

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 28 March 2017	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	<b>55 Old Compton Street, London, W1D 6HW,</b>		
<b>Proposal</b>	Replacement of existing full height extract duct to rear elevation measuring 450mm x 450mm and associated plant at rear lower flat roof level		
<b>Agent</b>	Peacock and Smith		
<b>On behalf of</b>	Poppies Soho Ltd		
<b>Registered Number</b>	16/03127/FULL	<b>Date amended/ completed</b>	19 May 2016
<b>Date Application Received</b>	7 April 2016		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Soho		

## 1. RECOMMENDATION

Grant conditional permission.

## 2. SUMMARY

The proposal relates to an extract duct and associated plant on the rear elevation. The rear elevation of the premises is visible from St Anne's Church gardens. The basement and ground floor of the property is currently used as a fish and chip shop (Poppies) and the upper floors are in use as residential flats. The site is located within the Soho Conservation Area, the West End Stress Area and Core CAZ.

Prior to the submission of this application there was an existing full height extract duct (pre-existing) on the rear elevation and unfortunately the applicants replaced the existing duct with a larger duct (unauthorised) without planning permission during the application process. The unauthorised duct is closer to residential windows and it became apparent once erected, that it did not resemble the application drawings submitted. Revised drawings have been submitted which show the removal of the unauthorised duct and the installation of a new smaller duct set away from the existing residential windows. The new duct would be located in approximately the same position as the pre-existing duct.

The key issues for consideration:

- The impact of the proposed duct and plant on amenity; and

- The impact of the proposed duct and plant on the character and appearance of the Soho Conservation Area.

It is regrettable that the duct and plant was installed without planning permission and the impact on the residential windows is not acceptable. The proposed duct is set away from the residential windows and is acceptable in terms of impact on residential amenity and design grounds and therefore complies with the policies set out in the Unitary Development Plan (UDP) and Westminster's City Plan (City Plan). It is therefore recommended that permission is granted.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS



Pre-existing extract duct



Unauthorised extract duct



Unauthorised extract duct

## 5. CONSULTATIONS

### SOHO SOCIETY:

No objection.

### ENVIRONMENTAL HEALTH:

No objection.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 19

Total No. of replies: 2

No. of objections: 2

Letters of objection on the following grounds:

- The acoustic report does not adequately assess the impact of smells and noise from the proposed plant.
- Unauthorised ducting has been installed which is larger than shown on the proposed plans and obstructs the residential windows on the upper floors of the building, blocking view and light

### SECOND CONSULTATION

No. Consulted: 21

Total No. of replies: 4

No. of objections: 4

Letters of objection on the following grounds:

- Insufficient detail in the drawings
- Unauthorised ducting is larger than pre-existing and blocks light and view to residential windows on upper floors of the building.
- Noise nuisance from unauthorised duct
- Unauthorised duct is unsightly/an eyesore
- Location of proposed duct should not be closer to residential windows than the pre-existing duct
- Unsatisfactory response from developer causing delay and stress

### THIRD CONSULTATION – CURRENT PROPOSAL

No. Consulted: 25

Total No. of replies: 1

No. of objections: 1

Letter of objection on the following grounds:

- Potential for insulation to increase size of proposed duct
- Proposed plans show duct projects out from the rear elevation further than the previous proposal

- Duct could result in loss of light and view to flats.

PRESS ADVERTISEMENT / SITE NOTICE:

Yes.

## **6. BACKGROUND INFORMATION**

### **6.1 The Application Site**

55 Old Compton Street is an unlisted building located in the Soho Conservation Area and the Core Central Activities Zone. The building is also within the designated West End Stress Area.

The building comprises five storeys plus basement. The application relates to the ground and basement floors of the property which have a lawful use for restaurant (Class A3). The upper floors are in use as residential accommodation (Class C3).

Old Compton Street is characterised by a mix of uses including retail and restaurant uses at ground floor and upper floors in residential and office use.

The rear elevation of the property faces onto the Grade II\* listed St Anne's Churchyard.

### **6.2 Recent Relevant History**

At the time that this planning application was submitted to the City Council in April 2016, the pre-existing extract duct associated with the restaurant use was in situ on the rear elevation of the building. It is unclear whether this extract duct was subject to planning consent, however the duct had been in situ for more than four years and therefore was considered to be lawful.

An enforcement notice was served on the 14 March 2017 which will become effective on 18 April 2017 and requires the unauthorised duct to be removed within 1 month of the notice coming into effect.

## **7. THE PROPOSAL**

Permission is sought for the installation of a full height extract duct to the rear elevation of the building and associated plant at rear lower flat roof level.

