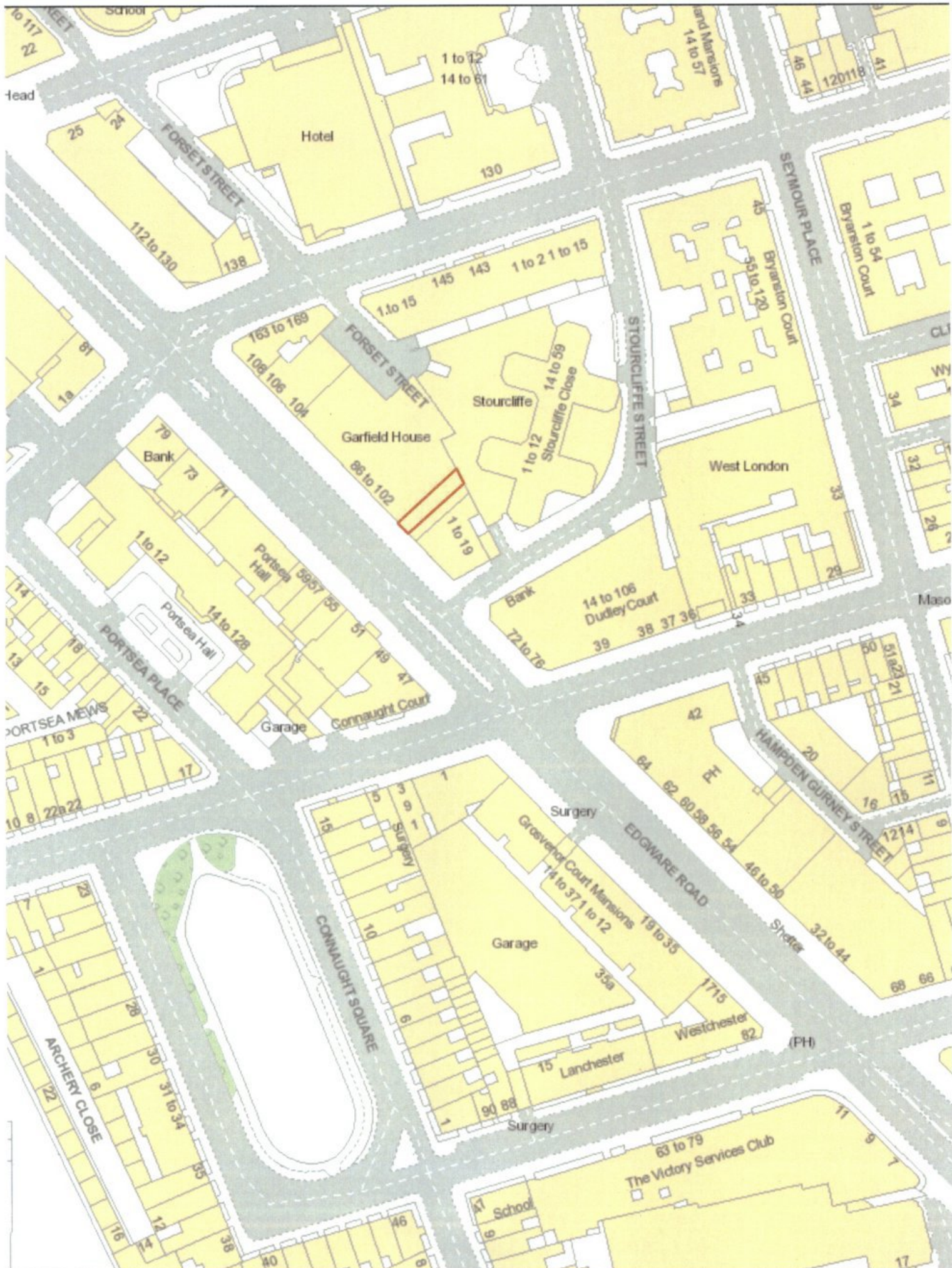


<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 3 February 2015	<b>Classification</b> For General Release	
<b>Report of</b> Operational Director Development Planning		<b>Wards involved</b> Bryanston And Dorset Square	
<b>Subject of Report</b>	<b>84 Edgware Road, London, W2 2EA</b>		
<b>Proposal</b>	Variation of Conditions 2 and 3 of planning permission dated 6 October 2005 for the refurbishment of the basement and ground floors for restaurant use (Class A3) including the erection of a full height extract duct on rear wall and alterations to the shopfront (RN: 05/03603/FULL); namely to allow use of the basement for customer seating and a total of 52 covers within the premises.		
<b>Agent</b>	RadcliffesLeBrasseur		
<b>On behalf of</b>	Palms Palace Limited		
<b>Registered Number</b>	14/09158/FULL	<b>TP / PP No</b>	TP/2824
<b>Date of Application</b>	15.09.2014	<b>Date amended/ completed</b>	15.09.2014
<b>Category of Application</b>	Minor		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Outside Conservation Area		
<b>Development Plan Context</b> - London Plan July 2011 - Westminster's City Plan: Strategic Policies 2013 - Unitary Development Plan (UDP) January 2007	Outside London Plan Central Activities Zone  Within Central Activities Zone Frontage		
<b>Stress Area</b>	Within Edgware Road Stress Area		
<b>Current Licensing Position</b>	Licence surrendered. Previous Licence for Late Night Refreshments Monday - Thursday 23.00 -23.30. Friday - Sunday 23.00-00.00		

## 1. RECOMMENDATION

Refuse permission - cumulative adverse impact on the Edgware Road Stress Area, and a detrimental impact on local residential amenity and local environmental quality.







84 EDGWARE ROAD, W2

## 2. SUMMARY

Permission is sought to vary conditions of a 2005 permission which granted a restaurant use of the ground and basement of the premises, to permit the use of the basement area for additional customer seating, rather than ancillary uses together with an increase in the maximum number of customers on the premises from 30 to 52. This would increase the restaurant customer floorspace to 176.3m<sup>2</sup> within the Edgware Road Stress Area.

The applicant has, in support of his proposal, provided a petition of 19 signatures of residents who reside above the premises. Contrary to this, objections have been received from Councillor Heather Acton, Harrowby and District Residents Association, The St Marylebone Society and the Portman Estate, as freeholder, on the principle of the intensification of the restaurant use within the Edgware Road Stress Area and on grounds of its impact on residential amenity and local environmental quality. Furthermore, Environmental Health, Licensing and Community Protection have raised concerns with the proposal, given the poor management of the premises and history of breaches of planning and licensing control.

