

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 28 February 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>	36-38 Lexington Street, London, W1F 0LJ		
<b>Proposal</b>	Use of the ground and basement floors as a sui generis use comprising retail and cafe elements.		
<b>Agent</b>	Indigo Planning		
<b>On behalf of</b>	Yoobi		
<b>Registered Number</b>	16/11269/FULL	<b>Date amended/ completed</b>	28 November 2016
<b>Date Application Received</b>	28 November 2016		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Soho		

## 1. RECOMMENDATION

Grant conditional planning permission.

## 2. SUMMARY

36-38 Lexington Street is an unlisted building located within the Soho Conservation Area, the Core Central Activities Zone, the West End Special Retail Policy Area and the West End Stress Area. The property comprises of basement, ground and first to fourth floor levels, the basement and ground floor of the property have lawful use as retail accommodation (Class A1) whilst the upper floors have lawful use as office accommodation (Class B1). Planning permission was granted in 2013 for a single storey extension at roof level and use of the upper floors as residential flats but it does not appear this consent was implemented and the consent has now expired.

Retrospective planning permission is sought for the use of the retail unit at basement and ground floor levels as a sui generis use comprising retail and cafe functions.

The key issues are:

- The loss of existing retail accommodation.
- The impact of the proposed use on the amenity of nearby sensitive occupiers.

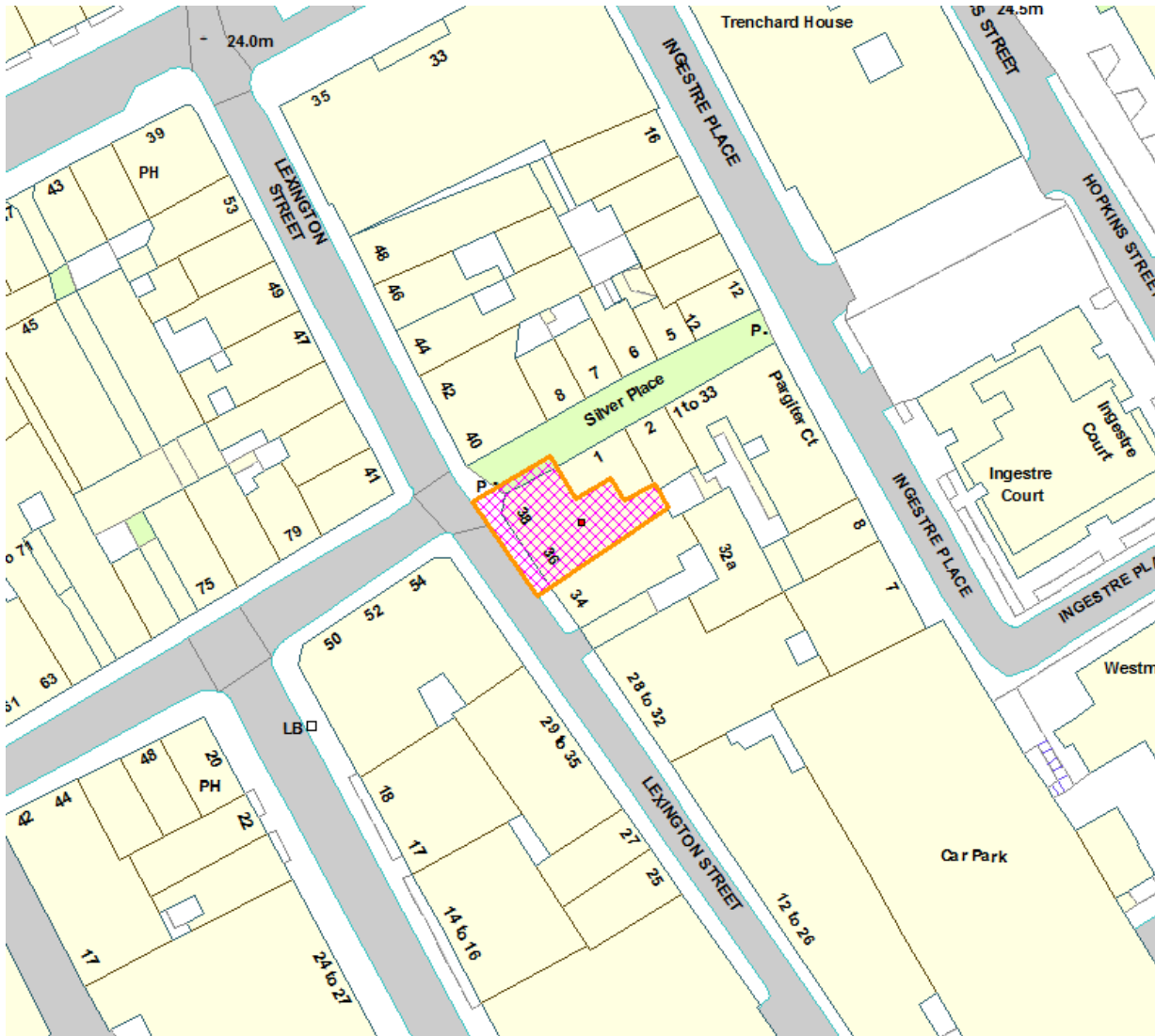
The loss of the retail accommodation is considered acceptable in this instance taking into account the proposed use, location of the property and the character of the immediate vicinity. Subject to

