

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 11 July 2023	Classification For General Release	
Report of Director of Town Planning & Building Control		Ward(s) involved Pimlico North	
Subject of Report	54 - 56 Lupus Street, London, SW1V 3EE		
Proposal	Installation of two air-conditioning units to rear in ground level enclosure adjacent to basement.		
Agent	Mr Gareth Evans		
On behalf of	Mr Blaz Emersic		
Registered Number	22/06175/FULL	Date amended/ completed	17 October 2022
Date Application Received	9 September 2022		
Historic Building Grade	Unlisted		
Conservation Area	Pimlico		
Neighbourhood Plan	Pimlico Neighbourhood Plan		

1. RECOMMENDATION

Grant conditional planning permission.

2. SUMMARY & KEY CONSIDERATIONS

The application seeks planning permission to install two external air conditioning units in an enclosure on the rear, basement-level courtyard to the premises. This will replace the existing unauthorised air conditionings units fixed to the wall above the door. The subject premises are in use as a commercial unit for the sale and distribution of glazing for construction or decoration purposes. It forms part of a mixed-use building with commercial premises at basement and ground floor levels and three storeys of flats above. The building is located on the north side of Lupus Street in the Pimlico Conservation Area. It is not a listed building.

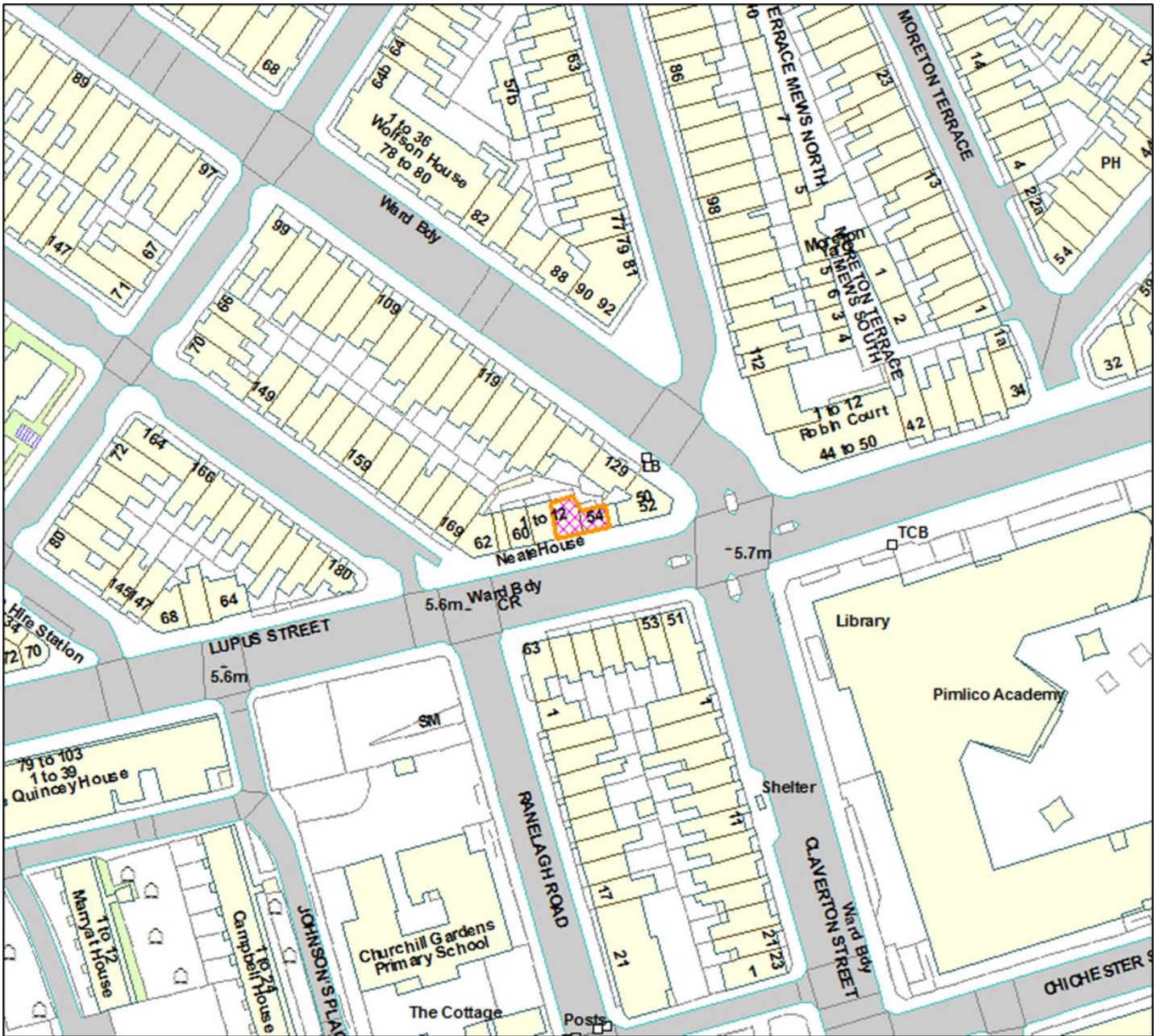
The key considerations in this case are:

- The impact of the proposal on the amenity of neighbouring residential properties.

