

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 03 April 2018	<b>Classification</b> For General Release	
<b>Report of</b> Director of Planning		<b>Ward(s) involved</b>	
<b>Subject of Report</b>	8 Pearson Square, W1T 3BF		
<b>Proposal</b>	Use of ground floor unit as a mixed Class A1 retail/A3 food and drink (sui generis) use.		
<b>Agent</b>	Savills		
<b>On behalf of</b>	Open House London Ltd.		
<b>Registered Number</b>	17/10799/FULL	<b>Date amended/ completed</b>	12 December 2017
<b>Date Application Received</b>	6 December 2017		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	East Marylebone		

## 1. RECOMMENDATION

Grant conditional permission

## 2. SUMMARY

The application site is a small ground floor retail unit (Class A1) within the redeveloped Middlesex Hospital Site, now known as Pearson Square. It is located within the Core CAZ. Planning permission is sought to allow the use of ground floor unit as mixed use (Class A1/A3).

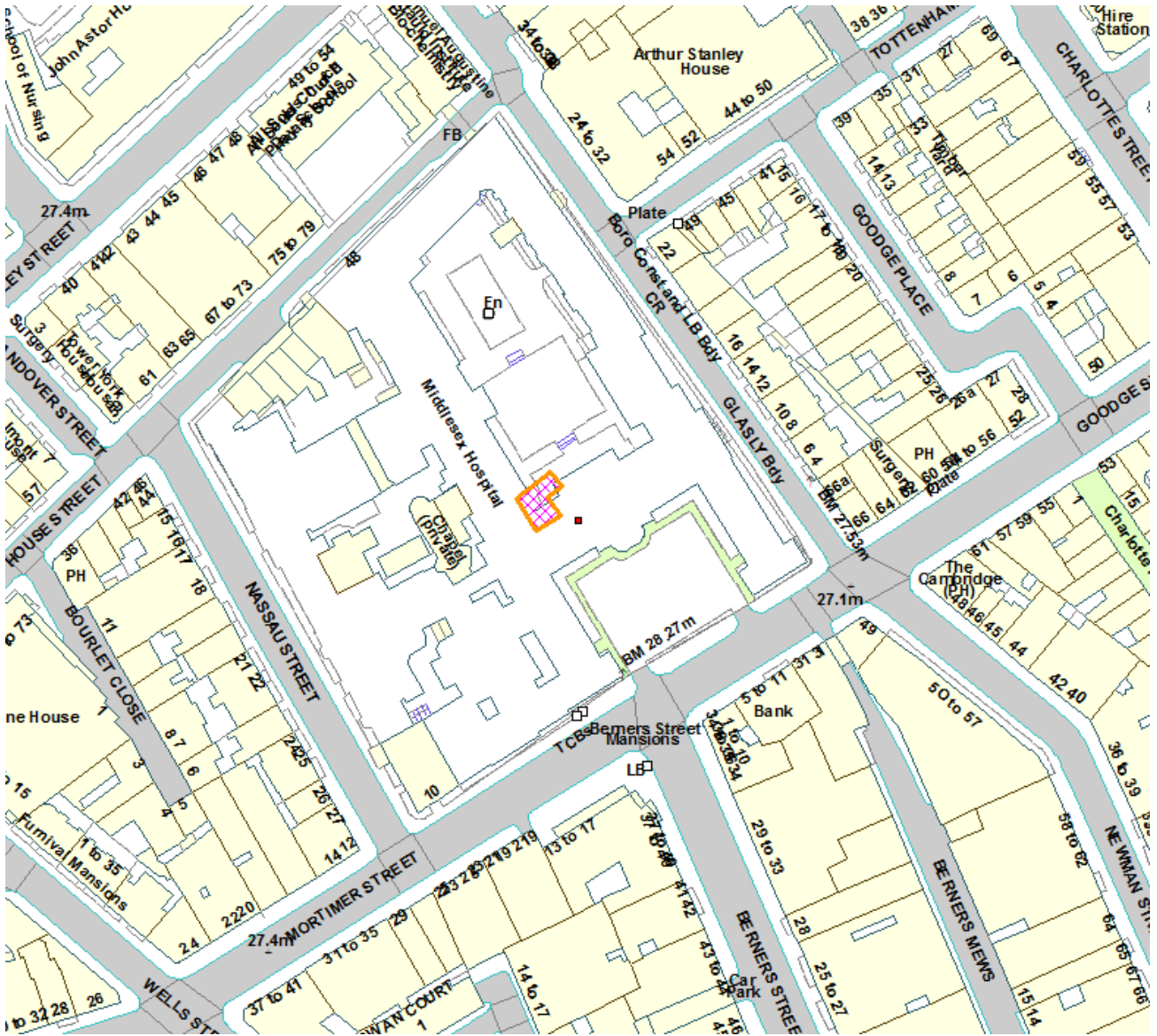
Permission is sought for the use of the premises for a mixture of retail and food and drink purposes. Because it is not possible to provide a full height extract duct, the applicant is proposing an internal re-circulation system for dealing with cooking fumes.