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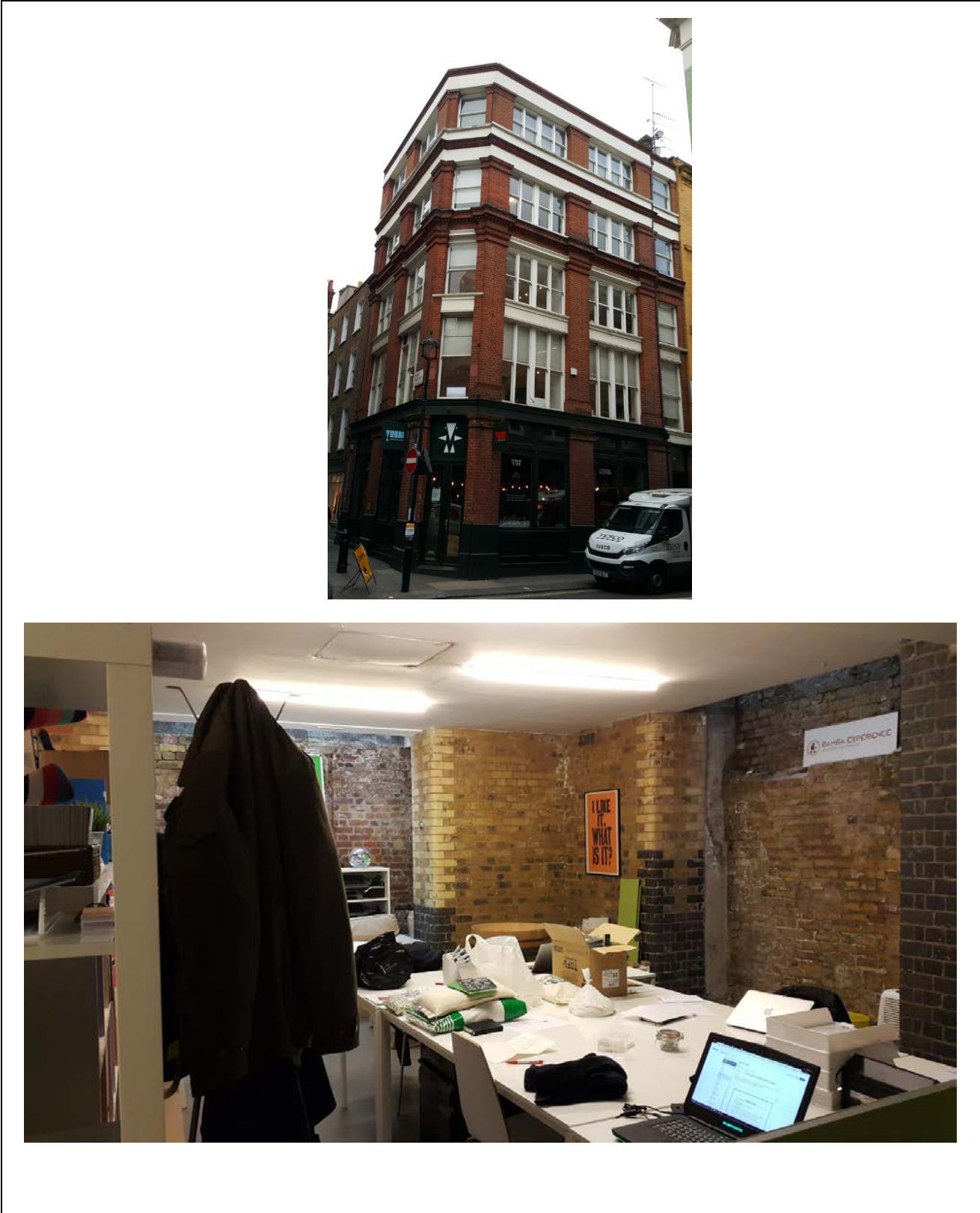
appropriate conditions it is also considered the proposed cafe / restaurant element will be acceptable in terms of its impact upon residential amenity in the vicinity. The proposal is therefore considered acceptable in land use, transport, design and amenity terms. The application is recommended for conditional approval being in compliance with the relevant Unitary Development Plan (UDP) and City Plan policies.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS





## 5. CONSULTATIONS

### SOHO SOCIETY

Objection on the following grounds:

Loss of retail accommodation affecting the mix of commercial uses in the vicinity.  
Increase in restaurant accommodation in the West End Stress Area.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 31

Total No. of replies: 2

No. of objections: 2

No. in support: 0

Objections on the following grounds:

Increase in noise disruption to residents.  
Loss of retail accommodation.  
Saturation of restaurant premises in the vicinity.

**PRESS ADVERTISEMENT / SITE NOTICE:** Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

36-38 Lexington Street is an unlisted building located on the corner of Lexington Street and Silver Place in the Soho Conservation Area, the Core Central Activities Zone, the West End Stress Area and the West End Special Retail Policy Area. The building comprises a lawful retail unit at basement and ground floor levels with office accommodation at first to fourth floor levels.

The retail premises is currently occupied by a sui generis use comprising retail and cafe functions. There is an open enforcement case in relation to the unauthorised change of use of the retail accommodation and this has prompted the submission of the current planning application.

### 6.2 Recent Relevant History

Planning permission was granted on the 5<sup>th</sup> September 2013 for the 'erection of a single storey roof extension and use of the first to fourth floors and new fifth floor level as seven residential flats (Class C3) comprising 5x1 and 2x3 bedroom units. Creation of a terrace at fifth floor level with a glazed balustrade.' This permission has not been implemented and has now expired.

A lawful development certificate was issued on the 15<sup>th</sup> December 2011 for the 'use of basement and ground floor as a retail shop (Class A1).' The applicant was the current occupier (Yoobi) who sought confirmation before occupation of the premises that their proposed operation would fall within Class A1 (Shops). This was on the basis that seating

would be limited to 13 covers and estimations that over 90% of the food purchased would be consumed off the premises and that the total hot food sales would average less than 2% of total sales. The operation appears to have opened soon after the lawful development certificate was issued. However, over time the operation of the unit has changed to include more seating and an enforcement case was opened on the 19<sup>th</sup> May 2015 to investigate whether this alteration to the operation of the premises represented an unauthorised change of use.

## 7. THE PROPOSAL

Permission is sought for the change of use of the premises at basement and ground floor levels to a sui generis use comprising retail and cafe / restaurant functions. The basement of the premises is utilised as an ancillary store, office, staff facilities and a customer toilet. The rear of the ground floor is utilised as a food preparation area with the front ground floor area being the sales area and customer seating for up to 32 customers. The unit provides a total floor area of 177m<sup>2</sup>.

## 8. DETAILED CONSIDERATIONS

### 8.1 Land Use

#### Loss of retail accommodation

Policy S21 of the City Plan states 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'. The supporting text advises that this approach will ensure that the needs of customers and retailers across the city are met through the retention of the number of shops and overall amount of retail floor space.

