

The Colonnades

London W2 6AR

24th January 2022

Dear Councillor Carmen,

Re: Noise from TR Property Investment Trust plc and Waitrose development 13/12442/FULL

Further to our letter to you dated 6th December we have reviewed the letter you received from Danielle Cherry and refute it, highlighting falsehoods and discrepancies:

The appropriate mechanism to stop the noise from development 13/12442/FULL is enforcement of condition 9. This was explained to the council by 'Planning Aid' in June 2021 and again by 'Planning Aid' in 3 subsequent letters which refuted all the council's explanations. We enclose the Planning Aid complaint letters for you to read. They clearly state the reasons the council must enforce condition 9 against the service yard which has had development built on it (scissor lift and lorry bay) as part of 13/12442/FULL and substantial change in use compared to before the development.

Additionally Danielle Cherry continues to mislead and provide false information:

- The Noise officer Gorden Corbett referred the noise complaint from residents to planning as a clear planning issue in May 2020. Furthermore there was no such noise prior to the development 13/12442/FULL.
- There was a noise recording taken from a flat in September/October 2020 by the council. (Flat 188, Paul Newbury – correspondence 2019-05-29 and 2020-07-25) The recording showed there was clear noise. We understand the council noise team had been instructed not to say anything by the planning team as they did not want to take action against Waitrose. The council said they would get back to them about stopping the noise in the future, but nothing happened.
- Noise complaints have subsequently been made 'non-anonymously', where residents have requested noise recording and the noise officer has refused and closed it down, marking it resolved, which it is not. Please see document provided of one such example which is as recent as November 2021 (One tenant raised three cases from Flat 184: CAS-247782-R0W0B5, CAS-246089-Y3Q8Q3, CAS-232720-H7G3D4 – all marked as resolved, no advice given why – refusal to attend).
- Noise complaints to the council were not just when the scissor lift was broken, they have been made when it is broken and not broken, either way there is excessive noise when it is in use with lorries. SEBRA have also complained to the council about the excessive noise from it at times when it was supposedly not broken and no action to stop the noise has been taken by the council. The complaints also included noise from lorry units and engines, beeping, staff commotion all day and night, bad manoeuvring. This has been explained to planning enforcement, but they falsely say we only complained because it was broken. It is permanently 'broken'. You have heard the recordings and agree the noise is unacceptable.
- Danielle refers to "500 noise complaints...made anonymously" whilst, as demonstrated above, this cannot be true – we see the same quote made by John Crockford, Environmental Health, over a year before on 17th November 2020. Is Danielle not able to take on-board complaints?

The council is disingenuous in the response.

Breach of Condition 9 of 13/12442/FULL (20/72862/H)

Council has unreasonably closed this without enforcement as detailed by Planning Aid letters (as enclosed). In October 2020 the council lawyer stated that there is no clear rationale for condition 9 in the committee report. Therefore, we conclude that Condition 9 cannot be discounted due to intentions made up in hindsight by a council planning officer who also states he has made a mistake with the wording. We feel this is unlawful, gross misconduct, and negligence. The made up intention does not match the wording of the condition when read, nor does the made up intention match the design and structure of development 13/12442/FULL which is not a closed structure building but has a large opening, scissor lift and lorry bay built as part of the permission and development. Condition 9 states it applies to the development and protects all buildings and adjoining buildings, it did not and does not discount any part of the development – there is no getting away from this. The council's claims are not based on the wording of the condition nor the development design. The Council will need to tell TR Property Investment Trust plc and Waitrose lawyers they are enforcing Condition 9 as per its wording and reason given on the planning decision 13/12442/ FULL or put in a formal application to vary the condition and open it to public scrutiny.

