

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 30 May 2023	Classification For General Release	
Report of Director of Town Planning & Building Control		Ward(s) involved St James's	
Subject of Report	19 Villiers Street, London, WC2N 6ND		
Proposal	Installation of kitchen extract duct to rear elevation.		
Agent	Mr Armin Ganguly-Hiebert		
On behalf of	Mr Jae Cho		
Registered Number	22/05869/FULL	Date amended/ completed	
Date Application Received	27 August 2022		
Historic Building Grade	Unlisted		
Conservation Area	Adelphi		
Neighbourhood Plan	N/A		

1. RECOMMENDATION

Grant conditional permission.

2. SUMMARY & KEY CONSIDERATIONS

19 Villiers Street is an unlisted building of merit located within the Adelphi Conservation Area and Central Activities Zone. The basement and ground floor is occupied by a restaurant with residential flats above.

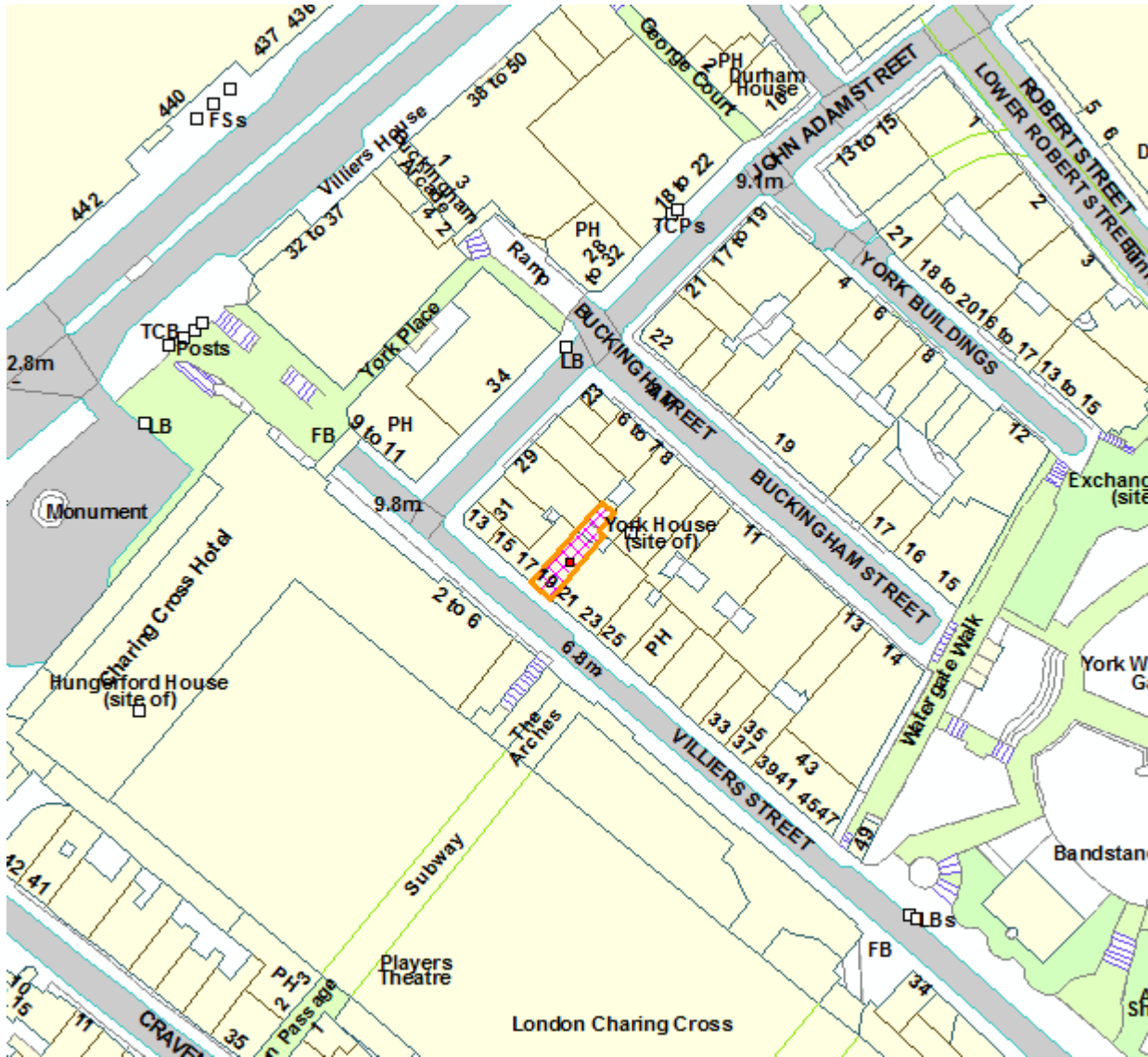
Permission is sought for installation of a full height kitchen extract duct to the rear elevation to serve the restaurant premises. It would replace an existing unauthorised low level rear kitchen extract which is subject to enforcement action.

