

**PLANNING COMMITTEE REPORT**

 Development Management Service  
 Planning and Development Division  
 Community Wealth Building Department

<b>PLANNING SUB COMMITTEE A</b>		<b>AGENDA ITEM NO:</b>	
<b>Date:</b>	01 February 2024		

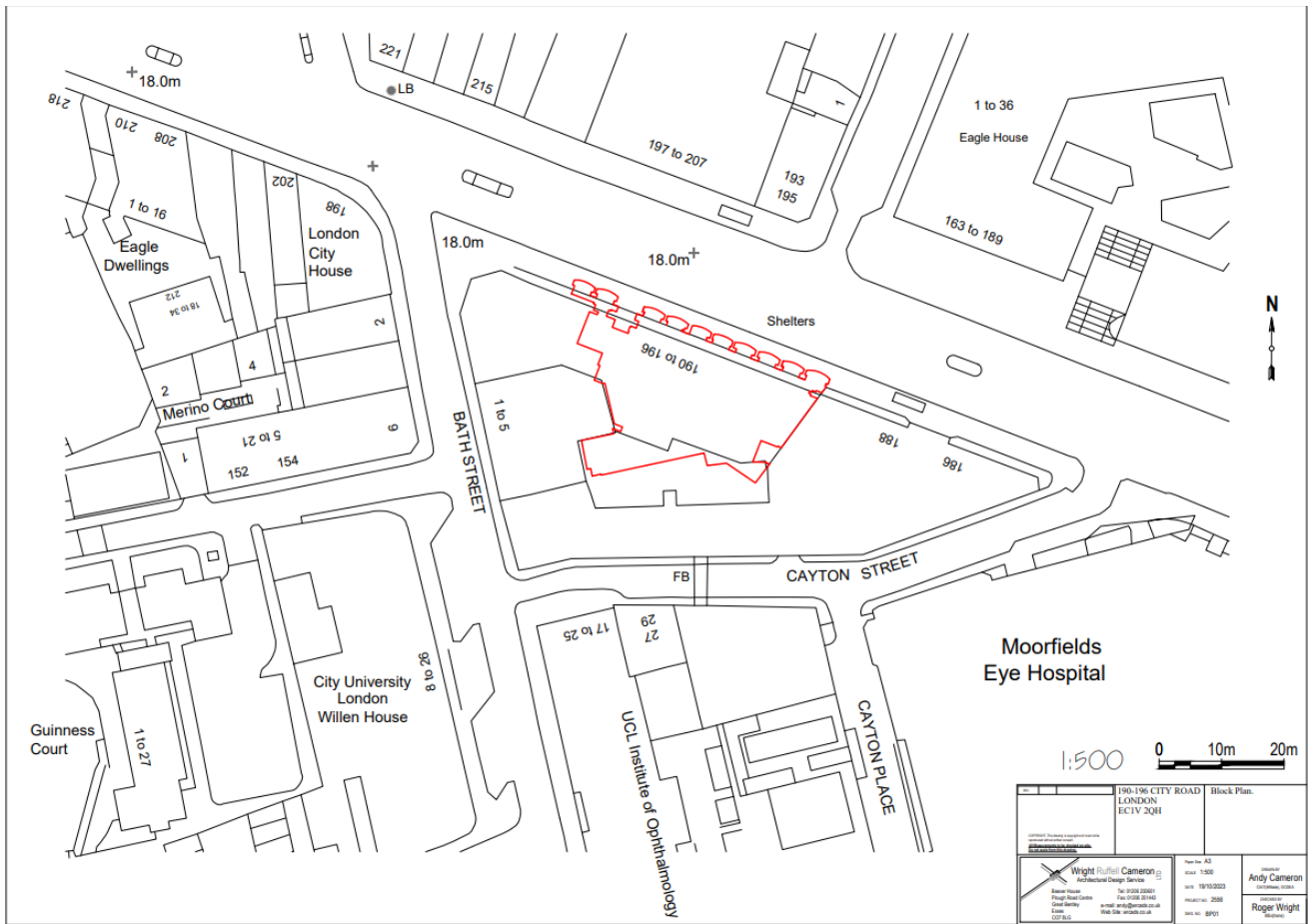
Application number	P2023/2844/S73
Application type	Removal/Variation of Condition (Section 73)
Ward	Bunhill
Listed building	N/A
Conservation area	Moorfields
Development Plan Context	Moorfields Conservation Area Central Activity Zone Local cycle route Major cycle route Site within 100m of TLRN Road Rail Land Ownership – TfL Tunnels London Underground Zones of interest Heathrow Safeguarding Area Art4 - Withdraw Permitted Dev for c.E to c.MA APAs City Fringe Opportunity Area
Licensing Implications	Yes, there is currently an extant premises license in place under the landlord's name Monopro Limited. Changes to the premises may require a variation application.
Site Address	Part Basement (Restaurant), 190 City Approach, City Road, London, EC1V 2QH
Proposal	Section 73 Application to vary Condition 2 of Planning Permission 841340 dated 15 June 1984 to amend the hours of operation to 11:00 to 00:00 Monday to Thursday, Sunday, and Bank Holidays and 11:00 to 01:30 (the following day) Friday and Saturday.

