

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 22 October 2019	<b>Classification</b> For General Release	
<b>Report of</b> Director of Place Shaping and Town Planning		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	<b>32 Berners Street, London, W1T 3LR</b>		
<b>Proposal</b>	Use of an area of the public highway measuring 0.95m x 8.36m for the placing of 3 tables and 6 chairs and one heater in connection with the existing ground floor use.		
<b>Agent</b>	Monmouth Planning Ltd		
<b>On behalf of</b>	Bone Daddies Ltd		
<b>Registered Number</b>	19/02573/TCH	<b>Date amended/ completed</b>	30 April 2019
<b>Date Application Received</b>	5 April 2019		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Not applicable		

## 1. RECOMMENDATION

Grant conditional permission for a temporary one year period.

## 2. SUMMARY

The application relates to an area of public highway outside of 32 Berners Street close to the junction of Mortimer Street. 32 Berners Street forms part of 25-33 Berners Street which is a mixed use development of retail (Class A1) and/or café/restaurant (Class A3) use at part ground and basement floor levels and offices (Class B1) at first to seventh floors, which was completed in 2017. Until recently the ground floor unit of 32 Berners Street had remained vacant but it is now occupied by 'Flesh and Buns', a Japanese izakaya-style ('informal') restaurant & bar.

Permission is sought for the use of an area of the public highway measuring 0.95m x 8.36m for the placing of three tables and six chairs and one heater in connection with the ground floor restaurant. The furniture would be placed on the highway between 10:00 and 21:30 hours daily and operational between 10:00 and 21:00 daily.

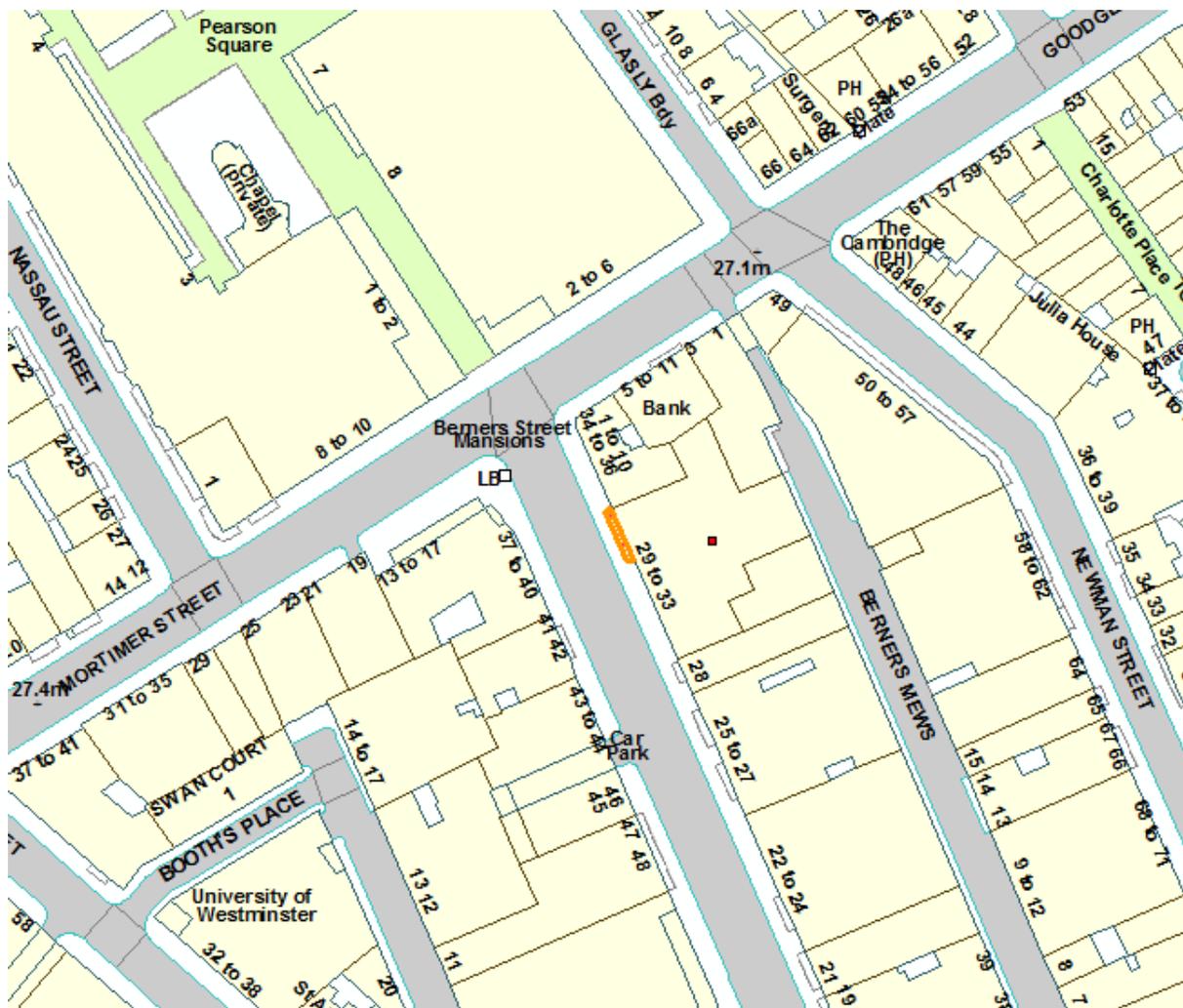
The key issues raised in this case are:

- \* The impact of the proposal on pedestrian movement and highways safety and
- \* The impact of the use on residential amenity.

A number of objections been received relating to the impact on residents' amenity and highway safety.

The proposal is considered acceptable in highways terms, leaving a sufficient width of unobstructed pavement for pedestrian movement. Subject to appropriate conditions, it is not considered that the use would have a material impact upon residents' amenity. The proposals comply with relevant local plan policies and is recommended that permission be granted for a temporary period of one year to enable the impact of the development to be monitored.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS



4 Sep 2019 at 16:32:39



## 5. CONSULTATIONS

### FITZROVIA NEIGHBOURHOOD ASSOCIATION:

Any response to be reported verbally.

### HIGHWAYS PLANNING MANAGER:

No objection subject to standard conditions and temporary one-year permission to allow monitoring.

CLEANSING: No objection

### ADJOINING OWNERS/OCCUPIERS

No. Consulted: 26

No. Responses: 8 objections received on the following grounds:

- Increased noise from external seating/adverse impact on welfare and amenity of residents;
- obstruction of the highway/pedestrian safety;
- fumes from smokers;
- consumption of alcohol;
- setting a precedent;
- detrimental effect on the character and appearance of the area;
- safety issues associated with the gas powered heater;
- undermining terms and conditions of the premises licence.

SITE/PRESS NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application relates to an area of public highway outside 32 Berners Street close to the junction of Mortimer Street. This is a relatively new commercial development that includes a restaurant unit: the hours of this are restricted by planning condition to between 08:00 to 00:00 on Mondays to Saturdays and between 10:00 to 23:00 on Sundays and Bank Holidays. (The Premises Licence allows the restaurant to be open from 10:00 to 23:30 on Mondays to Thursdays, 10:00 to 00:00 on Fridays and Saturdays and 10:00 to 22:30 on Sundays.) The unit was recently occupied by 'Flesh and Buns', a Japanese izakaya-style ('informal') restaurant & bar.

Although the area is largely commercial in terms of character and function, there is some residential accommodation in the vicinity, the nearest being Berners Mansions, 34-36 Berners Street. A number of objections have been received from or on behalf of residents in this building.

### 6.2 Recent Relevant History

17.08.2016 - Permission granted for the demolition of existing buildings and erection of replacement building comprising retail (Class A1) and / or cafe/restaurant (Class A3) at

part ground and part basement floor levels; offices (Class B1) at upper levels (16/01934/FULL). Fully implemented.

## **7. THE PROPOSAL**

Permission is sought for the use of an area of the public highway measuring 0.95m x 8.36m for the placing of 3 tables and 6 chairs and 1 heater in connection with the existing ground floor Japanese restaurant.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

Proposals for the use of the public highway for the provision of tables and chairs for use in association with eating and drinking establishments is considered under Unitary Development Plan (UDP) Policy TACE 11 and Policy S41 of the City Plan. These policies permit tables and chairs to be sited on the highway where they would not result in highway obstruction and where there would be no material loss of amenity to neighbouring occupiers. In these circumstances, there is no policy objection to the principle of private use of the public highway (which is permitted at many sites throughout Westminster) and objections to the commercialisation of the public highway cannot be supported.

The impact of the proposals upon local amenity and the operation of the highway is discussed below.

