

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 27 June 2023	Classification For General Release	
Report of Director of Town Planning & Building Control		Ward(s) involved West End	
Subject of Report	34 Grosvenor Square, London, W1K 2HD		
Proposal	Variation of conditions 2 and 3 of planning permission dated 30th March 2022 (RN 21/07888/FULL) for the variation of conditions 3 and 4 on permission dated 24/11/2020 for alterations in connection with the construction of platform within lightwells fronting South Audley Street to provide space for tables and chairs for use in association with a restaurant (Class E) : NAMELY, to extend the temporary permission for the retention of the decking in the front lightwell with external dining for a further temporary period until May 2024. (Application made under Section 73 of the Act.)		
Agent	DP9		
On behalf of	Caprice Holdings Ltd		
Registered Number	23/01122/FULL	Date amended/ completed	21 February 2023
Date Application Received	21 February 2023		
Historic Building Grade	Unlisted		
Conservation Area	Mayfair		
Neighbourhood Plan	Mayfair		

1. RECOMMENDATION

Refuse permission - design grounds

2. SUMMARY & KEY CONSIDERATIONS

34 Grosvenor Square is a mixed-use building comprising a restaurant on basement, ground and first floors with residential flats on the second to fifth floors. On 24 November 2020, permission was granted for the erection of a platform within a front lightwell for use as external dining area for the restaurant with 13 tables and 26 chairs for a temporary period of 1 year from the platform being installed. Subsequently on 30 March 2022 a further temporary permission was granted to retain the platform to be used for outside dining until 6 May 2023 and requiring the removal of the platform and

the reinstatement of railings by 16 June 2023.

The current application is for a further temporary permission seeking to retain the platform/decking in the front lightwell for outside dining for the restaurant for a further year until May 2024. The application is made under S73 of the Act and seeks to vary conditions on the last permission granted in March 2022.

The key issues for consideration are:

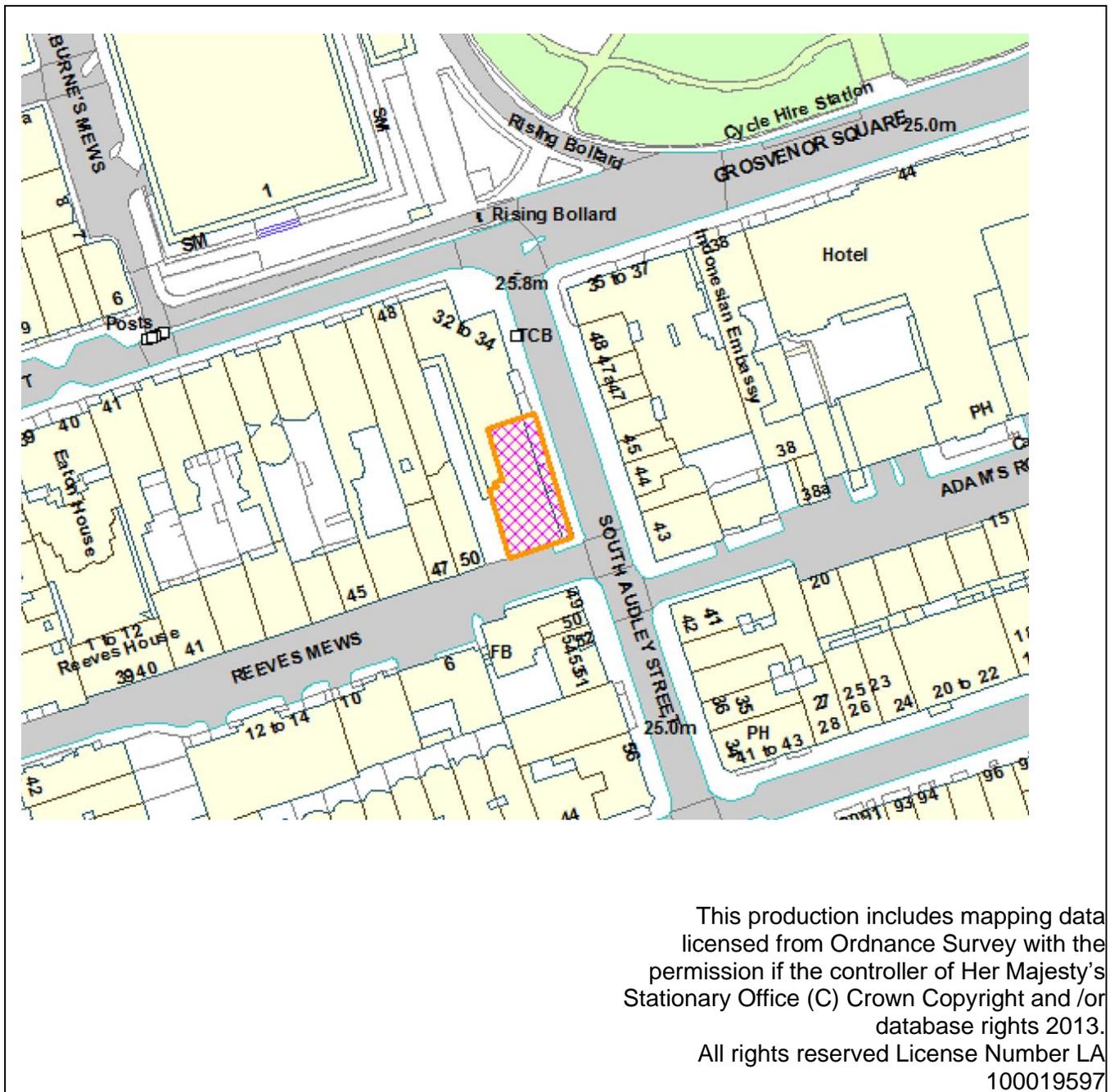
- The acceptability of permitting the lightwell structure, which is harmful to the appearance of the building and the Mayfair Conservation Area, for a further temporary period of 1 year.
- The impact of the external dining on neighbours' amenity

Front basement lightwells are a traditional feature, and an important characteristic, of many conservation areas, including the Mayfair Conservation Area, and the infilling of these lightwells is not normally considered acceptable. In granting the previous temporary permissions initially in November 2020 and subsequently in March 2022, the City Council recognised the difficulties faced by the hospitality industry during its recovery from the Covid 19 pandemic.

The current application is made on the basis that the external dining is a well-used facility which has become an important offer of the restaurant, supported by its clients. However, the special circumstances created by the pandemic are no longer applicable, and there are not the same extenuating circumstances which previously warranted a departure from the established design policies. Given the present circumstances this application for a further temporary permission is not supported for design reasons.

Had the application been considered acceptable in townscape and design terms conditions would have been recommended restricting the use of the dining area to between 8am and 10pm and requiring the use to operate in accordance with an Operational Management Plan (OMP) in order to ensure the amenity residents on the upper floors is protected.

3. LOCATION PLAN



4. PHOTOGRAPHS



5. CONSULTATIONS

5.1 Application Consultations

MAYFAIR RESIDENTS GROUP

No response received.

MAYFAIR NEIGHBOURHOOD FORUM

No response received.

RESIDENTS SOCIETY OF MAYFAIR & ST. JAMES'S

No response received.

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 27

Total No. of replies: 6

No. of objections: 0

No. in support: 6

6 Letters of support raising some or all of the following points:

- A cold looking exterior has been transformed into a warm and vibrant façade;
- The external dining has significantly increased the feel good factor of the area;
- The restaurant is well managed and the terrace area is used responsibly;
- No change should be made to either the hours of use (10am to 10pm) or the number of covers (26).