Case Officer	Sandra Chivero
Applicant	Mr Graeme Hawkins
Agent	Reeve Brown

**1. RECOMMENDATION**

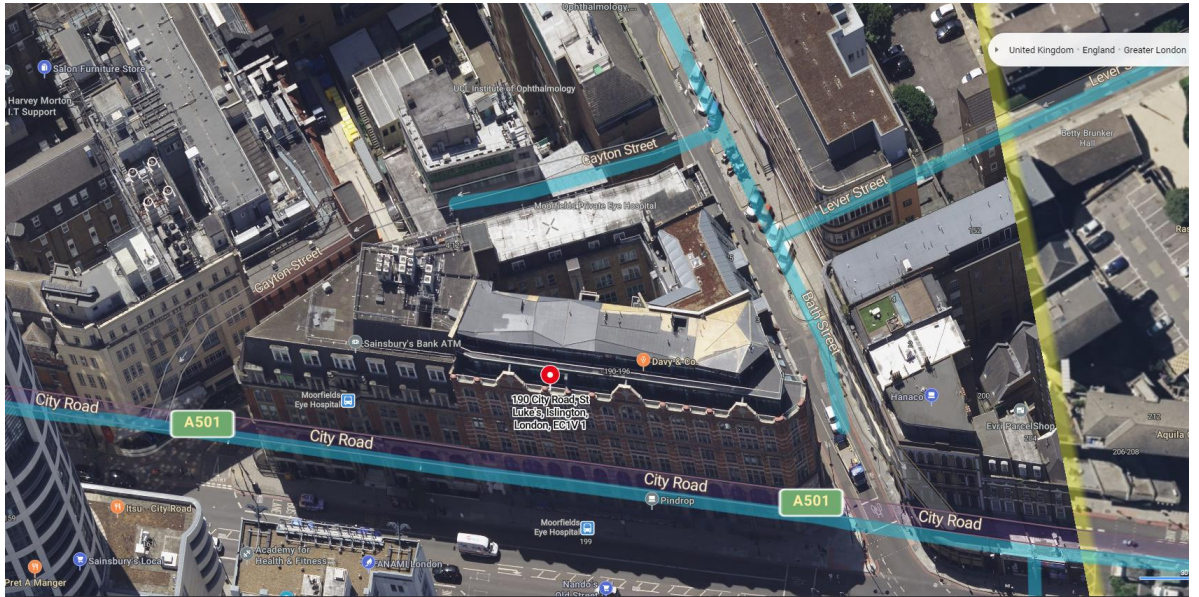
The Committee is asked to resolve to **GRANT** planning permission subject to the conditions set out in Appendix 1.

**2. SITE PLAN (site outlined in red)**



**Image 1:** Site Plan

### 3. PHOTOS OF SITE/STREET



**Image 2:** Aerial View



**Image 3:** View of application site from Westland Place



**Image 4:** View from City Road at the corner with Bath Street

#### **4. SUMMARY**

- 4.1 This is an application seeking to vary Condition 2 of Planning Permission 841340 dated 15 June 1984 to amend the hours of operation to 11:00 to 00:00 Monday to Thursday, Sunday, and Bank Holidays and 11:00 to 01:30 (the following day) Friday and Saturday. The premises at basement level would remain as a drinking establishment.
- 4.2 Concerns have been raised by residents relating to disturbance, noise, and antisocial behaviour. The change to the hours of operation is by 1 additional hour Monday to Thursday and 2 ½ hours on Saturdays. The premises licence relating to the previous operator, the Bavarian Beerhouse, has permitted opening hours in line with the current proposal.
- 4.3 The Environmental Pollution, Policy & Projects Team (EPPP Team) do not object to the proposed extension of operation hours. The Acoustic Officer highlighted that the bar is in the basement with an entrance at ground floor level, with doors at the entrance and at the bottom of the staircase to form a lobby to reduce noise breakout. Due to the ambient nature of the music, it is expected to be inaudible outside the premises, and would not have enough energy to transmit between floors up the building. A condition has also been attached to this current application stipulating that no music or other amplified noise arising from the operation of the part basement unit shall be audible outside the premises, nor transmit between floors up the building and for a sound limiter to be fitted. A further condition has been attached to this current application requiring the applicant to follow the guidance of the submitted noise management plan to minimise disturbance, antisocial behaviour and noise impacts from patrons' access and egress as well as a compliant procedure.
- 4.4 The management plan sets out that mitigation measures would involve responsibility for the management controls assumed by the manager, trained staff and event organisers. The external door to the premises will be kept closed during the evening, except when being used for immediate access and egress, in order to minimise noise break-out from the premises. Signs would be prominently displayed by the door and there would be polite notices from staff reminding patrons and smokers of the proximity of neighbours and encouraging them to keep their voices down. Taxis will be encouraged to turn off their engines while waiting and not sound their horns. A phone number and an email address will be provided to nearby residents to allow efficient notification of the premises if noise levels are causing a disturbance.
- 4.5 The Designing Out Crime Officer also did not raise any objection. It is stated that in principle, the proposal does not appear to be contentious from a crime prevention perspective, with various measures proposed by the applicant in the noise impact assessment that will be taken to minimise any adverse impact.
- 4.6 Subject to the conditions relating to the limitations for music levels at this site and stipulation to follow the submitted noise management plan, the proposal would not prejudice the residential amenity of the neighbouring properties and would comply with Policy D14 of the London 2021 and Policies Plan PLAN1 and DH5 of the Islington Strategic Development Management Policies (2023).