The application has been amended to reduce the size of the extract duct to 450mm x 450mm which is in line with the pre-existing duct. The plant at rear flat roof level has also been reduced in size to sit below the parapet wall and the residential windows at first floor level.

The extract duct in situ is unauthorised and has been built closer to the existing residential windows than the extract duct it replaced. The previous duct was set away from the residential windows. The unauthorised duct was installed in July 2016. New plant was also installed to the rear lower flat roof. This plant partially obscured the residential windows at first floor level. As already stated above the unauthorised duct and plant is now the subject of an enforcement notice.

Drawings initially submitted as part of the application were inconsistent and did not accurately reflect the existing or proposed situation and the unauthorised duct was not installed in line with the proposed drawings. Therefore, the City Council has undertaken three rounds of consultation when new drawings were submitted. Officers' are confident that the latest set of drawings are accurate.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

The proposal does not raise any land use issues.

### **8.2 Townscape and Design**

The proposed duct is located in the same position as the pre-existing duct and therefore provided that the duct is painted black, the duct will not have an impact on the character and appearance of the Soho Conservation Area.

### **8.3 Residential Amenity**

Policy ENV6 of the UDP relates to noise pollution and part 1 states that the City Council will require design features and operational measures to minimise and contain noise from developments, to protect noise sensitive properties. Policy ENV7 of the UDP relates to noise from plant and machinery and internal activity and sets out noise standards to be achieved in relation to noise sensitive properties. Policy S29 of the City Plan relates to health, safety and well-being. It states that 'The council will resist proposals that result in an unacceptable material loss of residential amenity and development should aim to improve the residential environment'. Finally, policy S32 (noise) aims to ensure that development 'provides an acceptable noise and vibration climate for occupants and is designed to minimise exposure to vibration and external noise sources'.

#### ***Original proposal – June 2016***

As set out above, the existing and proposed drawings originally submitted with the application were inaccurate. The alignment of the windows on the rear elevation was differed from the application drawings.

The unauthorised duct was installed in July 2016. The duct was installed closer to the residential windows and larger thereby causing an obstruction to the residential windows.

Two objections were received from the first round of consultation on the grounds of increased smells from the new user of the restaurant, noise from the plant, and the duct causing an increase sense of enclosure to the residential windows.

#### ***Second proposal – October 2016***

Additional drawings were submitted as well as a revised acoustic report.



Four objections were received to the revised proposal on the grounds that the plans contained insufficient detail regarding the dimensions of the duct and the length of time taken to deal with the unauthorised duct.

It was considered that the drawings were inaccurate and the application couldn't reasonably be determined.

### ***Third proposal – January 2017***

The application drawings now include dimensions and are an accurate representation of the building. The plant installed at rear flat roof level is partially in front of the first floor windows and this is not acceptable. The proposal shows the plant will not extend in front of the residential windows which is now considered to be acceptable.

The drawings indicate that the proposed duct will be installed away from the residential windows and will be located to the east of an existing drainpipe, which is roughly the same position as a pre-existing duct. The proposed duct will be 400mm x 400mm and will include 50mm of insulation as recommended in the acoustic report. An objection has been received that the depth of insulation is unclear and the total width of the duct, including insulation should not exceed 450mm x 450mm. This is the case as per the submitted drawings. Environmental Health has no objection to the proposal on noise grounds.

An objection is also made on the grounds that duct extends sits too far out from the rear elevation and will cause an obstruction to residential windows. Proposed plans show the proposed duct will project 164mm from the rear elevation. The objector states that as part of the latest proposal the duct would project further from the rear than the pre-existing duct. It is unlikely that the pre-existing duct sat flush with the rear elevation as there would need to be separation from the elevation and the duct for maintenance and vibration reasons. Furthermore the eaves of the building restrict the duct from sitting any closer to the elevation.

Although the grounds for objection are understood and Officers are sympathetic to the resident's concerns, as the proposed duct is now in the same position as the pre-existing duct it is not considered that permission could reasonably be withheld for amenity reasons. A condition is however recommended to ensure that the scheme is implemented by 18 May 2017 to ensure the removal of the unauthorised plant and ductwork in accordance with the enforcement notice. The condition also requires the proposed plant and duct to be completed in their entirety to ensure that ventilation to the restaurant is satisfactory.

#### **8.4 Transportation/Parking**

The proposal does not raise any highways implications.

#### **8.5 Economic Considerations**

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

**8.6 Access**

The proposals do not affect the access to the building.

**8.7 Other UDP/Westminster Policy Considerations**

Not applicable.

**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**

The proposal is not CIL Liable.

**8.11 Environmental Impact Assessment**

Not applicable.

