

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 24 November 2020	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved St James's	
Subject of Report	35 The Market, Covent Garden, London, WC2E 8RF		
Proposal	Use of an area of public highway measuring 6.5m x 10.5m for the placing of 26 tables, 52 chairs, 10 stools, 13 planters, 2 parasols, external bar area, service station and associated works including installation of new services below existing cobbles and pavement cover in connection with Sushi Samba.		
Agent	FIMA Architecture and Planning LTD		
On behalf of	Samba Covent Garden LTD		
Registered Number	20/03408/FULL	Date amended/ completed	17 June 2020
Date Application Received	2 June 2020		
Historic Building Grade			
Conservation Area	Covent Garden		

1. RECOMMENDATION

Grant conditional permission

2. SUMMARY

The site is located outside the Covent Garden Market Building which is a Grade II* listed building and located within the Covent Garden Conservation Area.

Planning permission is sought for the use of an area of the Piazza in front of the north-east corner lodge pavilion of the Market Building for the placing of tables, chairs, parasols, an external bar area and service station, as well as new services below the existing cobbles and pavement covers under the Piazza itself. The service/waiter station and tables and chairs will be stored within the external bar outside of opening hours (fully covered and locked), with the planters and any excess tables and chairs stored internally at ground floor level.

The Covent Garden Area Trust have raised strong objection on design grounds, regarding the impact of the proposals on the setting of the Market building and on how the appearance and function of the Piazza will be managed and maintained.

The key issues in this case are:

- The impact on the setting of the Grade II* listed Market Building, and on the character and appearance of the Covent Garden Conservation Area; and
- The impact on pedestrian movement.

While the placement of such items would not normally be considered acceptable in such a sensitive location, given the economic challenges created by the COVID-19 pandemic, the proposals are recommended for approval for a temporary two year period.

3. LOCATION PLAN



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4. PHOTOGRAPHS



Site as Existing

5. CONSULTATIONS

COVENT GARDEN COMMUNITY ASSOCIATION

Any response to be reported verbally.

COVENT GARDEN AREA TRUST

14/07/2020

Raise an objection:

- The society objected to a similar application at the same unit last year and the application was subsequently refused.
- There is a lack of detail in the application, especially regarding how the structure will be affixed to the area and packed away every evening or at short notice in line with current public highways requirements and guidance for market building occupants.
- The structure/seating arrangements will completely dominate that corner of the market building and block the tower located directly behind.
- Object to the fact that the temporary structure has already been erected without planning permission.

19/10/2020

- There is a lack of detail in the application, particularly in the Design and Access Statement and Heritage Statement regarding the impact of the proposed development on the setting and significance of the listed Central Market Building.
- Whilst further information has been provided about how the external bar will be affixed to the area and how the items will be stored overnight, the society does not believe this provides sufficient reassurance about how the impacts on the appearance and function of the Piazza will be managed and the subsequent impact on the piazza and setting of the listed building.
- The society objects to the use of “flower-pots” and suggests the use of low, demountable “rope” or canvas barriers instead.
- The edge of the proposed canopy when extended should be no closer than 3m from the east face of the north-eastern corner-pavilion of the market building behind in order to avoid concealing the aediculed door-opening from view.
- During opening hours the proposals will completely dominate that corner of the market building and block the north-eastern corner-pavilion of the listed market building.
- The design and detailing of the bar and waiter station are more appropriate to the interior of the restaurant and are out of character with the listed building.
- Unless a comprehensive approach is taken to the treatment of external seating areas within the Piazza, there will be a continued erosion of its character and damage to the setting of the market building by individual proposals of this nature.

29/10/2020

- Confirmation provided that the trust did not object to a similar application at the same unit (as stated in previous comments) but provided comments relating to a breach of planning.

PROJECTS OFFICER (WASTE):

No objection, the area of the proposal is not maintained and cleaned by the council.