- 4.7 The proposal is considered acceptable subject to suitable conditions as set out in Appendix 2 and it is recommended that the S73 application be approved.

## 5. SITE AND SURROUNDING

- 5.1 The application site comprises a basement unit located within a prominent corner building at the junction of City Road, Bath Street and Shepherdess Walk. The building is six stories high on the City Road frontage and drops to five stories with a setback sixth floor to the Bath Street frontage. An additional two stories have been recently constructed above the existing building. The building is not statutory nor locally listed but it is located within the Moorfields Conservation Area.
- 5.2 This section of City Road is predominantly commercial in character with residential accommodation on the upper levels. Moorfields Eye Hospital and Old Street roundabout are located to the east.
- 5.3 The site also falls within the designated Central Activity Zone, City Fringe Opportunity Area, Archaeological Priority Area and the Licensing Bunhill Cumulative Area.

## 6. PROPOSAL (IN DETAIL)

- 6.1 Section 73 Application to vary Condition 2 (Hours of operation) of Planning Permission 841340 dated 15 June 1984 for the following: Retention of use of part of basement as an ale and port house serving hot food without complying with Condition 2 of the permission of 15 June 1984 (Ref. 840049 for Change of use of disused basement staff canteen to an ale and port house serving hot food).
- 6.2 Condition 2 (Hours of operation) of Planning Permission 841340 dated 15 June 1984 reads as follows:
- The use shall not operate except between the hours of 11.00 and 23.00 on any weekdays, and 12.00 to 22.30 on Sundays and Bank Holidays.*
- 6.3 The amendments include the extension of hours of operation to 11:00 to 00:00 Monday to Thursday, Sunday, and Bank Holidays and 11:00 to 01:30 (the following day) Friday and Saturday (Increase of 1 extra hour Monday to Thursday and 2 ½ hours on Saturday).
- 6.4 It is noted that Condition 2 (Hours of operation) of Planning Permission 841340 dated 15 June 1984 erroneously missed mentioning Saturdays. The proposed amendments to the hours of operation would therefore also gives an opportunity to clarify the opening hours for Saturdays.

## 7. RELEVANT HISTORY:

### *Planning Applications*

- 7.1 **P2021/1176/S73** Section 73 application comprising the variation of Condition 2 (approved plans) pursuant to planning permission ref: P2015/3665/FUL (Appeal decision APP/V5507/W/16/3141792) which was granted on 14th July 2016. Amendments proposed include seeking retrospective permission for: Omission of previously approved metal roof screens that would fold onto the balconies of the new sixth and seventh floors – **Granted 24 February 2022.**



7.2 P2021/1970/FUL Relocation of existing 3 no. fan units from the rear lightwell into the basement plant room with installation of new associated acoustic enclosure and silencers; installation of new connection link (to rear lightwell) from existing 3 no. plant room outlets to existing ducting; extension of existing boiler flue and a consolidating stainless steel extension to existing ducting along the rear of the new 6th and 7th floor levels with associated support screens incorporating anchors – **Granted 08 October 2021.**

7.3 P2021/0131/NMA Non-Material amendment to Planning Permission Ref: P2015/3665/FUL (Appeal Decision APP/V5507/W/16/3141792) dated 14 July 2016 for the: 'Erection of a roof extension to create 4 x 3-bedroom residential flats and associated roof terraces.' Amendments sought include: Omission of previously approved metal roof screens that would fold onto the balconies of the new sixth and seventh floors; and Inclusion of brickwork to sections of the glazed rear elevation – **Refused 09 February 2021.**

**REASON:** The proposed omission of the previously approved metal roof screens that would fold onto the balconies of the new sixth and seventh floors and inclusion of brickwork to sections of the glazed rear elevation would represent material alterations to the previously approved scheme. The alterations may therefore give rise to design, standard of accommodation and amenity implications which would need to be fully assessed within a Section 73 or Full Planning application. Therefore, the proposed amendment would constitute a material amendment to the approved scheme and the non-material amendments proposed within this application are not agreed.

7.4 **P2018/1007/S73** Section 73 application to vary condition 2 (drawing numbers) of planning application P2015/3665/FUL (appeal ref: APP/V5570/W/16/3141792). The proposed changes regard alterations to the mechanical equipment/plant and external ducting of the approved scheme – **Refused 11 June 2018.**

**REASON:** The mechanical equipment including ducting due to inappropriate siting would have a harmful impact upon the character and appearance of the existing building and Moorfields Conservation Area. The development fails to comply with policies CS8 and CS9 of the Core Strategy (2011), policies DM2.1 and DM2.3 of the Development Management Policies (2013) and the relevant sections of Urban Design Guide (2017) as well as Moorfields Conservation Area Guidelines 2002.

