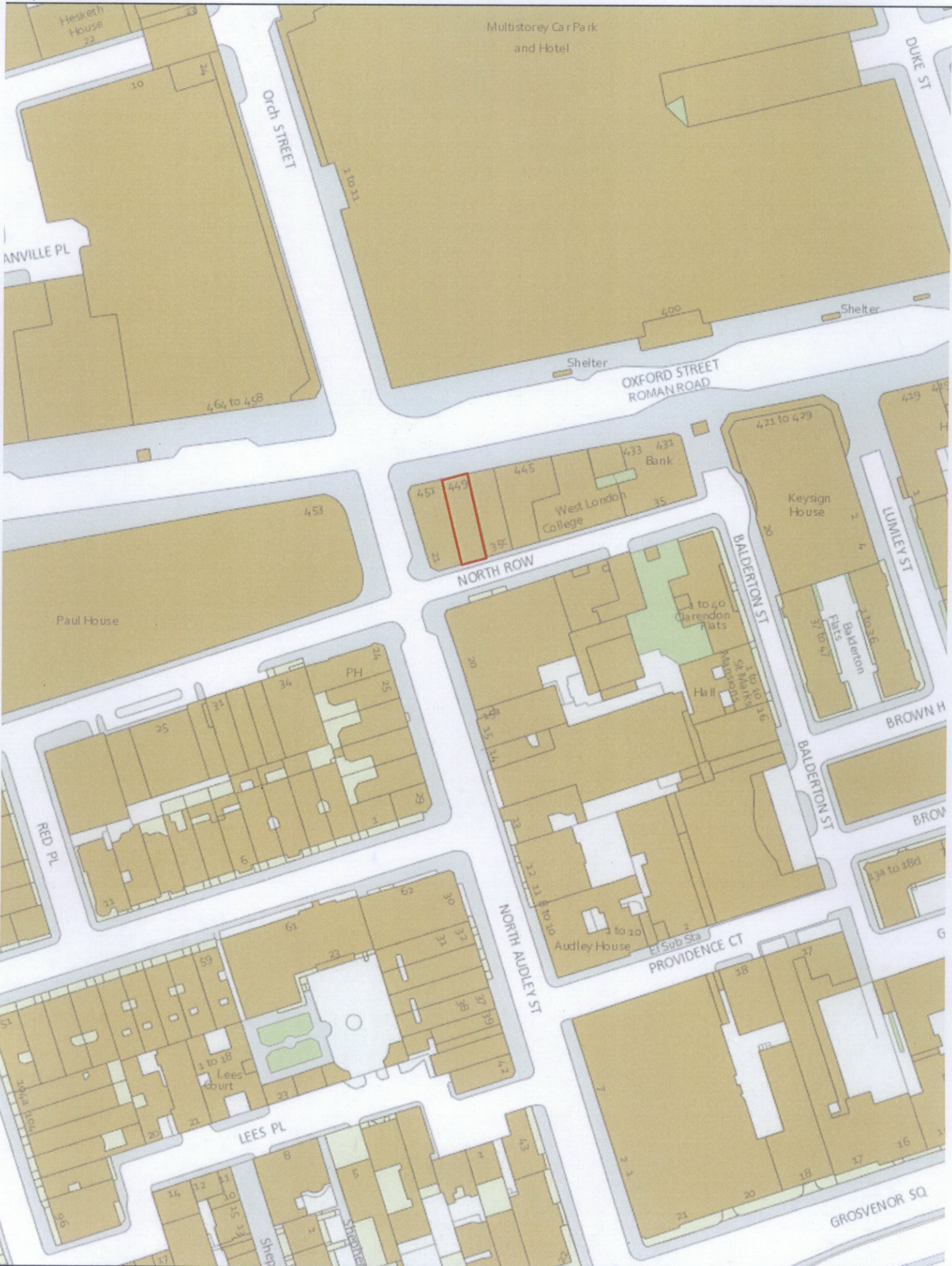


CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 15 December 2015	Classification For General Release	
Report of Director of Planning		Wards involved West End	
Subject of Report	449 Oxford Street, London, W1C 2PS		
Proposal	Use of part basement, ground and first floors as a composite use comprising car showroom and retail (sui generis).		
Agent	Capita Property & Infrastructure		
On behalf of	TESLA MOTORS LIMITED		
Registered Number	15/09563/FULL	TP / PP No	TP/2995 : PP-04555659
Date of Application	13.10.2015	Date amended/ completed	13.10.2015
Category of Application	Other		
Historic Building Grade	Unlisted		
Conservation Area	Mayfair		
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 Within Central Activities Zone		
Stress Area	Outside Stress Area		
Current Licensing Position	Not Applicable		

1. RECOMMENDATION

Refuse permission - loss of retail floorspace.



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Data Source:

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0 5 10 20 Metres



449 OXFORD STREET, W1

2. SUMMARY

The application site comprises the basement, ground and first floors of this unlisted building located within the Mayfair Conservation Area. The site is located within the Core CAZ, the West End Special Retail Policy Area and a Primary Shopping Frontage of the West End International Shopping Centre. The unit was last occupied by a gift shop (Class A1). The proposed use is described by the applicant as, 'a mixed use Class A1 and sui generis (display and / or sale of motor vehicles)'.

The key issue in this case is:

- Whether the proposed change of use would harm the character and function of the West End International Shopping Centre as a result of the loss of the existing retail (Class A1) floorspace within the Primary Shopping Frontage.

It is considered that the loss of the retail shop would harm the unique status and offer of the West End Special Retail Policy Area and harm the character and function, and therefore attractiveness, of the West End International Shopping Centre through weakening the retail offer to the detriment of the retail character and function of the Primary Shopping Frontage. The proposal is therefore contrary to City Plan Policies S7 and S21 and UDP Policy SS3. For this reason the application is recommended for refusal.

3. CONSULTATIONS

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

- No objection.

HIGHWAYS PLANNING MANAGER:

