



Statement of Case
Petersham Nurseries

April 2024





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1.0 INTRODUCTION

- 1.1 This Statement of Case is submitted by hgh Consulting (“the Agent”) on behalf of Petersham Nurseries Ltd (“the Appellant”).
- 1.2 The Appeal was submitted under Section 174 of the Town and Country Planning Act 1990 (as amended) against an Enforcement Notice (ref. 18/0025/EN/BCN) (“the Notice”) served by the London Borough of Richmond upon Thames (“the Council” and “LPA”) on 15 January 2024 in respect of Land at Petersham Nurseries, Petersham Road, Petersham, Richmond, TW10 7AB (“the Site”).

Enforcement Notice

- 1.3 A full copy of the Notice and supporting report has been provided at Appendix 1. The alleged breach of planning control within the Notice reads:

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

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

U27543 NS04 Hours of Use - Café/Restaurant

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

U27544 NS05 Café/Restaurant areas

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

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

1.4 The reasons cited for issuing the Notice are:

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

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

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

Grounds of Appeal

1.5 This Statement sets out the case on behalf of the Appellants in respect of the following Grounds of Appeal:

- **Ground (A)** - that, in respect of any breach of planning control which may be constituted by matters stated in the Notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged; and
- **Ground (D)** - that, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters; and
- **Ground (G)** - that any period specified in the Notice in accordance with section 173(9) falls short of what should reasonably be allowed.

2.0 SITE AND SURROUNDINGS

Description of Site and Surroundings

- 2.1 The application site forms Land at Petersham Nurseries, Petersham Road, Petersham, Richmond, TW10 7AB (“the Site”). A Site Location Plan and Site Plan are provided at Appendix 2.
- 2.2 The Nurseries comprise three glass greenhouse structures, separate brick and timber buildings, and outdoor areas, which together accommodate the plant and shop sales, display areas, seating areas, the kitchen, toilets, and staff office.
- 2.3 The site is a single planning unit, which lawfully falls within Use Class E.
- 2.4 Petersham Nurseries is located on the northern side of Petersham Road, to the rear of 143 Petersham Road (also known as Petersham House). The site is accessed via Church Lane, which runs between 141 Petersham Road and St Peter’s Church. Pedestrian access is via 2x footpaths that run from River Lane and Church Lane.
- 2.5 Petersham Nurseries has a licence agreement with the Council, which owns the adjacent land, to use it as a turning area for service vehicles.
- 2.6 The site is located within the Petersham Conservation Area and is located within Metropolitan Open Land (MOL). Petersham Meadows, which is designated as an “Other Site of Nature Importance”, and an area of hardstanding adjoin the site to its north. This land to the north is also within the Thames Policy Area.
- 2.7 There are several listed buildings in the local vicinity, including:
 - Magnolia House, 143A Petersham Road (Grade II);
 - 143 Petersham Road (Grade II*);
 - The Coach House, 141 Petersham Road (Grade II);
 - Rutland Lodge, 145 Petersham Road (Grade II*);
 - St Peters Church, Petersham Road (Grade II*);
 - The Manor House, River Lane (Grade II);
 - Glen Cottage, River Lane (Grade II);
 - The Navigators House, River Lane (Grade II); and
 - Petersham Lodge, River Lane (Grade II).
- 2.8 Rose Bank, which is a residential property that directly adjoins the site to its north, is locally listed as a Building of Townscape Merit (“BTM”). Further to the west, The Old Stables on River Lane and Belvoir Cottage are also BTMs.

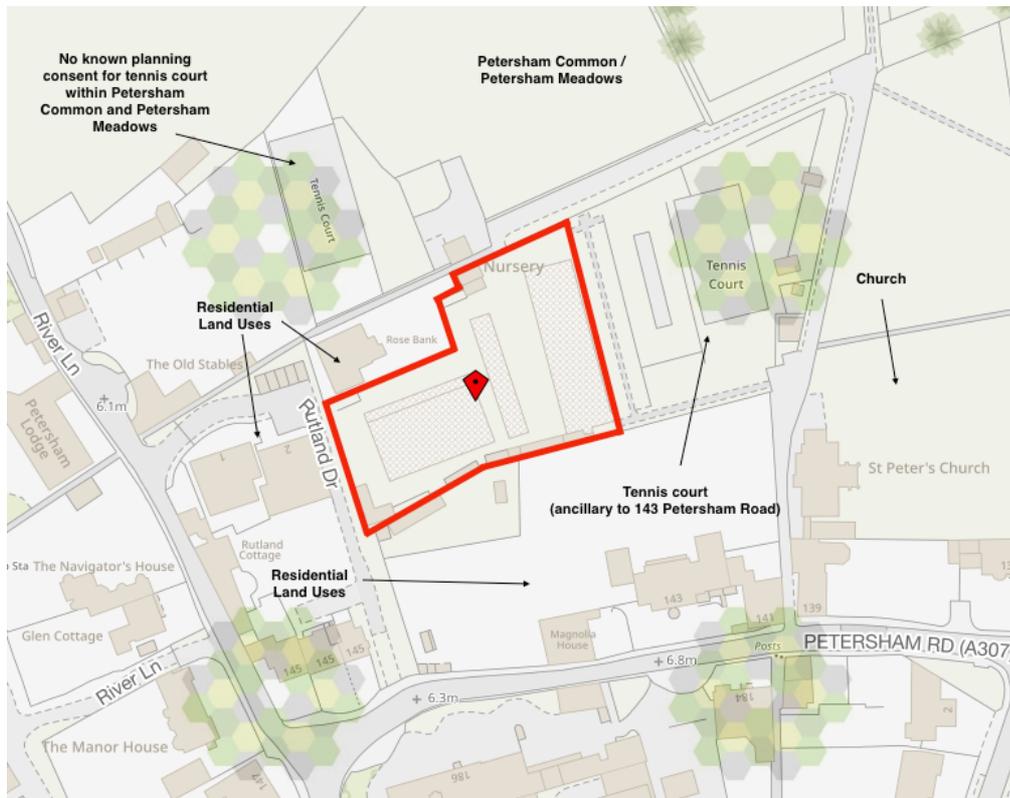


Figure 1: Petersham Nurseries (Surrounding Land Uses)

Petersham Nurseries Operation

- 2.9 Petersham Nurseries is a family-owned and run business which has evolved over many years. It currently comprises a garden centre with ancillary café/restaurant and has operated as such since circa 2004. There is a synergy between the elements of the business, with customers to the café/restaurant also visiting the garden centre, and vice versa.
- 2.10 Given the nature of the business, it is reliant on the café/restaurant to generate a profit, and specifically the evening restaurant operation (which generates approximately 45% of the total food and beverage profit). This high percentage is due to the higher average spend in the evenings, as people generally spend longer dining and are more likely to order multiple courses and alcoholic drinks. This higher spend leverages off a cost base which is already in place, resulting in an overall higher profit margin.
- 2.11 The Nurseries are a major employer, employing 152 staff (which increases to 170 in peak season), many of whom live locally. Within this headcount, the café/restaurant has 108 employees in a variety of roles (including front of house and kitchen roles), which increases to 126 employees at peak times. It is worth noting that the Nurseries create significant employment opportunities for young people, employing 53 people under the age of 25, with the majority of these in café/restaurant roles. In addition to direct employment opportunities, the Nurseries generate both indirect jobs within the supply chain and induced jobs within the wider economy.

- 2.12 The Nurseries play a significant role in the local community, undertaking many charitable events and making contributions over the course of the last 20 years. A recent example is the hosting of morning coffee mornings and provision of information sessions on benefits and other support mechanisms for the Ukrainian refugee community.
- 2.13 The positive impact of the Nurseries is reflected in the level of support from the local residential and business community in Richmond. A selection of letters of support is provided at Appendix 3. These have been received from parties including local residents and businesses, staff members, Be Richmond (the Richmond Business Improvement District), the Headteacher of Grey Court School, Zac Goldsmith (former MP) and those who have benefitted from the charitable work undertaken by the Nurseries. A press book has also been included at Appendix 14 which collates national and international press relating to the Nurseries.
- 2.14 With regard to sustainability, Petersham Nurseries' ethos is to encourage positive living through consideration of the environment. They do this through responsible sourcing for all facets of the business, including reducing wastage and recycling as much as possible to ensure they minimise the impact of the nursery, café, and restaurant on the environment.
- 2.15 Indeed, the business has been awarded Green Michelin Stars for the past 4-years (2021, 2022, 2023, and 2024), which is given to restaurants who are the forefront of the industry for sustainable practices and operations. In recent years, the business has been awarded the following awards and achievements:
- Winner of the Richmond Business Award for Best Achievement in Social Responsibility 2018
 - Winner Richmond Business Awards Best Achievement in Social Responsibility 2019
 - Winner Richmond Business Award for Best Business 2020
 - Winner Richmond Chamber of Commerce Award for Best Business for Environmental Sustainability 2023.

