

CITY OF WESTMINSTER			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 10 March 2015	<b>Classification</b> For General Release	
<b>Addendum Report of</b> Operational Director Development Planning		<b>Wards involved</b> West End	
<b>Subject of Report</b>	<b>57 Rupert Street, London, W1D 7PJ</b>		
<b>Proposal</b>	Excavation to create a new basement and roofing over existing courtyard in order to extend bar (Class A4).		
<b>Agent</b>	KR Planning		
<b>On behalf of</b>	Consolidated Property Corporation Ltd		
<b>Registered Number</b>	14/04624/FULL	<b>TP / PP No</b>	TP/14412
<b>Date of Application</b>	15.05.2014	<b>Date amended/ completed</b>	27.08.2014
<b>Category of Application</b>	Minor		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Soho		
<b>Development Plan Context</b> - London Plan July 2011 - Westminster's City Plan: Strategic Policies 2013 - Unitary Development Plan (UDP) January 2007	Within London Plan Central Activities Zone  Within Central Activities Zone		
<b>Stress Area</b>	Within West End Stress Area		
<b>Current Licensing Position</b>	Premises Licence opening hours: Monday-Thursday 10.00 - 22.30 Friday and Saturday 10.00 - 00.00 Sunday 12.00 - 23.00 Capacity restriction of 260 persons		

## 1. RECOMMENDATION

Grant conditional permission.









57 RUPERT STREET, W1

## 2. SUMMARY

The application was reported to the Planning Applications Committee on 27 January 2015 where it was decided to defer the consideration of the case to allow for a Members site visit. A site visit took place on 11 February 2015.

Since Committee, as a result of the submission of an Architectural and Historic Interest Appraisal prepared by Paul Velluet on behalf of the proprietors of the Yard Bar, there have been on-going investigations into the historic significance of 57 Rupert Street and courtyard, and its contribution to the historic character and appearance of the conservation area. It has become clear that the significance of the building and its contribution to the character and appearance of the Soho Conservation Area is greater than originally thought.

No.57 Rupert Street dates from the 1880s and was built to accommodate stables, a loft, carriage house, and a small dwelling. Contemporary publications show model designs for accommodation of a notably similar design to the building on this tightly constrained urban site. It is one of few remaining semi-public yards in Soho.

Equine accommodation once found in the area may be divided into three categories:

1. Stables in public streets e.g. Duck Lane, Portland Mews, Richmond Mews, Bridle Lane etc. These are common and many survive in some form.
2. Stables associated with particular large scale buildings/uses e.g. J. Huggins & Co., brewers. These were less common and there do not seem to be any remaining.
3. Stables in yards behind buildings e.g. 45A Brewer Street (Horse Hospital), 57 Rupert Street etc. These were also less common and only these two examples seem to have survived. The former Horse Hospital is a Grade II listed building.

The application site is accessed via an archway from Rupert Street which opens into a yard enclosed by No.57 on its west and south sides to a height of two storeys, and to the north and east by the rear of premises in Brewer Street and Rupert Street which rise to a height of up to five storeys with mansard roofs above. Above and beyond No.57 to the west is the tall flank wall of St. James's Residences, and to the south is an open area beyond which is the rear of buildings in Archer Street.

Internally, it is clear that the original roof structures are intact and at ground floor level there are some areas of exposed white glazed brickwork, and cast iron columns that would have formed stalls. Otherwise the walls are plain brick or plastered, and there is an interesting blind arcade along the south side of the building at first floor level. Externally, the building has two hipped roofs and a small area of flat roof, the walls are of white painted brickwork with some original windows. The first floor walkway is a modern addition and the ground floor doors to the former carriage house are also modern. Nevertheless, the outward scale, form and design of the building makes a positive contribution to the character and appearance of the Soho Conservation Area and it is significant as a rare survival of a historic building type. Its historic interest and contribution to the conservation area are further enhanced by it being apparently the only example in Soho of this kind of stabling and because it was designed in accordance with late 19th century best practice.

The Architectural and Historic Interest Appraisal prepared by Paul Velluet demonstrates that the proposed alterations, including excavation of a basement and enclosure of the yard beneath a glazed roof would alter the size, form and design of the building, and significantly alter its relationship to the yard which is an important part of its historic character and appearance, and is of particular importance to the way in which it contributes to the Soho Conservation Area.

Since the application was presented to Committee in January the applicant has submitted amended drawings which increase the provision of openable glazed panels within the courtyard roof, extractor units and intake ventilation ducts. Under the previously allowed appeal, the Inspector imposed a condition requiring that the roof over the courtyard remained fixed shut. It is recommended that, if planning permission is granted, in order to protect neighbouring residential amenity, a condition to this effect be imposed in accordance with the Inspector's original aims.

### 3. CONSULTATIONS

#### REPRESENTATIONS RECEIVED AFTER THE PREVIOUS REPORT WAS COMPILED BUT VERBALLY REPORTED TO COMMITTEE

Two letters and an Architectural and Historic Interest Appraisal raised objections on the following grounds:

- The last remaining open stable yard in Soho could be lost forever.
- The building is an unlisted building of merit and should be protected and preserved.
- A second application at the site (RN:14/12447/FULL) relates to a roof extension to create three flats. The applications should be considered by the Committee at the same time.
- The development proposals do not complement or enhance the Soho Conservation Area and it will be an intensification of use.
- A well-established and profitable independent operator will be lost and there will be no controls over who takes the new space, especially as development costs are likely to place rents out of reach of independent operators.
- The existing bar appeals to a wide range of customers throughout the day, including office workers, residents, tourists and the LGBT community.
- Smokers will be displaced onto Rupert Street and this will potentially damage residential amenity and lead to a rise in anti-social behaviour and crime, which we have worked hard to manage in conjunction with the Police.
- Excavating a new basement will extend the premises and there are no guarantees that a licence will not be sought for later hours or a greater capacity in time. There are already adequate facilities for staff and storage.
- Additional plant will be needed at roof level and ducts within the yard for any future operation. This will have a further impact on the conservation area and would have an adverse impact on residential amenity.
- The noise report submitted by the applicant was prepared in 2009 when the premises was under the management of a different operator and did not have the same level of popularity. The current operator has employed their own noise specialist to review this and have submitted these comments to the City Council.
- The Committee report contains a lack of information about the changes and investment made to the existing operation, including use of a sound limiter, and better management of the site since the previous application was made in 2009.
- The previous application was granted at appeal. Emphasis was placed on the low numbers of customers and how this would not have an adverse impact on residential amenity. This situation has now changed considerably and is a material consideration.
- In conservation terms, the building is of considerable interest and significance, architecturally and, socially and archaeologically and merits every effort to secure its continued survival without harm. The proposed development will harm the heritage significance of the building, contrary to national and local planning policies.

One letter on behalf of the applicant raised the following issues:

- The issues relating to noise and smoker relocation were live issues on the previous appeal when the Inspector found in favour of the applicant.
- Ventilation of the bar is not a planning issue as it is dealt with by other regulatory controls.



## REPRESENTATIONS RECEIVED AFTER THE PREVIOUS REPORT WAS COMPILED AND RECEIVED AFTER THE PREVIOUS COMMITTEE MEETING

### COUNCILLOR CHURCH

- The proposal would harm the architectural merit of the application site.
- The proposals will worsen the lives of local residents and compromise local amenity.
- The venue is unique and should remain part of Soho life for years to come.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS

- An updated Architectural and Historic Interest Appraisal which sets out the interest and architectural and conservation significance of the bar and courtyard.
- One letter of objection received on the following grounds:  
The proposal would result in an unacceptable loss of historic character.

600 (approx) objections have been received which raise the following issues:  
(As is the Council's usual practice, a copy of each of these has been supplied to every member of the Committee with the officers report).

#### Amenity and Crime

- The courtyard is essential for providing an on-site smoking solution that is easily controlled by the management.
- The proposed filling in of the courtyard will affect the running of the business and force smokers onto Rupert Street.
- The displacement of smokers will cause additional noise disturbance to residents and neighbouring occupiers.
- The displacement of smokers will result in more crime and disorder within the immediate area.
- At peak times the courtyard can accommodate 90 smokers. If displaced, this additional crowd will have a significant impact on the free flow of pedestrians.
- At the time of the previous allowed appeal, the public house operation was not popular and not frequented by large numbers of customers. The Inspector's references to a 'small' number of smokers who would not noticeably increase noise levels, are incorrect.
- Smokers outside the premises would be difficult for the management to control.
- The loss of the open courtyard will have a significant impact upon local residents, business and the local environment.
- The applicant's noise assessment is based on survey work undertaken in November 2009. Bearing in mind the changing nature of the local environment, it is apparent that the survey work is now out of date and does not represent the noise character of the local area.
- The noise assessment does not consider the potential noise impact of circa. 90 additional smokers congregating on Rupert Street.

