



City of Westminster

# Committee Agenda

Title:

**Planning Applications Sub-Committee (3)**

Meeting Date:

**Tuesday 19th April, 2022**

Time:

**6.30 pm**

Venue:

**Rooms 18.01 & 18.03, 18th Floor, 64 Victoria Street, London, SW1E 6QP**

Members:

**Councillors:**

Jim Glen (Chairman)  
Eoghain Murphy  
Guthrie McKie  
Selina Short



**Members of the public are welcome to attend the meeting and listen to the discussion Part 1 of the Agenda.**

**Committee members will attend the meeting in person at Westminster City Hall. The Committee will be a hybrid Meeting and will be live broadcast via Microsoft Teams. Admission to the public gallery is by a pass, issued from the ground floor reception from 6.00pm.**

**If you have a disability and require any special assistance please contact the Committee Officer (details listed below) in advance of the meeting.**

**If you require any further information, please contact the Committee Officer, Georgina Wills, Committee and Governance Officer.**

**Tel: 07870 548348; Email: [gwills@westminster.gov.uk](mailto:gwills@westminster.gov.uk)  
Corporate Website: [www.westminster.gov.uk](http://www.westminster.gov.uk)**

**Note for Members:** Members are reminded that Officer contacts are shown at the end of each report and Members are welcome to raise questions in advance of the meeting. With regard to item 2, guidance on declarations of interests is included in the Code of Governance; if Members and Officers have any particular questions they should contact the Head of Legal & Democratic Services in advance of the meeting please.

## **AGENDA**

### **PART 1 (IN PUBLIC)**

#### **1. MEMBERSHIP**

To note any changes to the membership.

#### **2. DECLARATIONS OF INTEREST**

To receive declarations by members and officers of the existence and nature of any personal or prejudicial interests in matters on this agenda.

#### **3. MINUTES**

To sign the minutes of the last meeting as a correct record of proceedings.

#### **4. PLANNING APPLICATIONS**

Applications for decision

##### **Schedule of Applications**

Members of the public are welcome to speak on the specific applications at the virtual planning committee meeting.

To register to speak and for guidance please visit:

<https://www.westminster.gov.uk/planning-committee>

Please note that you must register by 12 Noon on the Friday before the Committee meeting

In the event that you are successful in obtaining a speaking slot at the hybrid meeting please read the guidance, in order to familiarise yourself with the process prior to joining the remote meeting.

All committee meetings open to the public are being broadcast live using Microsoft Teams. For information on participating in the virtual Committee please see the following link

<https://www.westminster.gov.uk/stream-council-meetings>

**(Pages 5 - 8)**

To access the recording after the meeting please revisit the Media link

- |    |   |                          |
|----|---|--------------------------|
| 1. | <b>CAVENDISH SQUARE, LONDON, W1G 9DB</b>          | <b>(Pages 13 - 34)</b>   |
| 2. | <b>167 OXFORD STREET, LONDON, W1D 2JP</b>         | <b>(Pages 35 - 46)</b>   |
| 3. | <b>AUDLEY SQUARE, LONDON</b>                      | <b>(Pages 47 - 62)</b>   |
| 4. | <b>98 WESTBOURNE GROVE, LONDON, W2 5RN</b>        | <b>(Pages 63 - 92)</b>   |
| 5. | <b>90D CLIFTON HILL, LONDON, NW8 OJT</b>          | <b>(Pages 93 - 110)</b>  |
| 6. | <b>48 &amp; 49 BLOMFIELD ROAD, LONDON, W9 2PD</b> | <b>(Pages 111 - 136)</b> |

**PART 2 (IN PRIVATE)**

**RECOMMENDED:** That under Section 100 (a) (3) and Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended), the public and press be excluded from the meeting for the following Item of Business because it involves the likely disclosure of exempt information relating to the financial or business affairs of any particular person (including the Authority holding that information) and it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Items	Grounds	Para. of Part 1 of Schedule 12a of the Act
6 & 7	The Reports involve the likely disclosure of exempt information relating to financial or business affairs.	Para. 3

**Stuart Love**  
**Chief Executive**  
**7 April 2022**

## Order of Business

At Planning Sub-Committee meetings the order of business for each application listed on the agenda will be as follows:

<b>Order of Business</b>
i) Planning Officer presentation of the case
ii) Applicant and any other supporter(s)
iii) Objectors
iv) Amenity Society (Recognised or Semi-Recognised)
v) Neighbourhood Forum
vi) Ward Councillor(s) and/or MP(s)
vii) Council Officers response to verbal representations
viii) Member discussion (including questions to officers for clarification)
ix) Member vote

These procedure rules govern the conduct of all cases reported to the Planning Applications Sub-Committees, including applications for planning permission; listed building consent; advertisement consent, consultations for development proposals by other public bodies; enforcement cases; certificates of lawfulness; prior approvals, tree preservation orders and other related cases.



CITY OF WESTMINSTER

## MINUTES

### Planning Applications Sub-Committee (3)

#### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Planning Applications Sub-Committee (3)** Committee held on **Tuesday 22nd February, 2022**, Rooms 18.01 & 18.03, 18th Floor, 64 Victoria Street, London, SW1E 6QP.

**Members Present:** Councillors Jim Glen (Chairman), Guthrie McKie, Selina Short and Antonia Cox

#### 1 MEMBERSHIP

1.1 It was noted that Councillor Antonia Cox had replaced Councillor Eoghain Murphy.

#### 2 DECLARATIONS OF INTEREST

2.1 Councillor Glen explained that a week before the meeting, all four Members of the Sub-Committee were provided with a full set of papers including a detailed officer's report on each application; together with bundles of every single letter or e-mail received in respect of every application, including all letters and emails containing objections or giving support. Members of the Sub-Committee read through everything in detail prior to the meeting. Accordingly, if an issue or comment made by a correspondent was not specifically mentioned at this meeting in the officers' presentation or by Members of the Sub-Committee, it did not mean that the issue had been ignored. Members will have read about the issue and comments made by correspondents in the papers read prior to the meeting.

#### 3 MINUTES

##### 3.1 RESOLVED:

That the minutes of the meeting held on 21 December 2021 be signed by the Chair as a correct record of proceedings

#### 4 TREE PRESERVATION ORDER NO. 683 - 17 BLOMFIELD ROAD, LONDON W9 1AD

Tree Preservation Order No. 683 – 17 Blomfield Road London W9 1AD

Sam Robinson QC addressed the Sub-Committee in objection to the TPO being confirmed.

**RESOLVED UNANIMOUSLY**

That the Tree Preservation Order No. 683 (2021) be confirmed without modification with permanent effect.

**5 PLANNING APPLICATIONS**

**1 47 GREAT MARLBOROUGH STREET LONDON**

Enlargement of 4th floor residential flat (Class C3), erection of a rooflight over a rear terrace to create a repositioned bathroom for the flat. (Retrospective).

**RESOLVED UNANIMOUSLY**

That conditional permission be granted.

**2 46A GREAT MARLBOROUGH STREET LONDON W1F 7JW**

Erection of rear extensions at third and fourth floor use as offices (Class E) and installation of an air conditioning unit within an existing enclosure at rear 1st floor level.

A Late representation was received from Peacock and Smith (18.02.22).

**RESOLVED UNANIMOUSLY**

That conditional permission be granted

**3 6 BALFOUR PLACE LONDON W1K 2AX**

Variation of Condition 1 of planning permission dated 25 September 2020 (RN: 20/04800/FULL) for, 'Erection of infill extension at basement level in order to enlarge existing office (Class B1), use of part ground floor on Mount Street elevation as a shop (Class A1) accessed from existing bay, erection of roof extension to enlarge existing flat (Class C3), insertion of new windows and doors on the north and east elevations, creation of a residential terraces at third floor level and provision of plant within existing vaults'; NAMELY, to insert a door in place of a window at basement floor level and alter the design of a dormer window at 5th floor level. (Application under Section 73 of the Act).

The presiding officer raised in his presentation an error in the description of development in the Committee report, as the date of the planning permission being varied by this Section 73 planning application was 25 September 2020 and not 29 July 2020.

An Additional representation was received from a local resident (Date Unknown)

Late Representations were received from Councillor Timothy Barnes (22.02.22), Councillor Johnathan Glanz (22.02.22) & (22.02.22) and a local resident (22.02.22).

Peter Martindale addressed the Sub-Committee in objection to the application.

**RESOLVED (For Councillors Jim Glen, Selina Short and Guthrie McKie. Against Councillor Antonia Cox)**

That conditional permission be granted.

**PART 2 (CONFIDENTIAL)**

The Chair moved and it was

**RESOLVED:** That under Section 100 (a) (4) and Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended), the public and press be excluded from the meeting for the following Item of Business because it involves the likely disclosure of exempt information relating to the financial or business affairs of any particular person (including the Authority holding that information) and it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**4 63 CARLTON HILL, LONDON, NW8 0EN**

1 x London plane (T4): Fell

**RESOLVED UNANIMOUSLY**

That consent be refused.

The Meeting ended at 8.20 pm

**CHAIRMAN:** \_\_\_\_\_

**DATE** \_\_\_\_\_

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# Agenda Annex

CITY OF WESTMINSTER  
 PLANNING APPLICATIONS SUB COMMITTEE – 19th April 2022  
 SCHEDULE OF APPLICATIONS TO BE CONSIDERED

Item No	References	Site Address	Proposal	Applicant
1.	<b>RN(s):</b> 1) 22/01162/F ULL 2) 22/01127/A DV  West End	Cavendish Square London W1G 9DB	1. Erection of a Spiegeltent touring structure (with an internal capacity of up to 600), a box office, two bar areas, seven catering units, toilets, storage, outdoor seating areas and fencing with lighting and associated plant in conjunction with use of Cavendish Square for the Underbelly Festival at Cavendish Square 2022 (Sui Generis), with a maximum of 2,000 visitors at any one time, for a temporary period from 28 April 2022 to 31 July 2022. Installation and deinstallation will take place over the periods between 13 April 2022 and 8 August 2022.  2. Temporary display of signages at Cavendish Square in association with the Underbelly Festival at Cavendish Square 2022 over the periods between 28 April 2022 to 31 July 2022, with installation and deinstallation taking place over the periods between 13 April 2022 and 8 August 2022.	Underbelly Limited
	<b>Recommendation</b> 1. Grant conditional permission. 2. Grant conditional advertisement consent			
Item No	References	Site Address	Proposal	Applicant
2.	<b>RN(s):</b> 22/00426/FULL  West End	167 Oxford Street London W1D 2JP	Use of basement as an events space (sui generis).	Frasers Group PLC
	<b>Recommendation</b> Grant conditional permission.			
Item No	References	Site Address	Proposal	Applicant
3.	<b>RN(s):</b> 21/08677/FULL  West End	Audley Square London	Erection of a plinth and public art sculpture, and associated works within Audley Square.	CAUDWELL PROPERTIES (109) LIMITED
	<b>Recommendation</b>  1(i) Does the Sub-Committee consider that the additional information submitted and the results of the public consultation exercise address the concerns previously expressed? (ii) If so, grant conditional permission subject to completion of a S106 unilateral undertaking to secure the following:  a) Lighting of the public art, b) the proposed structural support for the public art, c) a maintenance programme for the public art, d) public liability insurance for the public art,			

CITY OF WESTMINSTER  
 PLANNING APPLICATIONS SUB COMMITTEE – 19th April 2022  
 SCHEDULE OF APPLICATIONS TO BE CONSIDERED

	<p>e) the proviso that the Council can require the removal or remove the public art itself, and that the applicant is required to fund all associated costs, including reinstatement of the highway to the Highway Authority's satisfaction,</p> <p>f) the cost of monitoring the agreement,</p> <p>g) costs of the stopping-up process; and</p> <p>h) a commuted sum of £50,000 for maintenance of the public art</p> <p>2. If the S106 unilateral undertaking has not been completed within six weeks then:</p> <p>a) The Director of Place Shaping and Town Planning shall consider whether it would be possible and appropriate to issue the permission with additional conditions attached to secure the benefits listed above. If so, the Director of Place Shaping and Town Planning is authorised to determine and issue such a decision under Delegated Powers; however, if not;</p> <p>b) The Director of Place Shaping and Town Planning shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits which would have been secured; if so, the Director of Place Shaping and Town Planning is authorised to determine the application and agree appropriate reasons for refusal under Delegated Powers.</p>
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Item No	References	Site Address	Proposal	Applicant
4.	<p><b>RN(s):</b> 21/01858/FULL</p> <p>Bayswater</p>	<p>98 Westbourne Grove London W2 5RU</p>	<p>Variation of conditions 2 and 3 of planning permission dated 27 October 2015 (RN: 15/04113/FULL) which itself varied condition 13 (tables and chairs) of planning permission dated 07 February 2003 (RN:02/03540) for Part demolition / redevelopment to provide new buildings, part alterations/extensions (including listed building) to provide 36 flats, 2 live-work units, retail, restaurant facilities and 34 parking spaces in basement with associated works; namely to remove restrictions outside of No. 98 Westbourne Grove (previously Cote restaurant) only. NAMELY, to allow takeaway and delivery sales from the premises, with delivery drivers utilising the motorcycle bay on Hereford Road outside of 20-22 Hereford Road and allow a small ancillary bar area within the restaurant to serve diners at the restaurant and to provide bar-style seating areas.</p>	13th St Hospitality

**Recommendation**  
 Grant conditional permission

Item No	References	Site Address	Proposal	Applicant
5.	<p><b>RN(s):</b> 21/08061/FULL 21/08062/LBC</p> <p>Abbey Road</p>	<p>90D Clifton Hill London NW8 0JT</p>	<p>Installation of timber decking with provision for drainage and retention of black painted railings to terrace (Linked with 21/08062/LBC)</p>	Mr Zein Khan

**Recommendation**

1. Grant conditional permission
2. Grant conditional listed building consent.
3. Agree reasons for granting conditional listed building consent as set out in Informative 1 attached to the draft decision letter.

CITY OF WESTMINSTER  
 PLANNING APPLICATIONS SUB COMMITTEE – 19th April 2022  
 SCHEDULE OF APPLICATIONS TO BE CONSIDERED

**CONFIDENTIAL ITEMS**

The following items are due to be published on the “confidential” part of the agenda as the reports involve the likely disclosure of exempt information relating to financial or business affairs.

Item No	References	Site Address	Proposal	Applicant
6.	RN(s): 22/01230/TPO  Little Venice	49 Blomfield Road London W9 2PD	2 x lime (T5 and T6): fell	Property Risk Inspection
	<b>Recommendation</b> Refuse consent			
Item No	References	Site Address	Proposal	Applicant
7.	RN(s) : 22/01229/TPO  Little Venice	48 Blomfield Road London W9 2PD	1 x Tree of Heaven (T4): fell	Property Risk Inspection
	<b>Recommendation</b> Refuse consent			

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# Agenda Item 1

Item No.

1

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 19th April 2022	<b>Classification</b> For General Release	
<b>Report of</b> Director of Place Shaping and Town Planning		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	<b>Cavendish Square, London, W1G 9DB</b>		
<b>Proposal</b>	<p>1. Erection of a Spiegel tent touring structure (with an internal capacity of up to 600), a box office, two bar areas, seven catering units, toilets, storage, outdoor seating areas and fencing with lighting and associated plant in conjunction with use of Cavendish Square for the Underbelly Festival at Cavendish Square 2022 (Sui Generis), with a maximum of 2,000 visitors at any one time, for a temporary period from 28 April 2022 to 31 July 2022. Installation and deinstallation will take place over the periods between 13 April 2022 and 8 August 2022.</p> <p>2. Temporary display of signages at Cavendish Square in association with the Underbelly Festival at Cavendish Square 2022 over the periods between 28 April 2022 to 31 July 2022, with installation and deinstallation taking place over the periods between 13 April 2022 and 8 August 2022.</p>		
<b>Agent</b>	Gerald Eve LLP		
<b>On behalf of</b>	Underbelly Limited		
<b>Registered Number</b>	22/01162/FULL 22/01127/ADV	<b>Date amended/ completed</b>	22 February 2022
<b>Date Application Received</b>	22 February 2022		
<b>Historic Building Grade</b>			
<b>Conservation Area</b>	Harley Street		

## 1. RECOMMENDATION

1. Grant conditional permission.
2. Grant conditional advertisement consent.

## 2. SUMMARY

Permission is sought for the use of Cavendish Square for a pop-up event for a temporary period of 3 months from 28 April. The proposals include a temporary theatre to the north-east of the Square together with seven food stalls and two bars and associated adverts. The event will be operated by Underbelly who have an established record of running festivals and outdoor events in the UK. Planning permission and advertisement consent were granted for similar proposals in 2021.

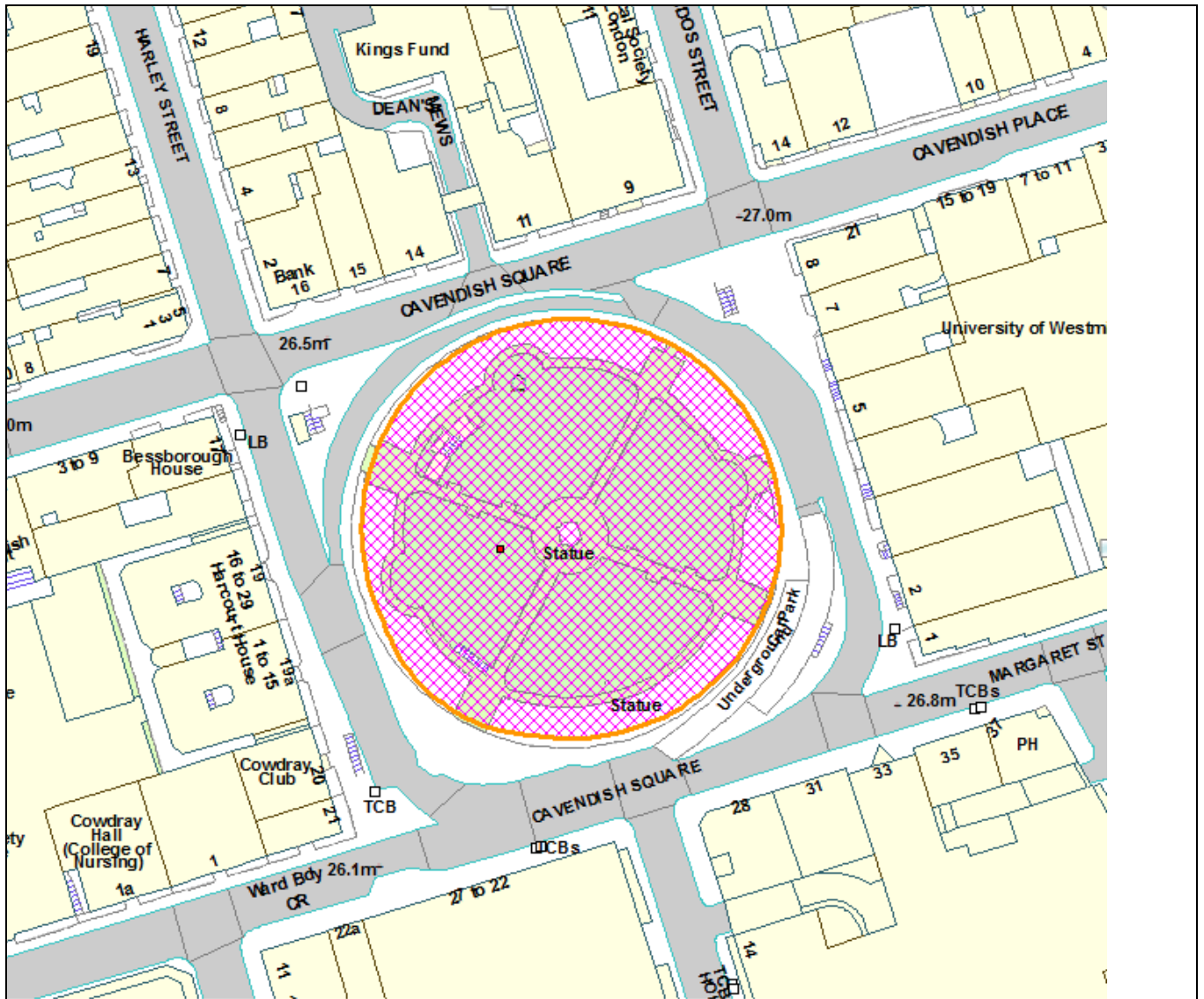
The key issues for consideration are:

- The acceptability of using the Square as an entertainment venue in land use and amenity terms.
- The impact of the structures on the townscape, the character and appearance of the Harley Street Conservation Area.

Cavendish Square is a sensitive historic environment of high significance. The proposed structures and advertisements will occupy a large part of the gardens and will be highly visible from the surrounding area. They are considered to have a harmful impact on the character of the gardens, the character and appearance of this part of the Harley Street Conservation Area and the setting of adjacent listed buildings. On the basis that it is only intended to be in place for a period of three months, it is considered that the impact on the heritage assets is one of less than substantial harm, because of the temporary nature of the structures and advertisements. However, the creation of a cultural event which would attract tourism and custom to the local area, and the jobs created by such an event, are considered public benefits which outweigh that harm.

Subject to appropriate conditions including requiring the event to be operated in accordance with the Operational Management Plan (OMP) and securing site restoration, the temporary scheme is considered acceptable.

3. LOCATION PLAN



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4. PHOTOGRAPHS





## 5. CONSULTATIONS

### COUNCILLOR GLANZ

Supports attempts to ensure that the West End remains a vibrant and unique set of experiences for people to enjoy, but not at the expense of the significant loss of limited outdoor space to those who live here for such an extended period of time.

### HISTORIC ENGLAND

No objections raised. Suggest that the 'Recommended management practices' set out in Historic England's good practice guide 'Temporary Structures in Historic Places' (2010) are followed.

### HISTORIC ENGLAND (ARCHAEOLOGY)

No objections raised.

### METROPOLITAN POLICE

Any response to be reported verbally.

### THE GARDENS TRUST

Any response to be reported verbally.

### LONDON HISTORIC PARKS AND GARDENS

Any response to be reported verbally.

### MARYLEBONE ASSOCIATION

Objections raised on the grounds that the 3-month duration will prevent any use and enjoyment of the square for the majority of the spring and summer period; that 2,000 people will bring associated noise, disruption, with the added vehicular disruption caused by deliveries and waste removal; and that the drinking establishments may exacerbate disruption and anti-social behaviour. Object also to the loss of public accessible green space and as the proposed festival occupies the majority of the square, it renders it unusable. An alternative site should be considered.

### WESTMINSTER PARKS & GARDENS

No objections raised.

