

CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 8 November 2016	Classification For General Release	
Report of Director of Planning		Ward(s) involved West End	
Subject of Report	46 Berkeley Square and 46 Hay's Mews, London, W1J 5AT		
Proposal	Use of 46 Berkeley Square as a private members' club (sui generis), with internal and external alterations including mechanical plant, and erection of Annabel's canopy to front; use of 46 Hay's Mews as a private members' club, and a health and wellbeing club (sui generis), alterations to the mews building including the erection of a pitched roof extension with mechanical plant; and erection of a full length retractable glazed canopy from the mews building to the main building enclosing the external dining terrace/courtyard; associated mechanical plant and landscaping.		
Agent	Bidwells		
On behalf of	The Birley Group		
Registered Number	16/07773/FULL and 16/07774/LBC	Date amended/ completed	23 August 2016
Date Application Received	12 August 2016		
Historic Building Grade	Grade I (46 Berkeley Square only)		
Conservation Area	Mayfair		

1. RECOMMENDATION

Refuse planning permission and listed building consent – design and historic building grounds.

2. SUMMARY

No. 46 Berkeley Square is a, vacant, Grade I listed office building on the western side of Berkeley Square which is linked, at basement level, to offices at 46 Hay's Mews at the rear. The mews building is not listed, but is within the curtilage of the listed building. There is an open terrace between the buildings at ground level.

Permission and listed building consent were granted in October 2016 for alterations to the main building, the redevelopment of the mews building and excavation beneath the mews building and terrace (although not beneath the main building) to create a second basement level, and for a retractable single storey glazed extension within the central courtyard and the use of the basement of

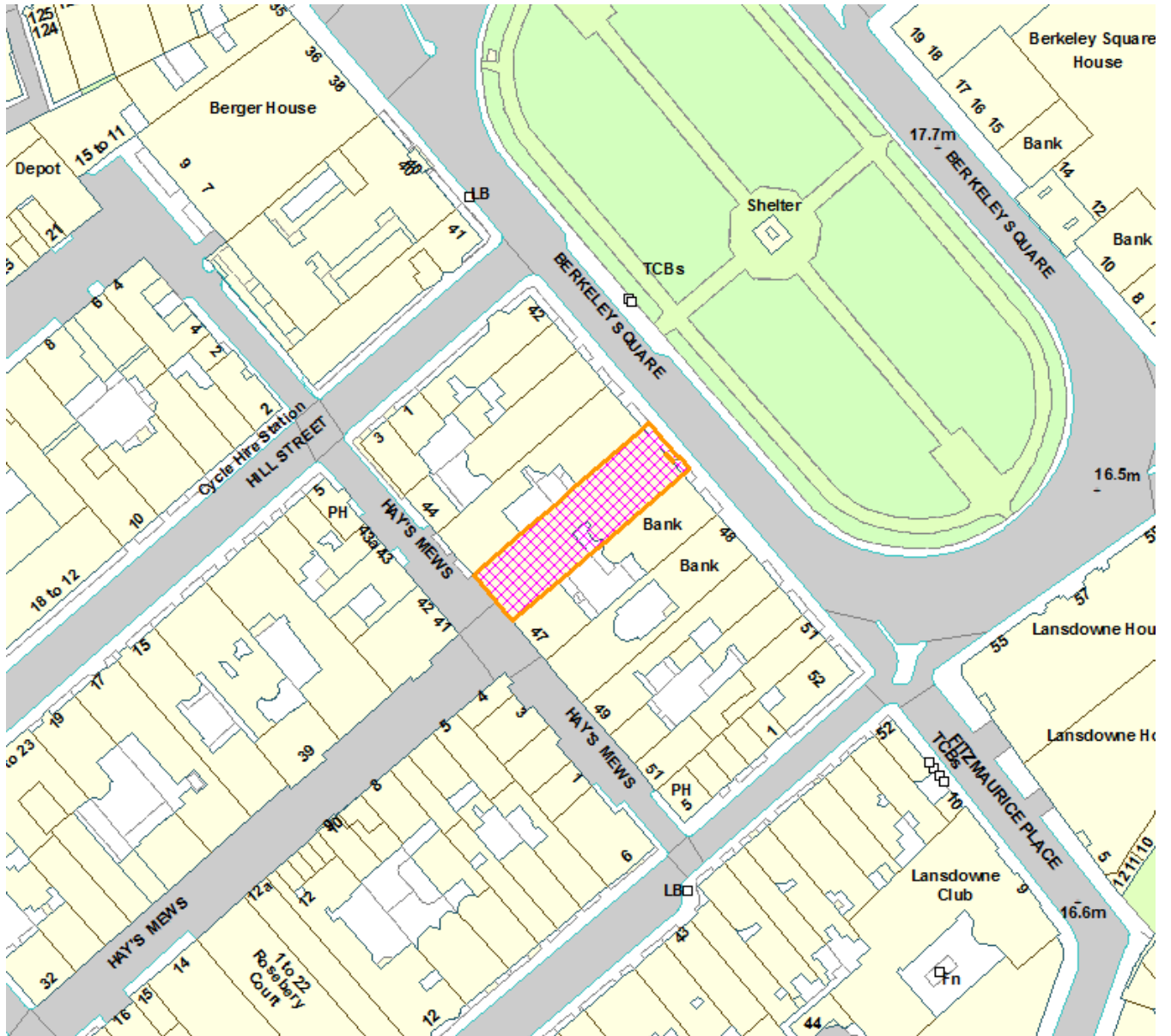
the main building as a private members' night club (a new venue for Annabel's club, currently located at 44 Berkeley Square) and a 'day club' for Annabel's on the upper floors of the main building. The redeveloped mews building was to be used a health club/spa, with separate membership arrangements. However, the whole site was to remain interlinked and there was expected to be crossover in membership between the uses.

This revised application excludes the additional basement and retains the mews building (with alterations and extensions) for use as a health and well-being club, but now also to include ancillary facilities for the private members' club. Proposals for the retractable glazed extension are revised so that so that it covers the whole of the central courtyard, taking it up to the rear of the Grade I building, where there is now also a section of fixed canopy on part of that building. A small lightwell at the rear of the main building is covered over to provide additional floorspace.

Given that the key principles of the scheme have already been approved, the main issues for consideration are the impact of the works in the rear courtyard, including the glazed roof structure and infilling of the basement lightwell, on the listed building and the conservation area.

It is considered that the proposed retractable glass canopy will have a detrimental impact on the special interest of the Grade I building and on the character and appearance of the conservation area. Discussions with the applicant's agents have sought to reach a compromise but the applicant is unwilling to consider alternatives and therefore the proposals are recommended for refusal on design and historic building grounds.

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

WARD COUNCILLORS

Any response to be reported verbally.

HISTORIC ENGLAND

- Consider that the in-filling of a small rear lightwell and the introduction of the glazed canopy (including a permanently fixed canopy to the rear of the Grade I listed building) would result in some harm being caused to the significance of the listed building -
- In particular the introduction of the curvilinear flashing detail would contrast unfavourably with the existing geometry and restrained classical composition of the rear elevation;
- Generally welcome the omission of the previously proposed secondary basement extension [in the approved scheme] and note that the internal alterations to the main building are largely as approved;
- However, consider that the harm is less than substantial and advise that the Council must determine whether the wider public benefits of the scheme clearly and convincingly outweigh the harm to its significance and have issued Authorisation for the Council to determine the listed building application;

GEORGIAN GROUP

Any response to be reported verbally.