#### Design

- The application site has been identified as a building of merit, thereby the open courtyard is of significance and character. Its loss would be detrimental to the character and visual appearance of the building and wider conservation area.
- The loss of the open courtyard is contrary to the Council's policy for retaining all open spaces and their quality, heritage, ecological value, tranquillity and amenity.

#### Other

- The existing operators of the public house neither need the proposed development to enhance their operation, nor understand how the proposed alterations will have any benefit to the operation.
- In practice, the proposed layout would not meet basic fire escape requirements.

- The residential units adjoining the public house are currently under refurbishment (and vacant). The absence of any objections from these units should not be taken as meaning that occupiers tacitly support the proposals.
- The existing courtyard is a unique facility for patrons and should be protected.
- The excavation of a basement could harm the stability of surrounding properties.
- The premises is one of the few enclosed, but open to the sky, areas within Soho where it is possible to drink and smoke and as such is popular with local residents, workers and the wider LGBT community. This unique environment is part of the historic fabric of the original development and was not designed to take such physical intervention in the form of digging out or glazing over which would be harmful to its character and qualities.
- The result of developments such as this, and the consequent substantial increase in rents, means that only large brands and expensive restaurants can afford the resultant higher rental levels. This is having a very clear and unwelcome impact on Soho generally which is losing its character of small, independent and unique venues.
- The loss of the venue is harmful to the LGBT community who have suffered losses of a number of prominent venues within Soho and wider London over the past 18 months.

## BACKGROUND PAPERS

1. Application form.
2. Report to Planning Applications Committee and minutes dated 27 January 2015.
3. Letter from Councillor Church received 23 February 2015.
4. Letter from Andy Jones, long term leaseholder of 57 Rupert Street received 22 January 2015
5. Letter from Kieran Rafferty on behalf of applicant received 26 January 2015
6. Letter from Jonathan Phillips on behalf of The Yard Bar received 26 January 2015.
7. Architectural and Historic Interest Appraisal prepared by Paul Velluet dated February 2015.
8. Letter from David Watkin, Emeritus Professor of the History of Architecture dated 12 February 2015.
9. 600 (approx) letters/emails received dating from 23 February 2015 – 28 February 2015.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT HELEN MACKENZIE ON 020 7641 2921 OR BY E-MAIL – [hmackenzie@westminster.gov.uk](mailto:hmackenzie@westminster.gov.uk)

**PLANNING APPLICATIONS SUB-COMMITTEE DECISIONS 27.01.15**

RESOLUTION

**6 57 RUPERT STREET, W1**

Excavation to create a new basement and roofing over existing courtyard in order to extend bar (Class A4).

Late representations were received from Cllr Glenys Roberts (27.01.15), Kieran Rafferty (26.01.15), Jonathan Phillips (26.01.15), Andy Jones (22.01.15).

Late representations were also received from over 600 people objecting to the proposed development.

Councillor Jonathan Glanz and Councillor Glenys Roberts both spoke before Members of the Sub-Committee opposing the proposed application.

**RESOLVED:**

Decision deferred pending a site visit by the Committee.



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## 1. RECOMMENDATION

Grant conditional permission.

## 2. SUMMARY

The site comprises of a two storey bar known as "The Yard" to the rear of 55 and 59 Rupert Street within the Soho Conservation Area, Central Activities Zone (CAZ) and the West End Stress Area. It is accessed via a passageway underneath 55-59 Rupert Street.

Permission is sought for the excavation of a basement to provide additional staff accommodation for the bar and the installation of a roof over an existing courtyard. No changes to the opening hours or capacity are proposed as part of this application. The existing floor area of the site measures 325m<sup>2</sup> and the development would add a further 85m<sup>2</sup>. The proposal is identical to an application previously refused by the City Council (RN:09/07815/FULL), but subsequently allowed by the Planning Inspectorate. That planning permission has now expired.

The key issues for consideration are:

- The impact of the proposals upon the amenities of neighbouring residents.
- The impact of the works upon both the host building and the wider character and appearance of the conservation area.
- The impact that patrons displaced from the existing 'smoking yard' will have on the potential for crime on Rupert Street.

The proposals are considered acceptable on amenity, design and conservation grounds and comply with the policies set out in the Unitary Development Plan (UDP) and Westminster's City Plan: Strategic Policies.

## 3. CONSULTATIONS

### COUNCILLOR GLANZ

- The application is by the freeholder of the building over the head of the current long term lessee.
- The proposal would result in the intensification of the use of the site and would therefore materially adversely affect residential amenity in the area.
- The proposal will result in smokers being displaced onto Rupert Street.
- The premises is one of the few enclosed, but open to the sky, areas within Soho where it is possible to drink and smoke and as such is popular with local residents, workers and the wider LGBT community. This unique environment is part of the historic fabric of the original development and was not designed to take such physical intervention in the form of digging out or glazing over which would be harmful to its character and qualities.
- The result of developments such as this, and the consequent substantial increase in rents, means that only large brands and expensive restaurants can afford the resultant higher rental levels. This is having a very clear and unwelcome impact on Soho generally which is losing its character of small, independent and unique venues.

### SOHO SOCIETY

Objection. The current use of the property as a bar included good urban design for its purpose with an open area suitable for smoking. The built environment of Soho has narrow pavements and should this application be approved, patrons of the premises would have to come out onto the street to smoke thus blocking the public highway. This would create additional noise nuisance and street crime problems. Increasing the size of the premises would increase the number of patrons to the detriment of residential amenity. The covering of the outdoor area would require mechanical ventilation and associated air conditioning units, which would be unsustainable in design terms. The design of the proposal would go against the heritage as a stable yard and would not improve the character of the conservation area.

**WESTMINSTER POLICE LICENSING TEAM**

Currently customers of 'The Yard' smoke within the internal courtyard. If a roof is created, the many smokers will end up in the street. There is an existing problem with thefts occurring in the vicinity and more people outside will result in more crime and disorder.

**BUILDING CONTROL**

No objection.

**DESIGNING OUT CRIME OFFICER**

No response received.

**ENVIRONMENTAL HEALTH**

No objection subject to standard conditions and Informatives.

**ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS**

No. Consulted: 112; Total No. of Replies: 13.

Petition with 2767 signatures in opposition to the proposal.

Eleven letters of objection received on the following grounds:

**Amenity and Crime**

- The courtyard is essential for providing an on-site smoking solution that is easily controlled by the management.
- The proposed filling in of the courtyard will affect the running of the business and force smokers onto Rupert Street.
- The displacement of smokers will cause additional noise disturbance to residents and neighbouring occupiers.
- The displacement of smokers will result in more crime and disorder within the immediate area.
- At peak times the courtyard can accommodate 90 smokers. If displaced, this additional crowd will have a significant impact on the free flow of pedestrians.
- At the time of the previous allowed appeal, the public house operation was not popular and not frequented by large numbers of customers. The Inspector's references to a 'small' number of smokers who would not noticeably increase noise levels, are incorrect.
- Smokers outside the premises would be difficult for the management to control.
- The loss of the open courtyard will have a significant impact upon local residents, business and the local environment.
- The applicant's noise assessment is based on survey work undertaken in November 2009. Bearing in mind the changing nature of the local environment, it is apparent that the survey work is now out of date and does not represent the noise character of the local area.
- The noise assessment does not consider the potential noise impact of circa. 90 additional smokers congregating on Rupert Street.

**Design**

- The application site has been identified as a Building of Merit, thereby the open courtyard is of significance and character. Its loss would be detrimental to the character and visual appearance of the building and wider conservation area.
- The loss of the open courtyard is contrary to the Council's policy for retaining all open spaces and their quality, heritage, ecological value, tranquillity and amenity.



