

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date: 16<sup>th</sup> January 2018</b>	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> Hyde Park	
<b>Subject of Report</b>	<b>117-119 Edgware Road, London, W2 2hx</b>		
<b>Proposal</b>	Use of the ground floor for mixed retail / restaurant use (Class A1/A3); use of basement as restaurant (Class A3), installation of a retractable canopy, recirculation ventilation system and electrical heaters.		
<b>Agent</b>	Mrs Emma McBurney		
<b>On behalf of</b>	Mr Jihad Issa		
<b>Registered Number</b>	17/08100/FULL	<b>Date amended/ completed</b>	2 <sup>nd</sup> January 2018
<b>Date Application Received</b>	8 September 2017		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	N/A		

## 1. RECOMMENDATION

Refuse planning permission- land use.

## 2. SUMMARY

The application site is a double fronted unit shop unit currently in use (unlawfully) as a The Beirut Café. The site is located within the Central Activities Zone Frontage and is part of the Edgware Road Stress Area.

The site operated as an A3 restaurant lawfully under a temporary flexible use between 5<sup>th</sup> May 2014 and 5<sup>th</sup> May 2016 but has been operating unlawfully since. A subsequent application for a permanent change of use to a restaurant (Class A3) over ground and basement was refused and dismissed at appeal on land use grounds.

This application seeks to address the reason for the dismissed appeal, by proposing two retail display cabinets inside the shopfront windows on the basis that this would create a mixed use A1/A3 use at ground floor and an A3 use at basement. Permission is also sought for the installation of a recirculation system as a means of ventilation, and the erection of a canopy and electric heaters to the front of the property. The application originally proposed tables and chairs on the highway outside of the property, however this has been withdrawn from the proposal following objections by Transport for London and our Highways Planning Manager.

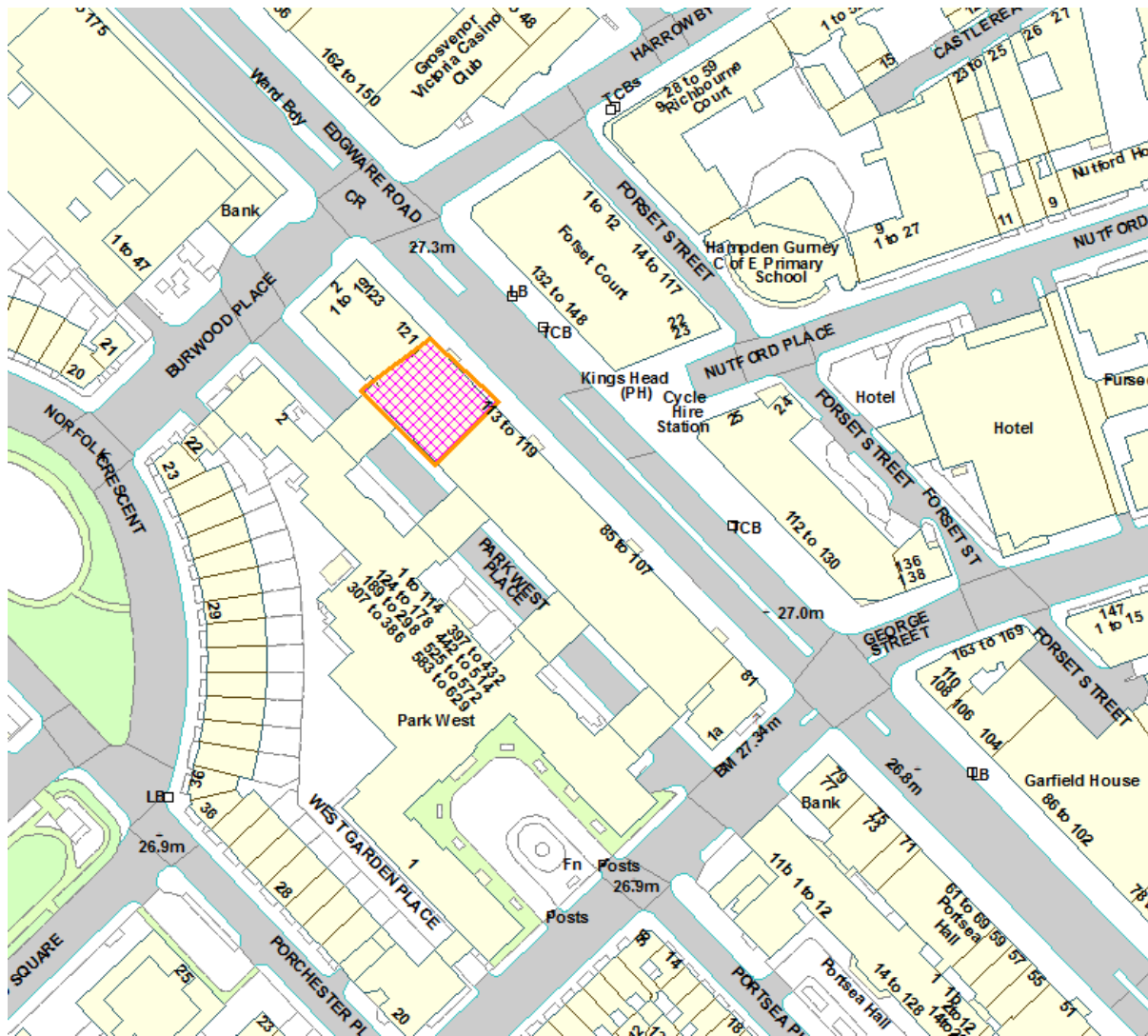
Eight objections have been received from neighbouring residents on land use and amenity grounds. In contrast six letters of support have also been received.

