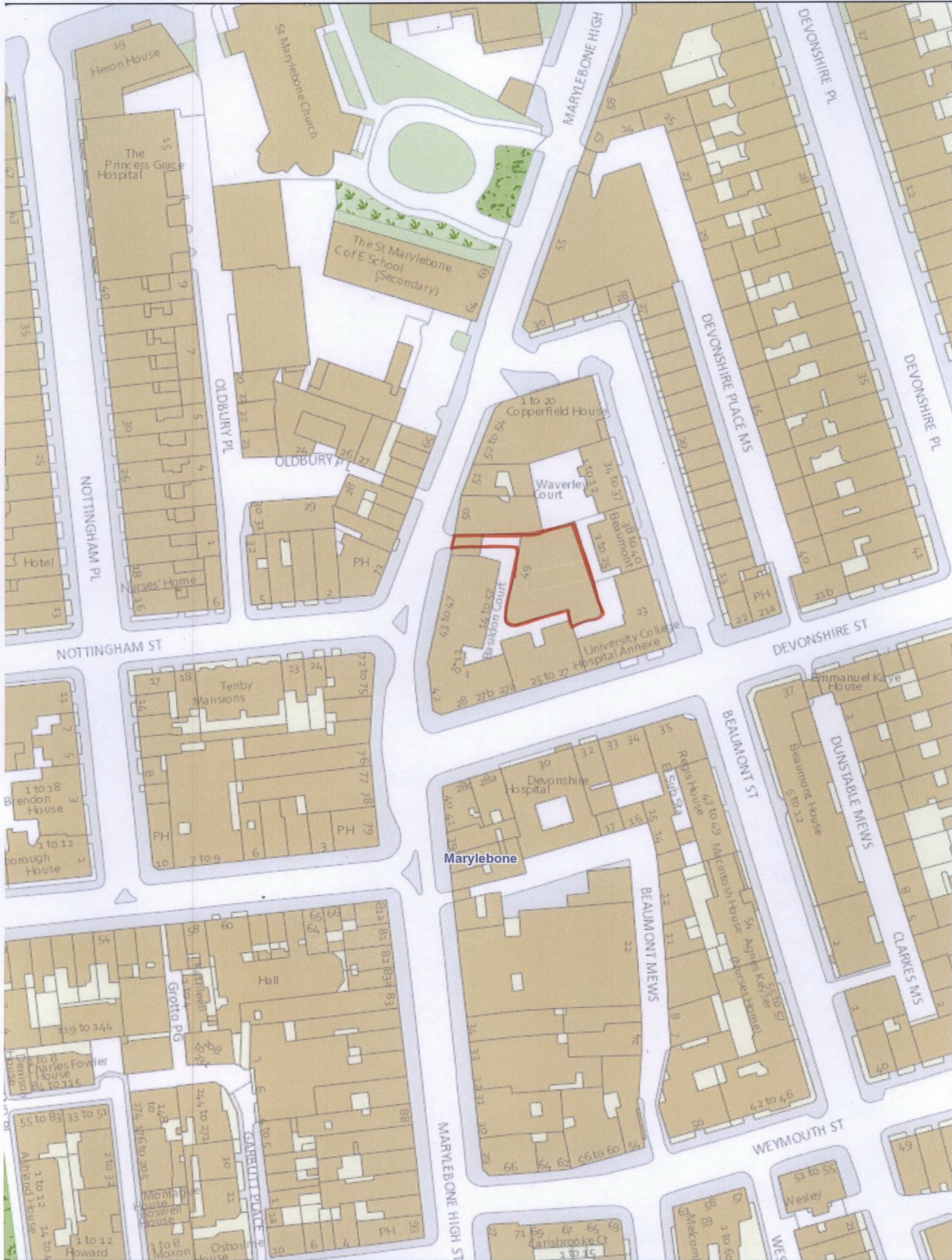


CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 28 July 2015	Classification For General Release	
Report of Director of Planning		Wards involved Marylebone High Street	
Subject of Report	49 Marylebone High Street, London, W1U 5ED		
Proposal	Use of part of the lower ground floor as an exercise/dance studio (Class D2) for a temporary period up until 21 January 2024 between the hours of 06.00-22.00 Monday-Saturday and 09.00-18.00 on Sundays and Bank Holidays.		
Agent	Nicholas Taylor + Associates		
On behalf of	X Barre London Ltd		
Registered Number	15/03629/FULL	TP / PP No	TP/10767
Date of Application	24.04.2015	Date amended/ completed	24.04.2015
Category of Application	Other		
Historic Building Grade	Unlisted		
Conservation Area	Harley Street		
Development Plan Context - London Plan July 2011 - Westminster's City Plan: Strategic Policies 2013 - Unitary Development Plan (UDP) January 2007	Within London Plan Central Activities Zone Outside Central Activities Zone		
Stress Area	Outside Stress Area		
Current Licensing Position	Not Applicable		

1. RECOMMENDATION

Grant conditional permission.





49 MARYLEBONE HIGH STREET, W1

2. SUMMARY

The application site comprises a three storey backland building comprising basement, ground and first floor levels. The building is unlisted and located within the Harley Street Conservation Area and is currently utilised in its entirety as a medical facility by the London Diabetes and Lipid Centre. The property is surrounded by other buildings which are primarily commercial on the lower floors fronting Marylebone High Street and Devonshire Street with residential flats on the upper floors.

Permission is sought for the temporary use of part of the lower ground floor of the property as an exercise/dance studio (Class D2). No external alterations are proposed as part of this application.

The key issue for consideration is:

- The impact of the proposed use upon the amenity of nearby residential occupiers.

Subject to appropriate conditions, the proposed dance/exercise studio is considered acceptable in land use, highways and amenity terms and accords with the relevant Unitary Development Plan (UDP) and Westminster's City Plan: Strategic Policies (City Plan) policies.

3. CONSULTATIONS

MARYLEBONE ASSOCIATION

Any response to be reported verbally.

ENVIRONMENTAL HEALTH

No objection subject to conditions.

HIGHWAYS PLANNING MANAGER

No objection subject to conditions.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS

No. Consulted: 126; Total No. of Replies: 2.

Two objections on the following grounds:

