07/19 @17.57
Item 4.70 - Till receipts (including illegible itemised bill) - 19/10/19 @17.59 and 21/09/19 @17.46
Item 4.71 - Till receipt (Restaurant(?)) - 31/12/19 @16.47
- Till receipt (Restaurant(?)) - 16/11/19 @17.48
Item 4.72 - Till receipt (Restaurant(?)) - 26/01/20 @17.48
- Till receipt (Restaurant(?)) - 07/03/20 @17.42
Item 4.73 - Till receipts (including illegible itemised bill) - 16/02/20 @17.02
Item 5.1 - Aerial imagery dated 01/01/2006, 05/03/2008, 27/06/2010, 19/07/2013, 04/06/2015, 08/04/2017, 07/05/2018, 29/06/2019, 11/04/2020

Item 5.2 - Photos from the following years were submitted

- Item 13.1 - Invoice from Opentable dated 01.01.2009 addressed to Petersham Nurseries
- Item 13.1 - Invoice from Burstenhaus Redecker dated 22.02.2008 addressed to Petersham Nurseries Ltd
- Item 13.1 - Invoice from Burstenhaus Redecker dated 09.03.2009 addressed to Petersham Nurseries Ltd
- Item 13.1 - Invoice from Burstenhaus Redecker dated 04.12.2009 addressed to Petersham Nurseries Ltd
- Item 13.2 - BT bill dated 4 March 2012 address to Petersham Nurseries Ltd
- Item 13.2 - Invoice/Statement from Barclaycard for period 01.03.2012-31.03.2012 address to Petersham Nurseries
- Item 13.2 - Thames Water Bill dated 13.03.2012 addressed to Petersham Nurseries
- Item 13.2 - Invoice from Berkshire Wet Waste dated 31.03.2012 addressed to Petersham Nurseries
- Item 13.2 - Liverpool Victoria - Business Insurance Schedule from 01.03.2012-28.02.2013 addressed to Petersham Nurseries Limited
- Item 13.2 - Invoice from Opentable dated 01.04.2012 addressed to Petersham Nurseries
- Item 13.2 - Invoice from Osbornes dated 01.04.2012 address to Petersham Nurseries
- Item 13.2 - Invoice from Greener World dated 28.04.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 - Invoice from Brindisa Ltd dated 04.05.2012 address to Petersham Nurseries Limited
- Item 13.2 - Invoice from Astier de Villatte dated 11.06.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 - Invoice from The Russell School dated 18.06.2012 Item 13.2 addressed to Petersham Nurseries Ltd
- Item 13.2 - Invoice from LBRuT dated 01.07.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 - Invoice from LBRuT dated 04.07.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 - Invoice from The London Lawn Care Company dated 26.07.2012 addressed to Petersham Nurseries

- Item 13.2 - Invoice from Kothari & Co dated 28.09.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 - EDF Bill dated 12.11.2012 for period 09.03.12-08.11.12 addressed to Petersham Nurseries Ltd
- Item 14 - Business Rates Bill for period 2012/13 dated 27.07.2012 addressed to Petersham Nurseries Ltd
- Item 15.1 - Petersham Nurseries Ltd - Form P32 (2013) - Employer Payment Record - from 06.04.2013 - 05.04.2014
- Item 15.2 - Payment Submission to HMRC from Petersham Nurseries Ltd for period 06.05.2014 - 05.04.2015
- Item 15.3 - Business Tax Account for tax year 2015-2016 (no details of business to which the statements relate to)
- Item 15.4 - Business Tax Account for tax year 2016-2017 (no details of business to which the statements relate to)
- Item 15.5 - Business Tax Account for tax year 2017-2018 (no details of business to which the statements relate to)
- Item 15.6 - Business Tax Account for tax year 2018-2019 (no details of business to which the statements relate to)
- Item 13.3 - Southern Communications Bill dated 04.04.2019 addressed to Mr John Neill, Petersham Nurseries
- Item 13.3 - Invoice from Retail it dated 01.10.2019 addressed to Petersham Nurseries
- Item 13.3 - Invoice from Crystal Care dated 01.11.2019 addressed to Petersham Nurseries
- Item 13.3 - Invoice from The Russell School dated 20.11.2019 addressed to Petersham Nurseries Ltd
- Item 13.3 - Invoice from Evergreen dated 11.12.2019 addressed to Petersham Nurseries Ltd
- Item 13.3 - Invoice from Priddy Essentials dated 16.12.2019 addressed to Petersham Nurseries
- Item 13.3 - Invoice from HG Walter dated 28.12.2019 addressed to Petersham Nurseries (Richmond)
- Item 13.3 - Invoice form Sustainable Waste Services dated 31.12.2019 addressed to Petersham Nurseries

U0082845 Decision Drawings - Part 3

For the avoidance of doubt the Drawing(s) No(s) to which this decision refers are as follows:-

- Item 6.1 - April 2013
- Item 6.2 - May 2013
- Item 6.3 - June 2013
- Item 6.4 - July 2013
- Item 6.5 - August 2013
- Item 6.6 - Sept 2013
- Item 6.7 - Oct 2013
- Item 6.8 - Nov 2013
- Item 6.9 - Dec 2013
- Item 6.10 - Jan 2014
- Item 6.11 - Feb 2014
- Item 6.12 - Mar 2014
- Item 6.13 - April 2014
- Item 6.14 - May 2014
- Item 6.15 - June 2014
- Item 6.16 - July 2014
- Item 6.17 - Aug 2014
- Item 6.18 - Sept 2014
- Item 6.19 - Oct 2014
- Item 6.20 - Nov 2014

Item 6.21 - Dec 2014
Item 6.22 - Jan 2015
Item 6.23 - Feb 2015
Item 6.24 - Mar 2015
Item 6.25 - April 2015
Item 6.26 - May 2015
Item 6.27 - June 2015
Item 6.28 - July 2015
Item 6.29 - Aug 2015
Item 6.30 - Sept2015
Item 6.31 - Oct 2015
Item 6.32 - Nov 2015
Item 6.33 - Dec 2015
Item 6.34 - Jan 2016
Item 6.35 - Feb 2016
Item 6.36 - Mar 2016
Item 6.37 - April 2016
Item 6.38 - May 2016
Item 6.39 - June 2016
Item 6.40 - July 2016
Item 6.41 - Aug 2016
Item 6.42 - Sept 2016
Item 6.43 - Oct 2016 - FOH - Timecards
Item 6.44 - Nov 2016 - FOH - Timecards
Item 6.45 - Dec 2016 - FOH - Timecards
Item 6.46 - Jan 2017 - FOH - Timecards
Item 6.47 - Jan - Feb 2017 - FOH - Timecards
Item 6.48 - Feb - March 2017 - FOH - Timecards
Item 6.49 - Jun - July 2017 - Teahouse - Timecards
Item 6.50 - Jun - July 2017 - FOH - Timecards
Item 6.51 - July - August - Timecards
Item 6.52 - Jan - Feb 2018 - Timecards
Item 6.53 - March - Apr 2018 - Timecards
Item 6.54 - May - June 2018 - Timecards
Item 6.55 - Jun - July 2018 - Timecards
Item 6.56 - July - Aug 2018 - Timesheet (Clockings)
Item 6.57 - Aug - Sept 2018 - Timesheet (Clockings)
Item 6.58 - Sept - Oct 2018 - Timesheet (Clockings)
Item 6.59 - Oct - Nov 2018 - Timesheet (Clockings)
Item 6.60 - Nov - Dec 2018 - Timesheet (Clockings)
Item 6.61 - Feb - March 2019 - Timesheets (Clockings)
Item 6.62 - March - April 2019 - Timesheets (Clockings)
Item 6.63 - April - May 2019 - Timesheets (Clockings)
Item 6.64 - May - June 2019 - Timesheets (Clockings)
Item 6.65 - Jun - July 2019 - Timesheets (Clockings)
Item 6.66 - July - Aug 2019 - Timesheets (Clockings)
Item 6.67 - Aug - Sept 2019 - Timesheets (Clockings)
Item 6.68 - Sept - Oct 2019 - Timesheets (Clockings)
Item 6.69 - Oct - Nov 2019 - Timesheets (Clockings)
Item 6.70 - Nov - Dec 2019 - Timesheets (Clockings)
Item 6.71 - Dec 2019 - Jan 2020 - Timesheets (Clockings)
Item 6.72 - Jan - Feb 2020 - Timesheets (Clockings)
Item 7 - Officer Report for Refused application 12/0067/VRC
Item 8 - EH Report dated 8 June 2015
Item 9.1 - The Richmond Magazine Event Quotation - Event on 8 July 2008
Item 9.2 - Article in Country Life dated 23 September 2004
Item 9.3 - Article in MetroLife (undated)
Item 9.4 - Article in SAGA Magazine dated October 2004
Item 9.5 - Article in the Observer dated September 2004
Item 9.6 - Article in TimeOut dated August 18-25 (no year)

Item 9.7 - Article in Vogue - dated January (no year)
Item 10 - Sample of Restaurant/Teahouse Events - Christmas Late night Shopping dates 2 December and 9 December 2009 between 6-9pm
Item 11 - Supper Club Customer Travel Arrangements

Item 16.1 - Petersham Nurseries Final travel Plan dated October 2010
Item 16.2 - Draft Technical Note dated 30 November 2012 by i-Transport
Item 16.3 - Technical Note dated 29 January 2014 by i-Transport.
Item 16.4 - Technical Note dated 20 June 2014 by i-Transport.
Item 16.5 - Technical Note dated 14 October 2014 by i-Transport.
Item 16.6 - Transport statement dated December 2015.
Item 16.7 - Draft Travel Plan Monitoring Report dated November 2015
Item 16.8 - Transport Statement dated February 2017. Survey undertaken Friday 9 December 2016
Item 16.9 - Travel Plan Monitoring Report dated December 2017
Item 17 - Decision Notice for application 98/0525/S191
Item 18 - Decision Notice for application 08/4312/FUL
Item 19 - Table setting out average monthly and daily customers served at the Restaurant between 2009 - 2019

U0082846 Decision drawings - Part 4

For the avoidance of doubt the Drawing(s) No(s) to which this decision refers are as follows:-

1.1 Statement of Truth - Skye Gyngell received 15.03.2022

Covering letter dated 5.11.22

Letters of support from Joanna Hales, Kate Ridyard, Michele and Thomas Ludqvist, Petersham Nurseries petition, Sarah Chapman, Sarah Tippett, Tracy Worcester, Zac Goldsmith, Alexander Serge Lourie

Info sheet for Photograph Timestamp
Events Calendar 2011

Feb 2020 Clockings, Jan 2020 Clockings, June 2019 Clockings, Marach 2019

Clockings, May 2019 Clockings

Petersham Nurseries - feedback summary

Petersham Nurseries - Petition - Staff feedback to Gareth Roberts

Petersham Nurseries Photo locations

Petersham Nurseries Timecard Roles

Princes Foundation 08.09.11

Soil Association 03.03.11

Temporary Event Notice AF185156E

Proposed Plan 02-277-03 RP02

Photo images dated 04.04.11, 10.08.2007, 13.12.2012, 21.08.2003, 22.09.2008, 25.08.2006, 11.03.2007, 11.04.2011, 13.12.2012, 21.08.2003, 11.04.2011, 21.08.2003, 19.09.2011, 21.08.2003, 19.09.2011, 21.08.2003.

All received October 2022

U0082847 Split decision

For the avoidance of doubt, the LPA considers that insufficient information has been submitted to satisfactorily prove that for a continuous period of 10 years:

1. The cafe/restaurant have been in operation selling food and beverages to visiting customers between 10am-6pm Tuesday to Sunday excluding Mondays (but including Bank Holidays). Evening openings for the sale of food and beverages have occurred up to 11pm three events per week between Wednesday - Saturday. The evening openings have been seasonal. The operation has exceeded 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 within the area outlined in red shown on drawing reference 02-277-03-RP02. The operation has exceeded the areas specified in condition NS05 of LPA ref: 08/4312/FUL;

Consequently it has not been demonstrated that the development is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990.

This approval grants a Certificate of Lawful Development for the description modified/substituted by the LPA under S191(4) of the Town and Country Planning Act 1990.

END OF SCHEDULE OF CONDITIONS AND INFORMATIVES FOR APPLICATION
21/3108/ES191

NOTES:

- 1. If you are aggrieved by the decision of the Council to refuse an application for a certificate under Sections 191 and 192 of the Town and Country Planning Act 1990 (as amended) or to refuse in part you may appeal to the Secretary of State under Section 195 of the Act (as amended).**
- 2. Notices of appeal must be submitted online at www.planninginspectorate.gov.uk or in writing to Initial Appeals, The Planning Inspectorate, Temple Quay House, 2 The Square, Bristol BS1 6PN or in Wales to the Secretary of State for Wales, Cathays Park, Cardiff CF1 3NQ. Copies of all relevant documents, including the application, the notice of decision and all plans, drawings and correspondence must be supplied to the Secretary of State.**
- 3. You are advised to consult the brief official guide to the applications and appeals, published by the department of the Environment and the Welsh Office from which the appeal forms may also be obtained on request.**

Application reference: 21/3108/ES191

HAM, PETERSHAM, RICHMOND RIVERSIDE WARD

Date application received	Date made valid	Target report date	8 Week date
02.09.2021	03.12.2021	28.01.2022	28.01.2022

Site:

Petersham Nurseries, Petersham Road, Petersham, Richmond

Proposal:

A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref: 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner:

1. The cafe/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

Status: Pending Consideration (If status = HOLD please check that all is OK before you proceed any further with this application)

APPLICANT NAME

Petersham Nurseries Ltd

AGENT NAME

Ms Norma Jean Worden-Rogers,
WSP
WSP House
70 Chancery Lane
London
WC2A 1AF

DC Site Notice: printed on and posted on and due to expire on

Consultations:

Internal/External:

Consultee

Expiry Date

Neighbours:

Garden Flat,30 Grosvenor Place,30 Grosvenor Place,Bath,BA1 6BA -
38 HUNTLEYS PARK,ROYAL TUNBRIDGE WELLS,TN4 9TD -
18 Breakwater Gardens,Ham,Richmond,TW10 7SQ -
1 Rutland Drive,Petersham,Richmond,TW10 7AQ -
25 Martingales Close,Ham,Richmond,TW10 7JJ -
67 Christchurch Road,East Sheen,London,SW14 7AN -
7 Meadow Close,Richmond,TW107AJ -

The Old Stables,River Lane,Petersham,Richmond,TW10 7AG -
 Petersham Lodge,River Lane,Petersham,Richmond,TW10 7AG -
 SECOND FLOOR FRONT,25 IVES STREET,LONDON,SW3 2ND -
 Rosebank,River Lane,Petersham,Richmond,TW10 7AG -
 12A,KINGS ROAD,SHERBORNE,DT9 4HU -
 The House,River Lane,Petersham,Richmond,TW10 7AG -
 Sandpits Cottage,Sandpits Road,Petersham,Richmond,TW10 7DT -
 2 Rutland Drive,Petersham,Richmond,TW10 7AQ -
 1 NORTHWEALD LANE,KINGSTON UPON THAMES,KT2 5GL -
 FLAT 14,RIVERSIDE MILL HOUSE 20,CHURCH STREET,ISLEWORTH,TW7 6XB -
 1 Little Green,Richmond,TW9 1QH -
 24 RODWAY ROAD,LONDON,SW15 5DS -
 Elm Lodge,230 Petersham Road,Petersham,Richmond,TW10 7AL -
 Cecil Cottage,Sandpits Road,Petersham,Richmond,TW10 7DT -
 The Glass House,River Lane,Petersham,Richmond,TW10 7AG -
 227 BANSTEAD ROAD,BANSTEAD,SM7 1RB -
 23 Leyborne Park,Kew,Richmond,TW9 3HB -
 THE OLD PRESS,MILLEY ROAD,WALTHAM ST LAWRENCE,READING,RG10 0JR -
 163 Petersham Road,Petersham,Richmond,TW10 7AH -
 1 Dynevor Road,Richmond,TW106PF -
 6 Sudbrook Gardens,Ham,Richmond,TW10 7DD -
 24 DOVER PARK DRIVE,LONDON,SW15 5BG -
 C,Rialto Building,2 Landale Street,Hong Kong,00000 -

History: Development Management, Appeals, Building Control, Enforcements:

<u>Development Management</u>	
Status: GTD	Application:00/T0726
Date:10/05/2000	Fir - Fell
<u>Development Management</u>	
Status: GTD	Application:00/T0727
Date:10/05/2000	Fir - Fell
<u>Development Management</u>	
Status: GTD	Application:00/T0728
Date:10/05/2000	Conifer - Reduce Height
<u>Development Management</u>	
Status: GTD	Application:00/T0729
Date:10/05/2000	Conifer - Reduce Height
<u>Development Management</u>	
Status: WNA	Application:03/2480/CAC
Date:16/09/2003	Existing Timber Shed To Be Demolished.
<u>Development Management</u>	
Status: GTD	Application:03/2452
Date:27/10/2003	Demolition Of Existing Changing And Storage Facility,construction Of New Facilities Building To Provide Accessible Disabled Wc For Public Use, Staff Changing Area, Toilet And Kitchen. Erection Of Adjacent Lean-to Roof To Provide Covered Sto
<u>Development Management</u>	
Status: REF	Application:97/0569
Date:12/08/1997	Erection Of A Single Residential Dwelling On Two Levels And A Two Storey Gatehouse
<u>Development Management</u>	
Status: GTD	Application:97/0577
Date:12/08/1997	Demolition Of Glasshouses.
<u>Development Management</u>	
Status: GTD	Application:98/0525
Date:22/06/1998	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 C

<u>Development Management</u> Status: WTD Date:27/04/1998	Application:98/0551 Erection Of One Dwelling, Detached Garaging And Landscaping.
<u>Development Management</u> Status: GTD Date:05/10/1967	Application:67/0884 Erection of Greenhouse.
<u>Development Management</u> Status: GTD Date:01/01/1968	Application:67/2117 Erection of greenhouse.
<u>Development Management</u> Status: GTD Date:22/06/1970	Application:70/0560 Erection of glasshouse.
<u>Development Management</u> Status: GTD Date:08/09/2004	Application:04/2167/FUL Retention of single storey building of green oak structure clad in cedar replacing similar building in disrepair.
<u>Development Management</u> Status: WDN Date:13/10/2006	Application:06/1916/ES191 Part use of land for restaurant use and part car park use on existing garden centre site.
<u>Development Management</u> Status: WDN Date:19/02/2007	Application:06/3891/ES191 Retainment of Nursery / Garden Centre and Cafe / Restaurant ancillary.
<u>Development Management</u> Status: GTD Date:23/02/2007	Application:06/4053/FUL Revised design for facilities building. (Approved Ref 03/2452)
<u>Development Management</u> Status: GTD Date:24/04/2007	Application:07/0307/LBC Erection of single storey building within nursery for staff use
<u>Development Management</u> Status: GTD Date:11/12/2007	Application:07/1235/FUL Proposed application for continued mixed use as garden centre (class A1) and Cafe/restaurant (classA3).
<u>Development Management</u> Status: GTD Date:29/07/2009	Application:08/4312/FUL 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).
<u>Development Management</u> Status: WON Date:16/05/2017	Application:09/2294/VRC Continuation of planning permission granted 11 December 2007 (07/1235/FUL), to allow permanent mixed use as garden centre (class 1) and cage/restaurant (class A3).
<u>Development Management</u> Status: GTD Date:01/03/2013	Application:08/4312/DD01 Details pursuant to conditions U27545 (Extract System) of planning permission 08/4312/FUL 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).
<u>Development Management</u> Status: WDN Date:11/08/2011	Application:10/2914/VRC Variation of condition NS04 of consent 08/4312/FUL to include opening between 1900-2300 hours Thursday, Friday and Saturday each week.
<u>Development Management</u> Status: GTD	Application:08/4312/DD02

Date:22/03/2013 Details pursuant to conditions U27539 NS01 (Green Travel Plan and Review), in part, and U27540 (Cycle parking) of planning permission 08/4312/FUL for continuation of planning permission granted 11 December 2007, to allow permanent mixed use as garden centre (Class A1) and cafe/restaurant (Class A3).

Development Management

Status: REF Application:12/0067/VRC
Date:01/06/2012 Variation of condition U27543 NS04 (Hours of use) of consent 08/4312/FUL to include opening between 1900-2300 hours Saturday each week.

Development Management

Status: VOID Application:13/4312/VOID
Date:18/09/2013 Details pursuant to condition U27541 - NS03 (Servicing and Deliveries) of planning permission 08/4312/FUL.

Development Management

Status: GTD Application:08/4312/DD03
Date:11/11/2013 Details pursuant to condition U27541 - NS03 (Servicing and Deliveries) of planning permission 08/4312/FUL for continuation of planning permission granted 11 December 2007, to allow permanent mixed use as garden centre (Class A1) and cafe/restaurant (Class A3).

Development Management

Status: REF Application:14/0345/VRC
Date:18/01/2018 Application for variation of condition NS04 of planning permission 08/4312/FUL for permanent mixed use as garden centre (Class A1) and café/restaurant (Class A3), to allow for the sale of food for consumption on the premises, between the hours of 09.00 and 18.00 on Mondays, Tuesdays and Wednesdays, 09.00 and 23.00 on Thursdays, Fridays and Saturdays and 11.00 and 18.00 on Sundays.

Development Management

Status: WNA Application:08/4312/DD04
Date:02/12/2020 Details pursuant to condition U27539 (NS01 Green Travel Plan & Review) of planning permission 08/4312/FUL

Development Management

Status: RNO Application:15/T0184/TCA
Date:30/04/2015 T1-2 - Conifer - Fell and grind out stump

Development Management

Status: WON Application:20/T1053/TCA
Date:10/12/2021 T1 - Oak Biomechanics and Structural Integrity: The tree has an over extended radial canopy which protrudes uniformly over the tennis court and swimming pool situated on its adjacent aspects. The branches forming the low and middle canopies are extremely end weighted and overlong. Biological Factors and Vitality: The tree is displaying significant basal exudation with bacterial wet wood visibly protruding from fissures in the bark. In addition to this an abundance of exudate could be seen visibly bubbling up through the soil immediately adjoining the buttress areas. This had been seen by the author in a previous visit and was the prompt for a more detailed inspection. After excavating the soil at the base of the tree it became immediately apparent that decay was prevalent, and this was confirmed after removing some of the bark and sapwood covering one of the buttresses. The bark peeled away very easily and subsequently exposed visibly decayed sapwood. The cause of this is likely to be Honey Fungus (Armillaria mellea) as rhizomorphs (bootlaces) and mycelium were identified. Recommended Intervention: Due to the significant volume of weight extending above the target areas beneath, and coupled with the presence of Honey Fungus aforementioned, it would be prudent to significantly reduce the overextended radial spread of the tree. Selective end weight

pruning and removal of deadwood, along with lateral limb reduction of at least two metres is recommended and will mitigate the likelihood of failure without significant detriment to the vigour or aesthetical value of the tree. The canopy of the tree should also be raised to allow adequate clearance above the swimming pool and tennis court. This should ideally be achieved by removing secondary growth only, to a maximum height of four meters. T2 - Ash: This tree is succumbing to Ash Dieback and is situated adjacent to a high target area. This tree should be removed as soon as possible. T3 - Oak: This tree is display

Development Management

Status: PCO

Date:

Application: 21/3108/ES191

A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref: 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner: 1. The cafe/restaurant have been in operation selling food and beverages to visiting customers between 10am-11pm Tuesday to Sundays excluding Mondays (but including Bank Holidays). The operation has exceeded 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 within the hatched area shown on drawing reference 292-03-AOU 01. The operation has exceeded the areas specified in condition NS05 of LPA ref: 08/4312/FUL; 3. The business has been carried out by Petersham Nurseries Ltd contrary to condition NS08 of LPA reference 08/4312/FUL.