Policy SS5 of the UDP also seeks to resist the loss of retail floor space within the Core Central Activities Zone. Outside of the Prime Shopping Frontages the policy aims to encourage a balanced mix of appropriate street level activities, whilst maintaining and safeguarding residential communities.

In support of the proposal the applicant argues that the proposed operation will still provide a substantial retail function from the premises. According to the information provided by the applicant in the Planning Contravention Notice (PCN), 89% of the food sales on the premises is cold food for consumption off-site. The applicant also sells a range of speciality teas and home kits from the premises (although this appears to be a very small part of the overall operation). The applicant contends in their PCN that heated food only accounts for 2.0% of sales, being soup with no primary cooking taking place within the premises.

The unit is located at the eastern end of Beak Street on the corner of Lexington Street and Silver Place. The immediate vicinity along Silver Place, Lexington Street and the eastern end of Beak Street does not have a strong retail character and function. South along Lexington Street is primarily offices at ground floor level whilst to the north of the application site along Lexington Street is primarily restaurant premises. Silver Place to the east of the application site has relatively little footfall and it provides retail and beauty

premises. West along Beak Street is used as a mix of offices and restaurant premises at ground floor with some retail units. Planning permission was granted on the 29<sup>th</sup> April 2014 for the redevelopment of the neighbouring property to the south (34 Lexington Street) for a retail unit at ground floor and a restaurant at part ground and basement levels. The property to the north, 40-42 Lexington Street, is lawfully in office use but permission was granted in February 2017 for the use of the basement, ground, first and second floors as a dual alternative uses as either retail (Class A1) and / or office (Class B1). The property further to the north, 44 Lexington Street, is lawfully a shop at ground floor level. Opposite the site with a large frontage to both Lexington Street and Beak Street is a large office building for which permission was granted in 2016 for the use of part basement and ground floors as a retail unit.

On the basis of the current lawful use of 40-42 Lexington Street, the proposal would result in two consecutive ground floor premises on the eastern side of Lexington Street in non-A1 use. The shops at 34 Lexington Street and 44 Lexington Street would flank these two non-A1 uses. The result is that the loss of the lawful use at this site would not result in three consecutive non-A1 shop type units. The proposal therefore does not breach Part C of Policy SS5.

The main thrust of Policy SS5, however, is to ensure that the character and function of an area or the vitality or viability of a shopping frontage or locality is not harmed by the replacement of shops with non-A1 town centre uses. As set out above, given its location, and the fact that the premises would still retain a substantial retail function, it is not considered that the proposed change of use of the unit would undermine the character of the area. For this reason it is not considered the loss of retail floor space can be resisted in this instance. This is subject to a condition limiting the number of covers to 32 in order to prevent the future intensification of the restaurant element of the proposed use.

### **Proposed Cafe / Restaurant Element**

The property is situated within the West End Stress Area and the Core Central Activities Zone. Due to the size and location of the property the 'restaurant / café' element of the sui generis use needs to be considered with regard Policies TACE9 of the UDP and S24 of the City Plan. TACE9 states that new entertainment uses are only permissible where they would have no adverse impact on residential amenity or local environmental quality in terms of noise, smells, highways implications, increased late night activity and no adverse effect on the character and function of its area. Policy S24 is similarly worded.

The premises measures 177m<sup>2</sup> and provides 32 covers for those customers who choose to eat in. The PCN details that of the approximate 400-450 daily customers at the premises only 12% eat their purchase within the premises with the remainder taking their items away for consumption off-site. The proposed opening hours of the premises are 11:30 till 21:00 Monday to Saturday (the unit is closed on Sundays). This is the same as the current hours of opening. Conditions are proposed to restrict the number of covers and the opening hours as detailed above.

The nearest residential units are located on the upper floors within the adjoining building to the east at 1 Silver Place and on the upper floors of 34 Lexington Street being the adjoining building to the south. Taking into account the small number of people who could be seated in the cafe element of the premises and the early closing times, it is not



considered the proposal would have a detrimental impact upon nearby residents in terms of noise disturbance from patrons.

