

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 16 <sup>th</sup> March 2021	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved Marylebone High Street	
Subject of Report	17 New Cavendish Street, London, W1G 9UA		
Proposal	Variation of Condition 1 and Condition 2 of planning permission dated 2 February 1998 (RN: 97/05508/FULL) for, use of basement and ground floor for class A3 food & drink purposes and installation of full height extract duct to rear; NAMELY, to vary Condition 1 to allow for the opening hours to change to 08:00 - 22:30 (Monday - Sunday), and to vary the wording of Condition 2 to allow for a food takeaway service to operate for a temporary period of two years, between the hours 08:00 - 22:30 (Monday - Sunday).		
Agent	Howard De Walden Estate		
On behalf of	Howard De Walden Estate Ltd		
Registered Number	20/07771/FULL	Date amended/ completed	4 December 2020
Date Application Received	4 December 2020		
Historic Building Grade	Unlisted		
Conservation Area	Harley Street		

## 1. RECOMMENDATION

Grant conditional permission

## 2. SUMMARY

The application involves a basement and ground floor restaurant located on the north side of New Cavendish Street. The unit is currently occupied by 'Galleria' restaurant, although the site is currently being advertised for re-letting. The upper floors of the building are in residential use. The site is within the wider Central Activities Zone (CAZ) area and is located within the Harley Street Conservation Area.

Planning permission for the use of the basement and ground floors as a restaurant was granted in February 1998 and currently operates between the hours of 10:00am to 10:30pm. Condition 2 attached to the 1998 planning permission also enables the provision of a take-away service, but this is restricted between the hours of 10:00am and 6:00pm.

The application is submitted on behalf of the Howard De Walden Estate, who advise that the COVID-

19 pandemic, and restrictions on trading, have significantly impacted hospitality business turnover for many independent businesses around the estate. In order to mitigate the effects of the pandemic, the application is seeking to vary the wording of Condition 1 to allow for the opening hours to be brought forward by two hours to 08:00 daily. The applicant argues that this will allow the existing premises to offer breakfast trade to the current occupier, as well as future occupants, and would allow the unit to survive and thrive in these uncertain times. The applicant also seeks to amend Condition 2 to allow its delivery and takeaway service to operate to these same hours for a temporary period of two years, in order to enable greater flexibility.

Policies ENV 13 of the Unitary Development Plan (UDP) and S29 of the City Plan seek to ensure that development does not harm the residential environment of surrounding properties and result in a material loss of residential amenity. One objection has been received on the basis that the building was not designed to accommodate a restaurant, that insufficient evidence has been submitted to demonstrate that adequate soundproofing will be installed, and that use of a rear courtyard could result in noise nuisance. However, the restaurant use is lawful and has been in existence for some considerable time and therefore additional restrictions relating to internal noise and soundproofing could not be imposed in relation to this application. This part of New Cavendish Street is mixed use in character, comprising a mix of commercial uses on the ground floor, with predominantly residential above. Given the character of the street, and despite the residential flats immediately above, allowing the restaurant to open earlier at 8am rather than 10am as currently permitted is unlikely to result in an adverse impact on residential amenity. To address the concerns raised about noise in the courtyard, a condition is imposed requiring the rear kitchen door, that provides access to the rear courtyard, to remain closed between the extended hours of operation sought (08:00 -10:00).

With regards to offering a takeaway facility, the applicant's argument that this is necessary to enable greater flexibility during the pandemic is acknowledged. At present, given the current lockdown restrictions, the takeaway facility serves as the only function of the restaurant use. This is permitted development under Class DA of the Town and Country Planning (General Permitted Development) Order 2020 which allows restaurants to temporarily provide takeaway food (until 24 March 2021). However, after this date, any level of sales greater than that which could be considered incidental to the restaurant use, would result in a change of use, which would require the submission of a new planning application. At present, the takeaway facility is limited by condition until 6pm. The application seeks to allow the takeaway service to operate from 08:00 until 22.30. It is recognised that the extended hours of the take-away service could result in additional comings and goings and could have an impact on the residents above, particularly as a take-away delivery service is provided. However, given both the size of the restaurant and the character of New Cavendish Street, extending the time period which the restaurant can provide a takeaway service is in principle considered acceptable. Council records also show that no noise related complaints have been received in the past over the current takeaway and delivery facility.