### HIGHWAYS PLANNING MANAGER

No objections raised.

### ENVIRONMENTAL SCIENCES

No response to date.

### ARBORICULTURAL OFFICER

No objections raised.

### PROJECTS OFFICER (WASTE)

Additional bins/waste storage required.

**ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED**

No. Consulted: 272; Total No. of replies: 4  
No. of objections: 2  
No. in support: 2

Two letters of objection raising the following concerns:

- \*Cavendish square is too small a square and the tranquillity of the square is too important to locals, shoppers and visitors
- \* The area is considered 'deprived of green space' and therefore it should not be reduced
- \* Noise
- \* Last year, the carnival music on the north side of Cavendish square was unbearable
- \* Many pubs and restaurants have really struggled in the last 2 years and the proposals will suck trade from local hospitality businesses
- \* 3 months is too long for such an event
- \* Last year's effort just looked tatty, not a great attraction for the World Class Shopping Centre Oxford Street

**PRESS ADVERTISEMENT / SITE NOTICE:**

Yes

**6. BACKGROUND INFORMATION****6.1 The Application Site**

Cavendish Square lies one block north of Oxford Street and one block to the west of Regent Street within the heart of the West End. The Square links into Henrietta Place and Margaret Street to the south west and south east, and Wigmore Street and Cavendish Place to the north west and north east.

Oxford Circus Underground Station is situated approximately 200 metres to the south east of the site. Beneath the gardens is a 3 level underground car park, accommodating 432 car parking spaces with car wash and toilet facilities totalling 17,443 m<sup>2</sup>. The subterranean car park which was constructed in 1969 is open on a 24 hour basis. Above ground it comprises ramp enclosures and stair accesses mostly constructed in dark brown brick. The entrance and exit ramps are located in the south west corner.

The site lies within Marylebone, within the Harley Street Conservation Area, the Core Central Activities Zone and the West End Retail and Leisure Special Policy Area. Regent Street Conservation Area lies adjacent to the Harley Street Conservation Area to the east. Cavendish Square is surrounded by several Grade 2 and 2 \* listed buildings. A grade 2 listed Statue of Lord George Bentinck is located at the southern end of the square.

The surrounding area is mainly commercial although Harcourt House No 19a Cavendish Square is a building of 25 flats situated on the western side of the Square.

## 6.2 Recent Relevant History

On 28 April 2020, a resolution to grant planning permission (subject to the completion of a S106 legal agreement, and the views of the Mayor of London) was reached for the “Demolition and erection of above ground structures in conjunction with the use of an underground car park (Sui Generis) as a flexible mixed use commercial development comprising uses within the following use classes A1-A5, B1, B2, B8, C1, C2, D1, and D2 along with the excavation of a 4th basement level, new entrances and associated landscaping and highways works to provide up to 25,953 sqm (GIA) of floorspace”.

On 2 June 2021, planning permission was granted for the “Erection of a Spiegeltent touring structure (with an internal capacity of approximately 500), a box office, a bar area, 9 catering units, toilets, storage, outdoor seating areas and fencing in conjunction with use of Cavendish Square for Underbelly Summer Event 2021 (Sui Generis), with a maximum of 2,000 visitors at any one time, for a temporary period from 14 June 2021 to 8 October 2021.”

## 7. THE PROPOSAL

Permission is sought for the installation of a temporary pop up events tent, market stalls, bar and ancillary facilities for a period of three months. The intention is that the event will be operational from 28 April 2022 to 31 July 2022. Advertisement consent for associated signage is also sought.

The proposals comprise 7 market food stalls, two bars, a box office, toilets and associated back of house storage, plant and equipment. The form of the events tent would be based on the travelling entertainment Spiegel tents from Belgium and Germany. The proposed structure primarily comprises a 23.5 metre diameter tent for the main arena, with a bar area and foyer space. The proposed structure consists of a steel frame, with wood panel cladding, coloured glazing, and a fabric roof. The main structure is 8.5 metres in height. Separate back of house equipment, dressing rooms and storage containers will be located to the north of the Spiegel tent.

The Spiegel tent is a self-contained theatre/cabaret tent, operated by Underbelly, which will have a capacity of 480 seated guests and 600 standing. It will house a range of live cabaret, comedy, music and children’s theatre. The Spiegel tent may also be used for ad-hoc events and functions in conjunction with, or for, local stakeholders, businesses and Westminster City Council. Entrance to the site will take place between 12:00 to 22:00 on Mondays and between 12:00 and 23:00 on Tuesday to Sundays. Performances in the theatre tent will terminate at these same times.

Access to the Spiegel tent will be for ticket holders or invited guests only. There will be free access to the food and drink stalls within the site, and the total capacity for the entire site is to be capped at a maximum of 2,000 visitors at any one time.

## 8. DETAILED CONSIDERATIONS

### 8.1 Land Use

The London Plan policy SD4 promotes cultural, arts, entertainment and the nighttime

economy and tourism functions within the CAZ. London Plan policies HC5 supports the use of land for pop-ups or meanwhile uses for cultural and creative activities during the day and at night-time to stimulate vibrancy and viability and promote diversity in town centres, Cultural Quarters and other areas.

The site lies within the West End Retail and Leisure Special Policy Area, an area of world-renowned retail and leisure destinations and some of London's most recognised tourist attractions and public spaces. Policy 2 of the City Plan promotes an improved retail and leisure experience in this area and prioritises diverse evening and night-time economy and an enhanced cultural offer. In addition, Policy 15 seeks to maintain and enhance the attractiveness of Westminster as a visitor destination, balancing the needs of visitors, businesses and local communities.

Policy 16 states that proposals for food and drink and entertainment uses will be of a type and size appropriate to their location. In terms of arts and cultural uses, new uses are supported in commercial areas of the CAZ. The policy also states that events in the public realm should also support the character and function of the area in which they take place and must be organised in a way that minimise the impact on the long-term access to open space, amenity of residents, businesses and others, and maintain the quality of the public realm.

The use of Cavendish Square for a temporary pop-up event for leisure, cultural and entertainment uses is in accordance with these policies. Objectors contend that the Square is a quiet and calm place and that the proposals would result in a loss of green space in an area which is deprived of open space. Cavendish Square itself does not fall within an area of open space deficiency however, Policy 34 does protect all open spaces and their quality, heritage and ecological value, tranquillity and amenity. However, the supporting text for Policy 34 does indicate that open spaces may be used for temporary events, provided the land is fully remediated following the event.

The applicants have confirmed that the gardens will remain open for the public who do not wish to make use of Underbelly Festival's offering. The only area of the gardens that is ticketed is the Spiegeltent venue itself, which uses a relatively small section, and that once operational, the gardens will open every day as per the normal Westminster City Council opening hours so there are no restrictions on times it can be accessed. The applicants also confirms that they are looking to increase the number of gates from which the gardens can be accessed. Three of the four gates will be open until midday, and the north-west gate will be open whenever possible, including until 6pm daily, to allow a through-route through the gardens.

On the basis that permission is subject to a condition which requires the site to be restored to its present position there would be no permanent impact on the Square in accordance with City Plan policies.

### **The London Squares Preservation Act**

The Square is protected by the London Squares Preservation Act 1931. The primary purpose of the Act is that protected Squares be preserved permanently as open space. The Act requires that a protected square should only be used for authorised purposes namely for the purpose of an ornamental garden, pleasure ground or ground for rest,

play and recreation. Section 3(1) of the Act states that only buildings and structures allowed on London Squares are those which are “necessary or convenient for, and in connection with, the use and maintenance of such squares.”

The Act does allow temporary uses in the gardens, provided they are for short periods only.

## 8.2 Townscape and Design

### a. Cavendish Square

Cavendish Square was laid out as a garden by Charles Bridgeman in 1717 as an early part of the Cavendish-Harley Estate. It lies within the Harley Street Conservation Area and makes an important contribution to its significance, character and appearance.

Cavendish Square is a sensitive historic environment of high significance. On the east side of Cavendish Square are four grade 2 listed buildings and one grade 2 star. On the north side are two grade 2 star listed buildings and two grade 2 listed buildings. On the west side are three grade 2 and one grade 2 star listed buildings.

The gardens are not included on the Historic England register of historic parks and gardens but they are included in the list of squares and gardens protected by the London Squares Preservation Act 1931.

The primary negative feature of the Square is the underground car park which was created in 1970, along with new walls and railings erected around the garden. This has a harmful impact on the townscape quality and integrity of the Square, the character and appearance of the conservation area and the settings of the adjacent listed buildings.

### b. Legislation and policy

The key legislative requirements in respect to designated heritage assets are as follows:

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that “In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

Section 72 of the same Act requires that “In the exercise, with respect to any buildings or other land in a conservation area...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

Chapters 12 and 16 of the NPPF require great weight be placed on design quality and the preservation of designated heritage assets including their setting. The NPPF clarifies that harmful proposals should only be approved where the harm caused would be clearly outweighed by the public benefits of the scheme, taking into account the statutory duty to have special regard or pay special attention, as relevant. This should also take into account the relative significance of the affected asset and the severity of the harm caused.

The London Squares Preservation Act 1931 seeks to protect designated squares, gardens and enclosures in Greater London. Section 3 (1) of the Act confirms that its purpose is to limit the use of London Squares to 'ornamental pleasure grounds or grounds for play, rest and recreation' and confirms that the only buildings and structures allowed on London Squares are those which are "necessary or convenient for, and in connection with, the use and maintenance of such squares."

### **c. The proposal**

The proposed temporary event involves the erection of seven market stalls, a large tent, two bars, toilets and associated back of house storage and equipment, all within the gardens. The main structure is the Spiegeltent which will be located in the north eastern part of the site, with back of house storage stored to the rear, enclosed by hoarding. The Spiegeltent is constructed from steel and aluminium frames, with painted timber wall panels and coloured glazing. The roof will be grey tent fabric.

The walls and floors of the stalls will be clad with painted timber and have felt covered roofs. The bar takes the form of a shipping container, converted for use as a bar.

Advertisement consent is sought for a number of illuminated advertisements. These include three large signs at the entrances to the gardens, signs on the food stalls, three signs on the box office, one on the bar and one on the entrance to the Spiegeltent. The size of the adverts are the same as permitted in 2021.

There will also be five signs on the hoardings.

### **d. Consideration**

The proposed structures and advertisements will occupy a large part of the gardens and will be highly visible from the surrounding area. They will have a harmful impact on the character of the gardens, the character and appearance of this part of the Harley Street Conservation Area and the setting of adjacent listed buildings. If this was a longer term proposal then it would result in substantial harm to the heritage assets referred to above, and would be wholly unacceptable

The proposals are considered to be contrary to the provision of the London Squares Preservation Act 1931, because they prevent the public from enjoying the gardens for the purposes they were intended for. However, the Act does allow temporary uses in the gardens, provided they are for short periods only.

### **e. Harm v benefits**

On the basis that it is only intended to be in place for a period of four months, it is considered that the impact on the heritage assets could be said to be less than substantial harm, because of the temporary nature of the structures and advertisements. In considering this application the harm caused to heritage assets needs to be weighed up against any public benefits. The proposed theatre will provide economic and cultural gains, and the provision of a pop-up visitor attraction for a temporary period will help to attract workers, residents and visitors to the area and create a number of temporary jobs. The public benefits are considered to outweigh the less than substantial harm caused, and the proposal is considered acceptable in terms of its impact on the designated heritage asset(s). Therefore, the recommendation to grant conditional permission is compliant with the requirements of the NPPF and the statutory duties of

the Planning (Listed Buildings and Conservation Areas) Act 1990.

### 8.3 Residential Amenity

In amenity terms the main issue is the impact of noise from the proposed events, and the impact of additional people attracted to the Square, and whether this will also cause significant additional noise and disturbance.

There are residential flats in Harcourt House to the west of the Square, flats at 14 John Princes Street to the east, and some residential to the north of the Square in Harley Street, Deans Mews and Chandos Street. However, the majority of buildings in the Square are in commercial use.

Objectors are concerned that the event will cause noise and disturbance and comment that the music from last year's event was unbearable. It is acknowledged that the proposed use has the potential to result in an increased noise nuisance to neighbouring residential occupiers and later into the evening. The hours of operation are restricted, with a terminal hour of 23:00 every night, apart from Mondays when the festival will close at 22:00. These hours are earlier than last year, when the event closed at 23:00 Sundays – Wednesdays and 23.30pm on Thursdays, Fridays and Saturdays.

Performances in the Spiegeltent are programmed from midday daily and ending at 22:00 on Sundays to Wednesday and 23:00 on Thursdays to Saturdays. In addition, the Spiegeltent has been located to the north-west of the site, which is the furthest point within the Square from the residential flats in Harcourt House. It is also anticipated that most customers at the end of the events will head south either to public transport links on Oxford Street or the taxi rank on the south side of Cavendish Square.

The capacity of the Spiegeltent has been reduced from 800 standing / 650 seated last year to 600 standing / 480 seated this year. This is due to the internal layout of the stage and a slight reduction in the size of the tent compared to last year.

In response to the concerns raised to the capacity of the event, the applicants have confirmed that although the planning application states a capacity of 2000, this is based on the square meterage of the gardens and the fact that it remains a public park for the duration of the event. In 2021, where the same capacity was in place, there were no more than 100 people in the gardens when performances were not taking place in the Spiegeltent and the maximum capacity never exceeded 600 people on site at any given time.

The application is also supported by an operational management plan (OMP) which sets out a number of measures to ensure it will not have a detrimental impact on the amenity of adjoining residents, including: calendar and operational times, dispersal policies, management structure roles and responsibilities, security, pedestrian and vehicular access, health and safety, evacuation procedure, refuse waste management and neighbour liaison procedures. The headlines in the suggested OMP appear to be comprehensive.

A noise management plan has also been submitted that sets out the following measures to control noise:

- i. The Spiegeltent structure has a wooden surround with a heavy internal fabric to attenuate sound levels.
- ii. Underbelly will agree sound levels, the procedure for setting such sound levels and the method for ensuring that they are adhered to in accordance with the Licensing Authority.
- iii. Amplified noise levels within the Spiegeltent shall be restricted so as not to exceed 85dB(A) Leq over any 15 minute period when measured at the mixing desk.
- iv. The timing of daily events has been made to ensure that there is no amplified noise audible from the site above the off-site environmental noise, at the closest noise sensitive premises after 10pm on any day.

In preliminary discussions Environmental Sciences have raised no objections and have advised that there were no noise or other complaints received following last year's event. As with last year's event, noise limits will be set, and agreed with Environmental Services before any events commence. A condition is recommended which requires the use to operate in accordance with the submitted OMP. On this basis it is considered that the use would operate without detriment to the locality.

#### **8.4 Transportation/Parking**

City Plan policy 24 supports a sustainable pattern of development which maximises trips made by sustainable modes and Policy 25 prioritises pedestrian movement. The proposed use is likely to generate an increase in trips to the site. Underbelly expect most customers to make use of public transport and actively encourage use of public transport to access their events. For those with mobility issue who do require the use of a car to access the event, there is a 24-hour taxi rank located on the Square itself. In addition, there is a 24-hour car park located beneath Cavendish Square with 432 spaces including charging bays for electric vehicles.

Given the accessibility to public transport facilities in the area it is considered that the increase is unlikely to have any significant adverse impact on the public highway.

The applicant advises that events are programmed to allow for a graded dispersal of customers and to ensure the entry and egress of patrons is managed safely and its impact minimised. Underbelly submit that the event is designed so that any queuing which does take place, takes place within the footprint of the festival site. Customers are encouraged to purchase tickets in advance to avoid any queues at the box office. Any queue which may occur due to checking of tickets will occur at the entrance to the tent, within the footprint of the site, rather than the entrance to the site. Entry is free to the site itself, so other than bag checking, there will be no delay in customers entering.

Whilst an assessment of how many customers would be expected to enter and leave by each entrance/exit has not been provided, the Highways Planning Manager accepts that the application is very much for a temporary period, and that the time of most concern is at the end of performances when stewards will be deployed to the relevant crossing points to support pedestrian movements. This is one of the measures within the OMP and will be secured by condition.



### Servicing

Policy 29 requires servicing, collection and delivery needs to be fully met within a development site. The Highways Planning Manager recognises that the constraints of the site preclude off street servicing.

Deliveries and servicing to the Site will take place on street on the eastern side of the Square. All deliveries at this stage of the development are pre-scheduled and will be made between 6am and 12pm. No deliveries will be scheduled after opening time. The applicant advises that the number of deliveries is likely to be low, with one daily delivery for food, one for refuse and six deliveries per week for drink. Subject to this amended delivery location, it is considered that vehicular activity associated with the development will not adversely impact on the highway.

These measures are the same as in the event agreed last year, and the Highways Planning Manager advises that this did not appear to cause any highway safety/disruption problems and is acceptable.

### Cycling

London Plan cycle parking standards require 1 space per 8 staff and 1 space per 30 customers. Whilst it is unlikely that there will be many people cycling to the site, some staff are likely to cycle and a condition is proposed requiring cycle spaces to be made available on site.

## **8.5 Economic Considerations**

The Event would create 120 temporary jobs and Underbelly commit to seeking to recruit locally where appropriate. For the installation and de-installation periods, Underbelly works with crewing company 'Connection Crew' which gets ex-homeless people back into work.

Objectors are concerned that the proposal would affect local hospitality and in response the applicants have confirmed that food and non-alcoholic drinks purchased elsewhere can be consumed in the gardens. The only restriction is that alcohol purchased elsewhere cannot be consumed. As well as being a licensing condition, this allows Underbelly staff to ensure that sensible drinking is encouraged and prevents anti-social behaviour.

## **8.6 Access**

The gardens will remain open to the public at all times during the day, with restricted access only if capacity is exceeded. As throughout the rest of the year, the gardens will be closed at night.

The scheme will provide level access to all the event facilities in accordance with Part M of the building regulations.

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

### **Plant**

An acoustic report has been submitted in support of the application assessing the

background noise levels measured at the nearest noise sensitive receptors. The report assesses noise from the plant including the chillers and generator plant. Subject to the normal noise conditions, this aspect of the application is considered to be acceptable.

### **Refuse /Recycling**

An area for waste and recycling has been shown on the plans, and an updated drawing has been received to show the capacity of the waste storage bins to address the concerns of the Waste Project Officer.

Bins will be provided at entrances and exits and the operator intends to employ staff to perform a rubbish patrol following closure. This patrol will pick up bottles, flyers, food wrapping etc. in the immediate vicinity of the premises. This is set out within the OMP.

### **Trees**

The gardens comprise mainly mature London Planes, ornamental shrubs, amenity grass and a hedge enclosure that runs around the circular garden area. All the trees within the site are protected by Tree Preservation Orders and are to be retained. The application is supported by an Arboricultural Impact Assessment that sets out that during the construction and dismantling of the development, the root protection areas of a number of the trees will require suitable tree protection. This will be by ground protection and tree protection fencing. The Councils Arboriculturist advises that the tree protection details within the submitted arboricultural report are similar to that approved within last year's application for the same event and are sufficient.

### **Air Quality**

Policy 32 expects all major developments to be air quality neutral and requires all new development that include potentially air pollution generating uses to demonstrate how these impacts are being appropriately minimised and mitigated. In this case, the proposals do include a diesel generator and an informative has been added to ensure that the operation of the generator meets with the same emission standards as laid down in the Non-Road Mobile Machinery (NRMM) Regulations. The Council also has an air quality monitoring station on Cavendish Square that will be used to gauge any impact on the monitoring results.

### **Lighting**

Festoon lighting will be hung around the entire site boundary above the perimeter hoarding and there will be flood lighting within the site. At the end of trading, lighting will be reduced to encourage the gradual dispersal of customers. An informative has been added to the decision notice to ensure that any lighting does not cause any nuisance for neighbours at night.

## **8.8 Westminster City Plan**

The City Plan 2019-2040 was adopted at Full Council on 21 April 2021. The policies in the City Plan 2019-2040 are consistent with national policy as set out in the National Planning Policy Framework (NPPF) (July 2021) and should be afforded full weight in accordance with paragraph 219 of the NPPF. Therefore, in accordance with s.38 of the Planning and Compulsory Purchase Act 2004, it comprises the development plan for Westminster in combination with the London Plan adopted in March 2021 and, where relevant, neighbourhood plans covering specific parts of the city (see further details in

Section 8.9). As set out in s.38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 49 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

#### **8.9 Neighbourhood Plans**

None relevant.

#### **8.10 London Plan**

This application raises no strategic issues.

#### **8.11 National Policy/Guidance Considerations**

The City Plan 2019 - 2040 (April 2021) policies referred to in the consideration of this application are considered to be consistent with the NPPF 2021 unless stated otherwise.