3.0 PLANNING HISTORY AND LICENSING

Planning History

- 3.1 The site has been in use as a garden centre since 1962. The planning history shows that planning permission was granted for greenhouse structures between 1967 and 1970 (LPA refs. 67/183, 67/884, 67/2117 and 70/560).
- 3.2 In 1998, a Certificate of Lawful Existing Use or Development (“CLEUD”) was granted in respect of the use of the premises as a garden centre (LPA ref. 98/0525). The full description of development is set out below:

“Use as a garden centre comprising open sales and display of plants and garden centre products; covered sales and display of garden centre products; ancillary storage and equipment plus sales office; plant growing areas; and public entrance courtyard and vehicle turning and loading area”.
- 3.3 The effect of the 1998 CLEUD was that the site could be used for A1 retail use (now Use Class E) without the need for planning permission and had no restriction on hours or areas of operation.
- 3.4 A café / restaurant was opened in 2004, which operated ancillary to the garden centre use. In 2007 however, the Council held the view that the café / restaurant was no longer ancillary to the primary Use Class A1 function of the garden centre and that a mixed Use Class A1 / A3 approval was required to regularise the lawful use.
- 3.5 Subsequently, Petersham Nurseries applied for temporary planning permission for a mixed-use site (Use Class A1 / A3), which was granted in December 2007 (LPA ref. 07/1235/FUL). Condition 1 of the permission stated that consent was for one year only, expiring at the end of November 2008. The reason being was to monitor and review the use after it had been in operation and to see if the impacts could be successfully mitigated.
- 3.6 An application to allow a permanent mixed-use of Use Class A1 and A3 was granted in July 2009 (LPA ref. 08/4312/FUL). The Decision Notice is included at Appendix 4.
- 3.7 The permanent permission was subject to several conditions, which are summarised in the table below on Page 7:

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

U27540 NS02 - Cycle Parking	Additional cycle parking facilities shall be provided in accordance with detailed drawings to be submitted to and approved in writing by the Local Planning Authority, such drawings to show the position, design, materials and finishes thereof.	Discharged under reference 08/4312/DD02
U27541 NS03 - Servicing and Deliveries	Within 6 weeks of the permission hereby granted the applicant is required to submit a servicing and delivery schedule to be submitted to and approved in writing by the Local Planning Authority, and should include measures to prevent servicing and delivery taking place during the peak hours of 11:30 to 15:00 hours Monday - Saturday and at any time on Sunday and restrictions on the weights of vehicles allowed to visit the site.	Discharged under reference 08/4312/DD03
U27543 NS04 - Hours of Use - Café/Restaurant	There shall be no sale of food for consumption on or off the premises during the following times: Tuesday to Sunday - before 10:00hrs and after 16:30hrs and on Sundays - before 11:00hrs and after 16:30hrs. The A3 premises shall not be open on Mondays. A notice to this effect shall always be displayed at all times on the premises so as to be visible from outside.	<i>Non-compliance since 2009</i>
U27544 NS05 - Café/Restaurant Areas	The Café/Restaurant areas shall be confined solely to the areas identified for these purposes on Approved Drawing Number DP7/2857 for Permission 07/1235/FUL.	<i>Non-compliance since 2009</i>
U27545 NS06 - Extraction Equipment	Any equipment required to effectively suppress the emission of fumes or smell and obviate any other nuisance from cooking processes carried out in the premises to be installed shall be submitted to and approved in writing by the Local Planning Authority.	Discharged under reference 08/4312/DD01
U27546 NS07 - Air Conditioning Equipment	No air conditioning apparatus, equipment or ducting shall be erected, placed or fixed to any part of the roof or external faces of the building(s), otherwise than as submitted to agreed in writing by the Local Planning Authority.	No action required

U27547 NS08 - Personal Permission	The A1/A3 mixed use hereby permitted shall only be carried out by Mr Francesco Boglione for the period during which the premises are owed by Mr Francesco Boglione.	Superseded by application reference 21/3108/ES19 1
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- 3.8 The mixed A3 use was restricted by areas and hours; however, the A1 use had no such restriction and could operate without restrictions within the site’s red line boundary.
- 3.9 An application to vary condition NS04 (hours of use) of LPA ref. 08/4312/FUL to include opening between 19:00 and 23:00 on Thursday, Friday and Saturday evenings was submitted to the Council in 2010 but was withdrawn on 11 August 2011 (LPA ref. 10/2914/VRC).
- 3.10 Whilst the application was not determined, an Officer’s Report had been prepared for LPA ref. 10/2914/VRC (included at Appendix 5), which raised concerns regarding alleged impacts because of impact on the MOL and residential amenity. The report notes that evening restaurant openings have occurred for at least 2-years (which would extend 15 years prior to current day).
- 3.11 The Officer’s Report also stated that it was difficult to support an objection to the character and amenity of the Conservation Area, and that transport concerns may be able to be overcome with more rigorous surveys, such as measuring a non-evening as a baseline against an evening operation to capture the difference in car trips.
- 3.12 A subsequent application was submitted to open in the evening on Saturdays and was refused by the Council on 29 March 2012 (LPA ref. 12/0067/VRC). This application was refused due to the alleged detriment of the character of the MOL and adverse effect on residential amenity. The Officer’s Report confirms that the impact to the Conservation Area is unsustainable as a reason for refusal and acknowledges that issues regarding transport had been overcome (Officer’s Report and Decision Notice included at Appendix 6).
- 3.13 A further application was submitted on 3 February 2014 and was refused on 18 January 2018 (LPA ref. 14/0345/VSC) for the variation of condition NS04 to allow the sale of food for the consumption on the premises between the hours of 9:00 and 18:00 on Mondays, Tuesdays, and Wednesdays, 9:00 and 23:00 on Thursdays, Fridays, and Saturdays and between 11:00 and 18:00 on Sundays. The Officer’s Report and Decision Notice for this application are included at Appendix 7.
- 3.14 The Environmental Health Officer confirmed that they had no objection to evening openings insofar as they were properly managed (which they believed they could be). The application was nevertheless refused because of an inappropriate use, which would allegedly be detrimental to the character and function of the MOL and adverse effect on residential amenity.
- 3.15 An informative attached to the decision notice issued on 18 January 2018 for LPA ref. 14/0345/VSC advised that:

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

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

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

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

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

- 3.21 The CLEUD confirmed the lawfulness of a small extension of opening hours, a larger operational restaurant/café area, and removal of the personal condition. The Council did not accept the evidence submitted regarding evening use and of the café / restaurant operating over the full area. The Officer’s Report and CLEUD Decision Notice is included at Appendix 8.

3.22 On 13 September 2023, the Planning Committee considered a report by officers to take enforcement action against Petersham Nurseries. The Committee decided to take enforcement action against all evening operations and seating areas used in the daytime that were closest to neighbouring properties.

Licensing

3.23 In September 2022, the Council granted Petersham Nurseries Ltd a new premises licence under the Licensing Act 2003. The opening hours authorised under the new licence are:

- Monday - 09:00 to 17:00;
- Tuesday - 09:00 to 17:00;
- Wednesday - 09:00 to 23:00;
- Thursday - 09:00 to 23:00;
- Friday - 09:00 to 23:00;
- Saturday - 09:00 to 23:00; and
- Sunday - 11:00 to 17:00.

3.24 The licence permits the sale of alcohol up to 17:00hrs seven days a week and, additionally, on no more than three days per week on Wednesdays to Saturdays, up until 22:30.

