

CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 2 May 2017	Classification For General Release	
Report of Director of Planning		Ward(s) involved	
Subject of Report	Development Site At 25-33, Berners Street, London		
Proposal	Use of part ground and basement floors as gym/ health club/ fitness studio (Class D2).		
Agent	Gerald Eve LLP		
On behalf of	Derwent London Group		
Registered Number	17/01448/FULL	Date amended/ completed	23 February 2017
Date Application Received	21 February 2017		
Historic Building Grade	Unlisted		
Conservation Area	Charlotte Street, West		

1. RECOMMENDATION

Grant conditional permission.

2. SUMMARY

This site relates to three former office buildings on the east side of Berners Street. Planning permission for the redevelopment of the site for a new commercial building of eight storeys plus basement and rooftop plantroom was initially granted in November 2014 and works are substantially complete. The original permission enables use of the ground and basement floors for a range of uses comprising retail (Class A1), restaurant (Class A3) and office (Class B1). This application seeks the use of the main part of the basement and small part of the ground floor for a gym, health club or fitness studio (Class D2). A specific occupier is not known at this stage.

Although the City Council generally places a high priority on retaining retail uses, the building is not yet occupied, and therefore the flexible Class A1, A3 and B1 uses have not yet come into use. The application does not therefore result in the loss of any existing Class A1 retail floorspace. City Plan Policy S20 also protects existing office use, however, as the proposed use is to another commercial use, it is also acceptable in policy terms.

UDP policy SOC 1 deals with the provision of new social and community facilities (both public and private) in general and requires new facilities to be located as near as possible to the residential areas they serve, to have no adverse impact on the amenity of the surrounding area, including the effect of any traffic generated by the use, and to be safe and easy to reach on foot, by cycle and by and by public transport. City Plan policy S34 encourages new social and community uses, including health

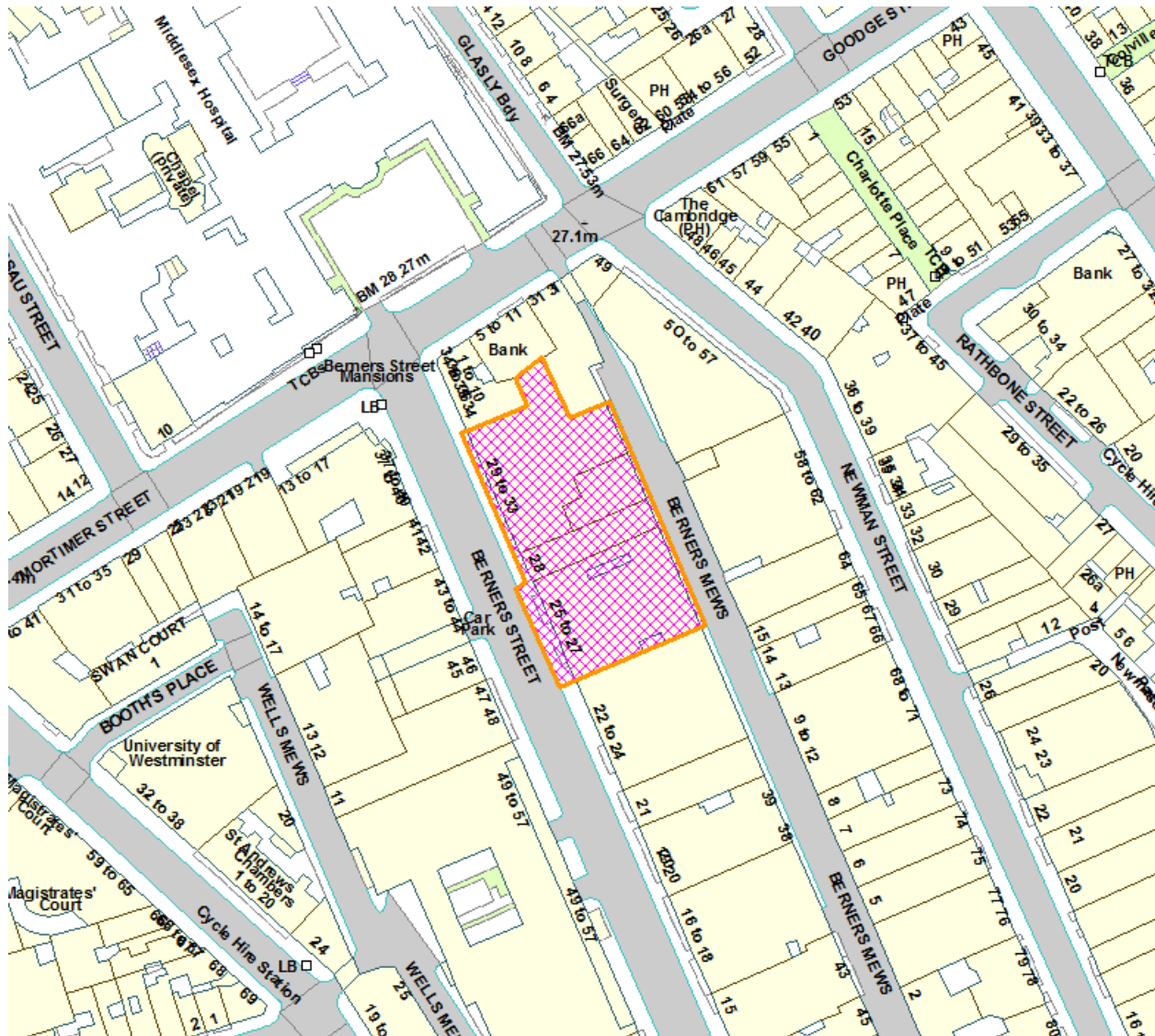
and leisure facilities.

