

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 16 August 2016	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> Marylebone High Street	
<b>Subject of Report</b>	<b>74 - 76 Chiltern Street, London, W1U 5AA,</b>		
<b>Proposal</b>	Details of proposed restaurant operation, including the internal layout of the unit (showing the areas to be used for public drinking/dining and back of house functions), opening hours, capacity, hours of plant operation and serving hours pursuant to condition 42 of planning permission dated 19 August 2015 (15/01247) for the redevelopment of the site to provide residential flats (Class C3), a retail shop (Class A1/A2), a restaurant or public house (Class A3/A4), storage areas (Class B8), a health and fitness centre (Class D2), a replacement street sweepers' depot (sui generis), and basement parking and associated plant (Site includes 22-28 Paddington Street).		
<b>Agent</b>	Rolf Judd Planning		
<b>On behalf of</b>	NZR Ltd		
<b>Registered Number</b>	16/02830/ADFULL	<b>Date amended/ completed</b>	6 April 2016
<b>Date Application Received</b>	30 March 2016		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Portman Estate		

## 1. RECOMMENDATION

Approve details.

## 2. SUMMARY

The application site has recently been redeveloped to provide 59 flats on the upper floors and a mixture of uses on the basement and ground floors including a restaurant or public house use (Class A3/A4) on part basement and part ground floors, which replaced a public house and smaller restaurant and café premises. As no operator had been identified, at the time that permission was granted on 19 August 2015, the permission was subject to a condition requiring operational details of the restaurant or public house to be approved prior to the use commencing. A restaurant tenant has now been identified and details have been submitted to discharge this condition.

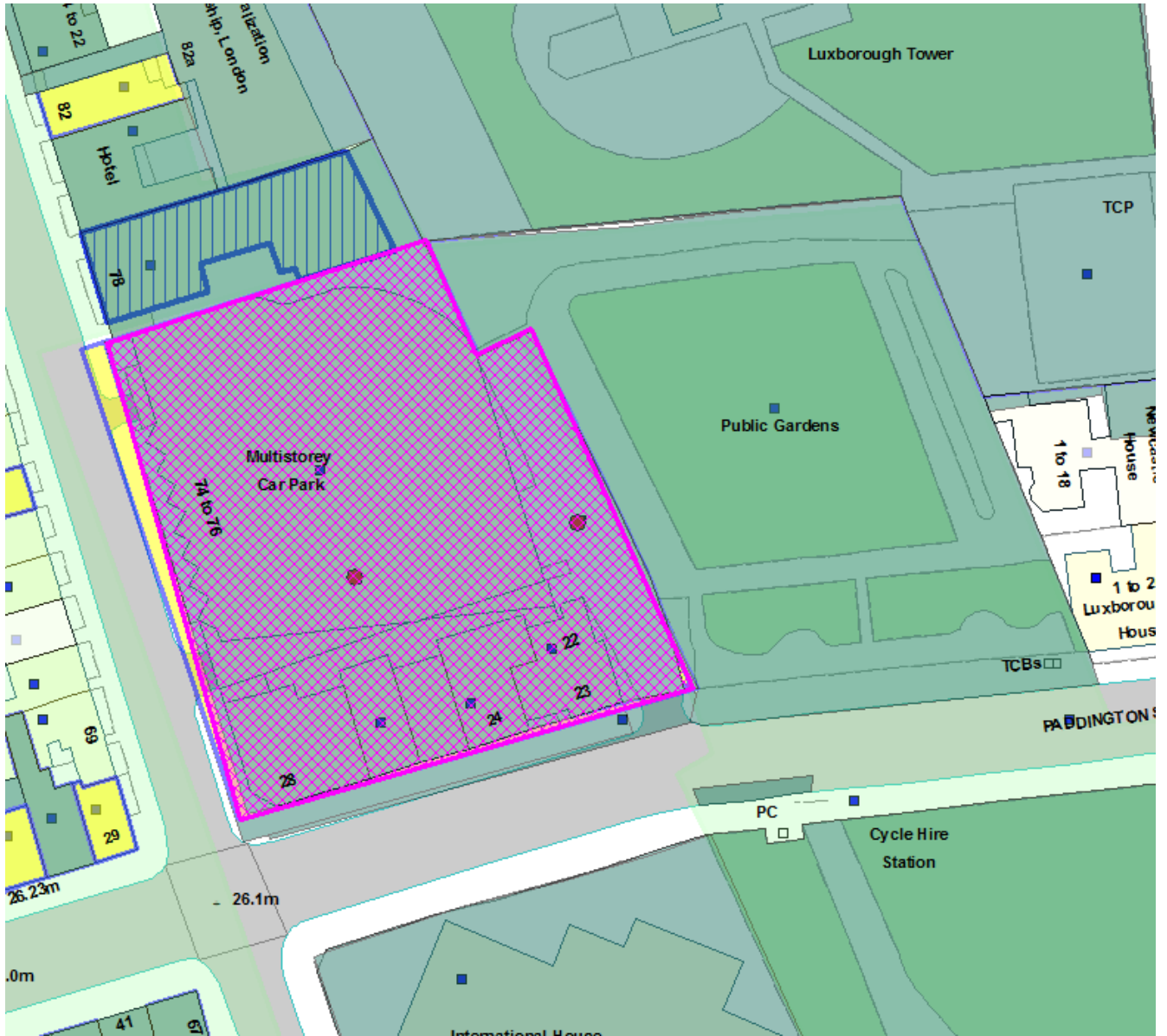
The key issue in this case is the impact of the proposed restaurant operation upon the amenities of neighbouring residential occupiers.