3.25 As part of the application, Petersham Nurseries offered up several additional controls which have formed conditions on the premises licence. This includes (i) limiting the sale of alcohol after 5pm to a more limited area (including Greenhouse 1 and the pergola area), (ii) limiting the sale of alcohol beyond 5pm to three nights per week, and (iii) changing the start time on Sundays to be after 11am to ensure no conflict with St Peter's Church. Specific conditions have also been agreed with the police.

3.26 The licence had been subject to public consultation, and assessed against the four licensing objectives, which include public nuisance.

3.27 The Home Office's statutory guidance to support licensing authorities in the carrying out of their functions under the Licensing Act 2003 states¹:

“Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour, and insects or where its effect is prejudicial to health.”

3.28 This means that the issues of noise and disturbance resulting from people arriving and leaving later in the evening were considered acceptable.

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

3.29 The premises licence was granted and has been in operation since November 2022.

3.30 The premises licence is a material planning consideration and is enclosed at Appendix 9.

4.0 PLANNING POLICY CONTEXT

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

National Planning Policy Framework

- 4.4 A revised NPPF was published by the UK Government’s Department for Levelling Up, Housing & Communities on 19 December 2023, which sets out the government’s planning policies for England and how these are expected to be applied.
- 4.5 Paragraphs 7 and 8 makes clear that the purpose of the planning system is to contribute to the achievements of sustainable development, including commercial development. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways:
- (a) An economic objective - to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

- (b) A social objective - to support strong, vibrant, and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful, and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
 - (c) An environmental objective - to protect and enhance our natural, built and historic environment, including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.
- 4.6 So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11).
- 4.7 Paragraph 59 relates to “Enforcement”, and states that effective enforcement is important to maintain public confidence in the planning system. The NPPF is clear that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.
- 4.8 Paragraph 85 sets out that planning policies and decisions should help create the conditions in which businesses can invest, expand, and adapt. Significant weight should be placed on the need to support economic growth and productivity, considering both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.
- 4.9 Paragraph 123 requires planning policies and decisions to promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.
- 4.10 Paragraph 142 states that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
- 4.11 At paragraph 143, the five purposes the Green Belt serves are set out:
 - (a) To check the unrestricted sprawl of large built-up areas;
 - (b) To prevent neighbouring towns merging into one another;
 - (c) To assist in safeguarding the countryside from encroachment;
 - (d) To preserve the setting and special character of historic towns; and
 - (e) To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

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

London Plan (2021)

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

- 4.20 Policy E10 relates to visitor infrastructure and states that London's visitor economy should be strengthened by enhancing and extending its attractions, particularly to parts of outer London
- 4.21 Policy G3 sets out that Metropolitan Open Land (MOL) is afforded the same status and level of protection as Green Belt:
- (a) MOL should be protected from inappropriate development in accordance with national planning policy tests that apply to the Green Belt.
 - (b) Boroughs should work with partners to enhance the quality and range of uses of MOL.
- 4.22 Policies T4 - T6 require development proposals to reflect and be integrated with current and planned transport access, capacity, and connectivity. The cumulative impacts of development on public transport and the road network capacity including walking and cycling, as well as associated effects on public health, should be considered and mitigated.

Richmond Local Plan (2018)

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

Ham and Petersham Neighbourhood Plan (2018)

- 4.29 Policy C1 sets out that the clear distinction between the built-up areas and green spaces of Ham and Petersham will be retained and, where appropriate, enhanced to ensure that the boundary is well defined, physically, and visually.

4.30 Policy R1 writes that proposals which extend and enhance the range of local shops, pubs, restaurants, cafes, and related commercial services will be encouraged.

5.0 GROUNDS OF APPEAL

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

- 5.1 We contend that the extension of evening hours / operations and seating areas, in breach of the restrictions in Conditions NS04 (hours of use) and NS05 (café/restaurant areas), fully accords with the Development Plan as a whole and planning permission should be granted.
- 5.2 For the purposes of this section of the Statement, the extension of evening hours / operations to allow up to three evenings per week (Wednesday to Saturday) and extended seating area is referred to as “the proposed development”.
- 5.3 This section of the Statement of Case provides an assessment of the proposed development against the relevant planning policies and other material considerations of importance to the decision-making process. It also seeks to respond to the points made within the Enforcement Notice.
- 5.4 The planning considerations in respect of the extension of evening hours / operations and seating areas are as follows:
 - (a) Principle of Development
 - (b) Socio-Economic Impact
 - (c) Impact upon Metropolitan Open Land
 - (d) Design and Impact on Heritage Assets
 - (e) Impact on Residential Amenity
 - (f) Transport
 - (g) Very Special Circumstances

Site Specific Circumstances

- 5.5 The success of Petersham Nurseries results from the nature of the site and the business itself, which has developed organically over many decades. The concept of the Nurseries is wholly reliant upon the environment within which it sits, with the greenhouses creating the atmosphere and ambiance which, when coupled with high quality seasonal food (much of which is grown on-site in the kitchen garden), provides a unique restaurant offering.
- 5.6 The synergy between the different elements of the business, both the café/restaurant and garden centre retail, are key to the success of the business, which has become a destination location (as acknowledged by the Council in the Enforcement Notice Report).
- 5.7 The Petersham Nurseries site and the business are inextricably linked, and the Appellant would not be able to relocate the restaurant element of the business elsewhere within the local area.
- 5.8 These site-specific circumstances are a material consideration which should hold significant weight in the planning balance.

Principle of Development

- 5.9 The development under consideration comprises the extension of the hours of operation to allow up to three evenings per week (between Wednesday to Saturday) and an extended area of seating, as shown on the agreed Enforcement Appeal Plan at Appendix 10.
- 5.10 The proposed development will enable the Appellant to provide an evening ‘supper club’ offering three days per week, which will provide substantial socio-economic benefits (discussed in more detail in latter sections of this Statement). It will also allow for additional outdoor seating (noting that the nature of this seating means it will be primarily be used on a seasonal basis.)
- 5.11 These benefits are twofold; the first being economic, with the provision and safeguarding of employment opportunities (which would otherwise be lost), including the contribution towards 158 jobs on-site (rising to 170 during the peak season), and supporting other businesses within the local supply chain. The second benefit is the contribution to tourism - providing a unique evening offer that will attract visitors to this destination location, which, in turn, promotes tourism within the wider Richmond area. These socio-economic benefits are discussed in more detail in later sections of this Statement.
- 5.12 The proposed development contribution towards employment and the local economy fully accords with paragraph 85 of the NPPF, which states that significant weight should be placed on the need to support economic growth and productivity, considering both local business needs and wider opportunities for development.
- 5.13 It also accords with London Plan Policy GG5 (Growing a good economy), which promotes the diversification of London’s economy, and Policy HC6 (Supporting the night-time economy), which promotes the night-time economy. Indeed, Policy HC6 specifically writes that planning policies and decisions should facilitate the extension of opening hours of existing daytime facilities such as shops, cafes, and restaurants into the night-time.
- 5.14 This is reinforced by the Council’s own Retail and Leisure Study: Phase 2 Final Report (2023), which writes at paragraph 6.18 and 6.19 of the growing need for additional retail floorspace that supports shopping, leisure, and cultural uses. Indeed, paragraph 6.19 of this study writes:
- “Growth in the food / beverage and commercial leisure, entertainment and culture sectors provide an opportunity to enhance the evening and night-time economy...including the repurposing of retail floorspace. The emerging Local Plan could recognise and foster this potential...”.*
- 5.15 At a local level, the proposed development fully accords with Local Plan Policy LP40, which supports a diverse and strong local economy. In addition, it accords with Policy R1 of the Ham and Petersham Neighbourhood Plan, which encourages proposals that extend and enhance the range of local shops, pubs, restaurants, cafes, and related commercial services in the area. In respect of Petersham specifically, the Ham and Petersham Neighbourhood Plan recognises that there are no shops in Petersham apart from Petersham Nurseries - which makes the site a crucial local employer.