PRESS NOTICE/ SITE NOTICE:

Yes

5.2 Applicant's Pre-Application Community Engagement

Engagement was carried out by the applicant with the local community and key stakeholders in the area prior to the submission of the planning application in accordance with the principles set out in the Early Community Engagement guidance. The applicant undertook a consultation with business owners in the area. A petition supporting the application with 25 signatures has been received. This comments as follows:

- Businesses in the local area support the proposed one-year extension to outdoor dining.
- Fellow businesses in the area understand the significant impact that the hospitality industry has faced over the past few years and the importance in adapting to changing circumstances in order to survive.
- The extension of the terrace at 34 will be crucial in supporting the continued success of its business and in turn contribute to the vibrancy of the local area.
- The restaurant has demonstrated responsible and considerate management of

their premises in the past.

- This application will encourage more footfall and economic activity in the area which in turn will help and support other businesses in the area.'

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

No. 34 Grosvenor Square is a building on basement ground and five upper floors, with frontages on South Audley Street and Reeves Mews. Part of the basement, ground and first floors are in restaurant use, accessed from South Audley Street, and the remainder of the building is occupied as flats. The site lies within the Central Activities Zone (CAZ) and the Mayfair Conservation Area,

The restaurant use commenced in November 2011, with 108 covers, occupying the basement, ground and a small area at first floor level. Permission was subsequently granted on appeal, on 26 March 2013, to extend the restaurant use to the entire first floor of the restaurant unit, providing an additional 60 covers. A further permission, granted on 24 November 2020, increased the total restaurant capacity to 194 covers, including a maximum of 26 covers on any permitted external dining terrace.

The restaurant opening hours are 08.00 to 01.00 (the following morning) on Monday to Saturday and 08.00 to 23.00 on Sundays.

The external tables and chairs were first used on 17 May 2021.

7.2 Recent Relevant History

On 2.09.2010 permission was granted for use of the lower ground, ground and part first floor as a restaurant (Class A3) and associated alterations including a full height extract duct (RN 10/00743/FULL).

On 26. 03.2013 permission was granted, on appeal, for use of the first floor as a restaurant in connection with an existing restaurant at basement and ground floors and for the installation of new plant at roof level (RN 12/01295/FULL/ Appeal Reference APP/X5990/A/12/2183693).

On 24.05.2013 an Operational Management Plan was approved pursuant to Condition 8 of planning permission dated 26 March 2013 (RN: 12/01295/FULL) 13/04008/ADFULL.

On 01.09.2015 permission was granted for the variation of Conditions 4 and 7 of planning permission granted on appeal dated 26 March 2013 (RN: 12/01295/FULL) to allow the restaurant opening hours and operation of plant as follows: 08.00 to 01.00 (the following morning) on Monday to Saturday and 08.00 to 23.00 on Sundays (RN 15/05750/FULL). Condition 2 on this permission restricted the capacity of the premises to a maximum of 168 covers including 60 covers on the first floor.

On 24 November 2020 permission was granted for 'Alterations including the construction of platform within lightwell fronting South Audley Street to provide space for tables and chairs for use in association with restaurant (Class A3) RN 20/04702/FULL.

Also, on 24 November 2020 permission was granted for the Variation of Condition 2 of planning permission dated 01 September 2015 (RN: 15/05750/FULL) for, 'Use of first

floor as restaurant (Class A3) in connection with the existing restaurant at basement and ground floor and new plant at roof level'. NAMELY, to allow the increase the capacity of the restaurant from 168 to 194 (RN 20/04701/FULL). The amended condition limited the restaurant capacity to 194 persons, with no more than 108 covers at ground floor level , no more than 60 covers on the first floor and no more than 26 external dining spaces.

On expiry of any temporary permission for the external dining spaces the capacity of the restaurant will be limited to 168 customers (108 on the ground floor and 60 at first floor level).

