

25 February 2016

# First Chicago House, 90 Long Acre

in the City of Westminster

planning application nos.14/11129/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**

Redevelopment of existing office building to provide mixed use development comprising, residential, retail, offices and cultural rehearsal space (as amended).

**The applicant**

The applicant is **Northwood Investors**, the agent is **Gerald Eve LLP**, and the architect is **PLP Architecture**.

**Strategic issues**

Outstanding issues in relation to **housing space standards, affordable housing, urban design, energy** and **transport** have been resolved.

**The Council's decision**

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

**Recommendation**

That the City of Westminster 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 18 November 2014 the Mayor of London received documents from City of Westminster Council 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: "*Development which comprises or includes the erection of a building of one or more of the following descriptions – (c) more than 30 metres high and is outside the City of London.*"

2 On 19 December 2014 the Mayor considered planning report D&P/3488/01, and subsequently advised City of Westminster Council that the application did not comply with the London Plan, for the reasons set out in paragraph 78 of the above-mentioned report; but that the possible remedies set out in that paragraph of the report 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. Since then, the application has been revised in response to the Mayor's concerns (see below). On 8 December 2015 City of Westminster Council decided that it was minded to grant planning permission for the revised application, and on 12 February 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 Council under Article 6 to refuse the application or issue a direction to City of Westminster 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 25 February 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](http://www.london.gov.uk).

## Update

5 Since the consultation stage, the planning application has been revised in terms of inclusion of cultural rehearsal space, changes to the quantum and unit mix of residential units, layouts of the market and affordable units, increase in height to 12 storeys, inclusion of a lift to serve the affordable units and a second core to the market element of the scheme. Reduction of car parking spaces from 55 to 30 is also included in the revised scheme.

6 At the consultation stage City of Westminster Council was advised that the application did not comply with the London Plan, for the reasons set out in paragraph 50 of the above-mentioned report; but that the possible remedies set out in that paragraph of the report could address these deficiencies:

- **Principle of land use** – The proposed mixed use on a site located in the Core Central Activity Zone is supported in principle and complies with policy 2.10 of the London Plan Mixed use in CAZ.
- **Partial loss of office space:** The proposed development would result partial loss of office space and the benefit from the overall proposal outweigh the loss.
- **Retail:** The provision of retail units on a site located in the heart of Covent Garden is supported in principle.
- **Housing and space standards:** Whilst the density is acceptable, some clarifications are required in terms of housing mix and space standards.
- **Affordable housing:** The level of affordable housing should be accompanied by a viability appraisal that demonstrates the maximum reasonable amount of affordable housing is provided. Any submitted appraisal should be independently verified by the Council's appointed consultant and the assessment should be shared with the GLA.
- **Children's play space:** The provision of play space in the courtyard could be acceptable provided it is designed to incorporate formal play areas segregated from office amenity.
- **Urban design:** Concerns raised above in the design section of this report should be addressed.
- **Inclusive access:** The proposed measures comply with the inclusive design policies of the London Plan and should be secured.

- **Sustainable development/energy:** Further information should be provided to support the carbon savings from the energy efficiency measure alone and in regard to future connection. The applicant should confirm that all apartments and commercial uses will be connected to the site heat network. Further information is required that support the carbon savings from the proposed renewable technology. Given that the retail element contributes considerable carbon emissions, the applicant should consider requiring the future tenant to specify air source heat pumps via a green lease agreement to ensure additional savings are achieved on site. The applicant should ensure that the short fall in carbon dioxide reductions is met off-site.
- **Transport:** Electric vehicle charging points, travel plan, car parking management and construction logistics plans and delivery & servicing plan should be submitted and secured. Contributions towards Legible London wayfinding should be secured by WCC, with transfer to LB Camden if necessary, included within s106. Contribution towards CIL is required.



*First Chicago House, the existing building: Source – applicant’s design and access statement.*

## Cultural rehearsal space in CAZ

7 A cultural rehearsal space (Sui Generis) has been introduced, after the stage 1 consultation. The applicant has set out that this introduction of the rehearsal space is to respond to an identified need and deficiency within the CAZ and it will be located at basement levels 1 and 2, ground and first floor level of the proposed building.

