

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 19 June 2018	Classification For General Release	
Report of Director of Planning		Ward(s) involved St James's	
Subject of Report	9 Russell Street, London, WC2B 5HZ,		
Proposal	Installation of kitchen air-supply and air-extract ducting and air-conditioning condenser units to rear with associated works.		
Agent	Euan Brown		
On behalf of	Red Farm London Ltd		
Registered Number	18/00997/FULL	Date amended/ completed	30 May 2018
Date Application Received	5 February 2018		
Historic Building Grade	Unlisted		
Conservation Area	Covent Garden		

1. RECOMMENDATION

1. Grant planning permission.

2. SUMMARY

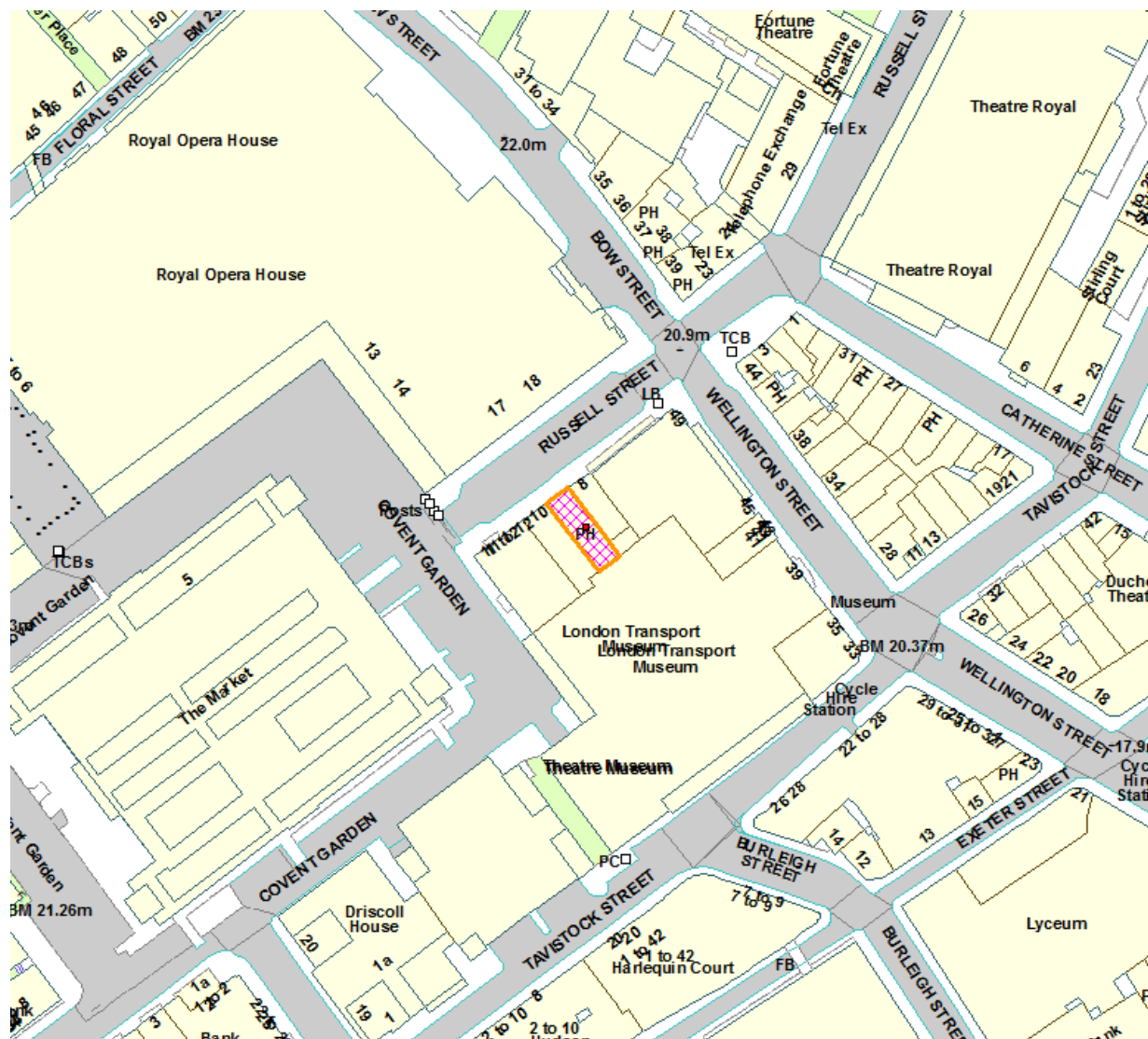
An application has been submitted seeking planning permission for the installation of kitchen air-supply and air-extract ducting and air conditioning condenser units to the rear of the No. 9 Russell Street in conjunction with the use of the property as a restaurant (Class A3).

