

CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 18 TH October 2016	Classification For General Release	
Report of Director of Planning		Ward(s) involved Churchill	
Subject of Report	SHOP AT, 61-63 PIMLICO ROAD, LONDON, SW1W 8NE,		
Proposal	Lawful development certificate to demonstrate that the lawful use of the site is as a sui generis timber yard with ancillary showroom and trade counter.		
Agent	Quod		
On behalf of	Travis Perkins (Properties) Limited		
Registered Number	16/07505/CLEUD	Date amended/ completed	2 September 2016
Date Application Received	5 August 2016		
Historic Building Grade	Unlisted		
Conservation Area	Belgravia		

1. RECOMMENDATION

Refuse certificate: insufficient evidence to demonstrate on balance of probabilities that the lawful use of the site is not for Class A1 retail purposes.

2. SUMMARY

This application for a Lawful Development Certificate has been submitted by Travis Perkins (Properties) Ltd. The application relates to the existing use of the premises at nos. 61 - 63 Pimlico Road.

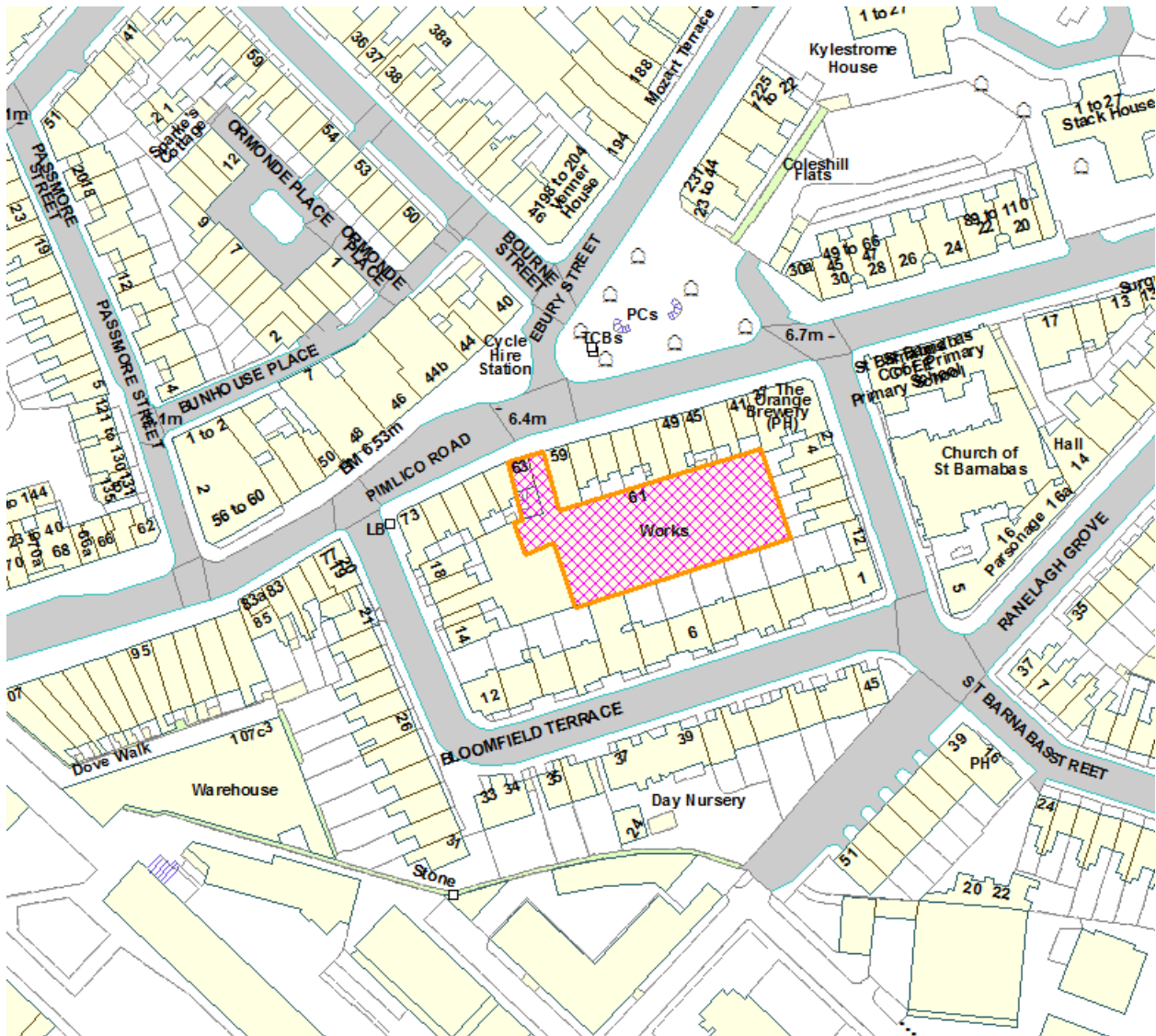
The key issue is whether the applicant has demonstrated on the balance of probabilities that the lawful use of the site is a sui generis timber yard with ancillary showroom and trade counter rather than a Class A1 retail unit; and has been used as a sui generis timber yard with ancillary showroom and trade counter for more than ten years before the date of this application.