**REASON:** The proposed mechanical equipment and its associated ducting would cause unacceptable noise impacts and disturbance to neighbours. It would therefore be contrary to policy DM2.1 of the Development Management Policies (2013).

7.5 **P2017/4919/FUL** Installation of mechanical plant equipment including the introduction of 2no. louvres above the entrances to Units 1 and 5 Bath Street to provide heating and cooling to these properties – **Granted 08 August 2018.**

7.6 December 2015: **P2015/3665/FUL** Erection of a roof extension to create 4 x 3-bedroom residential flats and associated roof terraces – **Refused 01 December 2015.** Subsequent Appeal Decision Ref. **APP/V5507/W/16/3141792** **Allowed on 14 July 2016.**

7.7 P2013/2065/FUL Erection of a roof extension to the building to create 3 self-contained residential units (1 x 2 bed & 2 x 3 bed) and improvements to the forecourt and communal areas **Refused 16 December 2013.**

**REASON:** The proposed roof extension by reason of its design, excessive scale, bulk, height, massing and finishing materials is considered to form an overdominant and discordant development which would detract from the character and appearance of the of the host building and wider conservation area setting. The development would visually dominate the host building and would be readily visible from short and long views from the public realm along City Road. The proposed development is therefore considered contrary to policy CS9 of the Core Strategy 2011, policies DM2.1 & 2.3 of the Development Management Policies 2013, Conservation Guidance note 31, Islington's Urban Design Guide 2006 and the NPPF 2012.

**REASON:** The applicant has failed to provide adequate provision for affordable housing contrary to the Islington Affordable Housing Small Sites Contributions SPD. The council and the applicants have failed to come to any agreement that the full contribution is not viable and/or that instead a lesser contribution should be made. Therefore, the proposal is contrary to policies CS10 Part A and CS12 Part G of the Islington Core Strategy 2011, the Islington Affordable Housing Small Sites Contributions SPD, and Environmental Design SPD.

- 7.8 972047 Change of use of ground floor to Health Centre and associated alterations  
Granted 22 January 1998.
- 7.9 961576 Change of use of ground floor to retail units and first to fifth to 35 residential units (14 two bed flats and 21 one bed flats) Granted 19 September 1997.
- 7.10 841340 Retention of use of part of basement as an ale and port house serving hot food without complying with condition 02 of the permission of 15th June 1984 Granted 08 January 1985.
- 7.11 840049 Change of use of disused basement staff canteen to an ale and port house serving hot food Granted 15 June 1984.

#### **ENFORCEMENT:**

- 7.12 None related to the Part Basement Unit.

## **8. CONSULTATION**

### **Public Consultation**

- 8.1 Letters were sent to occupants of 636 adjoining and nearby properties on Paul Street, Cayton Street, Bath Street, City Road, and Lever Street, on 26 October 2023. A site notice and press advert were also displayed on 26 October 2023. The public consultation of the application therefore expired on 19 November 2023, however it is the Council's practice to continue to consider representations made up until the date of a decision.
- 8.2 At the time of writing this report a total of **14** responses had been received from the public with regard to the application. The issues raised can be summarised as follows (with the paragraph that provides responses to each issue indicated within brackets):
- Inappropriate location of venue (para.10.13)
  - Disturbance, Noise and Antisocial behaviour (paras. 10.14-10.29)
  - Noise from relocated air filtration units (para. 10.29)
  - Consultation letters not received by all residents (para. 10.32-10.34)
  - Issues with applicant's other venue (para. 10.32-10.34)
  - The planning statement has incorrect details of floor uses (para.10.34)

### **Internal Consultees**

- 8.3 **Public Protection Division (Noise Team)** The Acoustic Officer read all objections received. It was noted that the proposed change is 1 additional hour Monday to Thursday and 2 ½ hours on Saturday. It was advised that the premises licence for the previous operator here, the Bavarian Beerhouse, has permitted opening hours in line with this. It was further advised that there were previous complaints and a notice served upon the premises for noise from the extraction system back in 2018. There were extensive works to abate the nuisance and no complaints have been received since 2018.
- 8.4 It was advised to follow the guidance of the noise management plan to minimise noise impacts from patrons' access and egress and the complaints procedure. It was further advised that whoever is the operator should be aware of the limitations for music levels at the site. Overall, the EPPP team raised no objections to the proposed extension of operating hours.
- 8.5 **Public Protection Division (Licensing)** advised that the holder such as the landlord can remain the licence holder and appoint someone to run the venue on their behalf. Premises licenses are permanent, but the holder can consent to transfer to someone else at any point. However, if the layout plan has changed, the Licence would still be in place, but the licence holder may not be able to use it as it currently stands.
- 8.6 It was also noted that the only time a license can cease is when:
- Licence is Surrendered by the licence holder
  - Licence holder goes into a form of insolvency while technically the licence holder and no one takes the licence (consent at this point is not needed)
  - The Licence holder if a person becomes mentally incapacitated
  - Its revoked through a review and or through the court after an appeal

