



Planning Proof of Evidence Petersham Nurseries

June 2024



PETERSHAM NURSERIES LTD

**LAND AT PETERSHAM NURSERIES, PETERSHAM ROAD,
PETERSHAM, RICHMOND, TW10 7AB**

**AN APPEAL UNDER SECTION 174 OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

APPEAL REFERENCE: APP/L5810/C/24/3339372

Proof

of evidence of

Nick Belsten MRICS

On behalf of

Petersham Nurseries Ltd

June 2024



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1.0 NAME AND QUALIFICATIONS

- 1.1 My name is Nick Belsten. I hold an Honours Degree in Estate Management from the University of Greenwich. I am a Chartered Surveyor, and a Member of the Royal Institution of Chartered Surveyors (Planning & Development Division).
- 1.2 I have been a town planning and development consultant for over 28 years, holding senior positions in a succession of companies. I was a Director at CBRE, an Executive Director and owner of Indigo Planning Ltd, a Director of London at WSP, and most recently an Executive Director of hgh Consulting. hgh Consulting employs 34 planners and related professionals, and is a busy planning consultancy practice, primarily acting for landowners and developers.
- 1.3 I am an advisor to University of London, NHS Property services in London and a Commissioner for the London Urban Transformation Commission, which works with key stakeholders including the GLA, Historic England and the London boroughs to ensure joined-up approach to policy development and advocacy across the capital. I sit on the Planning Committee of the British Property Federation and am active in the affairs of various professional organisations.
- 1.4 My professional experience covers most types of property, and ranges from the very large scale to the small. This includes the mixed-use regeneration of King's Cross Central, the Francis Crick Institute, the UK Centre for Dementia, and Institute of Neurology; University of London's Bloomsbury Senate House Masterplan and notable heritage related cultural and leisure developments including, The Chiltern Firehouse; the renowned music venue, KoKo, and number of renowned central London theatres and cinemas.
- 1.5 I am familiar with Richmond both from a professional and a personal viewpoint. My family comes from Petersham, and I live locally in nearby St Margarets, and I was married in St. Peters Church which is next to Petersham Nurseries.
- 1.6 I have also advised on a wide range of projects within the London Borough of Richmond upon Thames. This includes a new community sports pavilion in St Margarets; I am also acting on behalf of several local community groups in respect to the proposed Thames Water Teddington Direct River Abstraction (DRA) DCO project.
- 1.7 The evidence I have prepared and which I provide in this Proof is, to the best of my knowledge, truthful as to the facts, and honest as to my professional opinions. It has been prepared in accordance with the guidance provided in Royal Town Planning Institute Practice Advice, 'Planners as Expert Witnesses' (2018), and in the practice statement, 'Surveyors Acting as Expert Witnesses' published by the Royal Institution of Chartered Surveyors (fourth edition).

2.0 INTRODUCTION AND BACKGROUND

- 2.1 At this public inquiry, I appear on behalf of Petersham Nurseries Ltd (referred to throughout this Proof as Petersham Nurseries), the Appellant, who own Land at Petersham Nurseries (the subject of this appeal).
- 2.2 Petersham Nurseries is a family run business, owned by Mr and Mrs Boglione. Further details about the company are provided within Ms Boglione's Proof of Evidence.

Background to the Appeal

- 2.3 As detailed within the preceding Statement of Case, the Appeal was submitted under Section 174 of the Town and Country Planning Act 1990 (as amended) against an Enforcement Notice (ref. 18/0025/EN/BCN) ("the Notice") served by the London Borough of Richmond upon Thames ("the Council" and "LPA") on 15 January 2024 in respect of Land at Petersham Nurseries, Petersham Road, Petersham, Richmond, TW10 7AB ("the Site").
- 2.4 The alleged breach of planning control within the Notice reads:

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

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

U27543 NS04 Hours of Use - Café/Restaurant

There shall be no sale of food for consumption on or off the premises during the following times: Tuesday to Sunday - before 1000hrs and after 1630hrs and on Sundays - before 1100hrs and after 1630hrs. The A3 premises shall not be open on Mondays. A notice to this effect shall be displayed at all times on the premises so as to be visible from outside. REASON: To safeguard the MOL, conservation area, amenities of nearby residential properties and the area generally.

U27544 NS05 Café/Restaurant areas

The café/restaurant areas shall be confined solely to the areas identified for these purposes on Approved Drawing Number DP7/2857 for Permission 07/1235/FUL. REASON: To safeguard the MOL, conservation area, amenities of nearby residential properties and the area generally.

These conditions are being breached because the café/restaurant is operating outside of the permitted hours (in breach of condition NS04 hours of use) and the extent of the café/restaurant area has increased in size beyond that permitted under Approved Drawing Number DP7/2857 (in breach of condition NS05 café/restaurant areas)".

2.5 The reasons cited for issuing the Notice are:

“The café/restaurant operating outside of its permitted hours (in breach of condition NS04 hours of use) and the increase in size of the café/restaurant area beyond that permitted under Approved Drawing Number DP7/2857 (in breach of condition NS05 café/restaurant areas) has led to pedestrian, vehicular and commercial activity which is harming the amenity and living conditions of neighbouring residents and has an urbanising effect detrimental to the character and function of the Metropolitan Open Land (MOL).

This is contrary to the National Planning Policy Framework (2023), to policy G3 (MOL) of The London Plan (2021), to policies LP8 (Amenity and Living Conditions) and policy LP13 (Green Belt, MOL and Local Green Space) of the adopted Local Plan (2018), and to policies 46 (Amenity and Living Conditions) and 35 (Green Belt, MOL and Local Green Space) of the draft publication version, Reg 19, Local Plan (2023).

Notwithstanding this, a minor extension of the hours to those stipulated in paragraph 5(a) below and a confined area for café/restaurant use stipulated in paragraph 5(b) below, which despite being of a greater extent than the approved Planning Permission, would be of a lesser extent than currently in operation and would address the harm caused thus allowing for the continued use of the café/restaurant in an amended form that would achieve compliance with the policies cited above. For these reasons the requirements cited below effectively ‘under-enforces’ the hours and area specified in paragraphs 5(a) and 5(b)”.

Grounds of Appeal

2.6 The appeal against the Enforcement Notice is made on:

- **Ground (A)** - that, in respect of any breach of planning control which may be constituted by matters stated in the Notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged; and
- **Ground (G)** - that any period specified in the Notice in accordance with section 173(9) falls short of what should reasonably be allowed.

3.0 SITE AND SURROUNDINGS

Description of Site and Surroundings

- 3.1 The application site forms Land at Petersham Nurseries, Petersham Road, Petersham, Richmond, TW10 7AB (“the Site”).
- 3.2 The Nurseries comprise three glass greenhouse structures, separate brick and timber buildings, and outdoor areas, which together accommodate the plant and shop sales, display areas, seating areas, the kitchen, toilets, and staff office.
- 3.3 The site is a single planning unit, which lawfully falls within Use Class E.
- 3.4 Petersham Nurseries is located on the northern side of Petersham Road, to the rear of 143 Petersham Road (also known as Petersham House). The site is accessed via Church Lane, which runs between 141 Petersham Road and St Peter’s Church. Pedestrian access is via 2x footpaths that run from River Lane and Church Lane.
- 3.5 Petersham Nurseries has a licence agreement with the Council, which owns the adjacent land, to use it as a turning area for service vehicles.
- 3.6 The site is located within the Petersham Conservation Area and is located within Metropolitan Open Land (MOL). Petersham Meadows, which is designated as an “*Other Site of Nature Importance*”, and an area of hardstanding adjoin the site to its north. This land to the north is also within the Thames Policy Area.



Figure 1: Petersham Nurseries (Surrounding Land Uses)

Petersham Nurseries Operation

- 3.7 Petersham Nurseries is a family-owned and run business which has evolved over many years. It currently comprises a garden centre with ancillary café/restaurant and has operated as such since circa 2004. There is a synergy between the elements of the business, with customers to the café/restaurant also visiting the garden centre, and vice versa.
- 3.8 Given the nature of the business, it is reliant on the café/restaurant to generate a profit, and specifically the evening restaurant operation (which generates approximately 45% of the total food and beverage profit). This high percentage is due to the higher average spend in the evenings, as people generally spend longer dining and are more likely to order multiple courses and alcoholic drinks. This higher spend leverages off a cost base which is already in place, resulting in an overall higher profit margin.
- 3.9 The Nurseries are a major employer, employing 162 staff (which increases in peak season), many of whom live locally. In addition to direct employment opportunities, the Nurseries generate both indirect jobs within the supply chain and induced jobs within the wider economy.
- 3.10 The Nurseries play a significant role in the local community, undertaking many charitable events and making contributions over the course of the last 20 years. A recent example is the hosting of morning coffee mornings and provision of information sessions on benefits and other support mechanisms for the Ukrainian refugee community.
- 3.11 The positive impact of the Nurseries is reflected in the level of support from the local residential and business community in Richmond. A selection of letters of support have been received from parties including local residents and businesses, staff members, Be Richmond (the Richmond Business Improvement District), the Headteacher of Grey Court School, Zac Goldsmith (former MP) and those who have benefitted from the charitable work undertaken by the Nurseries.
- 3.12 Regarding sustainability, Petersham Nurseries' ethos is to encourage positive living through consideration of the environment. They do this through responsible sourcing for all facets of the business, including reducing wastage and recycling as much as possible to ensure they minimise the impact of the nursery, café, and restaurant on the environment.
- 3.13 Indeed, the business has been awarded Green Michelin Stars for the past 4-years (2021, 2022, 2023, and 2024), which is given to restaurants who are the forefront of the industry for sustainable practices and operations. In recent years, the business has been awarded the following awards and achievements:
- Winner of the Richmond Business Award for Best Achievement in Social Responsibility 2018
 - Winner Richmond Business Awards Best Achievement in Social Responsibility 2019
 - Winner Richmond Business Award for Best Business 2020
 - Winner Richmond Chamber of Commerce Award for Best Business for Environmental Sustainability 2023.

