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| CITY OF WESTMINSTER | | | |
| PLANNING APPLICATIONS COMMITTEE | Date 28 February 2017 | Classification For General Release | |
| Report of Director of Planning | | Ward(s) involved Hyde Park | |
| Subject of Report | 27-29 Spring Street, London, W2 1JA, | | |
| Proposal | Installation of a kitchen extract duct to side elevation facing Conduit Place. | | |
| Agent | D Rose Planning LLP | | |
| On behalf of | Apple London Limited | | |
| Registered Number | 16/02249/FULL | Date amended/ completed | 11 March 2016 |
| Date Application Received | 11 March 2016 | | |
| Historic Building Grade | Unlisted | | |
| Conservation Area | Bayswater | | |

1. RECOMMENDATION

Grant conditional permission.

2. SUMMARY

The application site is a five storey plus basement building located within the Bayswater Conservation Area. This application relates to the basement and ground floor unit, which has historically been used as a public house/ bar, but more recently used as a restaurant. The upper floors of the building are in residential use as flats.

Permission is sought for the installation of a kitchen extract duct between basement and to third floor level to the side elevation of the building facing Conduit Place. Planning permission was previously granted for a similar extract duct in 2012 (12/06116/FULL), but this previous permission has lapsed without being implemented.

Objections have been received to the proposed development from four neighbouring residents on a range of design and amenity grounds.

The key issues in this case are:

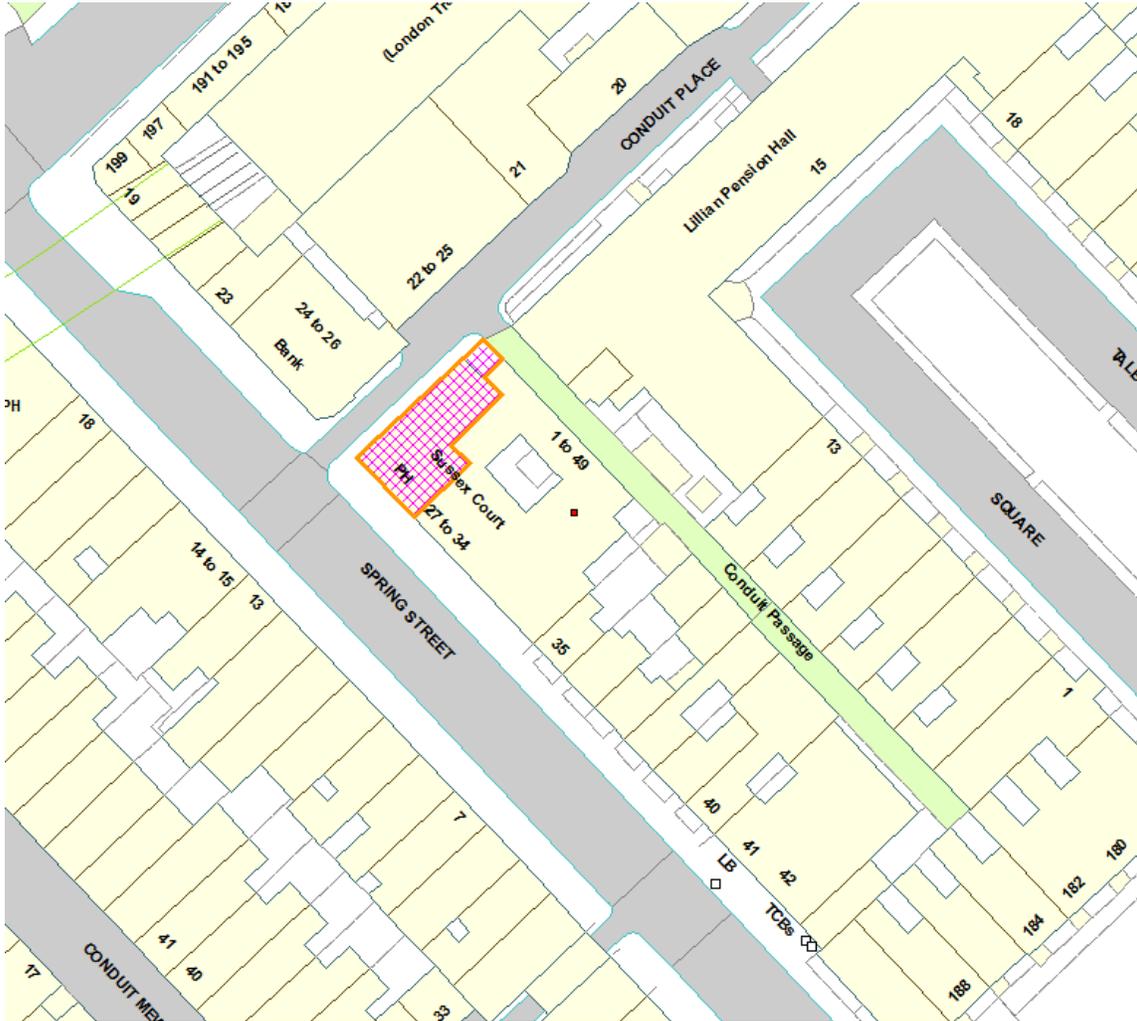
- The impact of the proposed development on the appearance of the building and the character and