Appeal

Validation Date: 03.07.1998

Reference: 98/0551

Development Appeal

Appeal

Validation Date: 11.06.2008

Reference: 08/0063/AP/CON

Proposed application for continued mixed use as garden centre (class A1) and Cafe/restaurant (class A3).

Building Control

Deposit Date: 08.12.2003

Reference: 03/2409/BN

Installation of septic tank and associated pipework and drainage for new staff building.

Building Control

Deposit Date: 09.12.2009

Reference: 09/2068/FP

Single storey detached facilities building

Building Control

Deposit Date: 15.02.2017

Reference: 17/FEN00528/GASAFE

Install a gas-fired boiler

Building Control

Deposit Date: 08.12.2016

Reference: 17/FEN01013/GASAFE

Install a gas-fired boiler

Building Control

Deposit Date: 30.09.2018

Reference: 18/FEN03122/GASAFE

Install a gas-fired boiler

Enforcement

Opened Date: 09.11.2005

Reference: 05/0556/EN/UCU

Enforcement Enquiry

Enforcement

Opened Date: 04.03.2009 Enforcement Enquiry
Reference: 09/0098/EN/ADV

Enforcement
Opened Date: 21.05.2010 Enforcement Enquiry
Reference: 10/0248/EN/UBW

Enforcement
Opened Date: 23.06.2010 Enforcement Enquiry
Reference: 10/0313/EN/NAP

Enforcement
Opened Date: 13.01.2011 Enforcement Enquiry
Reference: 11/0028/EN/BCN

Application Number	21/3108/ES191
Address	Petersham Nurseries Petersham Road Petersham Richmond TW10 7AB
Proposal	<p>A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref: 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner:</p> <ol style="list-style-type: none"> 1. The cafe/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
Contact Officer	Wendy Wong Chang / Nicki Dale

1. INTRODUCTION

- 1.1 Government Guidance as contained in the National Planning Practice Guidance (NPPG) indicates that local planning authority (LPA) can grant a certificate confirming that an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990. The LPA can issue the certificate upon the provision of relevant information satisfying them of the lawfulness at the time of the application of the use described in the application, or they shall refuse the application.
- 1.2 As such the onus of proof in a Lawful Development Certificate (LDC) application is firmly on the applicant. While the LPA should always co-operate with an applicant seeking information they may hold about the planning status of land, by making records readily available, they need not go to great lengths to show that the use, operations, or failure to comply with a condition, specified in the application, is, or is not, lawful.
- 1.3 S191(3) deals with lawfulness in relation to breaches of condition. The failure to comply with a continuing requirement condition becomes lawful once there has been non-compliance for 10 years. If non-compliance ceases within the 10 year period then that breach is at an end, and any further breach starts the 10 year period running again.

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

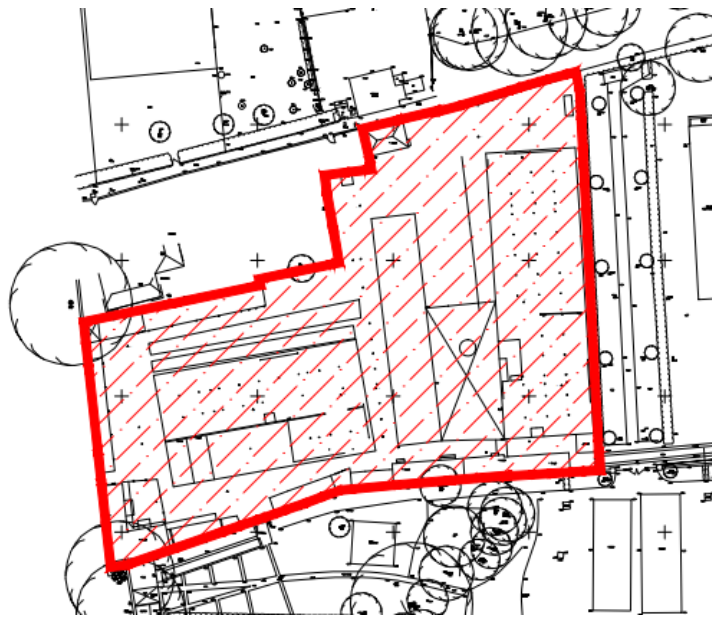
- 2.1 The site is occupied by Petersham Nurseries.
- 2.2 The application site is situated within Ham and Petersham Village and is designated as:
 - Archaeological Priority (English Heritage)
 - Article 4 Direction Restricting Basement
 - Petersham Conservation Area

- Floodzones 2/3/3a
- Metropolitan Open Land
- Protected View (Indicative zone) - N_View_004 View from near Ham House to Orleans House
- Protected View (Indicative zone) - N_View_005 View to Marble Hill House (north)
- Protected View (Indicative zone) - N_View_006 View from Richmond Hill to Asgill House
- Area Susceptible to Surface Water Flooding
- Ham, Petersham and Richmond Riverside Ward

3. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY

3.1 The application for a lawful development certificate was initially sought for the following operations/use that were subject to conditions on LPA ref: 08/4312/FUL and which the applicant states have taken place continuously over a period in excess of the last 10 years in the following manner:

1. The cafe/restaurant have been in operation selling food and beverages to visiting customers between 10am-11pm Tuesday to Sundays excluding Mondays (but including Bank Holidays). The operation has exceeded 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 within the hatched area shown on drawing reference 292-03-AOU 01. The operation has exceeded the areas specified in condition NS05 of LPA ref: 08/4312/FUL;



3. The business has been carried out by Petersham Nurseries Ltd contrary to condition NS08 of LPA reference 08/4312/FUL.

3.2 The comprehensive list of planning history can be found above however the most relevant planning history is as follows:

08/4312/FUL - 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) – Granted on 29.07.2009

3.3 The relevant conditions to which this application relates to are as follows:

U27543NS04 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.

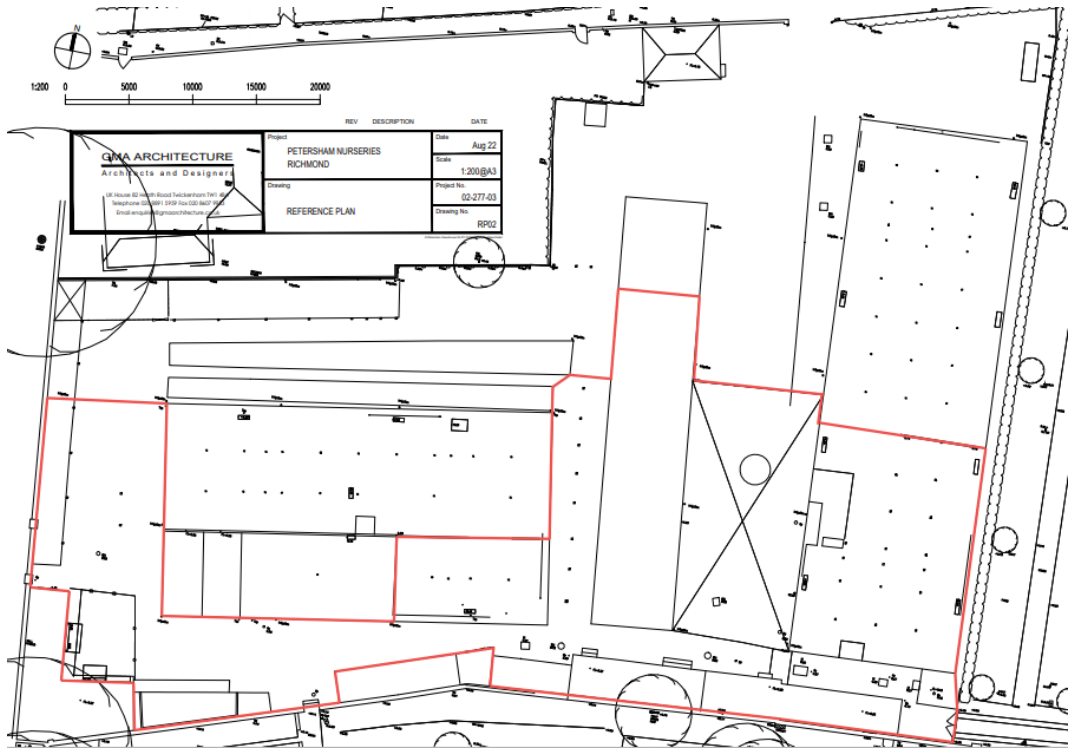
U27544NS05 Café/Restaurant Areas

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.

U27547NS08 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. REASON: To safeguard the amenities of the adjoining residents and the area generally.

- 3.4 The conditions are all considered to meet the tests and be enforceable. The reasoning for the conditions is set out and described further in the Committee reports which accompanied both application 07/1235/FUL and 08/4312/FUL.
- 3.5 Following discussion, a revised description was proposed by the applicant:
 - 1. The cafe/restaurant has been in operation selling food and beverages to visiting customers between 10am-6pm Tuesday to Sunday excluding Mondays (but including Bank Holidays). Evening openings for the sale of food and beverages have occurred up to 11pm three events per week between Wednesday – Saturday. The evening openings have been seasonal. The operation has exceeded 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 within the area outlined in red shown on drawing reference 02-277-03-RP02. The operation has exceeded the areas specified in condition NS05 of LPA ref: 08/4312/FUL;



- 3. The business has been carried out by Petersham Nurseries Ltd contrary to condition NS08 of LPA reference 08/4312/FUL.
- 3.6 As explained in the report below, the LPA do not consider that a Certificate can be granted in these terms sought by the applicant.
- 3.7 S191(4) of the Town and Country Planning Act 1990 states:

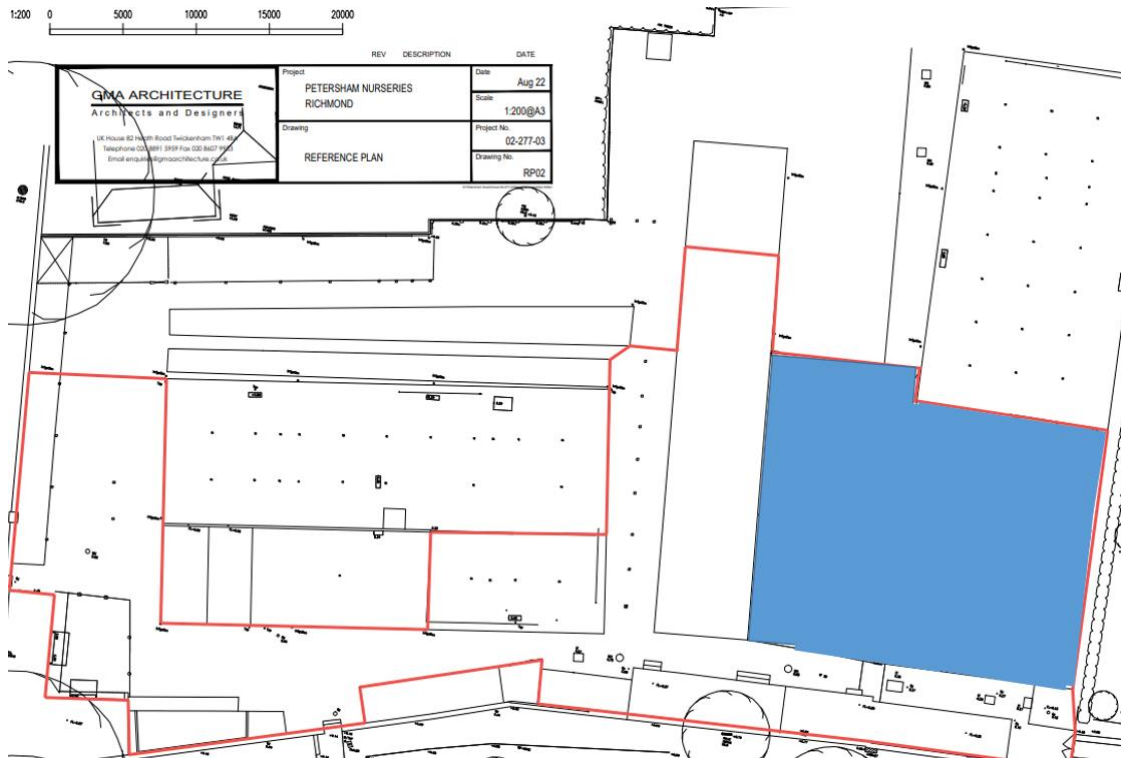
“If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”
- 3.8 The TCPA thus allows the LPA to modify the description of development to issue a Certificate for development/operations which they are satisfied is lawful. On assessment of the considerable volume of information submitted with this application, it is considered that a Certificate can be granted for an alternative description as follows:

“A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref: 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner:

 - 1. The cafe/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 Bogleione.”

3.9 For the avoidance of doubt, the areas referred to in (2) above are highlighted in blue below atop Plan 02-277-03 RP02:



4. CONSULTATIONS CARRIED OUT

4.1 This is an application for a Certificate of Lawful Development (Existing), which is a request to the Council to confirm that the development as specified does not require an application for planning permission to be submitted to the Council. In assessing this application, the Council is making a determination of law, and as such it is not considered to be necessary to undertake a public consultation.

4.2 Notwithstanding this, 34 objections were received, and the comments can be summarised as follows:

- PN has always been primarily a nursery selling plans and garden accessories
- PN prior to this year (2021) used to abide by the restriction not to open at night with the exception of their permitted TENS allowance.
- They have been opening three nights a week and advertising this as such on their website – Thursday through Saturday
- They have not opened continuously for ten years from 10.00am to 11.00pm
- The seating area against the boundary wall with Rutland Drive has been in place for no more than 5 years and has also been expanded closer towards our boundary this year.
- The external seating along the wall of Petersham House was added in or around 2014
- This lawful development certificate for operations that he claims have been happening informally over the past 10 years is incorrect.
- Changes documents on Ham Photos blog since 2007 and note that the seating area has extended between July 2013 and December 2013
- Nursery opening times are early/mid morning but always closing around 4/5pm
- Last few years, more noticeable tables in the outside spaces with more awnings and permanent structures

- Few years ago, dining spaces were contained within the first two large green houses and the space in between
- Gradually increased area used for food and beverages
- We would ask the applicant to apply for planning permission for the hours and area that they wish to use so it can be properly consulted upon and reviewed rather than do so via a certificate of lawfulness.
- Noise is unreasonable
- Concerns with additional light pollution
- Increase in traffic

- 4.3 2 Observations were received, and the comments can be summarised as follows:
- On visits to the Nurseries, I noted that the eating / drinking area has expanded considerably over the last 5 years and to the best of my knowledge have not been generally open at night up to 2021
 - Although the area for food and beverage sales has expanded considerably over the last 5 years, Petersham Nurseries has not been open at night until 11pm as stated, except for special permitted events, before 2021
 - I am interested to know how Petersham Nurseries are attempting to substantiate what I believe to be a false claim.
- 4.4 Letters of support have been received direct from the applicant. These indicate support for the business but do not materially add to the assessment of the evidence in support of the application. One document appears to be a petition but is not accompanied by details of names and addresses of those who have left comments.

5. AMENDMENTS

- 5.1 As set out above, the description of development has been amended during the application process and further evidence was submitted in respect of the hours and areas of use for sales of food/beverages.

6. PROFESSIONAL COMMENTS

- 6.1 S191 of the Act states at (2) for the purposes of the Act, uses and operations are lawful at any time if – no enforcement action may then be taken in respect of them (...because the time for enforcement action has expired...)
- 6.2 S191(3) states, “For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
(a) the time for taking enforcement action in respect of the failure has then expired; and
(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.”
- 6.3 There have been no enforcement notices issued for the site. The assessment thus centres on the case that lawfulness has been gained through the passage of time.
- 6.4 S171B(3) of the Act is relevant and states that “no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.”
- 6.5 S191(4) states “If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.” The application was received on 02.09.2021 and validated on 03.12.2021.
- 6.6 The date of the first breach is not clear. However, the period for assessment would be a continuous 10-year period between the date of the grant of 08/4312/FUL (29.07.2009) and

thus the date of imposition of the condition, and the date that this application was made (validated 03.12.2021).

- 6.7 For clarity, as the planning permission and conditions were not imposed until 29.07.2009 all evidence that has been submitted that applies to dates prior to this has been disregarded in this assessment.
- 6.8 The Council has had regard to a number of High Court judgements, the most relevant of which are: *Nicholson v Secretary of State for the Environment and Malden District Council* [1998] JPL 553; *Peter Ellis v Secretary of State for Communities and Local Government and Chiltern District Council* [2010] JPL 231; *Basingstoke and Deane Borough Council v Secretary of State for Communities and Local Government and Sir Thomas Stockdale* [2009] EWHC 1012 (Admin) and the more recent *R (oao Ocado Retail Ltd) v Islington LBC* [2021] EWHC 1509 (Admin).
- 6.9 In *Ellis*, the judge quoted from *Nicholson* as follows: "...Enforcement action against a breach of condition is concerned with the particular breach in question. If non-compliance ceases by discontinuance of the offending activity or otherwise, that breach is at an end. The condition however, will in an appropriate case continue in force. If there is subsequently renewed non-compliance, that would, in my judgement, be a fresh breach. The period for enforcement against that breach under section 171B(3) will begin to run again. It is not permissible to add the period of one breach to that of a subsequent breach, if as a matter of fact and degree they are separate breaches."
- 6.10 In *R (oao Ocado Retail Ltd) v Islington LBC* [2021] EWHC 1509 (Admin) Mr Justice Holgate explained that "The "rolling" nature of the time limit simply meant that the landowner would not have to do any more than show that a breach of planning control has existed for a minimum period of 10 years prior to the date on which the issue of immunity falls to be determined. It did not mean, as has sometimes been said, that the only way of demonstrating immunity was by looking solely at the 10-year period immediately prior to the date of an application for CLEUD or the issuing of an enforcement notice. The 10-year rule might have been satisfied at some point prior to that date. Second, once the 10-year rule is satisfied, the breach of planning control becomes lawful. In other words, a legal right in respect of what had previously amounted to a breach of planning control would accrue."
- 6.11 In assessing the evidence, the Council must therefore consider the degree of continuity and whether there was a continuous breach of the relevant conditions for a 10-year period during the period 29.07.2009 to 03.12.2021. It is not a question of continuous operation contrary to a condition; it is a question whether, over the relevant 10-year period, there has been a continuing breach of condition. The correct approach is to ask the question whether enforcement action could have been taken at all material times, successfully, in relation to what was happening in the premises, or to the premises, at any material time.
- 6.12 In determining a LDC the onus is on the applicant to show why an LDC should be granted.
- 6.13 As set out in the NPPG, an application for a Certificate of Lawful Development "needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates". It continues, "Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date...".
- 6.14 A Lawful Development Certificate cannot be subject to conditions, but it should specify the precise level or scale of use. The description of development is important and forms the basis on which this application is assessed. In this regard, clarity was sought on the extent of the breach and certificate sought, and for this to be adequately specified in the description.
- 6.15 On initial approach, the applicant's agent confirmed that they wished for this application to be considered in respect of the Description of Development submitted, and no other lesser extent.

6.16 The LPA entered into discussions with the applicant to communicate that the evidence submitted did not support the granting of a Certificate on the terms sought. A revised description of development and further evidence were then submitted. The LPA still does not consider that a Certificate can be granted under the description proposed by the applicant but that a certificate for lesser extent can be granted, as explained further throughout this report.

6.17 The applicant submitted an extensive list of documents to evidence the hours and location of use as described below. Each item is assessed in turn in relation to the revised description provided by the applicant:

1. **The cafe/restaurant has been in operation selling food and beverages to visiting customers between 10am-6pm Tuesday to Sunday excluding Mondays (but including Bank Holidays). Evening openings for the sale of food and beverages have occurred up to 11pm three events per week between Wednesday – Saturday. The evening openings have been seasonal. The operation has exceeded the hours specified in condition NS04 of LPA ref: 08/4312/FUL;**

6.18 Condition NS04 states as follows:

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.

6.19 The following have been provided on submission of the application:

- Item 1.1 - Statement of Truth by Skye Gyngell
- Item 1.2 - Statement of Truth by Charlotte Senn
- Item 1.3 - Statement of Truth by Bobby Melton
- Item 1.4 - Statement of Truth by Charlotte Hollands
- Item 1.5 - Statement of Truth by Yvonne Damant
- Item 1.6 - Statement of Truth by Francesco Boglione

Statements	Statement of Truths					
	Skye Gyngell	Charlotte Senn	Bobby Melton	Charlotte Hollands	Yvonne Damant	Francesco Boglione
Employment History / Relationship	Chef 2004-2011	Joined in 2004 and became General Manager 2011-2019	Operations Manager since 2010	Teahouse Supervisor Since 2014	Customer	Owner
HOURS OF OPERATION						
Opened in May/June 2004	x					
Teahouse started opening at 10am then began opening at 9am.				x		
Teahouse has last orders at 4.30-5pm but customers in the Teahouse or Restaurant can stay until they had finished.	x	x		x		
Teahouse service end at 5pm everyday of the week				x		
Restaurant hours until 6.30-7pm			x			
Evening events are limited based on licensing. Can operate 21 evenings per years.			x			

Worked 3-4 evenings events per year for last 5 years				x		
Evening events usually take place on Friday or Saturday evenings with two sittings – one at 6.30pm and one at 8.45pm				x		
Evening events end around 11pm. Staff leave around midnight				x		
Held charity events that do not require license			x			
Since 2014/2015, increased daytime events for weddings. 30-40 a year and they leave at 7.30pm.			x			
Apply temporary event notice for events in the evenings	x		x			x
Kitchen area for the restaurant has always been along the shared wall with Boglione's house			x			

2) Temporary Event Notices

Item 2.1 – Unsigned/unprocessed Temporary Event Notice – Saturday 7 June 2008 between 18.00-23.00

Item 2.2 – Unsigned/unprocessed Temporary Event Notice – Wednesday 18 June 2008 between 18.00-00.00

Item 2.7 - Temporary Event Notice Application form – 3 April 2010 between 18.00-23.30 (café in Greenhouse no.1)

Item 2.10 – Temporary Event Notice Application form – 1 May 2010 between 18.00-23.30 (café in Greenhouse no.1)

Item 2.12 - Temporary Event Notice Application form – 5 June 2010 between 18.00-23.30 (café in Greenhouse no.1)

Item 2.14 - Temporary Event Notice Application form – 3 July 2010 between 18.00-23.30 (café in Greenhouse no.1)

Item 2.16 - Temporary Event Notice Application form – 7 August 2010 between 18.00-23.30 (café in Greenhouse no.1)

Item 2.17 - Temporary Event Notice Application form – 4 September 2010 between 19.00-23.00

Item 2.18 - Temporary Event Notice Application form – 1 October 2010 between 19.00-23.00

Item 2.19 - Temporary Event Notice Application form – 23 October 2010 between 19.00-23.00

Item 2.20 - Temporary Event Notice Application form – 6 November 2010 between 19.00-23.00

Item 2.21 - Temporary Event Notice Application form – 20 November 2010 between 19.00-23.00

Item 2.22 - Temporary Event Notice Application form – 4 December 2010 between 19.00-23.00

Item 2.23 - Temporary Event Notice Application form – 20 December 2010 between 19.00-23.00

Item 2.25 - Temporary Event Notice Application form – 7 May 2011 between 18.00-23.30

Item 2.26 - Temporary Event Notice Application form – 14 May 2011 between 18.00-23.30

Item 2.27 - Temporary Event Notice Application form – 18 May 2011 between 18.00-23.30

Item 2.28 - Temporary Event Notice Application form – 2 June 2011 between 18.00-23.30

Item 2.29 - Temporary Event Notice Application form – 4 June 2011 between 18.00-23.30

Item 2.30 - Temporary Event Notice Application form – Thursday 9 June 2011 between 18.00-23.30

Item 2.31 - Temporary Event Notice Application form – Saturday 11 June 2011 between 18.00-23.30