- Noise disruption from the proposed use.
- Vibration through the building structure.
- Increase in light pollution.

ADVERTISEMENT/SITE NOTICE: Yes

4. BACKGROUND INFORMATION

4.1 The Application Site

The application site is an unlisted property located at the rear of buildings fronting Marylebone High Street in a backland development comprising of basement, ground and first floor levels.

The building is currently used for medical purposes being occupied by the London Diabetes and Lipid Centre. The entire property has lawful use as medical or office accommodation.

4.2 Relevant History

A planning application for the 'use of part of the lower ground floor as an exercise/dance studio (Class D2) for a temporary period up until 21 January 2024 between the hours of 06.00

- 22.00 Monday - Saturday and 09.00 - 18.00 on Sundays and Bank Holidays' was withdrawn on the 31 March 2015 following officer concerns with regard potential noise nuisance resulting from the proposed use impacting upon the amenity of residents within the vicinity.

17 October 2014: Permission was granted for the 'dual/alternative use of the property as either office accommodation (Class B1) or as an outpatients clinic (Class D1). Extension to the existing opening hours of the medical use to between 08:00 and 22:00 Monday to Friday and 09:00 and 18:00 on Saturdays, Sundays and Bank Holidays.'

21 March 2011: Permission was granted for the 'replacement of plant behind existing screening at roof level and installation of additional screening.'

31 August 2010: Permission was granted for the 'dual/alternative use of first floor for either offices (Class B1) or outpatient clinic (Class D1) in connection with use of ground and lower ground floors as outpatient clinic.'

22 July 2004: Permission was granted for the use of the ground and lower ground floor for dual use for either office or outpatient clinic.

5. THE PROPOSAL

Permission is sought for the change of use of part of the lower ground floor to a dance/exercise studio (Class D2). The proposed use comprises of a reception and merchandise area, changing and shower facilities, two studio rooms and associated office and storage spaces. Internally it is proposed to install secondary glazing but externally there are no works proposed to the building as part of the application.

Planning permission has been previously granted for the installation of air conditioning plant at the property in 2011. The applicant contends that the existing plant provides all the required cooling needs of the property and there is no plant proposed as part of this application for the change of use.