Item No.
----------

<b>8</b>
----------

Several objections have been received that the restaurant would adversely affect the amenities of neighbouring residents. However, the submitted details are considered acceptable and it is recommended that the condition is discharged.

### 3. LOCATION PLAN



This production includes mapping data licensed from Ordnance Survey with the permission of the controller of Her Majesty's Stationary Office (C) Crown Copyright and/or

4. PHOTOGRAPHS



## 5. CONSULTATIONS

### THE MARYLEBONE ASSOCIATION

Objection to the details provided. Specifically that 116 covers appears high, the hours of opening should be reduced to 23.30 at the latest, plant should be restricted to midnight (00:00 hours) and that the impact of the restaurant should be considered as a whole including footfall, deliveries and external smoking.

### CLEANSING

Original objection under 16/02830/ADFULL but confirmed no objection to revised restaurant waste storage and waste management arrangements (considered under 15/02752/FULL)

### HIGHWAYS

No objection

### ENVIRONMENTAL HEALTH

No objection

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 275

Total No. of replies:6 ( 3 objections received in response to other applications but included as they are relevant to the consideration of this application)

No. of objections: 6

No. in support: 0

Objections received on the following grounds:

- principle of a restaurant use in this residential location, previous public house was not as large in terms of area or street frontage
- late night disturbance due to restaurant capacity and proposed opening hours
- proposed opening outside the core hours and would set a precedent for late night opening in the area
- potential for customers to remain in the premises after proposed terminal hour
- disturbance resulting from proposed hours of plant operation
- loss of privacy due to increased footfall close to neighbouring ground floor flats
- drawings show an exit on to Chiltern Street, opposite residential properties
- potential use of Chiltern Street exit by smokers will result in nuisance from smoke, noise and littering of the pavements.

- potential highway obstruction from customers spilling out onto the pavement
- increase in traffic
- increase in litter

PRESS ADVERTISEMENT / SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application site is located on the north side of Paddington Street at its junction with Chiltern Street. The site is located immediately adjacent to the boundary with the Portman Estate Conservation Area, which excludes both the application premises and International House, on the south side of Paddington Street. Paddington Street Gardens North is located immediately to the east of the site.

