

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 6 <sup>th</sup> December 2016	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> St James's	
<b>Subject of Report</b>	<b>80 Jermyn Street, London, SW1Y 6JD,</b>		
<b>Proposal</b>	Lawful Development Certificate for a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis).		
<b>Agent</b>	Savills		
<b>On behalf of</b>	Users Group of the Franses Tapestry Archive		
<b>Registered Number</b>	16/06894/CLEUD	<b>Date amended/ completed</b>	22 July 2016
<b>Date Application Received</b>	20 July 2016		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	St James's		

## 1. RECOMMENDATION

Issue certificate.

## 2. SUMMARY

This application for a Lawful Development Certificate has been submitted by the Users group of the Franses Tapestry Archive. The application relates to the existing use of the premises at 80 Jermyn Street.

The key issue is whether the applicant has demonstrated on the balance of probabilities that the lawful use of the site is a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis).

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the use described in this application is lawful. Planning merits are not relevant to the consideration of this particular application.

In this case, it is recommended to issue a Lawful Development Certificate because sufficient evidence has been submitted to demonstrate that, on the balance of probability, the use of 80 Jermyn Street has been as a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis) continuously for ten or more years prior to the date of receipt of the application.

Accordingly, it is recommended to issue a Lawful Development Certificate because sufficient evidence has been submitted to demonstrate that, on the balance of probability, the use of 80 Jermyn Street has been a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis) continuously for ten or more years prior to the date of receipt of the application.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS

















## 5. REPRESENTATIONS RECIEVED

### WESTMINSTER SOCIETY:

The Westminster Society has been in correspondence with the applicant, fully supports this application and recommends that the certificate be issued.

### CAVENDISH HOTEL (THE ASCOTT LIMITED):

It is clear that the premises have not been used for the purposes set out within the CLEUD application and accompanying statutory declaration for a continuous period of more than 10 years. The premises have been used for primary retail (Class A1) use with associated ancillary storage and archive facility as per the lawful use and lease of the premises. Accordingly, the CLEUD application should be refused as the balance of evidence indicates that there has been no established change of use.

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

S Franses Ltd occupies the basement and ground floor of 80 Jermyn Street on the corner with Duke Street St. James.

The building is not listed but is located within the St. James's Conservation Area and the St. James's Special Policy Area within the Core Central Activities Zone.

### 6.2 Recent Relevant History

#### 80 Jermyn Street

Planning permission was refused on 15 June 1988 for the change of use of the premises from Class A1 retail to Class A3 wine bar/restaurant (ref. 88/01058/FULL).

#### 80 – 81 Jermyn Street

An application for 'Use of part of the ground floor and part basement levels of 80 - 81 Jermyn Street for retail purposes (Class A1). Alterations to the ground floor facade on the Duke Street and Jermyn Street elevations including new access to new retail unit, shopfront alterations; and associated external works' (15/11669/FULL) was withdrawn on 23 November 2016.

## **7. THE PROPOSAL**

This application for a lawful development certificate seeks to demonstrate that the lawful use of 80 Jermyn Street is a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis).

The application has been submitted on behalf of the 'Users Group of the Franses Tapestry Archive' (a group of concerned researchers and users who use the Franses Tapestry Archive and came together specifically to preserve the use and access to the Archive and Library in its current location).

## **8. DETAILED CONSIDERATIONS**

### **8.1 Considerations**

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191 of the Town and Country Planning Act 1990 ("the 1990 Act"). Under s. 191(2) of the 1990 Act, development is lawful if no enforcement action may be taken in respect of it (either because it did not require planning permission or because the time limits for taking enforcement action have expired), and it does not constitute a contravention of any of the requirements of an enforcement notice then in force.

Under section 171B of the 1990 Act, the time limit for taking enforcement action against a material change in use, other than change of use to a dwelling house, is 10 years. Therefore, in the context of the current application, the 10 year rule would apply.

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the matters specified in the application are lawful. Planning merits are not relevant to the consideration of this particular application, and the local planning authority is under a duty to issue a certificate if it has been provided with information satisfying it of the lawfulness of the existing use.

In dealing with a Lawful Development Certificate, the burden of proof rests with the applicant, and the standard of proof is on the 'balance of probabilities'. The NPPG states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

#### **The Applicant's Evidence**

The applicant asserts that the lawful use of the premises is a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis).

