

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 19 March 2019	Classification For General Release	
Report of Executive Director, Growth Planning and Housing		Ward(s) involved Marylebone High Street	
Subject of Report	Basement And Ground Floor, 42 Marylebone High Street, London, W1U 5HD		
Proposal	Installation of 4 x condensing units at rear lower ground floor level in shared service yard. (RETROSPECTIVE APPLICATION).		
Agent	Bidwells LLP		
On behalf of	Getti Ltd		
Registered Number	18/08647/FULL	Date amended/ completed	10 October 2018
Date Application Received	10 October 2018		
Historic Building Grade	Unlisted		
Conservation Area	Harley Street		

1. RECOMMENDATION

Grant conditional permission

2. SUMMARY

42 Marylebone High Street is an unlisted building located within the Harley Street Conservation Area currently operating as a restaurant (Class A3) at basement and ground floor level. Offices (Class B1) and residential (Class C3) units are located on the upper floors of the building.

Retrospective permission is sought for the installation 4 x condensing units to the rear elevation of the building within a shared service yard. It is proposed that the plant will operate between 07.00 and 23.00 daily.

The application has been submitted as a result of complaints to the City Council's Planning Enforcement Team regarding the installation of unauthorised plant in respect to noise disturbance throughout the night.

Throughout the course of this application, the proposal has been amended to omit reference to a cold room condenser. This is to ensure that the plant fully complies with the City Council's noise level requirements. The applicant has stated that this condenser is no longer required for the operation of the restaurant. An informative has been included to remind the applicant that this has not been approved as part of this application and to remove this unit from the site.

In relation to noise from the proposed plant the application has been considered in the context of Policies ENV7 of the UDP and S32 of the City Plan. These policies seek to protect nearby occupiers of noise sensitive properties and the area generally from excessive noise and disturbance resulting from plant.

Three objections have been received from a neighbouring residents from above and to the rear of the premises. They object to the additional background noise, the units operating all night and inconvenience to local residents since the restaurant opened in May 2018.

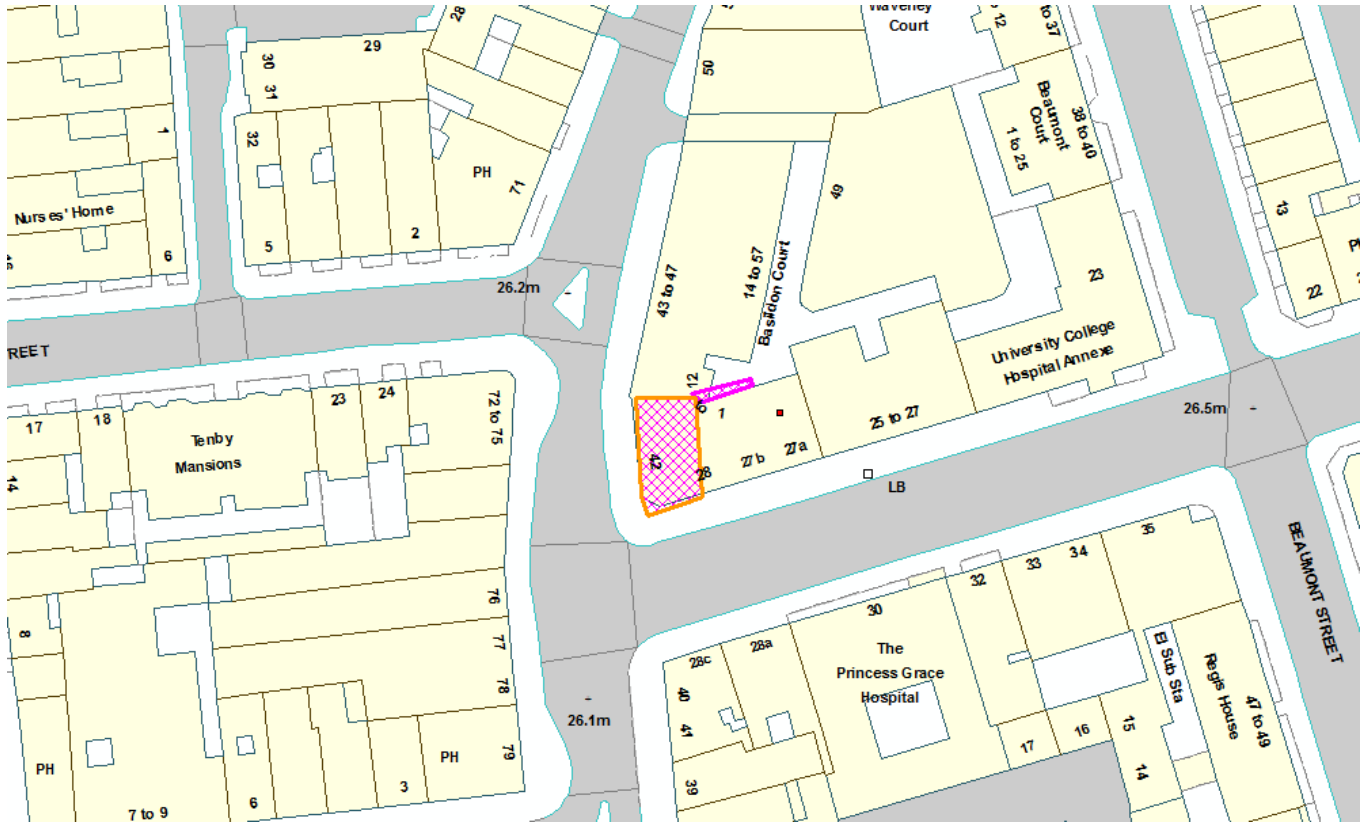
The application is supported by an acoustic report that was amended in January 2019 to omit reference to the cold room condenser. Acoustic readings from two occasions in 2018 have been used to assess the four air conditioning units against the potential impact of noise from the plant at the nearest residents.

