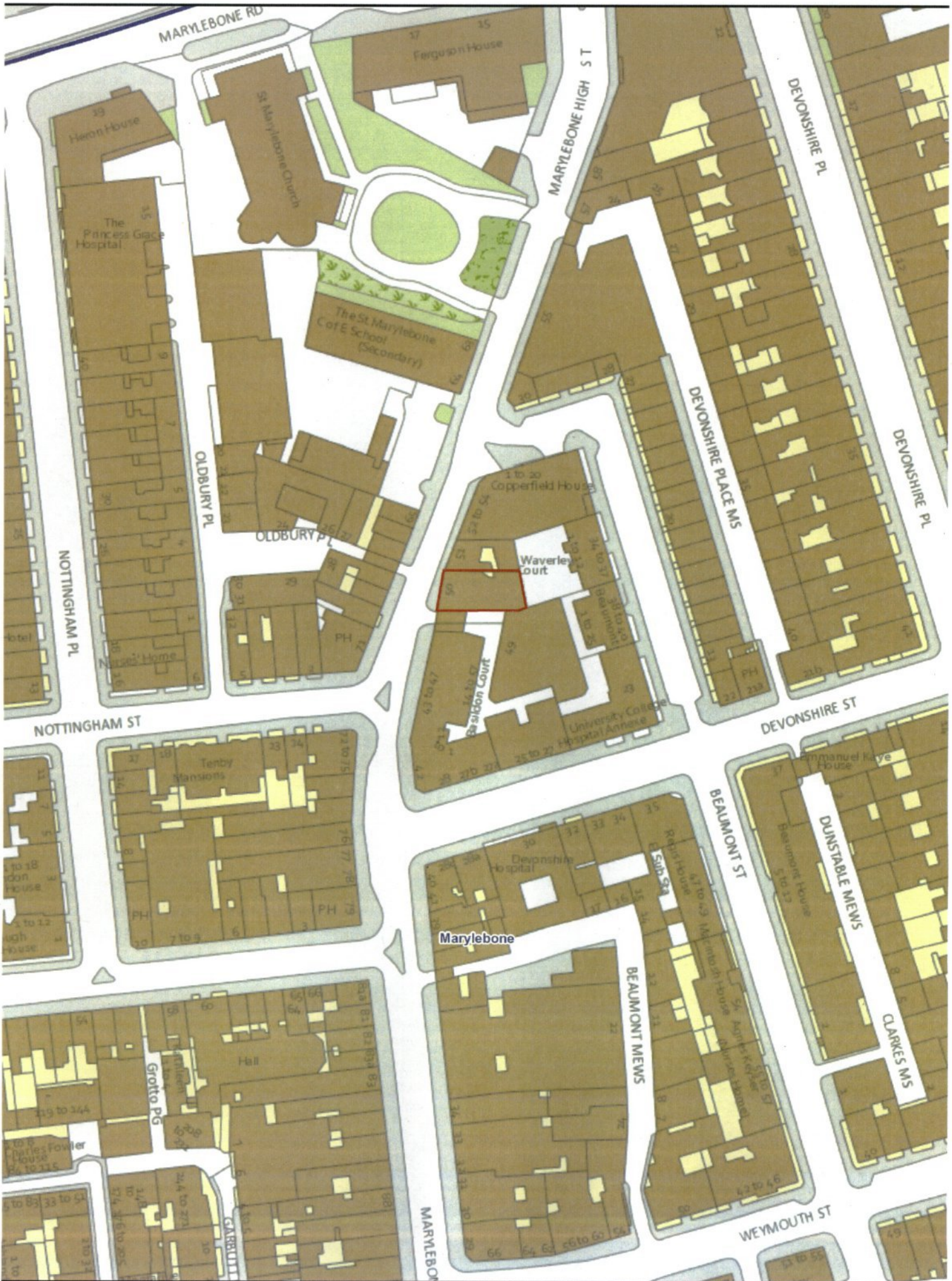


<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 21 April 2015	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Wards involved</b> Marylebone High Street	
<b>Subject of Report</b>	<b>50 Marylebone High Street, London, W1U 4RW</b>		
<b>Proposal</b>	Variation of Condition 3 of planning permission dated 13 May 2014 (RN:14/01407/FULL) for, 'Variation of Condition 22 of planning permission dated 02 October 2001 (RN: 00/06626) for part redevelopment with alterations and extensions for restaurant (Class A3) and retail (Class A1) use on basement and ground floors with six flats at first, second and third floors and plant to first floor rear level; which allowed a variation to the servicing hours for the restaurant (Class C3) at No. 50 Marylebone High Street to 07.00-18.00 Mondays to Fridays (excluding Bank Holidays); namely, extension of trading hours to 07.00 to 00:00 Monday to Saturday and 08.00 to 23.30 Sundays.		
<b>Agent</b>	RadcliffesLeBrasseur		
<b>On behalf of</b>	Corbin & King Limited		
<b>Registered Number</b>	14/11015/FULL	<b>TP / PP No</b>	TP/19998
<b>Date of Application</b>	06.11.2014	<b>Date amended/ completed</b>	06.11.2014
<b>Category of Application</b>	Minor		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Harley Street		
<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  Outside Central Activities Zone		
<b>Stress Area</b>	Outside Stress Area		
<b>Current Licensing Position</b>	Opening hours – 07.00-23.30 (Monday – Saturday) 08.00-23.30 (Sunday)		

## 1. RECOMMENDATION

Grant conditional permission.





50 Marylebone High Street, W1

## 2. SUMMARY

The application site comprises a restaurant (Class A3) occupying the basement and ground floors of an unlisted building location within the Harley Street Conservation Area. The site is located within the Central Activities Zone (CAZ) yet outside the Core CAZ. The site is not located within a stress area.

The application seeks to vary the wording of Condition 3 of planning permission dated 13 May 2014 in order to extend the terminating hours for the restaurant from 23.30 to 00.00 (Mondays to Saturdays). No change is proposed on Sundays and Bank Holidays.

