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| CITY OF WESTMINSTER | | | |
| PLANNING APPLICATIONS COMMITTEE | Date 31 January 2017 | Classification For General Release | |
| Report of Director of Planning | | Ward(s) involved West End | |
| Subject of Report | 37-38 , Margaret Street, London, W1G 0JF | | |
| Proposal | Variation of condition 3 of planning permission dated 8 April 2015 (RN 15/01461/FULL) which in itself varied condition 3 of planning permission dated 8 April 2014 for use of part of the ground floor as a restaurant (Class A3) (which allowed an extension to opening hours); NAMELY, to extend opening hours from 08.00 - 03.00 daily. | | |
| Agent | Bidwells LLP | | |
| On behalf of | Mrs G Bahl | | |
| Registered Number | 16/10306/FULL | Date amended/ completed | 27 October 2016 |
| Date Application Received | 27 October 2016 | | |
| Historic Building Grade | Unlisted | | |
| Conservation Area | Regent Street | | |

1. RECOMMENDATION

Grant conditional permission for a temporary period of 1 year.

2. SUMMARY

The application involves a vacant basement and ground floor unit last occupied by 'Matchbar' as a bar/ restaurant in which customers could purchase drinks, snacks and full meals. Matchbar occupied the premises between 1999 and October 2016. The premises are to be occupied by 'The Jazz Suite' which the applicant describes as being 'a premium wine and cocktail bar with food'. The upper floors are in office use (Class B1). The site is close to the junction with Regent Street and lies within the Regent Street Conservation Area.

Permission is sought to vary condition 3 on permission dated 8 April 2015 to enable an extension to the opening hours of the premises. The existing permitted closing time is midnight on Sundays to Tuesdays, 01.00 the following morning on Wednesdays and Thursdays and

02.00 the following morning on Fridays and Saturdays. Permission is sought to extend the opening until 03.00 daily. This would therefore enable the premises to remain open an extra three hours on Sundays to Tuesdays, two hours on Wednesdays and Thursdays and one hour on Fridays and Saturdays.

The key issues for consideration are :

- the impact of the character and function of the area,
- the impact on residential amenity

The site lies within the Core CAZ in an area mixed use in character. Ground floor units in the vicinity are a mixture of shops, cafes, bars and restaurants with primarily offices on the upper floors. Given the commercial nature of the area close to Oxford Circus in the Core CAZ, it is not considered that extending the opening hours as proposed would impact on the character and function of the area.

