

Address:	39 Whitfield Street and 24-25 Scala Street London W1T 2SF	
Application Number:	2009/1660/P	Officer: Aysegul Olcar-Chamberlin
Ward:	Bloomsbury	
Date Received:	01/04/2009	

Proposal: Change of use from internet cafe/bar (Class A1) to restaurant (Class A3) at lower ground and ground floor levels including alterations to shopfront, installation of air conditioning units to roof top and ventilation ducting to roof top and rear elevation, increasing height of the mono-pitched roof at ground floor extension and new entrance door to upper floor levels on Scala Street elevation to commercial building.

Drawing Numbers:

101; 102; 103; 104; 106; 201 C; 202; 202 B; 203; 203 C; 204 C; 205; 340/M/1; 340/M/2; Ventilation and Air Conditioning Report (containing acoustic and manufacturers details) dated 04/06/2009 by Derek Durant Associates; Plant Noise Assessment Report dated 05/06/2009 by RBA Acoustics; Letter concerning marketing from David I Winton (the applicant) dated 13/11/2009; Letter from E A Shaw Chartered Surveyors to the applicant dated 13/11/2009 (concerning marketing); Letter from Shelley Sandzer to the applicant dated 12/11/2009 (concerning marketing); Techwrap2 and Techtube by Rockwool (details of acoustic insulation to duct); E-mail from Mark Newton (the agent) dated 03/12/2009; and E-mail from Robert Barlow from RBA Acoustic Ltd (the acoustic consultant) dated 08/12/2009.

RECOMMENDATION SUMMARY: Grant planning permission with conditions

Applicant:	Agent:
Mr David Winton Jadwin Property Group 1 Vere Street London	Joseph and Partners 16 Swan Court Tanner Street London SE1 3LE

ANALYSIS INFORMATION

Land Use Details:			
	Use Class	Use Description	Floorspace
Existing	A1	<i>Internet Cafe</i>	240m ²
Proposed	A3	<i>Restaurants and Cafes</i>	240m ²

OFFICERS' REPORT

Reason for Referral to Committee: This application involves the creation of a new Class A3 use [Clause 3(iv)].

1.0 SITE

- 1.1 The application relates to lower and upper ground floor levels of a 5-storey building on the south-west corner of Whitfield Street and Scala Street in the Charlotte Street Conservation area. The building has mixed uses of internet café (Class A1) and offices (Class B1).
- 1.2 The site falls in the Central London Local Area (Fitzrovia) and is surrounded by mixed use buildings. There is a Grade II listed building which is used as a Toy Museum on the opposite corner of Scala Street and Whitfield Street (1 Scala Street).

2. THE PROPOSAL

2.1 Original

Planning permission is sought for the change of use of the lower ground and ground floor levels from an internet cafe/bar (Class A1) to a restaurant (Class A3) including alterations to shopfront, installation of air conditioning units to roof top and ventilation ducting to roof top and rear elevation and new side entrance door to building on Scala Street elevation.

2.2 Revision

- 2.2.1 The proposal has been amended since it was originally submitted. The proposed external ramp at the main entrance doors to the ground floor has been omitted from the proposed scheme. Instead of replacing the mono-pitched roof of the ground floor rear extension with a flat roof, it is proposed to increase the height of the mono-pitched roof of the rear extension. The new mono-pitched roof to the ground floor rear extension would be below the side parapet wall and approximately 0.5m below the first floor windows.
- 2.2.2 The proposed alterations to the shopfront would involve replacement of series of small toplights between fascia and shop windows with ventilation louvers on both Scala Street and Whitfield Street elevations.
- 2.2.3 Three air conditioning units are proposed to be located on the roof top close to the adjoining office building. They would be 940mm (height) x 950mm (width) x 350mm (depth) each.
- 2.2.4 The proposed ducting work associated with kitchen extract would run from the lower ground floor level to the rooftop (through all floor levels).
- 2.2.5 A new side door would be installed to the opening of the existing side entrance door.

3. RELEVANT HISTORY

3.1 The application site

- **9501833** – Planning permission was granted on 15/12/1995 for the continued use of basement and ground floor as internet access and training centre cafe and shop.
- **PSX0205410** – Planning permission was granted on 04/02/2003 for the use of ground and first floors as internet café (sui generis) and basement as ancillary games room. Conditions imposed for no hot food to be prepared or sold for consumption on or off the premises and to limit the hours of operation between the hours of 9am and 10pm on Mondays to Saturdays and not at all on Sundays and public holidays.

3.2 Neighbouring Properties

- **1 Scala Street & 41 Whitfield Street** – Planning permissions and listed building consents (2004/2017/P, 2004/2020/P, 2004/2021/L) were refused on 04/08/2004 for the change of use of the ground floor and basement from a shop ancillary to a museum (Class D1) to retail use (Class A1) and the change of use of 1st, 2nd & 3rd floors from museum (Class D1) to 2 x 2-bedroom self-contained residential units (Class C3). This application was not refused in terms of land use policies; it was refused due to the lack of parking provision for the proposed flats and loss of historic fabric of the listed building due to excessive internal alterations.