VICTORIAN SOCIETY

Any response to be reported verbally.

TWENTIETH CENTURY SOCIETY

Any response to be reported verbally.

COUNCIL FOR BRITISH ARCHAEOLOGY

[Response from the London and Middlesex Archaeological Society] Object to the disturbance caused to the internal features.

SOCIETY FOR PROTECTION OF ANCIENT BUILDINGS

Any response to be reported verbally.

ANCIENT MONUMENTS SOCIETY

Any response to be reported verbally.

RESIDENTS' SOCIETY OF MAYFAIR & ST. JAMES'S

Any response to be reported verbally.

MAYFAIR RESIDENTS' GROUP

Any response to be reported verbally.

DESIGN OUT CRIME OFFICER

No objection.

ENVIRONMENTAL HEALTH

Initial holding objection with regard to potential noise outbreak from the use of the terrace for dining subsequently overcome following clarification about acoustic information – recommend approval subject to conditions.

HIGHWAYS PLANNING

Consider the proposals to be acceptable on transportation grounds, subject to conditions controlling taxi usage through the Operational Management Plan and servicing through an updated Servicing Management Plan.

PROJECTS OFFICER (WASTE)

Initial objection about inadequate waste refuse overcome by revisions.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 170; Total No. of replies: 5

No. in support: 4 (one saying subject to no noise issues);

One response stating that whilst the current scheme is an improvement on the approved one, they have the following concerns that need to be addressed:

- Noise and disturbance from the proposed first floor kitchen in 46 Hay's Mews;
- Smells and fumes from the proposed first floor kitchen in 46 Hay's Mews;
- Noise and disturbance from refuse disposal and collection;
- Queries about the draft Operational Management Plan (OMP) and areas for improvement.

No. of objections: 0.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

46 Berkeley Square is a Grade I listed building that dates from the mid-eighteenth century. It is currently vacant but the lawful use is for office purposes. It comprises basement, ground and three upper floors. It is linked at basement level to 46 Hay's Mews, which formed part of the office accommodation. There is a shared courtyard between the building. The mews building is not listed but is within the curtilage of the listed building. The site is within the Mayfair Conservation Area and the Core Central Activities Zone but it is not in a Stress Area.

The area is characterised by a variety of uses, including residential, commercial and entertainment-type activities. Although Berkeley Square itself is predominantly (though not exclusively) commercial in nature, Hay's Mews has a greater concentration of residential accommodation. The buildings on either side of the application site are in commercial use. The nearest residential accommodation is located within 48 Berkeley Square and 48 Hay's Mews.

6.2 Recent Relevant History

4th October 2016 – planning permission and listed building consent granted [following the completion of a legal agreement] for the use of 46 Berkeley Square as a private members' club (sui generis), with internal and external alterations, including erection of Annabel's canopy to front, together with the demolition of existing mews 46 Hay's Mews and erection of a replacement four storey building including a two storey basement for the provision of a health club use (sui generis) and associated mechanical plant and landscaping.

This was subject to a legal agreement that secured the following:

- a) Provision of £1,068,000 towards the City Council's affordable housing fund (index linked and payable upon the commencement of development);
- b) A minimum of 4 days per year (1 per quarter) for members of the public to look round the building between 09.00 and 16.00 (including one of the Open House London weekend days);
- c) 10% discounted membership for local residents of Berkeley Square and Hay's Mews (subject to them meeting the membership criteria in the same way any other member would be required to do);
- d) Scholars able to make appointments to view the building and obtain copies of the heritage report electronically free of charge;
- e) The applicant to apply for listed building consent for the removal of the existing canopy to the basement of Annabel's at 44 Berkeley Square and, subject to consent being granted, removal of that canopy before the erection of the approved canopy to the front of 46 Berkeley Square [as the applicant wishes to relocate the canopy from No. 44 to No. 46, and officers would not wish to see canopies on both properties] ;
- f) Monitoring costs of the S106 legal agreement.

It is also noted that permission was granted on 7th March 2016 for the use of the adjacent property (45 Berkeley Square) as a private members' club (2,276 sqm), with alterations including the erection of a single storey glazed extension within the central courtyard, creation of external terraces at first and third floors, and associated internal alterations. This was a speculative application and this permission has not yet been implemented.

7. THE PROPOSAL

As previously, the proposals involve the establishment of a private members' club (comprising the relocated Annabel's nightclub and a new Annabel's Day Club) and a new Health Club and Wellbeing Centre (both sui generis uses). Annabel's is a fashionable club for exclusive clientele, established in 1963, currently located two doors to the north (44 Berkeley Square).

Planning permission and listed building consent are sought for a variation to the approved scheme, although the proposals are broadly the same in land use terms: change of use from offices (Class B1) to private members' club (sui generis) at 46 Berkeley Square and the alteration and extension (rather than demolition) of 46 Hay's Mews for use as a Health Club and Wellbeing Centre (sui generis) and to provide back of house (kitchen) facilities for the main club. Listed building consent is sought for the internal and external alterations to 46 Berkeley Square.

The relocated club will be contained within the existing basement of 46 Berkeley Square, with a similar layout to the existing Club at No. 44. The basement can be accessed separately from Berkeley Square via the stairs within the front lightwell. The basement will comprise lounge areas, dining and a dance floor, along with cloakrooms and back of house areas. This portion of the Annabel's Club will be for evening dining and dancing. It is now also proposed to open the basement club on Sundays [there was no Sunday opening for the nightclub in the approved scheme].

It is proposed to create Annabel's Day Club in the remainder of the building (ground to third floors), which will comprise lounge areas, bar and dining rooms and private rooms for meetings and dining, along with associated supporting facilities.

The table below sets out full details of the proposed uses including floorspace, opening times and covers:

	APPROVED	CURRENT
Proposed Gross Floorspace (GEA) (including courtyard dining area) [existing = 2,588 sqm]	3,047 sqm (+459 sqm/17.7%)	2,790 sqm (+202 sqm/7.8%)
Capacity of Annabel's (basement)	165 covers + 35 bar patrons	175 covers + 73 bar patrons
Capacity of Annabel's (ground and upper floors)	282 covers	302 covers
Capacity of health club	68 covers	8 consultation and treatment rooms by private appointment for members
Total Capacity of Annabel's – seated - including standing at the bar	550	550
Annabel's basement club proposed hours	Monday to Saturday, 0700 - 0400	Monday to <u>Sunday</u> , 0700 – 0400
Annabel's Day Club proposed hours	Monday – Sunday 0700 - 0400	Monday – Sunday 0700 – 0400
Health club proposed hours	Monday – Sunday 0600 - 2200	Monday – Sunday 0600 – 2200

The key physical alterations proposed for the main house are as previously approved:

- Façade cleaning and repair where required, and general refurbishment of the interiors;
- Replacement of CCTV cameras with smaller scale cameras;
- Exterior façade lighting to subtly light the building;
- Opening up an existing bricked up doorway at the rear ground floor of the house;
- Replacing a window with a doorway at basement level at the rear of the house and replacing an existing 20th century skylight;
- An infill extension at rear ground floor level to house a service hoist, installation of two dumbwaiters to rear extension to closet wing at first to third floor, and a single dumbwaiter to ground and basement level;
- Enlarging the existing ground floor opening between the front and rear principal rooms,

- Removal of pine panelling in rear room on second floor and introduction of a new doorway to allow separate access from the hall to the rear two rooms, and opening up of existing opening to create larger front room at second floor level and the introduction of partitioning to create men's toilets and create a room to the front with better proportions;
- The introduction of partitioning to the rear room at second floor to create ladies WCs and kitchen server;
- The insertion of kitchen extract and duct supply at third floor level;
- Replacement of the existing lift and lift shaft and installation of a new service stair;
- Relocating the front canopy to Annabel's from no. 44 to no. 46.

