

CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 21 March 2017	Classification For General Release	
Report of Director of Planning		Ward(s) involved Marylebone High Street	
Subject of Report	42 - 44 James Street, Marylebone, London, W1U 1EU,		
Proposal	Alterations including the installation of an openable shopfront and alterations to rear first floor roof.		
Agent	Rolfe Judd Planning		
On behalf of	SCP Estate Ltd		
Registered Number	16/10563/FULL	Date amended/ completed	4 November 2016
Date Application Received	4 November 2016		
Historic Building Grade	Unlisted		
Conservation Area	Stratford Place		

1. RECOMMENDATION

Grant conditional permission.

2. SUMMARY

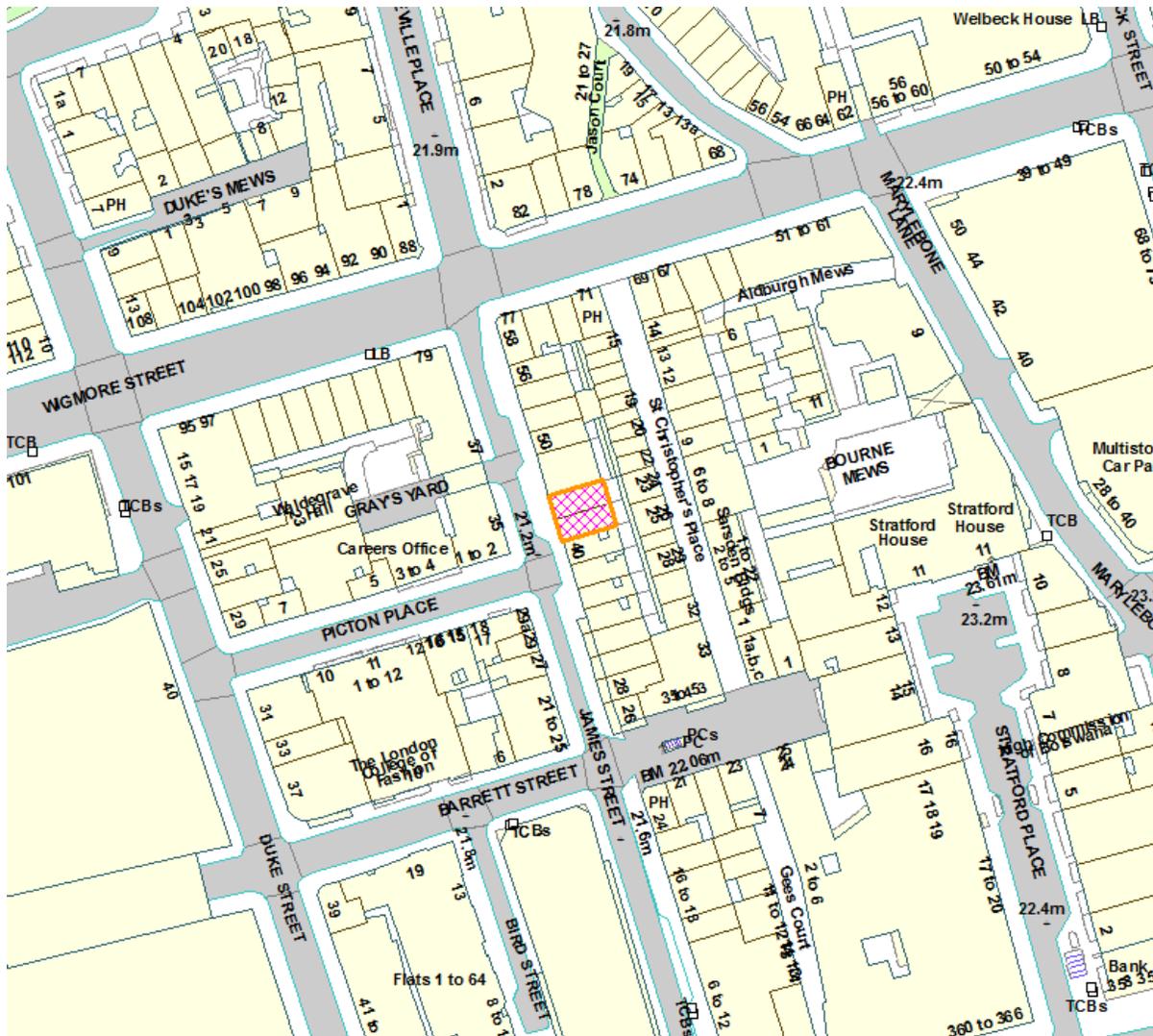
The application relates to separate basement and ground floor restaurants (Class A3) in adjacent unlisted buildings within the Core Central Activities Zone. Planning permission is sought for alterations including the installation of a partially openable shopfront and for alterations to the roof of the ground floor rear extension.

