

Licensing Sub-Committee Report

Item No:	
Date:	3 October 2019
Licensing Ref No:	19/09670/LIPN - New Premises Licence
Title of Report:	Westminster Fire Station 4 Greycoat Place London SW1P 1SB
Report of:	Director of Public Protection and Licensing
Wards involved:	St James's
Policy context:	City of Westminster Statement of Licensing Policy
Financial summary:	None
Report Author:	Kevin Jackaman Senior Licensing Officer
Contact details	Telephone: 0207 641 8094 Email: kjackaman@westminster.gov.uk

1. Application

1-A Applicant and premises			
Application Type:	New Premises Licence, Licensing Act 2003		
Application received date:	6 August 2019		
Applicant:	Sankalp Ltd		
Premises:	Westminster Fire Station		
Premises address:	4 Greycoat Place London SW1P 1SB	Ward:	St James's
		Cumulative Impact Area:	None
Premises description:	According to the application form the premises will trade as restaurant and bar		
Premises licence history:	This is an application for a new premises licence and therefore no licence history exists		
Applicant submissions:	None		

1-B Proposed licensable activities and hours							
Late Night Refreshment:				Indoors, outdoors or both			Indoors
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	23:00	23:00	23:00	23:00	23:00	23:00	
End:	00:00	00:00	00:00	00:00	00:00	00:00	
Seasonal variations/ Non-standard timings:		From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. On Sundays prior to bank holidays/public holidays 23:00 - 00:00					

Sale by retail of alcohol				On or off sales or both:			On
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	07:30	07:30	07:30	07:30	07:30	07:30	07:30
End:	00:00	00:00	00:00	00:00	00:00	00:00	23:00
Seasonal variations/ Non-standard timings:		From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. On Sundays prior to bank holidays/public holidays until 00:00					

Sale by retail of alcohol				On or off sales or both:			Off
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	08:00	08:00	08:00	08:00	08:00	08:00	10:00
End:	23:00	23:00	23:00	23:00	23:00	23:00	22:30
Seasonal variations/ Non-standard timings:		From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. On Sundays prior to bank holidays/public holidays until 00:00					

Hours premises are open to the public							
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	07:30	07:30	07:30	07:30	07:30	07:30	07:30
End:	00:30	00:30	00:30	00:30	00:30	00:30	23:30
Seasonal variations/ Non-standard timings:		From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. On Sundays prior to bank holidays/public holidays until 00:00					

2. Representations

2-A Responsible Authorities	
Responsible Authority:	Environmental Health Service
Representative:	Dave Nevitt
Received:	3 September 2019
<p>I wish to make Representations on the following grounds:</p> <p>Representation is made in relation to the application, as the proposals are likely to increase the risk of Public Nuisance and may impact upon Public Safety.</p>	

Responsible Authority:	Metropolitan Police Service
Representative:	Bryan Lewis
Received:	3 September 2019 (withdrawn)
<p>Police object to this application, as it may not promote the licensing objectives, namely the prevention of crime and disorder for the following reasons:</p> <ul style="list-style-type: none"> • More information is required to properly assess this application • Off sales times are earlier than core hours; Westminster Council licensing policy. <p>Following a reduction in the hours for off sales, the Metropolitan Police Service withdrew their representation on 16 September 2019</p>	

2-B Other Persons	
Name:	██████████
Address and/or Residents Association:	████████████████████
Received:	3 September 2019

Objecting to Restaurant:

We already have more than necessary food restaurants on the Strutton Ground street and adjacent streets too.

However these restaurants and food market still are very poorly policed by the Westminster and they at the moment are allowed to through cooking oil in the draining pipes, leave food waste on the street for days, are allowed huge deliveries during night hours. And despite our concerns nothing has been done about it.

Also the street and neighbourhood is already infested with cooking smells and fumes. I don't believe would be reasonable not fair for the citizens living in the area to grand another restaurant licence.

The Opposition to the Bar:

Again the Neighbourhood has numerous Bars already in existence nearby. There are 3 bars in a radius of few meters. One on Strutton Ground and Two on Horseferry Road. We ready have huge problems with drunk people on the street, that are shouting, sleeping on the doors, having very antisocial behaviour.

The application even asks for permission to serve alcohol even before 10 AM ! This should be banned by health department! Only asking such a thing shk

The opening hours are until 00:00 in a very residential neighbourhood where flats are pa. How could someone agree to such a thing?

If they want to do something good for the society they should open a bread bakery, a fresh fruits vegetables, a family welcoming place for Sundays, a place to engage the quality of life of people living in this neighbourhood, that are already suffering from the many restaurants and bars that took the place of the food and existing shops.

Most of our neighbours on Strutton Ground are renting the apartment through Airbnb because they can find good permanent tenants to live permanently in such an abandoned place and dirty. And again though it is illegal, there are no checks from Westminster on this, and we the people truly living there are suffering

On 16 September, the interested party submitted the following further comments:

I tried to respond to different categories, but I feel they are all interlinked. As the nuisance of a neighbourhood attracts the crime and disorder, making the place unsafe for public and children.

Crime and Disorder

The neighbourhood has already too many pubs and alcohol providing facilities. This application even ask the right to serve alcohol from very early morning.

