

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 19 December 2017	Classification For General Release	
Report of Director of Planning		Ward(s) involved Hyde Park	
Subject of Report	17 Sheldon Square, London, London, W2 6EP		
Proposal	Use of pavement adjacent to existing restaurant for the placing of 18 tables, 74 chairs and surrounding planters in an area measuring 21.45m x 5.9m.		
Agent	Bidwells		
On behalf of	Zizzi Restaurant		
Registered Number	17/05841/TCH	Date amended/ completed	7 August 2017
Date Application Received	3 July 2017		
Historic Building Grade	Unlisted		
Conservation Area	No		
Premises Licence	Restaurant and external tables and chairs: Monday to Sunday 10:00 to 23:30.		

1. RECOMMENDATION

Grant conditional permission.

2. SUMMARY

The application proposes the use of a hard paved area outside 17 Sheldon Square for the placing of 18 tables and 74 chairs in connection with the use of the premises as a Zizzi's restaurant.

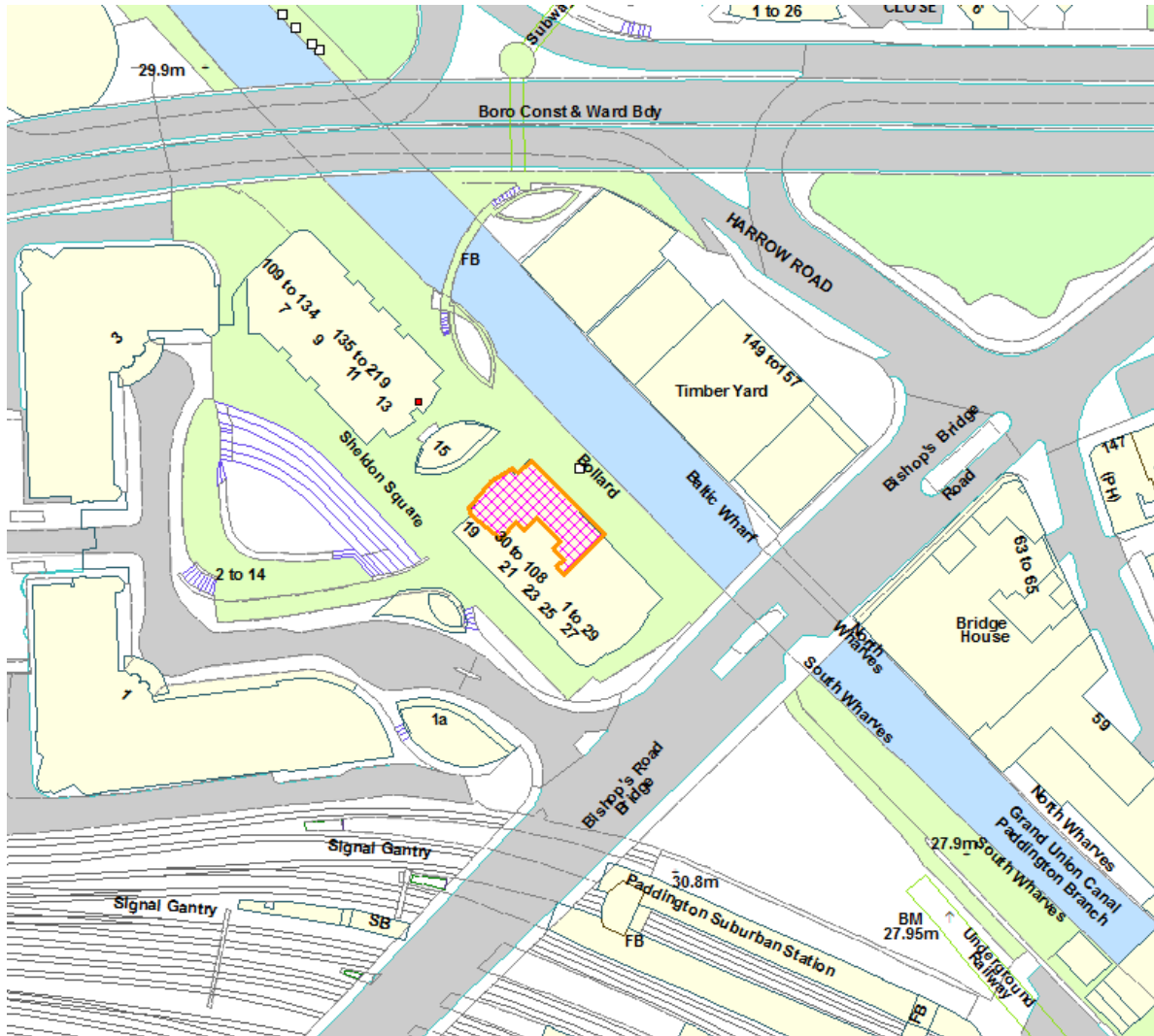
The key issues in this case are:

