

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 9 October 2018	Classification For General Release	
Report of Director of Planning		Ward(s) involved West End	
Subject of Report	2-5 Hertford Street, London, W1J 7RW,		
Proposal	Variation of Condition 10 of planning permission dated 9 May 2017 (RN: 16/04002) (which itself was a variation of planning permission dated 3 March 2016 (RN: 14/12430/FULL)) for, <i>'Use of part first floors, second and third floors as a private members club use in connection with the existing private members club (sui generis). Alterations to the fenestration of the property to include the introduction of new window openings; creation of new plant areas at second and third floor levels; alterations to the roof form and installation of an awning over the terrace at third floor level. Internal alterations at all floor levels'</i> ; NAMELY, to allow the third floor terrace to be open to customers between the hours of 07.00 and 00.30 daily.		
Agent	Daniel Rinsler & Co		
On behalf of	5 Hertford Street Ltd.		
Registered Number	18/02776/FULL	Date amended/ completed	10 April 2018
Date Application Received	7 April 2018		
Historic Building Grade	Grade II		
Conservation Area	Mayfair		

1. RECOMMENDATION

1. Grant conditional permission subject to the completion of a deed of variation to the original legal agreement dated 3 March 2016.
2. If the S106 legal agreement has not been completed within six weeks of the date of this resolution then:
 - a) The Director of Planning shall consider whether it will be possible or appropriate to issue the permission with additional conditions attached to secure the benefits listed above. If so, the Director of Planning is authorised to determine and issue the decision under Delegated Powers; however, if not;
 - b) The Director of Planning shall consider whether the permission should be refused on the grounds that the proposals are unacceptable in the absence of benefits which would have been secured; if so, the Director of Planning is authorised to determine the application and agree appropriate reasons for refusal under Delegated Powers.

2. SUMMARY

5 Hertford Street is a Private Members Club which has occupied the majority of a street block bounded by Shepherd Market, Trebeck Street, Shepherd Street and Hertford Street since July 2012.

