

PLANNING STATEMENT

**Variation of Condition 5 of Appeal Decision
Reference APP/X5210/A/10/2124621**

At

Dabbous, 39 Whitfield Street, W1T 2SF

**ON BEHALF OF
Dabbous**

June 2013

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1.0 INTRODUCTION

- 1.1 This Planning Statement is submitted on behalf of Dabbous Enterprises Limited ("the Applicant") in support of an application to vary a condition of an appeal decision in relation to Dabbous Restaurant at 39 Whitfield Street (Appeal Ref: APP/X5210/A/10/2124621).
- 1.2 The current opening hours were set when the use of the site as a restaurant was permitted on appeal in July 2010. That application sought permission to open until 23:30 Monday to Saturday and 22:30 on Sundays.
- 1.3 Subsequently, Dabbous has operated for over 17 months. In direct response to its success, the applicant seeks to extend the restaurant's opening hours to offer a better dining experience for customers. The proposal is for the premises to remain open for an additional hour on Thursday, Friday and Saturday evenings (until 00:30 am the next day).
- 1.4 This application follows the refusal of an application submitted to the Council earlier this year for the extension of opening hours (until 01:30am everyday) alongside alterations to the hours of plant operation (LPA reference: 2013/0771/P).
- 1.5 This Statement includes a description of the site and the development proposals. It provides an overview of relevant planning policy, the planning history and a full planning assessment. On the basis of the assessment and the associated supporting documents for the application, it is confirmed that the proposals will not have a detrimental impact on the amenity of surrounding residents and occupiers, therefore should be considered favourably by the Council.
- 1.6 This Planning Statement forms part of the application submission and should be read in conjunction with the Noise Assessment prepared by RBA Acoustics and the Statement of Community Involvement prepared by Communications Potential.

2.0 THE SITE AND SURROUNDING AREA

- 2.1 The application site is situated on Whitfield Street in Camden. The premises occupy the corner plot at the Junction of Whitfield Street and Scala Street. The ground and basement of the building is currently occupied by Dabbous restaurant, and has been since January 2012. The upper floors of the building are occupied by offices.
- 2.2 The surrounding area comprises a mix of uses, including residential dwellings on Scala Street and Charlotte Street to the south west and commercial units on Whitfield Street and Goodge Street to the north, east and south of the property. The area is characterised by retail use and food and drink outlets, with offices and residential units occupying the upper floors of many buildings. The application site is situated behind Tottenham Court Road, a major Central London shopping street, and comprises a well-used thoroughfare connecting the adjoining areas (as confirmed by the Inspector in Appeal Ref: APP/X5210/A/10/2124621).
- 2.3 The site has a PTAL rating of 6b, due to its close proximity to both Goodge Street and Tottenham Court Road Underground Stations, and numerous bus routes which run along Tottenham Court Road.
- 2.4 The application site is situated within the Charlotte Street Conservation Area.

3.0 PROPOSAL DESCRIPTION

- 3.1 This application proposes to vary Conditions 5 associated with the appeal decision for this site (ref: APP/X5210/A/10/2124621). This application follows the refusal of a previous application to vary Conditions 5 and 7 of the appeal decision to extend the hours of the restaurant until 1.30am Monday to Saturday, dated 28 March 2013 (LPA reference: 2013/0771/P).
- 3.2 Based on the reasons for refusal, which are detailed in the next chapter of this Statement, the applicant has reviewed the proposals and now applies for what is considered appropriate extended opening hours on the busiest evenings of the week, being Thursday, Friday and Saturday evenings.
- 3.3 In relation to the variation of Condition 7, which formed part of the past submission, it is considered that an amendment to this condition is no longer required. The applicant's M and E Consultant has confirmed that the air conditioning units will not be required to run within the last hour of opening hours proposed. On that basis, the operation of the air conditioning units will remain as approved by the appeal decision (i.e. until 11.30pm).
- 3.4 The current Condition 5 is worded as follows:
Condition 5 - *No customer shall be permitted to be on the premises outside the following times: -*
09.00 to 23.30, Monday – Saturday.
09.30 to 22.30 Sunday.
- 3.5 In direct response to the success of Dabbous restaurant, the applicant proposes to extend the opening hours to offer a better dining experience for customers. Since opening in January 2012, the restaurant has enjoyed a succession of five star rated reviews and won a plethora of awards, including a Michelin Star. The restaurant is also fully booked over a full year in advance, which proves its popularity.

