

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 23 October 2018	Classification For General Release	
Report of Director of Planning		Ward(s) involved West End	
Subject of Report	1 Woodstock Street, London, W1C 2AB,		
Proposal	Continued use of the basement and ground floor as a restaurant (Class A3)		
Agent	MRPP		
On behalf of	DrunchW1 Ltd		
Registered Number	18/05996/FULL	Date amended/ completed	26 July 2018
Date Application Received	17 July 2018		
Historic Building Grade	Unlisted		
Conservation Area	Mayfair		

1. RECOMMENDATION

Grant conditional permission

2. SUMMARY

The application site is located on the corner of Woodstock Street and Blenheim Street. Originally a Class A1 sandwich bar, at some point it converted to restaurant use without permission (though permission was granted in 1989 for a kitchen extract duct). The unit is small, being only 108 sqm and has a capacity of approximately 32 covers. Permission is now sought to regularize the use. The applicant is seeking hours of operation of between 09:00 and 20:00 daily.

The key issues for consideration are:

- The loss of the lawful retail use on the character and function of the area; and
- The impact of the proposed restaurant on residential amenity of the surrounding area,

Due to the long term absence of a retail element in this unit, it is not considered that the loss of the lawful retail (Class A1) unit would be detrimental to the character and function of the area. Subject to conditions, it is not considered the proposed use would negatively impact on residential amenity nor detract from the character and function of the area, especially given the small size and limited opening hours. The scheme is therefore recommended for approval and complies with the policies set out in the Unitary Development Plan (UDP) and Westminster's City Plan (City Plan).

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

CROSSRAIL 1

No response to date

CROSSRAIL 2

No comment

MAYFAIR RESIDENTS GROUP

No response to date

RESIDENTS SOCIETY OF MAYFAIR & ST. JAMES'S

No response to date

ENVIRONMENTAL HEALTH

No objection subject to conditions

HIGHWAYS PLANNING

Objection – no details of cycle storage, details of waste storage not in line with Council requirements.

WASTE PROJECT OFFICER

Submitted details of waste storage are not in line with Council requirements – condition requested

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 51

Total No. of replies: 9

No. in support: 9

Nine comments of support have been received in response to the application, 2 of which are from the same person (possibly the operator themselves, based on the applicant details for previous applications), and others from commercial operators on the street and in the locality.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

The application site is an unlisted building within the Mayfair Conservation Area, the West End Special Retail Policy Area (WESRPA) and the Core Central Activities Zone CAZ. It is located on the corner of Woodstock Street and Blenheim Street, which is not within a designated stress area. The property comprises of basement, ground and first to third floors. The first to third floors are in use as offices (Class B1). The basement and ground floor are currently occupied by a restaurant known as Drunch.

The lawful use of the ground and basement floors is not entirely clear. A lawful development certificate was submitted by the applicant earlier this year, that sought to

demonstrate that the existing use of the premises is as a restaurant/café (Class A3); it also sought to demonstrate that the use of the public highway for the placing of tables and chairs in two areas on Blenheim and Woodstock Streets was lawful through being immune from enforcement action (through having taken place without material interruption for at least ten years before the submission of the application). The lawful development certificate was refused on 16 April 2018 on the grounds that submitted evidence was not sufficiently precise or unambiguous to demonstrate, on the balance of probability, that the use sought was lawful.

Based on the evidence available in that application, it appeared more likely that the use of the premises has gradually changed from a sandwich shop (Class A1), to a premises selling sandwiches and some hot food with limited seating (sui generis), only becoming a café / restaurant in July 2013. This time period is well short of the required 10 years to demonstrate the use is lawful. As such, the Council would consider that the lawful use of the basement and ground floor is still retail (Class A1) as originally permitted in 1973 and 1974. However, it is acknowledged that the premises has probably been used for food-related purposes (including retail sandwich bar) for much of this time.

6.2 Recent Relevant History

There are currently two enforcement investigations open against the site. One of these relates to the use of the premises as a Shisha Café (Rn: 14/56226/I) and the second is in relation to tables and chairs being placed on the public highway without permission (RN: 13/54588/N).

Planning permission for the use of the public highway for placing tables and chairs in association with the adjacent use in the property was refused in May 2018 (RN: 17/10597/TCH) on the grounds that the application was premature and such a use would intensify the unauthorised use of the basement and ground floors.

