

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 St James's	
Subject of Report	18 Tavistock Street, London, WC2E 7PP		
Proposal	Use of ground floor as pancake and souffle bar with take-away (sui generis) .		
Agent	Mr Frixos Kyriacou		
On behalf of	Mr G Kythreotis		
Registered Number	19/07681/FULL	Date amended/ completed	15 October 2019
Date Application Received	3 October 2019		
Historic Building Grade	Unlisted		
Conservation Area	Covent Garden		

1. RECOMMENDATION

Grant conditional permission.

2. SUMMARY

18 Tavistock Street comprises a vacant ground floor shop unit within Class A1 within the Core Central Activities Zone and West End Stress Area. There are residential flats in Harlequin Court immediately above the site.

The application proposes the change of use of the unit to a mixed shop, restaurant and takeaway use (sui generis).

The key issues to consider in this case:

*The land use change from Class A1 shop to a sui generis use.

*The amenity impacts resulting from the shop, restaurant and takeaway use.

Objections have been received from residents within Harlequin Court and the Covent Garden Community Association mainly on the grounds of land use, odour, noise nuisance and waste impact. Whilst the objections are noted and understood, for the reasons set out in the report it is not considered that they are sustainable on this occasion.

The proposal is considered acceptable and accords with the relevant land use, amenity and highways policies within Westminster's City Plan: Strategic Policies and the UDP.

3. LOCATION PLAN



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4. PHOTOGRAPH



Front elevation

5. CONSULTATIONS

COVENT GARDEN COMMUNITY ASSOCIATION

Objection on the grounds that Tavistock Street is a quiet, dense residential street; that A1 units can thrive in this location, the proposed operation does not fall within A3 and A5 use classes, proposal is harmful to residential amenity, potential nuisance from lack of ventilation, hours of opening, deliveries and servicing, use of residential waste store and leaving refuse on the street and risk of change to fast food outlet.

COVENT GARDEN AREA TRUST

No response to date.

HIGHWAYS PLANNING

No objection but to minimise the impact of the proposed use on the road network, no delivery service should operate from this location. Delivery vehicles can reduce availability of parking for other uses and increase noise and fumes in the area.

WASTE PROJECT OFFICER

No objection to revised drawing showing satisfactory waste storage.

ENVIRONMENTAL HEALTH:

Object to this application on the grounds that the scheme does not appear to include a suitable high-level kitchen extract ventilation duct as required by council guidelines. However, the scheme may be acceptable on the basis that low risk catering activities are proposed and subject to recommended condition and informative. However following discussions with agent the proposed connection to the existing ventilation duct serving the adjoining unit is considered appropriate.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 99

Total No. of replies: 4

No. of objections: 4

No. in support: 0

The letters of objection raise the following issues:

*Land use:

- Over-concentration of food outlets.
- Use against the spirit of the conservation area.
- Proposed use does not need to be within A3/A5 use classes.
- A1 use has potential at this location.
- Risk the use will change to takeaway (A5).

*Amenity:

- Noise disturbance from operation of activity (collection of rubbish at later times, deliveries, customers queuing and congregating in front of the premises).
- Noise disturbance within the internal lightwell from staff and ventilation.
- Odour impact/smells – no extraction facilities but fumes created.

*Other matters:

- Premises too small and not suitable for a takeaway business as Harlequin Court is an upmarket residential property to be used as a restaurant A3 use.
- Use of residential waste storage provision and food waste left on the street.
- Increased traffic.

PRESS ADVERTISEMENT / SITE NOTICE:

Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

18 Tavistock is a vacant ground floor commercial unit comprising approximately 50 sqm. It forms part of a larger development known as Harlequin Court which is in residential use. The application site is located within the Central Activities Zone, the Covent Garden Conservation Area, the West End Stress Area and the West End Special Retail Policy Area.

6.2 Recent Relevant History

20 Tavistock Street

Planning permission was granted for the creation of two retail units on the ground floor of 20 Tavistock Street on 12 December 2006 (RN: 06/05157/FULL).

