

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 30 March 2021	Classification For General Release	
Report of Director of Place Shaping and Town Planning		Ward(s) involved Lancaster Gate	
Subject of Report	Ground Floor , 31 Moscow Road, London, W2 4AH		
Proposal	Installation of full height extract duct to rear elevation.		
Agent	Mr Nicholas Papalexandrakos		
On behalf of	Mr Nikos Ferikidis		
Registered Number	20/07733/FULL	Date amended/ completed	3 December 2020
Date Application Received	3 December 2020		
Historic Building Grade	Unlisted		
Conservation Area	Bayswater		

1. RECOMMENDATION

Grant conditional permission.

2. SUMMARY

The application relates to a commercial unit on the ground floor of No.31 Moscow Road known as 'Byzantium Café', which is within a four storey block of commercial units on the ground floor and residential flats above called 'Shaftsbury House'. The proposal is for the installation for an extract duct on the rear elevation that rises from ground floor level to above the roof of the building. The application site is unlisted and located within the Bayswater Conservation Area.

The key issues in this case are:

- the impact of the duct on the amenity of the occupiers of the neighbouring residential properties; and
- the impact of the duct on the character and appearance of the Bayswater Conservation Area.

For the reasons as set out in the report, the duct is considered to accord with the design and amenity policies in the City Plan adopted in November 2016 (the City Plan) and the Unitary Development Plan adopted in January 2007 (the UDP). The application is therefore recommended for approval, subject to the conditions set out in the draft decision letter appended to this report.

3. LOCATION PLAN



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4. PHOTOGRAPHS



Front Elevation of No. 31 Moscow Road



Rear Elevation of No. 31 Moscow Road



Rear Elevation of No. 31 Moscow Road



Rear Elevation of Nos. 45 and 47 Moscow Road

5. CONSULTATIONS

BAYSWATER RESIDENTS ASSOCIATION:

Any response received to be reported verbally.

ENVIRONMENTAL HEALTH OFFICER:

No objection. Noise levels, vibration levels, and the hours of use of the plant should be controlled through conditions.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 21

Total No. of replies: 5

No. of objections: 5

No. in support: 0

In summary, the objectors raised the following issues:

Design:

- The design of the proposed extract duct is inappropriate to the character and appearance of the building on the application site and the conservation area.

Amenity:

- The extract duct would cause the occupiers of Shaftsbury House to suffer a material loss of amenity as result of noise and cooking odour.
- The proposal would facilitate an expansion of the activities of the café on the application site which would harm the amenity of the occupiers of Shaftsbury House due to an increase in the number of people using it. The increased activity would cause a rise in anti-social behaviour.

Other:

- The applicant has not received permission from either the freeholder or the Right to Manage (RTM) company to install the proposed ducting.
- There is an existing extraction system on the application site with a vent but no ducting. The applicant should upgrade the existing extraction system rather than installing a new one with ducting.
- The proposal would decrease the value of the flats within Shaftsbury House.

PRESS ADVERTISEMENT / SITE NOTICE:

Yes

6. BACKGROUND INFORMATION

6.1 The Application Site

The application relates to a commercial unit on the ground floor of No.31 Moscow Road known as 'Byzantium Café', which is a within 'Shaftsbury House'. The site lies on the south side of Moscow Place and is bounded by Bark Place to the west. The application

site is unlisted and located within the Bayswater Conservation Area. It is within the core frontage of the Moscow Road Local centre.

6.2 Recent Relevant History

05/02899/CLEUD

Lawful Development Certificate Issued for the Continued use of ground floor as a café (A3 Use Class).

Issued 22 June 2005.

45 Moscow Road

12/06824/FULL

Permission granted for the Installation of an extract duct at the rear to serve existing cafe.

Application permitted: 12.11.2012

7. THE PROPOSAL

Permission is sought for the installation of a new extract duct to rear of the property that rises from ground level to above roof level. The duct rises 1.7 metres in height above the parapet of the main body of the building on the application site. The duct is constructed from steel and the applicant has not specified whether it will be painted.