The key issues for consideration are:

- * The impact of the proposals on the appearance of the building and character of the surrounding Covent Garden Conservation Area.
- * The impact of the proposals on the amenity of neighbouring residents.

The proposals are considered to comply with the Council's policies in relation to design, conservation and amenity as set out in Westminster's City Plan: Strategic Policies (City Plan) and the Unitary Development Plan (UDP) and the application is recommended for refusal.

3. LOCATION PLAN



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4. PHOTOGRAPHS



Front Elevation

5. CONSULTATIONS

COVENT GARDEN COMMUNITY ASSOCIATION

Objects to the installation of amount of plant and equipment directly adjacent to residents' noise-sensitive windows. The applicant has ignored planning regulations, installing plant and equipment without permission after planning permission had been expressly refused. The applicant has shown no concern for the impact of the commercial use on local residents. The amount of proposed plant would result in visual clutter when considered cumulatively with existing surrounding plant.

COVENT GARDEN AREA TRUST

Acknowledge concerns of local residents and CGCA. No objection on grounds of impact on conservation area or architectural character of area. Concerns that work has progressed without planning permission and have advised applicant that subject to consent been given works must be completed prior to occupation of the premises.

ENVIRONEMNTAL HEALTH

No objection, subject to conditions.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

1. Original Consultation

No. Consulted: 45

Total No. of replies: 5

No. of objections: 5

No. in support: 0

Five letters of objection, from Soho Housing Association and residents of two flats at the adjoining No. 10 Russell Street, on the following grounds:

Design

*Negative impact on conservation area

Amenity

*Noise and vibration

*Loss of light

*Impact on view

Other

*Not enough of an improvement on previously refused scheme to merit approval

*Queries over accuracy of noise assessment

*Plant has been installed without permission.

2. Consultation on revised proposals (17 May 2018)

No. Consulted: 53

Total No. of replies: 3

No. of objections: 3

No. in support: 0

Three letters of objection, from residents of the three flats at the adjoining No. 10 Russell Street, on the following grounds:

Design

*Proposals are very large and not in keeping with conservation area.

Amenity

*Noise and vibration

*Loss of light

*Impact on view

*Sense of enclosure.

Other

*Concerns over accuracy of noise assessment.

*Queries over daylight and sunlight assessment

*Developers have ignored local residents and council and continued with the development.

*No notification received

3. Consultation on further revised proposals (30 May 2018)

No. Consulted: 55

Total No. of replies: Any responses to be reported verbally at committee

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

No. 9 Russell Street is an unlisted building within the Covent Garden Conservation Area and falls within the Central Activities Zone in a mixed commercial and residential area. The property comprises lower ground, ground and four upper storeys. The application property is currently vacant having previously been occupied as a bar with ancillary bar use on the upper floors. (Belushi's). The nearest residential properties are to the west of the site at 10 Russell Street. The nearest listed building is the grade II London Transport Museum to the south.

6.2 Recent Relevant History

Planning permission was refused in January 2018 for the installation of kitchen air-supply and air-extract ducting and air conditioning condenser units to rear with associated works, on the grounds of its appearance in the conservation area, sense of enclosure and potential loss of light and insufficient information with respect to noise.

