

F.A.O: **Debbie Jackson, Executive Director of Growth, Planning and Housing (djackson@westminster.gov.uk)**

Roald Piper, Planning Enforcement Team Leader (rpiper@westminster.gov.uk)

Subject: Your ref. 13/12442 - The Colonnades 26 Porchester Road London W2 6ES

Dear Ms Jackson and Mr Piper,

I write on behalf of local residents concerning the above planning application and in particular the Council's decision not to enforce Condition No. 9.

Planning Background

Planning permission was granted under ref. 13/12442 for the following:

Reconfiguration of the ground and first floors to provide a supermarket (Class A1) at part ground floor and first floor levels with three retail shop units (Class A1) and two restaurant/ cafe units (Class A3) at ground floor level, extension to Porchester Road and Bishop's Bridge Road elevations to infill existing colonnade and create entrance lobby to supermarket, infilling of basement vents to Bishop's Bridge Road, alterations to street facades, amendments to rear service yard, installation of mechanical plant and associated public realm works.

Permission was granted subject to several conditions, some of which relate specifically to noise output and the management of noise in relation to the amenities of nearby residential properties. Condition No. 9 states the following:

The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

Reason: As set out in ENV6 of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at section 9.76, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development.

The development includes amendments to the rear service yard and installation of mechanical plant, as stated in the Council's application description. The applicant's Planning Statement also outlines that this includes the movement of plant equipment inside the building.

Planning permission was granted by the Committee with the Officer's report outlining at Para 6.3.2 (Noise disturbance) that:

‘The scheme proposes new mechanical plant at basement level and new kitchen extraction equipment to serve the new restaurant/café and supermarket units. Environmental Health do not object to these proposals in principle. However, due to the scope of the development, although the existing background noise levels have been assessed as part of the application, the mechanical plant has yet to be specified and therefore it is recommended that a detailed supplementary acoustic report and full details of any additional attenuation measures that may be required are secured by condition to ensure that the proposed plant would comply with Policies ENV6 and ENV7 in the UDP and S32 in the City Plan.’

The officer’s report also concluded that alterations to the existing outdoor service yard would not cause additional noise and disturbance. Whilst the officer’s report concludes that the service yard would not be harmful, crucially it does not refer to the other works and the changes associated with the yard area and main building itself. These include the infill work and door creation, scissor lift and loading bay installation (which were rebuilt in the outside service yard and which result in more noise and disturbance compared to the previous loading bay within the covered service yard) and the alterations to the internal areas of the development site. At the time of the decision Policy 32 of the Consolidated City Plan, which constituted the Development Plan for Westminster alongside the London Plan, states:

The Council will work to reduce noise pollution and its impacts and protect Noise Sensitive Receptors from noise by: 1. Requiring development to minimise and contain noise and vibration; 2. Ensuring development provides an acceptable noise and vibration climate for occupants and is designed to minimise exposure to vibration and external noise sources; and 3. Securing improvements to Westminster’s sound environment, including protecting open space of particular value for their relative tranquillity.

The City Plan 2019-2040 supersedes this policy and outlines a similar objective within Policy 33 as follows:

“Development should prevent adverse effects of noise and vibration and improve the noise environment in compliance with the council’s Noise Thresholds, with particular attention to: 1. minimising noise impacts and preventing noise intrusion to residential developments and sensitive uses; 2. minimising noise from plant machinery and internal activities; 3. minimising noise from servicing and deliveries; and 4. protecting the relative tranquillity in and around open spaces.”

Key to the application, as outlined above, is the provision of plant equipment and amendments to the service yard, both of which aspects are specifically detailed in the application description. Also key to the consideration of noise is the use of the word ‘development’ within Condition 9, thereby implying that all aspects of the proposal should be subject to the requirements of the planning condition.

When granting permission, the officer and subsequently members of the committee saw it as necessary to impose Condition 9, which requires noise output from the development to conform to a specifically prescribed level when assessed from “within the same building or in adjoining buildings.” Members also considered it necessary to

impose Condition 8 requiring the submission of an acoustic report and Condition 12 requiring the developer to submit a servicing management plan for approval.

Questions to the Council

The development has now been completed and is causing significant levels of noise disturbance within the building, adjoining buildings and surrounding buildings, both during day and night, in contravention of the conditions imposed. Noise is particularly generated by a service scissor lift and loading bay built into the ground of the service yard and general activity within the service yard.

The imposition of Conditions 8, 9 and 12 are clearly intended to exert a control over the activity and functioning of the development in the interest of the amenities of local residents and occupiers of other land uses. Indeed, subsequently submitted details for Condition 8 (acoustic report) were refused in July 2020 as being insufficient to demonstrate that there would not be significant harm. The Council has more recently considered it expedient to enforce Condition 12 and a Breach of Condition Notice is currently being issued.

These conditions each relate to noise and local amenity. I would therefore request clarity as to why certain conditions are being enforced whilst others are not. In regard to Condition 9 specifically, this sets a prescriptive noise level range that is considered to be acceptable both within the building and in respect to adjoining buildings. The specific wording of this condition is clearly intended to prevent excessive noise around the site and in my professional opinion meets the tests of being necessary, relevant, enforceable, precise and reasonable when applying planning conditions, as outlined in the NPPF and PPG guidance.

The local residents that I am acting on behalf of have confirmed that at no time has the Council visited the site to measure noise output within the building and within adjoining buildings to ascertain compliance with the very clear wording of the condition. I therefore respectfully request an explanation as to why the conditions, particularly No. 9, are not being enforced in this case so that the amenities of local residents can be safeguarded.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Mellor', written over a light grey horizontal line.

Paul Mellor Bsc (Hons), MA, MRTPI
Volunteer - Planning Aid for London

Mr Paul Mellor

pdjm82@gmail.com

Please reply to: Danielle Cherry

Direct Tel. No: 07866035882

Email: dcherry@westminster.gov.uk

ENF ref: DP/PET/20/72862/H

DC ref: 16/09313/FULL

Date: 16th July 2021

Dear Mr Mellor,

**Town and Country Planning Act 1990
Planning (Listed Buildings and Conservation Areas) Act 1990
Re: Breach of Condition 9 of 16/09313/FULL - Noise levels at The Colonnades, 38
Porchester Road, London, W2 6ES**

I am writing in response to your letter dated 23rd June 2021.

