

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 1 March 2016	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward involved</b> West End	
<b>Subject of Report</b>	<b>91 Mortimer Street, London, W1W 7SR</b>		
<b>Proposal</b>	Use of the ground floor and basement as a shop (Class A1).		
<b>Agent</b>	C. B. Wright & Associates Ltd		
<b>On behalf of</b>	Mr E Karavil		
<b>Registered Number</b>	15/09716/FULL	<b>Date amended/ completed</b>	5 November 2015
<b>Date Application Received</b>	19 October 2015		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	East Marylebone		

## 1. RECOMMENDATION

Refuse planning permission - loss of wholesale showroom use.

## 2. SUMMARY

No. 91 Mortimer Street is an unlisted building located on the south side of Mortimer Street near the junction with Great Portland Street. The basement and ground floor of the premises currently have lawful use as a wholesale showroom (*sui generis*) whilst the upper floors have lawful use as office accommodation (Class B1).

This application seeks permission for the change of use of the existing basement and ground floor showroom to a retail unit (Class A1). It should be noted that permission has been refused three times previously for the change of use of the premises to a retail unit in 2011, 2013 and 2014.

The key issue in this case is:

- The loss of the showroom floorspace within the designated East Marylebone Special Policy Area which seeks to protect wholesale showroom uses.

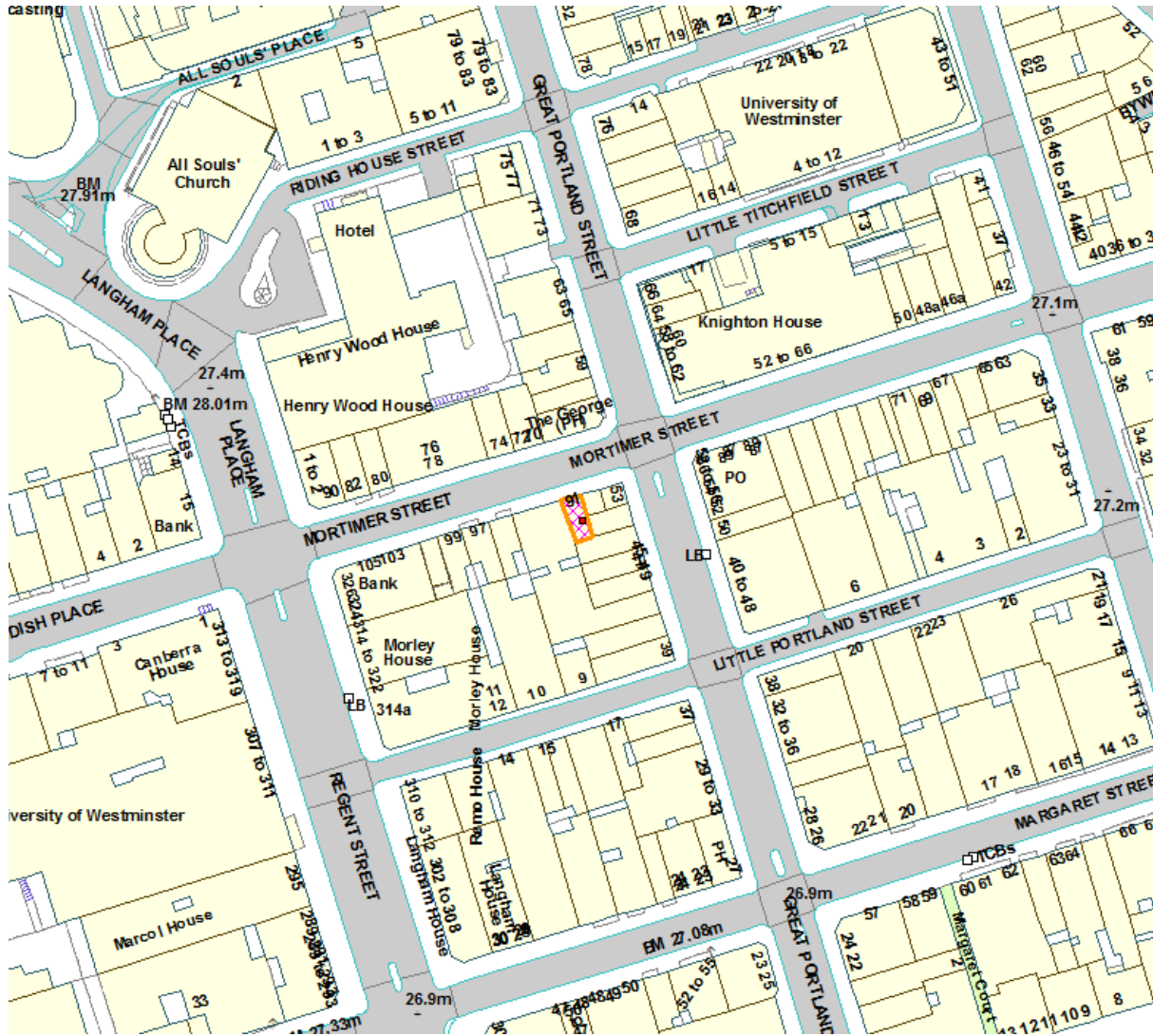
Policies COM12 of the Unitary Development Plan (UDP) and S2 of the City Plan seek to protect wholesale showroom uses within the East Marylebone Special Policy Area. The applicant has not demonstrated any exceptional circumstances with regard to the application to justify a deviation from this policy requirement. Whilst the City Council is currently considering the removal of the East Marylebone Special Policy Area this revision is at a very early stage and it would be inappropriate to