12 - 14 Tavistock Street

Planning permission was granted for "Use of the ground floor as restaurant and cafe (Class A3). Installation of a full height extract flue within an internal service riser terminating at roof level".

7. THE PROPOSAL

The application proposes the change of the unit from Class A1 retail use to a pancake and souffle bar with a takeaway service (sui generis use). The unit will provide a mix of A1 retail, A3 restaurant and A5 takeaway and will operate with a preparation area with waffle and coffee machines, a counter with till, food display and souffle machines, self-service fridges (for soft drinks and sandwiches), a seating area and toilet facility.

The applicant advises that the unit will serve coffee, tea, soft drinks, patisseries, sandwiches, waffles/pancakes, milk-shakes, ice-cream, chocolates, biscuits, Japanese sweets, almonds, sweets and Turkish delights. The hours of operation sought are 08.00 to 22.00 Monday to Saturday and 09.00 to 21.00 on Sundays and Bank Holidays.

8. DETAILED CONSIDERATIONS

8.1 Land Use

Loss of retail use

The Covent Garden Community Association and local residents object to the loss of the retail A1 use. The last occupier of the ground floor unit was a souvenir shop.

The application site lies within the Core CAZ where retail use is protected under Policy S21 of the City Plan and saved Policy SS5 of the UDP. The site is also within the West End Special Retail Policy Area, so Policy S7 of the City Plan applies. There is therefore a general presumption to retain ground floor Class A1 retail uses throughout Westminster except where the Council considers that the unit is not viable as set out in City Plan policy S21.

The applicant has not demonstrated that the unit is not viable as an A1 unit. The Covent Garden Community Association states that there are successful A1 units along this section of the street which backs onto the Jubilee Market.

Policy SS5 seeks an appropriate balance of town centre uses in the CAZ outside the primary shopping frontage. Permission for the introduction of a non-A1 town centre use at basement, ground and first floor level will only be granted where the proposal would not be detrimental to the character and function of an area or to the vitality or viability of a shopping frontage or locality. Part C details that it must not lead to a concentration of three or more consecutive non-A1 uses.

The retail unit is small, and this part of Tavistock Street does not have a strong retail character as it is located away from the main shopping area of Covent Garden. In fact the retail unit (and the neighbouring retail unit at 12 - 14 Tavistock Street) were only granted permission for A1 use in 2006 when they were previously in office use. Officers recognise that it may be difficult for an A1 retail tenant to attract sufficient passing trade in this location. When the application was submitted the souvenir shop had already ceased trading. Furthermore in June 2015 permission was granted for the use of the neighbouring unit from A1 to A3 restaurant use. (However the application was not implemented, and the unit remains operating within an A1 use class as an ice cream café). The other adjoining unit at 20 Tavistock Street is also in retail use. In terms of UDP policy SS5, the proposal would not result in more than three consecutive non-A1 units within the frontage.

Covent Garden is a mixed-use area with a particular emphasis upon serving tourists/visitors, West End shoppers and workers, as identified within the Retail Health check report dated December 2008. It is an important leisure service destination. The report identifies Tavistock Street has one of the locations for restaurants and cafés within the area.

It is considered that the loss of the retail unit would not materially alter the character or function of the area. Policy S7 acknowledges the need for class A3 cafes and restaurants to support the main retail function within the West End Special Retail Policy Area. The unit will retain an active shop frontage and would continue to support the character and function of the area in accordance with Policy S7. In addition the unit would provide an element of A1 retail use by selling cold food and drinks for takeaway purposes

Given the particular circumstances of the case, namely the local context and the small size of the unit, the loss of an A1 shop unit is considered acceptable in this instance.

Introduction of new entertainment use.

The amenity society and local residents object to the change of use on the grounds of potential nuisance, intensification of use and over-concentration of food outlets in the area.

Given the size of the proposed entertainment use and its location within the Core CAZ and the West End Stress Area, policy TACE 9 applies. Policy TACE 9 states that permission will only be granted for proposals where the Council is satisfied that the proposed development has no adverse effect (taken into account the number and distribution of entertainment uses in the vicinity, any cumulative adverse effect) upon residential amenity or local environmental quality as a result of noise, vibration, smells, increased late night activity, or increased parking and traffic.

