



# Planning Inspectorate

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## Appeal Decision

Site visit made on 29 August 2024

**by David Wyborn BSc(Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 November 2024**

**Appeal Ref: APP/K5600/W/24/3345077**

**10 Golborne Road, London W10 5PE**

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- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Golborne Laylow against the decision of Royal Borough of Kensington and Chelsea.
  - The application Ref is PP/23/06566.
  - The application sought planning permission for the erection of a rear second floor extension and mansard roof extension at third floor level with roof terrace; alterations to ground level entrance openings and window positions in association with the change of use of the property from public house (Class A4) to private members' club (sui generis) at basement level; restaurant (Class A3) at ground and part first floor and single residential unit (Class C3) at part first, second and third floor levels as amended by NMA/17/06465 for change of use of part of the first floor area which is currently residential C3 use class back to original A4 drinking establishment use class (NMA dated 1 November 2017) without complying with a condition attached to planning permission Ref PP20/04425 dated 25 May 2021 as amended by NMA22/07102 dated 19 December 2022.
  - The condition in dispute is No 10 which states that: The use shall not be carried out other than between 0730 hours and 0100 hours (the following day) on Monday to Thursday, 0730 hours and 0200 hours (the following day) on Friday and Saturday, and between 0730 and 0000 hours on Sunday.
  - The reason given for the condition is: To prevent any significant disturbance to residents of nearby properties and comply with development plan policies, in particular policy CL5 of the Local Plan 2019.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a rear second floor extension and mansard roof extension at third floor level with roof terrace; alterations to ground level entrance openings and window positions in association with the change of use of the property from public house to private members' club (sui generis) at basement level; restaurant at ground and part first floor and single residential unit at part first, second and third floor levels as amended by NMA/17/06465 for change of use of part of the first floor area which is currently residential use class back to original drinking establishment use class (NMA dated 1 November 2017) without complying with a condition attached to planning permission Ref PP20/04425

dated 25 May 2021 as amended by NMA22/07102 dated 19 December 2022 at 10 Golborne Road, London W10 5PE in accordance with the terms of the application, and subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. Planning permission was granted in May 2015 for alterations and additions to 10 Golborne Road in association with the change of use of the then empty public house to uses including private members' club, restaurant and residential (PP/15/00071 - the 2015 permission). There was a subsequent non material amendment (NMA/17/06465) to this permission to allow the use of the first floor for solely the specified commercial uses (the 2015 permission as amended).
3. The 2015 permission was subject to condition 11 which set the time limits for the opening of the restaurant and private member's club. This specified these uses shall not be carried out other than between 0730 hours and 2330 hours on any day and that no customers shall be on the premises outside those hours.
4. Under application PP/20/04425, a proposal was submitted to vary condition 11 of the 2015 permission as amended so that the hours of opening of the premises could be extended. This was permitted in May 2021 (the 2021 permission). Condition 10 of the 2021 permission detailed the hours of opening and condition 11 set an 18 month limited period for the operation of the extended hours after which those hours would revert to those originally approved by condition 11 of the 2015 permission. There was a subsequent non-material amendment application to correct one element of the timing of the hours of operation under condition 10 of the 2021 permission and this was agreed (Application NMA22/07/07102 granted on 19 December 2022) (the 2021 permission as amended).
5. This resulted, for the 18 month period, the hours of operation for the use shall not be carried out other than between 0730 hours and 0100 hours (the following day) on Monday to Thursday, 0730 hours and 0200 hours (the following day) on Friday and Saturday, and between 0730 and 0000 hours on Sunday.
6. The 2021 permission as amended was the grant of a new and separate planning permission. The evidence indicates that it was implemented and I do not consider that this permission has lapsed<sup>1</sup>. The situation is that, after the 18 month limited period of operation with the extended opening hours, the operation of the premises can continue on a permanent basis, but in accordance with the reduced operational hours restricted to those times specified in the 2015 permission as amended.
7. This latest proposal, the subject of this appeal, seeks to further extend the operating hours for the premises and update the times in condition 10 of the 2021 permission as amended. If permitted, this would create a new and separate planning permission.