#### Other

- The existing operators of the public house neither need the proposed development to enhance their operation, nor understand how the proposed alterations will have any benefit to the operation.
- In practice, the proposed layout would not meet basic fire escape requirements.
- The residential units adjoining the public house are currently under refurbishment (and vacant). The absence of any objections from these units should not be taken as meaning that occupiers tacitly support the proposals.
- The existing courtyard is a unique facility for patrons and should be protected.
- The excavation of a basement could harm the stability of surrounding properties.

One letter of support received on the following grounds:

The middle of a residential courtyard has always been a poor location for a late night entertainment use as multiple complaints to Environmental Health attest. Local residents have suffered excessive noise from the premises for a number of years. Any application that will improve the establishment and ensure peace for residents is supported.

One neutral letter received which neither opposed or supported the proposal.

## 4. BACKGROUND INFORMATION

### 4.1 The Application Site

The site comprises an unlisted two storey bar (Class A4) known as "The Yard". The premises are located to the rear of 55 and 59 Rupert Street within the Soho Conservation Area, Central Activities Zone and the West End Stress Area. The site is accessed via a passageway underneath 55-59 Rupert Street, which opens into a small courtyard which forms part of the premises. The bar extends into the first floor where there is a large balcony which is also accessible to patrons.

### 4.2 Relevant History

An identical application was previously refused by the City Council (RN:09/07815/FULL), on the grounds that the proposals would add to the existing late night activity and disturbance in this part of the West End Stress Area and would harm the character and function of the area, the quality of the area's environment and the general amenity of the area. However, the appeal was allowed by the Planning Inspectorate. The time for the works to commence has now expired, hence the applicant has submitted a new planning application.

## 5. THE PROPOSAL

Permission is sought for the excavation of a basement to provide additional staff accommodation for the bar and the installation of a roof over an existing courtyard. No changes to the opening hours or capacity are proposed as part of this application. The existing floor area of the site measures 325m<sup>2</sup> and the development would add a further 85m<sup>2</sup>, resulting in an entertainment use of 410m<sup>2</sup>. The proposal is identical to an application previously refused by the City Council (RN:09/07815/FULL), but subsequently allowed by the Planning Inspectorate. This planning permission has now expired.

## 6. DETAILED CONSIDERATIONS

### 6.1 Land Use

The proposal involves an increase in overall floorspace for a bar (Class A4) within the West End Stress Area and, on this basis, UDP Policy TACE 10 is relevant. Policy TACE 10 states permission will be granted for proposals only in exceptional circumstances.

Westminster's City Plan: Strategic Policy S24 relates to entertainment uses and states that entertainment uses need to demonstrate that they do not adversely impact on residential amenity, health and safety, local environmental quality and the character and function of the area.

The planning history shows the original permission for the use was granted in 1993 for A3 (food and drink purposes) and is now used as a bar (Class A4), which was previously within the old A3 Use Classes Order (pre 2005 Use Classes Order). The premises have a licence to open between 10.00 - 23.30 Monday - Thursday, 10.00 - 00.00 Friday - Saturday and 12.00 - 23.00 on Sundays.

The premises are accessed via a passageway under 55-59 Rupert Street which opens onto a courtyard area. This courtyard area is generally very busy at peak times, and is also surrounded by a large balcony area at first floor level which allows additional patrons to drink and smoke outside. The existing plans indicate a retractable canopy which extends over the courtyard. This canopy was in place in 2009, but has since been removed by the current operators.

The application proposes a new glazed roof which would enclose both the balcony and the courtyard. Whilst the glazed roof would not add to the overall useable floorspace, it could give rise to a more intensive use of the floorspace. Subterranean excavation is also proposed to create a basement level. The submitted floorplans show that the new floor area will be used entirely for staff facilities, however, it is conceivable that this arrangement may alter in the future and the new floorspace could become available to the public.

The applicant has stated they do not wish to increase the capacity of the bar. The current premises licence has a capacity restriction of 260 patrons. There is also no intention to vary the current opening hours which at present has the following terminal hours: 23.30 on Monday to Thursdays; 00.00 hours on Fridays and Saturdays; 23.00 hours on Sundays, bank holidays and public holidays.

The proposed glazed roof and basement extension are unchanged from a previous application submitted to the City Council in 2009 (RN: 09/07815/FULL). The application was initially refused by the City Council, but subsequently approved by the Planning Inspectorate. The Inspector considered that, subject to steps being taken to restrict the opening hours and patron numbers permitted into the premises, the proposal would not intensify the existing use to a level that would cause additional harm to the amenity of neighbouring residents. A number of objections to the proposal have been received and these are addressed within the following sections of the report.

### 6.2 Townscape and Design

The proposed extension, enclosing the area between the main building fronting Rupert Street and the outbuilding at the rear is not considered contentious in design terms. While the proposal is unusual, this area has already been partially enclosed and is only visible from very limited private views. It is at low level and would not harm the appearance of the building or the character and appearance of the conservation area. The Planning Inspector in 2010 also confirmed her view that the proposal would preserve the character and appearance of the

conservation area. For these reasons it is considered to comply with Westminster's City Plan: Strategic Policies S25 and S28 and UDP Policies DES 1, DES 5 and DES 9.

One objection to the proposals refers to the requirement within Westminster's City Plan: Strategic Policy S35 to protect open spaces. This policy relates to public open spaces such as parks, pocket parks and civic amenity spaces rather than open spaces which are not public and are associated with entertainment uses. The policy does not preclude the roofing over of the existing courtyard.

### 6.3 Residential Amenity

#### Noise and the displacement of smokers

The existing premises are somewhat unusual, in that they feature a large external area for drinking and smoking within a site which is enclosed on all sides by a large number of residential properties. The City Council's records indicate that there have been 19 noise related complaints received since 2009. This is unsurprising given that the courtyard can be very busy during peak hours. One neighbouring resident has written in support of the proposals as it is their belief that the covering of the courtyard will significantly reduce the noise disruption currently experienced by neighbouring residents.

The application has been submitted by the freeholders of the premises, not the current operators of the bar and the operators object to the proposals.

The applicant has submitted a noise report which seeks to demonstrate that the proposed glazed canopy would significantly reduce noise levels for the occupiers of the residential properties overlooking the courtyard. The report, based on surveys on two separate dates, states that residents overlooking the courtyard experience a high level of noise late in the evening where noise levels from the courtyard were between 70-75dB. The report states that the reduction in noise from the glazed roof is estimated to be approximately 30dBA. Therefore, the noise levels at the nearest neighbouring residential properties would be between 45dB to 50dB. The noise reports also assessed noise levels on Rupert Street, to the front of the premises and concluded that the displacement of smokers from the premises would result in a 1dB increase in prevailing sound levels.

A noise report has been prepared on behalf of the operators of the premises to rebut the findings from the applicant's noise report. The report states that the applicant's report is outdated as it was prepared in 2009 and is not an adequate reflection of the existing activity at the application site. The contention is that the bar is now busier than it was at the time of the previous application (it is suggested that the turnover is now four times greater than the 2009 figures, albeit the Licensing capacity restriction has always been 260 patrons within the premises at a time). The objectors consider that the number of smokers displaced onto Rupert Street will be far greater than the number anticipated by the applicant's noise consultant and the Planning Inspector, who considered that the numbers would be small and would not cause a demonstrable noise impact.

It should be noted that there will always be an element of estimation when assessing crowd noises, given the nature of the noise which is variable rather than constant. For this reason a judgement needs to be taken on the likely impact that the proposal will have on the number of smokers outside the premises. Also, it could be argued that if the bar has been busier since 2009, in turn it will be more of a nuisance to existing residents.

The number of noise complaints received in the 12 year period between 1997 and 2009 was 28. In the five year period since 2009, 19 noise complaints have been received which indicates that while the bar is busier it is having a greater impact on amenity.

An objection submitted on behalf of the operators of the premises highlights that the current application has been submitted by the freeholder against the wishes of the operators who



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would like to retain the courtyard area for al fresco smoking and drinking. The objectors have submitted surveys which indicate that at peak hours there are a large number of smokers within the courtyard and balcony. These smokers, who will be displaced outside the premises, will be more difficult for the management to control.

It could be argued that the reason that the number of smokers at the premises is so high is because patrons wishing to smoke are particularly attracted to the premises by its unique offer, which allows smoking without leaving the premises. It is considered that if the premises covered the yard, and lost this unique element, the number of patrons wishing to smoke who visited the bar may be reduced. It is therefore not unreasonable to consider that the number of smokers displaced onto Rupert Street may not be as high as the objectors believe.

