

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS SUB COMMITTEE</b>	<b>Date</b> 4 April 2023	<b>Classification</b> For General Release	
<b>Report of</b> Director of Town Planning & Building Control		<b>Ward(s) involved</b> West End	
<b>Subject of Report</b>	37 - 38 Clarges Street, London, W1J 7EN		
<b>Proposal</b>	Installation of plant within the front lightwell at lower ground floor level; installation of air intake louvres on the front elevation at lower ground floor level; installation of a high level extract duct on the rear elevation and repositioning of an existing air conditioning unit and installation of new screening on the flat roof area at rear first floor level.		
<b>Agent</b>	Firstplan		
<b>On behalf of</b>	Aragawa UK Ltd		
<b>Registered Number</b>	22/03663/FULL	<b>Date amended/ completed</b>	21 June 2022
<b>Date Application Received</b>	1 June 2022		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	Mayfair		
<b>Neighbourhood Plan</b>	Mayfair Neighbourhood Plan		

## 1. RECOMMENDATION

Grant conditional permission.

## 2. SUMMARY & KEY CONSIDERATIONS

38 Clarges Street is an unlisted building in the Mayfair Conservation Area and the Central Activities Zone. It's neighbours, 36 and 39 Clarges Street are grade II listed buildings. To the rear, 12, 14 and 15 Half Moon Street are also all grade II listed. The building has lawful use as a restaurant at lower ground and ground floor levels and residential flats on the upper floors.

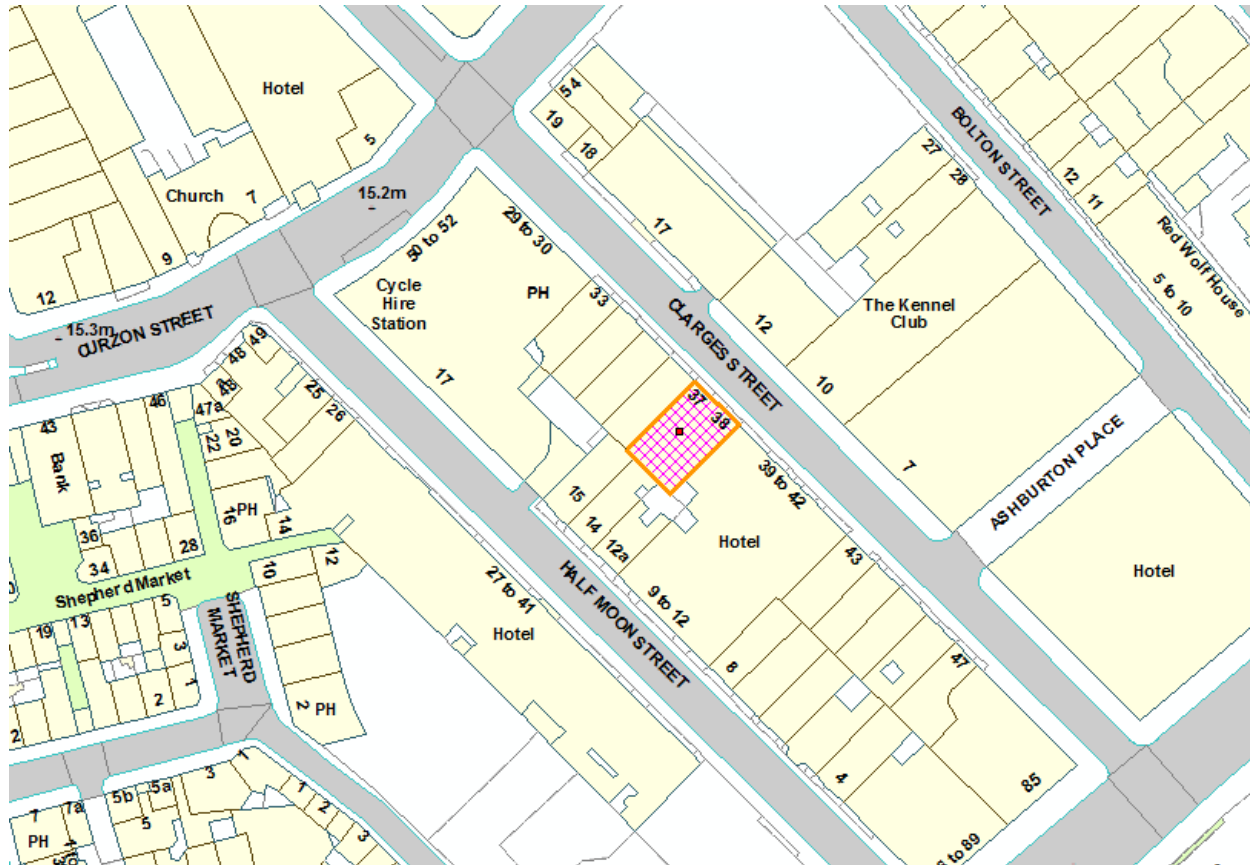
The application proposes the installation of plant within the front lightwell of the building; new louvres on the front elevation at lower ground and ground floor levels; the installation of a high level extract duct on the rear elevation of the building to terminate at main roof level; and the repositioning of an existing air conditioning unit at the rear of the building to the flat roof area at rear first floor level with the installation of a new acoustic screen.