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<sup>1</sup> There is, therefore, no need to consider the request in paragraph 5.1 of the appellant's statement that the appeal should be to consider a variation to condition 11 of the 2015 permission.

8. The submission explains that, compared to the operating hours for the 18 month period permitted under condition 10 of the 2021 permission as amended, there would be no change to the operating hours on Mondays, Tuesdays, Wednesdays and Sundays, but an additional hour is sought on Thursdays, Fridays and Saturdays.
9. The appellant has explained that they would be amenable to the imposition of a condition which would impose a temporary period for the extended hours of operation so as to act as a "trial period" for at least 12 months. It is argued that this would allow the time to test the actual and genuine impacts and implications of the extended hours on the ground and in reality.
10. I sought clarification during the appeal process from the main parties as to the permitted uses on each floor of the building and, consequently, if I was minded to allow the appeal, what uses and their related times of operation, would be approved. In the interests of background, the original 2015 permission permitted a private members' club in the basement, a restaurant at ground and part first floor, and a part first, second and third floor residential use. This permission was updated by the non-material amendment which changed the approved mixed commercial and residential use on the first floor to solely commercial, in the form of the restaurant and drinking establishment uses. This effectively updated the description of the development. Consequently, the 2015 permission as amended was for the specified commercial uses on the basement, ground and first floors, and residential use on the second and third floors.
11. The 2021 permission was an application to seek to solely vary the times of operation of the approved commercial uses. This was permitted. However, the condition which listed the plans copied across those plans from the original 2015 permission and did not list the updated plan for the first floor use from the non-material amendment which showed that it had been permitted in solely commercial use. At the time of the submission of the application for the 2021 permission, the lawful and permitted use of this floor was solely commercial. Attaching the original plan number for the first floor to the 2021 permission, rather than the updated plan showing the revised use, would appear to have been in error. Effectively the specified incorrect plan proposed a use of the first floor that would have been in contradiction with the updated description of the development under the 2015 permission as amended.
12. This latest proposal seeks to vary the 2021 permission as amended, and this permission in turn relates back to the 2015 permission as amended, which allowed the specified commercial uses across all of the basement, ground and first floors, and with residential on the second and third floors. I consider that these are the approved uses of the building and against which this proposal should be considered, notwithstanding the plan for the first floor attached to the 2021 permission.
13. I am also aware that a Premises Licence<sup>2</sup> has been granted for the building and included commercial use throughout the second floor, in the form of a private dining room. However, my attention has not been drawn to any grant of planning permission for commercial use on the second floor, and I do not judge that I am in a position to consider such a use as part of this appeal.

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<sup>2</sup> Premises Licence 22/311450/1 – dated 1 December 2022.

This includes because to do so would be contrary to the description of the original development and would also extend commercial activity to a floor that has not, as part of previous planning permissions, been approved.

14. Finally, since the decision of the Council, it has adopted the New Local Plan Review (July 2024) (the Local Plan 2024), and this has superseded the old Local Plan (2019). The Council in its appeal statement identify policies from the Local Plan 2024 which it considers are relevant to the appeal and the appellant has made submissions on these policies at the final comments stage. I will, therefore, determine the appeal based on the Local Plan 2024.

### **Main Issue**

15. The main issue is whether or not the proposed extended opening hours for the commercial uses at the site, including private members' club, restaurant and drinking establishment, would create an unacceptable impact in noise and other disturbance which would materially harm the living conditions of the occupants of neighbouring properties.