The report has been assessed by the Council's Environmental Health Officer who has confirmed that the plant should operate in accordance with the relevant criterion set out within UDP Policy ENV 7. Conditions are recommended relating to plant noise, vibration and limited hours (07:00 – 23:00 daily) the plant can be in use.

Following a number of complaints being lodged to the City Council's Environmental Health noise team in July 2018, a number of inspections were conducted between July and November 2018. The most recent inspections conclude that confirm the plant is switched off by 23:00. Since there have been no recent complaints, Environmental Health have closed their investigation.

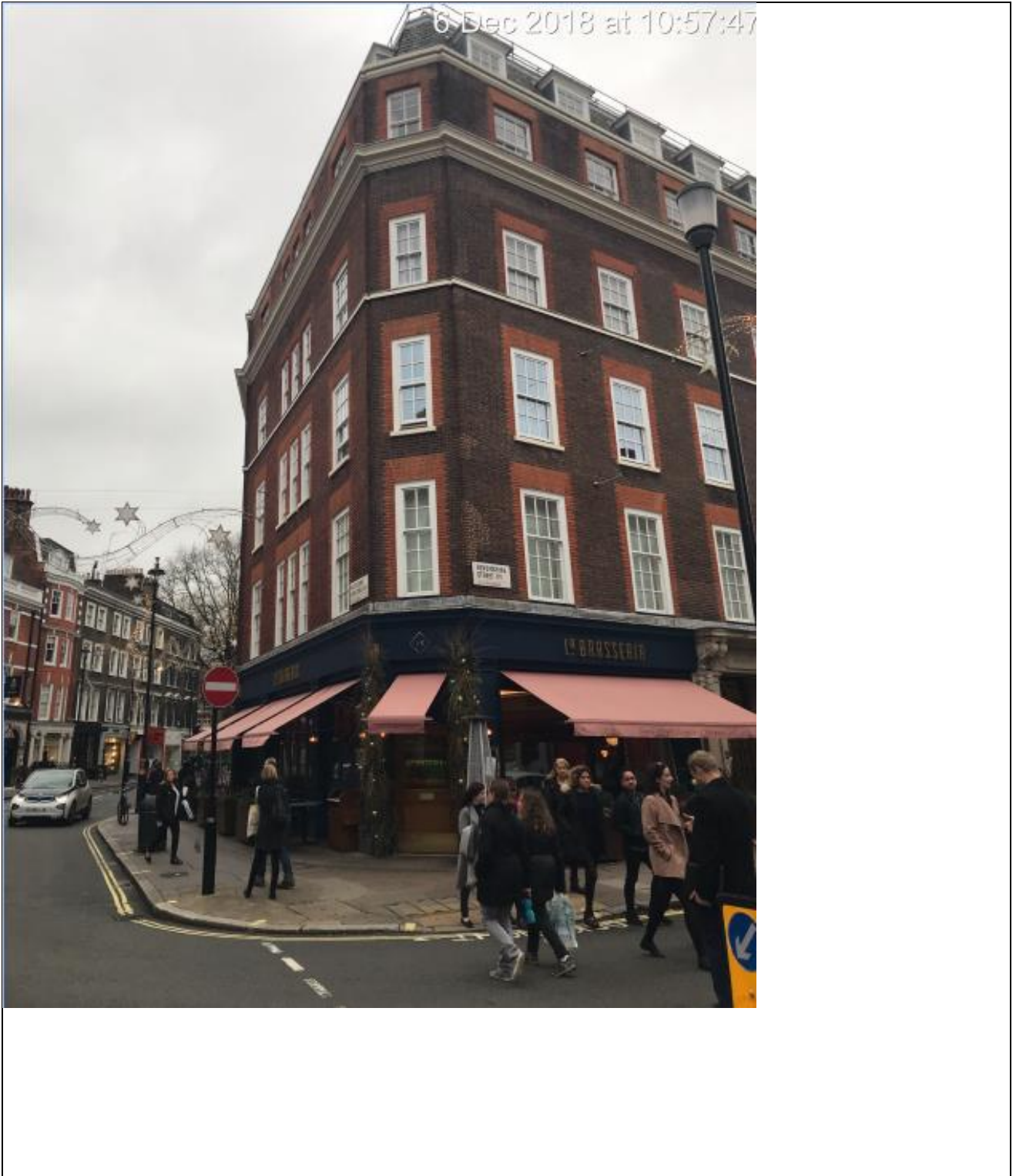
For these reasons, the proposal is acceptable in amenity terms. Furthermore, given its discreet location, the proposal will preserve the character and appearance of the Harley Street Conservation Area. It is accordingly recommended that condition permission be granted.