#### **8.12 Planning Obligations**

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

#### **8.13 Environmental Impact Assessment**

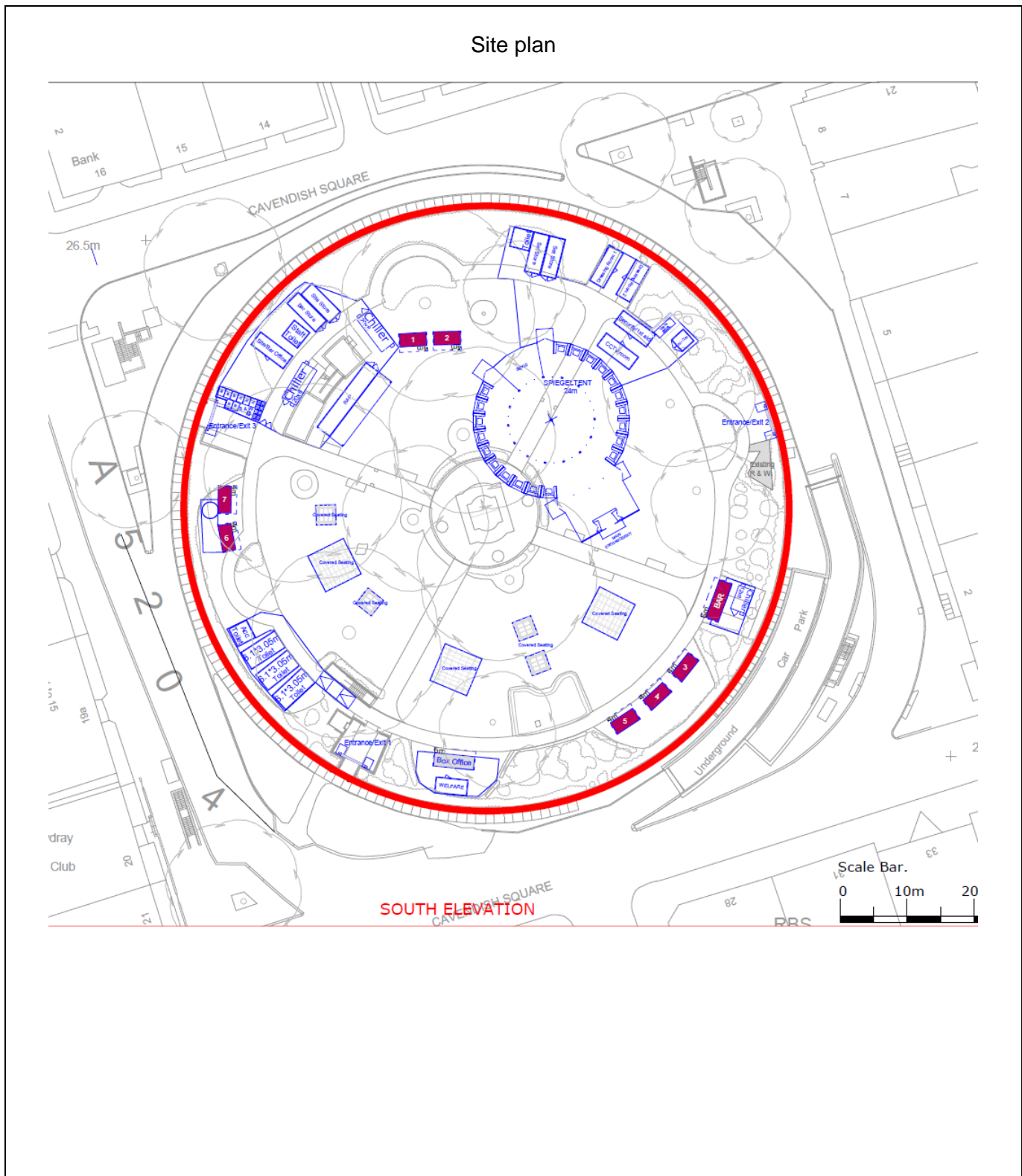
The proposals are not of sufficient scale to require an Environmental Impact Assessment.

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

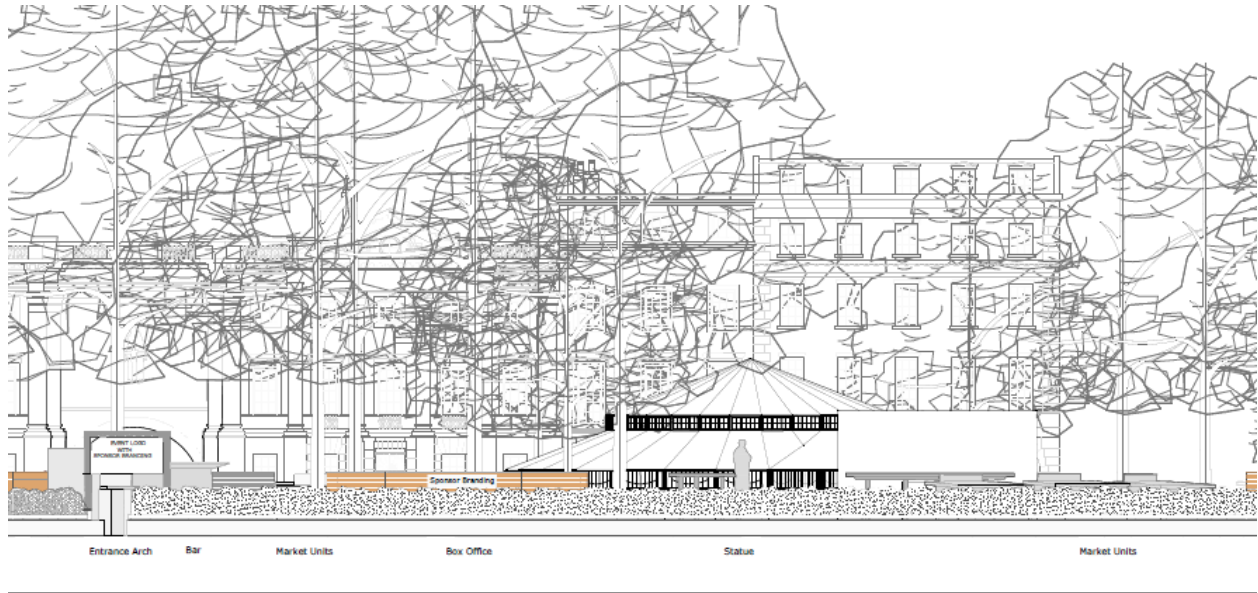
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: MARK HOLLINGTON BY EMAIL AT [mhollington@westminster.gov.uk](mailto:mhollington@westminster.gov.uk)

**9. KEY DRAWINGS**

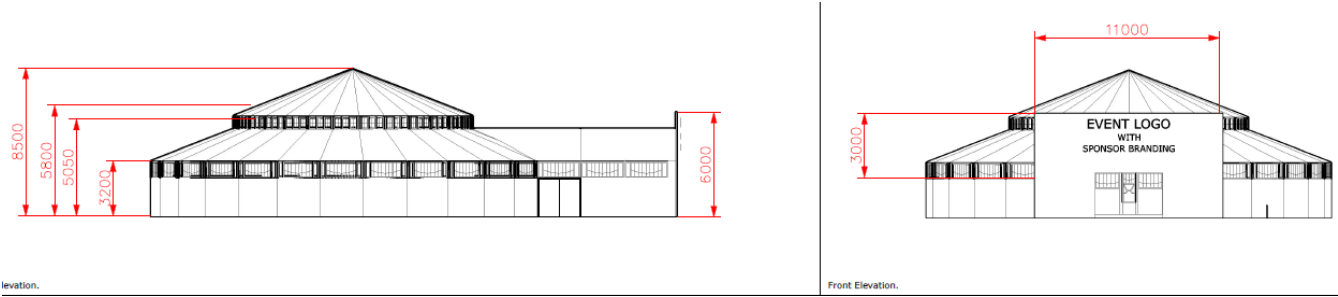
Site plan



South elevation



Spiegeltent



**DRAFT DECISION LETTER**

**Address:** Cavendish Square, London, W1G 9DB

**Proposal:** Erection of a Spiegeltent touring structure (with an internal capacity of up to 600), a box office, two bar areas, seven catering units, toilets, storage, outdoor seating areas and fencing with lighting and associated plant in conjunction with use of Cavendish Square for the Underbelly Festival at Cavendish Square 2022 (Sui Generis), with a maximum of 2,000 visitors at any one time, for a temporary period from 28 April 2022 to 31 July 2022. Installation and deinstallation will take place over the periods between 13 April 2022 and 8 August 2022.

**Reference:** 22/01162/FULL

**Plan Nos:** UB-CSS-22-003, UB-CSS-22-004, UB-CSS-22-005, UB-CSS-22-006, UB-CSS-22-007, UB-CSS-22-008, UB-CSS-22-009, UB-CSS-22-0010, UB-CSS-22-0011, UB-CSS-22-0012; UB-CSS-22-201; Noise Survey and Acoustic Assessment dated 1 February 2022; Tree Survey and Arboricultural Impact Assessment dated February 2022; Operational Management Plan v1.3 dated 14 March 2022

**Case Officer:** Jo Palmer

**Direct Tel. No.** 020 7641  
07866040238

**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 Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021). (R11AD)

- 3 The development hereby permitted shall not be begun before 28 April 2022 and can continue until 31 July 2022. After that the use must end and you must remove the structures, seating and fencing. You must then return the land to its previous condition and use.

## Reason:

The building should not remain for a longer period because it would be contrary to Policy 34 of the City Plan 2019-2040. (R03BC)

- 4 Customers shall not be permitted to events within the Square before 12:00 or after 22.00 hours on Mondays, and before 12:00 and after 23:00 Tuesdays to Sundays.

## Reason:

To protect the environment of people in neighbouring properties as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021). (R12AD)

- 5 You must carry out the measures included in your management plan dated 14 March 2022 at all times that the Event use is in use. (C05KA)

## Reason:

To make sure that the use will not cause nuisance for people in the area. This is as set out Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021). (R05GC)

- 6 (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 in writing 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 in writing 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 written 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. (C46AC)

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) and the draft Noise Technical Guidance Note (November 2019), so that the noise environment of people in noise sensitive receptors is protected, including the intrusiveness of tonal and impulsive sounds, and 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. (R46AC)

- 7 Before you operate the event use, you must provide the separate stores for waste and materials for recycling shown on drawing number UB-CSS-22-201 and thereafter you must permanently retain them for the storage of waste and recycling. You must clearly mark them and make them available at all times to everyone using the event use.

Reason:

To protect the environment and provide suitable storage for waste and materials for recycling as set out in Policies 7 and 37 of the City Plan 2019 - 2040 (April 2021). (R14CD)

- 8 You must not start any site clearance or building work, and you must not take any equipment, machinery or materials for the development onto the site, until you have carried out the tree protection measures within the submitted arboricultural report dated February 2022.

Reason:

To make sure that the trees on the site are adequately protected during building works. This is as set out in Policies 34 and 38 of the City Plan 2019 - 2040 (April 2021).



(R31AD)

- 9 You must provide a minimum of 25 cycle parking spaces prior to the commencement of the Event use. Thereafter the cycle spaces must be retained and the space used for no other purpose. (C22FC)

Reason:

To provide cycle parking spaces for people using the development in accordance with Policy 25 of the City Plan 2019 - 2040 (April 2021). (R22FB)

**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 the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), 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 Please make sure that the lighting is designed so that it does not cause any nuisance for neighbours at night. If a neighbour considers that the lighting is causing them a nuisance, they can ask us to take action to stop the nuisance.
- 3 The diesel generator should meet with the same emission standards as laid down in the Non-Road Mobile Machinery (NRMM) Regulations

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.

**DRAFT DECISION LETTER**

**Address:** Cavendish Square, London,

**Proposal:** Temporary display of signages at Cavendish Square in association with the Underbelly Festival at Cavendish Square 2022 over the periods between 28 April 2022 to 31 July 2022, with installation and deinstallation taking place over the periods between 13 April 2022 and 8 August 2022.

**Reference:** 22/01127/ADV

**Plan Nos:** UB-CSS-22-003, UB-CSS-22-004, UB-CSS-22-005, UB-CSS-22-006, UB-CSS-22-007, UB-CSS-22-008, UB-CSS-22-009, UB-CSS-22-0010, UB-CSS-22-0011, UB-CSS-22-0012;

**Case Officer:** Jo Palmer

**Direct Tel. No.** 020 7641  
07866040238

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

- 1 The advertisements can stand until 8 August 2022. You must then remove them without delay.

**Reason:**

The advert is temporary, so under Policy 43 of the City Plan 2019-2040 (April 2021), we can only approve it for a limited period. (R04AC)

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.

# Agenda Item 2

Item No.

2

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 19 <sup>th</sup> April 2022	<b>Classification</b> For General Release	
<b>Report of</b> Director of Place Shaping and Town Planning		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	167 Oxford Street, London, W1D 2JP		
<b>Proposal</b>	Use of basement as an events space (sui generis).		
<b>Agent</b>	Tompkins Thomas Planning		
<b>On behalf of</b>	Frasers Group PLC		
<b>Registered Number</b>	22/00426/FULL	<b>Date amended/ completed</b>	1 February 2022
<b>Date Application Received</b>	24 January 2022		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	N/A		

## 1. RECOMMENDATION

Grant conditional permission.

## 2. SUMMARY

The application site lies at the junction with Poland Street and comprises basement, ground and six upper floors. The basement and lower floors are in retail use, whilst the upper floors are in office use (2nd - 6th storeys). The site lies within the West End Retail and Leisure Special Policy Area and the Central Activities Zone.

Planning permission was granted in June 2015 for alterations and extensions for retail and office use. Condition 10 of this permission (Ref: 15/00231/FULL) restricts the use of the basement (and ground and first floors) for retail purposes only.

This application seeks planning permission for the use of the basement as an events space. The applicant sets out that these events will predominantly focus on small fashion-brand launches (some of which will directly relate to the retail use of the wider Flannels store), art exhibitions and company related presentation and conferences; including annual results or product-specific events led around fashion and art.

Events are likely to commence around 18:00 and conclude at 22:30 with one evening function for the first three months, with two per month thereafter. It is anticipated that the largest events will be brand-led and the result of collaboration between Flannels, Frasers Group and FAM. Capacity will be limited to 200, but it is envisaged that guests would arrive and depart throughout the course of the

event rather than there being a fixed capacity for the duration of the event.

In land use terms, Policy 14 aims to secure a mix of commercial uses that provide activity at street level, and creates a welcoming, attractive and healthy environment for consumers to shop, access services, and spend leisure time, whilst also supporting their role as major employment hubs and visitor destinations. Specifically part C states, *“All development within the town centre hierarchy will be of a scale, type and format that reflects and enhances the role and function of the centre within which it is proposed.”*

- 1. The International Centres of the West End and Knightsbridge will provide a focal point for large format comparison retail, supported by complementary town centre uses that increase customer dwell time, and new office floorspace;*
- 2. The WERLSPA will provide a wide mix of commercial uses that support the West End's role as a retail, employment and cultural hub, and as a centre for the visitor, evening and night-time economy”.*

Paragraph 14.13 states that a strong retail core should be maintained at ground floor level and immediately above. In this case, the proposals relate solely to basement floor level and would therefore be in compliance with Policy 14. The introduction of a use at basement level that serves visiting members of the public is supported in policy terms.

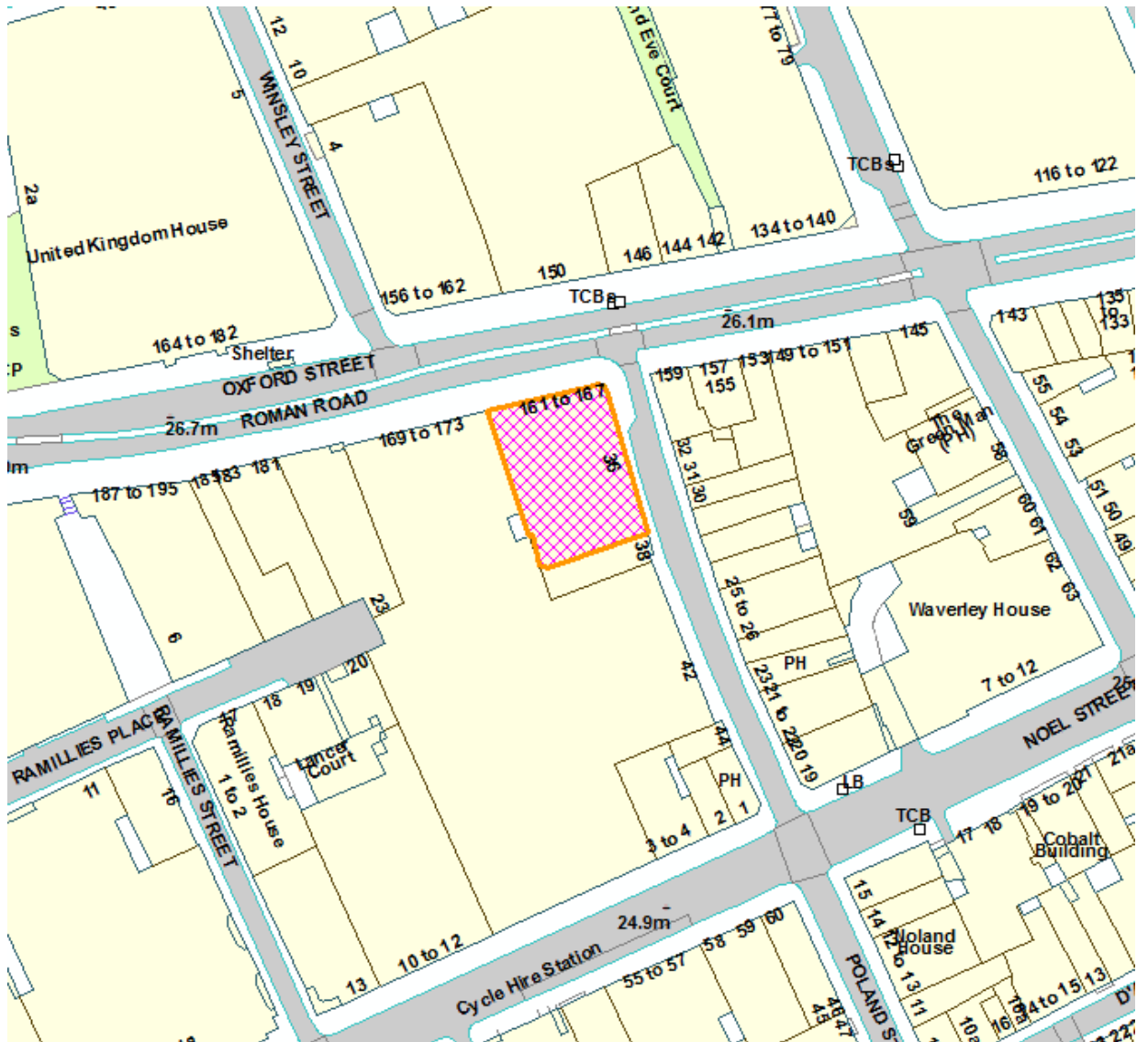
There are limited residential units within the vicinity of the site, the closest being the nine flats on the upper floors of 142-144 Oxford Street on the opposite side of Oxford Street. There is also one flat at 29 Poland Street. The use of the basement as an events space is likely to be more intensively used than the lawful retail use. However, the number of events and the proposed hours are modest and access will be entirely from Oxford Street. The applicant has also agreed to a condition limiting the number of events, hours etc to those set out in the Planning Statement. Whilst one letter of objection has been received on the grounds of noise disturbance, given the commercial nature of the site, its central location and the proposed operating hours, the use is considered acceptable as it would be neither harmful to the character and function of the area or to residential amenity, in accordance with City Plan Policies 7 and 33.

The proposed use is expected to generate an increase in taxis and private hire vehicles. Concern is raised that the proposal use may generate intense periods of high levels of vehicle arrivals and departures. Large groups of people arriving and departing in a short space of time may also result in localised congestion. This would include on the footway to other pedestrians and on the carriageway to other motorists. However, the Highways Planning Manager considers that, while the proposed use may result in higher levels of activity at different times, the activity of guests arriving and departing the site (both vehicular and pedestrian) will not result in significant detrimental highway safety or operation, based on the proposed use as outlined in the submission documents.

Policy 29 requires new developments to be provide for on-site servicing and freight consolidation. Deliveries and goods left on the highway create an obstruction to pedestrians. Delivery vehicles stopping on the highway can also result in localised congestion to other motorists. No details of how the space will be serviced are provided. It is unclear if the space will utilise existing servicing provision within the wider site. A Servicing Management Plan may demonstrate how the proposed development would minimise the impact of the proposed development on the highway network, so as not to have a significantly detrimental impact on other highway users. This is secured by condition. As servicing appears to take place within close proximity of residential accommodation on Poland Street, the condition also secures the hours of servicing.

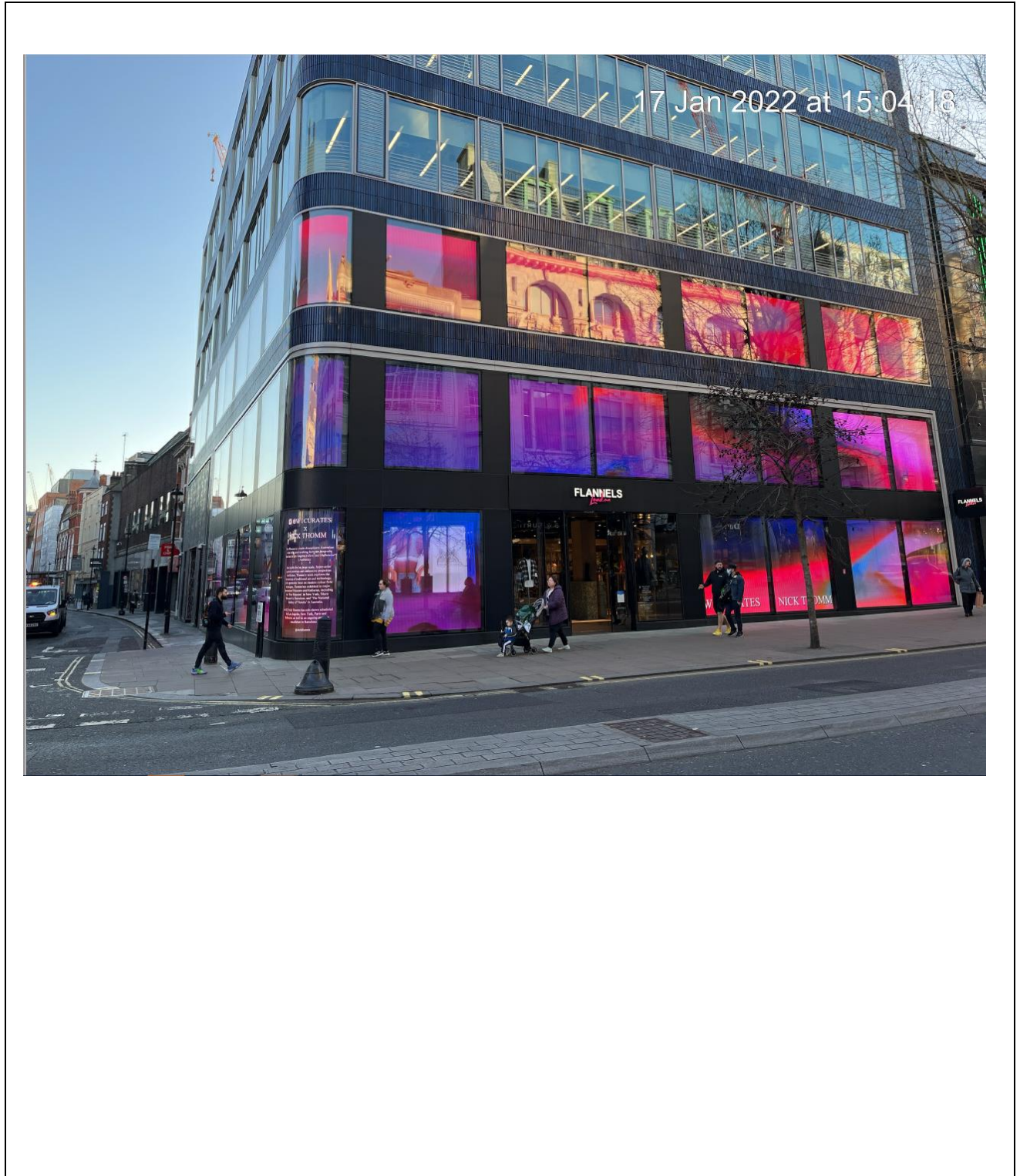
The objector also refers to disturbance from existing advertising. The signs have deemed consent under the Advertisement Regulations and the city council have elected not to take discontinuance action against these signs. The application could not therefore be refused for this reason.