### **Reasons**

16. The appeal premises are a four storey plus basement detached property. The building was previously a public house but now operates as a private members' club, restaurant and drinking establishment with residential accommodation above. The building has a main entrance to the side that leads onto a hard surfaced open area and nearby there are car parking spaces located off Golborne Road.
17. The premises are located in a fairly busy built-up area, adjoining Golborne Road, with on either side of the road a row of ground floor premises, including shops, cafes, a doctor's surgery and a library. Many of the upper floors of the buildings in the surrounding area are residential flats. These residential buildings include the blocks at Trellick Tower on the opposite side of the road, the reasonably nearby Golborne Road flats towards the west and southwest of the appeal building and, to the broadly north, the residential properties in Holmefield House.
18. In terms of the development plan policies, the most relevant for the determination of this proposal are Policies GB8 and CD9 from the Local Plan 2024. Policy GB8 concerns noise and vibration, and includes the policy test that noise and vibration must not create unacceptable impact on local residential amenity including neighbouring properties. Policy CD9 sets out the approach to living conditions and requires that the reasonable enjoyment of the use of buildings, gardens and other spaces is not harmed due to increases including from noise.
19. The Council's Noise Supplementary Planning Document May 2009 (the Noise SPD) provides the basis for considering planning applications that raise issues of noise. A section of the Noise SPD covers Clubs, Pubs, Bars and Places of Entertainment and establishes the information that will be required to support an application and the issues that are likely to form part of the assessment. The Noise SPD requires that premises should be constructed with adequate provision for sound insulation ensuring that music noise and the general 'hubhub' created by patrons does not materially impact on the amenity of

occupiers of surrounding properties. The Noise SPD advises that, when assessing a proposal, consideration should be given, including to the likely noise impact of patrons arriving and departing the venue, an assessment of the parking/vehicle impacts, and the assessment of the likely departing routes for walkers should be made both in the early evening, late evening and early hours of the morning and after the venue closes.

20. Additionally, Policy HC6 of the London Plan 2021 sets out the approach to supporting the night-time economy. It is explained that the night-time economy refers to all economic activity taking place between the hours of 6pm and 6am and includes eating, drinking and entertainment. The policy seeks, amongst other things, the promoting of the management of the night-time economy through an integrated approach to planning and licensing.
21. In this case, while the use of the site has reverted to the originally permitted hours, it operated with extended hours for an 18 month period until April 2024. This proposal would extend the opening time for an extra hour on Thursdays, Fridays and Saturdays compared with the hours operated during the temporary period, and this would be much more extensive than the hours that the use has now reverted to.
22. It is of significance that a Premises Licence was granted in December 2022 for the extended hours that are now sought. The minutes from the Licensing Sub-Committee set out the detailed examination that took place before the licence was granted. While the Environmental Health Section objected to the extended hours, its submission to the Sub-Committee explained that the premises are well managed and the building has been developed to a very high acoustic value. The concerns of the Area Senior Environmental Health Officer are explained to be in relation to the impacts that could be created to neighbouring residents from customers departing the premises up to 03.00 hours. It is detailed that, in particular, the external areas are all hard surfaces and, therefore, highly reverberant, with external sound from persons outside which can be reflected and the later any noise can occur, the greater the impacts that can be created to neighbouring residents.
23. Nevertheless, despite this objection and the other comments raising concerns, the Licensing Sub-Committee was satisfied that the proposed hours of operation would be acceptable, subject to a series of conditions attached to the Licence including operational requirements as to how the use and customers would be managed. The evidence indicates that the Premises Licence regime provides an ongoing regulatory tool and at any time, the licence can be made the subject of an application for review, as a result of which the conditions could be changed, or the licence revoked.
24. I have very carefully considered the objections to the proposed operating hours from some local residents including from those within the Golborne Flats closest to the site and who explain that they have bedrooms facing the road side direction and appeal site. It is explained that the situation has been much better when the site was not operating in past months. These representations, while fairly modest in number compared with the number of properties in the vicinity, do include detailed concerns with the noise and activity associated with the use and some comments explain it has affected their ability to sleep.

