

CITY OF WESTMINSTER			
PLANNING APPLICATIONS SUB COMMITTEE	Date 30 April 2024	Classification For General Release	
Report of Director of Town Planning & Building Control		Ward(s) involved Pimlico North	
Subject of Report	58 - 60 Lupus Street, London, SW1V 3EE		
Proposal	Use of an area of the public highway measuring 11.2m x 1.93m for the placing of four tables and eight chairs in connection with ground floor retail unit.		
Agent	Truekiffin & Co - Mr Andrew Kiffin		
On behalf of	Mr Jose Cruz		
Registered Number	21/03747/TCH	Date amended/ completed	4 June 2021
Date Application Received	4 June 2021		
Historic Building Grade	Unlisted		
Conservation Area	Pimlico		
Neighbourhood Plan	Pimlico Neighbourhood Plan		

1. RECOMMENDATION

Grant conditional planning permission for a temporary period of two years.

2. SUMMARY & KEY CONSIDERATIONS

The application proposes to use an area of public highway in front of the delicatessen at 58 - 60 Lupus Street in Pimlico for the placing of four tables and eight chairs to be used by customers of the delicatessen. The application site is located in the Pimlico Conservation Area and the Lupus Street Local Centre.

The key considerations in this case are:

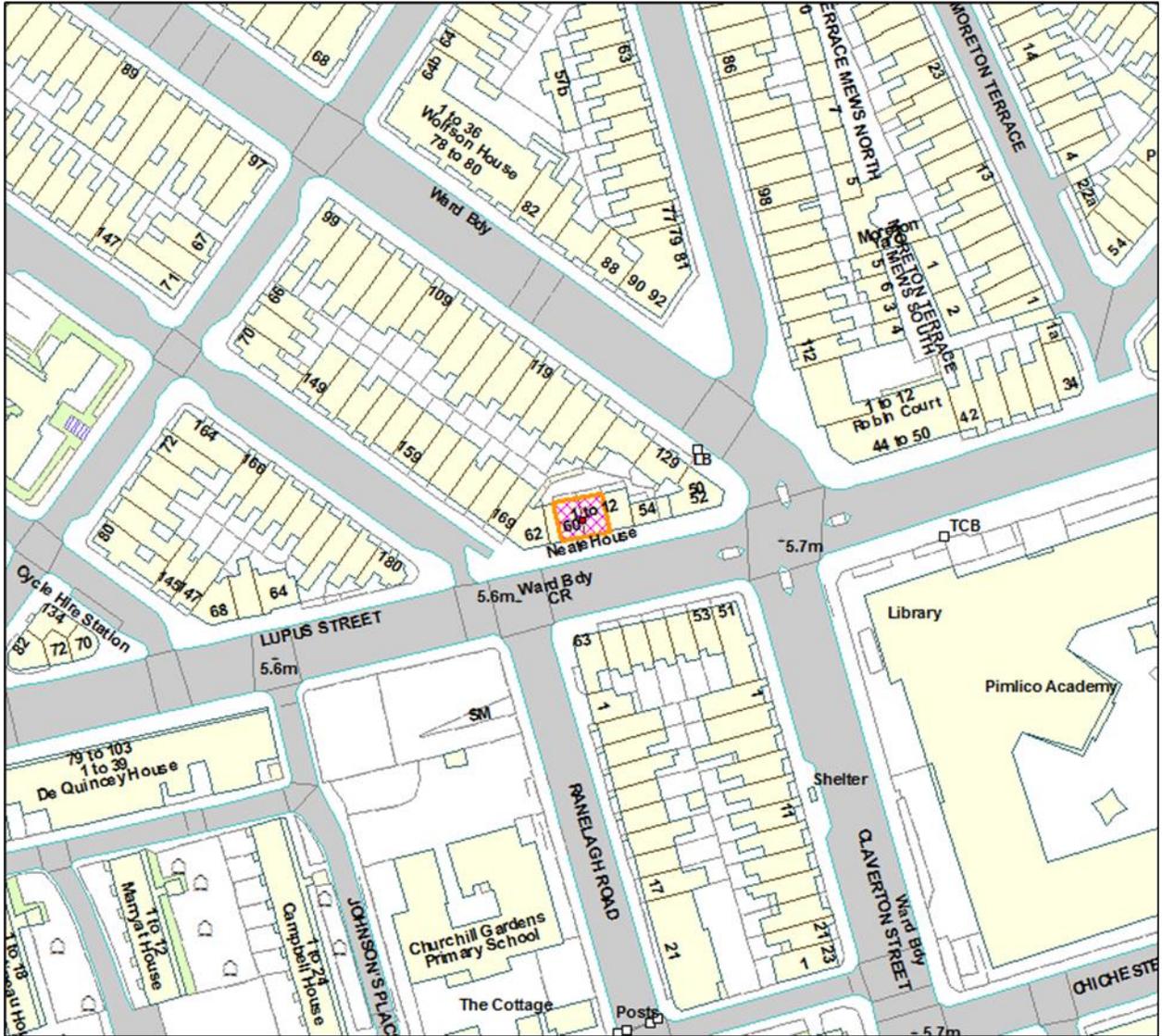
- The principle of tables and chairs on the highway in this location.
- The impact of the proposed tables and chairs on the character and appearance of the Pimlico Conservation Area.
- The impact on the amenity of neighbouring residential properties.
- The impact on pedestrian movement along Lupus Street.

