

<b>CITY OF WESTMINSTER</b>			
<b>PLANNING APPLICATIONS COMMITTEE</b>	<b>Date</b> 7 October 2014	<b>Classification</b> For General Release	
<b>Report of</b> Operational Director Development Planning		<b>Wards involved</b> West End	
<b>Subject of Report</b>	<b>Eastgate House, 16-19 Eastcastle Street, London, W1W 8DA</b>		
<b>Proposal</b>	Details of proposed affordable housing provision elsewhere in the City of Westminster in accordance with Condition 1(2) of planning permission dated 6 November 2013 (RN: 13/08208) for use of the property as Class A1 retail on part basement and ground floor and part residential entrance (Class C3), and first to sixth floors as seven residential units (Class C3) and associated alterations and extensions including creation of roof terraces at third to sixth floor levels, alteration of roof top plant enclosures with associated installation of new plant, and installation of new shopfronts.		
<b>Agent</b>	Montagu Evans LLP		
<b>On behalf of</b>	TMCT Associates		
<b>Registered Number</b>	14/01404/ADFULL	<b>TP / PP No</b>	TP/2484
<b>Date of Application</b>	14.02.2014	<b>Date amended/ completed</b>	20.03.2014
<b>Category of Application</b>	Non DCLG		
<b>Historic Building Grade</b>	Unlisted		
<b>Conservation Area</b>	East Marylebone		
<b>Development Plan Context</b> - London Plan July 2011 - Westminster's City Plan: Strategic Policies 2013 - Unitary Development Plan (UDP) January 2007	Within London Plan Central Activities Zone  Within Central Activities Zone		
<b>Stress Area</b>	Outside Stress Area		
<b>Current Licensing Position</b>	Not Applicable		

## 1. RECOMMENDATION

For Committee's consideration:

1. Does the Committee consider that the contribution of £350,000 in lieu of a full payment towards the Council's affordable housing fund is acceptable in this case?
2. Subject to 1. above, grant conditional permission subject to a S106 legal agreement to secure:
  - i) the payment of £350,000 towards the City Council's affordable housing fund (index linked and payable on commencement of development);
  - ii) S106 Monitoring contribution.

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3. If the S106 legal agreement has not been completed within six weeks of the date of the Committee's resolution then:

(a) The Operational Director shall consider whether it would be possible and appropriate to issue the permission with additional conditions attached to secure the benefits listed above. If so, the Operational Director is authorised to determine and issue such a decision under Delegated Powers; however, if not

(b) The Operational Director shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits which would have been secured; if so, the Operational Director is authorised to determine the application and agree appropriate reasons for refusal under Delegated Powers.





**EASTGATE HOUSE, 16-19 EASTCASTLE STREET, W1**

## 2. SUMMARY

The conversion of this unlisted building to residential accommodation was approved in November 2013. The scheme triggered a requirement to provide affordable housing. It was accepted that this was impractical to provide affordable housing on-site; the applicant advised that they did not have any other suitable properties where affordable housing could be provided and the Council agreed that a commuted payment was an acceptable option in this case. A policy compliant figure of £797,000 was agreed by the applicant and secured by condition.

The applicant now argues that the development is not viable and the commuted payment cannot be paid. This has been subject to assessment by independent consultants acting on behalf of the Council, who advise that at the present time the scheme is indeed unviable. Notwithstanding this, the applicant has offered an ex gratia payment of £350,000.

The sole issue is whether the financial contribution that has been offered by the applicant is acceptable.

## 3. CONSULTATIONS

### FITZROVIA NEIGHBOURHOOD ASSOCIATION

Objection - strongly object to the removal of any affordable housing contribution. See no reason with the continuing rise of property values for the developer to remove this important housing contribution - a site in this location near Crossrail is likely to increase in value.

### ADJOINING OWNERS/OCCUPIERS AND OTHER REPRESENTATIONS

No. Consulted: 76; Total No. of Replies: 2.

Two letters on behalf of the freeholder of the property:

- one letter objecting to the application, but not stating on what grounds;
- one letter questioning what notifications have been sent on the owners/long leaseholders of the property under Certificate B of the application form.

ADVERTISEMENT/SITE NOTICE: Yes

## 4. BACKGROUND INFORMATION

### 4.1 The Application Site

The building is located on the north side of Eastcastle Street, on the junction with Wells Street. Marylebone Passage is at the rear. It comprises basement, ground and six upper floors. Historically the building has been in a mix of showroom, office and banking use. At the present time, all of the upper floors are in office use; part of the ground floor and basement also appears to be in office use although the agent believes that this may be ancillary to the showroom use that occupies the remaining part of the ground floor and part basement.

The site is within the East Marylebone Special Policy Area (SPA) as defined within the Unitary Development Plan (UDP). However, the extent of the SPA has been revised and reduced by Westminster's City Plan: Strategic Policies adopted in November 2013 and under that policy the site is well outside of the SPA.