The key issues for consideration are:

- The impact of the proposal upon the amenities of neighbouring residential properties.
- The impact of the proposal upon the appearance of the existing building and on the character and appearance of this part of the conservation area.

An objection has been received on amenity grounds. However, for the reasons set out in the main body of the report, and subject to appropriate conditions, including a requirement for the shopfront to be closed at 21.00 hours, the proposals are considered to comply with relevant UDP and City Plan policies and the application is recommended for approval.

3. LOCATION PLAN



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4. PHOTOGRAPHS





5. CONSULTATIONS

MARYLEBONE ASSOCIATION:

No objection.

ENVIRONMENTAL HEALTH:

Objection: potential noise disturbance from openable shopfront; impact on means of fire escape, insufficient customer toilets..

CLEANSING MANAGER:

No objection subject to condition securing waste and recycling provision.

HIGHWAYS PLANNING MANAGER:

No objection.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 22

Total No. of replies: 1

No. of objections: 1

No. in support: 0

Opening shopfront will exacerbate existing noise disturbance from within the restaurant and from external seating and from late night activity; drainage inadequate.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

The application site comprises two adjacent unlisted buildings, located within the Stratford Place Conservation Area and the Core Central Activities Zone. The basement and ground floor of both buildings are in lawful restaurant use (Class A3). The upper floors of both properties are occupied as a total of five flats.

This part of James Street is characterised by restaurant with tables and chairs on the public highway. Many of the properties between Wigmore Street and Barrett Street also have openable shopfronts There are further residential properties on the upper floors of the buildings to the north and south of the application premises, the nearest within nos. 38 and 52 James Street and, opposite, in Picton Place.

6.2 Recent Relevant History

42 James Street

1994 - (RN: 94/08592/FULL) Permission granted for the use of the basement and ground floor of 42 James Street for Class A3 purposes. A condition prevented primary cooking on the premises.

11 July 1995 Permission for the installation of a new opening shopfront (95/03460/FULL).

1996 - (RN: 96/08589/FULL) Permission granted to remove the primary cooking condition on the 1994 permission and for the installation of a full height extract duct at the rear.

There has been a series of permissions, dating from 1996, for the placing of tables and chairs outside the premises. The latest of these, which permits external seating until 23.00 hours, expires on 31 July 2017.

The current restaurant opening hours are between 12:00-2300

44 James Street

2008 - (RN: 07/05797/FULL) Permission granted for alterations to the existing high level extract duct

Rating records describes the use of the basement and ground floors as a 'restaurant and premises'

There has been a series of permissions for the placing of tables and chairs on the highway outside the premises, the first of these dating back to 1985. The latest permission, which permits external seating until 23.00 hours, expires in July 2017

Given the planning history, the lawful use of the basement and ground floors is considered to be as a restaurant (Class A3). In these circumstances, the lawful use of No. 44 James Street is considered to be for Class A3 purposes.

The current restaurant opening hours are between 12:00-23:00 (23:30 Friday and Saturday).

There is a long history of complaints in relation to the existing restaurant operation in relation to noise from plant, from within the restaurant and from the use of external seating.

7. THE PROPOSAL

This application is for the installation of an openable shopfront to both properties, which would be amalgamated to form a single restaurant, and for alterations to the ground floor rear roof at no 44, to create a level roof area.

The application has been amended to revise the design of the proposed shopfront, which incorporates bi-fold doors, to include stallrisers.

