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Our ref **EKPS/210611/MG**
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FAO David Brettell

Dear Sir or Madam,

Section 73 Application: Variation of Condition 10 attached to Planning Permission 129082/FO/2021 at 16, 20 and 24 Kennedy Street, Manchester, M2 4BY

On behalf of our client, The Hut Group ("THG"), we are pleased to confirm a Section 73 ("S73") Application to vary Condition 10 of the Approved Planning Application (reference 129082/FO/2021) in relation to the aforementioned properties, has today been submitted via the Planning Portal (PP-10261619). The planning application fee of £234 has been paid electronically via the Planning Portal.

The application comprises the following documents:

- This Covering Letter prepared by Euan Kellie Property Solutions;
- Completed Application Forms and Certificates;
- Site Location Plan;
- Kennedy Street Operational Management Strategy prepared by THG (ref: Kennedy Street Operational Management Plan 3 September 2021);
- Roof Terrace Evening Noise Control Sheet (ref: Noise control terrace) prepared by THG; and,
- Noise Report prepared by WSP (ref: 70075436-R01-AC-rev01 THG 16-24 Kennedy Street Environmental Noise Survey Report).

Background

On 4 June planning permission was granted by Manchester City Council ("MCC") for the following development at 16, 20 and 24 Kennedy Street in Manchester (ref: 129082/FO/2021)

"Change of use from dwelling house (Class C3 use) to serviced accommodation and event space associated with the King Street Townhouse Hotel (Sui Generis) at 24 Kennedy Street, change of use from office (Class E (g) use) to a restaurant / café use at ground floor and events space and hotel accommodation associated with the King Street Townhouse hotel on the upper floors (Sui Generis) at 20 Kennedy Street and change of use from office (Class E (g) use) to ancillary retail space at ground floor and spa training facilities (Sui Generis) at upper levels at 16 Kennedy Street with amendments to front and rear elevations, and extension at roof level at 20 and 24 Kennedy Street."

The approved development will enable THG to deliver a worldwide training spa facility and a high-quality serviced accommodation and event space which is to be associated with King Street Townhouse.

THG intend to operate 16, 20 and 24 Kennedy Street in conjunction with – and under the same management as – the neighbouring King Street Townhouse Hotel (also owned by THG) which has operated successfully

since 2015 without disturbance to surrounding residents (notably the closest residents are located within the apartments at 2-4 Booth Street, directly opposite the Kennedy Street side of the development, and adjacent to the existing King Street Town House).

It is intended that the rooftop terrace at 20 and 24 Kennedy Street will deliver the same high-quality service and experience as that is being delivered on the King Street Townhouse Hotel external rooftop terrace, and the same management strategies will be implemented to ensure there is no disturbance to local residents.

The recent aforementioned consent at 16, 20 and 24 Kennedy Street however includes a condition restricting the hours of operation of the terrace at 20 and 24 Kennedy Street. The Condition restricts the use of the terrace for events and private hire, and also restricts the opening hours to 7.30am to 10.00pm Sunday to Thursday; and, 7.30am to 10.30pm Friday and Saturday. The Condition is provided in full in the following section of this letter.

As a result, the restrictions on the Kennedy Street terrace are much more onerous when compared to the consented operation of the King Street Town House terrace (Ref. 104475/FO/2013/C1) which allows use (for events or functions) up until 02.00am.

With consideration to the above, and the relationship of the two properties in terms of ownership and operation, THG is now seeking to amend the hours of operation of the rooftop terrace at 20 and 24 Kennedy Street to align more with the hours of operation at King Street Townhouse external rooftop terrace.

Scope of Application

As noted earlier, the planning consent (Ref. 129082/FO/2021) for the development at 16, 20 and 24 Kennedy Street in Manchester includes a condition restricting the use and hours of operation of the external fourth floor terrace.

Specifically, Condition 10 states:

'The proposed external roof terrace on the 4th floor shall not be brought into use unless and until the following details have been submitted to, and approved in writing by, the City Council, as local planning authority

i) Maximum capacity

ii) Opening hours, which should not exceed 7.30am to 10.00pm Sunday to Thursday and 7.30 to 10.30 Friday and Saturday

iii) Full details of external lighting

iv) Confirmation that the external terrace shall not host events, shall not be available for private hire, and shall not play live, recorded or DJ led music.