4.0 PLANNING HISTORY AND LICENSING

4.1 This section of my Proof sets out a summary of the planning history and licensing records of the site. This is a factual record of planning and licensing decisions available on the Council's website.

Planning History

- 4.2 The site has been in use as a garden centre since 1962. The planning history shows that planning permission was granted for greenhouse structures between 1967 and 1970 (LPA refs. 67/183, 67/884, 67/2117 and 70/560).
- 4.3 In 1998, a Certificate of Lawful Existing Use or Development ("CLEUD") was granted in respect of the use of the premises as a garden centre (LPA ref. 98/0525). The full description of development is set out below:
- "Use as a garden centre comprising open sales and display of plants and garden centre products; covered sales and display of garden centre products; ancillary storage and equipment plus sales office; plant growing areas; and public entrance courtyard and vehicle turning and loading area".*
- 4.4 The effect of the 1998 CLEUD was that the site could be used for A1 retail use (now Use Class E) without the need for planning permission and had no restriction on hours or areas of operation.
- 4.5 A café / restaurant was opened in 2004, which operated ancillary to the garden centre use. In 2007 however, the Council held the view that the café / restaurant was no longer ancillary to the primary Use Class A1 function of the garden centre and that a mixed Use Class A1 / A3 approval was required to regularise the lawful use.
- 4.6 Subsequently, Petersham Nurseries applied for temporary planning permission for a mixed-use site (Use Class A1 / A3), which was granted in December 2007 (LPA ref. 07/1235/FUL). Condition 1 of the permission stated that consent was for one year only, expiring at the end of November 2008. The reason being was to monitor and review the use after it had been in operation and to see if the impacts could be successfully mitigated.
- 4.7 An application to allow a permanent mixed-use of Use Class A1 and A3 was granted in July 2009 (LPA ref. 08/4312/FUL).
- 4.8 The permanent permission was subject to several conditions, which are outlined in the table below:

Condition	Full Condition Wording	Status
<p>U27539 NS01 - Green Travel Plan & Review</p>	<p>Within 3 months of the date of this permission a full travel plan which accords with Transport for London’s “Guidance for Workplace Travel Planning for Development (2008)” shall be developed and submitted to and approved by the local planning authority in writing (“first approval date”) and shall be implemented on the first approval date and shall be reviewed and revised annually by each anniversary of the first approval date and in accordance with the requirements set out in i) to I v) below:</p> <ul style="list-style-type: none"> i) by a date no later than 10 months after the first approval date a survey methodology shall be submitted for the travel plan which shall be iTrace compliant to the local planning authority for its approval in writing; ii) by a date no later than 12 months after the first approval date a revised travel plan incorporating the results arising from the approved survey methodology shall be submitted to the local planning authority for its approval and the approved revised travel plan including any revisions or suggestions made by the local planning authority shall be implemented upon receipt of such approval; iii) by a date no later than 2 months prior to the submission of a revised travel plan each year in accordance with iv) below, a survey methodology for the travel plan which is iTrace compliant shall be submitted to and approved by the local planning authority; and iv) a revised travel plan shall be submitted to the local planning authority for its approval annually by each anniversary of the first approval date for a period of 10 years from the first approval date and on each occasion the approved revised travel plan including any revisions or suggestions made by the local planning authority shall be implemented upon receipt of such approval. 	<p>The condition has been discharged via references 08/4312/DD02 and 08/4312/DD04</p>

U27540 NS02 - Cycle Parking	Additional cycle parking facilities shall be provided in accordance with detailed drawings to be submitted to and approved in writing by the Local Planning Authority, such drawings to show the position, design, materials and finishes thereof.	Discharged under reference 08/4312/DD02
U27541 NS03 - Servicing and Deliveries	Within 6 weeks of the permission hereby granted the applicant is required to submit a servicing and delivery schedule to be submitted to and approved in writing by the Local Planning Authority and should include measures to prevent servicing and delivery taking place during the peak hours of 11:30 to 15:00 hours Monday - Saturday and at any time on Sunday and restrictions on the weights of vehicles allowed to visit the site.	Discharged under reference 08/4312/DD03
U27543 NS04 - Hours of Use - Café/Restaurant	There shall be no sale of food for consumption on or off the premises during the following times: Tuesday to Sunday - before 10:00hrs and after 16:30hrs and on Sundays - before 11:00hrs and after 16:30hrs. The A3 premises shall not be open on Mondays. A notice to this effect shall always be displayed at all times on the premises so as to be visible from outside.	<i>Non-compliance since 2009</i>
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.	<i>Non-compliance since 2009</i>
U27545 NS06 - Extraction Equipment	Any equipment required to effectively suppress the emission of fumes or smell and obviate any other nuisance from cooking processes carried out in the premises to be installed shall be submitted to and approved in writing by the Local Planning Authority.	Discharged under reference 08/4312/DD01
U27546 NS07 - Air Conditioning Equipment	No air conditioning apparatus, equipment or ducting shall be erected, placed, or fixed to any part of the roof or external faces of the building(s), otherwise than as submitted to be agreed in writing by the Local Planning Authority.	No action required

U27547 NS08 - Personal Permission	The A1/A3 mixed use hereby permitted shall only be carried out by Mr Francesco Boglione for the period during which the premises are owned by Mr Francesco Boglione.	Superseded by application reference 21/3108/ES191
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- 4.9 The mixed A3 use was restricted by areas and hours; however, the A1 use had no such restriction and could operate without restrictions within the site’s red line boundary.
- 4.10 An application to vary condition NS04 (hours of use) of LPA ref. 08/4312/FUL to include opening between 19:00 and 23:00 on Thursday, Friday and Saturday evenings was submitted to the Council in 2010 but was withdrawn on 11 August 2011 (LPA ref. 10/2914/VRC).
- 4.11 Whilst the application was not determined, an Officer’s Report had been prepared for LPA ref. 10/2914/VRC, which raised concerns regarding alleged impacts because of impact on the MOL and residential amenity. The report notes that evening restaurant openings have occurred for at least 2-years.
- 4.12 The Officer’s Report also stated that it was difficult to support an objection to the character and amenity of the Conservation Area, and that transport concerns may be able to be overcome with more rigorous surveys, such as measuring a non-evening as a baseline against an evening operation to capture the difference in car trips.
- 4.13 A subsequent application was submitted to open in the evening on Saturdays and was refused by the Council on 29 March 2012 (LPA ref. 12/0067/VRC). This application was refused due to the alleged detriment of the character of the MOL and adverse effect on residential amenity. The Officer’s Report confirms that the impact to the Conservation Area is unsustainable as a reason for refusal and acknowledges that issues regarding transport had been overcome.
- 4.14 A further application was submitted on 3 February 2014 and was refused on 18 January 2018 (LPA ref. 14/0345/VSC) for the variation of condition NS04 to allow the sale of food for the consumption on the premises between the hours of 9:00 and 18:00 on Mondays, Tuesdays, and Wednesdays, 9:00 and 23:00 on Thursdays, Fridays, and Saturdays and between 11:00 and 18:00 on Sundays.
- 4.15 The Environmental Health Officer confirmed that they had no objection [*my emphasis*] to evening openings insofar as they were properly managed (which they believed they could be). The application was nevertheless refused because of an inappropriate use, which would allegedly be detrimental to the character and function of the MOL and adverse effect on residential amenity.
- 4.16 An informative attached to the decision notice issued on 18 January 2018 for LPA ref. 14/0345/VSC advised that:

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

- 4.17 In response to the refusal, the applicant entered into pre-application discussions with the Council and, following a meeting in the Spring of 2018, submitted a draft application to the Council in December 2018, but no response was received from the Council.
- 4.18 On 31 August 2021, a CLEUD application was submitted to the Council regarding conditions NS04, NS05 and NS08 of 08/4312/FUL (LPA ref: 21/3108/ES191). The CLEUD was submitted due to the passage of time and the continuous use of the operational areas of the site and the evening operations, which was supported by significant evidence.
- 4.19 The period that the CLEUD application covered was between 2009 - 2019 (i.e. since the grant of planning permission on 29 July 2009). The submitted evidence was from a variety of sources and demonstrated that the breach of conditions NS04 and NS05 had been continuous over at least a ten-year period.
- 4.20 Over this period, and as demonstrated above, there were several planning applications that were submitted, and the Council was fully aware of the extent of the operation at Petersham Nurseries. The Council decided not to pursue enforcement action.
- 4.21 On 4 September 2023, the Council amended the description of the certificate application and granted a certificate for the following:

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

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

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

- 4.22 The CLEUD confirmed the lawfulness of a small extension of opening hours, a larger operational restaurant/café area, and removal of the personal condition. The Council did not accept the evidence submitted regarding evening use and of the café / restaurant operating over the full area.
- 4.23 On 13 September 2023, the Planning Committee considered a report by officers to take enforcement action against Petersham Nurseries. The Committee decided to take enforcement action against all evening operations and seating areas used in the daytime that were closest to neighbouring properties.

Licensing

- 4.24 In September 2022, the Council granted Petersham Nurseries Ltd a new premises licence under the Licensing Act 2003. The opening hours authorised under the new licence are:
- Monday - 09:00 to 17:00;
 - Tuesday - 09:00 to 17:00;
 - Wednesday - 09:00 to 23:00;
 - Thursday - 09:00 to 23:00;
 - Friday - 09:00 to 23:00;
 - Saturday - 09:00 to 23:00; and
 - Sunday - 11:00 to 17:00.
- 4.25 The licence permits the sale of alcohol up to 17:00hrs seven days a week and, additionally, on no more than three days per week on Wednesdays to Saturdays, up until 22:30.
- 4.26 As part of the application, Petersham Nurseries offered up several additional controls which have formed conditions on the premises licence. This includes (i) limiting the sale of alcohol after 5pm to a more limited area (including Greenhouse 1 and the pergola area), (ii) limiting the sale of alcohol beyond 5pm to three nights per week, and (iii) changing the start time on Sundays to be after 11am to ensure no conflict with St Peter's Church. Specific conditions have also been agreed with the police.
- 4.27 The licence had been subject to public consultation, and assessed against the four licensing objectives, which include public nuisance.
- 4.28 The Home Office's statutory guidance to support licensing authorities in the carrying out of their functions under the Licensing Act 2003 states¹:
- “Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour, and insects or where its effect is prejudicial to health.”*
- 4.29 This means that the issues of noise and disturbance resulting from people arriving and leaving later in the evening were considered acceptable.
- 4.30 The premises licence was granted and has been in operation since November 2022.

