

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 30 October 2018	Classification For General Release	
Report of Director of Planning		Ward(s) involved Maida Vale	
Subject of Report	Basement And Ground Floor , 294 Elgin Avenue, London, W9 1JS		
Proposal	Variation of condition 5 (hours of use) and 9 (no deliveries) of planning permission dated 05 September 2016 (RN: 16/04625/FULL) for the Use of basement and ground floor as a cafe/restaurant (A3). Replacement of existing shopfront with new timber shopfront including new fascia board, retractable awning. Reinstatement of two rear windows and other minor alterations. NAMELY, to allow operational hours of 07.00-23.00 hours Monday to Saturdays and 08.00-22.30 hours on Sundays and to allow deliveries.		
Agent	Mr Dragan Romanic		
On behalf of	Mr Dragan Romanic		
Registered Number	18/06271/FULL	Date amended/ completed	23 August 2018
Date Application Received	25 July 2018		
Historic Building Grade	Unlisted		
Conservation Area	Maida Vale		

1. RECOMMENDATION

Grant conditional permission, subject to a one year temporary permission and requirement for an operational management plan in respect of delivery service.

2. SUMMARY

Permission was granted on 5 September 2016 for works including the use of the basement and ground floor as a café/restaurant. The permission included conditions which limited the number of customers (maximum of 40), the opening hours (07:00 – 19:00 Monday to Saturday and 08:00 – 18:00 on Sundays, bank and public holidays) and to ensure that no delivery service was provided.

This application seeks to amend the opening hours for the premises and to allow the provision of a delivery service. No change is proposed to the number of customers allowed on the premises.

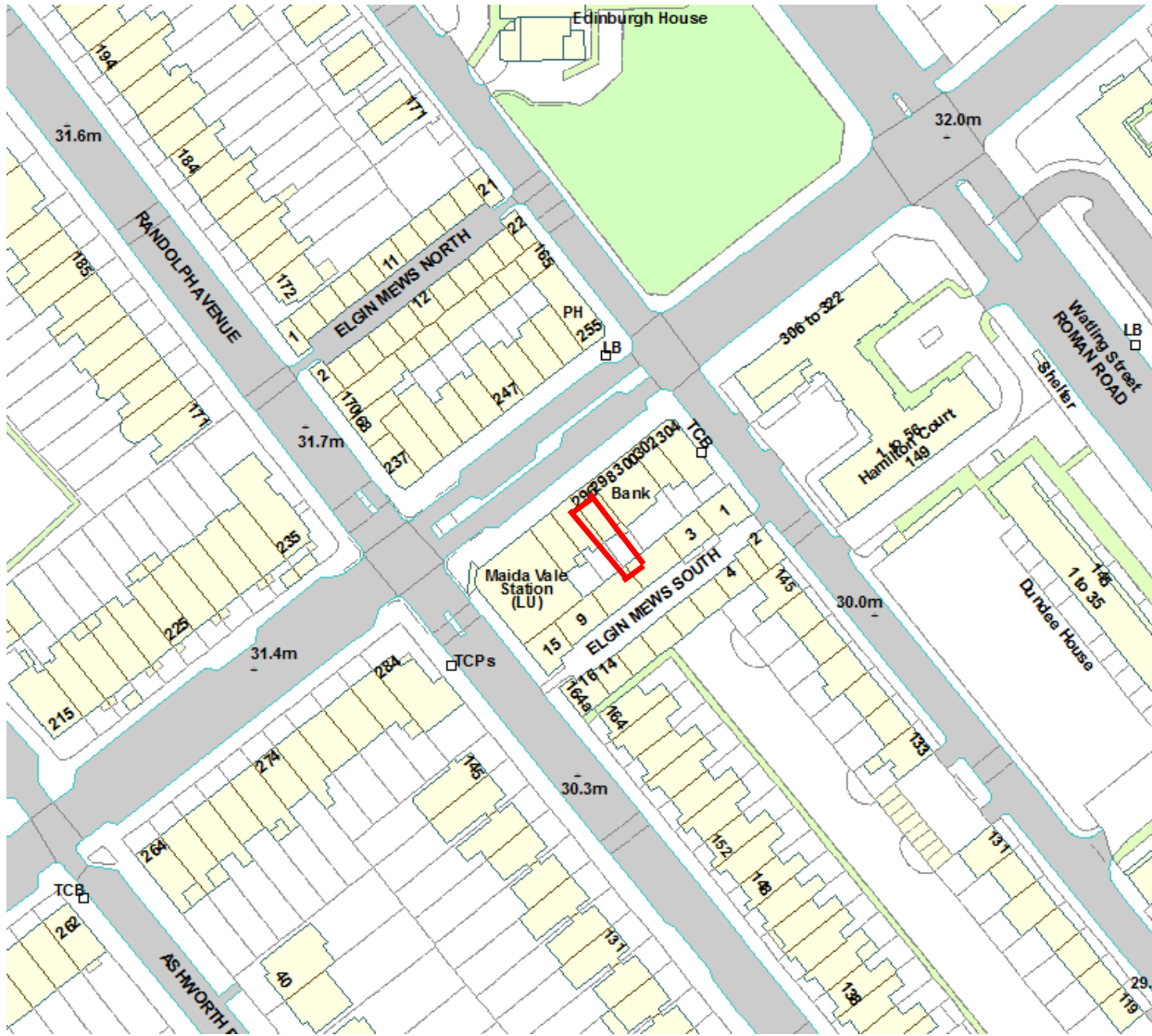
Objections have been received on the grounds that the proposed amendments could have a negative impact on the area. One letter of support has also been received.