6. DETAILED CONSIDERATIONS

6.1 Land Use

6.1.1 Loss of offices/medical

Whilst the entire building is currently utilised as medical floorspace the dual/alternative use granted in 2014 enables the use of the property to change between the D1 and B1 uses approved for 10 years without further planning permission.

Whilst the Council would seek to protect medical accommodation, the use of the property can currently lawfully change to general office accommodation. The City Council does not currently have any policies seeking the protection or retention of office accommodation within this area of Westminster. This is under review, but at the present time the application is considered acceptable in land use terms.

6.1.2 New dance/exercise studio

The proposed new dance/exercise studio (Class D2) is for a temporary period until 21 January 2024 when the use would revert back to the lawful medical/office use. A facility such as this is considered a social/community use and Policy S34 of the City Plan states that 'new social and community facilities will be encouraged throughout Westminster and will be provided on large scale development sites.' The proposed social/community facility is therefore considered

acceptable in land use terms and, a condition is proposed as requested by the applicant stating that the change of use is only for a temporary period.

6.2 Townscape and Design

No external alterations are proposed as part of the application.

6.3 Amenity

6.3.1 Noise and vibration

Objections have been received to the application from neighbouring residential occupiers within Basildon Court which is directly to the west of the application site. These flats are in very close proximity to the application building as are other flats on the upper floors in blocks which surround the site.

Policy S32 of the City Plan seeks to ensure that noise pollution and its impacts are reduced by 'ensuring development provides an acceptable noise and vibration climate for occupants and is designed to minimise exposure to vibration and external noise sources.' UDP Policy ENV6 is also relevant and states the City Council will 'require residential developments to provide adequate protection from existing background noise.'

UDP Policy ENV7 considers noise from plant, machinery and internal sources. Part A of the policy states:

'Where development is proposed, the City Council will require the applicant to demonstrate that this will be designed and operated so that any noise emitted by plant and machinery and from internal activities, including noise from amplified or unamplified music and human voices, will achieve the following standards in relation to the existing external noise level at the nearest noise sensitive properties, at the quietest time during which the plant operates or when there is internal activity at the development.'

A similar application submitted in February this year was withdrawn whilst the applicant gathered evidence to support their assertion that the proposal would not detrimentally impact upon residential amenity. This application is now supported by an acoustic report which assesses the impact of the proposal in terms of noise at the nearest sensitive window (the nearest residential windows were identified as being 5m distant). The submitted acoustic report includes on-site measurements of the existing background noise levels and also assesses the sound insulation properties of the building to determine the potential for noise transmission through the building structure itself.

To accord with Policy ENV7 of the UDP any noise resulting from operation of the use will have to be 10dB below background at the nearest noise sensitive windows. A 24 hour noise survey was carried out and the lowest background noise level was recorded as being 48dB during the hours of 07:00 and 23:00 and 44dB during the hours of 23:00 and 07:00. The proposed opening hours of the premises are from 06:00 – 22:00 Monday to Saturday and 09:00 – 18:00 Sundays.

Acoustic attenuation measures are proposed including the installation of secondary glazing to all the windows serving the use in the basement, loudspeaker isolation and mounting and the installation of a sound limiter system to the speakers. With these measures in place the predicated noise levels are 28dB at the nearest residential windows. These levels would therefore comply with ENV7. The assessment of noise transference through the building itself to the medical accommodation above shows that noise levels will comply with the relevant British Standard.

It should also be noted that the planning permission relating to the use of the upper floors restricts the opening hours of the office use to 08:00 and 19:00 on Monday to Friday and 08:30 and 14:30 on Saturdays and not at all on Sundays or Bank Holidays, whilst the medical use is restricted to between the hours of 08:00 and 22:00 Monday to Friday and between 09:00 and 18:00 hours on Saturdays, Sundays and Bank Holidays for patients. The premises are open to staff between the hours of 07:30 and 22:30 Monday to Friday and 08:30 and 18:30 on Saturdays, Sundays and Bank Holidays.

The proposed unit measures 265m² with approximately half of this area being used by the two studios and the remainder used for ancillary purposes (reception, offices, changing facilities etc). It is envisaged that people would enter/leave the facility either on their own or in very small groups. Due to the size of the unit, the nature of its operation and the direct access off Marylebone High Street it is not considered that people entering or leaving the facility would cause a noise nuisance to nearby residents.