Given this policy context, the provision of a new gym/health facility is considered acceptable in land use terms. However, the application involves a large unit, some 960sqm in floor area, and the proposal is entirely speculative - no details of capacity, and types and sizes of classes or activities, have been submitted at this stage. The applicant has requested operating hours of 06:00 to 23:00 Monday to Friday and 08:00 to 20:00 on Saturdays and Sundays. The entrance to the proposed D2 facility is also within close proximity to existing residential flats at Berners Mansions at 34-36 Berners Street and therefore the impact of the D2 use on residential amenity needs careful assessment. No objections from adjoining residential occupiers have been received. The applicant advises that the future occupier will sign up to an Operational Management Plan which will address how the premises will be managed, including how people arriving at and leaving the premises would be managed. Despite the early hours that the applicant requests, it is recognised that gym users are unlikely to arrive or leave in large numbers and subject to conditions requiring doors and windows to the basement lightwell to be fixed shut and to prevent any music played from being audible outside the premises, it is not considered that the use would be likely to have a material impact on neighbouring residential amenity.

The applicant has also confirmed that no additional air conditioning plant is required to service the proposed D2 use. As plant areas which were approved as part of the original planning permission are shown on the proposed drawings, this plant is once again subject to the Council's standard noise conditions.

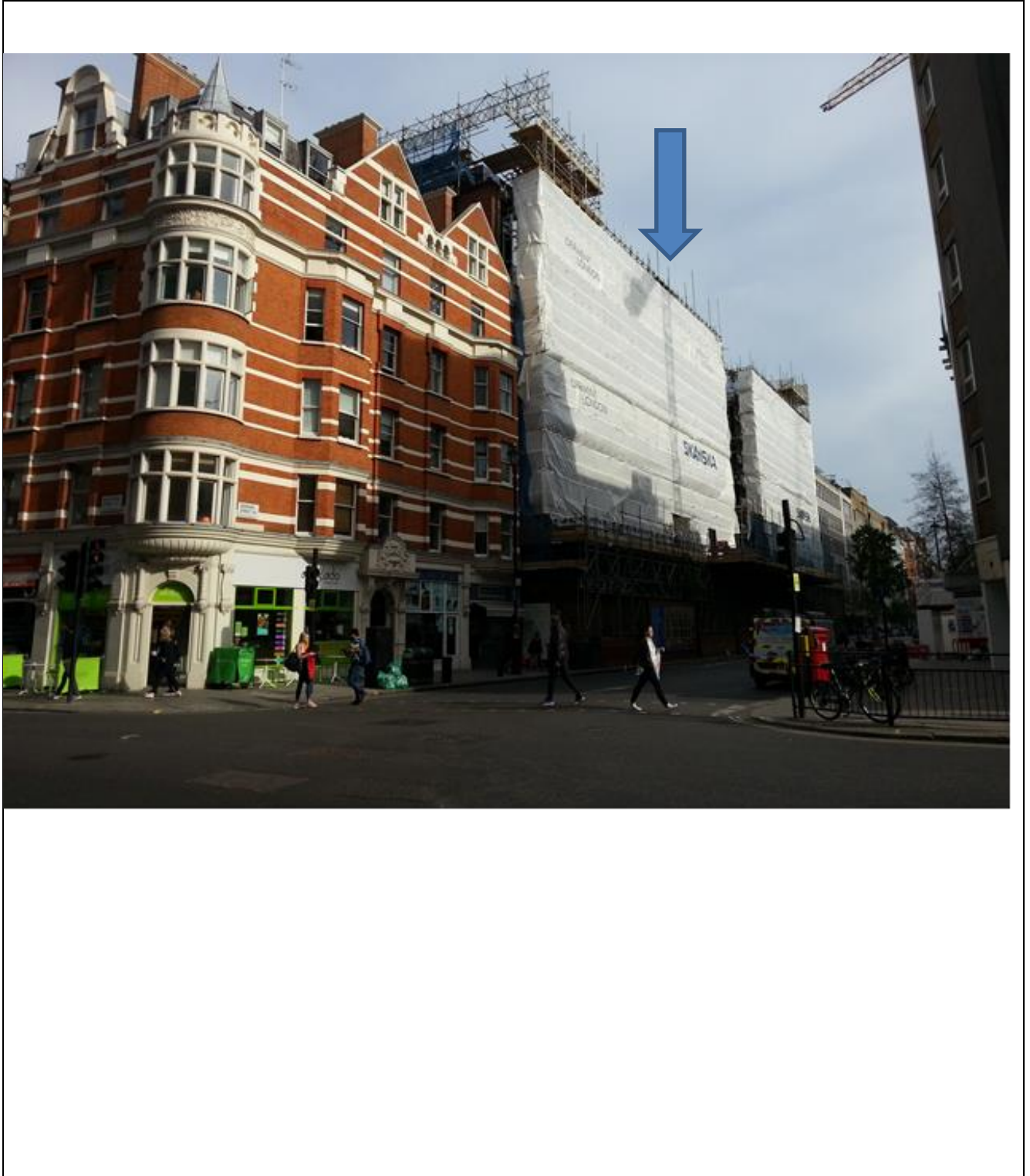