**8.12 Other Issues****9. BACKGROUND PAPERS**

1. Application form
2. Response from Soho Society, dated 2 July 2016
3. Response from Environmental Health dated 12 October 2016
4. Letters from occupier of Top flat, 55 Old Compton Street dated 18 July 2016, 22 October 2016
5. Letters from occupier of Flat 1, 55 Old Compton Street dated 23 June 2016, 26 July 2016, 9 October 2016 and 27 January 2017
6. Letter from occupier of 55 Old Compton Street dated 22 October 2016
7. Letter from occupier of 55 Old Compton Street dated 22 October 2016
8. Enforcement notice 55 Old Compton Street dated 14 March 2017.

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

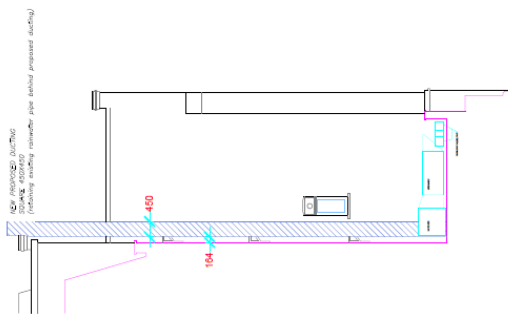
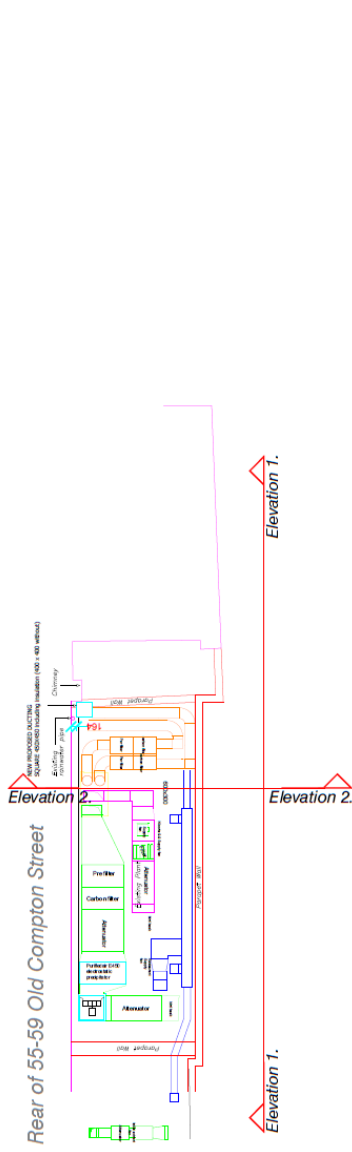
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: MIKE WALTON BY EMAIL AT [mwalton@westminster.gov.uk](mailto:mwalton@westminster.gov.uk)

