

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 30 April 2019	Classification For General Release	
Report of Executive Director Growth Planning and Housing		Ward(s) involved Warwick	
Subject of Report	52 Lupus Street, London, SW1V 3EE		
Proposal	Use of ground floor as sandwich bar and café (Sui Generis) (Retrospective)		
Agent	Town and Country Planning Law		
On behalf of	Town Sky Investment Ltd		
Registered Number	18/10574/FULL	Date amended/ completed	14 December 2018
Date Application Received	14 December 2018		
Historic Building Grade	Unlisted		
Conservation Area	Pimlico		

1. RECOMMENDATION

Refuse permission – loss of retail, impact on residents.
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2. SUMMARY

52 Lupus Street is an unlisted building located within the Pimlico Conservation Area, Pimlico CAZ and Lupus Street Local Centre. The application relates to the ground floor unit.

In July 2018, planning sub-committee resolved to refuse permission for use of the ground floor as a mixed retail/restaurant use (Sui Generis) with new ducting to the rear and retractable awnings to the front and side elevations (RN:18/10574/FULL). The application was refused on land use, amenity/lack of information (relating to the proposed use and extraction system) and design grounds.

Following complaints from residents, the Council has commenced an enforcement investigation into the unauthorised change of use of the premises from A1 to a mixed class A1/A3 use (RN:18/67661/U).

The current retrospective application for use of the ground floor as a sandwich bar and café (Sui Generis) seeks to address the previous reasons for refusal. Enforcement action is being held in abeyance pending the determination of this application.

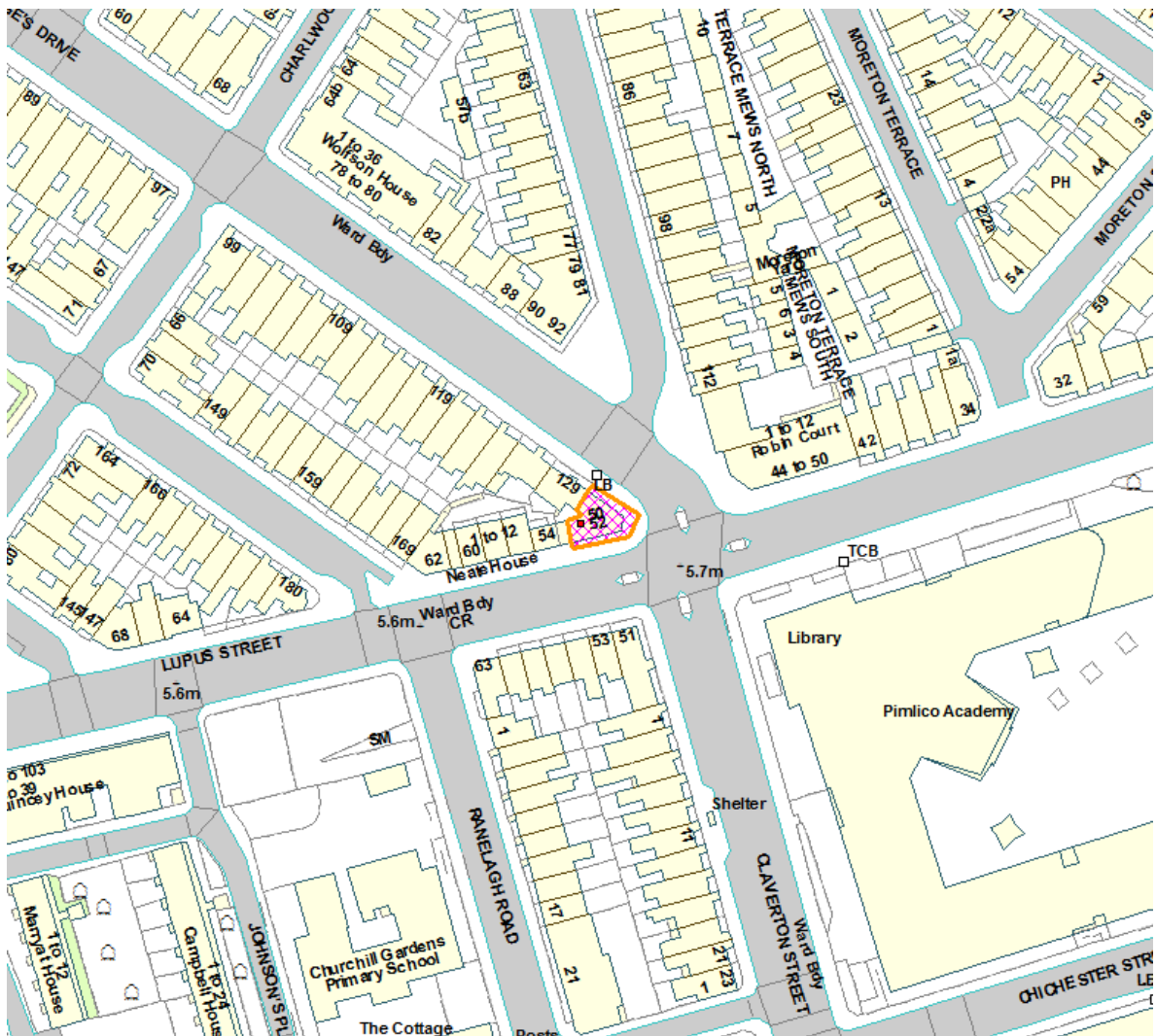
The key issues for consideration are:

*The impact of loss of A1 retail on local shopping facilities

*The impact of the proposals on residential amenity and local environmental quality

The application has been assessed against the relevant policies as set out in the Unitary Development Plan (January 2007) and Westminster's City Plan (November 2016) and is considered to be unacceptable in terms of land use, residential amenity and local environmental quality. As such, it is recommended that planning permission is refused.

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

CLLR JACQUI WILKINSON

- Objection.
- The application refers to the “continued” use of A1/A3 status, which is misleading. An application for A3 usage (restaurant/café) has been refused, however it is clear that the unit has been operating as a café with table service and not a shop.
- The Council has refused an application for tables and chairs outside the premises, which the proprietors have implemented anyway, suggesting a total disregard for planning rules.
- There is limited space for waste disposal around the property and an A3 use is likely to generate much more waste than A1.
- The plans include an increase in the number of tables and chairs and hours of operation, suggesting a significant increase in the size and scope of the operation, which is part of a residential block. The cooking equipment proposed is also far beyond that needed by A1 usage despite claiming that “no primary cooking” would be conducted.
- Any expansion of the business could result in ventilation being ducted into the private yard of the flats above, which would intrude on the peace and amenity of residents.

PIMLICO FREDA

- Objection.
- The Sui Generis use class is unsatisfactory and the application should clearly state whether retail shop or café is the principal use and which use is ancillary.
- The current application illustrates that the applicant has been openly defiant of the Council’s previous decision (RN:18/10574/FULL), ignoring the existing planning use and carrying out a blatant breach of planning control.
- The proposals would lead to the loss of an A1 unit.
- There are two busy pelican crossings outside the unit, the proposals would add to congestion on the pavement in this area.
- The applicant has filled out the application form incorrectly.
- The proposed increase in tables and chairs and opening hours would cause noise and nuisance to local residents, harming residential amenity.
- Waste management is not mentioned in the application and the applicants currently use resident’s on-street black bins, which is unacceptable.
- Nuisance complaints have been made by immediate neighbours since the current operation “Café de Borek” opened.
- General “Creep” of A3 Use Class.
- The capabilities of the proposed cooking equipment suggests that primary cooking will take place.

PIMLICO NEIGHBOURHOOD FORUM

- Any response to be reported verbally.

WESTMINSTER SOCIETY

- Any response to be reported verbally.

HIGHWAYS PLANNING MANAGER

- Undesirable but could be made acceptable via conditions.
- The impact of the change of use on parking levels will be minimal.
- A condition is recommended to ensure cycle parking is provided in accordance with the London Plan.
- No off-street servicing is provided for the development. However, the site is located within a Controlled Parking Zone, which means that single yellow lines in the vicinity allow loading and unloading to occur. The largest regular service vehicle expected to be associated with this development is the refuse collection vehicle. This will service the property in a similar fashion to other nearby properties.
- To minimise the impact of the proposed use on the network, no delivery service should operate from this location.

