

CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 20 December 2016	Classification For General Release	
Report of Director of Planning		Ward(s) involved West End	
Subject of Report	173 Wardour Street, London, W1F 8WT,		
Proposal	Use of basement and ground floor as retail, café and hot food takeaway purposes (Sui Generis).		
Agent	Miss Danielle St Pierre		
On behalf of	Wasabi		
Registered Number	16/06424/FULL	Date amended/ completed	18 August 2016
Date Application Received	7 July 2016		
Historic Building Grade	Unlisted		
Conservation Area	Soho		

1. RECOMMENDATION

Grant conditional permission

2. SUMMARY

The application site comprises the basement and ground floors of an unlisted building located within the Soho Conservation Area, the core Central Activities Zone and the West End Stress Area. The lawful use of the premises is a retail shop (Class A1).

Permission is sought for the use of the basement and ground floor premises for a mixture of retail, café and hot food takeaway (Sui generis). This use commenced in July 2012.

The key issues for consideration are:

1. The impact on the character and function of the area
2. The impact on residential amenity.

The scheme is considered acceptable in land use terms and, subject to conditions, it is not considered that the use would adversely affect the amenities of neighbouring residents and local environmental quality. The scheme complies with relevant policies set out in the Unitary Development Plan (UDP) and City Plan and is therefore recommended for approval.

3. LOCATION PLAN



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4. PHOTOGRAPHS





5. CONSULTATIONS

SOHO SOCIETY:

No objection

ENVIRONMENTAL HEALTH:

No objection, subject to conditions.

HIGHWAYS PLANNING MANAGER:

No objection, subject to conditions.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 106 Total No. of replies: 0

ADVERTISEMED/ SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

The application site comprises the ground and lower ground floors of this unlisted building located at the junction of Wardour Street and D'Arblay Street. The site is within the Core Central Activities Zone, West End Stress Area and the Soho Conservation Area.

The unit is currently occupied by Wasabi for retail, café and hot food takeaway purposes.

Soho is a vibrant area characterised by retail, a variety of entertainment uses, commercial offices and residential. The nearest residential properties to the site are located at No's 5, 6 and 32 D'Arblay Street.

6.2 Recent Relevant History

30 April 2010: Certificate of Lawful Use (Existing) was refused for the use of the ground and basement floors for restaurant and retail purposes (Sui generis 10/01971/CLEUD)

7. THE PROPOSAL

This retrospective application seeks permission for the use of the basement (49 sqm) and ground floor (89 sqm) for retail, café and hot food takeaway purposes (Sui generis). The unit is occupied by Wasabi.

No external extract or ventilation equipment is proposed. There are currently unauthorised, ground level ventilation grilles on the D'Arblay street frontage. The application involves retaining these vents, two of which will become fresh air vents for the lower ground and ground floors and one will become a bleed duct for filtered, clean odourless air discharge which will be linked up to the internal re-circulation system when it is introduced.

The application was submitted in response to a complaint from the owner/operator of a neighbouring restaurant, regarding an unauthorised change of use. To date, there have been no objections to the planning application.

The plans show seating for 23 customers at ground floor front but the applicant have since confirmed that seating will be provided for only 16 customers. A large cabinet displaying hot and cold food for sale occupies the rear of the unit. This is a “self-service” operation. No cutlery is provided on the tables, putting an emphasis on take away sales. There are no customer WC’s. There is no customer access to the basement, which provides food preparation and staff accommodation.

The premises would operate between 11.00 and 21.00 hours Monday to Saturday and 11:00 to 20.00 hours on Sundays) selling hot and cold food to customers for lunch and dinner. No primary cooking is proposed. Food is prepared off-site and then reheated in microwaves on-site. Self-contained rice cookers are used, and rice is then rolled and used for sushi preparation.

The applicants have submitted an annual sales report for 2015 which shows that 80% of sales are for “takeaway” and that 20% of food purchased is eaten at the premises. The majority of food sales (72%) are for cold food and drinks, with 28% of the sales for hot food.

