

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 29 November 2016	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> Marylebone High Street	
<b>Subject of Report</b>	20 Moxon Street, London, W1U 4EU,		
<b>Proposal</b>	Use of part of the ground and lower ground floor levels as a mixed use (sui generis) comprising retail / restaurant premises and installation of a high level extract duct.		
<b>Agent</b>	Iceni Projects Ltd		
<b>On behalf of</b>	Mr Laurent Faure		
<b>Registered Number</b>	16/02689/FULL	<b>Date amended/ completed</b>	30 September 2016
<b>Date Application Received</b>	24 March 2016		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Harley Street		

## 1. RECOMMENDATION

Grant conditional planning permission.

## 2. SUMMARY

Ashland House is an unlisted building of merit in the Harley Street Conservation Area situated outside of the Core CAZ. The lower ground and part ground floors have historically been used as office accommodation (Use Class B1) however since 2012 these floors have been in mixed retail, restaurant and bar uses. On-going enforcement action is being taken in relation to the unauthorised change of use and this application has been submitted in order to regularise the situation. Permission is also sought for the installation of a high level extract duct on the side elevation of the building to terminate at main roof level.

The key issues for consideration in this case are the acceptability of the use in this area and the impact upon residential amenity.

The change of use of the office accommodation to an alternative use serving visiting members of the public is considered acceptable. It is also considered, with suitable conditions in place, residential amenity would be protected and the proposal is in accordance with the relevant policies of the adopted UDP and City Plan and is accordingly recommended for conditional planning approval.

3. LOCATION PLAN



4. PHOTOGRAPHS



## 5. CONSULTATIONS

### MARYLEBONE ASSOCIATION

Any response to be reported verbally.

### CLEANSING

No objection subject to conditions.

### HIGHWAYS

No objection subject to conditions.

### PLANNING ENFORCEMENT

Enforcement Notice has been served in relation to the unauthorised use of the premises.

### ENVIRONMENTAL HEALTH

No objections subject to conditions.

### ADJOINING OWNERS AND OCCUPIERS

No Consulted: 32

No Replied: 1

Objection on the following grounds:

The building and surrounding area are unsuitable for a business of this kind.

### SITE AND PRESS NOTICE

Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

Ashland House is an unlisted building of merit in the Harley Street Conservation Area. The application relates to the part ground and basement floors which have historically been used as office accommodation (Use Class B1) however since 2012 these floors have been in mixed retail, restaurant and bar uses. The remainder of the building is occupied as residential flats.

### 6.2 Recent Relevant History

Planning permission was granted on the 24th April 2008 for the 'reconfiguration of existing residential (Class C3) and office (Class B1) floorspace at part ground floor of Ashland House, enclosure of rear basement courtyard with a glass roof and external alterations (site includes No. 20 Moxon Street)'. This provided for the previous lawful configuration of the uses at the property.

Planning permission was granted on the 12<sup>th</sup> June 2012 for the 'use of part lower ground and ground floors of the property as retail accommodation (Class A1) and alterations to the windows at ground floor level on the Moxon Street elevation.' The City Council

considers that the above permission was not implemented as the unit which opened at the premises was not a retail unit but instead a sui generis mix of retail, restaurant and wine bar uses. On-going enforcement action is being taken in relation to the unauthorised change of use and the Enforcement Notice is currently the subject of an appeal. The Enforcement Officer considers, after extensive investigation, that the retail use was never implemented.

Planning permission was also granted on the 21/06/2016 for the 'retention of three external air conditioning units at lower ground floor level in rear courtyard.'

## **7. THE PROPOSAL**

Permission is sought for the change of use of the premises at part ground and basement levels to a sui generis use comprising retail, restaurant and bar functions and the installation of an associated high level extract duct on the side elevation of the property to terminate at main roof level.

Currently, the premises are laid out with retail wine sales at ground and part lower ground floor levels. The remainder of the lower ground floor provides a delicatessen section, which also provides wine tasting, a small area of tables and chairs with a kitchen which provides a café function with associated office and storage areas towards the rear of the unit. The GEA of the entire premises is 354sqm.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

#### **i. Loss of office use**

The loss of the office accommodation is considered acceptable outside of the Core CAZ.