appearance of the Bayswater Conservation Area.

- The impact of the proposal on the amenity of neighbouring residents.

For the reasons set out in this report the proposed development is considered to be acceptable in design and amenity terms and, subject to the recommended conditions, it would comply with the relevant policies set out in the Unitary Development Plan (UDP) and Westminster's City Plan: Strategic Policies (the City Plan). The proposed kitchen extract duct is therefore recommended for approval.

3. LOCATION PLAN



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4. PHOTOGRAPHS



Front elevation (top) and side elevation facing Conduit Place (bottom).

5. CONSULTATIONS

WARD COUNCILLORS - HYDE PARK

Any response to be reported verbally.

SOUTH EAST BAYSWATER RESIDENTS ASSOCIATION

Initially provided a neutral comment believing it was a reapplication of a previously approved application. Follow up comment was a provisional objection. Concerns raised that the applicant was obfuscating details of the application by not making it apparent the air conditioning condenser units were included. Acoustic report suggests further information is required, including location of microphones and that the noise may be intermittent and so require a 15dB reduction below the existing background noise level. Request that the application is reported to a committee meeting for determination.

ENVIRONMENTAL HEALTH

Following further discussions and the submission of an amended Mechanical Services Specification document, no objection is raised.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 98;

Total No. of replies: 6 (two responses each from two objectors);

No. of objections: 4;

No. in support: 0.

Six letters/ emails have been received from four respondents raising objection on all or some of the following grounds:

Design:

- The duct is ugly and dominating.
- No objection to kitchen extract duct, ugly but necessary.

Amenity:

- The duct does not extend far enough up the building to ensure that smells will not cause noise and odour nuisance, particularly for occupants of the flats in Sussex Court.
- Existing boiler extraction duct which extends above the top of the building, why can't the kitchen duct extend to the same height?
- Noise pollution issues will have a detrimental effect on residents who suffer from sleep deprivation issues.
- The duct operating from 0800-2300 hours is too long, what is to stop them operating it beyond these hours?
- Believe that the level of night time background noise is higher than expected. Report states it to be 47dB; believes it should be 31dB at nearest residential window as it is intermittent and tonal. Also states that main source of noise is traffic which drops significantly in the evening.
- As position of microphone has not been disclosed questions where the data came from.

- Area already exceeds WHO guidelines for background noise levels. Air conditioning units are usually intermittent and tonal and not sure how the installation of these will meet City Council guidelines on background noise levels.

Other:

- Confusion over whether air conditioning units are also proposed as part of this application.
- If air conditioning units are proposed, their location and impact on the amenity of neighbours in terms of noise is not clear.
- Believes there is a conflict of interest as the freeholder is also the managing agent. The planning agent is acting on behalf of them.
- Believe that as the site is uninhabited following the closure of the previous wine bar this is part of a plan to redevelop the area

PRESS ADVERTISEMENT / SITE NOTICE:

Yes.

6. BACKGROUND INFORMATION

6.1 The Application Site

The application site is a five storey plus basement building located within the Bayswater Conservation Area. The first to fourth floors are in use as flats. The application relates to the basement and ground floor unit at the corner of Spring Street and Conduit Place, which has historically been used as a public house/ bar, but has more recently been used as a restaurant/ wine bar. The premises are currently vacant.

The site is located within a Secondary Frontage within the Praed Street District Shopping Centre and is also within the North Westminster Economic Development Area.

6.2 Recent Relevant History

25 October 2011 – Permission was refused for enlargement of ground floor windows on Conduit Place elevation and erection of a kitchen extract flue to rear corner of the building (11/01473/FULL). In refusing permission the Planning Applications Committee considered the erection of the extract duct to be acceptable, but the application was refused on the detailed design of the windows.