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afford much weight to this proposal before it has been adopted by the City Council. It is therefore considered the loss of the wholesale showroom is unacceptable in principle and the application is recommended for refusal.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS



## 5. CONSULTATIONS

Fitzrovia Neighbourhood Association:  
Any response to be reported verbally.

Highways Planning:  
Acceptable in highways terms subject to conditions.

Cleansing:  
Acceptable subject to conditions.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED:

No. Consulted: 36  
Total No. of replies: 3  
No. of objections: 1  
No. in support: 2

Letters of support on the following grounds:

- Productive use of the property will increase footfall in the area and increase the vitality of the street.

Objection received on the following grounds:

- Notice was not served upon the freeholder of the property by the applicant, as legally required.
- The loss of the wholesale showroom use in the East Marylebone SPA is contrary to the adopted policies of the City Council that protect this use.
- Little if any weight can be afforded to the City Council's proposal to remove the East Marylebone SPA.
- The marketing information submitted is considered insufficient to show the unit has been properly marketed.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

No. 91 Mortimer Street is an unlisted building located within the East Marylebone Conservation Area and the Core Central Activities Zone, as defined by the adopted City Plan. The property is also located within the East Marylebone Special Policy Area as defined by both the UDP and the City Plan.

The lawful use of the basement and ground floor levels is as a wholesale showroom (*sui generis*). It would appear that the property has been vacant for a number of years. The first, second and third floor levels of the property have lawful use as office accommodation.

Mortimer Street is characterised by commercial uses at ground floor level with residential and office uses on the upper floors. The property is located on the south side of a section of Mortimer Street running between Regent Street and Great Portland Street.

## 6.2 Recent Relevant History

Planning permission was refused on 28 June 2011 for the 'use of the ground and basement floors as a retail unit (Class A1)' on the grounds of the loss of the showroom use.

Planning permission was granted on 22 November 2011 for the 'dual alternative use of the first, second and third floors for either office accommodation (Class B1) or residential purposes (Class C3) to provide 2 x 1 bedroom flats. Retention of roof terrace. External alterations including the installation of Juliet balconies at rear first to third floor.'

Planning permission was refused on 17 July 2013 for the 'use of the basement and ground floors as a retail unit (Class A1) and alterations to the shopfront,' on the grounds of loss of showroom and loss of a traditional shopfront.

Planning permission was refused on 22<sup>nd</sup> April 2014 for the 'use of the basement and ground floors as retail accommodation (Use Class A1) for a temporary period of two years' on the grounds of loss of showroom.

## 7. THE PROPOSAL

Permission is sought for the change of use of the ground and basement floor levels from the current wholesale showroom (*sui generis*) use to retail accommodation (Class A1).

The basement and ground floor levels to which this application relates measure 85m<sup>2</sup>.

## 8. DETAILED CONSIDERATIONS

### 8.1 Land Use

#### Loss of showroom

The applicant has confirmed that the property was utilised as a wholesale showroom for the clothing business before it became vacant. Business Ratings records also confirm that the basement and ground floor of the property were rated as a 'showroom and premises' for 2005 and 2010. There is also significant evidence on the internet that there was a wholesale clothing retailer previously operating from the property called 'Freddini Flighteagle'. The premises do not appear to have been utilised for any other purpose since this business vacated the premises. The applicant states that the unit has been vacant since the wholesale showroom vacated the property in 2006 and that the property has been marketed since December 2013. Seemingly the unit has been left unoccupied and has not been marketed for most of the intervening seven years.

