

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 21 <sup>st</sup> June 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>16A D'Arblay Street, London, W1F 8EA,</b>		
<b>Proposal</b>	Dual/alternative use of the ground floor for either a retail (Class A1) use and/or for a composite retail/cafe/bar use (sui generis).		
<b>Agent</b>	Rolfe Judd Planning		
<b>On behalf of</b>	Dalla Terra Vetro Ltd		
<b>Registered Number</b>	16/02074/FULL	<b>Date amended/ completed</b>	8 March 2016
<b>Date Application Received</b>	8 March 2016		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Soho		

## 1. RECOMMENDATION

1. Does the Committee agree that the use of the ground floor for either a retail (Class A1) use and/or for a composite retail/cafe/bar use (sui generis) is acceptable?

2. Subject to 1. above grant conditional permission

## 2. SUMMARY

The application site is situated on the northern side of D'Arblay Street, within the Core Central Activities Zone (CAZ) and the Soho Conservation Area. Permission is sought for the continued retrospective use of the ground floor for a dual/alternative use as either retail or a mixed retail and cafe/bar use (sui generis) by 'Vetro'. No external alterations are proposed.

The lawful use of the premises at ground floor is for retail purposes (Class A1). Whilst an element of retail is retained in the form of a small retail display of Italian wines, it is considered that due to the amount of internal seating (39 covers with an additional 12 covers in the private room to the rear) and the sale of wines and ancillary snacks and lunches for consumption on the premises, that the current use is a mix of retail (Class A1), cafe (Class A3) and drinking establishment (Class A4). The applicant has confirmed that the majority of sales to date are for the consumption of food and drink on site falling within Class A3 and Class A4 (cafe 25% and drinking establishment 40%), with a Class A1 (retail) element (35%). There is no primary cooking and no kitchen ventilation equipment is proposed.

The sui generis use will result in a loss of retail floorspace. Policy S21 of Westminster's City Plan: Strategic Policies states 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. Saved Unitary Development Plan Policy SS5 states that planning permission for the introduction of a non-A1 town centre use at basement, ground and first floor level will only be granted where the proposal would not be detrimental to the character and function of an area or to the vitality or viability of a shopping frontage or locality and does not lead to, or add to, a concentration of three or more consecutive non-A1 uses or cause or intensify an existing over-concentration of A3 and entertainment uses in a street or area.

The application would lead to 3 or more non-retail uses. However, the area is primarily commercial in character, the use generates activity at street level and the retail area, which albeit is small, retains an element of the retail use. It is not considered that the use of the unit for a mixed A1/cafe/bar use in this location would be detrimental to the character and function of the area or to the vitality or viability of the shopping frontage or locality and the balance of A1 to non-A1 uses would not be undermined, and as such, the proposal is considered to satisfy the relevant shopping policies within the CAZ.

The principle of the introduction of an element of Class A3/A4 use in this location also needs to be assessed. The relevant policies for consideration are TACE9 and S24. TACE9 states that permission will only be granted for proposals that have no adverse effect on residential amenity or local environmental quality as a result of noise; vibration; smells; late night activity or increased parking and traffic and should have no adverse impact on the character and function of the area. Policy S24 is similarly worded. The Soho Society has objected to the application on the grounds that the proposal introduces a new entertainment use within the Stress Area. This part of D'Arblay Street is, however, mixed in character and function with only a relatively limited number of other entertainment uses. It is not considered that an additional entertainment use would result in an unacceptable concentration of entertainment uses or harm the character and function of the Soho Conservation Area.

One letter of objection has also been received from a resident some distance away in Broadwick Street, on the grounds of noise from deliveries and from customers leaving the premises late at night. Whilst there is some residential in the locality: the nearest are flats at 13 and 25 D'Arblay Street. There are other flats on D'Arblay Street but these are located on the opposite end of the street close to the junction with Berwick Street.

