

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 23 June 2020	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved West End	
Subject of Report	68 - 70 Wardour Street, London, W1F 0TB		
Proposal	Flexible use of the ground and basement floors for either retail (Class A1) or restaurant use (Class A3).		
Agent	Planning Potential Ltd.		
On behalf of	Sapcote Group PLC		
Registered Number	20/01448/FULL	Date amended/ completed	27 February 2020
Date Application Received	27 February 2020		
Historic Building Grade	Unlisted		
Conservation Area	Soho		

1. RECOMMENDATION

Grant condition permission

2. SUMMARY

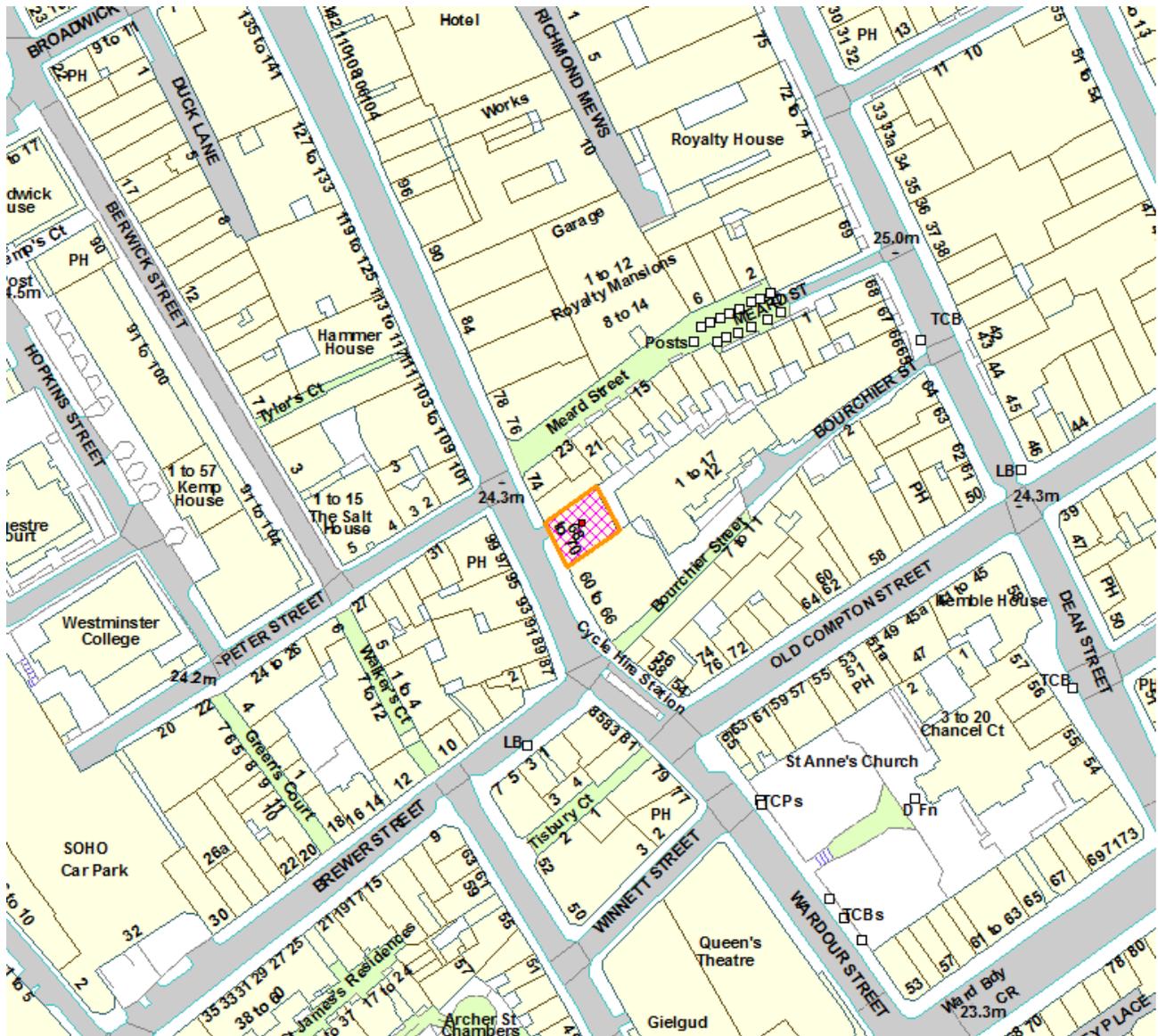
The site comprises an unlisted five storey plus basement building within the Soho Conservation Area, Central Activities Zone (CAZ) and West End Stress Area. The basement and ground floors are currently vacant but were last in use for mixed restaurant and retail purposes (Sui Generis). The upper floors are in use as residential flats.