The key considerations in this case are:

- The impact of noise from the plant operation on the amenity of nearby residential occupiers.
- The impact of the proposal on the appearance of the building and the character and appearance of the conservation area.

A detailed objection has been received from a neighbouring resident on multiple grounds including noise disturbance; detrimental impact on the character and appearance of the conservation area and the building itself; potential odour nuisance; vibration and a number of other issues. The proposals are however considered acceptable in terms of their impact on the amenity of neighbouring residential properties and also in design terms, subject to relevant conditions. For these reasons the proposal is considered to comply with the relevant policies in the London Plan, City Plan and the Mayfair Neighbourhood Plan and it is therefore recommended that conditional planning permission is granted.

### 3. LOCATION PLAN



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4. PHOTOGRAPHS

Front Elevation of the Building:



**Front Lightwell:**



**Rear elevation:**



## 5. CONSULTATIONS

### 5.1 Application Consultations

#### MAYFAIR RESIDENTS GROUP

Any response to be reported verbally.

#### RESIDENTS SOCIETY OF MAYFAIR & ST. JAMES'S

Object to the plant in the front lightwell and at the rear on the grounds that it will detrimentally impact the appearance of the building and the wider conservation area and support the detailed objections submitted by the residential occupier.

#### MAYFAIR NEIGHBOURHOOD FORUM

Any response to be reported verbally.

#### ENVIRONMENTAL HEALTH

No objection subject to conditions.

#### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 18

Total No. of replies: 2

No. of objections: 4 (all from the same resident)

No. in support: 1

Objections on the following grounds –

- Potential for noise disturbance.
- Potential fire risk to the building from the operation of the restaurant.
- Use of the area at rear first floor level by the applicant will prevent residential tenants placing their own air conditioning units in the area.
- Concerns over access for cleaning and maintenance of the duct.
- Questions whether an existing internal duct could be utilised.
- Design implications for the building and the wider conservation area.
- Incorrect address has been used for the site.
- Full consideration should be given of the Class E use.
- Technical concerns with the submitted acoustic report and the manufacturers stated noise levels.
- Concern the background noise level is not accurate due to other plant being in operation.
- The building may require a new lift which would allow the duct to be routed internally.
- Discrepancies between the drawings and the acoustic report.
- Concern over structure borne vibrations from the plant operation impacting residential occupiers.
- Potential for odour nuisance to result from the operation of the duct.
- Potential for increased heat in the vicinity resulting from the use of the plant.
- Potential noise disruption resulting from the relocation of the existing air conditioning unit.

- Financial input from residential occupiers which is not offset by the commercial occupiers.

Support on the following grounds –

Amendments to the scheme [including relocation of his air-conditioning unit at rear first floor level and additional acoustic information ] have addressed all the previous objections this residential occupier expressed.

PRESS NOTICE / SITE NOTICE: Yes

## **5.2 Applicant's Pre-Application Community Engagement**

The applicant advises that engagement was carried out with the flat occupiers of the first and second floors of the building [believed to be the only long term tenants of the building] inviting them to two online Zoom discussions. The applicant states that constructive dialogue was had with the occupier of the first floor flat and the application now includes the relocation of their air conditioning unit and a letter of support from this resident. The applicant states that no response was received from the occupier of the second floor flat who has objected to the application.

## **6. WESTMINSTER'S DEVELOPMENT PLAN**

### **6.1 City Plan 2019-2040 & London Plan**

The City Plan 2019-2040 was adopted at Full Council on 21 April 2021. The policies in the City Plan 2019-2040 are consistent with national policy as set out in the National Planning Policy Framework (NPPF) (July 2021) and should be afforded full weight in accordance with paragraph 219 of the NPPF. Therefore, in accordance with Section 38 of the Planning and Compulsory Purchase Act 2004, it comprises the development plan for Westminster in combination with the London Plan, which was adopted by the Mayor of London in March 2021 and, where relevant, neighbourhood plans covering specific parts of the city (see further details in Section 6.2).

As set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 49 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

### **6.2 Neighbourhood Planning**

The Mayfair Neighbourhood Plan includes policies on a range of matters including public realm, directing growth, enhancing retail, commercial and public house uses, residential amenity, commercial growth, cultural and community uses, heritage, design, servicing and deliveries and environment and sustainability.

The plan has been through independent examination and was supported by local residents and businesses in a referendum held on 31 October 2019. It was adopted on 24 December 2019. It therefore forms part of the development plan for Westminster for development within the Mayfair neighbourhood area in accordance with Section 38 of the Planning and Compulsory Purchase Act 2004. Where any matters

relevant to the application subject of this report are directly affected by the policies contained within the neighbourhood plan, these are discussed later in this report.

### **6.3 National Policy & Guidance**

The City Plan 2019-2040 policies referred to in the consideration of this application have been examined and have been found to be sound in accordance with tests set out in Paragraph 35 of the NPPF. They are considered to remain consistent with the policies in the NPPF (July 2021) unless stated otherwise.

## **7. BACKGROUND INFORMATION**

### **7.1 The Application Site**

38 Clarges Street is an unlisted building in the Mayfair Conservation Area and the Central Activities Zone. The building comprises lower ground, ground and first to fourth floor levels. The lower ground and ground floor levels have lawful use as a restaurant and the upper floors are in use as residential flats. Council Tax and Electoral Register indicate two flats on each of the first, second and third floors and a penthouse flat at fourth floor level.