The key issues in the determination of this case are:

- The impact of the duct on the character and appearance of the Adelphi Conservation Area.
- The impact on the amenity of neighbouring residential properties.

For the reasons set out in this report, the proposed extract duct is considered to accord with the the relevant policies in Westminster's City Plan 2019-2040 (adopted April 2021). As such, the application is recommended for approval subject to the conditions set out in the draft decision letter.

3. LOCATION PLAN



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4. PHOTOGRAPHS



19 Villiers Street (BUNSIK)



Rear of 19 Villiers Street (Aerial view)

5. CONSULTATIONS

5.1 Application Consultations

Ward Councillors for St James's (Cllr Tim Mitchell)

The occupier of a flat located above the restaurant has expressed a concern that the duct cladding will age quickly and it might provide an opportunity for vermin to climb up from the ground.

Planning Enforcement Team
No comment

Environmental Health
No objection, subject to conditions

Westminster Society
Any response to be reported verbally.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS:

First Consultation: September 2022

No. Consulted: 27

No. of objection: 6 objections (from 4 residents and the Villiers Street Residents Association)

Second Consultation began January 2023

No. Consulted: 27

No. of objection: 3

The objections are summarised as below:

Amenity

- Noise and Odour

- an 'inaccurate representation of the noise pollution to the flats as the noise sensitive receiver identified in the noise assessment report should be the properties closest to the kitchen on the ground floor instead of the unit on the top floor near the duct termination point.
- the proposed extract duct would bring further noise nuisance to the rear of the building which already has mechanical plant equipment serving other commercial uses.
- The revised location for the proposed extract is closer to the windows which would increase the noise and odour nuisance.

- Overshadowing

- The chunky duct would reduce light into some properties.
- The new location for the proposed extract is closer to the windows which would increase the noise and odour nuisance and reduction of light.

-Other matters

- The extract would compromise an existing boiler flue pipe.

- The duct cladding will age quickly and that it might provide an opportunity for vermin to climb up from the ground.
- Inadequate drawing information.

PRESS/ SITE NOTICE:

Yes

5.2 Applicant's Pre-Application Community Engagement

Formal pre-application engagement is not required for a development of this scale although it is encouraged by the City Council for all development. Therefore, whilst details of any pre-application engagement with neighbours that may have taken place have not been submitted, this is not contrary to the expectations of the guidance for development of this scale.

6. WESTMINSTER'S DEVELOPMENT PLAN

6.1 City Plan 2019-2040 & London Plan

The City Plan 2019-2040 was adopted at Full Council on 21 April 2021. The policies in the City Plan 2019-2040 are consistent with national policy as set out in the National Planning Policy Framework (NPPF) (July 2021) and should be afforded full weight in accordance with paragraph 219 of the NPPF. Therefore, in accordance with Section 38 of the Planning and Compulsory Purchase Act 2004, it comprises the development plan for Westminster in combination with the London Plan, which was adopted by the Mayor of London in March 2021 and, where relevant, neighbourhood plans covering specific parts of the city (see further details in Section 6.2).

As set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 49 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

6.2 Neighbourhood Planning

The application site is not located within an area covered by a Neighbourhood Plan.

6.3 National Policy & Guidance

The City Plan 2019-2040 policies referred to in the consideration of this application have been examined and have been found to be sound in accordance with tests set out in Paragraph 35 of the NPPF. They are considered to remain consistent with the policies in the NPPF (July 2021) unless stated otherwise.

7. BACKGROUND INFORMATION

7.1 The Application Site

19 Villiers Street is an unlisted building of merit located within the Adelphi Conservation Area. The building has a restaurant use at basement and ground floor level with residential units above (as part of the wider terrace at 13-25 Villiers Street). The site backs onto the grade II listed 27 and 29 John Adam Street. At the rear of the site there are several extract ducts including a duct at the rear of 31 Villiers Street that was approved in 2014 (RN: 14/01616/FULL).

- 7.2 The basement and ground floor has been a restaurant since 2010 following planning permission granted in September 2010 at appeal. (RN: 09/02369/FULL). Condition 5 attached to the appeal decision required the submission of details with regard to equipment to control the emission of fumes and smell as insufficient information was provided with the application. There is no planning history relating to the discharge of the condition.

