

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 26 November 2019	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved Marylebone High Street	
Subject of Report	52 - 55 Dorset Street, London, W1U 7NH,		
Proposal	Use of two areas of forecourt measuring 5.84m x 1.78m and 3.76m x 2.05m for placing of nine tables and 18 chairs, 3 freestanding heaters, and planters associated with the operation of the ground and basement premises.		
Agent	Turley		
On behalf of	AOK Kitchen		
Registered Number	19/07086/TCH	Date amended/ completed	17 September 2019
Date Application Received	12 September 2019		
Historic Building Grade	II		
Conservation Area	Portman Estate		

1. RECOMMENDATION

Grant conditional permission

2. SUMMARY

This application site partly comprises a Grade II listed building (Nos. 53-55) and an unlisted building (No. 52) situated within the Portman Estate Conservation Area. Following a permission granted in 2018 the building is now in restaurant use. Above the site at first, second and third floor level is residential (Class C3) accommodation.

Planning permission is sought for the use of two areas of forecourt measuring 5.84m x 1.78m and 3.76m x 2.05m for the placing of nine tables and 18 chairs, 3 freestanding heaters, and planters. Permission was previously granted on 30 July 2018 to use the same external area for seating for a period of one year.

The main difference in this application from that previously permitted is the inclusion of three freestanding heaters and the extended hours of operation from 09:00 to 08:30, an overall increase in the hours of use by 30 minutes daily. The applicant originally sought permission to use the forecourt for tables and chairs until 22:00 daily. However, the applicant has agreed to reduce the hours to the same terminal hour of 21:00 as previously permitted.

The key issue for consideration is the impact of the proposals upon the amenity of neighbouring residents. A large number of objections from neighbouring residents in the Dorset Street area have been received on the grounds of early morning and late-night disturbance, that heaters would intensify the external seating area use, increased traffic causing highway obstruction and parking issues and on the basis that the operator has been noisy and operating outside the approved hours. The agent confirms that the applicant has been in regular contact with local community and neighbours in an attempt to resolve the matters highlighted within the consultation concerns. The scheme has been revised to address some of these concerns by:

- Provision of an operational management plan confirming the management of the tables and chairs.
- Terminal hour of external seating area 21:00 (as previously approved).

Subject to conditions, the scheme is considered acceptable on highways and amenity grounds. However, it is recommended that permission is granted for a temporary period of one year to enable the situation to be monitored.

3. LOCATION PLAN



This production includes mapping data licensed from Ordnance Survey with the permission of the controller of Her Majesty's Stationary Office (C) Crown Copyright and/or database rights 2013. All rights reserved License Number LA 100019597

4. PHOTOGRAPHS



5. CONSULTATIONS

MARYLEBONE ASSOCIATION:

Any response to be reported verbally.

HIGHWAYS PLANNING MANAGER:

No objection subject to condition

CLEANSING:

No objection

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED:

No. Consulted: 75

Total number of replies: 9 objections received from neighbouring residents on the following grounds:

- increased hours will create increased noise at the beginning of the day and in the late evening
- heaters will intensify the use
- increased traffic and parking on double yellow lines
- complaints have been made to the restaurant regarding noise and opening outside the approved hours of operation
- use of outside heaters are environmentally damaging

SITE & PRESS NOTICE

Yes.

6. BACKGROUND INFORMATION

6.1 The Application Site

No. 52 is an unlisted property and No. 53 - 55 is a Grade II listed property located on the southern side of Dorset Street at the corner of Manchester Street. The building comprises basement, ground and three upper floors. The site is located within the Portman Estate Conservation Area. The building is in restaurant use operated by A.O.K Kitchen and residential use on the upper floors.

The site is located outside the Core Central Activities Zone (but within the Central Activities Zone) and is part of a Local Shopping Centre. It is not in a Stress Area.

6.2 Recent Relevant History

Planning permission and listed building consent were granted on 30 July 2018 (18/02822/FULL) for the alterations at basement and ground floor levels including the installation of a partially openable shopfront, erection of a bin store screen and installation of replacement plant to the rear and associated alterations. Dual/alternative use of part of the basement level as a restaurant (Class A3) and/or bakery (Class A1) and use of two areas of the private forecourt for the placing of nine tables and 18 chairs

in association with the ground floor restaurant use. This permission has been implemented.

7. THE PROPOSAL

Permission is sought for the use of two areas of forecourt measuring 5.84m x 1.78m and 3.76m x 2.05m for placing of nine tables and 18 chairs, 3 freestanding heaters, and planters associated with the operation of the property.