The Environmental Health officer has confirmed that the use, subject to conditions relating to maximum noise levels, vibration and the requirement to install the specified acoustic mitigation measures, would be acceptable in amenity terms and compliant with the standard City Council noise criteria. In these circumstances, it is not considered that the scheme could justifiably be refused on the grounds of noise nuisance and the objections from neighbouring occupiers on these grounds could not be sustained.

The mitigation measures proposed within the acoustic report in relation to 'loudspeaker isolation' and 'loudspeaker mounting' will address the issue of vibration from the speakers transferring through the building structure. The standard condition is also proposed with regard acceptable levels of vibration transmission.

6.3.2 Light Pollution

Due to the close proximity of the application building to neighbouring residential properties a condition was attached to the 2014 permission requiring the submission of a strategy to negate possible increased light pollution. A strategy was submitted involving the use of blackout blinds, and the condition was discharged on the 13 February 2015. The approved details considered the extended opening hours until 22:00 on certain days of the week, however, as the current application seeks permission to open earlier in the morning (06:00), it is considered that an updated strategy is required to address these extended opening hours and to ensure the proposal does not result in increased light pollution to surrounding residential occupiers. A condition is proposed requiring the submission of this strategy. It is noted that an objector has commented on the potential for an increase in light pollution and with this condition in place the concerns are considered to have been addressed.

6.4 Transportation/Parking

No off-street car parking is proposed as part of the development, however, the site is located within a Controlled Parking Zone and therefore anyone driving to the site will be subject to those controls. It is not considered the change of use would result in any additional parking pressures in the vicinity compared to the existing use.

Cycle parking is shown as being provided within the demise of the unit at lower ground floor level. The provision is considered consistent with the Further Amendments to the London Plan and the cycle parking is secured by condition.

6.5 Economic Considerations

Any economic benefits generated are welcome.

6.6 Access

Access to the building is via the enclosed passageway running between Marylebone High Street and the building's entrance. There is an existing lift from the ground floor to the lower ground floor.

6.7 Other UDP/Westminster Policy Considerations

6.7.1 Waste Storage

A condition is proposed requiring the submission of amended drawings to show the provision of waste and recycling storage facilities within the demise of the unit. There is considered sufficient space at lower ground floor level for this to be provided.

6.8 London Plan

The proposal does not raise strategic issues and does not have significant implications for the London Plan.

6.9 National Policy/Guidance Considerations

Central Government's National Planning Policy Framework (NPPF) came into effect on 27 March 2012. It sets out the Government's planning policies and how they are expected to be applied. The NPPF has replaced almost all of the Government's existing published planning policy statements/guidance as well as the circulars on planning obligations and strategic planning in London. It is a material consideration in determining planning applications.

Until 27 March 2013, the City Council was able to give full weight to relevant policies in the Core Strategy and London Plan, even if there was a limited degree of conflict with the framework. The City Council is now required to give due weight to relevant policies in existing plans "according to their degree of consistency" with the NPPF. Westminster's City Plan: Strategic Policies was adopted by Full Council on 13 November 2013 and is fully compliant with the NPPF. For the UDP, due weight should be given to relevant policies according to their degree of consistency with the NPPF (the closer the policies in the plan to the NPPF, the greater the weight that may be given).

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

6.10 Planning Obligations

The application does not raise a requirement for a planning obligation.

6.11 Environmental Assessment including Sustainability and Biodiversity Issues

The scale of the proposed development does not require the submission of an Environmental Impact Assessment or provide opportunities for additional sustainability measures.

6.12 Conclusion

The proposals are considered acceptable in land use, transport and amenity terms and accord with the relevant UDP and City Plan policies. The application is therefore recommended for conditional planning approval.

BACKGROUND PAPERS

1. Application form.
2. Memorandum from Highways Planning Manager dated 13 May 2015.
3. Memorandum from Environmental Health Consultation Team dated 28 June 2015.
4. Letter from the residential occupier of 31 Basildon Court, 54-57 Devonshire Street, London dated 14 May 2015.
5. Letter from the residential occupier of 24 Basildon Court, 54-57 Devonshire Street, London dated 18 May 2015.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT JOSEPHINE PALMER ON 020 7641 2723 OR BY E-MAIL – jpalme@westminster.gov.uk

DRAFT DECISION LETTER

Address: 49 Marylebone High Street, London, W1U 5ED

Proposal: Use of part of the lower ground floor as an exercise/dance studio (Class D2) for a temporary period up until 21 January 2024 between the hours of 06.00-22.00 Monday-Saturday and 09.00-18.00 on Sunday and Bank Holidays.