Policy S24 is also relevant, the policy requires that new entertainment uses are appropriate in terms of the type, size of use and 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.

Although considered an entertainment use in policy terms the proposed sui generis use will be low key. It will specialise in pancakes and souffles and have specialist cooking equipment as a result. Customers will have the option of eating within the premises (17 covers will be provided) or purchasing a take-away.

In terms of the character of the area, this part of Tavistock Street has a varied mix of uses with a strong residential character. However it is not considered that the proposal will result in an over-concentration or have a detrimental impact upon the character and function of this part of Covent Garden. A terminal hour of 22:00 in this part of the City is considered acceptable and the applicant has agreed to a 09:00 opening time on Sundays and Bank Holidays. It is not considered that the operating hours proposed will cause harm to the residents of Harlequin Court.

The concerns raised about people congregating in the street are noted. It is likely that the unit will accommodate queuing customers but in the event that there are more customers than space available, the operational management plan (OMP) provided by the applicant states that members of the public will be asked to return to the premises in 10 minutes. It is not considered that a refusal on the grounds that there was queuing on the street could be justified. The OMP provides details of the cooking equipment to be installed, the type of hot food provided, that there will be no food delivery service and no music audible outside the premises. It is recommended that the OMP is secured via a condition.

Odours

Concerns have been expressed by residents about odour nuisance, particularly because as originally submitted no extraction was proposed as part of the scheme. The applicant now proposes to deal with cooking odours by utilising an existing full height extract flue within an internal service riser which terminates at roof level. This will require an internal connection from the application unit to the existing duct. This duct was installed as part of the change of use application at the neighbouring unit. A condition is recommended to secure that this connection is made. If the connection is not made then the unit will only be able to use the cooking equipment and serve the hot food products set out in the

OMP (1 x waffle maker and 3 x souffle makers). The Environmental Health officer originally objected to the scheme but considers that the scheme may be acceptable on the basis that low risk catering activities are proposed.

Waste

Originally the applicant intended to use an existing communal waste facility in the basement of the building. This attracted objections from local residents. The applicant revised the scheme and now proposes to provide two 80 litre bins for rubbish and recycling. This satisfies the council's waste requirements.

8.2 Townscape and Design

The proposed permission does not involve external alterations. An informative will advise the applicant that separate advertisement consent is required if new fascia and projecting signs are installed.

8.3 Residential Amenity (Loss of light, overlooking)

Policies S29 of the City Plan and ENV13 of the UDP seek to protect residential amenity in terms of light, privacy, sense of enclosure and encourage development that enhances the residential environment of surrounding properties. Given that there are no external alterations proposed, the scheme does not raise other amenity concerns.

8.4 Transportation/Parking

Representations received objected on the grounds of increased traffic and disturbance from deliveries. The Covent Garden Community Association also request the provision of a servicing plan.

The Highways Planning Manager has raised no objection to the proposal subject to conditions to prevent a delivery service from operating. The size of the unit would ensure that the servicing requirements remain comparable to the existing retail use. It is therefore not reasonable to request the provision of a servicing plan for a unit of this size. Subject to a condition restricting the delivery service from the premises the proposal is considered acceptable in highways terms.

8.5 Economic Considerations

No economic considerations are applicable for a development of this size.

8.6 Access

The access to the unit is not altered. The ground floor unit benefits from a step-free access.

8.7 Other UDP/Westminster Policy Considerations

Concerns have been raised about use of the unit in future as a take-away within Class A5) or a more intense A3 use. The proposed use is a mix of A1, A3 and A5 and is therefore

classed as a sui generis use. Planning permission is required to use the premises as either A3 or A5.

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

Not applicable.

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

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

8.13 Environmental Impact Assessment

The proposal is of insufficient scale to require an environmental assessment.

