

CITY OF WESTMINSTER			
PLANNING APPLICATIONS COMMITTEE	Date 18 July 2017	Classification For General Release	
Report of Director of Planning		Ward(s) involved Marylebone High Street	
Subject of Report	8-13 Bird Street, London, W1U 1BU		
Proposal	<ol style="list-style-type: none"> 1. Installation of an openable shopfront and aluminium and glass entrance screen. 2. Use of an area of the public highway measuring 14.65m x 0.79m for the placing of 12 chairs and 6 tables in connection with restaurant use. 		
Agent	Ian Thompson Architecture		
On behalf of	Busaba Eathai Ltd		
Registered Number	<ol style="list-style-type: none"> 1. 17/02499/FULL 2. 17/03483/TCH 	Date amended/completed	<ol style="list-style-type: none"> 1. 22 March 2017 2. 16 May 2017
Date Application Received	<ol style="list-style-type: none"> 1. 21 March 2017 2. 21 April 2017 		
Historic Building Grade	Unlisted		
Conservation Area	Not applicable		

1. RECOMMENDATION

1. Refuse planning permission – Amenity grounds
2. Refuse planning permission – Amenity and highway safety grounds.

2. SUMMARY

The application site is an unlisted building located outside a conservation area, but which lies within the Core Central Activities Zone (CAZ). The building comprises a ground floor restaurant and residential flats at first to ninth floor levels.

Separate applications have been submitted for the installation of a new entrance and a partially new shopfront to the restaurant, incorporating openable windows, and for the placing of tables and chairs on the highways in association with the restaurant use.

The restaurant has an existing lawful openable shopfront element to the north eastern elevation of the property. The current shopfront application is for the extension of the openable shopfront by one additional bay and an aluminium framed glazed entrance screen on the corner of the site at the Bird Street/Barrett Street junction. Several objections have been received on design grounds to the shopfront application and on amenity grounds on both applications.

The key issues for consideration are:

- The impact of the opening windows upon the amenities of neighbouring residential properties.
- The impact of the openable shopfront upon the appearance of the existing building.
- The impact of the tables and chairs upon the amenities of neighbouring residential properties.
- The impact of the tables and chairs on pedestrian safety.

