



City of Westminster

Cabinet Member/Committee Report

Meeting or Decision Maker:	March 2022 Committee Cabinet Member for Communities and Regeneration
Date:	9 March 2022
Classification:	General Release
Title:	Petition Response: Noise Nuisance Affecting Residents (Noise from TR Prop Inv PLC & Waitrose 13/12442/FULL)
Wards Affected:	Bayswater
Better City, Better Lives Summary	A commitment to collaborate with all parties affected by use of the Service Yard Area to ensure it is managed sustainably and in accordance with the relevant conditions the subject of the extant planning permissions.
Key Decision:	Non-Key Decision
Financial Summary:	There are no known financial implications associated with this report
Report of:	Deirdra Armsby, Director of Place Shaping and Town Planning Martin Sone, Area Planning Officer, Planning Enforcement Team msone@westminster.gov.uk

1. Executive Summary

This report relates to a petition presented to Full Council on 19 January 2022 by Councillor Maggie Carman. This petition with 50 signatures is in respect of several alleged breaches of planning control by Waitrose and the Freeholders of the building and the associated service yard, and they centre around breach of conditions attached to planning permissions 13/12442/FULL and 16/09313/FULL. Residents are of the view that the City Council has not enforced the terms of conditions 9, 12 and 25.

The City Council has had, and continues to have, extensive negotiations with Waitrose and the Freeholders to ensure compliance with the planning conditions. Warning letters have been issued and reports recommending service of breach of condition notices have been drafted and approved by the Director of Law. However, it has ultimately not proved necessary nor expedient to serve these notices to date. This is primarily due to both Waitrose and the Freeholders taking various steps to address the areas of concern raised by residents and in turn the City Council. Furthermore, despite site visits being undertaken by Officers, no new breaches pertaining to the conditions have been revealed which would justify service of the notices.

It should also be noted that when the breaches of the conditions were taking place, it was during the lockdown periods attributed to the COVID 19 Pandemic. This was an unprecedented time and central government issued ministerial statements requesting that local planning authorities work proactively with supermarkets to ensure that planning controls were not a barrier to food delivery over this period. In fact, central government encouraged local planning authorities to only pursue formal enforcement action as a last resort once all other avenues of negotiation had been exhausted.

2. Recommendations

- 1) That you note the action taken by the City Council to resolve the breaches of planning control identified to date.
- 2) That you note the Director of Law's decision that condition 9 was not imposed to control activities nor noise generated in the service yard and as such cannot be relied upon as a mechanism by which the planning enforcement team may seek to control

noise and disturbance from activities occurring in the Service Yard.

- 3) That you note the City Council's attempts to resolve and mitigate noise from the service yard by seeking compliance with the terms of the approved Service Management Plan, the subject of condition 12.
- 4) That you agree that the investigation into the breach of condition 25 was reasonable and proportionate and note that this condition is now being complied with and the breach of planning control resolved.
- 5) That you note and support the action taken by the Noise Service to investigate complaints of noise nuisance and that you agree no evidence has been witnessed to date to substantiate a Statutory Nuisance being caused.

3. Reasons for Decision

The City Council has dealt with the alleged breaches of planning control in a reasonable, proportionate, and transparent manner having regard to development plan policies and all other material considerations. Regard has also been had to the published ministerial statements and the fact that the breaches were occurring at an unprecedented time, during the Covid 19 Pandemic.

