



The Planning Inspectorate

Notes of Case Management Conference held on 23 April 2024

by **D Hartley BA (Hons), MTP, MBA, MRTPI**
an Inspector appointed by the Secretary of State

Appeal Ref: **APP/L5810/C/24/3339372**

Land at **Petersham Nurseries, Petersham Road, Petersham, Richmond TW10 7AB**

The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

The appeal is made by Mr Francesco Boglione of Petersham Nurseries Limited against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.

The enforcement notice, numbered 18/0025/EN/BCN, was issued on 15 January 2024.

The breach of planning control alleged in the notice is failure to comply with condition Nos U27543NS04 and U27544NS05 of a planning permission Ref 08/4312/FUL granted on 29 July 2009.

The development to which the permission relates is continuation of planning permission granted on 11 December 2007 (07/1235/FUL) to allow permanent mixed use as garden centre (Class A1) and café/restaurant (Class A3). The conditions in question are No U27543NS04 which states that: *'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 11.00hrs and after 16.30hrs. 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'*, and No U27544NS05 which states that: *'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'*.

The notice alleges that the conditions have not been complied with in that the café/restaurant is operating outside of the permitted hours (in breach of condition NS04 hours of use) and the extent of the café/restaurant area has increased in size beyond that permitted under approved drawing number DP7/2857 (in breach of condition NS05 café/restaurant areas).

The requirements of the notice are: a) permanently 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 and b) permanently restrict the café/restaurant uses areas to within the blue line, as shown on the attached Plan 2. The period for compliance with the requirements is 2 months.

The appeal is proceeding on the grounds set out in section 174(2) (a), (d), and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

I am appointed to conduct the forthcoming inquiry and determine the above appeal. I am a chartered Town Planner. I also led the Case Management Conference (CMC).

I issued a pre-inquiry note on 7 March 2024 and a CMC agenda last week. I confirmed that there would be no discussion during the CMC as to the merits of the respective cases of the parties and that I would not hear any evidence. Rather the purpose of the CMC was to give a clear indication as to the ongoing management of this case and the presentation of evidence, so that the forthcoming inquiry would be conducted in an efficient and effective manner.

The Inquiry is scheduled to open at 10.00 am on Tuesday 2 July 2024. It was agreed that on each subsequent day, the inquiry would reconvene at 09.00 am.

CMC Attendance

For the Appellant	For the Council
Scott Stemp Counsel	Mark Westmoreland Smith Kings Counsel

No interested parties were in attendance.

Advocates and Witnesses

Council’s Advocate

Mark Westmoreland Smith, Kings Counsel

Appellant’s Advocate

Scott Stemp, Counsel

Council witnesses

- Mr E Appah, Senior Planning Enforcement Officer
- Possible additional witnesses depending on the appellant’s technical documents to be submitted by no later than 20 May 2024 (names/positions to be sent to me due course).

Appellant Witnesses

- Planning and policy witness
- Highways witness
- Noise witness
- Economic/finance witness

- Company representative witness

(names/positions to be sent to me in due course).

Main issues

The parties agreed with my preliminary view that the following were the main issues for discussion at the inquiry: -

Ground (d) appeal

Agreed as per the CMC agenda.

Ground (a) appeal and the deemed planning application

The following main issues were agreed:-

- Whether the breach of planning control results in inappropriate development in Metropolitan Open Land (MOL) including its effect on the openness and purposes of the MOL,
- the effect of the development on the living conditions of the occupiers of neighbouring properties in respect of noise, disturbance, and light,
- the effect of the development on the character and appearance of the area, and if the development is inappropriate in MOL, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development.

Other interested party comments to be addressed in the evidence

I commented that concerns had been raised by other interested parties about the breach of planning control including its effect on the safe use of Church Lane and Petersham Road, on-street car parking demand, biodiversity, the setting of St Peter's Church which is a grade II* listed building, and the character and appearance of Petersham Conservation Area. The extent to which these matters will form main issues will depend on the consideration of the written evidence submitted to date, my site visit observations, and any verbal representations made at the inquiry. It was agreed that the respective planning proofs would include responses to third party comments.

I indicated that supportive representations had also been made by other interested parties who refer to economic and job benefits and the community/charitable work undertaken by the business. It was agreed that these matters would be considered in the planning balance as part of the consideration of the ground (a) deemed planning application.

It was noted that third parties had referred to 'important views' across Petersham Meadows and reference is made to a draft SPD. It was agreed that this would be addressed in the proofs. It was agreed that planning proofs would address all third-party comments.

The LPA allege harm caused from lights. The LPA clarified that this concern related to car headlights and external lights, including lights around the perimeter of the site (including on Church Lane). The LPA confirmed that it did not relate to light from the buildings on the site.

How the main issues will be dealt with

Ground (d)

It was agreed that all ground (d) evidence would be heard by cross examination with each witness giving evidence on immunity under oath. The ground (d) appeal would be heard first as a discreet and separate topic area.

In respect of the ground (d) appeal, it was agreed the witnesses would make an affirmation rather than swear on a Holy Book or Text.

