

Item No.
1

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 5 th March 2024	Classification For General Release	
Report of Director of Town Planning & Building Control		Ward(s) involved Hyde Park	
Subject of Report	Ground and Basement Unit 195 - 197 Edgware Road London W2 1ES		
Proposal	<p>Proposed ‘under’ enforcement notice, as follows:</p> <p>That the Notice take effect 35 days after the date of service and requires within 2 months from the date it takes effect, the following:</p> <ol style="list-style-type: none"> 1) Cease use of the highway at the Edgware Road frontage of the Property for the placement of tables and chairs for customer use, except to the extent that: <ol style="list-style-type: none"> a) The 6 tables and 12 chairs must only be placed within the part of the highway shown outlined by green lines on Plan A, with the area to be enclosed by barrier banners only; b) The 6 tables and 12 chairs must only be placed on the highway, between the hours of 09:00 and 23:00 daily; c) The 6 tables and 12 chairs must only be used by customers of the property; d) No additional tables, chairs, screens or any other furniture or equipment shall be placed on the highway; and e) The 6 tables and 12 chairs may only be placed on the highway until [one year after date of service]. <p>That authority for the issue of the Enforcement Notice also includes authority to withdraw any such notice and to issue further notices if it becomes necessary to do this in order to remedy the breach of planning control to which this notice relates.</p>		
On behalf of	Planning Enforcement Team		
Registered Number	23/77683/O		

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Date Breach Identified	06.02.2023	Date amended/ completed	N/A
Historic Building Grade	Unlisted		
Conservation Area	N/A		
Neighbourhood Plan	N/A		

1. RECOMMENDATION

Serve an 'under' enforcement notice to prohibit unrestricted use of the highway at the Edgware Road frontage for the provision of tables and chairs for customer use.

The result of such action would be to effectively grant planning permission for a limited time, subject to restrictions.

This is in conjunction to action proposed in relation to the unauthorised customer seating at the Star Street frontage, for which an enforcement notice is to be served requiring the use of the pavement for external seating to cease, and the screen affixed to the Star Street elevation to be removed.

2. SUMMARY & KEY CONSIDERATIONS

195 - 197 Edgware Road, London, W2 1ES is a five-storey (with basement) building at the corner of Star Street and Edgware Road. This report concerns a commercial unit at ground floor and basement level ("the Property") which is in use as a café with shisha use.

Part of the highway at each frontage forms part of the freehold and leasehold titles. However, prior to the provision of tables and chairs commencing, the pavement at each frontage had been used as pavement for the passing of pedestrians, as part of the public highway, since at least 1959. The City Council therefore regards the entire pavement at either frontage as publicly maintainable highway. Accordingly, the use of the highway at each frontage for the provision of tables and chairs in connection with the use of the ground floor café constitutes a material change of use.

The owner of the Property has been advised a number of times to seek planning permission for the use of the highway at the Edgware Road frontage for customer seating, or for a pavement licence under the Business and Premises Act 2020. However, an application has not been forthcoming.

With the above in mind, there are three potential options or courses of action with regard to the use of the pavement at the Edgware Road frontage, which are as follows:

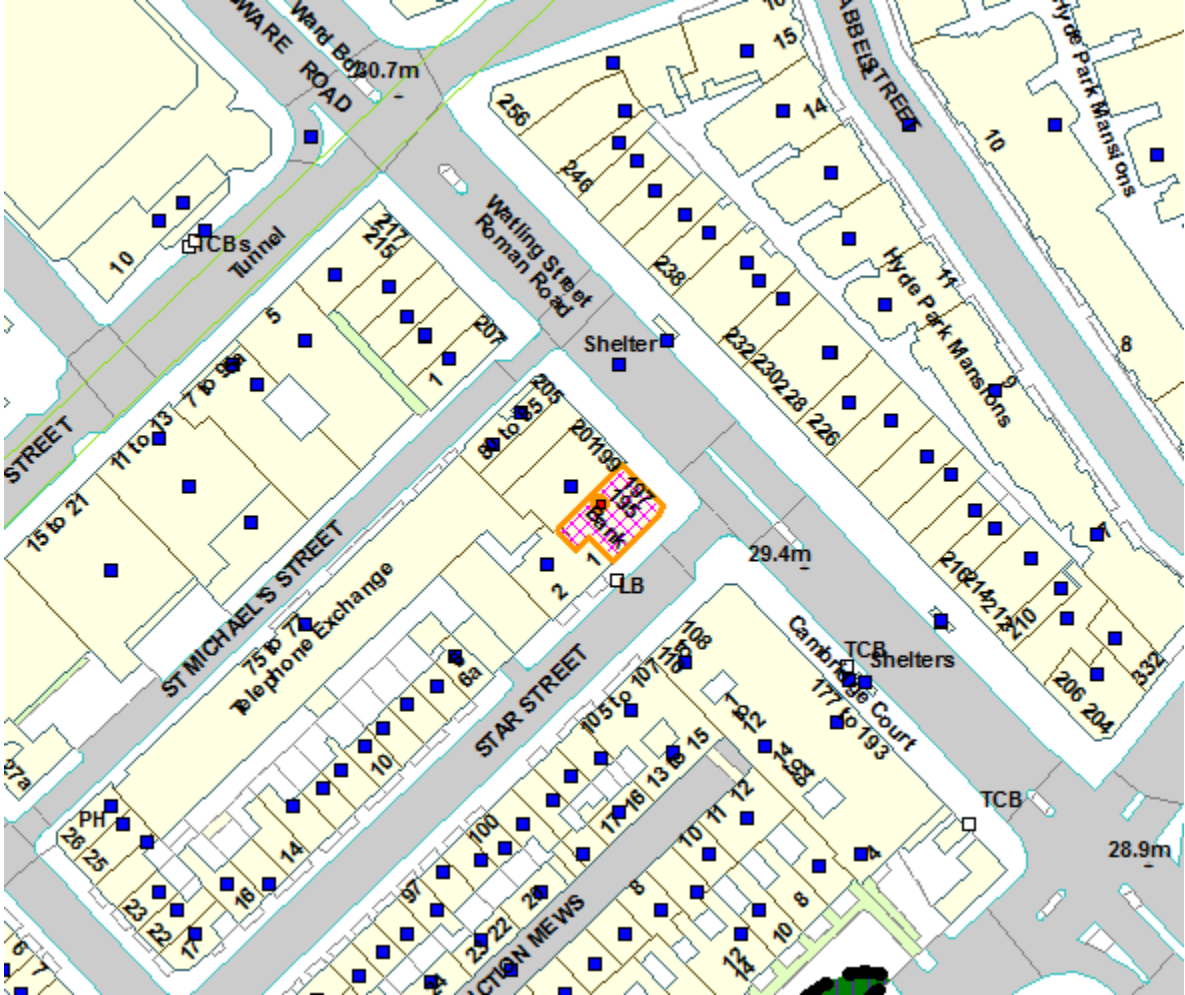
- (I) Not to pursue enforcement action regarding the placement of tables and chairs on the highway – if this option is exercised, any potential future amenity issues associated with the unrestricted use of the highway for the placement of tables and chairs could not be addressed;
- (II) Serve an enforcement notice requiring the removal of the tables and chairs from the highway – the City Council's records confirm that the use of the highway at the Edgware Road frontage for the provision of tables and chairs is acceptable if restricted by conditions. In light of these permissions, it would be unreasonable to pursue enforcement action seeking the removal of the tables and chairs at the Edgware Road frontage;
- (III) Serve an 'under' enforcement notice to prohibit unrestricted use of the highway at the Edgware Road frontage for the provision of tables and chairs for customer use – the result of such action would be to effectively grant planning permission for a limited time, subject to restrictions. This is considered the most reasonable and proportionate response to the breach of planning control.