#### **ii. Introduction of Entertainment/Retail Use**

The property is situated just outside of the Marylebone High Street District Centre as defined in the UDP. Policy SS10 of the UDP considers the provision of new retail floorspace outside of the CAZ and aims the encouragement of new retail accommodation where appropriate. Part C of the policy states; 'proposals for retail developments outside District or Local centres will not be permitted if they would cause demonstrable harm to the vitality or viability of existing centres.' Policy S21 of the City Plan states that 'new retail floorspace will be directed to the designated Shopping Centres.' In this instance, the proposed unit is located close to the secondary frontage of a designated District Centre, and given the small size of the proposal, with the majority of the floorspace being at basement level, it is not considered that the proposal would have a detrimental impact upon the vitality of the nearby shopping centre.

The increase in the restaurant/bar element of the proposed use needs to be considered under UDP Policy TACE 9 and City Plan Policy S24. TACE9 states that new entertainment uses are only permissible where they would have no adverse impact on residential amenity or local environmental quality in terms of noise, smells, highways

implications, increased late night activity and no adverse effect on the character and function of its area. Policy S24 is similarly worded.

#### Impact on amenity

The cafe element in the lower ground floor of the premises is shown on the drawings as having a seating capacity of 20 covers, the opening hours of the entire premises are 12:00 till 22:30 on weekdays, 10:00 till 22:30 on Saturdays and 10:00 till 18:00 on Sundays.

The nearest residential units are located at first floor level and above within the building itself (Ashland House) and the building immediately opposite is in residential use and so residential occupiers are in very close proximity. Taking into account the small number of people who could be seated in the cafe element of the premises and the early closing times it is not considered the proposal would have a detrimental impact upon residents in terms of noise disturbance from patrons.

A high level extract duct is proposed on the side elevation of the property to terminate at main roof level which will disperse cooking smells from the premises and this is considered acceptable. Currently the unit operates with a low level extraction system discharging into the courtyard at the side of the property at lower ground floor level. A condition is proposed requiring all primary cooking to cease until the high level extract duct shown on the drawings is installed.

The current license for the premises restricts the hours of servicing to between 07:00 and 22:00 Monday to Saturday and between 08:00 and 22:00 on Sundays and public holidays. These hours are considered suitable to protect residential amenity and a similarly worded condition is proposed restricting servicing to these hours.

Subject to the imposition of the conditions referred to above it is not considered the proposed use would adversely impact on residential amenity and the proposal is therefore considered to comply with Policy S24 of the City Plan and Policy TACE9 of the UDP.

#### Impact on character and function of the area

The area is mixed use in character comprising commercial offices and entertainment uses and a significant number of residential properties. There are some licensed premises in the vicinity although it is not considered that the area is saturated with such uses. The nearest licensed premises are restaurants at 8-10 Moxon Street (09:00 till 22:30), 4-6 Moxon Street (08:00 till 23:30) and 93B Marylebone High Street (08:00 till 00:00).

An objection has been received stating that the building and area is unsuitable for uses of this kind however it is not considered the proposed use would be harmful to the character and function of this part of the East Marylebone Conservation Area, especially considering the impending redevelopment of the Moxon Street car-park site opposite and the current lawful office use.

## **8.2 Townscape and Design**

The only external alteration associated with this proposal is the installation of an external extract duct to the rear of the building, located in a recessed corner. The rear elevations to this group of buildings are largely free of visual clutter and there is no precedent for plant or ducts affixed to these elevations. However, the proposed location for this duct is in a

recessed corner, where its visual impact would be reduced. In order to mitigate its visual impact further, it is recommended that the duct is screened in GRP cladding to emulate the appearance of the original brickwork. Subject to this screening, the proposals will preserve the character and appearance of this part of the conservation area and are compliant with the requirements of DES 5 and DES 9 of the City Council's Unitary Development Plan.

### **8.3 Residential Amenity**

The application has been considered in the context of Policies ENV6 and ENV7 of the UDP and S32 of the City Plan. These policies seek to protect nearby occupiers of noise sensitive properties and the area generally from excessive noise and disturbance resulting from plant.

