

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 14 th November 2017	Classification For General Release	
Report of Director of Planning		Ward(s) involved West End	
Subject of Report	23-25 Mortimer Street, London, W1T 3JE		
Proposal	Erection of a single storey extension at main roof level with associated alterations to the existing roof to create a new sixth floor with a terrace for use as a new residential flat (Class C3).		
Agent	Milan Babic Architects		
On behalf of	Mortimer London LTD		
Registered Number	17/05705/FULL	Date amended/ completed	6 July 2017
Date Application Received	28 June 2017		
Historic Building Grade	Unlisted		
Conservation Area	No		

1. RECOMMENDATION

Grant conditional planning permission.

2. SUMMARY

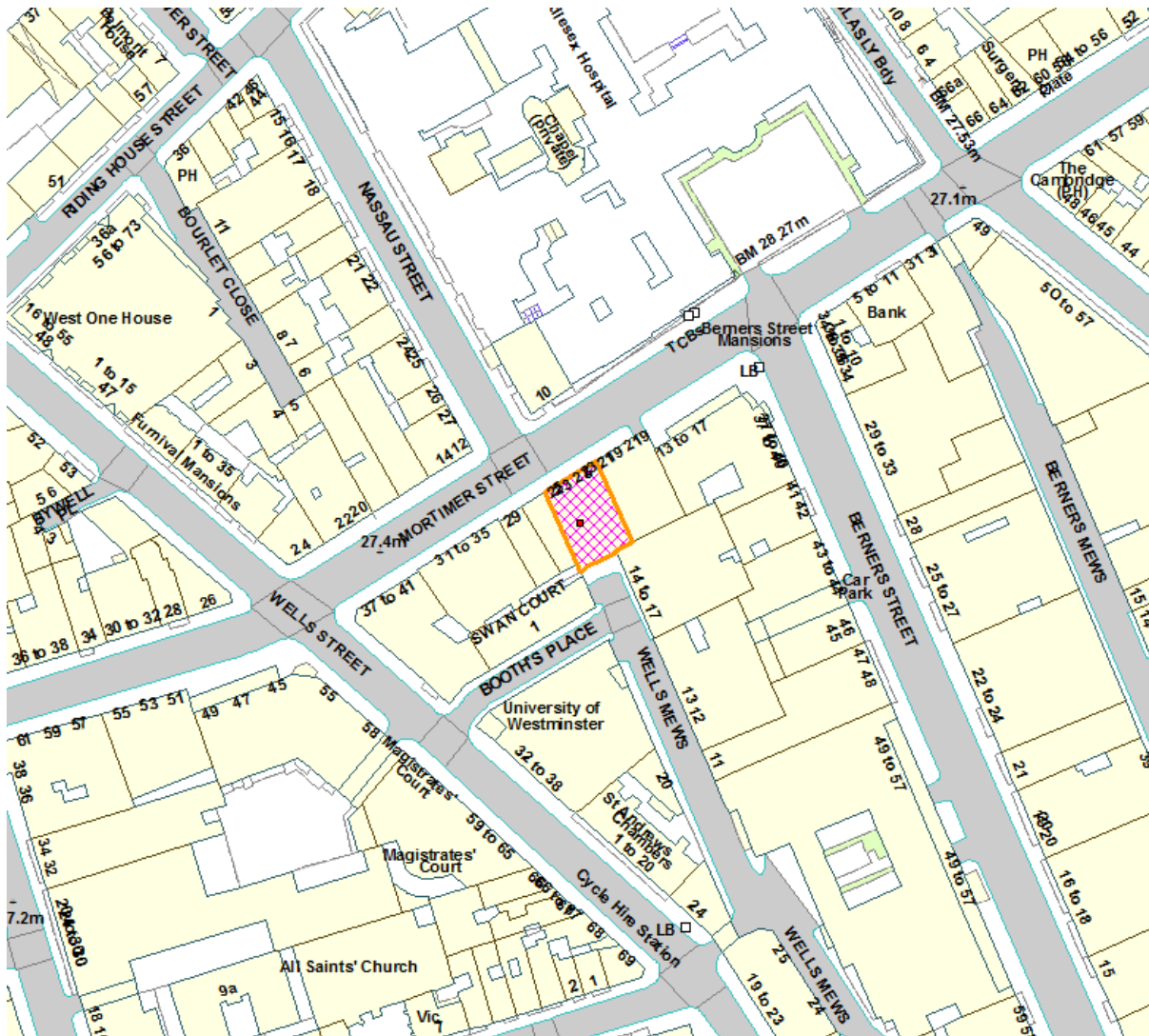
23-25 Mortimer Street is an unlisted building located just outside the boundary of the East Marylebone Conservation Area. The property comprises retail accommodation at basement and ground floor levels with ten residential flats at first to fifth floor levels. Planning permission is sought for the erection of a new sixth floor level for use as a residential unit with a terrace area at the rear. The creation of the new sixth floor flat also involves alterations to the fifth floor flat as the existing sloping roof to the penthouse unit is proposed to be reconfigured.