The key considerations in this case are:

- The impact on pedestrian movement
- The impact on the amenity of neighbouring residential properties

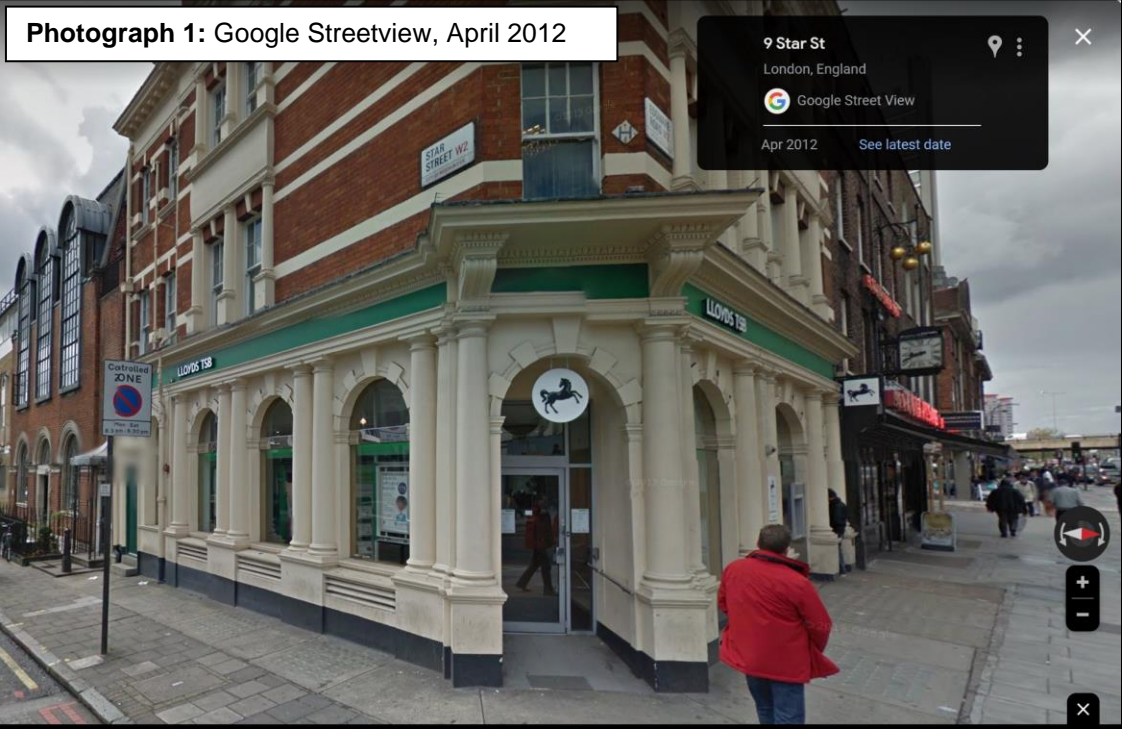
Having regard to the development plan policies and other material considerations, it is considered reasonable and proportionate to pursue formal enforcement action against the use of the highway at the Edgware Road frontage for the provision of tables and chairs, allowing the provision at the Edgware Road frontage to continue only for a limited time, subject to conditions. After one year, the owner will be required to seek a new planning permission or to seek a pavement licence.

3. LOCATION PLAN



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4. PHOTOGRAPHS





Photograph 3: Google Streetview, June 2021



Photograph 3: WCC inspection, September 2022

5. CONSULTATIONS

5.1 Application Consultations

SOUTH EAST BAYSWATER RESIDENTS ASSOCIATION
No response received

ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS RECEIVED

No. Consulted: 44, Total No. of replies: 0

PRESS NOTICE/ SITE NOTICE:
No

5.2 Applicant's Pre-Application Community Engagement

N/A

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) (December 2023) and should be afforded full weight in accordance with paragraph 225 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 47 of the NPPF, the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

6.2 Neighbourhood Planning

The application site is not located within an area covered by a Neighbourhood Plan.

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 (December 2023) unless stated otherwise.

7. BACKGROUND INFORMATION

7.1 The Application Site

The Property is a ground floor and basement level unit within a five-storey building at the corner of Star Street and Edgware Road. The Property is in use as a café with provision of shisha smoking. The Property forms part of the Edgware Road South CAZ Retail Cluster. The Property is not listed, and is not located within a conservation area.

The external seating provision on the highway at the Edgware Road frontage varies, with up to 8 small tables and 16 chairs provided, sometimes extending across the corner entrance to the premises. At the north-west end of the Edgware Road seating area is a further screen affixed by hinges, and the edge of the seating areas is marked by black canvas barriers.