Objections to this application have been received from numerous neighbours and the Pimlico

FREDA. The objections are principally on the grounds of the impact of the proposals on neighbouring amenities in terms of noise and the proposal's potential to cause pinch points on the footway in front of the premises.

In this report the proposal is assessed against the relevant policies in the Pimlico Neighbourhood Plan 2021-2040, the City Plan 2019-2040, London Plan 2021 and any relevant material considerations. This report concludes that the proposal, if subjected to a number of conditions (as set out in the draft decision notice at the end of this report), would be acceptable for a temporary period of up to two years.

3. LOCATION PLAN



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4. PHOTOGRAPHS



Front of Application Site.

5. CONSULTATIONS

5.1 Application Consultations

Initial consultation, begun in June 2021

Pimlico FREDA

Objects. Plans and description are incorrect.

Westminster Society

Any response to be reported verbally.

Pimlico Neighbourhood Forum

Any response to be reported verbally.

Highways Planning Manager

4 large tables with 16 chairs are not acceptable in highways planning terms. 4 standard sized tables with 8 chairs, as approved by application RN 19/08975/TCH, would be acceptable.

Waste Project Officer

No objection.

Adjoining Owners/Occupiers

No. of letters sent: 40

Site & Press Notice

Yes.

Public Representations

No. of representations received: 7

No. of objections: 6

No. in support: 0

In summary, six neighbouring residents object on the following grounds:

Residential amenity:

- Noise nuisance.
- Smoke/odours.
- Litter.

Highways:

- Obstruction/pinch point on pavement.

Other:

- Inaccurate plans and description.

Consultation on revised plans, begun March 2022

Ward Councillors for Warwick and Tachbrook Wards

Any response to be reported verbally.

Pimlico FREDA

Objection. Proposals would adversely impact character and appearance of Pimlico Conservation Area, encourage loitering and “overspill”, encroach on to public highway and contribute towards street clutter, contrary to policy. In particular, the proposed barriers and parasols should not be permitted.

Westminster Society

Any response to be reported verbally.

Pimlico Neighbourhood Forum

Any response to be reported verbally.

Highways Planning Manager

Proposed layout of tables and chairs is acceptable, subject to conditions. Proposed umbrellas overhanging the footway is not acceptable, smaller umbrellas should be used.

Waste Project Officer

No objection.

Adjoining Owners/Occupiers

No. of letters sent: 43

Public Representations

No. of representations received: 7

No. of objections: 7

No. in support: 0

In summary, seven neighbouring residents object on the following grounds:

Residential amenity:

- Noise nuisance.
- Smoke.

Highways:

- Obstruction/pinch point on pavement.

Other:

- Applicant’s non-compliance with previous planning permission or licenses for tables and chairs at this site.
- 2023 application for premises license does not match proposed layout of tables and chairs.