- Concerned by the lack of information in respect to how vehicles will be delivered to the site. However, accepts that this issue could be dealt with by a condition securing the submission of a Service / Delivery Management Plan.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS:

No. Consulted: 34; Total No. of Replies: 2.

Two letters of support from the landlord and London and Partners (the Mayor's international business support organisation) on the grounds that the proposal would enhance the retail offer in the West End.

ADVERTISEMENT / SITE NOTICE - Yes.

4. BACKGROUND INFORMATION

4.1 The Application Site

The site comprises the basement, ground and first floors of an unlisted building located within the Mayfair Conservation Area. The site is located within the Core CAZ, the West End Special Retail Policy Area and a Primary Shopping Frontage of the West End International Shopping Centre. The site was last occupied by a gift shop (Class A1).

4.2 Relevant History

Permission was granted on 16 May 1988 (Ref: 88/01443/FULL) for the use of the basement, ground, and first floors for retail purposes.

Permission was granted on 16 July 2014 (Ref: 14/03502/FULL) for the use of second and third floors as three residential flats (Class C3), together with the installation of new windows

in south and west elevations, replacement roof lights at third floor level a new boiler house and replacement plant screen on second floor roof of No. 451 Oxford Street. It is understood that the internal works to convert the upper floors to residential accommodation have recently been completed but that the flats are not yet occupied.

Permission was granted on 21 July 2014 (Ref: 14/03484/FULL) for, *inter alia*, the use of rear part of basement of No. 449 Oxford Street for financial and professional use (Class A2) and for the use of first floor of No. 447 Oxford Street for retail purposes (Class A1). The loss of retail floorspace at basement level was deemed to be acceptable overall, as the scheme resulted in a net increase 77m² of retail floorspace.

Planning permission was granted on 20 August 2014 (Ref: 14/05606/FULL) for the installation of replacement shopfronts at Nos. 443 – 449 Oxford Street.

5. THE PROPOSAL

Whilst car showrooms sell and display goods to visiting members of the public, Paragraph 3(6) of the Town and Country Planning (Use Classes) Order 1987 (as amended) sets out a number of uses which are to be regarded as being *sui generis* (i.e. of their own kind). This includes the use of premises for the sale or display for sale of motor vehicles.

