

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 31 May 2016	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	<b>5 Berners Street, London, W1T 3LF</b>		
<b>Proposal</b>	Erection of a full height extract duct on the rear elevation of the property in association with the approved restaurant at basement and ground floor levels.		
<b>Agent</b>	Savills		
<b>On behalf of</b>	OTR Berners Street LLP		
<b>Registered Number</b>	15/11831/FULL	<b>Date amended/ completed</b>	28 January 2016
<b>Date Application Received</b>	18 December 2015		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	East Marylebone		

## 1. RECOMMENDATION

Grant conditional permission.

## 2. SUMMARY

The application site is a recently refurbished building which connects through to No. 11 Berners Place, a mews building at the rear. A restaurant (Class A3) occupies the ground and basement floors with the six upper floors in residential use (Class C3) providing eight residential units. The building is unlisted, but located within the East Marylebone Conservation Area.

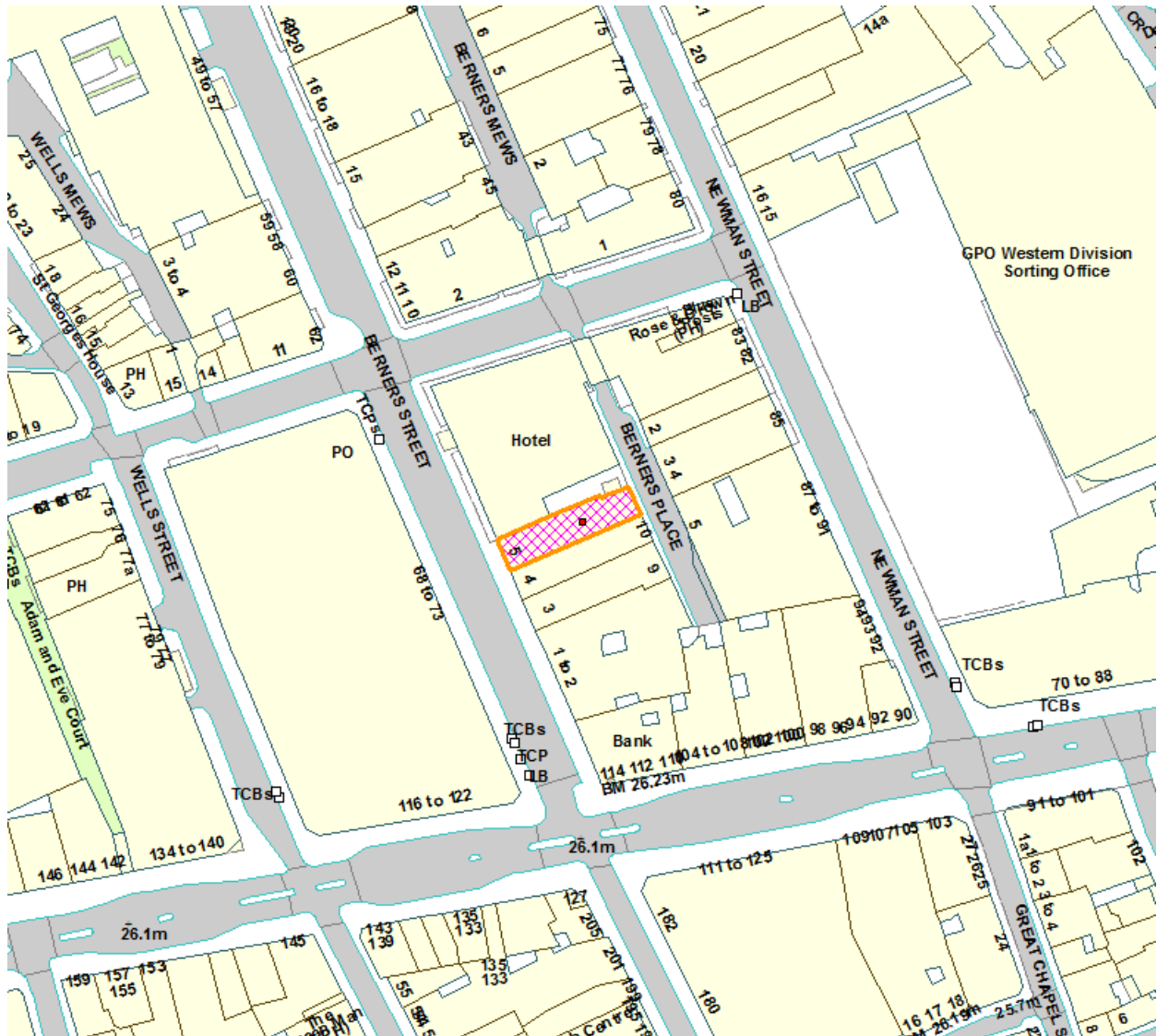
Planning permission is sought for the installation of a full height external duct on the rear elevation of the main building.

