

# APCAR SMITH PLANNING

Chartered Town Planning Consultants

**PLANNING STATEMENT  
IN RESPECT OF PROPOSALS  
RELATING TO**

**309 WEST END LANE  
LONDON NW6 1RD**

Our Ref: CA/2902

NOVEMBER 2015

*Principal: Carolyn Apcar BA Hons. MRTPI*

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### Appendices

- A.** Night time photographs of some nearby A3/A4/A5 uses with external seating.

## **1.00 Introduction**

- 1.01 This application relates to the variation of Condition 2 of planning permission ref: 2005/2639/P. That permission was for the change of use from retail to restaurant, including the placing of tables and chairs in the forecourt. The condition in question limited opening hours from 8.00am to 8.00pm. This application seeks to vary that condition and seeks permission to remain open until 11.00pm on Mondays to Saturdays and 10.30pm on Sundays.
- 1.02 Section 2 contains a description of the site and surrounding area with particular reference to other similar uses in the vicinity. Section 3 refers to the planning history of the application premises and also planning history of other relevant premises referred to in Section 2. Planning policies are considered in Section 4 followed by our appraisal of the merits of the proposals in Section 5 and our conclusions in Section 6.
- 1.03 The application is accompanied by a Noise Impact Assessment produced by Clover Acoustics which demonstrates that the proposed extended hours would cause no harm to resident's amenities.

## **2.00 Site and Surroundings**

2.01 The application premises lie within the heart of the West Hampstead District Centre – a busy centre containing, as well as retail and service uses, a significant proportion of eating/drinking facilities falling within Use Classes A3, A4 and A5. Many, including the application premises, have external seating in front of the units, at the back edge of the pavement.

2.02 Other units within the District Centre with uses falling within Classes A3, A4 or A5 include:

- 218 - Bellaluna (Italian restaurant open 10.00am until 11.00pm daily).
- 238 – Brioche Café and Bar.
- 242 – The Wet Fish Café (open until 11.00pm Mondays to Saturdays).
- 248 – Moment Espresso Bar and Restaurant (open until 11.00pm Mondays to Saturdays and 10.00pm Sundays).
- 252-254 – Nandos Restaurant (open until 11.00pm Mondays to Thursdays, 11.30pm Fridays and Saturdays and 10.30pm Sundays).
- 262 – Dominos Pizza (collection and delivery - open until 1.00am Friday night/Saturday morning and Saturday night/Sunday morning and midnight the rest of the week).
- 264-266 – Café Nero.
- 268 – El Rocio Tappas Bar and Restaurant (open until midnight on Fridays and Saturdays and 11.30pm Sundays to Thursdays).
- 272 – Dylan’s Bakery and Sandwich Bar.
- 341 – Davids Deli (open until midnight daily).
- 339 – Schnitzel Chicken and More (Restaurant and Take-Away - open until 11.00pm daily).
- 335 – Good Earth Express (Chinese Restaurant and Take-Away - open until 11.00pm Mondays to Saturdays).
- 331 – Gourmet Burger Kitchen (open until 11.00pm Mondays to Saturdays and 10.00pm Sundays).
- 327 – Lusmorphia (Restaurant and Take-Away - open until midnight Tuesdays to Saturdays and 11.00pm Sundays).
- 315 – Fortune Gate (Chinese Take-Away - open until 11.30pm daily).

- 311 – Locanda Restaurant (open until 11.00pm daily).
- 295-297 – The Black Lion Bar (open until 1.00am Fridays and Saturdays and 11.00pm Sundays to Thursdays).
- 291 – 160 Bar and Smoke House (open until 11.00pm Mondays to Thursdays, 12.00am Fridays and Saturdays and 10.30pm on Sundays).
- 283-285 – The Alice House Restaurant and Bar (open until 11.30pm Mondays to Thursday, 01.00am Fridays and Saturdays and 11.0pm Sundays).
- 279 – Guglee Restaurant (open until 11.00pm daily).
- 273 – La Brocca (Wine Bar and Restaurant and Take-Away - open until 01.00am Fridays, Saturdays and Sundays and 11.00pm the rest of the week).
- 267 – Lenas Café (open until 10.00pm daily).
- 305 – The Meat Bar (take-away open until midnight daily).