7.3 Recent Relevant History

On 24 December 2009, a planning application (RN: 09/02369/FULL) was refused for "Alterations during the course of construction to a scheme granted planning permission on 8 May 2008 (RN: 07/05508) for the use of 13-25 Villiers Street, 31 John Adam Street and 9 Buckingham Street as residential accommodation (Class C3), and ground floor units on Villiers Street and John Adam Street frontages for retail and restaurant uses (Class A1 and A3) and installation of new shopfronts; namely, use of units 19 and 21 Villiers Street for Class A3 use (cafe and restaurant) and installation of extract duct to rear elevation." The application was refused on land use grounds.

An appeal was made to the above refusal. The appeal was allowed in September 2010 (RN:10/00026/TPREF). Following the grant of planning permission, the restaurant use commenced but without the discharge of this particular condition.

On 25 April 2022, a planning enforcement investigation (RN: 22/76015/K) was carried out on a potential unlawful low-level extract duct at the application site.

8. THE PROPOSAL

Planning permission is sought for the installation of a full height kitchen extract duct to rear elevation. The duct would measure 400mmx400mm and the duct termination point would be at roof level. Several changes have been made during the course of determination in response to the objections and advice from case officer, including the modifications to the duct's route, height and size. It was originally intended to clad the duct in GRP brick effect panels, however, this has been removed following fire safety concerns.

9. DETAILED CONSIDERATIONS

9.1 Land Use

The proposed extract duct is required in connection with the existing use of 19 Villiers Street on the ground floor and basement as a restaurant. The restaurant use is lawful and established through a planning permission granted at appeal.

9.2 Environment & Sustainability

Sustainable Design

The proposal does not raise any sustainable design issues.

9.3 Biodiversity & Greening

The proposal does not increase biodiversity issues.

9.4 Townscape, Design & Heritage Impact

Legislative & Policy Context

The key legislative requirements in respect to designated heritage assets are as follows:

Section 72 of the LBCA Act requires that *“In the exercise, with respect to any buildings or other land in a conservation area...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”*

Furthermore Chapters 12 and 16 of the NPPF require great weight be placed on design quality and the preservation of designated heritage assets including their setting. Chapter 16 of the NPPF clarifies that harmful proposals should only be approved where the harm caused would be clearly outweighed by the public benefits of the scheme, taking into account the statutory duty to have special regard or pay special attention, as relevant. This should also take into account the relative significance of the affected asset and the severity of the harm caused.

Furthermore, the proposals will be assessed against the impact upon the significance of the building and the character and appearance of the Adelphi Conservation Area. Proposals will be assessed against policies 38, 39, and 40 of Westminster's City Plan 2019-40 (April 2021)

Consideration

The proposed route for the duct is at the northern boundary of the site, which appears to be the best available location for an external duct. Whilst the duct, including the cowl at the top of the duct, would not be visible from public vantage points due to the narrow streetscape of Villiers Street, it would be visible to some neighbouring residents.

Following negotiation and advice from the case officer, the height of the duct has been reduced to below that of the chimney stacks, and the duct will therefore not be the

dominant feature on the roof.

In addition, given the application building is located immediately adjacent to the Grade II listed 27 and 29 John Adam Street, the proposals should minimise the visual impact on the setting of the listed buildings, as well as the character and appearance of the conservation area. Whilst a brick effect overclad would have been welcomed, this is not now possible for fire safety reasons. It is therefore recommended that a condition requires the duct work to be painted black which would reduce its visual prominence.

Overall, because the ducting would not be visible from public vantage points, the character and appearance of the conservation area as experienced from the public realm would not be impacted. While the proposed duct would be visible in private views from the rear, with the duct painted black and reduced in height, and given it would be viewed within the context of other larger and more prominent ducting, it would not be harmful to the appearance of the building or the character and appearance of the conservation area as experienced from these private views. The proposal is therefore acceptable in design and conservation area terms.

9.5 Residential Amenity

Policy Context

Policies 7 and 33 of the City Plan seek to protect residential amenity in terms of light, privacy, sense of enclosure and to encourage development, which enhances the residential environment of surrounding properties. Part D of policy 33 states that Development will effectively address the adverse impact of odour through the incorporation of appropriate mitigation measures using a precautionary approach.

Consideration

Objections from five nearby residents and the Villiers Street Residents Association have been received and they raise concerns on potential noise pollution and overshadowing from the proposed extract duct. The objectors suggest that there is an 'inaccurate representation of the noise pollution to the flats' as the noise sensitive receiver identified in the noise assessment report should be the residential flats closest to the kitchen on the ground floor (i.e. the 1st floor flat of 23A Villiers Street) instead of the residential units near the duct termination point on the top floor.

The objectors are concerned that the proposed extract duct would bring further noise nuisance as residential units in this block are already subject to noise from mechanical plant. One of the objectors argues that residential units would be 'sandwiched' by the proposed extract duct and an existing extract from the ground floor unit at 25 Villiers Street (Pret A Manger). The objectors are also concerned that the extract duct would reduce the light received to some properties.