It should be noted that the 2014 permission (City Council reference: 13/12442/FULL) was updated in 2017 through an application to vary conditions on the 2014 permission. Condition 9 was carried across, so we are considering Condition 9 of planning permission (City Council reference: 16/09313/FULL) for

'Variation of Conditions 16 and 17 of planning permission dated 9 October 2014 (RN: 13/12442/FULL) for reconfiguration of the ground and first floors to provide a supermarket (Class A1) at part ground floor and first floor levels with three retail shop units (Class A1) and two restaurant/ cafe units (Class A3) at ground floor level, extension to Porchester Road and Bishop's Bridge Road elevations to infill existing colonnade and create entrance lobby to supermarket, infilling of basement vents to Bishop's Bridge Road, alterations to street facades, amendments to rear service yard, installation of mechanical plant and associated public realm works. NAMELY, to allow amalgamation of Units 4 and 5 facing Bishop's Bridge Road to form one retail unit for use as a mixed retail shop and restaurant use (Sui Generis) (Site also known as Unit 4, Bishop's Quarter, Bishop's Bridge Road)' which was allowed at appeal.

Condition 9:

The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

Following receipt of the complaint regarding a breach of Condition 9, I too had made the

mistaken assumption that Condition 9 applied to the service yard and sent warning letters to Waitrose and The Colonnades advising that Condition 9 would need to be complied with. It was only upon receipt of a response from Waitrose and The Colonnades, in which they raised immediate concerns that Condition 9 had never been intended to control noise from the service yard that I then queried the intentions of the condition with the Planning Officer that determined the application and applied the condition in question.

The Planning Officer confirmed that Condition 9 had not been intended to control noise emanating from the service yard and that the Servicing Management Plan (Condition 12) had been imposed to control all amenity concerns relating to the service yard. The reason that it had been concluded in the 2014 permission that the proposed service yard would be no worse than the pre-existing situation was that (i) there were no conditions requiring the partially covered servicing area to be used for the act of loading and unloading and (ii) this meant, along with a lack of manoeuvring space (which the applicant evidenced in their TS), that large articulated lorries Waitrose were already using to service the site by 2014 were lawfully being loaded and unloaded in the open part of the service yard area and carted into the store via the open ended covered part of the service yard. It is therefore the view of the Local Authority that in the 2014 permission, there was no development within the yard that would result in intensification of its use relative to the previously unrestricted use of the original yard.

Furthermore, disputed Condition 9 specifically refers to the 'design and structure' of the development and goes on to reference that it should '...protect residents in the same building...' clearly inferring that 'development' is to be read as a building or other enclosed structure permitted by the 2014 permission for the purpose of the condition.

It should also be noted that if condition 9 had been intended to control noise emanating from the service yard, then the hours applied to condition 9 would have been different. The Servicing Management Plan controlled by Condition 12 requires the service yard to be used for deliveries between 7am and 7pm only. Condition 9 refers to both daytime and night-time noise levels meant for controlling noise emanating from within the building which could occur throughout the daytime and the night-time when the store is being replenished.

Noise monitoring:

Given the above conclusions, I presented both the residents' concerns and the Planning Officer's response to the City Council Legal Team and asked for a Legal opinion as to whether or not condition 9 would be enforceable against noise emanating from the service yard. The City Council Legal team confirmed that condition 9 could not be enforced against the service yard and subsequently, the enforcement investigation into condition 9 was closed. As such, I did not reach the stage of the investigation where I would usually put in a request to the City Council Noise Team to carry out noise monitoring in relation to a breach of a planning condition.

The City Council Noise Team have received in the region of 400 noise complaints over the past year. However, all of these complaints have been made anonymously and, as such, the noise team have been unable to visit the resident's property to undertake the necessary noise monitoring to determine whether there is a statutory noise nuisance. I have repeatedly advised the residents that the Noise Team will only be able to investigate and carry out noise monitoring where details of the complainant's address and contact information are provided, but the complaints have continued to be submitted anonymously.

I have inspected the service yard with a City Council Noise Officer to listen to the noise coming from the scissor lift alone and the Noise Officer confirmed that the noise from the scissor lift does not comprise a statutory noise nuisance.

Servicing Management Plan (SMP)

The Planning Enforcement Team have taken and continue to take the complaints regarding the noise concerns from the service yard very seriously and are working very hard to resolve any breaches of the SMP. This has been a particularly difficult year for supermarkets and there have been Ministerial Statements put in place by the Government protecting food suppliers from enforcement action throughout the pandemic. Whilst there have certainly been a large number of breaches of the SMP, some of the breaches have taken place for reasons beyond the control of The Colonnades or Waitrose due to staff isolating, warehouses being closed down and extra deliveries needing to be made where there has been increased demand during the periods of lockdown. This does not excuse all of the breaches and we will continue to work to ensure that we balance the needs of the business and the needs of residents (who have, for the most part had to stay within their homes for the past year) as best we can.

Whilst the SMP cannot control the noise from the scissor lift, the scissor lift was broken when we first received the complaint in 2020 and has since been fixed and is being regularly and pro-actively serviced to prevent further breakdown. The Colonnades have hired a full time (7am-7pm) security team for the service yard to ensure the SMP is complied with at all times. Waitrose have recently installed a noise insulating roller shutter, acoustic matting and have insulated the louvres in the wall that faces the service yard to further reduce any noise escape from within the delivery area. Waitrose have also cancelled contracts with third party suppliers who have been proven to contravene the SMP.

An application has recently been submitted to the City Council to vary the SMP and once the application has been validated, the residents will be consulted on it.

Yours sincerely



For **ROALD PIPER**
PLANNING ENFORCEMENT TEAM LEADER

F.A.O: **Debbie Jackson, Executive Director of Growth, Planning and Housing (djackson@westminster.gov.uk)**

Roald Piper, Planning Enforcement Team Leader (rpiper@westminster.gov.uk)

Subject: **Your ref. 13/12442 - The Colonnades 26 Porchester Road London W2 6ES**

Dear Ms Jackson and Mr Piper,

Thank you for your letter dated 16th July 2021 in response to my complaint concerning the above. Upon further review of your response, I have the following additional points and queries to raise and I would appreciate your further consideration of these.

The council states that the wording of Condition 9 is a mistake and that it does not relate to the service yard. The case officer has stated that the condition should be worded to say 'building' rather than 'development'. However, if the development excludes the service yard, the features within it including the scissor lift and loading bay are new, constructed as part of the 2013 permission and subsequent 2016 variation permission. As the decision cannot be reissued, a formal process would be required to remove or vary the condition's wording.

The 2016 variation of condition application was allowed on appeal, with the Inspector imposing an identically worded Condition 9. This implies that the council requested this condition to be added should the Inspector allow the appeal, thereby contradicting the view given that this condition is erroneous. It also confirms that the Inspector considered this condition (in its exact wording) to meet the tests of imposing planning conditions (i.e. reasonable, enforceable, necessary).

Condition 12 does not stipulate a 7am-7pm activity time for the service area. This condition was worded to require the applicant to submit a SMP. This document subsequently provided delivery times. It is therefore the case that the times of activity in the service yard were not known when Condition 9 was worded for the purposes of issuing a decision. This is also contrary to the advice you have provided and again supports the separate consideration and requirement for Condition 9.