Plan Nos: Site Location Plan, Acoustic Report (12483.NIA.01 RevB), Drawing: 101A.

Case Officer: Matthew Giles

Direct Tel. No. 020 7641 5942

Recommended Condition(s) and Reason(s):

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

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 No amplified sound from the gym hereby permitted shall be audible from outside the premises.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13FB)

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

Reason:

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

- 4 All windows at lower ground floor level will be fixed shut and retained in this manner permanently.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13FB)

- 5 You must implement all of the acoustic mitigation measures as detailed in Section 5 of the Noise Impact Assessment (12483.NIA.01 RevB) before the use hereby approved can operate. You must thereafter maintain these measures to the specified standard for as long as the use is in operation.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13FB)

- 6 You must install secondary glazing to all the windows at lower ground floor level as shown on drawing 101 and to the specification detailed in the Noise Impact Assessment (12483.NIA.01 RevB) before the use hereby approved can operate. You must thereafter maintain the secondary glazing in this form for as long as the use is in operation.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13FB)

- 7 The exercise / dance studio (Class D2) use allowed by this permission can continue until 21st January 2024. After that the land must return to its previous condition and use. (C03AA)

Reason:

As requested by the applicant.

- 8 You must use the property only for exercise / dance studios. You must not use it for any other purpose, including any use within Class D2 of the Town and Country Planning (Use Classes) Order 1987 as amended April 2005 (or any equivalent class in any order that may replace it). (C05AB)

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13FB)

- 9 Customers shall not be permitted within the exercise / dance studios premises before 06:00 or after 22:00 on Monday to Saturday (not including bank holidays and public holidays) and before 09:00 or after 18:00 on Sundays, bank holidays and public holidays. (C12BD)

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R13FB)

- 10 You must apply to us for approval of details of how waste is going to be stored on the site and how materials for recycling will be stored separately. You must not start work on the relevant part of the development until we have approved what you have sent us. You must then provide the stores for waste and materials for recycling according to these details, clearly mark the stores and make them available at all times to everyone using the . (C14EC)

Reason:

To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 12 of our Unitary Development Plan that we adopted in January 2007. (R14BD)

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

Reason:

To provide cycle parking spaces for people using the development as set out in TRANS 10 of our Unitary Development Plan that we adopted in January 2007.

- 12 (1) Where noise emitted from the proposed internal activity in the development will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the internal activity within the exercise / dance studio use hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The activity-specific noise level should be expressed as LAeqTm,, and shall be representative of the activity operating at its noisiest.

(2) Where noise emitted from the proposed internal activity in the development will contain tones or will be intermittent, the 'A' weighted sound pressure level from the internal activity within the exercise / dance studio use hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the permitted hours of use. The activity-specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.

(3) Following completion of the development, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:

- (a) The location of most affected noise sensitive receptor location and the most affected window of it;
- (b) Distances between the application premises and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (c) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (a) above (or a suitable representative position), at times when background noise is at its lowest during the permitted hours of use. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (d) The lowest existing LA90, 15 mins measurement recorded under (c) above;
- (e) Measurement evidence and any calculations demonstrating that the activity complies with the planning condition;
- (f) The proposed maximum noise level to be emitted by the activity.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007 (UDP), so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan: Strategic Policies adopted November 2013, 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.

- 13 The whole of the glazing on the east elevation at lower ground floor level shall be permanently maintained with obscure glazing.

Reason:

To protect the privacy and environment of people in neighbouring properties. This is as set out in S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 and ENV 13 of our Unitary Development Plan that we adopted in January 2007. (R21BC)

- 14 You must apply to us for approval of details of a strategy to mitigate for any increase in light pollution or overlooking of neighbouring sensitive properties associated with the extended opening hours approved in Condition 9 of this permission. Until such time as the City Council has approved these details you can not operate the use hereby approved.