Alterations at the rear roof are proposed to accommodate future plant but the plant proposals do not form part of the current application.

The application drawings also refer to the replacement of pavement railings to match the existing.

8. DETAILED CONSIDERATIONS

8.1 Land Use

As there are no restrictive conditions, the amalgamation of the two restaurants to create a single restaurant unit does not constitute development requiring planning permission.

8.2 Townscape and Design

The existing shopfronts at 42-44 James Street are poor quality twentieth century shopfronts with uncharacteristic window and door openings. No. 42, in particular, has a pair of doors, in place of a shop window, with no stallriser. No. 44, while incorporating traditional shopfront elements, is poorly executed with modern materials and “off the shelf” components.

Policy DES 5 of the City Council’s Unitary Development Plan states that permission will generally be granted for new shopfronts ‘where they relate satisfactorily to the design of the upper parts of the building’ and ‘where the new shopfront is not designed to be entirely or largely openable, in the absence of local circumstances or established patterns of trading activity.’

Furthermore, the City Council’s Supplementary Planning Guidance ‘Food and Drink Premises’, (1999) also states that ‘an opening shopfront often has folding or sliding doors, which, when open, create an opening in the shop frontage which may extend almost the full width of the ground floor. In most cases these shopfronts do not relate architecturally to the building in which they are installed, or to the street. Creating these openings within a terrace of more solid and traditional shopfronts can be harmful to the appearance of the street and the character and appearance of a conservation area...’

Following negotiations with officers, the shopfront design has been amended to incorporate stallrisers so that, when the doors are closed, the shopfront will have a more traditional appearance. While the proposed shopfront does not reflect the solid to void pattern of the upper storeys, it is an improvement in design terms on the existing poor quality shopfronts. It is also consistent with the design of shopfronts at numbers 38, 40 and 46, adjacent and no. 35, opposite.

Following these revisions, the proposed shopfront is considered acceptable in design terms. Given the number of openable shopfronts on James Street, including immediately adjacent and at no. 48, it is not considered that the principle of opening shopfronts can be resisted in this case

The proposed alterations to the roof of the ground floor extension are acceptable in design terms.

8.3 Residential Amenity

Policy S29 of the City Plan aims to protect the amenity of residents from the effects of development. Similarly, Policies ENV 6 and ENV 7 of the UDP seek to control noise disturbance from development. Of particular relevance, paragraph 9.108 of Policy ENV 7 relates specifically to openable shopfronts and states: 'The City Council will discourage provision of openable shop fronts that would enable noise from inside the premises to be heard outside.' Openable shopfronts will generally be resisted where internal noise can escape and cause nuisance for nearby residents.

The nearest residential properties are located on the upper floors of the application premises.

New shopfront

An objection has been received from the occupier of an existing first floor flat at 44 James Street on the grounds that the introduction of an opening shopfront would exacerbate existing noise disturbance from within the existing restaurant, resulting from poor soundproofing, and from the external seating areas and from noisy plant. The objector has referred to a long history of complaints concerning the existing restaurant operation.

The Council's Environmental Health Officer has expressed concern about noise breakout from within the premises, via the proposed shopfront, and has requested a condition requiring the hours of shopfront opening to be restricted.

This area of James Street is characterised by a concentration of adjacent A3 uses with tables and chairs occupying much of the public highway in this area. Many of the shopfronts in this part of James Street, between Wigmore Street and Barrett Street, contain openable windows. These shopfronts very much form part of the vibrant character of the area. The applicants have provided examples of properties in James Street where openable shopfronts have been permitted, with conditions, to protect residential amenity.

In view of the character of this part of James Street, the proposed opening shopfront is considered acceptable in principle. However, it is considered appropriate to restrict the hours of shopfront opening to between 9:00 and 21:00 each day. This would serve to ameliorate the impact of the proposals at the most noise-sensitive times of the day although it is acknowledged that tables and chairs in the area are permitted until later in the evening (varying from 21:00 to 23:00). However, the proposed condition would ensure that no additional noise nuisance would be created during evening hours. In addition, it is considered appropriate to restrict the playing of live or recorded music (amplified or non-amplified) when the shopfront is open.