The applicant has submitted the following evidence in support of their application:

1. Application form;
  - The application form confirms the lawful development certificate is being sought on grounds the use began more than 10 years before the date of this application.
2. Site location plan;
3. Statutory Declaration by Ms Barbara Swirski dated 20 July 2016 (with attachments including floorplans and photos)
  - This declaration is made by the former in-house solicitor of S Franses Ltd who now represents the 'Users Group of the Franses Tapestry Archive'.
  - The declaration describes the nature of the activities for the basement and ground floor and confirms that these have subsisted for more than 10 years.
  - The declaration is supported by floorplans and photographs showing that the premises is laid out with areas designated for retail storage and display; depository; archive library; and areas for provision of services, advice and information.
  - The declaration sets out that the retail areas of the business represent about 30% of the floorspace, whilst the other areas of the business floorspace is to provide a depository, archive/ library and other services associated with historic tapestries, textile art and carpets from the Middle Ages onwards.
4. Letter from Savills on behalf of the applicant dated 20 July 2016 which describes the application and the use of 80 Jermyn Street.

The applicant seeks to both describe the use and demonstrate the premises at 80 Jermyn Street has been used as a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis).

The applicant confirms the site has been in continuous use as a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis) since it opened in 1991.

The applicant describes the various activities which comprise the use as follows:

- i. The Temperature Controlled Depository.
  - Allows safe storage of 100s of privately owned works;
  - Contains important holdings tapestries and needlework, second only to the National Collection at the Victoria and Albert Museum.
- ii. The Archive Library.
  - Founded in 1987 and moved to 80 Jermyn Street in 1991;

- Largest tapestry archive in world with over 200,000 cross referenced images of European tapestries;
- Contains 2 x study/ reading areas with photocopying facilities and microfilm readers for scholars;
- Library of reference books begins with title from 1840 and includes 1000s of out of print titles as well as the very latest publications;
- 3,500+ academic articles and scholar journals from the 19<sup>th</sup> century onwards;
- 1000s of auction titles and sales records which allow accurate and up to date appraisals/ valuations and to successfully identify works that have been stolen;
- Collection of images by the Art Loss Register to assist with identifying stolen works;
- Collection of Dealer's records acquired from world's leading dealers from last 120 years.

iii. Advice, services and information.

- Valuations for inter museum loans for exhibitions worldwide insured by govt. indemnity, example of recent cases are Boston Museum of Fine Arts, the Metropolitan Museum of Art, and the National Trust;
- Expert reports provided including valuations for the Acceptance in Lieu Scheme for the Arts Council on behalf of HRMC and valuations for Heritage Lottery Grants;
- Assistance provided to arrange loans for major exhibitions;
- Academic catalogues published in-house including design layout and photography;
- Lighting and photo equipment used for record purposes;
- Restoration and repair services and general advice and information relating to specific antique fabrics, tapestries, and textiles.

iv. Commercial Gallery.

- Sales are mostly to museums and collectors;
- Museum representatives, private clients or their interior designers will discuss their needs and items of potential interest will be shown;
- Sales are almost exclusively by prior appointment;
- Retail stock stored on specially designed pull-out screens in the ground and basement.

In summary, the applicant asserts that 80 Jermyn Street comprises of a composite of uses and should be considered sui generis.

### **The City Council's records**

The Council's records indicate a planning application was refused on 15 June 1988 for the change of use of the premises from Class A1 retail to Class A3 wine bar/restaurant (ref. 88/01058/FULL).

This gives an indication that the lawful use of the unit was Class A1 retail in 1988.

### **Representations received/ other evidence**

The landlord (The Ascott Limited) who acquired the Cavendish Hotel in 2012 has provided the following evidence to contest the issuing of a Lawful Development Certificate.

- i. Email from Gerald Eve on behalf of The Cavendish Hotel Ltd (part of The Ascott Limited) dated 27 October 2016;
  - Consider the lawful use of unit to be Class A1 given the lawful use would have been Class A1 in 1991 and there has been no planning applications to change the use of the unit since;
  - Consider Class A1 use is supported by the principal lease granted in 1991 which contained a clause that states the tenant could not:  
“use or permit or suffer to be used the demised premises or any part thereof otherwise than as a shop with showroom and ancillary office use for the retail trade or business of dealers in oriental carpets tapestries needlework antique furniture or works of art”.
  - The photographic evidence supplied with the statutory declarations demonstrate that as recently as September 2015 was not being used as a depository or archive library, but was being used for the storage of wine;
  - The extensive archive at 80 Jermyn Street is an ancillary function of the primary retail use of the premises and required to enable the business to prove the provenance of the items it buys and to guarantee the authenticity of what it sells;
  - The alleged number of visits to the archive is very low (averaging around four per week);
  - Services provided are on a commercial basis, not as a community benefit ; and
  - The applicant has previously described the use as a Class A1 retail gallery in an objection to our current application for the site (ref. 15/11669/FULL).
- ii. Statutory declarations and supporting photographs by Stephen Harvey, Rebecca Catherine Hollants Van Loocke, and Charles Batchelor dated 25 October 2016;
  - The declarations are provided by the Regional Maintenance Manager UK responsible for the real estate assets of The Ascott Limited within the UK (Stephen Harvey); the Regional General Manager UK and Ascott Director (Rebecca Catherine Hollants Van Loocke); and a property advisor to The Ascott Limited (Charles Batchelor).
  - In summary, the declarations all confirm that they have all visited the premises in 2015 and noticed large quantities of wine stored in the basement.