The applicants also argue that nearby restaurant/entertainment uses such as OKA, the adjoining restaurant at 19 New Cavendish Street and The Cavendish at No.35, do not have restrictions on their hours of takeaway and that the restriction imposed in 1988 for takeaway hours is both historic and does not reflect the current climate in which many retail units are struggling to survive without being able to trade as they normally would. This argument is accepted, but given that there are residential flats directly above the restaurant it is considered that the extended hours allowing takeaways in the evening should be limited to 2 years from the date of this permission in the first instance to allow the position to be monitored and reviewed.

## 3. LOCATION PLAN



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## 4. PHOTOGRAPHS



## 5. CONSULTATIONS

Marylebone Association  
No response to date.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 73  
Total No. of replies: 1

One letter objection has been received on the following basis:

- The building was not designed to accommodate food and beverage activities at ground floor level.
- The submission does not provide any evidence that adequate soundproofing will be installed to support such activities and will lead to loss of amenity to residents above.
- The proposals will encourage the use of rear courtyard area that will also have a detrimental impact on residential amenity.

PRESS ADVERTISEMENT / SITE NOTICE:  
Yes

## 6. BACKGROUND INFORMATION

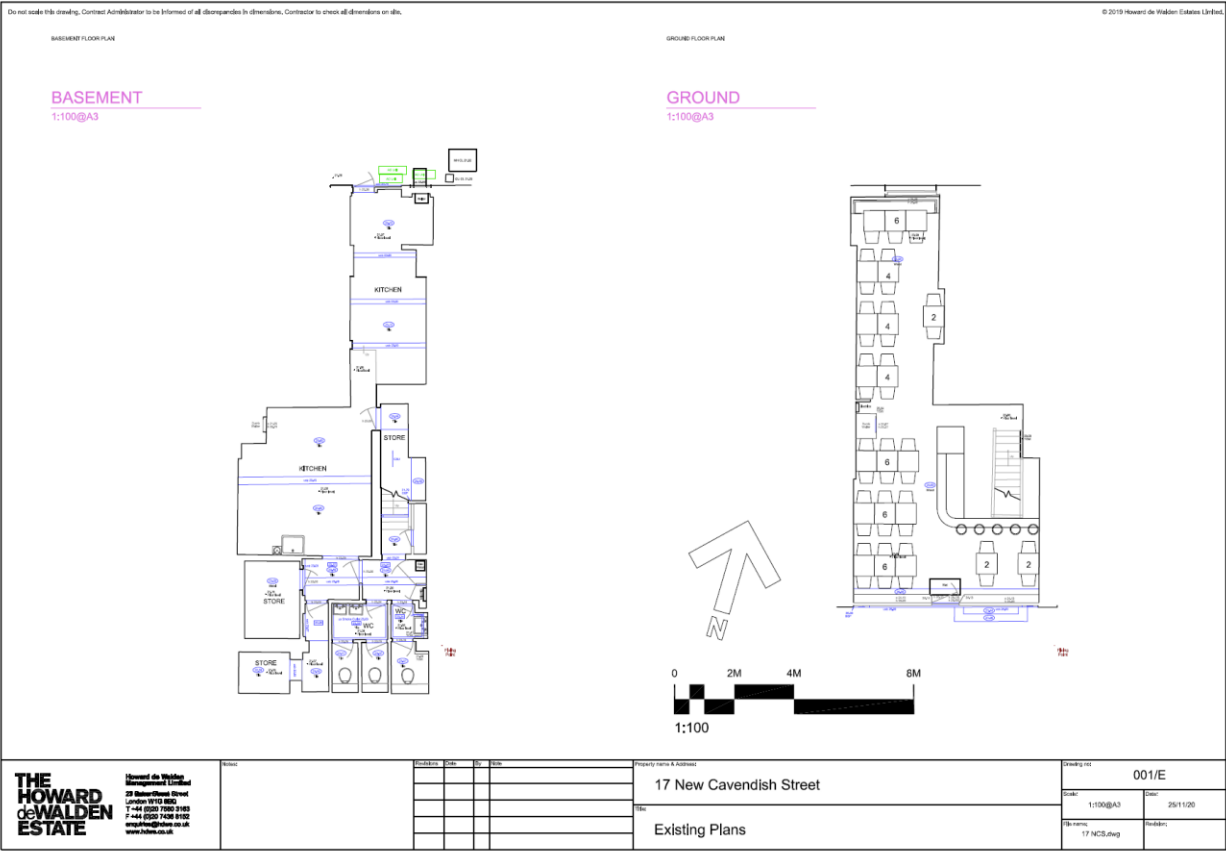
### 6.1 Recent Relevant History

97/05508/FULL  
USE OF BASEMENT AND GROUND FLOOR FOR CLASS A3 FOOD & DRINK  
PURPOSES AND INSTALLATION OF FULL HEIGHT EXTRACT DUCT TO REAR.  
Application Permitted 12 February 1998

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

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: JO PALMER BY EMAIL AT JPALME@WESTMINSTER.GOV.UK

7. KEY DRAWINGS





**DRAFT DECISION LETTER**

**Address:** 17 New Cavendish Street, London, W1G 9UA

**Proposal:** Variation of Condition 1 and Condition 2 of planning permission dated 2 February 1998 (RN: 97/05508/FULL) for, use of basement and ground floor for class A3 food & drink purposes and installation of full height extract duct to rear; NAMELY, to vary Condition 1 to allow for the opening hours to change to 08:00 - 22:30 (Monday - Sunday), and to vary the wording of Condition 2 to allow for a food takeaway service to operate for a temporary period of two years, between the hours 08:00 - 22:30 (Monday - Sunday).

**Reference:** 20/07771/FULL

**Plan Nos:** 001/E

**Case Officer:** Rattan Sehra

**Direct Tel. No.** 07866039814

**Recommended Condition(s) and Reason(s)**

- 1 The use hereby permitted shall not be carried on except between the hours of 08:00 to 22:30.