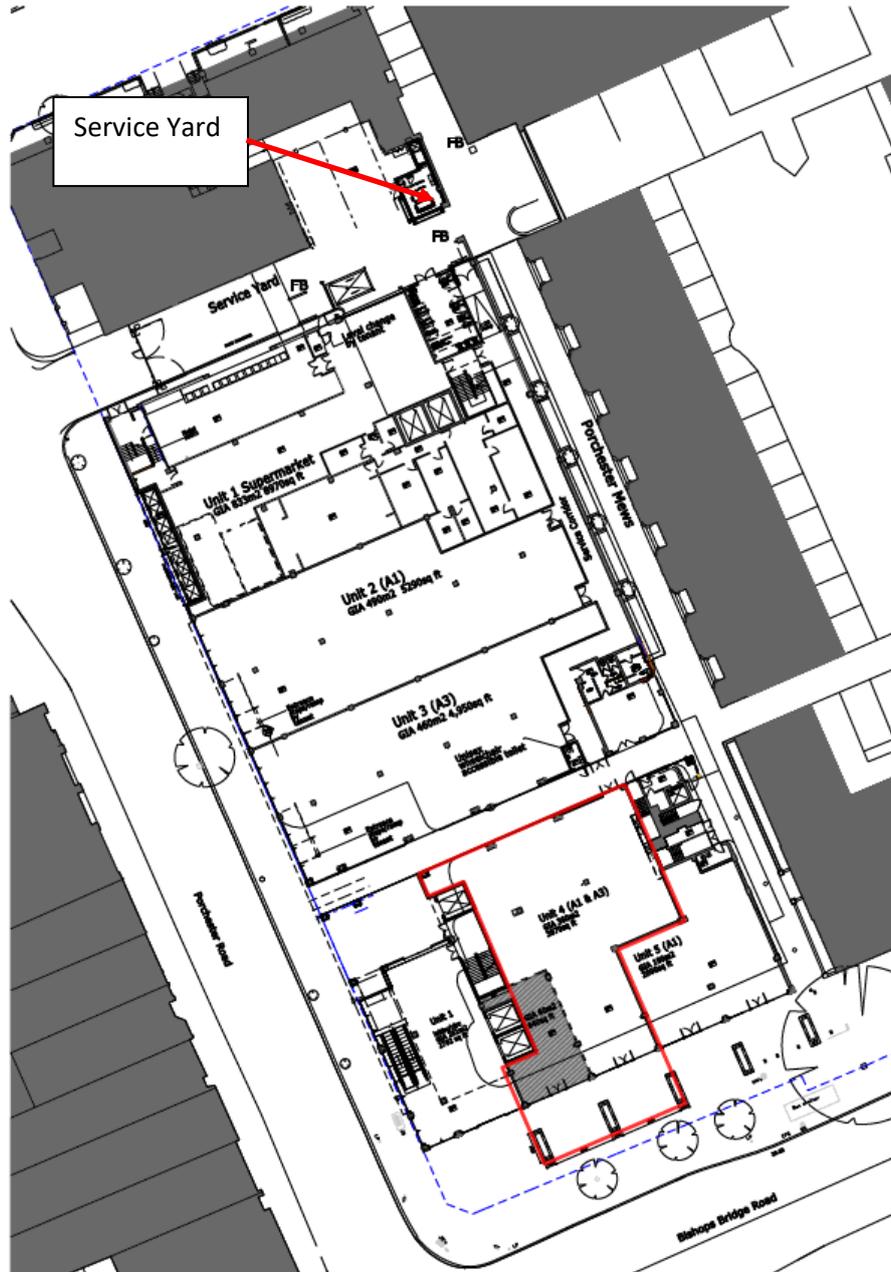
The Noise Service have responded to complaints from local residents. Where complaints have been made anonymously monitoring has been conducted from external areas and where a named complainant has been identified monitoring has been carried out from within affected properties. To date no evidence has been witnessed to substantiate a Statutory Nuisance.

4. Background, including Policy Context

History of the Site

- 4.1 The site is known as The Colonnades, Porchester Road, London, W2 6ES. The Colonnades is a mid-1970s mixed use redevelopment. The Colonnades is not a listed building but does sit within the Bayswater Conservation Area.
- 4.2 The site includes a service area (See Plan below) which is accessed from Porchester Road. It is the noise and activities occurring within the service yard area which is the subject of the petition. This yard has serviced all the commercial units within the Colonnades for many years and prior to 2013 there were no planning conditions controlling its use. There was a Budgens supermarket that used the service yard area before Waitrose

occupied the site in 2008. Prior to 2013 deliveries to this supermarket were primarily undertaken within the envelope of the building.



4.3 In 2013 a planning application (our reference: 13/12442/FULL) was submitted for the following proposal:

Reconfiguration of the ground and first floors to provide a supermarket (Class A1) at part ground floor and first floor levels with three retail shop units (Class A1) and two restaurant/ cafe units (Class A3) at ground floor level, extension to Porchester Road and Bishop's Bridge Road elevations to infill existing colonnade and create entrance lobby to supermarket, infilling of basement vents to Bishop's Bridge Road, alterations to street facades, amendments to rear service yard, installation of mechanical plant and associated public realm works.

