

## Application reference: 21/3108/ES191

### HAM, PETERSHAM, RICHMOND RIVERSIDE WARD

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

**Site:**

Petersham Nurseries, Petersham Road, Petersham, Richmond

**Proposal:**

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

1. The cafe/restaurant has been in operation selling food and beverages to visiting customers between 10am-5pm Tuesday to Sunday excluding Mondays in exceedance of the hours specified in condition NS04 of LPA ref: 08/4312/FUL;
2. The areas used for the preparation, sale and consumption of food and beverages have operated in exceedance of the areas specified in condition NS05 of LPA ref: 08/4312/FUL to the extent that they have also operated in the areas identified as 1 and 2 within the submitted Statement of Truths insofar as they also correlate with the red line delineated on the updated drawing "Reference Plan 02-277-03 RP02" received October 2022.
- 3 The business has been carried out by Petersham Nurseries Ltd, notwithstanding that the land has remained in the ownership of Francesco Boglione

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

**APPLICANT NAME**

Petersham Nurseries Ltd

**AGENT NAME**

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

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

**Consultations:**

**Internal/External:**

**Consultee**

**Expiry Date**

**Neighbours:**

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

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

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

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

## Sales Office, Plant Growing Areas And Public Entrance C

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

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

Development Management

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

Development Management

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

Development Management

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

Development Management

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

Development Management

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

Development Management

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

Development Management

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

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

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Development Management

Status: PCO

Date:

Application: 21/3108/ES191

A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref: 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner: 1. The cafe/restaurant have been in operation selling food and beverages to visiting customers between 10am-11pm Tuesday to Sundays excluding Mondays (but including Bank Holidays). The operation has exceeded the hours specified in condition NS04 of LPA ref: 08/4312/FUL; 2. The areas used for the preparation, sale and consumption of food and beverages have operated within the hatched area shown on drawing reference 292-03-AOU 01. The operation has exceeded the areas specified in condition NS05 of LPA ref: 08/4312/FUL; 3. The business has been carried out by Petersham Nurseries Ltd contrary to condition NS08 of LPA reference 08/4312/FUL.

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Appeal

Validation Date: 03.07.1998

Reference: 98/0551

Development Appeal

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Appeal

Validation Date: 11.06.2008

Reference: 08/0063/AP/CON

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

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Building Control

Deposit Date: 08.12.2003

Reference: 03/2409/BN

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

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Building Control

Deposit Date: 09.12.2009

Reference: 09/2068/FP

Single storey detached facilities building

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Building Control

Deposit Date: 15.02.2017

Reference: 17/FEN00528/GASAFE

Install a gas-fired boiler

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Building Control

Deposit Date: 08.12.2016

Reference: 17/FEN01013/GASAFE

Install a gas-fired boiler

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Building Control

Deposit Date: 30.09.2018

Reference: 18/FEN03122/GASAFE

Install a gas-fired boiler

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Enforcement

Opened Date: 09.11.2005

Reference: 05/0556/EN/UCU

Enforcement Enquiry

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Enforcement

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

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

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

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

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<b>Application Number</b>	<b>21/3108/ES191</b>
<b>Address</b>	<b>Petersham Nurseries Petersham Road Petersham Richmond TW10 7AB</b>
<b>Proposal</b>	<p>A lawful development certificate is sought for the following operations/use that were subject to conditions on LPA ref: 08/4312/FUL and have taken place continuously over a period in excess of the last 10 years in the following manner:</p> <ol style="list-style-type: none"> <li>1. The cafe/restaurant has been in operation selling food and beverages to visiting customers between 10am-5pm Tuesday to Sunday excluding Mondays in exceedance of the hours specified in condition NS04 of LPA ref: 08/4312/FUL;</li> <li>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.</li> <li>3. The business has been carried out by Petersham Nurseries Ltd, notwithstanding that the land has remained in the ownership of Francesco Boglione</li> </ol>
<b>Contact Officer</b>	<b>Wendy Wong Chang / Nicki Dale</b>