PROJECTS OFFICER (WASTE)

- The drawings submitted are not in line with the Council's recycling and waste storage requirements. This could be addressed by condition.

ENVIRONMENTAL HEALTH

- Objection.
- The proposals have the potential to cause nuisance from cooking odours.
- The proposed new use has residential flats immediately above and no acoustic report has been submitted to assess for noise transfer through the building fabric.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 219

Total No. of replies: 24

No. of objections: 16

No. in support: 8

16 letters of objection have been received on some or all of the following grounds:

Land use

- There is already too many cafes on Lupus Street and not enough retail shops. Loss of A1 retail would be contrary to City Plan Policy S21 and detrimental to the local area which is residential in character.
- The unit is currently being operated illegally as an A3 café, offering table service and limited take-away/retail options.
- The equipment proposed would suggest that the unit will actually be a restaurant with primary cooking.
- The use of the unit is gradually creeping toward entirely A3.

Amenity

- The increased hours of use (from 08:00 - 19:00 to 10:00 - 22:00) will cause disturbance to residents in the evenings and are longer than other nearby units.
- Cooking will generate fumes, steam and odours which will impact the amenity of local residents.

- The existing operation has led to nuisance complaints from neighbours in a mainly residential area.
- Residents opposite the site find that the large windows cause overlooking and loss of privacy.
- If longer hours of trading are permitted, there will be light spillage from the windows.
- Tables and chairs were placed outside the unit in summer 2018, this caused nuisance to residents from noise and smoking.
- Insufficient detail has been provided about the operation of the premises.

Design and Conservation

- Awnings would be out of keeping with the rest of the frontage and wider conservation area.

Other

- There are no areas for the storage of waste and refuse is often left on the public highway outside and in residential bins.
- Concern raised about accuracy of description of works "Continued Use"
- The cooking equipment poses a fire risk to the building

8 letters of support have been received on some or all of the following grounds:

Land Use

- The café provides a service to the local community, providing a place for social interactions and work. The proposals would allow an expanded food menu offering natural/organic produce.
- This is a totally new application for a café/sandwich bar, which is different from the previous application for retail/restaurant.
- Lupus Street is not a mainly residential area anymore.
- The unit has previously been vacant for a period of time and other A1 units on Lupus street remain vacant, therefore the application will not take up valuable retail space and will promote economic viability.
- There is not an overprovision of cafes in the local area.
- The café is accessible and provides for the needs of the elderly, disabled and pram users.

Design and Conservation

- As the frontage has not been physically altered it cannot be detrimental to the surrounding area. The cleaning of the frontage has had a positive impact on the appearance of the unit.

Amenity

- The frontage is similar to other retail frontages in Lupus Street and does not cause overlooking or loss of privacy.
- The proposals do not include outdoor tables and chairs.
- The café does not cause noise nuisance over the existing noise levels of the surrounding area.

Other

- The site does not have an alcohol licence.
- Fire safety is not a planning consideration
- There is no evidence to suggest that the café has led to parking congestion or has impeded pedestrian movement.
- The café does not leave refuse outside Neate House or the public bins opposite.

PRESS ADVERTISEMENT / SITE NOTICE: Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

52 Lupus Street is an unlisted building, which lies within the Pimlico Conservation Area, Pimlico CAZ and Lupus Street Local Centre. The application site consists of the ground floor retail unit. The basement of the property is currently used as a physiotherapy practice and the upper floors of the building are used as residential flats (Neate House).

6.2 Recent Relevant History

In December 2014, permission was refused for use of the basement and ground floors as a restaurant/ wine bar (Class A3) on land use and lack of information grounds.

In February 2016, permission was granted for use of part of the basement as a physiotherapy practice (Class D1) (RN:15/11319). Permission was granted for the creation of a lightwell enclosed by railings and associated works to allow direct access to the physiotherapy practice, in March 2016 (RN:16/00672).

In August 2018, permission was granted to expand the size of the physiotherapy practice into the remainder of the basement level (RN:17/05443).