HIGHWAYS PLANNING MANAGER

- Highway is often in the ownership of the adjoining landowners, however land ownership does not void the highway status. If pedestrians have passed over an area for 20 years without restriction, then that land is considered part of the public highway under Section 31 Part 3 Chapter 66 of the Highways Act 1980.
- Objection to the planters, umbrellas and external bar and service station, the guidelines for placing of tables and chairs on the highway state that permanent barriers are not permitted, as the licensed area must be capable of reverting to use as public highway each night so that it can be washed down by the Cleansing Department. These items, if not mobile, will not be removed each night and may disrupt the cleansing of the street and cause disruption to pedestrian movement.
- No objection in principal to the proposed tables and chairs as they are temporary furniture that can be removed from the highway outside of operational hours.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 80

Total No. of replies: 1

No. of objections: 0

No. in support: 1

One letter of support received from the landlord, Capital and Counties (Capco) on the following grounds:

Design

- The application contains a well thought out design with high quality finishes. The proposals are minor in nature and easily reversible in the future.
- Do not consider that the bar and service station will impact negatively on the listed structure and is comparable to similar installations around the market building.

Highways

- The application area is not on the public highway and is situated on Capco owned land and does not affect the operation of the highway.
- Tables and chairs have previously been permitted in this location.

Other

- COVID-19 has resulted in a loss of jobs for many, particularly those that rely on the hospitality industry.
- This particular location has historically had issues in servicing the ground floor seating area, due to there being no ground floor preparation presence, and until it is made fit for purpose it will underperform and be underutilized directly impacting negatively on employment.

RECONSULTATION DATED 15 OCTOBER 2020

Additional information provided: proposed plan and section drawings for out of hours; details of tables, chairs, bar, waiter station and parasols; and confirmation that the proposed hours of operation are 10:00 – 23:00 Monday to Saturday and 12:00 – 22:30 on Sundays.

No. Consulted:89
Total No. of replies:0

PRESS ADVERTISEMENT/SITE NOTICE
Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

The site is located outside the Covent Garden Market Building which is a Grade II* listed building and located within the Covent Garden Conservation Area and West End Stress Area.

The unit is in restaurant use, operated by Sushi Samba. There are currently tables and chairs, planters, menu board, and rope barriers on site, covered by two large parasols.

6.2 Recent Relevant History

In September 2015, Planning permission and listed building consent were granted for the removal of the existing first floor conservatories and installation of a replacement glazed structure to the eastern elevation, partial infill of the central avenue, removal of the external staircases. Associated alterations to the north and south halls, and northern pavilion, use of a terrace at the southern pavilion, installation of a metal balustrade, external table and chairs; all in connection with use as a single restaurant (Class A3).

In December 2015, conditions 7, 9 and 11 of the planning permission dated 22 September 2015 were varied to amend the wording of conditions to approve a new operational management statement, extend the time of outdoor seating until 23:00 hours, and to allow the bar area to be open to non-diners.

In September 2016, conditions 1 and 4 of the planning permission and listed building consent dated 1 December 2015 were varied to allow various alterations including use of stainless steel to replace zinc on new roof, facade amendments, glazed panels to balustrade, new fixings and alterations to private dining terrace.

In July 2019, following a complaint from the Covent Garden Area Trust an enforcement case was opened at the site relating to the placing of unauthorised tables and chairs and other associated features that have been placed on the highway.

7. THE PROPOSAL

Permission is sought for the installation of 26 tables, 52 chairs, 10 stools, 13 planters, 2 parasols, external bar area and a service station on the public highway in front of the north-east corner lodge pavilion. The application includes the installation of new services below the existing cobbles and pavement covers under the Piazza itself.

The waiter station and tables and chairs will be stored within the external bar outside of opening hours (fully covered and locked), with the planters and any excess tables chairs stored internally.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The use of the highway for tables and chairs in connection with eating and drinking establishments is considered under Policy TACE 11 of the UDP and Policy S41 of the City Plan. Policy TACE 11 recognises that al fresco eating and drinking is popular and can provide opportunities for visitors, residents and workers to experience and contribute to the vibrancy and character of an area.

As stated above, two parasols and tables and chairs are already placed at the application site. The previous permissions from 2015/16 show that the area is within the red line boundary of the A3 planning unit, now operated by Sushi Samba, although no plans showing any external tables and chairs were included with the applications.

The Councils policies permit tables and chairs where they are safe, where a convenient pedestrian environment is maintained and where no unreasonable harm to local residential amenity and environmental quality occurs. These issues are set out in further detail below.

