

Whiteleys Shopping Centre, Bayswater

in the City of Westminster

planning application no: 15/10072/FULL

Strategic planning application stage II referral

Town & Country Planning Act 1990 (as amended); Greater London Authority Acts 1999 and 2007; Town & Country Planning (Mayor of London) Order 2008.

The proposal

Demolition of and redevelopment of building behind retained and refurbished facades to Queensway and Porchester Gardens facades to provide a mixed use development comprising three basement levels, ground floor and up to 10 upper floor levels, containing 103 residential units (Class C3), retail floorspace (Class A1 and A3) facing Queensway and arranged around a new retail arcade below re-provided central atrium and central retail courtyard, public car park, hotel (Class C1), cinema (Class D2), gym (Class D2), crèche (Class D1), with associated landscaping and public realm improvements, provision of 103 basement residential parking spaces, cycle parking and associated basement level plant and servicing provision.

The applicant

The applicant is **Queens Road W2 Limited**, and the architect is **Foster & Partners**.

Strategic issues

Issues with respect to **affordable housing, play space, urban design, flood risk, climate change mitigation, air quality** and **transport** have been satisfactory addressed since Stage One. In response to direct representations to the Mayor, the **heritage** issues have been considered further. The principle of a residential-led mixed use development is acceptable in strategic planning terms.

The Council's decision

In this instance, Westminster City Council has resolved to grant permission, subject to conditions and completion of a Section 106 agreement.

Recommendation

That Westminster City Council be advised that the Mayor is content for it to determine the case itself, subject to any action that the Secretary of State may take, and does not therefore wish to direct refusal or direct that he is to be the local planning authority.

Context

1 On 26 November 2015 the Mayor of London received documents from Westminster City Council notifying him of a planning application of potential strategic importance to develop the

above sites for the above uses. These were referred to the Mayor under the followings categories of the Schedule to the Order 2008:

- 1B(c)- Development which comprises or includes the erection of a building outside Central London and with a total floorspace of more than 15,000 square metres;
- 1C(c) - Development which comprises the erection of a building that is more than 30 metres high and is outside the City of London.

2 On 6 January 2016 the Mayor considered planning report D&P/3649/ 01, and subsequently advised Westminster City Council that the application was broadly supported but aspects of the application did not comply with the London Plan, for the reasons set out in paragraph 61 of the above-mentioned report; but that the resolution of outstanding issues could lead to the application becoming compliant with the London Plan.

3 A copy of the above-mentioned report is attached. The essentials of the case with regard to the proposal, the site, case history, strategic planning issues and relevant policies and guidance are as set out therein, unless otherwise stated in this report. Since then, the application has been revised in response to the Mayor's concerns (see below). On 29 March 2016, Westminster City Council decided that it was minded to grant planning permission, subject to conditions and completion of a Section 106 agreement, and on 5 April 2016 it advised the Mayor of this decision. Under the provisions of Article 5 of the Town & Country Planning (Mayor of London) Order 2008 the Mayor may allow the draft decision to proceed unchanged, direct Westminster City Council under Article 6 to refuse the application or issue a direction to Westminster City Council under Article 7 that he is to act as the Local Planning Authority for the purposes of determining the application, and any connected application. The Mayor has until 19 April 2016 to notify the Council of his decision and to issue any direction.

4 The decision on this case and the reasons will be made available on the GLA's website www.london.gov.uk.

Update

5 At the consultation stage Westminster City Council were advised that whilst the principle of residential-led mixed-use redevelopment of the site was supported, the following strategic concerns were raised:

- **Affordable Housing:** the lack of an affordable housing contribution is a concern and it is not possible at this stage to determine whether this would render the scheme unviable, and address London Plan Policy 3.12.
- **Play space:** the applicant should provide more detail to explain how local play areas will meet the demands of different age groups associated with the development and pay a financial contribution towards upgrades, in order to satisfy London Plan Policy 3.6.
- **Urban design:** the applicant and the Council should ensure that the pedestrian environment on Redan Place is safe and inclusive, and the Council should also secure high quality detailing and materials by condition, to ensure compliance with London Plan Policies 7.5 and 7.6.
- **Flood risk:** the applicant should provide further information in relation to flood risk and surface water drainage, in order to satisfy London Plan Policies 5.12 and 5.13.
- **Climate change mitigation:** the energy strategy does not accord with London Plan policies 5.2, 5.6 and 5.7. Further information is required regarding the energy centre, heat network and biofuel system.