8. DETAILED CONSIDERATIONSS

8.1 Land Use

8.1.1 Loss of retail

The lawful use of the premises is considered to be as a retail shop (Class A1) and the proposals would result in the loss of 138 sqm of retail floorspace.

City Plan policy S21 states that existing A1 retail will be protected throughout Westminster except where the council considers that the unit is not viable, as demonstrated by long term vacancy despite reasonable attempts to let.

Policy SS5 states that within the CAZ, outside of the primary shopping frontages, A1 uses on basement, ground and first floors will be protected. Permission for the introduction of a non-A1 town centre use on these levels will only be granted where the proposal would not be detrimental to the character and function of an area or to the vitality or viability of a shopping frontage or locality. Furthermore, proposals must not lead to, or add to, a concentration of three or more consecutive non A1 uses or cause or intensify an existing over-concentration of A3 and entertainment uses in a street or area.

This corner property is located next to solicitors (Class A2) and a restaurant (Class A3) on the Wardour Street frontage and the proposal would result in the concentration of three non-A1 units. The remainder of this frontage comprises a mixture of restaurants (Class A3), residential (Class C3), retail units (Class A1) and office use (Class B1).

The proposed unit retains some element of retail use, with a display cabinet which is visible from the street displaying the sale of cold drinks and cold food to take away.

The use has been in operation for over four years. There have been no objections to the application to regularise the use. The proposed use generates street level activity and retains a retail function on the site. The majority of business is from “takeaway” sales (80%) and most sales (72%) are of cold food and drink.

Whilst it is acknowledged that the proposal will lead to the concentration of three or more consecutive non A1- uses, given the high percentage of takeaway/cold food sales it is not considered that the impact of the use (which operates during shop rather than restaurant hours) would be significantly different from that of a sandwich shop (Class A1).

Consequently, subject to a conditions to restrict the layout of the premises to that shown on the submitted plans, to restrict the number of customer seats to 16 (as confirmed by the applicants in an e-mail dated 8 November 2016) rather than to the 23 seats shown on the submitted drawings, it is considered that the loss of the existing Class A1 floorspace would not adversely impact on the character and function of this part of the Soho conservation area nor to the vitality or viability of the shopping frontage or locality.

8.1.2 Proposed use

The site is located within the Core CAZ and the West End Stress Area. Given the size of premises (138sqm), and the nature of the use, UDP policies TACE 8 and TACE 9 are applicable.

Policy TACE 8 relates to cafe/restaurant uses and states that permission will generally be granted where the City Council is satisfied that the proposed development has no adverse effect (nor taking into account the number and distribution of entertainment uses in the vicinity, any cumulatively adverse) effect upon residential amenity or local environmental quality as a result of noise, vibration, smells, increased late night activity or increased parking and traffic and no adverse impact on the character and function of the area.

Policy TACE 9 relates to larger café/restaurant uses, and to other forms of entertainment use, including hot-food takeaways where permission will only be granted where the City Council is satisfied that the proposal satisfies the tests set in TACE 8 (above). In both cases, where appropriate, conditions will be imposed to ameliorate the potential impact of the use.

Under City Plan policy S6, within the West End Stress Area, new entertainment uses will only be allowed where they are small-scale, low impact and do not result in a concentration of late night uses. Policy S24 also requires proposals for new entertainment uses to demonstrate that they are appropriate in terms of type and size of use, scale of activity, relationship to concentrations of entertainment uses and any cumulative impact and that they do not adversely impact on residential amenity, local environmental quality and the character and function of the area.

Given the size of the premises, the type and low-key nature of the use and the proposed opening hours, it is not considered that the proposals would not have a significant impact on the character or function of the area.

Given the nature of the use and the proposed hours of use, it is not considered that activity generated would have any greater impact on neighbours' amenities than the lawful retail

use. Other than the original complaint about the unauthorised change of use, no other complaints have been received in relation to this application.

The existing ventilation system discharges via ground level grilles on the D'Arblay Street frontage, which is considered unacceptable. Following discussions, the applicant has agreed to install a re-circulation system where, no external fumes are extracted from the premises. The submission of details of this system, and timescales for its installation, would be the subject of conditions.