3. LOCATION PLAN



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4. PHOTOGRAPHS



## 5. CONSULTATIONS

### SOHO SOCIETY

No response to date

### HIGHWAYS PLANNING MANAGER

No objections raised.

### WASTE PROJECT OFFICER

Further information requested.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 82

Total No. of replies: 1

One letter of objection on the grounds that the existing bright flashing images from the Flannels shop currently cause disturbance. The events space will mean more people staying until late hours of the night adding noise to the constant light emitted by the advertising screens which will make even more difficult to have a decent night rest.

### SITE NOTICE:

Yes

## 5.1 Recent Relevant History

Planning permission granted in June 2015 for the variation of Condition 1 of planning permission dated 01 February 2013 (RN: 12/02082) for 'Alterations including extensions at fourth, fifth and sixth floor levels, screened plant at roof level, creation of terrace at sixth floor level, recladding of facades and enlargement/repositioning of atrium. in association with the use of the building for retail (Class A1) purposes at part basement, part ground floor and part first floor levels and office (Class B1) purposes at part basement, part ground floor, part first floor and second-sixth floor levels'; namely, revisions to the approved drawings in order to make the following alterations to the approved development: (i) redesign of the Oxford Street and Poland Street retail frontages at ground and first floor level; (ii) alterations to the detailed design of the upper floor office facade and glass design; (iii) alterations to the proposed office entrance on Poland Street to incorporate public art; (iv) reconfiguration of the plant and service layout at basement and roof levels; and (v) rearrangement of the office floor plates and the building core / atrium (including the removal of one fire escape staircase)'.

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

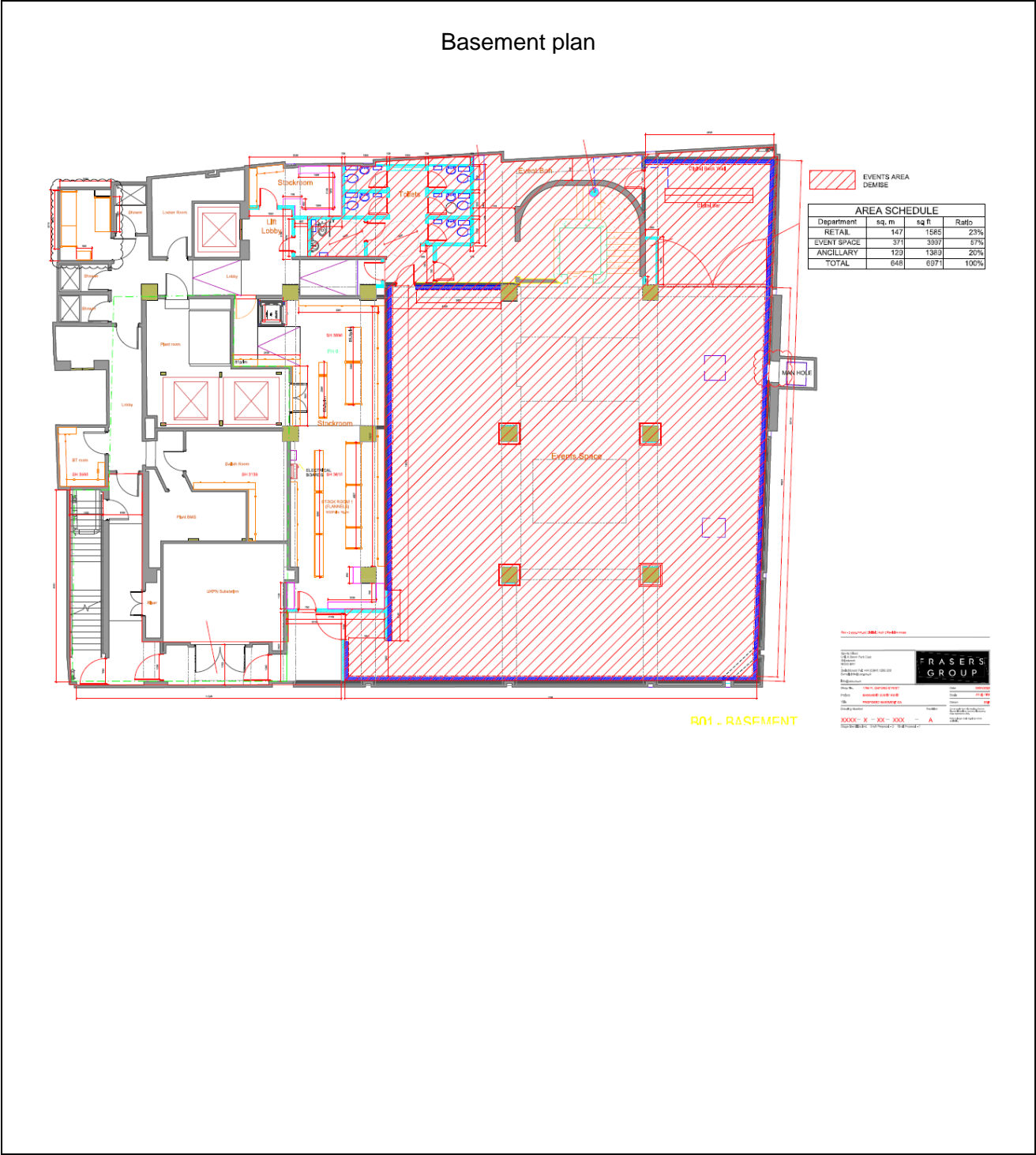


Item No.
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<b>2</b>
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IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: MARK HOLLINGTON BY EMAIL AT <a href="mailto:mhollington2@westminster.gov.uk">mhollington2@westminster.gov.uk</a>
---

6. KEY DRAWINGS



**DRAFT DECISION LETTER****Address:** 167 Oxford Street, London, W1D 2JP**Proposal:** Use of basement as an events space (sui generis).**Reference:** 22/00426/FULL**Plan Nos:** CPS16 028 115 Q, CPS16 028 114 P, XXXX-X-XX-XXX Rev A and Planning Statement dated January 2022**Case Officer:** Jo Palmer**Direct Tel. No.** 020 7641  
07866040238**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.
	<b>Reason:</b> For the avoidance of doubt and in the interests of proper planning.
2	The use must be carried out in accordance with paragraphs 2.1.6 to 2.1.11 and 4.4.1 and 4.4.2 of your planning statement dated January 2022.
	<b>Reason:</b> To make sure that the use will not cause nuisance for people in the area. This is as set out Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021). (R05GC)
3	You must apply to us for approval of details of how waste is to be stored on site and how materials for recycling will be stored separately. You must not commence the event use hereby approved until we have approved what you have sent us. You must then provide the waste and recycling storage prior to occupation of the development and thereafter permanently retain the stores according to these details. You must clearly mark them and make them available at all times to everyone using the basement. You must not use the waste and recycling store for any other purpose. (C14GB)
	<b>Reason:</b> To protect the environment of people in neighbouring properties as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021). (R14AD)
4	You shall submit a Servicing Management Plan for the City Council's approval setting out

	<p>the hours of servicing, processes to ensure that loading takes place over the minimal amount of time, safety measures, storage locations, scheduling of deliveries and staffing.</p> <p>You shall not commence the use hereby approved until we have approved what you have sent us. You must adhere to the approved Servicing Management Plan for the life of the development unless a revised strategy is approved in writing by the City Council.</p>
	<p>Reason: To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in Policy 29 of the City Plan 2019 - 2040 (April 2021). (R23AD)</p>
5	<p><i>If you play live or recorded music in the property, the received music noise level in neighbouring residential habitable spaces <b>must</b> be 10 dB below the existing ambient and maximum noise levels in the residential habitable spaces when music is not playing, at the quietest time of day and night, measured over a period of 5 minutes and in the indices of Leq and LFmax in the octave bands 63 Hz and 125 Hz. The overall music noise level in terms of LAeq,5mins <b>must</b> be at least 10 dB below the existing background noise level in terms of dB LA90,5mins.</i></p>
	<p>Reason: To protect neighbouring residents from noise nuisance, as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021) and the draft Environmental Supplementary Planning Document (May 2021). (R13FC)</p>
6	<p>Access to the events space shall be from Oxford Street; the entrance on Poland Street shall only be used as a secondary means of escape.</p>
	<p>Reason: To protect neighbouring residents from noise nuisance, as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021) and the draft Environmental Supplementary Planning Document (May 2021). (R13FC)</p>

### 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 the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), 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.

Item No.
<b>2</b>

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.

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# Agenda Item 3

Item No.

3

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 19 April 2022	<b>Classification</b> For General Release	
<b>Report of</b> Director of Place Shaping and Town Planning		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	<b>Audley Square, London W1</b>		
<b>Proposal</b>	Erection of a plinth and public art sculpture, and associated works within Audley Square.		
<b>Agent</b>	DP9		
<b>On behalf of</b>	CAUDWELL PROPERTIES (109) LIMITED		
<b>Registered Number</b>	21/08677/FULL	<b>Date amended/ completed</b>	7 January 2022
<b>Date Application Received</b>	17 December 2021		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Mayfair		

## 1. RECOMMENDATION

<p>1(i) Does the Sub-Committee consider that the additional information submitted and the results of the public consultation exercise address the concerns previously expressed?</p> <p>(ii) If so, grant conditional permission subject to completion of a S106 unilateral undertaking to secure the following:</p> <ul style="list-style-type: none"> <li>a) Lighting of the public art,</li> <li>b) the proposed structural support for the public art,</li> <li>c) a maintenance programme for the public art,</li> <li>d) public liability insurance for the public art,</li> <li>e) the proviso that the Council can require the removal or remove the public art itself, and that the applicant is required to fund all associated costs, including reinstatement of the highway to the Highway Authority's satisfaction,</li> <li>f) the cost of monitoring the agreement,</li> <li>g) costs of the stopping-up process; and</li> <li>h) a commuted sum of £50,000 for maintenance of the public art</li> </ul> <p>2. If the S106 unilateral undertaking has not been completed within six weeks then:</p> <ul style="list-style-type: none"> <li>a) The Director of Place Shaping and Town Planning shall consider whether it would be possible and appropriate to issue the permission with additional conditions attached to secure the benefits listed above. If so, the Director of Place Shaping and Town Planning is authorised to determine and issue such a decision under Delegated Powers; however, if not;</li> </ul>
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b) The Director of Place Shaping and Town Planning shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits which would have been secured; if so, the Director of Place Shaping and Town Planning is authorised to determine the application and agree appropriate reasons for refusal under Delegated Powers.

## 2. SUMMARY

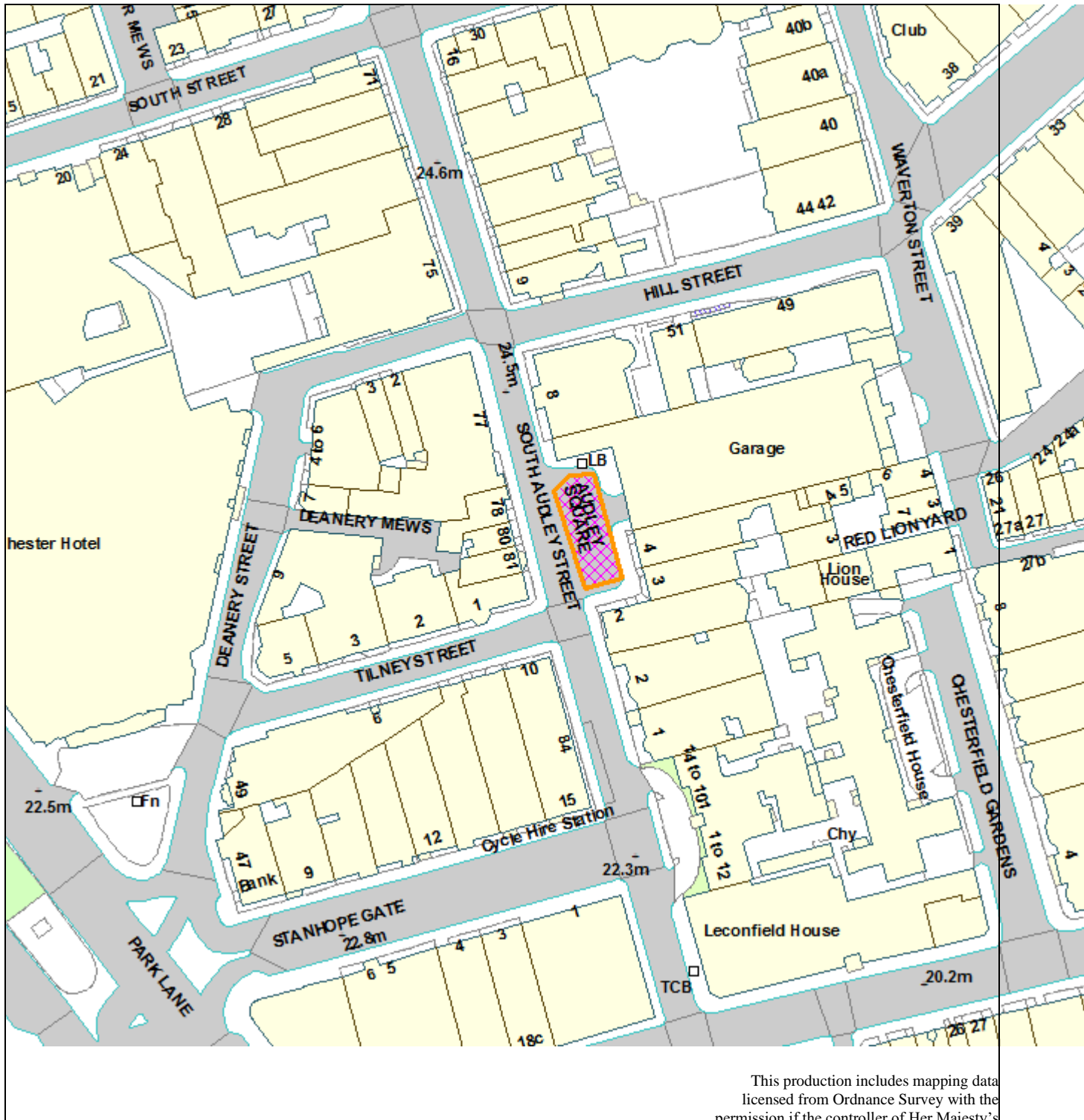
Permission was granted in March 2016 for redevelopment of the Audley Square Garage site. Work is underway building out this development.

A proposal for the public art in Audley Square, pursuant to Condition 2 of the planning permission, was reported to the Planning Applications Sub-Committee (1) on 28 August 2018. Having considered the proposal, the decision was deferred for the applicant to consider alternative designs which are more in keeping with the area.

The current application is for planning permission because the proposed artwork would fall outside of the application site of the main application for the redevelopment of the garage. The design of the public art is the same as that considered by the Planning Applications Sub-Committee (1) on 28 August 2018 but is submitted with additional justification and following a public consultation exercise.



### 3. LOCATION PLAN



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4. PHOTOGRAPHS



## 5. CONSULTATIONS

### RESIDENTS' SOCIETY OF MAYFAIR & ST. JAMES'S:

Any comments to be reported verbally

### MAYFAIR RESIDENTS' GROUP:

Any comments to be reported verbally

### HIGHWAYS PLANNING MANAGER:

Objection. See section 8.4 below.

### ARBORICULTURAL SECTION:

Any comments to be reported verbally

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 19

Total No. of replies: 4

No. of objections: 0

No. in support: 4

### SITE NOTICE:

Yes.

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

Audley Square is in the Mayfair Conservation Area towards to the southern end of South Audley Street opposite its junction with Tilney Street. Buildings on the south side of the square and one building on the east side are grade II listed, and there are grade II listed buildings on the west side. The application site is in front of a new development forming the northern and most of the eastern sides of the square. It comprises public highway.

### 6.2 Recent Relevant History

15/02197/FULL

Demolition of existing buildings (with the exception of 4 Red Lion Yard which is to be retained with external alterations) and the erection of new building of eight/nine storeys (plus lower ground floor and four basement levels) to provide 30 residential units with swimming pool and gymnasium, creation of roof terraces, car parking and cycle parking; vehicular access from Waverton Street; hard and soft landscaping; and plant at roof level.

Application Permitted                      9 March 2016

18/00303/NMA

Amendments to planning permission dated 9 March 2016 (RN: 15/02197) for: Demolition of existing buildings (with the exception of 4 Red Lion Yard which is to be retained with

external alterations) and the erection of new building of eight/nine storeys (plus lower ground floor and four basement levels) to provide 30 residential units with swimming pool and gymnasium, creation of roof terraces, car parking and cycle parking; vehicular access from Waverton Street; hard and soft landscaping; and plant at roof level.

Namely, amend the wording of Condition 2 so that it refers to public art within Audley Square only. Revised condition to read: You must apply to us for approval of detailed drawings of the following parts of the development - 1. Typical facade details at all levels, including roof; , 2. Public art on Audley Square. You must not start any work on these parts of the development until we have approved what you have sent us. You must then carry out the work according to these detailed drawings.

Application Permitted 24 January 2018

17/04129/ADFULL

Details of public art (sculpture) in Audley Square pursuant to condition 2 (part 2) (as amended by Non-Material Amendment 18/00303) of planning permission dated 9 March 2016 (RN: 15/02197/FULL).

No Further Action 26 November 2019

## 7. THE PROPOSAL

The application seeks permission for the erection of a plinth and public art sculpture, and associated works within Audley Square.

The submission of this application seeks the City Council's agreement in respect to the location and detail of the public art secured under Schedule 1 paragraph 6.1 of the legal agreement (dated 9 March 2016) which states, *"The Owner undertakes that the Public Art shall be provided and displayed in a prominent location at the Development or such other position agreed in writing with the City Council acting reasonably as an integral part of the Development and the detail of the Public Art shall be submitted by the Owner to and approved by the City Council acting reasonably before Occupation of the Development"*.

## 8. DETAILED CONSIDERATIONS

### 8.1 Land Use

No floorspace is proposed and therefore the proposal raises no land use issues.

### 8.2 Townscape and Design

The site is in the Mayfair Conservation Area and within the setting of listed buildings on the south and west sides of Audley Square.

The key legislative requirements in respect to designated heritage assets are as follows:

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires, *"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building*

*or its setting or any features of special architectural or historic interest which it possesses.”*

Section 72 of the same Act requires, *“In the exercise, with respect to any buildings or other land in a conservation area...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”*

Chapters 12 and 16 of the NPPF require great weight be placed on design quality and the preservation of designated heritage assets including their setting. Chapter 16 of the NPPF clarifies that harmful proposals should only be approved where the harm caused would be clearly outweighed by the public benefits of the scheme, taking into account the statutory duty to have special regard or pay special attention, as relevant. This should also take into account the relative significance of the affected asset and the severity of the harm caused.

Audley Square is in the Mayfair Conservation Area towards to the southern end of South Audley Street opposite its junction with Tilney Street. Buildings on the south side of the square and one building on the east side are grade II listed, and there are grade II listed buildings on the west side. The application site is in front of a new development forming the northern and most of the eastern sides of the square. It is designed with classical detailing that will restore an appropriate architectural character to Audley Square and to this part of the Mayfair Conservation Area. In this context a similar approach to the artwork’s design, also grounded in the classical tradition, is appropriate.

The design considered by Sub-Committee(1) in 2018 is the same as currently proposed, namely *'The Spirit of Mayfair'* (previously, *'The Spirit of Fashionable Mayfair'*) comprising a group of three fictional figures depicting icons of fashion, style, and elegance, cast in bronze. This sculpture celebrates the beginning of fashionable endeavour and enterprise in eighteenth century Mayfair. This accords with the broad aims of Mayfair Neighbourhood Plan where policy MPR1(b) seeks to create attractive streetscapes, including public art in connection with major new developments, and this is in conformity with City Plan policy 43E.

The proposed artwork stands upon a plinth which includes tree planting/greening within the enhanced Audley Square public realm. The sculptor is Philip Jackson who is a renowned artist responsible for many high-profile works.

In response to comments from the Sub-Committee, the applicant's team undertook a full review of the proposal. It is stated that the work of a wide variety of well-established artists forming a robust portfolio of images and general information regarding artists' genres, use of materials, experience in the provision of public art, national and international reputation was considered. There followed an in-depth discussion as to whether there was any evidence that an alternative artist would produce a better solution to public art for Audley Square that meets with the client's expectations and requirements. After careful consideration, the applicant concluded that the proposal by Philip Jackson presented best solution to public art for Audley Square with both the context and history of the immediate setting and wider Mayfair area in mind.

In May 2020, the Applicant appointed Kanda Consulting, a specialist public consultation company, to undertake a pre-application community consultation. A series of targeted

public engagement activities took place to present the proposed public art and public realm, as a series of virtual presentations, to the key local stakeholders. This gave them the opportunity to meet with representatives of the project team to discuss and leave their feedback on the proposals. Responses to the consultation were broadly positive.

As confirmed in relation to the previous application, the applicant is willing to maintain the public art in perpetuity and a maintenance agreement can be secured to ensure the public art is the responsibility of the applicant and not the council. The agreement will also need to secure the removal of the public art with associated works of making good above ground level, and the re-instatement of the paving, to match adjoining areas, should the maintenance regime fail. There would also have to be public liability insurance associated with the artwork.

There have been letters received strongly supporting of the application, including from the University Women's Club at 2 Audley Square, and from the architects of the garage redevelopment (A.M.Stern Architects).

It is considered that the public art is acceptable in design and conservation terms subject to securing an appropriate unilateral undertaking having regard to policies 38, 39, 40, and 43 of the City Plan 2019-2040 and policies MPR and MD of the Mayfair Neighbourhood Plan; For these reasons, the proposal is considered to be compliant with the requirements of the NPPF and the statutory duties of the Town and Country Planning Act 1990, and the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **8.3 Residential Amenity**

The proposal raises no amenity concerns.

### **8.4 Transportation/Parking**

The Highways Planning Manager maintains his objection from before, namely that the public art will be on the public highway and may cause an obstruction to pedestrians. Concerns are also raised about the design and height of the public art, which may encourage members of the public to climb it. Consequently, the proposed public art could have a significantly adverse impact on highway users who engage with it in an unintended but foreseeable way, as well as being a safety hazard within the highway.