Objections have been received from neighbouring residential occupiers and the Soho Society due to the potential increase in noise associated with a new restaurant premises but, as detailed above, the current premises has a terminal hour of 21:00 which would be controlled by condition. Considering the premises closes so early in the evenings this would not result in an increase in noise disruption in the area at unsociable hours and the objections on these grounds could not be sustained.

An objector has commented that music has sometimes been played within the premises at 21:30 or 22:00. However, reading the emails between the two parties this seems to have been caused by cleaning staff playing music while they work in the evenings. Also, there are no current conditions on the hours of operation of the existing retail unit. Conditions relating to the opening hours are proposed in relation to the current planning application. A condition is also proposed limiting music being played to between 11.30 and 21.00 (Monday to Saturday) and stating that no music can be played in the premises which is audible externally or within adjoining properties. This is to ensure there is no noise nuisance to the adjoining residential occupiers. These conditions address the concerns of a neighbouring resident and provide the City Council with control in respect to the proposed use where there are currently no planning controls.

In terms of potential odour nuisance from the restaurant operation, 2.0% of the sales are of hot food in the form of soup which is heated in tureens. The applicant has stated that this is the only hot food which is sold from the premises and all other food is sold cold. Any cooked food (such as rice) is prepared in a central kitchen off-site. It is noted that there are very limited kitchen facilities within the unit and no equipment has been installed which would allow primary cooking. In these circumstances it is not considered necessary for high level extraction equipment to be installed and it is noted that no objections have been received to the application which detail any odour nuisance being caused by the current operation. A condition is recommended preventing any primary cooking and any re-heating of food (other than soup). An informative is suggested advising the applicant that the application is only considered acceptable in this regard due to the lack of primary cooking and hot food sales from the site and that any change with regard hot food sales may result in a change to the sui generis use on the site which would necessitate a new planning permission and also the installation of suitable extraction equipment to disperse any food odours.

Subject to the imposition of the conditions referred to above it is not considered the proposed use would adversely impact on residential amenity and the proposal is therefore considered to comply with Policy S24 of the City Plan and Policy TACE9 of the UDP.

### **Impact on character and function of the area**

The area is mixed use in character comprising commercial offices, retail and entertainment uses and a number of residential properties. There are some licensed premises in the vicinity although it is not considered that the area is saturated with such uses. The nearest licensed premises are restaurants at 43 Lexington Street (08:00 till 23:30), 45 Lexington Street (10:00 till 23:30) and 46 Lexington Street (10:00 till 23:30).

Objections have been received from neighbouring residential occupiers and the Soho Society concerned about the number of restaurants in the vicinity of the site and 'over-saturation' of the area with entertainment uses. A land use survey has been undertaken of the ground floor uses along the section of Lexington Street to the junction of Broadwick Street to the north, along Beak Street to the junction of Bridle Lane to the west, along Silver Place to the junction with Ingestre Place to the east and approximately 30m along Lexington Street to the south. It identifies that there are 33 commercial units, of these 20 are in use as retail shops, 5 restaurants, 2 public houses, 3 offices and 1 is vacant (with the lawful use uncertain). Restaurants and public houses constituted 21% of the number of individual units within the immediate area. It is not therefore considered that there is an overconcentration of restaurant / entertainment uses in the vicinity with the majority of the nearby units being in retail use. It is also important to note that the premises will still retain a significant retail function and the unit will be closed to customers from 21:00 daily (except Sunday where it is closed all day) which will not lead to any increase in noise for residential occupiers at sensitive times of the day. The objections received on these grounds are not therefore considered acceptable.

## **8.2 Townscape and Design**

The application does not include any external alterations to the property.

## **8.3 Residential Amenity**

The impact of the proposal on the residential amenity of nearby occupiers has been discussed in Section 8.1 above.

## **8.4 Transportation/Parking**

It is not considered the proposed sui generis operation would result in any additional servicing requirements when compared to the lawful retail operation. The site is also within a Controlled Parking Zone and therefore all delivery vehicles will have to accord with the on street parking and loading restrictions.

## **8.5 Economic Considerations**

No economic considerations are applicable for a development of this size.