### **Applicant’s response to representations received**

The applicant has provided the following in response to the landlord’s objection:

- i. Email from Savills on behalf of the applicant dated 15 November 2016; and
- ii. Statutory declaration by Simon Sidney Franses dated 14<sup>th</sup> November 2016.

The content of the response is summarized below:

- Comments on the planning history and lease are irrelevant as the test for a Lawful development certificate is for the 10 years prior to the application;
- The storage of wine for the refreshment of clients is an entirely normal aspect of dealing in very valuable works of art and should be regarded as ancillary to the retail use component of the mixed ‘sui generis’ use;

- The landlord does not dispute services are provided beyond the sale of carpets/ tapestries;
- The landlord does not know the ownership of the stored carpets/ tapestries and cannot dispute the existence of the depository use;
- The landlord does not know what the archive library contains or how it is arranged;
- The landlord is in no position to compare the usage of the archive library for the purpose of proving provenance with usage by researchers;
- Many objections to the associated planning application confirm usage of the archive library which is not ancillary to retail activity;
- The applicant's objection to the associated planning application referring to the use of the unit as Class A1 was never intended as an authoritative statement of the use nor should it be taken as such;
- The landlord's comments and conclusions confirm they have no understanding of the applicant's unique or specialized business.

### **Determination of the Application**

The key issue is whether the applicant has demonstrated, on the balance of probabilities, that the lawful use of the site is a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis).

Following a site visit, officer's observations of the current operation indicate a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis).

Contrary to the objections received from the landlord, the non-retail uses of the site are not considered to be ancillary to the retail use because they are neither incidental, nor ordinarily incidental, to that use. For example, the archive and the depository uses plainly also include uses which are independent from the retail use of the site. It is considered that the components of the existing use of the site fall outside the scope of a Class A1 retail use, and more properly comprise a mixed sui generis use of the premises as a whole.

The applicant has submitted two statutory declarations with supporting documentary and photographic evidence confirming that the existing sui generis use has continued, uninterrupted, for more than 10 years prior to submission of the applications (since at least 1998). This evidence is considered sufficiently precise and unambiguous to justify the grant of a certificate. Moreover, it is considered that the local planning authority has no sufficient evidence, including that submitted by the landlord, to contradict or otherwise make the applicant's version of events less than probable.

The statutory declarations submitted by the landlord principally relate to short site visits carried out between 23 July 2015 and 4 September 2015. These visits did not involve an inspection of the entire premises and they were not intended to ascertain the existing use of the premises. In contrast, the applicant has a much more detailed knowledge of the use of the site throughout the last 10 years, and therefore the applicant's evidence regarding the nature and different components of that use is preferred.



Observations regarding the storage of cases of wine are not considered to indicate an interruption of the existing sui generis use. The statutory declaration from Mr Franses confirms that wine has been stored at the site since 1998 for the purposes of entertaining clients, and there is no evidence to contradict or dispute this. On balance, this use is considered to be ancillary to the retail component of the mixed sui generis use, rather than comprising a further additional element of the mixed sui generis use.

Accordingly, it is recommended to issue a Lawful Development Certificate because sufficient evidence has been submitted to demonstrate that, on the balance of probability, the use of 80 Jermyn Street has been a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis) continuously for ten or more years prior to the date of receipt of the application.