The applicant has described the proposed use of the basement, ground and first floors as 'a mixed use of Class A1 [shops] and *sui generis* (display and / or sale of motor vehicles'. However, for the reasons set out in Section 6.1 of this report, officers consider that the retail element of the proposed use is ancillary to the principal use proposed; namely, as a car showroom (*sui generis*). Consequently, officers are of the view that the proposed development is for the use of basement, ground and first floors as a car showroom (*sui generis*) and the application has been considered on this basis.

As with many car showrooms in central London, customers will be able to configure and order their vehicles from the proposed store but will not drive them away on the day of purchase. The applicant advises that all vehicles are custom built and delivered 4-5 months after the order is placed. One or two cars will be on display at ground floor level and this display will be changed approximately four times a year.

At this stage, arrangements for test drives are yet to be confirmed. However, the applicant advises that it is seeking to lease parking spaces in the vicinity of the store for this purpose. It is estimated that there will be in the region of 20 test drives per week.

The proposed hours of operation are 10.00 – 20.00 (Monday to Saturday) and 12.00 – 18.00 (Sundays).

6. DETAILED CONSIDERATIONS

6.1 Land Use

6.1.1 Proposed Use

It is well established that the primary uses of land often embrace one or more ancillary activities. Whether or not an activity is ancillary to a primary use is a matter of fact and degree, based on the individual circumstance of each case. Factors such as the floorspace dedicated to each use, the character of the planning unit and the revenue derived from each element are taken into account when making such an assessment.

The applicant advises that the proposed showroom will operate in a similar way to the existing showroom at the Westfield shopping centre in White City, Shepherd's Bush. Officers have visited this showroom and are of the view that the retail element is ancillary to the primary use

as a car showroom. This is because one car is prominently displayed within the shop window and one chassis sits further back into the unit. The majority of the display walls are dedicated to the options for fitting out cars and to display touch screens providing information on the vehicles. There are a limited number of racks of clothing to the rear of the shop. For these reason, the character and function of this use is considered to be a car showroom with an ancillary retail use.

The submitted application drawings show similar layouts, with only a very small area at the rear of the ground floor for 'merchandise'. For these reasons, officers consider that the proposed car showroom use represents the principal use that is being applied for and that the retail sales element would be ancillary to this primary use. An informative is recommended to advise the applicant of the City Council's position on the description of the proposed use.

6.1.2 Policy Context

The London Plan (2015) (Table A2.1) identifies the West End as one of two international shopping centres in London (the other being Knightsbridge). The international shopping centres sits at the top of London's shopping hierarchy, being globally renowned retail destination with a wide range of high-order comparison and specialist shopping with excellent levels of public transport accessibility. Oxford Street, Regent Street and Bond Street are the most important shopping frontages in the West End International Shopping Centre and are almost exclusively made up of retail units at basement and ground floor and a significant retail presence on the upper floors.

City Plan Policy S7 states that the unique status and offer of the West End Special Retail Policy Area will be maintained and enhanced. City Plan Policy S21 adds that existing A1 retail will be protected throughout Westminster except where the council considers that the unit is not viable, as demonstrated by long-term vacancy despite reasonable attempts to let. More specific policy for the site's location on a Primary Shopping Frontage of the West End International Shopping Centre is provided by UDP Policy SS3(B) which states planning permission will not, except in the most exceptional circumstances, be granted for a change of use from A1 use at basement, ground or first-floor level within the Primary Shopping Frontages. The supporting text to this policy states there will be very few circumstances that would allow an exception to UDP Policy SS3(B) (para. 7.29).

6.1.3 Loss of Retail Floorspace

It is clear that, given the site's location within the West End Special Retail Policy Area and a Primary Shopping Frontage of the West End International Shopping Centre, there is strong policy protection for retail floorspace. The most exceptional circumstances would have to be demonstrated to justify departing from the above policies.