- 5.16 Regarding tourism, London Plan Policy E10 (Visitor infrastructure) states that London’s visitor economy should be strengthened by enhancing and extending its attractions, particularly to parts of outer London. Local Plan Policy LP43 states that the Council will support the sustainable growth of the visitor economy for the benefit of the local area by supporting proposals which promote and enhance the borough’s existing tourist attractions.
- 5.17 We consider that Petersham Nurseries comprises a highly successful tourist attraction, which is acknowledged in the Enforcement Notice Report (see Appendix 1), which states:
- “The café/restaurant use has become ... a destination in its own right, with a national and international reputation”.*
- 5.18 The proposed sustainable growth and enhancement of this tourist attraction fully accords with Policy LP43.
- 5.19 The proposed development is inherently sustainable, being an existing restaurant, which has been operating successfully in this location for many years. No new infrastructure or physical development is proposed to enable the evening opening hours. The proposed development seeks to make the best use of land by intensifying an existing use, in accordance with Chapter 11 of the NPPF and London Plan Policy GG2 - both of which promote the effective use of land.
- 5.20 The proposed development will not have any adverse socio-economic or environmental impacts in terms of noise, transport, heritage, or light pollution (as discussed further in this section of the Statement) and the proposed operation will be carefully managed in accordance with the Appellant’s existing Evening Management Plan (see Appendix 11), which sets out strict management procedures to limit potential disturbance.
- 5.21 In addition, the site is subject to an approved premises licence (see Appendix 9), which was granted in September 2022 (details of which have been summarised at Section 3 of this Statement). The opening hours permitted under the licence are:
- Monday - 09:00 to 17:00;
 - Tuesday - 09:00 to 17:00;
 - Wednesday - 09:00 to 23:00;
 - Thursday - 09:00 to 23:00;
 - Friday - 09:00 to 23:00;
 - Saturday - 09:00 to 23:00; and
 - Sunday - 11:00 to 17:00.
- 5.22 The licence permits the sale of alcohol up to 17:00 seven days a week and, additionally, on no more than three days per week on Wednesdays to Saturdays, up until 22:30.

- 5.23 As part of the application, Petersham Nurseries offered up several additional controls which have formed conditions on the premises licence. This includes (i) limiting the sale of alcohol after 5pm to a more limited area (including Greenhouse 1 and the pergola area); (ii) limiting the sale of alcohol beyond 5pm to three nights per week; and (iii) changing the start time on Sundays to be after 11am to ensure no conflict with St Peter's Church. Specific conditions have also been agreed with the police.
- 5.24 The licence had been subject to public consultation, and assessed against the four licensing objectives, which include public nuisance. This means that the issues of noise and disturbance resulting from people arriving and leaving later in the evening were assessed and considered to be acceptable. It is noted that Richmond's Statement of Licensing Policy is clear at paragraph 8.5 that "*the planning department are a responsible authority under the Licensing Act 2003 and the Council will take account of relevant representations in regard to planning issues including those relating to the appropriate operating hours of a licensed premises.*" It therefore reasonable to assume that the Planning Department were given the opportunity to make representations on the licence application; and such representations were taken into consideration when determining the application.
- 5.25 The grant of the licence is a material planning consideration which should hold significant weight.
- 5.26 In summary, the proposed extension of the evening hours and area of seating comprises sustainable development that makes the most effective use of an existing development, and which fully accords with the NPPF, London Plan and Local Plan policies (namely Policies GG2, GG5, E10, LP40 and LP43).
- 5.27 It will generate substantial socio-economic benefits and contribute to tourism within Richmond and will not result in adverse amenity of environmental impacts. We therefore consider that the principle of development should be supported.

Fallback Position

- 5.28 It is worth noting that the current permission for Petersham Nurseries allows for a Class E operation to take place across the whole site with no restriction on hours or areas of operation in planning terms (except those set by the conditions in LPA ref: 08/4312/FUL regarding café/restaurant operations). This would not necessarily need to be a retail use, as it would be possible for alternative occupation within any of the uses included within Class E - including gym, creche, day nursery, light industrial or offices (amongst others). None of these uses would be restricted by the condition relating to the café / restaurant operation and could, theoretically, even be able to open 24-hours a day.
- 5.29 Should the fallback position be implemented, the operation could be more impactful operation (with associated vehicle movements and potential disturbance) compared to the operation of the proposed development.

Socio-Economic Impact

- 5.30 The importance of encouraging economic growth is iterated at all levels of Planning Policy, from paragraph 85 of the NPPF, through Policy GG5 of the London Plan and Policy LP40m of the Local Plan.

- 5.31 At a high level, the importance of the economic contribution of the hospitality sector is clearly demonstrated within the report prepared by Ignite Economics, titled ‘The Economic Contribution of the UK Hospitality Industry’ which confirms that the hospitality industry accounts for 3.5m jobs *“making it the 3rd biggest sector in terms of employment in the UK”*. These jobs provide a strong stimulus for further employment within the sector’s supply chain, and the report notes that *“When looking at the indirect and induced impact on the wider economy, this increased to almost 6.5m jobs, or 18% of the total UK jobs”*.
- 5.32 At a local level, the Richmond *“Retail and Leisure Study - Phase 2”* (January 2023), which forms part of the emerging Local Plan evidence base identifies an under-supply of food and beverage floorspace across the Borough, based upon an upward trend in demand and anticipated expenditure. This is despite the significant economic impact of the COVID 19 pandemic.
- 5.33 Petersham Nurseries is a successful business comprising a retail, food and beverage offering which has grown organically over many years. The business is operating with a proven formula which demonstrably works, with customers attracted to both the garden centre and restaurant elements of the business and a synergy between the uses. The business has a high dependency on the café/restaurant to generate a profit, and specifically the evening restaurant operation (which generates approximately 45% of the total food and beverage profit).
- 5.34 Petersham Nurseries is a major employer in the area, employing 152 staff (which increases to 170 in peak season), many of whom live locally. Within this headcount, the café/restaurant has 108 employees in a variety of roles (including front of house and kitchen roles), which increases to 126 employees at peak times. It is worth noting that the Nurseries create significant employment opportunities for young people, employing 53 people under the age of 25, with the majority of these in café/restaurant roles. In addition to direct employment opportunities, the Nurseries generate both indirect jobs within the supply chain and induced jobs within the wider economy.
- 5.35 Additional economic benefits of job creation include the generation of taxes and savings on unemployment benefits not required.
- 5.36 The contribution of Petersham Nurseries towards employment and the local economy and the extension of the opening hours to allow the business to operate in the evenings fully accords with planning policy at all levels, from paragraph 85 of the NPPF, London Plan Policies GG5 HC6, Local Plan Policy LP40, and Policy R1 of the Ham and Petersham Neighbourhood Plan. The Council pays no regard to the economic contribution of the Nurseries in their Enforcement Notice Report - however it is a key planning consideration which should hold significant weight.
- 5.37 Perhaps most importantly, the impact of granting planning permission for the proposed development will be to safeguard a significant number of jobs. These are existing jobs, providing real livelihoods within a proven business (rather than projected jobs within a planning application for a development which is not yet in existence).

- 5.38 In addition to the economic benefits of employment and job creation, the Nurseries have a beneficial impact upon the tourism economy within Richmond. As stated within the Council’s Enforcement Notice Report, Petersham Nurseries comprises a highly successful tourist attraction, which is “*a destination in its own right, with a national and international reputation*”. The considerable appeal of the Nurseries attracts tourists to Richmond, who may stay in the local area and spend money in local businesses. The contribution of the Nurseries to the tourism economy is a key benefit, and the sustainable growth and enhancement of this tourist attraction fully accords with Policy LP43.
- 5.39 In addition to the economic benefits, the Nurseries generate significant social benefits, and play a significant role in the local community, undertaking many charitable events and making contributions over the course of the last 20 years. A recent example is the hosting of morning coffee mornings and provision of information sessions on benefits and other support mechanisms for the Ukrainian refugee community.
- 5.40 The business also generates non-monetary social value, including a sense of achievement and self-worth for employees and a calm and pleasant environment for customers to relax and socialise.
- 5.41 The social benefits of Petersham Nurseries would be safeguarded through the grant of planning permission to allow the extension of the restaurant opening hours and extended seating, which would allow the business to continue operating and contributing to the local community.