No details of staff numbers have been provided, and whilst cycle parking is shown on the proposed plans, a condition is required to ensure that a proportion are to be dedicated to the proposed gym (whilst retaining sufficient spaces for the remaining uses within the building). Conditions have also been included to ensure that the D2 occupier has access to the waste store on the ground floor and to require the provision of details of shower and changing facilities to ensure that these facilities shown on the proposed plans are retained for future office occupiers (and cyclists in particular) on the upper floors.

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

FITZROVIA NEIGHBOURHOOD ASSOCIATION

No response to date

HIGHWAYS PLANNING MANAGER

No objections subject to conditions

CLEANSING

No objections subject to conditions

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 111; Total No. of replies: 0

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 Recent Relevant History

In November 2014 planning permission was granted for the demolition of existing buildings and erection of replacement building comprising retail (Class A1) and / or cafe/restaurant (Class A3) at part ground and part basement floor levels; offices (Class B1) at part basement, part ground, and first to seventh floor levels (including roof terraces at front seventh floor level and at rear fourth floor level); and plant at roof level.

In December 2015 and in August 2016, S73 applications were granted varying the original planning permission and enabling external alterations to the approved scheme, including plant at rear ground floor, removal of three windows at first floor, and enabling the use of the units at part ground and part basement level for either retail, restaurant and/or office purposes.