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application.

In this case, it is recommended not to issue a Lawful Development Certificate because insufficient evidence has been submitted to demonstrate that, on the balance of probability, the use of 61 - 63 Pimlico Road has been as a sui generis timber yard with ancillary showroom and trade counter

continuously for ten or more years prior to the date of receipt of the application. Furthermore, the available evidence indicates that, on the balance of probability, 61 - 63 Pimlico Road has a lawful A1 retail use.

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 database rights 2013.
All rights reserved License Number LA 100019597

4. PHOTOGRAPHS



FIGURE 22. 57-63 PIMLICO ROAD

Pimlico Road frontage

5. REPRESENTATIONS RECIEVED

GROSVENOR ESTATE (FREEHOLDER):

- Asserts that the lawful use of the site is for Class A1 retail purposes;
- Facts available to the Inspector in 2002 led him to conclude that the lawful use of the site is for Class A1 retail purposes;
- The applicant has not provided sufficient evidence to demonstrate continuous sui generis use for a period of at least 10 years;
- The applicant's leases signed in 2004 agree that the premises will only be used for Class A1 purposes.

6. BACKGROUND INFORMATION

6.1 The Application Site

The principal building that comprises the majority of the application site is 61 Pimlico Road, a purpose built 19th century timber yard building, spanning the rear of 41 – 63 Pimlico Road. The timber yard is set behind frontage buildings on all 4 sides and is separated from other curtilages by a 7m or so high brick boundary wall. The only frontage it has to Pimlico Road, at ground floor level, is an open vehicle and pedestrian access/egress between 59 and 63 Pimlico Road. The yard is in use as a timber and builder's merchants and is occupied by Travis Perkins.

63 Pimlico Road is a separate shop unit at basement and ground floor level, which is linked to the timber and builder's merchants to the rear at 61 Pimlico Road. 63 Pimlico Road is in use as a kitchen showroom and is also occupied and managed by Travis Perkins (Benchmarx Kitchens at Travis Perkins).

6.2 Recent Relevant History

In **January 2001**, applications for planning permission, conservation area consent and listed building consent were submitted for:

'Alterations to 16 Bloomfield Terrace and use as 2 houses; demolition and redevelopment of 59 and 63 Pimlico Road behind retained elevations to form 2 shops and 2 flats; demolition of timber yard at 61 Pimlico Road and erection of 5 houses'.

An appeal was lodged to the Secretary of State against a failure to give notice within the prescribed period of a decision on these applications.

The applications were presented to Committee on **26 July 2001** where Members resolved that, had an appeal not been lodged, the committee would have refused permission and conservation area consent on grounds of:

- i. Loss of historic use and buildings to the detriment of the character and function of the conservation area;

- ii. Loss of the timber yard/ builders' merchants/ hardware store contrary to the objective of sustaining a range of local services and maintaining the diversity of Westminster's shopping centres.

The applications were all dismissed at appeal on **15th January 2002**. It should be noted that the Inspector only refused listed building consent on the grounds that planning permission and conservation area consent were refused and were necessary to facilitate the development. The Inspector's principal reasons for dismissing the appeals are summarised as follows:

1. The building makes a positive contribution to the character and appearance of the conservation area and the criteria against which such buildings should be judged did not support the case for demolition. The presumption in favour of preservation, in accordance with Government policy and the development plan should therefore apply; and
2. Removal of the builder's merchants would result in the loss of 1,500 square metres of mainly ground floor shopping floorspace, considered to be in breach of adopted local planning policy (the Inspector having determined that the builders' merchants has a Class A1 use and therefore forms part of the protected retail frontage).

(Appeal Refs: App/X5990/E/01/1066683, E/01/1066684, and A/01/1066685)

7. THE PROPOSAL

This application for a lawful development certificate seeks to demonstrate that the lawful use of the site is not for Class A1 retail purposes but as a sui generis timber yard with ancillary showroom and trade counter.