The key issues in relation to this case are:

- The impact of the proposals on the highway network;
- The impact of the proposals on the amenity of neighbouring residents.

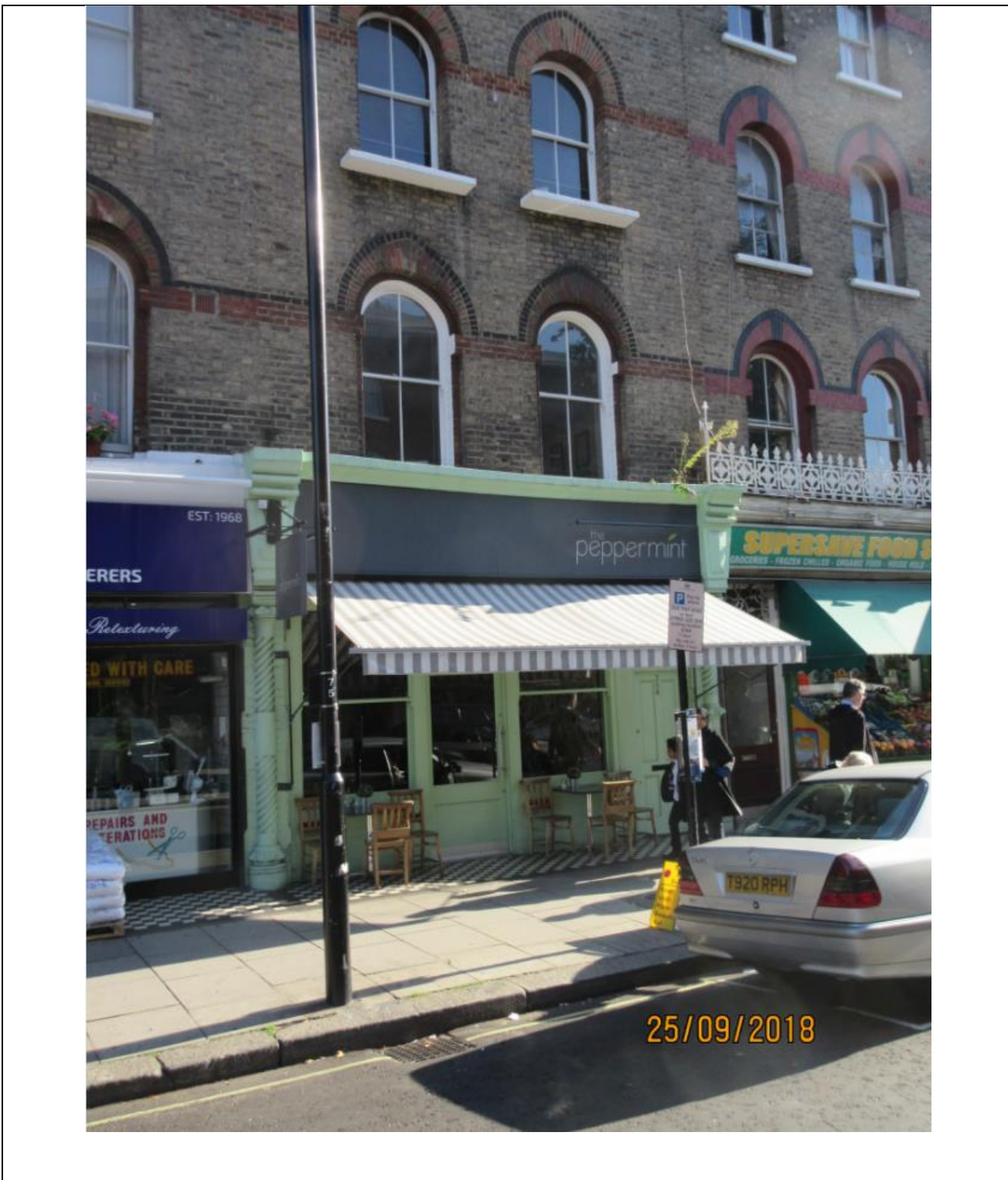
The proposed variations to the opening hours and for the provision of a delivery service are considered acceptable subject to permission being granted for the delivery service for a temporary period of one year and the submission of an Operational Management Plan. Subject to this condition the proposals are considered to accord with the City Councils adopted policies in the City Plan (November 2016) and the Unitary Development Plan (UDP) (January 2007) in land use, amenity and highways terms. The application is therefore recommended for temporary approval (in relation to the delivery service), subject to the conditions as set out on the draft decision letter appended to this report.