TACE 11 requires that tables and chairs should not unacceptably intensify an existing use. It is considered that the proposals would not result in a significant intensification of the restaurant use. The external furniture is therefore considered acceptable in land use terms.

8.2 Townscape and Design

The Covent Garden Area Trust has objected on a number of grounds relating to design, including a lack of detail in the application regarding the impact of the proposals on the setting of the Market Building and on how the appearance and function of the Piazza will be managed and maintained.

Commenting on the proposed layout of the furniture when not in operation, the Trust has noted that although the bar would be on wheels and not fixed to the ground, the storage area will itself add to the visual clutter and break up the open vista of the Piazza and Market Building and that no details are provided of how it will be covered or of the materials/treatment of the proposed covering. Moreover, the provision of overnight storage does not address their principal concern that during opening hours the seating arrangements and the bar and waiter station, by virtue of their detailed design and colour palette, will visually dominate this corner of the Market Building blocking the appreciation of the north-east corner pavilion with the edge of the proposed canopy when extended potentially impinging on the aediculed door opening. The Trust additionally considers that as no details of the proposed planting planting-boxes are provided, and that low demountable 'rope' or canvas barriers should be used instead.

The Trust goes on to consider that unless a comprehensive approach is taken to the treatment of external seating areas within the piazza more generally there will be a continued erosion of its character and damage to the setting of the Market Building by further proposals of this type and note that temporary structures have already been

erected.

Visually, the impact upon the setting of the Market Building principally arises from views approaching from Russell Street and from vantage points at the eastern end of the Piazza, there are two large parasols covering tables and chairs which already impact on the appreciation of the upper storey of the building. Neither the parasols nor tables and chairs have planning permission. It is proposed to retain the parasols and introduce a greater number of tables and chairs to this part of the Piazza. The impact is therefore from the retention of the parasols, tables and chairs, the placement of the bar, waiter station and to a lesser degree the enclosing planters upon the Piazza and the effect of this intensification of furniture (visual clutter) upon the setting of the listed building and the appearance of the Covent Garden Conservation Area.

The bar and serving station would not be removed at night, but rather would be consolidated externally which would involve the waiter station and tables and chairs being stored inside the bar, with the remainder of the tables and chairs and planters stored inside at ground floor level. The applicant has provided a proposed drawing showing the out of hours appearance. Whilst their external presence would in some form be permanent for the duration of any permission granted, the items are on wheels and so their impact on the piazza and setting of the grade II* listed market building is reversible and restricted to the duration of a time limited permission. As a long term installation in the piazza, the proposals are considered to be unjustifiable and would have an unacceptable impact on the setting of this important building, the townscape qualities of the Piazza and the Covent Garden Conservation Area.

Although having no physical impact on historic fabric, the siting of an external bar and waiter station and the tables, chairs and existing parasols upon the Piazza in such close proximity to the Market building is considered to lead to less than substantial harm to the relevant designated heritage assets, however there are important mitigating factors which leads to the conclusion that this proposal can be considered acceptable. Firstly, the applicant has confirmed their agreement to a temporary two year permission.

Other considerations are that the Piazza of Covent Garden has a character of vitality and trading spanning back in history and central government messaging and recent changes to planning legislation, has clearly sought to encourage an approach which stimulates the economy, as a consequence of the impact of the COVID-19 pandemic, notably promoting measures which enable town and city centres to 're-open' and attract visitors.

In this case, allowing the proposals for a temporary two year period would mean that the harm caused to the setting of the Grade II* listed Market building and the Covent Garden Conservation Area in the form of visual clutter would remain a temporary impact and would be further offset by the public benefits of stimulating the economy during these unprecedented times by allowing business to continue trading thus maintaining the optimum viable use of The Market building and offering an external space for dining whilst meeting legal requirements to stem the spread of Covid-19. While the placement of such items would not normally be considered acceptable in such a sensitive location, given the proposals are for a temporary period of two years, their impact can be reviewed towards the end of this temporary period.