- The impact of the tables and chairs on the amenity of neighbouring residents.
- The impact upon pedestrian movement/ provision of adequate pedestrian access along the canal side.

Objections have been received from occupiers of residential properties on the upper floors of the building (No.27 Sheldon Square), principally on noise and disturbance and anti-social behaviour grounds. However, it is considered that the objections raised can be suitably mitigated by the recommended conditions, which are referred to in the report and set out in the draft decision letter

appended to the report. In this context, it is considered that the proposed tables and chairs and surrounding planters would accord with the relevant policies in the Unitary Development Plan (UDP) adopted in January 2007 and Westminster's City Plan (the City Plan) adopted in November 2016. Therefore, the application is recommended for approval for a temporary one year period to allow the amenity impacts of the tables and chairs to be monitored.

3. LOCATION PLAN



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4. PHOTOGRAPHS



View of tables and chairs area looking north west (top) and looking south east (bottom).

5. CONSULTATIONS

PADDINGTON WATERWAYS AND MAIDA VALE SOCIETY

No Objection. Ask that neighbours' views into consideration.

SOUTH EAST BAYSWATER RESIDENT ASSOCIATION

Have made the following comments/ raised the following issues:

- Resident's (who live above restaurant) views should be taken into account.
- Excessive number of tables and chairs. Consider the number should revert to number that were previously approved.
- Should be set back behind stone bench to give more room along footpath by canal for pedestrians, cyclist, wheelchairs, buggies etc.
- Use to cease no later than 23.00 and tables and chairs moved inside or stacked up so cannot be used
- Area to be kept clean at all times.
- Permission granted for one year only to monitor use.
- No advertising on any barriers. umbrellas etc.

HIGHWAYS PLANNING MANAGER

Objection. Whilst 3.9m wide pathway along the canal would remain, this is less than half the width of the distance between the building and the canal and the surface treatment to the remaining area of pathway (granite setts) is unsuitable for vulnerable pedestrians such as wheelchair users. Given high flows of cyclists, a minimum width of unobstructed pathway of 5.15m should be retained to comply with the Westminster Way SPD and Policies TRANS3 and S41.

CLEANSING MANAGER

No objection.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 115.

Total No. of replies: 3.

No. of objections: 3.

No. in support: 0.

Three emails have been received raising objection on all or some of the following grounds:

Amenity

- Would like to support application but only if a condition is added requiring tables and chairs to be removed from the external area by 23.00 daily. Note that a similar condition was added to Smith's Bar and Grill, 25 Sheldon Square.
- Tables and chairs cause excessive noise disturbance to neighbours.
- Tables and chairs should be taken inside at 23.00 to avoid antisocial behaviour and noise nuisance.
- Noise disturbance from use of tables and chairs keeps neighbouring residents awake at night.
- Note that other restaurants at Sheldon Square may have their licences reviewed for noise issues.

ADVERTISEMENT/ SITE NOTICE

Yes.

6. BACKGROUND INFORMATION

6.1 The Application Site

The application site is a ground floor restaurant, currently operated by Zizzi's. The application premises is located within a mixed use 10 storey building with retail uses at ground and basement level and residential flats on the upper floors. The site is located within the Central Activities Zone (CAZ) and the Paddington Opportunity Area (POA).