Item 2.32 - Temporary Event Notice Application form – Thursday 16 June 2011 between 18.00-23.30

Item 2.33 - Temporary Event Notice Application form – Saturday 18 June 2011 between 18.00-23.30

Item 2.34 - Temporary Event Notice Application form – Thursday 23 June 2011 between 18.00-23.30

Item 2.35 - Temporary Event Notice Application form – Saturday 25 June 2011 between 18.00-23.30

Item 2.40 – 2.41 - Temporary Event Notice Application form – 18:00 Friday 4 May 2012 – 23.00 Saturday 5 May 2012

Item 2.42 - Temporary Event Notice Application form – Saturday 12 May 2012 between 19.00-23.00

Item 2.43 - Temporary Event Notice Application form – Saturday 19 May 2012 between 19.00-23.00

- Item 2.44** - Temporary Event Notice Application form – Saturday 26 May 2012 between 19.00-23.00
- Item 2.45** - Temporary Event Notice Application form – Saturday 9 June 2012 between 19.00-23.00
- Item 2.46** - Temporary Event Notice Application form – Saturday 16 June 2012 between 19.00-23.00
- Item 2.47** - Temporary Event Notice Application form – Saturday 23 June 2012 between 19.00-23.00
- Item 2.48** - Temporary Event Notice Application form – Saturday 7 July 2012 between 19.00-23.00
- Item 2.49** - Temporary Event Notice Application form – Saturday 14 July 2012 between 19.00-23.00
- Item 2.50** - Temporary Event Notice Application form – Saturday 21 July 2012 between 19.00-23.00
- Item 2.51 – 2.52** - Temporary Event Notice Application form – 18:00 Friday 27 July 2012 – 23.00 Saturday 28 July 2012
- Item 2.53 – 2.54** - Temporary Event Notice Application form – 18:00 Friday 29 June – 23.00 Saturday 30 July (No year)
- Item 2.55 – 2.56** - Temporary Event Notice Application form – 18:00 Friday 3 August 2012 – 23.00 Saturday 4 August 2012
- Item 2.61** - Temporary Event Notice Application form – Saturday 20 April 2013 between 18.00-23.30
- Item 2.62** - Temporary Event Notice Application form – Saturday 27 April 2013 between 18.00-23.30
- Item 2.64** - Temporary Event Notice Application form – Saturday 18 May 2013 between 18.00-23.30
- Item 2.64** - Temporary Event Notice Application form – Friday 24 May 2013 between 18.00-23.30
- Item 2.65 – 2.66** - Temporary Event Notice Application form – 18:00 Friday 24 May 2013 – 23.00 Saturday 25 May 2013
- Item 2.67** - Temporary Event Notice Application form – Saturday 1 June 2013 between 18.00-23.30
- Item 2.68 – 2.69** - Temporary Event Notice Application form – 18:00 Friday 14 June 2013 – 23.00 Saturday 15 June 2013
- Item 2.70 – 2.71** - Temporary Event Notice Application form – 18:00 Friday 12 July 2013 – 23.00 Saturday 13 July 2013
- Item 2.72** - Temporary Event Notice Application form – Friday 2 August 2013 between 17.00-24.00
- Item 2.73** - Temporary Event Notice Application form – Saturday 14 September 2013 between 18.30-24.00
- Item 2.75** - Temporary Event Notice Application form – Friday 13 December 2013 between 17.00 – 23.30
- Item 2.77** - Temporary Event Notice Application form – Friday 14 February 2014 between 17.00 – 24.00
- Item 2.78 – 2.79** - Temporary Event Notice Application form – 18:00 Friday 16 May 2014 – 23.00 Saturday 17 May 2014
- Item 2.80 – 2.81** - Temporary Event Notice Application form – 18:00 Thursday 5 June 2014 – 24.00 Friday 6 June 2014
- Item 2.81 – 2.82** - Temporary Event Notice Application form – 18:00 Friday 6 June 2014 – 24.00 Saturday 7 June 2014
- Item 2.83** - Temporary Event Notice Application form – Saturday 21 June 2014 between 18.00-24.00
- Item 2.84** - Temporary Event Notice Application form – 17.00 Thursday 17 July 2014 to 24.00 Saturday 19 July 2014
- Item 2.87** - Temporary Event Notice Application form – 18.00 Thursday 7 August to 24.00 Saturday 9 August 2014
- Item 2.90** - Temporary Event Notice Application form – 18.00 Thursday 18 September 2014 to 24.00 Saturday 20 September 2014
- Item 2.93** - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 29 November 2014
- Item 2.100** - Temporary Event Notice Application form – 18.00 – 24.00 Friday 5 December 2014
- Item 2.101** - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 6 December 2014
- Item 2.102** - Temporary Event Notice Application form – 18.00 – 24.00 Friday 19 December 2014
- Item 2.103** - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 20 December 2014
- Item 2.104** - Temporary Event Notice Application form – 17.00 – 24.00 Saturday 14 February 2015
- Item 2.105** - Temporary Event Notice Application form – 18.00 Thursday 14 May 2015 – 24.00 Saturday 16 May 2015
- Item 2.108** - Temporary Event Notice Application form – 18.00 Thursday 4 June 2015 – 24.00 Saturday 6 June 2015
- Item 2.111** - Temporary Event Notice Application form – 17.00 – 24.00 Friday 19 June 2015
- Item 2.113** - Temporary Event Notice Application form – 18.00 Thursday 9 July 2015 – 24.00 Saturday 11 July 2015
- Item 2.116** - Temporary Event Notice Application form – 18.00 Thursday 23 July 2015 – 24.00 Saturday 25 July 2015
- Item 2.119** - Temporary Event Notice Application form – 17.00 – 24.00 Saturday 26 September 2015
- Item 2.121** - Temporary Event Notice Application form – 18.00 Friday 23 October 2015 – 24.00

Saturday 24 October 2015

Item 2.126 - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 14 November 2015

Item 2.129 - Temporary Event Notice Application form – 18.00 – 24.00 Friday 4 December 2015

Item 2.130 - Temporary Event Notice Application form – 18.00 – 24.00 Friday 11 December 2015

Item 2.131 - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 12 December 2015

Item 2.133 - Temporary Event Notice Application form – 18.00 Friday 12 February 2016 – 24.00

Saturday 13 February 2016

Item 2.135 - Temporary Event Notice Application form – 18.00 – 24.00 Friday 18 March 2016

Item 2.136 - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 16 April 2016

Item 2.137 - Temporary Event Notice Application form – 18.00 Thursday 5 May 2016 - 24.00 Saturday 7 May 2016

Item 2.140 - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 28 May 2016

Item 2.141 - Temporary Event Notice Application form – 18.00 Thursday 23 June 2016 – 24.00 Saturday 25 June 2016

Item 2.144 - Temporary Event Notice Application form – 18.00 Thursday 7 July 2016 – 24.00 Saturday 9 July 2016

Item 2.147 - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 22 October 2016

Item 2.150 - Temporary Event Notice Application form – 18.00 – 24.00 9 December 2016

Item 2.152 - Temporary Event Notice Application form – 18.00 Thursday 15 December 2016 – 24.00 Saturday 17 December 2016

Item 2.155 - Temporary Event Notice Application form – 18.00 Friday 10 February 2017 – 24.00 Saturday 11 February 2017

Item 2.161 - Temporary Event Notice Application form – 18.00 7 July 2017 – 24.00 8 July 2017

Item 2.165 - Temporary Event Notice Application form – 18.00 – 24.00 13 July 2017

Item 2.166 - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 29 July 2017

Item 2.167 - Temporary Event Notice Application form – 18.00 – 24.00 Saturday 2 September 2017

Item 2.168 - Temporary Event Notice Application form – 18.00 – 24.00 Thursday 28 September 2017

Item 2.169 - Temporary Event Notice Application form – 18.00 – 24.00 Thursday 26 October 2017

Item 2.170 - Temporary Event Notice Application form – 18.00 – 24.00 Friday 27 October 2017

Item 2.171 - Temporary Event Notice Application form – 18.00 – 24.00 Friday 3 November 2017

Item 2.172 - Temporary Event Notice Application form – 18.00 – 24.00 Friday 17 November 2017

Item 2.173 - Temporary Event Notice Application form – 18.00 Thursday 30 November 2017 – 24.00 Friday 1 December 2017

Item 2.176 - Temporary Event Notice Application form – 18.00 Thursday 14 December 2017 – 24.00 Saturday 16 December 2017

Item 2.180 - Temporary Event Notice Application form – 18.00 Thursday 15 February 2018 – 24.00 Friday 16 February 2018

Item 2.181 - Temporary Event Notice Application form – 18.00 10 May 2018 – 24.00 11 May 2018

Item 2.185 - Temporary Event Notice Application form – 18.00 – 24.00 Thursday 7 June 2018

Item 2.186 - Temporary Event Notice Application form – 18.00 – 24.00 14 June 2018

Item 2.187 - Temporary Event Notice Application form – 18.00 21 June 2018 – 24.00 22 June 2018

Item 2.189 - Temporary Event Notice Application form – 18.00 – 24.00 29 June 2018

Item 2.190 - Temporary Event Notice Application form – 18.00 5 July 2018 – 24.00 6 July 2018

Item 2.193 - Temporary Event Notice Application form – 18.00 – 24.00 1 September 2018

Item 2.194 - Temporary Event Notice Application form – 18.00 – 24.00 21 September 2018

Item 2.196 - Temporary Event Notice Application form – 18.00 – 24.00 29 November 2018

Item 2.198 - Temporary Event Notice Application form – 18.00 – 24.00 7 December 2018

Item 2.200 - Temporary Event Notice Application form – 18.00 13 December 2018 – 24.00 15 December 2018

Item 2.203 - Temporary Event Notice Application form – 18.00 14 February 2019 – 24.00 15 February 2019

Item 2.205 - Temporary Event Notice Application form – 18.00 – 24.00 23 March 2019

Item 2.206 - Temporary Event Notice Application form – 18.00 2 May 2019 – 24.00 3 May 2019

Item 2.208 - Temporary Event Notice Application form – 18.00 – 24.00 16 May 2019

Item 2.209 - Temporary Event Notice Application form – 18.00 6 June 2019 – 24.00 7 June 2019

Item 2.213 - Temporary Event Notice Application form – 18.00 11 July 2019 – 24.00 12 July 2019

Item 2.215 - Temporary Event Notice Application form – 18.00 – 24.00 24 August 2019

Item 2.219 - Temporary Event Notice Application form – 18.00 – 24.00 31 October 2019

Item 2.220 - Temporary Event Notice Application form – 18.00 – 24.00 1 November 2019

Item 2.221 - Temporary Event Notice Application form – 18.00 – 24.00 7 November 2019

Item 2.222 - Temporary Event Notice Application form – 18.00 14 November 2019 – 24.00 15 November 2019

Item 2.224 - Temporary Event Notice Application form – 18.00 – 24.00 21 November 2019

Item 2.226 - Temporary Event Notice Application form – 18.00 – 24.00 29 November 2019

Item 2.227 - Temporary Event Notice Application form – 18.00 – 24.00 6 December 2019

Item 2.228 - Temporary Event Notice Application form – 18.00 11 December 2019 – 24.00 13 December 2019

3) Supper club Menu

Item 3.1 – Charity Dinner Menu – Tuesday 27 June 2006 (No corresponding TEN)

Item 3.2 – Supper Club Menu – Saturday 1 May 2010 (event corresponds with **Item 2.10** – Temporary Event Notice Application form)

Item 3.3 – Supper Club Menu – Friday 1 October 2010 (event corresponds with **Item 2.18** - Temporary Event Notice Application form)

Item 3.4 - Supper Club Menu – Saturday 3 July 2010 (event corresponds with **Item 2.14** - Temporary Event Notice Application form)

Item 3.5 - Supper Club Menu – Saturday 4 April 2010 (No corresponding TEN) (same as Item 3.6) (Note: Officer check - Date Error by Organiser, it is believed this should be Saturday 3 April 2010)

Item 3.6 - Supper Club Menu – Saturday 4 April 2010 (No corresponding TEN) (same as Item 3.5) (Note: Officer check - Date Error by Organiser, it is believed this should be Saturday 3 April 2010)

Item 3.7 - Supper Club Menu – Saturday 7 August 2010 (event corresponds with **Item 2.16** - Temporary Event Notice Application form)

Item 3.8 - Supper Club Menu – Saturday 4 September 2010 (event corresponds with **Item 2.17** - Temporary Event Notice Application form)

Item 3.9 – Supper Club Menu - Saturday 5 June 2010 (event corresponds with **Item 2.12** - Temporary Event Notice Application form)

Item 3.10 – Supper Club Menu - Saturday 6 November 2010 (event corresponds with **Item 2.20** - Temporary Event Notice Application form)

Item 3.11 – Supper Club Menu - Saturday 20 November 2010 (event corresponds with **Item 2.21** - Temporary Event Notice Application form)

4) Till Receipts

Item 4.1 – Till receipt (Restaurant) – 19/5/12 @16.56 (corresponds with **Item 2.43** - Temporary Event Notice Application form)

Item 4.2 – Till receipt (Restaurant) – 19/5/12 @22.36 (corresponds with **Item 2.43** - Temporary Event Notice Application form)

Item 4.3 – Till receipt (Restaurant) – 19/5/12 @22.37 (corresponds with **Item 2.43** - Temporary Event Notice Application form)

Item 4.4 – Till receipt (Restaurant) – 19/5/12 @22.33 (corresponds with **Item 2.43** - Temporary Event Notice Application form)

Item 4.5 – Till receipt (-) – 20/5/12 @17.00

Item 4.6 – Till receipt (Shop) – 20/5/12 @17.10

Item 4.7 – Till receipt (Shop) – 20/05/12 @17.18

Item 4.8 – Till receipt (Shop) – 20/05/12 @17.02

Item 4.9 – Till receipt (Shop) – 29/06/13 @17.04

Item 4.10 – Till receipt (Shop) – 29/06/13 @17.07

Item 4.11 – Till receipt (Shop) – 29/06/13 @17.14

Item 4.12 – Till receipt (Restaurant) – 29/06/13 @17.19 (no corresponding TEN submitted)

Item 4.13 – Till receipt (Shop) – 29/06/13 @17.22

Item 4.14 – Till receipt (Restaurant) – 17/08/13 @16.55 (no corresponding TEN submitted)

Item 4.15 – Till receipt (Restaurant) – 17/08/13 @17.00 (no corresponding TEN submitted)

Item 4.16 – Till receipt (Restaurant) – 08/12/13 @17.17 (no corresponding TEN submitted)

Item 4.17 – Till receipt (Restaurant) – 08/12/13 @17.16 (no corresponding TEN submitted)

Item 4.17(2) – Till receipt (Restaurant) – 08/12/13 @17.19 (no corresponding TEN submitted)

Item 4.18 – Till receipt (Restaurant) – 08/12/13 @17.25 (no corresponding TEN submitted)

Item 4.19 – Till receipt (Restaurant(?)) – 23/03/14 @17.37 (no corresponding TEN submitted)
– Till receipt (Restaurant) – 06/04/14 @17.08 (no corresponding TEN submitted)

Item 4.20 – Till receipt (TH) – 06/06/14 @16.40

Item 4.21 – Till receipt (Restaurant) – 06/06/14 @17.15 (no corresponding TEN submitted)

Item 4.22 – Till receipt (Shop) – 06/06/14 @19.15

- Item 4.23** – Till receipt (Shop) – 06/06/14 @19.48
- Item 4.24** – Till receipt (Shop) – 06/06/14 @19.53
- Item 4.25** – Till receipt (Shop) – 06/06/14 @20.03
- Item 4.26** – Till receipt (Shop) – 06/06/14 @20.20
- Item 4.27** – Till receipt (Shop) – 06/06/14 @20.24
- Item 4.28** – Till receipt (Shop) – 06/06/14 @20.27
- Item 4.29** – Till receipt (Restaurant) – 06/06/14 @20.56 (corresponds with **Item 2.81 – 2.82** - Temporary Event Notice Application form)
- Item 4.30** – Till receipt (Restaurant) – 06/06/14 @21.53 (corresponds with **Item 2.81 – 2.82** - Temporary Event Notice Application form)
- Item 4.31** – Till receipt (Restaurant) – 06/06/14 @21.54 (corresponds with **Item 2.81 – 2.82** - Temporary Event Notice Application form)
- Item 4.32** – Till receipt (Restaurant) – 06/06/14 @21.56 (corresponds with **Item 2.81 – 2.82** - Temporary Event Notice Application form)
- Item 4.33** – Till receipt (Restaurant) – 16/01/16 @16.52 (no corresponding TEN submitted)
- Item 4.34** – Till receipt (Restaurant) – 16/01/16 @17.19 (no corresponding TEN submitted)
- Item 4.35** – Till receipt (Restaurant) – 17/01/16 @16.52 (no corresponding TEN submitted)
- Item 4.36** – Till receipt (Restaurant) – 17/01/16 @17.03 (no corresponding TEN submitted)
- Item 4.37** – Till receipt (Restaurant) – 17/01/16 @17.04 (no corresponding TEN submitted)
- Item 4.38** – Till receipt (Restaurant) – 17/01/16 @17.07 (no corresponding TEN submitted)
- Item 4.39** – Till receipt (Restaurant) – 31/01/16 @16.41 (no corresponding TEN submitted)
- Item 4.40** – Till receipt (Shop) – 31/01/16 @16.56
- Item 4.41** – Till receipt (Shop) – 31/01/16 @16.57
- Item 4.42** – Till receipt (Shop) – 31/01/16 @16.58
- Item 4.42** – Till receipt (Shop) – 31/01/16 @16.59
- Item 4.44** – Till receipt (Restaurant) – 31/01/16 @17.13 (no corresponding TEN submitted)
- Item 4.45** – Till receipt (Restaurant) – 31/01/16 @17.27 (no corresponding TEN submitted)
- Item 4.46** – Till receipt (Shop) – 21/02/16 @16.44
- Item 4.47** – Till receipt (TH) – 21/02/16 @16.50
- Item 4.48** – Till receipt (TH) – 21/02/16 @16.51
- Item 4.49** – Till receipt (Restaurant) – 21/02/16 @17.11 (no corresponding TEN submitted)
- Item 4.50** – Till receipt (Restaurant) – 21/02/16 @17.13 (no corresponding TEN submitted)
- Item 4.51** – Till receipt (restaurant) – 21/02/16 @17.16
- Item 4.52** – Till receipt (Bottle of Eisola) – 08/03/16 @17.13
- Item 4.53** – Till receipt (Restaurant) – 16/01/16 @17.02 (no corresponding TEN submitted)
- Item 4.54** – Till receipt (Restaurant(?)) – 18/02/17 @17.51 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – 21/01/17 @17.37 (no corresponding TEN submitted)
- Item 4.55** – Till receipt (Restaurant(?)) – 09/04/17 @18.04 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – 26/03/17 @18.07 (no corresponding TEN submitted)
- Item 4.56** – Till receipt (Restaurant(?)) – 10/06/17 @17.30 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – 06/05/17 @18.23 (no corresponding TEN submitted)
- Item 4.57** – Till receipt (Restaurant(?)) – 15/07/17 @18.01 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – 05/08/17 @17.26 (no corresponding TEN submitted)
- Item 4.58** – Till receipt (Restaurant(?)) – 14/10/17 @17.39 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – unclear date @17.11
- Item 4.59** – Till receipt (Restaurant(?)) – 20/12/17 @17.34 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – 25/11/17 @18.14 (no corresponding TEN submitted)
- Item 4.60** – Till receipt (Restaurant(?)) – 16/02/18 @20.23 (corresponds with **Item 2.180** - Temporary Event Notice Application form)
– Till receipt (Restaurant(?)) – 28/01/18 @17.38 (no corresponding TEN submitted)
- Item 4.61** – Till receipt (Restaurant(?)) – 28/04/18 @17.54 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – unclear date/time
- Item 4.62** – Till receipt (Restaurant(?)) – 30/06/18 @17.43 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – 20/05/18 @17.40 (no corresponding TEN submitted)
- Item 4.63** – Till receipt (Restaurant(?)) – 26/08/18 @17.51 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – 07/07/18 @17.31 (no corresponding TEN submitted)
- Item 4.64** – Till receipt (Restaurant(?)) – 27/10/18 @17.55 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – 16/09/18 @17.44 (no corresponding TEN submitted)
- Item 4.65** – Till receipt (Restaurant(?)) – 25/11/18 @17.56 (no corresponding TEN submitted)
– Till receipt (Restaurant(?)) – 16/12/18 @18.06 (no corresponding TEN submitted)

- Item 4.66** – Till receipt (Restaurant(?)) – 24/02/19 @17.36 (no corresponding TEN submitted)
 – Till receipt (Restaurant(?)) – 06/01/19 @17.55 (no corresponding TEN submitted)
- Item 4.67** – Till receipt (Restaurant(?)) – 24/03/19 @17.44 (no corresponding TEN submitted)
 – Till receipt (Restaurant(?)) – 21/04/19 @18.03 (no corresponding TEN submitted)
- Item 4.68** – Till receipt (Restaurant(?)) – 22/06/19 @18.11 (no corresponding TEN submitted)
 – Till receipt (Restaurant(?)) – 25/05/19 @18.04 (no corresponding TEN submitted)
- Item 4.69** – Till receipt (Restaurant(?)) – 18/08/19 @17.35 (no corresponding TEN submitted)
 – Till receipt (Restaurant(?)) – 14/07/19 @17.57 (no corresponding TEN submitted)
- Item 4.70** – Till receipts (including illegible itemised bill) – 19/10/19 @17.59 and 21/09/19 @17.46 (no corresponding TEN submitted)
- Item 4.71** – Till receipt (Restaurant(?)) – 31/12/19 @16.47 (no corresponding TEN submitted)
 – Till receipt (Restaurant(?)) – 16/11/19 @17.48 (no corresponding TEN submitted)
- Item 4.72** – Till receipt (Restaurant(?)) – 26/01/20 @17.48 (no corresponding TEN submitted)
 – Till receipt (Restaurant(?)) – 07/03/20 @17.42 (no corresponding TEN submitted)
- Item 4.73** – Till receipts (including illegible itemised bill) – 16/02/20 @17.02 (no corresponding TEN submitted)

6.20 After discussion with officers, the following further evidence was provided:

Evidence	Officer Commentary
Events calendar 2011	No evening times accompany the events listed and so it is not possible to establish what times each event was on for, or whether food/beverages were sold at it. For example, there is no explanation of what the 'Petersham Playhouse Halloween Event' was or whether any accompanying refreshments at the Candlelit Christmas Market and Carols would have comprised anything other than a retail use. There are 10 additional 2011 calendar entries for supper clubs, all on Saturdays: 6, 13, 20, 27 August 1, 8, 15, 22 October 24, 31 December. These dates are not corroborated by TENS, till receipts or menus
March 2011	Details of dinner event dated 03/03/2011
September 2011	Details of dinner for charity event dated 08/09/2011 TENS 03.09.11
March 2019	There are instances of clockings that go up to and exceed 6pm, but on the whole by a little margin. Late evening clockings are found consistently on 14/03/2019. Corresponds with TENS evidence.
May 2019 clockings	As above. Late evening clockings are found consistently on: 02/05/19 – 23.38; 22.49; 23.46; etc 03/05/19 – 22.55; 23.56; 23.34; etc 15/05/19 – 00.09; 00.30; 00.10; etc. 16/05/19 – 22.38; 22.29; 22.54 etc The evidence corresponds with 2 TENS for May 2019
June 2019 clocking	There are instances of clockings that go up to and exceed 6pm, but on the whole by a little margin. Late evening clockings i.e. past 8pm are found consistently on: Sat 01/06/19 – 01.00; 22.59; 22.28; 22.39; 22.32; 23.00; 22.00 etc. Weds 05/06/19 – 21.14; 21.14; 21.31; 21.14; 21.31; 21.31; 21.30 etc Thurs 06/06/19- 23.58; 23.37; 23.30; 23.44; 23.46; 23.36; 23.31; etc Fri 07/06/19 – 23.06; 23.32; 23.04; 23.17; 23.08; 23.30; 23.38 etc Thurs 20/06/19 – 21.15; 22.31; 22.32; 22.31; 22.59; The chefs hours exceed that of waiting staff.
Jan 2020 clockings	There are instances of clockings that go up to and exceed 6pm, but on the whole by a little margin. Late evening clockings i.e. past 8pm are found to be very limited throughout the document and dates do not concur across staff. The teahouse chef is indicated to work later hours on a number of dates but as these do not correspond consistently with late hours of other staff, as above, this is considered more likely evidence of food preparation than sales.