- 4.4 This application was granted permission on the 9 October 2014 and allowed for a substantial increase of the Waitrose supermarket floorspace from 2150 square metres to 4060 square metres. The proposed development also included alterations to the way the Service Yard operated including, but not limited to the installation of a 'scissor lift' in the open service yard area, to assist with loading and unloading of goods. The planning permission was subject to planning conditions including a condition requiring a Service Management Plan (SMP) to be submitted for the City Council's approval under Condition 12. I attach this planning permission as Appendix 1. The planning permission has been implemented.
- 4.5 The SMP required by condition 12 to be submitted and approved by the City Council was received on the 3 December 2014 (Our reference: 14/12071/ADFULL). The SMP was subsequently approved on the 11 February 2015 (together with the discharge of condition 3 relating to the facing materials to be used in the development). I attach as Appendix 2 a copy of this permission and the SMP.
- 4.6 A further permission was granted at appeal in 2017 for the variation of some of the conditions in the original 2014 permission. The 2017 permission (City Council reference: 16/09313/FULL) contains the conditions that apply to the development today and are the subject of this report. The approved SMP condition above was carried over with this new permission. I attach as Appendix 3 the 2017 Planning Permission.
- 4.7 Waitrose remain in occupation of the site and the service yard area remains in shared use between the Freeholder, Waitrose, other commercial units and residents occupying the Colonnades. It is understood that Waitrose has increasingly become a successful and popular operator in the local area, in part due to the closure of other supermarkets within the vicinity, including the closure of Marks and Spencer and Tesco in Queensway. During the Pandemic, Waitrose informed the Council that they were operating above expected capacity and essentially at 100 per cent capacity, which led to the increased use of the service yard area, and this may have been a reason for the increase in complaints from residents.

Investigation into Breach of Condition 9 of planning permission 16/09313/FULL

- 4.8 The Planning Enforcement Team has received complaints since March 2020 in respect of various breaches of conditions culminating in the submission of the petition presented by Councillor Carman to Full Council on the 19 January 2022. A main area of concern raised by the residents is the noise and disturbance associated with the use and management of the service yard area by Waitrose and the Freeholders.

- 4.9 The residents maintain that there is a breach of Condition 9 of the planning permission 16/09313/FULL. Condition 9 reads:

"The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35bd LAeq 16 hours daytime and of more than 30 dB LAeq 8 hours in bedrooms at night".

- 4.10 When this matter (noise and associated disturbance in the service yard) was first reported to the Planning Enforcement Team, the team erroneously dealt with this matter as a breach of the terms of condition 9 and initial warning letters were sent to all known parties having an interest in the land including Waitrose and the Freeholders. The use of the term 'development' in the condition does suggest that the condition applies to the entire development which would include the service yard area. However, closer examination of the reasons behind the condition confirm that the condition was intended to apply to the 'building' as opposed to the 'development'. The reason for the planning condition states:

*"As set out in ENV6 of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at section 9.76, in order to ensure that **design, structure and acoustic insulation of the development** will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development.."*

- 4.11 The wording of the condition is intended to be used for the 'building'; the City Council is not aware of another example where a scissor lift has been acoustically insulated. Furthermore, an open service yard area would not be acoustically insulated unless you were proposing a roof to cover the service yard area; there was no such proposal to cover the service yard area under planning permissions 13/12442/FULL or 16/09313/FULL. A further review of the Sub-Committee report for planning permission 13/12442/FULL supports the above conclusion. The Sub Committee report states (section 6.3.2):

"The proposed alterations to the service yard would reduce its overall size. However, the service yard is already an open area and therefore it is not considered that the amended open service yard would give rise to significant additional noise disturbance (subject to successful resolution of the officers current concerns regarding waste and recycling storage - see Section 6.4.4 of this report)".

- 4.12 Waitrose responded to the Council's warning letters taking the very firm view that the condition did not apply to the service yard area.

4.13 Given the foregoing, advice on this point was sought from the Director of Law who confirmed that condition 9 could not be enforced against the service yard area as this was not the intention of the planning condition. Accordingly, the City Council has heeded this advice and maintained this position. It is clear that condition 9 was never imposed to control noise and activities from the service yard. Given the foregoing, there would be a significant risk that any enforcement notice served in respect of breach of the condition would be overturned on appeal, and costs of such an appeal would be awarded against the City Council.