The key issues in this case are:

- The loss of A1 retail within the CAZ and Edgware Road area

The proposal is considered to harm the function and character of the Central Activity Zone and the vitality and viability of the Edgware Road area and is recommended for refusal.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS



## 5. CONSULTATIONS

### WARD COUNCILLORS FOR HYDE PARK

Any response to be reported verbally.

### TRANSPORT FOR LONDON

Objection to tables and chairs on the highway and associated permanent change of use of the public highway.

### HYDE PARK ESTATE ASSOCIATION:

Any response to be reported verbally.

### ENVIRONMENTAL HEALTH:

No objection to the application subject to conditions relating to the proposed recirculation system.

### CLEANSING MANAGER

Objection on the grounds that the details provided are not in accordance with waste and recycling requirements.

### HIGHWAYS PLANNING MANAGER

Objection to tables and chairs on the highway and associated permanent change of use of the highway and to the lack of cycle parking proposed.

### CRIME PREVENTION DESIGN ADVISOR:

Any response to be reported verbally.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 709

Total No. of replies: 13

No. of objections: 8

No. in support: 6

8 objections on all or some of following grounds:

#### LAND USE

- Loss of A1 retail
- Too many of the same types of restaurant

#### AMENITY

- Noise
- Shisha Smoke
- Late opening hours
- Air pollution (odour)

6 letters of support on all or some of the following grounds:

- The restaurant provides a family friendly destination on Edgware Road
- No smoke or noise issues
- One of few restaurants that does not offer Shisha
- The unit would become vacant were the restaurant to close
- Loss of A3 restaurants at Regents House to be replaced with A1 only

PRESS ADVERTISEMENT / SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application site is the ground floor and basement of No. 117 – 119 Edgware Road which is not listed or within a conservation area. The site forms part of a frontage to the south east of the Edgware Road between No. 81 – 123, and is a double fronted unit with lawful retail use (Class A1), but which is currently in use (unlawfully) as The Beruit Café. Above the application site are residential units that form part of the Park West apartments.

The site is located within the Central Activities Zone Frontage, is part of the Edgware Road Stress Area and has a long history as a shopping destination. Edgware Road is a Transport for London red route with traffic flows in both directions.

### 6.2 Recent Relevant History

#### 15/12047/FULL

Use of the basement and ground floor as a restaurant (Class A3). Installation of full height extract ducting to rear of application site adjacent to windows of properties of Park West. Use of two areas of public highway each measuring 8.8m<sup>2</sup> for the placing of 8 tables and 16 chairs, erection of electrical heater under canopy.

