

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 18 July 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>31-33 , Shepherd Market, London, W1J 7PT</b>		
<b>Proposal</b>	Use of premises as a mixed use restaurant and outdoor shisha smoking venue (sui generis) including use of an area of the public highway measuring 2.1m x 7.6m for the placing of 12 tables and 24 chairs. Installation of two awnings along the Shepherd Market (retrospective application).		
<b>Agent</b>	Mr Motaz Aladas		
<b>On behalf of</b>	Mr Motaz Aladas		
<b>Registered Number</b>	17/03726/FULL	<b>Date amended/ completed</b>	2 May 2017
<b>Date Application Received</b>	2 May 2017		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Mayfair		

## 1. RECOMMENDATION

Grant conditional permission for a temporary period of one year.

## 2. SUMMARY

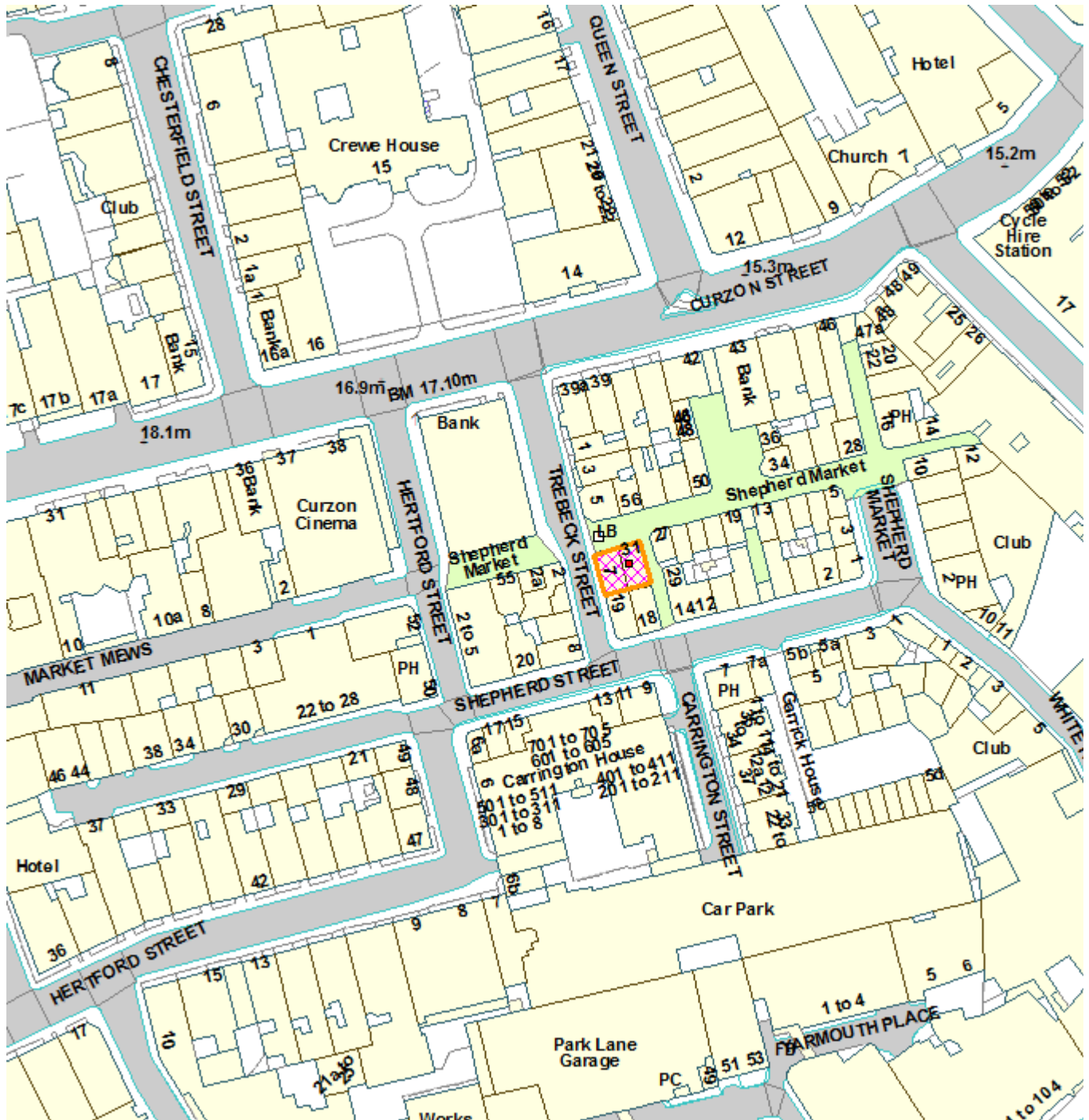
The application site comprises a three storeys plus basement building on the south east corner of the junction between Shepherd's Market and Trebeck Street. The site is not listed, but is located within the Mayfair Conservation Area. The lawful use of the basement and ground floors is as a restaurant (Class A3) with office on the first floor and residential accommodation on the second floor.