5.2 Applicant’s Pre-Application Community Engagement

The applicant did not engage with neighbouring residential occupiers or other members of the community that might be affected by the proposals before making this application. The Council’s Early Community Engagement Guidance encourages developers to

engage with local stakeholders and communities where their proposals will have significant impacts. It is, therefore, disappointing that the applicant did not carry out early community engagement, however not doing so was not contrary to the guidance for development of this scale. The planning application must be considered on its merits.

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 City Plan Partial Review

The council published its draft City Plan Partial Review for consultation under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012 on 14 March 2024. The consultation continues until 25 April 2024. The Partial Review includes updated policies for affordable housing, retrofitting and site allocations.

An emerging local plan is not included within the definition of “development plan” within s.38 of the Planning and Compulsory Purchase Act 2004. However, paragraph 48 of the NPPF provides that a local authority may give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

Footnote 22 to paragraph 48 states that during the transitional period for emerging plans consistency should be tested against the version of the Framework, as applicable, as set out in Annex 1 (paragraph 230). This means that the consistency of the policies in the City Plan Partial Review must be tested for consistency for the purposes of paragraph 48(c) against the September 2023 version of the NPPF.

Accordingly, at the current time, as the Partial Review of the City Plan remains at a pre-submission stage, the policies within it will generally attract limited if any weight at all.

6.3 Neighbourhood Planning

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

It has been through independent examination and was supported by local residents in a referendum held on 22 September 2022. It was adopted on 7 December 2022. It therefore forms part of the development plan for Westminster for development within the Pimlico Neighbourhood Area in accordance with Section 38 of the Planning and Compulsory Purchase Act 2004. Where any matters relevant to the application subject of this report are directly affected by the policies contained within the neighbourhood plan, these are discussed later in this report.

6.4 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

The application site is an area of public highway in front of 58 - 60 Lupus Street, which is a ground and basement level commercial unit used as a delicatessen (Class E), trading as 'Delicias Pimlico'. It is located on the north side of Lupus Street and within a building known as Neate House, which occupies the land between Cambridge Street and St George's Drive and comprises commercial units on the ground and basement levels, with three upper floors comprising residential units. The site is a part of the Lupus Street Local Centre and is within the Central Activities Zone (CAZ). The site is located in the Pimlico Conservation Area and Neate House is an unlisted building of merit.

7.2 Recent Relevant History

Planning Applications

On 31 August 2023, the City Council granted permission for the installation of extract fan with associated acoustic enclosure to rear at lower ground floor level.

On 31 August 2023, the City Council granted permission for the installation of two air conditioning units and associated acoustic enclosures to rear at lower ground floor level.

On 17 August 2021, the City Council refused permission for the erection of two canopies

above the front windows of the shop on the grounds they would harm the appearance of the building and Pimlico Conservation Area.

On 29 May 2020, the City Council granted permission for the use of an area of the public highway measuring 11.2m X 1.93m for the placing of four tables, eight chairs and associated barriers in connection with ground floor retail unit for a temporary 1 year period expiring 1 June 2021.

Enforcement

There are two currently pending enforcement investigations at the property, one relating to the unauthorised use of the highway for the placing of tables and chairs and one relating to a kitchen extract to the rear of the building.

Since 2019, nine other enforcement investigations have been opened but subsequently closed.

8. THE PROPOSAL

This application seeks planning permission for the use of an area of the public highway in front of 58 - 60 Lupus Street, measuring 11.2m X 1.93m, for the placing of four tables and eight chairs to be used in connection with the delicatessen at 58 - 60 Lupus Street.

The proposal originally included parasols and barriers enclosing the tables and chairs, but these have been removed from the proposal by the applicant.

It is acknowledged that the applicant has placed up to four tables and 16 chairs on the site in breach of planning control, but this arrangement is not what the applicant is seeking approval under this application.

9. DETAILED CONSIDERATIONS

9.1 Land Use

Policy 14 of the City Plan sets out the approach to be taken for development in town centres and high streets. At Part A, Policy 14 requires proposals in existing town centres and high streets to enhance and diversify their offer as places to shop, work and spend leisure time. At Part C, it requires development within the town centre hierarchy to be of a scale, type and format that reflects and enhances the role and function of the centre within which it is proposed. In Local Centres, such as Lupus Street, this means a mix of commercial and community uses to meet residents' day to day shopping needs, provide local employment opportunities and support opportunities for community interaction.