There are a number of residential flats in close proximity to the restaurant, including on the upper floors of the application premises and directly opposite. Two objections from local residents have been received on the ground that the extended operating hours are inimical to residential amenity.

The proposed extension to the restaurant's operating hours by 30 minutes on Mondays - Saturdays is not considered to cause an unacceptable loss of residential amenity for local residents. As such, it is concluded that the proposal is in accordance with City Plan Policy S29 and therefore it is recommended that conditional permission be granted.

## 3. CONSULTATIONS

### THE MARYLEBONE ASSOCIATION

- If the City Council is minded to permit this variation of condition we recommend a temporary 12 months consent to assess any possible detrimental amenity impact.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS

No. Consulted: 165; Total No. of Replies: 2.

Both objecting to the proposal on the following grounds:

- The later closing hours will further impact on the amenity of nearby residents, degrading their quality of life and making the area an unsuitable place to live.
- Drivers waiting for their passengers wait on the opposite side of Marylebone High Street (beneath one of the objector's flat) and allowing this later into the evening will create noise and disturbance.
- The applicant should be required to explain why this request is needed and why it was not foreseen.
- The effects of the later opening hours on services / backroom / backyard activities should be explained.

ADVERTISEMENT/SITE NOTICE: Yes.

## 4. BACKGROUND INFORMATION

### 4.1 The Application Site

The application site comprises a restaurant (Class A3) occupying the basement and ground floors of an unlisted building located within the Harley Street Conservation Area. The site is located within the CAZ yet outside the Core CAZ. The site is not located within a stress area.

The site is at the northern end of Marylebone High Street which is mixed in character, comprising retail and restaurant uses on the lower floors with offices and residential flats above. There is a significant amount of residential in the immediate vicinity. The upper floors of the application premises, adjacent premises and properties directly opposite are all in residential use.