A noise impact assessment and an odour assessment have been submitted to support the application. The Environmental Health team has reviewed the reports and raise no objections to this application on environmental noise or nuisance grounds subject to conditions to control the noise and vibrations from the equipment. In response to concerns from residents about the rear 4th floor residential window being identified as the

closest residential receiver in the noise impact assessment, Environmental Health advise that the main noise source from kitchen extract schemes is from the fan and the fume discharge opening. In this case the fan is to be located internally so the main noise source is the point of discharge with the nearest most affected noise sensitive property being the residential window at rear 4th floor level.

A site visit to the properties of three objectors has been undertaken during the course of this application. It was found that there are existing boiler flues serving the kitchens which would compromise the route of the originally proposed extract duct and it was observed that an existing extract serving 25 Villiers Street is close to some windows of the flats.

The proposals have been revised in response to the concerns about the boiler flues and advice from the case officer. The amended scheme changed the location of the duct so that it would be less visible and would better fit in with the appearance of the building. Despite this new location being marginally closer to some of the windows of the flats, there would be about a 25cm gap, the size of the duct (including its depth) has been reduced from 600 mm x 1200 mm to 400 mm x 400 mm. Given this relatively modest depth, the impact on light and outlook to the flats would be minimal.

A second consultation was carried out and three objections to the amended scheme have been received. The objectors re-stated their concerns about the potential noise and smell nuisance from the extract. The objectors pointed out that the new location for the extract following the amendment is closer to their windows, which would cause unbearable noise and visual pollution, as well as overshadowing.

Whilst the provision of a full height kitchen extract duct in close proximity to residential windows is always regrettable, it is relative common place on mixed use building in central London a 'full height' kitchen extract duct that terminates away from residential windows would always be considered the best option to prevent odour nuisance in environmental health terms. As such this scheme offers confidence that odour nuisance is unlikely to result.

In this case, notwithstanding that the proposed extract would not be ideal in amenity terms as it would run close to the windows of neighbouring residents, the proposed extract is in connection with an established restaurant use. Furthermore, a 'full height' discharging scheme will address the existing enforcement investigation and the complaint regarding the unlawful low-level extract duct at the application site which is known to be causing odour issues. The applicant's acoustic report has demonstrated that when operating the equipment is likely to comply with our standard noise conditions and a condition requiring a post-commissioning noise report would provide further safeguard. A condition requiring the duct to be painted black would limit its visual impact.

9.6 Transportation, Accessibility & Servicing

The proposal does not raise any transport / parking issues.

9.7 Economy including Employment & Skills

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

9.8 Environmental Impact Assessment

The proposal is not of sufficient scale or impact to require an Environmental Impact Assessment.