3.6 The most popular aspect of the menu is a seven course Tasting Menu, which as expected, takes time to appreciate and enjoy. On this basis, the applicant considers that longer opening hours at the premises from Thursday, Friday and Saturday evenings would allow customers to fully enjoy their dining experience.

3.7 The applicant proposes the following wording for the condition:

Condition 5 - *No customer shall be permitted to be on the premises outside the following times: -*

09.00 to 23.30, Monday – Wednesday

09.00 to 00.30 Thursday - Saturday

09.30 to 22.30 Sunday.

Relevant background - the appeal decision and recent noise assessment

3.8 The current hours of opening were set when the use of the site as a restaurant was permitted on appeal in July 2010 (reference APP/X5210/A/10/2124621), as explained further within the following "Planning History" section.

3.9 The Inspector agreed that the opening hours proposed at that time were acceptable (up to 23:30 Monday to Saturday and up to 22:30 on Sundays), commenting: "*I do not consider that the operation of the site would be likely to result in unacceptable levels of noise and disturbance to the neighbouring occupiers...*" (Appeal decision, para. 21).

3.10 The Inspector did not assess the acceptability of the longer opening times that are currently being applied for (i.e. the additional hour on Thursday, Friday and Saturday evenings). Furthermore, they were considering a proposed restaurant. As the restaurant has opened and operated for over 17 months, it is possible now to assess its actual affect. No complaints have been made to the Council with regard to noise or disturbance in association with the current use.

- 3.11 The arrival and dispersal of patrons from the premises was observed as part of the Noise Assessment undertaken by RBA Acoustics (submitted with this application). The survey included noise measurements undertaken on 15 December 2012 when the venue was operating under a Temporary Event Notice (TEN) and opening hours were extended until 01:30 hours.
- 3.12 The Assessment confirms that patron departures were undertaken in a quiet manner, and that the majority were noted to immediately leave the vicinity and head South along Whitfield Street towards Tottenham Court Road, usually in small groups of two. Almost all of the patrons departing the premises were noted to leave on foot. The Assessment concludes that *"it is our professional opinion that the proposed extension to operation hours will not alter the acceptability of the current operations"*

4.0 PLANNING HISTORY

4.1 The site has been the subject of numerous planning applications over a number of years, relating to the use of the premises and external alterations. Those of relevance are set out below:

- Planning Application ref: 2009/1660/P – This application to change the use of the unit from an internet cafe/bar (Class A1) to a restaurant (Class A3) was refused by the Council on 20 January 2010, due to its perceived harmful impact on local residential amenity. Officer's recommendation to approve the application was overturned at Planning Committee. The officer's report stated that: *"The applicant proposes that this restaurant will operate between the hours of 9:00 and 23:30 on Monday - Saturday and 9:30 to 22:30 on Sunday. It is considered that, given the location and nature of the proposed use, the proposed hours of operation are acceptable."*
- Appeal ref: APP/X5210/A/10/2124621 – The applicant (Jadwin Property Group) appealed the Council's refusal, and the appeal was allowed on 9 July 2010. The Inspector concluded that the proposal would not have a detrimental impact on the occupiers of nearby residential units, having had particular regard to noise and disturbance, and that the scheme would preserve the character of the conservation area. The Inspector agreed that the proposed opening hours applied for at that time were acceptable (up to 23.30 Monday to Saturday and up to 22.30 on Sunday).
- Planning Application ref: 2011/2962/P – This application sought to discharge Conditions 3 and 4 pursuant to planning permission granted on appeal, as set out above. It related to details of ventilation, smoke extraction and odour control equipment and a replacement door. The Council accepted the noise assessment submitted, by RBA Acoustics, in relation to the proposed mechanical service plants and discharged the conditions on 20 October 2011.

