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| Address: | 1 Earlham Street London WC2H 9LL | | 11 |
| Application Number: | 2014/5368/P | Officer: Hugh Miller | |
| Ward: | Holborn & Covent Garden | | |
| Date Received: | 18/08/2014 | | |
| Proposal: Change of use from retail (Class A1) to dual, retail (Class A1) or restaurant (Class A3) at basement and ground floor levels and installation of associated extract duct on rear elevation and plant machinery on rear closet wing of 148 - 150 Shaftsbury Avenue. | | | |
| Drawing Numbers: Location plan; 22277-E01; 22277-E02; 22277-01; 22277-02; Acoustic Noise Report, ref.20380/PNA1, dated 25 July 2014; Design and Access Statement. | | | |
| RECOMMENDATION SUMMARY: Grant Planning Permission subject to conditions | | | |
| Applicant: | | Agent: | |
| Shaftesbury Covent Garden Limited c/o Agent United Kingdom | | Rolfe Judd Planning Old Church Court Claylands Road Oval London SW8 1NZ | |

ANALYSIS INFORMATION

| Land Use Details: | | | |
|-------------------|-------------------------------------|-----------------|---------------------|
| | Use Class | Use Description | Floorspace |
| Existing | A1 Shop | | 79.27m ² |
| Proposed | A1 Shop A3 Restaurants and Cafes | | 79.27m ² |

OFFICERS' REPORT

Reason for Referral to Committee: This application is being reported to the committee as it entails a change of use to dual A1 Class A3 (Clause 3iv).

1. SITE

- 1.1 The application site, 1 Earlham Street (also known as 1A Earlham Street), comprises basement + 4-storey; and lies east of the junction with Shaftesbury Avenue; and Cambridge Circus. The building comprises retail (Class A1) at basement and ground floor levels, and office accommodation (Class B1) to the remaining first, second and third floors.
- 1.2 The application site is located within the Covent Garden / Seven Dials, a popular shopping and tourist destination with a mixture of retail, commercial and residential units. Earlham Street currently has a number (approximately 9 units) of retail units located along its northern elevation, none of which are related to either food, drink or the entertainment industry.
- 1.3 The building is not listed however is located within the Seven Dials (Covent Garden) Conservation Area. The building is also located within the Central London Activity Zone. Earlham Street is designated as a primary frontage.

2. THE PROPOSAL

- 2.1 Change of use from retail (Class A1) to dual, retail (Class A1) or restaurant (Class A3) at basement and ground floor levels and installation of associated extract duct on rear elevation and plant machinery on rear closet wing of 148 - 150 Shaftesbury Avenue.

3. RELEVANT HISTORY

20 Earlham Street

- 3.1 May 2014 – **Withdrawn Application** - Use of first, second and third floor for alternative office (Class B1a) or as one studio and one 2-bedroom residential (Class C3) units.
- 3.2 February 2001 – **PP Granted** - Installation of replacement shopfront; ref. PSX0005388
- 3.3 January 2001 - **Withdrawn Application** - Dual/Alternative use of the ground floors of No. 148 Shaftesbury Av & No. 1 Earlham St for either Class A1 (Retail) Class A2 (Financial & Professional), Class A3 (Food & Drink) and Dual/Alternative use of the basements of No. 148 Shaftesbury Av & No. 1 Earlham Street for either Class A1 and/or Class A2; ref. PSX0005108

3-5 Earlham Street

- 3.4 June 1996 - **PP Granted** - "Dual use" of basement and ground floors for either retail class A1 (shops) use or retail class A2 (financial and professional services) use, or as B1 office space; ref. P9600744

4. CONSULTATIONS

Conservation Area Advisory Committee

4.1 Seven Dials (Covent Garden) Conservation Area

Local Groups

Covent Garden Community Association

4.2 Objection - Dual use is unlawful; and the change of use should be applied for at the time. Objection to A3 use as this part of Covent Garden is saturated with restaurants. Need to apply LDF DP12 and consider the cumulative impact on A3 use.

4.3 **Officer Comment:** See section relating to land use policy in assessment below.

Adjoining Occupiers

| Original | |
|------------------------------------|----|
| Number of letters sent | 42 |
| Total number of responses received | 0 |
| Number of electronic responses | 0 |
| Number in support | 0 |
| Number of objections | 0 |

Press notice advertised 25/09/2014, expires 16/10/2014. & Site notice displayed 24/09/2014, expires 15/10/2014.