The building on the site has been demolished and redeveloped pursuant to a series of permissions, the first granted in 2011. The site was formerly occupied by an unlisted building which principally comprised a public car park, accessed from Chiltern Street. In addition, the site housed a small ground floor street sweepers' depot, ground floor shop units fronting Paddington Street, including a restaurant and a sandwich/bar cafe with private function room (sui generis), and a public house at the junction of Chiltern Street and Paddington Street with a corner entrance.

With the exception of the hotels to the north of the site, this part of Chiltern Street has a strong residential character, more so since the application site was redeveloped to provide 59 flats on the upper floors. There is a terrace of flats opposite and immediately adjacent, at 78 Chiltern Street. Although Paddington Street is more mixed in character, there are residential properties on the upper floors of commercial buildings. There are also residential properties on the eastern side of Paddington Street Gardens North. Luxborough Tower, a residential block, is located to the north-east of the site.

The site is located outside of the Core Central Activities Zone.

### 6.2 Recent Relevant History

#### 12/09397/FULL

Demolition of the existing building, redevelopment and construction of a new building on three basement levels, ground, and part four/part seven floors comprising 60 flats (Class C3), a health & fitness club (Class D2), a retail shop (Class A1), a restaurant or public house (Class A3/A4), storage uses (Class B8) replacement accommodation for street cleansing facilities (sui generis), car parking for the development and 23 parking spaces for local residents, associated plant

Application permitted 11 April 2013

The scheme was approved subject to a S106 legal agreement which covered a range of obligations which are not relevant to the consideration of this application.

The approved drawings show a public house or restaurant unit (Class A3/A4 on part basement and part ground floors, at the corner of Paddington Street and Chiltern Street, with the main access on Paddington Street and an escape door, accessed from the basement, exiting onto Chiltern Street. There is no access shown from within the ground floor restaurant to the escape stair and Chiltern Street exit. However, the use of this door was not subject to a condition to restrict its use to a means of escape only.

#### 15/01247/FULL

Variation of Condition 1 of planning permission dated 11 April 2013 (RN: 12/09397) namely the substitution of drawings showing the following alterations to the scheme i) extension of ground floor flat G.01 onto part of rear lightwell terrace ii) amalgamation of three residential units (units 3.04, 3.05 and 3.06) at third floor level to create 2 x 2 bedroom flats and 1 x 4 bedroom flat and iii) amalgamation of two residential units (5.05 and 5.06) at fifth floor level to create 1 x 4 bedroom flat (resulting in the overall provision of 59 flats).

Application permitted 19 August 2015

The development is largely completed. Many of the flats are occupied and the use of the street sweepers' depot has commenced.

#### 16/03711/NMA

Amendments to planning permission dated 19 August 2015 (RN: 15/01247) namely, alterations to the design and fenestration pattern of the elevations and changes to the position of obscure glazing (east elevation, west block and west elevation, east block); replacement of external walkways/glass screens at the rear of the west block with a fully obscured glass elevation; alterations to the arrangement of coloured fins to the windows (east elevation, east block); alteration to location of entrance doors to the A3/A4 and A1/A2 unit on south elevation (Paddington Street); modifications to the ground floor frontage on Chiltern Street including alterations to the design of doors to the refuse store to the Class A3/A4 unit and to the central bay of the street sweepers' depot/sub-station and the formation of an additional entrance to the Class A3/A4 unit.

Application refused 27 June 2016

The Council determined that the proposed alterations, including the formation of a new access/egress to the restaurant (on the Chiltern Street frontage) constituted a material alteration to the approved scheme which would require the benefit of further planning permission.

Further applications have been submitted for alterations to the permission of 19 August 2016, including application 16/02752/FULL which includes alterations to the position of the entrance doors to the shop and restaurant (on the Paddington Street frontage) and the relocation of the approved restaurant waste store from ground floor to basement level (and the replacement of refuse store doors with fixed glass) and alterations to the shopfront design.

Several objections have been received to application 16/02752/FULL which refer to proposed restaurant opening hours and the impact of the new restaurant use. These comments will be considered as part of the assessment of the current application.

