

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 19 <sup>th</sup> December 2017	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> Marylebone High Street	
<b>Subject of Report</b>	25 Duke Street, London, W1U 1LD,		
<b>Proposal</b>	Retention of one air conditioning condenser unit to rear flat roof, installation of two extract/intake ducts terminating on rear flat roof.		
<b>Agent</b>	High Mood Food		
<b>On behalf of</b>	Waind Gohil + Potter Architects		
<b>Registered Number</b>	17/05868/FULL	<b>Date amended/ completed</b>	4 July 2017
<b>Date Application Received</b>	4 July 2017		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Stratford Place		

## 1. RECOMMENDATION

Grant conditional planning permission

## 2. SUMMARY

The application site is an unlisted building in the Stratford Place Conservation Area and the Core Central Activities Zone (CAZ). The property comprises of basement, ground and three upper floors.

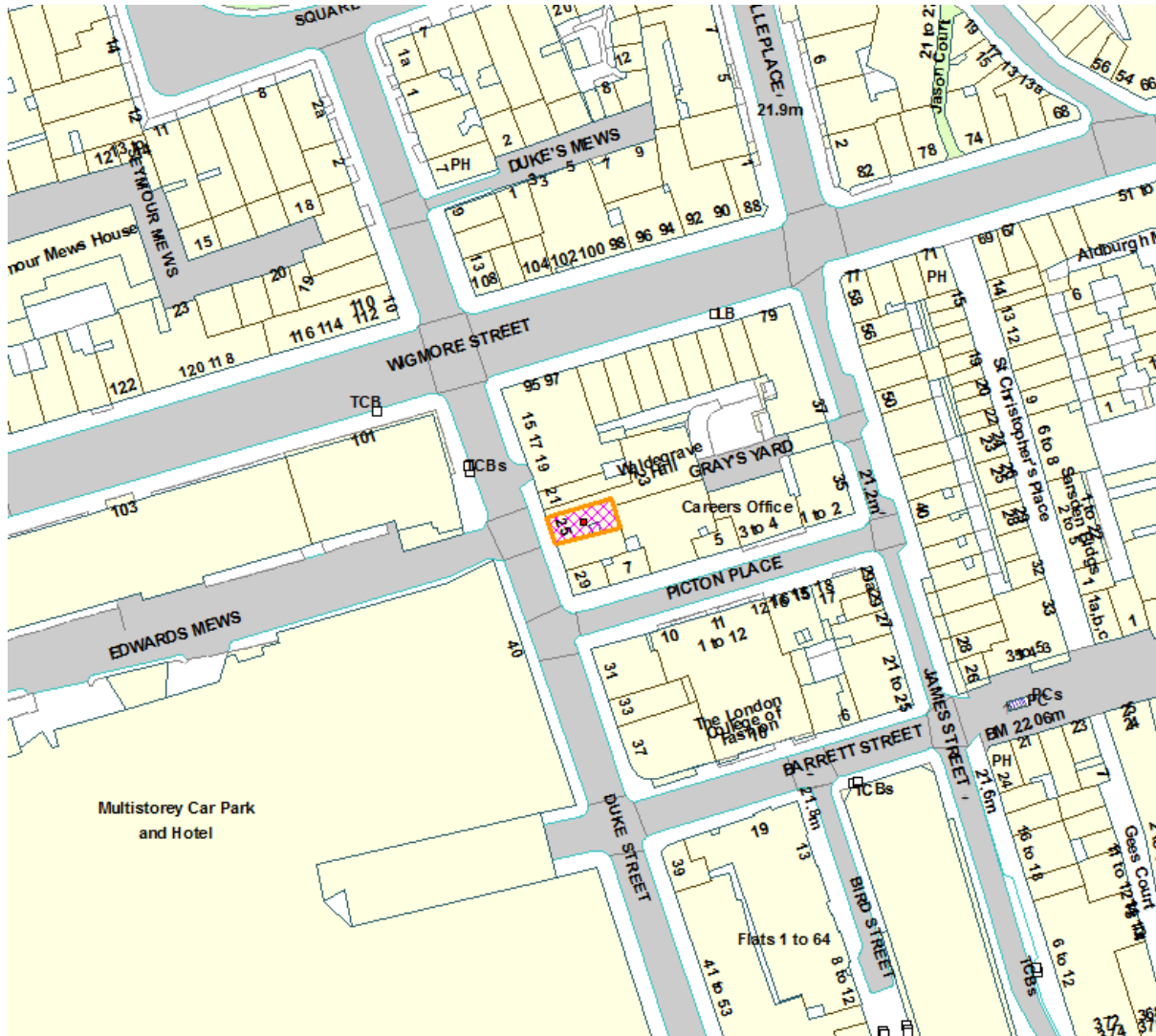
Permission is sought to allow the retention of one air conditioning condenser unit on the rear flat roof and the installation of two extract/intake ducts terminating on the rear flat roof.