### 4.2 Relevant History

November 2013 – planning permission granted for 'Use of part basement as retail (Class A1) and ground floor as part retail (Class A1) and part residential entrance (Class C3), and first to sixth floors as seven residential units (Class C3); associated extensions at third to fifth floors, creation of roof terraces at third to sixth floor levels, alteration of roof top plant enclosures with

associated installation of new plant, creation of green roofs, installation of new shopfronts and associated works (including a canopy), including alterations to rear (Marylebone Passage).'

Condition 1 required the following:

“(Pre Commencement Condition) You must not start work on the site until we have approved appropriate arrangements to secure the following:

1. parking mitigation arrangements;
2. the provision of affordable housing elsewhere in the City of Westminster.

In the case of each of the above benefits, you must include in the arrangements details of when you will provide the benefits, and how you will guarantee this timing. You must only carry out the development according to the approved arrangements.”

## 5. THE PROPOSAL

The applicant is now effectively seeking to discharge Condition 1 by entering a S106 legal agreement to make a financial contribution towards the Council's affordable housing fund. However, they advise that the scheme is no longer viable to pay the full amount (£797,000). There are no changes to the scheme itself.

## 6. DETAILED CONSIDERATIONS

### Affordable housing

The only issue concerns the provision of affordable housing. UDP Policy H4 requires affordable housing to be provided as part of housing developments on sites of 0.3 hectares or more, where there are 10 or more additional dwellings and in other cases which would have been equivalent to either of these criteria but fall below these thresholds because of the exceptional size of the units or the phasing of development. The policy requires affordable housing to be provided on site as part of the development, except where the applicant can satisfactorily demonstrate that the affordable housing cannot be designed for transfer to, or management by, a registered social landlord or other appropriate body. The amount of affordable housing required will be assessed in accordance with criteria such as location within the City of Westminster but the Council will take into account whether there would be particular costs associated with the development of the site, or the provision of affordable housing would make it difficult to meet other planning objectives that need to be given priority in developing the site.

Policy S16 of 'Westminster's City Plan: Strategic Policies' introduces new criteria triggering affordable housing requirements - an increase in residential floorspace of 1,000m<sup>2</sup> or more (in addition to 10 or more additional units). Again, the policy requires the affordable housing to be provided on-site, but where this is not practical or viable, cascade options allow for it to be provided off-site in the vicinity of the development site or possibly beyond the vicinity of the site. The supporting text to this policy notes that financial contributions towards the Council's affordable housing fund in lieu of affordable housing provision is an option that the Council will only accept if the cascade options have been thoroughly explored and proved impractical or unfeasible. The relevant London Plan policy concerning affordable housing provision is Policy 3.12.

The approved conversion scheme provides a total of 1,771.96m<sup>2</sup> (GEA) of residential floorspace. The policy requirement is that 25% of this should be provided as affordable housing (240m<sup>2</sup>, or approximately three units based on a standard size of 80m<sup>2</sup> per unit). It was accepted previously that on a relatively small site like this that it is physically impractical to provide a separate element as on-site affordable housing. The applicant has confirmed that they have no other buildings in Westminster that can serve as an alternative location. The

applicant therefore offered to make a full commuted payment in lieu towards affordable housing: based on the standard calculation, this equates to £796,920 (rounded up to £797,000). This was secured by a Grampian condition.

The applicant now advises that the development is unviable and that it cannot afford to make the full commuted payment required by policy. A viability report has been submitted in support of this, which has been assessed by independent viability consultants acting on behalf of the Council. Following protracted discussions, the Council's consultants advise that in fact the proposal is unviable, even without the required commuted payment. Notwithstanding this, the applicant is prepared to make an ex gratia offer of £350,000.

In the light of this advice, the Committee is asked to consider whether the applicant's offer is acceptable. The objection from the Fitzrovia Neighbourhood Association is noted, but given the advice from the Council's consultant, it is not considered that this objection can be sustained.

The freeholder of the property has objected to the current application but not specified why (despite being asked to expand upon their objection). They have also queried whether the applicant served the correct notices on all relevant owners: the planning agents acknowledged that there was an administrative error and that notices were subsequently served on the correct addresses of all interested parties.

## **BACKGROUND PAPERS**

1. Application form dated 14.2.14
2. Representation from the Fitzrovia Neighbourhood Association dated 14.4.14
3. Letter from Stevenson Harwood dated 25.4.14
4. Letter from The Langham Estate dated 3.3.14
5. Email from Montagu Evans dated 20.3.14

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS PLEASE CONTACT MICHAEL WALTON ON 020 7641 2521 OR BY E-MAIL – [mwalton@westminster.gov.uk](mailto:mwalton@westminster.gov.uk)