3. LOCATION PLAN



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4. PHOTOGRAPHS (front elevation)



5. CONSULTATIONS

PADDINGTON WATERWAYS AND MAIDA VALE SOCIETY:

No objection, but consider the deliveries should be restricted to standard core hours.
Request for neighbours' views to be taken into consideration.

HIGHWAYS PLANNING MANAGER:

Raise objection to the removal of the condition and the provision of a delivery service.
Comment that should officers recommend approval, this should be subject to the provision of a Delivery Service Management Plan prior to implementation and permission should only be granted for a temporary period.

WASTE PROJECTS OFFICER:

No objection.

ENVIRONMENTAL HEALTH:

No objection.

PLANNING ENFORCEMENT:

Any response to be reported verbally.

DESIGNING OUT CRIME OFFICER:

Any response to be reported verbally.

ADJOINING OWNERS / OCCUPIERS:

No Consulted: 70

No responses: Four responses. Three objections (2 from the same address) raising some or all of the following issues:

- Request for considerations to reduce noise from additional traffic and cooking (particularly given long hours);
- Increased vagrancy;
- Increased anti-social behaviour;
- Improvements to business should not be at the expense of local residents;
- There is no enforcement of traffic and parking restrictions past 18:30 so local residents must fend for themselves;
- Limited other establishments in area open as late;
- If rear courtyard is allowed for additional customer seating noise levels to adjacent residences will increase (noise hotline would not be enforceable).

One letter of support raising the following points:

- Vital to support local businesses;
- Road is always busy late at night and pub opposite operates late hours, so extended opening hours acceptable.

SITE NOTICE / PRESS ADVERT:

Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

This application relates to a cafe located at ground and basement floors, on the south side of Elgin Avenue, close to the entrance to Maida Vale Tube Station. The property is not listed but within the Maida Vale Conservation Area. The site also lies within the Maida Vale Local Centre. There are residential flats on the upper floor levels.

6.2 Recent Relevant History

Permission was granted on 5 September 2016 (Referenced 16/04625/FULL) for the use of basement and ground floor as a cafe/ restaurant (A3). Replacement of existing shopfront with new timber shopfront including new fascia board, retractable awning. Reinstatement of two rear windows and other minor alterations.
Application Permitted 5 September 2016

7. THE PROPOSAL

The original permission (ref 16/04625/FULL) included restrictive conditions to limit the opening hours of the cafe to between 07:00 and 19:00 Monday to Saturday and 08:00 to 18:00 Sundays and Bank Holidays, to reduce the impact on the amenity of neighbouring residents and so that no delivery service was provided which could reduce the availability of parking for other uses and increase noise and fumes in the area.

