

**70-73 Piccadilly**

in the City of Westminster

planning application no. 15/01827/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 the existing buildings at 70-73 Piccadilly, 1-3 Berkeley Street and 43-48 Dover Street and redevelopment comprising a building of ground plus 6-10 storeys with three basement levels; use of the property as residential accommodation (Class C3) comprising 52 residential dwellings, hotel accommodation with ancillary functions (Use Class C1) and either retail/financial and professional services/restaurants or drinking establishments (Use Classes A1-A4) as part basement, ground and first floor levels, installation of plant; creation of terraces at seventh and eighth floor levels; installation of PV cells at main roof level; open space as part of an amended pedestrian access route between Dover Street and Berkeley Street, 60 car parking spaces, 151 cycle parking spaces and other ancillary works.

**The applicant**

The applicant is **Crosstree Real Estate Management LLP** and the architect is **Adjaye Associates**.

**Strategic issues**

The residential-led redevelopment within the **Central Activities Zone** is in accordance with strategic objectives. Outstanding strategic planning concerns relating to **land use, housing, urban design, inclusive design, energy** and **transport** have been satisfactorily addressed.

**The Council's decision**

In this instance the City of Westminster has resolved to grant permission but giving delegated authority to refuse the application if the Section 106 agreement is not signed within 6 weeks of the date of the Committee resolution.

**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 that he is to be the local planning authority.

## Context

1 On 12 January 2015 the Mayor of London received documents from the 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 (c) that is more than 30 metres high and is outside the City of London.”*

2 On 20 May 2015 the Mayor considered planning report D&P/3508a/01, and subsequently advised the Council that 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 63 of that report; but that the possible remedies set out in that paragraph could address those deficiencies. 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.

3 On 14 July 2015, the Council’s Planning Application Committee considered the application but resolved to defer the application to allow the applicant to reconsider:

- The size and number of residential units, including consideration of reducing the size of some units and also the number of three/four bedroom units;
- Providing unallocated parking;
- Retaining the horse statue on site;
- Use of Portland stone on the proposed building;
- Retention of the Harrington Shop Front;
- Retention and restoration of Dover Yard sign.

4 The scheme was subsequently amended. The number of residential units was increased from 39 to 52 units. The mix of residential units was revised to incorporate a higher percentage of one and two bedroom units. The revised scheme now provides 60 unallocated car parking spaces. The Horse and Rider statue, historic shopfront and Dover Yard sign will all now be retained. The applicant declined to confirm the use of Portland stone.

5 On 15 September 2015 Council decided that it was minded to grant planning permission for the amended scheme and agreed a dual recommendation resolving to grant conditional planning permission but giving delegated authority for officers to refuse permission if the Section 106 legal agreement is not signed within a specified date. On 12 January 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 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 26 January 2016 to notify the Council of his decision and to issue any direction.

6 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

7 At the consultation stage the City of Westminster was advised that proposed development was in general accordance with strategic policy and was supported. However, the proposal raised a number of strategic planning concerns that needed to be resolved to comply with the London Plan. Addressing each of the points, the following is noted:

### Land use

8 At consultation stage it was noted that the proposed development would result in a loss of office space within the CAZ. In response to this comment the applicant refers to the fact that the London Plan recognises the pressing need for more housing in London, with increased housing targets set for each year. London Plan policy 4.2 states that the Mayor and boroughs should support mixed use development and redevelopment of office provision to improve London's competitiveness and address wider objectives of the London Plan. The strategic objective being to deliver additional housing to meet the need for more homes. Furthermore the London Plan states that local plans should support the conversion of surplus office to other uses and promote mixed use developments and there is sufficient provision of office accommodation within the development pipeline. The applicant therefore concludes that the proposal accords with the strategic objectives of the NPPF, the London Plan and Westminster City Council policies.

9 In considering this response the Council refers to Policy S47 of the Westminster City Plan, which advises a presumption in favour of sustainable development in line with the NPPF. Specific reference is made to Paragraph 51 of the NPPF which advises local planning authorities should normally approve planning applications for change of use to residential and any associated development from commercial buildings (currently in B use class) where there are not strong economic reasons why such development would be inappropriate.

10 The Council concludes that whilst there would be a loss of offices floorspace and employment as a result of the development, the loss of offices is part of a mixed use scheme which would increase hotel and residential floorspace on the site. The Council states that there is no evidence to suggest that the economic impact of the proposals on this part of Piccadilly or the City as a whole would be sufficiently harmful in this instance to justify refusing permission. There are no current policies within the UDP or City Plan which protect existing offices, although this is under review at the present time.

11 London Plan policy does not specifically protect office uses although it does encourage the renewal and enhancement of office stock within the CAZ. Westminster City Council are in the process of changing their policy, but this scheme has been determined before those changes have come into place, the land use proposals are therefore considered acceptable under the terms of the current development plan.

### Housing

12 At consultation stage it was noted that the proposed development was not proposing any affordable housing on site. A financial viability assessment (FVA) was prepared by Strutt and Parker and submitted in support of the application. The FVA was independently assessed by DTZ on behalf of the Council. DTZ concluded that the development could not support either on-site affordable housing provision or a payment in lieu without impacting on the financial viability of the development. Notwithstanding this the applicant offered a payment of £1.5 million towards the Council's affordable housing fund. A S106 legal agreement is proposed to secure the payment of the contribution. Based on the advice by DTZ it is concluded that the affordable housing solution is acceptable, provided that the Council secures this payment to fund new additional affordable housing.