5. POLICIES

5.1 LDF Core Strategy and Development Policies

CS1 Distribution of growth
CS5 Managing the impact of growth and development
CS7 Promoting Camden's centres and shops
CS8 Promoting a successful and inclusive Camden economy
CS9 Achieving a successful Central London
CS14 Promoting high quality places and conserving our heritage
CS18 Dealing with our waste and encouraging recycling
DP12 Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses
DP13 Employment premises and sites
DP16 Transport implications of development
DP24 Securing high quality design
DP25 Conserving Camden's heritage
DP26 Managing the impact of development on occupiers and neighbours
DP28 Noise and vibration
DP30 - Shopfronts

5.2 Supplementary Planning Policies

Camden Planning Guidance 2011/ 2013

Seven Dials (Covent Garden) Conservation Area Appraisal and Management Strategy

London Plan 2011

National Planning Policy Framework (Adopted March 2012)

6. ASSESSMENT

- 6.1 The principal considerations material to the determination of this application and summarised as follows:

- Land use
- Provision of retail A3 use
- Design
- Amenity
- Refuse

Land use policy

- 6.2 The application site measure approximately 79.27sqm over the basement and ground floors. It lies within Covent Garden a well-known shopping and entertainment destination and a major attractor of tourists. The unit is currently occupied as retail A1 as are all the ground floor units with the parade nos.1-23. Earlham Street is within the Central London Area also within a designated primary frontage of Central London Frontages.
- 6.3 Policy CS7 (*Promoting Camden's centres and shops*) seeks to make sure that the impact of food, drink, entertainment and other town centre uses on residents and their local area is minimised by:
- e) seeking to protect and enhance the role and unique character of each of Camden's centres, ensuring that new development is of an appropriate scale and character for the centre in which it is located;
 - f) providing for, and maintaining, a range of shops, services, food, drink and entertainment and other suitable uses to provide variety, vibrancy and choice;
 - g) protecting and promoting small and independent shops, and resisting the loss of shops where this would cause harm to the character and function of a centre;
 - h) making sure that food, drink and entertainment uses do not have a harmful impact on residents and the local area, and focusing such uses in Camden's Central London Frontages, Town Centres and the King's Cross Opportunity Area.
 - i) supporting and protecting Camden's local shops, markets and areas of specialist shopping; and
 - j) pursuing the individual planning objectives for each centre, as set out below, including through the delivery of environmental, design, transport and public safety measures".
- 6.4 Policy DP12 (*Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses*) seeks to manage development of

shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours.

- 6.5 Policy CS7 and DP12 has a general presumption in favour of locating food, drink and entertainment uses within central locations such as this, on the basis that they are mostly appropriately located in commercial areas to minimise their impact on residential amenity, such as to ensure that they do not cause individual or cumulative harm to an area. For Covent Garden, the council's Planning Guidance: Town Centres, Retail and Employment/ Retail Uses, states the Council will not support proposals that results in:

- Less than 80% of the total number of units in that frontage being A1 retail use,
- More than 25% of the total number of units in that frontage being in food, drink and entertainment uses,
- More than two food, drink and entertainment uses consecutively, or
- Food, drink and entertainment uses greater than 100sq m.

The Council will also take into account the number and mix of uses in adjacent and opposite premises in assessing applications.

- 6.6 When a change of use from retail (Class A1) is proposed the Council normally seeks to ensure that a certain level of retail use is retained in designated centres in order to protect the character, function, viability and vitality of the area. In this instance, the proposal is for dual use of either A1 use or A3 use. If permission is granted and the A3 use implemented the permitted development rights allow a change to either use to occur for a 10 year period. Whichever use is in place in the 10th year becomes the lawful use and no further changes are allowed unless it is permitted development or planning permission has been granted.

- 6.7 The proposed unit is located within a parade of 8 units on the north side of Earlham Street; and all the units are within retail A1 use (including the application site), 1 x vacant unit. Several units have either offices or residential uses on the upper floors. On the south side, in addition to the designated street market traders, there are 9 retail A1 units; 1 of which is A3 use. The proposed change of use would result in the retention of 7 retail units or 87.5% of the designated retail frontage. The table below show the units which are largely of clothing trade.

| No. | Description | Use Class |
|----------------------|-----------------------------|--------------------------------|
| 1 Earlham Street | Clothes | A1 |
| 3 Earlham Street | Clothes | A1 |
| 5 Earlham Street | Clothes | A1 |
| 7 Earlham Street | Gallery | A1 |
| 9 Earlham Street | Vacant | A1 |
| 11 Earlham Street | Clothes | A1 |
| 13 Earlham Street | Clothes | A1 |
| 21-23 Earlham Street | Clothes | A1 |
| Total | 7 retail A1 units or | 87.5% A1 units retained |

- 6.8 In terms of cumulative impact; there is no A3 use within the retail parade between nos.1-23. A single A3 unit is at no. 26 Earlham Street opposite side to the south east. North of the application site are located 2x A3 units at nos. 148-150 & 152-156 Shaftesbury Avenue; non-designated frontages (see table below). Owing to the robust retail character, it is not considered that an A3 use within this Earlham Street parade would cause harm neither singularly or cumulatively owing to its strong character, function, vitality and viability of this parade. Moreover, as noted in the CPG the area is known for its shopping and entertainment destination and a major attractor of tourists; therefore food, drink and entertainment uses are an important part of the mixed use character and function of Covent Garden.