The key issue in this case is:

- The impact of the proposed intensification of restaurant use within the Edgware Road Stress Area on residential amenity and local environmental quality.

The proposal is considered to intensify an existing problematic use which has a cumulative adverse impact on the Edgware Road Stress Area and consequently a detrimental impact on local residential amenity and local environmental quality, contrary to relevant Unitary Development Plan (UDP) and City Plan policies and is therefore recommended for refusal.

## 3. CONSULTATIONS

### COUNCILLOR HEATHER ACTON

Objection, there has been innumerable problems caused by the premises and oppose any expansion of covers within the premises or any later hours. The 2005 permission placed conditions on the premises for good reason and there is no reason for them to be removed. There is an issue of over intensification of restaurants and cafes on and around Edgware Road and this should be taken into account. Ward Councillors, the Edgware Road Partnership, businesses and residents want a wider retail offer in the area and this wish should be taken into account. The operation of the premises has been very poor and as Ward Councillor receives many complaints from residents living opposite with noise from the cafe in the early hours of the morning and fighting outside. As a result the police have had the cafe on their radar. Compliance with planning and licensing requirements has been poor, with a lack of co-operation with Westminster Wardens reported and imagine Bryanston and Dorset Square Ward Councillors will have had complaints from residents on their side of the road.

### TRANSPORT FOR LONDON

Any response to be reported verbally.

### METROPOLITAN POLICE

Any response to be reported verbally.

### HARROWBY AND DISTRICT RESIDENTS ASSOCIATION

Objection, agree with Councillor Acton's comments. They have failed to adhere to current licensing arrangements and as a result have been a nuisance to residents and have been caught conducting illegal activities with shisha smoking in the basement. To grant permission would undermine the whole system and erode our trust in the planning system and gives the wrong signal to other businesses. This proposal does nothing for our community and does not improve the general over intensification of restaurants and cafes on and around Edgware

Road which many have been trying to change to bring greater diversity to the businesses in the area.