8. DETAILED CONSIDERATIONS

8.1 Land Use

An objector has said that the proposal would facilitate an expansion of the activities of the café on the application site

The commercial unit on the ground floor of No.31 Moscow Road is in use as a café and this is not to alter as a result of the proposal. The property will continue to operate under Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (came into effect on the 1st September 2020).

There is no evidence to suggest that the proposal would significantly increase the number of customers who would use the café. The installation of extraction equipment would not cause a material change of use of the application site. For these reasons there is no objection to the proposal in land use terms.

8.2 Townscape and Design

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that *“In the exercise, with respect to any buildings or other land in a conservation area...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”*

Whilst there is no statutory duty to take account of effect on the setting of a conservation area, Policy DES 9 (F) in the UDP requires that where development will have a visibly adverse effect upon a conservation area's recognised special character or appearance,

including intrusiveness with respect to any recognised and recorded familiar local views into, out of, within or across the area, it will not be permitted.

Furthermore Chapters 12 and 16 of the NPPF require great weight be placed on design quality and the preservation of designated heritage assets including their setting. Chapter 16 of the NPPF clarifies that harmful proposals should only be approved where the harm caused would be clearly outweighed by the public benefits of the scheme, taking into account the statutory duty to have special regard or pay special attention, as relevant. This should also take into account the relative significance of the affected asset and the severity of the harm caused.

The relevant policies for consideration of this case are DES 1, DES 5 and DES 9 of the UDP (2007) and S25 and S28 of the City Plan (2016).

Shaftsbury House is a late-twentieth century brick building. Chenies House is a building located to the west of Shaftsbury House that has a very similar design and is likely to have been built at around the same time. There are extract ducts at the rear of Chenies House that rise from ground floor level to above roof level. No. 45 Moscow Road and No. 47 Moscow Road are ground floor commercial units at Chenies House and the extract ducts are associated with these properties. An extract duct was approved at No. 45 Moscow Road on 12.11.2012 under application RN: 12/06824/FULL. Photos available to the City Council suggest that the extract duct at No. 47 Moscow Road is lawful due to the passage of time.

The extract duct proposed which is to be constructed in steel, rises the full length of the building on the rear elevation similar to the ducts on the adjacent buildings. A number of objectors have raised concerns with the duct stating that rather than enhancing the appearance of the building, instead it will cause harm. Whilst not ideal, it is considered difficult to resist a duct in this location given the existence of similar ducts nearby and also because the building is not of any particular design merit. Although the duct would be visible in long views from Poplar Place, it does back on immediately to LUL train lines and therefore not be visually prominent in private views. It is recommended a condition is attached requiring the duct must be painted a similar colour to the wall it is attached in order to reduce its visual prominence. For these reasons the proposal is considered to preserve the character of the Bayswater Conservation Area.

As such, the proposal is considered acceptable, mindful of policies DES 1, DES 5 and DES 9 of the UDP and S25 and S28 of the City Plan and therefore, a recommendation to grant conditional permission would be compliant with the requirements of the NPPF and the statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990.

8.3 Residential Amenity

Policies ENV5, ENV6, ENV7, and ENV 13 of the UDP and S29 and S32 of the City Plan seek to protect residential amenity and environmental quality.

The existing cafe serves Greek food that is prepared on the premises, the majority of which is cooked in an oven. It also serves coffees, sandwiches and salads. The applicant would like to expand the menu to include grilled food, which is why the

proposed extract duct is required.

The plant that is being proposed is an extractor fan with a duct that vents above roof level. The hours of use proposed for the plant is 07:00 – 23:00 daily.

Objections have been received stating that the proposal would cause the occupiers of neighbouring and adjoining properties to suffer a material loss of amenity as a result of noise, disturbance and odour.

Policy ENV 6 requires design features and operational measures to minimise and contain noise from developments, in order to protect noise sensitive properties. Policy ENV7 requires that the applicant demonstrates that any proposed plant and machinery will be designed and operated so that any noise emitted will achieve the necessary standards in relation to the existing external noise level at the nearest noise sensitive properties. The application site has been assessed as being in an area in which existing ambient noise levels are below WHO Guideline Levels. As the area exceeds these levels, the design noise level criteria for the plant must be 5 dB below the background noise reading in order to comply with ENV 7.