As such, whilst being mindful of policies TACE 11, DES 1, DES 9 and DES 10 of the UDP and S25 and S28 of the City Plan, given the public benefits that would be delivered, which comprise promoting measures which enable town and city centres to 're-open' and thereby stimulating the economy as a consequence of the impact of the COVID-19 pandemic, the proposal is considered acceptable in terms of its impact on the designated heritage asset(s) for a temporary two year period. Therefore, the recommendation to grant conditional permission is compliant with the requirements of the NPPF and the statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990."

8.3 Residential Amenity

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 which enhances the residential environment of surrounding properties.

TACE 11 states that planning permission for the provision of tables and chairs, on the footway will only be granted when such developments (including any means of enclosure that may be required by the relevant licensing authority) will not cause a nuisance to residents.

The Council's records show that the nearest residential property is located on the upper floors of 10 Russell Street (approx. 50m). The proposed hours of operation are 10:00 - 23:00 Monday to Saturday and 12:00 -22:30 on Sundays. As the site is located in a busy central London location, the proposals are considered to be acceptable in amenity terms subject to a condition securing the hours of operation.

8.4 Highways

Policies TRANS 3 and TACE 11 of the UDP, Policy S41 of the City Plan and The Westminster Way relate to tables chairs and other objects placed on the footway.

S41 states that all developments will prioritise pedestrian movement and the creation of a convenient, attractive and safe pedestrian environment, with particular emphasis in areas with high pedestrian volumes and peaks.

TRANS3 (A) states that the City Council, in considering development proposals, will aim to secure an improved environment for pedestrians, with particular regard to their safety, ease, convenience and directness of movement, in the course of negotiations or securing planning agreements, including the provision of appropriate facilities, such as footway widening, footbridge location and covered arcading.

The Westminster Way strives to promote walking through design and use of suitable materials/surfaces that aid rather than disadvantage pedestrians.

The piazza is owned and maintained by Capital and Counties and the applicant states that it has been used for tables and chairs for approximately 25 years and does not form part of the public highway.

The Highways Planning Manager states that the highway is often in the ownership of

adjoining landowners and that if pedestrians have passed over an area for 20 years without restriction, then that land is considered part of the public highway under the Highways Act 1980. It should be noted that no evidence has been provided to support the applicants claim that the area has been used for approximately 25 years for tables and chairs.

The primary function of the highway is the free and unobstructed movement of the highway users. This includes pedestrians, motorists' and cyclists. Secondary functions can be considered those that relate to the primary function (e.g. parking of vehicles, provision of cycle parking, and bus stop facilities). Tertiary functions of the highway are those that need not occur on the highway and include table and chairs and queuing space for premises. Therefore the priority is given to pedestrian movements.

The applicant has provided drawings showing that the waiter station and tables and chairs will be stored within the external bar outside of opening hours (fully covered and locked), with the planters and any excess tables and chairs stored internally at ground floor level. The Council's Project Officer (Waste) has raised no objection to proposals as the area is not maintained or cleaned by the Council.

The Highways Planning Manager has raised no objection in principle to the proposed tables and chairs as they are temporary furniture that can be removed from the highway outside of operational hours. However, objection is raised to the items that will remain on the highway outside of operational hours. Although the bar is on wheels, it will be a permanent fixture on the highway, which is contrary to the Council's "Guidelines for the placing of Tables and Chairs on the Highway" SPG (2005) which states that the licensed area must be capable of reverting to use as public highway each night, as failure to do so may cause disruption to pedestrian movement: failing to secure an improved highway environment for pedestrians.

Accordingly, it is considered that the proposals do not comply with Policies TRANS 3 and TACE 11 of the UDP, Policy S41 of the City Plan, The Westminster Way and the "Guidelines for the placing of Tables and Chairs on the highway" SPG.

When weighting up the material considerations in the case which are discussed earlier in this report and considering the economic challenges created by the COVID-19 pandemic and the temporary two-year period sought, the highways concerns are not considered sufficient to justify withholding permission in this instance. The situation on site can be monitored during this two-year temporary period.

8.5 Economic Considerations

The impact of the COVID-19 pandemic is a material consideration and, as set out earlier in the report, the proposal would allow the business to continue trading which is an economic benefit.

8.6 Access

Access to the restaurant will remain as permitted.