The key issues for consideration are:

- The impact of the proposals upon the amenity of neighbouring residential properties,
- The acceptability of the proposals upon the appearance of the building and the character and appearance of the conservation area.

Subject to conditions, the proposals are considered to comply with relevant Unitary Development Plan and City Plan policies and are therefore recommended for approval.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS



## 5. CONSULTATIONS

### MARYLEBONE ASSOCIATION

No objection subject to no objection raised by Environmental Health

### ENVIRONMENTAL HEALTH

No objection subject to conditions

### ADJOINING OWNERS AND OCCUPIERS:

No. consulted: 22; No. responded: 2

Two objections from the same objector have been received on the following grounds:

- \* Impact on amenity (from plant noise, cooking odour, heat)
- \* Change of use of premises

SITE AND PRESS NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application site is an unlisted building located in the Stratford Place Conservation Area. It comprises of basement, ground and three upper floors. First floor and above are in use as two residential properties (Class C3) whilst the basement and ground floors have a lawful use as retail (Class A1).

### 6.2 Recent Relevant History

Planning permission was granted on 23 June 2011 (RN: 11/01008/FULL) at for the redevelopment of 79-95 Wigmore Street, 21-25 Duke Street, 3-4 Picton Place and 37 James Street for retail, office and residential purposes (permitting the use of the ground floor of No.25 Duke Street as Class A1 retail).

There are current enforcement cases in relation to a potential unauthorised use of the property from (Class A1) retail to a mixture of retail and café (Sui Generis Use) and in relation to the unauthorised installation of an air-conditioning unit at rear first floor level (the subject of this current application.)

## 7. THE PROPOSAL

Permission is sought to allow the installation of one air conditioning condenser unit to the rear flat roof at first floor level and the installation of two extract/intake ducts terminating on the rear flat roof.

Following an inspection of the site, it has become evident that the air conditioning condenser unit at the rear has already been installed.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

The premises are in lawful retail (Class A1) and although vacant they are currently being fitted out for use for High Mood Food. The applicant argues that the intended use will remain within Class A1 use, akin to a sandwich bar with limited seating and food preparation and cooking ancillary to this use. As such, it is considered that the application can be determined on the basis of the lawful retail use.

One objection has been received on the grounds of that the premises is no longer within A1 use, and this matter is the subject of an open enforcement case. However, as a change of use does not form part of this application this objection cannot be upheld. Should the use of the premises ultimately fall outside its lawful retail use, action can be taken by the Planning Enforcement Team as a result of the open enforcement investigation.

### **8.2 Townscape and Design**

The proposed plant equipment will be located at the rear flat roof and the ducts will be discretely located in the same area. These will not be harmful to views from the public realm or from local private views subject to a condition requiring them to be painted dark grey. The proposals are considered acceptable in terms of their siting, size and appearance. The equipment is not considered to be harmful to the character and appearance of the Stratford Place Conservation Area.

The proposals therefore comply with S28 of Westminster's City Plan and DES 1, DES 5, DES 6 and DES 9 of Westminster's Unitary Development Plan (adopted January 2007).

### **8.3 Residential Amenity**

City Plan policy S29 seeks to safeguard the amenity of neighbouring residential properties. UDP policy ENV13 sets out that permission will not be granted for development proposals which would result in a material loss of amenity to neighbouring properties by way of loss of daylight or sunlight or increased sense of enclosure. The unit is sited on a rear first floor flat roof within close proximity of a bedroom window to the first floor flat. The unit is the same height as the rear boundary wall and as there are only relatively oblique views of the unit from the rear bedroom window it is not considered that the unit would result in any adverse loss of light or increased sense of enclosure.

### **8.4 Transportation/Parking**

Not applicable

### **8.5 Economic Considerations**

Not applicable

## 8.6 Access

Access arrangements to the site are unchanged as a result of this application.

## 8.7 Other UDP/Westminster Policy Considerations

### Plant

The proposed scheme includes one air conditioning condenser unit to rear flat roof at first floor and two extract/intake ducts terminating on the rear flat roof. An acoustic report has been submitted in support of the application which details existing background noise levels. Environmental Health have assessed this report and confirm that the calculated noise levels of the proposed plant are likely to comply with the conditions set out by the Council.

