

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
HEARING STATEMENT**

1. INTRODUCTION

- 1.1. This Hearing Statement summarises the case that the Appellant wishes to put forward to support its appeal against the Enforcement Notice issued by the Council on 16 January 2023.
- 1.2. This Hearing Statement contains a full list of the documents that the Appellant intends to rely upon in support of the appeal, and it contains the Appellant’s submissions in connection with the issues that require further evidence. Further evidence will be provided at the hearing.
- 1.3. This Hearing Statement should also be read in conjunction with the Grounds of Appeal already submitted.
- 1.4. The Planning Inspectorate will be aware that the Enforcement Appeal is to be considered alongside the Planning Appeal APP/X5210/W/22/3312728 in respect of which Pegasus are acting for the Appellant. We intend to rely on the same set of appeal documents to avoid unnecessary time spent discussing matters at the forthcoming hearing.

2. DOCUMENTS

- 2.1. Full Statement of Case against refusal of application 2021/4163/P prepared by Pegasus (December 2022) and in respect of associated Planning Appeal (APP/X5210/W/22/3312728);
- 2.2. Operational Management and Delivery Plan (November 2022) – Jacuna;
- 2.3. Noise Impact Assessment prepared by Aval Consulting Group (January 2022);
- 2.4. Noise Impact Assessment – Addendum by Aval Consulting Group (November 2022);
- 2.5. Bat Survey Report prepared by BioScan (September 2022);
- 2.6. Transport Statement prepared by TTP Consulting (December 2022);
- 2.7. Documents submitted in respect of linked appeal APP/X5210/W/22/3312728 (including the main noise report, odour assessment, plans, heritage statement);
- 2.8. Draft statement of common ground (Council comments awaited at 16.5.23);
- 2.9. Draft Section 106 Agreement – currently under negotiation with the Council and to be submitted in due course.

3. THE COUNCIL'S POSITION

- 3.1. The Enforcement Notice contained six reasons for the issue of the notice.
- 3.2. Reason (f) was “*In the absence of a Bat survey, the development has potentially harmed the local bat population and biodiversity...*”. The Appellant instructed BioScan to prepare a Bat Survey Report and this was submitted with the Enforcement Appeal. The Bat Survey Report concluded that it was “unlikely that any significant impact on bats has occurred at this site”. Further, the Bat Survey Report states that even in the absence of evidence, it is unlikely that bats would ever have roosted at the Site because of its poorly vegetated industrial character. Notwithstanding these conclusions the Appellant has agreed with the Council to pay a sum of £500.00 towards the erection of bat boxes off-site and this will be secured by an appropriate Agreement (subject to the Inspector concluding that such an obligation meets the relevant CIL tests). It is the Appellant’s position that this reason for issuing the Enforcement Notice can be overcome.

- 3.3. Reasons (d) and (f) related to the lack of any legal agreement for securing a local employment and training package and satisfactory Operational Management Plan. The Appellant is undertaking negotiations with the Council, and it is considered that Reasons (d) and (f) can/will be overcome by some form of appropriate Agreement in due course.
- 3.4. Reason (a) was that the change of use has occurred within the last 4 years. The Appellant is not appealing under Ground (d) and this reason is not disputed.
- 3.5. Considering the above the remaining substantive reasons raised by the Council for issuing the Enforcement Notice are:
- 3.5.1. Reason (b) - *The proposed use by virtue of its nature and intensity, in particular the volume and frequency of deliveries and collections, and the manner in which they are undertaken using disruptive and potentially dangerous vehicle manoeuvres, causes harm to the amenity of the area, pedestrian and highway safety contrary to policy A1 (Managing the impact of development) and T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan 2017 and policy T4 (Assessing and mitigating transport impacts) of the London Plan 2021.*
- 3.5.2. Reason (c) - *The proposed use, by virtue of the nature and intensity of deliveries and collections generates vehicular noise which has not been fully mitigated, and due to the proximity of neighbouring residential causes harm to the amenity of the area, contrary to policy A1 (Managing the impact of development) of the Camden Local Plan 2017.*
- 3.6. The Appellant has submitted a Transport Statement and Noise Impact Assessment with the Enforcement Appeal and associated Planning Appeal. For the reasons given in this Hearing Statement which will be addressed further at the Hearing it is considered that Reasons (b) and (c) are overcome and that the Inspector should allow the appeal on Ground (a).

