

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 12 September 2017	Classification For General Release	
Report of Director of Planning		Ward(s) involved West End	
Subject of Report	Kingly Court, Kingly Court, London, W1B 5PW,		
Proposal	Retention of retail Units 2.12 and 2.13 as s restaurant (Class A3) use on a permanent basis.		
Agent	Rolfe Judd Planning		
On behalf of	Shaftesbury AV Ltd		
Registered Number	17/05109/FULL	Date amended/ completed	23 June 2017
Date Application Received	9 June 2017		
Historic Building Grade	Unlisted		
Conservation Area	Soho		

1. RECOMMENDATION

Grant conditional permission

2. SUMMARY

Kingly Court is a three storey block of shop units situated between Carnaby Street and Kingly Street within Soho. It is occupied primarily by restaurant and cafe' uses. The application relates to the use of two adjacent units (no's 2.12 and 2.13) on the 2nd floor at the northern end of Kingly Court. In addition to other restaurants cafe's there are a small number of retail uses and a yoga studio on the 2nd floor. The application premises have been occupied by 'Dirty Bones' as a restaurant (Class A3) since September 2015 pursuant to a temporary flexible use.

In 2013 an amendment to the General Permitted Development Order introduced a change to permitted development rights to allow a building of less than 150 m2 within Class A1 to change to Class A3 (restaurants and cafes') for a temporary period of 2 years. A condition of the temporary permitted development is that the site reverts to its previous lawful use at the end of the 2 year period. In September 2015 the Council received a formal notification for the implementation of a temporary Class A3 restaurant/café at the application premises. The restaurant use commenced on 28th September 2015 and will therefore expire on 28 September 2017. Permission was also granted for a ventilation extract duct in September 2015 which has been installed. Permission is now sought for permanent use of the units as a restaurant (Class A3).

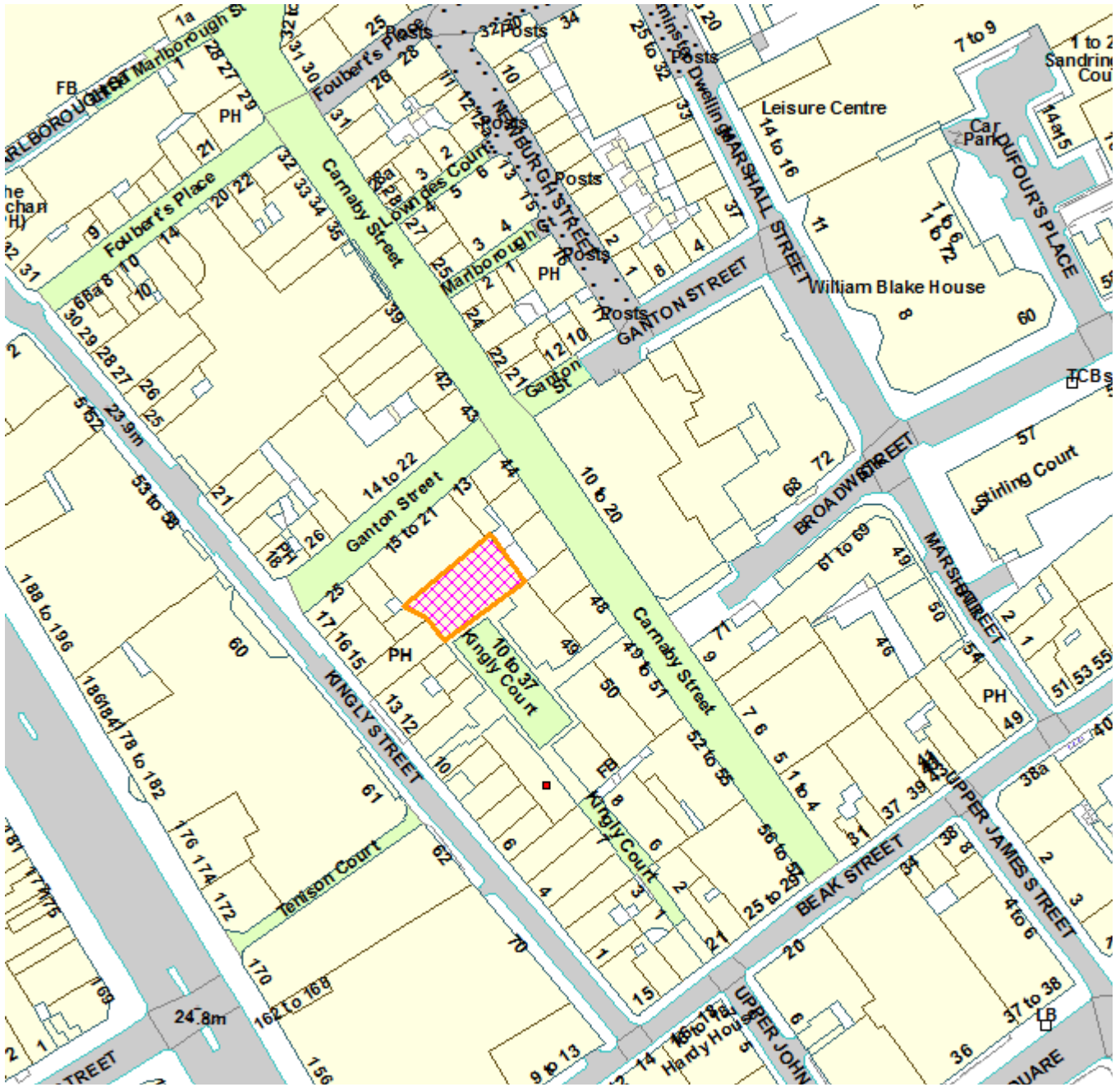
Prior to the existing restaurant use the premises was used for retail Class A1 purposes. The site lies within the West End Special Retail Policy Area (WESRPA), City Plan policy S7 seeks to maintain and enhance the unique status and offer of the WESRPA. Policy S21 of the City Plan states that existing A1 uses will be protected throughout Westminster.