4.14 The Council's investigation into a breach of Condition 9 was closed on the 27 August 2020. This is a decision that has caused considerable correspondence between the City Council and the affected residents and has led to Stage 1 and 2 complaints (see Paragraph 4.33 - 4.35 and Appendix 6), the petition and the most recent correspondence received on the 24 January 2022 (Appendix 7). The Planning Enforcement Team in conjunction with the Director of Law are firmly of the view that Condition 12, pertaining to the service management, is the mechanism by which the Council sought to control activities and deliveries taking place within the service yard. Residents have been advised that any noise emanating from the yard should be reported to the Council's Noise Team for investigation to determine whether a statutory noise nuisance is occurring. The Noise Service have assessed the noise externally on a number of occasions and most recently from affected residents' homes on Saturday 5th February 2022 from 07:30hrs – 08:30hrs, Monday 7th February 2022 from 07:30hrs – 08:30hrs and 2nd March 2022 from 06:50hrs – 09:00hrs. On 2nd March noise monitoring equipment was employed to assist the assessment. During these visits the level of noise witnessed was not considered to constitute a Statutory Nuisance. The Noise Service are very happy to visit any additional residents who may live closer to the Service Yard where we can repeat this exercise. Notwithstanding the foregoing, if residents believe noise from within the Waitrose store (as opposed to the service yard) can be heard from any residential flat, the City Council would be happy to arrange investigation into this matter and noise monitoring undertaken.

Investigation into Breach of Condition 12 of planning permission 16/09313/FULL

4.15 Complaints were also received at the outset that there was also a potential breach of Condition 12 of the planning permission granted on appeal 16/09313/FULL which reads:

Condition 12: *"You must permanently operate the development and manage the service yard in accordance with the Servicing Management Plan that we approved on 11th February 2015 (14/12071/ADFULL),*

unless or until we approve an alternative Servicing Management Plan in writing”.

4.16 As previously highlighted, the SMP was submitted and approved by application 14/12071/ADFULL (See Appendix 2). The City Council received a large volume of complaints (with evidence) between 2020 to 2021, which refer to various sections of the Servicing Management Plan being breached. These can be summarised as follows:

- Deliveries being undertaken from Porchester Road in breach of Paragraph 2.3
- that goods and cages are left in the service yard in breach of Paragraph 2.11
- More than one HGV unloading at any one time in breach of paragraph 2.13
- that vehicles are waiting/queuing in the area in breach of paragraph 2.15
- that the service yard is obstructed by goods, cages and waste in breach of paragraph 2.22
- that delivery vehicles are waiting on the public highway in breach of paragraph 3.4; and
- that reversing beepers are being left on outside of the approved hours, in breach of the above sections of the Servicing Management Plan in breach of paragraph 4.1

4.17 The City Council placed Waitrose on warning that formal enforcement action would be pursued if the matters which were being reported as being in breach of the terms of the SMP were not resolved. However, the Council had to also have regard during this period to the Ministerial Statement from central Government instructing Local Planning Authorities not to take enforcement action against Supermarkets which would result in unnecessarily restricting deliveries of food and other essential items during the Covid 19 pandemic.

4.18 The first Ministerial Statement from Robert Jenrick, Secretary of State for Housing, Communities and Local Government was released on the 13 March 2020 (See Appendix 4). The Ministerial Statement stated:

Given the current situation (COVID 19 Pandemic) local planning authorities should not seek to undertake planning enforcement action

which would result in unnecessarily restricting deliveries of food and other essential deliveries during this period, having regard to their legal obligations.