## 4.2 Relevant History

Permission was granted on 2 October 2001 for part redevelopment of Nos. 50 and 51 Marylebone High Street including use of the basement and ground floors of No. 50 as a restaurant (Class A3) and a retail unit at No. 51. The scheme included the provision of six flats on the first to third floors. Condition 5 of this permission reads:

*“The restaurant use hereby permitted shall not be carried on except between the hours of 09.00 to 22.00. Between the hours of 22.00 and 22.30 no customers shall be admitted to the restaurant and by 22.30 all customers shall have vacated the restaurant”.*

An application to vary Condition 5 of the 2001 permission to allow the restaurant to open at 07.00 hours daily was refused on 16 June 2010 on the grounds that the earlier opening hours would result in noise and disturbance to residents. On 27 January 2011 an appeal against this refusal was allowed, permitting the restaurant to open at 07.00 on Mondays – Saturdays and 08.00 on Sundays.

An application to vary Condition 22 of the 2001 planning permission to allow the servicing of the retail unit at No. 51 Marylebone High Street and the restaurant at No. 50 Marylebone High Street between the hours of 07.00 and 18.00 daily was refused on 14 April 2011 on the ground that the proposed extended servicing hours would result in an unacceptable loss of amenity for the occupiers of residential properties in the vicinity of the site.

An application to vary Condition 22 of the 2001 planning permission to allow the servicing of the restaurant at No. 50 Marylebone High Street 07.00-18.00 Mondays to Fridays (excluding Bank Holidays) was granted on 13 May 2015. It is this permission that, having carried forward Condition 5 of the original 2001 permission (albeit re-numbered to be Condition 3), that the current application is seeking to vary.

An application to use of the two areas of public highway both measuring 1.85m x 0.75m for the placing of 2 x tables and 4 x chairs in connection with adjacent restaurant (Class A3) use at ground and basement level was permitted on 1 July 2014. Condition 3 limited the operating hours to between 09.00 – 18.00. An application to vary the wording of Condition 3 to extend the servicing hours to 08.00 to 23.00 hours (Mondays to Saturdays) and 09.00 to 22.00 hours (Sundays and Bank Holidays) was permitted on 27 October 2014.

## 5. THE PROPOSAL

The application seeks to vary the wording of Condition 3 of planning permission dated 13 May 2014 in order to extend the terminating hours for the restaurant from 23.30 to 00.00 (Mondays – Saturdays). No change is proposed on Sundays and Bank Holidays.

The application has been amended during the course of its consideration to reduce the proposed terminal hour on Friday and Saturday from 00.30 to 00.00. The proposed extended terminal hour on Mondays to Thursdays remain unchanged (i.e. 00.00).

## 6. DETAILED CONSIDERATIONS

### 6.1 Land Use

The proposal does not raise any land use issues.

## 6.2 Townscape and Design

The proposal does not raise any design or conservation issues.

## 6.3 Amenity

The northern end of Marylebone High Street is more residential in character than the southern end. The central issue is whether, given the character of the street and the circumstances of the case, extending the operating hours from 23.30 to 00.00 on Mondays to Saturdays would be harmful to the amenity of residents in the vicinity of the site.

There are a number of residential flats in close proximity to the restaurant, including on the upper floors of the application premises and directly opposite. Two objections from local residents have been received on the ground that the extended operating hours are inimical to residential amenity.

Ensuring that the City is an attractive place for residents to live is of central importance, with City Plan Policy S29 stating that the City Council will resist proposals that result in an unacceptable material loss of residential amenity. However, this protection of residential amenity must be balanced against ensuring that commercial operators are not unduly restricted. The City Council's general approach to opening hours is set out within UDP Para. 8.88 where it states:

*“As a general rule, the Council expects that, in entertainment uses in predominantly residential areas, it will impose planning conditions that no customers will be allowed to remain on the premises after midnight on Sundays (other than those immediately preceding Bank Holidays) to Thursdays, and after 12.30 a.m. on the following morning on Friday and Saturday nights and on Sundays immediately preceding Bank Holidays. An earlier closing time may be sought where there are residential uses in immediate proximity”.*

Whilst the original application was in accordance with the above general approach, given that there bedrooms of flats immediately above the restaurant, it is considered that a terminal hour of 00.30 on Fridays and Saturdays was not acceptable. As such, the applicant revised the application to reduce the terminal hour on Fridays and Saturdays to 00.00 (i.e. the same terminal hour sought for Mondays to Thursdays). It is considered that a terminal hour of 00.00 on Mondays – Saturdays is acceptable in the context of a modestly sized (i.e. under 500m<sup>2</sup>) restaurant on Marylebone High Street (albeit accepting that the northern end which is more residential in character than the southern end).