#### HYDE PARK ESTATE ASSOCIATION

Any response to be reported verbally.

#### MARYLEBONE ASSOCIATION

Any response to be reported verbally.

#### THE ST MARYLEBONE SOCIETY

Is this in Marylebone Association area. A various history of cafe/shisha without permission and refusals. No indication of how basement is to be ventilated.

#### ENVIRONMENTAL HEALTH

Objection. Premises fall within the Edgware Road Stress Area. The increase in capacity so as to allow customers in the basement will have the likely effect of causing an increase in public nuisance within the area. There is history associated with the premises. The Westminster City Council Licensing Inspectors issued a warning letter under the Health Act 2006 to the occupier of the premises on 30 December 2013 as they had witnessed persons smoking in the basement area on Saturday 21 December 2013.

#### LICENSING

2012 Premises Licence authorises late night refreshment 23.00-23.30 Monday to Thursday and 23.00-00.00 Friday to Saturday; restriction on supply of food to outside area after 23.00 and no use of external tables and chairs after 23.00 each day. The owners of the premises were written to by Westminster City Council's Licensing in September 2014 regarding a breach of their licence in respect of hours of use (witnessed as open for food and drink at unsocial hours of 01.30 and 04.15) and capacity (36 chairs on the premises).

Unhappy with the venue which has a poor history, including prosecutions for breaches of the smoke free regulations and in breach of CCTV related licence condition. The licence has currently been surrendered and so the venue cannot currently provide licensable activities (such as late night refreshment - hot food and drink).

#### COMMUNITY PROTECTION

From February 2012 to date the premises has warranted the attention of the dedicated Warden night team and local Westminster Warden over 100 times due to legislative breaches across multiple legislation. Issues include oversizing of forecourts, improper use of smoking shelters, overflowing of commercial waste, breaches of Health Act (internal shisha smoking). Although due to recent civil enforcement action appear to be complying, premises remain on the top five premises of concern from the Edgware Road Action Group. Concern that if business is allowed to expand that there may be a return to former behaviour displayed prior to prosecution. If not monitored constantly, non compliance continues. Also, incident in 2013 involved a hostile customer and police involvement.

#### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS

No. Consulted: 148; Total No. of Replies:2 .

A petition in support and one letter of objection received.

A petition of 19 signatures of people who reside at Flats 1-19 above 84 Edgware Road and Evelyn Court, Stourcliffe Street in support of the proposal has been submitted by the applicant.

Objection from Portman Estate (Freeholder) on grounds of increasing restaurant entertainment use within the Edgware Road Stress Area, whereby the focus should be on reducing restaurant activity.

ADVERTISEMENT/SITE NOTICE: Yes

#### 4. BACKGROUND INFORMATION

##### 4.1 The Application Site

The application relates to the ground floor and basement of an eight storey building at the southern end of Edgware Road. The upper floors are in residential use, known as Evelyn Court. No.84 forms part of a parade of shops and restaurants between George Street to the north and Stourcliffe Street to the south. The property is neither listed nor in a conservation area but lies within the Central Activities Zone (CAZ) Frontage and the designated Edgware Road Stress Area.

##### 4.2 Relevant History

A Lawful Development Certificate was issued on 24 April 2001 for use of the ground floor and basement for mixed Class A1/Class A3 purposes.

Planning applications were submitted in April 2004 and November 2004 for the proposed refurbishment of the premises for restaurant use. Due to a lack of information, neither application was validated and the files were subsequently closed.

Permission was granted on 6 October 2005 for the refurbishment of the basement and ground floors for restaurant use (Class A3), including erection of full height extract duct on rear wall and alterations to the shopfront. Conditions were imposed to restrict the opening hours to between 08.00 and 23.00, a limit of 30 customers on the premises at any one time, and to prevent the basement being used for customer seating or a bar area (05/03603/FULL).

An application for Variation of Condition 3 of planning permission dated 6 October 2005 (RN: 05/03603); namely, to allow customer seating in the basement ancillary to ground floor restaurant, was never validated due to a lack of information. Despite repeated requests for the information, nothing was forthcoming and the file was closed.