¹ Paragraph 2.2, Revised Guidance issued under section 182 of the Licensing Act 2003, Home Office, December 2023

5.0 PLANNING POLICY CONTEXT

- 5.1 The planning policy and legislative context is of key relevance to Ground (A) of this appeal, and I now provide a summary of the relevant context.
- 5.2 Planning decisions must be taken in accordance with the Development Plan unless there are material considerations that indicate otherwise, as set out as Section 38(6) of the Planning and Compulsory Purchase Act 2004.
- 5.3 The relevant adopted national, regional, and local planning policy, which are of relevance to this Appeal, include:
- National Planning Policy Framework (“NPPF”);
 - London Plan (2021);
 - Richmond Local Plan (2018);
 - Ham and Petersham Neighbourhood Plan (2018);
 - Supplementary Planning Documents and Guidance, including:
 - Development Control for Noise Generating and Noise Sensitive Development SPD;
 - Transport SPD;
 - Conservation Areas SPG; and
 - Planning Guidance for Food and Drink Establishments SPG.
- 5.4 It is noted that the Council is currently preparing a new Local Plan, and the Richmond draft Publication Version Local Plan (2023) was submitted for examination in January 2024. The emerging policies are still the subject of unresolved objections that will need to be carefully scrutinised by an appointed Inspector through the Examination in Public (EiP) process.
- 5.5 Consequently, the Appellant considers that only the most limited weight should be afforded to the emerging policies. The Appellant’s position is detailed further within the Matters of Dispute within the Statement of Common Ground.

National Planning Policy Framework

- 5.6 A revised NPPF was published by the UK Government’s Department for Levelling Up, Housing & Communities on 19 December 2023, which sets out the government’s planning policies for England and how these are expected to be applied.
- 5.7 Paragraphs 7 and 8 makes clear that the purpose of the planning system is to contribute to the achievements of sustainable development, including commercial development.
- 5.8 Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways:

- (a) An economic objective - to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
 - (b) A social objective - to support strong, vibrant, and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful, and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
 - (c) An environmental objective - to protect and enhance our natural, built and historic environment, including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.
- 5.9 So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11).
- 5.10 Paragraph 59 relates to “Enforcement”, and states that effective enforcement is important to maintain public confidence in the planning system. The NPPF is clear that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.
- 5.11 Paragraph 85 sets out that planning policies and decisions should help create the conditions in which businesses can invest, expand, and adapt. Significant weight should be placed on the need to support economic growth and productivity, considering both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.
- 5.12 Paragraph 123 requires planning policies and decisions to promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.
- 5.13 Paragraph 142 states that 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.
- 5.14 At paragraph 143, the five purposes the Green Belt serves are set out:
- (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 special character of historic towns; and
 - (e) To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

- 5.15 Paragraph 149 explains that if it is necessary to restrict development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt. If, however, the character of the village needs to be protected for other reasons, other means should be used, such as conservation area or normal development management policies, and the village should be excluded from the Green Belt.
- 5.16 Paragraph 152 recognises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraphs 154 and 155 set out certain forms of development which are not considered inappropriate in the Green Belt.
- 5.17 Paragraph 196 requires plans to set out a positive strategy for the conservation and enjoyment of the historic environment.
- 5.18 In determining applications that affect heritage assets, paragraph 203 explains that local planning authorities should take account of:
- (a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - (b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - (c) The desirability of new development making a positive contribution to local character and distinctiveness.

London Plan (2021)

- 5.19 Policy GG1 of the London Plan (2021) states that those involved in planning and development must seek to ensure that London continues to generate a wide range of economic and other opportunities, and that everyone is able to benefit from these to ensure that London is a fairer, more inclusive, and equal city. Policy writes that those involved in planning and development should plan for places that provide important opportunities for building relationships during the daytime, evening, and night-time.
- 5.20 Policy GG2 seeks to create successful sustainable mixed-use places that make the best use of land. It requires those involved in planning and development to:
- Proactively explore the potential to intensify the use of land to support workspaces; and
 - Protect and enhance London's open spaces, including the Green Belt, Metropolitan Open Land, designated nature conservation sites and local spaces.
- 5.21 Policy HC1 requires development proposals affecting heritage assets, and their settings, to conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings.
- 5.22 Policy GG5 promotes the diversification of London's economy and Policy HC6 sets out that boroughs should develop a vision for the night-time economy, supporting its growth and diversification. This includes extending the opening hours of existing daytime facilities such as shops, cafes, and restaurants.

- 5.23 Policy E10 relates to visitor infrastructure and states that London's visitor economy should be strengthened by enhancing and extending its attractions, particularly to parts of outer London
- 5.24 Policy G3 sets out that Metropolitan Open Land (MOL) is afforded the same status and level of protection as Green Belt:
- (a) MOL should be protected from inappropriate development in accordance with national planning policy tests that apply to the Green Belt.
 - (b) Boroughs should work with partners to enhance the quality and range of uses of MOL.
- 5.25 Policies T4 - T6 require development proposals to reflect and be integrated with current and planned transport access, capacity, and connectivity.

Richmond Local Plan (2018)

- 5.26 Policy LP1 of the Richmond Local Plan (2018) requires all development to be of high architectural and urban design quality. Development proposals will have to demonstrate a thorough understanding of the site and how it relates to existing context, including character and appearance, and take opportunities to improve the quality and character of buildings, spaces, and the local area.
- 5.27 Policy LP3 requires development to conserve and, where possible, take opportunities to make a positive contribution to the historic environment. Policy LP4 writes that the Council will seek to preserve and, where possible, enhance the significance, character and setting of non-designated heritage assets.
- 5.28 Policy LP8 requires all development to protect the amenity and living conditions for occupants of new, existing, adjoining, and neighbouring properties.
- 5.29 Policy LP10 states that the Council will seek to ensure that local environmental impacts of all development proposals do not lead to detrimental effects on the health, safety, and the amenity of existing and new users or occupiers of the development site, or the surrounding land.
- 5.30 Policy LP13 states that the borough's Green Belt and Metropolitan Open Land will be protected and retained in predominantly open use. Development will be supported if it is appropriate and helps secure the objectives of improving the Green Belt or Metropolitan Open Land.
- 5.31 Policy LP45 requires new development to make provision for the accommodation of vehicles to provide the needs of the development while minimising the impact of car-based travel, including on the operation of the road network and local environment, and ensuring making the best use of land.

Ham and Petersham Neighbourhood Plan (2018)

- 5.32 Policy C1 sets out that the clear distinction between the built-up areas and green spaces of Ham and Petersham will be retained and, where appropriate, enhanced to ensure that the boundary is well defined, physically, and visually.
- 5.33 Policy R1 writes that proposals which extend and enhance the range of local shops, pubs, restaurants, cafes, and related commercial services will be encouraged.

6.0 GROUNDS OF APPEAL

6.1 In this section of my Proof, I appraise each ground of appeal in the context of the relevant legislation, the development plan and other material considerations. This appeal against the enforcement notice is made on grounds (a) and (g) as set out at Section 174 of the Town and Country Planning Act 1990.

Ground (A) - “That planning permission should be granted for what is alleged in the notice”.

6.2 The planning considerations in respect of the extension of evening hours / operations and seating areas are as follows:

- (a) Site Specific Circumstances
- (b) Principle of Development
- (c) Socio-Economic Impact
- (d) Impact upon Metropolitan Open Land
- (e) Design and Impact on Heritage Assets
- (f) Impact on Residential Amenity
- (g) Transport
- (h) Ecology and Biodiversity
- (i) Very Special Circumstances

Site Specific Circumstances

6.3 As set out in detail within Ms Boglione’s Proof of Evidence, the success of Petersham Nurseries results from the nature of the site and the business itself, which has developed organically over many decades. The concept of the Nurseries is wholly reliant upon the environment within which it sits, with the greenhouses creating the atmosphere and ambiance which, when coupled with high quality seasonal food (much of which is grown on-site in the kitchen garden), provides a unique restaurant offering.

6.4 The synergy between the different elements of the business, both the café/restaurant and garden centre retail, are key to the success of the business, which has become a destination location (as acknowledged by the Council in the Enforcement Notice Report).

6.5 I defer to Ms Boglione for full details; however I concur with her conclusion that the Petersham Nurseries site and the business are inextricably linked, and I consider that these site-specific circumstances are a material consideration which should hold significant weight in the planning balance.

Principle of Development

6.6 The proposed development will enable the Appellant to provide an evening ‘supper club’ offering three days per week, which will provide substantial socio-economic benefits. It will also allow for additional outdoor seating (noting that the nature of this seating means it will primarily be used on a seasonal basis.)