10. KEY DRAWINGS

Proposed plan/elevation/section

<p>1. All drawings shall be submitted to the Local Planning Authority for approval. The drawings shall be submitted in accordance with the requirements of the Building Regulations and the Town and Country Planning Act 1990.</p> <p>2. The drawings shall be submitted in accordance with the requirements of the Building Regulations and the Town and Country Planning Act 1990.</p> <p>3. The drawings shall be submitted in accordance with the requirements of the Building Regulations and the Town and Country Planning Act 1990.</p> <p>4. The drawings shall be submitted in accordance with the requirements of the Building Regulations and the Town and Country Planning Act 1990.</p>	
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<p><b>BOWMAN RILEY ARCHITECTS</b></p> <p>Shelton Church POPPES FISH AND CHIPS 55-59 OLD COMPTON STREET, SOHO, LONDON, W1D 6HW</p>														
<table border="1"> <tr> <th>Rev</th> <th>Description</th> <th>Date</th> </tr> <tr> <td>1.0</td> <td>Issue for Planning</td> <td>13/11/21</td> </tr> <tr> <td>1.1</td> <td>Issue for Construction</td> <td>13/11/21</td> </tr> </table>	Rev	Description	Date	1.0	Issue for Planning	13/11/21	1.1	Issue for Construction	13/11/21	<table border="1"> <tr> <td>Project Number</td> <td>00000001</td> </tr> <tr> <td>Sheet Number</td> <td>8</td> </tr> </table>	Project Number	00000001	Sheet Number	8
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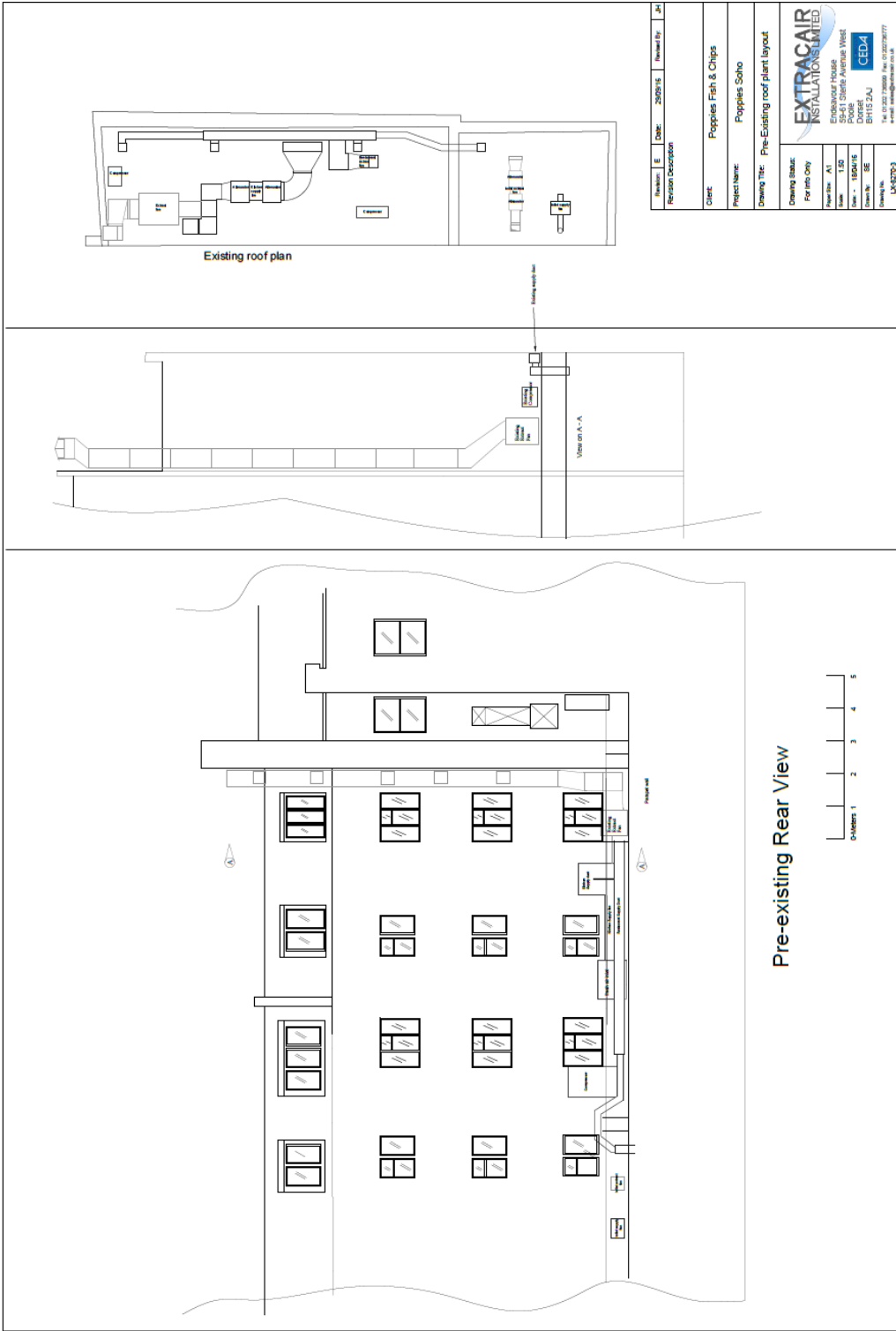
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Elevation 2.



Datum: 99.00m.  
Elevation 1.



Pre-existing plan/elevation/section



**DRAFT DECISION LETTER**

**Address:** 55 Old Compton Street, London, W1D 6HW,  
**Proposal:** Replacement of existing full height extract duct to rear elevation measuring 450mm x 450mm and associated plant at rear lower flat roof level.  
**Reference:** 16/03127/FULL  
**Plan Nos:** 7xxx 000(002) B

**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 (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 remove the unauthorised extract duct and plant and install the new extract duct and plant hereby approved within 2 months of the date of this decision, the works must be completed as per the approved drawings in their entirety.

Reason:

To protect the privacy and environment of people in neighbouring properties, as set out in S29 of Westminster's City Plan (November 2016) and ENV 13 of our Unitary Development Plan that we adopted in January 2007. (R21AC)

- 6 You must paint the extract duct black and keep it that colour. (C26EA)

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 Soho 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)

- 7 The air conditioning/extract/supply air hereby permitted shall not be operated except between 11.30 hours and 00.00 (midnight) hours daily. The chiller condensers can operate on a 24 hour basis.

Reason:

To safeguard the amenity of occupiers of noise sensitive properties and the area generally by ensuring that the plant/machinery hereby permitted is not operated at hours when external background noise levels are quietest thereby preventing noise and vibration nuisance as set out in S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 7 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 (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 Conditions 3 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)

**Informative(s)**

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.