The Environmental Health Officer has assessed the proposal. The applicant has submitted an acoustic report by KP Acoustics Ltd (ref: 21026.PCR.01 dated 17th July 2020) which demonstrates that the proposed plant would meet the requirements of the City Council's design noise level criteria. The Environmental Health Officer has no objection to the proposal on environmental noise or nuisance grounds, provided that the noise levels, vibration levels, and hours of use of the plant machinery are controlled by conditions. In addition, it shall be enforced though condition that the noise control measures specified in the report are carried out on the application site before the plant is first used.

The installation of the plant would not result in the number of customers using the application site increasing to such an extent that it would cause the occupiers of neighbouring and adjoining properties to suffer material loss of amenity as result of noise and disturbance.

The proposed plant vents above the roof level of the application site. The Environmental Health Officer has assessed the proposed system and considers that it would meet the City Council's Guidelines for ventilation and odour control.

Due to its size, height, and position, the proposed ducting would not cause the occupiers of neighbouring and adjoining properties to suffer a material loss of amenity as a result of a loss of outlook or daylight/sunlight, and nor would it have an overbearing impact on these properties.

For the reasons stated above the proposal is considered to be in accordance with policies ENV5, ENV6, ENV7, and ENV 13 of the UDP and S29 and S32 of the City Plan

8.4 Transportation/Parking

Not relevant.

8.5 Economic Considerations

No economic considerations are applicable for a development of this size

8.6 Access

Not relevant.

8.7 Other UDP/Westminster Policy Considerations

None.

8.8 Westminster City Plan

The City Council is currently working on a complete review of its City Plan. Formal consultation on Westminster's City Plan 2019-2040 was carried out under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012 in June and July 2019 and it was submitted to the Secretary of State for independent examination in November 2019. The City Plan examination hearings took place between 28 September and 16 October 2020. Following the examination hearings, the Council consulted on the main modifications recommended by the Inspectors between 30 November 2020 and 18 January 2021. However, having regard to the tests set out in paragraph 48 of the NPPF, whilst the draft City Plan has now been through an Examination in Public, it will continue to attract limited weight at this present time prior to the publication of the Inspector's final report.

8.9 London Plan

This application raises no strategic issues.

8.10 National Policy/Guidance Considerations

The City Plan and UDP policies referred to in the consideration of this application are considered to be consistent with the NPPF unless stated otherwise.

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

No pre-commencement conditions have been recommended.

8.11 Planning Obligations

Planning obligations are not relevant in the determination of this application.

8.12 Environmental Impact Assessment

An Environmental Impact Assessment is not required for a proposal of this scale.

8.13 Other Issues

Under Article 14 of the Town & Country Planning (Development Management) Procedure Order 2015 the applicant is required to serve notice on everyone who has a freehold interest or a leasehold interest (with at least 7 years left to run) on the land or building to which the application relates. Owners of Shaftsbury House have objected to the proposal on the grounds that the applicant has not asked their permission to install the plant. The agent has clarified that while the applicant has not asked permission from the owners, notice has been served on them. The agent has submitted a copy of Ownership Certificate B which lists the owners who had notice served on them. The agent has said that if the planning application is approved, it is the applicant's intention to approach the owners for permission. While it is essential that the applicant serves the relevant notices before applying for permission, it is not necessary for the applicant to have been granted permission from the owners before the application is determined. The fact that the application does not have permission from the owners to carry out the works is not a reason for the City Council to refrain from determining the application.