On 30 March 2022 permission was granted for Variation of conditions 3 and 4 on permission dated 24/11/2020 for 'Alterations in connection with the construction of platform within lightwells fronting South Audley Street to provide space for tables and chairs for use in association with restaurant (Class A3)' Namely to enable the platform to be used for dining until 16 May 2023 (condition 3) and requiring the removal of the platform and requiring the reinstatement of railings and plinth by 16 June 2023 (condition 4) Application made with Section 73 of the Act (RN 21/07888/FULL).

8. THE PROPOSAL

Permission is sought to extend the temporary permission granted in March 2022 (RN 21/07888/FULL) for the retention of decking and outside dining until May 2024.

No changes are proposed to either the permitted number of covers, which will remain 26 across 13 tables, or the hours of use which are restricted to between 08.00 and 22.00 hours daily.

The application is made under Section 73 of the Act seeking to vary conditions 2 (temporary time period for the decking and use of the tables and chairs) and 3 (date which the decking should be removed) on planning permission dated 30th March 2022 (RN 21/07888/FULL).

In addition to the decking and external dining, screening has been installed enclosing the decking and planters have been installed on the front railings. The screening and planters both require planning permission. This has previously been raised with the applicant. They are not however part of this application and this matter has not been pursued further given that the works were temporary and expected to be removed.

Retractable canopies have also been installed which provide shading to the dining area. The canopies are considered to be advertisements under the advertisement regulations and benefit from deemed advertisement consent, and again are not part of this application.

9. DETAILED CONSIDERATIONS

9.1 Land Use

City Plan 2019-2040 Policy 7 (Managing Development for Westminster's People) seeks to ensure proposals are 'neighbourly' by protecting and where appropriate enhancing local environmental quality. Policy 33 (Local Environmental Impacts) seeks to protect the

local environment from adverse impacts from developments including from noise pollution. The proposal to continue to use the decking as external dining for an additional year need to be assessed against these policies.

An Operational Management Plan (OMP) has been submitted as part of the application which details proposed arrangements for the management of the external dining area including:

- smoking will only be permitted on the western side of the terrace. The eastern side of the terrace is strictly non-smoking;
- all customers wishing to dine outside are clearly told about the 22.00 hour closing time;
- at 21.30 hours, staff will assess which customers need to move inside to ensure the permitted hours of use are adhered too.

There have been no objections to the application. One of the letters of support from a resident in the building is made on the basis that there is no change to the permitted hours of use for the dining. This letter refers to the permitted hours being 10am to 10pm. The OMP refers to the terrace being open to guests between 12.00pm and 10pm Monday to Fridays and 11.00am and 10pm on Saturday and Sundays. The hours on the previous permission are however earlier in the mornings. A condition restricts the use to 8am to 10pm to enable the restaurant to serve breakfast. The previously permitted hours are again considered to be acceptable.

The response to the City Council's normal consultation exercise and the applicant's consultation with businesses in the area support are summarised above in section 5 of this report. The letters of support comment that the dining is well managed by the restaurant ensuring that its use does not result in nuisance to the neighbouring residents and adds to the vibrancy of the area.

Had the application been considered acceptable in townscape and design terms (discussed in section 9.4 of this report below), conditions would have been recommended requiring compliance with the OMP and restricting the number of covers and hours of use as per the previous temporary permissions. Subject to adhering to these conditions it is considered that the proposal would not result in any significant disturbance to neighbouring residents and granting permission is acceptable in land use and amenity terms.

9.2 Environment & Sustainability

Not applicable

9.3 Biodiversity & Greening

Greening covers the front railings either side of the entrance to the restaurant, although this is not part of this application.

9.4 Townscape, Design & Heritage Impact

Legislative & Policy Context

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

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('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."*

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.

Policies 38, 39 and 40 of the 'City Plan 2019-2040' (adopted April 2021) and MD4 of the 'Mayfair Neighbourhood Plan 2018-2038' (adopted December 2019) are of relevance in this case.