In July 2018, planning sub-committee refused permission for use of ground floor as a mixed retail/restaurant use (sui generis) with new ducting at the rear and retractable awnings to the front and side elevation (RN:18/02472). The application was refused on land use, lack of information and design grounds. Conditional advertisement consent was granted for the display of 3no. externally illuminated fascia signs measuring 0.3m x 2.5m, 0.4m x 2.8m and 0.3m x 2.5m (RN:18/02473/ADV).

Following complaints from residents, the Council has commenced an enforcement investigation into the unauthorised change of use of the premises from A1 to a mixed class A1/A3 use (18/67661/U). Enforcement action is being held in abeyance pending the determination of this application.

7. THE PROPOSAL

The proposals seek retrospective permission for a change of use of the ground floor from A1 retail to sandwich bar and café (Sui Generis) measuring 145sqm. The application site includes the public highway outside the unit on Lupus Street and St George's Drive. No external alterations are proposed.

8. DETAILED CONSIDERATIONS

8.1 Land Use

The lawful use of the ground floor is retail (Class A1) and it was previously occupied by a chemist operated by “Geewick Ltd”.

The unit is currently occupied by the applicant, who is trading under “Café de Borek”. The submitted Design and Access (& Planning) Statement states that the application is for “...the continued use of a commercial unit as a shop selling retail goods, cold food for consumption off the premises, and as a cafe...”.

Objectors state that the unit is currently being operated illegally as an A3 café, offering table service and limited take-away/retail options.

The proposed floor plan shows a preparation/ store area, a counter and shelves, seating area (35 seats & 17 tables) and toilet area (2 toilets). The applicant has provided no information to demonstrate the proportion of total sales that can be attributed to A1 retail. From the information provided and the officers site visit, it appears likely that the proposed use would operate like a conventional A3 Café, with only an ancillary amount of A1 retained, and the premises also has the appearance of a conventional A3 café. However, without further information forthcoming from the applicant on the division of sales between food and drink consumed on or off the premises, it is not possible to be certain that it is an A3 café and this application is therefore being determined on the basis of the submission that it is a sui generis use – i.e. mixed A1 and A3.

Loss of Retail

Objectors contend that the loss of the A1 use would be detrimental to the local area and that Lupus Street is already well provided with café uses.

Policy S21 states that existing A1 retail will be protected throughout Westminster except where the council considers that the unit is not viable, as demonstrated by long-term vacancy despite reasonable attempts to let.

The applicant has not sought to demonstrate that the unit would not be viable as an A1 unit. Instead the applicant contends that the proposed sui generis use still provides a convenience retail function and has not had a detrimental impact on local shopping facilities. However, even though insufficient information has been submitted by the applicant on this point, it certainly appears that any retail function at the site is very limited (and as previously stated the use may actually be A3) and, accordingly, the proposals are not considered to comply with Policy S21.

The application site is located within the Lupus Street Local Shopping Centre, in the non-core frontage.

Unitary Development Plan (UDP) policy SS7 aims to protect the designated Local Shopping Centres for the service they provide to residents, visitors and workers, and because they reduce the need to travel. Part (C) of the policy states that outside the

Core Frontages, permission will be granted for loss of an A1 use at ground-floor level if the proposal:

1. would not be detrimental to the character or function of the centre, nor have a harmful effect on the vitality or viability of the centre
2. would not reduce the range of local convenience shops, or have a detrimental effect on local shopping facilities
3. would not result in more than three non-A1 units located consecutively in a frontage
4. would not undermine the balance of A1 to non-A1 uses within the frontage as a whole.

The proposals would result in the loss of a local convenience shop. The applicant's Design and Access (& Planning) Statement references the Council's Shopping Centre Health Check from 2007 to justify the loss. However, the Council's most recent Health Check Survey (2014) shows that the overall number of A1 retail uses in Lupus Street decreased by 2 units between 2007 and 2013 and that the number of local convenience shops fell from 18 to 12. It is considered that the loss of another local convenience shop would have a detrimental effect on local shopping facilities and the retail character and function of the local centre. The proposals do not accord with Policy SS7.

Proposed Use

City Plan Policy S10 recognises the predominantly residential nature of Pimlico, and "Village" character with associated local uses and the sense of small-scale shops and services. Stating that the area will be primarily for residential use with supporting retail, social and community and local arts and cultural provision.