Subject to conditions controlling the hours of operation, the premises layout, the amount of customer seating, and the installation of a replacement extract system, it is not considered that the proposal would have an adverse impact on the amenities of neighbouring occupiers.

8.2 Townscape and Design

The shopfront has been in situ for more than four years and is therefore immune from enforcement action. The applicant has submitted plans detailing the D'Arblay Street elevation retaining three ventilation grilles (two as fresh air vents and one as a bleed duct) which allows the internal recirculation system to operate efficiently. This is considered acceptable.

8.3 Residential Amenity (Daylight/ Sunlight and Sense of enclosure)

Not Applicable

8.4 Transportation/Parking

The Highways Planning Manager considers that the proposal will have limited impact on parking demand in the area but has recommended that a condition is imposed to prevent the operation of any delivery service from the premises.

No off-street servicing is indicated within the application site. The site is located within a Controlled Parking Zone, which means that locations single and double yellow lines allow loading and unloading to occur.

Given the small size of the unit, it is not considered reasonable to attach a condition requiring cycle parking provision.

8.5 Economic Considerations

Any economic benefits generated by the proposed are welcomed.

8.6 Access

No changes are proposed to the building access.

8.7 Other UDP/Westminster Policy Considerations

8.7.1 Ventilation plant

The City Council's Environmental Health Officer has confirmed that, whilst a café use would ordinarily be expected to be served by a full height kitchen extract duct, given the nature of the use, and as all food is heated in electrical appliances, a re-circulation system would be acceptable as an alternative, in this instance. This is an internal system which does not rely upon untreated air discharging through external vents.

Conditions are recommended requiring the submission of details of the re-circulation system within 3 months of the date any planning approval and its installation within 2 months of the approval of these details.

8.7.2 Refuse /Recycling:

The submitted drawings do not show details of arrangements for the storage of refuse or recyclable materials. Conditions are recommended requiring the submission of details showing how waste and recyclable material will be stored on site and to ensure that no waste is left or stored on the public highway.

8.8 London Plan

This application raises no strategic issues.

8.9 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.

8.10 Planning Obligations

Not applicable

8.11 Environmental Impact Assessment

The scheme is of insufficient scale to require an Environmental Impact Assessment.

9. BACKGROUND PAPERS

1. Application form
2. Response from Soho Society, dated 6 September 2016
3. Response from Environmental Health dated 17 November and 12 December
4. Response from Highways Planning Manager dated 5 September 2016
5. E-mail from application confirming seating arrangement, dated 8 November 2016
6. Land use survey