Permission is sought for the use of the basement and ground floor as either a retail shop (Class A1) or a restaurant (Class A3). The key issues are:

- the acceptability of the scheme in land use terms, in particular the potential loss of retail (Class A1) use;
- the impact on residential amenity.

Subject to appropriate conditions, the scheme is considered acceptable in land use, amenity and highway terms and the application is therefore recommended for approval.

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

SOHO SOCIETY

Any response to be reported verbally.

HIGHWAYS MANAGER

No objection subject to conditions

WASTE PROJECT OFFICER

Revised waste storage provision required

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 57

Total No. of replies: 8

8 letters of objections from 4 households on the following grounds:

- Loss of retail
- Impact on amenity; noise and odour nuisance (vermin, litter and smokers)
- Unsociable hours of operation
- Potential increased noise breakout through glazed infill at rear
- Increased pedestrian activity
- Impact on value of neighbouring residential units
- Historic /track record of not complying with planning conditions

PRESS ADVERTISEMENT / SITE NOTICE:

Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

68-70 Wardour Street is an unlisted building located within the Soho Conservation Area, Core Central Activities Zone, the West End Stress Area and West End Special Policy Retail Area (WESPRA). The property was originally built in 1885 as a printing works. The ground and basement floors remained in use as a print shop (Class A2) until being used as a mixed- use café bakery occupied by Le Pain Quotidien pursuant to permission granted in 2011.

The basement and ground floors are currently vacant but were last occupied by Mas Q Menos', a Latin food and wine bar operator, although this does not appear to have been lawful. Mas Q Menos vacated the site in December 2019. Conditions have historically been imposed to ensure the front portion of the ground floor is used for retail purposes only.

A high-level rear extract duct has been installed pursuant to permission being granted on 11 December 2018. The permitted opening hours are 0900 – 0000 Monday to Saturday

and 0900 to 2230 on Sundays and bank holidays. The capacity is restricted to 80 seated customers.

The upper floors are in use as residential flats.

6.2 Recent Relevant History

Permission was granted on 24 November 2011 (RN: 11/06088) for the use of basement and ground floor as mixed café/bakery use (sui generis). Installation of a new shopfront, external alterations to the rear of the building and the installation of three air conditioning condenser units and associated plant at the rear of the building at basement and ground floor level.

Subsequently, permission was granted on the 02 December 2014 (RN: 14/09082) for the variation of Conditions 3, 4 and 5 of the above consent, to allow the toasting of bread, to extend the opening hours on Sundays from 22.00 to 22.30, and to increase the maximum number of people allow on the premises at any one time from 60 to 80.

Permission was granted on the 30 May 2013 (RN: 13/02849) for the use first-fourth floors as four 3x2 and 1x3 bedroom residential units (Class C3) with associated external alterations, including an extension at roof level and rear terrace at fourth and fifth floor.

Permission was granted 11 December 2018 for the 'Use of basement and ground floor for retail and restaurant purposes (Sui Generis). Retention of 3 external air conditioning units and removal of 2 x existing external refrigeration units and installation of new air intake grilles at ground floor level. Removal of existing low-level kitchen extract duct and replacement with new extract duct located along the rear elevation terminating above roof level'. Condition 9 required that the majority of the ground floor to be used solely for retail sales and display only and required a retail display as part of the shop frontage to be maintained.

7. THE PROPOSAL

Permission is sought for the use of the basement and ground floors for either retail (Class A1) or restaurant (Class A3) purposes totalling 211 m2 GIA.

The restaurant will be able to accommodate 115 covers at full capacity. The proposed operating hours are 09:00 to 00:00 Monday to Saturday and 09:00 to 22:30 on Sundays and Bank Holidays.