- 6.7 The socio-economic benefits are discussed by Mr Ward in his Proof of Evidence, and I defer to him on this detail. However, I note that these benefits are twofold; the first being economic, with the provision and safeguarding of employment opportunities (which would otherwise be lost), including the contribution towards 162 jobs on-site (rising during the peak season), and supporting other businesses within the local supply chain. The second benefit is the contribution to tourism - providing a unique evening offer that will attract visitors to this destination location, which, in turn, promotes tourism within the wider Richmond area.
- 6.8 I consider that the proposed development contribution towards employment and the local economy fully accords with paragraph 85 of the NPPF, which states that significant weight should be placed on the need to support economic growth and productivity, considering both local business needs and wider opportunities for development.
- 6.9 It also accords with London Plan Policy GG5 (Growing a good economy), which promotes the diversification of London's economy, and Policy HC6 (Supporting the night-time economy), which promotes the night-time economy. Indeed, Policy HC6 specifically writes that planning policies and decisions should facilitate the extension of opening hours of existing daytime facilities such as shops, cafes, and restaurants into the night-time. I note that in their Statement of Case, the Council allege that the proposed development is contrary to Policy HC6. I disagree with this assertion and address this point in more detail in the following section of my Proof.
- 6.10 At a local level, I consider that the proposed development fully accords with Local Plan Policy LP40, which supports a diverse and strong local economy. This compliance with Policy LP40 is acknowledged by the Council in their Statement of Case.
- 6.11 In addition, I believe that it accords with Policy R1 of the Ham and Petersham Neighbourhood Plan, which encourages proposals that extend and enhance the range of local shops, pubs, restaurants, cafes, and related commercial services in the area. In respect of Petersham specifically, the Ham and Petersham Neighbourhood Plan recognises that there are no shops in Petersham apart from Petersham Nurseries - which makes the site a crucial local employer.
- 6.12 Regarding tourism, I note that the Council do not consider tourism or the visitor economy at all within their Statement of Case. Notwithstanding this, I consider that the proposed development benefits tourism in Richmond and that this is a material planning consideration.
- 6.13 London Plan Policy E10 (Visitor infrastructure) states that London's visitor economy should be strengthened by enhancing and extending its attractions, particularly to parts of outer London. Local Plan Policy LP43 states that the Council will support the sustainable growth of the visitor economy for the benefit of the local area by supporting proposals which promote and enhance the borough's existing tourist attractions.
- 6.14 Petersham Nurseries comprises a highly successful tourist attraction, which is acknowledged in the Enforcement Notice Report (see Core Document CD1.2), which states:

"The café/restaurant use has become ... a destination in its own right, with a national and international reputation".

- 6.15 I consider that the proposed sustainable growth and enhancement of this acknowledged tourist attraction fully accords with Policy LP43.
- 6.16 When considering the principle of sustainable development, I believe that the proposed development is inherently sustainable, being an existing restaurant which has been operating successfully in this location for many years. No new infrastructure or physical development is proposed to enable the evening opening hours. The proposed development seeks to make the best use of land by intensifying an existing use, in accordance with Chapter 11 of the NPPF and London Plan Policy GG2 - both of which promote the effective use of land.
- 6.17 The proposed development will not have any adverse socio-economic or environmental impacts in terms of noise, transport, heritage, or light pollution (as set out in the Proofs of Evidence prepared by Mr Ward, Mr Vivian, Mr Bevis and as discussed further in my Proof) and the proposed operation will be carefully managed in accordance with the Appellant's existing Evening Management Plan, which sets out strict management procedures to limit potential disturbance and is a requirement of the approved Premises Licence (see Core Document **CD10.1**).
- 6.18 This approved Premises Licence was granted in September 2022. The opening hours permitted under the licence are:
- Monday - 09:00 to 17:00;
 - Tuesday - 09:00 to 17:00;
 - Wednesday - 09:00 to 23:00;
 - Thursday - 09:00 to 23:00;
 - Friday - 09:00 to 23:00;
 - Saturday - 09:00 to 23:00; and
 - Sunday - 11:00 to 17:00.
- 6.19 The licence permits the sale of alcohol up to 17:00 seven days a week and, additionally, on no more than three days per week on Wednesdays to Saturdays, up until 22:30.
- 6.20 As part of the application, Petersham Nurseries offered up several additional controls which have formed conditions on the premises licence. This includes (i) limiting the sale of alcohol after 5pm to a more limited area (including Greenhouse 1 and the pergola area); (ii) limiting the sale of alcohol beyond 5pm to three nights per week; and (iii) changing the start time on Sundays to be after 11am to ensure no conflict with St Peter's Church. Specific conditions have also been agreed with the police.
- 6.21 The licence had been subject to public consultation, and assessed against the four licensing objectives, which include public nuisance. This means that the issues of noise and disturbance resulting from people arriving and leaving later in the evening were assessed and considered to be acceptable. I note that Richmond's Statement of Licensing Policy is clear at paragraph 8.5 that:

“the planning department are a responsible authority under the Licensing Act 2003 and the Council will take account of relevant representations in regard to planning issues including those relating to the appropriate operating hours of a licensed premises”.

- 6.22 The Council’s Statement of Case confirms at paragraph 6.6 that the planning department was consulted on the licence but did not provide a response.
- 6.23 I consider that the grant of the licence is a material planning consideration, which should hold significant weight.
- 6.24 In summary, I conclude that the proposed extension of the evening hours and area of seating comprises sustainable development that makes the most effective use of an existing development, and which fully accords with the NPPF, London Plan and Local Plan policies (namely Policies GG2, GG5, E10, LP40 and LP43).

Fallback Position

- 6.25 It is worth noting that the current permission for Petersham Nurseries allows for a Class E operation to take place across the whole site with no restriction on hours or areas of operation in planning terms (except those set by the conditions in LPA ref: 08/4312/FUL regarding café/restaurant operations). This would not necessarily need to be a retail use, as it would be possible for alternative occupation within any of the uses included within Class E - including gym, creche, day nursery, light industrial or offices (amongst others). I defer to Ms Boglione’s Proof, which discusses the prospect of fallback positions.
- 6.26 Should a fallback position be implemented, the operation could be more impactful (with associated vehicle movements and potential disturbance).

Socio-Economic Impact

- 6.27 The socio-economic benefits of the proposed development are presented in detail by Mr Ward in his Proof of Evidence, and I concur with his conclusions.
- 6.28 Regarding economic impact, the importance of encouraging economic growth is iterated at all levels of planning policy, from paragraph 85 of the NPPF, through Policy GG5 of the London Plan, and Policy LP40 of the Local Plan.
- 6.29 I note that in their Statement of Case, the Council refer to two key policies relating to the economy: Local Plan LP40 and London Plan HC6. I address each policy in turn below:

Policy LP40: Employment and Local Economy

- 6.30 Policy LP40 states:

“The Council will support a diverse and strong local economy in line with the following principles:

1. *Land in employment use should be retained in employment use for business, industrial or storage purposes.*

2. *Major new employment development should be directed towards Richmond and Twickenham centres. Other employment floorspace of an appropriate scale may be located elsewhere.*
3. *The provision of small units, affordable units and flexible workspace such as co-working space is encouraged.*
4. *In exceptional circumstances, mixed use development proposals which come forward for specific employment sites should retain, and where possible enhance, the level of existing employment floorspace. The inclusion of residential use within mixed use schemes will not be appropriate where it would adversely impact on the continued operation of other established employment uses within that site or on neighbouring sites.”*

6.31 The Council accept that the proposed development would comply with Policy LP40, and I agree with this view. The site is currently in employment use, and the proposed development seeks to build upon this, generating further employment and economic benefits (as discussed by Mr Ward). Petersham Nurseries is a major employer in the area, employing 162 staff (which increases during peak season), most of whom live locally. The business clearly contributes toward the local economy in accordance with Policy LP40.

6.32 The proposals will retain an existing employment site in employment use, and - perhaps most importantly - safeguard a significant number of jobs. These are existing jobs, providing real livelihoods within a proven business (rather than projected jobs within a planning application for a development which is not yet in existence).

6.33 I therefore conclude that the proposed development fully complies with Policy LP40.

Policy HC6: Supporting the night-time economy

6.34 Policy HC6 of the London Plan writes that boroughs should develop a vision for the night-time economy, supporting its growth and diversification. In Development Plans, town centres strategies and planning decisions, boroughs should:

- (1) *“Promote the night-time economy, where appropriate, particularly in the Central Activities Zone, strategic areas of night-time activity, and town centres where public transport such as the Night Tube and Night Buses are available*
- (2) *Improve access, inclusion and safety, and make the public realm welcoming for all night-time economy users and workers*
- (3) *Diversify the range of night-time activities, including extending the opening hours of existing daytime facilities such as shops, cafes, libraries, galleries and museums*
- (4) *Address the cumulative impact of high concentrations of licensed premises on anti-social behaviour, noise pollution, health and wellbeing and other issues for residents and nearby uses, and seek ways to diversify and manage these areas*
- (5) *Ensure night-time economy venues are well-served with safe and convenient night-time transport*

(6) *Protect and support evening and night-time cultural venues such as pubs, night clubs, theatres, cinemas, music and other arts venues”.*

- 6.35 Policy HC6 goes on to write that promoting management of the night-time economy through an integrated [*my emphasis*] approach to planning and licensing, out-of-hours servicing and deliveries, safety and security, and environmental and cleansing services should be supported. Boroughs should work closely with stakeholders such as neighbouring boroughs, the police, local businesses, patrons, workers and residents.
- 6.36 I note that the Council allege that the proposed development would conflict with Policy HC6 due to the noise nuisance and disturbance it would cause. I disagree with this view. The aim of Policy HC6 is to promote the night-time economy and Part B (3) actively encourages the extension of opening hours of existing daytime facilities. The Policy is clear that subject to the management of impacts on residents and nearby uses, night-time economy venues should be supported.
- 6.37 Petersham Nurseries is operated in accordance with an Evening Management Plan (as required by condition of the Licence) which, as demonstrated by the evidence presented by Mr Vivian and Mr Bevis, successfully manages and mitigates potential noise and disturbance (I discuss residential amenity impact in more detail later in my Proof). I therefore consider that the proposed development fully complies with Policy HC6.
- 6.38 Further, Policy HC6 supports an integrated [*my emphasis*] approach to planning and licensing, which reinforces the case that the approved Premises Licence is a material planning consideration that should hold significant weight.
- 6.39 In addition to the economic benefits of employment and job creation, the Nurseries have a beneficial impact upon the tourism economy within Richmond. This is a matter which is not considered by the Council at all within their Statement of Case.
- 6.40 As stated at paragraph 9.7 of the Council’s Enforcement Notice Report, Petersham Nurseries comprises a highly successful tourist attraction, which is “*a destination in its own right, with a national and international reputation*”.
- 6.41 The contribution of the Nurseries to the tourism economy is a key benefit which should be a material consideration. This is addressed in more detail by Mr Ward in his Proof, who refers to the fact that visitors to the Nurseries come from not only Richmond, but elsewhere in the UK and overseas. Mr Ward notes the beneficial impact of these visitors on other local businesses, confirming that over 60% had visited other businesses in the Borough as part of the same trip.
- 6.42 The relevant planning policies comprise London Plan Policy E10 (Visitor infrastructure) and Local Plan Policy LP43. Policy E10 states that London’s visitor economy should be strengthened by enhancing and extending its attractions, particularly to parts of outer London. Local Plan Policy LP43 states that the Council will support the sustainable growth of the visitor economy for the benefit of the local area by supporting proposals which promote and enhance the borough’s existing tourist attractions. I consider that the sustainable growth and enhancement of Petersham Nurseries, an acknowledged tourist attraction, fully accords with Policy E10 and Policy LP43.