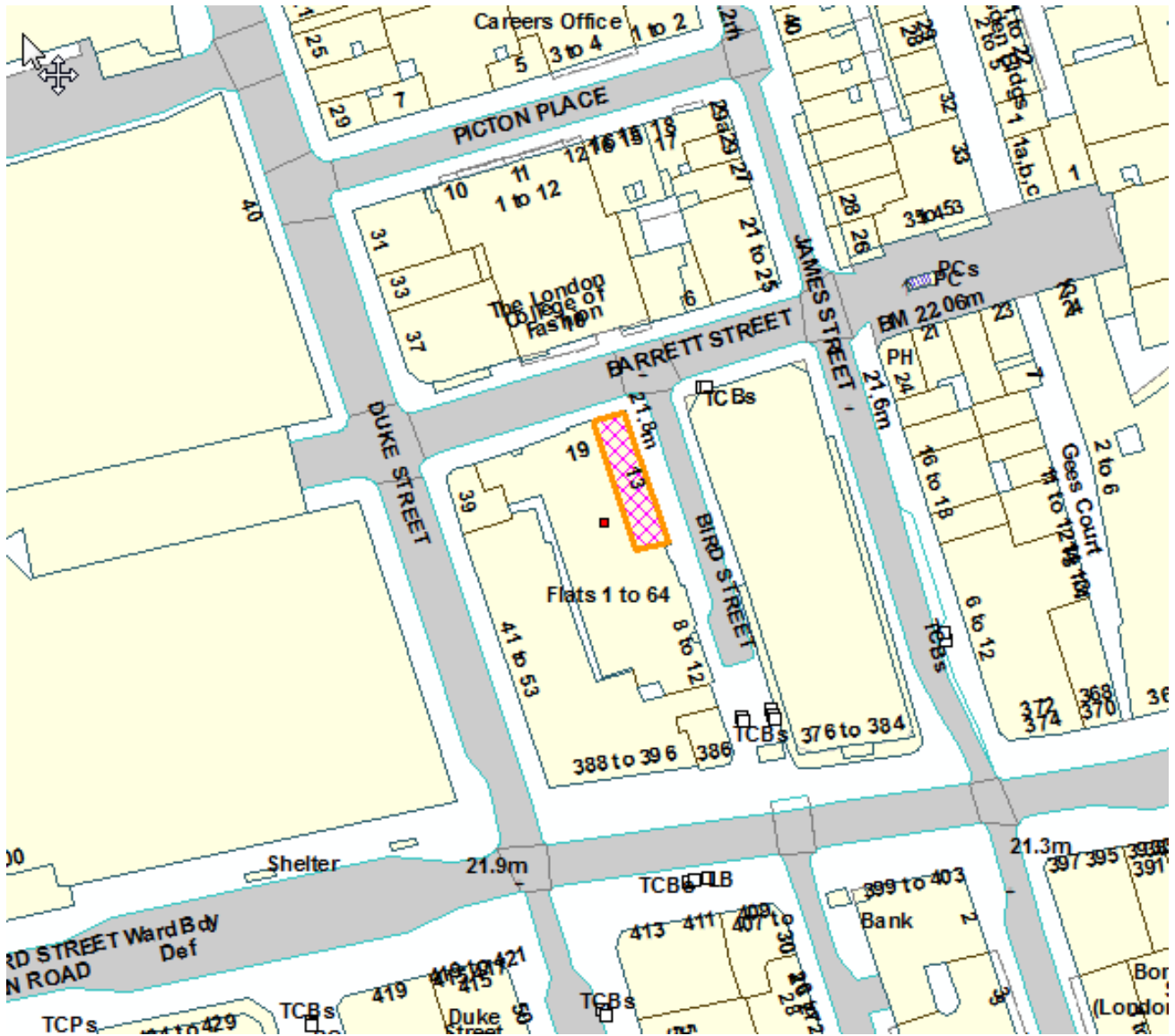
Previous proposals for the installation of an openable shopfront on the site were dismissed on appeal, on design grounds only. Retrospective permission was subsequently granted for an openable shopfront of a revised design. It is considered that the additional openable element applied for in this application would have a greater impact upon the amenity of neighbouring occupiers due to the location of the internal bar and seating area.

It should be noted that Bird Street has recently benefitted from temporary public realm works on behalf of New West End Company (NVEC), to provide temporary design alterations to Bird Street. This was done to enliven the street, making it more inviting to pedestrians with improved pedestrian access between Oxford Street and the streets to the north. The scheme, permitted in December 2016, allows the installation of five kiosks along the eastern side of the Bird Street and associated landscaping works, namely the laying of artificial grass, which results in the pedestrianisation of the street. This was for a temporary period until 6th December 2017.

The application for the openable shopfront is considered to be unacceptable in amenity terms and fails to comply with ENV 6 and ENV 7 of our Unitary Development Plan and Policy S29 and S32 of our City Plan and is therefore recommended for refusal. However, it's design matches the existing openable element of the shopfront and as such it is considered to be acceptable in design terms.