The public realm in front of this restaurant, adjacent to the Grand Union Canal, is a busy thoroughfare between Paddington Station and Little Venice and Harrow Road. The space between the canal and the host building is not public highway, but forms part of the public realm delivered as part of the 'Paddington Central' scheme for redevelopment of the former Paddington Goods Yard site. Therefore, whilst the public realm is privately owned, it is subject to a Walkways Agreement which allows public access across the site in perpetuity for members of the public.

This public realm around the 'Paddington Central' site was recently refurbished by the new owners of the site, British Land. This included the introduction of new street trees, benches and surface treatments to parts of the site.

In this case, there is an existing public bench located within the area which is used for the placing of tables and chairs in relation to the restaurant at 17 Sheldon Square. The extent of the existing area covered by tables and chairs is in accordance with the plans allowed on appeal on 15 September 2017.

6.2 Recent Relevant History

6.2.1 Planning Applications History

17/00549/ADV

Display of advertisements on canvas breeze screen barriers on the footway.

Application Refused 10 March 2017

17/00548/TCH

Placing of 24 tables and 88 chairs in an area measuring 23m x 6.8m with associated screens and planters to front and side elevations in connection with existing ground floor restaurant.

Application Refused 9 March 2017

Permission was refused for the following reason:

'The proposed extension of the area for tables and chairs onto the pedestrian footway would result in too much of the footway being lost and harm pedestrian safety and so could be unsafe. The proposal will also make access more difficult for disabled users

and other pedestrians who will be forced to use the cobbled surface, and the placing of the tables and chairs will make access more difficult to the public bench. The proposal fails to comply with policies TRANS 3, TACE 11 and DES1(B) of the Unitary Development Plan that we adopted in January 2007 and policies S41 and S28 in the Westminster's City Plan (adopted November 2016) and the advice contained in the Council's adopted Westminster Way (2011).'

An appeal against the City Council's decision to refuse permission on 9 March 2017 was allowed on appeal on 15 September 2017 for a temporary period of 2 years. A copy of the appeal decision and approved tables and chairs layout is provided in the background papers (Appeal RN: APP/X5990/W/17/3176225).

16/11896/ADV

Display of internally illuminated fascia sign measuring 500mm x 1630mm, non illuminated fascia sign measuring 140mm x 1770mm, internally illuminated projecting sign measuring 900mm internally illuminated menu box sign measuring 970mm x 1850mm, placement of 6 windbreaks measuring 950mm x 1850mm and 3 parasols measuring 1500mm 3500mm.

Application Permitted 9 January 2017

16/06381/FULL

Variation of Condition 4 of planning permission dated 2 September 2014 (RN: 14/07154/FULL) for variation of Condition 4 of planning permission dated 6 September 2012 (RN: 12/07304) for continued use of the pavement adjacent to the canal for the placing of 19 tables and 68 chairs in connection with associated restaurant for a further 2 years; namely, to extend the use of the pavement adjacent to the canal for the placing of tables and chairs for a further 2-year period.

Application Permitted 16 August 2016

14/07154/FULL

Variation of Condition 4 of planning permission dated 6 September 2012 (RN: 12/07304) for continued use of the pavement adjacent to the canal for the placing of 19 tables and 68 chairs in connection with associated restaurant for a further 2 years.

Application Permitted 2 September 2014

12/07304/FULL

Use of the pavement adjacent to canal for the placing of 19 tables and 68 chairs in connection with associated restaurant.

Application Permitted 6 September 2012

10/00087/FULL

Variation of Condition 4 of planning permission dated 16 February 2009 (RN: 09/00052); namely, to allow for continued use of the public highway for the placing of 19 tables and 68 chairs in connection with Zizzi Restaurant for a further temporary period of two years.

Application Permitted 1 March 2010

09/00052/TCH

Use of the public highway for the placing of 19 tables and 68 chairs in connection with Zizzi Restaurant.