Subject to these conditions, it is not considered that this aspect of the proposals would have a material impact upon the amenities of neighbouring residential properties.

Alterations to the rear roof

The objector is also concerned about the proposed alterations to the roof of the ground floor extension, immediately outside rear windows to their property, on the basis of potential noise disturbance and impact on the ventilation to the first floor flats via these windows.

The proposed works involve the “levelling off” of this roof, below the height of the adjacent window, to create a flat roofed area to accommodate tenants’ plant. However, the plant proposals do not form part of the current application. In themselves, these works to the roof would have any material impact upon the amenity of the neighbouring flats and, consequently, this objection could not be supported. Any application, by future tenants, for the installation of new plant on this altered roof, would be considered on its own merits.

8.4 Highways

The proposed shopfront incorporates outward opening doors, while these would not normally be considered acceptable. However, these opening doors would not project beyond the line of the existing, and proposed replacement, railings on

either side of the shopfront and, on this basis, the Highways Planning Manager has raised no objection to the proposals.

8.5 Economic Considerations

Any economic benefits resulting from the proposals are welcomed.

8.6 UDP/Westminster policy considerations

The Project Officer (Waste) has requested a condition requiring details of refuse/recycling storage arrangements for the restaurant, on the basis that the amalgamation of the two units requires permission. However, given that the amalgamation of the units does not constitute development, and as the application relates to a new shopfront and minor external works, this condition is not considered to be necessary.

8.7 London Plan

This application does not raise any strategic issues.

8.8 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.

8.9 Planning Obligations

The application does not trigger any planning obligations.

8.10 Other Issues

An objection has been received citing existing problems with the drains serving the application premises. This is not a material planning issue and could not justify the withholding of planning permission. However, it is likely that this matter would be addressed during the refurbishment of the premises.

The City Council's Environmental Health Officer has objected to the proposal on the grounds that the removal of the internal staircases within the amalgamated units would adversely affect the arrangements for means of escape in case of fire and because there would be insufficient customer toilets to support the number of covers. These objections are not material planning considerations given that no change of use is proposed and would not constitute reasons for withholding planning consent. However, it is recommended that an informative is attached to the decision notice to alert applicants to this issue.