### **7.2 Recent Relevant History**

21/08123/FULL - Installation of external plant in association with the restaurant premises including condensers and louvres within basement lightwell, louvre above front door at ground floor level and two high level extract ducts to rear. Application withdrawn on the 16<sup>th</sup> March 2022 (due to inadequate acoustic information).

21/05953/FULL - Installation of external plant including condensers and louvres within basement lightwell, louvre above front door at ground floor level and two high level extract ducts to rear. Application withdrawn on the 22<sup>nd</sup> October 2022 (further revisions required).

22/03844/FULL - Installation of one air-conditioning unit on the flat roof at rear first floor level (Flat 12) [in a different location from the current proposals]. Application under consideration.

## **8. THE PROPOSAL**

Permission is sought for the installation of a high level extract duct on the rear elevation of the building. The duct would exit the building through the flat roof at rear first floor level and terminate at main roof level. There is an existing air conditioning unit which is attached to the rear elevation at rear first floor level (belonging to one of the first floor flats) which is proposed to be relocated to another part of the flat roof area with a new acoustic enclosure. At the front of the building new plant is proposed under the metal access stair and the lightwell bridge. Ventilation louvres are proposed in the front elevation of the building at lower ground level.

The application was originally advertised as relating to 38 Clarges Street, however, the commercial part of the building has an address of 38 Clarges Street and the residential



units on the upper floors have an address of 37 Clarges Street. As a result, the application has been readvertised with the amended address of 37 – 38 Clarges Street and an amended description of development to highlight that the external ducting at the rear is attached to 37 Clarges Street. This addresses one of the objections that has been raised.

## **9. DETAILED CONSIDERATIONS**

### **9.1 Land Use**

Although there are no planning decisions relating to the restaurant use at basement and ground floor, there is other information confirming that this is a longstanding use. For example, there is a premises licence dating from 2005 granted to Miyama Japanese Restaurant (which correlates with online Google Map street views dating back to at least 2012). It should be noted that whilst any restaurant would be subject to licensing controls, it would not be subject to any planning controls, such as opening hours or capacity. Such a use would now fall within Use Class E (discussed in detail below).

Unfortunately it is not clear how the previous restaurant kitchen extracted cooking fumes: the kitchen has been removed and there is no indication that there was either an internal or external duct, and it is possible that any extraction was carried out at low level.

### **9.2 Environment & Sustainability**

#### **Odour**

The application is supported by a ventilation report which assesses the acceptability of the high level duct to provide suitable odour dispersal from the restaurant premises. This has been assessed by Environmental Health who have confirmed the proposed duct will provide a suitable means for odour dispersal. A condition is included to require the installation of the high level extract duct and its retention for as long as the restaurant is in operation. The objector has commented on potential odour nuisance from the use of the duct and also the operation of the plant in the front lightwell. The operation of the plant in the front lightwell will not result in any odour issues as these are condenser units. The duct at the rear complies with the relevant City Council criteria, which requires high level discharge to ensure adequate dispersal of fumes and the ventilation report has been assessed and deemed acceptable with Environmental Health. The objection on these grounds is not therefore considered sustainable.

For details of noise etc please see 9.5 below.

### **9.3 Biodiversity & Greening**

Not relevant.



## 9.4 Townscape, Design & Heritage Impact

### Legislative & Policy Context

The key legislative requirements in respect to designated heritage assets are as follows:

Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the LBCA Act”) requires that *“In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”*

Section 66 of the LBCA Act requires that *“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”*

Section 72 of the LBCA Act requires 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 39(K) in the City Plan 2019-2040 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.

### Detailed Design

The position for the proposed plant in the front lightwell is acceptable in design terms. Two of the three proposed units are partially beneath the lightwell bridge, and partly covered by the existing metal lightwell stairs. The third unit is entirely beneath the lightwell stair. They will not be visible in views from the public realm and are acceptable in design terms. Similarly, the proposed new ventilation louvres in the front lightwell will be largely concealed beneath the lightwell bridge. The only louvre which will be visible from the pavement is above an existing (non-original) louvered timber door at basement level. As such it will not disrupt any traditional openings.

The applicant has clarified that an existing decorative louvered panel (part of a fresh air intake duct) above the front door at ground floor level will be retained at existing.

These works at the front of the building are therefore sufficiently discreet that they will not negatively affect the appearance of the building, the character or appearance of this part of the Mayfair Conservation Area, or the setting of the adjacent listed buildings.

At the rear the proposed duct is a large and conspicuous addition to the rear of the building, visible in private view from the surrounding buildings. The route of the duct has been the subject of negotiation and refinement over the course of the application, and now represents the least visually disruptive route for such an installation.

Provided that the duct is coloured to match the adjacent fabric, this element is considered to be acceptable in design terms.

## **Objections**

The Residents' Association of Mayfair and St James's and the residential objector have objected on the grounds that the duct to the rear and the plant within the front lightwell will have an unacceptable impact on the Mayfair Conservation Area. As discussed above, the lightwell works will be entirely screened by the existing metal stair and lightwell bridge, with the exception of one louvered panel of modest size. Were these elements to be clearly visible then it is agreed they would have a harmful impact on the character and appearance of the area, but in the proposed locations they are acceptable and therefore the objections are not considered to be sustainable.