	The document is blank from page 74 onwards.
Feb 2020 clockings	<p>Finishing times are generally prior to 6pm with some exceptions, notably closer to 7pm on 03/02 in two instances. There are instances of late times being highlighted for waiting/cooking staff:</p> <p>13/02/20 – 22.52; 23.01; 22.30; 22.30; 23.36; 22.40; 22.46 etc</p> <p>14/02/20 – 00.29; 23.23; 23.54; 23.25; etc</p> <p>These would appear to indicate evening events were held on 13th & 14th</p> <p>The spreadsheet on page 45 indicates late times over several dates under the heading 'kitchen'. This is not explained and as many dates do not correspond with other evidence Officers hypothesise in the absence of explanation to the contrary that this may have involved food preparation/clean-up as opposed to food/beverage sales.</p>

- Petersham Nurseries Timecard job descriptions

Summary of assessment – (a) The cafe/restaurant have been in operation selling food and beverages to visiting customers between 10am-6pm Tuesday to Sunday excluding Mondays (but including Bank Holidays).

- 6.20 From the submitted Statement of Truths, it is noted that the dining facilities opened in May/June 2004.
- 6.21 Many of the till receipts align with the statement of truths in that they appear to suggest customers have ordered food and drink within the hours approved by condition but have not finished their meal and completed payment for their bill within the defined hours. The majority of the till receipts for which there is no corresponding TEN are time stamped prior to 6pm.
- 6.22 In looking for evidence of till receipts specifically from the restaurant that exceed the authorised daytime hours of 16.30, the below table summarises the position:

Month	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec
2009												
2010												
2011												
2012					20 th 17.00 – 17.18							
2013						29 th 17.04 – 17.22		17 th 16.55 - 17.00				8 th 17.16- 17.25
2014			23 rd 17.37	6 th 17.08								
2015												
2016	16 th 16.52-17.19 17 th 16.52-17.07 31 st 16.41-17.27	21 st 16.44- 17.16	8 th 17.13									
2017	21 st 17.37	18 th 17.51	26 th 18.07	9 th 18.04	6 th 18.23	10 th 17.30	15 th 18.01	5 th 17.26		14 th 17.39	25 th 18.14	20 th 17.34
2018	28 th 17.38			28 th 17.54	20 th 17.40	30 th 17.43	7 th 17.31	26 th 17.51	16 th 17.44	27 th 17.55	25 th 17.56	16 th 18.06
2019	6 th 17.55	24 th 17.36	24 th 17.44	21 st 18.03	25 th 18.04	22 nd 18.11	14 th 17.57	18 th 17.35	21 st 17.46	19 th 17.59	16 th 17.48	31 st 16.47
2020	26 th 17.48	16 th 17.02	7 th 17.42									
2021												

- 6.23 There is evidence of a consistent breach during 2017 to March 2020. The evidence from the till receipts does not support a consistent breach for 10 years.

- 6.24 This evidence can be supplemented by the evening events evidence, considered in further detail below. However, as to be discussed the evening evidence also falls short and does not confirm an exceedance of hours on the full range of days/times for which the certificate is sought.
- 6.25 The Statement of Truths are generally consistent in noting that teahouse/café had last orders at 4.30-5pm but customers could stay until they finished their food/drinks (see statement from Charlotte Senn, Bobby Melton, Charlotte Hollands). The statement from Charlotte Senn indicates that this was seasonal, usually 'later in the summer months'. The statements do not explain the time period for exceedance of the condition but are from employees who cover a 10 year period of experience with the premises.
- 6.26 The wording of the condition requires that "there shall be no sale of food for consumption on or off the premises during the following times". The question then arises as to the point of sale. The LPA consider this to be point at which an order for food is made and accepted, as opposed to the point at which the purchases are finally consumed on the premises. The evidence from the statement of truths would indicate that orders have generally been taken up until 5pm.
- 6.27 The Statement of Truths indicate that daytime food sales have followed retail opening hours. It is noted that at the time of writing this report the Café opening hours are advertised as 12-5pm Tues-Thurs and Sun, and the same with an additional 6.30-11pm sitting on Fri-Sat. The premises are currently advertised as being closed on Monday's except on bank holidays. Whilst the till receipt evidence does not illustrate a continuous breach, when supplemented with the Statement of Truths and on the balance of probability, it is considered that a Certificate could be granted confirming the lawfulness of sale of food and beverages between 10am-5pm Tuesday to Sunday excluding Mondays.
- 6.28 Little is said of bank holiday opening in particular. The applicant's description of development is imprecise in the respect that it is unclear whether the terms of the condition seek confirmation of bank holiday opening on days other than Mondays, or whether it wishes to establish the lawfulness of Monday opening only on Bank Holidays. The LPA do not support the grant of a certificate for a Description of Development which is not precise in its terms.
- 6.29 That point aside, the Statement of Truths are silent on bank holiday openings and no evidence of a consistent breach over 10 years has been presented on this point.
- Summary of assessment – (b) Evening openings for the sale of food and beverages have occurred up to 11pm three events per week between Wednesday – Saturday. The evening openings have been seasonal. The operation has exceeded the hours specified in condition NS04 of LPA ref: 08/4312/FUL;**
- 6.30 It is unclear when the breach of the planning condition first took place. Though worth noting is the Statement of Truth from Bobby Melton, who started in 2010, and Charlotte Holland, who started in 2014.
- 6.31 Bobby Melton notes that the restaurant hours usually finished between 6.30-7pm and whilst charity events do not require TENS, they have applied for TENS for their evening events. Charlotte states in her Statement of Truth that 'evening events usually take place on Friday or Saturday evenings with two sittings – one at 6.30pm and one at 8.45pm'. This is supported by the numerous TENS submitted as part of this application which are all for between Thursdays and Saturdays.
- 6.32 Even when cross examined with the staff timecards, it is clear that there is a lack of evidence to demonstrate that the cafe/restaurant have been in operation selling food and beverages to visiting customers for the full extent of the time period cited in the applicants description of development, that being to 11pm Wednesdays-Saturdays. The evidence is summarised in Table 1 and Table 2 appended to this report.
- 6.33 The submitted TENS with dates spreading over 11 years (between 2008 and 2019) demonstrate

that the applicants have applied for such notices over the period of 11 years. It is acknowledged that on the balance of probability those events with corresponding TENs are likely to have taken place. However, the evidence presented is not sufficient to demonstrate the continuous use of the land for a period of 10 years given the dates are for 1 or 2 days during certain weeks and not for a continuous period. In-fact, they amount to, on average, between 1 to 4 evening events per calendar month during some time periods. This does not demonstrate continuous use Weds – Saturday evenings between to 11pm.

- 6.34 The submitted supper club menus are only provided for dates in 2010. The absence of any corresponding plans fails to clarify the location of these events.
- 6.35 The till receipts provide a highlight of some of the transactions that took place on site spanning the period between 2012 and 2020. No plans were submitted to confirm the location of the restaurant, shop or Tea House over time and the ad hoc times and dates presented by each of the till receipts fail to satisfactorily demonstrate the continuous use of the land for a particular use over a continuous period of 10 years and the opening hours.
- 6.36 Considering the balance of probability, it is reasonable to conclude that there have been ad-hoc breaches of the hours of use condition. Overall however, the submitted items result in ambiguity and thus provide insufficient evidence to confirm the lawfulness of the operation as cited in the applicants Description of Development.
- 6.37 The Court of Appeal decision of Secretary of State for the Environment v Holding and Thurrock Borough Council [2002] EWCA Civ. 226 confirms that, to become lawful, a use must have continued actively throughout the ten-year period, to the extent that enforcement action could have been taken against it at any time during that period. Any significant interruption in the continuity of an unauthorised use, before it has gained rights under the four or ten-year rule, means that the particular breach is at an end, and, when the use recommences, the ten-year period must start again.
- 6.38 The Thurrock judgement has been considered in the more recent Court of Appeal case of Swale Borough Council v The First Secretary of State [2005] EWCA Civ 1568. In his judgement Keene L J referred to the judgement of Newman J at first instance in Thurrock, subsequently approved by the Court of Appeal, and in particular to the following summary by Schiemann L J at paragraph 15 of the Court of Appeal judgement, as follows:
- “The rationale of the immunity is that throughout the relevant period of unlawful use, the LPA, although having the opportunity to take enforcement action, has failed to take any action and consequently it would be unfair and/or could be regarded as unnecessary to permit enforcement. If at any time during the relevant period the LPA would not have been able to take enforcement proceedings in respect of a breach (for example, because no breach was taking place) then any such period cannot count towards the rolling period of years which give rise to the immunity. It was for the land owner to show that at any time during the relevant period enforcement action could have been taken”.*
- 6.39 Considering the evidence from the time of the grant of application 08/4213/FUL onwards it is noted that:
- The only evidence submitted for the period October 2009 to March 2010 comprise 2 photographs (which do not contribute to consideration of the hours condition) and a sample of Restaurant/Teahouse Events – Christmas Late night Shopping dates 2 December and 9 December 2009 between 6-9pm. This suggests only the sale of a very limited menu which could be considered to fall within the A1 retail operation, supporting the 'late night shopping' nature of the event. Overall, it is considered that the details provided do not provide evidence of a breach of condition for this period.
 - There are a series of TENS and associated supper club menu's for 1-2 dates per month for the period April to December 2010. It is accepted that on the balance of probability there was a breach of the hours of use condition during this period, albeit to a very much lesser extent than the hours sought under the description of development.

- In 2011, there are TENS granted predominantly for May and June 2011. There is one event in March and one in September. Other evidence has been submitted but this is very limited and largely comprises 'calendar' entries and the weight given to this must be questionable. There are no till receipts or timecards for this period. Even if accepting this evidence, there is a then a 4 month gap in the breach Jan— 3rd May 2012.
 - In 2012, the TENS evidence is supported in two instances by till receipts which indicates that there may have been evening events in breach of the condition over a 4 month period between May and August. Notwithstanding the LPA's critique of the evidence, there is then a further substantive gap in the purported breach of 7.5 months (5th August 2012 – 19th April 2013). Given this extended time period it is considered that the Local Planning Authority could not have taken enforcement action as there was no breach. This is considered to be a significant break in the breach, during which time the LPA would not have been able to take enforcement proceedings.
 - From 20th April 2013 to 13th December 2019 there is more regular evidence of TENS being granted with breaks between these evening events of up to some 5 months (i.e. between 12th Feb – 6th July 2017).
 - The last TENS submitted in evidence is dated 13th December 2019. Even if the Local Planning Authority considered that the evidence supported the fact that a breach had taken place for a continuous period such that it met the terms of the description of the development, which it does not, the evidence would not amount to a continuous period of 10 years during the period from the grant of planning permission 08/4312/FUL to December 2019.
 - There is no evidence submitted for 2020 apart from late clockings on 2 dates in February, or the remaining period to the date of this application other than 3 till receipts from January to March 2020 timed between 5pm and 6pm and staff timesheets for Jan/Feb 2020. The pandemic lockdowns began in March 2020. No breach of planning control occurred during that time and the practical consequence is that the applicant must show a continuous breach for 10 years between the grant of planning permission and the break in the breach for lockdown.
 - There is very little evidence of evening use on a Wednesday to 11pm. This amounts to only 3 dates in total. On Thursday late openings, there are 5 dates in 2011 and none at all from October 2011 - May 2014. The evidence does not support 10 years continuous use of Wednesday and Thursday openings.
 - The TENS evidence shows up to a maximum of 21 evening events per year and this no. has not been evidenced consistently over 10 years. A certificate could not be granted for more than this i.e. a weekly Friday & Saturday would amount to 104 evenings per year; and this is not supported by the evidence. The evidence indicates that 12 events per year on a Friday/Saturday seasonal use during May-July and December could be supported if there had not been a break in the breach in 2012/2013 and 2020/21.
- 6.40 The applicant has included the words, "the evening openings have been seasonal" within their description. The evidence does indicate seasonal use although this has been inconsistent, and the description is insufficiently precise for the issuing of a Certificate on these terms, notwithstanding the other concerns. The LPA offer the following observations:
- January – no evidence of consistent breach
 - February – 7 years continuous breach for 1-2 evening events
 - March – no evidence of consistent breach
 - April – no evidence of consistent breach
 - May – 9 years of events with a gap in 2017
 - June – 9 years of events with a gap in 2017
 - July – 8 years of events
 - August – no evidence of consistent breach

- September – no evidence of consistent breach
- October – no evidence of consistent breach
- November - 5 years of events with a gap in 2016
- December - 9 years of events with a gap in 2012

6.41 In anticipation that the applicant may wish to cite the Coronavirus pandemic in support of an argument of a continued breach, the LPA would note Miles v National Assembly of Wales [2007] EWHC 10 (Admin). In that case, the court held that an interruption of 15 months or so in the use of land for motorcycling before the 10 year period had elapsed, because of the foot and mouth outbreak, meant that the earlier period could not count towards the accrual of immunity. In his appeal decision, the Inspector had noted that the interruption was “out of the control of the Appellant and he intended to resume the use”. Nevertheless, the court confirmed that, during “the period of the foot and mouth outbreak there could have been no question of enforcement action.”

2. The areas used for the preparation, sale and consumption of food and beverages have operated within the area outlined in red shown on drawing reference 02-277-03-RP02. The operation has exceeded the areas specified in condition NS05 of LPA ref: 08/4312/FUL;

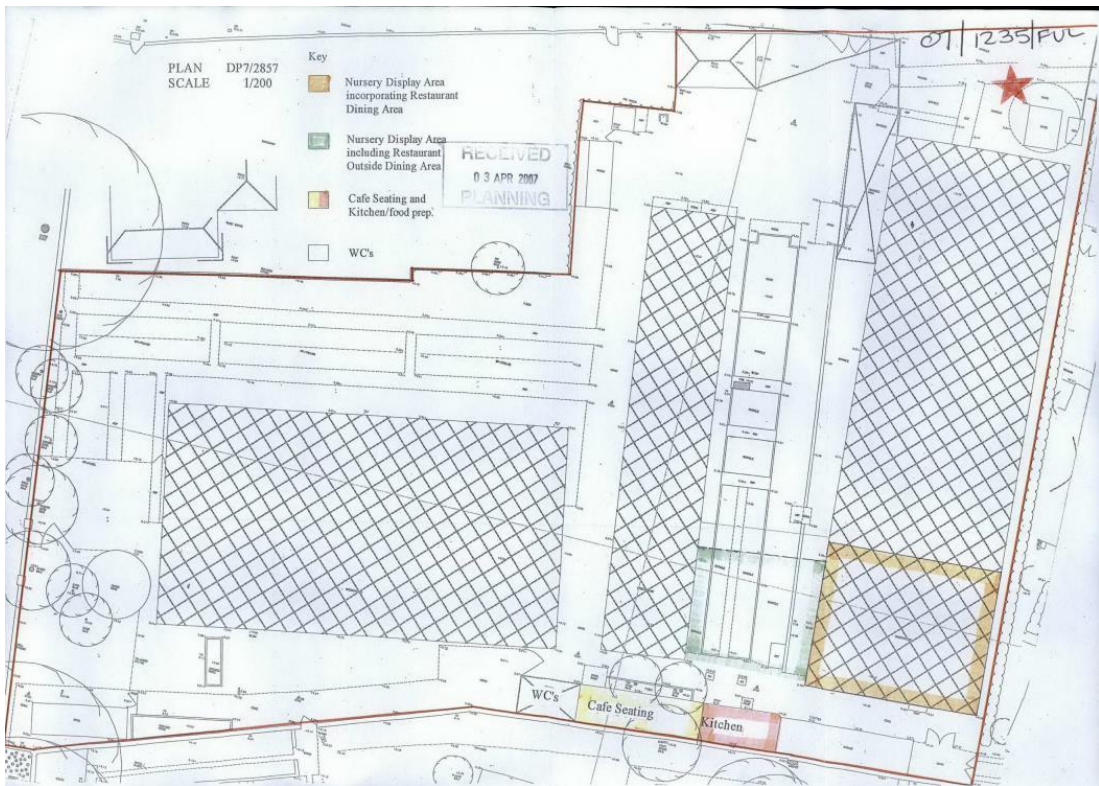
6.42 Condition NS05 states as follows:

U27544NS05 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.

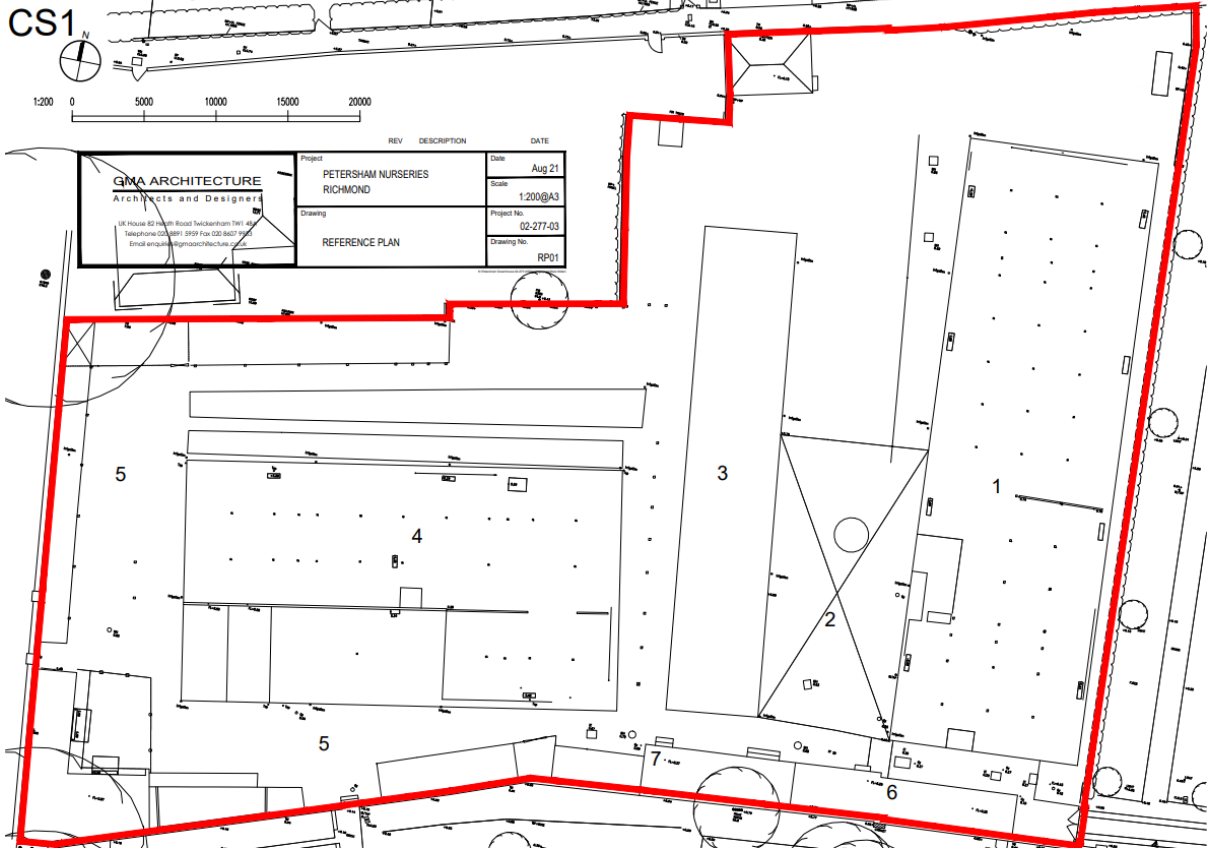
REASON: To safeguard the MOL, conservation area, amenities of nearby residential properties and the area generally.

6.43 The plan referenced in the condition shows the following areas:

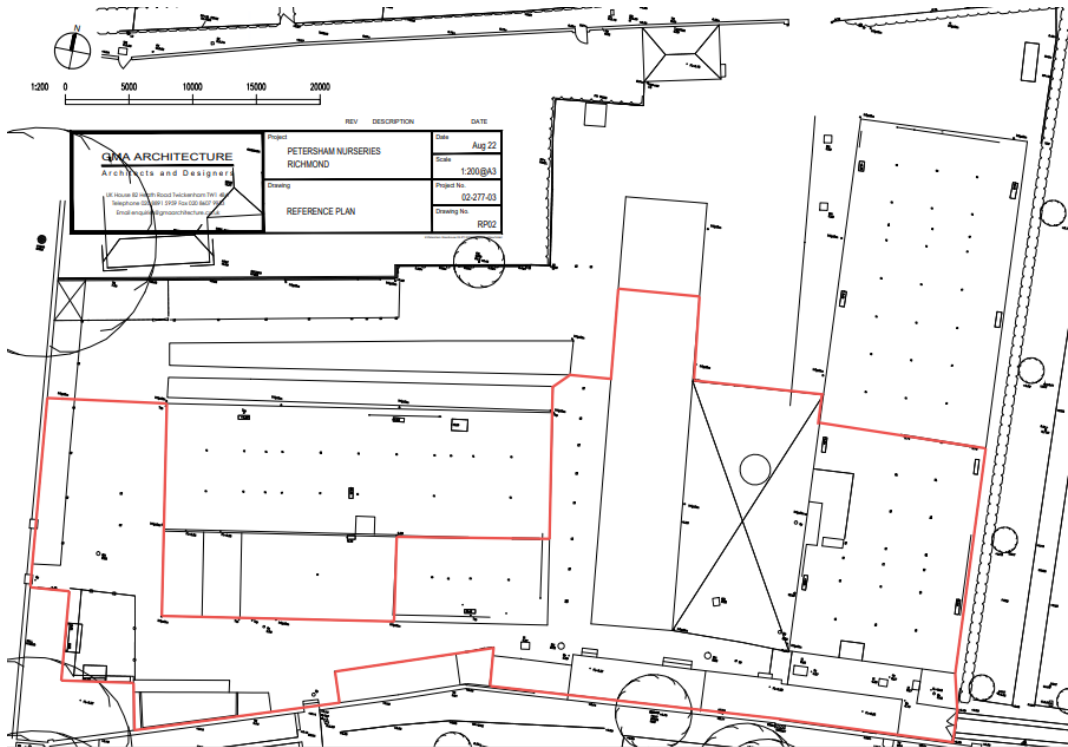


- 6.44 The following have been submitted:
- Item 1.1 - Statement of Truth by Skye Gygell to be read in conjunction with below Plan
 - Item 1.2 - Statement of Truth by Charlotte Senn to be read in conjunction with below Plan

- Item 1.3 - Statement of Truth by Bobby Melton to be read in conjunction with below Plan
- Item 1.4 - Statement of Truth by Charlotte Hollands to be read in conjunction with below Plan
- Item 1.5 - Statement of Truth by Yvonne Damant to be read in conjunction with below Plan
- Item 1.6 - Statement of Truth by Francesco Boglione to be read in conjunction with below Plan



6.45 Over the course of the application the plan of areas to which lawfulness is sought to be established was amended to:



Statements	Statement of Truths					
	Skye Gyngell	Charlotte Senn	Bobby Melton	Charlotte Hollands	Yvonne Damant	Francesco Boglione
AREA OF USE						
Employment History / Relationship	Chef 2004-2011	Joined in 2004 and became General Manager 2011-2019	Operations Manager since 2010	Teahouse Supervisor Since 2014	Customer	Owner
Name of Owner		Francesco Boglione				
May/June 2004 café started with a few tables along the back wall	x					
Greenhouse marked 1 was firstly used for the restaurant	x					
In 2005, started using greenhouse labelled 3 and area labelled 2	x					
By 2006, café was a sit-down restaurant and open seven days a week and operated in half the area labelled as 1 on the plan with the remainder of the glasshouse used a retail. This extended to area 2.		x				
In 2007, indoor seating areas for the restaurant were in areas marked 1 and 2 (length of the area is about the same)			x			
Supper club started around 2005 and became more regular from 2008. Events were focussed around		x				

holidays and were usually on Friday and Saturday evenings. Supper club took place in areas 1, 2 and 3.						
Supper club started in 2005					x	
From 2008, half of Greenhouse 1 was used a restaurant and same amount of space in area 2	x					
Seating areas for the café, restaurant and dinners were the same in 2008 as those used in present day						x
From 2008/2009, outdoor seating area was around greenhouse 4	x					
By 2009 onwards, the teahouse tables were distributed in areas labelled 3, 4 and 5.		x				
From 2010, seating areas for the restaurant is about half of greenhouse 1 and outside area 2.				x		

2) Aerial Imagery and photographs

Item 5.1 – Aerial imagery dated 01/01/2006, 05/03/2008, 27/06/2010, 19/07/2013, 04/06/2015, 08/04/2017, 07/05/2018, 29/06/2019, 11/04/2020

Item 5.2 – Photos from the following years were submitted

In the area identified as Restaurant - 2004, 2005, 10/06/2006, 18/05/2004, 13/05/2004, June 2005, 02/10/2008, 2010

In the area identified as GH3 – 10/03/2011, 21/07/2011, 13/05/2012

In the area identified as GH2 – 31/12/2002, 22/10/2005, 10/06/2006, 01/09/2007, 04/03/2009, 27/10/2009, Christmas 2009.