8. DETAILED CONSIDERATIONS

8.1 Considerations

In dealing with a Lawful Development Certificate, the burden of proof rests with the applicant, and the standard of proof is on the 'balance of probabilities'.

A use can be considered lawful if it has been carried out for four or 10 years in accordance with Section 191 of the Town and Country Planning Act (as amended by Section 10 of the Planning and Compensation Act 1991).

In the context of the current submission, the 10 year rule would apply for the use as a sui generis timber yard with ancillary showroom and trade counter.

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application.

The Applicant's Evidence

The applicant asserts that the lawful use of the premises is as a sui generis timber yard with ancillary showroom and trade counter.

The applicant has submitted the following evidence in support of their application:

1. Application form;
2. Site location plan;
3. Floor plan;

The floorplan shows that the ground floor is laid out as warehouse; showroom; trade counter; tool hire workshop; and tool hire area.

4. Relevant Appeal Decisions (x3) and Case law;

The applicant has cited the following guidance, appeal decisions and case law as evidence to confirm that a timber yard or builder's merchants is considered to be sui generis (or without use class).

- i. Development Control Practice (DCP) Manual (sections 21.1 and 4.333);
- ii. Appeal decision dated 27th February 2007: Plumstead High Street, LB Greenwich (Ref: APP/E5330/C/06/2017752);
- iii. Appeal decision dated 01 August 1989: Percy Place, LB Hammersmith and Fulham (Ref: APP/C/88/H59390/24/P6);
- iv. Appeal decision dated 26 March 2015: Mills Road, Bath and North East Somerset (Ref: APP/F0114/A/2229371);
- v. Case Law: Brazil (Concrete)Ltd v Amersham RDC 1967

5. Description of use of 61 – 63 Pimlico Road/ Travis Perkins (set out in letter from Quod dated 27 July 2016);

The applicant seeks to both describe the use and demonstrate the premises at 61 - 63 Pimlico Road has been used as a sui generis timber yard with ancillary showroom and trade counter continuously for ten or more years prior to the date of receipt of the application

The applicant asserts that Timber Yards and Builder's Merchants are not listed in the 1987 Use Classes Order (UCO) and, as such, are considered to be without class or sui generis.

The applicant confirms the site has been in continuous use as a timber yard since it opened in 1840; and that Travis Perkins acquired the lease in 2000 and has operated it as a timber merchant since this time.

The applicant asserts that across the UK, Travis Perkins is recognised as a sui generis use, and displays the following characteristics:

- i. Supplies building materials, timber, plumbing and heating, kitchens and bathrooms to trade professionals and builders;
- ii. Associated with Class B8 (storage and distribution);
- iii. Often found on industrial estates surrounded by such uses;
- iv. Employment generating sui generis uses.

The applicant provides both national and local sales data for Travis Perkins. Based on national Travis Perkins data:

- 70% of sales to trade account customers;
- 30% sales to cash customers (25% to builders and tradesmen without a trade account and 5% to the general public);
- 65% of sales by phone or email and delivered directly from the manufacturer, suppliers or direct from Travis Perkins's distribution hubs;
- Travis Perkins marketing strategy focused on trade account customers.

In regard to the Travis Perkins Pimlico branch data:

- 79% of sales to trade account customers (higher than national average);
- 21% sales to cash customers (20% to builders and tradesmen without a trade account and 1% to the general public);
- 75.4% of sales from the timber yard;
- 15.8% of sales from tool hire.

A breakdown of the floorspace of the 61 – 63 Pimlico Road is provided to demonstrate over 50% of floor area is dominated by the timber, forest products and heavy side products (storage of concrete, cement etc.):

Use	% of Total Floor Area
Forest product yard	22.8
Timber Yard	20.2
Walkways and Working Area	17.3
Trade Area	15.
Tool Hire	8
Heavyside Yard (concrete, cement etc.)	7
Benchmark Kitchen Showroom (no.63)	7
Office	2.3
Total	100%

In summary, the applicant asserts that the use of 61-63 Pimlico Road is different from a shop or a Class B8 unit and as such a use is not listed in the Use Class Order the site should be considered sui generis.

6. Undated Historic photograph of 61-63 Pimlico Road showing the entrance to 'W. H. Newson Timber Yard;

7. Statutory Declaration by Michael Shields (Travis Perkins Branch Manager) dated 04 August 2016.

The statutory declaration corroborates the sales data, and floorspace figures provided by Travis Perkins, as well as the period of time the site has been used as Timber Yard and occupied by Travis Perkins.