- 6.43 In addition to the economic benefits, the Nurseries generate significant social benefits, and play a significant role in the local community, undertaking many charitable events and making contributions over the course of the last 20 years. The business also generates non-monetary social value, including a sense of achievement and self-worth for employees and a calm and pleasant environment for customers to relax and socialise.
- 6.44 The social value of Petersham Nurseries is considered in detail by Mr Ward in his Proof of Evidence, and I concur with his assessment and conclusions.
- 6.45 The social benefits of Petersham Nurseries would be safeguarded through the grant of planning permission to allow the extension of the restaurant opening hours and extended seating, which would allow the business to continue operating and contributing to the local community.

Metropolitan Open Land

- 6.46 I now turn to the impact of the proposed development upon the Metropolitan Open Land. Within the Enforcement Notice, the Council allege that the operation of the café/restaurant outside its permitted hours and increase in size of the seating area is contrary to Chapter 13 of the NPPF, Policy G3 (MOL) of the London Plan, Policy LP13 (Green Belt, MOL and Local Green Space) of the adopted Local Plan and Policy 35 (Green Belt, MOL and Local Green Space) of the draft publication version Local Plan due to its impact on both the character and openness of the MOL. I have considered the proposed development against each of these policies in detail in this Proof; however, before undertaking this policy assessment, I have first considered the contribution of the site towards the strategic function of the MOL.

Contribution of the site to the MOL

- 6.47 The designation criteria for MOL are set on in Policy G3 of the London Plan. To be classified as MOL, land must meet four criteria:
- **Criteria 1:** Contribute to the physical structure of London by being clearly distinguishable from the built-up area;
 - **Criteria 2:** Includes open-air facilities, especially for leisure, recreation, sport, the arts and cultural activities, which serve either the whole or significant parts of London;
 - **Criteria 3:** Contains features or landscapes (historic, recreational, biodiversity) of either national or metropolitan value; and
 - **Criteria 4:** Forms part of a strategic corridor, node, or link in the network of green infrastructure and meets one of the above criteria.
- 6.48 Within the evidence base for the draft Local Plan, a Green Belt, MOL, LGS and OOLTI Review was undertaken by Arup (dated 31st August 2021). The Metropolitan Open Land Annex Report 2021 which forms part of this assessment confirms that Petersham Nurseries is located within Parcel 8 - “*Ham House, Douglas House, Richmond Hill Rise, Ham Common, Ham Polo, Buccleugh Gardens, Greycourt School, Petersham Lodge, Petersham Meadows*”.

6.49 A detailed assessment of the contribution towards the MOL designation has been undertaken by Fabrik, which is provided at **CD10.10** of the Core Document List. This report is, in turn, informed by a detailed Landscape and Visual Appraisal with Impact Statement, which is provided at **CD10.9** of the Core Document List.

6.50 The technical report prepared by Fabrik and the LVAIS confirm as follows:

“The Site and associated access track from which vehicles reach the car park from the A307 Petersham Road are clearly perceived as part of the settlement of Petersham and therefore does not meet Criteria 1.

The Site does not include any leisure, recreation, or sporting facilities, nor does it serve an arts or cultural purpose in planning terms. It therefore does not meet Criteria 2.

Historically, the Site has continuously formed part of the settlement of Petersham and therefore is not considered to be a landscape of national or metropolitan value. It does not contain any listed buildings or structures. As such it does not meet Criteria 3.

The built nature of the Site and its immediate surroundings, including the surfaced access track/PRoW create a clear association with the existing settlement on the edge of a landscape that forms part of the strategic green infrastructure network. The Site and its associated access therefore are not considered to meet Criteria 4.”

6.51 The technical report prepared by Fabrik confirms that the site contributes very weakly (if at all) to the MOL designation. I agree with this conclusion, and I consider the weak contribution of the site towards the four criteria set out within Policy G3 to be a material consideration when assessing the impact of the proposed development upon the MOL.

Purpose of the MOL

6.52 The five purposes of the Green Belt/MOL are set out at paragraph 143 of the NPPF. I have assessed how the proposed development relates to each purpose as follows:

a) to check the unrestricted sprawl of large built-up areas;

6.53 The site is an established and self-contained previously developed site in the urban area of Petersham. The proposed development does not propose any additional built form and will not give rise to unrestricted sprawl of a large built-up area.

b) to prevent neighbouring towns merging into one another;

6.54 The site does not form part of a gap between neighbouring towns, as it sits within the existing settlement boundary of Petersham. The proposed development will therefore not result in neighbouring towns merging into one another.

c) to assist in safeguarding the countryside from encroachment;

- 6.55 The site is located within an established and self-contained property boundary. The proposed development will not introduce any additional built form and will not therefore materially encroach further into the countryside.

d) to preserve the setting and special character of historic towns; and

- 6.56 The site is located within the Petersham Conservation Area and there are several listed buildings within the vicinity. A Heritage Impact Assessment has been prepared by Portico Heritage (see **CD10.7** of the Core Document List), which confirms that the operation of Petersham Nurseries forms part of the character of the area, and the extension of the opening hours will not harm the significance, character, or appearance of this area.
- 6.57 In addition, the site has no impact on the setting of surrounding heritage assets as it operates entirely hidden behind high brick boundary walls. The proposed development will therefore not harm the setting and special character of a historic town.

e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

- 6.58 The proposed development will enhance the existing operation on a previously developed site, assisting in the regeneration of urban land.
- 6.59 In summary, the report prepared by Fabrik concludes that the proposal does not adversely impact upon the five purposes of the Green Belt/MOL.
- 6.60 Within the Enforcement Notice Report, the Council asserts that the proposed development “*has the effect of urbanising the character of the site and this conflicts with purposes a), c) and d)*”.
- 6.61 Regarding purpose (a), it is difficult to understand why the Council consider that the extension of opening hours would cause “unrestricted sprawl” of a built-up area, given that “sprawl” refers to unrestricted growth over expanses of land - and the proposal does not propose any additional built form.
- 6.62 Regarding purpose (c), the site is located within an established and self-contained property boundary; therefore, the proposals will not result in encroachment into the countryside.
- 6.63 Finally, regarding purpose (d) - and as confirmed within the enclosed Heritage Statement - the proposed development will not harm the setting and special character of a historic town. Indeed, the operation of Petersham Nurseries forms part of the character of this area.
- 6.64 I therefore conclude that, as set out within the appended technical report, the proposed development accords with the five purposes of the Green Belt / MOL, contrary to the Council’s assertion.

Development within the MOL

- 6.65 Paragraph 152 of the NPPF confirms that inappropriate development is, by definition, harmful to the Green Belt which should be afforded substantial weight and not be approved except in very special circumstances. This is reiterated in Local Plan Policy LP13, which confirms that the borough's MOL will be protected and retained in predominantly open use. Appropriate uses include (but are not restricted to) public and private open spaces, playing fields, open recreation and sport, biodiversity and open community uses.
- 6.66 The Council's Statement of Case includes conflicting references to the concept of "*inappropriate development*" and it is unclear whether the Council considers the use of the site at Petersham Nurseries to comprise inappropriate development within the MOL.
- 6.67 Paragraph 2.4 of the Statement of Case states [*my emphasis*]:

*"Paragraph 152 of the NPPF advises that inappropriate development is, by definition, harmful to the Green Belt [MOL] and should not be approved except in Very Special Circumstances (VSC). On this point, it is relevant that **the underlying development at this site (mixed use as a garden centre and café / restaurant) is 'inappropriate development - the fact that it benefits from planning permission and is lawful does not change this underlying point. Further information can be found in the officer report for the temporary mixed use and permanent mixed use of the site attached to this statement as Appendix 16 and 17. Any extension of this use is an extension to inappropriate development, even if not in itself development, and needs to be considered in this context when evaluating the harm caused by the increase in hours...**"*

- 6.68 Paragraph 6.10 of the Statement of Case states [*my emphasis*]:

*"The notice does not attack the lawful use of the site as garden centre and café/restaurant because planning permission has already been granted this use. **Therefore, the notice does not relate to inappropriate development in the Green Belt.** However, it relates to the harm caused by breach of conditions NS04 and NS05 and the impact these are having on the amenity and living conditions of neighbouring residential properties and the urbanising effect it causes which is detrimental to the character and openness of the (MOL) arising from the use of the restaurant/ café for longer hours and over extended area."*

- 6.69 Should Mr Appah's Proof of Evidence confirm that the Council does consider the proposed development to comprise "*inappropriate development*", then I disagree with this conclusion.
- 6.70 Paragraph 155 of the NPPF relates to other forms of development, which do not comprise the construction of buildings, and which are not inappropriate in the Green Belt - provided they preserve its openness and do not conflict with the purposes of including land within it. These include both the re-use of buildings (provided these are of permanent and substantial construction) and material changes of use.

- 6.71 The purpose of paragraph 155 is to allow for the continued use of existing development, provided this does not result in an adverse impact on openness. This aligns with Chapter 11 of the NPPF (making effective use of land), specifically paragraph 123. Petersham Nurseries is a good example of re-using (and ensuring the continued use) of existing development, through the re-purposing and occupation of the existing permanent structures on site.
- 6.72 The essential characteristics of Green Belts and Metropolitan Open Land are their openness and permanence. My detailed assessment of the impact of the proposed development on openness is set out below; however, in summary, I consider that the proposed development would not have a greater impact on the openness of the MOL than the existing development and that the openness of the MOL will be preserved. In addition, as set out above, I am satisfied that the proposed development accords with the five purposes of the NPPF.
- 6.73 I therefore consider that the proposed development accords with paragraph 155 of the NPPF and should not be considered as inappropriate development within the MOL.