### **8.2 Residential Amenity**

Objections have been received from local residents on the grounds that the proposals would result in unacceptable noise disturbance to neighbouring residential properties at Berners Mansions, 34-36 Berners Street, and occupiers in 30 Berners Street. The supporting text to UDP Policy TACE 11 states that the City Council normally would not permit external tables and chairs where the upper floors of the main building are in residential use. The upper floors of 32 Berners Street are occupied by offices. The nearest residential units are adjacent to 32 Berners Street and within Berners Mansions, 34-36 Berners Street: the nearest residential window is approximately 15m away from the proposed seating area.

There are some residential premises in the area and Berners Street appears to be quieter later into the evening. The applicant originally requested hours of use until 23:00 daily and some of the objectors refer to this time. Following negotiations, the applicant has agreed to provide service to the seating area until 21:00 daily, with a closure of the area at 21:30 (to allow 30 minutes for customers to finish eating). This has been confirmed as part of their operational management plan and would be secured by condition. Given the limited number of seats proposed (6) and subject to a condition limiting the hours of use to those proposed 10:00 to 21:30 hours on Monday to Sunday, it is not considered that the scheme would result in unacceptable noise disturbance to neighbouring residents.

There has been an objection that this application would set a precedent for allowing tables and chairs in Berners Street. The site is within very close proximity to existing previously approved tables and chairs directly under Berners Mansions, at 36 Berners Street (the café unit on the corner with Mortimer Street). The 2016 permission (16/08753/TCH) allows for the use of the public highway for the placing of two tables, four chairs and two barriers in an area measuring 3.4m x 1.3m on Mortimer Street and four tables, eight chairs and two barriers in an area measuring 1.5 m x 6.0 on Berners Street. This permission allowed the use of the tables and chairs between 07.00 and 20.00 (Monday to Friday) and 10.00 and 17.00 (Saturdays). It is acknowledged that the 2016 permission expired in December 2018, however the tables and chairs remain in situation with no formal complaints to the tables and chairs having been raised from local residents. The tables and chairs at this site are currently under investigation by the City Councils Planning Enforcement team.

Adjacent to the site at 34 Berners Street (also under Berners Mansions) is a coffee shop with 3 tables and 6 chairs. Since the submission of this application, the use of the tables and chairs has found to be unauthorised and is now also subject to a planning enforcement investigation. It should be noted that prior to this application, no complaints appear to have been received to these tables and chairs, which appear to have been in place since at least July 2014.

When the Council grants permission for tables and chairs on the public highway, it is normally for a temporary period of one to two years. Diagonally opposite the site, at 37 Berners Street, is a restaurant (currently the Greyhound Café) which has a private forecourt; this holds a large number of tables and chairs that do not require planning permission. (Permission was granted in March 2008 for permanent galvanised steel planters and umbrella bases to be placed on the private forecourt of the restaurant, to enclose the external seating area.) This restaurant is open until 23:00 hours Monday to Sunday: their licence requires the outside area to be vacated by 23:00 hours and the tables and chairs removed by 23:00 hours Monday to Saturday and 22:30 hours on Sundays. However, there are no planning controls on this large area of external seating.

There are objections concerned that there will be noxious fumes from people who start smoking in the area. The operational management plan confirms that smoking will not be permitted within the seating area: customers who wish to smoke may only do so south of the premise's entrance on Berners Street, away from Berners Mansions - this would in accordance with conditions 31 and 32 of the premises license. Even so, smoke from a potential maximum of six diners is likely to be limited and disperse quickly.

Further objections relate to the consumption of alcohol on site. The objection raises concerns that no off-sales alcohol was agreed when negotiating the premises license in 2018. The external seating area will form part of the seating area for the restaurant, and whilst the consumption of alcohol is not a planning consideration, the operational management plan confirms that customers using the area will be served by waiter service and the area will be regularly monitored. This is not a material planning consideration and could not justify the withholding of permission. However, the licence has a number of restrictions that control alcohol consumption and the applicant would be expected to comply with them.

One objector raises concerns that the tables and chairs will create the opportunity for crime. Given there are only three tables and six chairs proposed in this application, it is considered unreasonable to refuse this proposal based on a potential increased amount of crime. Furthermore, the premises licences requires the provision of a comprehensive CCTV system that covers the main entry point.