An acoustic report has been submitted in relation to the installation of the high level extract duct at the rear of the property and the potential noise and vibration impacts of its operation. The nearest affected residential windows are at first floor level within the property itself. It has been demonstrated that noise from the duct and associated equipment will be compliant with the City Council requirements at these windows and this has been considered acceptable by Environmental Health. Conditions are proposed in relation to the noise and vibration levels from the plant and the installation of the specified associated acoustic mitigation measures.

The acoustic report demonstrates that the ducting is compliant with the City Council noise criteria over a 24 hour period and as some of this is used for ventilation it is not considered appropriate to condition the hours of use of the plant.

### **8.4 Transportation/Parking**

An amended drawing has been submitted showing the provision of two cycle parking spaces in the basement of the property which is compliant with the requirements of the London Plan. A condition is proposed to ensure this is provided and retained.

It is not considered the proposal would result in any significant increase in the number of people visiting the site by car when compared to the current office function and the site is also located within a Controlled Parking Zone. The Highways Planning Manager has requested a condition be applied to any approval requiring the submission of a Servicing Management Plan to outline how servicing will occur on a day to day basis for the unit, almost as an instruction manual or good practice guide for the occupants. This should also identify storage locations, staffing arrangements, scheduling of deliveries, and likely delivery vehicle size. To ensure that goods and delivery vehicles spend the least amount of time on the highway as possible and do not cause an obstruction or a danger to highway users.

### **8.5 Economic Considerations**

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

## **8.6 Access**

Level access is provided to the ground floor of the unit with a lift in operation between the ground and lower ground floor levels to provide full access to the property.

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

A condition is imposed requiring the submission of amended floorplans to show adequate storage for waste and recycling materials.

## **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**

Environmental Impact issues have been covered in sections 9.1 and 9.3 above.

## **9. BACKGROUND PAPERS**

1. Application form.
2. Response from Highways Planning Manager dated 12 September 2016.
3. Response from Cleansing Manager dated 14 September 2016.
4. Response from Environmental Health dated 27 October 2016.
5. Letter from occupier of 12 Ashland House, Ashland Place, dated 4 October 2016.