8. DETAILED CONSIDERATIONS

8.1 Land Use

Potential loss of retail floorspace

The proposals would potentially result in the loss of an area of retail floorspace at ground floor if the restaurant option is implemented. Objections have been received from residents to the loss of retail floorspace.

The site lies within the Core Central Activities Zone and UDP policy SS5 and City Plan

Policy S21 and S7 are applicable.

These policies seek to ensure there is an appropriate balance of town centre uses within the CAZ, as such retail (Class A1) uses at basement and ground floor levels are protected. Permission will only be granted for the introduction of a non-A1 town centre s where the use would not be detrimental to the character and function of an area or to the vitality or viability of a shopping frontage or locality. Additionally, proposals for non-A1 uses must not lead to, or add to, a concentration of three or more consecutive non-A1 uses or cause or intensify an existing over-concentration of A3 and entertainment uses in a street or area. City Plan policy S21 protects existing A1 retail floorspace except where the Council considers that the unit is not viable, as demonstrated by long term vacancy despite reasonable attempts to let for an 18-month period. Policy S7 seeks to maintain and enhance the unique status and offer of the West End Special Retail Policy Area.

The premises are vacant and have been marketed for in excess of 12 months. This is short of the policy requirement which requires marketing to have been carried out for an 18 month period and an independent assessment in order to demonstrate that retail use is not viable. The marketing assessment has not been independently assessed.

The clear policy presumption is to prevent the loss of retail particularly at ground floor level. In this instance the loss of retail is however considered to be acceptable and not contrary to the aim of the adopted retail policies. This is because the unit has never been occupied solely for retail purposes and only an area of the ground floor has provided a retail function. In addition to this the premises have been marketed in excess of 12 months without success and as a general perception the former use operated as a restaurant.

In the circumstances it is not considered that loss of the existing retail function would have an adverse impact upon the character and function of the area. This aspect of the application is considered acceptable.

Potential loss of restaurant/increase in retail floorspace

The Council do not currently have any policies which prevent the loss of restaurant floorspace changing to another shop type premises serving visiting members of the public in this location. Therefore, the principle of its loss is acceptable in this instance.

The scheme would potentially provide retail accommodation totalling 211 sqm within the core CAZ. Policy SS4 of the Unitary Development Plan (2007) and policies S6 and S21 of the City Plan promote the introduction of new retail floorspace in this location.

Restaurant/cafe use

The proposed restaurant over ground and basement levels of the building would measure 211 sqm. An entertainment unit of this type and size located within the Core Central Activities Zone and the West End Stress Area would need to be considered against Policies TACE9 of the UDP and S24 of the City Plan.

These policies require new entertainment uses to demonstrate that they are appropriate in terms of the type and size of use, scale of activity, relationship to any existing concentrations of entertainment uses and any cumulative impacts and that they do not

adversely impact on residential amenity, health and safety, local environmental quality and the character and function of the area.

The site lies within the heart of Soho which is characterised by a high concentration of entertainment uses. Use of the premises as a restaurant accords with the prevailing character of the area and would not have a material impact on the character and function of this part of the Soho conservation area.

There are a significant number of residential flats in close proximity including on the upper floors of the application premises and at 72 – 74 Wardour Street. Residents in the vicinity of the site have objected to proposed restaurant use, arguing that it will have an adverse impact on amenity in terms of noise, odour, increase vermin, litter and smokers associate with the restaurant use.

The proposed restaurant would have a total capacity of 115 which is an increase of 35 customers based on the existing lawful position. No change is proposed to the current permitted opening hours which are 09:00 to 00:00 Monday to Saturday and 09:00 to 22:30 on Sundays and bank holidays.

Paragraph 8.88 of the UDP states, *'As a general rule, the Council expects that, in entertainment uses in predominantly residential areas, it will impose planning conditions that no customers will be allowed to remain on the premises after midnight on Sundays ... to Thursdays, and after 12.30am on the following morning on Friday and Saturday nights...'*. The proposed opening hours accord with this 'general rule' and are considered to be acceptable in this busy location in the Core CAZ.