Previously, the Sub-Committee did not object to the proposed public art on these grounds.

It is not proposed that the public art be transferred into the City Council's ownership. In order to ensure that the public art will not fetter the City Council's ability to properly exercise its functions as the Highways Authority, a unilateral undertaking will ensure that the City Council can require the removal or remove the public art itself, and that the applicant is required to fund all associated costs, including reinstatement of the highway to the Highway Authority's satisfaction.

Finally, the detailed design of the alterations to the public highway to allow this public art to be placed in the location proposed have not yet been agreed. There is therefore no

guarantee that the final design of the public highway will be able to accommodate the proposed public art. The public art will need the approval of the Highways Authority to be placed upon the public highway. This is separate from the planning process. If granted permission, this decision would not fetter the City Council's decision as the Highways Authority as to whether or not to allow the art to be placed upon the public highway.

#### **8.5 Economic Considerations**

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

#### **8.6 Access**

The proposed sculpture is sited in the public realm and may be seen from surrounding pavements and from the island area on which it is situated.

#### **8.7 Other City Plan/Westminster Policy Considerations**

None

#### **8.8 Westminster City Plan**

The City Plan 2019-2040 was adopted at Full Council on 21 April 2021. The policies in the City Plan 2019-2040 are consistent with national policy as set out in the National Planning Policy Framework (NPPF) (July 2021) and should be afforded full weight in accordance with paragraph 219 of the NPPF. Therefore, in accordance with s.38 of the Planning and Compulsory Purchase Act 2004, it comprises the development plan for Westminster in combination with the London Plan adopted in March 2021 and the Mayfair Neighbourhood Plan (adopted December 2019) (see further details in Section 8.9). As set out in s.38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 49 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

#### **8.9 Neighbourhood Plans**

The Mayfair Neighbourhood Plan includes policies on a range of matters including character, heritage, community uses, retail, offices, housing, cultural uses, transport and the environment. It has been through independent examination and supported at referendum on 31 October 2019, and therefore now forms part of Westminster's statutory development plan. It will be used alongside the council's own planning documents and the Mayor's London Plan in determining planning applications in the Mayfair Neighbourhood Area. Where any matters relevant to the application subject of this report are directly affected by the policies contained within the neighbourhood plan, these are discussed elsewhere in this report.

#### **8.10 London Plan**

This application raises no strategic issues.

#### **8.11 National Policy/Guidance Considerations**

The City Plan 2019 - 2040 (April 2021) policies referred to in the consideration of this application are considered to be consistent with the NPPF 2021 unless stated otherwise.

### 8.12 Planning Obligations

The draft 'Heads' of agreement are proposed to cover the following issues:

- a. Lighting of the public art,
- b. the proposed structural support for the public art,
- c. a maintenance programme for the public art,
- d. public liability insurance for the public art,
- e. the proviso that the Council can require the removal or remove the public art itself, and that the applicant is required to fund all associated costs, including reinstatement of the highway to the Highway Authority's satisfaction,
- f. the cost of monitoring the agreement,
- g. costs of the stopping-up process; and
- h. a commuted sum of £50,000 for maintenance of the public art

### 8.13 Environmental Impact Assessment

Not applicable

### 8.14 Other Issues

None

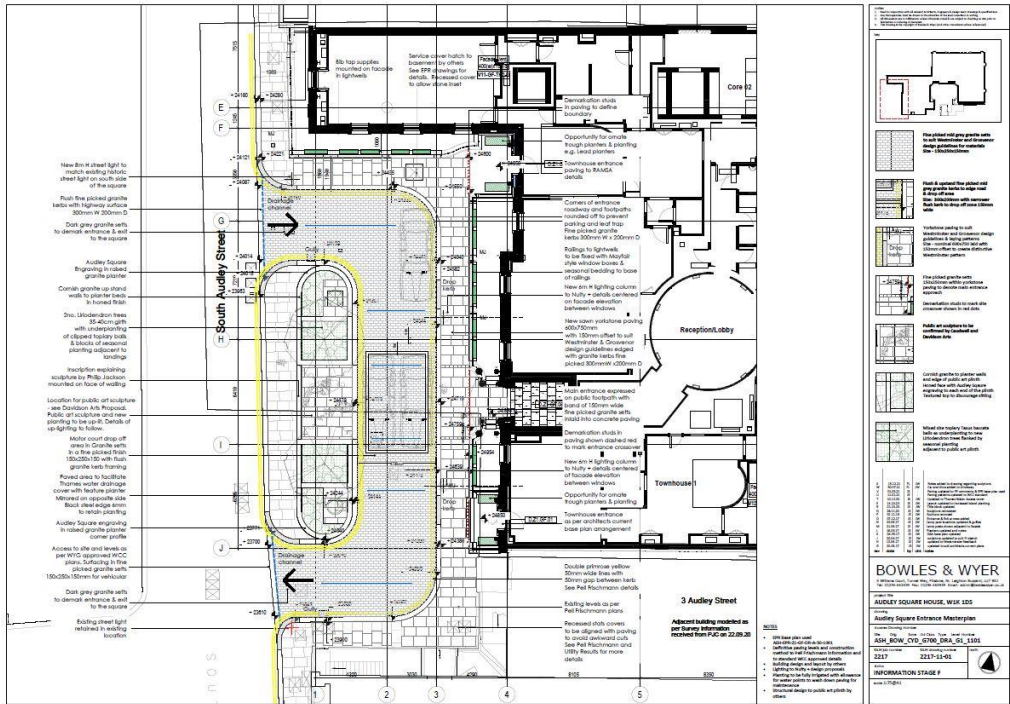
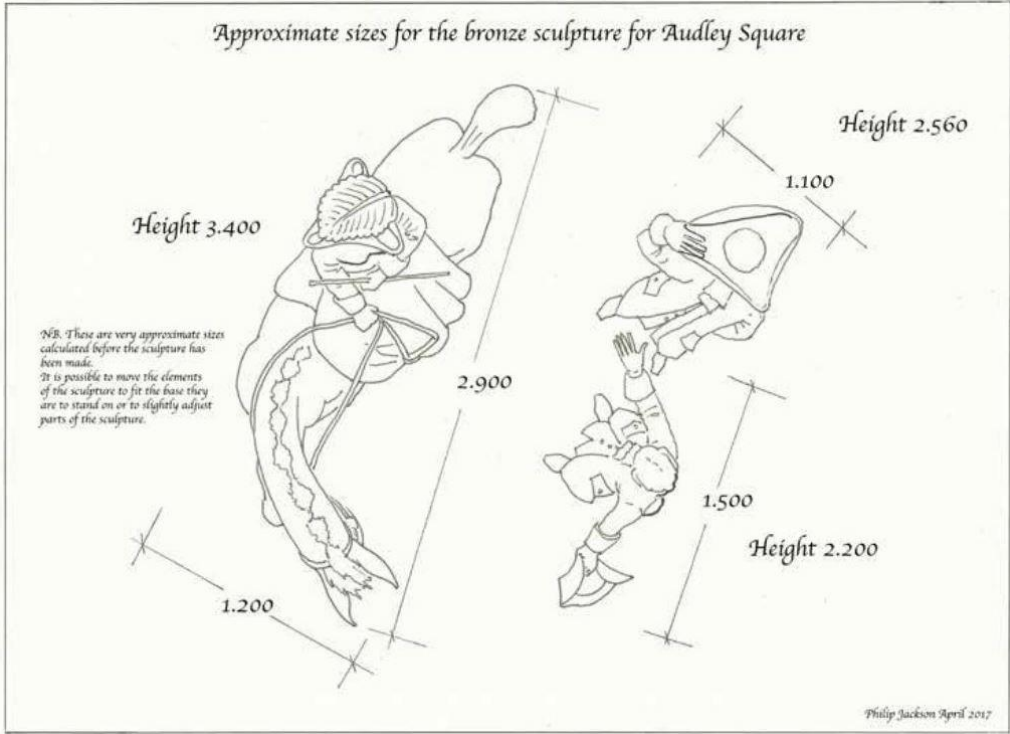
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

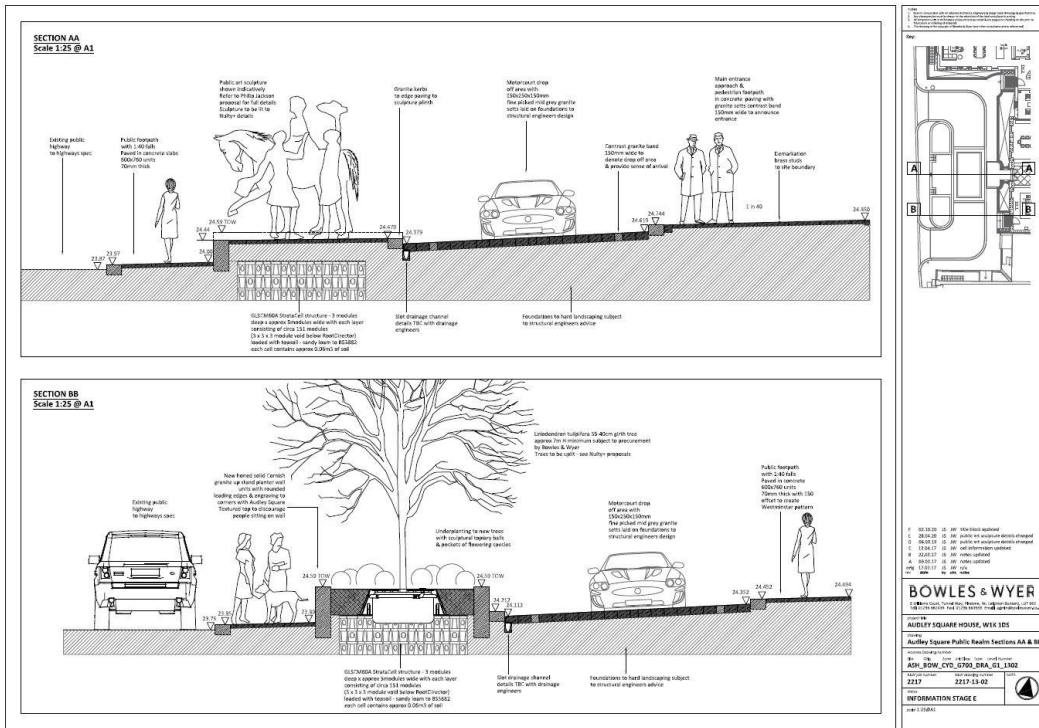
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT, PLEASE CONTACT THE PRESENTING OFFICER: MARK HOLLINGTON BY EMAIL AT [mhollington2@westminster.gov.uk](mailto:mhollington2@westminster.gov.uk)



9. KEY DRAWINGS







**DRAFT DECISION LETTER****Address:** Audley Square, London W1**Proposal:** Erection of a plinth and public art sculpture, and associated works within Audley Square.**Reference:** 21/08677/FULL**Plan Nos:** ASH-EPR-ZZ-ZZ-DR-A-89-5000 Rev P01; ASH-EPR-ZZ-WE-DR-A-89-5002 Rev P01; ASH-EPR-ZZ-SE-DR-A-89-5003 Rev P01; 2217-11-01 Rev X; 2217-13-02 Rev F.**Case Officer:** Matthew Pendleton**Direct Tel. No.** 07866 039923**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.
2	<p>Reason: For the avoidance of doubt and in the interests of proper planning.</p> <p>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:</p> <ul style="list-style-type: none"> <li>o between 08.00 and 18.00 Monday to Friday;</li> <li>o between 08.00 and 13.00 on Saturday; and</li> <li>o not at all on Sundays, bank holidays and public holidays.</li> </ul> <p>You must carry out piling, excavation and demolition work only:</p> <ul style="list-style-type: none"> <li>o between 08.00 and 18.00 Monday to Friday; and</li> <li>o not at all on Saturdays, Sundays, bank holidays and public holidays.</li> </ul> <p>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)</p> <p>Reason: To protect the environment of neighbouring occupiers. This is as set out in Policies 7 and</p>

33 of the City Plan 2019 - 2040 (April 2021). (R11AD)
---

**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 the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), 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 need to speak to our Highways section about any work which will affect public roads. This includes new pavement crossovers, removal of redundant crossovers, changes in threshold levels, changes to on-street parking arrangements, and work which will affect pavement vaults. You will have to pay all administration, design, supervision and other costs of the work. We will carry out any work which affects the highway. When considering the desired timing of highway works in relation to your own development programme please bear in mind that, under the Traffic Management Act 2004, all works on the highway require a permit, and (depending on the length of the highway works) up to three months advance notice may need to be given. For more advice, please email [AskHighways@westminster.gov.uk](mailto:AskHighways@westminster.gov.uk). However, please note that if any part of your proposals would require the removal or relocation of an on-street parking bay, this is unlikely to be approved by the City Council (as highway authority).
  
- 3 Under the Highways Act 1980 you must get a licence from us before you put skips or scaffolding on the road or pavement. It is an offence to break the conditions of that licence. You may also have to send us a programme of work so that we can tell your neighbours the likely timing of building activities. For more advice and to apply online please visit [www.westminster.gov.uk/suspensions-dispensations-and-skips](http://www.westminster.gov.uk/suspensions-dispensations-and-skips).
  
- 4 All new installations will need to be endowed with either a regular revenue stream or a commuted sum so that the new work can be properly maintained in perpetuity. The amount of the endowment depends on the complexity of the piece and the attention it will need. Prior to the commencement of development, the applicant will need to ensure they have all necessary approvals. The applicant will need technical approval for the works to the highway (supporting structure) prior to commencement of development. The applicant should contact Louisa Augustine ([laugustine@westminster.gov.uk](mailto:laugustine@westminster.gov.uk)) in Westminster Highways Infrastructure and Public Realm to progress the applicant for works to the highway.

Item No.
<b>3</b>

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.

# Agenda Item 4

Item No.
4

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 19 April 2022	<b>Classification</b> For General Release	
<b>Report of</b> Director of Place Shaping and Town Planning		<b>Ward(s) involved</b> Bayswater	
<b>Subject of Report</b>	<b>Site At 43 Hereford Road, 2-6 Botts Mews, 2 Chepstow Road, 104-106 Westbourne Grove, 112a/B, 98-112 Westbourne Grove, W2 5RU</b>		
<b>Proposal</b>	Variation of conditions 2 and 3 of planning permission dated 27 October 2015 (RN: 15/04113/FULL) which itself varied condition 13 (tables and chairs) of planning permission dated 07 February 2003 (RN:02/03540) for Part demolition / redevelopment to provide new buildings, part alterations/extensions (including listed building) to provide 36 flats, 2 live-work units, retail, restaurant facilities and 34 parking spaces in basement with associated works; namely to remove restrictions outside of No. 98 Westbourne Grove (previously Cote restaurant) only. NAMELY, to allow takeaway and delivery sales from the premises, with delivery drivers utilising the motorcycle bay on Hereford Road outside of 20-22 Hereford Road and allow a small ancillary bar area within the restaurant to serve diners at the restaurant and to provide bar-style seating areas.		
<b>Agent</b>	Mr Mark Shearman		
<b>On behalf of</b>	Sunday in Brooklyn		
<b>Registered Number</b>	21/01858/FULL	<b>Date amended/ completed</b>	23 March 2021
<b>Date Application Received</b>	23 March 2021		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Westbourne		

## 1. RECOMMENDATION

Grant conditional permission.

## 2. SUMMARY

This application relates to a commercial premises on the corner of the Westbourne Grove and Hereford Road. The property was built almost 20 years ago as part of a redevelopment scheme approved in 2003 which was for commercial units at ground floor level and residential properties at upper floor levels. The site is unlisted, lies within the Westbourne Conservation Area and lies within the Queensway/ Westbourne Grove Major Centre.

Permission is sought to vary conditions 2 and 3 of the latest permission dated 27 October 2015 (RN: 15/04113/FULL) to allow takeaway and delivery sales from the premises, with delivery drivers utilising the motorcycle bay on Hereford Road outside of 20-22 Hereford Road and allow a small ancillary bar area within the restaurant to serve diners at the restaurant and to provide bar-style seating areas.

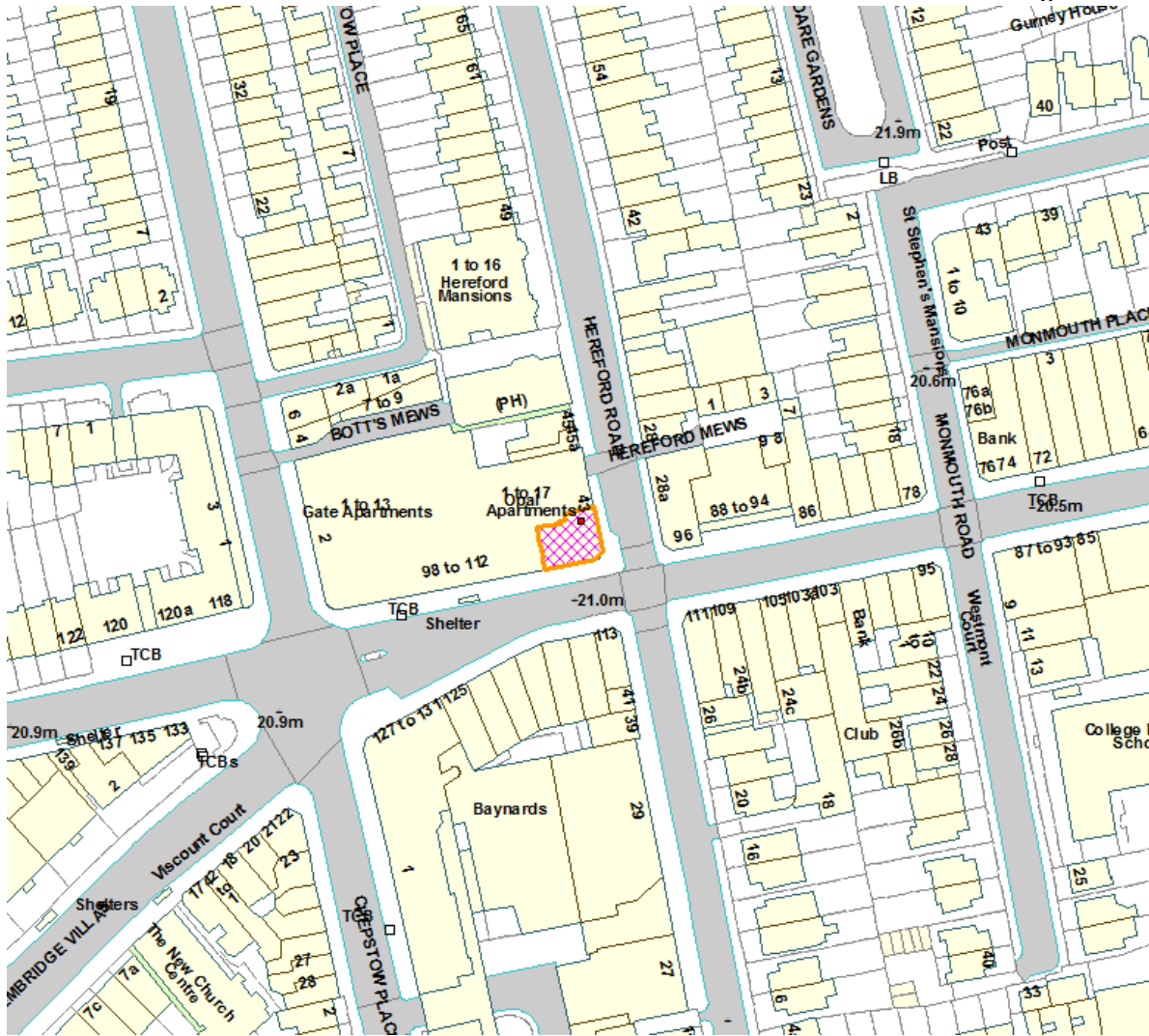
The key issues in the determination of the application are:

- The impact upon the surrounding highway network and
- The impact upon the amenity of neighbouring properties.

Subject to conditions, the proposals are considered acceptable in highways and amenity terms and are considered to comply with policies 7, 14, 16, 28, 29, 33 and 38C of the City Plan 2019-2040 (April 2021) and are recommended for approval.



### 3. LOCATION PLAN



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4. PHOTOGRAPHS

Front elevation



Single yellow line on Hereford Road, adjacent application site (also showing nearest cycle stands):



Cycle stands on Westbourne Grove (photo taken when Cote was still in operation):



Motorcycle parking bay on Hereford Road (application site in the distance):



## 5. CONSULTATIONS

### Consultation responses to original consultation:

#### WARD COUNCILLORS FOR BAYSWATER:

Any response to be reported verbally.

#### BAYSWATER RESIDENTS ASSOCIATION:

Any response to be reported verbally.

#### SOUTH EAST BAYSWATER RESIDENTS ASSOCIATION:

Submitted correspondence showing that residents are concerned about the highway's safety and amenity impact of motorcycle delivery people, however do not themselves comment on the application.

#### NOTTING HILL EAST NEIGHBOURHOOD FORUM:

Welcome new businesses and new concepts to the area. Note that the original conditions were imposed for a reason. Note the proposal includes an increased emphasis on take-aways, which will increase the delivery traffic associated with it, bringing concerns of increased noise, pollution, traffic incidents etc. An investigation into the increase in deliveries generally should be undertaken.

#### WESTBOURNE NEIGHBOURHOOD ASSOCIATION:

Any response to be reported verbally.

#### HIGHWAYS PLANNING MANAGER:

Originally an objection was received on the grounds that the proposed delivery function could reduce space available to pedestrians, cyclists and other highway users and uses. Bicycles and their riders waiting/congregating on the highway (including footway) would create an obstruction for pedestrians and other highway users. Delivery vehicle parking can also reduce the availability of parking for other uses, increase congestion (both on the carriageway and footway) and increases noise and fumes in the area.

Further to the receipt of an amended Operational Management Plan, whilst details concerning the number of couriers at the site at any one time and the hours for the food delivery service are acceptable, there remains concerns as to the use of the motorcycle parking bay, south on Hereford Road, given the distance from the application site this may encourage riders to look for other spaces in the area which increases congestions, noise and fumes.

#### ENVIRONMENTAL SCIENCE OFFICER:

There is an objection to the proposed take-away sales from the premises on the grounds that it would increase the risk of public nuisance and disturbance to nearby local residents, particularly late at night. The concern may be addressed if the takeaway/delivery activity is not permitted after 2300hrs.

