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| Item No. |
| 3        |

| <b>CITY OF WESTMINSTER</b>   |   |                               |
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| <b>PLANNING APPLICATIONS SUB COMMITTEE</b>                         | <b>Date</b>   | <b>Classification</b>         |
|  | 19 February 2019  | For General Release           |
| <b>Report of</b><br>Executive Director Growth Planning and Housing | <b>Ward(s) involved</b><br>St James's   |                               |
| <b>Subject of Report</b>   | <b>Whitcomb Street Carpark, 39 - 41 Whitcomb Street, London, WC2H 7DT,</b>  |                               |
| <b>Proposal</b>  | Continued use of Levels 12 - 16 of car park (sui generis) as temporary office, construction welfare and storage area (sui generis) with screening to elevations associated with the construction of the Leicester Square Hotel opposite until 1 June 2020 |                               |
| <b>Agent</b>   | Jones Lang Lassalle Ltd   |                               |
| <b>On behalf of</b>  | Edwardian Pastoria Hotels Ltd   |                               |
| <b>Registered Number</b>   | 18/07140/FULL   | <b>Date amended/completed</b> |
| <b>Date Application Received</b>                                   | 21 August 2018  | 21 August 2018                |
| <b>Historic Building Grade</b>                                     | Unlisted  |                               |
| <b>Conservation Area</b>   | Haymarket   |                               |

## 1. RECOMMENDATION

Grant conditional permission.

## 2. SUMMARY

This retrospective application relates to a multi-storey car park owned by the Council and leased to a parking operator. The public car parking is part of a 1960's mixed-use development located in the Central Activities Zone, the West End Stress Area and the Haymarket Conservation Area.

Retrospective permission is sought for a temporary period for the use of 5 floors of the car park as a site office, construction welfare and storage area (sui generis) in connection with the construction works at the Leicester Square Hotel nearby. The application includes screening to the car park elevations. The use started on 1 December 2015 and is proposed to continue until 1 June 2020. The application was submitted following investigations by the Planning Enforcement Team.

Objections have been received from residents in Huguenot House, the residential tower block above the public car park, on the grounds of loss of car parking spaces, inappropriate use, noise, detrimental impact to the appearance of the building and the local environment, security and fire safety, impact on building services, breach of planning control and breach of lease.

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|----------|
| Item No. |
| <b>3</b> |

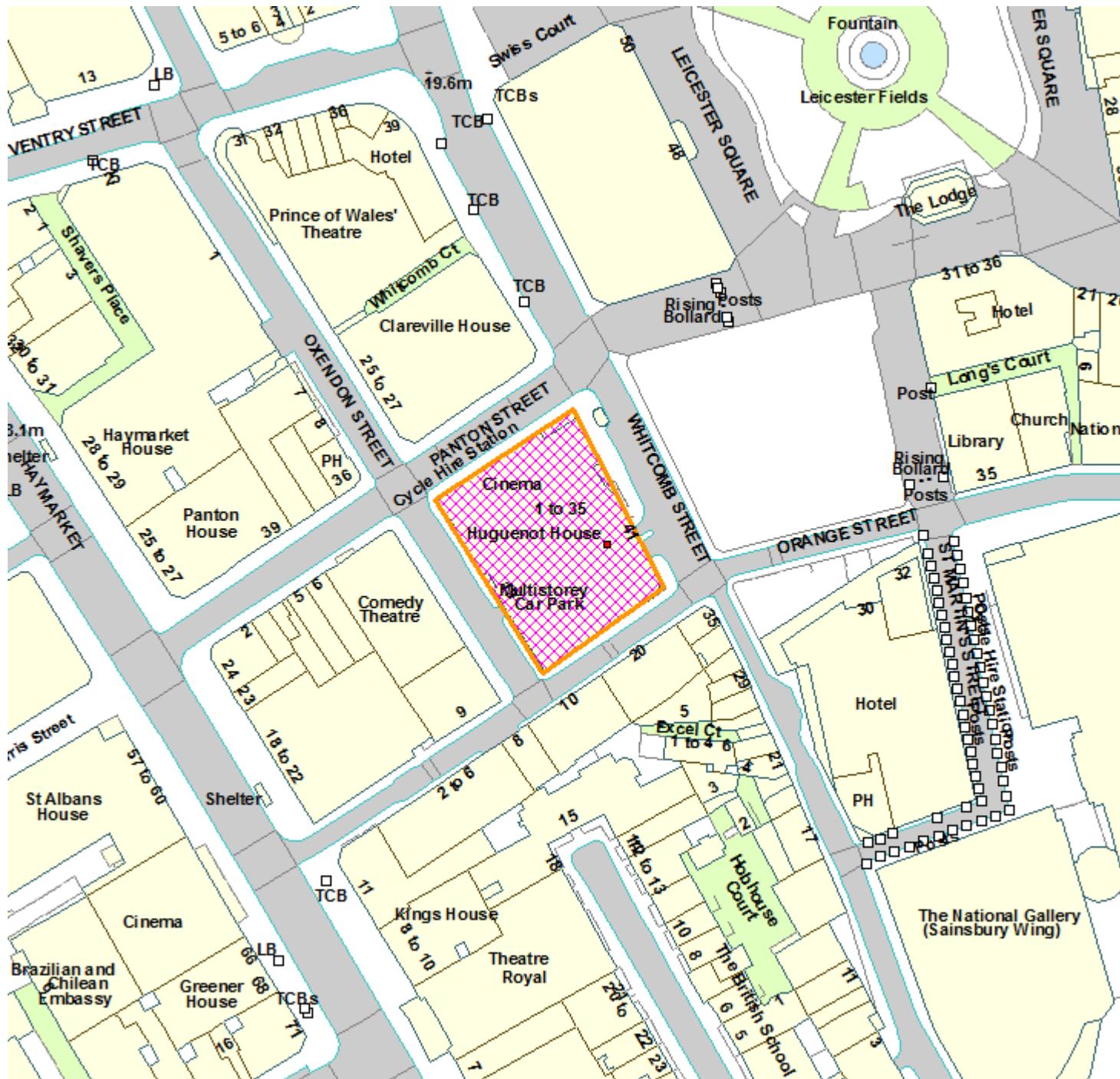
The key issues to be considered are:

- The acceptability of temporary loss of public car parking spaces;
- The acceptability of the proposed temporary *sui generis* use at this location;
- The impact of the proposals on the amenity of the neighbouring residential occupiers; and
- The impact of the proposals on the character and appearance of the Haymarket Conservation Area

Notwithstanding the objections raised, taking into account the use, the location within the CAZ and the temporary nature of the proposals they are considered to comply with the relevant policies in the Unitary Development Plan adopted in January 2007 (the UDP) and the Westminster's City Plan adopted in November 2016. The application is therefore recommended for approval subject to the conditions set out in the draft decision letter.