One objection has been received to the creation of a new restaurant entrance on Chiltern Street. This alteration does not form part of any current application, but would require further planning permission. Any future application would be the subject of full public consultation. However, in view of residents' concerns about the creation of an additional access point on Chiltern Street, it is considered appropriate to impose an additional condition to restrict the use of this doorway as a means of escape only.

## **7. THE PROPOSAL**

The approved schemes include speculative proposals for the introduction of a replacement entertainment use on the site – either a restaurant (Class A3) or a public House (Class A4). Prior to the redevelopment of the site, the corner unit was occupied by “the Apollo” PH.

Given that no end user/tenant had been identified, in order to safeguard the amenities of local residents, Condition 42 on permission dated 19 August 2015 states:

“You must apply to us for approval of full details of the Class A3/A4 unit hereby approved, including plans showing the internal layout of the unit, showing the areas to be used for public drinking/dining and 'back of house' areas, and details of the opening hours (hours during which customers will be on the premises), maximum customer capacity, hours of plant operation and serving hours before the use of this unit commences. Thereafter the unit shall only be occupied in accordance with these approved details”.

The current application seeks to discharge this condition. A tenant has now been identified and the premises will be occupied as a restaurant (Class A3) by an operator who also has a restaurant at 11-13 Frith Street.

The submitted plans indicated that the premises will provide 102 covers at ground level, with an ancillary bar, and 10 covers within a basement level private dining. The total customer capacity will be 116. The remainder of the basement would house customer w.cs and back of house areas, including the waste store.

The proposed opening hours are 10.00 to midnight on Monday to Thursday  
09.00 to 01.00 the following morning on Friday and Saturday and  
09.00 to 23.30 hours on Sunday.

The proposed plant operating hours are 1 hour before and 1 hour after the proposed opening times on each day.

The submission also includes details of the restaurant waste strategy.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

The application raises no land use issues. However, it is noted that the approved restaurant/public house unit, which is the subject of this application, measures 468 m2



(GEA). It replaces a public house (401 m<sup>2</sup>), a restaurant (143 m<sup>2</sup>) and a sandwich bar/café/function room (188 m<sup>2</sup>) which occupied the original site.

## 8.2 Townscape and Design

No alterations are proposed as part of this application

## 8.3 Residential Amenity

UDP policy TACE 9 is applicable to the consideration of proposals for new restaurant of the size proposed. It states that, in considering the acceptability of such proposals, the Council will have regard to the number of customers, opening hours, arrangements to safeguard amenity and prevent disturbance from smells, noise and vibration (including from the use of plant), servicing arrangements and arrangements for the storage of waste and recyclable materials and will impose conditions, where necessary to control the use of restaurant premises.

An application has been made to discharge details of the restaurant plant, including the kitchen extract duct, including a supplementary noise report, which demonstrate that the plant would operate in accordance with Council noise standards. The submitted details are considered acceptable.

A separate application has also been made which includes details of revised arrangements for the storage of waste and recyclable materials at basement level, (relocated from ground floor level on Chiltern Street) and a Waste Management Strategy, which includes details of refuse collection times. The Project Manager (Waste) has confirmed that the revised arrangements are acceptable. These same details have now been submitted in support of the current application.

### **Principle of restaurant use and size and extent of restaurant**

Objections have been received to the principle of a restaurant use in this location and on the grounds that that the public house which previously occupied this part of the site was not as large, and occupied less of the street frontage.

The restaurant use is permitted on this part of the site and occupies the same area and extent of the building frontages as shown on the approved plans. Consequently, these objections cannot be supported. However, the restaurant is only 61 m<sup>2</sup> larger (including back of house areas) than the original public house and, overall, the development has reduced the total floorspace occupied by entertainment use on the site.

### **Opening hours and capacity**

It is proposed to open the restaurant until midnight on Monday to Thursday, until 01.00 hours the following morning on Friday and Saturday and until 23.30 hours on Sundays. The proposed restaurant capacity is 116 (including an ancillary bar area).