Policy S24 also requires that proposals for 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 use and any cumulative impacts and adverse impacts on residential amenity, health and safety, local environment quality, and the character and function of the area.

Given the size of the application site (145sqm), and the nature of the use, UDP policy TACE 8 is applicable. TACE 8 relates to restaurant and café uses and states that permission will only be granted where the City Council is satisfied that the proposed development will have no adverse effect (nor, taking into account the number and distribution of entertainment uses in the vicinity, any cumulatively adverse effect) upon residential amenity or local environmental quality as a result of noise, vibration, smells, increased late night activity or increased parking and traffic and no adverse impact on the character and function of the area.

The application site is located directly underneath a number of residential properties at Neate House, with many more in close proximity. Concern has been raised by objectors that odours from the kitchen could generate steam and odours which will impact the amenity of local residents. The applicant states that there will be no "primary cooking" on site, a menu has not been provided. Environmental Health have raised objection to the proposals on odour nuisance grounds as the cooking equipment, if used to its fullest extent, has the potential to cause odour nuisance to nearby residents.

Objectors have raised concern about increased congestion on the pavement outside the unit which has already led to nuisance complaints from neighbours and subsequent enforcement action in relation to the placing of tables and chairs on the highway (RN: 18/68944/N). Whilst outdoor tables and chairs are not shown on the proposed drawings, the application site includes the pavement which indicates a clear intention that the applicant wishes to use the public highway outside the unit and, if the proposals were approved, they would be able to place tables and chairs in this location. One of the reasons for refusal of the last application was insufficient information with respect to the proposed use. Once again, no information has been provided with regards to capacity, staff numbers, tables and chairs or mitigation measures to reduce disturbance from customers. Further, Environmental Health officers have raised objection on noise grounds, as no acoustic report has been provided to assess for noise transfer through the building from the new use.

The proposed hours are 1000 – 2200 hours Monday to Sunday and objections have been received on the grounds that the hours are too long and would disturb surrounding residents. It is unclear whether or not these hours could be considered acceptable given the outstanding details.

The site is within a Controlled Parking Zone, which means that anyone who does drive to the site will be subject to those controls; because of this, it is considered that the impact of the proposals on parking would be minimal. The Highways Planning Manager recommends that if permission is granted, conditions be attached to ensure that no delivery service should operate from this location and that cycle parking is provided in accordance with London Plan standards. No servicing details have been provided.

Overall, it is considered that the information submitted is insufficiently detailed with respect to the proposed use. In the absence of sufficient information, it is considered that the use would have an unacceptably harmful impact on the amenity of neighbouring residents and local environmental quality. This would not meet Policies S24, S29, S31 and S32 of Westminster's City Plan (November 2016) and Policies TACE8, ENV5, ENV6, ENV7 and ENV13 of our Unitary Development Plan (January 2007).

8.2 Townscape and Design

No external alterations are proposed under this application.

8.3 Residential Amenity

Policies S29 of the City Plan and ENV13 of the UDP seek to protect residential amenity in terms of light, privacy, sense of enclosure and encourage development which enhances the residential environment.

The unit has a number of large windows at ground floor level on the front and side elevations. Objectors have stated that residents opposite the site find that the windows have caused overlooking and could potentially cause light spillage if longer hours were permitted. Given the distance between the windows of the unit and those directly facing residential properties (approx. 21m to 53/55 Lupus Street), it is considered that proposals would not result in an unacceptable degree of overlooking between properties and it would not be justified to refuse the application on light spillage grounds.

Noise, disturbance and odour nuisance are addressed in section 8.1 of this report. As discussed above, it is considered that the information submitted is insufficiently detailed with respect to the proposed use and in the absence of sufficient information, it is considered that the use would have an unacceptably harmful impact on the amenity of neighbouring residents. Accordingly, it is considered that the proposals do not meet Policies S29 and ENV 13.

8.4 Transportation/Parking

Transportation/parking issues have been covered in section 8.1 of this report.

8.5 Economic Considerations

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

8.6 Access

No changes to the existing means of access are proposed.