A certificate of lawfulness was refused in April 2018 (RN: 15/00006/CLEUD) which sought to regularise the use of the basement and ground floor as a restaurant (Class A3) and the use of the public highway for the placing of 12 tables and 13 chairs. This certificate was refused on the grounds that the information provided was not sufficiently precise or unambiguous to demonstrate, on the balance of probability, that the uses applied for had taken place continuously for at least ten years prior to the date of application.

Planning permission was granted in May 1989 for the installation of extract ductwork. Permission had been refused in 1983 for use of the premises as a restaurant with ancillary kitchen accommodation and erection of an extract duct in the rear light, on the grounds of loss of retail space.

Planning permission was granted in April 1974 for the use of the basement area as a snack bar (RN: 74/24061/UNK) and in February 1973 for the use of the ground floor as a sandwich bar (RN: 73/02302/UNK). Both of these uses would fall within Class A1 retail of the current use class order.

7. THE PROPOSAL

Retrospective permission is now sought to allow the continued use of the basement and ground floor as a restaurant (Class A3), and to regularise the lawful use of the unit for Class A3 purposes. The unit (basement and ground floor) measures 108 sqm and the applicant has advised the capacity would be 32 guests. The hours of operation are between 09:00 and 20:00 daily. No external alterations are proposed as the restaurant utilises the existing duct on the site.

8. DETAILED CONSIDERATIONS

8.1 Land Use

Loss of Retail Use

City Plan Policy S21 protects retail floorspace through the Westminster except where the Council considers the unit is not viable, as demonstrated by long-term vacancy (18 months) despite reasonable attempts to let. City Plan Policy S7 seeks to protect the unique status and offer of the WESRPA as well as providing Oasis Area of rest, where appropriate, to support the main retail areas in the Policy Area. UDP Policy SS5 seeks an appropriate balance of town centre uses in the CAZ and states that *“A1 uses at ground, basement and first floor level in the CAZ and CAZ frontages will be protected.”* It goes on to state that the introduction of non-A1 town centre uses at these floors will only be granted where it would not be detrimental to the character and function of an area or to the vitality or viability of a shopping frontage or locality. Non-A1 uses also must not lead to, or add to, a concentration of three or more consecutive non-A1 uses.

Long-term vacancy of the site cannot be demonstrated in this location as the current occupier has been there for some time and, as outlined in section 6.1, been operating in a manner similar to the current operation since approximately 2013. While the loss of retail floorspace might normally be considered unacceptable, it is considered to be hard to resist in this case due to the long standing absence of a proper retail element in the site and the fact that it has been used for food and drink purposes for a long time, albeit originally as a retail sandwich bar. It would not be considered that the unit has made a contribution to the retail function of the area and therefore, the loss of this retail unit would not be detrimental to the character and function of the area.

The loss of the retail unit would lead to a concentration of three or more consecutive non-A1 uses in a row (resulting in four in this location along Blenheim Street), therefore not complying with UDP Policy SS5. However, for the reason outlined above, it is not considered that this will detract from the character and function of the area and is considered acceptable in this instance.

Proposed Restaurant 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 (108sqm), UDP policy TACE 8 is applicable. Council records indicate that the closest residential accommodation to the application unit are located opposite the site on the upper floors of 8 Blenheim Street. Other residential units are located on the upper floors of Nos. 4, 10 and 11 Blenheim Street. Woodstock Street appears to have significantly less residential properties on it with the closest being at No. 16, which is some 19.5m away.

The capacity of 32 guests and operational hours (09:00 and 20:00 daily) of the restaurant are both considered to be modest and acceptable for this location. They can be secured by condition.

The applicant argues that the provision of the proposed use in this area would be in accordance with Policy S7 of the City Plan as it would contribute to the provision of an oasis area of rest, supporting the WESPRA. It is considered that this location is appropriate for such a use which supports the key shopping areas on nearby Oxford Street and New Bond Street.

Given the size of the premises, the relatively modest opening hours and its existing operation, it is not considered that the proposals would have an adverse impact on the character or function of the area, nor on residential amenity. The issue of kitchen extraction is dealt with in section 8.7.

It is noted that there are several representations in support of the application, including claims about the provision of excellent food and drinks in the premises, and that tourists and nearby businesses benefit from this.

The supporters have also lament the Council's enforcement actions against the occupiers unauthorised restaurant use and unauthorised use of the highway for placing tables and chairs and how they consider the Council do not make decisions in the right manner. They also say that Westminster should protect its more affluent restaurants.