It was agreed that evidence that accompanied a previous lawful development certificate application, which essentially related to the breach of planning control, was being sent to me/the Council for the purposes of the ground (d) appeal and that a hard copy would also be sent to me for my file.

Ground (a)

It was agreed that the ground (a) appeal would be considered by means of cross examination.

Ground (g)

It was agreed that the ground (g) appeal would be considered by way of round table discussion led by me alongside the consideration of without prejudice ground (a) appeal suggested conditions.

Documents, plans, evidence and submissions

Noise assessment and traffic surveys

In the interests of procedural fairness, it was agreed that the appellant's noise assessment, traffic surveys and light/landscaping assessment would be sent to PINS and the Council by **no later than 20 May 2024** and that the Council would immediately notify the public and consultees of receipt of this new evidence giving them until **30 May 2024** to send any representations to the case officer at PINS. The notification letter should make it clear that representations made already would continue to be

considered by me and that any comments made should relate solely to the identified documents/assessments/surveys submitted. It was agreed that PINS would send any received representations to the appellant/Council after 30 May 2024. The appellant confirmed that survey/assessment methodologies would be agreed between the main parties in advance.

Core Documents

It was agreed that the appellant would prepare a core documents list and then display all documents electronically in one place (Council to host). It was agreed that a link to the core documents would be sent to me after proofs of evidence had been exchanged. This would be used by all at the inquiry. Please ensure that statements, proofs and the SofCG are also included in the core document list library.

Opening and closing submissions

It was agreed that I would have hard copies at the inquiry and that electronic versions would be sent to the case officer on the same day.

Statement of common ground

In view of the forthcoming appellant's assessments and surveys, coupled with possible further third-party comments, it was agreed that a revised statement of common ground would be submitted. I would ask that this is sent by no later than **13 June 2024**. This would include possible revisions to the ground (a) appeal suggested conditions (see below). It is noted that some conditions are still under consideration.

Conditions

It was agreed that suggested conditions would also be prepared in respect of the fallback position, i.e., the requirements of the notice.

It was agreed that no planning obligation would be submitted in respect of the ground (a) appeal.

Inquiry running order/programme / no of days

It was agreed that the 3 days initially scheduled for the inquiry would unlikely be adequate. It was agreed that 4 days would be adequate and therefore the inquiry would also include Friday 4 July.

It was agreed that the first day of the inquiry would start at 10 am and that it would reconvene at 9.30 am on subsequent days.

In terms of running order, the following was agreed: -

- Inspector's Opening Remarks
- Opening Statements (Appellant then Council, no more than 15 minutes each)
- Third Party Comments
- Ground (d) Appellant's Witnesses
- Ground (d) Council's Witnesses
- Ground (a) – Appellant's Witnesses {OR roundtable discussion}
- Ground (a) – Council's Witnesses {OR roundtable discussion}
- Ground (a) suggested conditions – roundtable discussion
- Ground (g) appeal – roundtable discussion
- Site Visit (I shall undertake an unaccompanied site visit prior to the inquiry)
- Closing Submissions (Council then Appellant)
- Costs Applications (if any)

Inquiry venue

The Council confirmed that the inquiry would be held at York House, Richmond Road, Twickenham, TW1 3AA. Wi-fi and photocopying facilities would be provided. Water should be provided for me, witnesses, and advocates. The Council indicated that it would confirm if a car parking space would be reserved for me each day.

Timetable for submission of documents

- Appellant to submit ground (d) evidence to LPA/PINS **this week** to sit alongside the appellant's statement of case (it is understood that this may have already happened).
- Council to submit noise complaints (redacted where necessary) to appellant/PINS **this week** (it is understood that this may have already happened).
- Final comments, if necessary, by **6 May 2024**
- Appellant's noise assessment, traffic surveys and light/landscaping assessment (including summary findings) to be sent to the Council/PINS by no later than **20 May 2024**. Council to immediately consult the public/consultees in respect of this new evidence with representations to be sent directly to the PINS case

officer by no later than **30 May 2024** (LPA to send PINS a copy of the notification letter including lists of addresses).

- Proofs of evidence by **4 June 2024**
- Revised statement of common ground including suggested ground (a) conditions (to also include conditions relative to the position relating to the requirements of the notice) by no later than **13 June 2024**
- Time estimates from the main parties for cross examination, and based on the agreed running order, to be sent to me by no later than **13 June 2024**.
- Council to Issue a notification letter to all interested parties (date, time, venue for inquiry) by no later than **11 June 2024**. A copy of the notification letter with a list of addresses should be sent to PINS on or before **11 June 2024** (the Council confirmed that it would likely to do this now so that it was not missed).
- I will issue an inquiry work programme, based on the time estimates from the advocates, by no later than **18 June 2024**. The Council should display this on its web site upon receipt.

The Council should make all notes, including this one, available on its website for interested parties.

I would be most grateful if you would send me hard copies of proofs and any revised SofCG as well as electronic versions.

It was agreed that a copy of the Council's first notification letter notifying interested parties of receipt of the appeal would be sent to me this week. I was not able to see a copy of this on my file.

I thank you once again for your time and assistance at the CMC.

D Hartley

INSPECTOR

23 April 2024