### **8.3 Transportation/Parking**

Following initial concerns raised by the Highways Planning Manager, the applicant has amended the original scheme that proposed the use of an area measuring 1.25m x 8.36m for placing of 3 tables and 8 chairs, 1 heater and planters. The proposal has omitted two chairs and the planters and reduced the seating area to an area measuring 8.35m x 0.95m. This leaves 2.6m for pedestrian use, in accordance with Council guidelines that require a minimum width of 2m for pedestrian movement and on this basis the Highways Planning Manager has no objection to the application.

Neighbouring objectors raise concerns that the tables and chairs could cause obstruction to pedestrian and wheelchair users and cause access problems for street cleaners and refuse storage. The amended proposal is considered to address these concerns.

For the reasons outlined above, the proposals are considered acceptable in highways terms and the objections are not considered to be sustainable. However, in accordance with the Council's usual practice, it is recommended that permission is granted for a temporary period of one year to allow the impact of the proposal to be monitored.

### **8.4 Economic Considerations**

No economic considerations are applicable for a development of this size

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

#### **Cleansing**

The Projects Officer (Waste) has raised no objection to the revised application.

### **8.6 Westminster 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 took place between Monday 12 November 2018 and Friday 21 December 2018. Following this informal consultation, the draft plan has been revised and formal consultation is now being carried out under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012 between Wednesday 19 June 2019 and Wednesday 31 July 2019. In the case of a draft local plan that has been published for consultation under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012, including a second revision Regulation 19 plan, it remains at a pre-submission stage (i.e. has yet to be submitted to the Secretary of State for Examination in Public) and therefore, having regard to the tests set out in para. 48 of the NPPF, it will generally attract very limited weight at this present time.

## 8.7 London Plan

This application raises no strategic issues.

## 8.8 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.

## 8.9 Planning Obligations

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

## 8.10 Environmental Impact Assessment

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

## 8.11 Other Issues

There is an objection that the tables and chairs would have a detrimental impact on the character and appearance of the area, by increasing night time activity and making it seem like Soho. The amount of outside seating and limited evening hours are considered to be modest: in the context of the large seating area on the private forecourt on the opposite corner, the impact on character and appearance is considered to be modest and the objection is not sustainable.

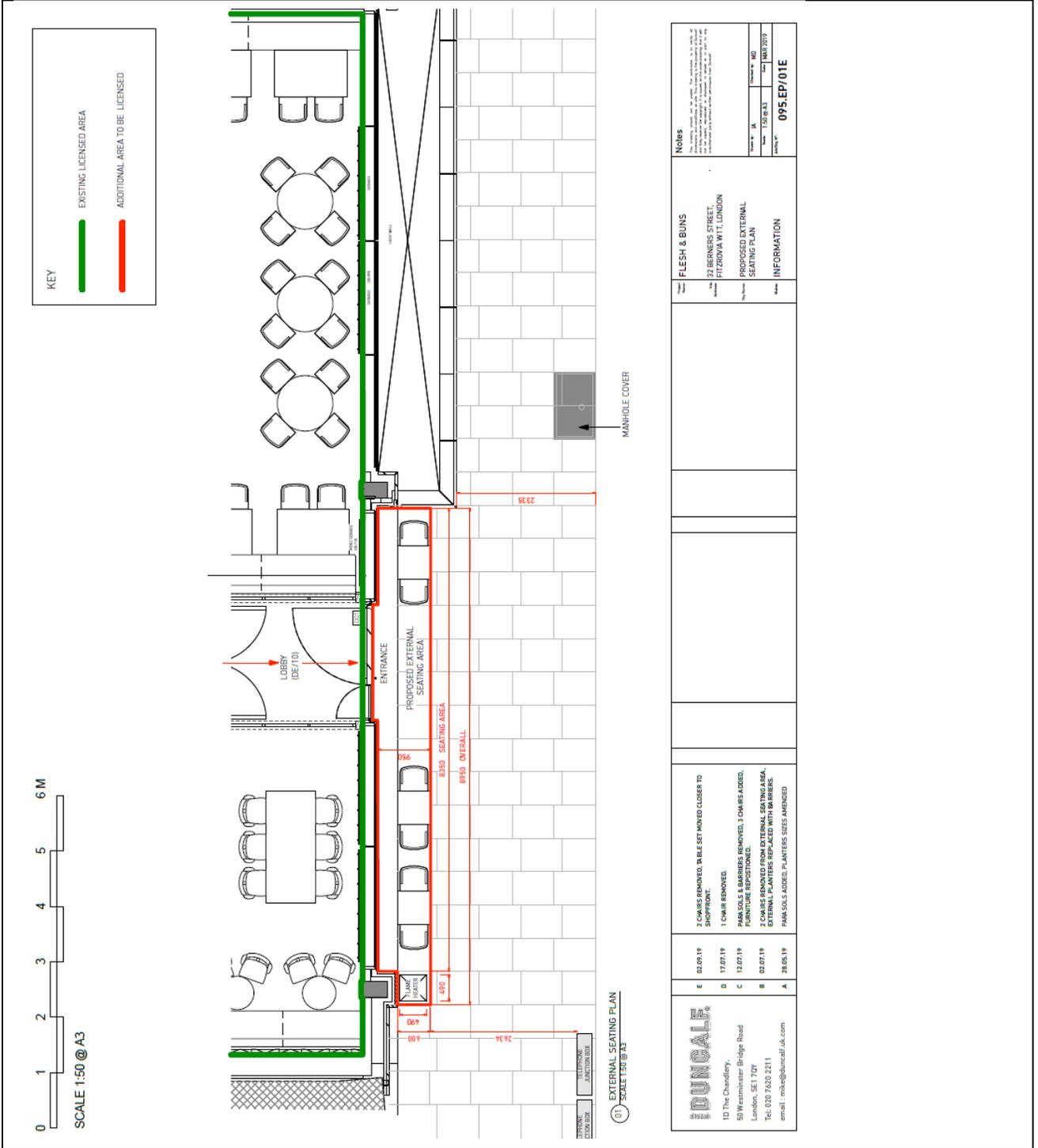
Concerns that this application undermine the terms and conditions of the premises licence are not considered to be sustainable. Licensing is a separate regime from planning and the applicant is still required to comply with the premises licence. Having six customers eating immediately outside the restaurant in a designated seating area as part of the waiter-service function is not considered to conflict with the terms of the licence.