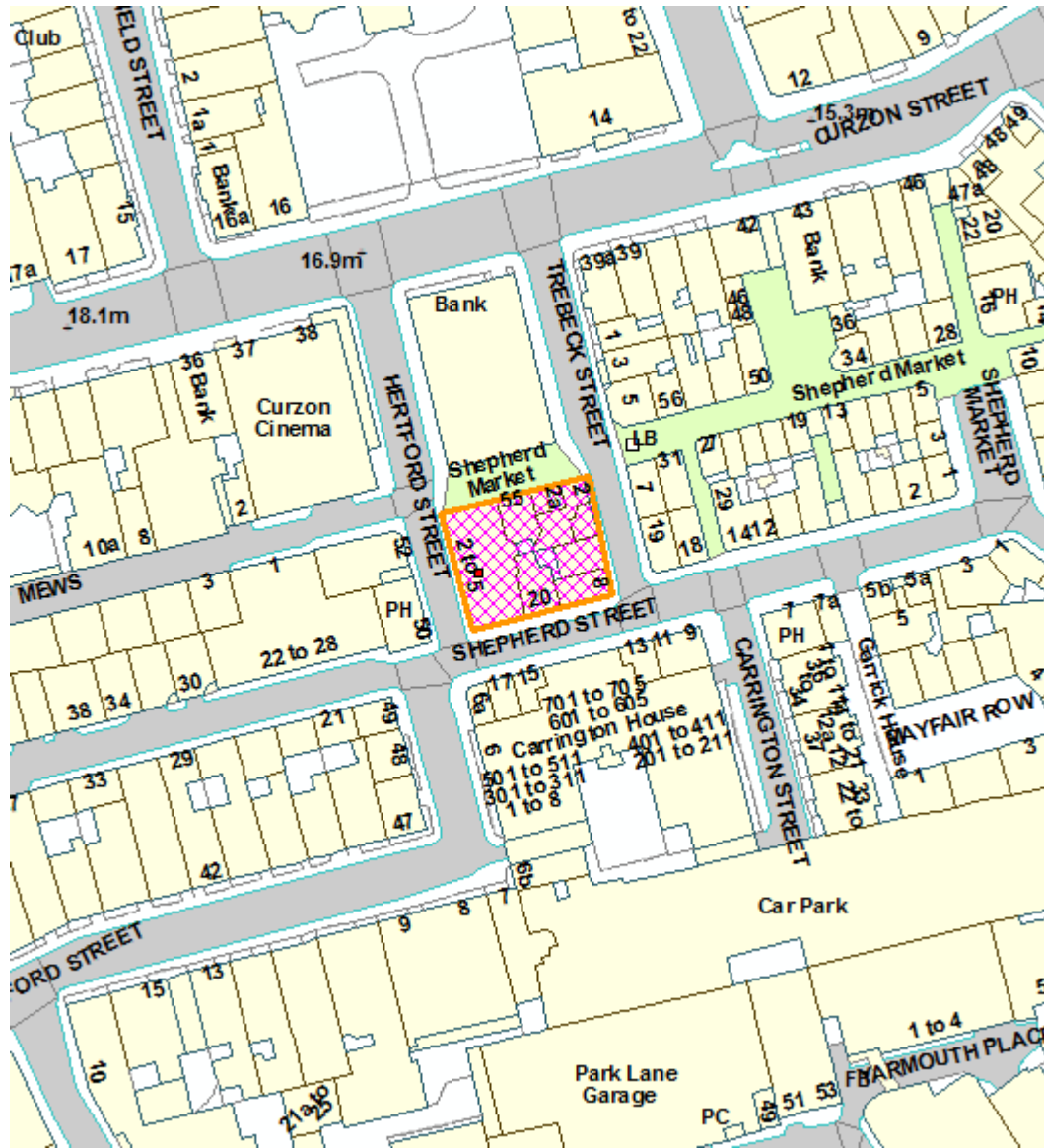
The club has a small 3rd floor terrace on the Shepherd Market frontage at the junction with Hertford Street. The hours of use of the terrace are restricted from 07.00 to 23.00 daily. On the 9 May 2017 permission was granted for the use of the terrace from 07.00 to 00.30 daily for a temporary period of 1 year. The temporary permission was granted to enable the position to be monitored. This application seeks to vary Condition 10 of permission dated 9 May 2017 (RN: 16/04002/FULL) to allow the terrace to be used from 07.00 to 00.30 permanently.

The key issue is the impact that allowing the later terminal hour would have on residents' amenities.

The area is mixed use in character including a number of residential properties. In response to consultations 52 letters of support has been received from residents, businesses in the area. Objections have been received on behalf of the owners of No 38 Curzon Street which has 4 flats at 1st and 2nd floors that the use of the terrace until 00.30 on a permanent basis may result in noise nuisance.

For the reasons set out in the main body of the report the proposal is considered acceptable and the application to vary the condition is recommended for approval. This is subject to the completion of a deed of variation to the original legal agreement dated 3 March 2016.

3. LOCATION PLAN



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4. PHOTOGRAPHS



Image of view from 2nd floor apartment 38 Curzon Street

5. CONSULTATIONS

RESIDENTS SOCIETY OF MAYFAIR AND ST JAMES'S

No objection on the basis that the applicant carries out a noise survey to establish the current background noise levels and that the license is subject to these levels not being breached.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 44

Total No. of replies: 55

No. of objections: 3

No. in support: 52

52 letters of support on some or all of the following grounds;

The Club is a great asset to the area and the later opening hours of the 3rd floor terrace has never caused any nuisance or disturbance

3 letters of objection on behalf of the owners at flats 1-4 38 Curzon Street on some or all of the following grounds:

- An acoustic report is required
- The Acoustic report submitted contradicts the approved Management Plan
- Use of terrace for more than 25 persons and after 23.00 would be to the detriment of residents in close proximity
- Permitting use of the terrace beyond 23.00 would set a precedent for similar applications from other businesses.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

In July 2012, 5 Hertford Street Private Members Club opened, occupying the majority of the lower floors of a street block bounded by Shepherd Market, Trebeck Street, Shepherd Street and Hertford Street. The site was previously occupied by Tiddy Dol's restaurant and had been derelict for a number of years.