Retaining retail floorspace within the Primary Shopping Frontages is of central importance to maintaining the West End Special Retail Policy Area's role at the top of London's retail hierarchy. The character and function of Oxford Street is almost exclusively made up of retail units. The loss of a retail unit (344m²) in this prominent location would inevitably harm the Primary Shopping Frontages' character and function by weakening the retail offer and thereby reducing the attractiveness of the West End International Shopping Centre to shoppers. The applicant has submitted no evidence demonstrating that the unit is long-term vacant. Given its prime location it is considered to be extremely unlikely that the unit would not be attractive to a wide range of Class A1 retailers that would contribute to the character, function and attractiveness of the Primary Shopping Frontages of the West End International Shopping Centre. In these circumstances the applicant is not considered to have demonstrated that the most exceptional circumstances exist which would justify a departure from the strong adopted retail policies to protect retail floorspace in this location. It is concluded that the proposed use would harm the unique status and offer of the West End Special Retail Policy Area and harm the character, function and attractiveness of the West End Special Retail Policy Area, contrary

to City Plan Policies S7 and S21 and UDP Policies SS3. It is accordingly recommended that permission be refused.

The applicant has referred to the existence of a car showroom on the Primary Shopping Frontage of the West End International Shopping Centre, at No. 52 Regent Street. However, the lawful use of this unit is within Class A1 (Shops) and no planning permission has been granted for its use as a car showroom. The City Council is currently investigating whether the unit is selling cars and therefore whether there is a breach of planning control. Furthermore, the two parts of the store facing Regent Street (i.e. the Primary Shopping Frontage) are exclusively used for display and sale of clothing. As such, the appearance of the unit from Regent Street is not of a car showroom but of a retail unit. Two cars are displayed within the rear room that faces Glasshouse Street (not a Primary Shopping Frontage). The nature of the use is very different from the current proposal which is proposed to have minimal retail character and function.

6.2 Amenity

The use of the premises as a car showroom is unlikely to raise any amenity concerns despite the flats on the upper floors of this building. Late night deliveries of cars may cause some disturbance but such deliveries are common in a heavily commercialised street like Oxford Street. The addition of four later night deliveries per annum is unlikely to result in a material loss of amenity for neighbouring residents.

The proposed opening hours do not raise any amenity concerns.

6.3 Townscape and Design

No external alterations are proposed and therefore the proposal will not have an impact on the character and appearance of the Mayfair Conservation Area.

6.4 Transportation

The applicant proposes delivering and loading vehicles on Oxford Street outside of trading hours (i.e. between 22.00 and 06.00) four times a year. The area immediately in front of the site is available for loading between 21.00 and 07.00.

Details of how cars will be delivered to and from the site have not been submitted. The Highways Planning Manager considers that, provided cars are changed no more than once a quarter, it would be difficult to object to this level of trip generation. This is, however, subject to the applicant submitting a Service / Delivery Management Plan for the City Council's approval. This should include details setting out how cars will be transported to the site, how they will access the site without adversely affecting safe pedestrian and vehicular movement and how the surface of the pavement will be protected from damage during the process.

On the basis of this advice, had the application been acceptable in other respects, a pre-commencement condition would have been imposed securing such a Service / Delivery Management Plan.

6.5 Access

There is currently level access to the shop and this is not proposed to be altered. The applicants have advised that the existing shopfront doorway is sufficiently wide (2.6m) to accommodate a motor vehicle.

6.6 Economic Considerations

The proposed car showroom's economic impact is not considered to be materially different from the lawful existing use as a retail unit.

6.7 Other UDP/Westminster Policy Considerations

None.

6.8 London Plan

The proposal raises no strategic issues.

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 these applications are considered to be consistent with the NPPF unless stated otherwise.

6.10 Planning Obligations

The proposal gives rise to no planning obligations.

6.11 Environmental Assessment including Sustainability and Biodiversity Issues

The proposal is of insufficient scale to require an Environmental Assessment.

6.12 Other Issues

None.

7. CONCLUSION

It is not considered that the applicant has demonstrated the most exceptional circumstances to justify the loss of retail floorspace in his location and a departure from the Council's adopted shopping policies. As such, the application is recommended for refusal.