3) Supplementary info submitted October 2022

Peterham Nurseries photo locations and accompanying photos

6.46 The Statement of Truths indicate (with reference to the areas indicated in the plan above) that:

- Glasshouse 1: In 2005 there were 18 tables, all in greenhouse 1. The restaurant operated in half of this area from around 2006-2008.
- Area 2: There were seating areas here for the restaurant from 2005-2007 and its extent was around the same as that of the restaurant, and has been used that way since
- Glasshouse 3: The teahouse started operating from this building around 2005/6 although the extent of the teahouse operation and the retail area is not clear from the statement of truths
- Building 7: The teahouse has operated from this space since prior to 2014
- External area 5: Outdoor seating ran halfway along the outside rear by the toilets and storage rooms along the back of the greenhouse, along the back wall and around the corner in 2007. In 2008/9 the seating wound around greenhouse 4. There has been seating here, apparent from the statement of truth's but its extent is not clear. One statement of truth refers to some 80 seats outside from 2007/8. Another notes that teahouse customers could sit anywhere in the Nursery with tables dotted all over the site, displayed both as retail

furniture and for customer dining. Since 2014 there has been seating here along the back wall of the nurseries.

- Glasshouse 4: Teahouse tables were distributed in this area from 2009 but extent is not clear. Since 2014/15 this area has been used for daytime weddings amounting to on average 30-40 per year. Charlotte Hollands Statement of Truth indicates a smaller seating area in here.

6.47 The supplementary photo locations show seating in:

- Glasshouse 3: Seating in the southern part in 2006/2007 and seating extending further north in 2011, 2012 and 2015
- External area 5: seating present to the southern and western border in 2011

Summary of assessment

6.48 Initially the accompanying plan referenced in the Description of Development highlighted the site in its entirety and it had been submitted that the whole site had been used for the preparation, sale and consumption of food and beverages. However, this does not reflect the areas described in the accompanying Statement of Truths and the area witnessed by Officers during site visits.

6.49 Following discussion, a revised plan and description were submitted.

6.50 At the site visit undertaken during the assessment of this application, the Officer observed that the restaurant/café occupied about half of Greenhouse 1 (with the other half being used for retail purposes) and same amount of space in area 2 and 3. There were external seating areas in Area 5 with some benches around Greenhouse 4. These are reflective of the areas as described in the submitted statement of truths.

6.51 The statements are consistent in identifying that half of greenhouse 1 and an equivalent external area (marked 2) have been used since 2007/2008. It is considered that these areas are adequately defined, matching that on the submitted plan, and a Certificate could be granted for the use of these areas for dining.

6.62 The extent of the seating in the greenhouses labelled 3 and 4 is insufficiently explained. Whilst the Statement of Truths are generally consistent in stating that greenhouse 3 has been used for seating, the statements do not describe the extent of the seating area in the same way that they do for greenhouse 1 for example. The LPA are thus not able to issue a Certificate that is sufficiently clear and precise for this area. The statements do not provide 10 years continuous use evidence of the event space in the greenhouse labelled 4.

6.63 The description of the extent of external seating in area 5 is insufficiently precise in the Statement of Truths. It is accepted on the balance of probability that there has been some external seating on site for a continuous period of 10 years, most likely and consistently present in the area to the south of greenhouse 4 but again, the LPA are not able to issue a Certificate that is sufficiently clear and precise in defining this area. Objections to the application note that the seating area against the boundary wall with Rutland Drive has been in place for no more than 5 years.

6.64 The statements are largely silent on the building marked 6 which accompanies them. This building partly corresponds to the area approved under the parent application but the extension to this area on the plan is unexplained.

3. The business has been carried out by Petersham Nurseries Ltd contrary to condition NS08 of LPA reference 08/4312/FUL.

U27547NS08 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. REASON: To safeguard the amenities of the adjoining residents and the area generally.

6.65 The following has been submitted:

- Item 1.6 - Statement of Truth from Francesco Boglione
- Item 13.1 – Invoice from Opentable dated 01.01.2009 addressed to Petersham Nurseries
- Item 13.1 – Invoice from Burstenhaus Redecker dated 22.02.2008 addressed to Petersham Nurseries Ltd
- Item 13.1 – Invoice from Burstenhaus Redecker dated 09.03.2009 addressed to Petersham Nurseries Ltd
- Item 13.1 – Invoice from Burstenhaus Redecker dated 04.12.2009 addressed to Petersham Nurseries Ltd
- Item 13.2 – BT bill dated 4 March 2012 address to Petersham Nurseries Ltd
- Item 13.2 – Invoice/Statement from Barclaycard for period 01.03.2012-31.03.2012 address to Petersham Nurseries
- Item 13.2 – Thames Water Bill dated 13.03.2012 addressed to Petersham Nurseries
- Item 13.2 – Invoice from Berkshire Wet Waste dated 31.03.2012 addressed to Petersham Nurseries
- Item 13.2 – Liverpool Victoria – Business Insurance Schedule from 01.03.2012-28.02.2013 addressed to Petersham Nurseries Limited
- Item 13.2 – Invoice from Opentable dated 01.04.2012 addressed to Petersham Nurseries
- Item 13.2 – Invoice from Osbornes dated 01.04.2012 address to Petersham Nurseries
- Item 13.2 – Invoice from Greener World dated 28.04.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 – Invoice from Brindisa Ltd dated 04.05.2012 address to Petersham Nurseries Limited
- Item 13.2 – Invoice from Astier de Villatte dated 11.06.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 – Invoice from The Russell School dated 18.06.2012 Item 13.2 addressed to Petersham Nurseries Ltd
- Item 13.2 – Invoice from LBRuT dated 01.07.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 – Invoice from LBRuT dated 04.07.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 – Invoice from The London Lawn Care Company dated 26.07.2012 addressed to Petersham Nurseries
- Item 13.2 – Invoice from Kothari & Co dated 28.09.2012 addressed to Petersham Nurseries Ltd
- Item 13.2 – EDF Bill dated 12.11.2012 for period 09.03.12-08.11.12 addressed to Petersham Nurseries Ltd
- Item 14 – Business Rates Bill for period 2012/13 dated 27.07.2012 addressed to Petersham Nurseries Ltd
- Item 15.1 – Petersham Nurseries Ltd – Form P32 (2013) – Employer Payment Record – from 06.04.2013 – 05.04.2014
- Item 15.2 – Payment Submission to HMRC from Petersham Nurseries Ltd for period 06.05.2014 – 05.04.2015
- Item 15.3 – Business Tax Account for tax year 2015-2016 (no details of business to which the statements relate to)
- Item 15.4 – Business Tax Account for tax year 2016-2017 (no details of business to which the statements relate to)
- Item 15.5 – Business Tax Account for tax year 2017-2018 (no details of business to which the statements relate to)
- Item 15.6 – Business Tax Account for tax year 2018-2019 (no details of business to which the statements relate to)
- Item 13.3 – Southern Communications Bill dated 04.04.2019 addressed to Mr John Neill, Petersham Nurseries
- Item 13.3 – Invoice from Retail it dated 01.10.2019 addressed to Petersham Nurseries
- Item 13.3 – Invoice from Crystal Care dated 01.11.2019 addressed to Petersham Nurseries
- Item 13.3 – Invoice from The Russell School dated 20.11.2019 addressed to Petersham Nurseries Ltd

- Item 13.3 – Invoice from Evergreen dated 11.12.2019 addressed to Petersham Nurseries Ltd
 - Item 13.3 – Invoice from Priddy Essentials dated 16.12.2019 addressed to Petersham Nurseries
 - Item 13.3 – Invoice from HG Walter dated 28.12.2019 addressed to Petersham Nurseries (Richmond)
 - Item 13.3 – Invoice form Sustainable Waste Services dated 31.12.2019 addressed to Petersham Nurseries
- 6.66 It has been submitted that whilst Mr Francesco Boglione and his wife own Pertersham Nurseries, the business operates under Petersham Nurseries Limited.
- 6.67 Petersham Nurseries Limited contractually employs all its staff members and all supplier contracts. The business has never been run personally by Francesco Boglione.
- 6.68 The statement of truth by Francesco Boglione and the receipts/invoices from relevant suppliers are considered to be sufficient to establish that on the balance of probability, that the business has been carried out by Petersham Nurseries Ltd.
- 6.69 The NPPG advises that “a condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.”
- 6.70 The Statement of Truth from Francesco Boglione evidences that from the time of purchase of the site (over 10 years ago) to the present day that he, together with his wife, own the company and are Directors of the Petersham Nurseries Ltd., notwithstanding any degree (or lack thereof) of direct involvement in its management.
- 6.71 The Counsel advice accompanying the application acknowledges Mr Boglione as a director but states that “it is beyond argument that a company has a separate legal personality from its members, shareholders or directors.” This point is noted albeit the NPPG explicitly seeks to hold responsibility for the legal personality of a company to a named individual. For this reason, the Local Planning Authority do not consider that there has been a breach of condition ‘U27547 NS08 Personal Permission’. The use has been carried out by Mr Francesco Boglione as an owner with legal responsibility for the company Petersham Nurseries Ltd. Nonetheless, the LPA would accept also that the business has been “carried out by Petersham Nurseries Ltd” in respect of the wording of the condition and could issue a Certificate to this extent, but not to the extent that it supports a breach of planning control as indicated in the applicants wording in their description.

Other evidence

List of supporting documents:

A) Staff Timecards

Item 6.1 – April 2013 – typical timecards submitted is illustrated below:

DATE	DAY	CTGY.	START	STOP	HOURS	REG	OT1	OT2	OT3	UNPAID	TOTAL	F
03/04/2013	WED	WORK	09:35 IG	17:05 OE	7.50	7.50					7.50	
06/04/2013	SAT	WORK	11:38 IL	18:46 OL	7.00	7.00					7.00	
07/04/2013	SUN	WORK	11:32 IL	18:15 OL	6.75	6.75					6.75	
10/04/2013	WED	WORK	09:41 ID	17:25 OD	7.50	7.50					7.50	
14/04/2013	SUN	WORK	11:43 IL	19:12 OL	7.25	7.25					7.25	
17/04/2013	WED	WORK	09:40 ID	17:54 OL	8.00	8.00					8.00	
21/04/2013	SUN	WORK	09:58 IL	19:10 OL	9.00	9.00					9.00	
23/04/2013	TUE	WORK	11:39 IL	15:13 OE	3.25	3.25					3.25	
24/04/2013	WED	WORK	08:52 IE	17:06 OE	8.00	8.00					8.00	
26/04/2013	FRI	WORK	11:58 IL	15:29 OE	3.25	3.25					3.25	
28/04/2013	SUN	WORK	11:32 IL	18:54 OL	7.25	7.25					7.25	
30/04/2013	TUE	WORK	09:26 IR	17:37 OR	8.00	8.00					8.00	
EMPLOYEE TOTALS						82.75	0.00	0.00	0.00	0.00	82.75	

- Item 6.2** – May 2013 - Timecards – incomplete Month
- Item 6.3** – June 2013 - Timecards – incomplete Month
- Item 6.4** – July 2013 - Timecards – incomplete Month
- Item 6.5** – August 2013 - Timecards – incomplete Month
- Item 6.6** – Sept 2013 - Timecards – incomplete Month
- Item 6.7** – Oct 2013 - Timecards – incomplete Month
- Item 6.8** – Nov 2013 - Timecards – incomplete Month
- Item 6.9** – Dec 2013 – Timecards – incomplete Month
- Item 6.10** – Jan 2014 – Timecards showing working on Saturdays and Sundays only
- Item 6.11** – Feb 2014 – Timecards – incomplete Month
- Item 6.12** – Mar 2014 – Timecards – incomplete Month
- Item 6.13** – April 2014 – Timecards – incomplete Month
- Item 6.14** – May 2014 – Timecards – incomplete Month
- Item 6.15** – June 2014 – Timecards – incomplete Month
- Item 6.16** – July 2014 – Timecards – incomplete Month
- Item 6.17** – Aug 2014 – Timecards – incomplete Month
- Item 6.18** – Sept 2014 – Timecards – incomplete Month
- Item 6.19** – Oct 2014 – Timecards – incomplete Month
- Item 6.20** – Nov 2014 – Timecards – incomplete Month
- Item 6.21** – Dec 2014 – Timecards – incomplete Month
- Item 6.22** – Jan 2015 – Timecards – incomplete Month
- Item 6.23** – Feb 2015 – Timecards – incomplete Month
- Item 6.24** – Mar 2015 – Timecards – incomplete Month
- Item 6.25** – April 2015 – Timecards – incomplete Month
- Item 6.26** – May 2015 – Timecards – incomplete Month
- Item 6.27** – June 2015 – Timecards – incomplete Month
- Item 6.28** – July 2015 – Timecards – incomplete Month
- Item 6.29** – Aug 2015 – Timecards – incomplete Month
- Item 6.30** – Sept 2015 – Timecards – incomplete Month
- Item 6.31** – Oct 2015 – Timecards – incomplete Month
- Item 6.32** – Nov 2015 – Timecards – incomplete Month
- Item 6.33** – Dec 2015 – Timecards – incomplete Month
- Item 6.34** – Jan 2016 – Timecards – incomplete Month
- Item 6.35** – Feb 2016 – Timecards – showing working on Fridays, Saturdays and Sundays only
- Item 6.36** – Mar 2016 – Timecards – incomplete Month
- Item 6.37** – April 2016 – Timecards – incomplete Month
- Item 6.38** – May 2016 – Timecards – incomplete Month
- Item 6.39** – June 2016 – Timecards – incomplete Month
- Item 6.40** – July 2016 – Timecards – incomplete Month
- Item 6.41** – Aug 2016 – Timecards – incomplete Month
- Item 6.42** – Sept 2016 – Timecards – incomplete Month
- Item 6.43** – Oct 2016 – FOH - Timecards – incomplete Month
- Item 6.44** – Nov 2016 – FOH - Timecards – incomplete Month
- Item 6.45** – Dec 2016 – FOH - Timecards – Full Month recorded though some dates no stop time
- Item 6.46** – Jan 2017 – FOH - Timecards – incomplete Month
- Item 6.47** – Jan - Feb 2017 – FOH - Timecards – incomplete Months
- Item 6.48** – Feb - March 2017 – FOH - Timecards – incomplete Months
- Item 6.49** – Jun - July 2017 – Teahouse - Timecards – incomplete Months
- Item 6.50** – Jun - July 2017 – FOH - Timecards – incomplete Months
- Item 6.51** – July – August - Timecards
- Item 6.52** – Jan - Feb 2018 – Timecards – incomplete Months
- Item 6.53** – March - Apr 2018 – Timecards – incomplete Months
- Item 6.54** – May – June 2018 – Timecards – incomplete Months
- Item 6.55** – Jun - July 2018 – Timecards – incomplete Months
- Item 6.56** – July – Aug 2018 – Timesheet (Clockings)
- Item 6.57** – Aug - Sept 2018 – Timesheet (Clockings)
- Item 6.58** – Sept - Oct 2018 – Timesheet (Clockings)
- Item 6.59** – Oct - Nov 2018 – Timesheet (Clockings)
- Item 6.60** – Nov - Dec 2018 – Timesheet (Clockings)
- Item 6.61** – Feb – March 2019 – Timesheets (Clockings)

- Item 6.62** – March - April 2019 – Timesheets (Clockings)
- Item 6.63** – April - May 2019 – Timesheets (Clockings)
- Item 6.64** – May - June 2019 – Timesheets (Clockings)
- Item 6.65** – Jun - July 2019 – Timesheets (Clockings)
- Item 6.66** – July - Aug 2019 – Timesheets (Clockings)
- Item 6.67** – Aug - Sept 2019 – Timesheets (Clockings)
- Item 6.68** – Sept - Oct 2019 – Timesheets (Clockings)
- Item 6.69** – Oct - Nov 2019 – Timesheets (Clockings)
- Item 6.70** – Nov - Dec 2019 – Timesheets (Clockings)
- Item 6.71** – Dec 2019 – Jan 2020 – Timesheets (Clockings)
- Item 6.72** – Jan – Feb 2020 – Timesheets (Clockings)

Summary

- 6.72 Whilst the timecards and clockings demonstrate staff being on site however they do not cover a 10 year period or specify the role being undertaken by staff in order to evidence that the hours worked were specifically in relation to the restaurant/café element of the business as opposed to the retail trade or other supporting roles. In addition, in the absence of additional information to confirm the area to which the staff associated with the timecards/clockings are working in for a continuous period of 10 years, it is not considered to constitute satisfactory evidence which materially adds to the assessment.

Item 7 – Officer Report for Refused application 12/0067/VRC

Item 8 – EH Report dated 8 June 2015

- Stating owners have been issued with TENs over the past 3 years

Sample Press Articles

Item 9.1 – The Richmond Magazine Event Quotation – Event on 8 July 2008

Item 9.2 – Article in Country Life dated 23 September 2004 noting below opening hours:

- Monday - 2pm -5.30pm
- Tuesday – Saturday – 9am – 5.30pm
- Sunday and bank holidays – 11am – 5pm
- Café – Friday – Sunday 11am – 5pm

Item 9.3 – Article in MetroLife (undated) noting below opening hours:

- Monday – 2pm-5.30pm
- Tuesday – Saturday – 9am – 5.30pm
- Sunday and bank holidays – 11am – 5pm

Item 9.4 – Article in SAGA Magazine dated October 2004 noting below opening hours:

- Monday - 2pm -5.30pm
- Tuesday – Saturday – 9am – 5.30pm
- Sunday and bank holidays – 11am – 5pm
- Café – Friday – Sunday and bank holiday Mondays 11am – 5pm

Item 9.5 – Article in the Observer dated September 2004 noting below opening hours:

- Café – Thursday to Sunday and Bank Holidays 11am – 5pm

Item 9.6 – Article in TimeOut dated August 18-25 (no year) noting below opening hours:

- Fri – Sun 11am – 5pm

Item 9.7 – Article in Vogue – dated January (no year)

Item 10 – Sample of Restaurant/Teahouse Events – Christmas Late night Shopping dates 2 December and 9 December 2009 between 6-9pm (no corresponding TEN submitted)

Item 11 – Supper Club Customer Travel Arrangements

Dated as follows:

- Saturday 3/4/2010 – Cover count 51 (Corresponds with **Items 3.5 and Items 3.6** - Supper Club Menu – Saturday 4 April 2010 and **Item 2.7** - Temporary Event Notice Application form)
- Saturday 1/5/2010 - Cover count 81 (Corresponds with **Item 3.2** - Supper Club Menu – Saturday 1 May 2010 and **Item 2.10** - Temporary Event Notice Application form)

- Saturday 5/6/2010 – Cover count 77 (Corresponds with **Item 3.9** - Supper Club Menu – Saturday 5 June 2010 and **Item 2.12** - Temporary Event Notice Application form)
- Saturday 3/7/2010 – Cover count 76 (Corresponds with **Item 3.4** - Supper Club Menu – Saturday 3 July 2010 and **Item 2.14** - Temporary Event Notice Application form)
- Saturday 7/8/2010 – Cover count 68 (Corresponds with **Item 3.6** - Supper Club Menu – Saturday 7 August 2010 and **Item 2.16** - Temporary Event Notice Application form)
- Saturday 4/9/2010 – Cover count 69 (Corresponds with **Item 3.8** - Supper Club Menu – Saturday 4 September 2010 and **Item 2.17** - Temporary Event Notice Application form)
- Saturday 1/10/2010 – Cover count 74 (Corresponds with **Item 3.3** - Supper Club Menu – Saturday 1 October 2010 and **Item 2.18** - Temporary Event Notice Application form)
- Saturday 23/10/2010 – Cover count 62 (Corresponds with **Item 2.19** - Temporary Event Notice Application form)

Item 16.1 – Petersham Nurseries Final travel Plan dated October 2010

Item 16.2 – Draft Technical Note dated 30 November 2012 by i-Transport submitted in support of an application to allow for late opening of café/restaurant on three evening per week (Thursday, Friday and Saturday). Staff and Customer Travel Survey was undertaken on the evening of Saturday 8 September 2012.

Item 16.3 – Technical Note dated 29 January 2014 by i-Transport. A survey was undertaken on Saturday 22 September 2012 between 8.30am – 6.30pm. On this day, the site was open from 9am to 5pm. The café/restaurant was open 12-2.45pm (reservations required) and light refreshments were also available between 10am and 4.30pm

Item 16.4 - Technical Note dated 20 June 2014 by i-Transport. Surveys were undertaken on Friday 16th and Saturday 17th May 2014.

- Friday – Film Screening between 6.30pm-8.30pm
- Friday – Supper club between 6.30pm – 11.00pm
- Saturday – day time opening as usual
- Saturday – Supper club between 6.30pm – 11.00pm

Item 16.5 - Technical Note dated 14 October 2014 by i-Transport. Surveys were undertaken on Saturday 20th September 2014. The Nurseries was open as usual on the Saturday daytime and a 'Supper Club' was held in the evening between 18:30-23:00.