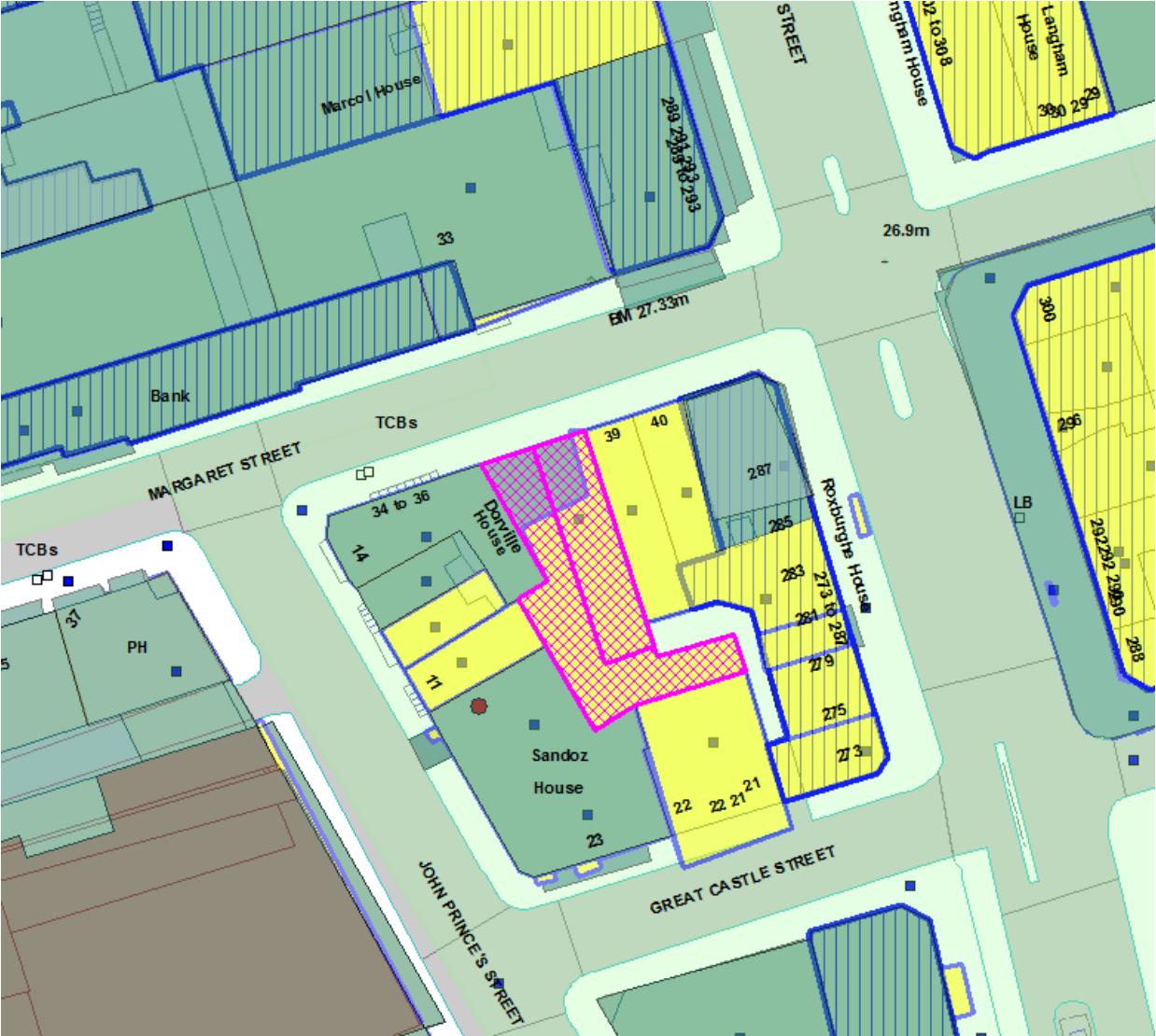
The nearest residential accommodation are four flats on the upper floors of Dorville House 14 John Prince's Street, these residential flats front onto Margaret Street immediately to the west of the application site. Objections have been received from The Marylebone Association and a nearby commercial office occupier that the proposed extended hours would adversely impact on amenity and would not benefit the area. However, no objections have been received from the occupiers of Dorville House. There are also three other licensed premises in the immediate vicinity, namely; All bar one at 291 Regent Street, The Finery Public House at 23 Great Castle Street, and The Phoenix Public House at 37 Cavendish Square. All three of these premises have a terminal hour earlier than proposed at the application premises. The latest closing time of All bar one is 11pm, the Finery Public House is open until midnight on Fridays, the Phoenix Public House is open until 2am (the following morning) on Fridays.

The approved premises license allows opening until 3am daily, however a condition on the license prevents the entrance on Margaret Street being used after 23.00 hours (other than for emergency purposes). The condition requires all access and egress between 23.00 and 03.00 to be from Great Castle Street.

It is acknowledged that the proposed extended hours would have a later terminal hour than other licensed premises in the vicinity. However there are no residential properties on Great Castle Street, therefore provided that access and egress onto Margaret Street is restricted until 23.00 hours as per the premises licence, the extended hours are considered to be acceptable and would not adversely impact on either residential amenity or the character of the area. It is however recommended that permission is granted for a temporary period of 1 year in the first instance to enable the position to be monitored.

The application initially also sought to vary condition 4 on permission dated 8 April 2015 to enable plant to operate until the later 3am closing time. However, as Environmental Health advised that the submitted acoustic report was inadequate, the proposal to vary condition 4 has now been omitted from this application. The applicant is aware that the operation of the plant will not correspond with the opening hours and has confirmed that a subsequent application accompanied by an updated acoustic report will be made to rectify this position.

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

MARYLEBONE ASSOCIATION:

Objection, adverse impact on amenity in terms of noise and disturbance

ENVIRONMENTAL HEALTH:

Object on the grounds that the acoustic report does not assess the impact of plant noise

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 65

Total No. of replies: 1

One letter of objection that the extended hours will generate more noise, rubbish waste and general disturbance for nearby commercial/ office occupiers and will not benefit the area in any way.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 Recent Relevant History

Planning permission was originally granted in February 1996 for use of the basement/ ground floor as a restaurant/bar - (Council ref: 95/05549).