There has been an objection about the pedestrian and public safety implications of the proposed external heater. This is not a planning matter but dealt with under other legislation and an objection cannot be sustained on these grounds. The applicant has to apply to the Council for a highways license to place the heater on the pavement. As part of that application the applicant will need to provide a Risk Assessment to the Council to demonstrate that the heaters are used and stored safely. The Risk Assessment will be assessed by the Council's Environmental Health division as part of the consultation process for the highways licensing application.

(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: PAUL QUAYLE BY EMAIL AT [pquayle@westminster.gov.uk](mailto:pquayle@westminster.gov.uk)

# 9. KEY DRAWINGS



**DRAFT DECISION LETTER**

**Address:** 32 Berners Street, London, W1T 3LR,

**Proposal:** Use of an area of the public highway measuring 0.95m x 8.36m for the placing of 3 tables and 6 chairs and, 1 heater in connection with the existing ground floor use.

**Reference:** 19/02573/TCH

**Plan Nos:** 095.EP/01E, Bone daddies Ltd - 32 Berners Street Operational Management Plan Revision 1.

**Case Officer:** Shaun Retzback

**Direct Tel. No.** 020 7641 6027

**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 You must not put the tables and chairs and, where relevant, other furniture, equipment or screening hereby approved in any other position than that shown on drawing 095.EP/01E. (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 You can only put the tables and chairs and, where relevant, other furniture, equipment or screening hereby approved on the pavement between 10:00 and 21:30. (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. (R25BD)

- 4 Customers are only permitted on the tables and chairs between 10:00 and 21:30.

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. (R25BD)

- 5 The tables and chairs must only be used by customers of ground floor, 32 Berners Street. (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)

- 6 This use of the pavement may continue until 30 September 2020. You must then remove the tables and chairs and, where relevant, other furniture, equipment or screening hereby approved. (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.

- 7 You can only put out on the pavement the tables and chairs and heater shown on drawing 095.EP/01E. No other furniture or equipment 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. (R25EA)

- 8 The tables and chairs hereby approved must only be operated in accordance with the measures included in your Operational Management Plan Revision 1 received on 4 September 2019.

Reason:

To make sure that the use will not cause nuisance for people in the area. This is as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and TACE 11 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

**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, neighbourhood plan (where relevant), 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 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)
- 3 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)
- 4 The 'Operational Management Plan Revision 1' received on 4 September 2019 must be adhered to at all times. If the City Council receive complaints about the external seating area not being used in accordance with this Plan, planning permission may not be renewed.

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.