#### ADJACENT OWNERS / OCCUPIERS:

No. consulted: 36 no. of replies: 3 (2 from the Hereford Road Association)

3 objections were received concerning the following issues:

Highways:

- Concern about the impact of collections from the restaurant on the highways. There is already significant congestion on both sides of Westbourne Grove at the corner with Hereford Road. If collections increase, then this will exacerbate existing road safety issues.
- The proposals would not be consistent with Quietway Cycle Route 2 which seeks to ensure that quietways are high-quality with low traffic volumes.
- The ways in which the delivery service would operate on the application site, as detailed in the Servicing management plan does not sound credible – the restaurant will manager riders?
- Moped drivers are dangerous.
- The restaurant unit drivers do not abide by parking rules/ legislation.
- Already significant issues with Franca Manca on the corner.

Amenity:

- The hours during which a collection service can be offered are far too long. This would have a negative impact on users of the highway and neighbour amenity.

**RECONSULTATION** - with neighbours on Hereford Road, as a result of proposals for delivery drivers to use the cycle parking bay (carried out 21 January 2022).

No. Consulted:8

Total No. of replies:4

Total No of Objections:4

Highways:

- The parking proposals are unfeasible
- How can only 2 riders at any one time be controlled.
- Reconfirming comments that staff can enforce rider behaviour is discreditable
- The revised OMP does not overcome the existing speeding issues of Hereford Road

Other:

- Why should the application be approved when the applicant was well aware of the conditions restricting deliveries.

The Hereford Road Association welcomes the amendments to the proposed timings for the delivery service.

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application site is a restaurant at ground floor and basement level of No. 98 Westbourne Grove. The site on the corner of Westbourne Grove and Hereford Road. It is unlisted and located within the Westbourne Conservation Area. The buildings have five storeys, and the upper floors are in residential use.

The application site is within the Queensway/ Westbourne Grove Major Centre.

## 6.2 Recent Relevant History

Numerous applications for tables and chairs outside the premises (as listed within the submitted OMP). The latest is listed below:

15/04113/FULL

Variation of Condition 13 (tables and chairs) of planning permission dated 07 February 2003 (RN:02/03540) for Part demolition / redevelopment to provide new buildings, part alterations/extensions (including listed building) to provide 36 flats, 2 live-work units, retail, restaurant facilities and 34 parking spaces in basement with associated works; namely to remove restrictions outside of No. 98 Westbourne Grove (Cote restaurant) only.

Application Permitted 27 October 2015

09/05567/FULL

Retention of use of part basement of No 100 from retail as an extension to the existing restaurant (Class A3).

Application Permitted 22 September 2009

09/00679/FULL

Use of part of the communal refuse store to the rear of the ground floor retail units of Nos. 102-104 Westbourne Grove for retail purposes (Class A1) associated with the retail use of 106 Westbourne Grove (Unit 4).

Application Permitted 6 August 2009

06/00320/FULL

Variation of Condition 5 of planning permission dated 7 February 2003 (RN: 02/03540) namely, to vary opening hours of Unit 3 108 Westbourne Grove (Class A3) from 08:00 - 24:00 hours midnight to 08:00 - 00:30 hours (Mon. - Sat.) and from 08:00 - 23:00 to 08:00 - 24:00 hour midnight (Sun. & Bank Holidays).

Application Permitted 6 March 2006

04/08483/FULL

Amendments during the course of construction to planning permission 02/03540/FULL, namely, the reconfiguration of the basement and ground floor levels to subdivide the approved units from seven units to nine (providing seven retail units and 2 x A3 units) with a total increase in floorspace of 22m<sup>2</sup> retail and 77m<sup>2</sup> of A3 space and the reconfiguration the approved delivery bays and waste storage area.

Application Permitted 12 May 2005

108 Westbourne Grove (part of redevelopment site)

04/05705/FULL:

Variation of Condition 2 (RN: 02/03540) dated 07 February 2003 namely to allow for the sale of hot and cold drinks and cold food for consumption off the ground floor premises (No. 108) that were granted consent as part of the redevelopment.

Application Permitted 15 September 2004

02/03540/FULL

Part demolition / redevelopment to provide new buildings, part alterations/extensions (including listed building) to provide 36 flats, 2 live-work units, retail, restaurant facilities and 34 parking spaces in basement with associated works.  
Application Permitted 7 February 2003

## 7. THE PROPOSAL

Permission is sought to vary conditions 2 and 3 of permission 15/04113/FULL, which itself was one of a number of variation approvals on an original redevelopment scheme granted in 2003. The variation to the conditions would allow takeaway and delivery sales from the premises, with delivery drivers utilising the motorcycle bay on Hereford Road outside of 20-22 Hereford Road and allow a small ancillary bar area within the restaurant to serve diners at the restaurant and to provide bar-style seating areas.

The conditions are currently worded:

### **Condition 2 -**

Notwithstanding the provisions of Class A3 of the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order) no food or drink of any kind shall be sold on the premises for consumption off the premises, other than at 108 Westbourne Grove, London W2 5RU in accordance with Variation of condition permission granted 15/09/2004 under reference 04/05705/FULL.

### **Condition 3 –**

You must only use the Class A3 restaurants as sit down-waiter service -restaurants. You must not use any part of the Class A3 premises as a bar, ancillary bar area, or for any other purpose within Class A3 of the Town and Country Planning Use Order 1987 (or any order that may replace it).

## 8. DETAILED CONSIDERATIONS

### 8.1 Land Use

#### 8.1.1 Takeaway/Deliveries

A number of objections have been received on the grounds of the takeaway/delivery service and the impact this has on the surrounding highway network, and ultimately the harm this causes to the amenity of neighbouring properties.

Condition 2 restricts any takeaway and delivery service from the premises. The applicant argues that 'takeaway/delivery' is crucial to restaurants in the fast/casual dining sector and that this has become even more important in the light of the Coronavirus pandemic. The applicant argues that in many circumstances it is seen as the key to survival, particularly when restaurants are small in size and the premiums, rental demands and business rates are so high. The applicant also argues that to allow deliveries/ takeaways would be similar to the Co-op at 108 Westbourne Grove (which is part of the same development and was allowed under application 04/05705/FULL when it was occupied by Carluccio's (but as a point to note, the condition carries over to any future occupier)) and is allowed by the condition.



The principle of a takeaway/delivery service is supported by policy 14 and 16 of the City Plan with policy 16 stating “provision for food deliveries from restaurants or cafés, including facilities for platform-based delivery, will only be supported where it is demonstrated that the facilities do not result in a change of use to hot food takeaway or other uses including composite / sui generis uses”. The premises is to remain a restaurant (now Class E).

Paragraph 16.8 of the City Plan goes on further to recognise the recent growth in delivery platforms and seeks to control numbers and hours of operation of food deliveries through planning conditions to ensure any such services are ancillary to the primary use of the premises and will seek to promote use of sustainable delivery options.

The applicant has provided an Operation Management Plan (OMP) in order to address the concerns from the Highways Planning Manager and objections from neighbouring properties, surrounding delivery vehicle parking and the implications on the highway and noise and disturbance to neighbours. This was revised during the course of the application and that required additional consultation to residents on the south side of Hereford Road.

The OMP sets out the following:

- The delivery companies to be used by the applicant “Sunday in Brooklyn” are Deliveroo and Supper.
- The hours of opening are conditioned (Condition 5 of permission 15/04113/FULL) to be 08.00-00.30 Monday – Saturday and from 08.00-24.00 hrs midnight Sunday and Bank Holidays.
- The food delivery service will also be stopped during peak hours, including between 8am-9am and 4pm-5.30pm for delivery drivers (to limit impact on local roads).
- The delivery service will be stopped after 10pm (this has altered since the original submission and is to avoid further impact on the residents)
- Once drivers accept the ‘order/delivery’ via the app, the app explains the parking spots that the restaurant expects them to use, and tells them they MUST park up and walk inside to greet the host.
- Parking must be in a legally designated space (depending on the type of vehicle).
- Motorcycle drivers shall be required to park either in the area of single yellow line if space is available, or alternatively within the Solo Motorcycle Bay available circa 50m south to the south of the site, on Hereford Road. If no parking is available, they will locate and parking within an alternative suitable parking space.
- Bicycle riders shall be required to park their bicycle on either of the Sheffield-type cycle stands located outside the site, either on Hereford Road, or on Westbourne Grove. Further stands are available further to the west of the site, at the signalised junction of Westbourne Grove with Pembridge Villas and Chepstow Place.
- Car drivers will be discouraged in general, as parking is limited to single yellow line or Pay and Display spaces. In any case they will be required to park within permitted spaces only. Private vehicles are allowed to park on single yellow lines for loading activities for up to 20 minutes until 6.30pm.
- If drivers do not find any legally permitted space available, they will advise the restaurant accordingly, and continue on their search, until they find an appropriate parking location.
- After finding a suitable place to park, all couriers will be directed by staff at the restaurant to the lower ground floor to the food counter for collection, or advise them to wait within the restaurant by the bar until ready.

- Once their food order is collected, the couriers will make their way back to their vehicle.
- Couriers on foot will just walk into the restaurant host stand.
- A sign is in place on the window clearly illustrating on a map where the parking spots are. Staff must be familiar with these.
- Upon arrival, drivers are asked to confirm where they have parked to ensure this is correct.
- Take drivers name if they have flouted the rule and report them to Deliveroo/ Supper.
- There shall be no more that 2 couriers on the site at any one time.
- In addition, a basic flow chart mapping the processes for staff and drivers was submitted (as can be seen in the relevant drawings section of this report).

At the time of drafting the revised OMP in December 2021/ January 2022, the restaurant began daytime food deliveries, because of the rise in the Omicron infections and the knock on impact that had to the restaurant over Christmas/ New Year. The applicant knew that this was unlawful and wrote to the planning department to set out their intentions. In this short period, and taking into consideration that the operator of the restaurant is very new to the UK market, the restaurant apparently was only dealing with an average of 8 deliveries per day. As such, the applicant cannot provide an estimate of how many deliveries there could be during a day.

The applicants offer to suspend delivery service during peak hours, and to terminate deliveries at 10pm is very much welcomed, and meets Environmental Science Officers request. The number of deliveries, although acknowledging this is likely to increase is not considered to be excessive and with the restaurant only accepting 2 drivers at any one time, is reflective of the number of online/app orders they expect to receive.

The use of the north side of Hereford Street and Westbourne Grove for cycle parking/ parking is not objectionable too in highways terms given the parking restrictions already in place. Any noise generated by riders/ motorcycles is not considered to be so harmful to the residents above the application or the surrounding area, over what exists at present. Westbourne Grove is a major centre and is very busy with a variety of late night entertainment/ retail offerings and has a significant footfall. The finishing time of deliveries of 10pm is probably earlier than other unrestricted establishments in the area and therefore the proposals are acceptable in amenity terms.

The proposals seek to direct motorcycle riders, if unable to find other legal parking nearer the restaurant, to use the solo motorcycle bay outside of 18, 20, 22 Hereford Road. These residents were notified of the proposals and no comments were received. Further comments by original objectors were raised on highways and noise grounds. The Highways Planning Manager does not raise a concern as to the use of motorcycle bay per se, but given its distance to the restaurant and the round trip of approx. 100m, (which couriers will have to walk, ½ the distance carrying food) may cause riders to ride around looking for alternative parking which then adds to traffic congestion and occupation of other parking availability.

The applicant argues that if the drivers can park closer to the restaurant, and legally, then they will. In addition, if there are no objections to the use of the solo motorcycle bay, then it takes approximately 1minute to walk 100m, which is not unreasonable and drivers will be

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aware of this when accepting the order via the app.

The Highways Planning Manager has concerns that riders waiting/congregating on the highway (including footway) would also create an obstruction for pedestrians and other highway users which would be contrary to Policy 25. The details submitted in the OMP would not allow this to happen given the directions to the rider/ drivers as to where to park; the conditions upon which they accept the order and that staff of the restaurant will be trained to deal with rider/ drivers should they not obey the instructions.

In amenity terms, the use of the solo motorcycle bay by delivery drivers is unlikely to result in significant noise levels to the adjacent Hereford Road properties, both in terms of noise from vehicles or from voices of drivers, over what can already occur from this legal parking. As noted above, the hours and the number of delivery drivers are to be controlled and drivers are encouraged not to 'hang around' before or after collecting deliveries.

The applicant has been very pro-active with the City Council to ensure that a delivery service is operated with minimal disruption to the highway network and neighbouring properties. It is important to note that the City Council has been unsuccessful at recent appeals across the borough where conditions have sought to prevent such services operating, including within Queensway (RN: 19/00475/FULL) and to this end it is recommended that permission be granted subject to additional conditions securing hours of operation and adherence to the OMP.

Agreement has also been reached that should permission be granted that the applicant would accept a condition restricting delivery service for a temporary period of a year in order for the City Council to monitor the implications on the surrounding roads and neighbours and for the restaurant to gather appropriate data should an extension to a temporary permission be applied for at a later date.

### **8.1.2 Ancillary Bar**

Condition 3 states that there shall be no bar at the restaurant. It is likely this condition was imposed primarily to prevent a full bar use at the site and the amenity implications this could bring, due to the fact that when the consent was granted a restaurant use and a bar use fell within the same Use Class. This is no longer the case and permission would now be required to change the use of the premises solely to a bar.

The premises has been in commercial operation for many years operating until recently by Cote. The premises is now operating as Sunday in Brooklyn. The applicant is now seeking the inclusion of an ancillary bar area within the premises. This will allow for a comprehensive drinks offering and create an area for customers to wait before or after dining at their table. It would also provide additional counter-style seating capacity for diners to consume their meals at the bar if all tables are occupied. The bar area will take up only a small area of the restaurant and will not impact on the overall primary use of the premises as a sit-down, waiter-service restaurant.

There are no policies in the City Plan 2019-2040 that would prohibit a restaurant having an ancillary bar area provided the proposal did not harm neighbour amenity. A small bar area serving diners is not unusual and given the size of the restaurant is not considered to result in a significant amount of 'drinkers'. The bar area is considered appropriate to its host use and the surrounding area which is a mix of food, drink and entertainment uses and retail

premises and, provided that the restaurant complies with the opening hours specified in condition 5 it is therefore considered that a small ancillary bar would not harm neighbour amenity, and complies with the general aims of policy 14 and 16 of the City Plan.

It should also be noted that permission would now be required to change the use of the premises from a restaurant solely to a bar.

## **8.2 Townscape and Design**

There are no design implications as a result of the proposals.

## **8.3 Residential Amenity**

Issues of amenity have been discussed in the land use section of this report.

## **8.4 Highways Matters**

Highways matters associated with the takeaways/ food deliveries have been discussed in the land use section of this report.

There are no concerns with regards to servicing and deliveries as this is not an application for a change of use.

## **8.5 Economic Considerations**

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

## **8.6 Access**

The access is not to alter as a result of the proposals.

## **8.7 Other City Plan/Westminster Policy Considerations**

None.

## **8.8 Westminster City Plan**

The City Plan 2019-2040 was adopted at Full Council on 21 April 2021. The policies in the City Plan 2019-2040 are consistent with national policy as set out in the National Planning Policy Framework (NPPF) (July 2021) and should be afforded full weight in accordance with paragraph 219 of the NPPF. Therefore, in accordance with s.38 of the Planning and Compulsory Purchase Act 2004, it comprises the development plan for Westminster in combination with the London Plan adopted in March 2021 and, where relevant, neighbourhood plans covering specific parts of the city (see further details in Section 8.9). As set out in s.38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 49 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

## **8.9 Neighbourhood Plans**

There are no neighbourhood plans for this area.

#### **8.10 London Plan**

This application raises no strategic issues.

#### **8.11 National Policy/Guidance Considerations**

The City Plan 2019 - 2040 (April 2021) policies referred to in the consideration of this application are considered to be consistent with the NPPF 2021 unless stated otherwise.

Further to the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the City Council cannot impose a pre-commencement condition (a condition which must be discharged before works can start on site) on a planning permission without the written agreement of the applicant, unless the applicant fails to provide a substantive response within a 10 day period following notification of the proposed condition, the reason for the condition and justification for the condition by the City Council.

There are no pre-commencement conditions attached to this permission.

#### **8.12 Planning Obligations**

Planning obligations are not relevant in the determination of this application. There are no CIL payments required as a result of this proposal.

#### **8.13 Environmental Impact Assessment**

The proposals raise no environmental concerns.

#### **8.14 Other Issues**

Concern has been raised as to the legality of 'L' plates and that moped drivers are generally young, dangerous, don't abide by the rules of the road and therefore a risk to pedestrian and traffic safety. Whilst these concerns are noted, they are not a material planning consideration and regulated through other means.

Comment has been raised that the restaurant operator shouldn't have taken on a lease that prohibited deliveries if this is always their intention. The local planning authority cannot refuse to assess an application on this basis and due consideration has been given to the proposals.

The objectors have stated that there are already problems with delivery drivers from the Franca Manca opposite the site. Enforcement investigations have been carried out and it has been found that there is no breach of planning control as there are no conditions on this property restricting deliveries.

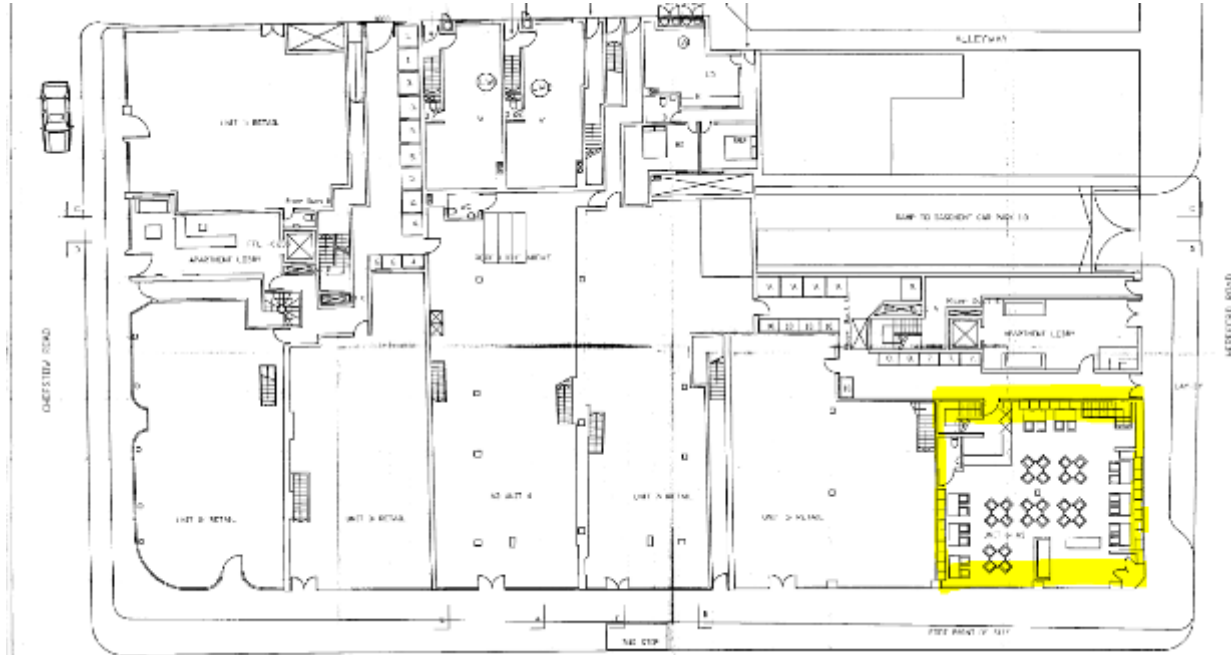
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

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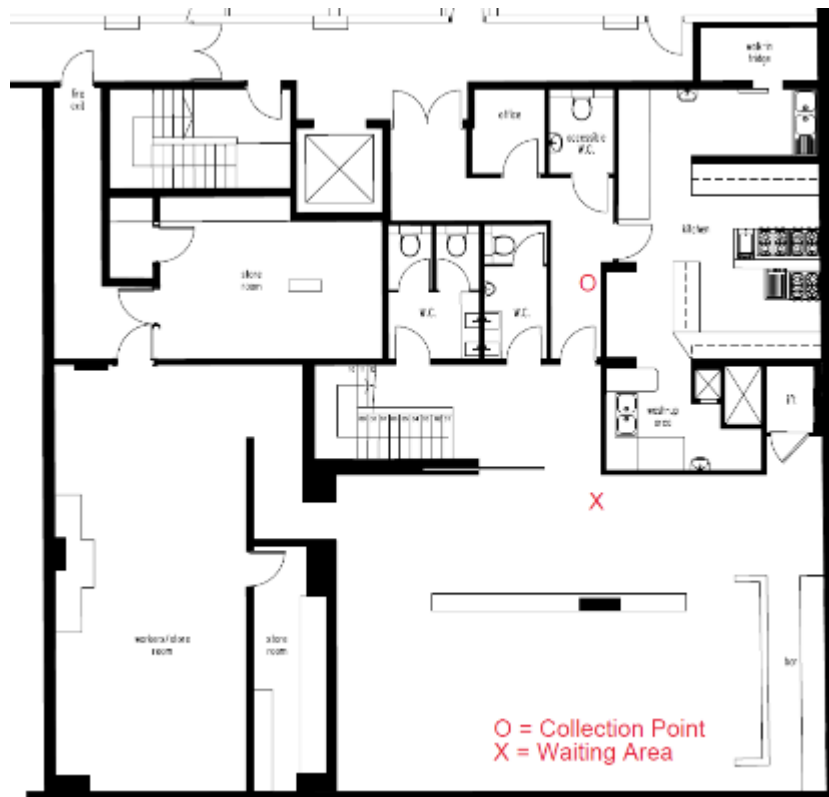
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: RUPERT HANDLEY BY EMAIL AT [rhandley@westminster.gov.uk](mailto:rhandley@westminster.gov.uk)