8.7 Other UDP/Westminster Policy Considerations

Refuse /Recycling

Objectors state that the proposed use generates more waste than an A1 use would and have raised concern that the application makes no reference to waste management. It appears from the drawings that waste storage could be accommodated within the unit. Had the application been recommended for approval, this could have been secured by condition.

8.8 Westminster City Plan

The City Council is currently working on a complete review of its City Plan. Informal consultation on the first draft of Westminster's City Plan 2019-2040 took place between Monday 12 November 2018 and Friday 21 December 2018. Following this informal consultation, any representations received are being considered and the draft plan will be revised in advance of formal consultation under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012. Given the very early stage of the consultation process and having regard to the tests set out in para. 48 of the NPPF, the policies of the emerging draft City Plan are given little to no weight at the present time.

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.

This development does not generate a Mayor CIL or WCC CIL payment.

8.12 Environmental Impact Assessment

The application is not of a sufficient scale to require an Environmental Impact Assessment.

8.13 Other Issues

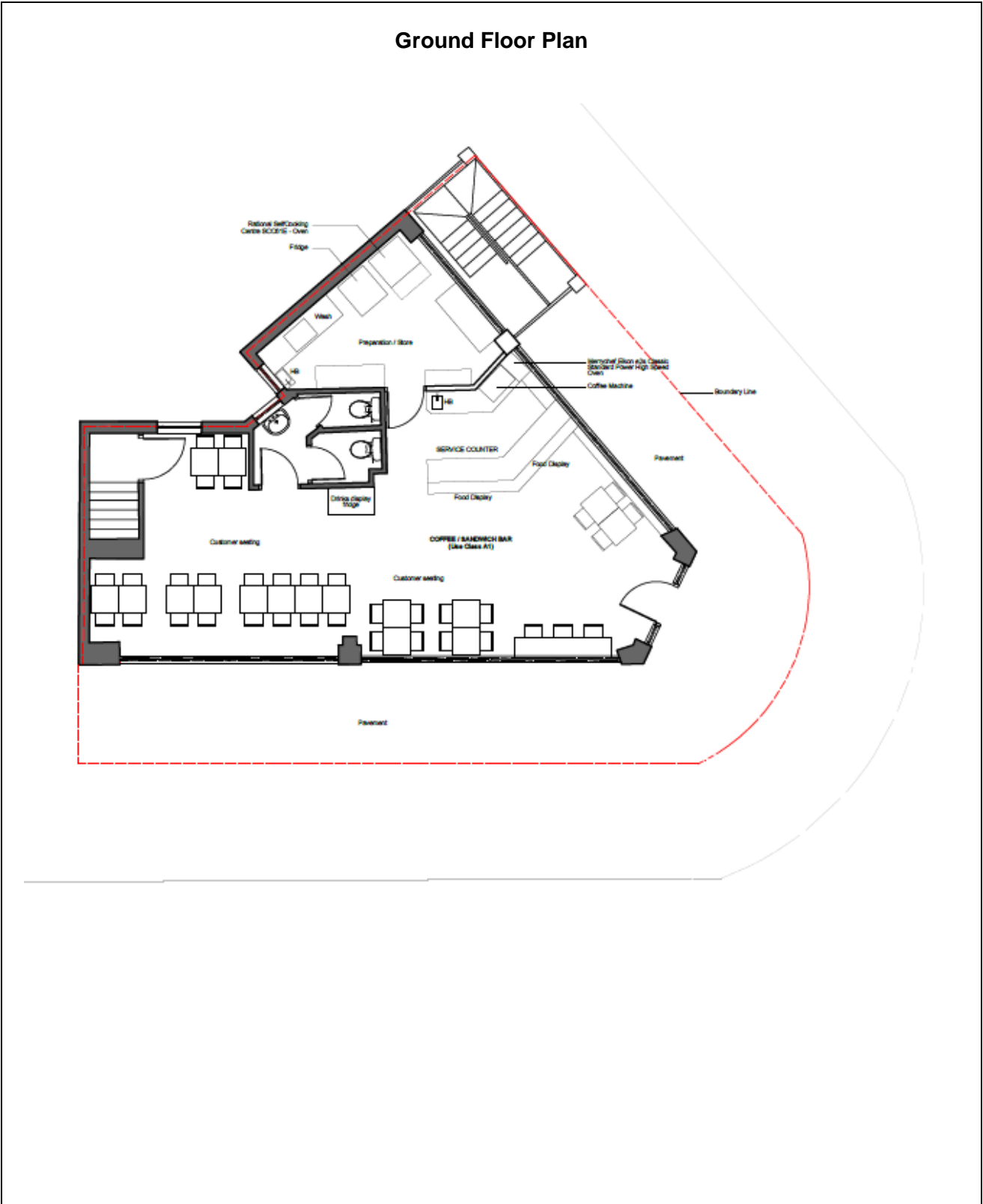
Fire Risk

Objectors have raised concern that the cooking equipment poses a fire risk to the building. Whilst noted, this is a building regulations matter.

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

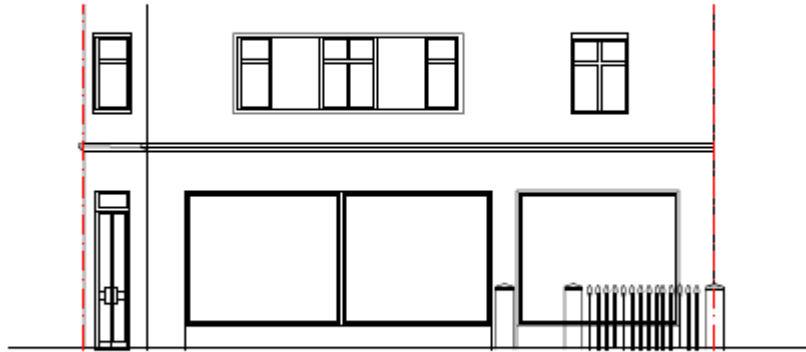
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: IAN CORRIE BY EMAIL AT icorrie@westminster.gov.uk

9. KEY DRAWINGS



Elevations

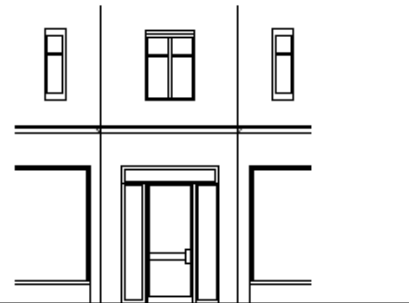
Note
No changes to the elevations is proposed



Existing Side Elevation (St. George's Drive)
Scale 1:100



Existing Front Elevation (Lupus Street)