It is considered that this proposal represents an opportunity to reduce the impact of the unit on neighbouring residential property's through the addition of conditions to control the operational elements of the restaurant. The existing unit has a glazed rooflight at rear and the occupiers of the first floor flat refer to noise outbreak from the kitchen area at basement level. It would appear that the source of the noise outbreak has been from this glazed area. The applicant has offered to accept a condition requiring details of the design and structure of both this glazed area and the internal separating structure between the proposed restaurant and the residential at first floor to ensure that the premises complies with the Councils standard internal noise conditions. The recommended condition requires details to be submitted, approved and installed prior to the unit being used for restaurant purposes. A condition is also recommended preventing music being played in the premises which is audible externally or within adjoining properties. The former retail/restaurant use operated without either of these conditions.

In addition to the above, a condition is recommended to ensure that the use would essentially be a sit-down restaurant with any ancillary bar limited to a small part of the premises (15%) and would only to be used by diners before and after meals.

A condition is also recommended proposed preventing home deliveries from the restaurant as information has been provided demonstrating that this service would operate without detriment to highways movements or residential amenity.

Whilst details of waste storage have been provided, they are not in line with the Council

waste storage requirements. As such, revised details of waste will be secured by condition.

Whilst the end user is not known at this stage an Operational Management Plan has been submitted by the applicant to:

- Minimise the impacts of servicing;
- Manage the collection of waste;
- Prevent music creating a noise nuisance;
- Managing guests leaving the premise.

Objectors have also raised concerns regarding the impact of people smoking. A condition has been imposed requiring an updated Operational management Plan to ensure smokers do not cause a nuisance to neighbouring residents.

With the relevant safeguarding conditions as detailed above, it is considered that the proposal would not have a detrimental impact on the living conditions of neighbouring residents nor local environmental quality. The proposed restaurant premises is therefore considered to be in accordance with UDP Policy TACE9 and City Plan Policy S24.

8.2 Townscape and Design

There are no external alterations proposed as part of this application.

8.3 Residential Amenity (Daylight/ Sunlight/ Sense of enclosure)

Not applicable.

8.4 Transportation/Parking

The Highways Planning Manager raises no objections to the proposal and considers that the proposal is unlikely to have a significant impact on car parking in the area and that in terms of people arriving and departing, the levels would not be significant in highways planning terms.

UDP TRANS20 requires off street servicing to be provided where possible. This application relates to the use of an existing building and no off-street servicing can be provided. The site is located within a Controlled Parking Zone, which means that single/double yellow lines in the vicinity can allow loading and unloading to occur. The largest regular servicing vehicle expected to be associated with the development is the refuse collection vehicle. The Highways Planning Manager is satisfied that given the floor area concerned, the servicing requirements are not expected to have an adverse impact on the public highway.

Due to the potential impact of delivery and servicing, it is recommended that a condition is attached to ensure that the retail (Class A1) is not used as a food retail unit and the imposition of a condition has also been recommended to ensure no delivery service operates from the application site to ensure highway congestion is minimised.

No cycle parking has been shown on the submitted drawings. To comply with the London Plan (as amended) a minimum of two cycle spaces are required, which will be

secured by condition.

8.5 Economic Considerations

Any economic benefits generated are welcomed.

8.6 Access

No alterations are proposed to the existing access arrangement.

8.7 Other UDP/Westminster Policy Considerations

Refuse /Recycling

As detailed above, the whilst details of waste storage have been provided, they are not in line with the Council waste storage requirements. As such, revised details of waste have been secured by condition.

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 and on the 19 November 2019 the plan was submitted to the Secretary of State for independent examination. In the case of a draft local plan that has been submitted to the Secretary of State for Examination in Public, under Regulation 22(3) of the Town and Country Planning Act (Local Planning) (England) Regulations 2012, 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 Neighbourhood Plans

None relevant.

8.10 London Plan

This application raises no strategic issues.

8.11 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.

8.12 Planning Obligations

The application does not trigger any CIL requirements nor planning obligations.

8.13 Environmental Impact Assessment

The proposal is of insufficient scale as to trigger an environmental assessment.