Application Refused	11 July 2016
Dismissed at appeal	14 August 2017

#### 15/10068/P3JPA

Use of ground floor from Class A1 (retail) to Class A3 (restaurant). Notification for prior approval under Schedule 2, Part 3, Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Application Withdrawn	7 December 2015
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#### 14/09331/FULL

Temporary change of use of the basement level to restaurant (Class A3) until 01 April 2016 in connection with the existing restaurant at ground floor level.

Application Permitted	12 January 2015
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#### 14/01767/TFU

Temporary flexible use of the ground floor as a restaurant (Class A3) pursuant to Class D, Part 4, Schedule 2 of Town and Country Planning (General Permitted Development) (Amendment) Order 2013 for a two-year period from 1 April 2014.

No Further Action	7 March 2014
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## 7. THE PROPOSAL

Planning permission is sought for the use of the basement as a restaurant (Class A3) and ground floor for mixed retail/restaurant (Class A1/A3) together with installation of a re-circulation ventilation system, a canopy and electric heaters to the front elevation.

During the course of the application the applicant has amended the proposal to omit the proposed use of the public highway to the front of the premises for the placing of 4 tables and 8 chairs.

## 8. DETAILED CONSIDERATIONS

### 8.1 Land Use

The application site is within the Edgware Road CAZ frontage and the Edgware Road Stress Area, accordingly the relevant policies are SS5, TACE 9 of the UDP and S8, S24 of the City Plan.

The proposal is very similar to that which was recently dismissed at appeal. The only difference in the drawings is the proposed installation of two retail display cabinets behind the shopfront windows. The applicant has, on this basis applied for a mixed use of the ground floor for retail/restaurant use (Class A1/A3). However, it is not considered that the installation of two retail display cabinets would in itself create a mixed use of the premises. It is clearly the case that the ground and basement are used as a restaurant (Class A3) and that any retail offer associated with the display cabinets would be either de-minimus or at best ancillary and would not comprise a true mixed use planning unit.

For the above reason the proposal is considered to result in the loss retail floor space (Class A1) and the proposed restaurant use (Class A3) would detract from the character and function of the CAZ frontage as a shopping destination/area and harm the viability and vitality of the Edgware Road through the reduced retail offer and impact that the restaurant would make to the overconcentration and dominance of such uses in the area.

Policy SS5 seeks an appropriate balance of town centre uses. Part (B) specifically states the introduction of non-A1 uses at basement and ground floor level will only be granted where the proposal would not be detrimental to the character and function of the area or to the vitality or viability of a shopping frontage or locality. Part (C) goes on to state that non-A1 uses must not cause or intensify an existing over concentration of A3 and entertainment uses in a street or area.

Policy S8 of the City of Westminster Westminster's City Plan (WCP) 2016 states that within the Edgware Road Stress Area, new entertainment uses will only be allowed where the Council considers that they are low-impact and would not result in an increased concentration of late-night uses. The reasoned justification for this policy acknowledges that the provision of cafes, restaurants and appropriate entertainment uses can help to support the retail function of the Edgware Road CAZ Frontage. However, creating a concentration of such uses within the area would unacceptably impact on the functioning of the area.

During the previously dismissed appeal it was established that Edgware Road as a whole comprises approximately 57% A1 uses and 20% A3 uses, which includes the existing A3 use operating from the appeal property. The appeal property is one of approximately 22 units within the frontage, which comprise a mix of A1, A2, A3 and sui generis businesses. The inspector stated that “many of these units are small. In marked contrast, two of the A3 units, the appeal property and Al Arez, are larger units with a much greater presence in the frontage. As a result, I find that they dominate the row of properties, with the A1 units being viewed as secondary to the non-A1 units.”

Relating to this application the applicant has stated that the loss of A3 units between No’s 112 and 130 Edgware Road is a material consideration in the assessment of the current application, however the inspector was aware of the loss of these units in dismissing the previous appeal and stated “I note that approved developments along Edgware Road would result in a reduction in A3 units and an increase in A1 units. Nevertheless, overall, I find that there is an overconcentration of A3 uses in the area, which the appeal property contributes towards”. As such the loss of A1 elsewhere along Edgware Road is not considered as a reason to grant planning permission for the current application.