7. BACKGROUND PAPERS

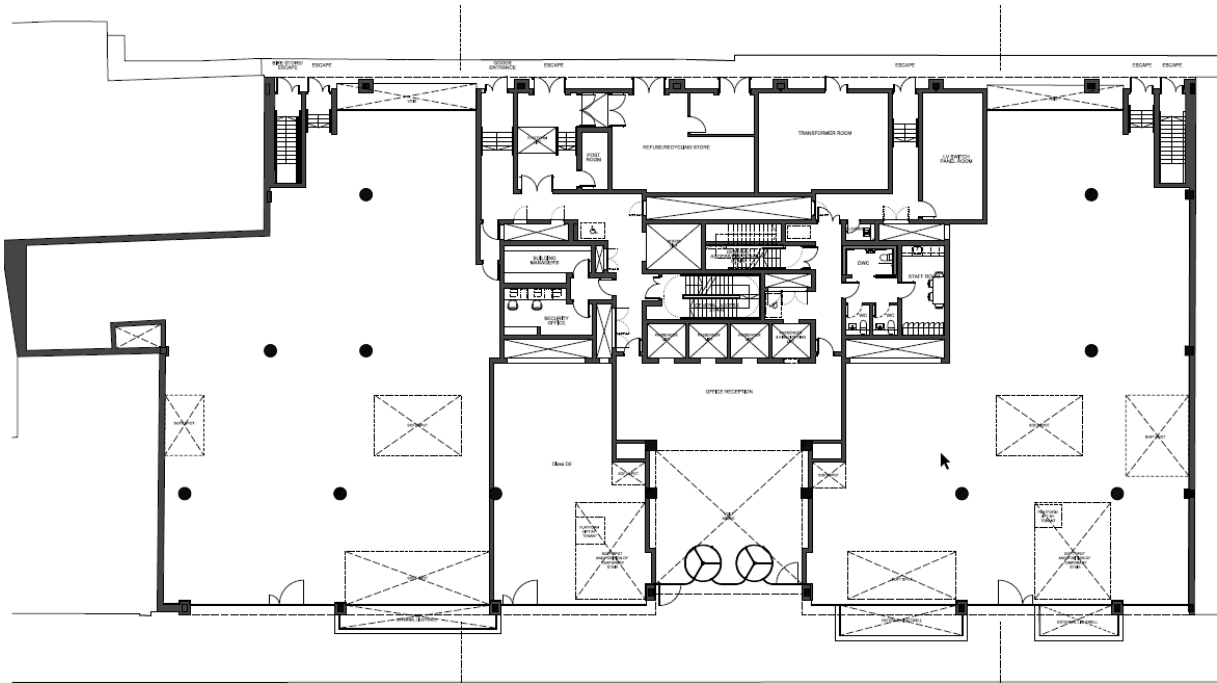
1. Application form
2. Memorandum from Highways Planning Manager dated 13 March 2017
3. Memorandum from Cleansing dated 7 March 2017

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

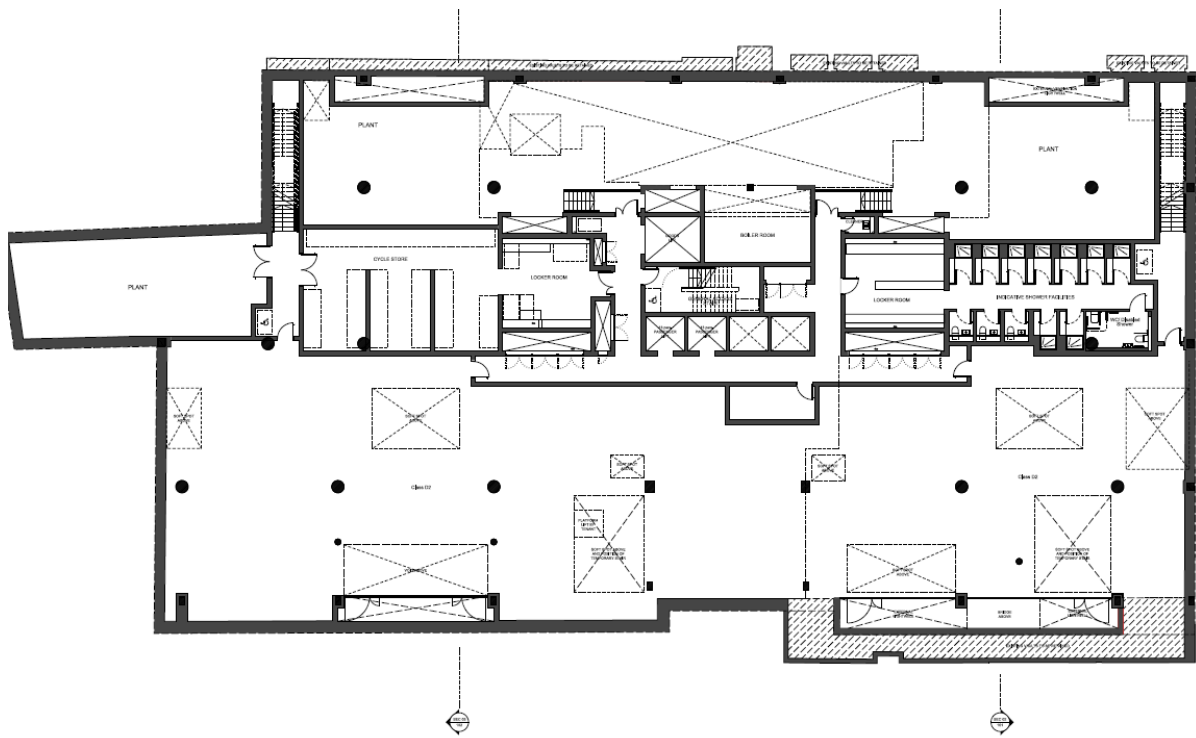
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: PAUL QUAYLE BY EMAIL AT pquayle@westminster.gov.uk