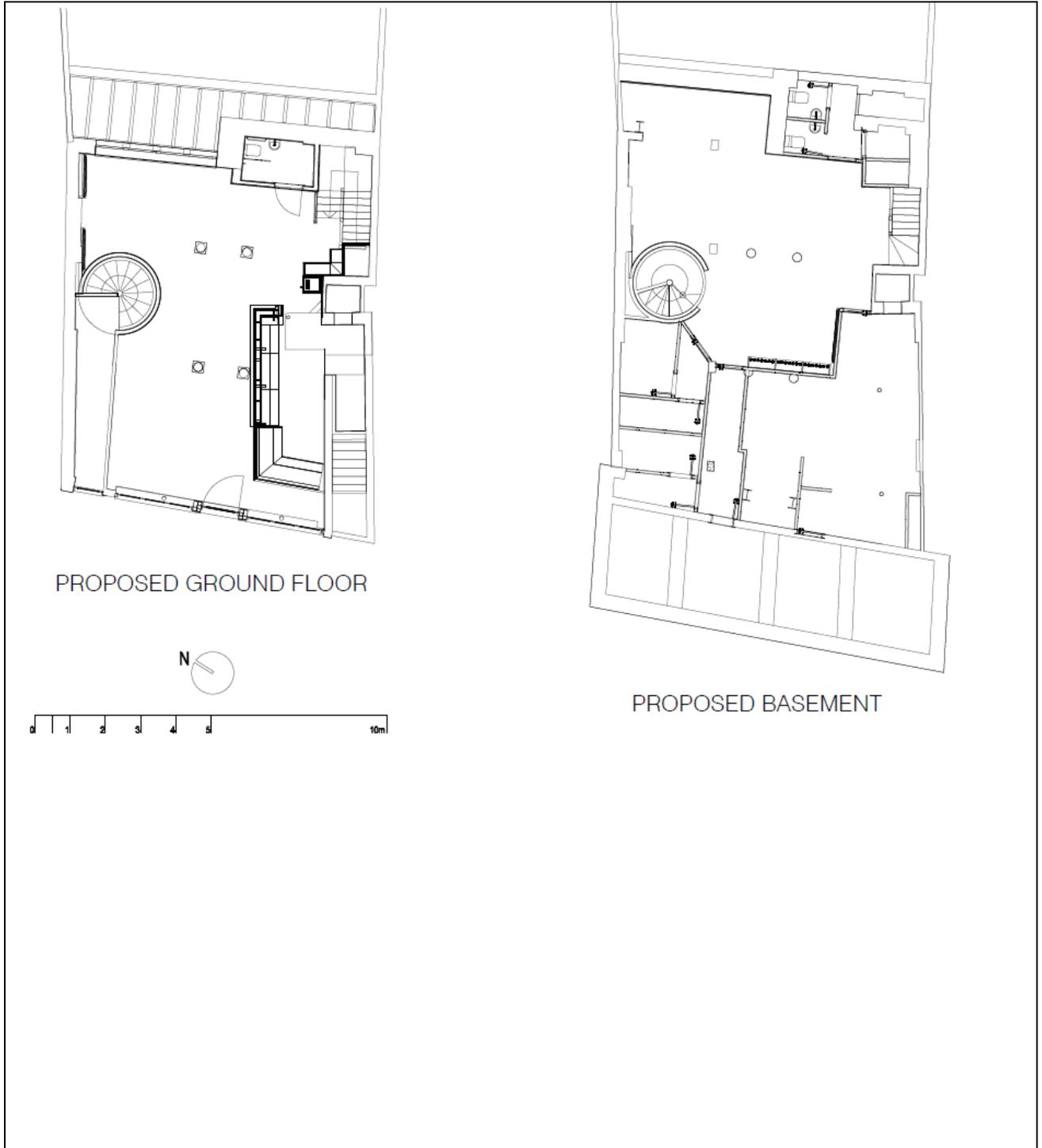
8.14 Other Issues

Objections have been received on the ground that the proposal has the potential to reduce the value of their residential property and that the former occupier failed to comply with previous planning conditions. Property values are not a planning consideration and permission could not reasonably be withheld on the basis that a previous occupant of the premises breached planning conditions.

(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: MIKE WALTON BY EMAIL AT mwalton@wetminster.gov.uk

9. KEY DRAWINGS



DRAFT DECISION LETTER

Address: 68 - 70 Wardour Street, London, W1F 0TB,

Proposal: Flexible use of the ground and basement floors for either retail (Class A1) or restaurant use (Class A3).