Metropolitan Open Land

- 5.42 The site is located within the designated Metropolitan Open Land and is therefore subject to London Plan Policy G3 and Local Plan Policies LP13 and LP31 as well as Chapter 13 of the NPPF (which applies equally to Green Belts and MOL).
- 5.43 When considering the impact of the proposed development on the MOL, it is first necessary to consider the contribution of the site towards the strategic function of the MOL.
- 5.44 The designation criteria for MOL are set on in Policy G3 of the London Plan. To be classified as MOL, land must meet four criteria:
- **Criteria 1:** Contribute to the physical structure of London by being clearly distinguishable from the built-up area;
 - **Criteria 2:** Includes open-air facilities, especially for leisure, recreation, sport, the arts and cultural activities, which serve either the whole or significant parts of London;
 - **Criteria 3:** Contains features or landscapes (historic, recreational, biodiversity) of either national or metropolitan value; and
 - **Criteria 4:** Forms part of a strategic corridor, node, or link in the network of green infrastructure and meets one of the above criteria.

- 5.45 Within the evidence base for the draft Local Plan, a Green Belt, MOL, LGS and OOLTI Review was undertaken by Arup (dated 31st August 2021). The Metropolitan Open Land Annex Report 2021 which forms part of this assessment confirms that Petersham Nurseries is located within Parcel 8 - “Ham House, Douglas House, Richmond Hill Rise, Ham Common, Ham Polo, Buccleugh Gardens, Greycourt School, Petersham Lodge, Petersham Meadows”.
- 5.46 When considering whether the site meets the criteria within Policy G3, we note the following:
- (a) The site is surrounded by a high brick wall, which clearly creates a physical boundary between the site and the wider MOL designation; and
 - (b) Within the site, there are several permanent structures - including glasshouses, brick and timber buildings housing the restaurant preparation areas, toilets, staff offices and the teahouse.
- 5.47 It is therefore clearly part of the building form and is physically and developmentally distinguishable from the open land at Petersham Meadows and Petersham Lodge to the north and northwest of the site. It therefore does not meet Criterion 1.
- 5.48 In June 1998, Petersham Nurseries was granted a Certificate of Lawfulness for Existing Use or Development (CLEUD) to establish the unrestricted use of the site for a garden centre under reference 98/0525. This CLEUD established the site as an open A1 use. The Use Class Order was updated in September 2020 and the operation of the entire site is now Class E. On this basis, it does not meet Criterion 2.
- 5.49 MOL Criterion 3 is not applicable to the site as the site does not include any statutory or locally listed buildings nor contain features or landscapes of either national or metropolitan value.
- 5.50 Whilst the surrounding area provides well connected green spaces an essential part of green and blue River Thames corridor of regional importance, the site itself does not provide a node or link in this network and does not meet Criterion 4.
- 5.51 In light of the above, it is considered that the site contributes very weakly (if at all) to the MOL designation. This should be a material consideration.
- 5.52 Notwithstanding the above, the site remains within the MOL designation, and as such has been assessed against the relevant policies within this Statement.

Purpose of the MOL

- 5.53 The five purposes of the Green Belt/MOL are set out at paragraph 143 of the NPPF. An assessment how the proposed development relates to each purpose is set out below:
- a) to check the unrestricted sprawl of large built-up areas;*
- 5.54 The site is an established and self-contained previously developed site in the urban area of Petersham. The proposed development does not propose any additional built form and will not give rise to unrestricted sprawl of a large built-up area.

b) to prevent neighbouring towns merging into one another;

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

c) to assist in safeguarding the countryside from encroachment;

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

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

5.57 The site is located within the Petersham Conservation Area and there are several listed buildings within the vicinity. A Heritage Summary has been prepared by Portico Heritage (see **Appendix 6**), which confirms that the operation of Petersham Nurseries forms part of the character of the area, and the extension of the opening hours will not harm the significance, character, or appearance of this area.

5.58 In addition, the site has no impact on the setting of surrounding heritage assets as it operates entirely hidden behind high brick boundary walls. The proposed development will therefore not harm the setting and special character of a historic town.

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

5.59 The proposed development will enhance the existing operation on a previously developed site, assisting in the regeneration of urban land.

5.60 In summary, the proposal does not adversely impact upon the five purposes of the Green Belt/MOL, and indeed, will contribute towards purpose (e) by enhancing an existing developed site.

5.61 The Council asserts that the proposed development “*has the effect of urbanising the character of the site and this conflicts with purposes a), c) and d)*”. We fundamentally disagree with this suggestion.

5.62 Firstly, the extension of opening hours will have no impact upon the character of the site, which remains as existing with no additional structures or buildings proposed.

5.63 Regarding purpose (a), it is difficult to understand why the Council consider that the extension of opening hours would cause “unrestricted sprawl” of a built-up area, given that “sprawl” refers to unrestricted growth over expanses of land - and the proposal does not propose any additional built form.

5.64 Regarding purpose (c) the site is located within an established and self-contained property boundary; therefore, the proposals will not result in encroachment into the countryside.

5.65 Finally, regarding purpose (d) - and as confirmed within the enclosed Heritage Statement - the proposed development will not harm the setting and special character of a historic town. Indeed, the operation of Petersham Nurseries forms part of the character of this area.

5.66 We therefore conclude that the proposed development accords with the five purposes of the Green Belt / MOL, contrary to the Council's assertion.

Development within the MOL

5.67 Paragraph 152 of the NPPF confirms that inappropriate development is, by definition, harmful to the Green Belt which should be afforded substantial weight and not be approved except in very special circumstances. This is reiterated in Local Plan Policy LP13, which confirms that the borough's MOL will be protected and retained in predominantly open use. Appropriate uses include (*but are not restricted to*) public and private open spaces, playing fields, open recreation and sport, biodiversity and open community uses.

5.68 The Enforcement Notice Report notes: "*It has previously been concluded through the planning history that an intensification of the restaurant use would constitute inappropriate development in MOL.*" We consider that the Council's justification for considering the proposals to be 'inappropriate development' is flawed.

5.69 Paragraph 155 of the NPPF relates to other forms of development, which do not comprise the construction of buildings, and which are not inappropriate in the Green Belt - provided they preserve its openness and do not conflict with the purposes of including land within it. These include both the re-use of buildings (provided these are of permanent and substantial construction) and material changes of use.

5.70 It is clear that the purpose of paragraph 155 is to allow for the continued use of existing development, provided this does not result in an adverse impact on openness. This aligns with Chapter 11 of the NPPF (making effective use of land), specifically paragraph 123.

5.71 The essential characteristics of Green Belts and Metropolitan Open Land are their openness and permanence. A detailed assessment of the impact on openness is set out below; however, in summary, the Appellant considers that the proposed development would not have a greater impact on the openness of the MOL than the existing and that the openness of the MOL will be preserved.

5.72 The impact of the proposed development on the purpose of the MOL has been undertaken within the section above in this Statement, which demonstrates that the proposal does not adversely impact upon the five purposes of the MOL, and indeed, will contribute towards purpose (e) by enhancing an existing developed site.

5.73 Considering the above, we contend that the proposed development accords with paragraph 155 of the NPPF and should not be considered as inappropriate development within the MOL.

Impact on Openness of the MOL

5.74 The key consideration is whether the proposed development would have a greater impact upon the openness of the Green Belt than the existing development. As confirmed in *R. (Samuel Smith Old Brewery) v Yorkshire County Council [2020] UKSC 3 [1]*, openness can have both spatial and visual aspects.

- 5.75 Spatially, the proposals do not introduce any additional built form and no spatial harm is caused to the MOL. This has been confirmed by the Council both in their Enforcement Notice Report and the Statement of Common Ground.
- 5.76 Regarding visual harm, the Council maintain that the intensification of the use through the extension of opening hours will result in additional activity with increased '*comings and goings and associated disturbance*' resulting in '*an intrusion of urban characteristics into the MOL, which does not preserve openness*'.
- 5.77 The Appellant fundamentally disagrees with this assertion. Although not explicitly stated, it is assumed that the Council's reference to comings and goings and associated disturbance relate to potential impacts in respect of (i) noise, (ii) traffic and (iii) lighting.