**1. INTRODUCTION**

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

**2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS**

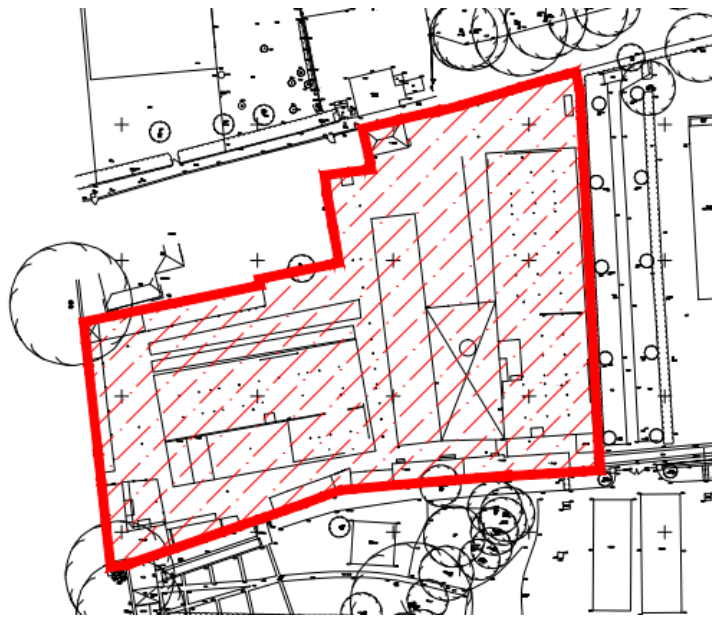
- 2.1 The site is occupied by Petersham Nurseries.
- 2.2 The application site is situated within Ham and Petersham Village and is designated as:
  - Archaeological Priority (English Heritage)
  - Article 4 Direction Restricting Basement
  - Petersham Conservation Area

- Floodzones 2/3/3a
- Metropolitan Open Land
- Protected View (Indicative zone) - N\_View\_004 View from near Ham House to Orleans House
- Protected View (Indicative zone) - N\_View\_005 View to Marble Hill House (north)
- Protected View (Indicative zone) - N\_View\_006 View from Richmond Hill to Asgill House
- Area Susceptible to Surface Water Flooding
- Ham, Petersham and Richmond Riverside Ward

**3. DESCRIPTION OF THE PROPOSAL AND ANY RELEVANT PLANNING HISTORY**

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

1. The cafe/restaurant have been in operation selling food and beverages to visiting customers between 10am-11pm Tuesday to Sundays excluding Mondays (but including Bank Holidays). The operation has exceeded the hours specified in condition NS04 of LPA ref: 08/4312/FUL;
2. The areas used for the preparation, sale and consumption of food and beverages have operated within the hatched area shown on drawing reference 292-03-AOU 01. The operation has exceeded the areas specified in condition NS05 of LPA ref: 08/4312/FUL;



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

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

08/4312/FUL - Continuation of Planning Permission granted 11 December 2007 (07/1235/FUL), to allow permanent mixed use as garden centre (Class A1) and café/restaurant (Class A3) – Granted on 29.07.2009