The key issues for consideration are:

\* The individual and cumulative impact of another flue in this location.

Subject to appropriate conditions, the proposal is considered acceptable in design and amenity terms. The application is therefore recommended for conditional approval being in compliance with the relevant Unitary Development Plan (UDP) and Westminster City Plan: Strategic Policies (City Plan).

### 3. LOCATION PLAN



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4. PHOTOGRAPHS

Photograph 1- Rear elevation of 5 Berners Street



Photograph 2- Rear elevation of 3 and 4 Berners Street (No. 3 with an existing external duct)



Photograph 3. Front elevation of building



## 5. CONSULTATIONS

### FITZROVIA NEIGHBOURHOOD ASSOCIATION

Any response to be reported verbally.

### ENVIRONMENTAL HEALTH

No objection

### PLANNING ENFORCEMENT TEAM

The Planning Enforcement Team currently has a planning enforcement investigation on the matter of the low level extract duct. Since November 2015, the Planning Enforcement Team has received five complaints to date with regards to noise and odours from the extract duct.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 22

Total No. of replies: 1

No. of objections: 1

No. in support: 0

The occupier of the top floor at 9 Berners Place has objected to the installation of the high level extract duct for the following reasons:

- No case has been made or exists for the original planning consent for full height internal extract not being implemented. It has been proposed to implement a scheme that i) would not have been consented had it originally been applied for and ii) would not be necessary if the original consent had been implemented.
- There are two issues to be considered-
  - Whether this is the least damaging practicable solution to the current problem; and
  - The integrating of the entire planning system if the Council accept without reservation seemingly false representations from applicants and their agents to legitimise a breach of planning.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application site has recently been refurbished and comprises of eight storeys and connects through to No. 11 Berners Place, a four storey mews building at the rear. A restaurant (Class A3) occupies the ground and basement floors with the six upper floors in residential use (Class C3) providing eight residential units.

The building is unlisted, but located within the East Marylebone Conservation Area and Central Activities Zone (CAZ), the West End Stress Area (WESA) and the Creative Industries Special Policy Area (CISPA).

The nearest residential properties are located within the application building at first floor level and above and within the upper floors of 3 and 4 Berners Street.

## 6.2 Recent Relevant History

Planning permission was granted on 18 October 2012 for the partial demolition of existing roof and rear facade, rear extension first to sixth floors of Berners Street building for a lift, addition of third floor between Berners Street and Berners Place buildings, addition of mansard roof extension to Berners Place building, external alterations including replacement shopfront and addition of dormer windows to Berners Street elevation. Works in association with the use of the building for light industrial (Class B1c) in the basement and retail (Class A1) at ground floor, and eight residential units (Class C3) on first to sixth floors.

This permission was varied on 3 December 2013 for alterations to the rooflights and dormer windows, acoustic louvres a new duct and other alterations. A low level duct was approved in connection with the retail/light industrial use.

Planning permission was granted on 29 October 2013 for the use of the basement and ground floor for restaurant purposes, installation of full height extract duct (routed internally) venting at roof level, plant at basement level, air intake at rear first floor level, acoustic louvres at rear ground floor. Installation of new shopfronts to Berners Street and Berners Place.