An application for use of ground floor and basement as restaurant and shisha bar (sui generis use), submitted retrospectively, was refused on 27 August 2010. The reason for refusal was that the presence of tables and chairs on the highway, directly underneath residential windows belonging to Evelyn Court, would cause a loss of amenity by way of an unacceptable increase in noise, disturbance and foul odours.

An application for Variation of Condition 2 and removal of Condition 3 of permission dated 6 October 2005 for refurbishment of basement and ground floor for restaurant use (Class A3) (RN: 05/03603); namely, to increase the capacity of the restaurant to 70 covers and to allow the basement to be used to provide customer seating was refused on 12 July 2011 (10/01771/FULL).

The reason for refusal was that the proposal showed the enlargement of the planning unit which fell outside the scope of Section 73 of the Town and Country Planning Act 1990 (as amended) and required a new planning permission.

There are ongoing planning enforcement investigations into the unlawful use of the basement area for smoking and eating, and the premises opening beyond the hours permitted by the 2005 planning permission.

##### OTHER HISTORY

City Council records show repeated and regular breaches of their licence and planning permission in relation to hours of operation, capacity, internal smoking of shisha.

## 5. THE PROPOSAL

Permission is sought to vary conditions pursuant to planning permission granted in 2005 for a restaurant use, in order to allow for the use of the basement for customers (rather than storage and toilet facilities ancillary to the restaurant) to accommodate an increase in the maximum number of covers at the premises from 30 to 52.

It is noted that the submitted proposed basement floor plan is annotated "Prep kitchen no cooking".... and "extracts and cooking equipment to be removed". No explanation of this is given and no details of the nature of the restaurant and food on offer has been provided.

It is also noted that the submitted application form describes the proposal as "Variation of Condition 2 to allow 52 covers on ground floor and basement" and also "to allow 24 additional covers in the basement". The proposed description was amended by officers to accurately reflect the need to vary Condition 2 to allow an additional 24 covers to the 30 currently allowed and also to remove Condition 3 to enable the basement to be used by customers. However, the applicant's agent suggests (in an email of 03.11.2015) that 52 covers are proposed, 28 covers at ground floor (two fewer than which is consented) plus the 24 in the basement.

Further to a suggestion in the applicant's agent email of 03.11.2014 that a variation of operational hours may also be being sought, the applicant's agent has subsequently confirmed on 07.01.2015 that this is not the case and no change to the permitted closing hour of 23.00 is sought by this application.

The guidance accompanying Section 73 of the Planning Act is explicit - in assessing an application under S73, a local planning authority may only take into account the issues arising as a result of the conditions being altered. It cannot and must not seek to reassess the operational part of the permission, or deal with issues which are not directly related to the matter in hand.

## 6. DETAILED CONSIDERATIONS

### 6.1 Land Use

In 2005 an application sought to retain the use of the premises as a restaurant (Class A3) with a full height duct at the rear and a fully openable shopfront. Planning permission was granted by the Planning Applications Sub-Committee, subject to a number of restrictive conditions in order to minimise the impact of the restaurant use. These conditions included a restriction on the use of the basement of the premises, to prevent its use for additional customer seating or a bar area (Condition 3) and a restriction on the maximum number of customers allowed on the premises at any one time to 30 (Condition 2). Other conditions included a requirement for details of waste storage, 08.00-23.00 as hours of operation of the restaurant and associated plant (Conditions 1 and 7), and the fixing shut of the shop front (Condition 10).

Proposed restaurant uses of over 150m<sup>2</sup> within the Stress Area, such as what is proposed under this application fall to be assessed under Policy TACE9 of the UDP and Policies S24 (Entertainment Uses) and S29 (Health Safety and Well Being) of the City Plan are also relevant. Given the existing restaurant use and character of the premises and locality, it is not considered that the proposal would adversely affect the character or function of the area. However, the assessment of the impact of the proposal on residential amenity and environmental quality is set out under the Amenity section of this report.

### 6.2 Townscape and Design

No external alterations are proposed and the application does not therefore raise any such issues.