Item 16.6 – Transport statement dated December 2015. Survey undertaken on Friday 23 October 2015

Item 16.7 – Draft Travel Plan Monitoring Report dated November 2015

Item 16.8 – Transport Statement dated February 2017. Survey undertaken Friday 9 December 2016

Item 16.9 – Travel Plan Monitoring Report dated December 2017

Item 17 – Decision Notice for application 98/0525/S191

Item 18 - Decision Notice for application 08/4312/FUL

Item 19 – Table setting out average monthly and daily customers served at the Restaurant between 2009 - 2019

Other information which does not materially assist the assessment

- Letter of support to licensing application from Joanna Hales
- Letter of support from Kate Ridyard
- Letter of support to licensing application from Michele and Thomas Lundqvist
- Petition with no supporting names/addresses
- Letter of support to licensing application from Sarah Chapman
- Letter of support to licensing application from Sarah Tippet
- Letter of support to licensing and planning application from Tracy Worcester
- Letter of support to licensing application from Zac Goldsmith
- Infosheet on how to view a time stamp of a photograph
- Letter of support to licensing application from Alexander Serge Lourie

- Petersham Nurseries Supporter Petition Feedback Summary Note dated 05.10.2022
- Petersham Nurseries Staff Feedback to Gareth Roberts

Conclusion

- 6.73 Officers are satisfied sufficient evidence has been submitted to demonstrate that the business has been carried out by Petersham Nurseries Ltd, notwithstanding its opinion that this does not represent a breach of the terms of the condition.
- 6.74 The submitted items, although voluminous still on the whole result in ambiguity and thus provide insufficient evidence to confirm that the cafe/restaurant have been in operation selling food and beverages to visiting customers between 10am-6pm Tuesday to Sunday excluding Mondays (but including Bank Holidays), or that seasonal evening openings for the sale of food and beverages have occurred up to 11pm three events per week between Wednesday – Saturday; or that the areas used for the preparation, sale and consumption of food and beverages have operated within the area outlined in red shown on drawing reference 02-277-03-RP02.
- 6.75 For the purposes of clarity, the LPA consider that a Certificate of Lawfulness can be granted for the following description of development:

A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner:

- 1. The cafe/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*

7. Other Matters

- 7.1 The applicant has submitted Counsel Advice, which has been reviewed by Council’s legal team. The Advice purely sets out procedural matters to which the Council concurs with.

Recommendation:

The determination of this application falls within the scope of Officer delegated powers - YES

I therefore recommend the following:

- 1. REFUSAL (in part)
- 2. PERMISSION (in part, for an amended description of development)
- 3. FORWARD TO COMMITTEE

This application is CIL liable YES* NO
(*If yes, complete CIL tab in Uniform)

This application requires a Legal Agreement YES* NO
(*If yes, complete Development Condition Monitoring in Uniform)

This application has representations online (which are not on the file) YES NO

This application has representations on file YES NO

Case Officer (Initials):WWC & NID... Dated:13.07.2023.....

I agree the recommendation:

This application has been subject to representations that are contrary to the officer recommendation. The Head of Development Management has considered those representations and concluded that the application can be determined without reference to the Planning Committee in conjunction with existing delegated authority.

Head of Development Management:RDA.....

Dated: ...04/09/2023.....

APPENDIX 1: SUMMARY OF EVIDENCE BY MONTH/NO/TYPER OF EVIDENCE

Month	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	TOTAL TENS
2009													
2010				1 TENS 1 SCM	1 TENS 1 SCM	1 TENS 1 SCM	1 TENS 1 SCM	1 TENS 1 SCM	1 TENS 1 SCM	2 TENS 1 SCM	2 TENS 2 SCM	2 TENS	12
2011			1 TENS 1 SCM		3 TENS	8 TENS		4 CAL	1 TENS 1 SCM	4 CAL		2 CAL	12
2012					5 TENS 1 TR	3 TENS 1 TR	5 TENS	2 TENS					15
2013				2 TENS	3 TENS	3 TENS	1 TENS	1 TENS 1 TR	1 TENS			1 TENS 1 TR	12
2014		1 TENS	1 TR	1 TR	2 TENS	4 TENS 1 TR	3 TENS	3 TENS	3 TENS		1 TENS	4 TENS	21
2015		1 TENS			3 TENS	4 TENS	6 TENS		1 TENS	2 TENS	1 TENS	3 TENS	21
2016	3 TR	1 TENS 1 TR	1 TENS	1 TENS	4	3 TENS	3 TENS			1 TENS		4 TENS	18
2017		2 TENS					4 TENS		2 TENS	2 TENS	4 TENS	2 TENS	16
2018		2 TENS			2 TENS	5 TENS	2 TENS		2 TENS			4 TENS	17
2019		2 TENS	1 TENS 1 TS		3 TENS 3TS	2 TENS 5 TS	2 TENS	1 TENS		1 TENS	6 TENS	3 TENS	21
2020		2 TS											
2021													

Number on the table refers to number of dates within that month

TR – Till receipt (these are only cited within the table above where the time stamp is noted to be for the restaurant and exceeds 1630. Where multiple receipts re available on the same date these have only been included once, i.e., to show 1 date in that month has corroborating evidence)

SCM – Supper club menu/charity dinner menu

CAL – entry on a calendar

TS – timesheet for waiting staff/hosts etc.

APPENDIX 2: SUMMARY OF EVIDENCE BY DATE

Month	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec
2009												
2010				Sat 3rd	Sat 1st	Sat 5 th	Sat 3 rd	Sat 7 th	Sat 4 th	Fri 1 st Sat 23 rd	Sat 6 th Sat 20 th	Sat 4 th Mon 20 ^h
2011			Thurs 3 rd		Sat 7 th Sat 14 th Weds 18 th	Thurs 2 nd Fri 4 th Thurs 9 th Sat 11 th Thurs 16 th Sat 18 th Thurs 23 rd Sat 25 th		Sat 6 th Sat 13 th Sat 20 th Sat 27 th	Sat 3 rd Thurs 8 th	Sat 1 st Sat 8 th Sat 15 th Sat 22 nd		Sat 24 th Sat 31 st
2012					Fri 4 th Sat 5 th Sat 12 th Sat 19 th Sat 26 th	Sat 9 th Sat 16 th Sat 23 rd	Sat 7 th Sat 14 th Sat 21 st Fri 27 th Sat 28 th	Fri 3 rd Sat 4 th				
2013				Sat 20 th Sat 27 th	Sat 18 th Fri 24 th Sat 25 th	Sat 1 st Fri 14 th Sat 15 th	Fri 12 th Sat 13 th	Fri 2 nd 1 TR	Sat 14 th			Fri 13 th 1 TR
2014		Fri 14 th			Fri 16 th Sat 17 th	Thurs 5 th Fri 6 th Sat 7 th Sat 21 st	Thurs 17 th Fri 18 th Sat 19 th	Thurs 7 th Fri 8 th Sat 9 th	Thurs 18 th Fri 19 th Sat 20 th		Sat 29 th	Fri 5 th Sat 6 th Fri 19 th Sat 20 th
2015		Sat 14 th			Thurs 14 th Fri 15 th	Thurs 4 th Fri 5 th Sat 6 th Fri 18 th	Thurs 9 th Fri 10 th Sat 11 th Thurs 23 rd Fri 24 th Sat 25 th		Sat 26 th	Fri 23 rd Sat 24 th	Sat 14 th	Fri 4 th Fri 11 th Sat 12 th
2016		Fri 12 th Sat 13 th	Fri 18 th	Sat 16 th	Thurs 5 th Fri 6 th Sat 7 th Sat 28 th	Thurs 23 rd Fri 24 th Sat 25 th	Thurs 7 th Fri 8 th Sat 9 th			Sat 22 nd		Fri 9 th Thurs 15 th Fri 16 th Sat 17 th
2017		Fri 10 th Sat 11 th					Fri 7 th Sat 8 th Thurs 13 th Sat 29 th		Sat 2 nd Thurs 28 th	Thurs 26 th Fri 27 th	Fri 3 rd Fri 17 th Thurs 30 th	Fri 1 st Thurs 14 th Fri 15 th Sat 16 th

2018		Thurs 15 th Fri 16 th			Thurs 10 th Fri 11 th	Thurs 7 th Thurs 14 th Thurs 21 st Fri 22 nd Fri 29 th	Fri 6 th		Sat 1 st Fri 21 st		Thurs 29 th	Fri 7 th Thurs 13 th Fri 14 th Sat 15 th
2019		Thurs 14 th Fri 15 th	Thurs 14 th Sat 23 rd		Thurs 2 nd Fri 3 rd Thurs 16 th	Sat 1 st Weds 5 th Thurs 6 th Fri 7 th Thurs 20 th	Thurs 11 th Fri 12 th	Sat 24 th		Thurs 31 st	Fri 1 st Thurs 7 th Thurs 14 th Fri 15 th Thurs 21 st Fri 29 th	Fri 6 th Weds 11 th Thurs 12 th Fri 13 th
2020		Thurs 13 th Fri 14 th										
2021												

BLACK – TENS app

BLUE – calendar entry

ORANGE – menu, charity event details

GREEN – late clockings

Appendix 10

ENFORCEMENT REPORT REF: 18/0025/EN/BCN	
ADDRESS	PETERSHAM NURSERIES, PETERSHAM ROAD, PETERSHAM
ENFORCEMENT ISSUE	BREACH OF PLANNING CONDITIONS: a) U27543 NS04 HOURS OF USE – CAFÉ/RESTAURANT b) U27544 NS05 CAFÉ/RESTAURANT AREAS c) NS08 PERSONAL PERMISSION
CONTACT OFFICERS	AARON DAWKINS/CRAIG RAYBOULD
WARD	HAM, PETERSHAM AND RICHMOND RIVERSIDE



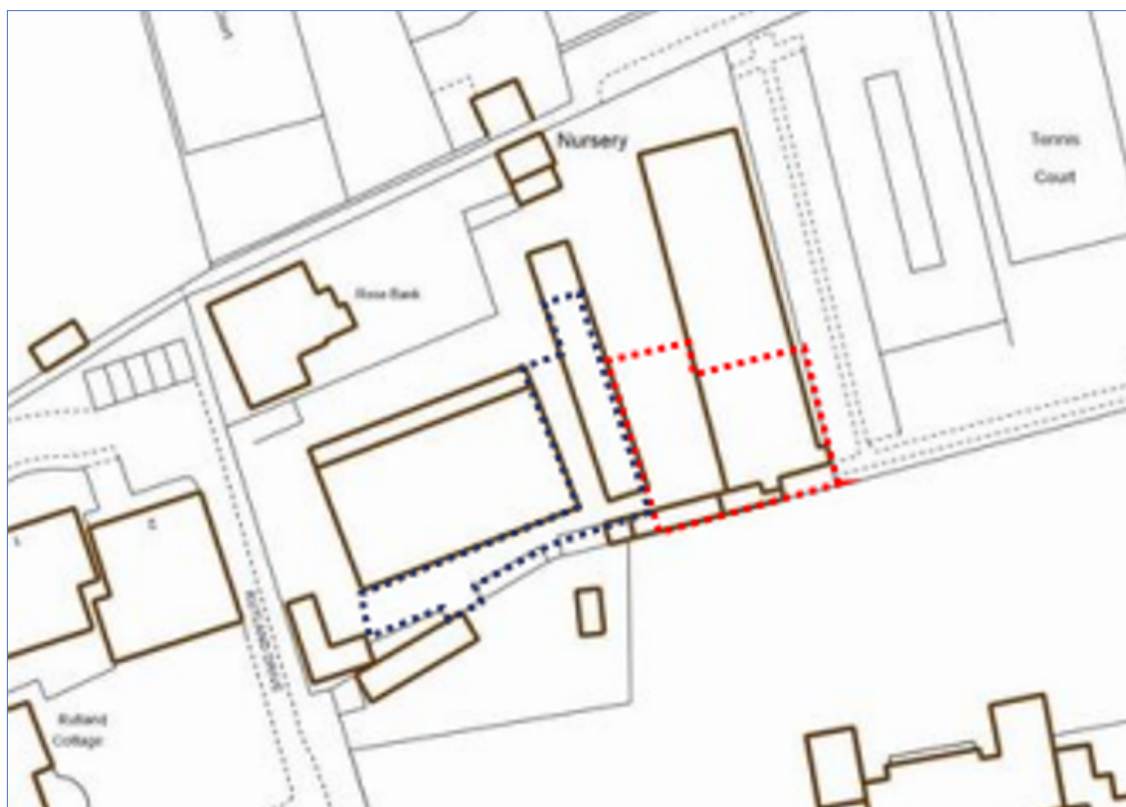
© Crown copyright. All rights reserved. London Borough of Richmond Upon Thames LA 100019441[2023].'- Do not scale'

1. SUMMARY

- 1.1 The planning system exists to control the development and use of land in the public interest. The planning system can only achieve this if planning controls are enforced when necessary. The enforcement of planning controls is therefore a fundamental part of the planning system.
- 1.2 The main objectives of the planning enforcement function are to remedy harm to public amenity resulting from a breach of planning control and to manage it, making sure that the integrity of the planning system is not undermined. A breach of planning control is development carried out without the requisite consent from the Council.
- 1.3 The café/restaurant at Petersham Nurseries is currently being operated in breach of the planning conditions relating to the hours and areas of use as set out on their

operative planning permission 08/4312/FUL. The applicant further considers that the business is being carried out in breach of the personal permission condition.

- 1.4 In deciding whether or not to take action, the Local Planning Authority must consider if it is 'expedient' to do so, that is whether the action proposed to be taken is appropriate and commensurate with any alleged harm that has been or is being caused. This involves deciding whether the breach of planning control unacceptably affects public amenity, prejudices planning policy objectives or the existing use of land or buildings meriting protection in the public interest. A judgement has to be made in each case as to the seriousness of the breach and the level of any harm that it causes.
- 1.5 The applicant has previously sought planning permission for an extension of the hours of use. Application 12/0067/VRC to vary the hours of operation condition by allowing the café/restaurant element to operate from 19.00 to 23.00 on Saturday every week was refused permission on 29 March 2012 under delegated powers due to harm to neighbouring amenity and because it was considered inappropriate development in MOL, harmful to its openness.
- 1.6 A subsequent application 14/0345/VRC sought to allow for the sale of food for consumption on the premises, between the hours of 09.00 and 18.00 on Mondays, Tuesdays and Wednesdays, 09.00 and 23.00 on Thursdays, Fridays and Saturdays and 11.00 and 18.00 on Sundays. This was refused by the Planning Committee at its meeting on 17.01.2018 again for reasons of harm to residential amenity and MOL.
- 1.7 There has been no change to the thrust of planning policy in respect of MOL or protection of neighbouring amenity in the interim period and in the context of these earlier decisions, it is considered that the breach of planning conditions insofar as it relates to *evening* openings is demonstrably harmful and it is expedient to serve an Enforcement Notice in this respect.
- 1.8 There is no harm arising from the business being carried out by Petersham Nurseries Ltd. as opposed to Mr Francesco Boglione. Sufficient evidence was provided in application 21/3108/ES191 to satisfy officers that in this respect, the breach would be lawful through the passage of time.
- 1.9 Evidence presented in 21/3108/ES191 also demonstrates a minor extension to the permitted hours to 5pm, Tuesday to Sunday, has been carried on for a period in excess of ten years continuously and is now immune from enforcement action.
- 1.10 With respect to the areas of use, 21/3108/ES191 demonstrated that there are areas within Petersham Nurseries which have been used for additional café/restaurant seating for some considerable time. The LPA considered granting a lawful development certificate for '*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.*'. The decision not to do so is a relevant consideration. The Council is also required to consider whether the action it might take is proportionate to the breach identified. The recommendation from Officers is that the Enforcement Notice would 'under enforce' the full extent of the conditions and include additional areas, that whilst not evidenced as being immune from enforcement action, are not considered to be causing any planning harm, mainly due to the separation distances from these areas and neighbouring residential properties. These are delineated with a blue line. See below map:



- 1.11 For clarity, the term 'under enforcement' identifies a breach of planning control which could have required any buildings or works to be removed, or an activity to stop, but has stipulated some lesser requirements. When all the requirements of the notice have been complied with, then planning permission is deemed to be granted for those remaining operations or use (section 173(11) of the Town and Country Planning Act 1990).

RECOMMENDATION: It is recommended that the Planning Committee resolved that

- a) An **ENFORCEMENT NOTICE** be issued; and
- b) In the event of the notice not being complied with, to grant delegated authority to the Assistant Director of Environment and Community Services to take further action as necessary including proceeding to prosecution.

2. REASON FOR PLANNING COMMITTEE DETERMINATION

- 2.1 The Council's constitution states that the Assistant Director of Environment & Community Services (Planning & Transport Strategy) may decline to exercise her delegated powers in a particular case, including, without limitation, in cases where in her view it would be in the public interest for the matter to be heard by Committee. In such cases, she must then refer the matter promptly to Committee for consideration.
- 2.2 In light of the planning history including an earlier refusal of evening opening by the Planning Committee and the public interest, the Assistant Director declines to exercise her delegated powers in this case.

3. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 3.1 Petersham Nurseries is located on the northern side of Petersham Road, to the rear of no.143. Vehicular access is from Church Lane, which runs between no.141 Petersham Road and St Peters Church. A pedestrian access is via a pathway which runs from River Lane.
- 3.2 The site is located within the Petersham Conservation Area and is located within Metropolitan Open Land (MOL). The surrounding area is open in nature, with a semi-rural character. Petersham Meadows, which is designated as an Other Site of Nature Importance, and a hardstanding adjoin the site to the north. The Nursery has a licence agreement with the Council, which owns the adjacent land, to use it as a turning area for service vehicles. This land to the north is within the Thames Policy Area.
- 3.3 Several listed buildings surround the site to the west, south and east including:
- Magnolia House 143A Petersham Road (Grade II)
 - 143 Petersham Road (Grade II*)
 - The Coach House 141 Petersham Road (Grade II)
 - Rutland Lodge 145 Petersham Road (Grade II*)
 - St Peters Church, Petersham Road (Grade II*)
 - The Manor House, River Lane (Grade II)
 - Glen Cottage, River Lane (Grade II)
 - The Navigators House, River Lane (Grade II)
 - Petersham Lodge, River Lane (Grade II)
- 3.4 Rose Bank, the residential property which directly adjoins the site to the north is locally listed as a Building of Townscape Merit. Further to the west, The Old Stables on River Lane and Belvoir Cottage are BTMs.
- 3.5 Residential properties border the site to the west and south. In addition to those cited above are no's 1 and 2 Rutland Drive to the west on the other side of Rutland Drive. Many of the surrounding properties have extensive curtilages which contributes to the semi-rural nature character of the area.

4. DESCRIPTION OF THE ALLEGED BREACH

- 4.1 Planning permission 08/4312/FUL was granted on 29.07.2009 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)". This application was granted subject to conditions including the following:

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.

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. REASON: To safeguard the amenities of the adjoining residents and the area generally.

- 4.2 With respect to the hours of operation, Petersham Nurseries has been advertising on its website that the opening hours are operating in breach of condition, being:

Petersham Nurseries Café

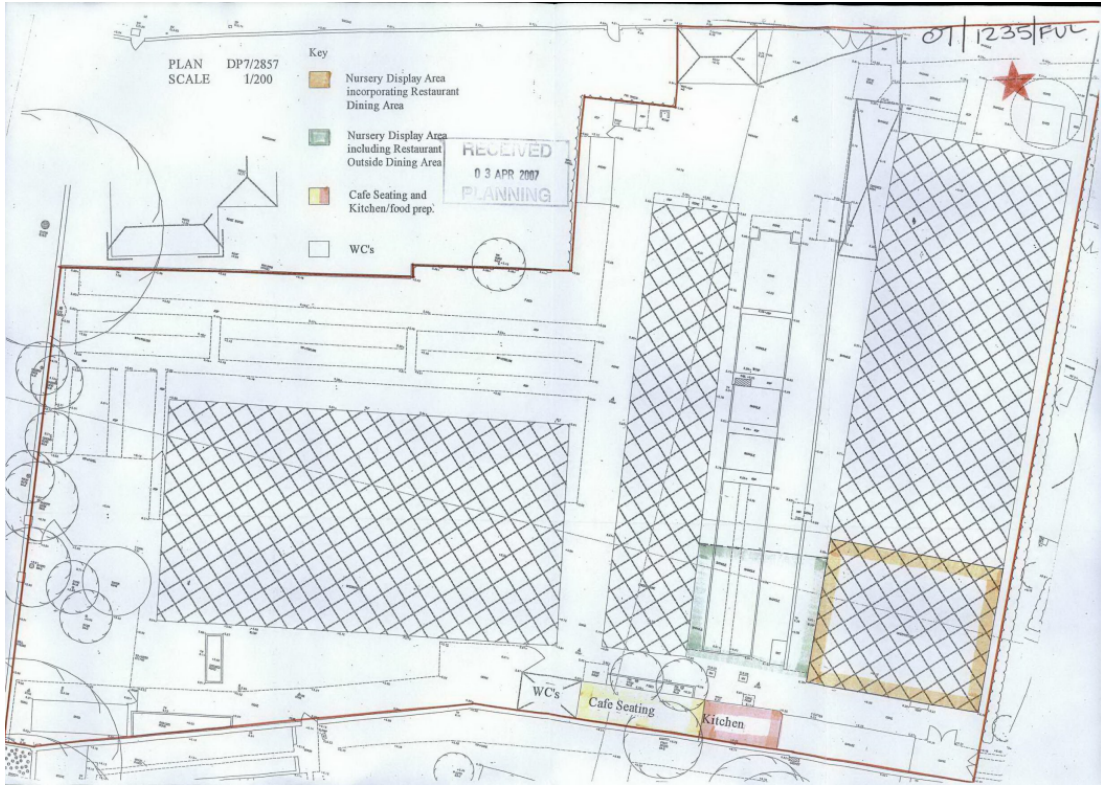
- Monday Closed (except Bank Holidays)
- Tue-Thus 12pm-5pm
- Fri 12pm-5pm, 6.30pm-11pm
- Saturday 12pm-5pm
- Sunday 12pm-5pm

Supper Club is open for bookings on every Friday and (limited Saturdays).

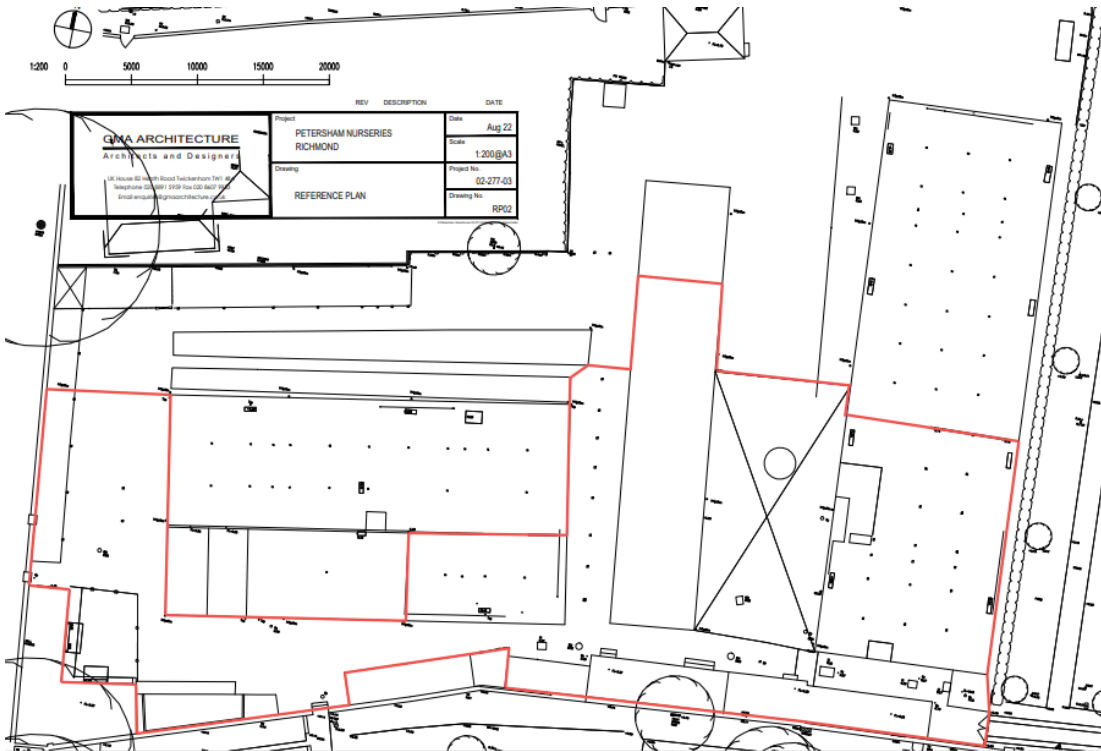
The Teahouse

- Monday Closed (except Bank Holidays)
- Tue-Sat 10am-4pm
- Sunday 11am-4pm

- 4.3 Within the recent application 21/3108/PS191, Petersham Nurseries sought to gain a Certificate of Lawful Development for café/restaurant operation during the following hours: “10am-6pm Tuesday to Sunday excluding Mondays (but including Bank Holidays). Evening openings for the sale of food and beverages have occurred up to 11pm three events per week between Wednesday – Saturday. The evening openings have been seasonal.” A Certificate could not be granted for the terms sought but a partial approval was given for selling food and beverages to visiting customers between 10am-5pm Tuesday to Sunday excluding Mondays.
- 4.4 With respect to the extent of the café/restaurant area, the approved extent on Drawing Number DP7/2857 is shown on the plan below to include the areas in orange, green and yellow highlighting:



4.5 Within the recent application 21/3108/PS191, Petersham Nurseries sought to gain a Certificate of Lawful Development for the following areas of café/restaurant use, as defined by the red line:



4.6 On officer's site visits to Petersham Nurseries, café/restaurant seating has also been witnessed in the north-eastern corner of the site adjacent the entrance and on the northern border as the site adjoins Rose Bank.