The October 2013 and December 2013 consents have been partially implemented. The basement and ground floors is being used for restaurant purposes. However the internal full height extract duct has not been implemented. The low level duct approved in connection with the retail/light industrial use has been implemented and the restaurant is using this duct to extract cooking smells.

A certificate of proposed lawful development was refused in March 2016 for the use of the existing low level extract duct (permitted in December 2013) in association with the restaurant at ground and lower ground floor (permitted in October 2013).

*“Condition 1 of the planning permission dated 29.10.2013 (RN: 13/07973) requires that the development be carried out in accordance with the drawings and other documents listed on the decision letter. The drawings listed on this decision letter, and the other listed documents (Design and Access Statement, Planning Statement and Ventilation and Cooling Statement) all refer to and clearly identify a high level extract duct onto Berners Street. Your proposal to use a lower level extract duct approved under the planning permission dated 3.12.2013 (RN: 13/07695) for a part light industrial and part retail use would not accord with the requirements of Condition 1 of the permission dated 29.10.2013 and therefore you would either need consent to vary or remove this condition, or apply for a new planning permission.”*

### 4 Berners Street

Planning permission was granted on 23 June 2015 for the use of the basement, ground and part third floor as a restaurant (Class A3), installation of a new shopfront, a full height extract duct on the rear elevation and plant within an enclosure at rear third floor level.

## **7. THE PROPOSAL**

As set out in detail above, permission was in October 2013 for the use of the ground and basement floors as a restaurant. This consent included the installation of an internally routed full height extract duct. However, the applicants have not installed the internal duct as permitted and are currently using a low level extract within the rear lightwell to discharge cooking smells. Low level extract ducts are not suitable for the discharge of cooking smells. Therefore, permission is now sought for the installation of a full height external duct on the rear elevation.

The applicants have stated that it has not been possible to install the internally routed extract duct as per the consent granted in October 2013, due to the need for access through approved residential apartments on the upper floors, a number of which have now been sold. This is disappointing, as at the time of the consent, building works were continuing on site and the duct should have been built at the same time. However, the City Council cannot refuse to deal with this application.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

There is no associated land use issues associated with the installation of an external high level extract duct in connection with a restaurant use (Class A3). The use of the ground and basement floors as a restaurant was permitted in October 2013. The restaurant is now operating and has been since December 2015 when a Premises Licence was issued.

### **8.2 Townscape and Design**

The proposed duct will run to high level along the boundary with 4 Berners Street. Permission has also been granted for the installation of a full height extract duct to the rear of 4 Berners Street (not implemented). There is also an existing duct to the rear of 3 Berners Street. The existence of these two ducts does, to an extent, compromise the uncluttered appearance of the rear elevation of Berners Street. From this perspective, it is considered that damage to visual amenity has already been done, and an additional duct might be considered acceptable.

Consideration has been given to whether a third duct would add to a cumulative harm, as it has already been determined that one or even two ducts could be accommodated without an unacceptable impact on the character or appearance of the East Marylebone Conservation Area. Negotiations have been undertaken to reduce the size of the duct and to clad the duct in brickwork in order to reduce its visual impact. The proposed duct has been reduced in diameter, however it is not able to be clad in brickwork without adversely affecting the outlook from the rear fourth floor windows of 4 Berners Street. The duct will be finished in a colour to match the rear elevation.

The proposed duct is considered to have a lesser impact than the consented duct at No. 4, as the permission for this duct did not control the finish and will presumably be a bare steel colour.

On balance, the duct is considered acceptable in design terms.

### **8.3 Residential Amenity**

The full height extract duct is located on the rear elevation set in from the party wall with 4 Berners Street. The upper floors of No. 4 are in residential use and split into five residential flats. Four of the residential flats are dual aspect. The fourth floor rear windows serve a studio flat which has a single outlook overlooking the rear. Although preferable from a design and conservation perspective, brick cladding around the extract duct (to reduce its impact on the conservation area) would increase the bulk and could have an adverse impact upon these neighbouring residential windows and in particular the single aspect studio flat at fourth floor level.