The key issues for consideration are:

- The impact of the single storey roof extension in design terms and the impact on the appearance of the building.
- The impact of the development on the residential amenity of nearby occupiers.

Subject to conditions, the proposal is considered acceptable on land use, design and highways grounds and in terms of its impact upon the amenities of neighbouring occupiers. The application is considered to comply with the relevant City Plan and Unitary Development Plan (UDP) policies and is therefore recommended for approval.

3. LOCATION PLAN



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4. PHOTOGRAPHS





5. CONSULTATIONS

FITZROVIA NEIGHBOURHOOD ASSOCIATION

Any response to be reported verbally.

HIGHWAYS PLANNING

No objection subject to conditions.

CLEANSING

No objection subject to conditions.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 32; Total No. of replies: 8

8 letters of objections on the following grounds:

Amenity

*Overlooking from the proposed sixth floor rear terrace of the existing fifth floor terrace serving the unit at this level.

*The proposed new unit would not be an acceptable standard.

*Noise and disturbance during the construction process.

*Loss of daylight / sunlight to 12-14 Mortimer Street and residential flats on the upper floors of the building itself.

Design

*Proposed design is considered unacceptable and would have a negative impact on the appearance of the building and wider street scene.

*Exterior parts of the building are in need of refurbishment.

Other issues

*Detrimental impact upon the human rights of the occupiers of the fifth floor flat with regard the right to a private family life and home.

*Requirement for structural alterations to Flat 10 (fifth floor level) to enable the construction of the proposed sixth floor.

*Notice was not correctly served on the relevant parties with regard the previous planning consent and the current application.

*Fire escapes routes have not been indicated on the drawings with regard escape over the roof of the property.

*Inaccurate information has been provided in the application with regard the waste / recycling storage.

*Extension to the lift shaft will require works to the lift which will inconvenience other residents of the building.

*Proposed development cannot be built without the consent of other interested parties.

*Impact on parking levels within the vicinity

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

The property is unlisted and located outside of any designated conservation area on the southern side of Mortimer Street. The building comprises of a retail unit at ground floor level with ten residential flats on the first to fifth floor levels of the property. The fifth floor is currently used as a single residential flat with terrace areas to the front and rear of the unit. As set out below, there have been a number of recent planning decisions relating to the property, including a permission granted on 5th April 2017 for an identical scheme. This planning permission is currently the subject of a Judicial Review relating to whether the Ownership Certificate on the application had been correctly completed and notice served on the relevant parties.

6.2 Recent Relevant History

5th April 2017 – Planning permission granted for the ‘erection of a single storey extension at the front of the property at sixth floor level with an associated terrace for use as a new residential flat (Class C3).’ This permission has not been implemented and is currently subject to an on-going Judicial Review.

8th July 2016 – Planning permission granted for the ‘erection of a single storey extension at the front of the property at sixth floor level with an associated terrace for use as residential accommodation (Class C3) in connection with Flat 10.’ This permission has not been implemented.