- 2.03 Many of the A3/A4/A5 uses listed above incorporate external seating on the West End Lane frontage. These includes No's 295/297, 331, 341, 272, 264/266, 252/254, 248 and 242.
- 2.04 As a result of the many A3, A4 and A5 uses there is a lot of activity in this District Centre throughout the evenings. The outdoor seating at many of the establishments, some of which are covered and with heaters during the winter months, increases the activity on the street.
- 2.05 There is residential accommodation on the upper floors above the application premises. There is also residential accommodation above the other A3, A4 and A5 uses on West End Lane.
- 2.06 West End Lane is a busy road carrying significant volumes of traffic and buses travelling along routes C11, 328 and 139. The latter is a 24 hour bus route. There are bus stops in close proximity to the application premises – immediately opposite and approximately 15m to the north on the same side of the road.
- 2.07 The application premises changed hands approximately 14 months ago and now operate as a tea room. No alcohol or food is served on the premises. Despite the planning permission enabling opening from 8.00am (as discussed in the following section) they in fact only open for business at midday. There is an awning in front of the property

covering the external seating. Given the nature of the use, with no alcohol being served, the premises do not attract boisterous customers with their customer base primarily being local residents in the late 20's/30's age group.

- 2.08 Attached at Appendix A are a number of photographs of some of the other A3/A4/A5 uses with external seating which demonstrate the character of West End Lane during the evenings. It is clearly very different to the majority of District Centres in the London Borough of Camden and elsewhere, having a very continental feel.

### **3.00 Planning History**

#### **Application Premises**

- 3.01 In 2003 planning permission was refused (Ref: PWX0302166) for the siting of tables and chairs in the forecourt of the then retail unit. There were two reasons for refusal – the first referring to the proposed external seating effectively changing the use from Class A1 to A3 which was considered to be detrimental to the West Hampstead District Centre; the second reason for refusal referred to visual clutter detrimental to the character and appearance of the Conservation Area. It is noted that neither of the reasons for refusal raised any concerns in respect of residential amenities.
- 3.02 In 2007 the Local Authority served an Enforcement Notice (Ref: EN03/0051) alleging the change of use of the ground floor from retail to Class A3. The reason for the issuing of the Notice referred to the impact on the retail character and function of the District Centre with the requirements of the Notice being to cease the restaurant/café use and reduce numbers of tables and chairs on the forecourt (to 3 tables and 10 chairs). Also in 2007 retrospective planning permission for the change of use and placing of tables and chairs on the forecourt was refused (Ref: 2005/2639/P) – again solely on the basis of the character and function of the District Centre. Neither the Enforcement Notice or the refusal of planning permission raised concerns in respect of noise disturbance and the harm to residents amenities.
- 3.03 An appeal against the Enforcement Notice was allowed in February 2008 (appeal Ref: APP/X5210/C/07/2057396) on the basis of the appeal under Ground (a) – that planning permission should be granted. At Para 12 of the decision letter the Inspector noted that many of the cafes and restaurants locally have taken advantage of wide pavements to add vitality of the street scene, also commenting in the same paragraph that the property was ideal for the use, matching the character of the immediate locality. He further commented that the use of the forecourt for tables and chairs adds to the vitality of the area. Condition 2 imposed by the Inspector limited opening hours from 8.00am until 8.00pm daily. However it is clear from Para 13 of the appeal decision that the hours were those requested by the Appellant. Thus in limiting the hours in this respect it was not as a result of concerns raised regarding later hours harming residents amenities. It was simply because these were the hours the Appellant required. Condition 1 prevented primary cooking, limiting hot food to that

reheated by means of microwave oven, electric toaster or panini grill. This is of relevance in terms of the limitations on any future use.

- 3.04 In 2011 planning permission was granted for the erection of a single storey rear extension and installation of a retractable canopy, timber enclosure and planting boxes to the front of the unit (Ref: 2011/3896/P). This permission has been implemented.
- 3.05 More recently, in 2013, planning permission was refused for the variation of Condition 2 of permission Ref: 2005/2639/P to allow opening hours between 8.00am and 11.30pm Mondays to Saturdays and 8.00am to 10.30pm Sundays. The reason for refusal referred to concerns in respect of noise disturbance to the detriment of the amenity of occupiers of nearby residential properties referring to various LB Camden policies which we comment on in the following section. An appeal against this decision was dismissed in April 2014. At Para 7 the Appeal Inspector referred to the condition having been imposed in line with the hours sought in the original planning application and with the specific purpose of protecting nearby residents from noise and disturbance. However the latter part of his comments are wrong. The hours condition was imposed by another Inspector when allowing the Enforcement Notice appeal (as referred to above). With appeal decisions Inspectors do not have to give reasons for the imposition of conditions and indeed no reason was specified in the Enforcement Notice appeal decision. Furthermore nowhere in the appeal decision does the Inspector suggest that longer opening hours would harm residents amenities. It is acknowledged that hours of operation condition are often to protect neighbours amenities but in allowing the Enforcement Notice appeal in February 2008 that Inspector did not need to consider whether later opening hours would harm neighbours amenities since these were the hours that Appellant had sought permission for.