A key difference is that a retractable glazed canopy (to enclose the outdoor dining area on the courtyard/terrace between the two buildings) would now extend from the mews building right up to the rear of the listed building. This also requires a curvilinear flashing detail to be permanently attached to the rear elevation of the Grade I building to enable an interface with the expanded glazed canopy. In the recess area of the main building it is also necessary to fix glazed elements where the retractable portion could not reach. The retractable glass canopy would protect diners from inclement weather but, whatever the weather, the intention is that this would be extended to enclose the dining terrace at 22.30 hours (or earlier, depending on noise levels).

A small lightwell at the rear of the listed building will also be roofed over to provide additional floorspace to the basement club.

The new proposals now include the refurbishment and extension of the existing mews building for use as a private health and wellbeing centre (previously it was described as being part spa) and for the provision of ancillary kitchen facilities for the main club at first floor level. The 68 covers from the approved health club bar (first floor level) would be accommodated elsewhere on the site. The service door to the substation and main entrance door on Hay's Mews would be replaced. On the rear elevation the ground floor wall will be removed to create the terrace restaurant and the first and second floor will be reconstructed to facilitate the erection of the glazed retractable canopy. At first and second floor level of the rear mews elevation a sustainable living/green wall is to be created. The roof profile would be altered to accommodate new plant.

The approved second basement beneath the courtyard and mews building is omitted from the current scheme. The current application originally included additional plant and a large enclosure on the roof of the Grade 1 listed building but this has been removed from the proposal. This would have been recommended for refusal because of its impact on the appearance of the listed building. The plant at this level now matches what was approved, namely any roof plant at this level (apart from the new lift overrun) is no higher than the parapet.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The land use aspects of the proposal are largely as approved, though there have been some policy changes since the previous scheme was considered and these do have some consequences for the current proposals.

8.1.1 Loss of office use

Since the previous scheme was considered by the Planning Application Committee in April 2016, the Council has adopted the 'Westminster's City Plan: Strategic Policies' (July 2016). The new policy approach seeks to redefine what is considered to be sustainable development in the context of the loss of offices. A key aspect of the new policy approach is to stem the loss of office accommodation to residential use and to increase flexibility with regard to mixed use requirements arising from office developments, within the Core CAZ and on the Named Streets. The loss of offices will be acceptable where they are to other commercial uses, which is the case here, and therefore this aspect of the proposal is considered to remain acceptable.

8.1.2 Proposed Private Members' Club and Health Club (sui generis)

The applicant seeks to change the use of the main building to a private members' club with a separate health club/wellbeing in the mews building, both sui generis uses. The proposal has a specific operator identified (Annabel's). The applicant's intention is to provide a club that will offer a very high quality range of facilities befitting of the Grade I listed status of the building, the aim being to embrace the building's heritage status and to use the principal rooms for entertaining, as would have been their original purpose. Section 7 sets out the details of the proposal.

City Plan Policy S24 and UDP Policies TACE 8-10 deal with entertainment uses. The TACE policies are on a sliding scale in which developments where TACE 8 is applicable would be generally permissible and where TACE10 is applied (where the gross floorspace exceeds 500m²) only in exceptional circumstances. Given the size of the development, it needs to be assessed against UDP Policy TACE 10.

City Plan Policy S24 requires proposals for new entertainment uses to demonstrate that they are appropriate in terms of type and size of use, scale of activity, relationship to any existing concentrations of entertainment uses and any cumulative impacts, and that they do not adversely impact on residential amenity, health and safety, local environmental quality and the character and function of the area. The policy states that new large-scale late-night entertainment uses of over 500 sqm will not generally be appropriate within Westminster.

The policies aim to control the location, size and activities of entertainment uses in order to safeguard residential amenity, local environmental quality and the established character and function of the various parts of the City, while acknowledging that they provide important services in the City and contribute to its role as an entertainment centre of national and international importance.

This proposed uses are similar to those previously approved, The Planning Applications Committee accepted that members' clubs form part of the longstanding character of Mayfair, and that their unique nature makes them distinct from other large scale entertainment activities open to the general public. Implementation of the proposal would bring the building back into active use, and help restore this important listed building to its optimum condition. The club use remains acceptable in principle, and would not be harmful to the character and function of the area. Similarly, the proposed health club/wellbeing centre is considered to be an appropriate activity amongst the diversity of

uses in the area, which includes a public house nearby on the corner of Hay's Mews and Hill Street.

Had the current proposal been acceptable in historic building terms, appropriate conditions (including adherence to a robust management plan) identical to those in the approved scheme would have been recommended. Any permission would also have been subject to a legal agreement to secure:

- the limited public access to the building being offered by the applicant. This includes four days per year (1 per quarter) for members of the public to look round the building between 09.00 and 16.00 (including one of the Open House London weekend days)
- arrangements for architectural scholars to make appointments to view the building and obtain copies of the heritage report electronically free of charge
- a 10% discounted membership for local residents of Berkeley Square and Hay's Mews (subject to normal membership criteria).

The impact of the proposed use in amenity and highways terms is discussed in sections 8.3. and 8.4 below

8.1.3 Mixed Use Policies

The previous application was considered in the context of UDP Policy CENT3 and Westminster's City Plan Strategic Policy S1: these aimed to encourage mixed use developments within Central Westminster, requiring any increase in commercial development to be matched by residential provision provided this is appropriate and practical. The approved scheme involved an increase in commercial floorspace of 459 sqm, without an equivalent increase in residential floorspace. However, the policies allowed a cascade approach and subject to circumstances gave the option of making a commuted payment towards the Council's affordable housing fund. The applicant had offered a policy compliant payment £1,008,000, which was secured as part of the legal agreement.

The current scheme has a smaller increase in commercial floorspace, of 202 sqm (7.8%). However, since the earlier approval, the revised City Plan (July 2016) has been adopted and policy CENT 3 has been withdrawn. Under revised policy S1 there is now longer a requirement for non-office commercial increases to be matched with an increase in an equivalent amount of residential floorspace. As the site is located within the Core CAZ, the increase in commercial floorspace is still considered to be acceptable in principle.

8.2 Townscape and Design

The site comprises a mid-eighteenth century house, Grade I listed, facing onto Berkeley Square, and a twentieth century neo-Georgian mews building on Hay's Mews at the rear, The mews building is not listed but is within the curtilage of the listed building. The main building makes a very positive contribution to the character and appearance of the Mayfair Conservation Area. The unlisted mews building also makes a positive contribution to the conservation area. The adjacent two buildings to the north on Berkeley Square (44 and

45) are also listed Grade I and the building to the south is listed Grade II*. The mews building to the north (45) is listed Grade 2.