9.9 Planning Obligations & Pre-Commencement Conditions

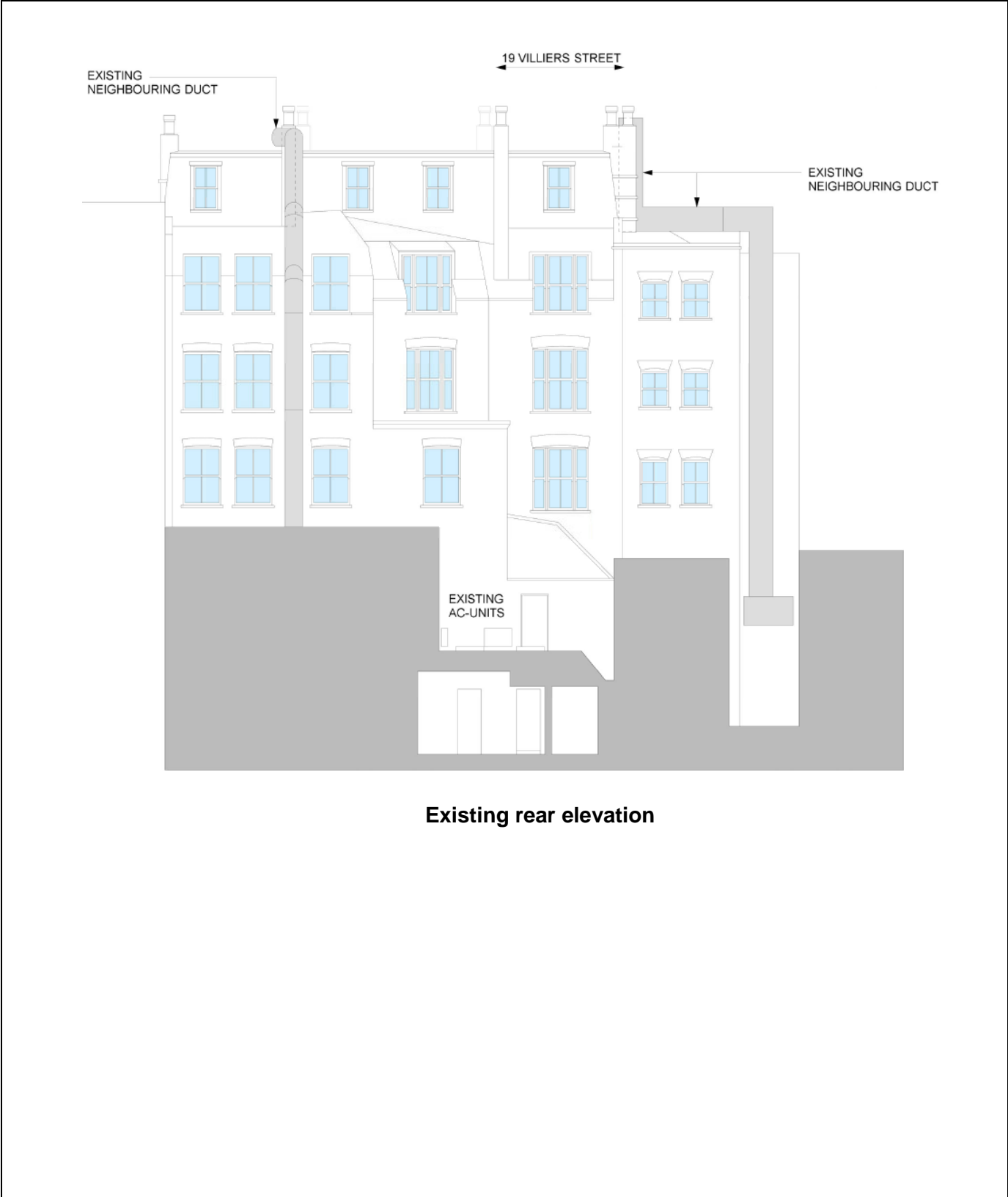
Planning obligations are not relevant in the determination of this application.

