

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 17 January 2017	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	<b>449 Oxford Street, London, W1C 2PS</b>		
<b>Proposal</b>	Use of part basement, ground and first floors as a composite use comprising car showroom and retail (sui generis).		
<b>Agent</b>	DP9 Ltd		
<b>On behalf of</b>	Tesla		
<b>Registered Number</b>	16/10374/FULL	<b>Date amended/ completed</b>	3 November 2016
<b>Date Application Received</b>	31 October 2016		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Mayfair		

## 1. RECOMMENDATION

1. Refuse permission - loss of retail floorspace.

## 2. SUMMARY

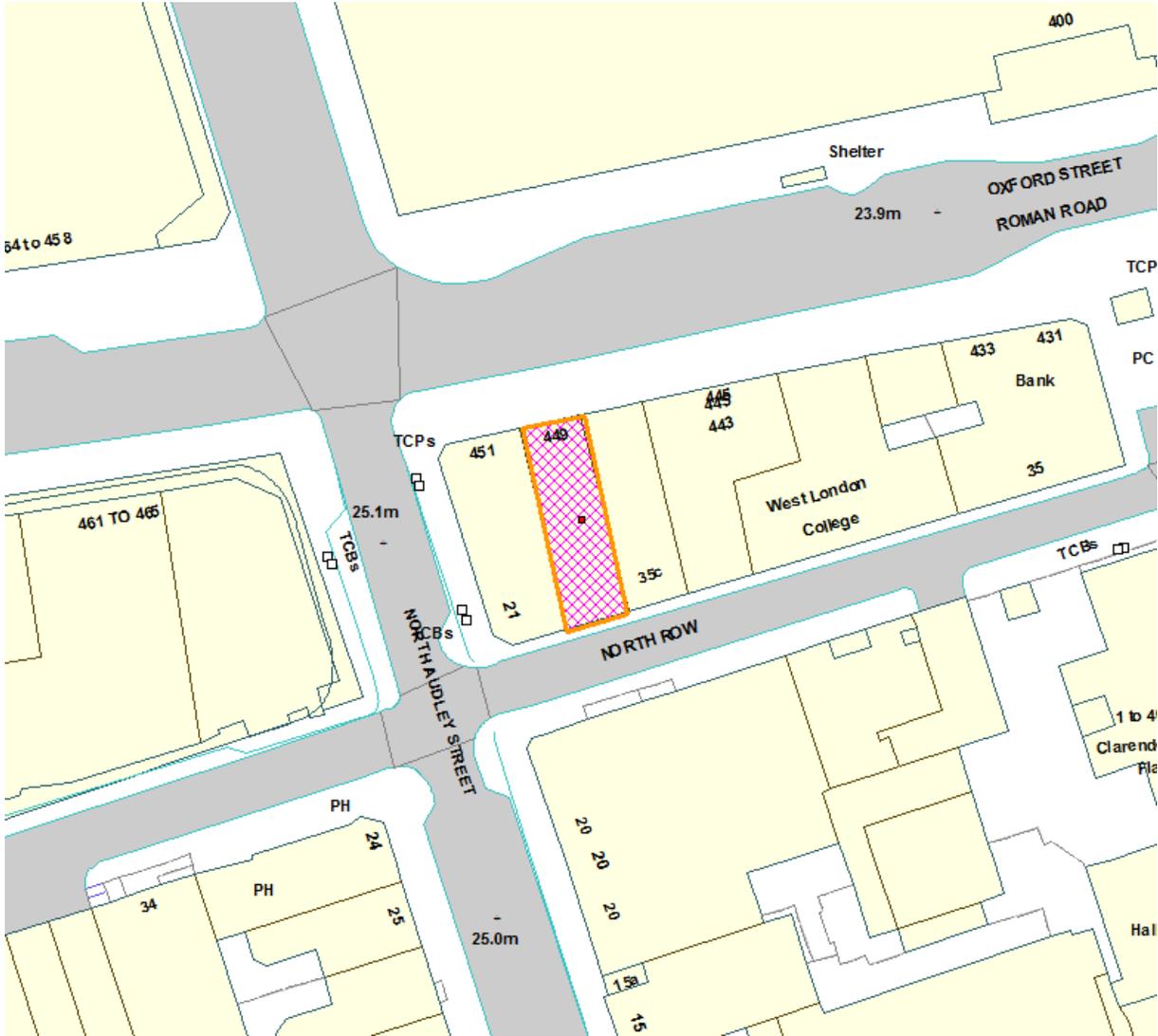
The application site comprises the front basement, ground and first floors of this unlisted building located within the Mayfair Conservation Area, the Core Central Activities Zone (Core CAZ), the West End Special Retail Policy Area and a Primary Shopping Frontage of the West End International Shopping Centre. The unit was last occupied by a gift shop (Class A1). Permission is sought for the use of the unit as a composite use comprising car showroom and retail (sui generis).