Rupert Street is a particularly busy street especially during peak night time hours. It is likely that the number of displaced smokers would not be significant in the context of the overall pedestrian flows on Rupert Street. Based on the likely number of patrons who will be displaced to the street and the prevailing very busy street conditions, it is unlikely that a demonstrable noise impact will be experienced by neighbouring residents.

Overall, it is considered that the erection of a glazed roof over the courtyard, without any increase in the number of customers within the premises, is likely to result in a reduction in the level of noise experienced by neighbouring residents at the rear of Rupert Street. Whilst smokers will be displaced to the front of the premises, it is debatable whether patrons who wish to smoke will visit the premises in such large numbers as at present, as a result of the external smoking area being lost. It is understood that some noise, which at present emanates from the courtyard will be transferred to Rupert Street as a result of the displaced smokers. However, as Rupert Street is already a very busy street, it is not considered that this will cause demonstrable noise harm.

#### Impact on crime

A number of objections have focussed on the impact that large numbers of displaced smokers could have on crime levels within the immediate area outside the premises on Rupert Street and the junction with Tisbury Court. The concerns, including those expressed by the City Council's Police Licensing Team, are that this area of Rupert Street is a known crime 'hotspot' and that the greater the number of people congregating on the street the easier it is for drug dealers and other perpetrators of crime to act nefariously, and that those patrons congregating outside the premises are more likely to be victims of crime. However, it is not uncommon for smokers to congregate outside entertainment premises; in fact this is how the majority of entertainment uses within Soho operate, and it would not be sustainable to recommend the application for refusal on these grounds.

#### Daylight/Sunlight and Overlooking

The roofing over of the existing terrace is not considered to cause any amenity issues compared to the current situation in terms of daylight, sunlight and overlooking. It would not add to any overlooking issues to the neighbouring flats as it only involves roofing over the existing courtyard.

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

The proposals do not require any additional parking provision.

#### **6.5 Economic Considerations**

Any economic benefits generated are welcomed.

#### **6.6 Other UDP/Westminster Policy Considerations**

Not applicable.

## **6.7 London Plan**

The proposal does not raise any strategic implications.

## **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**

None required.

## **6.10 Environmental Assessment including Sustainability and Biodiversity Issues**

None required.

## **6.11 Access**

Access to the main building would be unchanged.

## **6.12 Other Issues**

Comments have been received concerning any potential impact that the basement excavation would have on the foundations and structural integrity of other buildings, and to the potential effects on the water table and the potential increase in the risk of flooding.

This impact of basement excavation is at the heart of concerns expressed by residents across many central London Boroughs, heightened by well publicised accidents occurring during basement constructions. Residents are concerned that the excavation of new basements is a risky construction process with potential harm to adjoining buildings and occupiers.

Studies have been undertaken which advise that subterranean development in a dense urban environment, especially basements built under existing vulnerable structures is a challenging engineering endeavour and that in particular it carries a potential risk of damage to both the existing and neighbouring structures and infrastructure if the subterranean development is ill-planned, poorly constructed and does not properly consider geology and hydrology.

While the Building Regulations determine whether the detailed design of buildings and their foundations will allow the buildings to be constructed and used safely, the National Planning Policy Framework March 2012 states that the planning system should contribute to and

enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by land instability.

The NPPF goes on to state that in order to prevent unacceptable risks from land instability, planning decisions should ensure that new development is appropriate for its location. It advises that where a site is affected by land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

The NPPF advises that planning decisions should ensure that a site is suitable for its new use taking account of ground conditions and land instability and any proposals for mitigation, and that adequate site investigation information, prepared by a competent person, is presented.

Officers consider that in the light of the above it would be justifiable to adopt a precautionary approach to these types of development where there is a potential to cause damage to adjoining structures.

To address this, the applicant has provided a structural engineer's report explaining the likely methodology of excavation. Any report by a member of the relevant professional institution carries a duty of care which should be sufficient to demonstrate that the matter has been properly considered at this early stage.

The purpose of such a report at the planning application stage is to demonstrate that a subterranean development can be constructed on the particular site having regard to the site, existing structural conditions and geology. It does not prescribe the engineering techniques that must be used during construction which may need to be altered once the excavation has occurred. The structural integrity of the development during the construction is not controlled through the planning system but through Building Regulations and the Party Wall Act.

This report has been considered by our Building Control officers who have advised that the structural approach appears satisfactory. We are not approving this report or conditioning that the works shall necessarily be carried out in accordance with the report. Its purpose is to show, with the integral professional duty of care, that there is no reasonable impediment foreseeable at this stage to the scheme satisfying the Building Regulations in due course. This report will be attached for information purposes to the decision letter. It is considered that this is as far as we can reasonably take this matter under the planning considerations of the proposal as matters of detailed engineering techniques and whether they secure the structural integrity of the development and neighbouring buildings during construction is not controlled through the planning regime but other statutory codes and regulations as cited above. To go further would be to act beyond the bounds of planning control.

The City Management Plan will include policies specifically dealing with basement and other subterranean extensions. This is at an early stage of development and will not carry any weight as a material consideration in determining planning applications until it has progressed significantly along the route to final adoption.

An objection to the proposal refers to the fact that the proposed layout would not meet fire escape requirements. This matter is dealt with under Building Regulations and planning permission could not be reasonably withheld.

### **6.13 Conclusion**

The proposals are considered acceptable on amenity and design grounds, and comply with the policies set out in the UDP and City Plan.



**BACKGROUND PAPERS**

1. Application form
2. Letter from Councillor Glanz dated 25 September 2014
3. Letter from Soho Society dated 13 October 2014
4. Memorandum from Environmental Health dated 15 September 2014
5. Email from Westminster Police Licensing Team dated 14 October 2014
6. Memorandum from Building Control
7. Letter, external smoker survey results, email, correspondence from London Fire and Emergency Planning Authority and Noise Impact Report by Big Sky Acoustics, all submitted on behalf of the occupiers of the premises at 57 Rupert Street "The Yard" dated 29 September 2014, 20 October 2014, 21 October 2014 and 24 October 2014
8. Letter from owner/occupier of Circa, 62 Frith Street dated 01 October 2014
9. Letter from owner/occupier of Prowler Retail Store dated 04 October 2014
10. Letter from owner/occupier of Flat 1, Tisbury Court dated 07 October 2014
11. Two letters from owner/occupiers of 33 Broadwick Street dated 07 and 08 October 2014
12. Letter from owner/occupier of the Soho Salon, 5 Carlisle Street dated 07 October 2014
13. Letter from owner/occupier of Rupert Street Supermarket, 55 Rupert Street dated 07 October 2014
14. Letter from owner/occupier of 15 St James Residences, Brewer Street dated 07 October 2014
15. Letter from owner/occupier of The Full English, 18 Greek Street dated 08 October 2014
16. Letter from owner/occupier of Ronnie Scott's dated 08 October 2014
17. Two letters from owner/occupiers of Flat 6 Ingestre Court, Ingestre Place dated 09 and 10 October 2014
18. Letter from owner/occupier of Flat 13, 23 Brewer Street dated 10 October 2014
19. Letter from owner/occupier of 1st Floor Flat, 33 D'Arblay Street received 20 October 2014
20. Petition in opposition to the proposal containing 2767 signatories.
21. Appeal decision dated 14 September 2010.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT HELEN MACKENZIE ON 020 7641 2921 OR BY E-MAIL – [hmackenzie@westminster.gov.uk](mailto:hmackenzie@westminster.gov.uk)

**DRAFT DECISION LETTER**

**Address:** 57 Rupert Street, London, W1D 7PJ

**Proposal:** Excavation to create a new basement and roofing over existing courtyard in order to extend bar (Class A4).

**Plan Nos:** A(GA)001; A(GA)P090/B; A(GA)P100/B; A(GA)P110/A; A(GA)P120/B; A(GA)P300/A; A(GA)P301; Noise Assessment (R3144-1 Rev) and Subterranean Construction Report (prepared by Pringuer James Consulting Engineers).

**Case Officer:** Billy Pattison **Direct Tel. No.** 020 7641 3267

**Recommended Condition(s) and Reason(s):**

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

**Reason:**

For the avoidance of doubt and in the interests of proper planning.

