

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 12 March 2019	Classification For General Release	
Report of Executive Director Growth Planning and Housing		Ward(s) involved St James's	
Subject of Report	138 Shaftesbury Avenue, London, W1D 7EA,		
Proposal	Variation of Condition 3 of planning permission dated 30 July 2018 (RN 18/05021/FULL) for the use of the ground, first and basement levels as restaurant (Class A3) and offices (Class B1) at second floor level including installation of plant and duct equipment at rear.; NAMELY, to allow an ancillary delivery service.		
Agent	First Plan		
On behalf of	Lemon Pepper Holdings		
Registered Number	18/10105/FULL	Date amended/ completed	27 November 2018
Date Application Received	27 November 2018		
Historic Building Grade	Unlisted		
Conservation Area	Soho		

## 1. RECOMMENDATION

Grant conditional permission for a temporary period of one year.

## 2. SUMMARY

The application site is located on the corner of Shaftesbury Avenue and Charing Cross Road, at Cambridge Circus. The unit which the application relates is occupied by Wingstop restaurant and comprises basement, ground and first floors. The third and fourth floor levels comprise two separate flats which are accessible via a separate entrance on Charing Cross Road.

Permission was granted on 13 February 2018 for a restaurant (Class A3) at basement, ground, and first floor level. Subsequently, permission was granted for the variation of condition 3 of the aforementioned consent to allow ancillary walk in takeaway sales on the 30 July 2018.

Condition 3 states that 'no delivery service to operate from the premises'. The reason for this condition was 'the we cannot grant planning permission for unrestricted use within Class A3 because it would not meet Class TACE 9 of our Unitary Development Plan that we adopted in January 2007, and because of the special circumstances of this case'.

Permission is now sought to vary Condition 3 to allow an element of sales via the Deliveroo delivery

service from the premises.

The supporting documentation states that:

- Deliveroo riders will utilise cycle and motorcycle parking facilities within two minutes' walk from the site.
- All riders will be given a specific collection time.
- Signage and leaflets will be provided to direct riders to cycle and motorcycle bays.
- Deliveroo riders will utilise a separate queue internally to reduce dwell time.

The restaurant floorspace is 304 sqm (GIA), and as the site is located within the West End Stress Area, the application is assessed against UDP Policy TACE9 and City Plan Policy S24. These policies state that new entertainment uses will need to demonstrate that they are appropriate in terms of the 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.

Objections have been received from neighbouring residents, the Soho Society and on behalf of neighbouring theatre's including the Place Theatre which is opposite the site, on the grounds that delivery service will result in increased traffic, congestion and question the likelihood that riders will be coordinated to spread their parking across different motorcycle and bicycle bays and increase noise from motorcycles and increase potential for loitering. Reference is also made to an existing issue with queuing at the premises and Deliveroo causing significant issues across Westminster.

The Highways Planning Manager has reviewed the proposal, and whilst the objector's concerns regarding the distance to bicycle/motorcycle bays are echoed, they consider that if the delivery service is operated in the manner identified above, given the availability of motorcycle and cycle spaces in the vicinity, no objection is raised subject to a condition requiring a revised operational management plan (OMP) to include the management of deliveries. It is considered that if the delivery service does not accord with the approved details, it can be successfully enforced against. However, it is recommended that that it should be granted for a temporary period of one year initially to enable its impacts to be monitored.