Plan Nos: Drawing WS-PP-02

Case Officer: Damian Lavelle

Direct Tel. No. 07779431364

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

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 Should the premise be used for restaurant purposes (Class A3), the provision of a bar and associated bar seating must not take up more than 15% of the floor area of the restaurant/retail premises. You must use the bar to serve restaurant customers only, before, during or after their meals.

Reason:

To prevent a use that would be unacceptable because of the character and function of this part of the Soho Conservation Area. This is in line with S24 of Westminster's City Plan adopted November 2016 and TACE 9 of our Unitary Development Plan that we adopted in January 2007.

- 3 Should the premise be used for restaurant purposes (Class A3) customers shall not be permitted within the premises before 09:00 or after 24:00 on Monday to Saturday (not including bank holidays and public holidays) and before 09:00 or after 22:30 on Sundays and bank holidays and public holidays. (C12BD)

Reason:

To protect the environment of people in neighbouring properties as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and ENV 6, ENV 7 and TACE 9 of our Unitary Development Plan that we adopted in January 2007.

(R12AC)

- 4 Should the premise be used for restaurant purposes (Class A3), you must not allow more than 115 people onto the premises at any one time.

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TACE 9 of our Unitary Development Plan that we adopted in January 2007. (R05AB)

- 5 Notwithstanding the detail shown on the approved drawings, you must apply to us for approval of revised details of how waste and recycling is going to be stored on the site. You must not occupy the retail or restaurant use hereby approved until we have approved what you have sent us. You must then provide the waste and recycling store in line with the approved details prior to occupation, and clearly mark it and make it available at all times to everyone using the premises. You must not use the waste and recycling store for any other purpose. (C14GA)

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)

- 6 You must not sell any hot-food take-away on the premises, nor operate a delivery service, even as an ancillary part of the primary Class A3 use. (C05CB)

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TACE 9 of our Unitary Development Plan that we adopted in January 2007.

- 7 You must not play live or recorded music on your property that will be audible externally or in the adjacent properties.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 8 (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 retail or restaurant 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 retail or restaurant 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 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)

- 9 Prior to occupying the premises for restaurant purposes, you must apply to us for approval of details of all separating structures (walls, ceilings and glazing) demonstrating that the internal activity will comply with the Council's noise criteria as set out in Condition 8 of this permission. You must not occupy the restaurant use hereby approved until we have approved what you have sent us. You must then install the separating structures in line with the approved details prior to occupation and retain them for as long as the restaurant is in situ.

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 sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels.

- 10 You must apply to us for approval of details of secure cycle storage for the retail or restaurant use. You must not occupy the retail or restaurant use hereby approved until we have approved what you have sent us. You must then provide the cycle storage in line with the approved details prior to occupation. You must not use the cycle storage for any other purpose.

Reason:

To provide cycle parking spaces for people using the development as set out in Policy 6.9 (Table 6.3) of the London Plan 2016 (R22FA)

- 11 The restaurant (Class A3) use hereby approved shall not commence until details of how odours in connection with the kitchen have been submitted to and approved by the City Council. The duct must then be installed in accordance with the approved details and must thereafter be retained at all times that the premises is in use as a restaurant (Class A3).

Reason:

To protect the environment of people in neighbouring properties as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6, ENV 7 and DES 5 of our Unitary Development Plan that we adopted in January 2007. (R14AC)

- 12 In the event that the restaurant Class A3 use is implemented, you must apply to us for approval of new Operational Management Statement which should detail

how staff and customers who wish to smoke will be managed. You must not start the restaurant use until we have approved what you have sent us. You must then carry out the measures included in the approved Operational Management Statement at all times that the restaurant is in use. (C05JB)

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 13 Notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) Order 1987 (or any provision equivalent to that class in any statutory instrument revoking or re-enacting that order) the retail accommodation hereby approved shall not be used for food/supermarket purposes

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TRANS 20 of our Unitary Development Plan that we adopted in January 2007. (R05AB)

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 Under Part 3, Class V of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, the retail and restaurant floor can change between the retail and restaurant uses we have approved for 10 years without further planning permission. However, the actual use 10 years after the date of this permission will become the authorised use, so you will then need to apply for permission for any further change. (I62A)