At the rear the objection states that there is currently no plant, and suggests that the uncluttered rear elevation should be preserved. The rear of the building is L shaped, with the proposed duct rising close to the angle. As such it is as far as possible from any of the adjacent listed buildings. Providing that the duct is coloured to match the adjacent masonry, the visual impact will be limited. A condition has been included to control the colour of the ducting. A second objection has been received on the grounds that the ducting is very close to the bedroom windows of the flats, 11, 21 and 31 (and presumably that the visual impact on views from these flats is greater). The objector considers that the size and location of the plant means that it is not subservient or sympathetic to the host building and will create an adverse visual impact. It is the case that there is little plant equipment in this area at present (the existing air-conditioning unit for one of the first floor flats), and that the duct will be more prominent in views from some flats than from others. However, the rear of No. 37-38 is undistinguished (and has been rebuilt completely differently for the period appearance of the front of the building), and with suitable treatment it is considered that the duct can be accommodated without harm to the character and appearance of the conservation area. Taking this into account the objection cannot be sustained on these grounds and the application is considered acceptable in design terms subject to relevant conditions.

## **9.5 Residential Amenity**

### **Noise & Vibration**

In relation to noise from the proposed plant the application has been considered in the context of Policy S33 of the City Plan 2019-2040. This policy seeks to protect nearby occupiers of noise sensitive properties and the area generally from excessive noise and disturbance resulting from plant operation.

An acoustic report has been submitted in relation to the installation of the plant equipment. Plant is proposed both within the front lower ground floor lightwell and at the rear of the building (being the high level extract duct and the repositioned existing air conditioning unit around which it is proposed to install a new acoustic enclosure). The nearest noise sensitive windows to both the plant at the rear and the front of the building are the first floor residential windows of the same building.

It is proposed the plant can operate between the hours of 12:00 and 23:30 daily with the exception of the two condenser units in the front lower ground floor lightwell which are required for refrigeration and are proposed to operate at any time over the 24 hour period. The lowest background noise level was recorded at the rear of the property as being 45dB over the period of 12:00 until 23:30 which results in a design criteria for the noise levels from the plant operation of 35dB being 10dB below background at the nearest noise sensitive receptor. At the front of the property the lowest background noise levels were recorded as being 50dB until midnight which results in a design criteria of 40dB for the plant proposed to operate until 23:30. For the two condenser units at the front of the property which it is proposed can operate over 24 hours the Environmental Health Officer has accepted a level of 40dB as the lowest expected noise level overnight resulting in a design criteria of 30dB.

A range of acoustic and vibration mitigation measures are proposed which includes the installation of duct mounted attenuators to the fans, acoustic louvres to the inlet ducts of supply fans, acoustic louvres to the pavement vault housing the catering condensers and the installation of anti-vibration mounts to various items of equipment.

The proposed plant to the rear of the building is predicted to produce a combined maximum sound pressure level of 31dB at rear 1st floor windows. For the plant to the front of the building when all items are running, during restaurant operating hours, it is predicted to produce a combined maximum sound level of 38dB. During the night-time period when the catering condensers are operating alone the predicted level is 28dB.

The acoustic report concludes that with the acoustic mitigation measures installed and the hours of operation of the plant controlled as detailed above that the noise levels at the nearest sensitive property will be compliant with the City Council criteria. Environmental Health have assessed the documentation and confirmed that the plant operation will be acceptable. Conditions are included to control noise and vibration levels from the plant, hours of operation and the installation of the acoustic mitigation measures.

The objector has raised concerns about the potential for vibration transmitted through the building structure causing a nuisance to residential occupiers within the building. The potential for vibration from the plant operation causing a nuisance has been assessed by Environmental Health who have recommended the standard condition with regard acceptable vibration levels and do not foresee the proposal causing an issue for residents.

The objector has raised a number of concerns on technical points relating to the acoustic report and these have all been assessed by Environmental Health who have confirmed the details in the acoustic report with regard the noise levels from the plant and the

measuring of the background noise levels are all accurate and the technical objections from the residential occupier cannot be supported.

The duct has been located so as not to have any impact on any of the windows to the flats.

#### **9.6 Transportation, Accessibility & Servicing**

Not relevant.

#### **9.7 Economy including Employment & Skills**

Whilst the development is of insufficient scale to require an employment and skills plan, it will contribute positively to the local economy during the construction phase through the generation of increased opportunities for local employment, procurement and spending.

#### **9.8 Other Considerations**

##### **Existing air conditioning unit:**

There is an existing air conditioning unit at the rear of the building which serves one of the residential units at first floor level. The previous (withdrawn) planning application proposed the relocation of this unit to a higher point on the rear elevation. This was closer to the windows of other residential units in the building. The air conditioning unit is now proposed to be located on the flat roof area of the rear first floor under the windows of the residential unit which it serves. This has been assessed in the acoustic report and Environmental Health deem the noise levels from the unit will be acceptable with the acoustic enclosure in place. A condition is imposed to require the acoustic mitigation to be provided and retained to the specification detailed in the acoustic report. A post installation survey is also required by condition to ensure that all the plant is complaint with the relevant conditions once installed and operating.