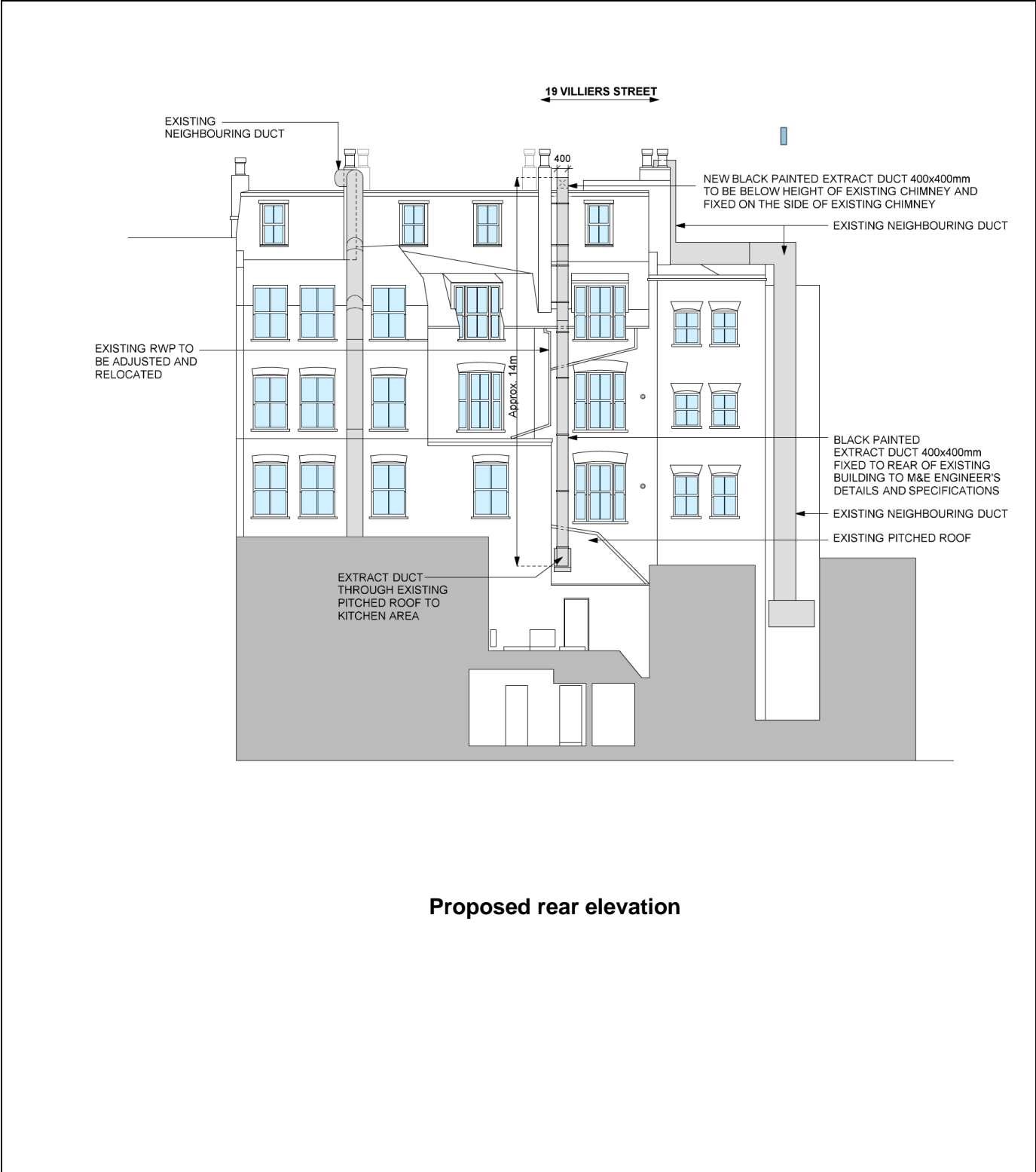
10. Conclusion

This proposal would add a full height extract to an established restaurant use to address existing complaints and enforcement investigation about the unlawful low-level extract. For the reasons as set out in this report, the proposed extract is considered to accord with the relevant policies in Westminster's City Plan 2019-2040 (adopted April 2021) in terms of design and amenity. As such, the application is recommended for approval subject to the conditions set out in the draft decision letter.