### 6.3 Amenity

The existing restaurant is, under the 2005 permission, only permitted to accommodate a maximum of 30 customers at ground floor level with the basement only permitted for ancillary storage, kitchen and WC facilities.

The proposal seeks to extend the customer floorspace of the restaurant, currently only at ground (84.7m<sup>2</sup>) into the existing basement, creating a two floor restaurant of 176.3m<sup>2</sup> (internal floor space) with a proposed capacity of 52. However, it is annotated on the submitted proposed basement floor plan "Prep kitchen no cooking".... and "extracts and cooking equipment to be removed". This casts doubt over the proposed use of the premises as a restaurant, especially given the intensification of floorspace and capacity that is proposed.

The premises are located within the designated Edgware Road Stress Area, where the significant number of entertainment uses in close proximity has reached a level of saturation. Edgware Road has high levels of night time noise from entertainment premises and pedestrians and vehicles which has degraded residential amenity and the local environment. The aim of the City Council's entertainment policies is to control the location, size and activities of entertainment uses in order to safeguard residential amenity, local environmental quality and the established character and function of various parts of the City.

Given this background, the principle of the intensification of the customer floorspace and increase in capacity of the restaurant use raises concern given the location of the premises within the Edgware Road Stress Area and also given the ongoing problems associated with the current premises.

Proposed restaurant uses of over 150m<sup>2</sup> within the Stress Area are assessed under Policy TACE9 of the UDP. This policy states that permission will only be granted for proposals under this policy where the City Council is satisfied that: - i) the proposed development has no adverse effect (including cumulative effect) upon residential amenity or local environmental quality and no adverse effect on the character or function of its area having regard to the nature and operation of the use, the immediate surroundings and the locality. In appropriate cases the use of conditions to minimise adverse effects will be considered.

The existing premises has a history of unauthorised activities and breaches of planning and licensing control as expanded upon throughout this report. It is evident from many of the representations received from Ward Councillor Heather Acton, Harrowby and District Residents Association, the St Marylebone Society and Westminster Licensing and Street Wardens that the existing premises have and continue to cause problems showing little regard to planning and licensing controls and adversely impacting upon residential amenity and environmental quality. Furthermore, the freeholder of the premises, The Portman Estate has also raised objection to the intensification of the use within the Stress Area. The applicant's submission of a petition in support of the proposal from residents above the premises is noted; however, this is at odds with the aforementioned representations.

The intensification of the restaurant's customer floorspace to 176.3m<sup>2</sup> and increase in its capacity to 54 covers (almost double that existing) would adversely affect residential amenity and local environmental quality within the Edgware Road Stress Area, by way of increased late night activity from more customers at the premises and associated noise and disturbance as well as increased pressure on commercial waste and exacerbated by the associated poor management and operation of the premises which has resulted in unauthorised activities and breaches of planning and licensing control taking place at the premises.

Given the known existing adverse effects of the existing entertainment uses within the Edgware Road Stress Area, including the application premises, the further intensification of these particular premises is considered to add to the adverse impacts at these premises and



cumulatively to the Edgware Road Stress Area. Given that the existing conditions on both the 2005 planning permission and licences has not been effective in minimising the impact of the premises on residential amenity and local environmental quality, it is not considered that the proposed intensification of the restaurant use could be adequately controlled in this way. The applicant's agent has suggested that the City Council consider granting the proposal for a temporary period of one year in order to monitor the management of the premises, however, there is significant existing evidence of the poor management of the premises and this is therefore considered inappropriate in these circumstances.

For the reasons set out above, the proposal is considered to be unacceptable and contrary to Policy TACE9 of the UDP and Policies S24 and S29 of the City Plan.

#### **6.4 Transportation/Parking**

The proposal is not considered to raise any significant transportation issues.

#### **6.5 Economic Considerations**

Not applicable.

#### **6.6 Equalities and Diversities (including Disabled Access)**

It is not considered that the granting or refusal of permission will have any significant impact on the City Council's equalities and diversities policies.

#### **6.7 London Plan**

The proposal does not raise strategic issues and does not have significant implications for the London Plan.