8. KEY DRAWINGS

Proposed ground floor plan



Proposed basement floor plan



DRAFT DECISION LETTER

Address: Development Site At 25-33, Berners Street, London, ,

Proposal: Use of part ground and basement floors as gym/ health club/ fitness studio (Class D2).

Reference: 17/01448/FULL

Plan Nos: 13438 AR L-1 P00 099 Rev G, 13438 AR L00 P00 100 Rev H

Case Officer: Jo Palmer **Direct Tel. No.** 020 7641 2723

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.

- 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 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 D2 use 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 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 the D2 use 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 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. 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.

- 6 Customers shall not be permitted within the D2 premises before 06.00 or after 23.00 on Monday to Friday (not including bank holidays and public holidays), before 08.00 or after 20.00 on Saturday and Sundays, bank holidays and public holidays. (C12BD)

Reason:

To make sure that the use will not cause nuisance for people in the area. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and SOC1 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

- 7 No music played within the D2 premises shall be audible outside the building.

Reason:

To make sure that the use will not cause nuisance for people in the area. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and SOC1 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

- 8 You must apply to us for approval of a management plan to show how you will prevent customers who are arriving and leaving the D2 premises from causing nuisance for people in the area, including people who live in nearby buildings. You must not start the D2 use until we have approved what you have sent us. You must then carry out the measures included in the management plan at all times that the D2 premises is in use.

Reason:

To make sure that the use will not cause nuisance for people in the area. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and SOC1 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

- 9 With the exception of the entrance door, you must keep the doors and windows in the D2 premises closed. You can use them in an emergency or for maintenance only.

Reason:

To make sure that the use will not cause nuisance for people in the area. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and SOC1 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

- 10 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 D2 use. (C14EC)

Reason:

To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan (November 2016) and ENV 12 of our Unitary Development Plan that we adopted in January 2007.

- 11 You must apply to us for approval of details of secure cycle storage for the D2 use. You must not start any work on this part of the development until we have approved what you have sent us. You must then provide the cycle storage in line with the approved details prior to occupation. You must not use the cycle storage for any other purpose.

Reason:

To provide cycle parking spaces for people using the development as set out in Policy 6.9 (Table 6.3) of the London Plan 2015.

- 12 You must apply to us for approval of details of shower and changing facilities for the D2 use. 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 shower and changing facilities according to these details, clearly mark the stores and make them available at all times to everyone using the D2 use.

Reason:

In order to ensure sufficient provision of on-site changing facilities and showers for cyclists as set out in Policy 6.9 of the London Plan 2015.

- 13 You must use the property only for gym, fitness or health club use. You must not use it for any other purpose, including any within Class D2 of the Town and Country Planning (Use Classes) Order 1987 as amended April 2005 (or any equivalent class in any order that may replace it). (C05AB)

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet SOC1 of our Unitary Development Plan that we adopted in January 2007. (R05AB)

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 Please contact our Cleansing section on 020 7641 7962 about your arrangements for storing and collecting waste. (I08AA)

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.