Provision of new restaurant floorspace (Class A3)

- 6.9 Policy DP12 requires the Council to consider the effect of non-retail development on shopping provision and the character of the centre in which it is located. The LDF recognises the potential for new, or extended, restaurant uses to harm the amenity of adjoining residential occupiers, and as such seeks to steer them toward designated centres. The proposed use as a restaurant would occupy the same floorspace as the existing clothes store, approximately 79sqm; and is below the 100sqm threshold as noted in CPG5, with slightly longer opening times. The operating times are yet to be confirmed by the prospective tenant, but in accordance with para. 6.17- 6.18 of CPG5 (Town Centres, Retail and Employment (2013); the Council will attach conditions to planning permission for food and drink and entertainment uses to control hours of operation. In some instances, depending on the location, character of the area, the nature of the proposed use and its likely impact on amenity, earlier closing times may be more appropriate. The application site falls within one of Camden's Special Policy Areas at Seven Dials for Licensing, where hours of operation for licences tend to be as follows: For licences not including the sale or supply of alcohol: Monday to Thursday 0900 hours until 2330 hours; Friday and Saturday 0900 hours until midnight Sunday 0900 hours until 2230 hours. A condition is recommended to control the use as part of the planning permission.
- 6.10 A flexible permission could in theory result in the loss of retail A1 floorspace. However, owing to the relatively small floorspace (79.27sqm), it is not considered overly harmful, due to the fact that the retail parade is characterised by retail A1 units. There is one vacant unit close to the host building. Therefore, the provision of retail and or restaurant use as an alternative would be equally welcomed. In this regards, the dual use of the unit accords with the thrust of policies CS7 and DP12 by providing accommodation for a range of retail enterprises within Covent Garden. This aspect of the proposals is also considered acceptable

Conclusion

- 6.11 The proposal seeks dual use of either retail A1 or A3 use. Owing to the established mixed use characteristic of the Covent Garden area, it is considered that were an A3 use to be located at the application site, it would not have a negative impact on the function, character, vitality and viability of the centre and is considered acceptable.

Design

- 6.12 In anticipation of the A3 use, the installation of plant machinery is proposed. It is proposed to locate the unit on the flat roof of the rear closet wing of no.148-150 Shaftesbury Avenue; adjacent to existing plant machinery. In addition the proposed associated extraction duct would be located on the rear elevation of the host building terminating approximately 2.0m above the nearest noise sensitive window at roof level. The rear of the host building is enclosed by the adjacent buildings; with neither the a/c unit nor the extraction duct being visible from the public realm. The plant equipment would not have any detrimental impact on the appearance of the host building and is considered acceptable in this enclosed location.

Amenity for occupiers and neighbours

Plant equipment

- 6.13 The closest noise sensitive window (residential & office) lies on the upper floors of nos.1, 3 & 5 Earlham Street opposite approx. 4.0m away. There is existing plant on the roof of the neighbouring building. Whilst distance per se is not a complete barrier to noise disturbance from the proposed plant, it would be fitted with an attenuator and silencer to mitigate against noise levels and be in compliance with the Council's standards; and therefore not impact adversely on residential amenity.
- 6.14 The acoustic report carried out noise measurement between the 3rd & 4th June 2014. The report states that the lowest background noise level in respect of a/c unit measured was 52 dB LA90 during daytime (07:00 – 23:00) and; 51 dB LA90 during the night time (23:00 – 07:00). Thus the adjustment of at least 10 dB LA90 below the prevailing lowest background noise in line with the Council's CPG recommended noise levels would result in noise level at daytime of 42 dB LA90 and 41 dB(A). The report states that the unit will be operational during daytime and night-time hours.
- 6.15 In addition, the noise report state, the proposed plant would be in compliance with British Standard 8233:1999 '*Sound insulation and noise reduction for buildings – Code of Practice*'. The report recommends the extract fan to be enclosed in an enclosure to ensure minimal impact on neighbouring occupiers. It can therefore be predicted that noise emissions from the proposed plant would be expected to comfortably meet the recommendations of the relevant British Standard, even with neighbouring windows partially open.
- 6.16 The Council's Environmental Health officer is satisfied that with the acoustic report the plant will be in compliance with the Council's required standards. As such a condition requiring the plant enclosure details in addition to the usual condition which will ensure that should the plant be noisier than anticipated the local planning authority will have sufficient control and protect amenity.

Refuse

- 6.17 There are no details of refuse collection owing to no designated occupier. A condition is attached requiring details of refuse storage.

7. CONCLUSION

- 7.1 In light of the above, it is considered that the change of use from retail A1 use to a dual use for either retail (A1) or restaurant (Class A3) complies with policies and guidance; and in the event the A3 use is implemented the character, function, viability and vitality of the centre be protected. It is considered that the installation of

the plant equipment would not result in any significant material harm in terms of design and appearance to the host building. The submitted acoustic report has demonstrated that there would be no harm to residential occupiers' amenities (noise disturbance) at nearby buildings and conditions are proposed to ensure noise levels remain within the standards in the future.

7.2 Planning Permission is **recommended subject to conditions**.

8. **LEGAL COMMENTS**

8.1 Members are referred to the note from the Legal Division at the start of the Agenda.

Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans [22277-E01; 22277-E02; 22277-01; 22277-02; Acoustic Noise Report, ref.20380/PNA1, dated 25 July 2014; Design and Access Statement.