#### **6.8 National Policy/Guidance Considerations**

Central Government's National Planning Policy Framework (NPPF) came into effect on 27 March 2012. It sets out the Government's planning policies and how they are expected to be applied. The NPPF has replaced almost all of the Government's existing published planning policy statements/guidance as well as the circulars on planning obligations and strategic planning in London. It is a material consideration in determining planning applications.

Until 27 March 2013, the City Council was able to give full weight to relevant policies in the Core Strategy and London Plan, even if there was a limited degree of conflict with the framework. The City Council is now required to give due weight to relevant policies in existing plans "according to their degree of consistency" with the NPPF. Westminster's City Plan: Strategic Policies was adopted by Full Council on 13 November 2013 and is fully compliant with the NPPF. For the UDP, due weight should be given to relevant policies according to their degree of consistency with the NPPF (the closer the policies in the plan to the NPPF, the greater the weight that may be given).

The UDP policies referred to in the consideration of this application are considered to be consistent with the NPPF unless stated otherwise.

#### **6.9 Planning Obligations**

Not applicable.

## 6.10 Environmental Assessment including Sustainability and Biodiversity Issues

Not applicable.

## 6.11 Conclusion

The proposal would unacceptably intensify an existing restaurant use within the Edgware Road Stress Area, which would adversely affect residential amenity and local environmental quality, contrary to Policy TACE9 of the UDP and S24 and S29 of the City Plan and is therefore recommended for refusal.

## BACKGROUND PAPERS

1. Application form
2. Email from Councillor Heather Action dated 20.01.2015
3. Email from Harrowby and District Residents Association dated 21.01.2015
4. Email from St Marylebone Society dated 14.10.2014
5. Memo from Environmental Health dated 16.10.2014
6. Emails from Premises Licensing dated 22.12.2014 (x2) including letter to owner dated 29.09.2014)
7. Email from Community Protection dated 19.01.2015
8. Email from Portman Estate (Freeholder) dated 22.12.2014
9. Email from applicant's agent dated 22.01.2015

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT NATHAN BARRETT ON 020 7641 5943 OR BY E-MAIL – [nbarrett@westminster.gov.uk](mailto:nbarrett@westminster.gov.uk)

**DRAFT DECISION LETTER**

**Address:** 84 Edgware Road, London, W2 2EA

**Proposal:** Variation of Conditions 2 and 3 of planning permission dated 6 October 2005 for the refurbishment of the basement and ground floors for restaurant use (Class A3) including the erection of a full height extract duct on rear wall and alterations to the shopfront (RN: 05/03603); namely to allow use of the basement for customer seating and a total of 52 covers within the premises.

**Plan Nos:** 5046-PD-01 Rev B; 02 Rev B; Letters of 09.10.2014 and 03.11.2014 with petition.

**Case Officer:** Sarah Whitnall

**Direct Tel. No.** 020 7641 2929

**Recommended Reason for Refusal:****Reason:**

- 1 The proposal would intensify an existing problematic use which has a cumulative adverse impact on the Edgware Road Stress Area and consequently a detrimental impact on local residential amenity and local environmental quality, contrary to policy TACE9 of our Unitary Development Plan that we adopted January 2007 and policy S24 and S29 of our City Plan: Strategic Policies that we adopted November 2013.

**Informative(s):**

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way so far as practicable. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan: Strategic Policies adopted November 2013, Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service. However, we have been unable to seek solutions to problems as the principle of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.
- 2 You are reminded of the need to comply with the 2005 planning permission for the refurbishment of the basement and ground floors for restaurant use (Class A3), including erection of full height extract duct on rear wall and alterations to the shopfront. Conditions are in place to restrict the opening hours to between 08.00 and 23.00, a limit of 30 customers on the premises at any one time, and to prevent the basement being used for customer seating or a bar area.(05/03603/FULL)

Notes:  
 1. The drawings are for information only.  
 2. All dimensions are in millimetres unless otherwise stated.  
 3. All dimensions are to be taken as per the construction.  
 4. All dimensions are to be taken as per the construction.  
 5. All dimensions are to be taken as per the construction.  
 6. All dimensions are to be taken as per the construction.  
 7. All dimensions are to be taken as per the construction.  
 8. All dimensions are to be taken as per the construction.  
 9. All dimensions are to be taken as per the construction.  
 10. All dimensions are to be taken as per the construction.