The applicant has also stated that this application seeks a similar use to that at No. 103 Edgware Road (Al Arez). However, 103 has quite a different planning history to No. 117 – 119 Edgware Road in that prior to its current use its lawful use was for Sui Generis mixed use purposes comprising a shisha smoking parlour to the rear and a retail snack bar and bureau de change to the front of the premises. For this reason, the site is not comparable to No’s 117 – 119 Edgware, the lawful use of which is solely for Class A1 (Retail) purposes.

In dismissing the appeal against the decision to refuse the previous application (Ref: 15/1204/FULL) for a change of use at No. 117 - 119 Edgware Road the inspector found that with a recirculation system for ventilation the proposal would not harm neighbouring properties in terms of noise, vibration smell and that with a condition to limit the opening hours to 23:00 there would be no increase in late night activity. The current application includes a recirculation system and closing hours of 23:00, therefore the parts of policy TACE 9 relating to amenity have been addressed.

However, the inspector concluded “I find therefore that by reason of the existing over concentration of A3 uses in the area, the proposed development does have a significantly harmful effect on the retail character and function of the CAZ and the vitality and viability of the Edgware Road area, contrary to Policies SS5 and TACE9 of the UDP and Policies S8 and S24 of the WCP.”

For the reasons set out above, the applicant’s justification is not supported and the proposal remains unacceptable in land use terms. During the course of the application the applicant has suggested they are willing to increase the amount of A1 Retail retained to the front of the property and requested that permission be granted for a temporary A3 use until the end of their lease in 2020. Neither of these are considered to overcome the in principle objection to the proposal in land use terms and the reasons for dismissing the previous appeal. Therefore, the proposal remains contrary to policies SS5 and TACE9 of the UDP and Policies S8 and S24 of the WCP.



## 8.2 Townscape and Design

The proposed works retain the shop front installed during works which were carried out under the temporary flexible use. Additionally, the application seeks permission for the installation of a retractable canopy and electric heaters above the entrance door.

Retractable canopies and heaters are not uncommon on Edgware Road, the submitted drawings show a canopy that appears to be of a scale in keeping with the host building and surrounding area. The drawings submitted with the application however do not provide adequate detail of the heaters. Notwithstanding this the principle of heaters is acceptable and were the application acceptable on land use grounds further details would have been sought by condition.

The canopy and heaters are not dissimilar to those found elsewhere in the frontage and the wider Edgware Road and as such subject to additional details regarding the heaters would therefore be acceptable in design grounds and in accordance with DES5 of the UDP and S28 of the City Plan.

## 8.3 Residential Amenity

ENV13 of the UDP and S29 of the City Plan seek to protect residential amenity and environmental quality from development.

The application site sits within the Edgware Road Stress Area which has been designated as such due to the concentration of A3 establishments. Within Edgware Road there are a number of premises which offer a similar service to that proposed and which have opening hours later than those proposed at the site which are 23:00.

The inspector has previously stated that with closing hours of 23:00 the site would not be considered to contribute towards late night activity in the area and that given the existing busy nature of Edgware Road regarding traffic and comings and goings associated with the existing businesses the change of use to A3 restaurant would not significantly harm neighbouring residential properties regarding noise.

In applications of this nature applicant must demonstrate that they are able to provide adequate ventilation to prevent smells and odours causing harm to neighbouring residential properties. Ordinarily the City Council would require this to be provided internally or in the form of full height external ducting which discharges at one meter above roof height. In exceptional circumstances the City Council may consider a recirculation system.

During the course of the appeal the Inspector determined that subject to appropriately worded conditions a re-circulation system may be appropriate in this location. Further, the environmental health officer has determined that the application site passes the test of an exceptional circumstance on the grounds that cooking will take place using electric only. As such environmental health has not raised objection to the application subject to appropriate conditions.

Objections have been made on the grounds that Edgware Road is already busy and noisy due to restaurants which operate late into the night and which pollute the air with cooking smells and odours and that an approval of the change of use at No. 117 – 119 Edgware Road would further increase harm. Further objections have been raised on the grounds that shisha smoke causes harm to local residents, this application however does not include shisha and the site does not appear to have a history of shisha. In contrast representations of support have also been received.