- The impact of the proposal on the host building and on the character and appearance of the Pimlico Conservation Area.

The proposal is considered acceptable in design and heritage terms because the equipment would be enclosed in a suitably designed and positioned enclosure. It would also be acceptable in amenity terms given the applicant has demonstrated that the equipment can operate without noise disturbance to neighbours. Overall, the development complies with Policy 7, 33, 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021) and therefore is recommended for approval, subject to the conditions set out in the draft decision letter.

3. LOCATION PLAN



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4. PHOTOGRAPHS



5. CONSULTATIONS

5.1 Application Consultations

PIMLICO FREDA

Objection. Application is invalid as incorrect ownership certificate submitted and the applicant, due to restrictions on their lease, would not have authorisation to use the outside of the building or the courtyard to the rear of the building for the installation of plant.

WESTMINSTER SOCIETY

No response received.

PIMLICO NEIGHBOURHOOD FORUM

No response received.

ENVIRONMENTAL HEALTH

No objection, subject to conditions.

ADJOINING OWNERS/OCCUPIERS:

No. Consulted: 25

PRESS NOTICE/ SITE NOTICE:

Yes

Total No. of replies: 12 from 8 individuals

No. of objections: 12 from 8 individuals

No. in support: 0

Twelve objections have been received to this application from eight individuals, all owners or occupiers of the flats above the subject premises or of properties on adjoining roads. The grounds for objection raised can be summarised as follows:

Residential Amenity

- Unacceptable noise and vibration impacts on nearby residential occupiers.
- Cumulative impacts of proposal alongside plant at neighbouring premises has not been adequately considered.

Other Matters

- Applicant does not have permission in lease to install external equipment in courtyard.
- Inaccuracies on application form.

Many objections also raise the history of the subject site and neighbouring premises.

5.2 Applicant's Pre-Application Community Engagement

The Council's Early Community Engagement Guidance document does not suggest

developers carry out early community engagement.

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 Pimlico Neighbourhood Plan includes policies on a range of matters including commercial uses, design and heritage, housing and hotels, open spaces, pedestrian and transport facilities and protecting the environment.

It has been through independent examination and was supported by local residents in a referendum held on 22 September 2022. It was adopted on 7 December 2022. It therefore forms part of the development plan for Westminster for development within the Pimlico 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 have been discussed 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

54 - 56 Lupus Street is a commercial unit (Class E) used by a glazing company, Sky Bespoke Glass, for the sale and distribution of glazing for construction or decoration

purposes. The unit forms part of a 1950's four storey unlisted building which comprises a parade of commercial units at basement and ground floor levels with flats above (known as Neate House). The building fronts onto Lupus Street with the rear facing the private gardens of the residential properties along St George's Drive and Cambridge Street. The site is within the Pimlico Conservation Area and Lupus Street Local Centre.

7.2 Recent Relevant History

Planning Applications

On 28 June 2022, the Council refused permission for the installation of two air-conditioning units on the ground floor rear elevation (RN: 22/01369/FULL) for the following reasons:

1. Because of their location and lack of screening, the condenser units would contribute to a cluttered façade and would harm the appearance of this building and fail to maintain or improve (preserve or enhance) the character and appearance of the Pimlico Conservation Area. This would not meet Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021).
2. Because of their location on the rear wall within 1m of noise sensitive properties, and without any acoustic mitigation measures, the air conditioning units would be harmful to residential amenity by reason of noise and vibration. This means that the plant would be a nuisance to the people living in neighbouring properties which would not meet policies 7 and 33 of the City Plan 2019 - 2040 (April 2021).

On 23 April 2020, the Council granted permission for the installation of replacement shopfront (RN: 20/01197/FULL).

Enforcement

On 17 December 2020, the Council wrote to the owners/ other relevant parties warning that they had installed unauthorised air conditioning units and planning permission should be obtained. (RN: 20/73645/K)

On 12 January 2022, the Council again wrote to the owners/ other relevant parties warning that they had installed unauthorised air conditioning units and planning permission should be obtained. (RN: 20/73645/K)

On 12 July 2022, the Council wrote to the owners/ other relevant parties again outlining the air conditioning units are unauthorised and that as permission for the units had been refused on 28 June 2022 they should be removed. (RN: 20/73645/K)

8. THE PROPOSAL

This application seeks to overcome the reasons for refusal of application for planning permission refused on 28 June 2022 by locating two proposed new external air conditioning units in an enclosure at courtyard level, rather than keeping the two existing, unauthorised external air conditioning units in place in their location above the basement level door and without an enclosure.