### **External Consultees**

- 8.7 **Metropolitan Crime Prevention** The Designing Out Crime Officer commented that in principle, the proposal does not appear to be contentious from a crime prevention perspective, with various measures proposed by the applicant in the noise impact assessment that will be taken to minimise any adverse impact.
- 8.8 It was also advised that the Metropolitan Police licencing department and local Safer Neighbourhood Team had also been contacted to ascertain if they have any comments in respect of the application. At the time of writing this report no further comments had been received.
- 9. RELEVANT STATUTORY DUTIES & DEVELOPMENT PLAN CONSIDERATION & POLICIES**
- 9.1 Islington Council (Planning Sub Committee), in determining the planning application has the following main statutory duties to perform:
- To have regard to the provisions of the development plan, so far as material to the application and to any other material considerations (Section 70 Town & Country Planning Act 1990).



- To determine the application in accordance with the development plan unless other material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004) (Note: that the relevant Development Plan is the London Plan and Islington's Local Plan, including adopted Supplementary Planning Guidance).
- 9.2 National Planning Policy Framework 2021 (NPPF): Paragraph 10 states: "at the heart of the NPPF is a presumption in favour of sustainable development.
- 9.3 The National Planning Policy Framework 2021 seeks to secure positive growth in a way that effectively balances economic, environmental, and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.
- 9.4 Since March 2014 Planning Practice Guidance for England has been published online.
- 9.5 In considering the planning application account has to be taken of the statutory and policy framework, the documentation accompanying the application, and views of both statutory and non-statutory consultees.
- 9.6 The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. These include:
- Article 1 of the First Protocol: Protection of property. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
  - Article 14: Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.
- 9.7 Members of the Planning Sub-Committee must be aware of the rights contained in the Convention (particularly those set out above) when making any Planning decisions. However, most Convention rights are not absolute and set out circumstances when an interference with a person's rights is permitted. Any interference with any of the rights contained in the Convention must be sanctioned by law and be aimed at pursuing a legitimate aim and must go no further than is necessary and be proportionate.
- 9.8 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of mindful of this duty inter alia when determining all planning applications. In particular, the Committee must pay due regard to the need to: (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.9 The Development Plan is comprised of the London Plan 2021, Islington Strategic and Development Management Policies (SDMP) 2023, Bunhill and Clerkenwell AAP 2023 and Site Allocations 2023. The policies of the Development Plan that are considered relevant to this application are listed at Appendix 2 to this report.

9.10 The SPGs and/or SPDs which are considered relevant are listed in Appendix 2.

### **Designations**

9.11 The site has the following designations under the Islington Strategic and Development Management Policies (SDMP) 2023:

- Moorfields Conservation Area
- Central Activity Zone
- Local cycle route
- Major cycle route
- Site within 100m of TLRN Road
- Rail Land Ownership – TfL Tunnels
- London Underground Zones of interest
- Heathrow Safeguarding Area
- Art4 - Withdraw Permitted Dev for c.E to c.MA
- APAs
- City Fringe Opportunity Area

## **10. ASSESSMENT**

10.1 The main issues arising from this proposal relate to:

- Land Use
- Neighbour Amenities

### **Scope of the Consideration of this Case Under Section 73 of the T&CPA**

10.2 Section 73 of the Town and Country Planning Act 1990 concerns 'Determination of applications to develop land without compliance with conditions previously attached.' It is colloquially known as 'varying' or 'amending' conditions. Section 73 applications also involve consideration of the conditions subject to which planning permission should be granted. Where an application under S73 is granted, the effect is the issue of a fresh grant of permission and the notice shall list all conditions pertaining to it. The application cannot be used to vary the time limit for implementation.

10.3 It is important to note that when assessing S73 applications the previously granted planning permission is a significant material consideration, which impacts heavily on the assessment of the proposal. If the original application has been implemented, or if the permission has not yet expired, the applicant may go ahead and complete the original approved scheme if they wish.

10.4 In this case, the applicant could develop the site in accordance with the 1985 permission, and this fall-back position is a material consideration to which significant weight must be given.

- 10.5 Alterations to planning policy and other material considerations since the original grant of planning permission are relevant and also need to be considered. However, these must be considered in light of the matters discussed in the previous paragraphs and the applicant's ability to complete the originally approved development.
- 10.6 A recent Court of Appeal decision (5 November 2019 - Case No: C1/2018/2922) which concerned the limits of the power under section 73 of the Town and Country Planning Act 1990 to grant planning permission for development without complying with conditions subject to which a previous planning permission was granted. This Court of Appeal decision rules (inter alia) that the alteration of a condition should not lead to a necessity to alter the application description and any such proposals that require the original description of development to be changed sits outside of the power conferred by section 73.
- 10.7 The proposed amendments to the original planning permission are not considered to result in the change to the description of the main application (841340) as the proposal remains essentially the same.