Application Permitted 16 February 2009

07/06650/TCH

Use of the land for the placing of 19 tables and 68 chairs in connection with Zizzi restaurant (Unit 2).

Application Permitted 19 September 2007

07/03042/TCH

Use of the public footway for the placing of 15 tables and 60 chairs in connection with associated restaurant at Unit 2.

Application Refused 24 May 2007

6.2.2 Planning Enforcement

17/64029/H

Allegation received that Conditions 1, 2, 5 and 6 attached to planning permission dated 16 August 2016 (Ref 16/06381/FULL) had been breached. The investigation is ongoing at the present time.

Complaint received: 19 April 2017

7 THE PROPOSAL

The application proposes the use of the pavement adjacent restaurant premises (Zizzi's) for the placing of tables and chairs in an area measuring 21.45m x 5.9m. 18 tables and 74 chairs with surrounding planters are proposed.

There have been a number of temporary permissions for tables and chairs outside this restaurant since 2007. The original application (RN: 07/03042/TCH) was refused as it was considered detrimental to the public realm and would have blocked the pedestrian flow along the canal side. Temporary permissions for the placing of 19 tables and 68 chairs in connection with this restaurant unit have been continually renewed since a subsequent 2007 permission (RN: 07/06650/TCH) was granted.

A recent application seeking permission to extend this to 24 tables and 88 chairs with surrounding screens and planters was refused for the reason set out in Section 6.2.1, but subsequently allowed on appeal in September 2017 (RN:17/00548/TCH). The area of tables and chairs allowed by the appeal scheme measures 1.5m x 6m to the side of the restaurant and 6.6m x 23m to the front of the restaurant, with planters around the boundary of the area. The appeal scheme was permitted for a temporary period of two years. Therefore, it remains extant and tables and chairs can be placed in this enlarged area until 15 September 2019.

The current application seeks permission for the placement of 18 tables and 74 chairs with surrounding planters, within an area measuring 21.45m x 5.9m to the front of the restaurant only. This is a smaller area and a lesser number of tables and chairs than was recently allowed on appeal.

8 DETAILED CONSIDERATIONS

8.1 Land Use

In land use terms, there are no objections to the principle of tables and chairs being placed outside restaurants/cafes in this location within the Paddington Opportunity Area, subject these being in compliance with Unitary Development Plan policy TACE11 in terms of their impact in amenity and access terms.

8.2 Townscape and Design

The design of the tables and chairs proposed are detailed within documents submitted with the application. The furniture is of a good standard and would not be detrimental to the character and appearance of the area.

8.3 Residential Amenity

A number of objections have been received raising concerns in amenity terms, principally relating to noise disturbance.

Earlier applications for the use of this area of paving for tables and chairs have also received objections on noise amenity grounds. Objectors are concerned that the conditions restricting hours of use on previous approvals have not in their view been adhered and that this exacerbates the opportunities for noise and anti-social behaviour beyond the permitted hours of use.

However, as identified in Section 7, a larger area of paving for the placing of a greater number of tables and chairs has recently been allowed in September 2017. In his decision the Inspector resolved that the concerns of neighbours could be addressed by the imposition of similar conditions to those attached to previous permissions for tables and chairs at this site. This includes a condition restricting the hours of use for the tables and chairs to between 08.00 and 23.00 Monday to Sunday. Set in this context, whilst the concerns of objectors are understood in terms of the need for the operator to abide by the conditions imposed, it is not considered that permission could reasonably be withheld on amenity grounds.

The appeal scheme was permitted for a temporary period of two years of the date of the appeal decision. It is therefore recommended that the current proposal for tables and chairs is allowed for the same temporary period, with the permission expiring on 15 September 2019. This would allow the impact of the increased number of tables and chairs on the amenity of neighbours to be reviewed at that stage.

For the reasons set out above, including the recent appeal decision, and subject to the conditions set out in the draft decision letter, the proposed tables and chairs are considered to be acceptable in amenity terms and compliant with Policies S29 and S32 in the City Plan and Policies ENV 6 and TACE 11 in the UDP.