For the reasons outlined within this amenity section of the report the council does not consider the concerns raised justify a reason for refusal of the application on amenity grounds. The works are considered in accordance with ENV 13 of the UDP and S29 of the City Plan.

#### **8.4 Transportation/Parking**

This initial application included the permanent change of use of the highway for the use of tables and chairs. Transport for London and the highways planning manager raised objection to the permanent change of use of the highway. As such the applicant has subsequently omitted the proposed tables and chairs from the application.

The highways planning manager also stated that the application does not provide adequate cycle parking. Had the application been acceptable on land use grounds revised cycle storage plans would have been sought via condition.

The proposal does not raise any other highways issues.

#### **8.5 Cleansing**

The waste manager has raised objection to the application on the grounds that the details submitted are not in line with the council's waste and recycling storage requirements. Had the application been acceptable on land use grounds revised drawings would have been sought to secure appropriate details.

#### **8.6 Economic Considerations**

No economic considerations are applicable for a development of this size

#### **8.7 Access**

Access to the site will remain the same as the current situation.

#### **8.8 Other UDP/Westminster Policy Considerations**

None

#### **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**

This development does not require an Environmental Impact Assessment

### **8.13 Other Issues**

#### **Planning Enforcement**

Following the dismissed appeal, the Planning Enforcement Team were preparing to take enforcement action at the site however the applicant requested that action be held in abeyance as they feel that this application will address the concerns over the loss of retail. This is not considered to be the case and the matter will be reported back to planning enforcement.

## **9. BACKGROUND PAPERS**

1. Application form
2. Appeal decision dated 14.08.2017 (Ref 15/12047/FULL)
3. Response from Transport for London dated 13 November 2017
4. Memo from Highways Planning Manager dated 02.11.2017
5. Memo from Cleansing Manager dated 01.11.2017
6. Memo from Environmental Health dated 05.12.2017
7. Letters (x2) from occupier of 565 Park West, London, dated 25 October 2017
8. Letter from occupier of 168 Park West, Edgware Road, dated 28 October 2017
9. Letter from occupier of 227,314 Parkwest, London, dated 29 October 2017
10. Letter from occupier of 425 Parkwest, London, dated 29 October 2017
11. Letter from occupier of 140 Edgware Road, London W2 2QG, dated 31 October 2017
12. Letter from occupier of Flat 445 Park West, Edgware road, dated 2 November 2017
13. Letter from occupier of 562 Park west, London, dated 27 November 2017
14. Letter from occupier of flat 90, Foreset court, dated 27 November 2017
15. Letter from occupier of 107, Edgware Road, dated 27 November 2017
16. Letter from occupier of 308 Parkwest, Block 5, dated 28 November 2017
17. Letter from occupier of 626 Parkwest, Block 9, dated 28 November 2017
18. Letter from occupier of Marble Arch BID, 19 Eastbourne Terrace, dated 20 December 2017
19. Letter from occupier of 22 Crawford place, London, dated 29 December 2017
20. Letter from the occupier of 8 Parkwest Place London dated 04.01.2018