- 4.19 This Ministerial Statement was renewed on the 30 November 2020 and renewed again on the 15 July 2021 (Appendix 4). The Ministerial Statement expired on 31 January 2022 and has not been renewed at the time of writing this report. These Ministerial Statements constituted a significant material consideration for the Council's investigations when considering the expediency of formal enforcement action at that time. It was clear that the direction of travel from not only Central Government, but the City Council was to support local business and that pursuing formal enforcement action should be a last resort, once all other attempts to resolve breaches had failed.
- 4.20 Despite the Ministerial Statement, the City Council continued to liaise with Waitrose and the Freeholder regarding the breaches of the SMP. The City Council drafted a breach of condition notice which was approved for service by the Director of Law, but the notice has to date not been served. The imminent prospect of the service of the notice, appeared to propel both Waitrose and The Freeholder into action and they undertook a number of actions to ensure compliance with the SMP as set out below.
- 4.21 In June 2021 a meeting between officers of the City Council, Waitrose and the Freeholders was held. During this meeting Waitrose outlined that they had now engaged a security team to prevent anyone from trying to park or service from Porchester Road and that they had taken the difficult decision to suspend contracts with delivery companies that were regularly not complying with this element of the SMP. The Waitrose Branch Manager advised that they had moved everything around internally to manage their space more effectively which curtailed items/goods from being stored in the service yard thereby causing obstruction. All the louvres had been insulated and the roller shutter was about to be replaced with a quieter noise insulated one. They also committed to undertaking regular pro-active maintenance of the scissor lift. Since this meeting was held in June 2021 the Planning Enforcement Team is not aware of any subsequent complaints or new evidence of a breach of the terms of the SMP. As such, it has not proved necessary to serve the breach of condition notice.
- 4.22 In July 2021, pre-application advice (our reference: P21/00471) was sought in relation to a revised SMP, including steps to mitigate the noise in the service yard area. Advice was subsequently provided in August 2021 which led to submission of further pre-application advice exploring further potential revisions to the SMP. Part of the reason for the delay in providing the advice is because a planning appeal had been submitted in

response to the Council's decision to refuse planning permission to amend Condition 25 of planning permission 16/09313/FULL relating to residential access to the refuse bins in the service yard area. As this appeal was relevant to how the service yard area would be used going forward it was decided that further discussions should be held in abeyance pending the determination of this appeal. I refer to this breach of condition 25 in paragraph 4.30 and 4.31 below, but the appeal was dismissed in December 2021 and residents must now be given access to the residential bins. After the appeal decision and following clarification of a few points, the Council's pre-application advice is due to be provided imminently.

- 4.23 The Freeholder also submitted a planning application (reference: 21/04074/FULL) for the following proposal:

Variation of condition 12 of planning permission dated 21 December 2016 (RN: 16/09313/FULL) which itself varied conditions 16 and 17 of planning permission dated 9 October 2014 (RN: 13/12442/FULL) for reconfiguration of the ground and first floors to provide a supermarket (Class A1) at part ground floor and first floor levels with three retail shop units (Class A1) and two restaurant/ cafe units (Class A3) at ground floor level, extension to Porchester Road and Bishop's Bridge Road elevations to infill existing colonnade and create entrance lobby to supermarket, infilling of basement vents to Bishop's Bridge Road, alterations to street facades, amendments to rear service yard, installation of mechanical plant and associated public realm works. Namely, amendments to wording of condition 12 to allow the review of the operation and management of the servicing area at the Colonnades and to reflect modern delivery and servicing arrangements.

- 4.24 The application was made invalid on receipt on 18 June 2021 pending submission of an SMP that includes resident access to the service yard and service of the correct ownership certificate. At the time of writing this report the application remains invalid. The applicants have advised that they intend to submit the SMP and correct ownership certificate following the outcome of the appeal referred to in paragraph 4.22 and receipt of the pre-application advice also referred to in paragraph 4.22. Once the application is validated, neighbour notification letters will be issued in the usual way allowing for representations to be made on the proposed modifications of the SMP. The revised SMP is likely to include mitigating measures such as the installation of hard-wearing rubber mats to reduce noise from the trolleys as they are taken to and from the store.
- 4.25 Whilst no recent evidence has been submitted to the planning enforcement team regarding breaches of the current SMP, the team

remains committed to ensuring the council continues to ensure strict compliance with its terms.

Letter/Petition received via Councillor Carman

4.26 Councillor Carman forwarded the petition to the Planning Enforcement Team on the 21 December 2021. The letter/petition from the residents wanted to draw the Councillor's attention to the noise caused by TR Property Investments Trust PLC and Waitrose following the grant of planning permission 13/12442/FULL which allowed the supermarket to increase its floor space and make alterations to the service yard area. The letter explained:

- The Council planning department have not enforced condition 9
- The Council planning department have not enforced condition 12
- That the Council are trying to allow the conditions to be lifted

4.27 In addition complaints were made about the use of the Scissor lift, lorries leaving their engines running, the use of metal cages and the associated noise, noise from the service yard gates, the slamming of lorry doors, Waitrose staff shouting and talking loudly, vehicles manoeuvring without partners/marshals and beeping HGV warning sensors before 08.00am. I refer to these issues below. The residents letter also makes reference to the point that no one is monitoring the SMP and the letter suggests that consideration be given to the installation of a soundproof roof over the open service yard area. The letter was signed by 50 people.