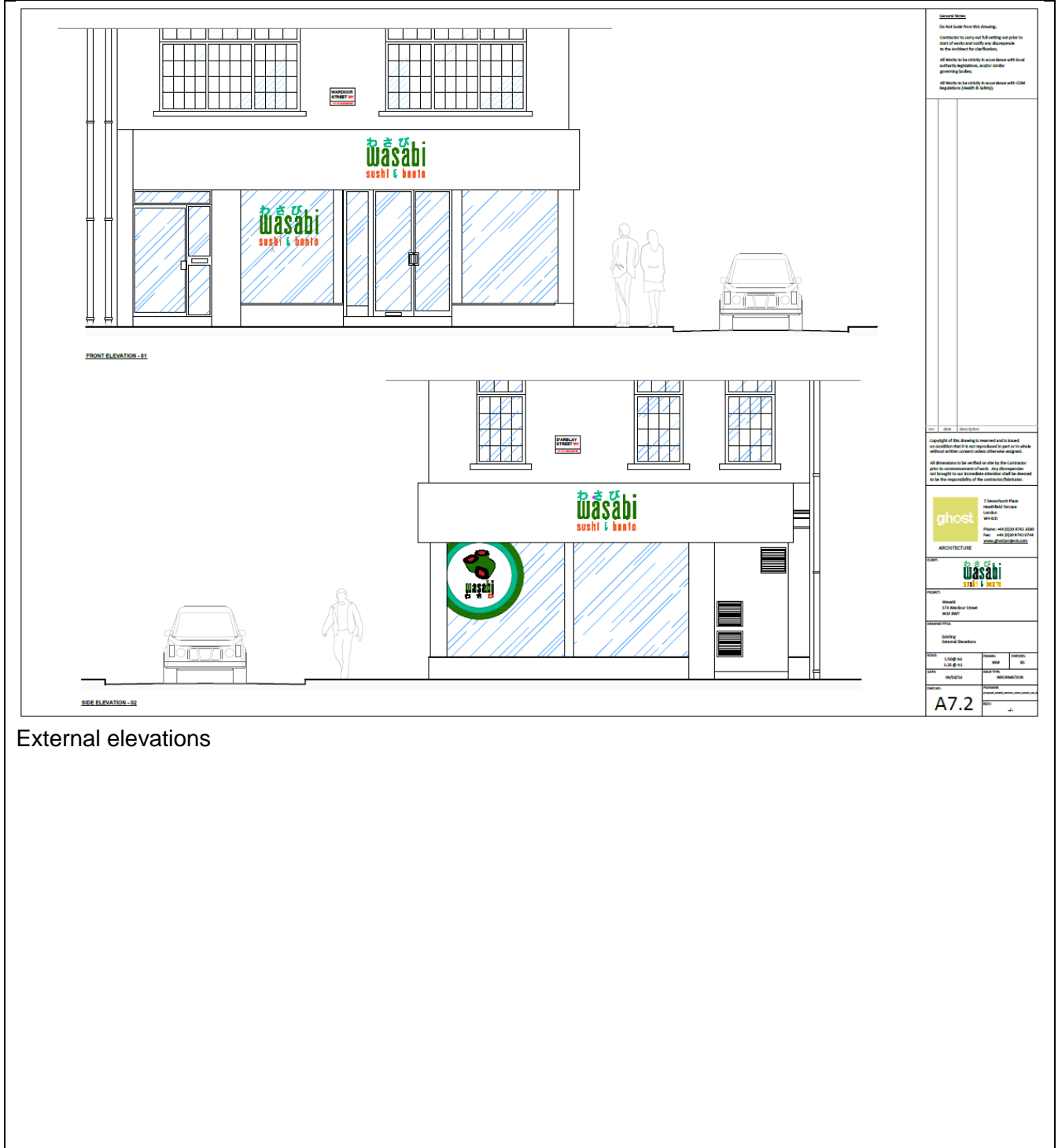
Selected relevant drawings

(Please note: All the application drawings and other relevant documents and Background Papers