8 It is noted that there are currently no art or cultural uses on the site, however, historically the Queen’s Theatre was located on the site. The applicant has worked with the Royal Opera House, with a view to providing an orchestral rehearsal space which is fit for purpose. It is understood that the space will be first offered to the Royal Opera House then to other bodies nominated by the Association of British Orchestra (to meet the defined need). It is recommended that the provision of the cultural rehearsal space at a peppercorn rent, with the end user to be agreed by WCC be secured through a S106 legal agreement.

9 GLA officers welcome and support the introduction of such a cultural rehearsal space on a site located within CAZ in Covent Garden, characterised by cultural and tourist attractions. The introduction of this space in the scheme is compatible with the character and function of the area.

10 The proposal complies with the objectives of the London Plan – as it enhances the quality of life and promotes London’s global competitiveness. The proposal accords with the London Plan policy 2.11‘CAZ – Strategic Functions’.

## Affordable housing and space standards

11 The applicant has proposed 10 affordable residential units in the amended plan - in the form of intermediate/pocket homes comprising five studios, four x 1-bed (1b/1p - each with 39sqm) and one x 1-bed (1b/2p with 52sqm). All the space standards are in line with the London Plan minimum space requirements. It is also noted that all the affordable units have additional dedicated storages at the basement level, which is welcomed.

12 The financial viability report has been assessed by independent consultants – GVA acting on behalf of the City of Westminster Council. They have concluded that the scheme cannot viably provide more than 5.7% (of the total residential floor space) on-site affordable housing. However, this applies to the grant of a 3-year planning permission, but the applicant is applying for a 5-year planning permission. Therefore, they further reiterated their position and stated that whilst current values indicate that the proposed scheme cannot provide more than 5.7% affordable housing on site, by the end of the 5-year period values are anticipated to have increased sufficiently to enhance viability. They therefore recommend that the Council include provision for a review mechanism should development not have commenced within 3 years, or alternatively simply consider a three-year permission.

13 Considering the independent consultants report, constraints of the proposed development (the small footprint of the site and the late inclusion of lifts to the affordable units in the revised scheme), and that the Council has confirmed the aforementioned affordable housing offer meets their policy requirements, the proposed level of affordable housing (i.e. 10 intermediate/pocket units) is the maximum reasonable amount and is accepted, in this instance.

14 Finally, as the independent consultants have recommended and that the London Housing values are anticipated to increase, the Council should consider including provision for a review mechanism should development not have commenced within 3 years.

## Urban design

15 As discussed above, the scheme has been revised and a cultural rehearsal space has been introduced which will be located at basement levels of the proposed building. The revision includes changes to the layouts of the market and affordable units, increase in height to 12 storeys, inclusion of a lift to serve the affordable units and a second core to the market element of the scheme.



*Views of the proposed development: Source - applicant's Revised design and access statement, (July 2015).*

16 Concerns were raised regarding the affordable housing unit size / layout and the impact of including a second market core.

17 In response, the applicant has confirmed that the layout of affordable units at first floor has been revised to accommodate a lift to first floor level and to ensure that all units are London Plan

compliant in terms of size. In order to achieve this, the number of affordable units has reduced from 11 to 10. The revised layout will be dealt with by way of an amending condition to the decision notice.

18 With regards to the inclusion of a second market core, the architects PLP have reviewed a further option where the second core is now full size. In this scenario, the second core rises to the 7<sup>th</sup> floor (with a lift overrun at 8<sup>th</sup> floor), above which the setbacks along Shelton Street prevent the additional core in massing terms, and the unit count is 8 or less (due to setbacks and larger units) such that an additional core to the floors above are not required. It is noted that, the back of house spaces in the basement would be shared (i.e. plant, refuse, cycle storage etc.) as duplication of these areas would require a significant increase in area.

19 The applicant has confirmed that the introduction of this second full market core has the following impact:

- A reduction in net sales area of 609sqm / 9 units (2 affordable and 7 market).
- A loss of 134sqm retail at ground floor.
- A loss of 112sqm residential storage in the basement.

20 The applicant has undertaken a viability review to understand the financial implications of introducing this full second market core and have advised that the financial impact would be in the region of £18.2m which is the result of the additional cost of including the second core, the loss of 9 units and the loss of 134sqm retail floor space.