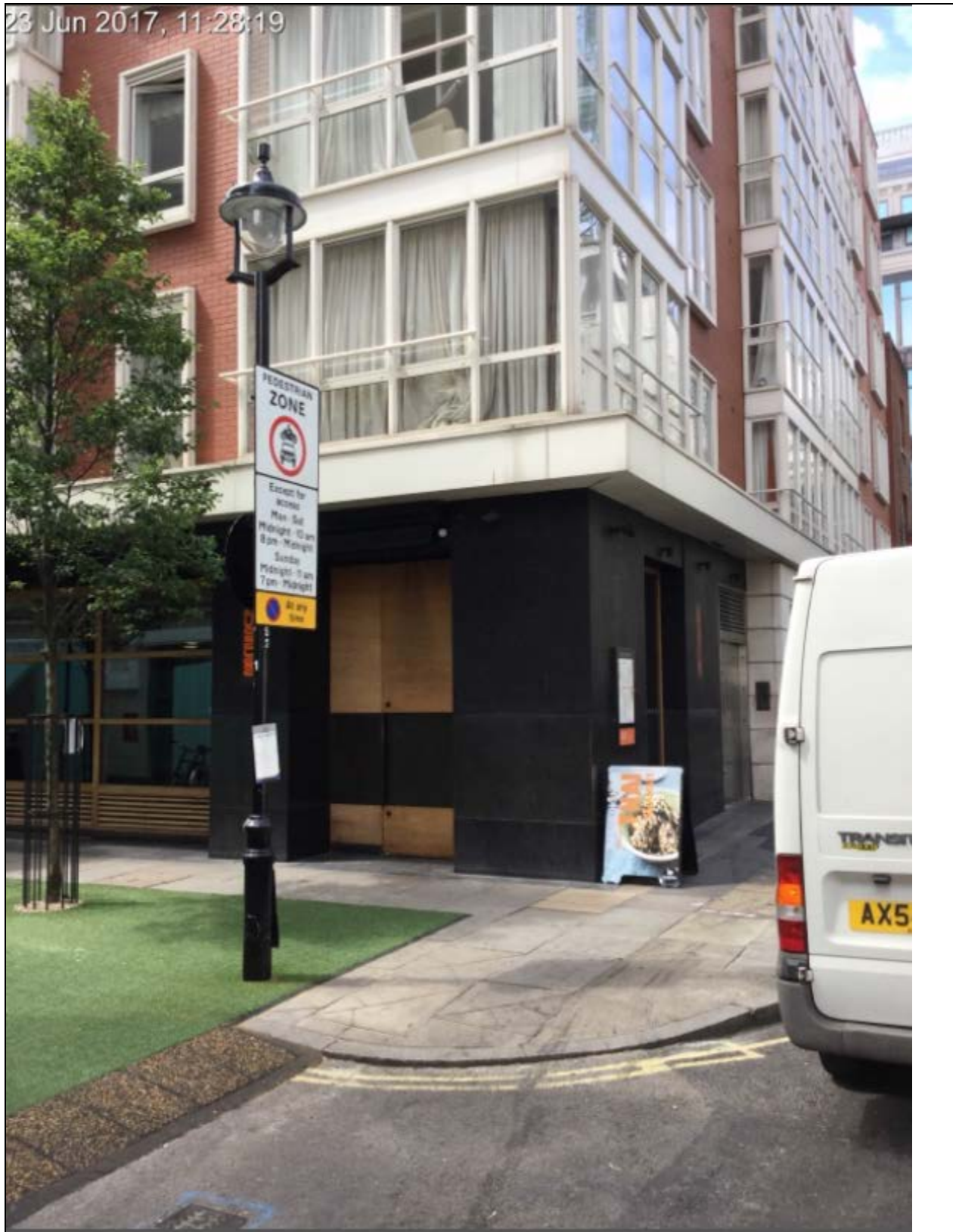
The application for the tables and chairs is considered to be unacceptable in highways and amenity terms and fails to comply with Policy ENV 6, TRANS 3 and TACE 11 of our Unitary Development Plan and S29 and S32 of the City Plan policies and is therefore recommended for refusal.

3. LOCATION PLAN



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4. PHOTOGRAPHS



23 Jun 2017, 11:28:23



5. CONSULTATIONS

Application 1 (shopfront)

MARYLEBONE ASSOCIATION:

No objection

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 123

Total No. of replies: 10

No. of objections: 10 raising the following concerns:

Amenity

Adverse impact on the amenities of neighbouring residential properties as a result of noise disturbance and nuisance from food odours and customers' cigarette smoke.

Design

Shopfront design is out of character with the appearance of the building.

Other

Concern regarding the obstruction of access to the residential entrance should the public highway be used for dining in the future.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

Application 2 (tables and chairs)

MARYLEBONE ASSOCIATION:

No objection

CLEANSING:

Concerns regarding street cleansing operatives being unable to clean and maintain this part of the pavement.

HIGHWAYS PLANNING MANAGER:

Proposed tables and chairs at this depth are not considered consistent with Westminster Way Supplementary Planning Document (SPD) or are in accordance with S41 and TRANS3.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 88

Total No. of replies: 6

No. of objections: 6 raising the following concerns:

Amenity

Adverse impact on the amenities of neighbouring residential properties as a result of blocking for pushchairs/wheelchairs/deliveries of public highway, noise disturbance and nuisance from food odours and customers' cigarette smoke.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

The application site is a restaurant on the ground floor of an unlisted building located within the Core CAZ, just to the north of the Oxford Street Primary Shopping frontage and within the West End Stress Area. The nine upper floors of the building (known as The Phoenix) are in residential use. The remainder of the street/area is characterised by a mixture of retail and office use.