7.2 Recent Relevant History

On 15th November 2016 planning permission was granted for 'Use of ground floor and part basement as a mixed A1/A3 coffee bar with seating (Sui Generis) and use of basement as offices (Class B1)' (RN. 16/07126/FULL).

On 16th June 2017 planning permission was granted for 'Use of an area of the public highway measuring 6.6m x 1.5m on the Edgware Road frontage for the placing of 2 barriers, 6 tables and 12 chairs in connection with the existing ground floor unit' (RN. 17/02443/TCH).

On 10th November 2017, planning permission was refused for 'Use of ground floor and part basement as a mixed A1/A3 coffee bar with seating (Sui Generis). Retention of a kitchen extract system, and louvres to Star Street elevation' (RN. 17/07984/FULL).

On 10th December 2018 planning permission was granted in relation to the Edgware Road elevation, for 'Use of an area of the public highway, measuring 6.6m x 1.6m for the placing of 2 barriers, 6 tables and 12 chairs in connection with the ground floor unit' (ref. 18/07907/TCH).

8. THE PROPOSAL

The external seating provision at the Edgware Road frontage varies, with up to 8 small tables and 16 chairs provided, sometimes extending across the corner entrance to the premises. At the north-west end of the Edgware Road seating area is a screen affixed by hinges, and the seating area is enclosed by black canvas barriers. The use of the highway for external seating requires planning permission or a pavement license, but the owner has declined to seek such permission, despite being requested a number of times.

It is proposed to serve an 'under' enforcement notice to prohibit unrestricted use of the highway at the Edgware Road frontage for the provision of tables and chairs for customer use. The result of such action would be to effectively grant planning permission for a limited time, subject to restrictions. The wording of the recommendation proposed is as follows:

'That the Notice take effect 35 days after the date of service and requires within **2 months** from the date it takes effect, the following:

- 1) Cease use of the highway at the Edgware Road frontage of the Property for the placement of tables and chairs for customer use, except to the extent that:
 - a) The 6 tables and 12 chairs must only be placed within the part of the highway shown outlined by green lines on Plan A, with the area to be enclosed by barrier banners only;
 - b) The 6 tables and 12 chairs must only be placed on the highway, between the hours of 09:00 and 23:00 daily;
 - c) The 6 tables and 12 chairs must only be used by customers of the Property;
 - d) No additional tables, chairs, screens or any other furniture or equipment shall be placed on the highway; and
 - e) The 6 tables and 12 chairs may only be placed on the highway until **[one year after date of service]**.

That authority for the issue of the Enforcement Notice also includes authority to withdraw any such notice and to issue further notices if it becomes necessary to do this in order to remedy the breach of planning control to which this notice relates.'

9. DETAILED CONSIDERATIONS

9.1 Land Use

City Plan 2019-2040 Policy 16 (Food, Drink and Entertainment) seeks to ensure that the use of outdoor areas for shisha smoking is only permitted within the town centre hierarchy, provided any unacceptable impacts on public health and amenity of the surrounding area are adequately mitigated.

The proposal in question is the use of the highway at the Edgware Road frontage for tables and chairs, used primarily for shisha smoking. The use of the premises as a mixed-use comprising a café with shisha smoking does not have planning approval.

A number of site inspections have been undertaken during the day and at night. The business is a large, popular, busy and vibrant café with shisha smoking provided at the external tables and chairs only. Internally there are tables, chairs and benches sufficient to accommodate 56 customers, and a full range of hot and cold drinks, and hot and cold food options. Externally, the provision of tables and chairs varies slightly between the day and the evening, with up to 6 tables and 12 chairs provided at the Star Street elevation, and up to 8 tables and 16 chairs provided at the Edgware Road frontage, including across the front entrance.

However, it is considered that if the number of tables and chairs were to be reduced as a result of the requirements of Notice A (relating to the seating area at the Star Street elevation) and Notice B (the subject of this report) there would be no tables and chairs for customer use at the Star Street frontage, and no more than 6 tables and 12 chairs provided at the Edgware Road frontage. It is considered that on the basis of this significantly reduced area of tables and chairs, the provision of shisha until 23:00 would constitute an ancillary part of the café use.

9.2 Environment & Sustainability

N/A

9.3 Biodiversity & Greening

N/A

9.4 Townscape, Design & Heritage Impact

N/A

9.5 Residential Amenity

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.