4.28 The City Council responded to the Councillor and the resident's letter on the 7 January 2022. The letter advised that the City Council is not averse to taking the appropriate action to alleviate noise nuisance being caused by the service yard, but this needs to be progressed through the appropriate mechanisms, which are; through tackling any breaches of Condition 12 and the SMP, which is currently being resolved, and also through an Environmental Health investigation into whether there is a statutory noise nuisance. The letter also addressed the specific investigations raised by the letter/petition. I attach Councillor Carman's email, the residents' letter, and the City Council's response as Appendix 5.

4.29 Submitted with the petition was the residents' assertion that they had been assured there would be no noise from development 13/12442/FULL but they advise that this has not been the case. They list the noises

caused by the development and I refer to each of their bullet points below:

- 1) The Waitrose Scissor Lift built into the service yard. Screaming/squealing (with high frequencies) from it when it is used that penetrates our flats 100 block and the streets. And also bangs from it when in use. Used from 7am to 7 pm daily.**

When considering whether to grant planning permission for the development in 2013/14, the officer determining the application took the view that the service yard was an already open area and therefore it was not considered that the use of this open service yard would give rise to significant additional noise disturbance. This is set out in paragraph 6.3.2 of the Sub Committee Report attached as Appendix 1.

The Director of Law has confirmed that the noise from the Waitrose scissor lift is not controlled by Condition 9 of planning permissions 13/12442/FULL or 16/09313/FULL. There are no noise mitigating requirements nor levels of noise which may be emitted from use of the Scissor Lift set out in the approved SMP (14/12071/ADFULL). Accordingly, noise from the scissor lift is not controlled by way of a planning condition. The matter is though subject to noise investigations by our Noise Team. Whilst the petition makes reference to the scissor lift being operated daily from 7am to 7pm daily, this accords with Paragraph 3.4 of the SMP which limits all deliveries to these times and as such there is no breach.

During the Noise Service's investigation, the noise levels emitted from the Scissor lift have been assessed from within the service yard but also from the balcony of an affected resident's premises. The most recent monitoring exercise on 2nd March reported that it took 28 seconds for the scissor lift to be raised and the noise levels emitted increased the ambient noise levels by 1-2 dB. The noise from the lift going down was reported to be almost inaudible. It was noted that there was a noticeable mid to high pitched tone at 2.5 kHz which could lead to annoyance, but the officer concluded that on this occasion the noise from the scissor lift would not constitute a Statutory Nuisance.

- 2) The Waitrose lorry bay built into the service yard – Waitrose lorries put engines and units on and the vibration and noise from them penetrates into the 100 block flats. Used from 7am and 7pm daily. Also on the Road.**

Section 4.1 of the SMP states '*Delivery vehicle and refrigeration units, where fitted, will be turned off as soon as practicable once they are within the loading bay*'. As will be noted, the SMP does not require the engines and refrigeration units to be immediately turned off. Rather they must be turned off as soon as practicable. Officers have observed the deliveries

over recent weeks and noted that whilst engines and refrigeration units were on at times, they were also off for extended periods during the delivery. Westminster's Food and Safety Team have verified that the maximum time the engines/refrigeration units may be switched off is 30 minutes or the food will spoil. As already highlighted, the deliveries are occurring within the prescribed timescales and the planning enforcement team has not been made aware of any recent servicing outside of the yard (from the surrounding roads).

3) Running metal cages etc. along metal floors and metal walls in the lorries and scissor lift and yard and building. These are crashed hard into one another and echo and penetrate the 100 block flat and creates a huge amount of noise. From 7am to 7pm daily.

This practice does not breach the terms of the existing SMP and therefore there is no actionable breach of planning control relating to this practice. Our Noise Team has though been monitoring this element. During recent visits officers have observed the practice of unloading full metal cages and then loading empty metal cages, stacked onto each other, onto the vehicle using the scissor lift. Officers' observations and noise monitoring results have indicated that while this is the noisiest element of the process the noise did not constitute a Statutory Nuisance. However, it was commented that further changes could be made which would reduce the level of noise experienced. Officers have met with Waitrose and discussed these recommendations. One point made was that when the empty cages are stacked onto each other the level of noise experienced is higher. Waitrose have subsequently agreed to trial stacking up to a maximum of 3 empty cages at a time. While this will reduce the noise levels it will however prolong the activity. Further mitigation measures were also discussed including the use of rubber matting.