No primary cooking occurs, no ventilation or extraction equipment is required and in the nine months the use has been operating only one complaint has been received regarding the operation of the use. Given that the use has been shown to be able to operate without adversely affecting direct residential amenity, it is considered that this 'sui generis' retail/cafe/bar use restricted to 51 covers is acceptable. The hours of operation are between 11:30 - 23:00 hours Monday - Thursday; 11:30 - 24:00 Friday - Saturday and 12:00 - 20:00 on Sunday. Within this very busy, predominantly commercial location, the hours are considered to be acceptable in amenity terms.

The Highways Planning Manager considers that the proposal will have limited impact on parking but recommends that no delivery service should operate from this location to minimise the impact of the proposed use on the road network. This is dealt with by condition. Whilst two cycle parking spaces should normally be provided within the demise of the unit, given the small size of the unit, it is not considered reasonable to attach a condition requiring cycle parking provision in this instance.

The application is considered acceptable in amenity terms, and although the property is located within the West End Stress Area this proposal is considered to be small scale, low impact and will not result in an added increase in late night users due to the reasonable hours of operation in this part of Soho. Committee's views are sought on the acceptability of the proposal.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS

20 Apr 2016, 14:37:30



20 Apr 2016, 14:47:40



20 Apr 2018 14:47:50



## 5. CONSULTATIONS

### THE SOHO SOCIETY

Objection - Application for "sui-generis" use class does not reflect the nature of the existing business or the proposed. Intensification of an A4 use in the West End Stress Area, which is already saturated with venues of this type. The proposed continued A1 use is not objected to.

### ENVIRONMENTAL HEALTH

No objection.

### HIGHWAYS PLANNING MANAGER

Undesirable on transportation grounds; no off street servicing indicated within the application site. Cycle parking should also be provided.

### CLEANSING MANAGER

No objection.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 25

Total No. of replies: 1

No. of objections: 1 - Noise concerns, increase in A4 use.

No. in support: 0

PRESS ADVERTISEMENT / SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

This application lies in the:  
Central Activities Zone  
Soho Conservation Area  
West End Stress Area

### 6.2 Recent Relevant History

#### 02/03794/FULL

Use of ground floor of 16A D'Arblay Street for either Class A1 (retail) purposes or Class A1 (retail) purposes in ground floor front and Class B1c (light industrial) use in ground floor rear.

Application Permitted                      10 July 2002

#### 02/01935/FULL

Use of ground floor for Class A1 (retail) or Class B1 (light industrial) uses.

Application Withdrawn                      2 May 2002

## 7. BACKGROUND PAPERS

1. Application form
2. Response from Soho Society, dated 10 April 2016
3. Letter from occupier of 16 Broadwick Street, London, dated 6 April 2016
4. Memorandum from Highways Planning Manager dated 4 April 2016
5. Memorandum from Environmental Health dated 5 April 2016