Reason: For the avoidance of doubt and in the interest of proper planning.

- 4 Noise levels at a point 1 metre external to sensitive facades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

- 5 No music shall be played on the premises in such a way as to be audible within

any adjoining premises or on the adjoining highway.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

- 6 Prior to the commencement of the A3 use details of refuse store shall be submitted to and approved in writing the Council and be permanently retained whilst the approved use is in operation.

Reason: To safeguard the amenities of the neighbouring premises and the area generally in accordance with the requirements of the London Borough of Camden Local Development Framework Core Strategy policies CS5 (Managing the impact of growth and development), CS7 (Promoting Camden's centres and shops) and CS8 (Promoting a successful and inclusive Camden economy); and the London Borough of Camden Local Development Framework Development Policies DP12 (Supporting strong centres and managing the impact of food, drink and entertainment and other town centre uses) and DP26 (Managing the impact of development on occupiers and neighbours).

- 7 In the event that the use is Class A3 (restaurant), the ground and basement floors of shown on the approved plans shall not be open to customers outside of the following times: 09:00 hours - 23:30 hours Monday to Thursdays, Fridays to Saturdays 09:00 hours - 24:00 hours (midnight) and on Sundays and Bank Holidays, times: 09:00 hours until 23:30 hours. No customers shall be on the premises and no sound emanating from these premises shall be audible within any adjoining premises outside of these hours.

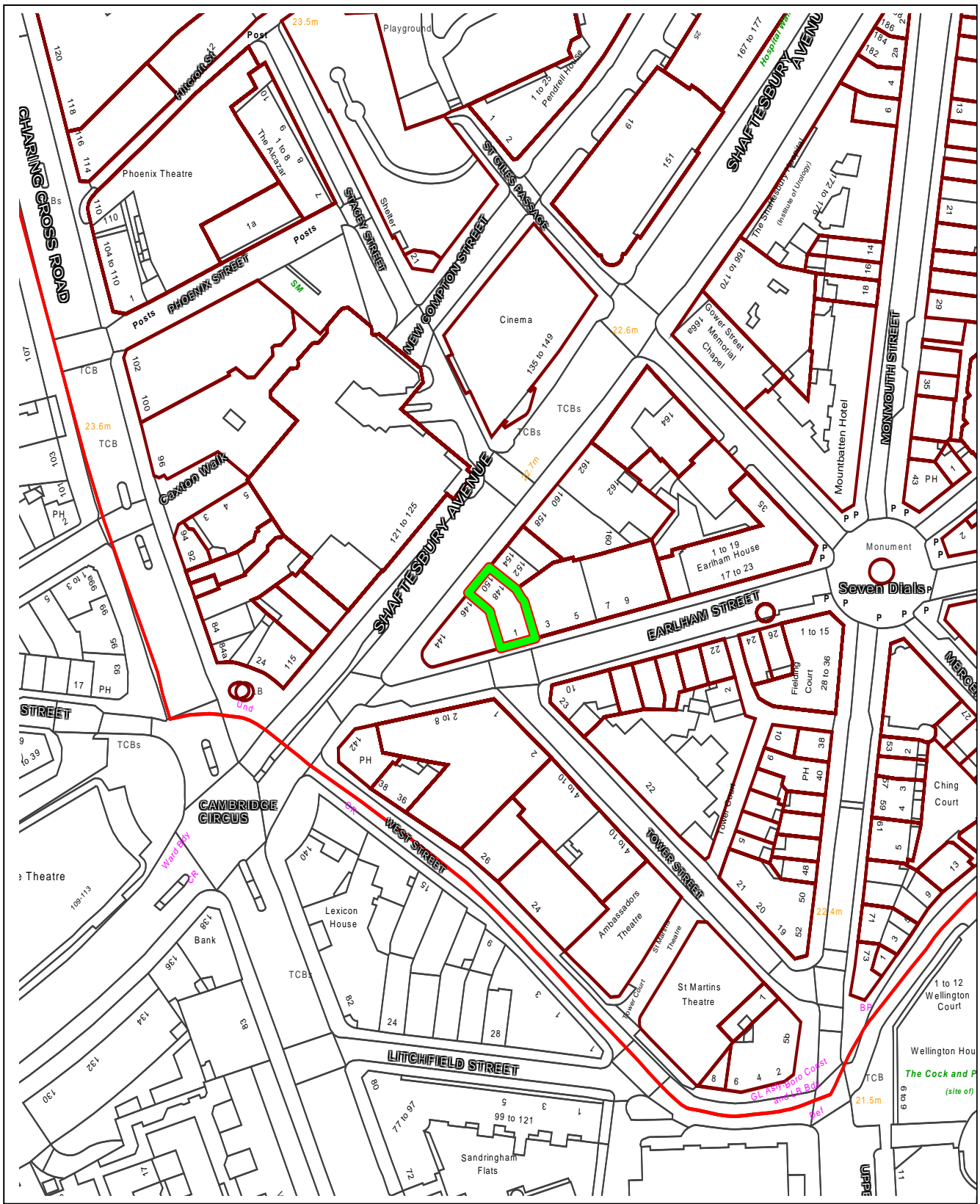
Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts which cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Argyle Street WC1H 8EQ, (tel: 020-7974 6941).
- 2 Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You are advised to consult the Council's Compliance and Enforcement team [Regulatory Services], Camden Town Hall, Argyle Street, WC1H 8EQ (Tel. No. 020 7974 4444 or on the website <http://www.camden.gov.uk/ccm/content/contacts/council->