21 A revised drawing pack has been received showing the proposed amendments to both the affordable layout to include a lift to first floor and to achieve London Plan minimum space standards (which will be secured by an amending condition) as well as typical floor plans showing the location, and impact of, a full second market core. This pack also shows the applicant's suggested solution to having one market core by including a separation corridor with the introduction of doors to each residential corridor.

22 As a result, the amended design has addressed the concerns raised and the Council has confirmed in writing to secure the revised layout to be dealt with by way of amended conditions to the decision notice. This is accepted.

## **Sustainable development/energy**

23 Since stage 1 consultation the applicant has considered to address the concerns raised. Currently, the proposed scheme falls short of the London Plan Target by 90 tonnes and the applicant and the Council were advised to ensure that the shortfall in carbon dioxide reductions is met off-site. However the Council committee report states that *"under the new Community Infrastructure Levy Regulations (2010 as amended) the Council cannot currently collect a carbon offset payment"*.

24 The applicant has confirmed that all residential units will have active cooling and that this is needed to ensure that comfort conditions can be met. The applicant has ensured that the control system is designed so that active cooling is used only when needed; including controls to switch off the system if the windows are open. The applicant has provided the SAP and BRUKL sheets for the energy efficiency measures which shows that a gas boiler has been used for the baseline emission figures, which is welcomed. The applicant has agreed to provide capped connection to the heat network for the retail units. This is also welcomed.

25 However, there remain technical details that should still need to be addressed in consultation with GLA officers related to:

- The proposed use of two heat networks.
- The use of separate distribution systems for heat and space heating for the residential units and the potential overheating risk mitigation measures.

26 As such, outstanding energy issues have been partially resolved but the remaining technical matters as discussed above will be further addressed through further negotiations and amended conditions, with the aim of meeting the London Plan 35% target. The Council and the applicant have both agreed to such resolution of the technical matters.

### **Transport for London's comments**

27 In regard to matters raised by TfL at Stage 1, s106 provision for a car parking management plan, construction management (code of practice) plan public realm and highway improvements, car club membership (25 years) for each dwelling, and conditions securing EVCP, and cycle parking will be applied, though the scheme would not provide any short stay cycle parking, contrary to London Plan Policies 6.9 and 6.13, having an overall shortfall of 31 spaces.

28 Car parking levels have been reduced from 55 spaces (a 0.49 ratio) to 30 (a 0.25 ratio) for the 119 dwellings proposed. This is welcomed by TfL.

29 The Committee Report does not set out why travel plans, a delivery and servicing management plan, or legible London s106 contributions have not been secured. However, the applicant has proposed to promote a travel plan notwithstanding the lack of such a requirement in the s106 agreement. This is welcomed by TfL.

30 Given that the scheme will deliver a significant improvement to the quality and quantity of surrounding public realm, and will encourage more sustainable means of travel than the existing development, the refusal of the development due to the failures to fully address the requirements of London Plan Transport Policies would not be appropriate.

31 As the additional public realm proposed is not intended by the applicant to become adopted highway, TfL would recommend a more effective condition preventing the enclosure of these spaces. Proposed condition 13 is not likely to prevent the erection of enclosing railings / boundaries where those structures are not specific or individual to the A3 uses proposed. A removal of permitted development rights - allowing the construction or erection of a gate / fence / wall / other means of enclosure at ground floor level - under Part 2, Class A of the GDPO would be more appropriate.

### **Response to consultation**

32 The Council using its consultation procedures (advertisement / site notice), has consulted 412 adjoining owners / occupiers.

33 Responses from local residents: The total no of replies is 38 that include 4 letters of support and a petition containing 128 signatures raising objections on the following grounds:

- Land use – lack of active frontage, missed opportunities to reinstate something of the site's history and pedestrian route through the site, lack of affordable housing, the building is not for Covent Gardeners, overcrowding.
- Design – existing building should be retained, the proposal is against the principle of demolition and redevelopment, increase in height and bulk, not in keeping with the surrounding conservation areas, public space is not well incorporated, architecturally mediocre and architectural vandalism, contrary to the NPPF as substantial harm will be caused.
- Amenity – existing building relates better to surrounding residential properties, overbearing impact on Arne Street and Shelton Street will become canyon like, loss of sunlight and daylight, loss of privacy, increased noise, dirt and pollution.
- Highways – increased pedestrian and vehicular congestion, lack of car parking will impact on on-street resident's car parking bays.
- Other – concern that the interests of those affected in Camden may be overlooked, impact on satellite TV, impact on local shops and businesses and wider pavement to Long Acre will encourage pedicabs.