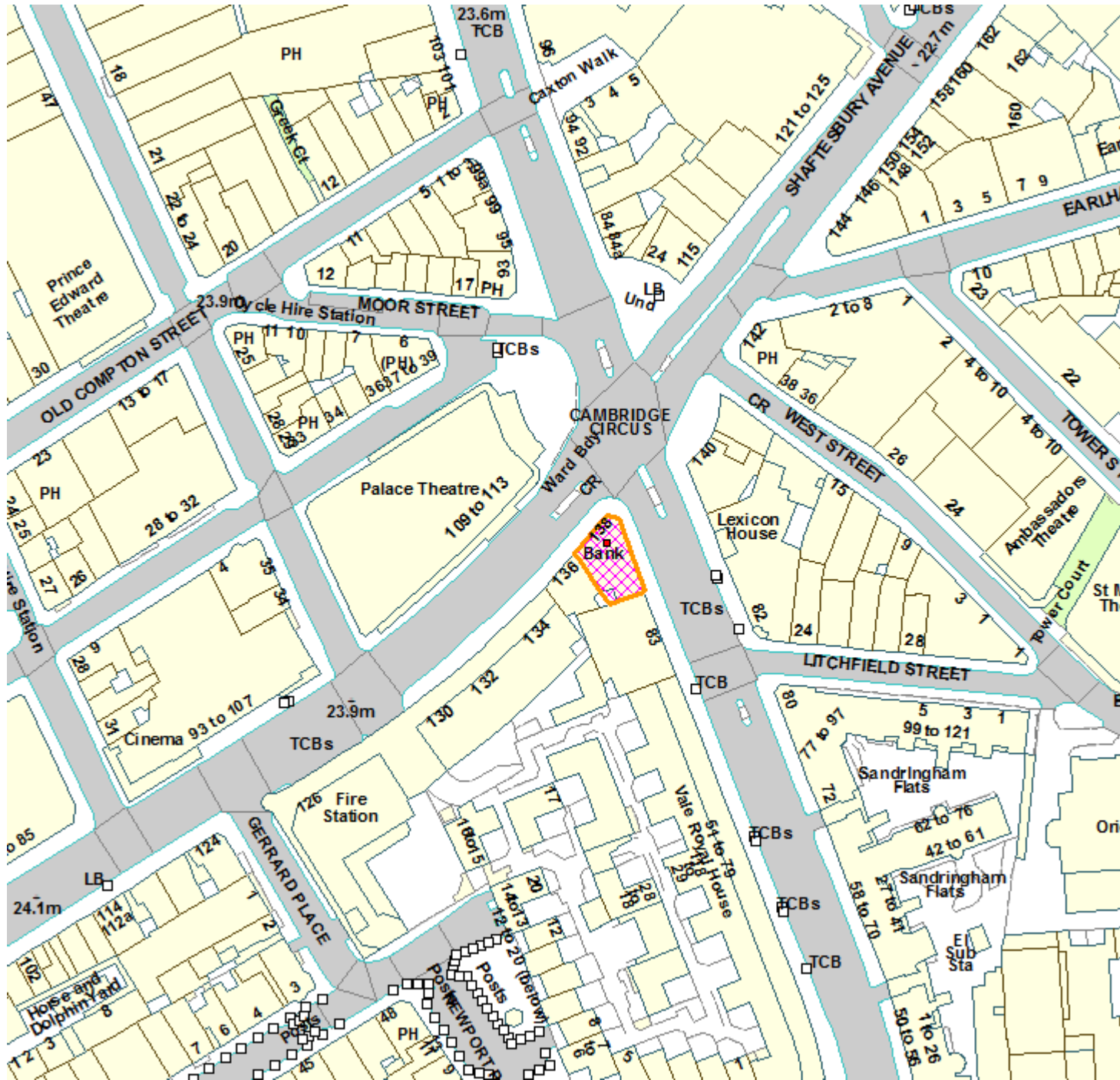
Given that Deliveroo utilise bicycles and motorcycles and noting their impacts on junction capacity, it is considered that the implication on traffic congestion in the vicinity would be negligible.

Deliveroo riders are paid on an order by order basis, this means it is not in their interests to remain parked and stationary in a specific location. As such, it is not considered that it would be reasonable to refuse this application due to the potential of increased loitering in the area.

Objectors referenced claims that the existing restaurant operators are not operating in accordance with their existing operational management plan, or approved plans and have noted the customers are queuing on the highway. No complaints have been received by the Council since the restaurant use was implemented. During the course of this application, two site visits have been undertaken, and no queuing issue was observed. An informative has been added to ensure the restaurant operates in accordance with the approved OMP.