## **8.6 Access**

No changes are proposed to the access arrangements to the property. Currently no level access is provided to the ground floor level with steps between the unit and street level.

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

### **Waste / Recycling**

A condition is proposed requiring the submission of detailed drawings to show suitable storage within the demise of the premises for waste and recycling materials.

### **8.8 London Plan**

This application raises no strategic issues.

### **8.9 National Policy/Guidance Considerations**

The City Plan and UDP policies referred to in the consideration of this application are considered to be consistent with the NPPF unless stated otherwise.

### **8.10 Planning Obligations**

Planning obligations are not relevant in the determination of this application and as the application is for a change of use without additional floor area, the proposal does not include a requirement for a CIL payment.

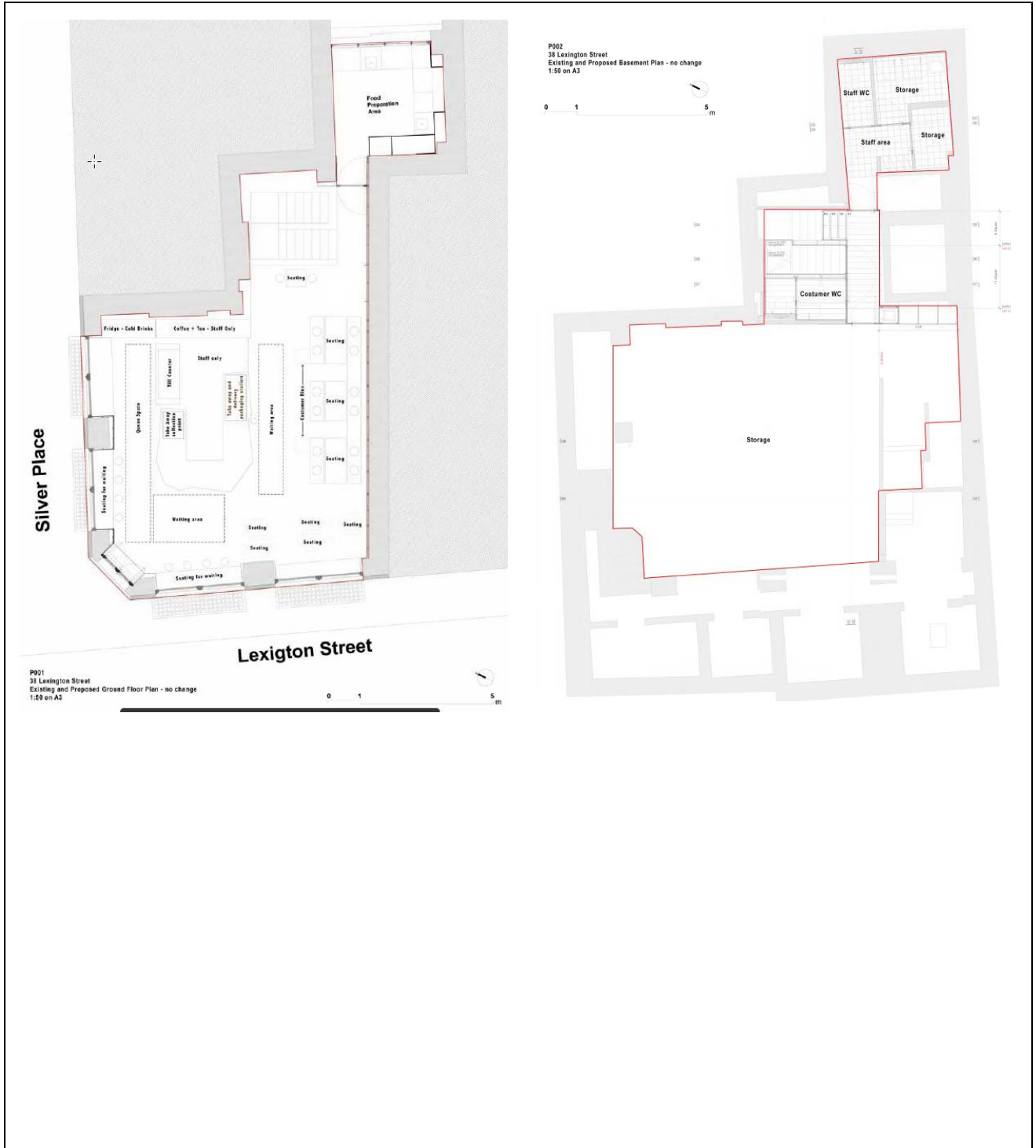
## **9. BACKGROUND PAPERS**

1. Application form
2. Response from Soho Society, dated 11 December 2016
3. Letter from occupier of 1B Silver Place, London, dated 19 December 2016
4. Letter from occupier of Flat 2, 1B Silver Place, London, dated 18 January 2017

(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: MARK HOLLINGTON BY EMAIL AT [mhollington2@westminster.gov.uk](mailto:mhollington2@westminster.gov.uk)

### 10. KEY DRAWINGS



**DRAFT DECISION LETTER**

**Address:** 36-38 Lexington Street, London, W1F 0LJ,

**Proposal:** Use of the ground and basement floors as a sui generis use comprising retail and cafe elements.

**Reference:** 16/11269/FULL

**Plan Nos:** P001, P002.

**Case Officer:** Matthew Giles

**Direct Tel. No.** 020 7641 5942

**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 You must not cook raw or fresh food on the premises and the only food that may be reheated is soup.

Reason:

The plans do not include any kitchen extractor equipment. For this reason we cannot agree to unrestricted use as people using neighbouring properties would suffer from cooking smells.

This is as set out in S24 and S29 of Westminster's City Plan (November 2016) and ENV 5 of our Unitary Development Plan that we adopted in January 2007.

- 3 You must not provide more than 32 covers in the property at any one time.

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TACE9 of our Unitary Development Plan that we adopted in January 2007.

- 4 You must not play live or recorded music outside the following hours: 11:30 till 21:00 Monday to Saturday.

Any live or recorded music played within the premises must not be audible externally or in adjacent properties.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of

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