The wording of Condition 9 is clear in its intention to protect the amenities of residents within the building and within adjoining buildings. This reason is differently worded to the reason given for Condition 12 and should be treated as a separate issue in its own regard, particularly in light of the huge number of complaints you have received concerning noise.

In addition, the following points of fact and correction are raised.

1. The committee report states in section 6.4.4 "the applicant cites that the layout of the existing service yard requires articulated lorries to be reversed into the service yard (they cannot enter in forward gear) and then carry out multiple manoeuvres to enter the covered section of the service yard where the existing servicing bay is located."

This is contrary to your position stating that articulated lorries were loading and unloading on the open service yard and transporting them into the covered area. This is also not stated in the committee report. Loading under the covered area would assist in reducing noise in compliance with the conditions.

2. The Colonnades was designed with the loading bay within the roofed section of the yard so that unloading can occur under the roof, not elsewhere in the yard with the transportation of deliveries around to it. There may be issues of lawfulness if there are noise issues and nuisance caused to residents from the yard which is in shared ownership with residents. There were also previously fewer deliveries and smaller lorries.

I appreciate that the council has taken the view that Condition 9 need not be enforced, however in light of the above points I would respectfully request further consideration is given to these issues.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Mellor', written over a horizontal line.

Paul Mellor Bsc (Hons), MA, MRTPI
Volunteer - Planning Aid for London

Mr Paul Mellor

pdjm82@gmail.com

Please reply to: Danielle Cherry

Direct Tel. No: 07866035882

Email: dcherry@westminster.gov.uk

ENF ref: DP/PET/20/72862/H

DC ref: 16/09313/FULL

Date: 14th September 2021

Dear Mr Mellor,

**Town and Country Planning Act 1990
Planning (Listed Buildings and Conservation Areas) Act 1990
Re: Breach of Condition 9 of 16/09313/FULL - Noise levels at The Colonnades, 38
Porchester Road, London, W2 6ES**

I am writing in response to your letter dated 30th July 2021. Please accept my apologies for the delay in responding.

You are correct that the Officers have confirmed that in hindsight, the word 'building' should have been used in Condition 9 instead of 'development'. By way of further explanation of how the erroneous wording was arrived at, I can advise that the wording of Condition 9 is taken from the Council's list of standard conditions (which is published on our website – see condition C49BA) and this condition is intended to be used to prevent noise transference between uses within a new development. In this case the wording of the standard condition should have been tailored to accurately reflect that the purpose of the condition was to prevent noise transference between the enlarged supermarket use and other uses within the existing building. Therefore, whilst the Planning Enforcement Team could invite the applicants to apply to vary the condition to amend the wording of the condition from 'development' to 'building', the City Council has concluded that it cannot reasonably require or sustainably enforce that they do this.

In reference to your point concerning the decision made by the Planning Inspectorate to allow a subsequent S73 application, the City Council are unable to comment on the detailed considerations undertaken by the Inspector in resolving to allow the appeal in 2017. I would note though that the erroneous nature of the wording of this condition had not come to the attention of officers at the time of the appeal, hence officers were unable to suggest a corrected version of the condition to the Inspector. It is agreed that the condition meets the relevant tests for planning conditions, but it can only be enforced for the purposes that it was intended.

The Servicing Management Plan is a document that was approved by the City Council pursuant to Condition 12 and it specifically includes the times during which the service yard is permitted to be operational. As explained previously and in the opening paragraph of this letter, Condition 9 is not intended to be applicable to the service yard. It is correct that Conditions 9 and 12 should be treated separately, as they were applied to tackle separate issues, Condition 9 to

prevent noise transference within the building and Condition 12 to control activity and resultant noise from the activity occurring within the service yard.

In terms of clarification point '1' in your letter, the text in the committee report from 2014 focuses on explaining the challenges that were faced by modern articulate lorries when attempting to use the former covered section of the service yard for its originally intended purpose as a servicing bay. In practice, as observed by officers on site in February 2013, the covered portion of the former service yard had ceased to be used by larger articulated lorries for delivery of stock to the Waitrose store due to the manoeuvring difficulties explained in the committee report. Instead, it had become established as an ancillary area for the following activities: storage of bins and baled waste, provision of compactors for compacting of waste/ recycling, storage of stock trolleys and crates, provision of mechanical plant, storage of some non-food stock, loading of smaller home delivery sized vans and parking of employee vehicles (see photographs taken on 13th & 17th February 2013 in Appendix 1). There were no planning conditions controlling the use of the former service yard.

You will appreciate from the explanation above and from the photographs provided in Appendix 1 that whilst the committee report did not expressly refer to servicing of articulated lorries being undertaken in the uncovered area by the time of the 2013 application, this was occurring owing to the multiple other uses occurring in the covered area. In the absence of any planning conditions controlling the use of the former service yard, the cessation of the use of the covered area for the loading or unloading of goods did not breach any planning controls.

In respect of clarification point '2', as set out in response to point '1', the covered area of the original service bay was demonstrated to be difficult to access for articulated vehicles and had fallen out of use for servicing of larger vehicles prior to the 2013 application. Allied to this there were no planning conditions requiring it to be used in the way originally intended. It was in this context and having regard to the rise in servicing activity set out in the submitted Transport Statement, to which the Highways Planning Manager did not object (see page 10 of the committee report), that the open service yard was found to be acceptable.

In conclusion, the City Council's position remains that the planning enforcement investigation into Condition 9 is closed and will not be enforced against the service yard. The City Council is of the view that should an enforcement notice be served against noise from the service yard in breach of Condition 9, the notice would be appealed successfully.

The City Council is not averse to taking the appropriate action to alleviate noise nuisance being caused by the service yard, but this needs to be progressed through the appropriate mechanisms, which are; through tackling any breaches of Condition 12 and the SMP, which is currently being resolved, and also through an Environmental Health investigation into whether there is a statutory noise nuisance. Both Planning Enforcement and Environmental Health have advised your client that in order to progress investigations by the Environmental Health team to assess the noise and establish whether there is a nuisance, your client needs to provide contact details when making the complaint. Of all of the roughly 400 complaints made to the noise team to date, every complaint has been made anonymously, which has meant that noise assessments have never taken place and the Noise Team/Environmental Health Team investigations have never progressed. It is therefore strongly recommended that your client contacts the City Council Noise Team with a new noise complaint along with contact details so that noise monitoring equipment can be set up in your client's property to obtain a formal assessment of the noise.

Yours sincerely

D Cherry

For **ROALD PIPER**
PLANNING ENFORCEMENT TEAM LEADER

Appendix 1 – Photographs of Former Service Yard



Photo 1 - View from Porchester Road – 13 February 2013



Photo 2 – View into Covered Service Yard (1 of 3) – 17 February 2013



Photo 3 – View into Covered Service Yard (2 of 3) – 17 February 2013



Photo 4 – View into Covered Service Yard (3 of 3) – 17 February 2013

2021-09-22

F.A.O: **Debbie Jackson, Executive Director of Growth, Planning and Housing (djackson@westminster.gov.uk)**

Subject: **Your ref. 13/12442 - The Colonnades 26 Porchester Road London W2 6ES**

Dear Ms Jackson,

I refer to a letter from Planning Enforcement dated 14th September 2021 in response to my complaint concerning the above. Upon further review of the response (all correspondence attached), I consider it necessary to escalate the complaint officially to the Head of Planning as I have the following queries to raise that have not been adequately answered to date. I would therefore appreciate your further consideration of these and a response within 14 days.