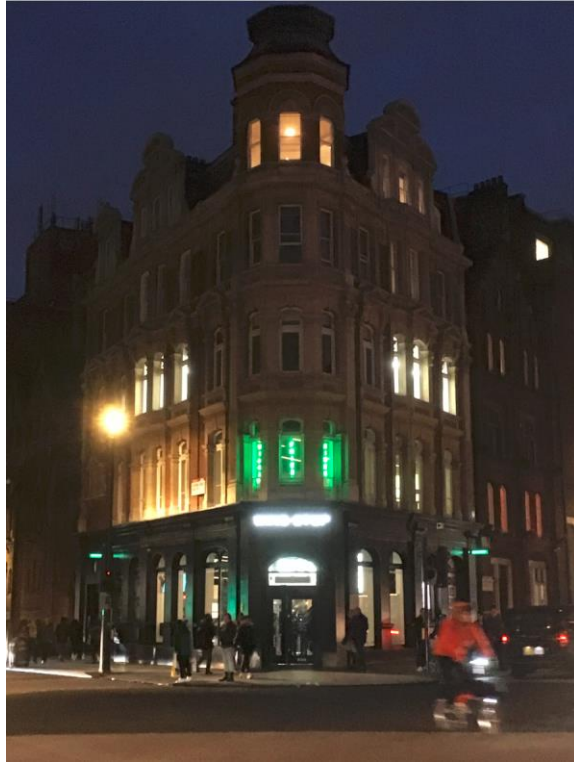
Given the background noise level due to the commercial context and high volume of vehicular traffic in the vicinity of the site, it is not considered that the proposal would result in noise nuisance to neighbouring residential properties or other noise sensitive receptors in the vicinity.

### 3. LOCATION PLAN



This production includes mapping data

#### 4. PHOTOGRAPHS



## 5. CONSULTATIONS

### SOHO SOCIETY

Objection on the following grounds - Potential obstruction and congestion.

### HIGHWAYS PLANNING MANAGER

No objection, subject to conditions.

### WASTE PROJECT OFFICER

No objection.

### ADJOINING OWNERS / OCCUPIERS

No. of original consultees: 12

No. responses: 2 objections, including 1 on behalf of the Palace Theatre on the following grounds:

- \* Increase traffic congestion;
- \* Unlikely that cycle/motorcycles will utilise all identified bays;
- \* Increase noise from motorcycles;
- \* Increased loitering;
- \* Existing issue with queuing;
- \* Existing restaurant is not complying with the approved Operational Management Plan or approved layout
- \* Deliveroo cause significant issues across Westminster

### SITE & PRESS NOTICE

Yes.

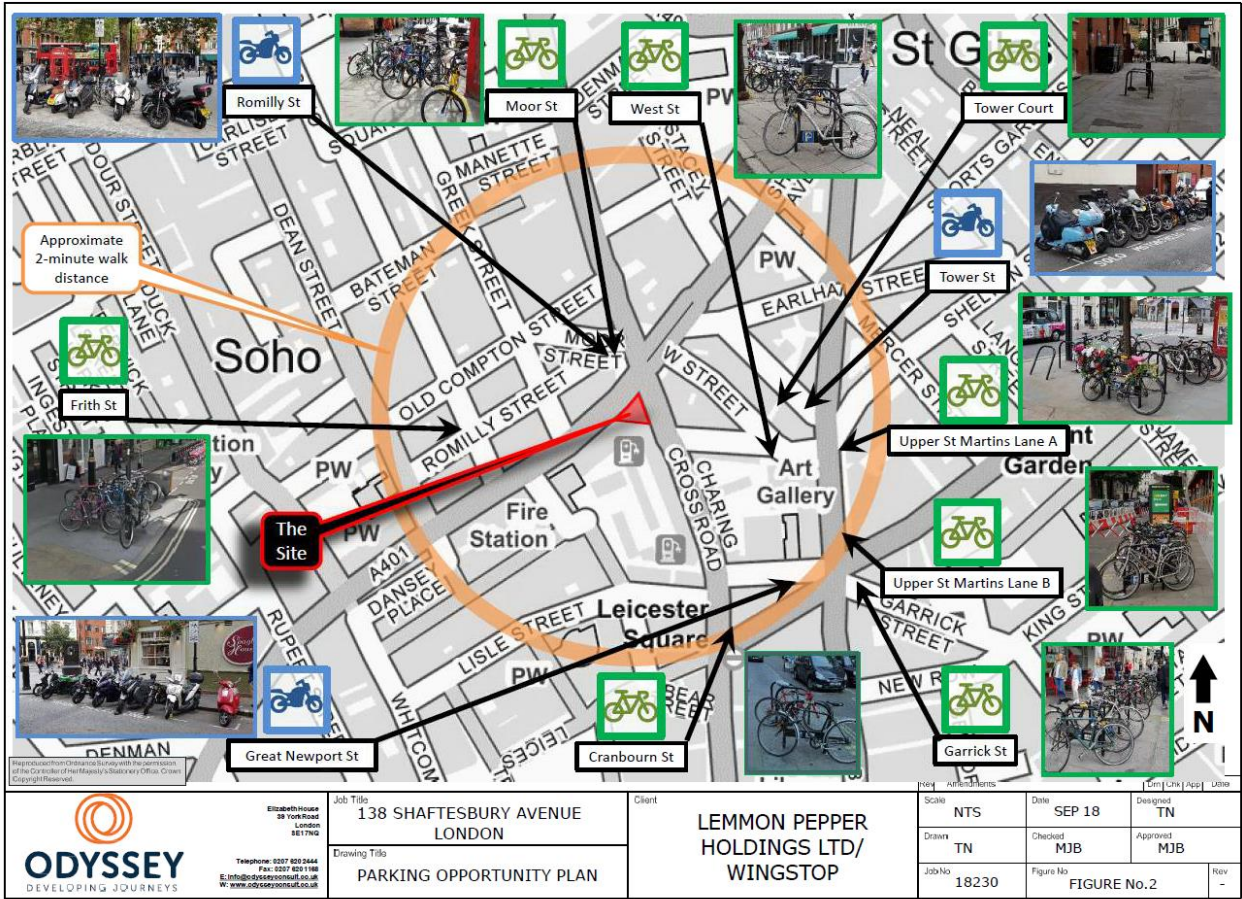
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: HELEN MACKENZIE BY EMAIL AT [hmackenzie@westminster.gov.uk](mailto:hmackenzie@westminster.gov.uk)