- **Air Quality:** the applicant should provide further information to address the queries raised in respect of air quality and the Council should secure mitigation measures by condition, in order to satisfy London Plan Policy 7.14.
- **Transport:** to ensure compliance with London Plan policies 6.1, 6.4, 6.5, 6.7, 6.9 and 6.13 the applicant is requested to reduce parking provision for the residential element of the scheme, with car parking management and electric vehicle charging points to be secured by condition. Cycle facilities should be provided in accordance with London Plan standards and a contribution should be paid towards increasing local cycle hire capacity. Further financial contributions should be secured towards bus stop upgrades and Crossrail. The City Council should impose conditions to secure delivery and servicing plan and construction logistics plan. Furthermore, S106 obligations are required to secure a permit free scheme and a travel plan.

6 Since then, the applicant has responded to a number of the matters raised in the Stage One report as set out below. It should also be noted that the applicant has sought to respond to local concerns with regards to design and heritage issues, including providing further information on material and treatment detailing and amending height and massing. The number of residential parking spaces has also been reduced from 146 to 103. Modifying conditions were imposed at Committee to reduce the two rear towers by two storeys and reduce the height of the front roof extensions above the retained facades by 1.5 metres. The City Council consider that the losses of daylight and sunlight and the increased sense of enclosure to a number of residents at the rear in Kensington Gardens Square, Redan Place and Porchester Gardens are acceptable, on balance.

Affordable Housing

7 At Stage One, no affordable housing offer was being made, with the applicant's viability assessment demonstrating that it would not be viable to provide any affordable housing either on-site or off-site. This has subsequently been reviewed by the Council's independent consultants and an index-linked affordable housing contribution of £6 million is to be secured within the section 106 legal agreement. It should be noted that the applicant had offered an alternative of 6 intermediate units to be delivered on-site (4x1-bed and 2x2-bed units) in lieu of 3 of the proposed townhouses. Members and officers agreed that a greater quantity of affordable housing could be provided elsewhere within the City with the affordable housing contribution than the 6 units being offered on-site. GLA officers would concur with this assessment.

Play space

8 The development would give rise to a child play space requirement of 179 sq.m. It was accepted by GLA officers that it would be very difficult to incorporate play space within the scheme and it would be somewhat undesirable to include this within the proposed retail courtyard, which could give rise to accessibility issues and safety concerns. At Stage One, the applicant identified a number of other facilities within the local area. The Council has secured a financial contribution of £100,000 (index linked) towards improvements to play space in the vicinity of the development. London Plan Policy 3.6 is considered to be satisfied.

Urban design

9 At Stage One, the design and layout was broadly supported but concern was raised in terms of the proposed pedestrian environment at Redan Place and potential safety issues with residential garages for the proposed townhouses and the collection/drop-off arrangements for the proposed hotel. These garages have now been removed and the parking relocated to the proposed

basement. The applicant has also confirmed the collection/drop-off arrangements for the hotel, and added a secondary collection/drop-off point for the hotel within the basement. GLA officers consider these changes will ensure a better and safer environment for pedestrians in Redan Place.

10 Taking in the above changes, the post-submission amendments to the scheme in response to the comments from both the GLA, City Council and other stakeholders, the further information on materials and detailing presented, and the proposed modifying conditions to further reduce the two rear towers by two storeys and reducing the height of the front roof extensions above the retained façade by 1.5metres, GLA officers consider the proposals to be acceptable and much-improved.