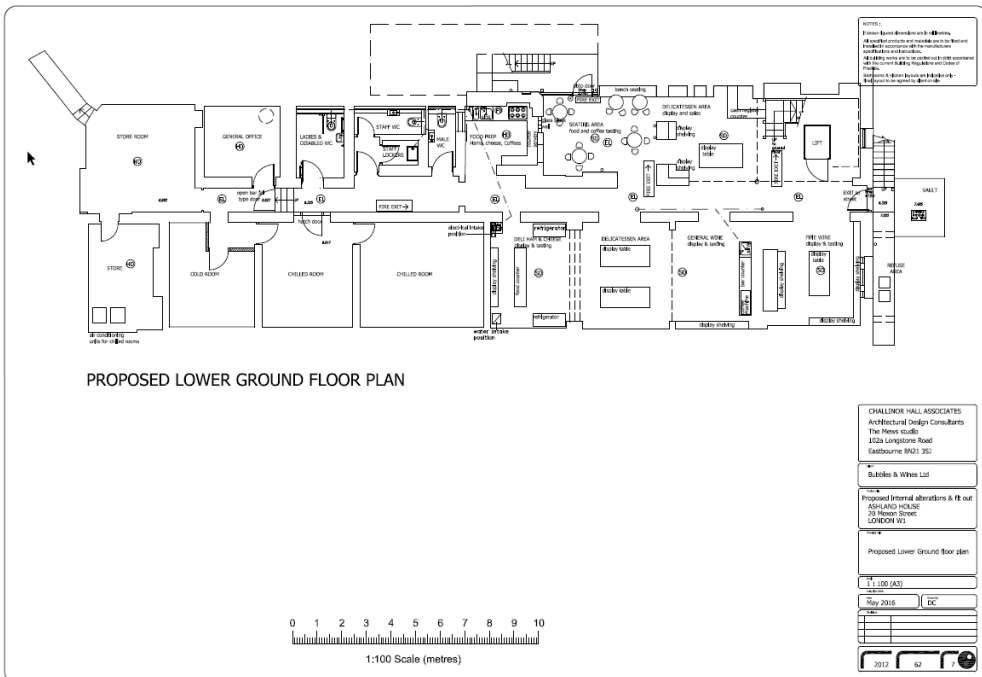
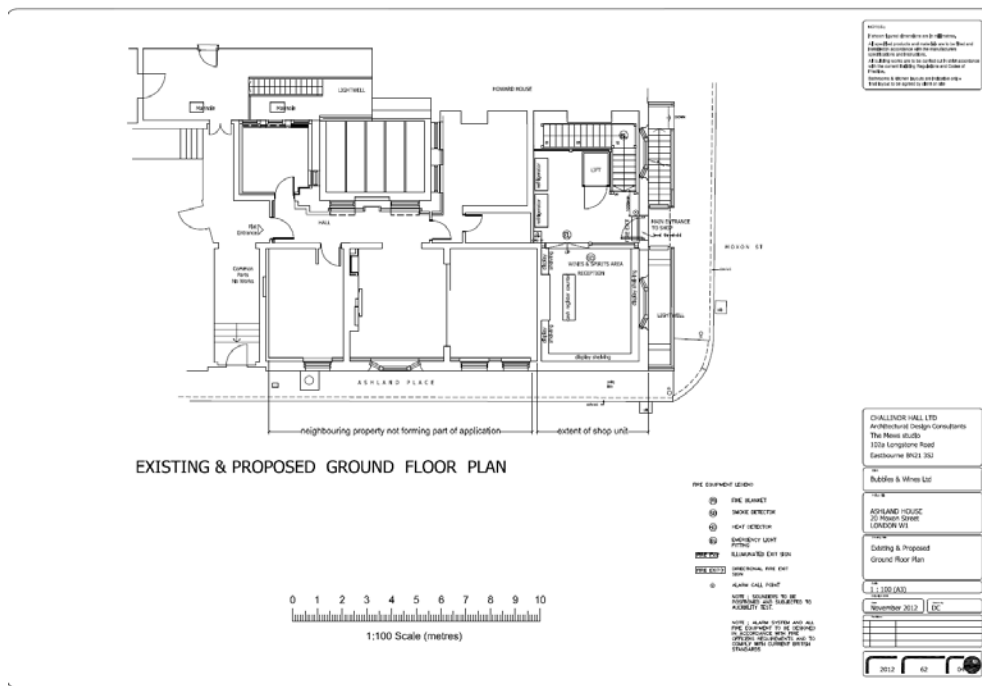
### **Selected relevant drawings**