6. KEY DRAWINGS

Cycle and motorcycle bays in the area



**DRAFT DECISION LETTER**

**Address:** 138 Shaftesbury Avenue, London, W1D 7EA,

**Proposal:** Variation of condition 3 of planning permission dated 30 July 2018 (RN 18/05021/FULL) for the use of the ground, first and basement levels as restaurant (Class A3) and offices (Class B1) at second floor level including installation of plant and duct equipment at rear.; NAMELY, to allow an ancillary delivery service.

**Reference:** 18/10105/FULL

**Plan Nos:** Application Form

18/05021/FULL

Document titled 'Takeaway Management Plan received on the 14 June 2018

18/02126/ADFULL

3000, 3001, 138 Shaftesbury Avenue, Proposed floor mounted hooped bike racks, 001-476-000 D, 001-476-001-0 H, 138 Shaftesbury Avenue Proposed restaurant bin store at basement level, Wing Stops Operational Strategies v.3.

17/10760/FULL

3589-SK-0000, 3589-SK-0005, 3589-SK-0004, 3589-SK-0003, 001-476-000 C, 3001 C, 3002 D.

**Case Officer:** Damian Lavelle

**Direct Tel. No.** 020 7641 5974

**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 carry out any building work which can be heard at the boundary of the site only:
  - \* between 08.00 and 18.00 Monday to Friday;
  - \* between 08.00 and 13.00 on Saturday; and,
  - \* not at all on Sundays, bank holidays and public holidays.

Noisy work must not take place outside these hours. (C11AA)

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 You must apply to us for approval of a Delivery Service Management Plan. You must then carry out the measures included in the approved Delivery Service Management Plan at all times that the restaurant is in use. (C05JB,

Reason:

We cannot grant planning permission for unrestricted use within Class A3 because it would not meet Class TACE 9 of our Unitary Development Plan that we adopted in January 2007, and because of the special circumstances of this case. (R05BB)

- 4 The provision of a bar and bar seating must not take up more than 15% of the floor area of the restaurant premises. You must use the bar to serve restaurant customers only, before, during or after their meals.

Reason:

To prevent a use that would be unacceptable because of the character and function of this part of the Soho Conservation Area. This is in line with S24 of Westminster's City Plan adopted November 2016 and TACE 9 of our Unitary Development Plan that we adopted in January 2007.

- 5 You must not allow more than 99 customers into the property at any one time.