Thereafter, the roof terrace shall only be permitted for a temporary period of twelve months, after which the use shall cease, unless a further consent is granted.

Reason - To safeguard the amenities of the occupiers of the building and occupiers of nearby properties, and in order that any potential impact can be assessed, pursuant to policies SP1 and DM1 of the Core Strategy'

Whilst THG recognise and respect the need to ensure any future development does not impact on surrounding residential amenity, it is considered the restrictions on the operational hours of the terrace – along with the restrictions on the use of the terrace for private parties and events – are particularly onerous and disproportionate. Further, these restrictions will have an impact on the functionality and viability of the Hotel and, in line with this, THG's ability to provide world-class facilities.

As a result, this S73 Planning Application therefore seeks to vary the wording of Condition 10 to extend the opening hours of the terrace and remove the restriction on the use of the terrace for private hire and events.

The proposed amended wording to the condition is outlined below:

'10) The proposed external roof terrace on the 4th floor shall only be brought into use unless and until the following details have been submitted to, and approved in writing by, the City Council, as local planning authority

i) Maximum capacity

ii) Opening hours, which should not exceed 7.30am to 11.30pm Sunday to Thursday and 7.30 to 12.30am Friday and Saturday

iii) Full details of external lighting

iv) Confirmation that the external terrace shall not play live music.

The terrace shall be operated in complete accordance with the submitted Operational Management Strategy. Should any noise complaints be received by the Council, the Operational Management Strategy should be reviewed, updated and resubmitted for approval to address any complaints.

Reason - To safeguard the amenities of the occupiers of the building and occupiers of nearby properties, and in order that any potential impact can be assessed, pursuant to policies SP1 and DM1 of the Core Strategy.'

Assessment of Changes

THG recognise and respect the need to safeguard the amenities of both occupiers of the building and local residents occupying nearby properties, in order to comply with Core Strategy Policy DM1, 'Development Management'.

In line with this, a Noise Assessment (ref. 70075436-R01-AC-rev01) considering the operational noise resulting from the terrace is submitted with this application.

The assessment concluded that operational noise associated with the development (including the external terrace) will not exceed the levels required by MCC guidance (i.e 10 dB below the background noise level without the entertainment noise present).

Further to this, an Operational Management Strategy (ref: Kennedy Street Operational Management Plan 3 September 2021) has been developed by THG in consultation with the King Street Townhouse facilities manager (who has assisted with the management of the King Street Town House Hotel since 2015).

This document is submitted with this application and outlines the management strategies which will be implemented by THG to protect neighbouring residential amenity. This includes the following restrictions operational strategies outlined overleaf.

“Use

- *Between the hours of 10.00pm and 02.00am (where applicable) access between the internal and external 4th Floor area (roof terrace) will be controlled by the Staff. Anyone in the 4th Floor External Area (roof terrace) after 10pm will be asked to remain seated.*

Music

- *The external 4th Floor Area (roof terrace) will only be permitted to play background recorded music, no live music will be permitted.*
- *Noise limiters will be in place in the 4th Floor Area (internally and externally) and any 3rd Party entertainment providers will be a contractually obliged to abide by THGs Noise Control policy.*

Management

- *A Roof Terrace Evening Noise Control Sheet (ref. Noise control terrace) has been submitted with this S73 Application to demonstrate how noise will be managed through frequently logging the noise control measures implemented and times the terrace doors are closed.*
- *Hosts of any Private events held on the rooftop terrace will be bound by contractual terms to ensure that THG's strict management policies are adhered to.*
- *An onsite General Manager will be appointed and available to ensure the measures in the Operation Management Plan are adhered to and to address any concerns from residents & deal with any issues (should they arise).*
- *A rigid complaint procedure will be implemented, as detailed in the Operational Management Strategy. The procedure follows that any noise complaints from neighbours will be evaluated immediately by the onsite General Manager who will be required to contact the resident and respond to their concerns in a respectful and helpful manner, dealing with the noise issue immediately.*
- *All external noise complaints including details of the nature of the complaint and neighbour's contact details, will be logged in the file called "noise complaints" as well as being emailed to the premises licence holder / General Manager within 24 hours of the complaint occurring."*