9. DETAILED CONSIDERATIONS

9.1 Land Use

The development raises no land use implications.

9.2 Environmental & Sustainability

Policy 38 of the City Plan seeks to ensure development responds to the likely risks and consequences of climate change. The policy envisages achieving this in a way which means the need for plant and machinery is reduced. As such, natural ventilation of buildings should be the starting point to avoid the use of mechanical systems. However, in this case because the application relates to a relatively small commercial unit in an existing building, there are limited options to improve the internal temperatures to provide a comfortable environment for workers and customers. Therefore, the air conditioning units are not opposed on sustainability grounds.

9.3 Biodiversity & Greening

Given the scale and nature of the development there is no opportunity for greening.

9.4 Townscape, Design & Heritage Impact

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.”*

Policy 38 of the City Plan requires that development positively contributes to Westminster’s townscape. Policy 39 of the City Plan requires that development preserve or enhance the character and appearance of Westminster’s conservation areas. Policy 40 of the City Plan requires development to be sensitively designed having regard to the surrounding townscape and that extensions and alterations respect the character of the existing and adjoining buildings.

Policy PIM 4 of the Pimlico Neighbourhood Plan requires development in the Pimlico Conservation Area to demonstrate well-detailed, high quality, sustainable and inclusive design and architecture which preserves and enhances the historic character of the conservation area.

The previously refused air-conditioning units were in part considered unacceptable due to their location, cumulative appearance with other air-conditioning units on the rear elevation of the wider host building and their lack of enclosure, resulting in a cluttered appearance detrimental to the character and appearance of the host building and conservation area when viewed from private views.

This proposal will enclose the units and place them at ground level. This will soften their appearance, not result in any cluttering of the rear of the building and is therefore considered not to harm the character and appearance of the host building or the conservation area. It is, therefore, considered acceptable in conservation and design terms. It is considered necessary that further detailed drawings of the enclosure is provided and that it is finished in a grey colour to further soften the proposal's appearance. The draft decision includes recommended conditions which will ensure this.

9.5 Residential amenity

Policy 7 of the City Plan 2019-2040 (April 2021) requires development to be neighbourly by protecting amenity and local environmental quality.

Policy 33 of the City Plan requires that development prevents adverse effects of noise and vibration, including by minimising noise from plant machinery.

Policy PIM 1 of the Pimlico Neighbourhood Plan requires proposals in the Lupus Street Local Centre to protect residential amenity.

The Environmental SPD sets out noise thresholds for which plant machinery should operate so to not disturb residential neighbours.

Objectors have primarily raised concern about the impact of noise and vibration from the proposed air-conditioning units.

The applicant has submitted an acoustic report (dated August 2022) supporting the application. This report measures the existing minimum background noise level as 44 dB during the day and the ambient background noise level as 54 dB during the day (which does not exceed World Health Organisation (WHO) guideline levels for ambient noise levels in a city). The report also notes the nearest residential window is 5 metres from the proposed equipment. The Environmental SPD sets a threshold of noise levels for non-tonal plant equipment and requires it to be less than 5 dB below the minimum background noise level at the nearest residential window (noise sensitive receptor). Without an acoustic enclosure around the units, the report notes that equipment will fail to meet this threshold, but that with the proposed acoustic enclosure (that will provide a 15 dB reduction) it will achieve it. The acoustic report notes that with the reduction provided by the enclosure, the noise at the nearest residential property will be 9 dB below the threshold required by the Environmental SPD. Additionally, the applicant is only seeking authorisation to use the units between 0800 and 1700 on Mondays to Fridays.

Given the above, the Council's Environmental Health Team do not object to the proposal subject to conditions securing that: the development abides by the Council's noise thresholds; its hours of operation are limited to between 0800 and 1700 on Mondays to Fridays; and the units are installed such that they limit the amount of vibration transferred to neighbouring properties. A condition will also ensure that the enclosure is installed prior to the units being turned out.

Some objectors have raised concern regarding the cumulative impact of the equipment

to the rear of this building. In relation to the application site, a condition will require the existing unauthorised units are removed. In relation to adjacent commercial properties at this building, the objectors raise concern regarding the equipment at 58-60 Lupus Street for which the Council is currently considering planning applications and there is an open enforcement investigation. The cumulative noise impact of equipment is not normally a significant concern. This is because when two noise sources combine the additional increase in decibels will be relatively marginal as the decibel scale is logarithmic. Moreover, in this case, the acoustic enclosure will ensure the noise from this equipment is significantly below the existing minimum background level at the neighbouring residential properties. Nonetheless, in light of the concerns from residents, it is considered necessary for the applicant to provide a post-commissioning noise survey to ensure that the approved equipment, once installed, does in fact meet the Council's noise thresholds.