This application seeks to vary these conditions to allow the premises to open longer hours and to provide a delivery service. The proposed opening hours are:

- Monday to Saturday 07:00 to 23:00
- Sundays and Bank Holidays 08:00 to 22:30

Through the amendments to the conditions the applicant is looking to expand their offer and to compete with other local operators.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The principle of the use was established through the granting of permission for the café/restaurant use. The unit has since been operating as 'Peppermint', a café use (Class C3). The operator is looking to expand their offer, by amending their menu, opening hours and by providing a delivery service.

The café has a floorspace of approximately 116sqm and therefore TACE 8 of the UDP applies, which relates to entertainment uses. The policy states that permission will generally be granted where the City Council is satisfied that proposals have no adverse impact upon residential amenity or local environmental quality as a result of a) noise; b) vibration; c) smells; d) increased late night activity; e) increased parking and traffic. It

also seeks to ensure that development will have no adverse effect on the character or function of its area.

In order to mitigate against negative impacts as a result of the development, conditions were applied to the original permission. Consideration must therefore be had as to the acceptability of varying these conditions as proposed.

Three objections have been received from residents within the mews directly behind the unit on Elgin Avenue, on various grounds including increased noise and anti-social behaviour. No objections and one letter of support has been received from residents on Elgin Avenue.

Extended opening hours (Condition 5):

The terrace which this unit sits within, is largely characterised by retail units, including local convenience shops, a laundrette and an estate agents. The opposite side of Elgin Avenue includes a number of convenience shops, a pharmacy, an antiques shop, a hair dressers a Thai restaurant and a pub. There is also a restaurant just off Elgin Avenue on Randolph Avenue, 'Banana Tree'. Records would indicate that none of these existing restaurant uses are restricted by conditions in relation to hours or delivery services. The website for the Thai restaurant indicates that it is open until 23:00 daily, Banana Tree also until 23:00 daily (except 22:30 on Sundays) and the pub until 23:00 Monday to Thursday and midnight on Friday and Saturday. Both the Thai restaurant and Banana Tree provide a delivery service.

Objectors located within the Mews to the rear have raised concerns in relation to the provision of an additional unit which is open until late in the evening and suggest that this may set a precedence. Each application must be assessed on its merits and this unit sits within a frontage which currently does not include any other entertainment uses. No objections have been received from residents located on Elgin Avenue, who are most likely to be directly impacted by extended hours, due to comings and goings later into the evening. Given that there are other examples of premises in the location with similar opening hours, and the relatively small size of the unit, it is not considered that the proposals will have such a significant impact on the amenity of adjacent residents, as to justify refusal.

Concerns have also been raised in relation to the use of a yard to the rear of the unit at basement level for additional seating until 11pm, which could cause noise disturbance to residents to the rear. While the use of this space is not currently limited, the premises are restricted in terms of their opening hours to 7pm. While it is unlikely that this space would be used by customers, due to its 'back of house' location, a condition is recommended to limit the use of this space, so that it is not used by customers to ensure that amenity of residents to the rear is protected. This has been accepted by the applicant.

Provision of delivery service (Condition 9):

Concerns have also been raised by residents of Elgin Mews South that scooters currently congregate at the junction of Elgin Avenue / Randolph Avenue, causing discomfort to surrounding residents. They also note that there is no enforcement of traffic or parking restrictions past 18:30.

The Highways Planning Manager has also raised concerns in relation to parking, noise and fumes. While the concerns raised by the residents of the mews and the Highways Planning Manager are shared by officers, the applicant is seeking to expand their offer in order to increase the long term viability of the permitted use. No objections have been received in relation to the existing use, with one letter of support from a resident of Elgin Avenue, who wishes to encourage a local independent business looking to diversify.

Subject to permission for a delivery service being granted on a temporary basis of one year, so that the impact of such a service can then be fully considered following a fresh round of consultation, it is considered that the provision of a delivery service on a trial basis is acceptable. Any future application for the continuation of a delivery service will be considered in light of consultation responses and may be refused if the impact is considered to have been too great.