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



**U27543NS04 Hours of Use - Café/Restaurant**

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

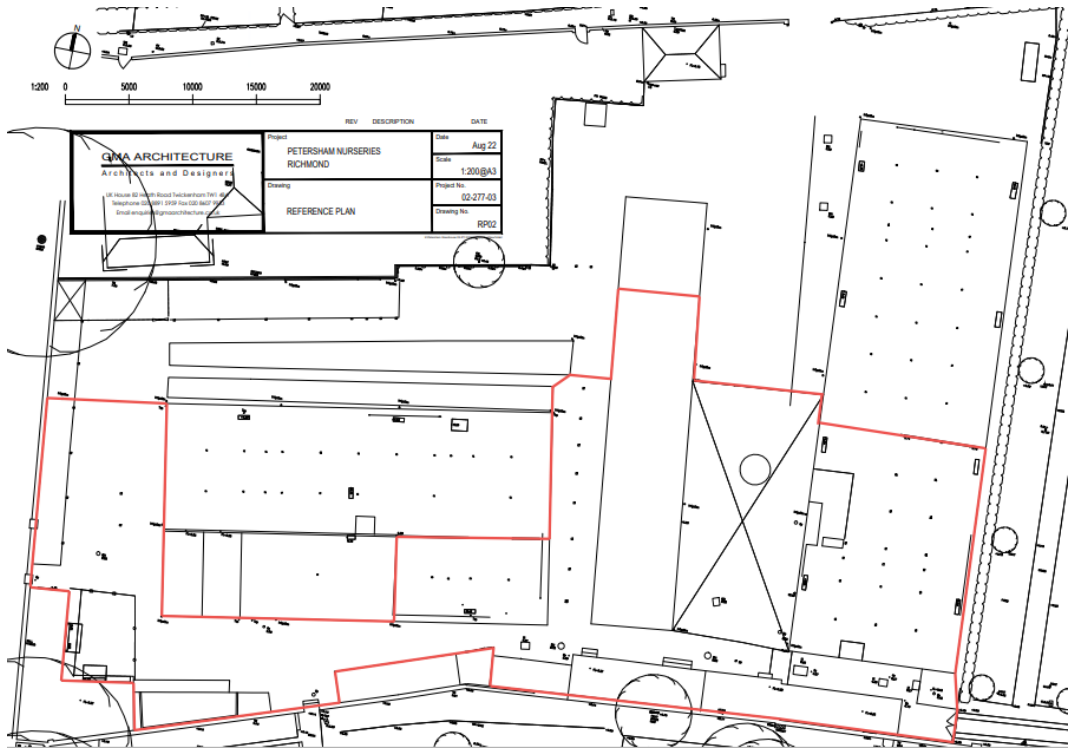
**U27544NS05 Café/Restaurant Areas**

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

**U27547NS08 Personal Permission**

The A1/A3 mixed use hereby permitted shall only be carried out by Mr Francesco Boglione for the period during which the premises are owned by Mr Francesco Boglione. REASON: To safeguard the amenities of the adjoining residents and the area generally.

- 3.4 The conditions are all considered to meet the tests and be enforceable. The reasoning for the conditions is set out and described further in the Committee reports which accompanied both application 07/1235/FUL and 08/4312/FUL.
- 3.5 Following discussion, a revised description was proposed by the applicant:
  - 1. The cafe/restaurant has been in operation selling food and beverages to visiting customers between 10am-6pm Tuesday to Sunday excluding Mondays (but including Bank Holidays). Evening openings for the sale of food and beverages have occurred up to 11pm three events per week between Wednesday – Saturday. The evening openings have been seasonal. The operation has exceeded the hours specified in condition NS04 of LPA ref: 08/4312/FUL;
  - 2. The areas used for the preparation, sale and consumption of food and beverages have operated within the area outlined in red shown on drawing reference 02-277-03-RP02. The operation has exceeded the areas specified in condition NS05 of LPA ref: 08/4312/FUL;