Planning permission was granted in March 2015 for the change of use of first, second, third and fourth floors from bar/ancillary bar (Class A4) to three residential flats (Class C3). External works were approved including a rear extension at third and fourth floor

levels, installation of a replacement shopfront, six air conditioning units and acoustic screen at roof level.

7. THE PROPOSAL

Planning permission is sought for the installation of a full height kitchen air-supply and air-extract ducting and air conditioning condenser units to the rear elevation. The applicant is Red Farm Ltd who are seeking to operate the application premises as a Chinese style restaurant. Works to install a kitchen duct have already commenced on site. However the application has been revised during the course of consideration in an attempt to reduce the impact on the occupiers of flats within No. 10 Russell Street who have windows that overlook the site. The air conditioning condenser units are proposed to be installed on the rear of the closet wing at first and second floor level

8. DETAILED CONSIDERATIONS

8.1 Land Use

The kitchen extract duct and air conditioning units do not raise any land use issues. However, it is understood that they are required in connection with the use of the premises as a restaurant by Red Farm Ltd. This application does not seek planning permission for the change of use of the premises to Class A3 as the applicant is seeking to change the use under permitted development. On this basis this report does not consider the change of use to restaurant and conditions, such those relating to hours of operation and capacity, are not applicable.

Townscape and Design

The application site previously had a kitchen extract duct running up the rear elevation of the premises. This has been removed and works have commenced on the new duct. The proposed duct is substantially larger than the previous duct, and following concerns relating to its amenity impact, it has been redesigned to be sited partly on the closet wing. The revised location makes the duct more prominent than its previously considered location abutting the main rear wall of the application site.

Given the scale of the duct, the applicant was asked to consider locating some or all of the structure inside the building. However, the applicant has advised that due to the stepped profile of the rear of the building it is only feasible to run the extract duct internally from basement to ground floor level. To extend the duct further internally would entail structural work at upper floor level, the relocation of stairs and significant loss of commercial floor space. The applicant argues that the loss of commercial floorspace would make the business unviable.

Although some limited private views do exist from the upper storeys of surrounding buildings, the rear of the building is obscured from view due to the presence of the Grade II listed London Transport Museum. On this basis the proposed ductwork can only be viewed from a small number of private upper floor windows that overlook the site and this is in the context of an already cluttered set of rear elevations. Whilst the proposed duct work would not preserve or enhance the Convent Garden Conservation Area and

would result in some harm, this would be lessened by the very restricted visibility of it from both public and private vantage points.

In such cases, the harm caused must be weighed against any public benefits which the scheme might secure. In this case the proposals would provide public benefits in the form of securing a viable tenant for the commercial unit. In addition the use of the premises as a restaurant rather than a bar is considered to be a public benefit as it will enhance the character and function and local environmental quality of this part of Covent Garden. It is considered that the low degree of harm caused to the conservation area in this case would be outweighed by these benefits.

A condition is recommended requiring that the ductwork and acoustic screening is painted to match the prevailing colour of the building's brickwork.

There is no objection in design terms to the air conditioning units.

On balance the works are considered acceptable in design terms in line with policies DES1, DES5, DES6 and DES9 of Westminster's Unitary Development Plan and policy S25 and S28 of Westminster's City Plan: Strategic Policies.

8.2 Residential Amenity

The scheme has been revised to take account of the impact of the duct on residential amenity. The revised scheme moves the duct further away from windows in 10 Russell Street. The council has received letters of objection from neighbouring residents that directly overlook the site at first, second and third floor levels and from the Covent Garden Community Association.

Noise

The proposed ductwork and air conditioning condenser units, which will operate between 08:00 hours and 00:00 hours daily, will be acoustically lagged and screened appropriately to ensure that noise from the plant complies with the City Council's policies at all times. An acoustic report has been submitted in support of the application which has been assessed by Environmental Health who have no objection subject to imposition of the City Council's standard noise conditions.