4. CONSULTATIONS

4.1 Charlotte Street CAAC

No comment

4.2 Charlotte Street Association strongly objects to the proposed Class A3 use, on the grounds that:

- The proposed A3 use would be contrary to the Council's supplementary planning guidance for Central London which protects existing A1 (retail) use in Fitzrovia.
- The application premise is located within a close proximity to the extensive residential use therefore A3 use in this location is unsuitable and likely to be detrimental to residential amenity.

4.3 Adjoining Occupiers

<i>Number of letters sent</i>	7
<i>Total number of responses received</i>	0

4.4 A site notice was displayed from 17/06/09 to 08/07/09.

5.0 **POLICIES**

Set out below are the UDP policies that the proposals have primarily been assessed against. However, it should be noted that recommendations are based on assessment of the proposals against the development plan taken as a whole together with other material considerations.

5.1 **London Borough of Camden Replacement Unitary Development Plan 2006**

SD1 - Quality of life

SD6 - Amenity for occupiers and neighbours

SD7B - Noise/vibration pollution

SD8A - Disturbance from plant and machinery

B1- General design principles

B3 - Alterations and extensions

B7 - Conservation areas

T2 - Capacity of transport provision

R1B - Location of new retail and entertainment uses

R2 - General impact of retail and entertainment uses

R3 - Assessment of food and drink uses and licensed entertainment

Appendix 1 – Noise and Vibration Thresholds

5.2 **Camden Planning Guidance 2006**

Section 46: Town Centres, retail and entertainment uses

5.3 **Revised Planning Guidance for Central London – Food, Drink and, Specialist and Retail Uses (2007).**

5.4 **Charlotte Street Conservation Area Statement**

6.0 **ASSESSMENT**

The principal considerations material to the determination of this application are summarised as follows:

- Land use;
- New restaurant use;
- Character and appearance of conservation area;
- Impact on residential amenity;
- Transport

6.1 **Land Use**

According to the latest planning history records, the basement and ground floors of the building were authorised for internet café use which was classified as sui-generis in 2003. However, the Use Classes Order as amended in 2005 classifies internet cafes under Use Class A1 (retail). On that basis, the authorised use is now considered to be Class A1; therefore the proposal would result in loss of a potential retail unit. Two aspects of the proposed change of use are important in terms of land use: whether the loss of Class A1 use would be detrimental to the character

and function of the area, and whether the proposed restaurant use together with the other restaurants and pubs in the area could have an adverse impact on the mixed use character of the area and amenities.

6.1.1 Loss of internet cafe/bar (Class A1) use:

- 6.1.1.1 Although the site is located in the Fitzrovia (Local) Area in the Central London, it is not within any designated core or commercial frontage as identified in the Central London Guidance. It is also noted the site is located within walking distance of the classified commercial frontages on Goodge Street and Tottenham Court Road.
- 6.1.1.2 Policy R7 of the UDP has a general presumption against the loss of retail (Class A1) floorspace. R7c states that outside of the designated frontages, proposals that involve the net loss of A1 floorspace will only be acceptable where they contribute to the local character, function, vitality and viability of the area, including housing and/or essential services for residents or businesses.
- 6.1.1.3 The building has been vacant since the beginning of 2009 and marketed for A1/A3 uses since April 2009. The supporting information, including the estate agent's marketing details, and advice to justify the loss of A1 use indicates that there have been no offers for retail (A1) use in the last 8 months but there has been interest in restaurant (A3) use. It is considered that the proposed A3 use is unlikely to harm the character, function, vitality and viability of the area as outlined in Policy R7. The proposal will also contribute to promoting economic activity in the area by converting an empty unit to a use that will generate footfall.

6.1.2 New Restaurant (Class A3) Use:

- 6.1.2.1 Whitfield Street is mainly characterised by a mixture of commercial uses including office, retail, restaurant/café and pub/public house. Scala Street has a number of residential properties and office buildings. Both Scala Street and Windmill Street contain relatively high proportions of residential uses compared to the rest of the conservation area.
- 6.1.2.2 Policy R2 states the Council will only grant planning permission for development for food and drink uses and licensed entertainment where it considers that the development will not cause harm to the character, amenity, function, vitality and viability of the area and the transport conditions. Furthermore, policy R3 explores the matters that need to be considered for individual and/or cumulative harm to an area that might be caused by food or drink uses. For example: affect on shopping provision; nearby residential amenity in terms of noise vibration and disturbance from plant and machinery; concentration of littering or anti-social behaviour; and highway conditions; and effectiveness of emission of fumes and ventilation system.
- 6.1.2.3 In that respect, the Central London Guidance on Food, Drink and Entertainment, Specialist and Retail Uses states that although food, drink and entertainment uses are an important part of Fitzrovia, outside of the designated

commercial frontages permission for new or extended food, drink or entertainment uses will not generally be granted as they are likely to cause harm to adjoining residential occupiers (see para. 9.17). This is usually in terms of noise and cooking smells on an individual basis, and their cumulative affects can also cause concentrations of littering or anti-social behaviour and harm to highway conditions.