22 November 2012 – Permission was granted for the installation of kitchen extract flue to rear elevation (12/06116/FULL). This permission lapsed after 3 years without being implemented. See copy of decision letter and relevant drawings in background papers.

5 August 2014 – Permission granted for installation of metal swing gates to Conduit Passage and installation of condenser units within an enclosure in the courtyard of Sussex Court (14/05003/FULL).

7. THE PROPOSAL

Planning permission is sought for the installation of a kitchen extract duct to the rear of the site on the side elevation of the building facing Conduit Place. The proposed duct would extend from basement level up the side of the building to the third floor level. It would terminate away from the majority of the upper floors of the building as the upper floors of the building are stepped to the rear. However, notwithstanding this, it is acknowledged that it would still be in relatively close proximity to the windows of flats on the upper floors. An associated air intake louvre is proposed at ground floor level in the side elevation facing Conduit Place (located within an existing window opening).

Due to inconsistencies in the originally submitted acoustic report submitted with the application, objectors initially mistakenly believed that air conditioning condenser units were proposed to be installed as part of this application within the rear lightwell. However, this does not form part of the current application and the application documents have been amended to remove any reference to the air conditioning condenser units. It should be noted though, that air conditioning condenser units were previously approved within the rear lightwell in August 2014 (14/05003/FULL) and this permission remains extant until 5 August 2017.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The current application does not raise any land use issues and the proposed kitchen extract duct would be used in conjunction with the lawful use of the basement and ground floor premises.

8.2 Townscape and Design

The proposed kitchen extract duct would be visible in views from Conduit Place, but would not be readily visible in views from Spring Street due to its position on the rearmost part of the side elevation. In views along Conduit Place the proposed duct would be seen in context with the large duct already present on the side elevation, which runs the full height of the building. The existing full height duct (serving another ground floor unit) and the presence of a significant amount of other pipework to the side elevation give it a particularly functional appearance. In this context, the principle of a kitchen extract duct to this elevation is difficult to resist in principle in design terms despite its visibility within Conduit Place.

The proposed duct is to be finished in black so as to limit its impact on the appearance of the building and a condition is recommended to ensure the duct is painted. In this case, the finishing of the duct in black is considered sufficient to mitigate its impact on the appearance of the building and the character and appearance of the conservation area.

The scheme includes the installation of an air intake louvre in one of the side elevation windows at ground floor level. This would be a discreet alteration and dummy louvres are proposed to the two other matching windows so that the consistency of the fenestration at ground floor level facing Conduit Place is maintained.

For the reasons set out, the proposals are considered acceptable in design terms and would comply with Policies DES 1, DES 5 and DES 9 of the UDP and Policies S25 and S28 in the City Plan.

8.3 Residential Amenity

8.3.1 Daylight and Sunlight and Sense of Enclosure

The proposed kitchen extract duct would be positioned so that it would be sufficiently remote from neighbouring windows so as not to cause a material loss of light or increased sense of enclosure. The proposal therefore accords with Policy ENV13 in the UDP and S29 in the City Plan.

8.3.2 Noise Disturbance

The extract duct is expected to be operated predominantly between the hours of 08.00 and 23.00 daily during the hours that the premises are expected to open. However, the submitted acoustic information seeks to demonstrate that the proposed duct could be operated at any time 24 hours a day without causing noise disturbance to neighbouring residents.

Environmental Health are satisfied that the kitchen extract duct and associated air intake duct would be capable of complying with Policies ENV6 and ENV7 in the UDP and Policy S32 in terms of noise disturbance. However, they recommend that a precautionary approach is taken given the proximity of neighbouring residential windows and they therefore advise that a supplementary acoustic report should be secured by way of a condition. This would ensure that the operational noise level of the kitchen extract duct, once it has been fully specified by the applicant, would be below the existing background noise level by 10dB or more at the nearest neighbouring window. Other conditions are also recommended to control noise and vibration from the extract duct once it has been installed.

Concerns have been expressed by objectors that the locations in which the sound recording data was collected is not clearly specified. However, Environmental Health have confirmed that the locations at second floor level to the rear of the building and the fifth floor level to the front of the building are acceptable and are representative of background noise levels that would be expected in this part of the City. They note also that the data provided is also consistent with other planning applications they have reviewed in the vicinity of the application site. In this context, the concerns expressed in relation to the accuracy of the acoustic report data cannot be supported as a ground on which to withhold permission.

In summary, subject to the recommended conditions, the proposal is acceptable in noise terms and would accord with Policies ENV6 and ENV7 in the UDP and Policy S32 in the City Plan.