Flood risk

11 Whilst the site is within Flood Zone 1, concern was raised at Stage One in relation to the significant risk of surface water flooding on parts of the site. Consequently, the applicant was asked to commit to a range of floor risk measures. The applicant has responded positively and committed to a range of measures including raising electrical equipment to 1m above finished floor levels within the basement, locating vulnerable basement uses within flood proof enclosures and installing a pumping system within the basement. The approaches are considered to be an acceptable approach to the flood risk present and meet the requirements of London Plan Policy 5.12.

12 As confirmed at Stage One, the surface water drainage proposals meet London Plan Policy 5.13. The applicant will consider incorporate blue roof technology as the design is developed.

Climate change mitigation

13 Further to the comments at Stage One, the applicant has confirmed that all building uses will be connected to a single energy centre, as well as the size and location of the energy centre. The applicant has also provided the further details requested on the biofuel for the CHP.

14 The proposals now meet London Plan Policy 5.2.

Air quality

15 In response to the queries raised at Stage One on air quality, the applicant has provided supplementary information on air quality information including an assessment of NRMM emission and a Transport Air Quality Neutral Assessment. The applicant has also confirmed that mechanical ventilation units will be used for the proposed residential units facing Queensway as an air quality mitigation measure.

16 The proposals are considered to comply with London Plan Policy 7.15

Transport for London's comments

17 At Stage 1 Transport for London (TfL) asked that various London Plan policy issues be addressed.

18 The agreed conditions secure, as requested, a Travel Plan, Construction Logistics Plan, and Service Management Plan. Cycle parking is secured in accordance with London Plan standards and policy compliant blue badge parking and electric vehicle charge points have also been secured by condition. There is an overall reduction in car parking, from 146 spaces to 103 spaces, which is welcomed by TfL.

19 As also requested the Section 106 Heads of Terms (S106) provides funding to Crossrail in the order of £1,814,150 and £6,000,000 towards public realm improvements to Queensway. However TfL's request for £100,000 to extend an existing Cycle Hire docking station was refused by Westminster despite the fact that docking stations are already under extreme pressure at peak times in the area generally. Also TfL's request for £30,000 for bus stop improvements was also refused.

20 Whilst it is disappointing that TfL's Cycle Hire and bus stop improvement contribution request has been refused, on balance it is not considered that this is sufficient reason alone to recommend to the Mayor that he directs refusal given the other contributions the scheme would make to active transport notably long stay and short stay cycle parking in accordance with London Plan standards and a financial contribution to improve the public realm along Queensway.

Response to consultation

21 The Council notified local amenity groups, together with 1,376 letters of notification to surrounding residents and businesses in November 2015. There were 96 initial objections received, plus 3 letters of support. Additionally there were two online petitions to the proposals i) 'Save Whiteleys Heritage' with 620 supporters and ii) 'Get the Development of Whiteleys Right' with 618 signatures at the time of the Planning Officer's written report to Committee.

22 A second consultation was undertaken following the aforementioned amendments to the scheme, with 50 responses including local councillors and Karen Buck, MP for Regents Park and Kensington North. There were also a number of late representations ahead of Committee.

23 Responses from Statutory Bodies

- **Historic England (HE):** No explicit objection – *advise that the significance of the listed building is primarily derived from the architectural quality of its external elevations and the buildings pivotal role within the townscape. Nevertheless they consider the surviving atria, domes and staircase to also make a clear contribution to its special interest and the interventions and roof additions proposed would be considered harmful, albeit to a degree considered less than substantial. HE also consider this be the case in terms of the impact upon the special character and appearance of the Queensway Conservation Area, and consider the impact could be lessened through a reduction in the scale of the roof and a greater degree of setback from the cupola.*

HE advises that, in line with paragraph 134 of the NPPF that where harm is identified, this should be weighed against the public benefits of the proposal including securing the assets optimum viable use. The applicant's heritage statement suggests the proposals are necessary to secure a vibrant and sustainable future for Whiteleys and also to secure the long term conservation of the retained elements of heritage significance. HE do not consider it has been clearly demonstrated that an alternative viable scheme (one which would result in less harm to the special interest of the listed building could not be achieved).