The key issues for consideration are:

1. The impact on the character and function of the area, and
2. The impact on amenity.

The scheme is considered acceptable in land use terms and, subject to conditions, it is not considered that the use would adversely affect the amenities of neighbouring residents and local environmental quality. The scheme complies with relevant policies set out in the Unitary Development Plan (UDP) and City Plan and is therefore recommended for approval.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS



## 5. CONSULTATIONS

### FITZROVIA NEIGHBOURHOOD ASSOCIATION

No response to date

### ENVIRONMENTAL HEALTH

No objection subject to conditions

### HIGHWAYS PLANNING

No objection

### CLEANSING

No objection subject to conditions

### ADJOINING OWNERS AND OCCUPIERS:

No. consulted: 63; No. responded: 0

SITE AND PRESS NOTICE: Yes

## 6. BACKGROUND INFORMATION

### 6.1 The Application Site

The application site is a small ground floor retail unit (Class A1) within the redeveloped Middlesex Hospital Site (approved March 2012), now known as Pearson Square. It comprises 74 sqm and is located within the Core CAZ. The applicant advises that the unit in question is currently occupied by The Larder, a delicatessen selling cheese, cured meats, pastries, eggs, wine, tea & coffee, sandwiches and salads (among other things). While there is some limited seating available, there is currently no on-site cooking and the majority of sales are of food for consumption off the premises.

### 6.2 Recent Relevant History

None

## 7. THE PROPOSAL

Planning permission is sought for a change of use of the ground floor from A1 retail to A1/A3 shop / restaurant. Associated to this change of use is the internal installation of recirculating kitchen extract. This will achieve the complete recirculation of exhaust air with no requirement for a route to the external atmosphere and no external equipment and, therefore, does not require planning permission. The change will facilitate some limited cooking on-site to broaden the menu range. There will be approximately 44 covers. The current delicatessen offer will still be available. The applicant has advised that the opening times would be Monday 7.30am to 4.30pm, Tuesday – Friday 7.30am to 10pm and Saturday – Sunday closed (though these hours are considered to be excessively restricted and the proposed hours condition will allow longer opening times).

There will be no external alterations.

All deliveries and refuse & recycling collections will be made from the basement via the goods entrance on Cleveland Street, as part of the shared back of house facilities in this new block. Refuse & recycling storage is provided by the landlord in the basement.

## **8. DETAILED CONSIDERATIONS**

### **8.1 Land Use**

#### **Reduction of retail function**

The lawful use of the premises is as a retail shop (Class A1) and the proposals would effectively result in part loss of this use, albeit that the proposed replacement will maintain a strong retail function.

City Plan Policy S21 states that existing A1 retail will be protected throughout Westminster except where the Council considers that the unit is not viable, as demonstrated by long-term vacancy despite reasonable attempts to let. UDP Policy SS5 Part (A) states that A1 uses at ground, basement or first floor level in the CAZ will be protected. Part (B) states that permission for the introduction of a non-A1 town centre use at basement, ground or first floor levels will only be granted where this would not be detrimental to the character and function of an area to the vitality or viability of a shopping frontage or locality. Part (C) of SS5 identifies that such proposals also must not lead to, or add to a concentration of three or more consecutive non-A1 uses or cause or intensify an existing over-concentration of A3 and entertainment uses in a street or area.

The applicant advises that it is not possible to demonstrate long-term vacancy because the applicant is the existing occupier. It is claimed that the shop in its current guise does not make a profit, despite concerted marketing campaigns and overhauls. The applicant is tied in to a long lease and has, informally, sought alternative operators to take over the lease both among traditional retailers and more restaurant focussed operators with no interest whatever. It is acknowledged that the location of the shop off the main thoroughfare of Mortimer Street is likely to be a contributing factor both to the lack of operating success and the lack of offers for the lease.