- 2 Except for basement excavation work, you must carry out any building work which can be heard at the boundary of the site only:
- \* between 08.00 and 18.00 Monday to Friday;
  - \* between 08.00 and 13.00 on Saturday; and
  - \* not at all on Sundays, bank holidays and public holidays.

You must carry out basement excavation work only:

- \* between 08.00 and 18.00 Monday to Friday; and
- \* not at all on Saturdays, Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours. (C11BA)

**Reason:**

To protect the environment of neighbouring residents. This is as set out in S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

- 3 You must apply to us for approval of samples of the facing materials you will use, including glazing, and elevations and roof plans annotated to show where the materials are to be located. You must not start any work on these parts of the development until we have approved what you have sent us. You must then carry out the work using the approved materials. (C26BC)

**Reason:**

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of this part of the Soho Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

- 4 **Pre Commencement Condition.** No development shall take place, including any works of demolition, until a construction management plan for the proposed development has been submitted to and approved in writing by the City Council as local planning authority. The plan shall provide the following details:

- (i) a construction programme including a 24 hour emergency contact number;
- (ii) parking of vehicles of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- (iii) locations for loading/unloading and storage of plant and materials used in constructing the development;
- (iv) erection and maintenance of security hoardings (including decorative displays and facilities for public viewing, where appropriate);
- (v) wheel washing facilities and measures to control the emission of dust and dirt during construction; and
- (vi) a scheme for recycling/disposing of waste resulting from demolition and construction works.

You must not start work until we have approved what you have sent us. You must then carry out the development in accordance with the approved details.

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007.

- 5 Notwithstanding drawing number A(GA)P100/B the windows in the glazed canopy hereby permitted shall be used for emergency access and maintenance only, and shall be kept closed at all other times.

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R22CC)

- 6 No amplified or other music shall be played in the covered courtyard area shown on plan No. A (GA) P100/A

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R22CC)

- 7 Customers shall not be permitted within the premises before 10.00 hours or after 23.30 hours on Monday to Thursdays; or before 10.00 hours or after 00.00 hours on Fridays and Saturdays; or before 12.00 hours or after 23.00 hours on Sundays, bank holidays and public holidays. (C12BD)

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R22CC)

- 8 You must not allow more than 260 customers into the property at any one time. (C05HA)

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R22CC)

**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. 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, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.
- 2 You are encouraged to join the nationally recognised Considerate Constructors Scheme. This commits those sites registered with the Scheme to be considerate and good neighbours, as well as clean, respectful, safe, environmentally conscious, responsible and accountable. For more information please contact the Considerate Constructors Scheme directly on 0800 783 1423, [siteenquiries@ccscheme.org.uk](mailto:siteenquiries@ccscheme.org.uk) or visit [www.ccscheme.org.uk](http://www.ccscheme.org.uk).
- 3 When carrying out building work you must do all you can to reduce noise emission and take suitable steps to prevent nuisance from dust and smoke. Please speak to our Environmental Health Service to make sure that you meet all requirements before you draw up the contracts for demolition and building work.

Your main contractor should also speak to our Environmental Health Service before starting work. They can do this formally by applying to the following address for consent to work on construction sites under Section 61 of the Control of Pollution Act 1974.

24 Hour Noise Team  
 Environmental Health Service  
 Westminster City Hall  
 64 Victoria Street  
 London  
 SW1E 6QP

Phone: 020 7641 2000

Our Environmental Health Service may change the hours of working we have set out in this permission if your work is particularly noisy. Deliveries to and from the site should not take place outside the permitted hours unless you have our written approval. (150AA)

- 4 As this development involves demolishing the buildings on the site, we recommend that you survey the buildings thoroughly before demolition begins, to see if asbestos materials or other contaminated materials are present - for example, hydrocarbon tanks associated with heating systems. If you find any unexpected contamination while developing the site, you must contact:

Contaminated Land Officer  
 Environmental Health Consultation Team  
 Westminster City Council  
 Westminster City Hall  
 64 Victoria Street  
 London SW1E 6QP

Phone: 020 7641 3153  
 (173CA)



5 Asbestos is the largest single cause of work-related death. People most at risk are those working in the construction industry who may inadvertently disturb asbestos containing materials (ACM<sub>s</sub>). Where building work is planned it is essential that building owners or occupiers, who have relevant information about the location of ACM<sub>s</sub>, supply this information to the main contractor (or the co-ordinator if a CDM project) prior to work commencing. For more information, visit the Health and Safety Executive website at [www.hse.gov.uk/asbestos/regulations.htm](http://www.hse.gov.uk/asbestos/regulations.htm) (I80AB)

6 Under the Construction (Design and Management) Regulations 2007, clients, the CDM Coordinator, designers and contractors must plan, co-ordinate and manage health and safety throughout all stages of a building project. By law, designers must consider the following:

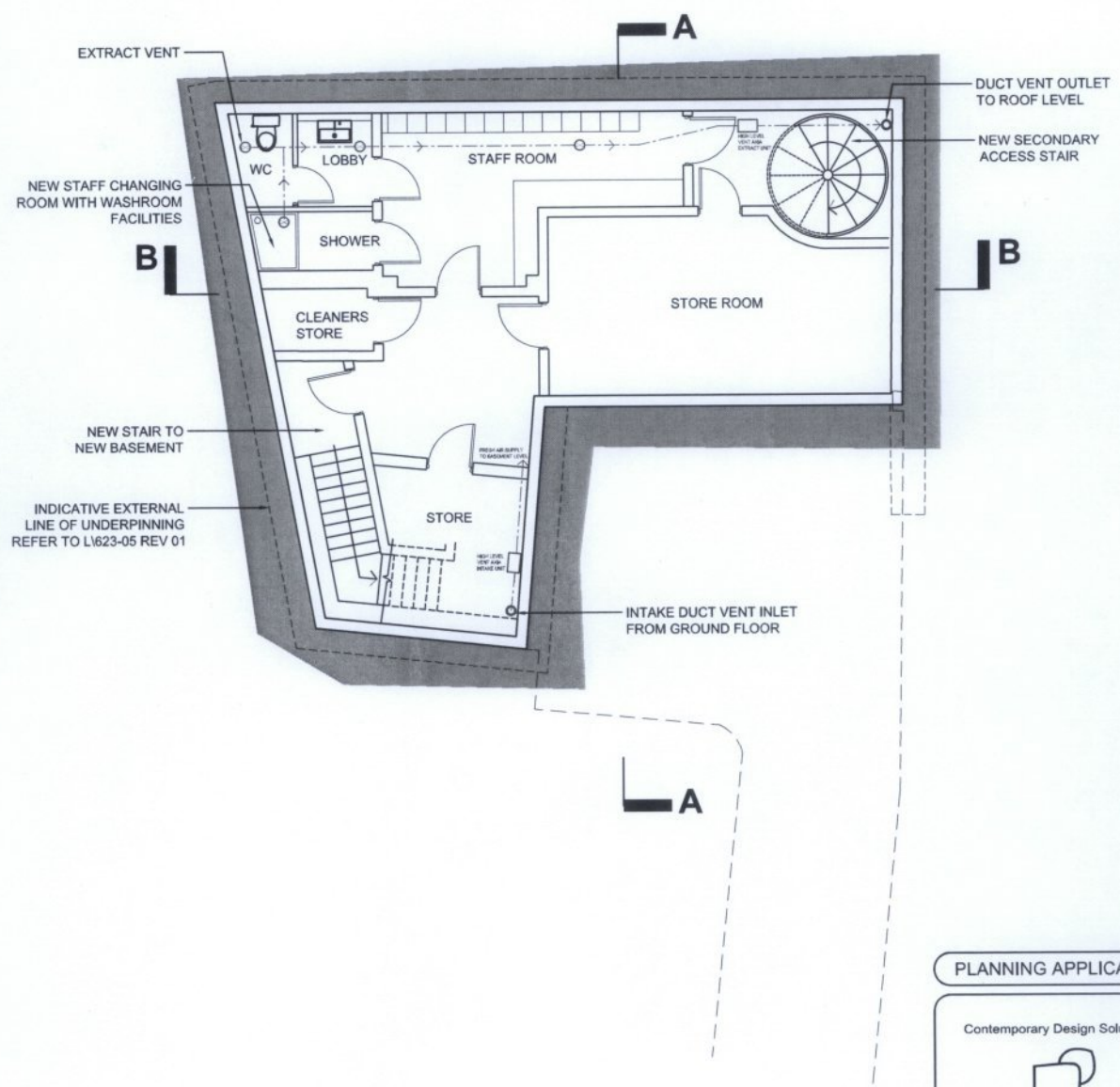
\* Hazards to safety must be avoided if it is reasonably practicable to do so or the risks of the hazard arising be reduced to a safe level if avoidance is not possible;

\* This not only relates to the building project itself but also to all aspects of the use of the completed building: any fixed workplaces (for example offices, shops, factories, schools etc) which are to be constructed must comply, in respect of their design and the materials used, with any requirements of the Workplace (Health, Safety and Welfare) Regulations 1992. At the design stage particular attention must be given to incorporate safe schemes for the methods of cleaning windows and for preventing falls during maintenance such as for any high level plant.