Condition 9

The first issue relates to the imposition of Condition 9 of the above planning application and the Council's failure to enforce this. For reference, Condition 9 reads as follows:

‘The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.’

As you will see from the correspondence to the Enforcement Department to date, the Council has taken the view that the condition is incorrectly worded and that it will not be pursuing the enforcement of the condition, either in respect to the amenities of other uses within the building of the development or in respect to adjoining buildings.

The Council asserts that the condition has been incorrectly worded and that it should refer only to the amenities of uses within the same building, rather than the adjoining surrounding buildings. It also asserts that the condition must only relate to the ‘building’ in question and not the ‘development’ as described.

I hereby respectfully write again to enquire as to the reasons why the Council considers it unnecessary to enforce this condition. I also provide further information and evidence that requires the consideration of the Council.

Within the previous letter, the Enforcement Department has outlined that it is not averse to using appropriate mechanisms to control noise and disturbance that results from a development. In this case, Condition 9 is the appropriate mechanism to control noise to under 35 dBs, as the condition states. However, the Enforcement Department has attempted to clarify that this condition was imposed erroneously. You will notice from my previous correspondence that an appeal was allowed whereby the Inspector concurred with the use of this condition, which was suggested and worded by the Council, and imposed it on his appeal decision accordingly.

The Council asserts that a word in the condition should have been different to that on the decision notice, and that the condition was erroneously used after being lifted from the Council's list of standard conditions. On inspection of this list, it is clear the condition used is not a standard condition and is in fact a bespoke one, therefore implying that the wording required a degree of professional input to tailor it to the specific noise issues related to the development to ensure it may be granted permission. The Enforcement Department's view that the intention of the condition is different to the wording that appears on the decision notice must therefore be open to complete scrutiny and the decision altered only by official means by way of a variation or removal of condition application.

The Council also asserts that the condition must relate only to the building rather than the development, however the wording of the condition demands otherwise. The planning application's description of development includes "amendments to rear service yard, installation of mechanical plant." As the decision notice is a legal document and the wording of the condition has not been formally amended, it stands that the condition is valid and should be enforced accordingly. You will see from the last letter sent by the Enforcement Department (14th September 2021), which included site photos, that the scissor lift and loading bay were not present at the site prior to the 2013 planning permission and were built as part of the development.

The imposition of Condition 9 must therefore have been considered to meet the tests for imposing planning conditions (i.e., reasonable, relevant, enforceable etc). This condition has been used both by the planning department and the Inspectorate at appeal stage, is specific and direct in its requirements and has not at any point up to now been considered erroneous. In fact, reference to the requirement to comply with Condition 9 is noted as recently as May 2021 in a letter to the applicant approving a non-material amendment application.

My final point on the imposition of Condition 9 is that, even if the different wording is varied and accepted, it still requires the noise levels within the building to be kept to below 35dB. From the large number of noise complaints your department has received, this is not considered to be the case. At no point has the Council implied that the condition should not have been imposed in any form, and indeed the reference to the standard conditions includes a clear indication of the need to assess noise impact (Condition C49BA).

In conclusion, it is considered that Condition 9 is valid and that it is unreasonable not to enforce adherence to it, both in respect to the building itself and the other associated aspects of the development including new works to the service yard and change of use. The Enforcement Department's comment that an appeal against the condition would be successful is unreasonable and both undermines the tests for using of planning conditions and pre-empts an appeal process. It is also incorrect to refer to the lack of conditions previously relating to the service yard as a justification to overlook any conditions imposed by the recent permissions that now restrict it. To do so ignores the original considerations necessary to consider the development acceptable.

Condition 12

Matters relating to Condition 12 (service management plan) are also inadequately addressed in the response from the Enforcement Department. Condition 12 does not stipulate activity levels of 7am to 7pm and there was no approved SMP at the time of the decision. It is therefore the case that the times of activity within the service yard were unknown when Condition 9 was worded for the purpose of issuing the decision. It is therefore incorrect for the Council to state that the SMP operation times indicate that Condition 9 does not include the service yard. This crucial point is avoided in the latest response.

In addition, despite the many breaches, objections and complaints lodged by residents (over 400 as the Council acknowledges) the Enforcement Department has still not issued a Breach of Condition Notice in this regard. The latest correspondence I am aware of from the Council on this matter states that the enforcement proceedings have been held in abeyance as the applicant is seeking alterations to the SMP which will in likelihood affect the residents negatively. This matter has been on-going for over 17 months and an update on either the proposed SMP or the enforcement notice proceedings is therefore requested.

There is no evidence that the articulated lorries were not previously unloading in the covered loading bay as outlined in the Council's response. The area is certainly large enough to do this and it is not reported in the original Committee report (which states clearly that they are required to use it). The Enforcement Department says that the photographs attached to their letter show that the area was not used for unloading. The photos do not show that. The photo of toilet rolls does not prove that they were not unloaded in the covered area. The photos do not show employee vehicles in the covered area or any lorries unloading in the open area, which is causing the greater noise issue (there was a designated car park at the time). Therefore, the Enforcement Team's photos do not provide proof of the claim that is made within the letter, namely that the covered loading bay had previously become an ancillary storage area and that unloading was undertaken in the uncovered area of the service yard. This is not what has been experienced by the residents I represent when making these observations. These assertions made by the Council divert from the main issue relating to the noise generated by the scissor lift and loading bay, which are specific items constructed within the service yard and are in breach of Condition 9.

The Council has not therefore provided evidence that the use of the covered loading area has been historically used for ancillary purposes aside from unloading. The site plan for both permissions shows the covered area (even with refuse bins) had a manoeuvring space wider than the current manoeuvring space. It is due to the development constructed on permissions 13/2442/FULL and 16/09313/FULL that the applicant is now no longer using the covered service area to unload and is breaching Condition 9 consequently. There were low levels of noise prior to the development and unloading within the covered area, as verified by residents.

Conclusion

As a means of providing a constructive solution, it is considered that the amenities of residents in the buildings above the service yard, and the amenities of residents in surrounding areas, could be vastly improved by the installation of an acoustic barrier/ roof and other sound-dampening options within the service yard. I would also again request that the complaints raised by neighbours be investigated fully, including thorough evidence gathering of the noise levels over 35 dB LAeq experienced by the neighbours.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Mellor', written in a cursive style.