8.2.1 The listed building and alterations to the mews building

The main building was listed in 1958. It was built as a town house circa 1744-50, together with no. 45 Berkeley Square, and is attributed to Henry Flitcroft. The list description states:

Both houses have fine interiors with contemporary plasterwork and chimneypieces. Very good ironwork to stone staircase of No 46. Part of best surviving terrace sequence in square and with exceptional interest.

8.2.1.1. Proposed glazed roof

The area at the rear of the main house, between it and the mews, is developed at basement level but not above. The recent planning permission and listed building consent approved a glazed extension at the rear of the mews building. However, this was set well away from the rear of the main building, to safeguard the existing, historic plan form of the main house and to maintain its historic relationship to the rear space. The approved arrangement was the result of lengthy negotiations, also involving officers from Historic England.

The current proposal involves the addition of high-tech sliding glass roof over the space between main house and mews building, with fixings to the rear of the Grade I listed building. Most of the roof would be capable of being retracted against the rear of the mews building, but part of the roof would be fixed to the rear wall of the main house, and would not be retractable. A track would be fixed to the closet wing of the main house to accommodate the sliding roof. When closed, the whole of the rear area would be covered by the curved glass roof. When fully open much of the space would be open to the sky, except for the fixed parts on the rear walls of the main house and the mews building.

This is considered to be a very radical, modern, intervention at the rear of one of the most important listed Georgian town houses in the City of Westminster and, indeed in the whole of London and would have a major impact on the appearance, plan form and function of the Grade I listed building. It is considered that the rear wall of the listed building should be respected, by remaining free of any glazing or fixings. A clear space, open to the sky, should also be maintained at the rear of the building - as was achieved in the approved scheme.

Officers have suggested that a revised proposal, with a similar curved, retractable, glass roof, which did not cover the whole of the rear area and maintained a rear space of similar dimensions to that previously approved, would be acceptable. However, the applicant does not wish to pursue alternative solutions.

It is therefore considered that because of its design, location and architectural relationship to the main building, the proposed glazed roof would harm the special architectural and historic interest of this grade 1 listed building. It would also fail to maintain or improve (preserve or enhance) the character and appearance of the Mayfair Conservation Area. This would not meet S25 and S28 of Westminster's City Plan: Strategic Policies

adopted November 2013 and DES 1, DES 5, DES 9, DES 10 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007.

8.2.1.2 Infilling of basement lightwell

The proposal also involves infilling the existing historic lightwell at the rear of the closet wing, thereby internalising the existing windows at basement level. The external space around the closet wing is important to the significance of the listed building because this is the historic Georgian plan form, where the windows open onto an open area, open to the sky, and original eighteenth century fabric survives at basement level. This aspect of the courtyard works is also considered harmful to the special interest of the grade 1 listed building and unacceptable in terms of its impact on its appearance and historic plan form. This is contrary to the City Council's urban design and conservation policies, Unitary Development Plan policies DES 5 and DES 10 in particular.

8.2.1.3 Alterations to the mews building

The current scheme also proposes the retention of the existing mews building, with minor alterations to doors and modifications to the roof form to house new plant. The approved basement excavation would be omitted from the scheme. These changes are uncontentious and are acceptable in townscape terms.

8.2.1.4 Conclusion on historic building issues

The approved scheme was considered to cause some harm to the Grade I listed building, because of the nature of some internal alterations. However, it was considered that, overall, the permitted scheme delivered benefits, in terms of the future beneficial use of the building and the restoration of other parts of its interior, which outweighed the harm caused.

This current proposal causes additional harm to the listed building over and above that already caused by the permitted scheme. There are no additional public benefits which outweigh that additional harm. It is therefore considered unacceptable in terms of the City Council's urban design and conservation policies (including DES 1, DES 5, DES 9 and DES 10 of the Unitary Development Plan) and also the NPPF tests.

8.3.2 Archaeology

The current proposal does not include any additional basement excavation. This matter was previously assessed by Historic England who advised that there are no archaeological requirements.

8.3 Residential Amenity

UDP Policies ENV6 and ENV7 deal with the subject of noise pollution and vibration both from new uses, internal activity and the operation of plant, and seek to protect occupants of adjoining noise sensitive properties. The policies require the potential for any disturbance to be ameliorated through operational controls and/or attenuation measures. Policy S32 of the City Plan requires disturbance from noise and vibration to be contained.

8.3.1 Club and Health/Wellbeing Centre

The previous application gave rise to strong objections centred predominantly (though not exclusively) on the potential impact of the proposals on local amenity. However, the Planning Applications Committee agreed that with appropriate conditions (including requirements for robust operational and servicing management plans) that the proposals would not have a material impact on the local environment. It is noted that there have been a number of representations in support of the proposals.

The current scheme has been revised to omit the additional basement that has been approved, which is welcomed in reducing the potential impact of building works. However, this amendment does not affect the capacity of the premises, the current scheme effectively reducing the amount of ancillary/back of house accommodation.

The main members' entrance to the premises will be from Berkeley Square, and the entrance for the health club/wellbeing centre will remain in the mews (also to be used for the staff entrance, deliveries and servicing). A Draft Operational Management Plan (OMP) has been submitted which seeks to demonstrate the applicant's commitment to minimising the noise impact of the proposal. The OMP covers measures to prevent noise breakout, the management of customers arriving and departing, car parking, access control, use of staff entrance in Hay's Mews and management of waste and recyclable material for disposal and collection.

The main building would be open between 07.00 and 04.00 hours, now including Sundays. The health club/wellbeing centre would open from 06.00 until 22.00 hours. These operating hours would have been conditioned (as would the premises capacity, outlined above). The applicants have now requested that the basement nightclub is allowed to open on Sundays, until 04.00 (in the approved scheme the applicant did not want Sunday opening for the basement club). The existing Annabel's club is controlled by its licence to open 09:00 to 04:00, Monday to Saturday and 12:00 to 23:00 on Sundays. Given that the day club has approval to open until 04.00 hours seven days a week, there is not considered to be any justifiable reason for resisting the basement club to open for the same hours.

It is noted that a separate permission has been granted for speculative proposals for the use of 45 Berkeley Square as a private members' club (though this will not necessarily be implemented), potentially resulting in two new club uses adjacent to each other. This would be in addition to the vacated Annabel's club in the basement of No. 44, the upper floors of which are occupied by the Clermont Club, a private gaming club. The cumulative impact of the new entertainment use has previously been considered by Members and found to be acceptable in the context of Berkeley Square and, provided that the club uses are well run.

A representation has been submitted on behalf of the residents in 48 Berkeley Square and 48 Hay's Mews. Although they welcome the revised proposals, they do raise issues of mitigation and control concerning the operation of the proposed club kitchen, on the first floor of the mews building, and refuse disposal and collection. It is considered that, had the scheme been acceptable, these matters could be adequately dealt with by condition, including a requirement for a finalised Operational Management Plan (OMP) to be submitted before the use commences.

8.3.1.1 Use of dining terrace and the retractable canopy

As with the approved scheme, a key consideration remains the potential for noise and disturbance from the, all year round, use of the rear courtyard for outdoor dining. As part of the approved scheme, the terrace area was to be lowered by 1.4m, thereby reducing the risk of noise nuisance as the noise source would be significantly beneath the existing courtyard wall level. In the current scheme, the terrace remains at its existing level. However, this is also considered acceptable given that the courtyard is fully enclosed by high boundary walls and subject to appropriate operational controls.