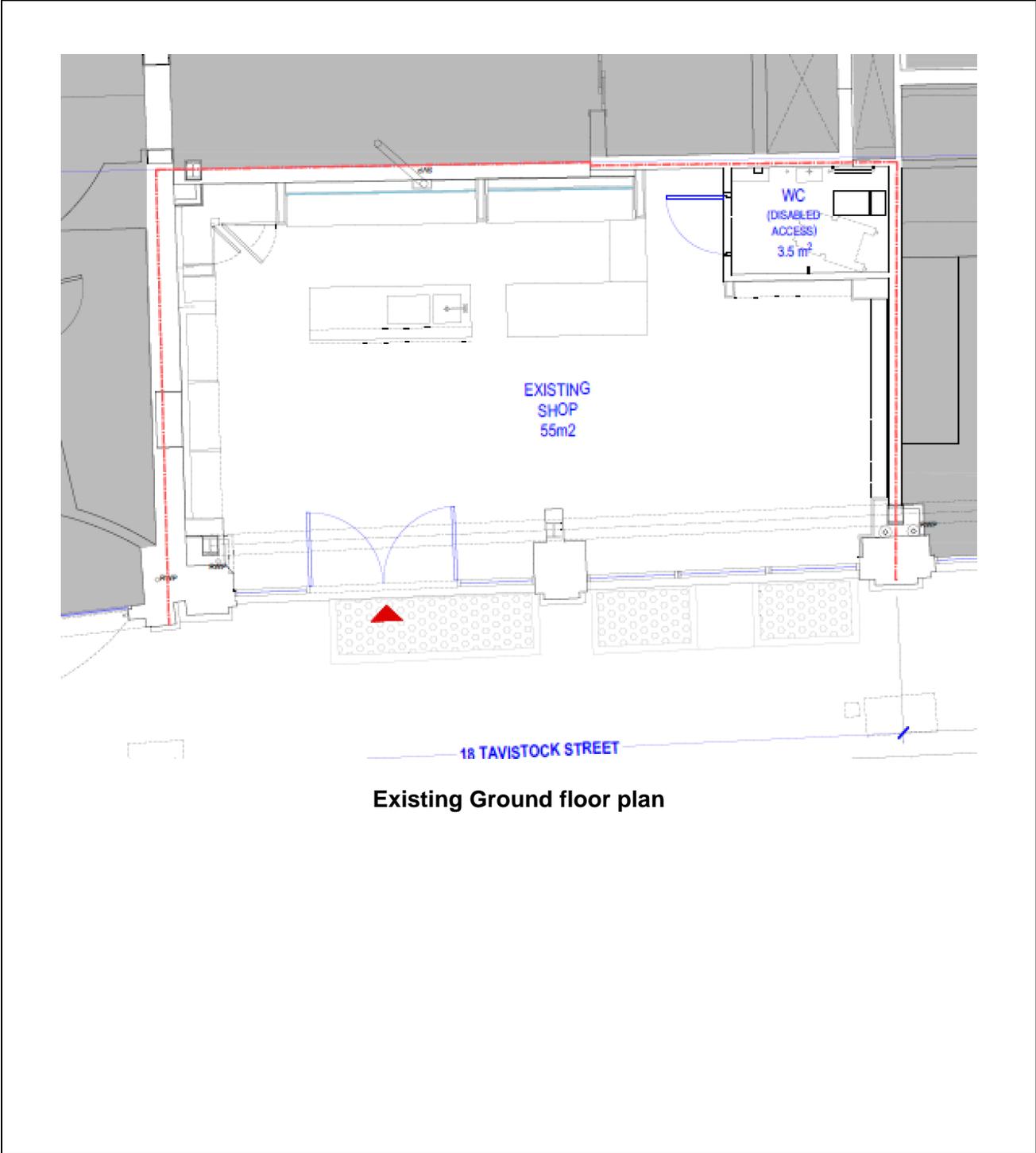
8.14 Other Issues

Refusing a proposed change of use because it may devalue the value of a neighbouring property is not a valid reason for refusing planning permission.