Planning permission was granted for the use of the upper floors at the subject Property as residential flats in 2014, and there are a number of other residential flats at the upper levels of the surrounding properties. Whilst Edgware Road is a vibrant area, with a thriving night-time economy, it is reasonable to expect the use of the external area to cease at 23:00, when the majority of residents would want to be going to be sleep.

A large area of customer seating used late into the night would have the potential to cause noise and disturbance to residents in the local environment, which would be contrary to London Plan policy D14 and City Plan policies 7 and 33, which seek to prevent development causing adverse impacts on residential properties.

Therefore, having regard to the development plan policies and other material considerations, it is considered reasonable and proportionate to 'under-enforce' the unauthorised use of the highway at the Edgware Road frontage for customer seating, by serving an enforcement notice, which permits the use to continue only subject to the following conditions:

- a) The 6 tables and 12 chairs must only be placed within the part of the highway shown outlined by green lines on Plan A, with the area to be enclosed by barrier banners only;
- b) The 6 tables and 12 chairs must only be placed on the highway, between the hours of 09:00 and 23:00 daily;
- c) The 6 tables and 12 chairs must only be used by customers of the Property;
- d) No additional tables, chairs, screens or any other furniture or equipment shall be placed on the highway; and
- e) The 6 tables and 12 chairs may only be placed on the highway until [one year after date of service].

9.6 Transportation, Accessibility & Servicing

Highway Impact

City Plan 2019-2040 Policy 25 (Walking and cycling) seeks to ensure proposals prioritise and improve the pedestrian environment. Policy 28 (Highway access and management) states that the council will resist the loss of highway land, particularly footways.

The lawful use of the highway is for the passing of pedestrians. Authorisation for the use of the highway for the provision of tables and chairs expired on 19th December 2019.

The primary function of the highway is the free and unobstructed movement of the highway users, i.e. pedestrians. Secondary functions can be considered those that relate to the primary function, such as the provision of cycle parking and bus stop facilities. Tertiary functions of the highway are those that need not occur on the highway, including the provision of external tables and chairs for customer seating. Therefore, the priority is given to pedestrian movements.

At the Edgware Road frontage, the pavement measures approximately 5.7m from the building line to the kerb edge. The area in use for the provision of tables and chairs at this elevation is 1.6m in width from the building line to the canvas freestanding barriers, and therefore a width of 4.1m is retained for the passing of pedestrians. Accordingly, the flow of pedestrians is not obstructed by the use of this area of highway for the provision of tables and chairs, as the minimum requirement of 2m is retained.

Whilst it is unlikely that the provision of tables and chairs at the Edgware Road frontage would be increased to the extent that it impeded the 2m minimum width of pavement required to be retained for safe passing of pedestrians, without conditions imposing a maximum seating area, such provision could be possible. Extending the seating area across the front of the adjacent property, across the junction with Star Street or across the full width of the pavement would impinge the safe flow of pedestrians, contrary to London Plan policy SD6, which encourages the delivery of a barrier-free and inclusive town centre for all Londoners, and City Plan policies 25, 28 and 43, which seek to protect and prioritise pedestrian movement on the highway, and require that proposals for the provision of tables and chairs must not compromise pedestrian movement.

Accordingly, it is considered appropriate to allow the use of the highway to continue, subject to restrictions controlling the amount of pavement to be used for this purpose, and the number of tables and chairs and other furniture to be provided.