- Planning Application ref: 2013/0771/P – The application sought a variation to Conditions 5 and 7 of the above appeal decision, to allow for extended opening hours until 1.30am Monday to Saturday, and associated with that, an extension to the hours of operation of the air conditioning units. The application was refused 28 March 2013 on the basis of the impact of late night activity on surrounding neighbours and that it failed to adequately demonstrate whether the extension to the plant operation would have an adverse impact on amenity.

5.0 COMMUNITY CONSULTATION

- 5.1 To ensure that local residents were made aware of the rationale for the proposals at Dabbous restaurant, the applicants and their specialist Communication Consultant (Communications Potential) arranged a community consultation event on Tuesday 27 November 2012.
- 5.2 The Statement of Community Involvement submitted in support of this application provides detail on the outcome of this event. It also sets out the other means of communication utilised by the applicant in advance of submitting this planning application.

6.0 PLANNING POLICY POSITION

6.1 The Statutory Development Plan for Camden comprises the London Plan 2011, the Camden Core Strategy 2010-2025 and Development Policies Development Plan Document (DPD), which were both adopted in November 2010. The National Planning Policy Framework (NPPF) is also a material consideration.

National Planning Policy

6.2 Prior to the publication of the NPPF, on 23 March 2011, the Government issued a Ministerial Statement on 'Planning for Growth'. The proposals announced by the Chancellor include the following points which subsequently evolved into the NPPF:

- A new presumption in favour of sustainable development. This is a powerful new principle underpinning the planning system that will help ensure that the default answer to development and growth is 'yes' rather than 'no'.
- A pro-growth National Planning Policy Statement. The planning system is considered too cumbersome and complicated, and has acted as a brake on growth and development. A new simple document called the National Planning Policy Framework has now been published by the government, and is outlined above.
- Changes to permitted development rights to cut red tape. The government considers there are plenty of empty office blocks, warehouses and business parks lying empty, waiting to be turned into much need new housing. Ministers have introduced measures that seek to scrap the requirement to get permission for change of use, incentivising growth and boosting housing supply.
- Other proposals including measures to remove bureaucracy and to fast track applications are also set out.

- 6.3 In addition the then Minister for State, Greg Clarke MP set out the measures local authorities should consider when deciding whether to grant planning permission. They should:
- Take into account the need to maintain a flexible and responsive supply of land for key sectors.
 - Consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies.
 - Be sensitive to the fact that local economies are subject to change and take a positive approach to development where new economic data suggests that prior assessments of needs are no longer up-to-date.
 - Ensure they do not impose unnecessary burdens on development.
- 6.4 Further to the publication of the National Planning Policy Framework (NPPF) on 24 March 2012, all Planning Policy Statements and Planning Policy Guidance Notes have been revoked and replaced.
- 6.5 The NPPF sets out the Government's planning policies for England and how these are expected to be applied. It is a material consideration in planning decisions.
- 6.6 Paragraph 186 of the NPPF states that Local Planning Authorities (LPAs) should approach decision-taking in a positive way to foster the delivery of sustainable development. It also notes that LPAs should look for solutions rather than problems, and decision-takers, at every level should seek to approve applications for sustainable development where possible (paragraph 187).
- 6.7 With regard to noise pollution, paragraph 123 of the NPPF states that decisions should aim to recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them.

Regional Planning Policy - Greater London Authority (GLA)

- 6.8 The London Plan July 2011 is the overall strategic plan for London, which sets out the integrated, economic, environmental, transport and social framework for the development of London over the next 20-25 years.
- 6.9 Policy 7.15 of the London Plan relates to reducing noise pollution associated with development proposals. The policy notes that proposals should seek to reduce noise by minimising the existing and potential adverse impacts of noise on, from, within, or in the vicinity of development proposals.