The proposed air conditioning units and their enclosure, by virtue of their size and location, will not detrimentally impact neighbouring residential amenities in other respects such as loss light or increased sense of enclosure.

Overall, subject to the above-mentioned conditions, the proposal is considered acceptable in terms of its impacts on residential amenity and complies with Policies 7 and 33 of the City Plan and Policy PIM 1 of the Pimlico Neighbourhood Plan and the Environmental SPD.

9.6 Transportation, Accessibility & Servicing

There are no transportation, accessibility or servicing implications.

9.7 Other Considerations

FREDA and some other objectors raised that they consider the application to be invalid as the applicant had not certified that they had notified all entities with an ownership interest in the land. The applicant has subsequently certified that they have notified all entities with an ownership interest in the land, including the long leaseholder with demise over the rear courtyard where the air conditioning units would be placed, by completing and signing Certificate B on the updated application form they submitted on 13 April 2023. Officers, therefore, consider the application to be valid.

FREDA and some other objectors raised that the applicant may not be authorised to install external equipment in accordance with their lease. While issue is not planning consideration, officers have seen the applicant's lease and, while freeholder permission is required, there does not appear to be any other impediment to the developer implementing the proposed development if planning permission were granted.

9.8 Economy including Employment & Skills

The development will not result is any notable economic benefits.

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 and no pre-commencement conditions are recommended.

10. Conclusion

The proposed external air conditioning units, due to their proposed location and enclosure and subject conditions securing their noise and vibration impacts and appearance of the enclosure, will be acceptable in terms of their impact on neighbouring amenities and the character and appearance of the host building and the Pimlico Conservation Area. The proposal therefore complies with the City Plan and Pimlico Neighbourhood Plan and it is recommended that conditional planning permission is granted accordingly.

(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: JOSHUA HOWITT BY EMAIL AT jhowitt@westminster.gov.uk

11. KEY DRAWINGS





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ADJOINING NEIGHBOUR

PRE-EXISTING SIDE ELEVATION 1:100

ADJOINING NEIGHBOUR

PROPOSED SIDE ELEVATION 1:100

DRAFT DECISION LETTER

Address: 54 - 56 Lupus Street, London, SW1V 3EE

Proposal: Installation of two air-conditioning units to rear in ground level enclosure adjacent to basement.

Reference: 22/06175/FULL

Plan Nos: OS Plan 54-56 Lupus Street; 341-PRE-EXT-01; 341-PROP-03.

Case Officer: Max Leonardo **Direct Tel. No.** 020 7641
07817095744

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) and Policy PIM 1 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022). (R11AD)

- 3 You must apply to us for approval of detailed drawings (including sections at 1:10) of

the ground level enclosure.

You must not start any work on this part of the development until we have approved in writing what you have sent us. You must then carry out the work according to these details.

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 Pimlico Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021) and Policy PIM 4 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022). (R26BF)

- 4 You must install the enclosure shown on the approved drawings before you use the machinery. You must then maintain the enclosure in the form shown for as long as the machinery remains in place. (C13DB)

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 Pimlico Conservation Area as well as to protect neighbouring residents from noise nuisance. This is as set out in Policies 7, 33, 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021) and Policies PIM 1 and PIM 4 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022). (R26BF)

- 5 The enclosure shall be finished and maintained grey.

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 Pimlico Conservation Area. This is as set out in Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021) and Policy PIM 4 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022). (R26BF)

- 6 (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 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 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.

- (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 minutes) 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.
- (C46BC)

Reason:

As set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021), Policy PIM 1 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022) 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 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. (R46BC)

- 7 The plant/machinery hereby permitted shall not be operated except between 0800 hours and 1700 hours on Mondays to Fridays. (C46CA)

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), Policy PIM 1 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022) and the Environmental Supplementary Planning Document (February 2022). (R46CC)

- 8 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), Policy PIM 1 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022) and the Environmental Supplementary Planning Document (February 2022). (R48AB)

- 9 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) 6 and 8 of this permission.

Reason:

As set out in Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021), Policy PIM 1 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022) 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. (R51BC)

- 10 You must remove the unauthorised air conditioning units to the rear of the premises within two (2) months of the date of this permission.

Reason:

In the interests of amenity, pursuant to Policies 7 and 33 of the City Plan 2019 - 2040 (April 2021) and Policy PIM 1 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022).

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 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

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.