8.2 Townscape and Design

Not applicable as not changes proposed.

8.3 Residential Amenity

Please refer to section 8.1 for main amenity considerations.

8.4 Transportation/Parking

It has been noted by objectors that delivery services for the existing restaurant linger at the junction of Elgin and Randolph Avenue, where parking restrictions are not enforced. It is unclear if these cause harm or which restaurant these services relate. Subject to the condition for the submission of an Operational Management Plan and permission being granted on a temporary basis, it is considered that the impact of the service can be mitigated and its impact be reconsidered in a years time should the operator wish to continue providing this service.

8.5 Economic Considerations

No economic considerations are applicable for a development of this size.

8.6 Access

No change to existing access arrangements.

8.7 Other UDP/Westminster Policy Considerations

Concerns have been raised in relation to the ventilation equipment for the restaurant. The original permission included details of ventilation and conditions in relation to noise, which will need to be adhered to under the revised operating hours. This is considered acceptable. In addition, no objection has been received from Environmental Health in relation to the proposals.

8.8 Neighbourhood Plans

Not applicable.

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.

Further to the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the City Council cannot impose a pre-commencement condition (a condition which must be discharged before works can start on site) on a planning permission without the written agreement of the applicant, unless the applicant fails to provide a substantive response within a 10 day period following notification of the proposed condition, the reason for the condition and justification for the condition by the City Council.

An Operational Management Plan is required to be submitted confirming how the delivery service will be managed and when it will commence. The applicant has agreed to this condition.

8.11 Planning Obligations

Planning obligations and a CIL payment is not relevant in the determination of this application.

8.12 Environmental Impact Assessment

The development is of insufficient scale to require the submission of an EIA.