The key issue in this case is:

\* Whether the proposed change of use would harm the unique status and offer of the West End Special Retail Policy Area and harm the character and function of the West End International Shopping Centre as a result of the loss of retail (Class A1) floorspace within the Primary Shopping Frontage.

It is considered that the loss of the retail shop would harm the character and function, and therefore attractiveness, of the Primary Shopping Frontage of the West End International Shopping Centre through weakening the retail offer. This would inevitably harm the unique status and offer of the West End Special Retail Policy Area. The proposal is therefore contrary to City Plan Policies S7 and S21 and UDP Policy SS3. For this reason the application is recommended for refusal.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS



## 5. CONSULTATIONS

### RESIDENTS SOCIETY OF MAYFAIR & ST. JAMES'S

Any response to be reported verbally.

### HIGHWAYS PLANNING MANAGER

- Concern raised in respect to the lack of information regarding how cars would be delivered to and from the site and how often this would occur.
- If cars are changed no more than once a quarter advises that it would be difficult to object to this level of trip generation.
- Requests that a Service/Delivery Management Plan be secured by condition.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED:

No. Consulted: 13

Total No. of replies: 0

No. of objections: 0

No. in support: 0

PRESS ADVERTISEMENT / SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The site comprises the front basement, ground and first floors of an unlisted building located within the Mayfair Conservation Area. The unit comprises 399 sqm (GIA). The rear basement is occupied by a passport photograph studio (Class A2) with an entrance onto North Row and does not form part of the application site.

The site is located within the Core CAZ, the West End Special Retail Policy Area and a Primary Shopping Frontage of the West End International Shopping Centre. The site was last occupied by a gift shop (Class A1).

### 6.2 Recent Relevant History

Permission was granted on 16 May 1988 (Ref: 88/01443/FULL) for the use of the basement, ground, and first floors for retail purposes.

Permission was granted on 16 July 2014 (Ref: 14/03502/FULL) for the use of second and third floors as three residential flats (Class C3), together with minor external alterations. It is understood that the internal works to convert the upper floors to residential accommodation have recently been completed but that the flats are not yet occupied.

Permission was granted on 21 July 2014 (Ref: 14/03484/FULL) for, *inter alia*, the use of rear part of basement of No. 449 Oxford Street for financial and professional use (Class A2) (currently occupied by a passport photography studio) and for the use of first floor of No. 447 Oxford Street for retail purposes (Class A1). The loss of retail floorspace at basement level was deemed to be acceptable as overall the scheme resulted in a net increase 77sqm of retail floorspace. The delivery of the additional retail floorspace within

No. 447 Oxford Street prior to the commencement of the financial and professional use was secured by condition.

Planning permission was granted on 20 August 2014 (Ref: 14/05606/FULL) for the installation of replacement shopfronts at Nos. 443 – 449 Oxford Street.

A planning application (Ref: 15/07967/FULL) was submitted in August 2015 by Tesla Motors Limited for the installation of air conditioning units at the rear of the property and a change of use of the ground, basement and first floors from retail to a car showroom (a *sui generis* use). However, the application was amended in October 2015 so that it only sought planning permission for the installation of plant. This followed advice from officers that the loss of a retail unit in this location was unacceptable in principle. Permission was granted on 10 March 2016.

A subsequent application (Ref: 15/09563/FULL), also submitted by Tesla Motors Limited, seeking planning permission for a mixed use of part basement, ground and first floors of the property as a retail shop and car showroom (*sui generis*) was withdrawn on 14 December 2015 following an officer recommendation to the Planning Committee that the application be refused on the loss of retail floorspace grounds. Officers did not accept that the proposed use of the property was a composite use comprising a retail shop and car showroom. Rather, officers considered that the retail element of the proposed use was ancillary to the principal use proposed; namely as a car showroom / marketing suite (*sui generis*).