HE recognise that there will be some direct heritage benefits in terms of the general repair and restoration of the historic elevations (including the windows). The applicant also proposes that the scheme will deliver considerable public benefits and the activation of Queensway and Redan Place.

HE advise the Council, as decision maker, they must be clearly convinced that the proposals are necessary and must also determine whether the wider public benefits put forward by the applicant outweigh the harm caused to the heritage assets.

- **Historic England (Archaeology):** No objection - *Conclude that the proposal is unlikely to have significant effect on heritage assets of archaeological interest and no further assessment or conditions are necessary.*
- **Thames Water:** No objection, subject to conditions - *Identified an inability of the existing wastewater infrastructure to accommodate the needs of this application and request a Grampian style condition to ensure that no development is commenced until a detailed drainage strategy has been submitted to and approved by the Council in consultation with Thames Water .Prefer all surface water is disposed on site using SUD's as per the London Plan. Also suggest no piling takes place until a piling method statement has been submitted and approved .The applicant needs to address what measures will be taken to minimise groundwater discharges into the public sewer.*

24 Responses from non-statutory bodies

- **The Victorian Society:** Object on the grounds of the substantial and unjustified harm it would cause to the listed building and deleterious impact it would have on the Queensway Conservation Area.
- **The Twentieth Century Society:** Object on the grounds of the substantial harm to the Grade II Listed building. Endorse the Victorian Society's position.
- **Ancient Monument Society (AMS):** Object on the grounds of the substantial harm to the Grade II Listed building. Endorse the Victorian Society's position.
- **SAVE Britain's Heritage:** Object on the grounds of the harm to the listed building and the Queensway Conservation Area. Endorse the Victorian Society's position.
- **South East Bayswater Residents Association (SEBRA):** Objections on the grounds of the harm to the listed building and Conservation Areas. Object to the bulk and height of the proposed development and the ensuing impact upon amenity including daylight/sunlight, overlooking and sense of enclosure. Object to the level of affordable housing. Numerous other comments relating to quantity of restaurants, servicing, car parking, absence of public toilets and construction management.
- **Bayswater Residents Association:** Objections on the grounds of the harm to the listed building and Conservation Areas. Object to the bulk and height of the proposed development and the ensuing impact upon amenity including daylight/sunlight, overlooking and sense of enclosure. Object to the level of affordable housing. Numerous other comments relating to quantity of restaurants, servicing, car parking, absence of public toilets and construction management.
- **Queensway Residents Association:** Object, and support the comments made by SEBRA.
- **Save Whiteleys Heritage:** Object to the impact on the Grade II Listed building and the removal and relocation of various heritage features. Cite the views of the other heritage bodies and groups which have objected to the application. Proposed alternatives to the proposed scheme to retain features and public access to the features.
- **Get Whiteleys Right:** Objections on behalf of 120 residents including the submission of a daylight and sunlight report. Object to the height/bulk/mass of the proposals and the ensuing amenity impact in terms of privacy and light. Object to the impact on the Grade II Listed building. Object to the impact on the Queensway Conservation Area and Bayswater

Conservation Area. Object to the affordable housing offer. Question the public benefit arising from the proposals.

25 Responses from individuals and resident groups

In summary, objections have been made on the following grounds:

- Impact on the Grade II Listed building
- Overdevelopment of the site
- Height/bulk/mass of the proposed development
- Lack of affordable housing
- Loss of existing retail
- Loss of car parking
- Loss of employment
- Impact on daylight/sunlight for adjoining neighbours
- Overlooking to adjoining properties
- Impact of the basement construction
- Construction traffic and disturbance

26 GLA officers would highlight that a number of these matters were raised in the initial consultation and have subsequently been addressed by the applicant and through the proposed conditions, as detailed in paragraph 6.