BACKGROUND PAPERS

1. Application forms.
2. Online response from the Residents' Society of Mayfair and St. James's dated 20 October 2015.
3. Memorandum from Highways Planning dated 21 October 2015.
4. Letter from London and Partners dated 25 November 2015.
5. Letter from Tribeca Holdings dated 26 November 2015.

Item No.

5

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT SARA SPURRIER ON 020 7641 3934 OR BY E-MAIL – sspurrier@westminster.gov.uk

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04/12/2015

DRAFT DECISION LETTER

Address: 449 Oxford Street, London, W1C 2PS

Proposal: Use of part basement, ground and first floors as a composite use comprising car showroom and retail (sui generis).

Plan Nos: A-110, A-111, A-112.

Case Officer: Mark Hollington

Direct Tel. No. 020 7641 2523

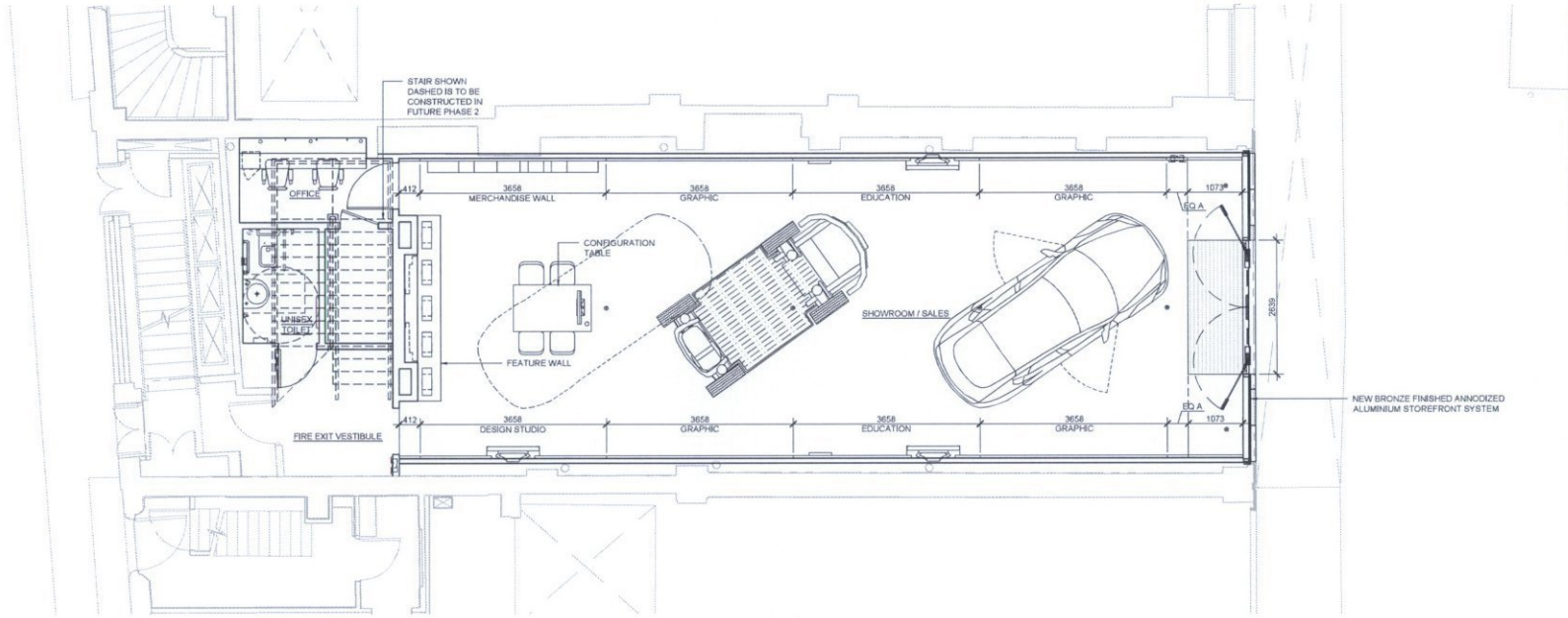
Recommended Reason(s) for Refusal:

Reason:

- 1 Your development would lead to the loss of a retail unit in the Primary Shopping Frontage of the West End International Shopping Centre, as defined in our Unitary Development Plan that we adopted in January 2007. This would harm the unique status and offer of the West End Special Retail Policy Area and harm the character and function and therefore attractiveness of the West End International Shopping Centre. This would not meet Policies S7 and S21 of our City Plan that we adopted in November 2013 and Policy SS3 of our Unitary Development Plan that we adopted in January 2007.