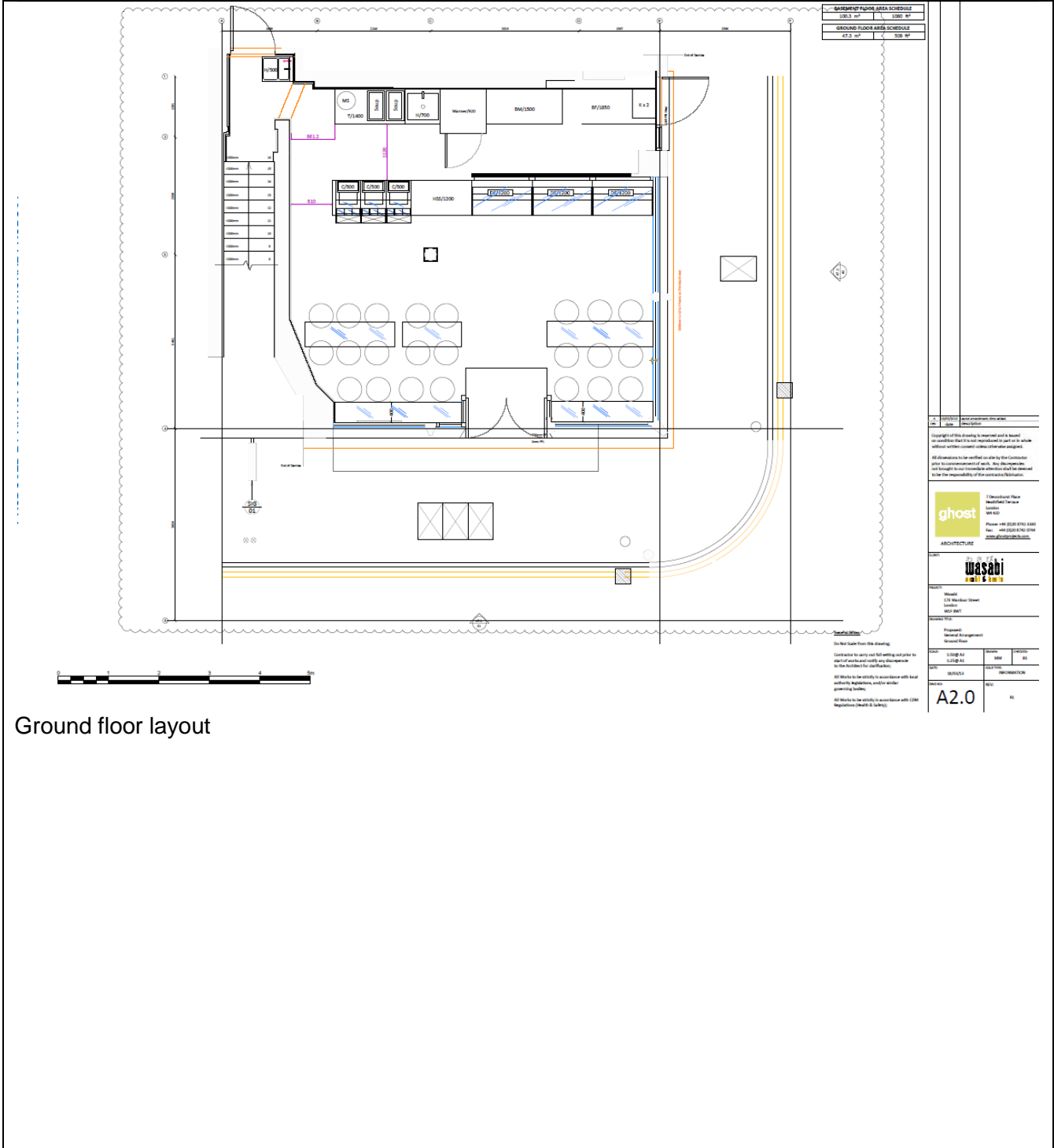
are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: MIKE WALTON BY EMAIL AT mwalton@westminster.gov.uk