Representations to the Mayor

27 An objection and request for Mayoral Call-in dated 4th April 2016 has been received from Carl Montgomery on behalf of 'Save Whiteleys Heritage' enclosing a petition to the Mayor, heritage report, photographs, an interpretative summary of the 'Historical England' response to Westminster City Council, plus duplicate copies of representations from The Victorian Society, The Twentieth Century Society, SAVE Britain's Heritage and The Victorian Society which were made to Westminster City Council.

28 The focus of the objection are the impacts of the proposal on the Grade II Listed building including the loss of historical/architectural features and the loss of public access to view these features.

29 Requests for a Mayoral Call-in have also been made by Councillor Adam Hug (Westbourne Ward and Leader of Westminster Labour Group, Westminster City Council) and Karen Buck MP for Regents Park and Kensington North, in emails dated 10th April 2016 and 11th April 2016 respectively.

30 In response to the comments raised by various parties, including 'Save Whiteleys Heritage', GLA officers feel it important to advise the Mayor on their position with regards to the heritage issues raised.

Officer assessment of the heritage issues

31 The application scheme reviewed at Stage One had been the subject of extensive pre-application discussions and the scale and massing had been reduced and refined in response to comments made by Westminster City Council, Historic England and GLA officers. The majority of comments received over the course of the application concern the loss of the octagonal dome within the central atrium and the relocation of original features, including a staircase.

32 The further revised scheme represents a significant improvement on the previous design and in the GLA's view, satisfactorily addresses officer concerns raised regarding the relationship between the proposed two new uppermost storeys and the retained Queensway façade, reducing their height and them setting back from the refurbished cupola, also benefiting the restored central dome and the overall silhouette of this historic landmark. The modifications to the design of the central entrance on Queensway also go some way in retaining more historic fabric and a more classical approach to the design of the shopping arcade below the atrium should ensure a more satisfactory resolution of this part of the scheme. The additional information on detailed building materials and architectural specifications such as the refurbishment or where necessary, scholarly replication, of historic fenestration, new brickwork and other details is welcomed.

33 The applicants have also responded to the issue of the loss of the surviving octagonal glass dome (originally designed to be one of a pair) – GLA officers consider that the removal of this heritage feature is regrettable, but would not cause substantial harm to the listed building. The relocation of the principle staircase and vestibule screen from their existing positions to the side of the development is also regrettable but on balance it is accepted that given the reordering of the layout and uses within the building, this is an acceptable solution which will retain these important features within the development and allow them to be appreciated by guests and visitors to the new hotel for generations to come.

34 In summary, GLA officers consider that the revisions to the scheme are welcome improvements to the proposed redevelopment and on balance the reworking of the uses within the site and the modifications to the layout and the fabric of the surviving historic elements of the former department store (including the restoration of many of these features) should preserve both the special interest of the surviving parts of the Whiteleys store, the character and appearance of the Queensway Conservation Area and the settings of the adjacent Bayswater and Westbourne conservation areas. The proposal is considered therefore to accord with the requirements of policy 7.8 contained within the London Plan, notwithstanding some harm to the significance of the Grade II listed building, namely the loss of the octagonal dome and the relocation of the central entrance screen and double staircase from the Queensway frontage to the new hotel wing.

35 Sections 66 and 72 of the Planning (Conservation Areas and Listed Buildings) Act 1990 requires the decision maker to have "special regard" to the desirability of preserving the listed building or its setting, and pay "special attention" to the desirability of preserving or enhancing the character or appearance of the conservation area. The NPPF also states that substantial harm to listed buildings should be exceptional, and where less than substantial harm will be caused, the harm should be weighed against the public benefits of the proposal.