- 6.1.2.4 The building on the opposite corner of Scala Street and Whitfield Street is a toy museum (Class D1). The adjoining property and the property opposite the application site on Scala Street are in residential use. There are also office buildings on the opposite and adjoining sites on Whitfield Street. Given that there is no dominant use in the area and the fact that the site is not in a defined commercial frontage, the proposed restaurant use is considered to be acceptable in principle provided that it would not harm the amenities of the residential properties on the adjoining and opposite sites on Scala Street.
- 6.1.2.5 Although there are residential properties on the adjoining and opposite sites, the proposed A3 use would not result in an unacceptable accumulation of food, drink and entertainment uses in the area which could harm the mixed use character of the area or the amenities. There are no other restaurant or drink establishment uses within a 20m radius of the site. The closest drink establishment (A4) is located at the corner of Whitfield Street and Godge Street on the other side of the adjoining office building. Additionally, the proposal includes adequate level of measures to prevent noise and cooking smell nuisance in the surrounding area (see amenity section for impact on residents).

6.2 Appearance and Character of Conservation Area

6.2.1 Alterations to shopfront:

- 6.2.1.1 The Council's guidance states that shopfronts should be designed as part of the whole building and should sensitively relate to the scale and, proportions and architectural style of the building and surrounding facades. The existing shopfront is considered to relate well to the host and surrounding buildings in terms of its detailing. Many features of the existing shopfront would be retained. Only the small toplights section would be removed and replaced with powder coated metal louvers. Two alternatives for the proposed louvers are proposed. It is considered that the flat bladed louvers would be a better option for this type of building. In that respect, a condition specifying this will be attached to the permission.
- 6.2.1.2 Although the louvers would not be traditional features in terms of their material and appearance, they would complement the metal cladding on the adjoining office building and respect the details of the fascia. The proposed louvers by reason of their size, positioning and detailing are considered be a minor alteration to the existing shopfront and would not harm the appearance of the streetscene or the wider conservation area.

6.2.2 Installation of air conditioning units and ventilation ducting:

- 6.2.2.1 The Conservation Area Statement states that all development should respect existing features such as building lines, roof lines, elevation design and architectural detailing and materials of adjoining buildings. Additionally, the new external ventilation ducts should not be erected on visually sensitive locations.
- 6.2.2.2 The proposed air conditioning units would be set back by approximately 11.2m from the building line on Scala Street. The nearest air conditioning unit to the front of the building would be set back by 4.2m from the front building line on Whitfield Street. They would be mainly screened by the parapets walls around the roof and would not be visible from street level. Given the height of the building, views of the roof top of building are also not possible from street level.
- 6.2.2.3 The part of ducting work on the roof top would be screened by the parapet walls and would not project beyond the highest part of the roof. The rest of the proposed ducting work would be to the rear elevation of the building and would not be outside the envelope of the building. Whilst it is generally preferred that all plant to be integrated within the envelope of the building, the Council's Planning Guidance does recognise that when dealing with existing buildings there may be other solutions. It states that plant should generally be confined to the rear façade; however, if the building is listed or within a conservation area even this may not be acceptable. The building is not listed, but is located in a Conservation Area. The rear elevation is only visible in limited public views from Scala Street, and the duct is not considered to detract from this rear elevation as it is located behind the projecting rear part of the building.
- 6.2.2.4 Given the size, bulk and positioning of the duct it would not be readily visible from the street. In light of this and the fact that the property has a relatively undistinguished rear façade, the siting of the duct is acceptable in design terms and will not harm the character and appearance of the building or the wider conservation area.

6.2.3 Increasing height of mono-pitched roof at ground floor extension:

The existing ground floor extension is located behind the projecting rear part of the building and has a glazed mono-pitched roof. It is proposed to increase the height of the roof by approximately 0.5m. The design and materials of the new roof would match the existing roof. The new roof would minimally alter the rear elevation of the building and would not be visible from the street; therefore it is considered to be acceptable.

6.2.4 New side entrance door on Scala Street elevation:

The proposed side entrance door would be largely glazed with aluminium frames. It would have a modern appearance which would respect to the proposed shopfront and surrounding urban blocks. When considered within the scale of the host building, it would be a minor alteration and would not harm the appearance and character of the building or the wider conservation area.