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

11. KEY DRAWINGS





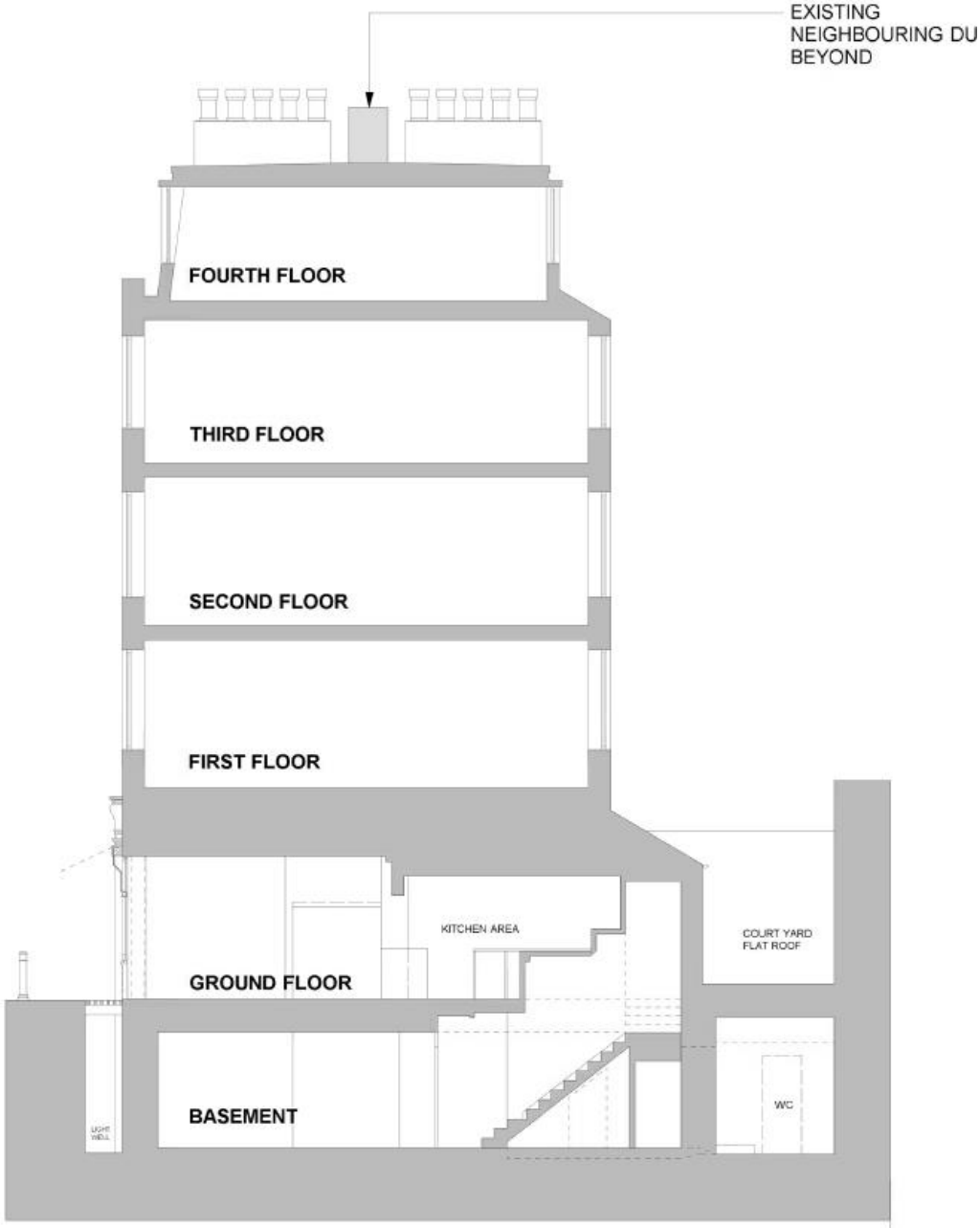
Proposed rear elevation



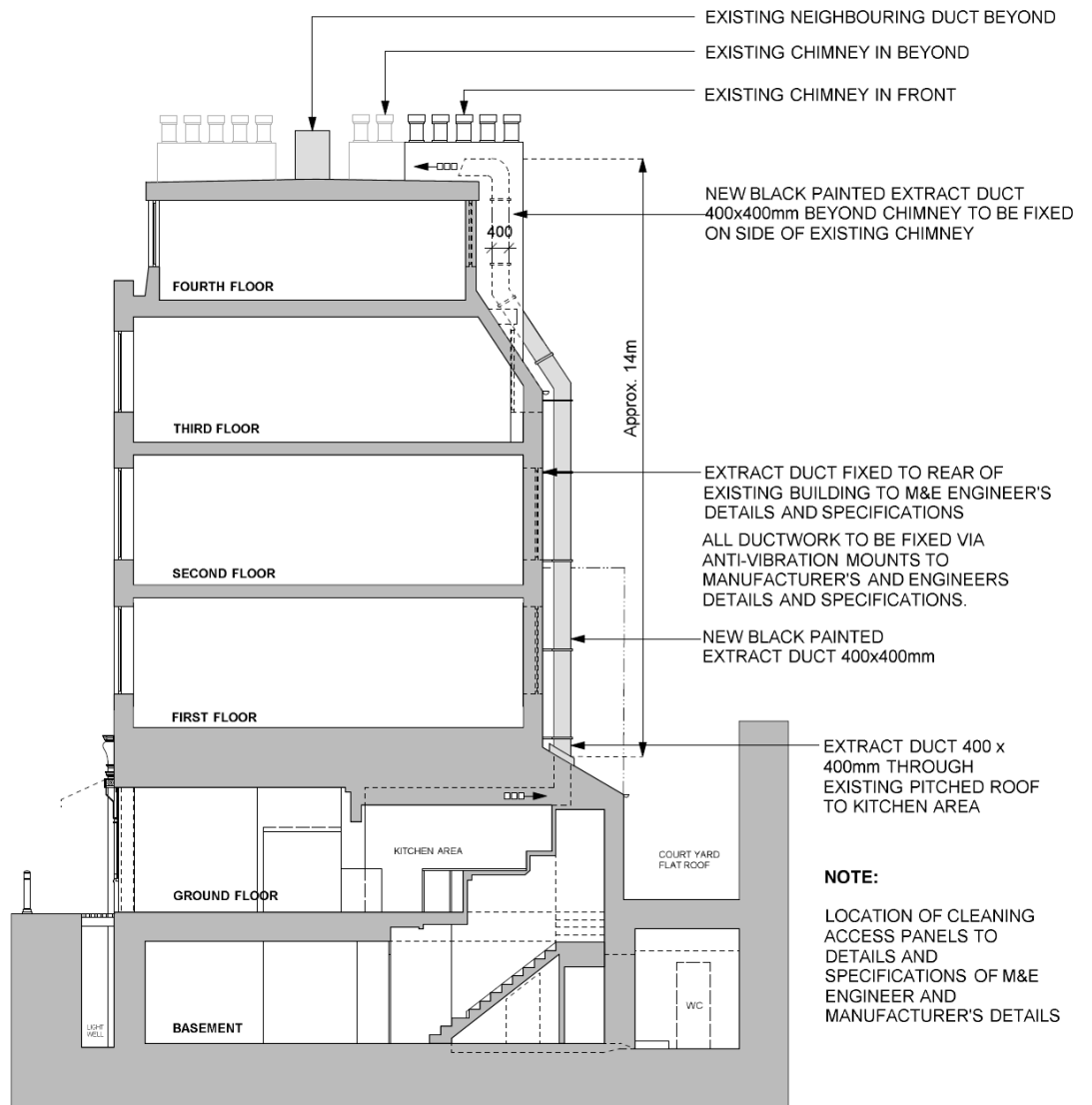
Existing front elevation



Proposed front elevation



Existing section



Proposed section

DRAFT DECISION LETTER

Address: 19 Villiers Street, London, WC2N 6ND

Proposal: Installation of kitchen extract duct to rear elevation

Reference: 22/05869/FULL

Plan Nos: 19-VS-2022-PT-001, 19-VS-2022-PT-002, 19-VS-2022-PT-006, 19-VS-2022-PT-007, 19-VS-2022-PT-008, 19-VS-2022-PT-009-06, 19-VS-2022-PT-010-06, 19-VS-2022-PT-011-06, Odour Assessment Letter by Lewis Ductwork, Planning Compliance Report dated 16 August 2022,

Case Officer: Morgan Cheung

Direct Tel. No. 07971092759

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.

Reasons:

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
- o not 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)

Reasons:

To protect the environment of neighbouring occupiers. This is as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021). (R11AD)

- 3 (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 in writing 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 in writing 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 written 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 LA90, 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.

(C46AC)

Reasons:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) and the Environmental Supplementary Planning Document (February 2022), so that the noise environment of people in noise sensitive receptors is protected, including the intrusiveness of tonal and impulsive sounds, and 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. (R46AC)

- 4 The plant/machinery hereby permitted shall not be operated except between 07:00 hours and 23:00 hours daily. (C46CA)

Reasons:

To protect the privacy and environment of people in neighbouring properties, as set out Policies 7 and 38 of the City Plan 2019 - 2040 (April 2021). (R21AD)

- 5 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 0.2m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property. (C48AB)

Reasons:

To ensure that the development is designed to prevent structural transmission of noise or vibration and to prevent adverse effects as a result of vibration on the noise environment in accordance with Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) and the Environmental Supplementary Planning Document (February 2022). (R48AB)

- 6 You must not operate the plant/ machinery that we have allowed (other than to carry out the survey required by this condition) until you have carried out and sent us a post-commissioning noise survey and we have approved the details of the survey in writing. The post-commissioning noise survey must demonstrate that the plant/ machinery complies with the noise criteria set out in condition(s) ^IN; of this permission.

Reasons:

Because existing external ambient noise levels exceed WHO Guideline Levels, and Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) and the Environmental Supplementary Planning Document (February 2022), so that the noise environment of people in noise sensitive receptors is protected, including the intrusiveness of tonal and impulsive sounds, and by contributing to reducing excessive ambient noise levels. (R51AC)

- 7 The ducting for the kitchen extract ventilation scheme to prevent odour nuisance shall be as shown in drawing no 19-VS-2022-PT-009-06 dated 16/5/2023.

Reasons:

To protect the environment of people in neighbouring properties as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021). (R14AD)

- 8 You must paint the ductwork black within 3 months of the date of its installation and maintain it that colour thereafter.

Reasons:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of the area. This is as set out in Policies 38 and 40 of the City Plan 2019 - 2040 (April 2021). (R26AE)

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 the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), 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. **HIGHWAY LICENSING:**

Under the Highways Act 1980 you must get a licence from us before you put skips or scaffolding on the road or pavement. It is an offence to break the conditions of that licence. You may also have to send us a programme of work so that we can tell your neighbours the likely timing of building activities. For more advice, please visit our website at www.westminster.gov.uk/guide-temporary-structures.

CONSIDERATE CONSTRUCTORS:

You are encouraged to join the nationally recognised Considerate Constructors Scheme. This commits those sites registered with the Scheme to be considerate and good neighbours, as well as clean, respectful, safe, environmentally conscious, responsible and accountable. For more information please contact the Considerate Constructors Scheme directly on 0800 783 1423, siteenquiries@ccscheme.org.uk or visit www.ccscheme.org.uk.

BUILDING REGULATIONS:

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

3. Kitchen extract ventilation scheme should contain the following elements:
 - i. The kitchen extract duct should be designed to discharge vertically where necessary.
 - ii. All cookline equipment must be placed under the extraction canopy.
 - iii. The general ventilation within the kitchen must be designed to achieve an upper ambient temperature of 25 centigrade and provide sufficient air changes within the workspace in compliance with Building & Engineering Services Association (BESA) guidance DW172 -2018 or as updated.

iv. The kitchen extract ducts must be fitted with doors/hatches for cleaning and maintenance, at approximately 2-3 metre intervals or be in compliance with the BESA document TR19 for cleaning and maintenance.

v. Access to the ducting must comply with the Health & Safety safe access standards.

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.