

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

PLANNING APPLICATIONS COMMITTEE 23/04/2024

REPORT BY THE DIRECTOR, PLANNING AND PLACE

Application:	PP/24/01036	Agenda Item:	S39	
Address:	Hotel, 19-21 Penywern Road, LONDON, SW5 9TT			
Proposal:	Retention of plant at rear of hotel and installation of acoustic enclosure.			
Applicant:	Ariyan Hotels Limited			
Agent:	Mr Brewer Urbanspace Planning Ltd			
Properties notified:	Objections:	Support:	Comments:	Petition:
29	9	0	0	0
Conservation area: Earls Court Square				

1. Summary

- 1.1 The retrospective application to retain a plant equipment, with the addition of an acoustic enclosure, is recommended for approval. The equipment is positioned in a discreet location and it has been demonstrated that noise generated would be below the lowest ambient background noise in the area. Subject to conditions, the proposals would comply with policies of the Development Plan as well as complying with the statutory requirements for development within a conservation area. There are no material considerations to suggest a decision other than in accordance with the Development Plan.
- 1.2 Objections received from interested parties have been taken into consideration and are addressed throughout the report and in Section 8. Where appropriate and necessary, conditions are recommended to address the concerns raised.

It is recommended the Committee grants planning permission with the conditions listed in Section 9 of this report.

2. Reason for committee consideration

- Three or more objections were received during the consultation period and the recommendation is to grant.

3. The site and its surroundings

- 3.1 19-21 Penywern Road is a mid-terrace building in hotel use located on the southern side of

the street. The building comprises six storeys including a lower ground floor level and a mansard roof extension. The neighbouring buildings on Penywern Road are also in hotel use. However, the property does back onto a residential terrace of houses at Earls' Court Square at the rear.

3.2 The property is in the Earl's Court Square Conservation Area.

4. The proposal and any relevant planning history

- 4.1 Retrospective planning permission is sought for the retention of plant equipment at rear ground floor level. The application also seeks permission for the addition of an acoustic enclosure to house the equipment.
- 4.2 Permission to retain the plant was originally submitted in 2023 but was withdrawn following advice from officers as no acoustic report was submitted with the application. Retrospective permission was granted in March 2024 for the retention of the rear extension, on which the plant equipment is affixed.
- 4.3 Officers visited the site on 29 November 2023.
- 4.4 The relevant planning history is set out below:

Reference	Description	Decision
PP/99/02345	Erection of rear extension to existing hotel at basement and ground floor level.	Granted 19/12/2000
PP/05/02217	Erection of rear extension to existing hotel at basement and ground floor level (renewal of planning permission PP/99/02345 dated 19/12/2000).	Granted 06/12/2005
PP/06/01564	Erection of rear extension to existing hotel at basement and ground floor level	Granted 21/08/2006
PP/16/05275	Erection of single storey rear extension.	Granted 23/11/2016
PP/23/06702	Erection of single storey rear extension	Granted 15/03/2024
PP/23/06705	Retention of plant to rear of hotel which replaced previous plant.	Withdrawn

5. Main policies and strategies relevant to the decision

The development plan

5.1 The main planning considerations applying to the site and the associated policies are:

	Local Plan
Conservation areas	CL3, CL11
General townscape	CL1, CL2, CL6
Living conditions	CL5, CE6

5.2 These policies can be read online at:

- Local Plan:

- 5.3 The Council started a New Local Plan Review (“NLPR”) and consultation on Publication Policies (Regulation 19) closed on 22 December 2022. The Council submitted the NLPR for examination (Regulation 22) on 8 February 2023. Examination hearings were held in June and July 2023. The Council has received a Post Hearings letter from the Inspector requesting the Council prepare a schedule of Main Modifications. The Main Modifications identified by the Inspector to make the NLPR sound is currently being consulted on by the Council for 6 weeks (30 January 2024 to 12 March 2024).
- 5.4 The statutory starting point for determining this proposal remains the adopted policies in the development plan, including the RBKC Local Plan 2019, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, paragraph 47 of the National Planning Policy Framework, and paragraph 001 of the National Planning Practice Guidance on Plan-making. Paragraph 48 of the NPPF outlines the weight local authorities may give to relevant policies in emerging plans. The Council hopes to adopt the Plan in May/June 2024, but this depends on when we receive the Inspector’s report and may change. The emerging policies in the NLPR will be a material consideration afforded moderate weight at this stage however, where specific emerging policies are of particular relevance to the assessment, individual weightings have been given and expressed.

Other local strategies or publications

- 5.5 The main relevant supplementary planning documents adopted by the Council are:

- Earl’s Court Square Conservation Area Appraisal
- Noise

- 5.6 These documents can be read online at:

- Conservation Area Appraisals:
<https://www.rbkc.gov.uk/planning-and-building-control/heritage-and-conservation/conservation-areas/conservation-area>
- Other documents:
<https://www.rbkc.gov.uk/planning-and-building-control/planning-policy/supplementary-planning-documents-and-guidance>

6. Evaluation

- 6.1 The decisive issues are:

- i Whether the plant equipment and enclosure preserve, or take opportunities to enhance, the character and appearance of the group of buildings and the Earl’s Court Square Conservation Area (the CA).
- ii Whether the equipment would ensure that good living conditions continue for neighbouring occupants.

Character and appearance.

- 6.2 The retention of the plant equipment and addition of an acoustic enclosure would be acceptable. Hotels require plant equipment for their general running, such as kitchen extraction, which is the case with the plant in question. The plant has been positioned in the corner of the rear elevation and the newly built rear extension at ground floor level. This is a discreet location and is shielded from view by the walls of the hotel itself, fencing around the area and a large number of mature trees.

- 6.3 Extraction equipment itself is unattractive and, where the equipment can be seen, it currently has a harmful impact. However, there is a requirement for an enclosure around the equipment, primarily for noise dampening reasons (see Living Condition section below). The enclosure would have the benefit of also shielding the unattractive equipment.
- 6.4 However, the details provided within the acoustic report show a basic enclosure that is also utilitarian in appearance. The area the plant is located is surrounded by timber fencing and a similar finish to the enclosure would preserve the character of the space. Therefore, the following condition is recommended:
- The plant equipment hereby approval shall not be operated until full particulars of the following have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved, and maintained as such:
 - a) Detailed drawings of a timber clad acoustic enclosure. (Condition 2)

Living conditions.

- 6.5 As a result of its discreet positioning, the plant would not have significant impact on neighbours in terms of loss of light or through causing a sense of enclosure. Although the equipment would require maintenance, there is a condition imposed on application PP/23/06702 precluding the use of the area as a roof terrace, and there would be no harmful loss of privacy as a result.
- 6.6 Plant equipment does generate noise. The application includes an acoustic report demonstrating that noise generated would be within the Council's standards for acceptable noise levels. Acoustic data was compiled from a survey undertaken in 2021. However, environmental health officers are satisfied that noise levels are unlikely to have significantly changed in the meantime.
- 6.7 To ensure that the equipment does not cause a disturbance through noise and vibration, the following conditions are recommended:
- Noise emitted by all building services plant and vents shall not exceed a level 10dBA below the existing lowest background noise level at any time when the plant is operating. (Condition 3)
 - The plant shall not operate unless it is supported on adequate proprietary anti-vibration mounts. (Condition 4)
 - In order to comply with condition 3, the air conditioning unit shall be installed within acoustic enclosures as described in the acoustic report, compiled by Spratt and Hamer. The recommendations of the report shall be adopted, implemented in full and maintained in place thereafter. (Condition 6)
- 6.8 Furthermore, the acoustic report states that the units would only be operational between 06:30 and 10:00 daily. Therefore, the following condition is recommended:
- The plant equipment hereby approved shall only be operated between 06:30 hours and 10:00 hours, on any day. (Condition 5)

Issues and balancing

- 6.9 Subject to conditions, the retention of the plant equipment within an acoustic enclosure would preserve the character and appearance of the group of building and the Earl's Court Square Conservation Area and ensure that good living condition continue for neighbouring occupants.
- 6.10 Considerable importance and weight has been attached to and special attention has been paid to the desirability of preserving or enhancing the character or appearance of the

conservation area, under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended.