It is hoped that as part of the proposed amendments to the SMP, mitigation measures (rubber matting) will be employed to reduce noise levels from the moving metal cages.

4) Service Yard Gates and Doors 'whirring' noise and slamming metal gate doors by Waitrose staff. All Day All Night. The gates were not built for this purpose and were not there prior to the development.

There are no planning conditions controlling the opening or the closing of the gates nor is there a requirement seeking to control such noise in the SMP.

During the Noise Service monitoring exercise on 2nd March, the main gates were observed being opened at 07:18hrs but the noise witnessed was not considered to constitute a Statutory Nuisance.

5) Slamming Lorry Doors and noise from public bins.

There are no planning conditions controlling such noise nor is there a requirement seeking to control this activity in the SMP

During the Noise Service monitoring exercise on 2nd March a Westminster refuse collection was observed from 07:35hrs to 07:40hrs. The vehicle was collecting residential waste immediately below residents' balconies. The noise was noted to be loud and intrusive but was not connected to Waitrose. A second refuse collection was noted at 08:00hrs again noted to be loud and intrusive but not connected to Waitrose.

Refuse collections can be noisy and to reduce the likelihood of a Statutory Nuisance occurring refuse collections in residential areas are advised to occur between the hours of 07:00 – 23:00. No evidence has been substantiated to indicate that refuse collections are occurring outside of these hours.

6) Waitrose staff shouting, talking loudly in the day and night. Not talking in hushed voices as required.

The SMP does require Waitrose staff to speak with 'hushed' voices and Officers have observed this requirement being breached. This has been raised with Waitrose who are now taking steps to remind staff to use 'hushed' voices. This technical breach of the SMP is not considered a justifiable reason to serve a breach of condition notice.

7) Badly re-maneuvring Waitrose 16.5m HGV in road and yard, no staff directing, in breach of condition 12.

The SMP (Paragraph 2.9) does require 'Partners' from the food store to assist drivers reversing into the Service Yard Area. Council Officers have not seen recent evidence of vehicles reversing without the assistance of Partners. It is the City Council's understanding that staff have been employed since June 2021 to ensure that deliveries are not made from the highway and to assist vehicles into the Service Yard Area. The planning enforcement team will of course review the position if recent evidence is obtained demonstrating a breach.

8) Beeping HGVs before 8am in breach of Condition 12 and also after 8am, when there should be staff directing the HGV's

The SMP (Paragraph 4.1) requires all audible warning signals, including reversing beepers are disabled on all Waitrose delivery vehicles which arrive at the branch between 7.00 and 8.00 hours. The planning enforcement team have not received recent evidence that this requirement is being breached but Waitrose have been reminded of this requirement and written confirmation has been requested confirming

compliance. The team will continue to monitor the site moving forward to ensure strict compliance.

- All audible warning signals, including reversing beepers, are to be disabled on all Waitrose delivery vehicles which arrive at the branch between 07:00 and 08:00 hours.

There are no planning requirements to switch off audible warning signals post 08.00 hours

Breach of condition 25 of planning permission 16/09313/FULL

- 4.30 The Freeholder, TR Property Investment Trust plc, was not allowing residents access to bins in the service yard area which was in breach of Condition 25. Condition 25 reads:

Prior to occupation of the retail units you must provide the storage area within the service yard for residential waste and materials for recycling shown on drawing number 17 Rev.13. You must clearly mark this area and make it available at all times to everyone living in the residential part of the Colonnades.

- 4.31 Following warning letters, a planning application (our reference: 20/05767/FULL) was submitted to remove Condition 25. Upon receipt of the application, enforcement action was held in abeyance pending consideration of the application. The City Council refused this application by notice dated 10 February 2021. An appeal was lodged against this refusal and subsequently dismissed on the 23 December 2021. Following the dismissal of the appeal, the Freeholder sent the City Council an email advising that letters have gone out to all residents of the Colonnades advising them that they can now access the bins in the service yard. On the face of it therefore, this condition is no longer being breached and the investigation was subsequently closed on the 25 January 2021. The Planning Enforcement Team will of course review this position in light of any new evidence submitted by the residents.