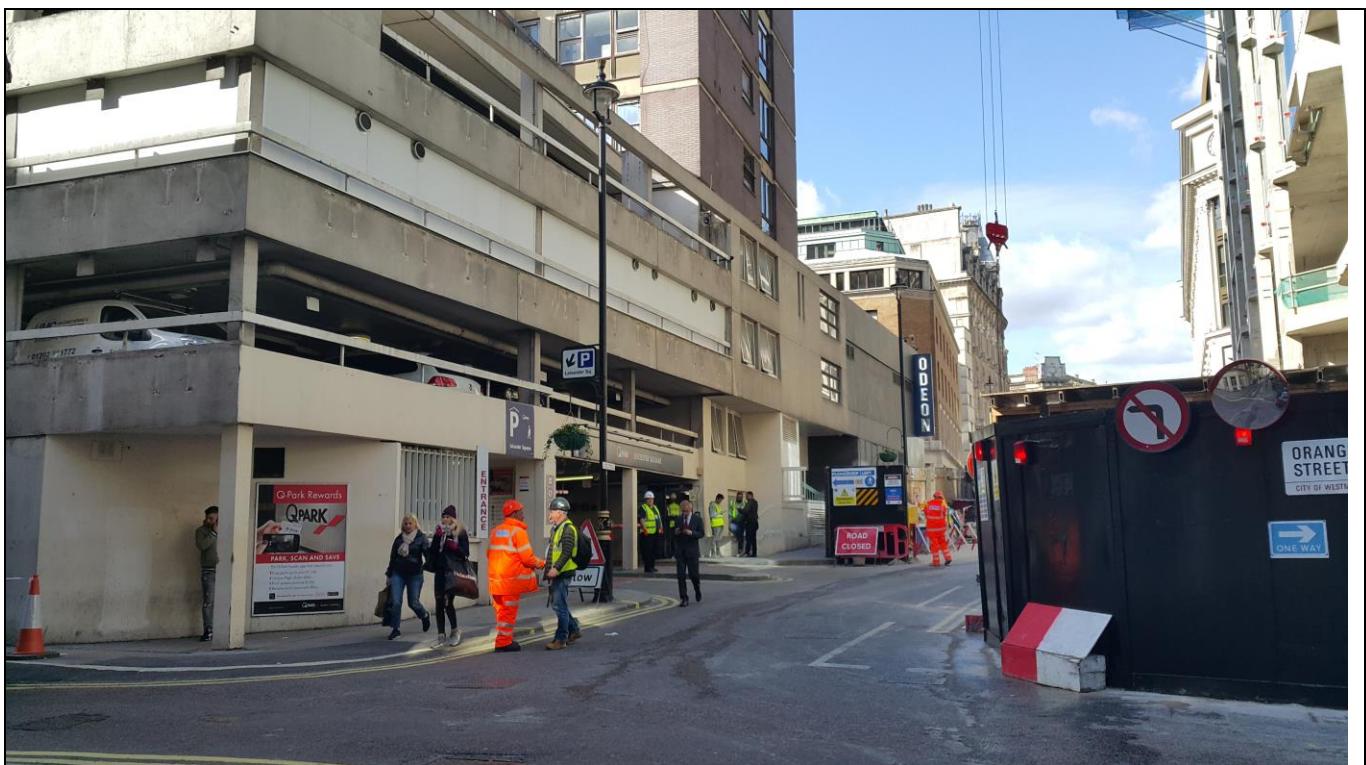
**Item No.**

### **3. LOCATION PLAN**



|          |
|----------|
| Item No. |
| <b>3</b> |

#### 4. PHOTOGRAPHS



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|----------|
| Item No. |
| <b>3</b> |

## 5. CONSULTATIONS

WESTMINSTER SOCIETY: No response to date.

SOHO SOCIETY: No response to date.

WASTE PROJECT OFFICER: Drawings not in line with the Council recycling and waste storage requirements.

HIGHWAYS PLANNING MANAGER: No objection.

ENVIRONMENTAL HEALTH: No objection in principle.

BUILDING CONTROL: No adverse comments, there are aspects of the fire safety and means of escape issues that are being dealt with under a retrospective (Regularisation) Building Regulations application.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 72

No. of replies: 6 (Huguenot House Association and 5 neighbours)

No. of objections: 6

No. in support: 0

The letters of objection are on the following grounds:

#### **Land use**

- Inappropriate change of use.
- Existing empty office space in the building should have accommodated the proposed use.
- Loss of public car parking spaces.

#### **Design**

- The screening detracts from the appearance of the building and the wider area.
- The proposal attracts anti-social behaviour.

#### **Amenity**

- Disturbance during construction works with disregard Council's working hours and noise levels
- Noise linked with activity

#### **\*Other matters**

- Questions raised as to whether Q-Park are able to sublet, the timing of the breach of planning and why notice wasn't served on relevant bodies including Westminster Council.
- Fire safety concerns.
- Significant increase in waste and use of water.

|          |
|----------|
| Item No. |
| <b>3</b> |

- Process of planning notification not efficient.
- Concerns raised about noisy construction work.
- Lack of natural light or fresh air to offices.

#### HUGUENOT HOUSE RESIDENTS ASSOCIATION

Object on the following grounds:

- unacceptable change of use for financial gain
- challenge the sui generis description
- loss of car parking spaces and future demands for parking and in particular off-street parking
- car parking under-used because of construction works
- lack of aesthetic considerations
- cause justification to demolish and redevelopment of Huguenot House
- security concerns (unauthorised access to telephone rooms)

PRESS ADVERTISEMENT / SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The 1960's building consists of a concrete framed podium with a slab block tower above known as Huguenot House and occupies an entire island site surrounded by Panton Street, Orange Street, Whitcomb Street and Oxendon Street. It is a mixed use site with a cinema and a public car park at ground, first, second and underground levels and offices and 35 residential flats on the upper levels. The site lies in the Central Activities Zone, the Haymarket Conservation Area and the West End Stress Area.

The application relates to the public car park element which is over 17 split levels at ground, first, second and four basement levels. They are identified as levels 1 to 16 and provide 247 car parking spaces. The car park is leased to Q Park and the Council are the freeholders of the site. Vehicular and pedestrian accesses to the car park is from Whitcomb Street.

### 6.2 Recent Relevant History

None.

## 7. THE PROPOSAL

This application follows a planning enforcement investigation for unauthorised change of use of part of the public car park.

The use to which this application relates commenced in December 2015 when two car park levels were used as temporary staff welfare rooms and office space by the contractor operating on the adjacent development site at land bounded by Leicester Square, Panton Street, Whitcomb Street, Orange Street and St. Martin's Street (known as the Leicester Square Hotel).

|          |
|----------|
| Item No. |
| <b>3</b> |

From April 2018 three additional car park levels have been used as temporary office, construction welfare facilities and storage areas (*sui generis*) as storage and staff space requirements increased. Retrospective permission is sought for this temporary use until 1 June 2020. The proposed use includes office space, staff meeting rooms, toilets, changing area, cloakroom, storage space, canteen and a waste and recycling area.