9 BACKGROUND PAPERS

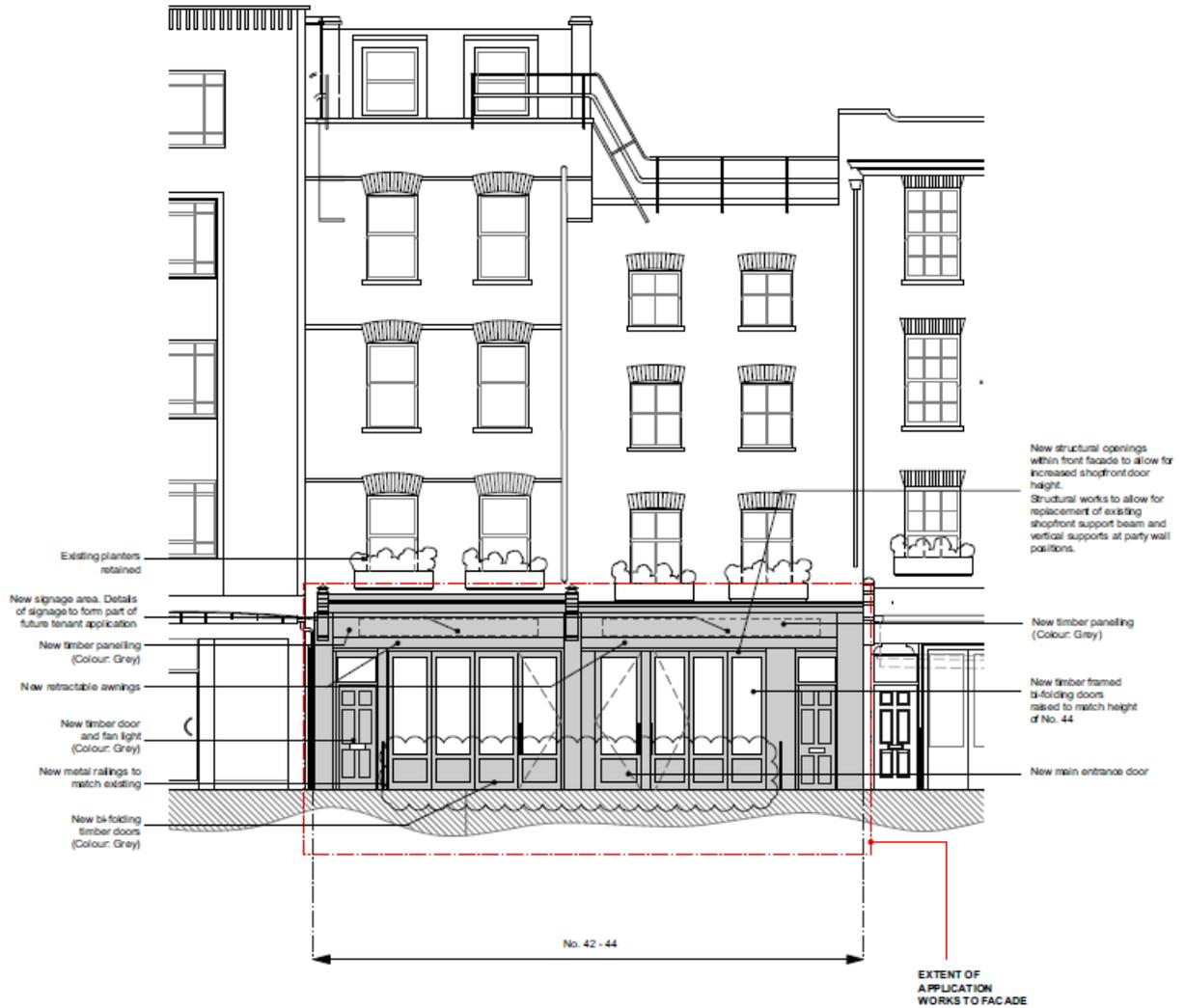
1. Application form
2. Response from the Marylebone Association, dated 16 December 2016
3. Response from Environmental Health, dated 1 December 2016
4. Response from Project Officer (Waste) dated 15 February 2017
5. Response from the Highways Planning Manager dated 8 March 2017
6. Letters from occupier of Flat 1, 44 James Street, dated 7 December 2016 and 20 February 2017(enclosures)

(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: SARASPURRIER BY EMAIL AT sspurrier@westminster.gov.uk.