Design

34 Grosvenor Square is an unlisted building located in the Mayfair Conservation Area. The ground floor is faced in stone with a fixed canopy over the principal entrance. While it dates from the twentieth century, the multi-paned sash windows, first floor keystones, lightwell and railings reflect details found elsewhere within the conservation area.

The application documents provide a floorplan only and no elevation or section to demonstrate how the platform will be installed and its height within the lightwell.

The proposals will result in the loss of the open area, the removal of two sections of railings and result in an unusual addition to the streetscape and fail to reflect the character of the street. Lightwells form a common feature within the conservation area and contribute to its character and appearance (significance). The loss of this lightwell will serve to dilute the legible grain of development within this part of townscape. This application fails to reflect the context and would cause less than substantial harm to the character (significance) of the Mayfair Conservation Area.

The proposals, therefore, contrary to policies 38, 39 and 40 of Westminster's City Plan 2019-2040 (adopted April 2021) and MD3 of the 'Mayfair Neighbourhood Plan 2018-2038'.

Paragraph 200 of the NPPF requires 'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.'

Furthermore, Paragraph 202 of the NPPF states:

'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'

No Heritage benefits have been identified as part of this application.

9.5 Residential Amenity

The provision of the decking has no material impact on the amenity of the occupants of any nearby properties in terms of daylight, sunlight or sense of enclosure.

9.6 Transportation, Accessibility & Servicing

Not applicable

9.7 Economy including Employment & Skills

The ability of the proposal to assist in the economic recovery of the restaurant during the COVID-19 pandemic was previously given considerable weight. In accordance with Government advice the Council adopted pragmatic approach to support businesses through unprecedented times. Despite the clear design policy position that infilling the lightwell would be harmful to the appearance of the building and the character and appearance of the Mayfair Conservation Area, on the basis that this harm was temporary and reversible, it was considered that the proposal's contribution to the economic recovery was a clear public benefit which outweighed any temporary harm.

In granting temporary permission in March 2022 the applicant was advised by way of an informative on the decision notice that a further application for the retention of the dining platform would be unlikely to be granted given the clear harm to the appearance of the building and the wider Mayfair Conservation Area. The case that the proposal is required to aid economic recovery is no longer applicable.

9.8 Other Considerations

None.

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.