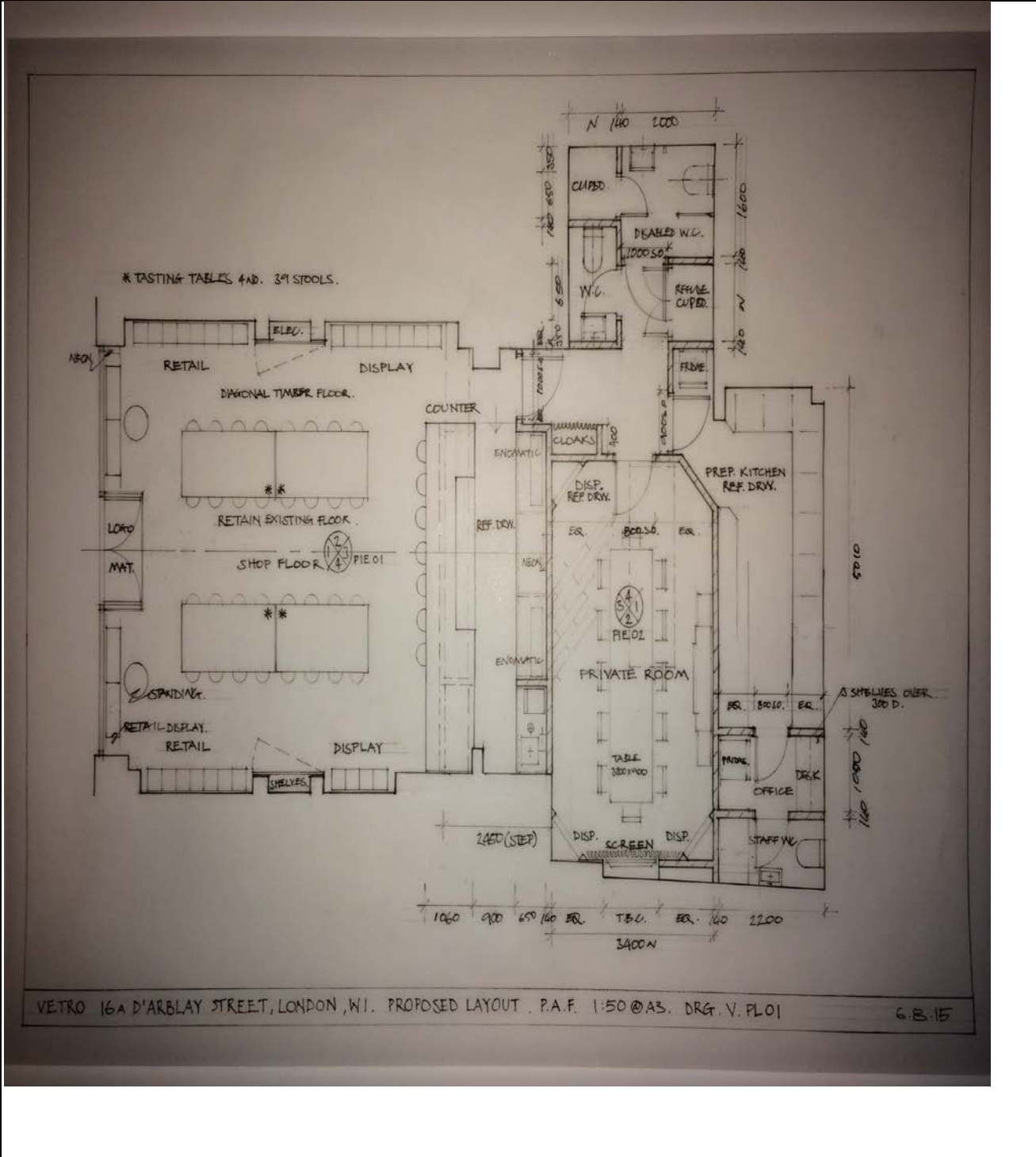
### **Selected relevant drawings**

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

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT JOSEPHINE PALMER ON 02076412723 OR BY EMAIL AT [jpalme@westminster.gov.uk](mailto:jpalme@westminster.gov.uk)



8. KEY DRAWINGS



**DRAFT DECISION LETTER**

**Address:** 16A D'Arblay Street, London, W1F 8EA,

**Proposal:** Dual/alternative use of the ground floor for either a retail (Class A1) use and/or for a composite retail/cafe/bar use (sui generis).

**Reference:** 16/02074/FULL

**Plan Nos:** V.PL01

**Case Officer:** Shaun Retzback

**Direct Tel. No.** 020 7641 6027

**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 Customers shall not be permitted within the ground floor premises before 11:30 or after 23:00 Monday to Thursday, before 11:30 or after 24:00 Friday-Saturday and before 12:00-20:00 on a Sunday

Reason:

To protect the environment of people in neighbouring properties as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6, ENV 7 and ENV 13 of our Unitary Development Plan that we adopted in January 2007. (R12AC)

- 4 You must not cook raw or fresh food on the premises. (C05DA)

Reason:

We cannot grant planning permission for unrestricted use within Class A3 because it would not meet S24 and S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and

TACE 9 of our Unitary Development Plan that we adopted in January 2007. (R05CC)

- 5 You must provide the waste store shown on drawing V.PL01 before anyone moves into the property. You must clearly mark it and make it available at all times to everyone using the property. You must store waste inside the property and only put it outside just before it is going to be collected. You must not use the waste store for any other purpose. (C14DC)

Reason:

To protect the environment and provide suitable storage for waste and materials for recycling 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. (R14CC)

- 6 You must not operate a delivery service from the premises hereby permitted, even as an ancillary part of the 'Sui Generis' use.