The property is within the revised and smaller East Marylebone SPA as defined by the City Plan Proposals Map. Policy S2 of the City Plan considers the designated Special Policy Areas and seeks to 'provide specific protection for the unique clusters of specialist uses

*which are central to London's character and ensure these clusters are not eroded by pressure from other commercial uses.'* Detailed guidance on each of the SPAs will not be available until the adoption of the City Management Plan and it is therefore prudent to refer to the guidance provided by the UDP.

The East Marylebone SPA has been designated to protect the wholesale showrooms in the area which have created a *'marketplace for the exchange of goods manufactured and sold all over the world'*. Policy COM12 Part A of the UDP states that *'planning permission which would result in the loss of wholesale showrooms in the East Marylebone Special Policy Area at ground floor and basement levels will not normally be granted and wholesale showrooms floorspace should be replaced in re-development schemes'*.

Paragraph 2.86 of the UDP states that: *'In East Marylebone, and to a lesser degree elsewhere in the City, showrooms are important uses which contribute to the character and function of the surrounding area. The City Council has defined a core showroom area, the East Marylebone Special Policy Area. This area contains the main concentration of wholesale showrooms in Westminster; most of these showrooms are associated with the fashion industry. The protective Policy COM 12 (A) will apply within this area.'*

The reasoning for this is that *'further losses of wholesale showrooms from the core area would therefore undermine this concentration and threaten the viability of East Marylebone as a prestigious wholesale area of international importance.'* Paragraph 2.88 of Policy COM12 says that long-term vacancy can be taken into account when determining an application involving the loss of showroom floorspace within the East Marylebone SPA. Long-term vacancy is considered to be marketing of a vacant unit for a minimum period of 18 months. It must be demonstrated that the unit has been *'marketed widely and thoroughly on terms that are no more onerous than market conditions in the locality'*. The applicant has said the unit has been vacant since 2006 but only marketed since December 2013.

The applicant has provided a letter from Robert Irving Burns (RIB) a local lettings company, who state that it first marketed the property in January 2014. It is claimed that a variety of methods were used to market the property including an email campaign to other agents and applicants and the particulars being displayed in the agents' windows. They claim a single offer was received on the premises from a retail ticket company. The agent therefore concludes there is no demand for wholesale showrooms in the area. The agent also states that, as there are no other wholesale showrooms on this immediate stretch of Mortimer Street, the location is not desirable for this use and potential occupiers would only seek to locate in micro locations within the area. To support its assertion that there is no market for wholesale showroom premises, the agent also states that the number of wholesale showrooms in the East Marylebone SPA has reduced to the point of *'no longer existing today'* and that the industry has primarily relocated elsewhere in London to cheaper accommodation.

It should be noted that on the particulars submitted by RIB it does not state the property is lawfully a wholesale showroom. It is further noted that marketing information was submitted to support the previous application to change the use and at the time the estate agent was advertising the premises on their website as a *'self-contained retail premises'* suitable for A1 and showroom uses. It is also noted that at no time in the past ten years has an application been made to display an estate agents board on the property.

With regard the agent's comments that this location is unsuitable for a wholesale showroom, there are a large number of wholesale fashion retailers located on Great Portland Street which is a few metres to the east. Given the sparse information contained within the letter from the letting agent it is not considered necessary to have the letter independently assessed at the applicant's expense as would normally be required. The freeholder of the property, who has objected to the application, has also reviewed the marketing information and considers there is *'substantial information missing from this report. There is no evidence of how Robert Irving Burns has attempted to market the property during this 18 month period other than a copy of an undated and unprepossessing marketing pamphlet. There is no detail as to whom and how this was circulated and no evidence of external signage being used to market the property.'*

The freeholder further notes that the unit is not isolated from other showrooms and is still located within the reduced East Marylebone SPA as defined by the City Plan. The objection from the freeholder on the grounds of insufficient marketing evidence having been submitted is substantiated and it is considered only minimal weight can be given to the marketing information provide by Robert Irving Burns.

The freeholder has also raised an objection to the loss of the wholesale showroom use citing Policies COM12 of the UDP and S2 of the City Plan. The City Council is currently proposing revisions to the Westminster City Plan which includes the removal of the entire East Marylebone Special Policy Area and the deletion of the relevant policy referring to this SPA. The Special Policy Areas and Policies Map Revision has undergone the statutory Regulation 19 consultation stage (4 December 2015 to 7 February 2016) in line with the Town and Country Planning (Local Planning) (England) Regulations 2012 and is soon to be submitted to the Secretary of State for consideration by an inspector. No objections were received during the consultation period to the removal of the SPA and three representations of support were received. The Mayor has also confirmed the deletion of the SPA raises no strategic issues.