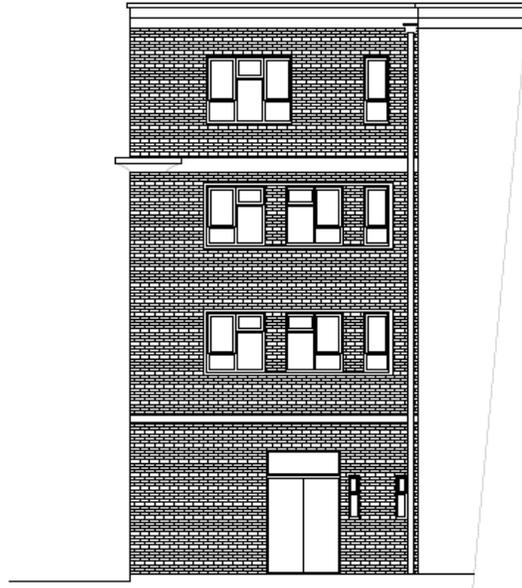
An objector has stated rather than installing a new extraction system with ducting the applicant should instead upgrade the existing extraction system that has no ducting. However, it is not to the City Council's role to judge what the best method of extraction is to use on the application site, rather the role is to assess whether the current proposal is acceptable.

An objector has stated that the proposal would decrease the value of the flats within Shaftsbury House, however this is not a material planning consideration.

(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: KIMBERLEY DAVIES BY EMAIL AT kdavies1@westminster.gov.uk