Paul Mellor Bsc (Hons), MA, MRTPI
Volunteer - Planning Aid for London

Mr Paul Mellor

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Enf Ref: DP/PET/20/72862/H & DP/PET/
20/73125/H

DC Ref: 13/12442/FULL

Date: 19th October 2021

Dear Mr Mellor,

Town and Country Planning Act 1990
Planning (Listed Buildings and Conservation Areas) Act 1990
Re: The Colonnades, 26 Porchester Road, W2 6ES
Complaint reference: 22565501

I write by way of formal response to your complaint set out in your email dated 22nd September 2021, which has been passed to me for investigation under Stage 1 of the City Council's complaints procedure. The investigation into your complaint is now complete and I comment as follows.

Decision

Your complaint is Not Upheld.

Condition 9

'The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.'

Reason

'As set out in ENV6 of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at section 9.76, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development. (R49BA)'

Further to the letters of response dated 16th July 2021 and 14th September 2021, the following responds to the additional matters raised in this complaint in reference to Condition 9.

Condition 9 was applied to the 2014 planning permission to control noise transference between the differing uses within the building (i.e. the supermarket at Ground and First levels and the residential use at upper levels). Condition 9 was applied as a standard condition under code

(C49BA). It should have been noted in the previous letter that this code has been recently updated (April 2021) to (C49BB) following the adoption of the new City Plan. This would explain why the condition appeared to have different wording when you recently reviewed it.

Code C49BA: (wording at the time of 2014 permission)

<p>C49BA The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB $L_{Aeq,16\text{ hrs}}$ daytime and of more than 30 dB $L_{Aeq,8\text{ hrs}}$ in bedrooms at night.</p>	<p>R49BA As set out in ENV6 of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at section 9.76, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development. (R49BA)</p>
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Code C49BB: (current revised wording following implementation of City Plan April 2021)

<p>C49BB The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB $L_{Aeq,16\text{ hrs}}$ daytime and of more than 30 dB $L_{Aeq,8\text{ hrs}}$ in bedrooms at night. Inside bedrooms 45 dB L_{Amax} is not to be exceeded more than 15 times per night-time from sources other than emergency sirens. (C49BB)</p>	<p>R49BB To ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development, as set out Policies 7 and 33 of the City Plan 2019 – 2040 (April 2021) and the draft Noise Technical Guidance Note (November 2019). (R49BB)</p>
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The following screenshot demonstrates that the standard condition (that cannot be edited) (C49BA) was used for the 2014 permission. It also demonstrates the description on the system ‘noise impact from within building’ which explains why this standard condition was chosen. Accordingly, whilst the Planning Enforcement Team could invite the applicants to apply to vary the condition to amend the wording of the condition from ‘development’ to ‘building’, the City Council has concluded that it cannot reasonably require or sustainably enforce that they do this.

The screenshot shows a planning application interface with the following details:

- App No.:** 13/12442/FULL
- U.P.R.N.:** 010033571330
- Status:** PER - Application Permitted
- Address:** The Colonnades, 26 Porchester Road, London
- Proposal:** Reconfiguration of the ground and first floors to provide a supermarket (Class A1) at part ground floor and first floor levels with three
- Recommendation:** PER - Application Permitted
- Decision Type:** COMS - Sub-Committee
- Officer:** DC_OG - Oliver Gibson
- Date:** 20.02.2014
- Committee Date:** 11.03.2014

The 'Conditions or Reasons for Rejection' table is as follows:

Sequence	Type	Recommendation
9	C	C49BA - Resi - noise impact from within building
9	R	R49BA - Resi - noise impact from within building
10	C	C22FA - Provide cycle parking

The description of development includes amendments to the service yard and the installation of mechanical plant. The amendments to the service yard comprised the proposed infill of the previously covered area of the service yard. This covered area now forms part of the building and not the service yard. The mechanical plant is at basement level and is controlled by conditions 6 and 8. The scissor lift was a new installation in the service yard and is controlled by the requirements of the Servicing Management Plan. The Scissor lift has also been

monitored by a City Council Noise Officer and it was determined that the noise from the scissor lift does not comprise a Statutory Noise Nuisance.

Condition 9 is not the appropriate method to control the noise from the service yard because it was not applied to the planning permission with that intention. The appropriate methods to control noise from the service yard are through Condition 12 (the Servicing Management Plan) and through the City Council's Environmental Health Noise Team.

To date, this complaint has related solely to enforcing Condition 9 for noise emanating from the service yard which is why it has not been enforced. The Planning Enforcement team have not received reports that Condition 9 has been breached in relation to noise transference from within the building (between the supermarket and residential uses). If this is the case, the resident would need to report this to planning enforcement directly so that noise monitoring can be organised and undertaken from the resident's property.

The previous lack of conditions on the service yard was not referred to as a justification for overlooking the current conditions, it was referred to by way of explanation as to why it was not considered by the Local Planning Authority, that in the 2014 permission, there was any development in the service yard that would result in an intensification of its use, relative to the previously unrestricted use of the service yard.

Condition 12

"You must permanently operate the development and manage the service yard in accordance with the Servicing Management Plan that we approved on 11th February 2015 (14/12071/ADFULL), unless or until we approve an alternative Servicing Management Plan in writing".

Reason:

"To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in S41 of Westminster's City Plan: Strategic Policies adopted November 2013 and STRA 25, TRANS 20 and TRANS 21 of our Unitary Development Plan that we adopted in January 2007. (R23AC)"

It is correct that the hours defined in the Servicing Management Plan (7am to 7pm) were approved after the imposition of Condition 9. Conditions 9 and 12 were imposed on the permission dated 9th October 2014 and the Servicing Management Plan was approved (ref: 14/12071/ADFULL) on 11th February 2015. However, Condition 9 was imposed to control noise transference from within the building, not the service yard. Should Condition 9 have been intended to control noise from the service yard, consideration would have been had for the hours of operation of the service yard at the time of imposing Condition 9 and a bespoke noise condition would have been applied.

Furthermore, the committee report written at the time of imposing Conditions 9 and 12 confirms that *'it was not considered that the amended service yard would give rise to significant additional noise disturbance'* (see extract below). This conclusion was reached on the basis that officers had established during the application that the covered section of the service yard was no longer being used for loading and unloading and there were no planning conditions attached to the original permission for the Colonnades to control servicing arrangements within the servicing yard. In this context, a condition going beyond the requirements set out in Condition 12 was not considered to be capable of meeting the tests for planning conditions as set out in the NPPF.

The proposed alterations to the service yard would reduce its overall size. However, the service yard is already an open area and therefore it is not considered that the amended open service yard would give rise to significant additional noise disturbance (subject to successful resolution of officer's current concerns regarding waste and recycling storage – see Section 6.4.4 of this report).