13 At consultation stage it was requested that the net residential density be confirmed. The density was confirmed as 783 habitable rooms per hectare based on the scheme prior to amendments. Given the sites 'excellent' public transport accessibility and central location the indicative range identified by the London Plan would be up to 900 habitable rooms per hectare. The amended scheme still falls within the indicative range and the density is therefore acceptable.

14 Further details of child playspace provision were requested at consultation stage. It has been confirmed that no play space is provided as part of the development. Furthermore no form of mitigation or off-site provision has been secured as part of the resolution to grant planning permission. Given the proximity of Green Park and Hyde Park to the application site, on balance the lack of playspace provision is not considered sufficient grounds to direct refusal.

#### Urban design

15 At consultation stage the applicant was advised to ensure that the flank edge of the retail unit as the north-east end of the Dover Yard link is designed and secured within the application to provide passive surveillance. The applicant has confirmed that this flank edge will be activated with commercial frontage. The resolution to grant planning permission is subject to a condition requiring approval of detailed design of shopfronts. The response is considered satisfactory.

16 The retention and relocation of the Horse and Rider statue within the site has been secured by S106 legal agreement as requested at consultation stage, which is welcomed.

#### Inclusive Design

17 At consultation stage the applicant was requested to review the quantum of accessible hotel rooms in light of the requirements of London Plan policy 4.5. No further details have been provided and Council has not given consideration to this requirement. The provision of 10% of hotel bedrooms as accessible rooms should be secured by condition with details to be submitted for approval.

#### Energy

18 At consultation stage it was advised that the overheating strategy should be reviewed to ensure that dwellings do not require mechanical cooling, avoiding the use of air conditioners. The applicant has responded stating that although the dwellings on site are dual aspect and will benefit from cross ventilation, the overheating simulations included in the Energy Statement were based on a conservative worst case scenario where no ventilation was allowed across the apartments (i.e. only single sided ventilation accounted in each room). If cross ventilation is considered in the thermal model, once the assessment takes cross ventilation into account, all rooms in the tested apartments meet the requirement for the tested years. Notwithstanding, energy efficient central cooling system has been integrated within the design primarily to meet market requirements for this level of accommodation, rather than being necessary to avoid overheating, as demonstrated by these studies. The efficient cooling system will also ensure internal comfort during periods where noise and/or air quality requirements dictate the need to close the windows. Overall the response is satisfactory.

19 Details of the floor area for the site energy centre have been provided as requested at consultation stage and are considered satisfactory. Implementation of the proposed site heat network should be secured by condition along with the commitment that the development is designed to allow future connection to a district network should one become available.

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

20 In regard to matters raised by TfL at Stage 1, a Construction Logistics / Management Plan and Servicing Management Plan, along with unallocated carp parking, will be secured by s106. At the time of referral, only 20% of spaces are to be required, by condition, to have Electric Vehicle Charging Points. Westminster City Council have been reminded that the London Plan requires 20% active, and 20% passive provision, and that suitable conditions have been applied to several previously referred schemes within Westminster, and the same approach is required in this instance.

21 The City Council did not require the provision of lifetime homes accessible parking provision, further retail cycle parking spaces, membership of the Mayor's Cycle Hire Scheme for residents, identification of coach parking provision or the provision of a detailed Travel Plan, nor were these requirements, set out in the Mayor's Stage 1 response, reported to the Committee.

22 Whilst the level of residential car parking remains excessive, as the number of dwellings was increased by a greater proportion than the number of parking spaces, following the Stage 1 response, the parking ratio has fallen from 1.3 spaces per dwelling, to 1.15. It is unclear why the number of cycle parking spaces was not commensurately increased, and thus less than the London Plan minimum levels are now to be provided. The basement parking level appears to be capable of providing the additional 16 cycle parking spaces required (above the 74 currently proposed) to meet the minimum requirements, and this should be achieved through revisions to the cycle parking condition proposed.

23 Whilst the Council has failed to address the number of issues set out above, on balance, as the loss of office floorspace means the impact on trip generation would be largely neutral, the development would provide improved public realm within and around the site, and a Mayoral CIL charge of £627,950 would be expected, the proposals are therefore considered acceptable.

## **Response to consultation**

24 The Council notified 576 nearby owners and occupiers, with a total of 3 objections received including one from a local councillor. Amenity concerns were raised in relation loss of sunlight from the completed development and the impact of noise and during construction and during the lifetime of the development. Objections were also raised in relation harmful impacts arising from the design, bulk and massing of the development. One letter of support was received from a local councillor, although disappointment was expressed at the lack of financial contribution towards affordable housing.

25 In relation to the objections and points raised, these have been addressed in the Council report and strategic matters about design bulk and massing of development in particular, have been addressed in the initial Stage 1 consultation.

26 In terms of statutory consultees, Historic England supports the proposed development and the archaeological advisory service has recommended conditions which are incorporated in the draft decision notice. London Underground has no comment other than the developer should continue to work with them.

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

27 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

28 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

29 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.

30 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.

31 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

32 The principle of the redevelopment of the site is supported in accordance with strategic policy. The issues raised at consultation stage regarding loss of office space have been addressed. The issues raised regarding affordable housing and urban design have been addressed and concerns in relation to energy, inclusive design and transport can be satisfied with additional conditions. As such, 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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