6.2 Recent Relevant History

16/04002/FULL

Variation of condition 3 and 10 of planning permission dated 3 March 2016 (RN: 14/12430/FULL) for, 'Use of part first floors, second and third floors as a private members club use in connection with the existing private members club (sui generis). Alterations to the fenestration of the property to include the introduction of new window openings; creation of new plant areas at second and third floor levels; alterations to the roof form and installation of an awning over the terrace at third floor level. Internal alterations at all floor levels'; Namely, to vary opening hours to enable the extended

private members club at first, second and third floors to open between 07.00 and 01.30 the following morning on Mondays to Saturdays and between 12.00 and 00.30 the following morning on Sundays and to permit the use of the basement until 03.30 hours on the morning following Thursday to Saturday and until 3.30 hours on the morning following Sunday prior to a Bank Holiday and to permit the use of the third floor terrace until 00.30 each day for a temporary period of one year.
Application Permitted 9 May 2017

7. THE PROPOSAL

The Private Members Club has an external terrace at 3rd floor level on the Shepherd Market frontage of the building. Use of the terrace was restricted by condition from 07.00 to 23.00. Permission was granted in May 2017 to use the terrace until from 07.00 to 00.30 for a temporary period of one year. This application seeks to vary the condition (No 10 of planning permission dated 9 May 2017 RN: 16/04002) to enable the terrace to be used between 07.00 and 00.30 daily on a permanent basis.

Further to an objection that the application failed to include any noise assessment, an acoustic report has subsequently been submitted in support of the application.

8. DETAILED CONSIDERATIONS

The Members Club has been operation successfully since opening in July 2012. There have been no complaints to either the City Council's noise team or to the Club's Management team regarding the use of the 3rd floor terrace whilst it has been used until 00.30. The Club operates in accordance with an approved Management Plan.

The applicant advises that, *'Any complaints or nuisance would be reported to the Club's Operations Manager and its Membership Secretary. The procedure provide that if any complaints had been received, that would have resulted in full investigation, including review of CCTV footage and reports from staff. Any person with concerns would have been invited into the Club to meet management to ensure that any issues that may have arisen are fully reported and to help understand the Club's robust management controls'*. There have however been no complaints regarding the use of the club or the 3rd floor terrace. In addition to this 52 letters of support have been received which attest that the Club is well run a benefit to the area and that the extended hours of the 3rd floor terrace would cause no nuisance.

An objection was received from the owners of the 1st and 2nd floors of 38 Curzon Street, that the application failed to include any noise assessment to support the notion that the extended hours will not cause any disturbance to existing residents. 38 Curzon Street is situated to the north west of the application premises on the opposite side of Hertford Street. The 1st and 2nd floors have recently been converted into 4 residential flats pursuant to planning permission granted on 7 March 2017 (RN 16/11057/FULL). These flats are being marketed.

Acoustic Report

In response to this objection a Noise Assessment has been carried out and submitted as part of the application. The Noise Assessment sought to quantify background noise levels and readings were taken from the second floor of 51 Hertford Street.

An objection was received from 38 Curzon Street that the acoustic report was misleading as the second floor of 51 Hertford Street is not the closest residential receptor to the terrace because it is below the third floor roof terrace and hidden from it. A request was made that readings should be taken from flats at 38 Curzon Street which have a direct line of sight and are above the 3rd floor roof terrace.

In response to this objection further acoustic readings were taken from the Club's 3rd floor terrace and from Flat 4 on the 2nd floor of 38 Curzon Street. A supplementary Acoustic Technical Note was submitted. The report identifies that the nearest façade/corner of Flat 4, 38 Curzon Street is the Living Room/Kitchen/Dining Room, and that the bedroom windows are slightly further away along the Hertford Street façade and the Market Mews façade. Noise from the terrace at 5 Hertford Street will impact the windows of the Living Room more than the bedrooms.