Objectors consider that the proposed opening hours and restaurant capacity (116 customers) would have a significant impact on late night activity in the area to the detriment of residents' amenities. They are also concerned that the restaurant would open "outside the core hours" and that this would set a precedent for late night opening in the area.

With regarding to opening hours for restaurant (and similar) uses, the supporting text to Unitary Development Plan policies (paras. 8.86 to 8.88) states that it is not considered appropriate for the Council to set widely applicable hours for entertainment premises to close because of the variety in the characteristics of entertainment uses and the great variations in the pattern of land uses in the City. The City Council sets out provisions in relation to opening hours in its Statement of Licensing Policy. In considering applications involving entertainment uses a number of factors will be taken into account including the size of the premises, proposed capacity, the type of use, the proximity and concentration of residential uses and existing levels of night time activity and operating hours of neighbouring premises.

The Plan confirms that the Council seeks to operate its controls as a local planning authority and as a licensing authority in a generally consistent way. As "a general rule" in predominantly residential areas, it would be expected that customers would not generally remain on the premises after midnight on Sundays to Thursdays and after 12.30am on the following morning on Fridays and Saturday nights (exceptions apply to Sunday opening on days preceding Bank Holidays).

The Council's Statement of Licensing Policy (effective 7 January 2016) sets out the core hours as follows:

Fridays and Saturdays: 10.00 to midnight  
Monday to Thursday: 10.00 to 23.30  
Sundays preceding a Bank Holiday: 12.00 to midnight  
Other Sundays 12.00 to 10.30

The Statement of Licensing Policy (effective 7 January 2016) confirms that applications for premises opening outside the core hours will be considered in relation to the likely impact of the proposed opening times on crime and disorder, public safety and public nuisance and whether there is residential accommodation in the proximity of the premises that would be likely to be adversely affected by the premises being open or carrying out operations at the hours proposed.

Given the size and layout of the premises and the nature of the use proposed use, the proposed customer capacity is not considered unreasonable.

Only the proposed Friday and Saturday operating hours would exceed the hours suggested in the Unitary Development Plan, (by 30 minutes) and, on Sundays, the premises would close 30 minutes earlier than those suggested hours. However, the proposed opening hours exceed the core hours set out in the Statement of Licensing Policy by 30 minutes on Monday to Thursday and 1 hour on Friday to Sunday.

It is noted that the Council granted a premises licence for the proposed openings times on 25 April 2016. No objections were received to the Licence Application.

While there are residential premises in the vicinity on the site, including those in Chiltern Street and on the upper floors of the application site, given the character of the area, the nature of the use and the proposed restaurant capacity, it is not considered that the proposed opening hours would have a material impact on residents' amenities or the environmental quality of the area. As each application is considered on its merits, it is not considered that the proposal would set a precedent for operating hours in other premises.

### **Potential for customers to remain in the premises after proposed terminal hour**

One objector is concerned at the potential for customers to remain in the restaurant after the proposed terminal hour. Customers are only permitted to remain on the premises during the approved opening hours and an informative is recommended on the decision notice to that effect. Should customers remain on the premises outside the permitted hours, the operator would be in breach of the condition requiring the premises to be operated in accordance with the approved details.

### **Disturbance resulting from proposed hours of plant operation**

It is proposed that the restaurant plant will operate for a maximum of one hour before and after the restaurant opening times (until 02.00 hours on Friday and Saturday). The applicants have confirmed that the extended operating times are necessary to facilitate service preparation and clearing up.

One objection has been received on the grounds that the plant operation will result in late night noise disturbance to neighbouring residents. However, the plant for the development is subject to operating conditions relating to noise levels and vibration. Details of the restaurant plant have recently been submitted for approval, including a supplementary acoustic which demonstrates that the selected restaurant plant will operate in accordance with the noise conditions imposed. The nearest noise sensitive properties are third floor flats within the main development. The Environmental Health Officer has confirmed that the submitted details are acceptable .