The proposed re-wording of Condition 10, sought by way of this application, therefore includes a requirement of the terrace at 20 and 24 Kennedy Street to be operated in complete accordance with the submitted Operational Management Strategy. Furthermore, we have updated the Condition to require the Operational Management Strategy to be reviewed, updated and resubmitted for approval to address any complaints (should they be received).

This proposed wording will ensure MCC as Local Planning Authority will continue to have sufficient control of the rooftop terrace operation as necessary. Similarly, the measures outlined in the Operational Management Strategy will enable THG to ensure that they are respectful of the amenities of both occupiers of the building along with nearby local residents.

With consideration to the changes proposed to the condition, the limited extension to the opening hours of the terrace; the conclusions of the noise assessment; and the Operational Management Strategy submitted it is concluded that the proposed changes to the Condition wording will not result in an adverse impact on surrounding residential amenity.

Other Planning Conditions

Should this S73 application be approved, a new decision notice will be issued by MCC that will sit alongside the original approval. The new decision notice would include all relevant planning conditions but update those which have already been addressed and discharged. With this in mind, the National Planning Practice Guidance ("NPPG") states:

"Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted."

A decision notice describing the new permission should clearly express that it is made under section 73. It 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. Further information about conditions can be found in the guidance for use of planning conditions."

Following the granting of planning permission on 4 June 2021, an application to discharge Conditions 8 (Acoustic Requirements), 9 (Externally Mounted Plant Details) and 12 (Air Quality Mitigation) was submitted on 25 June 2021 (ref: CDN/21/0476)

Further to this, THG has submitted an application (ref. PP-10256989) to discharge Conditions 3 (Schedule of Materials), 5 (Fume, Vapours and Odours Scheme) and 6 (Construction Management Plan) on 28 September 2021, which is currently awaiting validation.

THG are still awaiting a decision on both applications, however it is respectfully requested that the above conditions are updated in line with the information submitted in any decision for this S73 planning application.

Basis of Determination

As noted earlier within this letter, whilst there is no definition of what constitutes a 'Minor Material Amendment', the NPPG recognises that in order for changes to be considered under a S73 Application, the scale and/or nature of the change must not result in a substantially different development from that consented under the original planning permission.

The changes to the hours of use of the rooftop terrace at 20 and 24 Kennedy Street are considered to be relatively minor in nature and will not result in a substantially different development from the originally approved scheme. As a result, the changes are therefore considered to fall within this definition put forward by the guidance outlined in this letter.

Conclusions

The principle of using the rooftop at 20 and 24 Kennedy Street as event space for prospective users has already been established by way of the planning permission which was granted on 4 June 2021 (ref. 129082/FO/2021). The proposed change to hours of operation of the rooftop terrace at 20 and 24 Kennedy Street are required to align with the needs of the business – which is to provide world-class facilities in the heart of Manchester city centre.

Alongside this, THG is committed to maintaining a positive relationship with neighbours and ensuring that there are no noise disturbances from the hotel operations. The Operation Management Plan submitted with this application sets out the noise mitigation strategies and the management procedure, including a complaints procedure.

In addition, the changes proposed to the condition will ensure that MCC as the Local Planning Authority will retain the ability to require the Operational Management Strategy to be revisited should complaints be received.

Furthermore, it is noted that MCC are in a position to control the operations of the rooftop terrace through other Environment Health Legislation and licensing as necessary, which will allow them to take further action on any noise disturbance if appropriate.

It is therefore respectfully requested that this application is approved without delay.

I trust the submitted information is sufficient and I look forward to receiving confirmation that the application has been registered. Should you have any queries or require any further information, please do not hesitate to contact me by email or telephone (0161 486 5025).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'K. Daniels'.

Katie Daniels MRTPI
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