Permission is sought for the use of the basement and ground floor for restaurant and shisha purposes (sui generis), use of an area of the public highway measuring 2.1m x 7.6m for the placing of 12 tables and 24 chairs and the installation of two awnings along the Shepherd Market frontage.

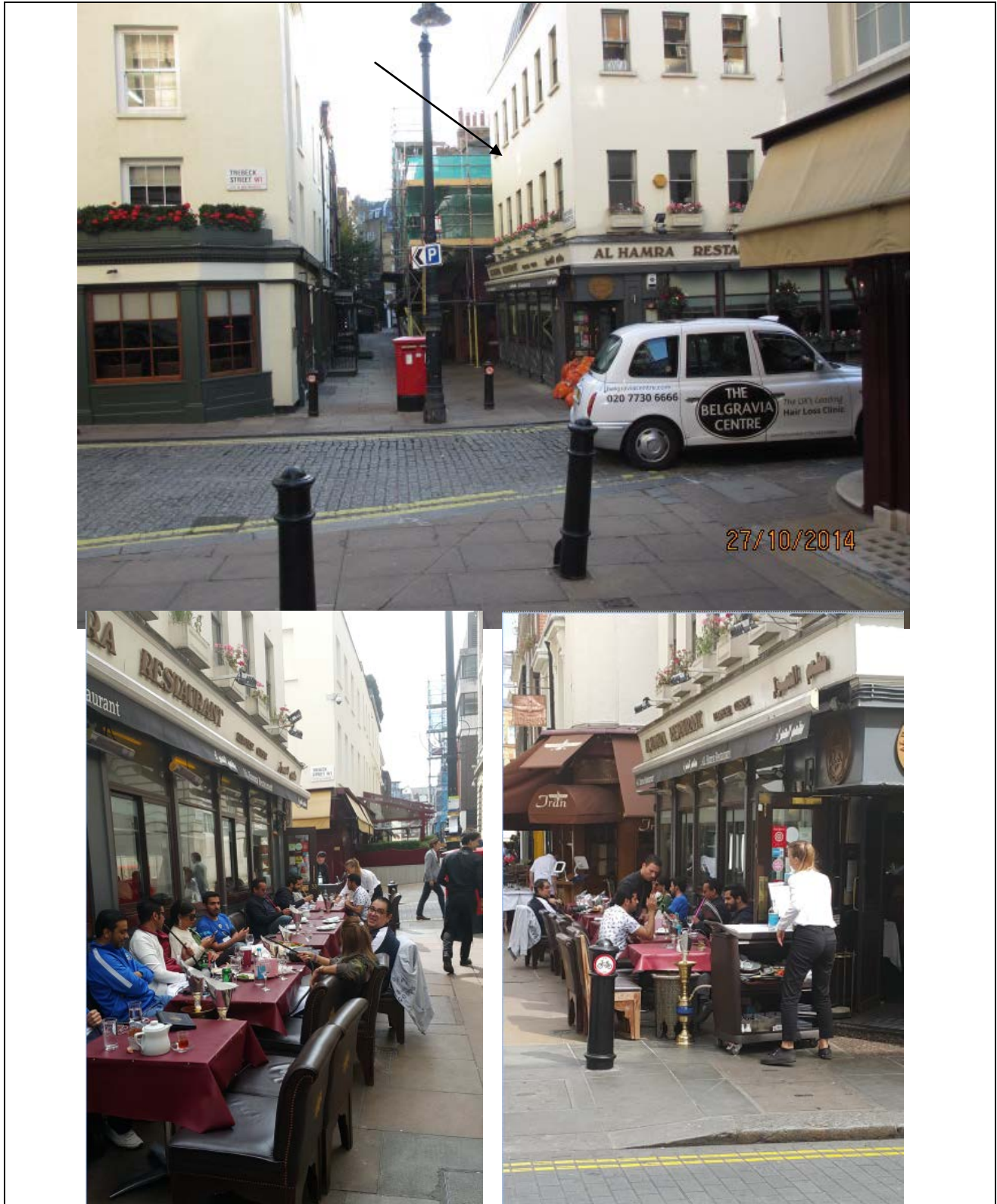
The key issue is the impact of the proposed use on local amenity.