**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)

- 2 You can provide takeaway service from the premises, between the hours of 08.00am - 22.30pm only, Monday to Sunday, for a temporary period until 31<sup>st</sup> March 2023. Thereafter, the food takeaway hours should revert to between the hours of 10:00am - 18:00pm each day.

**Reason:**

A food takeaway service is considered acceptable only for a temporary period in recognition of the exceptional circumstances due to the current COVID-19 pandemic. We can only grant a temporary trial period for the takeaway hours so that the potential impact of the proposed hours can be assessed, and 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, of our Unitary Development Plan that we adopted in January 2007. (R23AC)

- 3 The plant and any associated equipment hereby approved shall be so constructed to ensure that the noise generated will not increase the background noise level (LA90, 15 mins) as measured 1 metre from the nearest window of the nearest affected property by more than 2dB(A). The new plant shall not cause any audible noise or perceptible vibration to be transmitted through the structure of the building and to adjacent buildings.

**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)

- 4 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.

- 5 The kitchen door at basement floor level must remain closed between the hours of 08:00 and 10:00 daily, except for means of escape purposes.

**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 You must register your food business with the Council, please use the following link: [www.westminster.gov.uk/registration-food-business](http://www.westminster.gov.uk/registration-food-business). Please email the Environmental Health Consultation Team (Regulatory Support Team 2) at [ehconsultationteam@westminster.gov.uk](mailto: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.
- 2 Please email our Project Officer (Waste) at [wasteplanning@westminster.gov.uk](mailto:wasteplanning@westminster.gov.uk) for advice about your arrangements for storing and collecting waste.



- 3 In the case of a restaurant or similar use, the hours of operation specified by this planning permission should be interpreted to refer to the hours during which customers may be present on the premises. The latest time, therefore, refers to the time by which the final customers should have left the premises.

The hours of operation may be further restricted by the Council's Licensing Sub-Committee should the operation also require a licence.

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.