25. I have taken these comments very seriously, although they are not especially reflective of other information, for instance, in terms of formal complaints at the earlier stage, the evidence presented to the Licensing Sub-Committee refers to four noise complaints in 2021, and none in 2022. The Noise Impact Assessment report (Blue Sky Acoustics – 17 April 2023) (the NIA Report 2023) explains that of the four complaints, one was related to plant noise which was quickly resolved, one was an anonymous complaint about a potential breach of Covid rules, one related to a Temporary Event Notice at Halloween, and one related to loud music, which the report indicates was not substantiated, and was a single complaint at that time and the case was closed by the Council.
26. The information which accompanied and helped to justify the 2015 permission included an acoustic report which proposed a series of sound insulation and other works, which subsequent information indicates were incorporated into the building. There seems little doubt that the building is well insulated and is generally suitable to contain the noises that are generated by the approved uses in the building, although the comments of some local residents disagree.
27. The control over the potential noise that may emanate from the building is further reinforced by the licence conditions including that no music or amplified sound shall be generated within the premises so as to give rise to nuisance within neighbouring dwellings, that recorded music is subject to a noise limiter unit, and all windows and external doors from the basement to the ground floor shall be kept closed after 21.00 hours, except for the immediate access and egress of patrons and staff.
28. In terms of the comings and goings, particularly the dispersal of patrons in the early hours of the morning, there are operational policies in place for the management of such activities. These include as part of the conditions attached to the licence that the premises licence holder shall ensure that any patrons using the outside area and/or drinking outside and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
29. While I am conscious of the objections from local residents and the comments that the use has caused disturbance, I am also aware that the evidence indicates that the premises are generally well run and that 28 letters of support for the proposed extension to the opening hours were received at the planning application stage. Some of the comments in support say they are from local residents, although it appears not immediate to the appeal site. These letters include comments that the use of the appeal premises and the staff have made a positive difference to this part of Golborne Road over the past 7 years including that it used to have a crime and disorder problem whereas it now feels safe and welcoming.
30. While the majority of the surroundings to the premises are hard surfaced and this can lead to sounds being reflected, there are also two reasonably mature trees either side of the entrance to the building. Furthermore, the entrance to the premises, located within the southern side of the building, is positioned fairly close to the main road and is not immediately adjoining



surrounding residential properties. This position of the doorway aids those leaving the premises and taking taxis, or generally dispersing along footways in the area without all of the routes necessitating walking directly close to nearby residential properties.

31. There is an outside seating and smoking area by the main doorway and this area is controlled by the licence conditions. These matters assist with reducing the potential for disturbance by those outside and/or leaving the premises, although there is clearly the potential for disturbance, with any premises, if individuals choose to act in an unneighbourly way even with management and other operational safeguards in place.
32. There has been a period with extended hours in the past and, while there are some adverse comments on the impact that this had to the living conditions of residents, there is other information that provides a different picture. On balance and when considering the totality of information, I consider that the evidence tends to the view that, in the normal course of operations, the impact on the area and local living conditions during that period has been acceptable. Indeed, it was such that in December 2022 the Premises Licence was even agreed with longer hours than the trial period times, even though that trial period was at its start and had some way to run at the time.
33. I also give weight to the NIA Report 2023 accompanying this proposal which concludes that, on balance, it appears that the dispersal for the current terminal hours of operation, during the trial period, has not impacted residents (who may be asleep at 0200 hours) and, therefore, the risk of an impact from dispersal at 0300 hours at the weekend is no greater than it is at 02:00 hours.
34. Based on all the information before me, including the assessment and conclusions of the NIA Report 2023, the views and decision of the Licensing Sub-Committee, and the controls and conditions in association with the Premises Licence, I agree that the balance tends to indicate that the premises should be able to operate with the extended hours as sought so as to not create an unacceptable impact on local residential amenity, including at neighbouring properties.
35. Nevertheless, I also have in mind the objections of the Area Senior Environmental Health Officer, including at the licence and planning stages, who commented that the previously approved hours were the optimum hours acceptable for this location and the increase in hours requested would create a significant public nuisance. Nevertheless, the licence was granted and while I have found that it is probable that the effect of the proposal would be acceptable, the opening hours would extend into a period when there should not be an unreasonable level of disturbance and the extension to the hours as proposed in this appeal do not appear to have been tested in practice. If there was a trial period this would provide more assurance, or not, that the hours of operation, especially those hours extending to 0200 and 0300 hours on some days, would be acceptable in the longer term. Also to consider is that the previous trial period had not been completed when the Licensing Sub-Committee made its decision and the analysis at that time could not reflect what has happened since.