### **Land-use**

- 10.8 Policy R1 Part M states that *Islington has a varied night-time economy which the Council will seek to protect and enhance where appropriate.*
- 10.9 Policy R1 Part O states that *Pubs are part of Islington's social fabric, and they contribute positively to Islington's culture, character and economy. The loss of pubs will be resisted, and new pubs encouraged where appropriate.*
- 10.10 Policy R10 Part C, seeks to protect cultural uses and Part D stipulates that *Proposals for new night-time economy uses (including redevelopment/intensification of existing night-time economy uses) will only be acceptable within the CAZ or in Town Centres.*
- 10.11 Policy R11 (Public Houses) *The Council will resist the redevelopment, demolition, and Change of Use of any Public House.*
- 10.12 The current application relates to the basement unit which has a lawful use as a drinking establishment and this use would remain. It is stated that the proposed occupant of the premises is London Shuffle, a bar operator who specialises in establishments that provide table shuffleboard and lane shuffle, both of which involve sliding a disc along a surface to score points. This proposed operation of premises would be consistent with the extant permission for use of the premises as a drinking establishment. In addition, given the location of the unit within the CAZ, it is well served by safe, convenient, and sustainable night-time transport.
- 10.13 Concerns have been raised regarding the proposed venue being inappropriate within a residential building. The lawful planning use of the basement as a drinking establishment has already been established and land use is not being assessed under the current application. As noted above, this a Section 73 Application to vary Condition 2 of Planning Permission 841340 dated 15 June 1984 to amend the hours of operation. The application, therefore cannot be refused for land-use reasons or concerns as the land-use has lawful permission to operate.

## **Neighbouring Amenity**

### Licensing

- 10.14 There is currently an extant premises licence in place under the landlord's name Monopro Limited. The Council's Licensing Officer stated that the licence holders such as a landlord can remain as the licence holder and appoint someone to run the venue on their behalf. Premises licenses are permanent, but the holder can consent to transfer to someone else at any point, the new people just need to make an application accompanied with the consent they do not need to apply for a new licence.
- 10.15 However, if the layout plan has changed, the Licence would still be in place, but the licence holder may not be able to use it as it currently stands until a) the layout plans are updated either through a minor or full variation b) revert the premises back to how the licence had it, this is possible even if the premises were demolished.
- 10.16 In view of the above, an informative has been attached to the application advising that a license variation application may be required for the operation of the site and any alcohol sales.

### Late-Night Levy

- 10.17 All licensed premises in Islington authorised to sell alcohol between 00:01 and 06:00 hours have to pay an annual levy of between £299 and £4,400, depending on their rateable value and whether the premises are primarily or exclusively used to sell alcohol for consumption on the premises. The Council agreed with the Mayor's Police and Crime Commissioner that the proceeds of the levy will be used in Islington and that they will work together with the Metropolitan Police to devise a joint scheme for the use of the proceeds.
- 10.18 The current proposal resulting in the operation of hours extending to 01:30 (the following day) Friday and Saturday, would require that a Late-Night levy is paid along with the annual premises licence fee.

### Amenity

- 10.19 Policy PLAN1 Part B (i) of Islington's SDMP (2023) states that developments must be "contextual" and provide a good level of amenity with due consideration of noise and the impact of disturbance, hours of operation, vibration, pollution (such as air, light and noise), fumes between and within developments, overshadowing, overlooking, privacy, direct sunlight and daylight, over-dominance, sense of enclosure and outlook.
- 10.20 Policy DH5 (Agent-of-change, noise, and vibration) part D All development proposals which have the potential to cause or exacerbate unacceptable noise and vibration impacts on land uses and occupiers in the locality must fully assess such impacts, with reference to relevant noise thresholds set out in Appendix 2.
- 10.21 As noted above, the application is for an extension of the current conditioned opening hours 11.00 and 23.00 on any weekdays, and 12.00 to 22.30 on Sundays and Bank Holidays to 11:00 to 00:00 Monday to Thursday, Sunday, and Bank Holidays and 11:00 to 01:30 (the following day) Friday and Saturday. The premises at basement level would remain as a drinking establishment. It is also noted that the entrance is at ground floor onto City Road, where there is also the City Road Medical Centre at ground floor level with residential accommodation on the upper floors.