**9. KEY DRAWINGS**

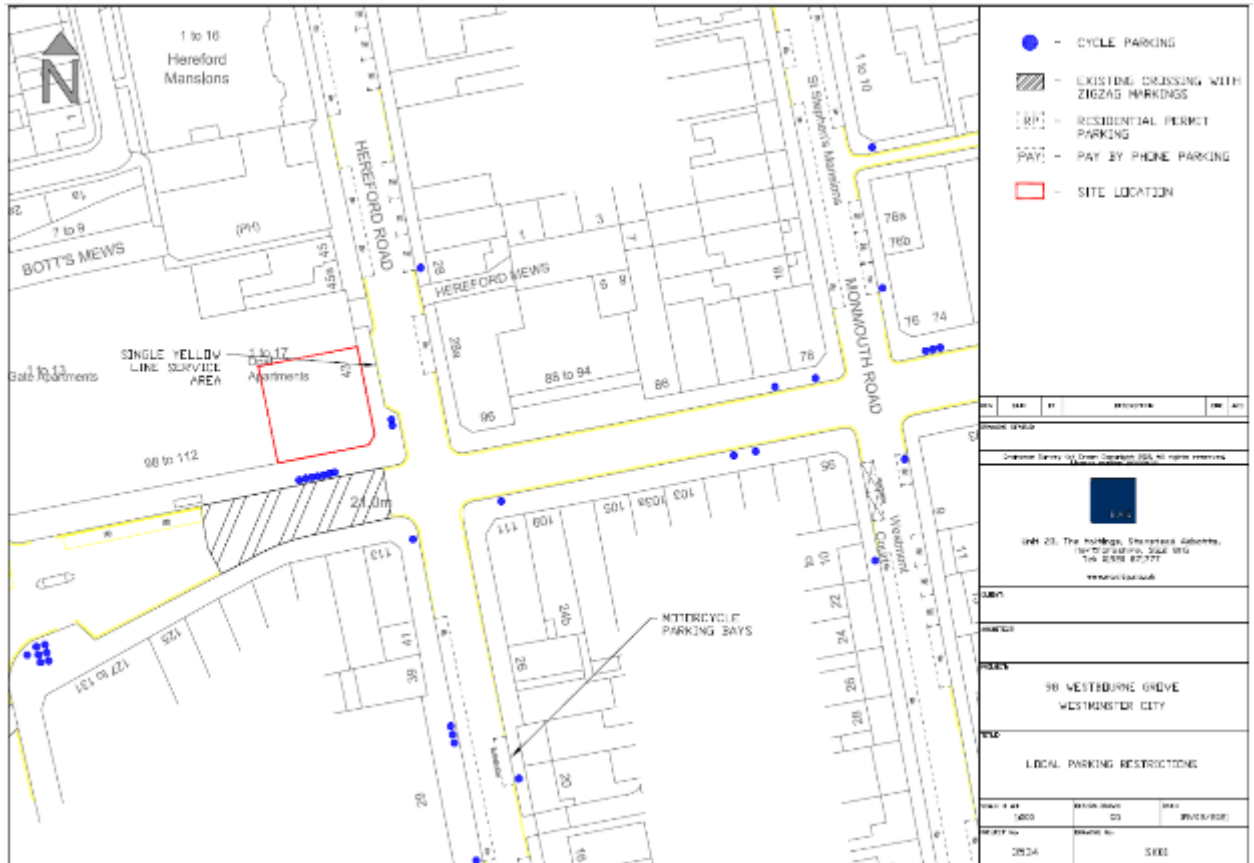
Originally approved ground floor plan with application area highlighted in yellow:



Proposed Lower Ground Floor Plan showing collection point:



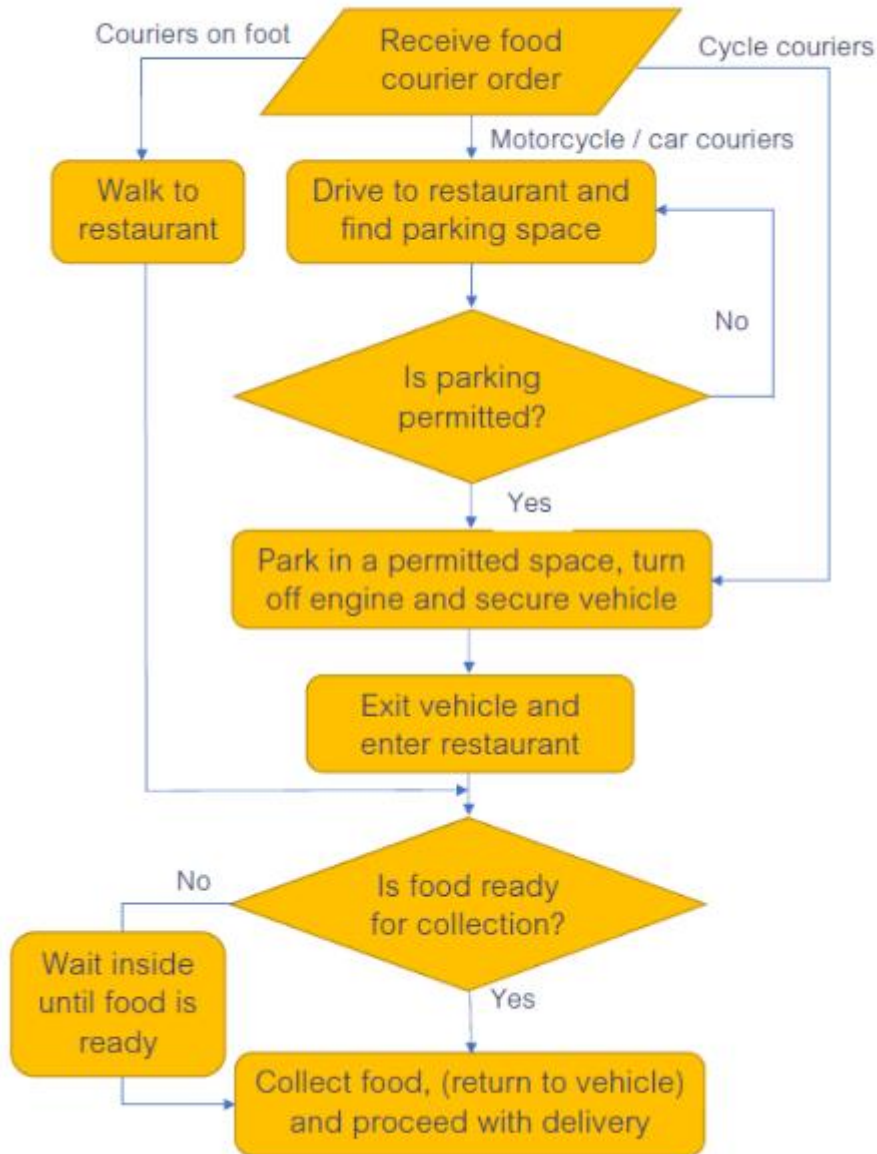
Appendix B of OMP: Parking Restrictions





Appendix C of OMP: Flow Chart of Food Courier Collection Process

Food courier collection process from 98 Westbourne Grove, London:



**DRAFT DECISION LETTER DRAFT DECISION LETTER**

- Address:** 98 Westbourne Grove, London, W2 5RU,
- Proposal:** Variation of conditions 2 and 3 of planning permission dated 25 November 2015 (RN: 15/04113/FULL) which itself varied condition 13 (tables and chairs) of planning permission dated 07 February 2003 (RN:02/03540) for Part demolition / redevelopment to provide new buildings, part alterations/extensions (including listed building) to provide 36 flats, 2 live-work units, retail, restaurant facilities and 34 parking spaces in basement with associated works; namely to remove restrictions outside of No. 98 Westbourne Grove (previously Cote restaurant) only. NAMELY, to allow takeaway and delivery sales from the premises, with delivery drivers utilising the motorcycle bay on Hereford Road outside of 20-22 Hereford Road and allow a small ancillary bar area within the restaurant to serve diners at the restaurant and to provide bar-style seating areas.
- Plan Nos:** Approved Documents of variation application 21/01858/FULL:  
Cover Letter by Firstplan ref: 21/98WESTBOURNE/MS/ta Dated: 23 March 2021,  
Service Management Plan - 98 Westbourne Grove, Transport Note 98 Westbourne Grove London
- Original approved documents dated 7 February 2003 (RN:02/03540/FULL);  
A139/000,001A,002C ,003B,004A,005,006, 007A,008,009,011A,  
012A,013B,014,015, 016,017B,018A,019, 020,A239/001A,002C,  
003,004A,005,006,007 ,008,009,010,011,012, 013,014,015,016A,017, 018, SK0-  
P1A,(SK)2V-01, (SK)2V-02,SK(B)06 and SK(B)07.
- Approved documents of variation dated 20 August 2004(RN:04/05232/FULL);  
A239/003A,004B,009A and site location plan.
- Approved documents of variation dated 15.9.2005 (RN:04/05705/FULL);  
Photo 1-6; letter received 22 July 2003; letter dated 20 Aug 204 from Simon  
McCarthy.
- Approved documents of variation dated 10 March 2005 (RN:04/08845/FULL);  
Letter dated 28th January, Planning Statement dated 21st October 2004, Drwgs  
A239/001 Rev C, 002 Rev E, 1201/001 Rev D amd 002 Rev C. (sl)2-10 Rev A,  
A139/000, 1202/001 Option 1, Photographs and planning statement.
- Approved documents of variation dated 10 March 2005 (RN:05/00486/FULL);  
A139/000, CCD 021 GATE01 rev A.
- Approved documents of variation dated 12 May 2005 (RN: 04/08483/FULL);  
A239/001 Rev C, 002 Rev E, 1201/001 Rev F and 002 Rev C. (sl)2-10 Rev A
- Approved documents of variation dated 6 March 2006 (RN:06/00320/FULL)  
12-01; 01-01ab; 02-01AB and letter dated 9 January 2005.

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Approved documents of variation dated 27 October 2015 (RN:15/04113/FULL)  
A.01 Rev A

Approved documents of variation dated 27 November 2017 (RN:17/08849/FULL):  
A.01 Rev. A

Approved documents of variation dated 15 January 2020 (RN:19/08177/FULL):  
A.01 Rev. A

**APPROVAL OF DETAILS APPROVED DOCUMENTS:**

Approved documents of details dated 14 April 2004 (04/08131/ADFULL):  
CCD 021 HR03 REV 1; CCD 021 WG03 REV C; CCD 021 CR03 REV B; CCD 021  
WG 04 and revised elevation to Chepstow Road (received by fax Rev A).

Approved documents of details dated 3 Sept 2004 (RN:04/06874/ADFULL)  
CP-1237-A-A(H71)025, CP-1237-A-L(00)15, CP-1237-A-L(00) 130 F, CP-1237 A-  
A(H71)02 C.

Approved documents of details dated 27 July 2004 (RN:04/02052/ADFULL):  
WGGRC002, 003, 004, 005, 006, 007, 008, 009, SK75 & SK76

Approved documents of details dated 9 August 2004 (RN:04/05915/ADFULL)  
letter dated 27th July and drwg A239/003.

Approved documents of details dated 9 August 2004 (RN:04/05922/ADFULL)  
letter dated 27th of July and drwgs A239/005, 012 and 03540/FULL/16(ii)

Approved documents of details dated 6 September 2004 (RN:04/05103/ADFULL)  
15(B) 1; 15 (G)1; 15(R)1

Approved documents of details dated 20 September 2004 (RN:04/05943/ADFULL)  
Letter dated 28th July 04, drwgs5K/03540/24, A239/015.

Approved documents of details dated 12 October 2004 (RN:04/06789/ADFULL)  
Site plan.

Approved documents of details dated 2 December 2004 (RN:04/07498/ADFULL)  
Camera details - SWX80, drwg sk/03540/27/ELE

Approved documents of details dated 10 March 2005 (RN:04/10201/ADFULL)  
A4 pamphlet, plans JS/TP 001 - 006

**Case Officer:** Kimberley Davies

**Direct Tel. No.** 07866036948

**Recommended Condition(s) and Reason(s) or Reason(s) for Refusal:**

- 1 You must not use the premises as:

(a) temporary sleeping accommodation as defined in Section 25 of the Greater London Council (General Powers) Act 1973 as amended by the Greater London Council (General Powers) Act 1983; or

(b) holiday accommodation under either a tenancy agreement or any other form of accommodation contract. (C08AA)

Reason:

To ensure the proposal provides permanent domestic residential accommodation in accordance with Policy 8 of the City Plan, adopted April 2021.

- 2 Notwithstanding the provisions of Town and Country Planning (Use Classes) Order as amended September 2020 (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order) no food or drink of any kind shall be sold on the premises for consumption off the premises, other than at 108 Westbourne Grove in accordance with variation of condition permission granted 15/09/2004 under reference 04/05705/FULL and 98 Westbourne Grove in accordance with variation of condition permission granted 19 April 2022 under reference 21/01858/FULL.

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet Policy 14 and 16 of the City Plan 2019 - 2040 (April 2021). (R05AC)

- 3 Except for 98 Westbourne Grove, you must only use the Class A3 restaurants as sit down-waiter service -restaurants. You must not use any part of the Class A3 premises as a bar, ancillary bar area, or for any other purpose within Class A3 of the Town and Country Planning Use Order 1987 (or any order that may replace it).

Reason:

To protect the environment of people in neighbouring properties, as set out Policies 7, 33 and 38 of the City Plan 2019 - 2040 (April 2021).

- 4 You must not use the Class A3 restaurants hereby permitted for playing live or recorded music or of any amplified sound that can be heard outside the property.

Reason:

To protect the environment of people in neighbouring properties, as set out Policies 7, 33 and 38 of the City Plan 2019 - 2040 (April 2021).

- 5 The Class A3 restaurant uses hereby permitted shall not be carried on except between the hours of 08.00 hours to 24.00 hours midnight on Monday to Saturday excluding Bank Holidays and 08.00 hours to 23.00 hours on Sundays and Bank Holidays.

This is apart from Unit 3 108 Westbourne Grove may be open from 08:00 - 00:30 hours (Mon. - Sat) and from to 08:00 - 24:00 hours midnight (Sun. & Bank Holidays) as permitted by variation application ref: 06/00320/FULL dated 06.03.2006.

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Reason:

To protect the environment of people in neighbouring properties as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021). (R12AD)

- 6 You must provide the waste store shown on drawing A239/002C before anyone moves into the property. You must clearly mark it and make it available at all times to everyone using the building. You must store waste inside the property and only put it outside just before it is to be collected. (C14DA)

Reason:

To protect the environment and provide suitable storage for waste and materials for recycling as set out in Policies 7 and 37 of the City Plan 2019 - 2040 (April 2021). (R14CD)

- 7 The Class A1 retail accommodation hereby approved shall at no time be occupied in less than the five self-contained units as shown on Drawing No. A239/002C hereby approved.

Reason:

To ensure the retention of shop units of the size permitted which are compatible with the needs of retail trades appropriate to this area, and to ensure compliance with the City Council's policies as set out in 14 and 16 of the City Plan, April 2021.

- 8 The means of access and egress suitable for people with disabilities which is shown in drawing no(s). A239/002C hereby approved shall be provided prior to the occupation of the development and permanently retained unless otherwise approved in writing by the City Council as local planning authority. (C20A)

Reason:

To make sure that there is reasonable access for people with disabilities and to make sure that the access does not harm the appearance of the building, as set out in Policy 38 of the City Plan 2019 - 2040 (April 2021). (R20AD)

- 9 At least one car parking space shall be provided for each of the residential flats (excluding the affordable units located at 6 Botts Mews) and the two 'live work' units within the redevelopment hereby approved. The parking spaces to be reserved for the use of residents shall be separately identified and thereafter permanently maintained to the satisfaction of the City

Reason:

To provide parking spaces for people using the development as set out in Policy 27 of the City Plan 2019 - 2040 (April 2021). (R22AC)

- 10 The whole of the cycle store shown on the drawings shall be provided and retained permanently for the accommodation of bicycles of the occupiers of residential accommodation in this development.

Reason:

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To provide cycle parking spaces for people using the development in accordance with Policy 25 of the City Plan 2019 - 2040 (April 2021). (R22FB)

- 11 The delivery bay in the basement car park shown on Drawing No. A239/001A shall be clearly and separately identified and thereafter permanently retained in perpetuity for the use of service vehicles visiting any part of the application site.

Reason:

To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in Policy 29 of the City Plan 2019 - 2040 (April 2021). (R23AD)

- 12 You must hang all doors or gates so that they do not open over or across the road or pavement. (C24AA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in Policies 24 and 25 of the City Plan 2019 - 2040 (April 2021). (R24AD)

- 13 No planters, tubs, tables or chairs, freestanding advertisements or any other items shall be placed on either the private forecourt or adjoining public highway along frontages of the application site along Hereford Road, Chepstow Road and Westbourne Grove, apart from the temporary tables and chairs outside No.98 Westbourne Grove, placed in accordance with the terms of planning permission granted under 15/01715/TCH, or any subsequent permission.

Reason:

In the interests of public safety and to avoid blocking the road as set out in Policies 24 and 25 of the City Plan 2019 - 2040 (April 2021). (R24AD)

- 14 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 Westbourne Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

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

i) all new shopfronts;

ii) the set-back frontage between the upper floors of 104-106 Westbourne Grove and 108-110 Westbourne Grove, including the glass railing to the roof terrace;

iii) typical windows and surrounds of the upper floors of 43 Hereford Road/98-104 Westbourne Grove;

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

This is unless the development is carried out in accordance with the details approved under references; 04/08131/ADFULL dated 14/05/2005, 04/06874/ADFULL dated 09/09/2004, 04/02052/ADFULL dated 27/07/2004.

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 Westbourne Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 16 Full particulars/detailed drawings as appropriate of the following part(s) of the development shall be submitted to and approved by the City Council as local planning authority before any work is commenced on the relevant part of the development:-

- i) details of how overlooking of the side window of residential Unit 5 from the roof terrace of residential Unit 4 will be prevented;
- ii) screening to the roof terraces serving the residential units the 'live work' units and affordable units in Bott's Mews.

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

This is unless the development is carried out in accordance with the details approved under references; 04/05915/ADFULL dated 19/08/2004, 04/05922/ADFULL dated 19/08/2004.

Reason:

To protect the privacy and environment of people in neighbouring properties, as set out Policies 7 and 38 of the City Plan 2019 - 2040 (April 2021). (R21AD)

- 17 You must paint all new outside rainwater and soil pipes black and keep them that colour. (C26EA)

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 Westbourne Grove Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 18 You must not attach flues, ducts, soil stacks, soil vent pipes, or any other pipework other than rainwater pipes to the outside of the building unless they are shown on the approved drawings. (C26KA)

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 Westbourne Grove Conservation Area. This is as

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set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 19 You must not put any machinery or associated equipment, ducts, tanks, satellite or radio aerials on the roof, except those shown on the approved drawings. (C26PA)

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 Westbourne Grove Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 20 The combined residential and workshop space hereby approved in 4 and 5 Bott's Mews shall not be sub-let, sub-divided or used or occupied other than as a single live/work unit. These premises shall only be used for purposes within Class C3 or Class B1 as defined by the Town and Country Planning (use Classes) Order 1995 (as amended), and the proportion of Class C3 and Class B1 accommodation shown on the approved plans shall not be amended without the prior approval of the Council as local planning authority.

Reason:

To enable the City Council to review the position in the light of experience and the prevailing circumstances and make sure it is in line with Policies 8 and 9 the City Plan 2019-2040, adopted April 2021.

- 21 The new windows on the upper floors of 43 Hereford Road/98-104 Westbourne Grove shall be double-hung timber sliding sash windows.

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 Westbourne Grove Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 22 The set back link at roof level between the mansard roofs of 112 and 112a Westbourne Grove (shown on Drawing No. A239/010) shall be faced with lead rather than slate.

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 Westbourne Grove Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 23 The windows to the first floor on the Chepstow Road frontage of 2 Chepstow Road (labelled 2-3 Bott's Mews on Drawing No. A239/010) shall be retained as 12 pane timber sash windows.

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 Westbourne Grove Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)



- 24 The flats hereby approved shall not be occupied until those flats above or adjacent to any of the commercial premises on the site have been insulated to minimise noise transmission between them, in accordance with details which shall be submitted to and approved by the City Council as local planning authority.

This part of the development shall not be carried out otherwise than in accordance with the details thus approved, unless constructed in accordance with details approved under reference 04/05943/ADFULL dated 20/09/2004.

Reason:

To ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development, as set out Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) and the draft Environmental Supplementary Planning Document (May 2021). (R49BB)

- 25 Detailed drawings showing the design, construction and insulation of the entire ventilation system and any associated plant, including the air intake, shall be submitted to and approved by the City Council as local planning authority before any work is commenced on the relevant part of the development.

Provision in accordance with the details thus approved shall be made prior to the commencement of the use and shall thereafter be permanently retained to the satisfaction of the City Council as local planning authority. (C13B)

This is unless the development is carried out in accordance with the details approved under reference 04/05103/ADFULL dated 06/09/2004 and thereafter be permanently retained to the satisfaction of the City Council as local planning authority,

Reason:

To ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development, as set out Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) and the draft Environmental Supplementary Planning Document (May 2021). (R49BB)

- 26 Details of a scheme of public art shall be submitted to and approved by the City Council as local planning authority. Further, the approved scheme shall be implemented prior to the occupation of the building and thereafter it shall be retained and maintained on site unless its removal and/or relocation has been approved in writing, in advance, by the City Council as local planning authority. This is unless the development is carried out in accordance with details approved under reference 04/10201/ADFULL dated 10/03/2005, ref: 04/06789/FULL dated 12/10/2004)

Reason:

To ensure the provision of public art, in accordance with Policy 43 of the City Plan, adopted

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April 2021.

- 27 Prior to the occupation of the development hereby permitted, a scheme of security measures to improve the access arrangements in respect of the rear refuse store accessed from Botts Mews shall be implemented in accordance with details to be submitted to and approved in writing by the City Council as local planning authority, in consultation with the Metropolitan Police Crime Prevention Design Adviser.

The development shall not be carried out otherwise than in accordance with the details thus approved. This is unless the development is carried out in accordance with the details approved under reference 04/07498/ADFULL dated 02/12/2004.

Reason:

To reduce the vulnerability of the development to crime, and to ensure that such provision is made in a manner that does not detract from the external appearance of the building, as set out in policy 38 of the City Plan 2019-2040, adopted April 2021.

- 28 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.

- 29 The restaurant at ground and basement level of 98 Westbourne Grove must be carried out in accordance with the Operational Management Plan (dated January 2022), hereby approved at all times.

Reason:

To make sure that the use will not cause nuisance for people in the area and to ensure that any delivery service does not cause a hinderance to pedestrian and vehicle traffic. This is as set out Policies 7, 16, 25, 28 and 33 of the City Plan 2019 - 2040 (April 2021). (R05GC)

- 30 The takeaway and delivery service hereby allowed at the premises at ground and basement level of 98 Westbourne Grove shall operate for no more than 1 year from the date of this permission.

Reason:

So that the local planning authority can assess the effect of the use and make sure it meets Policy 7, 14, 16, 25, 29, 33 and 38C of the City Plan 2019 - 2040 (April 2021). (R03CC)

**Informative(s):**

- 1 In dealing with this application the City Council has implemented the requirement in the National

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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 the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), 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.