The proposed use occupies 2200 sqm of car park floorspace which results in a reduction of 56 car parking spaces. This is a public car park and there is no allocation of spaces for the residents at Huguenot House.

As part of the proposals external screening has been installed around the perimeter of the car park levels.

## **8.**

### **DETAILED CONSIDERATIONS**

#### **8.1 Land Use**

The loss of public off-street car parking for a temporary period is assessed against Policy TRANS25 of the Unitary Development Plan (UDP). This policy states that the City Council will usually permit the loss of public off-street parking but the following factors will be considered:

- 1 the need to reduce traffic levels and encourage more sustainable modes of transport
- 2 the average and peak usage of the car park
- 3 the availability of alternative, nearby public car parks
- 4 the impact on local on-street parking facilities
- 5 the impact on traffic and local residential amenity
- 6 any other factors considered relevant.

A key argument put forward by the applicant for the temporary loss of the public car park spaces is that the car park is underused. An independent study was carried out during a week in April 2016 on behalf of Corporate Property. Based on a maximum capacity of 247 spaces the survey shows that that peak utilisation was on a Saturday with 49% of car parking spaces occupied and the rest of the week the peak utilisation was equal or below 30% (with average utilisation below 20%). Therefore the 120 cars counted at peak time on a Saturday during the survey would still find spaces to park as 191 car parking spaces are retained as part of this scheme. It is accepted that construction works may have been operational at this time at the proposed Leicester Square Hotel. However the impact from these construction works is unlikely to have had a major impact on the operation of the car park as vehicular access to the car park would have been maintained.

Objectors disagree that the car park has been underused and comment on the future additional demand for off-street car parking spaces identifying it as a valuable public asset.

The letters of objection refer to the lack of alternative off-street parking facilities. However there are 11 alternative public car parks located within one kilometre of the application site and four of them are less than 400 meters away.

|          |
|----------|
| Item No. |
| <b>3</b> |

Given the temporary nature of the loss, the under-use of the car park and alternative facilities within close proximity, the proposal is considered acceptable in terms of Policy TRANS 25. The Highways Planning Manager does not object to the proposal.

Objections have been received that the proposed temporary office, construction welfare and storage area use is an inappropriate use and that existing empty office space in the building (one letter also mentioned empty offices in the area) should be used instead. Suspicion that the applicant has been discouraged to the use the empty office accommodation in Huguenot House is also pointed out. The residents' concerns that the existing empty office space above the car park should be used are understood. However, it is understood that this office space is managed separately from the car park. Despite this, permission has been sought for the use of the car park for the temporary use and the Council must assess the scheme as submitted on its own merits.

It is considered that the proposed temporary site office and associated facilities use are in accordance with City Plan Policy S1 which within the CAZ promotes a mix of uses consistent with supporting its vitality, function and character and Policy S47 which states that the Council will take a positive approach that reflects the presumption in favour of sustainable development.

Furthermore consideration needs to be given to the benefits of the proposal in terms of providing construction welfare facilities for a large redevelopment. These facilities need to be located in close proximity to the construction site and in this central location alternative options may be limited. Alternative options for the welfare facilities, such as on the public highway, may have been inconvenient to pedestrians to vehicular traffic and modular cabins may have been harmful to the visual amenity of the area. In conclusion the location of the office, storage space and construction welfare facilities within the existing public car park enables construction works at nearby site to operate efficiently and is likely to have less impact on local pedestrian and vehicular traffic. The proposals are considered to be compliant with policy TRANS 25 of the UDP.

## **8.2 Townscape and Design**

Objectors are concerned that the partitions around the edge of the car park levels to accommodate the temporary use have adversely affected the appearance of the building. The works have been described as ugly, an eyesore and creating a canyon affect in the street. Objectors consider this adversely affects the local environment making it less safe and attracting anti-social behaviour.

This 1960s multi-storey car park is a modernist structure with a utilitarian appearance. The car parking decks going up the structure are easily identified. There are simple metal railings fixed to the top of the parapet at the each deck. The area between each deck was originally open, and created a light (parapet wall at edge of deck) and dark (airspace) horizontal banding up the elevations. White panels have been installed to enclose each deck and create workspace. The panels installed at the lower levels of the structure (levels 12-14) have been set behind the railings atop the parapet wall and it is clear that they are infilling the airspace between the parapet/railing of one deck and the underside of the one above. The partitions installed at levels 15 and 16 are set back from the parapet at the edge of the parking decks and are not visible from street level. It

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|----------|
| Item No. |
| <b>3</b> |

is considered that this simple, temporary solution remains subservient to the parking decks and maintains the alternating horizontal banding up the elevations.

On both days of site visits no graffiti could be seen and the streets surrounding the garage did not appear particularly dirty.

Given the temporary nature of the proposal, it is not considered that any objections on design grounds could be justifiably sustained.

### **8.3 Residential Amenity**

Objections have been received from residents in Huguenot House on grounds of noise and disturbance. It is not clear whether the noise relates to activity relating to the current proposal or from the construction works relating to the Leicester Square Hotel.

The use of the premises as a site office, storage space and construction welfare facilities is unlikely to give rise to significant noise disturbance given that the facilities have been internalised (as a result of the external partitions) and the lack of noisy activity associated to use. It is not considered reasonable to limit the hours of use of the premises given that the public car park is open 24h a day and that the proposed activity is linked to the construction works on the adjoining site. Our standard noise condition is recommended to prevent noise outbreak from the site.

In addition Huguenot House and the public car park have separate accesses and the two uses are clearly separated. It is therefore not considered sustainable to refuse permission on a deteriorated quality of life for the residents at Huguenot House.

In this context it is considered that the proposed use is acceptable for a temporary period and would on that basis accord with policies S29 and S32 of the City Plan and Policies ENV 6 and ENV13 in the Unitary Development Plan.

### **8.4 Transportation/Parking**

The proposal does not raise any significant transport implications beyond those considered under paragraph 8.1.

### **8.5 Economic Considerations**

No economic considerations are applicable for a development of this size

### **8.6 Access**

The car and pedestrian accesses to the public car parking remains as existing.

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

#### **Waste**

Three residents in Huguenot House make reference to an increase in waste arising from the use. The drawings submitted with the application show an area dedicated to waste

|          |
|----------|
| Item No. |
| <b>3</b> |

and recycling. This is considered acceptable in principle however the applicant will need to confirm the bin capacities for the storage of residual waste and recyclable materials. It is considered that this information can be secured by condition. Subject to this condition it is not considered reasonable to refuse this application on lack of waste and recycling management.