- 10.22 As previously noted, the proposed change is for 1 additional hour Monday to Thursday and 2 ½ hours on Saturday taking the hours of operation to 23.00 on any weekdays, and 22.30 on Sundays and Bank Holidays to 00:00 Monday to Thursday, Sunday, and Bank Holidays and 01:30 (the following day) Friday and Saturday, which is in line with the current premises licence at the site that applied to the previous operator, the Bavarian Beerhouse.
- 10.23 There were previous noise complaints and a notice served upon the premises for noise from the extraction system in 2018. The Council's Acoustic Officer advised that there were extensive works carried out to abate the nuisance and no complaints have been received since 2018. It is also noted that basement bar has doors at the entrance at ground floor and at the bottom of the staircase to form a lobby to reduce noise breakout.
- 10.24 The submission also includes a noise management plan with guidance on minimising disturbance, antisocial behaviour and noise impacts from patrons' access and egress as well as a compliant procedure. The management plan sets out that mitigation measures would involve responsibility for the management controls assumed by the manager, trained staff and event organisers. The external door to the premises will be kept closed during the evening, except when being used for immediate access and egress, in order to minimise noise break-out from the premises. Signs would be prominently displayed by the door and there would be polite notices from staff reminding patrons and smokers of the proximity of neighbours and encouraging them to keep their voices down. Taxis will be encouraged to turn off their engines while waiting and not sound their horns. A phone number and an email address will be provided to nearby residents to allow efficient notification of the premises if noise levels are causing a disturbance.
- 10.25 The mitigation measures noted above are set out to address noise sources identified in the noise report submitted with this application in relation to the proposed operation of the premises, namely noise from patrons outside the building smoking (shouting, laughing, etc.) and patrons leaving the bar throughout and at the end of the night, including taxis, thus mitigate impact on the residential amenity to neighbouring properties. A condition has been attached to the application (Condition 4) to follow the guidance contained within the noise management plan.
- 10.26 Previous premises had a sound limiter fitted which was calibrated at 85.2dBA in the main bar area (along with settings for linear sound levels and low frequency bands at 63 and 125Hz), set for where *"music played from within the venue spaces was barely audible at the listening position, and would therefore be considered inaudible within the residences of the closest noise sensitive receivers."* The submitted noise report notes that the proposed operator is London Shuffle and that the *"operator only intends to have background, ambient music in the premises, with no loud or live music."* Due to its ambient nature, the music would be inaudible outside the premises and would not have enough energy to transmit between floors up the building. A further condition has been attached to the application (Condition 5) stipulating that no music or other amplified noise arising from the operation of the part basement unit shall be audible outside the premises, nor transmit between floors up the building and for a sound limiter to be fitted. In view of this the Council's EPPP Team have no objections to the proposed change of hours. This is also taking into account that there is currently a premises licence with a number of related licensing management controls on the license holder.

- 10.27 The Designing Out Crime Officer also did not raise any objection. It is stated that in principle, the proposal does not appear to be contentious from a crime prevention perspective, with various measures proposed by the applicant in the noise impact assessment that will be taken to minimise any adverse impact. It was also advised that the Metropolitan Police licencing department and local Safer Neighbourhood Team had also been contacted to ascertain if they have any comments in respect of the application. At the time of writing this report no further comments had been received.
- 10.28 Given the above assessment and subject to the recommended conditions, it is considered that there would not be unacceptable harm to neighbouring occupiers, and it is considered that the proposal would comply with Policy D14 of the London 2021 and Policies Plan PLAN1 and DH5 of the Islington Strategic Development Management Policies (2023).
- 10.29 Further concerns raised to noise from relocated air filtration units require to be passed on EPPP Team to investigate further.

### **Sustainability**

- 10.30 It is noted that the council has adopted the Strategic and Development Management Policies (SDMP) (2023) in the time since the current application was first submitted. Policy S2 of the SDMP requires all development proposals to submit a Sustainable Design and Construction Statement which must demonstrate that the proposal meets all relevant sustainable design policies. The Sustainability Policies also require the level of detail within the Sustainable Design and Construction Statement to be proportionate and relate to scope and scale of the development.
- 10.31 The applicant has not submitted a Sustainable Design and Construction Statement as a part of the submission documents. However, no physical works are proposed, the proposal is only to increase hours of operation by 1 extra hour Monday to Thursday and 2 ½ hours on Saturday of an extant permission. In view of this and the fact that the extant permission predates the adoption of the Islington's Strategic and Development Management Policies 2023 and it is not considered to be proportionate to the scale of this development to require the submission of a SDCS retrospectively, in this instance.

### **Other Matters**

- 10.32 Concerns have been raised in representations regarding consultation letters not having been received by all residents. The Council's records show that the consultation letters were sent to all relevant neighbouring and adjoining properties. In addition, site and press notices were also displayed.
- 10.33 The concerns raised in representations regarding the issues with the applicant's other venue in a different location are not a material planning consideration.
- 10.34 It is highlighted in a representation that the submitted Planning Statement incorrectly states that the NHS medical centre is on the ground and first floors and that the residential units are situated from the second floor upwards. The Council acknowledges this inaccuracy in the Planning Statement. However, it is noted that in the noise impact assessment report the site description correctly states that above the premises is an NHS medical centre at ground floor level, with apartments from first floor level upwards. The Council is satisfied that the Noise Assessment was carried



out accurately on this basis. The above assessment is also based on the correct uses and neighbouring context.