8.7 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. The Examination in Public took place between 28 September and 2 October and 12 October and 16 October. Having regard to the tests set out in paragraph 48 of the NPPF, whilst the draft City Plan has now been through an Examination in Public, it will continue to attract very limited weight at this present time prior to the publication of the Inspector's report.

8.8 Neighbourhood Plans

Not applicable to this site.

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.

8.12 Environmental Impact Assessment

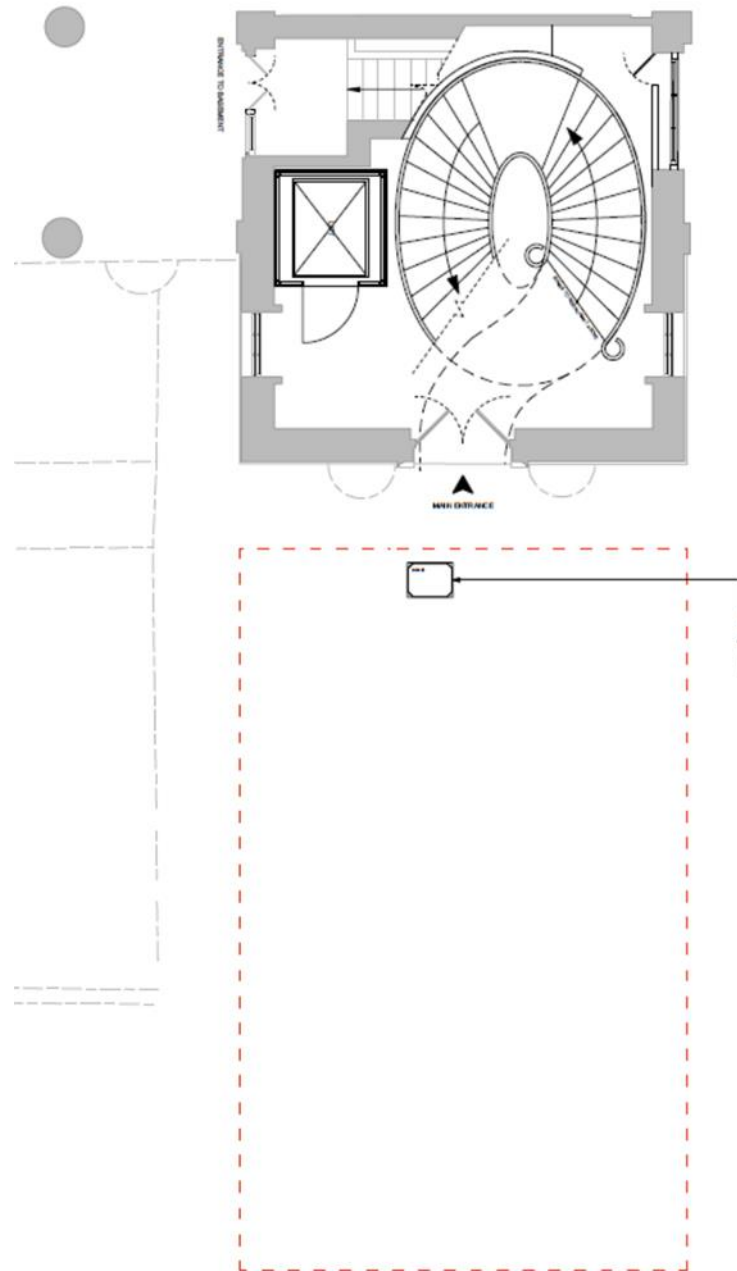
Not required for a development of this scale.