#### **Other Relevant Planning History**

- 3.06 We comment below on relevant planning history concerning the properties referred to at Para 2.02 of this Statement.
- 3.07 In June 1998 permission was granted (Ref: PW9802018) for No.238 to remain open until 11.00pm daily.
- 3.08 An appeal was allowed in October 1997 for extending opening hours at 242 until 11.00pm Mondays to Saturdays and 10.30pm Sundays and



Bank Holidays (LB Camden Ref: PW9702121). It is clear from Para 11 of that decision that the Inspector was aware of the flats above those premises as well as others in the general area but despite this concluded that extending the hours (previously 6.00pm) would be acceptable with no unacceptable increase in noise and disturbance to the detriment of residents amenities. There have been subsequent permissions granted for table and chairs in front of 242 with the most recent (Ref: 2014/4641/TC) being to renew the permission for external tables and chairs, permitting these to be used for the same hours as the Inspector had referred to for the premises generally.

- 3.09 The external seating at 248 is allowed by permission Ref: 2014/4322/TC with hours being conditioned to 11.00pm Mondays to Saturdays and 10.00pm on Sundays. The Council were obviously satisfied that this would not harm residents amenities.
- 3.10 As regards 252 to 254 the change of use to restaurant was permitted in 1998 on appeal (LA Ref: PW902373). We have been unable to obtain a copy of the appeal decision to see whether any conditions were imposed regarding opening hours but note that when the Council subsequently granted planning permission in 2010 (Ref: 2010/4803/TC) for external tables and chairs the relevant condition enabled these to be used until 11.00pm Mondays to Thursdays, 11.30pm Fridays and Saturdays and 10.30pm on Sundays. There have been a series of subsequent permissions to renew the temporary permission for the tables and chairs allowing the same hours to continue.
- 3.11 Turning next to 268, a series of planning permissions have been granted in respect of external seating (7 tables and 26 chairs) with opening hours permitted until 11.00pm daily (the most recent permission in this respect being Ref: 2014/4104/TC approved in July 2014).
- 3.12 In 1993 permission was granted on appeal in respect of the restaurant use of the ground floor of 273 West End Lane (LA Ref: PL/9200712). In allowing that appeal the Inspector did not consider it necessary to impose any condition restricting opening hours. Para 13 of the appeal decision noted the numerous restaurant and similar which remain open until late at night in the vicinity as a result of which it was considered that the additional activity likely to be generated by the proposal would be unlikely to harm living conditions of those living in the vicinity.

- 3.13 The Local Authority granted permission for the change of use of 279 to a take-away within the previous definition of Class A3 in 1992 (Ref: PL/9101276). This was subject to a condition limiting opening hours until 11.00pm daily.
- 3.14 As regards 283/285 the Local Authority granted permission in 1989 (Ref: PL/8905087) for use of the basement of 283 and basement and ground floors of 285 to be used as a restaurant subject to a condition limiting opening hours until 11.00pm daily.
- 3.15 In September 2005 permission was granted on appeal for the change of use of 291/293 (LA Ref: 2004/2452/P) to restaurant. A condition was imposed limiting opening hours until midnight Mondays to Saturdays and 11.00pm Sundays and Bank Holidays. In allowing these hours the Inspector was of the view that they would not seriously harm local residential amenity given the nature of the locality.
- 3.16 The original A3 use of No.331 was permitted by the Local Authority in 1997 (Ref: PW9605103R1). At that time this was restricted by condition to 6.00pm Mondays to Saturdays. However the Local Authority have subsequently allowed opening hours to be increased with a number of subsequent permissions having been granted culminating in permission Ref: PWX0103485, granted in 2001, allowing the premises to be open from 8.00am until 12.30am Mondays to Thursdays, 01.00am Fridays and Saturdays and 11.30pm on Sundays.
- 3.17 As far as 335 is concerned, the Local Authority granted permission in 1991 (Ref: 9100563) for the restaurant with hours limited to 11.30pm daily.
- 3.18 At No.339 permission was granted by the Local Authority for a change of use to a restaurant in 1996 (Ref: P9602306) with opening hours until 11.00pm Mondays to Saturdays. Subsequently, in 2003 (Ref: 2003/2798/P) the relevant condition was varied to allow opening until 11.00pm daily. The Officer's report acknowledged that given the other A3 units in close proximity without hours restrictions or with hours restrictions for longer hours daily, it would be unreasonable not to extend the hours for 341 as sought.
- 3.19 Lastly we would refer to 341 where permission was granted on appeal in August 2004 (LA Ref: 2003/0363/P) for change of use to restaurant with hours restricted until 11.00pm daily.