23rd May 2016 – Planning permission granted for the ‘erection of a single storey extension at rear fifth floor level in place of existing terrace.’ This permission has not been implemented.

7. THE PROPOSAL

Permission is sought for the erection of a single storey extension at main roof level to provide a new residential unit with a small terrace area provided to the rear of the new sixth floor level. The existing communal staircase and lift serving the block would be extended to the proposed new sixth floor. There is an existing sloping roof to the top floor flat which would be reconfigured as part of the proposal. This would also require internal alterations to the top floor flat.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The proposed increase in residential floor space is compliant with policies H3 of the UDP and S14 of the City Plan, both of which seek to increase the number of residential units in Westminster. The new residential unit measures 44.5m² which complies with the minimum size requirements for studio flats as detailed in the London Plan. An objection has been received stating that the proposed flat will require alterations to the existing flat at fifth floor level (for which consent would not be given). The objector believes this may result in a flat

being built which is sub-standard. However, if a smaller flat is constructed it would subsequently not have been built in accordance with any approved drawings.

The proposal involves changes to the roof of the fifth floor flat which would reduce the height of this property by approximately 1 metre. It is not considered that the loss of this part of the building, particularly as the majority of the retained front elevation of this property is fully glazed, would result in a sub-standard form of residential accommodation. As detailed elsewhere in the report, the fifth floor flat appears to be held on a long lease and the leaseholder has objected to any alterations to their flat. The proposed changes to the front elevation of the flat are acceptable in planning terms according with relevant policies of the City Council, and any issue relating to the right to carry out the works is a private matter between the relevant parties.

8.2 Townscape and Design

The existing building stands on the south side of the street and is not in a conservation area. The Mortimer Street façade is set back from the building line, is of stucco with grey-green window frames, and has projecting balconies. It stands between a handsome Edwardian building of red brick with stone detailing and a streamlined stucco building of art-deco appearance. The East Marylebone Conservation Area adjoins the site to the west and its boundary continues along the centre of the street opposite the site. Also opposite the site is the grade II listed No. 10 Mortimer Street which stands on the corner of Nassau Street and is part of the recently redeveloped Middlesex Hospital site. There are also listed buildings at No. 26, No. 23, and No. 20 Nassau Street. The site is clearly visible in views along Nassau Street and Mortimer Street. It is also visible from Wells Mews, at the rear where, some way to the south, can be found the grade II listed 'St Margaret's House', and the grade II-star listed 'Sanderson Hotel'.

The proposed extension at roof level wraps around the existing plant and lift motor rooms and has a largely glazed façade to Mortimer Street. The rear façade is mostly solid with the exception of doors leading to a terrace area on the southeast corner of the building. The Design & Access Statement notes at para. 4.01 that the rear façade of the extension will be "*rendered with glazing to match the existing façade*", and the front will "*...consist of a curtain wall with some partially openable glazed panels to ensure proper ventilation of the building.*"

As before, the extension's design is intended to harmonise with the floor to the current top storey. Glazing bars are visually carried through from the floor below and the height of the penultimate storey is equal to the ridge height of the adjacent building to the west.

The 2016 approval is understood to have allowed for a combination of glazing and metal panels to the Mortimer Street elevation, to provide privacy for the dressing room (although this is not immediately obvious from the drawings). The new arrangement is for a fully glazed facade, which is consistent with the street façade of the floor below. The extent of the setback remains the same as both the 2017 and 2016 approvals which will help to minimise the appearance of the new storey in views along Mortimer Street, and will reduce the appearance of its bulk in the key view from Nassau Street.