The proposal is considered acceptable in land use, amenity, design and conservation grounds (subject to amending conditions) and complies with the policies set out in the Unitary Development Plan (UDP) and Westminster's City Plan and is therefore recommended for approval for a temporary period of one year to enable the amenity aspects of the proposal to be monitored.

### 3. LOCATION PLAN



4. PHOTOGRAPHS



## 5. CONSULTATIONS

### RESIDENTS SOCIETY OF MAYFAIR & ST. JAMES'S

Object on the following grounds:

- Late even noise
- Smoke in a residential area

### CLEANSING

No objection subject to conditions

### HIGHWAY PLANNING

No objection subject to conditions limiting the use of the highway

### PLANNING ENFORCEMENT

No objection

### ENVIRONMENTAL HEALTH

No objection

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 24; Total No. of replies: 1

No. in support: 0

No. of objections: 1, on the grounds of smells and plumes, detriment to the health and enjoyment of patrons.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application site comprises a three storeys plus basement building on the south east corner of the junction between Shepherd's Market and Trebeck Street. The site is not listed, but is located within the Mayfair Conservation Area.

The lawful use of the basement and ground floor is as a long-standing restaurant (Class A3) with office and residential accommodation on the upper floors. The upper floors, however, are not the subject to the application. There are tables and chairs with the capacity for 24 customers placed on the highway along the Shepherd Market frontage, being used as area for serving food, drink and shisha (unlawfully) in connection with the existing restaurant. The Council has granted permission for the tables and chairs since the 1990s.

The basement and ground floor to which the application relates equates to 165 m2 GIA.

The immediate surrounding properties are largely in retail or restaurant uses at ground floor level with a mix of residential and commercial on the upper floors.

## 6.2 Recent Relevant History

### 31-33 Shepherd Market

Permission was granted on the 26 June 2015 (ref: 15/03834/TCH) for the use of an area of the public highway measuring 2.1m x 6.85m for the placing of 12 tables and 24 chairs in connection with adjacent ground floor unit. This permission expired on 30<sup>th</sup> June 2017.

There is an active and on-going enforcement investigation at this address (ref: 16/61530/U) in relation to the unauthorised and material change of use of the premises from an A3 restaurant to a sui generis mixture of restaurant and for the smoking of Shisha.

A certificate of lawfulness was refused on the 09 August 2016 for the use of the premises as a Class A3 (restaurant) with ancillary shisha element. This determination was upheld within an appeal decision dated 16 March 2017 (ref: APP/X5990/W/16/3154409).

### 5 Trebeck Street

Permission has also previously been granted for the placing of external seating outside 5 Trebeck Street along the Shepherd Market frontage, opposite the application site, on a number of occasions. The most recent of which (ref: 16/06975/TCH) permitted the use of the highway for the placing 16 tables and 32 chairs in an area 2m x 11m in association with the existing ground restaurant between 11.00 and 23.00 daily. This permission expires 30 September 2018.

## 7. THE PROPOSAL

Retrospective permission is sought for the continued use of the basement and ground floor for restaurant and shisha purposes (sui generis). It is proposed that the shisha will be served within an area of the public highway measuring 2.1m x 6.85m where 12 tables and 24 chairs are proposed. This is same number of tables and chairs in the same area that the Council has previously approved. The application also seeks to install two replacement awnings along the Shepherd Market frontage.

The proposed shisha preparation area is located in the basement in a separate area from the kitchen. The charcoal which is placed on top of the shisha pipe in order to burn the flavoured tobacco is burnt in the basement. The smoke from this is connected internally to the existing kitchen extract duct.

The shisha pipes will be served through the side door on the Shepherd Market frontage and after use they will be cleaned in the same area.

The restaurant and shisha premises will be able to accommodate 104 covers at full capacity; however shisha will only be able to be served externally which has the capacity for 24 customers. The proposed operating hours of the restaurant (set by their licence) are 10.00 to 00.00 hours (midnight) Monday to Saturday and 10.00 to 23.30 hours on Sundays; however, the use of the external tables and chairs terminates at 23.00 daily.

The application has been amended during the course of its consideration to remove side valances on the proposed awnings.