8.3.3 Odour Nuisance

Objections have been received raising concerns that the location of the extract point of the duct at third floor level could lead to odour nuisance being caused to neighbouring residential properties, particularly those on the upper floors of Sussex Court.

Primary cooking has occurred on these premises in its past use as a restaurant/ wine bar and the existing extraction point for the small kitchen that served that former use was at basement level within the rear lightwell. Consequently, this point of extraction could continue to be used in connection with any future use of the building and this would result in a particularly low level extraction point for cooking odours. Set in this context and having regard to the stepped form of the rear of the building, whilst it is normally expected that kitchen extraction ducts should terminate above the highest point of the existing building, in this case the provision of a duct with a lower extraction point is difficult to resist.

For the reasons set out in the preceding paragraph, Environmental Health are satisfied that the proposed duct, which would terminate and discharge at third floor level, would not materially worsen the existing lawful situation in terms of odour nuisance. They therefore advise that it is preferable in odour nuisance terms to seek to ensure that the duct proposed would be designed to include features that would reduce odours being omitted from the duct, such as canopy filters, a UV light filter and ensuring the velocity at the point of discharge is 12m/s or higher. A condition is recommended to secure full details of the odour reduction measures that are to be installed on the kitchen extract duct, as well as a management plan that demonstrates how the duct will be serviced and maintained to ensure its ongoing performance in terms of minimising odour omissions.

In conclusion in odour nuisance terms, Environmental Health are satisfied that the proposed duct would, subject to conditions, meet current industry standards for the most up to date odour reduction technology and given the proposed extract duct would not be materially worse than the existing lawful situation in terms of kitchen extraction, permission cannot reasonably be withheld on odour nuisance. Subject to the recommended condition to secure full details of the odour control equipment and future management of that equipment, the scheme would accord with Policies TACE9 in the UDP and S24 and S32 in the City Plan.

8.4 Transportation/Parking

The proposed development does not raise any transportation or parking considerations.

8.5 Economic Considerations

No economic considerations are applicable for a development of this size.

8.6 Access

The proposed kitchen extract duct would not have any impact on existing access to the application premises.

8.7 Other UDP/Westminster Policy Considerations

None relevant.

8.8 London Plan

The application does not raise any 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

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

8.11 Environmental Impact Assessment

An environmental impact assessment is not required for a development of this size.

8.12 Other Issues

As stated above several objectors considered mistakenly believed that the current application included the installation of two air conditioning condenser units. Two of the originally submitted documents, the acoustic report and the mechanical services specification had included drawings and references to the air conditioning units. However, the application form, description of development and submitted drawings did not include these items of mechanical plant. The applicant has amended the acoustic report and mechanical services specification to remove the references to the units and they do not form part of the current application.

One objector stated they believed there is a conflict of interest as the freeholder is also the managing agent and the planning agent is acting on behalf of them. However, this is not a ground on which to withhold planning permission and is instead a private legal matter between those with an interest in the building.

One objector stated that as the site is uninhabited since the previous wine bar closed down, they believe this is part of a plan to redevelop the unit. The lawful use of the site is as a restaurant/ wine bar and this application pertains to that use. There is no suggestion that the current application will lead to a material change of use of the premises requiring planning permission. If such a change of use were to occur in future, then it would need to be considered on its own merits as part of a further separate planning application.

9. BACKGROUND PAPERS

1. Application form.
2. Copy of planning permission dated 22 November 2012 and relevant approved drawings.
3. Emails from the South East Bayswater Residents Association dated 21 April 2016 and 31 May 2016 and 2 June 2016.
4. Memos and email from Environmental Health dated 13 April 2016, 30 June 2016 and 21 December 2016.

5. Emails from the occupier of 8 Sussex Court, 27-29 Spring Street dated 2 June 2016 and 11 June 2016.
6. Emails from the occupier of 19 Sussex Court, 27-29 Spring Street dated 2 June 2016 and 3 June 2016.
7. Email from the occupier of 28 Sussex Court, 31 Spring Street dated 4 June 2016.
8. Email from the occupier of 27 Sussex Court, Spring Street dated 7 June 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 OLIVER GIBSON ON 020 7641 2680 OR BY EMAIL AT ogibson@westminster.gov.uk.

10. KEY DRAWINGS



Existing (top) and proposed (bottom) Conduit Place elevations.

DRAFT DECISION LETTER

Address: 27-29 Spring Street, London, W2 1JA,

Proposal: Installation of a kitchen extract duct to side elevation facing Conduit Place.