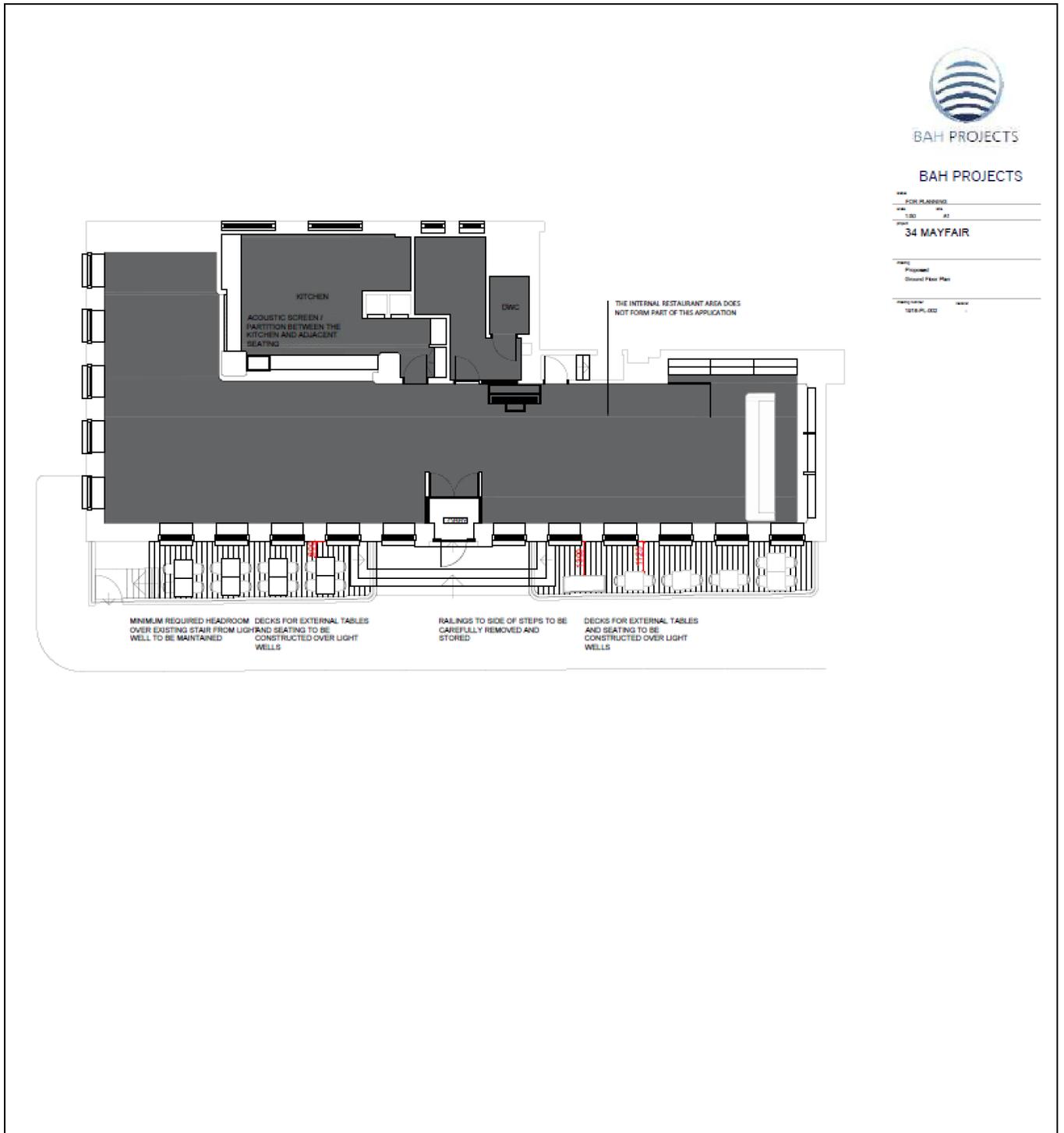
9.11 Conclusion

The proposed works which infill the front lightwell are considered to be detrimental to the appearance of the building and the wider Mayfair Conservation Area. This would result in less than substantial harm to the designated heritage asset. There are no public benefits arising from the application which would outweigh this harm. The application is contrary to adopted plan policies and accordingly is recommended for refusal.

(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

10. KEY DRAWINGS



DRAFT DECISION LETTER

Address: 34 Grosvenor Square, London, W1K 2HD

Proposal: Variation of conditions 2 and 3 of planning permission dated 30th March 2022 (RN 21/07888/FULL) for the Variation of conditions 3 and 4 on permission dated 24/11/2020 for alterations in connection with the construction of platform within lightwells fronting South Audley Street to provide space for tables and chairs for use in association with restaurant (Class A3) NAMELY, to extend the temporary permission for the retention of the decking in the front lightwell with external dining for a further temporary period until May 2024. (Application made under Section 73 of the Act.)

Reference: 23/01122/FULL

Plan Nos: 1918-PL-002

Case Officer: Mike Walton

Recommended Condition(s) and Reason(s)

Reason for refusal

The infilling of the lightwell would harm the appearance of this building and fail to maintain or improve (preserve or enhance) the character and appearance of the Mayfair Conservation Area. This would not meet Policies 38, 39 and 40 of the City Plan 2019 - 2040 (April 2021).

Informative

1. In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way so far as practicable. We have made available detailed advice in the form of our statutory policies in the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, London Plan (March 2021), planning briefs and other informal written guidance, as well as offering a full pre application advice service. However, we have been unable to seek solutions to problems as the principle of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.

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.