### **City Plan**

The City Council is currently working on a complete review of its City Plan. Informal consultation on the first draft of Westminster's City Plan 2019-2040 started on Monday 12th November 2018 and closed on Friday 21st December 2018. Following this informal consultation, any representations received will be considered and the draft plan will be revised in advance of formal consultation under regulation of the Town and Country Planning Act (Local Planning) (England) Regulations 2012. Given the very early stage of the consultation process and having regard to the tests set out in para. 48 of the NPPF, the policies of the emerging draft City Plan are given little to no weight at the present time.

### **8.8 Neighbourhood Plans**

Not applicable.

### **8.9 London Plan**

This application raises no strategic issues.

### **8.10 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.

### **8.11 Planning Obligations**

Planning obligations are not relevant in the determination of this application.

### **8.12 Environmental Impact Assessment**

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

### **8.13 Other Issues**

#### **Lawfulness**

The letters of objection question whether there has been a breach of lease with the parking operator sub-letting part of the car park and the breach of planning. The letters raise concerns about collusion between the Council, the parking operator and the applicant about that a planning application was only submitted after enforcement action/ e so no application has been submitted. There are also concerns that the proposed temporary change of use will be used to justify the redevelopment of the entire building.

|          |
|----------|
| Item No. |
| <b>3</b> |

The Corporate Property department of the Council has confirmed that they were informed of the sub-letting and as landlord they could not reasonably object to an underletting. First because of the nature of the use. The "Permitted Use" under the parking operator's lease is for parking, offices and storage, any other use now or previously carried on at the premises, private storage. In addition they consented to an underletting to help generate new source revenue as the parking operator is obligated to pay the Council a rent. Issues regarding lease are not covered by planning legislation so requesting a full disclosure of the lease and subletting documents is not considered reasonable for the assessment of this application and it is not considered reasonable to withhold permission on lease grounds.

With regards to concerns about creating a precedent for similar types of planning application and justification to redevelop the whole building, the public car parking spaces is a *sui-generis* use and any future change of use would need planning permission and have to be assessed on a case-by-case basis.

Planning laws allow retrospective planning applications. This is at the applicant's risk but a retrospective application is assessed on the planning merits of the scheme in the same way as any other application. Refusing the proposal because it has been submitted after the commencement of the use would not be reasonable.

The retrospective application follows an enforcement investigation by the Planning Enforcement Team Council. It is not known why permission has not been applied prior to the commencement of the use but the enforcement process clearly shows impartiality of the Council when dealing with planning breach and applications.

### **Fire safety**

One of the main concerns raised by objectors is a potential lack of fire safety arrangements, in particular when the fire alarm of the car park is triggered. A review of the Council's records reveals that there have been noise complaints about the car park alarm. However the car park alarm is different from the independent fire alarm system that is installed at the application premises. In addition, the applicant advises that the principal contractor responsible for the construction of the Leicester Square Hotel is responsible for the use of the space and is required to comply with Health and Safety legislation in relation to the use and means of escape of the designed spaces. Officers have been advised that the current fire alarm system within the premises was last serviced in September 2018 and that fire checks are undertaken by the principal contractor on all fire points and extinguishers on a weekly basis. In the event of an alarm, fire wardens are responsible for clearing a maximum of 206 persons from the offices and welfare spaces. Building Control advise that there are aspects of the fire safety and means of escape issues that are being dealt with under a retrospective (Regularisation) Building Regulations application. This information is considered sufficient to understand that fire safety has been taken into consideration. A refusal on fire safety grounds would not be warranted under the Council's planning policies.

### **Crime and security**

Safety has also been raised in the objection letters due to change in appearance of the public car park favouring anti-social behaviour and unauthorised access to the building.

|          |
|----------|
| Item No. |
| <b>3</b> |

The Council's Environmental Health officer has been consulted and responded that there has been no records of associated public nuisance and/or public safety complaints during the period that the car park has been occupied by the applicant.

There is a separate access between the public car park and Huguenot House. Only part of the car park space is used by the applicant and they will have no access to the other parts of the building. In addition the agent advises that they are proposing to install a security alarm which will be monitored by the project site security team.

The activity at ground floor level remains as existing with the parking operating 24 hours a day 7 days a week and there no evidence link between the proposed use and anti-social behaviour. It is therefore not considered reasonable to refuse permission on safety grounds for a temporary use at upper levels.

### **Consultation process**

The efficiency of the consultation process has been queried in one of the objection letters. Letters to Huguenot House and all the neighbouring buildings directly facing the application site have been consulted, which is a total of 72 consultees. The letters were sent on the 24<sup>th</sup> of August 2018. In addition a site notice was put up and the application was advertised in a local newspaper. This was detailed to the objector via email on the 31<sup>st</sup> of August 2018. It is therefore considered that the consultation process has been carried out appropriately.