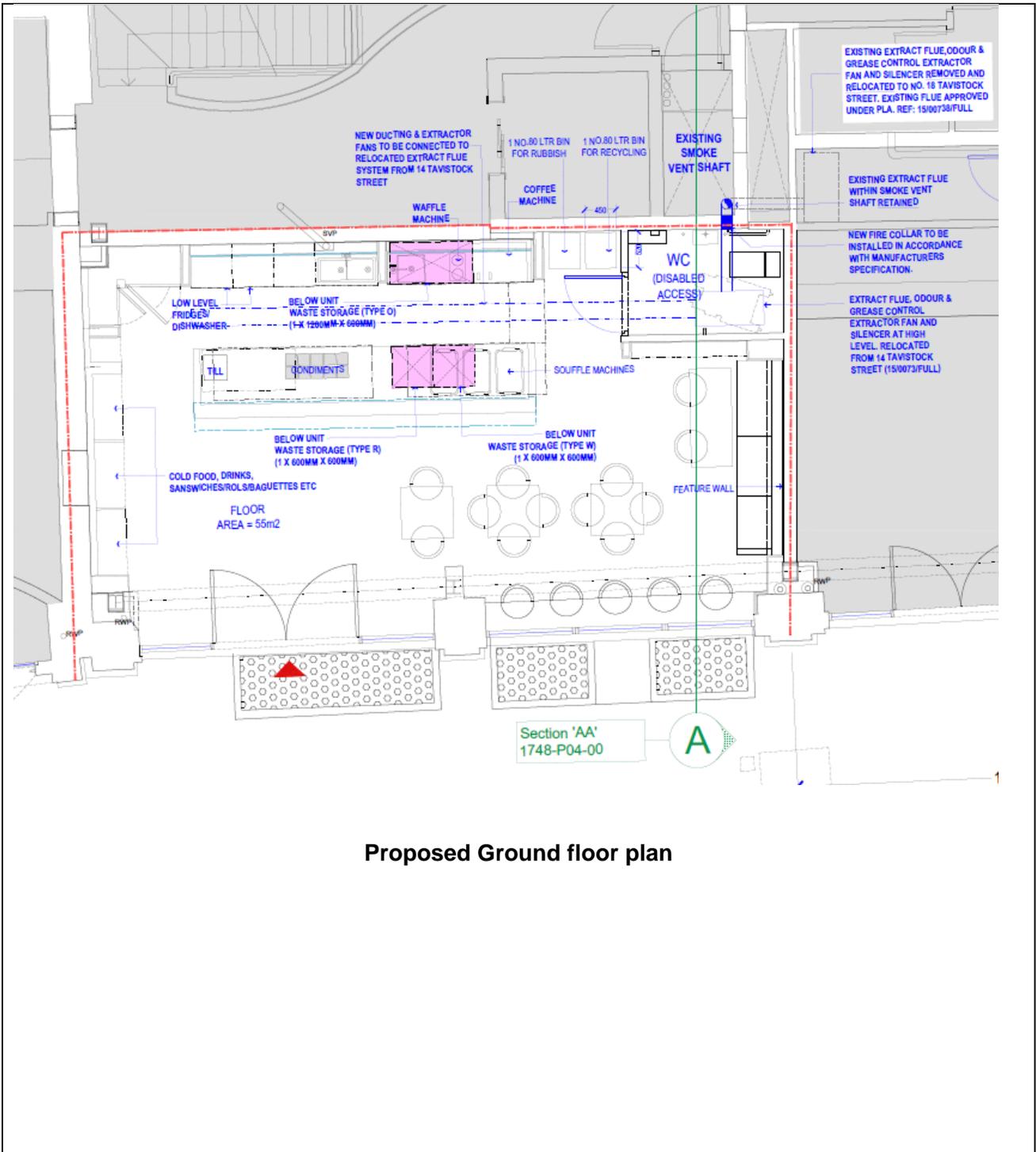
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: MATTHEW MASON BY EMAIL AT mmason@westminster.gov.uk