The objector has commented on the potential for increased noise from this unit and that noise levels from the unit may have increased over time. The unit is already located at the rear of the building and the proposal includes an acoustic screen for this unit. With the safeguarding conditions in place as detailed above the operation of this unit will not result in a noise nuisance and the objection on these grounds is not considered sustainable.

##### **Financial input from residential occupiers:**

The objector has commented that residential occupiers have made substantial financial contributions to the upkeep of the building in the past which have not been made by the prospective restaurant occupier. This is not a relevant planning matter but a private matter between the tenants and their landlord.

**Fire risk from the restaurant operation:**

The objector has raised concerns about the potential for the operation of the restaurant and the cooking of food to result in an increased fire risk to the building. The existing lawful use of the commercial premises is as a restaurant and the acceptability of the use is not part of the planning application. Any operator would need to comply with the relevant fire safety criteria and building regulations.

**Use of the area will prevent residential tenants placing their own air conditioning units in the area:**

The objector has also objected on the grounds that using the first floor area to place the proposed commercial equipment will mean that in future other residential occupiers within this building cannot place possible equipment they want on this part of the roof. There is additional space on the rear flat roof and at main roof level where it may be possible to install additional plant, but this application solely relates to the commercial plant (and the relocated residential air-conditioning unit). The installation of plant in this area would have to be agreed with the freeholder and any relevant leaseholders, the same as any potential future applications for residential plant.

**Potential future new lift:**

The objector has commented on the potential future installation of a lift in the building which they consider might result in additional space for the duct to be located internally. Whilst this is noted there would not appear to be any proposal for this and the application is limited to the proposed works as detailed.

**Heat Generation:**

The objector has commented on the potential for the operation of the plant to result in additional heat to the front and rear of the building. Both locations for the proposed plant are relatively open and well ventilated. It is considered any heat generated by the plant operation will be easily dissipated through natural air flow and would not lead to a material increase in temperatures in the immediate vicinity. The objection on these grounds is not therefore considered sustainable.

**Class E/restaurant use:**

The objector has commented that; *'there is a significant danger that this application (if approved) could set a very bad precedent for the whole of Westminster given the planning changes that are now applicable to Class E, i.e. no requirement to apply for change of use. Applicants should not be allowed to install large scale plant or ducting exterior to or close to residential buildings just because of this change without giving full consideration to the whole range of planning policies.'*

The lawful use of the lower ground and ground floor commercial unit is as a restaurant and it has operated as such previously. A restaurant use would fall within Class E. The current application for additional plant and an extract duct is based on the operational requirements of the proposed restaurant operator and the application has been considered with regard all relevant policies. The application has not been recommended

for approval because of changes to the use class order, which is not relevant in this case.

**Access for maintenance and cleaning:**

Concern was raised that there may not be suitable access for maintaining and cleaning the ductwork at the rear. The objector is concerned both that people carrying out cleaning / maintenance may not be able to do so without falling and that they will be able to look directly into residential windows. These concerns are noted but any people carrying out work at height will be subject to relevant health and safety legislation to ensure the work is carried out safely. The applicant has also confirmed that occupiers of the upper floors will be notified by email 24 hours before any planned maintenance of the plant so they will be aware of when people may be outside their windows (the same as window cleaners). Again, this is partly a private matter between the tenants of the building and the landlord. The applicant has confirmed that access to the rear of the building for maintenance will be through the retained skylights on the rear flat roof which provide direct external access from the restaurant accommodation.

**Address:**

The application was originally advertised as relating to 38 Clarges Street: the objector considered the application should have been advertised as 37-38 Clarges Street. The commercial part of the building has an address of 38 Clarges Street and the residential units on the upper floors have an address of 37 Clarges Street. Subsequent to the objector raising this issue the application has been readvertised with the amended address of 37 – 38 Clarges Street and an amended description of development to highlight that the external ducting at the rear is attached to 37 Clarges Street.

**Utilising an internal duct:**

The objector has suggested that an internal duct is utilised as opposed to installing the external duct. This issue has been investigated by the applicant who have advised that there are two internal risers at the property, one used for plumbing and the other appearing to be a small internal chimney riser. The previous restaurant operator specialised in sushi but also did have a number of items on their menu which would have required primary cooking. The kitchen has been stripped out and the applicant advises they cannot be entirely certain of how the previous occupier extracted cooking fumes but the internal risers are too small for a modern commercial kitchen hence the application for the external high level duct.

**Discrepancies between the drawings and the acoustic report:**

The objector has noted that the acoustic report refers to units 'CU1, CU2 and CU3', however, the drawings show units OU1 and OU2. The objector queries why there is a difference in the number of units, however, the drawings show and the annotations also state that there are two of the OU2 units, so the drawings are showing the three units which the acoustic report assesses.

## 9.9 Environmental Impact Assessment

The proposed development is not of sufficient scale or impact to require an Environmental Impact Assessment.

## 9.10 Planning Obligations & Pre-Commencement Conditions

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

## 10. Conclusion

The proposal will facilitate the occupation of the vacant lower ground and ground floor commercial unit by providing modern equipment for the restaurant occupier. The external plant and associated works are acceptable in design and amenity terms subject to conditions to safeguard residential amenity and the appearance of the building and wider conservation area.