The size, scale and position of the duct is considered acceptable.

### **8.4 Transportation/Parking**

The application does not raise any transportation issues.

### **8.5 Economic Considerations**

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

### **8.6 Access**

The application does not raise any access issues.

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

#### **Plant**

The area has been assessed as being in an area in which existing ambient noise levels are above WHO Guideline levels.

The acoustic consultant advises that the tenant's extract system feeds into the landlords vertical discharge ductwork that terminates through a reducing cone at approximately 1m above roof level. The nearest noise sensitive receptor to the termination duct is approximately 2m away (within the application site). Although the duct is set back to align with the mansard roof, the extract fan is located internally within the lower ground floor of the development and as such there is unlikely to be any noise breakout issues from the fan casing.

Environmental Health officers have confirmed that the application is likely to comply with the City Council's standard noise conditions and have raised no objection to the proposal.

### **8.8 London Plan**

This application raises no strategic issues.



### **8.9 National Policy/Guidance Considerations**

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

### **8.10 Planning Obligations**

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

### **8.11 Environmental Impact Assessment**

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

### **8.12 Other Issues**

An objection has been received stating that they believe that the extract duct could have been routed internally due to the extensive works that have taken place. Furthermore they have stated that the City Council should not accept a planning application for the external extract duct without fully questioning the applicants. The City Council cannot prevent the submission of a planning application and each application has to be dealt with on its own merits. Any decision made by the City Council must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. There were no conditions on the October 2013 consent which ensured that the full height extract duct was built in accordance with the plans before the restaurant use commenced. Therefore this allowed for the October consent and the December consent to be partially implemented. The objections on these grounds are not considered sustainable to refuse the application.

The objector recommends three planning conditions, which are set out in the background papers. However these are not considered to be conditions the Council can agree too, as they are irrelevant to the proposed development and do not meet the six tests as set out in the NPPF (paragraph 206) which states that planning conditions should only be imposed where they are: necessary; relevant to planning and; to the development to be permitted; enforceable; precise and reasonable in all other respects.

## **9. BACKGROUND PAPERS**

1. Application form
2. Response from Environmental Health, dated 1 March 2016
3. Response from the Planning Enforcement Team, dated 9 May 2016
4. Letter from occupier of Top Floor, 9 Berners Place, dated 29 February 2016