Over 480 complaints have been made to the City Council Noise Team, not the Planning Enforcement Team. A breach of condition notice for Condition 12 has been prepared and approved by the City Council Legal Team and is ready for service if required. At the time that the notice was about to be served, Waitrose and The Colonnades submitted an application: (City Council reference: 21/04074/FULL) *'Variation of condition 12 of planning permission dated 21 December 2016 (RN: 16/09313/FULL) which itself varied conditions 16 and 17 of planning permission dated 9 October 2014 (RN: 13/12442/FULL) for reconfiguration of the ground and first floors to provide a supermarket (Class A1) at part ground floor and first floor levels with three retail shop units (Class A1) and two restaurant/ cafe units (Class A3) at ground floor level, extension to Porchester Road and Bishop's Bridge Road elevations to infill existing colonnade and create entrance lobby to supermarket, infilling of basement vents to Bishop's Bridge Road, alterations to street facades, amendments to rear service yard, installation of mechanical plant and associated public realm works. Namely, amendments to wording of condition 12 to allow the review of the operation and management of the servicing area at the Colonnades and to reflect modern delivery and servicing arrangements.'*

The application remains under consideration at the current time. Prior to making the application Waitrose and The Colonnades met with the Planning Enforcement Team to review all of the residents' concerns and breaches in detail and a proposal was put forward by The Colonnades to ensure compliance with the Servicing Management Plan whilst the application to vary Condition 12 is assessed and determined. Following this meeting in June 2021, the Planning Enforcement Team have not received any further complaints regarding the use of the service yard or breaches of the Servicing Management Plan. There is a constant dialogue between The Colonnades, Waitrose and the Planning Enforcement Team regarding any events/issues that arise beyond the control of the Colonnades that could raise cause for concern and the Council is maintaining a log of all these incidents. It is therefore reasonable and proportionate to hold further enforcement action (including the service of the breach of condition notice) in abeyance at the current time whilst the application is being determined.

Servicing Arrangements Prior to and During the 2013 Application

In respect of the location of servicing activity at the time of the 2013 planning application, as set out above, the principal material consideration when assessing the application was the degree of planning control over the servicing activities within the original 'L' shaped servicing yard. As there were no planning conditions imposed on the original planning permission for the Colonnades to control the location of servicing within the yard, the noise emanating from servicing activity, or the hours during which the servicing could take place, the amendments to infill the covered section of the yard and associated alterations to the yard were considered to be acceptable, subject to the imposition of Condition 12 to control the impacts of servicing on the highway and the amenity of neighbours. The committee report does not state, as you assert, that Waitrose deliveries were 'required' to use the covered servicing area (i.e. the report

does not infer that there was any requirement pursuant to a planning condition or obligation for servicing to occur within the covered area).

With regard to your observations regarding the compatibility of the metal framed storage rack and refuse bins shown in the photographs appended to the recent correspondence from the Planning Enforcement Team with the tracking diagrams provided in the Transport Statement supporting the 2013 application, these are accepted. However, your observations disregard the presence of other substantial items shown within the covered section of the yard, some of which are not readily moveable, such as the refuse baler and compacted recycling located on pallets. Officers observed on site in 2014 that these, along with the more mobile items shown, served to obstruct access to the covered servicing bays and indicated that the covered servicing bay were unlikely to be in regular use at that time.

Noise

There have been 495 noise complaints during the course of 2020-2021, linked to Porchester Road with 482 of these relating to noise from commercial premises. Review of these complaints indicates that almost all relate to Waitrose, an average of over 2 a day, with some days seeing far more. The complaints have all been made anonymously and have therefore been closed as there is no recipient to constitute a statutory nuisance.

The Noise Service operate under the provisions of the Environmental Protection Act 1990. This act enables a local Authority to investigate a complaint of noise nuisance and if a Statutory Nuisance is identified, serve an Abatement Notices on those responsible requiring the nuisance to be abated.

To substantiate a Statutory Nuisance, officers need to be satisfied that noise emitted from premises is causing an unreasonable interference with the use or enjoyment of neighbouring property. To be satisfied of an existence of a Nuisance, officers must therefore assess the noise from within an affected person's property. With anonymous complaints this is not possible. As a result, officers must then assess whether the noise is *likely* to cause a nuisance within a neighbouring property. During the investigation of this complaint officers have only received anonymous complaints and have therefore responded by assessing the noise externally. The noise has been assessed externally on various occasions. The Noise Team have had officers observing the goods yard entrance and have engaged with the on-duty manager for Waitrose. On no occasion have the investigating officers been satisfied that the noise was *likely* to constitute a Nuisance. Therefore, under the provisions of the Environmental Protection Act 1990, we have not been able to take any further action.

In addition, the Noise Team have attempted to call the mobile number provided on these complaints. The resident(s) refused to provide their name or address and the Noise Officer advised that they could not proceed with investigating these complaints without these details.

Current Position

Whilst a suggestion to cover the service yard with a roof could be (and has been) suggested to The Colonnades, the Planning Enforcement Team do not have the powers to require and/or enforce such additional development. Breaches of Conditions 9 and 12 have been thoroughly investigated and the investigation into Condition 9 has been subsequently closed. Should a

complaint be received regarding a breach of Condition 9 in relation to noise transference from within the building, a new investigation will be opened, and noise monitoring will be undertaken from the complainant's property. The investigation into Condition 12 is ongoing and will continue to be held in abeyance whilst the application is being determined.

Conclusion

This completes Stage 1 of the City Council's complaint procedure and in this instance, for the reasons I have set out in this letter, your complaint is not upheld because Conditions 9 and 12 have been thoroughly investigated and enforcement action in relation to Condition 12 is ongoing. If you wish to discuss this matter further the contact details of the planning officer investigating this matter are at the top of this letter.

Your complaint has been investigated under Stage 1 of the council's complaints procedure. If you remain dissatisfied with the outcome of this Stage 1 Complaint you can request a Stage 2 Chief Executive review by writing to: The Complaints Team, 19th Floor, City Hall, 64 Victoria Street, London SW1E 6QP, or tel: 020 7641 1911, or e-mail: stage2complaints@westminster.gov.uk, who will review your complaint further.

Yours sincerely

A handwritten signature in black ink that reads "Deirdra Armsby". The signature is written in a cursive style with a small dot above the 'i' in "Deirdra".

Deirdra Armsby
Director of Place Shaping and Town Planning

2021-10-26

F.A.O: **Debbie Jackson, Executive Director of Growth, Planning and Housing (djackson@westminster.gov.uk)**

Stage 2 Chief Executive Review, The Complaints Team
stage2complaints@westminster.gov.uk

Subject: **Your ref. 13/12442 - The Colonnades 26 Porchester Road London W2 6ES**

Dear Ms Jackson, Sir/Madam,

I refer to the Stage 1 Complaint letter dated 19th October 2021 concerning the above. Upon further review of the response (all correspondence attached), I consider it necessary to escalate the complaint officially to the Stage 2 complaint procedure as there are several incorrect statements and discrepancies in the reply. The incorrect statements are outlined below and should be considered alongside the correspondence trail I have attached. I would therefore appreciate your further consideration of these and a response within 14 days.