- 5 You must not open the restaurant premises to customers, and you must not allow customers on the premises, outside the hours:

11:30 till 21:00 Monday to Saturday.

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TACE9 of our Unitary Development Plan that we adopted in January 2007. (R05AB)

- 6 You must apply to us for approval of details of how waste is going to be stored on the site and how materials for recycling will be stored separately. Within 6 months of the date of this decision you must either: (i) Provide the stores for waste and materials for recycling in accordance with the approved details; or (ii) Cease to operate the unit. You must clearly mark the stores and make them available at all times to everyone using the property.

Reason:

To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan (November 2016) and ENV 12 of our Unitary Development Plan that we adopted in January 2007. (R14BD)

- 7 You must operate the use in accordance with the layout shown on the approved ground and lower ground floor plans.

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TACE9 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. 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.
- 2 Buildings must be provided with appropriate welfare facilities for staff who work in them and for visiting members of the public.

Detailed advice on the provision of sanitary conveniences, washing facilities and the provision of drinking water can be found in guidance attached to the Workplace (Health, Safety and Welfare) Regulations 1992.

[www.opsi.gov.uk/SI/si1992/Uksi\\_19923004\\_en\\_1.htm](http://www.opsi.gov.uk/SI/si1992/Uksi_19923004_en_1.htm) The following are available from the British Standards Institute - see <http://shop.bsigroup.com/>:

BS 6465-1:2006: Sanitary installations. Code of practice for the design of sanitary facilities and scales of provision of sanitary and associated appliances BS 6465-3:2006: Sanitary installations. Code of practice for the selection, installation and maintenance of sanitary and associated appliances. (I80HA)

- 3 This planning permission grants consent for the sui generis use of the premises. This means that the use is not in any particular use class. Any future plans to materially (significantly) change the use that we have approved will require the benefit of planning permission including any changes to the level of seating or the proportion / preparation or type of hot food sold within the premises.
- 4 Please contact our Environmental Health Service (020 7641 2971) to register your food business and to make sure that all ventilation and other equipment will meet our standards. Under environmental health law we may ask you to carry out other work if your business causes noise, smells or other types of nuisance. (I06AA)

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.