[contacts/environment/contact-the-environmental-health-team.en](http://www.camden.gov.uk/ccm/content/contacts/contact-the-environmental-health-team.en) or seek prior approval under Section 61 of the Act if you anticipate any difficulty in carrying out construction other than within the hours stated above.

- 3 You are reminded that filled refuse sacks shall not be deposited on the public footpath, or forecourt area until within half an hour of usual collection times. For further information please contact the Council's Environment Services (Rubbish Collection) on 020 7974 6914/5. or on the website <http://www.camden.gov.uk/ccm/content/contacts/council-contacts/environment/contact-street-environment-services.en>.
- 4 This permission is granted without prejudice to the necessity of obtaining consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Application forms may be obtained from the Council's website, www.camden.gov.uk/planning or the Camden Contact Centre on Tel: 020 7974 4444 or email env.devcon@camden.gov.uk.
- 5 The Council supports schemes for the recycling of bottles and cans and encourages all hotels, restaurants, wine bars and public houses to do so as well. Further information can be obtained by telephoning the Council's Environment Services (Recycling) on 0207 974 6914/5 or on the website <http://www.camden.gov.uk/ccm/content/environment/waste-and-recycling/twocolumn/new-recycling-rubbish-and-reuse-guide.en>.
- 6 You are advised that condition 7 means that no customers shall be on the premises and no noise generating activities associated with the use, including preparation and clearing up, shall be carried out otherwise than within the permitted time.
- 7 You are advised that if implemented, the alternative Class A1 or Class A3 use permission hereby granted gives flexibility of use for 10 years from the date of this permission. After 10 years the lawful use would revert to whichever of the uses is taking place at the time.



Application No: 2014/5368/P

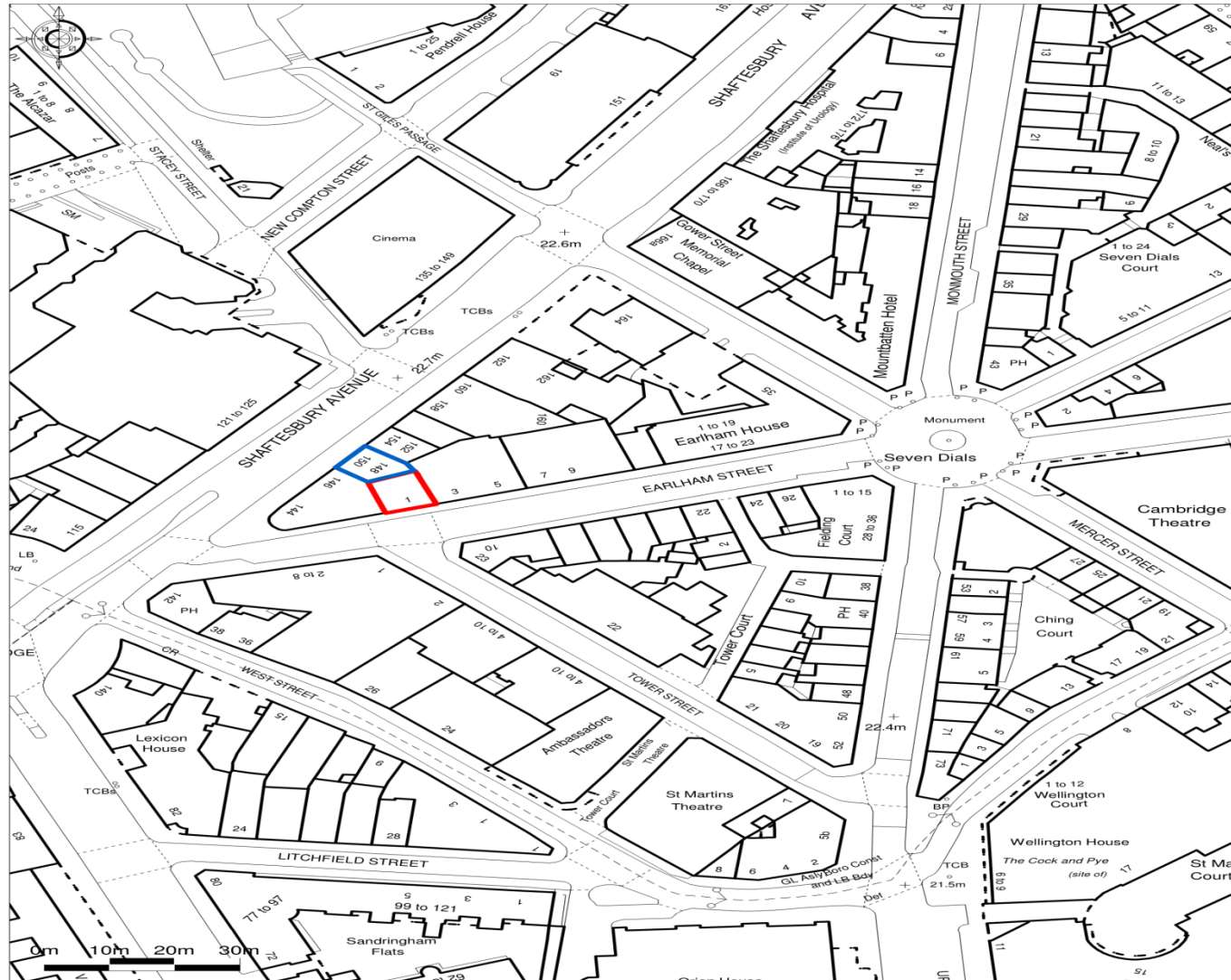
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London
WC2H 9LL**