The most recent permission allowed the use of external seating between 09.00 and 21.00 daily, after which time the tables and chairs were to be stored within the building. Permission is now sought for the use of the tables and chairs between 08:30 and 21:00 daily.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The use of the highway for tables and chairs in connection with eating and drinking establishments is assessed under Unitary Development Plan (UDP) Policy TACE 11 and Policy S41 of the City Plan. These policies permit tables and chairs where there would be no adverse obstruction on the highway and no material harm to the local residential amenity. These matters are discussed in paragraphs 8.3 and 8.4 below.

8.2 Townscape and Design

The proposed tables and chairs are considered acceptable in townscape terms and, being impermanent, would not harm the character and appearance of the East Marylebone Conservation Area.

8.3 Residential Amenity

The nearest residential accommodation is located above the restaurant at 52 Dorset Street. There are also number of residential dwellings in Dorset Street in close proximity to the site including a large number of residential flats at St Andrew's Mansions opposite the application site. Objections have been received from nine local residents, which relate to the use of the terrace before 09:00 and beyond 21:00 daily, noise from customers and clearing of tables, concerns have also been raised regarding the use of external heaters.

The forecourt to the front of the premises has been in use for a varied amount of tables and chairs by the previous occupier for a number of years. The tables and chairs are located on a private forecourt, not public highway, and therefore the City Council ordinarily has no control over the use of tables and chairs in this area. However, as part of the permitted 2018 application, the applicant agreed to apply to the City Council for permission for the tables and chairs.

As stated above, objectors are concerned about extended hours for the tables and chairs and believe that the terminal hour of 21:00 should remain in place and that the tables and chairs should not be placed on the terrace before 09:00. Since the

application was submitted the terminal hour has been revised to 21:00 in accordance with the concerns raised. The increased hours by 30 minutes to 08:30 in the morning are not considered unreasonably early and is unlikely to materially impact the amenity of surrounding residents. There are a number of other tables and chairs in close proximity on Chiltern Street operating similar or earlier hours.

Since the application was submitted, complaints have also been made to the City Council's Noise Team relating to noise disturbance from tables and chairs being placed on the pavement after 21:00 and objectors have contacted the restaurant directly complaining both about noise from the terrace after 21:00 and from noise from inside the restaurant when windows have been left open, contrary to the terms of the original permission. These concerns have been raised with the applicant who contend that these infringements are as a result of a recent change in management, however, they maintain that the requirements set out in the operational management plan have now been addressed, that the tables and chairs on the terrace are closely monitored by the management team and that any breach will be flagged and addressed accordingly. A condition is recommended limiting the external seating to a further year only and the applicant has been advised that if further complaints are received it is unlikely that a renewal would be granted in the future.

In response to the objections from neighbours to this application, the restaurant has also submitted a 'Operational Strategy' which sets out the measures proposed to prevent public nuisance and to protect the local residential amenity. The Operational Strategy sets out a number of objectives including the hours of use of the seating area, cleaning of the area, spot checks by management and the number of patrons permitted in the external seating area. This strategy is to be secured by condition.

8.4 Transportation/Parking

The tables and chairs retain a pavement width of 2.12m for pedestrian use. This satisfies the Council's 'Westminster Way – Public realm strategy, Design principles and practice' which states that a minimum requirement of 2m is required as a pedestrian clearway.

A number of concerns raised by objectors relate to the traffic situation on Dorset Street and Manchester Street with vehicles parking in residents' bays and on double yellow lines. Whilst these objections are acknowledged, unauthorised parking is not a planning consideration and it would be unreasonable to refuse the application for tables and chairs on these grounds.

8.5 Economic Considerations

Any economic benefits are welcome.

8.6 Access

The access arrangements to the property remain unchanged.

8.7 Other UDP/Westminster Policy Considerations

Objections have been received regarding the external heaters intensifying the use and are environmentally damaging to the environment. Whilst these concerns are acknowledged, there is no policy basis to refuse the application on sustainability grounds and the City Council has approved a large number of tables and chairs applications which include external heaters. The heaters are fully removable from the public highway and will be conditioned to ensure they are stored within the premises outside the hours of use.

8.8 Westminster City Plan

The City Council is currently working on a complete review of its City Plan. Formal consultation on Westminster's City Plan 2019-2040 was 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 and subject to 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.

8.9 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. The proposal is not CIL-liable.

