

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 Marylebone	
Subject of Report	77 - 78 Marylebone High Street, London, W1U 5JW		
Proposal	Variation of Condition 14 of planning permission dated 7 December 2022 (RN: 22/04052/FULL) for, 'Use of the basement, ground, and part first floor as a restaurant (Class E(b)), installation of air conditioning units within acoustic enclosures at roof level and new full height extract ducting (kitchen extract duct and pizza oven flue) to west elevation'; NAMELY, to extend the opening hours of the restaurant use to customers between 08.00 hours and 23.30 hours on Monday to Thursday, 08.00 hours to 00.00 hours on Friday and Saturday, and 08.00 hours to 22.30 hours on Sundays, bank holidays and public holidays. (Application under Section 73 of the Act).		
Agent	Firstplan		
On behalf of	Big Mamma Group		
Registered Number	22/08684/FULL	Date amended/ completed	23 December 2022
Date Application Received	23 December 2022		
Historic Building Grade	Unlisted		
Conservation Area	Harley Street		
Neighbourhood Plan	n/a		

1. RECOMMENDATION

Grant conditional planning permission

2. SUMMARY & KEY CONSIDERATIONS

The application premises is located on the eastern side of Marylebone High Street. On 7 December 2022 permission was for the use of a basement, ground and part 1st floor unit as a restaurant. The permission limited the opening hours of the restaurant to the following:

between 08.00 hours and 23.00 hours on Monday to Saturday (not including bank holidays and public holidays) and 08:00 hours and 22:00 hours on Sundays, bank holidays and public holidays.

This application seeks to extend the opening hours to between 08.00 hours and 23.30 hours on Monday to Thursday, 08.00 hours to 00.00 hours on Friday and Saturday, and 08.00 hours to 22.30 hours on Sundays, bank holidays and public holidays.

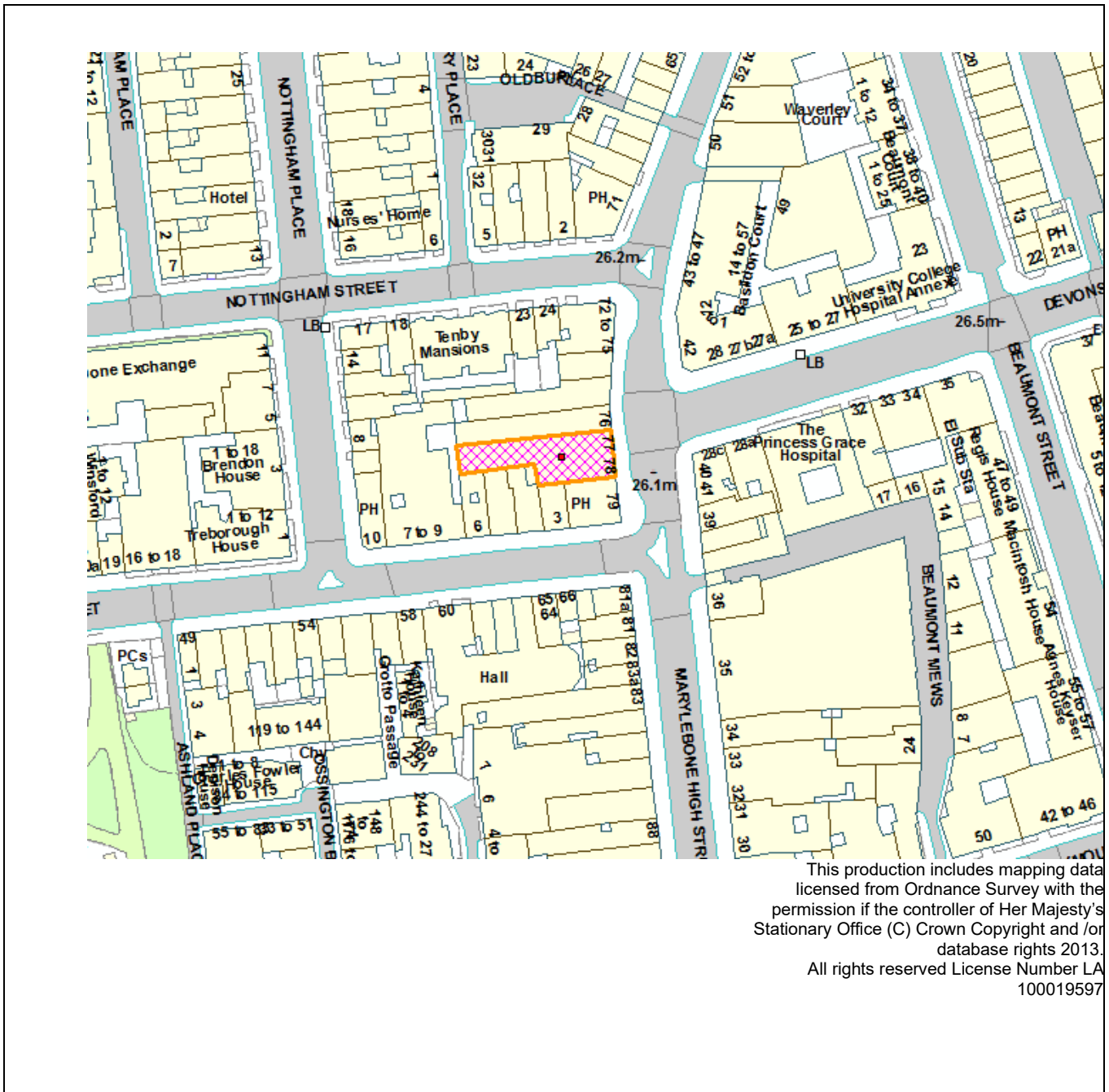
The key considerations in this case are:

- The impact on the amenity of neighbouring residential properties.
- The impact upon the character and function amenity of the wider Marylebone Village.

The proposal seeks to increase the terminal hour by 30 minutes on Sundays to Thursdays and 60 minutes on Fridays and Saturdays. An Operational Management Plan (discussed in detail in the main body of the report) has been submitted in support of the application. The area is mixed use in character comprising a range of commercial uses at ground floor with a mixture of offices and residential on the upper floors, including at the application site. An adjacent Public House has a terminal hour of midnight on Mondays to Saturdays and 23.00 hours on Sundays.

The proposed opening hours of the restaurant do not exceed the neighbouring Pub. Given the character of the area on the basis that the use operates in accordance with the OMP which will be secured by condition the extended opening hours are considered acceptable.

3. LOCATION PLAN



4. PHOTOGRAPHS



5. CONSULTATIONS

5.1 Application Consultations

MARYLEBONE ASSOCIATION: No response

HIGHWAYS PLANNING: No objection

CLEANSING: No objection

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 49

Total No. of replies: 3 Objections received from neighbouring residents who raise the following concerns;

- Loss of amenity, increased noise disturbance
- Adverse impact on the area

5.2 Applicant's Pre-Application Community Engagement

The Early Community Engagement Guidance encourages developers carrying out development to engage with those living adjacent or very close to the site at an early stage prior to the submission of a formal application. The agent has confirmed there has been no discussion between the applicant and neighbours in relation to the current application.

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

The property is located on the western side of Marylebone High Street between Nottingham Street to the north and Paddington Street to the south and is formed of 77 and 78 Marylebone High Street. The property is an unlisted four storey brick built building located within the Harley Street Conservation Area. The ground and lower ground floors are currently vacant formerly in use as a café-delicatessen with residential flats above.

7.2 Recent Relevant History

On 17 May 2022 permission was granted for use of the basement, ground and part first floor as a restaurant (Class E(b)), installation of air conditioning units within acoustic enclosures at roof level and new full height extract ducting (kitchen extract duct and pizza oven flue) to west elevation (RN 21/08140/FULL)

Condition 14 of this consent required the following:

You must not open the restaurant (Class E) premises to customers, and you must not allow customers on the premises, outside the following times: between 08.00 hours and 23.00 hours on Monday to Saturday (not including bank holidays and public holidays) and 08:00 hours and 22:00 hours on Sundays, bank holidays and public holidays.

On 7 December 2022 permission was granted for Variation of Conditions 1, 6, 8, 10 and 12 of planning permission dated 17 May 2022 (RN: 21/08140/FULL) for, 'Use of the basement, ground, and part first floor as a restaurant (Class E(b)), installation of air conditioning units within acoustic enclosures at roof level and new full height extract ducting (kitchen extract duct and pizza oven flue) to west elevation'; NAMELY, to paint the kitchen extract rather than clad it in brick slips (as required by Condition 6), to include reference to the specific colour that the plant enclosure is required to be painted (Condition 8), and to provide the waste storage and cycle parking details required by Conditions 10 and 12. (Application under Section 73 of the Act). 22/04052/FULL

Condition 14 remained unchanged on this consent.