The scheme retains proposals for the construction of a retractable glass roof, which would enclose the dining area during inclement weather, and at night, which would minimise potential noise nuisance later in the evening. However, under the scheme, the retractable canopy would cover the whole of the terrace, whereas the approved canopy stopped well short of the rear of the Grade I listed building. This amendment would increase the capacity of the terrace dining terrace from 80 to 92 customers. However, it is not considered that this increase would have a significant impact on neighbours' amenities. As with the approved scheme, there could be a condition to permit alfresco dining until 22.30, after which time the retractable glass roof will be extended to enclose the dining area (until 08.00 hours each day). As previously, conditions would also be required to secure a management plan to control noise outbreak and ensure that the staff take appropriate measures to control noise, aided with a noise monitoring regime and a limit on noise levels (to be agreed). With this in place, once an agreed maximum noise level had been reached, the retractable glass roof will be closed to contain sound (even if before 22.30 hours). This would ensure that the management regime reacts to the precise noise conditions on the terrace at any time beyond that when the terrace is to be enclosed.

It is considered that these measures would be sufficient to address potential concerns about the proposals giving rise to intrusive noise and disturbance adversely affecting the current ambiance, character and quiet environment. Whilst the Environmental Health Officer initially objected to the proposals over concerns about potential noise nuisance, they have now withdrawn their objection. It is noted that some representations prefer the courtyard to be fully enclosed, though in general it would still be open during the day. The scheme incorporates plant within the building at basement level, on the roof of the mews building and on the roof of the listed building. All plant could be conditioned to minimise noise levels and vibration. The new roof to the mews building (to contain mechanical plant) is slightly lower than in the approved scheme. The new retractable glazed canopy is higher than the approved one, but is curved in profile, rising up from the existing garden walls, so that the highest point is above the terrace of the application site.

8.3.2 Daylight and Sunlight

UDP Policy ENV13 seeks to ensure that new developments do not result in an unreasonable loss of natural light for existing local residents; City Plan Policy S29 states that the Council will resist proposals that result in an unacceptable material loss of residential amenity.

The applicant has undertaken a daylight and sunlight assessment in accordance with the recommended standards for daylight and sunlight in residential accommodation set out in

the Building Research Establishment (BRE) publication 'Site layout planning for daylight and sunlight' (2011).

The daylight and sunlight study demonstrates that there will only be small losses of light to the nearest residential properties (in Hay's Mews, opposite the new mews building), well within the recommended guidelines and therefore this aspect of the proposal is acceptable

8.4 Transportation/Parking

8.4.1 Car Parking

No car parking can be provided given the constraints of the site, and the Highways Planning Manager does not consider that there will be an increase in the demand for on-street parking given the parking constraints in the area and the site's high level of public transport accessibility. He notes that there is likely to be demand for taxi traffic but that there is a fairly extensive section of double yellow line outside the premises which should prevent other vehicles from parking there, and this should mean that taxis should be able to access the kerbside without blocking the carriageway.

8.4.2 Servicing

All servicing will take place at the rear of the site on Hay's Mews. The Transport Statement advises that the proposed servicing of the premises would generate 6 – 9 vehicles a day. Although the existing office use would have had some servicing associated with it, the Transport Statement does clarify how much.

The Highways Planning Manager notes that a new club competing with the existing premises at No 44, which may continue to operate as a private members' club once vacated by Annabel's, could give rise to issues with the number of servicing vehicles in the Mews. However, he considers that it should be possible to avoid such problems by co-ordinating and controlling servicing through a Servicing Management Plan, which could be secured by condition.

To help ensure that servicing will not materially worsen the amenity of residents within Hay's Mews it was previously proposed to control its hours to between 07.00 and 21.00 hours Monday to Saturday, and not at all on Sundays and Bank Holidays.

8.4.3 Cycle Parking

The application refers to the provision of 38 cycle parking spaces, most likely for staff. The applicant states that these would be provided in the basement of 3a Hay's Mews (which is owned by the applicant). Although this is outside of the application site it could be secured as a planning obligation as part of a legal agreement. The provision of 38 spaces is considered to be excessive given the nature of the use and a smaller number of spaces might be considered acceptable.

8.4.4. Waste

Refuse will be stored internally within a designated store within the Hay's Mews building. Separate storage will be provided for general refuse and recyclables. Refuse would then be collected at street level in Hay's Mews. Initial concerns from the Projects Officer (Waste) about the inadequate capacity of the refuse storage have been overcome by revisions to increase the capacity. There have been separate complaints from a resident in Hay's Mews about refuse problems created by the existing Annabel's club – it is considered that with conditions, including a section in a revised Operational Management Plan conforming how waste would be managed so that it is not left on the public highway in Hay's Mews, this matter could be adequately addressed.

8.4.4 Highway Safety

Whilst the doors to the proposed sub-station within the mews building will open out over the public highway (which is a requirement of UKPN), they will be opened infrequently and under close supervision. In the context of a very quiet mews, this is acceptable in highway safety terms. The doors to the reception area in the mews building are also shown as opening outwards - a condition could require this to be amended.

8.5 Economic Considerations

Any economic benefits generated are welcomed, in particular providing a viable use for this listed building.

8.6 Access

Level access will be provided into the new mews building, where the new lift meets Part M minimum size requirements, and where there will be level access through to the terrace. However, there are steps into the main building from Berkeley Square and the difference in levels and the listed building constraints mean that this situation cannot be changed. The intention is that management will assist disabled members into the building, where there will be lift access to all other areas

8.7 Other UDP/Westminster Policy Considerations

8.7.1 Biodiversity and Sustainability

Policy S28 of the City Plan requires developments to incorporate exemplary standards of sustainable and inclusive urban design and architecture. Policy S40 considers renewable energy and states that all major development throughout Westminster should maximise on-site renewable energy generation to achieve at least 20% reduction of carbon dioxide emissions, and where feasible, towards zero carbon emissions, except where the Council considers that it is not appropriate or practicable due to the local historic environment, air quality and/or site constraints. Policy S39 seeks to ensure that all new development links to an existing district heating network or where this is not possible provides a site wide decentralised energy generation network. The National Planning Policy Framework establishes a presumption in favour of sustainable development. London Plan Policy 5.3 also requires developments to achieve the highest standards of sustainable design, with

Policy 5.2 seeking to minimise carbon emissions through a 'Be Lean, Be Clean and Be Green' energy hierarchy.

The listed building constraints mean that there are no sustainability provisions for 46 Berkeley Square. The intention for the mews building would be to target 35% CO2 emission reductions beyond the Building Regulation Part L compliance standard by incorporating a high quality thermal envelope, use of high efficiency plant and control systems and incorporating a combined heat and power (CHP) plant to supply hot water throughout the building. This is considered to be acceptable.

Policy S38 of the City Plan and UDP Policy ENV 17 encourage biodiversity but the site has no opportunity to make any provisions for this. Although a green/living wall is proposed on the rear of the mews building, this is primarily for visual amenity reasons and is not considered to have any real biodiversity benefit.