36 Both Westminster City Council and Historic England consider the development would cause less than substantial harm to the Queensway Conservation Area. Having paid special attention to the desirability of preserving or enhancing the character or appearance of the Queensway Conservation Area and giving the harm identified considerable importance and weight, Westminster City Council consider that this harm is outweighed by the public and regeneration benefits of the scheme.

37 Likewise both Westminster City Council and Historic England conclude the development would cause less than substantial harm to the listed building. Having had special regard to the desirability of preserving listed buildings or their setting and giving the harm identified considerable importance and weight, Westminster City Council consider that this harm is outweighed by the public and regeneration benefits of the scheme.

38 In assessing the proposals, GLA officers conclude that despite the strong presumption against granting planning permission and listed building consent, the harm identified, namely the loss of the octagonal dome and the relocation of the central entrance screen and double staircase from the Queensway frontage to the new hotel wing, would be less than substantial and would be outweighed by the public and regeneration benefits of the scheme, namely the contributions secured towards public realm improvements on Queensway, contributions to affordable housing and the repair and restoration of the historic facade.

Draft Section 106 agreement

39 The following are included within the Heads of Terms for the draft Section 106 agreement:

- £6,000,000 financial contribution towards public realm improvements to Queensway.
- £6,000,000 affordable housing contribution
- Cost of the highway works including Stopping Up Orders
- £1,814,150 Crossrail CIL contribution
- £100,000 financial contribution towards play space improvements in the vicinity
- Site Environmental Management Plan plus Environmental monitoring costs of £40,000 per annum during demolition and construction
- £740,000 towards a rolling programme of public art (and maintenance)
- Employment, training and skills
- Management and parking strategies.
- S106 monitoring costs.

Article 7: Direction that the Mayor is to be the local planning authority

40 Under Article 7 of the Order the Mayor could take over this application provided the policy tests set out in that Article are met. In this instance the Council has resolved to grant permission with conditions and a planning obligation, which satisfactorily addresses the matters raised at stage 1, therefore there is no sound planning reason for the Mayor to take over this application.

Legal considerations

41 Under the arrangements set out in Article 5 of the Town and Country Planning (Mayor of London) Order 2008 the Mayor has the power under Article 6 to direct the local planning authority to refuse permission for a planning application referred to him under Article 4 of the Order. He also has the power to issue a direction under Article 7 that he is to act as the local planning authority for the purpose of determining the application and any connected application. The Mayor may also leave the decision to the local authority. In directing refusal the Mayor must have regard to the matters set out in Article 6(2) of the Order, including the principal purposes of the Greater London Authority, the effect on health and sustainable development, national policies and international obligations, regional planning guidance, and the use of the River Thames. The Mayor may direct refusal if he considers that to grant permission would be contrary to good strategic

planning in Greater London. If he decides to direct refusal, the Mayor must set out his reasons, and the local planning authority must issue these with the refusal notice. If the Mayor decides to direct that he is to be the local planning authority, he must have regard to the matters set out in Article 7(3) and set out his reasons in the direction.

Financial considerations

42 Should the Mayor direct refusal, he would be the principal party at any subsequent appeal hearing or public inquiry. Government Planning Practice Guidance emphasises that parties usually pay their own expenses arising from an appeal.

43 Following an inquiry caused by a direction to refuse, costs may be awarded against the Mayor if he has either directed refusal unreasonably; handled a referral from a planning authority unreasonably; or behaved unreasonably during the appeal. A major factor in deciding whether the Mayor has acted unreasonably will be the extent to which he has taken account of established planning policy.

44 Should the Mayor take over the application he would be responsible for holding a representation hearing and negotiating any planning obligation. He would also be responsible for determining any reserved matters applications (unless he directs the council to do so) and determining any approval of details (unless the council agrees to do so).

Conclusion

45 The principle of a residential-led mixed use development is supported. The issues raised at consultation stage regarding affordable housing, play space, urban design, flood risk, climate change, air quality, parking and transport have been addressed. The proposals are considered to be acceptable in strategic planning terms.

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