7. Community Infrastructure Levy

- 7.1 If permitted and built, the proposal would not require a payment towards funding additional infrastructure under the Borough's Community Infrastructure Levy or a payment towards funding Crossrail under the Mayor of London's Community Infrastructure Levy.

8. Consultations carried out

Comments from interested parties

- 8.1 29 nearby owners/occupiers were notified directly of the application. The application was advertised in the Gazette on 23/02/2024. A statutory notice advertising the application was posted near the site on 23/02/2024.
- 8.2 No letters were received supporting the application.
- 8.3 9 letters were received objecting to the application, summarised as:

	Comment	Response
1	The plant equipment is out of keeping with the Earl's Court Conservation Area.	The plant is in a discreet location and is only visible from a few neighbouring properties. Once the details of the acoustic enclosure are agreed, the impact on appearance would be less.
2	The equipment generates noise that can clearly be heard by neighbours and causes a disturbance.	The plant has not had the acoustic enclosure installed as yet. Recommended conditions 2 through 6 would ensure that the plant is not in operation until the full details of the acoustic enclosure are confirmed.
3	No attempt has been made to screen the plant equipment.	Recommended conditions 2 and 6 would ensure that an acoustic enclosure is retained in perpetuity.
4	The proposed acoustic enclosure would not address the issue of the appearance of the equipment.	As proposed, the acoustic enclosure would appear unattractive. Recommended condition 2 would ensure a more attractive finish to the enclosure.
5	The flat roof where the plant is located is being used as a breakout area by hotel staff and guests. This causes overlooking and increased noise.	There is a condition imposed on planning permission PP/23/06702 restricting the use of the roof as a terrace. Any use of the roof for recreational reasons is now a breach of condition and can be reported to the Council's planning enforcement team.
6	A stairway has been built connecting the flat roof to the lower area, use of which causes disturbance.	This is not part of the application and is not, therefore, relevant. However, as of the time of writing, the stairs have been removed.
7	The plant operates between 6.15am and 1:30pm, not 6:30 to 10:00 as stated in the report.	Recommended condition 5 states that the plant may only operate between 06:30 and 10:00. Operation of the equipment outside of these hours would amount to a breach of condition.
8	The acoustic report does not take into account all neighbours, just 23	The acoustic report measures the existing background noise at the two closest receptor