8.8 London Plan

The proposal does not raise any strategic issues and is not referable to the Mayor of London

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

Policy S33 of the City Plan details the Council's aim to secure planning obligations and related benefits to mitigate the impact of all types of development. Formulas for the calculation of contributions towards related public realm improvements etc. are detailed in the Council's Supplementary Planning Guidance on Planning Obligations. On 6 April 2010 the Community Infrastructure Levy (CIL) Regulations came into force which makes it unlawful for a planning obligation to be taken into account as a reason for granting planning permission for a development, or any part of a development, if the obligation does not meet all of the following three tests:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

From 6 April 2015, the Community Infrastructure Levy Regulations (2010 as amended) impose restrictions on the use of planning obligations requiring the funding or provision of a type of infrastructure or a particular infrastructure project. Where five or more obligations relating to planning permissions granted by the City Council have been entered into since 6 April 2010 which provide for the funding or provision of the same infrastructure types or projects, it is unlawful to take further obligations for their funding or provision into account as a reason for granting planning permission. These restrictions do not apply to funding or provision of non-infrastructure items (such as affordable housing) or to requirements for developers to enter into agreements under Section 278 of the Highways Act 1980 dealing

with highway works. The recommendations and detailed considerations underpinning them in this report have taken these restrictions into account.

As stated above, given the changes to the Council's mixed use policies, the scheme is no longer required to deliver new residential floorspace. However, had the application been acceptable, a legal agreement would still have been required to secure the limited public access that is offered, to ensure the applicant to remove the existing club canopy at the entrance at 44 Berkeley Square to be removed and relocated to No. 46, and to secure the off-site cycle parking.

The estimated CIL payment is £38,800.

8.11 Other Issues

8.11.1 Construction impact

Given the relatively small scale nature of the proposed works, it is not considered necessary to require any restrictions on the building programme apart from the standard condition controlling hours of work (had the scheme been recommended for approval).

8.11.2 Crime and Security

The latest proposals have been considered by the Metropolitan Police Service's Crime Prevention officer, who has confirmed that he has no concerns with regard to the security or safety of the site.

8.12 Conclusion

Whilst the proposal is in many respects similar to the approved scheme, it is considered that the proposed works to the rear courtyard, involving the retractable glass canopy and infilling of the rear lightwell, will have a detrimental impact on the special architectural and historic interest of this Grade I listed building. Discussions with the applicant's agents have sought to reach a compromise but the applicant is unwilling to consider alternatives and therefore the proposals are recommended for refusal on design and historic building grounds.

9. BACKGROUND PAPERS

1. Application form
2. Letter from Historic England dated 14 September 2016
3. Email from the London and Middlesex Archaeological Society (LAMAS) dated 4 October 2016
4. Memoranda from the Environmental Health Consultation Team dated 9 September and 25 October 2016
5. Memoranda from the Projects Officer (Waste) dated 6 August and 24 October 2016
6. Memorandum from the Highways Planning Manager dated 21 October 2016
7. Letter from occupier of 48 Berkeley Square, dated 10 October 2016
8. Letter from Lewis Silkin LLP, Clifford's Inn, dated 16 September 2016
9. Letter from occupier of 15 Hay's Mews, London, dated 12 September 2016
10. Email from the Metropolitan Police Service Crime Prevention officer dated 14 September

2016

11. Letter from occupier of 1, Hay's Mews, dated 12 October 2016

12. Letter from occupier of 6 Chesterfield Hill, London, dated 19 October 2016

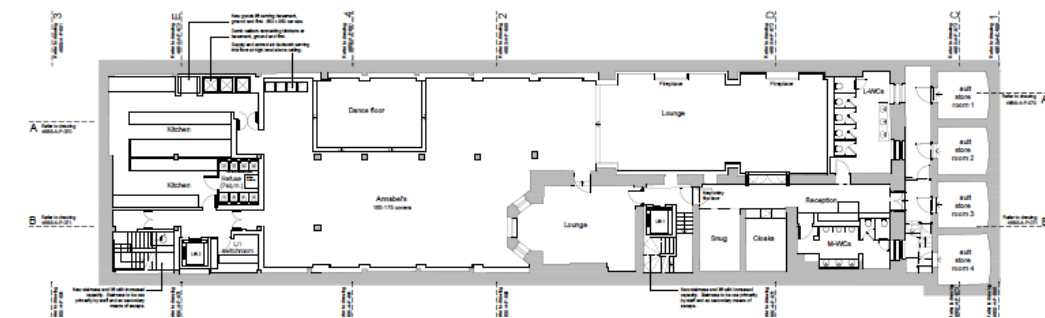
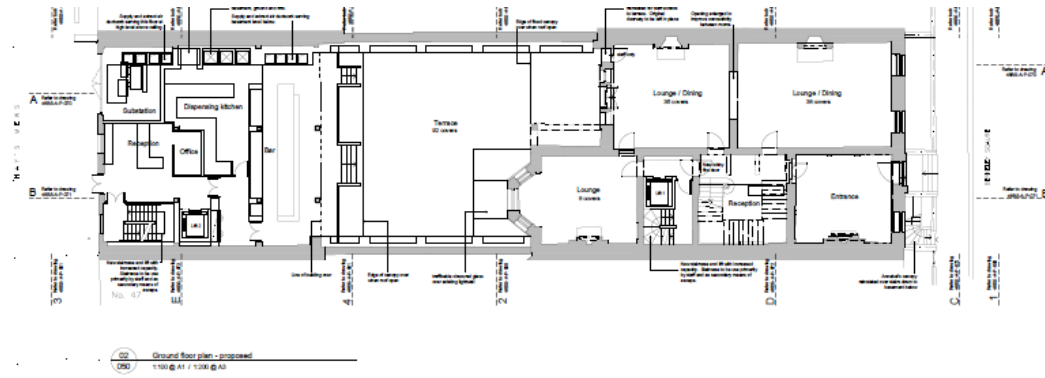
Selected relevant drawings below

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

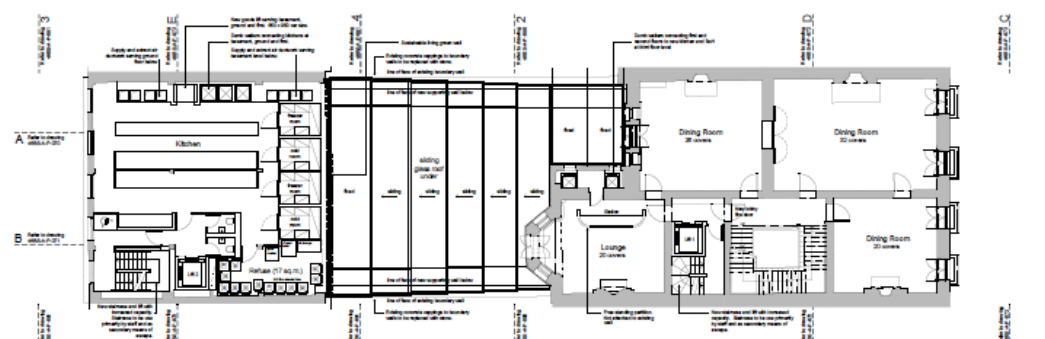
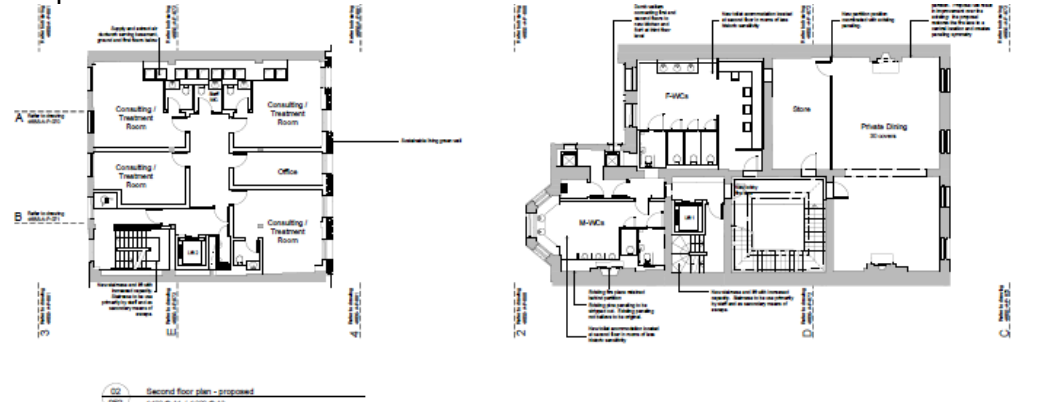
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: SARA SPURRIER BY EMAIL AT sspurrier@westminster.gov.uk