Discrepancies

Condition 9

You have acknowledged in your Stage 1 Complaint response that the scissor lift and attached lorry bay were built on the open service yard as part of the development, therefore it stands that these items are a part of the development constructed under permission refs. 13/12442 and 16/09313. It also stands therefore that these items are covered by Condition 9, which relates to the entire development.

In 2020 the Council lawyer stated there was no clear rationale for Condition 9 in the committee report. The report, decision notices and legal agreement (S106) did not state that the condition refers to the transference of noise from within the building as the Council's latest response claims. This stance is only mentioned in hindsight by Mr Oliver Gibson in 2020. It is understood that the Council's position is to disregard Condition 9 as incorrectly worded, however Mr Gibson clearly thought the wording of Condition 9 included the service yard. As he stated in 2020, he made a mistake with the wording and the word 'development' should be replaced by 'building'. I would reiterate that conditions cannot be changed informally in hindsight in this manner to assist an applicant in avoiding their requirements.

Notwithstanding the above, it is not possible that the condition could only refer to the 'building' and not the 'development' in its entirety because the development refers to building works and other reconfiguration works of the open area, including scissor lift and loading bay within the service area. The scissor lift and loading bay were built within the service yard as part of the permitted reconfiguration under the planning

permission. The noise created by these items does not comply with Condition 9 and transmits to the same and adjoining buildings (the scissor lift and loading bay are now acknowledged by the Council as being built on the permissions 13/12442 and 16/09313). The building is not designed to be a closed structure for 24 hours a day and this directly contradicts the Council's explanation and would breach Condition 9.

The screenshot you provide shows the partial wording of Condition ref. C49BA and the officer would be expected to have read the whole condition. The screenshot shows the condition was imposed on the development in February 2014, before the Committee meeting. Therefore, the Committee would have understood this to be applicable to the service yard, as did Planning Enforcement, the local residents, Planning Aid of London and the Planning Inspectorate at appeal. A formal application to vary the condition wording would be required to reassess these impacts and this would allow for full scrutiny and public consultation. It is improper to dismiss or ignore the requirements of the condition in the manner that the Council has.

In the 2013 list of conditions (point 13, page 67) C49BA states it 'protects residents in the same building or adjoining buildings from noise and vibration from the development.' C49BA states that it is used to control noise from mixed sources, and the reason states that the condition's use can 'provide sufficient protection to residents in same and adjoining buildings from elsewhere in the development.' Westminster Council's City Plan Policy ENV 6 seeks to limit and contain noise from development, to protect noise sensitive properties from noise disturbance, protect tranquil areas, and reduce noise from transport.

It is noted that condition code C49BB has been in use since 2021. The 2019-2040 list of conditions simply states that C49BA 'protects existing or proposed residential from transmission of noise or vibration within the same building or adjoining buildings from the development or change of use.' The wording and meaning of both versions of the condition serve the same purpose and therefore whichever one is referenced becomes irrelevant. Were it the intention to not protect residents in adjoining noise sensitive buildings, a bespoke condition should have been used to fit the development in question and may have omitted parts of the development relating to the outside reconfiguration and equipment.

As per my letter of July 2021, the Committee report states that the applicant is required to use the covered loading bay. Section 6.4.4 of the report reads "the applicant cites that the layout of the existing service yard requires articulated lorries to be reversed into the service yard (they cannot enter in forward gear) and then carry out multiple manoeuvres to enter the covered section of the service yard where the existing servicing bay is located." The applicant is clearly stating the covered loading bay is required and it is incorrect for the Council to assert in 2021 that it was not. This is also not what the residents have experienced and not what was included on the applicant's swept path analysis details that supported the planning application. There was no unloading of lorries on the open service yard prior to the development completing and it is unreasonable to make this assumption or conclusion as there was mainly a small supermarket occupier at the site which was at that time attempting to develop on the open and covered service yard.

Condition 12

The Council's response acknowledges that Condition 12 did not have any specified times or approved SMP at the time of decision and the Council cannot use this as a justification or explanation to discount the relevance of Condition 9 to include the service yard. Further to this, if the service yard hours were not even stated for Condition 12 at time of decision, it is incorrect for the Council to say these details would have been considered for Condition 9 if it included the service yard. Condition 9 is a noise condition which protects the entire development and adjoining buildings for 24 hours from development elsewhere as one would reasonably expect. It would be unreasonable not to include the service yard which has experienced significant development as described within the planning application and has consequently experienced a significant change in the way it is used.

Condition 12 does not control noise from the scissor lift or lorry loading bay at all. It is false for the Council to state this in the Stage 1 complaint response. Furthermore, the visit by the noise officer you refer to in November 2020 was not a thorough assessment as it did not include the scissor lift when in use or any monitoring or recording of noise.

The enforcement team was informed in June 2021 that breaches of the SMP were on-going but delayed issuing a Breach of Condition Notice. This was initially intended to be served in 2020 and it is incorrect for the enforcement team to claim they were unaware of on-going breaches. In the meantime, my letters dated June 2021 and July 2021 have taken months to be responded to. The formal BCN needs to be served for various reasons and as a matter of public record. Please can you provide the date that the variation of Condition 12 application was submitted and why it remains undetermined after 4 months of consideration? The variation to Condition 12 is detrimental to residents as The Colonnades is an old development and not designed for modern vehicles. The variation of the condition in the manner proposed will likely generate further noise.

Many noise complaints have been made to the Council since the completion of the development, including complaints from the SEBRA Residents' Association. An Environmental Health officer investigating noise (Gordon Corbett) visited the site in early May 2020 stated that the development was causing an echo upwards and noise nuisance from the service yard to surrounding residents, exacerbated by the lack of acoustic roof and the presence of multiple hard surfaces. He stated that this was a planning problem and advised that it be reported to planning enforcement. I am aware that Planning Enforcement ordered noise recording at the site in May 2020 and after more than 4 months this order was cancelled in October 2020.

Conclusion

The breach of these conditions directly impacts the residents daily. The noise from the development is an intrusive nuisance that detrimentally impacts on the standard of amenity that the residents may reasonably expect to be able to continue to enjoy. The Council needs to enforce both planning conditions and seek remedies for both (including measures such as an acoustic barrier roof to satisfy Condition 9) to address the noise and disturbance issues, and to enforce against the breach of Condition 12.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Mellor', written over a thin horizontal line.