The council has a big issue already to contain the drunken people on the neighbourhood who sleep on the street, pee on the street and destroy the streets and the parks.

Public Safety

Cooking Waste, smells and fumes in the air

Objecting to Restaurant:

We already have more than necessary food restaurants on the Strutton Ground street and adjacent streets too.

However these restaurants and food market still are very poorly policed by the Westminster and they at the moment are allowed to through cooking oil in the draining pipes, leave food waste on the street for days, are allowed huge deliveries during night hours. And despite our concerns nothing has been done about it.

So until all these issues are tackled i do not see reasonable to allow another big restaurant

opened until 00:00 in this very dense neighbourhood.

Also the cooking waste will be evacuated very close to residents from Strutton Ground and Artillery Mansion, including the ones from Greycoat Street. The way the building has been allowed to be built, this smoke will be trapped within the internal court and the residence can't do anything about it. and the cooking material will

We used to have a similar issue with a much smaller shop: Fired Chicken Shop (26 Strutton Ground) . The cooking oil that was going into the air was going into the houses getting even through the closed windows and was trapped on staircases and hallway of the buildings and it was impossible to get rid of.

Please find the appeal decision by Planning Inspectorate is attached regarding this hot food shop, showing the difficulty of having A5 unit within a residential area and the impossibility to mitigate the nuisance of such thing. This should be used a reference for any new A5 applications.

Noise and Alcohol. The Strutton Ground and the Greycoat Place are very dense populated area with residents.

Open bars until late at night will bring a lot of noise, and drunk people and load speaking/shouting people. The council has already issues containing the nuisances of these streets already, so having a new bar with further more nuisance to be contained. The neighbourhood does not need a new pub. There is one every 20-30 meters in the area. and this application even demands to serve alcohol before 10 a.m! until 12 p.m. It is outrageous that something like this is not banned by Health Minister given all the issues UK has with alcohol.

Most of our neighbours on Strutton Ground are renting the apartment through Airbnb because they can find good permanent tenants to live permanently in such a abandoned place and dirty. And again though it is illegal, there are no checks from Westminster on this, and we the people truly living there are suffering.

Protection of Children from harm:

Young children should have places to brunch with their parents in the area, not bars.

There are way too many bars and too many drunken people in this neighbourhood and nobody to ask for help when we get harassed.

I have been harassed by drunken people while being with my 2 year old, on numerous occasions, and I am scared and frightened but there is no police near by or someone that I could ask help from.

The neighbourhood has already too many issues to be resolved before adding new ones.

4 Greycoat Planning application has been granted with many floor above the rest, despite being in a conservation area, the new building is taking away light and wellbeing from the other apartments. I strongly feel it's unfair to grand further more applications that will be of nuisance for the residents.

I would also suggest to record the level of pollution and particles in these street: Strutton Ground Ground and Greycoat and I believe you will see the level are way above the limits. So there is no possible way to permit further pollutants if you do care about the health of children living in this neighbourhood. Before the hearing I will buy pollution devises to measure such pollution, especially in the pick hours when children are coming home from school and all restaurant are operating and the streets are packed with cars, but Westminster should do the same if they care about the Health and Safety of its residents who pay council taxes.

Suggestions of other developments in the space:

If they want to do something good for the society they should open a **bread bakery, a fresh fruits vegetables, a family welcoming place for Sundays**, a place to enhance the quality of life of people living in this neighbourhood, that are already suffering from the many restaurants and bars that took the place of the food and existing shops

They could use the space as a Nursery that could be used both for local residents as well as by the people working in the neighbourhood. That will be helpful for the society. Hatching Dragons are looking for a bigger nursery place in the area but cannot find one because all places are taken up for food restaurants.

Thank you very much for your understanding

3. Policy & Guidance

The following policies within the City of Westminster Statement of Licensing Policy apply:

Policy HRS 1 applies	<p>(i) Applications for hours within the core hours set out below in this policy will generally be granted, subject to not being contrary to other policies in the Statement of Licensing Policy.</p> <p>(ii) Applications for hours outside the core hours set out below in this policy will be considered on their merits, subject to other relevant policies.</p> <p><u>For premises for the supply of alcohol for consumption on the premises:</u></p> <p>Monday to Thursday: 10:00 to 23:30 Friday and Saturday: 10:00 to midnight Sundays immediately prior to Bank Holidays: Midday to midnight Other Sundays: Midday to 22:30</p> <p><u>For premises for the provision of other licensable activities:</u></p> <p>Monday to Thursday: 09:00 to 23.30 Friday and Saturday: 09:00 to midnight Sundays immediately prior to Bank Holidays: 09:00 to midnight Other Sundays: 09:00 to 22:30</p>
Policy PB1 applies	<p>Applications will only be granted if it can be demonstrated that the proposal meets the relevant criteria in Policies CD1, PS1, PN1 and CH1.</p>

4. Equality Implications

The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary, section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

5. Appendices

Appendix 1	Premises plans
Appendix 2	Applicant supporting documents
Appendix 3	Documents submitted by Interested Party
Appendix 4	Premises history
Appendix 5	Proposed conditions
Appendix 6	Residential map and list of premises in the vicinity

Report author:	Kevin Jackaman Senior Licensing Officer
Contact:	Telephone: 0207 641 8094 Email: kjackaman@westminster.gov.uk

If you have any queries about this report or wish to inspect one of the background papers please contact the report author.