36. The Planning Practice Guidance provides advice on the interrelationship between the planning and licensing regimes. It also advises on the circumstances where a temporary permission may be appropriate and these include when a trial run is needed in order to assess the effect of the development on the area. I believe that the concerns which have been expressed are sufficient to create an element of uncertainty such that any permission should not be granted on a permanent basis at this point in time. The circumstances would justify the granting of a temporary period. A temporary period of 12 months with the premises operating with the extended hours would be necessary and reasonable to assess the practical implications on the ground of the extended hours.
37. During that temporary period, the extended hours would align with those specified in the Premises Licence. The combination of controls across both regimes would provide an integrated approach to planning and licensing as required by Policy HC6 of the London Plan 2021.
38. Consequently, I conclude that, subject to a temporary 12 month period as a trial to judge the effect of the extended hours on the amenities of the area, the mix of commercial uses should not, based on the balance of information before me, create an unacceptable impact from noise and other disturbance which would materially harm the living conditions of the occupants of neighbouring properties. On this basis, I consider that the proposal would comply with Policies GB8 and CD9 from the Local Plan 2024 and the Noise SPD.

### **Other Matters**

39. I have had regard to all the representations submitted both in objection and support to the proposal. I have examined the issues with regard to noise and disturbance above and I have concluded a trial period is appropriate.
40. Other matters have been raised, such as the impact of lighting, and it being a private members' club with local people not being able to afford membership and therefore the premises not being of benefit to the local community. These concerns are not directly related to the issue of potential noise and disturbance from the uses in the building and, therefore, like the Council I have not needed to consider them further as part of the main issues in this appeal.
41. As part of my considerations, I have taken into account that the extended hours would also provide an economic benefit to the premises, and the area more generally, and would help support the night time economy, a general policy objective.
42. Additionally, the proposal has been accompanied by a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended). The undertakings provide for car free housing by way of preventing the ability of an occupant to apply for or obtain a parking permit. This would be in accordance with development plan policies to encourage sustainable travel and reduce any dependency on private vehicle travel. The Council has confirmed that it is satisfied with the UU and I consider the obligations comply with the tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.



## Conditions

43. I have had regard to the conditions suggested by the Council if I was minded to allow the appeal. These largely replicate the conditions attached to the previous approval. This approach accords with the Planning Practice Guidance which explains that the decision made under section 73 should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.
44. Examining the proposed conditions, a condition setting out the standard commencement period for this new and freestanding permission is required. It is standard practice to attach a condition setting out the approved plans as part of any permission in the interests of clarity. The original permission consisted of the change of use and physical works, including extensions. The physical works have been confirmed as complete. No plans have been supplied as part of this submission that show these external changes and as these are built, and are not in dispute, a list of these plans as part of the condition is not necessary.
45. In terms of the uses of the building, the appellant has submitted a set of the floorplans. The use of the basement and ground floor have been consistent since the 2015 permission and the related plans are necessary to list in the interests of clarity. The submitted first floor plan is the amended plan agreed as part of the non-material amendment application (NMA/17/06465) and should be listed as this is the subject of the 2015 permission as amended and has not been sought to be changed since.
46. A second floor plan has been submitted and this shows this space is internally connected to the upper floor and appears to be in a combined use with that residential use. On the basis of the 2015 and 2021 permissions which allowed and did not alter the residential use of these two floors, and in the absence of any planning permission that indicates otherwise, these two plans are listed and their use is stated for residential purposes. I have worded the condition accordingly so that there is clarity as to the uses and floors to which the operating hours apply.
47. Conditions 3, 4, 5, 6, 7, 8 and 11, as listed in the attached schedule, are transposed from the earlier permission. The physical works are complete, however, because the wording of the conditions and the requirement for ongoing maintenance and/or management of the various listed items, the conditions are necessary. I have altered the suggested wording in respect of condition 9 and the use of the terrace to reflect the residential uses on the upper floors. All these conditions are reasonable and necessary in the interests of the character and appearance of the building and wider area.
48. A temporary trial period for the operation of the proposed hours is necessary and reasonable for the reasons explained. A condition is required to detail this period, to list the extended hours of operation and the hours that the commercial activities would revert to after the end of the temporary period. I have combined these requirements within a single condition so that they are clear and self-contained, and do not need to cross-reference to a condition in a previous planning permission. Finally, it is necessary for the Council to be