The restaurant, occupied by "Busaba" has frontages on Bird Street and Barrett Street. The restaurant has an existing opening shopfront on the Bird Street elevation. There are entrances to the upper flats on both street frontages.

The permitted restaurant opening hours are from 08.00 and 00.00 hours (midnight) on Monday to Saturday and 10.30 and 22.00 hours on Sundays and Bank Holidays.

The site is limited to restrict capacity to 168 customers into the restaurant at any one time (excluding customers visiting the premises to collect takeaways).

6.2 Recent Relevant History

4 June 1996 (95/06426): permission granted for redevelopment of the existing building above ground floor level for retail or restaurant use on ground floor, 64 residential flats on nine upper floors with 38 parking spaces in the basement: condition 18 restricted the restaurant use to between 8am and 12 midnight on Monday to Saturday and not at all on Sundays and Bank Holidays.

26 June 1997 (97/04059): permission granted for variation of condition 18 of planning permission dated 4.6.96, to enable the restaurant to operate on Sundays and Bank Holidays between the hours of 10.30 am and 7.30 pm.

13 December 2004 (04/07731): permission granted for the installation of new shopfront

19 April 2005 (05/01679): permission refused on design and amenity grounds for alterations to the shopfront, including a fully-openable element.

22 September 2005 (05/01679): Appeal against the Council's decision of 19 April 2005 was dismissed on design grounds. The Inspector concluded that the openable shopfront would not have an adverse effect on the living conditions of neighbouring residents through noise disturbance.

3 November 2005 (05/06116): permission granted for removal of Condition 17 of planning permission dated 4 June 1996 (RN: 95/06426): namely, to allow ancillary take away facility and permit the sale of food and drink for consumption off the premises.

10 January 2006 (05/09582): retrospective permission granted for the retention of the openable shopfront comprising a set of sliding doors on the Bird Street elevation.

25 September 2007 (07/06909): permission was refused for the use of the public highway for the placing of 12 tables and 24 chairs in between existing trees adjacent to Bird Street pavement edge in connection with existing restaurant. It was considered that the tables and chairs would block the flow of pedestrians along the footpath and so could be unsafe and the close proximity to residential flats above, the external seating area would lead to a loss of residential amenity and noise disturbance to the residential occupiers on the upper floors of 8-13 Bird Street.

30 April 2015 (15/00780): Permission refused on design grounds for the installation of openable shopfront and the relocation of entrance door.

6 December 2016 (16/08018): Permission granted for the installation of 5 new kiosks on the eastern side of Bird Street and associated landscaping works, including works to the highway, the laying of artificial grass and provision of green wall.

7. THE PROPOSALS

Application 1:

Permission is sought for the installation of a new/replacement openable shopfront along part of the Bird Street frontage and for a new aluminium and glazed entrance screen at the corner of Bird Street and Barrett Street.

Application 2:

Permission is also sought for the use of the public highway for the placing of 6 tables and 12 chairs in connection with the restaurant use.

8. DETAILED CONSIDERATIONS

8.1 New Shopfront (application 1)

8.1.1 Land Use

The premises are in lawful restaurant use and the application does not raise any land use issues.

8.1.2 Townscape and Design

The application site is located just to the north of Oxford Street, within the narrow confines of Bird Street, outside of any designated conservation area. It is a contemporary brick building to the upper levels. The existing shopfront is of a reasonable quality comprising dark slate with recessed bays punctuated by heavy columns at ground floor level. There is already one small openable element to the shopfront which was permitted in January 2006 (05/09582). This proposal would see a second solid element of the ground floor shopfront elevation removed and replaced with a sliding openable timber door to match the existing timber door approved in 2006.

Objections have been raised on the grounds that the proposed shopfront is not in keeping with the style of the host building.

In townscape terms the existing elevation is a series of bays framed by thick concrete pilasters with basic steel and glass windows in between. The proposals will broadly replicate this pattern. The most noticeable change is the corner elevation will become mostly glazed with no stallriser. Given the dull current elevation this amendment is minor and will contribute a more active frontage than currently exists. The application is acceptable in design terms and in accordance with DES 1; DES 5; S 25; S 28 and the NPPF. Accordingly the objections on design grounds are not considered to be sustainable.