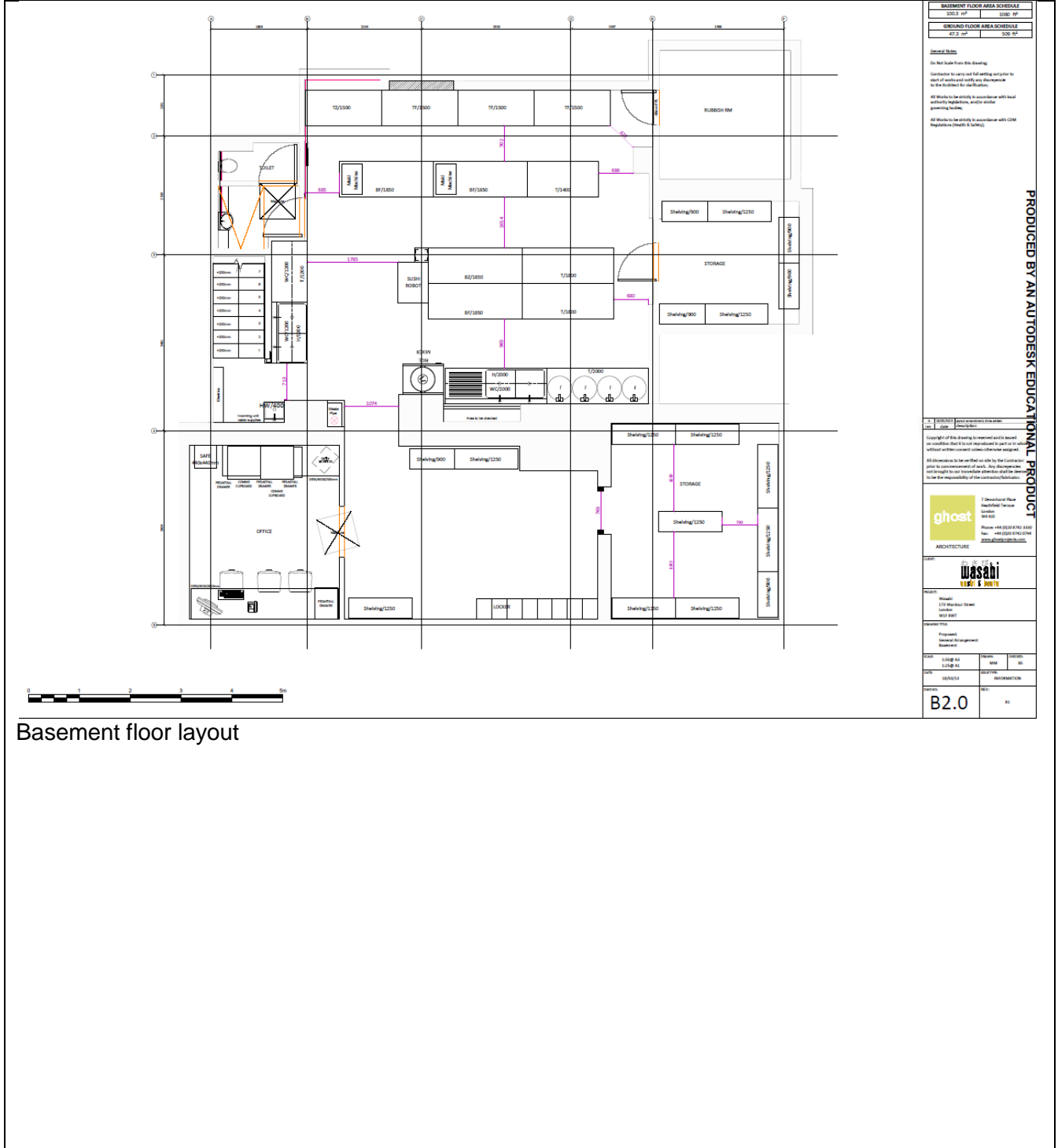
10. KEY DRAWINGS



External elevations



Ground floor layout



Basement floor layout

BASEMENT FLOOR AREA SCHEDULE	
502.5 m ²	502.5 m ²
GROUND FLOOR AREA SCHEDULE	
412.3 m ²	509.8 m ²

General Note
Do Not Scale From this drawing.
Contractor to carry out all setting out prior to start of work and notify any discrepancies to the Architect for clarification.
All Works to be strictly in accordance with local authority regulations, codes of practice and governing bodies.
All Works to be strictly in accordance with CDM Regulations (Health & Safety).

DISCLAIMER
I, the undersigned, do not warrant the accuracy of this drawing.
Copyright of this drawing is reserved and is based on information that is not guaranteed to be true or valid without further consent unless otherwise agreed.
All dimensions to be verified on site by the Contractor prior to commencement of work. Any discrepancies will be the responsibility of the Contractor/Builder.

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Project:
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W6 7BT

Project Title:
General Arrangement
Basement

DATE:	12/08/11	BY:	MS
DATE:	12/08/11	BY:	MS
DATE:	12/08/11	BY:	MS

REVISIONS:
1. B2.0

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DRAFT DECISION LETTER

Address: Basement And Ground Floor, 173 Wardour Street, London, W1F 8WT,

Proposal: Use of basement and ground floor as retail, café and hot food takeaway sales (Sui Generis), infill of existing vents on D'Arblay Street elevation.

Reference: 16/06424/FULL

Plan Nos: A2.0 REV R1 (as amended by email from Danielle St Pierre dated 8 November 2016), B2.0 REV R1, A7.2

Case Officer: Shaun Retzback **Direct Tel. No.** 020 7641 6027

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 Customers shall not be permitted within the premises before 11:00 or after 21:00 hours Monday to Saturday and between 11:00 or after 20:00 hours Sundays.