Impact on Openness of the MOL

- 6.74 The key consideration is whether the proposed development would have a greater impact upon the openness of the Green Belt than the existing development. As confirmed in *R. (Samuel Smith Old Brewery) v Yorkshire County Council [2020] UKSC 3 [1]*, openness can have both spatial and visual aspects.
- 6.75 Spatially, the proposals do not introduce any additional built form and no spatial harm is caused to the MOL. This has been confirmed by the Council both in their Enforcement Notice Report and the Statement of Common Ground.
- 6.76 Regarding visual harm, the Council maintain that the intensification of the use through the extension of opening hours will result in additional activity with increased ‘comings and goings and associated disturbance’ resulting in ‘an intrusion of urban characteristics into the MOL, which does not preserve openness’. In the Council’s Statement of Case, Mr Appah expands upon this and suggests that the:
- “additional level of activity generated through extended hours into the evening and through the increased footprint of the café/restaurant has an urbanising effect on this otherwise tranquil semi-rural setting to the detriment of the character and openness of the MOL”.*
- 6.77 Although not explicitly stated, it is assumed that the Council’s reference to “additional activity” relate to potential impacts in respect of (i) noise, (ii) traffic disturbance and (iii) lighting. This was confirmed in the Case Management Conference on 23 April 2024. The Council’s assertion is addressed in detail within the technical report prepared by Fabrik (provided at CD10.10 of the Core Document List), which considers each of the potential impacts referred to above and I defer to these conclusions.
- 6.78 Further detail on these matters is outlined below.

Noise

- 6.79 The current acoustic environment of the MOL is subject to ambient noise from several sources, including (but not limited to) aircraft taking off and landing at Heathrow Airport, traffic on the surrounding road network and commercial and residential uses in the surrounding area. The commercial uses include the operation of Petersham Nurseries.
- 6.80 As set out in Mr Vivian's Proof of Evidence and supporting noise surveys, the noise profile between 18:30hrs and 23:00hrs does not show louder average noise levels on the Friday or Saturday evenings when the "supper club" is in operation.
- 6.81 The evidence demonstrates that noise from the proposed development is consistent with levels recorded throughout the week. Mr Vivian states:
- "The evening operation of the restaurant has no impact on average noise levels and therefore this use does not cause an adverse impact, by reason of noise".*
- 6.82 The Fabrik report concludes that in light of the evidence provided by Mr Vivian, the noise associated with the Nurseries would not adversely impact upon the openness or character of the MOL.

Traffic

- 6.83 As with ambient noise, there are existing traffic movements in the local vicinity (most not associated with Petersham Nurseries), which form part of the character of this area of the MOL.
- 6.84 The main road which travels alongside the MOL is the A307 Petersham Road. Traffic surveys (including a count on the A307) are presented in Mr Bevis' Proof of Evidence. The surveys confirm that there are circa 17,000 two-way traffic movements on the A307. These traffic movements are in general unrelated to Petersham Nurseries, which generate only 0.4% of the traffic flows on the A307. Most of the traffic in the local area, and therefore through the MOL, is not generated by the Nurseries. These vehicle movements on the A307, and the associated traffic noise, form part of the character of the MOL.
- 6.85 When considering vehicle movements directly relating to traffic and parking demands generated by the evening operation of the Nurseries, Mr Bevis notes in his Proof that the peak movements observed on Church Lane and River Lane took place between 22:00 - 23:00 and were equivalent to one vehicle movement every three minutes. Mr Bevis concludes that this level of movement is so low that it is unlikely to be noticeable by most people.
- 6.86 In light of the conclusions set out in Mr Bevis' Proof, the technical report prepared by Fabrik concludes that the proposed evening operation of the Nurseries would not adversely impact upon the MOL. Rather, the number of vehicle movements is so low that even at peak times it is unlikely to be noticeable, and the Council's assertion that the traffic associated with the Nurseries will result in the introduction of "*urban characteristic into the MOL*" is clearly incorrect. This is even more the case when the vehicle movements associated with the Nurseries is considered in the context of the 17,000 daily vehicle movements which travel along the A307, alongside the MOL.

6.87 The report concludes that the traffic associated with the Nurseries would not adversely impact upon the openness or character of the MOL.

Lighting

6.88 In respect of lighting, it is noted that the Council have alleged that there will be an adverse impact on the MOL from lighting. At the CMC, it was suggested that the Council consider the main harm to come from external lighting and car headlamps, rather than lighting internal to the site.

6.89 A detailed Lighting Assessment has been undertaken by Buro Happold, which is provided at **CD10.8** of the Core Document List. This demonstrates that both the internal and external lighting falls within the permitted parameters stated in the ILP GN01:21 regarding light spill and obtrusive light emitted from the site and beyond the immediate site boundary. In addition to this, the Appellant is happy to further enhance the lighting environment through the replacement of the existing festoon lighting along Church Lane, should the Inspector consider this necessary.

6.90 The technical report prepared by Fabrik notes that in the context of the MOL, the site is not within a Dark Sky Reserve or within an area with any Dark Sky status in policy terms. The contextual environment is lit, with lighting associated with residential, commercial and other surrounding uses. The lighting environment of the appeal site is therefore part of the local character of the area.

6.91 The report concludes that there are no material effects upon associated perceptual matters of openness of the MOL in relation to lighting.

Impact upon the Character of the MOL

6.92 The Council allege that the proposed development will be detrimental to the character of the MOL. The Statement of Case refers to the “*semi-rural character*” of the area and makes repeated reference to the “*tranquil environment*” (paragraphs 2.13, 2.15, 2.23, 2.24 and 6.11 of the Council’s Statement of Case).

6.93 A detailed assessment of the character of the MOL has been carried out within the LVAIS, and the technical report prepared by Fabrik has considered that Council’s assertion that there will be an adverse impact on the character of the area.

6.94 The report notes that while the Ham and Petersham Neighbourhood Plan refers to the “*pastoral tranquillity*” of the Petersham Meadows themselves and the Local Plan refers to the “*relative tranquillity*” of the Borough’s open spaces; however, there is no suggestion that the wider built-up areas of Petersham are also tranquil. I am not aware of any formal studies of tranquillity undertaken by the Council.

6.95 The report highlights that the National Planning Practice Guidance relating to Noise confirms:

“For an area to justify being protected for its tranquillity, it is likely to be relatively undisturbed by noise from human sources that undermine the intrinsic character of the area. It may, for example, provide a sense of peace and quiet or a positive soundscape where natural sounds such as birdsong or flowing water are more prominent than background noise, e.g. from transport.”

- 6.96 As demonstrated within the evidence provided by Mr Vivian, the acoustic environment at Petersham Nurseries is subject to ambient noise from several human sources, including (but not limited to) aircraft taking off and landing at Heathrow Airport, traffic on the surrounding road network and commercial and residential uses in the surrounding area (including the lawful operation of the site itself).
- 6.97 In light of the above, the report concludes that the area does not meet the definition of tranquillity as set out in the NPPG and, therefore the Council's assertion that the proposed extension of opening hours affects the tranquillity of the area is unfounded.
- 6.98 Regarding the character of the MOL, it is noted that the Council refers to the urbanisation of the 'semi-rural environment' but does not acknowledge the existing settlement edges of Richmond and Petersham or the existing levels of noise and lighting.
- 6.99 A Landscape and Visual Appraisal with Impact Statement ("LVAIS") has been undertaken and is provided at **CD10.9** of the Core Document List. The appraisal concludes that whilst the site is within the MOL, it forms a cohesive part of Petersham settlement and is not a prominent feature in views from within the open landscape to the north. The boundary walls and hedgerows truncate views of the internal arrangements of the site and limit views of the parked cars along its boundary from publicly accessible locations.
- 6.100 The LVAIS concludes that the site is representative of, and in keeping with, the character of the townscape edge within the MOL. The LVAIS also concludes that the potential effects on landscape character are considered to be negligible and are not material for planning purposes.
- 6.101 In light of the above, I am comfortable that the proposed development will not adversely impact upon the character of the MOL.

MOL Policy

- 6.102 The Council allege conflict with Policy G3 (MOL) of the London Plan, Policy LP13 (Green Belt, MOL and Local Green Space) of the adopted Local Plan, and Policy 35 (Green Belt, MOL and Local Green Space) of the draft publication version Local Plan. As agreed within the Statement of Common Ground, both the Council and Appellant apply limited weight to draft Policy 35.
- 6.103 Policy G3: Metropolitan Open Land confirms that MOL is afforded the same status and level of protection as Green Belt, and that it should be protected from inappropriate development in accordance with national planning policy tests that apply to Green Belt.
- 6.104 I have addressed the relevant tests in the NPPF at paragraph 6.72 onwards in my Proof and conclude that the proposed development accords with paragraph 155 of the NPPF and should not be considered as inappropriate development within the MOL.
- 6.105 Policy LP13 of the Local Plan states:

- A. *The borough's Green Belt and Metropolitan Open Land will be protected and retained in predominately open use. Inappropriate development will be refused unless 'very special circumstances' can be demonstrated that clearly outweigh the harm to the Green Belt or Metropolitan Open Land.*

Appropriate uses within Green Belt or Metropolitan Open Land include public and private open spaces and playing fields, open recreation and sport, biodiversity including rivers and bodies of water and open community uses including allotments and cemeteries. Development will be supported if it is appropriate and helps secure the objectives of improving the Green Belt or Metropolitan Open Land.

- B. *It will be recognised that there may be exceptional cases where inappropriate development, such as small-scale structures for essential utility infrastructure, may be acceptable.*
- C. *Improvement and enhancement of the openness and character of the Green Belt or Metropolitan Open Land and measures to reduce visual impacts will be encouraged where appropriate.*

When considering developments on sites outside Green Belt or Metropolitan Open Land, any possible visual impacts on the character and openness of the Green Belt or Metropolitan Open Land will be taken into account.