Noise

- 5.78 The current acoustic environment of the MOL is subject to ambient noise from a number of sources, including (but not limited to) aircraft taking off and landing at Heathrow Airport, traffic on the surrounding road network and commercial and residential uses in the surrounding area. The commercial uses include the operation of Petersham Nurseries.
- 5.79 With regard to the Nurseries, the noise directly attributable to the site comes from the following sources:
- (a) Site servicing (deliveries and collections including waste collections)
 - (b) Employee arrival and departure
 - (c) Customer arrival and departure
 - (d) Activity from noise ancillary to the retail activity
 - (e) Plant noise associated with the retail activities (incl. heating, ventilation and cooling)
 - (f) Plant associated with the restaurant activities (incl. kitchen extract)
 - (g) The retail activity, which includes customer movements, shopping trolleys, goods movements, and checkout activities
 - (h) The café/restaurant activity, which includes customer movements and dining activities
- 5.80 It is noted that the Evening Management Plan (included at Appendix 11) includes a number of measures to mitigate adverse noise impacts, including (but not limited to) management of customer behaviour and movements, discouraging customers from driving and advising them of the taxi drop off/pick up location to avoid vehicles accessing via Church Lane and management of vehicles dropping off and collecting customers (including parking attendants requesting drivers to shut off their engines).
- 5.81 When considering whether the proposed development would result in an adverse noise impact on the MOL, it is necessary to first consider the ambient noise environment. The Appellant intends to instruct noise monitoring to be undertaken, and evidence will be submitted to demonstrate both the ambient noise levels and noise emissions from the evening restaurant operation. The results will be considered within the context of the MOL.

- 5.82 It is noted that there are no set noise limits for development within the MOL, and indeed neither Local Plan or the Richmond Development Control for Noise Generating and Noise Sensitive Development SPD make specific reference to the noise environment or the impact of noise on the MOL.
- 5.83 Notwithstanding this, the Appellant will submit a detailed assessment of the impact of the noise impact of the proposed development upon the character and openness of the MOL, which will be informed by noise monitoring, to demonstrate compliance with Policy LP13.

Traffic

- 5.84 As with ambient noise, there are existing traffic movements in the local vicinity (most not associated with Petersham Nurseries), which form part of the character of this area of the MOL.
- 5.85 It is noted that the Evening Management Plan includes a number of measures to limit the number of vehicle movements, including discouraging customers from driving and advising them of the taxi drop off/pick up location to avoid neighbouring roads and limit access to the Nurseries via Church Lane.
- 5.86 Traffic surveys will be conducted and presented in evidence to confirm the number of vehicle movements associated with the evening operation of Petersham Nurseries and how this relates to the wider highway network. This impact will be assessed in the context of the MOL.
- 5.87 It is noted that the impact of vehicle movements on the MOL is not specifically referenced within Local Plan Policy, although supporting paragraph 5.2.7 refers to the visual impact of traffic or car parking. Notwithstanding this, the Appellant will submit a detailed assessment of the impact of vehicle movements upon the character and openness of the MOL, which will be information by traffic surveys, to demonstrate compliance with Policy LP13.

Lighting

- 5.88 In respect of lighting, it is noted that the Council have alleged that there will be an adverse impact on the MOL from lighting. It is unclear whether the Council considers that this comprises light from the artificial lighting associated with the Nurseries or from car headlamps.
- 5.89 It is also unclear about the nature of the alleged harm. This part of the MOL is located directly adjacent to the built-up area of Petersham, and as such is subject to light spill from the surrounding buildings (both commercial and residential). Given that most residential properties are occupied during the evenings, it is reasonable to assume that the MOL is primarily subject to light spill from these properties during hours of darkness.
- 5.90 The Appellant has engaged a lighting consultant to advise on the potential impact of lighting on the MOL, and to ensure that the lighting design for the Nurseries complies with the relevant standards and recommendations, namely:
- ILP document GN01:21 'Guidance notes for the reduction of obtrusive light'.
 - ILP document note 08/23 'Bats and artificial lighting in the UK'.
 - BS5489-1:2020 Code for practice for the design of road lighting.

- BS EN 13201-1:2015 Road Lighting Part 2: Performance requirements.
- BS EN 12464-2:2014 Light and lighting. Lighting of workplaces. Outdoor workplaces
- CIBSE/ SLL Code for Lighting (Society of Light and Lighting):2022.
- CIBSE/ SLL Lighting Guides (and other relevant documents by CIBSE/SLL).

5.91 If required, a full artificial lighting assessment will be undertaken which will assess the impact of lighting from Petersham Nurseries on the MOL.

Summary of MOL Impact

- 5.92 In summary, the proposed development is not anticipated to result in any adverse impacts on the character of openness of the MOL in terms of noise, traffic, or lighting impacts. This will be demonstrated in evidence with relevant monitoring and assessments.
- 5.93 It has already been agreed that there is no spatial harm caused to the MOL. The openness of the MOL (both spatially and visually (subject to monitoring results)) will therefore be preserved.
- 5.94 The lawful use of the site is Class E. As noted above, the existing fallback position allows for the occupation of the site for Class E use (with the relevant restrictions on the restaurant operation) with no restrictions on hours of opening. Such an operation would have the potential to generate noise and traffic movements late into the night along with associated light spill.
- 5.95 In conclusion, we do not consider that the proposed development comprises inappropriate development within the MOL as it complies with the exceptions set out within paragraph 155 of the NPPF. The proposed development will cause no spatial harm, and it is anticipated that monitoring will demonstrate that there is no visual harm to the MOL and the openness of the MOL will be preserved. In addition, the proposed development complies with the five purposes of the Green Belt/MOL due to the nature of the existing site and surrounding area.
- 5.96 Should the Inspector disagree with this view, and consider that the proposed development comprises inappropriate development, then there are Very Special Circumstances which outweigh any perceived harm to the MOL. These are set out in detail and discussed below.

Design and Impact on Heritage Assets

- 5.97 Policy LP3 and LP4 of the adopted Local Plan requires development to preserve both designated and non-designated heritage assets.
- 5.98 The Council have assessed this issue within their Enforcement Report (ref. 18/0025/EN/BCN) and confirm at paragraph 9.28 that:

*“the current breach of condition is **not** considered to cause harm to the significance of nearby listed and locally listed buildings by virtue of the activity within their setting, or harm to the significance, character and appearance of the Conservation Area or Thames Policy Area” [own emphasis].*

- 5.99 Notwithstanding this judgement by the LPA, Portico Heritage have nevertheless conducted a Heritage Summary of the alleged breach of planning control, which is provided at **Appendix 6**.
- 5.100 Petersham Nurseries is neither listed, nor locally listed, but does lie within the Petersham Conservation Area (designated in January 1969).
- 5.101 There are also several statutory listed buildings in the vicinity of the site as well, including:
- Magnolia House, 143A Petersham Road (Grade II);
 - 143 Petersham Road (Grade II*);
 - The Coach House, 141 Petersham Road (Grade II);
 - Rutland Lodge, 145 Petersham Road (Grade II*);
 - St Peters Church, Petersham Road (Grade II*);
 - The Manor House, River Lane (Grade II);
 - Glen Cottage, River Lane (Grade II);
 - The Navigators House, River Lane (Grade II); and
 - Petersham Lodge, River Lane (Grade II).
- 5.102 Rose Bank, which is a residential property that directly adjoins the site to its north, is locally listed as a Building of Townscape Merit (“BTM”). Further to the west, The Old Stables on River Lane and Belvoir Cottage are also BTMs.

Heritage Assessment

- 5.103 The site has historically been a nursery - including when the area became a designated Conservation Area. The nurseries operate entirely hidden behind high brick boundary walls where activity has no impact on the setting of surrounding heritage assets.
- 5.104 The site’s operation forms part of the character of the area and extended opening hours for the café / restaurant will not detrimentally alter that character - particularly when Petersham Nurseries are lawfully entitled to open for those hours anyway for their A1 retail use.
- 5.105 As detailed in earlier sections, the evening use of the site has a very limited impact on traffic - with most visitors travelling via sustainable modes of transport - and further confirms there would be negligible to no impact.
- 5.106 Therefore, we contend that the alleged breach of condition does not cause harm to the significance of nearby listed and locally listed buildings or harm the significance, character, and appearance of the conservation area.
- 5.107 This was also the view of the Council, who write at paragraph 9.28 of their Enforcement Report (ref. 18/0025/EN/BCN) that:

“the current breach of condition is not considered to cause harm to the significance of nearby listed and locally listed buildings by virtue of the activity within their setting, or harm to the significance, character and appearance of the Conservation Area or Thames Policy Area” [own emphasis].