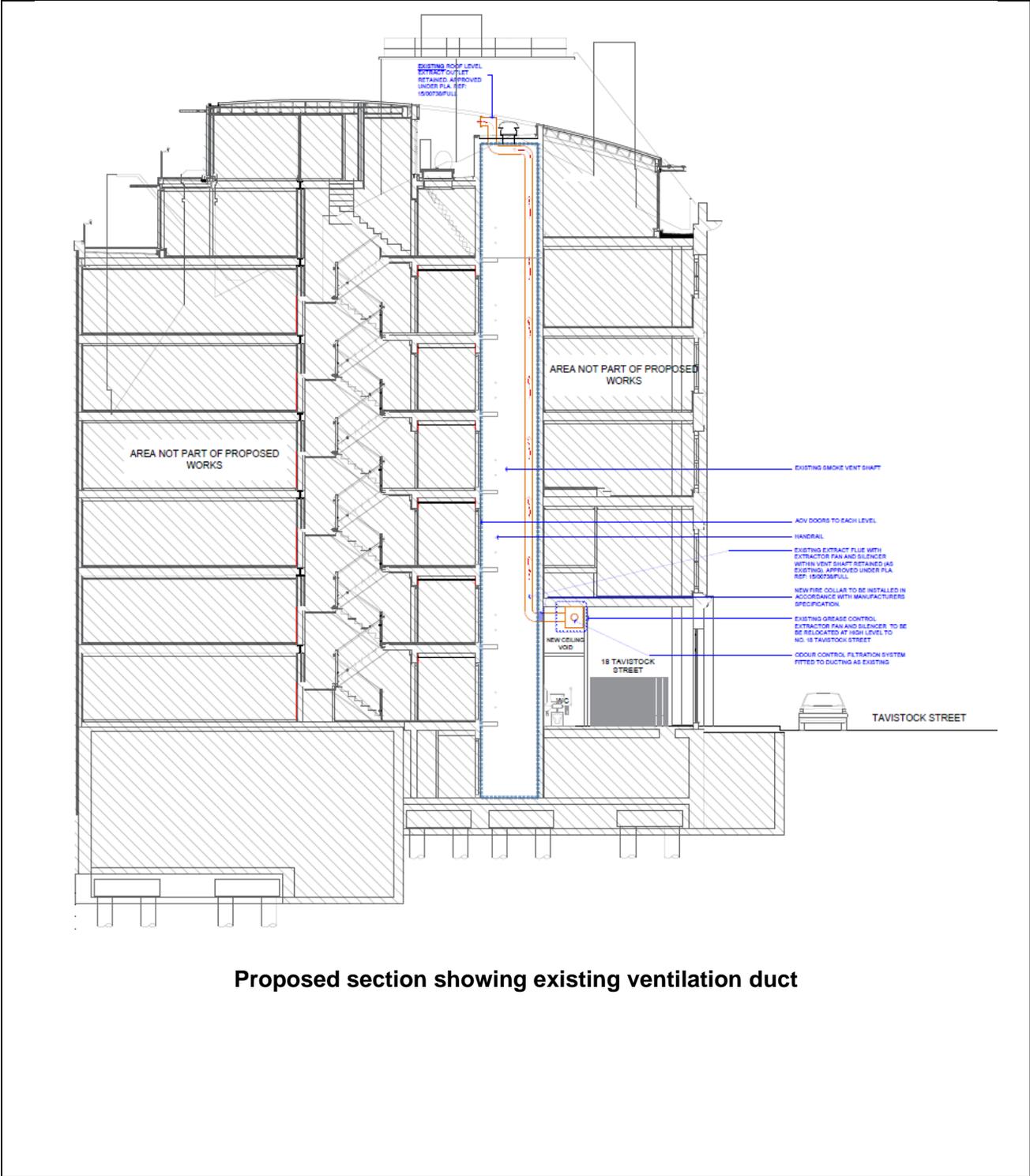
9. KEY DRAWINGS



Existing Ground floor plan



Proposed Ground floor plan



Proposed section showing existing ventilation duct

DRAFT DECISION LETTER

Address: 18 Tavistock Street, London, WC2E 7PP,

Proposal: Use of ground floor as pancake and souffle bar with take-away (sui generis) .