6.106 Policy LP13 appears to be relatively pragmatic. It confirms that the borough's MOL will be retained in "predominantly open use" [my emphasis], acknowledging that not all land within the MOL is in such 'open use'. The policy confirms that appropriate development will be supported, and it is also flexible in acknowledging that there may be exceptional circumstances where inappropriate development may be acceptable. I believe that the wording of Policy LP13 reflects the reality of the MOL within a London Borough, which is unlikely to solely comprise uses such as open spaces, playing fields and allotments, as evidenced by the inclusion of Petersham Nurseries within the MOL.

6.107 As set out above, I do not consider that the proposed development is inappropriate in the MOL. Policy LP13 confirms that appropriate uses will be supported. As demonstrated above, I consider that the proposed development would not adversely impact on the character or openness of the MOL. Should the Inspector disagree with my view, I consider that there are very special circumstances which outweigh any harm to the MOL (which I discuss further below).

6.108 I am therefore satisfied that the proposed development complies with Policy LP13.

Summary of MOL Impact

6.109 In summary, I am satisfied that the proposed development will not result in any adverse impacts on the character of openness of the MOL in terms of noise, traffic, or lighting impacts, or in terms of visual impact.

6.110 It has already been agreed that there is no spatial harm caused to the MOL. The openness of the MOL (both spatially and visually (subject to monitoring results)) will therefore be preserved.

- 6.111 The lawful use of the site is Class E. As noted above, the existing fallback position allows for the occupation of the site for Class E use (with the relevant restrictions on the restaurant operation) with no restrictions on hours of opening. Such an operation would have the potential to generate noise and traffic movements late into the night along with associated light spill.
- 6.112 In conclusion, I do not consider that the proposed development comprises inappropriate development within the MOL as it complies with the exceptions set out within paragraph 155 of the NPPF. The technical assessments have demonstrated that proposed development will cause no spatial or visual harm to the MOL and the openness of the MOL will be preserved. In addition, the proposed development complies with the five purposes of the Green Belt / MOL due to the nature of the existing site and surrounding area.
- 6.113 Should the Inspector disagree with this view, and consider that the proposed development comprises inappropriate development, then I believe that there are Very Special Circumstances which outweigh any perceived harm to the MOL, which I discuss later in my Proof.

Design and Impact on Heritage Assets

Policies LP3: Designated Heritage Asset and LP4: Non-Designated Heritage Assets

- 6.114 Policy LP3 requires development to conserve and, where possible, take opportunities to make a positive contribution to, the historic environment of the borough. Development proposals likely to adversely affect the significance of heritage assets will be assessed against the requirement to seek to avoid harm and the justification for the proposal.
- 6.115 Policy LP4 seek to preserve, and where possible enhance, the significance, character and setting of non-designated heritage assets.
- 6.116 The Council accept that the proposed development does not give rise to any heritage harm.
- 6.117 I agree with this view; however, to reinforce the case, the Appellant has nevertheless instructed an updated Heritage Impact Assessment, which is provided at **CD10.7** of the Core Document List.
- 6.118 The Heritage Impact Assessment concludes that the proposed development will preserve the character and appearance of the conservation area and the setting of listed and locally listed buildings and is therefore compliant with the Local and Draft Local Plans as well as national planning policy.
- 6.119 I agree with this assessment and am satisfied - as are the Council - that the proposed development adheres to policies LP3 and LP4 of the Local Plan.

Impact on Residential Amenity

Policy LP8: Amenity and Living Conditions

- 6.120 Policy LP8 - and draft Policy 46 of the Regulation 19 Version of the draft Local Plan - requires all development to protect the amenity and living conditions for occupants of new, existing, adjoining, and neighbouring properties. This includes ensuring there is no harm to the reasonable enjoyment of the use of buildings, gardens, and other spaces due to increases in traffic, servicing, parking, noise, light, disturbance, air pollution, odours or vibration or local micro-climatic effects.

- 6.121 It is acknowledged that both the Council and Third-Party Representations allege the proposed development fails to adhere to the requirements of Policy LP8. As set out in the Statement of Case, this position has been established by anecdotal evidence as well as the written representations to the previous CLEUD application (ref: 21/3108/ES191) received from residents of Rose Bank Cottage and Rutland Drive.
- 6.122 The Council has provided no quantitative evidence to substantiate the allegations of residential amenity impact.
- 6.123 I disagree with the Council's position and refer to a series of detailed assessments that are provided within the Core Document List - or form the basis of separate Proofs of Evidence - including a Transport Assessment, Noise Impact Assessment, Lighting Assessment, and Air Quality Assessment. These assessments are discussed in further detail within the relevant Proofs of Evidence - or have been enclosed at **CD10.5** and **CD10.8** of the Core Document List.
- 6.124 The assessments confirm - in quantitative terms - that the proposed development causes negligible impact to surrounding residential amenity and conforms to all relevant standards and thresholds.
- 6.125 I therefore consider that the proposed development accords with all the criteria set out in Policy LP8 - and draft Policy 46 of the Regulation 19 Version of the draft Local Plan.

Policy LP10: Local Environmental Impacts, Pollution and Land Contamination

- 6.126 Policy LP10 seeks to ensure that local environmental impacts of all development proposals do not lead to detrimental effects on the health, safety, and the amenity of existing and new users or occupiers of the development site, or the surrounding land. These potential impacts can include, but are not limited to, air pollution, noise and vibration, light pollution, odours and fumes, solar glare and solar dazzle as well as land contamination.
- 6.127 It is acknowledged that both the Council and Third-Party Representations allege the proposed development fails to adhere to the requirements of Policy LP10. As above, the Council has provided no quantitative evidence to substantiate non-compliance with Policy LP10.
- 6.128 To address each relevant issue under Policy LP10, the Appellant has instructed assessments of noise, traffic, air quality, and lighting. As detailed above, these assessments are discussed in further detail within other relevant Proofs of Evidence - or have been enclosed at **CD10.5** and **CD10.8** of the Core Document List.
- 6.129 I set out a summary of the results of these assessments below.

Air Quality

- 6.130 The current air quality in the area is subject to ambient emissions from several sources, including existing road traffic, agricultural land and other food retail premises. This includes the permitted operation of Petersham Nurseries.

- 6.131 The Appellant has submitted evidence to demonstrate the air quality effects from the non-permitted use of Petersham Nurseries will not cause an adverse impact on residential amenity (see CD10.5 of the Core Document List).
- 6.132 As part of the 2009 planning consent, the Council have approved and discharged condition U27545 NS06 (reference 08/4312/DD01) demonstrating appropriate odour control is in place to ensure no adverse odour impacts on the amenities of neighbouring residential occupiers will occur due to the café/restaurant. This remains in good working order and is regularly maintained.
- 6.133 In addition, as previously noted, the Evening Management Plan includes several measures to control vehicle movements. With these measures in place, I consider that Petersham Nurseries are successfully mitigating the potential impacts on residential amenity, in accordance with Policies LP8 and LP10.

Noise

- 6.134 In respect of noise, Policy LP10 encourages good acoustic design to ensure occupiers of new and existing noise sensitive buildings are protected.
- 6.135 I defer to the conclusions set out in Mr Vivian's Proof of Evidence and supporting noise surveys, which demonstrate that the noise profile between 18:30hrs and 23:00hrs does not show louder average noise levels on the evenings when the "supper club" is in operation.
- 6.136 The evidence demonstrates that noise from the proposed development is consistent with levels recorded throughout the week and would therefore cause no detrimental effect to the amenity of existing and new users or occupiers of the development site, or the surrounding land.

Traffic

- 6.137 To assess the potential disturbance from vehicle movements, detailed traffic surveys have been carried out on both the A307 Petersham Road and Church Lane and River Lane, which are presented in Mr Bevis' Proof of Evidence. The Council suggest that those residents most likely to be impacted by vehicle movements on Church Lane are those at 139 and 141 Petersham Road and those likely to be impacted by vehicle movements on River Lane are those at Rutland Cottages, 1 and 2 Rutland Drive, 145a Petersham Road and 145 Petersham Road.
- 6.138 I would note that nos. 145, 145a, 141 and 139 Petersham Road are all located directly adjacent to the A307 Petersham Road, which the surveys confirm receives 17,000 two traffic movements per day. It is reasonable to assume that the residents of these dwellings would be more impacted by these 17,000 movements than by the small number of movements associated with Petersham Nurseries.
- 6.139 I also note that nos. 1 and 2 Rutland Drive are not located directly on River Lane (although they share this access road to reach Rutland Drive). Rutland Drive itself is gated, with access only for residents. It is therefore unlikely that any vehicles associated with Petersham Nurseries would travel along Rutland Drive and cause disturbance to these residents.

- 6.140 The traffic surveys confirm that there are circa 17,000 two-way traffic movements on the A307. These traffic movements are in general unrelated to Petersham Nurseries, which generate only 0.4% of the traffic flows on the A307.
- 6.141 When considering vehicle movements directly relating to traffic and parking demands generated by the evening operation of the Nurseries, Mr Bevis notes in his Proof that the peak movements observed on Church Lane and River Lane took place between 22:00 - 23:00 and were equivalent to one vehicle movement every three minutes. Mr Bevis concludes that this level of movement is so low that it is unlikely to be noticeable by most people, and I defer to his view on this.
- 6.142 In light of the conclusions set out in Mr Bevis' Proof, I conclude that the vehicle movements associated with the proposed evening operation of the Nurseries would not adversely impact upon residential amenity. Rather, the number vehicle movements are so low that even at peak times Mr Bevis confirms it is unlikely to be noticeable. This is even more the case when the vehicle movements associated with the Nurseries is considered in the context of the 17,000 daily vehicle movements which travel along the A307.
- 6.143 I am therefore satisfied that the traffic associated with the Nurseries would not adversely impact upon the amenity of local residents.