4. THE GROUNDS OF APPEAL

- 4.1. The Appellant has appealed the Enforcement Notice on Grounds (a), (f) and (g).
- 4.2. In addition to the formal Grounds of Appeal the Appellant questions whether the Council had proper legal authority to issue the Enforcement Notice.

- 4.3. The Council's delegated report forming the basis of a refusal of the original planning application (2021/4163/P) anticipated issuing only one enforcement notice; there was no reference in the Report to the Council being able to undertake any steps required to secure enforcement of the alleged breach of planning control only that the "Borough Solicitor to be instructed to issue an [emphasis added] Enforcement Notice".
- 4.4. Further, the delegated report listed five reasons for issuing the Enforcement Notice, not six as appear on the Enforcement Notice. No evidence has been provided by the Council to confirm the legal authority on which the Council could add to the reasons approved by its Planning Committee.
- 4.5. The Enforcement Notice also amends wording which was approved by the Planning Committee, changing references to "The development" or "The use" to "The proposed use" or "The proposed development".
- 4.6. The Appellant would expect the Council to provide reference to a Standing Order or other evidence of authority that would allow the Council to depart from the Planning Committee's recommendation in the above ways.

5. SUBSTANTIVE GROUNDS

5.1. GROUND (A) - that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted

- 5.1.1. The Enforcement Notice raises no issue of concern with the principle of the development. Notwithstanding this fact the Full Statement of Case prepared by Pegasus assesses the principle of development and concludes that it is supported by local and national planning policy. The Appellant seeks to rely on this Full Statement of Case as part of its appeal on Ground (A).
- 5.1.2. It is clear from the assessment of the Council's case at Paragraph 3 above that the remaining grounds of objection to the development by the Council now relate to:
 - 5.1.2.1. Highway safety: (1) number and volume of vehicle movements and impact on the road network and (2) impact of vehicle movements on pedestrian and highway safety;
 - 5.1.2.2. Alleged harm to amenity of the area by virtue of noise created by the development

5.1.3. We would refer the Inspector to the following documents which address the above matters in detail:

5.1.3.1. Full Statement of Case against the refusal of application 2021/4163/P prepared by Pegasus (December 2022)

5.1.3.2. Operational Management and Delivery Plan (November 2022)

5.1.3.3. Noise Impact Assessment prepared by Aval Consulting Group (January 2022) and Addendum by Aval Consulting Group (November 2022)

5.1.3.4. Bat Survey Report prepared by BioScan (September 2022)

5.1.3.5. Transport Statement prepared by TTP Consulting (December 2022)

5.1.3.6. Full Statement of Case prepared by Pegasus in respect of the associated Planning Appeal (APP/X5210/W/22/331272).

5.1.4. Highway Safety

5.1.4.1. It is submitted that any highway impact of the development is acceptable and that the development complies with Local Plan Policies T1, T3 and T4.

5.1.4.2. The Appellant instructed TTP Consulting to prepare a Transport Statement which was submitted with the appeal.

5.1.4.3. The Transport Statement concludes that whilst there would be an increase in the number of vehicle movements these would not impact the operation of the local or wider highway network.

5.1.4.4. Further, the use of the Site by the Appellant has not resulted in any increase in accidents, in fact accidents peaked in 2018 prior to the Appellant beginning to operate from the Site.

5.1.4.5. An Operational Management and Delivery Plan (OMDP) will be secured by way of appropriate planning condition to ensure the safe movement of vehicles into and out of the Site.

5.1.5. Harm to Amenity – Noise

5.1.5.1. The Delegated Report confirms that the Council's Environmental Health Officer (EHO) has determined that the proposals are acceptable in environmental health terms with regards to the extraction system. The alleged unacceptable noise impacts are therefore restricted to transport noise only.

5.1.5.2. The Appellant submitted a Noise Impact Assessment – Addendum with the Enforcement Appeal and will also rely on the Noise Impact Assessment at the Hearing.

5.1.5.3. The Noise Impact Assessment – Addendum confirms that “it can be concluded that the noise impact would be ‘None/Not Significant’”. In the light of this finding Aval Consulting Group concludes that mitigation measures are not required.

5.1.5.4. The Noise Impact Assessment – Addendum does advise that staff should abide a code of practice secured by a noise management scheme. A Code of Conduct is included in the proposed OMDP and will be secured by planning agreement and enforced by the on-site marshal.