**LEGEND:-**

- AS USE
- ANCLARY TO AS USE

**EXISTING COVERS:-**  
 GROUND FLOOR = 28



**PLANNING**

Client: MR A. GABAS

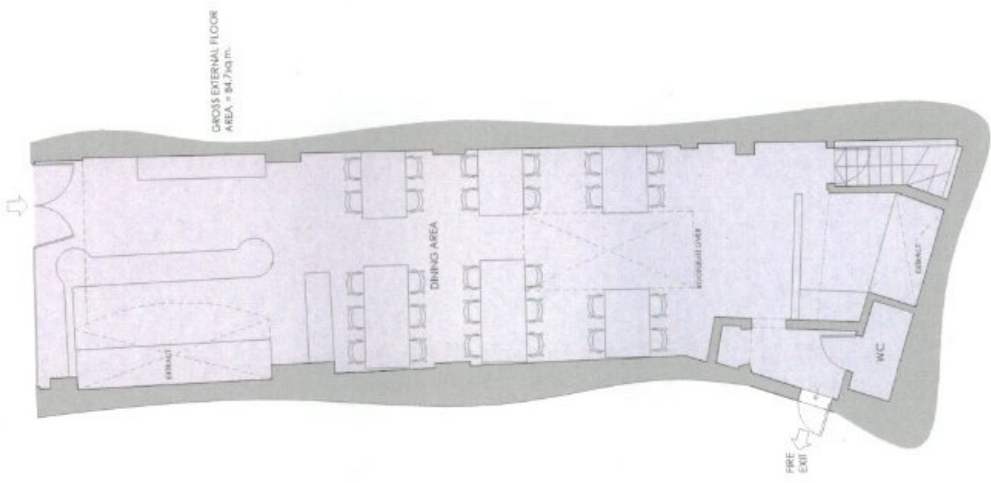
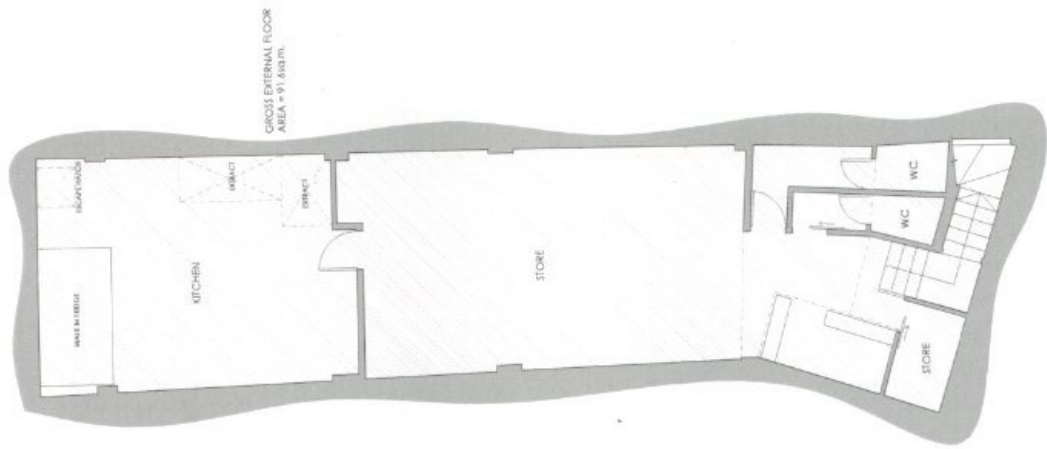
Project: PALMS PALACE  
 100-110 WOKING STREET  
 LONDON  
 W2 7EA