While there is no way for long term vacancy to be demonstrated for this retail unit, it is considered that an exception can be made in this instance. The Middlesex Hospital development site had no history of retail units within it until permission was granted for its redevelopment. Furthermore, as the proposed use is mixed in nature and contains a large element of retail which can be conditioned (all of the walls in the unit are products for sale), it would not be considered that there is a total loss of retail from the unit. Accordingly, subject to condition to retain a strong retail element in the unit, the loss of the retail A1 unit is considered acceptable in this instance.

#### **Proposed A3 use**

The A3 element of the proposed mix use introduces an 'entertainment' use. City Plan Policy S6 accepts that, in principle, entertainment uses are appropriate for the Core CAZ. City Plan Policy S24 and UDP Policies TACE 8-10 deal with entertainment uses. The TACE policies are on a sliding scale in which developments where TACE 8 is

applicable would be generally permissible and where TACE10 is applied (where the gross floorspace exceeds 500sqm), only in exceptional circumstances.

City Plan Policy S24 requires proposals for new entertainment uses to demonstrate that they are appropriate in terms of type and size of use, scale of activity, relationship to any existing concentrations of entertainment uses and any cumulative impacts, and that they do not adversely impact on residential amenity, health and safety, local environmental quality and the character and function of the area.

The site is located within the Core CAZ but outside of a stress area. Given the small size of the premises (74 sqm), UDP policy TACE 8 is applicable. The closest residential accommodation to the application unit are located within Pearson Square, though not directly above or opposite the unit in question. The block containing the application unit has offices (Class B1) located above and opposite, with residential units located on the northern end of this block. Other residential units are located in the northern block (fronting onto Nassau Street) and western block (fronting onto Riding House Street) of the site.

The applicant advises that the intended opening hours of the unit are Monday: 07:30-16:30, Tuesday - Friday 07:30-22:00 and closed on Saturday and Sunday: these are considered to be excessively limited and it is proposed that the condition allows sufficient flexibility with hours of 07.30 to 22.00 hours on Monday to Saturday and 08.00 to 19.00 hours on Sunday. The intended capacity within the unit is 44 covers, which is also considered modest and can be secured by condition.

Given the size of the premises, the mixed use type and low-key nature of the use (with the significant element of retail) and the modest opening hours, it is not considered that the proposals would not have an adverse impact on the character or function of the area, nor on residential amenity. It is not considered that the activity generated would have any greater impact on neighbours' amenities than the existing retail use.

The issue of kitchen extraction is dealt with in section 8.6.

## **8.2 Townscape and Design**

There are no external changes proposed.

## **8.3 Transportation/Parking**

The Highways Planning Manager has assessed the application and raised no objection to the proposal. The change of use is considered unlikely to create any significant change in the servicing requirements for the unit nor have an impact on the cycle storage requirements. It is not anticipated that the proposed use would generate any significant traffic from customers.

## **8.4 Economic Considerations**

Any economic benefits generated by the proposed are welcomed.

## 8.5 Access

No changes are proposed to the building access.

## 8.6 Other UDP/Westminster Policy Considerations

### Kitchen extraction

The applicant advises that the change of use will facilitate some limited cooking, so as to broaden the menu range, while maintaining the current delicatessen offer of the unit. No external cooking discharge is proposed for the unit as is usually required when commercial primary cooking takes place. The applicant has explored routes through the building for 'standard' discharge equipment at high level however; there is no capacity in the existing risers for such equipment.

Instead the applicant is proposing the internal installation of recirculating kitchen extract. They have advised that this will achieve the complete recirculation of exhaust air with no requirement for a route to the external atmosphere and no external equipment. Environmental Health have raised no objection to this proposal subject to imposing a range of conditions including on the type of cooking equipment and the manner in which it can be used (for example, cooking must be done by electricity rather than gas, so as to minimise the need for ventilation). There is also a requirement that the existing openable windows in the shop front are fixed shut, to ensure there is no dispersal of cooking fumes into the public domain. Following discussions with the applicant, it has been confirmed that they are willing to operate within such conditions.

The normal planning requirement for food establishments is that they must install a high level kitchen extract to ensure the proper dispersal of cooking smells. However, there may be exceptional cases where a high level duct cannot be installed (as is the case here) and the type of proposed restaurant use and food being cooked is such that Environmental Health advise that a wholly internal re-circulation system might be an acceptable alternative. The current proposal is considered to be an exceptional case and on that basis approval is recommended.

