

77-79 Jermyn Street and 34-36 Duke Street**in the City of Westminster****planning application no. 15/07661/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

Complete demolition of 77-79 Jermyn Street and 34-36 Duke Street and erection of a new seven storey retail (Use Class A1 and A3) and office (Use Class B1) building with additional basement levels and roof top plant.

The applicant

The applicant is **The Crown Estate** and the agent is **CBRE**. The architect is **John McAslan + Partners**.

Strategic issues

The office-led mixed use redevelopment of the site within the **Central Activities Zone** is in accordance with strategic policy objectives. Outstanding strategic planning issues relating to **the principle of development, urban design and climate change** have been satisfactorily addressed. With the exception of the non provision of Blue Badge parking on site, the application scheme is in general accordance with the transport policies of the London Plan

Westminster City Council has secured S106 agreement clauses and decision notice conditions to ensure the proposal complies with London Plan policies.

The Council's decision

In this instance the City of Westminster has resolved to grant permission.

Recommendation

That the City of Westminster 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 31 August 2015, the Mayor of London received documents from the City of Westminster notifying him of a planning application of potential strategic importance to develop

the above site for the above uses. This was referred to the Mayor under Category 1C of the Schedule to the Order 2008:

Category 1C

1. Development which comprises or includes the erection of a building (c) that is more than 30 metres high and is outside the City of London.

2 On 8 October 2015, the Mayor considered planning report D&P/3635/01, and subsequently advised the City of Westminster that while the application was generally acceptable in strategic planning terms, the application did not comply with the London Plan, for the reasons set out in paragraph 51 of that report but that the possible remedies set out in the same paragraph could address these deficiencies.

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. On 26 January 2016, the City of Westminster followed the Council officers' recommendations to approve the scheme and resolved to grant planning permission for the application. On 18 March 2016, the Council 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 the Council under Article 6 to refuse the application or issue or 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 has until 31 March 2016 to notify the Council of his decision and to issue any direction.

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

Update

5 At consultation stage the City of Westminster was advised that the principle of the office-led mixed use redevelopment of the site was in general accordance with strategic planning policy and was supported. However, the proposal raised a number of strategic planning issues that needed to be solved to comply with the London Plan. These issues are detailed below:

Mixed use development in CAZ

6 The proposed development generates a total uplift of 1,647 sq.m. of office floorspace or 1,618 sq.m. of commercial floorspace, requiring the provision of an equivalent amount of housing on site or nearby to address strategic and local mixed use policy in the Central Activities Zone.

7 At consultation stage, the applicant's justification for not providing any residential accommodation on site not to undermine the delivery of modern office floorspace was accepted by GLA officers. In return, the applicant proposed to provide 980 sq.m. of residential floorspace at 33 Bury Street, in the immediate vicinity of the site, and a payment in lieu of £1.46 million to meet the shortfall in residential floorspace. This was also accepted by GLA officers subject to the satisfaction of the Council and the offer being secured through the Council's Section 106 agreement.

8 The Council's S106 draft legal agreement confirms that a payment in lieu equating to £1.46 million towards the Council's Affordable Housing Fund has been secured, in addition to

the provision of 980 sq.m. of residential floorspace to be made ready for occupation at 33 Bury Street prior to the occupation of any part of the development.

Urban design

9 The proposal involves the demolition of 77-79 Jermyn Street and 34-36 Duke Street buildings which lie within the St James's Conservation Area and are in the setting of Grade II listed buildings.

10 Section 72 of the Planning (Conservation Areas and Listed Buildings) Act 1990 establishes a duty for decision makers to give special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. The National Planning Policy Framework (NPPF) states that great weight is to be given to the conservation of heritage assets and that any harm or loss should require clear and convincing justification. It further clarifies in paragraph 134 that *"where a development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."*

11 At consultation stage, the loss of the buildings on site did not raise any strategic concerns. However, it was noted that nos. 34-36 Duke Street presented a degree of architectural and historic merit, largely limited to the building's facade, which the applicant advised had been rebuilt/alterd following bomb damage. The Council's planning committee report has clarified that the frontage of nos. 34-36 Duke Street is a largely intact, mid-Victorian facade with proportions, architectural detail and materiality typical of other developments in St James of the 19th century and reflects the historic plot widths of the area. The ground floor shop fronts are a later replacement but have some interest. As such, it is the view of Council officers that the Duke Street Victorian buildings make a positive contribution to the character and appearance of the conservation area, rather than a neutral contribution as set out in the Council's Conservation Area Audit. However, given the contribution of the buildings to the conservation area and the size and nature of the conservation area as a whole, the Council considers that the loss of this facade would constitute less than substantial harm.