As such they have raised no objection to the application subject to appropriate noise conditions which requires all plant to operate at a level 10dB below background noise levels. The operational hours of the plant will be secured by condition to operate only between the hours of 08:00-20:00 in line with those recommended by Environmental Health.

The objector has raised concern regarding the impact of noise from the proposed plant, odour from any cooking on site, and heat created by the machinery/any discharge. However Environmental Health are satisfied that the plant can operate in accordance with the Council's standard noise requirements which are secured by condition.

The concerns regarding odour and heat are recognised however, the applicant has advised that the ducts in question are only to serve an air circulation system for the basement (to meet building regulations) and will provide intake and discharge of air. They will not serve to discharge cooking odours. The Council would not expect any primary cooking to be undertaken on the premises given that the unit is lawfully in retail (Class A1) and the assurances given by the applicant. On this basis, this aspect of the objection cannot reasonably be upheld.

## 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.

## 8.11 Environmental Impact Assessment

Not applicable

## 8.12 Other Issues

Not applicable

## 9. BACKGROUND PAPERS

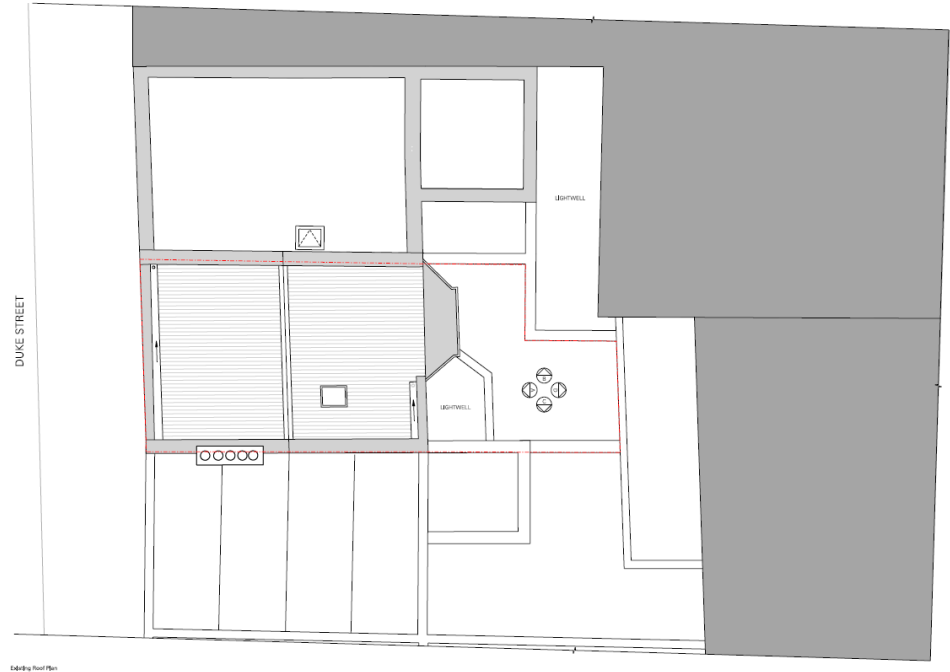
1. Application form and letter from applicant dated 10 August 2017.
2. Response from Marylebone Association, dated 11 July 2017
3. Response from Environmental Health, dated 11 September 2017
4. Letters from occupier of Flat 1, 25A Duke Street, dated 17 July 2017 and 18 August 2017

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

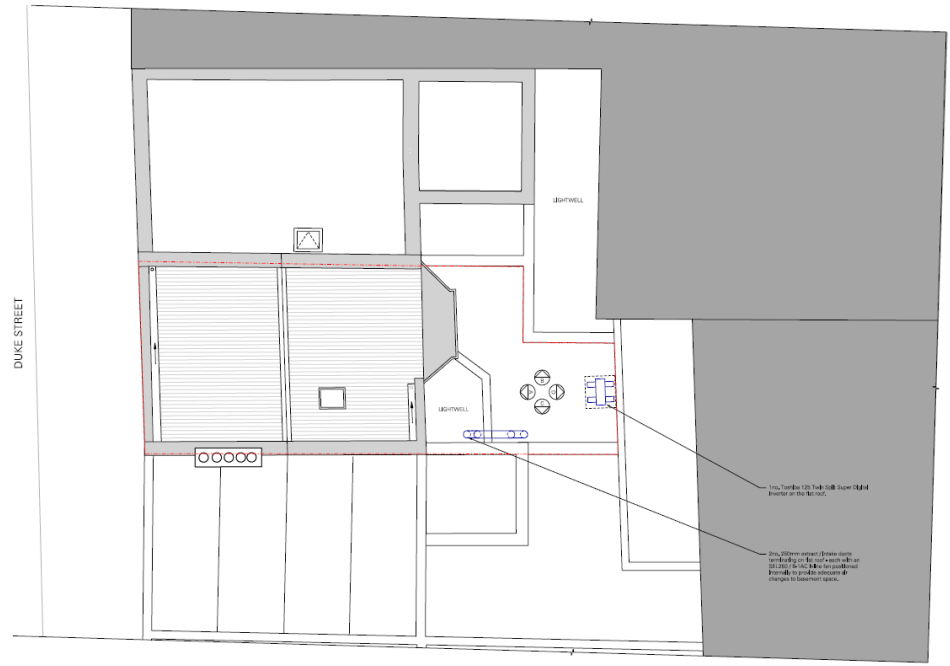
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: JO PALMER BY EMAIL AT [jpalme@westminster.gov.uk](mailto:jpalme@westminster.gov.uk)