There have been strong objections to the scheme on various grounds, including design and heritage matters. The objections raise legitimate matters of concern. Nevertheless,

the building is suitable, in principle, for a roof extension and the proposed alterations at roof level have been designed to suit the appearance of the building in terms of its detailed design and materials of construction. This accords with UDP policy DES 6. Furthermore, the height and bulk of the extension has been designed to ensure it respects the neighbouring building to the west, which is in the East Marylebone Conservation Area, which accords with UDP policy DES 9. The development would not harm any designated heritage assets or their settings. The set-back of the extension and its detailed design will ensure that it is not a dominant feature in longer views from Nassau Street, thereby preserving the setting of the East Marylebone Conservation Area and the setting of nearby listed buildings, as required by UDP policies DES 9 and DES 10. Likewise, when seen from the upper floors of surrounding buildings and from the rear in Wells Mews, the alterations are acceptable in design and heritage asset terms.

8.3 Residential Amenity

Sunlight and Daylight

An objection has been received to the proposal from 12-14 Mortimer Street, being a property on the opposite side of Mortimer Street approximately 22m to the west of the application site. Council records indicate this property is in use as office accommodation. As ENV13 seeks only to protect residential and other sensitive uses it is not considered that a reason for refusal could be sustained on the grounds of loss of light to existing office windows.

An objection has also been received concerned about losses of daylight / sunlight to existing residential flats within the building. However, it is not considered the upward extension of the building at sixth floor level would have any material impact on daylight / sunlight to the properties immediately beneath, and it is not considered that the application could be refused on these grounds.

Privacy

The proposal includes the creation of a small terrace (16m²) at the rear of the new sixth floor. There are existing terraces serving the fifth floor flat to the front and rear of the property at this level and the occupier of the fifth floor flat has objected to the creation of the sixth floor terrace on the grounds that this would result in overlooking both of the fifth floor terrace and fifth floor flat itself. It is not considered that overlooking would arise to the living accommodation beneath but it is recognised that the provision of the proposed terrace could result in some overlooking of the terrace beneath at the rear. Policy ENV13 of the UDP states that development should not result in a 'significant increase in the sense of enclosure or overlooking' whilst S29 of the City Plan is similarly worded. However, given the limited size of the proposed terrace and given that the existing plant room prevents direct overlooking of part of the terrace, it is not considered that the degree of overlooking would be so harmful to warrant refusal.

8.4 Transportation/Parking

Overall parking pressures in this area remain below the stress level as defined in Policy TRANS23 of the UDP. The introduction of increased levels of residential accommodation in this area without off-street parking or on-street parking restraint could result in an increased demand for parking and an objection has been received on this issue. On the basis of the Council's data and car ownership levels, any increased parking demand

resulting from the additional residential unit can be absorbed into the surrounding street network without exceeding the stress levels and therefore the development is consistent with TRANS23.

The Highways Planning Manager has asked for the provision of cycle parking for the residential unit, however, as the flat will be built above an existing retail use there is no space of the cycle parking to be accommodated at ground floor level. On this basis it is not considered reasonable to request ground floor cycle parking to be accommodated in this building.

8.5 Economic Considerations

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

8.6 Access

The existing lift is to be extended to provide access to the new unit.

8.7 Other UDP/Westminster Policy Considerations

Refuse /Recycling

The proposal does not indicate where waste and recycling will be stored within the property and a condition is therefore applied requiring the submission of amended drawings to show waste and recycling storage within the flat. A number of objectors have remarked on comments in the application submission about communal waste / recycling storage in the basement of the property which they claim is inaccurate. Whilst this may be an error in the submission, to address the concerns, a condition is imposed requiring further information on the waste / recycling storage. The Cleansing Manager has raised no objection to the application with this condition in place.

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. The estimated CIL payment relating to the creation of an additional residential unit is £3,793 for the mayoral CIL and £24,974 for the Westminster CIL.

8.11 Other Issues

Construction Impact

An objection has been received on behalf of Flat 10 stating that the proposed construction would require major structural alterations to their flat at fifth floor level. They state they

would not consent to these works being carried out and they would not permit any required changes to the relevant lease. Similar objections have been received from other residential occupiers within the building in relation to the extension to the communal staircase and the lift for which they consider the consent of the management company will be required. These are private issues between the relevant parties and it is not necessary in determining a planning application to determine whether the applicant (being the freeholder) currently has the right to construct the proposal. The application could not be legitimately refused on these grounds. Objections have been received in relation to the proposed extension of the communal lift to sixth floor level and inconvenience to other flat occupiers while the lift is extended. This is not a matter on which planning permission could be refused.