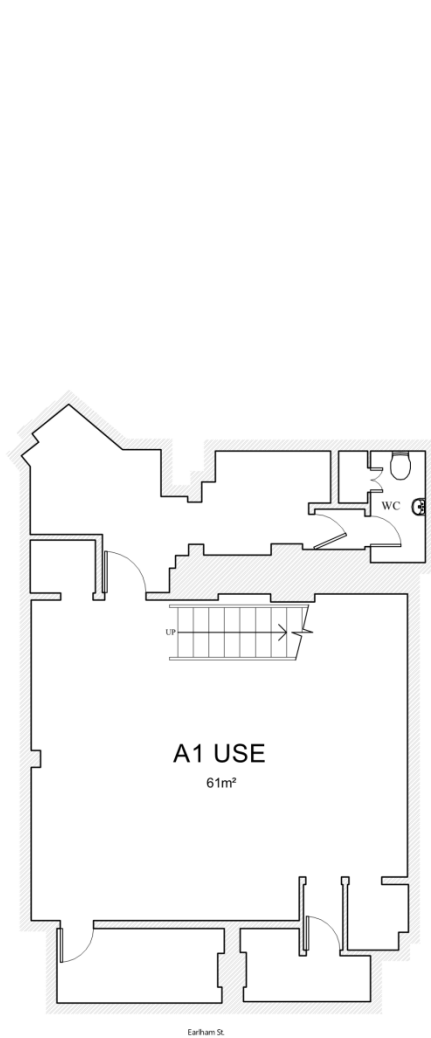
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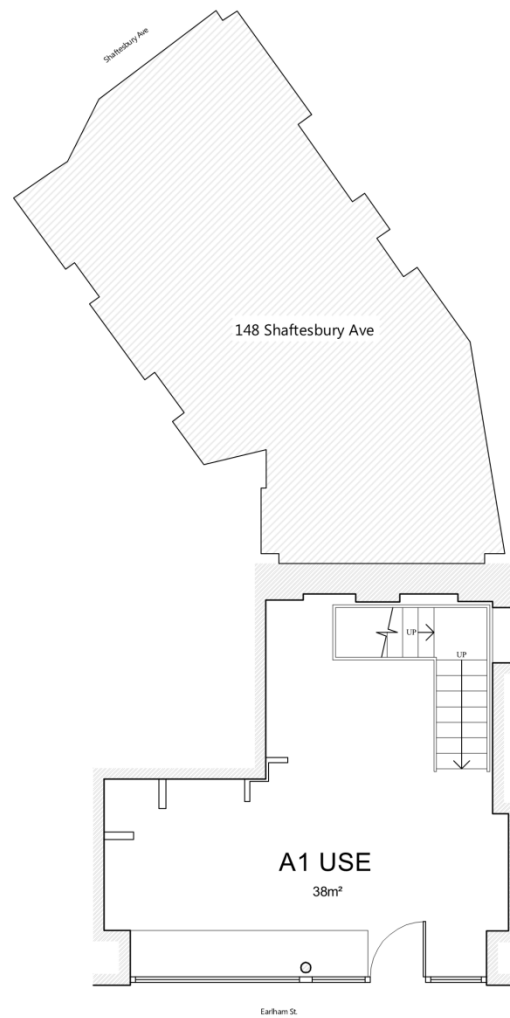