Impact on Residential Amenity

- 5.108 Policy LP8 seeks to protect adjoining properties from unreasonable loss of privacy, pollution, visual intrusion, noise, and disturbance. Policy LP10 goes on to write that environmental impacts of development must not lead to detrimental effects on the amenity of existing occupiers of surrounding land. The Richmond Development Control for Noise Generating and Noise Sensitive Development SPD (2018) confirms that the Council will seek to avoid significant adverse effects of noise on people living in the Borough.
- 5.109 The Council alleges that there will be adverse impacts on surrounding residential amenity as a result of the evening opening hours due to noise, disturbance from increased traffic generation and light pollution. As set out in the Statement of Common Ground, the basis for this assertion appears to be the written representations to the previous CLEUD application (ref: 21/3108/ES191) received from residents of Rose Bank Cottage and Rutland Drive.
- 5.110 It is noted that the resident of no.2 Rutland Drive (whom the Council suggest are a key sensitive receptor) has submitted a representation to the Inspector as part of this appeal process confirming that they have not been impacted in any way by the evening openings at Petersham Nurseries (this representation is included at Appendix 3 of this Statement). Given that no.2 Rutland Drive is less than 6m from the boundary of the Nurseries and directly adjacent to the area of additional seating, it is reasonable to assume that any properties located a greater distance from the site would also be unlikely to be adversely impacted in terms of residential amenity.
- 5.111 The Council has provided no quantitative evidence in the form of monitoring or vehicle counts to substantiate the allegations of residential amenity impact.
- 5.112 The Appellant fundamentally disagrees with the Council’s assertion that the proposed development will result in adverse residential amenity impacts, for the reasons set out below.

Noise

- 5.113 As detailed above, the current acoustic environment of the area is subject to ambient noise from a number of sources, including (but not limited to) aircraft taking off and landing at Heathrow Airport, traffic on the surrounding road network and commercial and residential uses in the surrounding area. The commercial uses include the operation of Petersham Nurseries.
- 5.114 With regard to the Nurseries, the noise directly attributable to the site comes from the following sources::
- (i) Site servicing (deliveries and collections including waste collections)
 - (j) Employee arrival and departure
 - (k) Customer arrival and departure

- (l) Activity from noise ancillary to the retail activity
- (m) Plant noise associated with the retail activities (incl. heating, ventilation and cooling)
- (n) Plant associated with the restaurant activities (incl. kitchen extract)
- (o) The retail activity, which includes customer movements, shopping trolleys, goods movements, and checkout activities
- (p) The café/restaurant activity, which includes customer movements and dining activities

5.115 As noted previously, the Appellant intends to instruct noise monitoring to be undertaken, and evidence will be submitted to demonstrate both the ambient noise levels and noise emissions from the evening restaurant operation on sensitive receptors (including neighbouring residential properties). It is anticipated that the monitoring will demonstrate that the evening operation of Petersham Nurseries will not cause an adverse impact on these receptors, in accordance with the limits set out in the Council's SPD.

5.116 In addition, when considering disturbance from noise, it is a material consideration that the restaurant use is licensed under the Licensing Act 2003. The Council, in its role as Licensing Authority, is required to carry out its various licensing functions to promote the following four licensing objectives which are:

- The prevention of crime and disorder
- Public safety
- **The prevent of public nuisance**
- The protection of children from harm

5.117 The Council, in its role as the local Licensing Authority, has granted a premises licence covering the opening hours of:

- Monday & Tuesday 09:00-17:00hrs
- Wednesday, Thursday, Friday & Saturday 09:00-23:00hrs
- Sunday 11:00-17:00hrs

5.118 Alcohol sales are permitted from 11:00-17:00hrs except on no more than 3 days per week, Wednesday to Saturday, when the hours for the sale of alcohol are 11:00-23:00hrs.

5.119 This separate regulatory regime means that there is a swift and powerful enforcement available in the event of breach of any of the licensing objectives and of conditions on the premises licence.

5.120 There is an opportunity for any member of the public (there is no vicinity test) to apply for a review of the premises licence at any time and this is a fast and inexpensive process. Such enforcement would not be available if the premises were solely a retail outlet without a premises licence.

5.121 Over several years, the restaurant use has been tested and there have been no noise (or other types of) complaints. Indeed, as the Environmental Health Officer commented in respect of application reference 14/0345/VRC:

“The owners of the premises have issued Temporary Event Notices (under the Licensing Act 2003) over the past 3 years for evening events and supper clubs and there is no record, on our system, of noise or other types of complaints associated with these events. This suggests that extended hours can be managed so as to limit any negative impact on amenity”.

5.122 In addition, the Appellants are committed to adhering to a stringent Evening Management Plan (see Appendix 11), which is reviewed on an annual basis (as required by condition of the Premises Licence) and includes the following measures (but not limited to):

- A minimum of 2x parking marshals are on duty from 17:00 until the last patron leaves the premises.
- Supper Clubs are attended only by guests with an advance reservation. Travel arrangements are therefore suggested and agreed with guests in advance.
- Guests are collected from their once their taxi has arrived for a swift departure.
- All vehicles arriving are advised by the parking marshals to switch off vehicle lights and engines.
- Employee incentives are used to encourage staff to travel to work via means other than by car.
- Guests are asked to depart respectfully no later than 23:00.
- Noise mitigation forms have been introduced to all staff to sign and agree to strict adherence to the noise mitigation policy in the form. This includes no use of mobile phones, no smoking, walking only in groups of four or under, until reaching Petersham Road.

5.123 This has - and will continue to - successfully manage and mitigate noise impacts associated with the evening operation of the site. The successful management of noise impacts is evidenced by the representation received from the resident of no. 2 Rutland Drive, confirming that they are not adversely affected by the evening operations despite being located only 6m from the boundary of the Nurseries site.

5.124 In summary, the ongoing management of the restaurant and evening operations are considered to successfully mitigate against any perceived harm to residential amenity, as per the requirements of Local Plan Policy LP8. This will be further evidenced with noise monitoring if required (to be determined upon receipt of the Council’s Statement of Case).

Traffic

5.125 The Council alleges that disturbance from vehicles movements adversely impacts residential amenity. The Appellant disagrees with this view. As noted previously, traffic surveys will be conducted and presented in evidence to confirm the number of vehicle movements associated with the evening operation of Petersham Nurseries. The number and location of movements will be reviewed to assess the potential disturbance to residential amenity.

5.126 As previously noted, the Evening Management Plan includes a number of measures to limit the number of vehicle movements, including discouraging customers from driving and advising them of the taxi drop off/pick up location to avoid neighbouring roads and limit access to the Nurseries via Church Lane. The Appellant considers that the Plan is successfully mitigating the potential impact of vehicle movements on residential amenity, in accordance with Policies LP8 and LP10. It is noted that the Council do not allege conflict with Policy LP10 (Local Environmental Impacts, Pollution and Land Contamination).

Lighting

5.127 In respect of lighting, it is noted that the Council have alleged that there will be an adverse impact on the residential amenity from lighting. It is unclear whether the Council considers that this comprises light from the artificial lighting associated with the Nurseries or from car headlamps.

5.128 The Appellant has engaged a lighting consultant to advise on the potential impact of lighting on residential amenity, and to ensure that the lighting design for the Nurseries complies with the relevant standards and recommendations, namely:

- ILP document GN01:21 'Guidance notes for the reduction of obtrusive light'.
- ILP document note 08/23 'Bats and artificial lighting in the UK'.
- BS5489-1:2020 Code for practice for the design of road lighting.
- BS EN 13201-1:2015 Road Lighting Part 2: Performance requirements.
- BS EN 12464-2:2014 Light and lighting. Lighting of workplaces. Outdoor workplaces
- CIBSE/ SLL Code for Lighting (Society of Light and Lighting):2022.
- CIBSE/ SLL Lighting Guides (and other relevant documents by CIBSE/SLL).