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 so far as practicable. 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. However, we have been unable to seek solutions to problems as the principle of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.
- 2 You are advised that the City Council considers the use that has been applied for is a car showroom (sui generis), with ancillary retail sales and not a mixed car showroom and retail shop (sui generis).



PROPOSED GROUND FLOOR PLAN

SCALE
1:50

1

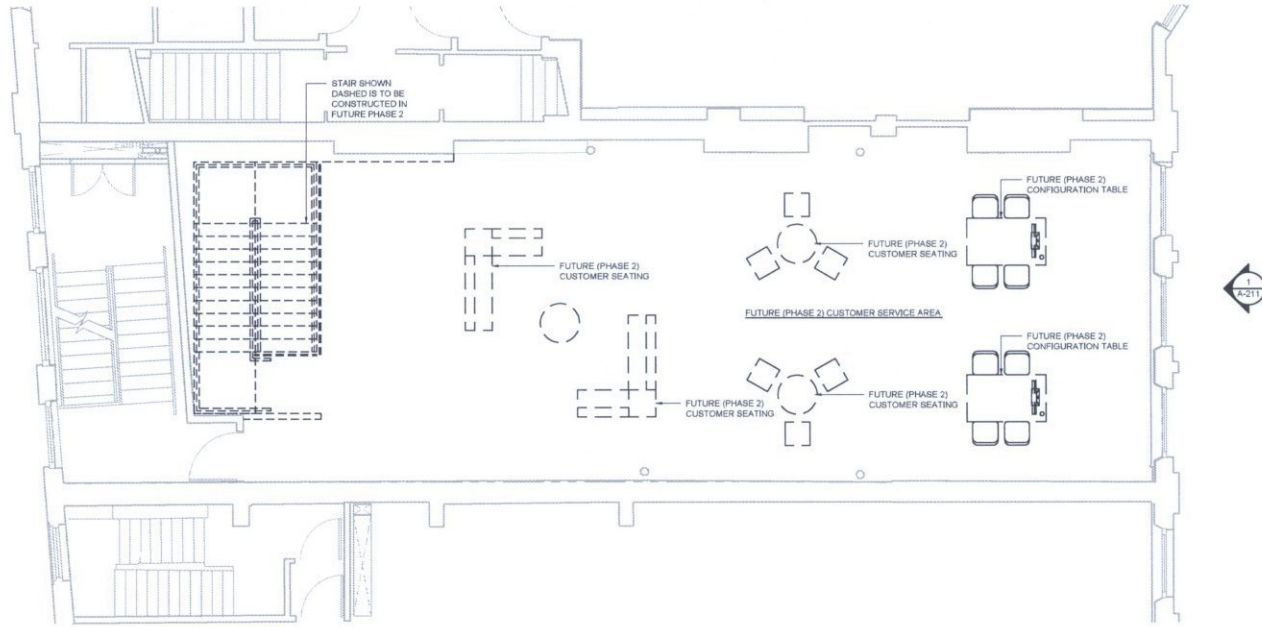
TESLA RETAIL
449 OXFORD ST
LONDON
W1C 2PS
UNITED KINGDOM

ISSUE / REVISION
08.16.12 PLANNING APPLICATION

DRAWING TITLE

PROPOSED
GROUND FLOOR
PLAN

A-111



PROPOSED FIRST FLOOR PLAN

SCALE
1:50

1

TESLA RETAIL
449 OXFORD ST
LONDON
W1C 2PS
UNITED KINGDOM

ISSUE / REVISION
06.16.12 PLANNING APPLICATION

DRAWING TITLE

PROPOSED
FIRST FLOOR
PLAN

A-112