10. KEY DRAWINGS

Existing Roof Plan

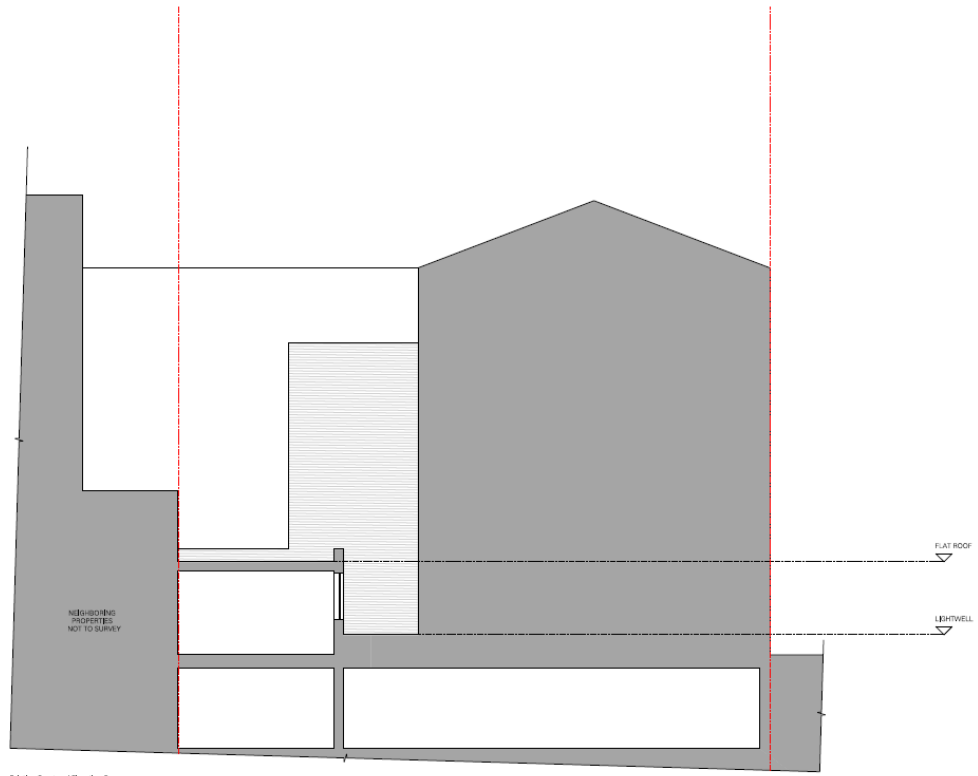


Proposed Roof Plan



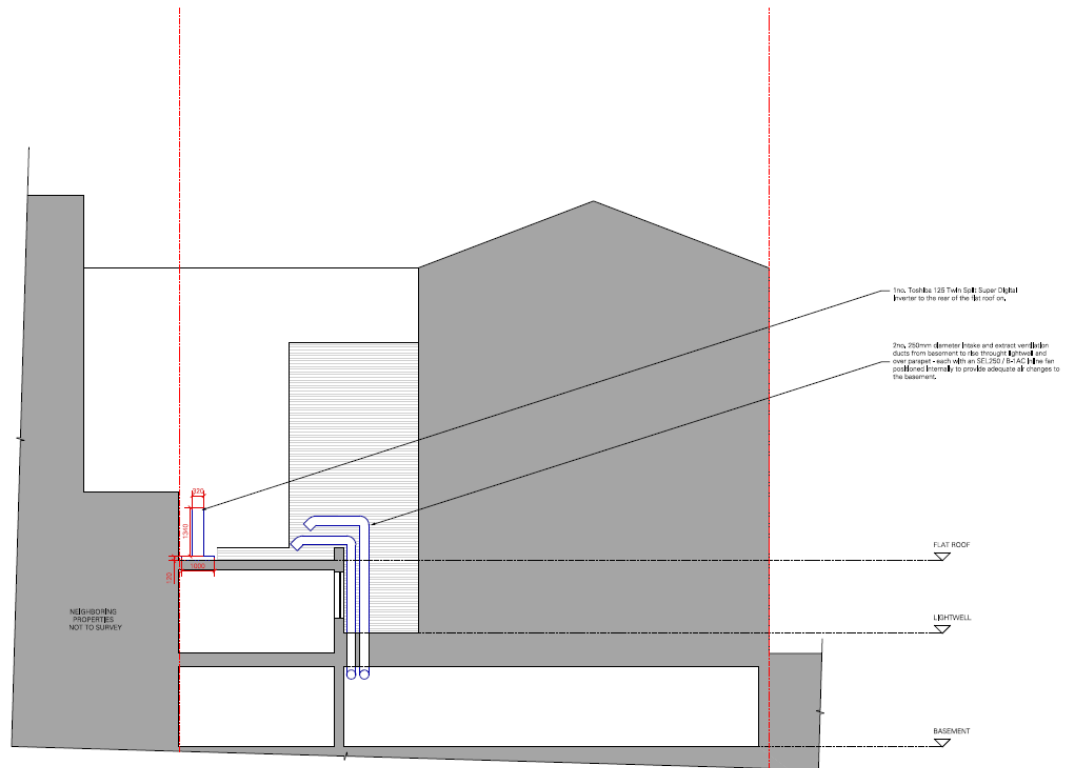


### Existing Elevation C



Existing Courtyard Elevation C

### Proposed Elevation C



Proposed Courtyard Elevation C

### Existing Elevation D



### Proposed Elevation D



**DRAFT DECISION LETTER**

**Address:** 25 Duke Street, London, W1U 1LD,

**Proposal:** Retention of one air conditioning condenser unit to rear flat roof, installation of two extract/intake ducts terminating on rear flat roof.

**Reference:** 17/05868/FULL

**Plan Nos:** 380 112 / E ; 380 230 / D ; 380 231 / B ; 380 232 / D ; 380 233 / B

**Case Officer:** Adam Jones

**Direct Tel. No.** 020 7641 1446

**Recommended Condition(s) and Reason(s)**

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents 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 in the interests of proper planning.

- 2 Except for piling, excavation and foundation work, you must carry out any building work which can be heard at the boundary of the site
- o between 08.00 and 18.00 Monday to Friday;
  - o between 08.00 and 13.00 on Saturday; and
  - o not at all on Sundays, bank holidays and public holidays.

You must carry out piling, excavation and foundation work only:

- o between 08.00 and 18.00 Monday to Friday; and
- o 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.

Reason:

To protect the environment of neighbouring occupiers. This is 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 this part of the Stratford Place Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

- 4 (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.

- 5 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.

- 6 The plant/machinery hereby permitted shall not be operated except between 08:00 hours and 20:00 hours daily.