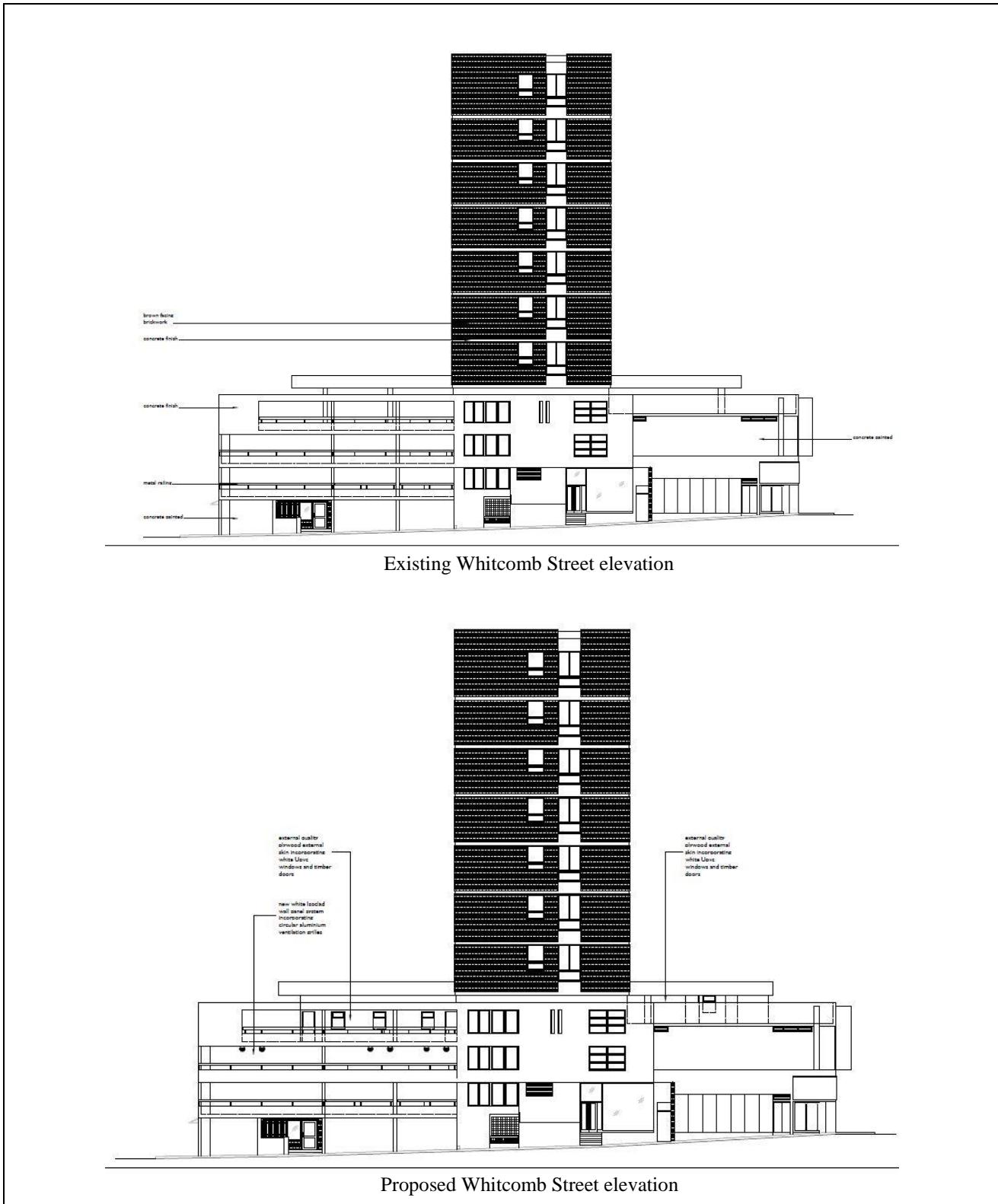
### **Services**

Concerns have been expressed with regards to the increase in use of water in the building. This would have to be addressed under Building Regulations and cannot be a reason to withhold planning permission.

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

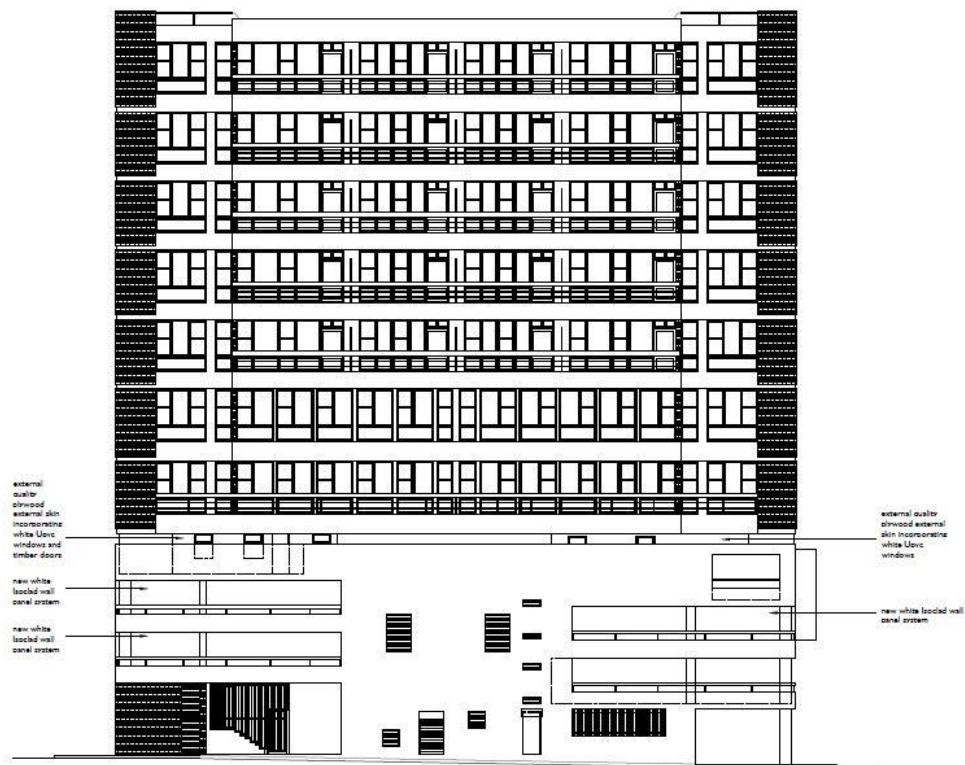
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| <b>IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: DAVID DORWARD BY EMAIL AT <a href="mailto:mmason@westminster.gov.uk">mmason@westminster.gov.uk</a>.</b> |
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## 9. KEY DRAWINGS