Policy 43 of the City Plan requires development to contribute to a well-designed, clutter-free public realm with use of high quality and durable materials capable of easy maintenance and cleaning, and the integration of high-quality soft landscaping as part of the streetscape design. It also sets out that proposals for trading from premises extending into the street (including provision of tables and chairs on the highway) will be supported where they would not: 1. harm local amenity; 2. compromise pedestrian movement or traffic conditions; and, 3. impede refuse storage and street cleansing arrangements.

Policy PIM 1 of the Pimlico Neighbourhood Plan sets out that the Local Centres, including Lupus Street, are the areas of a commercial and mixed use character to which main town centre uses that both serve visiting members of the public and provide active frontages should be directed within the Pimlico Neighbourhood Area. It also sets out that proposals in the Local Centres must protect and where appropriate enhance residential amenity, including neighbouring properties.

Considering the above policies, the proposed tables and chairs should be supported in land use terms unless they result in unacceptable impacts on Westminster's townscape value, pedestrian environment, or local amenities. These matters are assessed later in this report.

9.2 Environment & Sustainability

This proposal, by virtue of its small scale, does not trigger any requirements in relation environmental, sustainability or biodiversity.

9.3 Townscape, Design & Heritage Impact

Legislative & Policy Context

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

Section 72 of the LBCA Act requires that *"In the exercise, with respect to any buildings or other land in a conservation area...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."*

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 be clearly and convincingly justified and should only be approved where the harm caused would be clearly outweighed by the public benefits of the scheme. This should also take into account the relative significance of the affected asset and the severity of the harm caused.

Policy 38 of the City Plan requires that development positively contributes to Westminster's townscape. Policy 39 of the City Plan requires that development preserve or enhances the character and appearance of Westminster's conservation areas. Policy 43 of the City Plan requires that development contributes to a well-designed clutter-free public realm.

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

Impact on Heritage Assets and Townscape

The scale and layout of the proposed tables and chairs, along with their temporary

nature and that they will be required (by conditions on the grant of planning permission) to be taken in every evening, mean that the proposals will not cause any harm to the character and appearance of the Pimlico Conservation Area or the streetscape of Lupus Street.

Some objectors have commented that the proposed parasols will clutter the streetscape and limit the appreciation for Neate House, but these have now been removed from the proposal.

Hence, subject to conditions securing the layout and permitted hours that the items may be placed in the public highway, the proposal is considered acceptable in conservation and townscape terms and would accord with Policies 38, 39 and 43 of the City Plan and PIM 4 of the Pimlico Neighbourhood Plan.

9.4 Residential Amenity

Policies 7, 33 and 43 of the City Plan seek to ensure that development in Westminster does not harm local amenities. Policy PIM 1 of the Pimlico Neighbourhood Plan has the same objective but applies only to the local centres in the Pimlico Neighbourhood Area.

The proposed use of the highway for the placing of tables and chairs could result in the potential for greater noise to be generated from social activity than if the public highway were not used for this purpose. Noise will be generated by customers using the areas for sitting and when staff put out and take in the items each day. The applicant has applied to extend the hours by one or two hours each day compared to what they were permitted in 2020 under planning permission RN 19/08973/TCH, which permitted placing the items on the highway between 9 a.m. and 6 p.m. every day. Given the proximity of the flats above in Neate House, it is considered necessary in the interests of neighbouring residential amenity that these hours are not extended beyond what was previously authorised. Hence, a condition is recommended to be attached to the planning permission securing that the highway is only used for sitting out between 9 a.m. and 6 p.m. each day.

Given the number of tables and chairs proposed, the hours they will be permitted to be out on the pavement and their proposed location on Lupus Street - a busy road in the Local Centre - it is considered that the noise resulting from these tables and chairs will not unacceptably affect the amenities of nearby residential occupiers.

Some objectors have raised objection to possible smoke from customers using the tables and chairs rising into the flats in Neate House. The behaviour of customers on the street is outside of planning control. Nevertheless, the effects of occasional customers smoking while using these tables and chairs is not considered to be so harmful to the amenities of the residents in Neate House as to be unacceptable.