Location Plan 1 Earlam Street 2014/5368/P

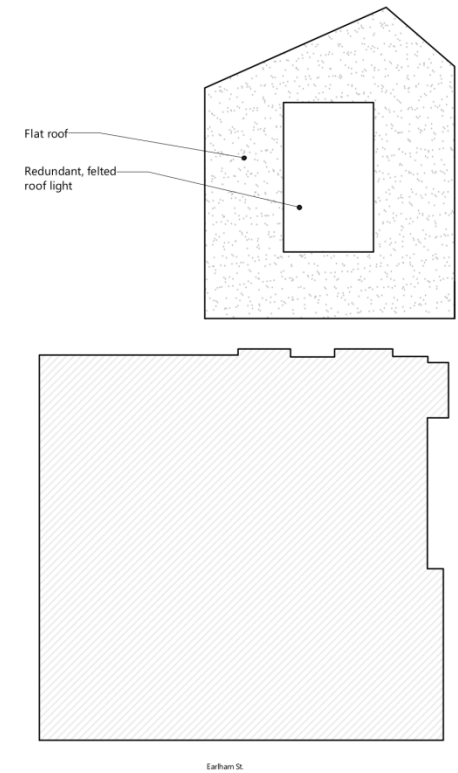




BASEMENT FLOOR PLAN



GROUND FLOOR PLAN

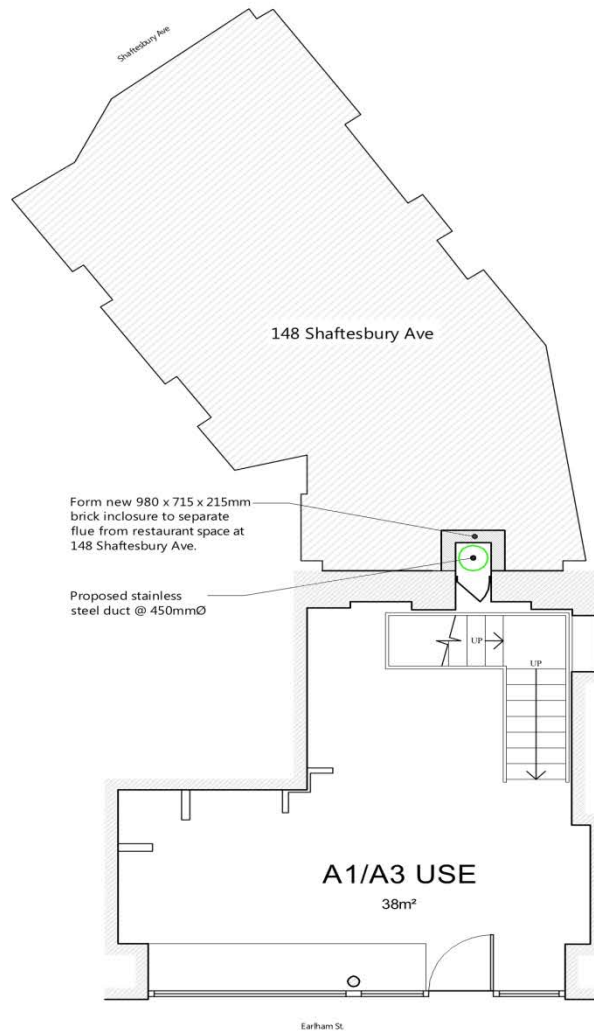


FIRST FLOOR PLAN

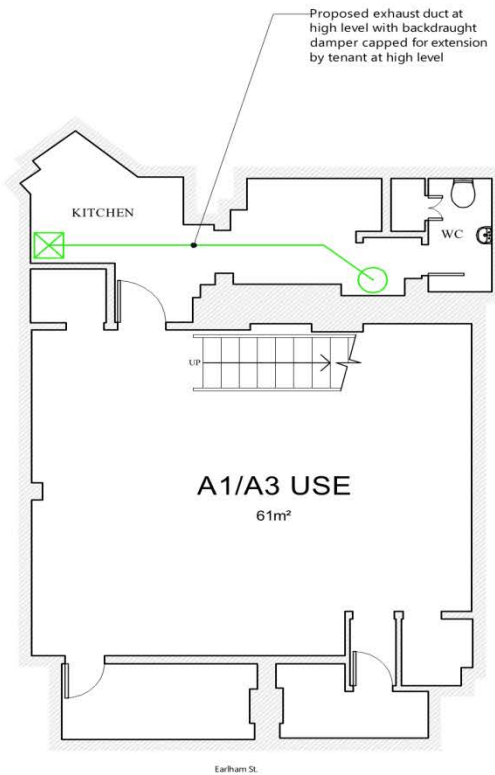
Existing basement & ground floors



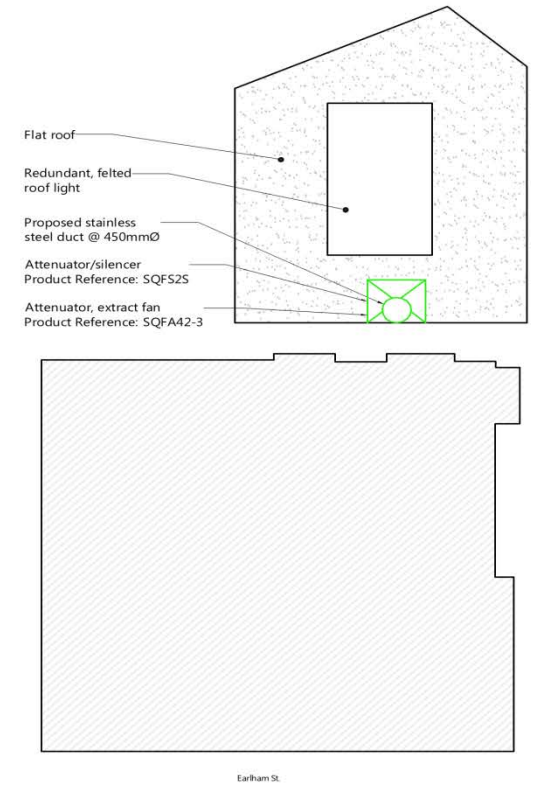
REAR ELEVATION



GROUND FLOOR PLAN