On 30 September 1999, planning permission was granted for a variation of conditions 3 & 8 of 95/05549 to allow opening hours of 0800-2400 daily and use of the plant operation from 0800-2430 daily (Council ref: 99/02795).

On 8 April 2014, temporary planning permission was granted at appeal for a variation of conditions 3 & 8 of 99/02795 to allow opening hours of 0800-midnight on Sundays to Tuesdays; 0800-0130hrs on Wednesdays and Thursdays; and 0800-0230hrs on Fridays and Saturdays and hours of use for associated plant of 0800-2430hrs on Sundays to Tuesdays; 0800-0130hrs on Wednesdays and Thursdays; and 0800-0230hrs on Fridays and Saturdays (Council ref: 13/02825/FULL; PINS Ref: APP/X5990/A/13/2201970). The permission was granted on a 12-month trial basis.

On 8 April 2015, permanent planning permission was granted for a variation of conditions 3 & 8 of 99/02795 to allow opening hours of 0800-midnight on Sundays to Tuesdays; 0800-0130hrs on Wednesdays and Thursdays; and 0800-0230hrs on Fridays and Saturdays and hours of use for associated plant of 0800-2430hrs on Sundays to Tuesdays; 0800-0130hrs on Wednesdays and Thursdays; and 0800-0230hrs on Fridays and Saturdays (Council ref: 15/01461/FULL).

On 17 June 2014, the premises licence was granted at the premises for opening hours of 1000-0300hrs daily (Council Ref: 13/09648/LIPN).

BACKGROUND PAPERS

1. Application form
2. Memorandum from Environmental Health dated 17 November 2016
3. Email from Marylebone Association, dated 22 November 2016
4. Letter from occupier of 40 Margaret Street, dated 22 November 2016

(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: JO PALMER BY EMAIL AT jpalme@westminster.gov.uk.

DRAFT DECISION LETTER

Address: 37-38 , Margaret Street, London, W1G 0JF

Proposal: Variation of condition 3 of planning permission dated 8 April 2015 (RN 15/01461/FULL) which in itself varied condition 3 of planning permission dated 8 April 2014 for use of part of the ground floor as a restaurant (Class A3) (which allowed an extension to opening hours); NAMELY, to extend opening hours from 08.00 - 03.00 daily.

Reference: 16/10306/FULL

Plan Nos: Unnumbered site location plan (received 27 October 2016)

Case Officer: Mike Walton

Direct Tel. No. 020 7641 2521

Recommended Condition(s) and Reason(s)

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum., , (2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum., , (3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:, (a) A schedule

of all plant and equipment that formed part of this application; (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment; (c) Manufacturer specifications of sound emissions in octave or third octave detail; (d) The location of most affected noise sensitive receptor location and the most affected window of it; (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location; (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures; (g) The lowest existing L A90, 15 mins measurement recorded under (f) above; (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition; (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission.

- 3 Customers shall only be permitted within the restaurant premises between the hours of 08.00 and 03.00 the following morning daily for a temporary period of 1 year from the date of this permission . After which time customers shall not be permitted within the restaurant premises before 08.00 or after 12.00 midnight on Sunday to Tuesday, and before 08.00 or after 01.00 the following morning on Wednesday and Thursday and before 08.00 or after 02.00 the following morning on Friday and Saturday.

Reason:

To protect the environment of people in neighbouring properties as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and ENV 6, ENV 7 and TACE9 of our Unitary Development Plan that we adopted in January 2007. (R12AC)

- 4 The plant and associated equipment shall not operate except between the hours of 08.00 or after 00.30 the following morning on Sunday to Tuesday, and before 08.00 or after 01.30 the following morning on Wednesday and Thursday and before 08.00 or after 02.30 the following morning on Friday and Saturday.

Reason:

To safeguard the amenity of occupiers of noise sensitive properties and the area generally by ensuring that the plant/machinery hereby permitted is not operated at hours when external background noise levels are quietest thereby preventing noise and vibration nuisance as set out

in S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007.

- 5 After 23:00 hours access and egress from the premises shall be from the Great Castle Street entrance/exit and the entrance on Margaret Street shall only be used in the case of emergencies after this time.

Reason:

To protect the environment of people in neighbouring properties as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and ENV 6, ENV 7 and TACE 9 of our Unitary Development Plan that we adopted in January 2007. (R12AC)

Informative:

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (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, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.

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.