34     Statutory/External consultees:

- Historic England: The application should be determined in accordance with national and local policy guidance.
- Historic England Archaeology: Original comments maintained, which is no objection to archaeology condition to secure a programme of archaeological evaluation and written scheme of investigation.
- Covent Garden Area Trust: The inclusion of an orchestral rehearsal space for the Royal Opera House is welcomed. However, maintain original objection to the scheme – ‘The proposal will significantly impact on the setting and views of the Grade II\* Freemasons Hall and Grade I Royal Opera House. The height, bulk, design and materials of the proposed development are inappropriate for the site and local context and would have a harmful impact on the setting of two significant designated heritage assets which will not be outweighed by the public benefit of the scheme. There is no need to create a local landmark in close proximity to nationally significant heritage assets which should remain the local landmarks. There is a clear opportunity to repair the harm which has been caused by past mistakes; however, this opportunity is missed by causing further harm by increasing the height on the site. There are too many setbacks and materials proposed which tip the balance from a positive approach to a negative approach. Setting back of retail units may result in anti-social behaviour.’ Concern that the number of affordable housing units has been reduced. Affordable housing is desperately needed in Covent Garden.
- Covent Garden Community Association: Strongly object to the revised application. Appreciate the addition of the orchestral rehearsal space, but the modifications to the proposed massing does nothing to alter the height, massing and other issues raised in the previous objection. Original objection maintained in regard to the proposed building is not sympathetic to the character or appearance of the area. The design does not reflect the history and legacy of Covent Garden. The development will have a visual impact on views of the Freemasons Hall, The Royal Opera House and other listed buildings. The height, massing and bulk which greatly exceeds the existing, and which is already among the tallest in Covent Garden, will have a negative impact on the character of Covent Garden. Loss of sunlight, daylight and privacy to existing residents which border all four sides of the site; lack of social housing; lack of renewable energy; the public realm is dead space with no servicing and deliveries; the number of parking spaces proposed is excessive; the development is a missed opportunity to secure more benefits for the community; and noise and vibration during construction works.
- - The Council’s committee report assessed the impact and stated that the application site is not located in a conservation area but it is adjacent to both Covent Garden and Seven Dials Conservation Areas. Due to its height and bulk the development will affect these heritage assets, however, compared to the existing building the proposal addresses the street more successfully in terms of aesthetic improvements, a lively street frontage and improved public realms.
- - GLA officers support the Council’s assessment and have also noted that the Council has secured a series of conditions requiring facade detailing and materials to be submitted for approval, which is welcomed in terms of ensuring the appearance of the proposed building is suitable and that it contributes positively to the character of Covent Garden.
- - Two days ago, the GLA has received one letter of objection to the proposal from a resident in Camden who stated that the Council has not consulted Camden residents and businesses just opposite the site. However, a copy of response from Covent Garden Community Association (whom the resident is a member) has been received as part of the Council’s stage 2 referral and the Association’s objection to the scheme is included in this report as shown above.

35 Concerns that have planning relevance have been addressed in this report, GLA's stage 1 report and the Council's committee report. Appropriate conditions have been imposed in the Council's draft decision notice addressing and / or resolving the concerns.

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

36 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**

37 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**

38 Should the Mayor direct refusal, he would be the principal party at any subsequent appeal hearing or public inquiry. Government guidance in Circular 03/2009 (*'Costs Awards in Appeals and Other Planning Proceedings'*) emphasises that parties usually pay their own expenses arising from an appeal.

39 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.

## **Conclusion**

40 Outstanding issues in relation to housing space standards, affordable housing, urban design, and transport have been resolved satisfactorily. The technical elements of the energy issues need further negotiations and amended conditions. Overall, the redevelopment of the existing office building for housing-led mixed use is supported in terms of good strategic planning in Greater London.

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