Despite Officer advice that the proposed use was not considered to fall within Class A1, an unauthorised material change of use took place on 16 December 2015 from a retail shop to a car showroom / marketing suite. This breach of planning control was reported to the City Council's Planning Enforcement Team for investigation. The applicant argued that, as cars were not being sold on site, there was no breach of planning control as the use would not constitute a use 'for the sale or display for sale of motor vehicles' which is specifically excluded from any of the classes within the Town and Country Planning (Use Classes) Order 1987 (as amended) by Article 3(6) of this Order.

Whilst the City Council accepted that no cars were being sold on site, a car and a car chassis are displayed prominently at ground floor level. The model of car on display in the property is clearly for sale, although not at the property. Regardless of whether the motor vehicle on display at the property is for sale or not, the list of uses provided within Section 3(6) of the Order is not exhaustive and does not mean that the use of a site for the display of motor vehicles that are not for sale cannot be considered a *sui generis* use. The Land Use Gazetteer (third edition) confirms that a 'motor vehicle dealer's display place (without sales)' is a *sui generis* use, as is a 'motor vehicle showroom' (with no mention of sales). Moreover, the main purpose of the use of the property is considered to be to showcase Tesla motor vehicles and promote the Tesla Motors brand on this busy international shopping centre location. The City Council therefore concluded that the property's primary use cannot be said to be within Class A1 (Shops).

In light of establishing a breach of planning control and, having taken into account the harm to the unique status and offer of the West End Special Retail Policy Area and harm the character and function and therefore attractiveness of the West End International Shopping Centre, an Enforcement Notice was served on 11 July 2016 and this took effect

on 16 August 2016. The Enforcement Notice required the following to take place by 16 November 2016:

1. Cease to use the Property as a car showroom/marketing suite; and
2. Remove any and all items brought onto the Property for the purposes of using it as a car showroom/marketing suite.

A site visit on 24 November 2016 confirmed that this Enforcement Notice had not been complied with.

## 7. THE PROPOSAL

The proposed use is described by the applicant as 'a composite use comprising car showroom and retail (A1/*sui generis*)'. In addition to the sale and display of cars from the site, the applicant also intends to display for sale a greater extent of merchandising and to display for sale the 'Tesla Powerwall' (a domestic battery for storing electricity generated by renewable energy (e.g. photovoltaic panels)). The layout of the unit is proposed to change from the current unauthorised use through:

- (i) The removal of the car chassis from the store;
- (ii) The relocation of the car for sale from front to rear ground floor level and its replacement with customer seating around table displays of merchandising;
- (iii) An increased amount of wall space dedicated to merchandising (four areas at ground floor level and two at first floor level); and
- (iv) The display for sale of the Tesla Powerwall (three are proposed to be displayed at ground floor level and two at first floor level).

For the reasons set out in Section 8.1.1 of this report, however, officers consider that the retail element of the proposed use is likely to be ancillary to the principal use proposed; namely, as a car showroom (*sui generis*).

As with many car showrooms in central London, customers will be able to configure and order their vehicles from the proposed store but will not drive them away on the day of purchase. Vehicles will be delivered to the customer once built. It is proposed that one car will be on display towards the rear of the ground floor level. Although not expressly stated in the application, the assessment of the application is based on the vehicle on display being changed approximately four times a year (as in the 2015 application).

Arrangements for test drives are yet to be confirmed other than the applicant states that they will not take place from the site.

Deliveries of merchandising and other supplies will be taken via the existing off-street servicing provided on North Row and North Audley Street.

## 8. DETAILED CONSIDERATIONS

### 8.1 Land Use

#### **Nature of the Proposed Use**

It is well established that the primary uses of land often embrace one or more ancillary activities. Whether or not an activity is ancillary to a primary use is a matter of fact and degree, based on the individual circumstance of each case. Factors such as the floorspace dedicated to each use, the character of the planning unit and the revenue derived from each element are taken into account when making such an assessment.

As set out within Section 7 of this report, the applicant proposes to change the way that the unit currently operates (although this is unauthorised) through selling cars from the site; increasing the wallspace dedicated to the display for sale of merchandising; and through selling the Tesla Powerwall. For this reason, the applicant argues that the use of the unit will be a composite use comprising retail and car showroom.

As the applicant has not started selling the Tesla Powerwall which they state will enhance their retail offer, it is difficult to assess whether the uptake in retail goods would be sufficient to mean that the retail function of the unit will be anything other than ancillary to the primary use of the unit as a car showroom. On the basis of the information provided, officers consider it likely that the principal reasons for people visiting the store will be to purchase cars. Despite the relocation of the car from the front to the rear of the ground floor, it will still be clearly visible from the street and the customer seating (albeit around tables displaying merchandising) will appear as a waiting area of a car showroom rather than a shop. For these reasons, it is considered likely that the retail sales element will be no more than ancillary to this primary use. An informative is recommended to advise the applicant of the City Council's position on the description of the proposed use.