8.4 Highways/ Transportation

The Highways Planning Manager objects to the application due to the increased obstruction of the towpath along the side of the canal relative to the previously approved

schemes for tables and chairs in this location (excluding the recently allowed appeal scheme). The Highways Planning Manager considers the tables and chairs to be contrary to Policies TRANS3 and TRANS11 in the UDP, Policy S41 in the City Plan and the guidance provided in the 'Westminster Way' Supplementary Planning Document (2011).

Policy TRANS3 states that the City Council, in considering development proposals, will aim to secure an improved environment for pedestrians, with particular regard to their safety, ease, convenience and directness of movement. Policy S41 requires all developments to prioritise convenient and safe pedestrian movement through good design. The 'Westminster Way' SPD stipulates that pedestrianised areas must maintain a minimum clearway of half the overall width.

The submitted drawings show that the paved area where the tables and chairs with associated planters are proposed is approximately 10.4m wide (this includes a 4.2m wide towpath beside the canal). The area proposed for tables and chairs is 6.4m wide at its widest leaving a pavement width of 3.9m (i.e. the area of the towpath). The reduced width of the footpath/ towpath would constrict pedestrian movement and divert pedestrians on to an area not best suited to more vulnerable pedestrians (i.e. wheel chair users) due to the uneven surface of the granite setts along the towpath. The applicant indicates that a third of the width of the footway could be left clear but this is only applicable in areas where tables and chairs can be placed on either side of the highway which is not the case with the application site.

The reduction in width is further compounded as the area is used for mooring boats on the canal side and also cyclists use this area as part of an access route and these movements often conflict with pedestrian flows. Whilst the tables and chairs are not proposed to be set so far forward across the whole frontage of the restaurant unit, this does not overcome the Highways Planning Manager's concerns given that a pinch point will still remain to the northern end of the tables and chairs area.

A previous application for tables and chairs was refused for the placing of 24 tables and 88 chairs within an area measuring 23m x 6.8m was refused under RN 17/00548/TCH for the following reason:

However, whilst the size and extent of the proposed tables and chairs area is clearly undesirable in pedestrian movement terms, the recent appeal decision for an even larger area of tables and chairs is a significant material consideration, given that the tables and chairs can be placed in this larger area until 15 September 2019. In this context, it is not considered that the current application could reasonably be resisted on pedestrian movement/ obstruction grounds. As set out in Section 6.3, it is recommended that permission is limited to a temporary period that expires on the same date as the appeal scheme (15 September 2017). This is because in transportation terms the imminent opening of the Elizabeth Line station at Paddington is likely to result in significant increases in footfall in and around the station. Consequently, it is reasonable to expect that footfall along the canal outside the application site will increase, particularly given the proximity to the entrance to the Hammersmith and City Line station further along the canal to the south. It will therefore be imperative that the extent of tables and chairs outside these premises is reviewed in September 2019 to identify whether the enlarged areas in both this scheme (if approved) and recently allowed appeal scheme are causing

a significant obstruction to the increased pedestrian flows expected as a result of the arrival of the Elizabeth Line.

8.5 Economic Considerations

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

8.6 Access

The impact of the proposed tables and chairs on pedestrian access along the canal side is considered in Section 8.4 of this report.

8.7 Other UDP/ Westminster Policy Considerations

None relevant.

8.8 London Plan

The application does not raise any 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 development is not CIL liable.

8.11 Environmental Impact Assessment

The proposed development is of insufficient scale to require an Environmental Impact Assessment.

8.12 Other Issues

In allowing the recent appeal, the Inspector considered the impact on the public bench within the tables and chairs area. The Inspector stated that the bench is positioned such that it has the appearance of being located within the outdoor seating area, as opposed to a freestanding bench that is visibly available for public use. On this basis the Inspector concluded that the enveloping of the public bench by the tables and chairs was not a ground on which to dismiss the appeal. In this context the objection made on grounds that the tables and chairs surround the public bench making it unusable cannot be supported as a ground on which to withhold permission.