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

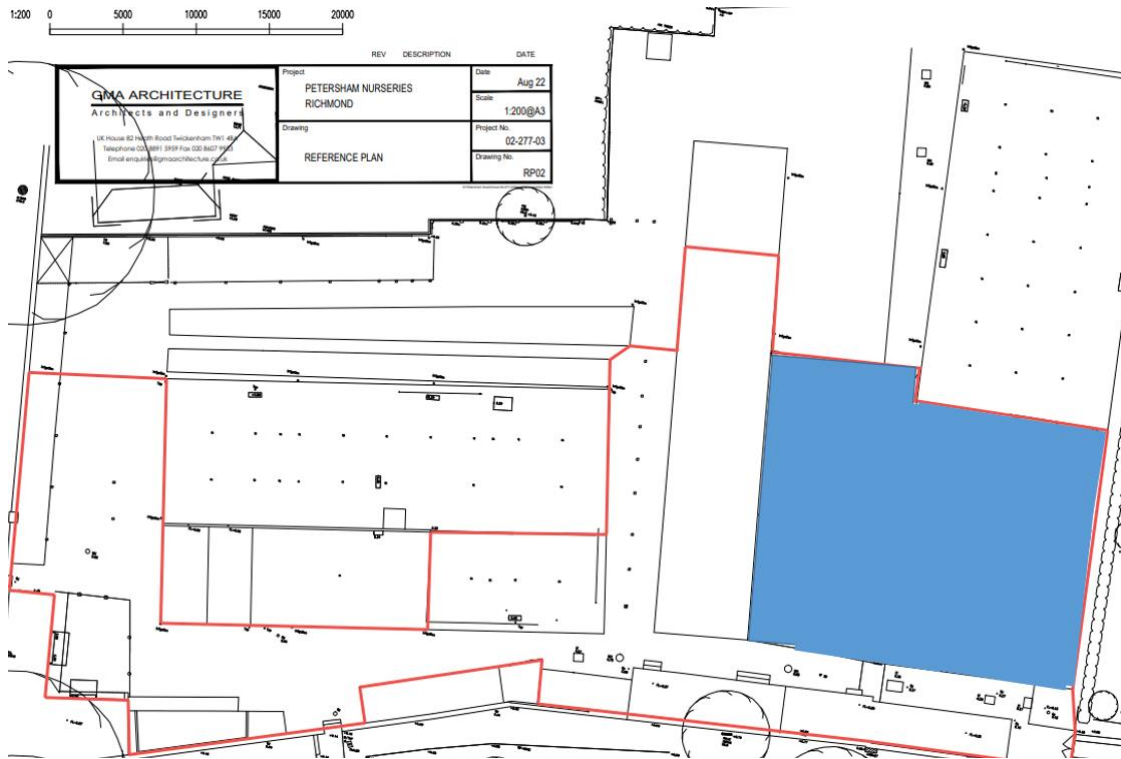
*“If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority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

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

  - 1. The cafe/restaurant has been in operation selling food and beverages to visiting customers between 10am-5pm Tuesday to Sunday excluding Mondays in exceedance of the hours specified in condition NS04 of LPA ref: 08/4312/FUL;
  - 2. The areas used for the preparation, sale and consumption of food and beverages have operated in exceedance of the areas specified in condition NS05 of LPA ref: 08/4312/FUL to the extent that they have also operated in the areas identified as 1 and 2 within the submitted Statement of Truths insofar as they also correlate with the red line delineated on the updated drawing “Reference Plan 02-277-03 RP02” received October 2022.

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

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



#### 4. CONSULTATIONS CARRIED OUT

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

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

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

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

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

## 5. AMENDMENTS

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

## 6. PROFESSIONAL COMMENTS

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

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

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

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

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

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

6.18 Condition NS04 states as follows:

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

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

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

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

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

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

## 2) Temporary Event Notices

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Saturday 24 October 2015

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

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

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

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

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

Saturday 13 February 2016

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3) Supper club Menu**

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

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

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

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

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

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

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

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

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

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

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

### **4) Till Receipts**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Petersham Nurseries Timecard job descriptions