For these reasons, the extension of the operating hours by 30 minutes on Mondays – Saturdays is not considered to cause an unacceptable loss of residential amenity for local residents and therefore the proposal is in accordance with City Plan Policy S29. It is not considered that a temporary permission is required, as suggested by the Marylebone Association.

## 6.4 Transportation/ Parking

The application raises no highways issues.

## 6.5 Access

Not applicable.

**6.6 Economic Considerations**

There are no particular economic issues.

**6.7 Other UDP/Westminster Policy Considerations**

None.

**6.8 London Plan**

The application does not raise any strategic issues.

**6.9 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.

**6.10 Planning Obligations**

None are required.

**6.11 Environmental Assessment including Sustainability and Biodiversity Issues**

None of relevance.

**6.12 Other Issues**

None.

**7. CONCLUSION**

The proposed extension to the restaurant's operating hours by 30 minutes on Mondays – Saturdays is not considered to cause an unacceptable loss of residential amenity for local residents. As such, it is concluded that the proposal is in accordance with City Plan Policy S29 and therefore it is recommended that permission be granted.

**BACKGROUND PAPERS**

1. Application forms.
2. E-mail from the Marylebone Association dated 23 December 2014.
3. Online response from the occupier of Flat 42, Basildon Court, 28 Devonshire Street dated 1 December 2014.
4. E-mail from the occupiers of the first floor flat, 68 Marylebone High Street dated 14 December 2014.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT MARK HOLLINGTON ON 020 7641 2523 OR BY E-MAIL – [mhollington@westminster.gov.uk](mailto:mhollington@westminster.gov.uk)



**DRAFT DECISION LETTER**

**Address:** Ground Floor, 50 Marylebone High Street, London, W1U 4RW

**Proposal:** Variation of Condition 3 of planning permission dated 13 May 2014 (RN:14/01407/FULL) for, 'Variation of Condition 22 of planning permission dated 02 October 2001 (RN: 00/06626) for part redevelopment with alterations and extensions for restaurant (Class A3) and retail (Class A1) use on basement and ground floors with six flats at first, second and third floors and plant to first floor rear level; which allowed a variation to the servicing hours for the restaurant (Class C3) at No. 50 Marylebone High Street to 07.00-18.00 Mondays to Fridays (excluding Bank Holidays); namely, extension of trading hours to 07.00 to 00:00 Monday to Saturday and 08.00 to 23.30 Sundays.

**Plan Nos:** 961/97/01-08; 775/P10X, P11R, and P12M.

**Case Officer:** Mark Hollington

**Direct Tel. No.** 020 7641 2523

**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 The restaurant use hereby permitted shall only be used for restaurant purposes and for no other purpose (including any other purpose within Class A3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking or re-acting that Order). Any bar use shall remain ancillary to the primary restaurant use and drinks shall not be sold or supplied within the restaurant other than to diners immediately before, during or immediately after their meal.

**Reason:**

We cannot grant planning permission for unrestricted use within Class A3 because it would not meet S24 and S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and TACE 9 of our Unitary Development Plan that we adopted in January 2007. (R05CC)

- 3 Customers shall not be permitted within the ground and basement floor restaurant premises before 07.00 or after 00.00 on Monday to Saturday (not including bank holidays and public holidays) and before 08.00 or after 23.30 on Sundays, bank holidays and public holidays. (C12BD)

**Reason:**

To protect the environment of people in neighbouring properties as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6, ENV 7 and of our Unitary Development Plan that we adopted in January 2007. (R12AC)