However in view of residents' strong concerns on this matter, a further condition requiring submission of a post-commissioning noise survey is also recommended to demonstrate that the plant/ machinery complies with the noise criteria applied and to include details of any amendments to the acoustic screen or other changes to proposed attenuation or acoustic lagging and any changes to plant.

Subject to imposition of the recommended conditions, it is not considered that the proposals will have a detrimental impact on residential amenity in terms of noise.

Daylight and Sunlight

A daylight and sunlight assessment has been submitted to assess the impact of the proposed works upon the light levels of the windows to the first and second floor flats at 10 Russell Street. The report concludes that the proposals will comply with the BRE's vertical sky component (VSC) guidelines, and are compliant with the BRE guidelines in

all other regards (with any transgressions falling within the guideline's permissible values). A sunlight assessment is not necessary as there are no affected windows that face the site that are within 90 degrees of due south.

The affected flats at first and second floor levels each have a further window and partially glazed door on their western elevation that face into an internal courtyard. As such the flank windows that face the application site, which have been the subject of the daylight and sunlight assessment, are not the only windows serving these two rooms.

Sense of Enclosure

The scheme that was originally submitted to the council for determination, and which has been partly constructed, was considered unacceptable to officers in terms of its impact to the second floor flat and its living room. This would have involved a large acoustic screen (necessary to reduce the noise impact) to be located within 1.7m of the living room window. The window to the first floor flat has an opaque treatment to the lower half of the window and is therefore less affected. The windows to the third floor flat are also less affected as they are set back behind a roof terrace.

Revisions to the scheme were therefore specifically sought by officers in an attempt to reduce the impact on the second floor flat. The revised scheme currently being considered has reconfigured the ductwork in such a way that the acoustic screen is no longer required and the ductwork has been set back to approximately 2.5m from the affected window. This has made the ductwork more prominent in terms of its design considerations but is considered to satisfactorily address the sense of enclosure concerns raised by the objectors.

As such the proposals are considered acceptable in amenity terms compliant with policies S29 of the City Plan and ENV13 of the UDP.

8.3 Transportation/Parking

The application does not propose any changes to the existing situation.

8.4 Economic Considerations

The scheme will allow this property to be brought into beneficial commercial use resulting in economic benefits through job creation.

8.5 Access

Access arrangements will remain unaltered by the proposals.

8.6 London Plan

This application raises no strategic issues.

8.7 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.

8.8 Planning Obligations

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

8.9 Environmental Impact Assessment

The proposals are of an insufficient scale to require an environmental assessment.