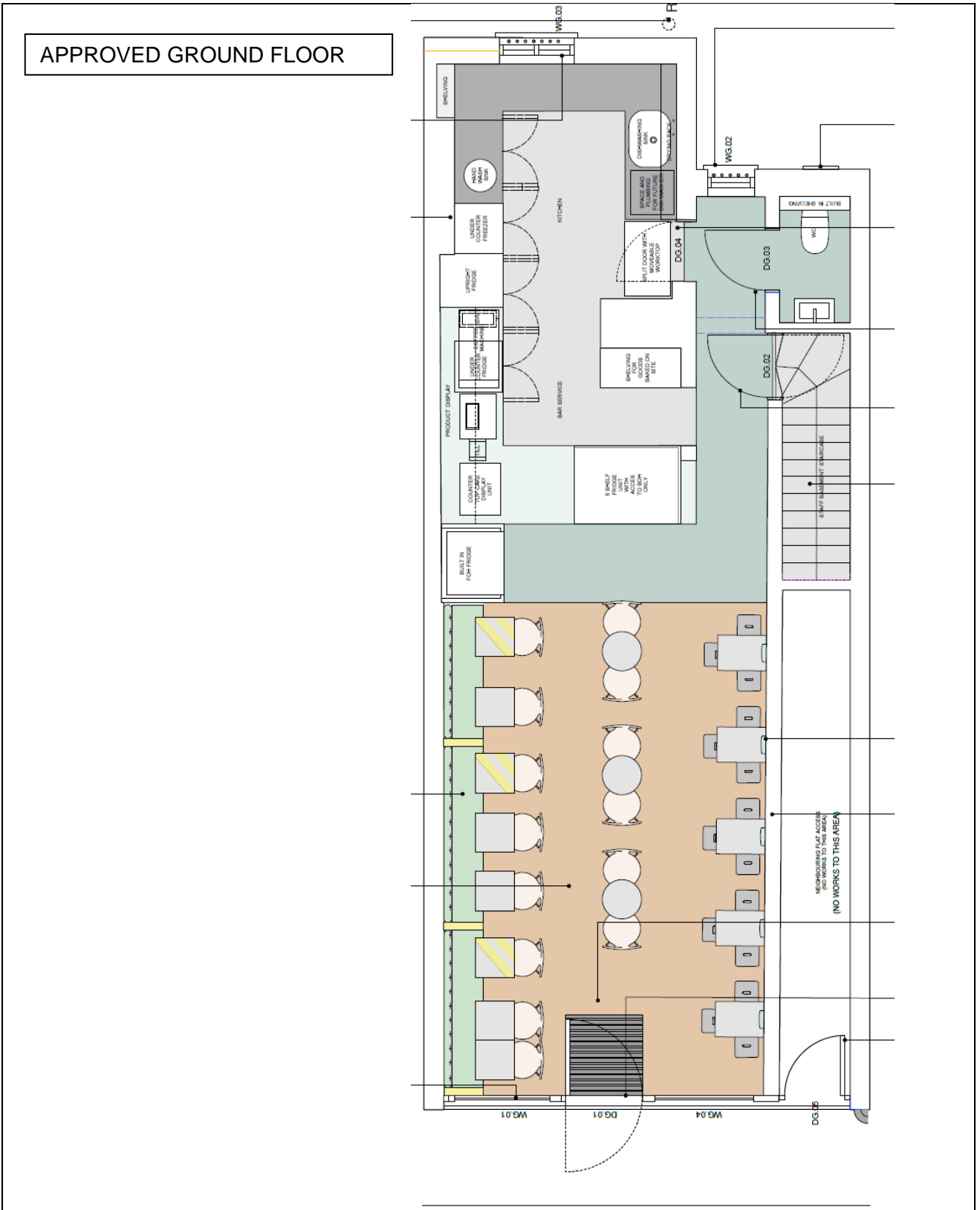
8.13 Other Issues

Concerns in relation to anti social behaviour have been received. An informative is recommended to require the OMP to include details of how customers will be managed to reduce anti-social behaviour.

(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: **RUPERT HANDLEY** BY EMAIL AT rhandley@westminster.gov.uk

9. KEY DRAWINGS



DRAFT DECISION LETTER

Address: Basement And Ground Floor , 294 Elgin Avenue, London, W9 1JS

Proposal: Variation of condition 5 (hours of use) and 9 (no deliveries) of planning permission dated 05 September 2016 (RN: 16/04625/FULL) for the Use of basement and ground floor as a cafe/restaurant (A3). Replacement of existing shopfront with new timber shopfront including new fascia board, retractable awning. Reinstatement of two rear windows and other minor alterations. NAMELY, to allow operational hours of 07.00-23.00 hours Monday to Saturdays and 08.00-22.30 hours on Sundays and to allow deliveries.

Plan Nos: Document titled "6.Condition(s) - Removal"; email dated 17 October 2018 from Dragan Romanic.

As approved under 16/04625/FULL:

15025 1.001 P1 SITE LOCATION PLAN; 15025 1.002 P1 SITE PLAN; 15025 1.100 P1 EXISTING BASEMENT FLOOR PLAN; 15025 1.101 P2 EXISTING GROUND FLOOR PLAN; 15025 1.102 P2 EXISTING ELEVATION; 15025 1.103 P2 EXISTING REAR ELEVATION; 15025 1.200 P2 PROPOSED BASEMENT PLAN; 15025 1.201 P2 PROPOSED GROUND FLOOR PLAN; 15025 1.207 P3 PROPOSED NEW SHOPFRONT; 15025 1.208 P2 PROPOSED REAR ELEVATION; 15025 1.209 P2 PROPOSED HOARDINGS; PLANNING STATEMENT; ACOUSTIC REPORT DATED 14 JUNE 2016; COVERING LETTER DATED 9 AUGUST 2016; Extraction Drawings: 200 T1; 208 T1.

Case Officer: Rupert Handley

Direct Tel. No. 020 7641 2497

Recommended Condition(s) and Reason(s) or Reason(s) for Refusal:

- 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 Except for piling, excavation and demolition work, you must carry out any building work which can be heard at the boundary of the site only:
 - o between 08.00 and 18.00 Monday to Friday;
 - o between 08.00 and 13.00 on Saturday; and
 - o not at all on Sundays, bank holidays and public holidays.