6.3 Impact on Residential Amenity

- 6.3.1 The associated external alterations would not be likely to result in loss of daylight, outlook and privacy to the nearest residential properties. Consideration needs to be given to the impact of the proposed restaurant use on neighbouring residential properties in terms of noise and cooking smell nuisance. The nearest residential properties that would be most affected by the proposal are 23 Scala Street (adjoining site) and Scala House (opposite side of Scala Street). The proposed plant on the roof top would be a distance of approximately 25m from the closest windows at Scala House.
- 6.3.2 An acoustic report prepared by RBA Acoustics has been submitted in support of this application. The report identifies the main sources of noise climate in the local area as traffic movements and existing mechanical services at the surrounding properties. The lowest background noise measured during the daytime is 50.3 dB(A) and during the night time is 47.6dB(A). During the operational hours of 8:30 and 00:30, the minimum background level is measured as 48.6dB(A). Following that, the baseline background noise level for setting the noise criterion at the nearest noise sensitive window is taken as 43.6 dB(A). Given that the applicant proposes the restaurant not to operate earlier than 9:00am or later than 11:30 pm and the fact that the proposed plant does not have any tonal characteristics, the baseline background noise level of 43.6 dB(A) is considered to be reasonable in this case (see the table on the last page of acoustic report).
- 6.3.3 The combined noise levels from all plant would not be beyond the baseline background noise level. However, the noise level at the ground floor of no. 40 Whitfield Street when the kitchen supply AHU fan is operated would be above the 43.6dB criteria. This would exceed the Council's threshold; therefore the Acoustic Consultant recommends that further acoustic measures (e.g. silencer) be incorporated to the supply fan to reduce noise level at that location. This is covered by condition. Given the proximity to of the proposed duct to the rear of 23 Scala Street, the applicant was advised to provide additional mitigation measure to prevent noise radiated from the duct. The applicant's acoustic consultant proposed to insulate the duct against noise breakout using Techwrap2 acoustic insulation.
- 6.3.4 The Council's Environmental Health Officer recommended that the mitigation measures detailed in item 5.6 of the report, including incorporation of a silencer into the atmospheric side of the kitchen fan and the proposed acoustic insulation to the duct, must be adopted. Additionally, the Environmental Health officer suggested that the discharge end of the ducting above the roof top should be 1m higher than it is proposed to increase efficiency of disposal of cooking odour/fumes. That could be an undesirable option as the increased height of the ducting could harm the appearance of the street scene. It is therefore recommended that a condition for the discharge end of the ducting to be fitted with an accelerator cone to increase the discharge velocity.
- 6.3.5 Subject to safeguarding conditions, it is considered that the Council's noise criterion will be achieved without the plant causing a noise problem at the nearest noise sensitive premises subject to conditions. The proposal thus complies with policies SD6, SD7B and SD8A and Appendix 1 of the adopted UDP.

6.4 Hours of operation

6.4.1 The Planning Guidance for Central London suggests that conditions controlling hours of operation no later than midnight should be attached to planning permissions for the development of food, drink and entertainment uses. Depending on the sensitivity of location and likely impact on amenity, it recommends that earlier closing times may be appropriate. The closing times refer to the time by which all customers should be off the premises and all noise-generating clearing up activities, audible from outside the premises, should cease.

6.4.2 A number of restaurants on Goodge Street and Charlotte Street operate as late as between 23:00 and 00:00. The applicant proposes that this restaurant will operate between the hours of 9:00 and 23:30 on Monday - Saturday and 9:30 to 22:30 on Sunday. It is considered that, given the location and nature of the proposed use, the proposed hours of operation are acceptable. It is also noted that the Council has recently granted a licence to the restaurant at 15-17 Goodge Street to put table and chairs outside the premises between the hours of 10am and 11pm on Monday-Saturday and 10am and 10.30pm on Sunday.

6.5 Impact on Transportation

The proposed change of use from A1 to A3 will only result in a small increase (if any) in pedestrian trip generation. The proposed floor area also does not reach the Council's threshold to require cycle parking provision. Whitfield Street and Scala Street are capable of accommodating any such increase in activity associated with the scheme. As such, the council's transportation planner raised no objection.

6.6 Refuse and Recycling

The basement floor plan indicates an area (internally) close to the kitchen for the storage of waste and recycling. There is adequate space internally for the storage of waste. The Council's Street Environmental Services considers the front of the premises wide enough to store waste. Rubbish will need to be stored in black bags and placed on the pavement for collection. In that respect, an informative is attached to the decision advising the applicant to contact Street Environmental Services for further advice on rubbish collections.

7.0 CONCLUSION

The proposed use and associated alterations and plants are considered not to harm the function and character of the area and the amenities of the neighbouring properties subject to appropriate safeguarding conditions. Conditional planning permission should be granted to ensure the protection of residential amenity.