## 8. DETAILED CONSIDERATIONS

### 8.1 Land Use and Amenity

#### Loss of restaurant floorspace

The premises would effectively continue to operate as a restaurant but technically it would change from Class A3 to a sui generis use. There is no policy to protect the loss of restaurant (Class A3) floorspace to another retail type unit in the CAZ; therefore the proposal is acceptable in principle in land use terms.

#### Impact of restaurant/ shisha smoking venue on character and function of the area

City Plan Policy S6 states that “the core CAZ is an appropriate location for a range of commercial and cultural uses”, subject to a number of priorities including (and of relevance):

- “Supporting strategically important clusters of uses consistent with enabling the growth and evolution of places to ensure that area retains its globally important function as a business location.....”

Shepherd’s Market, at street level, is predominantly characterised by boutique shops (Class A1) and restaurants (Class A3) offering a variety of cuisines. The majority of premises in proximity to the application site have tables and chairs on the public highway.

The application premises is occupied by Al Hamra Restaurant, which offers traditional Lebanese cuisine. Shisha smoking is synonymous with the Lebanese and wider middle eastern community and is an authentic element of their customers’ experience. As such, it is considered that the introduction of shisha to be served within the external seating area associated with the existing restaurant is an authentic part of the existing restaurant.

#### Proposed shisha/restaurant (Sui Generis) floorspace

The proposed shisha/restaurant use comprises 165m<sup>2</sup> GIA (excluding the external seating) and Policy TACE8 of the UDP applies. This relates to entertainment uses which may be permissible. TACE8(B) states that permission will generally be granted for proposals where the City Council is satisfied that the proposed development has no adverse effect upon residential amenity or local environmental quality as a result of noise; vibration; smells; increased late night activity; increased parking and traffic and no adverse effect on the character or function of its area.

The Mayfair Association and a member of the public who resides in Lancaster Gate (and appears to be a visitor to the area) have objected to the shisha element of the proposal, commenting that it will result in smells and plumes, detrimental to the health and enjoyment of patrons and residents and an increase noise and disturbance in a residential area in the evening.

The existing premises license for the premises controls the restaurant opening times (10:00 – 00:00 Monday to Friday, no restrictions on Saturdays and from 12:00 to 23:30 on Sundays); however, there is no known planning history controlling the hours of operation or number of covers within the existing restaurant. The conditions proposed for this decision would ensure that the use would essentially be a sit-down shisha parlour/restaurant (limited to 104 covers (80 internally and 24 externally). Furthermore the ancillary bar could be limited to a small part of the premises, to be used only by diners or shisha smokers before and after meals: a condition has been recommended to ensure that the bar area shall not exceed 15% of the proposed shisha/restaurant premises. The hours of opening would be restricted to the terminal hour of 00:00 Monday to Saturday and 23:30 on Sundays with service starting from 10:00 daily.

A number of permissions have been permitted for tables and chairs in connection with the existing restaurant occupier for in excess of 20 years, with comparable hours, layout and with the capacity for 24 customers (as proposed). Shisha has been served in the premises since September 2015 (as a minimum). There has been one known complaint regarding noise and shisha smoke at 10:30 on the 29 July 2016 from a residential occupant within 27 Shepherd's Market. No other complaints have been received in relation to the customers utilising the external seating within the last 20 years as such it is considered that this was an isolated incident and not representative of the management of the current occupier.

It is important to note that the outside seating area could be used for normal smoking purposes and there is no reason to believe that customers consuming shisha in the external seating area would have a materially different impact than the customers currently utilising the same area for dining purposes.

In line with the 2015 consent for tables and chairs which expired on the 30 June 2017, it is proposed to utilise the tables and chairs on the highway from 11:00 to 23:00 daily. Despite the objection on the late night disturbance, the hours proposed are within the generally acceptable hours set out in the UDP.

With the imposition of the above conditions including a restriction on the capacity to 104 diners (including external seating), it is considered that there will be no material increase in noise disturbance issues as a result of the shisha/restaurant use and offers better control over the existing situation.

According to the British Heart Foundation, shisha smoke releases toxins including carbon monoxide and heavy metals. The nearest residential window is located 7.1m above the ground of the external seating area. Environmental Health have reviewed the proposal. They have stated that the impact of the shisha smokers is difficultly to quantify, but they do not believe they can object to this proposal on this basis. Due to the potential impacts associated with the smoke from the shisha use, it is recommended that permission is granted for a temporary period of one year in the first instance to enable the situation to be monitored.

The impacts on parking, traffic and highways obstruction are discussed in section 8.4 below.