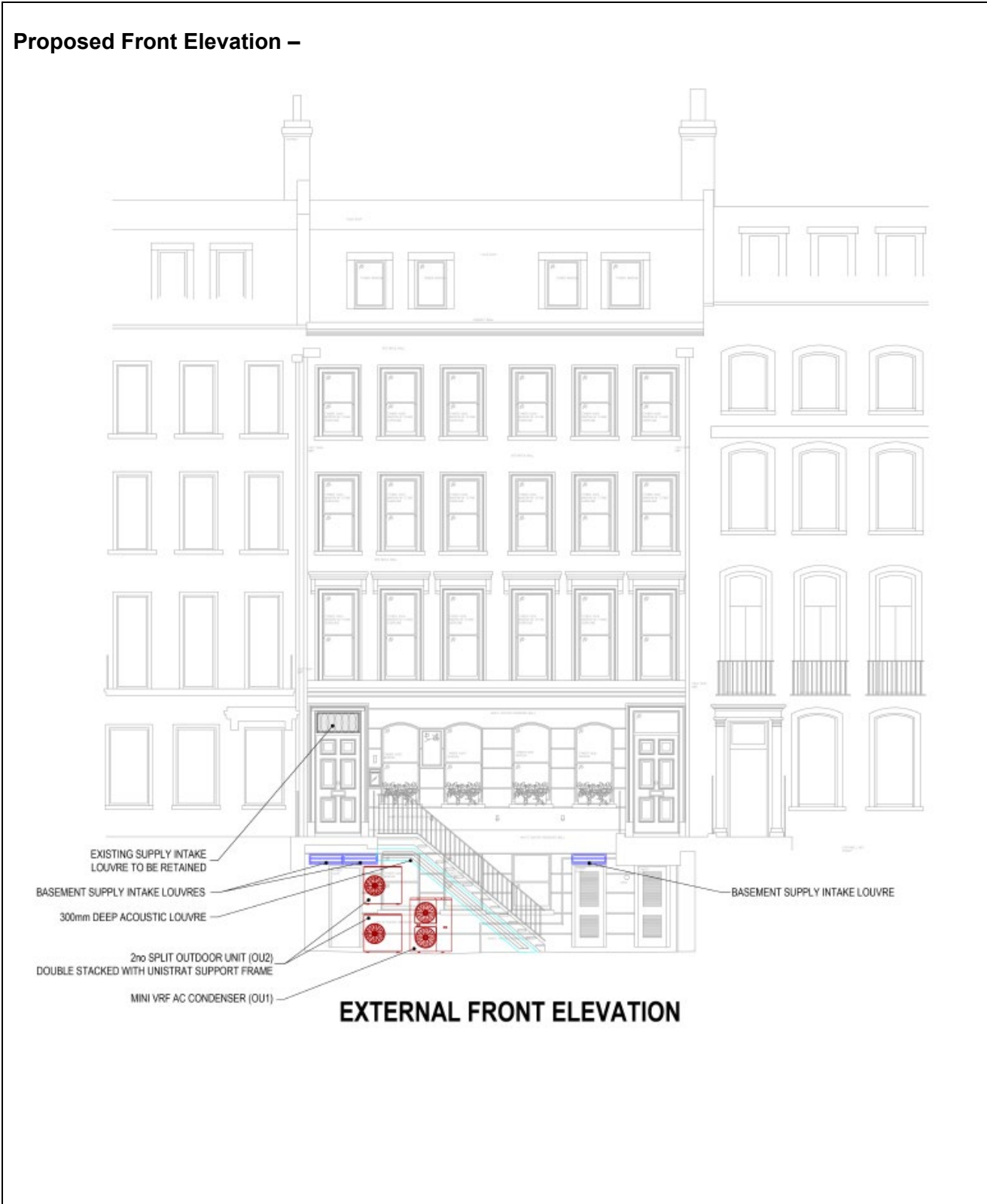
As such, the proposal is considered acceptable, mindful of policies 7, 14, 16, 33, 38, 39 and 40 of the City Plan 2019-2040 and therefore, a recommendation to grant conditional permission would be compliant with the requirements of the NPPF and the statutory duties of the Planning (Listed Buildings and Conservation Areas) Act 1990.