- 3.20 The above analysis of other permissions in the vicinity demonstrates that the Local Authority and Inspectors on appeal have never previously been concerned with opening hours of the nature sought now for No.309 West End Lane. Many of the Officer reports and appeal decisions acknowledge the relevance of other similar premises and precedents set by previous planning permissions. The same is relevant in the Council's consideration of the application now submitted for 309.

#### **4.00 Planning Policies**

- 4.01 We comment below on relevant planning policies – in particular those identified by the Local Authority in November 2013 when refusing application Ref: 2013/5045/P in respect of the application premises.

##### **LB Camden Core Strategy (Published November 2010)**

- 4.02 Policy CS5 – This refers generally to protecting the amenity of the Borough's residents with reference to making sure impact of development on neighbours is fully considered and requiring mitigation measures where necessary.
- 4.03 Policy CS7 – This policy relates to promoting the Borough's centres and shops. It includes reference to making sure that food, drink and entertainment uses do not have a harmful impact on residents and the local area.

##### **LB Camden Development Policies (Published November 2010)**

- 4.04 Policy DP12 – The policy refers to supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses. In order to manage potential harm to amenity reference is made to using planning conditions to address hours of operation.
- 4.05 Policy DP26 – This policy generally refers to managing impact of development on occupiers and neighbours and includes noise as one of the factors to be taken into account.
- 4.06 Policy DP28 – This relates specifically to noise and vibration referring to the Council not granting permission for development likely to generate noise pollution.
- 4.07 For the reasons discussed in Section 5 it is considered that the proposals comply with all of these policies.

## **5.00 Planning Appraisal**

- 5.01 We are aware of the relevance of the appeal decision dated 15 May 2014 in respect of the application premises (LA Ref: 2013/5045/P). The current application differs slightly in that it seeks permission only until 11.00pm Mondays to Saturdays (whereas that previous application sought permission until 11.30pm) as well as 10.30pm on Sundays. Whilst the Inspector dismissed that appeal there was no evidence before him in order to assess the impact of the use and hours and indeed he specifically refers at Para 9 to not being aware of the circumstances under which the various other late opening premises operate.
- 5.02 It is because of the Inspector not being aware of those circumstances that we have gone to the extent of carrying out a very thorough analysis of past planning permissions elsewhere in the West Hampstead District Centre as summarised at Para's 3.09 to 3.20. These demonstrate how the Local Authority and other Inspectors on appeal have considered it entirely appropriate to grant planning permission for similar uses (uses that now fall within Classes A3, A4 and A5) to operate until the hours permission is now being sought for 309 West End Lane and indeed many of these have been permitted to operate even longer hours.
- 5.03 Like the current application premises many of these also include external seating. Thus the fact that No.309 has tables and chairs under a canopy at the front of the property does not render it any different to many of the other examples we have referred to.
- 5.04 The Applicant has also commissioned an Acoustic Consultant to carry out a Noise Impact Assessment, a copy of which is submitted as a separate document with this application. Section 3 of that report refers to the premises being located on a busy street with the ambient noise climate reflecting this. Reference is also made to there being no amplified music and also to the external seating areas adjacent in the form of a public house and restaurant. High background noise climate is referred to as being due to road traffic noise as well as the variety of bars and restaurants in operation in the area, predominantly all with external seating to the front.
- 5.05 Noise readings were undertaken at the first floor boundary when Rouge Lounge at the application premises was open and with the

external seating area being utilised and also after its closing hours. The results demonstrate that noise levels at this location remained broadly the same during operational and non-operational periods. In view of this the Acoustic Consultants have concluded that the proposed extension of opening hours are unlikely to have an adverse impact on the noise climate.

- 5.06 When the previous appeal was dismissed there was no Noise Impact Assessment available for the Inspector. This additional supporting information now provided proves that the Inspector's concerns in dismissing the previous appeal in May 2014 were unfounded and we believe that were such a Noise Impact Assessment in front of the previous Inspector at that time it is unlikely that that appeal would have been dismissed.

## **6.00 Conclusions**

- 6.01 The appeal premises are located in an area with a significant number of A3, A4 and A5 uses, many of which (including the application premises) have external seating at the front. West End Lane is a busy road with high volumes of traffic and a high ambient noise background.
- 6.02 There have been many planning permissions granted by the Local Authority and Inspectors on appeal for A3, A4 and A5 uses where hours have been permitted beyond those sought for No.309. These decisions are clearly relevant to the current application.
- 6.03 The Noise Impact Assessment demonstrates that the extension of opening hours is unlikely to harm neighbours amenities.
- 6.04 For these reasons it is considered that the proposals comply with all relevant planning policies and that planning permission should be granted for the extended hours as sought.