A number of objectors have commented on noise disruption during construction. A condition is proposed to restrict the hours of noisy building works to ensure they do not take place at times detrimental to residential amenity.

Ownership Certificate

It would appear that the required notice was not correctly served on relevant interested parties in relation to the planning application submitted by the freeholder earlier this year and that planning application is currently subject to Judicial Review relating to this matter. This issue has been raised by a number of the objectors explaining why they did not object to the previous application. The objectors argue that had objections been received that the previous permission would not have been granted. This is noted, but each application is determined on its own merits.

It is noted that two objectors have commented that they have not had notice served on them in relation to the current application, however, the applicant confirms that notices were served on all registered leasehold owners of all flats within the block, including directly to solicitors and/or offshore companies where they are the registered leasehold owner. The applicant advises the list of registered owners was provided by the previous management company of the block. Notice has now been served on 19 addresses whilst there are 10 units in the block and all flats within the building have also been sent a letter by the City Council, in addition to the site notice displayed outside the property and the press notice. Taking this into account it is considered all residents will be aware of the current application and the applicant has taken the necessary steps to notify all legal leasehold owners of the flats in the building.

Fire Escape

Comments have been received with regard a potential fire escape over the roof of the building and what the proposed fire escape arrangements will be with the new proposal. This would be a matter considered under separate building regulation legislation. An Informative has been proposed to inform the applicant of this issue.

Maintenance/Structural matters

An objector has commented on the general maintenance of the exterior of the building which they consider inadequate but this is not considered relevant to the determination of the application. Another objector refers to the lack of a structural report, however this is a matter for the Building Regulations.

Human Rights Act

One objection refers to the interference with their right to property, and to a private and family life, respectively guaranteed by Article 1 Protocol 1 and Article 8 of the European Convention on Human Rights. For the reasons given above in relation to residential amenity, any interference with those rights resulting from the proposed development would be limited. Both are qualified rights and any interference with them would be outweighed by the public interest in increasing the residential floorspace in Westminster and proportionate.

9. BACKGROUND PAPERS

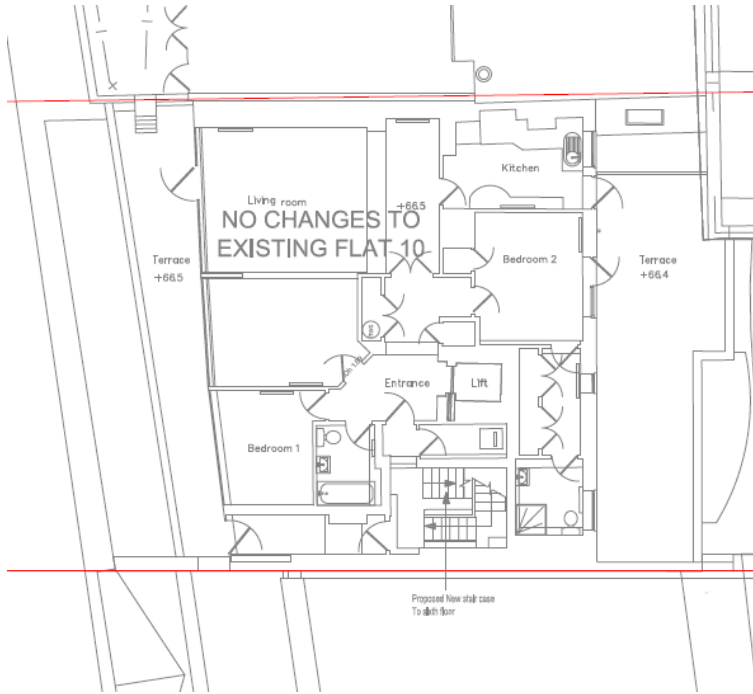
1. Application form
2. Response from the Cleansing Manager dated 20 July 2017
3. Response from the Highways Planning Manager dated 21 July 2017.
4. Letter from occupier of 16 Cedar Avenue West, Chelmsford, dated 14 July 2017
5. Letter from occupier of 12-14 Mortimer Street, London, dated 14 July 2017
6. Letter from occupier of Flat 1, 23-25 Mortimer Street, dated 24 July 2017
7. Letter from occupier of Flat 2 23-25 Mortimer Street, London, dated 27 July 2017
8. Letter from occupier of Flat 9, 23-25 Mortimer St, dated 28 July 2017
9. Letter from occupier of Flat 5, 23-25 Mortimer Street, dated 28 July 2017
10. Letter from occupier of Flat 6, 23-25 Mortimer Street, dated 30 July 2017
11. Letter from occupier of Flat 4, 23-25 Mortimer Street, dated 30 July 2017
12. Letter from Russell-Cooke Solicitors, 2 Putney Hill, London, dated 31 July 2017
(representing Flat 10, 23-25 Mortimer Street)