10. KEY DRAWINGS

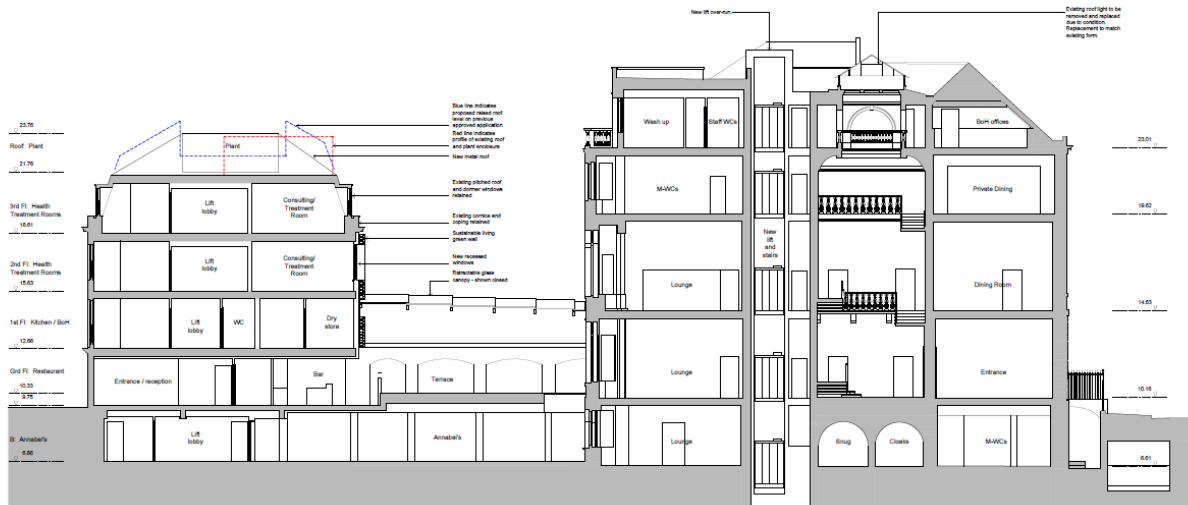
Proposed basement and ground floor



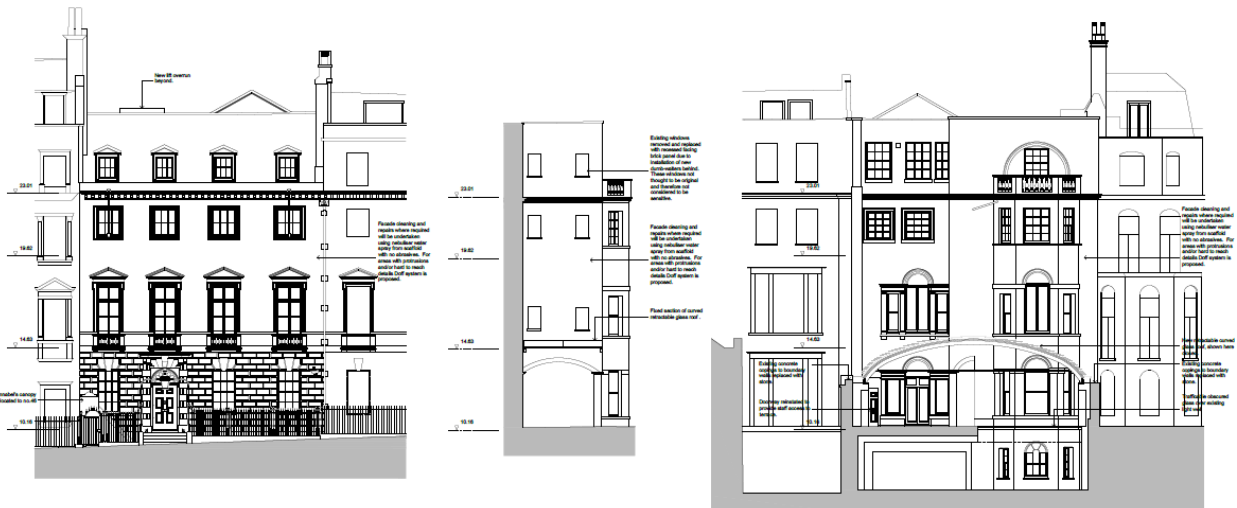
Proposed first and second floors



Proposed section BB, showing canopy over courtyard closed



Proposed front and rear elevations - 46 Berkeley Square



01 Proposed 46 Berkeley Square East elevation
050 1:100 @ A1 / 1:200 @ A3

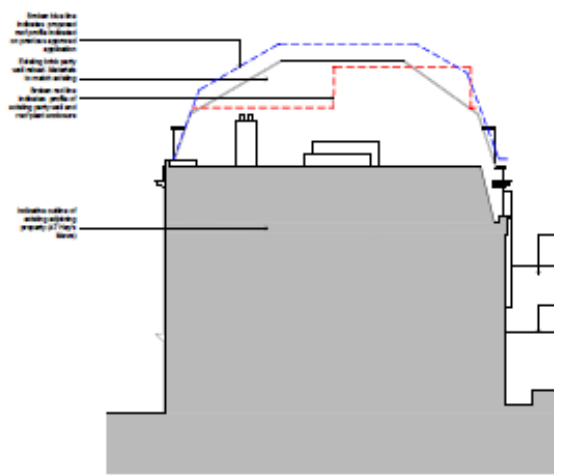
02 Proposed 46 Berkeley Square North elevation
050 1:100 @ A1 / 1:200 @ A3