#### **Policy Context**

The London Plan (2016) (Table A2.1) identifies the West End as one of two international shopping centres in London (the other being Knightsbridge). The international shopping centres sit at the top of London's shopping hierarchy, being a globally renowned retail destination with a wide range of high-order comparison and specialist shopping with excellent levels of public transport accessibility. Oxford Street, Regent Street and Bond Street are the most important shopping frontages in the West End International Shopping Centre and are almost exclusively made up of retail units at basement and ground floor and a significant retail presence on the upper floors.

City Plan Policy S7 states that the unique status and offer of the West End Special Retail Policy Area will be maintained and enhanced. City Plan Policy S21 adds that existing A1 retail will be protected throughout Westminster except where the council considers that the unit is not viable, as demonstrated by long-term vacancy despite reasonable attempts to let. More specific policy for the site's location on a Primary Shopping Frontage of the West End International Shopping Centre is provided by UDP Policy SS3(B) which states planning permission will not, except in the most exceptional circumstances, be granted for a change of use from A1 use at basement, ground or first-floor level within the Primary Shopping Frontages. The supporting text to this policy states there will be very few circumstances that would allow an exception to UDP Policy SS3(B) (para. 7.29).

## Loss of Retail Floorspace

Retaining retail floorspace within the Primary Shopping Frontages is of central importance to maintaining the West End Special Retail Policy Area's role at the top of London's retail hierarchy. The character and function of Oxford Street is almost exclusively made up of retail units. The loss of a retail unit in this prominent location would inevitably harm the Primary Shopping Frontages' character and function by weakening the retail offer and thereby reducing the attractiveness of the West End International Shopping Centre to shoppers. The applicant has submitted no evidence demonstrating that the unit is long-term vacant. Given its prime location it is considered to be extremely unlikely that the unit would not be attractive to a wide range of Class A1 retailers that would contribute to the character, function and attractiveness of the Primary Shopping Frontages of the West End International Shopping Centre.

The applicant has provided a proposed layout plan of the store and argues that only 21 sqm of the ground floor area will be dedicated to the selling of cars (i.e. 5% of the total floor area of the unit). The applicant argues that limiting the display to a single car, securing the proposed layout by condition or legal agreement, securing a retail display and by making the permission personal to Tesla constitute the most exceptional circumstances to justify the strong policies resisting the loss of retail floorspace in this location.

The argument that only 21 sqm of the ground floor will be used for car showroom purposes is considered to be fundamentally flawed. Inevitably, discussions between staff and customers relating to the purchase of cars will take place throughout the ground and first floors. It is considered likely that the majority of the ground and first floors will be dedicated to the sale of cars. Furthermore, granting a personal permission (rather than it running with the land) is not one that officers could support as there are not considered to be any exceptional circumstances to mean that the occupation of the unit by Tesla is acceptable whereby occupation by another car manufacturer would not be acceptable. In addition, the Government's Planning Practice Guidance states that a condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.

In these circumstances, the applicant has not demonstrated that the most exceptional circumstances exist which would justify a departure from the strong adopted retail policies to protect retail floorspace in this location. Introducing a car showroom to Oxford Street would harm the unique status and offer of the West End Special Retail Policy Area and harm the character, function and attractiveness of the West End Special Retail Policy Area, contrary to City Plan Policies S7 and S21 and UDP Policies SS3. It is accordingly recommended that permission be refused.

## 8.2 Townscape and Design

No external alterations are proposed and therefore the proposal will not have an impact on the character and appearance of the Mayfair Conservation Area.

### **8.3 Residential Amenity**

Late night deliveries of cars may cause some disturbance to the flats on the upper floors of the application site but such deliveries are common in a heavily commercialised street like Oxford Street. The addition of four late night deliveries per annum is unlikely to result in a material loss of amenity for neighbouring residents.

### **8.4 Transportation/Parking**

In the 2015 application, the applicant proposed delivering and loading vehicles on Oxford Street outside of trading hours (i.e. between 22.00 and 06.00) four times a year. The area immediately in front of the site is available for loading between 21.00 and 07.00.