5.1.6. In support of the Ground (A) appeal the Appellant intends to submit an appropriate form of Agreement which will secure the following (subject to the Inspector concluding that the planning obligations meet the CIL tests):

1. Employment Obligations relating to the employment of staff who reside in the Council's administrative area; to use reasonable endeavours to form partnerships with schools etc to explore summer internships and to place an obligation on the Appellant to encourage the restaurants who use the development to employ staff who reside within the Council's administrative area; and
2. A financial contribution of £500.00 towards the provision of Bat boxes.

5.2. GROUND (F) - That the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by

those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach

5.2.1. The Appellant submits that Steps 2 and 3 of the Enforcement Notice exceed what is required to remedy the breach, are imprecise and do not make clear what steps should be taken to remedy the breach.

5.2.1.1. Steps exceed what is reasonable

(a) The Enforcement Notice requires the Appellant to “make good the exterior of the property following the completion of the above works”. Whilst the breach of planning control to which the Enforcement Notice refers to external alterations having occurred the reasons for issuing the Enforcement Notice make no allegation of harm to the amenity caused by the external alterations.

5.2.1.2. Lack of Precision

(a) The requirement to remove “plant and machinery from the rear of Arch 74 and 75” does not make it clear what should be removed from the totality of the Site. It is a generic and imprecise requirement.

(b) The requirement to “make good the exterior of the property following the completion of the above works” does not make it clear what should be done. This same requirement refers to the “property”, not “Property” and it is considered that the wording is imprecise and unclear.

5.2.2. In the light of the above it is considered that the Enforcement Notice is imprecise and leaves Jacuna without knowing the precise steps it should take to remedy any breach.

5.3. GROUND (G) - That the time given to comply with the Notice is too short.

5.3.1. The Enforcement Notice provides a 6-month compliance period. It is submitted that this period is too short.

5.3.2. The Appellant seeks 12 months to accommodate commercial interests (namely employment that could be lost and/or commercial commitments which would mean a loss of income that would be detrimental and cause overall harm to the business).

- 5.3.3. The Appellant will give evidence at the Hearing to support the need for a 12-month period of compliance.
- 5.3.4. The average unexpired licence term for the Appellant's members is 18 months. Many of the brands served by the use are independent food brands whose business is conducted exclusively from the Site and 6 months is an inequitable time to allow them to stop their businesses or find alternative premises for the reasons mentioned above.
- 5.3.5. Close to 40 people will need to find alternative employment as a result of any site closure, particularly if the Appellant is unable to find an alternative premises and particularly those for whom the Site is their sole operating establishment.
- 5.3.6. The process of finding another site is likely to entail further assistance from a planning consultant and may need to submit a planning application on their behalf, potentially also involving work from co-consultants on matters relating to transport, and other matters.
- 5.3.7. Upon any purchase or lease terms being agreed, a window of two months to submit the planning application will be argued as being reasonable, and whilst an application may well be subject to a statutory determination period of two months, there is then the likelihood of delays by the determining authority. Given current application timelines, this would likely take at least 6 months.
- 5.3.8. The Appellant's lease with ArchCo has 8 years' time remaining. If the Enforcement Notice is upheld and the Appellant could not operate from the Site, it would be unable to service its payments of rent. The likely consequence is that the Appellant would need to find an alternative tenant to take over its current lease. It is extremely unlikely that this could happen quickly.
- 5.3.9. The Appellant would therefore need to be given time to negotiate with its various suppliers since, in many instances, it would be required to give notice to terminate agreements in breach of the contractual minimum terms (many of these contracts have recently renewed).
- 5.3.10. The Appellant will no longer be able to make use of the property and will be under an obligation to remove items from the Site. The Appellant will want to recycle as many of those materials as possible

for other projects. The process of stripping out has been estimated as likely to take between 16 and 24 weeks and would require ArchCo's sign off at each stage.

5.3.11. We would respectfully ask the Inspector to grant planning permission in this case.

6. CONCLUSIONS

6.1. With reference to the summary of evidence provided in this Hearing Statement which shall be examined at the hearing, any matters to be agreed in the Statement of Common Ground, the Inspector is respectfully requested to dismiss the Enforcement Notice and grant planning permission for the retention of the use subject to reasonable and relevant conditions as will be agreed between the Council and the Appellant.

Gateley
May 2023