9.5 Transportation, Accessibility & Servicing

Policy 25 of the City Plan sets out that development must prioritise and improve the pedestrian environment and contribute towards achieving a first-class public realm.

Policy 28 of the City Plan sets out that, given the increasing demands on existing highway space, the council will resist loss of highway land, particularly footways.

As mentioned previously, Policy 43 of the City Plan resists development for trading from premises into the street where they compromise pedestrian movement or impede refuse storage and street cleansing arrangements.

Policy PIM 18 of the Pimlico Neighbourhood Plan seeks for development to enhance the public realm, particularly where this rebalances space in favour of pedestrians. In particular, proposals should take opportunities to reduce street clutter created by physical infrastructure.

The Highways Planning Manager does not object to the revised proposed arrangement for four tables and eight chairs, as it would maintain a minimum pedestrian clearway on the pavement of 2 metres.

The Highways Planning Manager did raise concern with the proposed parasols potentially being unstable and overhanging the footway, but the parasols have now been removed from the proposal.

As this permission affects the use of the public highway and they City Council, as Local Highway Authority, has a duty assert and protect the rights of the public to the use and enjoyment of the highway and also it is considered necessary to continually assess the effects of tables and chairs, the permission can only be for a temporary period. As the previous planning permission (RN 19/08973/TCH) was authorised for only one year and the tables and chairs have continued to be placed on the site unlawfully since that permission expired in 2021, it is considered that two years is an appropriate period to authorise these tables and chairs for in order to assess their effect and allow for any enforcement action to be taken against any possible non-compliance with this permission.

For these reasons, and subject to conditions, the proposal is considered acceptable in highways terms.

9.6 Economy including Employment & Skills

Whilst the development is of insufficient scale to require an employment and skills plan, it will contribute positively to the local economy by adding to the vitality and vibrancy of the Lupus Street Local Centre.

9.7 Environmental Impact Assessment

The proposed development is not of sufficient scale or impact to require an Environmental Impact Assessment.

9.8 Planning Obligations & Pre-Commencement Conditions

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

9.9 Other Matters

Licensing application RN 23/08600/LIPV for variation of the delicatessen's premises license was determined at a meeting of the Council's Licensing Sub Committee No. 1 on 6 March 2024. At this meeting it was decided that the license will require that tables and chairs must be removed from outside the premises by 18:00 each day. This is accords with the limitations proposed to be put on the planning permission for the tables and chairs. The license does not allow for any consumption of alcohol at the tables and chairs seeking planning permission here.

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 has found that the proposed development is acceptable for a temporary period of two years.

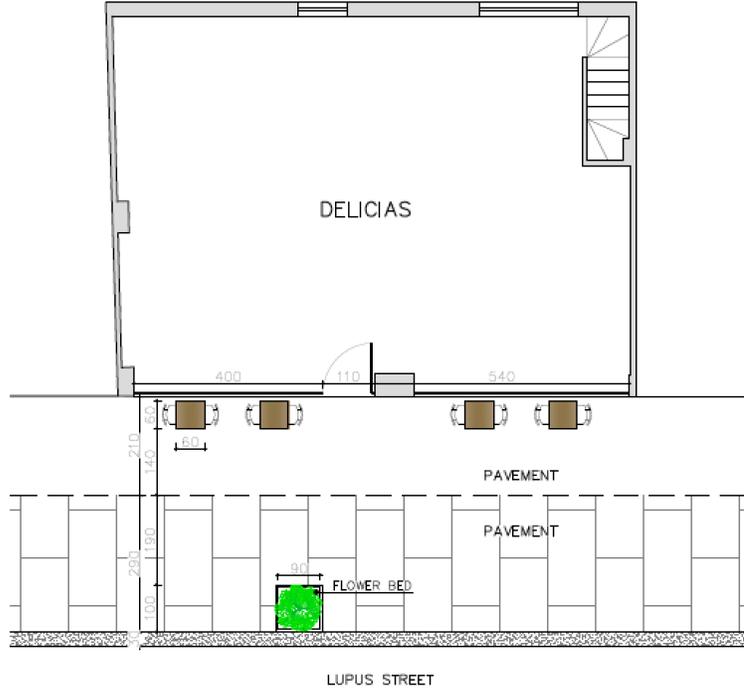
Accordingly, the proposal is considered acceptable and would be consistent with the relevant policies in the Pimlico Neighbourhood Plan 2021-2040, the City Plan 2019-2040 and London Plan 2021. It is recommended that planning permission is granted, subject the conditions listed at the end of this report, which are necessary to make the development acceptable.