Background Documents – Local Government (Access to Information) Act 1972

1	Licensing Act 2003	N/A
2	City of Westminster Statement of Licensing Policy	7 th January 2016
3	Amended Guidance issued under section 182 of the Licensing Act 2003	April 2018
4	Environmental Health Service representation	3 September 2019
5	Metropolitan Police Service Representation	3 September 2019 (withdrawn 16 September 2019)

1 Basement Floor Plan
Scale 1:50



REV DATE REVISION NOTES

REV	DATE	REVISION	NOTES
1	20.04.19	FOR TENDER	
2	22.04.19	FOR TENDER	

- LEGEND:
- Denotes Licensable Area
 - > Denotes Means of Escape
 - [E] Emergency Exit
 - [S] Smoke Detector
 - [H] Heat Detector
 - [CO2] CO2 Fire Extinguisher
 - [A2] Water Fire Extinguisher
 - [B] Fire Blanket
 - [A] Fire Alarm Call Point
 - [C] Central Panel with Sounders
 - [E] Emergency Exit Signage
 - [D] Fire Extinguisher
 - [F] Fire Extinguisher

This drawing is the property of Rosendale Design and shall not be used for any other project without the written consent of Rosendale Design. All dimensions are in millimeters unless otherwise stated. The contractor shall be responsible for the interpretation of any work to be undertaken in accordance with the drawings.

Rosendale Design
 7, Colindale Avenue
 Colindale, London NW9 1NS
 www.rosendaledesign.com