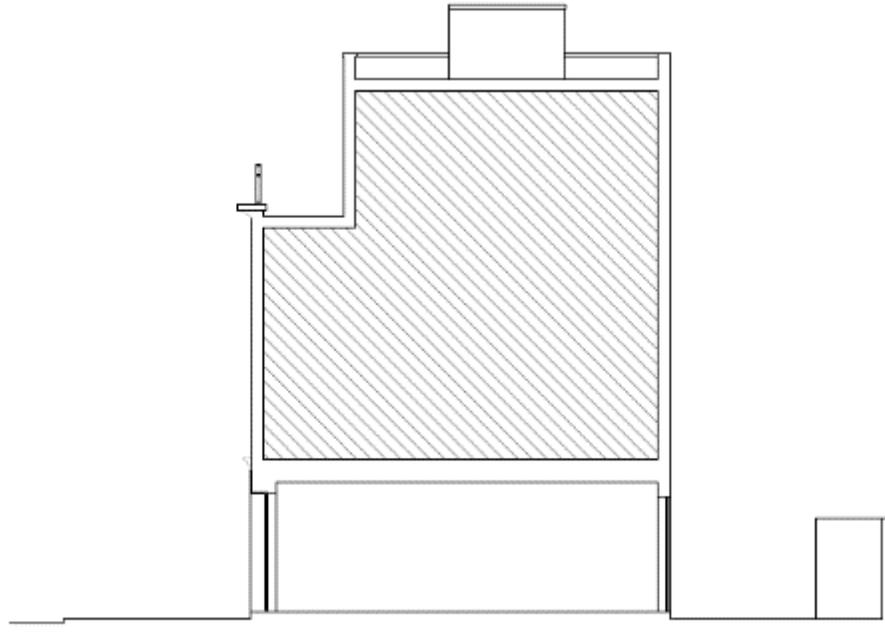
9. KEY DRAWINGS



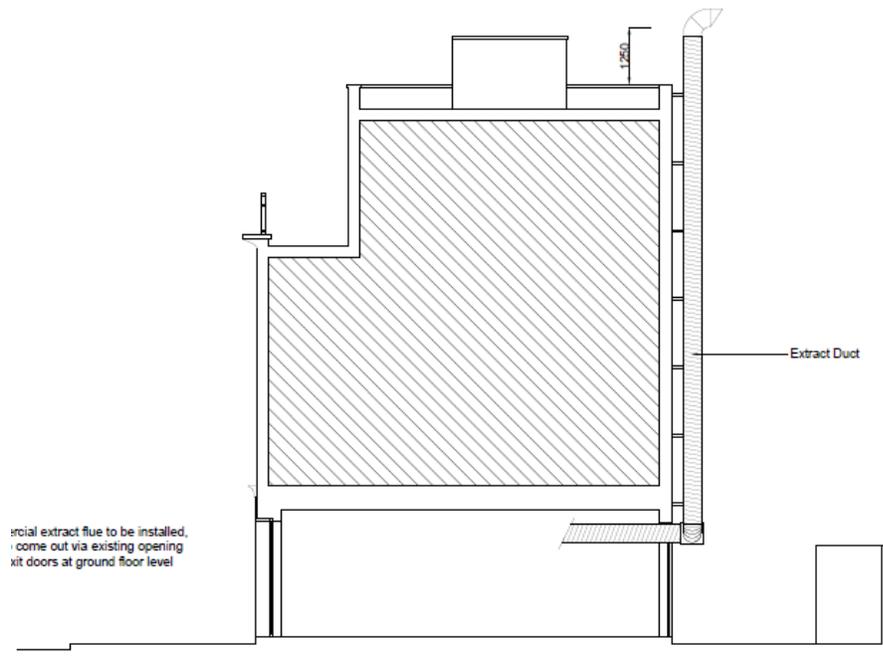
Existing Rear Elevation



Proposed Rear Elevation



Existing Section



Proposed Section

DRAFT DECISION LETTER

Address: Ground Floor , 31 Moscow Road, London, W2 4AH

Proposal: Installation of a new extract duct to rear of property.

Reference: 20/07733/FULL

Plan Nos: 247_01, 247_02 rev. A, 247_03, 247_04 rev. A, 247_05, Planning Compliance Report for 31 Moscow Road London by KP Acoustics Ltd ref: 21026.PCR.01 dated 17th July 2020, Design Statement 31 Moscow Road London W2 4AH by PPLX Architects Proposal: Planning application for the installation of a new extract duct to rear of property dated: June 2020, Details of Carbon Impregnated Bag Filters by Airclean

Case Officer: William Philips

Direct Tel. No. 020 7641
07866036165

Recommended Condition(s) and Reason(s)

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

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

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

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

Noisy work must not take place outside these hours unless otherwise agreed through a Control of Pollution Act 1974 section 61 prior consent in special circumstances (for example, to meet police traffic restrictions, in an emergency or in the interests of public safety). (C11AB)

Reason:

To protect the environment of residents and the area generally as set out in S29 of Westminster's City Plan (November 2016) and STRA 25, TRANS 23, ENV 5 and ENV 6

of our Unitary Development Plan that we adopted in January 2007. (R11AC),

- 3 All new work to the outside of the building must match existing original work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the drawings we have approved or are required by conditions to this permission. (C26AA)

Reason:

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

- 4 Notwithstanding the details shown on the approved drawings, you must paint the duct to match the colour of the wall it is attached to and it must be maintained and retained as such thereafter.

Reason:

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

- 5 (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 5 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 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.

(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:

As set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(2) of our Unitary Development Plan that we adopted in January 2007 (UDP), 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. (R46BB)

- 6 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)

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

Reason:

As set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(2) of our Unitary Development Plan that we adopted in January 2007 (UDP), 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. (R46BB)

- 8 Before the plant hereby approved is first used, you must carry out the noise control measures specified in section 6.0 and Appendix C of Planning Compliance Report for 31 Moscow Road London by KP Acoustics Ltd ref: 21026.PCR.01 dated 17th July 2020. The plant shall be maintained and retained as such throughout the lifetime of the development.

Reason:

As set out in ENV 6 (1), (6) and (8) and ENV 7 (A)(2) of our Unitary Development Plan that we adopted in January 2007 (UDP), 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. (R46BB)

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 **HIGHWAYS LICENSING:**
Under the Highways Act 1980 you must get a licence from us before you put skips or scaffolding on the road or pavement. It is an offence to break the conditions of that licence. You may also have to send us a programme of work so that we can tell your neighbours the likely timing of building activities. For more advice, please visit our website at www.westminster.gov.uk/guide-temporary-structures

CONSIDERATE CONSTRUCTORS:

You are encouraged to join the nationally recognised Considerate Constructors Scheme. This commits those sites registered with the Scheme to be considerate and good neighbours, as well as clean, respectful, safe, environmentally conscious, responsible and accountable. For more information please contact the Considerate Constructors Scheme directly on 0800 783 1423, siteenquiries@ccscheme.org.uk or visit www.ccscheme.org.uk.

BUILDING REGULATIONS:

You are advised that the works are likely to require building regulations approval. Details in relation to Westminster Building Control services can be found on our website at www.westminster.gov.uk/contact-us-building-control

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

Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.