8.12 Environmental Impact Assessment

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

8.13 Other Issues

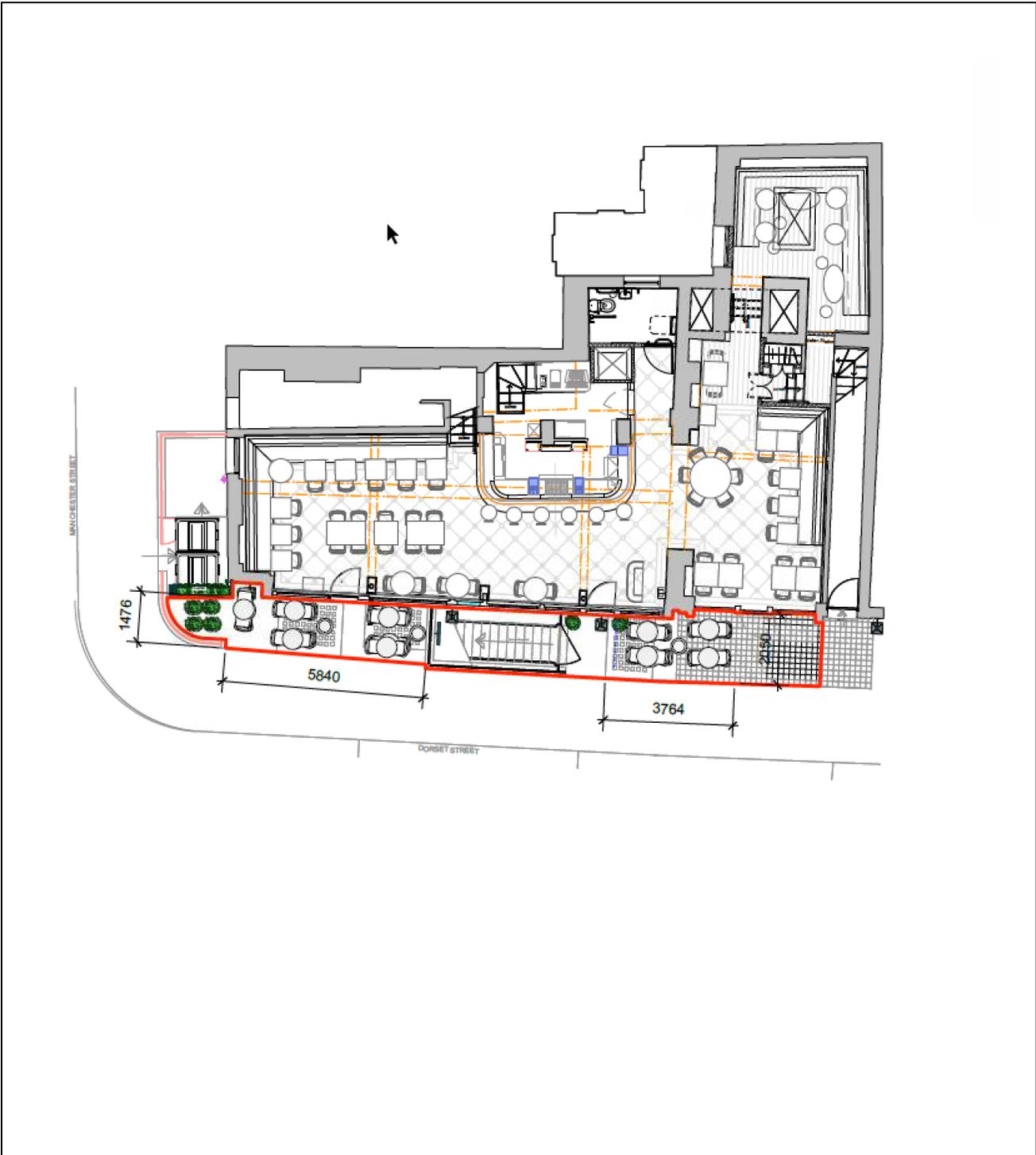
A number of objectors refer to the fact that the application site is not within a shopping centre. However, the southern part of Dorset Street is designated as a Local Shopping Centre in both the UDP and City Plan.

(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

KEY DRAWINGS



DRAFT DECISION LETTER

- Address:** 52 - 55 Dorset Street, London, W1U 7NH,
- Proposal:** Use of two areas of forecourt measuring 5.84m x 1.78m and 3.76m x 2.05m for placing of nine tables and 18 chairs, 3 freestanding heaters, and planters associated with the operation of the property.
- Reference:** 19/07086/TCH
- Plan Nos:** 1398_GA_2202 A, Management Strategy received by City Council on 7 November 2019

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 1398_GA_2202 A. (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 08:30 and 21:00. (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. (R25BD)

- 4 The tables and chairs must only be used by customers of the basement and ground floor unit. (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)

- 5 This use of the pavement may continue until 30 November 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.

- 6 You can only put out on the pavement the tables and chairs and, where relevant, other furniture, equipment or screening hereby approved shown on drawing 1398_GA_2202 A. No other furniture, equipment or screening shall be placed on the pavement in association with the tables and chairs hereby approved.

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)

- 7 You must carry out the measures included in your Management Strategy received on 7 November 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 Management strategy received on 7 November 2019 must be adhered to. If the City Council continue to receive complaints planning permission is unlikely to 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.