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

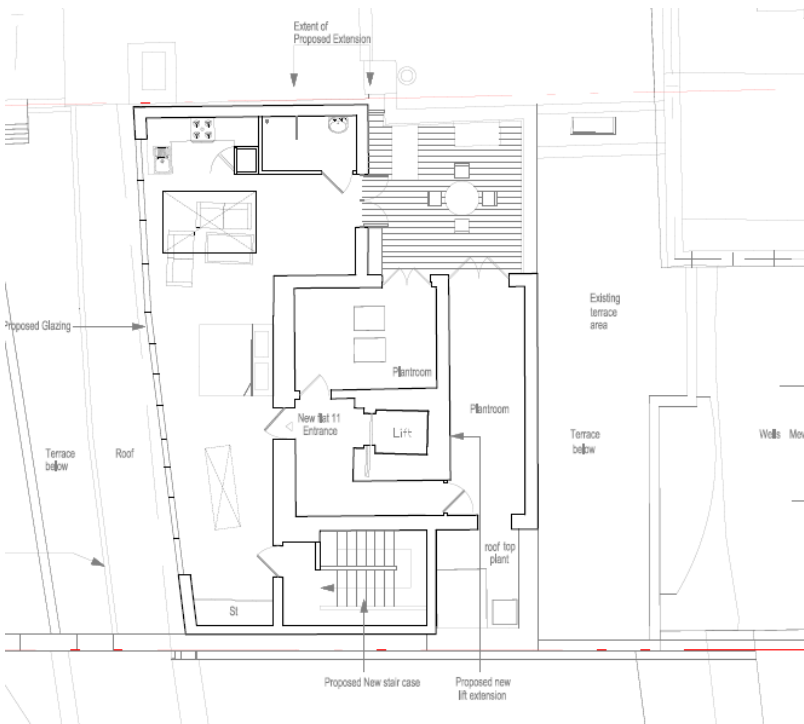
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: JO PALMER BY EMAIL AT jpalme@westminster.gov.uk