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<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 19 April 2022	<b>Classification</b> For General Release	
<b>Report of</b> Director of Place Shaping and Town Planning		<b>Ward(s) involved</b> Abbey Road	
<b>Subject of Report</b>	90D Clifton Hill, London, NW8 0JT		
<b>Proposal</b>	Installation of timber decking with provision for drainage and retention of black painted railings to terrace (Linked with 21/08062/LBC)		
<b>Agent</b>	Mr Elie Osborne		
<b>On behalf of</b>	Mr Zein Khan		
<b>Registered Number</b>	21/08061/FULL 21/08062/LBC	<b>Date completed</b>	14 February 2022
<b>Date Application Received</b>	25 November 2021		
<b>Historic Building Grade</b>	II		
<b>Conservation Area</b>	St John's Wood		

## 1. RECOMMENDATION

<ol style="list-style-type: none"> <li>1. Grant conditional permission</li> <li>2. Grant conditional listed building consent</li> <li>3. Agree reasons for granting conditional listed building consent as set out in Informative 1 attached to the draft decision letter</li> </ol>
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## 2. SUMMARY

<p>Planning permission and listed building consent are sought to retain the black painted railings which enclose the small roof terrace which serves this second floor flat and the proposed installation of decking and pipework. This property is a Grade II listed semi-detached villa located in the St John's Wood Conservation Area.</p> <p>A total of eight objections have been received from the Managing Company and residents on several grounds, namely the use of the flat roof as a terrace will result in overlooking/loss of privacy, the impact of the works on this listed building, the quality of the submitted drawings and insufficient information has been provided to show how the new decking is going to be constructed, access to the new pipework and flat roof to prevent further water ingress. The Management Company have also requested several conditions if the Council is minded to approve.</p>
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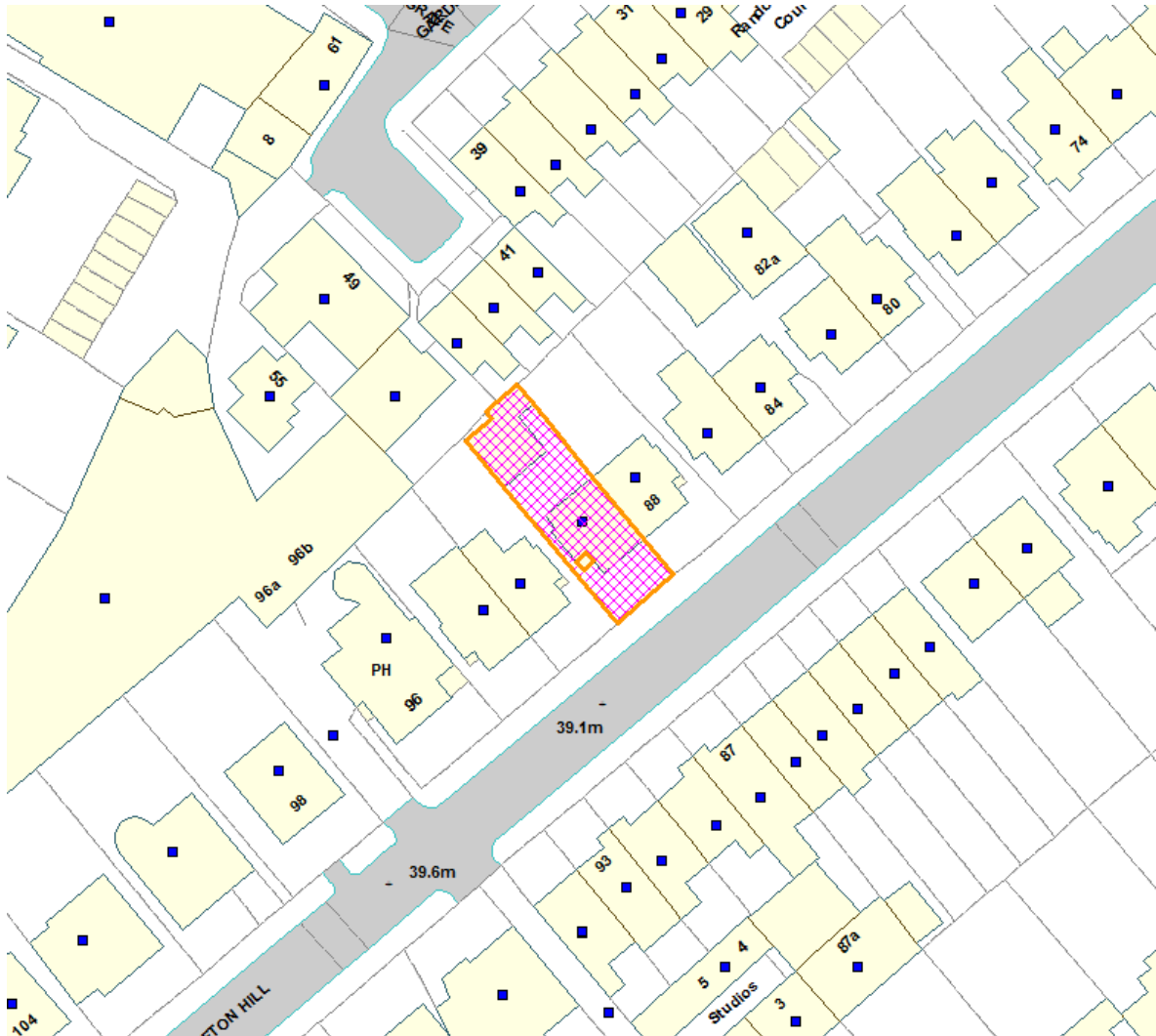
The key considerations are :

- The impact of the works on the amenities of neighbours.
- Impact of the railings and decking on the special architectural and historic interest of this Grade II listed building, its paired villa and whether the works will preserve the character and appearance of this part of the St John's Wood Conservation Area

Despite the objections received, the use of this flat roof area for sitting out purposes is lawful in planning terms. It would appear that prior to the building being listed in 2010, there was a plainer rail which enclosed this area, and there is a door in the side elevation providing access onto this flat roof.

The applicant is seeking approval to retain the current simple black railings which are fixed to the existing parapet wall. Despite the objections raised to the quality of the submitted drawings, it was clear from the site visit how the railings are fixed. Their design is not considered to be harmful to this designated heritage asset, it's pair or this part of the St John's Wood Conservation Area. The proposed timber decking is a reversible feature and applicant has amended the drawings to show an access hatch to allow access to the pipes below. The railings and the decking therefore comply with policies 38, 39 and 40 in the City Plan. It is not considered that the conditions requested by the Managing Agents are reasonable.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS

Front elevation and balcony railings to terrace



Existing terrace at No 90 D and railings





Existing flat roof with existing pipework, show fixing of the railings to parapet wall



## 5. CONSULTATIONS

St John's Wood Society: Note the objections made by neighbours and given this is a listed building request that the Conservation Officer makes a site visit to ensure that the character of the building is not harmed.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 17

Total No. of replies: 7

No. of objections: 7

No. in support: 0

Seven objections received to date, raising the following issues:

#### Design

- Quality of the drawings are poor and are misleading. Drawing 4D01E Existing elevation does not show the railings as they appear now and show an indicative representation of how the railings were before they were altered without listed building consent around 2008. Drawing 4D2E Proposed elevations shows how the railings are now but provides no dimensions, how they are constructed and how they are fixed to the building, and this is contrary to Council's guidance on planning applications.
- Application is contrary to the advice the Council's guide Demolition and Development in Conservation Areas which states that terraces at roof level are often unacceptable in principle especially listed buildings.
- No information has been provided and council should be unable to assess whether the existing railings are suitable to remain. Believe that the design of the railings are not in keeping with the building and if the Council is minded allowing the area to be used as a balcony, they should be more in keeping with the listed building. Drawings should be amended to include details of the construction.

#### Amenity

- Question the use of this flat roof as terrace/balcony as not aware of this area being used for over 20 years.
- Terrace will result in direct overlooking into the Cottage at the rear No's 87,89 and 92 Clifton Hill and result in loss of privacy.

#### Other Matters

- No details on how the proposed decking is to be constructed, materials used and how attached to the building and how sufficient access to enable the pipe work to be maintained. The previous decking was fitted without the landlord's approval and without listed building consent. It needed to be removed in December 2017 as it caused a leak to the roof finish and vitally important it does not happen again.
- New owner of flat D has been advised of the landlord's requirement for fitting decking to this roof and has ignored this and made no efforts to incorporate these requirements in the application.
- Application should be amended to incorporate all these requirements, so the Grade II listed building is protected from further water ingress.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

Revised Scheme

**ADJOINING OWNERS/OCCUPIERS :**

No consulted: 7 No Replies: One further email from the Management Company

- Not all the leaseholders received latest letter from the City Council
- No detailed construction drawings
- Revised drawings fail to specify that this will satisfy the freeholder and leaseholder of the property and the terms of the lease as legally required
- Should permission be granted request the following conditions
- No work can start on these parts of the development until the freeholder has given written approval
- Balcony decking and construction, protection of roof finish and access to clear blockages to drainage pipes and rainwater outlets ( 1:5 and 1:20 )
- Railing construction and fixing details ( 1:5 and 1:20)
- Management Company and leaseholders will only consider approval if the submission meets all the requirements specified in the freeholder's documents Flat D Procedures and Guidance for Installing Structure on the Balcony copy was sent to the City Council and the applicant prior to the purchase of the flat
- Once approved, any work must be carried out in accordance with these details. The reasons for these conditions to ensure that the Grade 2 listed building is protected from water leaks and the appearance of the building is suitable and that it contributes to the character and appearance of this part of the St John's Wood Conservation Area, to maintain the integrity of the building , to ensure that building insurance remains valid and the warranty of the flat roof covering ( from 2018 remains valid)

**6. BACKGROUND INFORMATION****6.1 The Application Site**

No 90 is a Grade II semi-detached villa located on the north side of Clifton Hill within the St John's Wood Conservation Area. The building is subdivided into flats and these applications relate to the second floor Flat D.

At the side of the building, there is an addition, and its flat roof forms part of the demise of Flat D and has been used as an outside amenity area .There is an existing door in the side elevation which provides access onto the flat roof area, and there are simple black metal railings fixed to the parapet wall.

The building was listed in 2010.

**6.2 Recent Relevant History**

Listed building consent approved on 24.2.2003 for internal alterations the removal of non-load bearing partitions wall and door frame between kitchen and sitting area to form open plan kitchen (03/00558/LBC).

**7. THE PROPOSAL**

Permission and listed building consent are sought for the retention of the black metal

railings which have been fixed to the parapet walls , and the installation of a new timber decking above the existing flat roof surface.

The existing terrace measures approximately 4.2m long and 1.2 wide and has soil pipes and bathroom waste pipes running across the flat roof . There is standing water on the existing flat roof.

Joist hangers will be laid over the existing flat roof for the new non-slip timber decking which will have a slight fall to add drainage and renew the gulley .

There was decking on this roof installed approximately 15 years ago, but it was removed due water ingress to the flat below. The current railings which the applicant wishes to retain were installed over 10 years ago.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

Despite the objections that this flat roof has not been used as a terrace, the use of this flat roof is lawful. This flat roof area has been enclosed by a simple rail and there is door access onto it, and this appears to predate the building being listed in 2010.

### **8.2 Townscape and Design**

The key legislative requirements in respect to designated heritage assets are as follows:

Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that *“In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”*

Section 66 of the same Act requires that *“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”*

Section 72 of the same Act requires that *“In the exercise, with respect to any buildings or other land in a conservation area...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”*

Furthermore Chapters 12 and 16 of the NPPF require great weight be placed on design quality and the preservation of designated heritage assets including their setting. Chapter 16 of the NPPF clarifies that harmful proposals should only be approved where the harm caused would be clearly outweighed by the public benefits of the scheme, considering the statutory duty to have special regard or pay special attention, as relevant. This should also consider the relative significance of the affected asset and the severity of the harm caused.

Objections have been received that the design of the railings are not in keeping with the host listed building and contrary to advice in the Council's SPG Roofs a Guide to Alterations and Extensions on Domestic Buildings which advises that terraces at roof level are often considered unacceptable in principle especially on listed buildings and may only be considered favourably where there is a clear consistent pattern established within the terrace.

These applications relate to a terrace on the flat roof of the addition of this semi-detached villa and is not located on the main roof. It appears that prior to the building's listing in 2010 there was a simple black rail which enclosed this terrace. The replacement black railings were installed approximately 10 years ago. It is not considered that the design of these railings which are simple are harmful to the special architectural and historic interest of this Grade II listed building.

One of the objections requests that the design of the railings needs to be amended to be more in keeping with the listed building. This is not considered to be a reasonable request. Their design is simple and similar to other railings located at No 80 and not harmful to this listed villa or its adjoining pair. The retention of these railings will preserve the character and appearance of this part of the St John's Wood Conservation Area.

The proposed decking over the existing flat roof and pipework will not be visible from street level, as it will be screened by the existing parapet wall. It is an alteration which is reversible and can be removed if access is required to the pipework on the roof at a later date. It is not considered that the decking will harm the special architectural and historic interest of this Grade II listed building.

As such, the proposal is considered acceptable, mindful of policies 38, 39 and 40 of the City Plan; and therefore, a recommendation to grant conditional permission and listed building consent would be compliant with the requirements of the NPPF and the statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **8.3 Residential Amenity**

#### **Privacy**

Objections have been received on the grounds that the terrace will result in overlooking to neighbouring residents in Clifton Hill to the front, rear, and side. However, the use of this flat roof as a terrace is lawful and therefore these objections cannot be sustained.

### **8.4 Transportation/Parking**

Not applicable for a development of this nature.

### **8.5 Economic Considerations**

No economic considerations are applicable for a development of this size

### **8.6 Access**

Not applicable for a development of this scale

#### **8.7 Other City Plan /Westminster Policy Considerations**

In dealing with these applications regard has been had to the advice in the Council's supplementary planning advice Repairs and Alterations to Listed Buildings.

#### **8.8 Westminster City Plan**

The City Plan 2019-2040 was adopted at Full Council on 21 April 2021. The policies in the City Plan 2019-2040 are consistent with national policy as set out in the National Planning Policy Framework (NPPF) (July 2021) and should be afforded full weight in accordance with paragraph 219 of the NPPF. Therefore, in accordance with s.38 of the Planning and Compulsory Purchase Act 2004, it comprises the development plan for Westminster in combination with the London Plan adopted in March 2021 and, where relevant, neighbourhood plans covering specific parts of the city (see further details in Section 8.9). As set out in s.38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 49 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

#### **8.9 Neighbourhood Plans**

Not applicable as there is no Neighbourhood Plan which covers this part of the city

#### **8.10 London Plan**

These application raises no strategic issues.

#### **8.11 National Policy/Guidance Considerations**

The City Plan 2019 - 2040 (April 2021) policies referred to in the consideration of this application are consistent with the NPPF unless stated otherwise.

#### **8.12 Planning Obligations**

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

#### **8.13 Environmental Impact Assessment**

Not applicable

#### **8.14 Other Issues**

##### **Drawings**

The objectors cite that the existing drawings do not show the railings as they appear now and show an indicative representation of how the railings were before they were altered without listed building consent around 2008. Drawing 4D2E Proposed elevations show how the railings are now but provides no dimensions, how they are constructed and how they are fixed to the building, and this is contrary to Council's guidance on planning applications.

The existing drawings do show how the former railings looked and has been amended to address the relationship of the railings with the existing side windows and doors .The proposed drawings show the current railings which the applicant is applying to retain. The dimensions can be scaled off the drawings. A further amended drawing has been submitted by the agent to show a section through the deck and a hatch to allow access to the pipework below .In addition to a site visit to the property, it is considered that the City Council has sufficient information to determine these applications.

### **Other Matters**

Several of the objections including the Management Company have requested further details to show the decking will be constructed, the materials to be used, how it will be attached and how can access be provided to allow access to the existing pipework on the roof and the existing roof finish. The objectors cite damage caused in the past and how these works may affect the warranty/insurance policies relating to the existing flat roof.

The proposed timber decking will be laid above the existing flat roof, joist hangers will be installed which will sit above the existing pipework which runs across the roof and the decking fixed to these hangers/frame. The applicant has confirmed access will be provided to the existing pipework which runs along the flat roof and the decking will sit below the main soil pipe which runs along the side elevation.

The objections raised by the Managing Agent that the applicant is not adhering to the terms set out for construction of the decking to protect the existing roof finish , this is not a ground for the City Council to refuse planning permission or listed building consent and is a private matter between the two parties. An informative is attached to the draft decision letter reminding the applicant to obtain all other necessary approvals under the terms of their lease before starting works.

The Management Company in a further representation has requested several conditions to be imposed. Firstly, that no works can commence until the freeholder has given written approval. This is not considered to meet the six tests for imposing planning conditions and is a private matter.

A condition to reserve the balcony construction to show details, and it is considered that we have sufficient information on the proposed decking, and this could again be a private matter between the applicant and the Managing Agents.

A condition to show railing construction and fixing details at a scale 1:5 and 1:20. The railings have already been installed and the method of their fixing to the parapet wall is clearly visible on site, and it is not considered that such a condition is necessary or reasonable.

A condition that the Management company and leaseholders will only consider approval if the submission meets all the requirements specified in the freeholders document Flat D – Procedures and Guidance for Installing Structure on Balcony. Again, such a condition is not reasonable and is a private matter.

A condition once approved any work must be carried out in accordance with these

details. A standard condition is imposed to ensure that the development is carried out in accordance with the approved drawings. However, it is not reasonable to include the freeholder's approval for the reasons set out above.

(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: RUPERT HANDLEY BY EMAIL AT [RHANDLEY@WESTMINSTER.GOV.UK](mailto:RHANDLEY@WESTMINSTER.GOV.UK).



KEY DRAWINGS

Existing Elevations ,floor plan, section pre the new railings being installed



Written dimensions to be taken in preference to scaled dimensions. The Contractor is responsible for checking all dimensions before work starts.  
All work is to be carried out to the requirements, and to the satisfaction of the Local Authority.  
These drawings are for planning purposes only.  
Any discrepancies to be brought to the attention of 4D Planning Consultants immediately.

Location Plan

Rev	Date	Description	By	CHK

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90 Clifton Hill, NW8 0JT

Title

Existing Elevations

Date: Dec 2021	Rev:
Scale: 1:50 @ A1, 1:100 @ A3	A
Drawing No. 4001E	

Proposed elevation, floor plan and section



Written dimensions to be taken in preference to scaled dimensions. The Contractor is responsible for checking all dimensions before work starts.  
 All work is to be carried out to the requirements, and to the satisfaction of the Local Authority.  
 These drawings are for planning purposes only.  
 Any discrepancies to be brought to the attention of 4D Planning Consultants immediately.

Location Plan

Rev	Date	Description	By	chk

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Project:  
90 Clifton Hill, NW8 0JT

Title:  
**Proposed Elevations**

Date: Dec 2021	Rev:
Scale: 1:50 @ A1, 1:100 @ A3	A
Drawing No. 4D022	

**DRAFT DECISION LETTER**

**Address:** 90D Clifton Hill, London, NW8 0JT,

**Proposal:** Installation of timber decking with provision for drainage and black painted railings.  
(Linked with 21/08062/LBC)

**Plan Nos:** 4D01E Rev A R; 4D02E Rev A, ; PL-PP-01; Heritage, Design and Access Statement November 2021; Photos; Block Plan; Location Plan.

**Case Officer:** Amanda Coulson

**Direct Tel. No.** 07866037509

**Recommended Condition(s) and Reason(s) or Reason(s) for Refusal:**

- 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 Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021). (R11AD)

- 3 The metal railings shall be maintained in a black colour .

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 St John's Wood Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

**Informative(s):****1 HIGHWAYS LICENSING:**

Under the Highways Act 1980 you must get a licence from us before you put skips or scaffolding on the road or pavement. It is an offence to break the conditions of that licence. You may also have to send us a programme of work so that we can tell your neighbours the likely timing of building activities. For more advice, please visit our website at [www.westminster.gov.uk/guide-temporary-structures](http://www.westminster.gov.uk/guide-temporary-structures).

**CONSIDERATE CONSTRUCTORS:**

You are encouraged to join the nationally recognised Considerate Constructors Scheme. This commits those sites registered with the Scheme to be considerate and good neighbours, as well as clean, respectful, safe, environmentally conscious, responsible and accountable. For more information please contact the Considerate Constructors Scheme directly on 0800 783 1423, [siteenquiries@ccscheme.org.uk](mailto:siteenquiries@ccscheme.org.uk) or visit [www.ccscheme.org.uk](http://www.ccscheme.org.uk).

**BUILDING REGULATIONS:**

You are advised that the works are likely to require building regulations approval. Details in relation to Westminster Building Control services can be found on our website at [www.westminster.gov.uk/contact-us-building-control](http://www.westminster.gov.uk/contact-us-building-control)

- 2** 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 the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), 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.
- 3** You are advised of the need to obtain all necessary approvals from the freeholder company before starting work on the installation of the timber decking .

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.

**DRAFT DECISION LETTER**

**Address:** 90D Clifton Hill, London, NW8 0JT

**Proposal:** Installation of timber decking with provision for drainage and black painted railings. (Linked with 21/08061/FULL)

**Reference:** 21/08062/LBC

**Plan Nos:** 4D01E Rev A, 4D02E Rev A ; PL-PP-01; Heritage, Design and Access Statement November 2021; Photos; Block Plan; Location Plan.

**Case Officer:** Amanda Coulson **Direct Tel. No.** 07866037509

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

- 1 The works 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:**

To protect the special architectural or historic interest of this listed building. This is as set out in Policy 39 of the City Plan 2019 - 2040 (April 2021) and paragraph 2.4 of our Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings. (R27BE)

- 2 The metal railings shall be maintained in a black colour .

**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 St John's Wood Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

**Informative(s):**

- 1 **SUMMARY OF REASONS FOR GRANTING CONDITIONAL LISTED BUILDING CONSENT -**  
In reaching the decision to grant listed building consent with conditions, the City Council has had regard to the relevant policies in the National Planning Policy Framework, the London Plan (March 2021), the City Plan (April 2021), as well as relevant supplementary planning guidance, representations received and all other material considerations., , The City Council decided that

the proposed works would not harm the special architectural and historic interest of this listed building., , In reaching this decision the following were of particular relevance:, Policies 38, 39 and 40 of the City Plan 2019 - 2040 adopted in April 2021 and paragraph 2.4 of our Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings.

2. You are advised of the need to obtain all necessary approvals from the freeholder company before starting work on the installation of the timber decking .

By virtue of paragraph(s) 1, 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

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