File: PLANNING FLOOR PLANS  
 SITE LOCATION AND BLOCK PLANS

Project No: 5046  
 Date: Nov 2013

Drawing No: 5046-PD-01  
 Revision: B

Scale: AS SHOWN (A1)  
 Drawn: MS  
 Checked: RC

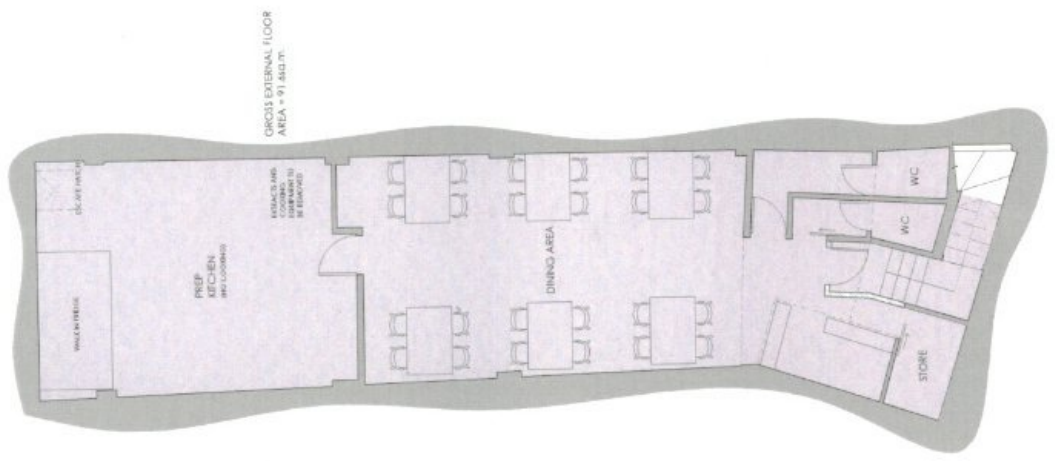




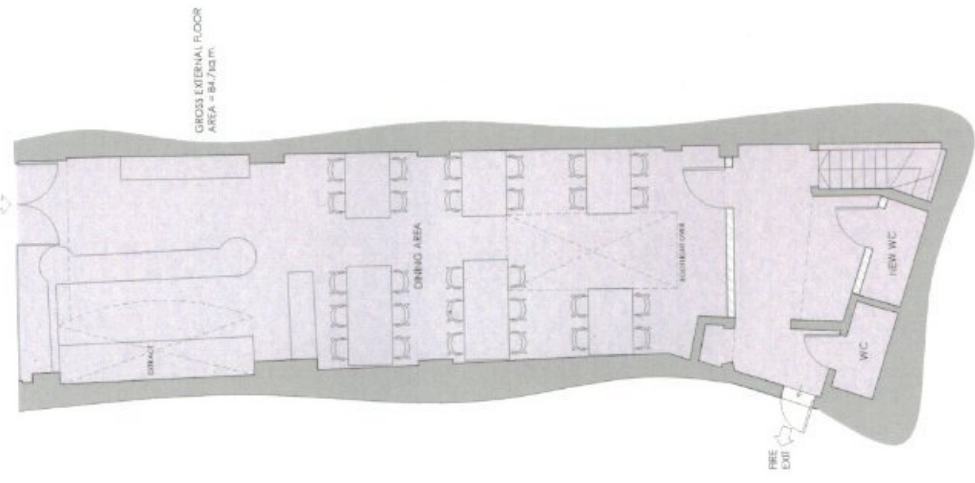
Notes:  
 1. The architect has not yet received the final approval from the relevant authorities for the proposed floor plan.  
 All dimensions are in meters unless otherwise stated.  
 All copyright reserved to Offset Architects

**LEGEND:-**  
 - A3 USE

**PROPOSED COVERS:-**  
 GROUND FLOOR = 28  
 BASEMENT = 24  
 TOTAL = 52



**BASEMENT FLOOR PLAN**  
 SCALE 1:20



**GROUND FLOOR PLAN**  
 SCALE 1:20  
 0m 1m 2m 3m 4m 5m  
 Scale bar 1:20

**PLANNING**

Client: MW.A. QATAR

Project: PALMS PALACE  
 84 EDGEMORE ROAD  
 DUBAI, U.A.E.  
 W.P. 26A

Title: PROPOSED FLOOR PLANS

Project No.	Date
5046	NOV. 2013
Drawing No.	Revision
5046-PD-02	B
Scale	Sheet
1:500(A)	NB
	Check
	RC

Offset Architects  
 10th Floor, Palm Jumeirah  
 Dubai, U.A.E.  
 P.O. Box 345678  
 Tel: +971 4 383 3333  
 Fax: +971 4 383 3334  
 www.offset.ae