**Reason:**

To safeguard the amenity of occupiers of noise sensitive properties and the area generally by ensuring that the plant/machinery hereby permitted is not operated at hours when external background noise levels are quietest thereby preventing noise and vibration nuisance as set out in S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007.

- 7 You must paint all the approved ductwork and air conditioning condenser unit dark grey. You must then keep it in that condition.

**Reason:**

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of this part of the Stratford Place Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

- 8 You must not put any machinery or associated equipment, ducts, tanks, satellite or radio aerials on the roof, except those shown on the approved drawings. (C26PA)

**Reason:**

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of this part of the Stratford Place Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

**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 Conditions 4, 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)
- 3 You are advised to permanently mark the plant/ machinery hereby approved with the details of this permission (date of grant, registered number). This will assist in future monitoring of the equipment by the City Council if and when complaints are received.
- 4 You are reminded that the lawful use of the basement and ground floor is retail (Class A1). If the Council does not consider the operation of the premises to fall within the lawful use, we may take enforcement action. Factors such as (but not limited to) the amount of seating inside or outside (or both) of the premises, primary cooking or baking taking place on site may take the operation of the premises out of its lawful use.

The ducts hereby permitted must only be used for air circulation and never for the discharge of food or cooking odour.

If a change of use were ever to be required so as to allow cooking etc. on site, a full height extract duct would be expected to be provided.

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.