8. THE PROPOSAL

The application is submitted under S73 of the Act seeking to vary condition 14 on the permission granted on 17 May 2022 (RN 21/08140/FULL) to extend the opening hours to extend the opening hours of the restaurant use to customers between:

08:00 to 23.30 hours on Monday to Thursday,
08.00 to 00.00 hours on Friday and Saturday, and
08.00 to 22.30 hours on Sundays, bank holidays and public holidays.

This would result in an increased terminal hour of 30 minutes on Sundays to Thursdays, 60 minutes on Fridays and Saturdays.

9. DETAILED CONSIDERATIONS

9.1 Residential Amenity

The City Council has planning policies to protect residential amenity. Policy 7 of the City Plan requires that development is neighbourly by; 'protecting and where appropriate enhancing local environmental quality'. Para 7.4 acknowledges that 'development must prevent unacceptable environmental impacts on existing and new users of building or its neighbours.'

Policy 16 considers food, drink and other entertainment premises and recognises that whilst these uses contribute to London's vibrant entertainment sector, they can also have detrimental impacts upon residential amenity if the operation is not managed properly.

Policy 33 states that; 'development should prevent adverse effects of noise and vibration and improve the noise environment in compliance with the council's Noise Thresholds, with particular attention to: minimising noise impacts and preventing noise intrusion to residential developments and sensitive uses'.

The upper levels of the application building are in residential use. In response to consultations three objections have been received from neighbouring residents that the extended opening hours would result in noise nuisance and would be detrimental to the character of the area by the provision of late night venues.

The Public House at 79 Marylebone High Street located immediately adjacent to the application site remains open to customers between 11.00 and 0.00 Monday to Friday, 09.30 to 00.00 on Saturdays, and 09.30 to 23.00 on Sundays.

An acoustic report has been submitted in support of the application. The report sets out the prevailing background noise at the application premises. The report estimates that noise from patrons leaving the restaurant up to the latest proposed opening times would increase the residual sound level by less than 2.7dB. The applicant refers to this being '*not significant*' when assessed in accordance with The Institute of Environmental Management and Assessment's Guidelines for Environmental Noise Impact Assessment. City Council's Environmental Services Officer has assessed the acoustic report and raises no objection commenting that the existing noise climate at the site should ensure that local residents are not disturbed by the proposal.

An Operational Management Plan has been submitted. The OMP details

- the restaurant has a maximum capacity of 175 customers;
- a duty manager/security personnel will monitor the conduct of patrons entering

and leaving the site later into the evening and to prevent congregating outside of the restaurant;

- details of the complaints procedure;
- details of staff training and management.

Subject to a condition which requires the restaurant to operation in accordance with the submitted Operational Management Plan the proposal is considered acceptable.

9.2 Transportation, Accessibility & Servicing

Not relevant.

9.3 Economy including Employment & Skills

The proposed development will contribute to the recovery of the West End in accordance with Policies 1 and 13 in the City Plan 2019-2040 by allowing the terminal hour of the business to extend by 30 minutes Sunday to Thursday, and by 60 minutes on Friday and Saturday.

9.4 Other Considerations

None.

9.5 Environmental Impact Assessment

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

9.6 Planning Obligations & Pre-Commencement Conditions

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

10. Conclusion

The application is considered to accord with policies 7,16 and 33 of the City Plan 2019-2040 and the requirements of the NPPF and the statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990.

(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: MIKE WALTON BY EMAIL AT mwalton@westminster.gov.uk

DRAFT DECISION LETTER

Address: 77 - 78 Marylebone High Street, London, W1U 5JW

Proposal: Variation of Condition 14 of planning permission dated 7 December 2022 (RN: 22/04052/FULL) for, 'Use of the basement, ground, and part first floor as a restaurant (Class E(b)), installation of air conditioning units within acoustic enclosures at roof level and new full height extract ducting (kitchen extract duct and pizza oven flue) to west elevation'; NAMELY, to extend the opening hours of the restaurant use to customers between 08.00 hours and 23.30 hours on Monday to Thursday, 08.00 hours to 00.00 hours on Friday and Saturday, and 08.00 hours to 22.30 hours on Sundays, bank holidays and public holidays. (Application under Section 73 of the Act).