9.7 Economy including Employment & Skills

N/A

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

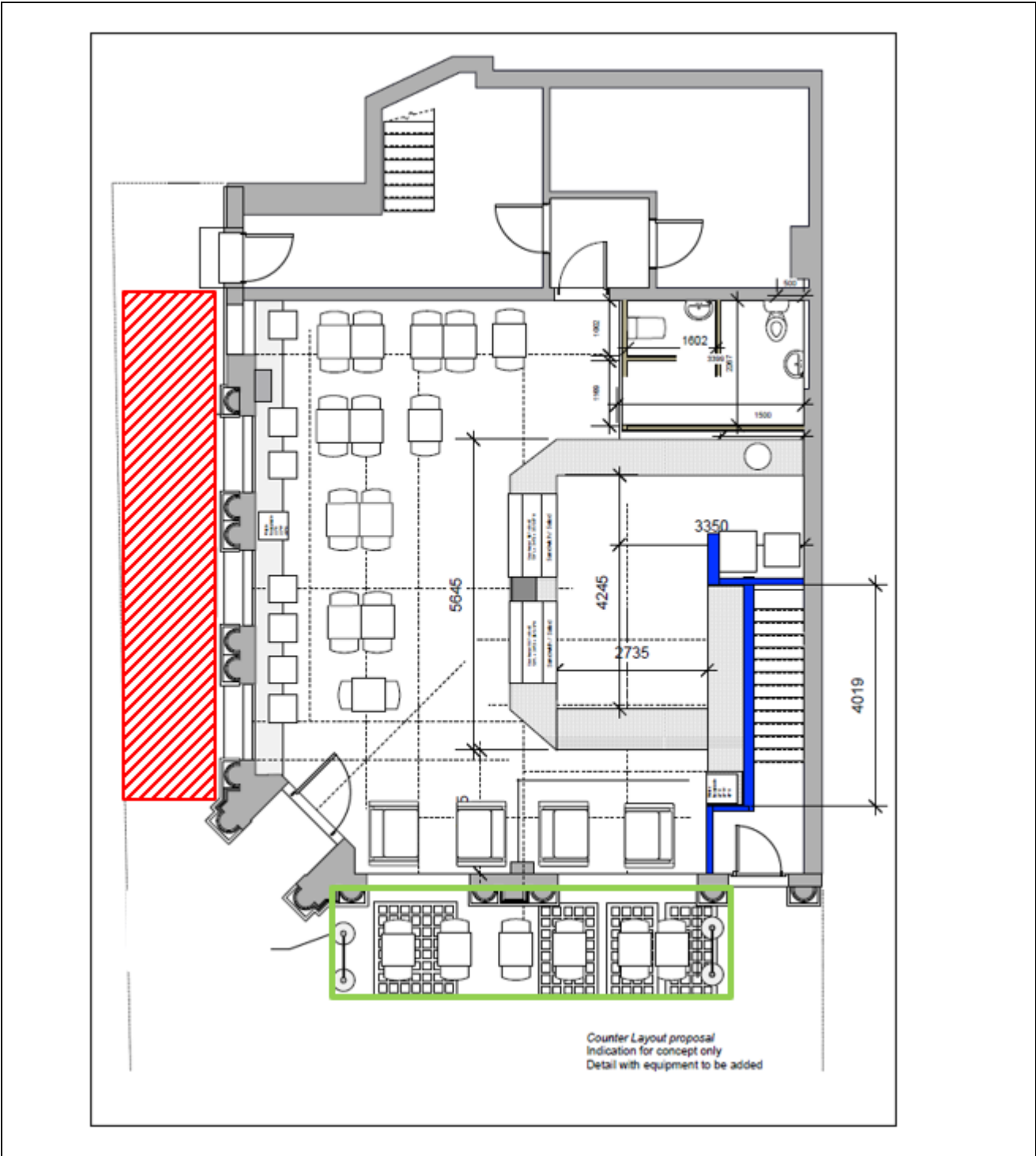
Planning obligations are not relevant in the determination of this application.

10. Conclusion

This report has considered the material planning issues associated with the proposed development in conjunction with all relevant national, regional and local planning policy. Having regard to this assessment, it is considered that the proposed 'under' enforcement notice is reasonable and proportionate.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: **Karen Ball**. BY EMAIL AT: **kball@westminster.gov.uk**.

11. KEY DRAWINGS



BACKGROUND PAPERS

1. Planning Enforcement Officer's Report
2. Decision notice and plans re planning permission granted on 15th November 2016 for 'Use of ground floor and part basement as a mixed A1/A3 coffee bar with seating (Sui Generis) and use of basement as offices (Class B1)' (RN. 16/07126/FULL).
3. Decision notice and plans re planning permission granted on 16th June 2017 for 'Use of an area of the public highway measuring 6.6m x 1.5m on the Edgware Road frontage for the placing of 2 barriers, 6 tables and 12 chairs in connection with the existing ground floor unit' (RN. 17/02443/TCH).
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