8.2 Townscape and Design

Not applicable

8.3 Residential Amenity

The impacts of the proposed use on residential amenity have been covered in section 8.1 above.

8.4 Transportation/Parking

The Highways Planning Manager has assessed the application and raised objection to the change in use due to the absence of on site cycle parking. For an A3 use, the London Plan requires 1 space per 175sqm of floorspace. This would require a total of 2 cycle parking spaces. However, given the size limitations of the site and the lack of suitable and accessible areas for such parking, it is considered unreasonable to insist on this provision.

8.5 Economic Considerations

The general economic contribution of an occupied commercial unit is noted.

8.6 Access

Access arrangements to the site will not be affected by these proposals.

8.7 Other UDP/Westminster Policy Considerations

Plant

The application site already benefits from an existing duct located in a small lightwell to the rear. This appears to be the same duct which was permitted in 1989 and installed subsequently.

Following a visit to the site premises, Environmental Health have confirmed that the existing situation with regards to the duct and kitchen equipment used is acceptable. The existing duct appears to discharge 1m above the height of the flat roof on the property. Although another part of the building block was higher than the discharge point, this is a solid brick with no windows or louvres, so that the discharge location is unlikely to result in odour nuisance.

While there are no residential uses in the building or immediately next door, the Environmental Health Officer has still requested that the building users be protected from internal sound transference through the building fabric, should activities change internally within the restaurant (e.g. louder music played etc.). This will be secured by condition.

Refuse /Recycling

The Waste Officer has assessed the application and noted that the drawings submitted showing waste storage are not in line with the Council recycling and waste storage requirements. However, given that the use is already operating and there appears to have been no issues with waste storage or collection, it is not considered necessary to impose this condition.

8.8 Neighbourhood Plans

The submission version of the Mayfair Neighbourhood Plan has been submitted by Mayfair Neighbourhood Forum to the council for consultation and an independent examiner is due to be appointed shortly.

8.9 London Plan

This application raises no strategic issues.

8.10 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.

8.11 Planning Obligations

Planning obligations are not relevant in the determination of this application.