8.1.3 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 and S32 of the City Plan seek to control noise disturbance from development. Of particular relevance, is paragraph 9.108 of Policy ENV 7 which states that '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 there is the potential for internal noise to escape and cause disturbance to neighbouring residents. There are 64 flats over nine floors immediately above the restaurant premises; objections have been received from 9 occupants of the residential building and one from the residents association on behalf of the residents.

The existing shopfront, incorporating openable windows and sliding doors, was approved in June 2006, it should be noted that the existing openable shopfront element is within a corridor leading to the restaurant from the main entrance door. This proposal will create a new fully openable element of the shopfront to include an additional window bay on the Bird Street frontage, replicating that of the end bay closest to Barrett Street.

It should be noted that in the appeal against the Council decision (19 April 2005) to refuse an application for the installation of an openable shopfront at the northern end of the unit, the Planning Inspector dismissed the appeal on design grounds only. He concluded that as the fully openable element was in fact at the entrance foyer to the unit, the proposal would not have any additional adverse impact upon the living conditions of adjoining residents, particularly as the hours it could be opened could be restricted by condition.

The nearest residential properties are located on the first floor of the property and above. Notwithstanding previous permissions, openable shopfronts are generally discouraged by the City Council on the basis that internal noise can escape and cause nuisance for nearby residents as set out in Policy ENV 7 of the UDP (2007). In contrast to the wider context (James Street and Oxford Street), this part of Bird Street is relatively quiet and it is not considered that a noise condition, similar to that imposed on the 2005 permission, will sufficiently restrict the noise levels emitted from the internal activity: as mentioned above, the proposed additional openable window is located within the main restaurant and bar area. This is likely to create a greater source of noise and odours than that of the existing openable window and is likely to have a negative impact on the residential properties directly above the premises.

The application fails to meet the requirements of Policy ENV 6, ENV 7 of the UDP and S29 and S32 of the City Plan and is therefore unacceptable in amenity terms.

8.2 Tables and chairs (application 2)

8.2.1 Highways

Objections have been received on the grounds that the proposed seating area will cause disruption to neighbouring residents of 'the flats in the upper floors of the building.

The Westminster Way, which requires a minimum 2m width of public highway beyond the proposed seating area to be maintained, free of physical obstructions to allow for pedestrian traffic. The equipment used by the City Council's street cleansing contractor also requires a minimum clearance of 2m to operate efficiently. Submitted drawings show the pavement proposed for tables and chairs to measure approximately 4.7m from building line to the kerb edge. The area proposed for placing tables and chairs is 0.8m, which should leave a pedestrian clearway of approximately 3.9m for a pedestrian clearway which would appear to satisfy the City Council's 2m minimum requirements. However this measure does not take into account the existing tree pits and when combined with the proposal leaves approximately 1.8m as a pedestrian clearway. This is not acceptable in Highway Planning terms as this measure is below the minimum 2m standard. Given the location, the proposed tables and chairs at this depth is not considered consistent with Westminster Way SPD or are in accordance with S41 and TRANS3.

The submitted drawings also show existing cycle racks with a 2m clearance. However the measure shown is when the cycle stands are unoccupied, once occupied the possibility of overspill is likely and any overspill will narrow the pedestrian clearway below the 2m minimum requirement.

The Highways Planning Manager has further concerns that it will be difficult for the proposal to keep within a depth of approximately 0.6m and this measure will not allow for disabled seating and does not offer a buffer area for service. Again any overspill will further narrow the existing pedestrian clearway, which is already below the minimum requirement at some points along the length of the proposal, and will potentially pose an obstruction to pedestrian movement contrary to Council guidelines.

The primary function of the highway is the free and unobstructed movement of the highway users. This includes pedestrians, motorists' and cyclists. Secondary functions can be considered those that relate to the primary function (e.g. parking of vehicles, provision of cycle parking, and bus stop facilities). Tertiary functions of the highway are those that need not occur on the highway and include table and chairs and queuing space for premises. Therefore the priority is given to pedestrian movements.

No details of storage of the tables and chairs have been provided. Tables and chairs must be stored internally outside of the units operating hours, clear details of internal storage must be provided, if permission is to be granted.

The proposal is therefore considered unacceptable on highways grounds.