Light Pollution

- 6.144 In respect of light pollution, Policy LP10 seeks to ensure that artificial lighting in new developments does not lead to unacceptable impacts.
- 6.145 A detailed Lighting Assessment has been undertaken by Buro Happold, which is provided at **CD10.8** of the Core Document List. This demonstrates that both the internal and external lighting falls within the permitted parameters stated in the ILP GN01:21 regarding light spill and obtrusive light emitted from the site and beyond the immediate site boundary.
- 6.146 The artificial light emitted from the site is therefore considered to be of negligible impact onto the surrounding residential properties.
- 6.147 Notwithstanding the above, I note that the Appellant is willing to further enhance the existing lighting environment in accordance with the recommendations in the Buro Happold assessment, with the replacement of the existing festoon lighting on Church Lane with low level lighting which will ensure vehicle and pedestrian safety but emit a lower level of light.
- 6.148 I am therefore satisfied that the light associated with the Nurseries would not adversely impact upon the amenity of local residents.

Summary

- 6.149 In summary the technical assessments and quantitative data confirm that the proposed development does not lead to detrimental effects on the health, safety and the amenity of existing and new users or occupiers of the development site, or the surrounding land.
- 6.150 I therefore consider that the proposed development accords with all the criteria set out in Policy LP10.

Transport

Policy LP45: Parking Standards and Servicing

- 6.151 Local Plan Policy LP45 - and draft Policy 48 of the Regulation 19 Version of the draft Local Plan - requires development to minimise the impact of car-based travel, including on the operation of the road network and local environment, making the best use of the land.
- 6.152 As referenced within the Council's Committee Report for application reference 14/0345/VRC, previous transport surveys have supported the position that there is capacity within Church Lane to accommodate the number of cars wishing to park at the site during evening operations - and it has been accepted that overspill onto surrounding streets does not constitute a severe impact on transport grounds.
- 6.153 Similarly, the overall number of vehicle movements generated by the use was also considered to not give rise to any severe cumulative impact, as required in the NPPF, to justify refusal on transport grounds.
- 6.154 As acknowledged by the Council, the Green Travel Plan previously approved has also been successful in mitigating the impact of the mixed A1 / A3 uses and that no nuisance arises from the use. The extension of the operational hours into the evening do not exacerbate this position.
- 6.155 Nevertheless, the Council have taken the view that - without updated assessments of vehicle movement - the proposed development is considered to harm functioning of the local highway network. As such, the Appellant's Transport Consultants have conducted updated traffic assessments, which are included in Mr Bevis' Proof.
- 6.156 As detailed above, Mr Bevis' traffic surveys confirm that there are circa 17,000 two-way traffic movements on the A307. These traffic movements are in general unrelated to Petersham Nurseries, which generate only 0.4% of the traffic flows on the A307.
- 6.157 When considering vehicle movements directly relating to traffic and parking demands generated by the evening operation of the Nurseries, Mr Bevis notes in his Proof that the peak movements observed on Church Lane and River Lane took place between 22:00 - 23:00 and were equivalent to one vehicle movement every three minutes. Mr Bevis concludes that this level of movement is so low that it is unlikely to be noticeable by most people, and I defer to his view on this.
- 6.158 I am therefore satisfied that the traffic associated with the Nurseries would not adversely impact the operation of the road network or local environment. I therefore consider that the proposed development accords with all the criteria set out in Policy LP45 - and draft Policy 48 of the Regulation 19 Version of the draft Local Plan.
- 6.159 Ecology and Biodiversity
- 6.160 While the Council has not alleged any harm to the biodiversity of the surrounding area, a few Third Parties have raised this. An Ecology Statement has therefore been prepared and enclosed at **CD10.4** of the Core Document List.

- 6.161 The note concludes that there are a very limited number of ecological features which may be at risk of potential impacts - namely, foraging / commuting bats and badgers. The potential impacts from the proposed development on these species relate to disturbance from increased noise and lighting, however neither species is likely to be significantly affected by the level and type of noise generated by the proposed development and the evidence presented by Mr Vivian found that average noise levels were no greater when the restaurant was in operation in the evening compared to when it was not.
- 6.162 The note concludes that impacts are very unlikely to negatively affect badgers in this suburban context, and lighting levels would be sufficiently low within Petersham Meadows as to have negligible impacts on foraging bats at this location. While bats foraging close to the northern boundary of the site could be disturbed by lighting associated with the proposed development, such impacts can be avoided through implementing a sensitive lighting scheme to reduce the intensity of the lights, their height above ground and to avoid any upward light spill.
- 6.163 The Lighting Assessment prepared by Buro Happold includes recommendations to enhance the lighting environment, with the replacement of the existing festoon lighting with low level lighting. The Ecology Technical Note concludes that, subject to the implementation of this lighting scheme, no adverse ecological impacts will arise from the proposed development.
- 6.164 I am therefore satisfied that the proposed development would cause no adverse ecological or biodiversity impacts.

Very Special Circumstances

- 6.165 The NPPF confirms that inappropriate development in the Green Belt/MOL should not be approved except in very special circumstances. This is reiterated in Policy G3 and Local Plan Policy LP13.
- 6.166 Should the Inspector consider that the proposed development comprises inappropriate development in the MOL, then I contend that there are Very Special Circumstances which outweigh any perceived harm, as follows:
- (a) The proposed development provides significant economic benefits, as detailed in earlier sections of this Proof.
 - (b) The proposed development generates significant employment opportunities, both directly on-site and indirectly, through the local supply chain.
 - (c) The proposed development provides training and education opportunities, with the provision of apprenticeships.
 - (d) The proposed development will improve the existing restaurant offering to the benefit of visitors.
 - (e) The proposed development provides significant social benefits through charitable work and donations.
 - (f) The proposed development is inherently sustainable, comprising the enhancement of an existing successful business which has grown organically over many years. No new infrastructure or structures are proposed.

- (g) The proposed development will enhance and expand an existing visitor attraction, improving the current tourism offer in Richmond and contribution towards the visitor economy.
- (h) The success of the business is dependent upon the site-specific circumstances, the Appellant would not be able to relocate the restaurant element of the business elsewhere within the local area.
- (i) The proposed development will not have an unacceptable adverse impact upon residential amenity in terms of noise, traffic, or light pollution.
- (j) The proposed development will not adversely impact upon the Petersham Conservation Area or surrounding listed buildings, due to the nature of the site.
- (k) Petersham Nurseries provides benefits to the health and wellbeing of visitors through the unique experience including improved quality, access to and engagement with nature.

6.167 I contend that the proposed development accords with the policies of the NPPF, London Plan, Richmond Local Plan and Ham and Petersham Neighbourhood Plan for the details reasons and justification set out in this Statement, and planning permission should be granted for what is alleged in the Enforcement Notice.

Ground (G) - “That any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.

- 6.168 The principle of proportionality has not been applied by the Council in requiring the alleged breach of planning control to cease within 2-months after the Enforcement Notice takes effect - particularly given the Appellant’s prominent role within the local economy.
- 6.169 As set out in the evidence provided by Ms Boglione and Mr Ward, ceasing the evening restaurant trade would pose significant challenges. The likelihood is that Petersham Nurseries may have to close its entire operation or at the very least, significantly restructure their business model, to avoid making significant losses.
- 6.170 To do this in a structured manner - in terms of making redundancies, fulfilling existing bookings to avoid potential contractual liabilities for defaults on the same, minimising operational losses (e.g. cancelling standing orders / deliveries from local suppliers), and potentially marketing the premises to a new purchaser - they should reasonably be allowed 6-months.

7.0 PLANNING BALANCE AND CONCLUSION

7.1 This appeal against the enforcement notice is made on grounds (a) and (g) as set out at Section 174(2) of the Town and Country Planning Act 1990. I have appraised each ground of appeal in the context of the relevant legislation, the development plan and other material considerations. I provide a summary of my conclusions relating to each ground below:

Ground (A) - “that planning permission should be granted for what is alleged in the Notice”

- 7.2 As identified in this proof, the extension of the restaurant operations (both evening opening hours and extended seating areas) comprises inherently sustainable development which makes the most effective use of land by intensifying an existing, successful, use, in accordance with Chapter 11 of the NPPF and London Plan Policy GG2.
- 7.3 The proposed development will not have any adverse socio-economic or environmental impacts in terms of noise, transport, heritage, or light pollution and the proposed operation will be carefully managed in accordance with the Appellant’s existing Evening Management Plan which sets out strict management procedures to limit potential disturbance. In addition, the proposed development will not adversely impact on the character of openness of the MOL.
- 7.4 The proposed development will result in significant benefits, including, but not limited to the following:
- Petersham Nurseries makes a significant contribution to the local economy, generating employment opportunities, both directly on-site and indirectly, through the local supply chain. These will be safeguarded through the grant of planning permission.
 - The Nurseries generate significant social benefits, and play a significant role in the local community, undertaking many charitable events and making contributions over the course of the last 20 years. These social benefits will be safeguarded for the future through the grant of planning permission.
 - The proposed development is inherently sustainable, comprising the enhancement of an existing successful business which has grown organically over many years. No new infrastructure or structures are proposed.
 - The proposed development will enhance and expand an existing visitor attraction, improving the current tourism offer in Richmond and contributing towards the visitor economy.
 - Petersham Nurseries provides benefits to the health and wellbeing of visitors through the unique experience including improved quality, access to and engagement with nature.
- 7.5 I consider that the substantial and wide-ranging benefits associated with the proposed development, as identified within my Proof - and other evidence produced in support of this appeal - would significantly outweigh any adverse impacts when considering the planning balance of the proposals.

- 7.6 I therefore conclude that the proposed development accords with the policies of the NPPF, London Plan, Richmond Local Plan and Ham and Petersham Neighbourhood Plan for the details reasons and justification set out in this Statement, and planning permission should be granted for what is alleged in the Enforcement Notice.
- 7.7 The appeal should therefore succeed on Ground A.
- Ground (G) - “That any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.**
- 7.8 I consider that the principles of proportionality have not been applied by the Council in requiring the alleged breach of planning control to cease within 2-months after the Enforcement Notice takes effect - particularly given the Appellant’s prominent role within the local economy - as detailed further within Mr Ward’s and Ms Boglione’s Proofs of Evidence.
- 7.9 The Appellant should reasonably be allowed 6 months to comply with the Notice.
- 7.10 The timeframe to comply with the Notice falls short of what should reasonably be allowed, and the appeal should succeed on Ground G.



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