In addition the council reply to 'Planning Aid- Paul Mellor' (October 2021) falsely says they have no complaints from noise going through the Waitrose ceiling which is not true, as evidenced in our letter to you by residents, and historical correspondence from Spring 2016 with TR Property Investment Trust PLC and Waitrose, we believe the council was also informed in 2016 by residents. (Please find attached this correspondence – between the Waitrose, the Freeholder and the representative of the flat leaseholders/tenants.) Both TR Property Investment Trust PLC and Waitrose know that the noise from the scissor lift, lorry bay and store is going through the ceiling and walls into the flats above throughout the 100 block and does not comply with condition 9. The most recent Waitrose manager, Tom Sager, stated this to a resident as a known problem in December 2021. The whole development 13/12442/FULL was poorly designed with no genuine thought given to noise, as evidenced by the fact Waitrose installed some limited soundproofing after completion due to these complaints, which is not working. The development 13/12442/FULL does not satisfy Condition 9 in any shape or form. The council is unreasonable and dishonest as detailed here and by 'Planning Aid –Paul Mellor' – we all want Condition 9 enforced against the entire development.

White pipe on building noxious gases complaint (20/73407/K) – no comment, irrelevant to our complaint.

Alleged breach of condition 6 and 8 regarding Waitrose plant noise (20/73262/H) – commented on by Planning Aid complaint letter to Council.

We believe these Conditions have not been met as stipulated.

Breach of Condition 23 (20/73237/H) – Waitrose bins

We refute the simplistic misleading description provided by Danielle Cherry. TR Property Investment Trust plc and Waitrose stored Commercial bins and waste bales on the service yard for years and refused to comply with the condition making excuses and no enforcement action was taken. This was also a continuous breach of Condition 12 Servicing Management Plan (SMP) for several years. The bins were eventually moved off the service yard end of Feb 2021 – that is almost a year to enforce after formally being notified by the residents in May 2020. The council did not issue the formal enforcement notice for the breach so there is no public record for people to know what the actions of these companies (TR Property Investment Trust plc and Waitrose) are really like and how the council avoids enforcing conditions. They still store large waste bales on the service yard and waste in non-designated areas internally at times in breach of this condition and in breach of condition 12 SMP. The council is trying to mislead the public and protect the companies.

Breach of Condition 15 (20/73237/H) – Accessible disabled toilet

On the original plans for 13/12442/FULL there was a requirement to include an accessible disabled toilet on the ground floor however this was not provided. There was no accessible disabled toilet and this condition of planning was breached continuously until 26 Jan 2021 when enforcement happened. No public enforcement notice was issued to TR Property Investment Trust plc and Waitrose so there is no public record for people to know what the actions of these companies are really like and how the council avoids enforcing conditions. The council is misleading the public and protecting the companies. This is a demonstration that planning at the Council is not enforcing the agreed conditions.

Breach of Condition 12 (20/73125/H)

‘Planning Aid –Paul Mellor’ has refuted all the misleading statements Danielle Cherry makes here, and we refute them again. Danielle has also omitted various information. At the time of the decision notice for 13/12442/FULL the Servicing Management Plan (SMP) for condition 12 did not exist and it therefore cannot be used as an excuse to discount condition 9, which controls actual noise levels from the whole development.

We repeat, the residents’ complaints were not only because the scissor lift was ‘broken’, it makes excessive noise at all times ‘broken’ or not. Just because Waitrose scissor lift can raise things up and down, and considered to be ‘not broken’ by Waitrose – it doesn’t comply to Condition 9. You have heard the recordings and agree. The Planning enforcement are even dishonest about our complaints.

We’d like to demonstrate that there have been more than a ‘few’ breaches (Danielle’s assertion in the response to you) to date of the SMP. As you have seen in our original letter to you, undersigned by multiple residents there have been many complaints about the problems in the service yard making life difficult and impacting our health. However there are a few not directly mentioned there though Danielle also knows about:

- the service yard has been obstructed continuously for many years by Waitrose bins and waste stored on it in breach of the SMP.
- Waitrose have been servicing HGVs on the service yard up till 10pm for years and lying to complaining residents saying they were allowed to. If the council were to check Waitrose historic delivery records this would be clear.
- Waitrose have been servicing from Porchester Road, and waiting on the road, almost daily for years blocking road and pedestrians and leaving engines and units running whilst parked.
- They do not take the products directly to the first floor delivery area demonstrating they exceed their internal store capacity as they often remain stored in the service yard or in the ground floor.
- Reversing beepers (audible warning signals) often not disabled or necessary
- Delivery team do not talk in hushed voices (the fact that an SMP chooses to include this shows the noise sensitivity of the area)
- Engines and units are not regularly switched off, left on whilst unloading; there's also a serious question about increased pollution into the residents homes.
- No monitoring of compliance to SMP by the Facilities Manager, apparently supplied by the TR Property Investment Trust PLC. Tom Sager, Waitrose Manager, informed a resident recently that the Freeholder is responsible for that and not Waitrose. Residents are still unclear of who the Facilities Manager is, or how to contact them directly. This problem was reported to Danielle Cherry at least in May 2020.