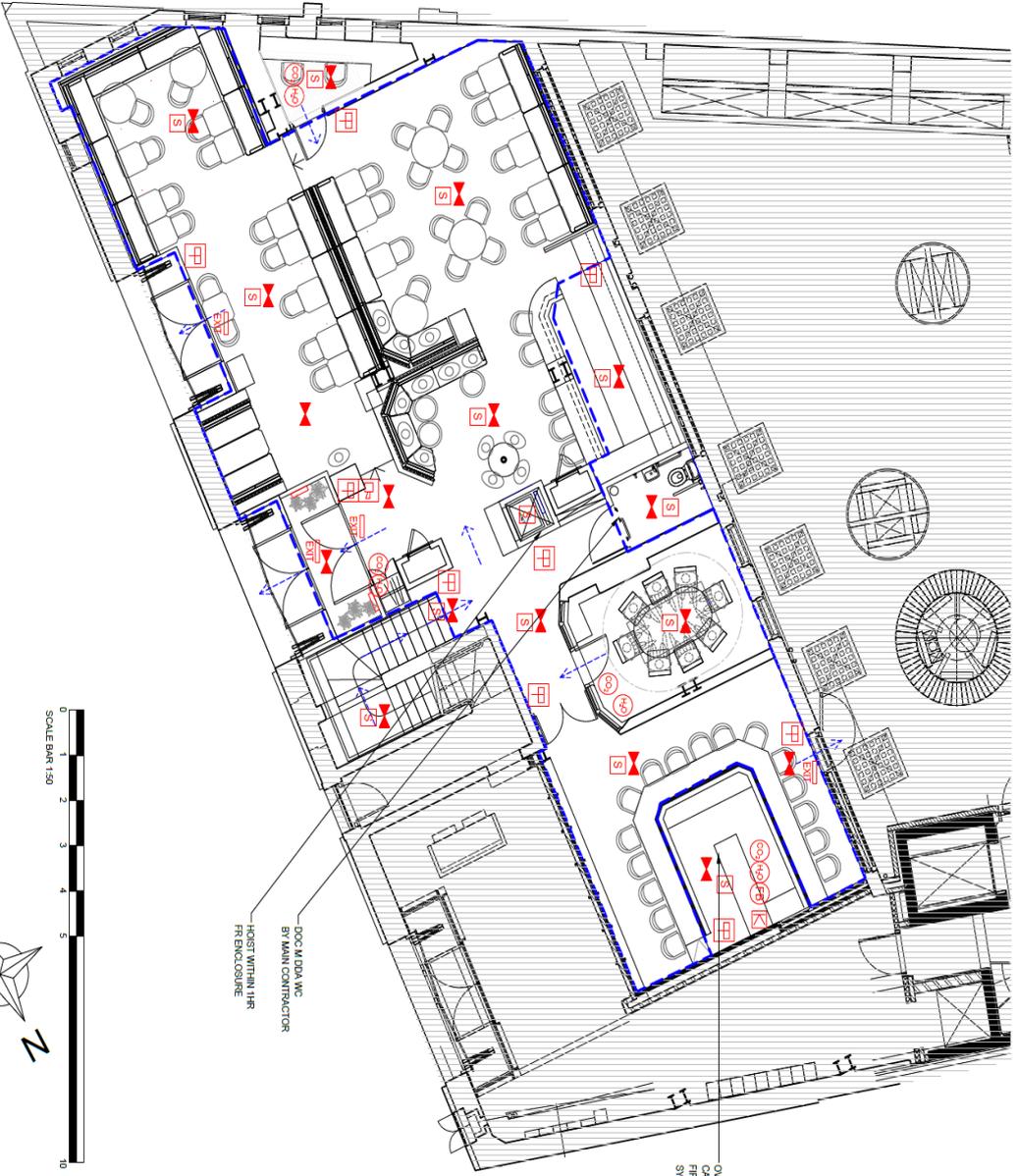
CLIENT
ATUL KOCHHAR
TINA ENGLISH

PROJECT TITLE
WESTMINSTER FIRE STATION

DRAWING STATUS
FOR TENDER

DRAWING TITLE
BASEMENT LICENSING PLANS

PROJECT NO.	SCALE
170	1/50 @ A1
DATE	DRAWN BY
20.04.2019	JK
DRAWING NO.	APPROVED BY
170-PL-B-00	JK
REVISION	REVISION
	B



DOC M DDA WC
BY MAIN CONTRACTOR
HOST WITHIN IFR
FR ENCLOSURE

OVERHEAD EXTRACTION
CANOPY WITH ANSUL
FIRE SUPPRESSION
SYSTEM



REV DATE REVISION NOTES

REV	DATE	REVISION NOTES
1	02/23/19	FOR APPROVAL
2	03/03/19	FOR TENDER
3	22/03/19	FOR TENDER

LEGEND

- - - - - Demos/Livable Area
- - - - - Demos Means of Escape
- - - - - Emergency Light
- - - - - Smoke Detector
- - - - - Heat Detectors
- - - - - CO2 Fire Extinguisher
- - - - - Water Fire Extinguisher
- - - - - Fire Blanket
- - - - - Fire Alarm Call Point
- - - - - Contact Panel with Sounders
- - - - - Emergency Exit Signage
- - - - - All internal doors and walls are to be 30 min FR unless otherwise stated

This drawing is the property of Rosendale Design. It is to be used for the project and site only. It is not to be used for any other purpose without the written consent of Rosendale Design. The design is subject to change without notice. The contractor is to be responsible for the construction of all work so indicated. It is to be completed in accordance with the contract documents and specifications.

Rosendale Design

7 Chalmers Street
WILMINGTON
www.rosendaledesign.com

DRAWING STATUS
TENDER

CLIENT
ATUL KOCHHAR
TINA ENGLISH

PROJECT TITLE
WESTMINSTER FIRE STATION

DRAWING TITLE
GROUND FLOOR
LICENSING PLANS

PROJECT NO.	SCALE
170	1/50 @ A1
DATE	DRAWN
29.03.2019	JR
DRAWING NO.	APPROVED
170-PL-G-00	JR
REVISION	REVISION
	C

Applicant Supporting Documents

Appendix 2

None submitted



Appeal Decision

Inquiry held on 7 December 2016

Site visit made on 7 December 2016

by **Nigel Burrows BA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: **12 January 2017**

Appeal Ref: **APP/X5990/C/16/3147923**

26 Strutton Ground, London, SW1P 2HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Hossein Ghashtasebi against an enforcement notice issued by City of Westminster Council.
- The enforcement notice, ref: 10/46085/I was issued on 8 March 2016.
- The breach of planning control as alleged in the notice is the unauthorised material change of use of the ground floor of the Property from a Class A1 (retail) use as a sandwich shop to a Class A5 (hot food take-away) use, and associated works which facilitate this material change of use, which include the installation of the large extract duct on the rear of the property, a smaller extract system on the shopfront and the installation of food storage and cooking equipment.
- The requirements of the notice are:-
 - (a) Cease the unauthorised Class A5 (hot food takeaway) use at the premises;
 - (b) Remove any and all items brought onto the site and which facilitate the Class A5 (hot food takeaway) use, which include the following:-
 - i. The extract duct at the rear of the premises (as shown in Photograph A);
 - ii. The extract installed on the shopfront (as shown in Photograph B);
 - iii. The food storage unit (as shown in Photograph C);
 - iv. The deep fat fryer units and grill unit (as shown in Photograph D, marked D1, D2, D3 and D4);
 - v. The deep fat fryer units (as shown in Photograph E, marked E1 and E2).
 - (c) Following the removal of the extract duct at the rear and the extract system on the shopfront, restore the property to its former condition, ensuring all remedial works are carried out in materials and detailing to match the existing fabric of the building.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld

Procedural Matters

1. At the Inquiry an application for a partial award of costs was made by the Council against the appellant. This application is the subject of a separate decision.
2. All evidence to the Inquiry was given on oath.

Background

3. The appeal relates to the ground floor of a three storey building, which forms part of a terrace of properties in mixed use situated on the west side of Strutton Ground in
-

Westminster. The ground floor of the building is occupied by the appellant's business, known as 'Strutton Fried Chicken'. The upper floors are occupied as a self-contained flat.

4. According to the Council, the building lies within a parade of properties which form part of the Core Shopping Frontage in the Pimlico sub-region of the Central Activities Zone (CAZ), as designated in the Westminster City Plan.¹ The Council confirms that it also forms part of the Strutton Ground/Artillery Row Local Centre, a designated Local Shopping Centre. In addition, the building lies within the Broadway and Christchurch Gardens Conservation Area, where it is identified as 'an unlisted building of merit'.