03 Proposed 46 Berkeley Square West elevation
050 1:100 @ A1 / 1:200 @ A3

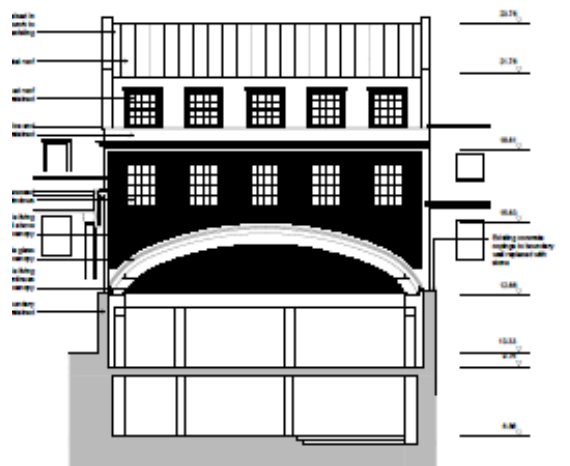
Proposed elevations - 46 Hay's Mews



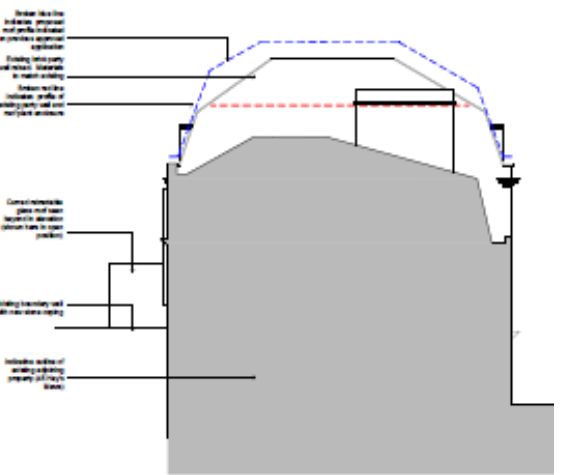
01 Proposed Mews West elevation
001 1:100 @ A1 / 1:200 @ A3



03 Proposed Mews South elevation
001 1:100 @ A1 / 1:200 @ A3



02 Proposed Mews East elevation
001 1:100 @ A1 / 1:200 @ A3



04 Proposed Mews East elevation
001 1:100 @ A1 / 1:200 @ A3

DRAFT PLANNING DECISION LETTER

Address: 46 Berkeley Square, London, W1J 5AT

Proposal: Use of 46 Berkeley Square as a private members club (sui generis use), with internal and external alterations including mechanical plant, and erection of Annabel's canopy to front; use of 46 Hay's Mews as a private members club, and a health and wellbeing club (sui generis) and alterations to the mews building including the erection of a pitched roof extension with mechanical plant; and erection of a full length retractable glazed canopy from the mews building to the main building enclosing the external dining terrace/courtyard; associated mechanical plant and landscaping. (Site includes 46 Hay's Mews)

Reference: 16/07773/FULL

Plan Nos: Location Plan 46BS-A-P-001 Rev B; Existing/demolition plans: 46BS-A-P-002 Rev B, 46BS-A-P-010 Rev B, 46BS-A-P-012 Rev B, 46BS-A-P-014 Rev B, 46BS-A-P-030 Rev B, 46BS-A-P-031 Rev B, 46BS-A-P-032 Rev B, 46BS-A-P-040 Rev B, 46BS-A-P-041 Rev B; Proposed plans: 46BS-A-P-003 Rev B, 46BS-A-P-050 Rev C, 46BS-A-P-052 Rev C, 46BS-A-P-054 Rev D, 46BS-A-P-070 Rev D, 46BS-A-P-071 Rev E, 46BS-A-P-072 Rev B, 46BS-A-P-073 Rev B, 46BS-A-P-074 Rev B, 46BS-A-P-080 Rev E, 46BS-A-P-081 Rev C., , Design and Access Statement Revision B dated 21 August 2016, Heritage Statement dated August 2016, Planning Statement dated August 2016, Daylight and Sunlight Report dated 12 August 2016, Transport Statement dated December 2015, Noise Impact Assessment dated 18 July 2016, Travel Plan dated December 2015, Energy Statement dated 23 November 2015, Construction Management Plan dated 3 August 2016, Draft Operational Management Plan, Servicing Management Plan dated December 2015, Preliminary Ecological Appraisal dated November 2015, Utilities, Structural Design Strategy dated July 2016, Drainage and Ventilation Statement dated 24 November 2015, Socio-Economic Assessment dated March 2016, Tree Survey/Arboricultural Impact Assessment dated November 2015, Statement of Community Involvement dated December 2015.

Case Officer: Paul Quayle

Direct Tel. No. 020 7641 2547

Recommended Condition(s) and Reason(s):

Reason:

1

Because of the design and location of the glazed roof structure and its architectural relationship to the main building, and the infilling of the lightwell at the rear of the closet wing, the proposed works in the courtyard would harm the special architectural and historic interest of this grade 1 listed building. The works would also fail to maintain or improve (preserve or enhance) the character and appearance of the Mayfair Conservation Area. This would not meet S25 and S28 of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 1, DES 5, DES 9, DES 10 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007.

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way so far as practicable. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (July 2016), 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 the applicant has been given every opportunity to submit an application which is likely to be considered favourably. Guidance was offered by Robert Ayton in August 2016 to the applicant advising that a retractable canopy that extended across the whole courtyard and impacted on the rear of the listed building was considered unacceptable, as was the infilling of the rear lightwell. However, the necessary amendments to make the application acceptable are substantial and would materially change the development proposal. They would require further consultations to be undertaken prior to determination, which could not take place within the statutory determination period specified by the Department of Communities and Local Government. You are therefore encouraged to consider submission of a fresh application incorporating the material amendments set out below which are necessary to make the scheme acceptable.

Required amendments: the glazed canopy to be set well away from the rear of the main house, and not physically connected to it, and the rear basement lightwell to remain open.

DRAFT LISTED BUILDING DECISION LETTER

Address: 46 Berkeley Square, London, W1J 5AT

Proposal: Internal and external alterations to facilitate change of use to private members club. (Linked to 16/07773/FULL)

Reference: 16/07774/LBC

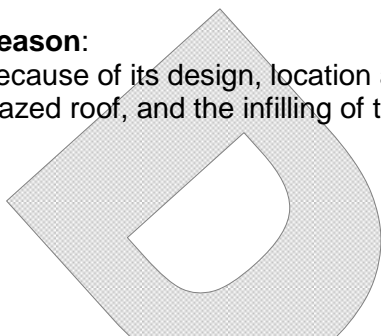
Plan Nos: Location Plan 46BS-A-P-001 Rev B; Existing/demolition plans: 46BS-A-P-002 Rev B, 46BS-A-P-010 Rev B, 46BS-A-P-012 Rev B, 46BS-A-P-014 Rev B, 46BS-A-P-030 Rev B, 46BS-A-P-031 Rev B, 46BS-A-P-032 Rev B, 46BS-A-P-040 Rev B, 46BS-A-P-041 Rev B; Proposed plans: 46BS-A-P-003 Rev B, 46BS-A-P-050 Rev C, 46BS-A-P-052 Rev C, 46BS-A-P-054 Rev D, 46BS-A-P-070 Rev D, 46BS-A-P-071 Rev E, 46BS-A-P-072 Rev B, 46BS-A-P-073 Rev B, 46BS-A-P-074 Rev B, 46BS-A-P-080 Rev E, 46BS-A-P-081 Rev C, Design and Access Statement Revision B dated 21 August 2016, Heritage Statement dated August 2016.

Case Officer: Paul Quayle

Direct Tel. No. 020 7641 2547

Recommended Condition(s) and Reason(s):

- Reason:**
- 1 Because of its design, location and architectural relationship to the main building, the proposed glazed roof, and the infilling of the lightwell at the rear of the closet wing, would harm the special



architectural and historic interest of this grade 1 listed building. It would also fail to maintain or improve (preserve or enhance) the character and appearance of the Mayfair Conservation Area. This would not meet S25 and S28 of Westminster's City Plan: Strategic Policies adopted November 2013 and DES 1, DES 5, DES 9, DES 10 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007.

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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.