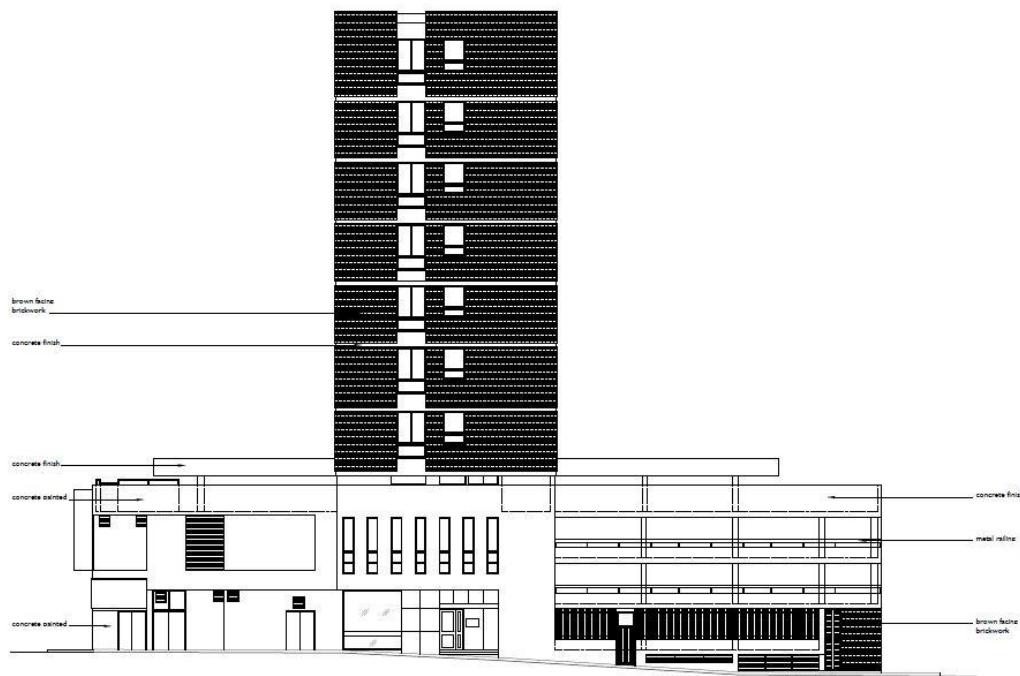




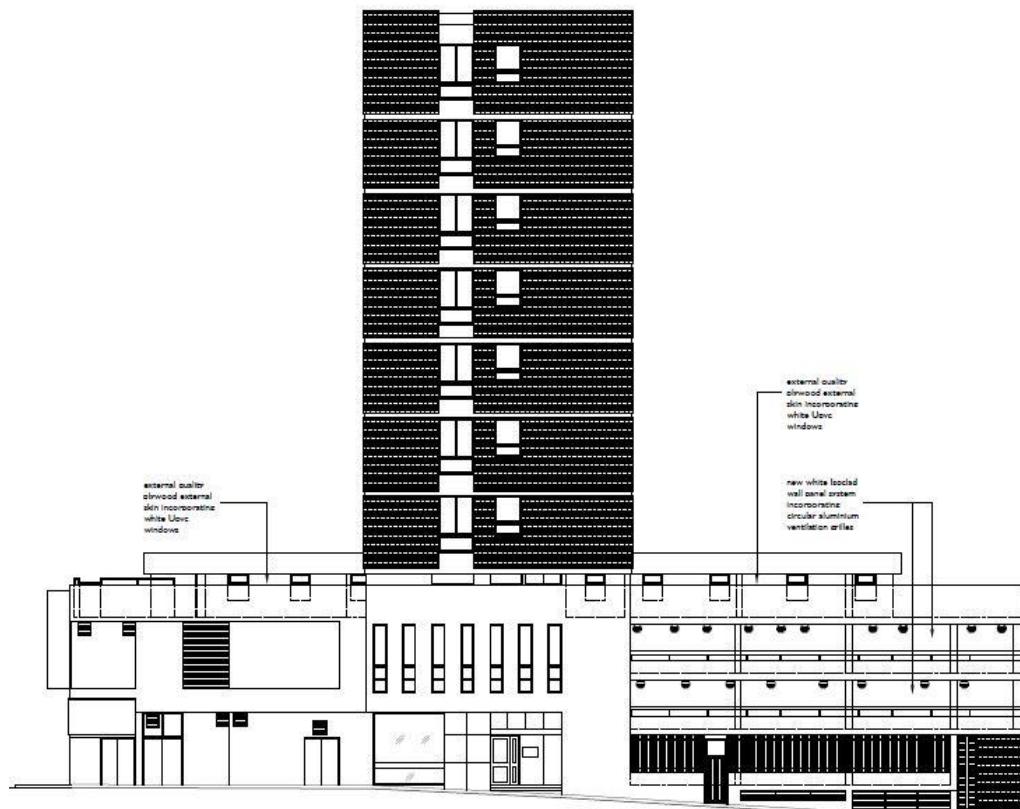
Existing Orange Street elevation



Proposed Orange Street elevation



Existing Oxendon Street elevation



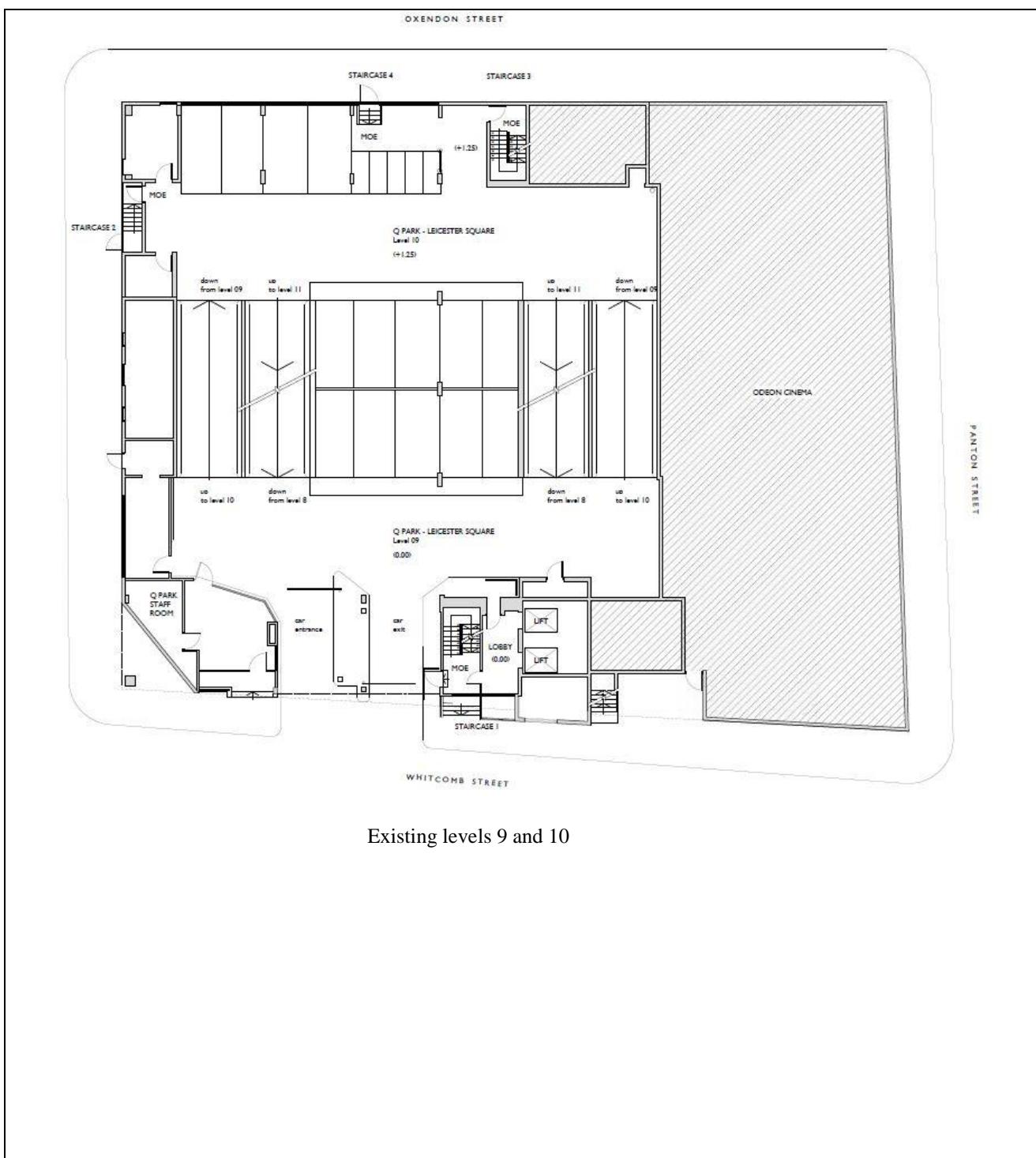
Proposed Oxendon Street elevation

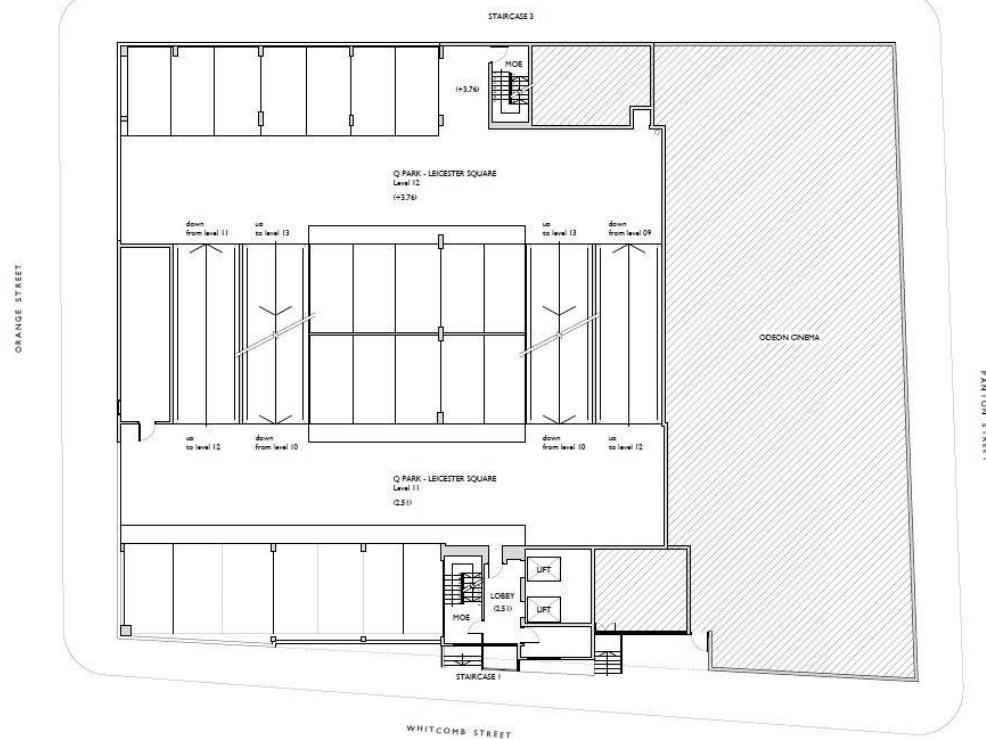


Existing Panton Street elevation

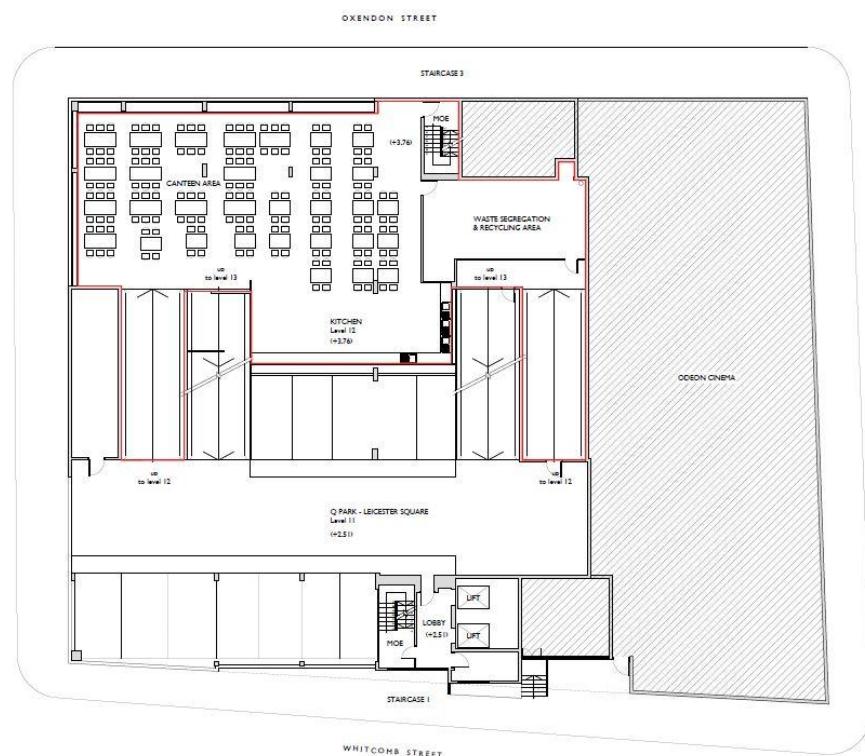


Proposed Panton Street elevation

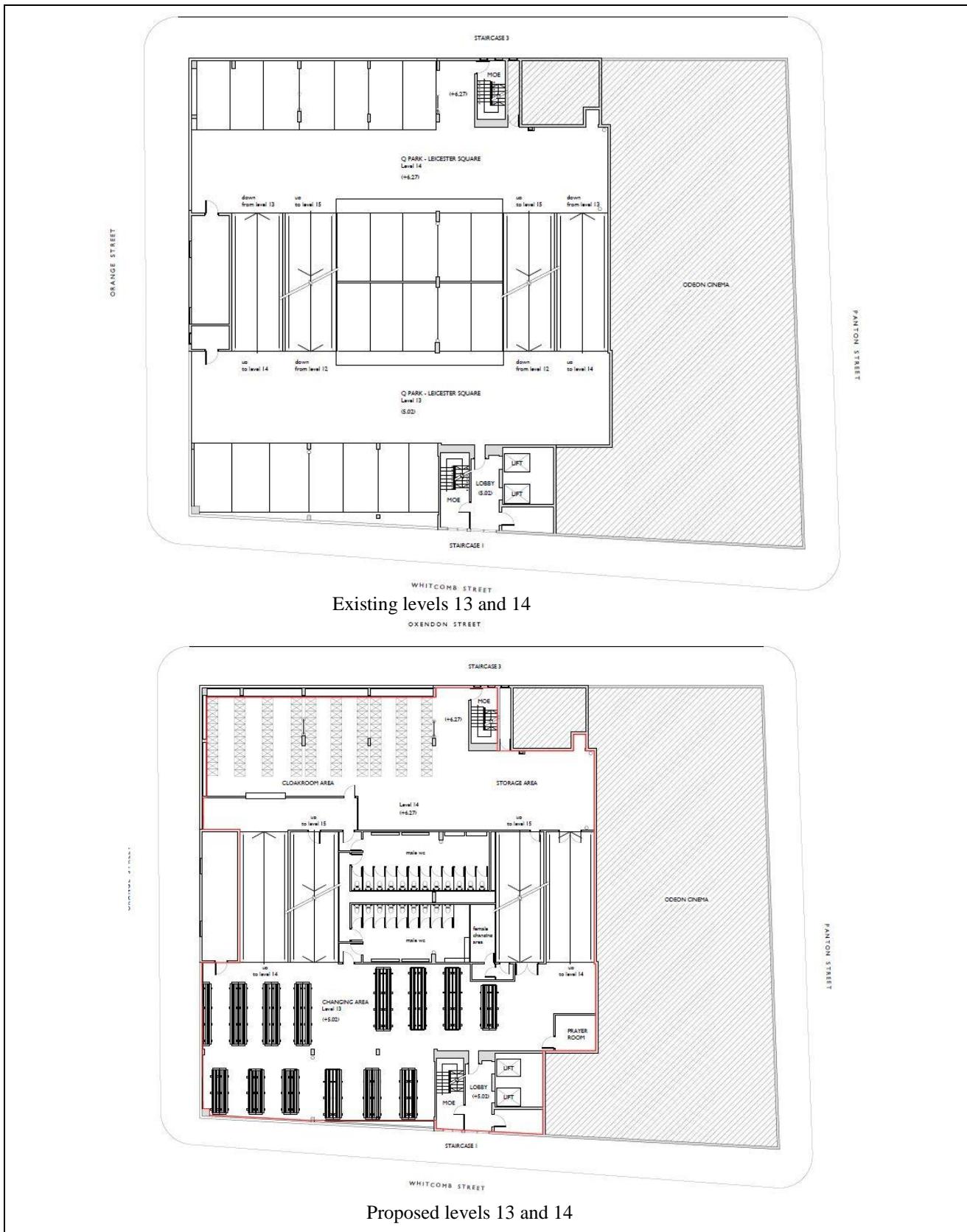




Existing levels 11 and 12

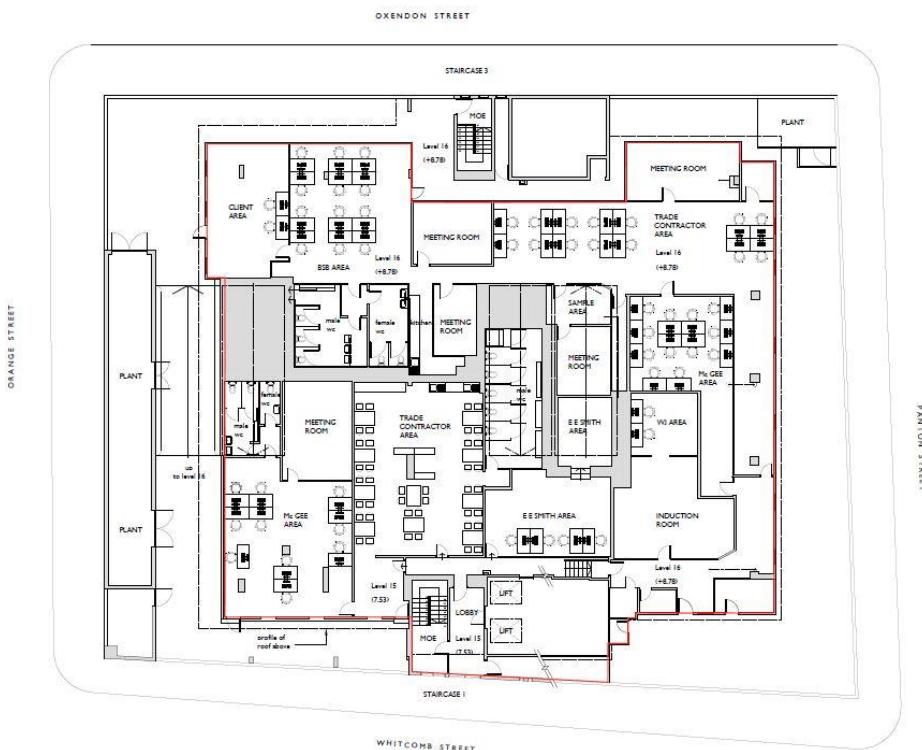


Proposed levels 11 and 12





**WHITCOMB STREET**  
**Existing levels 15 and 16**



## Proposed levels 15 and 16

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| Item No. |
| 3        |

## DRAFT DECISION LETTER

**Address:** Whitcomb Street Carpark, 39 - 41 Whitcomb Street, London, WC2H 7DT,

**Proposal:** Use from car park (Sui Generis Use) to temporary office, construction welfare and storage area (Sui Generis Use) associated with the construction of the Leicester Square Hotel opposite until 1 June 2020 (retrospective).

**Reference:** 18/07140/FULL

**Plan Nos:** 1822/P/600; 1822/P/609; 1822/P/611; 1822/P/613; 1822/P/615; 1822/P/631; 1822/P/632; 1822/P/633; 1822/P/634; 1822/P/6209; 1822/P/6211; 1822/P/6213; 1822/P/6214; 1822/P/6311; 1822/P/6312; 1822/P/6313; 1822/P/6314.

For information only: Design and access statement dated August 2018; Planning statement dated August 2018.