Preparing a health and safety file is an important part of the regulations. This is a record of information for the client or person using the building, and tells them about the risks that have to be managed during future maintenance, repairs or renovation. For more information, visit the Health and Safety Executive website at [www.hse.gov.uk/risk/index.htm](http://www.hse.gov.uk/risk/index.htm).

It is now possible for local authorities to prosecute any of the relevant parties with respect to non compliance with the CDM Regulations after the completion of a building project, particularly if such non compliance has resulted in a death or major injury.

REVISIONS		
Rev.	Date	By
A	Aug 2014	CT
A - Basement plan amended to reflect engineers underpinning plan; Spiral stair location amended to suit; section line BB added		
B	Feb 2015	CT
B - Ventilation intake and extract ducting proposal added to plan		



Proposed Basement Floor 1:100



DRAWING LOCATION - F:\DYAR-HALLMARKIP-HALLMARK PROJECTS\9920 - 57 RUPERT STREET - BAR APPLICATION\DESIGN\DWG01 PLANNING\SHEETS\A(GA) 090.DWG

PLOT DATE - 2/5/2015 8:29 PM

**PLANNING APPLICATION**

Contemporary Design Solutions



46 Great Marlborough Street  
London  
W1F 7JW  
Telephone: 020 7484 9200 Fax: 020 7484 4944

Client

**HALLMARK PROPERTY GROUP**

Project Title

New basement and ground and first floor refurbishment  
57 Rupert street  
London W1

Drawing Title

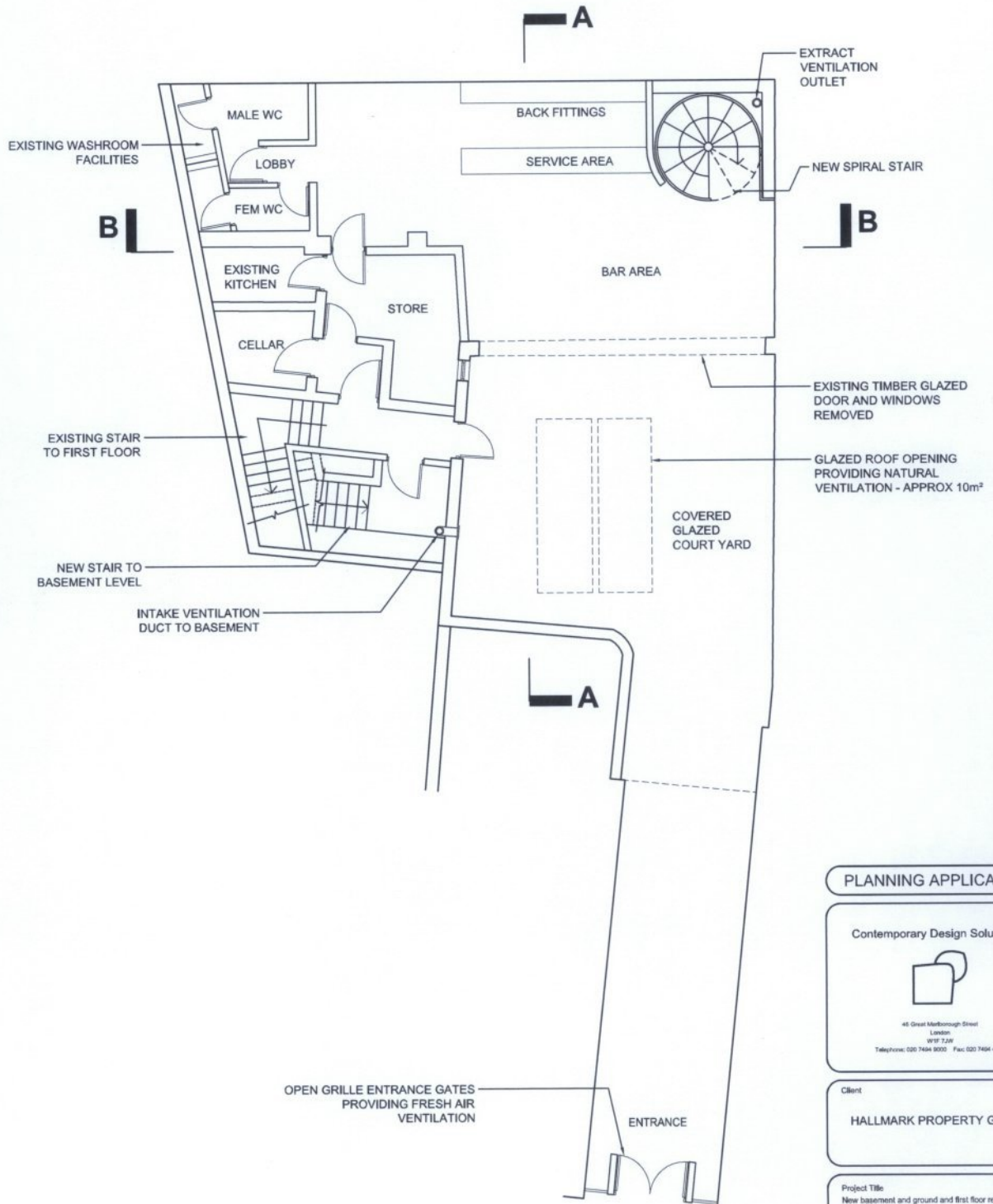
**Proposed Basement Floor Plan**

Scale: 1:100 @ A3 Date: September 2015

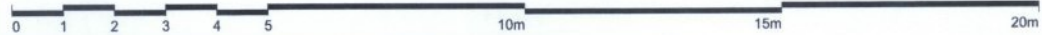
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Drawing No. A(GA) P090	Rev. B

REVISIONS

Rev.	Date	By
A	Aug 2014	CT
A - Staircase location amended Section line BB added		
B	Feb 2015	CT
B - Outline of ventilation opening and Intake/extract duct notes added		