	Earl's Court Square.	points, being 23 Penywern Road and 23 Earl's Court Square. Noise generated by the plant would be lower at all other properties than these two. Therefore, there is no requirement to measure background noise at any other points.
9	According to the report, the noise generated is lower than the background noise level. This cannot be true as the noise is audible. This is contrary to RBKC's requirement.	The units have not yet been fitted with the acoustic enclosure and are not running at their lowest level. Recommended conditions 2 through 6 will ensure that plant is not operational until full details of the enclosure are agreed and installed.
10	A security light has been installed which is causing light pollution.	This is not part of the proposal and cannot be considered.
11	The measurements within the acoustic report are not thorough. Measurements should be taken at different times of the day and night.	The plant would only run between 06:30 and 10:00. Therefore, only background noise between these times is relevant.
12	A condition should be imposed requiring the plant to be moved to the lower ground floor.	This condition cannot be implemented as it is not relevant to the submitted application. Only the impacts of the plant in the location shown on the documents can be considered.
13	A condition should be imposed requiring the panels of the acoustic enclosure to be 100mm thick rather than 50mm.	This is not a requirement as the application demonstrates that the enclosure as proposed would be sufficient. If the acoustic enclosure fails to dampen noise to the levels required, this would result in a breach of condition and a requirement that the plant is switched off.
14	A condition should be imposed requiring the plant only be operational between 08:00 and 10:00.	The request is for equipment to run between 06:30 and 10:00. The documentation shows that noise generated, once the acoustic enclosure is installed, would not be audible. Therefore, there is no requirement for a restriction of hours as proposed in the objection.
15	A condition should be imposed requiring equipment to be switched off should noise be audible and only switched on again once the issue is resolved.	The details of this proposed condition are included in recommended condition 3.
16	A condition should be imposed restricting the use of the flat roof as a roof terrace.	This has been imposed under planning permission PP/23/06702.
17	A condition should be imposed requiring the removal of the stairs.	This is not relevant to the proposal. However, as of the time of writing, the stairs have been removed.
18	A condition should be imposed requiring the security light to be removed.	This is not relevant to the proposal. However, disturbance caused by the light may be reported to the Council's environmental health team.
19	Receptor point NSR2 (23 Earl's Court Road) is not the closest receptor point. Houses on Earl's Court Road are closer, as are gardens on Earl's Court Square.	The requirements for the report are that measurements are taken at the closest neighbouring window. There is no requirement for measurements to be made in gardens or other windows that are further away.

Other consultees and organisations

Consultee	Comment	Where in the report this is considered
Director of Environmental Health	No objection subject to conditions.	Paras. 6.7 – 6.9

9. Recommended conditions if the application is granted.

1. Compliance with approved drawings

Other than detailed in condition 2, the development shall not be carried out except in complete accordance with the details shown on submitted plans **100, 091B, 192B**

Reason - The details are material to the acceptability of the proposals, and to ensure accordance with the development plan.

2. Submission of details (Full PP)

Notwithstanding the drawing numbers listed in condition 1, the plant equipment hereby approved shall not be operated until **full particulars of the following** have been submitted to and approved in writing by the local planning authority and the development shall not be completed otherwise than in accordance with the details so approved, and maintained as such:

(a) Detailed drawings of a timber clad acoustic enclosure.

Reason – To accord with the development plan by ensuring that the character and appearance of the area are preserved and living conditions of those living near the development suitably protected.

3. Noise from building services plant and vents

Noise emitted by all building services plant and vents shall not exceed a level 10dBA below the existing lowest LA90(10min) background noise level at any time when the plant is operating, and where the source is tonal it shall not exceed a level 15dBA below. The noise emitted shall be measured or predicted at 1.0m from the facade of the nearest residential premises or at 1.2m above any adjacent residential garden, terrace, balcony or patio. The plant shall be serviced regularly in accordance with the manufacturer's instructions and as necessary to ensure that the requirements of the condition are maintained. If at any time the plant is determined by the local planning authority to be failing to comply with this condition, it shall be switched off upon written instruction from the local planning authority and not used again until it is able to comply.

Reason - 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.

4. Anti-vibration mounts for air-conditioning/ extraction equipment

The plant shall not operate unless it is supported on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.

Reason - 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.

5. **Hours of operation - Any day**
The plant equipment hereby approved shall only be operated between 06:30 hours and 10:00 hours, on any day.
Reason - 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.
6. **Compliance with noise assessment**
In order to comply with condition 3, the air conditioning unit shall be installed within acoustic enclosures as described in the acoustic report, compiled by Spratt and Hamer. The recommendations of the report shall be adopted, implemented in full and maintained in place thereafter.
Reason - 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.