Local Planning Policy

- 6.10 Camden's adopted Core Strategy, Development Policies DPD and supplementary planning guidance contain a number of policies which relate to all aspects of this proposal, such as residential amenity, noise and food and drink uses.
- 6.11 An assessment of the proposals in relation to the relevant policies is set out in the following sections.

7.0 PRINCIPLE OF DEVELOPMENT

- 7.1 The site is located within the Central London area, as identified in the Core Strategy and on the Council's Proposals Map. This highly accessible location is considered to be particularly suitable for uses that are likely to lead to a significant increase in travel demand (for example retail, offices, leisure and tourism). Policy CS3 of the Core Strategy states that this area is suitable for provision of food, drink and entertainment uses.
- 7.2 The Central London area forms part of the Central Activities Zone (CAZ), within which offers a rich mix of local as well as strategic uses across Central London. Policy CS9 of the Core Strategy seeks to support and promote this area as a successful and vibrant part of the capital to live in, work in and visit.
- 7.3 Policy CS7 of the Core Strategy relates to the promotion of Camden's centres and shops. The policy states that the Council will seek to ensure that food, drink and entertainment uses do not have a harmful impact on residents and the local area, and will focus such uses in Camden's Central London Frontage, Town Centres and the King's Cross Opportunity area. Whilst the site does not fall specifically into one of the above areas, it is adjacent to one of Central London's busiest shopping streets (Tottenham Court Road), is located adjacent to a neighbourhood centre and is located in an area of mixed use. It is considered that Dabbous restaurant is a sympathetic occupier of the unit. As confirmed by the residents and local businesses that attended the Consultation Evening, the owners respect the amenity of the area and work hard to liaise with neighbours to ensure that any potential issues are overcome swiftly.
- 7.4 Policy DP12 of the Development Policies DPD relates to the management of food, drink and entertainment uses. The principle of the use has already been established, by the allowance of the appeal. Therefore the relevant part of this policy relates to the use of planning conditions to address any potential issues with such uses, such as hours of operation and noise levels.

- 7.5 The applicant considers that customers of the restaurant would benefit greatly from extended opening hours, in order to enjoy aspects such as the seven course taster menu. The application is supported by a noise assessment that is specific to the unit. It concludes that the extension to opening hours will not have a detrimental impact on residential amenity. The applicant would be happy to comply with conditions relating to extended opening hours and also maximum noise levels.
- 7.6 As part of the successful appeal in relation to this site, to change the use of the unit from Use Class A1 to Use Class A3, the Inspector concluded that the proposal would not have a detrimental impact on the occupiers of nearby residential units, having had particular regard to noise and disturbance. They also confirmed that the restaurant use would preserve the character of the conservation area.
- 7.7 The presence of the A3 Use in this area is therefore acceptable, and does not have a detrimental impact on surrounding occupiers or neighbours.
- 7.8 The Council is also planning to publish an Area Action Plan for Fitzrovia, and the site is located within the boundary of this area. The Proposed Submission Version of the AAP states that "Charlotte Street and the surrounding area is a focus of activity for shops, cafés and restaurants in Fitzrovia. It has a large residential population and there is much activity on the street." (page 81).
- 7.9 In addition to Fitzrovia's residential population, the area attracts a large influx of workers and visitors each day to its offices, academic institutions and shops, and in the evening to the bars, restaurants, cinema and other entertainment establishments. Workers and visitors are critical to the vitality and economic success of parts of the area.
- 7.10 Having undertaken the community consultation event in November 2012, it is clear that the local residents and businesses are supportive of Dabbous. Several have either been to, or are planning to attend the restaurant in the near future.