Proposed Ground Floor Plan 1:100



**PLANNING APPLICATION**

Contemporary Design Solutions



48 Great Marlborough Street  
London  
W1F 7JW  
Telephone: 020 7494 9000 Fax: 020 7494 4944

Client  
**HALLMARK PROPERTY GROUP**

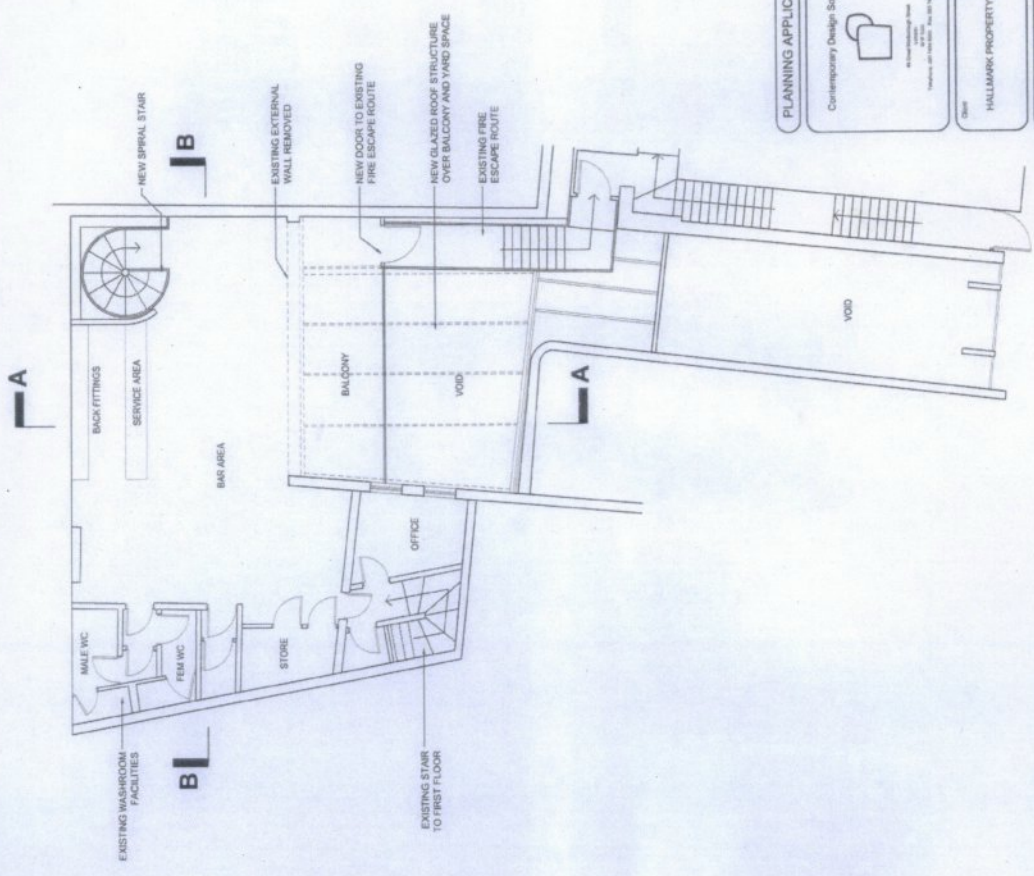
Project Title  
New basement and ground and first floor refurbishment  
57 Rupert Street  
London W1

Drawing Title  
**Proposed Ground Floor Plan**

Scale 1:100 @ A3 Date September 2009  
Drawn CT Checked  
Drawing No. **A(GA) P100** Rev. **B**



PROVISIONS  
 1. All work to be completed by 31st August 2014  
 2. All work to be completed by 31st August 2014  
 3. All work to be completed by 31st August 2014



**CASE COPY**  
 TP:  
 RN:  
 ADDRESS:

**PLANNING APPLICATION**

Contemporary Design Solutions

HALLMARK PROPERTY GROUP

17 Market Street  
 London E1 1BB

Proposed First Floor Plan

A(GA) P110

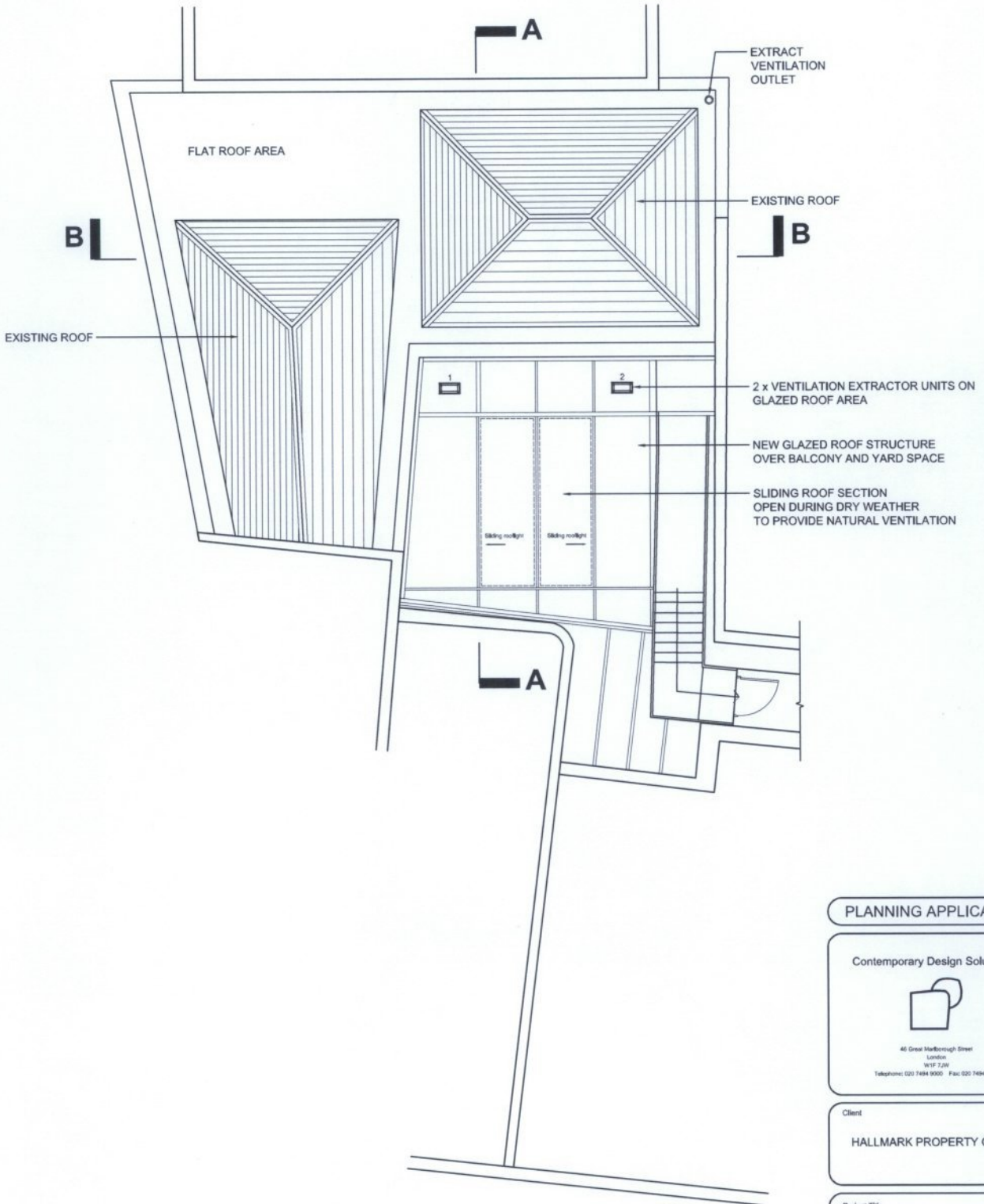
Proposed First Floor Plan 1:100

0 1 2 3 4 5 10m 20m  
 PLANNING APPLICATION PROJECTIONS - 17 MARKET STREET - MARK APPLICATIONS ENGINEERS  
 PLANNING CONSULTANTS LTD  
 PLOT DATE: 01/09/14 4:54 PM



REVISIONS

Rev.	Date	By
A - Section line BB added	Aug 2014	CT
B - Ventilation opening / extract vents and associated notes added	Feb 2015	CT



PLANNING APPLICATION

Contemporary Design Solutions

46 Great Marlborough Street  
London  
W1F 7JW  
Telephone: 020 7494 9000 Fax: 020 7494 4944

Client  
**HALLMARK PROPERTY GROUP**

Project Title  
New basement and ground and first floor refurbishment  
57 Rupert street  
London W1

Drawing Title  
**Proposed Roof Plan**

Scale	1:100 @ A3	Date	September 2009
Drawn	CT	Checked	
Drawing No.	<b>A(GA) P120</b>	Rev.	<b>B</b>

Proposed Roof Plan 1:100




REVISIONS

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TP:  
RN:  
ADDRESS:

PLANNING APPLICATION

Contemporary Design Solutions



44 Great Portland Street  
London  
W1P 2LP  
Telephone: 020 7492 2000 Fax: 020 7492 4944

Client

**HALLMARK PROPERTY GROUP**

Project Title  
New basement and ground and first floor refurbishment  
37 Rupert Street  
London W1