The appeal on ground (d)

5. The onus is on the appellant under ground (d) to make out the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice. The enforcement notice is directed at a material change of use of the ground floor of the building to a Class A5 (hot food take-away) use. Consequently, the appellant needs to show that the matters alleged in the notice occurred at least 10 years before it was issued (which was on 8 March 2016). As indicated in the heading above, the notice also attacks the works which facilitated the material change of use, including the installation of a large extract duct at the rear of the property, a smaller extract unit upon the shopfront, together with the installation of food storage and cooking equipment.
6. The appellant's stance at the Inquiry was that the premises had operated for 8 years as an A5 use - albeit at the time the enforcement notice was issued the overall period of use of the premises for non-retail purposes was 13 years.² In effect, the appellant alleges the premises were used for purposes within Class A3 for the remaining period.
7. The appellant evidently purchased the premises in March 2008, at which time it was trading as 'Café au Lait'. The appellant says that within a few months the premises were adapted to a hot food takeaway (HFTA) and its signage was changed to 'Strutton Fried Chicken'. A planning application to use the premises for A5 purposes was refused in July 2010.³ A further application for an A5 use was refused in February 2011.⁴ An appeal against the Council's decision was turned away by the Planning Inspectorate.
8. The appellant's case is mainly reliant on a letter accompanying the second application for an A5 use, undated photographs of the shopfront, a lease agreed in 2000, an email enquiry during 2003 regarding a proposed use of the premises as a sushi bar, plus photographs of menus and an exchange of correspondence with the Council between 2010 and 2016. Three witnesses also gave evidence at the Inquiry on the appellant's behalf.
9. In weighing the evidence before me, I have borne in mind that the appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. However, as the Council points out, it is also apparent that the premises were not within the control of the appellant for the entire 10-year period prior to the issue of the notice. This may have given rise to certain assumptions on the part of the appellant.
10. The letter accompanying the second application for an A5 use was from the Agent, Mr Norman White. He stated that since the original application was made, he had received additional information to show the premises were trading as an A3 use at least since 2003. He asked the Council to take this information into account. The additional information was addressed in the Planning Officer's report, but it was concluded this information was insufficient to demonstrate the existence of a lawful A3 use. The information before the Council apparently included a VAT return and a solicitor's letter. However, the appellant has not placed this particular information before the Inquiry.

¹ Westminster City Plan: Strategic Policies, adopted in November 2013 -revised version adopted in July 2016

² Paragraph 1.3 of Mr Fatherazi's Summary of Proof

³ Ref: 09/00341/FULL

⁴ Ref: 10/10184/FULL

11. As noted earlier, the shopfront photographs are undated. Mr Fatherazi (acting as the appellant's advocate and expert witness) accepted under cross examination that they were probably taken in 2008. They do not help to establish the nature of the business during 2006 to 2007, i.e. prior to the appellant's acquisition of the premises. The lease of the ground floor is dated 14 August 2000 and pre-dates the appellant's acquisition. It is for a term of 15 years. The specified use is 'a shop for the retail of clothes within Class A1'. As such, it is difficult to see how this document assists the appellant's case.
12. The enquiry about the use of the premises as a sushi bar is dated 27 March 2003. The correspondent asks the Council whether 'the A1 lease can be used for the proposed business activities'. The Council indicates the use could fall within Class A1 or A3, or it could be a composite use. The Council also states: "*To constitute an A1 use, the overall character of the use would have to remain as a shop. A small amount of hot food and seating can be provided, as long as it is ancillary to the main retail function*". Once again, it is difficult to see how this correspondence assists the appellant's case.
13. The appellant's photographs of various menus are also undated. It is believed they were taken in 2008. In any event, they amount to no more than a snapshot in time. These menus do not provide evidence of the continuity of the use over a 10-year period, nor do they help to establish whether food was mainly consumed within or outside the premises.
14. The correspondence between the Council and the appellant over the period 2010 to 2016 does little to establish the nature of the ground floor use over a 10-year period. The correspondence appears to be concerned, in part, with the application refused in February 2011. At this time permission was evidently sought to retain the A5 use and the full height extract duct on the rear elevation. The Planning Officer's report stated the unit had a lawful A1 retail use, albeit it was occupied by 'Strutton Fried Chicken'. However, the Planning Officer's report⁵ on the 2009 application (which related to a proposed A5 use) stated 'the premises currently trade as a sandwich shop' (i.e. a retail use within Class A1). I attach significant weight to these reports, which appear to provide contemporaneous accounts of the use of the premises at the time of the applications.
15. Turning to the other evidence from the appellant's witnesses, Mr Sidiq (a market trader) indicated he bought hot food from 'Strutton Fried Chicken' and from its predecessor, 'Café au Lait'. However, in answer to the question of whether it was possible to purchase cold food, he was determined to focus only upon hot food sales, which tended to undermine his credibility as a witness. He also appeared vague about the date when 'Strutton Fried Chicken' opened.
16. The evidence from Mr Kaboli was interpreted by Mr Fatherazi - which gave rise to some uncertainty in the answers given. However, Mr Kaboli indicated he had lived in the area since 2004 and knew that occupation of the premises had changed in 2005 and 2008. The latter date appears consistent with the appellant's case, insofar as he acquired the premises in March 2008. Mr Kaboli also said that he first purchased fried food from the premises in 2008.
17. A statement was also presented to the Inquiry from Mr Badiani (originally listed as a witness). Mr Badiani is the main leaseholder. He indicated that, as far as he is aware, hot and cold food was served in 'Café au Lait'. Mr Badiani's statement included undated photographs of the exterior/interior of 'Café au Lait'. Whilst this evidence could not be tested, it is not inconsistent with the Council's stance - namely, in order to determine whether or not a material change of use has occurred, it is necessary to explore the balance of hot and cold food sold from the premises and the balance of food consumed on and off the premises. This is a sound planning principle. It also appears to reflect the Council's stance over the years (for example, the advice given in relation to the sushi bar enquiry).
18. There appears to be no dispute the premises have been used for A5 purposes for about 8 years. However, the evidence before that period is much less conclusive. There is no firm or compelling evidence to demonstrate that, prior to the appellant's acquisition of the