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

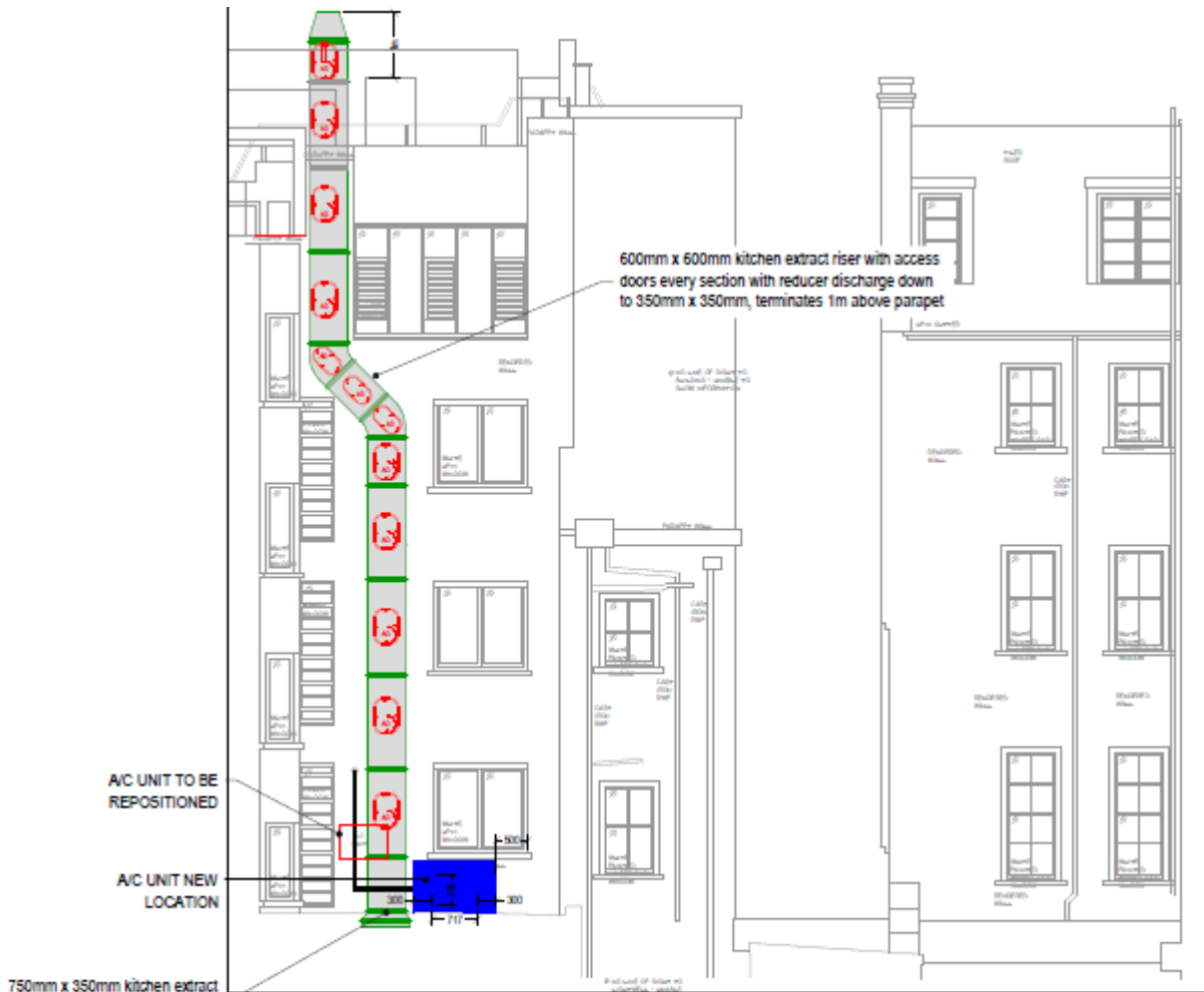
IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: PAUL QUAYLE BY EMAIL AT [pquayle@westminster.gov.uk](mailto:pquayle@westminster.gov.uk)



11. KEY DRAWINGS



South West Courtyard Elevation -



**SOUTHWEST COURTYARD ELEVATION**

1-50 A1

**DRAFT DECISION LETTER**

**Address:** 37 - 38 Clarges Street, London, W1J 7EN

**Proposal:** Installation of plant within the front lightwell at lower ground floor level; installation of air intake louvres on the front elevation at lower ground floor level; installation of a high level extract duct on the rear elevation and repositioning of an existing air conditioning unit and installation of new screening on the flat roof area at rear first floor level.

**Reference:** 22/03663/FULL

**Plan Nos:** Acoustic Report 210513-R001F, Drawings: 001-834-01 Rev C, 001-834-21 Rev B, 001-834-22 Rev C, 001-834-23 Rev B, 001-834-31 Rev D.

**Case Officer:** Matthew Giles

**Direct Tel. No.** 020 7641  
07866040155

**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:

- o 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 neighbouring occupiers. This is as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021). (R11AD)

- 3 No vibration shall be transmitted to adjoining or other premises and structures through the building structure and fabric of this development as to cause a vibration dose value of greater than 0.4m/s (1.75) 16 hour day-time nor 0.2m/s (1.75) 8 hour night-time as defined by BS 6472 (2008) in any part of a residential and other noise sensitive property. (C48AB)

Reason:

To ensure that the development is designed to prevent structural transmission of noise or vibration and to prevent adverse effects as a result of vibration on the noise environment in accordance with Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) and the Environmental Supplementary Planning Document (February 2022). (R48AB)

- 4 (1) Where noise emitted from the proposed plant and machinery will not contain tones or will not be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 10 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing by the City Council. The background level should be expressed in terms of the lowest LA90, 15 mins during the proposed hours of operation. The plant-specific noise level should be expressed as LAeqTm, and shall be representative of the plant operating at its maximum. , , (2) Where noise emitted from the proposed plant and machinery will contain tones or will be intermittent, the 'A' weighted sound pressure level from the plant and machinery (including non-emergency auxiliary plant and generators) hereby permitted, when operating at its noisiest, shall not at any time exceed a value of 15 dB below the minimum external background noise, at a point 1 metre outside any window of any residential and other noise sensitive property, unless and until a fixed maximum noise level is approved in writing 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 written 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 LA90, 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. (C46AC)