White pipe on the building omitting noxious gases.

- 4.32 A review of the approved plans confirmed that the extract duct in question is shown on the approved drawing D44 REV05 attached to the planning permission 13/12442/FULL. There was no breach of planning control. Due to the report of noxious gases however, the Planning Enforcement Team referred the complaint to the Environmental Health Team. It is understood that an officer from the 24-Hour Team attended the site to

investigate and reported that they had no concerns about noxious gases in that area. The case was closed on the 17 September 2020.

Stage 1 and Stage 2 Complaints against the Council

- 4.33 Since the 23rd June 2021 the City Council has been in correspondence with Planning Aid for London who have represented several of the residents in the Colonnades who have been affected by noise and disturbance from the service yard area. The correspondence culminated in submission of Stage 1 and Stage 2 complaints due to the perceived failure of the City Council to enforce the terms of condition 9 of planning permission 16/09313/FULL and for alleged inaction by the City Council in dealing with breaches of the SMP.
- 4.34 I attach as Appendix 6 the correspondence in respect of this matter including the Council's responses to the Stage 1 and Stage 2 complaints. The City Council has maintained its position that Condition 9 of planning permission 16/09313/FULL was not intended to control noise and or activity in the service yard area. Consequently, the investigation into this alleged breach of planning control has been closed. An explanation is also provided in respect of Condition 12, namely that although a report recommending the service of a breach of condition notice was prepared, this was placed on hold because in June 2021 the Freeholder and Waitrose put steps in place to secure compliance with the terms of the existing SMP. In the interim, applications for pre-application advice for a revised SMP seeking to alleviate residents' concerns have been submitted and are pending consideration and response. The advice provided as part of the pre-application response will be fed into the Freeholder's application for planning permission which seeks to vary the terms of the SMP. As previously outlined, once this application is validated, residents will be consulted and afforded the opportunity to make representations on the proposed changes to the plan.
- 4.35 In conclusion, the National Planning Policy Framework advises that planning enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. Having regards to the Ministerial Statements received from central government during the COVID 19 Pandemic and having regards to the complaints which have been received from residents, the Planning Enforcement Team has tried to manage the situation by not disrupting supply lines during the pandemic, whilst resolving the breaches of planning control affecting residents in an amicable manner.

Letter of rebuttal to the City Council's letter dated 7 January 2022

- 4.36 A letter dated 24th January 2022 (attached as Appendix 7) was sent by the residents to Councillor Carmen in response to the Council's letter dated 7 January 2022. The response refuted the content of the Council's letter and sought to highlight 'falsehoods' and 'discrepancies'. Much of what has been incorporated in this letter formed part of the Stage 1 and Stage 2 complaint responses. The City Council will though respond to this letter post the consideration of this report.

5. Financial Implications

There are no financial implications.

6. Legal Implications

The Director of Law has considered this report and confirms that the relevant enforcement legislation has been correctly applied by the local planning authority in relation to the alleged breaches of planning control.

7. Staffing Implications

There is no impact on staffing other than to note that monitoring the site is resource intensive but needs to be undertaken to ensure compliance with the terms of the respective planning permissions and/or to support formal enforcement action.

8. Consultation

No consultation has been undertaken as part of this Cabinet Member Report.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

Martin Sone – Area Planning Officer, Planning Enforcement Team
msone@westminster.gov.uk

BACKGROUND PAPERS:

Appendix 1: Planning Permission 13/12442/FULL dated 9 October 2014, Committee Report and Relevant Approved Drawings

Appendix 2: Approval of Details Application 14/12071/ADFULL including Service Management Plan

Appendix 3: Planning Permission 16/09313/FULL granted on appeal dated

Appendix 4: x3 Ministerial Statements from Secretary of State for Housing, Communities and Local Government covering the period March 2020-January 2022

Appendix 5: Councillor Carmon's email, Residents Letter dated 6th December 2021 and the Planning Enforcement Team's response dated 7 January 2022

Appendix 6: Correspondence between Planning Aid for London and The Planning Enforcement Team including Stage 1 and Stage 2 Complaint responses

Appendix 7: Residents Letter dated 24th January 2022

NB: For individual Cabinet Member reports only

For completion by the **Cabinet Member** for (add portfolio title)

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

.....
.....
.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled

..... and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for (add portfolio title)

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
.....
.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