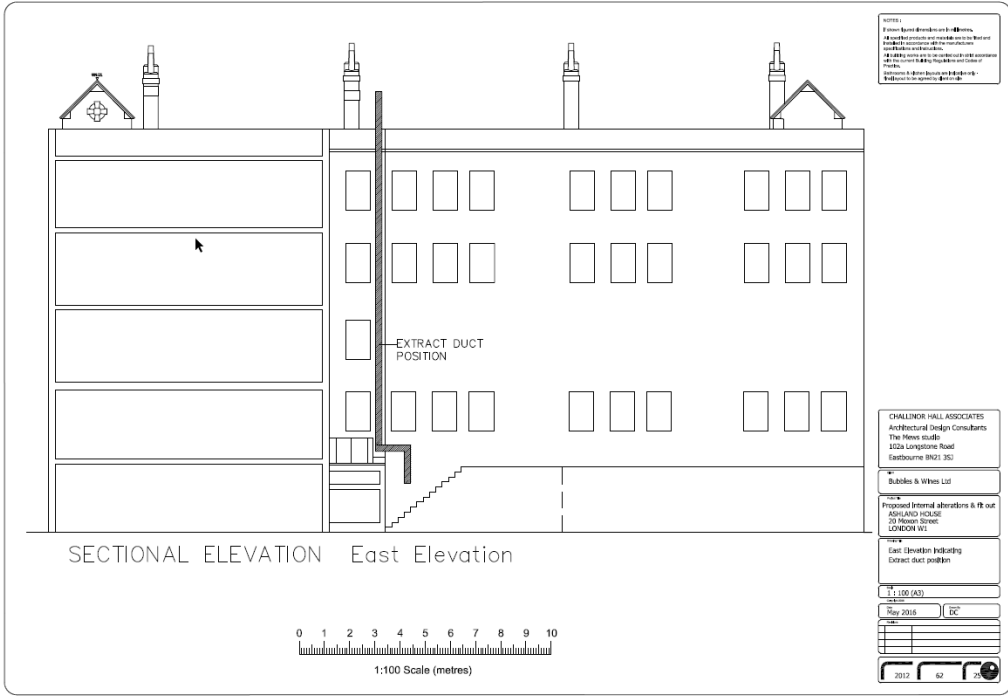
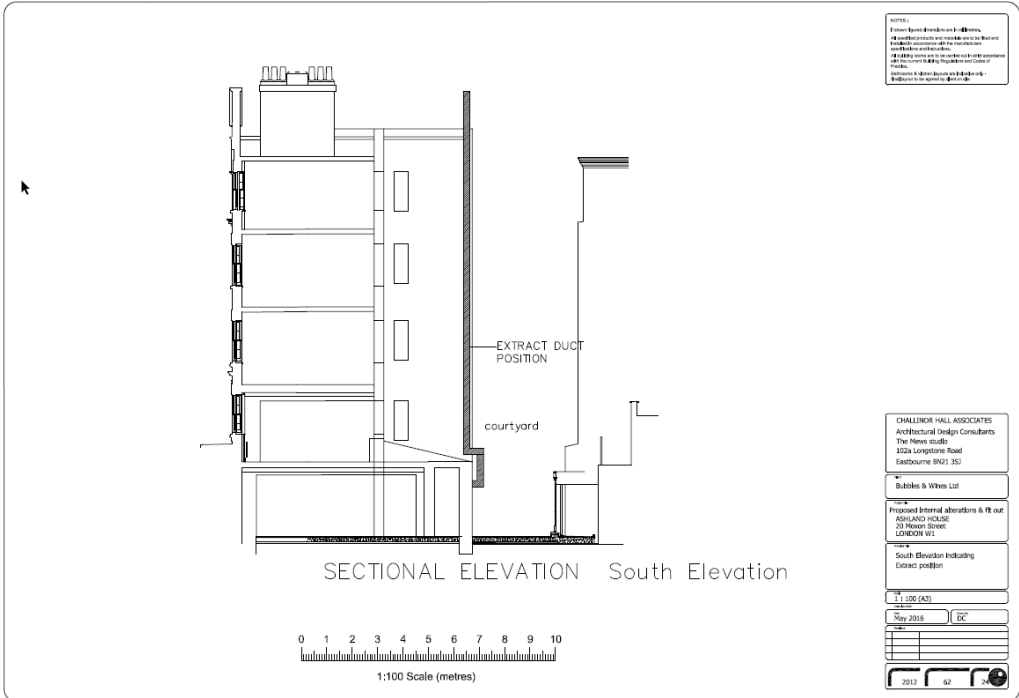
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: JO PALMER BY EMAIL AT [jpalme@westminster.gov.uk](mailto:jpalme@westminster.gov.uk)



10. KEY DRAWINGS





**DRAFT DECISION LETTER**

**Address:** 20 Moxon Street, London, W1U 4EU,

**Proposal:** Use of part of the ground and lower ground floor levels as a mixed use retail / restaurant premises (sui generis) and installation of a high level extract duct.

**Reference:** 16/02689/FULL

**Plan Nos:** Acoustic Report dated 25/08/2016, Drawings: (2012 62) 3 RevA, 4 RevA, 7 RevA, 24, 25.

**Case Officer:** Matthew Giles

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

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

You must carry out piling, excavation and demolition work only:

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

Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety).

Reason:

To protect the environment of neighbouring occupiers. This is as set out in S29 and S32 of Westminster's City Plan (July 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

- 3 (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest,

shall not at any time exceed a value of 5 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum., , (2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum., , (3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:; (a) A schedule of all plant and equipment that formed part of this application; (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment; (c) Manufacturer specifications of sound emissions in octave or third octave detail; (d) The location of most affected noise sensitive receptor location and the most affected window of it; (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location; (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures; (g) The lowest existing LA90, 15 mins measurement recorded under (f) above; (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition; (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason:

As set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(2) of our Unitary Development Plan that we adopted in January 2007 (UDP), so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (July 2016), by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission.

