

SECTIONS 172-177 OF THE TOWN AND COUNTRY PLANNING ACT 1990

**THE TOWN AND COUNTRY PLANNING (ENFORCEMENT NOTICES AND APPEALS)
(ENGLAND) REGULATIONS 2002**

APPELLANT: JACUNA KITCHENS LIMITED (“Appellant”)

**APPLICATION SITE: 178B Royal College Street and Arches 73, 74 and 75
Randolph Street, London, NW1 0SP (“Site”)**

LPA: LONDON BOROUGH OF CAMDEN (“Council”)

**ENFORCEMENT NOTICE: 16 JANUARY 2023
COUNCIL REF: EN21/0681**

**ENFORCEMENT APPEAL
APP/X5210/C/23/3316906
FURTHER HEARING STATEMENT IN RESPONSE TO THE COUNCIL’S STATEMENT OF
CASE**

1. INTRODUCTION

- 1.1. This further Hearing Statement provides our comments on the Council’s statement of case dated 28 April 2023 and supports the appeal against the Enforcement Notice issued by the Council on 16 January 2023.
- 1.2. This Hearing Statement should be read in conjunction with the Appellant’s first Hearing Statement and the Grounds of Appeal already submitted.
- 1.3. The comments in this Hearing Statement relate to matters raised by the Council and are set out under the various headings in the same order used by the Council in its Statement of Case

2. THE COUNCIL’S POSITION

(1) Chronology of principal events

- 2.1. In paragraph 4 of the Council’s Statement of Case the Council states that “the plant that has been installed at the Site does not match the plant shown in the submitted plans”:
- 2.2. Updated drawings have been submitted to the Council.

(2) Overview of the Unauthorised Development

- 2.3. **Paragraph 14** refers to “the OMP” – this document should be referred to as the Operational Delivery and Management Plan (“ODMP”). Changes to this document were made and the changes are identified in the Appeal Statement produced by Pegasus in Table 2.

(3) The Application

Nature and Intensity of Use

- 2.4. **Paragraph 54** – This is only relevant to the Getir use. The appellant has sought to operate under new delivery hours and the transport report and ODMP seek to justify the acceptability of revised hours and deliveries.

Manner in which deliveries and collections are being undertaken

- 2.5. **Paragraph 55** - We do not agree that the deliveries and collections to the Site are being undertaken in an unsafe and uncontrolled manner.
- 2.6. **Paragraph 56** – The Council has observed delivery riders driving the wrong way down Randolph Street. The ATC carried out by the Appellant’s transport consultant recorded 10 riders out of 483 motorcycles going the wrong way; in addition, not all the mopeds using the adjacent street are associated with the Appellant: Jacuna, with the manual counts suggesting that only 20% of the mopeds were associated with Jacuna, and on average 4 a day turned right out of the yard.
- 2.7. **Paragraph 57** – The Council’s observations of behaviour can apply to any form of courier and transportation use.
- 2.8. **Paragraph 58** – The Council refers to the size of vehicles and inability to cater for larger vehicles especially when there is parking on the Site. The 2018 consent states no more than 4 deliveries per week would be permitted using 7.5t vehicles (Condition 8) and that these should take place between 9am and 530pm Monday through Saturday. Condition 5 states that the permitted A1 and B8 uses should only take place during the same hours. The Council has referred to the difficulties caused by parking on site. This matter has been addressed by the proposed implementation of a new parking scheme by ArchCo which will ensure effective parking enforcement across the site and accessibility when needed.
- 2.9. **Paragraph 60 (a)**– The Council has observed that very few riders i.e. not all, use the designated parking space. This matter can be controlled by effective marshalling and the Appellant is willing to ensure that all future marshals on the site will be employed direct by the Appellant (rather than through an outside company as had previously been the case). The ODPM can be amended to deal with such matters (approved by way of submission to the Council) and will ensure

that any required procedures are followed, and these matters can be controlled effectively.

- 2.10. **Paragraph 60 (b)** – The Council’s assertion, commenting on the Transport Statement, is that “more than 12 mopeds an hour in six hours” could mean that at times there would be more than that number. Our transport consultants have confirmed that the likelihood of more than 12 moped delivery riders being present on the site at the same time is extremely low. The Council’s assumption is therefore not correct.
- 2.11. **Paragraph 60 (c)** – The Council states that there is no safe location for off-site waiting when the on-site parking is full. This does not occur very often and the same could be said for any uses that would operate across the site. Across London there are many examples of delivery vehicles having to find suitable layby areas until they can access a site.

Inadequate mitigation

- 2.12. **Paragraph 61** – The Council has been asked to review the ODMP and they have not previously discussed the content of comments that are now being made as part of the Council’s case with the Appellant. A suitably revised ODPM can be submitted for approval through planning condition and the Appellant is willing to make changes suggested by the Council to ensure that good neighbour relations are maintained.
- 2.13. **Paragraph 65** – The Council has referred to the inadequacies of the ODMP. The matters that have been raised as part of the Council’s case are quite capable of being addressed through discussion with the Council and a further submission for approval under the relevant condition.

Nature and Intensity of deliveries and collections

- 2.14. **Paragraph 75** – The Council and the Appellant agree that the local area is an area of high activity. We would argue that the hours of working in the context of this area do not cause an unacceptable level of harm to amenity.
- 2.15. **Paragraph 75 (d)** – The Council refers to the fact that noise from 7.5t vans is greater than noise from 3.5t vans. However, the 2018 Decision Notice mentions that only 4 deliveries per week can be undertaken using 7.5t vehicles. The survey period has picked up one vehicle greater than 3.5tn. However, it should be noted that the proposal does not include any increase in HGV’s. All deliveries are during daytime standard office hours and not including any night-time, so any Nearest Sensitive Receptor (NSR) is not likely to be affected since noise in general is higher in the area (noise from train line and major A road nearby). The impact is therefore not considered significant.