Reference: 19/07681/FULL

Plan Nos: 1748-E01-00 P1; 1748-E02-00 P1; 1748-P02-00 P6; 1748-P04-00 P1; Management Plan to deal with amenity issues dated June 2020., , For information only: planning statement; ventilation requirements report dated 09.10.19.

Case Officer: Aurore Manceau **Direct Tel. No.** 020 7641
07866038763

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 Except for piling, excavation and demolition work, you must carry out any building work which can be heard at the boundary of the site only: , o between 08.00 and 18.00 Monday to Friday; , o between 08.00 and 13.00 on Saturday; and , o not at all on Sundays, bank holidays and public holidays. , , You must carry out piling, excavation and demolition work only: , o between 08.00 and 18.00 Monday to Friday; and , onot at all on Saturdays, Sundays, bank holidays and public holidays. , , Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety). (C11AB)

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC),

- 3 You must carry out the measures included in your management plan dated June 2020 at all times that the pancake and souffle bar is in use. (C05KA)

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 9 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

- 4 There shall be no primary cooking on site such that you must not cook raw or fresh food on the premises. The reheating of food, the cooking equipment used and hot food products served shall be limited only to those described in the management plan document dated June 2020. (CO5DB)

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TACE9 of our Unitary Development Plan that we adopted in January 2007. (R05AB)

- 5 Within a month of the operation of the sui generis use you must apply to us for approval of confirmation of connection to the existing ventilation flue at No. 14 Tavistock Street.

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)

- 6 No delivery service must operate from the premises.

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 TRANS 2 and TRANS 3 of our Unitary Development Plan that we adopted in January 2007. (R24AC)

- 7 Customers shall not be permitted within the premises before 0800 or after 2200 on Monday to Saturday and before 0900 or after 2100 on Sundays, bank holidays and public holidays.

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 of our Unitary Development Plan that we adopted in January 2007. (R12AC)

- 8 Before anyone moves into the property, you must provide the separate stores for waste and materials for recycling shown on drawing number 1748-P02-00 Rev P6. You must clearly mark them and make them available at all times to everyone using the ****. (C14FB)

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)

- 9 (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum., (2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum., (3) Following installation of the plant and equipment, you may apply in writing to the City Council for a fixed maximum noise level to be approved. This is to be done by submitting a further noise report confirming previous details and subsequent measurement data of the installed plant, including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:, (a) A schedule of all plant and equipment that formed part of this application;, (b) Locations of the plant and machinery and associated: ducting; attenuation and damping equipment;, (c) Manufacturer specifications of sound emissions in octave or third octave detail;, (d) The location of most affected noise sensitive receptor location and the most affected window of it;, (e) Distances between plant & equipment and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;, (f) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (d) above (or a suitable representative position), at times when background noise is at its lowest during hours when the plant and equipment will operate. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;, (g) The lowest existing L A90, 15 mins measurement recorded under (f) above;, (h) Measurement evidence and any calculations demonstrating that plant and equipment complies with the planning condition;, (i) The proposed maximum noise level to be emitted by the plant and equipment.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may

ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission. (R46AB)

- 10 No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.

Reason:

As set out in ENV6 (2) and (6) of our Unitary Development Plan that we adopted in January 2007, to ensure that the development is designed to prevent structural transmission of noise or vibration. (R48AA)

- 11 You must not play live or recorded music which is audible outside the premises.

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)

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 condition 4 you must not cook food in any way which is likely to cause a nuisance by smell. You must not, for example, grill, fry, toast, braise, boil, bake, hot smoke or roast food. However, you can reheat food by microwave or convection oven as long as this does not require extractor equipment., , The hot food operation as described in the approved documents shall not be altered in any way with regards to cooking methods, cookline equipment or hot food types sold. ,
- 3 You must register your food business with the Council, please use the following link:

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www.westminster.gov.uk/registration-food-business. Please email the Environmental Health Consultation Team (Regulatory Support Team 2) at ehconsultationteam@westminster.gov.uk for advice on meeting our standards on ventilation and other equipment. Under environmental health legislation we may ask you to carry out other work if your business causes noise, smells or other types of nuisance.

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.