### **Selected relevant drawings**

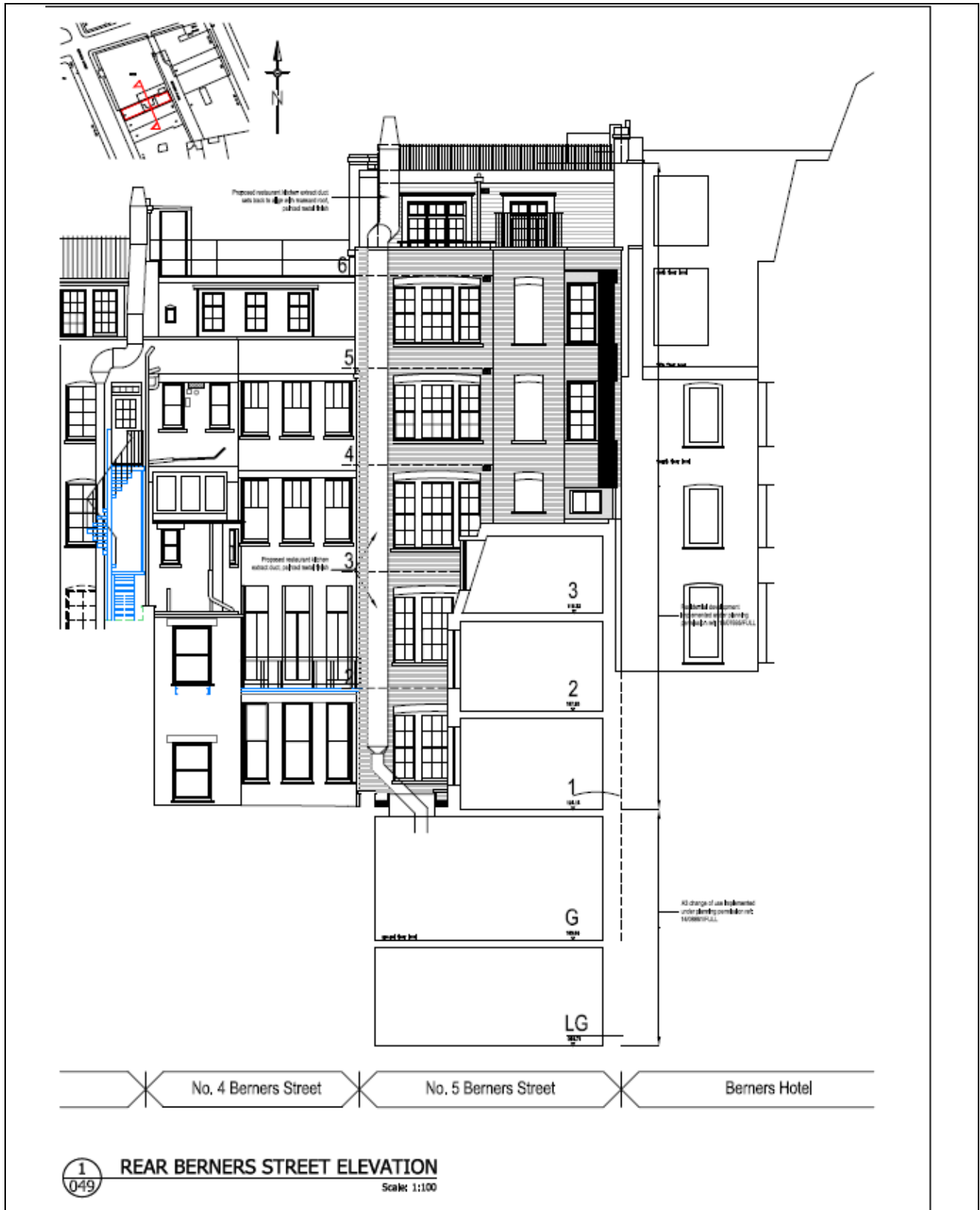
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

Item No.
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<b>12</b>
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IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT LINDSAY JENKINS ON 020 7641 5707 OR BY EMAIL AT <a href="mailto:CentralPlanningTeam@westminster.gov.uk">CentralPlanningTeam@westminster.gov.uk</a>
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10. KEY DRAWINGS



**DRAFT DECISION LETTER**

**Address:** 5 Berners Street, London, W1T 3LF,

**Proposal:** Erection of a full height extract duct on the rear elevation of the property in association with the approved restaurant at basement and ground floor levels.

**Reference:** 15/11831/FULL

**Plan Nos:** 2844-042D; 043D; 044D; 045D; 047D; 048D; 049D; 089A.

**Case Officer:** Lindsay Jenkins

**Direct Tel. No.** 020 7641 5707

**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 You must carry out any building work which can be heard at the boundary of the site only:

- \* between 08.00 and 18.00 Monday to Friday;
- \* between 08.00 and 13.00 on Saturday; and
- \* not at all on Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours. (C11AA)

Reason:

To protect the environment of neighbouring residents. This is as set out in S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

3

(1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless

and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum.

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

(3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:

- (a) A schedule of all plant and equipment that formed part of this application;
- (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;
- (c) Manufacturer specifications of sound emissions in octave or third octave detail;
- (d) The location of most affected noise sensitive receptor location and the most affected window of it;
- (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
- (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
- (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;
- (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;
- (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason:

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

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in

ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan: 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.

- 4 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.

- 5 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 East Marylebone Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

- 6 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 East Marylebone Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

- 7 You must install and finish the duct as shown on Drawing No. 2844 089A and kept it that colour for as long as the duct is in situ.

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 East Marylebone Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

**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.

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.