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

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

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

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

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

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

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

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



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

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

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

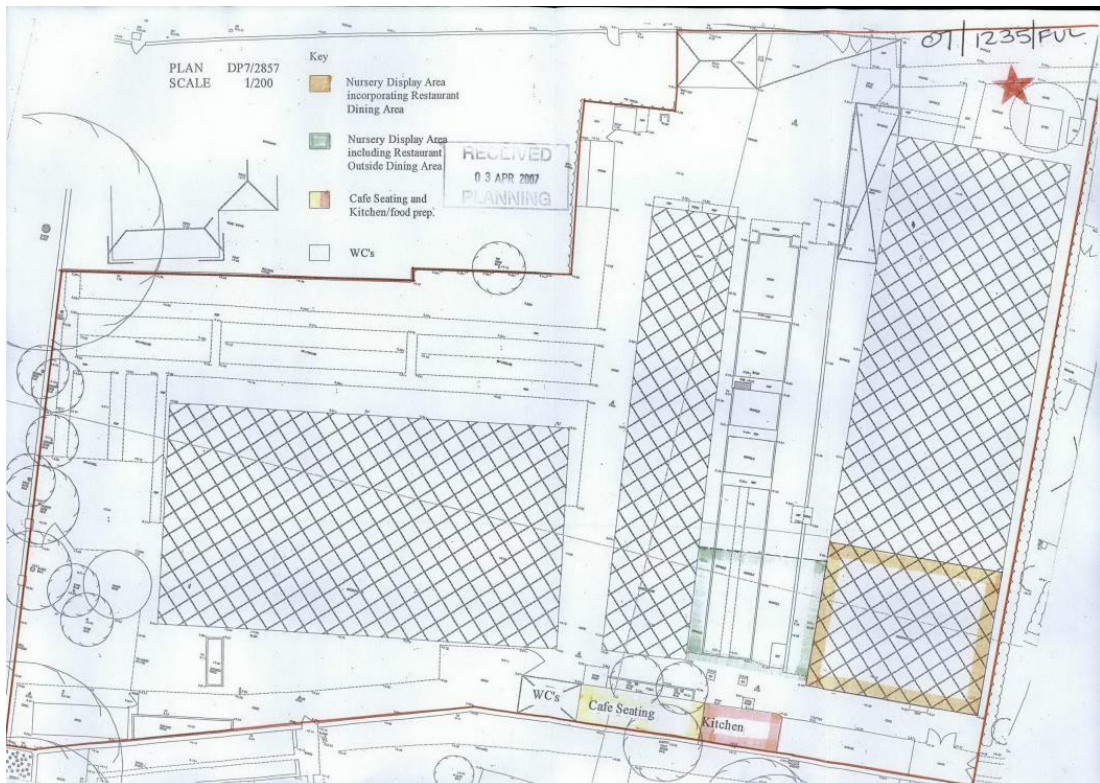
6.42 Condition NS05 states as follows:

**U27544NS05 Café/Restaurant Areas**

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

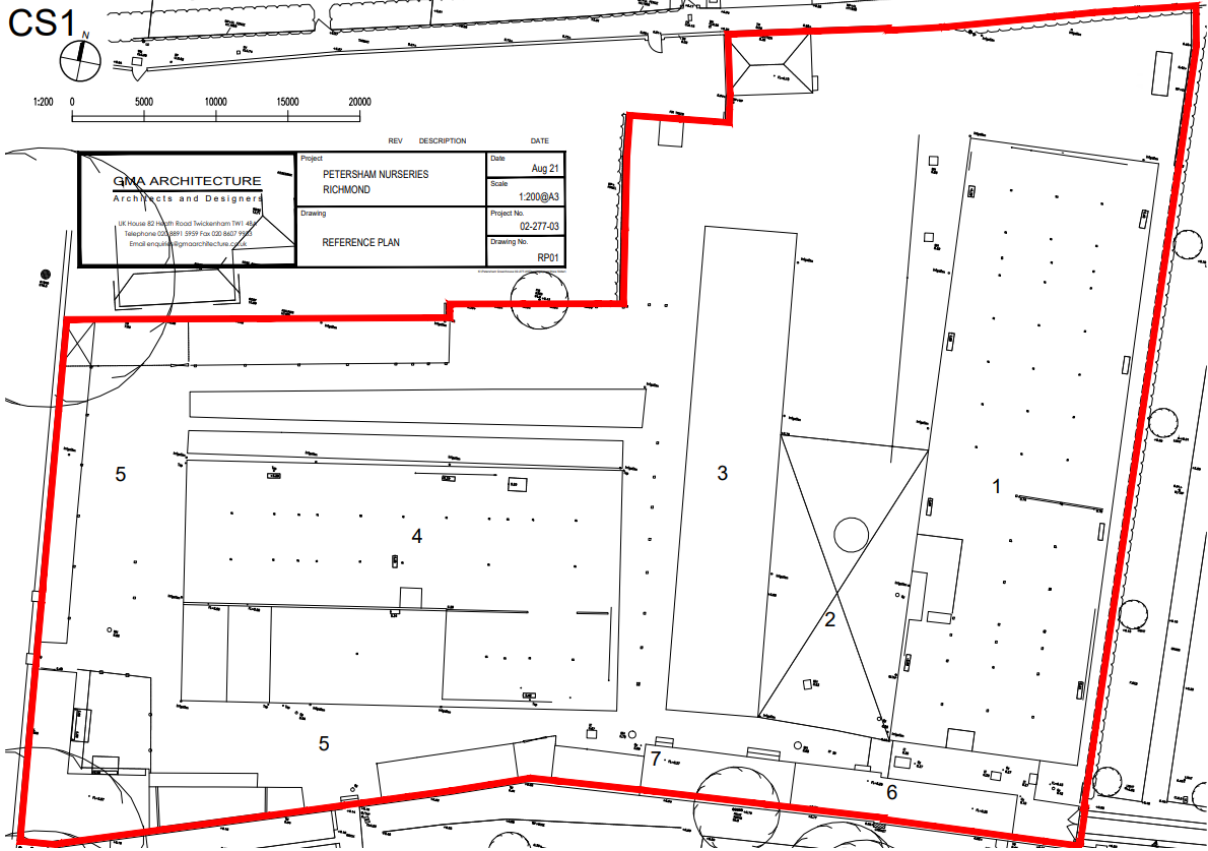
REASON: To safeguard the MOL, conservation area, amenities of nearby residential properties and the area generally.