Reference: 16/02249/FULL

Plan Nos: LO-904-EX010 Rev.B, LO-904-EX011, LO-904-EX099 Rev.B, LO-904-EX100 Rev.B, LO-904-EX-201 Rev.A, LO-904-EX301, LO-904-EX302, LO-904-PL-099 Rev.D, LO-904-PL100 Rev.F, LO-904-PL201 Rev.B, LO-904-PL301 Rev.D, LO-904-PL302-Rev.E, LO-904-PL303 Rev.D, Mechanical Services Performance Specification dated March 2016 (Rev.A submitted with email from John Boatman dated 28/08/16), Environmental Noise Survey and Plant Noise Assessment dated 15 June 2016.

Case Officer: Heather Lai

Direct Tel. No. 020 7641 6519

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 You must carry out any building work which can be heard at the boundary of the site only:

- * between 08.00 and 18.00 Monday to Friday;
- * between 08.00 and 13.00 on Saturday; and
- * not at all on Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours. (C11AA)

Reason:

To protect the environment of neighbouring occupiers. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R11AC)

- 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 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 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 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 L A90, 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.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels. Part (3) is included so that applicants may ask subsequently for a fixed maximum noise level to be approved in case ambient noise levels reduce at any time after implementation of the planning permission.

- 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 0.26 m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property.

Reason:

As set out in ENV6 (2) and (6) of our Unitary Development Plan that we adopted in January 2007, to ensure that the development is designed to prevent structural transmission of noise or vibration.

- 5 You must apply to us for approval of details of a supplementary acoustic report demonstrating that the plant will comply with the Council's noise criteria as set out in Condition 3 of this permission. The supplementary acoustic report you submit must include details (including drawings and manufacturer's specifications) of any noise attenuation measures required to achieve the noise criteria set out in Condition 3. You must not start work on the installation of the kitchen extract duct until we have approved what you have sent us. You must then install the kitchen extract duct and noise attenuation measures in accordance with the supplementary acoustic report and you must not remove the noise attenuation measures from the duct unless or until the extract duct is permanently removed from the building.

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(1) of our Unitary Development Plan that we adopted in January 2007, so that the noise environment of people in noise sensitive properties is protected, including the intrusiveness of tonal and impulsive sounds; and as set out in S32 of Westminster's City Plan (November 2016), by contributing to reducing excessive ambient noise levels.

- 6 You must apply to us for approval of full details of the odour reduction equipment to be installed on the kitchen extract duct and a service, maintenance and repair strategy that sets out how the odour reduction equipment will be regularly serviced, maintained and repaired throughout the lifetime of the extract duct. You must not operate the kitchen extract duct until we have approved the details and strategy that you send us. You must then install the odour reduction equipment in accordance with the details we approve before you use the kitchen extract duct and thereafter you must permanently retain the odour reduction equipment on the duct and you must maintain and repair it in accordance with the approved service, maintenance and repair strategy.

Reason:

To protect the environment of people in neighbouring properties and prevent odour nuisance occurring. This is in line with S24 and S29 and S32 of Westminster's City Plan (November 2016) and TACE 9 of our Unitary Development Plan that we adopted in January 2007.

- 7 The kitchen extract duct shall be painted or otherwise finished in a black colour prior to the use of the duct and thereafter it shall be permanently maintained in that colour.

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 Bayswater Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

- 8 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 Bayswater Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

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 (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, 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 You are advised to permanently mark the plant/ machinery hereby approved with the details of this permission (date of grant, registered number). This will assist in future monitoring of the equipment by the City Council if and when complaints are received.
- 3 In relation to Condition 6 of this permission, the required assessment should be use the qualitative odour assessment methodology outlined in Guidance on the Assessment of Odour for Planning, published by the Institute of Air Quality Management (IAQM, 2014).
- 4 The following odour reduction features must be incorporated in to the design of the duct in order for system to operate optimally at all times and these measures should be included in the details submitted pursuant to Condition 6: , (a) For the volume of air travelling through it, the duct run must be long enough after the ozone generating unit for the ozone to work before the air stream reaches the discharge point., (b) Incorporation of filter life monitoring packages for the grease filters and the UV light unit with safety cut-off features in the event of malfunctions., (c) Minimum efflux velocity of 12m/s whenever system is on.
- 5 Conditions 3, 4 and 5 control noise from the approved machinery. It is very important that you meet the conditions and we may take legal action if you do not. You should make sure that the machinery is properly maintained and serviced regularly. (I82AA)

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.