The City Council's records

The Council's records indicate an appeal relating to this premises was dismissed on 15th January 2002.

In reaching a decision, the Inspector considered whether the timber yard is a retail use, and based on the facts of the case, the Inspector concluded that the lawful use of 61-63 Pimlico Road is for Class A1 retail purposes. The Inspector is quoted as follows:

"Para. 43. In this instance the timber yard is completely enclosed. It is compact and appears to me to be a single planning unit. Significantly the yard includes the display of a range of goods for sale, including building materials, tools, hardware and paint. The goods are freely available both to visiting members of the public and the building trade, without any distinction or the use of a separate trade counter. Any processing is limited to the cutting of sawn and planed timber and sheet material into smaller pieces, processes not dissimilar in principle to the cutting of cloth in a fabric shop, clearly ancillary activities. The business does not appear to have any significant storage other than for goods to be sold on premises. It follows that despite timber yards not being specifically identified as shops in the UCO, the activities actually taking place, as a matter of fact and degree, satisfy category (g) of Part A to the Schedule of the Order which identifies Class A1 uses.

Para. 44. In making my assessment, that this timber yard has an A1 retail use, it needs to be recognized that goods can be bought on account, and orders made by telephone for home delivery, at most shops. Account facilities do not alter the fact that the goods are offered for display and sale without restriction and home delivery does not appear to me to equate to a separate distribution function.

Para. 51. I have also taken into account the assertion that to accept what has been described as a builder's yard as a retail use, would set a most damaging general precedent which, amongst other matters, could harm national policies to encourage shopping in town centres. But I have come to my conclusions on the facts of this case. No general precedent implying the categorization of all builders' yards as retail uses would therefore be set."

Other evidence

The freeholder has provided details of the applicant's leases for 61 and 63 Pimlico Road dated 27th February 2004.

The lease for 61 Pimlico Road states the permitted use is "To use the Premises only for the sale and storage of timber and building supply materials with ancillary offices or for any use within Class A1".

At 63 Pimlico Road, the lease states the permitted use is “To use the Premises only as to the ground and basement as a tool hiring shop or for any other retail use within Class A1”.

The leases give an indication that both parties, applicant and freeholder, agreed that the site would be used for Class A1 purposes.

Determination of the Application

A key consideration in the determination of this application is the appeal decision in 2002 that is directly relevant to this site. The evidence available to the Inspector in 2002 led to the conclusion that the lawful use of the premises is for Class A1 retail purposes. This application does not address the Inspector’s conclusions on lawful use in anyway, nor has it provided evidence to demonstrate that, on the balance of probability, a material change of use has occurred since the 2002 appeal.

The appeal decisions and case law cited by the applicant are not specific to this site and do not set a general precedent that all timber yard or builder’s merchants are categorised as sui generis. The non-binding nature of appeal decisions is set out in para.51 of the 2002 appeal decision where it was accepted that the conclusions were based on the facts of the case, and no general precedent implying the categorization of all builders’ yards as retail uses would therefore be set.

The lawful use of a timber yard or builder’s merchants is a question of fact and degree in each specific case. One timber yard or builder’s merchant will not necessarily be the same as another.

To conclude, it is considered that insufficient evidence has been submitted to demonstrate that, on the balance of probability, the use of 61 - 63 Pimlico Road has been used as a sui generis timber yard with ancillary showroom and trade counter continuously for ten or more years prior to the date of receipt of the application. Furthermore, the available council evidence indicates that, on the balance of probability, 61 - 63 Pimlico Road has a lawful A1 retail use.