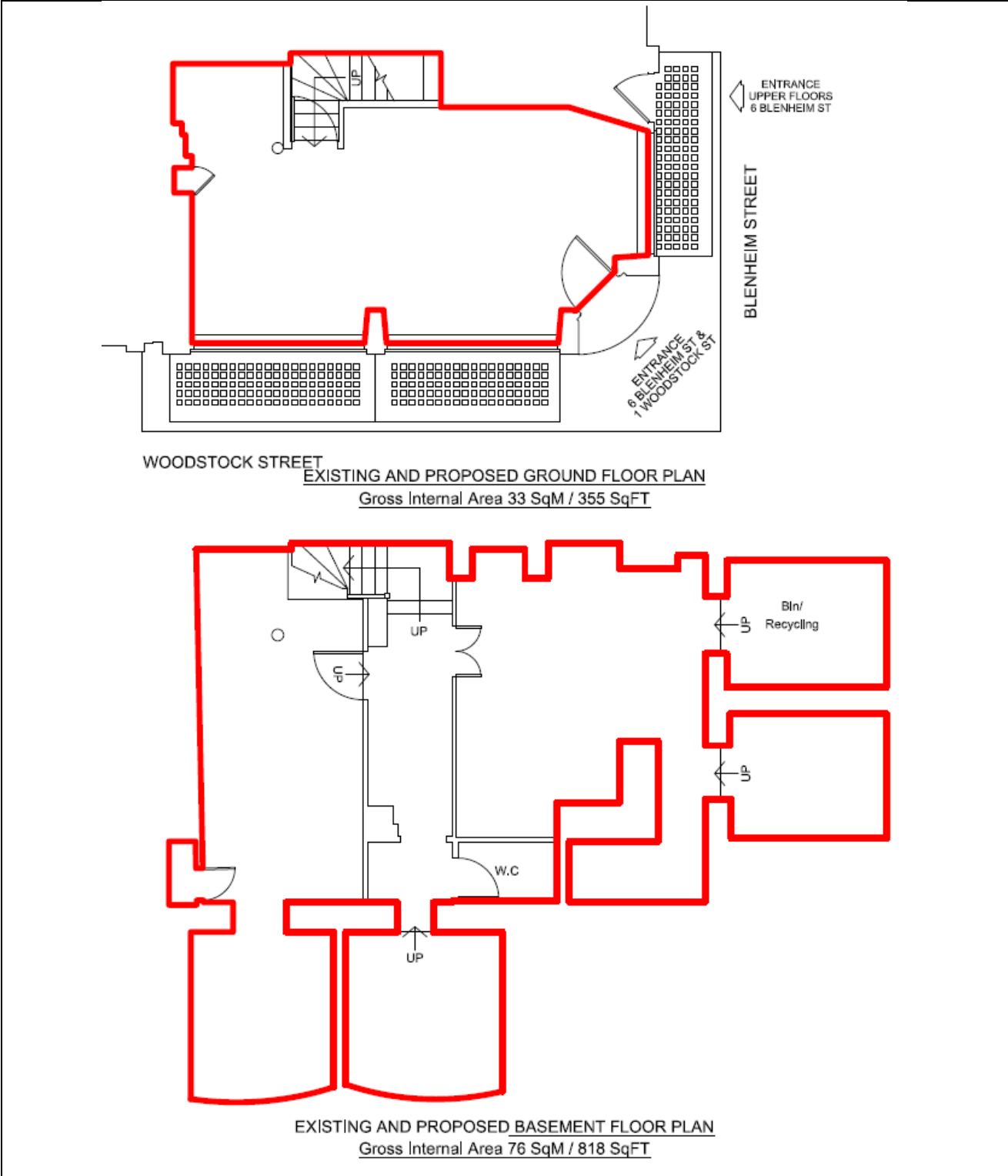
8.12 Environmental Impact Assessment

Environmental Impact issues have been covered in section 8.1 and 8.7 above.

(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

9. KEY DRAWINGS



DRAFT DECISION LETTER

Address: 1 Woodstock Street, London, W1C 2AB,

Proposal: Use of the basement and ground floor as a restaurant (Class A3)

Reference: 18/05996/FULL

Plan Nos: JDD_WS_001 dated February 2013

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 Customers shall not be permitted within the restaurant (Class A3) premises before 09:00 or after 20:00 each day. (C12AD)
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 of our Unitary Development Plan that we adopted in January 2007. (R12AC)
- 3 You must not allow more than 32 covers inside the premises at any one time.
Reason:
We cannot grant planning permission for unrestricted use in this case because it would not meet TACE 8 of our Unitary Development Plan that we adopted in January 2007. (R05AB)
- 4 If you provide a bar and bar seating, it must not take up more than 15% of the floor area of the property, or more than 15% of each unit if you let the property as more than one unit. You must use the bar to serve restaurant customers only, before, during or after their meals. (C05GA)
Reason:
We cannot grant planning permission for unrestricted use in this case because it would not meet TACE 8 of our Unitary Development Plan that we adopted in January 2007. (R05AB)
- 5 The kitchen extract ventilation for the removal of cooking fumes must be maintained for the life of the restaurant (Class A3) use and must discharge at least 1m above roof eaves (or 1m above flat roof).
Reason:
To protect the environment of people in neighbouring properties and the appearance of the site.

This is in line with S29 and S32 of Westminster's City Plan (November 2016) and ENV 6, ENV 7, DES 5 and DES 6 of our Unitary Development Plan that we adopted in January 2007.

- 6 The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.

For music noise; the indices of Leq and LFmax in the octave bands 31.5 Hz, 63 Hz and 125 Hz should be at least 10 dB below the existing background noise level measured in terms of L90,5mins (31.5Hz, 63Hz, 125Hz) inside the neighbouring premises.

Reason:

As set out in ENV6 of our Unitary Development Plan that we adopted in January 2007, and the related Policy Application at section 9.76, in order to ensure that design, structure and acoustic insulation of the development will provide sufficient protection for residents of the same or adjoining buildings from noise and vibration from elsewhere in the development. (R49BA)

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 To place any furniture on the public highway, you will require both (a separate) planning permission and a street trading licence. You can contact our Licensing Service on 020 7641 8549 for further advice regarding a street trading licence.
- 3 Should you alter the external route and/or discharge point of the existing extract duct to the rear, it is likely that you will require the benefit of planning permission. You should also discuss any future changes to this equipment with a Council Environmental Health Officer.
- 4 The kitchen extract ducting must be fitted with doors/hatches for cleaning, at approximately 3 metre intervals, complying with the H & S safe access standards
- 5 Amplified music is should be provided via a suitable noise limiter fitted to the musical amplification system set at a level to ensure compliance with Condition C49BA as amended.

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.