10. KEY DRAWINGS

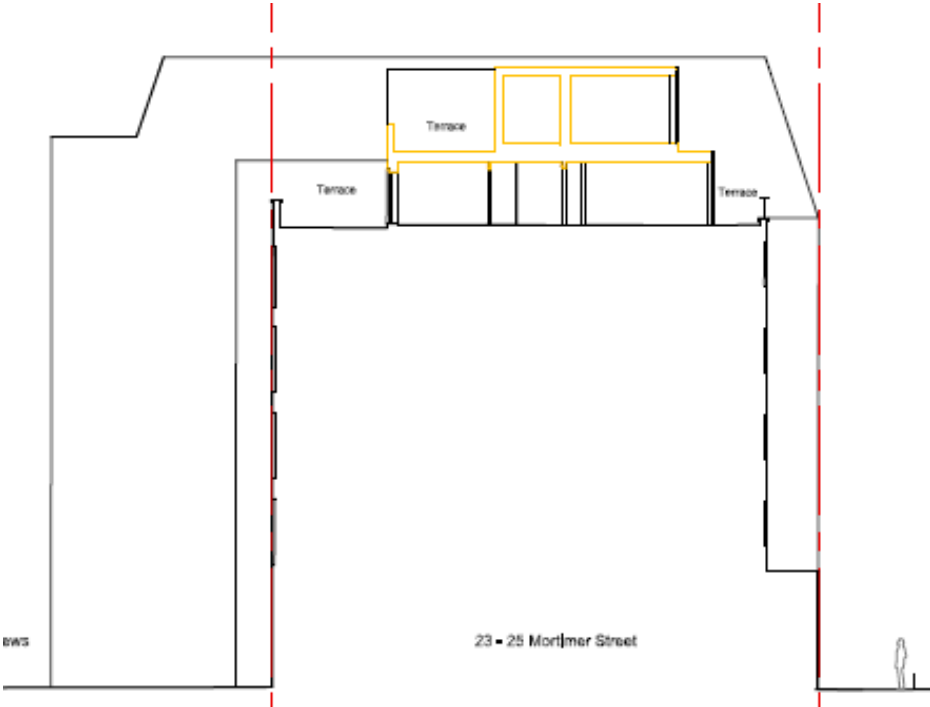
Proposed Fifth Floor –



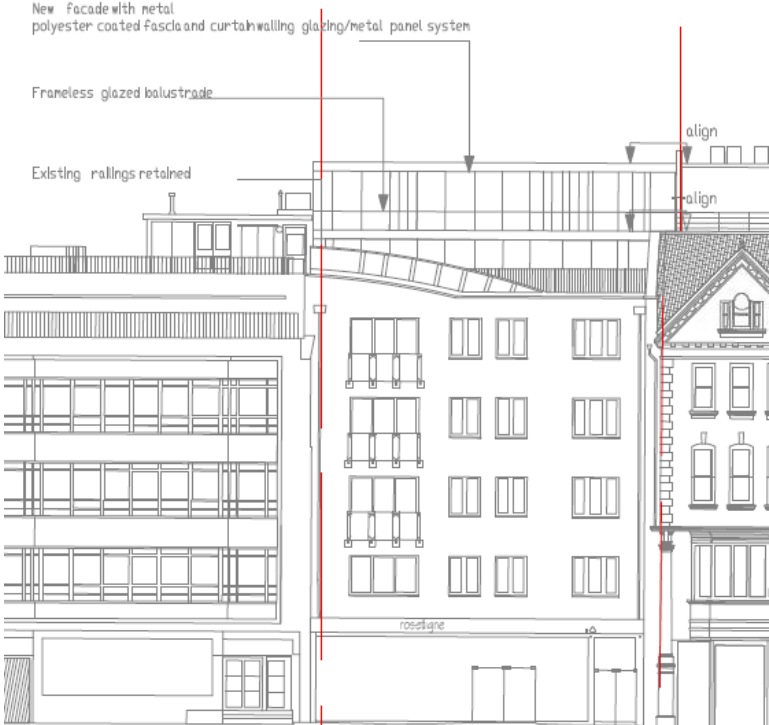
Proposed Sixth Floor –



Proposed Section –



Proposed Front Elevation –



NO CHANGES TO FRONT ELEVATION

DRAFT DECISION LETTER

Address: 23-25 Mortimer Street, London, W1T 3JE,

Proposal: Erection of a single storey extension at main roof level with associated alterations to the existing roof to create a new sixth floor with a terrace for use as a new residential flat (Class C3).

Reference: 17/05705/FULL

Plan Nos: Drawings: PA-169-205 Rev02, PA-169-206 Rev02, PA-162-109 Rev02, PA-162-112 Rev02, PA-162-114 Rev02.