It should be noted that the applicant has advised that without permission being granted for the proposed mixed use, they may pursue a Class A3 use through the General Permitted Development Order 2015 (as amended) Schedule 2, Part 4, Class D of which says that a change of use is permitted from an A1 Use to an A3 Use for up to 150 Sqm for a temporary period of two years. The application unit would fall within that section. The unit may become a restaurant at any time by virtue of permitted development rules, subject to notification being served on the Council.

The applicant has advised that this method of changing the use forms a fall-back position (as defined by the High Court decision in *Mansell v Tonbridge and Malling BC* (2017)) and is a material consideration which, in the applicants opinion, negates the requirement of Policy S21 to protect all retail uses in Westminster. The applicant states that this application allows the Council some measure of control over the operation of the shop/restaurant (by imposing conditions) and, in turn, allows the applicant a measure of permanence.

**Refuse /Recycling:**

The Cleansing Officer has assessed the application and raised concern that adequate waste storage is not indicated in the proposal. They have requested details of this be requested by condition. However, as the unit forms part of a larger site with centralised waste storage, and as the unit is already in operation, it is not considered necessary to request such details. The applicant has confirmed that all deliveries and refuse and recycling collections will be made from the basement via the developments goods entrance on Cleveland Street.

**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**

Not applicable. The proposal does not trigger any CIL payment.

**8.10 Environmental Impact Assessment**

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

**9. BACKGROUND PAPERS**

1. Application form
2. Response from Environmental Health, dated 16 January 2018
3. Response from Cleansing - Development Planning, dated 28 December 2017
4. Response from Highways Planning - Development Planning, dated 23 January 2018

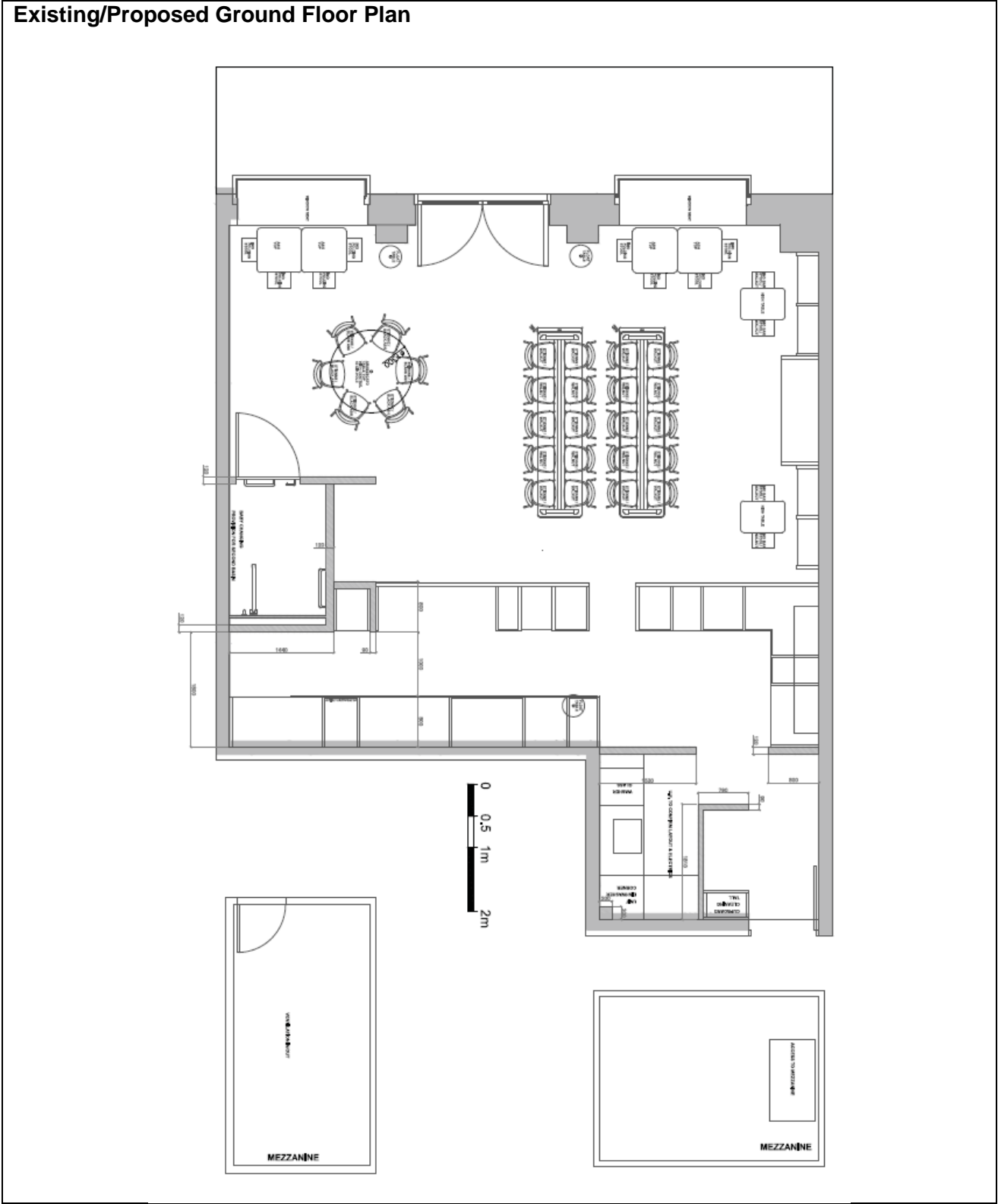
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