It is noted that the supplementary acoustic report states that the plant will only operate during restaurant opening hours (until 1.00 hours at the latest), while the current application proposes that the plant will operate until 2.00 hours on some days . Given this discrepancy, the Environmental Health Officer has reviewed the submitted data and has confirmed that, as background noise levels are constant between 1.00 and 2.00 hours (noise levels do not drop until after 3.00), the operation of plant until 02.00 would still comply with the noise conditions imposed. In these circumstances, it is not considered that the objection to the hours of plant operation could be supported.

### **Restaurant exit onto Chiltern Street**

Objections have been received expressing concern about the creation of a restaurant access/egress point on Chiltern Street, opposite residential properties, and the potential impact of the use of the entrance, including by smokers, resulting in noise disturbance, littering and highway obstruction, particularly by customers spilling out onto the pavement

As detailed in section 6.2 above (planning history) the approved drawings show the main restaurant entrance on Paddington Street within the westernmost shopfront (of three), closest to Chiltern Street. The plans also indicate a second door on Chiltern Street serving the basement level escape stair. No access is shown to this stair/exit point from within the ground floor restaurant. Although the doorway is marked as an escape door on the plan, its use is not limited to a means of escape by condition.

More recently, an application has been submitted (16/02752/FULL) for alterations to the approved scheme. This includes the relocation of the ground level refuse store to the basement and the replacement of the waste store doors with fixed glazing. These drawings, and the restaurant layout submitted as part of the current application, show a new internal route from the ground floor restaurant to the landing at the top of the escape stair, leading out onto Chiltern Street. Although the doorway is outward opening, and in the same position as the escape door shown on the original drawings, it is not now designated as an escape door. Given the modification to the internal layout and residents' concerns about the creation of a new restaurant entrance, this proposal would be subject to an additional condition to restrict the use of this door to a means of escape. This application also includes the relocation of the restaurant entrance further eastwards on the Paddington Street frontage, further away from residential properties on Chiltern Street

The Council has also determined that further alterations to the approved scheme, including the creation of a new restaurant entrance on Chiltern Street (in addition to the escape door) constitutes a material alteration to the approved scheme which would require further permission. It is understood that the applicants no longer intend to pursue this option.

Given that the current proposal does not involve the creation of a new restaurant access onto Chiltern Street, and as the use of the escape door will be controlled by a new condition on 16/02752/FULL, objections to the creations of a new access doors, and the consequent impact of its use upon residents' amenities and highway obstruction cannot be supported.

### **Loss of privacy to neighbouring ground floor flats due to increased footfall**

This site was formerly occupied by a 24-hour public car park and various Class A uses including a public house, restaurant and cafe/sandwich bar. There are several hotels on Chiltern Street, to the north of the site and various cafes along Paddington Street. Given this context, it is not considered that the potential increase in footfall associated with the reintroduction of an entertainment use on this site would have significant adverse effect on the privacy of occupants of neighbouring flats.

### **Increased litter**

One objection has been received on the grounds that the proposed use would result in an increase in litter generation in the area.

The proposed arrangements for the storage of refuse associated with the restaurant use are considered acceptable. The proposed use is as a sit-down restaurant and there is no reason to believe that this use would result have any impact on the local environment

due to increased littering. Consequently it is not considered that the proposed restaurant operation has the potential to result in increased littering.

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

One objection has been received on the grounds that the proposals would generate increased traffic in the area, particularly as a result of vehicles dropping off/picking up restaurant customers.

In approving a restaurant use on the site, the Council has previously concluded that it would not have any adverse impact in highways terms. The Highways Planning Officer has confirmed that the current application raises no highway issues.

#### **8.5 Economic Considerations**

Not applicable

#### **8.6 Access**

Not applicable

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

##### **Refuse /Recycling**

The application drawings include details of the waste store for the proposed restaurant. The Project Officer (Cleansing) has objected to this aspect of the restaurant layout.