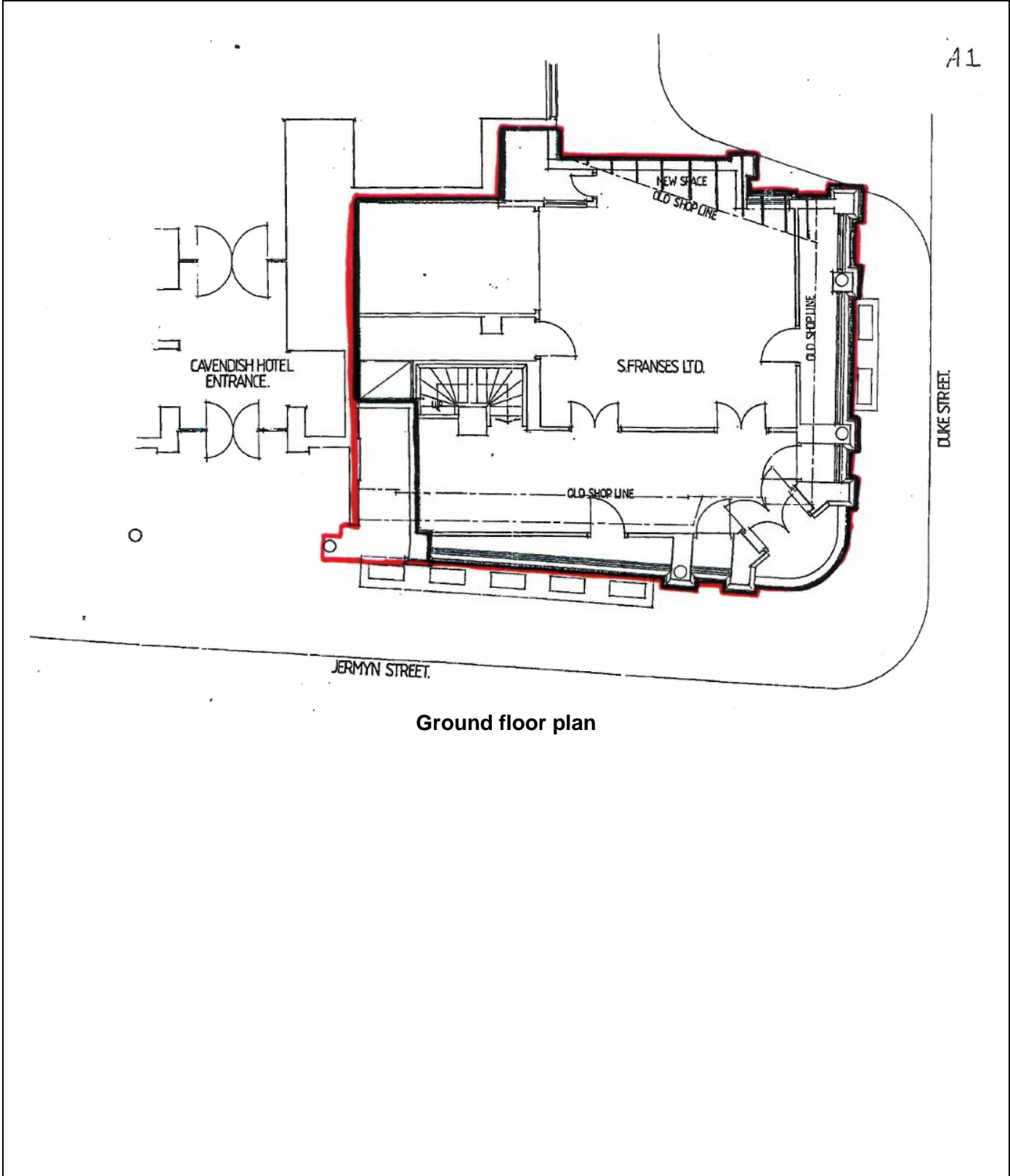
## **9. BACKGROUND PAPERS**

1. Application form.
2. Letter from Savills on behalf of the applicant dated 20 July 2016.
3. Statutory Declaration by Ms Barbara Swirski dated 20 July 2016 (with attachments including floorplans and photos).
4. Email from Gerald Eve on behalf of The Cavendish Hotel Ltd (part of The Ascott Limited) dated 27 October 2016.
5. Statutory declarations and supporting photographs by Stephen Harvey, Rebecca Catherine Hollants Van Loocke, and Charles Batchelor dated 25 October 2016.
6. Email from Savills on behalf of the applicant dated 15 November 2016; and
7. Statutory declaration by Simon Sidney Franses dated 14<sup>th</sup> November 2016.