- 7.11 Principle 5 of the AAP states that the Council will guide development of food, drink and entertainment uses to the Central London Frontage on Tottenham Court Road and New Oxford Street, except those the Council considers to be small scale and low impact. The AAP also notes that less than 20% of all licenced premises in Fitzrovia are licenced for the sale of alcohol after midnight. It is therefore considered that the extension of hours at this existing and successful restaurant will not impact cumulatively with regard to noise and disturbance in the surrounding area.
- 7.12 Camden Council also refer to the Revised Planning Guidance for Central London: Food, Drink and Entertainment, Specialist and Retail Uses, which was adopted in October 2007. It is considered that this document carries little weight on the basis that it has been prepared in relation to the Council's UDP policies that have now been fully superseded by the Local Development Framework. However, for the purposes of this assessment it has been reviewed.
- 7.13 The document states that development proposals will be assessed on a site by site basis. It states that food, drink and entertainment uses are considered an important part of the mixed use character of Fitzrovia, and that such uses contribute to the vitality and viability of the area, whilst providing natural surveillance during the evening and at weekends. In relation to hours of operation, the document states that conditions controlling the use no later than midnight are generally attached to planning permissions, and that later hours will only be acceptable provided that it can be demonstrated that no harm will be caused. As concluded by the submitted Noise Assessment, it is confirmed that the extended opening hours will not lead to any detrimental effect on the prevailing noise climate at nearby residential properties. Therefore, we believe that the site should be considered as an exception to local planning guidance.

- 7.14 Notwithstanding the above, the proposals allow for a closing time of the restaurant at 00.30 hours, with the service of food and drink finished 30 minutes prior to this. This allows for a period of 30 minutes for any customers still remaining in the restaurant to exit the premises at different intervals, therefore having a lower impact with regard to noise and amenity in the surrounding area.
- 7.15 On the basis of the above and our detailed review of planning policy associated with the site, it is considered that due to the small scale nature of the unit and its location on Whitfield Street, a main thoroughfare adjacent to Tottenham Court Road, the extension to opening hours is acceptable.
- 7.16 The restaurant has been open for over 17 months and there have been no complaints made to the Council with regard to noise or disturbance in association with the use. The applicants have worked closely with the local residents, as detailed in the Statement of Community Involvement, in order to overcome any comment or potential concerns associated with the operation of the restaurant. It is considered by the applicants and the locals that the extension to opening hours for Dabbous restaurant is appropriate.
- 7.17 Through discussions with the residents, it was made clear that whilst they were happy with the proposals for Dabbous, they were keen to see that the same hours of operation could not be passed on to another occupier, who may not be so aware or sympathetic to residential amenity. It was made clear during the Consultation Evening that the applicants are planning to occupy the unit long-term, however, were understanding of the comments made.
- 7.18 On this basis, we request that the planning permission relates to the current occupiers (i.e. a personal permission for Dabbous restaurant). It is understood that the Council have allowed this arrangement previously, for example, in relation to Bloomsbury Ballroom (noted in the correspondence associated with app ref: 2011/6402/P).

8.0 OTHER CONSIDERATIONS

Surrounding Occupiers and Residents

- 8.1 A Noise Assessment has been submitted with this application, to support the proposals, which relates to the general noise levels at the premises. The noise survey confirms that the extension to operating hours will not alter the acceptability of the current use. The noise surveys were undertaken on what constituted the busiest nights of the week for the restaurant in order to illustrate a worst case scenario for the purposes of the application. This included noise measurements undertaken on 15 December 2012 when the venue was operating under a Temporary Event Notice (TEN) and opening hours were extended until 01:30 hours.
- 8.2 The Officer's Report for the previous application referred to the potential to undertake a noise assessment on a Sunday or weekday, however, the restaurant is closed on a Sunday and there will be no opportunity to review a further TEN on a weekday for comparison purposes, as there is not one arranged or likely to occur this year. It is considered by the applicant's Noise Consultant that the Noise Assessment has been prepared in accordance with the worst case scenario for the proposed extended opening hours, and is therefore appropriate for the purposes of this application.
- 8.3 Policy DP28 of Camden's Development Policies DPD seeks to ensure that noise is controlled and managed within the borough. It is stated that planning permission will not be granted for development which is likely to generate noise pollution. The policy also states that permission for plant or machinery will be granted where it does not cause harm to amenity and does not exceed the standard noise thresholds. As confirmed by the Plant Noise Assessment, produced by RBA Acoustics, the survey results associated with the machinery confirm that the noise emissions are considered acceptable by the LPA.