Kingly Court operates as a successful food court destination, providing an area of casual dining which supports the strong retail offer on Regent Street and Carnaby Street. The applicant argues that requiring the premises to revert back to retail would be inconsistent with the offer now provided in Kingly Court.

The application needs to be assessed against UPD policy TACE 8 and City Plan policy S24. These policies allow restaurants provided that there is no adverse impact on the environment or residential amenity. The existing restaurant has 50 covers within a demise of 112 m². The opening hours are 10.00am to 00.00pm (midnight) Monday to Thursday, 10.00am to 00.30 (the following morning) Friday and Saturday and 12.00 to 23.00 on Sunday in accordance with the licence. Servicing is from Kingly Street, which is the case for the other units within Kingly Court. Refuse and waste is managed through the Kingly Court waste management centre.

Kingly Court has developed into a well known food, retail and dining destination within Soho. The premises has been operating as a restaurant for the past 23 months without harm to residential amenity or the character of the area. Retention of the use on a permanent basis is consistent with the character of Kingly Court as a catering destination in support of the nearby shopping streets. The application is considered to accord with adopted UDP and City Plan Policies and is accordingly recommended for approval.

3. LOCATION PLAN



4. PHOTOGRAPHS



5. CONSULTATIONS

SOHO SOCIETY

No objection (provided that acoustic mitigation is provided to the satisfaction of Environmental Health department)

ENVIRONMENTAL HEALTH:

No objection

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 71

Total No. of replies: 1

No. of objections: 0

No. in support: 0

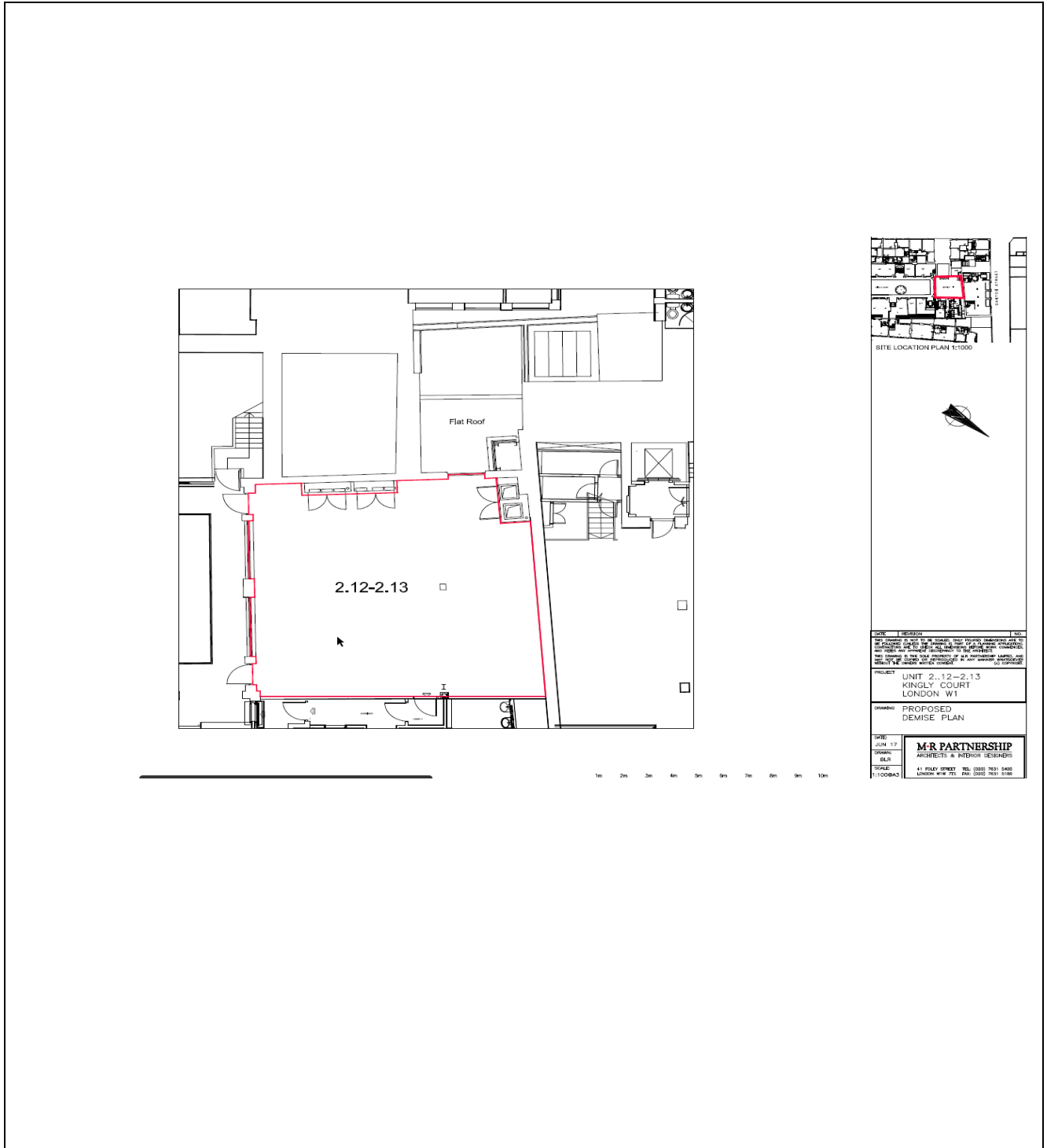
6. BACKGROUND PAPERS

1. Application form
2. Response from EH Consultation, dated 10 July 2017
3. Letter from occupier of St Anne's Tower, 55 Dean Street, dated 28 July 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: MIKE WALTON BY EMAIL AT mwalton@westminster.gov.uk

7. KEY DRAWINGS



DRAFT DECISION LETTER

Address: Kingly Court, Kingly Court, London, W1B 5PW,

Proposal: Retention of retail Units 2.12 and 2.13 as (Class A3) use on a permanent basis.

Reference: 17/05109/FULL

Plan Nos: 3041 D02, 3041 04, 3041 006

Case Officer: Mark Hollington

Direct Tel. No. 020 7641 2523

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 Customers shall not be permitted within the restaurant premises outside the hours: before 10.00 or after 00:00 (midnight) on Monday to Thursday, before 10.00 or after 00.30 the following morning on Friday and Saturday and before 12.00 or after 23.00 on Sunday

Reason:

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

- 3 The high level extract duct shown on the approved drawings shall be retained as long as the restaurant use is in operation

Reason:

To protect the environment of people in neighbouring properties as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6, ENV 7 and DES 5 of our Unitary Development Plan that we adopted in January 2007. (R14AC)

- 4 You must not allow more than 50 customers into the property at any one time

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet of our

Unitary Development Plan that we adopted in January 2007. (R05AB)

- 5 (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 LA90, 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.

- 6 No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.

Reason:

As set out in ENV6 (2) and (6) of our Unitary Development Plan that we adopted in January 2007, to ensure that the development is designed to prevent structural transmission of noise or vibration.

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 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)
- 3 Please contact our Environmental Health Service (020 7641 2000) to make sure you meet their requirements under the Control of Pollution Act 1974 and the Environmental Protection Act 1990. (I07AA)
- 4 Conditions 5 and 6 control noise from the approved machinery. It is very important that you meet the conditions and we may take legal action if you do not. You should make sure that the machinery is properly maintained and serviced regularly. (I82AA)

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.