Paragraph 216 of the NPPF states:

*'From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:*

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).'*

Taking into account the proposal to remove the East Marylebone SPA has been through consultation (with no objections) and the City Council intends to proceed with its deletion, Committee may take this into account in the determination of the application. However, the early stage in the development of this revised approach to East Marylebone means that it is recommended that it should only be afforded minimal weight.



The next stage is the submission of the proposed revisions to the Secretary of State for consideration by an independent inspector and no date has been established for this yet. The adopted policy framework still seeks to safeguard wholesale showroom uses in the East Marylebone SPA and the proposal to remove it is at a very early stage. It is therefore considered that the current proposal is unacceptable in principle in land use terms due to the loss of the wholesale showroom. The objection from the freeholder on these grounds is sustainable and it is not considered there are any extenuating circumstances to justify a deviation from adopted policy.

The freeholder of the property has also objected to the application as they did not receive the notice which the applicant says was served on them. However, the freeholder's representative has been made aware of the application and a lengthy letter of objection has been received on their behalf, so it is not considered that they have been prejudiced in any way due to their lack of receipt of the notice. The freeholder's details were also filled out correctly on the application form.

### **Retail Use**

Policy S6 of the City Plan states, with regard to the Core CAZ that '*retail use is encouraged throughout the area*'. The UDP is also supportive of retail floor space increases within the Core CAZ. In principle, the increase in retail accommodation is therefore considered acceptable but this must be considered in the context of the loss of the wholesale showroom use discussed as detailed above. It is also noted that Policy COM12 of the UDP states that where applications to change the use of wholesale showrooms (outside the East Marylebone SPA) are considered acceptable the preferred replacement use will be retail accommodation.

Two letters of support have been received to the application in relation to the use of the property as a retail unit helping to increase the footfall in the area and improve the vitality of the street. Whilst it is noted that the productive use of the property would improve the footfall in the area and contribute towards its vitality, the introduction of a small retail unit is likely to only have a minimal beneficial impact in this regard over and above the existing lawful use.

## **8.2 Townscape and Design**

No external alterations are proposed as part of the application.

## **8.3 Residential Amenity**

The conversion of the wholesale showroom to a retail unit is unlikely to have any material impact on the amenity of nearby residents.

## **8.4 Transportation/Parking**

It is considered the impact of the proposal on car parking requirements will be negligible, with little difference between the two uses. With regard servicing of the use, the property is located within a Controlled Parking Zone which means that single and double yellow lines within the vicinity allow commercial loading and unloading to occur within certain parameters. It is considered the proposed retail use would have similar servicing

requirements to the existing lawful wholesale showroom use and therefore, had the application been considered acceptable it would not have been necessary to impose additional restrictions through the use of conditions.

Given the size of the unit at 85m<sup>2</sup> there is no requirement with FALP for the provision of cycle parking.

#### **8.5 Economic Considerations**

No economic considerations are applicable for a development of this size.

#### **8.6 Access**

Level access is currently provided to the ground floor of the unit and this would be retained in the proposal.

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

The submitted floor plans do not show the provision of waste or recycling storage within the demise of the unit. A condition would be attached to any approval requiring the submission of amended plans to indicate these facilities to ensure waste was not left on the public highway.

#### **8.8 London Plan**

This application raises no strategic issues.

#### **8.9 National Policy/Guidance Considerations**

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

#### **8.10 Planning Obligations**

Planning obligations are not relevant in the determination of this application.

#### **8.11 Environmental Impact Assessment**

The proposal is of an insufficient scale to require an environmental assessment.

### **9. BACKGROUND PAPERS**

1. Application form
2. Response from Highways Planning - Development Planning, dated 5 November 2015
3. Response from Cleansing - Development Planning, dated 9 November 2015
4. Letter from Stephenson Harwood LLP, 1 Finsbury Circus, representing the freeholder (Mount Eden Land Ltd.) dated 27 November 2015
5. Letter from occupier of 60 Great Titchfield Street, London, dated 10 January 2016
6. Letter from occupier of 70 Great Titchfield Street, London, dated 6 January 2016
7. Letter from the applicant, Mir-Rashed Ahmed, 91 Mortimer Street, London, W1W 7SR,

undated.