8.10 Other Issues

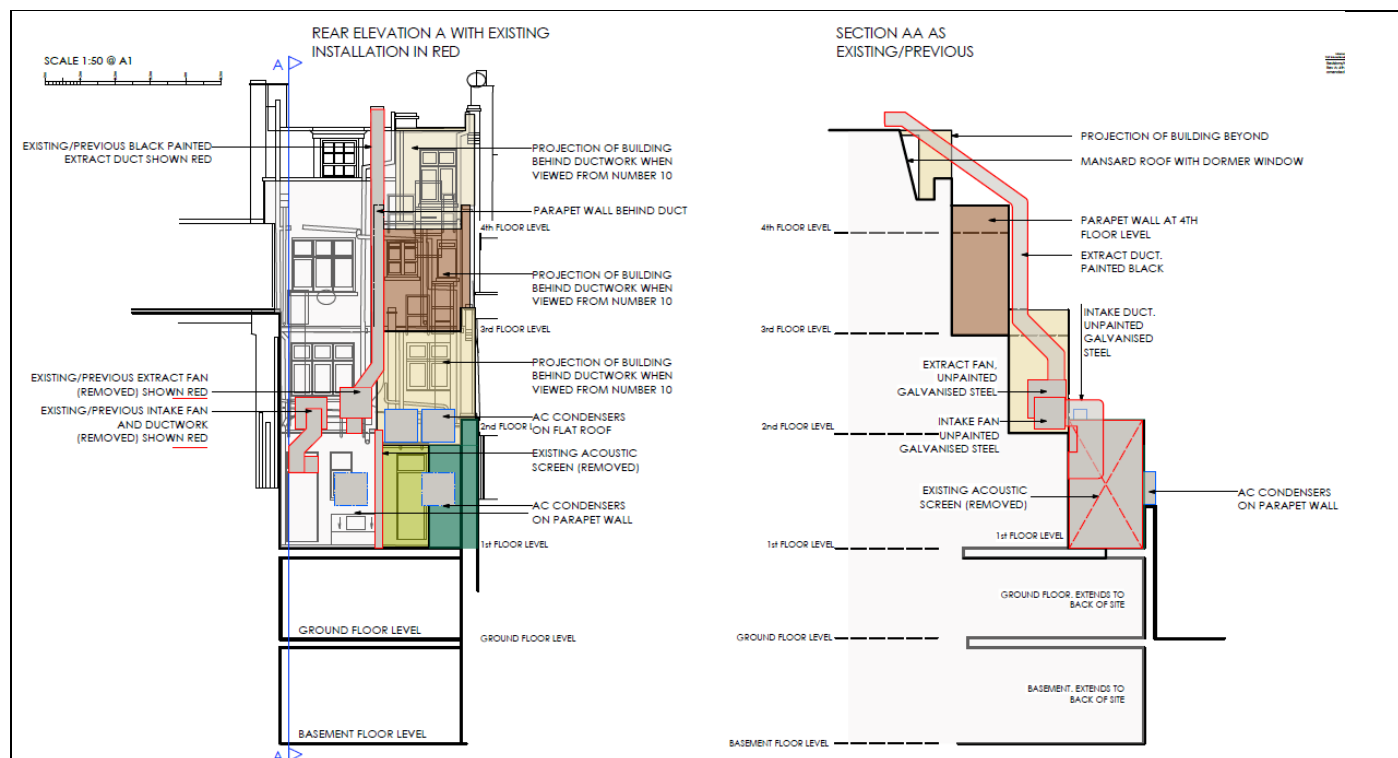
The objections have raised the issue of the activity from the use of the property as a restaurant. The property is currently capable of operating as a bar (Class A4) subject to the requisite licensing requirements and as previously considered the application does not seek express permission for the change of use of the premises, given permitted change of use rights in this regard.

The concern of residents regarding the commencement of works before permission has been obtained is noted. However, whilst regrettable, this is not a reason in itself to refuse the application.