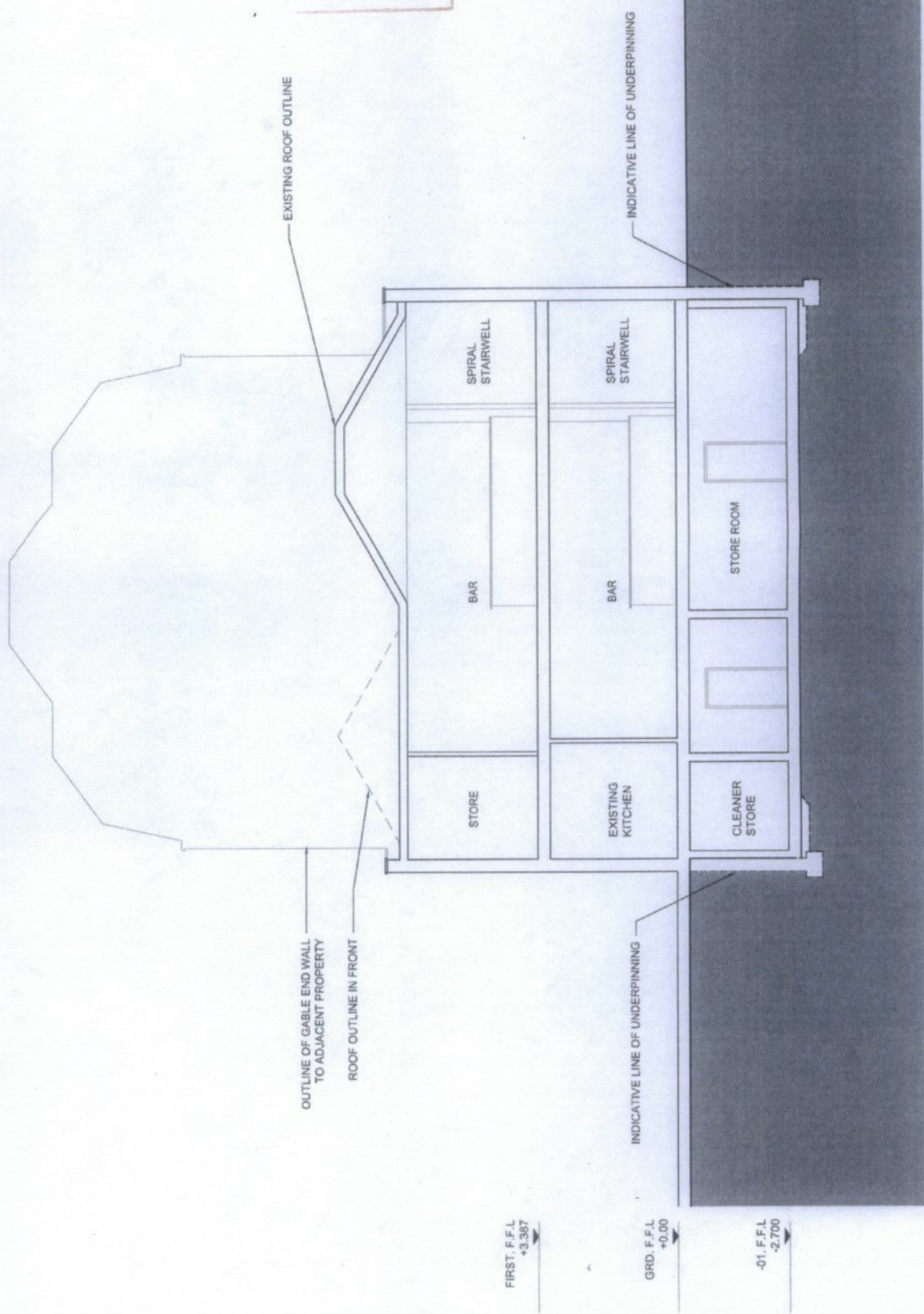
Drawing Title

**Proposed Site Section BB**

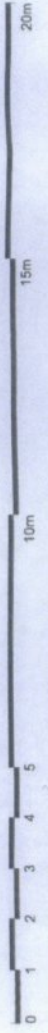
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Date: September 2008  
Checked: [Signature]  
Rev: [Signature]

PLOT DATE - 8/21/2014 4:27 PM



Proposed Section BB 1:100






REVISIONS

No. Date  
 A - Basement section amended to reflect underpinning and new fire escape route details added  
 Aug 2014 CT

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 TP: \_\_\_\_\_  
 RN: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

PLANNING APPLICATION

Contemporary Design Solutions  
  
 44 Chancery Lane  
 London EC4A 3DF  
 Telephone: 020 7463 8800 Fax: 020 7463 8844

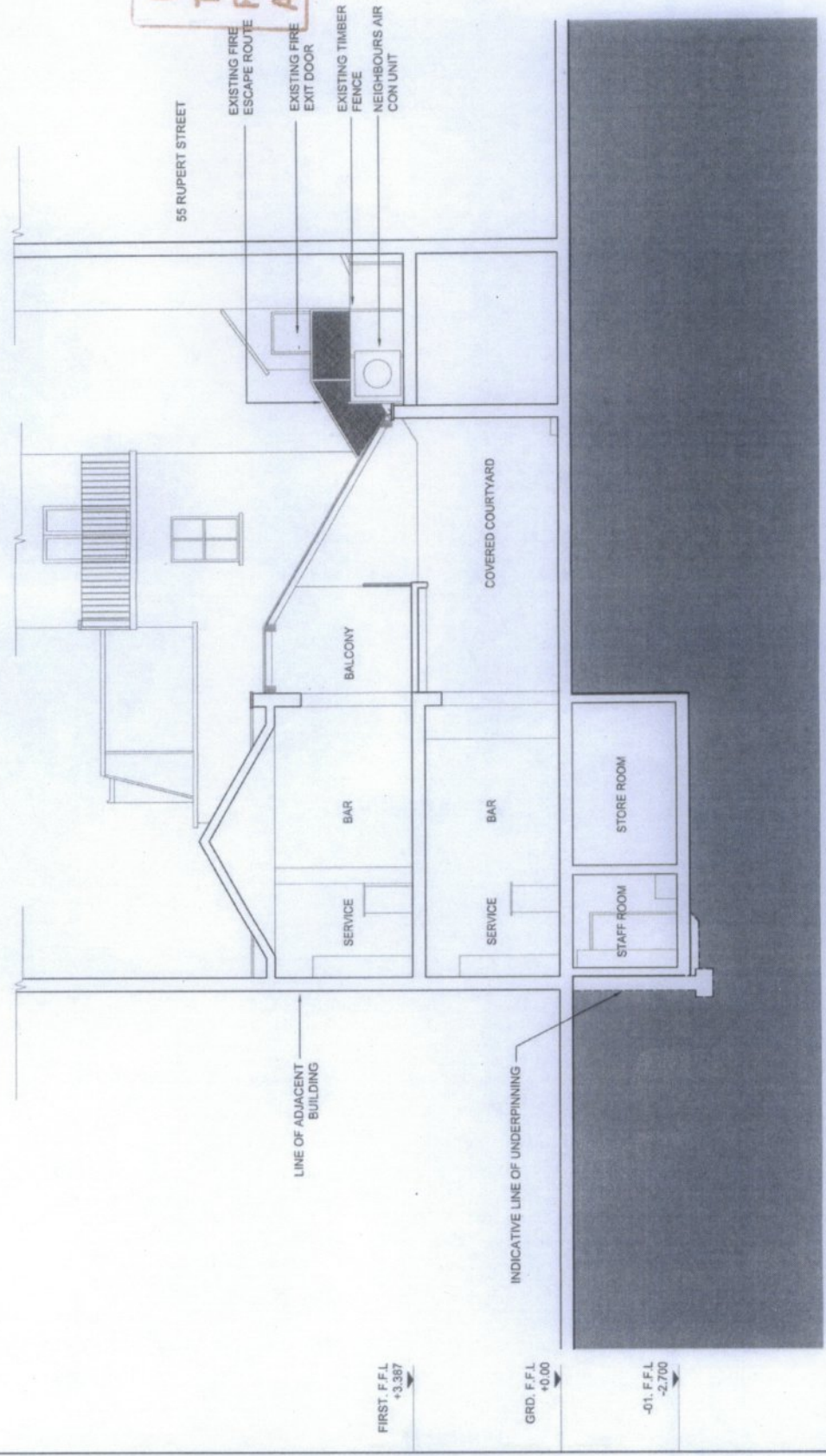
Client  
**HALLMARK PROPERTY GROUP**

Project Title  
 New basement and ground and first floor refurbishment  
 57 Rupert Street  
 London W1T

Drawing Title  
**Proposed Site Section AA**

Date: 1. 10.12.09	Date: September 2009
Drawn: BS	Checked:
Drawn by: BS	Scale:
<b>A(GA) P300</b>	
<b>A</b>	

PLOT DATE - 06/12/04 4:33 PM



Proposed Section AA 1:100