Reason:

To protect the environment of people in neighbouring properties as set out in S24, S29 and S32 of Westminster's City Plan (July 2016) and ENV 6, ENV 7 and TACE 8 of our Unitary Development Plan that we adopted in January 2007. (R12AC)

- 3 You must apply to us for approval of details of how waste is going to be stored on the site and how materials for recycling will be stored separately. You must not start work on the relevant part of the development until we have approved what you have sent us. You must then provide the stores for waste and materials for recycling according to these details, clearly mark the stores and make them available at all times to everyone using the basement and ground floor at 173 Wardour Street. (C14EC)

Reason:

To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan (July 2016) and ENV 12 of our Unitary Development Plan that we

adopted in January 2007. (R14BD)

- 4 Within 3 months of the date of this permission, you must apply to us for the approval of detail of how internal air re-circulation system shall be installed and details confirming no external discharge of any kitchen fumes from the premises.

Reason:

To protect the environment of people in neighbouring properties as set out in S29 and S32 of Westminster's City Plan (July 2016) and ENV 6, ENV 7 and DES 5 of our Unitary Development Plan that we adopted in January 2007. (R14AC)

- 5 Any internal air re-circulation system approved under condition 4, must be installed within 2 months of the date of this approval or the use shall cease.

Reason:

To protect the environment of people in neighbouring properties as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6, ENV 7 and DES 5 of our Unitary Development Plan that we adopted in January 2007. (R14AC)

- 6 With the exception of boiled rice you must not cook raw or fresh food on the premises. (C05DA)

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet ENV 5 of our Unitary Development Plan that we adopted in January 2007. (R05AB)

- 7 You must not operate a delivery service from the premises even as an ancillary part of the use.

Reason:

To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in S42 of Westminster's City Plan (July 2016) and STRA 25, TRANS 20 and TRANS 21 of our Unitary Development Plan that we adopted in January 2007. (R23AC)

- 8 All equipment for the production of hot food shall be heated using electricity only (ie no gas or solid fuels such as coal, wood etc).

Reason:

To protect the environment of people in neighbouring properties as set out in S29 and S32 of Westminster's City Plan (July 2016) and ENV 6, ENV 7 and DES 5 of our Unitary Development Plan that we adopted in January 2007. (R14AC)

- 9 The internal seating area shall be set out as detailed on plan number A2.0 REV R1.

Notwithstanding, the internal seating area shall be limited to 4 tables and 16 chairs as set out in an e-mail to City Council dated 8 November 2016.

Reason:

To protect the retail element of the site and to protect the environment of people in neighbouring properties. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 13 of our Unitary Development Plan that we adopted in January 2007.

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 (July 2016), Unitary Development Plan, 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 Please contact our District Surveyors' Services to discuss how you can design for the inclusion of disabled people. Email: districtsurveyors@westminster.gov.uk. Phone 020 7641 7240 or 020 7641 7230. If you make a further planning application or a building regulations application which relates solely to providing access or facilities for people with disabilities, our normal planning and building control fees do not apply. The Equality and Human Rights Commission has a range of publications to assist you, see www.equalityhumanrights.com. The Centre for Accessible Environment's 'Designing for Accessibility', 2004, price £22.50 is a useful guide, visit www.cae.org.uk. If you are building new homes you must provide features which make them suitable for people with disabilities. For advice see www.habinteg.org.uk It is your responsibility under the law to provide good access to your buildings. An appropriate and complete Access Statement as one of the documents on hand-over, will provide you and the end user with the basis of a defence should an access issue be raised under the Disability Discrimination Acts.
- 3 Please make sure that the street number and building name (if applicable) are clearly displayed on the building. This is a condition of the London Building Acts (Amendments) Act 1939, and there are regulations that specify the exact requirements. (I54AA)
- 4 Please contact our Cleansing section on 020 7641 7962 about your arrangements for storing and collecting waste. (I08AA)
- 5 The term 'clearly mark' in condition 3 means marked by a permanent wall notice or floor markings, or both. (I88AA)

- 6 Any material change to the approved layouts and the nature of the operations including to the size of the seating area is likely to require further planning permission.

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.