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

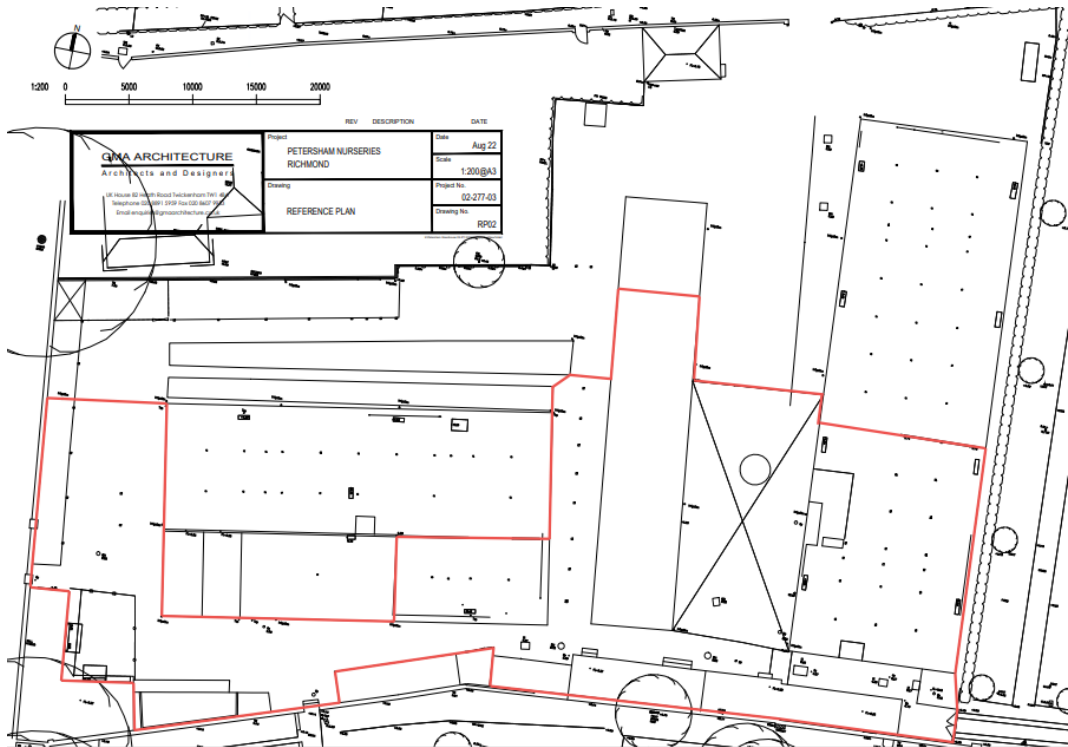


- 6.44 The following have been submitted:
- Item 1.1 - Statement of Truth by Skye Gyngell to be read in conjunction with below Plan
  - Item 1.2 - Statement of Truth by Charlotte Senn to be read in conjunction with below Plan

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



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



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

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

**2) Aerial Imagery and photographs**

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

**Item 5.2** – Photos from the following years were submitted

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

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

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

**3) Supplementary info submitted October 2022**

Peterham Nurseries photo locations and accompanying photos

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

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

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

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

6.47 The supplementary photo locations show seating in:

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

#### *Summary of assessment*

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

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

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

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

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

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

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

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

**U27547NS08 Personal Permission**

The A1/A3 mixed use hereby permitted shall only be carried out by Mr Francesco Bogleione for the period during which the premises are owned by Mr Francesco Bogleione. REASON: To safeguard the amenities of the adjoining residents and the area generally.

6.65 The following has been submitted:

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



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

**Other evidence**

**List of supporting documents:**

**A) Staff Timecards**

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

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

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



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

#### *Summary*

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

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

#### **Item 8 – EH Report dated 8 June 2015**

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

#### **Sample Press Articles**

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

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

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

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

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

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

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

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

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

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

- Fri – Sun 11am – 5pm

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

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

#### **Item 11 – Supper Club Customer Travel Arrangements**

Dated as follows:

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

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

**Item 16.1** – Petersham Nurseries Final travel Plan dated October 2010

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

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

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

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

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

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

**Item 16.7** – Draft Travel Plan Monitoring Report dated November 2015

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

**Item 16.9** – Travel Plan Monitoring Report dated December 2017

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

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

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

#### **Other information which does not materially assist the assessment**

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

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

**Conclusion**

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

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

- 1. The cafe/restaurant has been in operation selling food and beverages to visiting customers between 10am-5pm Tuesday to Sunday excluding Mondays in exceedance of the hours specified in condition NS04 of LPA ref: 08/4312/FUL*
- 2. The areas used for the preparation, sale and consumption of food and beverages have operated in exceedance of the areas specified in condition NS05 of LPA ref 08/4312/FUL to the extent that they have also operated in the areas identified as 1 and 2 within the submitted Statement of Truths insofar as they also correlate with the red line delineated on the updated drawing Reference Plan 02-277-03 RP02 received October 2022.*
- 3. The business has been carried out by Petersham Nurseries Ltd, notwithstanding that the land has remained in the ownership of Francesco Boglione*

**7. Other Matters**

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

**Recommendation:**

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

**I therefore recommend the following:**

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

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

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

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

This application has representations on file  YES  NO

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

**I agree the recommendation:**

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

Head of Development Management: .....RDA.....

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

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

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

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

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

SCM – Supper club menu/charity dinner menu

CAL – entry on a calendar

TS – timesheet for waiting staff/hosts etc.

**APPENDIX 2: SUMMARY OF EVIDENCE BY DATE**

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

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

BLACK – TENS app

BLUE – calendar entry

ORANGE – menu, charity event details

GREEN – late clockings