8.2.2 Residential Amenity

It is proposed to place the tables and chairs on the highway between 0900 and 2000 Monday to Sunday and Bank Holidays.

Objections have been received from 9 occupants of the residential building relating to noise, odours, anti-social behaviour, vermin and reduced accessibility.

In addition to policies S29, S32 and ENV 6, detailed above, the supporting text to UDP Policy TACE 11 states that the City Council normally would not permit external tables and chairs where the upper floors of the building are in residential use. In this case it is considered that the tables and chairs have the potential to create noise and disturbance to the residents above. It is not considered however that the objections about odour and vermin can be sustained.

The application fails to meet the requirements of Policy ENV 6 and TACE 11 of the UDP and S29 and S32 of the City Plan and is therefore unacceptable in amenity terms.

8.3 Economic Considerations

Any economic benefits generated by the proposal are considered to be minimal and outweighed by the harm to pedestrian safety and residential amenity.

8.4 Access

The access arrangements to the restaurant remain unchanged.

8.5 Other UDP/Westminster Policy Considerations

None

8.6 London Plan

This application raises no strategic issues.

8.7 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.

8.8 Planning Obligations

Planning obligations are not relevant in the determination of this application. The proposal is not CIL-liable.

8.9 Environmental Impact Assessment

The scheme is of insufficient scale to require an Environmental Impact Assessment.

9. BACKGROUND PAPERS

Application 1:

1. Application form
2. Appeal Decision dated 22 September 2005
3. Response from Marylebone Association, dated 24 April 2017
4. Letter from occupier of Flat 35 The Phoenix, Bird Street, dated 6 April 2017
5. Letter from occupier of flat 35 the phoenix, bird street, dated 6 April 2017
6. Letter from occupier of FLAT 57, THE PHOENIX, 19 BARRETT STREET, dated 17 April 2017
7. Letter from occupier of Flat 24 The Phoenix, Bird Street, dated 6 April 2017
8. Letter from occupier of Flat 38 The Phoenix, Barratt Street, dated 6 April 2017
9. Letter from occupier of 1, The Phoenix, 8, Bird Street, dated 15 April 2017
10. Letter from occupier of 14 Radnor Gardens, Enfield, dated 1 May 2017
11. Letter from occupier of FLAT 57 THE PHOENIX, LONDON, dated 7 May 2017
12. Letter from occupier of Flat 10, Phoenix Apartments, 8 Bird Street, dated 5 April 2017
13. Letter from occupier of Flat 57, The Phoenix, 19 Barrett Street,, dated 2 May 2017

Application 2:

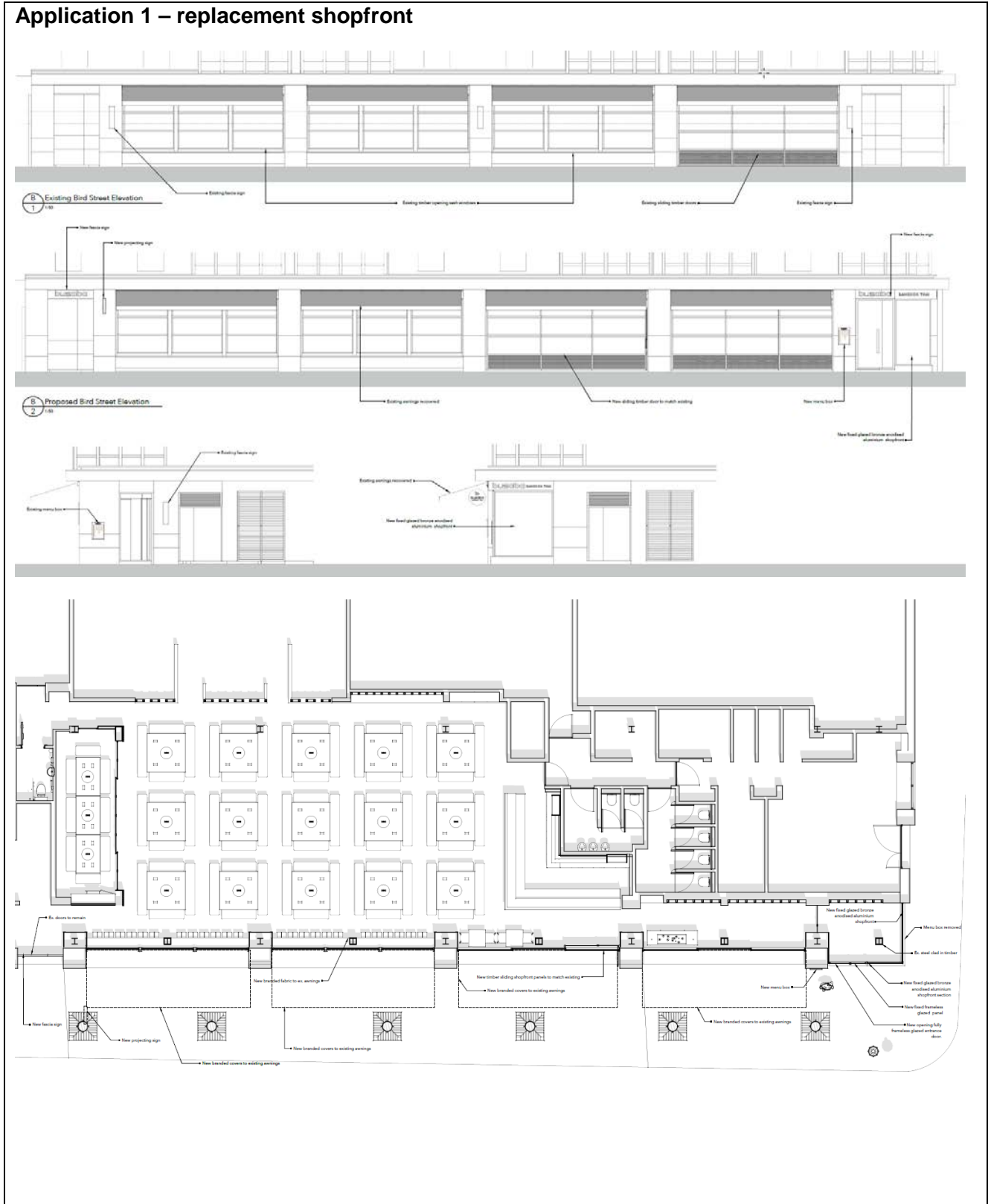
1. Application form
2. Highways Planning Manager consultee response, dated 9th June 2017
3. Cleansing consultee response, dated 26th May 2017
4. Response from Marylebone Association, dated 14 June 2017
5. Letter from occupier of Flat 35 The phoenix, 8/13 bird street, dated 1 June 2017
6. Letter from occupier of 1, The Phoenix, 8, Bird Street, dated 5 June 2017
7. Letter from occupier of FLAT 57, THE PHOENIX, 19 BARRETT STREET, dated 9 June 2017
8. Letter from occupier of Flat 38 The Phoenix, 8/13 Bird street, dated 1 June 2017
9. Letter from occupier of Flat 15, The Phoenix, Bird St, dated 26 May 2017
10. Letter from occupier of Flat 24 The Phoenix, 8/13 Bird street, dated 1 June 2017
11. Letter from occupier of Flat 35 The phoenix, 8/13 Bird street, dated 1 June 2017
12. Letter from occupier of Flat 57, The phoenix, dated 15 June 2017
13. Letter from occupier of 14 Radnor Gardens, Enfield (on behalf of The Phoenix Management Company Ltd), dated 9 June 2017

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

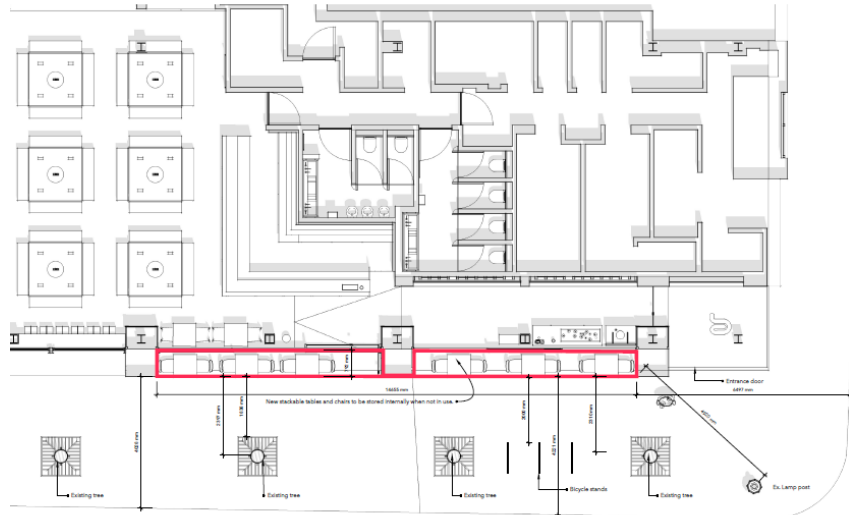
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: PAUL QUAYLE BY EMAIL AT pquayle@westminster.gov.uk