Reason:

To prevent a use that would be unacceptable because of the character and function of this part of the Soho Conservation Area. This is in line with S24 of Westminster's City Plan adopted November 2016 and TACE 9 of our Unitary Development Plan that we adopted in January 2007.

- 6 You must not play live or recorded music on your property that will be audible externally or in the adjacent properties.

Reason:

To protect neighbouring residents from noise nuisance, as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R13EC)

- 7 Customers shall not be permitted within the restaurant premises before 10.00 or after midnight daily.



## 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 (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. (R46AB)

- 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 (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)

- 10 You must apply to us for approval of details of how waste is going to be stored on the site. You must not commence the use hereby approved start work on the relevant part of the development until we have approved what you have sent us. You must then provide the waste store in line with the approved details, and clearly mark it and make it available at all times to everyone using the premises. You must not use the waste store for any other purpose. (C14CD)

Or

You must comply with the details approved on the 11 May 2018 (RN:18/02126).

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 apply to us for approval of details of secure cycle storage for the basement, ground first floor restaurant unit and the second floor office use. You must not commence the use hereby approved start any work on this part of the development until we have approved what you have sent us. You must then provide the cycle storage in line with the approved details prior to occupation. You must not use the cycle storage for any other purpose.

Or

You must comply with the details approved on the 11 May 2018 (RN:18/02126).

Reason:

To provide cycle parking spaces for people using the development as set out in Policy 6.9 (Table 6.3) of the London Plan 2016 (R22FA)

- 12 The extract duct hereby approved shall be installed in full prior to the commencement of the restaurant (Class A3) use hereby approved and shall be retained in situ for the life of the development.

Reason:

To ensure that cooking odours are adequately dispersed, as required by S29 and S31 of Westminster's City Plan (November 2016) and ENV 5 of our Unitary Development Plan that we adopted in January 2007.

- 13 You must apply to us for approval of an Operational Management Plan to show how you will prevent customers who are leaving the building from causing nuisance for people in the area, prevent customers queuing on the street, manage customers who wish to smoke, prevent customers from taking their drinks outside, and ensure deliveries and refuse are not stored on the highway and are carried out in a sensitive manner to ensure noise is minimised within agreed hours.  
You must then carry out the measures included in the approved Operational Management Plan at all times that the restaurant is in use. (C05JB)

Or

You must comply with the details approved on the 11 May 2018 (RN: 18/02126).

Reason:

To make sure that the use will not cause nuisance for people in the area. This is as set out in S24, S29 and S32 of Westminster's City Plan (November 2016) and TACE 9 and ENV 6 of our Unitary Development Plan that we adopted in January 2007. (R05GB)

- 14 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 Soho 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)

- 15 You must apply to us for approval of detailed drawings showing the following alteration(s) to the scheme (a) The provision of visual screening for the extract flue. You must not start on this part of the work until we have approved what you have sent us. You must then carry out the work according to the approved drawings.

Or

You must comply with the details approved on the 11 May 2018 (RN:18/02126).

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 Soho 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)

- 16 All servicing must take place between 00:00 and 07:00 daily. Servicing includes loading and unloading goods from vehicles and putting rubbish outside the building.

Reason:

To avoid blocking the surrounding streets and to protect the environment of people in neighbouring properties as set out in S42 of Westminster's City Plan (November 2016) and STRA 25, TRANS 20 and TRANS 21 of our Unitary Development Plan that we adopted in, January 2007. (R23AC)

- 17 Any ancillary takeaway service must be carried out in accordance with the 'Takeaway Management Plan' at all times that the restaurant is in use.

Reason:

We cannot grant planning permission for unrestricted use within Class A3 because it would not meet Class TACE 9 of our Unitary Development Plan that we adopted in January 2007, and because of the special circumstances of this case. (R05BB)

- 18 The ancillary delivery service allowed by this permission can continue until 31 March 2020. After that, no delivery service shall operate from the premises.

Reason:

We need to assess the effect of this activity regularly to make sure it meets S41 of Westminster's City Plan (November 2016) and TACE 11 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, neighbourhood plan (where relevant), 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 are reminded that the restaurant must operate in accordance with the approved operational management plan and approved floorplans. Failure to do so will result in enforcement action been taken.

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.