## 11. SUMMARY AND CONCLUSION

- 11.1 The proposal is considered acceptable subject to suitable conditions as set out in Appendix 2 and it is recommended that the application be approved.
- 11.2 Whilst the residents' concerns relating to disturbance, noise and antisocial behaviour are acknowledged, the proposed change of the hours of operation is by 1 extra hour Monday to Thursday and 2 ½ hours on Saturday and the EPPP TEAM have no objections. This is also taking into account that there is currently a premises licence with a number of related licensing management controls on the license holder.
- 11.3 Overall, the proposal is considered acceptable, subject to conditions relating the limitations for music levels at this site and stipulation to follow the noise management plan as set out in Appendix 2, the proposal would not prejudice the residential amenity of the neighbouring amenity and would comply with Policy D14 of the London 2021 and Policies Plan PLAN1 and DH5 of the Islington Strategic Development Management Policies (2023).
- 11.4 Given the above assessment, it is recommended that the S73 application be approved.

## APPENDIX 1

### RECOMMENDATION A

That the grant of planning permission be subject to **conditions** to secure the following, and that there is delegated to each of the following: the Head of Development Management the Team Leader Major Applications and the Team Leader Planning Applications to make minor changes (additions removals or amendments) to the conditions:

#### List of Conditions:

<b>1</b>	<b>COMMENCEMENT (3 YEAR CONSENT PERIOD)</b>
	<p>CONDITION: The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.</p> <p>REASON: To comply with the provisions of Section 91(1) (a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 (Chapter 5).</p>
<b>2</b>	<b>APPROVED PLANS LIST (COMPLIANCE)</b>
	<p>CONDITION: The development hereby approved shall be carried out in accordance with the following approved plans:</p> <p>Block Plan – BP01, PL12223-01Rev.A, Planning Statement dated September 2023, Noise Impact Assessment (Venta Acoustics) dated 25 September 2023.</p> <p>REASON: To comply with Section 70(1) (a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.</p>

<b>3</b>	<b>HOURS OF OPERATION (COMPLIANCE)</b>
	<p>CONDITION: The unit shall not operate outside the hours of:</p> <p>11:00 to 00:00 Monday to Thursday, Sunday, and Bank Holidays and 11:00 to 01:30 (the following day) Friday and Saturday.</p> <p>REASON: To ensure that the proposed development does not have an adverse impact on neighbouring residential amenity.</p>
<b>4</b>	<b>OPERATIONAL MANAGEMENT PLAN (COMPLIANCE)</b>
	<p>CONDITION: The part basement unit shall be managed and operated in accordance with details as described in the Noise Management Plan within the Noise Impact Assessment Report dated 25 September 2023 hereby approved and maintained as such thereafter into perpetuity.</p> <p>REASON: To ensure that the operation of the development does not impact on residential amenity.</p>
<b>5</b>	<b>AMPLIFIED NOISE (COMPLIANCE)</b>
	<p>CONDITION: No music or other amplified noise arising from the operation of the part basement unit shall be audible outside the premises, nor transmit between floors up the building. A sound limiter shall be fitted calibrated at 85.2dBA in the main bar area (along with settings for linear sound levels and low frequency bands at 63 and 125Hz) and maintained as such thereafter into perpetuity.</p> <p>REASON: To ensure that the operation of the development does not impact on residential amenity.</p>

**List of Informatives:**

1	INFORMATIVE: You are reminded of the need to comply with legislation outside the realms of the planning legislation including Building Regulations, Environmental Regulations (including noise and litter), Inclusive Design etc.
2	INFORMATIVE: You are reminded that a license variation application may be required for the operation of the site and any alcohol sales.

## **APPENDIX 2: RELEVANT DEVELOPMENT PLAN POLICIES AND GUIDANCE**

This appendix lists all relevant development plan policies and guidance notes pertinent to the determination of this planning application.

### **1 National Guidance**

#### **National and Regional Guidance**

The National Planning Policy Framework 2021 seeks to secure positive growth in a way that effectively balances economic, environmental, and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of these proposals.

- NPPF (2021)

### **2. Development Plan**

The Development Plan is comprised of the London Plan 2021, Islington Strategic and Development Management Policies (SDMP) 2023, Bunhill and Clerkenwell AAP 2023 and Site Allocations 2023. The following policies of the Development Plan are considered relevant to this application:

#### **A) The London Plan (2021) - Spatial Development Strategy for Greater London** Policy D14 (Noise)

#### **B) Islington's Strategic and Development Management Policies (SDMP) (2023)**

- Policy PLAN1 (Site appraisal, design principles and process)
- Policy SP1 (Bunhill and Clerkenwell)
- Policy R1 (Retail, leisure, and services, culture, and visitor accommodation)
- Policy R10 (Culture and the Night-Time Economy)
- Policy R11 (Public Houses)
- Policy DH5 (Agent-of-change, noise, and vibration)
- Policy S1 (Delivering sustainable design)
- Policy S2 (Sustainable design and construction)

#### **Islington Local Plan Bunhill and Clerkenwell Area Action Plan (2023)**

- Policy BC2: Culture, retail and leisure uses
- Policy BC3: City Fringe Opportunity Area

#### **Supplementary Planning Guidance (SPG) / Document (SPD)**

The following SPGs and/or SPDs are relevant:

None