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 Except for piling, excavation and demolition work, you must carry out any building work which can be heard at the boundary of the site only: between 08.00 and 18.00 Monday to Friday; between 08.00 and 13.00 on Saturday; and, not at all on Sundays, bank holidays and public holidays. You must carry out piling, excavation and demolition work only: between 08.00 and 18.00 Monday to Friday; and, not at all on Saturdays, Sundays, bank holidays and public holidays. Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety). (C11AB)

Reason:

To protect the environment of neighbouring occupiers. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

- 3 All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings we have approved or are required by conditions to this permission. (C26AA)

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both of our Unitary Development Plan that we adopted in January 2007. (R26AD)

- 4 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. You must not start work on the relevant part of the development until we have approved what you have sent us. You must then provide the stores for waste and materials for recycling according to these details, clearly mark the stores and make them available at all times to everyone using the residential unit. (C14EC)

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.

- 5 The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

Reason:

As set out in ENV6 of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at section 9.76, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development.

- 6 The design and structure of the development shall be of such a standard that it will protect residents within it from existing external noise so that they are not exposed to levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

Reason:

As set out in ENV6 (4) of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at sections 9.84 to 9.87, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the development from the intrusion of external noise.

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 The development for which planning permission has been granted has been identified as potentially liable for payment of both the Mayor of London and Westminster City Council's Community Infrastructure Levy (CIL). Further details on both Community Infrastructure Levies, including reliefs that may be available, can be found on the council's website at: , www.westminster.gov.uk/cil , Responsibility to pay the levy runs with the ownership of the land,

unless another party has assumed liability. If you have not already you must submit an **Assumption of Liability Form immediately**. On receipt of this notice a CIL Liability Notice setting out the estimated CIL charges will be issued by the council as soon as practicable, to the landowner or the party that has assumed liability, with a copy to the planning applicant. You must also notify the Council before commencing development using a **Commencement Form**, CIL forms are available from the planning on the planning portal:

<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>, Forms can be submitted to CIL@Westminster.gov.uk, **Payment of the CIL charge is mandatory and there are strong enforcement powers and penalties for failure to pay, including Stop Notices, surcharges, late payment interest and prison terms.**

- 3 Under the Greater London Council (General Powers) Act 1973, as amended by the Deregulation Act 2015, you need planning permission to use residential premises as 'temporary sleeping accommodation' (i.e. where the accommodation is occupied by the same person or persons for less than 90 consecutive nights) unless the following two conditions are met: 1. The number of nights in any single calendar year in which the property is used to provide 'temporary sleeping accommodation' does not exceed 90 [ninety]. 2. The person who provides the sleeping accommodation pays council tax in respect of the premises under Part 1 of the Local Government Finance Act 1992 (where more than one person provides the sleeping accommodation, at least one of those persons must pay council tax in respect of the premises)., This applies to both new and existing residential accommodation. Please see our website for more information: <https://www.westminster.gov.uk/short-term-letting-0>. Also, under Section 5 of the Greater London Council (General Powers) Act 1984 you cannot use the property for any period as a time-share (that is, where any person is given a right to occupy all or part of a flat or house for a specified week, or other period, each year).
- 4 Please make sure that the street number and building name (if applicable) are clearly displayed on the building. This is a condition of the London Building Acts (Amendments) Act 1939, and there are regulations that specify the exact requirements. (I54AA)
- 5 The design and structure of the development shall be of such a standard that the dwelling is free from the 29 hazards listed under the Housing Health Safety Rating System (HHSRS). However, any works that affect the external appearance may require a further planning permission. For more information concerning the requirements of HHSRS contact:, Residential Environmental Health Team, 4th Floor East, Westminster City Hall, 64 Victoria Street, London SW1E 6QP, www.westminster.gov.uk, Email: res@westminster.gov.uk, Tel: 020 7641 3003 Fax: 020 7641 8504.
- 6 You are advised to address the impact of your proposal on the means of escape in relation to existing residents. You are advised of the need to maintain any established means of fire escape from adjacent flats. Please contact our Head of District Surveyors' Services and/or The London Fire Authority regarding this aspect of your proposal.

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.