Objections have been received on behalf of the freeholder and owners of 38 Curzon Street on the following main grounds;

- i) the acoustic report contradicts the club management plan, as the report refers to a maximum of 25 customers on the terrace whilst the management plan refers to a maximum of 29;
- ii) reference to Hertford Street as being busy is incorrect;
- iii) the report failed to provide the actual number of members using the terrace or clarification if the canopy was drawn over the roof terrace during the tests. These are items that contribute to a reduction in noise levels and therefore need to be controlled by condition;
- iv) the report is confused as it refers to noise at flat 4 38 Curzon Street from activity at Shepherd's Tavern a distance of 25m away which tails off at 23.00 hours but concludes the proposal for use of the terrace (which is closer) would not cause a problem;

The objections conclude that use more intensive than 25 persons and beyond 23.00 hours would be detrimental to the amenity of residents who are a short distance from and directly overlooking the roof terrace.

With regards to point i) above, the capacity of the roof terrace is not stipulated within the approved Management Plan. The Management Plan for the Club's operation approved on 16 August 2016 (ref 16/03976/ADFULL) specifically refers to the ground floor decked area on Shepherd Market with a capacity for 29 diners. This has subsequently been superseded by the current tables and chairs permission of 20 January 2017 which allows for 37 seated persons. An earlier planning statement refers to 25 seated patrons on the 3rd floor roof terrace but this is not subject to a condition and the acoustic report technical does not contradict the Management Plan.

The acoustic report includes both a subjective assessment and a noise measurement assessment. Noise readings were taken at the residential receptor (Flat 4 38 Curzon Street) are not noticeably affected by noise levels from the Club's 3rd floor roof terrace. Even when noise on the Club's 3rd floor terrace peaks, there is no corresponding peak and no adverse noise impact noted in Flat 4 of 38 Curzon Street.

Environmental Health are satisfied that the technical analysis demonstrates that use of the terrace would not lead to any unacceptable noise impact to local residents and raise no objection to the application .

The size of the terrace naturally limits its capacity and it is not considered necessary to control this by condition. The use of the terrace is already subject to effective and robust noise management procedures and arrangements as well as Licensing Conditions. The Club has been operating without any complaints since it opened in July 2012 and the extended opening of the 3rd floor terrace until 00.30 has caused no nuisance to people in the area. It is therefore recommended that the condition 10 on permission granted on 9 May 2017, is permitted to enable the terrace to be open to customers between the hours of 07.00 and 00.30 daily on a permanent basis.

(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: MARK HOLLINGTON BY EMAIL AT mhollington2@westminster.gov.uk

DRAFT DECISION LETTER

Address: 2-5 Hertford Street, London, W1J 7RW,

Proposal: Variation of Condition 10 of planning permission dated 9 May 2017 (RN: 16/04002) for, 'Use of part first floors, second and third floors as a private members club use in connection with the existing private members club (sui generis). Alterations to the fenestration of the property to include the introduction of new window openings; creation of new plant areas at second and third floor levels; alterations to the roof form and installation of an awning over the terrace at third floor level. Internal alterations at all floor levels'; NAMELY, to allow the third floor terrace to be open to customers between the hours of 07.00 and 00.30 daily.

Reference: 18/02776/FULL

Plan Nos: 1496-P-01-3-090-102 revD, 1496-P-01-3-100-102 revE. 1496-P-01-3-110-202 revE, 1496-P-01-3-120-203 revE, 1496-P-01-3-130-203 rev E.

Case Officer: Mike Walton

Direct Tel. No. 020 7641 2521

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 not allow more than 700 customers into the premises at any one time.

Reason:

To make sure that this does not cause a nuisance for people in the area. This is as set out in TACE 10 and ENV6 of our Unitary Development Plan that we adopted in January 2007 and S24 and S 32 of the City Plan : Strategic Policies that we adopted in November 2013.