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**

**Existing/Proposed Ground Floor Plan**



**DRAFT DECISION LETTER**

**Address:** 8 Pearson Square, W1T 3BF,

**Proposal:** Use of ground floor unit as a mixed Class A1 retail/A3 food and drink (sui generis) use.

**Reference:** 17/10799/FULL

**Plan Nos:** FITZROY LARDER existing and proposed layout plan received by the Council on 19.02.2018

**Case Officer:** Adam Jones

**Direct Tel. No.** 020 7641 1446

**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 (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.

- 3 (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 mixed use (Class A1/A3) 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 mixed use (Class A1/A3) 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.

- 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 There shall be no external discharge of cooking fumes from the mixed use (Class A1/A3)

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R22CC)

- 6 The mixed use (Class A1/A3) use allowed by this permission must not begin until you have installed the reco-air internal re-circulation system (in accordance with the details submitted as part of this application). The kitchen extract ventilation for the removal of cooking fumes shall consist only of a re-circulation system approved by the Local Planning Authority where:

- i. All cookline/kitchen equipment shall operate by electricity only, and,
- ii. All cookline/kitchen equipment shall be placed under the re-circulation canopy.

This equipment must be permanently retained for as long as the mixed use (Class A1/A3) use continues.

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R22CC)

- 7 Customers shall not be permitted within the A1/A3 premises before 07.30 or after 22.00 hours on Monday to Saturday and before 08.00 or after 19.00 hours 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 9 of our Unitary Development Plan that we adopted in January 2007. (R12AC)

- 8 You must not allow more than 44 customers into the property at any one time. (C05HA)

Reason:

We cannot grant planning permission for unrestricted use in this case because it would not meet TACE 9 of our Unitary Development Plan that we adopted in January 2007. (R05AB)

- 9 You must, as a minimum, maintain the existing retail displays of products for sale on the walls, sales counter and chiller unit within the mixed use (Class A1/A3) unit hereby approved.

**Reason:**

To protect the retail character of the unit and ensure it remains as a mixed use (Class A1/A3) to accord with S21 of Westminster's City Plan (November 2016) and SS 5 of our Unitary Development Plan that we adopted in January 2007.

- 10 The mixed use (Class A1/A3) use allowed by this permission must not begin until you have permanently fixed shut the openable windows in the front elevation (as approved under application reference: 14/11101/NMA), and you have fitted self-closing door mechanisms to the main entrance doors. You must not leave these doors open except in an emergency or to carry out maintenance.

**Reason:**

To protect the environment of people in neighbouring properties as set out in S29 and 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 2, 3 and 4 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)
- 3 Prominent signage must be placed on the re-circulation equipment stating no combustible fuel such as gas, charcoal, wood etc can be utilised within the premises.
- 4 You may need separate licensing approval for the mixed use A1/A3 premises. Your approved licensing hours may differ from those given above but you must not have any customers on the premises outside the hours set out in this planning permission.
- 5 One or more of the uses we have approved are referred to as being 'sui generis'. This means that the use or uses are not in any particular class. Any future plans to materially (significantly) change the use that we have approved will need planning permission.

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.