10 KEY DRAWINGS

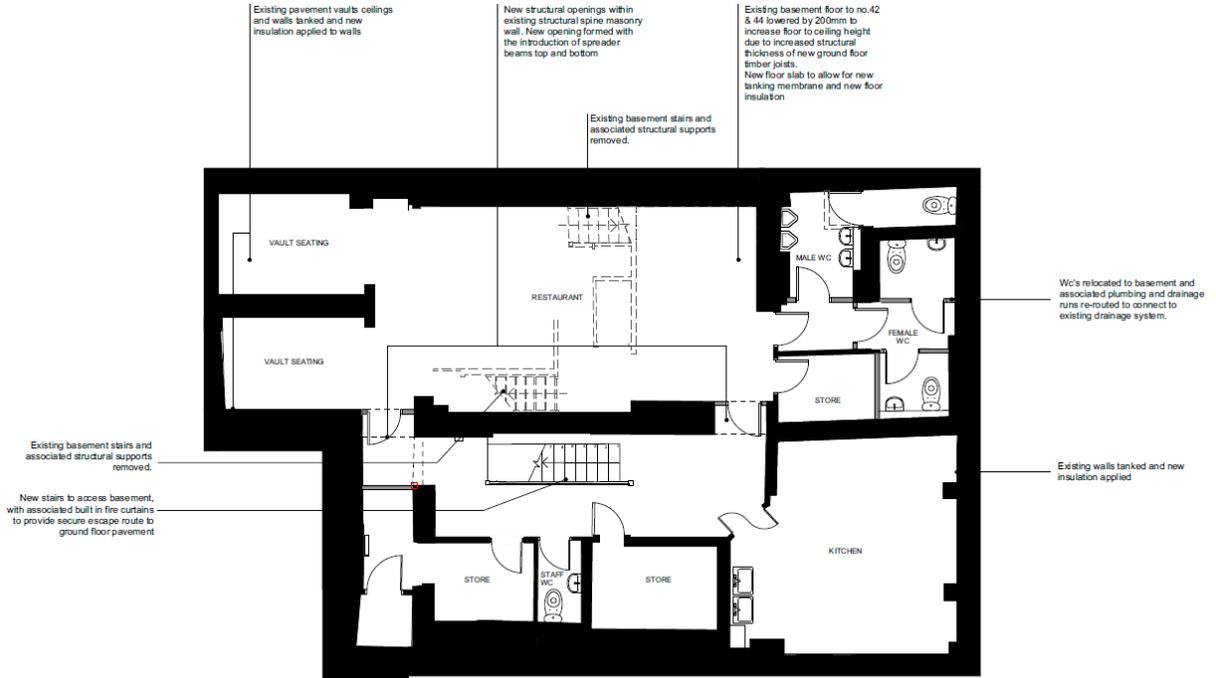
Proposed front elevation



01 Proposed Front Elevation
1:100 @ A3

02

Proposed basement plan



Proposed ground floor and first floor plan

DRAFT DECISION LETTER

Address: 42 - 44 James Street, Marylebone, London, W1U 1EU,

Proposal: Alterations including installation of an openable shopfront and alterations to rear first floor roof.

Reference: 16/10563/FULL

Plan Nos:

232 (PL)02 Rev. PL2; 232 (PL)01 Rev. PL2; 232 (PL)01 Rev. PL1; 232 (PL)B1 Rev. PL1.

Case Officer: Alice Dunn

Direct Tel. No. 020 7641 7957

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
- 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.

You must carry out piling, excavation and demolition work only:

- between 08.00 and 18.00 Monday to Friday; and
- not 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 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 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 Stratford Place 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)

- 4 You must close the windows within the shopfronts hereby approved between 21:00 each day and 09.00 the following morning.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 5 You must not play live or recorded music on your property (including amplified and non-amplified music) that is audible in the nearest property, when the shopfront is open.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- When the shopfront hereby approved is open
- 6 (1) Where noise emitted from the proposed internal activity in the development will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the internal activity within the restaurant, 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 when the windows within the shopfront are open, 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 permitted hours of use. The activity-specific noise level should be expressed as LAeqTm,, and shall be representative of the activity operating at its noisiest.
- (2) Where noise emitted from the proposed internal activity in the development will contain tones or will be intermittent, the 'A' weighted sound pressure level from the internal activity within restaurant, 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 when the windows within the shopfront are open, 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 permitted hours of use. The activity-specific noise level should be expressed as LAeqTm, and shall be representative of the activity operating at its noisiest.
- (3) Following completion of the development, you may apply in writing to the City Council for a fixed maximum noise level to be approved when the windows within the shopfront are open. This is to be done by submitting a further noise report including a proposed fixed noise level for approval by the City Council. Your submission of a noise report must include:
- (a) The location of most affected noise sensitive receptor location and the most affected window of it;
 - (b) Distances between the application premises and receptor location/s and any mitigating features that may attenuate the sound level received at the most affected receptor location;
 - (c) Measurements of existing LA90, 15 mins levels recorded one metre outside and in front of the window referred to in (a) above (or a suitable representative position), at times when background noise is at its lowest during the permitted hours of use. This acoustic survey to be conducted in conformity to BS 7445 in respect of measurement methodology and procedures;
 - (d) The lowest existing LA90, 15 mins measurement recorded under (c) above;
 - (e) Measurement evidence and any calculations demonstrating that the activity complies with the planning condition;
 - (f) The proposed maximum noise level to be emitted by the activity.

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 (UDP), 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.

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 that the City Council's Environmental Health Officer has objected to the proposal on the grounds that the removal of the internal staircases within the amalgamated units would adversely affect the arrangements for means of escape in case of fire. In addition, there are also considered to be insufficient customer toilets to support the number of covers.

You are advised to liaise with EHCT to discuss technical requirements in relation to the above matters.

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.