## 8.2 Townscape and Design

The proposed awnings (to be conditioned to be canvas) and external furniture are considered acceptable in terms of its design and materials. The works are considered to preserve and enhance the character and appearance of the Mayfair Conservation Area. The proposals therefore comply with S28 of Westminster's City Plan, DES 1, DES 5 and DES 9, of Westminster's Unitary Development Plan (adopted January 2007) and SPG 'Shopfronts, Blinds and Signs' (adopted May 1993).

## 8.3 Transportation/Parking including Tables and Chairs on the Highway

The Highways Planning Manager raises no objections to the proposed use and considers that it is unlikely to have a significant impact on car parking in the area. The site is also well served by public transport.

### Servicing

UDP TRANS20 requires off street servicing. No off-street servicing is proposed. The site is located within a Controlled Parking Zone, which means that single/double yellow lines in the vicinity can allow loading and unloading to occur. The largest regular servicing vehicle expected to be associated with the development is the refuse collection vehicle.

The Highways Planning Manager is satisfied that the servicing requirements are not expected to have an adverse impact on the public highway.

### Cycle parking

The current restaurant has no cycle parking. No cycle parking has been shown on the proposed drawings. To comply with the London Plan (as amended) a minimum of two cycle spaces are required. Given there is no change to the restaurant internally at ground floor level and the constrained internal stair (narrow and winding) leading to the basement which is used to access the kitchen and the proposed shisha preparation area, it is considered that it would be unreasonable to secure these spaces by condition.

### Tables and chairs

Tables and chairs on the footway are controlled by policy TACE 11 of the City of Westminster Unitary Development Plan (UDP) 2007. This states that permission will only be granted when such a proposal fulfil a number of criteria, including that they will not cause an obstruction, unacceptably intensify the existing use, have a detrimental effect on the character or appearance of the area nor cause a nuisance to residents.

The proposed layout for the external tables and chair is comparable to the 26 June 2015 permission in terms of the dimensions of the seating area and furniture layout, albeit that the seating would now utilise an extra 0.75m along the Shepherd Market frontage. With the exception of whether or not the proposal causes an obstruction, the other criteria have been discussed in sections 8.1 and 8.2 above.

This section of the pedestrianised Shepherd Market measures 5.82m in width and it is proposed that the tables and chairs project 2.1m out from the front of the building, which



leaves 3.72m remaining width. Due to the presence of consented tables and chairs outside 5 Trebeck Street (along the Shepherd Market frontage) which project 2m from the building line opposite 31-33 Shepherd's Market, this leave 1.72m pedestrian clearway. The normal highway standard is to ensure that a maximum of 50% of the pedestrian street is occupied by commercial activity (25% on either side) with a minimum of 2m left clear for pedestrians as stipulated by the Council's 'Westminster Way – Public realm strategy, Design principles and practice' . This standard is not quite achieved by this proposal, however, given the location and the previous permissions allowing identical areas (in terms of width) to be used, it is considered acceptable in highways terms.

As with all tables and chairs approvals, permission would be granted for a temporary period only, initially for one year and then normally two years for subsequent renewals.

#### **8.4 Economic Considerations**

Any economic benefits generated are considered to be minimal.

#### **8.5 Access**

The existing access arrangements to the premises are unchanged.

#### **8.6 Other UDP/Westminster Policy Considerations**

No specific waste store for waste and recyclable materials is illustrated on the plans. This will be secured by a planning condition within two months of issuing a decision.

#### **8.7 London Plan**

This application raises no 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 CIL requirements nor planning obligations.

#### **8.10 Environmental Impact Assessment**

The proposal is of insufficient scale as to trigger an environmental assessment.

### **9. BACKGROUND PAPERS**

1. Application form
2. Response from Residents Society Of Mayfair & St. James's, dated 24 May 2017
3. Response from Planning Enforcement Team, dated 15 May 2017
4. Response from Environmental Health, dated 7 June 2017

5. Response from Environmental Health, dated 14 June 2017
6. Response from Highways Planning Manager, dated 30 June 2017
7. Letter from occupier of Flat 19, 100 Lancaster Gate, dated 31 May 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](mailto:PQUAYLE@WESTMINSTER.GOV.UK).

### 10. KEY DRAWINGS



**DRAFT DECISION LETTER**

**Address:** 31-33 , Shepherd Market, London, W1J 7PT

**Proposal:** Use of premises as a mixed use restaurant and outdoor shisha smoking venue (sui generis) including use of an area of the public highway measuring 2.1m x 7.6m for the placing of 12 tables and 24 chairs. Installation of two awnings along the Shepherd Market frontage.