- 4 No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.

Reason:

As set out in ENV6 (2) and (6) of our Unitary Development Plan that we adopted in January 2007, to ensure that the development is designed to prevent structural transmission of noise or vibration.

- 5 Within two months of the date of this decision you must apply to us for approval of details of how waste is going to be stored on the site and how materials for recycling will be stored separately. You must then provide the stores for waste and materials for recycling according to these details, clearly mark the stores and make them available at all times to everyone using the premises.

Reason:

To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan (July 2016) and ENV 12 of our Unitary Development Plan that we adopted in January 2007. (R14BD)

- 6 You must cease all primary cooking at the premises until the high level extract duct as shown on the approved drawings has been installed and is operational. Once installed the duct must thereafter be permanently retained in situ and maintained for as long as the approved sui generis use continues.

Reason:

To protect the environment of people in neighbouring properties as set out in S29 and S32 of Westminster's City Plan (July 2016) and ENV 6, ENV 7 and DES 5 of our Unitary Development Plan that we adopted in January 2007. (R14AC)

- 7 All servicing must take place between 07:00 and 22:00 Monday to Saturday and between 08:00 and 22:00 on Sundays and public holidays. Servicing includes loading and unloading goods from vehicles and putting rubbish outside the building.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan (July 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 8 You must screen the ductwork with a cladding so that it matches the colour and appearance of the traditional brickwork. You must then keep it in that condition. (C26HA)

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 (July 2016) 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)

- 9 You must provide each cycle parking space shown on the approved drawings prior to occupation. Thereafter the cycle spaces must be retained and the space used for no other purpose without the prior written consent of the local planning authority.

Reason:

To provide cycle parking spaces for people using the development as set out in Policy 6.9 (Table 6.3) of the London Plan 2015.

- 10 Within two months of the date of this decision you shall submit and have approved in writing by the local planning authority, a detailed servicing management strategy for the sui generis use to include process, storage locations, scheduling of deliveries and staffing. All servicing shall be undertaken in accordance with the approved strategy unless otherwise agreed in writing by the local planning authority. Should the Servicing Management Plan not be approved you must cease the sui generis use hereby approved immediately.

Reason:

To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in S42 of Westminster's City Plan (July 2016) and STRA 25, TRANS 20 and TRANS 21 of our Unitary Development Plan that we adopted in January 2007. (R23AC)

- 11 The premises hereby approved must not open to customers, and you must not allow customers on the premises, outside the hours:, 12:00 till 22:30 on weekdays and 10:00 till 22:30 on Saturdays and 10:00 till 18:00 on Sundays

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TACE9 of our Unitary Development Plan that we adopted in January 2007. (R05AB)

- 12 You must not provide more than 20 covers in the cafe element of the use at any one time.

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TACE9 of our Unitary Development Plan that we adopted in January 2007. (R05AB)

- 13 You must install the acoustic mitigation measures as detailed in the approved acoustic report at the same time as the plant is installed and maintain it in this form for as long as the plant remains in place.

**Reason:**

To safeguard the amenity of occupiers of adjoining premises by preventing noise and vibration nuisance as set out in STRA 16, STRA 17, ENV 6 and ENV 7 of our Unitary Development Plan that we adopted January 2007. (R39BB)

**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 (July 2016), 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 Conditions 3 and 4 control noise from the approved machinery. It is very important that you meet the conditions and we may take legal action if you do not. You should make sure that the machinery is properly maintained and serviced regularly. (I82AA)
- 3 Please contact our Environmental Health Service (020 7641 2971) to register your food business and to make sure that all ventilation and other equipment will meet our standards. Under environmental health law we may ask you to carry out other work if your business causes noise, smells or other types of nuisance. (I06AA)
- 4 One or more of the uses we have approved are referred to as being 'sui generis'. This means that the use or uses are not in any particular class. Any future plans to materially (significantly) change the use that we have approved will need planning permission. (I78AA)
- 5 Under condition 6 until you install the high level extract duct, you must not cook food in any way which is likely to cause a nuisance by smell. You must not, for example, grill, fry, toast, braise, boil, bake, hot smoke or roast food. But you can reheat food by microwave or convection oven as long as you do not need extractor equipment.

Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.