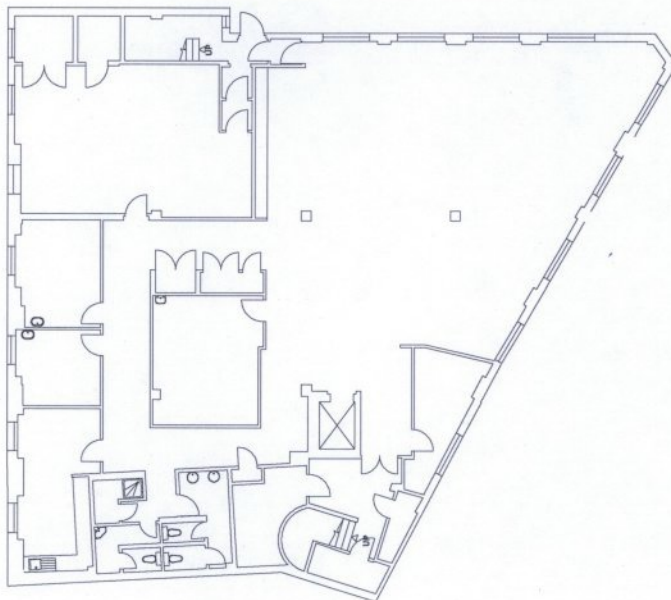
Once these details have been approved the use must operate in accordance with the approved strategy for as long as the exercise / dance studio use is in operation.

Reason:

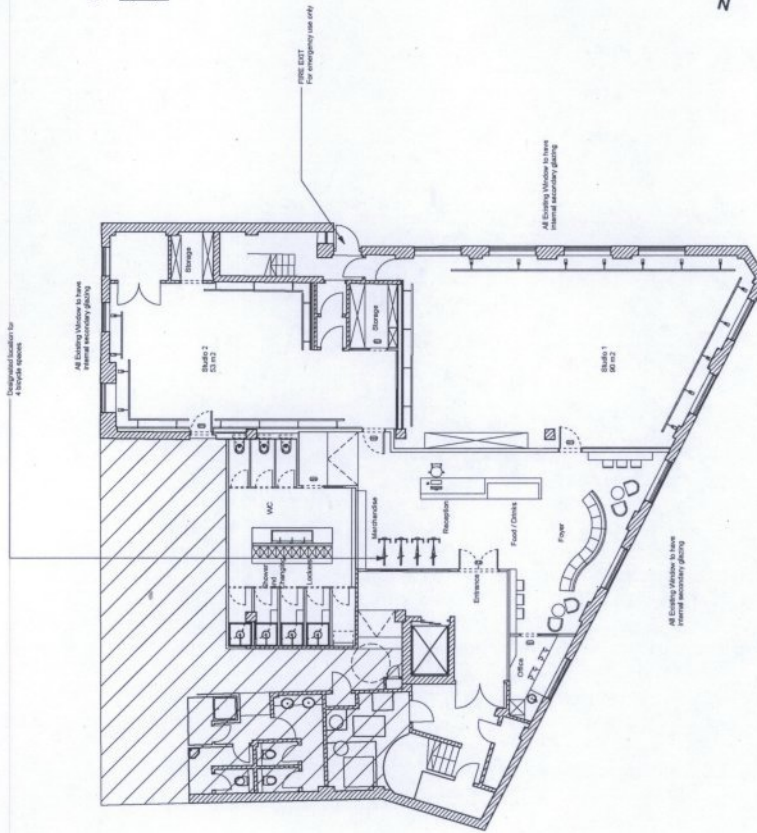
To protect the privacy and environment of people in neighbouring properties, as set out in S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 13 of our Unitary Development Plan that we adopted in January 2007. (R21AC)

Informative(s):

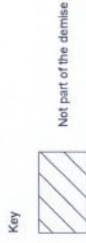
- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan: Strategic Policies adopted November 2013, Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service, 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.



1 Existing Lower Ground Floor Plan
Scale: 1:100



2 Proposed Lower Ground Floor Plan
Scale: 1:100



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Project
 Xtend Bare London

Existing title
 Existing and Proposed
 Lower Ground Floor Plans

Drawn	TM	Scale of A1	1:100	Sheet	Change of Use
Date	April 2015	Project Number	075	Sheet Number	101
					Rev
					A