As stated in her letter Danielle Cherry has still not sent the final breach of condition 12 notice.

It is puzzling that there is a proposed change to the SMP itself which would likely remove restrictions. Danielle said she would consult the residents about the proposed changes in June 2021. It has been over 7 months and she has not done this – we find this unacceptable given the impact on the residents. Neither has she issued the 'breach of condition' notice that was prepared by herself and the City Council Legal Team – this was to be issued in 2020. She was informed there were ongoing breaches in June 2021 but has ignored these in her comments and has taken no action. Nobody knows what the proposed changes are and there is no public scrutiny, it is all underhand.

It is unreasonable to expect residents to constantly re-complain about the same breaches when no action is taken and communications on the topic are not clear. The residents are then blamed for not complaining. This is vexatious.

Somehow the council allowed Waitrose and TR Property Investment Trust PLC to also lodge a new application (21/04074/FULL) to allow varying Condition 12. We feel this essentially removes the SMP and/or the oversight from the council planning team (and therefore the residents rights). This application has not been validated, and is again not publicly available – we feel this is being used as an excuse for not sending the breach notice.

The joint visit in September 2020 was not open to residents or counsellors, they were not informed or invited, only Waitrose was invited and the information Waitrose provided was false and the noise officer was subsequently informed of this, but did nothing. The scissor lift was not tested while in use with any HGVs present and load applied; and it was not tested against requirements of condition 9 and did not take into account the location. There are no other scissor lifts built in London without overhead acoustic protection in the middle of a residents block as it is an unreasonable and absurd thing to do.

The noise from the scissor lift and loading bay, both sited on the service yard, effects the quality of life and health of numerous residents every day.

Breach of Condition 25 (20/73124/H) – Access to resident’s bins in the service yard.

TR Property Investment Trust plc refused to allow residents access to their bins claiming they had not agreed to the planning condition 25. This was another blatant falsehood by the freeholder to get out of the condition. Planning Enforcement/Danielle Cherry did not issue the enforcement notice, allowing them years to put in planning applications and appeal the rejection at the expense of residents. On the 23rd of June 2021 Danielle Cherry stated to residents that the breach of condition notice (of Condition 25) was ready and would be served if the appeal to inspectorate was dismissed. The appeal was dismissed by the Inspectorate but she has still not sent the notice and she has lied to Planning Aid and the residents. We want public record of this breach, she needs to issue the notice.

Danielle is apparently waiting on a copy of the letter to residents and leaseholders – which we have received, and we can advise that there are a number of points made within the letter which avoid compliance with the Inspectorate’s decisions and the condition is essentially still being breached. There are too many caveats, and discouragements, given to residents and therefore does not comply with the condition. This is shocking.

We conclude that the response from the council / Danielle Cherry is, in the majority, unreasonable and false.

The council have acknowledged there is a noise nuisance from development 13/12442/FULL, they acknowledge they told TR Property investment Trust plc / Waitrose to build a sound proof roof, and they have acknowledged they have not enforced it. This was stated in correspondence between the Council and Planning Aid, with Planning Aid explaining they must enforce this to satisfy condition 9 along with other soundproofing:

“The breach of these conditions directly impacts the residents daily. The noise from the development is an intrusive nuisance that detrimentally impacts on the standard of amenity that the residents may reasonably expect to be able to continue to enjoy. The Council needs to enforce both planning conditions and seek remedies for both (including measures such as an acoustic barrier roof to satisfy Condition 9) to address the noise and disturbance issues, and to enforce against the breach of Condition 12.” – *Paul Mellor, Planning Aid for London (Stage 2 Complaint Letter from 26 October 2021).*

We have tried to resolve these problems with the Council, TR Property Investments Trust plc, and Waitrose – but it is impossible.