Paul Mellor Bsc (Hons), MA, MRTPI
Volunteer - Planning Aid for London



City of Westminster

Mr Paul Mellor
By email: pdjm82@gmail.com

16th Floor
Westminster City Hall
64 Victoria Street
London SW1E 6QP

This matter is being dealt with by:
Patricia Clarke
Email: pclarke@westminster.gov.uk
T: 07929 741477

Our ref: 22565501

24 November 2021

Dear Mr Mellor

Your Stage 2 complaint

The stage 2 investigation into planning enforcement of Condition 9 and Condition 12 is complete. If you are not satisfied with this response details of how to escalate the complaint to the Local Government and Social Care Ombudsman (LGSCO) can be found at the end of this letter.

Your complaint is Not Upheld.

The complaint

You say that the Council's Planning team have failed to enforce planning Condition 9 and Condition 12 at The Colonnades, 26 Porchester Road, W2 6ES, resulting in daily noise and disturbance to residents.

Condition 9

It is accepted that the scissor lift and associated amendments to the north elevation of the block containing the Waitrose supermarket and including those amendments forming new servicing openings, form part of the development permitted under 13/12442/FULL and 16/09313/FULL. It is also accepted that the Committee report dated 11 March 2014 did not provide a rationale that formally explained the intended purpose of Condition 9. Additionally, the discrepancy between the title of the standard condition and the wording of the condition itself, as imposed on the 2014 permission and the S73 application allowed at appeal in 2016 has contributed to confusion as to the intended purpose of Condition 9.

The Council's letter of 16 July 2021 outlined the investigation completed by the Council's Planning Enforcement team (PET) to establish the intended purpose of Condition 9, due to the absence of an explanation within the 2014 Committee report. This followed the initial report in May 2020 that Condition 9 may have been breached. The investigation addressed the conditions imposed on the 2014 and 2016 permissions and engaged with the original case officer to understand the intention for Condition 9 when it was included in the draft decision letter that was attached to the 2014 committee report.

The Council's letter of 14 September 2021 advised that the investigation identified the wording of Condition 9 as imposed on the 2014 and 2016 permissions did not reflect its intended purpose, that being to prevent noise transference between the enlarged supermarket use at first floor level, and residential accommodation directly above at second floor level. In this context whilst it is acknowledged that by plain reading of the wording in the condition, it could be interpreted as being applicable to the noise generated by the scissor lift and noise emanating from the openings facing the service yard, given the intended reason for imposing Condition 9, it would be unlawful for the Council to now seek to pursue enforcement action pursuant to Condition 9, where this would clearly exceed the originally intended purpose of the condition.

On 17 July 2020 the PET put through a request to the Noise Team for noise monitoring, however due to Covid restrictions the Noise team were unable to enter resident's homes for health and safety reasons. Subsequently it was determined that Condition 9 could not be enforced for noise emanating from the service yard as that was not the intended purpose of Condition 9. The request was then withdrawn and the investigation into Condition 9 closed.

The wording in the 2014 committee report relating to access of the former covered loading bay by articulated lorries was addressed in the Council's letter dated 14 September 2021. In the text you quote from Section 6.4.4 of this report that the word 'requires' is used to explain that if articulated lorries were reversed into the former service yard, they had to undertake multiple manoeuvres to access the covered section. The wording in the committee report does not state that articulated lorries are required by a pre-existing planning condition or obligation to service the site using the covered section of the former servicing yard. The absence of any such conditions or obligations has been clearly set out in the council's previous correspondence.

Condition 12

Condition 12 requires that the service yard is operated in accordance with the Servicing Management Plan (SMP) that was approved on 11 February 2015. This helps to minimise traffic disruption and avoid blocking surrounding streets and protect residents in neighbouring properties by minimising the noise impact until or unless an alternative SMP is approved in writing. The SMP restricts the service yards hours of use from 7am to 7pm, which in turn restricts the use of the scissor lift to these hours.

The initial complaint regarding noise emanating from the scissor lift identified the noise was due to a broken part on the lift. Part of the new proposal for the revised SMP includes measures to mitigate any future issues/breakdowns of the scissor lift to prevent this from re-occurring. The SMP does contain several other measures to mitigate noise, such as:

- The disabling of reversing beepers
- The delivery team talking in hushed voices
- Engines being switched off once practicable
- Radios being switched off during deliveries

It is noted that some of these measures have been breached over the last 18 months, and I am sorry that residents have been troubled by noise however, I can advise that further measures are being discussed as part of the proposed amendments to the SMP.

During the joint visit attended by the Council's PET and Noise teams on 21 September 2020 the scissor lift was operated in both directions and was not found to be excessively noisy producing noise expected from plant equipment.

Although no assessment was made from an affected property at the time of the visit, it is believed that noise from the operation of the scissor lift is unlikely to cause statutory nuisance as defined under Section 80 of the Environmental Protection Act 1990. The Noise Service has received several hundred anonymous complaints citing various noise issues including noise from the scissor lift

however, the Noise Service can only take action where there is a known complainant as it will be necessary to make an assessment of the noise being experienced from an affected property.

The last complaint of a breach of Condition 12 was received by the PET on 14 June 2021. A breach of condition notice for Condition 12 had been prepared and approved by the Councils Legal Team, however on the 18 June 2021, around the time of intended service for the breach of condition notice, Waitrose and the Colonnades submitted an application for a variation of condition 12 of planning permission dated 21 December 2016 - RN: 16/09313/FULL, which varied conditions 16 and 17 of planning permission dated 9 October 2014 – RN: 13/12442/FULL. this application remains invalid whilst discussions regarding the SMP are ongoing between the applicants and the case officer, the reference for this application for your information is 21/04074/FULL and you will be able to find full details of these planning applications by visiting <https://www.westminster.gov.uk/planning-building-and-environmental-regulations/find-appeal-or-comment-planning-application/search-and-comment-planning-applications>

Prior to making the application for a variation of Condition 12, Waitrose and The Colonnades met with the PET in June 2021 to review all prior breaches and residents' concerns in detail. A proposal was put forward by The Colonnades to ensure compliance with the SMP whilst the application to vary Condition 12 is under consideration. In the meantime, the PET is engaging in regular dialogue with Waitrose and The Colonnades regarding any events or issues that may raise concerns, and the Council is maintaining a log of any such incidents. Whilst consideration of the application to vary Condition 12 is under consideration, any enforcement action including the service of the breach of condition notice has been temporarily placed on hold. You may also wish to know that no further complaints have been received regarding the use of the service yard or breaches of the SMP since the time of the meeting in June 2021.

Installation of an acoustic roof

The stage 1 response dated 19 October 2021 referred to the installation of a roof and advised that the Council had no power to require or enforce the installation of such additional development.

Conclusion

Your complaint is not upheld as the investigation into the breach of Condition 9 has been fully investigated and has now been closed, whilst the investigation into a breach of Condition 12 remains suspended whilst an application into a variation of Condition 12 is under consideration.

This completes the final stage of the Council's complaints procedure. Should you remain dissatisfied with the way this complaint was addressed, you may contact the Local Government Ombudsman at www.lgo.org.uk.

Yours sincerely



pp Stuart Love
Chief Executive