However, revised refuse storage arrangements, relocating the restaurant waste store from ground floor to basement level, have been submitted under application 16/02752/FULL, which proposed various alterations to the approved scheme. Following revisions to this application, the Cleansing Officer has confirmed that the revised arrangements are acceptable.

As part of this submission, the applicants have confirmed that all waste collection will be undertaken by private contractor with collection times for general waste and cardboard between 07.00 and 21.00 and crushed glass collection, in the early morning slot (07.00 hours), by the same waste collector

The current application has now been revised to include the amended details submitted under 16/02752/FULL.

#### **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**

Not applicable

#### **8.11 Environmental Impact Assessment**

Not applicable

### **9. BACKGROUND PAPERS**

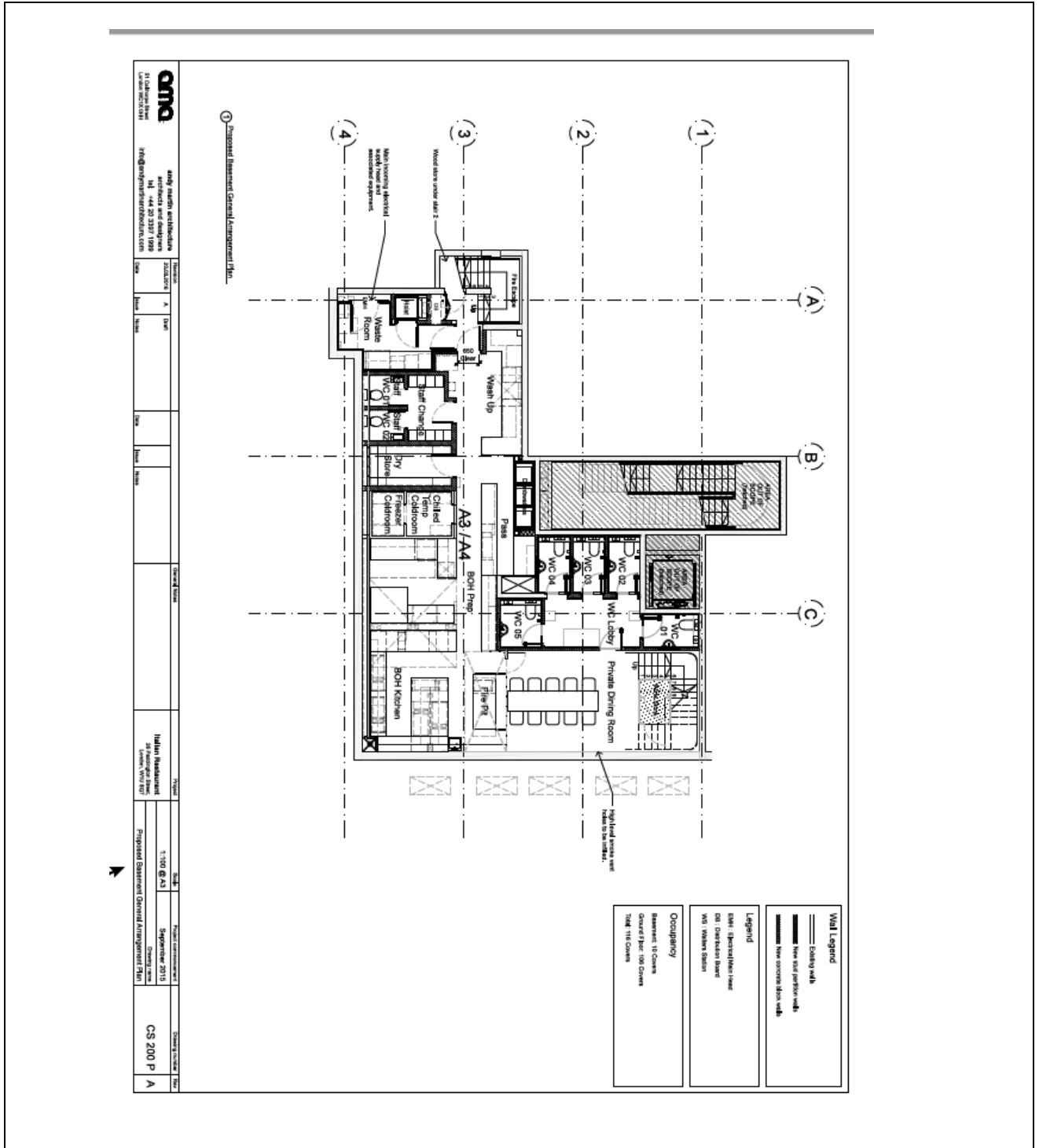
1. Application form
2. Letters from Rolfe Judd Planning dated 24 March and 10 June 2016
3. Responses from Project Officer( Waste) dated 18 April and 20 June 2016 (16/02752/FULL)
4. Response from Highways Planning Manger dated 14 April 2016
5. Letter from occupier of 12A Portman Mansions, Chiltern Street, dated 19 April 2016
6. Letter from occupier of 7 York Mansions, 84 Chiltern Street, dated 3 May 2016
7. Letter from occupier of 12 York Mansions, Chiltern Street, dated 3 May 2016
8. Letter from the occupier 9 Wendover Court, Chiltern Street dated 25 May
9. Letter from the occupier 26 Wendover Court Chiltern Street dated 9 May 2016
10. Letter from the occupier 41 Wendover Court Chiltern Street dated 10 May 2016
11. Email from Marylebone Association dated 2 August 2016
12. Email from Environmental Health dated 2 August 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 THE PRESENTING OFFICER: MIKE WALTON BY EMAIL AT [mwalton@westminster.gov.uk](mailto:mwalton@westminster.gov.uk).