9 BACKGROUND PAPERS

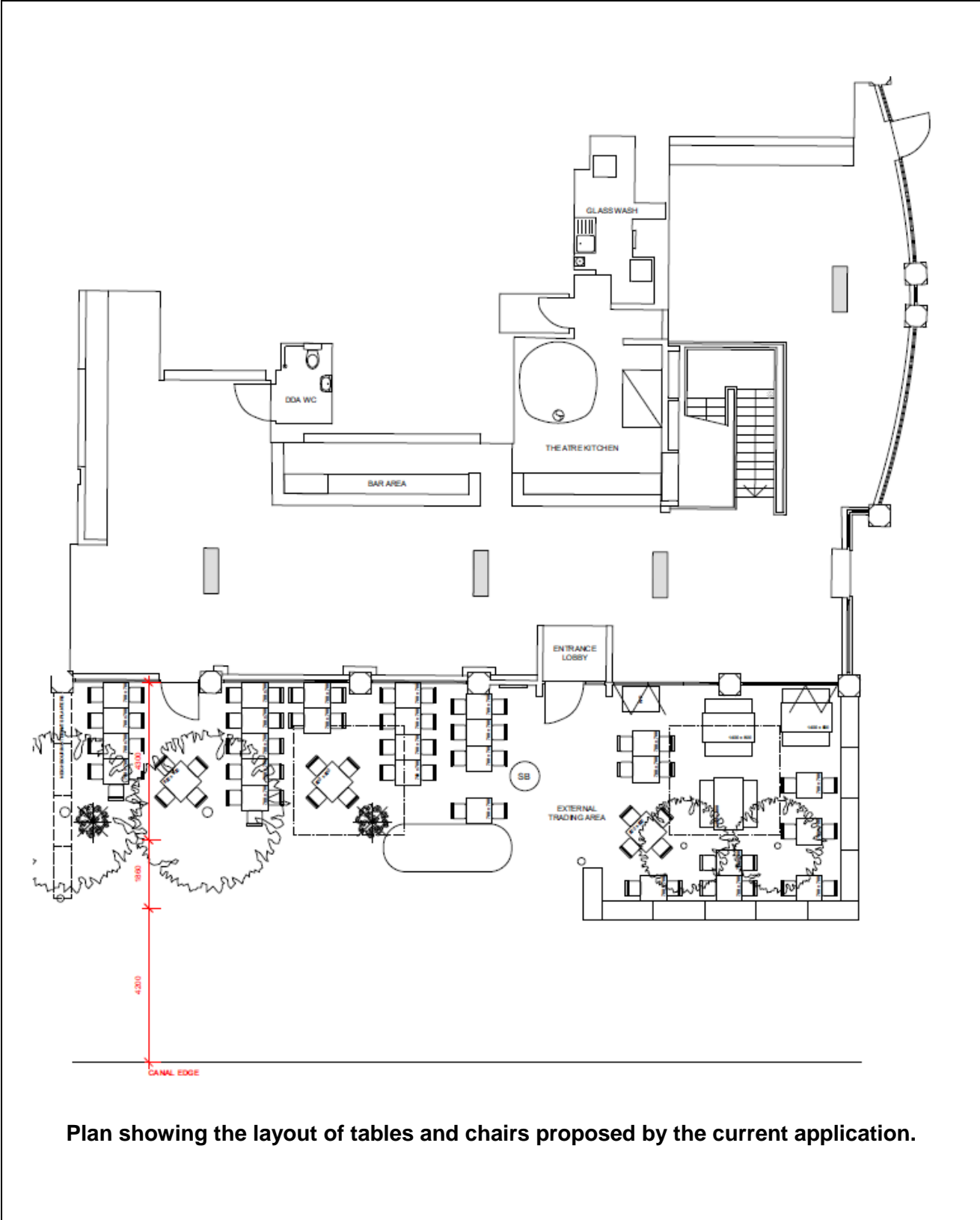
1. Application form.