- 3 You must not open the private members club on the basement to customers and you must not allow customers in the basement outside the following times;

- between 07.00 and 01.30 the following morning on Mondays, Tuesdays,
- between 07.00 and 02.30 the following morning on Wednesdays
- between 07.00 and 3.30 the following morning on Thursdays, Fridays and Saturdays;
- between 12.00 and 00.30 the following mornings on Sundays and 12.00 and 3.30 the following morning on Sundays prior to Bank Holidays;

on the ground and first floors to customers and you must not allow customers on the ground

and first floors outside the following times:

- between 07.00 and 01.30 the following morning on Mondays, Tuesdays,
- between 07.00 and 02.30 the following morning on Wednesdays
- between 07.00 and 03.00 the following morning on Thursdays, Fridays and Saturdays
- between 12.00 and 00.30 the following morning on Sundays
- and between 12.00 and 03.00 the following morning on Sundays immediately prior to bank holidays;

on the extended private members club at part first as outlined in red on drawing number 1496-P-01-3-110-202 rev E, and second and third floors on drawings 1496-P-01-3-120-203 rev E, and 1496-P-01-3-130-203 rev E and you must not allow customers on the extended private members club at part first, second and third outside the following times;

- between 07.00 and 01.30 the following morning on Mondays to Saturdays
- and between 12.00 and 00.30 the following morning on Sundays

Reason:

To make sure that this does not cause a nuisance for people in the area. This is as set out in TACE 10 and ENV6 of our Unitary Development Plan that we adopted in January 2007 and S24 and S 32 of the City Plan : Strategic Policies that we adopted in November 2013.

- 4 The use shall be operated in accordance with the 5 Hertford Street Management Plan dated 12 August 2016 approved on 15 August 2016 (RN 16/03976/ADFULL).

Reason:

To make sure that this does not cause a nuisance for people in the area. This is as set out in TACE 10 and ENV6 of our Unitary Development Plan that we adopted in January 2007 and S24 and S 33 of the City Plan: Strategic Policies that we adopted in November 2013.

- 5 You must not play live or recorded music within the area identified on the approved drawings as main entrance to club.

Reason:

To make sure that this does not cause a nuisance for people in the area. This is as set out in TACE 10 and ENV6 of our Unitary Development Plan that we adopted in January 2007 and S24 and S 32 of the City Plan: Strategic Policies that we adopted in November 2013.

- 6 No servicing shall take place outside the hours of 07.00-23.00. Servicing includes loading and unloading goods from vehicles and putting rubbish outside the building.

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan: Strategic Policies adopted November 2013 and TRANS 23, ENV 5 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R22CC)

- 7 All windows from the kitchens facing into the internal courtyard shall be kept closed and

permanently fixed shut.

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 S 32 of the City Plan : Strategic Policies that we adopted in November 2013.

- 8 (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 5 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 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.
- (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:

As set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(2) 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. (R46BB)

- 9 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 (4) of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at sections 9.84 to 9.87, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the development from the intrusion of external noise. (R49AA)

- 10 The third floor terrace as shown on drawing number 1496-P-01-3-130-203 rev D shall only be open to customers between the hours of 07.00 and 00.30 daily.

Reason:

To make sure that this does not cause a nuisance for people in the area. This is as set out in TACE 10 and ENV6 of our Unitary Development Plan that we adopted in January 2007 and S24 and S 32 of the City Plan : Strategic Policies that we adopted in November 2013.

- 11 All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings we have approved or are required by conditions to this permission. (C26AA)

Reason:

To protect the special architectural or historic interest of this building and to make sure the development contributes to the character and appearance of the Mayfair Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007. (R27AC)

- 12 The new joinery work must exactly match the existing original work unless differences are shown on the drawings we have approved. (C27EA)

Reason:

To protect the special architectural or historic interest of this building and to make sure the development contributes to the character and appearance of the Mayfair Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and paras 10.108 to 10.146 of our Unitary Development Plan that we adopted in January 2007. (R27AC)

- 13 You must not put any machinery or associated equipment, ducts, tanks, satellite or radio aerials on the roof, except those shown on the approved drawings. (C26PA)

Reason:

Because these would harm the appearance of the building, and would not meet S25 or S28, or both, of Westminster's City Plan (November 2016) and DES 1 and DES 5 of our Unitary Development Plan that we adopted in January 2007. (R26HC)

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 8 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)

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.