5.129 If required, a full artificial lighting assessment will be undertaken which will assess the impact of lighting from Petersham Nurseries on residential amenity and mitigation measures put in place to ensure compliance with Policies LP8 and LP10. It is noted that the Council do not allege conflict with Policy LP10 (Local Environmental Impacts, Pollution and Land Contamination).

Transport

5.130 Local Plan Policy LP45 requires development to minimise the impact of car-based travel, including on the operation of the road network and local environment, making the best use of the land.

5.131 As referenced within the Council's Committee Report for application reference 14/0345/VRC, previous transport surveys have supported the position that there is capacity within Church Lane to accommodate the number of cars wishing to park at the site during evening operations - and it has been accepted that overspill onto surrounding streets does not constitute a severe impact on transport grounds.

5.132 Similarly, the overall number of vehicle movements generated by the use was also considered to not give rise to any severe cumulative impact, as required in the NPPF, to justify refusal on transport grounds.

- 5.133 As acknowledged by the Council, the Green Travel Plan previously approved (including at Appendix 12) has also been successful in mitigating the impact of the mixed A1 / A3 uses and that no nuisance arises from the use. The extension of the operational hours into the evening do not exacerbate this position.
- 5.134 Notwithstanding this established position, updated Traffic Surveys will be submitted in evidence to demonstrate that the vehicle movements associated with the evening operation of Petersham Nurseries have a minimal impact on the operation of the road network and local environment, in accordance with Local Plan Policy LP45.

Very Special Circumstances

- 5.135 The NPPF confirms that inappropriate development in the Green Belt/MOL should not be approved except in very special circumstances. This is reiterated in Policy G3 and Local Plan Policy LP13.
- 5.136 Should the Inspector consider that the proposed development comprises inappropriate development in the MOL, then we contend that there are Very Special Circumstances which outweigh any perceived harm, as follows:
- (a) The proposed development provides significant economic benefits, as detailed in earlier sections of this Statement.
 - (b) The proposed development generates significant employment opportunities, both directly on-site and indirectly, through the local supply chain.
 - (c) The proposed development provides training and education opportunities, with the provision of apprenticeships.
 - (d) The proposed development will improve the existing restaurant offering to the benefit of visitors.
 - (e) The proposed development provides significant social benefits through charitable work and donations.
 - (f) The proposed development is inherently sustainable, comprising the enhancement of an existing successful business which has grown organically over many years. No new infrastructure or structures are proposed.
 - (g) The proposed development will enhance and expand an existing visitor attraction, improving the current tourism offer in Richmond and contribution towards the visitor economy.
 - (h) The success of the business is dependent upon the site-specific circumstances, the Appellant would not be able to relocate the restaurant element of the business elsewhere within the local area.
 - (i) The proposed development will not have an unacceptable adverse impact upon residential amenity in terms of noise, traffic, or light pollution.
 - (j) The proposed development will not adversely impact upon the Petersham Conservation Area or surrounding listed buildings, due to the nature of the site.

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

Ground (D) - “That, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters”.

5.138 We contend that the extension of evening hours / operations and seating areas is lawful and therefore there has been no breach of planning.

5.139 As set out in Section 3, the extension of evening hours / operations and seating areas has taken place for over a 10-year period. Indeed, an application to vary condition NS04 (hours of use) of LPA ref. 08/4312/FUL to include opening between 19:00 and 23:00 on Thursday, Friday and Saturday evenings was submitted to the Council in 2010 but was withdrawn on 11 August 2011 (LPA ref. 10/2914/VRC).

5.140 Whilst the application was not determined, an officer’s report had been prepared (see Appendix 5), which raised concerns regarding alleged impacts because of impact on the MOL and residential amenity. The report notes that evening restaurant openings have occurred for at least two years (which would extend to 15 years prior to the current day).

5.141 Further evidence that the evening openings and operational areas have been occurring on a continuous basis for more than 10-years is enclosed with this Statement of Case at Appendix 15. This will be discussed in more detail in evidence.

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

5.142 The Appellant maintains that the time to comply with the notice is too short. The principle of proportionality has not been applied by the Council in requiring the alleged breach of planning control to cease within 2-months after the Enforcement Notice takes effect - particularly given the Appellant’s prominent role within the local economy.

5.143 As detailed in earlier sections of this Statement, the profit associated with the evening restaurant trade is a cornerstone of the business. If this were to be lost, the likelihood is that Petersham Nurseries may have to close its entire operation or at the very least, significantly restructure their business model, to avoid making significant losses. In order to do this in a structured manner - in terms of making redundancies, fulfilling existing bookings in order to avoid potential contractual liabilities for defaults on the same, minimising operational losses (e.g. cancelling standing orders / deliveries from local suppliers), and potentially marketing the premises to a new purchaser - they should reasonably be allowed 6-months.

6.0 SUMMARY AND CONCLUSIONS

- 6.1 This Statement of Case has been prepared by hgh Consulting on behalf of Petersham Nurseries Ltd in support of an Appeal submitted under Section 174 of the Town and Country Planning Act 1990 (as amended) against an Enforcement Notice (ref. 18/0025/EN/BCN) served by the London Borough of Richmond upon Thames in respect of the site at Petersham Nurseries.
- 6.2 This Statement sets out the case on behalf of the Appellants in respect of the following Grounds of Appeal:
- **Ground (A)** - that, in respect of any breach of planning control which may be constituted by matters stated in the Notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged; and
 - **Ground (D)** - that, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters; and
 - **Ground (G)** - that any period specified in the Notice in accordance with section 173(9) falls short of what should reasonably be allowed.

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

- 6.3 As identified in this Statement, the extension of the restaurant operations (both evening opening hours and extended seating areas) comprises inherently sustainable development which makes the most effective use of land by intensifying an existing, successful, use, in accordance with Chapter 11 of the NPPF and London Plan Policy GG2.
- 6.4 The proposed development will not have any adverse socio-economic or environmental impacts in terms of noise, transport, heritage, or light pollution and the proposed operation will be carefully managed in accordance with the Appellant’s existing Evening Management Plan which sets out strict management procedures to limit potential disturbance. In addition, the proposed development will not adversely impact on the character of openness of the MOL.
- 6.5 The proposed development will result in significant benefits, including, but not limited to the following:
- Petersham Nurseries makes a significant contribution to the local economy, generating employment opportunities, both directly on-site and indirectly, through the local supply chain. These will be safeguarded through the grant of planning permission.
 - The Nurseries generate significant social benefits, and play a significant role in the local community, undertaking many charitable events and making contributions over the course of the last 20 years. These social benefits will be safeguarded for the future through the grant of planning permission.
 - The proposed development is inherently sustainable, comprising the enhancement of an existing successful business which has grown organically over many years. No new infrastructure or structures are proposed.

- The proposed development will enhance and expand an existing visitor attraction, improving the current tourism offer in Richmond and contributing towards the visitor economy.

- 6.6 It is considered that the substantial and wide-ranging benefits associated with the proposed development, as identified in this Statement, would significantly outweigh any adverse impacts when considering the planning balance of the proposals.
- 6.7 The proposed development accords with the policies of the NPPF, London Plan, Richmond Local Plan and Ham and Petersham Neighbourhood Plan for the details reasons and justification set out in this Statement, and planning permission should be granted for what is alleged in the Enforcement Notice. The appeal should therefore succeed on Ground A.

Ground (D) - “That, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters”

- 6.8 The Appellant contends that the extension of evening hours / operations and seating areas is lawful and therefore there has been no breach of planning. This is evidenced through the submission of information from the Appellant and also as noted within the Officer’s Report for application 10/2915/VRC, which noted that evening openings had been occurring for 2 years (a total of 15 years from the date of this appeal).
- 6.9 The operations cited within the Notice are lawful and the appeal should succeed on Ground D.

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

- 6.10 The Appellant maintains that the time to comply with the notice is too short. The principles of proportionality have not been applied by the Council in requiring the alleged breach of planning control to cease within 2-months after the Enforcement Notice takes effect - particularly given the Appellant’s prominent role within the local economy. The Appellant should reasonably be allowed 6 months to comply with the Notice.
- 6.11 The timeframe to comply with the Notice falls short of what should reasonably be allowed and the appeal should succeed on Ground G.



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