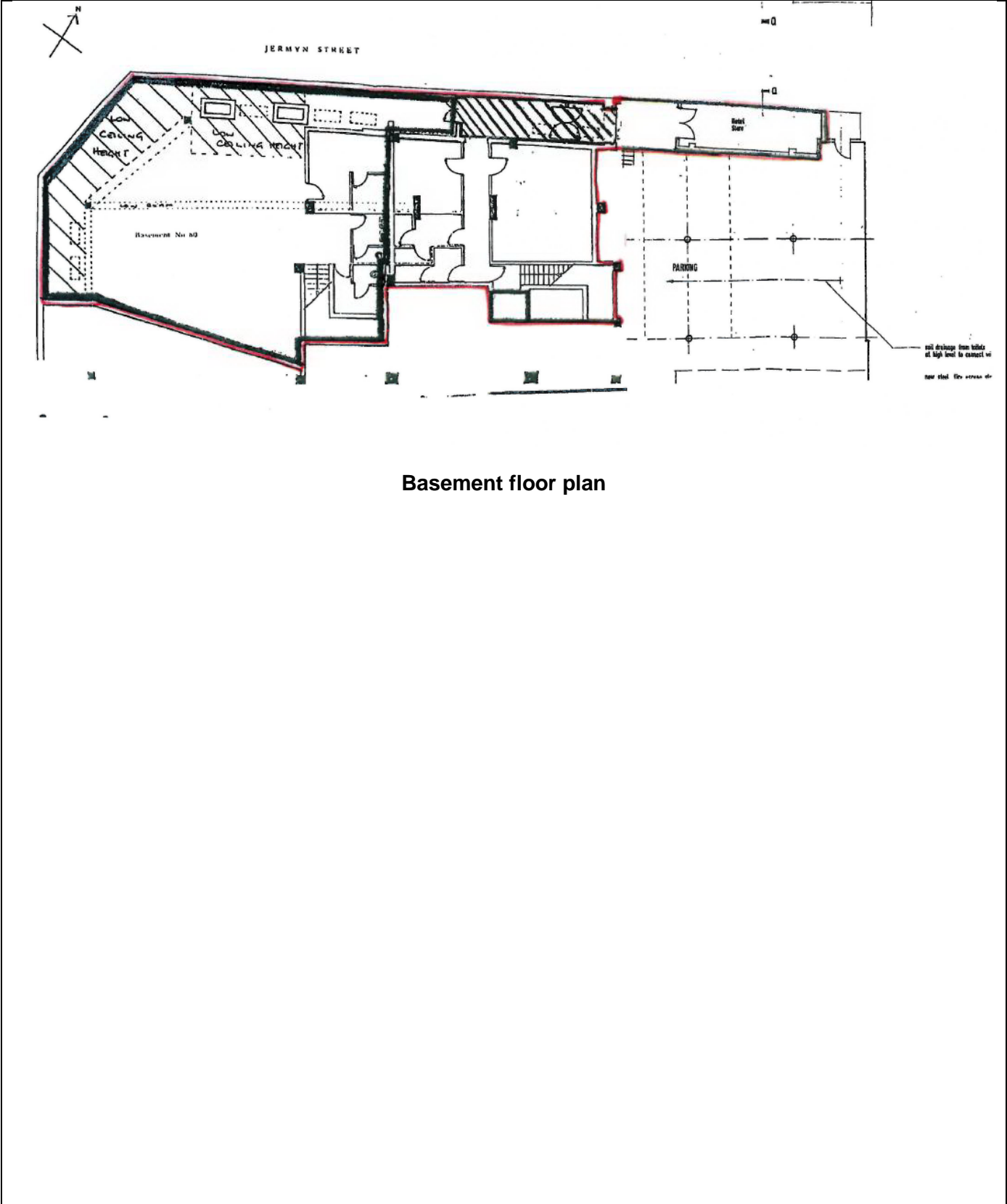
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: VINCENT NALLY BY EMAIL AT VNALLY@WESTMINSTER.GOV.UK

10. KEY DRAWINGS



Ground floor plan



Basement floor plan

**DRAFT DECISION LETTER**

**Address:** 80 Jermyn Street, London, SW1Y 6JD,

**Proposal:** Lawful Development Certificate for a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis).

**Reference:** 16/06894/CLEUD

**Plan Nos:** Location Plan; Basement and Ground Floor Plans; Statutory Declaration by Ms Barbara Swirski dated 20 July 2016; Letter from Savills dated 20 July 2016; Statutory Declaration by Simon Sidney Franes dated 14 November 2016.

**Case Officer:** David Dorward

**Direct Tel. No.** 020 7641 2408

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

The City Council is satisfied that, on the balance of probability, 80 Jermyn Street has been a mixed use comprising retail, depository, research centre, archive library, consultancy, publishing, and conservation for historic tapestries, textile art and carpets at basement and ground level (sui generis) for a continuous period of at least 10 years prior to the date of the application.

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.