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

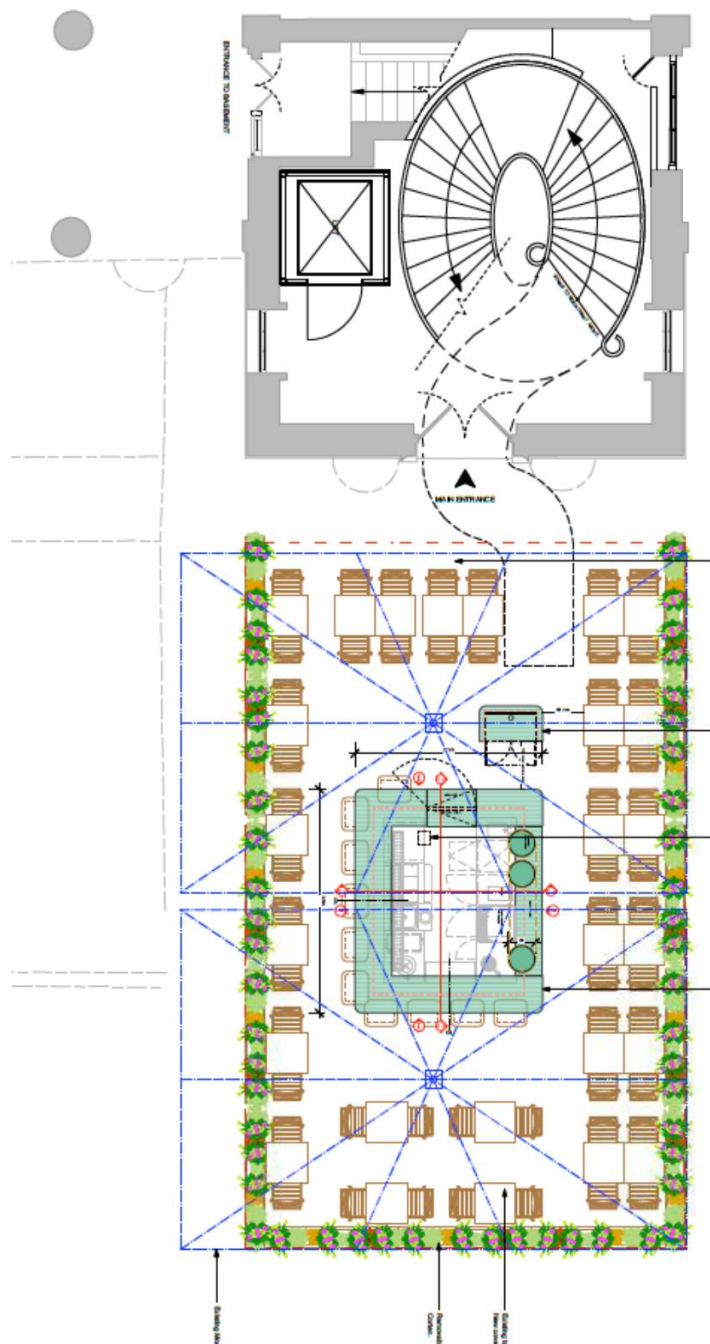
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: IAN CORRIE BY EMAIL AT: ICORRIE@WESTMINSTER.GOV.UK