Reason:

Because existing external ambient noise levels exceed WHO Guideline Levels, and as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) and the Environmental Supplementary Planning Document (February 2022), so that the noise environment of people in noise sensitive receptors is protected, including the intrusiveness of tonal and impulsive sounds, and 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. (R46AC)

- 5 The plant/machinery hereby permitted can only be operated between 12:00 hours and 23:30 hours daily, with the exception of the two condenser units identified in the acoustic report as 'chiller condenser' (DUET+ 1-1H STD) and 'freezer condenser' (DUET+ 1-1L STD) which can operate at any time.

Reason:

To safeguard the amenity of occupiers of noise sensitive receptors and the area generally by ensuring that the plant/machinery hereby permitted is not operated at hours when external background noise levels are quietest thereby preventing noise and vibration nuisance as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) the Environmental Supplementary Planning Document (February 2022). (R46CC)

- 6 You must install all the internal acoustic mitigation measures as detailed in the acoustic report at the same time as the plant is installed. These measures must thereafter be maintained in this form for as long as the plant remains in operation.

Reason:

To protect neighbouring residents from noise and vibration nuisance, as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021). (R13AD)

- 7 You must install and retain the high level extract duct on the rear elevation of the property for as long as the restaurant use is in operation.

Reason:

To protect the environment of people in neighbouring properties as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021). (R14AD)

- 8 You must not operate the plant/ machinery that we have allowed (other than to carry out the survey required by this condition) until you have carried out and sent us a post-commissioning noise survey and we have approved the details of the survey in writing. The post-commissioning noise survey must demonstrate that the plant/ machinery

complies with the noise criteria set out in condition(s) 4 of this permission.

Reason:

To protect neighbouring residents from noise and vibration nuisance, as set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021). (R13AD)

- 9 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 Mayfair Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

- 10 You must finish / paint the duct in a colour to match the adjoining building fabric. The duct must be maintained in this form for as long as it remains in place.

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 Mayfair Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021). (R26BF)

### **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 the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), 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 Conditions 4, 5 and 6 control noise from the approved machinery. It is very important that you meet the conditions and we may take legal action if you do not. You should make sure that the machinery is properly maintained and serviced regularly. (I82AA)
- 3 You must register your food business with the Council, please use the following link: [www.westminster.gov.uk/registration-food-business](http://www.westminster.gov.uk/registration-food-business). Please email the Environmental Health Consultation Team (Regulatory Support Team 2) at [ehconsultationteam@westminster.gov.uk](mailto:ehconsultationteam@westminster.gov.uk) for advice on meeting our standards on ventilation and other equipment. Under environmental health legislation we may ask you to carry out other work if your business causes noise, smells or other types of nuisance.

- 4 Please make sure that the street number and building name (if applicable) are clearly displayed on the building. This is also a condition of the London Building Acts (Amendment) Act 1939, and there are regulations that specify the exact requirements. For further information on how to make an application for street naming and numbering, and to read our guidelines, please visit our website: [www.westminster.gov.uk/street-naming-numbering](http://www.westminster.gov.uk/street-naming-numbering). (I54AB)
- 5 The construction manager should keep residents and others informed about unavoidable disturbance such as noise, dust and extended working hours, and disruption of traffic. Site neighbours should be given clear information well in advance, preferably in writing, for example by issuing regular bulletins about site progress.
- 6 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.
- 7 It is a legal requirement to ensure that every enclosed workplace is ventilated by a sufficient quantity of fresh or purified air. Where this ventilation is provided by mechanical means the regulations require those mechanical ventilation systems to be maintained (including appropriate cleaning) in efficient working order. B&ES Guide to Good Practice - TR19 Internal Cleanliness of Ventilation systems is a guidance document which can be used for new build, upgrade and maintenance of ventilation systems. Particular attention should be given to; Section 2 - New ductwork system cleanliness , Section 3 - Design and access to the internal surfaces of the ventilation system , Section 7 - Specific considerations for kitchen extract systems. (This section deals specifically with access to the internal surfaces to the kitchen extract system, cleaning methods and frequency of cleaning). Where access hatches or panels are required in order to meet the above requirements, these must be incorporated into the design of the ducting and any associated screening or cladding.
- 8 **SUMMARY OF REASONS FOR GRANTING CONDITIONAL LISTED BUILDING CONSENT -**  
In reaching the decision to grant listed building consent with conditions, the City Council has had regard to the relevant policies in the National Planning Policy Framework, the London Plan (March 2021), the City Plan (April 2021), as well as relevant supplementary planning guidance, representations received and all other material considerations.

The City Council has had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses and has decided that the proposed works would not harm this special architectural or historic interest; or where any harm has been identified it has been considered acceptable in accordance with the NPPF. In reaching this decision the following were of particular relevance: Policies 38, 39 and 40 of the City Plan 2019 - 2040 adopted in April 2021 and paragraph 2.4 of our Supplementary Planning Guidance: Repairs and Alterations to Listed Buildings.

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.