

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 27 June 2017	Classification For General Release	
Report of Director of Planning		Ward(s) involved West End	
Subject of Report	21 Berwick Street, London, W1F 0PZ		
Proposal	Installation of two openable sash windows within the existing shopfront.		
Agent	4M Group		
On behalf of	Mr Samir Maqedonci		
Registered Number	17/02862/FULL	Date amended/ completed	11 April 2017
Date Application Received	31 March 2017		
Historic Building Grade	Unlisted		
Conservation Area	Soho		

1. RECOMMENDATION

Grant conditional permission

2. SUMMARY

This application site is an unlisted building within the Soho Conservation Area, the Core Central Activities Zone (Core CAZ) and the West End Stress Area. The property comprises a basement and ground floor shop unit, which is currently trading as a café, with flats on the first and second floors. The café use is the subject of current enforcement investigations.

Planning permission is sought for the replacement of the shopfront glazing, which is set above a fixed stallriser, with two, openable, timber sash windows.

The key issues for consideration are:

- The impact of the proposals upon the amenity of neighbouring residential properties,
- The acceptability of the proposals upon the appearance of the building and the character and appearance of the conservation area.

Subject to conditions, the alterations are considered to comply with relevant Unitary Development Plan and City Plan policies and are therefore recommended for approval.

3. LOCATION PLAN



This production includes mapping data licensed from Ordnance Survey with the permission of the controller of Her Majesty's Stationary Office (C) Crown Copyright and /or database rights 2013. All rights reserved License Number LA 100019597

4. PHOTOGRAPHS



5. CONSULTATIONS

SOHO SOCIETY

No objection subject to conditions to restrict the permitted hours of window opening and to prevent the playing of amplified music when the windows are open.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 11

Total No. of replies: 0

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

This application site is an unlisted building within the Soho Conservation Area, the Core Central Activities Zone (Core CAZ) and the West End Stress Area. The property comprises a basement and ground floor shop unit, with flats on the upper floors.

The basement and ground floors are currently trading as a café (Class A3) although Council records indicate that the lawful use of the premises is for (Class A1) retail purposes. The use of the premises is the subject of current enforcement investigations.

The applicant has advised that the current café opening hours are between 08:00-22:30 on Monday to Wednesday, 08:00-00:00 (midnight) on Thursday-Saturday and 08:00-22:30 on Sunday.

The premises benefits from a premises licence which permits licensable activities (the sale of alcohol/late night refreshment) to take place between 10.00 and 23.30 hours on Monday to Wednesday, from 10.00 until midnight on Thursday to Saturday, from 11.00 until midnight on Sundays (from 10.00 until midnight on Sundays before Bank Holidays). A condition of the premises licence requires all external windows and doors to be closed at 21.00 hours.

6.2 Recent Relevant History

September 2014 for alterations and extensions on first and second floors in connection with the use of these floors as two flats. (RN: 14/05816/FULL)

23 January 2014: Application for a Temporary Flexible Use of the basement and ground floors as a cafe / restaurant (Class A3) for a 2 year period from 17th December 2013 (RN13/12735/TFU) - refused.

4 June 2014: Application for a Temporary Flexible Use of the basement and ground floors as a cafe / restaurant (Class A3) for a 2 year period from 10 March 2014 (14/02395/TFU) - refused.

Both applications were refused on the grounds that the intended café use had already commenced. The relevant legislation requires the applicant to notify the local planning

authority of the date when the proposed use will commence, prior to the commencement of the use.

Planning Enforcement investigations are currently taking place regarding an unauthorised change of use of the basement and ground floors from retail (Class A1) to restaurant/café use (Class A3). Records indicate that the premises were formerly occupied as a shop for the sale of wine (Class A1).

It is noted that there are tables and chairs on the highway outside of the premises. There is no record of planning permission having been granted for external seating. This matter is also the subject of a separate Enforcement Investigation.