- 8.4 It is therefore considered that the surrounding residents and commercial occupiers will not be impacted by the extension of the operating hours for this unit.

Patron Dispersal

- 8.5 The arrival and dispersal of patrons from the premises was observed as part of the noise assessment by RBA Acoustics. The assessment confirms that patron departures were undertaken in a quiet manner, and that the majority were noted to immediately leave the vicinity and head South along Whitfield Street towards Tottenham Court Road.
- 8.6 This matter was discussed in detail with the local residents and the applicant at the Consultation Evening held in November 2012. Whilst it is not an area of concern at present, a commitment from Dabbous restaurant in relation to managing patron dispersal would be welcomed. On that basis, the applicant would be willing to agree a Patron Dispersal Management Plan with the LPA, which would cover the following aspects, and would also likely be covered by any further licensing application:
- Encourage smokers associated with the restaurant to stand on Whitfield Street (this is already encouraged and a cigarette bin is located in this area to assist);
 - Encourage patrons to remain inside the restaurant until their transportation arrives – to reduce noise outside the restaurant;
 - Encourage patrons to leave the restaurant along Whitfield Street rather than Scala Street.
- 8.7 It is understood that the above aspects of patron management are already being considered, implemented and addressed by Dabbous restaurant. The applicant, for example, has hired a doorman to assist the restaurant on the busiest evenings of the week (Friday and Saturday) to seek to ensure that patrons entering and leaving the premises are respectful to the neighbouring residents. Also, the restaurant works closely with a local minicab firm and, upon requesting a taxi for a customer, asks them and

their party to remain inside the restaurant until their transportation arrives. This reduces the risk of disturbance outside the restaurant.

- 8.8 We understand that no noise complaints have been received with regard to patron dispersal at Dabbous Restaurant since it opened in January 2012, and our client is very keen to ensure that this remains the case. This matter has been confirmed within the Officer's Report associated with the last application (ref: 2013/0771/P). This stated that since opening the restaurant has utilised five Temporary Event Notices (TENs). No complaints have been received with regard to these evenings and the associated extended opening hours. We consider that this provides evidence that the extension of hours on the busiest three evenings of the week (Thursday, Friday and Saturday) for the restaurant are acceptable and appropriate.

Employment

- 8.9 It is understood that an extension to the opening hours of the restaurant, whilst of benefit to patrons, would also be of benefit to the local economy. It is proposed to hire up to three new members of staff in order to account for the additional two hours of operation proposed. As stated in the NPPF, the Government is committed to securing economic growth in order to create jobs and prosperity (paragraph 18). The continued success of Dabbous, which would be ensured by the extension to opening hours, would assist towards meeting the objectives of the NPPF and local policy.

9.0 CONCLUSION

- 9.1 The proposal to extend the opening hours on Thursday, Friday and Saturday evenings to 00:30 (the next day) is considered to be appropriate in this location and will provide for a better quality dining experience for patrons of Dabbous restaurant. The scheme will continue to ensure the protection and enhancement of the locality, including it's setting within the conservation area.
- 9.2 The evolvment of the scheme follows a detailed pre-application consultation process with local residents, which is set out in detail in the submitted Statement of Community Involvement. As set out above, the potential to provide a personal permission to Dabbous restaurant is supported by both local residents and the applicant. Should Dabbous ever vacate the premises, this would ensure the hours of opening would revert back to those approved as part of the appeal.
- 9.3 Overall, it is considered that the proposal to extend the opening hours of this premises by one hour three evenings a week is acceptable in this location, as confirmed by the submitted Noise Assessment, and therefore should be determined favourably by the Council.