BASEMENT FLOOR PLAN



FIRST FLOOR PLAN

Proposed floor plans

Pitched roof

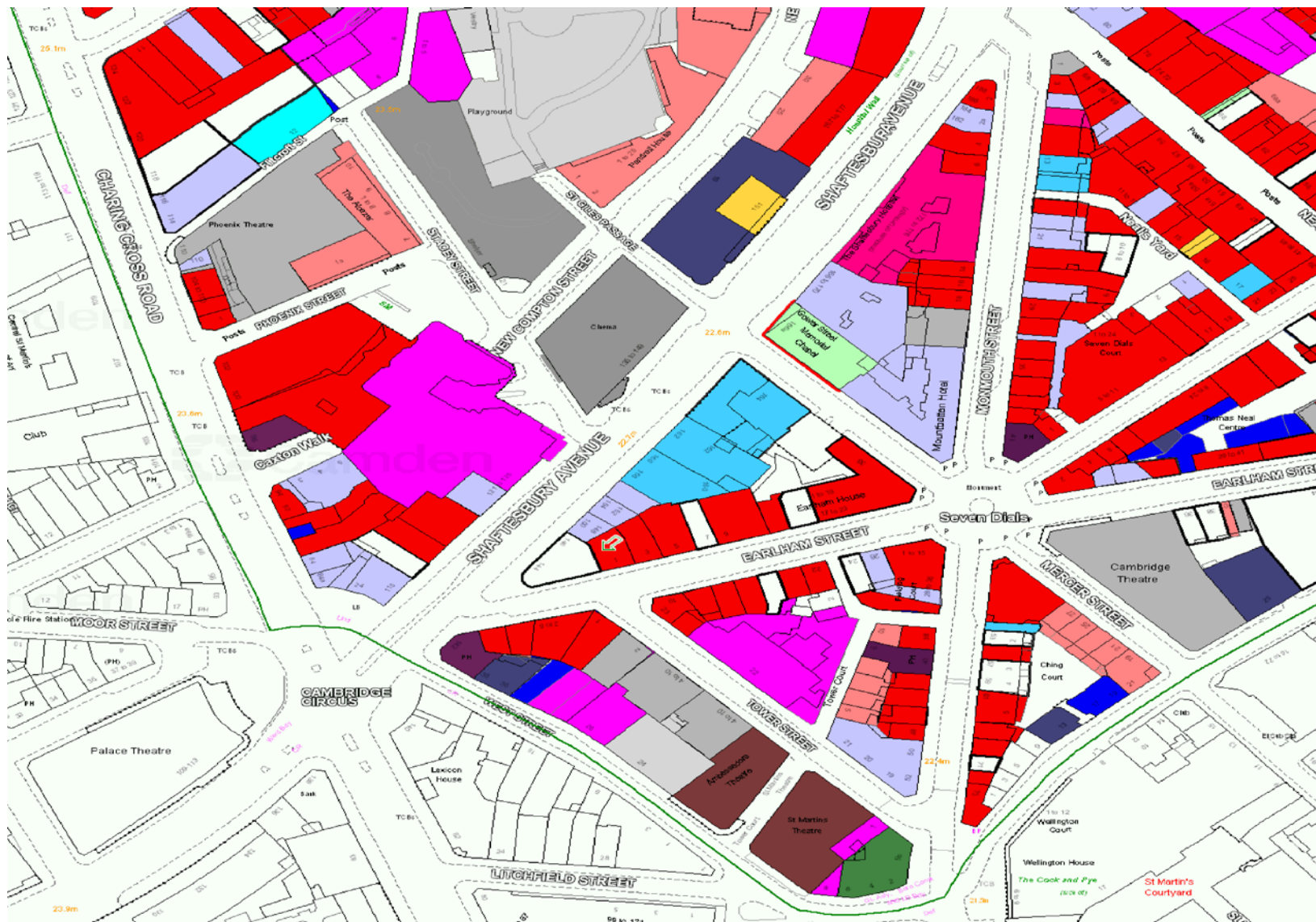
Proposed stainless steel
duct @ 450mmØ

Attenuator/silencer
Product Reference: SQFS2S

Attenuator, extract fan
Product Reference: SQFA42-3



REAR ELEVATION



Retail Survey – Map



Rear elevation – 1 Earlham Street



1 Earlham Street