2. Appeal Decision dated 15 September 2017 and relevant proposed floorplan.
3. Copy of Premises Licence for application premises dated 14 October 2015.
4. Email from the Paddington Waterways and Maida Vale Society dated 1 August 2017.
5. Email from the South East Bayswater Residents Association dated 22 August 2017.
6. Memo from Highways Planning Manager dated 7 July 2017.
7. Memo from the Cleansing Manager dated 20 July 2017.
8. Email from the occupier of Apartment 10, 27 Sheldon Square dated 8 July 2017.
9. Email from the occupier of 27 Sheldon Square dated 12 July 2017.
10. Email from the occupier of Apartment 6, 27 Sheldon Square dated 13 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: OLIVER GIBSON BY EMAIL AT ogibson@westminster.gov.uk.

10 KEY DRAWINGS



DRAFT DECISION LETTER

Address: 17 Sheldon Square, London, London, W2 6EP

Proposal: Use of pavement adjacent to existing restaurant for the placing of 18 tables, 74 chairs and surrounding planters in an area measuring 21.45m x 5.9m.

Plan Nos: Site location plan; Z782 100; Z782 107; Specification for Luxembourg Chair by Frederic Sofia; Specification for Robina Table.

Case Officer: Avani Raven

Direct Tel. No. 020 7641 2857

Recommended Condition(s) and Reason(s) or Reason(s) for Refusal:

- 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 put the tables and chairs in any other position than that shown on drawing Z782 100. (C25AA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 3 The tables and chairs must only be used by customers of Zizzi's (17 Sheldon Square).. (C25CA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 4 This use of the pavement may continue until 15 September 2019. You must then remove the tables and chairs. (C25DA)

Reason:

We cannot give you permanent permission as the area in question is, and is intended to remain, public highway and Section 130 (1) of the Highways Act 1980 states that "It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority". We also need to assess the effect of this activity regularly to make sure it meets S41 of Westminster's City Plan (November 2016) and

TACE 11 of our Unitary Development Plan that we adopted in January 2007. For the above reasons, and not because this is seen a form of trial period, we can therefore only grant a temporary permission.

- 5 You can only put the tables and chairs on the pavement between 08.00 and 23.00. (C25BA)

Reason:

To protect neighbouring residents from noise and disturbance as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 and TACE 11 of our Unitary Development Plan that we adopted in January 2007.

- 6 You can only put out on the pavement the tables and chairs shown on drawing Z782 100. No other furniture, equipment or screening shall be placed on the pavement in association with the tables and chairs hereby approved.

Reason:

To make sure that the type and appearance of the tables and chairs (and where appropriate other furniture or equipment) is suitable and that no additional furniture, equipment or screening is placed on the pavement to the detriment of the character and appearance of the area. This is as set out in TACE 11 and DES 7 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 You must keep the tables and chairs within the area shown at all times. We will monitor this closely and may withdraw your street trading licence if you put them outside this area. (I48AA)
- 3 You cannot put tables and chairs in the area unless you have a street trading licence.

If you want to know about the progress of your application for a licence, you can contact our Licensing Service on 020 7641 8549. If you apply for a licence and then decide to change the layout of the tables and chairs, you may have to apply again for planning permission. You can discuss this with the planning officer whose name appears at the top of this letter.

Please remember that once you have a licence you must keep the tables and chairs within the agreed area at all times. (I47AB)

- 4 You are advised that the area of tables and chairs hereby approved will be reviewed by the City Council as Local Planning Authority on expiry of this temporary permission on 15 September 2017, to ascertain whether they give rise to significant noise disturbance to neighbouring residents and/ or cause significant obstruction to pedestrians and other users of the canal side paving and towpath. With regard to pedestrian access, following the opening of the Elizabeth Line station at Paddington in 2018, it is likely that pedestrian flows in the vicinity of the station will increase. Therefore the tables and chairs hereby approved may not be acceptable in future if, following the opening of the Elizabeth Line, they are found to be causing an obstruction to increased pedestrian and cyclist flows along this part of the Grand Union Canal.

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.