5 RELEVANT PLANNING HISTORY

- 5.1 It appears that a nursery has existed on the site since at least 1962. In 1998 a Certificate of Lawful Use was granted in respect of use of the premises 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 (98/0525).
- 5.2 A retrospective planning application for a mixed use as a garden centre (Class A1) and café/restaurant (Class A3) was granted temporary permission on 29 November 2007 for a limited period of one year. The reason for the temporary consent was to enable the Council to monitor and review the use after it had been in operation, to see if its impact had been successfully mitigated, particularly by the implementation of a Green Travel Plan (07/1235/FUL).
- 5.3 Planning permission was subsequently granted on 23 July 2009 for the continuation of the mixed garden centre and café/restaurant use on a permanent basis. Condition U27543 NS04 restricted the hours of use of the café/restaurant element to between 10.00 and 16.30 on Tuesday to Saturday, 11.00 and 16:30 on Sundays and not at all on Mondays (08/4312/FUL).
- 5.4 An application was submitted in 2011 to vary this condition by allowing the café/restaurant element to operate from 19.00 to 23.00 on Thursday, Friday and Saturday every week. This was withdrawn by the applicants on 11 August 2012 (10/2914/VRC).
- 5.5 Application 12/0067/VRC to vary the hours of operation condition by allowing the café/restaurant element to operate from 19.00 to 23.00 on Saturday every week was refused permission on 29 March 2012 for the following reason:

The proposal would result in the expansion of an inappropriate use to the detriment of the character of Metropolitan Open Land and would result in an adverse effect on the amenities of neighbouring residential occupiers and the area generally. As such the proposal would be contrary to policy CP10 of the London Borough of Richmond upon Thames Local Development Framework Core Strategy adopted April 2009 and policies DM OS 1, DM TC 5 and DM DC 5 of the Council's Development Management Plan adopted November 2011.

- 5.6 A further application to vary the hours was then made in 2014. 14/0345/VRC sought to allow for the sale of food for consumption on the premises, between the hours of 09.00 and 18.00 on Mondays, Tuesdays and Wednesdays, 09.00 and 23.00 on Thursdays, Fridays and Saturdays and 11.00 and 18.00 on Sundays. This was refused by the Planning Committee at their meeting on 17 January 2018 for the following reason:

The proposal would result in the expansion of an inappropriate use to the detriment of the character and function of Metropolitan Open Land and would, by reason of an increased level of pedestrian and vehicular activity around the site, result in an adverse effect on the amenities of neighbouring residential occupiers and the area generally. As such the proposal would be contrary to the National Planning Policy Framework and the Local Plan, including policy CP10 of the Local Development Framework Core Strategy adopted April 2009, policies DM OS 1, DM TC 5 and DM DC 5 of the Development Management Plan adopted November 2011 and policies LP 8, LP 10 and LP 13 of the Publication Local Plan.

- 5.7 The minutes of the Committee meeting record that:

“The committee noted that Petersham Nurseries’ restaurant operations were particularly highly regarded in the local area and beyond. The committee was also mindful of the sensitivity of the site and the protections it was afforded, having been designated as metropolitan open land. Members considered the impact on residential amenity. The committee debated whether a case of very special circumstances had been made by the applicant that warranted permission being granted. On balance it was considered that whilst the restaurant operation was highly successful, the circumstances were not exceptional enough to warrant planning permission being granted.”

- 5.8 In 2021 an application was made for a Lawful Development Certificate. The applicant sought to establish that a breach of condition had been occurring for sufficient time as to gain immunity from enforcement. The terms of the Certificate sought to establish that:

1. The cafe/restaurant have been in operation selling food and beverages to visiting customers between 10am-11pm Tuesday to Sundays excluding Mondays (but including Bank Holidays). The operation has exceeded 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 within the hatched area shown on drawing reference 292-03-AOU 01. The operation has exceeded the areas specified in condition NS05 of LPA ref: 08/4312/FUL;
3. The business has been carried out by Petersham Nurseries Ltd contrary to condition NS08 of LPA reference 08/4312/FUL.

- 5.9 Within such an application, the burden of proof lies on the applicant. Whilst a substantial amount of evidence was presented to show sporadic breaches in the hours condition, and various breaches in the areas of use, the evidence was insufficient to demonstrate that a continuous breach had subsisted for 10 years for the full extent of the terms sought for the Certificate.

- 5.10 The legislation does however allow the Local Planning Authority to unilaterally modify the description of development and grant a Certificate for a modified description to development which it does consider lawful. As such, the LPA granted a Certificate of Lawfulness on 4/09/23 for the following description of development:

A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner:

1. *The cafe/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

6. DEVELOPMENT PLAN

6.1 The main Development Plan policies applying to the site are:

Richmond Local Plan (2018)

Issue	Local Plan Policy
Local Character and Design Quality	LP1
Impact on Designated Heritage Assets	LP3
Impact on Non-Designated Heritage Assets	LP4
Impact on Amenity and Living Conditions	LP8
Green Infrastructure, Green Belt, Metropolitan Open Land and Local green Space	LP12, LP13
River corridors	LP18
Sustainable Travel Choices	LP44
Parking Standards and Servicing	LP45

These policies can be found at

https://www.richmond.gov.uk/media/15935/adopted_local_plan_interim.pdf

Richmond draft Publication Version Local Plan (2023)

The Richmond Publication Version Local Plan (Regulation 19 version) and its supporting documents, including all representations received, was considered at Full Council on 27 April. Approval was given to consult at Regulation 19 and, further, to submit the Local Plan to the Secretary of State for Examination in due course. The Publication Version Local Plan, including its accompanying documents, were also published for consultation on 9 June 2023. Together with the evidence, the Plan is a material consideration for the purposes of decision-making on planning applications.

Issue	Publication Local Plan Policy
Living Locally and the 20-Minute Neighbourhood	1
Spatial strategy: Managing Change in the Borough	2
Local Character and Design Quality	28
Impact on Designated Heritage Assets	29
Impact on Non-Designated Heritage Assets	30
Green Infrastructure, Green Belt, Metropolitan Open Land and Local Green Space	34, 35
River and River Corridors	40
Sustainable Travel Choices	47
Parking Standards and Servicing	LP45
Vehicle Parking Standards and Cycle Parking	48

These policies can be found at

https://www.richmond.gov.uk/media/fomccpcf/publication_local_plan_low_resolution.pdf

London Plan (2021)

Issue	London Plan Policy
Building strong and inclusive communities	GG1
Making the best use of land	GG2
Fire Safety	D12
Heritage conservation and growth	HC1
Metropolitan Open Land	G3
Transport	T4, T5, T6

These policies can be found at

https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf

Ham and Petersham Neighbourhood Plan (2018)

Issue	Local Plan Policy
Protecting Green Character	C1

These policies can be found at

https://www.richmond.gov.uk/media/16749/hpn_plan_2018_to_2033_january_2019.pdf

7. MATERIAL PLANNING CONSIDERATIONS

National Planning Policy Framework (NPPF) (2021) sections

Section 2: Achieving Sustainable Development

Section 4: Decision-making

Section 11: Making effective use of land

Section 13: Protecting Green Belt Land

These policies can be found at:

<https://www.gov.uk/guidance/national-planning-policy-framework>

Supplementary Planning Documents

- Transport
- Conservation Areas

These policies can be found at:

https://www.richmond.gov.uk/services/planning/planning_policy/local_plan/supplementary_planning_documents_and_guidance

Other Local Strategies or Publications

Other strategies or publications material to the proposal are:

- Community Infrastructure Levy
- [Petersham Conservation Area Statement](#)
- [Petersham Conservation Area Appraisal](#)

Considerations for development in a Conservation Area

In considering whether to grant planning permission (or enforce against a breach) with respect to any buildings or other land in a conservation area, Section 72 of the Planning (Listed buildings and Conservation Areas) Act 1990 requires that special attention shall

be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In this context, "preserving", means doing no harm.

To give effect to that duty, decisions of the court have confirmed that for development proposed to be carried out in a conservation area, a decision-maker should accord "considerable importance and weight" to the desirability of preserving or enhancing the character or appearance of the conservation area, when weighing this factor in the balance with other material considerations which have not been given this special statutory status. This creates a strong presumption against granting planning permission where harm to the character or appearance of a conservation area is identified. The presumption can be rebutted by material considerations powerful enough to do so.

In applications where the decision-maker is satisfied that there will be no harm to the character or appearance of a conservation area, the statutory presumption against granting planning permission described above falls away. In such cases the development should be permitted or refused in accordance with the policies of the development plan and other material considerations.

8. THIRD PARTY INTEREST

8.1 The Local Planning Authority will protect the identity of complainants to Planning Enforcement and will treat such details as confidential.

8.2 Within the most recent planning history there have been third party representations both in support and opposition. The issues raised within those representations elucidate the material planning considerations relevant to the consideration of the proposed Enforcement recommendation. A summary of the issues raised can be viewed in the Officer Reports for the respective applications. These can be viewed at:

- 21/3108/ES191
https://www2.richmond.gov.uk/lbrplanning/Planning_CaseNo.aspx?strCASENO=21/3108/ES191
- 14/0345/VRC:
<https://cabnet.richmond.gov.uk/documents/s71516/14.0345.VRC%20-%20Petersham%20Nurseries%20Petersham%20Road%20Richmond.pdf>

9. PLANNING CONSIDERATIONS FOR ENFORCEMENT ACTION

9.1 The main planning considerations in this case are:

- i. Metropolitan Open Land (MOL)
- ii. Design and impact on Heritage Assets
- iii. Residential amenity
- iv. Transport

Issue i – MOL

9.2 As the site is designated as MOL, London Plan policy G3, Local Plan policies LP13 and LP31 and draft Publication Version Local Plan Policy 35 are relevant, as are paragraphs 137-151 of the NPPF on Green Belts, which applies equally to MOL. The government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential

characteristics of Green Belts are their openness and their permanence, as such it is a policy to restrain development.

- 9.3 Policy LP13 states that the borough's MOL will be protected and maintained in predominantly open use. Appropriate uses in MOL include public and private open spaces and playing fields and open recreation and sport. Development will be supported if it is appropriate and helps secure the objectives of improving the MOL. These requirements are retained in Policy 35 of the draft Publication Version Local Plan.
- 9.4 It has previously been concluded through the planning history that an intensification of the restaurant use would constitute inappropriate development in MOL. The Committee Report for the latest application 14/0345/VRC stated that:
- 9.5 *"The site is located within the MOL, which generally has a presumption against any inappropriate development and the existing mixed Class A1/A3 use is not identified as an appropriate use, although it is accepted that the retail nursery element of the use has existed on the site for more than fifty years. The policies do, however, recognise that there may be exceptional cases where it will be appropriate to allow modest development. Paragraph 4.1.3 of the DMDPD states that:*
- "New uses will only be considered if they are by their nature open or depend upon open uses for their enjoyment and if they conserve and enhance the open nature, character and biodiversity interest of MOL."*
- 9.6 *The lawful use of the site as a garden centre was a material planning consideration when assessing the original change of use applications, which involved part of the Class A1 floorspace going to a Class A3 use, rather than totally new Class A3 floorspace being created.*
- 9.7 *Small scale or low-key café use ancillary to a garden centre use is relatively common, even for such uses within MOL, but it is considered that the café/restaurant use (A3 use), which can accommodate approximately 120 covers, has become a destination in its own right, with a national and international reputation. In determining the previously approved applications, where the proposed hours of use were set within the existing hours of operation of the nursery use, the Committee considered that the stringent conditions that had been recommended were sufficient to mitigate the impact of the proposal, the restrictions on the hours of operation being a key component of that consideration.*
- 9.8 *Inappropriate development is by definition, harmful to MOL and should not be approved except in very special circumstances. The NPPF advises that very special circumstances will not exist unless the potential harm by reason of its inappropriateness is clearly outweighed by other considerations. It is recognised that the café/restaurant at Petersham Nurseries has become a very popular and successful local business, in part assisted by its special setting in this semi-rural and tranquil location. Whilst the role that the business as a whole plays in the local community and the desire to support an employment and visitor generating use is given weight in the assessment, these benefits are not considered to be significantly related specifically to the extension of the restaurant use, do not meet the tests for exceptional cases set out in policies DM OS 2 and LP13, and are not considered to clearly outweigh the harm arising to the character of MOL.*
- 9.9 *In the case of the 2012 refused application, it was considered that the proposed extension of hours into the late evening, on one day per week, was a step too far, in*

terms of the harmful effect on the character of the MOL. The operation of an inappropriate use within a 'dark area', into the late evening would have a harmful impact on the character of the MOL, with the introduction of movement, and associated light pollution from headlights and noise from engines, from cars and taxis in and around the site.

- 9.10 *In the submitted planning statement (letter from WYG dated 13 July 2017), the applicants suggest that the proposal conforms to national planning guidance with regard to Green Belt/MOL. The applicants do not accept that the proposal will have any impact on the character of the MOL, as there is no physical development proposed and the proposal involves the use of an existing building. However, as stated above, the adopted policy clearly sets out that uses do have an impact on the character and function of the MOL and this view has been supported in a number of appeal decisions.*
- 9.11 *The Committee has previously considered that an extension to the hours of operation for the Class A3 restaurant element of the permitted mixed use, for one evening per week, would cause demonstrable harm to the character of the Metropolitan Open Land, by reason of it being an intensification of an inappropriate use. The current proposal includes a much more extensive level of evening hours' operation than that previously considered to be harmful to the MOL, for three evenings per week, with a consequentially more harmful impact and the proposal is therefore considered to be contrary to the Council's adopted and emerging policies in respect of MOL."*
- 9.12 Since the time of that Planning Committee (January 2018) there have been updates to national and local policy. The thrust of MOL policy has remained consistent throughout but the assessment is reconsidered below.
- 9.13 The NPPF states that a local planning authority should regard the construction of new buildings as inappropriate in the green belt (para 149). This is not applicable as the breach does not involve new buildings. The NPPF continues at para 150 that, "Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it" and then goes on to list such other forms of development.
- 9.14 Looking at the history, it was recognised that the café/restaurant use is already an exceptional use in designated MOL but was initially considered acceptable on the basis that such ancillary facilities are common in garden centres and can support the outdoor open space element of the use, and on the basis of the restrictions on the hours of operation set out in condition NS04 to mitigate the impact of the proposals. The decision was made very much on the basis that the food offer would be an ancillary and complementary activity to the established retail use. The breach intensifies the use of the existing premises. The additional seating areas are such that the dominant use could now arguably be considered as the café/restaurant as opposed to the retail business. The additional hours of use further exacerbate this harm. The existing use is an inappropriate use in MOL and the breach intensifies this further.
- 9.15 The requirement of para 150 is that the exceptions may only apply provided the development/breach preserves the openness of MOL and does not conflict with the purposes of including land within it.
- 9.16 Openness is both a spatial and a visual concept, and there is a wealth of relevant case law around this part of an assessment. The Supreme Court grappled with this exception in *Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council* [2020] UKSC 3, and the findings of Sales LJ in *Turner* [2016] EWCA Civ 466 was not disputed:

“The concept of ‘openness of the Green Belt’ is not narrowly limited to the volumetric approach suggested by [counsel]. The word ‘openness’ is open-textured and a number of factors are capable of being relevant... Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.”

- 9.17 The breach of conditions does not cause spatial harm to MOL. There is no physical development associated with the increased hours of operation. Whilst the exterior seating areas are physically present, these chairs and tables are all moveable objects and do not have any greater harm to openness spatially than other objects which would alternatively be placed in these areas for retail sale. Indeed, it can reasonably be expected that such a retailer may sell outdoor furniture.
- 9.18 With respect to visual harm, the case that the activity generated by a use in terms of comings and goings, and the parking of vehicles at premises, can be harmful to MOL policy, has been made many times and supported at appeal. It remains the case that as the restaurant becomes even more of a destination in its own right, opening outside of the garden centre hours or indeed dominating business in the evening even if the retail hours were to be extended, it will intensify an inappropriate use in designated MOL. The increased comings and goings and associated disturbance affect the tranquility of the area and thus impacts on the character of the MOL, representing an intrusion of urban characteristics into the MOL. This does not ‘preserve openness’.
- 9.19 In relation to the purposes of including land within Green Belt, these are set out in the NPPF being a) to check the unrestricted sprawl of large built-up areas; b) to prevent neighbouring towns merging into one another; c) to assist in safeguarding the countryside from encroachment; d) to preserve the setting and spatial character of historic towns; and e) to assist in urban regeneration by encouraging the recycling of derelict and other urban land. The nature of the breach has the effect of urbanising the character of the site and this conflicts with purposes (a), (c) and (d).
- 9.20 It is concluded that the extension of opening hours into the evening is inappropriate development. A modest extension of daytime hours in a manner that is compatible with normal operational retail hours would not have the same urbanising impact compared with lawful operation and would not be considered to have the same harm to openness. An extension of the seating areas would not be considered to have an urbanising impact provided that the overall extent of that area remained complementary to the garden centre use during retail hours and would not become the dominant use. These factors must be considered in any decision on the extent to which to under-enforce the breach of planning control.
- 9.21 Paragraph 148 of the NPPF states “When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.”
- 9.22 Paragraph 148 continues “‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.” Where the breach of planning control constitutes inappropriate development, it is necessary to consider if there are any ‘Very Special Circumstances’ to justify under-enforcement. This assessment must be done in consideration of the case as a whole and this is discussed further below in this report.

Issue ii – Design and impact on heritage assets

- 9.23 As recognised in the NPPF, good design is a key aspect of sustainable development. Decisions should ensure developments add to the overall quality of the area; are sympathetic to local character and history (whilst not preventing or discouraging appropriate innovation or change); optimise the potential of the site; and create places that are safe, inclusive and promote health and wellbeing. Local Plan policy LP1 states, whilst policies require development to make the best use of land, this is to be achieved in a manner that respects, contributes to and enhances the local environment.
- 9.24 Policy LP3 and LP4 requires development to preserve both designated and non-designated heritage assets respectively. Policy LP18 requires development within the Thames Policy Area to respect the special character of the reach as set out in the Thames Landscape Strategy. The thrust of these policies remains consistent in the draft Publication Version Local Plan under Policies 28, 29, 30 and 40.
- 9.25 The breach of the conditions does not involve any physical development, but a use in itself can have the potential to impact upon the significance and character of heritage assets. The Committee Report for application 14/0345/VRC remains relevant and stated that:
- 9.26 *The Petersham Conservation Area Statement describes the area as a distinctive, well defined historic settlement. There are important views between the village and the surrounding green space of riverside meadows, parkland and Richmond Hill, a setting which contributes to its exceptional rural character. There is no specific reference to Petersham Nurseries in the Petersham Conservation Area Statement; however, there is reference to River Lane that leads to the riverbank, described as a quiet retreat from Petersham Road, and the surviving historic alleyways, which further contribute to the distinctive village character of this area, one of which leads to the entrance of Petersham Nurseries.*
- 9.27 *The amount of building on the Petersham Nurseries site has not altered significantly since the approval of the Certificate of Lawful Use in 1998. As the lawful use of the site is one of retail facilities and a café/restaurant, traffic generation and parking is an established feature at the site, not only in terms of customers and staff, but also with deliveries of plants, supplies and equipment. Furthermore, given the nature of the retail function of a garden centre often the products purchased at the site can be of bulky and/or awkward proportions, and therefore necessitate the use of a vehicle to transport them. It is considered that, up to now, the mixed use of the site has at least preserved the character and appearance of the conservation area, in so far as there has been no overall increase of area or built form on the garden centre site. The other impacts upon the conservation area are linked to the additional vehicular movements and car parking on site. In considering the previous application to retain the mixed use on a permanent basis, and the later one to extend the evening hours of the restaurant element, the Committee considered that the mitigation measures set out in the Green Travel Plan had been successful. The issue with the current proposal to extend the hours of use even further is whether any demonstrable harm would be created by additional vehicular movements and car parking in the area and if there would be any undue visual impact on the character and appearance of this part of the Petersham Conservation Area. As previously reported, in officers' opinion, this is less likely to be a sustainable objection, the visual impact on the character and appearance of the conservation area being difficult to identify.*
- 9.28 The earlier application was not refused on grounds of impact to designated or non-designated heritage assets. As per those decisions, the current breach of condition is

not considered to cause harm to the significance of nearby listed and locally listed buildings by virtue of the activity within their setting, or harm to the significance, character and appearance of the Conservation Area or Thames Policy Area.