Reference: 22/08684/FULL

Plan Nos: 21418/SH/ta/je, Operational Management Plan and Service Management Plan received on 16 February 2023, Acoustic Report from ACA dated 16th February 2023 (Report Reference: 211024-R003)

As approved by 22/04052/FULL:
001-767-05 REV E, 001-767-09 REV B, 001-767-10 REV B, 001-767-01 REV F

As approved by 21/08140/FULL:
001-767-05 REV D, 001-767-01 REV B, 001-767-02 REV B, 001-767-03 REV B,
001-767-04 REV B, 001-767-09 REV A, 001-767-10 REV A, DPA-005 REV 00,
DPA-006 REV 00, DPA-007 REV 00, DPA-008 REV 00

Case Officer: Shaun Retzback

Direct Tel. No. 07866 039589

Recommended Condition(s) and Reason(s)

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 Except for piling, excavation and demolition work, you must carry out any building work which can be heard at the boundary of the site only: , o between 08.00 and 18.00 Monday to Friday; , o between 08.00 and 13.00 on Saturday; and , o not at all on Sundays, bank holidays and public holidays. , , You must carry out piling, excavation and demolition work only: , o between 08.00 and 18.00 Monday to Friday; and , onot at all on Saturdays, Sundays, bank holidays and public holidays. , , Noisy work must not

take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety). (C11AB)

Reason:

To protect the environment of 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)

Reason:

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 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)

Reason:

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)

- 5 All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings we have approved or are required by conditions to this permission. (C26AA)

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 Harley Street Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 6 You must paint the ductwork so that it matches the colour and pattern of the adjacent brickwork. You must then keep it in that colour. (C26HB)

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 Harley Street Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 7 The pizza oven flue must be painted black and maintained in that condition for the life of the development.

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 Harley Street Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 8 The plant enclosure must be coloured dark grey RAL 7043 as shown on drawing number 001-767-05 REV E and maintained in that condition for the life of the development. The plant enclosure must be installed in full in accordance with the approved drawings before you use the machinery. You must then maintain the plant enclosure in the form shown for as long as the machinery remains in place.

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 Harley Street Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 9 You must use the basement, ground and part first floors only for; , (i) for the display or retail sale of goods, other than hot food, principally to visiting members of the public; , (ii) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises; , You must not use it for any other purpose, including any other use within Class E of the Town and Country Planning (Use Classes) Order 1987 as amended September 2020 (or any equivalent class in any order that may replace it).

Reason:

- (i) The application does not include a transport statement and for this reason we cannot agree to unrestricted use as a creche, day nursery or day centre. This is to avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in Policy 28 of the City Plan 2019 - 2040.
- (ii) To protect the special retail character of the area as set out in Policy 14 of the City Plan 2019 - 2040.

- 10 Before you commence the use of the basement, ground, and part first floor as a restaurant (Class E(b)), you must provide the separate stores for waste and materials for recycling shown on drawing number 0000-000 REV 03 prior to occupation and thereafter you must permanently retain them for the storage of waste and recycling. You must clearly mark them and make them available at all times to everyone using the property.

Reason:

To protect the environment and provide suitable storage for waste and materials for recycling as set out in Policies 7 and 37 of the City Plan 2019 - 2040 (April 2021). (R14CD)

- 11 You must hang all doors or gates so that they do not open over or across the road or pavement. (C24AA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in Policies 24 and 25 of the City Plan 2019 - 2040 (April 2021). (R24AD)

- 12 You must provide each cycle parking space shown on the approved drawings prior to

occupation of the basement, ground, and part first floor as a restaurant (Class E(b)). Thereafter the cycle spaces must be retained and the space used for no other purpose.

Reason:

To provide cycle parking spaces for people using the development in accordance with Policy 25 of the City Plan 2019 - 2040 (April 2021). (R22FB)

- 13 You must not operate a delivery service from the premises even as an ancillary part of the restaurant (Class E) use hereby approved.

Reason:

To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in Policy 29 of the City Plan 2019 - 2040 (April 2021). (R23AD)

- 14 You must not open the restaurant (Class E) premises to customers, and you must not allow customers on the premises, outside the following times: between 08.00 hours and 23.30 hours on Monday to Thursday, 08.00 hours to 00.00 hours on Friday and Saturday, and 08.00 hours to 22.30 hours on Sundays, bank holidays and public holidays.

Reason:

To protect the environment of people in neighbouring properties as set out in Policies 7, 16 and 33 of the City Plan 2019 - 2040 (April 2021). (R12AD)

- 15 This permission must be commenced no later than 16 May 2025.

Reason:

This permission authorises amendments to the original planning permission granted on 16.05.2022 (RN: 21/08140/FULL) which must be commenced no later than the above date. (R03HA)

- 16 You must operate the restaurant use allowed by this permission in accordance with the Operational Management Plan and Service Management Plan received on 16 February 2023. You must then carry out the measures included in the servicing management plan at all times that the restaurant is in use.

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet Policy 16 of the City Plan 2019 - 2040 (April 2021). (R05AC)

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.

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.