7. THE PROPOSAL

Planning permission is sought to for alterations to the shopfront comprising the replacement of existing shopfront glazing, on either side of the main entrance door, with two openable sash windows, above the fixed stallriser. The windows would be formed in timber.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The application does not raise any land use issues. The premises are currently in café/restaurant use but Council records suggest that the lawful use is for Class A1 (retail) purposes and this change of use is the subject of current enforcement investigations. However, it is considered that the application can be determined on the basis of the lawful retail use. Should permission ultimately be granted for an alternative use, it may be considered appropriate to impose additional controls on shopfront opening. This issue is set out in detail below.

8.2 Townscape and Design

Fully openable doors or windows are not generally acceptable in traditional shopfronts. This is because they can create an uncharacteristic void when open, which detracts from the character of an area. Policy DES 5 of the City Council's Unitary Development Plan states that permission will generally be granted for new shopfronts *'where they relate satisfactorily to the design of the upper parts of the building'* and *'where the new shopfront is not designed to be entirely or largely openable, in the absence of local circumstances or established patterns of trading activity.'*

Furthermore, the City Council's Supplementary Planning Guidance 'Food and Drink Premises', (1999) also states that *'an opening shopfront often has folding or sliding doors, which, when open, create an opening in the shop frontage which may extend almost the full width of the ground floor. In most cases these shopfronts do not relate architecturally to the building in which they are installed, or to the street. Creating these openings within a terrace of more solid and traditional shopfronts can be harmful to the appearance of the street and the character and appearance of a conservation area...'*

However, the aforementioned SPG suggests that one solution may be for the installation of sliding sash windows within shopfronts. These do occur historically, often being associated with butchers and fishmongers shops. Although it is unlikely new sash windows would be permitted in a shopfront of historic or architectural significance, in this case, the shopfront, is not considered worthy of retention in its own right and would retain its traditional proportions and components.

The shopfronts in this part of Berwick Street do not have a single prevailing character. Many are modern in design. In this context, it is not considered that the proposals would be harmful to the character of the conservation area.

It is therefore considered that the proposed sliding sash windows are acceptable in design terms. The proposal is considered to comply with DES 5 and DES 9 of the City Council's Unitary Development Plan and is considered to preserve the character and appearance of this part of the Conservation Area.

8.3 Residential Amenity

Policy S29 of the City Plan aims to protect the amenity of residents from the effects of development. Similarly, Policies ENV 6 and ENV 7 of the UDP seek to control noise disturbance from development. Of particular relevance, is paragraph 9.108 of Policy ENV 7 which states that 'The City Council will discourage provision of openable shop fronts that would enable noise from inside the premises to be heard outside'.

The nearest residential properties are located on the upper floors of the application building. Records indicate that there are further residential properties on the upper floors of 20 Berwick Street, next door to the site. No objections have been received to this application. The Soho Society has raised no objection subject to conditions to restrict the permitted hours of window opening and to prevent the playing of amplified music when the windows are open.

Openable shopfronts will generally be resisted where there is the potential for internal noise to escape and cause disturbance to neighbouring residents. Given the proximity of flats on the upper floors of the building, the applicants initially requested for the shopfront windows to be opened between 08:00-22:00 Monday – Wednesday, 08:00-23:00 Thursday – Saturday, and between 08:00-22:30 on Sundays and Public Holidays. However, it is noted that the premises licence requires all external windows and doors to be closed at 21.00 hours. In these circumstances, it is considered appropriate to require the windows to be closed at this time.

Given the need to safeguard residents' amenity it is also recommended that a condition is imposed to restrict noise levels from within the premises when the shopfront windows are open. As the windows would be closed at 21.00 hours, and subject to this general noise condition, it is not considered necessary to impose a specific condition relating to the playing of amplified music. Subject to these controls, in this busy central location, it is not considered that the proposals would have a material impact upon the amenities of neighbouring residents.

It would ordinarily be unusual for a condition to be imposed restricting hours when shopfront windows may remain open for a premises within retail use, however, the

imposition of such a condition here is not considered to sanction any future application for A3 use.

8.4 Transportation/Parking

Not Applicable

8.5 Economic Considerations

Any economic benefits of the scheme are welcomed.