3. LOCATION PLAN



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4. PHOTOGRAPHS





5. CONSULTATIONS

MARYLEBONE ASSOCIATION:

Concerns regarding plant running 24 hours. Recommends the plant be enclosed within acoustic enclosures.

ENVIRONMENTAL SCIENCES:

No objection subject to conditions.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 86

Total No. of replies: 3

No. of objections: 3


- units operate before 7am and after 11pm
- fans when in operation are too noisy

PRESS ADVERTISEMENT / SITE NOTICE: Yes

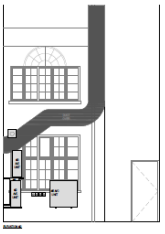
(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: MARK HOLLINGTON BY EMAIL AT mhollington2@westminster.gov.uk

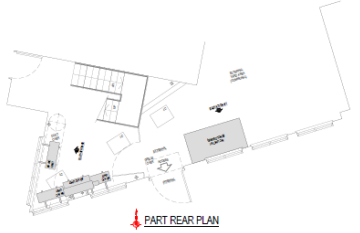
6. KEY DRAWINGS




PART REAR ELEVATION # 1



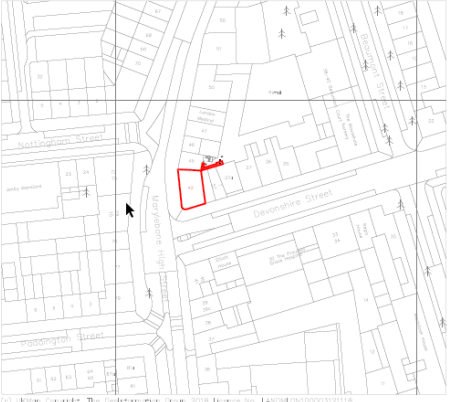
PART REAR ELEVATION # 2



PART REAR PLAN



LOCATION PLAN
SCALE @ 1:1000



BLOCK PLAN
SCALE @ 1:500

LEGEND:

- EXISTING PIPE
- EXISTING INSPECTION CHAMBER
- ACCESS TO REAR OF LA BRASSERIA
- NEW WC RELATIVE INSPECTION
- NEW WC WALL MOUNTED UNITS

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ampersand
17 The Arcade
Marylebone, London W1U 3AH
020 7494 2200
www.ampersand.co.uk

commercial architectural design and fit-out

LA BRASSERIA
42 Marylebone High Street
Marylebone
London
W1U 3HD

PROPOSED

Plan & Elevations
1:50 @ A1
1:25 @ A1
1:25 @ A1
1:25 @ A1
1:25 @ A1

7722/02

DRAFT DECISION LETTER

Address: Basement And Ground Floor, 42 Marylebone High Street, London, W1U 5HD

Proposal: Installation of 4 x condensing units at rear lower ground floor level in shared service yard. (RETROSPECTIVE APPLICATION).

Plan Nos: 7722/02 REV A

Case Officer: Shaun Retzback **Direct Tel. No.** 020 7641 6027

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 (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)

- 3 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)

- 4 The plant/machinery hereby permitted shall not be operated except between 07:00 hours and 23:00 hours daily.

Reason:

To safeguard the amenity of occupiers of noise sensitive properties and the area generally by ensuring that the plant/machinery hereby permitted is not operated at hours when external background noise levels are quietest thereby preventing noise and vibration nuisance as set out in S32 of Westminster's City Plan (November 2016) and ENV 6 and ENV 7 of our Unitary Development Plan that we adopted in January 2007. (R46CB)

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 Under the Construction (Design and Management) Regulations 2007, clients, the CDM Coordinator, designers and contractors must plan, co-ordinate and manage health and safety throughout all stages of a building project. By law, designers must consider the following:
 - * Hazards to safety must be avoided if it is reasonably practicable to do so or the risks of the hazard arising be reduced to a safe level if avoidance is not possible;
 - * This not only relates to the building project itself but also to all aspects of the use of the completed building: any fixed workplaces (for example offices, shops, factories, schools etc) which are to be constructed must comply, in respect of their design and the materials used, with any requirements of the Workplace (Health, Safety and Welfare) Regulations 1992. At the design stage particular attention must be given to incorporate safe schemes for the methods of cleaning windows and for preventing falls during maintenance such as for any high level plant.

Preparing a health and safety file is an important part of the regulations. This is a record of information for the client or person using the building, and tells them about the risks that have to be managed during future maintenance, repairs or renovation. For more information, visit the Health and Safety Executive website at www.hse.gov.uk/risk/index.htm.

It is now possible for local authorities to prosecute any of the relevant parties with respect to non compliance with the CDM Regulations after the completion of a building project, particularly if such non compliance has resulted in a death or major injury.

- 3 Conditions 2, 3 and 4 control noise from the approved machinery. It is very important that you meet the conditions and we may take legal action if you do not. You should make sure that the machinery is properly maintained and serviced regularly. (I82AA)

- 4 You are advised to permanently mark the plant/ machinery hereby approved with the details of this permission (date of grant, registered number). This will assist in future monitoring of the equipment by the City Council if and when complaints are received.

- 5 The City Council are aware that the cold room condenser is in situ. You are reminded that planning permission has not been granted for this unit and it should be removed. Planning

Item No.
4

Enforcement are aware that the plant is unauthorised and will seek to take enforcement action to regularise this breach of planning control.