Noise monitoring undertaken by Jacuna

- 2.16. **Paragraph 77 (a)** – The Council suggests the noise report relies on single noise monitoring location next to cycle parking and there is no explanation for why this was chosen or how it is representative. The site location has been considered suitable due to health and safety and equipment safety to capture representative background noise activities on site. Given the size of the site, suitable monitoring was needed to avoid being damaged by any vehicle movements. It should be noted that a correction facade factor was applied in order to assess the worst-case scenario.
- 2.17. **Paragraph 77 (b)** – The Council states that the noise report does not clearly identify noise sensitive receptors and how the calculations and impacts were carried out. The nearest sensitive receptor are the flats to the rear of the site. The noise consultants carried out the assessments on the Nearest Sensitive Receptor based on BS4142 and without taking into account any barrier impacts from the existing wall to carry out a conservative assessment. Therefore, the Nearest Sensitive Receptor is likely to have less impact than what has been presented in the report as the worst-case. It should be noted that all works are carried out during daytime hours and therefore in-line with the existing prevailing noise activities therefore the impact of the noise is considered as negligible.
- 2.18. **Paragraph 77 (c)** – The Council questions why delivery vans were not considered in the noise report, just mopeds. The reason for this is that the proposal use has/will not have an increase of delivery vans. Therefore, an assessment on any additional delivery vans was scoped out. However, any existing trips undertaken by delivery vans were recorded as part of the noise monitoring on-site and presented as part of the assessment.
- 2.19. **Paragraph 77 (e)** –

The Council argues that the noise report uses LAeq but not LAm_{ax}. and LAm_{ax} should be used because of moped noise. LOAEL daytime noise threshold is 45db – 55db and nighttime is 40db – 45db. SOAEL daytime noise threshold is 55db – 56db and nighttime is 45db – 57db. Noise from development would exceed these. Our noise consultant has advised that although the site is subject to close by 11pm, the traffic survey states there was no traffic entering or exiting the site from 10pm and there is therefore no activity until about 9am the next day. Therefore, the LAm_{ax} was not assessed since there is no night-time activity that could relate to sleep disturbance since the traffic activity is mostly prior to 10pm. In addition, as highlighted previously the NSR is in direct sight of the above train lines which will cause a higher noise level during night-time. As per TfL London Overground timetables, up to 144 services from Richmond/Willesden Junction go through Camden Town, with more trains on the other direction and freight trains are likely travelling through this track, which will generate a higher level of noise. Therefore, considering the prevailing background activities, the site is not considered to generate significant noise.

The Council suggests that noise from mopeds is inherently more annoying than general road traffic noise. The noise from a moped in isolation compared to some

other transport mode and type can be more audible where background noise levels are low in typical residential areas. However, considering the site location under an active train line bridge and with the A503 located less than 50m away from the site, the background noise levels is expected to be considerably higher. The line of sight between the train lines and the Nearest Sensitive Receptor is completely exposed and likely to have a far greater noise impact in comparison to any moped on the ground level. It is also to be noted that, on the ground level there is a wall between the NSR and the commercial sites which will function as a barrier.

- 2.20. **Paragraph 80 (a)** – The Council states that the ODMP seeks to mitigate noise by asking delivery vans alarms to be turned off and it is not usually possible to deactivate reversing alarms nor is it safe to do so. It is agreed that alarms are there for health and safety reasons. The noise level generated from a small number of vehicles measured during the survey with reversing alarm is not considered to be significant compared to the prevailing background activities as explained above.
- 2.21. **Paragraph 80 (b)** – The Council states that only cycles and e-bikes should travel to the site, to **ensure** appropriate noise levels would be complied with. The noise survey demonstrated that the existing noise activities would not cause any significant impact to the NSR. Any further traffic management can be agreed as part of the ODMP.
- 2.22. **Paragraph 80 (c)** – The Council has suggested that more appropriate mitigation would be to restrict the number, nature and timing of delivery vans. Even if vans did enter the site, it would be a relatively small number of vans from 8am to 10am and therefore the impact to the NSR is not considered to be significant.

Proposed Mitigation

- 2.23. We would suggest that the points raised by the Council on the ODPM are capable of being addressed and agreed in further consultation with the Council.
- 2.24. Regarding the Council's reference to "anti-social behaviour caused by loitering" we do not believe any such behaviour has occurred and the Council has certainly not produced any evidence of this behaviour to back up its assertion.

Deficiencies in the ODMP

- 2.25. **Paragraph 90** – We would maintain that there has been little engagement by the Council on the content of the ODPM but are willing to address the various matters that have now been raised as part of the Council's evidence. We disagree that the Appellant has a lack of control over those persons who visit the appeal site.

Planning Policy Conflicts

- 2.26. **Paragraph 96** – The Council's point about waste collection vehicles causing temporary hold ups in pedestrian activity traffic can also be said for many waste vehicles across London.
- 2.27. **Paragraph 97-** The Appellant is willing to offer in person meetings as well as zoom meetings and would be able to accept such a commitment.
- 2.28. **Paragraph 98** – The Appellant is willing to work with the Council and make no comment as to whether a temporary permission should be granted.

Planning balance and conclusion

- 2.29. **Paragraph 98** – the numbers of persons employed is dealt with in the Statement of common ground at paragraphs 3.6 and 3.7. The loss of this use and associated employment would be detrimental to the business. The Appellant maintains this is an important planning benefit to be taken into consideration in the planning balance.

Conditions & Other matters

- 2.30. Conditions and other matters will be discussed at the forthcoming hearing.

Gateley
9 June 2023

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