**Reference:** 17/03726/FULL

**Plan Nos:** Drawing AC/31-33/2017/A received 26 June 2017

**Case Officer:** Damian Lavelle

**Direct Tel. No.** 020 7641 5974

**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 You must not sell any hot-food take-away on the premises, nor operate a delivery service, even as an ancillary part of the shisha/restaurant use (Sui Generis). (C05CB)

Reason:

We cannot grant planning permission for unrestricted use within Class A3 because it would not meet Class TACE 8 of our Unitary Development Plan that we adopted in January 2007, and because of the special circumstances of this case. (R05BB)

- 4 The provision of a bar and bar seating must not take up more than 15% of the floor area of the restaurant premises. You must use the bar to serve shisha/restaurant customers only, before, during or after their meals or while smoking shisha.

Reason:

To prevent a use that would be unacceptable because of the character and function of this part of the Mayfair Conservation Area. This is in line with S24 of Westminster's City Plan adopted November 2016 and TACE 8 of our Unitary Development Plan that we adopted in January 2007.

- 5 You must not allow more than 80 customers into the property at any one time (including any customers waiting at a bar) and 24 customers externally utilising the tables and chairs on the highway.

Reason:

To prevent a use that would be unacceptable because of the character and function of this part of the Mayfair Conservation Area. This is in line with S24 of Westminster's City Plan adopted November 2016 and TACE 8 of our Unitary Development Plan that we adopted in January 2007.

- 6 You must not play live or recorded music on your property that will be audible externally or in the adjacent properties.

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)

- 7 Customers shall not be permitted within the shisha/restaurant premises before 10:00 or after 00:00 Monday to Saturday and before 10:00 or after 23:30 on Sunday.

Reason:

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

- 8 You must apply to us for approval of details of how waste is going to be stored on the site within 2 months of the issuing of this decision notice. You must then provide the waste store in line with the approved details, and clearly mark it and make it available at all times to everyone using the premises. You must not use the waste store for any other purpose. (C14CD)

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. (R14BD)

- 9 The restaurant/shisha use (Sui Generis) use allowed by this permission can continue until 31 July 2018. After that the land must return to its previous condition and use. (C03AA)

Reason:

We cannot give you permanent permission as the area in question is, and is intended to remain, public highway and Section 130 (1) of the Highways Act 1980 states that "It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority". We also need to assess the effect of this activity regularly to make sure it meets S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. For the above reasons, and not because this is seen a form of trial period, we can therefore only grant a temporary permission.

- 12 You must not put the tables and chairs in any other position than that shown on drawing AC/31-33/2017/A received 26 June 2017. (C25AA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 13 You can only put the tables and chairs on the pavement between 11:00 and 23:00. (C25BA)

Reason:

To protect neighbouring residents from noise and disturbance as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 and TACE 11 of our Unitary Development Plan that we adopted in January 2007.

- 14 The tables and chairs must only be used by customers of the restaurant/shisha use on the basement and ground floor of 31-33 Shepherd's Market. (C25CA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 15 This use of the pavement may continue until 31 July 2018. You must then remove the tables and chairs. (C25DA)

Reason:

We cannot give you permanent permission as the area in question is, and is intended to remain, public highway and Section 130 (1) of the Highways Act 1980 states that "It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority". We also need to assess the effect of this activity regularly to make sure it meets S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. For the above reasons, and not because this is seen a form of trial period, we can therefore only grant a temporary permission.

- 16 You can only put out on the pavement the tables and chairs shown on drawing AC/31-33/2017/A received 26 June 2017. No other furniture, equipment or screening shall be placed on the pavement in association with the tables and chairs hereby approved.

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

**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 cannot put tables and chairs in the area unless you have a street trading licence., , If you want to know about the progress of your application for a licence, you can contact our Licensing Service on 020 7641 8549. If you apply for a licence and then decide to change the layout of the tables and chairs, you may have to apply again for planning permission. You can discuss this with the planning officer whose name appears at the top of this letter., , Please remember that once you have a licence you must keep the tables and chairs within the agreed area at all times. (I47AB)
- 3 You must keep the tables and chairs within the area shown at all times. We will monitor this closely and may withdraw your street trading licence if you put them outside this area. (I48AA)
- 4 In line with Section 130 (1) of the Highways Act 1980, we cannot give you permanent permission for the proposed placing of tables and chairs on the highway can only be granted on a temporary basis therefore any future renewals (if permitted) will be temporary in nature.

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.