⁵ Dated 9 April 2009

ground floor, the amount of hot food sold from the premises and the manner in which food was consumed tipped the overall balance from an A1 to an A5 use of the premises.

19. I have taken into account the appellant's assertion that the premises were used for A3 purposes during the preceding 5-year period. Nevertheless, here again, there is no firm evidence to demonstrate this was the case, or to show this activity constituted a lawful use of the premises for planning purposes.⁶ Consequently, I see no reason to correct the allegation in the notice by deleting reference to 'A1 use', as offered by the Council.
20. It is well established in planning law that the onus rests with the appellant to make out his or her case. However, on the evidence before me, I find that burden has not been satisfactorily discharged in this particular case. On the balance of probability, I conclude that at the time the notice was issued it was not too late to take enforcement action against the alleged breach of planning control. The ground (d) appeal therefore fails.

The appeal on ground (a)

21. Taking into account all that I have seen and read, I consider there are three main issues in this case. The first is the implications of the development for the vitality, viability, retail function and character of the Strutton Ground/Artillery Row Local Centre. The second is the effect of this development upon the living conditions of residents within the locality, with particular reference to cooking odours, noise and disturbance. The third main issue is the implications of this development for the character or appearance of the Broadway and Christchurch Gardens Conservation Area.

Issue 1: Implications for the Strutton Ground/Artillery Row Local Centre

22. Policy S21 of the Westminster City Plan directs new retail floorspace to the designated shopping centres. The policy states, amongst other things, that existing A1 retail uses will be protected throughout Westminster except where the Council considers the unit is not viable, as demonstrated by long-term vacancy despite reasonable attempts to let. The explanatory text to the policy indicates the concentration of shop uses in designated shopping centres should be maintained to protect their retail attractiveness. It also explains that concentrations of non-retail uses can harm the appearance, character and retail function of a shopping centre. 'Saved' policy SS 7 of the Council's Unitary Development Plan (UDP)⁷ has similar objectives in relation to Local Shopping Centres.
23. The use of the ground floor of the building for a purpose within use Class A5 (or A3) conflicts with these policies. There is no firm evidence before me to show the use of the premises for retail purposes is not viable, or to show that the retail unit was vacant for an extensive period despite attempts to find a suitable occupier. The submissions for the appellant claim there have been a significant rise in the number of non-retail uses within the locality over the last 6 years. It is suggested the change of use of the premises from A1 to A5 use has not resulted in 'any loss to the Borough's shopping profile'. However, on the evidence before me, I find the development has contributed to an unacceptable dilution of the retail offer of the Core Frontage, thereby diminishing the vitality, viability and attractiveness of the Strutton Ground/Artillery Row Local Centre.
24. I conclude the change of use of the premises to Class A5 is contrary to the relevant planning policies that seek to protect existing retail floorspace throughout Westminster.

Issue 2: Living Conditions of Residents

25. There is an extensive mix of uses in the area, including retail and food and drink premises. There is also a significant residential component including a number of flats upon the upper floors of the properties nearby. In this instance, the dwelling most likely to be affected by the A5 use is the flat on the upper floors of 26 Strutton Ground.

⁶ Even allowing for the fact that Use Class A3 was subdivided under the provisions of the 2005 amendment to the Use Classes Order

⁷ City of Westminster Unitary Development Plan, adopted in 2007

26. According to the submissions for the appellant, the only modifications to the building involved the 'enhancement' of the extract duct at the rear of the property. However, this structure appears to have been part and parcel of the works originally carried out to adapt the property to an A5 use (which included the deep fat fryer units cited in the notice). A new extractor was also apparently installed above the shopfront entrance.⁸
27. The appellant claims that recent modifications to the rear extract duct have '*... reduced the amount of odour to almost zero ...*' and '*the Environmental Health Officers have taken care of the issue as well as the noise problem*'.⁹ However, clear and compelling evidence was given to the Inquiry by an occupier of the apartment above the A5 use, who gave a detailed account of the odours caused by the cooking of hot food, the noise associated with the operation of the extract system and its overall visual impact. The submissions from Liberty (the freeholder of the premises, based at 26-30 Strutton Ground) also indicate staff are 'subjected to unpleasant smells emanating from the shop'.
28. In addition, the Council has drawn my attention to numerous complaints received about noise and cooking odours from the extraction units, together with noise associated with customer activity during the evening. The appellant claims the stalls in Strutton Ground Market create some environmental impact within the locality. However, on the evidence before me, it appears the A5 use has a significantly greater impact on the living conditions of the residents above, not least because of the very close proximity of the extract system to their bedroom windows and the more extensive operating hours of the A5 business.
29. There is no firm evidence to show that the nuisance arising from cooking odours, noise and disturbance associated with the operation of the A5 use could be satisfactorily mitigated. I conclude this development conflicts with the relevant development plan policies which seek to protect the amenity of the area from noise and air pollution, including S29 and S32 of the City Plan and 'saved' policies ENV 5 and ENV 6 of the UDP.