9. KEY DRAWINGS

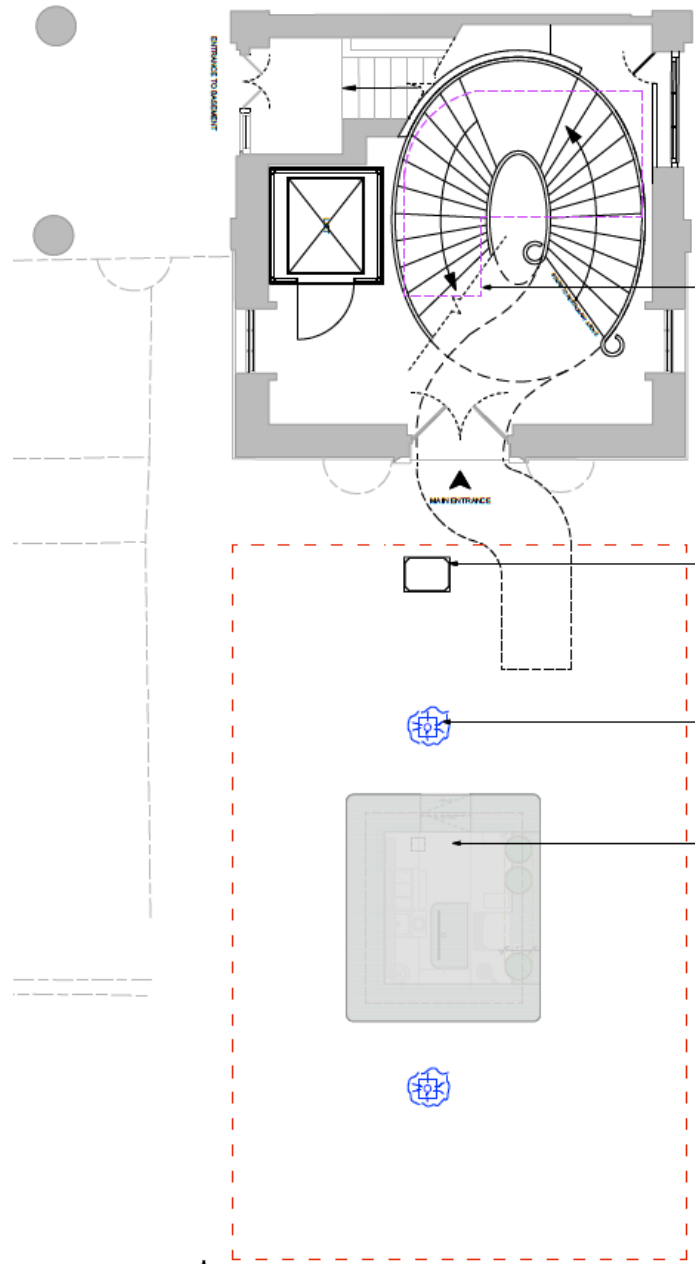
Existing Plan



Proposed Plan During Operational Hours

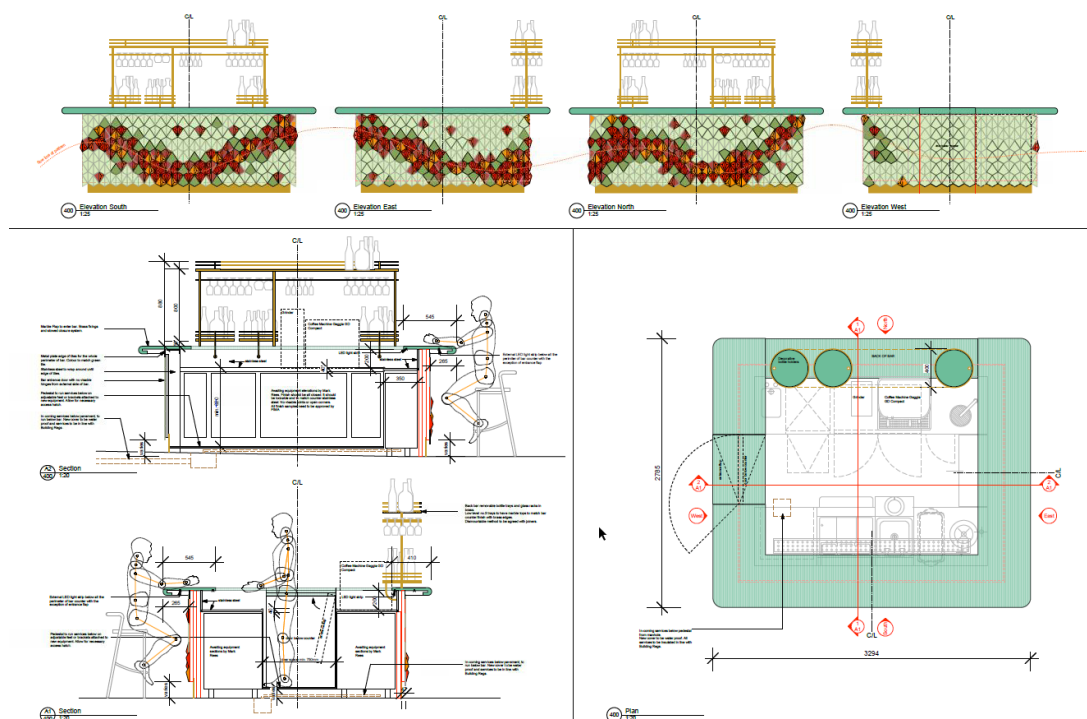


Proposed Plan During Non-Operational Hours

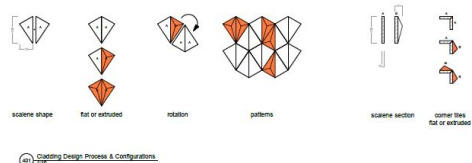


Proposed section during Operational Hours

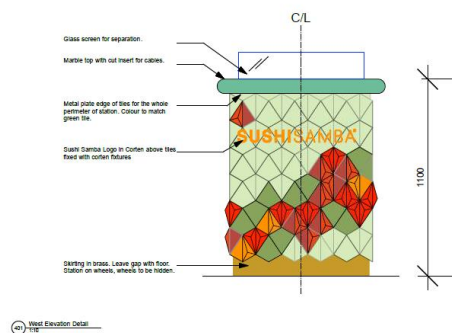
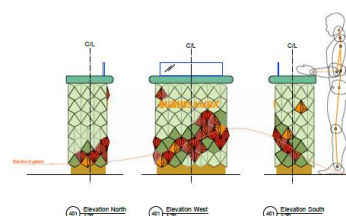




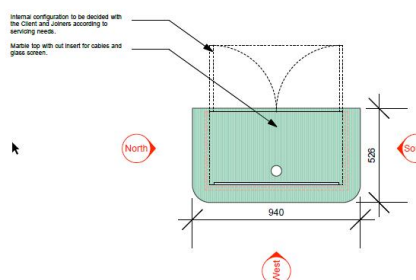
Detailed Waiter Station Drawings



Cladding Design Process & Configurations



West Elevation Detail



Plan

DRAFT DECISION LETTER

Address: 35 The Market, Covent Garden, London, WC2E 8RF

Proposal: Use of an area of public highway measuring 6.5m x 10.5m for the placing of 26 tables, 52 chairs, 10 stools, 13 planters, 2 parasols, external bar area, service station and associated works including installation of new services below existing cobbles and pavement cover in connection with Sushi Samba.

Reference: 20/03408/FULL

Plan Nos: 2002(00)001; 2002(02)100; 2002(02)101 Rev. A; 2002(50)100; 2002(02)200; 2002(02)201; 2002(02)400; 2002(02)401; Specifications of Tables and Chairs.

Case Officer: Ian Corrie

Direct Tel. No. 020 7641
07866038370

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 Only the waiter station, bar, parasols, tables and chairs and other furniture shown on drawing numbers 2002(02)100 and 2002(02)101 Rev.A shall be placed on the Piazza. The waiter station, bar, parasols, tables and chairs and other furniture shall only be placed on the Piazza in accordance with the position shown on drawing no. and 2002(02)100 between 10:00 hours and 23:00 hours Monday to Saturday and 12:00 hours -22:30 hours on Sundays; and in the position shown on drawing number 2002(02)101 Rev. A between 23:00 hours and 10:00 hours Monday to Saturday and 22:30 hours and 12:00 on Sundays.

Reason:

In the interests of public safety and to avoid blocking the road and to protect the setting of the Grade II* Covent Garden Market Building and the character and appearance of the Covent Garden Conservation Area as set out in S25, S28 and S41 of Westminster's City Plan (November 2016) and TACE 11, DES 1, DES 9, DES 10 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007.

- 3 This use of the Piazza may continue for a period of 2 years from the date of this decision. You must then remove the waiter station, bar, parasols, tables and chairs and other

furniture hereby approved. (C25DA)

Reason:

Allowing the proposals on a permanent basis would cause harm to the setting of the Grade II* Covent Garden Market Building and the character and appearance of the Covent Garden Conservation Area which would not meet S25 and S28 of Westminster's City Plan (November 2016) and DES 1, DES 9, DES 10 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007. 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.

- 4 The tables and chairs, bar and other furniture must only be used by customers of Sushi Samba (Unit 35, The Market, Covent Garden, WC2E 8RF). (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 You must make good the works to the Piazza and reinstate the cobbles in their existing arrangement after 2 years from the date of this decision on the removal of the waiter station, bar, parasols, tables and chairs and other furniture hereby approved.

Reason:

To make sure that the appearance of the building is suitable and that it contributes to the character and appearance of this part of the Covent Garden Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

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, which can be applied for at the following link: www.westminster.gov.uk/tables-and-chairs-licence. , If you want to know about the progress of your application for a licence, you can contact our Licensing Service by email to streettradinglicensing@westminster.gov.uk. 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.

- 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)

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.