Details of how cars will be delivered to and from the site have not been submitted. The Highways Planning Manager considers that, provided cars are changed no more than once a quarter, it would be difficult to object to this level of trip generation. This is, however, subject to the applicant submitting a Service / Delivery Management Plan for the City Council's approval. This would need to include details setting out how cars will be transported to the site, how they will access the site without adversely affecting safe pedestrian and vehicular movement and how the surface of the pavement will be protected from damage during the process.

On the basis of this advice, had the application been acceptable in other respects, a pre-commencement condition would have been imposed securing such a Service / Delivery Management Plan.

### **8.5 Economic Considerations**

The proposed car showroom's economic impact is not considered to be materially different from the lawful existing use as a retail unit.

### **8.6 Access**

There is currently level access to the shop and this is not proposed to be altered. The applicant advises that the existing shopfront doorway is sufficiently wide (2.6m) to accommodate a motor vehicle.

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

None.

### **8.8 London Plan**

The proposal 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**

The proposal gives rise to no planning obligations.

### **8.11 Environmental Impact Assessment**

The proposal is of insufficient scale to require the submission of an Environmental Assessment.

### **8.12 Other Issues**

None.

## **9. BACKGROUND PAPERS**

1. Application form
2. Memorandum from the Highways Planning Manager dated 15 November 2016.

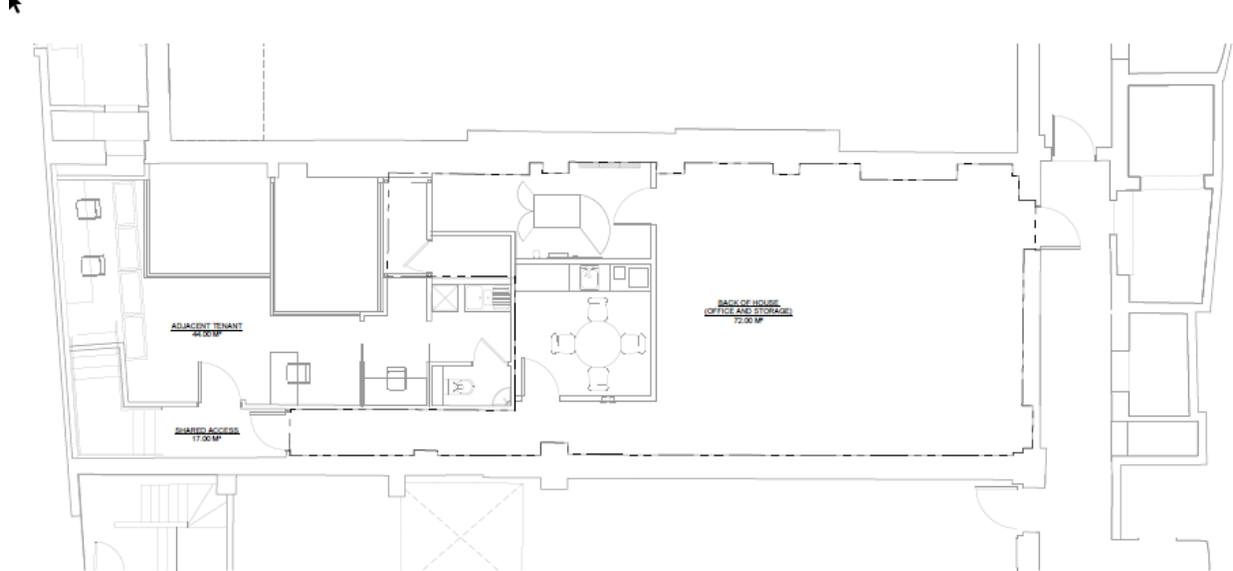
### **Selected relevant drawings**

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