- 4 The refuse store(s) shown on approved drawing no. 775/P10X, P11R, P12M shall be provided prior to the occupation of the development and thereafter shall be maintained permanently for

the storage of refuse for the occupiers of the development and shall be used for no other purpose, unless otherwise agreed in writing by the City Council as local planning authority. Refuse shall be stored within the premises at all times, other than immediately prior to collections. (C14D)

Reason:

To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 12 of our Unitary Development Plan that we adopted in January 2007. (R14BD)

- 5 No doors or gates shall be hung so as to open over or across the public highway. (C24A)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan: Strategic Policies adopted November 2013 and TRANS 2 and TRANS 3 of our Unitary Development Plan that we adopted in January 2007. (R24AC)

- 6 The roof of the building shall not be used for sitting out or for any other purpose not previously approved by the City Council as local planning authority, except as a means of escape in the case of emergency. (C21A)

Reason:

To protect the privacy and environment of people in neighbouring properties, as set out in S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 13 of our Unitary Development Plan that we adopted in January 2007. (R21AC)

- 7 Detailed drawings of the means of access and egress for people with disabilities to the retail and restaurant units as approved on 22 November 2001 ( RN 01/09102/ADFULL ) shall be permanently retained to the satisfaction of the City Council as local planning authority. (C20B)

Reason:

To make sure that there is reasonable access for people with disabilities and to make sure that the access does not harm the appearance of the building, as set out in S28 of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 1 (B) of our Unitary Development Plan that we adopted in January 2007. (R20AC)

- 8 Notwithstanding the provisions of Class A3 of the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order) no food or drink of any kind shall be sold on the premises for consumption off the premises. (C05C)

Reason:

We cannot grant planning permission for unrestricted use within Class A3 because it would not meet S24 and S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and TACE 9 of our Unitary Development Plan that we adopted in January 2007. (R05CC)

- 9 The total capacity of the ground floor restaurant use hereby approved shall be a maximum of 100 customers at any one time of which a maximum of 20 shall be accommodated within the ancillary bar area.

Reason:

We cannot grant planning permission for unrestricted use within Class A3 because it would not meet S24 and S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and TACE 9 of our Unitary Development Plan that we adopted in January 2007. (R05CC)

- 10 The glazing to the rooflight shall be fixed shut and permanently retained as such.

Reason:

In order to protect the amenity of adjoining occupiers.

- 11 Full details of blinds to the rear rooflights and automatic mechanism for their operation, shall be submitted to and approved by the City Council as local planning authority. The blinds shall be closed between the hours of sunset and 9.00am.

The development shall not be carried out otherwise than in accordance with the details thus approved.

Reason:

In order to protect the amenity of adjoining occupiers by preventing the outbreak of artificial lighting.

- 12 No music shall be played in the restaurant and retail units hereby approved which is audible outside the premises.

Reason:

In order to protect the amenity of adjoining occupiers.

- 13 Servicing of the retail unit at No. 51 Marylebone High Street shall only take place between the hours of 8.00am and 18.00 and at no other time.

Servicing of the restaurant unit at No. 50 Marylebone High Street shall only take place between the hours of 07.00 and 18.00 (Mondays to Fridays) (except Bank Holidays) and 08.00 - 18.00 (Saturdays, Sundays, and Bank Holidays).

Reason:

In order to protect the amenity of adjoining occupiers.

- 14 Detailed drawings (scale 1:20 and 1:5) of the following part(s) of the development shall be submitted to and approved by the City Council as local planning authority before any work is commenced on the relevant part of the development:-

a) plant screens.

This part of the development shall not be carried out otherwise than in accordance with the details thus approved. (C26D)

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 Harley Street Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan: Strategic Policies adopted November 2013 and

DES 1, DES 4 and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26DD)

- 15 No mechanical plant, ductwork, tanks, satellite or radio antennae or other structures shall be located on the roof other than those shown on the drawings hereby approved. (C26P)

Reason:

Because these would harm the appearance of the building, and would not meet S25 or S28, or both, of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 1 and DES 5 of our Unitary Development Plan that we adopted in January 2007. (R26HC)

**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.