10. KEY DRAWINGS

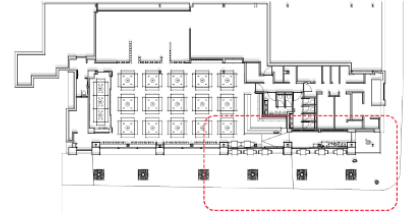
Application 1 – replacement shopfront



Application 2 – tables and chairs



Proposed Terrace Layout Plan
1:50
METRES



Proposed GA Layout Plan
1:50



Proposed Section Thru Terrace
1:50



Proposed Bird St Terrace Elevation
1:50
METRES

PROJECT NAME	DRAWING TITLE	DRAWING NUMBER	REVISION	SCALE	DATE	1 DOKKA ROAD LONDON SW6 0HP 0202 7188922 IANTHOMPSONARCHITECT.
SABA BANGKOK THAI BIRD STREET	EXTERNAL TERRACE LAYOUT	1609 FU-02	F	A.S.	APRIL 2017	IAN THOMPSON ARCHITECT

Application 1 – openable shopfront**DRAFT DECISION LETTER****Address:** 8-13 Bird Street, London, W1U 1BU**Proposal:** Installation of a new openable shopfront and new aluminium and glazed entrance screen.**Reference:** 17/02499/FULL**Plan Nos:** 1609 SE-01 REV D, 1609 GA-01 REV D, 1609 EL-01 REV D**Case Officer:** Shaun Retzback**Direct Tel. No.** 020 7641 6027**Recommended Condition(s) and Reason(s)**

- 1 The partially openable shopfront would, when open, allow noise generated from within the premises to be audible outside. This would be a source of disturbance for neighbouring noise sensitive properties and would therefore be contrary to policies S29 and S32 of our City Plan that we adopted in November 2016 and ENV6 and ENV 7 of the Unitary Development Plan that we adopted in 2007.

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirements in the National Planning Policy Framework with the applicant and positive way provide made available as stipulated. We have made our statutory duties under the City Plan (November 2016) and Unitary Development Plan (Supplementary 2016) and the Development Plan, briefs Supplemental Planning Documents, and the Council's planning and guidance, in order to ensure that the applicant has the opportunity to submit an application which is likely to be successful. As the applicant has not done so, the application was offered to the applicant in writing and a meeting was held to discuss the application. The applicant's application could not overcome the reasons for refusal.
- 2 The proposal to replace the corner entrance is considered acceptable on design and amenity grounds. You are requested to submit a separate application should you wish to seek planning permission for this proposal.

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.

Application 2 – tables and chairs

DRAFT DECISION LETTER

Address: 8 - 13 Bird Street, London, W1U 1BU,

Proposal: Use of an area of the public highway measuring 14.65m x 0.79m for the placing of 12 chairs and 6 tables in connection with restaurant use.

Reference: 17/03483/TCH

Plan Nos: 1609 FU-02 REV F

Case Officer: Shaun Retzback

Direct Tel. No. 020 7641 6027

Recommended Condition(s) and Reason(s)

- Reason:
- 1 The tables and chairs would block the flow of pedestrians along the footpath and so could be unsafe. This would also make it difficult to clean the footpath. This would not meet S41 of Westminster's City Plan (November 2016) and TRANS 3 and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (X08AC)
 - 2 The introduction of tables and chairs in this location would lead to a loss of amenity for residents on the upper floors of the building by way of increased noise and general disturbance. The proposal is therefore contrary to S29 and S32 of the City Plan that we adopted in November 2016 and ENV 6 and TACE 11 of our Unitary Development Plan that we adopted in January 2007.

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.