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan: Strategic Policies adopted November 2013 and TRANS 2 and TRANS 3 of our Unitary Development Plan that we adopted in January 2007. (R24AC)

- 7 The seating capacity of the ground and basement floors shall be limited to 51 customers as indicated on drawing V.PL01.

Reason:

To prevent a use that would be unacceptable because of the character and function of this part of the Soho Conservation Area. This is in line with S25 of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 9 of our Unitary Development Plan that we adopted in January 2007. (R05FC)

- 8 No music shall be played within the premises that is audible outside the premises.

Reason:

To protect the environment of people in neighbouring properties as set out in S24, S29 and S32 of Westminster's City Plan: Strategic Policies adopted November 2013 and ENV 6, ENV 7 and ENV 13 of our Unitary Development Plan that we adopted in January 2007. (R12AC)

- 9 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 S41 of Westminster's City Plan: Strategic Policies adopted November 2013 and TRANS 2 and TRANS 3 of our Unitary Development Plan that we adopted in January 2007. (R24AC)

- 10 With the exception of collecting rubbish, no goods (including fuel) that are delivered or collected by vehicles arriving at or leaving the building must be accepted or sent out if they are unloaded or loaded on the public road. You may accept or send out such goods only if they are unloaded or loaded within the boundary of the site. (C23CB)

Reason:

To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in S42 of Westminster's City Plan: Strategic Policies adopted November 2013 and STRA 25, TRANS 20 and TRANS 21 of our Unitary Development Plan that we adopted in January 2007. (R23AC)

- 11 You must not put planters, tubs, furniture or other obstructions on the forecourt. (C26QA)

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 1 and DES 5 or DES 6 or both of our Unitary Development Plan that we adopted in January 2007. (R26AD)

- 12 The retail display area shown on drawing V.PL01 must be retained in the manner shown on the drawing and used only for retail purposes.

Reason:

To ensure the retention of a retail character and function to the unit and to support the retail vitality and character and function of the area in accordance with Policies S6 and S21 of our City Plan that we adopted in November 2013 and Policy SS5 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. 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.
- 2 Please contact our District Surveyors' Services to discuss how you can design for the inclusion of disabled people. Email: [districtsurveyors@westminster.gov.uk](mailto:districtsurveyors@westminster.gov.uk). Phone 020 7641 7240 or 020 7641 7230. If you make a further planning application or a building regulations application which relates solely to providing access or facilities for people with disabilities, our normal planning and building control fees do not apply. The Equality and Human Rights Commission has a range of publications to assist you, see [www.equalityhumanrights.com](http://www.equalityhumanrights.com). The Centre for Accessible

Environment's 'Designing for Accessibility', 2004, price £22.50 is a useful guide, visit [www.cae.org.uk](http://www.cae.org.uk). If you are building new homes you must provide features which make them suitable for people with disabilities. For advice see [www.habinteg.org.uk](http://www.habinteg.org.uk). It is your responsibility under the law to provide good access to your buildings. An appropriate and complete Access Statement as one of the documents on hand-over, will provide you and the end user with the basis of a defence should an access issue be raised under the Disability Discrimination Acts.

- 3 Please make sure that the street number and building name (if applicable) are clearly displayed on the building. This is a condition of the London Building Acts (Amendments) Act 1939, and there are regulations that specify the exact requirements. (I54AA)
- 4 Please contact our Cleansing section on 020 7641 7962 about your arrangements for storing and collecting waste. (I08AA)
- 5 You cannot put tables and chairs in the area unless you have a street trading licence. If you want to know about the progress of your application for a licence, you can contact our Licensing Service on 020 7641 8549. If you apply for a licence and then decide to change the layout of the tables and chairs, you may have to apply again for planning permission. You can discuss this with the planning officer whose name appears at the top of this letter. Please remember that once you have a licence you must keep the tables and chairs within the agreed area at all times. (I47AB)
- 6 You are reminded of the need to apply for advertisement consent for any A-boards on the pavement.

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.