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: JOSHUA HOWITT BY EMAIL AT jhowitt@westminster.gov.uk

11. KEY DRAWINGS





Proposed Tables & Chairs Layout

DRAFT DECISION LETTER

Address: 58 - 60 Lupus Street, London, SW1V 3EE,

Proposal: Use of an area of the public highway measuring 11.2 m x 1.93 m for the placing of four tables and eight chairs in connection with ground floor retail unit.

Reference: 21/03747/TCH

Plan Nos: P'S'01 Rev. A; P'x'01 Rev. A; Proposed Tables and Chairs Layout (received 1 December 2023).

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

Recommended Condition(s) and Reason(s)

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 You must not put the tables and chairs and, where relevant, other furniture, equipment or screening hereby approved in any other position than that shown on the Proposed Tables and Chairs Layout (received 1 December 2023). (C25AA)

Reason:

In the interests of public safety and to avoid blocking the road as set out Policies 25 and 43 of the City Plan 2019 - 2040 (April 2021). (R25AD)

- 3 You can only put the tables and chairs and, where relevant, other furniture, equipment or screening hereby approved on the pavement between 09:00 and 18:00. (C25BA)

Reason:

To protect neighbouring residents from noise and disturbance as set out Policies 7, 33 and 43 of the City Plan 2019 - 2040 (April 2021) and Policy PIM 1 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022).

- 4 The tables and chairs must only be used by customers of ground floor shop at 58 -60 Lupus Street. (C25CA)

Reason:

In the interests of public safety and to avoid blocking the road as set out Policies 25 and 43 of the City Plan 2019 - 2040 (April 2021). (R25AD)

- 5 This use of the pavement may continue until 30 April 2026. You must then remove the tables and chairs and, where relevant, other furniture, equipment or screening hereby approved. (C25DA)

Reason:

We cannot give you permanent permission as the area in question is, and is intended to remain, public highway and Section 130 (1) of the Highways Act 1980 states that "It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority". We also need to assess the effect of this activity regularly to make sure it meets Policies 25 and 43 of the City Plan 2019 - 2040 (April 2021). For the above reasons, and not because this is seen a form of trial period, we can therefore only grant a temporary permission. (R25DD)

- 6 You can only put out on the pavement the tables and chairs and, where relevant, other furniture, equipment or screening hereby approved shown on Proposed Tables and Chairs Layout (received 1 December 2023). No other furniture, equipment or screening shall be placed on the pavement in association with the tables and chairs hereby approved. (C25EA)

Reason:

To make sure that the type and appearance of the tables and chairs (and where appropriate other furniture or equipment) is suitable, and that no additional furniture, equipment or screening is placed on the pavement to the detriment of the character and appearance of the Pimlico Conservation Area. This is as set out in Policies 39 and 43 of the City Plan 2019 - 2040 (April 2021) and Policy PIM 4 of the Pimlico Neighbourhood Plan 2021-2040 (December 2022).

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in the City Plan 2019 - 2040 (April 2021), neighbourhood plan (where relevant), supplementary planning documents, the London Plan (March 2021), planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.
- 2 You cannot put tables and chairs in the area unless you have a street trading licence, which can be applied for at the following link: www.westminster.gov.uk/tables-and-chairs-licence.

If you want to know about the progress of your application for a licence, you can contact our Licensing Service by email to streettradinglicensing@westminster.gov.uk. If you apply for a licence and then decide to change the layout of the tables and chairs, you may have to apply

again for planning permission. You can discuss this with the planning officer whose name appears at the top of this letter.

Please remember that once you have a licence you must keep the tables and chairs within the agreed area at all times.

- 3 You must keep the tables and chairs within the area shown at all times. We will monitor this closely and may withdraw your street trading licence if you put them outside this area. (I48AA)

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.