12 Historic England further advises in their representation to the Council that given that some elements of the elevations of the buildings have been altered/or repaired, the existing buildings at nos 34-36 Duke Street make a contribution, which is positive but modest within the wider context of the conservation area. While it recognises that the proposed replacement elevations are not without some merit and go some way towards recognising their historical context, this neither equals or surpasses the contribution to the historic character which is made by the existing buildings. Historic England, therefore urged the applicant in their representation to revise its scheme to sympathetically accommodate the historic elevations of the properties within its development.

13 The applicant has provided a heritage appraisal which concludes that neither the loss of the buildings nor their proposed replacement harm the character or appearance of the conservation area but can be considered to enhance the conservation area. The applicant has further explored the opportunities for retaining the existing facade of the Duke Street buildings but has advised that the change in level would make their retention in any redevelopment scheme unviable.

14 GLA officers agree with the Council's heritage assessment of the Jermyn and Duke Street buildings set out in the planning committee report, and acknowledge that the loss of nos 34-36 Duke Street would be regrettable. However, having considered the redevelopment proposals and as advised in the Stage 1 report, officers remain of the view that the high quality design approach underpinning the proposed building's form and proportions will result in preserving

and potentially enhancing the character of the conservation area. GLA officers accept that a case has been made to justify the loss of the Duke Street buildings given the public benefits of the scheme, which whilst modest entail the provision of significantly improved office and retail accommodation, which is flexible and architecturally attractive.

15 GLA officers welcome the conditions and informatives secured by the Council (conditions 18, 19, 20, 21, 22 and 23) that will ensure that the appearance of the building is suitable and that it contributes to the character and appearance of this part of the St James's Conservation Area. This includes Condition 20, which relates to the revised design for the shopfront, and an associated informative (5), which sets out that it should reflect the traditional detailing and materials of period timber shopfronts, which are a typical feature of the St James Conservation Area.

16 In conclusion, due consideration has been given by the applicant and the Council to the preservation of the Duke Street frontage as requested, in accordance with statutory guidance, and following assessment the rationale provided is accepted by GLA officers. Officers are satisfied that on balance in this case there is less than substantial harm, and the public benefits including securing optimum viable use outweigh the less than substantial harm. Taking into consideration that the scheme would not exert substantial harm, and the modest public benefits of the scheme delivered through its architecture, and improved accommodation, the proposal therefore, accords with the NPPF paragraph 134 and London Plan Policy 7.8.

17 The applicant was asked at consultation stage to provide a ground floor plan to show how the proposal related to the emerging public realm works in the area and to show the accessibility of the site. The applicant has clarified that there are no specific public realm works associated with the scheme and while The Crown Estate does have plans to undertake a comprehensive scheme of public realm works on Jermyn Street, the detailed design of this has not been finalised or agreed with Westminster City Council and as such it is not possible to predict when this may come forward.

Climate change

18 At the consultation stage, the applicant was asked to address a number of energy related issues. Further information was required to support the carbon dioxide savings claimed and to verify compliance with London Plan Policy 5.2. As it was also noted that the on-site carbon dioxide savings fell short of the London Plan targets and, while it was accepted that there was little further potential for carbon dioxide reductions on-site, the applicant was required to liaise with the Council to ensure the short fall in carbon dioxide reductions was met off-site.

19 The applicant has submitted an amended strategy including further information on cooling. The applicant has provided BRUKL sheets which show that the vast majority of spaces will meet the Part L solar gain limits with three areas not meeting the criteria (one significantly). The applicant has stated that the areas not meeting the solar gain limits is due to aesthetic requirements led by the Council. As there are passive design measures that can reduce the solar gains without significantly impacting on the visual design, for instance solar control glazing, the applicant should investigate measures during the detailed design with a view to reduce the solar gains as far as practical.

20 With regard to district heating, while the applicant has not investigated the opportunity to connect to the district heating opportunity areas in the vicinity, the applicant has advised that the energy centre will be designed to allow for future connection to a heat network should one become available. This approach is accepted in this instance.

21 As requested at stage 1, further information on the energy centre and the location of the PV panels and the operation of the solar hot water system has also been provided.