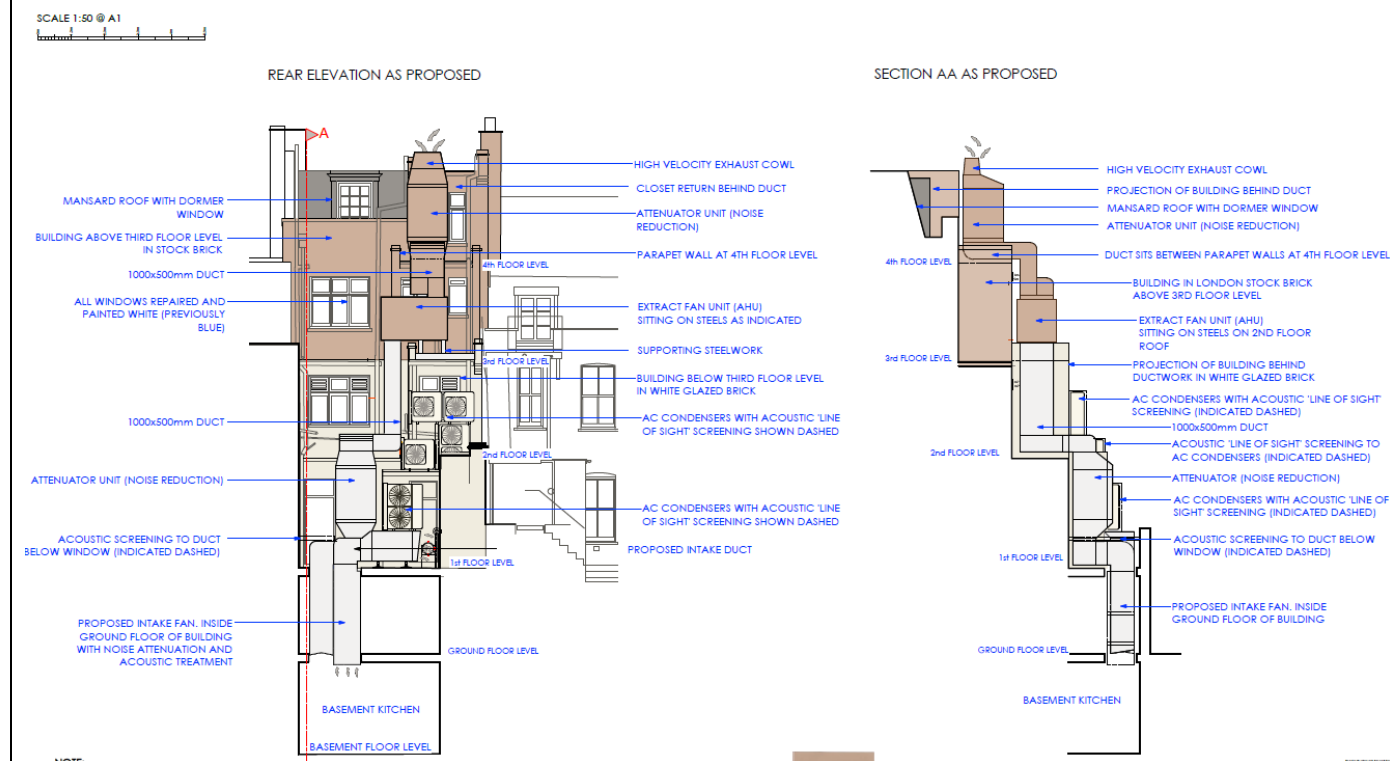
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: **MATTHEW MASON** BY EMAIL AT mmason@westminster.gov.uk.