9. BACKGROUND PAPERS

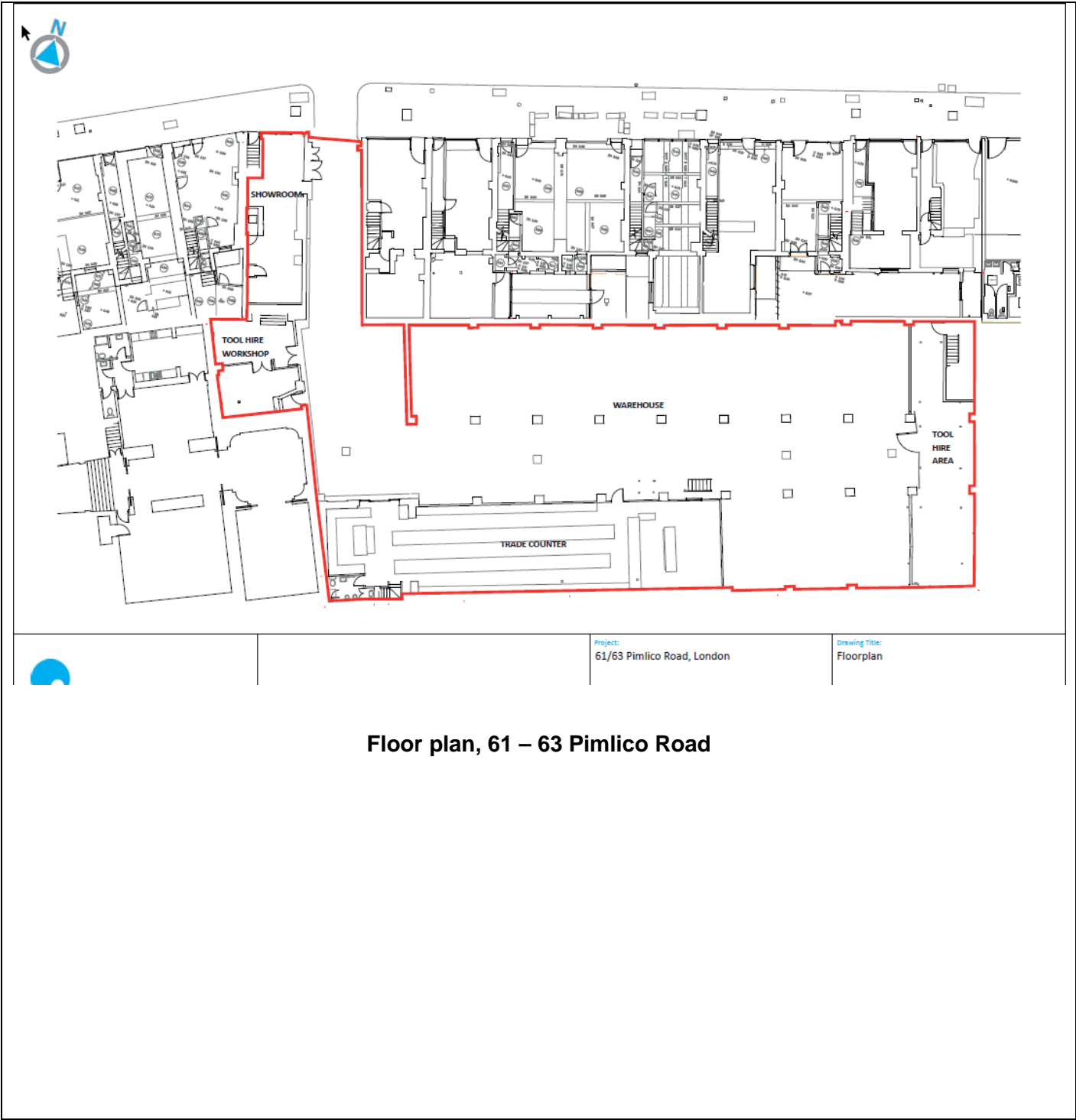
1. Application form.
2. Letter on behalf of Travis Perkins from Quod dated 27 July 2016.
3. Statutory Declaration of Michael Shields dated 4th August 2016.
4. Letter on behalf of Grosvenor Estates from Gerald Eve dated 22 September 2016.
5. Appeal decision dated 15 January 2002.

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: DAVID DORWARD BY EMAIL AT DDORWARD@WESTMINSTER.GOV.UK

10. KEY DRAWINGS



DRAFT DECISION LETTER

Address: Shop At, 61-63 Pimlico Road, London, SW1W 8NE,

Proposal: Lawful development certificate to demonstrate that the lawful use of the site is as a Sui generis timber yard with ancillary showroom and trade counter.

Reference: 16/07505/CLEUD

Plan Nos: Site location plan; Floor plan; Letter from Quod dated 27 July 2016 and appendices incl. Appeal Decisions (x3), Historical Photograph; Statutory Declaration by Michael Shields (Travis Perkins Branch Manager) dated 04 August 2016.

Case Officer: David Dorward

Direct Tel. No. 020 7641 2408

Recommended Condition(s) and Reason(s):**Reason:**

Insufficient evidence has been submitted to demonstrate that, on the balance of probability, the use of 61 - 63 Pimlico Road has been as a sui generis timber yard with ancillary showroom and trade counter continuously for ten or more years prior to the date of receipt of the application. Furthermore, the available evidence indicates that, on the balance of probability, 61 - 63 Pimlico Road has a lawful A1 retail use.

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.