Issue iii – Residential amenity

- 9.29 Policy LP8 states in considering proposals for development, the Council will seek to protect adjoining properties from unreasonable loss of privacy, pollution, visual intrusion, noise and disturbance. Policy LP 10 seeks to ensure that the local environmental impacts of developments do not lead to detrimental effects on the amenity of existing occupiers of surrounding land. Similar requirements are also imposed under Policy 46 of the draft Publication Version Local Plan. There are residential properties in proximity to the site that will be impacted by the proposal, as described in section 3 of this report.
- 9.30 By way of background, the Committee Report for application 14/0345/VRC stated:
- 9.31 *Whilst the introduction of a Class A3 use in this out-of-centre, semi-rural location would not normally be acceptable, the Committee has previously accepted that the circumstances of the case, and the conditions imposed on the original permission to mitigate the impact of the proposal, were sufficient to overcome the objections to the scheme.*
- 9.32 *In the case of the current application, a significant test would be if the proposed use would have a negative effect on the environment and amenity of residents. This assessment would need to be made with specific regard to following considerations:*
- Noise, Smells and Fumes (from within the site)*
- 9.33 *The nearest residential properties to the kitchen serving the restaurant are no.143 Petersham Road, Magnolia House and Rose Bank Cottage. These properties are approximately 40m, 45m and 50m from the kitchen respectively. Nos.139 and 141 Petersham Road are two houses which flank the Church Lane junction to Petersham Road, which are also located over 60m from the site. No complaints have been received regarding the use of the kitchen and a new ventilation and extraction system has been installed, having been approved in March 2013 (08/4312/DD01).*
- 9.34 *The applicants have submitted an Environmental Noise Assessment, prepared utilising national noise and planning policy guidance and surveys undertaken when the Supper Club is operational, which concludes that during the day and evening, noise disturbance from the restaurant results in no adverse effects in terms of annoyance or sleep disturbance.*
- 9.35 *The distance of the restaurant building from neighbouring houses means that it is unlikely that noise from within the premises would present a problem. The applicants, responding to a number of objectors' complaints about music, have previously categorically stated that no music will be played at the premises. This can be secured by condition.*
- 9.36 *The applicants have also implemented a change to the pedestrian access arrangements to the restaurant, during Supper Club operation, which has involved creating a sole access at the north-eastern boundary to the site, some 60 metres from the nearest residential neighbour. This also assists in mitigating any potential noise nuisance/disturbance from within the site.*

Noise and disturbance outside the site

- 9.37 *Nuisance and disturbance commonly associated with Class A3 uses usually relates to traffic and parking, vehicular and pedestrian movements and noise at anti-social times (generally in the late evening and at night-time). In addition, general noise and disturbance can occur at those times when groups of customers leave the premises and staff clear up and leave. This should not currently have been the case here as the permitted hours of operation do not extend into the evening. Nevertheless, the nuisance and disturbance created by additional traffic, car parking and customer noise associated with the restaurant use is understandably a major concern for local residents, and is a significant issue upon which this application should be assessed.*
- 9.38 *Noise from customers arriving at and departing from the premises is difficult to evaluate. Following government advice and guidance, the applicants' Environmental Noise Assessment (ENA) rightly draws a distinction between noise impacts which are intrusive, and which can be managed and mitigated, and those which are disruptive and should be avoided. The ENA suggests that there is no objectionable noise nuisance arising from the use of the premises as a result of the current occasional Supper Club evening operations. However, this is based on surveys which provide only a snapshot of evening activities on a particular evening. There continues to be anecdotal evidence from neighbouring occupiers that noise and disturbance from people leaving the premises by car and on foot does currently occur when the 'Supper Club' evening events have taken place. The applicants claim that the effects of this impact are exaggerated and stress that the mitigation measures that have been put in place are sufficient to address any concerns. These measures include:*
- *management of car parking and staff and customer methods of travel;*
 - *management of taxi movements;*
 - *management of pedestrian and vehicular departures;*
 - *delivery management;*
 - *management of refuse collection and recycling.*
- 9.39 *Whilst the results of the applicants' noise surveys are not disputed, it is suggested that the results of a one-off, closely managed and monitored event may not bear comparison with the effects of 150 (annually) regular, less closely managed and monitored events, particularly if the cumulative impact of this proposal is considered.*
- 9.40 *A number of objectors continue to refer to problems of traffic generation, parking issues and customer noise in association with current and past evening 'Supper Club' activities at the restaurant, which have been strongly refuted by the applicants. Matters relating to traffic and car parking are considered further in the Traffic and Car Parking section of this report, below. Notwithstanding the assertions of the applicants that objectors' claims are exaggerated, it is considered that the level of continuing anecdotal evidence of nuisance arising from the occasional 'Supper Club' evening events at the premises is indicative that there is potential for further loss of amenity to neighbouring residential occupiers if evening opening was permitted on a significantly more regular basis as currently proposed. As suggested in the consideration of the previously refused scheme, this could result from increased numbers of vehicle movements, including taxis, passing down the currently very quiet lanes, car doors slamming, engine noise and noise from customers and staff leaving the premises late at night, together with noise and disturbance from clearing up (including collection and disposal of bottles). Some of these impacts, such as bottle collection and disposal, could be prevented by condition and some mitigated to an extent by the applicants' suggested Service and Operations Management Plan. However, in officers' view, although car doors, engines running and voices may not be considered*

to result in a significant adverse impact in many other locations, given the tranquillity of this area such sounds are considered to be noticeable and intrusive, and given the lateness of the hours at times when residents may be trying to sleep, are also considered likely to cross over into noticeable and disruptive. The extent of the intensification would extend the likely occurrence of noise and consequent disruption throughout the year to a degree that is considered unacceptable.

Hours of operation

- 9.41 *In its consideration of the original planning applications for mixed Class A1/A3 use of the premises, the Committee previously took the view that any disturbance to residential amenity could be mitigated through the use of a condition controlling hours of operation, agreeing to the suggested hours of 1000 – 1630 Tuesday to Saturday and from 11.00 – 16.30 on Sundays and no opening on Mondays. In its consideration of the 2012 proposal, the Committee has previously decided the extension of hours on one day per week to be unacceptable. Whilst preventing the opening on a Monday is considered to be anomalous (this restriction seems to have reflected the use of the premises at the time the original application was made), officers take the view that the current proposal to extend the hours of use of the restaurant element by an even greater period of time, namely late into the evening three evenings per week, would be unacceptable for the reasons stated above.”*
- 9.42 It is important to note that the above assessment was made on the basis that the approved café/restaurant seating areas were tightly confined to those approved i.e. in the areas closest to the kitchen and well separated from residential neighbours. At present, the breach of condition is such that there are substantially more covers available for customers across the site as a whole and the seating areas are positioned directly adjacent to residential boundaries. Furthermore, the above assessment considered what mitigation could be put in place by condition, and these could not be applied in any decision to under-enforce i.e. restrictions on music and bottle collection at unsociable times. Given these factors and in the context of the earlier decisions, Officers remain of the view that under-enforcing evening openings would be demonstrably harmful to residential amenity.

Issue iv – Transport

- 9.43 The NPPF requires that development only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residential cumulative impacts on the road network would be severe (para. 111). Policy LP45 of the Local Plan and Policy 48 of the draft Publication Version Local Plan state that the Council will require new development to make provision for the accommodation of vehicles in order to provide for the needs of the development while minimising the impact of car-based travel including on the operation of the road network and local environment, making the best use of the land.
- 9.44 The Committee Report for application 14/0345/VRC stated:
- 9.45 *“Petersham Nurseries is situated in a sensitive location. It lies to the rear of 143 Petersham Road. The site can only be accessed by vehicles via Church Lane, which is a narrow road leading to the entrance of Petersham Nurseries and the turning circle. Pedestrian access is also achieved via an alleyway that connects Church Lane with River Lane at the entrance of the site.*
- 9.46 *The main parking area at the site is along Church Lane on the northern boundary of the Nurseries, where there is space for approximately 30 vehicles to be parked in a*

reasonable fashion (the Travel Plan suggested that there are 24 parking spaces, including three disabled, outside the nursery entrance and a further 14 spaces along Church Lane). The Nursery employs a dedicated parking assistant who directs vehicles along Church Lane and informs visitors of the parking facilities. For the Supper Club events, two parking attendants are utilized, to direct customers from and to Petersham Road and to regulate the activities of taxis and other drivers.

- 9.47 The previous report relating to the 2012 refused scheme, accepted by the Committee, stated that Petersham Nurseries had achieved impressive results over the years since the mixed Class A1/A3 use commenced. They have also shown a commitment to sustainable travel (and other practices) as demonstrated through the extent to which they have implemented numerous initiatives all designed to change the travel behaviour of its staff and visitors towards more sustainable modes. Customers for the Supper Clubs are encouraged to provide details of travel and not to drive. Car sharing and use of taxis is also encouraged.
- 9.48 During the operation of their occasional 'Supper Club' evenings, the applicants have carried out surveys of travel arrangements of guests attending and submitted this information in support of the current application. Two detailed surveys have been undertaken, one for a Supper Club on 23 October 2015, the other for a Supper Club on 9 December 2016, and Transport Statements analysing the results have been submitted in support of the application. The split for the modes of transport for persons attending the Supper Clubs is set out below:

Supper Club 23 October 2015

MODE	No. of vehicles	No. of people	% total people
Taxi	16	39	49
Car	7	21	27
Walk	-	14	18
Bus	-	4	5
Cycle	1	1	1

Supper Club 9 December 2016

Mode	No. of vehicles	No. of people	% total people
Taxi	18	50	49
Car	20	46	45
Walk	1	2	2
Bus	2	4	4
Cycle	1	1	1

- 9.49 It will be noted from these surveys that the progress on migration of customers away from the private car does not appear to have been maintained, with an increase in the number of private cars from 7 in 2015 to 20 in 2016.
- 9.50 There are approximately 40 potential parking spaces within Church Lane, although 6 of these spaces are not available for use on Supper Club evenings. The latest parking survey, from 9 December 2016, indicates that, of the 20 private cars attending the evening event, 17 parked in Church Lane, 2 in River Lane and 1 in Cedar Heights.

- 9.51 *Although the surveys represent only a snapshot of the operation, the supplementary Transport Statements submitted with this application support the contention that there is capacity within Church Lane to accommodate the number of cars wishing to park at the site during Supper Club operation. It is considered that overspill onto surrounding streets does not constitute a severe impact on transport grounds.*
- 9.52 *Similarly, the overall number of vehicular movements generated by the use, resulting from 18 taxis (36 return journeys) and 20 cars (40 return journeys) is also not considered to give rise to a severe cumulative impact, as required in the NPPF, to justify refusal on transport grounds.*
- 9.53 *In her assessment of the previously refused application, the Transport Officer had taken account of the survey information provided with that submission and concluded that evening opening on one day per week was unlikely to be detrimental to the functioning of the local highway network. She recommended that a condition would be required on any permission to require that any evening opening should be restricted to Saturday only and that no other events should be held at the venue on the same night.*

Refuse provision and servicing

- 9.54 *Currently, refuse is collected from the turning circle at the north of the premises. This provision is considered adequate and is proposed to continue. The applicants have previously provided letters from two of their main suppliers, advising that they do not anticipate a need for additional deliveries, nor any change in the size of vehicle or delivery times from those existing at present.*
- 9.55 *On the basis of the submitted information, officers are satisfied that the proposal to extend the hours of operation would not have an adverse impact on the functioning of the local highway network or add unacceptably to levels of on-street parking in the locality.”*
- 9.56 Again, it is important to note that the above conclusions were based on survey data for a limited number of people attending an evening event. The expansion of seating across the site is such that any decision to under-enforce against all breaches could potentially lead to a much greater number of movements in the evenings. This must be factored into the consideration of harm and the precise terms of any Enforcement Notice.
- 9.57 The Committee has previously accepted that the Green Travel Plan that is in operation at Petersham Nurseries appears to be mitigating the impact of the existing mixed garden centre and café/restaurant use during the currently permitted hours and that no nuisance arises from the current use from within the site itself. It is considered that a minor extension to the operational daytime hours will not exacerbate the harm.
- 9.58 It is accepted that allowing the restaurant element to operate on a Monday and Bank Holidays, during hours permitted for the remainder of the week, would address the currently anomalous restriction, which appears to reflect the opening times of the garden centre when the original application was submitted.

Very Special Circumstances

- 9.59 The proposal is inappropriate development in designated Metropolitan Open Land. Paragraph 147 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and such development should not be approved except in

Very Special Circumstances (VSC). Paragraph 148 of the NPPF states that Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

- 9.60 The Courts have not defined 'very special', beyond confirming that the words must be given their ordinary and natural meaning as contained in *R(Chelmsford BC) v First Secretary of State* [2004] EWHC 2978 (Admin):

'The words 'very special' must be given their ordinary and natural meaning. Since the expression 'very special' is so familiar, any attempt at definition is probably superfluous, but for what it is worth, the Shorter Oxford English Dictionary tells us that special means:

Of such a kind as to exceed or excel in some way that which is usual or common; exceptional in character, quality or degree. The circumstances must not be merely special in the sense of unusual or exceptional, but very special'.

- 9.61 The decision-taker must exercise a qualitative judgment and ask whether the circumstances, taken together, are very special and explain that reasoning.
- 9.62 The National Planning Policy Framework confirms that harm to the Green Belt should be afforded substantial weight. Harm arises from the reduction in visual openness by virtue of the evening hours and intensification of inappropriate use. This amounts to substantial weight against the proposal.
- 9.63 It is necessary to identify whether there is 'any other harm' arising from the proposal. A Court of Appeal judgment (*Redhill Aerodrome*) has confirmed that the interpretation given to any other harm in what is now paragraph 144 of the Framework is such that it is not restricted to harm to the Green Belt.
- 9.64 The Officers assessment is that harm also arises to residential amenity from the evening opening especially. The extension to the number of covers available on the site and in particular their proximity to neighbouring boundaries exacerbates this harm.
- 9.65 The onus is on the applicant to demonstrate a case for VSCs. Given the nature of this enforcement report, no case has been put forward by the applicant for VSC. However, it is noted that an argument to allow evening operation has previously been made to the Planning Committee. The minutes of the Committee from 17.01.2018 record Members conclusions in this respect:
- 9.66 *"The committee noted that Petersham Nurseries' restaurant operations were particularly highly regarded in the local area and beyond. The committee was also mindful of the sensitivity of the site and the protections it was afforded, having been designated as metropolitan open land. Members considered the impact on residential amenity. The committee debated whether a case of very special circumstances had been made by the applicant that warranted permission being granted. On balance it was considered that whilst the restaurant operation was highly successful, the circumstances were not exceptional enough to warrant planning permission being granted."*
- 9.67 Officers consider that these conclusions remain applicable. There are no very special circumstances which clearly outweigh the harm to MOL and its openness, and the other harm arising to residential amenity.

10. OTHER CONSIDERATIONS

- 10.1 Should the Enforcement Notice not be complied with, there will be a financial cost associated with pursuing consequent action.
- 10.2 There are reputational risks arising from the LPA failing to take action where there has been an abuse of its lawful processes.

11. PROPOSED ENFORCEMENT ACTION

Options for remedying the breach of planning control

- 11.1 **Option 1:** Issue an enforcement notice requiring strict adherence to conditions NS04 and NS05 imposed under 08/4312/FUL (except where the Certificate of Lawfulness granted under reference 21/3108/ES191 confirms immunity from enforcement).
- 11.2 This would have the effect of requiring full compliance with the conditions-imposed on planning permission 08/4312/FUL. This action is considered disproportionate to the breach of planning control, as a reduction in the hours of use and the café/restaurants areas would remedy the harm which has been identified, rather than a restoration to the approved hours.
- 11.3 **Option 2:** “Under-enforce” i.e. only taking enforcement action against the elements of the breach which are considered harmful in planning terms.
- 11.4 This would require partial compliance with the planning conditions imposed on planning permission 08/4312/FUL to an extent which would mitigate and remedy any caused by the breach of planning control. This would include allowing a small extension to the café/restaurant operating hours (Tuesday to Sunday 10am to 5pm and 11am to 5pm Bank Holidays) and an increase in the area the café/restaurant operates to the rear of the site and part of the central greenhouse. This area is delineated in blue in the map overleaf.
- 11.5 **Option 3:** Take no further action.
- 11.6 This would allow the breach to continue unabated, despite the policy contraventions established with this report, which include harm to residential amenity and inappropriate development within Metropolitan Open Land. Allowing these breaches to continue unabated would be an ineffective form of enforcement and regulation and could lead to the breaches become immune from further enforcement action.

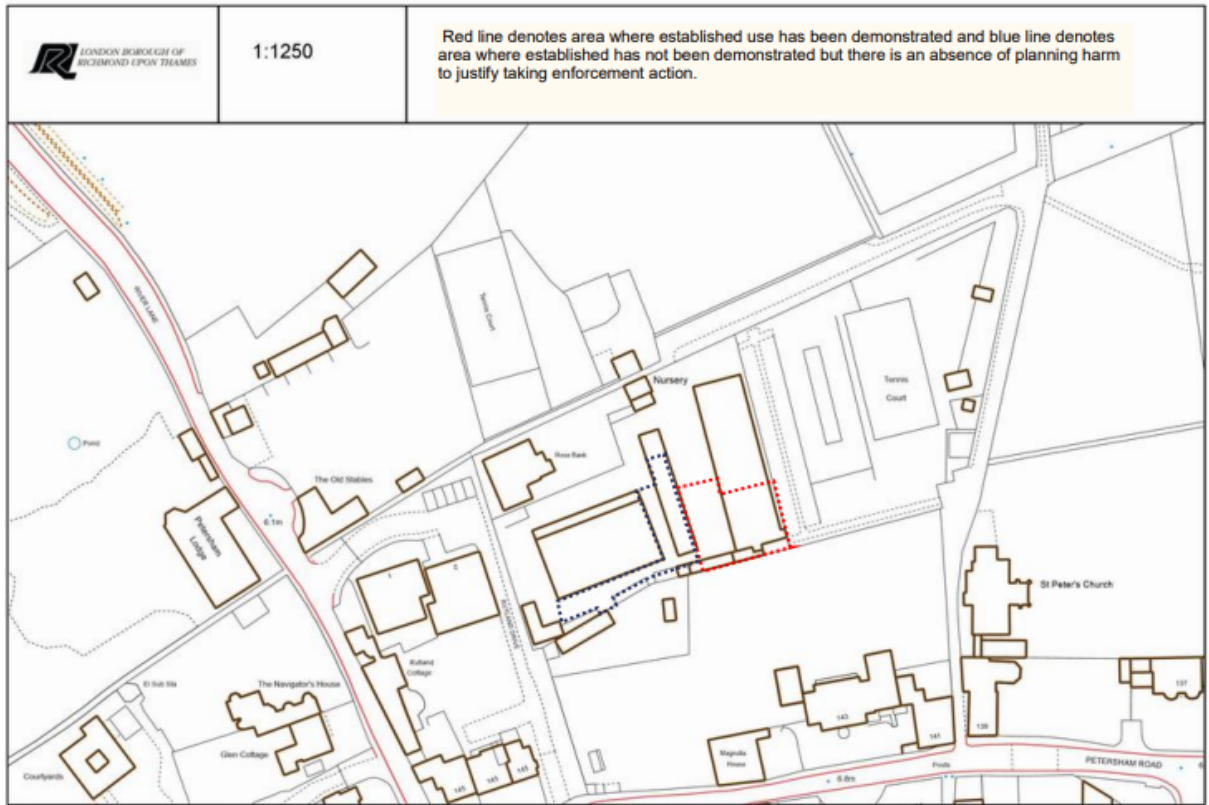
Recommendation

- 11.7 The Committee is recommended to resolve to serve an Enforcement Notice pursuant to ‘Option 2’ to:

To restrict the sale of food for consumption on or off the premises to the following: Tuesday to Sunday 10am to 5pm, and Bank Holidays 11am to 5pm.

Reason: A minor extension of the hours is not considered harmful to the residential amenity of the adjoining dwellings and would represent typical retail hours. Accordingly, it would be compliant with policies LP3, of the Local Plan and LP46 of the draft Publication Version Local Plan.

To restrict the café/restaurant areas to a confined area, which would be greater than that approved under application 08/4312/FUL but to a lesser extent than currently in operation, with a view of reducing the areas adjacent to the neighbouring residential properties. See attached map with the proposed area for café/restaurant use delineated in the red and blue lines.



Reason: A confined area for café/restaurant use, despite being of a greater extent than that approved under application 08/4312/FUL, would be of a lesser extent than currently in operation and designed to mitigate harm to the neighbouring residential properties by excluding the areas immediately adjacent to them from this area. In addition, it is considered that a limited increase in the café/restaurant use area, would not be harmful to the openness of the Metropolitan Open Land. Accordingly, it would comply with policies LP8, LP13 of the Local Plan and Policy 35 of the draft Publication Version Local Plan.

- 11.8 The compliance period is recommended to be: Two (2) months from the date the notice becomes effective. This is considered to be a reasonable amount of time for the business operation to be adjusted to the requirements of the enforcement notice.
- 11.9 In the event of the Notice not being complied with further action could be taken, including but not limited to prosecution proceedings.

12. PROPORTIONALITY AND HUMAN RIGHTS

- 12.1 This report sets out the alleged breaches of planning control and individually assesses the harm attributable to them. Where there is an absence of identifiable harm, the report proposes not to enforce against that element of the breach, or not to enforce against it in its entirety. This is an expedient and proportionate approach to remedying the harm caused by the breach which does not in this case, require full compliance with the relevant planning conditions. Policy contraventions have been

established, which notably include harm to residential amenity and inappropriate development within Metropolitan Open Land, which justify the proposed enforcement action.

- 12.2 The proposed action would impinge on the owners/occupiers' rights to private property free from interference (Article 1 of the First Protocol of the Human Rights Act 1998 and ECHR). This is however for the legitimate aim of addressing issues of wider public concern and accords with the principles established under *Lough-v-First Secretary of State* (2004) 1 WLR. Those on whom the notice will be served will also have the opportunity appeal to an independent body (The Planning Inspectorate), thereby according with Article 6 (right to a fair trial). The proposed action does not therefore breach the owner/occupiers Human Rights.

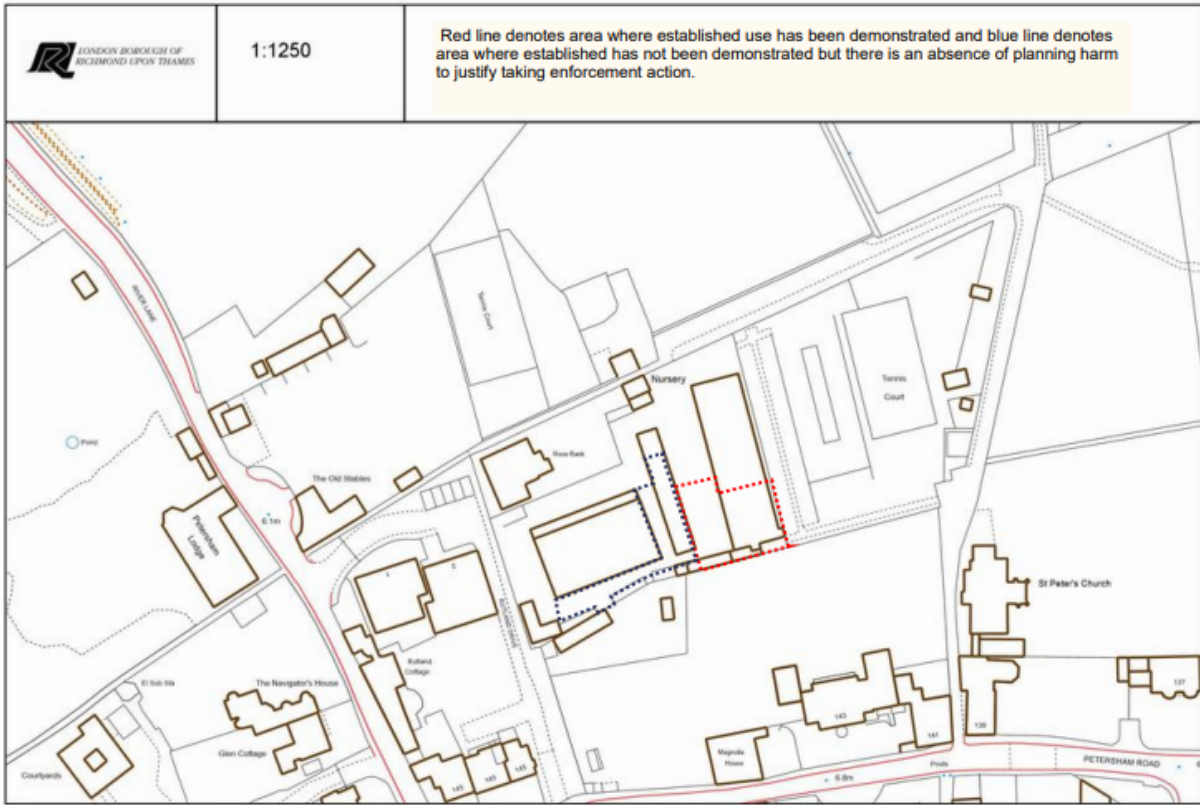
13. DRAFT ENFORCEMENT NOTICE DETAILS

Details of breach

- 13.1 Without planning permission and within the last ten years, breach of conditions U27543 NS04 Hours of Use, U27544 NS05 Cafe/Restaurant Areas and U27547 NS08 Personal Permission of planning permission 08/4312/FUL

Requirements

- 13.2 Permanently cease the sale of food for consumption on or off the premises except between the following times: Tuesday to Sunday 10am to 5pm and Bank Holidays 11am to 5pm.
- 13.3 Permanently cease café/restaurant use of the land, except where in the areas defined i.e. the areas within the blue and red dotted lines shown in the attached plan.



Compliance period

13.4 Two (2) months from date the notice takes effect.