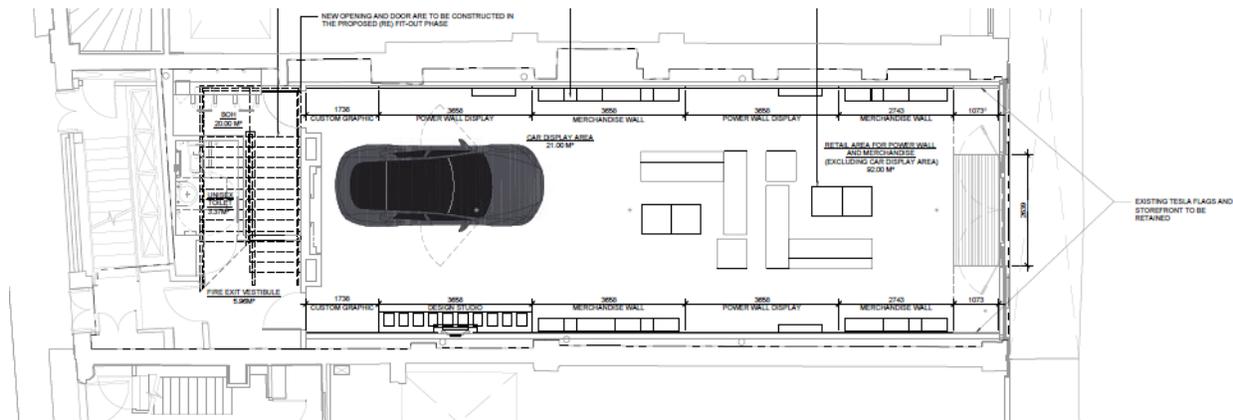
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: HELEN MACKENZIE BY EMAIL AT HMACKENZIE@WESTMINSTER.GOV.UK.

**10. KEY DRAWINGS**

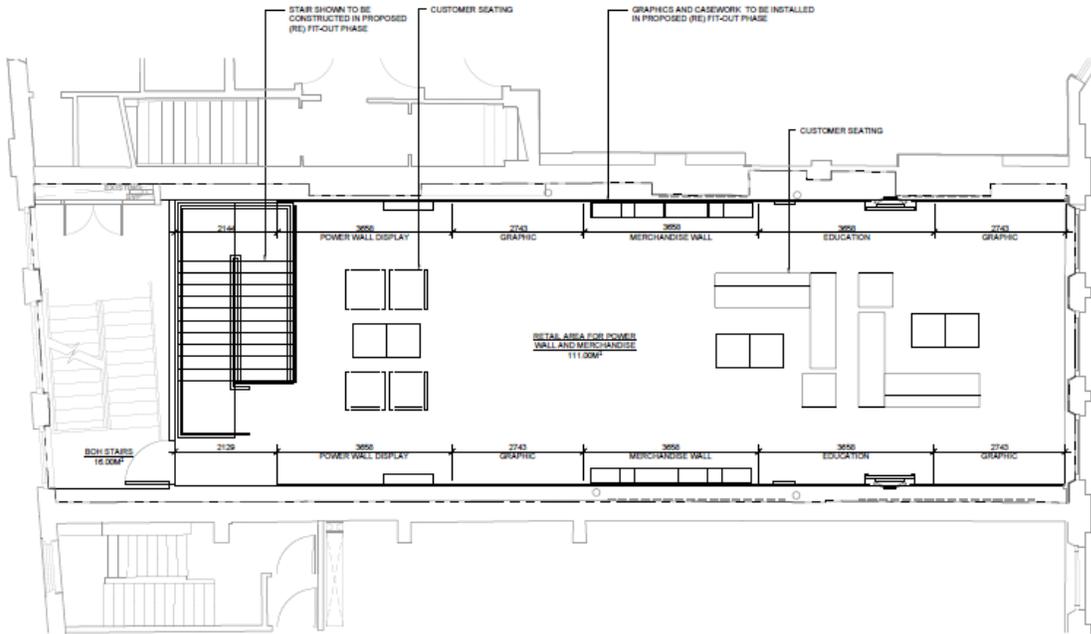
Proposed basement floorplan:



Proposed ground floorplan:



Proposed first floor plan:



**DRAFT DECISION LETTER**

**Address:** 449 Oxford Street, London, W1C 2PS,

**Proposal:** Use of part basement, ground and first floors as a composite use comprising car showroom and retail (sui generis).

**Reference:** 16/10374/FULL

**Plan Nos:** A-120, A-121 and A-122.

**Case Officer:** Mark Hollington

**Direct Tel. No.** 020 7641 2523

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

Reason:

- 1 Your development would lead to the loss of a retail unit in the Primary Shopping Frontage of the West End International Shopping Centre, as defined in our Unitary Development Plan that we adopted in January 2007. This would harm the unique status and offer of the West End Special Retail Policy Area and harm the character and function and therefore attractiveness of the West End International Shopping Centre. This would not meet Policies S7 and S21 of our City Plan that we adopted in November 2016 and Policy SS3 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 (November 2016), Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service. However, we have been unable to seek solutions to problems as the principle of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.
- 2 Based on the information provided, you are advised that the City Council considers the use that has been applied for is a car showroom (sui generis) with ancillary retail sales and not a mixed car showroom and retail shop (sui generis).

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.