**Case Officer:** Aurore Manceau

**Direct Tel. No.** 020 7641 7013

### **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 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 Haymarket 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)

- 3 The temporary use allowed by this permission can continue until the 1st of June 2020. After that the land must return to its previous condition and all associated structures must be removed.

Reason:

The use is not as set out in DES1, DES 5 and TRANS25 of our Unitary Development Plan that we adopted in January 2007. Use for more than a limited period would be harmful to the objectives of the Plan. (R03AB)

|          |
|----------|
| Item No. |
| <b>3</b> |

- 4 Within one month of this decision 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 one month of our decision 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 sui generis use.

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)

- (1) Where noise emitted from the proposed internal activity in the development will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the internal activity within the sui generis use 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 permitted hours of use. The activity-specific noise level should be expressed as LAeqTm,, and shall be representative of the activity operating at its noisiest., , (2) Where noise emitted from the proposed internal activity in the development will contain tones or will be intermittent, the 'A' weighted sound pressure level from the internal activity within the sui generis use 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 permitted hours of use. The activity-specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest., , (3) Following completion of the development, 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 including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:, (a) The location of most affected noise sensitive receptor location and the most affected window of it;,(b) Distances between the application premises and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;,(c) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (a) above (or a suitable representative position), at times when background noise is at its lowest during the permitted hours of use. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;,(d) The lowest existing LA90, 15 mins measurement recorded under (c) above;,(e) Measurement evidence and any calculations demonstrating that the activity complies with the planning condition;,(f) The proposed maximum noise level to be emitted by the activity.

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 (UDP), so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive

|          |
|----------|
| Item No. |
| <b>3</b> |

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. (R47AB)

**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 informed, 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 are advised that the works are likely to require building regulations approval. Details in relation to Westminster Building Control services can be found on our website <https://www.westminster.gov.uk/contact-us-building-control>  
You are advised that the works are likely to require building regulations approval. Details in relation to Westminster Building Control services can be found on our website <https://www.westminster.gov.uk/contact-us-building-control>

Please note: the full text for informatics 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.