INFORMATIVES

- 1 Your attention is drawn to the Conditions of this Permission and to the Council's powers of enforcement, including the power to serve a Breach of Condition Notice under the Town and Country Planning Act 1990, as amended. All Conditions must be complied with. If you wish to seek to amend a Condition you should apply to do so under s.73 of the Act, explaining why you consider it is no longer necessary, or possible, to comply with a particular condition.
- 2 Planning permission is hereby granted for the development as shown on the approved drawings. Any variation to the approved scheme may require further permission, and unauthorised variations may lay you open to planning enforcement action. You are advised to seek advice from the Directorate of Planning and Place, before work commences, if you are thinking of introducing any variations to the approved development.

Advice should urgently be sought if a problem occurs during approved works, but it is clearly preferable to seek advice at as early a stage as possible. Use the following link to see how advice can be obtained: [Planning Advice Service](#)

- 3 This property is within a Conservation Area. All building works should, therefore, be completed with great care. External facing work and detailed treatment should be finished in a manner sympathetic to the existing building. If there is any doubt about the way in which work should be carried out, you should seek the advice of the Directorate of Planning and Place.
- 4 Separate approval for the works hereby granted permission/consent may be required by the Building Act 1984 and the Building Regulations 2018 (as amended), and the grant of planning permission does not imply that such approval will be given. The District Surveyor, Town Hall, Hornton Street, W8 7NX should be consulted before works commence.
- 5 This development has been categorised as Category 3 for the purposes of the Council's Code of Construction Practice, so does not require a condition securing a Checklist or Site Construction Management Plan (SCMP). You are reminded that the Code still applies to building works at the site with regard to working hours and other site practices, and you are advised to review the Code to be aware of its objectives
<https://www.rbkc.gov.uk/environment/code-construction-practice>
- 6 To assist applicants in finding solutions to problems arising in relation to their development proposals the Local Planning Authority has produced planning policies, and provided written guidance, all of which are available on the Council's website. A pre-application

advice service is also offered, although not used in this instance.

On first submission the proposals did not comply with guidance, but improvements suggested by the planning authority were adopted by the applicant.

You are reminded that, if not properly managed, construction works can lead to negative impacts on the local environment, reducing residential amenity and the safe function of the highway. The Council can prosecute developers and their contractors if work is not managed properly. For advice on how to manage construction works in the Royal Borough please see the Council's website:

www.rbkc.gov.uk/environmentandtransport/adviceforbuilders.aspx. From this page you will also find guidance on what to include in Construction Traffic Management Plans (where these are required).

Construction and demolition work is controlled by the Council under sections 60 and 61 of the Control of Pollution Act 1974. The Council has adopted a Code of Construction Practice which sets out best practice standards expected in the borough and applies to new development projects from April 2019. Under the terms of the Code, works heard at the boundary of the site are restricted to:

Monday to Friday 8am – 6pm

Saturday, Sunday and public holidays – none permitted

The code also introduces a further set of restricted hours for high impact activities such as demolition and concrete breaking. Undertaking noisy works outside of the Code hours may be liable for prosecution and a fine of up to £5000 where a notice has been served under the Control of Pollution Act 1974.

If you are required to submit a Code of Construction Checklist and Site Construction Management Plan (SCMP), please contact the Construction Management Team on 020 7361 3002 or by email at dehcmt@rbkc.gov.uk

Your attention is drawn to Section 61 of the Control of Pollution Act 1974, which allows developers and their building contractors to apply for 'prior consent' for noise generating activities during building works. This proactive approach involves assessment of construction working methods to be used and prediction of likely construction noise levels at sensitive positions, with the aim of managing the generation of construction noise using the 'best practicable means' available. You are advised to engage an acoustic consultant experienced in construction noise and vibration assessment and prediction to complete your S.61 application. Relevant information can be found here [S.61 Control of Pollution Act 1974](#)

Background papers:

Documents associated with the application (except exempt or confidential information) may be viewed at www.rbkc.gov.uk/PP/24/01036. Access to computers is also available in the Customer Service Centre at the Town Hall.

Contact officer:

Mr. B. Brockey

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