You must carry out piling, excavation and demolition work only:

- o between 08.00 and 18.00 Monday to Friday; and
- o not at all on Saturdays, Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours unless otherwise agreed through a Control

of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety). (C11AB)

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. (R11AC)

- 3 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 make sure that the appearance of the building is suitable and that it contributes to the character and appearance of this part of the Maida Vale Conservation Area. This is as set out in S25 and S28 of Westminster's City Plan (November 2016) and DES 1 and DES 5 or DES 6 or both and paras 10.108 to 10.128 of our Unitary Development Plan that we adopted in January 2007. (R26BE)

- 4 You must not allow more than 40 customers into the property at any one time. (C05HA)

Reason:

To prevent a use that would be unacceptable because of the character and function of this part of the Maida Vale Conservation Area. This is in line with S25 of Westminster's City Plan (November 2016) and DES 9 of our Unitary Development Plan that we adopted in January 2007. (R05FC)

- 5 Customers shall not be permitted within the cafe/restaurant premises before 07:00 or after 23:00 on Monday to Saturday (not including bank holidays and public holidays) and before 08.00 or after 22:30 on Sundays, bank holidays and public holidays. (C12BD)

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 TACE8 of our Unitary Development Plan that we adopted in January 2007. (R12AC)

- 6 (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 LA90, 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. (R46AB)

- 7 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. (R48AA)

- 8 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.

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)

- 9 The delivery service hereby approved shall only operate for 1 year from the date an Operational Management Plan (OMP) has been submitted and approved by the Council as Local Planning Authority. The delivery service will then be provided in accordance with the OMP, unless otherwise agreed first by the City Council through the submission of a revised OMP. Following one year of the date of approval, the delivery service will then cease to be provided.

Reason:

To protect neighbouring residents from noise and disturbance as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25BD)

- 10 You must apply to us for approval of details of how waste is going to be stored on the site and how materials for recycling will be stored separately. You must not start work on the relevant part of the development until we have approved what you have sent us. You must then provide the stores for waste and materials for recycling according to these details, clearly mark the stores and make them available at all times to everyone using the cafe. (C14EC)

Reason:

To protect the environment and provide suitable storage for waste as set out in S44 of Westminster's City Plan (November 2016) and ENV 12 of our Unitary Development Plan that we adopted in January 2007. (R14BD)

- 11 You must not allow customers into the rear yard at basement level.

Reason:

To protect the environment of people in neighbouring properties. This is as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 13 of our Unitary Development Plan that we adopted in January 2007. (R21BC)

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (November 2016), Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.
- 2 You must make sure that any other activities taking place in the class A3 (restaurant or café) premises, such as small amounts of takeaway sales or small bar areas, are so minor that they do not alter the main use as a restaurant or café. If the scale of one or more of these extra activities is more substantial than this, it is likely that a material (significant) change of use (from class A3 to a mix of uses) will have taken place, which will need a new planning permission. (I61BA)
- 3 Please contact our Environmental Health Service (020 7641 2971) to register your food business and to make sure that all ventilation and other equipment will meet our standards. Under environmental health law we may ask you to carry out other work if your business causes noise, smells or other types of nuisance. (I06AA)
- 4 Please contact our Cleansing section on 020 7641 7962 about your arrangements for storing and collecting waste. (I08AA)
- 5 In relation to the Operational Management Plan required by condition 9, this will include details of how you will manage the delivery service to ensure that its impact on the amenity of adjacent residents is reduced, and how you will ensure that delivery operators adhere to local highways restrictions. It should also include details of how customers will be managed to ensure that they do not cause undue harm to local residents in terms of noise or anti-social behaviour.

**BACKGROUND PAPERS - Basement And Ground Floor, 294 Elgin Avenue, London, W9
1JS 18/06271/FULL**

1. Application form
2. Response from Paddington Waterways & Maida Vale Society, dated 10 September 2018
3. Memorandum from Waste Project Officer, dated 6 September 2018
4. Memorandum from Highways Planning Manager, dated 16 October 2018
5. Memorandum from Environmental Health, dated 25 September 2018
6. Letter from occupier of 300 Elgin Avenue, London, dated 1 September 2018
7. Letters from occupiers of 5 Elgin Mews South, London, dated 6 September and 18 October 2018
8. Letter from occupier of 9 Elgin Mews South, London, dated 15 September 2018