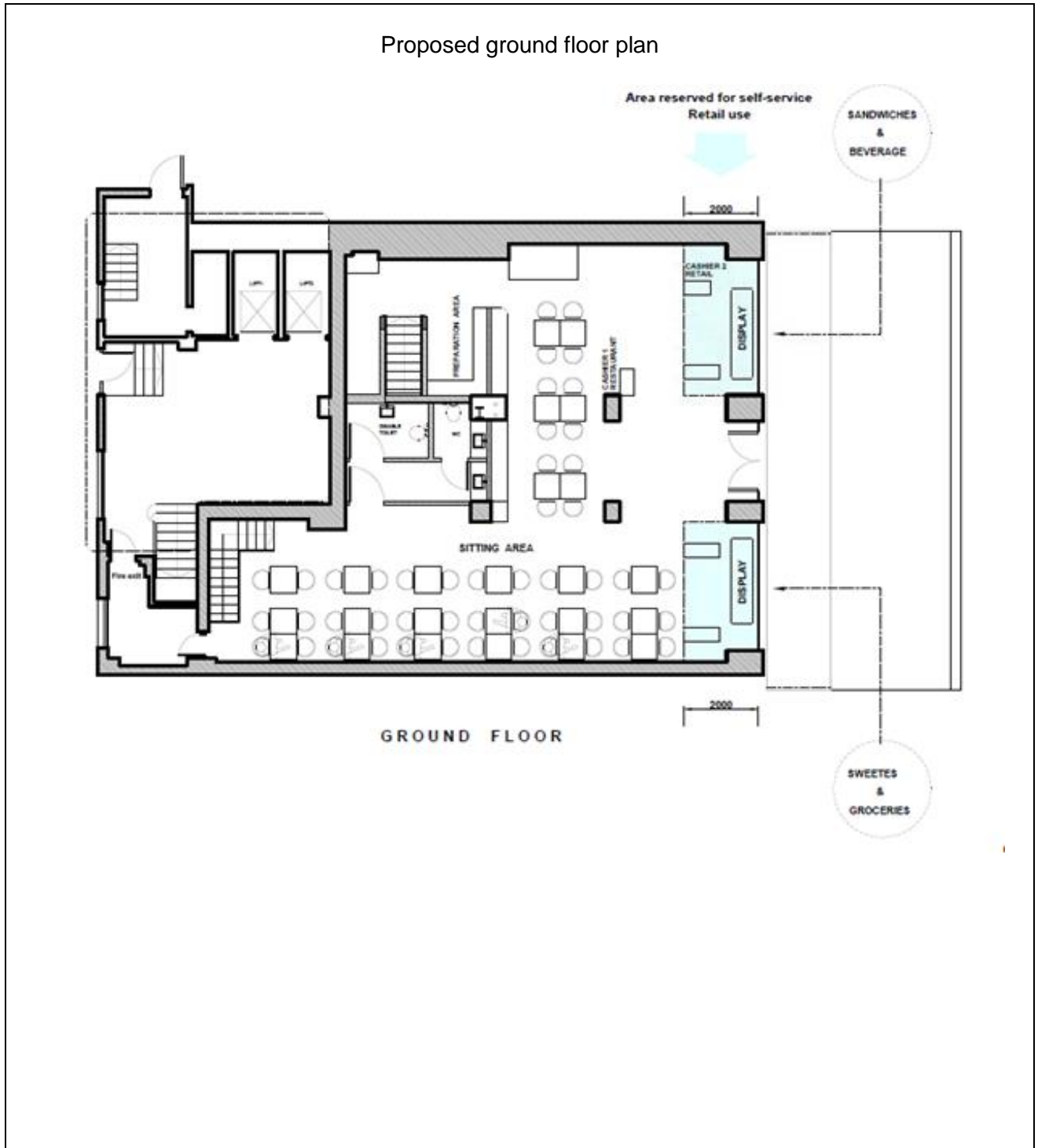
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

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IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: SARAH WHITNALL BY EMAIL AT <a href="mailto:swhitnall@westminster.gov.uk">swhitnall@westminster.gov.uk</a> .
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10. KEY DRAWINGS



**DRAFT DECISION LETTER**

**Address:** 117 Edgware Road, London, W2 2HX

**Proposal:** Use of the ground floor as a mixed use retail (Class A1)/ restaurant (Class A3); use of basement as restaurant (Class A3) floorspace; installation of a retractable canopy and installation of electrical heaters above entrance door.

**Reference:** 17/08100/FULL

**Plan Nos:** Site location plan, Ex/PL02, pro/dis PL1, Pr/SIT02, Proposed Specification for Kitchen Ventilation

**Case Officer:** Max Jones

**Direct Tel. No.** 020 7641 1861

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

Your plans would result in the loss of a lawful Class A1 retail unit which contributes to the character and function and vitality and viability of this part of the Central Activities Zone and Edgware Road. This would not meet policy SS 5, and TACE 9 of our Unitary Development Plan that we adopted in January 2007 and policies S 8, S 24 of Westminster's City Plan: Strategic Policies 2016.

**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 so far as practicable. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (November 2016), Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service. However, we have been unable to seek solutions to problems as the principle of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.

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.