Scale 1:100



Existing Corner Elevation - Entrance
Scale 1:100

DRAFT DECISION LETTER

Address: 52 Lupus Street, London, SW1V 3EE

Proposal: Use of ground floor as sandwich bar and café (Sui Generis) (Retrospective)

Reference: 18/10574/FULL

Plan Nos: Site Location Plan; TC/0202/PP/02; TC/0202/PP/01; TC/0202/PP/03; Design and Access (& Planning) Statement dated 4 November 2018; Merrychef Microwave Oven Specifications; Rational Selfcooking Center Specifications; Rational Internal Ventilation Specifications.

Case Officer: Ian Corrie

Direct Tel. No. 020 7641 1448

Recommended Condition(s) and Reason(s)**Reason:**

Your development would lead to the loss of a retail unit in the Lupus Street Local Centre as defined in our Unitary Development Plan that we adopted in January 2007. This would harm the retail character and function of the area and have a detrimental effect on local shopping facilities which would not meet S21 of Westminster's City Plan (November 2016) and SS7 of our Unitary Development Plan adopted (January 2007).

Reason:

In the absence of sufficient information to demonstrate that the use would comply with the City Council's noise and odour policies it is considered that it would have an unacceptably harmful impact on the amenity of neighbouring residents and local environmental quality which would not meet S24, S29, S31 and S32 of Westminster's City Plan (November 2016) and TACE8, ENV5, ENV6, ENV7 and ENV13 of our Unitary Development Plan (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 so far as practicable. 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. However, we have been unable to seek solutions to problems as the principle of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.

Item No.
1

- 2 Although you have described the use of the ground floor as a sandwich bar and cafe (Sui Generis) we believe that, if you had provided sufficient information, it would probably be the case that this would be an A3 use.