Issue 3: Implications for the Conservation Area

30. It is necessary to bear in mind that section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a general duty upon decision makers with respect to any buildings or other land within a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
31. I have also borne in mind that incremental changes to individual buildings, such as unsuitable alterations, can have a detrimental effect not only on the character and appearance of the building itself, but also upon the conservation area as a whole.
32. The size, bulk and profile of the large extract duct installed on the rear elevation of the building pays little regard to the architectural composition or character of the host building. The structure appears incongruous and is wholly inappropriate to its context. The adverse effect of this large extract duct significantly diminishes the contribution this building makes to its historic surroundings. This extract duct is also readily visible from the upper floors of the surrounding buildings. Overall, it fails to preserve or enhance the character or appearance of the Broadway and Christchurch Gardens Conservation Area.
33. The appellant would be willing to encase the extract duct with brickwork or tiles. However, it is difficult to envisage how this could be done in a way that would enable it to be successfully assimilated into its context. I find the development conflicts with the objectives of policy S25 of the Westminster City Plan and 'saved' UDP policies DES 6 and DES 9.

Overall Conclusions

34. I have taken into account all the other matters raised, however, I find they do not alter or outweigh the main considerations that have led to my decision. For the reasons given above, I shall uphold the notice and refuse to grant permission on the deemed application.

⁸ Albeit at the site visit it transpired that this extractor unit may have been recently replaced

⁹ Paragraph 4.7 of the Proof of Evidence lodged on the appellant's behalf

Formal Decision

35. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nigel Burrows

INSPECTOR

Premises History

Appendix 4

There is no licence or appeal history for the premises.

CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE AND CONDITIONS PROPOSED BY A PARTY TO THE HEARING

When determining an application for a new premises licence under the provisions of the Licensing Act 2003, the licensing authority must, unless it decides to reject the application, grant the licence subject to the conditions which are indicated as mandatory in this schedule.

At a hearing the licensing authority may, in addition, and having regard to any representations received, grant the licence subject to such conditions which are consistent with the operating schedule submitted by the applicant as part of their application, or alter or omit these conditions, or add any new condition to such extent as the licensing authority considers necessary for the promotion of the licensing objectives.

This schedule lists those conditions which are consistent with the operating schedule, or proposed as necessary for the promotion of the licensing objectives by a responsible authority or an interested party as indicated. These conditions have not been submitted by the licensing service but reflect the positions of the applicant, responsible authority or interested party and have not necessarily been agreed

Mandatory Conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
 - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or

less in a manner which carries a significant risk of undermining a licensing objective;

- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
 - (b) an ultraviolet feature.
7. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

A responsible person in relation to a licensed premises means the holder of the premise licence in respect of the premises, the designated premises supervisor (if any) or any individual aged 18 or over who is authorised by either the licence holder or designated premises supervisor. For premises with a club premises certificate, any member or officer of the club present on the premises in a capacity that which enables him to prevent the supply of alcohol.

- 8(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 8(ii) For the purposes of the condition set out in paragraph 8(i) above -
- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (b) "permitted price" is the price found by applying the formula -
- $$P = D + (D \times V)$$
- Where -
- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
- (i) the holder of the premises licence,
- (ii) the designated premises supervisor (if any) in respect of such a licence, or
- (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
- 8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- 8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Conditions consistent with the operating schedule

9. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.