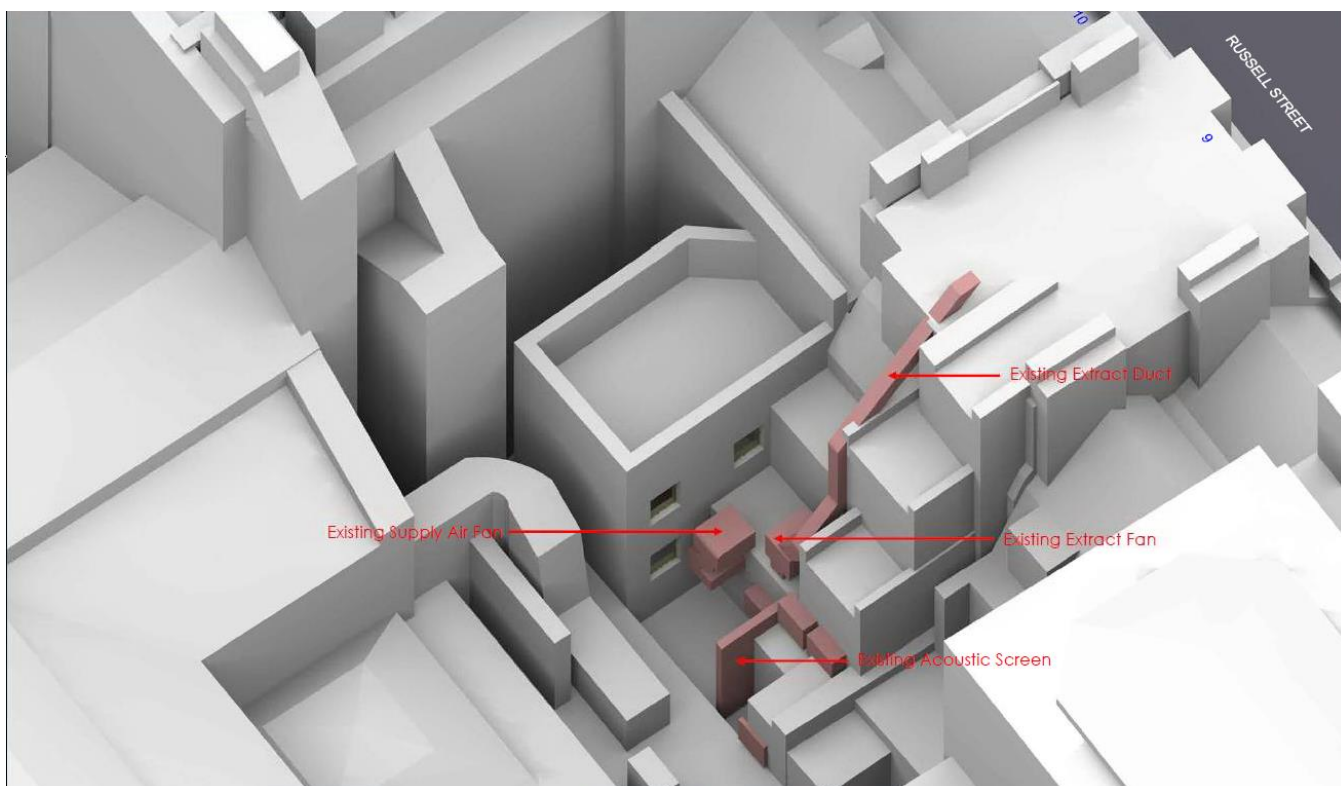
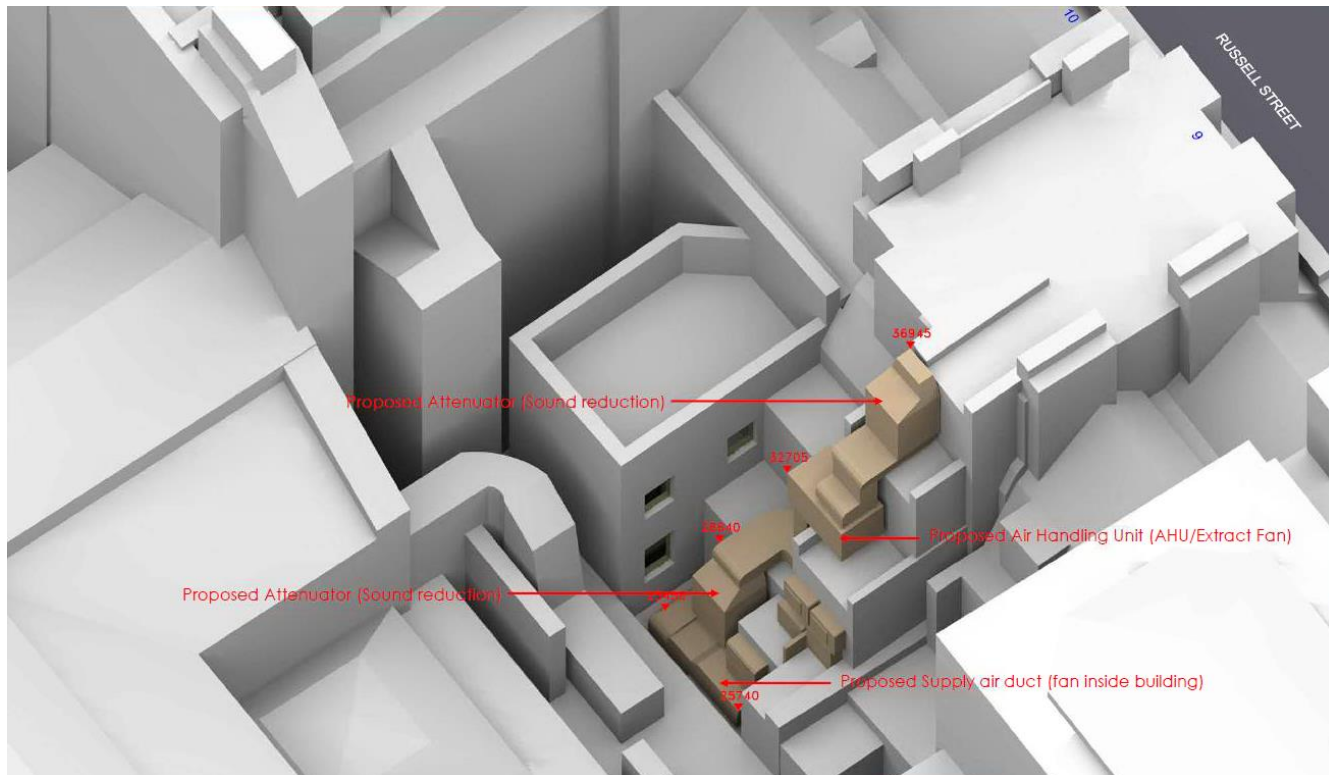
KEY DRAWINGS