8.6 Access

Access arrangements to the premises are un-changed by this proposal

8.7 Other UDP/Westminster Policy Considerations

None

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

Not Applicable

8.12 Other Issues

None

9. BACKGROUND PAPERS

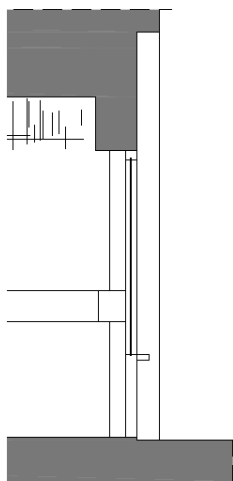
1. Application form
2. Response from Soho Society, dated 9 May 2017

(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

10. KEY DRAWINGS

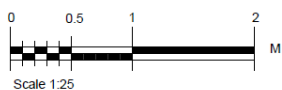
Existing Elevation



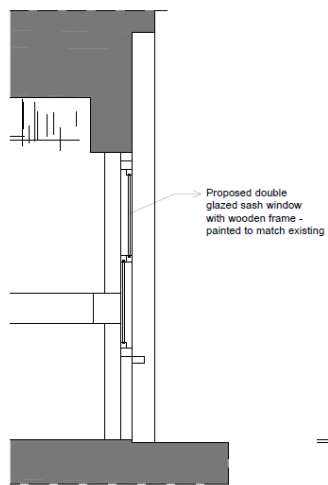
1 Existing Section



2 Existing Elevation



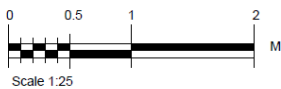
Proposed Elevation



1 Proposed Section



2 Proposed Elevation



Manufactures Specification:
 Window type: Sliding Sash box
 Frame: Painted timber frame to match existing
 Glass type: Double glazed unit
 Glass make up consists of: 4mm toughened X
 16mm air gap X 4mm toughened
 U- value: 1.5 W/mK.

DRAFT DECISION LETTER

Address: 21 Berwick Street, London, W1F 0PZ

Proposal: Installation of two openable sash windows within the existing shopfront.

Reference: 17/02862/FULL

Plan Nos: 2100 Rev. A

Case Officer: Adam Jones

Direct Tel. No. 020 7641 1446

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). (C11AB)

Reason:

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

- 3 All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings we have approved or are required by conditions to this permission. (C26AA)

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 (November 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)

- 4 You may only open the shopfront windows hereby approved between the following 08.00 and 21.00 hours each day.

Reason:

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

- 5 At times when the shopfront windows hereby permitted are open
- (1) Where noise emitted from the internal activity in the development will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the internal activity within the restaurant, 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 when the windows within the shopfront are open, 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 permitted hours of use. The activity-specific noise level should be expressed as LAeqTm,, and shall be representative of the activity operating at its noisiest.
- (2) Where noise emitted from the proposed internal activity in the development will contain tones or will be intermittent, the 'A' weighted sound pressure level from the internal activity within restaurant, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property when the windows within the shopfront are open, 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 permitted hours of use. The activity-specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.
- (3) Following completion of the development, you may apply in writing to the City Council for a fixed maximum noise level to be approved when the windows within the shopfront are open. This is to be done by submitting a further noise report including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:
- (a) The location of most affected noise sensitive receptor location and the most affected window of it;
- (b) Distances between the application premises and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (c) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (a) above (or a suitable representative position), at times when background noise is at its lowest during the permitted hours of use. This acoustic survey to be conducted in

- conformity to BS 7445 in respect of measurement methodology and procedures;
- (d) The lowest existing LA90, 15 mins measurement recorded under (c) above;
- (e) Measurement evidence and any calculations demonstrating that the activity complies with the planning condition;
- (f) The proposed maximum noise level to be emitted by the activity.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) 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 (November 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.

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 (November 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 You are advised that there are two on-going Enforcement Investigation regarding these premises. The first, (RN: 14/55425/I) relates to an unauthorised change of use of the basement and ground floors from retail (Class A1) to café use (Class A3). The second, (RN: 14/56266/N) relates to the placing of tables and chairs placed on the public highway outside the premises.

We may take legal action to stop the unauthorised activities. You are strongly advised to contact the Planning Enforcement Team in relation to the ongoing Enforcement Investigations as soon as possible. The Planning Enforcement Team can be contacted by:

Phone: 020 7641 8956

Email: planningenforcementteam@westminster.gov.uk

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.