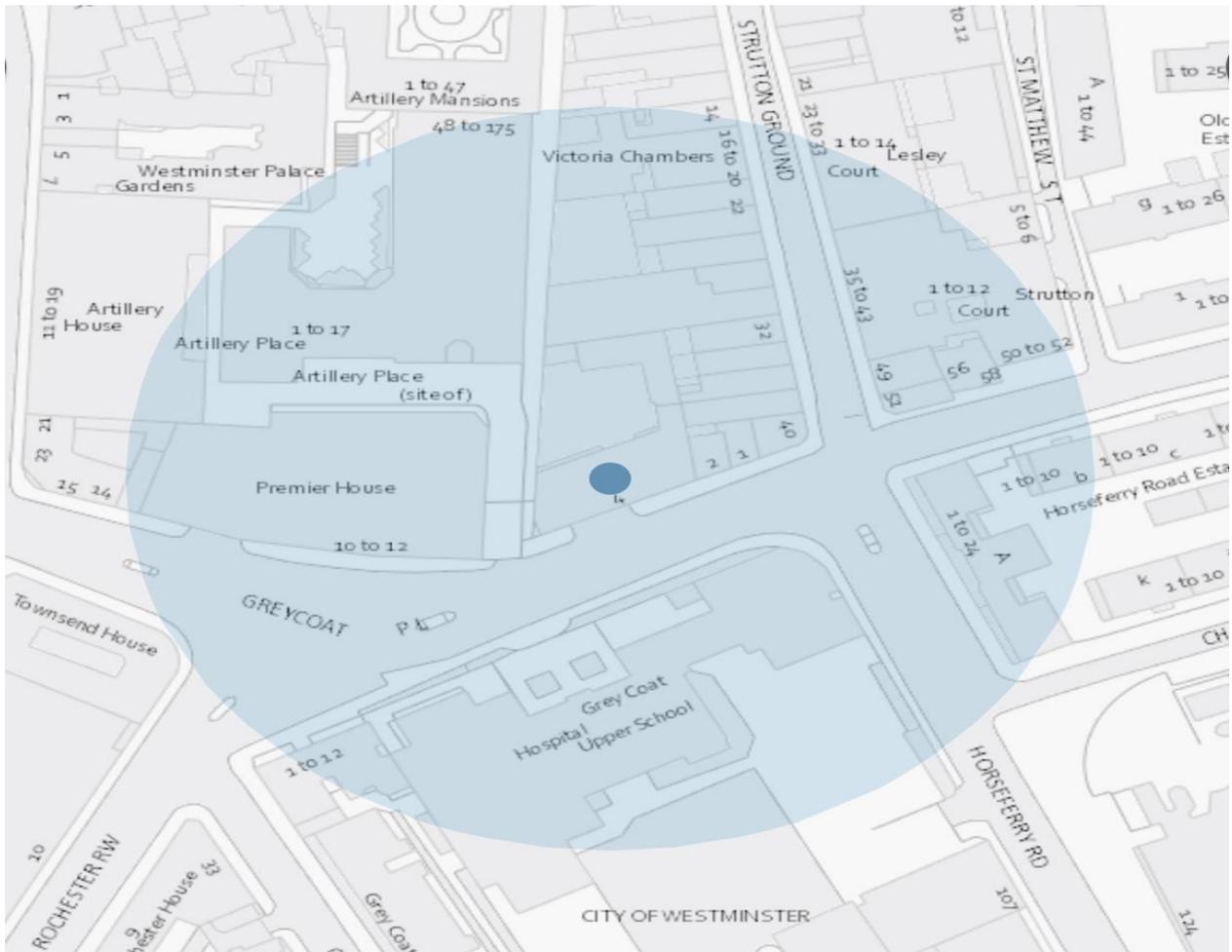
10. Prior to 10am alcohol for consumption on the premises shall be ancillary to a table meal.
11. Off-sales of alcohol shall be in sealed containers only.
12. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.
13. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
14. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
15. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly
16. No collections of waste or recycling materials (including bottles) from the premises shall take place between (23.00) and (08.00) on the following day.
17. No deliveries to the premises shall take place between (23.00) and (08.00) on the following day.
18. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
19. An incident log shall be kept at the premises and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received concerning crime and disorder
 - (d) any incidents of disorder
 - (e) all seizures of drugs or offensive weapons
 - (f) any faults in the CCTV system,
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
20. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.
21. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the licence by the Licensing Authority

Conditions proposed by the Environmental Health

None

Conditions proposed by the Police

None



Resident Count: 359

Licensed premises within 75 metres of 4 Greycoat Place, SW1

09/09686/LIPCH	Pizzetta	2 Greycoat Place London SW1P 1SB	Shop	Monday to Saturday; 08:00 - 23:00 Sunday; 10:00 - 22:30
06/09018/WCCMAP	Demes Newsagents	1 Greycoat Place London SW1P 1SB	Shop	Monday to Saturday; 06:00 - 20:00 Sunday; 07:00 - 17:00
17/07990/LIPV	Express Coffee Company	Basement and Ground Floor 40 Strutton Ground London SW1P 2HR	Cafe	Monday to Saturday; 07:00 - 22:00 Sunday; 07:00 - 18:00
06/04690/WCCMAP	Victoria News	28 Strutton Ground London SW1P 2HR	Shop	Monday to Saturday; 08:00 - 23:00 Sunday; 10:00 - 22:30

16/07810/LIPT	My Local - Strutton 123	41 - 45 Strutton Ground London SW1P 2HY	Shop (large)	Monday to Sunday; 07:00 - 23:00
18/12104/LIPT	Bamboo Basket Neway	37 Strutton Ground London SW1P 2HY	Restaurant	Monday to Saturday; 17:00 - 23:00 Monday to Sunday; 12:00 - 15:00 Sunday; 17:00 - 22:30
18/03480/LIPT	Bamboo Basket Neway	37 Strutton Ground London SW1P 2HY	Restaurant	Monday to Saturday; 17:00 - 23:00 Monday to Sunday; 12:00 - 15:00 Sunday; 17:00 - 22:30
16/11463/LIPDPS	(coffee Shop / Restaurant)	58 Great Peter Street London SW1P 2HD	Restaurant	Monday to Saturday; 07:00 - 21:00
19/06851/LIPVM	Slug and Lettuce	17-19 Artillery Row London SW1P 1RH	Public house or pub restaurant	Monday; 07:00 - 00:00 Tuesday; 07:00 - 00:00 Wednesday; 07:00 - 00:00 Thursday; 07:00 - 00:00 Friday; 07:00 - 00:00 Sunday; 07:00 - 23:00