Existing Rear Elevation



Proposed Rear Elevation

**Existing 3D Model View****Proposed 3D Model View**

DRAFT DECISION LETTER

Address: 9 Russell Street, London, WC2B 5HZ,

Proposal: Installation of kitchen air-supply and air-extract ducting and air-conditioning condenser units to rear with associated works.

Plan Nos: Site location plan; 07/005 Rev. E; 07/006 Rev. G; 07/010 Rev. A; Daylight and Sunlight Report dated May 2018; prepared by Point 2 Surveyors Ltd; Planning Compliance Report 13208-NIA-01 Rev. A dated 1 June 2018, prepared by Clement Acoustics.

Case Officer: Sebastian Knox

Direct Tel. No. 020 7641 4208

Recommended Condition(s):

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

Reason:

In 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 Sunday, 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 Saturday, Sunday, 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 permit 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 residents. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and NV 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 Covent Garden 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 must paint the ductwork and acoustic screening so that it matches the prevailing colour of the building's brickwork. You must apply to us for approval of the paint colour(s) you will use and must not undertake this part of the development until we have approved what you have sent us. You must then carry out the work using the approved colour(s) and must maintain it in that condition for as long as it remains in place.

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 Covent Garden 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)

- 5 (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 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.
- (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 15 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 L A90, 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:

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, 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.

- 6 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.

- 7 The plant/machinery hereby permitted shall not be operated except between 08:00 hours and 00:00 hours daily.

Reason:

To safeguard the amenity of occupiers of noise sensitive properties and the area generally by ensuring that the plant/machinery hereby permitted is not operated at hours when external background noise levels are quietest thereby preventing noise and vibration nuisance as set out in S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007.

- 8 You must not operate the plant/ machinery that we have allowed (other than to carry out the survey required by this condition) until you have carried out and sent us a post-commissioning

noise survey and we have approved the details of the survey in writing. The post-commissioning noise survey must demonstrate that the plant/ machinery complies with the noise criteria set out in conditions 5 and 6 of this permission and include details of any amendments to the acoustic screen or other changes to proposed attenuation or acoustic lagging and any changes to plant.

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, 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 When carrying out building work you must do all you can to reduce noise emission and take suitable steps to prevent nuisance from dust and smoke. Please speak to our Environmental Health Service to make sure that you meet all requirements before you draw up the contracts for demolition and building work.

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

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

Phone: 020 7641 2000

Our Environmental Health Service may change the hours of working we have set out in this permission if your work is particularly noisy. Deliveries to and from the site should not take place outside the permitted hours unless you have our written approval. (I50AA)

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

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

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

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

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

- 4 You are advised to permanently mark the plant/ machinery hereby approved with the details of this permission (date of grant, registered number). This will assist in future monitoring of the equipment by the City Council if and when complaints are received.
- 5 Conditions 5, 6 and 7 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)