# 10. KEY DRAWINGS







**DRAFT DECISION LETTER**

**Address:** 74 - 76 Chiltern Street, London, W1U 5AA,

**Proposal:** Details of proposed restaurant operation, including the internal layout of the unit (showing the areas to be used for public drinking/dining and back of house functions), details of the opening hours, capacity, hours of plant operation and serving hours pursuant to condition 42 of planning permission dated 19 August 2015 (15/01247) as described in Schedule 1 below:

Schedule 1:

Approved development:

Variation of Condition 1 of planning permission dated 11 April 2013 (RN: 12/09397) for demolition of the existing building, redevelopment and construction of a new building on three basement levels, ground, and part four/part seven floors comprising 60 flats (Class C3), a health & fitness club (Class D2), a retail shop (Class A1), a restaurant or public house (Class A3/A4), storage uses (Class B8), replacement accommodation for street cleansing facilities (sui generis), car parking for the development and 23 parking spaces for local residents, associated plant; namely, substitution of drawings showing the following alterations to the scheme i) extension of ground floor flat G.01 onto part of rear lightwell terrace ii) amalgamation of three residential units (units 3.04, 3.05 and 3.06) at third floor level to create 2 x 2 bedroom flats and 1 x 4 bedroom flat and iii) amalgamation of two residential units (5.05 and 5.06) at fifth floor level to create 1 x 4 bedroom flat (resulting in the overall provision of 59 flats).(Site includes 22-28 Paddington Street)

**Reference:** 16/02830/ADFULL

**Plan Nos:** CS 201 P Rev A, CS 200P Rev A (as amended by CS 920 SK Rev A); Waste Management Plan (Andy Martin Architecture) as amended by email dated 29 July 2016 (Rolfe Judd Planning)

**Case Officer:** Sara Spurrier

**Direct Tel. No.** 020 7641 3934

**Informative(s):**

1

You may need separate licensing approval for the restaurant premises. Your approved licensing hours may differ from those given above but you must not have any customers on the premises outside the hours approved as part of this application.

2

You are reminded that the fire escape door to Chiltern Street shown on drawing CS 201 P Rev A may only be used as a means of escape in the case of emergency and not as a general entrance to/exit from the restaurant premises.

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.