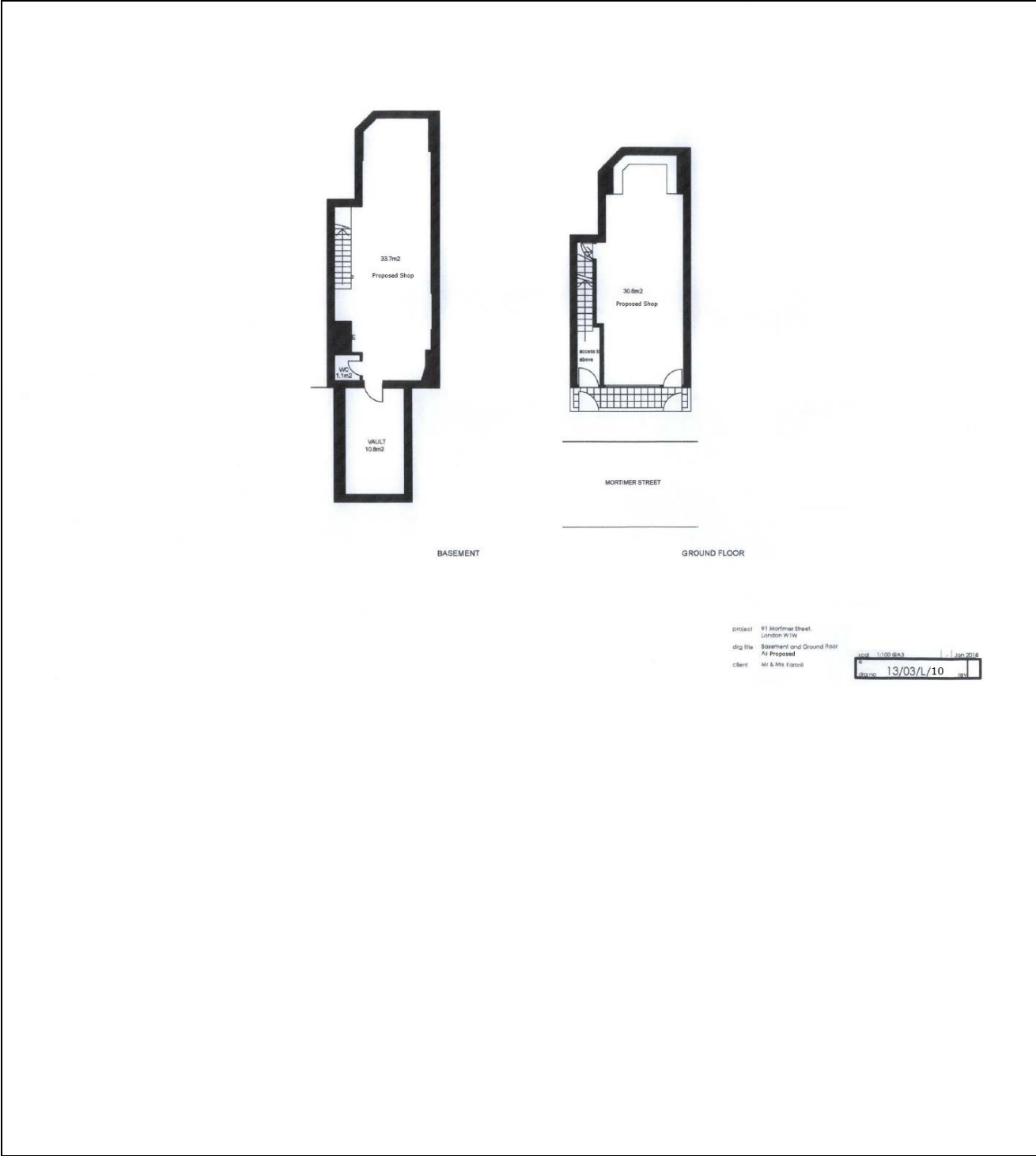
### **Selected relevant drawings**

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT MATTHEW GILES ON 020 7641 5942 OR BY EMAIL AT [CentralPlanningTeam@westminster.gov.uk](mailto:CentralPlanningTeam@westminster.gov.uk)

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**10. KEY DRAWINGS**



**DRAFT DECISION LETTER**

**Address:** 91 Mortimer Street, London, W1W 7SR,

**Proposal:** Use of the ground floor and basement as a shop (Class A1).

**Reference:** 15/09716/FULL

**Plan Nos:** 13/03/L/10

**Case Officer:** Matthew Giles

**Direct Tel. No.** 020 7641 5942

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

Reason:

- 1 The development would lead to the loss of a wholesale showroom which contributes to the character and function of this part of the East Marylebone Special Policy Area, contrary to Policy COM12 of our Unitary Development Plan that we adopted in January 2007 and Policy S2 of the City Plan that we adopted in 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.