22 With regard to the carbon off setting contribution, this has been the subject of further discussion since Stage 1, noting that the carbon savings fall short of the London Plan target of 40%. The GLA has requested that the shortfall be mitigated off site, and the Council and the applicant are currently negotiating this as part of the section 106 agreement.

23 As requested, the Council has secured a condition to ensure the delivery of the proposed photovoltaic panels, which is welcomed.

24 With regard to climate change adaptation, a condition has also been secured by the Council to secure the proposed brown roofs and increase biodiversity in accordance with strategic and local policy.

Transport

25 The agreed conditions secure, as requested, a travel plan, construction logistics plan, delivery and service plan, and policy compliant cycle parking. The development is car free, which is supported by Transport for London. Whilst requested at Stage 1, there is no provision for parking for Blue Badge holders on site, nor additional such spaces proposed on street to serve visitors and staff. Otherwise the scheme is in general accordance with the transport policies of the London Plan. The Section 106 Heads of Terms (S106) provides funding to Crossrail of £230,580.

Response to consultation

26 Westminster City Council publicised the application by press advertisement and site notice and by sending notifications to 152 nearby owners and occupiers. The Council received a total of 28 representations, which were all letters of objections. These raised concerns on:

- The demolition of the Duke Street buildings and its impact on heritage and the conservation area.
- The loss of the Duke Street gallery and the need in the area for smaller units for the art industry; the loss of the restaurant and pub that are long established.
- The height, bulk and massing of the replacement building.
- The impact of the development on light, overshadowing, increased sense of enclosure, loss of privacy of adjacent properties and on views.
- The overdevelopment of the site.
- The intensive use of Ryder Yard and impact on safety and security.
- The use of Busy Street for servicing of development.
- Refuse from commercial units.
- Noise, dust and disturbance from demolition and construction works.

27 The following statutory consultees and local bodies provided a consultation response to this application:

- **Historic England:** Did not raise concerns with the treatment of the new Jermyn Street elevations but raised concerns with the loss of nos 34-36 Duke Street as these buildings make a positive contribution to the special character of the conservation area. Whilst it is acknowledged that the contribution to the special character of the area is modest and the harm is considered as less than substantial, there are no clear heritage benefits arising from the scheme that could be considered to outweigh the harm identified. Historic England

objects to the submitted application and urge the applicant to reconsider their approach to the Duke Street buildings and to seek to revise their scheme to sympathetically accommodate the historic elevations of these properties within their development.

- **Response:** The Council notes that the retention of the facade within an overall redevelopment is possible. However, Council officers conclude that the replacement scheme, with an improved shopfront design to Duke Street, would be a building of some quality and could be considered sufficient to preserve or enhance the character or appearance of the conservation area. In seeking Members' views as to the precise balance of public benefit (i.e. the new design) against the harm of the loss of the mid C19 facades, the conclusion of Members was that the planning benefits in the scheme are sufficient to outweigh the loss of the existing buildings in their entirety. GLA officers concur that the scheme would constitute a positive contribution to the Conservation Area and would comprise a sufficient public benefit to outweigh the less than substantial harm.
- **Historic England (Archaeology):** No objection subject to a condition to secure a programme of archaeological investigation.
- **Thames Water:** No objection.
- **St James's Conservation Trust:** Do not wish to comment.
- **Westminster Society:** No objection, this is potentially a good scheme.

28 In summary, the objections raised above on amenity, conservation and design, land use, and highways grounds have been addressed in the Council report and strategic matters about the principle of the development, heritage and design, and transport have been addressed in this report and the initial Stage 1 consultation.

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

29 Under Article 7 of the Order 2008 the Mayor could take over this application provided the policy tests set out in that Article are met. In this instance Westminster Council has resolved to grant permission with conditions and a planning obligation, which satisfactorily addresses the matters raised at stage one, therefore there is no sound planning reason for the Mayor to take over this application.

Legal considerations

30 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

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

32 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.

33 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

The principle of the office-led mixed use redevelopment of the site is in accordance with strategic policy. The issues raised at consultation stage regarding the principle of development, urban design and climate change have all been addressed. With the exception of the non provision of Blue Badge parking on site, the application scheme is in general accordance with the transport policies of the London Plan.

34 Westminster City Council has secured S106 agreement clauses and decision notice conditions to ensure the proposal complies with London Plan policies. The application is now acceptable in strategic planning terms and there are no sound reasons for the Mayor to intervene in this particular case.

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