aware when the extended hours are implemented for monitoring and assessment purposes.

### **Conclusion**

49. Subject to a 12 month trial period, when examining the evidence in totality, I conclude, in all likelihood, that the extended hours of operation at the appeal site should not generally have an unacceptable impact on the living conditions of local residents.
50. It is such that, with an appropriate safeguard of a trial period, the scheme would comply with the development plan when considered as a whole and there are no planning considerations that outweigh this or lead me to conclude that the decision should be made other than in accordance with the development plan. The appeal succeeds and a new planning permission should be granted.

*David Wyborn*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing Nos DC\_P\_Proposed\_Basement (date 15-12-14), DC\_P\_Proposed\_Ground (date 15-12-14), DC\_PRO\_01\_P (1<sup>st</sup> floor layout – proposed - dated 07-03-17), DC\_P\_Proposed\_2<sup>ND</sup> (date 15-12-14), DC\_P\_Proposed\_3<sup>RD</sup> (date 15-12-14) and DC\_P\_Proposed\_ROOF (date 15-12-14) which, for the avoidance of doubt, show a private members' club in the basement, restaurant on the ground floor, and restaurant and drinking establishment on the first floor (the commercial uses); with residential use on the second and third floors.
- 3) All work and work of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture, profile and, in the case of brickwork, face bond and pointing, and shall be so maintained.
- 4) The cheeks of the dormer windows shall be clad in lead and be so maintained.
- 5) External windows and doors hereby permitted shall be timber framed and painted, with the windows being double hung, white painted, sliding sashes, and so maintained.
- 6) No items such as plants, umbrellas, heaters, screens, trellises, or other items, which rise higher than 1100mm from finished floor/decking level, shall be affixed to or placed upon the terrace at any time.
- 7) The railings to the roof terrace shall be painted black, and so maintained.
- 8) No water tank, lift motor room, or other structure or appliance, shall be erected upon the roof.
- 9) The roof of the mansard extension forming the subject of this planning permission shall only be used as a terrace in connection with the approved residential unit at second and third floor levels, and shall not be used at any time in connection with the commercial uses at first, ground and basement levels.
- 10) Within one month of the introduction of the approved hours, the applicant shall confirm, in writing, to the Local Planning Authority that the permission has been implemented and the date on which that occurred. The approved hours shall relate to the commercial uses in the basement, and on the ground and first floors, as specified in condition 2.

The commercial uses shall not be carried out other than between 0730 hours and 0100 hours (the following day) on Monday to Wednesday, 0730 hours and 0200 hours (the following day) on Thursday, 0730 and 0300 hours (the following day) on Friday and Saturday, and between 0730 and 0000 hours on Sunday (the approved hours).

The approved hours in this planning permission shall be in operation only for a limited period of 12 months from the confirmed date of the implementation, after which the hours of operation of the commercial uses shall not take place other than between the hours of 0730 and 2330 on any day and no customers shall be on the premises outside those hours.

- 11) The roof slope(s) of the building/extension hereby permitted shall be clad in natural slates, and so maintained.

End of Schedule